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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, SECOND SESSION

SENATE—*Monday, September 8, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

O God, we seek Thee only to discover that Thou art already seeking us. Breathe upon us the spirit of the Master that we may work for that larger kingdom Thou dost govern, the law of which is love. Give us wisdom to make and keep this Nation strong and brave and good. Make us truly sensitive to the heartaches and hardships of others. Be with those who work in places of danger. Minister to those who are poor and needy. Strengthen and uphold those of faint heart. Support those who are persecuted for righteousness' sake. Bring peace and justice in our time, for Thy name's sake. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 8, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. ROBERT C. BYRD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. TALMADGE). The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDING OFFICER. Without objection, it is so ordered.

POLISH STRIKE SETTLEMENT

Mr. ROBERT C. BYRD. Mr. President, Poland is emerging from an especially difficult, yet encouraging period. My colleagues and all Americans have watched the recent events in Poland with concern and keen interest. The historic agreement between Polish workers and Government is profoundly significant for Poland's future.

The strikes in Poland were an internal Polish matter, resolved by Poles. Now that the strike has been resolved, I am pleased that the people of Poland have avoided violence and have reached agreement through serious and productive bargaining.

American workers, and in fact all Americans understand the rights of workers to decide to join a labor union. We understand as well the right for unions to strike as part of the bargaining process. These are basic rights. It is laudable and encouraging that Poland—through its own exchanges and without outside intervention—has recognized those rights.

The strike by the workers of Gdansk's huge Lenin shipyards captivated international attention. At these same shipyards 10 years ago, labor unrest met a less fortunate resolution and 40 workers were killed. This time the strike spread to 500,000 workers, shutting down an estimated 600 State enterprises. But again, the attention was on Gdansk, where the unified strike committee issued its list of 21 demands. In that city strike leader Lech Walesa and First Deputy Premier Miexzyslaw Jagielski led the bargaining and arrived at a settlement. A city which had known tragedy in the past was the site of an historic agreement.

Both sides are to be congratulated for their restraint and their perseverance in reaching a settlement. They have begun a new period of labor relations in Poland. There is now a new union hall in Poland, and there may soon be others. Workers are lining up to join. The Polish Government has stated that it intends to honor the concessions accorded the workers. The new Communist Party leader, Stanislaw Kania, who has succeeded Edward Gierek, has affirmed that the Communist Party of Poland will honor the agreements.

The strike was costly to the Polish economy. I certainly hope that these agreements will provide a foundation for future economic strength. There have been difficulties in the Polish economy for some time, and the strike has added some short-term problems. But Poland has signaled that it will face its future having recognized certain workers' rights, and having accepted the strike demands as legitimate. No one believes that the coming years will be easy ones for the people of Poland. But the strength and independence of this proud people have been confirmed, and I am confident that they will endure future hardships with increased pride and resilience.

These positive accomplishments, which have become symbolized by the city of Gdansk, represent change and adaptation. They are positive accomplishments, and while acclaimed in Poland and praised in this country and others, they have been criticized. The world has been witness to the events of Gdansk. And the world will watch carefully as the promises of September live through the coming months and years. The Polish people have spoken for themselves and deserve the right to carry out their historic decisions as freely as they reached them. Gdansk means hope for a better future in Poland.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, does the minority leader need my time?

Mr. BAKER. Mr. President, I thank the majority leader. I do not need the time. I expect not to need all my time and I have a special order, I believe, for

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

this morning. So I will not need any additional time.

I thank the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I yield the remainder of my time to the minority leader.

Mr. BAKER. I thank the majority leader.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Chair.

THE POLISH STRIKE SETTLEMENT

Mr. BAKER. Mr. President, I will take this opportunity to commend the distinguished majority leader for his remarks in respect to the recent developments in Poland.

I think we have witnessed a remarkable chain of events, events which might have produced extraordinarily tumultuous, even bloody, results. But, on the contrary, they appear at this time to have produced real progress toward the elaboration of individual rights and collective opportunities within Poland.

While I am often critical of the President and his administration of our foreign policy, I wish to take this opportunity to say that I think our handling of the Polish situation was done in an intelligent and wise way and deserves our commendation and support.

I would, as well, Mr. President, take this opportunity to pay my special respects and evidence my hearty congratulations to our former colleague, the Secretary of State., Secretary Muskie. for this must have been a particulary poignant moment for him because of his interest in the freedom of Poland and the people of that brave nation.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, are there special orders for the recognition of Senators this morning?

The PRESIDING OFFICER. There is a special order for Senator TOWER, in addition to the time of the minority leader.

Mr. BAKER. I have a special order this morning as well?

The PRESIDING OFFICER. Fifteen minutes.

Mr. BAKER. So there are two special orders, for Senator BAKER and Senator TOWER.

Mr. President, shortly, I will make a brief statement which is to be the subject of my special order. I ask unanimous consent that any time I have remaining under the standing order for the recognition of the two leaders, together with my time under the special, be aggregated and assigned to the distinguished Senator from Texas for his use and control.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas is recognized.

Mr. BAKER. Mr. President, will the Senator from Texas yield to me for a statement?

Mr. TOWER. I yield to the distinguished minority leader such time as he may require.

Mr. BAKER. I thank the Senator from Texas.

THE "STEALTH" AIRCRAFT

Mr. BAKER. Mr. President, over the past several weeks, we have watched with alarm as the fabric of secrecy around one of the Nation's most sensitive and important military programs, Stealth, has come unraveled. That fabric now lies in shreds, the program exposed, and the costs to the American people and the security of the Nation are incalculable. I am saddened and I am angry because none of this was necessary.

In our efforts to preserve the military balance, the security of the United States has become dependent upon maintaining a significant qualitative edge over the Soviet Union in the development of military weapon systems. Huge Soviet investment in military research and development—$40 billion more than the United States during the Carter administration alone—has made it more and more difficult each year for us to maintain a qualitative offset to Soviet numerical superiority.

For that reason, it is essential that we keep advanced military research highly classified and well protected to prevent the Soviet Union from developing effective countermeasures. In the case of stealth, keeping the very existence of the program secret was of great importance.

Today it is common knowledge that the United States has had underway for some years a program to develop so-called Stealth technologies which may make aircraft far more difficult to detect and attack. Some successes have been recorded in this program and more are hoped for in the future. As a result of the disclosure of this program, however, the successful application of these technologies in the future could be short lived as a result of the development of countermeasures by the Soviet Union, countermeasures which the Soviets now know they must begin developing.

Mr. President, we are all dismayed by the unauthorized disclosures, for whatever reason, of classified information; but this leak is worse than most because the motivation for it is dubious at best and the rationale justifying it totally inadequate. The Washington Post, in an editorial on Sunday, asked the right questions; the American people deserve answers to those questions. Mr. President, I ask unanimous consent that the Post editorial, which states that the "burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup," be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

STEALTH

You have to be a real administration loyalist to take at face value the Pentagon's insistence that its official disclosure of top-secret information on the "Stealth" aircraft project last month was guided entirely by a desire to plug further leaks. The "major" unauthorized leak that prompted the disclosure came, in a story in this newspaper, on Aug. 14—just as Jimmy Carter was being renominated. Officials cited in that story acknowledged readily—some of them bitterly—that it was going to be used to combat Ronald Reagan's charges that Mr. Carter had lowered the nation's guard by, among other things, canceling the proposed B1 bomber. The Stealth technology, you see, is supposed to render aircraft virtually invulnerable to radar detection. It will thereby enable a future bomber to penetrate enemy defenses far better than could the late and widely lamented B1, and it will enable an administration so minded to claim that in canceling the B1 it was merely, wisely, waiting for a penetration bomber that actually could penetrate.

Secretary of Defense Harold Brown and President Carter resist conceding outright that the Stealth announcement was intended at least in part to burnish the administration's controversial defense credentials. Mr. Carter has a particular problem: to be seen as an adequate (but not excessive) hawk, but not to be seen as a born-again hawk. But the administration's collective denials are lame. It evidently wants the credit for demonstrating urgent and effective concern for security, but it does not want the blame for whatever damage may have been done—political damage as well as security damage—by premature release of secret information for campaign purposes.

Ronald Reagan says the Pentagon's confirmation gives the Soviet Union a tip-off of 10 years (lead time for a Stealth-equipped bomber) to prepare countermeasures. What about that? It seems fair to ask why, if the offense was so heinous, it took Mr. Reagan three weeks to say so. Is it just a coincidence that his assault coincided with an evident need to lift his campaign out of something of a self-confected slump?

For all of that, we remain troubled by the possibility that the administration's *confirmation that Stealth had been proven, flight-tested and validated at the highest levels* did add a good deal to earlier leaks—and to earlier official acknowledgments that the United States was working on the problem. Mr. Carter, ever since he got down to actually running against Ronald Reagan, has been doing some very transparent and occasionally reckless rearranging of his own defense record and trying to alter the public's perception of it. He has shown himself willing to involve the most intricate and secret security matters in the political campaign. The burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup.

Mr. BAKER. Mr. President, based upon evidence now on the public record, it is clear that the Pentagon, with White House complicity, provided private briefings for selected journalists on this technology. Then, against the advice of principal uniformed military advisers, on August 22 the Carter administration held a public press briefing on the program.

These disclosures have been justified on the basis of prior leaks, but the administration has for several years held a cavalier disregard for the security of this program. In June 1978 a major news story would have disclosed the program had it not been voluntarily withheld. No investigation was made to determine the source of that story. Now, official disclosure has been justified on the basis of leaks which appeared in public on the

11th and 14th of August. No investigation was undertaken until the 27th, coincidentally the date of the first House Armed Services Committee hearings on the disclosure, and even then only at the initiative of a subordinate DOD official, not the Secretary of Defense. I can only surmise that there was no incentive for an investigation because the Pentagon and the White House not only knew who was disclosing the information but had, in fact, authorized the disclosures. Why investigate when you already know the answers?

It is clear to me that these unconscionable disclosures could not have been made by the Pentagon without White House authority. Indeed, the Washington Post has quoted White House aides as considering the release of this information as part of President Carter's appearance at the Democratic National Convention. This violation of the public trust cannot be allowed to pass without the strongest possible effort to determine the person or persons responsible. Consequently, I call today for President Carter:

To make available to the committees of appropriate jurisdiction in the Congress all documents, correspondence, telephonic tapes or transcripts pertaining to the decision to disclose the Stealth technology program:

To direct the Carter-Mondale Presidential Committee and all elements of the executive branch, including the White House, NSC, Pentagon, intelligence community, or other appropriate entities not to destroy, or otherwise dispose of or permit the disposal of any documents, tapes, transcripts, notes or other matters of record bearing on access to information relative to "Stealth technology" and/or the decision to release any such information to the public;

To disclose the identity of and make available to appropriate committees of Congress such personnel from the above organizations involved in the decision to declassify this technology together with records and material cited earlier for use on congressional inquiries now in progress or to follow.

I further today request that the appropriate jurisdictional committees of the Senate undertake a thorough oversight inquiry into the leakage and overt release of this vital Government secret and that they do so without delay.

The irresponsible commingling of vital national security interests with domestic political concerns has resulted in a needless degradation of the well-being of this Nation and cannot be tolerated. In the interest of national security, if not simple decency, President Carter should come forward promptly with a full disclosure of the information I have requested. Otherwise, I will be forced to assume that the President personally authorized and directed this tragic disclosure, and I, and I believe the American people, will hold the President and his administration fully accountable.

Mr. President, I thank the Senator for yielding.

Mr. TOWER. Mr. President, I thank the distinguished minority leader for his statement. It is a singularly appropriate statement. It is a very thoughtful statement and one that I know he has pondered over for some time. He has rightly come to the conclusion that the statement should be made.

I believe that everything that has transpired over the past few weeks reinforces the efficacy of everything that has been said by the distinguished minority leader. He has noted that there is adequate evidence for political motivation of the leaks, noting the Washington Post story of August 14.

I note further that if the Brown press conference had been aimed at arresting the leak, as he claims, he would not have had to add the rather titilating description that this new discovery will alter the strategic balance and has been demonstrated successfully and is of great military significance.

In fact, in terms of the application of this technology to a bomber the statement made by the Secretary of Defense is simply untrue because the administration has not committed to a new bomber using this or any other technology.

I note, also, that Secretary Brown held this press conference and this briefing against the advice of his leading uniformed military advisors.

I note further that the implication of the White House is clear, that Jody Powell has confirmed that the President was aware of the situation and Brown's plans for action.

Mr. President, there have been some excellent articles that have appeared in various newspapers over the past few days. I wish to enter some of those in the Record.

First, an editorial from the Washington Star of Saturday, September 6, headed "Compromising Military Secrets," says, among other things:

> Secretary Brown, and any White House superiors who approved his unusual handling of the leaks, demonstrate an attitude towards military secrets best described as callow.

The Star went on to say:

> His account smacks of Boy Scout stuff, even if you take it at face value. While official lying isn't to be condoned, a bit of smoke-blowing to guard military secrets, in an age when the stakes include the lurking threat of nuclear war, remain in our book not only customary but imperative.
>
> Whatever the angle you take, then, the performance of the administration following the "stealth" leaks looks naive at best. That it may have been politically self-serving is also a distinct possibility.

Mr. President, I ask unanimous consent to have this editorial printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

Compromising Military Secrets

In the breach of secrecy surrounding the "stealth" aircraft program Governor Reagan has found a promising target. Whether he has hit it squarely is another question. His charge Thursday in Jacksonville, Fla., that the "breach of security was blessed and sanctioned by the Carter administration itself solely for the purpose of aiding Carter's campaign" is harsh and speculative, but still the administration has some explaining to do.

The "stealth" radar-evading technology is—or was—one of the most closely-held military secrets. Even so, secrecy had been partially compromised before mid-August stories in The Post and on ABC News brought it to general attention.

Benjamin Schemmer, editor of Armed Forces Journal, recently told a House Armed Services investigating subcommittee that he knew of the project as early as two years ago, although only after the mid-August leaks was he invited for a special Pentagon briefing and urged to write the story for his magazine—which he did, reluctantly, he claims. Also, the "stealth" project was discussed "in some detail," according to Richard Burt of The New York Times, in the most recent edition of Jane's All The World's Aircraft, published last September.

Thus it is not quite accurate to charge that the breach of secrecy was instigated, let alone "blessed and sanctioned" by the administration. No one seems to know, in fact, when or how the first leaks occurred.

A clearer issue, itself quite serious, arises from the administration's management of the mid-August leaks once they had begun. In his testimony Mr. Schemmer said he was told that Defense Secretary Harold Brown would confirm the existence of the "stealth" program only after his Armed Forces Journal story, fed by the special briefing, appeared. So it seems that after the first stories of August 11 and 14, the secretary of defense and his colleagues at the White House decided not to try to brush over the breach of secrecy but, in fact, to widen and amplify it.

Mr. Brown did just that at a press conference, claiming that future aircraft—perhaps a penetrating bomber—might be equipped with "stealth" technology rendering it "invisible" to Soviet radar detection. Mr. Brown went on to say, with uncharacteristic extravagance, that this non-existent warplane "alters" (present tense) "the military balance significantly." That is a tall claim, if it is not nonsensical, for a weapons system whose final form, by the secretary's own admission, will not be decided before next March at the earliest, and which cannot enter significant production in this decade.

Several things require emphasis in this sequence. It is, we believe, highly unusual, certainly it is of dubious wisdom, for an administration to amplify a breach of security; and indeed it emerged this week that the administration did so in the face of strenuous objections from, among others, the head of the Strategic Air Command. On August 14 that official, General Richard Ellis, wired the Pentagon that "giving the Soviets . . . advance warning of a new technology system, they must counter is to sound the death knell of that system." He asked "that you take immediate action . . . to discredit the story."

General Ellis' advice was disregarded for reasons uncertain but which, as Secretary Brown explained them to the House this week, seem naive at best. Mr. Brown not only confirmed the "stealth" system's existence, he did so in a manner tending to suggest that the administration is very sensitive to opposition charges that it is permitting the strategic balance to tip in the Soviets' favor and finds the promise of "stealth" a handy device for saying them nay.

Of course, the reality may be quite otherwise than it appears to be; conceivably, the cancellation of the B-1 bomber three years ago had something to do with the unripened promise of "stealth" technology. Yet Secretary Brown, and any White House superiors who approved his unusual handling of the leaks, demonstrate an attitude towards military secrets best described as callow.

Secretary Brown claimed, loftily, that a deceptive attempt to minimize the recent leaks "would have resulted in a rash of competitive reporting and a cascade of new leaks . . . much more damaging," and that "a policy of deceiving the public undermines the basic link of trust between the government and the people." So instead he built a "firebreak" against further revelations.

Possibly. But his account smacks of Boy Scout stuff, even if you take it at face value. While official lying isn't to be condoned, a bit of smoke-blowing to guard military secrets in an age when the stakes include the lurking threat of nuclear war, remain in our book not only customary but imperative.

Whatever the angle you take, then, the performance of the administration following the "stealth" leaks looks naive at best. That it may have been politically self-serving is also a distinct possibility. Governor Reagan is well within bounds to call attention to that possibility, even with a glancing blow.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the Record an article, by the very capable writer on such matters, Mr. George Wilson, in the Washington Post of this date, entitled, "The Risk in Politicizing the Pentagon."

There being no objection, the article was ordered to be printed in the Record, as follows:

THE RISK IN POLITICIZING THE PENTAGON

(By George C. Wilson)

Willingly or unwillingly, rightly or wrongly, Defense Secretary Harold Brown has now politicized himself and the Pentagon more than any of his predecessors. And there is considerable risk that any short-term political gains Brown has made for candidate Jimmy Carter will be far outweighed by the long-term losses, not only to President Carter but to the whole process of arriving at national decisions in the all-important field of national security.

For no matter what you may think of Harold Brown, he is the one and only man at the top of the Carter administration who really knows what he is talking about when it comes to the modern weaponry that threatens everybody on the planet. As a brilliant nuclear physicist, he helped develop the intercontinental ballistic missile and the hydrogen bomb and has wrestled with the Soviets on arms control issues for more than two decades. Harold Brown is truly an expert witness, as both the executive and legislative branches have come to appreciate in his first tour as steward over the world's most complicated military establishment.

Yet the cutting edge of this expertise has been dulled and chipped because Carter and Brown have used it too much in the political campaign. The defense secretary's credibility as a non-political, expert witness on such questions as the verifiability of the pending SALT II treaty has been eroded—at least for the short term. If Carter is reelected and keeps Brown as his leading SALT II advocate, any loss in Brown's credibility will be a loss to the president as well.

Although Brown is far from the first defense secretary to involve himself in a presidential campaign—as former Republican candidate Barry Goldwater has testified, in complaining that former defense secretary Robert S. McNamara politicized the Pentagon against him—he has dug himself deeper into it than any of his predecessors.

Last week, Brown was exchanging political fire directly with Ronald Reagan on the issue of whether Brown publicized secrets about radar-invisible Stealth aircraft to help combat Republican charges that Carter has been soft on defense. Shortly before that, even though his official spokesman had said Brown was going to the Democratic National Conventions only to listen to Carter's acceptance speech, the defense secretary went on the convention floor to lobby for the MX missile.

It was also Brown who gave the one and only public explanation of Carter's new and controversial nuclear targeting doctrine, again because of his expertise; who attacked the defense planks in the Republican Party platform; who took the lead in defending the disastrous Iranian rescue attempt made under a plan he had personally reviewed and endorsed; who accused previous Republican administrations of cutting the defense budget, despite the fact he had bragged early in his term at the Pentagon about cutting the inherited Ford budget; who invited the press to come along to White Sands, N.M., to watch testing of the cruise missile—the weapon Carter had chosen over the B1 bomber.

Brown denies that all this adds up to politicizing himself and the Pentagon. He says he regrets that national defense has become a central issue in the presidential election campaign. But now that it has, Brown contends, he has an obligation to set the record straight for the American people, allies abroad and potential enemies.

"I consider it part of my responsibility as secretary of defense to try to make the American people understand the facts on important defense issues," Brown said in justifying his responses to Reagan's charges on Stealth disclosures. He contends it is important for everybody to understand that the United States is still the most powerful nation on earth; that American technology is still keeping the country ahead of the Russians, with the Stealth breakthrough in making planes invisible to radar only one case in point. "I think it is part of my responsibility to make it clear what U.S. advantages are." One obstacle keeping people in the United States and elsewhere from making informed judgments about the state of the national defense "is an unwarranted denigration of U.S. capability. This hurts U.S. security."

Brown, a somewhat introverted man sees himself as one who has been dragged onto the center of the political stage by events. He says he is not enjoying the starring role—a larger one than the extroverted ex-pol, Melvin Laird, played before him as a Republican secretary of defense.

But it is not only Reagan who is complaining about Brown's going political. Other critics include both Democrats and Republicans: Republicans on the House Armed Services Committee who insist Brown went out of bounds for a defense secretary by holding a televised press conference on Aug. 22; senators who claim he has been playing politics for Carter with the defense budget; and active and retired military people who fear Brown and some of his service secretaries have politicized the Pentagon for all time.

Perhaps such criticism will blow away along with all the smoke of the political campaign after the November election. If not, the administration's only fully certified expert on the life and death questions of nuclear arms will have lost credibility at a most crucial time.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the Record an article, by Jack Anderson appearing also in today's Washington Post, entitled "Violating Secrecy to Preserve It."

There being no objection, the article was ordered to be printed in the Record, as follows:

VIOLATING SECRECY TO PRESERVE IT

(By Jack Anderson)

President Carter was accused by the Republicans of jeopardizing national security for political gain when he disclosed the "invisible plane" program.

That may be overstating it a bit, but not by much. Despite protestations of innocence by Carter's people in the Pentagon, both the timing and the content of the "stealth technology" disclosure suggest political motivation.

Defense Secretary Harold Brown explained the need for public announcement in a strange way. He said it was to stop the growing number of leaks about the program. In other words, to protect the secret program, it was necessary to destroy its secrecy.

Military officials closely associated with the stealth technology, which could eventually thwart enemy radar detection of American planes, are furious at the Carter administration for confirming the press leaks and adding details and credibility to the earlier, unofficial reports.

The absurdity of the position this puts the program's leadership in was illustrated by retired Air Force General Tom Stafford, who ran the project until last year. "I still will not even acknowledge that the project exists," he told my associate Peter Grant. "But if it does, the president has blown the lid off some of the finest technology that exists."

Everyone agrees that the development of stealth technology is a major breakthrough in strategic weaponry. And no one seriously denies that the announcement, at a highly unusual news conference with full publicity fanfare, helped Carter counter claims by Ronald Reagan that the president has been weak on defense policy. It particularly weakens the Republican charge that Carter's cancellation of the B1 bomber damaged our nuclear strike capability.

Until last month, knowledge of the program was limited to a few dozen key government officials. But after several news reports revealed bits and pieces of the project, Pentagon officials explained, it was decided to declassify certain portions "to keep the onion from peeling all the way."

But Defense Department insiders point out that Brown revealed far more about the state of the art than the unconfirmed press reports had. For instance, he said the Air Force had been making test flights of both manned and pilotless versions of the invisible plane since 1978. It was also disclosed that so far the concept had been applied only to tactical aircraft.

Blaming press leaks for the decision to disclose the program has a hollow ring to it, inasmuch as the first leaks had occurred as early as 1976. This lends credence to Republican suspicions that the dramatic revelation was politically inspired—timed to come just at the start of a close election campaign.

As a mater of fact, the biggest pre-announcement leak of all came from the Carter administration earlier this year. When Congress was considering funds for a new manned bomber, which Carter opposed, the Pentagon dispatched its top scientist, William Perry, to Capitol Hill. He let key senators in on the Stealth secret, and persuaded them to put off the manned-bomber decision.

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the Record a story of Friday, in the Washington Star, by John Fialka, which is headlined "Generals Opposed Release of Information on 'Stealth' Technology."

There being no objection, the article was ordered to be printed in the Record, as follows:

GENERALS OPPOSED RELEASE OF INFORMATION ON "STEALTH" TECHNOLOGY

(By John J. Fialka)

Two top Air Force generals have gone before a House panel to say they opposed the Pentagon's decision to release information on a secret aircraft project.

A House Armed Services investigative subcommittee heard testimony yesterday from Gen. Richard H. Ellis, head of the Strategic Air Comand, who said that both he and Gen. Lew Allen, the Air Force chief of staff, expressed "apprehension" over Defense Secretary Harold Brown's plans to discuss the general outlines of the so-called "Stealth" program at a Pentagon press conference.

The program, described as one of the most important top secret developments since the invention of radar during World War II, deals with a number of technological advances that apparently can make an airplane virtually invisible to enemy air defense radar systems.

The most likely user of an "invisible bomber" would be SAC. Ellis said that when he saw an Aug. 14 story in The Washington Post giving the general details of the Stealth program, he sent Allen a telegram that said the story "brought the hair up on the back of my neck."

Ellis, who said Allen shared his concern that a description of the program might give the Soviet Union enough advance warning to develop countermeasures, said he wanted the Defense Department to refuse to comment on the story. He said he wanted "the same kind of treatment that we have given all black (top secret) programs and the same treatment that we have given nuclear weapons for many years."

Defense officials, however, decided to take a different approach to the leaks, which also appeared in the magazine Aviation Week and on two television networks during the week of the Democratic convention. In his appearance before the committee yesterday, Brown said he rejected a "no comment" approach because it would have resulted "in a rash of competitive reporting and a cascade of new leaks."

Brown said he also rejected suggestions that he try to discredit the story. "As the nation learned to its bitter regret in the Watergate era, a policy of deceiving the public undermines the basic link of trust between the government and the people," he said.

"In those circumstances," he said, " I decided that the only truthful and effective course of action would be to acknowledge what had already been disclosed to the Soviets in the leaks and to lay down strict new security guidelines to prevent any further disclosures." Brown explained that he approved a partial declassification of the general nature of the program on Aug. 16.

"By doing so we have, in effect, created a "firebreak" to prevent the spread of technical details which, because they are at the heart of operational effectiveness, must remain highly classified," Brown said.

Rep. Rolin Beard, R-Tenn., suggested that the release of information might have been timed to coincide with the Democratic National Convention. He asked Brown for the details of any conversations he may have had about Stealth with President Carter or other White House officials during the week of the convention, but Brown flatly refused it, saying only that his "marching orders" from the President were to keep the existence of the program secret "as long as feasible."

"And we did that as long as we could,' Brown asserted.

The success of past efforts to protect Stealth technology was also brought under question by subcommittee members, who asked Brown and his undersecretary for research, Dr. William J. Perry, about earlier leaks that appeared in various trade journals, beginning with an account of the Stealth program in Aerospace Daily on July 23, 1976. It gave a detailed account of the Stealth program, then a small effort at Lockheed's Burbank, Calif., facility, the same experimental plant that produced the U-2 spy plane during the late 1950s.

Perry said in his statement to the committee that the first security break in the Stealth program occurred in June 1978 when the editor of Armed Forces Journal, Ben Schemmer, came to him with a story "revealing some aspects of our test program."

Perry said he urged Schemmer not to publish the story on national security grounds and Schemmer agreed, "as long as the story was not published elsewhere."

Despite Perry's success with Schemmer, stories about the Stealth program—the very name of which was classified—continued to leak out. Readers of a stock investor's newsletter were told in June, for example, about details of the wing, engine and stabilizer design on a Stealth prototype, an account which added that "in early May 1978 a Stealth aircraft reportedly crashed in the Nevada desert while operating out of Nellis Air Force Base."

But Defense officials apparently believed that a less detailed account in The Washington Post on Aug. 14 was going to be seen by more than a few investors. The article quoted administration sources as suggesting that President Carter might disclose details of a new invisible bomber when he spoke before the Democratic National Convention.

"As members of this committee well know," Brown said during his testimony, "Aviation Week and The Washington Post are read closely in the Soviet Embassy and are viewed as authoritative publications."

Part of the reasoning behind the disclosure of the general details of the Stealth program, Brown and Perry explained, was that it would remind the more than 1,000 people now involved in the secret program that new security guidelines have been drawn around the details of the technologies involved, which, they said, will remain highly classified.

Mr. TOWER. Mr. President, at this point I wish to yield such time as he may require to the distinguished ranking minority member of the Research and Development Subcommittee of the Armed Services Committee, the distinguished Senator from Virginia (Mr. WARNER) who will comment on this matter and on another matter of great importance regarding the personnel of our Armed Forces.

I yield such time as he may require to the Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Texas and also express appreciation to the minority leader for calling for hearings on this issue of the Stealth matter.

Mr. President, on August 28 I wrote to the chairman of the Senate Armed Services Committee urging that the committee hold hearings on the important matter of the Stealth technology and its partial revelation. I believe that this is a most important matter involving sensitive and highly classified national security information.

I ask unanimous consent to have that letter printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C. August 28, 1980.

Hon. JOHN C. STENNIS,
Chairman, Senate Armed Services Committee, Washington, D.C.

DEAR MR. CHAIRMAN: As Ranking Minority Member of the Research and Development Subcommittee, I have developed a great appreciation of America's ability to develop and ultimately exploit new technologies which will enhance our Nation's defenses. As Secretary of the Navy and now as a Member of the United States Senate, I have been aware of the importance of protecting highly classified new technologies from unauthorized disclosure.

Recent disclosures concerning the status and some details of ongoing programs to develop "Stealth technology" are very troublesome to me. Because this technology may offer great promise in the future, I am concerned that these leaks may prompt the development by the Soviet Union of countermeasures which may reduce the success of these programs.

Recent testimony before the House Armed Services Committee has indicated that these leaks have been encouraged by high-ranking Administration officials. For that reason I believe that the Senate Armed Services Committee should conduct an investigation of Administration participation in the disclosure of this highly classified information.

Sincerely,

JOHN WARNER.

Mr. WARNER. I believe the Senate has an obligation to look into the manner in which this classified information was revealed to the public and to ascertain whether political motivations were behind the disclosure. We can perform this responsibility, I am confident, without further compromise of security interests of this program.

ARMED FORCES PERSONNEL COMPENSATION

Mr. President, today is a very historic day for men and women in the Armed Forces. In 1 hour the President will affix his signature to a bill that went through this Chamber with almost unanimous support (87–1). But it is only the first step in a long needed legislative process properly recognizing the men and women of the Armed Forces for their services today and their need to have fair and adequate compensation in their fight against inflation.

The Carter administration initially lobbied hard against this bill. It was only after indications that the House of Representatives would soon join the Senate and pass the bill that the administration made a quick 180-degree reversal in its position, and that reversal was handled in a manner that we will all remember for many years.

The President chose the return of the aircraft carrier *Nimitz* and its escort ships from the Indian Ocean to stage a media event where he could indicate his support for higher compensation for our military personnel. In fact, the U.S.S. *Nimitz* was ordered to speed up and arrive home 2 days early on Memorial Day to accommodate a more appropriate time for media coverage.

I am pleased that the President decided to support the Warner-Nunn legislation, and I regret that I cannot accept the normal courtesies of the President extended to sponsors of such legislation and be in attendance in 1 hour when this bill which I authored will become law.

I feel that in clear conscience I cannot be there because, by my attendance I would be condoning the Carter administration's politicizing of defense matters.

The Carter administration opposed this pay legislation vigorously for months, and only after it became obvious that it would pass, despite administration opposition, did the President make the 180-degree switch to support the legislation.

I feel that much more remains to be done to improve the conditions of service of our military personnel.

I pledge to them my continuing support to insure they are fairly treated and compensated, even if I have to once again overcome opposition from the Department of Defense and the administration.

I should like to have printed in the Record at this time, and I ask unanimous consent to do so, an editorial appearing in the Washington Star which points to the administration record on this legislation.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

POLITICS AND NUNN-WARNER

The White House is laying on a dog-and-pony show tomorrow for President Carter's signing of the Nunn-Warner military benefits package. Lights, cameras, action—in plenty of time for the evening telecasts!

Given the president's campaign arabesques to assure the voters that a strong national defense takes second place to none among his priorities, Mr. Carter could hardly be expected not to make political capital of this measure. But it would have been seemly for the White House to forego the panoply of a presidential signing of the Nunn-Warner measure. After all, the administration found little to like about the proposal until, suddenly and in the wake of mounting publicity about the rush out of the service by seasoned noncoms and mid-level officers. Mr. Carter decided the proposal looked mighty good—and his change of heart was conspicuously announced as he greeted the crew of the carrier Nimitz on its return from long and arduous duty in the Indian Ocean.

No matter the political use to which the measure is put by the administration, Sens. John Warner, R-Va., and Sam Nunn, D-Ga., deserve great credit for the tenacity with which they fought to get their proposal through Congress.

It does not denigrate their proposal to call it, if not a bandaid, a compress for a severe military-manpower wound. Nunn-Warner is carefully focused—to quickly address a number of the most aggravating problems of retention. These remedial steps, in combination with the impending 11.7 per cent pay raise for the military (a figure that includes President Carter's increase for all federal employees), should provide opportunity for a thorough congressional look at the armed-services pay structure—which Senator Warner has requested.

Retaining the skilled personnel vital to a sophisticated military machine involves more than benefits, of course. A military career carries a particular set of tensions and demands that affect family life; "duty, honor, country" seems to have become a less compelling code than in the past; discipline has edged ever closer to being regarded as a four-letter word. But the provision of more sensible benefits may restore some appeal to military life.

The Nunn-Warner package would increase sea pay by an additional 15 per cent, and raise flight pay by 25 per cent; it would provide 10 per cent more in the subsistence allowance for personnel living off-base, which is not sufficient but may alleviate some of the moonlighting that is necessary for too many soldiers, sailors and airmen to feed their families; it would extend a desperately needed improvement in housing by a differential to put military allowances more in line with actual expenses in high-cost areas.

A good session's work. Now Congress can turn its attention to enhancing military service, perhaps through a new GI Bill, so higher quality recruits can be attracted to the wobbly all-volunteer force. Or, better yet, by ending that flawed experiment and instituting an equitable draft that would leaven the armed forces with the essential element that has gone over the hill.

Mr. WARNER. Mr. President, my colleagues have mentioned how we in the Congress, and how people throughout the Nation, are absolutely appalled at clear examples of the President of the United States using defense decisions for political benefit.

I would like to bring to the attention of my colleagues a new case of politicizing defense matters.

Mr. President, last week the President in a campaign visit to Philadelphia announced that the aircraft carrier *Forrestal* will be overhauled in Philadelphia bringing thousands of jobs and other economic benefits.

This announcement followed by only a few months an earlier campaign appearance in Philadelphia where President Carter announced how his administration had brought another aircraft carrier to Philadelphia—the U.S.S. *Saratoga.*

On May 9, 1980, the President made the following statement regarding the compensation for closing the Frankford arsenal:

> We have worked as hard as possible, because of that move and because of other reasons, to bring one of our major aircraft carriers here to the Navy Yard, as you know, for an overhaul. This will be a multi-hundred million dollar project that will keep intact between 8,500 and 9,000 jobs that were threatened and add at least 2,500 more new jobs in the repair or overhaul of the *Saratoga.*

The political involvement in the *Saratoga* decision was documented in the June 30, 1980, Congressional Record on page 17857 and I ask consent that it be reprinted at this point in the Record.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

CHRONOLOGICAL SEQUENCE OF "SARATOGA" SERVICE LIFE EXTENSION PROGRAM

Significant Events: 1977 and 1978.

May 1977: Congressional emphasis on least cost approach:

The Senate Armed Services Committee in its report "was not convinced that the Navy's current plans represent the least cost approach" and noted the inconsistency of projecting "serious declines in future private yard forces and at the same time plan[ing] to increase Naval shipyard work forces. . . ."

July 1977: Letter of the President to then Congressman Eilberg stating that with respect to the Philadelphia Naval Yard, "another 2,000 positions are expected to be created at that installation in 1980."

Uniformed Naval documents of November 8, 1977, Captain G. E. Fink; November 10, 1977, Admiral C. R. Bryan; November 23, 1977, Admiral L. H. Michaelis, recommending Newport News assignment for the *Saratoga.*

April 1978: Announcement of the Vice President linking the transfer of the USS *Saratoga* to the Philadelphia Naval Yard with an unsuccesful campaign pledge to keep open Frankford Arsenal in Philadelphia.

May 1978: The two Armed Services Committees adopted language freezing the assignment of SLEP and mandating the Navy to complete a least cost analysis for both the SLEP and DDG-2 modernization program.

June 1978: Secretary Claytor stated the comparative *Saratoga* cost to be $15–$30 million less at Newport News but supported the Philadelphia assignment on other grounds.

September 1978: The GAO, after adjusting for Navy errors, reported that the *Saratoga* cost would be $105.2 million less at Newport News based on existing law.

Significant Events: 1979:

January 3, 1979: Admiral Hayward memorandum. The Committees received from the Navy the legally mandated least cost study in which Admiral Hayward recommends the Newport News location based on:

An $80 million cost difference favoring Newport News based on the application of existing blue collar wage law and OMB regulation, and

A number of non-cost factors including the need elsewhere in the fleet for the 1,100 skilled naval personnel that would be required for SLEP at Philadelphia, the difficulty of increasing by 1,600 the Navy civilian jobs within present ceilings, and the potential dilution of the SLEP effort due to other high priority Navy work at Philadelphia.

January 25, 1979: Memorandum from Secretary of the Navy for the Secretary of Defense.

Secretary Claytor endorsed the Haywood report and recommendation along with statement that if civilian ceiling relief is obtained, Philadelphia would be an "acceptable alternative".

January 25, 1979: Letter from Deputy Secretary Duncan to Chairman Stennis.

In letter transmitting Navy study to Congress, Deputy Secretary Duncan, without repudiating Navy study or offering any justification on the merits, overruled Navy position favoring Newport News.

April 6, 1979: Committee on Armed Services recommended, in the FY 79 Defense supplemental authorization, language which precluded the obligation of funds for the *Saratoga* SLEP program unless the program was conducted on the basis of least cost as confirmed in the Comptroller General's report to the Congress.

May 3, 1979: The Senate voted additional language which in effect permitted the Secretary of Defense to determine the *Saratoga* shipyard assignment.

Subsequently, in conference with the House, all language was dropped with respect to the *Saratoga.*

Significant Events: 1980:

The President on May 9, 1980 made the following statement regarding the compensation for closing the Frankford Arsenal:

"We have worked as hard as possible, because of that move and because of other reasons, to bring one of our major aircraft carriers here to the Navy Yard, as you know, for an overhaul. This will be a multi-hundred million dollar project that will keep intact between 8,500 and 9,000 jobs that were threatened and add at least 2,500 more new jobs in the repair or overhaul of the *Saratoga.*"

Source.—May 9, 1980, White House Press Release, p. 5.

Mr. WARNER. Now, just a few short months later the President has again gone to Philadelphia and announced that the U.S.S. *Forrestal* will be sent to Philadelphia.

The President, from the pulpit of the Zion Baptist Church, said:

> The U.S.S. *Saratoga* will come to the Philadelphia Naval Shipyard later this month for re-fitting. That will save 8,500–9,500 jobs and bring in an additional 2,600 jobs—not

hand-outs, not make-work jobs, but important jobs that will add an additional 15 years of service to the life of that ship, jobs that will build a stronger and better future for our nation. The *Forrestal* will also be refitted here, and that will mean more jobs.

The *Forrestal* is not due to go to Philadelphia until sometime in 1983. Why then in the midst of a political campaign does the President make that type of an announcement?

Well, I made inquiry to the Department of the Navy, official and unofficial, and I ask unanimous consent to have printed in the RECORD my letter dated September 5 to the Secretary of the Navy asking him specifically to confirm information that I have in hand that the Department of the Navy had not even completed the formal decision-making process on where the U.S.S. *Forrestal* would be assigned when the President in the pulpit in Philadelphia made that announcement.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 5, 1980.

Hon. EDWARD HIDALGO,
Secretary of the Navy,
Pentagon Building,
Washington, D.C.

DEAR MISTER SECRETARY: On Wednesday, the President, while campaigning for re-election in North Philadelphia, announced that the carrier, U.S.S. Forrestal, will be assigned to the Philadelphia Naval Shipyard for modernization under the Service Life Extension Program.

In response to news inquiries, I issued the following statement concerning the President's announcement:

"As a former Secretary of the Navy, I know from first-hand experience that the assignment of ships to a repair yard is normally a routine, one-line public announcement from the Department of the Navy.

"For a President to seize such an announcement and use it as an opportunity for political advantage confirms that the decision was guided by political consideration, not cost-effective use of defense dollars.

"This tragedy is further compounded by the diversion of more than 1,000 uniformed sailors from active fleet service to routine shipyard work at the very time that the Navy is experiencing a crisis in retention."

Mister Secretary, the Forrestal is not scheduled to go into a shipyard for service life extension until 1983, which to many raises serious questions about the timing of the President's campaign-trail announcement.

And today, there is an indication that the official Department of the Navy paperwork on assignment of the ship has not been completed by the Chief of Naval Operations, Admiral Thomas Hayward, or by you.

Is this the basis for another allegation that national defense is being politicized by the President and being used as an active element in his quest for another term in the White House?

Mister Secretary, I would appreciate your timely response to the following questions:

1. Had the Department of the Navy completed its decision-making process and the official paperwork attendant to assignment of the Forrestal by the time the President made his announcement on Wednesday?

2. When had the Department of the Navy contemplated making its own announcement of the Forrestal's assignment?

3. Did you, as Secretary of the Navy, know in advance that the President planned to make his announcement concerning the Forrestal's assignment during his campaign visit to Philadelphia?

Thank you for your courtesy.

Yours sincerely,

JOHN W. WARNER.

Information has come to me from the Department of the Navy revealing that the formal procedures and cost analyses controlling a final decision on the assignment of the U.S.S. *Forrestal* to a shipyard had not been completed. If this proves true, then we have another example of the President seizing political gain by prematurely announcing a Defense Department decision.

This event follows the Stealth program announcement, the new nuclear targeting doctrine, the *Nimitz* military pay package announcement, and the Vice President's promise to send U.S.S. *Saratoga* to Philadelphia. These actions support the allegations that this administration is politicizing our Nation's defense. These actions have not escaped the watchful eye of the press.

I ask unanimous consent that an editorial from the September 7 edition of the Virginian Pilot be printed in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PAYING FOR POLITICS

Another plum for Philadelphia. And when else but at election time.

The plum is the overhaul of the carrier *Forrestal*. It will be refitted at the Philadelphia Naval Shipyard, not at Newport News Shipbuilding. A $550 million overhaul of the carrier *Saratoga* had already been set for Philadelphia at the end of this month.

Normally, notes Senator John Warner, R-Va., the assignment of a ship to a yard is "a routine one-line announcement from the Department of the Navy."

This assignment came, however, from the pulpit of north Philadelphia's Zion Baptist Church where President Carter was campaigning on jobs.

Representative Paul Trible, R-Va., branded Carter's announcement "a political move to win votes in Pennsylvania."

If politics were the whole of it, that would be just Virginia's tough luck. Philadelphia is Pennsylvania's Democratic breadbasket. And Pennsylvania is a state a Democrat has to win.

If Jimmy Carter carries Virginia, on the other hand, he will be heading toward a landslide.

What disgraces this decision is not politics, but economics. The General Accounting Office has estimated Newport News could perform a carrier overhaul for $80 million to $120 million less than Philadelphia.

And Chief of Naval Operations Admiral Thomas B. Hayward has argued that "since two-thirds of all Atlantic Fleet carriers are already homeported in Norfolk, far less turbulence to our people will result from a decision favorable to Newport News."

Since Mr. Carter has decided to ignore both cost and inconvenience to Navy families, Philadelphia will probably receive the remaining two carrier overhauls also, though the formal announcement must await some future election.

Mere patronage politics is one thing. The politics of planned inefficiency is altogether something else.

It's bad enough that the *Forrestal* assignment leaves taxpayers $100 million short. Some among them may also shy from contributing so handsomely to Mr. Carter's re-election.

Mr. TOWER. Mr. President, I want to commend the distinguished Senator from Virginia for his not attending the signing today of the bill of which he was a co-author, on which he labored long, hard, and thoughtfully. To do so would, in my view, tend to reinforce a deception that has been perpetrated by the White House.

Incidentally, I intend to join him with my absence during that signing ceremony today, remembering how the President tried to gag and inhibit the Chief of Naval Operations a few months ago when he tried to call the attention of the Congress and the American people to the fact that our retention rate of experienced enlisted personnel was deteriorating at an alarming and rapid rate, and the fact that now we do not have the level of combat-readiness that we should have in a number of our ships because we simply do not have the trained personnel.

To be present at the signing of this bill today would be an endorsement of a hypocrisy.

The Senator from Virginia has adequately pointed out what the President is doing is a 180-degree change from a previous position, and done so obviously under political pressure. He will probably now claim that he has done something splendid for the American military people when, in fact, this was a congressional initiative that was forced on him, and, as the Senator from Virginia pointed out, more is required to improve our personnel situation in the armed services of the United States.

On the matter of the stealth bomber, I think in the final analysis the evidence of the pure politicization of the issue is to be found in the fact that has always been traditional and customary in the past not to dignify leaks by confirming them; that when you confirm a leak of sensitive information you give it an official imprimatur that it does not have as long as it is only characterized as a leak.

Always when classified information escapes into the public eye, the traditional position of people in both the executive branch and the congressional branch has been neither to confirm nor deny.

There was no widespread publicity of this matter until the Secretary of Defense chose to have a press conference and to insult the intelligence of the American people by saying, in effect, that he had to expand on the public's knowledge of this highly sensitive program to prevent any further leaks.

There is growing sentiment in this country, as people become more aware of it, that what has been done has compromised the security of the United States for political purposes.

I believe the American people are outraged because, as I think public awareness grows, they will come to feel that on matters of national defense this administration is not to be relied on to make its decisions based on the national interest but based on the political exigencies of the moment.

Mr. President, I would like to yield 3 minutes to the distinguished chairman of the Armed Services Committee, the Senator from Mississippi (Mr. STENNIS).

Mr. STENNIS. Mr. President, I thank the Senator from Texas, and I thank the Senator from New Mexico very much for the patience he has exhibited in yielding to me.

I am in a personal situation here, Mr. President, timewise.

I understand something has been said here on the floor—and I know it is said in good faith—about the situation with reference to the so-called hidden bomber and reference was made that maybe there should be investigations and so forth by the proper committees. So I feel it is my duty to respond to that, at least briefly now.

Mr. President, let me very fully and frankly say this: I have been familiar with this matter and I have known the facts on the situation in helping supply the authorizations and the money for several years on this new weapons project, a project, and that is all I am going to call it. But I consider it a highly important project and a great deal rides with our side on coming out on top in this project. A great deal rides on that possibility. It has a meaning that will go on and could have a meaning that could go into the decades. So it is not just another little secret matter that somebody is kind of experimenting with. It is highly important.

With reference to investigating or having hearings—and I know those suggestions were made with the best possible good faith—I will tell you that you will go a long, long, long way before you find a way to do that without it becoming so heated up or so explosive or so difficult that you realize then that mistakes have been made and caused still unknown information to be revealed.

The PRESIDING OFFICER. The Senator has used his 3 minutes.

Mr. STENNIS. May I have 3 additional minutes?

Mr. TOWER. I yield 3 additional minutes to the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from Texas very much.

We have the matter, though, of this being taken up by the House now. I do not say this at all critically of them for taking it up or how they are handling it. I say now, though, as I have said to some of the members on our committee, that I lean against the idea of bringing this out for a so-called investigation, because too much is at stake. There is a great deal of this that has not been told yet, so far as I know. Facts are left untold that are still secret that are helpful to us—I mean in this project that is so helpful to our side.

So there is a chance for us to gain a real advantage out of this project that has been carried on for a long time.

I do not see any good that can come, frankly, from trying to go into it further and take a chance on revealing more—may I have a chance to get my mind together here a little? This is a highly important matter.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STENNIS. I say that there are still possibilities in this project for our side to gain, to come out on top in this thing. I lean strongly against exposing this project further, investigating and bringing it all out. I do not see how you can go into it much more without bringing up this unknown material.

But I am willing to consider it. I have talked to other members of the committee and we will consult about it in a proper way. But I am leaning strongly against risking more revelation by going into it more as I have said—and I do not speak as a novice on this matter. I have helped carry the load of this kind of work for just about 20 years. So what little impressions I have, have been burned into me by route of experience, including sleepless nights and worry.

And I am looking at a man here who knows what I am talking about, the Senator from North Dakota (Mr. Young). He has been one who has been in that group. So I speak with great deference to everyone.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. STENNIS. Yes. I do not believe I have any more time. The Senator from Virginia spoke to me about this.

Mr. WARNER. Mr. President, I am the one who originally wrote the letter asking for the hearings and today I have been joined with my colleagues, Senator Baker and Senator Tower.

I wish to insure the chairman—and the chairman knows full well that as ranking member of the minority on the knowledge of this program and it was my responsibility. I did not mean to suggest in my letter that the hearings should go into the ramifications of this project that would jeopardize the security.

But I do strongly believe, most respectfully I say to the chairman, that we have a duty in the Senate corresponding to that in the House to examine the procedures that were followed by which it was determined by the Secretary of Defense to have a full-blown press conference on this issue.

Mr. STENNIS. Mr. President, I say to the Senator I am not complaining. I am not complaining to him or anyone else. I am just telling him what I feel, what I know by experience and what I believe will be helpful to us in the future. That is all I have to say.

I thank the Senator very much.

Mr. TOWER. Mr. President, I can understand the concerns of the distinguished Senator from Mississippi. He has always been most careful and most prudent in terms of the treatment of classified information.

I do not believe that, in any instance, ever, that any leakage of classified information could be traced to the distinguished chairman of the Armed Services Committee or to any of his actions. I do not know of anyone in the Senate who has been more careful than my distinguished friend from Mississippi has been in this matter.

I do believe that we could get to the bottom of these leaks, however, without compromising further national security information. It occurs to me that the DOD should have undertaken this 2 years ago when this matter started leaking out, but they failed to do it. They did not do it. Now, on the 25th of August, Mr. Ross, the spokesman for the DOD, said that the administration and the Pentagon were not responsible for leaks. That has been proven to be untrue since that time.

The implication of that statement coming from him is clear, in that Members of Congress were the only other people who had official confirmation of what was going on, Mr. Ross implies, therefore, that Congress is where the leaks came from. In fact, they did not. And time and circumstance have established pretty well that the blame rests on the shoulders of the administration and the Pentagon. I think we ought to know who is responsible.

Mr. BAKER. Mr. President, will the Senator yield 1 minute to me?

Mr. TOWER. Yes, I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, no man in this Chamber has a greater respect for the Senator from Mississippi than do I. But I must confess that I am disappointed that the chairman does not agree to the call for hearings.

But I am a realist. If John Stennis does not want hearings, there will not be hearings. But the House of Representatives is having hearings, and I commend them for it.

I have today called on the President, and I reiterate now my request that the President of the United States instruct the agencies and departments of his administration and the personnel therein to preserve and protect the papers, the memoranda, the tapes, and the other documents that will permit us to see whether or not this disclosure was politically motivated.

Surely that request, to preserve the data so that at least the House committee can act on it, is a fair and a reasonable request under these circumstances.

Senator Stennis makes a good point, as he always does. If he suggests, as he has today, that he does not want hearings, I would wager there will not be hearings on the Senate side. But the House will.

My requests to the President are just as relevant for their inquiry as they would be for the Senate.

Mr. TOWER. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. Two minutes and 27 seconds.

Mr. TOWER. Mr. President, I ask unanimous consent that the Senator from New Mexico may have 5 additional minutes due to my using his time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, I thank the distinguished Senator from Tennessee. I also thank other Senators who have articulated on this issue. I concur in their general remarks almost entirely.

Mr. BAKER. Will the Senator yield to me?

Mr. SCHMITT. I yield.

Mr. BAKER. If the Senator will yield to me, I believe that ends the colloquy on the Stealth situation There are other Senators, including the Senator from New Mexico, the Senator from South Carolina (Mr. Thurmond), and possibly one or two others, who have other matters that they would like to discuss. From a communication with the majority leader, who is not on the floor because of other commitments, it is my understanding that he will provide shortly for a period for the transaction of routine morning business. If the Senator will withhold for a moment, I would like to suggest the absence of a quorum so that the majority leader can come to the floor and make the arrangements that I understand he wants to make. Will the Senator be willing to do that?

Mr. SCHMITT. I would be happy to do that, but I believe I do have the additional 5 minutes. I can be finished in that time. Maybe by then he will be here.

Mr. BAKER. I am sure he will be here.

Mr. SCHMITT. Mr President, I have no objection.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 1 hour, and that Senators may speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader for protecting my rights while I had to be off the floor

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

AMERICANS FOR CHANGE

Mr. SCHMITT. Mr. President, once again I must sadly bring to the Senate's attention the continuing attack on our basic freedoms growing out of the desperation of the Committee To Reelect the President.

Last Friday, desperate, shortsighted people took another step to intimidate broadcasters and to stifle freedom of speech and freedom of the press. My concern is based on the specter of a threat so ugly under these conditions that, unless nipped in the bud, it poses a serious threat to our most fundamental rights as free Americans, the rights of freedom of speech and freedom of the press.

As you are aware, I am national chairman of an independent political organization called Americans for Change, an organization with the purpose of raising and expending funds in behalf of the Republican national ticket, but independent of the ticket's organizational activities. Americans for Change recently prevailed in major litigation brought against us in Federal court. A suit to stop our activities was brought by Common Cause and joined in by the Federal Election Commission. This suit was rejected outright and unanimously by a three-judge panel less than 2 weeks ago.

Our principle for existence of Americans for Change is basic: The basic right of first amendment freedom of speech and association. Now that the court has once again upheld the rights of Americans for Change and other Americans to participate fully in the election process, the Carter-Mondale Campaign Committee, in its desperation, has taken another truly unprecedented step to stifle freedom of speech. On July 24, my colleagues will recall I informed the Senate of the Carter-Mondale Committee's efforts to intimidate the radio and television broadcasters of the country with threats of litigation if they ran paid advertising by Americans for Change or other independent committees.

Last Friday, they struck again, Mr. President. The Carter-Mondale Campaign Committee petitioned the Federal Communications Commission (FCC) for a drastic and major reinterpretation of the equal time provisions as they apply to the broadcasting of political advertisements. Obviously waiting until they had failed to stop free speech in the courts, this campaign committee petitioned the FCC for a declaratory ruling, which if granted, would require broadcasters to give free time—I repeat, to give free time—to the Carter-Mondale Committee equivalent to time bought by independent committees in which use of the voice and/or image of a Presidential candidate occurs.

This request for a ruling, if granted, would have the practical economic effect of forcing broadcasters to avoid selling time to many independent committees. Such a demand is particularly offensive and dangerous since Carter is the incumbent and thus has enjoyed free time galore throughout his first term and still does enjoy a vast media advantage in the campaign with the White House press corps available at almost any time.

In addition, the FCC, with a 4 to 3 Democratic majority, has set the ridiculous and preemptive deadline of Friday, September 12—this week, Mr. President—for public comment on the request by the Carter-Mondale Committee. This effectively 4-day comment period is without precedent when it comes to a major change in policy in political broadcasting. Ordinarily, at least 30 days for comment would be afforded, and the FCC might well hold a hearing before deciding the matter.

Mr. President, the intent of the Carter-Mondale Campaign Committee is clear. It is trying to accomplish, through abuse of Presidential power, and abuse of the power of the incumbency, and abuse of political control of the FCC, what it could not accomplish in the courts: to stifle this voice through coercion, threats, and intimidation; to stifle all opposition to the reelection of Jimmy Carter by suppressing freedom of speech.

Where will the Carter abuse of power stop? What other intimidation is in the wings? Was not a crass attempt to prevent the legal receipt of campaign funds by Reagan enough? Was not the nearly treasonous confirmation of highly secret data on bomber development enough? Was not the political use of Ambassadors and of Federal employees in the Department of Health and Human Services enough? Was not the blatant use of Presidential press conferences on the tragic situation in Iran to win primaries enough?

Next will the FEC—the Federal Election Commission—the FCC, the Justice Department, and other regulatory agencies be called on to close down more opposition political activities? Do not tell me that the first steps in such an effort have not been taken. They have been taken before the courts, before the FEC—as I and others can personally testify—and now before the FCC. Arguments have even been made in Federal court, Mr. President, that Americans for Change was illegal because it had too many members. Fortunately, and rightly, the court rejected those arguments.

Are other moves planned so that opposition political groups above a particular size are prevented free association and free speech? God help us, Mr. President. I hope Carter and his cronies will stop this insane and repetitive attack on our American political institutions.

Many political experts and observers have forecast that the Presidential campaign of 1980 will be the dirtiest in history. I must state bluntly that, tragically, these forecasts seem to be coming true.

In 1976, candidate Jimmy Carter roamed this Nation from one end to the other giving Americans new hope about morality and open government—preaching of love and honesty and integrity and confidence in our elected leaders.

Unfortunately we already learned, during the past 4 years, that those preachings were empty words, for the most part. The conduct of the Presidency and many associated with it for these nearly 4 years prove that fact beyond doubt.

This latest blatant attack on freedom of speech and expression by the Carter political organization is a new low. I am shocked and distressed and deeply concerned, both as a U.S. Senator and as an American citizen, over this latest tactic by a group of desperate shortsighted people.

The tactic will not go unchallenged. As chairman of Americans for Change, I have asked our attorneys to consider a response to both this latest outrage, and previous chicanery by the Jimmy Carter political machine.

A news conference will be held tomorrow morning to discuss options that may be open to us.

The fight has begun. And the real fight has become the protection of the basic rights of free Americans as much as who will be their next President.

In conclusion, Mr. President, let me answer some critics of my remarks before they pose the question. My concerns are not primarily political, although clearly the outcome of the Presidential election is at stake. To emphasize this point, let me assure the Senate that Americans for Change probably would not be affected directly by this latest desperate attack on freedom of speech by the Carter-Mondale Committee if they should prevail. Americans for Change has no plans at this time to use the voice or image of Presidential candidates in its political advertisements; however, that has been our tactical judgment. It should never be a judgment forced upon us by this blatant attempt to intimidate, or worse, unconstitutionally control and coerce the broadcast industry.

My concern here today is not to protect Republican fortunes in this election year, rather it is to protect the basic rights of American citizens to speak in behalf of the candidates of their choice and the basic rights of the press to sell advertising without intimidation by the Federal Government, or by those acting in behalf of the President.

Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I yield a minute and a half to the distinguished Senator from Iowa.

Mr. JEPSEN. I thank my distinguished colleague.

REVELATIONS OF THE SO-CALLED STEALTH PROGRAM

Mr. JEPSEN. Mr. President, I wish to register my deep concern about debate surrounding the so-called stealth program.

I recently had the opportunity to review testimony before the House Armed Services Subcommittee on Investigations. As we all know, it was revealed in these hearings that a high level official of the Department of Defense approached Mr. Benjamin Schemmer, editor of the Armed Forces Journal, and asked him to print a story containing heretofore highly classified information.

I found it quite shocking that, in this particular instance, the Department of Defense had not just passively condoned this leak—which would have been bad enough itself—but they actually originated and sanctioned this unprecedented breach of security.

In an attempt to bring this issue to the attention of my colleagues in the Senate, I ask unanimous consent that pages 46 through 62 of the House transcript be printed in the Record.

There being no objection, the transcript was ordered to be printed in the Record, as follows:

Mr. Stratton. Would you please be seated. You are the Editor of the Armed Forces Journal, are you not?

Mr. Schemmer. Yes sir.

Mr. Stratton. And there did appear in the Armed Forces Journal, the current issue, a rather detailed story on the stealth bomber and the stealth bomber technology.

According to Admiral Murphy, that was the result of an interview given to you by Dr. Perry. I wonder if you could either confirm or deny that, and could you tell us in your own words just the time that this alleged interview occurred and the circumstances under which it occurred?

Mr. Schemmer. Mr. Chairman, I respectfully decline to say, to name the source or sources for that story.

Mr. Stratton. We understand your unwillingness to name your sources, but is it true that you did have an interview and that the material on which the story was based came from a high Pentagon source?

Mr. Schemmer. Yes sir, I did have an interview with a senior Pentagon official.

Mr. Stratton. Could you indicate the date on which that interview occurred and the circumstances under which the story appeared in the Armed Forces Journal?

Mr. Schemmer. The so-called interview, sir, was on Monday the 18th of August.

Mr. Stratton. I beg your pardon?

Mr. Schemmer. The interview was on Monday, the 18th of August.

Mr. Stratton. And did this individual indicate that Secretary Brown had declassified the subject matter?

Mr. Schemmer. Specifically, no sir, I was told that Secretary Brown was aware of the classification. I was told, Mr. Dickinson, that Secretary Brown was aware of the conversation that was taking place.

Mr. Stratton. So is it not true that the Armed Forces Journal became aware of this technology—in fact, your issue indicates that as much as some three years ago, and that you declined to publish it because of its highly sensitive nature?

Mr. Schemmer. Essentially. It was a little more than two years ago, Mr. Chairman, we did do such a story, we were concerned about its implications and showed it to several individuals. One of them asked that we please sit on the story for a very long time.

Mr. Stratton. Now, your interview was on the 18th?

Mr. Schemmer. Yes sir.

Mr. Stratton. And when did the journal go to press?

Mr. Schemmer. Part of it was already at the press, Mr. Chairman, the preceding weekend, and based upon a prior conversation we made arrangements to kill some articles or pages to include the story that you are referring to. Essentially we were at press from I believe approximately Friday or Saturday the 14th and 15th, and I believe we came off the press shortly after midnight Wednesday.

Mr. Stratton. Did this individual tell you that this was a highly classified matter and that he didn't want it released? Was he giving it to you for our personal information because you were a knowledgeable person in defense matters or——

Mr. Schemmer. I hope not.

Mr. Stratton. Was he aware of the fact that you were going to get it published within the next few days?

Mr. Schemmer. Yes sir, he certainly was, and he did indicate that, reiterate it was a very sensitive program, that there was concerns about some leaks, that they felt there would be more, and that an effort was underway to try and contain the damage.

Mr. Stratton. When did your journal hit the stands or hit the mails, whatever it does when it comes out?

Mr. Schemmer. I believe we received our first copies and delivered them to the Pentagon shortly after midnight on Wednesday and delivered them to the Pentagon very early Thursday morning.

Mr. Stratton. That would be the 21st then, right? Wednesday was the 20th and——

Mr. Schemmer. Yes sir.

Mr. Stratton. Okay.

Mr. Schemmer. I believe we received our first copies sometime——

Mr. Stratton. And you heard Admiral Murphy say that whatever was released officially by the Defense Department, and Mr. Ross's knowledge there were any releases—maybe that is the reason he is in the Virgin Islands today instead of here—did this individual indicate to you that by giving you much more than had appeared in the Washington Post or Aviation Weekly, that he was thereby limiting the damage of those leaks by George Wilson and the unidentified authors of the Aviation Weekly?

Mr. Schemmer. Not in those words, Mr. Chairman, but I was led to believe that an article in the Journal might be helpful in this damage containment program.

Mr. Stratton. Well, you are a knowledgeable individual. If you have a secret and only a part of it leaks out, are you limiting the damage by releasing more of it?

I said in my opening statement that under this theory, when the Rosenbergs were able to transmit to the Soviets the lens pattern for the atomic bomb, we could have limited our damage by giving them the whole damn plan. Does that make sense to you?

Mr. Schemmer. Not to me, Mr. Chairman. I checked the leaks that had preceded the Journal article as I was developing the article. And I expressed very strongly, before we came off the press, my very strong conviction that it was irresponsible to let this information out at this time.

Mr. Stratton. Is it true that this individual who gave you this so-called damage limiting information, pressured you, if I can use that word, to get it out even sooner than your publication schedule would have provided? Did he urge you to speed it up?

Mr. Schemmer. I would not characterize it that way, Mr. Chairman.

Mr. Stratton. Did he encourage you to try to get it out rapidly?

Mr. Schemmer. I believe so. We worked night and day to get this off the press as soon as possible.

Mr. Stratton. Was it your understanding that Secretary Brown would not hold his press conference until after the Armed Forces Journal, with the information supplied by this high official, was in print?

Mr. Schemmer. Yes sir.

Mr. Stratton. And were you aware—the final question—that in the UPI story, the release of the information by the Armed Forces Journal was given as one of the reasons—since this secret had cascaded out in your publication—one of the reasons why Secretary Brown has reluctantly had to go public?

Mr. Schemmer. I read that, Mr. Chairman. I thought it was kind of ironic.

Mr. Stratton. Did you think that you had been set up as the fall guy?

Mr. Schemmer. Not really, sir.

Mr. Stratton. Mr. Daniel.

Mr. Dan Daniel. Thank you, Mr. Chairman. Would you tell the committee how long you have known about the technology and over that period of time did you carry on any dialogue with any officials in the Pentagon.

Mr. Schemmer. Mr. Daniel, I have known a little bit about this kind of work for many years. I was not aware of what it added up to in terms of the stealth program being discussed until early in 1979, and as I have testified, did write an article about the program to see what things might add up to and was concerned about what it all added up to and whether that story should be printed.

Mr. Dan Daniel. When did you write that story?

Mr. Schemmer. In the first half of '79, Mr. Daniel, and I would like not to be more specific.

Mr. Dan Daniel. All right, I will accept that. I assume that you discussed that article with some responsible individual in the Pentagon as to whether or not it should be released?

Mr. Schemmer. Yes sir.

Mr. Dan Daniel. And what response did you get?

Mr. Schemmer. I was told that it was an extremely sensitive program, that the story we had written had the key elements, was essentially correct, that there were some errors in it, I believe of no real significance, and I was asked if I would not print the story for a very, very long time.

Mr. DAN DANIEL. I respect your desire not to name your source.

Let me ask you whether or not you received the information from one source, more than one source, from the more than one agency of government, for example, the Pentagon, or Congress? Could you comment on that without calling any names?

Mr. SCHEMMER. Mr. Daniel, if you are asking about the first article, I put that article, 98 percent of it, together from unclassified bits and pieces of information that Admiral Murphy talked about earlier, and did attempt to discuss those little bits and pieces with a number of people, but that article was 98 percent from unclassified material.

Mr. DAN DANIEL. Were all of those people with whom you discussed those bits and pieces at the Pentagon or some of them in Congress or some at the White House?

Mr. SCHEMMER. Yes sir.

Mr. DAN DANIEL. They were all at the Pentagon?

Mr. SCHEMMER. They were all over.

Mr. DAN DANIEL. Thank you, Mr. Chairman.

Mr. STRATTON. Mr. Robert Daniel.

Mr. ROBERT DANIEL. I will yield.

Mr. STRATTON. Mr. Beard.

Mr. BEARD. I must say I am extremely shocked at the revelations here.

Would the gentleman confirm once again the date of your initial interview. August 18, did you say?

Mr. SCHEMMER. There was a phone conversation on August 18 and a person to person meeting on August 18.

Mr. BEARD. And the committee staff, will you confirm the date of your hearings and who requested the hearings that Dr. Perry presented to this committee. Can the committee give me the information on that?

It was August 20, two days after the initial interview, and did this committee request those hearings or did the Department of Defense come to us, the Department of Defense to give us those hearings?

Mr. STRATTON. Dr. Cooper.

* * * * *

Mr. BEARD. The Department of Defense requested to come over out of the blue to give us hearings on a project none of us knew anything about, two days after you had had the initial interview with a high ranking member of the Department of Defense, at which time, then followed by that, the Secretary of Defense, Harold Brown, on the 22nd, has a press conference, at which time he announces the development of a new revolutionary bomber system, where he states "I am announcing today a major technological advance of great military significance" talking about putting us light years ahead of the Soviet Union then referring to the reason why he is doing this is because of leaks attributed to the Armed Forces Journal, some of which were attributed to the Armed Forces Journal, is that correct?

Mr. SCHEMMER. Mr. Beard, I have read that. I was not present at Secretary Brown's——

Mr. BEARD. It is in the statement. He states, he notes that "several leaks about the stealth bomber, including the Armed Forces Journal," about the four or five types of invisible aircraft.

Mr. SCHEMMER. Mr. Beard, I have read the transcript of Secretary Brown's press conference. I was not present at it. One of our editors was. I believe Secretary Brown referred in this press conference to "newspapers and magazines and the TV leaks". I do not believe he cited any specific newspapers, the TV networks or magazines. I believe sir, yours is a ——

Mr. BEARD. I am sorry.

Mr. SCHEMMER.—wire service report of that press conference.

Mr. BEARD. Beg your pardon. I have the Washington UPI stating that he noted there had been several news leaks about it this week, including the Armed Forces Journal report. So I don't know if that refers to your magazine or not. But it seems to.

Mr. SCHEMMER. It seems some people drew that conclusion.

Mr. BEARD. If he is referring to yourself, which he instructed a high ranking official of the Pentagon to come and interview, before we were even interviewed, even briefed, then I find that that is absolutely unacceptable.

It goes on to say "In the fact of these leaks, I believe that it is not appropriate or credible for us to deny the existence of this program." Secretary Brown said that.

I think this totally shoots out of the water the Assistant Secretary of Public Relations for Defense, Tom Ross' statement, that none of these leaks came from the White House or the Pentagon. I think it makes it even more imperative that Mr. Ross is brought before this committee for participating in what I feel on the front seems to be a major critical coverup.

I also would ask this, Mr. Chairman, at this time, that this committee mandate that the Secretary of Defense be called before this investigations subcommittee for a hearing into what I feel could be one of the most politically motivated and flagrant violations of our national security.

I have never in my eight years in Congress seen such a politically motivated charade bringing into serious question serious, serious national security issues, because the polls don't look good for the Carter Administration, and I hate to be partisan, but the facts are leading up to it, and I would like to ask this committee as its ranking minority member of this committee, ask that we bring Secretary of Defense Brown before this committee, if he refuses that, we issue a subpoena, and I would like the Chairman's response to that.

Mr. STRATTON. Well, I think the committee wants to proceed in order, and judging from the very vacuous procedures that exist in the Pentagon for classifying and declassifying and in view of Admiral Murphy's testimony, I can hardly see how we can conclude the investigation without calling Secretary Brown. But I think we have got enough to crew on right now. We will take that under advisement later on.

As far as a subpoena is concerned, of course those have to be issued by the chairman of the full committee.

Mr. BEARD. I am sure when there is national security and a breach of our most stringent laws dealing with national security, I don't care whether it be the President or the Secretary of Defense, if the finger starts pointing that they have breached the security of this country for political reasons, then I feel that we set aside the so-called protocol and get these people over here by any means.

Mr. STRATTON. Mr. Daniel, do you want to reclaim any of our time?

Mr. ROBERT DANIEL. Thank you, Mr. Chairman.

I might ask that of Mr. Beard when his time comes.

Mr. BEARD. I am sorry, I have a list of questions.

Mr. STRATTON. Mr. Price.

Mr. PRICE. I have no questions.

Mr. STRATTON. Mr. Nichols.

Mr. NICHOLS. Thank you, Mr. Chairman.

I want to commend you for holding the hearings in the first place, Mr. Chairman. I don't have any questions of the witness. I appreciate and understand his reluctance to be here and I appreciate the motivation that brings him here. I appreciate it.

I just want to say, Mr. Chairman, that Admiral Murphy's testimony is the most disappointing testimony that I believe I have ever heard brought before this committee. I am alarmed by it. I am distressed about it. When a representative of the Department of Defense, on what appears to be a leak of this magnitude, comes before this committee and states that our objective of these investigations is not prosecution but simply rather identifying the leader and isolating him, in order to stem the flow of unauthorized disclosure, you are moving him over, just putting him on a shelf in another job, that is inexcusable, Mr. Chairman.

The second thing, when he comes here and when he says that I regard it as a right of the press to freely gather information without harassment or curtailment, and human propensity to share tidbits of information with inquisitive reporters. There are some things that don't need to be shared with the press, that need to be curtailed.

And finally, in the closing statement when he says I don't think the solution is prosecution or a more repressive climate of probes and checks. I can't tolerate this, Mr. Chairman, and I hope the committee will go into it in a good bit of depth.

I have no further questions.

Mr. BEARD. Would you yield? In my statement I failed to say to the witness before us, to commend him on what I feel has been exhibited as a typical example or an example of responsible journalism, and so please forgive me for not acknowledging that first. But I do commend the gentleman for having shown responsible actions for the past two years. I only regret that the gentleman is having to appear before this committee at this time and I certainly would hope that it would not injure his professional endeavors in the future.

Mr. SCHEMMER. Thank you.

Mr. NICHOLS. If this is the policy of the Department of Defense that has been brought to us this morning by Admiral Murphy, I am glad it has been called to our attention. I think the responsibility to get this matter straightened out rests squarely on this subcommittee and I am sure the Chairman is adequate to that task.

Mr. STRATTON. Mr. Badham.

Mr. BADHAM. Thank you, Mr. Chairman.

Mr. SCHEMMER. I also appreciate your being here and appreciate your concern in being here.

On August 18, the high ranking Pentagon official with whom you had the interview, was he a civilian or military or can you answer?

Mr. SCHEMMER. Mr. Badham, I respectfully decline to identify with whom I had these conversations.

Mr. BADHAM. Even to the point whether he was civilian or military?

Mr. SCHEMMER. Yes sir.

Mr. BADHAM. But he worked for the Pentagon?

Mr. SCHEMMER. Yes sir.

Mr. BADHAM. Did he call you or did you call him?

Mr. SCHEMMER. He called me, sir.

Mr. BADHAM. So the substance of the publication of your article was to move it up an issue and get it out as fast as you could. Was the whole situation commenced by a call to you from a high official of the Pentagon, is that correct?

Mr. SCHEMMER. With the exception I am concerned about the characterization, that of pushing up the issue. We did work very hard after the phone call and the visit to a subsequent——

Mr. BADHAM. He didn't call you up and say I am going to tell you this stuff, don't publish it?

Mr. SCHEMMER. I was asked when we could get the issue out.

Mr. BADHAM. You wouldn't have done anything had he not called you, is that correct?

Mr. SCHEMMER. That is correct.

Mr. BADHAM. Okay.

Mr. STRATTON. Would you yield?

Mr. BADHAM. Let me get the next question out if I may.

Was this person who called among those people with whom you discussed your proposed article over two years ago on the subject of the stealth bomber technology?

Mr. Schemmer. He is one of the individuals.

Mr. Badham. Whom you asked whether or not you should print or could?

Mr. Schemmer. That is not correct, sir. I gave two copies of this article to two other individuals and I was asked then to meet with this individual.

Mr. Badham. Okay. In your opinion, was this person then who came back to you two years ago, and the person who called you the other day, doing so because he knew that you knew so you ought to be one of the ones who got to publish it when it was to be published, kind of an obligation?

Mr. Schemmer. In part, yes sir. I would not use the word obligation. He certainly had no obligation.

Mr. Badham. He had no obligation but he felt if somebody was going to get the information you ought to be able to because you had it earlier?

Mr. Schemmer. I believe so, Mr. Badham.

Mr. Badham. I would yield to the Chairman.

Mr. Stratton. I just wanted to reiterate for the record, you testified earlier, did you not, that you actually urged this individual not to give you this stuff, that you felt that it was improper and damaging to print at this particular time?

Mr. Schemmer. After I wrote the article on Tuesday, Monday afternoon or Tuesday, I had a subsequent conversation, and having reread the article, and then looked at the leaks which had precipitated this, suggested very strongly that nothing be published, and I thought it was irresponsible for this information to be made public at this time.

Mr. Badham. So if I may reclaim, even though you were given the information and encouraged to publish it, you thought it would be improper to do so?

Mr. Schemmer. I felt, yes sir, I felt that the leak——

Mr. Badham. In the best interest of the country it would be proper not to print it?

Mr. Schemmer. I felt the leaks were a bunch of smoke.

Mr. Badham. I thank you for your patriotism and I yield back.

Mr. Stratton. Mr. Lloyd.

Mr. Lloyd. Thank you Mr. Chairman, Mr. Schemmer.

I have a question as to the methodology of the interpersonal relationships that exist between our profession and the Department of Defense.

Is it common for the journalists of your repute to have this kind of a rapport, and has other information, not pertaining to this information but other information pertaining to national defense issues, which were of a classified nature, to have been disclosed to you?

Mr. Schemmer. Yes sir.

Mr. Lloyd. Is it done with other "reporters", journalists, news media?

Mr. Schemmer. To the best of my knowledge, absolutely.

Mr. JEPSEN. Mr. President, I also wish to register my concern for the unprecedented reasons given by Secretary Brown for making this highly sensitive program a matter of public record. It has been a long-standing practice of the intelligence and defense community not to comment on highly sensitive material of this kind.

For example, there were many rumors, editorials, and even a few articles concerning the possibility of a secret mission to rescue U.S. hostages still held in Iran. These public comments were denied before the aborted rescue attempt or at least were greeted with a terse "no comment." In fact, such stories are still being denied to this day.

I see no compelling reason for Secretary Brown to have publicly admitted the existence of this program anymore than he would divulge the existence of other highly sensitive programs or missions. Senior military officials advised against it, and, through the auspices of Dr. Perry, so did the Senate Armed Services Committee.

Finally, Dr. Brown's claim that he had, in effect, been "forced" to admit the existence of the program because of persistent press reports is ridiculous on its face. Anyone who has dealt with Dr. Brown before our committee knows that, with the possible exception of the President, nobody "forces" Dr. Brown into doing or saying anything.

Mr. President, I yield the floor back to my distinguished colleague (Mr. Thurmond).

THE POLITICIZING OF THE OFFICE OF THE SECRETARY OF DEFENSE

Mr. THURMOND. Mr. President, I am deeply disturbed by the recent statements and activities of Secretary of Defense Harold Brown. It is becoming apparent to the general public and the press that the President is using his Cabinet officers for his political purposes more so than any previous U.S. President.

Mr. President, with so many military problems facing us today, I would hope that the Secretary of Defense would be focusing his complete attention toward their solution rather than stumping and and trying to justify what I consider to be a very poor track record for defense over the past 4 years. The Navy desperately needs more ships and they need them quickly. The Army has a serious recruiting and retention problem. The Air Force continues to thrash about with the MX program and also the need for a new strategic bomber.

Additional military pay and educational benefits are urgently needed by all the services. Mr. President, the list of problems which comes before the Senate Armed Services Committee is so long and so complicated that it really takes a Herculean effort by the Secretary of Defense and his staff to solve them. To allocate any of his time to political pursuits will only put our country further behind in efforts to improve our military posture. The Washington Post recently reported a large number of political speeches scheduled by all of the Cabinet officers between now and the election in November. I hope these trips are not taken at Government expense and on Government time. Frankly, in the defense area, I just do not see how the Secretary can take the time away from the critical problems facing us.

Finally, Mr. President, the political leak by Secretary Brown's staff on the "stealth" technology strikes me as nothing more than a feeble attempt to convince the public that this administration is doing, at least something, in the defense area. The leak on stealth technology and Presidential Directive 59 on strategic retargeting are calculated to confuse the American public and to refocus the American press away from the dismal administration track record on defense over the past 4 years.

It remains for the public to judge in November if they are satisfied with today's strategic balance with the Soviets.

Are they satisfied with our efforts on civil defense?

Are they satisfied with meeting a three-ocean requirement with a one and one-half ocean Navy?

Are they satisfied with 19,000 naval personnel on food stamps?

Are they satisfied with 25 percent of our Army recruits coming from mental category 4?

Are they satisfied with the shortage of military physicians and pilots?

Are they satisfied with the shortage of tanks, planes, helicopters, and spare parts which we now have, due to successive defense budget cuts over the past 4 years?

Mr. President, these are critical national defense problems of great importance. In the coming months, I would hope the Secretary gives his attention to these and the many other defense problems facing us. Also, I would urge that he not allow his office to become involved in a paristan political campaign. He is not an elected official. Partisan politics should be left primarily to those who must account to the voters for the policies they have espoused during their period in office.

Mr. President, I ask unanimous consent that the following two editorials on this important matter from the August 14, 1980, issue of the Charleston Evening Post; the September 8, 1980, issue of Fortune magazine, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Defense and Politics

Secretary of Defense Harold Brown, in a speech delivered not long ago in Oakland, Calif., attacked the Republican Party's military platform as "unrealistic, simplistic and dangerous." He went on to defend President Carter's defense policy as "prudent and mature."

Traditionally, secretaries of defense have remained aloof from partisan politics in an election year, keeping the Defense Department as nonpolitical as possible. In breaking with this tradition, Secretary Brown is even now politicking for Carter at the Democratic convention in New York.

But then, Mr. Brown has always supported his political masters rather than heeding the advice of his military advisors—the Joint Chiefs of Staff. It was Defense initiatives, under Brown's direction, that scuttled the B-1 bomber and tried to sink the nuclear carrier program. The Army's new battle tank was delayed as well as other programs. It was only thanks to alert members of Congress that some of those programs found their way back into the budget.

Now let's look at the latest in this "prudent and mature" defense policy. In a directive some Navy officials call "political gamesmanship", Brown has done an about-face on the Navy's shipbuilding plans for fiscal 1982. In his own testimony last January, he told Congress the Navy ought to build 19 ships in 1982. However in the still-secret, new budget guidelines sent to the Navy, he has directed that total be dropped to twelve. In that document he told the Navy "to bear in mind the fiscal realities we face." Even Navy Secretary Hidalgo termed the memo "most disturbing", saying the extra shipbuilding funds are "imperative if we are to achieve the force posture needed to support our strategy."

The dilemma is an obvious one. How can the administration deliver on its promise to build up defense without increasing the budget deficit and inflation? The answer is they can't, so again as in the past, Harold Brown bows to the politicians.

Regrettably he has decided to play this political role. We can only hope his successor will return to the nonpolitical stance that the Hatch Act demands for all other members of the Defense Department.

A LETTER THAT MATTERS

If $a=b$, then $a+c$ is greater than b, provided only that c is a positive number. We assume that Harold Brown, Ph.d., would readily assent to this abstract proposition. However, there does seems to be a problem about getting the Secretary of Defense to swallow the proposition when it begins to take on operational meaning—when, for example, it is applied to the Soviet-U.S. military balance.

It struck us, in reading the text of a speech Brown delivered in Oakland the other day, that logic is getting to be in some trouble at our highest military levels. Brown was assailing the Republican platform, assailment being, of course, part of every Cabinet officer's job these days. He was especially choleric about words in the platform suggesting that the U.S. was now militarily inferior to the Bolsheviks and promising to make us superior. Brown denied that the facts were as alleged; in fact, he averred, superiority for either side is pretty much impossible. "The truth is," he said, "that comprehensive military superiority for either side . . . is a military and economic impossibility if the other is determined to prevent it . . . Neither side can win . . . an arms race, because neither side would or needs to concede it to the other."

Now we know as well as the next fellow that the measurement of military power is no breeze. Dollars spent on defense are a far-from-perfect indicator of the capabilities achieved, as the article on page 38 makes plain. But presumably the dollars have something to do with the capabilities. If they don't, then Brown was just wasting the time of a lot of important people last year when he went before the Council on Foreign Relations and the Foreign Policy Association, jointly huddled at New York's Waldorf-Astoria, and worried about the "steady increase in Soviet military spending during each of the last 15 years."

But let us return to our little letters. Let us say that a represents Soviet military capabilities at some point several years ago and b represents U.S. capabilities at the same point. At this time, clearly, official U.S. doctrine held that a equaled b. We have, in fact, been saying that the two are equal ever since 1969—the year in which we formally abandoned any claim to U.S. superiority. We were still talking about equality in 1977—the year in which Harold Brown took over as Secretary of Defense. His own early speeches and his first "posture statement" proclaimed the two sides to be still about equal. He added in that statement, however, that "we must increase our investment in defense if we are to stay abreast."

That brings us to c. Let us say that c represents the net gain for the Soviet side since the point of presumed equality—that is, the amount by which Soviet spending on defense has outdistanced our own. There seems to be no disagreement about the fact that c is a positive, indeed a huge, number. The latest posture statement says that the Russians have recently been spending between 11 percent and 14 percent of their G.N.P. on defense, while we spend around 5 percent of a G.N.P. that is larger; what it all nets out to is that they're outspending us by around 50 percent. In defense investment (military hardware, construction, and R. and D.) the gap is greater. The posture statement says that Soviet investment spending probably exceeded our own by 85 percent in 1979. In short, $a+c$ is beating b by a mile.

It may seem tiresome to chop logic in such warm weather, but it is time to state that our Defense Department cannot sustain indefinitely the posture it has been clinging to for years. It can't go on, year after year, insisting that we have parity with the Russians while acknowledging, year after year, that they're heavily outspending us. An election year may be just the right time to insist that c matters.

Mr. THURMOND. Mr. President, in closing, I hold in my hand an article which appeared in today's Washington Post, September 8, 1980, entitled "The Risk In Politicizing the Pentagon" by George C. Wilson.

Mr. President, I believe this article has already been entered in the RECORD by Senator TOWER. But I want to emphasize that it is important that the American people read this article. It is important the Members of the Senate read this article. I think it will be apparent that the President of the United States is using his Secretary of Defense to politicize the Pentagon.

If he is going to politicize any department of Government, it should not be the Pentagon. In the Pentagon lies the hope for the survival of the freedom of the people of this Nation. In the Pentagon lies the hope for the survival of the freedom of the people of the free world, because without the United States the free world would fall like ripe apples into a basket.

Mr. President, it is extremely important that the President quit using the Secretary of Defense for politicizing the Pentagon.

I was amazed at the Stealth disclosures made by the Secretary of Defense. It is also important that he not use the Secretary of State for political purposes. It is important he not use the Attorney General of the United States for political purposes. But he is using all three of them.

It is not right. It is not proper. It is not in the best interests of this Nation.

I hope he will see that he has made a mistake and will discontinue doing so.

Mr. President, these matters are of grave concern to the people of this Nation. I hope the press will see fit to tell the people of the country what is going on here during this campaign.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

FROM PUBLIC SHOOTINGS TO GAS CHAMBERS

Mr. PROXMIRE. Mr. President, people have said there can never be another wholesale slaughter comparable to that conducted by the Nazis against the Jews. Yet, it must be remembered that at the time the Nazis were implementing their planned annihilation, many people were unaware of the extensive murder being committed.

Even today, many individuals do not comprehend the horror these men created. Perhaps, if the realities of the genocide initiated by the Hitler regime were told, again and again if necessary, people would realize the necessity of a preventive measure like the Genocide Convention.

The Nazis took great care to shroud their hideous activities and to formulate the most efficient means to effectuate the desired extermination of the Jews. The evolution of death-creating methods exemplifies this point.

During the summer of 1941, gas vans came into use as the townspeople tired of public shootings and the scale of murders increased. The vans held from 15 to 25 people and brought death within 15 minutes via carbon monoxide.

Initially, this method was applauded as it saved the Nazis the trouble of constructing permanent installations and of transporting the victims to distant burial sites.

However, within a short period of time, problems developed.

First, numerous complaints of headaches were expressed by the men assigned to unload the dead cargo.

Apparently, the victims urinated and defecated while in the throes of death.

Second, the vans were inadequate for the mass murder envisaged.

Open-air killings gradually replaced the van. The victims were transported to the outskirts of towns, divested of all clothing and other belongings, lined up, and shot. This method also proved unsatisfactory. Too many people were privy to the executions: The organizers, the local militiamen whose task it was to cover the graves, and the townspeople. The local inhabitants could not be prevented from hearing the incessant rattle of pistols, rifles, and submachine guns.

Furthermore, the killer squads had some men in their ranks who were unable to cope with the continuous cold-blooded murder of men, women, and children.

Eventually, the leaders determined that the stationary gas chamber was the best mode of extermination. Gas chambers were installed in the relatively secluded camps and operated by small staffs, thus permitting the program of annihilation to continue on a full scale and in secret.

The use of intelligent minds to implement the holocaust is frightening. We must acknowledge this and take action to prevent a recurrence of any form of genocide. The Genocide Convention can help us in this endeavor. The systematic annihilation of a national, racial, ethnic, or religious group is termed an international crime in the treaty. Certainly, in our own minds, genocide is one of the most heinous of crimes. We must transform this personal belief into a statement to the world. I urge the swift ratification of the Genocide Convention.

PRENOTIFICATIONS OF EXIMBANK FINANCINGS

Mr. PROXMIRE. Mr. President, I call to the attention of my colleagues five separate communications I have received from the Export-Import Bank pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, notifying the Senate of the following six transactions the Bank intends to approve: First, a financial guarantee of a commercial loan of $223,550,000 to facilitate the purchase by Britannia Airways of five new Boeing 767 jet aircraft, spare engines, related spare parts and ground support equipment; second, loans and guarantees of $111,387,400 to Mexico for the purchase of U.S.-produced gas turbines and ancillary equipment; third, loans and guarantees of $150,000,000 to TAP, the national airline of Portugal, for the purchase of five new Lockheed L1011–500 jet aircraft and related spare parts and services; fourth, loans and guarantees of $178,110,000 to Hylsa, S.A., a leading Mexican steel producer, for the purchase of U.S. goods and services to expand steel and port facilities at Tampico, Mexico; fifth, loans and guarantees of $460,173,000 to Air Canada for the purchase of 12 Boeing 767–200 jet aircraft with related spare engines, spare parts and services; and sixth, loans and guarantees of $247,503,000 to Nigeria to facilitate the purchase of U.S. equipment and services for a nitrogenous fertilizer project.

Mr. President, if there is a sacred cow in this body, it is the Eximbank. When that name is raised people bow, scrape, and act as if it is something that cannot possibly be criticized. Well, I would like to criticize it.

I think it is ridiculous for us to provide loans and loan guarantees, and, of course, these loans and loan guarantees are below market in every case, otherwise they would go to the market.

Loans and loan guarantees for what purpose? For the purpose of enabling some of our biggest corporations to sell in the foreign market, and in almost every case, Mr. President, they have a virtual monopoly of that market or they compete with other American firms, not with foreign firms.

How can we possibly justify hundreds and hundreds and hundreds of millions of dollars of guarantees—for example, to sell jets abroad—when the competition of course, is between, primarily, Boeing and Lockheed?

In the case I am announcing this afternoon, we have a guarantee to Boeing for $223 million to sell five jet aircraft to Britain, and then we have a guarantee of $460 million—almost half a billion dollars—to Air Canada for the purchase of jet aircraft, and that is being supplied by Boeing.

Then we have $150 million to provide for the sale of five new Lockheed jet aircraft to Portugal. This subsidy is paid for by the American taxpayer.

Anyone who thinks that our budget cannot be cut because if we do we grind the face of the poor, that we hurt the people whose incomes are low and who cannot fend for themselves—the sick, the lame, the halt, the blind, the unemployed—should consider what I am announcing here. I am announcing not a program of a few million dollars or a few hundred thousand dollars but one that adds up to more than a billion dollars. It is a program overwhelmingly for the benefit of the biggest, most prosperous, most profitable corporations in this country. It does not make any sense.

Section 2(b)(3)(i) of the Act requires the Bank to notify the Congress of proposed loans or financial guarantees or combinations thereof in an amount of $100,000,000 or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress adopts legislation to preclude such approval.

Mr. President, I ask unanimous consent that the letters from Eximbank and accompanying information pertaining to these transactions to be printed in the Record. Persons wishing to submit questions or comments on any of these transactions may contact Robert W. Russell, counsel to the International Finance Subcommittee, at (202) 224–0819 or Paul Freedenberg, minority professional staff member, at (202) 224–0891.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXPORT-IMPORT BANK OF THE
UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to the United Kingdom.

A. Description of Transaction.

1. Purpose.

Eximbank is prepared to make available financing in the form of a financial guarantee of a commercial loan of $223,550,000 to be extended by a United States private lender to T.N.H. Leasing A.G. The purpose of this Eximbank financing is to facilitate the purchase in the United States and lease to Britannia Airways Limited ("Britania") of five new Boeing 767 jet aircraft, spare engines, related spare parts and ground support equipment. The total U.S. export value for this transaction is estimated to be $263,000,000.

2. Identity of the Parties.

Britannia, based in the United Kingdom, is a charter airline and a third-tier wholly-owned subsidiary of International Thomson Organisation Limited ("ITOL"), a diversified Canadian holding company whose principal activities are printing and publishing newspapers, magazines and books, operating travel agencies, and participating in North Sea and other oil and gas fields. Britannia's current fleet consists of twenty-two 737 aircraft. The airline, established in 1962, operates package tours primarily from London to the Canary Islands and various Southern European and Mediterranean resort areas. Britannia will lease the aircraft from a wholly-owned subsidiary of ITOL.

3. Nature and Use of Goods and Services.

The principal goods to be exported from the U.S. are five new medium-range, wide-bodied commercial jet aircraft, related spare parts and ground equipment to be delivered during the period 1984-1986. Most of the airframe components will be manufactured in the Seattle-Renton-Everett area by The Boeing Company of Seattle, Washington. It is also expected that other United States firms will furnish components and spare parts. Potential engine manufacturers are the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut, the jet aircraft engine division of General Electric Company in Cincinnati, Ohio, and Rolls-Royce Limited in the United Kingdom. In the event Rolls-Royce engines are selected by Britannia, they will not be financed by Eximbank and Eximbank's financing will be reduced accordingly. Non-United States components manufactured in Japan and Italy will cost about $28 million, or approximately 11% of the United States goods, and are not included in the financing plan set out below.

B. Explanation of Eximbank Financing.

1. Reasons.

The Eximbank financial guarantee of $223,550,000 will facilitate the export of $263,000,000 United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports. Through 1990, aircraft purchase by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financing support for the export of U.S. aircraft has assisted U.S. aircraft manufacturers on obtaining approximately 80 percent of the world market for commercial jet aircraft. In order to maintain the existing market share for U.S. commercial jet aircraft over the next several years, Eximbank must strive to meet both borrowers' needs and foreign competition, in particular that from the European consortium, Airbus Industrie.

Airbus Industrie's A–130 jet aircraft was determined by Britannia to be technically and economically competitive with the 767 aircraft. Adequate financing from U.S. sources was necessary to enable Britannia to proceed with the purchase of all five aircraft, of which three are optional, and to enable Boeing to penetrate the European market with the first sale of 767 aircraft. The Eximbank financing appears to have been a decisive factor in winning the sale for the U.S. suppliers.

Boeing estimates that the production of each 767 aircraft will generate 1,017,900 man-hours of work for Boeing and its subsuppliers consisting of 870,000 for each airframe and 147,900 for each engine. Additional benefits which will flow from the United States from the transaction include sizeable follow-on exports of spare parts, ground support and other related equipment.

2. The Financing Plan.

The financing plan for the total U.S. procurement supported by Eximbank is as follows:

	Percent of U.S. costs	Amount
Cash payment	15	$39,450,000
Private financing with Eximbank guarantee	85	223,550,000
Total	100	263,000,000

(a) Eximbank Charges.

The financial charge on the financing extended under the Eximbank guarantee will be 10.7% per annum, payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for Britannia on February 7, 1980. It is possible that if market conditions require, some Eximbank credit will be blended with the financing extended under the Eximbank guarantee. A commitment fee of ½ of 1% per annum and a guarantee commitment fee of ⅛ of 1% per annum will also be charged on the undisbursed portion of the Private Financing. The financing will be secured by the guarantee of ITOL and mortgages on the aircraft.

(b) Payment Terms.

The financing for the aircraft will be repaid in three repayment schedules of 20 semiannual installments each, beginning November 15, 1984 with respect to aircraft to be delivered in 1984; beginning November 15, 1985 with respect to aircraft to be delivered in 1985; and beginning November 15, 1986 with respect to aircraft to be delivered in 1986.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN THE UNITED KINGDOM

[As of July, 31, 1980]

	Outstanding	Undisbursed
Direct loans	$394, 379, 199. 71	$185, 237, 734. 86
Financial guarantees	56, 682, 480. 00	110, 257, 520. 00
CFF loans	38, 400. 00	
Bank guarantees	6, 004, 348. 64	13, 566, 722. 75
Insurance medium	3, 130, 226. 94	3, 958, 562. 55
Insurance short	123, 596, 239. 24	
Total for the United Kingdom	583, 830, 894. 53	313, 020, 540. 16

Defaults and reschedulings: Loan No. 4097 was rescheduled Nov. 3, 1977, in the amount of $1,619,998.84. This loan was paid in full Jan. 17, 1979. There have been no other defaults to date.

UNITED KINGDOM

Area and population:	
Area (square kilometer)	244, 000
Population (mid-1979) (millions)	55. 8
Population density (per square kilometer)	229
GDP per capita (1979)	$6, 129
Sources and application of national product:	Percent
Uses (1978):	
Consumption	53. 8
Government	23. 2
Capital formation	20. 7
Stocks	1. 0
Exports	33. 9
Imports	−32. 6
Total	100
Sources (1978):	
Agriculture, forestry and fishing	2. 6
Mining and quarrying	3. 2
Manufacturing	28. 7
Construction	6. 0
Transportation and communication	8. 2
Services	51. 3
Total	100

	1976	1977	1978	1979	1980(E)
GDP data:					
Billions of dollars (nominal)	221	246	308	342	305
Rate of change (real) (percent)	3. 6	1. 4	3. 3	1. 5	−3. 0
Fiscal and monetary data:					
Government deficit (billions of dollars)	12. 3	7. 8	15. 1	17. 4	NA
Deficit as percent of GNP	5. 5	3. 2	5. 2	5. 1	NA
Increase in money supply (M3) (percent)	11. 2	9. 8	14. 9	12. 7	12. 7
Savings ratio (percent)	14. 6	13. 9	15. 2	15. 7	17. 0
Price data (percent increase over preceding year):					
CPI	16. 5	15. 9	8. 3	17. 5	18. 5
WPI	17. 3	19. 8	9. 1	12. 2	18
Labor data (percent increase over preceding year):					
Wages (weekly rates)	16. 5	10. 3	14. 6	15. 5	19. 0
Unemployment	5. 3	5. 7	5. 7	5. 4	7. 1
External debt (billions of dollars):					
Outstanding public debt	14. 2	18. 0	15. 8	14. 6	13. 9
Debt/GDP (percent)	6. 4	7. 3	5. 1	4. 3	4. 6
Debt service ratio (public debt only)[1] (percent)	7. 3	4. 8	2. 9	4. 9	NA
Balance of payments data (billions of dollars):					
Exports	45. 9	56. 1	−67. 3	86. 3	111. 5
Imports	−52. 4	−59. 2	−70. 2	−93. 3	−119. 8
Trade balance	−6. 5	−3. 1	−2. 9	−7. 0	−8. 3
Invisibles balance	4. 5	3. 8	4. 2	1. 9	1. 7
Current account balance	−2. 0	0. 7	1. 3	−5. 2	−6. 6
Capital account	−4. 6	12. 2	−3. 0	9. 0	NA
Overall balance	−6. 6	12. 9	−1. 7	3. 8	NA
Reserve data (billions of dollars):					
Foreign exchange (excluding gold)	3. 4	20. 1	16. 0	19. 9	
Gold (average London price)	2. 6	3. 3	4. 4	12. 1	

[1] For 1976 and 1977 includes only capital repayment.

Sources: IMF, IFS, and OECD Survey, OECD.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Mexico.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees ("Eximbank Financing") of $111,387,400 to Comision Federal de Electricidad ("CFE"). The purpose of the Eximbank Financings to facilitate the purchase in the U.S. for export to Mexico of 14 gas turbines and ancillary equipment to be manufactured by Westinghouse, General Electric, United Technologies and Brown Boveri. The total U.S. export value for this transaction is $131,044,000. In addition, Eximbank has issued a preliminary commitment to CFE to facilitate the purchase in the United States of $130 million of steam turbines and boilers.

2. Identity of the Borrower:

CFE is an autonomous institution of the Federal Government of Mexico which is responsible for providing most of Mexico's electric power. Eximbank has made many loans to CFE, and repayments have been made on a timely basis.

3. Nature and Use of Goods and Services:

The goods to be exported will be installed in and operated as part of CFE's electric power system. Mexico is in the midst of a severe power shortage, and the expansion of the system is a critical necessity. Mexico has abundant supplies of natural gas and petroleum to fuel the new units.

B. Explanation of Eximbank Financing

1. Reasons:

The Eximbank Financing of $111,387,400 will facilitate the export of $131,044,000 of U.S. goods and services. CFE has signed letters of intent to purchase the gas turbine units from Westinghouse, General Electric, Brown Boveri and United Technology. CFE is requiring suppliers to provide 85 percent fixed rate financing. European and Japanese suppliers are now including such financing as a part of their government supported bids. Over the past few years much of CFE's electrification programs have been so financed by EID/MITI of Japan. The Eximbank Financing will assist in the generation of some 5,240 jobs in the U.S. over the period of fabrication of the items. U.S. electrical equipment manufacturers are generally operating below capacity and are anxious to secure additional orders.

2. The Financing Plan:

The total cost of the U.S. goods and services to be purchased by CFE will be financed as follows:

	Amount	Percent of U.S. Costs
Cash	$19, 656, 600	15
Eximbank financing	111, 387, 400	85
Total	131, 044, 000	100

It is expected that 65 percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank ("Blended Eximbank Financing"). The remaining 35 percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

a. Eximbank Charges:

The financial charges on the Blended Eximbank Financing to be paid by CFE will be 8.75 percent per annum, payable semiannually. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment Terms:

CFE will repay the Eximbank Financing in 20 semiannual installments, beginning on August 15, 1981.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK OF THE
UNITED STATES
Washington, D.C., August 27, 1980.

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Portugal.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal. The purpose of the Eximbank Financing is to facilitate the purchase in the United States by TAP of five new Lockheed L1011-500 jet aircraft and related spare parts and services. The total U.S. export value for this transaction is estimated to be $250,000,000.

2. Identity of the Parties:

(a) TAP:

TAP, established in 1944, is Portugal's national air carrier and provides scheduled and charter service on both domestic and international routes. It is 100 percent owned by the government of Portugal.

(b) Guarantor:

The Government of Portugal, acting by and through its Ministry of Finance, will unconditionally guarantee payment of TAP's indebtedness under the Eximbank Financing.

3. Nature and Use of Goods and Services:

The principal goods to be exported from the United States are five commercial jet aircraft to be used by TAP on its international routes. The airframes for the L-1011-500's will be manufactured in California by the Lockheed California Company. In addition, other U.S. suppliers will furnish components and spare parts. The engines for the aircraft will be supplied by Rolls Royce supported by official export credit financing provided by the United Kingdom.

B. Explanation of Eximbank Financing:

1. Reason:

The Eximbank Financing of $150,000,000 will facilitate the export of $250,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their sub-contractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial aircraft.

The export of the five commercial jet aircraft which are the subject of this letter depends to a significant degree upon the availability of Eximbank support for the medium and long term maturities. Commercial lenders are unable to commit themselves in Portugal at fixed interest rates or for the full repayment term involved in this case, a ten year amortization after a four year delivery period. Therefore, the Eximbank Financing is necessary to provide repayment terms that would make the transaction economically feasible for TAP.

Lockheed estimates that the construction of each aircraft involves 600 man/years of employment evenly divided between Lockheed and its suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts and related equipment.

2. The Financing Plan:

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$37,500,000	15
Unguaranteed private Financing	62,500,000	25
Eximbank financing	150,000,000	60
Total	250,000,000	100

It is expected that forty percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank (Blended Eximbank Financing). The remaining sixty percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Blended Eximbank Financing to be paid by TAP will be 8 percent per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for TAP on July 5, 1979. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portions of the Eximbank Financing.

(b) Repayment Terms:

The Eximbank Financing and the Unguaranteed Private Financing will be repaid by TAP in two schedules of 20 semiannual installments beginning October 25, 1983 and October 25, 1984. The Unguaranteed Private Financing will be repaid from the early installments of each such schedule.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN PORTUGAL

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	$75,295,058.21	$11,833,288.82
CFF loans	1,128,425.70	1,333,288.82
Financial guarantees	2,658,426.92	
Bank guarantees and other	111,093.95	1,521,280,00
Insurance:		
Medium term	260,637.98	499,959.00
Short term	1,699,026.76	93,543,202.48
Total exposure	81,152,669.52	108,731,019.10

Defaults and reschedulings: In the past 10 yr. there have been no defaults or reschedulings of Export-Import Bank direct credits for United States export sales in Portugal.

PORTUGAL

Area (square kilometers)	92,072
Population (end 1979) (millions)	9.3
Population density (per square kilometer)	101
GDP per capita (in 1979 U.S. dollars)	$2,154
GDP:	Percent
Expenditure structure (1979):	
Private consumption	73
Government	15
Investment	22
Exports	25
Imports	−35
Total	100
Origin of GDP (1977):	
Agriculture	14
Industry	45
Services	41
Total	100

	1976	1977	1978	1979(P)
GDP data:				
Millions of dollars (nominal)	14,821	15,730	16,994	20,028
Growth rate (real)	6.9	5.3	3.2	4.0
Fiscal and monetary data:				
Government deficit (millions of dollars)	1,585	1,142	1,941	1,981
Deficit as percent of GDP	10.7	7.3	11.4	9.9
Increase in money supply (MI) (percent)	8.4	11.8	14.5	25.9
Savings ratio (percent)	14.3	13.2	16.3	19.7
Price data (percent change over previous year):				
CPI	12.1	27.4	22.1	24.2
WPI	19.2	28.7	31.6	NA
Labor data:				
Wages (monthly earnings) (percent change)	11.9	12.0	11.0	NA
Unemployment rate (percent)	6.9	7.9	8.4	10.0
External debt:				
Outstanding debt (millions of dollars)	2,892	4,427	5,420	6,583
Private	1,752	2,488	3,433	3,721
Public	1,140	1,939	1,987	2,862
Debt service ratio (public debt only) (percent)	5.0	6.1	5.3	NA
Total debt/GDP (percent)	19.5	28.1	31.9	32.9
Balance of payments (millions of dollars):				
Exports, f.o.b	1,823	2,027	2,410	3,594
Imports, f.o.b	−3,932	−4,533	−4,791	−6,016
Trade balance	−2,109	−2,506	−2,381	−2,422
Tourism (net)	186	268	431	695
Net services	−107	−863	−54	100
Unilateral transfers (net)	972	1,134	1,635	2,472
Of which emigrant remittances		1,174	1,671	2,446
Current account balance	−1,244	−1,499	−800	150
Capital account balance	277	636	760	1,259
Overall balance	−1,967	−863	160	1,352
Reserves (millions of dollars):				
Foreign exchange (excluding gold)	176	366	871	940
Gold (London average price)	3,454	3,562	4,276	12,262

Note: Exchange rate: Escudos/U.S. dollars—1976=31.549, 1977=39.855, 1978=46.010, 1979=49.781.

Sources: I.F.S., OECD Survey, IMF—Recent economic developments.

EXPORT-IMPORT BANK OF THE
UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Mexico.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees ("Eximbank Financing") of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500. The purpose of the financing is to facilitate the purchase in the U.S. for export to Mexico of various equipment and services required for the expansion of the Borrower's integrated steel facilities and port facilities at Tampico, Mexico. The total U.S. export value for this transaction is $178,110,000.

2. Identity of the Borrower:

Hylsa, S.A. is one of Mexico's leading producers of steel, and a wholly owned subsidiary of Grupo Industrial Alfa, S.A., which is Mexico's largest privately owned and most diversified company. Eximbank's experience with the Borrower has been satisfactory.

3. Nature and Use of Goods and Services: Various items of equipment and services to be used in the expansion of the Borrower's steel port facilities.

B. Explanation of Eximbank Financing:

1. Reasons:

The Eximbank Financing of $178,110,000 will facilitate the export of that amount of U.S. goods and services. U.S. equipment firms are having a difficult time winning jobs against Japanese and European bidders, all of whom offer competitive pricing and financing. Eximbank has been informed by the U.S. suppliers that their backlogs are way down, particularly since there are no major expansions contemplated by U.S. steel plants; thousands of U.S. jobs are therefore dependent in large part upon the ability of the U.S. suppliers to compete for steel mill jobs overseas. Recent OECD exchanges make it clear that Japan and England are supporting financial packages for this project of 85% of fixed rate financing, in addition to 15% of local costs, all at an interest rate of 7.5%. The Eximbank Financing will assist in the generation of some 7,120 jobs in the U.S.

2. The Financing Plan:

The total U.S. and local costs of the project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$26,716,500	15
Eximbank financing:		
(a) U.S. costs	151,393,500	85
Total		[1] 100
(b) Local costs	26,716,500	15
Total	204,826,500	

[1] U.S. costs.

It is expected that the Eximbank Financing for the U.S. Costs will consist of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

a. Eximbank Charges:

The financial charges on the Eximbank Financing to be paid by Hylsa will be 8.25 percent per annum, payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for Hylsa on March 6, 1980. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment Terms:

Hylsa will repay the Eximbank Financing in 20 semiannual installments, beginning on January 10, 1985.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK OF THE
UNITED STATES,
Washington, D.C., August 29, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Canada:

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available to Air Canada financing in the form of loans and guarantees (Eximbank Financing) of $460,173,000 to facilitate the purchase in the United States by Air Canada of 12 Boeing 767-200 jet aircraft with related spare engines, spare parts and services. The total U.S. export value of these purchases is estimated to be $575,216,000.

This transaction is the first proposed credit under a Preliminary Commitment issued by Eximbank to Air Canada for financing of Air Canada's purchases of jet aircraft referred to in our letter of August 23, 1979. In that Preliminary Commitment, Eximbank indicated to Air Canada the terms and conditions under which it will be prepared to extend up to $828,000,000 of financing (including the Eximbank Financing proposed in this transaction) to Air Canada to assist in the purchase of up to 24 Boeing 767-200 jet aircraft (including the 12 mentioned above) to meet that airline's needs for increased traffic on its domestic and North American routes and replacement of its aging fleet. Including the transaction mentioned above, the total U.S. export value of these purchases is estimated to be $1,035,000,000.

2. Identity of the Borrower:

Air Canada, Canada's largest airline, was established in 1937 as a corporation owned by the Canadian National Railroad and was reorganized in 1978 under the ownership of the Government of Canada. Its routes are worldwide, the principal routes being to Europe and North America, in addition to extensive operations throughout Canada. Eximbank has previously made 6 loans to Air Canada and repayments have been made on a timely basis.

3. Nature and Use of Goods and Services: The principal goods to be exported from the United States are 12 Boeing 767-200 commercial jet aircraft to be used by Air Canada, together with the additional commercial jet aircraft contemplated by the Preliminary Commitment, to handle increased traffic on its domestic and North American routes and to replace its aging fleet. The aircraft will be exported under various schedules during the period 1982-1986.

The airframes for the 767's will be manufactured in the Seattle-Renton-Everett area by the Boeing Company of Seattle, Washington. The engines for the 767's will be manufactured by the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut. In addition, other U.S. firms will furnish spare parts. Non-U.S. components manufactured in Japan and Italy will cost about $60,901,000, or approximately 11 percent of the United States goods, and are not included in the financing plans set out below.

B. Explanation of Eximbank Financing:

1. Reasons:

The Eximbank financing support of $460,173,000 contemplated in this transaction will facilitate the export of $575,216,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports.

During the next two to three years, several large foreign airlines will be undertaking major reequipment programs, and through 1990 aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial jet aircraft, and Eximbank believes it must be sensitive to purchasers' needs during this period of new product selection to insure that U.S. aircraft and engine manufacturers are able to offer attractive financing which helps them to sustain their position as a leading U.S. export sector.

The export of 12 Boeing 767-200 jet aircraft will have been achieved in the face of strong competition from the A-310-200 jet aircraft manufactured by Airbus Industrie. The A-310-200 was determined by Air Canada to be technically and economically competitive with the B767-200 for Air Canada's domestic and North American routes. To be competitive and to break into the important North American market with the A-310-200 type of aircraft, Airbus arranged special financing with support by the Governments of France and Germany. Adequate, comparable financing from U.S. sources was necessary to offset the A-310-200 financing. Air Canada's selection of the 767 over the Airbus will govern a substantial portion of Air Canada's fleet acquisition plans for the period through 1990. The Eximbank financing, therefore, was a decisive factor in winning this sale for the U.S. suppliers.

Boeing estimates that the sale of 12 B767-200 jet aircraft will provide 12.2 million man/hours of work for Boeing and its subcontractors, including 1.8 million for Pratt and Whitney in Connectcut for production of the engines. Additional benefits which will flow to the United States from the transaction include follow-on sales of up to 12 additional B767-200 jet aircraft and related exports of spare parts, ground support and other auxiliary equipment.

2. The Financing Plan:

The cost of the 12 B767-200 jet aircraft will be financed as follows:

	Amount	Percent of U.S. costs
Cash payment	$115,043,000	20
Eximbank financing	460,173,000	80
Total	575,216,000	100

It is expected that the Eximbank Financing described above will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Eximbank Financing to be paid by Air Canada will be 8.7 percent per annum, payable semiannually until the start of principal repayments as set forth in subparagraph (b) below. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

(b) Repayment Terms:

The Eximbank Financing, together with interest thereon, will be repaid in 2 schedules of 24 equal semiannual installments beginning (i) January 15, 1984 for aircraft to be delivered in 1982 and 1983 and (ii) January 15, 1985 for aircraft to be delivered in 1984. Repayments will be computed on the basis of an actuarial annuity method requiring level installment payments composed of decreasing amounts of interest and increasing amounts of principal in each installment, with interest accruing prior to the start of principal repayments being payable semiannually.

Attached is certain additional information on Eximbank activity in, and economic data about, Canada.

Sincerely,

H. K. ALLEN.

EXIMBANK EXPOSURE IN CANADA

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	266, 265, 082. 89	139, 286, 880. 20
Financial guarantees	0	0
CFF loans	289, 555. 58	0
Bank guarantees	253, 870. 60	0
Insurance:		
Medium	1, 036, 208. 53	815, 871. 70
Short	113, 820, 916. 29	

Defaults and reschedulings: In the past 10 yr there have been no defaults or rescheduling of Eximbank direct credits financing United States export sales to Canada.

CANADA

Area (thousand square kilometer)	9, 976
Population (begin 1979) (millions)	23. 5
Population density (per square kilometer)	2
GNP per capita (1979)	$9, 464

	Percent
Expenditures of GNP (1979):	
Consumption	63
Government	17
Capital formation	24
Exports	24
Imports	−28
Total	100
Origin of GDP (1978):	
Agriculture	3
Industry	29
Services	61
Other	7
Total	100

	1976	1977	1978	1979	1980(P)
GNP data:					
Nominal (billions of U.S. dollars)	194. 2	197. 6	203. 2	222. 4	249. 3
Rate of change (real GNP) (percent)	5. 4	2. 4	3. 4	2. 7	0. 3
Fiscal and monetary data:					
Government deficit (millions of U.S. dollars)	3, 246. 5	6, 965. 6	9, 526. 6	9, 906. 2	2, 191. 8
Deficit as a percent of GNP	1. 7	3. 5	4. 8	4. 5	0. 9
Increase in money supply (M2) (percent)	12. 6	14. 0	10. 7	2	NA
Savings ratio (percent)	10. 2	10. 1	10. 4	10. 3	NA
Price data (annual changes) (percent):					
CPI	7. 5	8. 0	8. 9	9. 1	9. 7
WPI	4. 2	9. 2	9. 4	13. 9	10. 9
Labor data (annual changes) (percent):					
Wages (hourly earnings)	14	10. 5	7. 1	9. 0	NA
Productivity	5. 1	0. 4	0. 4	−0. 9	0. 6
Unemployment rate	7. 1	8. 1	8. 4	7. 5	7. 8
External debt:					
Net international indebtedness (billions of U.S. dollars)	19. 9	25. 8	40. 1	42. 1	41. 2
As percent of GNP	10. 2	13. 1	19. 7	18. 9	16. 5
Debt service ratio (total debt) (percent)	4. 1	4. 8	6. 1	7. 4	NA
Balance of payments (millions of U.S. dollars):					
Exports	38, 534	40, 396	44, 276	55, 785	61, 012
Imports	−37, 127	−37, 896	−41, 424	−52, 374	−60, 098
Trade balance	1, 407	2, 500	2, 852	3, 411	914
Services (net)	5, 331	−6, 810	−7, 358	−8, 237	−9, 265
Transfers (net)	488	381	36	531	513
Current account balance	−3, 435	−3, 929	−4, 470	−4, 295	−7, 841
Capital balance	4, 425	2, 630	1, 689	5, 750	NA
Overall balance	989	−1, 299	−2, 781	1, 455	NA
Reserves (millions of U.S. dollars):					
Foreign exchange (excluding gold)	4, 964	3, 672	3, 560	3, 056	
Gold (average London price)	2, 698	3, 251	4, 276	12, 278	

Sources: OECD Survey, IMF, and IFS.

Export-Import Bank
of the United States,
Washington, D.C.

Hon. Walter F. Mondale,
President of the Senate,
Washington, D.C.

Dear Mr. President: Pursuant to Section 2(b) (3) (i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Nigeria.

A. Description of Transaction:

1. Purpose:

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $247,503,000 to the Republic of Nigeria, acting by and through its Federal Ministry of Finance (Borrower). The purpose of the Eximbank Financing is to facilitate the purchase in the United States by the Federal Ministry of Industries (FMI) of the Republic of Nigeria of equipment and services for a nitrogenous fertilizer project together with related infrastructure (Project). The total U.S. export value for this transaction is estimated to be $291,180,000.

2. Identity of the Parties:

(a) Republic of Nigeria:

The Republic of Nigeria, acting by and through its Federal Ministry of Finance, will act as the Borrower of the Eximbank Financing.

(b) FMI and Pullman-Kellogg:

FMI is the Ministry of the Republic of Nigeria charged with the responsibility for developing the country's industrial resources. FMI and Pullman-Kellogg (P-K) of Houston, Texas intend to form a joint venture company for the management and operation of the Project.

3. Nature and Use of Goods and Services:

The Project will be comprised of a 1,000 metric tons per day (MTD) ammonia plant, a 1,500 MTD urea plant, and a 1,000 MTD mixed fertilizers unit. The goods to be exported will involve chemical process, materials handling, utility plant, and construction equipment as well as various services including: engineering, procurement, construction supervision, start-up, training, and process licensing.

B. Explanation of Eximbank Financing:

1. Reason:

The Eximbank Financing of $247,503,000 will facilitate the export of $291,180,000 of U.S. goods and services. P-K has initiated a lump sum contract with FMI to act as prime contractor for the Project. The Project will provide Nigeria with a domestic source of fertilizer, will utilize natural gas currently being flared, and will result in foreign exchange savings since Nigeria currently imports the fertilizer to be produced from Europe.

The award of this Project to P-K represents a major breakthrough for a U.S. firm in Nigeria, a market in which the U.S. has had only limited success. It was accomplished in the face of strong competition from the French who also offered official export financing for 85 percent of the Project costs at a blended rate of 8.4 percent per annum.

P-K estimates that its engineering and other client services will involve approximately 607,000 man/hours of employment. In addition, P-K, as managing contractor will subcontract for equipment and engineering services from a number of other U.S. suppliers which will account for substantial additional man-hours of employment.

2. The Financing Plan:

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$43, 677, 000	15
Eximbank financing	247, 503, 000	85
Total	291, 180, 000	100

It is expected that the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges:

The financial charge on the Eximbank Financing to be paid by the Borrower will be 8.4 percent per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for the Borrower on September 11, 1979. A commitment fee of 0.5 percent per annum will be charged on the undisbursed portions of the Eximbank Financing and is included in the above financial charge of 8.4 percent.

(b) Repayment Terms:

The Eximbank Financing will be repaid by the Borrower in 20 semiannual installments beginning December 31, 1984.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. Allen.

NIGERIA: KEY ECONOMIC INDICATORS

[In millions of dollars at current exchange rate unless otherwise indicated]

	1977	1978	Percent change 1977–78	Estimate 1979
National income:				
GDP (current prices)	41,476	42,698	2.9	46,968
Population (millions)	79.7	81.7	2.5	83.7
GDP per capita	520.5	522.6	.4	561.1
Exchange rate (dollars per Naira)[1]	1.55	1.56	.6	1.66
Production index (1972=100):				
Mining	114.5	103.6	−9.5	125
All manufacturing	193.5	221.4	14.4	230
Beer	185.6	285.2	53.7	290
Cotton textiles	172.9	167.1	−3.4	200
Vehicle assembly	1,097.3	922.7	−9.5	1,145
Soap, detergents	328.4	362.5	10.4	320
Electricity	212.3	260.6	22.8	285
Agricultural production (1,000 tons):				
Yams	18,000	18,100	.6	18,100
Millet	2,950	3,100	5.1	3,100
Corn	1,500	1,675	11.7	1,070
Palm kernels	340	350	2.9	370
Cocoa beans (commercial)	205	165	−19.5	170
Agriculture production—Continued				
Cotton (commercial: 1976=81)	36	40	11.1	41
Peanuts (commercial: 1975=300)	14	20	42.9	50
Monetary:				
Money supply (Dec. 31)	7,431	7,466	.5	9,500
Retail price index (urban) (1975=100)	141.5	176.0	24.4	210
Commercial minimum lending rate (percent)	6	7	16.7	8
Treasury certificates (percent)	3.5	4.5	28.6	4.5
Trade:				
Reserves (Dec. 31)	3,908	1,948	−57.8	3,400
Payments balance (private)	648	4,730	629.9	3,000
Exports	12,364	9,838	−20.0	16,000
To United States	4,675	3,981	−14.8	8,000
Imports	10,747	13,136	22.2	11,000
From United States	1,203	1,407	17.0	1,000
Petroleum exports (million barrels per day)	2.03	1.85	−8.9	2.23

[1] The rate is adjusted frequently by the Central Bank. The figure for 1979 is a weighted average of rates during 1979. At the year's end the rate was $1.74 Naira.

Sources: Central Bank of Nigeria, Federal Office of Statistics, Agricultural Data and 1979 Estimates, U.S. Embassy. U.S. Department of Commerce: Foreign Economic Trends and Their Implications for the United States, April 1980, No. 80–023.

Eximbank exposure in Nigeria as of July 31, 1980

Short-term FCIA insurance	$20,619,000
Medium-term FCIA insurance	1,525,000
Medium-term bank guarantees	6,290,000
Financial guarantees	3,375,000
Direct credits	28,302,000
Cooperative financing facility	----------
Total exposure	60,111,000

PAYMENTS

History

Overall, Eximbank has had a satisfactory repayment record on direct credits in Nigeria. Some slow payments have occurred due to delays within Nigeria's administrative system.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. HELMS. Mr. President, I have listened with interest to the comments of my friend from Wisconsin. He always makes sense.

As he was speaking, I was thinking about how we got into this syndrome that all ills of the Nation can be cured from Washington, D.C. But it does not happen that way. I have just about decided that Washington does not solve problems—Washington is the problem.

In any case, I was just thinking about a good-sounding Federal program that was instituted by the bureaucracy with the approval of Congress a couple of years ago to supply fuel for needy people during emergency times. It was a very cold winter, as the Senator will recall; $22,000 was allocated for Gaston County, N.C., and they set up a complex bureaucracy, even there, to administer this $22,000.

The first thing they did was to hire a director for the program, equip him with an automobile, an office, a telephone, and a secretary. I will not go into all the details, but it ended up that just a little less than $500 of the $22,000 allocated for Gaston County, N.C., went for fuel for the poor. The remainder of it went for administration—for, if you please, a bureaucracy. They could not account for half of the almost $500 that supposedly was spent for fuel. They could not find where the oil went. They did find where some coal went.

So I rise just to pay my respects to my friend from Wisconsin, because he is forever looking at all these programs, and I have tried to stand with him in searching out waste and extravagance.

Mr. PROXMIRE. I thank the Senator from North Carolina. He is 100 percent right.

There is one word we seem to have forgotten. We learned it literally at our mother's knee. That is the word "no." I think the first thing a mother has to tell her little children is, "No, you can't do this; no, you can't do that."

We have to say, "No, we can't spend this money."

We are beseeched by various interest groups, some of whom have reasonably good cases but almost never are content, and we keep adding and adding, and the burden falls on the taxpayer—not the well-to-do alone, but on all the taxpayers.

I believe many people forget that the taxes are borne very heavily by people with incomes of $10,000, $12,000, and $14,000 a year, with families to support, and every nickel of those taxes hurts.

Not only do taxes go up with the spending, but also, prices go up, and it is heartbreaking for people with modest incomes.

I am delighted that my good friend from North Carolina, who has been a valiant opponent of excessive Government spending and waste, has made the statement he has. I could not agree with him more.

Mr. HELMS. I thank the Senator, and I compliment him.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. TALMADGE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, it is so ordered.

ONE MAN'S EFFORTS PAY OFF

Mr. HELMS. Mr. President, it is always inspiring to note the accomplishments of a single individual who has devoted a total dedication to a cause he knows to be right. It is even more heartwarming when the individual is a close personal friend, someone you have known and respected for many years.

Such is the case with my good friend, C. Hoke Leggett of Hobgood, N.C., outgoing president of the National Cotton Council. Hoke is a prominent farmer in my State. In addition to cotton, he also produces tobacco, peanuts, corn, soybeans, and hogs.

Hoke is an all-round farmer and gentleman—of the most persuasive makeup, I might add. A recent article in the Progressive Farmer observed that Hoke Leggett is an extremely convincing man of words. The publication stated, in fact, that Mr. Leggett is such a persuasive fellow, and such a firm believer in cotton, that he could talk the DuPont family into wearing cotton underwear.

In this article to which I refer, tribute was paid to Leggett for almost singlehandedly having convinced members of the National Cotton Council that they should raise $9 million for a crash program to keep cotton dust out of textile mills. His argument was that if cotton producers assume that dust and brown lung disease are something just for the textile mills to be concerned with, then the cotton producers are in big trouble.

He did not wait for the Government to step in to muddle it all up with a bureaucratic remedy. Hoke Leggett took it upon himself to get his fellow producers to take the initiative.

I ask unanimous consent, Mr. President, that the article from the Progressive Farmer be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SMALL GROWER DOES BIG THINGS FOR COTTON

Edith Longest Leggett was telling a group of ladies at the National Cotton Council (NCC) annual meeting how tricky it was to get in the 1979 peanut crop. "Where was Hoke?" one of them asked.

"Oh, doing what he's doing now," Mrs. Leggett replied. "Only I think it was in Washington at that time."

What C. Hoke Leggett was doing was convincing a group of skeptical cotton farmers of the dangers they faced from cotton dust. The Hobgood, N.C., producer of cotton, tobacco, peanuts, corn, soybeans, and hogs, who is outgoing NCC president and the man who could convince the Du Ponts that they ought to wear cotton underwear, was succeeding better than he knew.

At the January 1980 council meeting, delegates finally resolved that a $9 million crash program to keep cotton dust out of the textile mill was the only way to keep the cotton industry out of disaster.

"If cotton producers assume that dust and brown lung disease are a problem for the textile mills to solve, then we're going to be in big trouble" is the way Leggett's arguments run. "The problem belongs to the whole industry, to producers as well as to spinners and weavers. If we don't solve it, we won't have a cotton industry left to worry about."

The odds against scratching up $9 million in new research money for cotton dust in 1980 were pretty long in January. An Assistant Secretary of Agriculture was on hand to say that the President had passed the word to pare USDA research budgets to the core.

Cotton Incorporated spokesmen protested that they were already spending a big hunk of money on cotton dust research.

Millmen simply pointed to the billions already spent in their efforts to meet worksite standards laid down by the Occupational Safety and Health Administration (OSHA).

Still, NCC had its resolution; and to the surprise of no one who knew how he could work on a problem, it appointed Leggett Chairman of the newly established Industry-wide Cotton Dust Committee.

If Edith Leggett thought she was going to see more of Hoke around the farm because he was no longer NCC president, she was due for a disappointment.

Backed by the technical staff and like-minded officers of the council, Hoke began a campaign of begging, threatening, lobbying, arguing, speaking, arm twisting, and convincing. By lay-by, most of the funds for a $9 million, two-year, crash research program were promised or in sight.

"The price tag is high, but we've got to pay it," Leggett says. "If we don't, the mills will simply shift to synthetics."

Leggett concedes that the price of problem solving is always high, if not in money, always in time and effort. His neighbors sometimes ask him how he can spend so much time serving in state, regional, and national organizations.

"How can I not take the time to look after our business?" he'll reply, holding you with his expressive eyes while snapping out his words in a way that sometimes belies his North Carolina rural background. To Leggett, good marketing and consumer acceptance are as much the business of farming as is careful crop production.

His national activities haven't made him forget his community responsibilities. He has served two terms as mayor of Hobgood, been instrumental in starting a local peanut marketing association, and helped bring a branch of the Peoples Bank and Trust Co. to his town.

With 350 acres, Leggett is a small cotton grower as cotton growers go these days. "But everybody has got to help, large or small," he says.

"Maybe I could grow more and better cotton if I stayed home all the time and paid closer attention to my production practices. But somebody has got to sell it if we're going to raise it. If we all stay home griping about our poor market conditions, nobody is going to make any profit."

Leggett thinks that cotton's future looks good. "Cotton can stay competitive with synthetics if we can solve the dust problem," he says.

Cotton marketing has made a lot of progress, and Leggett credits Cotton Incorporated with making a big share of that progress possible. Personalities need not get in the way of an effective marketing program, he believes, adding, "We all must continue to support CI's program."

Leggett started growing cotton in 1954 and has seen many problems come and go. His farm is located in the area covered by the experimental boll weevil eradication program.

"We've shown here that a communitywide effort can deal with the pesky weevil," he says.

"Just a few years ago, I sprayed my cotton 19 times in a single season, mostly to control boll weevils. Last year, we sprayed only once, and that was to take care of a worm infestation. We didn't spray at all for boll weevils."

The boll weevil eradication effort has been so successful that cotton acreage has increased dramatically this year.

Leggett makes no bones about the fact that too few farmers are willing to pitch in and help solve farm problems.

"No one else will do it for us," he says.

For cotton farmers willing to take his advice and get involved in the leadership of their industry, Leggett gives the following pointers:

Start attending as many meetings as possible of organizations that are working to solve your problems. Get active in committee work. Speak up at meetings. Hold an office when it's offered.

Ask for opportunities to serve as a contact with Congressmen and other people in positions of leadership.

Go visit Cotton Incorporated in Raleigh and see what the staff is doing to solve marketing problems.

Get to know people in the textile industry. Find out what they want.

Get involved in the democratic process. Speak up on political issues that concern you.

Learn everything you can about producing quality cotton. Then produce it.

Encourage people of the news media to cover the positive efforts of the cotton industry. Help them see that the industry is working to solve the brown lung disease problem.

Basically, Leggett's attitude toward the cotton business is "get off your seat and onto your feet." He has always believed that the way to deal with your problems is to roll up your "britches legs" and wade right in.

Maybe that's why Mrs. Leggett is willing to get in the peanuts. And maybe she's pretty proud of the respect and admiration that Hoke has won wherever he has waded into farmers' problems.

MULTIPLE-USE MANAGEMENT OF FOREST LANDS MEANS CONSERVATION

Mr. HELMS. Mr. President, I am gratified that the Senate Committee on Agriculture, Nutrition, and Forestry voted last week to report S. 2861, the North Carolina Multiple-Use Forestry Management Act, sometimes referred to as the North Carolina Wilderness Act. This bill deserves timely consideration and enactment, and I commend it to the Senate.

On August 5, the Subcommittee on Environment, Soil Conservation, and Forestry held a hearing on the bill. I am surprised at the lack of public understanding concerning the management of our national forests. This was evidenced by a number of newspaper articles following the hearing which seemed to suggest that the alternative to wilderness is clearcutting the national forests. In all but a few of the newspaper articles there was a total lack of awareness of multiple-use management, which has been the guiding management philosophy of our national forests since 1905.

Furthermore, the question of multiple-use management of our national forests is not a partisan issue. Both Republicans and Democrats strongly endorse sound management of the resources of our national forests and have made clear their understanding that these resources will be enhanced by the final resolution of wilderness issues. The 1980 Democratic platform, for instance, says:

> America's national forests contain a national treasure that provides recreation, wilderness, fish and wildlife, and timber products.
>
> We reaffirm the Democratic Party's traditional support for multiple-use management to ensure the survival of these precious resources for this generation and generations to come.
>
> We call for the speedy resolution by Congress of the Roadless Area Review and Evaluation, stimulated by this Administration, to determine which areas are best suited for wilderness and which should be released for timber harvest and muiltiple-use management.

The Senate Subcommittee on Environment, Soil Conservation, and Forestry also endorsed multiple-use management in a recent review paper on the Forest and Rangeland Renewable Resources Planning Act. The Subcommittee found that:

> The role of the Federal Government in the National Forests is to protect and enhance the land, and to provide goods and services from those lands to the nation's people. . . . Accomplishment of the basic goal of land stewardship will also improve watersheds, fish and wildlife habitat, and enhance outdoor recreation opportunities available on the National Forests.

This, of course, is what Congress has directed the Forest Service to do. Multiple-use management is a tool which clearly has provided for the increased productivity of our national forests and is responsible for the increasing enhancement and protection of our forest resources.

We have a tremendous need for multiple-use management in the national forests of North Carolina, and because of our moist climate and the resulting rapid growth rates of our forests, management is essential for conservation purposes.

In an attempt to explain further the need for multiple-use management, as it applies to our Southeastern forests, I shall submit two articles to be printed in the Record at the conclusion of my remarks.

The first is a statement by one of the witnesses appearing at the hearing on

S. 2861, Mr. Hamilton C. Horton, an attorney from Winston-Salem, N.C., and a noted conservationist in our State.

The second article, "Silviculture of Eastern Hardwoods," is by David A. Marquis, who has served as the principal research silviculturist at the Northeastern Forest Experiment Station in Warren, Pa.

Both of these articles discuss the unique aspects of our eastern hardwood forests and explain the rationale behind the use of multiple-use management of our national forests.

Mr. President, I ask unanimous consent that these articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY HAMILTON C. HORTON, JR.

North Carolinians love the land of their state, perhaps more than most Americans. They want it preserved and passed down to their children and grandchildren unspoiled. And I think the evidence will show that they have not been laggards in the conservation of it.

We have more forest cover today in our state than we had in 1880. Our state parks have doubled and the acreage has increased in the past six years by a whopping 63.7 percent, compared to the National park increase of only 5.7 percent. We have more deer than when the white man came to our shores in 1588. And as Congress learned in the New River bill, Tarheels are willing to fight to keep their land and their waters from exploitation.

Why, then, given this desire to preserve their inheritance, did 82 percent of the general responses to RARE II in North Carolina oppose wilderness designation?

I suggest that perhaps it was because they realized that in our state, with national forests and national parks covering approximately 7 percent of the area, with private forests covering more than 60 percent of our land, with five components of the Wilderness system already, we had more pressing needs for our National Forest land.

Let me be specific. "Wilderness" is a fetching word—conjuring images of the forest primeval, of Walt Disney and Bambi. It is hard to argue against that sort of image.

But the actuality is that, far from preserving existing wilderness, RARE II in North Carolina is in the business of manufacturing wilderness. I say this because there is hardly an acre of our forest land that has not been logged over at least once. These previously cut over acres are candidates for RARE II designation today simply because the United States Forest Service has proven to be a good steward.

We would do well to remember that the Wilderness Preservation System is just one of the tools available to those of us interested in the environment. And its usefulness in particular cases is a question on which conservationists can honestly differ.

Because the evidence will show that there are definite tradeoffs involved: indeed, the evidence will show that such environmental values as habitat, wildlife conservation, reestablishment of near extinct species, can be jeopardized by "Wilderness" designation in North Carolina.

Largely this is because the Southeastern and Appalachian Forest regenerates itself more quickly than forests in most other sections of the nation, since we have the heaviest rainfall of any major section of the country, and our climate permits a longer season—more than 200 days—than the northern and far western forests.

This means that the many food plots and game openings which the Forest Service in cooperation with the State of North Carolina has established in any areas established for Wilderness, will immediately begin the inexorable process of closing up. In two or three years, they will disappear. With grave consequences to the wildlife population which requires them for food.

The tradeoff then, is between the value of having roadless acreages available for "Wilderness" experiences, and the values of habitat for our wildlife.

You see, under Forest Service regulations, once an area is declared "Wilderness," there can be no manipulation of habitat for wildlife. The most useful tool for deer and wild turkey conservation that we have found in North Carolina, for example, is the food plots and game openings I have mentioned, which provide browse and fruits and berries along the forest edge. We need more of these openings.

Let me dwell on just one concrete example. In the Wilson Creek watershed before RARE II, the Forest Service in cooperation with the North Carolina Wildlife Commission, had achieved a deer population of 1 per 40 to 50 acres. The turkey population was 1 per 500 acres.

Before RARE II there were 64 acres of openings for wildlife, and the plans were to create 52 additional game openings totaling 150 acres, to expand and protect the grape thickets and other food sources, and to improve the browse and forage available to deer by thinning the trees on 5,592 acres.

The result would have been a deer population of 1 per 25 to 30 acres. And a turkey population of 1 per 50 acres. This plan, then, in Wilson Creek would have increased the turkey population ten fold, and almost doubled the deer population.

But today, the largest part of the Wilson Creek watershed is frozen in Further Planning status under RARE II. More accurately, not frozen—but rather degenerating. Because nothing is more true than that nature does not stand still. Forest Service figures underscore this: In that watershed, deer food production, in thousands of pounds, was 15.8 million in 1973. If thinning of the forest had been permitted, the forest would be yielding 21.4 million pounds of deer food by 1983. But without thinning, by 1983 the forest food yield would be only 14.9 million pounds.

The point is that while the deer comeback under enlightened game management has been spectacular in Wilson Creek, we still want more. And our turkey population is still scarce. With the bulk of the Wilson Creek watershed now in further planning, the status quo there is being maintained. But those of us who want improved habitat and a real comeback for America's noblest bird, feel the status quo is not enough.

This bill by releasing the Lost Cove and Harper Creek RARE II areas in the Wilson Creek watershed would let North Carolina and the Forest Service get about the business of wildlife management, protection, and increase, and would permit those improved and more productive habitats for which plans had been finalized before RARE II.

The situation I have cited above is repeated throughout the RARE II areas which have not been designated for non-wilderness: it is not just that the game and wildlife openings would be obliterated if areas became "Wilderness," but that our plans for more and better wildlife habitat are at a standstill in both Wilderness-nominated and Further Planning areas.

But wildlife openings are not the only habitat improvement techniques that are jeopardized or stalemated as long as RARE II hangs fire in North Carolina.

Under Forest Service Regulations once an area is declared "Wilderness," there can be no thinning of the forests to increase browse for deer, no prescribed burning (another technique to foster the growth of food producing plants). There would be no protection of nuts or mast bearing trees.

Here let me insert that those familiar with the subject are unanimous that most birds and animals manifestly benefit from properly supervised, systematic harvesting of the timber of the national forests—something that, of course, is forbidden in Wilderness. Indeed, mature, virgin forests have been described as the "silent forests"—because of the absence of bird and animal life.

Moreover, under Forest Service regulations, once an area is declared wilderness, there can be no stocking of exotic species—that is to say non-native species—within its boundaries. Among other species, this would include the rainbow and brown trout—stocked by our state fish hatcheries under a program more than 50 years in operation.

Harper's Creek and Lost Cove Creek—now held under Further Planning—are considered the best trout waters in North Carolina.

But should these ultimately become Wilderness, under the terms of Forest Service regulations it would seem that only the Eastern Brook Trout—our only native trout species—would be permitted. While eagerly sought as game fish, the average size of the brook trout is only about 8" in length and a mere 4 oz. in weight.

The rainbow and brown trout, which would be excluded after half a century, average twice the size of the brook trout in streams, and in lakes and pools can weigh as much as 8 to 12 pounds.

I have tried to make the point that there are serious environmental tradeoffs involved with wholesale "Wilderness" acreage in our state—that the acknowledged positive values of "Wilderness" must be considered in balance with the negative values of harm to our longstanding and increasingly successful efforts to restore and maintain habitat for wildlife and plants.

The Forest Service has in the past been able to do this—using the Multiple Use approach. While producing regular harvests of timber, they have nurtured the golden eagle habitat in the Shining Rock area through controlled burning, have actively fostered growth of food trees and plants, have protected endangered and threatened species from being engulfed by the rampant growth of our forests—all acts which would be forbidden in "Wilderness" areas.

Many of us have been troubled by the unwillingness of certain national environmental groups to consider the adverse tradeoffs involved in Wilderness Designation in North Carolina. The only explanation I can make is that they are thinking of our forests as similar to the northern and western National Forests they are more familiar with—forests which do not regenerate as fast as ours, and where game openings often occur naturally.

Down in North Carolina, we have to keep cutting back the forests just to stay abreast. Indeed, decades of cooperative efforts of our State and Federal government can be obliterated within two or three years of neglect.

Certainly the Forest Service has conceded in its Southern Anplachian and Atlantic Coast States Draft Environmental Statement that:

"Timber stands allowed to mature become choice environments for insects and disease buildup which could spread beyond the wilderness boundaries."[1]

"The opportunity for a catastrophic fire because of heavy fuel buildup will be greater in wilderness areas than in a managed forest."[2]

"Species requiring early stages of vegetative succession for a part of their habitat

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Footnotes at end of article.

such as deer, grouse and turkey, rabbit and many song birds would decline." [3]

"Where fisheries are dependent on stocking . . . to maintain fishable populations, and stocking depends on motorized access, fish populations could decline." [3]

"Some increase in hunting of small animals such as squirrels can be expected, but big game hunting will probably decline." [4]

"Roadless areas currently used by individuals for hunting, firewood gathering or fishing, where vehicle use is necessary will become unavailable if the roadless area is designated wilderness. Recreational use in roadless areas by handicapped people will virtually be eliminated." [5]

So the approach taken by S. 2861 seems to be extremely wise: the two areas designated wilderness are areas that are deserving: Pocosin is a unique ecosystem which simply must be preserved. About 90 percent has never been disturbed: It would qualify as wilderness in the true sense. The Birkhead Mountains deserve the status for another reason: although that area was operated as an active plantation as recently as 1933, and has been lumbered as recently as 1973, it has the advantage of being the only potential wilderness in the piedmont plateau of the entire Southeast.

Of the areas which are to be considered by Congress at a later time under S. 2861, the Linville Gorge Extensions, Shining Rock Extension, and the Ellicott Rock Extension add valuable buffer land to existing, genuine "Wilderness," while the Craggy Mountain Wilderness Study Area and Craggy Mountain Extension have been mandated by the Congress for Wilderness consideration under the Eastern Wilderness Act. I am confident that when the Congress does have adequate time to consider these tracts, they will be found worthy of inclusion in the Wilderness Preservation System.

The remainder of the RARE II areas now proposed for "Wilderness" or retained in Further Planning status, would be released for Multiple Use—which would permit the Forest Service to protect it from fire and infestation, and improve habitat for fish and game, and protect endangered and threatened species as they have in the past.

Finally, let me urge this committee not to approach the evaluations made by the Forest Service of the individual RARE II tracts with undue reverence.

By this I mean that the original data base cranked into the RARE II computers was assembled in a hurried, almost frantic manner: the Forest Service in North Carolina had less than one month to complete the Wilderness Attribute Rating forms, the information from which was in turn inserted into the computer to form a part of the data base from which the entire RARE II evaluation system was extrapolated. The other major insertion into the data base was an evaluation of the mineral and energy potential of each nominated area—something we understand was done largely by telephone conference calls, with no input from local sources.

Thus, in North Carolina, 31 areas comprising more than 200,000 acres had to be evaluated by the hard-pressed Forest Service between November 1977 and the first of January 1978. The actual computer forms had to be completed for WARS in less than a month. The most conscientious efforts could not give an adequate analysis of the tracts in question under these time constraints. Indeed, in North Carolina there was no on-site geological evaluation, archaeological study, biological study, or even endangered or threatened species census: the crucial data base came from such information as was already available in Forest Service files and in the memory of Forest Service employees. There was no input at this stage from the State of North Carolina or from the academic community: they were not even consulted until after the Draft Environmental Statement was already published. And by this time the computer data base—full of inadequate, even erroneous, guesswork, recollection, and outdated statistics—had been established and was destine to influence the printout each time the computer was employed.

In conclusion, the passage of S. 2861 will be greeted by most North Carolinians as a sensitive and balanced approach to the competing values of habitat and wilderness experience, and will permit our people, in cooperation with the United States Forest Service to resume their long time and successful partnership in providing balanced and varied recreation to our people and enhanced habitat for our wildlife of all types.

FOOTNOTES

[1] Swanquarter, Ellicott Rock, Joyce Kilmer-Slickrock, Linville Gorge and Shining Rock.

[2] Page 46, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[3] Page 47, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[4] Page 50, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

[5] Page 53, Draft Environmental Statement, RARE II Southern Appalachian and Atlantic Coast States, June, 1978.

SILVICULTURE OF EASTERN HARDWOODS

(By David A. Marquis [1])

EXTEND AND LOCATION OF EASTERN HARDWOOD FORESTS

Deciduous hardwood forests cover some 235 million acres in the Eastern United States (U.S. Forest Service, 1973); this represents nearly half of the forested area in the entire country. Eastern hardwood acreage on National Forest lands totals about 17 million acres or nearly 20 percent of the commercial forest land in the National Forest System.

There are about five major types of eastern hardwood forests. The northern hardwood, or beech—birch—maple type, occurs throughout the northern portions of the East, and is especially important in the Lake States and New England. The aspen—paper birch type occurs throughout the same region but is especially prevalent in the Lake States. The Allegheny and Appalachian mixed hardwood types occur along the Appalachian Mountains and on the Allegheny and Cumberland Plateaus.

These are highly productive mixtures of both northern and southern or central species, with considerable variation from place to place in actual species composition. The oak—hickory and oak—pine types are the most extensive forest types in the United States; they occur throughout the East, but reach best development in the Central and Southern States.

Bottomland hardwoods occur in the stream bottoms of the South and Southeast and include both tupelo—cypress mixtures in the swamps and mixed oak—gum—hardwoods in the intermittently flooded bottoms or stream terraces.

Most eastern hardwood forests originated from old farms, after fires, or after heavy cutting during the era of railroad logging in the Eastern United States—about 1880–1930. Many stands were commercially clearcut over large areas during this time, and the resulting second-growth is essentially even-aged. Furthermore, the distribution of age-classes is highly imbalanced—most stands are 50 to 90 years old, and there are very few stands in the younger age classes.

There are considerable acreages of hardwoods that contain several age classes, the result of partial cuttings of one sort or another that provided for regeneration of part of the stand, but did not completely remove the overstory. There is much variation in the degree of stocking and quality of such stands.

Some existing hardwood types originally contained considerable quantities of conifers. Examples are the northern hardwoods, and Allegheny and Appalachian hardwoods where hemlock, white pine, and, in northern areas, red spruce and balsam fir were once prevalent. Some oak—hickory and oak—pine stands also had larger proportions of loblolly, shortleaf, or pitch pine than they now contain. In many cases, past cutting practices have eliminated or reduced these conifer components from their original levels.

EASTERN HARDWOODS—A COMPLEX BIOLOGICAL COMMUNITY

The eastern hardwoods are among the most complex biological communities on earth. There are well over a hundred species of trees that have commercial timber value, and many additional species of trees and shrubs of value to wildlife. In the mixed bottomland type alone there are over 70 commercial tree species. Diversity is equally great among the lesser plants and among the animal component of the ecosystem. No other forest types in the United States exceed the hardwoods in variety of game animals or variety of bird species, for example.

Differences in growth rate, longevity, and value for timber or wildlife add greatly to the complexity of management in mixed stands of eastern hardwoods. Even in stands where all the trees are the same age, it may require as much as 100 years longer for the slow-growing shade-tolerant species to mature than it does for the fast-growing intolerants. This often produces stands that are not only a mixture of species, but a mixture of sizes, with the crowns of the various species stratified into horizontal layers (Smith 1971). Such stands are often mistaken for all-aged stands, even though their origin and proper management is quite different from that of a true all-aged forest.

The different species also have markedly different values. Some are extremely valuable to wildlife—aspen is an outstanding example, as are the mast producers such as the oaks, cherries, and hickories. Characteristics of the wood—its strength, density, fiber length, color, figure (pattern), durability and workability—determine its value for timber products.

Prime examples of the great differences in value that exist are such species as black walnut, black cherry, yellow birch, or red oak where veneer-quality logs may bring prices 2 to 10 times higher than comparable logs of other species. And many of the hardwoods are used for specialty products where substitution of another species is not always possible or economically feasible.

For example, there is no wood equal to ash for the production of tool handles and baseball bats, none equal to birch for turning, to maple or oak for flooring, or to cherry or walnut for certain styles of furniture.

ECOLOGICAL CHARACTERISTICS OF EASTERN HARDWOOD SPECIES

Each of the many species of eastern hardwood trees has evolved a unique set of characteristics that adapt it to establishment and growth under particular forest conditions. In terms of natural or ecological succession, the climax species are those adopted to establishment in growing-space vacancies created by relatively minor disturbances, such as the death or removal of a single large tree.

Climax species such as beech and sugar maple are often characterized by production of modest quantities of large seed that is dispersed only short distances, by seedlings with the ability to survive and grow under the shade of a forest canopy, by slow growth rate and long life span. At the other end of the scale, pioneer species are those adapted to establishment in areas that have been severely or extensively disturbed by such events as lethal fires, extensive windthrow, tree clearcutting, or agricultural cultivation.

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[1] Principal Research Silviculturist, Northeastern Forest Experiment Station, Warren, PA.

Pioneer species such as aspen, cottonwood, and paper birch are often characterized by production of prodigious quantities of small seed that is disseminated over long distances, by seedlings resistant to exposure and adapted to very rapid growth in full sunlight. Between these extremes are many species adopted to establishment in growing space vacancies of intermediate size or severity.

Climax or shade-tolerant hardwoods include American beech and sugar maple. Pioneer or shade-intolerant species include the aspens, cottonwoods and paper birch. Other intolerants include a large group of species that are long-lived, and thus require severe, but infrequent, disturbances for perpetuation. These are among the most valuable tree species, for they grow rapidly to large size. They include yellow-poplar, black cherry, black walnut, white ash, red oak, and others. Some intermediate species include the hickories, red maple, yellow birch, and the white oaks (Smith 1973, U.S. Forest Service 1965). In forest types where truly tolerant species do not occur, intermediates like the hickories, red maple, and the white oaks often fill the tolerant's ecological niche, forming a sort of subclimax association.

FOREST CUTTING PRACTICES FOR EASTERN HARDWOODS

Forest cutting practices in the eastern hardwoods are based upon the ecological characteristics of the various species. The objective is to redirect the productive capacity of the forest to optimize some combination of benefits. Since trees naturally tend to occupy all of the available growing space, forest culture almost always involves the removal of some or all of the trees in ways that simulate or accelerate the kinds of natural disturbance that will produce the desired growth or regeneration.

Trees removed are usually harvested and their wood converted into timber products, but manipulation of the forest ecosystem for reasons of esthetics, recreation, wildlife, water, or grazing also usually requires the removal of trees. Thus, forest cutting is the primary tool of silviculture, whether or not the wood removed has value for timber.

Regeneration cutting methods all have the same objective—that of obtaining tree reproduction. And all employ the same technique—that of removing some of the existing vegetation to make available some light, moisture, and nutrients that are excess to the needs of the remaining trees so that new trees can get started. The several regeneration methods differ primarily in the degree of cutting, or the amount of existing vegetation that is removed. Each cutting method is really an attempt to simulate some natural disturbance, to create the environmental condition conducive to establishment of the particular species desired.

Single tree selection cutting involves the cutting of selected individual trees creating stands of mixed sizes or ages. In simulates natural disturbances such as might result from the periodic death of scattered large trees in a climax forest. Since regeneration is established under the partial shade of the overstory, and new seedlings must survive for long periods of time under this shade, single tree selection cutting is useful as a regeneration cutting method primarily for species that are shade tolerant.

Beech and sugar maple are the only two commercially important hardwood timber species that are well adapted to single tree selection cutting. These two are major components of the northern hardwood forest type, and also occur on some sites in the Allegheny and Appalachian mixed hardwood types.

When single tree selection cutting is applied to stands containing intolerant species, the species composition will gradually change as the intolerants are removed and replaced by more tolerant species (Trimble 1965, 1970). Complete stand conversion may require 50 to several hundred years, but stands cut repeatedly by single tree selection will eventually be dominated by a few tolerant species.

Results of single tree selection cutting in forest types that do not contain desirable tolerant species are not entirely predictable. In some cases, intermediate species such as red maple, white oaks, and hickories increase in predominance and may form a subclimax association, but it is not certain that such associations can be managed to produce high yields over extended periods of time. Such species are often less desirable than the intolerants they replace. And on many sites, particularly in the central and southern types, brush species may be increased rather than trees.

Single tree selection cutting is recommended for regeneration only in the northern hardwood type and in selected parts of the Allegheny and Appalachian mixed hardwood types where sugar maple and beech are found. In these types, it is recommended only where the objectives do not include perpetuation of intolerant and intermediate species.

A major advantage of single tree selection cutting is that it leaves the forest with a more natural or undisturbed appearance than any other regeneration cutting method. It is therefore especially suitable in areas where esthetics or recreational values are highest. Single tree selection is generally less favorable than water yield or wildlife habitat diversity are desired.

Group selection cutting involves the removal of trees in small groups of a few to many trees. Single tree selection is usually practiced in the areas between openings, as well. There is not complete agreement as to the maximum area that should be considered a group, but it is usually less than an acre, occasionally up to several acres. Perhaps clarity is best if the term "group" is used only for openings of less than about ½ acre, and the term "patch" is used for openings of about ½ to 2 acres in which all trees down to a small size are removed (Leak and Filip, 1975).

Group or patch selection cuttings simulate moderate disturbances in natural stands and hence are most appropriate for species of intermediate shade tolerance. The method has considerable latitude, however; tolerants also regenerate well under group selection and the method can be adapted for some intolerant species by using patch selection with the larger sized openings. Aspen—paper birch in the North, and cottonwood and willow in the South are perhaps the major examples for which some variation of group or patch selection could not be used to perpetuate the type.

Most others will reproduce in patch openings, although not necessarily in the proportions or with the efficiency that is possible using other cutting methods. In small patch or group openings, intolerants may reproduce, only to diminish in importance as a result of shading by the border trees. For example, patch cuttings of 1/10 to 6/10 acre in New England were found to contain only four percent intolerants after 15 years, in contrast to 5-acre clearcuts which contained thirty-eight percent intolerants (Leak and Wilson, 1958).

Just as the ability to reproduce intermediate and intolerant species by group or patch selection varies with size of opening used, so does the effect vary on esthetics and wildlife habitat. Small group openings may create a forest that is very nearly as pleasing to look at as one created through single tree selection cutting and may increase the proportion of some intermediate species; but these small openings provide only minor increases in habitat diversity and in the proportion of intolerant species regenerated.

Larger patch cuttings, on the other hand, can provide considerable increases in habitat diversity and in the proportion of intermediate and even intolerant species regenerated. But these patch cuttings are really small clearcuttings, and they may be just as unattractive as larger clearcuttings. Furthermore, even-aged regulation of areas by age class becomes much more efficient and effective than uneven-aged regulation as patch size gets larger. And loss of quality on border trees due to epicormic sprouting can be an important problem with patch cuttings (Smith 1965).

BECK AGAINST COMMUNICATIONS WORKERS OF AMERICA PROVIDES EVIDENCE OF EXTENT OF UNION'S USE OF COMPULSORY UNION DUES FOR POLITICAL PURPOSES

Mr. HELMS. Mr. President, use of compulsory union dues for political purposes is one of the most blatant abuses of the American political system imaginable. Congress allows big labor to collect millions of dollars in dues each year from workers who have no choice but to pay or lose their jobs. The union bosses then use a vast amount of this money to support political candidates and causes of their own choosing.

It does not matter whether the dues-paying employees happen to agree with the political choices of the union bosses. The workers have no say-so. I heard a prominent union leader acknowledge on television the other day that a great many of the members of his union favor Governor Reagan for President. No matter. The leadership of the union does not favor Reagan; therefore, the union is endorsing President Carter.

The extent of big labor's use of compulsory union dues for political purposes has always been a mystery because Federal election laws do not require the unions to report the so-called "in kind" contributions compulsory dues money is used to fund. But a recent ruling by a special master appointed by the U.S. District Court for Maryland in the case of Beck against Communications Workers of America gives some indication of how the union leaders spend the untold millions of dollars they collect.

The master ordered the Communications Workers of America to refund 81 percent of the agency shop fees it had collected from nonunion employees because the union used the money for political and other purposes unrelated to collective bargaining.

In 1976, Harry Beck, 18 of his fellow nonunion employees of the Chesapeake & Potomac Telephone Co., and one nonunion employee of American Telephone & Telegraph filed suit against the Communications Workers of America. Mr. Beck and his coworkers objected to the union's collection of agency shop fees for purposes not directly related to collective bargaining, contract administration, and grievance adjustment.

In a landmark decision released in March 1979, the court held that the union's use of agency fees for purposes unrelated to collective bargaining violated the first amendment rights of employees who object. The court ordered the union to refund to the nonunion employees the percentage of its budget not related to collective bargaining. A special master was appointed to take evidence and compute the percentage.

The union alleged that more than 86 percent of the agency fees collected were used for collective bargaining, contract administration, and grievance adjustment. But the special master found that only 19 percent of the agency fees collected were used for these permissible purposes. The master found that the union spent 81 percent of the fees for impermissible purposes, such as support of political candidates, legislative lobbying, charitable and social activities, and organizing drives.

The master ruled that employees have a first amendment right to a full refund of dues improperly collected, and ordered the union to refund 81 percent of the fees.

Mr. Beck and his coworkers had paid agency shop fees averaging $185 per year, so the average refund was $150.

Mr. President, use of compulsory union dues for political purposes is the greatest threat to the political freedom of the American voter that I know of. Harry Beck is only one of millions of American workers who object to having to finance political candidates and causes they do not otherwise support.

A recent poll by Opinion Research Corp. showed that 71 percent of the American people—including 65 percent of the Nation's union members—are opposed to the use of union dues in political campaigns.

It is time to call a halt to the excessive political power now being exercised by big labor. As my colleagues know, I have introduced a bill, S. 2325, that would prohibit the use of compulsory union dues for political purposes.

The union bosses have already declared that this legislation is "antiunion." It is no such thing. It proposes only that an element of fairness be restored to the political process.

I am not opposed to labor unions. But I feel that no American ought to be forced to join a union in order to get a job, or to keep one. Nor do I believe that any worker ought to be forced to pay dues to support political activities he or she opposes.

We live in an era when the inordinate political clout of a few labor union bosses has almost become an accepted fact of life. I do not feel that any segment of society ought to be conceded the right to dictate the political process.

Mr. President, let us not ignore the message of Beck against Communications Workers of America. Let us swiftly move to enact legislation to preserve the right of all Americans to participate voluntarily in the political process. Let us end the use of compulsory union dues for political purposes.

A LOOK AT "SUPERFUND"

Mr. HELMS. Mr. President, the Committee on Environment and Public Works has recently completed work on the Environmental Emergency Response Act, better known as the "superfund bill." I commend the committee for attempting the most difficult and serious task of dealing with hazardous waste problems. The issues are enormously complex and involve significant value judgments on the part of committee members.

However, I perceive that in reporting out S. 1480, the committee has erred on the side of overregulating the problem. This legislation would take us far beyond what many see as the real need for a bill narrowly targeted at the issue of inactive waste sites. Instead, it would make sweeping changes in existing common law, with the consequences of such changes completely unknown, and place an unnecessary burden on anyone who handles toxic chemicals—from the small farmer and the small businessman to the large chemical manufacturer and utility company.

S. 1480 would set aside hundreds of years of tort-liability law and substitute a new Federal "cause of action" coupled with a strict liability provision. Under the terms of the legislation, any person who is identified as having contributed in any significant degree to a hazardous waste release could be held responsible for the entire amount of the cleanup and damages. In addition, the bill would strip defendants of defenses they now have, such as third party negligence or intentional acts of a third party.

Mr. President, the effect of such a doctrine is clear. Take, for example, a small farmer who is driving down the highway with a container of pesticides to apply to his fields. A reckless driver comes whipping along in a Honda, loses control and plows the farmer right off the road, spewing pesticides right and left. Years later, someone else, who had gotten out of his own car to watch all the commotion, develops cancer. He remembers the pesticide accident and decides to sue the farmer. Now, of course, the farmer did not do anything wrong. And under current law, the burden falls on the cancer victim, not the farmer, to show that the cancer is indeed attributable to some act of the farmer. But S. 1480 would change that. Suddenly the burden of proof would fall on the farmer to prove that he was not responsible for injuries from the accident. In other words, the farmer could find himself facing a barrage of suits in which he is being held strictly liable for all the damages, regardless of whether or not he had any control over the situation.

The illusion has been created that agricultural activities have been exempted from S. 1480. Indeed, field application of pesticides and fertilizers are exempted. But even though "field applications" have been excluded from the fund and liability provisions, this is a very narrow exemption. As the committee report points out, anyone who spills, dumps, disposes of or leaks pesticides, whether intentionally or accidentally, legally or illegally, could be liable for all damage and injury.

It is because of such impact on the agriculture community that, on July 14, the American Farm Bureau, the Nation's largest farm organization, came out in public opposition to this legislation. In addition, groups ranging from the National Cotton Council to the Agricultural Chemical Association oppose S. 1480.

Mr. President, I have other concerns about this legislation. Problems inherent in the new liability provisions are compounded by the definition of hazardous substance. S. 1480 defines "hazardous substance" as:

> (G) any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimulation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Under this definition, literally any substance—even common table salt—may be considered a "hazardous substance" if spilled into your local creek.

The new liability provisions for medical expenses would be based on evidence from the claimant that first, he was exposed to a hazardous substance for which the defendant was responsible; second, the exposure was in a quantity or for a duration such as to create a reasonable likelihood that it was sufficient to cause or significantly contribute to the injury; and third, a reasonable likelihood exists that the substance causes or significantly contributes to the class or type of injury which is the subject of the claim. The proof of the existence of these factors would create a presumption in the plaintiff's favor. This would amount to a major change in existing law.

My suspicions about this bill have been confirmed by the statement of a Justice Department lawyer who helped develop and would enforce this legislation: "Government is perfectly prepared to punish the innocent for the sins of the guilty."

Mr. President, the issues involved here are highly complex. Far more information than we now have is required before we can adopt such sweeping legislation as S. 1480. Let us take a look and consider more limited legislation directed at the real problem—the abandoned or orphaned waste sites.

QUESTIONS AND ANSWERS ON PROPOSED URANIUM SHIPMENTS TO INDIA

Mr. PERCY. Mr. President, Senator GLENN on July 25 raised a number of key questions regarding the proposed shipments of uranium to India for India's Tarapur reactors. I read Senator GLENN's statement at the time with great interest because of my own concerns about the nonproliferation implications of these sales and also because of my high regard for the seriousness and dedication with which Senator GLENN addresses any issue before this body.

As is the usual case, Senator GLENN

raised some of the important questions which we all must address in making a decision on the Tarapur shipments. He opposes the shipments and answered the questions from his perspective. I thought it would be useful to have the State Department, as a proponent of the shipments, answer the very same questions from a department perspective.

We will soon be considering this controversial question in the Senate. The Senate Foreign Relations Committee is scheduled to take it up on September 10. I would like to share the answers I received from the State Department with my colleagues as part of our overall effort to air all arguments before a final decision must be made.

I ask unanimous consent that the questions and answers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS AND ANSWERS ON PROPOSED URANIUM SHIPMENTS TO INDIA

1. IMPORTANCE OF TARAPUR DECISION

Q. Why are these particular shipments of such importance?

A. These fuel exports, for two shipments of approximately 19 tons of enriched uranium each, carry out the U.S. commitment to India made in 1963 to provide the fuel for the Tarapur reactors, which were built with U.S. assistance.

Should the U.S. fail to provide this fuel for Tarapur, India has made clear that it may consider itself relieved of any obligations under the 1963 agreement for cooperation. If India were to do so, we could lose four important non-proliferation controls under the agreement. These include:

(a) IAEA safeguards on the U.S. fuel provided for Tarapur, including over 200 tons of spent fuel;

(b) Indian commitments to use only U.S. fuel in the Tarapur power reactors—loss of this commitment could result in the loss of what is essentially a non-explosive-use pledge and open the door to the use of Soviet-supplied fuel;

(c) U.S. consent rights over the reprocessing of that fuel and its subsequent use at Tarapur or elsewhere as India may desire—U.S. policies against the recycle of plutonium in current generation reactors, such as the Tarapur reactors, have been a central tenet of the Administration's non-proliferation efforts; and

(d) An obligation on the part of India not to transfer Tarapur fuel or any of its products to other countries without U.S. approval.

In addition, these shipments are important because the Tarapur issue has come to be a source of discord in U.S.-Indian relations. By dealing positively with the present two shipments, we will remove this source of discord and manifest a willingness to deal fairly and equitably with a state which occupies a position of central importance in South and South-West Asia. With the Soviet invasion of Afghanistan, relations between the U.S. and India are of great importance to the stability and the security of this critical region.

The Nuclear Non-Proliferation Act (NNPA) provides that countries receiving U.S. nuclear exports would have to have International Atomic Energy Agency (IAEA) safeguards on all their peaceful nuclear activities for continued U.S. nuclear supply. Both the Executive Branch and the Legislative Branch agreed on the importance of this full-scope safeguards criterion. But the Act also provides that this criterion does not apply during a grace period—license applications that were submitted before September 10, 1979, where the first export would occur before March 10, 1980, are not affected. One of the pending licenses was submitted in September 1978, and the second in August 1979. In accordance with a schedule worked out by U.S. and Indian experts, both license applications envisaged that the fuel shipments would have occurred before March 10, 1980.

The shipments were delayed by Executive Branch and NRC consideration of the licenses and by questions posed to the Executive Branch about the future policy of the Government of India and its nuclear program. Answers to these questions were delayed because India passed through a period of caretaker government during this time. It was not until January 1980, with the election with the election of the present government led by Mrs. Gandhi, that the NRC questions could be addressed on a conclusive basis. Thus the shipments of fuel that were expected to occur before March 10 could not take place because of delays in the U.S. Government. Thus, the Executive Branch believes these shipments must be treated as falling within the grace period. They do not therefore create a precedent for exempting any future license applications from the full-scope safeguards export criterion.

2. THE FULL-SCOPE SAFEGUARDS CRITERION

Q. Contrary to the State Department assertion, was the NRC correct in its legal interpretation that the NNPA provision on full-scope safeguards applied to these shipments?

A. The State Department's legal view is that licenses which were applied for within the 18-month period set forth in the law for shipments which would have occurred within 24 months are within the grace period during which the full-scope safeguards export criterion does not apply. While it is possible to construe the statute more narrowly, as the NRC's Office of the General Counsel had done, we feel that such a construction does not deal with a number of facts which are central to the provision of law and see no reason to adopt the narrower construction especially when it is contrary to United States policy interests. This narrower construction would essentially permit delay within the United States Government to defeat exports which could otherwise be made. Moreover, as a matter of law, there is no question that the President may authorize these exports if he finds that withholding them would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The "grace period" issue is basically one as to how the President's action with regard to these two fuel shipments should be characterized—as unexceptional because the licenses fell within the grace period or as an exception.

3. IMPACT ON THE NPT AND ON THE ADOPTION OF FULL-SCOPE SAFEGUARDS BY OTHER NATIONS

Q. What will be the impact on other nations if the US sends this fuel at this time?

A. The impact must be looked at in terms of the effect it has had on the states that are parties to the Nuclear Non-Proliferation Treaty (NPT) and those who are not, as well as on other nuclear supplier countries.

(a) *NPT Parties.* We see no discernable impact on the NPT or on the prospects for obtaining additional adherence to the NPT. In point of fact, the 111 non-nuclear weapon states party to the NPT have already accepted full-scope safeguards. However, approval of these two licenses does not diminish US support for full-scope safeguards as a condition of supply. As mentioned earlier, these two license applications fall within the grace period allowed by the NNPA before the fullscope safeguards requirement became effective.

(b) *NPT Non-Parties.* The atttiudes of states that are not parties to the NPT (or the Treaty of Tlatelolco) but which are recipients of US exports or which might be such recipients—such as Brazil, Argentina, Spain and others—should be looked at carefully. With some NPT non-parties—Israel and Pakistan—the US has no pending exports and is unlikely to have any without significant changes in the situation. No negotiations are under way with such states. With states such as Argentina, Brazil and Spain with which we are negotiating to receive assurance that the full-scope safeguards criterion is met, these negotiations have continued without interruption or without being affected by the decision on Tarapur.

(c) *Nuclear Suppliers.* With respect to those nuclear supplier nations that already requires full-scope safeguards as a condition of export—such as Australia and Canada—we have seen no wavering in their commitment to this position. With respect to others—such as France and West Germany—whom we are seeking to persuade to move in this direction, we have been told that they support our decision and consider it appropriate under the circumstances. We have no indication that they have retreated or retrenched in their own attitudes toward full-scope safeguards as a result of the President's Tarapur decision. Moreover, those who have expressed an intention to re-examine the possibility of supporting a requirement for full-scope safeguards as a condition for new supply commitments have not altered this position. Requiring full-scope safeguards for new supply commitments of course differs markedly from the US requirement in the NNPA for full-scope safeguards as a retroactive condition for the continuation of cooperation under existing agreements which are already in effect.

4. SIGNIFICANCE OF SAFEGUARDS

Q. Why are full-scope safeguards of significance for India? Does India have significant indigenous unsafeguarded facilities?

A. India does have significant unsafeguarded facilities. These include both existing research facilities and power facilities under construction. The absence of IAEA safeguards on these facilities means that there is no independent means to verify that all Indian nuclear facilities are solely concerned with non-explosive uses. The lack of such an assurance has contributed to doubts about India's nuclear intentions in South Asia.

We have negotiated for several years in an attempt to obtain Indian acceptance of safeguards on all its nuclear activities. In essence the Indian position has been, and remains, that India is not prepared to accept such safeguards until all states, including the nuclear-weapons-states accept them.

5. INDIAN ATTITUDE ON SAFEGUARDS

Q. Two years ago, when fuel licenses for Tarapur were being reviewed by Congress, the State Department argued that sending the exports would be an inducement to the Indians to cooperate on the safeguards questions. The exports were sent. What has been the Indian attitude on this issue since then?

A. At times over the 2 years of negotiations it appeared that some movement was possible. With the fall of the Desai Government, the installation of the caretaker government, and the advent of Mrs. Gandhi's Government there has been no sign of real give in the Indian opposition to full-scope safeguards and we are not optimistic that India will accept full-scope safeguards at any time in the foreseeable future.

The possibility that continuing discussions with India on this question will result in Indian acceptance of full-scope safeguards is slight. However, other progress on issues of non-proliferation interest may be more likely. It is possible to predict that, should the US fail to provide fuel for Tarapur, India will take the position that it regards the 1963 agreement as no longer in effect. If India were to take that step, as noted previously, we could lose four important nuclear non-proliferation controls that apply to cooperation under the present agreement. Failure to provide for the present two licenses will almost certainly shut off the possibility of a further dialogue with India on follow-up safeguards.

6. U.S.-INDIA OBLIGATIONS

Q. What are major U.S. and Indian obligations under the U.S.-India agreement for cooperation and fuel contract relevant to this case?

A. Our 1963 agreement for cooperation with India provides that the U.S. will sell to India all requirements for enriched uranium for use as fuel at the Tarapur reactors until 1993. The fuel is to be supplied in accordance with a contract. The contract makes clear that it is subject in all respects to the 1963 agreement, which controls in the case of incompatability.

In 1971, the contract was amended to provide for a change in U.S. law which permitted fuel to be owned while in the United States by a purchasing country rather than by the U.S. Government. That contract amendment provided that the purchaser would acquire title to the fuel in the U.S. and, with respect to that fuel, would obtain licenses for the shipment of the fuel and comply with all applicable United States laws.

The contract, as amended, continues to make clear in several places that it is not intended to affect the obligation to supply under the agreement for cooperation. In view of these provisions, it is doubtful that the Government of India would concur that it had agreed to comply with any future US law which could affect the obligation to supply fuel under the agreement of cooperation nor was such the intention of the US Government.

Subsequently, U.S. and Indian experts worked out a schedule for the provision of fuel to India. The schedule takes into account the fact that U.S.-supplied enriched fuel for the Tarapur reactors must first be fabricated at the Indian fuel fabrication facility at Hyderabad. This is the only existing fuel fabrication facility in the world which can manufacture fuel for Tarapur. U.S. low-enriched uranium must be provided about a year in advance in order to permit time to manufacture the fuel elements for the reactors. The schedule for supply is based on that fact, and the two pending shipments were applied for on the basis of this schedule.

India's key obligations under the agreement are summarized in Question 1.

7. POSSIBLE INDIAN LEGAL CLAIM

Q. Does India have a strong legal claim that rejection of the pending exports violates the U.S. obligation to supply the Tarapur reactors and that India is, therefore, released from her obligations under the agreement?

A. We do not wish to comment on the relative merits of the legal cases on both sides, and whether failure to supply the fuel in question would entitle India to consider itself released from its obligations under the 1963 U.S.-India agreement.

We note, however, that the Indian Government has made clear to the U.S. its view that the continuous and timely supply of fresh fuel is an important obligation. The more germane question is what India would do should it consider the agreement to have been breached by the U.S. Since the reactors, the spent fuel, and the reprocessing plant are all located on Indian territory, and the problem of electricity supply vitally affects India, fuel supply is a central issue for India. If we cease to supply, it is quite conceivable that India would claim the right to terminate safeguards, reprocess U.S.-origin spent fuel, retransfer the fuel to other countries as it might wish, use the fuel in whatever program it might decide was in its interest, and seek an alternative supplier such as the Soviet Union. These are actions which could be taken by India within its own territory, no matter what is the U.S. view of the legal situation.

8. POSSIBLE INDIAN ACTIONS AND CONSEQUENCES

Q. Despite the U.S. legal position, what would be the practical consequences if India violated the agreement by reprocessing without our permission, 200 tons of U.S.-origin spent fuel stored at Tarapur and/or removed safeguards from the Tarapur facility?

A. The removal of safeguards would be the first time that any country would have removed IAEA safeguards from nuclear fuel, without substitution or subjecting it to other IAEA safeguards.

It would be condemned by many states world-wide, and be a serious blow to the IAEA safeguards system and the need for strict observance of that system. This world seriously injure nuclear non-proliferation objectives.

With respect to the material at Tarapur, of the 200 or so tons, approximately one percent consists of plutonium. This plutonium would add a significant amount to the plutonium on hand or likely to be on hand in India. Moreover, it is likely that India would choose to recycle this plutonium in the Tarapur reactors. It would take approximately three years to construct a mixed-oxide fuel fabrication facility to make the mixed oxide fuel elements to recycle that plutonium. However, Indian willingness to commit itself to do so would be a serious demonstration of intent and have an adverse impact on U.S. interest in limiting plutonium recycle in thermal reactors.

Such steps by India would have the most serious consequences for non-proliferation.

The grace period was introduced in the law to provide for an orderly transition. We believe that this transition period was carefully worked out through cooperation by both the Congress and the Executive Branch to deal with countries such as India, and that the present shipments fall within that transition period.

9. CONTINUING DIALOGUE

Q. Will a cutoff cause irreparable damage to U.S.-Indian relations, thus making a continuing non-proliferation dialogue with India impossible, as claimed by the State Department?

A. It is difficult to see rationally how, in the absence of continuing nuclear cooperation, there is likely to be a serious dialogue with the Government of India on the issue of full-scope safeguards or other non-proliferation matters. For some time, the Tarapur issue has troubled U.S. relations with India and particularly in the area of nuclear cooperation. We believe that a break will have a negative effect on our overall relationship and make it difficult to discuss nuclear issues with India including concerns about nuclear stability in the subcontinent and the Pakistan nuclear program.

10. "UNRELIABLE SUPPLIER" ARGUMENTS

Q. Will a cutoff to India reinforce the image of the U.S. as an "unreliable supplier", as implied by the State Department?

A. Yes. Many countries have told us they view our position on the Indian case as significant in determining whether the U.S. will continue to be a reliable supplier to other nations. Senator Glenn argues that our problems in the area of reliable supply have to do with apparent inconsistencies in our non-proliferation policy. In that light, it is difficult to see how the charge of inconsistency can be rebutted based on our failure to approve fuel shipments which we undertook to deliver to India for a 30-year period under the 1963 agreement and which are permitted by the NNPA.

11. INDIAN FOREIGN POLICY

Q. What evidence is there to indicate that our nuclear trade with India has substantially affected India's foreign policy?

A. The Administration does not make such a claim. We have noted that the Indians regard the Tarapur issue as an important test of U.S. interest in maintaining a cooperative relationship with them; as an index of the U.S. Government's attitude toward India. Terminating fuel shipments would be seen as a signal of U.S. indifference toward cooperation with India, particularly in view of the strong Indian belief that the 1963 agreement firmly obligates us to supply fuel. The widespread indignation that would be created by a negative decision would undoubtedly strengthen the hands of those in India who claim that the Soviet Union is India's only reliable friend and that Moscow should replace the U.S. as supplier for Tarapur. This clearly would be contrary to our interests.

India's overriding national interest is in maintaining a strong non-aligned posture in South Asia. Against that backdrop India has pursued a foreign policy which it has gauged to be in its own interest. We should like to diminish the discord in our relationship with them at a time when one of the central threats to peace and stability exists in Southwest Asia—the Soviet invasion of Afghanistan. India has stated its concerns about the Soviet invasion, and we believe now is not the time to increase or hasten divisive factors in our relationship which a disapproval of these exports would entail.

12. REMAINING U.S.-INDIAN TIES

Q. If the pending shipments are rejected, will the U.S. be left without any substantial economic or military links to India?

A. No. U.S. relations with India cover a broad range of activities. We have provided economic assistance to India and remain an important trading partner for India. However, the Tarapur issue can affect that relationship in significant ways. Efforts to improve U.S.-Indian ties will have to operate in a more difficult environment if the fuel is not provided. If the licenses are approved, there may be new opportunities for developing constructive relations with India.

13. FUTURE U.S.-INDIA NUCLEAR TIES

Q. If this export is turned down, does that necessarily mean the end of all nuclear trade with India?

A. If these licenses are turned down, India has made clear in diplomatic correspondence with the U.S. Government that it believes India will be free to claim a material breach of agreement in our nuclear relationship. We could thus lose the non-proliferation benefits from our present relationship, which have been outlined in the response to Question 1 above, and would be undermining any basis for continued discussion with India on the issue of full-scope safeguards or other nuclear non-proliferation matters.

14. INDIAN-SOVIET NUCLEAR TIES

Q. If these shipments are rejected, won't the Indians turn to the Soviets for help?

A. Failure to provide these shipments would in effect be inviting the Soviets to take over the supply of fuel for reactors built with US aid and which have been perhaps one of the most important and significant US assistance projects to India. While the Soviets' nuclear control are traditionally strict and are not likely to undermine our non-proliferation objectives, we would be providing the Soviets an important opportunity further to solidify their already extensive relationship with India at this critical time—a step which is clearly not in US interest given the Soviet invasion of Afghanistan and the potential for further Soviet development of its position in South Asia. Further, the Soviets are unlikely to try or, if they did, to succeed in securing controls over US-origin materials.

15. EFFECT ON PAKISTAN

Q. What will be the impact on our effort to dissuade Pakistan from pursuing a nuclear weapons option if we provide the fuel for Tarapur?

A. Pakistan has not been happy with the President's decision to provide the fuel for Tarapur and this unhappiness has been voiced in the Pakistani press. However, our decision is unlikely to have any significant effect on Pakistan's intention and programs to acquire a nuclear explosive capability.

The US ceased certain economic and military assistance to Pakistan in 1979 as a result of the importation by Pakistan of material, equipment, and technology for the enrichment of uranium. This was in accordance with a provision of the Foreign Assistance Act.

We have no reason to believe that India has decided to renew a nuclear explosives testing program. We thus do not believe that approval of these shipments for Tarapur will have any direct impact on Pakistani intentions. However, failure to approve the licenses will seriously inhibit our ability to engage in a dialogue with India over nuclear matters aimed at resolving the serious nuclear problem in South Asia.

16. IMPACT ON NUCLEAR TRADE

Q. Is support for a cutoff inconsistent with a pronuclear attitude?

A. A strong non-proliferation policy is not necessarily inconsistent with either pro- or anti-nuclear attitudes. A strong non-proliferation policy is important to civil nuclear power. We believe that supply of fuel for Tarapur supports US non-proliferation objectives. In addition, as noted above, the decision will contribute to, rather than detract from, the impression of the US as a reliable supplier. A negative decision can only reinforce the impression of some that US nuclear supply policies are partly driven by anti-nuclear sentiment.

17. PAST MISUSE OF US NUCLEAR EXPORTS

Q. Have the Indians ever misused any nuclear materials we have exported to them under a valid sales agreement?

A. The Government of India has adhered to all the terms and conditions of the 1963 Agreement for Cooperation and the 1966 implementing contract, as amended.

As an entirely separate transaction, in 1956 the United States supplied India, on a one-time basis, twenty-one short tons of heavy water under a contract between India and the U.S. Atomic Energy Commission. That contract provided that the heavy water would be used only for peaceful purposes. In 1970, however, the United States formally told India that we would not consider any explosive use of plutonium produced through use of the heavy water to be consistent with the peaceful purpose pledge. The Indian Government made clear the next month that it understood our views but did not agree with them. It stated that it felt free to use nuclear energy for any peaceful purposes, including so-called peaceful nuclear explosive uses. Thus, there was no agreement in 1956 or in 1970 that the 1956 heavy water sales contract precluded use of U.S. heavy water in a peaceful nuclear explosion; this is a matter of disagreement between the two countries.

We believe it is probable that some United States-supplied heavy water was in the Cirus reactor at the time it produced the plutonium for the 1974 Indian nuclear test. However, we do not believe the legal obligation regarding such use was sufficiently unambiguous to warrant a legal charge that India violated the 1956 agreement. Moreover, after the 1974 explosion, the legal situation under the Tarapur agreement for cooperation was clarified by an exchange of letters so that no Tarapur supplies can be used for any nuclear explosive uses, no matter how the purpose of such an explosive is characterized. We have pointed out above, however, continued delay in providing exports of Tarapur fuel or alternatively, a denial of these exports could risk the possibility that India will consider itself free to use previously supplied Tarapur fuel and the derived plutonium without reference to the constraints imposed by the 1963 agreement.

ADDITIONAL QUESTIONS

The State Department also provided its responses to three other arguments made against the sale in the press and elsewhere.

Q. Hasn't India just agreed to a $1.6 billion sale of arms shipment from the Soviet Union on highly concessional terms? Why should we go ahead with the fuel shipment?

A. We do not see any direct connection between the Indo-Soviet arms deal and Tarapur fuel supply, and do not believe that the provisions of the Non-Proliferation Act were intended for punitive use in other areas of foreign policy.

In fact, the Indo-Soviet arms deal underscores our view that there are good foreign policy, as well as non-proliferation, reasons for going ahead with these fuel shipments. The Soviets have long been India's major arms supplier and the latest deal has been under negotiation for a year and a half. The terms, however, are extremely generous which demonstrates Soviet anxiety "to woo" India. While we do not see the Tarapur shipments as part of a competition with Moscow, at the same time we do not believe it to be in US interest to give the Soviets an opportunity in this area and unnecessarily attenuate our ties with India.

Q. Why not wait for the GAO report to be delivered next year before deciding this question? Couldn't the President resubmit the Executive Order next year?

A. There are times when postponing a decision is in effect a negative decision. The Indians need this fuel now in order to fabricate the fuel rods to produce power in the heavily industrialized and power-short Bombay area. The Indian Government has shown considerable patience, but has indicated that significant further delay in these two shipments could lead it to conclude that a material breach of the 1963 agreement has occurred. Although we would contest that view, there is good reason to believe that a postponement until next year would cause India to consider itself relieved of its obligation under the agreement and that it would seek alternative fuel supplies and/or reprocess the Tarapur spent fuel for recycling into the reactor.

In short, there is a very high probability that India would believe that reconsideration sometime "next year" is too late and too uncertain. If that were to be the case, postponement would have the same effect as a negative decision, including the loss of the non-proliferation safeguards and controls in the Tarapur agreement, not to speak of the damage to our broader policy interests.

Q. Now that India has launched its own satellite, doesn't nuclear supply to India mean that we will be suppporting a much more dangerous case of proliferation?

A. The question presumes that India's space launch vehicle capabilities can be directly and rapidly transmuted into a sophisticated medium—or intermediate—range nuclear delivery capability. While India's capacity to launch a satellite indicates a significant space launch vehicle capacity, the Indian launch vehicle is not necessarily directly or easily converted to a nuclear weapon delivery system. For example, the number of stages involved in the launch vehicle and the limited capacity of the launch vehicle make a direct or easy conversion unlikely.

The question also presumes that India has proceeded to construct a smaller weaponized version of the explosive device it tested in 1974. We have no evidence that India has done so. All other states which have proceeded down this road have required a series of tests to perfect the weapon it intended to develop for use with its ballistic missile delivery system. We have no evidence that such testing has taken place in India.

Thus, while relevant, the question is very remote from the two fuel licenses. There are alternative routes for the delivery of nuclear weapons open to countries with India's capabilities such as the use of modern aircraft, which might be both more effective and reliable should India choose to develop them. We have seen no signs nor do we have any evidence that such is the case.

THE RELIABILITY OF COAL

Mr. PERCY. Mr. President, on June 24 the Senate passed a landmark piece of legislation, S. 2470. This measure could become the most aggressive and potent law ever enacted to insure the expanded production and utilization of our Nation's abundant coal reserves. The Powerplant Fuel Conservation Act of 1980, which the Senate accepted 86 to 7, provides $3.6 billion in grants and loans to 80 utility powerplants across the country to convert from oil to coal. Six hundred million dollars is also included to help other powerplants control increased air pollution resulting from the burning of high-sulfur coal. This bill could conserve 400,000 barrels of oil a day by 1990, a dynamic step toward energy independence before the year 2000.

Unfortunately, this legislation has not yet been sent to the floor of the House of Representatives for a vote; it has been bottled up amidst controversy in committee, instead. With only 21 working days before the House's scheduled adjournment, it is becoming more and more doubtful that an oil back-out bill will be passed into law this session of Congress.

Mr. President, the legislation the Senate passed did not help the future of Illinois coal as much as I would have liked; the highly important phase II of our legislation was removed even before the bill reached the Senate floor. This section, the Senate will recall, would have made $6 billion available to utilities willing to retire their existing noncoal powerplants ahead of schedule, so they could build new coal powerplants or use alternative fuels instead. Illinois would have been the supplier of millions of tons of coal to these new plants, many of them located in the South and Southwest.

Phase II was removed from this legislation, but I still am in support of S. 2470. I support it for one simple reason: The foremost energy issue we are facing in this country today is not a regional one, between western low-sulfur coal and eastern medium- and high-sulfur coal. It is, rather, the question of whether or not we are going to reduce our oil imports, and begin burning American coal instead. Are we going to use this precious bounty of domestic energy from wherever it comes, and stop our intolerable reliance upon unstable foreign suppliers?

For decades, Mr. President, talk about using greater quantities of coal has been as cheap as the coal itself has been to buy. But this talk has been just that—talk. It has disappeared as soon as the first signs surfaced that domestic and foreign oil supplies could get us through our daily lives just a little longer. Despite the fact that the fuel burned in new utility coal boilers is cleaner than that burned in most oil boilers, according to the Environmental Protection Agency, using our greatest domestic fossil fuel has become popular only in talk, not in action. And the longer we wait before we recognize the danger of our ways, the worse off we will be.

Mr. President, on June 30, 1980, Bob Wiedrich of the Chicago Tribune wrote an excellent essay on the need to use coal as something other than a conversation piece. His message is succinct and direct:

> Politicians have used coal as a security blanket, whenever crisis has threatened. But always it has been returned to the cedar chest once the energy threat has subsided.

Weidrich notes that, no matter how secure our future relations may become with the nations of OPEC, we will always have an even more secure energy source in domestic coal. He urges all Americans to recognize, once and for all, the opportunity this domestic fuel source has to lead us to a secure energy future.

As we look at the unfortunate prospects of our failure to enact an oil backout bill this year, there is no better time for the Congress to appreciate Mr. Wiedrich's column than right now.

Mr. President, I ask unanimous consent that the June 28 column of Mr. Bob Wiedrich from the Chicago Tribune be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

When Oil Slips, Fall Back on Coal

(By Bob Weidrich)

Again, world leaders are going bananas over coal.

Every time the oil-producing countries hike the price and tighten the spigot, the politicians start getting bituminous smoke in their eyes.

Former President Nixon did so in 1974 after the first Arab oil embargo. Former President Ford followed suit during his brief tenure in the White House.

Now, Jimmy Carter has joined the leaders of six other major industrial nations in pledging their governments to developing sufficient alternative energy sources to break their mutual dependence on foreign oil.

Naturally, a substantial part of the commitment involves the use of coal, either for direct burning or as a source of synthetic oil and gas.

So once again, the relatively environmentally unacceptable, but overwhelmingly abundant mineral has become the darling of the political drawing rooms.

And hopefully, this time, the declarations from a Venice summit conference by President Carter and the chieftains of West Germany, Britain, France, Canada, Italy, and Japan will really mean what they say. For in the past, that has not been the case.

Politicians have used coal as a security blanket, whenever crisis has threatened. But always it has been returned to the cedar chest once the energy threat subsided.

Such tactics have left the coal industry in a state of indecision and disarray, unwilling to commit the financial resources required for the salvation of a fickle industrial society so thoroughly wedded to oil as a major energy source.

Granted, since the 1973–74 Arab oil embargo, the fidelity to coal has been increasing. An entirely new industry has developed around the burning of low-sulfur western coal, especially for the generation of electricity.

But even as the approach of a day of judgment caused by diminishing oil reserves has become apparent to all but the most optimistic observers, environmentalists and their governmental consorts have thrown expensive roadblocks in the path of that emerging industry.

Electric utilities attracted by the trillions of tons of coal still beneath the earth have been confronted by fantastically costly environmental controls from Washington, impairing the practicality of coal as a fuel.

Railroads hauling the coal to market in long-unit trains have been accused of everything from blocking traffic at highway crossings to interfering with the mating habits of western deer by building spur lines through their habitat.

I'm not criticizing the environmentalists for their fervor. Nor am I questioning the need for stringent controls over the burning of coal.

However, the demands for purity in many cases have been so excessive as to make it economically impossible for utilities to convert boilers burning oil and gas to handle coal, which is more abundant than oil and cheaper.

And the federal government, until now, has disgracefully lagged in providing the impetus and funding for a synthetic fuel industry that could get the United States started toward achieving independence from the economic domination of foreign oil producers and their often unstable governments.

Congress finally has passed—five years after the Arab oil embargo—a multibillion-dollar energy bill with synthetic fuel as its focal point.

After six months of negotiations, a bill has been approved to fund a $20-billion, five-year program of loan and price guarantees intended to produce plants capable of converting coal and oil shale into fuels.

However, the legislation envisions only the production of the equivalent of 500,000 barrels of oil a day by 1987, with an additional target of 2 million barrels a day by 1992. This is only a modest fraction of the 18 million barrels now consumed daily.

Yet, even these modest goals have already provoked congressional predictions of "socio-economic dislocations" in western oil shale areas through the spawning of unsavory boom towns, unless there is adequate planning now.

Obviously, there will be multifaceted problems in weaning America away from foreign oil. But the alternative of remaining under the thumbs of Middle East oil barons is unacceptable to a democracy accustomed to freedom.

What disturbs me, though, is the foot-dragging attitudes that have pervaded Washington during the half a decade that has passed since the Arabs first demonstrated their ability and willingness to throttle western oil supplies as a political weapon.

There has been much rhetoric, but precious little action—until now.

Synthetic fuel technology has been no secret for many decades. Neither have been the warnings that the United States would eventually run short of oil, warnings dating back as far as 1918.

In 1949, the U.S. made a half-hearted stab at energy independence by building a coal-to-oil demonstration plant at Louisiana, Mo., a year after America became a net oil importer for the first time in its history. When cheap Arab oil came on stream in 1953, however, the plant was scrapped. The rest is history.

So today, if the Arabs suddenly offer to kiss and make up, I hope Jimmy Carter and the other world leaders stick by their guns. Coal is a predictable resource deserving of our attention. The Arabs are not.

NATIONAL UNITY CAMPAIGN—REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

Mr. PERCY. Mr. President, The Congressional Research Service is interested in indexing the platforms adopted by the two major parties. CRS also wants to include the platform recently released by Congressman John Anderson running for President on the National Unity Campaign. Because Senator Howard Baker inserted the Republican platform in the Congressional Record, and Senator Pat Moynihan inserted the Democratic platform. It is felt that it would facilitate the indexation process if the Anderson platform were to be included in the Record as well. CRS could then make reference to specific pages in the Congressional Record for comparative purposes.

I have been asked to make this insertion by Congressman Anderson, who has been my friend for several decades and my colleague in the Illinois congressional delegation for 14 years. I am not only pleased to insert his platform because of these reasons but also because I believe his viewpoints as expressed, "Rebuilding a Society That Works: An Agenda for America" represent some bold challenging approaches and views that could well be carefully considered and in some cases adopted by the candidates of both major parties.

Mr. President, I ask unanimous consent that the Anderson platform be printed in the Congressional Record, not only so that the indexation process of the Congressional Research Service may be facilitated, but also so that it be available in its full text to all Members of Congress and readers of the Congressional Record for their study, analysis, consideration as a valuable contribution to the American political process, and as an historical document.

There being no objection, the material was ordered to be printed in the Record, as follows:

Rebuilding a Society That Works: An Agenda for America

To the American people:

In the past few weeks, the traditional political parties have released their traditional platforms. Now we are releasing ours—an untraditional program for America that responds to new challenges in new ways.

Our program is presented in two related documents. The first, "Rebuilding a Society that Works: An Agenda for America" highlights many of the major themes and proposals that our National Unity Compaign will offer to the nation. It is relatively short and deliberately selective. It states our goals and sketches in general terms how we intend to promote them. It is intended as a synthesis and an introduction to our program.

The second document, "The Program of the Anderson/Lucey National Unity Campaign," presents the details of our legislative and executive program in every major area of concern to this nation. It is divided into three sections. First, the Introduction sets forth the public philosophy that guides and unifies our program. The second, the body of the document, details our program in the general areas of economic policy, foreign and defense policy, social policy, and civil and human rights. The final section deals with the practical problems of governance. It substantiates our conviction that an Independent administration can effectively govern this nation.

It should be clear that we do not desire to implement every proposal in this program in the first year of an Anderson Administration. The full fiscal impacts of these initiatives are to be spread over the next four years. It would be fiscally irresponsible to do otherwise.

The program does not contain any massive new expenditures on the scale of a $60 billion land-based missile or a $25 billion-a-year comprehensive national health insurance scheme. Nor does the program call for large personal income tax cuts in advance of a balanced budget.

Moreover, we anticipate that the initiatives outlined in this program are small enough in their revenue impacts to be accommodated by the normal real dollar growth in revenues associated with an expanding economy. We will, within the next three weeks, issue a budgetary impact statement for our program.

How does our program differ from traditional party platforms?

First, it is *specific*. We have not been satisfied to express a vague commitment to abstract goals. We have spelled out our intentions; in many instances we have proposed specific legislation.

Second, it is directed toward *problem-solving*. We believe that government must be for the sake of acting. We firmly believe in the old maxim, "If it isn't broken, don't fix it." In each section of our program, therefore, we begin by stating the real, pressing, unavoidable problems we face. And everything we propose is intended to advance this nation towards solving these problems.

Third, our program is coherent. We believe that government fails when it loses its sense of overall purpose and direction. We believe that the public interest is neglected when government disintegrates into a grab-bag of uncoordinated, contradictory efforts to serve special interests.

Our proposals are consistent with the public philosophy which guides our unity campaign. Its principles are both simple and profound. We believe America is in peril because our tradition of self-government has been eroded. We believe we must prepare for the future; that we must be cognizant of its limits, and aggressively pursue its opportunities. We believe we must rebuild America, and that the government must act as a catalyst to encourage every American to participate in the task of rebuilding. We believe that the rebuilding of America will not have succeeded unless we have persevered in our efforts to establish justice for all Americans.

Fourth, our program is realistic. We know that our resources are limited and that they must be applied to our most basic and pressing needs. We have not promised more than our federal budget and our national economy can bear. And we have not avoided the hard choices. As we constructed this program, we thought in terms of what our responsibilities would be if we were governing this nation. It is a strategy of governance, not a game plan for winning the election.

Fifth, our program is a personal commitment. Harry Truman was right when he said that a platform ought to be a contract with the American people. But too often party platforms are ignored by the candidates, after the election and even during the campaign. This year, for example, the Democratic National Convention repudiated much of the economic program of its own party's nominee, and he, in turn, rejected their decisions. Alternatively, the Republican Vice Presidential candidate ran virtually his whole primary campaign against proposals appearing in the platform upon which he is now running. There is no ambiguity about our commitment to our platform. It's ours, we mean every word of it, and we'll stand by it, during and after the national campaign.

Although our program is a personal commitment, it is not the work of our hands alone. We have consulted with business executives and assembly-line workers and farmers and with citizens concerned about our nation's future. We have analyzed and debated every proposal, and we have drafted and redrafted them until we were fully satisfied. We are proud of this program and we will fight hard for it.

We urge you to read and consider the program, and to compare it with those of the traditional parties. At this time of national testing, we must move beyond the politics of empty tactics and superficial images. We must face and debate the real issues. You may disagree with what we say, but we want you to know that we believe and what we will do if elected. You have a right to know what we stand for and what we will try to get enacted into legislation. The program will also help you identify the main issues we must debate and the problems we must solve. Our country needs the energy, the involvement, the concern of each one of you.

Sincerely,

JOHN B. ANDERSON.
PATRICK J. LUCEY.

I. INTRODUCTION

Nearly thirty years ago, at the beginning of his campaign for the Presidency, Adlai Stevenson declared:

"Let's talk sense to the American people. Let's tell them the truth, that there are no gains without pains."

This courageous warning is as necessary now as it was in 1952. We cannot expect that the 1980s will be an easy decade. Our nation faces its gravest challenge since the Second World War. We cannot expect that our problems will solve themselves. They are not going to go away like some bad dream. We must make changes, and in the short run they will be painful. We can rebuild our economy and regain control of our national destiny, but we will have to pay a price for our recovery.

To cure our nation's ills, we must begin by understanding them.

In the century after the Civil War, we Americans built the greatest economy and society the world has ever seen. We planned for the future, and we invested in it. We built railroads and dams and factories and cities. We invented the telephone and mass-produced automobiles at prices most people could afford. We created an unsurpassed system of public education and universities. We invested in systems of security for the ill, the aged, and the unemployed. Our nation worked, and other countries admired our efficient, undogmatic common sense. When the world asked: What is the future?, the answer always was: Look at America.

But in the past twenty years our political leaders and political parties have failed the nation. We gradually abandoned the practices that made us great. We stopped planning, we stopped saving, and we stopped investing. We ignored the needs of tomorrow. We failed to take care of what we had built. And we lived beyond our means.

Nations, like families, cannot postpone their bills indefinitely. And our nation's bills have now come due.

Our economy is locked in a cycle of inflation, recession, and high interest rates.

Our factories are outdated and uncompetitive in world markets.

The foundations of our older cities—the bridges, the streets, the water mains—are crumbling.

Our system of public education is no longer teaching many of our children the skills they need to get jobs and survive in our society.

We have neglected our military equipment and our military personnel.

Worst of all, we have lost control over our economy, our foreign policy, indeed our very destiny, because we have lacked the will to declare our independence from foreign oil.

A generation of political leaders has told us that we could run bigger and bigger budget deficits without raising inflation and interest rates. A generation of political leaders has told us that we could concentrate on the interests of particular groups in our society and that the general interest of the nation would somehow take care of itself. A generation of political leaders has told us that we could get something for nothing.

We were told that we could fight a war without paying for it.

We were told that we could clean up the environment without paying for it.

We were told that we could increase pensions and social services without paying for them.

We were told that we could increase our consumption of ever-costlier foreign oil, without paying for it.

It has been a time of deception and illusion. And it must end now. Let us never again be told that we can get something for nothing. And let us never again be told that we can govern ourselves without making hard choices.

Turning this country around won't be easy. Our political system is now dominated by a jumble of special interest groups locked in a heedless struggle for private gain, ignoring the greater good of a healthier and more just society. We are close to becoming a stalemated society, locked into a politics of paralysis, where each interest group blocks any policy, no matter how wise and how necessary, if its own interests are threatened.

But our difficulties go even deeper than political illusion and political stalemate. We are also suffering from the manifest exhaustion of our political ideas.

Nearly half a century ago, Franklin Roosevelt took office amidst a national crisis and set in motion the policies that we have come to call the New Deal. These policies were designed to solve specific problems and to confront the devastation of the Great Depression. They were appropriate to the times, and they contributed to the relief of human misery and to the national recovery.

The Democratic party still clings to the policies of the New Deal. But today our circumstances are very different. The policies that once battled deflation now spur inflation. The policies that stimulated production now diminish productivity. The policies that attacked unemployment now actually contribute to it. The policies that once ministered to human misery now perpetuate it.

The Republican party has responded to the exhaustion of the New Deal approach in two contradictory, and equally erroneous, ways: it has embraced New Deal economics while it seeks to repeal New Deal social policy.

The Republicans tell us that we should cut personal income taxes across the board, by one-third. If we follow this advice, we will not save and invest more, we will spend and consume more. We will have skyrocketing interest rates that will choke off economic recovery, further stifle our automobile and housing industries, and plunge us into an even deeper recession. We will have record budget deficits and, to finance them, we will have an explosive growth in the money supply that will produce a record inflation. This is not a program for national recovery; it is a formula for national bankruptcy.

At the same time, Republicans advocate massive cutbacks in social programs. Their platform talks incessantly about freedom, but hardly ever about justice. It talks of liberating individuals from big government, but it would only liberate those least in need of assistance from their responsibilities to the nation.

This outdated quarrel between the old liberalism and an even older conservatism, which the two major parties are about to resume, has ceased to illuminate our most pressing public problems. Far away from the discord and rancor of party strife, the American people have reflected on the experience of this century, and we now agree on some basic truths.

We are all liberals, we are all conservatives. We all believe that prosperity without justice is unacceptable, and that justice without prosperity is unattainable. We all know that government must be bold and purposeful, but that it cannot do for us what we can only do for ourselves. We all believe that individuals are responsible for their acts, but not for the conditions within which they act. We all believe that life without liberty is intolerable, but that liberty without order is self-defeating. And we all know that this consensus must guide us as we seek solutions to our problems.

The Anderson campaign is based on a new public philosophy—one that neither repeats nor repeals the past, but rather builds upon it. Its principles are clear and simple. America is in peril because her foundations have been neglected in the past generation. We must plan for the future, we must save for the future, and we must invest in it. We must rebuild America. For the most part, government cannot do this directly. Rather, it must act boldly to create a new climate, and a new framework of incentives, that encourage individuals and businesses to get to work at the task of rebuilding. All Americans must contribute to, and help pay for, our national recovery, but the burdens must be allocated in proportion to the ability of individuals and groups to bear them. The rebuilding of America cannot succeed unless we move toward the future united; but we cannot remain united unless we persevere in our efforts to establish justice for all Americans.

To rebuild America, we must begin by restoring our economic vitality. To do this, an Anderson administration will move forward on three fronts.

First, we will use the tax code to limit consumption, and increase savings and capital formation.

Second, we will use fiscal policy to bring inflation under control and to restore a stable, predictable environment for long-term planning and investment. We cannot halt inflation until we stop printing money faster than we produce goods and services. But we can only slow the creation of money if we restore the balance of our federal budget, not in every year necessarily, but rather over the course of each business cycle. This will require moderation, discipline, and the willingness to make hard, explicit choices.

Third, an Anderson administration will move aggressively to keep American capital at home to be used for American purposes, by sharply reducing our dependence on imported oil. We will tax gasoline to reduce consumption, and we will set in motion programs to save energy in transportation, in our homes, and indeed in every aspect of our lives.

These measures will generate a substantial pool of investment capital. An Anderson administration will use these funds to put Americans back to work rebuilding America by creating new arenas for their energy and inventiveness.

We will put Americans back to work retooling our aging factories. We will not allow the Detroits and the Youngstowns of this nation to die. And as we retool our factories, we will preserve the kinds of jobs American workers want and deserve—permanent, productive jobs with prospects for advancement, not temporary, make-work, dead-end jobs.

We will assist the smaller businesses that have always produced most of the new ideas and new jobs for America and will do so again, if only we lift the burden of taxation and regulation from their backs.

We will stimulate technological innovation by providing new tax incentives to industry for research and development, and by increasing federal support for basic scientific research and for our space program.

We will put Americans back to work rebuilding the streets, the bridges, and the water mains of our crumbling cities with a $4 billion annual Urban Reinvestment Trust Fund. We will put our unemployed construction workers back to work building housing for America with cost-effective mortgage subsidies, and tax-exempt mortgage savings accounts for young couples. And we will use tax incentives and direct subsidies to neighborhood organizations to put Americans to work renovating the dwellings and rebuilding the economic base of the decaying neighborhoods of our inner cities.

We will put Americans back to work building public transportation for the 1980s with a $4 billion annual Community Transportation Trust Fund. At the same time, we will move toward the transportation system our economy needs, by rebuilding the railroads, the highways, and the ports of this country.

We will rebuild our system of public education. We will make public education an attractive career once again for our ablest college graduates, and we will vigorously employ the new Department of Education to promote quality basic education for all our children.

We will keep Americans at work in our most basic industry, agriculture, by taking steps to preserve the family farm. We will treat farmers as small businessmen, and give them tax breaks for investment in machinery and buildings. We will change the tax code to recognize the contribution of farm women and to reduce obstacles to the transmission of family farms from parents to children.

An Anderson administration will rebuild American military strength. We will pay the men and women in our volunteer armed forces what they need and richly deserve. We will rehabilitate our military equipment, so that it is really ready for use in emergencies. And we will restore the military balance with efficient and reliable new weapons systems, but not with costly boondoggles like the MX missile that will not increase our security but will only take away scarce resources from the weapons we really need.

As we move toward energy self-reliance, and as we rebuild our economy and our military strength, we will once again be able to deal consistently with friends and foe alike.

An Anderson administration will follow the prudent policy of rebuilding America's alliances with the nations that most closely share our interests and our values, by treating them as equal partners. We will never act in matters of joint concern without consulting them, and we will never expect them to follow us blindly.

To our adversaries, an Anderson administration will always offer opportunities for negotiation, for the reduction of arms, and for the easing of tensions. We will press for the ratification of SALT II and for the next stage in arms control negotiations—a real reduction, not just limitation, of strategic weapons. At the same time, we will allow no one to mistake moderation for weakness. We will make it clear to our adversaries that we will resist to the utmost any attempt at subversion and conquest. And we will never fear to aid those who are truly fighting for freedom.

As we rebuild America, at home and abroad, we will hold fast to our vision of a just America.

An Anderson administration will work for the even-handed application of our statutes to all citizens, and we will strongly support the efforts of the United States Commission on Civil Rights to impose reasonable, uniform standards on police use of deadly force.

An Anderson administration will work for fair housing laws with teeth in them.

An Anderson administration will carefully review the report of the Select Commission on Immigration, with the goal of devising a truly color-blind immigration policy.

An Anderson administration will use its resources of persuasion to obtain enactment of the Equal Rights Amendment and to block adoption of statutory and Constitutional restrictions on every woman's freedom of choice in matters of reproduction.

An Anderson administration will strive to promote economic justice. We will work for a more equitable system of taxation, and we will resist tax cuts, such as the Reagan-Kemp-Roth proposal, that give a bonanza to the rich, crumbs to the middle class, and nothing at all to the poor. As we reduce unemployment, we will seek to reduce disparities in the rate of unemployment among different groups in our population. We will not continue to tolerate unemployment rates above 40 percent in our inner cities. And we will not use unemployment as a weapon in the fight against inflation.

These measures are all part of a larger whole—the American vision of a society in which all enjoy genuinely equal opportunity to develop their gifts and to go as far as their talents and energies will allow. This is the justice the Preamble of our Constitution requires us to establish.

The struggle to rebuild America and to establish justice will be long and arduous. But we can do the job. The American people do not suffer from any mysterious malaise. They are weary of bad government, to be sure. But they are bursting with ideas, with energy, and with the desire for a better future. They are willing to sacrifice to gain that future. All they want is a government that presents them with a clear, believable program for the future, that enables them to save and to plan with confidence, that encourages innovation and risk-taking, that reduces regulation and liberates their energies. This is the kind of government an Anderson administration will give them.

With sensible policies, we cannot fail to surmount our current problems. We are rich in natural resources, and in human skill and energy. We have stable and flexible political institutions. We hold fast to a vision of human freedom that brings streams of refugees to our shores each year.

So let us take heart as we recall our strengths. We must make sacrifices, to be sure. We must allocate them openly and honestly. We must protect those who cannot easily bear additional burdens. Those of us who have prospered in America must contribute generously to the task of rebuilding the nation. And we must move toward the future resolutely united, as one nation, indivisible. For, as Theodore Roosevelt once reminded us, "The fundamental rule in our national life—the rule which underlies all others—is that in the long run, we shall go up or down together."

II. THE ECONOMY

Something has gone wrong. A nation whose productive capacity made it the arsenal of democracy and the envy of the world today finds itself plagued by a shrinking capacity to produce and a growing inability to compete in the world marketplace.

Once the world's leading producer of steel, we now find our output surpassed by both the Soviet Union and Japan. A year ago, the United States was the leading manufacturer of automobiles. Today, we are second. Even in high technology markets, once the near-exclusive reserve of American business, we find ourselves increasingly unable to compete.

Something indeed is wrong.

The nation's productive capacity has suffered from a decade of neglect. The "guns and butter" policies of the late 1960's led to a level of public and private consumption that ignored the critical investment needs of the economy. During the course of the past decade, the rate of personal savings has declined sharply, and government borrowing has dramatically increased. As a result, our rate of capital investment, which long ago fell behind the efforts of our chief foreign competitors, has declined further still. Our continuing failure to save and invest imperils our economic vitality and mortgages our hopes for a better and more prosperous tomorrow.

We can no longer afford to live off our past labors, manufacturing in obsolete plants with outmoded technology. There is an urgent need to rebuild our productive capacity to create jobs for the unemployed and to lessen inflationary pressures. The continuing failure of the Carter administration to take necessary actions threatens to generate yet another decade of economic stagnation with a resulting loss of purchasing power and employment opportunities.

Our tax laws penalize thrift. A penny saved is no longer a penny earned. Although inflation erodes the value of personal savings, the federal government still taxes the nominal interest received. As a consequence, the personal savings rate has declined steadily in recent years. In January of this year, the personal savings rate fell to a 29-year low.

Our tax laws have discouraged investment in capital plant and equipment. Between 1962 and 1968, real business investment expanded at an annual rate of 7 percent. During the past six years, however, real business investment has expanded at an annual average of only 2 percent.

A nation once famed for its entrepreneurial spirit is in danger of losing its competitive vitality. Small businesses, burdened by excessive taxation and regulation and saddled by high interest rates, have failed in recent years to generate the necessary jobs and technology. Large businesses, hampered by inadequate depreciation allowances, have failed to undertake the necessary retooling—resulting in an erosion of our industrial base.

Throughout most of the 1950's and 1960's, productivity grew at an annual rate of nearly 3 percent. Growth slowed to less than 2 percent in the 1970's. And in the first half of 1980, after 18 months of near constant decline, productivity has fallen to 1977 levels.

As individuals, as businesses, and as a nation, we have lost our ability to plan for the future. We have become a society that lives for today and ignores the needs of tomorrow.

The job of restoring our economic vitality requires a broad-based attack on the root causes of our economic decline. Nothing less than a comprehensive approach will suffice.

Our task is the rebuilding of America.

Immediate problems

The 1980 Recession

The disastrous rise in interest rates to record peaks in the first half of 1980 precipitated one of the worst, if not the worst, recession in the post-war era. Auto sales in May fell 42 percent below the previous year's level. Housing starts declined from an annual rate of 1.8 million earlier in the year to less than 1.0 million new starts in May.

Today, over 250,000 auto workers are on indefinite layoffs with 50,000 more on temporary layoffs. Over 2 million Americans have been added to the unemployment rolls in the past four months. While there are preliminary indications that the housing and auto sectors of the economy are beginning to recover, unemployment is expected to rise still higher in the months ahead.

We cannot remain indifferent to the hardship of those who have lost their jobs, nor to the threat of future layoffs. We must expand the eligibility for extended unemployment compensation and adopt a countercyclical revenue sharing program providing $500 million in relief for hard-pressed communities in fiscal year 1981 and $1 billion for fiscal year 1982. We must ensure adequate funding of summer youth jobs programs and other youth employment initiatives. We must also seek effective implementation of the Brooke-Cranston program to revive the housing market if present conditions persist.

Most important, however, we must resist appeals for either large-scale spending increases or massive tax cuts that would serve to further exacerbate the $30 billion deficit anticipated for fiscal year 1981. A larger deficit at this juncture would mean increased government borrowing and higher interest rates. The resulting credit squeeze would further retard the recovery of the interest-sensitive sectors of the economy, including the auto, housing, and the capital goods industries. This danger requires a very cautious and selective approach to all fiscal policy choices.

Inflation

Although inflation, as measured by the consumer price index, has receded from the 18 percent rate recorded in the first quarter of 1980, the underlying inflation rate remains at historically high levels. A central focus of national economic policy must be a progressive, year-by-year reduction in the inflation rate until reasonable price stability is achieved.

While fiscal and monetary restraint is essential to the achievement of price stability, we must also endeavor to reach a broader national accord on appropriate wage and price increases. Upon taking office, we will construct a Wage-Price Incentives Program. And Anderson Administration will seek to call labor and management leaders together to agree upon fair and realistic wage and price guidelines and to determine an appropriate means of encouraging compliance with those standards through tax-based incentives.

In the absence of sharp and prolonged increases in the rate of inflation, the Anderson Administration will oppose any mandatory wage and price standards. Experience has demonstrated that such controls are difficult to administer and result in a misallocation of economic resources.

FULL EMPLOYMENT

A sound economic policy must incorporate a commitment to full employment. We reaffirm the goals of the Humphrey-Hawkins Act and condemn the President for his failure to consult with Congress this past January before altering the timetables set forth in that Act. The establishment and attainment of national economic objectives is the jointly responsibility of the President and Congress.

While the central focus of American's full employment policy must be on the creation and preservation of productive, private sector jobs, there will be a continuing need for creative and complementary federal employment programs to reach areas of unmet needs.

Existing federal employment programs—administered under the Comprehensive Employment and Training Act (CETA)—place an undue reliance on public service employment and other jobs programs that do not significantly upgrade the labor skills or the employment prospects of program participants. While recent program initiatives, such as Title VII of CETA, have sought to expand the role of the private sector, such efforts have been underfunded and underutilized. We propose to expand the role and funding of the Private Industry Councils under Title VII and to otherwise enlarge the role of private employers in federally sponsored job training efforts.

State unemployment compensation programs, for the most part, are not linked to the retraining needs of displaced workers. As a result, those who exhaust their unemployment benefits frequently lack the necessary skills for gainful employment. We propose establishing federally funded pilot projects integrating State unemployment benefits with retraining benefits for those with long records of unemployment.

The Congress, in 1977 and again in 1978, approved an employment tax credit of 50 percent of the first $6,000 in wages of qualified new employees hired by small businesses. Many small businesses, however, have not taken advantage of the tax credit because they have no tax liability against which to apply the credit. An Anderson Administration will initiate an inter-department study on the advisability of making the tax credit refundable on a one-year trial basis.

Special attention must be devoted to the problem of youth unemployment, particularly minority youth unemployment. Nationwide, the unemployment rate for black and other minority youth is nearly 40 percent, and in many urban areas it exceeds 50 percent! To deal with this critical social problem an Anderson Administration will propose a number of youth employment initiatives:

Enactment of the proposed Youth Act of 1980 that will provide over $2 billion a year for job training and state and local educational programs designed to improve the employability of disadvantaged and out-of-school youth;

Increased funding for youth career intern programs;

A youth opportunity wage incentive that would exempt eligible youths and their employers from social security taxes during the first six months of employment; and

A Youth Energy Projects Act that would provide up to $1 billion a year (by fiscal year 1983) for multiyear, large-scale energy and energy conservation projects—including mass transit—offering career opportunities for economically disadvantaged youth between the ages of 18 and 24.

Structural initiatives

If we are to rebuild the American economy, we cannot be content with short-term measures employed first to stimulate and then to dampen the swings of the business cycle. We must address the basic long-term problems of job creation, inflation, productivity, economic growth, and the quality of life.

To solve these long-term problems, we must avoid stop-and-go economic measures. We cannot fight higher prices with higher unemployment and we cannot combat the decline of purchasing power with inflationary, across-the-board, consumption-oriented tax cuts like the Reagan Kemp-Roth proposal.

We believe that America needs a coherent program for long-term economic recovery and growth. This program must be designed to stimulate investment and to hold back consumption in a fair and equitable way so that we can rebuild and renew our capital plant—industrial, commercial, and public.

We believe that basic industry must be given the opportunity to rebuild and to restore its competitive edge by creating a new climate for investment and entrepreneurship.

It is not our intention to use protection or direct subsidies to achieve this end. Nor is it our intention to imitate the Japanese experience by putting the government into the business of picking the winners and losers of industrial competition. Such policies may be relevant to the requirements of those nations, but they are not relevant to a country that expects to be at the cutting edge of economic innovation and growth. Instead, we will create the conditions within which enterprises can flourish, provided they are well-managed by forward-looking entrepreneurs.

Although we will make every effort to facilitate the growth of major industry, and although we hope that major industry will expand strongly during the next decade, we believe that the major engine for American economic growth during the 1980's will come from small- and medium-sized businesses as they grow into large businesses. Therefore, we will also seek to encourage their formation and expansion in recognition of their role as the principal providers of new jobs and technologies in our economy.

To create a climate for economic recovery, rebuilding, and growth for businesses of all sizes, we will seek to enact five major structural initiatives:

First: We will use a prudent, restrained fiscal and monetary policy to dampen inflation, lower interest rates, and foster a stable economic environment for long-range planning by investors and government alike.

Second: We will use the tax code to encourage greater personal savings and capital formation.

Third: We will use tax incentives and direct federal assistance to stimulate research and development and to spur productivity.

Fourth: We will use legislation and executive authority to review and to prune regulations that waste capital and do not adequately promote valid regulatory objectives.

Fifth: We will use a tough, conservation-oriented energy program to curtail the rapid flow of American capital overseas to pay for imported oil.

Without these measures, we cannot hope to offset our economic decline. With them, we can produce a climate within which investment will be possible and attractive. It will then be the task of our managers and entrepreneurs to make use of the opportunities our policies will create. If they do—and we believe they will—our economy will once again generate a wealth of new jobs and rising real incomes.

Monetary and Fiscal Stability

We need to create a stable economic climate conducive to industrial development and the full employment of our human resources. Efforts in recent years to 'fine tune' the economy have served to accentuate, rather than moderate, cyclical economic swings. The resulting economic dislocation has damaged our productive capacity. The record jump in interest rates experienced this past spring brought the corporate bond market near collapse, forced thousands of small businesses into bankruptcy and pushed the consumer price index to a post-war high.

An Anderson administration will seek to avoid "stop and go" economic policies and will work to achieve a better balancing of monetary and fiscal policies: we should not rely upon a monetary tourniquet to stop the hemorrhage of inflation.

In ordinary times, federal expenditures should not exceed revenues. Thus, while declining tax revenues and increasing transfer payments can be expected to unbalance the budget during times of economic difficulty, the budget should be in balance, or in surplus, during times of economic expansion.

It should be understood that fiscal stringency requires an element of sacrifice on the part of all Americans. Fairness dictates, however, that no segment of our society should be asked to bear a disproportionate share of the burden. Moreover, all federal expenditures—whether for defense or nondefense related purposes—should be rigorously examined to determine whether they are cost-effective means of achieving national objectives.

Once balance in the federal budget has been achieved, the Anderson administration will propose legislation "indexing" the personal income tax brackets to prevent taxpayer incomes from being pushed into higher tax brackets by inflation. To the extent that further economies are made in federal spending, we will propose tax cuts that go beyond the tax relief afforded by indexing.

The Anderson administration, however, will not propose tax cuts that run counter to the goal of balancing federal revenues and expenditures. Proposals to cut personal income tax rates by one-third are fiscally irresponsible. A tax cut of that size would widen the deficit, increase government borrowing, hike interest rates, and accelerate inflationary expectations and underlying inflationary pressures. Rather than spurring new investments and savings, the plan would choke off recovery of the capital goods sector and lower the personal savings rate.

The goal of fiscal and monetary stability taken in the context of a fight against inflation will provide a climate of greater economic certainty in which investment decisions—large and small—can be made more rationally. Without such a climate of realizable expectations an investment oriented rational recovery program will be extremely difficult to implement.

The independence of the Federal Reserve, which has come under increasing attack in recent years, must be protected. While it is critically important for the Federal Reserve Board to observe its responsibility to report to the Congress and the President on the growth targets for the monetary aggregates, it is equally important that the Federal Reserve be free from undue political pressures. An Anderson Administration will respect the traditional independence of the Federal Reserve.

While mindful of the need for fiscal discipline and economic predictability, an Anderson Administration will oppose any new Constitutional limitation on the spending and taxing powers of Congress. Necessary budget reforms, including the typing of government spending to an appropriate percentage of GNP, should be enacted in the form of amendments to the Congressional Budget Act in a manner that will reserve to Congress and the President the power to adapt fiscal policies to changing circumstances.

America's Capital Needs

Sustained economic recovery requires an adequate pool of savings and capital. As individuals and as a nation, we need to save and invest more. Current Federal tax laws—and in some instances regulations—have served to foster debt and penalize thrift.

An Anderson Administration will commit itself to working with Congress toward the formulation of a comprehensive program designed to meet America's capital needs in the decade ahead.

The personal savings rate should be increased. Individuals needs to save, not only for retirement purposes, but also to guard against unforeseen financial troubles. Personal savings are also an important component of economic growth, providing the resources with which to finance new housing and capital expansion.

We must make it both possible and desirable for the average American to save again. Lowering the inflation rate will be a powerful stimulus to savings. The phasing out of interest rate restrictions on savings accounts, recently approved by Congress, will also be an important stimulant. More remains to be done, however, to remove the disincentives to savings and investment currently in our tax code. We propose the following initiatives:

Expanding the existing interest and dividend income exclusion (now $200 for individuals and $400 for married couples filing jointly) to $750 for individuals, $1500 for married couples filing jointly, by 1986;

Liberalizing the eligibility and income requirements for Individual Retirement Accounts, particularly for homemakers; and

Instituting a further review of capital gains tax treatment.

Our existing capital cost recovery system operates as a strong deterrent to capital expansion of plant and equipment. The historic cost method of calculating depreciation allowances vastly understates actual depreciation, effectively boosting business tax liabilities and discouraging the purchase of the capital equipment needed to improve worker productivity. Capital cost recovery problems are particularly acute for small businesses that do not take advantage of the liberalized depreciation allowances afforded by the asset depreciation range because of the complexity of the schedules.

We propose a comprehensive reform of the capital cost recovery system that would:

Establish a Simplified Cost Recovery System (SCR) for investments in capital equipment and machinery. Equipment should be assigned to one of four recovery accounts with recovery periods of 2, 4, 7 or 10 years depending upon its nature and normal useful life. Equipment and machinery can be depreciated an average of 40 percent faster than under existing law, and depreciation deductions should be computed by use of the "open-ended account" system currently in use in Canada.

Reduce the current useful life depreciation of structures to a standard twenty-year straight line depreciation with Section 1250 recapture provisions. The new depreciation guidelines would apply to all industrial and commercial structures and qualified low-income rental housing.

Provide a special 25 percent investment tax credit (in lieu of the existing 10 percent investment tax credit) for the rehabilitation of commercial and industrial structures.

Allow small businesses to expense (write-off in one year) the first $50,000 in annual expenditures for equipment and machinery.

The current state of the economy and of our most basic industries, including the auto and steel industries, requires the adoption of added capital cost recovery measures designed to insure that troubled companies and industries will not suffer from a competitive tax disadvantage in undertaking the necessary capital expansion and improvements in the forthcoming economic recovery.

The 10 percent investment tax credit, now permanent, allows businesses to offset the credit against 80 percent of tax liabilities in 1981 and 90 percent in 1982. Any part of the credit which cannot be applied against current tax year tax liability may be carried back three years and forward seven years. Restricting the credit to offsets against federal tax liabilities effectively denies the full benefit of the credit to businesses not currently showing a profit (and hence having no tax liabilities). This inequity can be resolved by making the investment tax credit refundable. While Congress has been understandably reluctant to approve the refundability of tax credits, the current state of many of our most basic industries and businesses requires a reevaluation of this policy as it relates to the investment tax credit.

To encourage unprofitable companies to modernize their plants and equipment, an Anderson Administration will propose amendments to the existing investment tax credit provisions to accelerate the time for applying the 90 percent limit based on tax liability and to provide for the prospective refundability of currently earned investment tax credits after the close of the year in which they are earned. To insure that Congress will have adequate opportunity to review and reconsider this measure, we propose to "sunset" the refundability provision three years after its enactment.

We believe that these measures will provide a strong stimulus to re-investment in America. An Anderson administration will, however, be prepared to go even further in the direction of investment-oriented incentives should that be necessary to complete the job of retooling our basic industries and to create a climate of rapid replacement for capital equipment so that our threatened firms can become internationally competitive once again.

Research and Development

Thirty years ago, three American scientists working for Bell Laboratories invented the transistor. As a technological breakthrough, it transformed communications, computing, education, entertainment and weaponry. In the early 1960's, scientists at Hughes Aircraft invented the laser, a breakthrough for which the full potential is still to be realized. Between 1950 and 1970, American scientists constructed the great accelerators which opened up vast new areas of human knowledge and technology.

These fundamental advances were the products of a nation that recognized the importance of scientific achievements and the role that science plays in our everyday lives. Total U.S. research and development spending as a percent of the gross national product, however, has fallen by nearly 50 percent in the past 15 years. We are in danger of losing our technological edge.

Declining technological growth has real consequences for all Americans. Technological improvements account for 40 to 70 percent of productivity growth. We all benefit from rising productivity in the form of increased purchasing power and higher real incomes. It is more than coincidence that our declining rate of productivity growth was preceded by an equally serious decline in our research and development effort.

To revive our flagging R&D effort, we propose a number of new initiatives and program improvements. An Anderson Administration will seek to:

Reverse the decline in the real dollar level of federal funding for research and development;

Provide a 10 percent investment tax credit for qualifying research and development expenditures;

Establish a federal program to re-equip the laboratories of our universities, our nonprofit research centers, and our government facilities;

Redefine the working relationship between government and universities so as to avoid the substitution of paperwork for genuine creativity;

Provide fixed objectives and more predictable project funding for scientists and engineers on the cutting edge of technology;

Establish regional technology centers under the aegis of the National Science Foundation and NASA to lower the costs of selling and licensing new technologies to private business;

Establish a more uniform patent policy for all federal agencies;

Require federal agencies to determine in an expeditious manner whether they will retain the patent on inventions developed by private contractors with federal monies;

Reorganize and increase the funding of the Patent and Trademark Office to improve its operations and handling of patent requests;

Explore the possibility of creating a separate patent court to reduce the time needed to establish the validity of a patent.

Regulation

Federal regulations are required to protect workers and consumers in such vital areas as health, safety, the environment, and maintenance of competition. Attempts to reform the regulatory process must recognize the contribution that appropriate regulations can make to a safer and more prosperous economy.

The pledge of the Carter Administration notwithstanding, the vast bulk of the federal regulatory machinery has not been properly streamlined and scrutinized. If we are to realize the widely-shared objective of reducing the estimated $100 billion in regulatory compliance costs, we must establish a comprehensive timetable for the review of the entire regulatory framework, instead of relying upon piecemeal review.

We will seek the passage of legislation that would:

Set forth an eight year timetable for thorough Congressional review of regulatory agencies;

Require the President by May 1st of the first session of each new Congress to submit a regulatory reform plan for each of the regulatory agencies scheduled for review in that Congress;

Require Congress to act on the regulatory reform plan by August 1st of the second session;

Provide "action-forcing" means of assuring Congressional action, including denying the affected agency the power to promulgate new rules and regulations until Congress has acted.

An Anderson Administration will be firmly committed to the growth and maintenance of competition in our modern economy. We support recent efforts toward deregulation of the transportation industry, and we will support thorough review of other federal laws affecting competition including our antitrust laws.

Energy

The availability and cost of energy have been among the most important structural factors in the American economy during the decade of the 1970's. Our increased dependence upon overseas oil has been responsible for a massive capital outflow. The rise in OPEC prices has fueled our inflation and precipitated two major recessions. Ownership of American industry, land, and structures is being transferred overseas to pay for our oil bill. It is not an overstatement to say that our ability to rebuild America will depend in large part upon our ability to reduce our dependence on foreign oil.

Six years have passed since the Arab oil embargo made energy a major issue in U.S. domestic and foreign policy. Despite his proclamation characterizing the energy problem as the "moral equivalent of war", President Carter has not succeeded in producing an effective comprehensive energy policy for the nation. The present situation is dangerous not only for the U.S. but also for world stability. It is time for us to move forward with consistent short-term and long-term policies designed to protect our economic vitality, security, and environmental health. This requires a new context for energy—a new way of viewing the energy opportunities before us, backed up by a set of policies to take advantage of those opportunities.

A healthy economy and a high standard of living for all citizens are not dependent on a given quantity of energy consumed but on maximizing the services or benefits derived from consumption. The goal of the Anderson energy program is to design policies aimed at providing individual and industrial consumers with all the heat, light, and mechanical power they require at the least cost. Our policies must encourage competition among various fuels and numerous technologies for using energy more efficiently.

To create an economic environment which enhances competition, energy supplies must be priced to reflect their real economic value. The incentive provided by correct energy pricing will hasten the transition away from scarce and expensive energy sources to economical renewable resources and more efficient ways of using finite supplies. Because these technologies have been at a competitive disadvantage in the past (due to price controls on oil and gas) they lack the capital investment needed to exploit their full potential. The Anderson energy program encourages economic investments in conservation technologies, new sources of oil and gas supplies, coal consumption technologies, and solar applications. In addition, policies are required to reduce our vulnerability to oil import disruptions and, for the longer term, to explore new technologies not now economical or fully developed.

While conservation is often thought of as simply doing without, conservation policies included in this program emphasize increasing the energy efficiency of housing, transportation, and industrial equipment that is needed to sustain our economy. Since the goods and services required by society can be produced by using various combinations of energy, capital, and labor, a least-cost strategy can be followed by encouraging technologies which require less energy to supply the same level of services. Application of economic conservation technologies to improve energy productivity now costs less than developing new energy supplies and so reduces the total cost of providing energy services to consumers.

These concerns are addressed by the programs covered in the following sections.

CONSERVATION POLICY

Energy conservation deserves the highest priority in U.S. energy planning because it is the least expensive way to provide energy services for homes, transportation, and industry. Conservation must be viewed as an additional option for providing energy benefits in the same way oil, gas, coal, and other technologies do. The energy services provided by conservation have distinct advantages over those provided by conventional fuels: they are cleaner, they are safe, they do not rely on foreign sources, and most important they are less costly.

A recent study by the National Academy of Sciences concluded that "throughout the economy, it is now a better investment to save a BTU than to produce an additional one". Conservation can be the most important method of providing the energy benefits we need over the next decade. The problem is that investments of major proportions are needed in conservation. Several studies indicate that $400–$500 billion in capital could be invested in retrofitting homes, improving auto efficiency, and increasing energy productivity in industry with economically attractive returns. Unfortunately, those sectors of the economy most in need of improved energy efficiency are also those least able to generate the necessary capital. We need to shift capital into energy-efficiency improvements, remove institutional barriers to such investments, and provide technical assistance and educational programs to motivate consumers to adopt energy-savings measures. To realize these goals, we should:

Pricing Reform

Firmly support continued decontrol of domestic oil and gas prices. Letting prices rise is the most efficient way to exploit our conservation potential. When consumers face the full economic value of the energy they use (prices which reflect more expensive domestic production costs, the insecurity of import dependence, and environmental risks) they will respond by substituting conservation technology to provide the energy services required.

Urge further reform of utility pricing to better reflect the varying costs of providing electricity service, thereby giving accurate cost signals to consumers. Since generating costs are higher during peak demand periods, consumption will shift to off-peak hours when power will be supplied by more efficient baseload equipment. The federal government should support local experiments around the country to demonstrate the cost effectiveness of this pricing strategy.

Residential/Commercial Buildings

Encourage utility companies to experiment with new ways to deliver and finance building retrofits. For example, interest-free loans could be offered to consumers for weatherproofing or solar water heating investments, with the costs of the program added into the rate base rate of the utility. The federal government should fund short-term demonstration programs to help utilities start up such programs and then disseminate the results to public utility commissions.

Develop a residential energy performance rating system to reflect the relative energy efficiency of a dwelling for a given geographic location and size. FHA and VA appraisers should include such an evaluation in their housing assessments. Preferential treatment for conservation investments should be built into federal lending practices by requiring lower down payments for mortgage loans on homes with high energy performance ratings.

Use local community action groups to educate consumers on energy conservation opportunities and their costs and benefits. Since effective conservation is the result of many individual decisions, we must establish informational and technical assistance programs directed to the individual consumer. Community block grant programs should expand funding for home audits, direct retrofit assistance, promotion of "life cycle" costing and other measures to help consumers make more economical choices and reduce their energy consumption.

Promote a strategy for retrofitting existing buildings to reduce energy costs and provide new employment. Financing is generally a more difficult problem for retrofits than for new construction, especially for inner-city multi-family rental dwellings. To remove such barriers, the Federal Government should substantially increase the investment tax credit for building rehabilitation. (See the program section on America's capital needs.)

Conservation in Transportation

Substantially increase the Federal tax on motor fuels and use the proceeds to lower payroll taxes and increase social security benefits. A 50 cent per gallon tax would achieve a reduction in gas consumption of as much as 700,000 barrels per day in the short-run and over one million barrels per day in the longer term. It would also generate over $50 billion per year in net revenues to be returned to consumers through offsetting tax relief.

Seek Congressional approval of an auto fuel economy standard of 40 miles per gallon by 1995. Enhanced fuel economy would save one million barrels per day over the level of consumption anticipated if the 1985 standard of 27.5 mpg is not raised. In addition, a special fuel economy minimum should be established for light trucks weighing 3 to 5 tons (a rapidly increasing share of the personal transportation market). By exempting these trucks from such standards, much of the conservation benefit of higher auto efficiency levels is being negated.

Enforce strict adherence to the 55-mile per hour speed limit on all major highways. It has been estimated by the Department of Transportation that this restriction on excessive speed cuts U.S. gasoline consumption by 3.4 billion gallons annually. Even more convincing, however, is that since its introduction in 1974, this law has saved 37,500 lives and prevented untold numbers of accidents on our roads.

Improve and expand mass transit to supplement the use of private vehicles. Short-haul public transportation designed to meet local commuter needs will reduce street congestion and air pollution as well as energy consumption. A much greater federal investment in a variety of public modes is required. (See the Community Transportation Program.)

Conservation in Industry

Promote industrial cogeneration by increasing DOE funding for demonstration projects and by providing technical assistance to industries and utilities. Because cogeneration is a highly efficient use of oil and gas, cogenerators should not be restricted in the use of these fuels by the Fuel Use Act and Windfall Profits Tax Act. Removal of these barriers would stimulate the operation of economic, decentralized systems to provide energy services.

Provide incentives to investment in energy productivity improvements including new conservation technologies. Adoption of accelerated depreciation allowances would stimulate general productivity increases as well as promote the purchase of energy-saving equipment. Also, consideration should be given to increasing the tax credits for industrial conservation measures, after careful evaluation of the response to existing incentives.

Conservation in Government

Set high energy efficiency standards in federal, state, and local government activities. Emphasizing conservation in the acquisition and operation of buildings and motor vehicle fleets demonstrates both the seriousness of our energy problems and the cost-effectiveness of our solutions.

Provide a market for energy-saving technology. The government should act as a proving ground for new conservation ideas directly through its procurement practices and should widely publicize those that are most successful.

Low-Income Energy Assistance

Continue federal financial aid to help pay residential energy costs incurred by the poor. Higher prices which result from oil and gas price decontrol will most adversely affect low-income families because they are most limited in what they can do to reduce their home heating bills and electricity demand.

Continue federally funded weatherization services to low income families, those least able to invest in energy-saving measures. The recent changes in the Weatherization Assistance Program to expand the labor component and improve the selection of qualified local agencies should help insure a more timely and efficient program.

Petroleum Policy

Federal petroleum policy must address two major problems. The first is the inability of the domestic resources base to supply the huge volumes of oil and gas required by the economy. Proved domestic reserves of these fuels declined by about 30 percent in the last decade because production levels far exceeded new discoveries. With each increase in demand, the balance of the nation's oil requirements was met by foreign imports. The second problem is the vulnerability created by a dependence on imports. Aside from the continuing problems of inflation and balance of payments deficits, the U.S. could suffer enormous economic damage if a sudden and severe disruption in supplies were to occur. Our oil dependence, particularly during periods of economic growth, contributes to instability in the world market by gradually reducing the market's flexibility which in turn leads to further large OPEC price increases. Both components of the problem have been aggravated by past policies that restricted the full development of domestic resources and subsidized greater imports.

The rate of decline in domestic reserves needs to be reduced by policies that encourage enhanced recovery from existing sources, increase—subject to environmental priorities—the amount of federal land and off-shore tracts available for exploration, and make greater use of previously marginal resources of oil shales, heavy oil deposits, gas trapped in tight sand formations, and similar unconventional deposits. Since these sources will not be adequate in themselves, it is also necessary to produce synthetic oil and gas using abundant coal reserves. Regulatory and pricing policies must be changed to discourage imports and promote competition among all sectors of the energy industry.

Problems caused by the extent of our dependence on foreign oil cannot be solved immediately, but our vulnerability can be reduced by the storage of a greater volume of emergency supplies and effective advance preparation to handle the effects of supply disruptions. It should also be recognized that major price increases might be reduced in the future by implementing supply and demand management programs well before world market conditions become dangerously strained. To make larger and more secure petroleum supplies available in the future, we should:

Developing New Supplies

Continue federal support for research and development programs on enhanced oil recovery from existing reserves, production from oil shale, tight sands, and heavy oil deposits.

Expand the off-shore tracts and federal land made available for petroleum exploration provided the best available and safest technology is used, cost effectiveness is demonstrated and environmental impacts are acceptable.

Diversify the sources of foreign supply by establishing a supply development function—an Agency for International Energy Development—within the International Energy Agency, by providing additional financial assistance to existing World Bank and Agency for International Development programs, and by increasing technical assistance to developing countries that are not currently net oil exporters.

Continue start-up funding for projects to develop synthetic gas and oil supplies using feedstocks. Support for production beyond present targets will depend on whether environmental problems are solved, whether technical feasibility is clearly demonstrated, and, most important, whether synthetics are more economic than other energy sources.

Increase federal support for efforts to define the availability and characteristics of new gas resources from geopressurized methane, devonian shales, and tight sand formations.

Restrict federal approval for new LNG projects until safety, siting, and security of supply issues have been resolved. This policy would not affect imports of gas by pipeline from either Mexico or Canada.

Contingency Planning

Complete and fill the Strategic Petroleum Reserve. At least one billion barrels should be in storage in order to provide significant protection from possible supply disruptions. A regional reserve for the Northeast, an area particularly dependent on imported oil, should be constructed.

Modify the current policy regarding use of oil in storage to permit withdrawal whenever world market conditions become overly rigid. In the past, accelerating demand for world oil supplies in the latter stages of the recovery cycle has strained the market to the point where a small disruption of supply causes disproportionately large increases in the world price. Use of the Strategic Petroleum Reserve to alleviate these conditions should require simultaneous economic measures to reduce overall demand.

Cooperate with other members of the International Energy Agency to arrange for mandatory restrictions on unusually large purchases in periods of tight supply. Often in the past, petroleum companies, anticipating a major OPEC price increase, have contributed to its magnitude by increasing inventories for short-term benefits.

Prepare several stand-by emergency conservation plans to promote fuel switching, electric power transfers, and reduced gasoline consumption in the event of an oil embargo.

Revise the present emergency rationing plan to reduce the length of time needed to put it into operation. A plan that takes longer than three months to be implemented has limited usefulness.

Pricing and Regulatory Policy

Continue the phasing out of price controls on oil and gas under the schedules provided in current legislation. The Windfall Profit Tax is necessary to meet national standards of equity.

Since the elimination of well head price controls will give all refiners comparable costs, end the Entitlement Program. Emergency allocation authorities should be retained for use in a major supply disruption.

Have the Energy Information Administration monitor transfer pricing practices by integrated petroleum companies to determine whether independent refiners are placed at an unfair competitive disadvantage by subsidies to the refining segment of integrated firms. Similarly, competitive conditions in the coal industry will be monitored to determine whether the use of profits from oil and gas operations give an excessive competitive advantage to the coal mining subsidies of oil companies in relation to independent coal companies.

Coal

This nation has the resources for coal to assume a much larger share of our energy supply mix. In conjunction with conservation, it offers an important alternative supply to reduce our dependence on imported oil. Coal also can serve to improve substantially our balance of payments through exports to other industrialized countries. Despite these opportunities, the demand for this fuel has not kept pace with the capability of coal industry miners and operators to produce it. Greater coal production and use will depend on resolving environmental and health problems and on rectifying constraints in coal transportation.

The combustion of coal is a major source of several major air pollutants. There is evidence that large quantities of sulfur oxides and nitrogen oxides emitted into the atmosphere from midwest power plants are contributing significantly to acid rainfall in New England and Canada. Such precipitation is believed to account for declines in certain species of fish and to have adversely affected crops and forests. In addition, there is growing speculation that large increases of carbon dioxide in the atmosphere will produce significant adverse changes in climate around the world. While carbon dioxide presents no direct threat to health or welfare at present levels, scientists are concerned that greater coal use will create a "greenhouse" effect, trapping heat that normally radiates away from the earth, thereby raising global temperatures.

Another environmental problem associated with coal is land degradation. Much of the expansion in output over the next few decades will require strip mining, a method of production which causes extensive land disruption and water problems if not properly controlled. Standards must be maintained to assure that land is returned to its original contour.

The expansion of coal output for both domestic and foreign markets is hindered by bottlenecks in our transportation system. Increased coal shipments, especially from Western states, would strain rail and port facilities. The ability of railroads to move coal on a timely and efficient basis requires increasing mainline trackage and supplying rolling stock. At East Coast ports, the capacity for storing and handling coal is inadequate, causing high demurrage charges.

To improve the competitiveness of coal while limiting adverse environmental impacts, we should:

Increase the Demand for Coal

Expedite the conversion of oil-fired electric power plants to coal beginning with the 80 plants targeted in the Senate oil backout bill. The government should provide financial assistance in the form of grants or loans to be repaid out of the fuel savings subsequently realized. All conversions must meet current air quality standards.

Encourage industrial use of coal by offering tax incentives to firms that convert from oil. The government has yet to implement regulations for the investment tax credit for coal-fired industrial boilers authorized in 1978.

Mitigate Environmental Impacts

Reduce acid rainfall by requiring electric power pools to use available plant capacity on a least emissions rather than least cost basis. Mandatory pre-combustion coal "washing" may also be a cost-effective way of curbing area-wide sulfur dioxide emissions.

Accelerate research and development of fluidized bed combustion and direct limestone injection processes to reduce air pollution. Adapting these technologies for new power plants offers a promising alternative to current expensive scrubber systems.

Increase funding to established independent agencies for research on the possible climatic effects of carbon dioxide emissions. Since the problem is a global one, parallel efforts need to be undertaken on an international level.

Support existing legislation to insure that states adequately regulate mining practices. Surface mining should not be allowed where land cannot be restored to the level of productive use which existed before strip mining.

Improve Coal Transportation

Facilitate the movement of coal to domestic markets by reducing railroad regulation while providing protection for "captive" coal shippers. Rates set by the ICC must compensate railroad companies for building, maintaining, and equipping an adequate transportation system.

Propose the establishment of a Coal Export Authority to review the need for expanded port facilities to accommodate coal for export and coastal movements. Where appropriate, this authority should undertake to aid in the funding of new coal terminals on both the East and West coasts. (See the Transportation Program.)

Reform the Regulatory Process

Improve the stability and predictability of environmental regulations and occupational health and safety standards. All rule-making should be conducted openly and policies should be consistent over time. It is possible to eliminate costly and unnecessary delays in the regulatory process while maintaining strict operating standards.

Resume the leasing of public land for coal production. Federal leasing policy should be designed to make low-cost coal available in efficient mining blocks, at a fair return to the public treasury, while insuring sound environmental practices.

Nuclear Power

Escalating problems with the cost and safety of nuclear power have raised serious questions regarding its role in America's energy future. The expansion of nuclear power, which presently accounts for 10 percent of the nation's electrical generating capacity, must be linked to the resolution of the nuclear waste and reactor safety problems, along with a reassessment of both the full costs of nuclear power and the anticipated demand for electrical generating capacity in the 1980's and 1990's. If the safety and nuclear waste questions cannot be satisfactorily resolved, we must halt the further expansion of nuclear power and phase out existing plants. If those questions can be satisfactorily answered, the future of nuclear power will be contingent on competitive cost factors, as well as the need for additional electrical generating capacity.

The Kemeny and Rogovin reports found major deficiencies in the management and practices of the Nuclear Regulatory Commission (NRC) and the industry itself. Both studies recommended substantial changes affecting the organization of the NRC, the operation and design of nuclear plants, evacuation plans, and the training of plant operating personnel. Prudence requires that we respond fully to their recommendations. The NRC should be barred from issuing new operating licenses unless the Commission certifies that the stringent safeguards adopted since Three Mile Island have been incorporated into the plant's design, operating procedures and emergency plans, and that all other safety issues pertinent to the plant and its design have been resolved.

We propose a moratorium on new construction permits, beyond those now being processed, until work has commenced on a permanent geologic disposal site. We have postponed the nuclear waste question for too long. If no suitable means of permanent disposal is available or technically feasible, then it would be irresponsible to put more nuclear power plants on the drawing board. If, on the other hand, a suitably safe means exists, we should begin a demonstration project at the earliest appropriate time.

While safe, permanent disposal of all high level radioactive and transuranic waste must be the principal responsibility of the federal government, all levels of government—including state, local, and tribal—must be allowed to participate in the entire decision-making process.

While every state must be responsible for the management and disposal of all civilian low-level nuclear wastes generated within its boundaries, disposal should proceed on an acceptable regional basis. Regionalization is favored by cost, transportation risk, geologic and other circumstances which make some states unsuitable as sites. We endorse the Task Force Report on Low Level Radioactive Waste Disposal of the National Governor's Association, which recommends that Congress authorize states to enter into compacts to select disposal sites.

Our commitment to nuclear power must be no greater than our commitment to the safety of nuclear reactors and the safe disposal of nuclear wastes. For twenty years now we have allowed our thirst for a cheap and reliable source of energy to outstrip the safeguards and other steps that should have accompanied the development of nuclear power.

It is important to remember that what happened at Three Mile Island was not merely a "loss of coolant"; there was also a "loss-of-confidence": public confidence. Just as a "loss-of-coolant" can lead to the shutdown of a nuclear reactor, so too can a "loss-of-confidence" lead to a shutdown of the entire nuclear industry. We must restore public confidence in nuclear power; but we must restore it by the force of our actions, rather than by the volume of our rhetoric.

In the meantime, we must begin in earnest to reduce our demand for electricity through conservation and enhanced energy efficiency, and to speed the development of renewable energy sources, and other alternatives to nuclear power.

Direct Solar Energy

Harnessing the sun's energy in active and passive solar applications should be one of our most important energy sources. However, the breakthrough required to have the potential offered by the various solar technologies realized has yet to occur in practice. In part, this has been due to the competitive advantage traditional fuels have enjoyed because of controlled prices and also because the federal program in solar energy has failed to offer sustained and adequate support for the most promising technologies. In the future, higher oil, gas, and electricity prices will sharply increase demand for the already cost-effective technologies and will provide necessary impetus for photovoltaic systems. The federal government, however, should undertake a much larger effort to promote research and development, improve consumer confidence in solar technologies, remove institutional barriers, and make a substantial commitment in solar energy for its own use. To attain the goal of meeting 20 percent of our energy needs from renewable resources by the year 2000, we should:

Develop uniform performance standards for active solar systems. This would significantly reduce consumer uncertainty about the prospective performance of solar devices by using standard performance criteria to facilitate comparisons between competing systems.

Encourage public utilities to establish special lending arrangements to help finance the purchase or lease of economical solar devices. Utility customers could then be supplied with a number of energy services at least cost.

Reduce the cost of photovoltaic systems by authorizing a larger federal procurement program. Significant federal purchases of these systems would encourage mass production by assuring manufacturers of an adequate intermediate market, lower unit production costs, and generate useful performance data. In addition, this program would serve as a training ground for building trades workers and increase consumer confidence in solar energy.

Focus federal research and development programs on identifying the basic reasons for the present high capital or operating costs of solar systems and on ways to reduce them. New construction materials and methods and energy storage devices should be explored seriously so that many options for using solar energy will be available.

Monitor the activities of the Solar Energy and Energy Conservation Bank to determine whether the $525 million authorized by Congress to subsidize solar energy for the next three years will be sufficient to maximize the long-term effectiveness of the program.

Other Energy Sources

In addition to the renewable and non-renewable energy resources discussed so far, significant contributions to meeting our energy needs can come from alternative energy sources. It is in our nation's best interests to make substantial investments in a wide range of promising technologies to determine which can provide energy services at least cost. Because our financial resources are limited, we must distinguish between those options which will deliver within the next twenty years and those which offer promise on a 30- to 50-year horizon. In the near term, there are several technologies, including wind and biomass energy systems, which require no major technical breakthroughs for their introduction. In the longer run, large quantities of energy from ocean power, geothermal resources, and nuclear fusion may be forthcoming, provided technical and economic hurdles can be overcome.

While greater reliance on these alternatives will occur eventually, critical decisions should be made now to speed the timing and reduce the costs of this transition. New incentives are needed to encourage more rapid implementation of these technologies beyond the demonstration stage. While current federal programs provide some experience in establishing financial incentives, development of a comprehensive and balanced approach to alternative energy commercialization remains a crucial problem.

Although many of the institutional and technical barriers to development have been resolved, incentives to invest in "new" energy sources have been limited in comparison with conventional sources of supply. This has been due, in part, to domestic price controls which maintain market prices below true replacement costs. By giving investors a false sense of the value of alternative source, the market has biased decisions away from more energy efficient, economical, and environmentally benign systems. A second barrier to full commercialization of alternative technologies is the high cost and limited availability of capital. Projects which are cost effective still have difficulty competing for financing in a tight capital market with high interest rates. Another difficulty is that private investors have been reluctant to commit funds to innovative projects where the returns are perceived to be uncertain. This has resulted in a cautious, wait-and-see attitude on the part of many potential users.

Recent federal actions to deal with some of these problems have included the passage of the Crude Oil Windfall Profits Tax Act and the Energy Security Act. To further stimulate the timely development and commercialization of alternative energy sources, we will:

Expand DOE funding for nonhardware activities. For small-scale decentralized systems, greater attention should be paid to increasing user awareness and acceptability, reducing utility interface problems, and developing competitive systems' manufacturing capability.

Direct DOE to demonstrate the reliability of wind energy equipment. Operating experience, power production and maintenance will instill consumer confidence by providing valuable information on machine designs and economics.

Emphasize smaller scale biomass conversion facilities to maximize its potential at least cost. Also, near term technologies, such as the production of methanol from wood, should be included in programs to commercialize biomass energy systems.

Prepare a comprehensive plan for the development of ocean thermal energy conversion (OTEC) in order to estimate its total cost and the federal involvement required to bring it to commercialization. DOE should complete a detailed resource assessment of the potential for OTEC to determine where it is likely to be the least-cost alternative.

Support accelerated funding of fusion energy research, contingent upon continued progress toward the demonstration of technical feasibility.

Targeted Measures

As we create a new climate that promotes economic stability, long-range planning, capital formation, investment, innovation, and risk-taking, we will lay a foundation for a resumption of steady growth, rising productivity, lowered inflation, and high employment.

In addition, however, we need specific initiatives to enable the various sectors of our economy to build on this foundation.

We need an industrial policy sensitive to the special problems of our basic industries.

We need to restore small business to its traditional role as a generator of new ideas and new jobs.

We need to ensure that our transportation system can meet the demands of an economy changing in light of changing energy usage practices.

We need to seek new solutions to the traditional problems of the farm economy.

We need to revitalize our space program, another important source of innovation.

We need to remove existing barriers to exports and to work aggressively to increase them.

We need to protect our trade and our currency through increased international economic cooperation.

Finally, we must preserve and extend the gains our working men and women have achieved in nearly a century of organization and struggle.

Industrial Policy

Once the Colossus of international trade and industry, America is now losing its ability to compete in the world marketplace. In 1968, U.S. manufacturing exports accounted for 24 percent of work exports. Last year, however, America's share of world manufactured exports was only 17 percent.

Our inability to compete in the world marketplace not only aggravates the balance of trade, it also erodes confidence in the dollar overseas, and leads to a loss of jobs and purchasing power here at home.

If we are to avoid yet another decade of economic stagnation, we must rebuild our declining industrial base. The rebuilding process must begin with a new industrial policy. By industrial policy, we mean the sum of government policies affecting industrial growth. Nothing less than a comprehensive review of those policies will do.

Industrial policy, however, should not be a subterfuge for the selective bailout of troubled companies or the artificial propping up of failing industries. Rather, our task is to promote a climate conducive to the recovery of troubled industries, the advancement of growing industries and the creation of new ones.

Neither should industrial policy be used as a vehicle for the elimination of necessary environmental and safety and health regulation. While regulatory objectives can sometimes be achieved by less burdensome and costly means of compliance, our environmental, safety, and health laws serve real public needs.

The principal focus of industrial policy must be on the five structural initiatives discussed above which we believe will spur industrial growth and innovation. Other important program initiatives include transportation and trade initiatives discussed below. There are, however, a number of other tasks that must be undertaken which are peculiar to the requirements of industry.

A decade of lagging research and development has led to a dangerous erosion of the competitiveness of some of our most basic industries, including the auto and steel industries. Many of those companies now lack the ability to attract the capital needed to finance the development of cost-saving innovations.

To assist in the recovery of established, but troubled, industries, an Industrial Development Administration should be established in the Department of Commerce. Like the existing Economic Development Administration (also in the Commerce Department), the Industrial Development Administration (IDA) should be authorized to give loan guarantees for selected projects. Unlike EDA, however, the new agency should be directed to assist in the financing of projects involving the development of new technologies and cost-saving techniques for industries as a whole.

IDA's assistance should be targeted at troubled industries; the agency should not be authorized to support projects in new or expanding industries.

It should encompass a cooperative government-industry program of directed basic research in automobile and steel technologies. IDA's support in this and other areas, however, should be limited to basic research and cost-saving production techniques.

Since IDA's limited objective is to assist in the remodernization of America's basic industries in the difficult decade ahead, authority to issue loan guarantees should expire December 31, 1989. On that date, IDA's financial obligations and responsibilities should be assumed by the Economic Development Administration or a related Commerce Department authority.

A commitment to the revitalization of American industry requires a White House staff structure that ensures proper attention to matters affecting the health of vital industries and the wellbeing of the American worker. To achieve this end, we propose to create, through legislative initiative, an Industrial Development Council modeled in part on the National Security Council.

The Council should be chaired by the President and have as members relevant Cabinet officers, other executive branch officials, and selected business and labor leaders. The Council should also have an adequate staff, headed by a Presidential advisor for Industrial Development to be appointed by the President, subject to Senate confirmation.

The Council should be charged with the responsibility of coordinating and reviewing those government policies which touch on industrial matters, fostering closer relations between leaders of management and labor, and encouraging American industry to adapt to the rapidly changing developments in international economics, technology, and consumer preferences.

Of particular importance is the need to open a closer dialogue between management, labor, and government leaders. When industries of major significance are in trouble, business, labor, and government all have a common interest in a remedy. The success of earlier labor-management committee experiments in the United States suggests these cooperative efforts should be conducted on a broader and more formal scale. The formation of a limited number of national, industry-wide labor-management committees should serve as useful adjuncts to the work of the proposed Industrial Development Council by providing a vehicle for direct input from the private sector.

The Auto Industry. The domestic auto industry is in trouble. Foreign imports in May of this year accounted for 28 percent of auto sales in this country. Domestic sales for May were 42 percent below last year's level, resulting in the lowest sales rate since the early 1960's. This summer, 250,000 auto workers have been on indefinite layoff and thousands more on temporary layoff.

While there has been a summer rebound, auto sales remain sluggish and the outlook clouded. Short-term prospects for the industry will be determined by the availability of consumer credit and the competitiveness and attractiveness of the newer, more fuel efficient models due to be marketed this fall and next spring. The longer term future of the industry will be determined by the resourcefulness of management, the cooperation of labor, the availability of capital and consumer credit, the level of import competition, and the tax and regulatory policies of the federal government.

The policies of an Anderson Administration will serve to assist the automotive industry's recovery:

Lower interest rates will enable more people to finance the purchase of automobiles.

The liberalized depreciation allowances will be specifically applicable to the special capital needs of the auto industry.

The refundability of the investment tax credit will serve to lower the effective costs of capital expansion and will be of special relevance to companies operating at a loss, as the auto industry now is.

The 10 percent investment tax credit for qualifying research and development will help spur innovation in an industry where demands for more fuel-efficient products are great and where product redesign is fundamental.

The Industrial Development Administration will help, through loan guarantees and other assistance, to establish a cooperative government-industry program of directed basic researh in automotive technology.

The Industrial Development Council, through its industry-wide labor management committees, will provide a vehicle for cooperation between industry, labor, and government to coordinate a concerted attack on industry problems.

Finally, an Anderson Administration will consult with foreign automotive producers in an effort to avoid arbitrary trade restrictions by persuading them to observe voluntary restraint during times of sharply slumping domestic sales.

The Steel Industry. Once the world's leading producer of steel, U.S. steel production recently fell into third place, behind both the Soviet Union and Japan. Steel shipments for 1980 are estimated at 80–88 million tons, compared to 100 million tons in 1979.

While U.S. steel shipments can be expected to rebound as the economy recovers from the 1980 recession, the steel industry faces serious long-term difficulties. A recent Office of Technology Assessment report concluded that "continued low profitability and some Federal Government policies, such as long depreciation time for new facilities, will cause the domestic steel industry to contract substantially."

From the standpoint of jobs and national security we must make every reasonable effort to revive the steel industry. OTA's report concluded that the "U.S. steel industry can be revitalized through increased investment in research and development (R&D) and the adoption of new technology." It is anticipated, however, that steelmakers will have to expand their capital spending by 50 percent (to approximately $3 billion per year) in order to make the necessary modernizations in plant and equipment.

The policies of the Anderson Administration will help rescue the steel industry as long as that industry is willing to make a commitment to its own future. The structural initiatives set forth above will be important factors in the steel industry's recovery—especially the liberalized depreciation allowances, the refundability of the investment tax credit, and the R&D investment tax credit. The institutional initiatives of the IDA and the IDC will also play important roles. Efforts to revive the auto industry will, quite rationally, also assist the steel industry. Furthermore, the heavy emphasis on capital expenditures for industry, as set forth above, and for basic urban and transportation needs, as set forth below, will provide a strong and predictable domestic market for steel manufacturers during the decade.

As with autos, an Anderson Administration will consult with foreign steel producers in an effort to avoid arbitrary trade restrictions by persuading them to observe voluntary restraint during times of sharply slumping domestic sales.

Small Business

The strength and vitality of the American economy is dependent on the health and competitiveness of small businesses. Twelve million small businesses today account for nearly one-half of the gross national product and employ more than one-half of the work force.

Small businesses make up the cutting edge of our economy. They are responsible for a majority of the nation's technological innovations and create over 80 percent of all new jobs.

Despite their economic importance, short-sighted government policies have over-regulated and over-taxed small businesses. Between 1960 and 1976, the share of total corporate after-tax profits earned by small and medium-sized companies fell from 41 percent to 27 percent.

To reduce the excessive taxation of small business enterprises, we propose to:

Allow small businesses to elect to write-off in the the first year the first $50,000 in investments in equipment and machinery each year, as described above.

Provide simplified and liberalized depreciation allowances for capital equipment and structures.

Provide an investment tax credit for qualifying research and development expenditures;

Defer capital gains tax on the sale of a small business if the proceeds are reinvested in another qualified small business within six months;

Expand the eligibility for Subchapter S status by expanding the maximum number of allowable investors;

Initiate a further review of capital gains treatment; and

Reduce corporate tax rates by two percentage points across-the-board by 1986.

The regulatory problems affecting small business deserve special consideration. Small businesses are often less suited or equipped to deal with federal regulatory requirements. Legislation should be enacted that would require federal regulatory agencies to consider the feasibility of enacting less burdensome regulatory requirements for small businesses, providing the new regulations do not jeopardize important safety and health objectives.

Transportation Policy

In a national program to rebuild our industrial base, save energy, and meet special requirements such as the export of coal and wheat, the quality of our transportation network assumes a fundamental importance.

Much of America's transportation infrastructure was designed at a time of declining fuel prices. That infrastructure must now be adapted to meet the nation's needs during a time of growing energy scarcity and rising prices. In transportation, as in other areas of the economy, there are unmet capital needs. Many of the nation's railbeds are in a state of serious disrepair. Highway maintenance costs are escalating. Our port facilities must be upgraded to meet rising and changing demands. Our traffic control systems need to be updated. We ignore these problems at our peril.

Rail Policy. For ninety years, the railroad industry has taken signals from government rather than from a free market. The government has used the railroad industry to promote economic and social goals, often forcing shippers on profitable, heavily travelled routes to cross-subsidize shippers on less remunerative lines. Competition from other modes superimposed on this regulatory regime has fashioned a financially troubled industry. Not only has the railroad industry been unable to provide shippers with quality service at reasonable rates, it has also failed to exploit the fuel efficiency advantages it enjoys over the trucking industry.

We must revitalize our nation's rail system. Railroads must be freed from the anachronistic regulation which now encumbers many aspects of the industry. Government must shift its focus from preserving unprofitable portions of the system to preservation of the system itself. An Anderson Administration will:

Give railroads more flexibility to determine their pricing and operating policies. In many parts of the country, however, shippers of bulk commodities over long distances remain captive to rail carriage. For reasons of both equity, and in the case of coal, national security, an Anderson Administration will guarantee rate protection to such shippers.

Abolish procedures that allow railroads collectively to set general rates. We applaud the recent ICC decision to withdraw antitrust immunity from rate bureaus setting general rates.

Continue those provisions of the 4–R Act that provide matching funds to States for the purchase of abandoned lines to ease the impact of abandonments on State and local economies.

Make the investment tax credit refundable to provide additional investment incentives, particularly for railbed investment. This proposal will be helpful to the weaker, marginally-profitable and unprofitable roads in their efforts to maintain and modernize.

Encourage the future formation of several long-haul rail lines to maximize the efficiency of uninterrupted rail movement.

Support Conrail at least until the United States Rail Association, Conrail's oversight body, completes its study and makes its recommendations to Congress this coming December.

Continue financial support for Amtrak. Amtrak should be provided with the funds necesary to meet its operating costs and to aid in roadbed improvements. Emphasis must be placed on rapid line corridor service through such programs as the Northeast Corridor Improvement Program.

Port Policy. In the 1980's America must stop exporting its dollars and start exporting its industrial produce. Our ports handle more than 95% of the tonnage moving in U.S. overseas foreign trade. Foreign trade currently accounts for 20 percent of our nation's GNP. That figure will grow throughout the decade, and with it will grow the demands placed upon our ports. We must take action to ensure that our ports will be able to bear the responsibilities placed upon them.

Oil price increases have opened up prospects for dramatic increases in U.S. coal exports. These exports could engineer a major turnaround in this nation's balance of payments Yet a number of obstacles could delay or prevent the growth of this valuable trade. Harbor channels must be dredged to accommodate the deep-drafted vessels necessary to transport coal shipments economically. Processing time for dredging permits must be shortened and delays by environmental agencies and the Army Corps of Engineers minimized. The environmental problems raised by port expansion must be solved, including the development of an adequate method for the disposal of contaminated spoil.

An Anderson Administration will establish a Coal Export Authority within the Department of Commerce to accelerate the revitalization of our nation's ports. The Authority will:

Explore the need for expanded and improved port facilities to accommodate coal for export and coastal movements.

Aid, where appropriate, in the funding of coal terminals on both the East and West coasts.

Reduce processing time for dredging permits. Specific criteria would be established for approving time extensions, highlighting the Corps' and the federal agencies' performance in meeting time frames through periodic reports, and more clearly delineating specific areas of review for each agency.

Urgently work toward solving the problem of disposal of contaminated spoil from dredging operations. This will also reduce delays caused by the three environmental agencies.

Highway Rehabilitation. In 1956, President Eisenhower launched the most successful transportation program in the nation's history—the Interstate Highway Program. Today, however, the highways are deteriorating at an alarming rate.

The Highway Trust Fund was established by Congress to provide a stable source of revenue to finance construction of the Interstate system. It provides the funds necessary for much of the rehabilitation work on both Interstate and non-Interstate roads as well as for the costs of new construction. But over the past two years expenditures have exceeded revenues. Revenues coming into the Trust Fund have declined while the costs of completion of the Interstate system and rehabilitation of federal-aid highways have skyrocketed. If conditions remain unchanged, the current Trust Fund balance of $12.6 billion could be depleted in a matter of years.

We must make a strong commitment to maintain our nation's highways. An Anderson Administration will:

Complete the few segments of our Interstate system which are deemed necessary in an energy-conscious and environmental conscious era.

Rehabilitate those federal highways which have deteriorated to the point of eroding their serviceability.

Make a strong commitment to increasing revenues for the Highway Trust Fund, recognizing that the fund may face lower revenues as fuel costs rise. We will review the federal highway program's revenue policy in order to develop additional sources adequate to meet the nation's highway needs. This will probably mean increased taxes no later than the mid 1980's.

Aviation Safety. Throughout its history the aviation industry has maintained a commendable safety record. But that record could be jeopardized without the implementation of major improvements. Outdated air traffic control equipment, and a steady increase in the number of flights, has endangered scores of passengers in recent months.

An Anderson Administration will recognize the need to revamp existing procedures and equipment to permit safe air travel by our nation's air commuters. Our proposals are not large budget items but will contribute significantly to aviation safety. Specifically, an Anderson Administration will recommend:

Replacement or upgrading of outdated traffic control equipment.

Installation of effective new control systems at airports of all sizes. New systems at small airports will allow small aircraft to land in bad weather, reducing congestion at the larger airports handling commercial aircraft.

Improvements, where necessary, in the certification, inspection and maintenance procedures utilized by the Federal Aviation Administration.

Study of the feasibility of improving the post-crash safety of planes. Prevention of the fires and noxious fumes which cause the majority of air crash fatalities would be addressed.

Redesign of regulations to improve the safety and licensing requirements of commuter airlines and private planes. Most aviation fatalities occur as a result of accidents involving these types of aircraft.

Agriculture

Agriculture is America's most basic industry. The American farmer, however, is in trouble. Net farm income in the second quarter of this year fell by an estimated 40 percent over the prior year's level. Squeezed by low grain and livestock prices, high interest rates, and escalating farm production costs, net farm income for all of 1980 is projected to fall an estimated 29 percent below last year's level.

For farmers in many parts of this country, the news has turned from bad to worse. A severe drought has crippled farm production in several important agricultural states, resulting in both higher prices for consumers and financial hardship or ruin for many farmers.

Agricultural policy in the 1980's must restore the fundamental strength of American agriculture. To achieve that goal, we must expand farm exports, assure adequate farm prices, restrain rising farm production costs, strengthen the family farm, provide ample farm credit, preserve agricultural land, and stabilize farm incomes.

Farm exports

Agricultural products are the mainstay of U.S. exports. Farm exports this year will total an estimated $40 billion. World trade in farm commodities is heavily encumbered by import restrictions and other barriers to fair competition.

An Anderson Administration will work to liberalize world trade and expand U.S. exports. We propose to:

Negotiate aggressively to reduce protectionist barriers overseas and to increase farm exports;

Provide for the maintenance of realistic inventories of basic farm commodities, principally in farmer-held reserves, sufficient to insure adequate and secure supplies at reasonably stable prices in the event of production shortfalls;

Expand export markets for American food products through continued support of economic development programs in the developing countries and to develop longer-range patterns of bilateral trade with those nations; and

Provide generous relief programs for the emergency feeding of refugees and the victims of famine or natural disaster.

Farm prices

The collapse of farm incomes this year points to a continuing need to maintain adequate farm prices. Neither consumers nor producers are well served by the boom and bust cycle of farm prices. It is in the best interests of both parties to maintain full and ample farm production at fair and stable prices.

Many government actions have powerful effects upon the prices American farmers receive, some actions by limiting commodity price decreases and others by restricting price increases contrary to actual supply and demand conditions. Such actions have been taken during recent years without any recognized test of whether the resulting prices are fair. Both the recent Republican and Democratic Administrations have repudiated the parity formula established by law for that purpose. Government action which interferes with market forces in the establishment of commodity prices should be reduced to a minimum, but when it becomes necessary, the government should insure that the price consequences of its action will be fair. The current restriction on sales of grain to the Soviet Union is a case in point.

The Anderson Administration will re-examine the parity formula and other proposals for measuring the equitability of farm commodity prices. Such a review should call for the views of both farmers and consumers in an effort to determine fair and equitable returns for farmers.

We propose also to improve and administer farm price supports and other commodity programs so as to make them less cumbersome and their effects more predictable and stable.

Recent drought conditions have dramatized the continuing need to expand the eligibility of coverage of federal crop insurance programs to better protect farmers from the financial devastation of drought and other natural disasters, while also providing adequate emergency farm credit.

We also reaffirm our support for the Capper-Volstead Act, the basic charter under which agricultural producers are empowered to organize for group action in pricing and marketing their products.

Farm costs

Net farm incomes in recent years have been sharply affected by the rising costs of fuel, petroleum-based fertilizers and pesticides, transportation, and farm equipment. Restraining those costs and lowering interest rates can further boost America's already high agricultural productivity and raise net farm incomes.

We propose to:

Reduce the cost of energy for farmers by encouraging efficient programs to convert farm and forestry products into alcohol and other forms of energy and promoting and facilitating increased use of solar, wind, and water energy resources;

Continue efforts to free farmers from excessive federal regulation by requiring federal regulators to assess the special impacts of their rule-making on small businesses;

Assure consideration in rail deregulation legislation of the needs of captive rail shippers for access to their markets and distribution systems at reasonable costs;

Insure priority allocation of fuel for agricultural use in the event of supply shortages;

Insure farmers fair and adequate access to farm credit; and

Reduce farm costs overall by instituting sound federal fiscal policies designed to reduce government borrowing, lower interest rates, and curb inflation.

The family farm

The real strength of American agriculture is the family farm. If we are to preserve this institution, however, we must adopt new measures designed to insure the continuity of family farm ownership and eliminate those aspects of current law that discriminate against the family farmer.

An Anderson administration will:

Support further reform of estate and inheritance tax policies to permit opportunities for successor generations to assume ownership and management of farm enterprises without incurring crippling tax burdens;

Insure smaller farmers fair and equal access to federal credit programs;

Expand current, long-term low-equity financing programs to better enable young farm families to begin full-time farming enterprises while guarding against abuse of the program by speculators;

Recognizing the vital role of women in the farm enterprise and work to repeal the application of the estate tax to the transfer of family farms between spouses—the so-called "widows tax"; and

Reform the tax laws to discourage the purchase of farm land for tax loss farming purposes.

Farm and rural women

The Anderson administration will strive to gain legal recognition for the role of farm and rural women as full partners with their husbands or brothers, sons or daughters. Farm women contribute their time, their labor and in many instances their money to the farming enterprise. They work in the fields and barns, they keep farm accounts and they participate in making farm business decisions.

Yet, today, because of high inflation and declining farm income, many farm and rural women find they cannot participate as they choose. Low farm returns force many to seek additional employment and another income off their farms, frequently to the detriment of their health and emotional well being. We will support programs that assure recognition of their contributions to the farming enterprise and a sound economic policy that will allow farmers to maintain a decent standard of living for their families.

Agricultural lands

The U.S. loses an estimated 20,000 acres of its best farmland each week to other uses. Much of it is irretrievably lost due to the enormous costs of reclamation. Preliminary statistics compiled by the National Agricultural Lands Study, now being conducted by the U.S. Department of Agriculture and the Council on Environmental Quality, suggests that the nation may lose as much as 22.4 million acres (7 percent) of its prime farmland by the year 2000. An Anderson administration will encourage state and local units of government to develop programs to protect vital agricultural lands and seek to bring federal actions into better conformity with state and local plans for agricultural land use.

Soil and water conservation

Conservation of our increasingly valuable soil and water resources is vital to America's future and to its future generations. America grew up on its farms. However, the pressures of rising population, economic growth and world food requirements have subjected these resources to steadily intensified competition and conflict among potential users.

Almost one-third of our total harvested acreage—109 million acres of cropland—is being subjected to erosion each year at a rate the USDA deems to be over "permissible erosion rates." If this continues, it would eventually destroy these lands' utility as cropland.

We must institute a closer, on-going review of soil and water depletion rates, while seeking to increase the delivery of technical and educational services. At the same time, however, we must recognize the very difficult decisions that will have to be made in these areas.

There are no easy solutions to the growing erosion, salinization and water scarcity problems. The Anderson administration will seek to frame these choices in the frankest manner possible and strive for an equitable resolution of conflicting needs and claims.

Agricultural policy and consumers

Although the food distribution process begins on the farm, food often goes through a complex chain of distributors before it reaches the consumer. This process adds two-thirds or more to the consumer's food bill. It is in the processing, distribution and advertising costs of food that the greatest potential for economics exists.

An Anderson administration will shift the federal government's research efforts on food processing and marketing towards reducing non-farm-added costs of food. Review should include new food forms and more efficient marketing practices and systems.

We also pledge to support and strengthen the food assistance programs, including the food stamp and school lunch programs, to better meet the nutritional needs of the truly needy.

The U.S. space program

Since its inception over twenty years ago, the U.S. space program has yielded an impressive array of technological and economic benefits. But after achieving the Kennedy Administration's goal of putting a man on the moon by the 1970's, America's space effort has faltered. While the U.S. has made impressive strides with the development of the space shuttle, the overall level of dollar commitment has declined in real terms.

We believe an invigorated space program can play an important role in raising productivity and revitalizing our economy since the space program funds basic research in a wide range of fields such as photography, communications, metallurgy, life-support systems, and many other areas of science and engineering.

An expanded space program based generally on NASA's current five-year plan should be established. The objectives of that plan should be:

To fill the transportation and orbital needs of space misssions in an economical and effective manner.

To improve our ability to apply space technology in areas that promise immediate or potential benefits to humanity, including remote sensing, communication and materials processing;

To improve our ability to acquire, transmit, and process data;

To increase our knowledge about the history of the cosmos and expand our understanding of the evolutionary process involved; and

To advance our fundamental knowledge of how energy is transported from the sun and through the intergalactic medium and what effects that energy has on Earth's environment.

NASA's current five-year plan does not include funding for several vital programs needed for the development of space science, technology, and industrialization. Many of these programs, included in earlier plans and cut from the current proposal by the Carter Administration, should be reinstated. They include:

An intensified effort to achieve routine operational use of the Space Shuttle, with improvements in lift and on-board power capabilities, that will enable it to realize its full potential.

Establishment of an operational Landsat-type system for Earth resources surveys, as repeatedly urged on a bipartisan basis in Congress, in lieu of the hesitant, half-hearted motions of the Carter Administration in this direction.

Proper support of a long-term program to explore the solar system with unmanned space probes, avoiding the costly starts and stops we have experienced under the Carter Administration. The Galileo mission to Jupiter, the Venus Orbiting Imaging Radar and Halley's Comet Flyby missions are important steps in this program.

Full support for scientific study of the universe through completion and operation of the large optical space telescope and other specialized scientific satellites.

Eventual establishment of a permanent U.S. presence in space through planning and design of a general purpose orbiting space station to work with and be serviced by the space shuttle, thereby regaining the economically important lead in space research which the Soviet Union now enjoys as a result of its ongoing space operations.

Continuation and amplification of satellite power system evaluation (including the possible manufacture from nonterrestrial materials) in order to determine the practical desirability of collecting solar energy in space and safely transmitting it to Earth.

Active research on large space structures, expanded space power generation, and the other technological advances needed to form a sound basic for developing a substantial national space industrialization capability within the foreseeable future.

Export promotion

A nation once famed for its "Yankee traders" now finds itself out-traded and outmaneuvered in the world market place. If

America is to prosper domestically, it must compete more effectively.

A nation, such as ours, which pays nearly $100 billion a year for foreign oil must export aggressively if it is to survive the decade ahead with its economy and currency intact. Viewed in that light, our export policy must be immediately invigorated. The policy of "benign neglect" that has characterized export administration in recent years cannot continue.

We propose a revitalized export promotion program, including the following new initiatives:

Expanded, competitive U.S. Export-Import Bank financing of U.S. exports;

Reduced taxation of American nationals living abroad and engaging in export activities;

Provision for duty-free entry of machinery and materials for use in export manufacture in foreign trade zones;

Amendments to the Webb-Pomerene law to permit business associations engaged in export activities to obtain pre-clearance anti-trust immunity for certified activities;

Measures designed to encourage the formation of export trading companies to assist small and medium sized firms in entering export markets;

Amendments to the Commodity Credit Corporation Charter Act creating an Agricultural Export Credit Revolving Fund to assure adequate financing of agriculture exports; and

Renewed efforts at obtaining international agreement on foreign business practices.

International economic relations

The present weakness of the U.S. economy reflects not only our own lack of capital investment and productivity improvements in recent years but also the larger fragility of the international economy due to the massive shifts of wealth from the oil-consuming nations to the oil-producing nations. It is anticipated that the current accounts surplus of the OPEC nations will reach $131 billion this year—a 15-fold increase over the 1978 surplus of $8.8 billion. By year's end, it is also expected that the industrialized countries will show an aggregate current account deficit of $49 billion, as compared to a 1978 surplus of $131 billion.

As severe as the oil-price pressures are to the industrialized West, they are even more severe for the non-oil exporting developing countries. Their deficit in 1980 is expected to reach nearly $70 billion, as compared to a $37.5 billion deficit in 1978. The combined debts of these countries has increased from $70 billion at the end of 1970 to approximately $300 billion by the end of 1979.

The continuing imbalance in world trade will put an enormous strain on world financial markets and test the limits of our international monetary system. Now more than ever, there is a need for closer international consultation and cooperation on international trade and monetary affairs. We cannot permit our shared problems to rupture either international trade or the international monetary order.

To meet the recurring challenges to international economic stability, we pledge:

Continued cooperation with our allies in attempting to achieve the energy conservation and production targets set forth in the recent Venice Summit Agreement;

Closer cooperation among our trading partners in an effort to reduce through common agreement the frictions which, if left unattended, could lead to arbitrary trade restrictions and a resulting trade war;

More effective and timely coordination of economic and financial policy among the leading industrialized nations, including the full use of facilities provided by the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD);

Continued efforts to enhance the effectiveness of IMF exchange rate surveillance;

Expanded financial and technical assistance to non-OPEC developing countries in their efforts to explore and market new energy sources; and

Renewed efforts to establish a new stable monetary order through further refinement and extension of the Special Drawing Rights, rather than reverting to an anachronistic and rigid gold standard as proposed by the Reagan platform.

Working men and women

An Anderson Administration will strive to improve the purchasing power of American workers, safeguard their working conditions, and protect their bargaining rights. In working toward these goals, we pledge to consult on a regular basis with the interested party—the working man and woman of America.

Within the last year, the purchasing power of the average urban worker has declined by over 7 percent. This is the record by which the Carter Administration's labor policy must be judged; and, by any reasoned interpretation, it must be adjudged a failure.

The policies of the past four years have not served to reduce unemployment at the expense of purchasing power. They have served to aggravate both joblessness and inflation. Unemployment today is higher than when President Carter took office. The average American worker today is neither more secure in his job nor richer in his pay than when the President took office.

The collective bargaining rights of the American worker must be protected. We find unacceptable the willingness of certain employers to bear the cost of defying sanctions for unfair labor practices. The administration and enforcement of our labor laws must be strengthened through selective improvements in the National Labor Relations Act.

An Anderson Administration will support measures designed to expedite the National Labor Relations Board hearing process, adequately compensate those who are illegally dismissed by their employer for union-organizing activities, and give the Secretary of Labor discretionary authority to withhold federal contracts from employers guilty of flagrant or repeated labor law violations.

We reaffirm our support for a fair and equitable federal minimum wage. The minimum wage should bear a consistent and reasonable relation to the average manufacturing wage. Congress should exercise proper oversight of the federal minimum wage laws by periodically reviewing both the level and scope of minimum wage protection.

Upon proper review and evaluation, an Anderson Administration will submit legislation in the first session of the 97th Congress to ensure a fair and adequate minimum wage for 1982 and beyond. We will oppose, however, efforts to "index" the minimum wage to an arbitrary wage or price formula. The minimum wage should be subject to normal and periodic review by Congress.

The health and safety of working men and women deserve the highest measure of protection. We reaffirm our longstanding support for the full and effective enforcement of the Occupational Safety and Health Act of 1970. The right of every American to a safe and healthful workplace should be safeguarded by a fully funded Occupational Safety and Health Administration (OSHA).

We pledge to oppose legislation, currently before the Congress, which would effectively exempt 90 percent of all workplaces from safety inspections, including inspections triggered by employee complaints of hazardous working conditions. The proposed legislation would put undue reliance upon "voluntary compliance", jeopardizing the lives of thousands of American workers. The proper role of OSHA is accident prevention, not after-the-fact accident investigation.

In addition to fair wages and improved working conditions, our working men and women want meaningful work. They have unique knowledge of what lowers the quality and raises the cost of what they make, and they have important views on how the workplace can be organized more sensibly and humanely. Workers in many of the world's healthiest economies have won the right to cooperate with their companies to help determine the structure of production. An Anderson Administration will seek to encourage this development in the United States in a prudent manner consistent with our own traditions.

Workers on indefinite layoffs in distressed industries such as the automobile, steel, and shipbuilding industries require special assistance. We support an extension of job-retraining and relocation assistance for displaced workers and Economic Development Administration assistance to distressed communities. We support on a pilot-project basis the adoption of work-sharing programs designed to minimize plant-layoffs through voluntary work-sharing agreements supported by modified unemployment compensation benefits for those working shortened hours.

We shall oppose efforts to repeal the Davis-Bacon Act of 1931. Workers on federal projects should be paid the prevailing wage of the community in which the construction takes place. We reserve judgment, however, on the advisability of extending prevailing wage protections into new areas.

III. MEETING HUMAN NEEDS

Introduction

A dynamic and growing economy is the necessary condition of social progress, of domestic harmony and equity, and of military strength and national security. And only such an economy can allow all its citizens the basic freedom to choose and to pursue their own occupations. But economic health is not an end in itself. The worth of every society is determined by what its members do—as individuals and as citizens—with the wealth they create.

We believe that a modern society must accept its responsibility to provide for basic human needs, in three ways.

First, it must act to furnish all its citizens with those public goods that cannot be attained through individual effort, but only through cooperative endeavors. It must, therefore, care for its cities, its transportation, and its community environment.

Second, a modern society must accept responsibility for those who cannot support themselves. It must provide sustenance for those who are unable to work, income for those who have reached the age of retirement from the workforce, and medical care and other services for those who cannot afford them without assistance.

Third, a modern society must create an environment within which human beings can strive to fulfill their own needs. It must encourage, not discourage, family life through tax policies and child care. It must enable its citizens to develop their abilities through systems of education and training, and through a wide variety of cultural experiences. And it must enable them to apply their abilities to their own betterment and that of their community, in productive and satisfying occupations. And it must protect the large environment in which we all must live.

An Anderson Administration will accept these three responsibilities. It will not seek to return this nation to the 1920's, as the Republicans dream of doing, but neither will it simply repeat the programs and ideas of the past, as the Democrats do. Rather, it will propose new means to attain the ends on which the overwhelming majority of Americans are in agreement: means that are as efficient, as equitable, and as humane as our ingenuity can devise.

The Future of America's Cities

General background

In the century after the Civil War, the United States underwent an economic expansion without precedent in world history. In the course of this great transformation, the United States, predominantly rural in 1865, became an urban nation. Once primarily service and trade centers, our cities became manufacturing centers as well. Massive urban capital investments were made—not only in factories but also in housing, roads, bridges, public transportation, sewers, and water systems. Population steadily shifted from farms to cities as urban employment opportunities expanded and the efficiency of the agricultural sector increased. This human tide was swollen by European immigrants and by Southern blacks.

After the Second World War, many older cities—particularly in the Northeast and Midwest—entered a period of economic decline. The proliferation of the automobile, coupled with the construction of our highway system, made it possible for members of the middle class to leave the central city for the suburbs. This trend was encouraged by the FHA, which directed capital toward single-family suburban housing construction. The newly burgeoning economies of the South and Southwest began to attract capital, skilled workers, corporate headquarters, and government contracts. Simultaneously, older cities received large numbers of new residents, from the South and from abroad, with below-average income, skill, and education but above-average requirements for public services. The net outflow of population these cities experienced slowed the growth of property values and promoted blight and crime in many neighborhoods.

These developments have had a marked effect on the composition of the inner cities. Between 1970 and 1977, the population of major American cities dropped by 4.6 percent, compared with a growth in suburban population of 12.0 percent and 10.7 percent in nonmetropolitan areas. The change has been even more pronounced in the cities of the northeast and midwest as population has shifted from those regions to the south and west.

Of the total population below the government's poverty level, 38 percent were living in the major cities by 1977, compared with 34 percent in 1970. In contrast, the proportion of the poor living outside the metropolitan areas fell during the same period from 44 percent to 39 percent.

Racial and ethnic population statistics are equally dramatic and disturbing. Fifty-five percent of the nation's black population now live in the large cities, compared to 25 percent of white Americans. Growing proportions of urban residents today belong to Hispanic or female-headed households. These three groups—Blacks, Hispanics, female-headed households—suffer from severe deprivation in housing, jobs, and income.

A recently released major study demonstrates that, despite the massive government assistance cities have received in the past two decades, the older, distressed cities of our nation are in worse shape than they were in 1960. Clearly the old policy of putting cities on welfare has not dealt successfully with their real problems.

We must do better. But we must not fall into the trap of seeking a new grand design or of attempting to devise a new set of policies while ignoring what we now have. The Carter Administration has tried to do this, and it has only made matters worse.

We should not fear to innovate. But we must also be concerned with the sound administration of existing programs. Regulations must be simplified, and better linkages established among related programs. Programs that work must be identified and expanded, while those that do not should be terminated or reoriented.

Federal urban policy should be guided by appropriate general principles.

We should strive for a suitable balance between federal and local initiatives, recognizing that neither centralization nor decentralization will succeed in all circumstances. Tasks, the equitable and efficient performance of which require national coordination should be handled at the federal level, while others are the proper function of states and localities.

We must recognize that there is no major urban problem that the federal government can solve solely through its own efforts. Federal initiatives should seek to mobilize local resources and to involve the private sector. Federal policy should try to substitute incentives for regulations and prohibitions whenever possible. The federal government should aim to create a climate within which individual initiative is encouraged and rewarded.

Some problems are best dealt with through sharply focused categorical programs. In general, however, the federal government should employ block grants to consolidate related programs, reduce burdensome regulations, and increase flexibility and access on the state and local level. We thus strongly support the general revenue sharing program.

To advance truly national interests, the federal government should minimize the use of discretionary programs that vest excessive decision-making authority in the bureaucracy. In general, formula-based allocation stemming from explicit, public legislative decision-making is sound public policy.

The federal government must seek to identify the most urgent needs of our urban centers and to concentrate its efforts upon them. We propose that the federal involvement in urban problems be increased because of the unmet human needs in many of our nation's cities, not because cities as such deserve special attention.

The federal government should distinguish between a short-term support function and a long-term investment function in its urban policies. While we meet today's needs, we should search for ways of rebuilding the economic capacity of our cities so that they can move toward eventual revenue independence and fiscal self-sufficiency.

The urban reinvestment trust fund

Most urban experts agree that the deterioration of our massive investment in urban capital stock—housing, roads, bridges, public transportation, sewers, water systems—is the most serious problem now confronting the nation's cities. Caught between declining tax bases and escalating costs, many cities particularly the older cities of the Northeast and Midwest have been forced to defer essential maintenance to meet immediate operating needs. A recent comprehensive survey of twenty-eight major cities concluded that:

Deterioration in the capital stock of older cities has accelerated in the past five years as a consequence of fiscal stress and aging.

As repair needs mount, maintenance workforces are being cut.

In many cases, cities facing severe budgetary pressures have curtailed maintenance spending more sharply than spending for other current operations.

Similarly, capital spending has been squeezed.

Older cities, predominantly those located in the Northeast and Midwest, face investment backlogs and lack the financial capabilities to meet their needs from local resources.

To address this massive and urgent problem, an Anderson Administration will propose an Urban Reinvestment Trust Fund (URTF) to assist distressed cities in rehabilitating and replacing their capital stock.

Funding. The URTF would be funded through 45 percent of the federal alcohol and tobacco excise taxes, to be phased in over a three-year period. When fully funded, it would receive and disburse approximately $3.8 billion annually (in 1980 constant dollars).

Allocation. The URTF would be allocated to cities and metropolitan areas on the basis of a three-factor formula: pre-1939 housing stock (weighted 50 percent); population in poverty (weighted 30 percent); population loss (weighted 20 percent). This formula is the best indicator of the two most relevant dimensions of community need: degree of decay of capital stock, and ability to raise and use tax revenues for maintenance.

Disposition of funds. The funds made available through the URTF would be used for:

The upgrading and repair of existing capital plant and equipment: streets, bridges, sidewalks, street lighting, water mains, sewers, waste processing and sanitary facilities, pollution control facilities and equipment, and related items;

The replacement or installation of such plant and equipment when current facilities are either beyond repair or altogether lacking.

Local authorities would be free to determine their own priorities and allocation procedures, subject to three constraints. Legislation would require:

That equity prevail in the use of funds within cities, with immediate emphasis on upgrading facilities in the most severely decayed areas;

That neighborhood organizations be adequately consulted in the process of determining community-wide priorities;

That URTF funds supplement, not replace, local funds currently employed for capital stock maintenance and rehabilitation.

Because the revenues from the federal excise taxes on alcohol and tobacco have been rising more slowly than the rate of inflation, at the end of the phase-in period we will consider raising current excise tax rates to meet the urgent national needs to which our Trust Fund is addressed.

Housing

The quality of life in our cities, and throughout our nation, is crucially affected by the availability of decent, affordable housing for all citizens. But the Carter policy of fighting inflation with tight money and high interest rates has had a devastating effect on this sector of the economy. Housing starts have declined to an annual rate of one million, the lowest since World War Two and one million units lower than predicted last year. This level of activity will result in: the loss of 1.6 million jobs; the loss of $27.6 billion in wages; the loss of over $3.5 billion in federal tax revenues and $7.5 billion in combined federal, state, and local revenues. Moreover, this lost production will produce an even more rapid inflation in housing costs as the economy recovers from the Carter recession.

The underlying demand for housing is very strong and will grow substantially through the 1980's. During this decade, 41 million Americans will reach the prime homebuying age, compared with 31 million in the previous decade, and the rate of new housefold formation will be 25 percent higher. This demand cannot be satisfied even by levels of production considered high in the past. Unfortunately, the crisis in rental housing means that new rentals will not be able to meet any substantial portion of the existing demand. Recent statistics show that in the past three years, there has been an annual net loss of rental units of nearly 2 percent. High interest rates, increased operating costs, and burdensome regulations have nearly shut down the private construction of rental housing. As a result, the nationwide multi-family vacancy rate has fallen to the lowest level since this statistic was first compiled twenty years ago. In many cities there is virtually no vacant rental housing.

In the early part of the 1970's, the federal government stepped into the breach by subsidizing the construction of new rental housing. This assistance reached its peak in 1976. Since then, because of soaring unit costs and fiscal constraints, the amount of subsidized new construction has declined sharply.

If we do not undertake effective new initiatives, housing will become a major source of social conflict in the 1980's, as new families struggle with dwindling supplies and escalating costs. In the past year, the percentage of families able to afford the monthly payments on their first house has declined sharply at the same time that rental housing has become scarcer and less affordable. We run the risk of being split into two nations: those who were fortunate enough to buy while housing costs were a reasonable fraction of personal incomes, and those who were unfortunate enough to arrive on the scene too late.

To deal with our housing problems, we propose the following steps:

We must begin to attack the housing problem in this nation by stabilizing our economy. Reckless spending and huge deficits lead to inflation which in turn escalates long-term interest rates, the key determinant of housing costs. In addition, inflation produces a flight from savings and paper money into real property, reducing funds available for mortgages and further hiking housing prices. The housing industry cannot function properly until we restore sound economic climate for planning and investment. This we pledge to do, as our first order of business.

We must work to dampen the inefficient and damaging housing cycle. We support the reactivation of a program such as that proposed by Republican Senator Edward Brooke and Democratic Senator Alan Cranston, a countercyclical mortgage-subsidy program that would be automatically triggered whenever housing starts fall below a designated level for a significant length of time. This is not a permanent subsidy, but rather a low-cost, temporary, recoverable government investment that works effectively to place a floor under housing starts.

We must embark on a comprehensive review of federal, state, and local regulations affecting housing construction and renovation which have been estimated to add up to 20 percent to the cost of each new unit. Where possible, we must simplify or eliminate this burdensome system of regulation.

We support the reauthorization of tax-exempt revenue bonds to support single and multi-family housing construction, subject to reasonable restrictions.

We support new initiatives to stimulate the private construction and operation of multi-family housing, including increased shallow interest rate subsidies and increased tax incentives, particularly accelerated depreciation, for multi-family buildings.

We support an urgent effort to increase the supply of urban housing stock to usable condition. All remaining federal restrictions on the use of HUD funds for renovation of existing housing should be eliminated. Programs, such as urban homesteading, that mobilize local renovation efforts should be encouraged. We especially support an increased partnership between the federal government and community organizations to put the people of our neighborhoods to work rebuilding their own homes.

We should explore policies that would increase the supply of urban housing by encouraging the conversion of abandoned buildings from other uses to housing. Such policies include providing technical assistance, identifying and donating surplus government buildings, and providing accelerated depreciation.

We support the extension of current programs that encourage low and moderate income urban residents to develop a stake in their community through ownership of their own residences. The Federal government should assist apartment dwellers to form co-operative organizations to purchase and renovate their buildings.

To increase the supply of mortgage funds, and to assist prospective homeowners, we support the gradual expansion of the existing interest income exclusion ($200 for individuals, $400 for married couples) to $750 for individuals and $1,500 for married couples as stated elsewhere in the platform.

Neighborhoods

A healthy city is a place of ethnic and economic diversity, neither a playground for the rich, nor a dumping ground for the poor. It is an association of stable, vigorous neighborhoods, secure in their differences, linked by common interests and purposes. A liveable physical environment is only a first step.

For too long, federal policy has discouraged or neglected neighborhoods. In the past, "urban renewal" obliterated existing neighborhoods, replacing them with public housing projects, highways, and office buildings. Today, although the federal government no longer levels whole neighborhoods, it continues to sponsor initiatives that damage neighborhood interests while neglecting and underfunding programs that directly benefit neighborhoods.

The following steps are essential to remedy this situation:

The next administration must appoint a new, high-level executive task force to review and, where appropriate, to implement the recommendations of the National Commission on Neighborhoods. The Commission's report was released nearly eighteen months ago, after extensive research and numerous public hearings, but the Carter Administration has almost completely ignored its findings;

We must promote the formation and activities of neighborhood associations, through such means as:

A neighborhood improvement tax credit, providing an 80 percent credit on the first 50 dollars of each taxpayer's contribution to a neighborhood group;

The provision of federal matching money to local neighborhood improvement groups in designated distressed areas;

Increased support for such ventures as the Neighborhood Housing Service, operating under the aegis of the Neighborhood Reinvestment Corporation, which seeks to form partnerships among neighborhood associations, financial institutions, and local governments to increase the supply of affordable housing;

Adequate funding for HUD's Office of Neighborhood Development which, in spite of significant accomplishments, has been neglected by the Carter Administration.

We must promote economic development in neighborhoods through:

Directing the Small Business Administration to comply with its authorizing legislation, which mandates that SBA programs be made accessible to Community Development Corporations;

Reauthorizing the SBA's 502 direct loan program, which is on the verge of termination in spite of its proven record of stimulating small business in declining neighborhoods;

Insuring that the Urban Development Action Grant program sponsors projects that distribute federal funds more equitably within cities and more directly benefit neighborhoods;

Offering increased tax incentives to the private sector to enter into partnerships with community development corporations and other neighborhood-based economic development groups.

We must recognize that although the increased flow of suburban dwellers back to our central cities has favorable consequences for urban tax bases and housing stock, it also generates a significant problem of dislocation, particularly among the poor and elderly. In the past, dislocation has meant declining housing quality, persistent overcrowding, increased costs, and severe psychological and social disruption for those forced to move.

Federal policy must be more responsive to the needs and legitimate claims of those presently residing in neighborhoods undergoing these changes. If some dislocation is unavoidable, the federal government must accept its fair share of the responsibility to assist displacees.

Enterprise zones

Within our distressed older cities, there are neighborhoods that can only be called zones of devastation. Dwellings are boarded up and abandoned, or inhabited by derelicts. Businesses are failing and fleeing. Arson is rife. Gangs fight for control of the streets while ordinary citizens live in constant fear. All who are able to escape do so, leaving behind those without alternatives or hope. In the South Bronx, for example, 96 percent of the residents are now Black or Hispanic, compared to 66 percent in 1970. One-quarter of the residents live in households with annual incomes under $3,000. One-third of the population is entirely dependent on welfare.

Some have suggested what amounts to urban triage—that we declare that certain areas are unsalvageable and leave them to their fate. We completely reject this proposal. It makes no economic sense to abandon our enormous investment in housing, factories, and capital stock, much of which is still usable or capable of being renovated. And it is inhumane to abandon viable neighborhoods where families have lived and worked for generations, and which still provide continuity and identity for many residents. Clearly, however, the traditional tools of federal urban and social policy have not worked, and cannot reasonably be expected to work, in these areas.

In an effort to give these devastated zones a chance to recover and thrive, Republican Congressman Jack Kemp and Democratic Congressman Robert Garcia have recently introduced a bill that would permit the designation of "enterprise zones".

The enterprise zone approach seeks to improve conditions in the most run-down urban areas by encouraging local governments to participate with the federal government in creating a climate favorable to the establishment and success of small business, by lowering existing corporate, capital gains, payroll, and property taxes and by furnishing new tax incentives. Two-thirds of all new jobs are in companies employing fewer than 20 people. Such companies are more able to develop new, profitable ideas and to utilize existing facilities. In addition, entrepreneurs with marketable skills and ideas but little capital are often willing to devote long hours in poor working conditions to build up their businesses. Moreover, although small business entrepreneurs often have little knowledge of business skills when they begin, as their businesses grow they gain management competence and are able to utilize increasing amounts of local labor. In short, the enterprise zone concept seeks to use federal legislation to mobilize already existing local resources—structurally sound buildings, surplus labor, enterpreneurial spirit—to help people in need to help themselves and to work toward pride and independence.

The Kemp-Garcia bill is still in a relatively early stage of legislative development and needs considerable refinement. Specifically, we propose that:

To be eligible to participate, local governments be required to lower sales taxes within the zones;

A residency requirement be added to ensure that a significant percentage of those hired under the payroll tax reduction provision actually live in the zones; and

Local lending institutions receive tax incentives to direct capital towards new ventures in the zones.

We believe that, appropriately amended, the enterprise zone bill will give new hope to urban areas that presently have no hope. Although it is an experiment, it will be undertaken only in areas that have little if anything to lose. We therefore support the passage and rapid implementation of well crafted enterprise zone legislation.

Community transit

Through years of planning, negligence, profligate consumption, and lack of federal leadership, the United Sates has slid into a state of dependence on foreign oil that threatens our economic viability and national security. Transportation consumes half the petroleum used in this country, and the single-passenger automobile is the largest consumer. While the automobile provides—and will continue to offer—freedom of mobility and flexibility of response, its technical performance must be improved and its efficient use encouraged. Additionally, as a Nation, we must commit ourselves fully to the development of a broad range of transportation alternatives. Increasing transportation choices requires strong federal support for public mass transit and incentives to encourage the private sector provision of energy-efficient and consumer-responsive transportation service options. It further requires a dedicated and predictable federal funding source. Such a federal policy will bring enormous fuel savings as well as increased and more fuel-secure personal mobility.

An Anderson Administration will propose a plan to provide a continuing and predictable federal commitment to:

provide long-term financial support for the capital and operating costs of mass transit systems;

finance effective auto management plans for urban areas;

stimulate the innovative involvement of the private sector in offering options to the solo use of the automobile; and

respond to the increasing need of rural populations for transportation alternatives.

A major part of this commitment will be met by the establishment of a new Community Transportation Trust Fund to fund capital and maintenance costs of metropolitan and local transit systems. Operating costs and other assistance programs would continue to be funded out of general revenues.

The CTTF would be funded through 45% of the federal alcohol and tobacco excise taxes. Over the next five years, 15 billion dollars would be expended, $2.5 billion in fiscal year 1981 alone. The surplus—as much as an additional $1.5 billion—would be reserved as a hedge against inflation. The reserve fund would be used to provide federal loan guarantees for automobile and other manufacturing companies that produce transit vehicles. The companies could use their federally guaranteed loans for research and development into the design, safety, and energy-efficiency of transit vehicles and for capital and tooling costs in manufacturing vehicles that respond to local procurement requests.

The CTTF will provide for the maintenance and modernization of rail, light rail, and bus systems for metropolitan areas, and for the building of new cost-effective surface light rail systems that contribute to rational land use planning and development objectives in accordance with the following priorities:

assurance that long-term federal commitments to new energy-efficient rapid transit lines are consistent with sound urban planning objectives;

more flexible funding to modernize, upgrade, and extend older fixed-rail and light rail systems and stations;

rigorous review of the cost- and energy-effectiveness of any new fixed guideway transit systems proposals;

investment in new light rail systems, using existing railroad right-of-ways highway medians, or urban streets;

production or rehabilitation and deployment of 10,000 buses annually for the next ten years;

employment of "track-sharing" systems where feasible, by which both commuters and freight-haulers make use of the same urban railbeds.

An Anderson Administration will also use funds from the CTTF to stimulate the revitalization of the cities. Urban areas would be encouraged to bring together civic leaders in making commitments to include: providing new jobs and training; establishing strong affirmative action goals; bringing new businesses and industries to the area; and designing new private facilities that enhance the environment.

The beneficial impact of transportation investment on urban economic development necessitates the coordination of transportation policies with other public decisions. The federal tax code, water and sewer grants, and highway programs tend to encourage scattered suburban development. An Anderson Administration will propose to realize the full economic revitalization potential of transportation by supporting transportation policy with other federal programs that influence urban development patterns. Housing, environmental, and overall urban policy will be coordinated to achieve this objective.

An Anderson Administration will prepare a twenty-year community transportation financing plan with state and community participation, to be enacted by Congress. The plan would provide both long-term funding predictability and greater local decision-making flexibility, enabling local transit agencies to plan more effectively and to allocate their resources in response to overall community needs. The long-term community transportation financing plan will have the following objectives:

establishment of a national goal of a ten percent annual growth rate in transit ridership and private ridesharing;

establishment of a comprehensive bus or rail system for every urban area with a population of 200,000 or more by the end of the decade;

establishment of effective ridesharing programs in all fifty states to provide alternatives to the automobile for urban and rural workers and others who are dependent on the automobile; and

development of a nationwide, coordinated approach to providing transportation choices for all rural Americans.

Efficient use of federal funds to provide transportation choices requires that communities also undertake comprehensive programs to ensure the responsible use of the automobile. An Anderson Administration will use federal funding, tax incentives, and technical assistance to encourage shared ridership and effective traffic management planning. Funds should also be administered to encourage all types of public and private operators to offer specialized collective transportation services.

The dynamics of private competition must be reintroduced into collective transportation. An Anderson Administration will create opportunities for specialized profit-making transit services. These opportunities include removing legal barriers providing tax credits, and amending the tax laws to encourage the use of alternatives to the automobile.

An Anderson Administration will encourage local alternatives to reverse the serious decline in transportation services to rural Americans. Car pooling, block grants for collective transportation, and technical assistance are vital federal options which will be utilized.

Federal support for local mass transit systems must be placed on a predictable long-term basis, enabling communities to respond to their transportation needs in the most effective manner. A creative Anderson Administration will achieve this goal by establishment of the CTTF and the twenty-year financing plan coupled with a flexible and realistic approach to transportation planning.

Health care

The underlying strength of the health care system in the United States lies in the quality, ingenuity, and diversity that is a hallmark of a free and diverse society. Federal health care policy must build on these strengths.

We cannot afford comprehensive, nationalized health care at this time. Nor can we afford a laissez faire attitude that simply blames our problems on federal regulation. The fundamental federal objective must be to contribute toward the overall health of our society while providing for those who cannot adequately take care of their own health care needs. We need an innovative, practical federal health policy which closes the gaps in our health care system, and complements and sustains the inherent strengths of a private-based system.

Federal health care policy must address the serious problems and weakness in our system, which include:

rampant inflation in health care costs;

gaps in health care coverage, including the limited access of the urban and rural poor to health care;

the lack of a comprehensive, long-term care policy for the elderly; and

the disproportionate emphasis of federal programs on the treatment of disease and the under-emphasis on preventive medicine and keeping people well.

Of these problems, the most severe is rampant inflation in health care costs. The health care industry accounts for 9% of GNP, nearly doubling since 1960. The average cost of a day in a hospital has increased from $15 in 1950 to $225 in 1978, seven times the general rate of inflation. Some of these increases in health care costs are undoubtedly attributable to remarkable but expensive improvements in health care technology and in expanded health care coverage for people previously underserved. But spiralling health care costs are also fueled by severe economic distortions in the health care financing systems.

Prior public policy decisions are responsible for a non-competitive health care environment. Heavy regulation of alternative delivery systems such as health maintenance organizations (HMOs) have made it nearly impossible for these systems to operate on a competitive basis. Cost-plus reimbursement under Medicaid and Medicare encourages doctors and hospitals to increase the volume and quality of hospital services without considering cost. The federal health insurance tax subsidy program, costing $13 billion annually, promotes adoption of health policies without full regard for costs. Regulatory programs such as the health system agencies (HSA) and professional standards review organizations (PSROs), while successful in some areas, have not yet demonstrated nation-wide success in holding down health care costs.

An Anderson Administration will reform federal financing, and encourage market-oriented incentives in order to reward cost-conscious behavior, contain rising health care costs, and respond to real health needs in the most appropriate and caring manner. Specifically, an Anderson Administration will:

Phase out retroactive cost-plus reimbursement under federal programs and replace it with prospective rate or fixed-premium financing. This will eliminate much of the expensive cost accounting and cost-reporting practices now imposed on hospitals, nursing homes, home health agencies, and health maintenance organizations, giving providers the incentive to contain costs rather than rewarding excessive spending;

Amend Medicare and Medicaid to allow participants to choose among competing health care options. This will promote flexibility, by allowing participants to select according to their needs, whether that be through prospective financial arrangements with hospitals or ambulatory care facilities, or through fixed-premium financing like a health maintenance organization;

Make employer health insurance tax deductibles contingent upon the offering of several qualified competitive insurance plans to encourage private sector competition. Employers should be required to make the same dollar outlay for health benefits per employee, regardless of the plan's cost, thus encouraging employees to make cost-effective selections and insurers to monitor the cost and efficiency of health care providers. Appropriate exemptions for small businesses should be allowed; and

Eliminate unnecessary and inefficient health system regulations as the principles of completion take effect. Federal funding for the health systems agencies and professional standards review organizations programs should be maintained. These regulatory programs were established in response to the failure of marketplace mechanisms to curb rising health costs. As competition is brought back into the health system, however, these regulatory activities can be phased out.

These reforms are designed to create incentives, control costs, deliver services efficiently, and provide quality services for all participants in the health care industry. An Anderson Administration will endeavor to hold down costs and provide quality health care simultaneously.

A second major problem is the lack of health care coverage for 22 million Americans. Despite considerable investment in medical care payments for the poor, these populations still suffer from poorly coordinated and episodic health care, and decreased access to medical care services.

An Anderson Administration will propose a responsible federal health care policy to better insure access to adequate health care and protection from improverishment. Specifically, an Anderson Administration will:

Increase the supply of medical personnel to underserved areas through increased funding of the National Health Service Corps. The NHSC has been successful in placing physicians, dentists and nurses in underserved areas where many have remained to practice.

Convert, where possible, urban hospitals with severe financial predicaments to serve, in whole or in part, as primary-care centers with federal assistance.

Stimulate demonstration projects utilizing the Independent Provider Association (IPA) model for rural area physicians, linking them to existing central urban HMOs. By facilitating the specialty services through the urban HMO, IPAs can "subcontract" the delivery of services to rural patients through existing solo practice or small-group physicians;

Expand the Medicare and Medicaid programs to include provision of mental health services; and

Expand, in gradual steps, the Medicaid program to provide adequate coverage for the poor and working poor not yet covered, including coverage of low-income intact families, childless couples, and singles, as more efficient practices free up resources for such growth in beneficiary population.

To better insure access to catastrophic coverage for working men and women, the Anderson Administration will propose legislation requiring private-sector employers to offer a catastrophic insurance option in order to qualify their health plans for federal tax deductions.

Our health care system also lacks effective, long-term care services for the elderly. Federal programs frequently foster unnecessary hospitalization, which not only has serious financial impact on the individual and the government, but also creates a class of demoralized and dependent senior citizens. We must shift our emphasis from institutionalization to home health care. Approximately 2.5% of the federal health care budget is spent on home health care, compared to 20% spent on nursing home care, yet it is estimated that many of the 1,100,000 nursing home residents could be cared for more cheaply, humanely, and appropriately by alternative health care services.

An Anderson Administration will propose a comprehensive federal policy supporting long-term care needs of older Americans that is directed toward optimal health care maintenance through prevention, care, and rehabilitation. We must provide the necessary care to allow older Americans to remain financially secure and productive participants in their community. Specifically, an Anderson Administration will:

Provide, as part of the Medicare program, a number of home health services: 1) homemaker and healthaide programs to provide such services as meal preparation, cleaning, and personal care; 2) adult day care centers for the elderly who need full supervision, but are cared for at night and weekends by relatives; 3) respite services to allow families to leave elderly members in care of competent individuals during vacations; 4) patient education to encourage the elderly toward greater self-reliance and self-sufficiency;

Allow tax credits for families caring for elderly relatives to assist them in meeting rising costs for goods and services for the elderly individual;

Extend Medicare benefits to cover services provided by alternative health care professionals, such as nurses and physician's assistants;

Extend Medicare benefits to cover eyeglasses, dentures, and hearing devices;

Promote provision of low-cost housing communities through tax credits, low-interest loans, or direct-funding incentives; and

Expand the Institute on Aging's research budget at NIH beyond the current 2% level.

An Anderson Administration will propose these reforms to insure greater security and fulfillment for elderly Americans. We must begin to take a step away from viewing the elderly as a burden and back toward seeing them as sources of wisdom and guidance.

Our present health care system also places disproportionate emphasis on the treatment of illness and lacks appropriate emphasis on preventive health care and health research. This practice is cost-inefficient and discourages proper health maintenance. We must place increased emphasis on protecting the healthy populations of our country from illness and on encouraging their continued good health. Health research must be recognized as a legitimate operating cost of the health care system.

An Anderson Administration will support programs to promote and extend good health to all Americans. Specifically, an Anderson Administration will:

Continue enforcement of clean air, clean water, solid waste, and toxic substance standards.

Increase funding for prevention and treatment of drug and alcohol abuse, and mental illness;

Pursue handgun control and automotive safety initiatives to reduce the loss of life and disability resulting from handgun and car accidents;

Support a Child Health Assurance Program to extend care to low-income children and pregnant women;

Preventive health care and early detection of disease for these groups would do much to eliminate birth defects and decrease the incidence of many chronic debilitating diseases;

Provide adequate funding for all forms of biomedical and health care research particularly in the area of prevention. The results of research relating health to lifestyle, diet, and the environment must be adequately disseminated to the public, so that enlightened personal decisions can be made;

Make tax moneys to professional health care education facilities that are heavily dependent upon federal financing contingent upon instruction on preventive medicine, nutrition, and epidemiology as part of their core curriculum; and

Continue support of OSHA and encouragement of innovative and economic ways of achieving safety and occupational health standards.

The measures outlined above form a health care policy that is fiscally responsible, incentive-based, and targeted on the gaps and weaknesses that currently exist in our fundamentally strong, private-sector based health care system. To curb escalating health care costs, we propose competition among health care options in the private and public sector. To reduce the gaps, we propose to extend Medicaid eligibility for the poor and support National Health Service Corps for under-served inner city and rural citizens. To care for the elderly, we extend home health care coverage and other Medicare provisions. And finally, we change the focus of health care to preventive measures like the Child Health Assurance Program. These measures stop short of comprehensive national health care, but they address the most critical needs of the American health care system in an affordable fashion.

Welfare reform

Welfare reform remains one of the great unfulfilled promises of government. The existing patchwork of public assistance programs is fragmented, irrational, wasteful, duplicative and inefficient. Repeated efforts at comprehensive welfare reform have failed under both Democratic and Republican Administrations.

The continuing failure to enact the necessary reforms has manifested itself in several forms. State and local governments which have sought to meet legitimate public assistance needs have been burdened by escalating costs, despite honest attempts to eliminate welfare fraud. States and localities that have permitted inflation to erode benefit levels have fared better financially, but welfare recipients in those states have suffered from increasingly inadequate support levels.

In many states, Aid for Families with Dependent Children (AFDC) benefits have been limited to one-parent households, forcing the breakup of families when fathers leave home to retain benefits for the children. In nearly all states there remains substantial work disincentives with welfare recipients confronting high "effective" marginal tax rates.

Transferring all responsibility for public welfare programs back to the states is not an appropriate means of dealing with the problems. We must seek to utilize the greater administrative efficiency that can be realized by large-scale delivery programs at the federal level with the greater equity and savings that can be realized at the local level by closer supervision and oversight.

Our task is to devise a more rational public assistance delivery scheme. Experience has demonstrated that welfare reform is best addressed by a series of selective reforms, rather than by attempting to secure immediate comprehensive reform. Adoption of the Social Welfare Reform Amendments of 1979, approved by the House of Representatives last December, would be a good first step towards reform of public assistance. The bill would:

Establish a national AFDC minimum benefit level equal to 65 percent of the poverty level for all families with children;

Raise income limits in certain states and provide a system of declining cash welfare supplements to recipients until the income ceiling is reached;

Require states to offer Aid for Families with Dependent Children (AFDC) benefits to families with two parents, one of whom is unemployed, providing the family meets an income and "unemployment test";

Decrease the non-federal funding share of AFDC benefits by 10–30 percent, depending on the nature of the benefit provided; and

Liberalize the Supplemental Security Income (SSI) program for the aged, blind and disabled, by permitting a husband and wife who separate to qualify for individual benefits earlier; and "cash out" foodstamps for certain classes of SSI recipients.

We must, however, go beyond these reforms in our efforts to provide a more responsive and cost-effective delivery system. Public assistance should be tied to both work incentives and work requirements for the able-bodied. Our principal objective must be the provision of private sector employment. While public sector employment programs will continue to play an important role in job-training and temporary employment, special attention must be directed at longer-term, private sector job opportunity.

We support an expansion of the Supportive Work Program, based on the recent successful demonstration project, in conjunction with the WIN program for AFDC recipients. We also endorse further expansion of the Earned Income Tax Credit for the working poor. These and other initiatives, including proposed changes in the benefit reduction formula, would go a long way toward increasing work incentives; but renewed emphasis must also be placed on job creation. We support retention of the Employment Tax Credit, which encourages new hires of disadvantaged workers, and expanded reliance upon the private sector jobs initiatives under Title VII of CETA. We must recognize, however, that the greatest provider of jobs for the disadvantaged in this country has always been a growing and vibrant economy.

If welfare costs are to be contained without sacrificing benefit levels for the truly needy, we need continuing administrative improvements in welfare programs, including standard procedures for the periodic determination of income and eligibility, and expansion of electronic management information systems. We support the use of innovative new approaches, like the National Recipient Systems (NRS), to the problem of erroneous payments.

Food stamps

Despite some of the earlier problems associated with the program, the Food Stamp Program remains a vitally important element of our public assistance delivery system. Food Stamps have provided timely and critical assistance to millions of Americans whose household budgets have been disrupted by temporary or permanent layoffs or whose incomes have suffered due to age or physical handicap. As a compassionate and humane society, we cannot ignore the legitimate nutritional needs of those who would otherwise go hungry. We shall continue to support full and adequate funding of the Food Stamp Program.

Senior citizens

Senior citizens desire to live a useful and secure life. Yet, for many, this goal remains elusive despite new federal initiatives and expenditures which consume one-fourth of the current federal budget. An estimated nine million older Americans now live in poverty, lacking wholesome food, adequate housing, and proper health care. For those living in isolation, a sense of being unneeded and unwanted robs their later years of meaning and dignity.

An Anderson Administration would be committed to meeting the real needs of older citizens, strengthening effective programs and initiating reforms as experience dictates. Before recommending any additions, however, we would insure that ineffective programs are eliminated.

An Anderson Administration would remove the barriers discouraging productive activity by the aging by:

Liberalizing the Social Security "retirement test," which limits outside earnings from part-time and temporary employment; and

Tightening loopholes in the Age Discrimination in Employment Act and enforcing current provisions to eliminate early mandatory retirement.

In the vital area of health care for the aging, reforms in the Medicare system could both improve care and reduce cost by eliminating unnecessary institutionalization. Older persons not needing intensive care in high-cost facilities could receive appropriate personal attention from their families or neighbors assisted by local supportive services. To encourage this approach we would:

Modify provisions which tax Social Security recipients living with their families, rather than in institutions;

Propose income tax deductions for families which care for relatives in their homes; and

Provide supportive services such as geriatric day care, homemaker services, nutrition programs, and sheltered living arrangements to allow the aging to remain in their communities at reduced cost.

The Medicare program would be revised to include home health services:

Homemaker and health-aide programs to provide services such as meal preparation, cleaning and personal care;

Adult day care centers for aging persons requiring full-time supervision who receive care from relatives on nights and weekends;

Respite services to allow families to entrust aging family members to the care of competent individuals during vacations; and

Patient education to help ill persons achieve greater self-reliance and self-sufficiency.

We would also encourage the development and use of health maintenance organizations (HMOs), which offer health services for predetermined annual fees. Prospective payment encourages preventive care and discourages unnecessary medical procedures.

We would support legislation to end fraud and abuse in the sale of private health insurance purchased by many aging persons to cover the gaps in Medicare coverage.

Lack of adequate, affordable housing plagues many aging persons. We favor increased support of public housing for older persons and pledge to continue to aid the aging in coping with rising energy costs.

Social Security Financing

The Social Security system is a public trust. It must be protected and preserved. We cannot allow potential insolvency to jeopardize the benefits of those who have contributed to the system during their working years.

Despite a series of scheduled payroll tax increases approved by the Congress in 1977, it is evident that neither the short-term nor the long-term financing questions have been resolved. It is anticipated that the Old Age and Survivors Insurance Trust Fund will approach insolvency within a few years.

The recurring problems with Social Security financing require close Congressional scrutiny. The 1977 amendments corrected one flaw in the Social Security program (the method for indexing benefits), which contributed to the long-term instability of the trust funds There are, however, other problems. One factor is the increase in the number of retirees relative to the number of contributing workers. The changing beneficiary/contributor ratio means that more benefits will have to be paid out while contributions to the trust fund decline. The second factor is inflation. Social Security benefits are indexed to inflation to maintain the value of the benefits. In recent years, however, inflation rates have exceeded wage increases, resulting in a further depletion of the funds.

The short-term financing problems of the Old Age and Survivors Insurance Trust Fund can be resolved by either reallocating a portion of the payroll tax from the disability and health insurance trust funds, or allowing the OASI Trust Fund to borrow from one of the other two funds.

The longer-term problems of the Social Security system require a more fundamental adjustment. When the "baby boom" generation reaches retirement age, the ratio of beneficiaries to contributors will rise sharply, requiring correspondingly sharp increase in payroll taxes in order to keep the Social Security system solvent. The problem can be avoided, either by substantially reducing benefits at that time or by gradually increasing the retirement age beginning in the year 2000. It would be unconscionable to postpone such a decision until that date. Individuals must be allowed to plan for their retirement future with the confidence that last minute changes in Social Security will not disrupt their plans. An Anderson Administration will urge Congress to resolve this question so as to better facilitate retirement planning by young Americans.

The problems associated with rising Social Security payroll taxes—lowered employment and higher prices—can be resolved in part by alternative financing, including the use of revenues from higher gasoline taxes. A 50 cent a gallon increase could generate enough revenues in 1980 to reduce the employee's contribution by 50 percent. Such a trade-off, if coupled with other forms of relief, could satisfy an urgent conservation need and reduce the adverse economic impacts associated with payroll taxes.

The family

American families, while evolving in diverse ways in recent years, remain a cornerstone of American society. However, complex forces have recently confronted the American family. Spiralling inflation, discriminating tax structures, conflicting welfare policies, and declining educational experiences are indicative of the challenges confronting family life in the 1980's. The many social tensions a family must face include the problems of material health, family planning, day care, and child welfare. In addition, the malaise in single parent families living in poverty deserves special attention. This broad catalogue of problems and needs includes abortion, adolescent pregnancy, health care, protection of the elderly, housing discrimination, unemployment, alcoholism and drug abuse, domestic violence, and flexible working schedules.

Given the diverse ideological opinions held as to the meaning of a family, it is unwise for government to think in terms of a "family policy". The government, however, should recognize the impact that its laws and practices have upon our social institutions, and try wherever possible to see that these laws and practices do not actively discriminate against the initiatives of the family. An Anderson Administration will support:

The elimination during the next few years of the "marriage tax" which discriminates against working spouses whose combined incomes are taxed at a proportionately higher rate than if they were single.

Elimination of inheritance and gift taxes in transfers between spouses.

Individual retirement accounts (IRA) for homemakers.

Government assistance for displaced homemakers.

Gradual revision of the federal welfare laws to eliminate discrimination against two-parent families.

Reform of the federal health care system as set forth elsewhere in the platform.

Elimination of the existing biases against intermediate care facilities and home-care treatment in federal health care programs.

Support for added tax deductions for wage earners in families that care for relatives instead of institutionalizing them.

Support for federal funding for child care for children whose parent or parents are employed and cannot afford privately funded child care.

Support for increased child care facilities for welfare mothers who want to work or training for work.

Recognition in our laws that the role of the homemaker is of equal value and dignity with that of the providing spouse.

Reform of child support and alimony enforcement machinery.

Elimination of discrimination against women as set forth elsewhere in the platform.

Support for Child Health Assurance Plan (CHAP) to provide preventive health care for children.

Consumer affairs

Fundamental to the functioning of a sound and stable domestic order is the protection of the health and safety of the American consumer. The American marketplace was founded upon the premise that the consumer is sovereign—we must continue to adhere to this principle. While we must uphold essential health and safety standards, we must also recognize that the American consumer does not benefit from an excessively regulated economy. We must protect the recent gains made in protecting the basic rights of the American consumer.

We must take the following steps to ensure the basic rights of consumers:

Support the improvement of management coordination and effectiveness of agency consumer programs through the efforts of the existing Inter-Agency Consumer Affairs Council and the implementation of government-wide standards for these consumer programs;

Continue support for essential food safety and drug statutes;

Preserve product disclosure requirements;

Protect consumers against dangerous products with appropriate standards for auto safety, clothing flammability, new drugs and chemicals, and food and children's products;

Support the right of a fair hearing for consumers and public participation in government proceedings;

Enforce legislation prohibiting debt collection agencies from engaging in unfair collection practices;

Enforce truth-in-lending and fair credit reporting laws;

Support for legislation to overturn the *Illinois Brick* case to provide indirect purchasers the right to seek redress against a manufacturer;

Eliminate abuses in the sale of credit life insurance;

Eliminate fraud in sale of health policies to the elderly;

Support a nation-wide program under the Elementary and Secondary Education Act to alert consumers of their rights, enhance their ability to make rational and well informed choices, and to inform them of their opportunity for participation in government decision-making;

Enforce anti-trust laws to protect consumers and assure an efficient and productive marketplace; and

Enforce anti-redlining laws.

Veterans

Our veterans have risked their lives to defend our nation's interests, and deserve our deepest respect. We must be willing, as a nation, to show our appreciation of veterans of our foreign wars.

The Veterans Administration was established to insure that our veterans would be treated properly. Yet, despite its resources, despite its manpower, the Veterans Administration often fails to fulfill its responsibilities. Too frequently, veterans are turned away from V.A. Hospitals; they are denied the medical care they need and deserve. An outside evaluation team should make a thorough review of the Veterans Administration and recommend pressures for reorganization and improvement.

One of the Veterans Administration's most glaring failures has been its response to Vietnam veterans. We recognize the unique problems facing these veterans, victims of a war that left many of them physically, psychologically, and emotionally shattered. In general, Vietnam veterans have a higher unemployment rate than non-veterans, and 20 percent earn less than $7,000 per year. It has been estimated that 25–30 percent of all Vietnam veterans suffer from high-level readjustment problems, including drug addiction, alcoholism, and chronic depression.

The most serious effects of the Vietnam War, however, may not be realized for many years. It is now known that the herbicide code-named "Agent Orange", which was used extensively in Vietnam, contains a deadly chemical which may produce cancer, anemia, and hemorrhaging in those exposed to it and birth defects in their children. Thousands of American soldiers and Vietnamese were exposed to this deadly herbicide. Today many veterans face the uncertainty of not knowing whether the delayed effects of Agent Orange will claim them or their offspring as victims.

We believe that the plight of the Vietnam veterans can no longer be ignored. We strongly support the enactment of comprehensive legislation to improve our nation's treatment of Vietnam veterans, such as the Vietnam Veteran's Act currently proposed by Senator Heinz.

An Anderson Administration will:

Extend the limitation date for Vietnam veterans' education benefits with a 10-year extension for theater veterans and a 3-year extension for era veterans. Educational benefits should be adjusted to reflect the cost of living. The limitation of state matching requirements will be eliminated;

Require the Veterans Administration to undertake a major outreach program to contact the victims of Agent Orange poisoning. This program should include evaluation, treatment, and compensation, where due, for both veterans and their children;

Authorize the Veterans Administration to pay the administrative start-up costs needed to establish state-run programs providing direct housing loans at an interest rate below the prevailing market rate;

Provide for necessary personal counseling of Vietnam veterans. There should be no fixed deadline on this counseling. Theater veterans should be able to take advantage of non-V.A. facilities, such as community health centers or private mental health services. An outreach program should be employed to contact those Vietnam era veterans who have become disenchanted with the current Veterans Administration; and

Implement programs, under the auspices of the Veterans Administration, to reimburse employers for wages and other training expenses incurred for veterans. These reimbursements would be available up to the value of the monthly educational entitlement available to the veteran.

These proposals will cost money. To neglect our veterans, however, could prove even more expensive, both to society and to the military. Our past practices have led to great attrition from our voluntary army; recruitment of qualified and competent people is becoming increasingly difficult. A major effort must be made to reverse our past decade of neglect.

Primary and secondary education

Public education is an investment in America's future—an investment of even greater value to the nation than our capital plant and equipment. We must upgrade our investment in our human capital, just as we seek to rebuild our physical capital.

Despite a rising federal dollar investment in primary and secondary education, there is a growing concern about the rate of return on those federal dollars. The question, "Why can't Johnny read?" is asked with concern at the third grade level. At the high school level, it is asked with dismay.

Governor Reagan proposes to abolish the Department of Education. We propose to make it work. This is no time to sound the retreat on public education.

Over the past four years, federal aid to education has increased by 73 percent. An Anderson Administration pledges to make better use of those dollars.

Education and Regulatory Reform

The federal government, in recent years, has assumed a larger and larger role in local education programs, resulting in waste and duplication of effort. Grantsmanship has replaced scholarship at the local level in the scramble for federal dollars. The Anderson Administration will work for formula federal aid to local school districts to take school boards out of educational finance and back to educational excellence.

We must work to redefine the federal role in primary and secondary education. There must, of course, be oversight of federal dollars, but such oversight should not be intrusive or destructive of local school matters. The federal government should serve as a catalyst—providing the funds which can help public school systems achieve their goals, rather than dictating those goals.

To assist in the task of redefining the federal role, we propose to appoint, with Congressional authorization, a Presidential Commission on Primary and Secondary Education. The Commission's mandate will expire 18 months after its authorization, after providing recommendations on ways to:

Reduce the federal paperwork burden on local schools;

Evaluate better the financial needs of public schools;

Restore state and local initiative;

Minimize unnecessary federal intrusion; and

Harmonize federal and state regulation.

Federal Aid to Primary and Secondary Education

The creation of the new Department of Education affords the opportunity to review the full range of federal education programs in a coherent and comprehensive fashion. The new department should review the proper role and mix of categorical and block grant programs. In a number of areas, including special education, categorical grants play an essential role in assuring federal objectives. In the absence of a compelling federal interest in program supervision, federal assistance should take the form of block grants in order to minimize paperwork and maximize local initiative.

Federal aid to education must continue to play a leading role in assuring that school districts with insufficient local resources can provide equal education opportunity. Federal assistance must put a greater emphasis on reducing the intra-state disparities that still exist.

An Anderson Administration will continue to support the Title I concentration grants for remedial instruction of low income and disadvantaged students. We also reaffirm our support for the Headstart Program and related program initiatives.

An Anderson Administration will oppose tuition tax credits for primary and secondary education. Tax expenditures of this nature would drain much needed resources from public education needs at a time when the public school system's long-standing role as the principal provider of quality education is endangered. An Anderson Administration, while recognizing the important role of private primary and secondary institutions, is committed to preserving the traditional importance of free public education.

We recognize the special education needs of the disadvantaged or the specially situated. We reaffirm our commitment to quality education for all and for federal support of special education initiatives, including targeted assistance for low income and low achieving students and bilingual education programs for those who possess limited English language skills.

Special attention must be directed at the problems associated with federally mandated education requirements. An Anderson Administration is committed to reducing federally imposed education costs by increasing the federal funding of those costs. The federal government must shoulder the fiscal responsibility for its own legislative mandates.

Education of the Handicapped

There are an estimated 8 million handicapped children under the age of 21 in the United States. Nearly half of them are enrolled in programs that fail to address their special problems. Many of those problems remain undiagnosed. As a consequence, many of these children are wrongfully labeled as "slow learners" or characterized as having "attitude problems." The Department of Education, under an Anderson Administration, will encourage more extensive testing at the pre-school or first grade level in order to better identify hidden handicaps.

We reaffirm our commitment to the Handicapped Childrens Act of 1975, P.L. 94–142, which requires that handicapped children be educated with the unhandicapped. We will support additional federal funds for the supplemental training of the classroom teachers needed to meet the federal requirements.

An Anderson Administration will also focus on the transitional problems that many handicapped students meet when they seek to move from the classroom to the workplace. Better linkages are required between special education programs and private sector affirmative action employment programs.

Vocational and Technical Education

Despite an unemployment rate of nearly 8 percent, many skilled jobs in this country still go unfilled for lack of qualified employees. The paradox of high unemployment and unfilled jobs illustrates the continuing need for federal support of vocational and technical education. Vocational programs can serve not only to improve the employability of program participants, but also make education more relevant to disillusioned youth.

An Anderson Administration will encourage a vigorous vocational and technical education program, tied to comprehensive career counseling programs. We pledge continuing efforts aimed at upgrading technical equipment and facilities and encouraging private industry to establish work-study programs at the school level.

Gifted and Talented

The creativity and intelligence of American children are our most valuable natural resource. Our most promising investment in the future is in the gifted and talented children who excel through a combination of ability and perseverance, and test the limits of our traditional educational resources.

The federal government has a special responsibility to these children, and to the school systems which must continually challenge and motivate them. Ironically, these students, who have the greatest potential to benefit from education have the highest drop-out rate. Many schools lack the facilities and personnel to identify and provide for the special needs of the gifted. Currently, only 12 percent of the 2,000,000 to 2,500,000 talented children in the United States are receiving special attention, and interstate differences in participation are profound. We are mandated to reduce the inequities and to guarantee that every gifted child is inspired to actualize his or her potential.

John Anderson would direct the Department of Education to develop programs to serve gifted and talented students in every state.

Federal funding can also be used to assist in the development of cooperative programs between private and public secondary and post-secondary schools and to improve programs now established by various public institutions, such as the National Science Foundation.

The private sector can and must participate in the education of these unique students. By opening the arts, business, and industry to the inquisitive and creative minds of talented students, we can provide them with invaluable opportunities for discovery and learning.

Bilingual Education

We have an obligation to deliver a fair and equitable education to all residents of this nation. We must strengthen our commitment to bilingual education. Bilingual programs should not simply be transitions toward a single language education, but rather should be jointly designed by government and community representatives with minority participation to maintain and cultivate a student's multiple linguistic capability.

Under an Anderson Administration, the Department of Education would be required to provide appropriate guidance to state and local governments and school boards for the joint development of responsive and effective bilingual education programs. The federal government will provide funding to cover the additional costs of mandated programs.

Literacy

At present, estimates indicate that between 20 and 30 million adults lack the fundamental skills necessary to read a newspaper or fill out a job application. We believe that without the ability to read, an individual is deprived of the ability to pursue his or her basic rights. Without reading skills, an individual has little opportunity for employment. Illiteracy prevents the people who need the greatest voice in government from having much of a voice at all.

Illiteracy contributes to an increased inefficiency of the American worker. Education programs of the past have failed to address the needs of the illiterate. We need to attack the problem where it begins—in our primary and secondary schools.

Success rates in adult education have been low and only a small percentage of the illiterates in this nation have ever been reached by such programs. This nation cannot afford to hire the individual tutors that literacy training requires. It must be up to individual communities to muster the resources and manpower necessary for literacy training.

An Anderson Administration will direct the Department of Education to undertake experimentation with community-developed and community-run literacy programs. Such programs should involve all appropriate resources in a region; the local school system, colleges, the private sector, local government, and the community. The Department should also have the responsibility for informing the nation of the severity of the literacy problem and devising methods to convince those who are illiterate to seek aid.

Higher education

In the 1960's and 1970's, our federal and state governments invested heavily in the expansion of higher education. They created an educational system unparalleled in human history, an asset of priceless value. Our modern institutions of higher education not only provide educational opportunity, they also are centers of scientific research, and have a major impact on economic growth in a technologically oriented society which requires the services of skilled professionals. Most important to our democratic society, institutions of higher learning are a primary mode of social and economic mobility.

In the 1980's, we enter a critical period for our higher education establishment. The expansion of the last two decades has halted. By 1983, enrollment in higher education will peak, and then decline by 15 percent by 1990. As with any sector when it enters a static period, our nation's universities and colleges face a period of disruption. These institutions must entrench, rebuild, and revitalize to help our nation face the demanding years ahead. Just as the steel and other basic industries in our country face a time of rebuilding, so too do our educational institutions.

The federal government has a crucial stake in sustaining the educational establishment. Hundreds of programs in a variety of federal agencies have invested in higher education: its academic quality and fiscal health; the vitality of its research and scholarship; and the availability of educational and self-development opportunities.

The federal government has supported our institutions of higher education by grants to students, faculty members, and to the universities themselves. As we look toward the 1980's and beyond, we must continue and strengthen all three means of support.

Federal financial aid to students in higher education is not a coherent program. It is a complicated mixture of programs reflecting different national commitments and goals developed over the past 36 years. Many of the programs are inadequately funded, and others are misdirected.

Our primary objective in providing grants and loans should be to increase access to higher education by lowering financial barriers to all members of society. We must encourage the provision of quality educational services, and promote traditional values which may have been ignored by efforts to rectify past inequities. There are no simple solutions to the weaknesses in the current federal financial aid programs:

We can identify problem areas but much research is necessary to develop comprehensive solutions. An Anderson Administration will make a commitment to develop these solutions, and will:

Develop a more rational, equitable, and widely available loan program to provide needed aid to middle income families. Currently, there are numerous loan programs, each with different repayment terms and degrees of availability;

Gradually increase the Basic Educational Opportunity Grants (BEOG) to reflect changes in the costs of education;

Liberalize the half-cost rule, which presently limits grant assistance to $750 annually for disadvantaged students attending a tuition free constitution;

Support renewed emphasis on self-help College Work-Study Program;

Encourage and increase funding of the TRIO programs: Talent Search, Upward Bound, Special Services for Disadvantaged Students, Educational Opportunity Centers, and Educational Information Centers—that deal with special problems and difficulties of access for the educationally disadvantaged;

Develop targeted post-enrollment remedial programs for students coming from disadvantaged educational environments;

Establish both an undergraduate and graduate Merit Scholarship Program at an estimated cost of $80 million; and

Maintain real spending on Supplemental Educational Opportunity Grants (SEOG) and State Students Incentive Grants (SSIG), currently funded at $440 million annually.

In addition to student financial aid, we must recognize the importance of subsidizing basic research in our institutions of higher learning. These centers play a significant role in the research and development needed to advance the technological genius and cultural heritage of our society. Recognizing this role, an Anderson Administration will:

Maintain real levels of support for the humanities;

Modestly increase funding for foreign language and area studies programs as described below;

Increase support for engineering research;

Increase support for quality scientific equipment, instrumentation, and facilities through a four-year phase-in program;

Upgrade research laboratories and equipment at universities and colleges with a five-year program of grants;

Create a fund for competitive post doctorate and research fellowships; special attention will be given to people out of universities for several years;

Increase support for research libraries collection development and collection preservation;

Improve the administration policies federally sponsored research to assure that regulations do not unduly restrict research programs;

Encourage both stability and predictability of resources; and

Encourage flexibility by federal regulators and auditors in the exercise of financial oversight: and recognize that efforts to document fully and precisely how every federal dollar is spent are often counter-productive;

Our nation has led the world in the quality of our medicine and medical professionals. As we renew our emphasis in comprehensive health care, we must continue to provide quality educational and research resources. The federal government can play a crucial role in sustaining these capabilities. An Anderson Administration will:

Support House Resolution 3633 Nurse Training and Health Programs Extension Act, providing continuing capitation funding for nursing education, and increased funding for the training of nurse practitioners and nurse midwives;

Increase funding for the National Health Service Corps;

Encourage the training of more health professionals, including physicians' assistants, nurse practitioners, paramedics, physical therapists, and midwives; and

Support predictable, long-term funding for biomedical research.

Federal involvement in higher education has resulted in numerous restrictions, changes in institutional procedures, and additional costs and burdens. Indiscriminately applied federal regulations have hampered our institutions of higher learning, impeded freedom of action and restricted self-management.

More care must be taken in the application of regulations to insure they do not unfairly impinge on the role of educational institutions. An Anderson Administration will not retreat from a forceful policy of affirmative action and environmental concern. But within these constraints, we must reexamine the effect of government regulations. Specifically, an Anderson Administration will propose to:

Subsidize compliance costs with a modest grant program;

Develop a comprehensive regulatory policy;

Take greater efforts to assess the impact of grant compliance requirements before their enactment; and

Increase flexibility in fund management for research.

International studies programs in our nation's institutions of higher learning are currently in a state of decline. America's ability to understand and deal effectively with both friends and foes depends heavily on trained and educated people knowledgeable in international affairs and competent in foreign languages. But the network of institutions and programs created in the 1950's and 1960's through the combined efforts of the government, private foundations and the universities has been seriously eroded. Federally funded foreign language and area fellowships declined from a peak of 2,557 in 1969 to 828 in 1978. Federal expenditures for university-based foreign affairs research declined from $20.3 million to $8.5 million, or 58 percent in constant dollars. At a time when America's needs for competence in international studies and foreign languages is becoming increasingly complex and urgent, our ability to respond to these needs is decreasing precipitously.

In a nation as large and pluralistic as the United States, only the federal government can provide the leadership and resources essential to improve substantially our foreign language and international studies capabilities. An Anderson Administration will establish long-term, enduring policies to:

Provide financial support for existing international studies programs at our universities and colleges and encourage the creation of new centers to correspond to national needs;

Provide funding for language teaching and support research designed to discover more adequate and effective language teaching techniques at all levels of instruction;

Increase support for foreign area and global issues research; and

Strengthen and expand our various international affairs programs at the community level, especially through the resources of our vast community college system.

The diversity and special services of minority-oriented institutions of higher learning are essential to rectifying past inequities. An Anderson Administration will:

Continue to support black colleges and universities;

Fully support the maintenance and development of American Indian community colleges. We are opposed to the transferring of schools under BIA control to the Department of Education. We recognize the need for community members to become further involved in the running of their schools. Decisions on the creation or termination of schools should not be made without tribal consent.

The arts

Our nation has always been distinguished by its rich and full artistic culture. The arts, in their popular as well as their professional forms, have played a key role in enriching the lives of all Americans. John Anderson affirms the essential role the arts play in American society.

John Anderson believes that the federal government should be a strong supporter of the arts. Yet, we must be careful in choosing the form of this support. The government should foster the development of the arts without controlling their content. Government support of the arts should consist primarily of creating an environment that, while encouraging a balanced development of all arts, allows the mechanisms of private and popular selection to play a predominant role.

John Anderson cites the following areas in which the government can assist the arts:

National endowments.—Funding for the National Endowments for the Arts and the Humanities should keep pace with inflation. The President should monitor the Endowment's operations to insure that the public has access to the Endowment's programs, and to insure that their funds are being spent wisely.

White House Conference on the Arts and Humanities.—John Anderson has supported efforts to hold a White House Conference on the Arts and Humanities. He will continue to help to arrange this Conference, which would provide a needed opportunity to discuss the future of American arts.

Cultural heritage preservation.—The federal government should take measures to assure that the nation's cultural heritage—its monuments, artifacts, works of art, languages, and cultural traditions—is protected and preserved.

Art bank.—John Anderson supports the bill to create a National Art Bank within the National Endowment for the Arts. The funds for this Art Bank would be used to purchase works of American art, which would then be leased for exhibition in government buildings, hospitals, and civic centers. The Art Bank would benefit all Americans by increasing exposure to American artists, and bringing the best of contemporary American art to all regions of the country.

Private support.—Private financial support is the element essential to the well-being of our national arts. The federal government offers a tax credit to those private individuals and corporations contributing to the arts. The Anderson Administration would encourage the private sector to take maximum advantage of this tax credit.

The challenge grant program, which provides matching funds for contributions from the private sector, has proven very successful. Anderson strongly supports this method of giving financial assistance to the arts.

A patron awards program is a third measure that could be used to foster contributions from the private sector. Individuals and corporations who provide essential support to the arts deserve to have their support publicly recognized.

Fair compensation.—John Anderson would investigate improvements in copyright and patent laws to insure that artists receive proper compensation for their work. He favors tax credits in those instances where an artist lends his or her talents to public performances.

Taxes.—John Anderson supports the Artists Equity Tax Act, and endorses the clarifications of the bill's language that have been suggested by the Authors League of America. This bill would modify our tax laws to: (1) encourage donations of art into the public domain, and (2) eliminate unfair tax burdens on artists and their heirs.

While recognizing the costs of these programs to foster the arts, John Anderson believes we must remember the arts' proven role in economic renewal and development. The establishment of art centers leads to improved property values, the growth of ancillary industries, with an accompanying increase in tax revenues. The arts could prove particularly useful in urban renewal programs, as they would help to attract people back into the cities. It is clear that the arts play an essential role in the well being of our nation.

Environment

The protection and preservation of the Earth's biosphere is vital to human survival. It is therefore necessary to ensure that our environmental initiatives of the past decade are not abandoned. We need to encourage a new ethos in our society that is built upon a greater respect for the environment and a greater willingness to protect it.

The Anderson Administration will accept the challenge offered by continuing threats to the environment by ensuring strong enforcement of our present environmental laws, and by enacting additional environmental legislation when necessary.

The Anderson Administration will be willing to accept the economic costs related to the protection and preservation of our air, land, and water against pollution, exhaustion, and depletion. We will ask the same of all our citizens. Our values cannot be oriented to short-term measures taken at the expense of future generations.

The nation's environmental standards were enacted to protect the health and safety of the American people and to ensure the quality of our lives and the lives of our children. We will exert our best efforts to meet our national commitment of protecting our environment. We will not relax these standards.

The following are important issues where an Anderson Administration will take new initiatives.

Oceans and Costal Areas

The United States continues to neglect its connections to the seas. The rapid deterioration of our nation's coastlines and waters is visible in oil-stained tidal pools, quarantined shellfish beds, the depletion of shorebird populations, and the loss of 300,000 acres of wetlands and 6,000 acres of fragile barrier islands which protect the Atlantic and Gulf Coasts.

Dumping of sewage sludge, catastrophic oil spills, chronic oil spills, and development of offshore oil and gas threaten to turn portions of our seas into large polluted sinks with barren underseas plains.

Once considered useless, our coastal wetlands are now seen as invaluable endangered resources. They provide vital habitat for water fowl, other coastal wildlife, food for commercially valuable fish and shellfish, natural waste treatment for tons of sewage effluent, storage for flood waters and the recharging of groundwater supplies. These valuable wetlands are being altered, polluted, and plundered by the pressures of energy siting, escalating demand for shipping channels, commercial development and second-home development.

Fish are in great demand as a source of protein; new sources of continental shelf oil and gas are urgently required to meet energy needs; seabed nodules are about to be mined for strategic minerals; global shipping grows; ports and harbors have become busier. Along the attractive coastal rim, urban populations concentrate more heavily and seek recreational joys from both water-related sports and esthetic surroundings. Finally, well over 100 nations face the sea, and they are exploring the potential of the oceans in contributing to their future.

To protect our oceans and coastlines from rampant resource exploitation, the Anderson Administration will institute the following programs:

It will actively lobby for the passage of "Oil Spill Superfund" legislation which would provide funds for rapid clean-up and damage compensation. Under our program:

Revenue for the superfund will be obtained through the taxation of companies involved with the transport and storage of oil that could result in the pollution of our country's waters.

Administration of the superfund will be by the EPA.

Use of superfund monies will be for:

The clean-up of oil spills.

Immediate compensation for damages caused by the oil spill.

The superfund will have the ability to sue the polluter to recover funds disbursed for damages, and the tax be adjusted on a biennial basis in the light of actuarial calculations.

With increased shipping of petroleum and hazardous cargo, and with increased size and decreased maneuverability of ships, greater attention is necessary to reduce risk to the environment and to assure safety for human life.

The Anderson Administration will direct the Coast Guard to strengthen traffic management systems and to devise means to enforce safety regulations more strictly. Additionally, new incentives and penalties will be provided to the shipping industry itself, so as to facilitate its assuming greater responsibility for operations. The Anderson Administration will also ask Congress to increase Coast Guard funding to cover the costs of these new programs.

The Anderson Administration will direct the Department of Transportation to research ways and means to accommodate increased maritime traffic, while reducing risk.

Sophisticated technology required for Arctic hydrocarbon exploration has not been tested and is still only in the developmental stage. Under the Anderson Administration, leasing in the Beaufort Sea will proceed only after technological methods are proven—*and* the annual review of the leased areas is comprehensive and conclusive enough to determine whether oil and gas exploration is having a detrimental impact on species such as the endangered Bowhead and Gray whales. Exploration in other Arctic areas such as the Chukchi Sea, Norton Sound and Navarin Basin will not proceed until the effects of Beaufort leasing is known, and consideration will be given to limiting exploration only within the barrier islands.

The Anderson Administration will require the following safeguards before any drilling is allowed to occur on George Bank, the world's most abundant fishery:

The barging of drill muds and cuttings off-site away from spawning areas except when meteorological conditions make this more hazardous than on-site disposal. Many of these materials contain toxic substances.

The reinjection of formation waters into the drilled cavity. These are waters associated with oil and gas reservoirs which are usually separated from oil and gas, and dumped overboard. Benzene, toluene, xylene, and ethyl-benzine are some of the materials found in these waters, and they are also the most toxic to marine organisms. The dumping of those materials could have a disastrous effect on fish larvae which circulate near the surface areas of the water columns.

Improvement in the composition and authority of the Biological Task Force established to monitor the effects of oil and gas activity on biological resources.

Lessees will be required to factor costs of safeguards into their costs of production in determining the feasibility of a particular tract. If the tract is subsequently determined to be economically infeasible, the developer will not be allowed to waive the safeguards, rather, the tract will be deleted.

Existing legislative and administrative authorities under the Federal Water Pollution Control Act (Section 404) will be strictly enforced, and federal agencies will encourage and solicit local support and aid in this enforcement.

The 1972 Coastal Zone Management Act is due for Congressional reauthorization. The Anderson Administration would seek to have this Act reauthorized by Congress and strengthened with more effective management incentives and enforcement tools. The following points should be included:

The CZMA should provide stronger incentives and penalties for states to develop and adopt their own management plans.

Periodic reports should be required from state and federal governments on the coastal areas, including reviews of state management plans.

Incentives for states to identify and preserve coastal areas of national significance.

Funding for additional beach access.

An Anderson Administration would address the issue of reducing federal funding for projects in high hazard areas especially on flood plains, wetlands, and barrier islands.

An Anderson Administration would support a strong, viable Marine Sanctuary Program.

Recent proposed changes in Section 404 of the Federal Water Pollution Control Act giving the Army Corps of Engineers more authority in the permitting process would be opposed by an Anderson Administration. (We favor the present procedure in which EPA has final veto over the Corps permits in the case of fragile areas.)

An Anderson Administration will require a review of our major ports in order to establish what are our national needs for ports and how established infra-structure can meet these needs without encouraging additional construction at the expense of our wetlands.

Through the United States Law of the Sea conference, the Anderson Administration would encourage adoption of environmental standards that would better control ocean pollution, the dumping of waste and the continuing disposal of radioactive materials on an international basis.

Public Lands

To fill the resource demands of a continually growing consumer population, many people wish to exploit the vast tracts of resource rich public lands in the West, and the remote undeveloped spots in the East. We must recognize that once we begin the exploitation of our public lands, however, that we are creating irreversible change. For this reason, it is in the best interest of the American people to hold portions of our natural lands in safekeeping, forever to be free from the threat of exploitation. Other federally owned lands can provide large amounts of valuable timber, minerals, and grazing land, if they are carefully managed. The next administration will have to address the following land management and resource preservation topics:

Alaska Lands

The Udall-Anderson Alaska Lands Bill (H.R. 39) passed the House of Representatives due in large part to intensive support by its primary minority co-sponsor, John Anderson. If enacted into law, this measure will protect approximately 128 million acres of unspoiled Alaska lands; of these, 67 million acres will be given "wilderness" designation. More recently, the Senate passed its own version of the Alaska Lands Bill, proposing the protection of approximately 100 million acres, but excluding some prime regions that are protected by the House bill.

We will exert our best efforts to secure enactment of a strong Alaska Lands Bill, as introduced by John Anderson in the House of Representatives.

Sagebrush Rebellion

The Bureau of Land Management of the Department of Interior manages the nation's "unappropriated, unreserved lands". This now amounts to about one-fourth of the land area of the United States. Ninety percent of these unreserved lands are west of the Rocky Mountains. There is currently local political pressure to enable the states to assume management of these lands.

It is, however, also argued that states will find it too expensive to manage the lands and will succumb to overwhelming pressures to sell it. (It would cost Idaho $51 million to manage 20 million acres of national forest lands at the current level of management by the federal government.) With the zeal to develop these areas, environmental concerns could easily be overlooked or ignored.

The Anderson Administration will work to have federal lands remain in the possession of the federal government to ensure they are managed in the best national public interest, according to principles of conservation and multiple use of all resources.

Forestry

More and more pressure has come from the timber industry and building trades to cut more heavily in our national forests as lumber shortages increase. Yet, we currently export logs to Japan. The hard choice here is between the preservation of an important and substantial part of the environment and the accummulation of needed export revenues. In an area as important as the national forests, we must allocate our resources more wisely. We must have respect for the land that extends beyond our time. Broad interests definitely should be represented in the preservation of national forests.

The Anderson Administration will vigorously enforce the multiple use/sustained-yield policy set forth in the National Forest Management Act of 1976.

The Anderson Administration will require the Forest Service to review its timber pricing policy to bring it in line with sound business practices, since the subsidizing of timber prices discourages private forest investment and other uses of the forests. More emphasis will be placed on private timber farms by the Forest Service to increase its cost-sharing and assistance programs.

RARE II Process

Through the RARE II (Roadless Area Review and Evaluation) process, the Forest Service has reviewed 62 million acres of roadless lands in the national forest system. The Forest Service has recommended 15.4 million acres as wilderness, 35 million acres be managed for multiple use (logging, grazing, recreation), and 10.8 million acres be studied further.

Under the Anderson Administration, wilderness designations will be increased and areas not previously studied will be reevaluated for their wilderness potential.

Urban Parks

To improve the urban environment and to assist urban areas maintain and protect their valuable parks, an Anderson Administration will:

Encourage the National Park Service to attend to the special needs and problems of parks and public recreational areas within the urban setting.

Air and Water Quality

In recent years the energy needs of our country have been the primary issue in the minds of our government officials and the general public. Since this issue receives focused attention and efforts, other domestic programs and issues at times go lacking or are even submerged. Environmental concerns are often considered hinderances to energy development and industry is continually attempting to have standards eased. Auto manufacturers plead to have auto emission standards relaxed as a way of attaining adequate mile-per-gallon ratings. The increased use of coal and synthetic fuels bring with it the potential of vitiating the nation's air quality. Emissions from increasing fossil fuel combustion combine with accumulations of carbon dioxide to form acid rain that has fallen on the Northeast depleting fish in mountain lakes and affecting crop production and forest yields.

Our water quality and reserves are also declining at a dangerous rate. Our ground water is being contaminated by abandoned waste dumps, unsafe landfills, polluted streams, and oil and gas well drilling techniques.

Some suggest we submerge environmental concerns to solve the energy, productivity, and economy issues. We must put in place policies and programs that will answer the needs of the future and not be oriented to short-term concerns without reference to what the consequences might be for future generations.

The Anderson Administration will establish the strict enforcement of the Clean Air Act of 1977 and the Water Pollution Control Act of 1972 as national priorities.

Through the EPA, the Anderson Administration will seek to reduce further industrial emissions and require the installation of best available control technology on existing coal-fired power plants.

The Anderson Administration will lobby against attempts to weaken standards or postpone the deadlines for reducing carbon monoxide and hydrocarbon levels in automobile exhausts.

The Anderson Administration will direct the EPA to phase out the substitution of taller smoke stacks for emission controls.

The Anderson Administration will seek to retain the section of the Clean Air Act that prohibits any "significant deterioration" of pristine air in our national parks and wilderness areas. (Removal of this provision would have allowed a giant coal-fired plant to be erected only nine miles from a major park in Utah.)

The Anderson Administration will direct the EPA to institute an exhaustive study of the effects of acid rain and methods for its prevention. (For further discussion of acid rain, see the Energy plank.)

A national program of water conservation will be initiated by the Anderson Administration. Environmental values will receive top priority in planning of water programs and projects.

Through the EPA, the Anderson Administration will strictly enforce federal standards for carcinogens in drinking water. If standards are not met by the utility or municipality serving a community, the consumers will be notified, and the utility required to meet the standards using appropriate technologies.

Wildlife

Ninety percent of all species which ever lived on Earth have now disappeared; almost all of them died out naturally. Recently, this process has changed. Man's actions now account for the extermination of numerous species. In 300 years man has eliminated 150 known species of mammals and birds, and an unknown number of reptiles, amphibians, and fish. Pressures from an increasing world population seeking room to live and resources necessary to support an ever rising standard of living are depleting the habitat of our wildlife.

A concern for wildlife conservation can seem frivolous in today's world, yet man has a tremendous self-interest in ensuring ecosystem stability and protecting the Earth's gene pool. Any reduction in the diversity of resources reduces our ability to respond to new problems and opportunities. In order to protect the wildlife of our lands and seas, the Anderson Administration will:

Strengthen the National Wildlife Refuge program by limiting the secondary uses of the refuges: grazing, timber harvest, hunting, trapping, predator control, and pesticide use.

Expand and strengthen the current embargo on the import of products derived from endangered wildlife.

Exercise the influence of the United States to encourage other countries to terminate the wholesale slaughter of whales, porpoises, seals, and other wildlife.

Enforce international whale conservation efforts through sanctions under the Pelly amendment to the Fisherman's Protective Act, which provides that any nation which undermines an international conservation treaty will have its nation's fishing products embargoed from entering U.S. ports under the direction of the Department of Commerce. Where a nation was in violation of an international conservation treaty and certified under the Pelly amendment, the Anderson Administration would employ the Packwood/Magnuson amendments to the Fishery Conservation and Management Act, which can expressly limit the amount of fishing allowed within the U.S.-200 mile limit.

Water Projects

Due to the pork-barrel nature of Army Corps of Engineers and other federally funded water projects, legislation in this area is often given a cursory review by Congress and usually passes with ease. As a result, many water projects are constructed without proper attention to their environmental impact.

The insatiable desire for ever cheaper electric power, without attention to cost-benefit ratios, will bring about the costruction of numerous hydro-electric dams on previously free-flowing rivers and streams. This could have many adverse effects such as the destruction of valuable fish and wildlife habitats, the inundation of productive farmland, the displacement of rural populations, and loss of irreplaceable scenic and recreational areas.

The wetlands of our country are also in jeopardy. Land developers are now turning to areas that were previously difficult to develop, but are now attractive due to escalating land costs. Now that the technology and machinery exists to drain our marshes and wetlands easily, we are faced with the prospect of the destruction of these valuable ecosystems that provide habitats for many forms of flora and fauna. Wetlands are also a valuable component in our water cycle, providing natural waste treatment and a means by which we can store flood waters to recharge our groundwater supplies.

To assure that federal water projects respect environmental concerns the Anderson Administration will do the following:

Direct the Army Corps of Engineers to place a strong emphasis on the preservation and restoration of our nation's wetlands.

Pay careful attention to proposed federal water projects to see that their cost-benefit ratios did not underestimate environmental impact. An example of a project that proves to be very cost-effective and that the Anderson Administration will support is the Charles River Watershed Project in North Carolina. This project establishes good flood-plain management and protects valuable wetlands.

Re-evaluate the cost-benefit ratios of all navigation projects for barges that are less than 40 percent complete to determine if they are still profitable. If they no longer pass this profitability test, then the Administration will halt their construction.

Decrease federal funding of water project costs to encourage the states to assume a larger share of project costs.

Federal water project aid will be made conditional on state implementation of groundwater management laws.

Toxic Substances

Through the manufacture of chemical substances, our nation generates 77 billion pounds of hazardous waste each year. Such waste threatens our air, rivers, and ground water resources. The serious toxic contamination discovered in the Love Canal area of New York has understandably resulted in public suspicion, fear, and anger. Such reaction is not unwarranted. There is convincing and sobering evidence that chemical wastes until recently have been disposed of illegally or carelessly in a way that assures they will ultimately find their way into the environment. In many instances these chemicals once released cannot be controlled.

The U.S. government through EPA has the framework to control chemical products and wastes. (The Toxic Substances Control Act authorizes the government to collect information on chemicals that may damage health or the environment and to control them where necessary.) The Resource Conservation and Recovery Act provides for government control over hazardous wastes from their point of generation to final disposal.

Thus the U.S. government is beginning to collect information on all aspects of waste generation and to dispose of (or store) the wastes securely. There is growing public concern that the federal government's present level of commitment is not adequate for the task.

In many instances, the failure to take swift measures endangers the public's health. As a matter of public policy, we cannot delay action while we await conclusive evidence of toxic-related cancer, abortion, fatalities, and birth defects.

Federal policy must be focused on the prevention of toxic disasters. The following policies will be implemented to address this national environmental crisis:

The Anderson Administration will more aggressively enforce the Toxic Substance Control Act and the Resources Conservation and Recovery Act. This calls for rapid promulgation of the rules by the EPA and for the expansion of testing and monitoring. Within legislative mandates, the Anderson Administration will expand the existing testing and monitoring procedures.

The Anderson Administration will work toward enactment of a "Toxic Waste Superfund" program for the clean-up of improperly disposed of toxic materials.

The superfund will be built on taxes levied on the principal hazardous waste generating industries.

The industries to be taxed will be identified through a study by the EPA.

The individual tax rates will be determined by the quantity of waste produced by the company.

The "Toxic Waste Superfund" will be administered by the EPA.

The superfund will be used for:

The clean-up of improperly disposed of toxic materials.

Compensation to innocent victims as a remedy of last resort. It must be noted that a polluter is liable for injuries incurred as a result of its improper disposal of toxic waste. If the polluter is unknown, or if liability for damage cannot be expeditiously established, then the EPA will be able to award compensation to the victim if it can be proven that injuries resulted from the improper disposal of toxic wastes.

The Anderson Administration will promptly convene regional councils of governors and mayors to develop sensible regional solutions to the disposal site problem. These councils would make the hard choices that are needed, assisted by technical experts from federal, state, and local agencies, with input from private citizens.

The Anderson Administration will direct the EPA to grant funds to be used to help the councils ensure that these priority disposal sites are managed with the greatest care and skill. This would include provision of technology development funds where appropriate in order to pioneer new and more effective disposal techniques.

The Anderson Administration will institute temporary emergency bans on the usage of toxic substances, herbicides, and pesticides where there is extensive evidence and confirmatory information that the substance is causing serious adverse health effects on people and the environment. (The EPA imposed an emergency ban on the use of both 2,4,5-T and Silvex. They took the action due to evidence that these herbicides caused cancer, birth defects, and miscarriages. We support this emergency ban.)

The Anderson Administration will examine in detail the problem of the transport of hazardous chemicals. It will act quickly to reduce the danger to the public from this source. Safe traffic routes will clearly be a major component of this initiative.

IV. GUARANTEEING RIGHTS AND PROMOTING JUSTICE

Prosperity without justice, and security without basic rights, are incomplete. Indeed, any society that long denies basic rights and just treatment to all its citizens diminishes its unity and strength, and sows a crop of bitterness and rage. It is both the obligation and the interest, of every society to deal fairly with all.

In modern American society, however, it must be remembered that economic well-being is considered a basic right of all Americans. Action in the field of civil rights today, therefore, has these basic priorities:

First, we must seek to provide employment opportunities for all. This is the purpose of our proposals here and elsewhere in the platform in the area of *jobs*.

Second, we must transform our laws so that they cover and protect all equally. This is the purpose of our proposals in the area of civil rights.

Third, we must ensure that all the laws we have are enforced fairly and equally. This is the purpose of our proposals in the areas of criminal justice.

Jobs and justice

A just and progressive civil rights policy must be founded not only upon the enactment and enforcement of civil rights legislation, but must also be founded upon an economic policy that provides opportunities for employment and advancement.

Throughout this program we have set forth proposals that affect the employment status of minorities. These include strengthening Title VII of CETA, enacting a Youth Energy Projects Act, supporting the Youth Act of 1980, stimulating small businesses in declining areas, establishing urban enterprise zones, and rebuilding neighborhood confidence by promoting policies that encourage local initiative. We have proposed urban housing programs to increase the supply of low income housing, encouraging self-ownership, and removing restrictions on the use of HUD funds for the restoration of existing residential structures. We have proposed low income energy assistance needed to help families unable to meet skyrocketing residential energy and weatherization costs. Our investment proposals include tax credits for firms that renovate their existing structures (largely relevant to urban areas). We have proposed a job-creating Urban Investment Trust Fund to rebuild the basic infrastructure of our cities and a job-creating Community Transit Trust Fund to renovate and rebuild our transportation network. Jobs will be a central concern of an Anderson Administration.

In addition to these and other programs outlined in this program, we propose a strong initiative in the field of minority business.

The ownership of businesses and other capital assets is the best way in which members of minority groups can gain their deserved share of the American economy. However, minority-owned businesses face not only all of the problems of finance, overregulation and marketing facing all small businesses, but also the additional problems caused by a long history of discrimination. Thus, it is necessary to provide additional assistance to Black, Hispanic, American Indian and other minority entrepreneurs. Such assistance should be carefully tailored to provide help to businesses that create long-term productive jobs and stimulate economic growth. We endeavor to:

Place additional emphasis in the Minority Business Development Program upon assisting minority entrepreneurs in growth industries, such as energy production and conservation, electronics and communications.

Implement legislative setaside provisions for minority businesses, especially in areas that can improve the productivity of the minority community and the economy as a whole, including funds allocated for research and development activities.

Expand the Minority Business Technology Commercialization Program of the U.S. Department of Commerce in assisting minority entrepreneurs to participate in the process of the commercialization of new technologies, including those resulting from our space program.

Make the programs of the Small Business Administration more effective through streamlined procedures, monitoring of results and closer working with minority-owned banks.

Civil rights

John Anderson's commitment to civil rights has never wavered throughout his years of government service. A vocal supporter of every major piece of civil rights legislation from the 1964 Civil Rights Act to the 1980 Fair Housing Act, he has remained steadfast in his loyalty to the principles of equal education, open housing, and employment for all. Governor Lucey has an equally long and distinguished civil rights record.

Although many are willing to make the claim that the battle for civil rights has been won and is over, we disagree. We are willing to applaud the progress thus far, but as long as we fail to see an Equal Rights Amendment ratified, as long as previous commitments to the rights of American Indians, Hispanics, Blacks, and other minorities are not honored; as long as we fail to extend those same commitments to the rights of the handicapped, immigrants, and others; as long as our fair housing laws are wantonly abused; and as long as groups such as the Klu Klux Klan and the Nazi party not only survive but actually gain nominations for public office, we are unwilling to call for a truce in the struggle for civil rights.

In most instances, the legislation necessary for the guarantee of civil rights is already in existence. Unfortunately, many of these laws, some of which have existed for a century, and some for two decades, are not being seriously upheld or enforced. Existing laws and statutes must be upheld and, if necessary, revised to enhance their enforcement. Only when we strictly enforce laws such as the Civil Rights Acts and uphold our fair housing laws will we realize an effective commitment to civil rights.

Housing

Title VIII of the 1968 Civil Rights Act declared that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." But despite this, many Blacks, Hispanics, and other minorities are still denied equal housing opportunities.

We believe steps must be taken immediately to insure equal housing opportunities for all.

The Anderson Administration will seek immediate enactment of Fair Housing legislation, if H.R. 5200 is not enacted during the 96th Congress.

In 1968, John Anderson cast the deciding vote in the Rules Committee which brought the Open Housing bill to the House floor, and he helped lead the fight for its passage. We recognize that the original bill must be strengthened. Thus, we support the legislation currently before the Congress which would authorize HUD to order violators to cease discriminatory practices, and to assess civil penalties against those accused of violating the Fair Housing Act.

We believe adequate funding must be provided to enable HUD to conduct community-wide compliance reviews, monitor compliance agreements, and establish a viable program for interagency coordination with regard to fair housing. We must increase funding for the Department of Justice in order to ensure adequate prosecution of Title VII violators. Affirmative Action.

The mandate of our civil rights legislation cannot be fulfilled simply by prohibiting practices intentionally designed to deny opportunities. We believe that we must make an honest and positive effort to enforce the equal protection clause of our constitution through the establishment of affirmative action programs.

We cannot be lax either in the monitoring or in the enforcement of affirmative action programs. Such programs have been in effect for only a brief interval of time compared to the years of oppression that preceded them. Over a century ago, the Supreme Court stated that when a person emerges from slavery to citizenship, he "ceases to be a special favorite of the laws." Such thinking, similar to the growing revisionism of today, helped to usher in a century of enforced segregation and discrimination. An Anderson Administration will never accept such a reactionary and unjustified view. It will be prepared to use the threat of terminating federal funds to offending institutions and municipalities much more extensively than previous administrations have been.

We also believe that the federal government should set the example in the application of minority hiring practices. An Anderson Administration will require full accountability from all government departments and agencies with regard to the implementation of affirmative action. We believe that the true test of an administration's intentions lies in its ability to place minorities in all branches of government, not just in those sections of government concerned with minorities. An Anderson Administration will seek to place minorities in all foreign as well as domestic branches of government.

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Education

Since the *Brown vs. The Board of Education* decision, school districts have struggled with the problem of properly integrating their schools. We favor federal support for communities to devise their own method to attain school desegregation. Those methods include redrawing zone boundaries, pairing arrangements between school districts where feasible. However, if these strategies fail to achieve integration, we favor an intelligently devised busing plan as a last resort.

The Anderson Administration will absolutely oppose any attempts to pass a constitutional amendment prohibiting busing.

We recognize that court-ordered busing is the result of community failure to design a local remedy for school desegregation. An Anderson Administration will seek to enact the National Educational Opportunity Act introduced in the 95th and 96th Congresses by John Anderson. This legislation would provide federal funds to encourage local cooperation in enacting school desegregation programs.

Native Americans and Alaskan Natives

The obligation owed to Native Americans and Alaskan Natives by the federal government is not discretionary, but is based on prior legal commitments established through judicial and legislative pronouncements. However, in many instances, the federal government has failed or is failing to meet this nation's obligations to Native Americans and Alaskan Natives.

We have always been strong supporters of sovereign tribal rule, as guaranteed to Native Americans and Alaskan Natives by treaty, Supreme Court decisions, Congressional policy and Executive Order. Under an Anderson Administration, treaties will not be abrogated without the consent of all parties involved.

We believe that a strong Bureau of Indian Affairs is necessary to adequately protect the interests of Native Americans and Alaskan Natives within the federal government. Any reorganization of the Bureau should seek to distribute more power toward both the Agency and tribal level.

The federal government must work with Native Americans and Alaskan Natives to plan, develop and implement realistic economic development programs which will improve and strengthen their economic position and which will bring long-term employment opportunities to their people. Where Tribal and Alaskan Native lands contain considerable amounts of coal, uranium, natural gas and other natural resources the federal government should not be permitted nor should it permit private industry to exploit these resources in a manner detrimental to those Tribes and Alaskan Natives.

We support the efforts of the Bureau of Indian Affairs' Federal Recognition Project.

An Anderson Administration will order enforcement of the Voters Rights Act and the Bilingual Education Act to assure that Native Americans and Alaskan Natives will receive voting information as well as sufficient educational materials in their native languages.

Life expectancy for Native Americans and Alaskan Natives is low. We propose an expansion of programs involving tribally controlled paraprofessionals and grassroots health services with an emphasis on preventive medicine.

Puerto Rico

The islands of Puerto Rico should be entitled to political self-determination. We support any decision the people of Puerto Rico make in a referendum whether the decision includes becoming a state, maintaining its status as a commonwealth, establishing independence.

Sexual Orientation

We believe that discrimination due to sexual orientation should not be tolerated baring discrimination based upon sexual oriby the Federal Government. An Anderson Administration would work to repeal the section of the Nationality and Immigration Act which excludes individuals from immigrating soley on the grounds of sexual orientation. We would issue an executive order entation within the Federal Government. An Anderson Administration would encourage Congress to extend to the Civil Rights Commission the power to investigate acts of discrimination against individuals based upon their sexual orientation.

District of Columbia

We applaud past efforts to grant the District representational rights. We support ratification of the amendment which would grant D.C. voting rights in Congress.

Immigration

Immigration policy raises a number of difficult issues. We seek to balance the aspirations of the poor, hungry, and jobless in other lands while protecting the most disadvantaged members of our own society from special burdens.

An Anderson Administration will create an executive task force to review and, where appropriate, to implement the recommendations of the Select Commission of Immigration and Refugee Policy as soon as its report is made public. In so doing, it will constantly keep in mind the contributions made by generations of immigrants.

The two thousand mile border we share with Mexico presents unique problems, but unique opportunities for mutually beneficial cooperation as well. The immigration of undocumented Mexican workers affects the interests of many parties, not just those of our two governments. It affects local communities on both sides of the border; it affects the American worker as well as the undocumented Mexican worker, and it affects our own Hispanic-American community.

We believe that any attempt to close the border would be detrimental to our relations with Mexico. We are opposed to any policy which requires the carrying of work cards. Such a policy is inconsistent with this nation's fundamental commitment to civil rights.

We must deal with the issue of Mexican immigration within the context of other border issues. The existing mechanisms for handling specific problems in the border region have not been satisfactory. Therefore, an Anderson Administration would propose the creation of a joint Mexican-American commission to promote cooperative border development in an integrated fashion as described elsewhere in the platform.

Handicapped

While significant strides have been made toward ending discrimination against the handicapped, much remains to be done in terms of increasing employment and education opportunities, while also promoting freer access to public buildings and services. Several tasks remain to be done.

We must work to eliminate discrimination against the handicapped in housing by amending Title VIII of the Civil Rights Act to bar such discrimination.

We must insure compliance with Section 504 of the Rehabilitation Act of 1973 to increase the accessibility of public facilities for disabled Americans.

We must accelerate the spending of monies already authorized for independent living demonstration projects.

We must expand federal vocational and educational training provisions to include independent skill training programs for the disabled.

We must provide appropriate tax relief for private employers who remove architectural or other barriers to the hiring of the handicapped.

Justice for American women

The time has come for all our institutions and leaders to seek justice for American women.

Full partnership for women in our society is essential to our self-respect as a nation and our moral standing as a world leader. In addition, rebuilding our nation depends on our capacity to utilize all the creativity, leadership, and technical skills available. Justice for women is not a luxury; it is a necessity.

The women's movement of this generation is a vital force in our society. Thousands of the ablest women are enlisted in this cause and have achieved great gains.

Federal legislation prohibiting discrimination in education, employment, credit, and housing has been passed. The Equal Rights Amendment has been ratified by 35 states representing 72 percent of the population. Thirteen states have added effective ERA's to their state constitutions. The Supreme Court has made tentative but ambiguous steps in the direction of interpreting the fourteenth and fifth amendments to extend to women equal protection of the laws.

Women of means can get legal, safe abortions.

Improvements have been made in marital property, divorce, and inheritance laws in a number of states.

The number of women mayors, city council members, and state legislators has steadily grown.

Half our college undergraduates are women, and 25 percent of our law and medical school enrollment.

Participation of girls and women in sports has skyrocketed.

Opportunities for women in non-traditional training and jobs have been opened up.

Government funding of child care facilities for low income women has increased.

Women have made gains in full acceptance in the military services, particularly in non-traditional occupations.

Some shelters for victims of rape and battered women have been established, and some Federal government funding is being provided.

These gains came against great opposition and at great cost in time and money to literally thousands of women and many supportive men.

In spite of the impressive victories already won, women are nowhere near achieving full partnership in any of our institutions, including the family.

The ERA, which would provide legal equality, has not been ratified.

The ERA is sorely needed because federal law and most state laws are based on the English common law, under which married women were chattel under the control of their husbands. They were considered incompetent to control their children, their property, or their own lives. Although many piecemeal reforms have been made, the laws are still riddled with vestiges of the English common law. For example, one state code reads as follows: "The husband is the head of the family and the wife is subject to him; her legal civil existence is merged in the husband, except so far as the law recognizes her separately, either for her own protection, or for her benefit, or for the preservation of public order."

Under another state code, a widow may forfeit any rights in her deceased husband's estate if she is guilty of "misconduct." There is no similar provision applying to a widower.

In a number of states, a wife may not receive alimony if she is at fault. A husband, however, is not penalized for being at fault.

In several states, profits from a business run jointly by wife and husband are the property of the husband.

The ERA is needed to insure that states and the Federal government make a systematic effort to review and revise their codes to eliminate such laws as these.

Many other problems remain:

Stumbling blocks have been put in the way of those seeking reform of domestic relations laws to accord homemakers the value and dignity they so richly deserve;

Over one-half of divorced mothers are supporting their children without assistance from the father and only 4.6 percent of divorced women receive any alimony;

The right to choose whether to bear children is not available to many poor women, and sterilizations without informed consent are still being performed;

Women still earn on the average 59 percent of what men earn, and 80 percent of women in the labor force are still employed in the segregated low-paid occupations. Many of these occupations pay less than traditionally male jobs with less responsibility and requiring less skill and education. Too many of the children of working mothers have inadequate care. Only 1.6 million licensed day care slots are available for 6.9 million children under 6 with working mothers.

Our university faculties have been very resistant to employing and promoting women. Although there are many more women Ph.D.'s than 15 years ago, the percentage of women faculty in universities has not improved significantly. Most of the improvement has come at four-year and two-year colleges in lower ranks.

Little progress has been made in participation of women in non-traditional vocational education programs;

Most battered women still have no refuge from violence, particularly women in small towns and rural areas;

The domestic relations laws of most states and the tax laws of the federal government are not based on the premise that the contributions of homemakers are equal in value and dignity to that of the providing spouse;

The federal government does not direct a fair share of employment and training opportunities to women;

Many federal government programs, such as alcohol and drug abuse programs, have not provided benefits to women in proportion to their needs. Health research has focused on women's reproduction leaving women out of studies on other aspects of health. In some programs, data are not kept by sex so that assessment of the impact on women cannot be made.

The Anderson administration will strive to create a climate that will encourage all our leaders and institutions to join the effort to bring women into full partnership in our society.

Equal Rights Amendment

The Anderson administration will strongly support the Equal Rights Amendment by giving its ratification a high priority. We will develop a joint strategy with state sponsors in unratified states and do our part to implement it. We will publicize the truth about the ERA and expose the distortions that are prevalent. We support the boycott of unratified states and urge private organizations to do so.

Reproductive Freedom

The Anderson administration will:

Oppose government intrusion or coercion in the most private of decisions—to bear or not to bear children. We support freedom of choice for the individual;

Oppose any constitutional amendment prohibiting abortion and urge that federal programs providing funding for medical care of pregnancy and childbirth should include funding for abortion;

Strictly enforce federal regulations to insure that sterilization is voluntary;

Increase government funding of family planning services, including services for teenagers; and

Increase research to find more effective methods of contraception, with the hope the time will come soon when no woman finds it necessary to have an abortion.

Appointments

Recognizing that highly qualified women are not as visible as highly qualified men, the Anderson administration will make a systematic effort to identify women for key positions, using the many women's organizations and other sources. Volunteer experience will be evaluated on its merits.

Enforcement of anti-discrimination laws

Anderson's administration will vigorously enforce anti-discrimination laws and executive orders, giving special attention to university tenure and promotion practices. We will oppose amendments that weaken such laws, including amendments that would limit women's opportunities to participate in sports. Appointees to positions responsible for enforcing such laws will be chosen on the basis of their capacity and commitment to full enforcement.

Participation of women in government programs

Anderson's administration will require that administrators of government programs collect data by sex and review the impact of these programs on women and the participation of women in policymaking. Corrective action will be required in those services, such as employment and training programs and alcohol and drug abuse programs, not enrolling women in proportion to their numbers in the populations served.

Health research will include women in the populations studied and women will serve on the committees designing studies and selecting grantees. It will be the Anderson administration's policy that women be equitably represented on all grant-awarding and review boards, committees, and advisory panels.

Pay equity

The Anderson administration will support research on methods of achieving pay equity for women in traditionally women's occupations and the development of guidelines and legislation, if necessary, to promote this goal.

Child care

The Anderson administration will support more extensive child care funding for children whose parent or parents are employed and cannot afford privately funded child care. We will support increased child care facilities for welfare mothers who want work or training for work.

Marriage

The Anderson administration will seek modification of federal laws to conform with the principle that the contributions of wife and husband are of equal value and dignity. We will:

Urge elimination of gift and estate taxes on transfers between marital partners;

Recommend elimination of the "marriage tax" by permitting two-earner families to file as if single;

Develop proposals for revision of social security laws to provide equity for homemakers and wives employed outside the home;

Support enactment of the Homemaker Retirement bill of which John Anderson is a sponsor;

Support government assistance for displaced homemakers to help them enter or reenter paid employment;

Recommend legislation and appropriations to aid victims of domestic violence.

While the marital property, divorce, and inheritance laws are under state jurisdiction, the Anderson administration will create a climate that will encourage fair treatment of women.

Registration/draft/military service

The Anderson administration opposes a peace time draft. If the Congress authorizes registration or a draft, we will urge inclusion of women.

The Anderson administration will:

Support repeal of laws prohibiting women in combat, leaving to the Armed Services discretion in assigning personnel;

Elimination of discrimination against women in the military services, and opening up of more military occupations to women.

Health and safety

Health insurance programs proposed by John Anderson's administration or supported by it will include coverage of women's health needs, such as care for pregnancy and pregnancy-related disabilities and abortion. Coverage will be provided for single-parent families and divorced and widowed women, who too often have inadequate coverage.

Safety and Health Standards will protect the reproductive health of women and men, and Title VII of the Civil Rights Act will be strictly enforced in cases where women are indiscriminately removed from positions involving contact with toxic substances. The Equal Employment Opportunity Commission and the Labor Department will be directed to issue the too-long-delayed guidelines immediately and proceed with enforcement.

Rural American women

Women living in small towns and rural areas are particularly handicapped by distance from educational institutions, employment and counseling services, day care, job training programs, health services, battered women's and rape crisis centers, and alcohol and drug abuse treatment centers. John Anderson's administration will endeavor in cooperation with representative organizations, to modify federal programs as necessary to provide equity for farm women and other women living in rural areas and small towns.

Minority and ethnic women

Special attention will be given to the needs of minority and ethnic women in all programs to combat discrimination and in programs to provide services to support women.

International

The Anderson administration will:

Advocate ratification by the Senate of the U.N. Convention on Elimination of all forms of Discrimination Against Women, attaching if appropriate reservations to insure consistency with United States laws;

Appoint more women to U.S. delegations, on governing bodies of international agencies, and in the U.N. system.

Criminal justice

Criminal Code Reform

An Anderson Administration will support a studied, incremental approach to criminal code revision rather than an omnibus approach that may sacrifice essential civil rights in the process of legislative bargaining.

We should set clear priorities and concentrate on revision in areas of key concern. These include:

Fair and uniform sentencing policies;

Equal protection of rights for all, including aliens, in every appropriate area;

More extensive coverage of white-collar crime.

Police/Community Relations

A police department must have the cooperation and good will of the residents of a community if it is to act in an efficient and effective manner. For cooperation to exist, residents must believe that the police force is acting on their behalf and is not an enemy to be feared and avoided.

An Anderson Administration would introduce legislation to Congress which would specifically authorize the Attorney General to take civil action against offending government and police departments so as to eliminate proven patterns and practices of misconduct in those departments. Anderson would also encourage efforts to increase staffing for the Department of Justice in the criminal division with a special emphasis placed on minority recruitment and hiring. Adequate staffing should also be provided for civil rights enforcement in the U.S. Attorney's office.

We also believe that those suspected of violating the law must be apprehended with a minimum of force. It should be the trial, not the arrest, that renders judgment and determines punishment. The federal government must use its powers of moral, legal and political persuasion to ensure that local justice is meted out in conformity with the standards of minimum force.

The Community Relations Service (CRS) which provides mediation and conciliation as opposed to litigation can be most useful in limiting racial tension. However, CRS is understaffed and underfunded. An Anderson Administration will seek to expand the staff beyond the 111 it now employs. Arbitration and mediation is a viable tool in police and community relations as well as in intracommunity relations.

Prison Reform

There are approximately 314,000 offenders housed in state and federal prisons At present, prisons are largely failing to rehabilitate those inmates and are instead creating impediments to rehabilitation. One-third of all prisoners released are back in prison within five years.

We support efforts being made by the courts to correct unconstitutional prison conditions created by the neglect of government officials. Such conditions can only prove to be a counter-productive force in our society. In addition, an Anderson Administration would authorize the Attorney General to institute civil suits on behalf of any inmate unable to get redress for deprivations of his or her federal constitutional and statutory rights.

We support legislation which would provide financial assistance to states for use in expanding educational and job training programs at correctional facilities.

Handgun Crime

The statistical profile of handgun crime constitutes a litany of death:

Handguns are used to commit nearly half of all the murders committed in the United States;

During the peak years of the Vietnam War, more Americans were killed by handguns than were killed in action in Vietnam;

Almost three out of every four law enforcement officers killed are victims of handguns;

Every hour, one American is killed by a handgun.

Despite these tragic realities, small but influential elements of our society have successfully fought handgun crime controls. More than a decade after the Eisenhower Commission called for handgun registration and the eventual universal licensing of handgun ownership, these goals elude us.

Some state and local governments have enacted laws to regulate handgun sales, distribution, and possession. These controls have effectively reduced handgun crimes, but their piecemeal enactment has resulted in localized benefits. In the absence of uniform activity by the states and municipalities, the national handgun problem cannot be solved. The deadly facts showing high rates of homicide by handguns mean that comprehensive federal legislation is needed now.

Before assuming office, candidate Carter "committed" his Administration to handgun control After taking office, President Carter either forgot his promise or intentionally ignored it. The Carter Administration has not proposed any gun control legislation to the Congress and the death toll from handgun crimes continues to mount.

The Anderson Administration will do what the Carter Administration has failed to do: submit handgun legislation to both houses of Congress. The Anderson Administration will propose a Handgun Crime Control bill which will:

Stop the manufacture, sale, and transfer of "Saturday Night Specials", the cheap handguns so widely used by criminals;

Establish mandatory jail sentences for the commission of crimes with a handgun;

Reduce illegal purchases of handguns by requiring purchasing licenses;

Establish strict requirements for those who are licensed to sell or manufacture handguns;

Develop a more effective tracing system to track down mis-used handguns and curtail illicit handgun traffic;

Require manufacturers, dealers, and owners to report the theft or loss of handguns, and penalize those who fail to do so;

Establish liability for illegal transfer of any handgun subsequently used to kill or injure another person;

Improve enforcement of federal handgun laws;

Require licenses to carry handguns outside the home or place of business.

The enactment of legislation embodying these proposals will not eliminate handgun crimes completely, and it will take years to eliminate illegal handguns from society. Yet, the longer this legislation is postponed, the higher the handgun death toll will climb. We must begin to enact remedies immediately.

Right to Privacy

Our right to privacy and freedom from government intrusion is one of our most fundamental rights. Now it is one of our most endangered rights. Improved communications technology allows increasing amounts of personal information to be transmitted and stored electronically. Many life-altering decisions are now based upon analyses of recorded data instead of personal interviews. The use of microwaves in telephone communications subjects our conversations to interception. Electronic funds transfer systems are capable of centralizing data on our financial transactions, but are also subject to possible abuse.

An Anderson Administration will draft legislation which more adequately protects our right to privacy. It will include provisions enabling citizens:

To have greater knowledge about data being collected about them;

To have the opportunity to correct erroneous information;

To be notified of adverse decisions based upon recorded information; and

To protect consumers' private financial records from unauthorized disclosure.

Recent court decisions concerning First and Fourth Amendment rights have increased the likelihood of government intrusion. An Anderson Administration will seek to enact legislation proposed in 1979 by John Anderson to prohibit law enforcement officials from obtaining search warrants to seize notes, photographs, and similar materials from groups or individuals not suspected of any criminal activity, except when necessary to prevent death or serious bodily injury.

Appointments

An Anderson Administration will work to increase the number of minorities and women at every level of our judicial system—as United States Attorneys, federal magistrates, federal judges, and United States Supreme Court Justices.

We completely reject any ideological "litmus test" of fitness for judicial positions as being wholly antithetical to the ideals of an independent and impartial judiciary.

V. SECURITY POLICY

Foreign policy

Introduction

The last two decades have seen a dramatic decline in the credibility and integrity of America's position in world affairs. We have witnessed the growth of Soviet military power, Soviet aggression in Afghanistan, and

Soviet military and political thrusts in Southeast Asia and Africa. We have seen Americans taken hostage, our representatives abroad killed, and our embassies destroyed. We have seen a significant erosion of our own economic power, our industrial productivity and our scientific and technological base. With this decline has come a concurrent rise in our dependence, on others—on the Arab states for our oil, on the Third World for other vital raw materials, on the Europeans to rescue our currency, and on China to balance Russia.

We are drifting downstream, learning to cope with each new demonstration of our weakness, unable to take the measures necessary for our long-run survival as a free and independent society.

We need clear and coherent answers and thoughtful leadership to revive the wellsprings of our strength so that we can regain our independence and restore our international position.

The first priority for American foreign policy quite simply must be to put our own house in order. Our economy and our technological base have always been the principal sources of our strength. Their decline is now the principal source of our growing weakness. The call, elsewhere in this program, for rebuilding our domestic strength is the starting point for our international recovery.

The next priority for American foreign policy is to restore and nurture our historic alliances, which have been neglected in the pursuit of global power balances that play our potential adversaries against each other. A common sense approach to foreign policy will look to our alliance systems as the bedrock of our long-range security.

The successful execution of these two prudent policies will go far toward restoring our international posture. Relying on these solid and secure foundations, we can better define our relationships with the Soviet Union, China, and the Third World.

The Soviet government will attempt to advance the reach of Soviet influence, whenever it is considered timely and promising. It will do so borne along by a large and skilled population, by deep and powerful historic currents of Russian nationalism, and by a comprehensive and flexible ideology. The Soviet Union is also beset with significant economic difficulties. It must contend with East European states always probing the limits of Soviet domination, and with a growing, united, and determined China. In dealing with the Soviets, we must be militarily strong, but seek whenever possible through negotiations to reduce fear and uncertainty. We should also pursue an even-handed policy between the Soviet Union and China, seeking to reduce our reliance upon their mutual antagonism as a major factor in our security position in Asia.

We must next reexamine our entire approach to the Third World, an area in which the United States has suffered great setbacks in the last two decades. We have treated Third World countries more as clients and as suppliers than as sovereign and independent states with their own needs, interest, and destinies. Our foreign policy must enunciate our ideals and promote our interests, but always within the bounds of respect for the sovereignty and independence of every nation, large and small.

We must also pay heed to human rights, not only to display our moral concern, but also to further human decency and to relieve pain and suffering. A strengthened America will launch a quiet offensive to help the refugee fleeing oppression, the Soviet citizen who wishes to leave his or her homeland, political prisoners all over the world, and American citizens languishing under barbarous conditions in foreign pails. We must also reach out to the hundreds of thousands of starving people in Cambodia, the Sahel, and other places throughout the world.

To succeed in these task, we must pay more attention to the conduct of our diplomacy. In recent years indecision and disunity have characterized the conduct of American diplomacy. There have been too many egregious examples where at best communications broke down and at worst important people with relevant viewpoints were deliberately excluded from the decision-making process. An Anderson administration will not tolerate such practices.

In formulating our policy, we must abandon the false logic that dexterity is a substitute for genuine strength. We must rediscover the meaning of the word commitment and understand that flexibility for its own sake is a self-defeating enterprise. We must recognize that America, as the world's leading power, must set an example for others by providing a focus for stability in the world. And we must never again find ourselves in a position where we need others more than they need us.

Furthermore, in the conduct of our diplomacy, we must once again emphasize substance over symbol. No grand conceptualization is needed to understand the dimensions of our current difficulties. No moral crusade will ever be a substitute for a solid foundation of patient diplomacy. No glittering style can ever successfully replace a cautious prudence. And no amount of bullying—however aggressive—can ever disguise genuine weakness.

What Americans must insist upon and must achieve is a renewed economic power and moral authority linked to a reinvigorated partnership with our democratic allies. With it, Western civilization can confront the dangers and the challenges of the world from a position of quiet but unquestioned strength and courage.

Western Europe and the Atlantic Alliance

The strength of our relationship with Western Europe and the Atlantic Alliance is central to the successful conduct of our foreign policy. Our ties to Europe touch all facets of America's interests abroad: relations with the Soviet Union and China, Middle Eastern and Persian Gulf problems, development in Third World, nuclear and conventional defense capabilities, arms control, energy dependency, human rights, and many others. These issues are addressed elsewhere in this program. What follows are the broad principles upon which an Anderson Administration will build its Western European policies. Also considered here are Western European issues not discussed elsewhere in this program.

For more than thirty years, the great and historic partnership between the United States and the nations of Western Europe succeed in preserving the peace and in providing a climate within which European skills and energy were mobilized to produce unprecedented prosperity, stability, and progress.

There are today significant challenges to the transatlantic relationship. Chief among them are the loss of control over the supply and price of energy, the relative decline of the American economy in comparison to the economies of Europe, and the steady expansion of Soviet military capabilities. These will continue to cause rivalry and tension in transatlantic relations. We reemphasize our belief, however, that close relations between the United States and Western Europe are central to sustaining our freedoms and security.

To pursue and nurture successfully our Atlantic partnership in the next decade, we must have a strong sense of the basic principles that should guide our efforts.

First among these broad principles is the recognition that apart from deterring a physical attack upon the United States itself, there is no more important national interest than the maintenance of our Alliance with Western Europe. We can afford nothing less than a full measure of cooperation and partnership.

Second, we must recognize that the Alliance must be a union of equal partners. Each member must act as a leader in its own right. Each must be prepared to share fairly in the burdens of our joint endeavors, and to justify these sacrifices to its own people. Each must have the steadfastness to persevere in joint initiatives.

Third, we must be prepared to acknowledge that there will be times when European interests are not those embraced by the United States. But we must not use these differences to decry the state of the Alliance. A mature and balanced partnership can accommodate differences of opinion or approach.

Fourth, the United States must cease talking about consultation and actually begin to consult with its allies before embarking on ventures in which it expects them to participate. Reciprocally, our allies must acknowledge that they have a similar responsibility. We must be ever aware of the need to seek counsel, explore proposals, and air ideas in confidence with our allies, before we embark on a course of conduct which we would expect others to follow. We must seek to use those opportunities and organizations that now exist to better advantage. To assist in achieving this goal, we need to broaden the scope of the present summit meetings to cover a wider range of political and security problems as well as economic problems.

An Anderson Administration will also encourage the European Community's evolution toward political union. The first direct election of the European Parliament and the establishment of the European Monetary System are significant indications of a prospering European idea. We believe that the admission of Greece, Spain and Portugal to the European Community will both strengthen the European idea and the future of democracy in Southern Europe.

In the economic sphere, oil and energy policies, monetary problems, and the rise of protectionism continue to crowd the transatlantic agenda. These issues are of deep concern to Japan as well, for they affect all the industrial democracies in similar ways. In dealing with these issues, an Anderson Administration will adhere to two tenets. First, rebuilt American industries are the mainstay of our international economic relationships. We must rebuild our industrial base and increase the productivity of our workers to restore our competitiveness in world markets. Second, the United States and the Western nations must ensure that divergent economic interests do not impair our security relations. These differences, rather than isolating countries, can encourage greater efforts toward agreed-upon solutions to our various problems.

Consistent with our strong interest in augmenting the Atlantic Alliance, we welcome Greece's participation as a full member of the Alliance, and will support efforts at enhancing stability in the Eastern Mediterranean. We recognize the importance of the Aegean Islands to the security of Greece, and look forward to a just resolution of Aegean Island issues.

We believe that the continuing crisis in Cyprus, too long delayed in its resolution, must be settled through negotiations between Greece, Turkey, and the Cypriot people.

The principles embodied in United Nations Resolution 3212 and the Ten Point Agreement of 1979 provide the surest foundation for peace, security, and stability in the region. An Anderson Administration will be prepared to provide assistance in the rebuilding of the Cypriot community.

The Soviet Union

We have entered a new era in our relationship with the Soviet Union. The Soviet troops and tanks that poured into Afghanistan have banished to the history books the business as usual relations of the 1970's. The problem of how to deal with the Soviet Union is the greatest task our diplomacy will face in the years ahead.

Our relationship with the Soviet Union is competitive. They are our rival, not our partner, in the international arena. But the elements of our rivlary, while extremely serious, are neither total nor absolute, largely because our security interests are not completely separable. We share with the Soviet Union, and with all nations, a pre-eminent interest in avoiding a nuclear holocaust.

We must therefore establish a balance of prudent expectations in our relationship with the Soviet Union. An Anderson Administration will not hesitate to take serious measures to resist Soviet political and military thrusts, but we will exercise our power in a responsible manner. We will be energetic in seeking safeguards to reduce the risks of war, and we will do our utmost to demonstrate to the Soviets that their interests are best served by their own restraint.

Toward these ends, the Anderson Administration, as stated elsewhere in this program, will do what is required to maintain the invulnerability of our nuclear forces as the Soviets continue to improve the accuracy of their missiles. We will continue to improve our conventional forces. Without illusions, we will continue the SALT II process, and thereby lay the groundwork for SALT III.

Measured against the resources, skills, and capacities of the West, the Soviet Union is the far weaker force. The successes of the Soviet Union thus depend in great part on the degree of cohesion, firmness, and vigor which the Western world can exhibit. The Anderson Administration's efforts to rebuild the Western Alliance will therefore be a centerpiece of our efforts to conduct diplomacy toward the Soviet Union.

We strongly support the Helsinki process. The broadening of trade, as well as the expansion of scientific, technological, and cultural exchanges, will be dependent upon practices by the Soviet and East European governments which are consistent with basic human rights standards.

We respect the desires of the people of Eastern Europe to determine their own destinies, free of outside interference. We reaffirm our commitment to respect the territorial integrity and national sovereignty of Eastern European states and we expect the Soviet Union to respect that integrity and sovereignty as well.

Lastly, our relations with the Soviet Union must be seen in the broader setting of world politics. Activities by the Soviet Union and East European countries in Third World areas which endanger our interests must necessarily impede the broadening of our relationships. But we must not let our concerns about the Soviet Union distort our policies toward the nations of Africa, Asia, Latin America, and elsewhere. With our allies, we will encourage the forces of nationalism to find expressions not in demagoguery and military dictatorships, the breeding ground of revolutionary violence, but in moderate policies of social change.

We will oppose Soviet adventurism whereever necessary, but we will also seek opportunities for reducing fear, uncertainty, and misunderstanding through negotiations. Above all else, we must be clear, steady, and coherent in our dealings with the Soviet Union, leaving no doubt about our determination to maintain and advance our foreign policy interests.

Middle East

The attainment of peace and stability in the Middle East is a high priority of American foreign policy. In recent years, the cause of peace has advanced dramatically with the signing of the Camp David accords by Israel and Egypt. In the Persian Gulf, however, stability is threatened by the revolution in Iran, the Soviet invasion of Afghanistan, world dependence on Arab oil, and religious and ideological disputes among the regional actors. Our policy throughout the region must be directed towards the reduction of tensions and, with the support of our allies, the protection of Western interests.

American policy toward the Arab-Israel dispute must be conducted with the understanding that a solution to that conflict will not resolve the energy crisis, the instability of the oil producers, the turmoil in the Persian Gulf, the plight of the hostages in Iran or the occupation of Afghanistan. The United States must remain the guarantor of the Egyptian-Israeli Peace Treaty.

An Anderson Administration will not exert pressure on the parties involved nor interfere in the negotiations. The United States should not attempt to dictate the terms of a peace settlement with public rebukes of the negotiating parties, clandestine meetings with those who would abort the peacemaking process or submission of comprehensive proposals for peace that are not supported by the countries directly concerned.

America's political, economic and military commitment to Israel is fundamental to our strategic interests in the Middle East. Israel is committed, as we are, to democratic ideals and to a free and open way of life that respects human rights. We should utilize Israel's strategic and technical experience, its intelligence information and, in an emergency, its facilities. We will continue to provide military and economic assistance to Israel at a level sufficient to enable it to maintain its security as its potential adversaries expand their military capabilities, and to maintain its economy while accepting the high costs of withdrawal, relocation and peace.

The United States must remain committed to a meaningful peace. A lasting settlement must encompass the principles affirmed in the Camp David accords, including reconciliation; the establishment of secure and recognized borders; fully normalized relations including trade, travel, communications and the exchange of ambassadors; and an end to military threats, political attacks and economic warfare.

The courageous efforts of President Sadat to achieve peace with Israel have encouraged the development of friendly relations between Egypt and the United States. This relationship with the Arab world's leading country should be vigorously promoted with assistance and diplomatic support, to demonstrate the value of the Camp David Accords, to promote Western interests and to help maintain the balance of power in the region.

An Anderson Administration will continue to support the recognition of Palestinian rights, embodied in the Camp David accords, but will oppose the creation of a Palestinian state between Israel and Jordan. Such a state would be dominated by the Palestine Liberation Organization, would promote instability in the Middle East and would threaten other nations in the area as much as the security of Israel. We should look to Jordan to help significantly in resolving the Palestinian questions. The United States must continue its refusal to recognize or negotiate with the PLO until it repudiates terrorism, explicitly recognizes Israel's right to exist in peace, and accepts UN Security Resolutions 242 and 338 unchanged.

An Anderson Administration will weigh its public statements with care and put greater emphasis on quiet diplomacy through regular diplomatic channels. We will not, for example, stoop to the temptation to use UN votes as a means of interfering with the diplomacy of the peace process. An Anderson Administration will not label Israeli settlements as "illegal" and as "obstacles to peace". This prejudges and compromises negotiations from the outset. The question of the settlements can best be resolved by Egypt, Israel and the Palestinian residents of the West Bank and Gaza Strip.

The final status of East Jerusalem must be decided by negotiation. The United States must support the continuation of free and unimpeded access to Jerusalem's holy places by people of all faiths. Jerusalem must remain an open and undivided city. At the conclusion of the peacemaking process, the Anderson Administration will recognize Jerusalem as the capital of Israel and move the U.S. embassy there.

The Anderson Administration will exercise restraint in approving arms transfers to those nations which oppose the peace process and do not cooperate with our diplomatic efforts. The United States should actively use diplomatic channels to discourage those arms transfers by third parties which might contribute to regional instability.

The invasion of Afghanistan, the instability in Iran, and recent events in Saudi Arabia have provided the Soviet Union with an opportunity to achieve the political encirclement of the Persian Gulf and the states of the Arabian peninsula. Soviet activity in the Yemens, Syria, Libya, and Ethiopia increases the danger of this threat and offers immediate challenges to the United States. Efforts to increase our presence in the region should proceed with caution, and be made in close cooperation with our friends in the region and our European allies.

To give ourselves greater leverage in regional and great power disputes, we must reduce our costly dependence on foreign oil. An Anderson Administration will embark on a comprehensive program of energy independence, outlined elsewhere in this platform.

Our principal objective in Iran is to secure the prompt and safe release of our embassy personnel still being held hostage by the Iranian government. We will use every measure of quiet diplomacy, bilateral and multilateral, to achieve this end.

East Asia and the Pacific

Japan

Our relationship with Japan stands at the center of American foreign policy toward East Asia. The bonds of history, though recently forged, are strong. Common interests bind us as well: Japan, next to Canada, is the single largest trading partner of the United States, and our treaty with Japan is the cornerstone of our security interests in East Asia.

We believe that two basic principles should guide our policy toward Japan: that a genuine American-Japanese partnership is fundamental to all else in the Pacific, and that economic and security elements in the partnership cannot be separated.

We recognize that Japanese defense expenditures raise critically difficult problems for both Japan and the nations of East Asia. Japan's role as an economically powerful, but lightly armed, nation significantly contributes to East Asian regional stability. A major shift in Japan's military role in the region could undermine, not enhance, that stability. An Anderson Administration will not press Japan to expand its military capabilities beyond the level which the Japanese believe their security requires and their constitution permits. Japan should contribute more to collective security, but this need not be through military measures. We will urge Japan to increase its economic assistance to other countries, and to expand its contribution to research and development of alternative energy resources. We will continue to renegotiate burden-sharing arrangements on the cost of American bases in Japan to reflect changes in the value of the yen and the dollar as well as increases in Japan's economic capabilities.

We will make no military or diplomatic moves in East Asia, particularly with regard to China and Korea, without advance consultation with Japan. We will demonstrate greater sensitivity to Japan's great dependence on imported energy supplies and to the vital role alternative energy sources can play in Japan's economy.

Japan's post-war economic ties to the United States have been fundamental to Japan's own progress and its expansion into regional and world economies. The ASEAN Nations (the Association of Southeast Asian Nations comprised of Indonesia, Malaysia, the Philippines, Singapore, and Thailand), with its population expected to increase from its present 230 million to 290 million in 1985 is one of the world's fastest-growing economic regions.

An Anderson Administration will explore ways of expanding America's role among the ASEAN group which also enchances our relationship with Japan. One approach to this end would be to extend current mechanisms for American-Japanese consultation now dealing with defense issues and bilateral trade to include funding for ASEAN projects.

Japan is at once our military ally and our economic rival. Three major issues have troubled American-Japanese trade relations from our perspective: the large current trade imbalance: the impact of Japanese exports on the American automobile industry; and access to Japan's domestic market.

The principal remedy for these problems is to restore the dynamism of the American economy to make it more competitive in the Japanese market. We will press for the removal of restraints on the import of American goods by Japan, particularly in telecommunications equipment, computers, and semiconductors, areas in which the United States has a comparative advantage over Japan but has not had fair access to Japanese markets. We will encourge Japan to build additional industrial plants in the United States to retain jobs now being lost to industry in Japan.

China

The diplomatic breakthrough with China is a remarkable achievement of twentieth century diplomacy. An Anderson Administration will build on this achievement to develop closer relations with China diplomatically, economically, and culturally.

We have been reduced in recent years to a reliance upon the antagonism between Russia and China to bolster our security position in Asia. We believe that those who talk blithely about playing the fabled "China card" fail to recognize that China is not a card to be played, but a player with cards. China's interests may depart from our own or from those of our Asian allies. We cannot allow China to develop an "America card" for use in her relations with the Soviet Union or with other East Asian countries, who view China with a mixture of awe and fear.

An Anderson Administration will never place the United States in a position where we pressure any of our friends into reaching a dangerous accommodation with their historic antagonists. We must, therefore, never put ourselves in a position where Taiwan is the price for Chinese cooperation against Russia.

We will continue our present informal military and economic relations with Taiwan, at the same time giving quiet encouragement to the indirect trade relations developing between Taiwan and China. We strongly oppose restoring our relationship with Taiwan to governmental status. Such a course of action would be disastrous setback for American foreign policy.

The Anderson Administration will take no steps to increase antagonism between Russia and China. It is therefore unwise at this time to become an arms supplier to China.

We will seek to bring China into discussions with the Soviet Union, Western Europe, and the United States on arms control. We will search for ways to encourage China's leaders to take measures to guard against accidental nuclear war, and to maintain strategic nuclear stability.

The Chinese government has announced plans for a ten-year economic plan of staggering proportions; the estimated total investment is some $600 billion, and includes construction of 120 large industrial projects. China is, however, a great distance from these goals, and its successful modernization will require the participation of all industrial nations.

The Anderson Administration will expand scientific, cultural, and particularly educational exchanges with China. We will also promote the growth of United States trade with China through such measures as assisting the American business community to expand its presence in China. We will discuss with China ways in which we can assist its efforts to generate foreign exchange to finance its imports. We believe that sales of technology to China should encourage the Chinese to continue to concentrate its efforts on improving its economic performance.

In broadening trade contacts with China, the Anderson Administration will adhere to two tenets. First, China will not provide America with a major market for many years to come. Second, we must extend credits to China and accord her full opportunities under the most favored nation principle at the same time we move forward in resolving our trade difficulties with Japan. If these difficulties are left unresolved, while trade with China expands, we run the risk of convincing our principal ally in East Asia that our support is truly feckless.

Southeast Asia

Southeast Asia has once again become an arena of military conflict and human suffering. The boat people from Vietnam and the millions of hungry Cambodians assisted through American-supported international programs are the victims of these conflicts.

We support swift humanitarian responses to the human tragedies of Southeast Asia. An Anderson Administration will place a high priority on American support for Red Cross/UNICEF humanitarian aid programs for Kampuchea. We will also support their insistence that no relief goods go to armed groups in Kampuchea nor those on the Thai border.

But humanitarian responses alone are not enough. Vietnam's occupation of Kampuchea and Chinese support for Pol Pot's guerrillas, China's threat to invade Vietnam again, and Soviet access to Vietnamese ports and airfields are parts of a deepening Southeast Asian crisis. The present trend is toward the consolidation of Vietnamese control over Kampuchea and greater involvement by both the Soviet Union and China in the region.

Our objectives will be the reduction of the Soviet military presence and political influence in Vietnam, the restoration of normal life in Kampuchea by an end to the fighting and the withdrawal of Vietnamese troops, and the assurance of Thailand's security.

To achieve these objectives we will encourage the ASEAN nations in their current negotiations with Vietnam. We will, while forging a new relationship with China, be attentive to Vietnam's concerns about China, just as we pay heed to the concerns of Thailand and other ASEAN nations about Vietnam itself.

We will also announce an end to United States support for the forces under Pol Pot's command. They represent a morally reprehensible regime and prolong the suffering of the Kampuchean people without offering any realistic prospect of helping to reach a compromise settlement of the conflict.

The United States should not vote for the seating of Pol Pot's regime at the U.N., but instead support a vacant seat for Kampuchea until a government emerges with a proper claim to represent the Kampuchean people.

Korea

Geography and ideology have combined to make the division of Korea a danger to the peace of East Asia and the world. The United States is responsible for supporting South Korean security both through the presence of its combat forces in South Korea and its security treaty with South Korea. We reaffirm the importance of maintaining our commitment to defend South Korea against attack. We will not pursue unilateral withdrawal of American combat forces from South Korea, as was attempted by the Carter Administration in 1977–78. Those unilateral actions increased rather than allayed tensions throughout the region, raising new questions about America's seriousness of purpose and capacity for determined leadership.

The eruptions of anti-government protests demanding restoration of democratic freedoms and constitutional government in South Korea require far-sighted and coherent United States policies. Pressures for progress toward these political goals and opposition to physical repression by the military-dominated government have become far stronger than in past years. The government's attempt to suppress protest while failing to establish a timetable for elections and the removal of restrictions on democratic freedoms risks an unprecedented political explosion which might invite intervention by North Korea and trigger a new war.

The problem of security and political stability in South Korea cannot be separated, therefore, from the problem of political freedoms. An Anderson Administration will strengthen American efforts to persuade the military to change its policy. We will make it clear that the United States cannot remain passive in the present situation, given its own heavy responsibility for the defense of South Korea, and that it supports to the fullest extent possible the legitimate aims of those demanding democratic freedoms.

Toward North Korea, we will end the fruitless and dangerous isolation from the United States, moving forward, in consultation with South Korea and Japan, in such areas as cultural and academic exchanges.

The critical issue of stabilizing the Korean situation on a more lasting basis will be a daunting task. We will give active encouragement to North and South Korea to move toward a true accommodation, recognizing that the goal will not be achieved soon and that the issue is of deep concern to Japan and China, and to the Soviet Union.

Australia and New Zealand

Our friendship with Australia and New Zealand is deep and lasting. The ANZUS Treaty, the continuing symbol of our close ties, will remain a cornerstone of American security in the Pacific.

An Anderson Administration will consult with Australia and New Zealand on security issues of mutual concern. We should pursue a unified approach to strengthening ASEAN and in handling refugee problems in the region. We will consult with Australia and New Zealand before establishing any permanent spent nuclear fuel storage sites in the southern Pacific.

The United States shares with Australia and New Zealand important commercial and economic interests. An Anderson Administration will pay close attention to the issues created by Australian and New Zealand access to American markets.

South Asia

Since the end of World War II, United States foreign policy in South Asia has suffered from misunderstanding concerning the political, economic, and strategic importance of the region, the aims of its principal nations, and the nature of its regional conflicts. As a result, we have repeatedly failed to achieve our foreign policy objectives in the region, and we have helped to create the one condition we sought most to avoid—namely, the extension of Soviet influence into an area whose leaders and peoples are inclined toward friendship with the United States.

An Anderson Administration's policies toward South Asia will center around three interrelated realities.

First, India lies at the region's center in every sense of the word. None of the major conflicts in the region can be resolved consistent with our interests without considering the interests of India.

Second, there are two principal sources of tension in South Asia: the India-Pakistan conflict and the India-China conflict. Our policy in the 1980's must avoid the past mistake of embracing Pakistan and tilting away from India. We must help each recognize that their common regional security interests should outweigh local differences that have separated them in the past. We must, while developing the new relationship with China, be sensitive to India's concerns about China.

Third, the underlying bases for conflicts among the South Asian countries are indigenous and regional in character. They are distorted, not clarified, when viewed solely through the prism of American-Soviet relations.

The Carter Administration's unsuccessful rush to re-arm Pakistan following the Soviet invasion of Afghanistan diminished our prestige, and revived Indian suspicions that the United States was building an informal alliance which threatened India's interests.

If the Soviet Union threatens Pakistan's territorial integrity—a threat that would also endanger India's security—we will consult with Pakistan, India, and other countries about steps to be taken to meet the Soviet challenge. An Anderson Administration will be prepared to consider seriously a request for arms by Pakistan in such circumstances.

We believe that any economic aid to Pakistan must genuinely help to maintain the country's integrity and economy, and should be designed to strengthen Pakistan's internal stability by improving the standard of living of its people. It should be concentrated in such areas as agrarian development and reform, road-building programs, rural electrification, and improved internal communication. But if Pakistan is to become truly secure, the government must be encouraged to broaden its political base, renew its commitment to constitutional government and fair elections, and move toward more stable relations with India.

An Anderson Administration will make a major effort to open a wider window to India, whose size, population, economic strength, military might, and relative political stability ensure that it will continue to exercise significant influence in the region. We will support India's independent role in world affairs. We will not abandon our commitments to other countries in the area for the sake of improved relations with India. But with quiet and patient diplomacy it is both possible and desirable to establish a more lasting and productive friendship with this enormous land.

To help achieve this goal, the Anderson Administration will encourage both India and China to continue efforts to settle their boundary controversies. We will assure the Indian government that the American naval forces in the Indian Ocean will not intervene in internal South Asian disputes.

Our interrelated policies toward Pakistan and India will require diligence and courage. Nowhere will this be more important than in forging a position on nuclear materials. First, we must encourage India in the moderate nuclear policies the country has pursued since its explosion of a nuclear device in 1974. We will link our nuclear materials export programs to the continuation of such policies. Second, we will help to create a sense of security for Pakistan in order to reduce its incentives to test a nuclear device.

Finally, we cannot accept as permanent any arrangement which incorporates Afghanistan into the Soviet orbit. An autonomous and independent Afghanistan must be our goal. An Anderson Administration will work with the Government of India in efforts to influence the Soviet Union to withdraw its troops from Afghanistan in furtherance of the regional stability which we and our friends desire.

Africa

The United States must recognize that Africa will play a key role in world affairs in the years ahead. Today many African states are expressing increased independence in world affairs. Africa possesses an abundance of oil and other raw materials essential to the world economy, and represents an important potential export market for our manufactured goods. The success of global policies will increasingly depend on our ability to maintain good relations with African countries.

We must respect the right of Africans to determine their own destinies. An Anderson Administration's African policies will promote genuine stability in the continent by helping the nations of Africa to achieve social justice, political progress, and economic prosperity for their people.

We believe that the long-term interests of all the people in Namibia and South Africa will be served best by an orderly transition to majority rule in each country. The South African government's continued refusal to permit free elections in Namibia, or to share power with the black majority in its own country, threatens the stability of Africa. An Anderson Administration will look for peaceful means to increase pressures on South Africa to expedite the resolution of these conflicts.

South Africa is the only country in the world where all political, economic, and social rights are completely dictated by race. Apartheid, an all-encompassing legal system proclaiming the superiority of the white race, is an affront to human decency.

In an effort to bring a peaceful transition to majority rule in South Africa, an Anderson Administration will:

Continue efforts to bring an end to apartheid in South Africa through negotiations in regional and multilateral forums;

Continue Export-Import Bank restrictions on lending and credit guarantees for investments in South Africa;

Encourage compliance by all countries with the United Nations embargo on the export of military equipment to South Africa; and

Discourage investments in South Africa, whenever possible in cooperation with our allies.

South Africa's refusal to allow for the completion of a negotiated transition to majority rule in Namibia requires a number of immediate steps. An Anderson Administration will:

Work with other members of the Contact Group (Canada, France, West Germany, Britain) to seek a final agreement in Namibia based on U.N. Security Council Resolution 435, which has been accepted by both South West Africa People's Organization and the South African government;

Deny Export-Import credit privileges to corporations making investments in Namibia based on rights secured from South Africa or the present Namibian authorities;

Support all U.N. efforts to speed the transition to majority rule in Namibia; if U.N. efforts prove ineffective, an Anderson Administration will work through other multilateral forums, particularly the Organization for African Unity (OAU), to bring majority rule to Namibia.

Territorial disputes, particularly those in the Western Sahara and in the Horn of Africa, threaten both the stability of the countries directly involved, and that of the entire region. In helping to resolve these disputes, an Anderson Administration will adhere to two principles. First, all settlements should be consistent with the principle of territorial integrity endorsed by the Organization of African Unity. Second, the United States should encourage OAU peacekeeping and peacemaking initiatives aimed at resolving these conflicts.

The Cuban and Soviet military presence in Africa is of deep concern to us. We believe that peace and political stability in Africa is best assured by African people and governments resolving their political disputes without the intervention of outside military forces. We will encourage the peaceful resolution of African disputes as the surest means of guaranteeing African regional stability.

American interests in Africa will best be served if our policies are designed to assist African nations develop their economies. Thus, an Anderson Administration will increase the effectiveness of our foreign aid by augmenting our programs and improving our disbursement practices. (see Foreign Assistance)

We will give priority to assistance programs in those African countries which have made significant progress toward responsive, stable governments. Zimbabwe, for example, has recently undergone a peaceful transition to majority rule, but the United States has not yet offered assistance adequate to meet reconstruction needs. An Anderson Administration will also endeavor to build a close partnership with Nigeria, which has recently made an encouraging transition from military rule to a system of government whose constitution closely resembles our own.

Our government should also promote private investment in Africa which is essential to fostering peaceful progress.

The Western Hemisphere

A fundamental principle of our foreign policy is that relations with countries that are closest geographically and in interest and purpose are among the most important. We must give primacy to maintaining confidence and trust in these relations. Too often we have assumed, however, that good relations come naturally and without effort. They do not. They must be carefully nurtured through positive action to further and maintain mutual understanding and respect.

Canada

Facts of history, geography, economics, and security tie the United States closely to Canada. But our ties, no matter how strong, need constant attention. By failing to resolve differences when they first appear, we run the risk of having them turn into more serious problems. There are four initiatives that the Anderson Administration will take towards Canada.

We will support the conclusion of a treaty on Atlantic fishing rights. Our countries began negotiations on fishing rights in August, 1977, culminating in a treaty signed on March 29, 1979. The Senate has yet to approve this treaty. But a fishing rights treaty which serves the long-term economic interests of

American fishermen is desperately needed if we are to avoid the overfishing of the Georges Bank.

We will continue to engage the Canadians in a dialogue on trade issues of mutual concern, and will work to reach agreement on a comprehensive tax arrangement on trade between our two nations.

The United States and Canada must work together to insure that both our nations have adequate future energy supplies. Our nations need to increase their cooperation in energy research and development projects. The Anderson Administration will work to expedite the construction of the Alaskan-Canadian natural gas pipeline, a cooperative effort which offers important benefits to both our nations. American investment in Canadian energy resource projects will help Canada achieve energy independence.

Our common border dictates that the United States and Canada develop a consistent approach to environmental problems. The United States is presently considering an increase in its use of coal as an energy source, particularly in the Northeast. This increase threatens to raise the level of sulphuric pollution in the atmosphere in Canada as well as in the United States. The proposed Garrison dam project would also have serious effects on the Canadian environment. Canada is thus justifiably concerned with these and other issues that affect the Canadian environment. As a responsible ally and neighbor, we must continue to consult Canada on these matters of mutual interest.

Latin America

For most of the 20th century, our hemispheric neighbors in Latin America have lived in the military, political, and economic shadow of the United States. This old, unequal relationship is now obsolete. Over the past decade, economic development and social change within the hemisphere have given our neighbors a new sense of self-confidence and national pride. Our Latin American relations will thus be increasingly complex in the years ahead. If we accept this challenge in a spirit of mutual respect and cooperation, our traditional friendships will be strengthened. If we turn away from the challenge, ignoring it or seeking to reassert the paternalism of the past, we will find ourselves increasingly isolated in our own hemisphere.

Mexico

We have no more important partner in Latin America than Mexico. Many of the most pressing bilateral issues between the United States and Mexico have major domestice implications on both sides of the border. Improving our relations will require careful, flexible negotiations which are sensitive to the legitimate interests of both nations, and that recognize the emerging industrial power of our southern neighbor.

The Anderson Administration will explore more fully the ways in which we can assist Mexico in its program of industrial development. Unless we are able to find fields for mutual cooperation, such as technology transfer, Mexico will naturally seek such assistance elsewhere. Unless we are responsive to the needs of Mexico's industrial development program, it will be difficult to secure Mexico's cooperation on such issues as energy and immigration.

One of the most complex and difficult issues is the immigration of undocumented Mexican workers to the United States. The immigration issue touches the interests of many parties, not only those of our two national governments. It affects local communities on both sides of the border; it affects the American worker as well as the undocumented Mexican worker; and it affects our own Hispanic-American community.

We recognize that there is no easy solution to the immigration problem. Any attempt on our part to close the border would be impractical and enormously expensive. And Mexico would see it as an unfriendly act.

An Anderson Administration will begin to deal with the issue of immigration within the context of other border issues. Migration in the border regions has produced local communities that straddle the border. We have not worked closely enough with Mexico to fashion policies that address the unique social problems that these border communities face. The existing mechanisms for handling specific social problems in the border region have not been satisfactory.

We propose that a joint American/Mexican Commission be created to promote cooperative social development in the border region. This Commission would concern itself with improving and integrating social services in the border areas. Among that Commission's tasks would be the strengthening of organizations like the U.S./Mexico Border Health Association. The joint Commission would establish a structure responsive to the basic unmet, human needs in the border region.

Beyond the immediate human problems along our common border, there are many issues between our two countries that require and deserve a mechanism for continuing high level collaboration. The Anderson Administration will expand the State Department's current modest effort to collaborate with Mexico by formalizing a permanent consultative mechanism. An on-going, high-level dialogue on issues such as trade, agriculture, energy, migration, finance, and industry is essential to building the kind of partnership that should characterize our relations with Mexico in the 1980's and beyond.

Central America

The most dangerous threat to hemispheric peace today is the acute political crisis in Central America. We must recognize that the political violence in El Salvador, Guatemala, and Hondouras is in part the product of real social problems and human rights violations, and that decades of poverty, inequality, brutality, and dictatorship have produced the volatile conditions with which we now must grapple.

The Anderson Administration will take initiative in urging the governments of these nations to broaden their political base, create truly democratic political institutions, and proceed with the necessary policies of social change without delay. We will refrain from supporting governments unwilling to undertake these necessary reforms. We cannot again afford to wait until a political crisis is full blown, as it is today, in El Salvador, before we begin to seek solutions.

It would be a grave mistake to blame the current political crises in Central America on Cuban subversion. Cuba will seek to take advantage of instability in the region, but Cuba is not the sole cause of such instability. We must not allow our concerns about Cuba exclusively to shape our policy toward Central America, or any other part of the hemisphere. No amount of military aid can make a repressive government popular, and an unpopular government is never secure for long. The best antidote to Cuba's promotion of revolution is a region of sound, popular, democratic governments—not an armed camp of military dictators.

For four decades, the United States supported the corrupt and unpopular dictatorship of Anastasio Somoza in Nicaragua. Even though the revolution which drove Somoza from power last year enjoyed the support of virtually the entire populace, the United States tried, until the last moment, to prevent the revolutionary government from coming to power. The new Nicaraguan government is understandably suspicious of American intentions.

Nevertheless, Nicaragua and the United States have been able to maintain cordial relations over the past year. The new Government of National Reconstruction has committed itself to political pluralism. The government's program of reforms has created some tensions with the private sector, but both sides have thus far shown a willingness to compromise in the interests of national reconstruction.

We believe that providing economic aid to Nicaragua serves our national interest well. We support the $75 million aid package recently passed by the Congress. It will speed economic recovery and will also help sustain the current atmosphere of compromise and moderation within Nicaragua. To cut off economic assistance, as proposed in the Reagan platform, will undermine those political groups which have urged moderation, push the government towards more radical economic policies, and drive Nicaragua to seek closer ties with the Soviet Union.

In recent years Cuba has taken new intiatives in both Central America and the Caribbean. Cuba has provided some arms to revolutionaries in Central America, and has provided economic aid to some nations in the Caribbean.

We must not allow our concerns about Cuba to distort our policies toward the rest of the hemisphere. It would be a mistake to support repressive governments in Central America merely because Cuba opposes them; it would be a mistake to refuse aid to governments in the Caribbean merely because Cuba aided them.

At the same time, we will not tolerate direct military intervention by Cuba in Central America. There must be no Angolas in the Western hemisphere. We will also oppose any attempt by the Cubans to lead the nonaligned movement into the Soviet camp.

Others may wish to enter into relations with Cuba, but we ourselves cannot consider a normalization of relations until Cuba demonstrates a willingness to compromise on the many issues that divide us.

Caribbean

The economic situation in most of the Caribbean is particularly difficult today. The small-island economies which depend on world trade for many critical resources face severe trade imbalances because of the rising price of energy. This has led to a burgeoning foreign debt, inflation, and unemployment, all of which aggravate the already serious problem of poverty in most of the Caribbean.

These conditions have produced both a new potential for political unrest and a new willingness to experiment with different models of economic development. Jamaica, Grenada, and Guyana have adopted democratic socialist models which seek to blend socialist economies with parliamentary democracy.

As Cuba seeks to expand its influence on the region through its own economic assistance programs, the United States should respond, not with efforts to contain Cuba, but with efforts to build a strong basis of friendship between ourselves and our Caribbean neighbors. The complex social and economic problems of this region cannot be solved by military responses.

Increased economic assistance is an absolute necessity for some of the Caribbean islands. While the Carter Administration has raised the level of U.S. assistance to the region, even more must be done. The ongoing deterioration in the region's terms of trade requires balance of payments assistance as well as development assistance.

To avoid creating an unhealthy bilateral dependency between the United States and those Caribbean economics that are most in need of external aid, much of the economic assistance provided by the United States should be channeled through multilateral institutions such as the Caribbean Development Bank.

Increased levels of aid cannot by themselves solve the economic problems faced by Caribbean countries. Other global and regional programs will be required if these states are to experience sustained growth. Effective commodity agreements, particularly for sugar, are needed to reduce the vulnerability of Caribbean economics to the vagaries of the world market. Initiatives toward regional economic cooperation and integration should be encouraged. International donors, including the United States, could support a regional shipping line to lower transportation costs and stimulate intra-regional trade. Similar cooperative ventures in such fields as food and energy should be encouraged as well.

South America

In South America, we must continue to strengthen our diplomatic relations with the continent's democracies. The Andean states of Venezuela, Colombia, Peru, and Ecuador are important allies in our quest for human rights and the restoration of democracy in the region. We must increase the coordination of our policy with theirs in responding to crises such as the recent military coup in Bolivia. Military officers in Bolivia and elsewhere must know that when they destroy a democratic government, they will meet not only the opposition of the United States, but also a solid front of opposition from all the democracies of our hemisphere.

The existing military governments of the southern cone must understand that our commitment to human rights and democracy is firm. Until they demonstrate substantive progress in the field of human rights and towards the restoration of democracy, they can expect no improvement in their relations with the United States. Moreover, we must make clear to them that interference in the internal affairs of their neighbors is incompatible with hemispheric peace and security.

The current U.S. policy of denying foreign assistance to governments that systematically violate human rights is a laudible one and should be continued. But more must be done. In too many cases, American banks and corporations undercut our governmental policy by providing loans and investments to the very countries which are ineligible for governmental aid. Our government must make greater informal efforts to bring public and private policy into better coordination.

The case of Chile is a special one. There is strong reason to believe that the Chilean military government was directly responsible for a brutal act of international terrorism perpetrated in the United States—the assassination of Orlando Letelier and the murder of Ronni Moffitt. The Chilean government has refused to cooperate with the U.S. in bringing the responsible parties to justice.

As the scourge of international terrorism spreads, the United States must take an unequivocal stand that it will not tolerate acts of terrorism in this country, especially when those acts are the responsibility of a foreign government. If Chile continues to refuse to cooperate in the prosecution of the Letelier-Moffitt case, the U.S. should consider additional measures to bring diplomatic and economic pressure on Chile.

Human Rights

To advocate human rights is to insist on respect for and protection of the rights and freedoms of persons—to be free from political persecution and torture, hunger, and deprivation; to enjoy freedom of thought, conscience, religion or belief.

We must not allow others to come to believe that our commitment to human rights is negotiable, or that it will be sacrificed at the first convenience. Of necessity, we must recognize the limits of our ability to improve the condition of human rights in other nations: the results will be long-term and gradual. But we shall never despair in promoting the full and free development of the individual.

A primary task of the Anderson Administration will be to sustain the framework of international peace and security within which human rights can be discussed, championed, and enlarged. The continuation of stable relations itself is therefore a crucial condition for the improvement of human rights in Eastern Europe and the Soviet Union.

We are angered that the number of Jews permitted to emigrate from the Soviet Union has plummeted, and we deplore the continued harassment of Jews in the Soviet Union. We are also deeply troubled with actions taken by authorities in the Soviet Union and Eastern European countries against individuals monitoring their nation's progress in complying with the Helsinki Accords. We reaffirm the conviction set forth in the Helsinki Accords of the "right of the individual to know and act upon his [human] rights and duties".

We must attend the second Helsinki review conference in Madrid, and we must insist upon a complete assessment of the degree to which the Soviet Union and the Eastern European nations have complied with the Helsinki Accords. We must make it clear before and during the Madrid conference that the imprisonment of Helsinki monitors and the punishment of countless others for their religious or political beliefs is violative of the Helsinki Accords and repugnant to the common tenets of civilization.

Under an Anderson Administration, the growth of American trade with the Soviet Union and Eastern European countries will require progress toward genuine respect for the right to emigrate. We see few, if any, justifications for denying the right of persons to change their citizenship from one country to another country willing to admit them.

An Anderson Administration will bring to bear on all countries, through bilateral and multilateral measures, every possible peaceful influence to prevent, to repair, or to end gross violations of human rights. Exceptions to our peaceful intercessions in support of human rights will be narrowly construed and strictly limited.

An Anderson Administration will:

Give strong diplomatic support for democratic governments; it will propose new foreign assistance legislation that would allow us to furnish these governments adequate and timely aid to help secure economic, social, and political rights for their people;

Limit economic and military assistance to nations that overthrow their democratic governments;

Deny military and economic assistance to governments that systematically violate human rights; and

Encourage corporations to conduct their activities and policies abroad in ways that are consistent with internationally recognized human rights standards.

The plight of refugees seeking haven in America requires urgent and diligent action. The Refugee Act of 1980 establishes the first comprehensive statutory basis for our refugee policy, providing for more equitable refugee admissions and assistance programs. The Anderson Administration will vigorously implement this important new legislation.

Equal justice and our commitment to human rights requires our establishing a sound and humane national immigration policy. John Anderson has repeatedly urged the Carter Administration to grant poliitcal asylum to the 10,000 Haitian refugees who have sought refuge in this country since 1971. Our immigration policies, laws, and practices must safeguard the civil rights of all Americans and the rights of those visiting our country for legitimate purposes. The Select Commission on Immigration and Refugee Policy chaired by Father Theodore Hesburgh will report to Congress by December on reforming our system of immigration and our refugee laws. Reform is greatly needed, and the Anderson Administration will move vigorously in this area.

The absence of bold leadership in the past four years has been nowhere more apparent than in the timorous responses of the Carter Administration to the tragedy in Cambodia. An Anderson Administration will press for adequate aid programs and will oppose any reduction in the monthly number of Indochinese refugees who may now be admitted to the United States.

An Anderson Administration will give active support to the private voluntary agencies, the Red Cross, and the various United Nations organizations in their unflagging efforts to provide relief and sustenance to hundreds of thousands of men, women, and children throughout the world who, fleeing war and famine, face disease and starvation. We must, where the need is especially urgent, speed up our timetable for contributing pledged funds. Humanitarian assistance, quickly provided, can mean the difference between life and death for thousands of people.

United Nations

The United Nations, now nearly 35 years old, continues work that needs to be done, but which the United States cannot begin to do by itself. The U.N. is helping to eradicate the ancient scourges of disease and malnutrition through public health programs. It is organizing help for refugees and migrants. It is monitoring world-wide environmental dangers. It is administering safeguards to discourage nuclear proliferation. It is maintaining truce supervisors and peace-keeping forces in the Middle East and elsewhere.

The Anderson Administration will play a vigorous role in supporting United States foreign policy objectives in the United Nations, through the General Assembly, the Security Council, and the specialized agencies. We will give strong support in the Congress to those U.N. programs which further our interests. The agenda is crowded:

Strengthening the peacemaking and peacekeeping capacities of the U.N.;

Helping Namibia, through a United Nations presence, in its transition from South African control to full independence;

Reaching an acceptable conclusion on the Law of the Sea negotiations;

Establishing a United Nations High Commissioner for Human Rights;

Sustaining the work of the International Labor Organization; and

Expanding United Nations efforts in controlling international terrorism.

We must also reassess our role in a number of United Nations activities.

Our contribution to the United Nations Development Fund fell by one-third in real terms during the 1970's. We need to consider maintaining our financial contribution at historical levels. But more than money is needed. We should also make significant program contributions. Few economies have developed and applied technology to their productive processes so quickly as ours. We should make full use of our own economic development experiences in launching initiatives for United Nations development activities.

We have in recent years given greater attention to human rights concerns in our foreign policy, but incongruously we have failed to ratify a number of international human rights conversions widely accepted in the international community.

The Convention on the Prevention and Punishment of the Crime of Genocide has languished in the Senate for more than 30 years. It has been supported by every administration, Democrat and Republican. It should be promptly approved by the Senate. Other human rights agreements are in the Senate, including the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. These covenants raise important constitutional issues. Our aim should be their ratification, attaching, where appropriate, reservations to insure that they are consistent with the United States Constitution.

The recent decision by the International Court of Justice calling for the release of our diplomatic personnel held hostage in Iran underlines the need to strengthen international legal institutions. If we expect other countries to accept the jurisdiction of the Court, we must be prepared to do the same by repealing the Connally Reservation.

We have seen in the Security Council action on Iran and in the General Assembly condemnation of the Soviet invasion of Afghanistan how the United Nations can advance the goal of world peace. We have seen in General Assembly resolutions on Israel and the Palestine Liberation Organization how our purposes can be impeded. Neither euphoria, born of success, nor cynicism, born of frustration, should guide our policies toward the United Nations.

The United Nations is a political institution. Our success in it will be in equal measure to the aggressiveness with which we promote our legitimate interests. But we must be unyielding in our efforts to prevent the humanitarian aims of the UN's nonpolitical organizations from being exploited for narrow national, or ideological advantage. An Anderson Administration will strongly oppose efforts to stack committees and to bar nations from participating in regional or organizational activities.

We should not be dismayed at setbacks. Instead we must move to regain in the United Nations and in its specialized agencies that role which the strength, skills, and democratic practices of this nation suggest should be ours.

Foreign Assistance

The United States should return to its long tradition of extending assistance to the needy peoples and countries of the world. Funds channeled through American agencies and international organizations have been spent in the pursuit of a wide range of objectives, consistent with our humanitarian obligations and our political, economic, and security interests.

During the past decade, domestic support for foreign aid has waned. At present, the United States ranks 13th among industrialized nations in the percentage of GNP devoted to foreign assistance. There is a growing belief among voters that America can no longer afford to spend scarce resources on foreign assistance programs that seemingly produce few concrete results.

An Anderson Administration will seek to reverse this trend by heightening public awareness of the value of foreign aid programs. American foreign aid:

Increases world stability by supporting countries which are struggling to establish responsive political institutions, and prosperous economies;

Gives us continued access to raw materials by promoting steady economic development in Third World countries;

Provides business and jobs for Americans because roughly 75 cents of every development aid dollar is used to buy American products;

Promotes a vigorous export sector, which is a key element in American economic growth; and

Adds to the security of our nation by reinforcing alliances of strategic value.

These practical reasons for strengthening foreign aid programs reinforce humanitarian concerns. Foreign aid enables us to help alleviate the plight of the world's poor.

Our national interests, humanitarian obligations, and international responsibility demand that we provide more funds for foreign assistance. An Anderson Administration will harbor no illusions about foreign aid programs. The primary objective of foreign aid, to foster the development and modernization of Third World countries, is an extremely delicate task that often takes years. We should do all we can to ensure the success of development programs, but not lose faith if some development efforts meet with failure.

Foreign aid funds used to alleviate absolute poverty should be channeled through multilateral assistance programs wherever possible. By meeting basic human needs in nutrition, health, and education, we can provide people with the means to become self-reliant, and to participate in the building of their societies.

Long-term economic development will also play a major role in an Anderson foreign assistance program.

International and regional financial institutions provide capital essential for the development of Third World economies. An Anderson Administration will seek suitable assistance for the World Bank, the United Nations, and other institutions with similar goals to ensure that adequate capital is available for multilateral development programs.

The rising cost of oil has caused the current accounts deficit of non-oil-exporting developing countries to increase 400 percent in the last seven years. An Anderson Administration will encourage OPEC states to help Third World countries cope with an increasing burden of debt.

An Anderson Administration will emphasize economic assistance over military aid, consistent with our belief that security is built upon responsible political institutions and economic prosperity.

Specifically, an Anderson Administration will:

Increase the efficiency of the foreign assistance bureaucracy by placing the Agency for International Development (AID) once more directly under the supervision of the Secretary of State;

Establish a clearer separation of economic aid from military aid.

Re-evaluate present assistance allocation policies which tend to give small amounts of money to many different programs. The result is that some projects do not receive enough money to be fully successful.

As America moves into the 1980's, we cannot weaken our commitment to a sound policy of foreign assistance. A sensible foreign policy requires a strong assistance program. Misunderstanding, cynicism, and a leadership vacuum has led to neglect of this vital component of our national heritage and prosperity.

The Intelligence Agencies

Our intelligence community is passing through the darkest period of its history. The talents of the intelligence agencies have been sorely misused in the past and investigations by congressional committees have raised serious questions about the integrity and effectiveness of our intelligence effort.

Many claim that a strong intelligence service, with secrecy necessarily woven into the fabric of its activities, is basically antagonistic to the exercise of liberty in a free and open society. We disagree. The work of the intelligence agencies is a significant and necessary part of America's efforts to live securely and peacefully in the world. And we are confident that the intelligence agencies can accomplish their vital functions without impairing our basic rights and freedoms.

An Anderson Administration will strongly support congressional oversight of the intelligence agencies. We will request Congress to enact charter legislation to define the nature, breadth, and scope of intelligence activities. We will also support reduction in the number of congressional committees to which the intelligence agencies must report. Through its oversight committees, Congress should receive prior notification of all significant covert intelligence operations, and the principle of congressional access to intelligence agency information and material must be firmly established.

We believe that covert operations should be undertaken only for compelling reasons, and we will support legislation that prohibits assassination in peacetime and other practices by our intelligence agencies that are repugnant to our democratic traditions. We also favor a prohibition on the paid covert use for intelligence purposes of accredited American journalists, academicians, those following a full-time religious vocation, and Peace Corps volunteers. The Intelligence Oversight Board, too long ineffective, must meaningfully monitor the propriety of intelligence activities.

The ability of the intelligence agencies to provide accurate and timely assessments of actual and emerging international events requires urgent attention. Two areas must be immediately addressed. We must strengthen our ability to make a more discriminating use of intelligence-collecting resources and to engage in more thoughtful analysis. We must also vigorously promote better coordination of both agency information and counter-intelligence activities.

Finally, we share the widespread concern about the exposure of the identities of our intelligence agents abroad. An Anderson Administration will consider seeking legislation to bring criminal charges against individuals who, using secrets learned while employed in an intelligence agency, endanger lives by revealing an agent's identity. We affirm our conviction, however, that punishing writers who have not worked for an intelligence agency is inconsistent with First Amendment freedoms. Such measures would be a false promise of agent safety and national security.

Nuclear Non-Proliferation

For thirty-five years the United States has pursued policies intended to restrict the spread of nuclear weapons. The original objective of the program was to keep weapons design and fabrication techniques secret while promoting the use of nuclear power for peaceful purposes. As other countries developed research expertise, however, the focus shifted toward a framework of multilateral and bilateral agreements to renounce nuclear weapons development and apply internationally administered controls on the technology and supplies required to build atomic weapons.

The unchecked proliferation of nuclear weapons and weapons-grade material directly affects the security of the United States, by altering regional balances, and potentially threatening global stability. The destabilizing effects of nuclear proliferation are compounded by the danger of civil wars, irridentist ambitions, terrorist activities, and the failure of command and control systems.

An Anderson Administration will work in cooperation with other states to safeguard physically all nuclear materials from diversion and to restrain the spread of sensitive nuclear technology. We will devote particular attention to limiting the number of facilities which use or produce plutonium or weapons-grade uranium.

Reprocessing plants are particularly susceptible to the diversion of nuclear fuels since a commercial plant processes about

150 tons of plutonium annually and existing accounting techniques have significant "acceptable" error levels. Even if new technology was developed which could monitor fuel losses continuously to an accuracy of one percent, measurement uncertainties would still greatly exceed the amount needed to fabricate a bomb. We must therefore, rely increasingly on physical security measures to deter diversion of nuclear fuels, while also working to improve the measurement techniques which provide a crucial technical safeguard. An Anderson Administration will work to restrict the spread of reprocessing plants to additional countries since most states with "young" nuclear industries have no economic need for these facilities.

We believe that the United States must maintain a vigorous program of nuclear energy research and development if we are to retain our capacity to contribute technology, managerial skills, and operational experience to the broad range of nuclear activities relevant to the prevention or management of nuclear weapons proliferation. In particular, we must take a lead in supporting research to develop improved fuel cycle safeguard technology, including exact and continuous fuel rod assay systems for use in reprocessing plants. Nuclear weapons can be manufactured from diverted fuel in a matter of days, so exact and continuous international monitoring of the fuel flow and stocks in all civilian nuclear facilities should be a long-range objective of American diplomacy.

Though the detection of "trickle" diversion of fuels from reprocessing plants may never be possible, technological improvements and strict internationally supervised safeguards could make nuclear power and reprocessing systems much more secure than they are today.

An Anderson Administration will use every technological and managerial tool at its disposal to increase still further the distance between the military and peaceful uses of nuclear energy, and to secure nuclear fuel from diversion or misuse. For example, we will support basic research into alternative designs of the breeder reactor which do not use plutonium and we will consult closely with our European allies on all non-proliferation matters.

We must encourage all states to join in improving nuclear facility safeguards as a means of building confidence between nations and increasing the genuine security of nuclear fuel cycles. We will best be able to broaden the appeal of nuclear safeguards policies by emphasizing their technical aspects and avoiding public condemnations of our allies. We will promote internal accounting improvements as a means of boosting quality control and reducing worker radiation hazards.

An Anderson Administration will support a strengthening of the safeguards and inspection authority of the International Atomic Energy Agency (IAEA). We will also encourage efforts to have the IAEA play a greater role in ensuring the physical security of nuclear material. Standards for the physical protection of nuclear materials in transit, whether international or domestic, should be made as rigorous as current protective technology will allow.

We believe that the international community will gain from future efforts along the lines of the International Nuclear Fuel Cycle Evaluation process and an Anderson Administration will support such efforts. Technically oriented meetings presently offer the best procedure for evaluating elements of civilian nuclear programs and building toward an international consensus on the issue.

The Non-Proliferation Treaty and the Treaty of Tlatelolco have helped to build confidence among participating states by establishing verification procedures as well as a presumption against nuclear proliferation. Neither treaty has been signed by every possible signatory, but the agreements have clearly had a beneficial effect and an Anderson Administration will search for further opportunities to expand the scope of the non-proliferation regime.

We believe that exports of nuclear technology should only be approved by the United States in instances where the proposed transfer clearly assists American non-proliferation goals. An Anderson Administration will enforce strict policies concerning the export of technical data, material, and technology and we will review the definition of relevant technologies to ensure that certain non-nuclear technology will be controlled if the technology, when combined with nuclear technology, might lead to the further proliferation of nuclear weapons.

An Anderson Administration will support the provisions of the 1978 Nuclear Non-Proliferation Act. We will seek to strengthen the commitments of all nuclear supplier states to refrain from the transfer of those fuel cycle components which were identified as "least proliferation resistant" at the International Nuclear Fuel Cycle Evaluation conference. We will call on all nuclear supplier states to make known the agreed upon arrangements for disposal of spent fuel from nuclear facilities which they have supported in any way. We will propose negotiations towards an agreement which would involve the IAEA in the approval of design and construction plans for all nuclear facilities worldwide.

An Anderson Administration will take initiatives aimed at satisfying the legitimate research and development needs of countries with small nuclear programs. This approach certainly introduces some minor proliferation risks, but it might prove to be the most effective means of avoiding additional unnecessary programs using weapons-grade fuels. We should initiate joint research programs with scientists from such states, but should simultaneously ask their governments to forego nuclear explosive research and accept all international safeguards.

We believe that the United States and other nuclear supplier nations should join with the IAEA, EURATOM, and national nuclear authorities to create a fund and technical advisory service to assist developing nations convert research facilities using weapons-grade fuel to fuels of lower nuclear weapons utility. An Anderson Administration will also increase the amount of foreign aid devoted to technical and financial assistance for developing countries which are interested in expanding their "soft path" energy resource programs.

Defense

Introduction

The fundamental purpose of America's armed forces is to provide for our security and to sustain and advance our national policies. The years ahead will see old and new challenges to our achieving this purpose that will test the patience and wisdom of our people and our leaders.

The greatest of those challenges will continue to be the expansion of Soviet military strength, and the Kremlin's efforts to exploit its military capabilities against the West.

In strategic forces, the Soviets have reached essential equivalence with our own and continue to improve the accuracy of their missiles. In conventional forces, the Soviet Union has greatly augmented its forces in Central Europe. It has sent thousands of ground troops into Afghanistan, and whether directly or through client states, has sought to extend its political and military influence in Southeast Asia, in the Persian Gulf region, and elsewhere.

The United States must therefore contend with the continued growth of Soviet military capabilities.

We must also attend to other challenges to our security, which lie outside the realm of our concerns with the Soviet Union.

In Central and Latin America, Africa, and throughout the region stretching from the Persian Gulf to the Pacific Ocean, nations and peoples are undergoing immense political, economic, and social changes. Change is inevitable. It is rapid, often unanticipated, and too frequently causes human tragedy on a vast scale. Regions and continents will not be won or lost by any single power. But our political, economic, and military interests in an interdependent world require consistent attention to the Third World through enonomic and political measures, and, where appropriate, through prudent and effective defense programs.

What must be done to meet these challenges?

Our first priority is to build a defense posture that demonstrates to the Soviet Union that it cannot gain strategic advantages over us.

We must take steps to protect the invulnerability of our nuclear forces.

We must have usable conventional forces to carry out the tasks dictated by defense needs.

We must proceed with arms control measures that enhance our security, but at the same time not fall prey to the illusion that arms control can or should carry the entire burden of preserving the military balance with the Soviet Union.

We must do our utmost to modernize our military personnel policies to retain the skilled men and women whom we need so much to implement our defense responsibilities.

We must spend what we need for defense, but we must apply the most exacting standards of efficiency and accountability to the way we spend defense dollars.

What matters is what we buy with our defense dollars, not how much we incrementally change our budget. We must discard simplicities which hold that spending more money will itself provide a solution to our security problems.

Moreover, we must never forget that arms by themselves are not sufficient to guarantee our security. As outlined elsewhere in this program, we must also restore our domestic economy, which, in the long run, is the true foundation of our international power. We must encourage further growth of our technological and scientific capacity. Spending unwisely for defense while we neglect the steps necessary to increase the productivity, innovation, and competitiveness of the American economy will buy us short-range comfort and long-range disaster.

Provision for our security also requires that we invigorate our alliances with Europe and Japan. If these alliances are preserved on the basis of a full measure of cooperation and partnership, the West will have more economic, industrial, and technological resources than any power or combination of powers that might challenge us. But we must also recognize that our alliances are unions of partners. Each must be prepared to share the burden of our joint endeavors fairly and to justify these sacrifices to its own people.

We cannot enter the international arena of the 1980's either poorly armed or fearful to do whatever is necessary to meet our commitments. There is the risk that the world will become a more hostile environment for the United States, and we must be prepared for this eventuality.

We need leadership to develop sound defense programs and strategies to implement them.

We need leadership to work constructively with Congress, orchestrating a balanced approach to national security.

We need leadership to provide steady coherence in the conduct of our joint affairs with our allies.

The Anderson Administration will meet the challenges to our national security as follows:

Strategic Forces

The nuclear weapons relationship with the Soviet Union is at the center of our military concerns.

Nuclear weapons, because of their enormous destructive power, their global reach, and the great speed with which they can reach their targets, have had a revolutionary impact on the security of nations. Throughout history, the chief purpose of armed forces has been to win wars. The chief purpose of nuclear weapons must be to prevent war.

For the past five Administrations, Democrat and Republican, our nuclear strategy has been based on the principle of deterrence. Our principal objective is, not to wage nuclear war, but to prevent it.

An Anderson Administration will unambiguously reaffirm this traditional strategy. We must hold fast to the conviction that control of nuclear war is improbable, and that victory in nuclear war is meaningless. We re-emphasize our belief that the extensive deployment of weapons which threaten to destroy the other side's strategic weapons undermines the stability of the strategic balance and can be dangerous in a crisis, for each side will then have a strong incentive to fire its missiles before they are destroyed on the ground. We must maintain secure strategic forces capable of delivering measured, timely, proportionate, and, if necessary, overwhelming responses to any conceivable attack. We have such forces now. We must protect their ability to survive in the future.

One component of our strategic arsenal, our fixed, land-based missiles, is, however, becoming vulnerable to an all-out surprise attack by Soviet forces. We must recognize the danger but not be either paralyzed or imprisoned by it. We should remember that even after absorbing a massive first-strike against one portion of our nuclear deterrent, our strategic forces will be able to destroy enough of the Soviet Union's industries and military facilities to prevent its re-emergence as a major industrial or military power.

The fundamental question posed by the growing vulnerability of our land-based missiles is what comprises the most desirable mix of forces as the American arsenal is modernized in the 1980's. Should we preserve the three main components of our strategic forces, land-based missiles, bombers, and submarines? Or, as we move into the future, should we place greater reliance on bomber and submarine forces?

A possible solution would be negotiations with the Soviet Union that verifiably reduces the capacity of each party to threaten the other's land-based missiles. Unfortunately, the Soviets have so far rejected such negotiations. We must urgently seek to convince them that their intrasigence is forcing us to consider options which may severely impair strategic stability.

The Carter Administration's specific cure for the vulnerability of our land-based missiles—the proposed mobile land-based MX system—is unsound. It will be enormously expensive (at least $50 billion, perhaps as much as $100 billion). There is reason to believe that the Soviet Union could destroy the system for less cost than we can build it. The proposed system will consume vast water and energy resources, and will disrupt, perhaps irreparably, the environment in the proposed missile site areas. It would invite Soviet military planners to aim nuclear weapons at thousands of new targets in the United States, and if SALT II is not ratified, the Soviets can develop all the necessary warheads and additional delivery vehicles to overwhelm the system as proposed.

American ingenuity can devise a more flexible and more cost-effective solution to the threat posed to our land-based missiles.

The Anderson Administration will give this matter the fresh and sober consideration it deserves through a comprehensive assessment of strategic doctrines, capabilities, and choices, free from either ideology or illusion.

What specific steps must be taken now to rebuild and modernize our strategic forces?

Our military command, control and communications systems should be made as survivable as our strategic weapons systems. For much less than it would cost to build the MX system proposed by the Carter Administration, we can insure that our command, control, and communications systems could survive any attack.

Our warning systems must be improved, as well as our ability to analyze data and make decisions under war-time conditions.

We can improve the basing systems for our aircraft and fleet ballistic missiles.

We must also move ahead with the current Trident submarine program. The technology embodied in the missile and in the submarine will enable us to be more secure and confident in the coming decades.

We should continue research into other missile-carrying submarines, including a larger number of smaller submarines, as additional means for enhancing our deterrent capabilities, as well protecting our seaborne strategic retaliatory forces against future Soviet anti-submarine warfare capabilities.

We will continue modernization of the B–52 with air-launched cruise missiles, short-range attack missiles, and with improved navigational and other electronic systems. The B–52 is a formidable weapon of destruction. The Soviet Union obviously does not take it for granted. Neither should we.

We will continue existing research on new bomber forces, including those capable of launching cruise missiles.

Conventional Forces

The brutal invasion of Afghanistan has underscored that the Soviet Union persists in a foreign policy of opportunistic expansion. However, in allocating more money for conventional defense capabilities to help limit Soviet power, we must pause to assess our situation and to clarify our strategy.

Soviet improvements of their general purpose forces, real and potential, must be taken seriously. They must also be kept in perspective. The Soviet Union cannot be assured that with the outbreak of war in Central Europe, the East European countries would be compliant allies. And to the East, there is a united and hostile China, growing stronger.

In Europe, the size and quality of Western forces continue to make military aggression appear unattractive to the Soviet Union. The risk of nuclear escalation imposes even greater cautions. But to maintain a credible conventional deterrent, United States forces and those of our European allies will need to be improved, particularly to address the critical issue of depth in the alliance's central sector.

An Anderson Administration will:

Improve personnel effectiveness.

Increase operations and maintenance funding to improve overall force readiness. Too large a proportion of our equipment is not ready for action on short notice.

Pre-position more equipment in Europe. This would allow us to send reinforcements to Europe more quickly, and would have the added advantage of freeing airlift and sealift capabilities to meet threats to stability in the Persian Gulf region.

Reexamine the relation between support to combat roles in the Army to determine how the "tooth-tail" ratio can be increased to achieve greater efficiency of fire-power and use of logistic assets.

Improve weapons design systems. Advanced technology can and should be used to strike out in new directions. Too often, however, we forego simple, reliable, rugged weapons systems with clear missions in favor of expensive, complex systems which yield only marginal improvements. Multi-purpose weapons systems, while providing more flexibility, may suffer from four defects: (1) they are usually very expensive and, hence, fewer can be bought; (2) because fewer can be bought, additional resources are often needed to protect them; (3) they may be less suited to any given mission than simpler single-purpose systems; (4) this "gold-plating" invariably makes weapons more difficult to maintain, thereby compounding our manpower problems. An Anderson Administration will conduct a thorough assessment of military design and procurement practices to examine such problems as these and to establish a sounder basis for making judgments about the cost-effectiveness of weapons systems.

We welcome our allies' commitment to raise defense spending by 3 percent a year until 1984. An Anderson Administration will discuss with our European allies additional measures for increasing their conventional capabilities in concert with our efforts. These measures include:

The role of European reserves as combat-ready forces for use in the initial phases of combat. Most European reserves are meant to serve as individual replacements for casualties in units already in action. These reservists could be organized into actual combat formations to help cope with a Warsaw Pact armored breakthrough.

The condition of European war reserve stocks of ammunition, parts, and replacement equipment. There should be agreed stockage levels among the allies, as well as standardization and interoperability to share stockpiled materials in wartime.

The level of armaments of European ground forces.

The role of European civilian airline fleets in airlift operations, looking towards alterations in wide-bodied jets to increase the speed at which American reinforcements reach Europe.

Although the defense of Europe remains the central concern of our overseas conventional force capabilities, it is necessary to recognize that other areas of the world, notably the Middle East and the Persian Gulf, may require the continued deployment of American conventional forces in the foreseeable future. An Anderson Administration will not let our primary focus on European force requirements lead us to neglect our responsibilities in other areas of the world.

The Anderson Administration will develop political and military measures, wherever possible in cooperation with our allies and others, to limit Soviet influence in Third World areas, and to persuade the Soviets that unilateral action on their part will not be successful. Our conventional capabilities must also respond effectively to local situations that arise outside our relationship with the Soviet Union. Economic and political measures are the principal instruments for serving our security interests in these areas, but military forces can provide a necessary ingredient in our overall posture.

Our military forces in the Persian Gulf area should serve two purposes: to give confidence to friends and to deter Soviet action in the Persian Gulf region.

To achieve these goals, an Anderson Administration will improve the Marine Corps' tactical mobility and ground-based firepower capabilities. We will take measures to deploy a regular naval presence in the Persian Gulf region, without impairing our naval strength elsewhere. We must be able to reinforce this presence rapidly with sufficient military power to contend successfully with Soviet incursions.

An Anderson Administration in its military acquisition practices will recognize that some parts of the world may require equipment that is different from equipment designed for operations in Europe.

An Anderson Administration will also encourage our Western allies and Japan to act in concert with us, whenever possible, in the Persian Gulf Region. The British, Dutch, French, and Australians either maintain bases in the Indian Ocean and/or regularly deploy naval units there. The security of the Persian Gulf area is vitally important to the economies of the West. The United States should not be alone in shouldering the burden of shared concerns.

We will discuss with our friends in the Persian Gulf region ways of pre-positioning equipment in their countries, and use of their air and naval facilities.

In all these measures, we will proceed cautiously, mindful that military capabilities and commitments must not become engines driving our foreign policy.

During the past 20 years, our general purpose naval forces have emphasized capabilities for offensive actions against Soviet sea and land targets. This must remain a significant mission for the Navy. But we believe that the Navy, as a flexible instrument of American statecraft, must give renewed and significant attention to its traditional responsibilities, namely, protecting the sealanes between the United States and our allies and protecting our interests in Third World areas. An Anderson Administration will develop a naval construction program to expand existing capabilities and to meet new challenges to our security interests in the 1980's and beyond.

The Draft and Military Personnel Policies

An Anderson Administration will oppose peacetime draft registration. The freedom to choose individual careers without the threat of government compulsion is a precious one. To protect it, we must make every effort to meet our military manpower needs without conscription.

The all-volunteer forces as currently maintained, however, are not adequate. The armed services are finding it difficult to recruit men and women to their ranks. The average educational competence of new recruits is declining. There is evidence that the military competence of our combat troops has deteriorated.

Career military personnel, whose professional skills are critical to our military effectiveness, are leaving the armed services at disturbing rates. Continued erosion of the size and quality of the armed forces will have serious repercussions for our national security. No more urgent task confronts our armed forces than meeting our military personnel needs.

Fairness to the men and women in the armed services and their families also argues for action. They deserve a quality of life equal to the importance of their responsibilities and the sacrifices we ask of them.

An Anderson Administration will:

Increase basic pay and allowances to compensate for losses since the start of the all-volunteer force;

Support breaking the link between military pay and that of civil service workers;

Provide bonuses for superior job performance by individuals as determined by unit commanders, as well as reenlistment bonuses for those individuals in occupational skills of critical importance to the armed forces;

Eliminate in many instances the "up or out" policy governing military promotions which requires many qualified enlisted personnel and officers to retire from the service even though they could continue to make useful contributions to our national security. We should create a pool of skilled individuals who may remain in the armed services outside the normal promotion path up to age 55 or 60;

Improve base housing, increase housing allowances, and expand social services such as day care facilities for military families;

Increase the cost-of-living allowances for individual service men and women in areas with especially high costs of living;

Grant allowances for all forces stationed overseas in places such as Germany, where, for example, the value of the dollar has declined 66 percent against the mark since 1970;

Adopt independent insurance fee schedule for medical services provided by private physicians to dependents of U.S. military personnel;

Develop a program of lateral entry enlistments for active duty and reserve forces for both enlisted and officer ranks;

Provide enlistment bonuses for those with education or technical training beyond high school;

Provide additional education to enlistees in exchange for an extension of the initial enlistment period;

Provide more extensive training to individual reservists including overseas deployments with active units for two-week periods where appropriate;

Reevaluate the issue of ceilings on the numbers of military dependents overseas.

These measures will cost money. But our nation can make no sounder defense investment. Moreover, these measures will save money in the long run. Reducing the outflow of experienced personnel will mean lower expenditures for recruiting, outfitting, and training. Additional monies can be saved by having the most experienced personnel continue to operate and maintain sophisticated weapons systems.

Arms Control

We face a critical juncture in the pursuit of a sound arms control policy aimed at limiting the levels and types of nuclear weapons as well as conventional forces. SALT II, the SALT process itself, technological threats to stability, the continuing proliferation of nuclear weapons, all demand our closest attention.

What are the fundamental elements of a sound and workable arms control policy?

Arms control agreements must enhance our basic security and must not compromise our ability to protect our national interests.

In our major arms control endeavors, we must insure that present and future agreements will preserve and reinforce the stability of the strategic balance.

Arms control agreements, particularly our accords with the Soviet Union, are not agreements between friends. We cannot rely on the good intentions, or promises on paper, of our adversaries. Arms control agreements must be based on adequate, effective verification.

We must develop new ways in which our NATO allies can participate fully, wherever possible, in the arms control process. Genuine consultation with our allies is essential if we are to deal imaginatively with the complex problems of theater nuclear weapons and the conventional military balance in Europe.

The Anderson Administration will take steps to complete the SALT II process, and thereby lay the groundwork for SALT III. We will propose immediate discussions with Moscow to consider possible supplementary measures to facilitate ratification of the pending treaty and to explore an agenda for the next round of negotiations on strategic weaponry.

The basic security interests of the United States are well served by ratifying the SALT II treaty. The treaty as negotiated is adequately verifiable, within the constraints imposed by national technical means of verification. Critics of the treaty have not shown how our nation would be more secure if we rejected it. In the absence of the SALT II constraints, the Soviets can expand their nuclear armaments to levels well beyond those provided in the treaty. We would have no choice but to match arms for arms in a renewed arms race. Fear and insecurity, the wellsprings of war, would be the constant lot of both countries.

In Europe, the Soviet Union is deploying nuclear missiles of sufficient accuracy to threaten land-based nuclear weapons in Europe. The Western Alliance should proceed with its plans to modernize its theater nuclear arsenal; at the same time, we should keep open the possibility of negotiations with the Soviet Union to limit theater nuclear forces.

The Anderson Administration will support efforts to negotiate a ban on the development, testing, and deployment of anti-satellite warfare systems. Until, however, the Soviet Union shows a willingness to enter serious negotiations in this area, we should continue research on an anti-satellite capability.

We favor conclusion of a short-term comprehensive Nuclear Test Ban Treaty among the United States, the Soviet Union, and the United Kingdom, with frequent review pending inclusion of all nuclear weapons states.

The United States should continue to seek agreements in such key areas as peaceful nuclear explosions, chemical warfare, and conventional arms transfer restraint.

Conclusion

We cannot help keep the peace, nor retain the confidence of our friends or the respect of our adversaries, if our military strength declines. We must do what is required to sustain the credibility of our nuclear forces, to rebuild our conventional forces, and to retain the services of our most capable military personnel. These actions must be pursued consistently and with common sense.

Our aim must be the wiser use of defense moneys to achieve for ourselves and our posterity a peaceful future, confident in America's ability to maintain a defense policy that will insure its security in the years ahead.

VI. HOW AN INDEPENDENT CAN GOVERN

We have set forth a comprehensive program for America. But this is not enough. The American people want new ideas, but they also want effective government. The novel possibility of an Independent administration raises important questions about governing this nation—questions to which the American people deserve answers.

We believe that at this critical juncture, America needs an Independent President, and we believe that such a President can work successfully with a Congress organized along party lines to govern this nation.

We now need an Independent President, for two reasons:

The major parties have proved unequal to the task of formulating a realistic post-New Deal public philosophy. The Democratic Party is committed to extending the New Deal without providing the means to pay for it. The Republican Party has been captured by forces that offer a curious combination of consumption-oriented economics and pre-New Deal social policies. The Anderson-Lucey National Unity Campaign is based on a centrist philosophy that ties its program of social policies to those measures needed to rebuild the economic base upon which they can rest.

The traditional parties were reasonably effective mechanisms for distributing the the dividends of economic growth. But during a period in which the central task of government is to allocate burdens and orchestrate sacrifice, these parties have proved incapable of making the necessary hard choices. We are prepared to tell the American people what we must do, and allocate the burdens in a manner sensitive to both economic efficiency and social equity.

Most of the key issues confronting the country now cross traditional party divisions. In the sphere of foreign and defense policy, the overwhelming majority believes that our military preparedness must be increased, that our long-standing alliances with Europe and Japan must be rebuilt, and that our manufactured goods must be free to compete on a fair basis in major world markets. In the domestic sphere, we agree that we must reindustrialize our economy, rebuild our cities, reduce unemployment, inflation, and energy consumption, safeguard our environment, and extend the full protection of civil rights to all who reside within our borders. Conversely, the issues that most passionately divide us—the controversy between capitalism and corporatism, and social issues such as ERA, abortion, and affirmative action, are debated within rather than between political parties.

The Anderson National Unity Campaign builds on this agreement. It transcends the irrelevant quarrels between an old liberalism and an even older conservatism, and it offers effective, coordinated means to achieve goals that enjoy overwhelming public support.

We believe, further, that an Independent President can be effective. We must, of course, acknowledge that the context within which presidents must act has become more complicated and restrictive during the past two decades. Sober observers have pointed to the decentralization of Congress, the fragmentation of political parties, the risk of single-issue constituencies, and the atomization of the electorate as major elements of this new situation. But we contend that in 1980 an Independent Anderson Administration can deal with it more effectively than can a major party administration.

We have four reasons for this contention.

An Anderson victory—in the teeth of the enormous institutional bias against independents—would be a dramatic signal to Congress that the nation wants and expects action, based on the new consensus the campaign has articulated.

Unlike other post-war independent candidacies, the Anderson campaign represents neither a region nor a dissident fringe, but rather a coalition of the center—the traditional basis for governing the American polity.

In the absence of Congressional cohesion and party discipline, the President's effectiveness rests largely on his ability to persuade significant numbers of legislators that his proposals are sensible and fair. John Anderson and Patrick Lucey are superbly equipped to do this. Mr. Anderson has spent two decades acquiring a working knowledge of the issues, from a national perspective. He is intimately acquainted with the intricate process by which ideas are translated into proposals, proposals into laws, and laws into deeds. And he knows the individuals who make the laws—their concerns, their language, their sensibilities. As President, Anderson would have the potential to work as effectively with the Congress as any post-war chief executive. Mr. Lucey has served as an effective Governor of a major state which contains virtually all the problems of industry, commerce, and agriculture that are found elsewhere in the United States.

Congress will work productively with any President who enjoyed the trust and confidence of the American people. A key determinant of this in modern politics is the President's ability to communicate with them, face-to-face and through the media. This ability does not depend upon the party application of the President, but upon the ability of the President to advocate and persuade.

We believe with Alexander Hamilton that:

> . . . the true test of a good government is its aptitude and tendency to produce a good administration.

A good administration, in turn, has two requisites: good personnel, and prudent use of them.

As President, an Anderson Administration will strive to appoint talented individuals, without regard to party affiliation. They will be drawn from a broad range of backgrounds—government, business, labor, academia. Ideally, each will blend general intellectual or theoretical competence and practical experience—both in Washington and elsewhere.

The Administration will attach great weight to judicial appointments on every level. It will strive to ensure that only wise and experienced individuals be nominated for these crucial offices without regard to partisan affiliation. We believe that the greatest asset of the judiciary is the trust—even reverence—accorded to it by the American people, and that in the years ahead this high regard can be maintained only if the judiciary is perceived as broadly representative of the spirit of the nation. Accordingly, we will intensify the quest for women and members of minority groups from whom judges and Supreme Court Justices can be appointed.

As to the appropriate use of individuals within the modern Presidency, two great statesmen and electoral antagonists have between them succinctly propounded the correct policy. Adlai Stevenson once stated that there are only three rules of sound administration: pick good people, tell them not to cut any corners, and back them to the limit. And Dwight Eisenhower, whose genius for governance becomes more evident with every passing year, once reflected on his tenure in office in the following terms:

> The government of the United States has become too big, too complex, and too pervasive in its influence on all our lives for one individual to pretend to direct the details of its important and critical programming. Competent assistants are mandatory; without them the Executive Branch would bog down. To command the loyalties and dedication and best efforts of capable and outstanding individuals requires patience, understanding, a readiness to delegate, and an acceptance of responsibility for any honest errors—real or apparent—those subordinates might make.

We believe that the greatest administrative failure of the current administration is its failure to deal successfully with the Congress. At the heart of its failure lies its inability to engage in substantive, meaningful consultation. Such consultation has two components:

The involvement of relevant Congressional personnel in the drafting of legislative submissions; and

A constant two-way exchange on the progress of proposed legislation through the Congress.

An Anderson Administration will give relations with Congress the highest priority, assigning to this task experienced senior officials known to and trusted by the Members of Congress.

In general, an Anderson Administration will act on the principle that a strong Presidency rests on a strong Congress. It will respect the traditional prerogatives of the Congress and it will attempt to foster unity rather than foment discord within the Congressional ranks. At the same time, an Anderson Administration will protect and vigorously employ the powers of the Presidency. Our Constitution envisages a perennial mixture of contest and harmony among the different branches of our government, through which the liberties of the people will be preserved and the general welfare promoted.

Conception of the presidency

A successful Presidency rests on a clear conception of the Presidency. We believe that:

The President must be a problem-solver, whose every effort is directed toward the general welfare. The "general welfare" is not a rhetorical fiction, but rather a course of action that promotes individual well being while complying with the dictates of justice and fair play.

The President must be a policy-coordinator. Government fails unless its initiatives are mutually consistent, reflecting coherent priorities and a sense of direction. Standing at the apex of government, only the President is in a position to perform this task.

The President must give leadership to the Executive Branch. He should not recklessly attack federal personnel, most of whom are dedicated and hard working, but rather ensure that they receive clear signals to guide their endeavors.

A President cannot simply enunciate his preferences but must energetically follow through with determined efforts to translate them into policy. To this end, the President must avoid inflammatory public rhetoric while engaging in quiet persuasion and patient, persistent negotiation.

A President must tell the truth to the American people, even when it is unpalatable and unpopular. In current circumstances, only an individual prepared to be a one-term President, if necessary, can faithfully and conscientiously discharge his Constitutional responsibilities.

A President must exhibit constant resolve and steadfastness once he has made a decision and embarked on a course of action. He should not expect to please everyone; nor should he be deterred by criticism. And he should not attempt to govern the nation by public opinion polls, but should always act to further the long-term public good, as he sees that good.

The President must embody and express an appropriate historical perspective. He must strive to link significant public acts to the American political tradition, to give the Amercan people a sense of continuity with their basic values and a feeling of participation in a meaningful common enterprise.

It has become fashionable to point to the many constraints within which modern Presidents must operate. And some political leaders—including the present occupant of the Oval Office—have sought to lower our expectations of presidential performance and achievement.

We cannot deny the existence of constraints. But for the most part they are nothing new. They are built into the structure of the Constitution itself. In the past, great Presidents have used the many powers of their office to overcome these obstacles, to promote the common defense and general welfare.

We believe that it is still possible to do this, with bold, farsighted, independent leadership. We believe that the program we have set forth is the basis for such leadership, and that we can effectively direct the affairs of this nation in the 1980's.

The essence of presidential responsibility is to assert the general interest over narrow interests; to make difficult choices among worthy, but conflicting, objectives; to strike policy balances that are wise and fair enough to earn the support of Congress and the nation.

No president can forecast in all respects the precise course he will follow on all issues. But it is incumbent upon candidates who seek your vote to state their view of the country's needs and to identify those initiatives they expect to undertake.

This we have attempted to do. Many distinguished Americans have contributed to the studies and position papers upon which it is based, but it is our own sketch of the priorities we believe should guide our country—not a mosaic of bargains among special interests or trade-offs among experts.

We seek a workable synthesis of policy and program, for the next administration must blend new ideas with old, innovative concepts with traditional values, proven approaches with tentative ones. In responding to the challenges we face, government must be frankly experimental in some fields, conventional in others. It must also be utterly ruthless in judging its performance and pruning its failures. These convictions will animate our administration.

We speak for a patriotism greater than party. And we invite patriots of all persuasions to join with us in shaping a government that can shape the future.

OLD DEFENDERS' DAY 1980

Mr. MATHIAS. Mr. President, Marylanders will celebrate Old Defenders' Day this September 12 to mark the 166th anniversary of the successful defense of Baltimore by its citizen-soldiers in the War of 1812.

If the British thought that Baltimore Harbor was worth fighting for in 1814, imagine what they would think today. The port is in the midst of a major economic rejuvenation that is crowned by the twin pavilions of Harborplace. Baltimore Harbor is more than just the major industrial center in the State of Maryland, however. It attracts more than just business investment. The new Baltimore celebrates the people of the city and with the construction of Harborplace draws them into the thick of this vibrant port.

The battles of North Point and Fort McHenry which began on September 12, 1814, were a turning point in the War of 1812. The rebuilding of the Port of Baltimore today signals an important turning point as well. Baltimore was once defended against attack from foreign invaders. Now it is being defended against decay and neglect. In both cases the people fought for it and the people will benefit.

PRIVILEGE OF THE FLOOR

Mr. TALMADGE. Mr. President, I ask unanimous consent that the following staff members of the Committee on Agriculture, Nutrition, and Forestry, and Tom Little of Senator Huddleston's staff, be granted the privilege of the floor during consideration of the conference report on S. 1125: Henry Casso, Carl Rose, Phil Fraas, Bill Lesher, George Dunlop, and Burleigh Leonard.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL CROP INSURANCE ACT OF 1980—CONFERENCE REPORT

Mr. TALMADGE. Mr. President, I submit a report of the committee of conference on S. 1125 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistance legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of August 28, 1980.)

Mr. TALMADGE. S. 1125 provides the framework for a workable, nationwide program of disaster protection for farmers. I believe that the changes to the Senate bill made in conference strengthen the bill, and urge my colleagues to join me in approving the conference report.

I thank Senator Huddleston for his hard work over the past 2 years on crop insurance legislation and for his leadership in managing S. 1125 in the Senate. I also commend Senator Helms for his cooperation and assistance, as ranking minority member of the committee on Agriculture, Nutrition, and Forestry, in developing this important legislation, and Chairman Foley of the House Agriculture Committee for his outstanding service as chairman of the conference committee.

EXPANSION OF COVERAGE

Mr. President, the existing disaster protection programs do not adequately meet the needs of U.S. farmers. The protection they are supposed to provide often is insufficient or nonexistent to meet emergencies when and where they arise. The present Federal crop insurance program is now available in only about half the Nation's counties and on only 26 crops. In Georgia, only 61 of the State's 159 counties are included in the existing crop insurance program.

It makes no sense to me—and it makes no sense to farmers affected—that this insurance protection is available to some and not to others, even when they may be neighbors operating farms side-by-side divided only by a county line.

S. 1125 responds to the needs of U.S. farmers by authorizing the extension of the present limited Federal crop insurance program to all counties and all crops.

GREATER PROTECTION

In addition, S. 1125 will reduce the cost of crop insurance to farmers and permit them to obtain insurance to cover almost all production costs. Under the bill, a farmer would be able to obtain coverage based on the projected market price of the commodity involved.

To reduce the cost of Federal crop insurance so that farmers will be able to afford full coverage, the Federal Crop Insurance Corporation would pay 30 percent of each participating farmer's premium on that portion of the policy insuring 65 percent of normal yield.

CONCLUSION

Mr. President, I set as a priority for the Committee on Agriculture, Nutrition, and Forestry this year the development of a bill to improve the Federal disaster protection program for farmers. Through the efforts of Senator Huddleston, Senator Helms, and many others, the Senate has for consideration today a strong bill that meets this objective. S. 1125 will greatly benefit U.S. farmers, and I urge its approval by the Senate.

Mr. President, I yield the floor at this time to my distinguished ranking minority member, the Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair, and, of course, I thank my able colleague, the distinguished chairman of the Agriculture Committee, Mr. Talmadge.

Mr. President, were it not for the efforts of the House and Senate conferees I would feel obliged to oppose this Federal crop insurance legislation.

I voted against the crop insurance bill approved by the Senate on September 10, 1979, because of its excessive cost and because it would deal a mortal blow to private hail and fire insurers and the agents who serve them.

I explained in the minority views published with the committee report to S. 1125 the conditions under which I would be able to support the legislation:

First, the premium subsidy would have to be limited to the first 50 percent of yield coverage.

Second, FCIC would have to offer an all-risk policy without hail and fire coverage, with premium costs adjusted accordingly and the same premium subsidy applicable to such policy, so as to give the farmer the opportunity to obtain hail and fire coverage from the private sector if he so desired.

Third, disaster payments would be available only in those counties where Federal crop insurance is not offered.

Fourth, the private insurance agent or broker who places all-risk crop insurance with FCIC would have the right to renew and service that policy.

Fifth, the private insurance agent would have to be indemnified for loss suffered as a result of acts or omissions of FCIC in issuing, billing, and renewing policies.

In conference, virtually all of my conditions were met. It was agreed that a 30-percent premium subsidy, rather than the Senate's 20- to 40-percent subsidy range, would be applicable on the first 65 percent of the farmer's yield, rather than the Senate's 75-percent coverage level.

The conferees accepted an arrangement, which I had advocated, to allow farmers the option of substituting private hail and fire insurance for the hail and fire coverage provided in the Federal all-risk policy. To make the option meaningful FCIC will provide the farmer with a premium credit on the Federal all-risk policy that reflects the costs of the excluded hail and fire coverage.

The conferees decided that a producer shall not be eligible to receive a premium subsidy on his Federal crop insurance policy if he elects to make his acreage eligible for disaster payments. The farmer can still purchase Federal crop insurance; however, he will have to do so without the benefit of the additional premium subsidy.

Finally, the conferees accepted provisions that give private agents and brokers renewal and servicing rights on Federal all-risk policies that they place. The agents will also be indemnified for loss suffered as a result of FCIC's acts or omissions.

By making these significant modifications of the Senate crop insurance bill, the conferees have paved the way for replacing an inequitable and much-abused disaster payments program with a nationwide, shared-cost, all-risk crop insurance program that should cost the American taxpayers far less than the current disaster payments. And the conferees have done so without exposing the private hail and fire crop insurance industry to an undue displacement of its business.

In fact, S. 1125 will open up new opportunities to private insurers by providing a reinsurance plan that will permit the private sector to offer its own all-risk crop insurance policy. If the private sector can live up to its claim that it can do a better job of extending coverage to farmers, the need for Federal Government involvement in the crop insurance business may vanish altogether.

I believe that this legislation creates the kind of environment in which private industry and the Federal Government can work together in a partnership to provide the farmers of this Nation with protection from natural disasters at a reasonable cost to both producers and taxpayers. I urge my colleagues to approve the conference report on S. 1125.

Before I yield the floor, I wish to ask the able Senator from Georgia (Mr. TALMADGE) one question.

Section 104 of S. 1125 requires that FCIC reimburse private insurance companies for the administrative and program expenses incurred by them "under terms and provisions and rates of compensation consistent with those generally prevailing in the insurance industry."

Later, in the same section, reference is made to the fact that licensed private insurance agents and brokers "shall be reasonably compensated" for their successful efforts to sell Federal all-risk crop insurance policies.

I interpret the words "shall be reasonably compensated" to mean that private insurance agents and brokers are to be compensated for their services according to terms and provisions and rates of compensation generally prevailing in the insurance industry for similar services. Such an interpretation tracks the language in section 104 regarding the compensation of insurance companies. It also reflects the congressional intent to provide the same basis for computing the compensation of both private insurance companies and private insurance agents and brokers.

So my question is this: Does the Senator from Georgia accept this interpretation as accurately reflecting his understanding of the intent of the agent compensation provisions of section 104?

Mr. TALMADGE. The answer is yes.

Mr. HELMS. I thank the Senator.

I yield the floor.

Mr. HUDDLESTON. Mr. President, S. 1125 substantially revises the Federal crop insurance program for farmers and provides for expansion of the program to all crops and all farmers.

It is vital that this legislation be enacted. Farmers must be provided with a sound program of disaster protection that is equitable and responsive to their legitimate needs. And the American taxpayer must be assured that Federal expenditures for disaster assistance are used wisely and without waste.

EXPANSION AND IMPROVEMENT OF THE CROP INSURANCE PROGRAM

For the past 41 years, the Federal Government has offered an all-risk crop insurance program through the Federal Crop Insurance Corporation. The Corporation has operated the program on an actuarially sound basis and it has been an extremely cost-effective Government service in the counties in which it has operated. However, the program has operated only in a limited number of counties and has been available only for a limited number of commodities.

S. 1125, as agreed to by the conference committee, will amend the Federal Crop Insurance Act to expand the Federal crop insurance program. S. 1125 will remove the limits under existing law on the growth of the program and provide funding authority to permit rapid expansion of the program throughout the Nation. Secretary of Agriculture Bob Bergland, in a letter to me dated September 5, 1980, estimates that, with enactment of S. 1125, the Federal Crop Insurance Corporation will, by 1985, be able to offer comprehensive crop insurance coverage for virtually all acreage in the United States devoted to major crop.

The Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, which I chair, has responsibility for oversight of Federal crop insurance. The subcommittee will be following closely the course of the Department of Agriculture's implementation of S. 1125 and act as necessary to assure that there are no unnecessary delays in the schedule for expanding the program and that integrity within the Federal Crop Insurance Corporation is preserved. The subcommittee will hold hearings in the near future to receive testimony from the Department of Agriculture on its actions to improve the management of the Federal Crop Insurance Corporation and on its plans to implement the crop insurance reforms under S. 1125.

S. 1125 will assure that Federal crop insurance is affordable to all farmers. It will require that the Federal Government pay 30 percent of the cost of crop insurance under the act for that portion of each policy covering 65 percent of normal yield. S. 1125 will also provide farmers the opportunity to obtain coverage on an additional 10 percent of yield, thereby bringing allowable coverage up to 75 percent of their normal crop yields.

ROLE OF PRIVATE INSURANCE

The bill contains several provisions designed to encourage the private insurance industry to participate in the expanded crop insurance program.

Private insurance companies, as a rule, now write only specific risk crop insurance covering hail, fire, and lightning risks. Numerous attempts by private industry to write all-risk policies have failed.

Federal reinsurance—to cover the risk of catastrophic losses such as those that arise from large-scale droughts, floods, or freezes—is necessary if private industry is to succeed in entering the all-risk field.

The Federal Crop Insurance Act now authorizes the Federal Government to provide reinsurance but the act has a 20-county limit on the reinsurance program.

The private industry, although expressing interest in all-risk crop insurance, has been reluctant to commit resources to an experimental effort that would be at best a pilot project in terms of magnitude, and that does not provide a sufficient base for dispersion of risk to build a sound reinsurance program.

The Federal all-risk crop insurance program cannot expect to have maximum participation by farmers unless private industry commits its resources and delivery system to all-risk insurance.

S. 1125 addresses this need by repealing the 20-county limit on the reinsurance program and providing that the Federal subsidy of Federal crop insurance premiums will also apply to crop insurance policies written by private companies if the policies are reinsured by the Federal Crop Insurance Corporation. Also, the conference bill requires the Corporation to implement a pilot reinsurance program beginning in 1982.

These steps will provide the impetus for the development of a private-Federal partnership in providing all-risk insurance to U.S. farmers.

S. 1125 also amends the act to require the Federal Crop Insurance Corporation, to the maximum extent feasible, to use private companies in administering the program. This will enable the Corporation to use the delivery system of private industry to market and service Federal all-risk crop insurance on a commission on contract basis. Private industry can bring a wealth of expertise and well-trained personnel to the expanded, nationwide crop insurance program.

There are some 25,000 to 30,000 private crop insurance agents across the Nation who could sell and service crop insurance. The Federal Crop Insurance Corporation should use this valuable resource pool in implementing the crop insurance program under S. 1125, rather than establishing a massive new Federal bureaucracy.

In addition, S. 1125 amends the Federal Crop Insurance Act to permit farmers to obtain coverage against hail and fire risks from non-Federal insurers and purchase Federal crop insurance to cover other risks. This provision is designed to assure that the expanded all-risk crop insurance program under S. 1125 will complement, but not unfairly compete with, the well-established hail and fire insurance industry.

With these provisions in S. 1125, the bill enjoys the support of most of the insurance industry, as well as the support of farm groups and the Department of Agriculture.

DISASTER PAYMENTS

S. 1125 includes provisions to extend through 1981 the disaster payments programs for producers of wheat, feed grains, upland cotton, and rice.

Although the disaster payments programs have helped thousands of farmers hard hit by natural disasters during the last 6 years, the programs have been criticized for being expensive, limited to just six crops, and inequitable in their application.

Under existing law, the disaster payments programs will expire when the 1980 crops are harvested, and the administration is strongly opposed to extension of the programs beyond the time it takes to implement crop insurance reform.

By extending the disaster payments program for 1 additional year, S. 1125 will assure that producers of the disaster payments commodities are not left without disaster protection during the period needed by the Federal Crop Insurance Corporation to develop the crop insurance program under S. 1125. Once in place, the crop insurance program should provide to these farmers a strong alternative to disaster payments.

S. 1125 PROVIDES NEEDED PROTECTION

Mr. President, agriculture is one of this Nation's most valuable resources. We have an efficient system for producing food and fiber unparalleled in the world. Nonetheless, for the thousands of family farmers who make up U.S. agriculture, it remains one of the highest risk undertakings in our economy. Historically, 1 out of every 12 acres planted is not harvested because of adverse weather or other natural disasters.

This year, farmers in many areas of the Nation have suffered from destructive hot weather and drought. In some localities, farmers are experiencing their third or fourth straight year of drought conditions. Many may go out of business.

Our farmers need disaster protection. They do not want or need a Federal handout, but they need some type of assistance to help them cope with the uncertainties of weather and other natural conditions and they are willing to pay their fair share to get it.

This need can best be met through a comprehensive Federal crop insurance program under which farmers can protect their capital investments in food and fiber production. S. 1125, as agreed to by the conference committee, provides such an insurance program. I urge my colleagues to approve the conference report on S. 1125.

Mr. President, I ask unanimous consent that a summary of the major provisions of S. 1125, as agreed to by the conferees, and Secretary of Agriculture Bergland's letter to me, dated September 5, 1980, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE MAJOR PROVISIONS OF S. 1125, AS AGREED TO BY THE CONFERENCE COMMITTEE

The Federal Crop Insurance Act of 1980, as agreed to by the conference committee, would establish an expanded and comprehensive crop insurance program for farmers. The conference bill would remove limits to the expansion of the Federal crop insurance program, authorize additional funding for the program, encourage private industry participation in the program, provide partial Federal payment of premiums for crop insurance policies, and extend the disaster payments program under the Agricultural Act of 1949.

Specifically, the major provisions of the conference bill would—

(1) Increase the authorized capital stock of the Federal Crop Insurance Corporation from $200 million to $500 million;

(2) Cancel all capital stock of the Corporation outstanding on the date of enactment of the bill;

(3) Increase the membership of the Board of Directors of the Corporation from 5 to 7 and change its composition so that it would include—

(a) the manager of the Corporation,

(b) the under secretary or assistant secretary of agriculture responsible for the Federal crop insurance program,

(c) the under secretary or assistant secretary of agriculture responsible for the farm credit programs of the Department of Agriculture,

(d) one person, not in Government service, who is experienced in the crop insurance business, and

(e) three active farmers who are Federal crop insurance policyholders;

(4) With respect to administration of the crop insurance program, require the Corporation, to the maximum extent possible, to—

(a) contract with private insurance companies. Private insurance companies would be reimbursed for administrative and program expenses incurred by them under terms and conditions and rates of compensation consistent with those generally prevailing in the industry; and

(b) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers (and give insured farmers the right to renew insurance for successive terms through such agents and brokers). Agents and brokers would be reasonably compensated, from premiums, for sales and renewals of Federal crop insurance, recognizing their function to provide continuing service while the insurance is in effect. However, compensation for agents and brokers would not be included in computations establishing premium rates;

(5) Require the Corporation to provide reasonable indemnification to private insurance agents and brokers for errors or omissions of the Corporation or its contractors for which the agent or broker is held liable (except to the extent the agent or broker caused the error or omission);

(6) Effective with the 1981 crops—

(a) remove the 150-county and 3-commodity annual limits to expansion of the Federal crop insurance program, and

(b) remove the 20-county limit on the program to provide Federal reinsurance to private crop insurers;

(7) Provide, with respect to coverage to be made available under the Federal crop insurance program, as follows:

(a) Insurance would be made available to a farmer on his crop for 75 percent of normal yield;

(b) lower levels of yield coverage would also be made available, including coverage at 50 percent of normal yield; and

(c) price coverage would be made available, per unit of production, that approximates (but is not less than 90 percent of) the projected market price;

(8) Require the Corporation, to the maximum extent possible, to provide reinsurance to private insurance companies and government entities that provide crop insurance to farmers under plans acceptable to the Corporation, and make available a test program of reinsurance to begin not later than with the 1982 crops. The Corporation would pay operating and administrative costs to insurers of policies that are reinsured to the same extent that such costs on the Corporations' policies of insurance are covered by the Corporation;

(9) Provide that a producer may have deleted from his Federal crop insurance policy coverage against hail and fire risks if he obtains equivalent hail and fire coverage from nonfederal insurers. For any producer who makes this election, his Federal crop insurance premium would be reduced by 40 percent of the prevailing average insurance premium charged in the country by nonfederal insurers for equivalent coverage on hail and fire risks; but the amount derived using formula could not be less than 15 percent, nor more than 30 percent, of the Federal crop insurance premium, nor could the reduction in the cost of the premium exceed the actual cost to the producer of the substitute coverage;

(10) In order to encourage the broadest participation in the Federal crop insurance program, require the Federal Government to pay 30 percent of the cost of crop insurance premiums covering 65 percent (or less) of yield. The Federal payment would apply both to (a) premiums on direct Federal crop insurance and (b) in order to provide equity among producers purchasing crop insurance, premiums on nonfederal crop insurance reinsured by the Federal Government;

(11) Authorize the Corporation to offer Federal crop insurance and provide for reinsurance in Puerto Rico and other commonwealths and territories of the United States;

(12) Authorize the Corporation to offer specific risk protection programs for risks not covered by private insurance;

(13) Delete the $12 million limit on annual appropriations to cover the Corporation's operating and administrative costs;

(14) Authorize annual appropriations to the Corporation to cover agents' commissions, Federal premium payments, direct costs of crop inspections and loss adjustments, and interest on Treasury notes;

(15) Authorize the Corporation to obtain emergency funding whenever moneys available to the Corporation are insufficient to cover claims for loss indemnification, as follows:

(a) The Secretary of Agriculture could use the funds of the Commodity Credit Corporation whenever the Board of Directors of the Federal Crop Insurance Corporation requests such use of funds (the Secretary's authority to use Commodity Credit Corporation funds would expire 1 year after the date on which the authority is first used); and

(b) The Corporation could borrow from the U.S. Treasury to the extent provided in advance in appropriation acts; and

(16) Make applicable to the 1981 crops the farm disaster payment and prevented planting disaster payment provisions for wheat, feed grains, upland cotton, and rice of the Agricultural Act of 1949. In 1981, a producer of any of these commodities would have the option of choosing between such disaster payments or participating in the shared-cost crop insurance program provided in the bill (they would not be eligible for both).

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 5, 1980.

Hon. WALTER D. HUDDLESTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUDDLESTON: I am pleased to learn that the Senate will soon consider the conference report on S. 1125, a bill designed to strengthen and improve the Federal Crop Insurance Program. The Administration strongly supports this legislation. It would provide the basis for extending an actuarially sound insurance program to all significant crops, thus permitting subsidized crop insurance to become the primary form of Federal disaster protection for farmers. For the 1980 crop year, the Federal Crop Insurance Corporation (FCIC) extended $2.7 billion of insurance protection to farmers. By

1985, when expansion plans are expected to be largely achieved for major crops, FCIC's insurance coverage is expected to climb to $14.7 billion. At that point, virtually all acreage devoted to major crops would be insurable.

The current management of FCIC is very familiar with the new legislation as well as the operational aspects of the Corporation and I have no doubt that they will be able to administer the new program in a very effective manner. Acting Manager Everett Sharp has over forty years' experience with the Corporation.

Implementation of the expanded and improved crop insurance program would work to the benefit of farmers, the insurance industry and the taxpayer. I want to assure you that the USDA stands ready to fully and quickly implement this proposed new program.

We are confident that the new program will be a success and urge prompt consideration of the conference report for S. 1125.

Sincerely,

BOB BERGLAND,
Secretary.

Mr. TALMADGE. Mr. President, I urge adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. TALMADGE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HAY TRANSPORTATION DEREGULATION

Mr. TALMADGE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1625.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1625) entitled "An Act to amend the Act of December 20, 1944, as amended", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That the Act of December 20, 1944 (58 Stat. 836; 12 U.S.C. 1150), is amended by adding at the end thereof a new section 4 as follows:

"SEC. 4. Notwithstanding any other provision of law, no persons who have received or have owing to them, prior to the date of enactment of this section, payments at rates announced by the Secretary of Agriculture for self-hauling of hay or other roughages under the hay transportation assistance program shall be liable for, or be obligated to refund, any amount that is determined by the Secretary to be in excess of the payment computed in accordance with the maximum rate provided by section 8 of the Farmer-to-Consumer Direct Marketing Act of 1976: *Provided*. That the Secretary determines that such persons have otherwise complied with the terms and conditions of, and are otherwise entitled to payments under, the hay transportation assistance program.

Mr. TALMADGE. Mr. President, S. 1625 would provide relief to certain livestock producers who received drought emergency financial assistance in 1976 for transporting roughage from points beyond their normal trade area to the location of their livestock in a designated drought-stricken county. Because of a miscalculation on the part of the Department of Agriculture, the producers received payments at an announced rate that exceeded the payment rate authorized by statute.

However, the producers had no knowledge in 1976 that the rate announced by the Department exceeded the statutory maximum rate, and many contracts were executed based on the rate announced by the Department.

It is simply unfair to ask the producers to pay for the Government's mistake. Therefore, S. 1625 would cancel the debts of those producers who have not made the requested refund and provide reimbursement to those producers who have already refunded the overpayments.

The House amendment to S. 1625 is technical in nature, providing simply that any payments made under the bill will be made from funds appropriated, or otherwise available on the date of enactment, for disaster relief.

Mr. President, I move that the Senate concur in the House amendment.

Mr. HELMS. Mr. President, I agree with the distinguished Senator from Georgia and I endorse the legislation and I urge its adoption.

Mr. McGOVERN. Mr. President, I am pleased that Congress is taking final action today on a bill I introduced to allow the Department of Agriculture to honor the commitment it made in 1976 to livestock producers who participated in the hay transportation assistance program.

In the summer of 1976, it became apparent that livestock producers needed Federal assistance because of the impact of the drought on the various sources of livestock feed, such as hay and feed grains. For years, the Department of Agriculture had a program of providing subsidized livestock feed in such situations. However, in the summer of 1976, this program was not in operation, inasmuch as there were no longer stocks of surplus feed grains.

To fill this gap, the President exercised the broad authority given to him by Congress in section 305(a) of the Disaster Relief Act of 1974: "In any emergency, the President may provide assistance to save lives and protect property and public health and safety." He authorized the implementation of a hay transportation assistance program. The program was funded by the Federal Disaster Assistance Administration—now called the Federal Emergency Management Agency—and administered by the Department of Agriculture.

The purpose of the program was to provide livestock producers with financial assistance for transporting roughage purchased from points beyond their normal trade area to the location of their livestock in a designated drought-stricken county.

In implementing the program in 1976, the Secretary of Agriculture provided that assistance would be limited to specified amounts per ton.

The program was later revised in some respects, and on October 7, 1976, the program was further changed to include beet pulp as an eligible roughage.

With the approval of the Farmer-to-Consumer Direct Marketing Act of 1976 on October 8, 1976, increases were made in transportation assistance under the program to require the Secretary to pay 80 percent of the cost of transporting hay, not to exceed $50 per ton, from areas in which hay was in plentiful supply to areas where farmers or ranchers were located. Wherever farmers performed the transportation themselves, the Department calculated and paid a uniform rate of reimbursement expressed in cents per ton mile. The rate was established at 9.5 cents effective October 8, 1976.

After a few weeks of experience under the program using the 9.5 cents reimbursement rate, the Department found that the rate resulted in overpayments in virtually all cases involving self-transportation of roughage for distances of over 100 miles. Consequently, on December 1, 1976, the rate for self-hauling was adjusted from a flat rate of 9.5 cents per ton mile to a two-step rate of 9.5 cents for the first 100 miles and 6.5 cents per ton mile for the remainder of the trip. This rate change was to correct what was found to be excessive payments to farmers hauling long distances.

Upon the program's expiration, it was learned through an audit that farmers who had transported beet pulp pellets in their own conveyances had, under the flat rate, been paid in excess of 80 percent of the cost. This happened because of the condensed nature of the roughage and because the farmers used large capacity vehicles for hauling.

Approximately 40 producers who transported beet pulp in their own vehicles have been required by the Department to make partial refund of payments made under the program. Claims against other producers are pending.

In many cases, contracts were executed for the purchase of roughage in reliance on the level of assistance announced by the Secretary.

Since the participants had no knowledge that the published flat rate exceeded the legal maximum rate at the time the contracts were executed, it would be unfair and harsh to require these producers to make repayments.

S. 1625 provides relief by allowing payments to stand as made to those participants who transported roughage in their own conveyances and were paid on the basis of the announced flat rate that was in effect at the time. The debts of those who have not made the requested refund would be canceled, and reimbursement would be made to those producers who have already made a refund. Under the bill, the Secretary would retain authority to insure that the program participants who would be relieved by the bill have complied with all other requirements of the program.

The enactment of S. 1625 will be in keeping with other statutes that permit the Secretary of Agriculture to provide fair and equitable treatment to farmers who rely in good faith on erroneous advice or action of authorized representatives of the Secretary.

The House amendment to S. 1625 is of a technical nature and makes no substantive change. I urge my colleagues to concur in the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOREN). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 1½ hours and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, today I am making my 22d speech on a subject of the United States Senate. I will relinquish the floor at any time any Senator wishes to speak and I will be glad to also relinquish the floor to accomplish the transaction of any business. At the moment, there is none that is cleared, but it may be that some business may be cleared before the day is over. It is also possible that some business can be cleared for tomorrow and the remaining days of the week. But for now there is nothing but waiting to be done.

In the event I do yield the floor to another Senator or for the purpose of suggesting the absence of a quorum before completing my statement, Mr. President, I ask unanimous consent that my statement may not show an interruption in the RECORD and that it appear today just before the statement of the program for tomorrow and the motion to recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. ROBERT C. BYRD at this point on the United States Senate are printed later in the RECORD, by unanimous consent.)

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nomination of Barbara S. Thomas of New York to be a member of the Securities and Exchange Commission.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the nomination of Barbara S. Thomas is cleared on our Executive Calendar and we have no objection to the consideration and confirmation.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

SECURITIES AND EXCHANGE COMMISSION

The legislative clerk read the nomination of Barbara S. Thomas, of New York, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the United States be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection it is so ordered.

SENATE CONCURRENT RESOLUTION 121—TO CORRECT THE ENROLLMENT OF S. 299

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAKER and myself, we send a concurrent resolution to the desk to make a technical correction in S. 299 and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

> Senate concurrent resolution (S. Con. Res. 121) to correct the enrollment of S. 299.
>
> The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made:
>
> In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . ."

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INFANT FORMULA ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 999, S. 2490, the Infant Formula Act of 1980.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not, the reservation is for the purpose of advising the majority leader that Calendar Order No. 999 is cleared on our calendar, and we have no objection to its consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

> A bill (S. 2490) to provide certain requirements for infant formula, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting clause and insert the following:

> That this Act may be cited as the "Infant Formula Act of 1980".
>
> SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:
>
> "REQUIREMENTS FOR INFANT FORMULAS
>
> "SEC. 412. (a) (1) An infant formula shall be deemed to be adulterated if—
>
> "(A) such infant formula does not provide nutrients as required by this section:
>
> "(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or
>
> "(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.
>
> "(2) The Secretary may by regulation—
>
> "(A) revise the list of nutrients provided under subsection (g);
>
> "(B) revise the required level for any such nutrients;
>
> "(C) establish requirements for quality factors for such nutrients; and
>
> "(D) establish the quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formula to determine whether such infant formula is in compliance with this section.
>
> "(b) (1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provide the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to quality control procedures prescribed by the Secretary under subsection (a) (2) (D).
>
> "(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—
>
> "(A) such infant formula provides nutrients in accordance with this section and

meets the quality factor requirements prescribed by the Secretary; and

"(B) the processing of such infant formula meets the quality control procedure requirements prescribed by the Secretary.

"(3) Before the first processing of any infant formula for commercial or charitable distribution for human consumption—

"(A) after a change in its formulation, or

"(B) after a change in its processing,

which the manufacturer reasonably determines may affect whether the formula is adulterated as determined under subsection (a)(1), the manufacturer shall notify the Secretary of such changes and that the formula provides nutrients in accordance with this section and meets the quality factor requirements prescribed by the Secretary and that the processing of such infant formula is in compliance with the quality control procedures prescribed by the Secretary.

"(c)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required under this section; or

"(B)(i) may be otherwise adulterated or misbranded, and

"(ii) if so adulterated or misbranded presents a risk to human health.

the manufacturer shall promptly notify the Secretary of such noncompliance of risk to health.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(d)(1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary may prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(e)(1) Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. No manufacturer shall be required under this subsection to retain any record respecting the distribution of an infant formula for a period of longer than 2 years from the date the record was made.

"(2) To the extent that the Secretary determines that records are not being made or maintained in accordance with paragraph (1), the Secretary may by regulation prescribe the records required to be made under paragraph (1) and requirements respecting the retention of such records under such paragraph. Such regulations shall take effect on such date as the Secretary prescribes but not sooner than the 180th day after the date such regulations are promulgated. Such regulations shall apply only with respect to distributions of infant formulas made after such effective date.

"(f)(1) Any infant formula which is represented and labeled for use by an infant—

"(A) who has an inborn error of metabolism or a low birth weight, or

"(B) who otherwise has an unusual medical or dietary problem,

is exempt from the requirements of subsections (a) and (b). The manufacturer of an infant formula exempt under this paragraph shall, in the case of the exempt formula, be required to provide the notice required by subsection (c)(1) only with respect to adulteration or misbranding described in subsection (c)(1)(B), and to comply with the regulations established by the Secretary under paragraph (2).

"(2) The Secretary may by regulation establish terms and conditions for the exemption of an infant formula from the requirements of subsections (a) and (b). An exemption of an infant formula under paragraph (1) may be withdrawn by the Secretary if such formula is not in compliance with applicable terms and conditions prescribed under this paragraph.

"(g) An infant formula shall contain the following nutrients and any other nutrient required by the Secretary by regulation under subsection (a)(2)(A):

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.
Percent cal	30	54.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300	
Vitamins:		
A(IU)	250 (75 μg)‡	750 (255 μg)‡
D(IU)	40	100.
K(μg)	4	
E(IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8	
B_1 (thiamine) (μg)	40	
B_2 (riboflavin) (μg)	60	
B_6 (pyridoxine) (μg)	35 (with 15 μg/gm of protein in formula).	
B_{12} (μg)	0.15	
Niacin (μg)	250	
Folic acid (μg)	4	
Pantothenic acid (μg)	300	
Biotin (μg)	1.5**	
Choline (mg)	7**	
Inositol (mg)	4**	
Minerals:		
Calcium (mg)	50††	
Phosphorus (mg)	25††	
Magnesium (mg)	6	
Iron (mg)	0.15	
Iodine (μg)	5	
Zinc (mg)	0.5	
Copper (μg)	60	
Manganese (μg)	5	
Sodium (mg)	20 (6 meq)‡‡	60 (17 meq).‡‡
Potassium (mg)	80 (14 meq)‡‡	200 (34 meq).‡‡
Chloride (mg)	55 (11 meq)‡‡	150 (29 meq).‡‡

*Stated per 100 kilocalorie.

†The source of protein shall be nutritionally equivalent to casein.

‡Retinol equivalents.

**Required to be included in this amount only in formulas which are not milk based.

††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2.

‡‡Milliequivalent for 670 kcal/liter of formula.".

SEC. 3. Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S..C 321) is amended by adding at the end the following:

"(aa) The term 'infant formula' means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.".

SEC. 4. Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) is amended—

(1) in the first sentence, by inserting "(1)" before "For purposes" and by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(2) in the third sentence, by inserting "or by paragraph (3)" after "preceding sentence";

(3) in the sixth sentence, (A) by striking out "The provisions of the second sentence of this subsection" and inserting in lieu thereof the following:

"(2) The provisions of the second sentence of paragraph "(1)",

and (B) by redesignating paragraphs (1) through (4) as subparagraphs(A) through (D), respectively; and

(4) by adding at the end the following:

"(3) An officer or employee making an inspection under paragraph (1) for purposes of enforcing the requirements of section 412 applicable in infant formulas shall be permitted, at all reasonable times, to have access to and to copy and verify any records—

"(A) bearing on whether the infant formula manufactured or held in the facility inspected meets the requirements of section 412, or

"(B) required to be maintained under section 412.".

SEC. 5. (a) Section 301 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

"(s) The failure to provide the notice required by section 412(b) or 412(c), the failure to make the reports required by section 412(d)(1)(B), or the failure to meet the requirements prescribed under section 412(d)(2).".

(b) Section 301(e) of such Act is amended (1) by striking out "section 703" and inserting in lieu thereof "section 412 or 703", and (2) by striking out "section 505" and inserting in lieu thereof "section 412, 505".

(c) Section 301(j) of such Act is amended by inserting "412," before "505".

SEC. 6. Section 412 of the Federal Food, Drug, and Cosmetic Act (added by section 2) shall apply with respect to infant formulas manufactured on or after the 90th day after the date of the enactment of this Act.

SEC. 7. (a) The Secretary of Health and Human Services shall conduct a study to determine the long-term effect on infants of hypochloremic metabolic alkalosis resulting from infant formulas deficient in chloride. The Secretary shall report the results of such study to the Congress.

(b) The Secretary of Health and Human Services shall conduct a review of existing Federal requirements for the labeling of infant formula to determine the effect of such requirements on infant nutrition and proper use of infant formula. Not later than the 180th day after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives containing the results of the review and including recommendations for any legislative or administrative action with respect to the labeling of infant formula as the Secretary determines appropriate.

(c) The Secretary of Health and Human Services shall conduct a review of issues concerning the export of infant formula that, if marketed in the United States, would be in violation of section 412 of the Federal Food, Drug, and Cosmetic Act. Not later than the 180th day after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, containing the results of the review and including recommendations regarding appropriate legislative or administrative action to improve current export policies, as the Secretary determines appropriate.

SEC. 8. (a) Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in Schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.".

(b) Section 203 of the Psychotropic Substances Act of 1978 (Public Law 95–633) is amended by striking out subsection (d).

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) by striking out "except as provided in paragraphs (4) and (5) of this subsection" in the first sentence of subsection (b) (1) (B) and inserting in lieu thereof "except as provided in paragraphs (4), (5), and (6) of this subsection"; and

(2) by adding after paragraph (5) of subsection (b) the following new paragraph:

"(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than $250,000.".

Mr. METZENBAUM. Mr. President, on March 27, I introduced S. 2490, the Infant Formula Act of 1980. That legislation, which is before the Senate today, has the cosponsorship of Senators BAUCUS, LEAHY, HUDDLESTON, MCGOVERN, WILLIAMS, SCHWEIKER, JAVITS, and KENNEDY.

This legislation came about in response to last year's recall of four infant formula products—three of them because they lacked an essential nutrient and the fourth because of poor processing. That recall, by the way, was less than fully effective—after 3 months, cans of defective infant formula were still for sale in several parts of the country, including my own State of Ohio.

S. 2490 sets minimum nutrient requirements for products labeled as "infant formula." The bill also directs the FDA to establish quality control procedures for the manufacture of infant formula, provides for full FDA access to testing and distribution records and requires the manufacturers to notify the FDA in case of adulteration or misbranding. In addition, the bill establishes guidelines for recall of adulterated misbranded products.

Mr. President, the Congress has been understandably reluctant to create any new Federal regulation. In this case, however, we have had a remarkable degree of cooperation between the Congress, consumer groups, the FDA, and particularly, the industry in producing what we believe is a fair and workable approach to a common problem.

Parents whose children suffered tragic consequences from consuming defective formula took the lead in bringing this situation to public attention. Their dedication and their undaunted efforts played a crucial role in moving this legislation.

The FDA has worked with us also in drafting regulatory provisions in the bill—provisions that are reasonable and workable.

Finally, I must commend the industry for its cooperation throughout this process. Rather than automatically opposing a regulation, the industry worked long and hard to help us draft legislation that will insure the safety of formula products without placing an undue burden on formula manufacturers.

This is the way legislation should be written—taking into account the legitimate concerns of all interested parties.

In all, the passage of this legislation took less than 1 year. I thank my colleagues on the Labor and Human Resources Committee, the chairman, Senator WILLIAMS, the ranking minority member, Senator SCHWEIKER, and all the bill's cosponsors for working together and swiftly for the passage of S. 2490. I also commend Congressmen AL GORE and RON MOTTL, who were instrumental in securing passage of companion legislation in the House.

Mr. President, this bill will protect our most precious resource—the children who are the Nation's future. I ask its option.

● Mr. BAUCUS. Mr. President, I am delighted that the Senate today is considering the Infant Formula Act of 1980. This legislation is urgently needed to insure the nutritional quality and safety of infant formula products.

I have long been concerned about the potential misuse of infant formula. The frightening and tragic events of last summer where over 130 infants suffered illness from consuming infant formula deficient in essential nutrients reinforced my conviction that Congress must take speedy, corrective action to assure the safety of our Nation's most valuable resource, young children. It was in response to these events and the documented inability of the Secretary of Health and Human Services to play an active role in monitoring infant formula products that I introduced S. 2490 with my distinguished colleague from Ohio, Senator METZENBAUM.

S. 2490 is a simple, forthright measure. It provides that infant formulas meet minimum nutritional standards, that manufacturers comply with premarket testing requirements, that procedures for effective recall of adulterated or deficient formulas be established, and that greater authority for the Secretary of Health and Human Services be provided to inspect manufacturer distribution records of infant formula products. The legislation also requires the Secretary to conduct a study on various aspects of infant formula labeling and its impact on consumers.

Mr. President, this legislation does not impose burdensome regulatory requirements. Further, the Congressional Budget Office has estimated that the provisions of S. 2490 will not result in significant additional expenditures to the Federal Government.

I would like to commend the Committee on Labor and Human Resources for their prompt and responsible consideration of this important measure. I want to thank especially Senator METZENBAUM for his effort and dedication in seeking a solution to insure the safety and nutritional quality of these life-sustaining products.●

● Mr. KENNEDY. Mr. President, as we move to consideration of S. 2490, The Infant Formula Act of 1980, I would like to add my congratulations to Senator METZENBAUM for his contribution to the resolution of this difficult issue.

When we first heard late last year that there was something seriously wrong with some infant formula products, all of us were surprised and saddened: Surprised to learn that such an error could have escaped detection for so long a period; saddened to know the anguish and doubt which the parents of these children must inevitably face. But through the hard work of my good friend and colleague, Senator METZENBAUM, we now have before us for consideration a bill which will assure that this sort of tragic error will never again take place. I understand that this bill has the full support of the industry, the administration, and the parents, and this broad ranging consensus on such a difficult issue gives clear testimony to the fairness of the provisions upon which we are to act.

The issue before us is the health of our children. I know from my travels throughout the country this past year that there is no issue about which the American people care more deeply, or for which they are willing to make greater sacrifices. Now, it is important that we lend our full support to the passage of this bill . . . and its guarantee of nutritious and unadulterated infant formula for our children.●

● Mr. SCHWEIKER. Mr. President, I urge my colleagues to join me in supporting the Infant Formula Act of 1980.

Nothing is more critical to the health and early development of our children than proper infant nutrition. For millions of American babies, this means that the formula they receive as the sole or primary source of nutrition must contain adequate levels of all essential nutrients.

Confidence in the safety of infant formula was shaken last summer, when we discovered that two widely-used products had been reformulated and marketed without adequate testing. The products were seriously deficient in chloride. Lack of chloride can severely impair normal growth and development, causing a condition known as metabolic alkalosis. The infants fail to gain weight and develop normally. Long term effects of chloride deficiency during critical months of infant development are still unknown.

The Food and Drug Administration's standards for infant formula, in effect at the time this problem was discovered, were inadequate and out-of-date, in light of current knowledge of what is needed for good health. FDA standards did not insure the safety of the most important food many children will ever eat, and there were no testing or quality control requirements in place to make certain formula products were safe and nutritious.

At the Health and Scientific Research Subcommittee's hearings in June, we heard moving testimony from the parents of affected children. We heard about the tragic human consequences of inadequate testing, out-of-date FDA guidelines, and poorly implemented product recalls.

Before us today is a bill that will go far to correct these deficiencies by filling in the gaps in FDA's regulatory authority and placing minimum nutrient standards for infant formula into law. Although placing the standards in statute may seem unusual, I believe it is warranted in light of the delays we can usually expect from the regulatory process. We need to insure formula safety by having the standards in effect just as soon as possible, on enactment. The standards in the bill reflect current scientific consensus, as developed by the American Academy of Pediatrics.

The bill provides for future changes in nutrient level requirements as our knowledge of proper infant nutrition advances. Of particular concern to me is the amount of iodine found in infant formula, and I am pleased that the Labor and Human Resources Committee's report on the bill directed the Secretary of Health and Human Services to give high priority to the need to curtail excessive iodine consumption and establish an appropriate maximum for iodine when the nutrient standards for infant formula are updated.

This legislation is very similar to the bill that passed the House of Representatives overwhelmingly and has the very rare distinction—for a new regulatory bill—of having been endorsed by the infant formula industry as a worthwhile, necessary and appropriate piece of legislation. As ranking Republican member of the Labor and Human Resources Committee and its Subcommittee on Health and Scientific Research, and as a cosponsor of the Infant Formula Act, I want to commend Senator METZENBAUM, the infant formula industry, and my other colleagues on the committee for the admirable spirit of cooperation and sense of responsibility that have been exhibited throughout the development of this legislation. What we have is a workable response to a real problem, avoiding the pitfalls of regulatory over-kill while providing needed protection for our children.●

UP AMENDMENT NO. 1551

(Purpose: To make certain technical corrections)

Mr. METZENBAUM. Mr. President, I send to the desk a technical amendment to the committee amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1551.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, line 24, strike out "by this section" and insert in lieu thereof "by subsection (g)".

On page 12, line 8, strike out "provided under" and insert in lieu thereof "in the table in".

On page 12, beginning on line 10, strike out "such nutrients" and insert in lieu thereof "nutrient required by subsection (g)".

On page 12, line 14, strike out "the quality" and insert in lieu thereof "such quality".

On page 12, beginning on line 22, strike out "testing of infant formula to determine whether such infant formula is" and insert in lieu thereof "testing of infant formulas to determine whether they are".

On page 13, line 14, strike out "this section" and insert in lieu thereof "subsection (g)".

On page 14, line 3, strike out "this section" and insert in lieu thereof "subsection (g)".

On page 14, line 13, strike out "under this section" and insert in lieu thereof "by subsection (g)".

On page 16, beginning on line 24, strike out "established" and insert in lieu thereof "prescribed".

On page 17, strike out lines 8 through 10 and the table following line 10 and insert in lieu thereof the following:

"(g) An infant formula shall contain nutrients in accordance with the table set out in this subsection or, if revised by the Secretary under subsection (a)(2), as so revised:

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.
Percent cal	30	54.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300	
Vitamins:		
A (IU)	250 (75 μg)‡	750 (275 μg).‡
D (IU)	40	100.
K (μg)	4	
E (IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8	
B_1 (thiamine) (μg)	40	
B_2 (riboflavin) (μg)	60	
B_6 (pyridoxine) (μg)	35 (with 15 μg/gm of protein in formula).	
B_{12} (μg)	0.15	
Niacin (μg)	250	
Vitamins—Continued		
Folic acid (μg)	4	
Pantothenic acid (μg)	300	
Biotin (μg)	1.5**	
Choline (mg)	7.0**	
Inositol (mg)	4.0**	
Minerals:		
Calcium (mg)	50.0††	
Phosphorus (mg)	25.0††	
Magnesium (mg)	6	
Iron (mg)	0.15	
Iodine (μg)	5	
Zinc (mg)	0.5	
Copper (μg)	60	
Manganese (μg)	5	
Sodium (mg)	20	60.
Potassium (mg)	80	200.
Chloride (mg)	55	150.

*Stated per 100 kilocalories.

†The source of protein shall be at least nutritionally equivalent to casein.

‡Retinol equivalents.

**Required to be included in this amount only in formulas which are not milk-based.

††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (UP No. 1551) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of H.R. 6940 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6940) to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that all language after the enacting clause be stricken and that the language of S. 2490, as amended, be substituted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 6940) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further consideration of S. 2490 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I thank the majority and minority leaders for their assistance.

Mr. ROBERT C. BYRD. The Senator is welcome.

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate recess for 30 minutes.

There being no objection, the Senate, at 3:50 p.m., recessed for 30 minutes; whereupon, at 4:20 p.m. the Senate reassembled when called to order by the Presiding Officer (Mr. Tsongas).

Mr. ROBERT C. BYRD. Mr. President, I yield to my distinguished friend (Mr. Matsunaga).

Mr. MATSUNAGA. I thank the distinguished leader for yielding.

RETIRING CONGRESSMAN ROBERT DRINAN SALUTED FOR HUMAN RIGHTS INITIATIVES

Mr. MATSUNAGA. Mr. President, retiring Representative Robert F. Drinan was honored this morning by the Washington Committee for Soviet Jewry because of his many years of dedication to the cause of human rights.

Having served in the House with Father Drinan for 6 years before my election to the Senate, I, too, wish to congratulate him upon the conclusion of 10 years of outstanding public service in the Congress. A Jesuit priest and the former dean of Boston College Law School, Congressman Drinan has served as chairman of the Criminal Justice Subcommittee of the House Judiciary Committee. I particularly recall serving with him on the House Select Committee on Aging and working with him in the early 1970's to enact the War Powers Act. During his 10 years in Congress, he has been a highly effective advocate for human rights and his voice will be very much missed in the Congress. However, I am sure that not only the voice, but also the leadership of Robert F. Drinan will be heard and heeded, wherever he may choose to be. I wish him well in his future endeavors.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination, which was referred to the Committee on Labor and Human Resources.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:07 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. Reuss, Mr. Ashley, Mr. St Germain, Mr. Gonzalez, Mr. Fauntroy, Mr. Patterson, Mr. AuCoin, Mr. Lundine, Ms. Oakar, Mr. Vento, Mr. Stanton, Mr. Wylie, Mr. McKinney, Mr. Evans of Delaware, and Mr. Green were appointed as managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 586) to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 5769. An act to reinstate and validate United States oil and gas leases numbered OCS–P–0218 and OCS–P–0226;

H.R. 6258. An act providing for reinstatement and validation of United States oil and gas leases numbered C–9496, C–9711, C–11600, C–11621, C–11622, C–11630, C–11631, C–11597, C–11599, C–13774, C–14197, C–17049, C–18262, C–26048, C–13532, C–11581, C–11585, C–11590, C–11591, and C–11595;

H.R. 7175. An act for the relief of the Woodstock Daily Sentinel;

H.R. 7203. An act to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such act for the education of health professions personnel, and for other purposes;

H.R. 8061. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes; and

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

At 5:10 p.m. a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981, in which it requests the concurrence of the Senate.

HOUSE MEASURES REFERRED

The following bills and joint resolution were read twice by their titles and referred as indicated:

H.R. 5769. An act to reinstate and validate United States oil and gas leases numbered OCS–P–0218 and OCS–P–0226; to the Committee on Energy and Natural Resources.

H.R. 6258. An Act providing for reinstatement and validation of United States oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11591, and C-11595; to the Committee on Energy and Natural Resources.

H.R. 7175. An act for the relief of the Woodstock Daily Sentinel; to the Committee of the Judiciary.

H.R. 7203. An act to amend the Public Health Service Act to revise and extend the programs for the National Health Service Corps and to revise and extend the programs of assistance under titles VII and VIII of such Act for the education of health professions personnel, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 8061. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1981, and for other purposes; to the Committee on Appropriations.

H.R. 7765. An act to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for fiscal year 1981; to the Committee on the Budget.

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day"; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4578. A communication from the Deputy Assistant Secretary of Defense, reporting, for the information of the Senate, that the security classification brackets were inadvertently omitted from the Current Estimate column of items 9, 10, 11 and 12 of Format D, Schedule Section (page 4) on the TACTAS SAR for the quarter ending June 30, 1980; to the Committee on Armed Services.

EC-4579. A communication from the Chairman, U.S. Consumer Product Safety Commission, transmitting, pursuant to law, the FY 1982 budget estimates for the Consumer Product Safety Commission; to the Committee on Commerce, Science, and Transportation.

EC-4580. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Natural Gas Incremental Pricing: A Complex Program With Uncertain Results and Impacts," September 4, 1980; to the Committee on Energy and Natural Resources.

EC-4581. A communication from the Associate Director, Bureau of Land Management, Department of the Interior, reporting, pursuant to law, that the Bureau of Land Management proposes to sell 4,614.78 acres of public land in Millard County, Utah, to the Intermountain Power Agency for development of a generating plant; to the Committee on Energy and Natural Resources.

EC-4582. A communication from the Secretary of the Interior, transmitting, for the information of the Senate, a correction notice to the notice of leasing systems required by section 8(a) (8) (43 U.S.C. 1337(a) (8) of the Outer Continental Shelf Lands Act, as amended), transmitted on August 15, 1980; to the Committee on Energy and Natural Resources.

EC-4583. A communication from the Assistant Secretary for Administration, U.S. Department of Transportation, transmitting pursuant to law, reports for a new system of records; to the Committee on Governmental Affairs.

EC-4584. A communication from the Records Officer, United States Postal Service, transmitting, pursuant to law, proposals for two systems of records; to the Committee on Governmental Affairs.

EC-4585. A communication from the Secretary of Health and Human Services, reporting, for the information of the Senate, concerning a study of the issues associated with establishing a Federal system to locate individuals exposed to hazardous substances and to assist them in obtaining medical care; to the Committee on Labor and Human Resources.

EC-4586. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend authorizations of appropriations for programs under the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and for other purposes; to the Committee on Labor and Human Resources.

EC-4587. A communication from the President of the United States, transmitting a proposed amendment to the request for appropriations for the fiscal year 1981 in the amount of $147,500,000 for the Department of Housing and Urban Development; to the Committee on Appropriations and the Committee on the Budget, jointly, pursuant to order of January 30, 1975.

REPORTS OF COMMITTEES SUBMITTED DURING THE RECESS

Under the authority of the order of September 4, 1980, the following reports of committees were submitted on September 5, 1980:

By Mr. JOHNSTON, from the Committee on Appropriations, with amendments:

H.R. 7590. An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96-927).

By Mr. RANDOLPH, from the Committee on Environment and Public Works:

S. Res. 515. An original resolution to waive section 402(a) of the Budget Act with respect to the consideration of H.R. 4084, authorizing funds for Fiscal Year 1981 for the Suisun Marsh, California. Referred to the Committee on the Budget.

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment, and (on behalf of Mr. Jackson) from the Committee on Energy and Natural Resources, with amendments:

H.R. 4084. An act to provide for a cooperative agreement between the Secretary of the Interior and the State of California to improve and manage the Suisun Marsh in California (Rept. No. 96-928).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS from the Committee on the Budget, without amendment:

S. Res. 504. Resolution to waive section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3027, authorizing funds for fiscal year 1981 for the Disaster Relief Act.

S. Res. 507. Resolution waiving 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3059.

S. Res. 511. Resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3074.

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, with an amendment:

H.R. 5625. An act authorizing the President of the United States to present a gold medal to the A. Philip Randolph Institute (Rept. No. 929).

GOLD MEDAL TO THE A. PHILIP RANDOLPH INSTITUTE

Mr. PROXMIRE. Mr. President, from the Committee on Banking, Housing and Urban Affairs, I report favorably a bill which would authorize the President to award a gold medal to the A. Philip Randolph Institute in recognition of Mr. Randolph's contributions to the American labor movement. For the purpose of designing and manufacturing the gold medal, the bill would authorize the sum of $20,000 to be appropriated. The legislation would also permit the manufacture of bronze duplicates for sale to the general public and would require the Treasury to attempt to recover the cost of the gold medal through the sale of these duplicates.

This proposal is reported by the committee with a technical amendment changing the fiscal year authorization in subsection (a) to 1982. This is consistent with the Congressional Budget Act.

By Mr. CHILES, from the Committee on Governmental Affairs, with an amendment and an amendment to the title:

S. 1411. A bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management, and for other purposes (together with additional views) (Rept. No. 96-930).

By Mr. CHILES, from the Committee on Governmental Affairs, without amendment:

S. Res. 516. An original resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1411. Referred to the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BENTSEN:

S. 3095. A bill to amend the Internal Revenue Code of 1954 to encourage the revitalization of urban areas around the nation; to the Committee on Finance.

By Mr. NELSON:

S. 3096. A bill to amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wisconsin; to the Committee on Energy and Natural Resources.

By Mr. NELSON (for himself and Mr. JACKSON):

S. 3097. A bill to establish an Office of Critical Materials; to the Committee on Governmental Affairs.

By Mr. HEFLIN:

S. 3098. A bill to amend the Internal Revenue Code of 1954 to provide an additional personal exemption for the taxpayer, the taxpayer's spouse, or a dependent, who has a disability requiring the use of a wheelchair; to the Committee on Finance.

By Mr. NELSON:

S. 3099. A bill to provide for the relief of the trustee of the bondholders of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin; to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 3100. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold medal to Jesse Owens; to the Committee on Banking, Housing, and Urban Affairs.

S. 3101. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the United States Secret Service Uniformed Division as are given to Federal employees under the General Schedule; to the Committee on Governmental Affairs.

By Mr. PROXMIRE:

S. 3102. A bill to amend section 31 of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN:

S. 3095. A bill to amend the Internal Revenue Code of 1954 to encourage the revitalization or urban areas around the Nation; to the Committee on Finance.

MODIFICATION OF THE REHABILITATION TAX CREDIT FOR COMMERCIAL AND INDUSTRIAL STRUCTURES

● Mr. BENTSEN. Mr. President, today I am introducing a bill to expand the existing 10 percent rehabilitation tax credit for commercial and industrial structures. Under present law, lessors are eligible for the rehabilitation tax credit if they lease the structure to private tenants. However, if the lessor improves the structures and then leases it to a State, local, or Federal governmental agency or a tax-exempt entity, the lessor is not eligible to claim the rehabilitation tax credit. This legislation would simply permit the lessor to claim this credit notwithstanding the identity of the lessee.

Mr. President, the tax cut bill recently approved by the Senate Finance Committee (H.R. 5829) includes my amendment to increase from 10 percent to 25 percent the present rehabilitation tax credit for industrial and commercial structures. Under present law, and under H.R. 5829, costs which qualify for the credit are depreciable rehabilitation costs incurred in connection with a building which has been in use for at least 20 years for the interior and exterior renovation, restoration, or reconstruction of the building.

The legislation that I am introducing today would supplement the decision of the Senate Finance Committee to increase the rehabilitation credit from 10 percent to 25 percent.

Mr. President, prompt enactment of the bill I am introducing today is needed for several reasons.

First, denial of the rehabilitation tax credit translates into higher rentals for governmental entities and tax-exempt organizations and may thus price them out of the inner city market where they should ideally locate to serve the needs of their constituents.

Second, governmental units and tax-exempt organizations have always been disproportionately high users of inner city properties because of their need to be in proximity to the public they serve.

Third, a commitment by governmental agencies or tax exempt organizations to locate and lease in inner city neighborhoods and renovated buildings has not only proven to be a catalyst for private investment but in many instances has broken the barrier of private sector resistance to locate and lease in such neighborhoods and buildings.

Fourth, relocation and leasing action by government agencies and tax exempt organizations has caused individual buildings, declining neighborhoods and central city areas to "turn around" through the infusion of private investment capital.

Fifth, to impede or restrict the stimulus of Federal, State, or local government agency and tax-exempt organization leasing and relocation to renovated buildings in these neighborhoods is clearly contrary to the objectives of the rehabilitation tax credit.

Mr. President, I urge the Senate to approve this legislation which would help revitalize some of the urban sections of all parts of this Nation.●

By Mr. NELSON:

S. 3096. A bill to amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wis.; to the Committee on Energy and Natural Resources.

ACQUISITION OF CERTAIN LANDS IN DOUGLAS COUNTY, WIS.

● Mr. NELSON. Mr. President, I first introduced legislation to preserve the St. Croix River in northern Wisconsin 15 years ago, in 1965. Three years later, the Wild and Scenic Rivers Act was passed, setting up a national system to protect our freeflowing, pristine rivers. The act immediately designated eight qualified rivers. The St. Croix was the only river east of the Mississippi to be included in the original eight.

Today I am introducing a bill to protect an area of exceptional beauty and ecological importance to the Upper St. Croix, the Velie Estate. A companion bill was introduced in the House of Representatives last week by Congressman DAVE OBEY.

This bill adjusts the boundary of the St. Croix National Scenic Riverway to include the Velie Estate so that the land may eventually be acquired by the National Park Service. The timely passage of this bill will prevent this exquisite tract of land from being subdivided and lost forever.

THE RESOURCE

From its origin in Lake St. Croix to its junction with the Namekagon River, there is only one outstanding natural area bordering the St. Croix which combines all of the qualities and environmental values associated with national parks—virgin timber, scenic vistas overlooking the valley, bubbling springs, trout streams and lakes, and numerous nature trails. All of these resources are found in a single property—the 1,380-acre Velie Estate, about 7 miles southwest of the Gordon Dam in Wascott Township, Douglas County, Wis.

A LAST CHANCE TO SAVE THE ESTATE

Held intact and preserved for many years by the Velie family, this property is now owned by a real estate developer who sold off 600 acres of peripheral forest land to a paper company. The owners are now in the process of offering fragments of the remaining property for sale to individuals and corporation, thus excluding public use and protection.

Subdivision would not only jeopardize the quality of scenic, water source and wildlife values but it would also deprive noncanoeing recreational visitors an opportunity to visit and obtain a wild river experience. The real danger of septic tank pollution at the headwaters of the river system would be exacerbated.

NEED FOR LEGISLATION

The National Wild and Scenic Rivers Act of 1968 authorizes the National Park Service to acquire strips of land along the banks of the St. Croix to protect natural features from intrusions. However, it does not provide for the acquisition and protection of exceptional scenic and ecologically important watershed areas beyond the riverside strips.

This bill would adjust the boundaries of the riverway to include this area. Inclusion of the Velie Estates would accomplish two important purposes. First, it would assure the continued protection of its important aquifers, virgin timber, scenic values, and wildlife habitat for endangered and threatened species—bald eagles, osprey, timber wolves, moose, and whitetail deer.

Second, the Velie Estate is the only area on the upper St. Croix of National Park Service caliber which could provide a natural history center for the general recreational public. Two modest visitor information centers have been established for the riverway, at Trego and Grantsburg, but campgrounds, visitor use, or interpretive facilities are not available in the upper St. Croix—a region of intensive recreational usage. Furthermore, much of the river is not easily accessible except to canoeists.

NATURAL HISTORY INTERPRETIVE VISITOR CENTER

The Velie Estate combines all the qualities needed for complete public use and appreciation of the upper St. Croix scenic riverway system.

Its huge rustic log lodge would accommodate a natural history interpretive center.

Both walking and woodland driving trails lend themselves to guided or self-guided nature trails.

Scenic overlooks from the bluffs command an awe-inspiring appreciation of the whole Upper St. Croix River Valley which once carried melting glacial waters.

The importance of protecting clear and clean cold water sources is easily demonstrated at the numerous bubbling springs at the base of the bluffs.

Trout streams and cold lakes will be available to trout fishermen.

Campground facilities could accommodate many visitors.

Its hundreds of acres of virgin forest would present unique opportunities for scientific studies.

This 1,380-acre tract, if acquired by

the National Park Service, would offer northwestern Wisconsin's economy several major benefits without causing any noticeable problems:

First. In lieu, taxpayments by the Federal Government would be approximately equal to the property taxes paid by the private owners.

Second. As a major attraction to recreational visitors, the service businesses in Gordon, Wascott, and nearby recreational resorts would be substantially benefited.

In order to provide for inclusion of this unusually valuable property in the St. Croix National Scenic Riverway, I intend to offer this bill as an amendment to the omnibus park bill (S.).

Finally, I would like to point out that, in contrast with other similar situations, there is total local and statewide support for Park Service acquisition of this property. The local township where it is located (Wascott), the county board (Douglas), and the Wisconsin Natural Resources Board have all passed resolutions urging Park Service purchase.●

By Mr. NELSON (for himself and Mr. JACKSON):

S. 3097. A bill to establish an Office of Critical Materials; to the Committee on Governmental Affairs.

OFFICE OF CRITICAL MATERIALS

● Mr. NELSON. Mr. President, I am today offering, with Senator JACKSON, legislation designed to develop a national materials policy.

It is quite clear that we are on the brink of a crisis far more serious than the 1970's crisis created by the Arab oil embargo and the exorbitant price increases levied by the OPEC cartel.

This crisis will result from the shortages or unavailability of raw materials essential to domestic manufacturing and our national defense.

Six years ago, I introduced legislation to create a National Resource Information System to monitor, analyze, and forecast supplies of, and demand for important world resources, and the implications for the U.S. economy.

I said at that time, at the peak of the energy crisis, that "If we respond correctly to our new condition, and start planning immediately, perhaps we can anticipate and avert crises looming in other commodities."

Six years after I introduced that legislation, and with the weight of two Presidential commissions, three major Government reviews, and dozens of privately and publically commissioned studies, the lessons of the energy crisis have gone unheeded and legislation that would have established a mechanism to deal with our critical materials problems has been ignored.

When I introduced the legislation in 1974, information prepared by the National Commission on Materials Policy showed U.S. dependence on foreign sources for more than 50 percent of its supply of half a dozen basic materials, five of them minerals.

More recent information indicates we are importing more than half our needs in 20 critical materials, and our dependence on foreign sources continues to grow as our technology advances and our needs increase. In some cases, a handful of underdeveloped, politically unstable nations control virtually all of our supplies of certain minerals necessary to construction of military aircraft engines, manufacturing of lightweight steel, and the making of catalytic converters for pollution control. There is nothing to prevent these nations from forming a cartel to control prices and allocate supplies. Given the political situation in some of these producing countries, there is nothing to prevent a total disruption in supplies.

Yet, as a nation, we have no mechanism for dealing with such situations.

If, in 1950, there had been an adequate resource information system, then by 1955 we would have had five annual reports on fuel resources and we would have seen the need for a major energy research and development program. We would have had 15 years in which to develop alternative energy sources and refine our technology to make better use of available supplies. Had we had such a system, we would not have faced the energy crisis of the 1970's, which has been at the heart of our economic problems of the last several years.

In 1974 I urged that we heed the energy crisis as a "distant early warning signal" so that we may soften the impact of shortages impending in important materials. I believed then, and even more so now, that the energy crisis tells us that we must abandon our assumption that there will always be an abundance of materials needed by a complex industrial society to maintain a high standard of living.

We should have begun 30 years ago to start planning so that we could anticipate and cope crises looming in these other materials. We certainly should have begun 6 years ago, when the energy crisis was at its peak of visibility. We must begin now.

Information extracted from Metal Statistics, the 1979 edition using the latest complete figures, from 1978, shows very vividly our situation regarding imported metals.

We import 100 percent of our needs in columbium, mica, and strontium. Columbium, from Brazil, Thailand, and Canada, is used in the aerospace industry and for the manufacturing of superalloys and pipeline steels. Mica, from India, Brazil, and the Malagasy Republic, is used widely in the electrical and electronic industries, for making insulators and capacitors, and liners for steam boilers.

We import more than 90 percent of our needs in manganese, tantalum, cobalt, bauxite, chromium, and platinum group metals. While the United States is the worlds largest producer and user of aluminum, we import 93 percent of our aluminum ore—bauxite—from such countries as Jamaica, Surinam, and Australia. Tantalum, used for data processing equipment, telecommunications, and weaponry, comes from Thailand, Canada, Brazil, and Malaysia.

Cobalt, a material absolutely necessary to the production of jet engines for military aircraft, and for cutting and drilling tools so vital to the domestic and defense industries, is a prime example of the potential problems we face.

Well over half of world production of cobalt comes from two African nations, Zaire and Zambia, and most of that from Zaire. Adding in production by the Soviet Union and Cuba, these four nations produce three-quarters of the world's cobalt.

Almost 70 percent of our national needs of cobalt are imported either directly or indirectly from Zaire and Zambia and we import 97 percent of our needs. A disruption in supply by even one of these nations, let alone the possibility of a cartel, would deal a crippling blow to our defense industry.

In April 1978, African Metals Corp., the marketing agent for Zaire's cobalt in the United States, announced that metal orders would be handled on an allocation basis only. In May of that year, insurgents occupied the key town in the key cobalt producing Shaba province, disrupting production for 2 weeks. Even with resumed production, the allocation remains in effect today.

This uncertainty surrounding the world's prime supplier of just one critical mineral combined with the potential for a single nation to become a cartel, places America in a vulnerable position.

We cannot afford this vulnerability, this potential for America's defense industry or domestic manufacturing to be brought to its knees.

The idea of a cartel for nonfuel minerals is a distinct possibility. In the mid-1970's, Guinea, Australia, Guyana, Jamaica, and Surinam, the principal producers of bauxite, the aluminum ore, met to discuss such an arrangement. In 1978, Brazil, Gabon, Mexico, Morocco, Upper Volta, and Zaire, principal producers of manganese, met to discuss "pricing problems." We import 98 percent of this important material for steelmaking, machinery, and construction industries.

We import between 60 percent and 90 percent of asbestos, fluorine, tin, nickel, cadmium, zinc, potassium, and selenium, and half or more of our needs in mercury, gold, and tungsten. In some of these cases, our dominant suppliers are traditionally friendly nations such as Canada and Australia. In others, we have more cause for concern. We import 81 percent of our needs in tin, from Malaysia, Thailand, Bolivia, and Indonesia.

As serious as our potential problems are in 1980, we are looking at far more serious problems in the near future. Our own mineral needs are projected to double by the year 2000, and as our needs expand, so too will the needs of the rest of the world. Our major competitors, Japan, West Germany, Great Britain, and France, have historically engaged in a quest for materials not domestically produced by them, but such keen competition for materials is somewhat new to American industry and Government.

For most of our history, we have been accustomed to having a bulk of our materials needs satisfied by either domestic interests or friendly foreign sources. As before OPEC, Americans have held to the view that the world's resources are not only limitless but that those resources are ours for the taking.

Our potential problems go far deeper even than supply disruption, and these problems are at least as serious. The economic consequences of raw materials pricing should be an immediate concern. Prices of raw materials have increased substantially across the board since 1973–74. Cobalt increased by 300 percent in 1 year. Molybdenum rose from $1.92 per pound in 1973 to $8 a pound in 1979, an increase of more than 400 percent.

We must deal with the relationship between materials and our overall industrial capacity. In a time of perceived tight supply and resultant escalating prices of materials, we have observed an adverse change in an already sagging industrial capacity. Some steel companies, for example, have made the business decision not to continue to maintain foundry facilities.

In a time when reindustrialization and revitalization of our economic base is essential to improving the health of our economy, industries are, instead, choosing to put their limited capital into activities that will not maintain either a vital industrial base or sustain industrial capacity.

In addition, small businesses, like independent foundries and those many subcontracting producers of parts and components using imported raw materials, face even more serious economic drains, and these smaller firms are a vital link in the industrial chain that we cannot afford to weaken or break.

Leading economists have classified this present economic recession as the "first-ever American supply-side" recession. The Council on Wage and Price Stability has cautioned that the answer to our present inflationary dilemma lies in increasing production and improving productivity. We must develop a better understanding of the consequences of our raw materials dependence is having on our industrial capacity, our production and productivity.

There is also cause for concern about the international side of our materials problem. Can the United States and the other free market nations provide the investment necessary to maintain, as well as explore and develop, vital mineral resources? The decade of the 1980's promises to be a decade in which capital will be far more scarce than it has been in the past.

At the same time, the costs of developing mineral sites are enormous. In the last year, several World Bank economists working on a United Nations study concluded that in order to keep pace with 1990 copper demands, the West must invest $46.5 billion to expand copper production.

Research and development of alternatives to materials even now in short supply is lagging for lack of investment dollars, as well as for lack of proper planning.

Foreign policy and defense implications of growing minerals dependence are numerous and obvious. While this Nation has been becoming more and more dependent on foreign sources for vital strategic materials, the Soviet Union appears to have been vigorously pursuing both sufficiency and stability in its supplies. Many analysts are rightfully concerned over the strategic security of vital mineral-producing regions and the stability of key mineral-rich countries. Are America's naval forces strong enough to maintain sea lanes required to supply our industry with imported materials? Can we afford to maintain a small tonnage of bulk merchant shipping to transport vital materials?

It is alarming enough just to look at leadtimes on aircraft part production—landing gear for military aircraft in 40 months, fuselages in 34 months, radar in 32 months, engines in 29 months, and batteries in 24 months.

Despite the many questions affecting our national security, there is serious question as to whether we have an effective national plan to deal with the abrupt cutoff of supplies on critical materials.

It is for these reasons that Senator Jackson and I have introduced a critical materials bill that will create an Office of Critical Materials within the Office of the President to coordinate Government materials activities, to generate a much greater awareness both in the Government and among the general public of the importance of materials matters, to make recommendations to the President, the Congress and departments and agencies of the Federal Government, and to recommed a coordinated national materials policy.

Responsibility for materials policy at the Federal level is now split among more than 20 Government entities. This fragmentation creates duplication of information and reporting, thwarts attempts to develop a cohesive body of information, and inhibits development of a policy which recognizes our dangerous dependence and ways to alter or control it.

This Office would consist of a small group of professionals who will impose discipline, management and leadership on our present fragmented Government structure.

Through its annual reports to the President and the Congress, and through its close relationship with an advisory board composed of private sector industrialists, scientists, engineers, and businessmen, we would have the mechanism to begin a national dialog on the critical materials problem. Congress will have the opportunity and the information to conduct public hearings on the issues and the private sector will have information available to it to make the proper decisions for the future.

This legislation proposes that the Office of Critical Materials be initially empowered for only 3 years. The objective is simple. The Office must pursue its mission with urgency and pass on to us its recommendations as quickly as possible so that the United States may be in a position to deal with our raw materials problems actively and with foresight, rather than reactively and with hindsight. At the end of that 3-year term, during which annual reports will be made inventorying our raw materials supplies and needs and projecting demand and sources of supply, the Office will issue a recommendation as to how the Federal Government should best proceed.

So far we have ignored all the warning signs, we have ignored the projections of previous studies and commissions. So far, we have failed to deal with the impending crisis in raw materials just as we failed to deal with the potential problems of oil supplies.

It is time we recognize that the magic of our technology is dependent upon a finite supply of minerals and materials.

This legislation offers us the mechanism with which to design a rational materials policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 3097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "the Critical Materials Act of 1980".

FINDINGS AND PURPOSES

Sec. 2. (a) The Congress finds that—

(1) the last decade has brought new and far-reaching developments in international critical materials matters, including the increased American dependence on critical materials sources outside of the United States;

(2) such dependence has resulted in a growing uncertainty over the availability of materials vital to American industry and strategic needs;

(3) the United States is not self-sufficient regarding these critical materials and is without any significant domestic source of some of these critical materials;

(4) the Nation's economy and defense rests on satisfying the resource needs of industry and small business;

(5) critical materials matters transcend many aspects of national public policy.

(6) the Federal Government's responsibility for critical materials matters is shared by more than 20 different departments, agencies, councils, and commissions with no single entity having authority and responsibility for coordinating or plannng overall Federal materials policy;

(7) the role small business plays as both a critical materials user and producer is frequently overlooked by the Government and the public; and

(8) a materials policy process which considers, as fully as possible, all of the relevant factors involved in the supply and allocation of critical materials is needed to coordinate the resource demands of defense and civilian endeavors.

(b) It is the purpose of this Act to establish an Office of Critical Materials in the Executive Office of the President in order to—

(1) vest the authority for coordinating critical materials actions, for identifying critical materials issues, for improving the materials policy process and advancing a national materials policy in one Government instrumentality;

(2) provide greater public exposure to the vital issues associated with critical materials and enhance public understanding of such matters; and

(3) insure greater interagency coordination on critical materials matters.

ESTABLISHMENT OF THE OFFICE OF CRITICAL MATERIALS

Sec. 3. There is hereby established an Office of Critical Materials (hereinafter referred to as the "Office") within the Executive Office of the President of the United States.

RESPONSIBILITIES AND DUTIES

SEC. 4. (a) The Office's primary responsibilities include:

(1) coordinating Federal materials policies, programs, and decisions on behalf of the President and making substantive materials policy recommendations to individual departments, agencies and instrumentalities of the Federal Government including recommendations on improving the coordination of the Federal Government's activities on critical materials;

(2) promoting, among the general public and the Federal Government, an awareness of the extraordinary importance of critical materials to the national economic and defense interests; and

(3) providing, within 3 years after the date of enactment of this Act, a substantive recommendation as to how the Federal Government may best be organized to improve the materials policy process and advance a national materials policy.

(b) The Office's duties also include—

(1) examining the activities and policies of the Federal Government departments, agencies, and instrumentalities as well as those activities of private industry, by use of public and Government information and data as well as that secured through the cooperation of private industry and the Government, in order to make recommendations regarding present and future policies affecting critical materials and the materials policy process;

(2) issuing an annual report on domestic inventory of critical resources with projections on the prospective needs of government and industry for these resources; and including an annual forecast, prepared in conjunction with other government departments, agencies, and instrumentalities, of the prospective major critical materials problems which the United States is likely to confront in the immediate years and provide advice as to how these problems may best be addressed;

(3) monitoring and evaluating the critical materials needs of basic industry, including the critical materials needs of small businesses;

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the office, which are designed to advance knowledge of critical materials issues and develop alternatives to resolve immediate and emerging national critical materials problems;

(5) gathering, analyzing, and evaluating authoritative information concerning significant developments and trends in critical materials matters affecting national economic and defense interests, in order to recommend that the Federal Government support particular public or private activities which promise to advance the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(6) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions, and developing a cost estimate of research and development activities which the office determines are most likely to advance the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(7) recommending ways to maximize cooperation with other countries in order to advance critical materials knowledge through the free exchange of information;

(8) assisting upon request of other government departments, agencies, and instrumentalities in the development of United States foreign policy pertaining to mineral-rich countries and vital materials regions of the world and in the development of a program of materials needs in United States defense policy;

(9) advising the President and the Congress as to the extent to which various Government or private activities affect the Nation's interest in securing a continuing supply of critical materials needed for the economy and defense;

(10) issuing an annual report to the President and the Congress detailing the work of the office in the preceding year; and

(11) providing, on a periodic basis, information on the current activities of the office to pertinent congressional committees.

AUTHORITY

SEC. 5. The Office is authorized to—

(1) prescribe rules and regulations as may be necessary for its operation;

(2) enter into contracts and acquire property necessary for its operation to the extent or in such amounts as are provided in appropriation Acts;

(3) publish or arrange to publish critical materials information that it deems to be useful to the public and private industry if such publication is consistent with the national defense and economic interests; and

(4) request available information from private and public sources which the office considers necessary in the discharge of its duties if—

(A) the information requested of private sources does not create an undue burden or hardship on the source from whom the information is requested; or

(B) the public sources of whom a request is made are permitted by law to furnish the requested information.

THE DIRECTOR OF THE OFFICE OF CRITICAL MATERIALS

SEC. 6. (a) The President of the United States, within 30 days after enactment of this Act, with the advice and consent of the Senate shall appoint, for a term of three years, a Director of the Office who shall be responsible for the functioning of the Office.

(b) The Director shall have the authority to develop rules and regulations necessary to carry out the purposes of this Act and shall be compensated at a level not to exceed the pay level for Executive Level II established in section 5313 of title 5, United States Code.

(c) In the event of a vacancy in the position of the Director, the President shall be required to submit the name of a nominee to the Senate within 30 days after the date of the position is vacant.

RESPONSIBILITIES OF THE DIRECTOR

SEC. 7. The Director shall be responsible for—

(1) advising the President on critical materials matters and assisting the President in Federal critical materials policy planning and development;

(2) informing the President of critical materials developments that bear significantly on the national economy or defense;

(3) maintaining a broad review of, and sustaining an on-going evaluation of, critical materials problems and the national critical materials policy process;

(4) performing any related duties which the President may prescribe or which may result from this Act;

(5) appointing and fixing the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(6) obtaining the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(7) establishing an annual program agenda for the Office which shall be conducted in cooperation with other Federal Government departments, agencies, interagency task forces, and instrumentalities which possess expertise in the area in order to maximize the use of interagency task forces; and

(8) entering into agreements with the General Services Administration for the procurement of necessary financial and administrative services for which reimbursement in such amount as may be agreed upon by the Director and the Administrator of General Services from funds of the Office

(b) In order to aid the operation of the Office the Director is authorized, upon the direction of the President, to require Federal Government departments, agencies and instrumentalities to furnish statistical data, information and reports as he deems necessary to discharge his responsibilities under this statute, including the duties identified in section 4(b)(2), (4), (5), (6), and (10).

INDUSTRY ADVISORY PANEL

SEC. 8. (a) There is hereby established an advisory panel on critical materials and industry whose purposes shall include aiding the Director in his formation of an annual program agenda for the Office, providing the Office with information on materials problems and developments, and other tasks as the President or the Director shall prescribe.

(b) The panel shall be comprised of 15 members and shall include individuals with expertise in foreign policy, industry, engineering and science, economics, public administration, small business, defense policy or other areas related to critical materials matters.

(c) The President shall appoint 15 individuals, none of whom shall be presently employed by the Government, to the panel within 30 days after receiving 30 nominations made by the Director who, himself, shall have submitted such nominations within 30 days after being appointed Director.

(d) Five of the 15 appointees shall serve for 3 years; five appointees shall serve for 2 years; and five appointees shall serve for 1 year; however, each of the appointees is entitled to reappointment for additional 3-year terms should the Office remain in existence beyond three years.

(e) A vacancy in the panel shall not affect its powers and any vacancy shall be filled in the same manner in which the original appointment was made, with the succeeding appointee serving the remainder of the predecessor's term.

(f) Each member of the Panel shall receive compensation at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in the actual performance of his or her duties as a member of the Panel and all members of the Panel shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(g) A Chairperson shall be appointed by the Director within 30 days after appointment of eight of the Panel members.

(h) The Chairperson shall organize the panel into subcommittees in a manner he and the Director determines will most aid the Office.

(i) The Chairperson shall call a meeting of the panel within 30 days after being appointed by the Director.

(j) In addition to meetings which may be called by the Chairperson, both the President and the Director shall have authority to convene a panel meeting as frequently as they deem necessary in order to aid in the efforts of the Office.

(k) The Director shall provide staffing and support to the advisory panel in order to assist the members of such panel in carrying out their duties.

FOREIGN AND DEFENSE POLICY

SEC. 9. The President, at his discretion, shall call upon the Secretaries of State, Defense, and Commerce, or their designees, and the Director of the office to meet to facilitate and coordinate the development of United States foreign policy, including international economic policy, as it pertains to mineral-rich countries and vital materials regions and to assist in the development of a program of material needs for United States defense policy, and to perform other materials tasks related to defense and foreign policy.

INFORMATION SERVICES

SEC. 10. The Office shall devote a portion of its resources in an effort to provide private industry with nonconfidential information on critical materials, and the national critical materials policy process.

SMALL BUSINESS

SEC. 11. (a) The Office shall survey the critical materials activities of small business in order to determine the most promising or advanced critical materials work being conducted by small business enterprises and outline measures to advance the innovative activities of small business enterprises working on critical materials matters.

(b) The Office shall provide information on Federal Government programs to small businesses and shall encourage the Federal Government to assist small businesses engaged in the most promising or advanced critical materials work.

(c) The Office shall issue, within 2 years after enactment of this Act, a report on the importance of critical materials to small business, both as a user and producer, and the report shall include an evaluation of the relationship between critical materials-related small businesses and United States industry as a whole.

DEFINITIONS

SEC. 12. As used in this Act "critical materials" means non-fuel minerals or other substances necessary for defense and economic activity that are primarily imported or in a market where there is prospect of shortages or uncertain supply.

APPROPRIATIONS

SEC. 13. There are authorized to be appropriated $5,000,000 for fiscal year 1981 and such sums as may be necessary for fiscal years 1982 and 1983.●

By Mr. MATHIAS:

S. 3100. A bill to authorize the President of the United States to present on behalf of Congress a specially struck gold medal to Jesse Owens; to the Committee on Banking, Housing, and Urban Affairs.

GOLD MEDAL FOR JESSE OWENS

● Mr. MATHIAS. Mr. President, today I send to the desk a bill to authorize the President to present on behalf of Congress a specially struck gold medal to Jesse Owens, the track star who won four gold medals in the 1936 Olympics in Berlin, Germany. James Cleveland Owens was born on September 12, 1913, the son of an Alabama cotton picker. Sixty-six years later, the renowned Olympic champion died of lung cancer on March 31, 1980.

Jesse Owens' feats in the 1936 Olympics have been well documented in recent months for new generations of Americans through the media coverage that attended his death. As the winner of four Olympic gold medals during the period Hitler was propagating his theory of Aryan supremacy, Owens not only achieved an athletic triumph, but effectively discredited Hitler's vicious racism. It was unfortunate that these victories, so stunning in themselves and symbolically, were not recognized in some tangible way upon Owens' return to the United States. Unlike the Olympic champions in recent years, Jesse Owens received no congratulatory honors, no letters nor even any congratulatory greetings when he returned to the United States from Berlin that summer. Instead, he was still expected to sit in the back of the bus and to live in specifically designated areas. In those days, the four gold medals that spelled world superiority could not win equality at home.

Again, however, Jesse Owens' personal qualities dominated over the racial obstacles existing at the time, and he achieved success in the field of public relations. In doing so well, both at the Olympics and throughout his entire life, Jesse Owens was an inspiration to his fellow athletes, especially his fellow black athletes. I am pleased to introduce this legislation to honor such a great American.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3100

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the President of the United States is authorized to present, on behalf of the Congress, to Jesse Owens, a gold medal of appropriate design in recognition of his athletic achievements in the 1936 Olympics. For such purpose, the Secretary of the Treasury is authorized and directed to cause to be stricken a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary of the Treasury. There are authorized to be appropriated not to exceed $15,000 to carry out the provisions of this subsection.

(b) The Secretary of the Treasury may cause duplicates in bronze of such medal to be coined and sold under such regulations as he may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the appropriation used for carrying out the provisions of this subsection shall be reimbursed out of the proceeds of such sale.

(c) The medals provided for in this Act are national medals for the purpose of §3551 of the Revised Statutes (31 U.S.C. 368).●

By Mr. MATHIAS:

S. 3101. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the U.S. Secret Service Uniformed Division as are given to Federal employees under the General Schedule; to the Committee on Governmental Affairs.

COST-OF-LIVING ADJUSTMENTS FOR OFFICERS AND MEMBERS OF THE UNITED STATES SECRET SERVICE UNIFORMED DIVISION

● Mr. MATHIAS. Mr. President, 4 years ago today, I introduced a bill in the Senate that separated the U.S. Park Police from the District of Columbia Police and Firemen's Salary Act, and provided that further pay adjustments would be in accordance with the Federal Pay Comparability System. At the time, the U.S. Park Police, although employees of the Department of the Interior, were considered an extension of the Metropolitan Police Department in the District of Columbia, and their pay adjustments were governed by the same standards governing D.C. employees. With the establishment of Home Rule and a City Council, Congress ceased to adopt salary increases for the District employees and, as a result, pay rates for park police, employees of the Interior Department, were established by locally elected officials in the District. The Secret Service Uniformed Division finds itself in much the same position today.

I send to the desk a bill that would make the annual pay adjustment mechanism for the U.S. Secret Service Uniformed Division compatible with that of other Federal employees under title 5 of the United States Code. At present, the members and officers of the Secret Service Uniformed Division are considered under the District's Police and Firemen's Salary Act of 1956. My bill would assure that payroll and personnel decisions made by the District's government and directed at District of Columbia employees do not affect these Federal employees.

What we appear to have here is a two-tier system within the Secret Service. The U.S. Secret Service falls within the Department of the Treasury. Secret Service agents, who protect the President and his family, are Federal employees for purposes of pay, benefits and retirement. The Secret Service Uniformed Division is assigned the duty of protecting the White House and the location of the President and his family. The Uniformed Division began as the White House police force and in 1978 became a part of the Secret Service, but retaining their status under the D.C. Police and Firemen's Salary Act. My bill would bring them under the Federal umbrella for purposes of pay adjustments, and thus begin the process of assimilating them into the Federal system completely.

I am hopeful that this bill can receive favorable consideration before the end of the Congress. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no obligation, the bill was ordered to be printed in the RECORD, as follows:

S. 3101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the purpose of this Act is to insure that officers and members of the United States Secret Service Uniformed Division are entitled to adjustments in basic compensation in the same overall percentage as are other Federal employees within the General Schedule under the Federal pay comparability system.

(b) Section 501 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, Sec. 4–833) is amended—

(1) by striking out "Executive Protective Service" in subsection (a) and inserting in lieu thereof "United States Secret Service Uniformed Division";

(2) by inserting ", and the annual rate of basic compensation of officers and members of the United States Secret Service Uniformed Division shall be adjusted by the Secretary of the Treasury," in subsection (b)(1) after "Secretary of the Interior"; and

(3) by inserting "or to officers and members of the United States Secret Service Uniformed Division" in subsection (c) after "United States Park Police force".

(c) The amendments made by subsection (b) shall take effect on October 1, 1980.●

By Mr. PROXMIRE:

S. 3102. A bill to amend section 31 of the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

AMENDMENT OF SECURITIES EXCHANGE ACT OF 1934

Mr. PROXMIRE. Mr. President, I am today introducing legislation to broaden and modify the fee structure under the Federal securities laws and increase the revenues generated by the SEC's activities.

Mr. President, on two previous occasions, the Banking Committee has expressed its concern over the increasing gap between the expenses of running the SEC and the real decline in the amount of its annual appropriation recouped through fees. In 1978, the committee directed the SEC to examine its fee structure and report its results to the committee (S. Rept. No. 95–1057). At that time, the committee stated that it had no desire for the SEC to charge fees which created "any undue burden on securities transactions or any adverse reaction upon the capital market," but noted that increasing the amount of revenues generated by SEC fees would result in fewer tax dollars being used to finance the SEC's activities.

The committee reiterated this feeling in the report on the pending SEC authorization bill (S. 2564, S. Rept. No. 96–752) in the following passage:

> Obviously, a more realistic fee schedule establishing a closer relationship between the fees collected by the SEC and the Commission's appropriated funds will reduce the burden the taxpayer now assumes in financing the Commission's activities. The Committee expects the Commission to cooperate in this effort since both statutory and administrative changes in the existing fee structure and levels will increase the likelihood that actual appropriations in future years will correspond to the authorizations approved by the Committee.

At the committee's mark up of the SEC's authorization in May, I expressed my concern about the disproportionate share of the SEC's costs being shouldered by the general taxpayer. A few years ago the SEC secured in fees about as much as it cost. The net cost to the taxpayers was a very small percentage of the total amount. This has deteriorated year by year. By and large, this is an investor protection agency and I believe the investors ought to pay for it. Almost by definition they are among the wealthiest people in our society.

Shortly after the SEC's authorization was reported by the committee, the SEC completed the study requested by the committee. The Fee Study Report discussed the background of the Commission's fee; reported on the revenues produced; summarized the collection procedures employed, and recommended possible changes in the fee structure.

Mr. President, the reasons for increasing the level of fees raised by the Commission's activities are discussed in the study. First, from 1966 until 1974, SEC receipts have averaged $19.4 million per year and represented an average of only 64 percent of the agency's budget. Since 1974, annual receipts jumped to an average of $24 million; however, as a result of the rising costs of salaries and other expenses, receipts have offset an average of only 57 percent of appropriated funds since 1974. The following chart illustrates the SEC's budget history in terms of its total fees, the relationship to its appropriation, and expresses fees as a percentage of the appropriation.

Mr. President, I am a strong supporter of the Securities and Exchange Commission and an admirer of its success in protecting investors and guaranteeing the integrity of our stock markets, the most preeminent in the world. The success of our securities markets is attributable to the vigorous regulatory and enforcement programs which have become characteristic of the SEC since its creation in 1934.

At the same time, I believe it should be investors, who enjoy directly the tangible benefits of the SEC's efforts, that should contribute the lion's share toward the SEC's costs rather than the general taxpayer. I concede that it is difficult to measure the benefits of the SEC's program and to associate those benefits with the various groups involved in our capital markets; however, the SEC agrees that the biggest beneficiaries of its programs are the buyers and sellers of securities. Accordingly the SEC recommended modifications to its present fee structure based largely on the transaction fees required by section 31 of the Securities Exchange Act of 1934.

Mr. President, the SEC recommended a generally sound approach in its Fee Study. The transaction fee can be raised with relative ease and minimal burden for several reasons. First, it is paid by the buyers and sellers of securities at the time of the transaction and thus has the benefit of ease of collection. Second, transaction fees are so low in comparison with other investment related costs, such as brokerage commissions, that there is not likely to be an economic consequence from raising the fee level. Third, collection and compliance costs are relatively low. Fourth, the fee increase will be borne by investors in an equitable manner. Finally, increasing the transaction fees will avoid increases in other SEC fees which could compound the present difficulties encountered in raising capital for American industry. I should note that the SEC advised against changes in the current registration fees under the Securities Act of 1933 and expressed the desire to eliminate a range of fees pursuant to the Independent Offices Appropriation Act of 1952 which have proved difficult and costly to administer.

Mr. President, the bill embraces the SEC's recommendation concerning the transaction fee with several important changes. First, the bill would increase the transaction fee from the present level of one three-hundredths of 1 percent. The SEC recommended a level of one-fiftieth of 1 percent. Second, the bill would extend this fee beyond transactions in securities listed on a national securities exchange which are covered under present law and extend the fee for the first time to over-the-counter securities. As a result under this bill the law would no longer differentiate between securities markets for the purposes of imposing and collecting a transaction fee. As our markets change and as the national market system mandated by Congress evolves, there will be less and less reason for discriminating among markets for this purpose.

Mr. President, this legislation will achieve annual savings to the Federal Government of between $30 and $50 million a year, depending on trading volume. At the time that we are increasing general revenues to the Treasury, we can help to eliminate at least one impediment to its receiving higher appropriations commensurate with its expanding responsibilities.

Mr. President, by introducing the measure at this time, I hope to provoke thought by the self-regulatory organizations and the individual brokerage houses about modifications in the SEC present fee rate and structure. Obviously, such legislation will require the alteration of existing practices and procedures as well as the establishment of new ones to provide collection and compliance mechanisms within the industry and at the Commission. The costs and consequences of these changes warrant careful consideration. I expect to take testimony in the future on these questions as well as on the impact of the other recommendations in the SEC's fee study concerning the Independent Offices Appropriation Act.

Mr. President, I ask unanimous consent that the bill and the accompanying table be printed in the RECORD.

There being no objection, the bill and the table were ordered to be printed in the RECORD, as follows:

S. 3102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

"TRANSACTION FEES

"SEC. 31. (a) Every national securities exchange shall pay to the Commission each year a fee in an amount equal to one eightieth of one per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during such calendar year. Every registered broker and dealer shall pay to the Commission each year a fee in an amount equal to one eighth of one per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on a national securities exchange during such calendar year.

"(b) No payment shall be required under this section for any calendar year in which the amount of such payment would be less than one hundred and twenty-five dollars. The fees imposed by this section shall be paid to the Commission no later than twenty business days after the end of each calendar quarter.

"(c) The Commission may, by rule, exempt any sale of securities or any class of sales of securities from any fee imposed by subsection (a) of this section if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. The Commission may, by vote, specify the conditions for the payments required in subsection (b), and permit reasonable extensions of the dates of such payments.".

SEC FEES COLLECTED

[Dollar amounts in thousands]

Fiscal years	Total fees	Appropriation	Fees, percent appropriation
1935	$288	$1,545	14.7
1936	900	3,029	29.7
1937	1,104	4,245	26.0
1938	716	3,895	18.4
1939	575	4,872	11.8
1940	493	5,470	9.0
1941	518	5,400	9.6
1942	313	5,440	5.8
1943	193	4,910	3.9
1944	408	4,602	8.8
1945	654	4,697	13.7
1946	1,093	4,694	23.2
1947	1,111	5,534	20.0
1948	946	5,739	16.5
1949	788	6,121	12.8
1950	790	5,878	13.4
1951	1,087	6,230	17.4
1952	1,364	5,813	23.5
1953	1,199	5,245	22.8
1954	1,216	5,000	24.3
1955	1,703	4,843	35.2
1956	2,074	5,278	39.3
1957	2,244	5,749	39.0
1958	2,334	6,935	33.6
1959	2,408	7,705	31.2
1960	2,631	8,100	32.5
1961	2,927	9,517	30.7
1962	3,422	11,412	29.9
1963	2,534	13,261	19.1
1964	3,106	13,937	22.3
1965	3,300	15,442	21.4
1966	6,608	16,442	40.0
1967	9,767	17,550	56.0
1968	14,623	17,730	82.0
1969	21,996	18,264	118.0
1970	15,526	21,904	71.0
1971	16,374	23,615	69.0
1972	19,121	26,776	71.0
1973	22,117	30,138	73.0
1974	21,828	36,202	56.0
1975	24,021	44,427	54.0
1976	25,836	49,291	52.0
1977	29,168	56,270	52.0
1978	26,426	52,475	42.0
1979	33,048	67,100	49.0

ADDITIONAL COSPONSORS

S. 2879

At the request of Mr. Melcher, the Senator from Oklahoma (Mr. Bellmon), the Senator from North Dakota (Mr. Burdick), the Senator from Mississippi (Mr. Cochran), the Senator from Alaska (Mr. Gravel), the Senator from Iowa (Mr. Jepsen), the Senator from South Dakota (Mr. McGovern), the Senator from North Carolina (Mr. Morgan), the Senator from New York (Mr. Moynihan), the Senator from Arkansas (Mr. Pryor), the Senator from West Virginia (Mr. Randolph), and the Senator from Montana (Mr. Baucus) were added as cosponsors of S. 2879, a bill to amend the Department of Education Act, Public Law 96-88 (20 U.S.C. 3414).

S. 2958

At the request of Mr. Percy, the Senator from Maine (Mr. Cohen) was added as a cosponsor of S. 2958, a bill to insure the development and implementation of policies and procedures to encourage the Veterans' Administration and the Department of Defense to cooperate in the efficient and effective use of Federal medical resources, and for other purposes.

S. 2967

At the request of Mr. Nelson, the Senator from Illinois (Mr. Percy) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 2979

At the request of Mr. Metzenbaum, the Senator from Colorado (Mr. Hart), and the Senator from Montana (Mr. Baucus) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

S. 3046

At the request of Mr. Percy, the Senator from South Carolina (Mr. Hollings) was added as a consponsor of S. 3046, a bill to amend the Safe Drinking Water Act to extend the period for which variances may be provided in the case of contaminant level and treatment technique requirements of national primary drinking water regulations, and for other purposes.

S. 3056

At the request of Mr. Chiles, the Senator from Florida (Mr. Stone) was added as a cosponsor of S. 3056, a bill to authorize the Secretary of Interior to revise the boundary of Everglades National Park in the State of Florida, and for other purposes.

S. 3087

At the request of Mr. Sasser, the Senator from Minnesota (Mr. Durenberger), and the Senator from Missouri (Mr. Eagleton) were added as cosponsors of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 193

At the request of Mr. Riegle, the Senator from Kentucky (Mr. Ford) was added as a cosponsor of Senate Joint Resolution 193, a joint resolution authorizing the President to enter into negotiations with foreign governments to limit the importation of automobiles and trucks into the United States.

SENATE RESOLUTION 516—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. CHILES, from the Committee on Governmental Affairs, reported the following original resolution, which was referred to the Committee on the Budget:

S. Res. 516

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1411. Such waiver is necessary because provisions of S. 1411 establish a goal to reduce the burden of Federal paperwork requirements on the public by twenty-five percent in three years, which would be difficult to accomplish if the small amount of resources required in fiscal 1981 were not available to the Office of Information and Regulatory Affairs. Reductions in paperwork for all sectors of the economy are expected to reduce inflationary pressures. The Committee regrets it was unable, due to the lengthy consideration of regulatory reform and lobbying reform to meet the May 15 date for the Paperwork Reduction Act. The Committee believes the potential savings and reduced inflation due to reduced paperwork burden should not be foreclosed. The Committee's letter to the Budget Committee pursuant to the requirements of Section 301(c) of the Congressional Budget Act 1974 did discuss S. 1411, the Paperwork Reduction Act.

AMENDMENTS SUBMITTED FOR PRINTING

POSTAL SERVICE ACT OF 1980—H.R. 826

AMENDMENT NO. 2289

(Ordered to be printed and to lie on the table.)

Mr. PERCY (for himself, Mr. Roth, and Mr. Danforth) submitted an amendment intended to be proposed by them, jointly, to the bill (H.R. 826) to amend title 39, United States Code, to provide that the U.S. Postal Service shall be subject to certain provisions of the Occupational Safety and Health Act of 1970.

Mr. PERCY. Mr. President, in face of probably the most disastrous Federal budget crisis in recent history, I send to the desk an amendment to delete from the omnibus postal legislation, H.R. 826, an expensive new postal subsidy program.

Section 6(a) of the bill would allow schools and libraries to mail back to publishers books and other materials they do not wish to keep at a rate below the already subsidized special rates for books. The bill also applies this heavily subsidized "library" rate to private as well as public libraries and expands the category of materials eligible for the reduced library rate to include teaching guides, kits and other items in addition to books and records.

When the committee reported the bill on May 15, the Congressional Budget Office using the projected mail volume for 1979 estimated that this new subsidy would cost $37 million in fiscal year 1981, $38 million in fiscal year 1982 and $41 million in fiscal year 1983. On September 5 the CBO revised these figures downward somewhat based on the actual 1979 mail volume for an expected cost of $27 million, $28 million and $29 million for fiscal years 1981 to 1983, respectively. With the mail-back subsidy estimated to increase by $2 million annually thereafter, we strongly believe that this postal subsidy is still too much of an unjustified expense to the taxpayers—costing $84 million over a 3-year period.

Under current law, the special fourth-class library rate for mailing materials to libraries and schools and between such institutions costs the taxpayers $54.5 million in fiscal year 1979. The total costs of materials mailed under the library rate was $76.4 million of which mailers—many of whom are commercial publishers—paid only $21.9 million. Taxpayers, therefore, picked up almost 72 percent of the tab for postage collected under this class of mail. The new mail-back program of H.R. 826 would greatly increase the costs of this library rate subsidy.

During hearings on the omnibus postal legislation, there was no discussion of the need for this expensive new mail-back program. No witnesses addressed the issue and no empirical evidence was submitted to justify its costs. But because this provision had a history of being included in previous "catch-all" postal legislation—but never enacted, we must note—the expanded library subsidy was attached to H.R. 826 without any consideration of the current budgetary crisis. We simply cannot afford to begin a new program subsidy, particularly at a time when we are under a mandate to cut overall postal costs. Vital social programs, including education programs, are being cut in an effort to stem the tide of inflation, and we must scrutinize the way every tax dollar is spent. The money slated for this mail-back program—$84 million over a 3-year period—can be put to better use.

With the reestimated budget deficit for fiscal year 1980 skyrocketing above $60 billion, the whole budget process is in danger of collapsing. While some may argue that $27 million is small change in light of the total Federal budget, we strongly believe that this type of reckless spending contributes greatly to mounting deficits. It is time to stop being frivolous about the American people's hard-earned tax dollars and establish a rigorous system of priorities for future Federal spending.

We would like to emphasize that the amendment does not affect the current library rate which is scheduled to be phased up to its full cost by 1987. The amendment takes nothing away from nor adds any unforeseen costs to libraries or publishers. The current library rate will remain in effect at the current rate of 19 cents on the first pound as opposed to the special rates for books of 59 cents on the first pound and $1.15 for regular parcel post mailers.

We urge our colleagues to vote for our amendment to strike section 6(a). Preventing the implemenation of this expensive, and to our minds unjustified, postal subsidy will demonstrate Congress commitment to the taxpayers that it is serious about reducing unnecessary Federal spending.

I ask unanimous consent that the amendment and the revised CBO estimate be printed in the RECORD. It should be noted that the CBO estimate discusses section 8 of H.R. 79 which is identical to section 6(a) of H.R. 826.

There being no objection, the amendment and letter were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2289

On page 14, beginning with line 12, strike out all through page 15, line 24, and insert in lieu thereof the following:

SEC. 6. Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following new subsections:

On page 16, line 1, strike out "(g)" and insert in lieu thereof "(f)".

On page 16, line 12, strike out "(h)" and insert in lieu thereof "(g)".

On page 16, strike out lines 22 through 24.

On page 23, line 5, strike out "6(b)" and insert "6".

On page 23, strike out lines 8 through 10.

On page 23, line 11, strike out "(d)" and insert in lieu thereof "(c)".

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 5, 1980.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to an inquiry from Congressman Ford, the Congressional Budget Office has prepared the attached detailed description of the analysis of Section 8 of H.R. 79, as ordered reported by the House Committee on Post Office and Civil Service on April 25, 1979. Please note that the CBO has revised the estimated cost for this provision based on more current postal volume data. The cost of this provision, which would result in a larger revenue forgone payment to the United States Postal Service, is estimated to be approximately $27 million in fiscal year 1981, $28 million in fiscal year 1982 and $29 million in fiscal year 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 4, 1980.

Hon. WILLIAM D. FORD,
Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FORD: In response to your June 13 letter, the Congressional Budget Office has prepared a more detailed explanation of the costs estimated for a provision in H.R. 79 and S. 2558 that would expand the fourth class library rate. In addition, the Congressional Budget Office has updated the cost of this provision based on more current data.

ANALYSIS OF H.R. 79

Section 8 of H.R. 79, as ordered reported by the House Committee on Post Office and Civil Service on April 25, 1979, would expand the category of mailers as well as type of mail eligible for special fourth class book rate, or library rate.

EXPAND ELIGIBILITY

The library rate would be extended to libraries other than public libraries. This would include special interest libraries, i.e., the Folger or presidential libraries; those accessible by membership, i.e., legal libraries; and other libraries, including those of associations and historical societies.

In order to estimate the number of additional libraries likely to be eligible for library rates, the Congressional Research Service (CRS) provided the CBO data from the 1978 edition of the American Library Directory, prepared by R. R. Bowker and Company. It was determined that over 7,000 libraries would be potentially eligible to receive reduced rates, including approximately 5,300 special, 840 law and 1,100 religious libraries. For purposes of calculation, the number of eligible libraries was reduced to 5,000 because of possible duplications in the listings and other factors. Based on industry statistics, CRS estimated that the average number of annual acquisitions per library was 3,300. However, it was assumed that the number of acquisitions would be approximately one-third that amount, or 1,100, to adjust for the assumption that nonpublic libraries would generally be smaller and receive books other than those sent through the United States Postal Service (USPS). The annual growth rate of 5 percent for acquisitions was assumed through fiscal year 1983.

The estimated additional pieces of mail were then added to the projected fiscal year 1979 library rate volume for currently eligible mail. Currently eligible mail was assumed to be 88 million pieces in fiscal year 1979, based on average growth in volume for fiscal years 1976 through 1978, and consistent with USPS mail volume projections available in the USPS January 1979 Comprehensive Statement on Postal Operations. The estimated current level was assumed to grow at a rate of around 8.5 percent annually, based on projections provided by USPS.

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—EXPANDED ELIGIBILITY

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Estimated current level	88.0	95.0	104.0	114.0	125.0
Additional eligibles	5.5	5.8	6.1	6.4	6.7
Total, projected volume	93.5	100.8	110.1	120.4	131.7

EXPAND MAIL CLASSIFICATION

Section 8 clarifies Public Law 94–421, specifying that teaching aids, guides and catalogs of books are eligible for library rates in addition to books (even if mailed separately). While no precise projections were available at the time the CBO cost estimate was prepared, growth in mail volume was estimated by various sources to range from negligible to over 20 percent, particularly if catalogs could be mailed at the lower rate. An estimated increase of 10 percent over the projected library rate volume was assumed as reasonable. This represented a volume diversion of approximately 4 percent from the special fourth class rate.

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—EXPANDED CLASSIFICATION

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Projected volume	93.5	100.8	110.1	120.4	131.7
Additional volume resulting from expanded classification	9.4	10.1	11.0	12.0	13.2

ALLOWANCE FOR RETURNS AND MAIL FROM NONPROFIT INSTITUTIONS

Under current law publishers may mail books to libraries and schools using library rates, but returns must be sent using the higher special fourth class rate. Section 8 would permit schools or libraries to return books at the lower library rate, as well as allow nonprofit organizations to mail books and other educational materials at the library rate. Under current law nonprofit organizations are allowed to mail at the lower rate only when the mailing is on loan or exchange.

According to industry statistics available in Book Industry Trends, published by the Book Industry Study Group, fewer than 20 percent of all books shipped to educational institutions are returned. The number of mailings from nonprofit organizations could not be precisely estimated, however. According to USPS officials the number of pieces could be considerable, assuming that many nonprofit organizations (i.e., the National Geographic Society, Red Cross, etc.) would become eligible for lower rates. For purposes of the estimate it was assumed that the maximum increase in mail volume for returns plus additional mail from nonprofit organizations would be 20 percent. The estimated percentage increase in volume was applied to the current volume plus expanded eligibility to derive the returns and nonprofit increment. (The additional volume anticipated from the expanded mail classification was not included in the base from which the rate of increase was calculated because it was assumed that the most weighted component would be catalogs, and these would not likely be returned.)

ADDITIONAL VOLUME OF MAIL USING LIBRARY RATE—RETURNS AND NONPROFIT ELIGIBILITY

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Total projected volume	93.5	100.8	110.1	120.4	131.7
Returns and nonprofit	18.7	40.2	22.0	24.1	26.3

SUMMARY

The total annual volume diversion from fourth class special rate to fourth class library rate is shown below.

ESTIMATED ADDITIONAL MAIL VOLUME RESULTING FROM SEC. 8

[By fiscal years, volume in millions of pieces]

	1979	1980	1981	1982	1983
Additional libraries	5.5	5.8	6.1	6.4	6.7
Expanded classifications	9.4	10.1	11.0	12.0	13.2
Returns plus mail from nonprofits	18.7	20.2	22.0	24.1	26.3
Total, additional volume	33.6	36.1	39.1	42.5	46.2

The number of additional pieces of mail was multiplied by the net additional revenue forgone payment, with a 20 percent increase in rates assumed for the second quarter of fiscal year 1981. The estimated cost for fiscal year 1979 was $7.4 million, which reflects the last quarter of the year. Costs for fiscal years 1980 through 1983 were estimated to be $32 million, $38 million, $40 million and $42 million in each year, respectively.

ANALYSIS OF S. 2558

On May 15, 1980 the Senate Committee on Government Operations ordered reported and filed their report on S. 2558. Because of time exigencies only a few changes were made to the costs estimated for Section 6(a) of S. 2558, a provision similar to Section 8 of H.R. 79. Applying the same methodology, but allowing for later date of enactment, the CBO estimated that that the net additional cost of this provision would be $37 million in fiscal year 1981, $38 million in fiscal year 1982 and $41 million in fiscal year 1983.

UPDATE OF H.R. 79, SECTION 8

CBO prepared the cost estimate for H.R. 79 on May 7, 1979. Since that time data on actual library rate volume has become available. Rather than the 88 million pieces which the USPS had projected would be sent at library rate in fiscal year 1979, the actual number was far less—61.8 million pieces. Using the actual fiscal year 1979 library rate volume as a base, and assuming a 6 percent annual growth rate, the same methodology applied to the new volume estimate results in an estimated cost for this provision of $27 million in fiscal year 1981, $28 million in fiscal year 1982 and $29 million in fiscal year 1983.

Should you so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will hold a markup session on H.R. 5612, and other pending legislation.

The hearing will begin at 10 a.m., in room 424 of the Russell Senate Office Building, on September 16.

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

Mr. METZENBAUM. Mr. President, the Judiciary Subcommittee on Antitrust, Monopoly, and Business Rights hearing on S. 2798, the Small Business Motor Fuel Marketer Preservation Act of 1980, and on S. 2828, the Small Business Motor Fuel Market Preservation Act of 1980, scheduled for Wednesday, September 10, has be rescheduled for Tuesday, September 9. The hearing will begin at 9 a.m. in room 5110 of the Dirksen Senate Office Building on the 9th.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 9, to hold hearings on executive nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

BIRTHDAY GREETINGS TO HON. CLAUDE PEPPER

● Mr. SASSER. Mr. President, today America's foremost champion for senior citizens celebrates his 80th birthday. On behalf of Tennessee's older citizens and myself, I would like to extend a heartfelt "Happy Birthday" to our senior colleague, the Honorable CLAUDE PEPPER.

CLAUDE PEPPER has served his country for 32 years as a Member of the Senate and the House of Representatives. And during those 32 years he has developed a well-earned reputation as a champion of the Nation's elderly.

As chairman of the House Select Committee on Aging, CLAUDE PEPPER has led the fight to improve the housing, nutrition, health, and economic status of our senior citizens. His willingness to work with other Members of Congress is an important factor in his success. I have had the pleasure of working with him on a number of occasions, including our work on legislation to provide a discount for senior citizens on Amtrak trains.

As the leading congressional proponent on matters such as mandatory retirement, meals-on-wheels, and safety for the elderly, CLAUDE has shown a unique sensitivity to the special needs of our older people. His early support of strong civil-rights legislation and the 40-hour week mark him as a man attuned to the needs of the Nation as well.

Mr. President, CLAUDE PEPPER shows no sign of slowing down, now that he has reached his 80th year. If anything, CLAUDE will continue to be a beacon of hope for millions of senior citizens—a man all can look to for guidance and inspiration.

I wish Congressman PEPPER the best on his birthday and continued success in the years to come. I look forward to many more years of cooperation on important issues and programs.●

BILINGUAL SCHOOL PROGRAMS

● Mr. HARRY F. BYRD, JR. Mr. President, I find increasing dissatisfaction throughout Virginia with the mandate of the new Department of Education requiring regular instruction of foreign born students in "their strongest language." The newly created Department has lost little time in injecting the Federal Government deeper into the operation of local schools.

Today I received a thoughtful letter from a long-time friend who has spent a lifetime either in the field of public education or from the outside as a strong and informed advocate.

The letter is written to President Carter by Stewart Bell, Jr., of Winchester, Va. Mr. Bell served 24 years on the Winchester City Council and 8 years as mayor. Earlier in his career, he was a public school teacher and then principal of a school at Gore in Frederick County, Va.

Mr. President, Mayor Bell's letter is a thoughtful one and it makes so much sense that I ask that it be printed in the RECORD.

The letter follows:

WINCHESTER, VA.,
August 30, 1980.

President JIMMY CARTER,
The White House
Washington, D.C.

DEAR PRESIDENT CARTER: Secretary of Education, Mrs. Hufstedler, has proposed a new set of Federal Regulations (Federal Register, Vol. 45, No. 152, p. 520–557, August 5, 1980) for bilingual programs in local schools throughout the country which will require regular instruction of foreign-born students to be in "their strongest language".

I wish to protest in the strongest terms this proposed regulation because:

1. It is wrong in principle. A major mission of our public schools is to be a unifying institution, reducing the divisive, abrasive, and economically disqualifying differences among us.

2. Our schools should be a strong counter-influence to those forces tending to fragment our society; they should emphasize our common interests and universal goals. One of the most insidious weaknesses in America is the drift toward the segmentation of our society into all sorts of groups and divisions who perceive themselves as having varied and sometimes competing interests and goals. In the face of these natural tendencies, we tend to lose sight of the fact that we are the *United* States of *America*.

3. Public schools should not abridge or deny the motivation and opportunities of paramount importance they provide for students to achieve equality within the mainstream of American culture and economic life. They may also encourage students to have an awareness of and pride in their ethnic history, culture, and achievements.

4. Our strength as a nation has been distilled in large measure from the strengths of our various and multiplied ethnic heritages. Through the challenging action of the American "melting pot" we have submerged and left behind many portions of our varied heritages, absorbed their strengths, and produced a new and unique culture which we are proud to call the United States of America.

5. It is administratively and financially unfeasible or impossible to provide regular required classwork in various languages. Obviously, good teachers and administrators give some special attention and effort to help foreign-born students to become oriented to their new situations on an introductory short-term basis.

I believe this proposed regulation is an egregious example of Federal regulations that are wholly unwarranted when measured in terms of our own well established national goals as enumerated in our Constitution. Among those stated are "to form a more perfect union, (and) to insure domestic tranquility."

I call attention to the fact that the inscription on the Statue of Liberty, the laws of our land, and the want ads in most newspapers are not written in languages other than English.

Sincerely,

STEWART BELL, JR.●

CIA PREDICTS RISE OF 5 PERCENT A YEAR IN SOVIET DEFENSE COST

● Mr. GARN. Mr. President, the Central Intelligence Agency now estimates that the Soviet Union is spending between 12 and 14 percent of its GNP on military forces compared to 5.3 percent for the United States and that over the last decade the Soviet Union outspent the United States by over $300 billion. This very year Soviet military expenditures are 50 percent greater than those of the United States.

This state of affairs is dangerous. Even more dangerous is the fact that these estimates are the product a CIA that now admits that it underestimated Soviet military spending for a decade by almost 100 percent. Current critics of the CIA point out that current CIA estimates are based on precisely the same methodology that produced the almost 100 percent error only 5 years ago.

There are some who try to attribute the Soviet disparity simply to manpower cost differences. This is simply not the case. As Gen. David Jones, chairman of the Joint Chiefs of Staff informed the Congress earlier this year, "the Soviets now possess an accumulated military capital stock some 25 to 50 percent larger than that of the United States," and that "the differential is projected to increase to the 40 to 60 percent range in favor of the Soviet Union by the mid 1980s."

I commend my colleagues' attention to a Washington Post article entitled "CIA Predicts Rise of 5 Percent a Year in Soviet Defense Cost," and ask that it be printed in the RECORD.

The article follows:

CIA PREDICTS RISE OF 5 PCT. A YEAR IN SOVIET DEFENSE COST

(By George C. Wilson)

The CIA yesterday predicted that the Soviet Union will keep increasing its defense budget 5 percent a year, the same percentage Congress approved for the United States this year.

The agency, at a hearing before a House Intelligence subcommittee, did say it is possible that Soviet military spending will slow down because of declining overall economic growth.

"The current and projected decline in Soviet economic growth raises questions about the U.S.S.R.'s ability to contnue increasing defense spending," Robert Huffstutler, director of CIA strategic research, told the subcommittee.

While foreseeing little slowdown before 1985, Huffstutler added, "In the longer term, growing economic difficulties may push the Soviet leaders to reexamine their plans with a view to reducing the growth of defense spending."

Two possible economies would be to reduce the production rates of some weapons and agree to arms control agreements providing direct savings, the CIA specialist said.

He cautioned, however, that "we think it highly unlikely" that the Soviet leaders will reduce military spending to the point that it reverses "longstanding policy of continuing to improve their military capabilities."

He said Soviet defense spending, after allowing for inflation, has grown "an average of 4 to 5 percent a year since at least 1965." In contrast to this steady growth, U.S. defense spending has been up and down in that same period, with the Vietnam war pushing the totals up during the late 1960s.

Who has been responsible for the decline in U.S. military spending since Vietnam is a hot issue in the presidential campaign, with Democrats and Republicans blaming each other.

A related issue is whether the CIA has been providing accurate comparisons of U.S. and Soviet military spending, a topic Chairman Les Aspin (D-Wis.) said the subcommittee would question the agency about in closed session.

The CIA provoked a flap in 1976 by announcing that it was nearly doubling its estimates of how big a slice of the Soviet gross national product was going for defense. Instead of the old 6 to 8 percent estimates the CIA said the new estimate was between 11 and 13 percent.

However, in 1978 the CIA attributed much of the increase to the fact that the Soviets were getting less bang for the buck because "Soviet defense industries are far less efficient than formerly believed."

Yesterday the agency stuck with its 11 to 13 percent of GNP for the 1965 through 1978 period, but raised the estimate to between 12 and 14 percent for 1979 because the Soviet economy sagged that year.

The estimated annual growth rate, after allowing for inflation, in the Soviet defense budget was estimated at between 4 and 5 percent in rubles.

The CIA estimates how much it would cost the United States and the Soviet Union to duplicate each other's military establishment, with one comparison expressed in rubles and another in dollars.

The CIA's cumulative estimates in dollars from 1970 through 1979 were $1,135 trillion for the United States and $1,460 trillion for the Soviet Union, a difference of about 30 percent. In 1979 alone, the CIA estimated the Soviet Union spent $165 billion on its military, about 50 percent more than U.S. expenditures.

Aspin said during a break in the hearing that CIA dollar comparisons are distorted because the agency puts Soviet soldiers on U.S. salaries.

Under that kind of figuring, Aspin said, "the Chinese would be spending us into oblivion" if their huge army was considered to be paid U.S. military salaries for making dollar comparisons.●

UNITED STATES MUST PROTEST DROP IN EMIGRATION OF SOVIET JEWS

● Mr. CRANSTON. Mr. President, recent reports out of the Soviet Union bring us the alarming news that the drop in emigration of Soviet Jews which began shortly after the Soviet invasion of Afghanistan last December has accelerated sharply. The number of Soviet Jews granted their emigration rights fell from last year's monthly average of more than 4,000 to 3,049 in March, 1,976 in May, 1,205 in July, and just 770 last month.

This sharp curtailment of emigration rights has been accompanied by a new clampdown on emigration activists by Soviet authorities. And officially sanctioned anti-Semitic campaigns are on the rise once again within the Soviet Union.

I believe it is incumbent upon the United States to protest vigorcusly the cutback in emigration perpetrated by Soviet authorities. Therefore, I have recently called upon my Senate colleagues to join in a letter to President Carter raising our voices in protest and asking for an official U.S. condemnation of recent Soviet emigration practices. I believe it is especially important to press this issue at the upcoming Madrid conference to review the compliance with the Helsinki accords which include important commitments from the Soviet Government regarding its respect for emigration rights. The agenda for this November conference will be set up in meetings which will begin in Madrid tomorrow. It is crucial that the United States press the emigration issue forcefully, both at the preparatory meetings and in the November sessions as well.

I am today submitting for the RECORD the full text of the recent letter to President Carter, cosigned by 57 Members of this body, which requests such a vigorous U.S. position. It is as follows:

U.S. SENATE,
Washington, D.C., September 4, 1980.

Hon. JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are writing to express our deep concern over the fate of the many people seeking to leave the Soviet Union, especially Soviet Jews. Emigration of Soviet Jews, which reached a record high of more than 51,000 in 1979, has fallen drastically throughout the first seven months of this year and has slowed to a trickle this month. Where an average of more than 4,000 Jews were granted emigration rights each month last year, only 1,205 exited in July 1980 and projections for August based upon half-month figures suggest that less than 700 will leave this month. This would mark the lowest monthly total since the signing of the Helsinki accords in 1975. Harassment of emigration activists by Soviet authorities has also increased—as have officially sanctioned anti-Semitic campaigns within the U.S.S.R. And a number of would-be emigration applicants have been arrested and subject to criminal prosecution on trumped-up charges in recent months.

We, as citizens of a free and democratic society, view these current trends with deep concern and a sense of renewed commitment to the rights of Soviet Jews to emigrate freely. The leadership of the Soviet Union must know that the United States will not shrink from its commitment to the principles of the Helsinki accords.

In view of your immutable commitment to human rights, and in light of the upcoming meeting in Madrid to review implementation of the Helsinki Final Act, we urge you to condemn publicly Soviet violations of internationally agreed upon human rights protocols and that you instruct the United

States delegation to the Madrid conference to press the emigration issue forcefully, both at the September preparatory session and in the November conference itself.

The United States made significant concessions to the Soviet Union in the Helsinki accords. In Basket I, our agreement to the principle of the inviolability of frontiers permitted the Soviets to represent that the post-World War II changes in Eastern European boundaries were legitimate. In Basket II, we agreed to increase trade with COMECON countries, greatly improving their access to modern Western technology. The human rights commitments made by the Soviet Union in Basket III were in exchange for these concessions. Thus, U.S. efforts to raise the emigration issue now do not constitute unwarranted interference in Soviet internal affairs. The Soviet government signed these international accords and made a commitment to implement the human rights provisions, thereby accepting international monitoring of the accords and registration of complaints regarding the failure of the Soviet Union to respect certain emigration and other rights.

We believe a White House statement would do much to focus world attention on the Soviets' flagrant abuse of international human rights charters. Additionally, such a statement would serve to renew the spirits of those at the forefront of the effort to protect the emigration rights of Soviet Jews in these days of darkness.

Sincerely,

Alan Cranston, Claiborne Pell, Daniel Patrick Moynihan, Harrison A. Williams, Jr., Rudy Boschwitz, Howell Heflin, John C. Danforth, Lloyd Bentsen, Richard S. Schweiker, Howard W. Cannon, Birch Bayh, David L. Boren, Max Baucus, Larry S. Pressler, Paul S. Sarbanes, Jacob K. Javits, Howard M. Metzenbaum, Lawton Chiles, Gaylord Nelson, Ernest F. Hollings, Herman E. Talmadge, Malcolm Wallop, John Heinz, Edward Zorinsky, William S. Cohen, Donald W. Riegle, Jr., Bob Packwood, Charles McC. Mathias, Jr., J. James Exon, Dennis DeConcini, John A. Durkin, Gary Hart, John C. Culver, Thomas F. Eagleton, Paul E. Tsongas, Frank Church, Carl Levin, S. I. Hayakawa, Robert Dole, Joseph R. Biden, Jr., Donald W. Stewart, Richard G. Lugar, Bill Bradley, David Durenburger, David Pryor, George J. Mitchell, Walter D. Huddleston, Abe Ribicoff, Alan K. Simpson, Jake Garn, Howard H. Baker, Jr., Charles H. Percy, Richard Stone, Lowell P. Weicker, Jr., Gordon J. Humphrey, Roger W. Jepsen, John Tower.●

TRIBUTE TO ALBERT B. (AB) HERMANN

● Mr. MATHIAS. Mr. President, to describe a funeral as being "nice" seems like a contradiction in terms. But the funeral of Albert B. (Ab) Hermann was just that—it was nice.

Ab Hermann died at the age of 81 while enjoying a vacation. His life had been long and productive; his death was quick and painless. Those who mourn Ab Hermann now grieve to lose him from their lives. But they rejoice in remembering his own rich life, crowned by those greatest of all blessings: a happy marriage and a loving family.

Ab Hermann's funeral was nice because Ab was nice and because he was a man who had made the most of every minute given him, who had served his fellow citizens well and faithfully, who had contributed much to his country and who had remained vigorous to the end.

Ab Hermann was a longtime official of the Republican National Committee and, as chairman of its Minorities Division, was the moving spirit behind its drive to expand its horizons by returning to its roots for inspiration. Ab Hermann's Republican Party was Abraham Lincoln's Republican Party: The party of freedom; the party of all the people.

Ab served as executive director of the Republican National Committee from 1949 to 1952 and from 1957 to 1961. In addition to being chairman of the Minorities Division, he served as director, campaign director, and special assistant to the chairman. He was director of the Speakers Bureau when he retired in the late 1970's.

In view of the tremendous contribution Ab made to the Republican Party it is not surprising that four former chairmen of the RNC gave memorial tributes at his funeral on August 25.

Meade Alcorn recalled that he had first encountered Ab Hermann as a student at Suffield Academy in Connecticut. Ab was a famous athlete from Colgate University where he had received the Lawrence Scholarship as best student athlete, earned 11 letters and made All American in three sports—football, basketball, and baseball.

Ab had come to Suffield as a coach and there, said Alcorn, he learned how to handle unreasonable, intractable, impatient schoolboys who all wanted to be athletes. Later, at the Republican National Committee, he handled unreasonable, intractable, impatient men who all wanted to be candidates for public office.

Bob Dole called Ab "a man who knew how to love" and it was this greatest of all virtues that enabled Ab to handle all those unreasonable, intractable, impatient people who pounded on his door, first as coach and then as counselor, and to make them his friends.

All of us who knew Ab are better for it. We will miss him but we will never forget this man who gave so much to so many people.

Mr. President, I ask that the full text of Senator Bob Dole's and Ray C. Bliss' eulogies be printed at the conclusion of my remarks together with the funeral service program as conducted by the Reverend L. R. Elson, Chaplain of the Senate, and the prayers said that day for Ab. I regret that no texts of the tributes of Meade Alcorn and William E. Miller are available, since they spoke extemporaneously and from the heart.

I would also like to submit for the Record, a column by David S. Broder from the Washington Post of August 27, 1980, which captured Ab's spirit very beautifully.

Mrs. Mathias joins me in sending deepest sympathy to Ab's widow, Sylvia, and their two daughters, Ellen H. Warfield and JoAnn H. Emerson.

The material follows:

Funeral Service for Albert B. Hermann

Gawler's Chapel, Washington, D.C.

Monday, August 25, 1980—1:30 P.M.

Officiating: The Rev. Edward L. R. Elson, S.T.D., Chaplain, United States Senate.

Organist: Mrs. Margaret Bryce.

Organ Prelude: "Onward Christian Soldiers"; "Amazing Grace"; "A Mighty Fortress"; "The Battle Cry of Freedom"; "America, the Beautiful"; "God Bless America".

Opening Sentences:

Prayer:

The Old Testament Lesson, Psalm 46, 23.

The New Testament Lesson, Selected.

Memorial Tributes by Former Chairmen of the Republican National Committee; The Honorable Meade Alcorn, The Honorable William E. Miller, The Honorable Ray Bliss, The Honorable Robert Dole.

The Memorial Prayers, The Lord's Prayer.

The Benediction.

Organ Postlude, The Congregation will remain seated during the rendering of "The Battle Hymn of the Republic."

Remarks of Ray C. Bliss, Former Republican National Chairman, at the Memorial Service of Mr. A. B. Hermann

Sylvia, members of the Hermann family, and friends of Albert Hermann:

We assemble here today to pay tribute to one who has meant much to each of us.

His wisdom and knowledge of the American political scene was one of my major guidelines during my long political career.

I am sure that each of us benefited in some way through this man who touched our lives.

To him we are grateful in our hearts for knowing him, and he will be forever etched in our memories.

There was and will be only one Albert B. Hermann.

Remarks of Senator Bob Dole: Tribute to Albert Hermann

Sylvia and members of Ab's family: Of all the words in the English language, perhaps the hardest to say is the word good-bye. Ultimately, of course, it must be. But not this afternoon. This afternoon, we prefer other words—words like friend, mentor, genius and inspiration. It is not a death that we mourn but a triumphant life that we celebrate. Can you imagine Ab having it any other way?

Ab was a man who knew how to love. He loved his family, he loved his friends, and he loved what he always called "the great State of New Jersey." He also loved the Republican Party—and those of us who were fortunate enough to be his colleagues in the party certainly loved him.

The grand ole party has lost a great Republican warrior. He was as old as the twentieth century, plus one, and during his life he saw his country and his party undergo revolutionary change. He was at the forefront of many of those changes. Because he loved our party, he wanted her to be what she was intended to be at her birth—a vehicle for the ideals and aspirations of every American regardless of surname, power, or economic station.

Walt Whitman, the great poet of American Democracy, put it this way . . . "I dare not shirk any part of myself, not any part of America, good or bad, not to build for that which builds for mankind, not to balance ranks, complexions, creeds and the sexes. I am for those that have never been mastered, I am for those who walk abreast with the whole earth, who inaugurate one, to inaugurate all."

Ab's belief in the average American was never mastered. And it led him to great accomplishments. Long before blacks and women and ethnic Americans claimed their place on the public stage, Ab Hermann was fighting to give them a share of the Republican Party. There were frustrations along the way, and there must have been times when even Ab wondered about the long-range prospects. But he was a persistent man. Persistence was a Hermann quality. Persistence mingled with the agility that won him eleven athletic letters, made him an all American in three sports, and later allowed him to perform equally marvelous balancing acts between people of strongly held opinions. The Boston Braves loss was the party of Lincoln's gain.

For me, I will always remember what Ab did for a fresh and very green young Congressman from the first district of Kansas who arrived in Washington in 1961—and who promptly discovered a sage and wit who was willing to share his vast experience with one who had a lot to learn.

Ab brought to life for me the abstract ideals in which we all claim to believe. He made those old Fourth of July chestnuts live and breathe—because he lived his life under their influence. He painted a vivid picture of the Republican Party as it should be, as the home of black and Hispanic and Jewish and Italian and millions of other Americans who have too long been excluded from the political mainstream. Ab wanted nothing to do with country club politics.

When I had the honor of working with Ab at the Republican National Committee, I found him to be a man who avoided the limelight, a man of humility, who was happy working behind the scenes. You could find Ab in his office, on the phone, quietly working away, that is, if you could make your way through the layers of cigar smoke.

He was always a tower of strength, a person you could rely on for a word of wisdom or encouragement when the occasion warranted. Ab was always cautioning me not to talk too long and I can see him now in the back of the room, looking at his watch—sending me a signal. We had great times bantering back and forth. I often introduced Ab as "Abe Lincoln's advance man" because of his long service, and he was constantly reminding me not to take myself too seriously—in fact, I'll bet he's smiling now.

Ab Hermann was an uncommon man. He achieved great things with his body, with his mind, with his uncommonly large heart. He loved a woman, and their love was an inspiration to all who knew them. He loved two daughters, and three grandchildren, and they will be blessed all their lives with that very special gift. They will leave here with memories that age cannot tarnish. Like all of us, they will find it difficult to say good-bye—but then, the good-byes will be tempered by having shared so much in a life crowned with triumph.

PRAYERS

Eternal Father, in whom we live and move and have our being, draw us close to Thee and let Thy light and joy fill our souls as we offer unto Thee the praise and thanskgiving of our hearts; for the mystery and wonder of life here and hereafter. We thank Thee that deep in the human heart is an unquenchable trust that life does not end with death, that the Father who made us will care for us beyond the bounds of vision even as He has cared for us in this earthly pilgrimage. We praise Thy name that our hope has been so wondrously confirmed in the life, the words and resurrection of our Lord Jesus Christ.

Almighty God, Father of mercies and Giver of all comfort, deal graciously, we pray Thee, with all those who mourn this day, that casting every care on Thee, they may know the consolation of Thy love, the healing of Thy grace, and the companionship of Thy presence. May Thy grace attend Sylvia, Jo Ann and Ellen and all others dear to him. Through Jesus Christ our Lord.

We give Thee thanks, O Lord, for all the sacred memories which cluster about this hour. We thank Thee this day for Thy servant "Ab"—for his home and his heritage. We thank Thee for the nobility of his manhood, the reach of his ideals, the integrity of his person, the strength of his intellect, the depth of his dedication, the hospitality of his mind, the warmth and durability of his friendship. We thank Thee for his versatile athletic skills, for his political prowess, for his executive talents, for the force and contagion of his patriotism and his selfless spirit of service to the common good. We thank Thee for the home he created and the love he shared.

We thank Thee, O Lord, for the battles fought and the victories won. We thank Thee too for lessons learned both in winning and in losing—for times when effort was unrewarded and work uncompensated, but a great cause was advanced. We thank Thee for the deep ties of the spirit binding us together—heart to heart, mind to mind, soul to soul, the visible and the invisible for time and eternity.

God of our Father and our God who has watched over this Nation from generation to generation may a new spirit of hope and joy arise in us to match the needs of the times. Give us wisdom and grace to go from strength to strength.

And now, O Father, who doest all things well, with thankful hearts that Thou hast given him to us for a season, we give Thy servant Albert, back to Thy tender care, until the shadows flee away, and the brighter day dawns, when the visible and the invisible are as one in Thy higher kingdom. Through Jesus Christ our Lord.

THE LORD'S PRAYER

Our Father, who art in heaven; Hallowed be Thy name. Thy Kingdom come. Thy will be done; On earth as it is in heaven. Give us this day our daily bread. And forgive us our debts; As we forgive our debtors. And lead us not into temptations; But deliver us from evil; For Thine is the kingdom, the power, and the glory, for ever. Amen.

BENEDICTION

The God of peace, that brought again from the dead our Lord Jesus, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well-pleasing in His sight; through Jesus Christ, to whom be glory forever and ever. Amen.

[From the Washington Post, Aug. 27, 1980]

FOUR LEGACIES

(By David S. Broder)

Four times in the past few weeks, the obituary pages have reported deaths of men for whom this reporter's professional respect was mingled with feelings of personal affection and gratitude.

William J. Baroody Sr., the former president and guiding spirit of the American Enterprise Institute; Albert B. (Ab) Hermann, a longtime official of the Republican National Committee; Donald G. Herzberg, the dean of graduate studies at Georgetown University; and former governor James B. Longley of Maine—unique and distinctive individuals, with little in common. But they exemplified four qualities that give vitality to our society and our politics and that are diminished by their deaths.

Bill Baroody believed in the power of ideas. He came to Washington as an advocate of free enterprise in a capital dominated by New Deal thinking. While advising two generations of Republican presidential contenders, his main purpose was to build an intellectual center of conservative thinking that could challenge the prevailing orthodoxy.

The American Enterprise Institute is that center, and it expanded under his 25 years of leadership from a ragtag outfit to an organization whose scholarly activities, conferences and publications rival those of its more liberal neighbor, The Brookings Institution.

Because Bill Baroody believed in open political debate, AEI has also become a place where dissenters from today's fashionable conservatism are welcome—and where the discussions are both civil and stimulating.

And Ab Hermann was a very different fellow—a street-smart politician whose vocabularly always bore the stamp of his Milltown, N.J., upbringing and his eight years as a third baseman with the old Boston Braves. Ab Hermann believed in the Republican Party in the same simple, fundamental way that he believed in his Colgate University athletic teams and in the value of competitive sports.

For almost 30 years, he was the unchanging presence on the political staff of the Republican National Committee, taking an unending succession of chairmen through their initiation rites and showing them which skeletons occupied which closets and how to keep them still.

For dozens of reporters (including this one, when I was barely able to find my way from the Cafritz Building GOP Headquarters to Capitol Hill), Ab Hermann was also a guide. Without the least trace of disloyalty to his party, he would—by the lift of an eyebrow or one of his fractured, Casey Stengel sentences—steer you toward reality, or at least to the Republican version of that elusive prize.

Don Herzberg was very bit as partisan a Democrat, but what distinguished him was his faith in young people and his devotion to the nurturing of their political talents. He did not make it easy for anyone to discover that fact; for, despite his academic career, he affected the pose of a tough-talking pol—someone who had no patience, for example, with the "reforms" of the Democratic convention and nominating process.

But his life work was teaching. Before coming to Georgetown, he had spent 17 years making the Eagleton Institute of Rutgers University one of the great graduate centers of politics in this country.

Don Herzberg had a particular affinity for practitioners, and not just scholars. He found them in places that fashionable opinion scorned. Under his leadership, Eagleton developed a program for identifying and coaching the most promising young state legislators in seminars designed for their special needs—and this at a time when the press and public did nothing but ridicule the legislatures as the sewers of politics.

The subsequent careers of those men and women are the best proof that Herzberg's faith was justified.

Jim Longley, the last of these four friends, was a man with enormous faith in himself. That is a trait of every successful politician, of course, but Longley possessed it to a degree I have rarely seen.

It made him a difficult, prickly person to deal with on many occasions. But that was a small price to pay for a relationship in which the intensity of one man's convictions forced an equally honest response from the other.

He had been a smashingly successful insurance salesman before he was drawn into politics by his work on a commission examining the operations of the Maine government. What he saw convinced him he could run Maine better than anyone else. When he decided that, he simply ran for governor as an independent, scorning the bend to the demands of the party nominating process.

He won in 1974—to everyone's surprise but his own—and quit in 1978, as he had said he would, satisfied that he had proved his point.

I said at the outset that these men were strikingly different from each other. But it occurs to me that there were some common threads. Jim Longley's only campaign button read "Think about it," a slogan Bill Baroody would have liked.

The legacy of this independent governorship in Maine is a strengthened two-party system, with both Democrats and Republicans in that small state presenting the voters with an exceptional quality of young leadership—something Ab Hermann and Don Herzberg would have loved.

They will be missed for what they were—and what they did.●

SUSAN POWELL FROM OKLAHOMA—MISS AMERICA

● Mr. BOREN. Mr. President, on Saturday night, a beautiful, green-eyed brunette from Elk City in western Oklahoma was crowned the 54th Miss America. Susan Powell, 21, epitomizes the quality of the outstanding young people of my home State.

Oklahomans are justifiably proud of Susan, who not only possesses a tremendous talent, but is a very warm and gracious young woman. There is no question that she will wear her crown well and be an outstanding representative for our entire Nation this year.

Susan is a 1977 graduate of Elk City High School and is presently a senior, majoring in vocal performance, at Oklahoma City University. She is the daughter of Vinita Powell and Wendell Powell of Elk City, and is active there in the United Methodist Church and the church choir.

Her ultimate goal is to sing with the Metropolitan Opera Co. I think all who heard her sing "Lucy's Aria" from Menotti's "The Telephone" as her pageant talent presentation would agree that she has the talent to meet this objective.

Oklahoma now becomes one of only five States in the 60-year history of the Miss America pageant to boast of three winners. In 1926, the late Norma Smallwood Gilcrease Bruce of Tulsa wore the crown of Miss America, and in 1967 Jayne Ann Jayroe of Laverne, Okla., held the title.

Only two other States have had more than three winners.

Susan speaks of her upcoming year with the patriotic pride characteristic of an Oklahoman. She says she feels Miss America is "an unelected representative of the country." It is her goal this year to "learn to love our country even more" during her travels.

Larry Wade, mayor of her home community recently hosted President Carter during his Elk City town meeting. He says nothing, other than the President's visit, could even compare with the excitement that Susan's triumph has caused in this western Oklahoma town.

His words speak much about how Oklahomans feel about their young people. "It is marvelous to see a young lady grow up in your community and be a warm and gracious part of it, then be such a great success."

Elk City residents, and all Oklahomans, are looking forward to having a big celebration in coming weeks when Susan returns home.

Obviously, Susan feels the same pride in her home State. Upon winning the crown Saturday night, she told national reporters, "I just want to say one thing to Oklahoma. I love you * * * Oklahoma is the greatest place to be."

Mr. President, Susan Powell, Oklahoma's Miss America, has a great future ahead of her. Oklahoma claims Susan as her own, but looks forward to sharing her talent and warmth with the entire Nation during the next year.●

NATIONAL NETWORK OF HOSTELS

● Mr. SASSER. Mr. President, traveling Americans both young and old have come to appreciate the 50-nation international network of hostels. Unfortunately, the hostels in this country are too few and far between. Vast distances separate America's 240 hostels, and this country is unique among Western nations in having no Government subsidies for them.

I am pleased to lend my support as a cosponsor of S. 3092, introduced in the Senate on September 4. This bill will set in motion a systematic approach for developing a national network of hostels.

With the rising costs of fuels and transportation, hostels are an increasingly appealing option for young Americans. Hosteling introduces education through travel at an affordable level which later, as families and incomes grow, is capitalized upon by larger corporations in the travel industry. It is often the case that an 18-year-old traveling on a shoestring budget will return when he is 25 or 30 years old traveling first class.

The development of an extensive hostel system in the United States will afford many Americans access to cultural attractions, natural resources, and urban centers. By utilizing the hostel's low-cost accommodations, many Americans will be able to see parts of the country which they otherwise would have only dreamed about. We owe our young people this opportunity and I urge the passage of the National Hostel System Act of 1980.●

THE PRIMARY PROCESS

● Mr. BIDEN. Mr. President, the intensity of press coverage of the political campaign tends to make us all a little dizzy. The print and broadcast media devote so much space and time to the campaign, the candidates and a welter of too often trivial details that we are overwhelmed by more information than we can absorb.

The result, I am afraid, is that we frequently find it easier simply to accept whatever is passing for fashionable thinking on political subjects, rather than to undertake the harder work of reaching our own conclusions. Such has been the case, I believe, with regard to the primary election process for selecting Presidential candidates.

Now and then, however, we are effectively challenged to do our own thinking, and commentator Jeff Greenfield has provided just such a challenge in a recent issue of Parade magazine. In an article entitled "Isn't It a Good Time To Look at What We've Done?" Greenfield explodes a series of cliches that have grown up around the primary process and clears the way for some clearer thinking on the subject.

Mr. President, I ask that Jeff Greenfield's thoughtful article be printed in the RECORD.

The article follows:

ISN'T IT A GOOD TIME TO LOOK AT WHAT WE'VE DONE?

(By Jeff Greenfield)

Now that the political conventions are over and the Presidential campaign has entered the grand finale, it is time to take a hard look at the recent and persistent attacks—from voters, politicians, political analysts and journalists—that have been mounted against the primary-based system of selecting nominees. It's time as well to reexamine our nostalgia for the old, boss-controlled convention system that, critics say, gave us Presidential giants while today we are offered only dwarfs.

It may seem heretical in the present atmosphere of bewailing the system, but herewith a dissent: The faults of our current setup are relatively minor, easily correctible—and not nearly as significant as those of the late, lamented system our present one was designed to correct.

A look at some specific complaints will, I hope, demonstrate that many of them are overblown, exaggerated, or just plain false—especially when they are based on a nostalgic and often wildly inaccurate view of the way things were. During the post-primary season, we have been bombarded with the following conclusions:

"The process takes too long." From the January caucuses in Iowa to "Super Tuesday" in June, 19 weeks elapsed. By the end of the primaries, Americans were hopelessly bored with the ceaseless flow of political stories. This process, certainly, could be shortened by legislating a primary season—say, from the first week in March to the first week in June.

But these actual voting weeks are not why the process seems so long. The length is due instead (1) to the growing practice of candidates announcing for office two years before Election Day, and (2) to the press's desire to be on top of the story as early as possible. There is no constitutional method of forcing the press to ignore Presidential politics two years in advance (stories are already appearing, in fact, about Ted Kennedy's chances in 1984).

Moreover, the process seems long now because (3) in the Good Old Days, prospective Presidents battled for votes by meeting with political power brokers in secret, months or years before the conventions were held. So the process isn't really longer now—it's just out in the open longer.

"The process is too expensive." If we count primaries and general elections together, political expert Richard Scammon says, it is probably less costly to elect a President now than in bygone days. In 1896, the Republicans spent $4 million to elect William McKinley—a sum which, considering the real value of those pre-inflation dollars, exceeds what any candidate will spend in 1980.

It is true that this year candidates found themselves running short of cash as key primaries approached: John Connally, who raised $12 million before the first primary was held, was out of funds by March; Ronald Regan had to cancel TV time in the later primaries. But this very constraint may actually help "cure" the complaint of excessive campaign length; with federally ordered limits on campaign fund-raising and spending, candidates in the future might announce later and save their money for key big-state primaries.

"The process puts too much weight on early primary and caucus states." Clearly, the flood of reporters into Iowa and New Hampshire gives these early-vote states enormous power in establishing "momentum." But there is nothing to prevent states such as California from advancing their dates to be part of the early primary season (New York's primary, once in mid-June, is now in late March).

Further, for all the talk of "momentum," late states often do have a good deal of power. In 1976, Jimmy Carter's nomination was not secured until he won Ohio in June. This year, Reagan's certain victory in California forced George Bush from the Presidential field.

"The primaries give too much of an edge to non-office-holders." True, both Reagan and Bush were non-office-holders in 1980, as was Carter in 1976. But does that establish a general rule?

It does not. Gerald Ford in 1976 and Carter in 1980 were incumbent Presidents; Edward Kennedy's Senate seat did not cause his primary losses.

The idea that our present system rewards the non-office-holder is a classic case of political myopia—a generalization from one campaign into a sweeping political "rule" that indicts a whole system.

"The skills needed for election are not the skills needed to govern." In the good Old Days, prospective Presidents dealt with power brokers and political leaders. The skills involved, it is argued, were precisely those needed to be an effective President—not the skills required today of creating a telegenic political personality.

Does this analysis hold water? John Kennedy, taking the telegenic primary route in 1960, won the Democratic nomination from Lyndon Johnson—an absolute master as political negotiations. Yet when Johnson assumed the Presidency, his skills proved ineffective in keeping the nation behind him on either his domestic or Vietnam policies. Warren Harding, Calvin Coolidge and Herbert Hoover did not display excessive Presidential timber even though they won nominations through wheeling and dealing.

In fact, this argument about skills, if extended logically, would suggest that we not choose Presidents by elections at all—just find worthy, wise elders and let them pick our leaders. A commitment to democracy demands that we trust the populace, and if we trust ourselves to choose a President, we ought to trust ourselves to choose candidates too.

The present systems has been in place for only three elections. It is the product of a specific year—1968—when political upheaval revealed an unpleasant truth: we had become effectively disenfranchised from choosing our candidates. In many states, delegates had been picked with no popular participation at all—as much as two years before the conventions. It was this condition that the primaries were designed to replace.

To defend this system is not to insulate it from challenge. It needs shortening, it needs financial reform, and it needs press coverage which treats the campaign not as a horse race but as a clash among ideas, policies and programs. But it also needs nurturing—not shortsighted attacks that ignore the substantial evils it was designed to correct.●

SENATOR JESSE

• Mr. LAXALT. Mr. President, over the weekend I read a tribute to the father of our distinguished colleague, the senior Senator from North Carolina (Mr. Helms). It was, in fact, a tribute to both Jesse's father and Jesse himself.

The tribute was published in the September/October issue of Charlotte magazine, published in North Carolina's largest city. The author, Joe Maynor, is an able writer, and his account of the relationship between Senator Helms and his late father touched my heart.

Mr. President, I commend this article to the attention of my colleagues because it tells a very great deal about Senator Helms, his stout principles, and how he acquired them.

I ask that the article by Joe Maynor be printed in the Record.

The article follows:

SENATOR JESSE

(By Joe Maynor)

His name was Papa and Papa was always right.

He was an imposing looking hulk of a man who served in the dual role of fire and police chief. He was known by everybody in the community because he was in evidence almost everywhere. His huge, beefy hands could restrain a fighting prisoner or soothe a scrape on a young lad's knee. He could be as gentle as he was firm, and his keen sense of justice gave him the respect and admiration of everybody who knew him.

Nobody had more regard for the awesome figure of a man than the young boy who was often seen following his footsteps. The youngster was skinny, a little tall for his age, but he had to pump his legs relentlessly to keep pace with the long strides of his father. When the man spoke, the boy listened, and he learned.

Papa was the first teacher that Jesse Helms, Jr. had, and the lessons he taught were based on a strict code of hard work, justice, and moral conduct.

Born in Monroe, North Carolina, on land that his ancestors settled in 1745, young Jesse Helms grew up in the company of people who held strong religious convictions and promising principles. Although there were many who made indelible impressions on on him, by far the strongest influence in his life was that giant of a man with the long stride and endless shadow—his father.

The Jesse Helms in the United States Senate today is nothing more, nor anything less, than an extension and refinement of the boy who developed his character and moral principles during a time when he says, "everybody was poor, but we didn't know it." He learned the work ethic early in life from his father and, like the subjects in McGuffey's Readers, his lessons were often punctuated by dramatic examples.

Take that special July 4th celebration at the height of the Great Depression. A group of merchants in Monroe got together and bought a new automobile to give away on Independence Day. Customers at participating stores received tickets with each purchase, and the stubs were deposited in a large container. On July 4th, a ticket would be drawn from the container and the winner of the car revealed.

"I remember that Papa gave each of us [children] three stubs that he had acquired when making purchases," the Senator recalls in his book, When Free Men Shall Stand.

" 'Keep them,' he said, 'but don't count on getting an automobile for nothing.'

"That was one of the few times that I doubted Papa's advice. I kept those stubs and examined them so often that they were almost tattered. I slept with them under my pillow. I knew that Papa just had to be wrong this time: surely fortune would smile on me."

Fortune frowned, of course, and young Jesse's disappointment was followed by a long talk with his father.

"In that talk he taught me that the way to achieve, the way to acquire something that I really wanted, was to work for it. Earn it, he said in his gentle way. He told me that in America people who work hard and save can do amazing things," Helms remembered.

It was a lesson he would never forget. From that incident and the resulting talk, he learned that there is no such thing as a free ride, and it gave him the foundation for his staunch support and practice of the work ethic. Because of that, he sees a bleak future for the nation today, if the trends of our modern society continue to perpetuate what he calls the Work-Less Ethic.

Again, quoting from his book: "While driving from my home in Raleigh to the airport one day recently, I counted thirty-six boys doing nothing. There was one cluster, eight or ten, standing in front of a neighborhood drugstore. A pool hall at one corner had five or six outside, and heaven knows how many inside. Three automobiles, each bearing three or more teenagers, roared past as I continued toward the Durham highway and the airport. And so it went. I recall seeing one boy—just one—behind a mower. But I also saw three elderly men doing yard work."

Such idleness would have been uheard of when he was a boy, and it frustrates him to see it now. He views it as an ailment that agonizes the country, giving root to the drug craze, the rising crime rate and even the breakdown in communications between the older and younger generations.

The work ethic took effect early on young Jesse Helms. At the age of nine he wrote his first newspaper story. It was a four paragraph account of a local football game in which the Purple Pythons broke a losing streak. His lead was, "The Purple Pythons Uncoiled Today . . . " That was the beginning of a career of public expression that he seemed destined to spend a lifetime pursuing.

Although there was little overt evidence of an interest in politics in his early life, he was profoundly influenced by the things that happened in his government and by those who observed those events. He felt a special, personal loss when he delivered the Charlotte News to nearby neighborhoods on the day the headlines carried the news about the deaths of Will Rogers and Wiley Post in a plane crash in Alaska. He was thirteen at the time, and he remembers it as "a dreary afternoon as I delivered the sad news . . ."

Will Rogers had a fundamental distrust of big government in general and Congress in particular, Jesse Helms shares that distrust. He points out that there is a statue of Will Rogers in Washington which is positioned about one hundred feet from one of the entrances to the House Chambers. It's the only statue facing the House Chamber—in keeping with his suggestion that "somebody better keep an eye on that crowd."

"There ought to be one facing the Senate Chamber as well. More Americans ought to keep their eyes on both houses," the Senator says.

Monroe writer/historian Max Harris, who was a couple of years behind him in school, remembers young Jesse racing up to the sidelines at football games, carrying a typewriter and spending most of the contest behind it, writing a fresh-from-the-game story for the Monroe paper. "He was also in the band," Harris recalls, "and that particular band had a lot of people who became famous North Carolina personalities."

Indeed it did. In addition to Jesse, there was Henry Hall Wilson, who served as a presidential advisor in the Kennedy and Johnson Administrations; Hargrove "Skipper" Bowles, who came extremely close to becoming Governor of North Carolina; Skipper's brother, John, who was president of Rexall Drugs; James "Bud'" Nance, who rose to Rear Admiral in the U.S. Navy and commanded the carrier *Forrestal*; Bruce Snyder, who went from the high school band to the Tommy Dorsey band at the height of the Swing Era; and a number of doctors, lawyers and other professional people.

All of those people heard the same teachers and learned the same lessons in school, but many went in different political directions when they left. For Jesse, there was never any question about the truth of conservatism. From his early childhood, he had learned that the country owed him nothing except the opportunity that it promised. That concept continues to be a major part of his political persuasion.

There is no way to discuss politics with Jesse Helms without talking about the economy and his gold-plated theory on it. That, too, dates back to those high school days, traceable directly to the English class of Miss Annie Lee, a teacher the Senator idolized.

Miss Annie Lee was an English teacher from the old school, and she demanded good grammar from her students. She had two pet peeves where grammar was concerned: she hit the roof when she saw a split infinitive and her teeth gripped one another when she was subjected to "different than."

"It's different from . . . different from! Not different than," she would say.

But Miss Annie Lee, English teacher, was also Miss Annie Lee, critical observer of the economy in those years of New Deal recovery. On the day the President announced that the country would be going off the Gold Standard, Miss Annie Lee took time out from her English instruction to lecture her class on the dangers of such a move. That lecture has stayed with Senator Helms to this day, and he is quick to point out that his English teacher's prophecies in those dark days of the Depression have come true.

"She got me interested in the Gold Standard," he said. "Our economy had been operating on legalized gold, gold certificates, and the money was backed up by precious metals. But when we went off that standard, Miss Annie Lee forecast what would happen. She said it would now be easy for the government to spend money that it doesn't have, weakening our currency with indebtedness. She was right. It happened."

Another English teacher, Mrs. Anna Benson Bamberger, recalls teaching Jesse in high school. He was the kind of student she would have to remember.

"He did his homework," she said. "He was ambitious, thoroughly trustworthy and he had a purpose in life." No teacher ever forgot a student like that.

The Baptist Church had its influence on young Jesse Helms, and that rock-ribbed religious background never fails to frustrate his enemies who would like to see him falter and be sent home from Washington in disgrace. He won't be found in a compromising position It won't happen because his morality is as sincere as his insistence on the return of the Gold Standard or his demand to regain ownership of the Panama Canal. There were too many years of regular church and Sunday School attendance, done within the endless shadow of that giant of a man who vouched for the truth of it all, for Jesse Helms to violate his Christian principles.

The roots are so deep that they are fundamental to the character of the man. When Senator Helms rises on the floor of the Senate to denounce the practice of abortion as legalized murder, he means it. When he prepares legislation to restore prayer to the public schools, he means that, too. He is equally sincere when he defends the rights of fundamentalist ministers to use their influence in reestablishing Christian foundations in their government. He believes that there is a new religion developing in this country that makes a god of the government through socialism, and denies the Deity of Christ.

"Some years ago a clergyman found himself addressing a gathering in Charlotte," he recalls. "The talk turned to economics. 'As far as socialism is concerned,' the clergyman said, 'there are only two places where it will work: in heaven, where they don't need it, and in hell, where they have it already.' "

Senator Helms quotes many people in the ministry, and he counts a number of well-known fundamentalist preachers among his close friends. Religion not only works as a powerful force in his daily life, it's also a strong influence in his political convictions. For example, his stand on the nation's welfare programs is tied directly to his view of the teaching of Christ.

"Nowhere at any time did Christ mention a government welfare program, let alone endorse one," he says. "He suggested another way, one that would work. But neither the politicians nor the people have paid much attention. They have preferred instead to try to do it their way."

Fulfilling personal responsibilities by being productive citizens is the Senator's answer to runaway welfare. Once again, his personal life reflects his political philosophy. He worked three jobs while going through Wake Forest College. His family didn't have the money to send him to college, so he went on motivation.

"R. W. House was the principal of Monroe High School and just before graduation, he called the seniors in for talks about their future," Helms recalled. "When he asked me if I would be going to college I told him we couldn't afford it. That's when he gave me a lecture that has stayed with me ever since."

The principal told him that there were jobs available to help anybody through college who wanted to go, but be willing to do whatever was necessary, as long as it was honest. "It will all come in time," he said, "if you're willing to work hard enough for it "

He was, and it did.

He dug post holes, proofed copy for a Raleigh newspaper and worked in the college sports information office.

There were other challenges in the young life of Jesse Helms. R. W. House was not only the principal, but the band leader as well. He recalls a time when Senator Helms was competing for state honors with the tuba. The championship competition was underway and Jesse had the attention of the judges.

"He started playing 'The Flight of the Bumble Bee,' and he got going a little bit, then stopped. He started over, but he stopped again. This time he took a new grip on the tuba, looked around for a moment and then looked directly at a judge. 'Judge, I'm scared to death,' he said. But he went on to win the state championship."

In fact, Jesse Helms was a two-time state tuba playing champion, and he tied once for national honors with the instrument. In spite of that, nobody, including himself, ever expected him to join the Boston Symphony.

"I played the tuba by memory," he said. "I really wasn't very good at it." So much for the musical career.

Yet the experience of conquering the tuba and taking it to championship heights was just another McGuffey's Reader experience that proved a point and exemplified the lesson that difficult things can be mastered with patience and dedication to the task.

With almost total recall, Senator Jesse Helms can relate to lessons of his youth to his action and attitudes of today. Those years are important to him, and so were the people he looked up to for guidance and counseling. He has taken them with him everywhere, forgetting nothing about them.

"I remember once after I came to the Senate, a number of us were working on a bill," he said. "Hubert Humphrey was in the working session, and we debated over long hours. Finally we came up with a bill we could all live with, but I noticed something that jumped out at me. I said, 'Gentlemen, there is one more change that I must insist on. There's a split infinitive in this bill, and Miss Annie Lee would never permit that. Let's change it, just for Miss Annie Lee.' Hubert Humphrey said, 'By all means. Let's make the correction for Miss Annie Lee.' She was extremely ill at the time, and I called her from Washington. I managed to get the message to her that we had corrected a split infinitive in a bill, just for her."

Jesse Helms remembers what he learned from his teachers and his friends, but most of all he remembers the lessons of that imposing figure with the beefy hands, the gentle touch, the long strides and the endless shadow. He called him from Washington just about every day until the day the old man died.

When he was gone, a great void was left in the life of the Senior Senator from North Carolina. He had been a teacher, a counselor, and a voice of wisdom to the very end.

His name was Papa, and to Jesse Helms, Papa is still right.

ARSON FOR PROFIT

● Mr. BIDEN. Mr. President, arson for profit has reached epidemic proportions. The National Fire Prevention Agency estimated that in 1978, there were 173,934 fires of incendiary or suspicious origin and 1,046 civilian deaths. In the State of Ohio, for example, it is estimated that there are an average of four arson fires set each hour of every day; and in the city of Wilmington, Del., arson caused 69 percent of all fires between June 1978 and June 1979 resulting in a dollar loss of $4.4 million.

On Wednesday, September 10, 1980, at 10:30 a.m. in room 2228 Dirksen Building, the Senate Judiciary Committee, Subcommittee on Criminal Justice, of which I am chairman, will hold a hearing on S. 252—The Anti-Arson Act of 1979. This bill would authorize and mandate that the FBI reclassify arson as a major crime by including it in their part I major crime statistics, instead of relegating it to the minor crimes category of part II crimes along with vandalism and drunkenness.

S. 252 would also create a formal interagency committee which would coordinate nine Federal agencies concerned with arson to complement and assist States in arson prevention. In addition, S. 252 would require applicants seeking property insurance in high risk neighborhoods under the FAIR plan to fully disclose all prior instances where property they held was destroyed by fire within the past 10 years. (The FAIR plan is the fair access to insurance requirements plan where privately owned agencies operated by State insurance authorities, provide property insurance in primarily urban areas where the insurance industry will not insure. These plans are reviewed by the Department of Housing and Urban Development.)

The witnesses who will testify possess a broad range of backgrounds and include a prosecutor, a firefighter, a representative from the FBI and several spokesmen from the insurance industry. The prosecutor, John Pyle and John Barracato (whose statement will be read by Rod Birmingham) manager of the Arson Fraud unit of Aetna Life and Casualty Insurance Co. are known nationally for their work in arson prevention. Both of them have contributed to a recent article in the June issue of the American Bar Association Journal entitled "The Most Neglected Crime in the United States."

This article, which I would like to share with my colleagues, discusses the efforts of Senator JOHN GLENN, the sponsor of S. 252, and what can be done to stop this arson epidemic before it gets out of control. I ask that the article be printed in the RECORD.

The article follows:

THE MOST NEGLECTED CRIME IN THE UNITED STATES

(By Betty Freudenheim)

In the early 1970's, you could stand at the intersection of 141st St. and St. Anne Ave. in the Bronx and see fire engines racing in every direction, recalls Edward McCarthy of the district attorney's office there. "Every building smelled of burning. Now if you go there—don't go alone—there is nothing left but stray dogs and junkies standing in empty doorways. Not just buildings were burned, but whole neighborhoods have been wiped out as far as the eye can see."

Many older cities have their smallscale South Bronxes, and others show a potential for repeating this tragedy and devastation, the wasteland created by arson. But after the flames are doused, the dead buried and insurance claims paid, only a few areas are making a real effort to track down the malefactors or to remove the profit which motivates the crime. Those cities which can show that their arson crimes are diminishing, point out that they are limited by budgets, certain current laws and untrained personnel. Here and there legislators are writing new laws, law enforcement officials are developing anti-arson strategy; nowhere in this country can they claim that, like small pox, they have wiped out the plague of arson. But the fight has begun.

"Arson is probably the most neglected crime in the United States, if not the world," said David F. McCormack, superintendent of the National Fire Academy (NFA). "Its outbreak is now at epidemic proportions." In the last decade arson has increased 400 percent, causing an estimated 1,000 annual deaths.

Michael J. Laperch, a Treasury Department official, said that "arson is the biggest crime, dollar-wise, in the nation." He estimated that losses now run from $3–6 billion dollars a year. Some experts go as high as $10 billion when tax and job losses are added in.

Reflecting the minimal attention given by investigators and prosecutors to this crime, the conviction rate for arsonists hovers around 1 percent nationally.

How has a crime of such magnitude managed to go unchecked and largely unnoticed? Only the occasional caption under a newspaper photo of a disastrous big fire tells us "arson suspected." Who cased the fire? Was the arsonist caught and convicted? Even though multiple deaths may have been involved, unlike sensational murders, we rarely find out who-done-it.

Sen. John Glenn, D-Ohio, asked himself similar questions after hearing complaints from fire marshals of Cleveland, Toledo and Youngstown. He called for hearings, in December 1977, of the Senate Intergovernmental Relations Subcommittee and declared "As residents of older, denser and poorer inner cities can readily testify, the smell of gasoline and the sound of fire engines in the night is an all too common characteristic of inner city life."

At these hearings, Sen. Charles Percy, R-Ill., testified that a General Accounting Office report, which he requested, indicated that "federal law enforcement agencies have done almost nothing to determine the severity of the problem or to lay down a coordinated strategy to cope with it." The GAO informed him that only 0.1 percent of the Law Enforcement Assistance Administration funds for localities—$1.7 million out of $2 billion—went for arson control in the period 1975–77. "This is ludicrous in the light of the frightening human and financial losses resulting from arson," Percy stated. (According to Percy, the LEAA has changed its policy and recently awarded 35 anti-arson grants totalling $8 million. However, this amounts to an average of only about $230,000 per city.)

One explanation for the national apathy to this violent crime was brought out by former Mayor Beame of New York City. Only four months before the hearings, this city had experienced a storm of vicious looting, rioting and arson during a power blackout. He testified that when he called on the Federal Bureau of Investigation for help in tracking down arsonists, such as those who had set fire to the South Bronx, his plea was turned down. Explanation: the FBI didn't consider arson a major crime. It was listed in the agency's Uniform Crime Reports as a "Part II" crime, ranked with drunkenness and disorderly conduct.

Former astronaut Glenn took on the down-to-earth task of changing the status of arson through a unanimously approved bill, to a Part I crime, which would rate it in importance with murder, rape and auto theft. This was the first change in the recording of crimes since the origin of the FBI in 1928. The 1979 crime statistics will show a large jump in Part I crimes because of this inclusion. However, Dave Cassens of the FBI's Washington office said that the figures for the last year still contain only partial statistics since the police chiefs (who formed the only opposition to the bill) have had to develop a whole new system of crime reporting. The 1980 figures, when they are announced, will reveal, at last, the true dimensions of the crime of arson.

What will this change of status do to help combat arson? As any general knows, you first have to recognize the enemy, and then any information about its tactics, size of forces and equipment are as important to the battle as maintaining a well-trained, coordinated combat force.

Glenn wants to use these figures and other information from federal investigative agencies to initiate a federal strategy to battle arson and encourage training and funding for anti-arson forces at both federal and local levels. He disclosed that "Federal efforts in the arson area are often duplicative, working at cross purposes, underfunded and uncoordinated. Arson assistance does not have high priority at the federal level." Training efforts have been spotty at best.

His new bill (S. 252, not voted on in 1979 and reintroduced this session) would establish a federal Interagency Committee on Arson Control composed of representatives of nine offices: The attorney general; FBI; postmaster general; secretary of the treasury; National Fire Prevention and Control Administration; Federal Insurance Administration; director of the Bureau of Alcohol, Tobacco, and Firearms; commissioner of the Internal Revenue Service and director of LEAA.

The committee would have power to organize a national strategy which would coordinate anti-arson training and develop federal research on arson prevention. (A special fund to finance the agency was dropped from the bill.) The bill will give a "clear message to LEAA that the Congress expects a strong LEAA effort in arson fighting," Glenn said. The bill also contains a provision that would make the classification of arson as a Part I crime a permanent classification. (The first bill had only stipulated a one-year period for this change.)

U.S. LAUNCHES ANTI-ARSON PROGRAM

Last December, the White House, stealing the march on Glenn, announced an arson-fighting program bringing together some of the same agencies. Under it, grants totaling $9 million are being made to nine states and 26 regional, county and local governments to improve investigation and prosecution of arson.

In the past decade, two federal agencies have become involved in arson investigation on a limited scale. For years the FBI had said that it could enter arson cases only if they occurred on federal property, otherwise the case would not involve a federal crime. Although S. 2292, a bill sponsored by Senator Percy that would give arson federal crime status, is still pending, the FBI now is participating in investigations involving racketeering activity under the Racketeer Influenced and Corrupt Organizations (RICO) law [18 U.S.C. § 1962(c) 1976]. The agents also prove that the arsonist violated federal statutes against mail fraud through insurance claims, obstruction of justice, etc.

"We are fighting a great deal of technology," said FBI's Cassens. "Torches (hired arsonists) know what to do, how to do it and how to make it look as though they had not done it." Although he did not want to discuss details, he said that in some cities where recent big fires have brought big insurance payoffs there is strong evidence that the torches may be employees of organized crime syndicates. Some of these "professionals" make $300,000 a year—tax-free of course, he said.

The Alcohol, Tobacco and Firearms (ATF) division of the Treasury Department also started investigating arson which affects interstate commerce in 1972, when "Molotov cocktails" were included in the definition of explosives [18 U.S.C. § 232(5).] (See United States v. Haynes 466 F.2d 1260 [5th Cir. 1972] reversed on other grounds; and 1970 Code Cong. and Ad. News 4011).

According to a memorandum by Jack Patterson, assistant chief counsel of ATF, "in incidents involving 'explosives or incendiary devices,' a violation of the National Fire Arms Act (NFAA) occurs in that there is the possession of an unregistered destructive device. Under NFAA, the term 'destructive device,' means any explosive or incendiary bomb or similar device, and includes any combination of parts from which a destructive device can be readily assembled [26 U.S.C. § 5845(f).]

"This office could work full time on arson cases, giving up all our other investigations, and still only make a dent in the situation," Michael LaPerch, special agent in charge of the New York office of ATF. "But even if we didn't do a thing, when the word is out that the Feds are working [there], that is enough to scare off some arsonists," he said.

ATF agents were called in to investigate more than 40 fires which occurred in the Buffalo area; these included 20 in lumberyards. Local firemen had sought federal help because they thought a business competitor perhaps a Canadian, might be the culprit. One snowy night, illuminated by three lumberyard fires, footprints led these investigators to a teenager who had incendiary devices in his car that matched those found at the fire scenes. Photos of all the suspicious fires and a few others which firemen had not even suspected were collected at the young man's home. Although federal agents rarely are involved in cases of pyromaniacs, it was their tracking skill which ended this chain of fires.

FIREMEN AND POLICE DEBATE JURISDICTION

Just as the FBI and ATF have been cautious about which arson-for-profit investigations they enter, so too, many fire and police departments have debated who has jurisdiction in cases of suspected arson. Firemen frequently say that their responsibility ends with putting out the fire, that they are not equipped to pursue criminals. Police departments report that fires are not their business. Petty jealousies and rivalries for the same tax dollars have impeded effective investigative efforts.

The internecine rivalries between the two forces are almost a local tradition in New York City. When the Bronx Social Club burned down on a Saturday night in 1976, 25 people died and 18 were maimed. Police and firemen were at loggerheads on the scene, arguing among the smoking ruins and departing ambulances over who should question the witness. Worried that such confrontations would fatally weaken his case, Bronx District Attorney Mario Merola forced both departments to report to him and to each other during the three-month investigation. The result: three arsonists were caught and sent to prison for life. One admitted he had been angered because his "niece" had gone to the social club despite his admonitions to keep away from the place.

Using this cooperation as an example, Merola created an arson squad with representatives from the fire marshal's office, police department and Insurance Crime Prevention Institute. "We coordinate their efforts since we have to prosecute the cases," said Edward McCarthy of the DA's office. "Everybody is under one tent now. We had to re-educate the police and fire departments so we don't lose a case. We don't want things botched up at the bottom."

The score card for this coordinated effort is all on the plus side. Structural fires in the Bronx have decreased from 14,474 in 1974 to 9,445 in 1979, according to Bronx Fire Department statistics. "Some people may say this is because we have nothing left to burn," said Barry Kluger of the arson squad, but no one can argue with the squad's 60 felony convictions out of 150 arson arrests in 1979. In the three years since the arson squad was created, the felony convictions have tripled over the 1974–76 average.

Testifying at Glenn's 1977 hearings, Merola admitted that the city had been self-defeating in the arson war through some of its regulations. About 100,000 people were on the lists for public housing, waiting for places to become available. Those whose homes had been burned were moved up to the top of the list and given $2,000 for new furniture from the city treasury. This double incentive, dangled before the eyes of unfortunate tenants, created an incentive for occupants to burn their own dwellings. Under new rules, if an applicant has more than one fire, investigation is made before he receives more money, and he no longer gets top priority.

THE FRIDAY NIGHT FIRES

In New Haven, the fire department takes some of the blame for the recurring arson blight of the Hill section there. In the early 1970s, four or five wooden frame houses would go up in flames every Friday night. "They knew that no one would be around to investigate until Monday morning," said the fire department's Lt. Martin O'Connor. Now whole blocks stand in mute testimony to past failures: windows boarded over and crumbling charred walls. "Cool it," says the black graffiti on one such broken wreck.

In March 1977, a grand jury attempted to do just that, uncover the extent of the city's arson problems. The highly publicized proceedings led to the arrest of 14 people for arson-related crimes. But the New Haven police and fire departments were also "found guilty" of failing to coordinate efforts.

The creation of a unified police-fire, four-man, highly trained arson squad also succeeded here. "We never had co-operation before," said Fire Marshall Thomas Lyden. "You'd have thought we had the plague."

"They are clasping hands now, not parting," said Arnold Markle, states attorney for the Judicial District of New Haven. "Suddenly, we are finding that we are successful. But this situation was born out of bitterness."

PERSONAL DIRECTION OF INVESTIGATIONS

As the second prong of New Haven's three-way arson attack, Markle personally directs investigations, urging concentration of effort on those cases that he feels can succeed in court. His book, *Criminal Investigation and Presentation of Evidence* (part of the Criminal Justice Series of West Publishing Co.), lists 31 questions for prosecutors, the answers to which could provide relevant information on the amount of insurance on a property compared to its value, figures showing whether the property was operating at a loss or statements from tenants indicating whether they were involved in a dispute with the landlord.

The careful preserving and testing of evidence is another Markle "must." "In the old days when there was accelerant dripping down the wall, the fire department would simply call it cooking oil," he said. "Never in a million years would that occur now." Officers are also instructed to seize the clothing of arrestees, particularly if they are arrested close to the fire scene.

Everything is run through the labs. New Haven, like many other cities, is requesting LEAA money to purchase sophisticated equipment such as hydrocarbon detectors and gas chromatographs. (Some inspectors send their evidence to the FBI lab in its DC headquarters or to the four ATF labs in Philadelphia, Atlanta, San Francisco and Rockland, Md., but a few prosecutors have indicated that they hesitate to have evidence leave their jurisdiction. They fear that it would be hard to prove in court that the gas-soaked board which had traveled to a far city was the same one which was found at the fire scene.)

COMPUTERS AND CONVICTIONS

The third prong of New Haven's arson war consists of a computer program to analyze information from city departments on a group of 100 houses which have no fire histories compared to 100 others with blackened backgrounds. Not only will this information help to convict torches and conspiring landlords, it also is useful in drawing attention to buildings which might provide future arson targets.

By analyzing computer printouts "we have discovered that arson occurs not only in deteriorating neighborhoods, but also in some which are undergoing the process of gentrification," Lt. O'Connor said. In the upgrading areas, landlords seeking quick eviction of low-rent tenants sometimes use gasoline to avoid city hall red tape. The city also gets stuck for the demolition costs, he added.

Arson is not the heart of the problem in upgrading neighborhoods; the "difficult reality lies in the conditions which allow arson to exist there," said James P. Chapman of Chicago's Uptown People's Law Center. He claims that the city of Chicago has purposely refused federal funds from the Housing and Urban Development Department for rehabilitation of the upper north side because this would stabilize the low-income population there, blocking the would-be improvement process. His group of downtown lawyers is working to protect the rights of tenants who are being evicted and burned out by speculators who intentionally let their buildings "go to pot."

Switching from the emphasis on the motives for arson, Seattle (which nearly halved its arson losses—$3.2 million in 1974 to $1.8 in 1978) has concentrated on arson prosecution. Its inspectors realized that, unlike in armed robbery cases, witnesses to arson crimes are rare and that would-be informers fear revenge fires if they testify. Most torches also have adequate time to create an alibi before the wick is burned or the gas exploded by the pilot light. The arson team in Seattle decided to exploit the Achilles' heel of a pro who has done a good job: he will often brag about his success. Insurance company funding provided an "Arson Hot Line" with rewards for informants. They can call toll-free from anywhere in the state and their identities will be protected. In the first three years of this program, rewards totaling $14,500 helped convict 23 arsonists responsible for $4.8 million in damages.

SEARCH WARRANTS RESTRICT INVESTIGATIONS

Another difficulty encountered by arson investigators was presented by the United States Supreme Court decision in *Michigan* v. *Tyler* (1978), [436 U.S. 499] which deals with the Fourth and 14th Amendments as they apply to entries and searches of fire-damaged property. In this case, while extinguishing a fire at Tyler's Auction, a furniture store leased by the respondent, containers of accelerants were noticed by the fire fighters. Because smoke and darkness prevented searching after the blaze was extinguished, fire officials and a detective postponed their examination until the following morning. Three additional visits were made without search warrants—four, seven and 25 days later.

Loren Tyler and his partner Robert Tomkins were convicted on evidence uncovered during the searches. The convictions were upheld by the Court of Appeals of Michigan, but the Supreme Court of Michigan, in a decision upheld by the U.S. Supreme Court, reversed the decision, holding entry to fight the fire and seizure of evidence at that time was legal but that once the fire was extinguished, any subsequent re-entry should have been pursuant to a search warrant.

In Michigan, administrative warrants are now issued if it is necessary to make more than one visit to a fire scene. Barry Kluger of the Bronx arson squad says that investigators there have avoided warrants by getting written consent from property owners to examine the premises to establish the causes of fires. "It would look pretty suspicious if they didn't want us to see what happened," he said.

Other laws inhibiting fire investigations include the state regulations ordering insurance companies to pay the victims of fire damage within 30 days. These laws, intended to squelch fly-by-night insurance companies, have encouraged arson profiteers who know that few investigations are completed within a month. Many insurance companies that formerly prided themselves on prompt payments now withhold money until the investigation is over. To protect such companies, the State of Washington last year adopted a law providing immunity from civil suits for insurance companies and fire departments in arson cases.

"We now have a regulation forcing insurance companies to pay all the back taxes which are owing before sending a check to the owner," said Kluger. In New Haven, the companies now must pay the demolition costs before paying the insuree. Both of these approaches are hacking away at the profit motive in arson.

But money is not always the instigating factor in arson. Enraged revenge fanatics, who burn the home of their adversaries, pyromaniacs and juvenile vandals are usually easy targets for police trackers. These aronists will often readily admit setting the fire and their motives.

In a Chicago case, Commander Nickels of the bomb and arson section of the police department related that a dinner guest felt that he was being served a type of fish which was inferior to what the members of the family were enjoying. This disgruntled gourmet rushed out and returned with gasoline, which he exploded at the front door when the family answered his ring.

REVENGE SEEKERS ARE MOST DANGEROUS

Revenge is the most dangerous form of arson since it often is accompanied by homicide. "This type of fire is usually right in the hallway, so people can't get out; there is smoke in the entire building," said New York City's Fire Marshall George F.

Molloy. "Luckily they usually light bags of garbage (which doesn't burn well). The worst is when they lose all touch with reality, rush in with a can of gas, pour it out and light a flame. That creates a real disaster, such as the Bronx Social Club.

"Yes, we do have pyromaniacs in this city of eight million," Molloy continued, "but not as many as they have on TV. There is a desperate need to study the psychology of pyromaniacs and revenge-type arsonists." Many are escaping punishment on insanity pleas, he said.

But it is not only the psychologically twisted arsonists who are evading sentences in the courts. The profit-motivated landlords and their co-conspirators rarely end up in cells because few prosecutors are equipped to handle such cases. John Barracato, former deputy chief fire marshall of New York City and new head of Aetna Insuarnce Company's nationwide efforts to "win the war on arson," said he is having difficulty finding six lawyers qualified and available to assist him in court. Aetna has underwritten the cost of developing an arson instruction and trial practice manual for California judges, prosecutors and law enforcement officers. It will be made available nationally through local district attorneys' offices in the spring of 1980.

A second new volume intended to develop arson expertise among prosecutors is being put out by the Greater Cleveland Crime Prevention Committee, in cooperation with John S. Pyle, assistant U.S. attorney for the Northern District of Ohio. This extensive and highly detailed book covers every aspect of investigations, from description of the best camera to use and type of color photos to be taken at the fire scene to sample search forms and copies of all pertinent laws. Out of nearly 40 pages, 70 are devoted to the trial itself: the voir dire, sample opening statements and examinations of fire inspectors, chemists and witnesses. The final 44 pages provide cases concerning the sufficiency of evidence. [Lawyers who wish to order this book can do so through the Greater Cleveland Crime Prevention Committee—1835 Williamson Building, Cleveland, Ohio 44114.]

With added knowledge, funding, equipment and well-trained arson squads, the mounting arson statistics could be turned downward nationally as they have been in certain locales. But there can be no real success story while homes, people and businesses are being burned. The goal of cooling these flames can be achieved only with cooperation at all levels, removal of the insurance profit motive and the thorough prosecution and sentencing of arsonists in the courts.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. BAUCUS). The Chair will state that the time for morning business has expired.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTINUATION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be continued, that Senators may speak during the period not to extend beyond 30 minutes, and that at the close of morning business the Chair in his capacity as a Senator suggest the absence of a quorum unless a Senator in the Chamber does it.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President and upon the recommendation of the minority leader, pursuant to the provisions of 22 U.S.C. 276, as amended by Public Law 95-45, appoints the Senator from South Dakota (Mr. PRESSLER) to attend the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16-24, 1980.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HAPPY BIRTHDAY, REPRESENTATIVE CLAUDE PEPPER

Mr. CHILES. Mr. President, it is my honor and my very extreme pleasure to invite my colleague and former Senator to visit me, so that the Senate can join me in extending my wishes to my distinguished colleague from Florida, former Senator PEPPER.

Senator PEPPER had the occasion of serving in this body for longer than I have served here already. In addition to that, of course, he has provided years of very distinguished service in the House.

He is celebrating his 80th birthday today, and we say that he is 80 years young.

There are those who think he is a little like Satchel Paige and that there may be 25 or 30 years that he is not counting somewhere along the line in regard to those 80 years. But all of us know that he does more work than most young men 35 or so are able to do. In addition to doing more work he is able to accomplish more.

I had occasion to campaign with Congressman PEPPER in Miami. We were walking a district in South Beach, and I was saying, well, I knew he was not going to have any problems, because everybody was coming out of the stores and they were all saying hello to Senator PEPPER and they were saying, "It is so good to see you over here again," and they were all asking who was that fellow he had with him. So I wondered why I was supposed to be there sort of campaigning for him, realizing that everybody knew him and was supporting him. But it was interesting.

He said he did not take anything for granted; that he did have what he thought could be a strong race, but he felt as if the people would be kind to him.

He said, "You know, I was in this particular area, in a parade, and that it looked like the people were saying hello. You can sort of tell by the expression on their faces whether they are receiving you well or not." He said, "It sort of brought back to mind the time I was riding in an open car with Franklin Roosevelt through this same area in 1932."

I realized then that I was sitting and listening to all of this history, and here we were campaigning in, I believe that was about, 1978 at that time, and he could relate the choice of an area to the same area back to 1932.

Of course, having this remarkable grasp that he does of our country, of Government, of everything that has happened in our country in between those times, I tell him that I think I would like to follow him all the time with a tape recorder to make sure that we receive and save all of this information, knowing how many events in history he has had the opportunity to witness, and not only to witness but to help to shape, because I think you will find his imprint on much of the legislation today that we think of as being a cornerstone, social security, much of the legislation that has happened, forward-thinking legislation, in this country.

Senator PEPPER has the distinction also of really being able to have served long enough so that he has at one time or another been vilified first, I think, for being conservative, then for being a liberal, and then again for being a conservative.

I really do not know, Senator, whether they are talking about you now as being a conservative or a liberal. But I think your philosophy has basically been the same through all that time, and that is to try to help people, to try to see that Government worked, and that we came up with workable solutions.

It is amazing to see what has happened, how a lot of different ideas were viewed at about that time as to whether they were supposedly wild ideas at one time that you early on espoused, and then when those ideas became acceptable, I think you also had occasion to try to oversight some of those same ideas to see that the bureaucracy, when it got hold of that legislation that was passed, was responding to that legislation in a proper way and in the spirit in which it had been formed.

I know I speak for my colleagues in the Senate, where you served so many years in this body, in saying that we all wish you a very happy birthday today. We know you are a fellow who is still planting trees, so there are going to be many, many returns. But we certainly wish you a happy birthday today, and we are delighted to have this opportunity to so say that in this Chamber today.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. CHILES. I am delighted to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I served in the other body when CLAUDE PEPPER served as a U.S. Senator. I have had the pleasure of his friendship now for these many years. He and I traveled to Cuba upon one occasion together. I enjoyed visiting Cuba with CLAUDE PEPPER.

I have also counted him as my friend, as a very able legislator, and I am delighted today to join with my equally good friend, LAWTON CHILES, as he commends CLAUDE PEPPER on his distinguished service and on his birthday.

I would say this to CLAUDE:

> Count your garden by the flowers;
> Never by the rains that fall;
> Count your days by the sunny hours,
> Not remembering clouds at all.
> Count your nights by stars, not shadows;
> Count your life by smiles, not tears;
> And on this beautiful September afternoon,
> Count your age by friends, not years.

Mr. CHILES. I thank the Senator.

NO EARLY RETIREMENT FOR CLAUDE PEPPER

Mr. METZENBAUM. Mr. President, today I join my colleagues in extending the warmest of birthday greetings to the only "Senator" in the House of Representatives. As you know, Congressman CLAUDE PEPPER served with distinction for 14 years as U.S. Senator from Florida. After leaving the Senate, another opportunity arose to serve his State and his country, and Senator PEPPER, as he is called affectionately by his many admirers, was elected to the House in 1962 and is now rounding out his ninth consecutive term in that body.

As chairman of the Senate Judiciary Committee's Subcommittee on Antitrust, Monopoly, and Business Rights, I have had the pleasure of working with him in his capacity as chairman of the House Select Committee on Aging. Our common concern was the exploitation of people in the sale of specialty health insurance such as cancer insurance policies. I was touched by his depth of compassion for these victims, his feelings for innocent persons who are victimized by unscrupulous operators and his desire to draft meaningful legislation to limit questionable sales practices.

His campaign to wipe out mandatory retirement policies based strictly on age and his efforts to better the conditions for our senior citizens are milestones in the basic civil rights struggles of this Nation.

Today we mark CLAUDE PEPPER's 80th birthday.

Mr. President, CLAUDE PEPPER has set a mandatory retirement age for himself. He says will retire in the year 2000 on the occasion of his 100th birthday.

Knowing CLAUDE, I will only believe it when I see it.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE UNITED STATES SENATE

THE SENATE PAGES

Mr. ROBERT C. BYRD. Today I would like to explore the history behind a group of Senate employees we see every day. Each morning that the Senate is in session, we see before us, sitting here on these risers, the fresh faces of our young pages. They have already been up, attending school, and on the job for several hours before we set foot in this chamber, and no matter how late into the night we remain in session, the pages are always with us. All we need to do is to beckon—as I shall do now—and a page will scurry over to respond to our every request. This young lady is going to get me a fresh glass of water. I am afraid sometimes we take these young people for granted, so, in partial remedy, I would like to tell my colleagues of the long history of service by the pages to this institution.

The term "page" is of Middle English origin. According to the Oxford English Dictionary, the word dates from the fifteenth century when it meant a youth employed as a personal attendant to a person of rank. Because of the similarity of their ages and the services they provide Members of Congress, the word "page" is the term used to describe these congressional employees who have served Congress so well.

One of the earliest references to pages in the Congress is found in a report on House pages issued by the twenty-seventh Congress in 1842. The report noted:

> From the origin of the present government, in 1789, to the present time, they (messengers) have been employed under the orders and resolutions of the House, and experience has attested the necessity of their services . . . From the first session of Congress held at the city of Washington, they have continued to be employed with the approbation of the House.

In 1827, the House employed three young boys to wait on its two hundred thirteen members, and the number steadily increased.

Tradition has it that Senators Daniel Webster of Massachusetts and Henry Clay of Kentucky began the page system in the Senate. Although the Senate had older messengers from its beginning in 1789, boys were apparently not used as pages until the late 1820's. The first Senate page, appointed by Clay and Webster, was nine-year-old Grafton Dulany Hanson, a direct descendant of John Hanson of Maryland, president of the Continental Congress. Grafton Hanson grew up in the office of page, serving over ten years. He moved on to other jobs in the Senate and left only to fight in the Mexican War where he was decorated for bravery.

When Grafton Hanson became too old to continue work as a page, Daniel Webster, in 1831, appointed a second boy, Isaac Bassett. Bassett was just twelve when he became a page but he served the Senate in various capacities for the rest of his life. For the next sixty-four years, from 1831 until 1895, from Andrew Jackson to Grover Cleveland, from page to assistant doorkeeper and governor of the pages, Bassett seldom missed a single day on the Hill.

Soon after Bassett began in 1831, another boy was hired as his assistant, raising the Senate page staff to two. The boys wore blue uniforms with shiny brass buttons. Together they filed all the Senate bills and documents and performed other services for the Senate's forty-eight members.

These first pages, Hanson and Bassett and those who followed them, had a variety of duties to perform which might not occur to us today. Pages still keep our desks supplied with writing materials, but in the nineteenth century, this job required knowledge of what type of quill pen and ink each Senator preferred. It was important to keep individual preferences straight. Daniel Webster always wanted a broad-nibbed pen while Clay preferred a fine point. Ink then did not come in convenient bottles. Pages had to mix it up and if they did not do it properly, there were plenty of complaints. There were also individual sand shakers to be filled. Some of us may have wondered what these little shakers here on our desks are for—the sand was used to blot the ink.

There were other needs of the Senators to which the pages catered. The flamboyant Sam Houston of Texas used to stride into the old Senate chamber down the hall dressed in a panther-skin waistcoat, large Mexican sombrero, and brightly colored serape.

He wore a flaming red vest, the kind of vest I wear when I play on the Grand Ole Opry and on Hee-Haw. He was particularly fond of his flaming red vest. So am I. I gave one of my flaming red vests to the Country Music Hall of Fame, but I have one extra red vest, and I will not give it away.

Senator Houston required special attention. Houston would while away the time in the chamber by whittling, creating a pile of shavings beneath his desk, and pages would bring him his pine blocks and then clean up the shavings. We have a charming description of Houston in a book by a Senate page during the 1850's. In *Memoirs of a Senate Page*, Christian Eckloff describes the scene:

> "Sam" Houston was one of the gentlest and most kindly natures I have ever known. A true friend and a gallant gentleman. Day after day, during spare moments, he sat there in his seat carving hearts out of soft pine wood. They were pieces about the size of the hand. When he had completed one of these works of art, he would summon a page, and pointing toward some fair spectator in the gallery, would say: "Give this to that lady up there, with General 'Sam' Houston's compliments."

And he would send her a little pine heart he had whittled.

In addition to keeping General Houston supplied with whittling blocks, the pages also had to keep the Senate snuff boxes filled.

As I pointed out last week there are still two snuff boxes, one on the left of the Chair and one on the right of the Chair, little lacquered boxes that are kept filled with snuff even to this day.

Perhaps some of my colleagues are not aware that there are still snuff boxes here in this chamber, still kept filled by our pages, should we ever be inclined to take a pinch or a sniff of snuff. Until 1849, the snuff box was kept on the Vice President's desk. After that, two little oriental snuff boxes were placed on either side of the presiding officer's chair, a position which they retain today. Some Senators would walk over to the boxes and help themselves to a pinch of the fine Macaboy snuff. Others expected the pages to anticipate their needs and bring them a pinch whenever they desired to "gratify the nostrils and clear the mind." The pages themselves sometimes had a good time with the snuff. Another nineteenth century page, Edmund Alton, who also wrote a charming book about his years in the Senate called *Among the Law-Makers* noted that when things got dull in the chamber, a page would sneak a large pinch of snuff and toss it in the faces of his fellow pages who were sitting in the front of the chamber like a row of solemn penguins, throwing them all into a fit of sneezing. One of our very own pages may also write a book about the Senate someday.

By the 1840's, two little boys were not enough to handle all the tasks of a rapidly growing Senate, so their number was increased to four. One of the new boys was eight-year-old Baker A. Jamison who also wrote about his experiences in a book called *Memories of Great Men and Events.*

In these early days, pages were usually paid $1.50 for each day the Senate was in session. But sometimes, the sessions lasted long into the night, and the sleepy pages had to remain at their posts. Night sessions meant a great deal of extra work for the boys. Oil had to be brought for the lamps on the walls, candles for the desks, and constant armfuls of hickory wood were needed for the four fireplaces and two stoves in the old chamber. In the wintertime, the pages were responsible for keeping the fires blazing away night and day. Christian Eckloff described the scene:

> One winter I recall—the winter of 1854–1855, if I am not mistaken—was extremely severe, with frequent snows and the mercury trying hard to get out at the bottom of the tube. Woolen shawls were then the fashionable garment for both men and boys, and they were heavy and warm; of somber hues, principally grey and brown, with a little variety in Scotch plaids. It was a common sight to behold the revered dignity of the Senate wrapped head and all in these big shawls, and comfortably retaining them in the chamber on very cold days. Many of the older men in their efforts to keep warm made frequent pilgrimages to the open grates, and were far more interested in the state of the fires than in the State of the Union.

For their overtime in night sessions and extra labors during the cold winters, the Senate usually voted, at the end of each session, to award the pages a bonus. At the end of the 1846 session, page Baker Jamison recalled receiving a small pile of twenty-dollar gold pieces. "This," he noted, "was a large sum for a small boy to carry through the streets of Washington, so the careful and thoughtful Secretary of the Senate, Mr. Asbury Dickins, had the money sewed up in our vest pockets and sent us home in the Senate mail wagon."

As one might imagine, enterprising pages soon hit upon another way of earning a little extra money. Their way to wealth lay through the autograph books that soon became a plague to Senators.

And they are still a plague to Senators. When I go to meetings these days and if I have to catch a plane immediately after, what a sight it is to see persons coming with the autograph books, or little pieces of paper torn on which they want the autograph. Once I start that autographing, there is no end of it. So I sometimes run the risk of missing my plane.

But that is one of the things we have to do as Senators, because the autographs are very much sought after by people whom we meet.

But the enterprising pages hit on a way of making a little extra money through autographs.

The albums had a roll-call list pasted on the front and, as each member's signature was secured, the page would check his name off. The signatures were not for the pages, of course, but for the tourists anxious to obtain the autographs of home-state and prominent Senators. Sometimes visiting ladies in the galleries would send the page in with their personal autograph book, seeking an inscription. The going rate in the 1850's was six cents a name. Pages would trade names amongst themselves, trying to get a complete set, which might bring as much as $10.00. Most Senators willingly cooperated until the demands became too frequent, but some were annoyed by it from the first. Henry Clay and John C. Calhoun were particularly reluctant to give their autographs, and to get them required considerable strategic maneuvering by the pages.

After his years as a page, Baker Jamison became a lawyer in nearby Maryland and, eventually, a member of the Maryland legislature. Among the other boys to serve as pages in the old chamber was Jamison's colleague, Henry Burgevine, who went off to sea, became a soldier of fortune, and was killed during an attempt to lead a Chinese rebellion. Another of Jamison's companions was John M. Wilson, who went on to West Point and became a General during the Civil War. The first pages also produced an admiral—Leonard Frailey, born in Washington in 1843 and a page at the age of twelve.

Two Maryland boys who started together as pages in the House in the 1850's later returned as Democratic members of Congress. Richard Townshend was born in Upper Marlboro, Maryland, in 1840. He left Washington for Illinois after his years as a page ended and became a school teacher and then an attorney. He returned to Washington in 1877, serving seven terms in the House.

Some say that Arthur Pue Gorman became a politician the day he started as a House page in 1852 at the age of thirteen. He was a page in the House less than a year before he caught the eye of Senator Stephen Douglas. The Illinois Senator had him transferred to the Senate page force. The story goes that he literally made his mark in the Senate almost immediately. During a recess, Gorman carved his name in one of the old stone columns in the old chamber with his pen knife. Years later, when Gorman was a Senator, he went back and claimed he found the evidence of his youthful misdeed. After various jobs in the Senate, Gorman became a Democratic member of the Maryland House, then its Speaker, then state Senator, and gradually the leader of his party. At age thirty-three, he was president of the Chesapeake and Ohio Canal Company. In 1880, the Maryland legislature elected Gorman to the United States Senate and kept him there, except for one term, until his death in 1906. Though an extremely influential Senator, Gorman never forgot his very first days in the Senate and was always a good friend to the pages.

The Civil War brought dramatic changes to the Senate. There were divided loyalties among the pages just as among the Senators they served. The emotional battles of words on the floor were often continued in the Capitol basement by pages who sought to settle differences with their fists. Many pages from the seceding states left Washington for the South with their sponsoring Senators in the summer of 1861. As the older boys left to enlist, their places were filled by pages from the North who were considerably younger.

Many of these boys were entirely on their own. As with pages today, they had to find their own food and lodging. Some of their boardinghouses apparently lacked bathing facilities. At one point, the pages' appearance became so objectionable that officers of the House and Senate tried to enforce a rule that every page take two baths a week in one of the huge marble bath tubs in the Capitol basement. It was no doubt a chilling experience since hot water was at a premium and the floors were cold marble. Indeed, it is alleged that Vice President—and former Senator—Henry Wilson caught the cold from which he died in the room right off this chamber in those very tubs. It is even said that on cold, still nights, Wilson's ghost roams the basement of this building and can be heard sneezing and sniffling.

The page boys tried every trick in the book to avoid the baths. As a result, a ticket system was devised. Each boy was issued two tickets and, upon entering the baths, he was to turn one in and it would be credited to his name with a tally taken each week. I must admit that these boys were not lacking in cleverness! They took to selling their tickets to city boys eager to say they had had a Congressional ablution.

After the Civil War, the page boys found still other ways of making extra money. A thriving business in autographs continued, especially during the impeachment trial of President Andrew Johnson. Unused tickets to the trial, discarded programs, and nearly every scrap of official paper dealing with the occasion proved to be salable souvenirs. Pages could also work overtime in the Senate folding rooms, sorting and folding the outgoing mail.

But the most lucrative sideline of all was getting commissions on the printing of speeches by members. When a Senator gave an important speech—and when did a Senator never give an important speech?—he would designate a page and give him sole responsibility for handling its dissemination. The page would solicit orders for the speech, fix a charge, hire a printer, and keep the profit. Christian Eckloff reported that in the years before the Civil War an address by Douglas, Seward, Sumner or some other nationally famous personality, with a subscription list of over 50,000 copies assured, could bring a page as much as $30.00. He also noted that his fellow page, Arthur Pue Gorman, was one of those most adept at landing such choice commissions.

One of the most colorful accounts of life as a page in the post-Civil War Senate can be found in Edmund Alton's *Among the Law-Makers*, from which I quoted earlier. Alton describes Washington and the Senate as he saw it from his perch on the steps before us.

Alton became a page on December 2, 1872. He dutifully showed up on his first day in the required attire: dark blue knee-breeches and jacket, long ribbed stockings, and white blouse shirts. Here is Alton's description of his first few minutes in the chamber:

> The prayer was hardly finished when nearly all the Senators began to clap their hands in every part of the Chamber, making quite a racket . . .

You see, they used to clap their hands. Some Senators do this—snapping their thumb and finger—and others will simply wave for a page and hold up their hand. But in those days Senators clapped their hands.

> They had a habit of doing that immediately after the opening exercises, and, on one occasion, caused an old man in the gallery to exclaim, "Well, I'll be hanged if I saw anything particularly fine about that prayer!" But they were not applauding the prayer—they were merely calling for pages.

Alton continues:

> When the clapping commenced, the other pages began running zigzag and in every direction, and at first I became confused and did not know what to do. At last I saw one Senator look at me and clap, but as I started to walk another page ran ahead of me. I was about the only new page, and more timid and modest than the other boys. They wished to show off, and they ran as fast as they could every time; and as I was a little fellow, with short legs, of course, they distanced me. I tried about a dozen times to answer calls, but was beaten by the other boys.
>
> I think several of the Senators must have observed my embarrassment, for after a while Senator Conkling beckoned me with the forefinger of his right hand—that was the way he always called a page—and I moved toward him at a quick and respectful gait . . . He was then standing behind his desk holding a letter, and a number of boys rushed and put up their hands and grabbed at the letter, and almost fought for it. The Senator made a gesture for them to go away, and when I came up he reached over their heads and gave the letter to me, with instructions as to what I should do with it. After that episode, I felt all right.

It did not take Alton very long to feel very much at home in the Senate. Only a few days later, he played a bold trick on a Senator. Here is what he said he did:

> A Senator came into the Chamber just as his name was reached by the Clerk who was calling the roll on some question. He looked around, and did not know what was going on or what he should do, and I pitied him and called out from behind him, "Vote No!" And he did! Of course he thought it was some responsible Senator speaking to him.

Alton intersperses his history of the times with one amusing story after another, and I think they give some idea of just what sort of mischief boys can get into. I will only mention a few incidents, however, since I do not want to give our current pages too many ideas!

When things were slow in the chamber, Alton recalled that the boys would play marbles right under the President's chair:

> Sometimes the Senators could not think of anything to send the pages for, and we would have an easy time; and, instead of sitting, as we ought, in an erect and dignified position, we would kneel down upon the soft carpet and play marbles. I have often gone up on the Republican side to where the Vice-President sat, as on a throne—just as the distinguished Senator from Oklahoma (Mr. BOREN) is doing today—and played marbles with a page on the Democratic side, almost under the Vice-President's chair. It would make some of the Senators angry to see us do this, especially Senator Anthony . . . But most of the Senators believed in letting us do whatever we pleased, so long as we kept still, while the young ladies in the gallery usually paid more attention to what we did than to what the lawmakers were doing. Perhaps it was this that used to annoy Senator Anthony.

When things got very dull, the page boys would dare one another to see who was brave enough to sneak a cap under the presiding officer's gavel. The next rap of the gavel brought a small explosion which certainly enlivened the chamber and enraged many Senators.

Evening sessions seemed to bring out the worst in the pages. They warmed to their mischief by first clearing the chamber of bats:

> On warm summer nights the bats would fly through the open window of the Marble Room, and, crossing the lobby, dash about the Chamber in bewildering style. Their gyrations were as nothing, however, in comparison with the antics of the chasing pages endeavoring to drive them from the room.

Once the bats were removed, the pages would run about, gleefully hiding the Senators' hats, coats, and canes. The slick marble banisters outside the chamber presented an irresistible temptation. To the horror of visiting ladies, pages would slither down them head first, shrieking all the way. Some would crawl out onto window ledges and howl like banshees or snake their way through the ductwork.

> We would take up the registers in the cloak-rooms and crawl all about, through the ventilating flues, under the floor of the Senate-chamber, among pipes and other heating and lighting contrivances that, like network, ran in every direction, looking for—no one knew what! The fact that we were in utter darkness and that there was an air-well into which we might fall and break our necks, added to the pleasure of such an excursion.

Sometimes the pages would play tricks on one another, sparing the Senators. A favorite pastime on long evenings was to find an unwary page asleep in some corner and cover him with mucilage and ink spots. Senators even entered into the game and would reveal to the "glue crew" the whereabouts of nodding pages.

The most fun, however, whether day or night, was to be had in mock session, mimicking the Senators they served. Would you think pages would do that? You would not think so? They still do, as I shall later explain.

Some boys were so good at their imitations that the Senators they modeled themselves after would come to watch. With a page occupying the President's chair, others answered to the names of their favorites in the chamber. One "Senator" would always begin with a motion to toss the previous day's journal into the waste basket, and it always carried.

For a brief time in the 1920's, these mock sessions evolved into an organization called "the Little Senate," with Vice President Charles Dawes presiding at some of its meetings. Dawes gave a luncheon for the "Little Senate" in 1925, during Prohibition, and urged the pages not to become "hip-flask boys" if they wanted to amount to something.

We learn of some early twentieth century page pastimes in the book by another former page, Richard Riedel, who stayed on in the Senate for forty-seven years, ending as Senate press liaison, after coming as a page at age nine in 1918. Mr. Riedel reports that in 1918, "We would see who could launch a paper clip with a rubber band hard enough to hit the glass ceiling. A champion launcher could make the old roof ring or hit a paddle arm on one of the electric fans that were suspended from the ceiling before the era of air conditioning."

Let me hasten to add that, lest we begin to think that the life of pages in the past was all play and no work, they had some very arduous tasks to perform in the days before the automobile and telephone. Before the installation of the legislative buzzers and signal lights—the signal lights are over the two doors, to the right and to the left of the Presiding Officer—pages raced through the halls and through committee rooms announcing an impending vote as they ran. There were also riding pages. Before telephones were invented, communication with the Executive Departments was by mail, sometimes a slow method—and still a slow method.

Consequently, the first riding pages were equipped with ponies and mail pouches and dispatched with letters of an urgent nature. For communications around Capitol Hill, there were pages known as "telegraph pages" who were equipped with the fashionable high seat bicycles to deliver and dispatch the telegrams to and from individual Members.

Before pages were assigned to cover certain areas of the chamber and certain Senators, a hand clap from a Senator could bring a stampede of pages eager for his attention. Only the strong survived! Half a dozen small boys would collide in front of a Senator's desk, and the one who sustained the least shock and picked himself up first got to run the errand. Senators often amused themselves when they required a page's aid by folding their messages into paper airplanes and watching the pages jump for them. Once, in his exuberance to aid Senator Oliver Morton of Indiana, a page slid right over the Senator's desk and into his lap. Former page Alton tells of how Senator Daniel Pratt's method of summoning pages once got him into trouble:

> Senator Pratt occupied a seat on the back row, and every day he used to roll up his heavy *Record* into a tight package ready for mailing, and toss it to the pages . . . Once, when he wished to have some extra fun, he stood up and threw the package, apparently with all his might. But whether he did not take good aim or his arm slipped, the *Record* whizzed through the air and struck Senator Anthony on the back of the head. With a cry of pain, that venerable Senator jumped to his feet, his eyes glistening with astonishment and vengeance. Turning fiercely around (expecting, perchance, to fasten the guilt upon a page), he saw Mr. Pratt bowing profoundly and profusely, the other Senators smiling. So Mr. Anthony forced a smile to his own face, and with an elegant obeisance, resumed his seat. But he rubbed his head for an hour or more.

From Senator Charles Sumner of Massachusetts, pages often had to endure pinches on the ear. The gesture was an affectionate one but sometimes, as in Alton's case, it had the opposite effect:

> Often have I attempted to pass the Senator, while he would be walking to and fro on the floor of the Senate, only to have both my ears seized good-naturedly . . . I shall always remember one of these adventures. He had sent me on an errand. Having returned, reported to him the answer, and received his deep-voiced thanks, I started to move away, but he had caught me, and continued his slow march—I in front, Indian file. As he was a tall man and I a very small boy in comparison, I had to walk on tiptoe to ease the pain, and even then it seemed as if my ear would come off my head. The worst of it was that he at once became so lost in thought that he forgot he had hold of me, and mechanically paced up and down, with his long strides, while I danced a mild wardance for some minutes—it seemed to me hours—to the intense amusement of all who observed it.

Since the turn of the century, much about the Senate pages' life has changed. Yet, much has remained the same. Pages still find it advantageous to know the likes and dislikes of those they serve. In the 1940's, one page had to remember that Senator Kenneth McKellar of Tennessee preferred a special brand of mineral water and fruit-flavored chewing gum. Senator Harley Kilgore of West Virginia liked a certain cola drink. And Senator Carter Glass of Virginia liked a piece of apple pie with cheese at two o'clock in the afternoon. Senator Joseph O'Mahoney of Wyoming liked an unusual brand of cigarettes, while Senator Charles Tobey of New Hampshire liked cigarettes with filters. Perhaps in their preferences for cigarettes, they recalled the "Lucky Strike" ads, then appearing in national magazines, containing a testimonial by their colleague, Gerald P. Nye. Said Nye:

> I have smoked Luckies off and on ever since my first term in the Senate 11 years ago, and I have always enjoyed their taste and the feeling of comfort and safety a light smoke gives my throat. I have done a great deal of public speaking, on the floor of the Senate, over the radio and at conferences. Necessarily this results in a strain on the voice. So naturally, in smoking, I have to think of my throat—and I have found that a light smoke is suitable to my throat.

Senators still like to tease the new pages. When Richard Riedel was a page in 1919, Senator Charles McNary of Oregon, a great friend of pages, had a special initiation for them. Riedel reported:

> In a serious Senatorial voice he instructed the novice to find "Senator Sorghum" for him immediately, said statesman having last been seen in the Senate restaurant. The waiters, elevator operators, and clerks were all in on the joke and sent the unsuspecting page to every corner of the Capitol on hearing that "Senator McNary wants to find Senator Sorghum." Eventually the page had to report back to McNary empty-handed. Another day, he would send a gullible new page to the Document Room for a nonexistent bill stretcher, but McNary failed to trick me the second time.

The fictitious "bill stretcher" was a favorite ploy, one which may even be in use today! It was used on Riedel in 1918, and Bobby Baker, later Secretary of the Majority, reported that Senator Robert Wagner of New York sent him for a "bill stretcher" in 1943 when he was a new page.

In the midst of first day confusion, one Senator always liked to give some dazed page a quarter and tell him to go down to the barbershop and get him a haircut. The young man would be half-way there before realizing he had been had!

But while more recent Senators have had fun *at* the pages' expense, they've also had fun *with* them, too. Senator McNary used to adopt each page, in turn, for a weekend of football, baseball, or theatergoing.

Senator James Davis of Pennsylvania shared the candy he kept in his desk for pages, and Senator Rufus Holman of Oregon shared his comic books.

In 1913, Vice President Thomas Marshall began what was to become a custom of the Vice President, giving a Christmas dinner in the Capitol for the pages. There was turkey and all the trimmings, and the Senators chipped in to buy small presents for the 16 pages. Vice President Calvin Coolidge continued the custom and brought his sons, John and Calvin, along to the dinner in 1921. The pages gave Coolidge a gavel to use when he presided over the Senate. In 1929, the pages gave Vice President Charles Curtis a tomahawk, in recognition of his Indian heritage, claiming a gavel was inadequate for enforcing silence in the Senate.

Since nine-year-old Grafton Hanson became the Senate's first page in the 1820's, there have been a number of changes in the age limit. In 1854, the Senate adopted a resolution which stated: "That in no case shall a page be appointed younger than thirteen years, remain in office after the age of seventeen years, or for a longer time than two Congresses or four years." In 1870, the age span was changed to twelve through sixteen years. And in 1949, the current limit was established permitting appointment to include pages between the ages of fourteen through seventeen.

In 1966, the Joint Committee on the Organization of Congress proposed a major change in the pages' age limit. It recommended that congressional pages be limited to "persons who have completed their high school education but who are not over the age of twenty-one." While the provision was included in the Legislative Reorganization Act of 1967 passed by the Senate, the act did not become a law. In 1973, the Senate again attempted to raise the age requirement to eighteen through twenty-one years, but the House took no action on the measure, so the 1949 limitations, fourteen through seventeen, still stand. There were and are, however, always exceptions. Richard Riedel was only nine when he became a page in 1918, a time when pages were to be from twelve to sixteen years old. How did he get in? Riedel explained that it was because of the influence of his sponsor, Senator Boies Penrose of Pennsylvania:

> Senators in those days could waive rules and customs just as grandly as they could wave the flag. Boies Penrose, the czar of Pennsylvania politics who personally had to approve a generation of Republican presidential candidates, could have put a toddler on the rostrum if he had wanted to.

While pages do have to leave when they reach the maximum age, they no longer have to leave because of height. There was an unwritten rule in the nineteenth century that no page could be taller than the shortest Senator. The way these youngsters seem to shoot up these days, with all the vitamins we have, we might have a constant turnover here in the chamber if we allowed ourselves such vanity. In the Supreme Court, which until just a few years ago had pages, one of the stipulations for the job was that the youngster not be higher than the Justice's chairs so that they could scurry about unnoticed by the audience.

No matter what their age, the road to becoming a Senate page has always remained the same. Whether it was Grafton Hanson appointed by Senators Webster and Clay in the 1820's, or Richard Riedel by Boies Penrose in 1918, or the pages that serve us today in this chamber, they all became pages because a Senator appointed them. The majority party gets to appoint the majority of the pages through the Majority Leader, while the Secretary for the Minority administers the page appointments for the Senate Republicans. Once appointed, the Sergeant-at-Arms swears in the pages, places them on the payroll, and supervises them while they are on duty. The Secretary of the Senate is responsible for their education.

Pages may still be young, and they may still be our appointees, but they are no longer all boys. That tradition was brought to an end in 1970, when our distinguished colleague, Senator JAVITS, let it be known that he intended to appoint a girl to fill a forthcoming vacancy. Incidentally, Senator JAVITS also hired the first black page in 1965. Learning from Minority Secretary J. Mark Trice, himself a former page, that there were no rules of statutes forbidding the hiring of female pages, Senator JAVITS appointed sixteen-year-old Paulette Desell. The Sergeant-at-Arms, however, refused to accept her appointment, claiming that the Rules Committee would have to make the decision as to whether a female page was acceptable

Meanwhile, Senators CHARLES PERCY and Fred Harris also appointed girl pages and were waiting for the same decision. During hearings on the question, the main objections raised by opponents to female pages concerned their safety, their ability to carry out the more arduous tasks, and what they would wear. After nearly five months of deliberation, the Rules Committee decided in the girls' favor, and on May 14, 1971, Paulette Desell became the Senate's first female page. A few minutes after her swearing-in, she performed her first official duty—serving a glass of water to the presiding officer, our colleague, Senator ALAN CRANSTON.

While there was some question about what the girls would wear, they did not have to worry about the scratchy knickers that the Senate pages had worn until 1947. For the first time in many years, the Republicans won a majority in the Senate in 1946, and they set about putting their own stamp on the era. One of the first changes was in the pages' attire. To the enormous relief of the Senate pages, who had had to endure merciless teasing from the House pages who had abandoned their knickers in favor of long pants a few years before, their uniform was changed to a dark blue suit and tie. The female pages easily adopted the same style.

All of our pages, whether girls or boys, are responsible for finding their own lodging and meals. This is what had always concerned Senators and often led to discussions for raising the age limit. This is a big city, and we worry about them at night after long sessions, and we worry about their diets degenerating into a steady, unsupervised one of pizza and soda. I must say, though, that they all look pretty healthy to me.

In the early Congresses, most of the pages were from Washington, and housing was seldom a problem since the pages lived at home. It has only been in this century that Senators have begun appointing pages from their home states, raising problems of housing. In 1943, Representative Alfred Elliott of California introduced legislation to provide for suitable housing, but no action was taken. Ever since, bills have been introduced periodically for that purpose but have met the same end. Those pages who do not live at home or with relatives usually live with other pages in the boardinghouses here on Capitol Hill. I am *sure* they are always perfectly behaved and a credit to the Senate every minute! Obviously, if they are to pay for their own food and lodging, the pages' salaries have had to be raised from the $1.50 a day that pages received in the early nineteenth century. Today, Senate pages earn $9,090 per year. As we watch them dashing about, sometimes loaded down with books and reports, I think we might all agree that they earn their keep.

While their duties no longer include chasing bats from our chamber and bringing us whittling sticks, they still have to sit up nights with us, and there are plenty of other duties to keep them busy. The pages are principally messengers—carrying documents, messages, and letters between the chambers of the House and Senate, Members' offices, committees, and the Library of Congress, and doing other errands to assist Senators.

When their school day is over, around 10:30 in the morning unless the Senate has convened earlier, the pages report to the Senate cloakrooms to which they have been assigned. While House pages are divided by function into bench, floor, documentarian, cloakroom, and overseer pages, Senate pages are not so categorized. All pages do whatever is needed, though they usually serve only the Senators of their party. After reporting to the cloakroom, a typical day for a page begins with placing the latest CONGRESSIONAL RECORD, calendar of business, and bills, resolutions, reports, and other documents that are scheduled before the Senate on the desk of each Senator.

Once the Senate convenes, the pages sit on the steps to the right and left of the Chair waiting to be summoned for assistance.

The Democratic pages appointed by Democratic Senators sit to the right of the Presiding Officer, and the pages appointed by Republican Senators to the left of the Presiding Officer.

On the House side, there is an electronic light system to summon pages, but here in this smaller chamber Senators used to clap their hands—and today we still nod our heads, or wave, or snap our fingers. I suppose we could always try clapping as our predecessors did, too. Our pages also make sure our microphones are working and the lines are not stretched out so we will trip and fall over them. They also place phone calls, deliver messages, and bring us a glass of water when we become parched in the midst of a speech.

One of the Senate pages' special duties only occurs every four years when they take part in the ceremony of counting the electoral ballots after a presidential election. Two pages, one from each party, carry the wooden boxes containing the ballots from the Senate to the House where the votes are tallied.

The biggest change in the twentieth century pages' life has been the beginning of the Page School. I think we might all be more forgiving of the occasional yawn escaping from a weary page during an evening session when we stop to realize that they must be up, dressed, and *in school* by 6:10 in the morning! Ten minutes past 6:00 o'clock in the morning!

It was not until 1925, when Congress passed the Compulsory School Attendance Act for the District of Columbia, raising from twelve to fourteen the minimum age at which a boy could quit school and go to work, that anyone gave much thought to the pages' education. Because their Congressional duties prevented them from attending regular public schools during the day, the Doorkeeper of the House, Bert Kennedy, decided to set up a private school for the pages. He set aside a basement room, found some battered desks and chairs to furnish it, and hired David J. Laupheimer, a Baltimore educator, to be principal, teacher and entire staff.

The boys paid tuition to attend the school, and Mr. Laupheimer drilled them in the rudiments of reading, writing, and arithmetic. The curriculum included semi-annual field trips. In March 1928, in eight cars provided by various Senators and Representatives, Mr. Laupheimer and twenty-two boys motored to Atlantic City where they were greeted by the mayor, rode ponies on the beach, and piloted the roller chairs up and down the boardwalk.

In 1929, the Devitt Preparatory School took charge of educating the pages. But transporting the pages from the Capitol to the school each day proved unwieldy, and, in 1931, the school in the Capitol basement was revived with Ernest Kendall as principal. By 1937, the school was approved by the District of Columbia school board and had five classrooms beneath the west terrace of the building.

In his excellent book, *Democracy's Messengers: The Capitol Pages,* William Severn describes Mr. Kendall's frustrations in acquiring suitable desks for his students. He finally discovered the desks that had been used at one time in the House chamber. Though dusty, the solid old desks were in good shape, even bearing the nameplates of their former occupants. At least one student was moved to express his sentiments upon sitting at such hallowed desks in verse:

> The pages, peculiarly Congress's pride,
> have in the Page School an incentive sublime, equipped as it is with desks where—side by side—Congressional statesmen sat in Lincoln's time . . .

From all accounts, the desks seem to have been the only sturdy, attractive furnishings in these early school rooms. Despite Mr. Kendall's pleas, no additional room could be found, and conditions were far from ideal. Senator Harold Burton of Ohio happened upon the school rooms by chance in 1942 and was most distressed by what he saw.

Testifying before the Joint Committee on the Organization of Congress in 1945, Senator Burton recounted his visit:

> I visited the school a couple of years ago, and found it housed in the most disreputable and unsuitable conditions. Dickens' Dotheboys schools had nothing on it at all. It was under the terrace of the Capitol Building, looking west. The room that the elementary boys used was one that the newspapermen used for a card and smoking room.

Senator Burton's reference to Dickens' Dotheboys schools alluded to the brutal Yorkshire school, Dotheboys Hall. Continuing Senator Burton's words:

> The main room was at the center of the Capitol. There were desks, but water was dripping from the ceiling onto the desks, and the plaster was falling down. A piece that had fallen had recently just missed

> a boy. There were no blackboards in the room, and there was no adequate lighting. The whole place looked as disreputable as it could be.

Senator Burton's speech must have had an effect. When the Joint Committee issued its report, it recommended improvements in the school. As a result, Congress included provisions for the tuition-free education of its pages in the Legislative Reorganization Act of 1946. From that point on, the Page School has been a part of the District of Columbia School System. Plans were also made for the school to move to more suitable quarters on the third floor of the Library of Congress where it still meets today.

Periodically, there have been attempts to provide the pages with a permanent residential school building. Most recently, the Legislative Reorganization Act of 1970 contained authorization for the Architect of the Capitol to acquire property near the Capitol grounds for dormitory and classroom facilities. The new building was to be called the John W. McCormack Residential Page School in honor of their Speaker of the House. Those plans, however, are still in abeyance.

Today, the Capitol Page School, although part of a large metropolitan public school system, is one of the smallest of big city high schools. The school is fully accredited by the Middle States Association of College and Secondary Schools. There are currently six teachers, a principal, Mr. John Hoffman, who has been in charge of the school for eleven years, an administrative assistant, and, last semester, two volunteers from the Georgetown University Law School who help the students stage mock trials. The school starts in September and runs through June, but the number of students there at any one time may fluctuate, since some pages come for as little as two months and others remain for as long as three years. The curriculum is geared toward college preparation, since ninety-eight percent of the pages go on to colleges and universities. As I mentioned, school starts each day at 6:10 a.m. There are courses in social studies, English, foreign languages, physics, business, and mathematics. While there are laboratories for physics and biology classes, considering the priceless library collection housed in the same building, it is not surprising to learn there is no chemistry laboratory.

Students are expected to maintain a C average. A powerful incentive to do so may be the fact that students' report cards are issued not only to the pages and their parents, but also to their sponsoring Senators and the Senate Sergeant-at-Arms, Mr. Hoffmann.

If the pages complete their senior year at the Capitol Page School, they may take part in the impressive graduation ceremony.

On June 19 of this year, graduation ceremonies for forty-nine seniors were held in the Senate Caucus Room to the accompaniment of the Marine Band. The students also receive certificates and congratulations from the President of the United States. President Eisenhower was the first Chief Executive to hand out the awards in person at the White House in 1953, and the tradition has continued almost unbroken, with President Carter doing the honors a few weeks ago.

Now, Senators might think that rising around five o'clock in the morning, before dawn's first light, attending school all morning, and then serving in the chamber all day, and sometimes into the night, would keep our pages so busy that there would be little time for any extracurricular activities at school. But that is not the case. I was amazed to learn of the variety of their interests. The school has an active Student Council. The elections are hotly contested in active campaigning. We can all appreciate the arduousness of a campaign, particularly when we realize that Student Council officers must stand for election twice a year!

In addition to the Student Council, there is the *Congressional*, the pages' award-winning yearbook. It is indeed a handsome volume, produced entirely by the pages, and supported by advertising, sponsorships, and the sale of copies. The students also publish a newspaper, *The Courier*, and participate in several clubs, such as the chess club.

It is hard to believe these students have enough energy left at day's end to play basketball, but they do. They not only play basketball; they win most of their games. In March of this year, the sports page of the *Washington Star* asked, "Can high school basketball players be successful on the court after contending with the responsibility of helping the legislative branch of the government work efficiently?" The answer was an unqualified "yes." This year, the team, coached by teacher Joe McGarth, was 19–2 for the season. Not bad for a team with constant turn-over, no gym of its own, and very irregular practice hours. Contributing to the victories this year was Donna McNeilly, the only female player on a boy's varsity team in the area.

I think most of us realize the many things the pages do for us. But what do the pages get in return, besides their salary, for the miles of leg-work they put in? Former Senator Harold Hughes of Iowa told one graduating class:

> Actually you probably know more about what is going on in the House and Senate chambers than we members do. You have heard virtually all of the speeches and parliamentary dueling that goes on, while we members, owing to committee hearings and other demands on our time, hear only a part.

Lyndon Johnson once described the chance to be a page as "a chance to see government without glamour—to learn that ideals alone don't make programs; that dreams do not automatically become reality." The pages seem to agree with these assessments of their job. As one page described it, "It's having a chance to watch day by day that counts. It's fascinating to see how one thing balances against another, the compromises, the need to give way on this to get that." Another said that from her vantage point right on the floor of the Senate, she had come to realize the complexities of government. "It's like a puzzle. When you look at just one piece—one day—it means nothing, but after a while you discover how it all fits and locks together."

Recently, I had the privilege of interviewing a former Senate page. I thought that before I gave this little speech on the Senate pages, it might be well if I interviewed a former Senate page—not so much a page serving at present, because I felt that there might be some reticence on the part of a page to speak candidly about Senators. So I chose to speak to a former page who had served a 6-week term in this body.

I doubt that any Majority Leader or, for that matter, any Senator, has ever had this type of in-depth interview with one of our young people who do such a fine job of helping us on the Floor and in the Page Rooms and in our Senate Office Buildings, and I wanted to get some first-hand impressions from the inside.

I asked the young man for his first impressions upon arriving on the Hill to serve as a Senate page. He replied that he was struck by the apparent waste of time that goes on on the Senate Floor. He was referring to the long debates, and the yielding of time back and forth from one Senator to another. I have often thought that it must seem that way to many of our visitors in the galleries, who are unfamiliar with our complicated procedure with regard to time allotted to Senators, and with parliamentary procedure in general.

Then our discussion turned to pages, and their errands and responsibilities. A Senate page must transport messages from building to building, from office to office, and from person to person on the Senate Floor. In addition, a page must remember what type of water a Senator prefers—so I was told by this former page—whether the Senator prefers spring water or sparkling water, whether or not a Senator requires a pillow at his desk. The former page informed me that a page must remember not to talk, chew gum, or point fingers on the Senate Floor. The young man I spoke with said that Patrick Hynes and Nordy Hoffmann were quite adept at reminding pages of the proper conduct expected on the Floor and were always giving pages "the eye."

I was pleased to hear that we have such fine "watch-dogs of decorum" in the persons of Patrick Hynes and Nordy Hoffmann.

We then moved on to a discussion of "page power." Being totally unfamiliar with this phenomenon, I was, frankly, fascinated to discover that the struggle for power begins so early on. Apparently, from what I could learn in my conversation with this former page, the most coveted positions are the Floor page jobs. The Floor pages are usually stationed on the Senate Floor and do not have to run so many errands. They also have the privilege of telling the other pages what to do. The Floor patronage positions are usually filled by those pages who have been around for a while and have some familiarity with Senate procedure.

Newer pages are divided into two groups, and those groups are supposed to alternate between duty on the Floor and duty in the Page Room. Apparently, the rotation does not always occur, because pages find the Page Room a little less interesting than Floor duty.

Partisanship also rears its head at an early age. The young man I talked with told me that he had observed a distinct difference between the Republican pages and the Democratic pages. He said that the Republicans seemed to be richer and a little more impressed with their station in life than the more middle-class Democrats. He related a story about a ride he took on an elevator with a fellow page from the other side of the aisle. It seems that the other boy looked my Democratic friend up and down, sneered, and said, "Oh, so you're a Democratic page."

I then asked about my friend's general impressions of specific Senators. I was unable to resist doing it. He gave them to me, and I will give them to Senators, but I will omit the names, except for my own. It may be interesting for other Senators to try to find themselves in these descriptions. It is always enlightening to see how we may appear in the eyes of observers. It can also be humbling.

My friend said that, generally, the older Senators are more quiet and seem to command more respect. The younger "troops" get much more emotional and some almost seem to scream when they speak on the Senate Floor. So, we have our firebrands, and we have our wise gray heads—a nice balance.

In his descriptions of individual Senators, one Senator was depicted as "being a little overweight and a real comedian"—although the gentleman in question appeared to be unaware that he was so funny. Another Senator was described as having a "very red face, looking perpetually angry," such qualities being fine material for imitation by young Senate pages. Another Senator was depicted as having a "Caesar-like" manner and pose. And, a final description was of a tall Senator who "constantly wears a wrinkled suit." One Senator fancies himself "the Senate's orator," according to the young former page. When he got to Robert C. Byrd, my friend got up and imitated my "Senatorial pose." He walked over to my mantlepiece, leaned against it, and looked slightly distracted. It was a pretty good imitation.

He thought I had "worked for years to perfect that pose," and he had it down pat. I was surprised to learn that I was the "terror of the pages" because I "roam from desk to desk" on the Senate Floor and "sometimes knock over water glasses." I was also characterized as having "hawk-like features." I am not sure that I agree with that, but that is the way he saw me.

I will go back on my earlier statement about not mentioning any other names and say that my friend indicated that his favorite presiding officer was my good friend, Sparky Matsunaga, because Senator Matsunaga performed the duties of the Chair with such zeal and ceremony. I have to agree that Sparky does handle that job with style.

We moved along to a discussion of the things that pages hate to do and those included the following.

Rush notices. "A page runs like mad to an office to deliver a document, only to see it thrown on a corner of a desk and not opened."

Whip notices. The page said that was a "lot of work."

House office building calls. They despise having to go all the way over to the House office buildings. He said that was "inconvenient."

Soda water versus regular water. "It is hard to remember who gets what."

He mentioned the fact that I had to have a special water: "This Senator likes that kind of water and another Senator likes a different kind of water."

But for the record, for those who will read 100 years hence, the reason I have to have a special water is, I joined the kidney stone club several years ago. I have had five experiences with kidney stones and the doctor suggested that I drink a distilled water so I will not have so many kidney stones. Five kidney stones are enough for anyone in a single lifetime.

As with every job, however, it's not all bad, so my friend listed for me the things pages enjoy. So here are some of the things now that pages enjoy:

Taking breaks; delivering messages to Senators; buying cigarettes and candy; cigars for Senators—he threw the cigars in, probably, for my enjoyment; playing in the Chamber after hours and imitating Senators. I would like to see this.

I asked him which Senator he imitated. He said, well, he imitated Robert C. Byrd for one.

We then moved on to my guest's analysis of the "evolution of a page."

Stage one. A new page is very much "on the ball," and jumps up at the slightest nod from a Senator, just jumps right up. He is always on time and studies his "blue book," a book issued to pages containing pictures of Senators for identification purposes, to try to learn to recognize Senators. My friend said that this was an almost impossible task because the Senators do not much resemble the photographs. They seem to be high school pictures. This stage lasts for about 2 weeks.

Stage two: Boredom sets in. The page has now run every conceivable type of errand and tries very hard to get out of anything difficult. The "older pages" try very hard to "use their seniority of a whopping 3 weeks" to give the new pages all of the bad jobs. The pages, by now, have learned where all of the secret hiding places are. These are the places where the pages go to watch TV and to sleep. I wonder where those places are? I think this would be very useful information during quorum calls. I may have the young man come back and further explore this point because pages may pick the places that Senators go to watch TV and sleep.

Stage three. By the time a page has been on duty for 3 to 6 months he or she begins to become more responsible. The outlook changes as the individual sees the possibility of moving into a floor page position. It is at this point that the pages start learning about the Senate and how it works.

I asked the young man about his overall impression of the Senate as an institution. The response was that he had never had a course in Government but that he thought that the Senate was "an effective and well-organized body" and that it handled bills and amendments in an orderly fashion. My friend said that he did not believe that an unpopular bill could be forced through the Senate. In a rather astute observation, my friend talked about one fault that he found with the Senate. He felt that there was no need to have two Senators from each State because they sometimes ended up "debating against each other and canceling each other's vote." I would concur with that opinion except, in cases where there are two Democrats from the same State. However, I doubt that such a measure would get much support from the other side of the aisle.

My young friend ended our discussion by saying he had not really been here long enough to "catch on" to the ins and outs of how the Senate operates but that he had learned a lot and had had a lot of fun during his service. He said that he had been careful to avoid committing the "pages' sin." I said, "What is the pages' sin?" He told me that the pages' sin was "mixing up the two Byrds."

I certainly had a lot of fun talking with my young, articulate friend, and I gained some new insights into the lives of the young men and women who help us so much here in the Senate.

When the 1964 graduating class of the Capitol Page School went to the White House to meet President Johnson, he reminisced about his years of dealing with pages while in the Senate, and he paid them a high tribute which I think we all would agree is still fitting. The President said:

> Woodrow Wilson said that the office of President requires the constitution of an athlete, the patience of a mother, and the endurance of an early Christian. Personally, I think he may have overstated the requirements of the Presidencv. But from long and close observation of thirty-four years, it seems to me that President Wilson may have been describing the requirements for a congressional page.

ORDER FOR RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are no orders.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand recessed until the hour of 10:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF ENERGY AND WATER APPROPRIATIONS BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees are recognized on tomorrow, the Senate proceed to the consideration of Calendar Order No. 1009, H.R. 7590, the energy and water appropriations bill.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, this item has been the subject of extensive negotiations on both sides today. It was cleared on this side. We have no objection to the request of the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader.

THE FOREIGN SERVICE REFORM BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 995, S. 3058, the foreign service reform bill is called up and made the pending business before the Senate, no nongermane amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, it is the understanding that the Senate will complete action on the energy and water appropriations bill tomorrow or Wednesday, more than likely Wednesday, and that the Senate would then take up the foreign service reform bill. But it is also the understanding that if the foreign service reform bill were to be called up on Wednesday and not completed on Wednesday, it would go over until Monday next.

Mr. President, I thank the distinguished minority leader, Senator STENNIS, Senator JOHNSTON, Senator PELL, Senator HELMS, and other Senators, for their cooperation in achieving the agreement.

HEALTH RESEARCH ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 988.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 988) entitled "Health Sciences Promotion Act of 1980."

(The amendment of the House is printed in the RECORD of August 28, 1980, beginning at page 23681.)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. KENNEDY, I move that the Senate disagree to the amendments of the House of Representatives, ask for a conference of the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY conferees on the part of the Senate.

MULTIEMPLOYER PENSION PLANS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. WILLIAMS, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3904.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the amendments of the House to the amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1974 and the income security under private multiemployer pension plans by strengthening the funding requirements for those plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. WILLIAMS, I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. WILLIAMS, Mr. RANDOLPH, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. LONG, Mr. MATSUNAGA, Mr. BOREN, Mr. DOLE, and Mr. CHAFEE conferees on the part of the Senate.

RECESS UNTIL TUESDAY, SEPTEMBER 9, 1980, AT 10:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order entered previously, that the Senate stand in recess until 10:30 a.m. tomorrow morning.

The motion was agreed to; and the Senate, at 6:33 p.m., recessed until Tuesday, September 9, 1980, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 8, 1980:

COMMUNITY SERVICES ADMINISTRATION

Laird F. Harris, of Michigan, to be an Assistant Director of the Community Services Administration, vice Frank Jones, resigned.

CONFIRMATION

Executive nominations confirmed by the Senate September 8, 1980:

SECURITIES AND EXCHANGE COMMISSION

Barbara S. Thomas, of New York, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 1985.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Monday, September 8, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. WRIGHT).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 5, 1980.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Monday, September 8, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord, who rules in the heavens above and yet lives in the hearts of people, we thank You for a new day with opportunity to serve those about us. Be present, O God of wisdom, and bless this assembly, enabling those gathered here to be effective instruments of peace and understanding. Grant us awareness to search for the truth that will best serve the common good, and teach us always to go about our work respecting those who differ from us. Give us the unity to focus on those goals and ideals that give health to the Nation and fulfillment to your people. In Your holy name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment, in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2111. An act to extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes.

NORTHWEST ENERGY BILL DANGEROUS AND HIGHLY CONTROVERSIAL

(Mr. WEAVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEAVER. Mr. Speaker, the Interior Committee has just passed out the northwest energy bill with 14 dissenting votes. The Eugene Water and Electric Board, my home utility, the largest public utility in Oregon, is strongly opposed to this bill. The board of the Eugene Water and Electric Board, including a conservative Republican pronuclear member, is unanimously and adamantly opposed to the passage of this bill. The reason: It would destroy local community control, destroy local initiative in developing new energy sources, and eventually would destroy the utility itself. I believe it necessary to do everything in my power to prevent passage of this dangerous, highly controversial legislation.

THE HONORABLE CLAUDE PEPPER'S 80TH BIRTHDAY

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, a magnificent Member of Congress, to wit, the gentleman from Florida, Mr. CLAUDE PEPPER, will be celebrating his 80th birthday today. The gentleman from Massachusetts, Father DRINAN, the gentleman from Florida, Mr. FASCELL, and other Members of Congress have arranged for a special order this afternoon. I think it is under the name of Mr. FASCELL. I just want to point this out to the Members here now so they might want to extend their remarks or make some observations on Mr. FASCELL's special order tonight.

Mr. PEPPER is a man I have known through most of our respective lives. He is called by many the most outstanding man of our era, certainly in the State of Florida, in preserving human rights and working to make things better for mankind. It is my pleasure to call this to the attention of the House, and maybe some of us would like to join the gentleman from Florida, Mr. FASCELL, this afternoon in paying tribute to the gentleman from Florida, Mr. PEPPER.

AMERICAN AGRICULTURE AND FAMILY FARMER IN STRUGGLE FOR SURVIVAL

(Mr. GINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINN. Mr. Speaker, it is no news that American agriculture and the family farmer are locked in a desperate struggle for economic survival. It is also no secret that the outcome of that struggle will foretell the future prospects of our entire economy. If the farmer can survive and maintain a plentiful and inexpensive supply of food and fiber, then the American economy can survive the trials of high-priced foreign oil and the ravages of inflation.

But unfortunately, I must report today that the prospects for our farmers are dark, and getting darker. Piled on top of the problems of skyrocketing farm operating costs and declining prices, our Nation is now gripped in a drought period that is likely to be recorded as one of the most severe in our history.

The drought has been particularly acute in my own State of Georgia. We face a crop loss exceeding $700 million and the full impact of the drought will no doubt far exceed that figure.

There is no magic solution to this crisis, but I am today introducing legislation, cosponsored by Representative DOUG BARNARD, which we believe will help. This bill will establish a 7-percent loan program for a 40-year period for farmers who wish to install or expand farm irrigation systems.

The loan money could be used to install new irrigation systems, repair or expand old ones, dig deeper irrigation wells, construct ponds, or other work designed to improve a farm irrigation operation.

Now, I will be the first to admit that our farmers are already faced with a huge operating debt, and we do them no great favor in passing new loan programs to let them try to borrow their way out of that burden of debt. But in this case, the need for irrigation equipment is so compelling that I believe it is essential for survival.

In Georgia, we have learned that irrigation is no longer a luxury. It is essential to the viability of a working farm, and without it, the average family farmer is playing Russian roulette with a fully loaded revolver.

I urge my colleagues to review this bill with care. I will be seeking cosponsors to the legislation this week, and I would greatly appreciate your support.

HIGH PRAISE AND THANKS TO MEN OF AMERICA AS CLOSE OF SELECTIVE SERVICE REGISTRATION DRAWS NEAR

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, as the Nation and our farmers continue to reel under the blows of inflation and recession at home, while we suffer declining prestige and mounting challenges abroad, we may be very proud of our young men. Not nearly enough has been said about the figures released last week indicating that 93 percent of all eligible men have registered for Selective Service. This turnout is far higher than had been predicted by the Anti-American groups and shows the patriotic, law-abiding spirit of our younger generation. They are making a real contribution to our preparedness effort.

There are still about a quarter of a million affected men who have yet to sign up. I believe that they will, as the close of the registration period draws near.

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

I offer my highest praise and my sincere thanks to the men of America who have answered the lawful call of their Nation.

THE CARTER ADMINISTRATION'S OUTRAGEOUS BREACH OF SECURITY

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, since the Ford administration, information about the highly classified "stealth" bomber program has remained top secret and only sketchy unconfirmed rumors about the program have ever publicly surfaced before now.

Now the Carter administration has unnecessarily provided the Soviet Union and other hostile powers a virtual gift of this top secret military information, which has certainly damaged our national security interests.

For several decades, our intelligence agencies have worked hard to prevent the disclosure of such highly classified secrets at even the lowest level, and the disclosure of much less vital secret information has landed violators behind bars.

President Carter and his top officials have shown themselves to be irresponsible and reckless by revealing the most intricate secret security matters for what appears to have been a political ploy to advertise their concern for defense after 4 years of negligence.

As the Washington Post noted editorially this past weekend, this was an abuse of office for political gain.

THE PRESIDENT'S HYPOCRISY

(Mr. DICKINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKINSON. Mr. Speaker, at 2:15 this afternoon there is a scheduled exhibition at the White House where the President will sign into law the so-called Nunn-Warner amendment to increase the cost-of-living allowances for our enlisted men particularly. Just recently the President was on board the *Nimitz* and announced to those who were returning from 144 days at sea that he was going to support the cost-of-living increase, and they all believed it. As soon as he got back, he rescinded this and said he would not support this because it was not in his budget, and it would lead to an unbalanced budget. Senator Hollings, a Democrat from South Carolina, said that this was hypocrisy and was made as a political ploy on the part of the President.

Mr. Speaker, I would say that this afternoon at 2:15 when the President goes through the motions of signing this bill, a bill which he opposed and now he is trying to get credit for, that this is politics at its highest and hypocrisy at its worst.

THE PRESIDENT'S DECISION TO LEAK "STEALTH" INFORMATION IS TREACHERY

(Mr. WINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WINN. Mr. Speaker, the editor of the Armed Forces Journal, who revealed to the American people the President's decision to leak for political purposes some of the most highly classified weapons technology information since the Manhattan project, has called that decision "irresponsible." I submit that it is more than irresponsible, it is treacherous. The highly sophisticated Stealth technology, an aircraft that presumably would be able to avoid radar detection until on top of its target, would if deployed render virtually obsolete the entire antiaircraft system of the Soviet Union. It would, of course, radically alter the military balance in this Nation's favor, at least until the 1990's, at which time it would be ready for use. By its action, the Carter administration and its shamefully politicized Department of Defense has now given the Kremlin a 10-year headstart on development of a system to counter this technology, and for what purpose? For none, apparently, other than for a brief splash of newspaper headlines in the desperate hope of reviving the President's failing reelection campaign. I would like to take this opportunity to make known my deepest concern for the loss of this military advantage, for the role it could play in the defense of the American people. And I would express my concern as well for this Nation that its defenses are left in the hands of an administration that for such fleeting political advantage will exploit the very systems by which this Nation survives. The survival of this society, I need not remind my colleagues, is nothing to be toyed with in so cavalier a manner, and it is nothing if not treacherous on the part of those who do.

□ 1010

CONCLUDING THE WORK OF CONGRESS AS SCHEDULED

(Mr. KRAMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KRAMER. Mr. Speaker, it has now been 4½ weeks since the leadership indicated that it does not intend to schedule a vote on the 1981 budget until after the election. In reaction, a number of us voiced the opinion that a lameduck session was really a cynical attempt on the part of the leadership to deny the voters the opportunity to judge how their Congressman stands on issues like inflation, unemployment, taxes and defense spending. Little has happened in the last 4½ weeks to prove us wrong. Aside from the Reconciliation Act, there has been no attempt on the part of the majority to move the budget process along. And, looking at this week's agenda, once again I see no mention of the second budget resolution. Still, we have 4 weeks to go before the scheduled date of adjournment on October 4—and that is more than enough time to act on next year's budget if the leadership wants to. But in the event that this does not happen, I am confident you will find strong support on this side of the aisle for staying in session until the budget is completed. Mr. Speaker, we feel it is more important to stay here and do our job than to spend October in our districts campaigning to save our jobs. However, given the majority party's record over the last 25 years, it appears its leadership has come to a different conclusion.

A NEW SECURITY CLASSIFICATION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LAGOMARSINO. Mr. Speaker, a report in yesterday's Los Angeles Herald-Examiner, attached, indicates the Carter administration is considering adding a new category of secret information classification to the existing system of confidential, secret, and top secret. Unnamed administration sources say the new classification will be called "royal."

Other published reports said the system will cut off most congressional, military, and other governmental officials, and would protect politically sensitive or embarrassing information from disclosure.

I submit that "royal" would certainly be an appropriate term for this new system of classification. Indeed, we would probably have to look back to George III or even Louis XVI to discover similar examples. And, of course, we all know what happened to Louis the XVI. He lost his head.

Perhaps someone should remind President Carter that we are a democracy (with a small "d"), and that he has not yet been crowned king.

WHAT IS A "ROYAL" SECRET?

WASHINGTON.—A new system of tightening access to highly secret information—including a supersecret designation "royal"—is being developed by the Carter administration, administration sources said last night.

The sources, who asked not to be identified, said the "royal" designation does not supersede the existing "confidential," "secret" and "top secret" categories, but is instead part of a system designed to manage an increasing volume of intelligence information originating from extremely sensitive methods or sources.

Other published reports said the system will cut off most congressional, military and other government officials and would make the classification "royal" above even "top secret." The reports quoted unnamed sources as saying "royal" would protect politically sensitive information that could embarrass President Carter.

Alfred Friendly Jr., a spokesman for Zbigniew Brzezinski, Carter's national security adviser, termed such a characterization of "royal" as "an outrageous fabrication."

LAMEDUCK SESSION A FURTHER EROSION OF PUBLIC CONFIDENCE

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, over the last two decades we have experienced a steady decline in the percentage of our citizens who turn out at the polls to participate in national elections. In fact, voter turnout in the United States now trails that of many of the Western democracies.

Political scientists point to this development as an alarming indication that public confidence in our representative institutions is on the wane.

At a time when we should be taking care to bolster that public confidence, the leadership of the majority proposes that we laugh in the face of the electorate by holding a lameduck lawmaking session.

During the 1932 debate on the 20th amendment to the Constitution, Representative Lozier of Nebraska made this point quite clear:

> The American people when they express themselves at the ballot box have the right to have their will represented and reflected in legislation. According to the genius and spirit of our institutions the people have the right to demand that their representatives meet speedily and translate their mandate into legislation.

If the Members of the House do submit to a session of lameduck lawmakers this November, they will be helping to further the apparent erosion of public confidence in our democratic institutions.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would like to announce that this is the day for the consideration of bills under suspension of the rules. Pursuant to the provisions of clause 3(b), rule XXVII, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV. Such rollcall votes, if postponed, will be taken on tomorrow, Tuesday, September 9.

CRIMINAL PROCEDURE AND EVIDENCE RULES AMENDMENTS

Mr. DRINAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7817) to amend or disapprove certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence proposed by the Supreme Court, and to amend chapter 231 of title 18, United States Code (relating to probation), as amended.

The Clerk read as follows:

"(B) any offer to plead guilty or nolo contendere; or

"(C) any statement made in connection with and relevant to—

"(i) any of the foregoing pleas or offers; or

"(ii) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(B) Rules 17(h), 26.2, and 32.1 of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall not take effect.

(C) Rule 44(c) of the Federal Rules of Criminal Procedure as added by the amendments so proposed and transmitted shall take effect as proposed and transmitted, except that the sentence beginning "Unless it appears" shall not take effect.

(D) Rule 410 of the Federal Rules of Evidence as amended by the amendments so proposed and transmitted shall take effect as amended to read as follows:

"Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

"Except as otherwise provided in this rule, evidence of—

"(1) any plea of guilty, later withdrawn, or plea of nolo contendere;

"(2) any offer to plead guilty or nolo contendere; or

"(3) any statement made in connection with and relevant to—

"(A) any of the foregoing pleas or offers; or

"(B) any discussion which the defendant reasonably believes to be a plea discussion, and which does not result in a plea of guilty or nolo contendere, or results in a plea of guilty, later withdrawn, or a plea of nolo contendere;

is not admissible in any civil or criminal proceeding if offered against the person who made the plea, offer, or statement. However, evidence of a statement made in connection with and relevant to any plea of guilty, later withdrawn, plea of nolo contendere, or offer to plead guilty or nolo contendere is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.".

(b) Rule 32(f) of the Federal Rules of Criminal Procedure is repealed.

SEC. 2. Chapter 231 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3657. Termination of probation

"At any time before the expiration of a period of probation, the court may, on its own motion or on motion of the defendant or the Government, terminate such probation if the court is satisfied that the conduct of the defendant and the interests of justice warrant such termination.

"§ 3658. Modification of probation

"At any time before the expiration of a period of probation, the court may, after opportunity for a hearing at which the defendant is entitled to assistance of counsel, modify the period and conditions of such probation.

"§ 3659. Summons and warrant for violation of probation

"(a) If a defendant is alleged to have violated a condition of probation in a material respect—

"(1) a probation officer may issue a summons for such defendant to appear at a preliminary hearing under section 3660 of this title; or

"(2) the court may issue a warrant to retake the defendant.

"(b)(1) A summons or warrant under this section shall be issued as soon as practicable after discovery of the alleged violation. Imprisonment of the defendant shall not be deemed grounds for delay of such issuance, except that, in the case of a defendant charged with but not convicted of a Federal or State offense, issuance of a summons may be suspended pending disposition of the charge.

"(2) If a defendant is serving a sentence of imprisonment for a Federal or State offense, a summons or warrant under this section may operate with respect to such defendant as a detainer.

"(c) A summons or warrant under this section shall be accompanied by a written statement setting forth—

"(1) the conditions alleged to have been violated;

"(2) the time, place, and purpose of the preliminary hearing;

"(3) the defendant's rights under section 3660(c) of this title; and

"(4) the action which the court is authorized to take under section 3661 of this title.

"§ 3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.

"(a)(1) If a defendant is alleged to have violated a condition of probation, the court with jurisdiction over the defendant or, upon order of such court, a court reasonably near the place of the alleged violation shall conduct a preliminary hearing without unnecessary delay to find if there is probable cause to believe that such a violation has occurred. Upon a finding of probable cause, the court may—

"(A) order a revocation hearing under subsection (b) of this section and order that the defendant be incarcerated pending such hearing;

"(B) order a revocation hearing under subsection (b) of this section and temporarily restore the defendant to probation pending such hearing—

"(i) if incarceration of the defendant is not warranted by the frequency or seriousness of the alleged violations;

"(ii) if the defendant is likely to appear for future proceedings; and

"(iii) if the defendant is not a danger to any person; or

"(C) order that the proceedings relating to the alleged violation be terminated without a revocation hearing if such action is in the interest of justice.

"(2) Conviction of a Federal or State offense committed after the defendant is placed on probation constitutes probable cause under this section.

"(b) Not later than sixty days after the date on which an order is entered under subsection (a)(1) (A) or (B) of this section, the court shall hold a revocation hearing. Such hearing may be held at the same time and place as the preliminary hearing.

"(c) At a preliminary hearing and a revocation hearing, the defendant shall have the opportunity—

"(1) to be represented by counsel;

"(2) to be apprised of the adverse evidence and to confront and cross-examine adverse witnesses; and

"(3) to appear and testify and to present witnesses and relevant evidence.

"(d) The defendant may waive the right to a preliminary hearing and to a revocation hearing.

"§ 3661. Action concerning violation of probation

"(a) If the court, after a revocation hearing, determines by a preponderance of the evidence that the defendant has violated a condition of probation, the court may—

"(1) continue probation unchanged;

"(2) reprimand the defendant;

"(3) modify the conditions of probation; or

"(4) revoke probation and impose any sentence that the court was authorized to impose at the time of initial sentencing.

"(b) In carrying out subsection (a) of this section, the court shall consider—

"(1) if the defendant has been convicted of a Federal or State offense, the seriousness of such offense; and

"(2) the frequency and seriousness of other violations of the conditions of probation.

"(c) If the court—

"(1) revokes probation and imposes a new sentence involving payment of a fine; or

"(2) modifies probation by increasing any monetary obligation of the defendant;

any money paid by the defendant pursuant to a condition of probation shall be credited toward any monetary obligation imposed upon the defendant as a part of the new sentence or as a result of the modification of probation.

"(d) If the court revokes probation and imposes a sentence of imprisonment—

"(1) any time served in confinement during probation shall be counted toward that term of imprisonment; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward that term of imprisonment.

"(e) If the court modifies probation by extending the period of such probation or by increasing the period of confinement provided in connection with such probation—

"(1) any time served in confinement in connection with the probation shall be counted toward the modified period of confinement; and

"(2) any time served on probation without a violation of the conditions of probation may be counted toward the modified period of probation.

"(f) A determination under this section shall be made on the record not later than twenty-one days after the date on which the revocation hearing is concluded and shall include a statement of the reasons for such determination.

"(g) The power of the court to revoke probation for violation of a condition, and to impose another sentence, extends beyond the expiration of the period of probation for any period reasonably necessary for the adjudication of matters arising before the expiration of such probation if, before such expiration, a summons or warrant is issued under section 3659 of this title on the basis of an allegation of the violation.

"§ 3662. Arrest of probationer by probation officer

"If, at any time during the probation period, a defendant violates a condition of probation, and such violation—

"(1) occurs in the presence of a probation officer; and

"(2) constitutes a Federal or State offense;

such probation officer may arrest such defendant.

"§ 3663. Searches by probation officers

"Upon the request of a probation officer, a court shall issue a warrant for such an officer to search for or seize property that is evidence that a defendant on probation—

"(1) has violated a condition of probation; or

"(2) has committed a Federal or State offense;

if the probation officer seeking the warrant establishes reasonable and articulate grounds to believe that such defendant has violated such a condition or has committed such an offense.".

SEC. 3. (a) Section 3651 of title 18, United States Code, is amended by striking out the undesignated paragraph beginning "The court may revoke".

(b) Section 3653 of title 18, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu therof the following new section heading:

"§ 3653. Report of probation officer and transfer of jurisdiction";

(2) by striking out the undesignated paragraph beginning "At any time"; and

(3) by striking out the undesignated paragraph beginning "As speedily as".

SEC. 4. The table of sections of chapter 231 of title 18, United States Code, is amended—

(1) by striking out the item relating to section 3653 and inserting in lieu thereof the following:

"3653. Report of probation officer and transfer of jurisdiction.";

and

(2) by adding at the end thereof the following new items:

"3657. Termination of probation.
"3658. Modification of probation.
"3659. Summons and warrant for violation of probation.
"3660. Preliminary hearing and revocation hearing with respect to alleged violation of probation.
"3661. Action concerning violation of probation.
"3662. Arrest of probationer by probation officer.
"3663. Searches by probation officers.".

SEC. 5. This Act and the amendments made by this Act shall take effect on December 1, 1980.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. DRINAN) will be recognized for 20 minutes and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in April 1979, several proposed amendments to the Federal rules of criminal procedure and the evidence were promulgated, pursuant to the Rules Enabling Act. They were to have taken effect on August 1, 1979. However, there were significant objections to some of those proposed amendments, so Congress delayed their effective date until December 1, 1980, in order to permit Congress the sort of thorough review that is contemplated by the Rules Enabling Acts. These amendments will now take effect on December 1 unless Congress takes action to modify them.

The Subcommittee on Criminal Justice held 2 days of hearings, and received testimony and statements from a wide variety of groups, including the Judicial Conference, the Department of Justice, the American Bar Association, private practitioners, law professors, the ACLU, the Federal Public and Community Defenders, and the National Legal Aid and Defender Association. Based upon the testimony and statements received, the subcommittee made certain changes in the proposed amendments. These changes are embodied in H.R. 7817, which was reported by a voice vote by the Judiciary Committee on August 27.

There are four matters covered in H.R. 7817. First is probation revocation procedures; second, joint representation of defendants; third, discovery of witness statements; and fourth, plea discussions.

First, probation revocation procedures. A new rule, 32.1, was proposed that changed the law to take account of recent constitutional pronouncements by the U.S. Supreme Court. The matter of probation revocation was addressed in detail by the Subcommittee on Criminal Justice and the full Committee on the Judiciary during their work on H.R. 6915, the criminal code legislation recently approved by the committee. The provisions in the criminal code bill were carefully considered by the subcommittee and committee.

They parallel the parole provisions recently enacted in the Parole Commission and Reorganization Act of 1976. H.R. 7817 replaces the proposed new rule with these provisions. Because probation revocation is a substantive, not a procedural, matter, H.R. 7817 places these provisions in title 18 of the United States Code, rather than in the Federal Rules of Criminal Procedure.

Second, joint representation of criminal defendants: Proposed new rule 44 (c). That proposal requires a trial court fully to advise defendants who are represented by the same lawyer that they have a constiutional right to the effective assistance of counsel, including separate counsel. It also permits the court to compel a defendant to obtain separate counsel, even if the defendant objects. The subcommittee approved the part of the proposed rule requiring advice of rights, but it disapproved that part of the rule permitting defendants to be compelled to obtain separate counsel. The constitutionality of this procedure is questionable, and the subcommittee decided that the better course of action is not to enact any rule on the subject until the courts have more fully addressed the issue.

Third, discovery of witness statements: Proposed new rule 26.2. The proposed new rule provides for production of defense witness statements. There is a great deal of opposition to this rule. The American Bar Association, for example, opposes the proposed rule as unconstitutional.

In light of this opposition, the Judicial Conference has advised that it does not oppose rejection of the proposed rule. The Judicial Conference is satisfied that the case of United States against Nobles, which provides for Government discovery of defense witness statements under certain circumstances, is still the law.

H.R. 7817 rejects proposed new rule 26.2. This will in no way affect the status of the Nobles case.

Fourth, plea discussions.

The present rule was enacted by Congress in 1975. The purpose of the rule is to promote disposition of cases without need for a full trial. This is accomplished by providing that statements made during plea negotiations are not admissible at a trial. Thus, the present rule in criminal cases is parallel to the rule in civil cases (Federal Rule of Evidence 408), which protects settlement negotiations in a like manner.

The proposed amendments would change the current rule by making statements made during plea negotiations inadmissible only if the statements were made to an attorney for the Government. This would be inconsistent with the legislative history of the rules and was vigorously opposed by a wide variety of groups, including the American Bar Association. If a defendant believes that plea discussions are taking place, even though the discussions are with a Government official other than an attorney, they should be inadmissible. However, a rule drafted too broadly is open to abuse. Therefore, H.R. 7817 disapproves the proposed amendments but amends the present rule to provide that only those statements that the defendant reasonably believes to be plea discussions are inadmissible.

H.R. 7817 is the result of careful consideration and balancing of a wide spectrum of interests. I urge my colleagues to support it.

☐ 1220

Mr. Speaker, I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I too rise in support of H.R. 7817. The bill deals with six amendments proposed by the Supreme Court to the Federal Rules of Criminal Procedure, as has been stated, and the Rules of Evidence which the Congress found so controversial last year that it delayed their effective date until December 1, 1980.

When the Congress so acted last year, it was responding to concerns expressed by a broad range of the practicing bar, including the American Bar Association, that these amendments should receive legislative attention from elected officials. The Congress felt that while the Enabling Acts permitting judicial promulgation of procedural amendments may serve a salutary purpose, they were never intended to prevent the Congress from looking at the substance of the promulgations.

Those who believe in the propriety of legislative veto or congressional veto, which is so popular in this House, over executive regulations, would seem logically to be found to support a similar effort of congressional oversight when the judicial branch is involved.

We have some indications that some Members of the House object to the procedure whereby the House has accepted this attempt to delay the implementation of these rules; and further to, on this occasion, attempt to change some of them and disapprove others. There is an additional view in the report of the committee to that effect. Some of the signers of those additional views I believe to be supporters of congressional veto. I have difficulty—great difficulty—in reconciling those two positions.

H.R. 7817 disapproves of two proposed amendments to the rules and provides alternative language for the other four. It was drafted fully a year after the amendments proposed by the Court had been delayed by the Congress, thus permitting time for the controversial dust raised by the original promulgation to settle, and allowing issues and problems to be carefully delineated. The gentleman from Massachusetts, Father DRINAN, has outlined the changes that would be made in the four instances.

I would particularly direct the attention of the Members to the disapproval of rule 26.2, which is rejected outright in this bill. The rule is rejected because it adds little to the substantive process of a trial, while on the other hand raising substantive questions. While U.S. against Nobles and its reciprocal rights of discovery, as are delineated in that case, will continue to be the law, our rejection of 26.2 is I believe a necessity which will permit the Judicial Conference to redraft and again propose a rule change which would be more acceptable.

I would urge that H.R. 7817 indeed be dealt with promptly. We have a time limit facing us. Those who would say that it ought to be brought up under the usual procedure with a rule, may also want to bear in mind that it would be difficult for this matter to be brought before the House before the adjournment on October 4. After the election, if there is indeed a lame duck session, we would be facing a December 1, 1980, time limit, at which time these rules would otherwise go into effect without any legislative input with respect to their content.

So. Mr. Speaker, I would urge an affirmative vote on H.R. 7817, and reserve the balance of my time.

Mr. KAZEN. Mr. Speaker, would the distinguished gentleman from Massachusetts yield to me for a question?

Mr. DRINAN. I would be happy to yield to my friend from Texas.

Mr. KAZEN. Mr. Speaker, I have heard from one of my Federal district judges that somewhere in the Congress there is a bill or provisions in bills to the effect that parties to a lawsuit can exercise a peremptory challenge to the presiding judge; in other words, that even if a judge is in no way disqualified, the parties can ask that he be removed for no cause whatsoever.

Is there anything like that in this bill?

Mr. DRINAN. There is nothing like that in this bill, I can assure the gentleman. That is the subject of a separate bill on which my subcommittee held hearings, and I can assure the gentleman from Texas and his friend the judge that that is not going to move, at least in this session of the Congress.

The American Bar Association is very favorably disposed to that legislation, and it indicates that in areas of judicial districts with more than four judges, an individual would be able to exercise one peremptory challenge against a particular Federal judge. I thank the gentleman for his inquiry, but there is nothing even approaching that in this bill whatsoever.

Mr. KAZEN. Let me further ask the gentleman this: Does he foresee the possibility of that bill coming to the floor this year?

Mr. DRINAN. There is no possibility.

Mr. KAZEN. I thank the gentleman for his answer.

Mr. DRINAN. Mr. Speaker, I am happy to yield such time as he may consume to the distinguished gentleman from North Carolina (Mr. GUDGER).

Mr. GUDGER. Mr. Speaker, I thank the gentleman from Massachusetts for yielding.

Mr. Speaker, the Rules Enabling Acts contemplate a thorough review of any proposed amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence. The Subcommittee on Criminal Justice, of which I am a member, and the Judiciary Committee, fulfilled its responsibilities under these acts by considering the proposed amendments before us today and by making changes in them where they were necessary.

The Subcommittee on Criminal Justice heard from a wide variety of witnesses, representing all sides of the criminal justice system. H.R. 7817 was the result. It is a balanced bill, approving some of the proposed amendments, disapproving some of them, and amending some of them. H.R. 7817 is supported by a wide spectrum of practitioners, law professors and groups such as the American Bar Association.

The first proposed rule, rule 44(c), wisely requires a trial court to advise defendents who are represented by the same lawyer of their rights of effective assistance of counsel, including separate counsel. But the rule would also have permitted the court to require the defendants to obtain separate counsel even if they object, and want to continue to be represented by the same lawyer. Several witnesses objected that this rule may be unconstitutional. This is an issue that has not been fully addressed by the courts. H.R. 7817 disapproves of giving the courts this authority until they more definitively resolve the issue.

Second, proposed rule 11(e)(6) protects the statements of parties who are engaged in plea negotiations from disclosure at trial. Plea bargaining is a fact of life in the criminal justice system; its main purpose is to resolve cases without trial. The proposed amendment would have limited the protection of the rule to only those plea negotiations between the defendant and a Government attorney. It would have made plea discussions with law enforcement agents admissible in all circumstances, unless they are coerced or involuntary. A variety of groups, including the American Bar Association, testified that law enforcement officers do engage in plea negotiations, and that the proposed amendment would be unfair to defendants who in good faith reasonably believe that they are negotiating with law enforcement officers.

But H.R. 7817 protects against possible abuse by a defendant who in bad faith, or unreasonably claims that an agent was plea bargaining. The defendant's belief must be reasonable for such discussions to be protected. In addition, since the defendant is a voluntary participant in the plea discussions these statements by their very nature are not coerced or involuntary. The effect of the proposal would be to leave a defendant's plea bargaining totally unprotected a large amount of the time. This would of course lead to an increase in trials as defendants stop trying to negotiate pleas.

H.R. 7817 also disapproves proposed rule 26.2, which would have required production of defense witness statements to the Government under a wide variety of circumstances. According to the Judicial Conference, the proponent of the rule, it is supposed to effectuate the Supreme Court case of United States against Nobles. But the Nobles case is much narrower than the proposed rule. Because it is much narrower, it does not present the constitutional problems that rule 26.2 does. Several witnesses, including the American Bar Association, criticized the rule as unconstitutional on fifth and sixth amendment grounds.

They also testified that the rule would violate the attorney's work product privilege. These issues have not been considered by the Supreme Court and there has been little lower court interpretation of the Nobles case. Congress should not promulgate a rule that is probably unconstitutional on a variety of grounds. It should at the very least allow the courts to interpret the Nobles case more fully. The Judicial Conference has said that it is satisfied that Nobles remains the law and that it does not need rule 26.2.

H.R. 7817 also substitutes for proposed rule 32.1 the provisions of H.R. 6915, the proposed Federal criminal code, on probation revocations. These provisions were carefully drafted by the subcommittee and the committee, and more fully and clearly set forth the rights and obligations of probationers and the courts during probation revocation hearings.

As noted earlier, the subcommittee heard from representatives of all viewpoints of the criminal justice system. It carefully considered the proposed amendments and the opposition to them. H.R. 7817 is a balanced bill, that takes into account a wide variety of interests and I urge my colleagues to support it.

□ 1030

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the very able and amiable gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Speaker, let me say to my colleagues that I sparingly take the well of the House, as I am sure they are all aware, and never unless I think that I have something to contribute.

This bill, H.R. 7817, should be resoundingly defeated. This bill comes from my subcommittee and my committee. Let me tell the Members what it does, particularly what rule 11(e)(6) provides. Contrary to what the Supreme Court and the Judicial Conference of the United States proposed, after extensive hearings—probably far more extensive than what we have done legislatively, and participated in by sitting Federal judges and bar associations—we, by vote in the subcommittee, and carried through in committee, have put restrictions on the admissibility of admissions or confessions or statements that might be made in the way of plea bargaining.

With that nobody disagrees. We have the same rule in civil procedure, that settlement discussions, are not admissible. But this language proposed in rule 11(e)(6) by the Supreme Court and by the Judicial Conference provides that to enjoy the privilege of being inadmissible it be made in conversations with an attorney for the Government; namely, someone who is authorized to bind the Government in a plea bargain. This bill would extend this privilege to statements made to a deputy sheriff on the street, the police officer on the street, or whoever, so that they would all be barred. And it says, "If the defendant reasonably believed that he was engaged in plea bargaining."

To any of the Members who have ever had experience in defending criminal cases or in prosecutorial roles—and I have had both—I can tell you that every single admission against interest and every confession made by a criminal will be asserted to be privileged when he has counsel, by claiming that the accused reasonably believed this statement was made in this course of plea bargaining.

The accused is given Miranda instructions right away when he is arrested. We, unfortunately, in the legal profession have the habit of naming our milestones after criminals. The medical profession calls a new advance the Salk vaccine or whatever we call it the Esposito rule or the Miranda rule, naming it after the criminal who was involved instead of calling it the Justice Warren rule or the Justice Douglas rule.

But be that as it may, the accused is told that whatever he says may be used against him in a court of law. He is not required to say anything, he is entitled to have counsel, and if he is unable to provide himself with counsel, the people will provide him with counsel free of cost to himself. The accused is told that when he is arrested.

Now, in most criminal cases guilt is proved by admissions and confessions. If one has a guilt complex and he knows he has done something wrong and somebody comes up and asks a few questions, he says to himself "My gosh, they've got me," and his desire is to be cooperative. His thinking probably goes along plea bargaining lines. He thinks that "If I am cooperative and I tell these guys everything, somehow or other they are going to be nicer to me."

So we are going to get this argument, that whenever they make admissions of fact when confronted with evidence, they can reasonably believe they were plea bargaining with a policeman on the beat, with a deputy sheriff out at the jail, or whoever, someone who has absolutely no authority to bind the Government in a plea bargain. And to my knowledge, I have never heard of a case where enforcement officers claimed authority to plea bargain. That has to be done by an attorney for the Government.

If we open this door, we are opening Pandora's box and we are destroying a well-considered rule by all the Federal judges who sit on these matters in the United States functioning as the Judicial Conference. If we shoot from the hip here in Congress, and if we change something this drastically and this quickly, it will be a serious impediment to our criminal law enforcement. Goodness knows, with the rate of criminal activity we have, we need more prosecutorial help, certainly not more obstacles.

I hope that we have a bigger closed circuit audience than we have here in the Chamber, and I would again say to the Members that I do not take this well to urge positions when I do not know whereof I speak. I say that if we undertake here in the Congress, with scant consideration, to undo what the entire Judicial Conference of the United States and a unanimous Supreme Court decided, namely, to limit the sanctity of discussion to those talks had with attorneys with the United States who have authority to bind the Government, we will deal a serious blow to enforcement of the criminal laws of the United States.

Mr. Speaker, I urge a no vote on this bill.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. LUNGREN), the gentleman of the sunny disposition as well as the sunny State of California.

Mr. LUNGREN. Mr. Speaker, I am, as is the previous speaker, a member of the subcommittee and the committee before which this matter was considered, and I have to say that, contrary to some assertions that have been made on this floor, I do not think we gave this matter very serious consideration, certainly not extensive consideration.

The period of time we gave this legislation in subcommittee was 2 days of hearings, and we heard the testimony of only about a half dozen witnesses, some of whom were talking to us about another matter, that is, the question of peremptory challenge which we decided we would not place in this bill.

□ 1240

So we did not get a great deal of input with respect to the substance of the bill before us.

If the Members of the House would look at the report that came out of our committee, they will see that there are three dissenting opinions. Interestingly enough, a number of those opinions are signed on by a number of different Members, sometimes in more than one case. The reason why you have three dissenting opinions is that there are so many parts to this one small bill. There are so many different rules we are talking about. And it seems to me that it certainly is not the better part of judgment to bring before this body a bill which contains a number of different aspects to be dealt with on the Suspension Calendar where we cannot even utilize the amendment process for dealing with the differences.

If I could address myself to one of those proposed rules that we have rejected, that is, the court's proposed rule 26.2, essentially all this rule does is to provide a uniform procedure for effectuating a policy which the Supreme Court unanimously established some time ago in the Nobles case. It is nothing that novel. But it is an attempt to try to establish a uniform procedure so that it is carried out around the country and is utilized in the same way throughout all of the courts.

I would suggest to my fellow Members that this is the wrong way to go about dealing with this type of legislation. Those of us who believe in the legislative veto and yet disagree with this, I think disagree in part because of the way in which it is presented here. It is here before us on the suspension calendar. We cannot give the careful consideration that is absolutely necessary.

Let us look at another particular rule that we are asked to change from what was brought to us by the court. This is the rule that goes to the question of plea bargaining. I had an amendment which was adopted in the process which puts in the word "reasonably," that is, that the particular individual involved must reasonably believe that the Government person to whom he is talking to be involved in plea negotiations. I put that in because the rule that we had was far more expansive, I thought, than what was brought to us by the court. But I am not necessarily satisfied with what we did even with my particular amendment. I think all that does is point up the problems that we have with this bill as it is brought before us and the inability we have on the Suspension Calendar to even consider amendments.

Mr. Speaker, I would ask for a no vote on this particular bill.

Mr. DRINAN. Mr. Speaker, I yield myself 3 minutes so that I may engage in a colloquy with the gentleman from California.

Mr. Speaker, the gentleman would concede that all support for proposed rule 26.2 evaporated during our hearings. And even the Judicial Conference, which had originally proposed 26.2 as a codification of the Nobles decision now says that they are prepared for its withdrawal.

We are not changing law. They wanted to change law. All of the experts that we had and the members of the subcommittee and the full committee said that the proposed rule goes beyond the Nobles decision. We say let the Nobles decision remain there rather than provoke a lot of litigation in the courts about the precise meaning of 26.2. We are doing what careful lawyers do; namely, postponing the effective date of things until we know there is consensus. We would be stirring up litigation in the courts, throwing the rights of the litigants and defendants into question. I would urge upon the gentleman that 26.2 goes beyond the Nobles decision and that, contrary to Nobles—for example, 26.2—requires the court to preclude a witness from testifying if the defense refuses to produce the witness' statement. On the other hand, Nobles approved preclusion of a witness' testimony if the court, in its discretion, felt it was appropriate.

I would, therefore, suggest that the gentleman has oversimplified the matter. The committee recommends the postponement of 26.2 and a reconsideration by all parties involved.

Mr. LUNGREN. Does the gentleman wish me to respond?

Mr. DRINAN. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I would say to the gentleman that, unfortunately, there is some misunderstanding between our subcommittee and the Department of Justice. In fact, the Department of Justice was not afforded the opportunity to make their presentation before us, and the Department of Justice, I think, has a very serious concern in this matter. The Department of Justice at this point in time still supports the rule as it originally came to us. I think those of us who wish to have the rule as it originally came to us are concerned about the fact that too often particularly those of us who are practitioners of the art of the law recognize that when we get in a courtroom situation we look upon it as just a contest in which we are out there dealing for our side versus the other side representing their particular interests, and the idea about really getting to the essential truth is sometimes lost. And it seems to me the fact that someone on the defense side is allowed to make a presentation, is allowed to testify under oath with respect to matters that that individual has already made statements on, that that information should come forward so that we can find out the truth rather than going around some of the rules that we attorneys construct, in some ways for a very, very good reason but in other ways which act not to try to find out exactly what happened, with all constitutional protections, but yet seem to go around the idea of getting to the truth of the matter.

I understand the sincerity of the gentleman's position, but I suggest that there are just as sincere positions on the other side, and I would suggest that, because we have this controversy, it is not appropriate for us to bring this particular bill before us on the suspension calendar where we cannot make the careful determination between the different rules.

Mr. DRINAN. I thank the gentleman for his comments, and I reserve the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. I should like to wish the Speaker pro tempore a very happy birthday today.

The SPEAKER pro tempore (Mr. PEPPER). The Chair thanks the gentleman.

Mr. HYDE. Mr. Speaker, I have very mixed feelings about this legislation. It comes very swiftly, and it is complex. I do not in any way wish to criticize the Subcommittee on Criminal Justice led by the gentleman from Massachusetts (Mr. DRINAN) and the gentleman from Ohio (Mr. KINDNESS). No committee, no subcommittee, has worked as hard as this subcommittee about the business of their assigned jurisdiction, and I salute them and compliment them. But, nonetheless, I feel uncomfortable about this legislation.

Rule 26.2 has to do with the variation of the Jencks Act. Every lawyer who has ever tried a case and had a witness testifying on the other side has wanted to have access to prior inconsistent statements if they are relevant and germane and concern substantial issues involved. And while the defense can get those under the Jencks Act and the Jencks case, the prosecution now has great difficulty getting access to those prior statements which may or may not be inconsistent.

A trial ought to be a search for truth. We ought not to continually tilt the procedural rules in favor of the defense. At some point, society ought to get some evenhanded treatment.

But, nevertheless, I understand there are problems with this rule. Many times the defense attorney acts as the investigator and, therefore, he would have to testify in a hearing concerning the production of statements which may or may not exist and may or may not be inconsistent with statements made by the witness on the stand.

Then you get into a problem of defense counsel possibly having to withdraw from the case and all of these resulting complications. I do think it is a subject that has to be studied and we need a resolution for it. If defense attorneys can afford a secretary, they ought to be able to afford an investigator and not put themselves into this dual position.

This subject deserves a lot more thorough treatment than it has received.

Mr. KINDNESS. Mr. Speaker, may I inquire of the Chair as to the amount of time remaining on each side?

The SPEAKER pro tempore. The gentleman from Ohio (Mr. KINDNESS) has 5 minutes remaining, and the gentleman from Massachusetts (Mr. DRINAN) has 5 minutes remaining.

Mr. DRINAN. Mr. Speaker, I am happy to yield my 5 minutes to the distinguished gentleman from Ohio (Mr. KINDNESS), but I will take 30 seconds to say, Mr. SPEAKER, that I join the thousands of friends in wishing you a happy 80th birthday.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman from Ohio (Mr. KINDNESS) is recognized for 10 minutes.

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Mr. KINDNESS. Mr. Speaker, I thank the gentleman from Massachusetts for yielding the additional time. I do not believe it will be necessary to employ that much time, but I would like to add my expression of wishes for great joy and happiness on the birthday today of the gentleman from Florida (Mr. PEPPER) who is acting as Speaker today.

Mr. Speaker, there is running through the debate that we have had on this bill today a concentration of concern on one part, and that is rule 26.2. I will grant that the gentleman from Michigan (Mr. SAWYER) has addressed himself largely to rule 11(e), but we must note that everyone seems to be looking at rule 26.2 and saying, in effect, there is dissatisfaction or concern about it.

Those who argue against the bill have said there is a difference of opinion. There is cause for concern about it. It is my concern, in response to that, that we not pass up the opportunity to delay rule 26.2 from going into effect. That is the whole point with respect to rule 26.2.

Some have said, for example, that this action comes very swiftly. It does not. A year ago the Congress delayed for 1 year the effective date on these rule changes that we deal with here today.

It has been said that there were only 2 days of hearings. Let us bear in mind that there has been 1 whole year for people to submit their concerns and their views and their differences with respect to these rules. There has been very ample opportunity afforded for every point of view to be expressed.

With respect to the Department of

Justice, it has been said that there was an unfortunate mixup as a result of which the Department did not testify on this occasion. Well, the position of the Department of Justice has not changed, apparently. Obviously it would not change, because the Department of Justice would like to have every prosecutorial tool available to it that they could have.

Now, regardless of the position of the Department of Justice, we are concerned primarily with the promulgation, the formulation of a rule 26.2 in the future that will protect the rights of individuals under the Constitution. Their right to effective counsel can be drastically affected by rule 26.2 as it is presently structured. I do not think it is worth letting a rule go into effect on December 1, 1980, just because we think it might be all right. As the gentleman from Massachusetts, Father DRINAN has said, let us be careful, and if you will, conservative, if I may use that expression, about the promulgation or the finalization of such a rule. Let us not do it, in other words. Let us pass H.R. 7817 resoundingly.

I would urge there be very firm support for H.R. 7817 so that we may have an orderly process of these rules being changed, delayed, or in the case of rule 26.2, a whole reworking is in order and is very much needed.

Mr. Speaker, I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I thank the gentleman for yielding. I commend him for his comments and concur completely.

In a matter like this, I think that we are all as lawyers very conservative, because the rights of the accused and the defendants are involved.

I commend the gentleman for understanding the complexity of these issues and explaining them so adequately.

Mr. Speaker, just a few points about what has been said.

With regard to proposed rule 11(e)(6), that rule is an attempt to change existing law. No showing was made to the subcommittee of abuses in the present rule. We are not dealing in this rule with deputy sheriffs and officers on the beat; we are dealing with highly trained Federal law enforcement officers. It is not uncommon for them to attempt, in the interest of judicial economy, to talk to defendants about disposition of the case. Usually such negotiation comes to fruition and a plea agreement is entered into. In those instances where it does not, should the discussions, when entered into in good faith and reasonably, be admissible in evidence? The current rule says "no." The civil rules say "no." There has been no showing that there are abuses under the current rule. In the absence of such a showing, no change is called for.

With regard to proposed rule 26.2, it is clear that the proposal goes beyond what was intended by the Judicial Conference and raises serious constitutional questions. The intent was to codify the decision in the Nobles case. The proposed rule goes far beyond that. Should the proposed rule be rejected, the present law, set forth in Nobles, will remain in effect. The best course of action, therefore, would be to follow what my distinguished colleague Representative KINDNESS, has suggested—let the Judicial Conference try again. Rather than let a badly drafted proposal take effect, we should disapprove it and let the Judicial Conference redraft it.

Mr. Speaker, I have no additional requests for time. I yield back the balance of my time.

Mr. KINDNESS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. DRINAN) that the House suspend the rules and pass the bill, H.R. 7817, as amended.

The question was taken.

Mr. SAWYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. DRINAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7817, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PROVIDING FOR ORDERLY DISPOSAL OF CERTAIN FEDERAL LANDS IN NEVADA AND FOR ACQUISITION OF CERTAIN OTHER LANDS IN THE LAKE TAHOE BASIN

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7306), as amended.

The Clerk read as follows:

H.R. 7306

SECTION 1. (a) The Congress finds that—

(1) the Bureau of Land Management has extensive land ownership in small parcels interspersed with or adjacent to private lands in urban areas of Clark County, Nevada;

(2) for orderly development of the communities in that county certain of those lands should be sold by the Federal Government;

(3) the Lake Tahoe Basin is a closed basin two-thirds of which is located within the State of California and one-third within the State of Nevada;

(4) the environmental quality of the Lake Tahoe Basin is seriously jeopardized by overdevelopment of sensitive land areas;

(5) a majority of the acreage developed within the Lake Tahoe Basin and the potential for further development of sensitive land areas is within California;

(6) further tourist oriented development within the basin encourages significant permanent development of other kinds as well as tourist visitation; and

(7) the unique character of the Lake Tahoe Basin is of national significance deserving of further protection and management.

(b) The purpose of this Act is to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin.

SEC. 2. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized and directed to dispose of lands under the jurisdiction of the Bureau of Land Management in Clark County, Nevada, as shown on the map numbered 7306A, dated May, 1980, and entitled "Las Vegas Valley, Nevada, Land Sales Map", which map shall be on file and available for public inspection in the offices of the Bureau of Land Management. Such dispoasl shall be in accordance with regulations developed jointly by the Secretary and the affected local governmental jurisdictions and shall be consistent with the provisions of the Federal Land Policy and Management Act and other applicable law except to the extent necessary to expeditiously carry out the provisions of this Act.

(b) No more than seven hundred acres per calendar year may be offered for sale by the Bureau of Land Management in Clark County.

(c) Notwithstanding section 1(b), the Secretary and the affected local governmental jurisdictions shall jointly select lands to be offered for sale under this Act. The Secretary may not offer any land for sale if in his judgment such land has not been appropriately classified in accordance with adjacent land use by the local governmental jurisdiction. In the event agreement cannot be reached on joint selection, no lands shall be offered for sale.

(d)(1) Except as otherwise provided in this subsection, the revenues from the sale of public lands under this subsection within Clark County, Nevada, shall, notwithstanding any other provision of law, be deposited annually, in the general fund of the Treasury of the United States.

(2) Five per centum of the annual revenues referred to in paragraph (1) shall be returned to the State of Nevada annually for use in the general education program of the State.

(3) Twenty per centum of the net annual revenues referred to in paragraph (1) shall be returned annually directly to the county or municipality within the boundaries of which such land sale occurred to be used for the purpose of acquisition and development of recreational lands and facilities. The total annual revenue returned under this paragraph to each such county or municipality shall be an amount proportional to the amount of revenues generated under this section from sales under this section of Federal land located within each such county or municipality. The preceding provisions of this paragraph shall cease to apply on October 1, 1982, unless, on or before such date, the States of Nevada and California have submitted to Congress for ratification amendments to the Tahoe Regional Planning Compact which amendments have been approved by both States.

(e) The revenues deposited in the general fund of the Treasury of the United States under subsection (d) are deemed to be in the nature of repayment for those authorizations set forth in section 3 of this Act. The Secretary, in cooperation with the Secretary of Agriculture, shall submit an accounting report biannually of income and expenditure provided for by this Act to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(f) The Secretary shall, subject to the provisions of subsection (c), make the first land sale offering of Clark County, Nevada, land no later than one year after the date of enactment of this Act.

(g)(1) The Secretary of Agriculture is authorized and directed to make annual payments to the governing bodies of each of the political subdivisions any portion of which is located in the area depicted on the final map filed pursuant to section 3(a). Such payments may be used only for water pollution control, soil erosion mitigation, or acquisition by local government authorities of lands and interests in lands within the Lake Tahoe Basin, or for any combination of the foregoing purposes.

(2) The total amounts appropriated for payments pursuant to this subsection shall be allocated proportionately among such political subdivisions in any fiscal year on the basis of the relative amounts of acreage acquired under this Act in each such political subdivision.

(3) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated for making payments under this subsection a sum equal to 15 per centum of the amount appropriated under such section 3.

(h) In addition to the amounts authorized to be appropriated to carry out the provisions of section 3 of this Act, there is authorized to be appropriated a sum equal to 5 per centum of the amount appropriated under such section 3 to be used by the Secretary of Agriculture only for purposes of preventing, controlling, or mitigating water pollution associated with national forest system lands in the Lake Tahoe Basin and for managing acquired lands within the Lake Tahoe Basin. Such sum shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(i) The provisions of section 3 of the Act of October 20, 1976 (31 U.S.C. 1601), and the provisions of subsections (a) through (c) of section 106 of the Act of March 27, 1978 (16 U.S.C. 790), shall apply to lands acquired by the Secretary of Agriculture under this Act in the same manner and to the same extent as such provisions apply to lands owned by the United States and referred to in such section 106. For purposes of applying such provisions, any reference in such provisions to the lands referred to in such section 106 or to the National Park System shall be treated as including reference to the lands acquired by the Secretary of Agriculture under this Act.

SEC. 3. (a)(1) The Secretary of Agriculture is authorized to acquire by donation, purchase with donated or appropriated funds, or otherwise, lands and interests in lands which were unimproved as of September 8, 1980 (except as provided in subsection (c)), and which are environmentally sensitive land within the meaning of paragraph (2). The funds used for acquisition of such lands and interests in lands shall be the funds authorized to be appropriated pursuant to this Act, and no such funds may be expended until the final map has been filed in accordance with paragraph (2)(B). Such funds shall be in addition to any other amounts available to the Secretary of Agriculture for expenditure in the Lake Tahoe Basin.

(2)(A) The Secretary of Agriculture, in consultation with the governments of Nevada and California and with local governments, including the appropriate planning and regulatory agencies, after notice and opportunity for public hearing, shall prepare a map of the lands to be acquired pursuant to this subsection.

(B) The Secretary of Agriculture shall, on or before December 31, 1980, and after notice and opportunity for public hearing, file with the United States Senate Committee on Energy and Natural Resources and the United States House of Representatives Committee on Inerior and Insular Affairs a map which in the Secretary of Agriculture's judgment best achieves the objectives set forth in this Act and includes the environmentally sensitive land defined in subparagraph (D) of this paragraph.

(C) the estimated acreage of the area depicted on the map filed pursuant to subparagraph (B) which is subject to acquisition under this subsection shall not exceed the acreage of the area depicted as environmentally sensitive land on the map entitled "H.R. 7306", numbered 1, and dated May 1980.

(D) For purposes of this paragraph, the term "environmentally sensitive land" means lands with respect to which human occupancy and use is resulting in, or if developed could result in, unacceptable environmental disturbance to water quality, soil, vegetation, wildlife, or visual or cultural resources. Such term includes—

(i) stream environment zones which are—

(I) areas generally located within the 100-year-flood plain;

(II) areas containing soils which are associated with high run off or high water tables;

(III) areas of riparian vegetation types, or

(IV) minimum protective buffer areas for the areas referred to in subclauses (I) through (III);

(ii) high hazard lands which are characterized by steep slopes and a fragile environmental balance or with a high erosion potential;

(iii) unimproved lands previously modified by man which are causing unacceptably high rates of sedimentation;

(iv) lands in the foreground view which are visually important to maintaining the natural character of the Lake Tahoe Basin; and

(v) shore zone areas which are sensitive to cliff erosion, beach erosion, and near-shore instability.

(E) The map filed pursuant to subparagraph (B) shall be prepared at such scale as to clearly identify the affected land tracts by ownership and shall designate such tracts for acquisition or non-acquisition.

(3) Before initiating acquisition proceedings for any lands under this subsection, the Secretary shall consult annually with State and local government agencies as to the necessity for such acquisition, the potential impacts on State and local government, and other appropriate aspects of the acquisition.

(4) Lands within the boundaries of the area subject to acquisition under this section which are owned by any State or local government may be acquired only by donation.

(b) Lands acquired under this section shall be administered as a part of the United States National Forest System; except that the Secretary of Agriculture, acting through the Chief of the Forest Service, may, in the case of lands (1) which are not contiguous to other lands within the National Forest System or (2) which are unsuitable for forest service administration, transfer such lands or interests therein to an appropriate unit of State or local government with appropriate deed restrictions to protect the evnvironmental quality and public recreational use of the lands concerned.

(c)(1) Except as provided in paragraph (2), with respect to that portion of the Lake Tahoe Basin, as defined as of the date of the enactment of this Act by the Secretary of Agriculture, which lies within the boundary deed restrictions to protect the environment of the State of California, as in effect on the date of the establishment of the Tahoe National Forest (October 3, 1905), the Secretary of Agriculture may require improved lands or interests in improved lands with the consent of the owner thereof or upon a finding by the Secretary of Agriculture that such lands are being used, or that an imminent threat exists that they will be used, in a manner detrimental to the preservation of the existing air, water, or visual qualities of the basin.

(2) No single family dwelling which is improved land (as defined in this subsection) may be acquired under the provisions of this subsection without the consent of the owner thereof unless the Secretary of Agriculture finds that (A) a change in the use of such dwelling has occurred subsequent to the date of enactment of this Act or that such a change in the use is threatened, and (B) in the case of a single family dwelling having a change or threatened change in use but maintained as a single family dwelling, such change or threatened change will result in a detriment to the preservation of the existing air, water, or visual qualities of the Basin.

(3) At such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of the air, water and visual qualities of the Basin, the Secretary of Agriculture shall make the findings provided for in section 3(c)(1) and 3(c)(2) herein in a manner consistent with such requirements.

(4) For purposes of this Act, the term—

(A) "improved land" means any land on which there is located a single family dwelling or other residential or commercial building, the construction of which commenced before September 8, 1980, together with so much of the land on which such building is located as is reasonably necessary to the use and enjoyment of such building; and

(B) "unimproved land" means any land other than improved land.

(5)(A) The owner or owners of any improved land acquired by the Secretary of Agriculture under this Act may retain a right of use and occupancy of such land for—

(i) a definite term of not more than twenty-five years from the date of the enactment of this Act, or,

(ii) a term ending at the death of the owner or owners of such land.

The owner shall elect the term to be reserved, except that if the owner is a corporation, the term shall not exceed twenty-five years from the date of the enactment of this Act. Unless the improved land is wholly or partially donated, the Secretary of Agriculture shall pay to the owner the fair market value of the improved land on the date of its acquisition, less the fair market value on that date of the right retained by the owner. For purposes of applying the preceding provisions of this subparagraph, ownership shall be determined as of the date of acquisition, except that in applying clause (ii) ownership shall be determined as of May 1, 1980.

(B) A right retained by the owner pursuant to this paragraph shall be subject to termination by the Secretary of Agriculture upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon notification by the Secretary of Agriculture to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(d) Lands and interests therein may be

acquired by the Secretary of Agriculture in accordance with this section without the consent of the owner thereof only where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed.

(e) The fair market value of the land or interest in land to be acquired by the Secretary of Agriculture under this section shall be determined by an independent appraisal made, where practicable, on the basis of comparable sales at the time of such acquisition. For purposes of the appraisal of any property to be acquired under this section, in determining the comparability of other property sales, the independent appraisal shall take into account the utilities, services, and facilities associated with the property concerned. Any change after the date of the enactment of this Act in the value of any property to be acquired under this section shall not be taken into account for purposes of determining the fair market value of such property to the extent that such change is attributable to the enactment of this Act.

(f) In acquiring any property under this section, the Secretary of Agriculture and the owner of the property to be acquired may agree that the purchase price will be paid in periodic installments over a period that does not exceed ten years, with interest on the unpaid principal balance thereof at a rate which is not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining period of maturity comparable to average maturities on the installments.

(g) There is hereby authorized to be appropriated, for the purposes of this Act, from the Land and Water Conservation Fund, $10-000,000 for the fiscal year 1981, and $20,000,-000 for the fiscal year 1982. In addition there is hereby authorized to be appropriated for these and subsequent fiscal years an amount equal to the amount of revenue obtained by the Federal Government from the sale of federally owned lands in Clark County, Nevada, after October 1, 1978, reduced for any fiscal year by the amount appropriated, pursuant to this sentence, in the prior fiscal years. Amounts authorized to be appropriated under this subsection shall remain available until expended. Authorizations of moneys to be appropriated under this Act shall be effective October 1, 1980. Authority to enter into contracts and agreements and to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. SEBELIUS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. PHILLIP BURTON) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. SEBELIUS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7306 reflects an intense effort over a period of the last 24 months. This effort was designed to couple two rather significant problems. The first problem, from my point of view, was to provide some mechanism for protecting Lake Tahoe from further degradation. Lake Tahoe straddles the California-Nevada border.

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It is the largest alpine lake in the Western Hemisphere. By definition, its ecosystem is very fragile. Because of its extraordinary beauty there has been what I perceive to be uncontrollable pressures for overdevelopment, and we felt that some protective mechanism was needed, hence this bill. This bill provides a significant element in that regard.

The second significant problem that confronted us, a problem I think that becomes all the more clear if you visit Clark County in Nevada. The Federal Government and the Bureau of Land Management own millions of acres in the State of Nevada, and own significant acreage in Las Vegas (Clark County), and even own property in downtown Las Vegas. Property that the committee decided, particularly at the insistence of our distinguished colleague from Nevada (Mr. SANTINI), should be put to productive use rather than remaining vacant. It is property that I would submit under the current and conventional values should be returned to the private tax rolls.

The gentleman from Nevada (Mr. SANTINI) brought this urgent problem to my attention 2 years ago or more, and the bill we have today reflects the rather intense discussions and negotiations that have followed that earlier plea. Our distinguished colleague from California, (Mr. FAZIO), introduced a bill that would have made the entire Lake Tahoe Basin, in effect, a national recreation area. This proposal, I would submit, was a reasonable one and one that, if I had my druthers, I would have preferred.

But the art and the challenge of the legislative process is to find some common ground, if there be any—and normally there is—to reconcile what appear to be irreconcilable differences.

So it is with a great deal of pride that I joined as a coauthor with the coarchitect and seminal source of this proposal, the lead author of the legislation, our distinguished colleague from Nevada (Mr. SANTINI).

For those of my colleagues who have not had the occasion to work with the gentleman from Nevada (Mr. SANTINI) firsthand, let me forewarn you, even if your objectives are compatible but your approach is different, you will be exposed to an extraordinary intellectual, philosophical, and political experience. JIM SANTINI's tenacity is only exceeded by diligence and intelligence.

This product is a good one, it is a thoughtful one, it is a reasonable one, and it is designed, among other things, to recognize that Lake Tahoe is a "national treasure." This legislation, in my view, is legislation that will go a good way toward solving and resolving the problems confronting this great heritage.

Mr. Speaker, H.R. 7306 provides for the orderly disposal of Federal lands in Clark and Washoe Counties, Nev., and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin, California and Nevada.

I am pleased to offer this legislation which is designed to help solve two significant problems in the States of California and Nevada; the protection of the Lake Tahoe Basin and aid the planned growth of urban areas of Clark County, Nev., through controlled sales of federally owned land. These are difficult isues that have required a great deal of time of myself and our colleague from Nevada, JIM SANTINI.

I am greatly impressed by and wish to commend Mr. SANTINI for his efforts on this bill. His long months of work, inventiveness, attention to detail and determination to develop a good policy serving the needs of the people of Nevada and the Nation is a credit to him and this institution.

The bill, as reported by the Committee on Interior and Insular Affairs subsequent to hearings held in Sacramento, Calif., Reno, Nev., and Washington, D.C., reflects amendments by the committee in consideration of the concerns of the local people while establishing measures to protect the Lake Tahoe Basin. The bill reflects the need for local participation with the U.S. Forest Service in preparing a map of the unimproved environmentally sensitive lands which may be acquired by the Secretary of Agriculture. The local governmental agencies, particularly the Tahoe Regional Planning Agency, are afforded special consideration in providing input and guidance to the Secretary of Agriculture.

Mr. Speaker, the bill specifically does the following:

Section 1 sets forth the findings and purposes of the legislation.

Section 2 establishes a mechanism for the orderly disposal of certain Federal lands managed by the Bureau of Land Management in Clark County, Nev. Subsection (a) directs the Secretary of the Interior, acting through the Bureau of Land Management, to dispose of certain Federal lands in urban areas of Clark County by map reference. Subsection (b) places a limitation on land sales pursuant to this act. No more than 700 acres per year may be sold under the act in all the local government jurisdictions combined in Clark County. Subsection (c) requires that a joint decision by the Secretary of the Interior and the affected local governments be made to determine parcel selection prior to sales. Subsections (d) and (e) are the provisions of the bill which stipulate disposition of revenues generated by land sales pursuant to this act. Subsection (f) directs the Secretary of the Interior to begin the first sale officially in Clark County no later than 1 year after the bill passes. Subsection (g) provides for the Secretary of Agriculture to make payments to local jurisdictions in the Lake Tahoe Basin for the purposes of correcting problems of water pollution, soil erosion, and land acquisition. These payments are to be allocated based on the amount of appropriations available to the Secretary of Agriculture. Subsection (h) provides for additional appropriations to the Secretary of Agriculture for pollution and erosion control on lands administered by the U.S. Forest Service. Subsection (i) provides for the highest level of in-lieu taxes permitted by existing law to be paid to the local jurisdictions in the Lake Tahoe Basin.

Section 3(a) authorizes the Secretary of Agriculture to acquire unimproved property and interests in unimproved property in environmentally sensitive areas in California and Nevada, according to map designation to be prepared by the Secretary of Agriculture in cooperation with the local governmental agencies, and after public hearings. The map is to identify unimproved environmentally sensitive lands as defined and is to be completed by December 31, 1980. Subsection (b) requires that any lands acquired shall be administered as part of the National Forest System. Subsection (c) establishes authority for the Secretary of Agriculture to acquire improved property within the Lake Tahoe Basin in the State of California with the consent of the owner or if use in certain cases or a change in use of such property would be detrimental to the existing air, water, or visual qualities of the basin. Special provisions are included to assure this authority will be used in a manner consistent with, once TRPA adopts final requirements, said requirements.

Improved lands are defined and rights of occupancy if the authority is exercised, are established. Subsection (d) requires the Secretary of Agriculture to expend all reasonable efforts to acquire lands by negotiation. Subsection (e) stipulates the process by which the Secretary of Agriculture shall establish fair market value for the lands to be acquired. Subsection (f) permits the Secretary of Agriculture to pay the seller for lands acquired in installments over a 10-year period. Subsection (g) provides for authorization for appropriations. This authorization limits appropriations to $10 million in fiscal year 1981, $20 million in fiscal year 1982 plus the income from the sales of lands in Nevada as set forth in the bill. The last sentence of subsection (g) is controlling as it relates to any authorization or appropriations provided for in this act.

Mr. Speaker, with regard to section 3(e) of the bill, it is our intent that special care be exercised by the U.S. Forest Service, when establishing fair market value, to determine and to set forth the amount of bonded indebtedness could be considered a lien against the land acquired. Many parcels within the Lake Tahoe Basin have a burden of bonded indebtedness against them for such items as sewers. Such amounts as may be involved should be collected by the agency administering the bonds. The U.S. Forest Service also should notify all of the agencies which administer bonded services and which might be affected by a land purchase, at the earliest possible time as to the proposed schedule of acquisition.

Finally, I wish to compliment James Bruner and all the members of the League To Save Lake Tahoe for their unrelenting efforts to preserve the beauty of this outstanding national treasure.

Mr. Charles Warren, an old and dear personal friend, who formerly was chairman of the Council on Environmental Quality, provided outstanding support in assisting myself and the committee work out the many difficult problems associated with the bill.

Lastly, the long hours put in by Mary Lou Cooper of Jim Santini's staff and committee staff, members, Dale Crane, Judy Lemons, Jowanda Shelton, Gary Ellsworth, and Clay Peters is greatly appreciated.

Editorial support is included below:

[From the San Francisco Examiner, June 6, 1980]

A Boost for Tahoe Preservation

President Carter's announcement last week about Lake Tahoe reflected a forward-looking policy decision that will be welcomed by that large and growing legion of people who are deeply concerned about the basin's fate.

It has been obvious for far too long that only a strong federal presence can prevent further deterioration of the fragile Tahoe environment. The joint effort by California and Nevada, upon which so many hopes rested in the early 1970s, proved vastly disappointing. Expansion-minded, hard-line Nevada casino interests, building demands on both sides of the state line and population pressures continued to over-tax the basin's natural resources.

Now the feds, like the cavalry of old, have come galloping to the rescue.

What Carter said was this:

1—He will instruct federal agencies to create a coordinating council to assure that no federal activity contributes to further pollution. Thus, the Environmental Protection Agency could cut off funds for new sewer connections and federal funds could be denied for some highway projects.

2—The president supported the Burton-Santini bill to sell federal properties in the Reno and Las Vegas areas and use the proceeds, approximately $150 million, to buy environmentally sensitive tracts of land in the Tahoe Basin.

If Carter should be re-elected (make your own forecast), he would be in a position to follow up on these declarations. If not, the Federal Government at least will have been launched on a constructive rescue operation which, if not perfect, nonetheless is bound to be more protective than any measures seen in the past.

The need for stringent controls becomes more evident all the time. A total of 47,000 people now inhabit the lake basin year-round. The population reaches 185,000 or more at the tourist peak. No wonder Mother Nature groans with the strain.

Some opponents of the Federal role protest that the people who live at the lake are best qualified to decide how it should be protected. That's nonsense. They had their chance and they muffed it. We welcome the more positive Federal intervention and only wish that it were stronger—and had come quite a lot sooner.

[From the Tahoe World, May 21, 1980]

Support Tahoe Buyout Bill

(By Tom Martens)

Lake Tahoe is at a turning point.

How can you tell?

Witness the green algae clinging to rocks in the Lake off the Coast Guard Station at Lake Forest. Sink your feet into the sediment ooze at the beach at Kings Beach. Observe the bright green algae along the Lake Tahoe Shoreline near Crystal Bay.

Such sediment and algae didn't get into the lake by accident. It pollutes Lake Tahoe as the result of years of poor development, road building and soil management practices.

It's about time to turn around such pollution.

We think the so-called Burton-Santini land swap bill is the key to future preservation efforts for Lake Tahoe.

We support the compromise. And think you should do the same.

The measure, a compromise numbered House Resolution 7306 and co-authored by Rep. Phillip Burton, D-San Francisco, and Rep. James Santini, D-Nevada, proposes the federal government sell land near Reno and Las Vegas and use the money to buy out environmentally sensitive land in the Tahoe Basin.

The measure also proposes that the federal government authorize that $10 million be spent in 1981 and $20 million in 1982 for Lake Tahoe environmental protection. That money would come from the Land and Water Conservation Fund, under the bill.

The bill authorizes the Secretary of Agriculture to buy land at Tahoe which may be used to the "detriment of existing air, water or visual qualities of the basin."

No detached single-family residential dwelling may be bought, according to the bill, unless a change in dwelling (made after the bill's passage) results in a detriment to air quality in the Tahoe Basin.

Under this condition, the owner of the property would be permitted to live in the dwelling for not more than 25 years.

Some would have Lake Tahoe residents believe that this revision means home owner would be forced to leave. With the buyout language, we think the bill provides the necessary authority to buy the environmentally sensitive land yet give bill teeth for dwellings that radically change after passage.

We think the bill is the key to any future erosion control in the Tahoe Basin. Any of the far-reaching plans—whether creation of a National Scenic Area or the State Water Resources Quality Control Board's 208 recommendations—should deal with financing for the misplaced Tahoe property owner.

The $25 state bond before the voters in November won't provide enough money. We think the land swap is the answer. And we think it should be ushered through Congress while there's still national interest in preserving Lake Tahoe.

[From the Sacramento Bee, May 21, 1980]

The Tahoe Compromise

With each passing day, it seems more likely that Congress will approve the California-Nevada compromise bill to curb residential and commercial growth at Lake Tahoe. The measure authorizes more than $150 million in federal land purchases at Tahoe over the next 10 years to slow down pollution and commercialization. Financing of these acquisitions of private property would be tied to sales of federal lands in the urban-growth paths of Reno and Las Vegas.

The measure sailed through the House Interior Committee and is ready for action by the entire House membership. A Senate version of the bill, with California Sen. Alan Cranston and Nevada Sen. Paul Laxalt as co-authors, will be introduced any day now.

The only reported opposition in the House is coming from two California representatives who have the most reason to support the measure on behalf of the majority of their constituents. Rep. Harold T. Johnson, who represents the North Shore of Tahoe and Rep. Norman Shumway, who represents the southern part of Tahoe, have come down on the side of the construction industry and the developers at Lake Tahoe. Johnson opposes a key provision which would give federal officials authority to acquire improved property on the California side if the owners planned additional construction that could harm the environment in the Tahoe Basin. Shumway opposes the bill generally and accuses Rep. Phillip Burton, one of the bill's authors, of trying to "ramrod legislation through at the eleventh hour."

The position of Johnson and Shumway does not serve their constituents well. Thousands of Lake Tahoe landowners who bought subdivision lots on the California side of the lake only to find out, too late, that they can't build homes on the property because of environmental protection rules, will be bailed out if the bill is passed. The people in the valley who don't own Tahoe lots, but who enjoy visiting the lake, are ill-served by Johnson's and Shumway's opposition to the compromise bill because the only way the scenic beauty of Lake Tahoe will be preserved is for the federal government to buy environmentally fragile land on both sides of the lake to slow down further growth and development.

The measure deserves the support of California's congressional delegation. Not only is it designed to protect the environment at Lake Tahoe and to compensate landowners who cannot build on their lots, but it is also a significant step toward forging an agreement between California and Nevada to preserve the scenic aspects of the mile-high lake.

[From the Los Angeles Times, Apr. 20, 1980]

A STEP TOWARD SAVING TAHOE

Democratic Reps. Jim Santini of Nevada and Phillip Burton of California are working together on legislation that could hold the line on pollution and congestion at Lake Tahoe through federal purchase of potential sites for commercial and residential development.

Although we still think creation of a national recreation area on one or both sides of the California-Nevada border is the best hope of halting the Tahoe urbanization, Nevada is dead set against that approach and has the clout to block it in Washington.

But if Santini and Burton, who chairs the House national parks subcommittee, can reach final agreement—and if Congress approves the legislation—an important step will have been taken toward reducing the excessive and inappropriate development that now threatens the magnificent alpine lake.

The measure would authorize the annual sale of up to 700 acres of federal holdings on the outskirts of Reno and Las Vegas to private investors. The receipts would be spent by the government to acquire parcels in the Tahoe basin that might otherwise become construction sites.

The concept of exchanging federal holding in urban areas for lands of high scenic and recreational value seems reasonable, and should prove attractive to Nevada, where the Sagebrush Revolution for the opening of more federal lands is very much alive.

The Santini-Burton measure assumes that the major potential for pollution and lakefront erosion exists in California, which has three-fourths of the land base. For that reason, the section of the basin within California would be subject to stricter land-use controls than would property in Nevada.

In exchange for that concession, Santini apparently has agreed to firm assurances, which might be written into the legislation, that his state's moratorium on new casino construction would remain in effect. Santini also is said to be amenable to prompt federal purchase of "environmentally sensitive" properties within his state.

California and Nevada have been warring over Tahoe for many years, and the lake itself had become the principal casualty of runaway development on both sides of the border. Along with the Brown Administration and the Sierra Club, we believe that the federal government, which already owns two-thirds of the basin, should have the dominant role in regulating future growth.

But that approach is anathema to Nevada's congressional delegation and the Santini-Burton compromise apparently is not, at least at this stage of the negotiations. It is the only concept that has a chance this year, and we favor its enactment.

Time would tell whether the new plan would effectively halt future environmental damage to Tahoe; if it did not, federal management would remain the best, and perhaps only, answer.

[From the Sacramento and Fresno Bee, Apr. 19, 1980]

A COMPROMISE TO SAVE TAHOE

A proposed bill by Reps. Jim Santini, D-Nev., and Phillip Burton, D-San Francisco, to create a national scenic recreation area on the California side of Lake Tahoe is a positive, although necessarily restrained, federal response to the failure of California and Nevada to agree on a save-Tahoe compact.

The measure, initiated by Nevada, recognizes that a continuing source of federal funds is necessary to buy private land at Tahoe that might otherwise be converted into residential or commercial uses. The money would come from annual sales, authorized by the bill, of up to 700 acres of federal lands near Las Vegas and Reno. Moreover by setting up a national recreation area on the California side of the lake only, the bill also supports Nevada's contention that California, not Nevada, is responsible for most of the overdevelopment at the lake. Staff members of the House National Parks Subcommittee made a study of the Tahoe Basin and found that, indeed, most of the pollution of the lake comes from California and that much of the land on the Nevada side is already under public ownership.

The sticking point here is pollution caused by the presence of huge gambling casinos on the Nevada side. Unless a way is found to halt the proliferation of the casino-hotels, limiting commercial development on the California side, while highly desirable, will have a limited effect on reducing air and water pollution in the entire basin. Common sense dictates that the bill contain some sort of provision to assure that Nevada's recent ban on new Tahoe casinos cannot be repealed and that definite limits are set on expansion of existing casinos. This is still to be worked out, but those in close touch with the preparation of the bill are optimistic that the final draft will contain such restrictions.

Although the Santini-Burton bill falls short of conservationists' desire for a national scenic area on both sides of the lake, having a federally controlled area on the California side would be a hopeful thrust toward a federally managed Tahoe-Basin where land use ultimately would be controlled by the U.S. Forest Service or the Department of the Interior.

Rep. Vic Fazio, D-Sacramento, has introduced such a measure creating a basinwide federal scenic area, but it has little chance of passing as long as the Nevada representatives oppose it. Fazio sees the possibility, however, that he, Burton and Santini may find common ground and unite behind one bill.

Although the Santini-Burton bill still needs refining and strengthening, the proposal puts flesh on skeletal hopes for saving both sides of Lake Tahoe. Under Nevada sponsorship, and with California backing, it has a decent chance of approval by Congress.

[From the Valley Times, Aug. 10, 1979]

SANTINI PLAN TO SAVE TAHOE JUST MIGHT WORK

The Nevada Legislature fumbled with it. Gov. Bob List dropped the ball.

And the California Legislature declined to accept it.

Thus a bi-state compact to save Lake Tahoe from further environmental degradation was lost this year.

The legislatively-imposed building moratorium at the lake has run out and Mr. List has decided that he won't extend the building freeze.

So the building boom on the shores of beautiful, but fragile, Lake Tahoe goes on.

What can be done to prevent them from paving the lake to put in a parking lot?

Congressman Jim Santini has a plan and it just might work. We applaud his efforts in this direction.

The plot calls for the sale of federally-owned land in and around Las Vegas, the proceeds of which would be put into a trust for public buy-outs of private Lake Tahoe property.

The land exchange idea has been presented to California Congressman Phil Burton, chairman of the House Subcommittee on National Parks, who will be in town Monday to meet with Santini and look over the Las Vegas lots now owned by the federal government.

It should appeal to all factions, environmentalists and developers alike.

Private property owners at Lake Tahoe could sell their land to Uncle Sam at a fair market value and not have to worry about complying with environmental regulations on building.

About 70 percent of Tahoe land is already in the hands of state, local and federal governments. Forestry officials would like to see this increased to 85 percent to insure public access and use of this important scenic and recreation area.

As far as the BLM-controlled Las Vegas land goes, you can hardly call it fragile. Much of it is checker-boarded in the city and county and opening up these building lots to developers would be to the public benefit.

It's a good way to start getting urban federal lands into private hands, because the Sagebrush Rebellion could drag on for years.

And at least it's a step in the right direction to slow the bulldozers at Tahoe and keep most of the lake in the public domain so we can all enjoy it.

Mr. PHILLIP BURTON. Mr. Speaker, at this time I yield such time as he may consume to the author of the legislation our distinguished colleague from Nevada (Mr SANTINI).

Mr. SANTINI. Mr. Speaker, it is with pride that along with my esteemed California colleague, the Honorable PHILLIP BURTON, I bring H.R. 7306 to the floor for consideration by the House. I believe H.R. 7306 offers a completely new and creative approach to two different land management problems—

First. The overdevelopment of fragile lands in the Lake Tahoe Basin which results in declining water quality of the lake; and

Second. The lack of orderly development and planning in the Las Vegas Valley, Nev., area because of urban Federal land holdings.

The general concept of H.R. 7306, selling certain Federal "checkerboarded" lands in the Las Vegas Valley and considering the proceeds repayment for acquisition of private environmentally sensitive land in the Lake Tahoe Basin was born 3 years ago. Since that time, Mr. BURTON and I have labored arduously to turn a creative concept into a viable legislative product. It has been a long, hard road, but I believe we have succeeded in our endeavors.

I would like to express my personal gratitude to my very able colleague, Mr. BURTON. We have discussed this measure, debated it and yes even argued about it in an attempt to balance a wide variety of concerns. At all times, his commitment to the goals we set out to achieve was unwavering. His personal expenditure of time and energy went far beyond the call of duty.

Mr. Speaker, the bill before you is not a perfect bill. Some will say it goes too far. Others will say is does not go far enough. I believe the truth lies somewhere in the middle. H.R. 7306 is a moderate aproach to some very tough, challenging problems.

I would like to take a moment to briefly describe the nature of those problems. Lake Tahoe, as many of you know, is an Alpine Lake which lies high in the Sierra Nevada Mountains of California and Nevada. Centuries ago it was used as the summer home of the Washoe Indians. Later, agriculture development came to the Lake Tahoe Basin, and by the 19th century timber from the basin was used for Comstock mining ventures. Gradually a few large estates and resorts came to Lake Tahoe. By the end of World War II, development in the area began to accelerate. Summer resorts increased in popularity, ski areas came, then gambling, then expanded residences, vacation homes, and heavy commercial development. All of these activities, and others have contributed to the pollution of one of America's most beautiful treasures.

At the same time land and water problems grew at Lake Tahoe, the Las Vegas, Nev., area also experienced growing pains. The urban areas of southern Nevada literally became islands in the middle on a federally owned area. Urban growth cannot be properly planned in the urban Las Vegas Valley because small parcels of Federal land are interspersed or "checkerboarded" with private land. The Bureau of Land Management even owns 150 acres of land on the Las Vegas Strip. Planning for urban growth is complicated and frustrated by scattered enclaves of vacant, unmanaged Federal land used in some cases for trash dumps and abandoned car lots.

The Santini-Burton proposal before you now represents an effort to provide a workable remedy for two very serious land management problems.

Mr. Speaker, at this time I would like to discuss some of the proposals reflected in the committee amendment to H.R. 7306. Following bill introduction, three hearings were held on the bill, one in Washington, D.C., and two in the field. By and large I have been most impressed by the sincere and substantive comments made by well over 100 witnesses and hundreds of letter writers. Almost everyone agreed with the bill in concept, but many people offered specific suggestions for improvement.

After these hearings, Mr. BURTON and I went back to the drawing board and spent many hours trying to devise amendments which would as far as possible accommodate private property interests in the Tahoe Basin and yet still retain the heart and purpose of the bill. Resolving these problems was not easy, but I do think we offered the Interior Committee a series of changes which go a long way toward a fair and proper balance. The committee amendment relates to such things as the Tahoe land acquisition map, consultation with State and local governments, modified condemnation, fair market value and soil erosion from highways and roads.

Mr. Speaker, at this time I would like to clarify the meaning and purpose of certain sections of the bill.

TAHOE ACQUISITION MAP AND PROGRAM

As a result of testimony at public hearings, the House Interior Committee was persuaded to discard the original land acquisition map (entitled H.R. 7306, numbered 1 and dated May 1980) which originally accompanied H.R. 7306. In its place, the committee has substituted language which requires the development of a new land acquisition map to be filed with the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs by December 31, 1980.

As you know, the reason I proposed the language to create a new map is to insure a carefully drawn, refined product which is of such a scale that owners of parcels will be able to see clearly whether or not their property is subject to acquisition.

And, although pursuant to section 3 (2)(c) we have stated that the new Lake Tahoe acquisition map will depict no more acreage as environmentally sensitive than was depicted on the original H.R. 7306 land acquisition map, our intent, of course, is that the land acreage designated as environmentally sensitive shall, insofar as possible, match anticipated appropriations authorized by this bill.

By way of further explanation, I would like to note that the committee added language which gives a precise definition of "environmentally sensitive." The reason we did so was to give the Secretary of Agriculture very strong guidelines with regard to the portrayal of environmentally sensitive lands on the new Tahoe acquisition map. I fully expect the new Tahoe acquisition map to be a much more precise and refined document.

One final word on the Tahoe acquisition map is in order here. I am very pleased that the committee saw fit to incorporate consultation and review by State and local governments and the general public in both the map preparation and in the actual acquisition process. And, in addition, the committee provided for consultation on map development with appropriate planning and regulatory agencies. We mean by this language to include consultation with the Tahoe Regional Planning Agency as well as other appropriate planning and regulatory agencies.

It is my belief that review and consultation with State and local governments and their planning and regulatory agencies would be usual Forest Service procedure, but these provisions certainly go a long way to insure input by people who know the area best and in the end will result in a much improved acquisition map and program.

BONDED INDEBTEDNESS

Mr. Speaker, in public hearings on H.R. 7306, it was brought to my attention by representatives of groups such as general improvement districts (GID's) that they were very concerned that passage of our bill would leave these GID's with outstanding bond obligations which subsequently could not be retired because of revenue losses from assessments on property removed from private ownership and placed in Federal ownership.

I would like to clear up any remaining doubt on this subject. It is our intent that any bonded indebtedness on specific parcels acquired by the Secretary of Agriculture pursuant to H.R. 7306 will be paid at the time of acquisition.

☐ 1310

I would like to insert into the RECORD at this time a letter from the chief of the U.S. Forest Service, Mr. Max Peterson, which sets forth their usual procedure with regard to bonded indebtedness. It is our intent that the procedure so outlined be used as the basis for extinguishing bonded indebtedness on property acquired pursuant to H.R. 7306. Our clarifying remarks should be considered amplification of the Forest Service's usual procedure.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I will be happy to yield to the chairman.

Mr. PHILLIP BURTON. I thank the gentleman for yielding. It is also our intention wherever possible that in the course of noticing to the property owner the amount that owner will receive, there will be separately stated the amount ascribed to the bonded indebtedness to the end that there can be more full and understandable disclosure in that respect.

Mr. SANTINI. I think the chairman's observations are very well taken.

The letter is as follows:

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C.

Hon. JIM SANTINI,
Washington, D.C.
House of Representatives.

DEAR CONGRESSMAN SANTINI: This responds to Ms. Cooper's request for information on how bonded indebtedness is handled in the Forest Service appraisal process.

The Provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1890, require that the Federal Government offer landowners not less than fair market value in all purchase transactions.

Determination of fair market value is based on appraisals of the land to be purchased and is made by competent, trained land appraisers. The appraisals are made following accepted appraisal premises, practices, and approaches that are recognized by professional appraisal societies and the courts. They are based on the current private real estate market transactions for the vicinity in which the individual property being appraised is located.

On occasion, we have found it necessary to appraise properties that are encumbered with bonded indebtedness. A sewer bond is one example of this type of indebtedness that we have encountered. In the instances we have been involved with, the sewer service is an improvement to the land. In past cases, we have considered the sewer assessment as a contribution to the land value in the total amount of the assessment.

We have no indication that the availability of sewer connections may enhance the property value more than the actual assessment. Lacking any indications contrary to allowing the total assessed value as an improvement to land, we will continue to treat properties with outstanding sewer assessments in the same manner when they are appraised for acquisition.

Following is an example of how a bonded indebtedness may be handled in an appraisal:

1. Value of a property without sewer service—$15,000. Assume no bonded indebtedness. Market value of property is $15,000 and landowner would be offered this amount.

2. Assume the same property as above is provided sewer service through a bonded indebtedness. The bond is $5,000. Because the property now has sewer service, the market value has increased. Appraised market value is now $20,000, and this amount would be offered to the landowner.

In the example above, the property is now worth $20,000. However, there exists a debt of $5,000 for the sewer service which is owed to a third party by the owner. The debt is a lien (legal claim for payment) on the property and must be satisfied by the owner prior to acquisition by the United States in order for the owner to convey an unencumbered title to the land.

There may be instances where properties have sold with the bond indebtedness included in the selling price. These sales may then be used as direct comparisons to a property being appraised that is subject to a sewer bond assessment, since any enhancement due to the sewer availability would be included in the selling price of the transaction.

Sincerely,

R. MAX PETERSON,
Chief.

LAND SALES AND LAND SALES MAP

Mr. SANTINI. I will turn for a moment, Mr. Speaker, to that portion of our bill which deals with Bureau of Land Management land sales as directed by H.R. 7306. There are two matters which I would like to clarify. First of all, the current land sales map referred numbered 7306 A, dated May 1980, and entitled "Las Vegas Valley Nevada land sales map" for various reasons fails to include for the most part checkerboarded public land within the city limits of the city of Las Vegas and the city of North Las Vegas, Nev. As currently drafted, the Las Vegas Valley Land Sales Map shows approximately 7,000 acres of checkerboarded Federal land in urban Clark County, Nev.

It is the intent of the sponsors of the bill that the public lands sales map of H.R. 7306 will include an additional 3,000 acres of Federal land "in small parcels interspersed with or adjacent to private lands" which must lie entirely within the city limits of the city of Las Vegas, Nev., and the city of North Las Vegas, Nev. This acreage will be added to the current map pursuant to joint selection by the Bureau of Land Management and the city of Las Vegas and North Las Vegas, Nev. It is our intent that the total acreage for potential sales in the land sales map to accompany H.R. 7306 will not exceed 10,000 acres of land and that it be BLM land which is "in small parcels interspersed with or adjacent to private lands." The Las Vegas Valley land sales map which will accompany our bill, furthermore, shall clearly delineate the boundaries of three urban governments in the Las Vegas Valley—Clark County, the city of Las Vegas, and the city of North Las Vegas.

The second issue I would like to address with regard to the public lands sales procedures established by H.R. 7306 relates to section 2(a) and 2(c) of the bill. I want to make very clear that the regulations we are directing the Secretary of Interior and the affected local governmental jurisdictions to develop to carry out the purposes of the act should in no way detract from the normal BLM lands sales procedures relating to public comment.

That concludes my remarks on the bill. I urge the support of my colleagues.

I thank the indulgence of the chairman of the committee for my time.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. SANTINI. I yield to the gentleman from Maryland.

Mr. BAUMAN. I thank the gentleman for yielding. I just wondered whether or not this bill in any way expanded the gentleman's colonial empire which I read about in today's paper. The gentleman might use this as an occasion where "the empire strikes back."

Mr. PHILLIP BURTON. If the gentleman will yield, I consulted with the gentleman from Nevada (Mr. SANTINI) in that respect, and it is surprising how territorially unlike the rest of us the gentleman from Nevada is with reference to his State. So I fear that no matter how much it may be deserving, the gentleman from California's contribubution will not be permanently noted.

Mr. BAUMAN. If the gentleman will yield further, I would just observe for the record that we have not done too terribly well with Presidents lately; perhaps an emperor is in order, and the gentleman would be most congenial in that role.

Mr. PHILLIP BURTON. I thank the gentleman very much.

Mr. SANTINI. I would like to make a further observation. I do think it is relevant that the Delegate from Guam (Mr. WON PAT) will be serving as mayor of Las Vegas on January 2, 1981.

Mr. PHILLIP BURTON. The only thing I cannot understand is why they took the 3,000 islands in the Pacific Trust Territories out of the domain of our distinguished subcommittee. I accused the gentleman from Oregon (Mr. DUNCAN) that perhaps he played some role in that respect, but he denies it.

Mr. BAUMAN. If the gentleman will yield further, there is no provision in this bill to rectify that situation, thus reexpanding the empire?

Mr. PHILLIP BURTON. Not yet. Not yet. There is only one title to this bill, believe it or not.

Mr. SEBELIUS. Mr. Speaker, I yield 6 minutes to the eminent ranking member of the Committee on Interior and Insular Affairs, the gentleman from California (Mr. CLAUSEN).

Mr. CLAUSEN. Mr. Speaker, as many of the Members know, when the Lake Tahoe bill was first reported from the Committee on Interior and Insular Affairs, I raised some very serious reservations in our minority remarks, along with some of our colleagues from California, regarding the hurried procedure that was being followed as well as the merits of the legislation itself. Since that time the committee has held 2 full days of field hearings, one of which I was able to attend in Reno, and has spent many long hours attempting to work out the best possible solution. To my knowledge, there are some 12 to 14 perfecting amendments that were adopted as a result of the input that came from that Reno hearing. For that reason I want to commend the gentleman from Nevada (Mr. SANTINI), our chairman, the gentleman from California (Mr. PHILLIP BURTON), as well as the gentlemen from California (Mr. JOHNSON, Mr. SHUMWAY, and Mr. FAZIO), for their willingness to cooperate and to work with us in the direction of perfecting this product.

As a result of these efforts, the legislation has been amended to address some of the major objections raised by the local officials, residents of the Lake Tahoe Basin, and the Members whose districts are affected, and has gained additional support, at least in concept.

Mr. SHUMWAY played a particularly important role in this process. He provided the committee with an extensive list of concerns expressed on behalf of the residents of the basin. The bill before us, I believe goes a long way toward accommodating his requests.

Mr. Speaker, after I listened to my friend, the gentleman from Nevada (Mr. SANTINI) explaining the basic provisions of the bill, it reminded me of a similar situation that we went through in the committee back in 1970 when I had the responsibility of directing what in effect was a new concept, namely, the King Range Conservation Area.

We had a similar situation involving the checkerboarding of Federal ownership and private lands. In the act establishing the King Range Conservation Area in my congressional district we provided for an exchange of lands for Bureau of Land Management lands outside the area to remove areas within the boundaries from private ownership.

Since the establishment of the King Range Conservation Area, we have enacted the BLM Organic Act designed to improve the agency capability of managing public lands under their jurisdiction.

In the Lake Tahoe situation, we are dealing with U.S. Forest Service lands intermingled with private lands. The bill before us allows for the exchange of these lands as one of several options available to the agency.

Of particular concern throughout this process has been the question of condemnation authority and the different applications of that condemnation authority with respect to Nevada as well as California. The legislation allows for acquisition of improved properties in California by way of condemnation, while limiting this authority in Nevada to unimproved lands. We addressed this problem specifically in our final markup of the legislation. A majority of the committee agreed that the condemnation authority was too broad and adopted two very significant amendments. While they fall short of removing the condemnation authority altogether, they do help to clarify when and how it can be used. It became clear during the course of the hearings that full condemnation was not acceptable, but there seemed to be a case that could be made for some limited condemnation, and, of course, that is what we have tried to do.

First, an amendment that was offered by my colleague, the gentleman from California (Mr. LAGOMARSINO), was adopted which addresses those lands in which a single-family dwelling is located and limits acquisition authority to only those instances where a "change in the use of such dwelling has occurred" subsequent to the passage of the bill or a change in use is threatened. It must be determined that the change in use or threatened change "will result in a detriment to the preservation of the existing air, water, or visual qualities of the basin."

Second, the committee recognized the important role of the Tahoe Regional Planning Agency in the adoption of the final requirements for the protection of the air, water, and visual qualities of the basin. The bill was amended, in an amendment that I offered to provide that once TRPA has developed a set of standards, the acquisition of lands will be made in a manner consistent with the requirements set by TRPA. In this way local input will be maximized and landowners will have a clearer understanding of their rights. The California Legislature did in its closing days formally reestablish TRPA, and I am hopeful they will move quickly in developing the necessary guidelines. If the California provisions had been amended to allow acquisition only by exchange, donation, or negotiated purchase, I believe the legislation would have little opposition. However, the limitations placed on the condemnation authority does certainly help give the landowners some of the assurances they desire and should prevent overly zealous actions on the part of the Department of Agriculture, its Secretary and personnel.

Everyone agrees that the Lake Tahoe Basin is a unique national treasure, a gem in the landscape of the Sierra Nevada Mountains, and must be preserved and protected.

☐ 1320

We believe that this legislation, as amended extensively, by the committee goes a long way toward accomplishing that objective. Therefore, I ask my colleagues to support it and advance the bill to the Senate for further consideration and, hopefully, adoption by this Congress.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. LAGOMARSINO), a member of the committee.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 7306 as amended. The bill provides needed protection for the Lake Tahoe Basin which is a magnificent resource important not only to the States of California and Nevada but to the Nation as well.

I would like to compliment the chairmen of the National Parks Subcommittee (Mr. BURTON, Mr. SANTINI, and Mr. SHUMWAY) for their willingness to listen to the concerns of local citizens in the Tahoe Basin and for their efforts to formulate a legislative solution which is sensitive to their needs while providing a strong degree of protection for the environment.

The committee amendment in the nature of a substitute which is before us today, has made several important improvements over the original version of H.R. 7306. Significant protections against condemnation have been added for owners of single family dwellings on the California side of the Lake Tahoe Basin. Section 3(c)(2) of the bill clearly states that no single family dwelling may be acquired by the Secretary of Agriculture without the consent of the owner unless a change in the use of that dwelling takes place or is threatened after the date of enactment of this act. Moreover, if a change in use does take place but the structure remains a single family dwelling nonetheless, the Secretary cannot acquire the property without the owner's consent unless that change is detrimental to existing air, water, or visual qualities of the basin.

These provisions make it very clear that owners of single-family dwellings can make changes in the use of their property without fear of condemnation so long as they are reasonable and not detrimental to the environment.

Furthermore, section 3(c)(3) provides that at such time as the Tahoe Regional Planning Agency has adopted final requirements for the protection of air, water, and visual qualities in the basin, the Secretary must make the findings which are prerequisite to condemnation of any improved property—including single family dwellings—in a manner consistent with the TRPA requirements. This section is intended to give property owners a clear set of standards, established by local government, by which changes in use can be judged and allowed without invoking the threat of Federal acquisition.

I am also pleased that the amendment makes funds available to political subdivisions within the States of California and Nevada under section 2(g) for water pollution control and soil erosion mitigation.

In summary, I believe H.R. 7306 as amended contains significant safeguards for the private landowners of the Tahoe Basin, while providing an appropriate degree of balance between Federal and State interests.

The Federal Government has a responsibility and an important role in protecting the public lands within the region as well as the unique qualities of the Interstate Basin. At the same time, the States of California and Nevada have an equal interest in protecting the rights, property, and environment of their respective citizens. This bill strikes a balance in which the interests of each are protected through a coequal partnership of authority and responsibility.

For these reasons, I urge my colleagues to join me in supporting passage of this legislation.

Mr. SEBELIUS. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. JOHNSON).

Mr. JOHNSON of California. Mr. Speaker, I rise to speak in opposition to passage of H.R. 7306 under suspension of the rules.

This legislation, which would provide for sale of Federal lands in the State of Nevada and the acquisition of other lands in the Lake Tahoe Basin, has some serious flaws. It is not a simple measure and needs to be given more careful and critical examination.

The bill would set up a double standard for land acquisition in the Tahoe Basin, and is not equitable in this important regard. In the California portion of the Tahoe Basin, it would provide for condemnation of lands improved by the construction of residential or commercial buildings, including private, single-family homes. However, in the Nevada portion of the Tahoe Basin, no condemnation of any kind would be authorized.

This section of the bill has been worked over several times by the committee since the measure was originally reported. But the basic inequity concerning acquisition authority is still there.

This different treatment of lands in the California and Nevada sections of the Tahoe Basin is carried through into provisions dealing with the way acquisition would be handled. It seems clear that a map would be completed by December 31, 1980, showing the unimproved lands in Nevada which are to be acquired by donation, purchase, or like means,

On the other hand, no map is required and no fixed date is established for deciding which improved lands in California are to be acquired by condemnation. In short, California landowners would have the threat of condemnation hanging over their heads for an undetermined period of years.

Another concern is with those provisions of H.R. 7306 that relate to the role of State and local government in land acquisitions within the basin. These provisions raise a number of questions that should be given careful study by all of those who might be affected.

The bill only requires that the Secretary of Agriculture, or the Forest Service, acting as his agent, consult with State and local governments before taking action to acquire lands. There is no mechanism established which would do more to encourage or stimulate consent agreements. Such a mechanism might at least set up a formal procedure for State and local government recommendations and Federal review and comment, as well as formal Federal explanations where State and local plans are not to be honored.

Mr. Speaker, legislation as sensitive and as complicated as this should not move so fast that it cannot be fully analyzed before it comes to a vote. Yet H.R. 7306 has not been available in final form so that those affected—the people of the Tahoe Basin—can study it, consider how it would affect their community, and give us their judgments.

Mr. SEBELIUS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. SHUMWAY).

Mr. SHUMWAY. Mr. Speaker, as many of my colleagues know, I have the good fortune to represent the southern portion of California's share of Lake Tahoe and as a result I maintain an active interest in this legislation and even though I am not a member of the subcommittee, I did attend the meeting held by the National Parks Subcommittee in Reno, Nev., on June 13, 1980.

Lake Tahoe represents a very beautiful asset in America but one which presents very difficult problems at the same time. Perhaps because of its bistate nature, these problems have been very challenging to those of us in Congress and in the State governments. Recent proposals for the preservation of the environment in that basin have ranged all the way from H.R. 6338, to create a national scenic area administered by the Forest Service, to doing nothing. In this setting and because to me it represents a potentially better solution than either one of these other extremes, I am lending my qualified support to H.R. 7406. I think this bill is novel insofar as it might assist in solving two problems at once. One, of course, is the excess Federal land problem we have heard about in the State of Nevada and the other is the need to generate more revenue for the purchase of additional land in the Lake Tahoe Basin.

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As the bill was originally introduced, I had considerable reservations about it. Particularly after the hearing we held in Reno, those reservations appeared to be insurmountable. I am happy to report now, because of a series of amendments adopted by the committee following the efforts of my colleagues who are very interested in this bill, many of those problems have been abated. Even though I still have some serious difficulties with a few provisions in the bill, I do think it has run its full course in the House. I understand that when it reaches the Senate it will gain more public participation, and because of this prospect I am happy to lend my support to the bill.

The feature of the bill which gave the greatest difficulty to all of us was the eminent domain authority. Because of the continuing controversy regarding condemnation, I frankly would like to see section 3 stricken in its entirety. I do not think it is necessary. Studies have not demonstrated the need for that acquisition procedure.

However, if it is deemed to be necessary because of the tax advantages, I think it should be used with these particular qualifications:

First, that it not be used for a period of time, for example, 5 years following the enactment of the bill. I think this would effectively reserve its use for the more difficult cases.

Second, that it be used for the acquisition of unimproved property only.

Third, that it be applied with equal force and effect in both California and Nevada.

Fourth, that it be applied only in cases where there is a direct and legally definable pollution such as might be declared a public nuisance.

I am hopeful that as the bill is subjected to the refinements of further public hearings in the Senate, perhaps appropriate amendments will be added. Upon that condition, I lend my support to the bill.

Mr. SEBELIUS. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr FAZIO).

Mr. FAZIO. Mr Speaker, I thank the gentleman for yielding, I will be very brief. I simply wish to lend my strong support to this piece of legislation which I think, in tandem with a revised bistate compact, which I think the Nevada Legislature is about to adopt and which should be before us for final approval in the next year; the Presidential Executive order which will for the first time coordinate all Federal activities in the basin; and hopefully, the passage of a $85 million bond issue in California on the November ballot, will name this a great year for Lake Tahoe.

I would like to give particular credit to the chairman of the subcommittee, the gentleman from California (Mr. PHILLIP BURTON) who put aside his own personal views and indications in this area to engage in a very strenuous and combative bargaining session which resolved, I think, the problem of dealing with the degradation of Lake Tahoe to the satisfaction of almost every Member of Congress. He and Mr. SANTINI deserve the thanks of not only Nevadans and Californians, but of all Americans who will value the many aspects of Lake Tahoe in the future.

Mr. SANTINI is a particularly courageous individual who took the trouble to enter into a very, very difficult thicket, one that is extremely sensitive in Nevada. As a result of his efforts, he has done his State a tremendous service, particularly the people of Las Vegas and the people of Clark County.

Mr. Speaker, our colleagues Mr. SANTINI of Nevada and Mr. BURTON of California have worked extremely hard on this to sell Federal lands in Clark County, Nev., and to simultaneously buy lands in the Lake Tahoe basin. H.R. 7306 represents a concrete, constructive approach to a pair of issues that often lead advocates and opponents astray into emotional and impractical tangents.

I am the author of another bill, H.R. 6338, which aims at a comprehensive solution to the problem of overdevelopment at Lake Tahoe but I strongly support this legislation. The lake is one of the most precious gifts nature has bestowed upon this country, a unique, very large, very deep, crystal clear, alpine lake, nestled in a basin of snowy peaks high in the Sierra Nevada Mountains. For many reasons governmental efforts to fulfill our obligation to preserve this resource have failed in the past 20 years. Part of the problem has been the sheer complexity of negotiating between the local, State, and national interests. This difficulty has been compounded because the lake lies in two States, Nevada and California. Another part of the problem has simply been understanding the way the basin's ecosystem works, and the roles that proliferating jurisdictions play in helping or hindering the natural mechanism. Given all this confusion the economic incentives to overdevelop the basin increment by increment have proven irresistible. Much damage has been done; much more damage is easily foreseeable unless we devise a governmental mechanism to stop it.

H.R. 6338 was an attempt at such a mechanism. It sought to rely as its basis on the considerable Federal presence already in the basin. The U.S. Forest Service owns 72 percent of the area, and we have spent over $50 million in the last decade buying large tracts of lands in order to preserve them from development. The trouble is that these purchases have been made part of the Forest Service's traditional policies of land acquisition, and have not seriously zeroed in on the lands where development is most economic, most harmful, and most imminent.

Further, while the Federal Government has been spending millions to preserve the basin, the Government has been spending equal amounts providing the essential public works projects to underwrite growth on private lands, nearly $50 million during the same period.

On the premise that truly effective efforts to handle growth in the basin would continue to elude local and State political officials—despite the sincerity of a number of them—and in recognition that the Federal Government has been as much the problem as a solution, H.R. 6338 sought to create a national scenic area whereby Federal actions would be coordinated among themselves and local actions would be coordinated with the Federal under a Federal master plan. The master plan would take as its basis the well-documented finding that the natural system of the Tahoe basin are now at a point of overload and irreversible degradation is accelerating.

This represented a strong approach to the basin's ills, but one which seemed necessary enough given the lessons of history that 42 Members of Congress agreed to cosponsor the legislation.

However, the political realities are such this year that the national scenic area approach embodied in H.R. 6338 probably is premature. Since its introduction the two States have renegotiated a bi-State compact for land use controls in the basin. California has agreed to it, Nevada apparently will soon. It should be before the Congress for ratification during the next year. the President by Executive order has also announced steps to coordinate Federal programs in the basin, and to place them under the primary test of preserving it.

In the context of these events, the Santini-Burton bill would make a very real contribution to a multifaceted problem that can hopefully be contained by these various new approaches. So I would like to commend Mr. SANTINI and Subcommittee Chairman BURTON for taking an approach that will significantly help the basin even if it does not garner them enthusiastic support from antagonistic groups at the ends of the spectrum. This sort of leadership is what the basin has truly needed.

As I view H.R. 7306, it tackles the basin's most difficult and dangerous problem head on: What should we do about the thousands of vacant single family lots approved years ago, but not built upon for one reason or another? Construction on many, if not most, of these lots. Together with efforts to raise amounts of sedimentation down the slopes of the basin and into the lake.

The Santini-Burton bill makes money available at no net loss to the American taxpayer to buy the most dangerous of these lots. Together with efforts to raise $85 million in bond money on the November ballot in California, we may solve another of the injustices that has become a fact of life at Tahoe. That is the thousands of lots are owned by thousands of individuals, who have had their money tied up for years in a situation that for them seemed impossible until this bill emerged.

However, Mr. Speaker, I would like to make one point. Key to the truly effective use of this money is the direction and authority this Congress must give to the Forest Service to move effectively on this problem. By that I mean, the Forest Service must have the ability to acquire by eminent domain a few parcels from speculators unwilling to sell. This power should be used only when necessary and only as a last resort. The Interior Committee has included provisions in this recent version of the bill which guard against the unwarranted or irresponsible use of this authority. The people are protected against abuse and the lake must also likewise be protected against continued abuse.

Mr. SANTINI and Mr. BURTON should be credited for the efforts they have taken to strike this careful balance. It is a balance if—and there is some reason to fear this might be the case—amendments are made to this bill in the Senate that deprive the Forest Service of tools to protect the lake by implementing a truly effective acquisition program, the bill's balance will have been lost and it will not be worth the surrender of lands owned by all Federal taxpayers to those in Clark County, Nev.

A land acquisition program must be organized; there must be a strategy to it. The strategy must be buttressed by eminent domain authority so that in the few instances where that power is necessary the whole fabric can be protected. Otherwise the Forest Service will be diverted into the same sorts of acquisition programs that have not sufficed in the past.

It takes some political courage on the part of our colleague from Nevada to recognize and act on this fact. I am most hopeful that the House will support the lake by supporting him and by maintaining this careful and constructive balance. In conjunction with the new bistate compact and with the President's Executive order, the Santini-Burton bill can do a lot, and it deserves our strong support. I hope very much that this tripart approach to the lake is sufficient to halt the degradation. If not, I will be anxious to move quickly to bolster it in the future where necessary. But clearly this is an excellent step which we can take this year and we should do so.

Mr. SEBELIUS. Mr. Speaker, I yield my final 2 minutes to myself.

Mr. Speaker, this bill constitutes an effort at the Federal level to directly apply some medicine and band-aids to the Lake Tahoe Basin, which is sick and ailing from overdevelopment.

Most of the credit for the fashioning of this bill must go to the chairman of our subcommittee, the Honorable PHIL BURTON, and to our colleague from Nevada, the Honorable JIM SANTINI. Had it not been for their initiatives and joint efforts, this bill would not be before the House today.

Lake Tahoe and its immediate environs constitutes a nationally significant resource—on that there can really be no argument. It is an extremely beautiful place. It also constitutes one of the best examples in the entire Nation of the inability of local government—and also of State government—to adequately protect from man's ruination, a magnificent resource.

The forces responsible for those adverse influences and impacts are so great and so far advanced by this time however, that even the Federal Government cannot singlehandedly solve the problem—the costs to do so and the political muscle to do so cannot possibly be mustered.

Consequently, this bill is but a part of the solution; the other parts of the solution must come forth from the cooperative efforts of the California and Nevada State governments, along with the multitude of other jurisdictions which have authorities and jurisdictions at Tahoe.

This bill represents a rather convoluted and piecemeal solution, but I do believe that under the difficult circumstances of the times it can be of help.

I think it is essential that the two Secretaries involved—Agriculture and Interior—and the Senate and House authorizing and appropriating committees all monitor all facets on the implementation of this bill very closely, as I am of the opinion that there will soon prove to be a need for legislative adjustment to various parts of this act.

Of primary importance is that this bill, when enacted, not jeopardize or curtail the good work that has been accomplished in recent past years by the U.S. Forest Service in its acquisition program. It is not intended that the bill will in any way work against that effort, but rather will augment it through its various different provisions.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California (Mr. PHILLIP BURTON) that the House suspend the rules and pass the bill, H.R. 7306, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert their remarks in the RECORD on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

INDIAN HEALTH CARE PROGRAMS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6629) to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein, as amended.

The Clerk read as follows:

H.R. 6629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 102 of the Indian Health Care Improvement Act (90 Stat. 1400), hereinafter referred to as the "Act", is amended by striking the last sentence in subsection (c) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,300,000, $2,600,000, $3,000,000 and $3,500,000, respectively.".

(b) Section 103 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,600,000, $1,800,000, $2,100,000, and $2,400,000, respectively.".

(c) The first sentence of section 757(a) of the Public Health Service Act is amended by striking the phrase "and for each of the succeeding fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting, in lieu thereof, the following: "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984.".

(d) Section 105 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $990,000, $1,140,000, $1,310,000, and $1,510,000, respectively.".

SEC. 2. (a) Section 201(c) of the Act is amended by adding the following sentence to paragraph (1) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $20,250,000, $23,000,000, $26,500,000, and $30,500,000, respectively, and such further additional positions are authorized as may be necessary.".

(b) Section 201(c) of the Act is amended by adding the following sentence to paragraph (2) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $6,400,000, $7,350,000, $8,450,000, and $9,700,000, respectively, and such further additional positions are authorized as may be necessary."

(c) Section 201(c) of the Act is amended by adding the following sentence to paragraph (3) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,875,000, $2,150,000, $2,500,000, and $2,875,000, respectively, and such further additional positions are authorized as may be necessary.".

(d) Section 201(c)(4) of the Act is amended by—

(A) adding the following sentence to subparagraph (A) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,500,000, $2,875,000, $3,300,000, and $3,800,000, respectively, and such further additional positions are authorized as may be necessary.";

(B) adding the following sentence to subparagraph (B) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $750,000, $870,000, $1,000,000, and $1,150,000, respectively, and such further additional positions are authorized as may be necessary.";

(C) by adding the following sentence to subparagraph (C) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,350,000, $2,700,000, $3,100,000, and $3,600,000 respectively, and such further additional positions are authorized as may be necessary.";

(D) by adding the following sentence to subparagraph (D) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $460,000, $525,000, $600,000, and $690,000, respectively, and such further additional positions are authorized as may be necessary."; and

(E) by adding the following sentence to subparagraph (E) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $250,000, $285,000, $325,000, and $375,000, respectively.".

(e) Section 201(c) of the Act is amended by adding the following sentence to paragraph (5) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $15,000,000, $17,250,000, $19,840,000 and $22,800,000, respectively.".

(f) Section 201(c) of the Act is amended by adding the following sentence to paragraph (6) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $5,000,000, $5,750,000, $6,600,000, and $7,600,000, respectively, and such further additional positions are authorized as may be necessary.".

(g) 201(c) is amended by striking all of paragraph (7) thereof.

SEC. 3. Title III of the Act is amended by inserting a new section 305 as follows:

"SEC. 305. For fiscal years 1981, 1982, 1983, and 1984, funds necessary to carry out the purposes of section 301 and 302 of this Act may be appropriated pursuant to authority contained in the Act of November 2, 1921 (42 Stat. 208), as amended by the Act of October 12, 1976 (90 Stat. 2233); and the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

SEC. 4. Section 506 of the Act is amended by adding the following sentence at the end thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $18,750,000, $21,500,000, $24,725,000, and $28,500,000, respectively.".

SEC. 5. Section 4(c) of the Act is amended by adding at the end the following: "For purposes of titles II and III of this Act, such terms include Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State of California.".

The SPEAKER pro tempore. Is a second demanded?

Mr. CLAUSEN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from California (Mr. CLAUSEN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I am pleased to bring before the House the bill (H.R. 6629) reauthorizing funds for the various initiatives and new programs established under the Indian Health Care Improvement Act of 1976.

Many years ago, the United States assumed the obligation to provide health care to Indian citizens living on or near Indian reservations. If the United States did not provide health services to Indians, they would have no health services available.

Yet, Mr. Speaker, the health gap between the Indian people and the rest of the Nation is abysmal. By all standards, the Indian people and communities lag 20 to 30 years behind in health status.

The 1976 act sought to establish a 7-year, incremental program, beginning in 1978, to raise the poor health standards of the American Indian and to close the gap between the Indian community and the rest of the Nation. The act provided specific funding authorizations for fiscal years 1978 through 1980, but reserved for later enactment the funding levels for fiscal years 1981 through 1984. H.R. 6629 provides that reauthorization.

Title I of the act provides for the development of health professions manpower to serve Indian communities. Programs are provided for health professions recruitment among Indians; compensatory scholarships; graduate scholarships in medical professions; an extern program. A total of $68,950,000 is authorized for these programs for the next 4 fiscal years.

Title II of the act gives congressional direction to the Indian Health Service in the field of patient care. Appropriations for patient care is authorized by other statutes on a continuing basis. Title II is intended to require appropriations over and above the basic authorization and appropriation. A total of $252,893,000 is authorized for the 4 fiscal years.

Title III of the act provides additional money for the construction of Indian health facilities. H.R. 6629 provides that appropriations for such facilities would revert to the existing authorization.

Title V of the act provides for the establishment and funding of urban Indian health outreach programs. H.R. 6629 authorizes a total of $93,475,000 over the next 4 fiscal years for these programs.

Since the authority for fiscal year 1981 is included in this bill, it is important that it be enacted in this Congress.

Mr. Speaker, I urge the passage of this bill.

Mr. CLAUSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 6629, and further to associate myself with the remarks of our distinguished chairman, Mr. UDALL, of Arizona, and to urge its passage by the House under suspension of the rules.

H.R. 6629 is a noncontroversial yet very important piece of legislation whose purpose is to reauthorize funds for the programs initially established by the Indian Health Care Improvement Act of 1976 for the fiscal years 1981 through 1984.

Enactment of the Indian Health Care Act followed extensive congressional oversight hearings by our committee which documented severe Indian health problems and deficiencies in the Federal programs to provide health care to Indians. The magnitude of these problems and deficiencies led Congress to provide for an incremental, 7-year program to provide the resources necessary to meet Indian health manpower, services, and facilities construction needs. The 1976 act authorized specific appropriations through fiscal year 1980, and provided that authorization for the next 4 years be by separate legislation after an assessment of the progress under the act during the first 3 years.

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The Committee on Interior and Insular Affairs reviewed the work that has gone forward under the act to date and found that considerable progress has in fact been made. Accordingly, H.R. 6629 represents a continuing commitment to the goals of the 1976 act, those, of course, to improve on the health and health care programs of the Indian community of America.

I am pleased to note that the bill contains an amendment prepared in conjunction with the Committee on Interstate and Foreign Commerce to insure that Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State are eligible for assistance provided in titles II and III of the act.

By a 1958 act of Congress, numerous small Indian rancherias in California were terminated from Federal recognition. Included among the conditions of termination was a requirement that the Indian Health Service bring certain community sanitation facilities up to standard. In many cases, however, this and other conditions were not fulfilled. In addition, the U.S. district court held that due process was denied dependents of terminated Indians in the termination act, and that these Indians should be eligible for Indian services. This amendment clarifies their eligibility.

Mr. Speaker, if I could have the attention of the chairman of the committee for just a brief moment, I want to clarify that those who were terminated under the rancheria program are in fact now qualified and eligible for coverage under this Indian health care legislation. Is the answer to that question in the affirmative?

Mr. UDALL. Yes. Mr. Speaker, if the gentleman will yield, that is the effect of the amendment to which the gentleman referred.

Mr. CLAUSEN. Mr. Speaker, I thank

the gentleman from Arizona (Mr. UDALL).

H.R. 6629 continues the congressional commitment of the 1976 act to meet the national policy goal of providing the highest possible health status to Indians and to provide existing Indian health services with the resources necessary to effect that policy. As my colleagues will remember, the 94th Congress adopted that policy goal by a vote of 310 to 9. The work should be continued to meet that goal.

Mr. Speaker, I therefore urge my colleagues in the House to pass H.R. 6629 without delay.

Mr. ASHBROOK. Mr. Speaker, will the gentleman yield?

Mr. CLAUSEN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Speaker, could we get into a little discussion of the cost of this legislation? What are we talking about in terms of cost?

Mr. CLAUSEN. Mr. Speaker, the overall amount—and I would ask for verification of this from the committee chairman—is $435 million. That is the authorized amount.

Mr. ASHBROOK. That is almost a half a billion dollars?

Mr. CLAUSEN. Almost a half billion dollars spread out over a 4-year period.

Mr. UDALL. Mr. Speaker, will the gentleman yield to me?

Mr. CLAUSEN. I am happy to yield to the committee chairman.

Mr. UDALL. Mr. Speaker, I want to make the point again that this is over a 4-year period, as shown on page 8 of the report. For 1981 the total is $87 million, it is $100 million in the next year, and in the peak year it is $132 million. In the fourth year it is $132 million.

Mr. ASHBROOK. Mr. Speaker, if the gentleman will yield further, may I ask, where does this money come from?

Mr. CLAUSEN. These are general fund authorizations.

Mr. ASHBROOK. General fund authorizations.

Mr. Speaker, I thank my colleague, the gentleman from California (Mr. CLAUSEN).

● Mr. CARTER. Mr. Speaker, I support H.R. 6629 which reauthorizes funding for programs under the Indian Health Care Improvement Act (Public Law 94-347) that would otherwise expire this fiscal year.

As you may recall this act was enacted in 1976 as a result of congressional oversight hearings which disclosed severe Indian health problems and deficiencies in Federal programs designed to provide health care to Indians.

That legislation was considered by the Interior Committee and by the Commerce Committee's Health and Environment Subcommittee on which I serve as ranking minority member. In order to address the wide range of Indian health problems we agreed to establish seven titles in the bill to provide a comprehensive and coordinated Federal effort.

These titles included programs to address the following needs:

Health manpower, including the need for a sufficient cadre of trained Indian health professionals;

Patient care;

Construction of hospitals and other health care facilities;

Elimination of unsafe water supplies and unsanitary waste disposal systems; and

Improved access to health resources for urban Indian organizations.

In sum, the Indian Health Care Improvement Act provided a framework for a sustained Federal effort to improve the status of Indian health.

And although improvements have been made significant problems still remain which support the need for continuing these authorities.

For example, if we compare the age-adjusted mortality rate for Indians and Alaskan Natives in 1978 with that of the U.S. population for all races in 1977 for various diseases we find that the Indian population has consistently higher rates.

For example, the age-adjusted mortality rate for Indians dying from 1.1 times as high as the comparable rate for the U.S. population.

For cirrhosis of the liver the Indian mortality rate was 4.8 times as high as that of the U.S. population. Indeed, alcoholism is one of the most serious health problems facing the Indian people today.

Another serious health problem among the Indian population is diabetes mellitus. We find that the age-adjusted mortality rate for Indians dying from diabetes is 2.6 times that of the U.S. population. And of course there are many serious complications that result from diabetes as well including blindness.

And finally, it should be noted that the death rate for Indians from tuberculosis is 6.2 times that of the U.S. population when age adjustments are taken into account.

In conclusion, Mr. Speaker, I would urge my colleagues to support H.R. 6629 so that we may continue our efforts to improve the status of Indian health in this country.

I would point out to my colleagues that the fiscal 1981 authorization level is substantially less than both the fiscal 1980 appropriation and authorization. This reduction was achieved primarily by elimination of title III, construction authority, which was determined not to be necessary any longer.

Finally, I wish to emphasize that the Commerce Committee still maintains its jurisdiction over Indian health legislation and our commitment to insure effective Federal programs in this area.

It was only because H.R. 6629 provided a straightforward extension of existing law, rather than major revision, coupled with the fact that our committee had a very full schedule, that we did not exercise jurisdiction over this reauthorization. A letter to Chairman UDALL from Commerce Committee Chairman HARLEY STAGGERS describing our committee's position appears in the committee report on page 7.

Again I urge favorable consideration of H.R. 6629.●

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CLAUSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 6629, as amended.

The question was taken.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

Mr. BROWN of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1250) to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes, as amended.

The Clerk read as follows:

S. 1250

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Stevenson-Wydler Technology Innovation Act of 1980".

SEC. 2. FINDINGS.

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation

and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of centers for industrial technology;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging and exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) "Director" means the Director of the Office of Industrial Technology, appointed pursuant to section 5 of this Act.

(4) "Centers" means the Centers for Industrial Technology established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is owned and funded by the Federal Government, whether operated by the Government or by a contractor.

(7) "Supporting agency" means either the Secretary of Commerce or the National Science Foundation, as appropriate.

SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

(a) IN GENERAL.—The Secretary shall establish and maintain an Office of Industrial Technology in accordance with the provisions, findings, and purposes of this Act.

(b) DIRECTOR.—The Secretary shall appoint a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5, United States Code.

(c) DUTIES.—The Secretary through the Director, on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(7) publish the results of studies and policy experiments.

(d) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act and recommendations for possible modifications thereof.

SEC. 6. CENTERS FOR INDUSTRIAL TECHNOLOGY.

(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be nonprofit institutions and shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;

(2) assistance to individuals and small business in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) REQUIREMENTS.—Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) PLANNING GRANTS.—The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

(e) ADDITIONAL CONSIDERATION.—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request. However, the establishment of a Center, the rendering of an opinion by the Attorney General, or any other activity undertaken or approved under this Act, shall not convey to any person, association, corporation or other business organization immunity from civil or criminal liability, or create defenses to actions under any antitrust law.

SEC. 7. GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this Act, including activities performed by individuals. The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program.

(b) ELIGIBILITY AND PROCEDURE.—Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) TERMS AND CONDITIONS.—

(1) Any grant made, or cooperative agreement entered into, under this section shall

be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

Sec. 8. National Science Foundation Centers for Industrial Technology.

(a) Establishment and Provisions.—The National Science Foundation shall provide assistance for the establishment of Centers for Industrial Technology. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b). The provisions of section 6(e) shall apply to Centers established under this section.

(b) Planning Grants.—The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan, as described under section 6(c)(3).

(c) Terms and Conditions.—Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this Act shall be governed by the National Science Foundation Act of 1950 and other pertinent Acts.

Sec. 9. Administrative Arrangements.

(a) Coordination.—The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this Act, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council on Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) Cooperation.—It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by or could contribute to, the programs established under this Act, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this Act.

(c) Administrative Authorization.—

(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this Act.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this Act.

Sec. 10. External Advice.

The Secretary shall require an appropriate advisory committee to review annually the activities of the Office and to advise the Secretary and the Director with respect to—

(1) the formulation and conduct of activities under section 5 of this title;

(2) the designation and operation of Centers and their programs under section 6 of this Act including assistance in establishing priorities;

(3) the preparation of the report required under section 5(d); and

(4) such other matters as the Secretary or Director refers to the Committee for review and advice.

The Director shall make available to the Committee such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

Sec. 11. Utilization of Federal Technology.

(a) Policy.—It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive, where appropriate, to transfer federally owned or originated technology to State and local governments and to the private sector.

(b) Establishment of Research and Technology Applications Offices.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. The agency head may waive the requirements set forth in (1) and/or (2) of this subsection. If the agency head waives either requirement (1) or (2), the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) Functions of Research and Technology Applications Offices.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the Center for the Utilization of Federal Technology and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry; and

(4) to provide technical assistance in response to requests from State and local government officials.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) Center for the Utilization of Federal Technology.—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;

(3) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer, particularly in dealing with State and local governments;

(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories;

(5) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(4); and

(6) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(e) Agency Reporting.—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.

Sec. 12. National Technology Medal.

(a) Establishment.—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on this basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) Award.—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) Presentation.—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

Sec. 13. Personnel Exchanges.

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

Sec. 14. Authorization of Appropriations.

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out section 6, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a), there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this Act, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this Act only such sums may be appropriated as the Congress may authorize by law.

SEC. 15. SPENDING AUTHORITY.

No payments shall be made or contracts shall be entered into pursuant to this Act except to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. HOLLENBECK. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. BROWN) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. HOLLENBECK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that I may have permission to revise and extend my remarks, and that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Speaker, I should like to thank the gentleman from Florida (Mr. FUQUA), chairman of the Science and Technology Committee, and the committee's ranking minority member, the gentleman from New York (Mr. WYDLER), for their leadership and assistance during the committee's considerations of S. 1250—a bill "to promote U.S. technological innovation for the achievement of national economic, environmental, and social goals."

I would also like to thank the members of the Subcommittee on Science, Research and Technology and, in particular, Mr. WATKINS, Mr. ERTEL, and the ranking minority member, Mr. HOLLENBECK for their assistance in preparing the bill.

Mr. Speaker, as you well know, technological innovation is a vital component of our country's economic growth as viewed from both domestic and international perspectives. Traditionally, the United States has been a leader in innovation—however, recent trends indicate that the extent of this lead may be diminishing in relation to past U.S. industrial performance and vis-a-vis foreign industrial performance.

Its concern over the current state of technological innovation in the United States has led the Committee on Science and Technology, and specifically, the Subcommittee on Science, Research and Technology to undertake an extensive review of this issue during the 96th Congress. A series of hearings, reports, and recommendations have culminated in the committee's support of S. 1250, now titled the Stevenson-Wydler Technology Innovation Act of 1980.

S. 1250, as amended, provides for a multifaceted approach to improving the environment in which industrial innovation occurs. The bill acts to strengthen the relationships between Government, industry, and academia such that each sector can contribute to the innovation process in a program of shared responsibilities. The resources available in the Federal laboratories are acknowledged and an effort to improve the utilization of this knowledge and expertise is prescribed. Several of President Carter's industrial innovation initiatives are given legislative mandates through this bill.

Overarching thrusts of the bill are: First, to build links between generators of knowledge (universities and Federal laboratories) and users of knowledge (industry and State and local governments); and second, to build into the Federal Government a positive concern for the welfare of industry. It is the committee's judgment that these two matters have not heretofore received sufficient attention from the Federal Government, and the bill is intended to rectify the situation.

The major features of the bill are as follows:

CENTERS FOR INDUSTRIAL TECHNOLOGY (SECTIONS 6 AND 8)

The bill authorizes the Department of Commerce (DOC) and the National Science Foundation (NSF) to support centers for industrial technology. The centers would be similar to existing NSF centers that either focus on a specific technology area (for example, polymer processing) or on training university students to be technological entrepreneurs. The bill leaves fairly broad latitude for center variety. The "generic technology" centers which have been planned by the Department of Commerce would be covered by the bill.

The bulk of the dollars authorized would be authorized for the centers.

OFFICE OF INDUSTRIAL TECHNOLOGY (SECTION 5)

The bill establishes an Office of Industrial Technology in DOC. This would provide a legislative basis for the Office of Productivity, Technology and Innovation (OPTI) which is being formed in DOC. The Office would undertake policy studies and experiments, and would be in charge of centers for industrial technology established by DOC.

UTILIZATION OF FEDERAL TECHNOLOGY (SECTION 11)

The bill declares a policy that Federal technology should be fully used, requires the establishment of Research and Technology Applications Offices in Federal laboratories, and establishes a single center for the Utilization of Federal Technology (CUFT). CUFT is being established by DOC anyway, and the bill would provide a legislative basis for it.

NATIONAL TECHNOLOGY MEDAL (SECTION 12)

The bill establishes a National Technology Medal to recognize individuals making outstanding contributions to technology. The President has announced his intention to have such a medal, and this would provide a legislative basis for it, similar to the legislative basis for the National Medal of Science.

PERSONNEL EXCHANGES (SECTION 13)

This bill requires DOC and NEF to establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Government laboratories.

AUTHORIZATIONS (SECTION 14)

The bill authorizes a total of $285 million over 5 fiscal years (1981–85). No funds are authorized to the National Science Foundation; rather, NSF funds for purposes of the bill would be included in the annual NSF authorization bill.

In addition, the bill provides that one-half of 1 percent of the research and development budget of each agency with a Federal laboratory should be available for technology utilization efforts in the agency.

The bill, as passed by the Senate, included the centers for industrial technology and the Office of Industrial Technology which I described previously. The Science and Technology Committee made no substantive deletions from the Senate-passed version of S. 1250, but did add material on the utilization of Federal Technology, the National Technology Medal, and Personnel Exchanges. The committee also added a role for the National Science Foundation. NSF had no role in the Senate-passed version of S. 1250, except to cooperate with the programs established under this act, as specified in section 9. The Science and Technology Committee gave NSF a role in supporting centers for industrial technology and in supporting personnel exchanges.

In an effort to meet the administration's objections to parts of the bill, we have made some additional changes since S. 1250 was reported by the Science and Technology Committee. I would like to outline the major changes made to accommodate the administration's wishes in what follows:

1. PATENT PROVISION (SECTION 6)

The patent provisions stated in section 6 have been deleted. The administration has argued that these provisions should be deleted because they are inconsistent with its position on Government patent policy reform as articulated in H.R. 6933. Furthermore, the administration has argued that, should a uniform patent policy bill like H.R. 6933 not pass this Congress, the inclusion of a new patent policy in section 6 will merely add another policy to the 26-odd patent policies under which the Federal agencies operate today. Lastly, the administration has argued that the intent of the patent provisions of section 6 can be met under existing patent policies at NSF and the Department of Commerce. That is, the administration has said that NSF and the Department of Commerce can and will promote the grant of exclusive rights to inventions, including the grant of full title, to industrial innovation centers at which the invention was conceived or under whose auspices the invention was made.

I lean toward the view that the patent provisions of section 6 are far better than most of the patent policies under which Federal agencies are currently forced to operate. However, because the administration has assured us that the intent of section 6's patent provisions will be met without explicit legislative language, the patent provisions have been deleted from the bill before us today.

2. ANTITRUST PROVISION

Section 6 contains a provision which permits NSF and the Department of Commerce to request an opinion from the Attorney General as to whether a proposed joint research activity of a center would violate any of the antitrust laws. The administration requested the inclusion of language that would make explicit that the Attorney General's opinion is only advisory and should not be looked upon as creating an absolute defense to subsequent actions brought under any antitrust law. The requested language has been included in the version of S. 1250 before us. Also, the making of a request for an opinion has been made optional rather than mandatory.

3. NATIONAL INDUSTRIAL TECHNOLOGY BOARD

S. 1250, as reported by the Science and Technology Committee contained a provision in section 9 which established a National Industrial Technology Board to advise the Secretary of Commerce and the Director of NSF with regard to matters within the act's purview. This section has been changed to allow the Secretary of Commerce to assign the functions of the Board, as designated in the act, to an existing advisory committee. Some of the requirements of membership and terms have also been changed. Again, these changes were made at the administration's request.

4. UTILIZATION OF FEDERAL TECHNOLOGY

Section 11 of S. 1250 requires the Federal Government to strive, where appropriate, to transfer federally owned or originated technology to state and local governments and to the private sector. Specifically, the act requires a commitment on the part of all agencies with Federal labs to operate offices of research and technology applications and to allocate a small portion of their research and development budgets (at least one-half of 1 percent) to support the technology transfer function at the agency and its laboratories.

As a result of strong administration opposition to this provision, we have included a waiver provision which permits Federal agencies to waive the budget and staffing requirements of section 11(b) if the agency transmits to Congress a written justification for the waiver with a full and complete explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency. Given the inclusion of the waiver provision, I believe that section 11 now allows each Federal agency the kind of flexibility it may need to meet the objectives of section 11 within the context of differing agency characteristics.

I believe that the present form of the bill does or should meet all of the administration's most substantial objections to S. 1250. I strongly urge my colleagues to join with me in supporting this bill. The Stevenson-Wydler Technology Innovation Act of 1980 is a step in the right direction for the U.S. economy as a whole and for the health of technological innovation in particular. Thank you, Mr. Speaker.

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Mr. Speaker, I want to give an opportunity to others who wish to speak on the bill to do so, and I note the approach of the distinguished chairman, whose contribution I have already recognized in this matter. I would be happy to yield to the gentleman from Florida (Mr. FUQUA) for whatever statement he may wish to make.

Mr. FUQUA. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980.

Every Member of this House is aware of the economic problems the country is facing. Inflation continues unchecked, our balance of trade is deeply in the red, and the increase in productivity of the Nation's work force has stopped in its tracks. We need to do something.

The Committee on Science and Technology has been working throughout the 96th Congress to understand the nature of our problems in innovation and productivity and to come up with solutions. I would like to compliment the gentleman from California, the Honorable GEORGE BROWN, for the leadership he has taken through the Subcommittee on Science, Research and Technology in studying these problems.

While the gentleman from California has conducted dozens of sessions of hearings on innovation and productivity, the full Committee on Science and Technology has also held many sessions. I have had the pleasure of chairing most of them.

I particularly remember the joint hearing we held with the House Committee on Small Business and the Senate Committees on Commerce and Small Business last October. That day we heard from the administration regarding the President's industrial innovation initiatives. The bill before the House now provides a legislative basis for several of the initiatives put forth that day. The principal thrusts of the bill are those of the President's industrial innovation initiatives on which there is agreement between the administration and Congress.

The gentleman from California's statement explains these thrusts, so I will not repeat them. The bill is quite modest in its provisions; we are not busting any budgets. The Committee on Science and Technology will be considering further legislation in the next Congress to help solve our innovation and productivity problems. The President, I should note, took the second step 2 weeks ago in his "economic program for the eighties." We are looking at that program carefully. I am pleased to see the steps the President is proposing.

As I mentioned a moment ago, the bill now before the House, S. 1250, provides for measures on which there is wide agreement. The bill has enjoyed bipartisan support in the Committee on Science and Technology. It has reached the floor of the House without a dissenting vote in subcommittee or committee. I especially appreciate the support for this bill provided by our colleague, the gentleman from New York, the Honorable JACK WYDLER, ranking minority member of the Committee on Science and Technology.

The gentleman from New York, as Members are aware, is retiring from Congress at the end of this session. His retirement is one I am sure his constituents would not have voted for if he had put them to the test.

JACK WYDLER and I were both sworn in for the first time on January 3, 1963, 18 years ago. We both joined the Committee on Science and Astronautics and the Committee on Government Operations. After 16 years we both arrived at the top of our party's seniority list of the Committee on Science and Technology. In our 18 years of common service, the lively debates JACK and I have had in our two shared committees would fill a large book. I will miss the gentleman from New York, and the committees will miss him.

As a tribute to the contributions of the gentleman from New York, in the version of the bill which is before the House now, which is shown in the CONGRESSIONAL RECORD from last Friday, I have proposed to add JACK WYDLER's name to the title of the bill. It is the Stevenson-Wydler Technology Innovation Act of 1980.

Mr. Speaker, the Stevenson-Wydler bill is a good bill and an urgently needed bill. I urge Members to vote for it. We need to get America moving. Thank you.

Mr. BROWN of California. I thank the gentleman very much for his contribution.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATKINS), who has been one of the staunchest members of the subcommittee in his concern for the interests of the health of American business and industry and who has made a substantial contribution to the perfection of this legislation.

Mr. WATKINS. Mr. Speaker, I am happy to rise in support of the bill S. 1250, the Stevenson-Wydler Innovation Act of 1980. I believe this bill can go a long way toward improving the climate for technological innovation in this country and I urge my colleagues to join with me in supporting this bill.

Mr. Speaker, I would like to commend my colleagues on the Science, Research, and Technology Subcommittee, and its chairman, Mr. BROWN, for the excellent job they have done with this bill. I would also like to commend our committee chairman, Mr. FUQUA, and the committee's ranking minority member, Mr. WYDLER, for their leadership and assistance during the committee's consideration of this bill.

I would particularly like to commend my Science Committee colleagues for their support of section 11 of the bill entitled, "Utilization of Federal Technology." This section is especially important to me and I believe it is a critical element of the bill.

Mr. Speaker, it is shocking to realize that, with few exceptions, the vast technology developed by federally funded programs since World War II has not resulted in widespread "spin-offs" of additional applications of practical products, processes, and services in our country's economy. But such "spin-off" applications can make a substantial impact on the Nation's economic growth, industrial productivity, and employment gains. They can also help revitalize our local economies. Thus, transfer and utilization of federally funded technology with a view toward solving critical national and local problems is truly an endeavor which promises great public benefits.

To achieve these public benefits, we need to shift the focus of Federal concern from simply telling local and State governments and commercial users about promising technologies to actually transforming these technical resources into an ultimately useful form. Cooperation and communication between the actual provider and the potential user are essential elements in this process.

Mr. Speaker, section 11, in which I had a major role in writing, should go a long way toward accomplishing the goal of effective technology transfer between the Federal R. & D. enterprise and State and local governments as well as the private sector. Again, I strongly urge my colleagues to join with me in supporting this bill.

Mr. BROWN of California. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania (Mr. ERTEL), a member of the subcommittee who has also made major contributions to the drafting of this legislation.

Mr. ERTEL. Mr. Speaker, I appreciate the gentleman's yielding and those kind words. I would like to compliment the chairman of the committee and the chairman of the subcommittee for bringing out this important legislation. I think it is important to the Nation.

I would also like to add my words to the chairman of the subcommittee in praising the gentleman from New York (Mr. WYDLER). Although I have only served on this committee for 2 years, I have had a great deal of opportunity to see his work on the committee, and I think he has done an outstanding job. The Republican minority ought to be proud to have such a member as part of their group, and I am sure that the committee will miss his endeavors in the future. He has certainly lent an enlightened view to many of the discussions we have had, and I have certainly appreciated his insights and acumen.

Mr. Speaker, we have heard about the need to improve productivity and innovation in this Nation, but unfortunately we have seen almost no action. This legislation offers us the opportunity to stop talking about our problems and start doing something about them.

There are many ways to approach the problem of declining productivity and innovation, but an important underpinning is bringing industry, Government and academia together to work in concert. This is precisely what this legislation does. We are talking about pooling our resources to make substantive improvements in fundamental industrial and technological processes. Not exotic, high technology hardware, but simple and basic activities such as welding, cement manufacturing, or making better use of the mineral properties of basic raw materials. These are activities which underlie a vast range of manufacturing and industrial processes.

Everyone benefits from improvements in these areas; but small businesses will find critical value in this work. Small businesses most often find themselves in need of improved manufacturing techniques and least able to pay for the necessary research and development. Generic technology centers support the basic tenant that made America's economic system strong to begin with—do it better.

This legislation addresses another area of great importance. How often have we heard that there is little value in the research done in our Federal laboratories? The basis for this statement is that little use is made of the research conducted at these institutions. The failure is not because there are not important applications for the work done in the Federal labs. Instead, there is no incentive to make use of the work. Even when a researcher wants to find applications, no mechanism exists for transferring this work to deal with our problems. That is, there is little or no technology transfer. Instead, the research information collects dust on the shelf. This bill takes an important step in changing this situation.

Quite often, technology transfer is discussed but we see little action. When action is taken, it involves transfers to other countries, while we ignore making use of our research at home. This legislation would create a mechanism within our large Federal laboratories to disseminate the work being conducted and to find applications in the United States. This work would be supported by a small part of the labs' budget—no additional money.

A few cities in this country have experimented with assigning an individual to see if anything the laboratories are doing can solve local problems. These experiments have been extremely successful. But we all know that our cities are facing major financial difficulties. Most do not have the luxury of turning someone loose on the Federal labs. Therefore, we must insure that the labs themselves meet their responsibility to make the fullest possible use of Federal R. & D. activities.

Let me give you an example of how technology transfer should work. Nearly every city has an assortment of records such as deeds. Over time, many of these records fade and can no longer be read. Community development is significantly affected by property ownership; however, if legal questions arise and deeds cannot be read, cities can face serious problems. The city of Philadelphia had such a problem. The city's science adviser had heard that NASA was working on a way to enhance photographs from its Mars missions and he asked if this process could be used on records such as deeds. NASA tried it out and it worked.

This is an example of a clear and important application of Federal lab work. We need to encourage this type of technology transfer; but unless we build in the necessary mechanisms to make it possible, our citizens are not going to be getting a full return on their investments.

Finally, let me say that when the Science and Technology Committee was working on this legislation, concerns were raised about how patents would be treated. The legislation contained a section which dealt with the allocation of patent rights for inventions coming out of the work of the generic technology centers. I supported these provisions, but the committee has been assured by the administration that it already has the authority to implement the policies delineated in that part of the bill and would act in a manner consistent with the intent of the committee.

In addition, legislation is moving toward floor consideration which would create a uniform Federal patent policy. It is more preferable to have one comprehensive policy, than to have a large number of policies as we have today. Consequently, those parts of the bill dealing with patent treatment have been dropped. It is my hope that the administration's assurances will be followed.

This legislation is an important step in an effort to improve innovation and productivity in the Nation. It gives us a chance to stop talking and start acting. I commend the chairmen of the full committee and the subcommittee for their work on this critical issue, and I urge my colleagues to vote for the bill.

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Mr. BROWN of California. Mr. Speaker, I reserve the balance of my time.

Mr. HOLLENBECK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. As a cosponsor of the earlier House version of this bill, at this time I want to pay tribute to my colleague, JACK WYDLER, the retiring ranking minority member of our Science and Technology Committee, for his efforts over the years to assure a strong national R. & D. program. In particular, I would commend his work with NASA in promoting that agency's technology utilization program which seeks to facilitate the spinoff or transfer of federally funded R. & D. to civilian uses. For many years now he has stood up very strongly for the principle that the results of Federal research should be shared throughout the society and I think it is a fitting tribute that this legislation, when passed will bear his name. I also commended the chairman of the full committee Mr. FUQUA and the subcommittee Mr. BROWN for their efforts in this area.

Mr. Speaker, I do not need to recite the litany of declining U.S. productivity. We can see its effects. I should note that it is particularly serious in some of our older industries; however, there are ominous signs, such as the extraordinarily high quality standards of Japanese electronics computer chips which suggest that even in those industries where the United States is now preeminent, we shortly face very stiff competition from the Japanese.

Mr. Speaker, I do not know how many of my colleagues here read last week's announcement that the Commerce Department is sponsoring three cooperative research centers to undertake research in so-called generic technologies.

These are technologies where the industrywide benefits of basic research would be substantial but where the return to any one company is relatively small so that it is impossible to justify the necessary funding by one company alone. The three centers which the Commerce Department is setting up concern welding and joining, lubrication, and power-metal processing. The Washington Post article noted that only $5.2 million was set aside to start the three centers because of budget restraints by the White House.

Mr. Speaker, these three centers are one example of the Centers for Industrial Technology which would be mandated by section 6 of the bill we are considering today. We would agree that far greater effort should be devoted to this type of activity which would promote a greater degree of cooperative technological innovation between scientists in industry and in universities. This bill is a positive step forward and I hope that by its passage Congress will impress upon the administration the urgency of the task before us. Reinvigorating the economy cannot be solved by penny-pinching grants of $5.2 million or a $20 billion tax cut program such as the President announced a week ago. The tasks are far greater.

The generic technology centers would be sponsored by the National Science Foundation as well as by the Department of Commerce. The National Science Foundation has for a number of years sponsored the famous cooperative industry-university polymer research center at MIT. It is upon that successful example that this bill draws its original inspiration. For this reason our bill, in contrast to the original Senate version, also gives the National Science Foundation a mandate to continue its activities in this area.

Mr. Speaker, I am pleased to see that S. 1250 provides a mandate for the newly created Office of Industrial Technology in the Department of Commerce which would seek to evaluate new technological developments, international technology transfers as well as the performance of U.S. industrial innovation relative to other nations. This office would also identify technical needs and opportunities across industrial sectors. The office would not formulate a national industrial policy which I firmly believe we must have in the future and which the findings of the bill support, but it would at least attempt to identify emerging problems and opportunities in promoting industrial innovation.

Mr. Speaker, I have said here and elsewhere many times that the United States needs a comprehensive national reindustrialization policy at the highest level which would seek to enunciate long-term industrial and economic goals as well as policies to achieve those objectives. I believe it is essential that we consider this process of reindustrialization over a 30- or 50-year lifetime throughout the lifecycle of the coming generation of new technologies. We are one of the few nations who does not have a comprehensive national industrial policy, and I believe the time is coming to mandate such a policy. In the near future I will introduce or cosponsor further legislative proposals to put into effect comprehensive national policies for industrial innovation. In the meantime, the new Office of Industrial Technology would provide a first step by spotting emerging industrial problems and opportunities.

Mr. Speaker, there are a number of specific areas I would like to note which I believe it will be very important for the administration to bear in mind as it carries out this legislation over the coming years. First, I would mention patent policies for inventions and innovations produced by the centers for industrial technology. In view of prospective legislation which may pass the House this year, at the request of the administration, we have eliminated patent provisions which are contained in the committee bill. They would have given a center, which incidentally is a nonprofit, nongovernmental institution, the option of acquiring title to any invention. We know from testimony before our committee that exclusive license or title must be given to an inventor if commercialization is to proceed. Since the whole point of this bill is to stimulate the commercialization of industrial innovations, then we must concede the principle of exclusivity with regard to patent rights if these innovations are to be put into practice. However, in the interest of consistency we have not enunciated a specific patent policy in this legislation.

In our negotiations with the administration they have agreed that within the mandates of the Department of the Department of Commerce and the National Science Foundation, the centers will be given the option to acquire title to any invention made under their auspices as a matter of customary practice. I hope that this policy will be put into practice with a minimum of bureaucratic and administrative redtape and with a minimum of administrative delay for the potential patent holder. Mr. Speaker, I hope that the administration honors this agreement because it represents a very substantial compromise on our part. We firmly believe that if commercialization is to proceed on a wide scale, it is essential that exclusive rights be given to develop the inventions which grow out of this program.

Finally, Mr. Speaker, section 11 of this bill requires that Federal laboratories establish Offices of Research and Technology Applications and that the Department of Commerce establish a Center for the Utilization of Federal Technology. The purpose of these offices within a laboratory is to promote the transfer of inventions and research conducted by each laboratory to State and local governments and to the private sector. The purpose of the Center for the Utilization of Federal Technology is to coordinate programs for the transfer of technology across the Federal Government. I strongly support the provision which requires any laboratory with a budget of over $20 million to assign at least one professional full-time to its Office for Research and Technology Application.

I also strongly support the requirement that Federal agencies designate at least 0.5 percent of their research and development budget for technology transfer. In many cases, these amounts are substantially less than the agencies are carrying out under their own initiative. S. 1250 would give the function of technology transfer a definite mandate for all Federal laboratories, not just for a select few such as NASA.

In some cases, technology is being developed which simply does not have conceivable application to civilian uses or to State or local government. In these and other extraordinary circumstances, an agency would be permitted to waive this requirement upon writing a written justification to the Congress. We do not intend to be inflexible; however, we do feel that this commitment represents at least a minimal goal for the important function of technology transfer at Federal laboratories.

Mr. Speaker, in conclusion I urge my colleagues to support S. 1250 today. Once again let me say that I think that passage of this bill will be a fitting tribute to our distinguished colleague, the ranking minority member of the Science Committee, JACK WYDLER.

Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. CARNEY).

Mr. CARNEY. Mr. Speaker, I, too, stand in support of S. 1250, the Stevenson-Wydler Innovation Act of 1980. As a member of the Committee on Science and Technology, I would like to associate myself with the remarks of both the majority membership and the minority membership who spoke so eloquently about the bill, as well as about the gentleman from New York (Mr. WYDLER), the ranking minority member of the Science and Technology Committee.

As a member of the Long Island delegation where the gentleman from New York (Mr. WYDLER) serves as the caucus chairman, I say without hesitation that the gentleman from New York (Mr. WYDLER) certainly understands the necessity of this bill and how it would help our community back on Long Island. I believe I share this view with all six Members from that community. I can say that without hesitation that the Long Island community from one end of the island to the other will miss the gentleman from New York (Mr. WYDLER) in the Congress of the United States.

I would just like to add my praise for the 18 years of fine work he has done in the Congress of the United States.

Mr. HOLLENBECK. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr. Speaker, I thank the gentleman for yielding.

Of course, it is an unusual experience to any Member to sit on the floor of the House and listen to himself praised. It is also a pleasant experience, however, so it is one that I thoroughly enjoy. I thank all the people that have participated in that praise; the chairman of the committee, the gentleman from Florida; the chairman of the subcommittee, the gentleman from California; the ranking member of the subcommittee, the gentleman from New Jersey; the gentleman from Pennsylvania, and my colleague, the gentleman from New York. I do appreciate their kind words and I think that I am proud in a sense to have my name associated with this legislation. It is important.

I only say in summary of those remarks that I believe our country in the years ahead in looking toward its economic future and what that future will be will come more and more to rely on the development of new technology to keep us as a nation and as a people enjoying the type of standard of living that we have become used to and that we hope to improve upon in the years ahead for our children. We are not going to compete in this world because we have low wages in our country, and I do not think in a true sense we are going to be able to compete because our workers are that much more productive than some of the workers in other countries of the world; but the one area in which the United States can maintain its support in the years ahead would be in technology.

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So the development of that technology is something of the highest order and should be of the highest priority for this Congress.

I would only say I hope as we develop that technology and enjoy its benefits—the benefits, of course, would be a greater number of jobs for our people and higher paying jobs for our people—as we develop these new products from the technology that we learn as people to enjoy the benefits of that, and the benefits from that are that we cannot only use these new products ourselves, but sell them to other countries of the world.

To do that we are going to have to mature, in my judgment, very greatly as a people and stop finding one way after another, and one reason after another, to deny ourselves foreign markets in so many places in the world. We have, as I have traveled around the world and looked at the situation, literally raised a myriad of regulations, not regulations in our country against our people, but regulations in every country, foreign country in the world against the introduction of American products and materials in those countries, for one reason or another, some good, some not so good, many questionable, but for one reason after another when one goes to these countries, country after country we find that the United States has managed to find some reason that they do not want to do business with that country, or they are prohibiting the sale to that country of certain types of material from the United States, most of it for noble causes, but most of it, unfortunately, totally ineffective since the countries simply buy the materials from other countries in the world.

In my judgment, if we were to tear down the artificial barriers we have erected as a nation around the world, we would find that we could "double," and I use that word, double the exports of the United States to the world. That would make a dramatic difference in the economic situation in which we find ourselves. If that were to come about a lot of our unemployment problems, a lot of our economic problems, and, yes, indeed, a lot of our inflationary problems would begin to turn back in our favor. We have lost a lot of that advantage, in my judgment, over the last 20 years of our Nation's history because of this constricting of our powerful trade potential that we have created as a problem for ourselves.

So I do hope that the House will, indeed, pass this legislation. It is a small but important step on the road to improving and increasing the technology that we make available to our industry, to make it more competitive, and to make it more productive. In that respect it holds out a great hope for the future betterment of the economic position in which our country finds itself.

Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980. Let me say that I am deeply honored by the initiative of the chairman of the Science Committee, and the chairman of the Subcommittee on Science, Research, and Technology to include my name in the title of this bill. I say this because I believe that the reindustrialization of this country and the very invigoration of technological innovation are among the most pressing tasks facing this Nation for the next generation. I believe this legislation, which would set up an Office of Industrial Technology to evaluate the status of industrial innovation and which would mandate joint university-industry centers for industrial technology, is extremely important to that end. I believe that this bill represents a real step forward in the attempt to try and bridge the difficult gap between government and industry by creating a new form of industry-university partnership in applied research. Somehow we must develop new mechanisms which go beyond the traditional spin-off of research such as has occurred mainly from DOD research. And it is also evident that simply having the Government directly carry out research in its own laboratories is not sufficient. The mere existence of ideas does not lead to their implementation. This is true in Government as well as universities and industry, and this bill is directed at making the university a real third party.

Mr. Speaker, a further extremely important provision added to the original bill introduced by Senator STEVENSON is contained in our section 11. That section would mandate the formation of Research and Technology Application Offices at Federal laboratories as well as a Center for the Utilization of Federal Technology at the Department of Commerce. These offices, as well as the Center, would carry out the promotion of technology transfer from Federal Laboratories and Federal research programs to State, local governments, and to the private sector. Federal agencies would be required to devote one-half of 1 percent of their R. & D. budgets to the function of technology transfer, and Federal laboratories with a budget of over $20 million would be required to have at least one full-time professional working on technology transfer. I think the committee has been extremely reasonable in trying to consider some of the administration's reservations about this provision. In order to give flexibility, we have compromised by allowing any agency to waive the set-aside requirement. The waiver would be by congressional notification, including the agency's plans for conducting its own technology transfer program.

Mr. Speaker, for years now, as I have overseen the activities of the National Aeronautics and Space Administration, I have supported that Administration's technology utilization program. I think in many ways they have done a fine job but I think we can go a bit further. All our national laboratories should reach beyond their traditional departmental or agency missions and within limits serve broader purposes such as improving the productivity of private industry and of State and local governments. This bill would greatly encourage this broader role for Federal research programs as well as for our national laboratories.

Mr. Speaker, let me say that authorizations proposed under this bill are reasonable in relation to the extraordinary need which our society faces over the coming generation to reinvigorate our economy. I believe that the private sector is the primary place where this reinvigoration must occur, but Government can provide an important catalytic role in supporting research and development in certain areas such as so-called generic technologies. In a complementary vein, I was successful in having an amendment adopted to the National Science Foundation authorization for three university-based technology innovation centers. These centers would not only encourage university-industry cooperation in basic research but also train potential entrepreneurs in technology commercialization. To achieve the purposes of this bill will require well-tailored seed money. Even more important is the creation of an innovative climate through appropriate national policies for private sector efforts.

Mr. Speaker, in conclusion, I urge my colleagues to support S. 1250. Once again, let me say that I am deeply honored to have my name associated with this bill and I wish to thank my colleagues on the Science Committee, Chairman FUQUA, Subcommittee Chairman BROWN, and ranking minority member of the subcommittee, "CAP" HOLLENBECK, for their initiative in honoring me by naming this bill after me. It is a highly worthwhile endeavor and I hope it is but the first of the many steps we must take in the reinvigoration of American technology development.

Mr. HOLLENBECK. Mr. Speaker, I have no further requests for time.

Mr. BROWN of California. Mr. Speaker, let me just summarize very briefly. I think the spirit and content of the bill has been conveyed adequately.

If the gentleman from Ohio were here, I think he would want to know just how much we are honoring the gentleman from New York (Mr. WYDLER) in this legislation. I want him to know that the authorization for the next fiscal year contained in this legislation is $24 million, a substantial part of which has already been requested by the administration for their budget. This is hardly as much as a new Federal building in the gentleman's district would cost, so I think we probably are getting a bargain in this legislation.

● Mr. RITTER. Mr. Speaker, I rise in support of S. 1250, the Stevenson-Wydler Technology Innovation Act of 1980 and compliment my colleagues on the Science and Technology Committee for the outstanding work they have done in bringing this legislation before the full House for consideration today.

I also extend my best wishes to Congressman WYDLER and want him to know of my great admiration and respect for him and the job he has done over the years for the American people. This Congress, and the people we represent, will sorely miss JOHN, for he is a tremendous asset to this Congress.

As I speak in support of this proposed legislation today, I bring a somewhat unique-to-the-Congress background. Being a scientist I have had the opportunity to actively participate in both university and industrial research. In addition, I have had the opportunity to interact with a variety of Federal laboratories which carry out research so valuable to many technological advances. I have also had the experience of small businesses. I know from firsthand experience the importance of bringing research to the product innovation, market stage.

In my view, these entities should share the common goal of encouraging and stimulating technological innovation. I am pleased that the bill before us today encompasses that common objective. Each of these vital elements provide skills and outlooks that must now be focused in support of stimulating greater innovation and productivity. The existence of the centers this legislation would establish for industrial technology is an important step to redirecting the more basic knowledge orientation of the universities toward the more market oriented objectives of industry.

That is what this measure is attempting to do and I applaud the fact that it is under consideration here today and I urge my colleagues to support this action.●

Mr. BROWN of California. Mr. Speaker, under the circumstances, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BROWN) that the House suspend the rules and pass the Senate bill, S. 1250, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

EMPLOYMENT OF PERSONAL ASSISTANTS FOR HANDICAPPED FEDERAL EMPLOYEES

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7466), to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status, as amended.

The Clerk read as follows:

H.R. 7466

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

"(a) For the purpose of this section—

"(1) 'agency' means—

"(A) an Executive agency; and

"(B) the Library of Congress;

"(2) 'handicapped employee' means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

"(3) 'nonprofit organization' means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

"(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

"(A) the provisions of this title governing appointment in the competitive service;

"(B) chapter 51 and subchapter III of chapter 53 of this title; and

"(C) section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

"(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion or the travel period involved. Any payment under this subsection to such an individual may be made either directly to that handicapped or by advancement or reimbursement to the handicapped employee.

"(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

"(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

"(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

"(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.".

(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

"3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.".

(c)(1) Section 604(a)(16)(A) of title 28, United States Code, is amended by striking out "3102" and inserting in lieu thereof "3102(b)".

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)," and inserting in lieu thereof "section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees),".

SEC. 2. Section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new subparagraph:

"(C) such members—

"(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

"(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.".

SEC. 3. The amendments made by this Act

shall take effect sixty days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado (Mrs. Schroeder) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. Leach) will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado (Mrs. Schroeder).

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7466 authorizes Federal agencies to employ personal assistants for employees with severe physical disabilities. By so doing, the bill permits the Federal Government to meet its responsibility for making reasonable accommodation to the special needs of handicapped individuals, as required by the Rehabilitation Act of 1973. Currently, agencies have the authority to hire readers for blind employees and interpreters for deaf employees. H.R. 7466 extends this authority to the employment of personal assistants for employees with severe physical disabilities.

This does not mean that each handicapped employee will have a full-time personal assistant. Most disabled employees are able and prefer to perform virtually all job-related functions by themselves. From time to time, a disabled employee might need someone to change the tape on a dictating machine or someone to push their wheelchair down to the cafeteria or someone to assist them in the bathroom. Since agencies now lack authority to employ for this purpose, handicapped employees must rely on colleagues to volunteer. The volunteer system is, however, unreliable and demeaning. This bill permits agencies to assign employees to perform these functions.

The bill, also, provides for the use of personal assistants who are paid for directly by the disabled employee or who are paid for by voluntary organizations. Further, it allows the Government to pay the costs for a traveling companion who is needed by handicapped employee while on travel. Additionally, H.R. 7466 extends this authority to members and staff of advisory committees.

The Govenent is cheating itself if it does not make use of the talents of our handicapped citizens. While employing disabled citizens reduces the Government's burden to support those who cannot work, the better reason to employ handicapped Americans is because many of them have skills, talents, and expertise that our Government needs. The Federal Government should be in the forefront of efforts to bring handicapped citizens into the mainstream of society. This bill will help in these efforts.

The cost of this legislation should be slight. I ask unanimous consent that the cost estimate of the Congressional Budget Office, which we received too late to place in the comittee report, be printed in the Record at this point.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Speaker, I introduced this legislation at the request of the Office of Personnel Management on May 29, 1980. My Subcommittee on Civil Service held 1 day of hearings on August 20. The Committee on Post Office and Civil Service ordered the bill reported on August 27, without dissent.

While this legislation makes only small changes in the law, it is very significant because it reaffirms the commitment of this Congress to bringing disabled citizens into the mainstream of American life. I urge its adoption.

Congressional Budget Office,
Washington, D.C., September 4, 1980.

Hon. James M. Hanley,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7466, a bill to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped federal employees both at their regular duty station and while on travel status, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980. The bill would not provide any additional budget authority, nor would it change personnel ceilings. It is assumed that costs of implementation would be met from existing agency funds.

Without historical evidence, it is not possible to estimate the precise costs that would be associated with this amendment if it were enacted. Based on a review of this bill and data supplied by the Office of Personnel Management, CBO would anticipate a maximum annual cost of $2.7 million to be associated with enactment of this bill. To the extent that services provided under this amendment are being provided by existing employees, and that employees hired as personal assistants will also perform other, currently funded duties, the costs would be less.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin,
Director.

Mr. HARRIS. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman.

Mr. HARRIS. Mr. Speaker, I simply want to take a moment to congratulate the gentlewoman for the work she has done on this bill. This may seem like a small thing to some, but I think it will be of great help to those active, productive handicapped workers with very little cost.

I think one of the confusions on the bill was that people imagined these helpers were going to be full-time helpers. They are not. They are people that are simply scheduled in a supplementary way to give the help and assistance that we receive such a large dividend on.

I want to congratulate the gentlewoman from Colorado (Mrs. Schroeder) for her leadership in bringing this bill to us. It is a good bill.

Mrs. FENWICK. Mr. Speaker, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield.

Mrs. FENWICK. I must ask where this leads. Is it correct, as this sheet I have before me states, that some 7 percent of the 2.8 million Federal employees are handicapped? That means 196,000 people.

As I also read, if they want to travel, or if they would need to travel, they would be provided an assistant. Why would it not be wiser to encourage the volunteer activities that are already taking place?

☐ 1420

Mrs. SCHROEDER. Those figures are a little bit deceptive. What we are talking about here are Federal employees with severe physical handicaps. When one says "handicaps" in a generic form, it encompasses a broad range.

Mrs. FENWICK. I would like to say this to my colleague: I am sure she knows that the Department of Labor classified at one time—and I hope it has now been changed—alcoholics and drug addicts as handicapped. We have to be careful in this House not to draw up legislation in such a way as to allow interpretations by the agencies far beyond what this House ever intended.

Mrs. SCHROEDER. If I can take some time back, I would like to assure the gentlewoman from New Jersey that we have exempted the alcoholic classification as a handicap. We are talking about severe physical—and I underline "physical"—handicaps, and the agency has the authority to look at whether or not those needs are really, No. 1, the needs of the Government and, No. 2, justifiable.

Mrs. FENWICK. I must ask my colleague if this is the time, with the deficits we have and the national debt we have, to inaugurate these new programs. I remind my colleague—I have only been here 5½ years—that when I came, the interest on the national debt was some $32 billion, and now it is around $70 billion. We cannot continue to inaugurate new programs which are going to hire people who then come on the Federal payroll.

Mrs. SCHROEDER. Again, if I may reclaim my time, we are certainly not starting new programs. This is from the 1973 act, and I think all of us know that there are many, many efficiencies involved in making sure people with handicaps can be gainfully employed rather than just saying we are going to put them all on welfare or on disability retirement. This bill makes a minuscule addition to the current law.

Mrs. FENWICK. What costs is the gentlewoman assigning?

Mrs. SCHROEDER. The maximum amount of costs that the Congressional Budget Office figured it could possibly cost would be $2.7 million. That is absolutely top dollars.

Mrs. FENWICK. Is that not the way we start everything? We started energy aid for the poor at $200 million; it is now

$1.2 billion. We started food stamps at $54 million; they are now $9.5 billion.

Mrs. SCHROEDER. Again, if I may reclaim my time, I think the gentlewoman realizes the other alternative is to put all of these people on disability retirement.

Mrs. FENWICK. It is not.

Mrs. SCHROEDER. We know that the disability retirement system is very expensive.

Mrs. FENWICK. It is not the only alternative.

Mrs. SCHROEDER. I think it is.

Mrs. FENWICK. The alternative is to put them into jobs where they do not have to travel. Not every single Federal employee has to travel.

Mrs. SCHROEDER. Again if I may reclaim my time, we are not talking about every single employee having to travel. In our hearings we heard from people who were injured in the line of Federal duty. They much preferred staying at their desks rather than taking disability retirement. With a very minuscule amount of money we can keep them there and not drain the disability retirement funds. Other people who are perfectly capable to do other things can also be made to fit into this category. I think this makes an incredible, inordinate amount of sense.

Mrs. FENWICK. This is a new program; it should not come to the floor under suspension.

Mrs. SCHROEDER. I would suggest the gentlewoman read the hearings because I think they would answer her questions.

Mr. Speaker, I have no further requests for time. and I would reserve the remainder of my time.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wholeheartedly endorse the provisions of H.R. 7466, which will permit the employment of personal assistants for handicapped employees at their regular duty stations as well as when on travel status, just as readers for the blind and interpreters for the deaf are presently employed.

The Federal Government, if it is to fulfill its role as a model employer must make good its intentions to usefully employ the skills and services of the Nation's handicapped. The employment of an assistant is essential both to fulfill the severely physically handicapped's medical needs and to allow him or her to function as efficiently and independently as possible.

This is not an elaborate, complex bill with many difficult far-reaching problems. It is, rather, a very sound financial and humanitarian approach to help a segment of our society achieve financial independence and, most important, the personal dignity for which we all strive. It does not create a large tax burden on the public; rather, it creates a new class of responsible, employed taxpayers.

This bill will help many severely handicapped people to fulfill the true goals of rehabilitation—to allow the handicapped person to be as economically and physically free as the "normal person in the street."

It should be made clear, in this regard, that it is the intent of the committee members actively involved in this legislation that the additional hires authorized by H.R. 7466 should not be charged against any agency's personnel ceiling. As the author of an amendment to the Civil Service Reform Act of 1978 (Public Law 95-454) which called for a Government-wide limit on the size of the civilian work force, I would like to emphasize that limitations of this nature, imposed by the Congress and administered by the executive branch, should not prejudice programs such as that provided by this legislation.

I urge my colleagues in the House to lend H.R. 7466 their unreserved support.

Mr. Speaker, I have no further requests for time and yield back the remainder of my time.

Mrs. SCHROEDER. Mr. Speaker, I would just like to point out that we do have an estimate from the Office of Personnel Management. They said they could not possibly imagine more than 200 employees ever having to travel with a severe physical handicap during a 1-year period, so I hope that puts some of the concerns that many people have to rest, that this is not opening a loophole. This is trying to serve a very serious need that has been overlooked in the past.

● Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 7466, legislation permitting the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

I commend my colleague, the gentlelady from Colorado (Mrs. SCHROEDER), for her work in bringing this measure before the Committee on Post Office and Civil Service, of which I am a member, and to the House floor.

Mr. Speaker, we are all well aware of the fact, which has been proven in both the private and public sector, that our handicapped citizens, given the opportunity, can make a valuable contribution to society. Indeed, the performance record of handicapped individuals demonstrates a substantial return on those adjustments and considerations provided them in their workplace because of their handicapped status.

H.R. 7466 would expand those current statutes authorizing the employment of or assignment of Federal employees as readers for the blind and interpreters for the deaf, by providing for assistance for other handicapped Federal employees. While the Office of Personnel Management estimates the cost of this measure at $330 000 for travel assistant services and $2,148,000 for assistant services needed on the job, OPM indicates that actual expenditures will be considerably less because many of these services will be provided by the existing work force of health unit staffs and coworkers.

Accordingly, Mr. Speaker, I urge my colleagues to support this important measure providing handicapped Federal employees the incentive and needed assistance to make a substantial contribution to our Nation.●

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time and would yield back the remainder of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado (Mrs. SCHROEDER) that the House suspend the rules and pass the bill, H.R. 7466, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7466, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

WITHHOLDING STATE INCOME TAX FROM CIVIL SERVICE RETIREMENT ANNUITIES

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6372) to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants.

The Clerk read as follows:

H.R. 6372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8345 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding.

"(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect with respect to different States during any one calendar year.

"(3) An annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the first month beginning after the day on which such request or revocation is received by the Office.

"(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities.

"(5) For the purpose of this subsection, 'State' means a State, the District of Columbia, or any territory or possession of the United States.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. CORCORAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, this bill is being called up on behalf of the chairman of the Subcommittee on Compensation and Employee Benefits of the House Committee on Post Office and Civil Service, the gentlewoman from Maryland (Mrs. SPELLMAN), who was called away just before we reached the floor for scheduled consideration. I believe that there is no controversy surrounding the bill and that it is supported unanimously by our committee.

Mr. Speaker, this is a very straightforward bill with a very limited purpose. H.R. 6372 will permit civil service retirees to have State income tax withheld from their annuity checks if they so desire.

Under existing law Federal income taxes are deducted from civil service annuity checks. In addition, in 1975 the Congress enacted Public Law 94-166 which authorized the Office of Personnel Management to make allotments from annuity checks for such purposes as the Office determines appropriate. Despite the authority to do so, OPM has refused to provide for allotments for State income tax purposes, and thus there is no mechanism by which civil service retirees can have State income taxes withheld from their annuity checks.

Under these circumstances civil service retirees must make periodic estimated tax payments to the States. These payments, which usually fall due on a quarterly basis, can be very inconvenient for retirees on small fixed incomes. Testimony presented to the Subcommittee on Compensation and Employee Benefits indicates that often retirees must take out short-term high interest loans at tax time in order to meet their State income tax obligations. I should point out that not only will the bill provide a convenient method for the retirees to pay their taxes, it will also facilitate the collection of income taxes by the States and for that reason the bill is supported by the National Association of Governors, the U.S. Conference of Mayors, and the National Association of Counties.

Mr. Speaker, this bill will result in no significant cost. The Congressional Budget Office cost estimate was not received in time to be included in the committee's report, and I ask unanimous consent that it be placed in the record at this point. The estimate indicates that the cost of H.R. 6372 will be approximately one-half million dollars per year. This is a small cost for legislation which will benefit our retirees as well as the several States, and I urge enactment of this legislation.

The Congressional Budget Office cost estimate is as follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 5, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6372, a bill to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants, as ordered reported by the House Committee on Post Office and Civil Service, August 27, 1980.

The bill, if enacted, would require the Office of Personnel Management (OPM) to withhold state income taxes from annuity checks when such withholding is voluntarily requested by the annuitant. The bill does not authorize additional appropriations for an increase in OPM's personnel ceiling.

CBO estimates that costs of approximately $450,000 would be incurred during fiscal year 1981 if this bill were enacted. Expected costs in fiscal year 1982 would be about $530,000. After fiscal year 1982 CBO would anticipate a reduction in costs required to maintain the program. OPM has estimated first year costs of $632,963 and costs of $604,452 thereafter. This estimate was based on the assumption that annuitants from 44 different states would be involved in the program. The CBO estimate reflects the fact that 17 states either have no personal income tax requirement or exempt civil service annuities. The CBO estimate also reflects lower costs in fiscal year 1981 to allow for the time required to initiate the new procedures.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

□ 1430

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Michigan (Mr. FORD) has adequately and accurately described the details of the bill. The bill primarily authorized the Office of Personnel Management to enter into a relationship with those States that provide taxes on the annuities of Federal employees in order to permit a withholding of that State tax.

Mr. Speaker, I rise in support of H.R. 6372, which provides for voluntary withholding of State income tax for civil service annuitants.

Testimony before the Subcommittee on Compensation and Employee Benefits, of which I am the ranking minority member, revealed that many annuitants would like the opportunity to have payroll deduction for State taxes. It would be of considerable benefit to the very elderly who worry over making quarterly tax payments on time, and it would also be helpful to those retirees who travel a good deal of time away from their primary residences.

It is nearly impossible to estimate how many annuitants would elect to have State taxes withheld from their annuity checks. We do know, however, that in approximately 41 States either no tax is levied on annuities or a certain portion of annuity income is exempt from taxation.

Mr. Speaker, this bill will enable many Federal annuitants to meet their State tax obligations in an orderly, timely fashion through payroll deductions. There is a minimal cost to the Government for establishing such a procedure.

As a precedent for this action, Federal tax and deduction of union dues are presently being withheld from annuity checks.

I urge prompt enactment.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. DERWINSKI), who is a ranking minority member on the full committee.

Mr. DERWINSKI. Mr. Speaker, H.R. 6372 is a general housekeeping bill which allows for the voluntary withholding of State income tax from Federal annuitants' checks.

This bill will primarily affect those elderly annuitants who are concerned and worry about making quarterly State tax payments on time. It will also benefit those annuitants who are away from their principal residences for long periods of time.

At present, similar withholding is made by the Office of Personnel Management for union dues from annuity checks.

Mr. Speaker, as a practical matter this bill will have minor administrative costs because it will only apply to annuitants who reside in States which tax annuity income. Subcommittee testimony shows over four-fifths of all States either exempt all or part of the annuity income.

Also, since the bill provides for voluntary withholding of State taxes, not all annuitants will elect such deductions from their annuity checks.

I support enactment.

Mr. CORCORAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 6372.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7666) to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7666

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the Federal Employees' Group Life Insurance Act of 1980.

REGULAR GROUP INSURANCE PAYMENT

SEC. 2. (a) Section 8701 of title 5, United States Code, is amended—

(1) in the section heading, by striking out "Definition" and inserting in lieu thereof "Definitions"; and

(2) by inserting at the end thereof the following new subsection:

"(c) For the purpose of this chapter; 'basic insurance amount' means, in the case of any employee under this chapter, an amount equal to the greater of—

"(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of $1,000, plus $2,000, or

"(2) $10,000,

except that the amount of insurance may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of $1,000, plus $2,000. In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.".

(b) Section 8704(a) of title 5 is amended to read as follows:

"(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

"(1) the employee's basic insurance amount, multiplied by

"(2) the appropriate factor determined on the basis of the employee's age in accordance with the following schedule:

"If the age of the employee is:	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0.".

(c) Section 8704(b) of title 5 is amended—

(1) by inserting before "Subject to" the following new sentence: "An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection.";

(2) in the table, by striking out "shown in the schedule in subsection (a) of this section" each place it appears and inserting in lieu thereof "of the employee's basic insurance amount"; and

(3) in the last sentence, by striking out "the amount shown in the schedule in subsection (a) of this section" and inserting in lieu thereof "an amount equal to the employee's basic insurance amount.".

(d) Section 8704(c) of title 5 is amended by striking out the last sentence and inserting in lieu thereof the following: "For the purpose of this chapter, 'annual pay' includes—

"(1) premium pay under section 5545(c)(1) of this title; and

"(2) with respect to a law enforcement officer as defined in section 8331(20) of this title, premium pay under section 5545(c)(2) of this title.".

(e) The item relating to section 8701 in the table of sections for chapter 87 of title 5 is amended by striking out "Definition" and inserting in lieu thereof "Definitions".

(f) Subsections (b) and (c) of this section shall take effect beginning with the first pay period beginning on or after October 1, 1981.

CONTINUATION OF REGULAR GROUP LIFE INSURANCE

SEC. 3. (a) Section 8706(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date of the employee's retirement, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

"(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding the date the employee becomes entitled to compensation, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismembership insurance, may be continued under conditions determined by the Office, during the period the employee is receiving compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

"(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

"(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and the employee's life insurance shall be reduced each month by 2 percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

"(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and the employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

"(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of compensation for disease or injury arises, the individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.".

EMPLOYEE DEDUCTIONS; WITHHOLDING

SEC. 4. (a) Section 8707 of title 5, United States Code, is amended to read as follows:

"§ 8707. Employee deductions; withholding

"(a) During each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

"(b)(1) Whenever life insurance continues after an employee retires on an immediate annuity or while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from the employee's annuity or compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

"(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each employee who so retires, or commences receiving compensation, on or before December 31, 1989.

"(c) The amount withheld from the pay, annuity, or compensaton of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

"(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.".

PREEMPTION

SEC. 5. (a) Section 8709 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

"(2) For the purpose of this section, 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.".

CONTINUATION OF REGULAR OPTIONAL INSURANCE

SEC. 6. (a) Section 8714a(c)(2)(C) of title 5, United States Code, is amended to read as follows:

"(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.".

(b) Section 8714a(d) of title 5 is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following new paragraph:

"(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.".

ADDITIONAL OPTIONAL LIFE INSURANCE

SEC. 7. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714a the following new section:

"§ 8714b. Additional optional life insurance

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8741a of this title.

"(b) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of $1,000) except that coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of $1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

"(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty. The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation. The reduction shall continue for 50 months at which time the insurance stops.

"(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

"(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.".

(b) The table of sections for chapter 87 of title 5, United States Code, is amended by inserting after the item relating to section 8714a the following new item:

"8714b. Additional optional life insurance.".

OPTIONAL LIFE INSURANCE ON FAMILY MEMBERS

SEC. 8. (a) Chapter 87 of title 5, United States Code, is further amended by inserting after section 8714(b) (as added by section 7 of this Act) the following new section:

"§ 8714c. Optional life insurance on family members

"(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

"(b) The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under conditions the Office shall prescribe, in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). The employee may stop coverage elected under this section at any time.

"(c)(1) Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office.

"(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

"(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

"(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) of this title.

"(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from the annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

"(2) If an agency fails to withhold the proper cost of optional life insurance on family members from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

"(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

"(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by the employee, to such employee or, in the event of the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.".

(b) Section 8701 of title 5 is further amended by inserting at the end thereof the following new subsection:

"(d) (1) For the purpose of this chapter, 'family member', when used with respect to any individual, means—

"(A) the spouse of the individual; and

"(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild (but only if the stepchild lived with the individual in a regular parent-child relationship), or recognized natural child—

"(i) who is less than 22 years of age, or

"(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

"(2) For the purpose of this subsection, 'dependent', in the case of any child, means that the individual involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.".

(c) The table of sections for chapter 87 of such title 5 is amended by inserting after the item relating to section 8714b (as added by section 7 of this Act) the following new item:

"8714c. Optional life insurance on family members.".

REPEAL OF SECTION 8713 OF TITLE 5

Sec. 9. (a) Section 8713 of title 5, United States Code, is repealed.

(b) The table of sections for chapter 87 of title 5 is amended by striking out the item relating to section 8713.

EFFECTIVE DATES

Sec. 10. (a) Unless otherwise specified, this Act shall take effect on the date of the enactment of this Act and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

(b) The amendment made by subsection (d) of section 2 of this Act shall apply with respect to premium pay payable under section 5545(c)(2), of title 5, United States Code, from and after the first day of the first pay period which begins on or after the date of the enactment of this Act.

(c) The amendments made by section 3 of this Act shall apply only in the case of an employee who retires or becomes entitled to receive compensation for work injury on or after the 180th day following the date of the enactment of this Act, or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

(d) The amendments made by sections 7 and 8 of this Act shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of the enactment of this Act, or on any earlier date that the Office may prescribe which is at least 60 days after the date of enactment, and shall have no effect in the case of an employee who died, was finally separated, or retired before the effective date.

AVAILABILITY OF CERTAIN FUNDS IN EMPLOYEES' LIFE INSURANCE FUND

Sec. 11. Amounts credited to the Employees' Life Insurance Fund under section 8714a(d) of title 5, United States Code, shall be available for expenses incurred by the Office of Personnel Management in implementing the amendments made by sections 7 and 8 of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. CORCORAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentleman from Michigan (Mr. Ford) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. Corcoran) will be recognized for 20 minutes.

The Chair recognized the gentleman from Michigan (Mr. Ford).

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to indicate, as I did before, that this is a bill coming from the subcommittee chaired by the gentlewoman from Maryland (Mrs. Spellman), and I present the bill on her behalf.

Mr. Speaker, this legislation would improve the life insurance program offered to Federal employees under the provisions of the Federal Employees' Group Life Insurance Act of 1954. Under existing law, employees are covered under a group policy which offers insurance equal to the amount of their annual salary, plus $2,000. They are also eligible to purchase, at their own expense, without Government contribution, an additional policy of up to $10,000. When an employee retires, he may carry his insurance into retirement, but after reaching age 65 the amount of the insurance in force begins to decline at the rate of 2 percent of the face value of the policy until a minimum of 25 percent of the original face value remains.

When this life insurance program was enacted 25 years ago, it was a very progressive and farsighted fringe benefit program. But, over the years, it has not kept pace with life insurance generally available for employees in the private sector of the economy. Indeed, compared to major employers, it falls far short of being a comparable and adequate insurance program.

H.R. 7666, as amended, would make three major improvements in the program. First of all, it would increase the amount of basic insurance available from the amount of the employees annual salary, plus $2,000, to an amount equal to the annual salary, plus $2,000, multiplied by a factor of 2. This doubling of the existing coverage would apply to any employee less than 36 years of age. For the employees between the ages of 36 and 45, the multiplication factor declines according to age. For employees 45 years of age and older, the current amount remains in effect. The additional cost of this new insurance for the younger employee is paid for entirely by the Federal Government.

Second, a new optional life insurance policy is made available to all employees regardless of age under which an employee may purchase, at his own expense, without Government contribution, additional insurance in increments equal to his annual salary up to five times his annual salary. For instance, an employee who is a GS-7, step 4, earns $15,317 a year. Under the existing program, he is entitled to $18,000 basic insurance. That is, his annual salary rounded off to the next higher thousand dollars, plus $2,000. Under H.R. 7666, as amended, he would be entitled to basic insurance, plus an additional optional policy of $16,000, $32,000, $48,000, $64,000, or $80,000, according to which increment of additional optional insurance he wished to purchase. The employee would also be permitted to buy insurance for his spouse or children in amounts of $5,000 and $2,500, respectively.

The third change we proposed is in insurance protection for employees after retirement. Under existing law, the reduction takes effect immediately after the retired employees' 65th birthday and continues until the 25-percent remainder is reached 38 months later. Under H.R. 7666, the employee could continue to pay an amount determined by the Office of Personnel Management necessary to cover the cost of slowing down or entirely eliminating the reduction in coverage. The employee would have the option of paying the cost of changing the reduction to 1 percent a month instead of 2 percent; or he could elect to pay the cost of having no reduction at all.

This legislation has support on both sides of the aisle, and I am pleased to say that the administration has expressed its strong support for the enactment of this bill. Its cost, which would not become effective until the beginning of fiscal year 1982, would be $12 million in the first year, and decrease to $6 million by the fifth year.

I urge the House to suspend the rules and pass this important legislation.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 7666. This measure was reported from our Committee on Post Office and Civil Service on a voice vote and it has the blessings of the administration.

Rather than reiterate the details of this bill, as has already been done by Mr. Ford, I will instead make some remarks about the general thrust of the bill.

Basically, this bill increases the amount of regular group life insurance to Federal employees under age 45. It allows Federal employees to buy increased amounts of group optional life insurance for themselves and their families. It also allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement.

According to the Office of Personnel Management, the expense to the Government would be reasonable. While there would be additional outlays from the employee's life insurance fund until 1990, after this date the required additional contributions from employees would fully offset outlays in the early years.

Mr. Speaker, this proposal will vastly improve the Federal life insurance program by structuring it more along the lines of plans in the private sector.

I urge enactment.

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Mr. Speaker, at this time I would like to yield 1 minute to the gentleman from Illinois (Mr. Derwinski), the ranking minority member of the Post Office and Civil Service Committee.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, H.R. 7666, as amended, provides needed improvements in the Federal employees life insurance program. In doing so, it avoids any cost in fiscal year 1981. While there are costs to the Government in the early years these costs will, in the long run, be offset by additional required contributions by Federal employees.

Specifically, this legislation changes the existing life insurance program in the following ways: First, it increases amounts of regular group life insurance for employees who are under 45 years of age. Second, it allows employees to elect to have additional amounts withheld from their annuities in order to have greater insurance coverage after retirement. Third, beginning with employees who retire after January 1, 1990, deductions will be made for continued group life insurance until age 65. Fourth, additional optional life insurance is available to Federal employees and their families.

Mr. Speaker, this is a reasonable proposal which has the solid support of the House Post Office and Civil Service panel.

I urge enactment.

Mr. CORCORAN. Mr. Speaker, I do not have any further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 7666, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on the bill, H.R. 7666, just considered by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

IRC AMENDMENTS RE TAX COURT JUDGES

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7779) to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court, as amended.

The Clerk read as follows:

H.R. 7779

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 3 ADDITIONAL JUDGES FOR TAX COURT; REMOVAL OF AGE LIMITATION.

(a) INCREASE IN NUMBER OF JUDGES.—Subsection (a) of section 7443 of the Internal Revenue Code of 1954 (relating to the number of judges on the Tax Court) is amended by striking out "16" and inserting in lieu thereof "19".

(b) REMOVAL OF AGE LIMITATION.—Subsection (b) of section 7443 of such Code (relating to appointment to the Tax Court) is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oregon (Mr. ULLMAN) will be recognized for 20 minutes, and the gentleman from Pennsylvania (Mr. SCHULZE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7779 responds to the vital need for the appointment of additional judges to the U.S. Tax Court by adding three judges to that court thus increasing the total number of Tax Court judges from 16 to 19. Appointments to these new seats could not be made before February 1, 1981.

In recent years, the workload of the Tax Court has increased significantly. Since 1974, the Tax Court has been authorized to issue declaratory judgments with respect to the status of certain organizations' employee retirement plans, municipal obligations, and the tax aspects of certain property transfers, and to decide certain disclosure actions brought against the Internal Revenue Service. The Crude Oil Windfall Profit Tax Act of 1980 extends the court's jurisdiction to windfall profit tax deficiencies. Because of these new responsibilities and the growth of complex tax litigation, particularly in the area of tax shelters, an increase in the court's membership to 19 is necessary to maintain timely resolution of taxpayer disputes. Despite these new responsibilities, the number of judges, has remained at 16 for over 50 years.

The bill also eliminates the present law ban on appointments of individuals age 65 or older as judges of the U.S. Tax Court. This ban conflicts with Federal policies against age discrimination and could deprive the Tax Court of experienced personnel.

The bill will have no effect on budget receipts and will increase outlays by only $185,000 in fiscal year 1981, $565,000 in fiscal year 1982, $665,000 in fiscal year 1983, $720,000 in fiscal year 1984, and $770,000 in fiscal year 1985.

Mr. Speaker, H.R. 7779 has bipartisan support in the Committee on Ways and Means. It is supported also by the tax section of the American Bar Association and, by the Department of the Treasury. I urge the passage of this most necessary bill.

Mr. SCHULZE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the suspension of the rules and immediate passage of H.R. 7779, a bill to add three judges to the U.S. Tax Court.

The Tax Court has functioned with 16 judges since 1925. The caseload of the court has grown significantly in recent years. Therefore, expanding the Tax Court to 19 judges will help it reduce the backlog of cases and adjudicate tax disputes without undue delay.

The increasing caseload on the Tax Court comes from several sources. First, since 1974 the Tax Court has had authority to issue declaratory judgments with respect to certain issues such as employee retirement plans and municipal obligations. Second, the crude oil windfall profit tax gives the Tax Court jurisdiction over this new excise tax. The windfall profit excise tax may generate some complicated litigation in the early years of its administration. Third, the IRS crackdown on abusive tax shelters is resulting in many persons challenging the IRS deficiency assessments in the Tax Court. Fourth, the public generally has become more prone to litigate tax disputes. While this may be a sign of a dynamic society, it does place a strain on the judicial branch to respond in a timely manner.

H.R. 7779 also eliminates the current prohibition on initially appointing an individual to the Tax Court after he has attained age 65. I believe this change will allow the Tax Court to attract highly qualified, mature persons for service on the bench.

Mr. Speaker, H.R. 7779 is a good bill. It will help the Tax Court discharge its responsibilities in a timely manner and will open Tax Court service to citizens of all ages.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7779, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.".

A motion to reconsider was laid on the table.

REGULATORY FLEXIBILITY ACT

Mr. HARRIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 299) to amend title 5, United States Code, to improve Federal rulemaking creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The Clerk read the Senate bill as follows:

S. 299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"Sec. 601. Definitions.
"Sec. 602. Regulatory agenda.
"Sec. 603. Initial regulatory flexibility analysis.
"Sec. 604. Final regulatory flexibility analysis.
"Sec. 605. Avoidance of duplicative or unnecessary analyses.
"Sec. 606. Effect on other law.
"Sec. 607. Preparation of analyses.
"Sec. 608. Procedure for waiver or delay of completion.
"Sec. 609. Procedures for gathering comments.
"Sec. 610. Periodic review of rules.
"Sec. 611. Judicial review.
"Sec. 612. Reports and intervention rights.

"§ 601. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

"§ 602. Regulatory agenda

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their repersentatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

"§ 603. Initial regulatory flexibility analysis

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

§ 605. Avoidance of duplicative or unnecessary analyses

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604, and 610 of this title.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

"§ 608. Procedure for waiver or delay of completion

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) An agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be promulgated until a final regulatory flexibility analysis has been completed by the agency.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

"§ 610. Periodic review of rules

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us represents, I think, a great deal of work in both the other body and in this body with respect to trying to get regulation off the back of small business. The Small Business Committee, chaired by the distinguished Member from Iowa (Mr. SMITH), has had extensive hearings on this and has, in fact, reported out legislation.

The Judiciary Committee, and specifically the Administrative Law Subcommittee chaired by Mr. DANIELSON, of California, has also had extensive hearings and extensive markup with respect to a more comprehensive regulatory reform bill. What we have here is a bill that has been passed by the other body and does a number of important things with respect to alleviating the burden on small business of our regulatory procedure. It requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have any substantive economic impact on a substantial number of small entities.

□ 1450

It requires an initial and final regulatory analysis of their rules to assess the impact on small entities. The analysis may be done in conjunction with any other required analysis. The analysis need not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, and the analysis may be waived or delayed in the event of emergency but for not more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on a rule's effectiveness. Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities. There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance, and it is the Office of Advocacy of the Small Business Administration that will in fact conduct a review.

Mr. Speaker, I would like to yield to my colleague, the gentleman from Iowa (Mr. SMITH), who is the one Member who has done so much to bring this matter into focus and bring to the attention of this House the problems of small business and the need for this sort of regulatory reform.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this bill which gives clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business. This bill, S. 299, would require Federal agencies and departments to consider the impact of proposed rules and where appropriate to exempt or adopt different and less burdensome regulations for small businesses, small nonprofit businesses and small cities, towns, and other political subdivisions. An exemption or simplified regulation would be required where the purposes of the law could be obtained while doing so.

Similar legislation (H.R. 4660) was extensively considered by the House Small Business Committee. The Subcommittee on Special Small Business Problems held hearings in 1977 and 1978 and developed the approach in the bill. The Small Business Committee members unanimously support that bill and each of them are cosponsoring it. I want to note that the House bill (H.R. 4660) was unanimously favorably reported by the Small Business Committee last October and the bill was then referred to the Judiciary Committee which was discharged from further consideration on May 28 of this year. Meanwhile, the Senate substituted this approach for the provisions in a bill they had held hearings on and passed the bill.

Overregulation of small entities is one of the ways big business has gained advantages over small businesses. The cost per unit for a big business to comply may be small due to a large volume. Small businesses cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies. Nor can they afford their own time needed to comply with existing regulations and reporting requirements.

As a result of overregulation, productivity and innovation have been curtailed and inflation has increased and in some cases competition from smaller businesses eliminated. Our committee's files are replete with documentation of these burdensome requirements which range from one company with three small shops receiving Federal forms weighing 45 pounds to another company which paid a $500 fine rather than fill out a Federal form which was 63-feet long.

I also want to point out that some laws and agencies currently use flexible regulatory strategies such as the Internal Revenue Code's provisions permitting salaried persons earning less than $20,000 per year to file a short form income tax form while other taxpayers are required to file the long form.

I believe that the provisions of this bill now under consideration (S. 299) will substantially reduce the burden imposed by Federal regulation upon small business and yet at the same time allow Federal departments and agencies to carry out their duties and functions. Although the Senate-passed bill differs in some respects from the bill favorably reported by the House Small Business Committee, it is designed to accomplish the same purpose and I hope that all Members will strongly support it today so that it may be sent to the White House without further delay. For the benefit of my colleagues I am attaching a brief statement concerning the provisions of the bill now under consideration.

I also want to point out that the concept of two-tier regulation was one of the issues considered by the recent White House Conference on Small Business which included a recommendation for two-tier legislation as No. 15 on the list of priorities. The Small Business Administration counsel for advocacy would have the authority and responsibility to make sure that agencies do as expected under the law.

Finally, I want to commend all of the Members who worked so long and hard on this matter and particulary the chairman of our Special Small Business Problems Subcommittee, ANDY IRELAND, the subcommittee's ranking minority member, Mr. BROOMFIELD, and the ranking minority member on the committee, JOE McDADE. I also want to commend Representative MARTY RUSSO who previously served on the Small Business Committee and chaired the Special Small Business Problems Subcommittee. It was his initial efforts and drafting which laid the groundwork for the bill we are considering today.

The material follows:

S. 299

(As passed Senate 8-6-80)

Sec. 2. Provides extensive statement of findings and purposes.

Sec. 3. Amends 5 U.S.C. to provide regulatory flexibility—

§ 601. Definitions—

(1) Agency means as defined in 5 U.S.C. (1),

(2) Rule means rule covered under 553(b) and includes those on grants but excludes rules of particular applicability relating to wages, prices, etc.,

(3) Small Business means as defined under § 3 of Small Business Act unless agency redefines,

(4) Small organizations means not for profit, independently owned and operated and not dominant in field of operation,

(5) Smal governmental jurisdiction means political subdivision of less than 50,000 population unless agency can justify additional definition, and

(6) Small entity means small business, small organization and small governmental jurisdiction.

§ 602. Regulatory agendas—

(a) In October and April each agency shall publish a regulatory flexibility agenda including

(1) Expected rules with significant economic impact on substantial number of small entities,

(2) Summary of nature of rules,

(3) Name and phone number of involved agency official—

(b) Copy of agenda sent to Chief Counsel for Advocacy,

(c) Agency shall provide notice by letter, publication etc, and

(d) Agency may promulgate regulation even if not on agenda.

§ 603. Initial regulatory flexibility analysis—

(a) If proposed rule must be published, an analysis must be done of impact on small entities; requires publication in Federal Register and transmittal to SBA's Chief Counsel for Advocacy, and

(d) Analysis must contain—

(1) Reason for rule,

(2) Objectives and purposes,

(3) Estimate of number of small entities to which rule will apply,

(4) Description of anticipated compliance requirements, and

(5) Crossreferences to other rules.

(c) Description of significant alternatives considered, including discussion of—

(1) Different compliance or reporting requirements,

(2) Clarification, consolidation or simplification of compliance and reporting requirements,

(3) Use of performance rather than design standards, and

(4) Exemption for smalls.

§ 604. Final regulatory flexibility analysis—

(a) Final rule shall be accompanied by final analysis; including—

(1) Succinct statement of need for rule and objectives,

(2) Summary of issues raised by comments, agency assessment of issues, changes made in response, and

(3) Alternatives and why rejected.

(b) Agency must make analysis available and give notice of availability in Federal Register.

§ 605. Avoidance of duplication or unnecessary analyses—

(a) Agency may do analyses as part of other proceedings,

(b) Regulatory flexibility analysis not required if head of agency certifies that rule will not have significant economic impact on substantial number of small entities, and

(c) Related rules may be combined into one analysis.

§ 606. Effect on other laws—Regulatory flexibility analysis does not alter other laws.

§ 607. Preparation of analyses—Agency may use either a quantifiable or numerical description of effects of proposed rule or alternatives or a more general description if quantification is not practicable or reliable.

§ 608. Waiver or delay—

(a) Agency head may waive or delay initial analysis upon written finding that final rule is emergency one making compliance impracticable, and

(b) Agency head may not waive final analysis but may delay it for up to 180 days after final rule published if emergency rule making; if not done, the rule lapses.

§ 609. Comment gathering procedures—When rule is promulgated having significant economic impact on substantial number of small entities, agency head shall assure that small entities have been given opportunity to participate through techniques such as—

(1) Notification that rule may have significant economic effect on a substantial number of small entities,

(2) Publication of notice of rule making in publications likely to be obtained by small entities,

(3) Direct notification of small entities,

(4) Holding open conferences or public hearings, and

(5) Agency rules designed to reduce cost of participation by small entities.

§ 610. Periodic review of rules—

(a) Within 180 days of law, agency shall publish in Federal Register a plan for periodic review of rules with a significant economic impact upon substantial number of small entities. Purpose is to change as needed to minimize significant economic impact upon substantial number of small entities. All rules reviewed within 10 years and new ones within 10 years, except agency may delay review for up to 5 years one year at a time,

(b) In conducting review, agency shall consider—

(1) Continued need for rule,

(2) Complaints or comments,

(3) Complexity,

(4) Relationship with other Federal or state regulations, and

(5) Changes which have occurred.

(c) Agency annually publishes agenda of rules to be reviewed in next year.

§ 612 Judicial review—

(a) Agency decisions regarding regulatory flexibility implementation are not subject to judicial review except as below in (b),

(b) Regulatory flexibility analysis and compliance or non-compliance by agency are not subject to judicial review but the analysis shall be apart of record of agency action if rule is subject to judicial review, and

(c) Nothing herein bars judicial review of any other impact statement or analysis otherwise permitted by law.

§ 611. Reports and intervention rights—

(a) SBA's Chief Counsel for Advocacy shall monitor agency compliance and report to President and Congress annually;

(b) Chief Counsel for Advocacy may appear amicus curiae in any action to review a rule to present his views on effect of rule on small entities, and

(c) U.S. court shall grant application of Chief Counsel for Advocacy to appear for purpose of (b).

§ 4. Effective date—Act effective 1-1-81 except that provisions for initial regulatory flexibility analysis and final regulatory flexibility analysis apply only to proposed rules issued 1-1-81 or after.

Mr. HARRIS. Mr. Speaker, I would like to yield at this point to the chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, the gentleman from California (Mr. Danielson), who has worked on regulatory reform so assiduously over the past several months.

Does the chairman of that subcommittee wish me to yield to him at this point?

Mr. DANIELSON. Mr. Speaker, as long as the gentleman from Virginia (Mr. Harris) is here and is managing the bill on behalf of the Committee on the Judiciary, which has jurisdiction over this subcommittee, and with no other committee having that jurisdiction, I will allow him, with my thanks, to continue in the management of the bill, but I would like to have an opportunity to comment later. I trust the gentleman will give due recognition to members of the Committee on the Judiciary who are here and who would like to be heard.

Mr. HARRIS. Mr. Speaker, I would like to yield to our fine colleague from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. Kastenmeier).

Mr. KASTENMEIER. Mr. Speaker, the legislation before us today, the Regulatory Flexibility Act, may be one of the best means we have to acknowledge that our diversity, which is our strength, is based as much on size as on anything else.

This bill addresses the very real differences between big business and small business—large urban areas and small towns—major national organizations and small local nonprofit groups.

It says, basically, that the Federal Government should, where feasible and consistent with the intent of the law, develop regulations only after thoroughly assessing their impact on small entities—business, organizations and governmental jurisdictions.

The measure before us is a result of several years of effort, numerous hearings in the House and Senate, and compromises between the House, Senate and the administraiton. More than half the House has cosponsored either H.R. 4660 or my own bill, H.R. 1971.

The Senate has twice unanimously passed a version of this legislation—comparable to my own bill, H.R. 1971 of the 96th Congress—first on the last day of the 95th Congress, and most recently on August 6 of this year.

Senator Culver deserves particular praise for his efforts on behalf of this legislation. He, along with Senator Nelson, developed the concept back in 1977, and they have built a body of testimony substantiating the need for such legislation. Both Senator Culver and Congressman Ireland have assembled for the Record lengthy statements describing the legislative history of regulatory flexibility proposals and the intent of S. 299. Senator Culver's statement appears in the Record of August 6, 1980 at pages 21452-21461. Mr. Ireland's is appearing in today's Record. These statements ably describe the understandings reached among the principal authors and sponsors of regulatory flexibility legislation on the Judiciary and Small Business Committees, allowing S. 299 to come before us today.

The President has issued a statement in support of the bill and embodied it in a directive to agency heads last November. We propose to embody it in law to assure congressional oversight of agency compliance with regulatory flex-

The bill requires that agencies consider the needs and interests of small
ibility provisions.
entities in carrying out their mandates. In no other respect does it alter current procedures. In no respect does it alter substantive law.

The bill's treatment of judicial review is intended to strike a balance between two necessary goals.

First, to insure that the internal procedures of the agencies are not unnecessarily delayed by interlocutory and intermediate court review of the regulatory flexibility analysis; and

Second, the desire to insure that agencies take seriously their obligation under the law by providing for review of regulatory flexibility analyses as part of the entire record.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield at that point?

Mr. HARRIS. Mr. Speaker, I might note that I have the time here, and I am going to continue to yield to the gentleman from Wisconsin (Mr. Kastenmeier). I have the time.

Mr. KASTENMEIER. Mr. Speaker, may I conclude my remarks? The gentleman from Virginia (Mr. Harris) has the time, and perhaps he will yield to the gentleman from Georgia (Mr. Levitas) at the appropriate time.

Mr. LEVITAS. Mr. Speaker, if the gentleman from Virginia will yield, I have a question I would like to ask the distinguished member of the Committee on the Judiciary about that very point that he was just addressing. If he could explain it for the Record, it would be quite helpful.

Mr. HARRIS. Mr. Speaker, I do have a number of requests for time, but I do yield for the purpose of a question by the gentleman from Georgia (Mr. Levitas).

Mr. LEVITAS. Mr. Speaker, I would simply like to inquire, what does this bill do by way of providing a judicial review to see that the procedures that have been written into this are in fact followed and can be reviewed by a court to see if they have been followed?

Mr. KASTENMEIER. Mr. Speaker, my understanding is, as the gentleman from Georgia (Mr. Levitas) knows because he has been following the bill, too, that this strikes a balance between having an appeal and not having appeals made on the record of the regulatory analysis as such, but when challenges to the rules themselves are made, that is, as a part of the complete record, the process of regulatory analysis may also then be reviewed, but only reviewed in that context judicially.

Mr. Speaker, if I may conclude my remarks, in other words, as I was saying, the courts may examine the regulatory flexibility analysis in determining the reasonableness of the final rule. The bill in no other way, changes or alters the right of judicial review under the Administrative Procedure Act.

Through this bill we can remove some

of the burdensome requirements placed on small business and small governments. We can begin to free vitally needed capital and human resources from wasteful activities and direct these energies to more productive and efficient purposes. This can be an important component of our economic recovery program and one that all Members of this body should support.

Mr. HARRIS. Mr. Speaker, may I inquire of the Chair as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, public discussion of overregulation and the need for regulatory reform all too often conjures up the oversimplified image of a confrontation between big government and big business. But, as we all know, it is small business that carries the heaviest burden with respect to governmental regulation. Other small entities such as hospitals, small colleges, and local governments are also hampered by the same situation. Unlike large corporations or unions, these organizations do not have the time, the personnel, nor the resources to adequately monitor and comply with the morass of regulation that confronts us all daily.

For this reason, I support the regulatory flexibility concept that is symbolized in S. 299.

I would like to point out by way of clarification how we happen to be where we are today. The Committee on Small Business of the House reported out some months ago H.R. 4660, the Small Business Regulatory Flexibility bill, which was sequentially referred to the Committee on the Judiciary. The concept was embodied into the regulatory reform bill that the Committee on the Judiciary has been working with.

However, the administration has sought to delay the progress of the regulatory reform bill in the full Judiciary Committee for reasons that have to do with its current contents. Thus the concept has not reached us or has not reached the House floor previously in what would be an orderly fashion. Incidentally, H.R. 4660 amended the Small Business Act, and that properly came out of the Committee on Small Business.

□ 1500

This bill that comes to us from the other body, however, adds a chapter VI to the Administrative Procedures Act and thus, of course, appropriately is within the jurisdiction of the Judiciary Committee; but Small Business and the Judiciary Committee are certainly no strangers, and the interest is shared, of course, with the Small Business Committee in seeing a more appropriate type of approach to regulatory flexibility for small business.

The regulatory flexibility approach recognizes that it is often counterproductive and unfair to apply identical regulations to entities regardless of their size. The regulatory flexibility approach is based upon the understanding that generalized rules often do not advance the regulatory objective that is involved.

However, I would be less than candid if I did not express concern over our present involvement in a piece-meal approach to regulatory reform. This is only a part of the picture that we are dealing with today. As important as regulatory flexibility for small organizations is, it does not address the full range of problems brought on by overregulation. We on the Judiciary Committee have been working on comprehensive regulatory reform since last November. Tomorrow the full Judiciary Committee was scheduled to resume its consideration of the Regulatory Reform Act of 1980, H.R. 3263. This has been stalled for some time, since about last May, because of the direct intervention of the Carter administration whose regulatory reform program has been marked by confusion and hypocrisy. It remains my hope that we will be able to bring this broader, more comprehensive bill to the House floor before adjournment.

The concept of small business and small organization regulatory flexibility is an important element in H.R. 3263 that is before the Judiciary Committee. But this measure also would require that agencies consider the economic impact of regulation, as well as regulatory and geographic differences, in promulgating new rules. H.R. 3263 also contains provisions aimed at speeding up seemingly interminable administrative proceedings, along with encouraging expanded public and business input into the regulatory process.

In fact, it is particularly worth noting that the language of H.R. 3263 is even stronger than the bill before us today with respect to small business and small organization regulatory flexibility. The bill we consider today requires that regulatory agencies undertake a detailed analysis, so as to give special consideration to the impact of a proposed rule on small entities. However, there is no language specifically requiring that the agency act on the conclusions of their analysis. It is conceivable that we could study these problems and then choose to do nothing about them. In contrast, under H.R. 3263, an agency is empowered to exempt a small business or small organization from the scope of a regulation, or to set lower compliance standards, where such a distinction is lawful, desirable and feasible.

I urge that S. 299 be supported today, realizing it is only part of a larger picture.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, I strongly support S. 299, the Regulatory Flexibility Act, and urge its passage by the full House.

As a small businessman myself, I am painfully aware of the need for a policy of 2-tier regulation as a means of helping small businesses. S. 299 addresses the fact that small businesses cannot and should not be expected to comply with all of the regulations developed for application to big businesses.

In addition, small governmental jurisdictions with populations of less than 50,000 are also granted relief by this bill. It incorporates a number of methods of making regulations more flexible, including, for example, the establishment of differing compliance and reporting requirements that take into account the amount of resources available to small businesses and mandate agency consideration of regulatory effects on small cities and towns, as well as on small enterprises and on individuals.

The present regulatory environment has a devasting effect on the competitive viability of the small business sector. Regulations when applied uniformly to big businesses and small businesses clearly provide huge advantages to the largest enterprises. Big business has the lawyers, accountants, engineers, consultants, and economic resources to comply with governmental regulations. On the other hand, the small businessperson often must spend critical time and resources sorting through a confusing morass of complex Federal regulatory requirements, which is a drag on national productivity.

As the chairman of the House Small Business Subcommittee on Antitrust, I have been a witness to the need for this legislation. I have heard not only from my constituents in northwest Iowa, but from small business people from all over the United States.

Last year, the Antitrust Subcommittee undertook an investigation into petroleum retail marketing practices. We found that several years of Federal attempts to regulate that industry have harmed the competitiveness of participating small businesses, contributing to tens of thousands of independent service station operators going out of business. Ironically, this effect was not the intent of the Federal regulations. Small businesses, whom the Government sought to protect, were smothered by a system imposed upon them that gave them no opportunity to respond to changing marketplace demands. Large oil companies, whom the Government attempted to control through regulation, easily found ways to manipulate and profit from Federal regulations, further entrenching their dominant industry position at the expense of the small business operator.

Today the gasoline retail market is structurally unsound, due to the uneven way Federal regulations have affected competition. As a result, the House Small Business Committee favorably reported the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722; a bill also identified by the Speaker's Task Force on Small Business as being one of this Congress most vital small business bills.

Regulations reward staid, inefficient business practices that often are found in large bureaucratic enterprises. Frequently, they are drafted to force these enterprises to respond to the interests of our national goals. But when applied uniformly to small business they stifle innovation, creativity and efficiency—the hallmark of the entrepreneur.

Of course, judicial review is necessary to assure that agencies comply with this act. The question of judicial review has been addressed very sensibly in this legislation, which provides that the courts should not be bogged down with lawsuits before the agencies have even finished their rulemaking. However, section 611(b) states that regulatory flexibility analyses can be examined by the courts when the validity of final rules is being determined. So judicial review in this act fits in well with the practice of judicial review under the law we are amending today and, I might add, with most of the other pending regulatory reform bills. I think this is a good, balanced approach to judicial review which will achieve the benefits the bill seeks without causing any unnecessary litigation.

Mr. Speaker, I have been supporting action on this problem ever since I came to Congress 6 years ago. A Federal policy of regulatory flexibility is long overdue. The delegates to the White House Conference on Small Business, representing the views of small business people from all across the United States, overwhelmingly endorsed the concept of reg-flex. Your task force on small business chose this legislation as a small business priority for this session of Congress. Two hundred and forty-six Members of Congress, including every member of the House Small Business Committee, are cosponsors of H.R. 4660, the original House version of S. 299. This legislation deserves the support of the entire House.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I support the concept of S. 299, but I think it is important for the Members of this body to know that this legislation does not really, in the long run, solve the problem.

This legislation does rightfully address some of the problems faced by small businessmen. The small businessman must be given special consideration, as offered by this bill, for regulations which are applied generally, can be most oppressive to small businesses. But I do not want the American public, or the small businessman, to be taken in and made to believe that this legislation alone will accomplish meaningful regulatory reform.

As the gentleman from Ohio pointed out, all of the language in this legislation could be totally ignored by any agency. There is no effective enforcement mechanism. This legislation can be disregarded by the same bureaucrats who are trampling over the small businessman right now.

If the administration thinks it can get away with calling this bill alone regulatory reform, without action on the comprehensive regulatory reform bill, then they are going to have people across the country remind them of the hypocrisy of their actions, both on the Republican side and on the Democratic side, between now and November. Without more comprehensive regulatory reform, this bill alone will be comparable to attacking a dragon with a wet spaghetti noodle.

We need real regulatory reform that has teeth in it. This is a good move in the right direction, but it in and of itself will not accomplish the goals of effective regulatory reform. We need results, not cosmetics.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

Mr. ALBOSTA. Mr. Speaker, I rise in support of the bill.

S. 299, the Regulatory Flexibility Act, is needed to reduce the unfair regulatory burden currently placed on our Nation's small businesses. This bill is part of a comprehensive regulatory reform package that includes vital elements, such as the one-House veto, court reimbursements to small businesses for actions against Government agencies, paperwork reduction, and revisions in the selection and evaluation of administrative law judges.

The package of regulatory reform is a must for the 96th Congress, if we are serious about reducing the burden of Government on the private sector. With productivity at record lows, we must streamline the requirements placed on business by the Government. I am hopeful that the appropriate committees will continue in their efforts to move this legislation to the floor of the House.

S. 299 is one of the major parts of the regulatory reform package, requiring regulatory agencies to analyze the likely impact of their rules on small businesses and other concerns. The bill requires each agency to publish semiannual lists of rules it anticipates promulgating which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking procedures. The bill also requires agencies to review all new and existing rules within 10 years.

I am pleased to see that the subcommittee, under the able leadership of the gentleman from Florida, included a section in this bill to apply the "two-tiered" approach to regulations affecting most nonprofit organizations which "are not dominant in their field" and local governmental subdivisions under 50,000 in population.

I urge my colleagues to support the passage of S. 299 so this process of regulatory reform and paperwork reduction can begin.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I rise in support of S. 299, which embodies the concept of regulatory flexibility. This means that agencies must analyze alternatives to proposed regulations that would minimize any adverse burden on small business. Among the alternatives would be the granting of outright exemptions or issuing regulations with different and less burdensome standards of compliance for small business. This concept has undergone several legislative changes in the last few months. And I am glad to say that these changes have improved the proposal significantly.

Earlier this year, a variation of this concept was presented in the form of an amendment to the Regulation Reform Act which the Judiciary Committee was considering in May. That amendment required an agency to issue regulations which exempt or lessen the burden on small businesses when the agency's analysis indicates it would be feasible to do so. I believe strongly that every effort must be made to free small businesses from unnecessarily burdensome regulations. At the same time it is important that this goal not be attained in ways that would result in significant weakening of other important public interests to which regulations may be directed.

For example, we must be careful not to make it easy for big businesses to spin off their dirty operations into small businesses that are not subject to a strict regulation. This occurred when the kepone scandal broke, involving the Allied Chemical plant in Hopewell, Va. Allied Chemical simply spun off the plant to a small business. Certainly we do not intend to say that being a small business, is in itself, sufficient grounds for exempting it from public health and safety laws.

Another factor relates to productivity. In some cases, an exemption could create an incentive for a small business to stay small. Certainly we do not want to create any disincentives to economic growth.

Another important consideration is whether a particular exemption would impair the ability of the Government to protect the public health and safety. For example, amendments have been offered from time to time to exempt from occupational safety and health laws any business employing less than 25 people. It is important to make sure that OSHA does not impose unnecessary burdens on small businesses. On the other hand, people who work for a business that employs less than 25 people surely are entitled to have their health and safety protected.

Because it seemed to me that agencies ought to consider such factors, I offered an amendment to the regulatory flexibility amendment during the Judiciary Committee markup in May. The amendment read:

> In determining whether it is feasible and desirable, and in the public interest, to exempt or set differing and less burdensome standards for small businesses and small organization, the agency shall consider whether such exemption or standard would
>
> (A) provide opportunities for businesses and organizations that are not small businesses and small organizations to avoid compliance with such rule;
>
> (B) create incentives for small businesses and small organizations against increasing their productivity, hiring additional employees, merging with other businesses or organizations, or otherwise increasing their size; or
>
> (C) impair the ability of the agency to protect the public health, safety or the environment or otherwise achieve statutory requirements.

While there was important committee support expressed for my amendment, it was the consensus of the committee that such language would be best handled in the report, rather than in the bill itself.

Representative ROBERT KASTENMEIER, one of the regulatory flexibility amendment's coauthors, stated that he supported report language to this effect. The regulatory flexibility amendment's other coauthor, Representative CALDWELL BUTLER, expressed appreciation to me for bringing this matter to the attention of the committee and stated that he would work with the subcommittee chairman in an effort to accommodate my recommendations into the legislative history.

Representative ROMANO MAZZOLI, who was managing the bill in the absence of Representative GEORGE DANIELSON, the chairman of the Subcommittee on Administrative Law and Government Relations, offered his services in drafting report language similar to the language in my amendment.

The reason I raise these points now is that the Judiciary Committee has not yet completed marking up the Regulation Reform Act and, therefore, no report has been written. In supporting the Senate bill we are now considering I want to make sure that the record reflects that my support, and I believe that of many other Members, is given with the understanding that such considerations are implicit in this legislation.

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in strong support of S. 299. At the same time, I wish to remind the Members of this body that the American people have been asking for true regulatory reform for many years. We are told that overregulation costs the American people over $100 billion a year. This bill is directed to only a small segment of the total amount of industry that is affected and the total number of people in this country who are affected by this overregulation.

This bill is a good first step, but I would hope that we would not take it as a substitute for H.R. 3263 which the Judiciary Committee and this Congress has been laboring over for many, many months.

The American people deserve to have true regulatory reform that deals with all of American industry and American problems of overregulation. This bill that we are considering today requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have significant economic impact on a substantial number of small entities, such as small businesses, organizations and governmental jurisdiction. It requires an initial and final regulatory analysis of all rules to assess their impact on small entities.

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The analysis may be done in conjunction with any other required analysis.

The analysis may not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The analysis may be waived but delayed in the event of an emergency, but not for more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on rules affecting them.

Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities.

There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance.

You can see from the things that this bill covers that there are many, many areas that are left totally uncovered. We do nothing in this legislation about a one- or two-House veto giving the Congress the right to decide themselves whether regulations are in order that have been passed by a regulatory agency. At the present time we have nonelected people that are determining the fate of thousands and thousands of American businesses and jobs of millions of American people without any real opportunity for the elected Members of Congress to react in such a way that they could overturn the regulations that are adopted, even though they are not in conformity with legislation that has previously been adopted by the Congress, or even if they are nonessential and go far beyond the problems that they seek to cure.

I think it is important in regulatory reform that the regulations at least are cost effective. This bill does not provide for that. It is a good first step, but please, let us not have the Congress fall for the kind of control that the present administration is presently imposing upon the Congress to prevent true regulatory reform.

Let us do something about this problem that we have promised the American people that we would do something about. Let us do it this year. Let us not let this bill take the place of a strong, true regulatory reform bill.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. McDADE).

Mr. McDADE. Mr. Speaker, I want to thank my friend, the gentleman from Ohio, for yielding to me.

Mr. Speaker, today the House will have the opportunity to approve legislation of tremendous significance to our Nation's small business men and women. The Small Business Committee has worked on this bill for almost 3 years, and I am pleased to say that I have cosponsored a similar measure and worked for its passage. Because the bill was stalled during the consideration of another bill in the Judiciary Committee, the Senate version has been used as a vehicle for this body to act upon this urgent request of the small business community.

S. 299 provides the impetus to Federal agencies to undertake innovative, flexible approaches when adopting and applying Federal regulations which otherwise may adversely affect smaller enterprises. Small organizations and small Government units are also covered by the bill's provisions.

The legislation under consideration revises administrative procedures to require Federal departments and regulatory agencies to perform an analysis of the economic and paperwork impact of a proposed rule on individuals, small businesses, organizations, and local governments. A number of alternatives designed to insure that rules promulgated are tailored to fit the size and scale of the entities to be regulated consistent with the applicable statute, are spelled out in the bill.

These include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation of compliance, and reporting requirements; and

Use of performance rather than design standards.

Regulatory flexibility legislation represents 3 years of hearings and related work by the Small Business and Judiciary Committees, with input by small business owners and their national associations, labor representatives, public interest groups, economists, fellow Members, and administration officials.

The need for flexible standards has generally been acknowledged and endorsed by these various interests. Prompt passage of this proposal is imperative, especially as we proceed through a period of escalated inflation, high unemployment, and business decline. By directing Federal agencies to consider the economic and redtape impact of their proposed regulations, we can expect less burdensome requirements for small entities. In this way, a measure of the resources necessary to get us back on the road to economic recovery can be directed to more efficient and productive purposes.

Mr. Speaker, no doubt each of us has heard from individuals operating small firms within our districts. The comments are always the same. Small business owners regularly report that they are unfairly burdened by complicated, costly regulations uniformly applicable to both large and small operations; by insensitive Federal regulators; and by detailed, time-consuming paperwork requirements. Such regulations strain the limited resources of small business owners who find that their limited capital must be spent on compliance and their precious time consumed by redtape demands. It is simply unfair to expect small outfits to be subject to the same rules as their counterparts, when less burdensome methods could be adopted and still serve the mandate of the applicable statute.

The measure under consideration today revises Federal administrative procedures so that whenever a Federal department or regulatory agency undertakes a rulemaking, it must perform an analysis of the economic impact, including the cost of compliance, of a proposed rule on individuals and small businesses, organizations and governmental units. The purpose behind this requirement is to assure that Government agencies adopt reasonable alternatives, consistent with the underlying substantive statute which would be less burdensome for smaller concerns. The proposal spells out a number of solutions agencies are to seriously consider to insure that rules promulgated are tailored to fit the size and scale of the parties to be regulated. The alternatives recommended to minimize the impact of a proposed rule on individuals and small entities include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation and simplification of compliance and reporting requirements; and

Use of performance rather than design standards.

Let me point out that Federal agencies are not limited to consideration of these alternatives only. Other reasonable means of assuring regulatory flexibility may be discussed. But, these alternatives are included in the legislation so that agencies will be on notice of their authority and, in fact, of their duty to take flexible steps in their regulation of small entities, if this would be consistent with the applicable statute. The alternatives the agency reviewed and deemed feasible, along with the reasons why any were rejected, must accompany issuance of the final rule.

When undertaking a regulatory flexibility analysis, Federal agencies are also required to evaluate the impact of recordkeeping and reporting requirements imposed by a proposed rule, including an estimate of the time necessary to complete such paperwork. Additionally, S. 299 directs the agencies to actively seek the participation of small businesses, organizations and governmental units in the consideration and formulation of proposed regulations. To insure adequate advance notice, each agency will have to publish semiannually an agenda of rules and regulations expected to be issued or reviewed during the coming year. Finally, at least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.

I must emphasize that this legislation is not designed to confer special favors or advantages on certain individuals or groups within our society. Nor is it intended to strip away the advances we have made in laws promoting the public's health, safety, and well-being, including statutes calling for clean air and water, a safe workplace, and manufacture of safe goods, to name just a few. Small business owners who testified before the Small Business Committee have not called for a wholesale abrogation of these laws. Rather, they have sought recognition that the regulations implementing these laws accommodate the size and capabilities of affected parties. I feel that S. 299 ably accomplishes these goals.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this bill.

Mr. Speaker, I would like to see congressional action to improve Federal agency rulemaking for all segments of our economy, and I certainly support S. 299 which is a positive beginning toward reducing the regulatory burden imposed upon small business by the Federal Government.

Small business plays a vital role in our Nation's economy. As a group, small businesses exemplify the traits which made America great. Today, however, this important sector of our economy is being crushed by the weight of Federal regulations and the resulting paperwork. One of the most frequent complaints I hear from the small business people of my district concerns the burden of Federal regulations, and I believe this is true of most of us in the Congress. The small business community's message to us regarding the Federal regulations and paperwork burden has been loud and clear: Reduce it. And that is the aim of this bill: To reduce the impact of Federal regulations on small businesses.

The bill does not call for a special commission to make a study of the problem and issue a report to Congress. Nor does it call for a new agency to deal with the continuing growth of regulations. This bill checks the growth at its source.

This legislation will make some overdue changes in the way the Federal agencies develop and issue regulations. It requires the agencies to weigh carefully the effects of their rules on small businesses and not issue those regulations whose benefits do not justify their costs to small business.

It is not the intent of the legislation to undermine the important progress our country has made during the past two decades in providing safer food, drugs, places of work, and cleaner air and water. We must protect the health and welfare of people as well as small business. Many regulations are essential and were developed in response to rising expectations and demands of the public that the Federal Government "do something about that."

This bill does not seek the elimination of Federal regulations, but a control of the bureaucrats. It deals with those Federal regulations that severely impact small business, and are not necessary, equitable, or very poorly serve the public interest. The legislation meets the justified concerns of small businesses without sacrificing progress toward meeting the goals established by legislative mandate and public need.

This bill gives the Members of the House a chance to really do something about a major problem facing small business. It is not a final answer, but it is a first step toward keeping the regulatory agencies from being a nightmare for small businesses. I urge my colleagues to support it.

Mr. Speaker, I wonder if the gentleman from Pennsylvania would join me in a little colloquy on the intent of this bill.

Mr. McDADE. I would be delighted to.

Mr. BROOMFIELD. Mr. Speaker, I am concerned about the difference between this bill and H.R. 4660 which I cosponsored, was approved unanimously by my subcommittee and was passed out of the Small Business Committee. Particularly, I am worried about whether the agencies are actually required to analyze their regulations for impact on small businesses, or may merely slide over potentially devasting provisions with only a cursory glance.

Mr. McDADE. My friend, the gentleman from Michigan, as usual, has raised a tremendously important question, one that we looked at in the subcommittee with diligence. May I say that it is the intent of our committee, and we are the people who wrote and reported the companion bill, and I believe I can speak for the members of the committee, I know I certainly speak for my friend, the gentleman from Massachusetts, who has had 3 years of his life invested in this bill, that agencies and departments have a positive duty under this legislation to determine the impact on small businesses of each and every new regulation and a specific, and I repeat, specific statement of businesses to which the new rule will apply and the proposed alternatives to reduce that impact. Furthermore, the agency has a positive duty to consider alternatives that would lessen the impact upon small business.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield further?

Mr. McDADE. I would be delighted to yield to my friend.

Mr. BROOMFIELD. But what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete?

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. KINDNESS. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania.

Mr. BROOMFIELD. Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy or incomplete? What if the agency ignores significant information provided by an affected individual; or, more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?

Mr. McDADE. Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation, it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.

Mr. BROOMFIELD. Mr. Speaker, I thank the gentleman.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I am delighted to yield to my friend, the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I just want to point out that it is difficult to make sure in legislation that every agency will do what it is expected to do; but to try to guarantee that, this bill provides, and our bill provided, although I think our bill was a little stronger, that the Chief Counsel for Advocacy has both the authority and the responsibility to carry through within the administration to make sure agencies do what they are expected to do under this legislation. The Chief Counsel for Advocacy does have a measure of independence within the administration and we will be sure he gets the personnel to do that.

Mr. McDADE. I thank my chairman. I could not agree with him more. It is our intent that our bill, and I agree with the chairman, it was stronger than the one we are considering today, but the intent of all of us in passing this legislation is to do exactly what the gentleman says and to make the agencies respond.

I thank my friend, the gentleman from Iowa, for his contribution.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I stand in support of this critical legislation. With the passage of this measure before us today, the House takes a major step forward on behalf of the overregulated small businessman and woman in this recession-ridden country.

For years now the small business community has been disproportionately burdened by the same reporting requirements as the corporate giants in the United States, those multinational, multibillion dollar entities which comprise the Dow-Jones industrial stock average. This is true even though the problems which gave rise to the Government action may not have been caused by the smaller entities.

It is obvious to all in this Chamber that unnecessary regulations create many barriers in many industries and discourage potential businessmen and women from introducing beneficial products and processes into the mainstream. How far do you think Wilbur and Orville would have gone if faced with similar regulations?

Mr. Speaker, as a member of the Small Business Committee since 1965, I have actively supported and cosponsored legislation designed to achieve the stated goals of this legislation. It is critical for the future posture of our industrial, high-technology Nation that it provide the innovative and productive sector of our society, small business men and women, the opportunity to direct most of its energies on production and not paperwork.

Failure to pass this long-awaited measure translates into continued diminution of this country's image as a world leader in innovation and technology. The long-term effect will be that the Japan's and Germany's in the world marketplace will continue to surge ahead in their relative productivity figures.

Therefore, it is imperative that Federal agencies endeavor to fit regulatory and information requirements to the scale of the businesses. If we can accomplish the objectives of this legislation, small businesses throughout the United States will save the millions of nonproductive man hours and billions of dollars required each year to comply with these unnecessary regulations.

I urge passage of this important matter.

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In closing, Mr. Speaker, I want to congratulate the subcommittee, the gentleman from Iowa (Mr. SMITH) and the gentleman from Florida (Mr. IRELAND), who is chairman of the subcommittee. I also want to thank the gentleman from Pennsylvania (JOE McDADE) and all of the others on the Small Business Committee, who have worked so hard and diligently for the past 3 years on this piece of legislation which I, too, have cosponsored.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. NOWAK).

Mr. NOWAK. Mr. Speaker, today we will consider landmark legislation on behalf of small business. For the first time, Government regulations must be designed to "fit the scale of those being regulated." Regulatory flexibility is not a new concept. Both Houses of the Congress have considered similar measures over the last few years.

Recently, I voted, along with 29 of my other colleagues on the Small Business Committee, to report a similar bill, H.R. 4660. And every Member knows the issue: They have been directly involved with constituent cases, and have seen how excessive Government regulations hamper smaller firms.

S. 299, the Regulatory Flexibility Act, is the first step toward the establishment of a broad, tiered Government policy, one which recognizes the special needs and limits of smaller firms. Ultimately, this policy will restore our free enterprise system.

It will insure that the small business community will continue to create the jobs, competition, and innovation our economy so desperately needs in the 1980's.

S. 299 provides a framework which will yield regulatory flexibility. Federal agencies are required to periodically publish a regulatory flexibility agenda. And they must prepare a regulatory flexibility analysis which will explain how their rules can be tiered to accommodate smaller firms. Lastly, they must review existing regulations and change them if they adversely affect small business.

Tiered regulations are not a drastic departure from past regulatory practice. A good example of a two-tiered reporting requirement is the personal income tax form. Salaried persons earning less than $20,000 a year are permitted to file a short form, 1040A, while others fill out the more detailed long form.

The Securities and Exchange Commission has embarked on an ambitious program of tiering. The Department of Energy tiers, the Environmental Protection Agency tiers, the Occupational Safety and Health Administration tiers. The problem is that, in some cases, past efforts to promote flexible regulations within the agencies have been undertaken without adequate economic analysis. The results are sporadic and sometimes inconsistent.

What this bill would do is impose an orderly, Government-wide, process on a rather ad hoc process. Some may ask, if we impose too many restrictions on the agencies' informal rulemaking, are we opening the door to the possibility that agencies will get around the restrictions by increasing enforcement efforts in an attempt to establish legal precedents? Agencies, of course, can, and should pursue violators of the law. However, when enforcement becomes petty or ill conceived, Congress has shown little reluctance to step in and chastise agencies through the oversight and budget review process.

Small business' demands are not outrageous. They only want straightforward, equitable laws. They are willing to pull their own weight, to hire employees, sell their products, to pay taxes, and contribute to our economy. Today, unfortunately, what they have is a jungle of conflicting regulation, and a Tax Code skewed in favor of the wealthy and the large corporations.

Tiered laws and regulations will move us a step closer to our goal. S. 299 is an important and vital first step which should be overwhelmingly supported by this House.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. Mr. Speaker, I rise in support of S. 299, the Regulatory Flexibility Act.

The House version, H.R. 4660, the Smaller Enterprise Regulatory Improvement Act was unanimously reported by the Small Business Committee on October 17, 1979, and had 245 cosponsors.

S. 299 was unanimously passed by the Senate August 6, 1980.

This legislation would require Federal agencies to assess the small business impact of their regulations and tailor them to fit the size of the entity being regulated.

Legislation of this nature was one of the major goals of the White House Conference of Small Business.

Our Nation's small businesses file more than 305 million Federal forms every year, totaling over 850 million pages and containing over 7.3 billion questions. The cost of this paperwork is about $12.7 billion, a cost that is eventually passed along to the consumer.

I commend the gentleman from Florida (Mr. IRELAND) for his work and leadership on this measure. I support it and urge its passage.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. Heftel).

● Mr. HEFTEL. Mr. Speaker, I rise in support of S. 299 as a token recommendation of the necessity for better protecting small business from the consequences of rulemaking by Federal agencies. It is mandatory that these agencies analyze before the fact proposed rulemaking in terms of the consequences for small business. It is unfortunate that the bill is not stronger and I would hope that this body would consider carefully the necessity for strengthening it in the future if such a need becomes apparent.●

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. Ireland).

Mr. IRELAND. Mr. Speaker, today marks the next to last step of a very long journey—that of the odyssey of the concept of regulatory flexibility for small business. I need not take up the House's time explaining how the mounting tide of Federal regulation and paperwork has swept away small business after small business. We have all heard the horror stories. The Small Business Committee has worked on this issue for years.

The result of several years of effort in our committee was H.R. 4660. This bill gained 246 cosponsors. Over 60 more Members asked to cosponsor after the report on the bill had been filed. The main concepts of the bill were later incorporated into major House regulatory reform legislation. Apparently, that legislation may not proceed further this Congress. In any event, small business cannot wait any longer.

Today we have before us Senate bill S. 299. This bill, which passed the Senate unanimously, is essentially the same as H.R. 4660. In fact, in all candor, S. 299 improves upon several sections of H.R. 4660. In a discussion of issues which I will insert in the Record today, our understanding of S. 299, which we are taking up today in lieu of H.R. 4660, is carefully described. I would like to thank Congressman Butler for providing his well prepared statement to the House for its consideration before the vote on this act.

What will this bill do for small business? First, Federal agencies will be required to publish in the Federal Register every 6 months a regulatory flexibility agenda. This agenda will also be sent to the Chief Counsel for Advocacy at the Small Business Administration and agencies will also endeavor to notify small businesses of the agenda through other channels. The agenda will contain a summary of any rules to be proposed which will have a significant economic impact on small business as well as the name and telephone number of a knowledgeable agency official among other things.

Second, whenever an agency has to publish notice of general rulemaking they are to prepare and make available for comment an initial regulatory flexibility analysis. They then must prepare a final regulatory flexibility analysis after having reviewed all comments. In this analysis, they must explain how their rules can be "tiered" or their burdens on small business otherwise lessened.

Third, agencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business. They have 10 years in which to complete this task and may use 1-year extensions, not to exceed 5 years, to complete the task.

Finally, the Chief Counsel for Advocacy of the Small Business Administration will monitor agency compliance with this law and will report at least annually to the Congress on said subject.

The Members of the House should know that regulatory flexibility was one of the major priority recommendations to come out of the White House Conference on Small Business. Last November, the President issued an executive memorandum that directed Federal agencies to consider flexibility in future rulemakings.

Mr. Speaker, the United States is presently in the midst of a rapid and pervasive expansion of Government influence over business. To assure a future for private, competitive enterprise, Federal policy needs to give careful attention to ways of dealing with the increasing intrusion of Government into the mechanics of the marketplace.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government. Every aspect of our lives is affected in some way by Government regulation: The air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs. Government intervention in the economy is today much more the rule than the exception.

Although Federal regulation has helped our society achieve many desirable goals, evidence is growing that too many regulations are poorly designed to begin with, or have outlived their usefulness. Such unnecessary regulations have imposed tremendous burdens on the public.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: First, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business, thereby placing Government in the strange position of encouraging economic concentration, and, second, consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

The time to act is now. The vehicle is S. 299.

I would like to take this opportunity to commend President Jimmy Carter for the leadership and concern he has shown in this area of regulatory relief for small business. While the congressional wheels were turning, the President put regulatory flexibility into an executive memorandum and in effect got the ball rolling early. His staff has been very helpful in the latter stages of this process and their expertise and assistance was much appreciated.

The Nation's small businesses owe a special debt of gratitude to the former chairman of the Subcommittee on Special Small Business Problems, Representative Marty Russo. Marty worked long and hard on this legislation and due to his appointment to the Ways and Means Committee was unable to continue as chairman. We all know that Marty Russo has been a leader in the fight against needless regulation not only on this bill but also by his work on independent bakers' labeling problems.

Needless to say this bill has wide support. Chairman Neal Smith and ranking minority member, Joseph McDade, of our committee have been towers of strength for years in the battle against overregulation of small business. Also, SBA Administrator A. Vernon Weaver, Chief Counsel for Advocacy Milton D. Stewart and, Jere W. Glover, Director SBA Office of Interagency Office Affairs, have been instrumental in this process. The National Federation of Independent Business and the National Small Business Association have played a major supportive role during considerations on this bill.

I would like to thank the subcommittee staff which has worked for several years on this issue—Stephen P. Lynch and Patricia E. Reese of the majority staff; Marvin W. Topping of the minority staff; and James W. Morrison, former consultant to the subcommittee.

Mr. Speaker, at this point I would like to insert in the Record a legislative history of H.R. 4660, a reply to Mr. Seiberling on the question of abuse of the size standards, a discussion of the issues involved in S. 299, and a letter from Senator Culver.

I also would ask permission to revise and extend my remarks.

Won't Tiered Regulations Encourage Large Businesses to Set Up "Dummy" Small Businesses to Take Advantage of Lesser Requirements on Small Business?

The bill provides that the definition of a small business shall be that employed by SBA or a definition of the agency's choosing. The SBA definition, at 15 USC 632 provides, among other things, that a small business concern "shall be deemed to be one which is independently owned and operated . . ." This tough, explicit definition provided by Congress has been strengthened by SBA criteria which further refine the concept of a small and independent business. SBA has more expertise on this matter than any other agency in Washington. Its Size Standards Division has carefully researched the question of business size for many years. An important body of case law has developed around these SBA definitions.

For instance, the courts have held that the SBA definitions have the force of law. (See for example: *Otis Steel Products Corp. vs. U.S.*, 1963, 316 F. 2d, 937,161 Ct. Cl. 694.) The courts have also backed up SBA's refusal to consider an affiliate of a big business as a small business. (See, for example, *American Electric Co., vs. U.S.*, D.C. Hawaii 1967, 270 F. Supp. 689 and *Springfield White Castle Co. vs. Foley*, D.C. Mo. 1964, 230 F. Supp. 77.)

Thus, these highly-developed, legally binding SBA criteria should be adequate in nearly every situation. However, should a rare case arise in which an agency feels it needs even more stringent criteria to define a small business, the bill would allow the agency to develop its own definition. Given these stringent safeguards against abuse, and given the bill's stipulation that critical matters of public health, safety, and welfare are never to be compromised, the issue of potential misuse of the tiers would seem to be fully addressed within the legislation.

SEPTEMBER 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: This is in response to your inquiry with regard to the judicial review provisions of S. 299 recently approved by the Senate. I understand that your concerns relate to part of the explanation on page 21457 in the Congressional Record of August 6, 1980.

I believe your concern can be resolved by the addition of the words "and consciously" between "completely" and "ignores" in lines ten and eleven of the second column, and by striking the word "therefore" in the eighteenth line of that column.

Sincerely,

JOHN C. CULVER.

LEGISLATIVE HISTORY OF H.R. 4660 OF THE HOUSE SMALL BUSINESS COMMITTEE

H.R. 4660 was the result of 3 years of hearings and related work by the Committee. During the Ninety-Fifth Congress two relevant bills were referred to the Committee, H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. Caldwell Butler of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative Andy Ireland of Florida. The purpose of his bill was to give Federal agencies flexibility in the issuance of Federal regulations.

Hearings were held on these bills on February 1, March 8, March 9, and March 16, 1978.

During this Congress, several similar bills were introduced and forwarded to the Committee. They were:

H.R. 1306, introduced by Representative Richard Schulze of Pennsylvania. The purpose of his bill was to require the preparation of small business impact statements in connection with Federal agency rules.

H.R. 1745, introduced by Representative Andy Ireland of Florida. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 2837, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of her bill was to require the preparation of small business impact statements in connection with Federal agency rules, and for other purposes.

H.R. 2908, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 3011, introduced by Representative Robert Lagomarsino of California. The purpose of his bill was to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs.

Hearings on these and the concepts considered last Congress were held on April 5, April 24, May 17, and May 22, 1979.

In these eight hearings the Committee heard from almost 40 witnesses from the public and private sectors. The result of all of this was a Committee bill combining the original Butler and Ireland concepts with refinements—H.R. 4660. This bill was considered and ordered favorably reported by the Full Committee 30–0, on July 17, 1979, as amended. At present 246, including all 39 members of the Small Business Committee, are co-sponsoring this legislation.

THE NEED FOR THE LEGISLATION

The Committee has for the last several years received evidence and heard testimony from countless small businesses complaining about Federal overregulation. These individuals have not opposed all regulation, but have drawn attention to instances of too much regulation and of ill-conceived regulation which has had an extraordinary economic impact.

Most of the witnesses who addressed themselves to this legislation sought means for balancing the goals of Federal regulation with those of a market economy. One such witness, Dr. Murray L. Weidenbaum, the Director of the Center for the Study of American Business at Washington University in St. Louis, has devoted considerable effort to studying the various impacts Federal regulation has upon business. In testimony before the Committee, he eloquently outlined some problems of regulatory impact. Turning to the Occupational Safety and Health Administration (OSHA), for example, he noted that the agency "provided a complex pamphlet containing 24 pages of fine print just listing the applicable standards for 'general industry'." And the explanation of those standards? For this the reader was referred to 29 CFR 1910. How is the average businessman supposed to know that CFR is the Code of Federal Regulations, that 29 is the volume 29 dealing with labor, and 1910 is section 1910, devoted to OSHA?

"(Assuming such a business person eventually located) * * * a copy of 29 CFR 1910, he is in for some surprises. The document contains 455 pages of fine print, including algebraic equations and trigonometric functions, but no index. Let us assume, generously, that our small business executive skips over the obviously technical parts and turns to what seems to be a simple section—the definition of an exit. By way of reference, the dictionary tells us that exit is 'a passage or way out.' For OSHA, however, defining exit is a challenge to its bureaucratic prerogatives, and it is not found wanting.

"To OSHA, an exit is 'that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment * * *' to provide a protected way of travel to the exit discharge." Obviously, our business executive now needs to find out what is "a means of egress" as well as an "exit discharge."

"Exit discharge is the easier term. It is defined merely as 'that portion of a means of egress between the termination of an exit and a public way.' Next comes OSHA's definition of a means of egress: 'a continuous and unobstructed way to exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel (?) and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards.'"

Anyone who followed all this would ultimately discover that OSHA is saying that an exit is an exit is an exit. In the case of "ladder" there are three renditions of the same tedious set of definitions plus one trigonometric function.

OSHA is certainly not the only offender when it comes to abstruse regulations. One could note the proposed regulations on job testing written by the Equal Employment Opportunity Coordinating Council. The guidelines were drafted with the best of intentions—to assure that tests do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the guidelines have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

Reading the proposed regulations reveals the basis for the objections. Here is a typical section, one of which in fact attempts to ease the burden on employers:

"A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance * * * If the relationship between a selection procedure and a criterion measure is significant but non-linear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should such guidelines be enforced, the result would surely not be fairer testing but a shift from what would be very costly and cumbersome procedures back to the simpler but far more bias-prone oral interview.

A CASE STUDY OF REGULATORY EFFECT ON SMALL BUSINESS LABELING RULES AND INDEPENDENT BAKERS

The Subcommittee on Special Small Business Problems conducted all the hearings leading up to H.R. 4660. In addition they have held many other hearings concerning regulatory impact on small business. One of the most telling examples of what is happening came in their hearings on small bakers and a Food and Drug Administration labeling regulation.

In the 1930's there were more than 10,000 independent bakers in America. Between 1939 and 1964, while the volume of bread production increased fivefold, the number of bakery plants declined to less than 5,000. Today the number of independent bakers is less than 1,000. Several large metropolitan areas have only one independent to serve them.

Independent bakers have made significant contributions to their industry as well as to the economy. For example, all of the following bakery innovations are attributed to independent bakers:

1. Wrapped bread.
2. Marketing of sliced bread.
3. Baking of a continuous-mix bread.
4. Bag bread.
5. End labels.
6. Bread in cellophane.
7. Bake-and-serve items.

Under sections 401 and 403 of the Federal Food, Drug, and Cosmetic Act, Congress directed the Food and Drug Administration to require careful and detailed labeling of food products. In particular, the act requires that all foods composed of two or more ingredients be labeled with the common or usual names of those ingredients. The FDA, in interpreting the law has for the most part required that ingredients be listed in the order of predominance.

In 1978 the FDA was prepared to put a new labeling regulation into effect. The rule had no flexibility and called for all products to be listed in strict order of predominance on the label. Since small bakeries tend to have more variable sources of supply the requirement would have necessitated the printing of an almost infinite number of labels by such small operations. Small bakers complained to the Subcommittee that this one new rule would add vast new costs and would drive a number of them out of business

Subcommittee members had several meetings with the bakers, FDA officials, and consumer advocates. Once various consumer representatives who had urged the FDA to adopt the regulation saw what the results would be, they were ready to modify the rule. The FDA was very cooperative. A new rule was issued, taking into account the needs of smaller bakeries.

Based on this and other similar experiences, the FDA has now set up four information desks throughout the nation for small business. The agency also now seeks out small buinesses for all their views, not just on labeling.

The lesson of this experience is important. An accelerated decline in independent bakeries would have led to a concentrated group of dominant companies and might well have created a baking monopoly or oligopoly. Characteristics of monopolies and/or ologopolies are all to well known—controlled output, high prices, and excess profits. Such a situation would confront the consumer with a market functioning according to the whims of a few. An objective of Federal regulation is to stop such concentration, not to create it. But a Congressional Subcommittee cannot realistically be expected to intervene in every such situation.

OTHER EXAMPLES

The Committee's files are replete with documentation of burdensome regulations adversely affecting small business. Productivity and innovation have ben curtailed. Inflation has been increased. Instances like the following are unfortunately all too commonplace:

A gas station owner spent 600 hours last year filling out just his Federal reporting forms.

An Idaho businessman paid a $500 fine rather than fill out a Federal form which was 63 feet long.

A New Hampshire radio station paid $26.23 in postage to mail its license renewal back to Washington.

A dairy plant licensed by 250 local governments, 3 states, and 20 agencies had 47 inspections in 1 month.

A butcher had one Federal agency tell him to put a grated floor in his shop one month and then the next month was told by another Federal agency he could not have a grated floor.

A company was forced out of the toy business because one of its main products was inadvertently placed on a Federal ban list.

An Oregon company with three small shops received Federal forms weighing 45 pounds.

THE OVERALL REGULATORY CLIMATE FOR SMALL BUSINESSES AND SMALL ORGANIZATIONS

A regulatory environment which necessitates the hiring of lawyers, accountants, engineers and consultants for businesses of any size to survive will clearly provide competitive advantages of the largest, most automated businesses and increase the size of firms which can enter the marketplace or remain there.

Professor Milton Kafoglis, formerly Senior Economist of the Council on Wage and Price Stability, set forth the problem in testimony on this legislation:

"* * * the regulatory agencies usually assume—contrary to fact—that costs imposed by regulation can be passed through to consumers with equal ease by all firms. This assumption tends to blunt the concern of regulatory agencies about disproportionate impacts on various sizes and classes of business.

"Though 'uniform' regulatory treatment of all businesses seems to be a reasonable criterion, it must be remembered that there are real differences and that uniformity of regulation could represent an economically inefficient solution * * *

"Uniform application of regulatory requirements seems to increase the size of firm that can effectively compete. In technical jargon, the unit-cost curve of the firm is shifted upward and to the right with its minimum point occurring at a larger output. That is, the imposition of regulations will, in most cases, artificially increase the size of the firm that can survive. If one employs the economists' theoretical 'dominant firm' model and introduces such upward shifts in cost curves (the small firm's cost curve shifting more than that of the dominant firm's), the market share of the dominant firm will increase while that of the small firms will decrease. As a result, industrial concentration will have increased. Thus, the 'small business' problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

"The usual paperwork and reporting burden whose total costs are invariant to output is the most obvious example of economies of scale imposed by regulation. Whereas large firms typically have a managerial structure and/or legal section that can absorb these costs with either no increase in staff or with an incremental increase, small firms must either add increments which are large relative to the size of the firm or seek consulting services which are expensive and not very highly specialized in the firms' particular needs. All such expenses are invariant to output, and their cost per unit of output declines as output increases. Such costs raise the cost curves of all firms but place the small firm at a relative disadvantage on a unit-cost basis.

"More importantly, the technology imposed by most regulations is itself subject to scale economies * * *

"Standards which impose technologies involving large fixed costs also raise barriers to entry, imposing capital burdens that small or medium-size firms cannot handle, and solidifying the market positions of existing firms. Indeed, large firms are likely to support such regulations since they are capable of insulating the industry from new competition * * *

"* * * there is not to my knowledge a government regulation which (if uniformly applied to all firms) would generate diseconomies of scale and increase the number of firms in an industry, thus encouraging deconcentration and increased competition."

Our Committee found ample evidence, on the other hand, that flexible regulatory strategies are not only workable in theory but have in fact been used on a sporadic and ad hoc basis throughout the agencies. An example of a two-tiered reporting requirement with which most Americans are familiar is the income tax form. Salaried persons, earning less than $20,000 are permitted to file their tax returns on Form 1040A (the "short form"), while other taxpayers are required to fill out Form 1040 (the "long form"). In this instance the Internal Revenue Service has made a determination that less information is necessary from low- and middle-income taxpayers with a single major source of income than is necessary from other taxpayers. Other agencies on occasion use multi-tiered techniques and they should continue to do so.

The Committee discovered numerous examples of such flexibility (both legislatively and administratively mandated) throughout the Code of Federal Regulations. The National Federation of Independent Business (NFIB) presented schematic charts of some of the varieties of existing "tiered" Federal regulation in a dozen different regulatory areas. Other witnesses compiled lists of flexible regulations in specific industries.

Unfortunately, however, efforts to promote regulatory flexibility have until now been sporadic, lacking in overall Congressional guidance, and at times ill considered. For example, the General Accounting Office's (GAO) testimony drew attention to the Department of Energy's crude oil entitlements program, which has enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels per day, the threshold of the entitlements program, whereas the minimum technologically efficient refinery size is 175,000 barrels per day.

Our Committee is persuaded that the most direct and practical solution to counterproductive flexible regulations, is to stimulate a much greater degree of participation in rulemaking by affected parties. Offering agencies the means for tailoring regulations to the resources of affected parties must be accompanied by a strong mandate to involve those parties in the deliberations.

Thus, although administrative and legal precedents support the general approach of the bill, they do not obviate the need for the legislation.

In fact, much of the thrust of the legislation could be met by the agencies by adapting their application of Executive Order 12044 to the demonstrated problems of small businesses and small organizations.

The Executive order requires that regulations should be as simple and clear as possible and should achieve legislatively mandated goals effectively and efficiently. It states that:

"They shall not impose unnecessary burdens on the economy, on individuals, on public and private organizations, or on state and local governments."

While this policy is completely consistent with the purposes of H.R. 4660, such as reducing unnecessary requirements and simplifying and clarifying necessary ones, there are numerous provisions of H.R. 4660 which are not addressed in the Executive order.

The order does not address the issue of the different impact of uniformly applied regulations on individual segments of the population, nor does it urge agencies to issue rules which apply differently to such segments of the population. Although the order does improve the opportunities for public comment on substantive rules, its provisions are narrower than those of H.R. 4660, and it does not open reporting requirements for public comment.

Finally, the Small Business Committee noted that enforcement of the Executive order is restricted. Since the question of agencies' compliance with the order is not subject to judicial review, realization of the benefits the order seeks to provide will largely depend upon the personal sensitivity and good faith of the rulemakers. Adherence to the order by the independent regulatory agencies, which are not part of the executive branch, is completely voluntary. Moreover, the Office of Management and Budget has limited structural mechanisms for enforcing the order, even within the executive agencies.

H.R. 4660 does not conflict with the Executive order and does not represent a duplication of objectives. H.R. 4660 would supplement and strengthen the order in several ways, notably by adding two new regulatory objectives: improving public participation and an assessment of alternative regulatory strategies in light of their impact on small concerns. Thus, the Committee believes this legislation is not only necessary, but timely.

Indeed, the Committee agrees with the testimony offered by the General Accounting Office (GAO) that:

"In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business."

H.R. 4660 has been carefully designed to permit such broad scale reform in the future, and nothing in the legislation would stand in the way of comprehensive rulemaking reform. Each major aspect of the bill accords with generally accepted principles under Executive Order 12044 or existing administrative law.

THE CONCEPT OF FEDERAL REGULATION OF THE MARKETPLACE

Federal regulations have the effect of law when finalized. Though thousands of new regulations are created every year, very few are ever taken off the books. Estimates of the cost to the economy of all these regulations ascend to $100 billion. In such a situation, it is important to keep track of the main lines of reasoning in support of Federal intervention in the marketplace.

There are two main arguments. Market failure, a term which economists use to designate a flaw in the marketplace which produces undesirable consequences, can create several problems. Regulations can remedy many of these problems. Among them are:

Natural monopoly, resulting in high prices, reduced output, and excess profits;

Interdependencies in natural resource extraction, resulting in the inefficient use of natural resources;

Destructive competition, resulting in chronically sick firms unable to satisfy consumer demand;

Externalities, which impose costs in society but not on the person who causes them; and inadequate information in the marketplace, resulting in poor decisions and wasted resources.

A regulation in any of these areas is meant to improve the market system and aid competition.

The second line of reasoning concerns social or political problems which demand regulation. Among these are regulations which are intended to:

Alter income distribution;

Strengthen national security;

Improve the environment;

Protect public health and safety;

Promote new industries;

Give special protection to groups like small business or family farms;

Provide special assistance to smaller communities and/or rural areas.

In each of these cases, regulation serves to meet an important social need. Difficulties arise when bureaucracies which are not responsible to the electorate exceed their statutory authority or fail to consider rulemaking alternatives which would have a less burdensome impact on the regulated public. It is this imbalance between goals and unnecessary burdens which this legislation is designed to address. The Committee did not intend to sanction any diminution of the legislatively mandated goals of Federal regulation.

AGENCY ENFORCEMENT

During the hearings an issue arose concerning an option which agencies may use rather than regulation. One of the witnesses before the Subcommittee, Mr. Calvin Collier, a former Deputy Director of OMB and former Chairman of the Federal Trade Commission, raised the possibility that agencies confronting new rulemaking procedures might evade them by resorting to the creation of legal precedents through enforcement actions against "worse case" offenders, and subsequent enforcement of such precedents upon the regulated public as though the precedents were actual rules.

While our Committee believed such agency action is much more likely under the more sweeping regulatory reform measures now pending before Congress, and that the Smaller Enterprise Regulatory Improvement Act would impose little additional burden on any agency, the Committee would note that agency enforcement budgets will be subject to rigorous oversight if evidence suggests that enforcement actions are being used as a surreptitious form of "rulemaking."

A PUBLIC PROBLEM

Overregulation is not just a small business probem. It is a problem with significant public consequences. One witness summed it up this way:

"The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: (1) the disproportionate impact of government regulation on small business reduces the competitive capacity of small business, thereby placing government in the strange position of encouraging economic concentration, and (2) consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

"The disproportionate impact of regulation on small business stems from economies of scale inherent in the regulatory process. This fact is neither unexpected nor stunning once attention is drawn to it. But as often is the case of the obvious, we tend to dismiss it in our preoccupation with the more specific."

On October 17, 1979, H.R. 4660 was referred to the House Judiciary Committee. On May 28, 1979, the Judiciary Committee was discharged from further consideration of H.R. 4660.

Discussion of Issues

When the Senate passed S. 299 on August 6, a "Description of Major Issues and a Section-by-Section Analysis" was provided to explain certain substitute language adopted for that bill. (See 126 Congressional Record 21452–21461.) Members of the House of Representatives took an active role in helping the various parties in interest achieve the understandings which were necessary to bring the measure before the Senate, just as members of the Senate have provided much help in bringing the measure before the House of Representatives today. Thus the Senate document entered into the Record on August 6 already reflects many of the concerns of House members who have been involved in the development of regulatory flexibility legislation. Indeed, much of S. 299 as passed is derived from provisions of H.R. 4660. Rather than commenting again on each of the various sections of S. 299, as passed by the Senate, this Discussion of Issues will supplement the Senate document by noting some general themes and objectives of the legislation, occasionally amplifying some of the points made during Senate consideration, and drawing upon, where appropriate, House Report 96–519 on H.R. 4660 (which should be incorporated by reference into the legislative history of the pending bill.) That House report more fully conveys the views on regulatory flexibility legislation of the principal authors and sponsors in the House of Representatives. Agreement on the matters discussed in this Discussion of Issues has helped provide the broad political consensus necessary to bring S. 299 before the House of Representatives in lieu of H.R. 4660. House members who have worked on this legislation are deeply grateful for the active and creative participation of Senators Culver, Nelson, Laxalt, Thurmond, and others in developing S. 299. Senator Culver has shown particular strength and perseverance in the long effort to enact regulatory flexibility legislation.

In general, regulatory flexibility legislation is designed to eliminate the unnecessary regulatory burdens which attend uniform or rigid regulatory strategies, particularly with respect to those on whom such unnecessary burdens weigh the most heavily—small businesses, small organizations, and small jurisdictions of government. The legislation directs agencies promulgating federal rules, reporting, and recordkeeping requirements to carefully examine them with the purpose of seeking less burdensome "flexible" alternatives.

The agencies are directed to assess such options as "tiering" (that is setting differing and less burdensome requirements on smaller entities), exemptions from all or parts of rules, the structuring of differing timetables for compliance, the use of performance standards rather than design standards, and so on. It is important to note that agencies are not restricted to use of the options specifically enumerated in S. 299. When S. 299 refers (in Section 603(c)) to "any significant alternatives to the proposed rule" and then enumerates alternatives "such as" those mentioned above, it means just that—that those alternatives are examples or possibilities, but that any other appropriate flexible regulatory strategy which is suggested must be given serious consideration. The Act does not specifically mention the adoption of less frequent reporting requirements for smaller entities, for example, although this form of flexible regulation is already used by many agencies, and is indeed completely consonant with S. 299. Equally appropriate in the future, although again not explicity noted in the Act, would be such current agency practices as adopting multi-tier regulations, and using criteria which have the effect of tiering by size but which do not directly measure business size (as for example, the EPA regulations affecting leather tanneries which are tiered according to volumes of effluent discharge.) The Act does not specifically cite the entitlements programs now in use by some agencies, although entitlements programs are a form of flexible regulation. Nor does it take note of imaginative new approaches like the Environmental Protection Agency's "bubble" concept, which takes into account that agency's mandate to clean up the air while lessening unnecessary burdens through a flexible application of a statute.

Neither S. 299 nor any other single piece of legislation could ever begin to specify the appropriate solution to address every situation regulators will encounter, now and in the future, and it would be unwise to attempt to do so. Reguatory flexibility should be viewed by the agencies as Congressional encouragement to reward agency personnel for seeking out and applying creative solutions to the genuine problems our smaller entities face in complying with broad, general statutes. Statutory mandates must never be compromised—that is why section 606 explicitly states that the Act does not alter any other statutory standard—but agencies are required by the Act to solicit and consider flexible approaches in the application of their statutes, where legally permissible.

Agencies may undertake initiatives which would directly benefit such small entities. Thus, the term "significant economic impact" is neutral with respect to whether such impact is beneficial or adverse. The statute is designed not only to avoid harm to small entities but also to promote the growth and well-being of such entities.

Acertaining the impact on small entities is the heart of the regulatory flexibility analysis. It is a finding of significant economic impact on a substantial number of small entities which triggers the consideration of flexible regulatory strategies. Evidence of such impact upon any one of the three types of entities—the small businesses, the small organizations or the small jurisdictions of government—requires agency compliance with applicable provisions of this legislation. Normally, rules will not affect two or three types of small entities simultaneously, but when this does occur, agencies should take steps to involve each type of entity in their rulemaking, and account for each in their regulatory flexibility analyses. Agencies should promulgate final rules whose flexible provisions are based on the rule's potential impact on each of the different types of affected small entities.

Thus the possibility that a rule may cause a substantial impact on a significant number of small entities is central to an agency's determinations under this legislation. Exactly what a "significant economic impact on a substantial number of small entities" is will vary from case to case. For example, if there were 500 small organizations of a certain description, and 200 of them would face major new reporting requirements if a certain rule were implemented, then the rule should be expected to have a significant economic impact on a substantial number of small entities (in this case small organizations). If there were only 25 small businesses in an industry dominated by 12 large businesses, then a rulemaking initiative which would threaten the economic viability of 15 of those small businesses, and thus adversely affect competition and industrial concentration, would have a "significant economic impact on a substantial number of small entities" within the meaning of the legislation, even though the absolute number of small businesses involved would be minuscule. As this example makes clear, economic impacts include effects on competition and economic concentration. The phrase "significant economic impact on a substantial number of small entities" is ambiguous in order to cover critical situations such as these examples without imposing exact numerical thresholds on the agencies overall. But clearly, any anticipated rulemaking which common sense would suggest could have a direct, noticeable economic impact on several thousand or more small entities (of any type) should be considered as included within the concept of having a "significant economic impact on a substantial number of small entities." Obviously, agencies are not expected to estimate the unforeseeable or to avoid ever making any mistakes in their estimates. Rather, the agencies should make good faith efforts to arrive at reasonable estimates and should scrupulously follow the procedures outlined in the legislation.

Those procedures can be delineated in a step-by-step manner. The initial decision the agency makes is a determination that the provisions of this Act are applicable to the agency and to the actions that it takes. This is clearly an important decision, which the agency should consider very seriously. The legislation is intended to be as inclusive as possible, and doubts about its applicability should be resolved in favor of complying with the provisions of the Act. Any significant comments from the public or especially the Office of Advocacy that a rulemaking should be accompanied by a regulatory flexibility analysis should be given the utmost serious consideration by an agency.

Although these more inclusive interpretations may result in additional effort for the agencies in the short run, such inconvenience should be viewed in light of the final rule's long-term advantages: more just application of the laws and more equitable distribution of economic costs, which will ultimately serve both the society's and the government's best interests.

It is difficult to ascertain how many regulatory flexibility analyses agencies will be required to prepare or publish under this Act, One estimate is that there will be about 500 per year. There may be more or fewer. The number will surely vary according to the subject areas the agencies choose to consider in any given year.

Having made the determination described above, the agency must then perform the regulatory flexibility analysis. The first step in this analysis is a careful estimation or projection of whether a rule, not yet proposed, may if implemented have a significant economic effect on a substantial number of small entities. This estimation will become a part of the agency's permanent rulemaking record. Under normal circumstances, a positive finding regarding impact should be followed by notification on the agendas required by section 602 that the rule, if implemented, could have such an effect on small entities. Sometimes, very early in rulemaking, agencies may only know in general terms that an area of rulemaking activity could have such an effect. This, too, should be noted on the agendas. In other words, an agency does not need to have a specific rule already developed to provide the public with agenda notification; agency activity in an area which is likely to result in a proposed rule having such an effect should also be noted. For purposes of agenda publication, agencies should interpret potential impact liberally. It would be preferable to have the agendas err on the side of anticipating more impact than subsequent rulemaking records indicate is likely to occur than to have such impact overlooked on agendas. For in cases where such potential impact proves to be unsupported by subsequent evidence, agencies are completely free to suspend any further regulatory flexibilty analysis (provided appropriate certification is published pursuant to section 605(b) of this Act), but the rulemaking record will have been enhanced by public comment on the agenda items. (Such public comment on agendas should be gathered in accordance with Section 609 of this Act, to the extent feasible.) A different type of situation occurs when an agency obtains evidence later in its rulemaking that suggests that an estimation of "significant economic impact on a susbtantial number of small entities" would be appropriate. In such a situation, the agency should proceed directly to the publication of an initial regulatory flexibility analysis. In other words, when, an agency must consider or act upon an item which did not appear in an agenda, it may do so. And an agency will not be required to consider or act upon any matter solely because it appeared in an agenda. In preparing agendas, as with other responsibilities under this Act, agencies may reduce their paperwork and avoid duplicative analyses by considering a group of closely related rules as one rule for purposes of simplifying analyses. But agencies may not avoid the requirements of this Act by dividing a larger rule into smaller rules with less impact.

Following the receipt and consideration of comments on the agency's impact assessment, as published in its agenda, the next step in the regulatory flexibility analysis is either the agency head's certification, under section 605(b), that a rule will not, if promulgated, have a significant economic impact or a substantial number of small entities, on the publication of an initial regulatory flexibility analysis under section 603. A certification under 605(b) must be made by the agency head personnaly, must be based upon sufficient evidence with in the rulemaking record, and must not ignore or fail to account for any significant evidence to the contrary. Certifications under section 605(b) should not be abused or taken lightly; they represent an important step in the evolution of an agency's regulatory flexibility analysis and overall rulemaking. Such certifications will also become a part of an agency's rulemaking record. For the administrative convenience of the agencies, the Act allows, certifications under section 605(b) to be published either concurrently with proposed rule publication, or after publication of an initial regulatory flexibility analysis (under section 603) concurrently with final rule publication. This timing of publication is flexible so that section 605(b) certifications can serve as the final evaluation in the regulatory flexibility analysis: the point at which the evidence makes clear that a flexible rule is not warranted by a rule's potential impact.

Agencies are required to notify the Chief Counsel for Advocacy of the Small Business Adminitration whether they publish an initial regulatory flexibility analysis under section 603 or whether they publish a certification under 605(b). The Chief Counsel's office was set up by Congress (under P.L. 94–305, 90 Stat. 669) to be an advocate for small business within the Federal Government. In that role, the Chief Counsel's office has been empowered to take part in a variety of inter-governmental activities, including participation in agency rulemaking proceedings. Comments by the Chief Counsel's office on agency certifications under section 605(b) should be viewed by the agencies as being just as significant as comments by the Chief Counsel's office on other parts of the regulatory flexibility analysis, such as comments upon the publication of the initial regulatory flexibility analysis under section 603. Because of the broad role Congress is assigning the Chief Counsel in the Administrative Procedure Act in monitoring agency compliance with this legislation, any comments submitted by the Chief Counsel in connection with an agency rulemaking should be given the utmost serious consideration by the agency. Agencies will benefit from the considerable experience of the Chief Counsel in developing flexible alternatives under this new area of law.

The reports on agency compliance which the Chief Counsel is required to submit to the President and to Congress under section 612(a) of this Act should include a listing of the Chief Counsel's comment submissions regarding the applicability to agency actions of provisions of the Act, including especially sections 602(b), 603(a), 605(b), and 610, as well as candid evaluations of all instances of disagreement between the Chief Counsel and the agencies involved. The reports will measure the progress of regulatory reform by compiling the number of regulatory flexibility analyses completed, rules under review, rules reviewed and flexible alternatives adopted. Inasmuch as the Chief Counsel is required to report "at least" annually, he may report more frequently, and may from time to time issue special reports on matters of particular significance with respect to regulatory flexibility implemention. Reports by the Chief Counsel's office, and other responsibilities of the Chief Counsel under this Act, should be implemented in accordance with existing procedures under that office's authorizing statute, P.L. 94–305. Section 612 of the Regulatory Flexibility Act provides that the Chief Counsel for Advocacy be permitted to appear as amicus curiae in any action in any views and the views of small entities with respect to the effect of a rule upon entities covered under the Act. This judicial role complements his already-established function of monitoring federal rulemaking affecting small business and participating in such rulemaking where appropriate.

After publishing an initial regulatory flexibility analysis, an agency should take the steps stipulated in section 609 for gathering comments, and should do so with special vigor if such steps have not already been taken following agenda publication under section 602.

Section 609 is quite explicit about the direct involvement of affected smaller entities in rulemaking. The participation of affected smaller entities in an agency's deliberations regarding flexible alternatives is an absolutely essential responsibility of an agency under this legislation. Such public participation will doubtlessly produce a number of significant contributions to an agency's search for the least burdensome regulatory strategy consistent with its mandate.

Analysis of comments gathered using these procedures, as well as comments, if any, from the Chief Counsel's office should form the foundation for the agency conclusions as expressed in the publication of the final regulatory flexibility analysis. An agency's final regulatory flexibility analysis of a rule should be directly linked to the final rule. It would not be reasonable for an agency to publish a finding that a rule is unnecessarily burdensome and that it could and should be made flexible, and for the agency then to fail to promulgate such a flexible rule.

Agencies may conduct emergency rulemaking in exceptional situations. The initial steps of a regulatory flexibility analysis need not be performed if a rule is being promulgated in response to an emergency, although the agency head must personally so certify, as in the case of certifications under section 605(b). However, as noted in section 608 (b), all rules, even emergency rules, must have a final regulatory flexibility analysis published for them (unless, of course, the agency publishes a certification under section 605(b) of this Act), but such publication may occur up to 180 days after the rule is promulgated. Failure to publish a final regulatory flexibility analysis within 180 days shall cause a rule to lapse.

To help agencies cope with unusual circumstances, particularly when unforeseen difficulties arise in the future, an agency head is permitted to extend the time limit for the review beyond ten years, for a year at a time, up to fifteen years. This authority should be used very sparingly, on a case-by-case basis for each rule involved. This provision of section 610(a) is most emphatically not intended to extend the review period beyond ten years on a wholesale basis for any agency. The agency plan for review of its rules, which must be published within 180 days of the enactment of this legislation, should be based on a ten-year cycle of review. In reviewing existing rules, agencies should follow the procedures described in sections 602–609 to the extent appropriate. Of course, such reviews should be consistent with the objectives stated within the underlying statutes of the agencies, as should all agency actions under this Act.

Ultimately, the Regulatory Flexibility Act is directed to agencies which in the past may not have known whether they were permitted by Congressional mandate to promulgate rules which were flexible enough to take into account special problems faced by small entities. The Act is designed to eliminate such uncertainty as well as to encourage agencies already promulgating flexible rules to continue doing so.

The sponsors of this Act hope that those agencies, and the agencies already working to implement flexible rules, will take their new responsibilities under this Act seriously and will make steadfast good faith efforts to comply. There are sanctions available for agencies which do not comply with this legislation, of course, in Congress and in the courts. This Act represents more than three years of careful work by both Houses of Congress to provide responsible legislative assistance to groups of Americans who feel sorely and justifiably afflicted by the way their government has treated them. Congress' concern about this problem is vividly expressed in the legislative history of regulatory flexibility proposals, a history which has included numerous unanimous votes in subcommittees, in full Committees, and on the Floor. In fact, there has never been a single negative vote cast against any regulatory flexibility bill since the introduction of the first such bill in the 95th Congress. Today's vote on the Floor of the House of Representatives finalizes a now general consensus that proper implementation of this legislation will result in much needed relief and significant benefits to our Nation's small entities.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from California, chairman of the Subcommittee on Administrative Law and Governmental Relations (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I should like to point out a few things in connection with this bill which we are today considering, S. 299.

First of all, this bill has never been considered by any committee or by any subcommittee of the House of Representatives. It stands here naked, by itself, the product of the other body, which was passed by the other body, but has never been referred to a committee of the House of Representatives.

Comment has been made, as to the subject matter of judicial review, to the effect that judicial review is provided for in this bill. I should like to point out that section 611 on page 15 of the bill provides as follows:

> Except as otherwise provided in subsection(b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

Insofar as thare may be Members who feel that judicial review is encompassed within this bill, I trust that the foregoing reference to the language of the bill itself will set that point straight.

I am willing to state as I stand here that this bill has some merit, and I emphasize the word "some." But I submit that it has very little.

The problems of regulatory reform are not fully addressed by this bill. If one were to use a form of common analogy, one could say that this is but a band aid on an economic cancer. The public and the business community have for years been clamoring for some relief from the overregulation from which we all suffer.

My subcommittee and I have worked long and hard to provide that relief. But apparently what we are confronted with now, under suspension of the rules, with no opportunity to amend, is a very small and inadequate substitute.

This bill, S. 299, falls far short of realizing the promise of regulatory reform as heralded so long ago by Executive Order No. 12044 which was issued on March 23, 1978, and which is now scheduled to expire on April 30, 1981.

In response to the public clamor, from all walks of life, for some meaningful reform of the regulatory process which would lift some of the burden of overregulation from the backs of our business and governmental community, the President issued Executive Order No. 12044 setting forth a realistic, meaningful, and hopeful proposal to make some real and substantial changes in the process under which Government regulations are issued to govern the business and community relationships of all our people.

In response to Executive Order No. 12044 I, together with Chairman PETER RODINO of the Judiciary Committee, and others, introduced the bill H.R. 3263 on March 27, 1979. That bill sought to bring about many improvements in the regulatory process and, at the same time, to extend its coverage to govern the regulatory procedures of the so-called independent agencies as well as those agencies which are a part of the Executive Office.

The Judiciary Committee's Subcommittee on Administrative Law, of which I am the chairman, conducted hearings for many months in order to obtain the information which would be necessary to mark up an effective bill which would carry out the purposes of Executive Order No. 12044. We had 10 days of testimony during which we heard more than 100 witnesses from every walk of life, from every section of the business community including small businesses and big businesses alike, from legal scholars, from the officials of many executive department agencies and from independent agencies, from legal scholars and practicing lawyers, from professors and administrative law judges, from organized labor, from public interest groups, Members of Congress, numerous Government officials and others. We benefited greatly from the opinions and experiences of this wide variety of witnesses. There followed 13 days of subcommittee markup before we concluded our amendments to the bill, H.R. 3263, and reported the same to the full Judiciary Committee.

Later the Judiciary Committee held 5 days of markup making sundry amendments to different parts of the bill but largely sustaining the work of the subcommittee.

In fact on May 14, 1979, when we concluded the fifth day of markup by the full committee, we were within about 2 hours of completing our work. Since then we have held the bill, H.R. 3263, in abeyance at the request of those who wish to work out some kind of compromise or agreement on two of the more controversial provisions of the bill; namely, those relating to the so-called legislative veto and those relating to the so-called Bumpers amendment.

Nevertheless, the bill, H.R. 3263, is completed in substantial respect and is an excellent bill which, with or without legislative veto and with or without the Bumpers amendment, could bring about the salutory and meaningful regulatory reform that the executive department, the legislature, the business community, labor, and the public so urgently need.

H.R. 3263 covers the entire spectrum of regulatory reform and would require many innovative techniques to be used by regulatory agencies in the preparation and promulgation of the rules and regulations to which it is directed. The bill would require advance notice to all concerned through a mandated regulatory agenda published twice a year identifying prospectively all major and significant rules that an agency might consider.

It requires regulatory analysis prior to rulemaking for all major and significant rules. As marked up by the Judiciary Committee that bill provides the maximum of regulatory flexibility which would take into account the specific needs of smaller businesses, smaller organizations and smaller units of government.

It would also require flexibility as to geographical sectors since it is obvious, for example, that a rule regulating water must be treated differently in a water rich area such as the Northeastern United States than in an arid area such as the Southwestern part of the United States. H.R. 3263 would require that regulations be drafted in plain English that can be understood by all, that there be an opportunity for public participation in the hearings on ruemaking procedure; and that there be review provisions for those regulations already in effect so that regulations which are no longer necessary could be eliminated and those which no longer meet the problems for which they are intended could be amended and modified. The bill, H.R. 3263, takes into consideration many other factors most of which are not even considered in the present bill S. 299.

One of the inadequacies of the present bill, S. 299, is shown by the following:

The question of whether Treasury regulations issued under the Internal Revenue Code are covered by S. 299 is not resolved by this bill. S. 299 was never considered in the Judiciary Committee nor in any subcommittee thereof. The bill by its terms applies only to the rules and regulations governed by section 553(b) of the Administrative Procedures Act, and that section excepts—excludes—interpretative rules.

Therefore, to the extent that Treasury Department regulations are in fact and in law interpretative rules they would be excluded. Otherwise, they would not be excluded. There are many other "open questions" in the bill which would be avoided by the passage of H.R. 3263.

Mr. Speaker, I respectively submit that the bill, S. 299, is not necessarily a bad bill. Truly, it amounts to nothing. It does not respond at all to, and does not meet, the need for regulatory reform which all of us have heard and considered during the past several years. It certainly does not meet the promise of regulatory reform that the public has come to expect as a result of the clamor of the last few years. After all the clamor and discussion concerning regulatory reform in the past 2 years the public has a right to expect a monumental work which will truly bring about meaningful and useful regulatory reform; instead of that what we are producing here today is a very small molehill.

Mr. Speaker, I hope that no one uses this bill as an excuse for, and that this bill will not lessen the demand for, regulatory reform. And I hope that this poor bill will not be used by the administration, by the Congress, or by anyone else as an excuse for not proceeding further with the bill, H.R. 3263, which is capable of providing the public with meaningful regulatory reform and which could be completed in the remaining days of this 96th Congress.

Mr. KINDNESS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. ROTH).

Mr. ROTH. Mr. Speaker, I rise in support of the bill, S. 299, the Small Business Regulatory Flexibility Act. S. 299 amends the Administrative Procedure Act to provide for increased flexibility in the application of the Federal rulemaking process to small businesses, small governmental jurisdictions, and small organizations.

This measure further provides that agencies must include economic and redtape impact analysis for small businesses, small governmental jurisdictions and small organizations whenever it publishes notice of a proposed rulemaking and must give public opportunity to comment on the initial analysis.

Moreover, this measure provides that agencies must publish a final regulatory flexibility analysis when it issues a final rule, explaining how rules can be "tiered" and offer reasons why less burdensome alternatives were rejected. If the Agency fails to do the required analysis or fails to take its own study into account when the final rule is published, the regulation is subject to being struck down by the courts. I want to point out that this act does not deny the statutory responsibility of the agencies. On the contrary, the act makes it perfectly clear to the agencies that they have a congressional mandate to adopt flexible alternatives.

By embracing S. 299, the House can take a quantum leap forward in the reduction of regulatory burdens which small businesses must shoulder. It must be recognized that Federal regulatory policies work a hardship on the small firm that the large is able to escape. Large firms have at their command a myriad of resources—lawyers, accountants, and greater organization that enable them to absorb and sometimes deflect the impact of Federal regulations. We must remember that in order for an economic system to remain competitive, it needs a strong and healthy small business section and I believe S. 299 is a step in the right direction toward insuring this goal.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I want to say to my colleagues that as a member of the Administrative Law and Governmental Relations Subcommittee of the Committee on the Judiciary, I am extremely disappointed at how the administration has tried to slip this particular bill through as some means of regulatory reform. Our subcommittee has worked for the better part of 10 months in trying to craft a bill that would actually achieve the reform that is needed in the regulatory process.

H.R. 3263 is a much, much superior bill. The bill that was reported out by the Small Business Committee, and the Small Business Committee worked long and hard on, is a much preferable bill. This is not even half a loaf. It does not go anywhere near where we have to go in reforming the regulatory process.

Those that suggest they are cosponsors of this legislation are totally in error. There are no cosponsors to this legislation. This bill is S. 299—a Senate bill. There have been no hearings to look at any aspect of this particular bill, and no Members of Congress in this body have had an opportunity to cosponsor or work their will on this legislation. In fact, I am greatly concerned at this point that the administration will believe that this legislation is an adequate substitute for the bill we should be passing, H.R. 3263.

● Mr. LUKEN. Mr. Speaker, I have always been a strong supporter of regulatory flexibility, because I believe burdensome and unnecessary regulations are a threat to the survival of the small businesses of this Nation.

We are currently facing declining productivity and innovation in the United States. Small business can reverse this trend if it is allowed to do so and is not regulated to death. Time and time again, small business has proven itself to be the innovator in our country.

For example, during the period of 1953–73, firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations.

Furthermore, the small business community has proven to be the backbone of our economic system. Recent reports indicate that 43 percent of the GNP is generated by small business and 57 percent of all employees in the United States are employed by small businesses.

In recent years, the regulatory burden for small business has continued to increase to levels that are suffocating their entrepreneurial qualities. This paperwork burden has spread to all types of interaction that small businesses have with the Federal Government. The Small Business Energy Subcommittee, which I chair, has heard testimony from numerous witnesses on the number of forms they must complete to apply for Federal funding and Government procurement. One solar small businessman stated that he has a 4-pound application file, containing 52 different forms, exhibits, and financal statements, requiring no fewer than 1,127 segments of data. Added to this were approximately 5,000 words of narrative descriptions and thousands of calculations and hundreds of hours of preparation time.

Small businesses must be relieved of this unnecessary and costly drain on their time and financial resources. Small business men and women cannot afford to spend the majority of their time completing forms, nor should they have to. If this trend is not reversed, many small businesses will have to close their doors, because they cannot overcome the demands imposed by the Federal Government. We must not let this occur, but we must do everything possible to stand behind the small businesses which are so valuable to our Nation's well-being.

S. 299, the Regulatory Flexibility Act of 1980, is an important step in reducing this disproportionate burden small business faces. This legislation tailors regulations to the size and capabilities of those being regulated. Small business will no longer have to bear the brunt of uniform rules and regulations created by Federal agencies. I urge you to join me in supporting this much-needed and valuable legislation. Thank you.●

● Mr. BUTLER. Mr. Speaker, I rise in support of the Regulatory Flexibility Act now pending before us. As the author of the first small business impact bill, H.R. 7739, in the 95th Congress, I am extremely gratified to find that my regulatory approach has now received such widespread support shown in the unanimous enactment of S. 299 by the Senate. I thank my Senate colleagues for their cooperation with me and the other principal House sponsors in the process of revising S. 299. The act we are voting on today is consonant with the objectives of my original bill and H.R. 4660 which I coauthored and creates a viable consensus on those important issues covered by the legislation. I have considered the Discussion of Issues which my colleague and coauthor on H.R. 4660, Mr. IRELAND, is placing in the RECORD today. Mr. IRELAND's Discussion of Issues explains very thoughtfully the understandings reached among the principal authors of regulatory flexibility legislation on the Judiciary Committee and its sponsors in the House. These understandings have cleared the way for House consideration of S. 299. I am particularly pleased to be able to make this statement today regarding S. 299 so that the House may consider my comments in voting on this legislation.

When I served on the Small Business Committee, I was horrified at some of the testimony presented before the committee by small businessmen regarding some Government regulations, and the seeming lack of concern by Federal agencies for the plight of the small businessman in complying with these regulations. Examples are numerous. Horror stories over OSHA regulations are legion, making OSHA a four-letter word among businessmen.

The number and functions of Government regulatory agencies have expanded at an alarming rate in the 1960's and 1970's, and it is obvious that almost every facet of business activity is subject to one or more governmental agencies who have the power to inspect, review, modify or reject the work of private industry; we are talking about regulation which affects nearly every aspect of industry, commerce, agriculture, trade, banking, and even private life.

And this regulation comes to us with an incredible price tag for which the consumer picks up the tab.

The cost of Government regulation in 1979 is estimated to run over $100 billion. Of that amount, $4.8 billion will go to operating costs of the agencies themselves but the cost of compliance with regulation will be over 20 times that. This compliance cost is especially alarming, considering it has doubled since 1974, and is five times its cost in 1970. Regulatory agency staffs now number 80,000, or nearly triple their size in 1970.

The successful small business in this country is the personification of the individual spirit that has characterized the achievements and accomplishments of this Nation. We must do what we can to halt the decline of small business if we are to preserve our free enterprise system. The purpose of well-conceived, meaningful regulations can still be accomplished and small businesses can still be protected if Government agencies will only take small business into consideration when they draft regulations. This act, in my opinion, would help make Government agencies cognizant of small business, would help the agencies implement their statutory goals, and would help preserve small business in our economy.

This legislation directs Federal agencies to consider less burdensome alternatives to regulations with significant economic impact on a substantial number of small entities. The specific requirement to analyze small business needs and regulatory goals will vastly improve the quality of rulemaking and will benefit both society and the affected entities.

Agencies will be required to prepare and publish an initial regulatory flexibility analysis for every proposed rule meeting the impact criterion. This preliminary analysis should generally explain the proposal's goals, the expected impact on small entities and the need for the proposed rule. Such an analysis will also include a preliminary discussion of significant less burdensome atlernatives.

Agencies are invited to go beyond the alternatives presently in use (such as multitiered regulations, reduced paperwork and additional time for compliance and adopt innovative approaches for regulatory flexibility, for example, the EPA "bubble" approach. Additional innovative approaches are especially desirable for the fulfillment of statutory goals with the minimum cost to the affected entities and the public that would inevitably bear a portion of the additional costs.

Let me emphasize that this act does not, in any way, compromise the statutory mission of the agencies. The act simply clarifies the authority of the agencies to adopt flexible alternatives. Where the underlying statute does not specifically preclude the consideration of flexible alternatives, Congress confirms the authority of every agency to incorporate flexible alternatives in its promulgation of rules.

I would like to add that this act also provides an excellent vehicle for agencies to fulfill their obligation under the Small Business Act, other applicable Federal laws and applicable executive orders and memoranda that direct Federal agencies to promote and protect the interests of small business. There have been numerous instances of the use of regulatory flexibility approaches to strengthen small business' ability to compete in the marketplace. The term "significant economic impact" was deliberately used to convey the intent of Congress that agencies would continue their practice of utilizing the regulatory flexibility analysis framework to develop rules that will benefit small businesses directly, as well as reducing the burdens on small businesses.

In other words, because the agencies are required to identify all proposed rules wth "significant economic impact," both adverse and positive, they will consequently be considering alternatives which also promote the health and well-being of small businesses. This benefit from this legislation is particularly welcome news at a time when vigorous small business activity would go far toward reducing inflation and unemployment and promoting the Nation's economic health.

After the receipt of comments from the affected small entities, from the Chief Counsel for Advocacy, if any, and from other interested parties, the agency shall prepare and then publish a final regulatory flexibility analysis. Such analysis shall explain the basis for the adoption of the final rule, and shall include discussion of the significant flexible alternatives.

The act does not require that an agency adopt a rule establishing differing compliance standards, exemptions or any other alternative to the proposed rule. It simply provides that the agency must explain its rejection of any reasonable alternative rule which would have been significantly less burdensome or significantly more beneficial to small entities. The act also insures that agencies which determine that the inclusion of small entities poses a significant burden to the small entities and is also of minimal value to the realization of the statutory goals will be certain to exempt those small entities from the scope of the final rule.

This legislation also recognizes that unforeseen events will occasionally preclude timely compliance with the initial and final regulatory flexibility analysis requirements (sections 603 and 604). Under certain conditions, an agency is permitted to waive or delay the preparation and publication of the initial regulatory flexibility analysis.

However, section 608(b) clearly provides that a final regulatory flexibility analysis must be completed for every final rule.

Thus, even rules issued in final (pursuant to section 553(b)(3)(B) of title 5, the "good cause" exception) without a proposed rule published for comment will be subject to a final regulatory flexibility analysis.

Although the provision for judicial review in S. 299 is less encompassing than the review applicable in H.R. 4660, this provision nevertheless insures that Government agencies will take seriously their obligation to comply with this new mandate. Current implementation of the concept of regulatory flexibility varies greatly among the agencies. The judicial review provision is designed to eliminate undesirable interlocutory or purely procedural challenges to rulemaking proceedings, but leave unimpaired the present right under the Administrative Procedure Act of review of the final rule. Judicial review of the lack of or adequacy of the regulatory flexibility analysis is permitted to the extent it is relevant to a review of the validity of the final rule. While the compliance of an agency with respect to particular provisions of this legislation is not subject to independent judicial review, such matters may be relevant to a determination of the reasonableness of the final rule.

Thus, unlike the situation regarding environmental impact statements, the failure to perform a regulatory flexibility analysis would not be grounds for injunctive relief in advance of the issuance of the final rule. However, the failure to perform an analysis of a reasonable alternative consistent with the desired regulatory goal may be adequate grounds for a determination that the final rule is unreasonable. Similarly, an agency's unreasonable determination not to perform a regulatory flexibility analysis may provide a basis for invalidation of the final rule, but would not be grounds for interlocutory relief.

The requirement of agenda publication, section 602, and the public notification requirements of section 609 will go far toward assuring adequate small business participation in the formulation of proposed rules with significant small business impact. For example, such a provision could have prevented the recent failure of the Department of Energy (DOE) to consider certain flexible alternatives in its recent proposal of appliance energy efficiency standards. Because the advance notification requirements were not in place, DOE overlooked informing the affected small business trade associations that the Department was proposing to include a testing requirement beyond that required by the Federal Trade Commission that had been developed months earlier. By DOE's own estimate, the new requirement would force some 65 percent of the small appliance manufacturers out of business.

Specifically with regard to small manufacturers of refrigerators, freezers, ranges/ovens, water heaters and room air conditioners, the Department indicated that these manufacturers had a 0.0 percent chance of successfully financing compliance with the new requirement. In its Economic Analysis, DOE simply stated that this was "an acceptable impact."

Furthermore, compliance with the provisions of section 603 requiring an initial regulatory flexibility analysis would have prevented DOE from failing to consider flexible alternatives at the time of the proposal. The Department did not consider the desirability of the alternative of not imposing the additional burdensome testing requirements, nor did it evaluate the impact of the proposal on competition in the industry.

When this act becomes effective, perhaps the Department of Energy will, at last, pay more attention to its statutory mandate and Executive directives to promote and protect small businesses. If the Department still entertains any doubts regarding its authority to promulgate flexible alternatives under its existing laws to aid small businesses and to alleviate small business burdens, this legislation resolves all such doubts and directs DOE to consider and promulgate such alternatives where appropriate.

Let me add a few words about the role of the Chief Counsel for Advocacy of the U.S. Small Business Administration. Under Public Law 94-305, the Chief Counsel for Advocacy is already required to file reports with the President and the Congress. This new law simply specifies the content of one of those reports. The Chief Counsel is already empowered under Public Law 94-305 to compel agency disclosure of the pertinent information required to perform these duties. It is expected that the Chief Counsel for Advocacy's monitoring efforts will insure compliance with the new law and aid Federal agencies in developing effective regulatory alternatives. The Office of Advocacy should act as a catalyst for innovative experimentation with regulatory alternatives by the agencies.

The legislation also provides that the Chief Counsel for Advocacy be permitted to appear as an amicus curiae in any action in any U.S. court to review a rule. He will present the views of the small business community with respect to the effect of a rule on small businesses. This judicial role complements his current role as the primary Federal regulatory watchdog for small business at the agency rulemaking stage. Courts should profitably draw from the considerable experience and expertise of the Chief Counsel in considering the unchartered waters of this regulatory reform. This provision provides an additional incentive for agencies to comply with the new legislation.

As the author of the first small business impact bill, H.R. 7739, I am extremely pleased to have played a part in helping this regulatory flexibility legislation be enacted into law. I am convinced that this act will mark the most significant legislative achievement for small business since the passage of the Small Business Investment Act 22 years ago.●

● Mr. RUSSO. Mr. Speaker, it is with extreme pleasure that I rise today to urge the House to act favorably upon legislation which embodies the concept of regulatory flexibility for small business. Through the majority of work done on H.R. 4660, I was the chairman of the House Subcommittee on Special Small Business Problems. Since that was the case, I believe it only appropriate that for the record I state the history of this concept.

James W. Morrison, who at the time was on Senator GAYLORD NELSON's staff, developed the concept of regulatory flexibility in August 1977. Senator NELSON, along with Senator JOHN CULVER, introduced the concept as a bill, S. 1974. It passed the Senate unanimously last Congress.

Last Congress several regulatory bills were introduced and referred to my subcommittee. The two primary bills were H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. CALDWELL BUTLER of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative ANDY IRELAND of Florida. The purpose of this bill was to give Federal agencies flexibility in the issuance of Federal regulations.

The concepts in these two bills were merged and formed the basis for H.R. 4660. The interest and hard work of the members of the subcommittee were instrumental in the forging of our final product. The subcommittee also was fortunate to have had Mr. Morrison on board as a consultant during our hearing process for a period of 6 months.

Representative ANDY IRELAND, a member of the subcommittee, became chairman upon my departure and has done a most commendable job of promoting regulatory flexibility. He has perservered and after endless meetings with various parties, he has brought us today to the brink of a new era in the relationship between the Federal Government and the small business community. The Senate on August 6 passed S. 299, thanks to the diligent efforts of many people. Senators JOHN CULVER, GAYLORD NELSON, and PAUL LAXALT deserve special praise.

S. 299 embodies the concept of our own H.R. 4660, and in fact, improves the bill in several areas. Congressman IRELAND, who introduced H.R. 4660 with me, has prepared a legislative history of H.R. 4660, and a Discussion of Issues of S. 299, for insertion in the RECORD today. The Discussion of Issue in particular very clearly states what we expect from this bill, and how we expect the agencies to implement it. We need this legislation.

In poll after poll, growing Federal regulation and its accompanying paperwork demands rank near the top and often are the No. 1 complaint of the Nation's small businessmen and women. Our Nation has a mixed economy. Public and private sectors necessarily interact. The Federal Government, through some regulation, attempts to bolster competition among businesses by laws designed to eliminate restraint of trade. Conversely, certain business activities are directly regulated by the Government. In effect, this substitutes Government decisionmaking for the normal workings of the marketplace. All types of Federal regulation have grown so much in recent years, that virtually every industry and household is now affected in often highly visible ways.

The time to act is at hand. We have the vehicle before us. Let us pass S. 299 and send the bill to the President.●

● Mr. BALDUS. Mr. Speaker, today is a special day for the small business men and women in this country. At last, we, in Congress, are heeding the pleas that they have long made to us to reduce the crush of Federal regulation that they must face on a daily basis.

This bill, S. 299, not only admits that such a problem exists, it addresses that problem as well. If we pass this bill today, in the future, Federal bureaucrats will have to understand, as well as be more sensitive to, the impact of the regulation they generate, and, we will all be better off because of it.

In the last Congress, as a Small Business Subcommittee chairman, I strongly and vigorously supported regulatory flexibility in several different legislative proposals. In this 96th Congress, S. 299 is the culmination of a long search for substantive regulatory flexibility for the small business community. I am especially pleased that this bill also recognizes that small organizations and small governmental jurisdictions are also in need of the same relief.

The primary sponsors of H.R. 4660—Representatives ANDY IRELAND, MARTY RUSSO, and M. CALDWELL BUTLER, should be highly commended for their perseverance in this field. President Carter, who earlier issued an Executive order calling for regulatory flexibility, should also be thanked for his assistance, and it is my hope that he will sign this bill as soon as possible.

Small business makes a tremendous contribution to our Nation's economy. Small business, as defined by the Small Business Administration, constitutes over 13 million businesses, comprises about 97 percent of all U.S. businesses, and accounts for more than one-half of all private employment in this country. Small business also accounts for 43 percent of business output, and one-third of the gross national product. Small businesses account for nearly all of the major innovations and inventions that move our technology ahead, as they have since World War II, and small business increases employment by about 4 percent per year as compared to the Fortune 500 companies which increase it only about 0.07 percent per year. In terms of economic growth, the record of small business is about twice that of the Fortune 500 companies, again, by percent.

For all of these vital contributions small business makes to our economy and the American way of life itself, small business asks very little from us in return. The small business community is one of entrepreneurs that have made it on their own, and believe that they can continue to make it on their own, maintaining their exceptional record of achievement, if they are not unduly interfered with by Government. The Federal help that these 13 million small businesses do receive each year is in the form of 270,000 loans from the Small Business Administration, but the recipients of these loans promise to return the money to the Government, with interest, and on time.

The clearest and most fervent request of these independent, small businessmen and women to the Federal Government is one which distinguishes them from the other special interest groups the Federal Government deals with. In exchange for their substantial contributions to our Nation's economy, they ask not for a handout, but only that the Government stop unreasonably regulating the environment in which they must function.

While the Government will always require a certain amount of information from business and while some regulation of industry may be inevitable, it should and can be accomplished in a reasonable and an equitable manner. It is clear that as it now stands, the amount of Government regulation has grown to self-defeating proportions which is deleterious to small business' very existence.

Mr. Speaker, S. 299 is a major first step in completing the task of reducing the regulation which stifles small businesses in a time when we need small businesses more than ever.

I urge the House to pass this bill.●

● Mr. RATCHFORD. Mr. Speaker, I welcome the opportunity to take a moment today to voice my support for S. 299, the Regulatory Flexibility Act.

My colleagues in the House have all become more conscious of the burdens which Federal regulations place on business and industry, and of the heavy responsibility which rests with the Congress to insure that regulations are neither excessive nor unnecessary. The regulatory process poses particularly large burdens for small businesses, which have neither the capacity nor the resources to challenge or to comply with Federal rules and regulations. It is this concern for the plight of the small businessman to which S. 299 is addressed.

Every week, when I return to Connecticut's 5th District, I hear the frustration of small businessmen who are being increasingly overwhelmed by the burdens of Federal regulation. The White House Conference on Small Business which was convened this January reaffirmed this message, and among the conference recommendations given the highest priority were calls for the establishment of greater regulatory flexibility with regard to small business. The White House Conference on Small Business reminded us all that we cannot treat large corporations and small firms as though they were identical, and the legislation before us today reflects the extent to which Congress has heard and responded to that important message.

The Regulatory Flexibility Act will take some crucial first steps in recognizing the special needs of small business. The legislation requires Federal agencies to analyze the likely impact of their regulations on small, privately owned businesses and other concerns. The bill also requires each agency to publish semiannual lists of rules it anticipates issuing which are likely to have a serious economic impact on small businesses and other concerns. Finally, provisions of S. 299 are designed to encourage small businesses to participate more fully in the Federal regulatory process.

The above provisions are significant, in that they represent the beginning of a growing awareness that regulations must be sensitive to the situation of small businessmen while protecting the public interest. In addition to these advances in the development of new Federal regulation, S. 299 also addresses problems in existing Federal regulations by requiring agencies to review all new and existing rules within 10 years. I have long supported the concept of "sunset" legislation which would mandate a periodic review of Federal programs to assess their effectiveness, and I strongly applaud the use of this type of mechanism in the Regulatory Flexibility Act to protect small business from excess in existing regulations.

Mr. Speaker, I have little doubt that this landmark legislation for regulatory flexibility with regard to small businesses will receive overwhelming approval by my colleagues in the House. The need for greater sensitivity in applying regulations to small businesses is all too apparent, and the merits of this legislation are equally clear. I simply wish to register my strong support for the Regulatory Flexibility Act, and to express my deep hope that this legislation represents the beginning of an honest effort in Congress to shape a regulatory process which serves the public interest while remaining manageable for the small businessmen who have contributed so much to our Nation's strength and prosperity.●

● Mr. RODINO. Mr. Speaker, the Congress, working with the administration, has been moving toward an extraordinary record in regulatory reform. In the last 3 years, we have passed major deregulation bills covering the airline, trucking, and banking industries and we are working on railroads, communications, and a comprehensive overhaul of the regulatory process.

The Regulatory Flexibility Act, which the House is considering today, is a vital part of that program. It will help the small businesses of our country and thereby strengthen competition.

Too many Federal regulations and paperwork requirements are written with big companies in mind, without considering the effect on small business. These rules can have a disproportionate and unfair impact on small businesses, reducing their ability to compete.

The Regulatory Flexibility Act requires all regulators to assess the impact of a proposed rule or report on small organizations. When the impact is significant, the agency must consider alternative approaches, such as requirements tailored to the size of the organizations affected and performance standards that give more leeway on how to comply. The creative approaches to regulation in this act will ease the burden on small business without sacrificing our commitment to protect the public's health and safety.

This act is drafted to help small businesses deal with the regulatory process. Many valid regulations are tied up in years of litigation, and small businesses often cannot afford the legal costs to participate. The judicial review standard in this bill is carefully designed to avoid needless litigation.

I want to commend the chairman of our Subcommittee on Administrative Law and Governmental Relations, Mr. DANIELSON; Mr. HARRIS, the manager of this bill, S. 299; and all of my colleagues who have supported the major deregulation bills that we have passed in the 96th Congress. S. 299 is a very significant part of the overall regulatory reform effort, and I urge my colleagues to vote for its passage.

□ 1530

Mr. HARRIS. Mr. Speaker, I want to recognize all those who worked so hard on this bill. The fact of the matter is that this is a good bill. I think it is time that we remove the tremendous burden of unnecessary regulation upon the small business community. I think they deserve it; I think they need it; I think our economy will benefit from it.

Mr. Speaker, I urge the passage of this bill and yield back the remainder of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LENT).

● Mr. LENT. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act.

As a cosponsor of similar legislation, the Smaller Enterprise Regulatory Improvement Act (H.R. 4660), I am gratified that legislation requiring Federal agencies to assess the small business impact of their regulation is on the agenda for final congressional action. This legislation was unanimously passed by the Senate last month. Prompt and positive action today can insure that this legislation is enacted without further delay.

Though I have long sought comprehensive improvements to administrative rulemaking to alleviate unnecessary and costly Federal regulation, I believe expeditious action on behalf of small business, small organizations, and small governmental jurisdictions—"small entities"—is absolutely necessary.

Small organizations face special burdens resulting from Federal regulation; uniformly applied Federal regulations often have a disproportionately greater economic impact on small entities unable to benefit from large-firm economies of scale. Overly burdensome Federal regulations have adversely affected competition and created barriers to innovation and creativity in many industries. Paperwork such as reporting and recordkeeping requirements pose special hardships on firms not having in-house accounting and legal departments; too often, compliance with such Federal regulatory requirements necessitates that costly outside assistance be retained.

This legislation is designed to alleviate this counterproductive situation by providing a measure of flexibility in the application of the Federal rulemaking process to small entities. Where necessary, agencies are directed to institute procedures including two-tiered rulemaking and exemptions from all or part of some rules to help reduce the disparate economic impact of rules and regulations on small entities. By assuring that the Small Business Administration is informed of proposed agency rules likely to have a significant economic impact on a substantial number of small entities, this legislation can increase small business participation in the Federal rulemaking process—a process which for too long has remained isolated from the organizations it most affects.

Along with calling for periodic review of new and existing rules affecting small entities, the bill also contains a provision waiving the requirement that a regulatory flexibility analysis be prepared in those cases where a proposed regulation has no significant economic effect on a substantial number of small businesses.

On balance, this legislation makes sense and I urge my colleagues to support passage of S. 299 so this legislation can be enacted into law without further delay.●

● Mr. BEREUTER. Mr. Speaker, I wholeheartedly urge my colleagues to vote today for passage of S. 299, the Regulatory Flexibility Act. America's productive small businesses, now hampered by a multitude of rules and regulations, must be given relief. Approval of S. 299 would provide some measure of assistance to this beleaguered segment of the economy, and would help our country return to the path of economic growth and prosperity.

ORIGINS OF THE REGULATORY PROBLEMS

During the decade of the 1970's, Congress rushed to pass legislation which would insure clean air, clean water, a safe workplace, and a multitude of other desirable environmental and social goals. This legislation granted many existing and newly created agencies sweeping powers to bring about those desirable objectives. As a result of this excessive delegation of authority, the Federal Government has become engaged too often in an inappropriate effort to restructure business operations and the activities of individuals.

This unprecedented regulatory effort went forward without due consideration for the cost efficiency of any individual regulation or for the cost efficiency of the regulatory effort as a whole. Furthermore, far too few efforts have been made to determine if the ends indeed justify the means used and the costs imposed by these regulations. In addition, the regulators have explored few alternatives to direct regulation; rather, detailed requirements applied across the board and strict enforcement have been the norm.

As a result, commercial and industrial enterprises within this country now bear a heavy paperwork burden and must expend far too much money in order to comply with these rules. Scarce financial resources, necessary to finance plant expansion, equipment acquisition, technological innovation, and job creation, thus have been siphoned off into less productive activities. In some cases, the costs imposed by such rules threaten the financial viability of individual businesses and entire industries.

The small business sector of our economy, in particular, bears a weighty burden in its attempts to comply with these rules. This segment of the economy typically must spend 7 to 10 times the amount spent by larger businesses in meeting the requirements of a given rule or regulation.

Obviously, the hard-working businessmen and businesswomen of America need relief.

S. 299 OFFERS RELIEF

At long last, Congress appears ready to recognize this problem and to provide that necessary relief by adopting S. 299. This bill would require each agency:

First, to publish a semiannual agenda of forthcoming regulations which are expected to have a significant impact on a substantial number of small businesses, organizations, and governmental units.

Second, to precede the promulgation of a rule with an analysis of its potenial impact on small businesses, organizations, and governmental units.

Third, to publish this analysis at the time the final rule is adopted. In this analysis, the agency must state the need for the regulation, and its objectives. In addition, public comments on the proposed regulation must be summarized and printed. An identification of the changes made in response to these public comments must be included in the analysis as well. An explanation of the alternatives to the regulation would form another part of the analysis. Finally, justification for the rejection of alternatives must be given as well.

Fourth, to insure that small businesses, organizations and governmental units receive an opportunity to comment upon any proposed regulation which may possess a significant impact upon them. New methods of notification must be pursued in order to allow more businesses to learn of pending regulations which may affect them.

Fifth, to design rules in order to reduce the cost of participation in rulemaking proceedings.

Sixth, to review—on a 10-year cycle—existing rules which impose a significant economic impact upon small businesses, organizations, and governmental units in order to eliminate or to modify the rules as necessary.

Despite my support for this long-overdue bill, I am disappointed that more comprehensive legislation remains stalled in committee. Enactment of S. 299 represents only one small, minor step on the road to regulatory reform. Much more needs to be done in order to reduce duplicative, unduly complicated, contradictory, and ineffective regulations in American society. The current regulatory system, clogged by delays and hampered by uncertainty, must be replaced by a cost efficient, effective, and streamlined system—one that is based on commonsense and reasonable discretion in the application of regulations.

I urge my colleagues, therefore, to give their support to S. 299 today and to follow through with even stronger support for passage, yet this session, of the more comprehensive legislation necessary to bring about true regulatory reform.●

● Mr. UDALL. Mr. Speaker, I rise in support of the Regulatory Flexibility Act, S. 299. I want to commend my good friend, the chairman of the Small Business Committee, for his hard work and strong leadership in bringing this bill to the floor. I know that he has put in many long hours in working on this legislation and on other bills that will benefit small business.

Back in 1978, I began extensive discussions with small businessmen and women in southern Arizona about their problems with the Federal Government. I continued those talks into 1979, when I cosponsored a small business conference with Walt Pearson, who is the publisher of a noted Arizona business magazine. The one overwhelming complaint that came up was that small businesses are swamped with paperwork. And it really does not make much sense to force some small firm—a corner drugstore, a little plumbing outfit, a small clothes store—to comply with the same regulations that we ask General Motors and Exxon and A.T. & T. to follow.

After consulting with business people in Tucson, and the rest of southern Arizona, I introduced a bill, H.R. 4729, the Small Business Promotion Act, that deals with several problems connected with small firms. One of those was Federal paperwork and Federal regulations. Title II of that bill would have required that all Federal agencies and departments examine their past regulations to see if somehow they could be less burdensome on small business, and it required that all future regulations be examined to either exempt or set separate standards for small businesses, whenever that is possible.

So I am glad that S. 299, which is very similar to this proposal, has made it this far and will, I hope, soon be enacted into law. I know that there are some departments and agencies of the Government that do not like this idea. But it is time that Government become more responsive to the needs of small business, and more realistic about the demands placed on these small firms. S. 299 will take us a long way toward these goals.

I strongly support passage of this bill, and I urge my colleagues to vote for it.●

● Mr. McKAY. Mr. Speaker, in recent years the Federal Government has intruded increasingly into the private sector in an effort to provide benefits for the American public. This has resulted in safer places to work, a cleaner environment, and many other benefits.

This process, however, has also resulted in thousands of rules and regulations being issued, all governing the lives and activities of Americans and American businesses. Thousands of reports and answers to thousands of questions from Federal agencies are required by this regulation.

The paperwork alone has become burdensome, particularly for small business. As a member of the Small Business Task Force, I have heard time and again examples of how Government regulations adversely affect small businessmen, particularly because of the discrepancy between the size of the enterprise and the scale of Federal requirements.

This overregulation is more than just a small business problem. The greater impact Federal regulation has on a small business reduces its ability to compete in the marketplace. The advantage goes to the largest, those most able to afford the hiring of the lawyers, accountants, and consultants needed to complete the work. Small businesses often lack the manpower and skills needed to comply efficiently. The public must pay the consequences of the resulting economic concentration.

Small businesses should not be exempted from important and beneficial regulation simply because they are small. But the requirements should and must be tailored to their ability to comply. We must stop restricting innovation and productivity. We must also stop fueling inflation.

This bill, S. 299, the Smaller Enterprise Regulatory Improvement Act, by requiring that Federal agencies take the circumstances of small business into account, will put us on the path toward equitable treatment for all, and will speed economic recovery in the Nation. It is with pleasure, therefore, that I have watched the progress of S. 299. As a cosponsor, I commend its passage to my fellow Congressmen.●

● Mr. GILMAN. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act of 1980.

As a cosponsor of a similar House bill, H.R. 4660, I am gratified for having this opportunity to vote on this Senate measure.

Mr. Speaker, it is crucial to our small businesses that a way be found to relieve them of burdensome, unnecessary, and unreasonable regulations.

I am pleased that this bill also includes in its purview small government jurisdictions—with less than 50,000 populations—as well as small businesses.

What S. 299 will do is direct Federal agencies to institute, where necessary, procedures—including two-tiered rulemaking, and exemptions from all or part of some rules—to help reduce the disparate economic impact of rules and regulations on small entities.

By reducing the special burden of regulations on small businesses, the bill will help those small businesses remain competitive with larger organizations which have the resources necessary to comply with complex Government regulations.

Small business provides the bulk of the new jobs created every year in the American economy. Unless we look after small business at every stage of the regulatory and legislative process, we will be in danger of "killing the goose that laid the golden egg" of our American economy. The way to recovery from our present economic difficulties will surely involve a greater role for the small businessman, and I very much hope that the way toward their assuming that greater role will be enhanced by the passage of this important legislation.

Mr. Speaker, I urge the adoption of this measure and that a summary of the provisions of S. 299 be printed at this point in the RECORD:

PROVISION OF S. 299

REGULATORY AGENDAS

S. 299 requires agencies to publish twice yearly a regulatory agenda which summarizes proposed agency rules likely to have a significant economic impact on a substantial number of small entities. The agency must transmit the agenda to the Small Business Administration (SBA), and endeavor to notify small entities of the agenda.

INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)

Whenever required by law, to publish notice of a proposed rule, an agency must prepare for public comment an IRFA describing the impact of the rule on small entities, including the projected time and degree of skill required to comply with the recordkeeping and reporting requirements of the rule. Each analysis also shall discuss significant alternatives to the rule, such as:

Differing reporting requirements depending on the size and resources of the entity;

Simplification of reporting requirements for smaller entities;

Use of performance rather than design standards; and

Exemptions from coverage of the rule.

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

When an agency promulgates a final rule, the agency shall prepare an FRFA outlining the need for the rule and its objectives. Public comments received shall be summarized, including any decisions or actions taken as a result of those comments. If alternatives were rejected the agency must state why.

CERTIFICATION AND WAIVER

Allows the agency to certify that a proposed rule will not have a significant economic effect on a substantial number of small entities, thereby obviating the need for any flexibility analyses. The agency also may waive or delay an IRFA where necessary to propose an "emergency" rule. It may not waive an FRFA for such a rule, though the agency may delay publishing the FRFA while the emergency rule takes effect. The emergency rule will lapse, however, if an FRFA is not published within 180 days from the day the rule was published.

PERIODIC REVIEW

The bill requires an agency to review its rules which significantly affect a large number of small entities. For existing rules, this review must take place within 10 years of the date of the Act; for future rules, within 10 years of their promulgation. The agency must publish a plan for such review within 180 days of the effective date of the Act.

This review should assess the continued need for the rule, evaluating length of time since the rule has been evaluated and considering: changes in economic or technological conditions; any complaints received on the rule; and the complexity of the rule. The agency shall publish yearly a list of the rules to be evaluated during the succeeding 12 months, inviting public comment.

OTHER PROVISIONS

S. 299 provides no interlocutory right of review of agency action, and does not alter any existing standards of review.

Each agency shall insure public participation in its rulemaking process.

All IRFA's, FRFA's and certifications of no significant impact must be published in the Federal Register.

The SBA shall monitor agency compliance with this Act, reporting annually to the President and Congress.●

● Mr. BIAGGI. Mr. Speaker, as a cosponsor of similar House legislation, I rise as an avid supporter of S. 299, the Regulatory Flexibility Act. Once again, Congress, in a close partnership with

President Carter, has emerged with substantive legislation in the all-important area of regulatory reform—a vital element in a stable economic future for our Nation.

S. 299 is directed at one of this Nation's most important economic segments—the small business community. The rapid proliferation of Government regulations has had an especially adverse impact on small businesses. The cost of Government regulation in 1979 was estimated to be in the vicinity of $100 billion. Regulatory staffs alone have tripled in size, now totaling 80,000. Excessive and occasionally unnecessary Government regulation has stifled small business growth and development. As a consequence, productivity has dropped significantly.

This legislation seeks to put forth some important reforms aimed at relaxing the regulatory stranglehold on small businesses. S. 299 requires Federal rulemaking agencies to analyze the likely impact of their rules on small, privately owned businesses and other concerns. The bill further requires each Federal agency to publish semiannual lists of rules it anticipates promulgating, which are likely to have a serious economic impact on small businesses or other small concerns. Small businesses are encouraged to participate in the rulemaking process.

President Carter, to his credit, has made regulatory reform one of the main elements of his domestic economic policy. His support and advocacy of this legislation has been invaluable. We should consider this to be good short- and long-term legislation. It will reduce a major problem of today which, in turn, will bolster our Nation in the future.

The small businessmen and women of this Nation typify what is supported to be the best of our free enterprise system. Yet, the free enterprise system is under severe stress because of the burdens of regulations and paperwork mandated by the Government. S. 299 is an excellent blueprint for a new policy seeking much needed and unrestricted growth in small business development. It deserves our passage today.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum will be considered withdrawn.

GENERAL LEAVE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 299.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

NATIONAL AQUACULTURE ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 20) to provide for the development of aquaculture in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology—

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propaganda and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "'coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers of employees of the Federal Government), while away from their homes or regular places of business in the

performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, taking into account the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretary deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Resources.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) Purpose and Functions.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) Chairman.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) Reports.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) Federal Consistency.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) Functions If Federal Council Terminated.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

Sec. 7. (a) In General.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) Terms and Conditions.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) Limitation.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) Audit.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

Sec. 8. (a) Capital Requirements Study.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) Capital Requirements Plan.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

Sec. 9. (a) Regulatory Constraints Study.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) Regulatory Constraints Plan.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

Sec. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983; and
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981,
(B) $4,000,000 for fiscal year 1982, and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

Sec. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. Breaux) will be recognized for 20 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. Breaux).

Mr. BREAUX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a little like the last bill that we just had passed, there was a better bill which we wished everyone could have agreed on with regard to aquaculture. However, the bill which we bring to the House floor today is, I think, one that all Members could be comfortable with supporting.

Mr. Speaker, Americans have not ranked among the major fish-eating peoples of the world. We consume on an average only a bit more than 13 pounds per capita a year while the average Japanese citizen eats some 70 pounds of seafood annually. In addition, this Nation is blessed with one-fifth of the world's fishery resources within 200 miles of our shores. Given these statistics, you may wonder why we should bother to encourage the development of aquaculture in this country which is what the bill before us is designed to do. But these statistics are somewhat misleading.

First, despite a relatively low appetite for fish and a wealth of fishery resources, we still import well over 60 percent of the fish we consume. Second, Americans are learning not only to appreciate the good taste of seafood but also its healthful qualities—high in protein and low in cholesterol. Consequently, they are eating it more with current estimates that levels of consumption will rise 80 percent by the year 2000. At the same time, on the basis of information garnered since the passage of the Fishery Conservation and Management Act of 1976, we now know that many of our traditional stocks of marine resources are declining from overfishing, pollution, and many other pressures. The regional fishery management councils have drawn up plans to manage these stocks and they will, wherever possible, be returned to a maximum yield level but this will take time.

In the meantime, where will we get the fish to meet our growing appetite? Initially, we can increase the share of the resources off our shores taken by Americans rather than foreign fishermen. My committee will be bringing legislation for this purpose before this body in the near future. Then, of course, we could always import more fish—or could we?

Aside from the detriment to our balance of payments, that is not a likely possibility in the years ahead. The world situation is far graver than ours: While estimates vary on the maximum global harvest from traditional marine stocks, they all agree that maximum will be reached no later than the year 2000. At the same time, the world's population is growing by leaps and bounds and is expected to reach 6 billion by the end of this century. In short, more people are going to be vying for a share of a limited supply of seafood. No, increased imports are not the answer even if we wanted to take that route.

This leads us to an as yet largely untapped nutritional resource—this country's vast potential for the development of aquaculture. But the emphasis here is strongly on potential. Contrary to what most of the small percentage of Americans who are aware of aquaculture think, it will be no simple matter to cultivate fish and shellfish on a national scale. America may be the breadbasket of the world but we have a long way to go before we can farm fish as effectively as we produce loaves.

The National Oceanic and Atmospheric Administration (NOAA) has categorized our current aquaculture expertise as being "roughly analogous to the state of agriculture before the land grant system and the Department of Agriculture launched intensive research programs to develop agricultural technology." And that took place over 100 years ago.

But the situation is not as hopeless as it sounds. However embryonic our aquaculture efforts may be, there are pockets of success throughout the country which show that it can be done even in the existing climate of discouragement.

Salmon produced in publicly supported hatcheries on the Columbia River represent more than one-half of the salmon caught in that large river system. The eggs are hatched and the fish are fed until they grow to a suitable size to be released to the wild. The released salmon feed off natural resources until maturity when they return to spawn and are caught by commercial fishermen or for sport.

Another successful example is that of trout farming. All of the trout purchased in our local markets are products of aquaculture.

Catfish is another species that is raised by large-scale production and is commercially successful. There are approximately 3,000 catfish farmers located in 42 States. The larger, more productive farms are located in the warmer climates of the Southern States and account for 80 percent of the catfish cultured.

The type of aquaculture with which I am most familiar and I might add for which I am most grateful, is that of culturing crawfish. In my home State of Louisiana, crawfish farming is an integral part of our local economy. Local landowners produce 99 percent of the crawfish in the United States, 85 percent of which is consumed within the State. In South Louisiana there are some 40 processing plants providing jobs for hundreds of people.

Aquaculture supplies only 3 percent of the fish we consume but where would we be without it? Would we be importing a larger quantity of our salmon and all of our trout, catfish, and crawfish? It is apparent that aquaculture can be a viable industry. It can and does contribute to our food supply. It can and does create new job opportunities. Other species can be cultured on the same basis with additional research and technical expertise. America's aquaculture potential can be realized if we will provide a climate of encouragement in which these pockets of success can multiply.

Mr. Speaker, the legislation before us today is a product of long and intensive study of aquaculture and its needs by the Committee on Merchant Marine and Fisheries which has held hearings on the subject in the 94th, 95th and current Congresses and has instigated a number of related studies. I am happy to say that these efforts have brought about a greater awareness of and interest in aquaculture in the executive branch. But these efforts have only enhanced the need for coordinating legislation.

Recognizing this fact, other members of the Committee on Merchant Marine and Fisheries and I introduced H.R. 20 on January 15, 1979. After a brief hearing, the committee unanimously ordered the bill reported to the House on May 3, 1979. That bill as reported authorized the Secretary of Commerce in consultation with the Secretaries of Agriculture and Interior, to develop a national aquaculture plan within 18 months. That plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The bill authorized the Secretary of Commerce to appoint an advisory committee to assist in initial development of the plan and to set up an interagency coordinating committee comprised of the heads of eight Federal agencies and chaired by the Secretary of Commerce, who was charged with preparation of a biennial report on the status of aquaculture. This bill also authorized scale tests and, if necessary, construction, operation, and maintenance of developmental aquaculture facilities—including production scale facilities—to assess the biological and economic feasibility of any aquaculture system.

It established an Aquaculture Information Center and provided for the sharing of such information with foreign countries.

It authorized matching grants on a 50-50 basis and loan guarantees up to a maximum of $150 million and provided a risk insurance program with a maximum face value of $125 million.

In addition to these assistance programs, the bill authorized to be appropriated to the Departments of Commerce, Interior, and Agriculture $65 million over a 3-year period.

Mr. Speaker, H.R. 20 was sequentially referred to the House Agriculture Committee. That committee ordered a substantially amended version of the bill reported to the House on July 11, 1979.

The Agriculture Committee bill contained many of the provisions of the original bill, but it authorized the Secretaries of Agriculture, Interior, and Commerce to draw up a national plan and establish a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET) under the Office of Science and Technology Policy (OSTP) to be composed of 13 agency heads. The Chairmen of two FCCSET sponsoring Committees would select the Chairman of the Joint Subcommittee for a 2-year term.

In this bill, the biennial report on the status of aquaculture would be prepared by the three Secretaries through the Joint Subcommittee on Aquaculture and the Joint Subcommittee would be required to complete, within 18 months, studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture.

The construction of production scale facilities was specifically excluded and provisions for matching fund grants, loan guarantees and insurance were eliminated from this bill which authorized to be appropriated only such sums as may be necessary to carry out the programs authorized.

In the ensuing months the two committees have negotiated their differences and this has culminated in the joint committee amendment in the nature of a substitute, to H.R. 20 which we are bringing before the House for its approval today.

The compromise bill closely parallels the bill reported by the Agriculture Committee but includes some changes considered important by the Merchant Marine and Fisheries Committee. It would require the Secretaries of the Interior, Commerce, and Agriculture to develop within 18 months the national aquaculture plan previously described.

The three Secretaries would be authorized to appoint an advisory committee to assist in initial development of the plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with acquaculture responsibilities. Its chairman would be selected by the Director of OSTP from among the three Secretaries or their designees for a 2-year term. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also authorizes demonstration projects to test the feasibility of aquaculture systems. There are authorized to be appropriated to each of the departments of Commerce and Agriculture $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983; and to the Department of the Interior $3 million for fiscal year 1981, $4 million for 1982 and $5 million for 1983. This is a total of $70 million over the 3-year life of the program.

It is the understanding of the members of the Merchant Marine and Fisheries Committee that the language of this bill with respect to demonstration projects would include production scale facilities where necessary to assess the biological, technical and economic feasibility of aquacultural systems.

Mr. Speaker, the members of both committees have worked hard to reach this compromise language. We believe it is the bare minimum necessary to get a national aquaculture development program underway.

Many of the Members of this body will recall that a more expansive aquaculture bill was passed overwhelmingly 2 years ago by both Houses only to be vetoed by President Carter. The compromise language which we are presenting for your approval today was negotiated in coordination with representatives of both the Senate and the administration and we have every reason to expect it will be enacted into law.

Administration witnesses, including representatives from the Office of Science and Technology Policy, and the Departments of Agriculture, Commerce, and the Interior all testified in support of a virtually identical bill at Senate hearings late last year. In addition, the Secretary of Agriculture wrote the Senate Agriculture Committee strongly recommending enactment of that bill.

Mr. Speaker, this bill has the overwhelming support of the Committee on Merchant Marine and Fisheries and of the Committee on Agriculture. Legislation for this purpose is strongly backed by the shellfish industry, the catfish industry, the freshwater trout industry, and all other fishermen in general, except the Pacific salmon fishermen, who were fearful that large private salmon producers would adversely affect their industry.

Mr. Speaker, the end of this century is only a short 20 years away. If we are ever going to coordinate the aquaculture programs of the Federal Government into an effective effort to encourage the development and growth of a thriving U.S. aquaculture industry, we must begin now. I can think of no more important legislative proposal than one which is aimed at assuring adequate supplies of protein-rich food resources for Americans in the 21st century and I urge the Members of the House to join me in this effort by adopting H.R. 20.

Mr. FORSYTHE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the National Aquaculture Act offers an exciting opportunity for this Nation to seize the initiative in the development of a new seafood production industry. Although worldwide output from aquaculture has approximately doubled in the last 5 years, and now amounts to some 6 million metric tons, U.S. aquaculture has remained relatively static.

One of the reasons why worldwide aquaculture production has increased is that several nations have recognized the potential for aquaculture development and have embarked on extensive aquaculture programs. Japan, for example, has established a 7-year coastal fisheries development program and has allocated $333 million to develop aquaculture. Canada has committed $300 million to an ambitious aquaculture program for restoring British Columbia salmon stocks. Mexico has recently launched a $1 billion fisheries program, of which more than $200 million will be allocated to aquaculture.

In contrast to the aquaculture efforts of these nations, aquaculture in the United States has been small and insignificant for many years. While international aquaculture accounts for approximately 10 percent of the world's fisheries production, U.S. aquaculture accounts for only 3 percent of all fish and shellfish consumed within the United States.

On an annual basis, the U.S. aquaculture industry is producing 48 million pounds of catfish, 2.6 million pounds of clam meats, 10 million pounds of crawfish, 17,000 pounds of freshwater prawns, 20 million pounds of oyster meats, 1 million pounds of pen cultured salmon, 60 million pounds of hatchery released salmon, 800,000 pounds of shrimp, and 30 million pounds of trout. Although these figures may seem significant, it is important to recognize that other nations such as Japan are producing 11½ times as much seafood by aquaculture as the United States. It is also significant to note that the United States is importing approximately $800 million of seafood products each year which could be produced domestically by the aquaculture industry.

Despite the relatively limited production of aquaculture in the United States, the future seafood market in this country provides an excellent opportunity for the expansion of the U.S. aquaculture industry. Within the United States, most traditional fisheries resources are already being harvested at or near their optimum sustainable levels. It is expected, however, that the demand for seafood products in the United States will increase 80 percent by the year 2000.

Even allowing for the introduction of nontraditional species into domestic markets, the amount of seafood which will be available to meet domestic demands will probably be severely limited. The implications of a limited domestic supply are increased prices to the consumer, an inadequate supply of seafood products, and an increase in the U.S. seafood balance-of-payments deficit.

Mr. Speaker, in my view, aquaculture offers the potential for overcoming many of these problems. Proven techniques for the production of trout, salmon, oysters, and other species are well known, and a review of the production records for these species provides a basis for estimating the potential for expanded production. The aquaculture production of rainbow trout, for example, has increased from just over 1 million pounds in 1954 to over 30 million pounds in 1972. With adequate markets and acceptable feed prices, it is estimated that production could be doubled in the next decade.

Private oyster farmers currently produce 20 million pounds of meat annually. Production through aquaculture could increase by a factor of 10 in many places by suspending oysters above the bottom, a method currently used in Japan and experimentally tested in the United States. With adequate markets and satisfactory prices, private oyster production through aquaculture could be quadrupled during the next decade.

For nearly 100 years, the salmon fishery has been enhanced by public aquaculture (hatcheries) and more than one-quarter of our salmon, 60 million pounds, now originates in these hatcheries. Federal and State salmon culture experts estimate that landings attributable to public hatcheries could be increased by 50 percent during the next decade if funds were available for expanding hatchery production. Private salmon aquaculture also has a great potential for expansion. The production from this source, which was less than 1 million pounds in 1974, could exceed 80 million pounds by 1985 if certain production problems could be solved and if markets remain attractive.

If these breakthroughs can be achieved, the benefits to the United States will be extraordinary. As I noted earlier, the United States is currently importing over $800 million of seafood products which could be provided by U.S. aquaculture. In addition to meeting our own growing demand for seafood, and significantly reducing our seafood balance-of-payments deficit, the United States could become a net exporter of marine protein to meet the food needs of other nations.

If the future is so bright, the question is why do we need to enact a National

Aquaculture Act? Although the answer is not simple, it can be summarized by saying that there are significant obstacles to the development of the aquaculture industry which can be overcome by this legislation.

The development of aquaculture for any species is a two-stage process. First, it is essential that an understanding of the basic biology of the species be developed. This entails a knowledge of what makes the species reproduce, what is the optimal growing temperature, what is the best food mixture at various stages of development, and so forth.

Once this information is available, it is possible to move into the second stage of development—an engineering, biological, and economic stage. There is a major difference between growing 100 fish in a laboratory tank and 100,000 fish in an aquaculture facility. The problems of disease, waste disposal, water quality within the system, nutrient mixes, and other factors become magnified. The problems are no longer biological.

For many species, the basic biology is known. What is needed is second-stage development and here is where the problem lies. Because of the present high-risk nature of the fledgling U.S. aquaculture industry, investors are generally reluctant to invest their funds in aquaculture when higher and safer returns are available elsewhere. We are thus confronted with the proverbial chicken and egg situation. Investment money is available to develop the aquaculture industry, but only after second-stage development is completed. Yet, without this investment capital, second-stage development may never be achieved.

To overcome these problems, the National Aquaculture Act directs the Secretaries of Commerce, Agriculture, and the Interior to develop an aquaculture development plan and to implement that plan through contracts and grants. The purpose of these contracts and grants is to test and demonstrate the feasibility of aquaculture including, where appropriate, the construction and operation of demonstration production facilities.

Mr. Speaker, in view of the extremely high potential the U.S. aquaculture industry offers for meeting the United States and world demand for seafood potential, and in view of the hesitation by private investors to provide capital for the development of the U.S. aquaculture industry, I urge that my colleagues join me in supporting this legislation.

Mr. Speaker, I would now yield such time as he may consume to the gentleman from Virginia (Mr. WAMPLER), the ranking member of the Committee on Agriculture.

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Mr. WAMPLER. Mr. Speaker, I thank the distinguished gentleman from New Jersey for yielding.

Mr. Speaker, I rise in support of this legislation, the National Aquaculture Act of 1980, which provides a framework for the development of aquaculture in the United States. For many months, a number of members on the House Committee on Agriculture and the House Committee on Merchant Marine and Fisheries have been working to reach agreement on legislation that would serve the needs of our aquaculture industry. This bill is the result of those efforts.

We on the Agriculture Committee were particularly interested in assuring that the Secretary of Agriculture had coequal status with the Secretaries of Commerce and the Interior in the development and carrying out of the national aquaculture development plan, and this is provided in the bill. Although a number of Federal agencies—including the Farmers Home Administration and the Farm Credit Administration—have been providing assistance to the aquaculture industry, most people would agree that more needs to be done. One of the major problems, however, is the lack of sufficient information about the acquaculture industry as a whole upon which to base further Federal support.

With the new impetus of the interagency aquaculture coordinating group in the development of a national aquaculture plan and in carrying out this legislation, I feel that we will be able to gather the needed information and make progress toward assisting the aquaculture industry of this Nation in research and development, technical assistance, demonstration, and extension education and training activities.

An important provision of this legislation is a requirement that a study be conducted to determine capital requirements for the further development of the industry. It was this aspect of the prior legislation passed by the 95th Congress which prompted the President to veto that bill. The President cited the lack of a clear demonstration of need for a loan guarantee program and an insurance program.

This study should allay the President's concern and enable him to sign this legislation into law. The results of the study should clearly demonstrate where additional Federal support needs to be targeted. I feel no one can disagree that we will need in the future to increase our supplies of aquatic foods in order to meet our ever increasing needs for food both nationally and worldwide.

We must be prepared to meet these demands by whatever means are available. The development of the aquaculture industry is most promising in this regard, and in my opinion, the bill we are considering is an important step to expediting this development.

I urge my colleagues to support this legislation.

Mr. BREAUX. Mr. Speaker, I yield 2 minutes to a member of the subcommittee who has worked very hard with the subcommittee on this legislation, the gentleman from Hawaii (Mr. AKAKA.)

Mr. AKAKA. Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. As the Members are aware, this bill is the result of much work between the Merchant Marine and Fisheries Committee and the Agriculture Committee and represents a sensible approach to Federal support of this growing industry.

The aquaculture industry stands on the threshold of great advances, and an indication of Federal support will give it the needed impetus. This is a reasoned and balanced approach to Federal support for aquaculture, providing an interagency national aquaculture development plan which will encourage aquaculture activities in both the public and private sectors.

Technical assistance will be provided to those individuals interested in aquaculture, and efforts will be made to eliminate needless regulation involved in starting aquaculture ventures. To accomplish the purposes of the legislation, a modest sum of money is authorized, certainly consistent with the present policy of fiscal restraint.

Mr. Speaker, in my State of Hawaii, we have long turned to the sea for many of our needs. Passage of this bill will lend support to those efforts throughout the Nation, and greatly assist this developing industry.

I urge my colleagues to support this bill and ask unanimous consent to revise and extend by remarks.

Mr. BREAUX. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

Mr. HEFTEL. Mr. Speaker, I want to congratulate the gentleman from Texas (Mr. DE LA GARZA) and the gentleman from Louisiana (Mr. BREAUX) for their leadership and perseverance, with the Members on the other side of the aisle, in finally bringing this bill back to the floor, not in its original form unfortunately, but nonetheless this is a step in the right direction.

Mr. Speaker, I rise in strong support of H.R. 20, the National Aquaculture Act. This legislation will create a long-overdue national policy on aquaculture development, requiring the planning and coordination of the Federal activities relating to aquaculture. Equally important, it will mandate studies of the financial and regulatory constraints which have inhibited the development of aquaculture in the United States.

In my home State of Hawaii, where we are blessed with climatic conditions conducive to aquaculture, we lead the country in its development. However, in the United States as a whole, acquaculture accounts for only 3 percent of all fish and shellfish consumed domestically. In 1979, the United States produced about 90,000 metric tons of fish through aquaculture. China, in the meantime, has produced 1.2 million metric tons annually of farmed fish, Japan 480 000 metric tons, and the Soviet Union 190.000 metric tons. Since the United States imports over 60 percent of the fish that Americans consume, the economic and trade benefits of a national aquaculture plan are readily evident.

There are many individual aquaculture efforts taking place in our country today, including overlapping Federal, State, and private activities. By taking action now to coordinate these efforts and encourage aquaculture production through careful planning, research, and development, I am convinced that we will be able to better meet the increasing challenge of feeding the world's people.

I urge my colleagues to join with me in supporting this bill and look forward to the President's early signature on this legislation.

Mr. FORSYTHE. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I rise as a cosponsor of H.R. 20, to commend both the subcommittee chairman and the ranking member for this legislation. Representing, as I do, the Chesapeake Bay of Maryland, I am acutely aware of the deficiencies in the development of aquaculture in the United States. This was forcefully brought home to me only a few months ago when I met with officials of a Japanese corporation that is now establishing a commercial eel farm in St. Mary's County, Md., where they will use American fish products grown in Maryland and harvested there. They will be cooked, frozen and shipped back to Japan for consumption, all at a price that is cheaper than production in Japan. Yet we in the United States are unable to produce and harvest fish stocks and species that are perfectly acceptable to our own American people for consumption and yet we have to import great amounts of fish at great cost. Perhaps this legislation will lead the way to encouragement toward ending that situation and enhancing American fish production.

Mr. Speaker, again I commend the committee for its action.

Mr. BREAUX. Mr. Speaker, I would just conclude with the statement that while we are today considering a bill under the simple process of suspension of the rules, it really belabors the fact that we have worked many, many months and, many years and, in fact, through several Congresses on getting to the point where we are today. I would like to acknowledge the tremendous amount of staff work that has gone on, I know in the staff of the Committee on Merchant Marine and Fisheries and I am certain also in the staff of the Committee on Agriculture to bring us to the point where we can stand today and bring up a bill with relatively no opposition at all. It was not like that in the 94th Congress, it was not like that in the 95th Congress when the President saw fit to veto this bill and yet today we are able to stand before the House and recommend a bill almost by unanimous consent which has the potential of bringing about some dramatic and realistic changes for this country which we will see well into the 21st century.

Mr. Speaker, I will also conclude by saying that our former colleague, Bob Leggitt of California, was very instrumental in the early days doing work on this legislation. I remember many, many drafting sessions and many, many points in time where it looked like we would never see a national aquaculture bill. Today we are on the brink of having that become a reality and an accomplishment.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. Mr. Speaker, I thank my colleague, the distinguished chairman of our subcommittee, for yielding.

Mr. Speaker, 2½ years ago, the House overwhelmingly supported legislation to establish a national aquaculture development plan. Unfortunately, the President pocket vetoed that bill as too costly and too far reaching.

Since that time, the House Merchant Marine and Fisheries Committee in concert with the House Agriculture Committee have worked together to fashion the legislation before us today, H.R. 20, the National Aquaculture Act.

Aquaculture has been in existence for about 4,000 years and is highly developed in other nations such as Japan and Russia. Unfortunately, aquaculture has been long overlooked in the United States even though it can be an important component of our Nation's agricultural industry. American aquaculture presently accounts for only 3 percent of all fish and shellfish consumed domestically. One reason for this is that previous efforts to develop a thriving aquaculture industry have been highly diffused. The necessary research and development in marine biology and related technology to make aquaculture successful have been almost nonexistent.

It makes sense to do something about this pattern. World production of seafood is on the wane. Certain stocks of fish of importance to the United States are either depleted already or seriously declining. Even so, the demand for these kinds of fish is increasing and that has created a potential shortage for U.S. consumers serving to drive the prices for shellfish to an all time high.

The United States is also faced with a terrific seafood import problem. An estimated 65 percent of the fish products consumed in the United States are imported. These fish products alone account for nearly $2 billion worth of fish.

If we are able to raise poultry, hogs, and beef for slaughter, we should be able to farm our waters methodically and scientifically as well. To accomplish the goals of increased fish production and a better trade balance, it is necessary for the Government to help the private sector get involved in the aquacultic cultivation of fish stocks. This requires advisory, educational, and technical assistance to those interested in becoming a part of the aquaculture industry.

With better coordination between the producers of fish and shellfish and the Government, we will be entering a new food producing era. A thriving aquaculture program can also take a good deal of the pressure off the commercial fishing and shellfish industries by complementing their endeavors. It will eventually help build up our depleted stocks and help compensate when clam and oyster beds are shut down because of pollution or disease.

Obviously, this rather modest bill will not solve every problem encountered by our commercial fishing industry but it can help insure that the United States holds its own in basic fish production both here at home and abroad. I strongly support H.R. 20 and urge my colleagues to join me in helping the United States regain her rightful position in the world's fishing community.

● Mr. FOLEY. Mr. Speaker, I rise in support of H.R. 20, as amended, the National Aquaculture Act of 1980. The version of H.R. 20 that appears before the House today represents a compromise between bills that have been reported by the Merchant Marine and Fisheries Committee and the Committee on Agriculture. The two committees have worked assiduously to provide a measure that would meet the objectives of the members of both committees and at the same time would be acceptable to the administration. The Senate recently passed a similar bill, S. 1650, and we have also worked with the representatives of the relevant committees in the Senate to strike a compromise that we believe will be acceptable to the other body.

This bill provides an important step in assuring a coordinated effort by agencies of the Federal Government in support of the development of the Aquaculture resources of the United States. The U.S. currently imports over 60 percent of its seafood requirements thus incurring a trade deficit of about 2 billion per year. Only 3 percent of our seafood needs are produced by aquaculture whereas the worldwide average is approximately 10 percent and in some countries the figure ranges upward to 40 percent. Our capture fish resources in many cases have been taxed to the limit. Any substantial improvement must come from aquaculture.

Today aquaculture in the United States produces such species as salmon, catfish, trout, oysters, shrimp, and other shell fish varieties. Estimates that domestic demand for seafood will grow 80 percent by the year 2000 have enhanced the market for aquaculture development.

The bill before the House today would require the Departments of Agriculture, Commerce, and Interior to formulate a National Aquaculture Development Plan within 18 months after enactment of the bill. It also encourages aquacultural activities and programs in both the public and private sector, increases coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, and the creation of new industries and jobs.

The bill requires the plan, among other things, to identify species that have significant potential for commercial cultivation, and set forth a research and development program. In implementing the plan, the Secretaries would provide educational and technical assistance on aquaculture to interested persons and to assess the feasibility of any aquaculture system, the Secretaries could conduct tests and if necessary to demonstrate its feasibility, construct and operate developmental aquaculture facilities for testing laboratory results. H.R. 20 also requires periodic reviews of the plan to keep the list of aquatic species with commercial potential accurate, and requires the Departments, in implementing the plan, to provide advisory, educational, and technical assistance on aquaculture to interested individuals and to avoid duplication of other Federal programs relating to aquaculture.

An interagency aquaculture coordinating group would be established by the bill under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis.

Finally, the bill authorizes to be appropriated: $7 million for fiscal year 1981, $10 million for fiscal year 1982, and $12 million for fiscal year 1983 to the Department of Agriculture; identical sums to the Department of Commerce; and $3 million for fiscal year 1981, $4 million for 1982, and $5 million for 1983 to the Department of the Interior.

The Committee on Agriculture has undertaken further efforts to assist in the development of an aquaculture industry in the United States. The conference report on the Federal crop insurance program which will be considered by the House this week, S. 1125, authorizes the Department to provide a crop insurance program for aquaculture financed in part by subsidies from the Federal Government on the same basis as provided for agricultural crops produced in the United States.

In addition, the committee has reported H.R. 7548, which amends the Farm Credit Act of 1971 that provides additional authority to the financial institutions that make up the Farm Credit System to offer financial assistance to those engaged in aquaculture. For example, with respect to producers and harvesters of aquatic products, the Farm Credit Act Amendments—

First, authorize Federal land banks to make real estate mortgage loans to producers or harvesters of aquatic products;

Second, authorize Farm Credit System institutions to provide to borrowers, members, and applicants financial-related services appropriate to their aquatic operations;

Third, authorize Federal intermediate credit banks to discount aquatic loans of lending institutions outside the Farm Credit System; and

Fourth, clarify that cooperatives engaged in furnishing aquatic business services are eligible to borrow from the banks for cooperatives.

Mr. Speaker, I urge the Members to join me in support of this important measure.●

● Mr. MURPHY of New York. Mr. Speaker, aquaculture in the United States accounts for only 3 percent of all fish and shellfish consumed domestically. With the U.S. importing over 60 percent of its fish for human consumption, it is immediately apparent that large economic benefits would accrue to this country in the forms of a healthier balance of trade and less strain on existing capture fisheries if this Government would encourage much more extensive acquaculture.

This is not being done, and what is being accomplished is taking place almost in spite of the diffusion of laws and agencies charged with responsibility for the aquaculture industry.

Annual landings of edible fish by U.S. fishermen have remained relatively constant since the 1960's. Traditional stocks of marine resources, once thought to be unlimited, are now estimated at a maximum level of global harvest of 100 to 150 million metric tons. Fish catches of such resources currently are around 70 million metric tons commercially and are increasing.

With finite marine resources and a seemingly infinitely expanding human appetite for protein due to population growth, it is incumbent on the United States to increase greatly its aquaculture production. It has been estimated that the potential protein production per unit area of water is up to 5,000 times that of a similar area in pasture used for beef production, and the conversion by fish of feed to edible protein is done much more efficiently than by those mammals husbanded by man on dry land.

Aquaculture needs firm, rational encouragement from the Federal Government if it is to succeed and grow in the way it should. It is hardly a risk-free business: Even under controlled circumstances aquaculture is at the mercy of nature, and it should be Government policy to aid in a fair way those entrepreneurs who take on the risks of the business.

However, at present, 11 Federal agencies have been identified as having direct involvement with aquaculture, and some 10 other agencies have programs which are indirectly related. Several of these agencies and components within these agencies have conducted research and development within the framework of specified missions, yet any coordination that has taken place has been primarily to avoid undesirable overlaps. However, far more serious than the overlaps have been the gaps because of lack of proper coordination and direction.

On January 15, 1979, I introduced H.R. 20, a bill which closely parallels legislation of the 95th Congress which was vetoed by the President. The Committee on Merchant Marine and Fisheries reported H.R. 20 on May 15, 1979. H.R. 20 was sequentially referred to the Agriculture Committee and that committee reported its version of the bill on July 16, 1979. Since that time, the two committees have negotiated a compromise version which is before the House for approval. The compromise version closely parallels my bill, as introduced, except it does not contain the features found objectionable by the President concerning loan guarantees and insurance.

Briefly explained, the compromise version would require the Secretaries of the Interior, Commerce, and Agriculture to develop a national aquaculture plan within 18 months. The plan would identify those aquatic species with a high potential for culturing on a commercial basis. For each identified species, the plan would set forth a research and development program.

The Secretaries would be authorized to appoint an Advisory Committee to assist in the initial development of the plan. An interagency aquaculture coordinating group would be established under the direction of the Office of Science and Technology Policy, which would operate as a Joint Subcommittee of the Federal Coordinating Council for Science, Engineering and Technology, and would consist of the heads of 13 agencies with aquaculture responsibilities. The coordinating group would, within 12 months of the date of enactment, carry out studies on capital requirements for aquaculture development and on legal and regulatory constraints to the development of aquaculture and would be required to report on the status of aquaculture on a biennial basis. The bill also would authorize demonstration projects to test feasibility of aquaculture systems which would include production-scale facilities when deemed necessary by such Secretaries. There would be authorized to be appropriated a total of $70 million to carry out the legislation.

Aquaculture is an idea whose time is overdue. H.R. 20, as amended, proposes an all-out effort in the direction of creating a widespread vital aquaculture industry.

I urge the prompt passage of H.R. 20, as amended.●

● Mr. ASHLEY. Mr. Speaker, traditional stocks of marine resources, once thought to be unlimited, are now estimated by experts to be capable of yielding a maximum global harvest of 100 to 150 million metric tons per year. More conservative estimates rarely exceed 100 million metric tons, including that of the National Oceanic and Atmospheric Administration which estimates the 100 million figure will be reached in the 1980's. World fish catches are currently around 70 million metric tons.

The present world population is approximately four billion and is expected to expand to 6 billion by the year 2000. What these figures mean is that, on a worldwide basis, we can expect a shortage of fisheries products within the next decade.

Currently, more than 60 percent of all fish consumed in the United States is imported and aquaculture accounts for 3 percent of the approximately 40 percent produced domestically.

With limited traditional stocks of marine resources to meet this increased need for fisheries products, it is apparent that the potential for aquaculture in the United States is enormous. However, that potential can become a reality only if our government takes the necessary steps to encourage more extensive aquaculture in the United States and this is what H.R. 20 is intended to accomplish.

H.R. 20, as reported by the Committee on Merchant Marine and Fisheries, closely parallels this committee's bill of the 95th Congress that was vetoed by the President. Under this legislation, the Secretary of Commerce would be designated as the lead agency and authorized to guarantee loans for the construction of aquaculture facilities and acquisition of stocks and provide insurance to owners of aquaculture facilities when insurance is not reasonably available in the commercial market.

H.R. 20 was sequentially referred to the Committee on Agriculture. As reported by that committee, it closely parallels the bill as reported by the Merchant Marine and Fisheries Committee except it does not contain the loan guarantee and insurance provisions, which were found objectionable by the President in the 95th Congress bill. Instead, it would call for a study to be carried out within 12 months to determine if there is a need for such assistance. Also, it would require a study to be carried out to identify the legal and regulatory constraints to the development of aquaculture to be followed by a plan of action to remove such obstacles. In addition, the Secretaries of Commerce, Agriculture, and the Interior would be given equal authority in carrying out the legislation.

During the past several months, the committees have met on a number of occasions with a view toward negotiating a compromise version of H.R. 20. A compromise has been reached which is in essence the Agriculture Committee's version of the bill with certain clarifying and technical amendments.

Under the compromise version, which is before the Members for approval today, the Secretaries of Commerce, Agriculture, and the Interior would be required to develop a national aquaculture plan within 18 months, identify those aquatic species with a high potential for culturing on a commercial basis, and set forth a research and development program for each identified species. The Secretaries would be authorized, for the purpose of assessing the biological, technical, and economic feasibility of an aquacultural system, to conduct tests of such system and, if necessary to demonstrate its feasibility, to construct, operate, and maintain developmental aquaculture facilities. It should be emphasized that such demonstration facilities could include production-scale facilities when it is deemed necessary by the Secretaries, in the furtherance of the development of certain aquatic species.

To assist in coordinating aquaculture activities among the various agencies, the compromise version would provide for the establishment of an interagency coordinating group under the direction of the Office of Science and Technology Policy within the Executive Office of the President. This coordinating group would consist of the heads of 13 agencies with aquaculture responsibilities.

The compromise bill would adopt the Merchant Marine and Fisheries Committee's funding authorization as it relates to the three Secretaries except that it would increase the funding by $5 million bringing the total amount authorized to $70 million over 3-year life of the legislation.

H.R. 20, as amended, has the strong support of the Committees on Merchant Marine and Fisheries and Agriculture and the aquaculture industry. Because of prior consultations with in the Senate and the administration when developing the compromise version of the bill, it is anticipiated that the Senate will agree to the compromise version and that the President will sign it when it reaches him for signature. In fact, the compromise version is practically identical to the Senate bill, S. 1650, which the administration strongly supports.

Mr. Speaker, I urge the prompt passage of H.R. 20, as amended.●

Mr. BREAUX. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORSYTHE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. BREAUX) that the House suspend the rules and pass the bill, H.R. 20, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1650) and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1650

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and that may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national policy for aquaculture;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) the term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law);

(2) the term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) the term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile or aquatic plant;

(4) the term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any States;

(5) the term "Plan" means the National Aquaculture Development Plan required to be established under section 4;

(6) the term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior; and

(7) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, and the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine to have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential. The Plan shall address the following matters, taking into account the status of aquaculture regarding the aquatic species concerned:

(A) aquaculture facility design and operation;

(B) water quality management;

(C) use of waste products (including thermal effluents);

(D) nutrition and the development of economical feeds, including natural food sources;

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans);

(F) processing and market development;

(G) production management and quality control; and

(H) the development of adequate supplies of seed stock;

(3) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(4) include, where appropriate, programs to analyze, and to formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture, and

(5) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practical, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person; and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquacultural assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the Joint Subcommittee on Aquaculture established in section 6, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system and, if necessary, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) INFORMATION SERVICES.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economical information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and

(ii) recommended measures to ameliorate any such effect;

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) BIENNIAL REPORT.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, and explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

SEC. 6. (a) ESTABLISHMENT.—There is established a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereafter in this section referred to as the "Subcommittee") that shall be composed of the following members or their designees:

(1) the Secretary of Agriculture,

(2) the Secretary of Commerce,

(3) the Secretary of the Interior,

(4) the Secretary of Energy,

(5) the Secretary of Health and Human Resources,

(6) the Administrator of the Environmental Protection Agency,

(7) the Chief of Engineers,

(8) the Administrator of the Small Business Administration,

(9) the Administrator of the Agency for International Development,

(10) the Chairman of the Tennessee Valley Authority,

(11) the Director of the National Science Foundation,

(12) the Governor of the Farm Credit Administration, and

(13) the heads of other Federal agencies as appropriate.

(b) PURPOSE AND FUNCTIONS.—The purpose of the Joint Subcommittee on Aquaculture is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the Subcommittee shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the two sponsoring Committees (the Committee on Atmosphere and Oceans and the Committee on Food and Renewable Resources) and the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) CHAIRMAN.—The Chairman of the Joint Subcommittee on Aquaculture shall serve a term of two years and shall be selected by the mutual agreement of the Chairmen of the sponsoring committees of the Federal Council.

(d) REPORTS.—The Subcommittee shall regularly report to the Chairman of the two sponsoring Committees and through them to the Chairman of the Federal Council, on the Subcommittee's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) FEDERAL CONSISTENCY.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the Subcommittee and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

CONTRACTS AND GRANTS

SEC. 7. (a) IN GENERAL.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) LIMITATION.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

SEC. 8. (a) CAPITAL REQUIREMENTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) CAPITAL REQUIREMENTS PLAN.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

SEC. 9. (a) REGULATORY CONSTRAINTS STUDY.—The Secretaries, through the Joint Subcommittee on Aquaculture, shall conduct within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—

(A) $7,000,000 for fiscal year 1981;

(B) $10,000,000 for fiscal year 1982; and

(C) $12,000,000 for fiscal year 1983;

(2) to the Department of Commerce—

(A) $7,000,000 for fiscal year 1981;

(B) $10,000,000 for fiscal year 1982; and

(C) $12,000,000 for fiscal year 1983;

(3) to the Department of the Interior—

(A) $3,000,000 for fiscal year 1981;

(B) $4,000,000 for fiscal year 1982; and

(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or action authorized under any other provision of law.

MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BREAUX moves to strike out all after the enacting clause of the Senate bill, S. 1650, and to insert in lieu thereof the provisions of the bill, H.R. 20, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid upon the table.

A similar House bill, H.R. 20, was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 695 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 695

Resolved, That upon the adoption of this resolution is shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, the first reading of the bill shall be dispensed with, and all points of order against the bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service, the bill shall be considered as having been read for amendment under the five-minute rule. It shall be in order to consider the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service now printed in the bill, and all points of order against said amendments for failure to comply with the provisions of clause 5, rule XXI are hereby waived. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill, in an order recommended by the chairman of that committee. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

☐ 1550

The SPEAKER pro tempore. The gentleman from California (Mr. Beilenson) is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the usual 30 minutes for purposes of debate only to the gentleman from Mississippi (Mr. Lott), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rule providing for the consideration of H.R. 6790, the Foreign Service Act of 1980. It is an open rule providing for 2 hours of general debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, and the other hour is to be equally divided and controlled by the chairman and ranking minority member of the committee on Post Office and Civil Service.

The rule waives clause 5 of rule XXI, which prohibits appropriations in a legislative bill, against consideration of the bill and the reported amendments of both the Foreign Affairs and Post Office and Civil Service Committees. This waiver is necessary because the bill and the amendments make various changes in the Foreign Service compensation and benefits structures. Such changes may result in the use of funds already appropriated for purposes other than originally intended. Technically, such changes are considered appropriations and thus a point of order would lie against the bill or the amendments without the waiver.

The rule also allows the amendments reported by the Post Office and Civil Service Committee to be considered en bloc in an order recommended by the chairman of the committee. This en bloc provision allows the combination of committee amendments dealing with the same issue. It will simplify floor consideration but will not have a restrictive effect during the amendment process.

Finally, the rule provides for one motion to recommit.

Mr. Speaker, H.R. 6790 is the first comprehensive revision of Foreign Service legislation since 1946. It will modernize the basic personnel management rules in the Foreign Service by tracking many of the policies contained in the Civil Service Reform Act of 1978. For example, the bill creates a senior Foreign Service along the lines of the recently created senior executive service. At the same time, the bill addresses those matters unique to the Foreign Service. It takes steps, for example, to reaffirm the requirement that membership in the Foreign Service means availability for worldwide service and seeks to improve the so-called "up or out" promotion system.

The bill is the product of extensive work by two House committees and will result in a simplified and clear governing statute for the Foreign Service. I urge my colleagues to support both the bill and the open rule under which it is to be considered.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 695 is the rulemaking in order consideration of the Foreign Service Act of 1980. It is an open rule and provides for 2 hours of debate. One hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs and 1 hour is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. Clause 5 of rule XXI prohibiting appropriations in a legislative bill is waived against consideration of the bill. This is necessary since the bill makes changes in pay and benefits which would allow previously appropriated funds to be used for new purposes. The rule makes in order consideration of the amendments recommended by the Committees on Foreign Affairs and Post Office and Civil Service and waives clause 5 of rule XXI against the amendments. This is necessary since the amendments also make changes in pay and benefits which could constitute the use of existing appropriations for new purposes. Lastly, it shall be in order to consider en bloc the Post Office and Civil Service Committee's amendments and they shall be in an order recommended by the chairman of that committee.

Mr. Speaker, the primary purpose of this bill is to codify into statute the various laws and rules governing the Foreign Service. The last major revision of Foreign Service law took place in 1946, and it is clear that changes are needed. Although most of the bill's provisions are sound, there does appear to be some controversy about certain parts of the bill. For example, the Foreign Service pay schedule is in need of revisions which will make it more realistic in view of the economic changes which have taken place. However, the bill seems to have gone far beyond what was needed and adopted linkages between the GS and Foreign Service schedules which result in increases for Foreign Service personnel of nearly 12 percent in addition to whatever general pay raise is provided in October. In addition, 17 percent of Foreign Service employees would receive increases of between 20 and 25 percent. These pay provisions are an impediment to passage of this legislation and invite a veto of the bill. It is my understanding that an amendment to restructure this section will be offered.

A number of other amendments to the bill are anticipated, including one which affects the automatic entitlement for former spouses. Rather than automatically entitling a divorced spouse to a substantial portion of a Foreign Service officer's pension, the amendment would allow the courts to order such payments, as is the current practice approved by the 95th Congress.

Mr. Speaker, although there are several amendments likely to be offered to this legislation, this is an open rule and consequently I have no objection to its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATIONS, FISCAL YEAR 1981

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 696 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. Res. 696

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the five-minute rule by titles instead of by sections. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas (Mr. FROST) is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 969 is an open rule providing for the consideration of H.R. 7301 authorizing appropriations for certain construction at military installations in fiscal year 1981, and for other purposes.

The rule provides for 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services and further provides that the bill shall be read for amendment under the 5-minute rule by titles rather than by sections.

Mr. Speaker, H.R. 7301 authorizes $5.538 billion for military construction projects in fiscal year 1981. This amount is $707,000 less than the total requested by the administration in its January budget request, March amended request and fiscal year 1980 supplemental request. The Committee on Armed Services has combined these three budget requests and the authorization level contained in H.R. 7301 reflects the committee's judgment on the programs requested by the administration for fiscal year 1981 as well as for the remainder of fiscal year 1980. I should note that H.R. 7301 does not make funds specifically available for fiscal year 1980, rather the Committee on Armed Services has made adjustments to the fiscal year 1981 authorization levels to accommodate the supplemental requests.

My colleagues will recall that the House has previously passed the fiscal year 1981 military construction appropriation without benefit of this authorization. It is therefore especially important that the House consider this legislation so that the appropriation approved in June be properly authorized.

Mr. Speaker, House Resolution 696 is a simple open rule and I would urge my colleagues to adopt it so that we may proceed to the consideration of H.R. 7301.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the notable thing about this rule is that it contains no waivers of points of order and no restrictions on amendments.

It provides 2 hours of general debate for the consideration of the military construction authorization for fiscal year 1981 and provides that this bill will be read for amendment by titles instead of by sections.

Mr. Speaker, the bill made in order by this rule authorizes a total of $5,538,003,000 for military construction. The Committee on Armed Services reported the bill by a vote of 41 to 0, with 1 voting "present."

The Rules Committee reported the rule by a voice vote.

I support the rule so that the House may proceed to consider the bill.

Mr. FROST. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

☐ 1600

FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FASCELL).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DERWINSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 2, answered "present" 2, not voting 103, as follows:

[Roll No. 523]

YEAS—325

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Barnard
Barnes
Bauman
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Bingham
Blanchard
Bolling
Boner
Bonior
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burton, Phillip
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Cleveland
Clinger
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fascell
Fazio
Fenwick
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kildee
Kindness
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Pa
Murtha
Musto
Myers, Ind.
Natcher
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Pease
Pepper
Petri
Pickle
Preyer
Price
Pritchard
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Roe
Rose
Rosenthal
Roth
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—2

Lloyd
Mitchell, Md.

ANSWERED "PRESENT"—2

Neal
Ottinger

NOT VOTING—103

Ambro
Anderson, Ill.
Applegate
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Boggs
Boland
Bonker
Breaux
Burgener
Burlison
Burton, John
Butler
Campbell
Chappell
Chisholm
Clay
Coelho
Coleman
Conyers
Corman
de la Garza
Dicks
Dingell
Dodd
Donnelly
Dougherty
Eckhardt
Edwards, Okla.
Emery
Fary
Ferraro
Findley
Fish
Fountain
Giaimo
Grassley
Hall, Ohio
Harkin
Hillis
Hinson
Holtzman
Hubbard
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Lederer
Lehman
Leland
Lowry
Lundine
McClory
McCloskey
McKinney

Marriott
Mathis
Mattox
Minish
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nelson
Nolan
Patten
Paul
Perkins
Peyser
Porter
Pursell
Quayle
Railsback
Richmond
Ritter
Rodino
Rostenkowski
Rousselot
Royer
Russo
Satterfield
Seiberling
Shannon
Spellman
St Germain
Steed
Stockman
Stokes
Tauzin
Thomas
Walker
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Young, Alaska
Zeferetti

□ 1610

So the motion was agreed to.

The result of the vote was announced as above recorded.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6790, with Mr. Kazen in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. Fascell) will be recognized for 30 minutes; the gentleman from Alabama (Mr. Buchanan) will be recognized for 30 minutes; the gentlewoman from Colorado (Mrs. Schroeder) will be recognized for 30 minutes; and the gentleman from Iowa (Mr. Leach) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. Fascell).

□ 1620

Mr. FASCELL. Mr. Chairman, I want to rise in support of H.R. 6790, the Foreign Service Act of 1980.

Mr. Chairman, I yield such time as he may consume to the chairman of the full committee, the gentleman from Wisconsin (Mr. Zablocki).

Mr. ZABLOCKI. Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980.

At the outset, I want to commend those of our colleagues whose diligent and untiring efforts have brought this landmark legislation to the floor today. Particularly the joint floor managers of the bill, the Honorable Dante B. Fascell, chairman of the Subcommittee on International Operations; the Honorable Pat Schroeder, chairman of the Subcommittee on Civil Service; and their respective ranking minority members, the Honorable John Buchanan and the Honorable Jim Leach. I also want to express my thanks to the distinguished chairman of the full Committee on Post Office and Civil Service, the Honorable James Hanley for his cooperation in permitting our two subcommittees to meet jointly for the purpose of taking testimony on and marking up the legislation. Without this joint effort, it is doubtful whether action on the bill could have been completed this year.

Mr. Chairman, the distinguished joint managers of the bill have thoroughly explained the provisions of H.R. 6790. I would like, however, to emphasize the importance of three of the bill's features.

First, in the area of compensation, the bill mandates pay comparability linkage between the new Foreign Service pay schedule and the pay grades of the civil service schedule. By requiring a clear and precise linkage between the two pay schedules, the bill brings Foreign Service salaries into compliance with the intent of the Pay Comparability Act of 1970. Under the present system, salaries of Foreign Service personnel lag behind comparable civil service positions and the variance between the two schedules is increasing. By rectifying this inequity, we will halt the trend in declining applications for the Foreign Service by those American men and women best qualified to steward our relations abroad.

Second, the bill as reported by the Committee on Foreign Affairs, raises the mandatory retirement age for the Foreign Service from 60 to 65. By raising the mandatory age 5 years, the bill brings into balance the competing factors underlying this issue. First, it gives those members of the service who do not want to retire at age 60 an opportunity to stay on the job an additional 5 years. Moreover, the bill gives the Secretary of State the discretion to extend the service of Foreign Service personnel beyond the age of 65. Second, by retaining a specified mandatory retirement age, the provision insures that those men and women entering the Foreign Service will be able to advance their careers without the impediment of compaction at the top levels.

Finally, the bill sets forth worldwide availability as the fundamental criterion for membership in the Foreign Service. The bill requires that all career members of the service shall be obligated to serve abroad. The so-called domestic Foreign Service category will be abolished and those current members not willing to serve overseas will be converted to the civil service.

Mr. Chairman, I am pleased to note that all of the differences between the two versions of the bill as reported by the Foreign Affairs Committee and the Post Office and Civil Service Committee have been resolved except for the issue of benefits for former spouses which will be resolved by a vote of the Committee of the Whole when the committee amendments are offered. I am advised that the full Senate is ready to consider this legislation as soon as it clears the House. I would, therefore, hope that we can complete our action on the bill today.

Mr. Chairman, the enactment of H.R. 6790 will provide a much needed boost in the morale of the Foreign Service, attract the best qualified personnel to the Foreign Service and improve the conduct of our foreign policy. I strongly urge the adoption of the bill.

Mr. BUCHANAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 6790 and to associate myself with the remarks of the gentleman from Florida (Mr. Fascell).

The bill before us today represents more than 18 months of work by our subcommittee and the Civil Service Subcommittee. At the same time, it also addresses issues with which our subcommittee has been concerned for many years.

In drafting this legislation, the subcommittee provided a forum for all who wished to be heard. We took all viewpoints into consideration in drafting this legislation and considered more than 100 proposed amendments. We worked closely with the agencies involved and with the unions representing their personnel.

In my judgment, the resultant legislation is a good bill which will help to strengthen and improve the Foreign Service with regard to both its efficiency and the morale of its members.

Because of mandated reductions in personnel levels, increased workloads, low pay and increased hardships involved with service abroad, the morale of the Foreign Service is extremely low.

These factors have resulted in increasing numbers of midlevel officers leaving the service for higher paying less demanding jobs in the civil service or in the private sector.

During the years that it has been my privilege to serve in this body, I have had the opportunity to meet many Foreign Service officers, both here and abroad. I continue to believe that the United States has the best Foreign Service in the world and I believe that we have not done right by these people who are putting their lives on the line for us every day.

The Foreign Service is unique in that its members are expected to spend the overwhelming majority of their careers abroad in cultures, climates and political conditions substantially different from and sometimes hostile to those in the United States.

I have here, in my hand, a newspaper article about a Foreign Service family and I think the headline reflects the reality of Foreign Service life today. The headline reads, "Overseas and Under Fire for Uncle Sam."

Mr. Chairman, the days of the pinstriped cookie pusher, if they ever existed, are long past. The days of terrorism, increasing family hardships and other problems are more reflective of the reality of the Foreign Service today.

With H.R. 6790, we attempt to address these realities—the realities of Foreign Service officers held hostage in Tehran who are paid less for performing their jobs than civil service personnel on a comparable level here in Washington; the realities of life abroad which contribute to increased divorce rate and separation of family members, the realities of Americans who are doing their best for our country but who are too often ignored or forgotten.

The numbers about which we are talking are not large. Indeed, the Department of State is the smallest Federal department. The Foreign Service personnel in the Department of State, the International Communication Agency, and the other agencies are fewer in number than the staff serving the Congress.

What we are addressing is a very small department with a very large mandate.

H.R. 6790 is an effort to address some of the most pressing problems facing personnel today. It tracks the civil service reform legislation enacted in 1978 with alterations to reflect the different nature of the Foreign Service. It is supported by the American Foreign Service Association which represents the majority of the Foreign Service members today.

I urge its adoption.

□1630

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

Codify existing but far-flung laws governing the Foreign Service;

Provide increased promotion opportunities for members of the Service;

Simplify and rationalize the numerous current categories of employment;

Increase the compatability of the personnel systems in the various agencies authorized to use the Foreign Service personnel authorities;

Facilities interchange of employees between agencies and between personnel systems;

Link the pay of the Foreign Service to that of the general schedule, to assure comparable pay for comparable work;

Establish a senior Foreign Service, parallel to the Senior Executive Service created by the Civil Service Reform Act of 1978, in which increased pay is available for outstanding performance;

Foster broad employee participation in determination of the conditions of employment affecting them by establishing a statutory framework for labor-management relations;

Authorize pension benefits for former spouses of members of the Foreign Service; and

Strengthen provisions of law designed to minimize the disruptive effect of a Foreign Service career on family life.

The Committee on Foreign Affairs and the Committee on Post Office and Civil Service, to which this legislation was jointly referred, worked closely to iron out potential problems. The disagreements between the two committees are limited in number and, for the most part, not over central issues in the legislation.

There are, however, two significant issues which may be debated on the floor. First, both subcommittees adopted a provision, which I sponsored, to provide pension benefits to former spouses of members of the Foreign Service. Unlike spouses of private sector employees, who are covered by social security, spouses of Government workers gain no retirement benefits based on their working spouse's contributions. So, in traditional role model families, where the husband works for a salary and the wife works for free in the house, death of or divorce from a Government-employed husband could leave the wife penniless. In the Foreign Service, members are rotated throughout the world often on a biennial basis. The wife or husband, who follows his or her Foreign Service spouse, can never build an independent career and is unlikely to have a retirement plan of his or her own. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation reports on her performance of representational duties. In effect, Foreign Service wives were impressed into Government service as unpaid representatives. The tradition of unpaid service continues.

The subcommittee provision established a presumption of a prorata division, based on the number of years of marriage, for both retirement and survivor's benefits. Only spouses of over 10 years would be eligible for an automatic share. Further, the former spouse and any current spouse had the right to veto any waiver of survivor's benefits by the member of the Service. While this provision was retained by the Foreign Service Committee, the Post Office and Civil Service Committee, by a vote of 12 to 11, adopted a weakening amendment offered by Mr. FORD of Michigan.

Under the Ford amendment, State courts are permitted to divide both retirement and survivor's benefits, but without benefit of any Federal guidance on the appropriate division. Recent experience with State family law judges and lawyers makes it clear that only self-executing legislation of the type adopted by the subcommittees is certain to vindicate the rights of former spouses. By eliminating the right of the current and former spouse to veto waiver of survivor's benefits, the Ford amendment may render the purported availability of a survivor's benefits for a former spouse a fraudulent promise. Finally, in limiting the effectiveness to future divorces and retirements, the Ford amendment provides no relief for the dozens of Foreign Service former spouses, with whom I have personally talked, who are destitute.

For these reasons, I urge your support for the Foreign Affairs Committee provision on former spouse pension benefits and your opposition to the Ford (Post Office and Civil Service Committee) amendment.

Second, the subcommittee adopted a provision linking the pay of the Foreign Service to that of the general schedule The original administration bill allowed the President to set the pay. We rejected this proposal because Foreign Service pay has, over the last decade, fallen well behind the general schedule. Unfortunately, the rather ill-defined concept of comparability has not been used to keep Foreign Service pay even with that of other Federal workers. Given the increased dangers faced by members of the Foreign Service and the decreased buying power of the dollar abroad, this erosion of Foreign Service pay is operating to make the Foreign Service a less desirable career.

At this point, it is not clear whether there will be an amendment to change the pay provisions of H.R. 6790 and keep down Foreign Service pay. There is a non-controversial Post Office and Civil Service Committee amendment to correct an oversight in the subcommittee adopted pay amendment. I will vigorously oppose any attempt to cut the pay of members of the Foreign Service and urge your opposition as well.

No agency will go out of business if we do not pass this bill today. No authorization will expire. Yet, I believe that there is a special sort of urgency to this legislation. The lot of a Foreign Service officer or staff member is on the decline. Pay is less attractive than a few years ago; career promotion opportunities are limited due to a glut of senior officers; being an American evokes hostility and suspicion, rather than friendship and respect, in an increasing number of posts; physical safety is a real and ever-present concern. If we need a Foreign Service, and I think we do, we must do something quickly to convince present and would-be members of the Service to pursue a career in the Foreign Service. The quality of our foreign policy depends in large part on the quality of those who implement it. If we do not act to maintain the quality of a Foreign Service career, we will only have ourselves to blame for poor international relations.

Mr. Chairman, I would like to compliment everyone involved in this whole process. I think we broke all records for the amount of time involved in legislation in both committees working together without the typical jurisdictional disputes or making witnesses duplicate their testimony. I think that was very noteworthy and everyone involved in the process should be really complimented.

Mr. Chairman, at this time I would yield such time as he may consume to our chairman of the Post Office and Civil Service Committee, JIM HANLEY. I also want to compliment him. This is probably one of the last major pieces of legislation coming out of his committee under his chairmanship, and he has been most cooperative during this whole process. I personally, therefore, would like to take the time of this body to compliment him and thank him. I yield to him such time as he may need.

Mr. HANLEY. Mr. Chairman, I would very much like to take this time to extend my congratulations to the gentlewoman for the yeoman work she has performed on this legislation. I would also like to thank again the gentleman from Florida (Mr. FASCELL) for his cooperation. This really is one of the classic demonstrations of teamwork.

Mr. Chairman, I take this time to congratulate and commend the Representative from Colorado and the Representative from Florida for their fine work on this legislation. This is much needed legislation, and I am hopeful that it will improve the Foreign Service personnel system and the conduct of the foreign affairs of the Nation.

This bill makes many improvements. It would:

Extend the "selection out" system, which allows for the removal of personnel for poor performance or nonpromotion, to all American career personnel in the service, and extend certain due process protections to that system in accordance with recent court decisions;

Establish a bill of rights for members of the Foreign Service, prohibiting discrimination and granting protection from reprisal for dissenting political views or good faith disclosures of information concerning violations of law, mismanagement, and abuse of authority;

Create a Senior Foreign Service, similar to the Senior Executive Service with difficult entry requirements, performance pay for outstanding performance, and the possibility of limited career extensions for service beyond expiration of time in class;

Directly link the Foreign Service pay schedule to the general schedule;

Provide for the more extensive hiring of Foreign Service family members, as opposed to foreign nationals, in noncareer positions at overseas posts; and

Convert employees of the foreign affairs agencies who are not available for worldwide service over to the general schedule.

I particularly want to commend the Representative from Colorado for her work on the labor-management relations provisions of this legislation. As many Members will remember, during the last Congress we passed the Civil Service Reform Act, and a major portion of that legislation involved establishing a statutory basis for labor-management relations in the Federal Government. The Committee on Post Office and Civil Service spent many, many hours fashioning a labor-management relations title which is now known as title VII of the Civil Service Reform Act. When the bill reached the House floor, title VII was further refined, and the labor-management relations provisions which passed the House were adopted by a record vote of 381 to 0. The House position on all important aspects of labor-management relations, such as management rights, was sustained in conference and is now law.

I say all this by way of background because, frankly, it is my judgment that the labor-management relations provisions of the Foreign Service Act of 1980 (H.R. 4674) proposed by the administration would never have made it through our committee, the committee with jurisdiction over the labor-management relations program for the Federal Government. The administration proposal simply differed too much from title VII of the Reform Act, and in some instances, even attempted to place in law for the Foreign Service some administration proposals which this House, during the last Congress, rejected when those proposals were submitted as part of the Civil Service Reform Act.

It is here that the Representative from Colorado played a key role. She drafted a complete substitute for the labor-management relations provisions of the administration bill, a substitute which was based on title VII of the Reform Act, and which adopted the provisions of that act except for the few cases where the unusual nature of the Foreign Service personnel system justified different treatment. That substitute was adopted by both committees and incorporated as chapter 10 of H.R. 6790.

The substitute brought the Foreign Service under the umbrella of the Federal Labor Relations Authority, and by so doing, insures that labor law in the Foreign Service will be administered consistently with that in the rest of the civil service. It conformed the management rights provisions of the Foreign Service Act with those of the Civil Service Reform Act, and in construing those provisions the legislative history of the Reform Act and the report of the Committee on Post Office and Civil Service on H.R. 6790 should be consulted, as well as decisions of the Federal Labor Relations Authority. It is certainly not the intent of the legislation to undo any decisions of the Authority and the provisions of H.R. 6790 should be interpreted consistently with that intent.

In closing, I urge the House to adopt this legislation. The other body is likely to act on it this week, and the differences between the two Houses are few. Enactment of H.R. 6790 will be a mark on the right side for the 96th Congress, and the legislation deserves your support.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe the Foreign Service Act of 1980, H.R. 6790, is sound, responsible, and progressive legislation properly focused on a number of problems which have afflicted the Foreign Service. Enactment of this legislation will—

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Mr. LEACH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I will be brief. I would just make two observations.

There are two unique features of this presentation today. One is the manner in which the bill was brought to the House floor under joint jurisdiction of two committees. I have never before worked under that procedure, but I am most impressed and indebted for the work of the gentleman from Florida (Mr. FASCELL), the gentlewoman from Colorado (Mrs. SCHROEDER) and, of course, the ranking member from Alabama (Mr. BUCHANAN) for their work on this legislation.

The second feature is we are dealing with a very unusual institution, the U.S. Foreign Service. I happen to be a frequent critic of American foreign policy over the last several decades, but the fact is that the United States today has the finest Foreign Service in the world. We should be careful about doing anything that upsets the applecart, and the aim of this legislation is to improve and refine and make a service that is very strong even stronger.

Mr. FASCELL. Mr. Chairman, will the gentleman from Iowa yield?

Mr. LEACH of Iowa. I am delighted to yield.

Mr. FASCELL. I thank the gentleman for yielding, because I think he has made a very important point that needs to be emphasized. That is the reason I take this time. I would hope that our colleagues would follow the gentleman's advice and if they have disagreements with respect to foreign policy that they do not try to change the policy by voting against the Department of State and the people who are trying to do their very best to represent the U.S. Government; namely, the Foreign Service of the United States.

Mr. LEACH of Iowa. I appreciate that. I would just follow up with one final observation of perhaps prejudice of my own and that is that the primary problem in foreign policy in the last several decades has been the politicization of foreign policy. What we must strive to do in the decades ahead is to professionalize foreign policy decisionmaking, bring the people that are competent in the area into the forefront of policy determination as well as execution.

Mr. Chairman, with those comments I will be happy to yield such time as he may consume to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Chairman, I, too, want to commend the distinguished chairman of the subcommittee and the ranking members of both the Foreign Affairs Committee and the Post Office and Civil Service Committee, the two committees which considered this legislation.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. As a member of the Committees on Foreign Affairs and Post Office and Civil Service, the two committees which favorably reported this legislation, I have had the opportunity to review the merits of this legislation and the needs it addresses.

Among the key aspects of this measure are provisions which: First, establish a set of merit principles governing personnel actions in the Foreign Service, and require protection against discrimination for applicants and employees of the Foreign Service; second, create a new Senior Foreign Service; third, link Foreign Service salaries to general schedule salaries; fourth, provide for performance pay compensation; and fifth, establish the Foreign Service Labor Relations Board, a statutory framework for labor-management relations in the Foreign Service.

The Foreign Service Reform Act of 1980 codifies and revises the various statutes governing Foreign Service operations and personnel administration. In light of the fact that the last major revision of Foreign Service legislation took place in 1946, it is clear that revisions are necessary to promote the effective conduct of our State Department and Nation's foreign policy.

There are several provisions of this measure that my colleagues must consider by way of amendment. However, I commend to my colleagues the general thrust of this comprehensive measure.

Accordingly, I urge my colleagues to support this important measure providing the Foreign Service with an effective and long overdue reorganization.

Mr. LEACH of Iowa. Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. PEPPER).

☐ 1640

Mr. PEPPER. Mr. Chairman, in 1978 the Members will recall that upon the initiative of the Committee on Aging of the House, working in cooperation with the gentleman from Illinois (Mr. FINDLEY) we recommended to the House and the House and the Congress adopted, and the President signed, a bill banning mandatory retirement from Federal employment at any age and generally in non-Federal employment below 70. Since that time especially our Select Committee on Aging has worked very diligently to try to eliminate other ceilings on employment. That is to make possible anybody doing a creditable job, and qualified to do that job, who wanted to keep on doing it to do so without any mandatory retirement from either public or private authority. One of those who at first did not subscribe to the principle that we were pressing was the State Department because it did not feel at the time that the age limit should be lifted above 60. The mandatory retirement age for the Foreign Service was 60. There were many members of the Foreign Service in many parts of the world where I had the privilege to make a visit and listen to who told me about the hardships inflicted upon them by that mandatory retirement rule that they had to retire at age 60.

So we on the Aging Committee had some hearings about the matter. As a matter of fact, our counsel participated in a case before the U.S. Supreme Court. The Supreme Court held under existing law that that mandatory retirement provision was valid; but the committee that is handling this bill today, the subcommittee of which is chaired by my distinguished colleague, the gentleman from Florida (Mr. FASCELL) responded to an appeal that we addressed to them. Your committee through the very able and lovely gentlewoman from Colorado (Mrs. SCHROEDER) is going to offer an amendment that is agreed to now by the State Department as I understand it, raising the mandatory retirement age from 60 to 65. That is not everything we would like, but that is a good beginning.

I rise to commend your distinguished committee and all who had a part in making that salutary step forward to make it possible for more people to continue doing a good job when they are competent and qualified to do so, and not to be thrown out of that job because of some arbitrary and meaningless criterion of age. Thank you very much for the proposed amendment.

Mr. BUCHANAN. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Chairman, I rise in basic support of H.R. 6790, the Foreign Service Act of 1980. This is the first major update and codification of Foreign Service laws and rules in 34 years. As the only member of both committees of jurisdiction, I call your attention to the fact that we have put over a year of work into this bill, and it is, for the most part, a balanced, progressive piece of legislation which should govern the Foreign Service well for many years to come. It is a necessary measure, I think, because although small as Government departments go the Department of State has become a cumbersome bureaucracy overaddicted to paper. There are significant defects in State Department personnel management, some of which this bill addresses.

Specifically, the reconciliation of civil service reform with the uniqueness of the Foreign Service and its mission was accomplished in a practical fashion at the subcommittee level.

The bill establishes statutory labor-management relations on the Civil Service reform model, but without ignoring the obvious differences between the 2.2-million employee domestic civil service and a 9,000-employee Foreign Service facing the responsibility of representing our country abroad.

We create a mandatory Senior Foreign Service as a rough equivalent of the voluntary domestic Senior Executive Service. The Senior Foreign Service is not a mere extension of the more loosely organized domestic group because the Foreign Service has long had a more grueling, up-or-out system than the civil service.

In the area of job classification the bill abolishes the so-called Domestic Foreign Service as it developed, rather by accident, over the years. We are all agreed that a Foreign Service career must mean that a person is worldwide available and willing to adjust himself and his family to whatever assignment he receives anywhere.

We further recognize the increasing incidence of divorce in the Foreign Service and authorize a new survivor benefit for former spouses, which a court may order the State Department to pay as part of a divorce settlement. The bill codifies the existing practice of awarding an annuity to an employee's former spouse when a court so orders.

Perhaps the most practical part of the bill is its raising of the mandatory retirement age from 60 to 65. Here we have succeeded, I believe, in balancing the issue of age discrimination with the decline in worldwide availability of older Foreign Service employees.

One of the important features of this legislation is its commitment to the principle of merit in recruitment and all aspects of Foreign Service employment. At the same time, the bill properly emphasizes the continued use of affirmative action, minority recruitment programs, and all other aspects of the Federal equal employment opportunity effort.

The Foreign Service was once justly criticized for its narrow base, a small select group which dominated the formation and conduct of U.S. diplomacy. Over the years, however, the Foreign Service changed as applicants—women, as well as men—of diverse ethnic, racial, and religious origins entered the diplomatic service. New forms of discrimination must not be permitted to deflect the thrust of further equal opportunity efforts. In this legislation, we make clear the intent of the Congress that the principle of merit will motivate the employment decisions of the Foreign Service. This concept is thoroughly compatible with a bona fide equal employment opportunity program which includes conscientious affirmative action and a vigorous minority recruitment program. We intend the Foreign Service of the future to be representative of the American people, free of discrimination by virtue of race, religion, gender, or ethnic origin and highly professional in character.

Our supplemental views in the Post Office and Civil Service Committee's report to this bill outlined three areas where the legislation could be improved. One of these areas, the unity of the Peace Corps personnel system, has already been settled pretty much to our satisfaction. In another, the Secretary's ability to acknowledge certain Selection Board decisions without merely rubberstamping them, compromise language will be offered and if the Department of State says it can live with such language, I will not oppose it. Third is the issue of pay. I maintain that it will always be a better idea to allow the President to administratively establish and revise the linkage of Foreign Service with civil service pay, under the general provisions of pay comparability. There are other problems, nonetheless, which are not addressed in the bill—cost-of-living allowances abroad and differences in posts around the world, for example.

My two committees have not reported identical versions of this bill, and as a member of both I will be taking positions on amendments as they are proposed. I will confine myself at this point to repeating to the House what I said so many times during our civil service reform debates in 1978: We must let managers manage in the executive branch if we expect to constructively criticize them later. Only if we give them the tools now will we be able to properly blame or commend them in the future.

Another important consideration is that, among other things, the Foreign Service Act of 1980 rearranges the categories and designations of Foreign Service employees. The Department of State's application of the FSO designation does not really take into account the complexities of the status of various U.S. Government officials who serve abroad. The Department should undertake to accommodate the real needs of the diverse Government agencies serving under Foreign Service aegis overseas and modify its career service designations accordingly.

Mr. Chairman, I will have further comments during the amendment procedure.

Mr. FASCELL. Mr. Chairman, I want to thank my colleagues for their participation in this legislation. As somebody said, it was kind of unique coming out here with two committees working on this bill, and the cooperation has, indeed, been excellent, the bulk of the work falling on the chairperson of the Subcommittee on Post Office and Civil Service and the Subcommittee on International Operations which held joint hearings and markup on the legislation, and the cooperation of the full Committee on Post Office and Civil Service and the full Committee on Foreign Affairs. It has been unusual for a bill of this magnitude.

Mr. Chairman, this is a large bill and as has already been pointed out, it is an attempt to modernize the legislation which has not been done since 1946. Those of us who have now worked on this bill can understand why our predecessors were reluctant to get into this complex area, which involves many agencies and many differing opinions.

I want to acknowledge on the record the excellent effort and hard work of the staff of both committees, the subcommittee and the full committee, as well as the organizational groups. I simply repeat this so that the record will reflect and my colleagues will get some of the flavor involved in what is really not only a major piece of legislation but a very important piece of legislation, with all of the agencies involved who have some responsibility in this area other than the State Department—the International Communication Agency, the Agency for International Development, the Arms Control and Disarmament Agency, Commerce, Agriculture, and the Peace Corps. Those are just the Agencies involved in this effort. There are also many different organizational groups who have some interest in what happens to the Foreign Service. All of their interests are affected by this.

Suffice it to say that there was a great deal of testimony, and a great many suggestions. I want our colleagues, Mr. Chairman, to know that between the two committees we considered every single suggestion that was submitted to the committees either by way of separate legislation, amendments or testimony. They totaled approximately 400 suggested changes. I just repeat that. They totaled 400. I have never been involved with a piece of legislation that received as much careful, thoughtful consideration, despite the fact that even at this moment there may be some differences of opinion about which is the best thing to do about one problem or another that still remains. We do not claim to be perfect; we just tried to get as perfect as we could get, but all of those elements were very carefully considered. Every single word of this bill was read by both committees. Every single word, sentence, paragraph and punctuation mark was analyzed as to where it came from, what it means, what changes were involved, what effect it would have. I cite that thoroughness and that careful approach to the problem because we are codifying all of this law applying to the Foreign Service in one place. Some of these provisions were law; some of them were regulations; some of them were executive orders; some of them were matters of precedent.

We then also provided pay comparability for the Foreign Service which we as Members of Congress laid down in the law, but which for 10 years has not been implemented. During this long process, we found that we were all going in the same direction, which was an admission—an admission that we in this country—and I say that in the broad general sense, not just the Congress—had literally ignored the people who represent us in the State Department, for whatever reason, whether it was bias or just because we did not want to get to it, or because we do not like the way things are going in foreign policy, or for whatever reason. The fact is that we put, rightly or wrongly, purposefully or not, an absolutely indescribable burden on people who were trying to do their very level best to represent the United States through our Foreign Affairs agencies—our Foreign Service.

In the smallest executive department with the fewest people—the State Department—the pay is not comparable to others in the Government. Involved are dangerous assignments, rotation, completely tearing up families, all kinds of personal psychological problems. We have arrived at the point where people coming into the Foreign Service who have any talent see no daylight and no reason to sacrifice his entire life for a career that could not promise him anything in 20 years. Today, ambassadors are shot, consuls are shot, people are kidnaped, terrorists take over, embassies are sacked, and we have 52 hostages.

□ 1650

The world has changed and this legislation is absolutely essential.

Mr. Chairman, in closing I want to again reiterate my gratitude to the gentlewoman from Colorado who chaired the Subcommitee on Civil Service of the Committee on Post Office and Civil Service, the staff on that committee and the staff on my own committee and all of the agencies and the organizations through their representatives who worked through the months to bring this piece of legislation to the point where it is today.

Mr. Chairman, I rise in support of H.R. 6790, the Foreign Service Act of 1980. At any time, this legislation would be of vital importance. But it is particularly timely and significant today as we continue to count the days of captivity of our Foreign Service Officers and military personnel in Iran. It is now 310 days since the takeover of November 4, 1979. One of my former staff is the ranking officer being held.

Unfortunately, the present crisis is not the first instance of an attack on U.S. personnel and installations overseas. In the past 10 years, 14 U.S. officials, including 5 Ambassadors, were murdered overseas—an average of 1 death every 260 days. Thirty-eight kidnapings have occurred, making an average of 1 every 96 days. Thirty-two personnel have been seriously wounded—an average of 1 every 114 days. And in the same period, 208 attacks have been made on our people and our installations in 43 countries, making an average of 1 terrorist attack every 17½ days. In the past 12 months, more than 3,500 U.S. employees and their dependents have been evacuated from post under emergency circumstances. In the 13 years since 1967, we have lost almost as many people as in the first 180 years of this Nation's existence. It is my strong conviction, Mr. Chairman, that the dangers of the Foreign Service life can no longer be ignored.

Indeed, over the past few months, the American people have been shown graphically that the Foreign Service is not composed of so-called "striped-pants cookie pushers" who spend their time at cocktail parties. On the contrary, it is a small, very capable group of motivated and hard-working individuals who have been asked to accept increasing responsibilities overseas to represent U.S. foreign policy interests, but who have not been given the human and financial resources with which to do the job.

Mr. Chairman, this bill begins to address these problems by reorganizing the Foreign Service to encourage more workable career patterns, providing a more rational set of allowances and benefits, and finally providing pay comparability with the Civil Service—a 10-year requirement of law which has too long been ignored. There is much that we as a Congress need to do to provide the solid foundation on which U.S. foreign policy interests can be represented effectively and efficiently. This bill is a vital beginning.

H.R. 6790 is the product of 3 years of study and review within the executive branch, at the urging of the Foreign Affairs Committee, and a full additional year of deliberation on the part of our committee and the Post Office and Civil Service Committee, including 14 days of hearings, and 5 days of subcommittee and committee markup.

I would like at this point to express my deep appreciation to my colleague, John Buchanan, the ranking minority member of the Subcommittee on International Operations for his invaluable help and expertise. I also want to thank Congresswoman Pat Schroeder, chairman of the Subcommittee on Civil Service, and her ranking minority member, Congressman Jim Leach. Their patience and willingness to devote countless hours of member and staff time to this legislation has helped produce a bill of which we can justly be proud.

I also want to express my deepest appreciation and admiration especially to the Department of State and the International Communication Agency, as well as to the other agencies who have so ably assisted us. My respect for the unsung abilities of our foreign affairs agencies has reached new highs. Former Secretary of State Cyrus Vance and Under Secretary of State Ben Read made personal and long-standing commitments to this legislation which demonstrate the importance which they attach to it. Secretary of State Muskie has continued that commitment.

I also want to thank the American Foreign Service Association and the American Federation of Government Employees for their able assistance. Because of the significance of this legislation to the Foreign Service as a whole, their memberships should be proud of the hard work and productive suggestions made by those unions.

Mr. Chairman, as my colleagues can see, this legislation is the product of exhaustive efforts. We took some 400 suggestions made by every witness who appeared before us or who submitted a written statement and either adopted, rejected or modified them. We heard from every group who had any interest in this legislation, as well as from numerous individual members of the Foreign Service and personnel experts from across the country.

Mr. Chairman, this legislation is vitally important not only to individual Foreign Service members, but also to the Foreign Service as an entity responsible for representing U.S. foreign policy interests. The Foreign Service as a whole is this Nation's most important resource of qualified professional personnel available to assist the President and the Secretary of State in the formulation and conduct of the foreign relations of the United States. Yet today's Foreign Service is operating under the structure and philosophy of 1946, when the last comprehensive revision of Foreign Service legislation was accomplished.

At that time, the United States maintained relations with only 71 nations, and international organizations played a very limited role in international affairs. Today, the United States maintains relations with 144 nations and participates in approximately 46 international organizations. The Department of State and the other foreign affairs agencies provide the foreign policy personnel who staff 283 posts abroad. Ironically, they represent only 20 percent of the total American civilian presence overseas, while at the same time possessing the major foreign policy responsibility. Indeed, only the Department of State, among all the foreign affairs and nonforeign affairs agencies of this Government, staffs all 283 U.S. posts abroad.

In 1946, there were 4,285 Foreign Service officers and staff. The United States conducts its foreign relations today with almost the same number of Foreign Service members it had in 1959, 21 years ago, when the United States maintained relations with only 85 nations.

Further eroding our ability to mount an effective foreign policy effort are the problems of inflation and dwindling resources. While the Department of State is the senior department of Government, it has the smallest budget among the Cabinet departments. Since 1967, when the Department of State had a personnel level of 18,628, there has been an 8.4-percent decrease in personnel, while larger Cabinet departments have increased their personnel numbers, in some instances by as much as 44 percent.

This erosion has occurred at the same time that the responsibilities, burdens and risks of Foreign Service life have increased enormously. More Americans are traveling overseas than ever before, with resulting problems which must be handled by members of the Foreign Service. In the past 12 years, five U.S. Ambassadors and five Foreign Service officers have been killed by terrorists. As we debate this bill, 52 Americans are still being held hostage in Tehran.

The dangers and hardships endemic to the Foreign Service, taken together with the resource cutbacks of recent years, have produced the most serious morale problem in the 200-year history of the Foreign Service. In 1979, for the first time in its history, the Foreign Service received more rejections than acceptances from those who were offered positions. At the same time, only 11,000 people took the Foreign Service examination, compared with 20,000 in 1963. Ironically, the major reason for this new phenomenon is not the increased danger, but the low pay of the Foreign Service compared with the Civil Service, and the overwhelming fact that the Government service in these highly inflationary times, is no longer financially competitive with the private sector. The Foreign Service has always attracted highly intelligent and motivated people. Such individuals are equally attractive to the private sector. Yet today, only the private sector is willing to provide adequate salaries and benefits to able people, so it is not surprising that the Government is losing the battle for good personnel. This bill attempts to redress that imbalance by mandating pay comparability between the Foreign Service and the Civil Service and providing a more rational system of allowances and benefits which recognizes the realities of Foreign Service life.

At this point, Mr. Chairman, let me highlight the major provisions of the bill as reported by the Foreign Affairs Committee:

First. Requiring worldwide availability for all members of the Foreign Service and converting to the Civil Service those individuals who are not worldwide available.

Second. Extending to the Departments of Commerce and Agriculture the authority to utilize the Foreign Service Act for personnel serving overseas.

Third. Creating a Senior Foreign Service, similar to the Senior Executive Service, with vigorous entry requirements, performance pay for outstanding service, and the possibility of limited career extensions.

Fourth. Providing pay comparability for the Foreign Service with the civil service.

Fifth. Extending the "selection-out" system, which provides for removal of personnel for substandard performance, to all career U.S. personnel in the Service, and to provide due process protections for that system.

Sixth. Establishing a bill of rights for members of the Foreign Service which emphasizes existing prohibitions against discrimination, encourages recruitment of women and minorities, and provides protection from reprisals for dissenting views or good faith disclosures of information concerning violations of law, mismanagement or abuse of authority.

Seventh. Raising the mandatory retirement age for the Foreign Service from 60 to 65.

Eighth. Providing a legislative division of retirement and survivor's annuities for former spouses of member of the Foreign Service.

Ninth. Encouraging and facilitating the assignment of Foreign Service members to Government agencies, and to the private sector.

Mr. Chairman, this bill is vital to the Foreign Service and constitutes a very important recognition by the Congress of the need for a strong and motivated Foreign Service. The bill builds incentives into the foreign policy effort to stop the exodus of talented people and reverse the trend away from Government service.

Secretary of State Muskie's strong support for this bill reflects the foreign policy philosophy expressed by him during his confirmation hearings:

> The Secretary of State must make sure that the State Department and the Foreign Service, as a whole, are fully engaged in the processes by which policy is made and in discussion of foreign policy with the Congress and our public.

I urge my colleagues to support this bill.

● Mr. WOLFF. Mr. Chairman, I rise in support of the Foreign Affairs Committee amendment to raise the mandatory retirement age for Foreign Service officers from 60 to 65 years. In fact, Mr. Chairman, I would prefer to see the mandatory age lifted altogether.

Obviously, foreign service officers serve in sometimes dangerous posts, some of which demand top physical condition. However, all officers at 60 or 65 are not incapable of serving in such posts. Aging, like every other human factor, is a very individual matter. We should not toss aside the considerable expertise of an entire career simply because someone has reached a certain age. In addition, it seems that one should not have to leave the service simply because he or she cannot serve in a few difficult posts.

In lieu of lifting the mandatory nature of this provision, it is useful to raise the mandatory retirement age from 60 to 65. While many dream of the day of retirement, there are those who would prefer to work as long as they possibly can. Many people have such a personal investment in their work that mandatory retirement is literally a death sentence, not a release to freedom and leisure.

I have often seen the tragedy of bright and capable people who retire, only to drift and disintegrate, like a ship without anchor. Why must this Nation structure our work patterns as to make the years after 65, for some, simply a useless period—a professional put out to pasture.

Very appropriately, today is the birthday of one of our distinguished colleagues, Congressman CLAUDE PEPPER. Today he is 80 years old, and serving his country with distinction and competence. I would submit that the job of being a Member of Congress is every bit as demanding as any position in the Foreign Service—and after this summer the Washington, D.C., post may also qualify as a hardship assignment.

Throughout my 16 years in Congress, while I have had my disagreements with the State Department, I have recognized the top caliber of many Foreign Service officers. They have served their country well and competently. I do not agree that the expertise amassed during years of service should be lost to the Foreign Service and the country because of a mandatory retirement age.

Therefore, I support at least raising the mandatory retirement age to 65, and urge my colleagues to support the committee amendment.●

● Mr. HARRIS. Mr. Chairman, I rise in support of H.R. 6790 because it will assure that merit is the middle name of the Foreign Service. It will also simplify the diverse categories of employment and facilitate the most effective utilization of employees by making the divergent personnel systems of various agencies more compatible.

I want to commend Chairwoman SCHROEDER and Chairman FASCELL for the comprehensive approach they have used in considering this legislation which was referred jointly to two committees. I participated in the joint subcommittee actions which, although they were exhaustive, resulted in the two full committees acting favorably on very similar provisions.

I would like to direct the attention of my colleagues to an amendment which will be offered by the Post Office and Civil Service Committee concerning the recommendations of the selection boards. I successfully offered this amendment during full committee consideration. This amendment will insure that career appointments will be extended based on merit as recognized by duly established selection boards. This is the key to maintaining merit in the Foreign Service personnel system, and I urge my colleagues to support it.

Mr. FASCELL will be offering an amendment to allow management flexibility in extending appointments in very limited situations when such action is determined by the Secretary to be in the public interest or when Presidential appointees would be terminated due to time-in-class limitations. I have been assured that this flexibility could have no adverse effect on individuals recommended for extensions by the selection boards, and I have no problem with the amendment based on that assurance.

I think it is important that the House pass this legislation because it will make the Foreign Service personnel system more understandable, and aid in recognizing and rewarding the very valuable services performed by our career Foreign Service employees.

I am also pleased to offer full support for the proposed Simon amendment. I think that the time has come to establish at least two model foreign language competency posts. As a member of the House group studying the state of foreign languages and international studies in the United States and its impact on the Nation's internal and external strength. I realize the importance of having all embassy personnel proficient in their host country language. These models will be an excellent start.

This amendment is not a response to a specific threat, but a recognition that America will continue to be faced with political crises around the world whose solutions will definitely require a capacity to understand the language and cultures of other global actors. The ability to speak a foreign language and understand other cultures is an important tool in America's ability to conduct foreign policy. I want to assure my friends, Congressman SIMON and Congressman PANETTA, that I will continue to work with them in all ways to improve international education.●

● Mr. WOLFF. Mr. Chairman, I rise in opposition to the Ford amendment, and in support of section 814 as reported of H.R. 6790. Section 814 establishes Federal guidelines for the State divorce court to encourage equitable distribution of retirement and survivor's benefits for Foreign Service officers and their current and former spouses. It establishes a presumption that former spouses, married 10 years or longer, would be entitled to a pro rata share of the Foreign Service members' retirement and survivors annuities.

Mr. Chairman, the spouses of Foreign Service officers suffer from special hardships by virtue of the career of their husband or wife. Generally the spouse is not able to pursue a career or paid professional activity while the Foreign Service officer is overseas. Often the spouse performs voluntary work which supports the career of the officer. This work is an important service to our country, and to our diplomatic service.

In addition, Foreign Service spouses suffer the further hardship of frequent moves from the United States to various foreign posts. The impossibility of pursuing a continuous and consistent career is obvious.

There have been many tragic cases of spouses, primarily women, who have accepted the hardships of their husband's careers. These women have often fulfilled the demanding functions of homemaker in the sometimes difficult circumstances of foreign posts. When these marriages end in divorce, after many years, the divorced spouse has too often found herself completely out in the cold, without retirement or survivors benefits from her divorced spouse, without a career background, and thus without her own retirement benefits.

In addition to these considerations, we must remember that the Foreign Service career itself can cause added adversity for a marriage, creating pressures which may lead to divorce.

I think that the Schroeder provision, section 814 makes sense. The argument that this provision in any way infringes on State divorce courts does not hold water. The Schroeder provision establishes a presumption that former spouses who were married for 10 years or more would be entitled to a pro rata share of retirement or annuities, unless it is modified or revoked by court order.

Thus, what the Schroeder provision does is to provide Federal guidance, so that the outcome in each case does not depend entirely on the underlying marital property law of the State in which the divorce happened to be heard. Yet, it does not preclude the court from preventing the divorced spouse from receiving these funds, if the particular case is severe enough to require that step.

I urge the defeat of the Post Office and Civil Service Committee amendment.●

Mr. FASCELL. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. BUCHANAN. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. LEACH of Iowa. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read for amendment. It shall be in order to consider en bloc any of the amendments recommended by the Committee on Post Office and Civil Service now printed in the bill in an order recommended by the chairman of that committee.

The bill is as follows:

H.R. 6790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atomospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of

State, except that (subject to section 201(b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such terms means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a)(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit priniciples.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d)(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency, the Director of the United States International Development Cooperation Agency, the Secretary of Agriculture, and the Secretary of Commerce may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other Act),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL OF THE FOREIGN SERVICE.—(a) There shall be an Inspector General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals exceptionally qualified for the position by virtue of their integrity, their knowledge and experience in the conduct of foreign affairs, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to and be under the general supervision of the Secretary of State. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the previous year;

(B) a description of the recommendations for corrective action made by the Inspector General during the previous year with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the previous year.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of the individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(f) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foregin Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or

other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

Chapter 3—Appointments

Sec. 301. General Provisions Relating to Appointments.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

Sec. 302. Appointments by the President.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) The President may confer the personal rank of ambassador, to be effective for a period not exceeding six months, upon an individual who is undertaking a special mission for the President if the President, before conferring such rank, transmits to the Committee on Foreign Relations of the Senate a written report of his intent to confer the personal rank of ambassador upon such individual and transmits with that report all relevant materials concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

Sec. 303. Appointments by the Secretary.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

Sec. 304. Appointment of Chiefs of Mission.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

Sec. 305. Appointment to the Senior Foreign Service.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

Sec. 306. Career Appointments.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendation of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

Sec. 307. Entry Levels for Foreign Service Officer Candidates.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class FS–5 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class FS–4 in the Foreign Service Schedule.

Sec. 308. Recall and Reemployment of Career Members.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be called to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

Sec. 309. Limited Appointments.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

Sec. 310. Reemployment Rights Following Limited Appointment.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

Sec. 311. Employment of Family Members of Government Employees.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

SEC. 403. FOREIGN SERVICE SCHEDULE.—(a) There is hereby established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter.

(b) The Foreign Service Schedule shall have 10 salary classes, designated FS–1 through FS–10, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

Salary class:	Shall correspond to grade:
FS–1	GS–15
FS–2	GS–14
FS–3	GS–13
FS–4	GS–12
FS–5	GS–11
FS–6	GS–9
FS–7	GS–7
FS–8	GS–6
FS–9	GS–5
FS–10	GS–4

(c) Each class in the Foreign Service Schedule shall have 14 salary steps. The first 10 salary steps in each class shall be equal to the steps for the corresponding grade in the General Schedule and the remaining 4 steps shall be in increments equal to the average increment of the first 10 steps in that class.

(d) Salary may not be paid under the Foreign Service Schedule at a rate in excess of the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(e) The Secretary of State shall prescribe regulations to carry out this section.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b) (1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other members of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary of that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which execeeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406. WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

(1) 52 calendar weeks of service in each of salary steps 1 through 9, and

(2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by

Foreign Service personnel assigned to class FS–10 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a)(1) The Secretary shall establish compensation plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)). Any compensation plan established under this section may include provisions for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements. A special differential may not be paid under this subsection with respect to work which is the basis for premium pay under subsection (b).

(b) Members of the Service (other than members of the Senior Foreign Service) shall be entitled to receive premium pay to the extent provided under subchapter V of chapter 55 of title 5, United States Code.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—(a) The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a)(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expense of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in this Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS–1 in the Foreign Service schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion to the Senior Foreign Service.

(2) Decisions by the Secretary on the number of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selected boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 406(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Foreign Service, performance evaluation reports of supervisors, records of commendations, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATION.—(a) Recommendations for promotions made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607. RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a) (1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary.

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c) (2); or

(2) who is retired under section 607(c) (1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607 (c) (1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund as provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a) (1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a) (2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institute (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702.—FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations:

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4) (A) employ in accordance with the civil service laws such personnel as may be neces-

sary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(c) In the implementation of this chapter, the Secretary shall seek to design training programs which will encourage and foster career development for the various categories of members of the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to memebrs of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member of his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b)(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them abroad; and

(C) otherwise assisting them in obtaining employment abroad.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802. MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an indiviual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age, on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or amendment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participants shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c) (1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d) (1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b) (1) (A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participants shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a) (5).

(3) (A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1) (B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b) (4) (B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day the participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c) (1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c) (3), and

(B) the minimum specified in subsection (1) (2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b) (2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to some one other than that participant.

(i) (1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during the period of recall service or who qualifies for an annuity under section 814 (a) or (b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b) (5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsections (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l) (1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right to any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814(b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814(b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity die in service after being recalled under section 308 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during the period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806(b)(3).

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3)) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b)(1) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(l) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (e).

Sec. 815. Lump-Sum Payments.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsections (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section

805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805(d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806 (a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(l) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332 (l) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is **transferred, be counted as creditable service under any other Government retirement system.**

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809 (e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814(b) or (c), and the amount of any such annuity under section 814(b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump sum credit under section 815(a) or (b);

shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This paragraph shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(4) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this Act on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a) (1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(o) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b) (2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or decreased participant on the effective date of the then last preceding gen-

eral annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall by Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from acompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed two round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to succesive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States, including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375 (a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the

Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

Sec. 903. Required Leave in the United States.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

Sec. 904. Health Care.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

Sec. 905. Representation Expenses.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

Sec. 1001. Labor-Management Policy.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representating members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Sec. 1002. Definitions.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constituition, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

Sec. 1003. Application.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligations to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall be regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia, which shall conduct its review on the same basis as an appeal from a decision of a District Court.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit, or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a)(1)(A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the operations of the Department, but informational picketing in the United States which does not interfere with such operations shall not be considered an unfair labor practice; and

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a non-duty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a) (1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607 (b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101 (a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) Except with respect to grievances described in section 1101(a)(1)(A), a grievant who is a member of a bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative. Such a grievant has the right to represent himself or herself under departmental procedures with respect to a grievance; however, the exclusive representative shall have the right to be present during the grievance proceedings.

(2) Any grievant who is not a member of a bargaining unit, or whose grievance is described in section 1101(a)(1)(A), has the right at every stage of the proceedings to representation of his or her own choosing.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under Section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department of State for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

SEC. 1106. BOARD PROCEDURES.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department of State.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceeding of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

SEC. 2101. PAY AND BENEFITS PENDING CONVERSION.—Except as provided in section 2104 (b), until converted under the provisions of this chapter, individuals who are in the Foreign Service immediately before the effective date of this Act and who could be converted under section 2102 or 2103 shall be treated for purposes of salary, allowances, and all other matters as if they had been converted under section 2102 or 2103, as the case may be, on the effective date of this Act.

SEC. 2102. CONVERSION TO THE FOREIGN SERVICE SCHEDULE.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

SEC. 2103. CONVERSION TO THE SENIOR FOREIGN SERVICE.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments a class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

SEC. 2104. CONVERSION FROM THE FOREIGN SERVICE.—(a) In the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) In the case of individuals in the Foreign Service in the International Communication Agency who immediately before the date of enactment of this Act are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) shall begin on July 1, 1981. Prior to that date, any individual in the Foreign Service exempted from conversion by this subsection may elect to remain in the Foreign Service and, notwithstanding any other provision of law, the status, promotion, class, and tenure of such individuals shall continue to be governed by the Foreign Service Act of 1946 and Public Law 90–494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, and 405) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 504, 610, and 803 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are temporarily excepted from conversion under this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

SEC. 2105. CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent to the Senate, those employees who elect conversion under subsection (a) (1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1)

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

SEC. 2106. PRESERVATION OF STATUS AND BENEFITS.—(a)(1) Subject to paragraph (2), every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2)(A) Conversion under section 2102 of any individual in the Foreign Service to the Foreign Service Schedule shall in each case be to a class determined on the basis of the rank held immediately before the effective date of this Act, in accordance with the following table:

If the rank held immediately before the effective date is:	The individual shall be converted to the following class:
FSO–3, FSR–3, FSRU–3, or FSS–1	FS–1
FSO–4, FSR–4, FSRU–4, or FSS–2	FS–2
FSO–5, FSR–5, FSRU–5, or FSS–3	FS–3
FSO–6, FSR–6, FSRU–6, or FSS–4	FS–5
FSO–7, FSR–7, FSRU–7, or FSS–5	FS–6
FSO–8, FSR–8, FSRU–8, or FSS–6	FS–7
FSS–7	FS–8
FSS–8	FS–9
FSS–9	FS–10
FSS–10	FS–10

(B) Each individual converted to a class under subparagraph (A) shall be placed in the salary step in that class which is the numerical equivalent of the step that individual was in immediately before such conversion unless the individual is entitled to be in a higher step under the provisions of paragraph (1).

(C) Any individual converted under this subsection whose basic rate of salary immediately before conversion exceeds the salary rate for the step to which he or she is converted shall be entitled to continue to receive salary at the former rate at time of conversion. Such salary rate shall be increased by 50 percent of the amount of each increase in the individual's new salary step until the rate is equal to the rate which would be applicable but for this paragraph.

(D) Not later than 6 months after the effective date of this Act, each career member of the Foreign Service holding the rank of FSO–6, FSR–6, FSRU–6, or FSS–4 immediately before such effective date shall be evaluated and considered for promotion to salary class FS–4 by a Foreign Service selection board in accordance with chapter 6 of title I of this Act.

(3) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service or

(2) in any other office or position continued by this Act,

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a) (2) of the Foreign Service Act of 1946 immediately before the effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

SEC. 2107. REGULATIONS.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

SEC. 2108. AUTHORITY OF OTHER AGENCIES.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

CHAPTER 2—AMENDMENTS RELATING TO FOREIGN AFFAIRS AGENCIES

SEC. 2201. BASIC AUTHORITIES OF THE DEPARTMENT OF STATE.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"SEC. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d)(2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d)(1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry on the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"SEC. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"SEC. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"SEC. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"SEC. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, the United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"SEC. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"SEC. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'.".

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2202. PEACE CORPS ACT.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f)(1)—

(A) in subparagraph (A) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and

(2) in subsection (h)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b)(1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(i) by striking out ", who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) The President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no individual whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe.".

(2) Section 7(a)(4) of the Peace Corps Act (22 U.S.C. 2506(a)(4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980,".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

SEC. 2203. FOREIGN ASSISTANCE ACT.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.".

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

(d) Section 631(c) of such Act (23 U.S.C.

2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

SEC. 2204. ARMS CONTROL AND DISARMAMENT ACT.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2205. REPEALED PROVISIONS.—The following are repealed:

(1) The Act entitled "An Act to improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801–810, 816, 817, 821, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886 889, 890, 896, 900, 901, 902, 906–915, 921–924, 926–928 936–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076, 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103–1106, 1111, 1112, 1116, 1121, 1131, 1136–1138a, 1139, 1148–1151, and 1156–60.

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat. 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Section 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States bv strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929–932, 1221–1234).

(7) Section 104(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079–1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g–1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 10791).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m–1079s).

SEC. 2206. OTHER CONFORMING AMENDMENTS.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out "section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g–1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 866, 867), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402 and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,", and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980;".

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056(b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5(a) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2)" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 cf the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(1) of the Internal Revenue Code of 1954 (26 U.S.C. 170(1)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the States Department Basic Authorities Act of 1956.".

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055(c)) is amended—

(1) in paragraph (1) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597. Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employees former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.".

(b)) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service.".

SEC. 2302. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large.".

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee".

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—Paragraph (2) of section 5541 of title 5, United States Code, is amended—

(1) by striking out clauses (xiv) and (xv) and inserting in lieu thereof the following:

"(xiv) a member of the Senior Foreign Service; or"; and

(2) by redesignating clause (xvi) as clause (xv).

SEC. 2305. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title I of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2306. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2307. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(i)" and by striking out "of the Department of State" and all that follows through "type of education".

SEC. 2308. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

(3) by adding at the end thereof the following new subsection:

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.".

SEC. 2309. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.".

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay.".

SEC. 2310. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5, United States Code, as amended by section 2309(a), is further amended by adding at the end thereof the following new section:

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee.".

(b) The analysis for chapter 59 of title 5, United States Code, as amended by section 2309(b), is further amended by inserting "§ 5928. Danger pay allowance"

after the item relating to section 5927 the following:

"5928. Danger pay allowance.".

Sec. 2311. Leave.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)-(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position in the Department of State which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.".

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

Sec. 2312. Retirement Credit for Imprisoned Foreign Nationals.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.".

Sec. 2313. Conforming Amendments to Title 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c)(2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c)(1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(3) Section 5404 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking cut "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e)(2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50.".

(f)(1) Section 6301(2)(xii) of title 5, United States Code, is amended by striking out "an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a)(2)(iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon ", the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1)(C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980".

CHAPTER 4—SAVING PROVISIONS, CONGRESSIONAL OVERSIGHT, AND EFFECTIVE DATE

Sec. 2401. Saving Provisions.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

Sec. 2402. Congressional Oversight of Implementation.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601 (c)(2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

Sec. 2403. Effective Date.—(a) Except as otherwise provided, this Act shall take effect on October 1, 1980.

(b)(1) Chapter 8 of title I of this Act shall take effect on the later of October 1, 1980, or the 90th day after the date of enactment of this Act. If such effective date is after October 1, 1980, the provisions of sections 519, 631, 632, and 636 and of title VIII of the Foreign Service Act of 1946, and the provisions of section 8 and 9 of Public Law 90-494, shall remain in effect until such effective date, notwithstanding the repeal of those provisions by section 2205.

(2) The provisions of such chapter regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after such effective date becomes a former spouse of an individual who separates from the Service after such date.

(3) The provisions of such chapter regarding the rights of former spouses to receive survivor annuities under section 814(b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the committee amendment to page 18.

The Clerk read as follows:

Post Office and Civil Service Committee amendment: Page 18, strike out line 14 and all that follows down through line 21, and insert in lieu thereof the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce with respect to those employees of the Department of Commerce performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979 may utilize the Foreign Service personnel system in accordance with this Act.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado (Mrs. SCHROEDER) has 5 minutes to explain her amendment if that is her desire.

Mrs. SCHROEDER. Mr. Chairman, I would be more than happy to yield to the gentleman from Florida for his substitute. This amendment, which was adopted by the Committee on Post Office and Civil Service, was recommended by the administration. It places limits on the abilities of the Secretaries of Commerce and Agriculture to utilize the Foreign Service personnel authorities by saying that those authorities can only be used for certain foreign affairs related aspects of their Departments.

Subsequent to adoption by the committee, a series of discussions took place within the administration. As a result, the administration agreed to accept slightly more flexible language, which I understand will be offered by the gentleman from Florida (Mr. FASCELL). I have no problem with this change and will accept it.

AMENDMENT OFFERED BY MR. FASCELL AS A SUBSTITUTE FOR THE POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENT

Mr. FASCELL. Mr. Chairman, I offer an amendment as a substitute for the Post Office and Civil Service Committee amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL as a substitute for the Post Office and Civil Service Committee amendment: In lieu of proposed new section 202(a) shown in italic type beginning in line 22 of page 18 and ending in line 8 of page 19, insert the following:

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM—(a)(1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment offered as a substitute for the committee amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. The gentlewoman from Colorado has explained what the substitute is about. The gentlewoman offered the committee amendment. This substitute represents a compromise between the two committee versions and would specifically permit use of the Foreign Service Act authorities by the Foreign Commercial Service and the Foreign Agricultural Service. It would also permit the President to direct the authorities to be used for other personnel in both Departments who serve abroad. This is consistent with our intent that a requirement of service abroad be central to the use of Foreign Service Act authorities. Therefore I urge support of the substitute.

Mr. BUCHANAN. Mr. Chairman, I rise in support of the substitute amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL) as a substitute for the Post Office and Civil Service Committee amendment.

The amendment offered as a substitute for the Post Office and Civil Service Committee amendment was agreed to.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendment, as amended.

The Post Office and Civil Service Committee amendment, as amended, was agreed to.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to observe that the committees involved would include at this point the Committee on Interior and Insular Affairs and the Ad Hoc Committee on Energy. They refer to this legislation as being on the fast track.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule which allows us to be on this fast track, I ask the Clerk to report the following committee amendments to be considered en bloc.

The amendments are to pages 47 and 222, relating to the Foreign Service schedule.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 47 in the table below line 19, strike out "GS-7", "GS-6", "GS-5", and "GS-4" and insert in lieu thereof "GS-8", "GS-7", "GS-6", and "GS-5", respectively.

Page 222, strike out line 3 and all that follows down through line 10.

Page 222, line 11, strike out "(D)" and insert in lieu thereof "(C)".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendment was adopted by the Committee on Post Office and Civil Service. It corrects a problem which we created in subcommittee in the statutory pay linkages. When we decided to link Foreign Service pay rates to the general schedule, we did so because the President has not used his authority over the past decade to keep Foreign Service pay rates comparable with the general schedule. However, in linking the rates, we pegged the lower paid Foreign Service staff to general schedule rates which were too low, given the knowledge, skill, and expertise of the positions. In the Post Office and Civil Service Committee, we corrected those linkages. This amendment makes the change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to page 60, relating to the designation of Foreign Service positions.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Post Office and Civil Service Committee Amendments. Page 60, line 3, immediately before "The" insert "(a)". Page 60, after line 16, insert the following new subsection:

(b) A position in the United States may be designated as a Foreign Service position under subsection (a) only if the Secretary determines—

(1)(A) that the functions of the position cannot be performed without significant experience abroad in the conduct of foreign affairs, or

(B) that the position is required to be designated as a Foreign Service position—

(i) to provide opportunities for rotation of members of the Service from assignments abroad to assignments in the United States, or

(ii) to provide training for future assignments abroad, and

(2) that the advantages of continuity of incumbency or specialized skill in the position do not outweigh the advantages from its designation under this subsection.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, I now offer an amendment adopted by the Committee on Post Office and Civil Service which restricts the use of the Foreign Service personnel authorities to cases in which there is a clear need.

The amendment, adding a new section 501(b), serves as a limitation on authority of agency heads to use the Foreign Service personnel authorities. This section codifies existing regulations saying that positions in the United States can only be classified as Foreign Service positions if there is a need for foreign policy expertise, a need to provide rotational opportunities or a need for training for future overseas assignments. Also, the advantage of continued incumbency or specialized skills must be outweighed by the advantages of a Foreign Service designation.

The provision reflects a longstanding Federal policy of relying on the personnel authorities contained in title 5, United States Code, unless there is a strong reason to depart from these provisions. The need for rotation and the desirability of an up-or-out system serves to justify the existence of a Foreign Service personnel system. Where these factors are absent, employees should be subject to the same statutory requirements applicable to other government employees.

Despite the fact that section 501(b) is not intended to change the basic groundrules, some in the foreign affairs agencies have voiced concern that statutory limitations on use of Foreign Service authorities might invite legal action. They point to law suits that have been filed in the past on this issue, when there was no statutory limit.

I want to make my position clear: I oppose any unwarranted proliferation of use of the Foreign Service authorities. First, the primary motivation behind this bill was to clear up and simpilify the existing rampant personnel categories in the Foreign Service. Currently, the Department of State has as many as 16 distinct personnel categories, each with its own rights and obligations. This chaos has resulted from the undisciplined way in which management has manipulated personnel rules to meet immediate needs or to respond to momentary shifts in personnel management philosophy. This legislation uses some strong medicine to cure this disease, including the involuntary conversion to the general schedule of some 1,200 to 1,500 Foreign Service employees who do not and are not required or expected to serve abroad. If we are going to clean up this system, let us do it right and prevent the recurrence of what has occurred over the last decade.

Second, the Foreign Service is designed for frequent rotation, worldwide availability, steady career progression within the system, and generalized skills. Under title 5 personnel authorities, employees develop specialized skills, are appointed to positions which contain clearly articulated duties, can only be assigned abroad with their consent, and win promotions through applying for new positions. The Foreign Service personnel system is designed for a specific and particular use, while the title 5 authorities are much more generally applicable. To use the Foreign Service authorities for other purposes undercuts the effectiveness or both systems and creates artificial distinctions between types of employees. Where misuse of the Foreign Service personnel authorities has occurred, poor morale and lower productivity has followed in its wake. Time and time again, agency management has failed to see the ramifications of sloppy usage of the Foreign Service personnel system. This bill is intended to preclude such sloppiness.

Mr. FASCELL. If the gentlewoman would yield, I do not have any problem with the philosophy behind this amendment. My problem is that I do not think these requirements should be in a statute. Rather, I think Congress should communicate its concern and oversee the Department's personnel management to make sure it complies with congressional intent.

There are numerous problems if we place these restrictions in statute. First, are we creating a new right of action by disgruntled employees against the foreign affairs agencies? At the least, I think this would certainly be tested in the courts.

Second, we just created a new personnel system at the Agency for International Development, under the Obey amendment to the foreign aid bill. Does this provision overrule the Obey amendment? The Post Office and Civil Service Committee Report indicates that the Obey amendment is not intended to be altered. Nevertheless, there are those in AID who are quite concerned about a possible change in the law.

Third, does this language cover the Peace Corps? Since 1965, the Peace Corps has had a unique personnel system which utilizes elements of the Foreign Service system for all employees. Does this amendment force the Peace Corps to create two personnel systems?

Because of all these problems, I would prefer to create legislative history on when it is appropriate to use the Foreign Service personnel authorities, rather than doing it by statute.

Mrs. SCHROEDER. I am sympathetic to what you suggest.

Let me clarify the three issues you raised. First, this position designation amendment is not intended to create any new legal rights. Indeed, the Office of Personnel Management, in answer to a query from Chairman HANLEY, believes that no new legal rights are created. I ask unanimous consent that a copy of that correspondence be made a part of the RECORD.

Second, our committee report is quite clear that this amendment does not change the Obey amendment. I know that concerns have been raised.

Third, our committee came out differently on this issue of the Peace Corps personnel system. The langauge in the Foreign Affairs Committee bill provides for a continuation of the status quo in the Peace Corps. I do not intend to contest this issue, although I find the current personnel system at the Peace Corps troublesome. If we adopt the Foreign Affairs language on the Peace Corps, I think our intention not to apply this section to the Peace Corps is quite clear.

Having said all that, I would be perfectly willing to agree to vote down this amendment with the understanding that we have created clear legislative direction to the agencies authorized to use the Foreign Service personnel authorities that they use those authorities in accordance with the criteria set out in the amendment; namely, that positions in the United States should be designated as Foreign Service positions only if the functions cannot be performed without significant experience abroad in the conduct of foreign affairs or if the position is needed for rotational purposes or for training for assignments abroad. Also, the advantage of continued incumbency or specialized skills must not outweigh the advantage of a Foreign Service designation.

Mr. FASCELL. That is fine with me. This gives the agencies the necessary flexibility to insure appropriate staffing.

Mr. Chairman, will the gentlewoman yield further?

Mrs. SCHROEDER. I will be happy to yield to the gentleman from Florida.

Mr. FASCELL. As the gentlewoman knows, I have had some reservations about writing this kind of concern explicitly in statute. I think that the general concept which is sought by the language is fine. I would have no trouble with that because it is rational and is essential.

The other aspect of it is, I just want to be sure we understand that there would be flexibility retained in making these decisions and the only way I could see that that could be done would be to oppose the amendment, although we would have the legislative history and the effort of the gentlewoman's committee to write it explicitly in the statute so that the agency knows exactly what the gentlewoman is talking about.

Mrs. SCHROEDER. Mr. Chairman, I certainly appreciate the gentleman pointing this out. I know we have had trouble deciding this. That is why I would like to put this in the debate as our legislative history on this position designation amendment.

I would be more than willing, I guess, to let the amendment go down to make sure we have not shutoff that flexibility about which the gentleman from Florida is so concerned and I think rightfully so.

Basically, I guess what we are agreeing to do is create legislative history as to where it is we hope we go and yet not put this into the cement at this time because it is still developing.

Mr. FASCELL. I thank the gentlewoman. As usual the gentlewoman is very concise and very thorough. I would hope, therefore, Mr. Chairman, for this legislative history being established, that the committee amendments would then be disagreed to.

☐ 1700

The CHAIRMAN. Is the gentleman opposing the amendments?

Mr. FASCELL. I am opposing this amendment specifically that is before us.

The CHAIRMAN. They are en bloc, and the gentleman is opposing them?

Mr. FASCELL. Yes, that is correct, Mr. Chairman.

Mrs. SCHROEDER. Mr. Chairman, they are the amendments that we are offering as committee amendments en bloc, but we are understanding the problems and the State Department's problems. We want the legislative history here, but we are willing to have them go down. We are just offering them.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were rejected.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to pages 86, 88, 89, 93, and 100 (beginning in line 25), 101, 102, 109, and 111 (relating to rights of former spouses).

The Clerk read as follows:

Post Office and Civil Service Committee amendments: Page 86, line 20, strike out "for not less than 10 years".

Page 88, strike out line 4 and all that follows down through line 10.

Page 88, line 11, strike out "(11)" and insert in lieu thereof "(10)".

Page 89, line 1, strike out "(12)" and insert in lieu thereof "(11)".

Page 89, line 8, strike out "(13)" and insert in lieu thereof "(12)".

Page 93, strike out line 17 and all that follows down through line 20 on page 95 and insert in lieu thereof the following:

(b) (1) (A) Any married participant who retires shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse unless the participant elects in writing at the time of retirement to waive or reduce the maximum survivor annuity for his or her spouse. Any election by any participant under the preceding sentence shall not be considered valid unless the participant establishes to the satisfaction of the Secretary of State (i) that the spouse has been notified of the loss of or reduction in survivor benefits or (ii) that the participant has complied with such notification requirements as the Secretary of State shall, by regulation, prescribe.

(B) If a participant or former participant has a former spouse for whose benefit a survivor annuity is required to be provided by the terms of any court order under section 820(b) (2), the participant shall receive a reduced annuity and provide a survivor annuity for that former spouse under section 814(a).

(2) The annuity of a participant or former participant, excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600.

(3) (A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1) (A).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(a) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(a) (4) (B).

(4) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before (A) the death of the surviving spouse, or (B) if the surviving spouse remarries prior to attaining the age of 60 years, such remarriage. If a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

Page 100, line 6, strike out "804(12)" and insert in lieu thereof "804(11)".

Page 100, line 15, strike out "or surviving former spouse".

Page 100, line 23, strike out "(1)".

Page 100, beginning on line 25, strike out "and his or her spouse jointly elect" and insert in lieu thereof "elects".

Page 101, strike out line 11 and all that follows down through line 16.

Page 101, line 23, after "reduced" insert ", subject to any reduction required to provide a survivor benefit under section 814(a)".

Page 102, line 8, strike out "814(b) (5)" and insert in lieu thereof "814(a) (5)".

Page 109, lines 10 and 14, strike out "814 (b)" and insert in lieu thereof "814(a)".

Page 111, beginning on line 3, strike out "or surviving former spouse who was married to the participant during the period of recall service".

Page 111, beginning on line 11, strike out "or such a surviving former spouse".

Page 111, line 15, after the period insert the following new sentence:

"Any surviving former spouse who was married to the participant during the period of recall service shall be entitled to have the same election rights with respect to an annuity under section 814(a) that a surviving spouse has under this subsection if and to the extent expressly provided in a court order under section 820(b) (2).".

Page 111, line 24, strike out "814(b)" and insert in lieu thereof "814(a)".

Page 114, strike out section 814, beginning on line 1 and ending on line 8 of page 121 and insert in lieu thereof the following:

SEC. 814. FORMER SPOUSES.—(a) (1) If a court order under section 820(b) (2) expressly so provides, in the case of any participant who is entitled to receive an annuity and who is survived by a former spouse, the former spouse shall be entitled to a survivor annuity in an amount which shall be determined by or in accordance with the provisions of that court order if the court order is consistent with the provisions of this chapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4) (A) The maximum survivor annuity or annuities for any spouse or former spouse or combination of such survivor annuities, under this subsection (and section 806) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806.

(B) Once a survivor annuity has been provided for under this subsection (or section 806) for any spouse or former spouse of a participant or former participant, a survivor annuity may thereafter be provided for a spouse or former spouse of that participant under this subsection (or section 806) only for that portion (if any) of the maximum available which is not committed for survivor benefits for any spouse or former spouse whose prospective right to such annuity has not terminated.

(C) After the death of a participant or former participant, a court order under section 820(b) (2) may not adjust the amount of the annuity of any former spouse under this subsection.

(5) (A) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4) (B), the participant may elect in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(b)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (a) for a former spouse pursuant to a court order under section 820(b)(2), such participant may elect an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State, and any annuity under this subsection shall not be considered as a survivor annuity for purposes of the provisions of section 806(h) requiring an election of certain survivor benefits.

(c) Section 806(1) shall not apply to any annuity payable under subsection (a) or (b).

Page 125, beginning on line 22, strike out "(and to any former spouse" and all that follows down through line 23 and insert in lieu thereof a period.

Page 126, strike out line 7 and all that follows down through line 9 and insert in lieu thereof a period.

Page 129, strike out subsection (1) of section 815, beginning on line 2 and ending on line 18 of page 129.

Page 134, strike out subsection (i) of section 816, beginning on line 8 and ending on line 2 of page 135.

Page 136, strike out line 21 and all that follows down through line 24 of page 137 and insert in lieu thereof the following:

(b)(1) Payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary to another person to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(2) Any former spouse of a participant or former participant shall be entitled to a survivor annuity under section 814(a) of this chapter if and to the extent expressly so provided for in the terms of a court decree of divorce or annulment, or the terms of any court order incident to such decree.

(3) This subsection shall not apply in the case of any court decree or order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

Page 18, line 138, strike out "(3)" and insert in lieu thereof "(4)".

Page 138, line 24, strike out "(4)" and insert in lieu thereof "(5)".

Page 24, strike out line 1 and all that follows down through line 6 on page 139.

Page 267, strike out line 16 and all that follows down through line 25 and insert in lieu thereof the following:

(2) The provisions of such chapter regarding the rights of any former spouse to any annuity under 814(a) shall apply only with respect to an individual who, after such effective date, becomes the former spouse of a participant or a former participant in the Foreign Service Retirement and Disability System.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The CHAIRMAN. The gentlewoman from Colorado is recognized for 5 minutes in support of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I oppose this amendment that I am offering. I would like to reserve my 5 minutes for later. Is that possible?

The CHAIRMAN. The gentlewoman will be protected.

Mr. FORD of Michigan. Mr. Chairman, I rise to speak in favor of the committee amendments.

Mr. Chairman, I quite understand the discomfort of the gentlewoman from Colorado. We have been discussing this issue for several years. What really is before us is really rather simple, in a way, but far-reaching in its impact.

The bill that was presented to our committee by the gentlewoman's subcommittee proposed that after the expiration of a fixed period of time, the spouse of a Foreign Service officer would have a vested right in that Foreign Service officer's pension rights so that if the Foreign Service officer were to serve for, say, 30 years—15 of which he or she was married to wife No. 1 or husband No. 1, and 15 of which he or she was married to wife or husband No. 2, that the two respective spouses were to share in a vested interest in the pension not only during the surviving period of the Foreign Service officer while he was on retirement, where they would divide the retirement between them and the former spouse, but also with respect to the benefits at the time that the Foreign Service officer passed on.

Now, how did this come about? Actually, prior to 1978, for many years the Federal Code in title V provided that annuity benefits of Federal employees were not reachable by any kind of court process. They were insulated from being determined or distributed in divorce proceedings or any other kind of legal proceedings. In the 95th Congress, the gentlewoman proposed that all Federal annuities be prorated between two parties to a marriage for those years or that part of a total pension that was accumulated during those years that one of them worked for the Federal Government.

We chose instead, in the committee, to provide that a court, when it was determining what should be done in a divorce separation or some other disposition of the property of the parties, should look at the individual parties, the circumstances pertaining to those parties, and be able to take into account all of their assets, including any rights they had in a pension fund. And so, as a result of that the House overwhelmingly passed the bill. The Senate agreed with us, and on September 15, 1978, we made annuities for all Federal employees except Foreign Service officers subject to legal process.

So, since that time all other Federal annuities can be the subject of consideration by the court when awarding property or support, and so forth, in a divorce proceeding. Now, there is no Federal divorce law. There are no Federal courts to grant divorces. That is a matter for State courts, and as the lawyers and others in this Chamber know, the variation between States is sometimes very great. As a matter of fact, that whole field of law has been turning over very rapidly in the last two or three decades, and old and very revered ideas about the respective rights of people because of their sex at the time of a divorce have been turned over very rapidly. We now see the phenomena of females paying child support, and males getting child custody—things that did not happen a few years ago.

What the gentlewoman is doing now is trying to extend this idea to the Foreign Service, and the argument Members will see in the committee report is that this is a little different because Foreign Service officers have spouses who have special kinds of duties, and as the report says, until 1972 the wife, but not the husband, of a Foreign Service officer used to get a report card on how nice she was in terms of entertaining at social events, and so forth. Thank goodness, that kind of archaic thinking has left most of our society, including the Foreign Service, so the gentlewoman's amendment is not intended to get to that problem. That is behind us.

What we discovered, however, was that after we enacted the law to permit all other annuities to be dealt with by the courts, it was discovered that unintentionally we had excluded Foreign

Service officers, so what we now are suggesting in the committee amendment that is before us is that we provide exactly what we have made the law to be for all other Federal annuitants, and apply that same law to Foreign Service officers.

Very simply, it is this: If a Foreign Service officer, just like any other person who acquires the right in the military and civilian service of the Federal Government, acquires a property right in an annuity, whether it be for retirement or payment as a survivor's benefit, that that interest can be examined by a court during a divorce proceeding, and the court can award a portion of that to the nonfederally employed spouse, whether it is male or female, if it is, in the opinion of the court, the appropriate thing to do.

A court might, on the other hand, decide that the $250,000 home that they have over here in Arlington should go to the wife, and that the Foreign Service officer, who has been living without his wife for 10 years overseas, should at least have his pension, even though he has no home.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. Ford of Michigan was allowed to proceed for 3 additional minutes.)

Mr. FORD of Michigan. That is perfectly all right with me as long as that is what that judge, under those circumstances with respect to those people, believes is equity at that time. Plain and simple, what the committee amendments ask us to do is leave to the domestic relations courts, or court, the disposition of this property right as they dispose of other property rights, and I would suggest to those who are concerned about the plight of poor spouses who have not been able to acquire any rights heretofore, that since July of this last year, by Executive order signed by President Carter, Foreign Service officers' pension rights have been reachable by the courts.

The gentlewoman sent all of us a letter and said that this has not worked because only one court has given a wife a property settlement involving the pension, but the fact is that it has only been on the books since last July, and it has not had time to do much of anything yet. Some of the people involved, I suppose, have not had time to catch up with it. There have been very few divorces that have occurred since the change in the law, so if we come back a year from now and we find out that the courts are willy-nilly, wholesale disregarding this annuity and refusing to take it into account, that might be the time for us to meddle.

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But I am pleading with the House not to get us into the domestic relations business and leave that to the State legislatures.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, let me ask, when would the property right vest under the amendment that is being considered now?

Mr. FORD of Michigan. Well, I understand it is still 10 years. After 10 years of marriage the nonfederally employed spouse, male or female, would have a vested interest in the pension, and that portion would be determined by the relative number of years they were married as against the total years the annuity accrued. In other words, if one worked for the Federal Government for 30 years and had a 30-year pension, the former spouse would be entitled to up to 50 percent. At the time of retirement 50 percent would go to the former spouse and 50 percent would be shared by the annuitant and possibly a new spouse or a new family.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, suppose there were children of the first marriage and the mother died within the 10-year period; would those children stand in the stead of their mother or the wife?

Mr. FORD of Michigan. No; I do not believe so. It would not affect the survivor's rights at all or the children.

Mr. HALL of Texas. It would not?

Mr. FORD of Michigan. This only creates a right for a surviving spouse, not for surviving family members.

Mr. HALL of Texas. If the party has a vested interest, how could we keep it from descending on the children upon the death of their mother?

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Ford) has expired.

(On request of Mr. Hall of Texas, and by unanimous consent, Mr. Ford of Michigan was allowed to proceed for 2 additional minutes.)

Mr. FORD of Michigan. Mr. Chairman, in answer to the gentleman's question, I have to tell him honestly that I cannot give him a good legal reason for it. I can only tell him that it is in fact what happens at the present time, and am not really sure why.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, this is a personal right fixed by law. We are not talking about testimentary rights to property. Unless the statute makes it devolve on the children, it does not.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield further?

Mr. FORD of Michigan. Mr. Chairman, first, before I yield let me see if I can unscramble it in this way for the gentleman.

We are talking about two kinds of rights acquired. One is the so-called pension right for the person fortunate enough to live past retirement and collect a monthly annuity during the balance of their life. They leave to their spouse a survivor's right that goes only to that spouse, and that does not become a right until the annuitant dies. That is a separate right which we are not affecting with this amendent.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, the gentleman from Michigan (Mr. Ford) is correct because the law establishes this right.

If the annuity could be inherited by the wife and children, we would not need this law to start with; everything would be taken care of.

Mr. HALL of Texas. But, Mr. Chairman, if the gentleman will yield further, if the property vests in the wife and that wife dies, under the community property statutes of my State the interest that the mother had would vest by descendant distribution in her children or by a will to whomever she may will that property.

Mr. FORD of Michigan. Mr. Chairman, the property does not really vest. The right to collect the annuity vests, and the right to collect the annuity is still contingent upon the annuitant's reaching retirement age. What it really says is that if he or she, the Foreign Service officer, lives long enough to collect the pension, the former spouse, regardless of the vesting status, has the right to collect the vested portion of that.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Ford) has again expired.

(On request of Mr. Hall of Texas, and by unanimous consent, Mr. Ford of Michigan was allowed to proceed for 2 additional minutes.)

Mr. HALL of Texas. Mr. Chairman, if the gentleman will yield for one additional question, may I ask, will this amendment, if it passes, affect the substantive law of the various 50 States in which rights to community property or separate property rights might exist presently in those States, or would it supersede what we now have?

Mr. FORD of Michigan. Only to this extent: The gentlewoman is opposing the committee amendments. If we strike the committee amendents and then go back to her original proposal, that creates a vested right without regard to what a court does in terms of the divorce.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. The gentlewoman is going to correct me and say, however, that a court could come in later and change it.

Mrs. SCHROEDER. No.

Mr. FORD of Michigan. Go ahead, Mr. Chairman, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I think what we are saying is that there is an entitlement subject to a court review. I think what we are doing is just shifting the presumption.

I want to compliment the gentleman from Michigan (Mr. Ford). I think what we have is two different approaches to the problem. What the gentleman is saying is that the court must act in all cases first. I am saying there is a presumption of an entitlement after 10 years of marriage subject to the court review. That is the difference.

Mr. FORD of Michigan. Mr. Chairman, if I may recapture a moment or a second of my time, I would just say that belongs in the closet with the presumption that the mother is always entitled to custody because mothers are better than fathers.

The domestic law in this country is changing more rapidly than anything else to reflect the changes in our society. I suggest that we have no business meddling in it. This is a perfect example of how dangerous it is for us to reach out there to the domestic relations courts and try to tell the judges what to do. We should let them take care of the divorce cases and effect proper settlements and the like, and we will do well if we can take care of those things that are within our jurisdiction.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the committee amendments.

Mr. Chairman, we have before us two somewhat different proposals for dealing with the same serious problem. I will, first, set out the problem and, then, explain why the Foreign Affairs Committee language is a better solution than the Post Office and Civil Service Committee scheme.

The need to provide pension benefits to former spouses of members of the Foreign Service was clearly spelled out in the hearings held on the Foreign Service Act. There is a general need to provide these benefits to the spouses of all Federal employees. In the private sector, employees are required to participate in the social security system. Nonworking spouses gain retirement benefits, based on the contributions of their working spouses. In the Federal sector, social security is not mandatory and the retirement systems for Federal workers do not provide retirement benefits for spouses. Hence, in traditional role model families; that is, where the husband works for a salary and the wife works for free in the house, a death of the husband or a divorce could leave the wife penniless.

The nature of the Foreign Service makes this need far more acute. All members of the Foreign Service are subject to frequent and continual rotation throughout their careers. The spouse has no opportunity to build an independent career, if he or she accompanies the member of the Service. Following death or divorce, the spouse has insufficient work experience to find a job, no retirement benefits in his or her own right, and no right to a portion of the benefits of the member of the Service.

Wives of Foreign Service officers have a special claim to this protection. Up until recently, wives of Foreign Service officers were rated on their husband's evaluation report on their performance of representational duties. In effect, Foreign Service wives were impressed into service as unpaid representatives of the U.S. Government. This tradition of unpaid service continues, although the appraisals are no longer officially made.

The need is clear; the size of the problem is growing. No-fault divorce produces over a million divorces a year, nationwide. The ease with which these divorces can be achieved has left thousands of women without adequate economic protection. Indeed, only 5 percent of divorcees over aged 30 receive alimony and the mean level of child support received is a puny $2,430 per year.

Now, let me explain why the provisions of the Foreign Affairs Committee bill are better than those adopted by the Committee on Post Office and Civil Service.

H.R. 6790, as reported by the Committee on Foreign Affairs, provides for a pro rata division of retirement and survivor's benefits, based on the number of years of marriage, between the member of the Foreign Service and the former spouse. This pro rata division is a presumption, subject to affirmation, modification, or vitiation by the State family law court. The bill gives the current spouse and former spouses of over 10 years a right to sign off before the participant waives all survivor's benefits. Also, former spouses of all participants in the Foreign Service retirement system, whether active duty or retired, are able to use this law.

The Post Office and Civil Service Committee amendment changes these provisions. Rather than establishing a presumption for division, the Post Office amendment merely permits courts to divide both retirement and survivor's benefits without any Federal guidance. In a world of universally competent judges and well-informed domestic relations lawyers, the presumption for pro rata distribution would be unnecessary. Recent experience with reforms in divorce law makes it very clear that self-executing legislation, such as this pro rata distribution presumption, is essential to assure that the law is followed.

The Post Office amendment also eliminates the right of a current former spouse to sign off on a waiver of survivor's benefits. By so doing, the Post Office amendment may render the supposed ability of a former spouse to share in survivor's benefits a hollow right. Under the Post Office amendment, the member of the Foreign Service retains the unilateral right to cut off whatever share of survivor's benefits a spouse may have thought he or she had.

Additionally, the Post Office amendment only applies to future divorces and future retirements. This leaves numerous former spouses of Foreign Service officers destitute. By using this effective date, the Post Office amendment cuts off from benefits those already divorced.

Let me expand on the question of effective date. The Foreign Affairs version provides survivor's benefits in the case of former spouses of members of the Service and retirees who die after the effective date. It provides a retirement annuity for spouses who are divorced from active duty members of the Service after the effective date. Providing survivor's benefits for former spouses of current retirees is essential to reduce the hardship on dozens of former Foreign Service wives who are now living at or near poverty. This group of would-be beneficiaries are easily identified and clearly deserving. To provide benefits for these former spouses, however, requires a rule which may provide benefits for others who do not have the same equities on their side. This latter group includes former spouses who have been out of the picture for many years.

To deal with this dilemma, I intend to offer an amendment after the Ford amendment is, I hope, voted down. My amendment will assure that former spouses who were divorced prior to the effective date get notice of the new law. If they do not promptly file a claim, they will be cut off from all benefits. If they do file a claim, the active duty member or retiree can go back to the court of jurisdiction and seek to cut off the former spouse. Any slight reduction in current retirement benefits which might be needed to pay for previously unelected survivor's benefits for a former spouse would not be retroactive under this formula. This means that if a current retiree has a qualifying former spouse and if that retiree is one of the 5 percent who do not elect survivor's benefits, the maximum 10 percent reduction in retirement annuity would start from the the claim is honored.

One point should be made very clearly in connection with the foreign affairs language. It creates a new entitlement for a former spouse. The entitlement for survivor's benefits should be considered by state courts as newly discovered marital property. If the value of the survivor's benefits were not taken into account at the time of divorce and property settlement, State courts should be expected to reopen divorce decrees to include this property in a settlement. As I said before, I would prefer them State courts to allocate retirement benefits rather than relying on a somewhat arbitrary pro rata formula. Without the pro rata formula, however, I think it is very unlikely that state courts will consider retirement benefits as marital property.

The Post Office amendment also does not remove the prohibition on a Foreign Service retiree assigning his or her survivor's benefits to a former spouse. The Foreign Affairs Committee bill permits this freedom of choice to the retiree.

Adoption of the Post Office amendment would result in grossly unequal treatment of Foreign Service spouses, depending upon the practice and laws in the states in which they are divorced. The General Accounting Office recently released a report on the implementation of Public Law 95-366, the law enacted in 1978 to permit courts to divide Federal civilian pensions upon divorce. The GAO reports that in the first 1½ years after enactment, 261 court orders were received, 62 of which predated passage of the act. Moreover, 40 percent of these court orders came from three States—California, Texas, and Washington State. Even more alarming is the fact that there were no orders from Maryland or the District of Columbia, and only one from Virginia—all of which have large concentrations of Federal employees and retirees.

The most important point is that both H.R. 6790, as reported by the Foreign

Affairs Committee, and the bill as reported from the Post Office and Civil Service Committee adopt the policy that retirement and survivor's benefits should be split between the member of the Foreign Service and his or her spouse, based on the equity of the situation. The language in the Foreign Affairs Committee bill is a far more effective way of accomplishing that policy than is the Post Office Committee amendment.

☐ 1720

Mr. HALL of Texas. Mr. Chairman, will the gentlewoman yield for a question?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, the gentlewoman indicated forum shopping. As I understand the law of my State and other States, when a person is serving in Foreign Service, if he lived in Texas when he went to that foreign country, or if he lived in the State of Louisiana, or some other State, he cannot go back to anyplace except the State where he lived when he went into the Foreign Service, unless he or she might have established a residence at some other locale, at some other State.

Now, does the gentlewoman's amendment allow a Foreign Service officer or his spouse to go to any area of the United States and file a suit for divorce, or would they be relegated to go back to the State where they lived prior to going into the Foreign Service?

The CHAIRMAN. The time of the gentlewoman from Colorado has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. We do nothing in the amendment to deal with where you are domiciled. That is a matter of State law. As the gentleman knows, there are as many different domicile laws as there are different States. We do not touch that at all. We are only trying to deal within the very narrow confines of retirement rights and survivors' rights. We are only saying that, in the case of the divorce, when it goes into the State court, where it will have to go, whatever State it is, dealing with domicile of whatever State they came from, or what have you, when they go in there, that there is a presumption that it should have vested some kind of entitlement after 10 years of marriage, unless the court finds a reason to go the other way. That is all.

Mr. HALL of Texas. If the gentlewoman will yield for one additional question, what is the basic reason for having a difference in the vestiture proceedings on a Foreign Service officer, as opposed to a civil service employee?

Mrs. SCHROEDER. The basic reason is not so much Foreign Service versus Civil Service because the civil service employee is, No. 1, stateside, and No. 2, not being moved all over the world. It is very possible for that spouse to have an independent career.

But, No. 3—and I think most important—is Foreign Service versus private sector. If these people were in the private sector, there would be a vesting after 10 years of marriage that we are extending to them. They are working in the States and they could have their own separate career. But for a Foreign Service spouse, who follows that Foreign Service officer around the world, it is almost impossible to have any kind of rights of your own.

So I think there is a much stronger case that could be made for that type of service versus someone who is in the continental United States.

Mr. HALL of Texas. If the gentlewoman will yield, do we have civil service employees who serve abroad? How would that be handled?

Mrs. SCHROEDER. This act is trying to deal with that.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I just want to answer the gentleman's question. One of the things we are trying to do in this legislation is clarify, so that Foreign Service authorities will be used for people who are abroad. That is one of the very important reforms in this act.

Mr. HALL of Texas. I have one additional question.

The date of marriage of the parties would not be a compelling determination of whether or not property acquired after the marriage would be community or separate, but whether or not they served in a particular locale would be the controlling interest?

Mrs. SCHROEDER. Whether they are in the Foreign Service, yes.

Mr. FASCELL. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, we have to clarify it, because the gentleman from Texas is talking about a particular locale for residence, which does not have a thing to do with the Foreign Service. It does not have anything to do with this bill. It does not have anything to do with the issue.

Mr. HALL of Texas. Why are we talking about it?

Mr. FASCELL. The State court, if and when the parties ever get into court, will make the decisions based on whatever the law of that court is.

The CHAIRMAN. The time of the gentlewoman from Colorado (Mrs. SCHROEDER) has expired.

(On request of Mr. FASCELL and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 4 additional minutes.)

Mr. FASCELL. By the way, Mr. Chairman, in case there is any doubt about it, I rise in opposition to the committee amendment offered by Post Office and Civil Service. On the Foreign Affairs Committee we went through this whole fight and we decided just the opposite of what the Committee on Post Office and Civil Service did. We felt there was a reason to make a distinction with respect to the presumptions that should apply to a spouse with respect to annuities and survivors' benefits, because of the fact that that individual, married to a Foreign Service officer, does not have the same opportunity or right that some other person would have to either establish a separate career or become a two-person working family or otherwise make an individual contribution toward earnings. The very nature of the service, the demand for responsibility on the spouse to the Service itself and to the individual Foreign Service Officer was that that spouse would have to make a contribution in terms of service.

Mrs. SCHROEDER. Mr. Chairman, I want to thank the gentleman from Florida for pointing that out. I would like to state that what the gentleman said is very, very important. We do nothing to domicile. We are just talking about the Foreign Service Retirement Survivors Act.

No. 2, in Post Office and Civil Service this amendment under consideration only passed by one vote. It was 11 to 12. The Senate has stayed with the original language. The Foreign Affairs Committee has stayed with the original language. I really urge this body to listen to my plea to turn down this amendment. I think it makes sense, and I think that the way the world has changed, we really, really need to take this into consideration.

Mr. LEACH of Iowa. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Iowa.

Mr. LEACH of Iowa. Mr. Chairman, I would like to rise in support of the gentlewoman's position and say that this is an unprecedented position that this Congress is about to take and one of the most important women's issues, in a symbolic sense, that we will be voting on in this session. I would hope, on those grounds as well as on merit grounds, that this body deals with this amendment very seriously. I would only like to underscore what the gentlewoman has been saying.

Mrs. SCHROEDER. I thank the gentleman from Iowa. I think the gentleman from Iowa has seen how difficult it is for families who are in the Foreign Service to have two careers. They are paying a penalty that other people do not have to pay in the civilian sector and in the private sector. That is basically why we are saying that this is unique and this is different.

Mr. DERWINSKI. Mr. Chairman, I move to strike the requisite number of words, and I rise to support the position of the gentleman from Michigan (Mr. FORD).

Mr. Chairman, let us appreciate the fact that this, by its very nature, is a difficult and emotional issue; but there are some facts to keep in mind.

First, as I understand it, as a general rule, divorce laws in the United States have always been under the jurisdiction of State legislative bodies and courts. I am not so sure that at this time in the Foreign Service personnel bill we should be involving ourselves in what could become, by virtue of taking the wrong position, a national divorce law. I really do not think we are moving in the right direction unless we support the gentleman from Michigan (Mr. FORD).

Let me point out that the very difficulty of this lies in the understanding of what transpires in the Foreign Service.

In an individual divorce case, under all circumstances, courts will take into account the individual financial factors, the decision as to who was or was not at fault, the contribution or lack of a contribution of an individual, the individual financial position of one or the other parties. That is what the divorce court is for.

I am not aware that Foreign Service personnel are in any way shortchanged in the courts.

So the whole thrust of this amendment, as I see it, is to see to it that the decision as to how to divide the annuity properly be left to the court at the time of divorce settlement.

I do not think that the Congress should arbitrarily dictate a condition of settlement. That is the real issue before us.

I yield to the gentlewoman from Colorado (Mrs. SCHROEDER).

□ 1730

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Illinois for yielding.

I just want to say that I do not think we are changing one single divorce law in any State. I want to make it very clear that we are not doing a Federal divorce law. We are only talking about rights which we set out under the statute as to how they might vest in the same manner that we do with social security and other areas.

We have no intention of changing any State law. We leave it in there that it is subject to the court, so the court would clearly consider this as a portion of the property, but then when they get down to allocating it, they could clearly change it around.

I want the legislative history to reflect that if the gentleman's position loses and mine wins, that that is clearly what we had intended in my position and in the gentleman's committee's position, because we do not want to write a national divorce law. We have no intention of doing that. We want to leave it in the State court.

It is just that we want to have this fairness doctrine cranked in so that it can be considered, so that after 10 years of marriage, which I think is a long period of time and analogous to social security once again.

Mr. DERWINSKI. My summation of what the gentlewoman is trying to do is that she would dictate a condition in the divorce case. The Ford amendment, on the other hand, permits the equity to be settled in each individual case, which under normal circumstances I presume is the logical course of action.

Now, we did debate this vigorously in both committees. I think we would all be honest and say that there is a national emotional factor involved in a situation like this; but the Ford amendment, as I interpret the amendment, is an amendment of reason. It allows the laws of particular States to legitimately prevail.

The only possible concern that someone should have is that somehow, by the very virtue of being in the Foreign Service, a divorce proceeding involving a Foreign Service officer somehow would not have the legitimate attention of divorce authorities in any State. That is not so.

We have to assume, and I think properly so, especially in the case of negotiated settlements, that the legal rights of everyone are going to be fully protected. I would think then that the Ford amendment falls on the side of equity, practicality, and what would be really commonsense.

Mrs. SCHROEDER. Mr. Chairman, would the gentleman yield again?

Mr. DERWINSKI. If I have any time, I yield to the gentlewoman.

Mrs. SCHROEDER. I just want to say that maybe reasonable women might differ with reasonable men and hope that the gentleman will support my position instead of the Ford position.

Mr. DERWINSKI. Well, I would like to point out, and I realize that bad examples make bad law.

To recap, Mr. Chairman, this amendment authorizes the courts to divide the retirement and survivor benefits of a member of the Service to provide an annuity for a former spouse as part of an alimony or property settlement.

Divorce in the United States has always been a matter for State legislatures and the courts. For civil servants, the Congress limited itself to obligating the Office of Personnel Management to pay annuities to former spouses under State divorce decrees on a case-by-case basis. Under this amendment we are extending this requirement of law to the Department of State and the Foreign Service.

Perhaps the most emotional and misunderstood controversy in the Foreign Service Act, concerns annuities for former spouses of Foreign Service personnel. The Ford amendment, adopted by the Post Office and Civil Service Committee, logically and compassionately allows the divorce courts in each State to divide both retirement and survivor annuities in order to create separate annuities for former spouses in those cases where they are justified.

Neither the Ford nor the Schroeder language is going to make divorce less expensive or traumatic. The issue is whether we will defer to the State courts which examine these important matters on a case-by-case basis, or whether we plunge into legislating a national divorce law which blissfully ignores such crucial divorce factors as the independent wealth, desertion, or previous settlement advantages of the spouses.

For this reason, the American Foreign Service Association (AFSA), the only major Foreign Service union, rejects the Schroeder amendment and supports the Ford approach. Military personnel are also alarmed at the Schroeder amendment's precedent of partitioning annuities without regard to the circumstances of each case.

The Ford amendment lets the equities of each case dictate the existence and amount of any annuities, and I feel it is the only practical solution to a difficult issue.

Mr. BUCHANAN. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the Post Office Committee amendment.

Mr. Chairman, I would submit that the language in the bill which was stricken and replaced by the Post Office Committee amendment was carefully considered by both subcommittees, the Subcommittee on Post Office and Civil Service and the Foreign Affairs Subcommittee and approved by the Foreign Affairs Committee.

The gentlewoman from Colorado, I think in the language that we suggested, indeed, served a very important purpose and equity is on her side.

In the case of survivor annuity, this provision, I might say, is in line as the gentlewoman has made clear with existing provisions of the social security law, which permits nonworking spouses to acquire benefits based on the working spouse.

It is also in keeping with recent recommendations of the President's Commission on Pension Policy.

Mr. FORD of Michigan. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. Yes; certainly, I will yield.

Mr. FORD of Michigan. The gentleman is one of the dearest and closest friends that I have in this House. I know the gentleman would not want to mislead this House. He drew an analogy with the social security law. That is the best way to recognize what is wrong with what the gentlewoman is doing. In the social security law, the amendment originally was put in by the same gentlewoman who passed the ERA in this House, the gentlewoman from Michigan, Martha Griffiths. We from Michigan are very proud of her contribution in this regard. That provided that a woman who was unable to acquire a vested right in social security benefits because of years of taking care of children while the husband was out working would be able to draw as if she had been working during those years; but here is a distinct difference. In the case of a woman who is divorced from her husband after 10 or 15 or 20 years and then collects social security, if there is a second family and children in the second family, they also draw social security.

Under the gentlewoman's amendment, the Foreign Service officer would have half of his money go to him and his present family and half go to his former spouse, regardless of the circumstances that destroyed that marriage, regardless of fault, regardless of how many years they have been separated and what the equities might be. That does not happen with social security, I suggest to the gentleman from Alabama. There is no problem, because both the former spouse and the present spouse have equal rights and both of them get a full social security benefit.

The taxpayers paid for that treatment; but in this case you are taking away from the annuitant a part of his annuity and giving it to somebody as a property right.

I thank the gentleman for yielding.

Mr. BUCHANAN. Certainly, the gentleman is my dear friend, but let me respond in two ways.

First of all, let me respond as to why I believe equity would demand some consideration for the Foreign Service spouse. As too often has been the case, the wife has accompanied her husband on a tour overseas, giving up opportunities for a career of her own. Frequent transfers to posts around the world mitigate against the establishment of careers or the opportunity to develop marketable skills.

At the same time, this wife is expected to do things like planning and hosting social functions, attending various official functions and other duties that might interfere with an independent career.

A survey within the Department of State, I would point out to the gentleman, indicated that the wife of an Ambassador or Charge often devotes an estimated 167 hours per month, or more than a 40-hour week to official functions, for which she receives no compensation.

As the law now stands, this spouse can provide all of these functions for years and then, upon divorce, be left with nothing.

Up until 1972, the wives, although not the husbands of Foreign Service officers, were considered in the efficiency reports of those officers as a part of how they were rated in their own careers.

I would say that equity says these spouses should be covered and there should be a presumption that after 10 years they would begin to be vested with pension rights of their own.

I would point out that we in no way interfere with the divorce process or the actions of the courts. Indeed, the language which is stricken by the Post Office Committee language states, and I quote, in section 814(A)(1):

> Unless otherwise expressly provided by any court order under section 820(B)(1) a former spouse or participant is entitled to an annuity,

And so forth.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(By unanimous consent, Mr. BUCHANAN was allowed to proceed for 2 additional minutes.)

Mr. BUCHANAN. If you look over to the section to which that refers, in the case of any participant or annuitant who has a former spouse with respect to whom there is a court order, any right of any former spouse to any annuity under section 814, and so forth, shall be determined in accordance with a court order if and to the extent expressly provided for in the terms of that court order.

We do not disturb that in the least. We are seeking equity for spouses who have not received in the past and otherwise may not receive.

I urge defeat of the Post Office Committee amendment and support for the original language of the two subcommittees of the Foreign Affairs Committee.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for purposes of getting the attention of the distinguished chairman of the subcommittee, because I have a few questions I would like to ask him to try to clarify what this information does.

The first question is, does this amendment apply, I ask the attention of the gentleman from Florida (Mr. FASCELL), does this amendment apply to those foreign service officers who are already retired?

□ 1740

I think that is a fairly simple yes or no answer.

Mr. FASCELL. Well, now, let us not get carried away, Mr. DINGELL. I am just going to find the section in the law because you read it just as well as I did. So we will just read it again.

Mr. DINGELL. Does it apply to those retired?

Mr. FASCELL. At page 267.

Mr. DINGELL. I will yield to the gentleman if he can tell me.

Mr. FASCELL. That is what I thought the gentleman was doing. On page 267 it makes it quite clear that the provision is retroactive with respect to survivor annuities, but not retirement annuities. I just want our colleagues listening to understand.

Mr. DINGELL. Then it does cover those who are retired?

Mr. FASCELL. Why, of course—for survivor annuities.

Mr. DINGELL. Does it apply to those who are already divorced?

Mr. FASCELL. Sir?

Mr. DINGELL. Does it apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Already what? Already in force?

Mr. DINGELL. Does this change in the law apply to Foreign Service officers who are already divorced?

Mr. FASCELL. Divorced?

Mr. DINGELL. Divorced.

Mr. FASCELL. For the purpose of survivors annuities, yes.

Mr. DINGELL. So a Foreign Service officer who might——

Mr. FASCELL. Retirement, no.

Mr. DINGELL. So if you have a Foreign Service officer who has been divorced for a period of 10 or 12 years and has a second family, it would already apply, it would apply to that Foreign Service officer and would permit his pension to be apportioned between his first wife and himself?

Mr. FASCELL. Just the survivor annuity, not his pension.

Mr. DINGELL. Not his pension?

What about the situation where a property settlement has already been made by the parties under a divorce?

Mr. FASCELL. If the court has jurisdiction, the court would still have jurisdiction.

Mr. DINGELL. But, as I understand it, then the provisions say that unless otherwise expressly provided by court order, so that the Foreign Service officer would then have to go into court.

Mr. FASCELL. He does not have to.

Mr. DINGELL. Well, if he was going to get relief, he would have to go back to court.

Mr. FASCELL. It depends on what you call relief.

Mr. DINGELL. If he had already paid alimony for years, if he had made a lump sum cash settlement.

Mr. FASCELL. But if you want to say it the other way, I am not being smart, I am trying to answer the gentleman's question.

Mr. DINGELL. Do you mind if I say it my way?

Mr. FASCELL. Just so you do not put words in my mouth, yes, you can say it any way you want to.

Mr. DINGELL. I am not trying to put words in your mouth. I am trying to find out what the proposal does. If the Foreign Service officer had already been divorced and had made a cash settlement in lieu of alimony, he would still be subject to the provisions of this proposal and compelled to then go into court to have this action set aside by the court; is that correct?

Mr. FASCELL. If he deemed it essential he could get the relief he wants.

Mr. DINGELL. So essentially what you are doing then is amending the earlier decree by this action in compelling the Foreign Service officer then to come back in to request that this action by the Congress be set aside; is that correct?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. I will yield first to the gentleman from Florida who is handling the bill, I am told.

Mr. FASCELL. I am just handling one part of it.

Mr. DINGELL. I know.

Mr. FASCELL. I will say to my colleague from Michigan, there are two committees. I do not think I can help you. But the answer is yes, unless the court orders otherwise, the language is explicit.

Mr. DINGELL. So then a Foreign Service officer——

Mr. FASCELL. The presumption is rebutable, the gentleman knows that.

The CHAIRMAN. Let us have regular order.

Mr. FASCELL. I am trying to answer the question.

Mr. DINGELL. So if a Foreign Service officer had been divorced and had made a lump sum settlement with his former wife, to avoid coming under the provisions of the new language of the Foreign Affairs Committee bill he would have to go in then to court and ask to have himself expressly ordered excluded from this section, even though he might have made an earlier cash lump-sum settlement with his former wife? Is that not a fact?

Mrs. SCHROEDER. Will the gentleman yield to me?

Mr. DINGELL. I yield to the gentleman from Florida who is handling the bill.

Mr. FASCELL. I will yield.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am glad to, yes.

Is the answer yes or no?

Mrs. SCHROEDER. The gentleman

knows the State courts continue to entertain jurisdiction in divorce cases.

Mr. DINGELL. I am not unaware of that, but what I am trying to figure out is if he has made a lump-sum settlement earlier—maybe the gentleman from Michigan, (Mr. FORD) can help me. I do not think I am getting much help.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. FORD of Michigan. Will the gentleman yield?

Mr. DINGELL. I am glad to yield to the gentleman.

Am I correct in my understanding a lump-sum settlement that had been made in connection with the earlier divorce decree, that that is, in effect, set aside by this language and the individual who has made that lump-sum settlement, to come out from under the provisions of section 814 of the Foreign Affairs Committee bill, has to go in and has to solicit, has to solicit the court to remove him from the coverage?

Mr. FORD of Michigan. There is one further condition that the gentleman should add to his conditions, and that is that he must live long enough to get the court to do it after this bill is signed by the President because the right will be created when this act is passed. If he does not live long enough to go to court and get an order his annuity is going to be split between his former family that he may not have seen for the last 20 years and his present family.

Mr. DINGELL. I will yield to the gentleman, but first have some other questions and the gentleman from Michigan (Mr. FORD) has been giving me rather helpful answers. I would like to persist on that course.

Mrs. SCHROEDER. Will the gentleman from Michigan yield?

Mr. DINGELL. I will yield as soon as I finish with the gentleman from Michigan (Mr. FORD), I will assure the gentlewoman.

Now let us say that Mr. John F. Service has divorced his wife because she has abandoned him and his five minor children. Is he also still subject to the provisions of this if he has gotten a divorce?

Mr. FORD of Michigan. If the divorce——

Mr. DINGELL. So that his pension will be apportioned half to that former wife who has abandoned him and his minor children?

Mr. FORD of Michigan. No, with respect to the apportionment of the annuity paid during his lifetime. It will only be prospective. Divorces that occur after the active date of this law. It is the survivor's annuity that is retroactively disposed of.

Mr. DINGELL. But it would be, it would be retroactively apportioned even if he had had a lump-sum settlement?

Mr. FORD of Michigan. Exactly, without regard.

Mr. DINGELL. Or even if his former wife has abandoned him and his minor children; is that right?

Mr. FORD of Michigan. Without regard to any circumstances leading to divorce or that occurred during the proceedings or any determination made by the court.

Mr. DINGELL. Would the court be able to take these matters into consideration in connection with the negotiations which would go on between the parties regarding the property settlement?

Mr. FORD of Michigan. No; what would have to happen, I suppose, and it would depend on how long a court in a respective State would entertain jurisdiction, I suppose if you still had jurisdiction in the court in the State where you got the original order you could go back, as you do now, to modify the decision. I must caution my colleague by saying that, that many States will not let you reopen property settlements, they will only let you reopen life rights such as support or alimony where you have a changing circumstance to deal with. They will not let you go back and retry the facts on the property settlement.

Mr. DINGELL. So in many instances the question of reopening the property settlement would not be available to the person who was going to be compelled to pay additional benefits to a former wife; is that correct?

Mr. FORD of Michigan. I think the question should be addressed to the gentlewoman from Colorado. She is a competent and distinguished lawyer.

Mr. DINGELL. I am more comfortable getting the views of the gentleman from Michigan. I will yield to the gentlewoman in just a minute.

Now let us assume Mr. John F. Service has gotten divorced and he remarries and has a second spouse and children by the second spouse. Then he gets married a third time and gets divorce and has a wife and children by that third spouse. How is that annuity of his apportioned among the sundry partners?

Mr. FORD of Michigan. Each of the former wives or former husbands in the case of a female Foreign Service officer would be entitled to their respective proportion of the number of years it took to acquire the annuity that they were married to that person.

Mr. DINGELL. The next question is——

Mr. FORD of Michigan. If it is a 30-year annuity you could have a 10, 10, and 10 arrangement.

Mr. DINGELL. Does this amendment distinguish between the wife or the spouse who has his or her own retirement or who has substantial means where a subsequent spouse might not have these available and might be entirely dependent upon the Foreign Service officer's annuity?

Mr. FORD of Michigan. No, because the allocation of the right is based on time in service and not quality of service. It does not, it does not distinguish between a loyal spouse, a helpful spouse, a disloyal spouse, or a guilty spouse.

Mr. DINGELL. The gentleman says it does not distinguish between the helpful spouses and the disloyal spouses or the guilty spouses? In other words, under this a Foreign Service officer could divorce his wife because she had shot him and not killed him?

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 3 additional minutes.)

☐ 1750

Mr. FORD of Michigan. If the gentleman will yield, I think that the gentleman should not pass this opportunity to recognize that the gentlewoman is now asserting the absolutely perfect example of perfection by seniority, because seniority is the only consideration that applies in acquiring these rights. It has nothing at all to do with the quality of service or the equity circumstances at the time of the divorce.

Mr. DINGELL. If I can ask another question here that troubles me, I note that a former spouse shall not become qualified for an annuity if before the commencement of the annuity, the former spouse marries after 60 years of age, but if a former spouse marries after 60 years of age, they continue to derive the benefits of this and are able to support their second husband in greater comfort because of the annuity which is being taken from a subsequent wife and children of the Foreign Service Officer; is that right?

Mr. FORD of Michigan. Yes; but in all kindness, one must expect that the kind of spouse that the gentlewoman is trying to protect would not do that.

Mr. DINGELL. Excepting that we are here passing a uniform law and taking from the courts the orderly discretion to consider divorces and to consider all aspects of the courts which the States have done splendidly, and which is a matter on which I am aware of no expertise in the Federal Government and no constitutional power in the Federal Government to deal with matters of domestic relations. Am I in error on this?

Mr. FORD of Michigan. The gentleman raises a good question which I posed a few moments ago. It is not at all clear to me what is meant in the gentlewoman's proposed language that you could overcome the presumption by going to court, since courts do not exercise jurisdiction over divorce proceedings in perpetuity. Usually if there are no children involved, once the property is disposed of and the status has been established, the court cleans its hands of the case.

Mr. DINGELL. Even where there are minor children the jurisdiction lies not over the marriage but lies over the persons and security of the minor children, and it expires when those minor children reach 18 years of age. Is that correct?

Mr. FORD of Michigan. Yes. So I do not know what court you would go to to overcome this presumption.

Mr. DINGELL. Now I yield to the gentlewoman from Colorado (Mrs. SCHROEDER). If she can help me, I will be very grateful on the points I raised.

Mrs. SCHROEDER. I thank the gentleman for yielding. I just want to make several points. I think the gentleman has got several things confused.

Mr. DINGELL. I do not believe I am confused.

Mrs. SCHROEDER. On the retirement portion prospectively is the only way it applies. The only thing it makes a difference in is with the survivor's benefits, and that is what we are talking about. I think we just want to make that very clear. We are not talking about amending State divorce laws.

Mr. DINGELL. That is a very good point. That is a very good point. I have this curiosity. The gentlewoman says this covers retirement.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. If Mr. John F. Service has, let us say, 29 years and 9 months at which time he divorces his wife of, let us say, 10 years standing. For that 1 month time does that wife procure full rights under this bill for that remaining 1 month of his 30-year service before he does retire?

Mrs. SCHROEDER. Will the gentleman yield?

Mr. DINGELL. Certainly I will yield.

Mrs. SCHROEDER. I think if the gentleman read the bill, it is 10 years of creditable service that counts, and that is what counts for the presumption. The courts can undo the presumption if the Member happens to marry someone who was terribly wealthy or did not follow him or her around. We are just talking about a presumption.

Mr. DINGELL. I am glad the gentlewoman raised that question, because what court would Mr. John F. Service go to to get the relief specified here? Would he go to a Federal court? Would he go to the court where he got his divorce 30 years ago?

Mrs. SCHROEDER. We do nothing to change State court jurisdiction. The jurisdiction of the courts is the State court. It has always been the State court. It will always be the State court. There is nothing in here dealing with that issue, because the State court has the jurisdiction.

Mr. DINGELL. If he comes from a State where the jurisdiction over the marriage is terminated by reason of a property settlement, a final divorce decree, and maturity of the children so that there is no jurisdiction of the court, coupled with the subsequent remarriage, what court does Mr. John F. Service go to to get this relief? Does he go to the court of his home State? Does he go to the Federal court? Does he go to the court of some other State? Let us say he got divorced in Nevada and retired in Washington, D.C.

Mrs. SCHROEDER. The gentleman goes to the court of competent jurisdiction. We are not overriding that decision. I think he would have to find that out.

Mr. DINGELL. What is the court of competent jurisdiction? I am trying to find out what is the court of competent jurisdiction he goes to? Is it the court that gave the divorce?

The CHAIRMAN. The time of the gentleman has expired.

The question is on the Post Office and Civil Service Committee amendments.

The question was taken, and the chairman being in doubt, the committee divided, and there were—ayes 16, noes 7.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 229, noes 111, not voting 92, as follows:

[Roll No. 524]

AYES—229

Abdnor
Akaka
Albosta
Alexander
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Boland
Boner
Brademas
Breaux
Brinkley
Brooks
Broyhill
Burlison
Butler
Carney
Carter
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Cotter
Coughlin
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dornan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Ala.
English
Erdahl
Erlenborn
Ertel
Evans, Ga.
Fenwick
Fish
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Frenzel
Fuqua
Gaydos
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hammerschmidt
Hanley
Hansen
Harkin
Harsha
Hefner
Heftel
Hightower
Holland
Hopkins
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Lewis
Livingston
Loeffler
Lott
Lujan
Luken
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Marlenee
Mathis
Mazzoli
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nichols
Nowak
O'Brien
Oberstar
Ottinger
Pashayan
Patterson
Paul
Pepper
Preyer
Price
Pritchard
Quillen
Regula
Rhodes
Roberts
Robinson
Roe
Roth
Rudd
Santini
Sawyer
Scheuer
Schulze
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Simon
Skelton
Snyder
Solomon
Spence
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stratton
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Trible
Udall
Vander Jagt
Volkmer
Walgren
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Williams, Mont.
Wilson, Tex.
Winn
Wright
Wyatt
Wylie
Yatron
Young, Fla.
Young, Mo.

NOES—111

Anderson, Calif.
AuCoin
Barnes
Beilenson
Bingham
Blanchard
Bolling
Bonior
Bouquard
Bowen
Brodhead
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Byron
Carr
Cavanaugh
Collins, Ill.
Conable
Conte
Corcoran
Courter
Deckard
Dellums
Downey
Drinan
Early
Edgar
Edwards, Calif.
Evans, Ind.
Fascell
Fazio
Fisher
Fowler
Frost
Garcia
Gephardt
Gibbons
Gilman
Gore
Gray
Green
Hamilton
Hance
Harris
Hawkins
Heckler
Hollenbeck
Holt
Jacobs
Jeffords
Kazen
Kildee
Kostmayer
Leach, Iowa
Lloyd
Long, La.
Long, Md.
Lungren
McCloskey
Maguire
Markey
Marks
Martin
Matsui
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Moakley
Murphy, Pa.
Oakar
Obey
Panetta
Pease
Petri
Pickle
Rahall
Rangel
Ratchford
Reuss
Rinaldo
Rosenthal
Roybal
Sabo
Schroeder
Seiberling
Sharp
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Stack
Stark
Stokes
Studds
Traxler
Van Deerlin
Vanik
Vento
Waxman
Weaver
Weiss
Wirth
Wolff
Wolpe
Yates
Zablocki

NOT VOTING—92

Addabbo
Ambro
Anderson, Ill.
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Boggs
Bonker
Burgener
Campbell
Chappell
Chisholm
Clay
Coelho
Conyers
Corman
Davis, S.C.
Dodd
Donnelly
Dougherty
Edwards, Okla.
Emery
Evans, Del.
Fary
Ferraro
Findley
Giaimo
Goodling
Grassley
Hall, Ohio
Hillis
Hinson
Holtzman
Hubbard
Ireland
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Lederer
Lehman
Leland
Levitas
Lowry
Lundine
McClory
McKinney
Marriott
Mattox
Mavroules
Minish
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nelson
Nolan
Patten
Perkins
Peyser
Porter
Pursell
Quayle
Railsback
Richmond
Ritter
Rodino
Rose
Rostenkowski
Rousselot
Royer
Russo
Satterfield
Shannon
Spellman
St Germain
Steed
Tauzin
Thompson
Ullman
Walker
Whitten
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wydler
Young, Alaska
Zeferetti

☐ 1810

The Clerk announced the following pairs:

On this vote:

Mr. Nelson for, with Mrs. Chisholm against.

Mr. Moffett for, with Mr. Leland against.

Mr. WOLPE, Mrs. BYRON, Mr. MARKEY, and Mr. BLANCHARD changed their votes from "aye" to "no."

Mr. BURLISON and Mr. TAUKE changed their votes from "no" to "aye."

So the Post Office and Civil Service Committee amendments were agreed to.

Mr. DERRICK. Mr. Chairman, I move to strike the requisite number of words.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding. I will just take a second here to say that we can conclude the remainder of the matters that are before the committee in very short order. I am sure that with a little bit more cooperation it will be helpful, and we can get through quicker.

Mr. DERRICK. Mr. Chairman, as you may know, I had planned to offer an amendment to chapter 11 of the bill now under consideration. And at the outset, I must congratulate both chairpersons responsible for this legislation, as it represents nothing less than a complete overhaul of the foreign service, a task last undertaken in 1946.

This is a comprehensive and complex piece of legislation, Mr. Chairman, and I fully appreciate the difficult negotiation process that was necessitated to produce a document that satisfied most of the parties involved. It is my concern, however, that because difficult battles were undertaken on certain other provisions of this legislation, that the issue of grievances, chapter 11, was not fully addressed.

As you know, my amendment would have been a substitute for the entire chapter on grievances. I have many concerns regarding the procedure as it works in this bill. The method of selection of board members is weighted in favor of management. There are specific items on which grievances may not be filed, and I believe the broadest possible construction should be required in statute. The exclusive representatives are afforded monopoly control in representing grievant's before the Board. And I do not believe the bill provides a strong indication that these hearings should be open to the public unless the grievant wishes otherwise.

As the above suggests, I do have several concerns about this legislation. However, in the interest of not delaying the process at this point, I will not offer my amendment if I may obtain assurances from the chairpersons involved and presently managing this bill, that hearings on this issue will be held at the earliest possible date to air and resolve the concerns I have today raised.

□ 1820

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding.

First, let me compliment the gentleman on the concern he has in this matter. The gentleman introduced the bill early on which I had cosponsored, along with several of my colleagues, and I want to assure him that the committee gave full consideration to that legislation. Notwithstanding that, I can appreciate the reservations and the concern which the gentleman in the well has, and let me assure him that in setting up this grievance procedure in the statute and codifying it the way we have, with all the past experiences we have, we are very anxious and very concerned that it works properly.

We will be following this very carefully from an oversight standpoint, and we will also take into account the further review and consideration of whatever concerns people have with respect to the legislation.

So I will tell the gentleman that notwithstanding the fact that his proposals were considered and were not agreed to either in this body or over in the other body, we will nevertheless assure the gentleman that hearings on the issues and the oversights will continue starting early next year.

Mr. DERRICK. Mr. Chairman, I thank the gentleman from Florida (Mr. FASCELL).

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from South Carolina (Mr. DERRICK) for not offering the amendment at this time. I think it is a very interesting proposal, and I assure the gentleman that we are very, very concerned in the civil service about all grievance procedures, and we will certainly be looking at it and having hearings and reconsider the gentleman's position at that time.

Mr. Chairman, I thank the gentleman in the interest of time for not offering his amendment.

Mr. STRATTON. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, I take it that the gentleman was expressing some reservation to a provision that occurs or that is set forth here in the Democratic whip advisory that says that this bill will establish collective bargaining in the Foreign Service, prohibit strikes and slowdowns, and provide for the negotiation of certain conditions of employment.

The CHAIRMAN. The time of the gentleman from South Carolina (Mr. DERRICK) has expired.

(On request of Mr. STRATTON, and by unanimous consent, Mr. DERRICK was allowed to proceed for 3 additional minutes.)

Mr. STRATTON. Mr. Chairman, will the gentleman yield further?

Mr. DERRICK. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Chairman, let me ask the gentleman, is that the section that the gentleman has said that he is concerned about but to which he will not offer an amendment?

Mr. DERRICK. Mr. Chairman, I do not have the document before me, but it is chapter 12 on grievances, and I assume it is the same.

Mr. STRATTON. Mr. Chairman, I believe that is the one that puts the Foreign Service into collective bargaining.

It seems to me that this is a strange thing for a service that has wanted to stand out as a kind of an elite group, with special pay and all these other things, that we suggest that they get together in collective bargaining and negotiate.

Do the ambassadors negotiate with the President or with the Secretary of State? It seems to me that this is highly improper.

Mr. DERRICK. Mr. Chairman, if I might suggest to the gentleman, the ambassadors are in a little different situation than the people I am representing here today, and I suggest to the gentleman that the situation as it concerns a Foreign Service officer, as the gentleman knows, has changed dramatically in the last several years. We are seeking to recognize that change with certain amendments that will be taken up next year, and we shall invite the gentleman, I am sure, to be the leadoff witness.

Mr. DERWINSKI. Mr. Chairman, will the gentleman yield?

Mr. DERRICK. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Chairman, I appreciate the fact that the gentleman is going to give us an opportunity to study this matter in more detail.

Mr. Chairman, whatever grievance mechanism it means to impose, I cannot imagine any civil service or foreign service agency being able to live with its definition of "grievance." All the foreign service agencies oppose it.

Section 1101 of this act defines "grievance" properly by generally confining its subject matter to things which are in personnel files or under the control of the Secretary of State. This amendment would extend that definition to just about anything. I quote: "any actions * * * which could result in career impairment or damage" or "actions related to promotion or selection out."

This seems to mean that an employee can be aggrieved even by thinking that his own promotion is not equal to his merit. He can be aggrieved even by the mere application of the selection out process which he accepted when he entered the Service. He can file a grievance even with respect to the contents of security records maintained by an agency to protect the confidential and classified aspects of our foreign policy.

Mr. Chairman, I do not think this amendment is a wise attempt at balancing the rights of an employee with the right and duty of foreign service personnel managers to manage. It ignores the practical balance of interests represented in the bill's grievance procedures.

Mr. STRATTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been interested in the Foreign Service, and I am interested in improving it. But I must say that I was appalled to read this document which is circulated, I understand, not to the Republican Members but to the Democratic Members and which would put the Foreign Service into collective bargaining and then prohibit strikes and slowdowns. I wonder how one could tell whether an ambassador is slowing down or not.

This would provide a separate board to adjudicate labor disputes, and then there is a second provision following that that would establish a bill of rights for members of the Foreign Service, one provision of which is granting protection from reprisals for dissenting political views or good faith disclosures of information concerning violations of law, mismanagement, or abuses of authority.

I wonder if the gentleman from Florida (Mr. FASCELL), who I understand is the author of the bill, could tell me whether this means that if somebody in good faith discloses the existence of the stealth aircraft, this section is designed to protect him.

Are we going to encourage the Foreign Service people who want to release classified information in good faith and say that they have carte blanche to do that?

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. STRATTON. Mr. Chairman, I would like to have the gentleman from Florida (Mr. FASCELL), who is a member of the Committee on Foreign Affairs, a very distinguished member and one who is interested in the Foreign Service, answer the question, because I would like to be able to support this bill, although I do not see how I can support it with these two provisions which strike me as being totally outside the province of the great Committee on Foreign Affairs.

Mr. FASCELL. Mr. Chairman, if the gentleman will yield, let me see if I can answer the gentleman's questions. Which one does he want me to answer first?

Mr. STRATTON. Well, whichever one the gentleman would like to answer.

Does the gentleman feel that one of the important needs of the Foreign Service is to be able to bargain collectively, and that we have to make special provisions for strikes and slowdowns in the Embassies around the world?

Mr. FASCELL. Mr. Chairman, I will tell the gentleman that there has been a collective bargaining system for the Foreign Service under Executive order since 1972 and we have never permitted strikes overseas and do not do so here.

We have simply codified all of the law that exists both as to grievances and labor-management relations in an effort to put it on a par with the other law which the gentleman also voted for, I might add, in dealing with the civil service people—the Civil Service Reform Act.

Mr. STRATTON. Mr. Chairman, the purpose of this, as I understand it, is to put the Foreign Service on a par with officers in the U.S. Armed Forces and with the Central Intelligence Agency officers, and I do not believe that there are provisions in either of those acts to prevent strikes or slowdowns or to encourage collective bargaining and the setting up of boards to adjudicate labor disputes.

Mr. FASCELL. Mr. Chairman, I will tell the gentleman that the purpose of the act is not to put the Foreign Service on a par with the military, from the labor-management standpoint, because we do not permit unions in the military, while we do in the Foreign Service.

Chapter 10 reflects the Executive order under which the Department has operated since 1972 and also follows, when desirable, certain provisions of the Civil Service Reform Act.

Now, let me answer the other question.

Mr. STRATTON. All right. What is a good faith disclosure relationship that the gentleman encourages?

Mr. FASCELL. A good faith disclosure is the right for an individual to come, for example, to the Congress. And in answer to the gentleman's inquiry, it is something that the gentleman has energetically defended from the time I first knew him. And that is that any general or any individual coming before the gentleman's committee should have the right and the responsibility to answer the Congress questions and woe be unto him if he did not answer the gentleman directly, notwithstanding the position of the administration on the matter that was under discussion.

Mr. STRATTON. Does the gentleman mean General Singlaub, for example?

He was a whistleblower, but look at what happened to him.

Mr. FASCELL. The point is that we have done our best to provide in the legislation that separate channel of dissent both in the Congress and in the administration. We specifically prohibit disclosures which are prohibited under other laws or in the interest of national security. We do not permit disclosures of classified information.

Mr. STRATTON. Yes; but what I am afraid of is that this is going to encourage dissenting members of the Foreign Service to release classified information.

Mr. FASCELL. There is no way that they can do that. The law protects against that.

The CHAIRMAN. The time of the gentleman from New York (Mr. STRATTON) has expired.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

□ 1830

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the following committee amendments to be considered en bloc:

The amendments to pages 185 and 186 (relating to labor-management picketing).

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 185, beginning on line 16, strike out "the operations of the Department," and all that follows down through line 19, and insert in lieu thereof "the Department in a labor-management dispute if such picketing interferes with the Department's operations, or".

Page 186, after line 10, insert the following:

Nothing in paragraph (7) of this subsection shall result in any informational picketing in the United States which does not interfere with the Department's operations being considered as an unfair labor practice.

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, these were committee amendments that we were going to offer, but the gentleman from Florida was going to offer an amendment to our amendments, and, once again, we are going to accept those.

So if I may just yield to the gentleman from Florida (Mr. FASCELL) at this time to present his amendment to our committee amendments, we will be able to expedite this process.

AMENDMENTS OFFERED BY MR. FASCELL TO THE POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mr. FASCELL. Mr. Chairman, I offer amendments to the Committee on Post Office and Civil Service Committee amendments.

The Clerk read as follows:

Amendments offered by Mr. FASCELL to the Committee on Post Office and Civil Service amendments: Page 185, beginning in line 20, strike out "if such picketing interferes with the Department's operations" and insert in lieu thereof "(except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice)".

Page 186, strike out lines 11 through 14.

Mr. FASCELL (during the reading). I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, as the gentlewoman from Colorado (Mrs. SCHROEDER) said, this is an amendment that we agreed on between the two committees as part of the amendments considered en bloc, and I would ask that the amendment be agreed to.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FASCELL) to the Post Office and Civil Service Committee amendments.

The amendments to the Post Office and Civil Service Committee amendments were agreed to.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments, as amended.

The Post Office and Civil Service Committee amendments, as amended, were agreed to.

POST OFFICE AND CIVIL SERVICE COMMITTEE AMENDMENTS

Mrs. SCHROEDER. Mr. Chairman, pursuant to the rule, I ask that the Clerk report the remaining committee amendments to be considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Committee on Post Office and Civil Service amendments: Page 2, in the item relating to section 209 within the table of contents, strike out "of the Foreign Service".

Page 6, in the table of contents, redesignate the items relating to sections 2305 through 2313 as relating to sections 2306 through 2314, respectively, and insert after the item relating to section 2304 the following:

Sec. 2305. Severance pay.

Page 15, line 18, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 22, beginning on line 13, strike out all of section 209 through line 15 on page 27 and insert in lieu thereof the following:

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(3) The Inspector General shall, in accordance with applicable law governing the civil service—

(A) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities under this section; and

(B) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities under this section.

(b) Inspection, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Controller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

Page 45, strike out subsection (c) (beginning on line 9 and ending on line 13).

Page 57, line 22, after "the member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

Page 68, line 20, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 73, beginning on line 7, strike out "in light of the recommendations of selection boards established under section 602 and the needs of the service" and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602".

Page 113, line 2, strike out "60" and insert in lieu thereof "65".

Page 113, lines 6, 11, and 14, strike out "60" and insert in lieu thereof "65".

Page 163, line 10, strike out "of the Foreign Service" and insert in lieu thereof "of the Department of State and the Foreign Service".

Page 170, line 25, strike out "Columbia," and all that follows down through line 2, page 171 and insert in lieu thereof "Columbia.".

Page 257, after line 2, insert the following new section:

Sec. 2305. Severance Pay.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

Page 257, line 6, strike out "Sec. 2305." and insert in lieu thereof "Sec. 2306.".

Page 257, line 22, strike out "Sec. 2306." and insert in lieu thereof "Sec. 2307.".

Page 258, line 8, strike out "Sec. 2307." and insert in lieu thereof "Sec. 2308.".

Page 258, line 12, strike out "Sec. 2308." and insert in lieu thereof "Sec. 2309.".

Page 258, line 10, strike out "Sec. 2309." and insert in lieu thereof "Sec. 2310.".

Page 259, line 20, strike out "Sec. 2310." and insert in lieu thereof "Sec. 2311.".

Page 260, line 12, strike out "Sec. 2311." and insert in lieu thereof "Sec. 2312.".

Page 261, line 10, strike out "Sec. 2312." and insert in lieu thereof "Sec. 2313.".

Page 261, line 24, strike out "Sec. 2313.' and insert in lieu thereof "Sec. 2314.".

Mrs. SCHROEDER (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

Mrs. SCHROEDER. Mr. Chairman, the amendments I am now offering in bloc are the rest of the amendments agreed to by the Committee on Post Office and Civil Service. Included in this group are:

A provision for a strong and independent Inspector General of the Department of State and the Foreign Service, who is equipped with the authority that other Inspectors General, created by the Inspector General Act of 1978, possess. This amendment was worked out with the Committee on Government Operations, which reported the major Inspector General legislation.

A provision giving selection boards, and not the Secretary of State, authority to determine which senior members of the Foreign Service, serving on limited career extensions, will not be renewed based on the needs of the Service.

Numerous technical and conforming amendments.

Language raising the mandatory retirement age from 60 to 65. This reflects a compromise worked out between the two distinguished gentlemen from Florida (Mr. Fascell and Mr. Pepper). Both the Post Office and Civil Service Committee and the Foreign Affairs Committee made this change.

The CHAIRMAN. The question is on the Post Office and Civil Service Committee amendments.

The Post Office and Civil Service Committee amendments were agreed to.

AMENDMENTS OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer a series of amendments.

The Clerk read as follows:

Amendments offered by Mr. Fascell: Page 35, line 11, immediately after "Commerce," insert "the Department of Labor,".

Page 47, line 2, immediately before "The" insert "(a)"; and immediately after line 10, insert the following new subsection:

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary of his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

Page 53, line 12, immediately after "compensation" insert "(including position classification)".

Page 83, line 2, strike out "abroad"; and in line 4, strike out "abroad".

Page 153, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

Page 204, line 13, strike out "of State"; and on page 206, beginning in line 12, strike out "of State".

Page 213, line 15, strike out "Act." and insert in lieu thereof the following:

Act, except that any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act), as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Page 233, line 17, strike out "the".

Page 258, strike out lines 8 through 11 and insert in lieu thereof the following:

Sec. 2308. Education Allowance.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

Page 259, line 22, strike out "2309(a)" and insert in lieu thereof "2310(a)" and on page 260, line 9, strike out "2309(b)" and insert in lieu thereof "2310(b)".

Page 260, line 7, immediately before the first period insert ", except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed twenty-five percent of the basic pay of the employee".

Page 260, beginning in line 18, strike out "in the Department of State".

Page 261, immediately after line 9, insert the following new subsection:

(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)".

Page 267, strike out lines 6 through 15 and insert in lieu thereof the following:

Sec. 2403. Effective Date.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) Section 812 of this Act, and the repeal of sections 631 and 632 of the Foreign Service Act of 1946, shall be effective as of the date of enactment of this Act.

Page 268, line 1, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(e) The provisions of chapter 8 of title I"; line 2, insert "section" immediately before "814(a)"; and beginning in line 3, strike out "such effective date" and insert in lieu thereof "the effective date of this Act".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read, printed in the Record, and that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, these amendments correct oversights and make conforming changes in a number of provisions of the bill some of which are necessitated by the adoption of the spousal annuity provision just discussed. The most significant are the changes necessitated in the effective date section because October 1, is almost here and the Foreign Affairs agencies will not be able to complete the regulations in time for the bill to take effect October 1.

Mr. FORD of Michigan. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this time to engage in a colloquy with the gentlewoman from Colorado.

I would like to compliment the gentlewoman from Colorado (Mrs. Schroeder) on her drafting of chapter 10, setting out the groundrules for labor-management relations in the Foreign Service. As I read these provisions, they are, with a few exceptions having to do with the size of the bargaining unit and the makeup of the labor board, precisely the same as the provisions in title VII of the Civil Service Reform Act of 1978. These provisions are quite different from the labor law provisions that the administration first recommended in the introduced version of H.R. 4674. Am I correct?

Mrs. SCHROEDER. The gentleman is perfectly correct. We did not see any reason that members of the Foreign Service should have fewer rights to organize and bargain collectively than other Government employees. In the key area of management rights, we copied the language from the Civil Service Reform Act, which the gentleman worked so hard on. Only slight adjustments were made to accommodate the different personnel system used by the Foreign Service.

Mr. FORD of Michigan. When the Foreign Service Labor Relations Board and the courts interpret this legislation, do you think they should be bounded by the decisions of the Federal Labor Relations Authority?

Mrs. SCHROEDER. Absolutely. Section 1007(b) of the bill says that decisions under this law must be consistent with FLRA decisions, except where special circumstances require otherwise. I would expect the Foreign Service Labor Relations Board to construe this exception very narrowly and find special circumstances only in rare cases. Good labor-management relations throughout the Federal sector require consistent interpretation of the law.

Mr. FORD of Michigan. I thank the gentlewoman. The Foreign Affairs Committee report states that management does not have to negotiate over procedures so time-delaying as to negate the exercise of a management right. As you surely remember, when we went to conference on the Civil Service Reform Act, the Senate had a provision which read "except that such negotiation shall not unreasonably delay the exercise by management of its authority to decide or act,". We insisted that this language be dropped and the Senate receded. The conference report points out that "negotiations on such procedures should not be conducted in a way that prevents the agency from acting at all, or in a way that prevents the exclusive representative from negotiating fully on procedures."

The Federal Labor Relations Authority read this legislative history and held that the issue of providing hearings before removal or suspension was indeed negotiable. In holding for the union in the Fort Dix case (2 FLRA No. 16, November 29, 1979), the FLRA found the agency claim of unreasonable delay to be without support in the legislative history of the Reform Act. As the FLRA said in its decision:

> The committee on conference . . . specifically rejected a provision in the Senate Bill (S. 2640) which provided that negotiation on procedures should not "unreasonably delay" so as to "negate" the exercise of management's reserved rights. . . . Rather, as the Conference Report indicates, [Title VII] is intended to authorize an exclusive representative to negotiate fully on procedures, except to the extent that such negotiations would prevent agency management from acting at all.

The case is now on appeal in the U.S. Court of Appeals. I am concerned that, first, the language in the Foreign Affairs Committee report would limit negotiation in the Foreign Service to a smaller scope than exists for other Federal employees and second, that the language might be used as an indication of congressional intent in the pending appeal on the Fort Dix case. Could the author of the provisions of chapter 10 please respond?

Mrs. SCHROEDER. I entirely agree with the comments of the gentleman from Michigan (Mr. FORD). In the area of management rights, chapter 10 is intended to provide precisely the same scope of negotiation in the Foreign Service as title VII does for the rest of the Federal Government. What is said in the Foreign Affairs Committee report was not my intention, as drafter, and was never discussed in our joint subcommittee meetings. As the law stands right now, the decision of the FLRA in the Fort Dix case is the law and it should apply to the Foreign Service as well after the passage of chapter 10. If the Court of Appeals modifies or overrules the FLRA decision, the court decision will become the law and will be equally binding on the Foreign Service as on the rest of the Federal Government. Further, I think the FLRA properly stated the intent of this committee in the Fort Dix decision.

Mr. FORD of Michigan. In light of this discussion, is it your view that the report of the Committee on Post Office and Civil Service on H.R. 6790 accurately states the intent of the author of the labor-management relations provision of H.R. 6790?

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Mrs. SCHROEDER. If the gentleman will yield again, I certainly do, and I thank the gentleman from Michigan for pointing this out.

Mr. FASCELL. The gentleman's concern is commendable, especially since both our committees have spent 1 year on this bill and the Foreign Affairs Committee began work 3 years ago. However, when the language in the Foreign Affairs Committee report is read in context, it is quite clear in following the bill's language.

Legislative history is composed of the hearings, reports and other documents of both committees. I do not feel that a complete reading of both reports will be found to be inconsistent.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FASCELL).

The amendments were agreed to.

FOREIGN AFFAIRS COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the Foreign Affairs Committee amendments.

The Clerk read as follows:

Foreign Affairs Committee amendments: Page 238, beginning on line 9, strike out "In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the" and insert in lieu thereof "The"; page 239, line 9 strike out "and" and insert in lieu thereof a comma; and page 239 line 13, immediately after "prescribe" and before the period insert the following: ", and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))".

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this language simply conforms the bill to the current provisions of the Peace Corps Act.

I would ask for the adoption of the amendments.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we have reviewed this amendment and have decided, with some reluctance, to accept it. The bill's provision limiting the ability of the Peace Corps to utilize the Foreign Service personnel authorities was added in subcommittee on my recommendation. Although the Committee on Foreign Affairs voted to strike the limitation, the Committee on Post Office and Civil Service voted to retain it. Rather than occupy the time of the House with a controversy which involves fewer than 100 employees, I have decided to accept the amendment and maintain the status quo.

In so doing, I am not endorsing the personnel system in effect in the Peace Corps. Existing law permits the President to utilize Foreign Service personnel authorities for the Peace Corps, without actually placing Peace Corps employees in the Foreign Service. Rather, these employees are subject to a 5-year time limit on their employment, from which they gain no career rights. This system has produced inequities, inefficiencies, and bad morale. I hope that the Subcommittee on Civil Service or another subcommittee with jurisdiction will hold detailed oversight hearings soon on the strange personnel system at the Peace Corps.

The CHAIRMAN. The question is on the Foreign Affairs Committee amendments.

The Foreign Affairs Committee amendments were agreed to.

AMENDMENT OFFERED BY MR. GONZALEZ

Mr. GONZALEZ. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ: Page 225, after line 13, insert the following:

SEC. 2107. RECALL OF CERTAIN CAREER MEMBERS WHO WERE INVOLUNTARILY RETIRED.—(a) Any individual who was retired from the Service under section 632 of the Foreign Service Act of 1946 after February 22, 1979, shall be recalled for service by the Secretary under section 308 of this Act if (1) a request to be recalled is submitted to the Secretary by the individual within 60 days after the effective date of this Act, and (2) the individual passes the pre-employment physical for worldwide assignment.

(b) For purposes of this chapter, any individual who is recalled for service pursuant to this section shall be considered to have been serving in the Foreign Service immediately before the effective date of this Act at the salary class and step held by that individual immediately prior to the involuntary retirement.

(c) Subject to chapter 6 of title I of this Act, any individual recalled for service pursuant to this section shall be retained on active duty until the individual has reached age 65 and completed at least 6 months of recall service pursuant to this section.

(d) Individuals recalled for service pursuant to this section shall not be counted toward any personnel ceiling established for the Department by the Director of the Office of Management and Budget.

Page 225, line 14, strike out "2107" and insert in lieu thereof "2108"; in line 17, strike out "2108" and insert in lieu thereof "2109"; and in line 21 strike out "2107" and insert in lieu thereof "2108".

Conform the table of contents.

Mr. GONZALEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. GONZALEZ. Mr. Chairman, at the very outset, let me say that I heartily and most sincerely congratulate the distinguished gentleman from Florida and his colleagues and the distinguished gentlewoman from the other committee and the gentlemen working on the other side of the aisle on this very difficult, rather complicated legislation. It is a 268-page bill. That indicates the complexity of it and the difficulty of it.

The discussions we have had on some of these amendments clearly indicate that into these little crevices that will come up when you have a general codification of a broad expanse of Federal law, that you might find that you are perpetrating some injustices. You will find that into these crevices there are some human beings that are being victimized.

My amendment simply would provide that those persons who have been compelled since the Supreme Court decision of February 22, 1979, Vance versus Bradley, because they were 60 years of age would have a chance to come back now that we are changing the mandatory retirement age to 65, if they so wish and if my amendment provides they satisfy the requirements of the service. That is, that they pass an entrance examination as they would as if they were starting out and they are not asking for reimbursement for retroactive pay or anything like that. It would affect no more than about 154 at the most and of those, I do not know how many would be interested in returning, but there are some who were caught in this fight here on pushing up the retirement from 60 to 65. It is an act of compassion, I think.

You know, our Government, if it is worthy of being a government, has to be compassionate. It has to be above all fair and equitable. This demands in turn that those of us in public service, particularly those of us that hold an elective office, must have a genuine passion for justice and compassion.

This is all that this would do. It would rectify a grievous error.

I was hoping that this amendment would be accepted by the two sides, because it is merely taking into account something that has been lost in this rather difficult transition embodied and reflected in the codification of all of this broad corpus of Federal jurisprudence.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I would be delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I thank the gentleman for yielding.

I just have one question. The gentleman said this applied to those who had been forced to retire because of the 60-year limit after February of 1979?

Mr. GONZALEZ. Yes, since February 22, 1979.

I was hoping the amendment would be accepted. I see no reason why it would not.

I yield back the balance of my time.

Mr. FASCELL. Mr. Chairman, after that appeal. I reluctantly rise to oppose this amendment in the strongest possible terms. In terms of equity, what the gentleman from Texas has so eloquently decided to do here is just hire everybody who is already out or rehire them or give them the right to be rehired. That affects AID, ICA, the State Department, everybody who has known since 1946 that the mandatory age of retirement was 60.

Now, in the gentleman's compassion, what the gentleman from Texas wants to do is give them another shot, which we would like to do all right. except for the fact that in the meantime you have got a lot of other people who have come into the system as a result of that who are going to be impacted most chaotically as well. You may be trying to rehire people, but what you would accomplish is the loss of younger members who would be forced out as a result of the rehiring and the personnel ceiling in the foreign affairs agencies. I would think under the circumstances with all the time that has gone by, in all fairness, we had better leave well enough alone and not provide in the law some statutory base to allow 285 people in four different agencies to come back into the Government service after they have now been out.

The Congress set the mandatory retirement age at 60 for very good reasons. We are now recognizing the changes in our society, the tendency of people to live longer, improved access to medical care, and modern transportation, among other factors. We are therefore persuaded that raising the mandatory retirement age to 65 is a rational response to these factors which preserves the concept of a predictable flow of recruitment, career development and separation which is served by a mandatory retirement age for the Foreign Service.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. Yes, of course.

Mr. GONZALEZ. Well, I interrupted because I think from what the gentleman has said here, he has not had a chance to properly evaluate my amendment. My amendment does in no way compel the hiring.

The persons accepted and the total number is nowhere over 154, contrary to the distinguished chairman's figure of over 200.

Mr. FASCELL. Well, if I can reclaim my time just for a moment, I would say that our information is that 285 people are affected, 115 in the State Department, 71 in ICA, 99 in AID, who reached the age of 60 and were retired since February of 1979.

Also, I must say in all fairness to the gentleman, we did consider this amendment in the committee and we rejected it for the very reasons we are rejecting it right now, because the language in the gentleman's amendment says:

> Any individual who was retired from the service shall be recalled for service by the Secretary under this act, provided, however,

And then it sets certain conditions; but I admire what the gentleman is trying to do and in a humanitarian sense, I would like to take care of everybody, but I think in all fairness we have done what is best for the Foreign Service and the country.

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The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ).

The amendment was rejected.

AMENDMENT OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 254, between lines 3 and 4, insert the following new section:

SEC. 2207. MODEL FOREIGN LANGUAGE COMPETENCE POSTS.—(a) In order to carry out the purposes of section 702 and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common language. Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

(b) The posts designated under subsection (a) shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require. Such exceptions shall be annually reported to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

Mr. SIMON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. SIMON. Mr. Chairman, I will not take 5 minutes. We have demonstration projects of a great variety and I am asking for a demonstration project. I have discussed this with the State Department and what we are saying is let us pick two embassies where we require everyone in those embassies to have some competence in the language of those embassies and say at least two, and we have worked out the language with the State Department.

Mr. PANETTA. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding. I would like first to commend the gentleman in the well for his fine leadership in the area of foreign language and international studies. I had the pleasure of serving with the gentleman on the President's Commission on Foreign Language and International Studies and was deeply impressed with his knowledge of the issues and his dedication to raising this very important matter for our country.

I have been working with you in helping to focus attention on the importance of foreign language competence in our diplomacy, in our trade balance, in our intelligence capabilities, and in our ability as a nation to understand and to cope with a turbulent world. The amendment before the House is truly an important contribution to this process. The question of staffing our Embassies abroad with people who have at least a minimum competence in the language and some understanding of the culture of the host country is extremely important. Right now, many of our Embassy personnel abroad remain isolated from the people of the host country, unable to communicate in the native language. This reality pesents us with a number of problems chiefly related to morale, but also touching on the ability of our personnel to respond well to possible crises at the Embassy such as terrorist attacks. Without an ability to communicate with the native population, our personnel are at a tremendous disadvantage.

I would like to ask the gentleman a few questions about his amendment. Is it not true that personnel from a number of agencies are stationed at our embassies abroad?

Mr. SIMON. Yes, that is correct. The International Communication Agency, the Department of Defense, the Agency for International Development, to name a few, all have personnel stationed at certain American Embassies.

Mr. PANETTA. My question then is: If we are to achieve a minimum proficiency requirement for all personnel in at least two embassies, will not there be a need for constructive interagency cooperation on this experiment?

Mr. SIMON. I am glad the gentleman raised that question because it strikes at the heart of my amendment. There is a tremendous need for all agencies with personnel stationed abroad to cooperate with the State Department in meeting the requirements of this amendment. I would urge the heads of these departments and agencies to support the thrust of this experiment by planning and consulting effectively with the State Department.

Mr. PANETTA. I thank the gentleman for his answer. Your amendment states that at least two embassies shall be designated as foreign language competence posts. I wonder if the gentleman is prepared to strongly encourage the State Department to assess its capabilities in this regard and to establish even more model embassies? Would you object to the State Department's establishing three, four, or even five such embassies?

Mr. SIMON. On the contrary, I would hope that my designation of "at least two" such embassies would not be regarded as a ceiling, but rather as a floor or a foundation upon which to make progress in other embassies. So, I would strongly encourage the State Department to begin this experiment with the maximum number of model embassies its resources can accommodate.

Mr. PANETTA. My last question relates to which languages and regions the gentleman is targetting. Would you prefer to see these model embassies in the same languages or in different languages, in the same regions of the world or different regions?

Mr. SIMON. Again, I compliment the gentleman from California for his insightful question. In discussions with State Department representatives I have made it clear that my interest is in having this experiment conducted in diverse settings, in diverse languages, in diverse regions. I would hope that the State Department would ensure that it spreads this experiment into as many different regions and language groups as possible. Only through that approach will we be able to assess adequately the resource implications, the personnel constraints, and the effectiveness of establishing foreign language competence posts abroad.

Mr. PANETTA. I thank the gentleman for his answers and urge adoption of his amendment.

Mr. SIMON. I thank the gentleman and want to express my gratitude to him for his work in shaping and supporting this amendment.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Minnesota.

Mr. OBERSTAR. I want to compliment the gentleman from Illinois for offering this amendment. As the gentleman knows, I am a very strong proponent of foreign language competency in the Foreign Service. I think the gentleman's amendment will help advance that cause.

Mr. SIMON. I thank the gentleman. He is not only a proponent, he is a living example of that.

Mr. DANIELSON. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from California.

Mr. DANIELSON. I thank the gentleman for offering his amendment. I hope he will urge that Swedish be one of the languages that is practiced in these embassies.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. I thank the gentleman and compliment him on his amendment. I support it.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Chairman, we have examined the amendment on this side for the committee and we agree with the amendment and accept it.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to my colleague from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Chairman, I wish to associate myself with the gentleman's remarks and thank my colleague for yielding.

Mr. BUCHANAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am happy to yield to my colleague from Alabama (Mr. BUCHANAN).

Mr. BUCHANAN. Mr. Chairman, we, too, have examined the gentleman's amendment and are pleased to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. SIMON).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OBERSTAR: Page 217, line 16, strike out "In" and insert in lieu thereof "Except as provided in subsection (b), in"; page 218, line 18, strike out "the 3-year" and all that follows through "Notwithstanding" in line 22 and insert in lieu thereof "no mandatory conversion from the Foreign Service shall be made, and subsection (a) shall not apply with respect to those individuals. Notwithstanding"; in line 24, strike out "such individuals" and insert in lieu thereof "each such individual"; on page 219, line 2, immediately after "Act)" insert "unless and until the individual converts under section 2102 or section 2103"; in line 3, strike out "and 405" and insert in lieu thereof "405, and 504"; in line 5, strike out 504,"; in line 8, strike out who are temporarily excepted from conversion under this subsection" and insert in lieu thereof "to whom this subsection applies"; and in line 11, immediately before the period insert ", except that such salary rates shall not be less than the salary rates which but for the enactment of this Act would take effect under those sections for the first pay period which begins on or after the effective date of this Act".

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, the purpose of this amendment is to preserve the rights of employees in the International Communication Agency, ICA, as established under their collective bargaining agreement with the agency in 1977. This agreement protects ICA employees from being involuntarily converted from the Foreign Service to the civil service and it has worked well. During the committee hearing both the agency, ICA and the employee organization, the American Federation of Government Employees, opposed the State Department's attempt to legislate this change to a mandatory conversion.

The people covered by this amendment are domestic specialists. They are writers, editors, broadcasters—people whose job is best done here in this country and who do not want to be forced into the Civil Service.

It seems to me very inappropriate at a time when these people in ICA were reporting on the strike of the Polish workers in the Gdansk shipyards that this committee and this State Department would be violating a workers' agreement. I think it is entirely inappropriate. I feel the collective bargaining agreement should be respected. I urge adoption of the amendment and hope the committee will accept it.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment. I want my colleagues to know this is a matter that was considered carefully over many months by the committee on the question of what to do with this issue on mandatory conversion. We believe the bill's provisions already represent a compromise between mandatory conversion without qualification and a purely voluntary conversion.

The largest group affected in this provision are 900 domestic specialists in ICA. If we allow these 900 people to convert voluntarily a major purpose of this bill would be defeated.

So I say in all fairness to everybody covered under the bill I urge my colleagues to defeat this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment Offered by Mr. OBERSTAR: Page 261, strike out section 2313 (lines 10 through 23) and insert in lieu thereof the following new section 2313:

SEC. 2313. RETIREMENT CREDIT FOR IMPRISONED FOREIGN NATIONALS AND FOR SERVICE WITH CERTAIN OVERSEAS BROADCASTING ORGANIZATIONS.—(a) Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon, and by inserting immediately after paragraph (9) the following new paragraphs:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual; and

"(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Inc., Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E).".

(b) Such section 8332(b) is further amended by adding at the end thereof the following new sentence: "The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection.".

On page 6, in the table of contents, strike out the item relating to section 2313 and insert in lieu thereof the following new item:

Sec. 2313. Retirement credit for imprisoned foreign nationals and for service with certain overseas broadcasting organizations.

Mr. OBERSTAR (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Chairman, our colleagues on the Foreign Affairs Committee and the Post Office and Civil Service Committee have done an enormous service in this legislation offering men and women of the Foreign Service benefits which are long overdue. But as the gentleman from Texas, Mr. GONZALEZ, earlier said, in a measure of such magnitude there are often injustices that creep in or may be overlooked.

One of those which I think has been overlooked and which has come to my attention, is that certain current or former employees of the International Communication Agency are being denied entitlement to their retirement credits. I have in mind those people who organized the binational centers in various countries outside the United States during the 1940's and 1950's.

I have some personal experience with people who operated these American and foreign country ethnic heritage and information centers. During a period when the U.S. Government was pursuing a variety of foreign policy objectives, these binational centers kept contacts between the United States and foreign nationals. Center staffs were paid on United States Government grants renewable on an annual basis. They were people who worked in very unhealthy areas of the world under very adverse conditions. They took on a very unpopular, sometimes risky task of defending their country and making friends for the United States overseas. I saw many of those individuals during the years when I lived and taught language in Haiti. They were the English speaking teachers, the cultural program directors and the librarians. Working at the binational centers, they created ties between America and the host community. Much of their work now continues through the mission and programing of the International Agency. I feel that those people ought to be given proper recognition for their retirement benefits.

Until the 1960's, the staff of these centers served in very tenuous yearly appointments because people who were making our foreign policy at that time feared that direct U.S. operation of the centers might backfire and cause anti-American feelings. Often, those centers were the target of anti-American feelings. They were bombed, they were firebombed, and they were attacked. Those people really had their lives on the line.

By the seventies, however, many of the staff employees had become career members of the Foreign Service. Those employees over the age of 50 were not offered unlimited appointments because they were very close to the traditional Foreign Service mandatory retirement age of 60. In 1974, a Federal court ruled that binational center grantees were entitled to retirement credits, but that decision has not been fully implemented.

My amendment would correct that discrimination at a very minimal cost of not even $100,000, according to estimates I have seen, and I hope the committee will accept the amendment.

□ 1900

Mrs. SCHROEDER. Will the gentleman yield?

Mr. OBERSTAR. I will be happy to yield.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition to the amendment.

The gentleman's amendment proposes to grant civil service retirement credit for service performed with certain radio broadcasting organizations such as Radio Free Europe and binational centers.

The Committee on Post Office and Civil Service and the Office of Personnel Management have consistently opposed legislative proposals to grant civil service retirement credit for periods of non-Federal service.

Although, in this case, the employees would be required to make a deposit to the civil service retirement fund to cover the non-Federal service, the service credits, nevertheless, would result in increasing the unfunded liability of the civil service retirement fund.

Mr. Chairman, the unfunded liability of the retirement fund now exceeds $130 billion. We simply cannot afford to incur additional liabilities, particularly for service which is not performed as a Federal employee. To do so in this case would result in an unfair burden on the American taxpayers and, most certainly, would open the door to a host of proposals for retirement credit for similar types of non-Federal service.

Mr. OBERSTAR. I am sorry the committee opposes the amendment. I think it is one that in all fairness should be accepted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The amendment was rejected.

AMENDMENT OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL: Page 73, line 20, immediately before the period insert ", subject to any career extension under subsection (d) of this section"; and immediately after line 20, insert the following new subsection:

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

Mr. FASCELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Chairman, this amendment seeks to correct a situation giving the Secretary some authority in certain cases to provide for limited extensions of service. It recognizes the desirability of preserving the current authority of the Secretary to extend temporarily the career appointment of a career member of the Service whose time in class or limited career extension expires. An example of this situation occurs when a Foreign Service officer who is part of a negotiating team reaches the end of his time in class and faces selection-out. In the interest of an effective and efficient foreign policy, the Secretary needs the discretion to grant a limited extension in such an instance. This provision permits such an extension for a maximum of 1 year.

This amendment also allows a career member of the Service to complete the term of a Presidential appointment even if his or her maximum time in class or limited career extension has expired. This is a recognition of the President's authority to make such appointment.

I urge support of the amendment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I compliment the gentleman and we certainly accept the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL).

The amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. KAZEN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 6790 to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, pursuant to House Resolution 695, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment of third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 239, nays 78, not voting 115, as follows:

[Roll No. 525]

YEAS—239

Akaka
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
Atkinson
AuCoin
Bailey
Barnes
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bevill
Blanchard
Boland
Bolling
Boner
Bonior
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Calif.
Buchanan
Burlison
Burton, John
Burton, Phillip
Butler
Carr
Carter
Cavanaugh
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Conte
Corcoran
Cotter
Coughlin
Courter
D'Amours
Danielson
Daschle
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dickinson
Dicks
Dingell
Dixon
Dornan
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Erdahl
Erlenborn
Ertel
Evans, Ind.
Fascell
Fazio
Fenwick
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Gaydos
Gibbons
Gilman
Gingrich
Glickman
Goldwater
Gore
Gradison
Gray
Green
Guarini
Gudger
Guyer
Hagedorn
Hamilton
Hance
Hanley
Harkin
Harris
Harsha
Hawkins
Heftel
Hightower
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kildee
Kostmayer
Leach, Iowa
Lent
Lewis
Lloyd
Long, La.
Long, Md.
Lujan
Luken
McCloskey
McCormack
McDade
McEwen
McHugh
Maguire
Markey
Marks
Martin
Mica
Mikulski
Miller, Calif.
Mineta
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Moore
Moorhead, Pa.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patterson
Pease
Pepper
Petri
Pickle
Preyer
Pritchard
Rahall
Rangel
Ratchford
Regula
Reuss
Rinaldo
Robinson
Roe
Rosenthal
Roth
Roybal
Sabo
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sensenbrenner
Sharp
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Stack
Staggers
Stanton
Stark
Stewart
Stokes
Studds
Swift
Synar
Tauke
Thomas
Traxler
Udall
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Winn
Wirth
Wolff
Wolpe
Wright
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—78

Abdnor
Applegate
Archer
Badham
Bafalis
Barnard
Bauman
Bethune
Bouquard
Brown, Ohio
Broyhill
Carney
Collins, Tex.
Conable
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Devine
Duncan, Tenn.
English
Ginn
Gonzalez
Gramm
Grisham
Hall, Tex.
Hammerschmidt
Hansen
Holland
Holt
Hopkins
Ichord
Jacobs
Jones, Okla.
Jones, Tenn.
Kazen
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Lee
Loeffler
Lott
Lungren
McDonald
McKay
Madigan
Marlenee
Michel
Miller, Ohio
Montgomery
Moorhead, Calif.
Mottl
Nichols
Pashayan
Paul
Quillen
Rhodes
Roberts
Rousselot
Rudd
Schulze
Shelby
Shumway
Shuster
Snyder
Solomon
Spence
Stangeland
Stenholm
Stockman
Stratton
Stump
Symms
Taylor
Trible
Wyatt

NOT VOTING—115

Addabbo
Alexander
Ambro
Anderson, Ill.
Ashbrook
Baldus
Beard, R.I.
Beard, Tenn.
Biaggi
Bingham
Boggs
Bonker
Broomfield
Burgener
Byron
Campbell
Chappell
Cheney
Chisholm
Clay
Coelho
Conyers
Corman
Crane, Daniel
Davis, Mich.
Davis, S.C.
Dodd
Donnelly
Dougherty
Edwards, Okla.
Emery
Evans, Del.
Evans, Ga.
Fary
Ferraro
Findley
Frost
Garcia
Gephardt
Giaimo
Goodling
Grassley
Hall, Ohio
Heckler
Hefner
Hillis
Hinson
Holtzman
Hubbard
Ireland
Jenrette
Kastenmeier
Kelly
Kemp
Kogovsek
Leach, La.
Leath, Tex.
Lederer
Lehman
Leland
Levitas
Livingston
Lowry
Lundine
McClory
McKinney
Marriott
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Minish
Moffett
Murphy, Ill.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nelson
Nolan
Patten
Perkins
Peyser
Porter
Price
Pursell
Quayle
Railsback
Richmond
Ritter
Rodino
Rose
Rostenkowski
Royer
Russo
Satterfield
Shannon
Skelton
Spellman
St Germain
Steed
Tauzin
Thompson
Ullman
Walker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wydler
Wylie
Young, Alaska
Zeferetti

□ 1910

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.

Mr. Chappell with Mr. Dougherty.

Mr. Lederer with Mr. Goodling.

Mrs. Byron with Mr. Railsback.

Mr. Coelho with Mr. Porter.

Mr. Mattox with Mr. McClory.
Mr. Zeferetti with Mr. Livingston.
Mr. Lowry with Mr. Hillis.
Mr. Jenrette with Mr. Grassley.
Mr. Ireland with Mr. Kemp.
Mr. Kastenmeier with Mr. Quayle.
Mr. Rodino with Mr. Ritter.
Mr. Satterfield with Mr. Pursell.
Mr. Russo with Mr. Williams of Ohio.
Mr. Rostenkowski with Mr. Wylie.
Mr. St Germain with Mr. Royer.
Mr. Tauzin with Mr. Walker.
Mr. Ullman with Mr. Kelly.
Mr. Thompson with Mr. Wydler.
Mr. Rose with Mrs. Heckler.
Mr. Steed with Mr. Marriott.
Mr. Alexander with Mr. Bob Wilson.
Mrs. Chisholm with Mr. Hinson.
Mr. Beard of Rhode Island with Mr. McKinney.
Mr. Price with Mr. Findley.
Mrs. Boggs with Mr. Ashbrook.
Mr. Nelson with Mr. Beard of Tennessee.
Mr. Minish with Mr. Daniel B. Crane.
Mrs. Holtzman with Mr. Davis of Missouri.
Mr. Mavroules with Mr. Emery.
Mr. Skelton with Mr. Edwards of Oklahoma.
Mrs. Spellman with Mr. Cheney.
Ms. Ferraro with Mr. Burgener.
Mr. Garcia with Mr. Evans of Delaware.
Mr. Donnelly with Mr. Broomfield.
Mr. Corman with Mr. Campbell.
Mr. Kogovsek with Mr. Charles H. Wilson of California.
Mr. Leland with Mr. Matsui.
Mr. Williams of Montana with Mr. Leach of Louisiana.
Mr. Lundine with Mr. Lehman.
Mr. Charles Wilson of Texas with Mr. Leath of Texas.
Mr. Levitas with Mr. Bonker.
Mr. Mathis with Mr. Baldus.
Mr. Ambro with Mr. Clay.
Mr. Bingham with Mr. Mazzoli.
Mr. Biaggi with Mr. Peyser.
Mr. Richmond with Mr. Patten.
Mr. Giaimo with Mr. Frost.
Mr. Fary with Mr. Hubbard.
Mr. Evans of Georgia with Mr. Dodd.
Mr. Hefner with Mr. Hall of Ohio.
Mr. Moffett with Mr. Conyers.
Mr. Nedzi with Mr. Murphy of Illinois.
Mr. Murphy of New York with Mr. Nolan.
Mr. Perkins with Mr. Myers of Pennsylvania.
Mr. Shannon with Mr. Whittier.

Messrs. MADIGAN, BROWN of Ohio, and HAMMERSCHMIDT changed their votes from "yea" to "nay."

Mr. ROE changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1920

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING CLERK TO MAKE CORRECTIONS AND TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 6790, FOREIGN SERVICE ACT OF 1980

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill H.R. 6790, the Clerk is authorized to correct section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending that bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PERSONAL EXPLANATION RELATING TO COMMITTEE AMENDMENT TO H.R. 6790

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Mrs. SCHROEDER. Mr. Speaker, when the vote occurred on the Ford (Post Office and Civil Service Committee) amendment to H.R. 6790 dealing with the rights of former spouses, the floor message from the Democratic cloakroom initially misidentified it as the Schroeder amendment. Well, the Ford amendment struck the language of the Schroeder amendment. Obviously, I opposed the amendment. Yet, Members relying on the floor message might have assumed I supported it. Many Members were confused. The attached statement came from the cloakroom.

Schroeder Post Office and Civil Service Committee amendment to Section 814, Permits State courts on a case-by-case basis to determine the division of retirement benefits and survivor annuities to former spouses of Foreign Service officers.

(Four minutes after the vote began the identity of Mrs. SCHROEDER was deleted from the explanation.)

PERMISSION FOR COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT DURING 5-MINUTE RULE ON WEDNESDAY OF THIS WEEK

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce be permitted to sit during the 5-minute rule on Wednesday of this week, September 10, 1980.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE OF COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO SIT ON TOMORROW, TUESDAY, SEPTEMBER 9, 1980, DURING 5-MINUTE RULE

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce be permitted to sit tomorrow afternoon, Tuesday, September 9, 1980, during the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, let me ask the gentleman, why is it so important to do this? We have a lot of legislation here to consider.

Mr. SCHEUER. Mr. Speaker, if the gentleman will yield, that is right, but we have been scheduled to hear testimony on H.R. 7791, the Reciprocity and Investment Act. We have many witnesses who are coming to the hearing.

Mr. ROUSSELOT. Is the request for witnesses only?

Mr. SCHEUER. For witnesses only.

Mr. ROUSSELOT. The gentleman can assure us, therefore, that there will be no markup of any bill?

Mr. SCHEUER. Absolutely not. I can assure the gentleman of that.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's response, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, there is pending before the Committee on Interior and Insular Affairs of the House an extremely important piece of legislation dealing with the question of radioactive waste disposal.

Last year I wrote a Law Review article in the Akron University College of Law "Law Review" on the subject of radioactive waste disposal and the emerging issue of States' rights. While it may seem the reflection of a bit of pride of authorship to place my own writings in the RECORD, since the matter is current and since this does lay out the law on the subject, I am including the Law Review article for the benefit of my colleagues following these remarks:

RADIOACTIVE WASTE DISPOSAL: THE EMERGING ISSUE OF STATES' RIGHTS

(By Hon. JOHN F. SEIBERLING) *

March 28, 1979, marked the beginning of a new public awareness and attitude toward nuclear power. On that day, what some scientists, industry officials and government spokesmen said would never happen did happen—a serious accident of critical magnitude crippled a nuclear power facility, releasing undetermined amounts of radiation into the atmosphere. Communities within a fifty mile radius were threatened with unimaginable chaos and disruption in the event a core meltdown forced mass evacuation.

The events of Three Mile Island forced industry, government and the public to reassess the vision of nuclear power as a key

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Footnotes at end of article.

solution to the energy crisis. As an outgrowth of this reassessment, the public began to demand a greater role in determining the development of nuclear power within their communities, and the public began to demand greater protection from the radiation hazards of nuclear waste transported through their communities. When the city of Cuyahoga Falls, Ohio for example, heard that radioactive waste from Three Mile Island was being trucked through the state, the city council passed an ordinance to place safety and security conditions on any such transports through city boundaries,[1] thus showing the concern which had already been expressed by officials in larger communities where accidents resulting in radiation leakage could result in a disaster of tragic proportions.[2]

States also have become increasingly responsive to public demands to prevent nuclear waste from being stored near their communities. State activity to prevent, limit, or prohibit outright the creation of nuclear waste facilities within the states' jurisdiction is not solely an outgrowth of Three Mile Island. Prior to March 28, 1979, sixteen states had approved legislation giving themselves either an equal role or a final say in federal decisions to store or dispose of radioactive waste within their boundaries.[3] Subsequent to March 28, 1979, the New Mexico legislature enacted a law prohibiting storage or disposal of radioactive waste in the state until and unless the state shall have concurred through a process to be established by a joint interim legislative committee. On May 30, 1979, the Ohio Senate approved legislation [3a] to prohibit the federal government from storing radioactive waste within the state at least through 1983.

If Ohio's bill is enacted into law, eighteen states will have claimed for themselves the authority to block federal decisions which may not adequately safeguard against accidents, leakage, spills or operational failures involving the transportation, storage and use of nuclear materials. Since radiation hazards which result from nuclear waste are not only potentially fatal but can endure literally for thousands of years, and with no national program of radioactive waste disposal on the horizon, this concern is well founded.

However, the laws passed by these states may run afoul of the Supremacy Clause of the Constitution. Regardless of the dimensions of the problem of disposing and safeguarding radioactive waste, the states' rights to impose conditions, or require prior consultation on potential waste disposal sites within their jurisdiction can be challenged in court, even in the absence of a federal solution, and have been challenged successfully. The purpose of this article is to examine the issue of the state role in federal nuclear programs and the need for Congressional action to insure that states will have an active role in federal decisions to dispose of radioactive waste within their jurisdictions.

I. THE ATOMIC ENERGY ACT

The Manhattan project brought a terrifying end to World War II and a hopeful beginning to the age of nuclear energy. However, since nuclear power was inexorably linked to weapons systems and national security, the federal government retained exclusive control over the development of atomic energy. In 1946, the Atomic Energy Act created the Atomic Energy Commission as the controlling federal agency, and restricted all private activity to fulfilling contractual obligations for the federal government.[4] Gradually, as nuclear power was developed to produce energy, and a domestic, peacetime application of the science became possible, the federal government invited industry to participate in making this application a reality. In 1954, Congress amended the Atomic Energy Act to allow increased participation by private industry through the establishment of a regulatory and licensing system.[5] It was later still that Congress approved legislation which gave states limited authority over certain kinds of nuclear materials, based on the recognition of state interest in "peaceful uses of atomic energy."[6] However, the policy Congress had established is based on the conclusion that the processing and use of nuclear materials is "vital to the common defense and security."[7] Thus, a federal agency (the Atomic Energy Commission, which in 1974, was designated the Nuclear Regulatory Commission) has been assigned full regulatory authority over the use of nuclear materials for commercial, peacetime purposes.

While the federal pre-emption over nuclear weapons development is a logical and defensible policy, it may be argued that continued federal pre-emption in uses of nuclear power for domestic purposes is an outdated application of the policy, especially in light of the expanded role of private industry. The nuclear industry asserts that excessive regulation by the federal government serves to impede the development of nuclear power as a major energy source in this country while states and citizen groups are more concerned about the dangers of nuclear power than ever before. From one side the federal government is being encouraged to smooth the way for the increased use of nuclear power for domestic energy needs, while from the other side the states are trying to cut from the federal regulatory fabric, on a state-by-state basis, a role for them to play, in partnership with the federal government, to represent the concerns of their citizens about the dangers of nuclear power and nuclear materials—including spent fuel—to public health and safety.

II. FAILURES OF FEDERAL REGULATORY SYSTEM

The problems of nuclear waste disposal are enormous. Currently, we have about seventy-four million gallons of radioactive waste in this country, all in temporary storage at plant-sited "pools"; and there are an additional eighty million gallons of defense nuclear waste which has accumulated since the military began producing nuclear weapons in the 1940's. The military high-level wastes have been stored at the Hanford Reservation in Washington State, the Savannah River reserve in South Carolina, and the Idaho National Engineering Laboratory in Idaho.[8]

The fission products contained in this waste are highly toxic elements, including the so-called transuranic elements; radioactive atoms heavier than uranium, which remain radioactive for extremely long periods of time. Plutonium-239, for example, has a half-life of almost twenty-five thousand years.[9] In human terms, the continued radioactive hazard is infinite. Even if radioactive waste storage could guarantee that no human exposure would occur for the life of the toxicity of the material, reactor waste must be isolated from the rest of the environment to prevent penetration and contamination of the biosphere, including food chains leading to man. This is a monumental problem, and even experts admit that no proven solutions to this problem exist at the present time.

The federal government, through the Department of Energy, has the prime responsibility for nuclear waste management.[10] However, the history of federal management of radioactive waste does not inspire public confidence in the existence of any long-term solutions to the problems of disposing nuclear waste, and the doubts expressed by the federal government itself through various agencies about current technological solutions to the radioactive waste problem point to the need for a thorough and public examination of all issues related to nuclear waste disposal.

The experience at the Hanford Reservation in Washington provides the best example of faulty assessments and planning by federal agencies for nuclear waste disposal. Millions of gallons of high-level waste were stored in liquid form in single-shell stainless steel and carbon tanks, which were originally expected to have a life expectancy of about fifty years. However, unexpected stresses resulted in failures before twenty years had passed, leaking over 423,500 gallons of high level wastes from sixteen tanks. The largest leak was discovered on June 8, 1973 when one tank was found to have leaked a total of 115,000 gallons amounting to 54,000 curies of radioactivity. The leak occurred over a period of months. (The extent of the leak was attributable in part to the absence of a key employee, whose substitute ignored signals from the monitoring system that something had gone wrong.)[11] The deficiencies in the storage technology at Hanford were previously known. In 1969, the General Accounting Office had warned that corrosion problems would exist with single-shell tanks,[12] but these warnings were ignored. Moreover, intermediate level radioactive wastes (up to 1 curie per gallon) were at first merely dumped in open trenches and absorbed into the sandy ground at Hanford.

The Department of Energy, which has authority to manage military as well as commercial radioactive waste, has embarked on a program to solidify the Hanford waste to prevent future leaks. Originally, as a part of the program, the Department of Energy proposed to store the military waste at a Waste Isolation Pilot Plant (WIPP) now being developed in New Mexico. The proposal has been modified since its initiation to use WIPP as a storage facility for transuranic wastes, such as contaminated clothing. While WIPP may be based on more advanced technology than was originally used at Hanford, past experience indicates that even technical experts have no confidence that their favored method of storing radioactive waste can be safely and surely implemented. Moreover, any disposal efforts would be subject to the hazards of accidents in transport, leaks of liquids pending solidification, or breakup or leaching into groundwater. (If the Administration lifts its current moratorium on reprocessing, additional hazards would be added to the problems of temporary and long term storage.)

Faulty selection criteria have further obstructed the government search for an "ideal" waste disposal site. In 1955, the National Academy of Science Research Council (NAS RC) was directed by the Atomic Energy Commission to examine the possibility of developing waste disposal facilities for radioactive materials. NASRC tentatively concluded in a 1957 research proposal that the best possibility was deep disposal in a geologic repository.[13] As a result of this initial conclusion, more engineering knowledge is available on salt mines than for any other method of radioactive waste disposal.[14] Some of the knowledge points to the potential instability of salt because of its plasticity and variable solubility.[15] Nonetheless, by 1970, the Atomic Energy Commission had spent one hundred million dollars and fifteen years to identify what they determined would be the final solution to the problem of disposing radioactive waste; an abandoned salt mine in Lyons, Kansas which would isolate radioactive waste permanently. The Kansas Geological Society, in an independent assessment of the selected site, raised questions about the site's safety, which was pockmarked with old oil and gas wells that penetrated the salt, providing an entrance for water from nearby operating mines. The Atomic Energy Commission later abandoned the site, admitting that the potential of water intrusion could leach out radioactive waste stored at the site.

Footnotes at end of article.

These experiences point to the faulty technology and criteria which have been employed by the federal government to develop a radioactive waste disposal program. In fact, the government no longer claims to possess solutions to the safety and security problems of long-term radioactive waste disposal. The most recent report on this issue, the Interagency Review Group report on Nuclear Waste Management [16] (a Presidential Commission which completed a report in March, 1979), had these conclusions concerning existing technology for preventing the potential exposure of humans to radioactive waste disposed of on a "permanent" basis:

"The risk assessments performed to date . . . have, with few exceptions, been based on idealized repository characteristics and are subject to significant uncertainties . . . Uncertainties associated with risk assessment derive from lack of data, lack of experience, inability to identify all release mechanisms for radionuclides, the natural variability in physical properties of geologic media, and the inability to predict long-term geologic and climatic process and social evolution. All of these uncertainties are neither additive nor of equal significance. An important aspect of the research remaining to be done is to understand how each enters into the overall uncertainty of the calculation of risk." [17]

The absence of federal solutions, following past failures, gives rise to another problem, which the Government Accounting Office described in a 1977 report:

"When it publicly announced its waste repository program objectives and goals the Department (of Energy) may have promised more than it can deliver. There are, we believe, formidable social, geological and regulatory problems which must be solved. Foremost among them is opposition of public and some political leaders. The Department may not be successful in gaining their acceptance unless it can convince the public that is has a sound waste management program and that geological disposal risks to man's environment are acceptably low." [18]

It is in this context—the absence of a federal program which promotes confidence—that seventeen states have already institutionalized their opposition to unilateral efforts by the federal government to bury radioactive wastes.

III. FEDERAL PRE-EMPTION

The state's laws giving them a role in federal radioactive waste management programs vary in the method, but essentially all achieve the purpose of reviewing and overriding a proposed federal action within their jurisdiction. However, in the absence of clear Congressional directive authorizing the states to have a role in such decisions, these state laws may be pre-empted by federal authority established under the Atomic Act as amended.[19]

In any inquiry into federal pre-emption it must first be established that the area is subject to federal regulation pursuant to authority designated by the Constitution. The findings of the Atomic Energy Act, as amended, clearly base the regulation of nuclear materials on constitutional powers over the common defense and security, interstate and foreign commerce and promotion of the general welfare.[20] As observed by the Eighth Circuit Court of Appeals in *Northern States Power Company* v. *Minnesota*, ". . . there can be no doubt but that Congress was acting within its constitutionally delegated authority in establishing a system of regulation over the entire spectrum of atomic energy, including the imposition of federal controls over health and safety standards." [21]

Once it has been established that the Constitution empowers the federal government to regulate the subject under question, it must be determined whether Congress intended or designed federal authority to preempt states from asserting their authority over the same subject.

"The doctrine of Federal pre-emption is based on Article VI, Clause 2 of the United States Constitution, the Supremacy Clause, which elevates federal law above that of the States." [22] The Clause states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The Atomic Energy Act does provide for a state role in regulating health hazards of certain radioactive materials. In 1959, Congress approved provisions which recognized state interest in peaceful uses of nuclear energy, and to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.[23] The provision still requires the Commission to retain control over certain activities, including the management and disposal of such nuclear waste which, in the Commission's determination, cannot be disposed of without a license. Another provision states that no restrictions on state activity will prevent state or local authorities from regulating activities for purposes other than "protection against radiation hazards." [24] (As will be shown, these provisions have been interpreted by the courts not to be relinquishing federal authority to the states, but to narrowly define a subject over which the state can regulate.)

Federal pre-emption can be assumed if it is physically impossible to comply with both federal and state regulations. In such a situation "a holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design." [25] However, in the absence of a direct collision between the two regulatory systems, it must be determined whether Congress intended the federal regulatory scheme to be exclusive. This must be assessed on a case by case basis since, "there is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress." [26] Where this intent is express, states cannot exert authority over the same area.[27] Otherwise, Congressional intent may be gleaned by examining the statute, or its legislative history.[28]

For example, "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it," [29] or if "the state policy produces a result inconsistent with the objectives of the federal statute," [30] or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," [31] then the state law and regulation is pre-empted by federal law. For where the federal government has, pursuant to its constitutional authority, enacted a system of regulation "States cannot, inconsistently with the purposes of Congress, conflict or interfere with, curtail, or complement, the federal law, or enforce law, or enforce additional or auxiliary regulations." [32]

The pre-emption of the Atomic Energy Act was challenged by the state of Minnesota in *Northern States Power Company*. In this case Northern was licensed by the Atomic Energy Commission to build a nuclear power plant in Minnesota. Northern applied to the state for a waste disposal permit. The state granted the permit upon the condition that Northern institute a program at the nuclear plant to detect and measure radiation releases, both liquid and gaseous. Since Northern was in compliance with federal law and with the radiation safety regulations required by the Atomic Energy Commission as a condition to licensing, Northern argued that Congress (in passing the Atomic Energy Act) intended for the Commission to have exclusive authority and control of nuclear plants, and therefore pre-empted enforcement of the state regulation. Minnesota argued, on the other hand, that it could regulate radioactive releases pursuant to the authority under section 2021(b) of the Atomic Energy Act, which defines the conditions under which states could enter into cooperative agreements with the Commission for the regulation of radiation hazards associated with by-products, source and special nuclear material.

The court examined this provision, and noted that the category of radioactive material under question—liquid and gaseous releases from operating nuclear plants—was not among the categories of material over which the state could assume control under section 2021(b). The court further examined the provision which specifically prohibited the Atomic Energy Commission, in transferring certain authority to the states, from relinquishing its authority over the construction and operation of any production or utilization facility.[33] Finding that the discharge of radioactive effluents fell under the regulation of production and utilization facilities, the court determined that the Minnesota law provided for dual control by state and federal authority in an area where the sole authority rested with the federal government.

The court found further indication that the federal act pre-empted Minnesota's law in the legislative history of section 2021, to provide for cooperative agreements between the Commission and states with respect to state assumption of regulation over certain materials. The court noted that, prior to the 1959 amendments, the regulation of all radioactive materials, including those for which regulation by agreement could be assumed by the state (pursuant to section 2021), was solely under the regulatory authority of the federal government:

"While the 1959 amendment does not use the term 'exclusive' or 'sole' in describing existing regulatory responsibilities of the Commission we think it abundantly clear that the whole tone of the 1959 amendment, upon examination of the statutory language alone, demonstrates Congressional recognition that the AEC at that time possessed the sole authority to regulate radiation hazards associated with by-product, source and special nuclear materials and with production and utilization facilities . . . If the States at that time possessed concurrent jurisdiction to regulate radiation hazards associated with these materials, it would have been unnecessary for Congress affirmatively to recognize their regulatory authority by virtue of a state-federal compact and to limit their authority for the duration of and subject to the provisions of such agreement." [34]

Thus the court concluded that the states' right to regulate radiation hazards is specifically limited to those materials defined in section 2021(b) and does not extend to any other areas.

The court also examined the legislative intent of section 2021(k) which states that "nothing in this section shall be construed to affect the authority of any state or local agency to regulate activities for purposes other than protection against radiation hazard." Since the radiation hazards which can be regulated by the states are clearly defined, the court interpreted this as restating the restriction against any other state regulation of radiation hazards of radioactive material.[35]

Footnotes at end of article.

Finally, the court found that the Minnesota law was preempted by the Atomic Energy Act[36] because Minnesota's law obstructed the achievement of the Act's goals "to encourage the development, use and control of atomic energy so as to make the maximum contribution to the general welfare and to increase the standard of living."[37] However, the Atomic Energy Act provided that these objectives were to be effectuated "to the maximum extent consistent with the common defense and security and with the health and safety of the public."[38] Congress determined that the achievement of these goals required a comprehensive Federal regulatory program which, the court concluded, prevented states from imposing stricter standards which may impede the development and use of nuclear power. The court held that "the federal government has exclusive authority under the doctrine of preemption to regulate the construction and operation of nuclear power plants which necessarily includes regulation of the levels of radioactive effluents discharged from the plants."[39]

In a more recent case, *Pacific Legal Foundation* v. *California Energy Commission*,[40] the United States District Court for Southern California held that the Atomic Energy Act pre-empted a state law which set conditions on the future licensing of nuclear power plants in the state.

California Public Resources Code section 25524.2 prohibited the State Energy Commission from licensing a nuclear power plant pending the designation by the Nuclear Regulatory Commission of an approved technology for disposing of nuclear by-products of plant operation. Under this section, the NRC was required to submit a report approving the designated radioactive waste disposal technology to the state legislature, which was empowered to "disaffirm" any recommendations or finding in the report.

In *Pacific Legal Foundation*, San Diego Gas and Electric Company terminated the proposed construction of the Sundesert nuclear power project in Southern California. Plaintiffs argued that the project had been terminated because the California Energy Commission had determined that the required findings on a radioactive waste disposal technology were not available, resulting, at least for the time being, in a moratorium on nuclear power plant licensing in the state.

The court, in examining the effect of California Public Resources Code section 25524.2, observed that the result of the requirements made on the NRC was to obstruct Congressional purpose in passage of the Atomic Energy Act.

"Congress' policy to encourage the development and utilization of nuclear energy would decidedly be frustrated if all fifty states had statutes similar to California Public Resources Code section 25524.2. Although the Atomic Energy Act certainly leaves room for the states to regulate on the subject of nuclear energy within the confines of section 2021(k) and 2021(b), the power to regulate is not necessarily the power to prohibit. There seems little point in enacting an Atomic Energy Act and establishing a federal agency to promulgate extensive and pervasive regulations on the subject of construction and operation of nuclear reactors and the disposal of nuclear waste if it is within the prerogative of the states to outlaw the use of atomic energy within their borders."[41]

In *Pacific Legal Foundation*, the court further elaborated on the arguments forwarded in *Northern States Power Company* concerning the limited application of section 2021 (k), the provision which reserves to the states the right to regulate "activities for purposes other than protection against radiation hazards." The defendants relied upon this section as delegating authority to the states to regulate for purposes other than radiation control. They argued that the provision allowed the state of California to enact a law which would insure that state citizens would not be forced to bear the financial risk of financing nuclear power plant construction if these plants were later closed because inadequate waste disposal facilities existed.[42] This broad interpretation of section 2021 (k) was rejected by the court based on an examination of legislative intent, since a wide scope for state authority would effectively undermine the regulatory scheme established by Congress in the Atomic Energy Act.

Rather, the court found that an examination of legislative history led to the conclusion that Congress commanded the courts to interpret section 2021 (k) in a manner consistent with section 2021 (c). To buttress this interpretation, the court referred to a letter sent in 1959 by the General Manager of the AEC by the Chairman of the Congressional Joint Committee on Atomic Energy. Regarding AEC's recommended language for section 2021 (k) the letter said: "[w]e did not intend to leave any room for the exercise of concurrent jurisdiction by the States to control radiation from those materials. Our sole purpose was to leave room for the courts to determine the applicability of particular State laws and regulations dealing with matters on the fringe of the preempted area in the light of all the provisions and purposes of the Atomic Energy Act, rather than in the light of a single sentence."[43] Since this interpretation was accepted by the Joint Committee, the court in *Pacific Legal Foundation* concluded that this indicated "Congressional approval of the position that the precise extent of preemption under the section is to be determined by the courts in the light of all the provisions and purposes of the Atomic Energy Act."[44]

In light of the fact that the opportunity for states to regulate nuclear materials under section 2021 (b) was clearly defined and concerned subject matter previously under the sole authority of a federal agent,[45] the court held that section 2021 (k) did not extend authority to the state to protect its citizens against nuclear plants which may lack adequate disposal facilities, since the effect of such protection would be to obstruct the use of nuclear power in the state contrary to the express purpose of the Atomic Energy Act. Further, because authority to regulate use of radioactive materials which present sufficient hazards to require licensing was retained by the Atomic Energy Commission by virtue of section 2021 (c) of the Act, the court held that "the state regulation on this subject is displaced. Accordingly, the court holds California Public Resources Code section 25524.2 impliedly pre-empted."[46]

These decisions certainly can be used as precedent to challenge state laws which would require state concurrence in decisions on radioactive waste disposal on the grounds that the Atomic Energy Act and regulation made pursuant thereto preempt state laws and regulations on the subject of the use and disposal of radioactive waste material.

In addition to the Atomic Energy Act, the Department of Energy Organization Act of August 4, 1977[47] gives specific authority to the Department of Energy over nuclear waste management, with the exception of those functions under the authority of the Nuclear Regulatory Commission. This means that DOE's authority does not cover the licensing of radioactive waste for permanent disposal or any functions covered by NRC-state agreements.

The Department of Energy Organization Act authorizes the federal agency to provide for:

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes.[48]

While a provision in the Act does require the Department to give "due consideration" to the needs of states where conflicts exist in the development of national energy plans,[49] there is no authority in this Act which gives the states a statutory basis for participating in the process of establishing nuclear waste facilities within their boundaries. In fact, the comprehensive and specific DOE authority defined in section 7311(8) over nuclear waste management would probably give considerable weight to arguments that the federal regulatory scheme is "so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it."[50] Any state law which regulated the disposal of radioactive waste could be challenged on the basis that such state action was preempted by federal authority under the Atomic Energy Act and the Department of Energy Organization Act.

III. STATES' RIGHTS AND NATIONAL GOALS

These ponderous legal obstacles do not seem to have dampened the efforts of the states to participate in radioactive waste disposal decisions to the extent of exercising authority to "veto" the selection of sites within their jurisdictions. Considering the risk assessments associated with disposal of radioactive waste, the duration of the hazard to public health and environment inherent in radioactive waste, the past failures in the federal government's efforts to manage radioactive waste and the growing public concern about the dangers associated with nuclear power in general, the states' interest is understandable. It also presents serious problems for the implementation of a national radioactive waste disposal management program, since without the cooperation of state and local officials, it could be politically impossible for the federal government to develop a radioactive waste disposal facility within a given state.

There is general agreement among federal officials that states must have some role in decisions to store radioactive waste if such facilities are to become a reality. In 1977, hearings before the House Interior Subcommittee on Energy and the Environment, then-Chairman of the Nuclear Regulatory Commission Marcus A. Rowden said: "The matter of where a repository is located is not simply a legal question. It is not simply a technological question. It is a political question, and a political decision is going to have to be made . . . My own view remains that the basic problems with regard to waste management are national scope. They will have to be addressed at the national level. Ultimately, it is going to be the Congress through legislation which makes the final determination."[51]

In 1979 hearings before the same Subcommittee, John M. Deutch, Director of Energy Research for the Department of Energy and Chairman of the President's Interagency Review Group on Nuclear Waste, in an exchange with the Chairman of the Subcommittee, Congressman Morris Udall, talked about the problems of providing a state role without authorizing a state veto:

DEUTCH. The position of the administration has been against a legislative veto right for States. On the other hand, we understand as a practical matter and as a matter of public interest, that when you are actually considering a specific facility in a specific State and locality, you must have the State and local officials supporting your program

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Footnotes at end of article.

in terms of technical merit and consequences for their areas.

Udall. It has been my own view, and maybe you will comment on this, that as a practical matter, whether you give it to them or not—if the Governor or the legislature or a large body of citizens in any State do not want an installation in their State, it is going to be extremely difficult for the federal government to force it upon them.

Would you agree that that is a practical statement?

Deutch. Absolutely, yes, sir.[52]

The final report of the Interagency Review Group on Nuclear Waste Management, issued in March 1979, reiterated the point that the federal government was bound in its development of a federal radioactive waste disposal program to work with the states. The final recommendations read: "The IRG believes that the technical and socio-political success of any federal waste management program is largely dependent on the States; and in particular the extent to which the states are involved early-on in program planning research and development, site identification, site characterization, (and) development of regional programs."[53] However, the report stopped short of recommending a state veto authority, finding that a state veto had the potential of allowing the state "at one specific moment—by one of several possible mechanisms—to approve or disapprove of federal site investigation activities or a proposal to site a repository or other facility."[54] Rather, the IRG recommended the establishment of a "consultation and concurrence" process whereby the state could participate on a continuing basis in all activities and "if it deems appropriate to prevent the continuance of federal activities."[55]

The Department of Energy currently follows an internal policy which subjects the approval of proposed locations for radioactive waste disposal facilities to state concurrence—in effect allowing the states to "veto" potential sites within their jurisdiction. In a letter dated June 19, 1978 from the Comptroller General of the United States to Congressman John D. Dingell, the Comptroller made reference to an agreement signed by the Governor of Louisiana and the Deputy Secretary of DOE which stated that, with respect to nuclear storage: "the Department of Energy will not construct any nuclear waste depository for long-term disposal in Louisiana if the State objects."[56] Since the legislative history of the Department of Energy Organization Act contained nothing to support a conclusion that the states could be given such a "veto" power by DOE, the Comptroller consulted an internal memorandum from the Department of Energy's Office of General Counsel which concluded that "the Secretary of Energy under existing law does not have the legal authority to enter into a binding agreement with a state pursuant to which the state would have the power to veto or forbid the establishment of a proposed nuclear waste repository in the state." The Comptroller further held that without statutory authority permitting such action, any agreements between officials of the Department of Energy and states giving the state the power to reject a potential disposal site selected by the Department would be legally unenforceable.

In further correspondence from the Department of Energy to Congressman Dingell, the Secretary of Energy James Schlesinger indicated that the Department was trying to develop a process for affected states to participate in the selection of potential sites for the disposal of radioactive waste. However, given the traditional Federal preemption of the states on all issues related to nuclear materials, as interpreted by the courts, DOE may require additional authority to implement a process for involving states in nuclear waste management decisions. It is unlikely that the courts would uphold the authority of DOE to create a role for the states if such a role could be construed to obstruct the implementation of a federal radioactive waste disposal program.

Several bills have been introduced in the 96th Congress to authorize a role for the states to participate in or veto decisions by the Federal government to create radioactive waste disposal facilities within their jurisdiction.[57]

Although the House Interior Subcommittee on Energy and the Environment held a day of hearings on H.R. 2762 in June, 1979, it is uncertain whether Congress will take any action to provide states an opportunity to participate meaningfully in federal decisions on nuclear waste facility siting. Opponents to state participation argue that enactment of such legislation would result in all fifty states objecting to radioactive disposal facilities proposed for their jurisdictions. However, the states are rejecting radioactive waste even in the absence of statutory authority, and this trend will, at the very least, delay the development and implementation of a national radioactive waste management plan. The courts may, and in the absence of a legislative solution, will dispose of the issue on the basis of legal considerations. But the problem is essentially technical and political. A final decision by Congress on nuclear waste disposal policy must accommodate both the national interest in solving the problem of radioactive waste disposal and the responsibilities of the states for health and safety of their citizens.

FOOTNOTES

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[*] Member of Congress, 1971-present; LL.B., Columbia University, 1949. I am deeply indebted to Suzanne Goulet of my staff for her work in researching and preparing the initial draft of this article.

[1] Cuyahoga Falls, Ohio, Code § 17 (1979).

[2] New York, N.Y., Health Code, § 175.111 (1976).

[3] Alaska, California, Colorado, Delaware, Hawaii, Louisiana, Maine, Maryland, Michigan, Minnesota, Montana, North Dakota, Oregon, South Dakota, Texas and Vermont.

[3a] S.B. 11, 113th Ohio Gen. Assemb., (1979). At the time of this writing (Feb. 1980) the bill is pending before the Ohio House Committee on Agriculture and Natural Resources.

[4] Atomic Energy Act of 1946, ch. 724, 60 Stat. 755.

[5] Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919, as amended by 42 U.S.C. § 2011 *et seq.* (1976).

[6] Atomic Energy Act of 1959, U.S.C. § 2021 (a) (1976).

[7] Id. at § 2021(a)(1) (1976).

[8] United States Department of Energy, Report to the President by the Interagency Review Group on Nuclear Waste Management (App. D) (1979) [Hereinafter cited as Report to the President].

[9] A. Kudo & D. Rose, *Disposal of Nuclear Wastes*, 182 Science 1205–1211 (1973).

[10] Department of Energy Organization Act of 1977, 42 U.S.C. § 7133(a)(8) (1976).

[11] National Academy of Sciences, United States Energy Research and Development Administration, Radioactive Wastes at the Hanford Reservation (1978).

[12] United States Government Accounting Office, Report to the Joint Committee on Atomic Energy, Progress and Problems in Programs for Managing High-Level Radioactive Waste (1971).

[13] The National Academy of Science National Research Council, The Disposal of Radioactive Waste on Land (1957).

[14] D. Johnson & S. Gonzales, United States Department of Energy, Salt Deposits in the United States and Regional Geologic Characteristics Important for Storage of Radioactive Waste (1978); Report to the President, *supra* note 8, at 60.

[15] A. Kubo & D. Rose, *supra* note 9, at 1207; Department of Energy, Subgroup Report on Alternative Technology Strategies for the Isolation of Nuclear Waste (1978).

[16] H.R. Rep. No. 95–1090, 95th Cong., 2d Sess. 8 (1978).

[17] Report to the President, *supra* note 8, at 45–46.

[18] United States Government Accounting Office, Report to the Senate Committee on Environment and Public Works, Nuclear Energy's Dilemma: *Disposing of Hazardous Radioactive Waste Safely* (1977).

[19] U.S.C. § 2011 *et seq.* (1976).

[20] *Id.* at § 2012 (1976).

[21] 447 F.2d 1143, 1147 (8th Cir. 1971).

[22] *Id.* at 1145.

[23] 42 U.S.C. § 2021 (b) (1976).

[24] *Id.* at § 2021 (k) (1976).

[25] Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142–143 (1963).

[26] Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[27] 447 F.2d at 1146.

[28] 373 U.S. at 146–152.

[29] Rice v. Sante Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[30] *Id.*

[31] 312 U.S. at 67.

[32] *Id.*

[33] 42 U.S.C. § 2021 (c) (1976).

[34] 447 F.2d at 1149.

[35] *Id.* at 1150.

[36] 42 U.S.C. §§ 2011 & 2012 (1976).

[37] 447 F.2d at 1154.

[38] 42 U.S.C. § 2013 (1976).

[39] 447 F.2d at 1154.

[40] Civil No. 78–711–E (S.D. Cal. filed March 6, 1979).

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] 447 F.2d at 1149.

[46] Civil No. 78–711–E.

[47] The Department of Energy Organization Act of 1977, 42 U.S.C. § 7101 *et seq.* (Supp. I 1977).

[48] U.S.C. § 7311 (A) (8) (1977).

[49] 42 U.S.C. § 7113 (1977).

[50] 331 U.S. at 230.

[51] Hearings before the Subcomm. on Energy and the Environment of the Comm. on Interior and Insular Affairs of the House on HR 18 et al., 95th Cong., 1st Sess. 55 (1977).

[52] Oversight hearings before the Subcomm. on Energy and the Environment of the Comm. of Interior and Insular Affairs on the House on Nuclear Waste Management, 96th Cong., 1st Sess. 11 (1979).

[53] Report to the President, *supra* note 8, at 95.

[54] *Id.*

[55] *Id.*

[56] Letter from R. F. Keller to John D. Dingell (June 19, 1978).

[57] At this writing, the bills are H.R. 1071, 96th Cong., 1st Sess., 125 Cong. Rec. 463 (1979), introduced by Rep. Joseph Moakley, which would authorize state legislative actions or state referenda on storage proposal; H.R. 1791, 96th Cong., 1st Sess., 125 Cong. Rec. 1666 (1979), introduced by Rep. James M. Hanley, which would subject federal proposals to store radioactive waste to state legislature's review; S.1443, 96th Cong., 1st Sess., 125 Cong. Rec. 16893 (1979), introduced by Senator John Durkin, to authorize approval by state legislatures or Indian tribes of proposal radioactive waste disposal facilities; and H.R. 2762, 96th Cong., 1st Sess., 125 Cong. Rec. 4417 (1979), to create a process for states to participate in proposed radioactive disposal facilities decisions, and to approve or disapprove of final disposal decisions.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENAS DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

Washington, D.C.,
July 2, 1980.

Hon. Thomas P. O'Neill, Jr.,
Speaker, House of Representatives, Washington, D.C.

Dear Mr. Speaker: On July 1, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on July 3, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

Benjamin J. Guthrie,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpenas.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-80, T-3190-80]

U.S. District of Columbia *vs.* Stacy Abney

To: Benjamin J. Guthrie, Sergeant at Arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia at 9:00 a.m., on the 3d day of July, 1980, as a witness for defendant and bring with you all records pertaining to demonstration permits issued by the Capitol Police used for demonstrations on the U.S. Capitol grounds from January, 1980 to the present.

[Superior Court of the District of Columbia, Docket No. M3934]

U.S. District of Columbia *vs.* Stacy Abney

To: James Powell, Chief, Capitol Hill Police.

You are hereby commanded to appear before the Criminal Division, Courtroom 19, of the Superior Court of the District of Columbia at 8:00 o'clock a.m. on the 3d day of July, 1980, as a witness for the defendant and bring with you all permits issued to individuals or groups for demonstrations on the Capitol Grounds from January, 1980 to the present.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPENA DUCES TECUM IN CASE OF UNITED STATES, DISTRICT OF COLUMBIA AGAINST STACY ABNEY

The SPEAKER pro tempore laid before the House the following communication from the Sergeant at Arms of the House of Representatives:

Washington, D.C.,
September 8, 1980.

Hon. Thomas P. O'Neill, Jr.,
Speaker, House of Representatives, Washington, D.C.

Dear Mr. Speaker: On September 8, 1980 I was served with a subpoena duces tecum; said subpoena was issued by the Superior Court of the District of Columbia.

The subpoena commands me to appear before the Criminal Division, Misdemeanor Branch on September 15, 1980 and requests the production of certain House records. The subpoena is available in my office for inspection by any Member.

Sincerely,

Benjamin J. Guthrie,
Sergeant at Arms.

The SPEAKER pro tempore. The Clerk will read the subpena.

The Clerk read as follows:

[Superior Court of the District of Columbia; Docket No. M-3934-8; T-3190-80]

U.S. District of Columbia *vs.* Stacey Abney

To: Benjamin J. Guthrie, sergeant at arms, U.S. House of Representatives, U.S. Capitol.

You are hereby commanded to appear before the Criminal Division, Misdemeanor Branch, Courtroom 19, of the Superior Court of the District of Columbia, at 9:00 o'clock a.m. on the 15th day of September, 1980, as a witness for ______________________________ and bring with you copies of applications for demonstration permits issued by Capitol Police Board from January 1980 to present.

SPECIAL PERMISSION RELATING TO SPECIAL ORDER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. Gingrich) will be recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I ask unanimous consent that my special order follow that of the gentleman from Florida (Mr. Fascell).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A TRIBUTE TO THE HONORABLE CLAUDE PEPPER ON HIS 80TH BIRTHDAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. Fascell) is recognized for 60 minutes.

Mr. FASCELL. Mr. Speaker, I thank the gentleman from Georgia (Mr. Gingrich) for the gracious deferral of his own special order so that I might, with my colleagues, take the floor at this time on a very rare and historical occasion, one which will give all of us, I am sure, great pleasure.

Mr. Speaker, we in the House of Representatives are privileged to count Claude Pepper as one of our most esteemed Members and it is with respect and affection that we honor him today on his 80th birthday. Our congratulations are offered on this milestone for his more than 50 years of public service and for his countless contributions to the United States and to the people he has represented so ably and so tirelessly. I invite our colleagues in the House to join with me in extending warmest birthday wishes to this distinguished gentleman from Florida.

It is certainly fitting that Claude Pepper was born at the dawn of the 20th century, the period of our country's most rapid growth. This era of intense progress has required the utmost adaptability and resourcefulness of the Nation and of the men and women who have led her. Claude never declined the challenges of this time, but accepted them, welcomed them and answered them. Claude witnessed the changes that advanced technology brought to industry, transportation and trade. He saw the changing human needs of our people and never ceased his efforts in support of programs to meet and anticipate these needs. He has been a man ahead of his time, a man willing to accept the advances of this age and eager to address the concomitant issues. His record is a remarkable one.

From the time that Claude became a Floridian in 1925, he has served our State in many capacities and it was in the Florida House of Representatives that his legislative career began. In 1936, Claude was elected to the U.S. Senate, where he served with distinction until 1951. And since 1963, Claude has been a highly effective, valued and admired Member of the House. He is a skilled, experienced lawmaker, evidenced by his responsibilities as ranking member of one of our most important and technical committees, House Rules. He sees and understands the social problems of this century and, because of his ability as a legislator, is able to do something about them.

The list of reforms that Claude Pepper has shaped and guided through the Congress is lengthy and impressive. From the days of the New Deal to the present, Claude has championed the needy of every age and station. But, his most recent efforts have been directed toward the welfare of older Americans and it is in this work that he has accomplished some of the most needed corrective action. Since he assumed the chair of the House Select Committee on Aging, many improvements in health and social progams have been brought about, the mandatory retirement law has been liberalized and a program designed to end abuses in the sale of health insurance to the elderly has been established. He has worked to demonstrate that persons over 65 have much to contribute to our society and his own life bears this out. Claude proves to younger and older Americans alike that life can be full and productive at 80.

It has been an honor for me to know Claude Pepper and his dearly remembered wife Mildred. I am proud of the years we have worked together in the Congress and of what has been accomplished here. I wish Claude every happiness today on his birthday and in the coming year. May we celebrate many such happy days.

Mr. BOLLING. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the distinquished Chairman of the Committee on Rules.

Mr. BOLLING. Mr. Speaker, I am delighted that the gentleman from Florida (Mr. Fascell) has taken this special order, and I am delighted to have the opportunity to join with him.

I have said this many times to our dear friend, Claude, that back when I graduated from a southern college in 1937, he was not only my hero but he was the hero of all the people of like mind in that college in Tennessee. I graduated from Sewanee.

I grew up in north Alabama, in Huntsville, and I had a special feeling for Claude even in those days because he came from Alabama, too.

□ 1930

But I have not told him why I felt that way about him then, and I have not told him another fact, that in 1946, when most Democrats were very discouraged and were not venturing out from their safe places to campaign for others or for the party, Claude Pepper was out working as hard as a man could work, and I had the pleasure, as one of my first political acts in Kansas City, Mo., to introduce him at a dinner, a small dinner, at which he was the principal speaker. I had my first opportunity to see and hear this man I had admired so long. Now, of course, I have the privilege of serving on a committee with him, and I find that the qualities that endeared him to me in 1937 and in 1946 are still with him.

The gentleman from Florida (Mr. Fascell) has said it very well. I would say it only a little bit differently: I know of no man in American politics at any time in my experience or now who has greater compassion, a stronger feeling for the people who needed help, the people who need help and are discriminated against in any way. He led the way in the South, in my opinion, in feeling that people should be treated fairly, all people. He did it in the most important possible way, by putting his record on the line time and time again.

I say without any hesitation that this country could only have been improved by Claude Pepper had his service not been interrupted. He is a person who, from the people that he served, always deserved the best, and the best is more than election victory. I am delighted that he is back in the Congress and has been for longer than most Members serve, having served a long time in the U.S. Senate and now a long time in the House of Representatives, and I hope I am as young as he is when I reach the age of 65.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding.

Mr. Speaker, there is so little that one can add to what has been said by these two eloquent speakers. I am only 5½ years in the House, and in that short time I have learned to respect and admire Claude Pepper. And more than that, I have the greatest affection for him. I tried like mad to get on his committee. I was not successful. If I am elected, I will try again. I can think of no greater honor and pleasure.

I have learned that the thing that really counts in political life is wholeheartedness, integrity and a true desire to do what you say you are doing. Of all of the people I have known here in the Congress, I think that this Member, this friend, this dear friend of ours, on his 80th birthday, has so clearly brought that home to each one of us.

I think that is the source of the affection which surrounds him every day and the respect and admiration that we have.

Mr. DRINAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. I thank the gentleman for yielding.

Mr. Speaker, it is with great pleasure that I join my colleagues in honoring our esteemed friend, Claude Pepper, on this his 80th birthday. It is difficult for me to think of Claude as 80 since that is traditionally a time in life when many choose to slow down. I was amused by a recent press account which described Claude as "galloping" toward his 80th birthday. Those of us who have worked closely with him know all too well that Claude never slows down.

He is untiring and unyielding in his efforts to achieve a better, more dignified way of life for the elderly, the poor, the disenfranchised. At the national level he is best known for his advocacy of the rights of older Americans. Throughout the South he is remembered for his unrelenting efforts to achieve racial justice long before the civil rights struggles of the 1960's. And, within his own 14th District in Florida, he is associated at this time with efforts to provide decent and humane resettlement for thousands of Cuban refugees.

He has enjoyed an astonishing record of success in his role as chairman of the House Select Committee on Aging. There is no issue of importance to older Americans which that committee has not addressed. Under Claude's command the committee serves as a vigilant watchdog for the concerns of older citizens in each and every piece of legislation that comes before the House.

Early in the 95th Congress, Claude decided that a change in public policy on mandatory retirement was vital if we were truly going to end discrimination based on age. Many felt it would not be possible to bring about such a significant change in national policy within the short space of 2 years. On October 18, 1978, the Age Discrimination Act amendments were signed into law eradicating the age-based retirement of Federal employees and increasing the retirement age in private employment from 65 to 70. Without the forceful and able leadership of Claude Pepper that victory would not have been possible.

His triumphs are too numerous to mention, but they include extending the popular Meals-on-Wheels program to the housebound elderly; establishing a program to combat crime in public housing and obtaining Amtrak discounts for older citizens. He continues to wage a diligent campaign to provide alternatives to nursing homes. Next to age discrimination, I think nothing troubles Claude more than the overinstitutionalization of our older citizens. I know he will not rest until federal policy emphasizes home health care and other support services aimed at allowing older citizens to remain in their homes and in their neighborhoods.

I know Claude has much planned for the Committee on Aging and in his many other endeavors. I am glad that he has paused to enjoy this birthday. Like Robert Frost in his lovely poem "Stopping by Woods on a Snowy Evening," Claude's life proclaims that he has promises to keep and miles to go before he sleeps.

Mr. FASCELL. I thank the gentleman for his remarks.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, it is with great pleasure that I rise to join my colleagues in extending to the gentleman from Florida (Mr. Pepper) our very best wishes on this day, his 80th birthday and I commend the gentleman from Florida, (Mr. Fascell) for taking this time on the House floor to honor our colleague in this manner.

Congressman Claude Pepper's record of service to this Nation, as we all know, is not only lengthy but is quite impressive. He first came to the Capitol in 1936 as a U.S. Senator and has served the people of Florida in many ways and in many capacities in the 44 years since that time. He has represented the 14th District of Florida since 1968 with a vigor and energy envied by his younger colleagues.

Claude Pepper's name is a household word in the homes of our senior citizens throughout our Nation, for it was he that successfully introduced and guided through the Congress a bill raising the mandatory retirement age from 65 to 70 for most jobs in the United States. As chairman of the Select Committee on Aging, he has followed that effort with the introduction of legislation to protect the health, safety, incomes, and rights of senior citizens.

Among the bills which he has authored are the Drug Benefits for the Aged Act, the Older Americans Civil Rights Act, the Long-Term Care Services Act, the Medicare Long-Term Care Act, the Space Technology for the Elderly Act, the Nursing Home Reform Act, and many others. It has been my privilege to join the distinguished gentleman from Florida in several of his efforts as a cosponsor of the Senior Citizens Health Insurance Reform Act and the Foreign Service Retirement Amendments.

It is obvious that Mr. Pepper's own district and the House of Representatives have not been the only beneficiaries of his leadership and initiative. His dedication and tireless effort have had and continue to have a significant—and favorable—impact on the elderly citizens of our Nation.

As he celebrates his birthday today, I take pleasure joining my colleagues in extending to Claude Pepper our congratulations, gratitude and respect, and our very best wishes for many more productive years.

Mr. ANDERSON of California. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California.

Mr. ANDERSON of California. I thank the gentleman for yielding, and I want to congratulate the gentleman for giving us this opportunity to tell Claude what we think of him today on his 80th birthday.

Mr. Speaker, I was listening to the remarks of the gentleman from Missouri a moment ago, and I want to also associate myself with his remarks. But I want to remind him that while he was introducing Claude at some meeting in 1946, out in California we were sponsoring and advocating him for the Presidency.

Mr. Speaker, it is with some feeling of awe, and perhaps inadequacy, that we call attention to the 80th birthday of Claude Pepper. I expect that his 100th birthday will also be celebrated in this Chamber, and that in the intervening 20 years, he will have accomplished more than most of us in our whole lifetimes.

I will leave it to others to catalogue Claude Pepper's record, but it could be the standard for public service for all of us in the 20th century. While it may be appropriate that the congressional champion of senior citizens has the earliest date on his birth certificate, his actions certainly belie the statistic. He attacks problems with the zeal of a freshman. Combined with his experience, this means he usually gets results. There is hardly a committee of this House which has not felt his hand prodding legislation to benefit the elderly.

Because my own district has one of the highest proportions of elderly in the country, I am especially grateful that his attention in recent years has focused on the concerns of senior citizens. I have been pleased to join him in a variety of successful legislative efforts in medicare, social security, insurance, transportation, retirement and many other issues important to the growing number of senior citizens in my area.

Even my own Subcommittee on Aviation, as remote as it may sound, has not been immune to Claude's influence. As the result of one of his bills, we are expecting in December to receive a report from the National Institute on Aging which may lead to later retirement ages for airline pilots.

In addition to my appreciation for his leadership, working with Claude Pepper has been one of the great personal pleasures of my career in the House.

Mrs. Anderson and I offer Congressman Pepper our best wishes on his 80th birthday. I also wish the rest of us could do as well at any age as does this octogenarian.

☐ 1940

Mr. FASCELL. I yield to my distinguished colleague, the gentleman from Florida (Mr. Hutto).

Mr. HUTTO. Mr. Speaker, I appreciate my colleague taking this special order. I want to join in this tribute to the distinguished gentleman from Florida, Congressman Claude Pepper, my good friend and Member of the Florida delegation on the occasion of his 80th birthday.

This man without a doubt is one of the most beloved politicians who ever served the great Sunshine State of Florida. As a fellow Alabamian, I think it is noteworthy that Claude even before coming to Florida had a rather distinguished career in his native state of Alabama. I was particularly pleased to learn to know that he taught in Dothan, Ala., back in 1917 and 1918. This was quite a while before I was born, but it is right near, just a few miles from my birthplace in Midland City, Ala., and later I worked in Dothan, as he did. I was in broadcasting.

I had heard of Claude Pepper for a long time, but I never personally had the opportunity to meet him until I began my service in the Florida legislature in 1972.

Claude once served there in the Florida House. Each year he comes back to Florida to visit the chamber and to address the Members of the Florida Legislature during its session. He is the only Florida delegate member that does this on an annual basis.

Since he represented Taylor County in the Florida House, he always makes it a point, and this was back in 1930, but every year when he comes back he makes it a point to go and sit with the member who serves that county, Taylor County. It so happens that Representative James Harold Thompson now represents that county and I sat next to Representative Thompson so that Claude would come down and sit between us. That is where I first met Claude and I had the pleasure of visiting with him on a number of occasions. It was then that I learned why Claude Pepper is the distinguished and beloved statesman of which all the State of Florida is justifiably proud.

Needless to say, when I came to the Congress after my election in 1978, one of the first persons in the Florida delegation that I visited with was Claude Pepper. As a freshman, it has been a source of encouragement and strength to have his wise advice, counsel and wisdom. He has been very helpful to me, as I am sure he has been to all the Members in our delegation, particularly the freshmen.

Claude Pepper is a very compassionate man and it is apparent by looking at his record that he has been understanding and helpful to many, many people during his long tenure of public service. His latest thing, of course, is that of being chairman of the Select Committee on Aging, which has been mentioned here several times, and for his work in seeking to help our senior citizens, I applaud his sincere efforts.

I believe that the lives of our aging population will be made better and be enriched in the future because of the work of this man.

It was during his visits to the Florida legislature that I also had the privilege of meeting his beloved wife, Mildred. We all mourn with him the loss of her a year or so ago of this charming lady. Claude is a fine family man. Just recently I enjoyed visiting with some other members of his family, his brother Frank, who is a television personality in Tallahassee, whom I have the pleasure of knowing, and other relatives as they visited here in the Capitol; so I consider it a distinct honor and privilege to know Claude Pepper and to serve in the same delegation with him.

I look forward to the pleasure of serving with you, Claude, for the next 20 years. I am counting on you to have another special order on his 100th birthday.

Mr. FASCELL. Mr. Speaker, I yield to the gentleman from Illinois (Mr. Simon).

Mr. SIMON. Mr. Speaker, I thank the gentleman from Florida very much.

Mr. Speaker, I am pleased to join in this tribute to our colleague, Claude Pepper.

We all go back in our recollections. I can remember as a boy admiring Claude Pepper.

One other little footnote here, I believe I am correct in saying that no person in U.S. history after having served in the Senate has served as long as Claude Pepper has in the House, so that he deserves a little footnote in history for those numbers; but it is not those numbers or even the numbers of 80 years for which we really honor him. It is for what those years have represented.

Our colleague, the gentlewoman from New Jersey (Mrs. Fenwick) talked about genuineness, and there is not a phony bone in Claude Pepper's body. As I walked over here from the Cannon Building, I thought, how do you really honor someone like Claude Pepper? I think we really pay tribute to Claude Pepper by doing two things. One is looking in our own communities and saying, where are the Claude Peppers in our communities that we have denied an opportunity to sit on a city council or a county board or whatever the organization might be, who could enrich those bodies as Claude has enriched us here? That is one thing we can do.

The second is to make sure that we move ahead and show concern for people. Medicare, for example, just one minor change would mean an awful lot for a great many senior citizens, and that is to cover dentures, hearing aids, and eyeglasses under medicare; not a huge thing in the Federal budget, a small thing, but an important thing. Those are the kinds of things we need.

I want to thank my colleague, the gentleman from Florida, for setting up this Special Order. We determine whether we are a civilized society, not by how we help the rich and the powerful. It is easy to do that. Any government can do that. We determine whether we are really a civilized society by whether we help people who desperately need help, who may not even know that we are in session here.

Claude Pepper has spent his life helping people, helping make us a civilized society. I am personally enriched by having the privilege of knowing and being able to call him a friend. Our House is enriched, our Nation is enriched. We are proud of you, Claude Pepper.

Mr. FASCELL. Mr. Speaker, I thank the gentleman.

I yield to the gentleman from Texas (Mr. Eckhardt).

Mr. ECKHARDT. Mr. Speaker, I thank the gentleman from Florida for making this special order possible.

What I have to say is very informal and is based totally on a couple of reminiscences of mine. I recall, the first had to do with Claude Pepper's Senate service. The second was with his House service.

A good number of years ago, around 1948, I began to specialize in labor law way down at that time I was in Ft. Worth and later in Dallas and then back to Houston; but I did not know much about labor law, neither did hardly anybody else in the country, because the Taft-Hartley Act had just been passed in 1947. There were not any cases on it but there was a book put out by BNA, sort of a paperback volume that gave the history of the Taft-Hartley Act and it was from that that we interpreted this immensely complicated act.

Well, I did not know Claude Pepper at that time, but I had to study that book, because it was about all we had. I will tell you what I discovered from studying that book, and that is that there were only two people in the Senate that knew anything about the Taft-Hartley Act. One of them was Senator Bob Taft and the other was Claude Pepper. Of course, since Claude liked to interpret the act more to my side than Bob Taft did, I was very, very interested in what he had to say about it.

□ 1950

But there was no one who had a fuller understanding of a piece of legislation than the gentleman that we honor today.

The other instance that I recall was in his House service. I was rather young here. I had just gotten on the Committee on Interstate and Foreign Commerce and we were dealing with a very thorny railroad question. The problem to try to accomplish was to prevent a lot of people in the country from being hurt by a strike and a lot of people who were working for the railroad from being hurt by a strike, too. We did not want to get them out on the pavement.

There were a lot of attempts that came out of the committee, there were a lot of viewpoints that came from across the aisle. All of a sudden Claude Pepper got up at the very opportune moment and offered an amendment which I think, as I recall, extended the waiting period, the cooling period for the strike. It suddenly was taken up by this entire body and passed.

My colleagues know how unusual it is for a person to be able to stand up and just at the opportune moment, and without ever having worked on the bill or lined up all of these special interest groups, to catch that moment and make it meaningful and swing this body.

I have seen that, and that is something that is so unusual that it bespeaks of a man of enormous legislative quality.

So what I am adding to what has been discussed here I think is an ingredient above his great kindness, his great standing as a person whom we all revere, his representation of his folks at home, and yet all of these things I think are also embodied in what I am trying to say here; that is, his enormous ability as a legislator, both in his service in the other body and in his service here.

I know I have seen some lawyers, particularly in criminal court actions, that seem to know exactly when to say a certain word and then the judge dismisses the whole case. Claude Pepper has that same sense of timing for this floor. He has taught me a great deal and I greatly revere and honor him and hold him in highest esteem for my period of having been able to watch his action here. He has taught me a lot and I thank him for it.

Mr. FASCELL. I thank the gentleman.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California (Mr. Danielson).

Mr. DANIELSON. I thank the gentleman for yielding because this is an occasion that we must all participate in.

First of all I associate myself with all the remarks of my colleagues which have heretofore been made because, in the first place, that enables me to hold the length of my little discourse down somewhat. Second, it simply is not possible for any one of us to remember even a portion of the good things about Claude Pepper.

I have a somewhat unique recollection of Claude Pepper. I just may have known him longer than anybody in this Chamber.

In 1940 during the 76th Congress, and that is a piece back, I was a special agent of the FBI. At that time the Capitol Building had no real police force. The war had broken out in Europe. We were not yet actively engaged in it. But the Architect of the Capitol and the Speaker, I have forgotten his name now, Speaker Bankhead, then Vice President, the one from Texas with the eyebrows, "Cactus Jack" Gardner, formed a police board and they sent down to the FBI and asked Hoover to send up a few agents to guard the Capitol because they had word that there were some marked people, marked men in the Senate and in the House who were going to get shot. One of them was Claude Pepper. He did not know it, but he knows it now.

So believe it or not, J. Edgar Hoover sent up two of us. I took the Capitol from that white stone in the middle of the Rotunda all the way through the Senate, and Herbie Brund, a friend of mine, took the Capitol from the white stone in the middle of the Rotunda all the way through the House. We were supposed to protect these 17 Members of Congress from assassination.

So he did not know it at the time, but I followed Claude Pepper around day in and day out and seldom let him out of my sight.

But I was enriched by that because I got to watch Claude Pepper in action over in the other body. That was before he had completed his training and come to the House. Claude Pepper was a magnificent Member of the other body.

I was particularly attracted because he was a good friend of my boyhood hero, Senator George W. Norris from Nebraska. In fact, they were very much alike. They were always in a fight for one reason or another. They never gave up for any reason whatsoever, and they accomplished a great deal.

Mr. Speaker, you will recall that in 1940 the Spanish Civil War had just been over a few months. Those Americans who had joined the Abraham Lincoln Brigade, and who had gone over to fight with the Loyalists, were somehow or other determined to be "Communistly inclined" or some such thing, and here when they returned to America they were the subject of contumely, opprobrium, hatred, and contempt of various sorts. But not by Claude Pepper.

Claude Pepper realized that as Americans they had a right to stand up for what they thought was good and decent in the world. I was so proud of Claude Pepper, along with Senator Norris, who would get down there on the floor and defend these Americans who did so much in the court of the Spanish Civil War to uphold the cause of people and liberty and freedom. I am happy to remember that less than 2 years later the United States of America was at war with the very people whom Claude Pepper and George Norris were protecting for having taken part in the war against Fascism from 1935 to 1939. I thank you today for that, Claude. It was great.

But the important lesson is this: Claude Pepper saw that long ago and it was 2 years later when the Fascists forced us into war against them that the rest of the world recognized it.

Having worked there for a long time and watching this great man, my colleagues can imagine my pleasure on coming to the Congress 10 years ago and having an opportunity to work with, as a colleague, Claude Pepper. It was one of the great experiences when I arrived in Congress and has been ever since.

We have a little inside joke. I see Claude once in a while and I say, "Claude, I swear I met your father 40 years ago in the 76th Congress." Well, Claude is laughing now. We kind of enjoy that little byplay.

But he has not gotten older. Forty years have gone by. He is wiser, but he is no older. He is still full of it. His whole personality is one of warmth and love and yet he fights like a tiger. For that reason I call him in my mind the tender tiger. That is just what he has been, what he will be.

Claude, you are an old friend, you are a great friend. Everybody in the Congress loves you. We want you to stick around and give us a lot more guidance. There is no one in America, no one man, woman, or child who has not been enriched by the fact that you have been here. I thank you.

● Mr. BAFALIS. Mr. Speaker, few States can boast a man with a record of public service to equal that of our colleague from Florida, the Honorable CLAUDE PEPPER, and I am delighted to have this opportunity to join the House in commemorating his 80th birthday.

CLAUDE PEPPER has a record of public service which dates back almost to Florida's beginnings. He began his career as a public servant in 1929 when he was elected to the Florida State House of Representatives. In 1936, he came to Washington as a U.S. Senator and won reelection in 1938 and 1944. He returned to Washington in 1962 as a Member of this body and has been an active, productive leader here ever since.

During that time he has compiled a list of citations and awards for public service virtually unparalleled. But more important, he has served his State and Nation so well, he has set a mark for all of us to aim for.

Few Americans are given an opportunity to be of real service to their country and then usually only for relatively short periods of time. But CLAUDE PEPPER has been of real service to this Nation for more years than many of us have been even aware of the need for public service.

His list of legislative accomplishments is long. His list of service to the people is even longer.

On this, has 80th birthday, I can only join my fellow Floridians in thanking him and wishing him many more years of active service.●

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to take this opportunity to pay tribute to my colleague in the House and on the Select Committee on Aging, CLAUDE PEPPER, on his 80th birthday. It is difficult to convey in words the admiration and great respect I have for CLAUDE PEPPER.

CLAUDE PEPPER was a Member of the House when I came to serve my first term, and I have worked with him in various capacities over 14 years now. We have a great Arkansas connection which goes back even farther than that. CLAUDE taught law at the University of Arkansas from 1924 to 1925, and we often discuss that one of his illustrious students was the great William Fulbright, former Senator and chairman of the Foreign Relations Committee. Even now his contemporaries in the Fayetteville area still inquire about CLAUDE.

I believe CLAUDE PEPPER is a statesman in the truest sense of the word. After suffering a defeat at the end of 14 distinguished years in the Senate, a man of lesser mettle might have been satisfied to return to Miami and to a comfortable law practice. Instead, CLAUDE worked hard for another chance to represent the people of Florida—this time in the House of Representatives. He has served a total of 32 years in the Congress and has touched more people's lives than any of us could hope to.

I have come to know CLAUDE best in working with him on the Select Committee on Aging. It has been my good fortune to serve with him since the committee's inception. The committee could ask for no finer chairman, and the elderly could ask for no more dedicated champion of their cause.

I am very proud of the accomplishments of the committee under the leadership of Chairman PEPPER. He successfully lead the fight to abolish mandatory retirement in the public sector and to extend the working lives of employees of the private sector. Under his guidance, the committee held the first national conference on mental health and the elderly and has taken a premier role in organizing the upcoming symposium on cancer research. And, just this year, his tireless efforts culminated in the establishment of a system which would protect unsuspecting elderly people from buying ineffective health insurance policies to supplement their medicare benefits. CLAUDE PEPPER continues to be concerned with the health, nutrition, housing needs, income, and overall welfare of all the people of this country.

It is my sincere wish that you have the happiest of birthdays, Senator, and a future which is as brilliant as your past.●

● Mr. RANGEL. Mr. Speaker, I rise today to join with my colleagues in paying tribute to our great colleague, CLAUDE PEPPER. As he celebrates his 80th birthday, I just would like to take a couple of moments to share with you some of the things that make him a great statesman.

Congressman PEPPER has been in the vanguard of the movement to provide the elderly within our Nation with the tools they need in order to live out their remaining years in dignity and happiness. It was as a result of his leadership that the House of Representatives established the Select Committee on Aging. As chairman of this committee, our dear friend has shepherded through the Congress the bill that raised the mandatory retirement age for most jobs in this land from 65 to 70 years of age. The implications of this major legislation will be seen for many years to come, especially when born during the baby boom move into their "golden years."

I have had the privilege of working with the "Senator" in several areas. I sat on the Select Committee on Crime, where I was able to learn of his compassion for people who are oftentimes neglected by those who attempt to legislate. That committee served as a catalyst for many of the anticrime programs that followed, in that his committee provided the legislative history that was necessary to document the need for the legislation.

At the beginning of the 96th Congress, I assumed the chairmanship of the Health Subcommittee of Ways and Means. In this new role I have again been brought closer to our colleague, as we both attempt to deal with the health problems which confront our seniors. Here again I have seen that the gentleman from Florida does have a full grasp of the issue and is totally committed to working with all groups to see that the Congress does its full share in providing for our senior citizens.

I have enjoyed the privilege of serving with my good friend, CLAUDE. On this your 80th birthday, I wish you well and many happy returns. The country and we here in the House need the benefit of your wisdom.●

● Mr. ANNUNZIO. Mr. Speaker, I am delighted to join my distinguished colleague, the Honorable DANTE FASCELL, in saluting our good friend and esteemed colleague, the Honorable CLAUDE PEPPER, on his 80th birthday.

Congressman PEPPER is the oldest Member of the House of Representatives, and I am honored to have served in the House with him since 1965 and to have benefited from his counsel and advice. He continues to give his best in service to his Florida constituents and to the people of our Nation. His oustanding dedication to high standards is an inspiration to his friends and fellow citizens and his record of excellence and creative accomplishment is most commendable.

CLAUDE began his career in Congress as a U.S. Senator from Florida during the years 1936–50, and was elected to his first term in the House in the year 1962. During his long career he has witnessed some of the greatest moments in the history of mankind and he has experienced, in a very real sense, the triumphs and the tragedies of our Nation.

CLAUDE PEPPER, as chairman of the Select Committee on Aging, has also given years of outstanding service to our senior citizens. He is dedicated to the well-being of every senior citizen in America. He is our watchdog, in the Rules Committee and on the floor of the House, on legislation that involves the concerns of senior citizens. CLAUDE PEPPER seeks the best for those people who were responsible for the building of America. I often have heard him say, "This is the least we can do for those who have done so much for America."

I have known CLAUDE PEPPER since 1948. I met him at the Morrison Hotel in Chicago in that campaign where he electrified the audience with his brilliant speech on the programs of the New Deal and how they involve each and every American. He has never lost that zeal and that fire as a champion of all the people by espousing that it is good and it is right for people to share in the wealth of America, because he believes that a productive citizen is what makes a Democratic country like ours strong. He firmly believes that each citizen who has produced for America and who has contributed to the wealth of America must be remembered by America in the twilight of their lives.

Again, CLAUDE, congratulations on this honor, and I extend to you my warmest best wishes for abundant good health and ever-increasing success as you continue to serve your State and your Nation in devotion to high principle.●

● Mrs. HOLT. Mr. Speaker, CLAUDE PEPPER has served in the Congress of the United States with honor and conviction. We have marvelled at his old fashioned oratory and delighted in his Southern wit. For unflinching commitment to civil liberties and passionate support for the aged, this octogenarian has earned our unwavering respect. For service to his country we pay him tribute.●

● Mr. FORD of Tennessee. Mr. Speaker, it is indeed an honor to join my colleagues in a tribute to an esteemed Member of this House, Chairman CLAUDE PEPPER.

Mr. PEPPER is an extraordinarily dedicated, capable, and hard-working colleague, who has gained the respect and admiration of each House Member with whom he has served.

Over the past years, he has carved out a unique role in Congress, and has distinguished himself nationwide as a fighter for human rights and justice for all elderly Americans. Long before assuming the chairmanship of the Aging Committee, he has been in the forefront of legislative battles to provide programs and services needed by the elderly, especially the poor elderly.

He has helped to make history as well as legislate it. Chairman PEPPER was instrumental in the passage of the mandatory retirement bill which added dignity to the working life of the elderly. He is a constant leader in the struggle to secure full physical and mental health coverage under medicare for the elderly. Under his leadership the Aging Committee has accomplished much toward bringing to the surface and alleviating many hidden problems of the elderly, and it is a real honor for me to serve on the Select Committee on Aging with him.

I am honored to add my birthday salute to Chairman PEPPER. I wish him much joy and happiness on this his 80th birthday.●

● Mr. OTTINGER. Mr. Speaker, today, CLAUDE PEPPER, my distinguished friend, Rayburn neighbor, and colleague, celebrates his 80th birthday. In his more than 30 years of congressional service, Mr. PEPPER has served in the finest traditions of our political system and the Democratic Party. The city of Miami, the State of Florida, and the United States should be proud that they have been represented by such a distinguished public servant.

During his tenure in the Senate, Mr. PEPPER helped maintain the ideals and programs of the New Deal. Later, he worked to prepare our country to confront the growing Nazi menace in Europe.

As a nine-term representative of the 14th Congressional District in Miami, he has fought to protect the elderly, fight crime, and develop a more productive economy. He has been an important voice on the Rules Committee and a true ally of humanitarian causes. His leadership on the Select Committee on Aging has made a significant difference in the quality of life for older Americans.

Not only has his record of service been exemplary, but his sense of humor and vigor have earned the admiration of both political friends and adversaries. Anyone who has heard CLAUDE tell a fascinating tale or joke must surely share my great respect for his warmth of character.

On his 80th birthday, CLAUDE PEPPER stands as a model to all of the senior citizens of this country. He is living proof that "age is a state of mind." One need only observe CLAUDE to realize why he has fought so hard to raise the mandatory retirement age.

Today, I join my colleagues in sending good wishes to CLAUDE for a most enjoyable birthday and many more succcessful years in Congress.●

● Mr. HUGHES. Mr. Speaker, it is a privilege and pleasure to join with so many of my colleagues in the House of Representatives to wish our good and beloved friend, CLAUDE PEPPER, a most happy birthday.

CLAUDE PEPPER has enjoyed a rich and rewarding career in both the Senate and House. In this respect, the Senate's loss is most assuredly, the House's gain.

When CLAUDE PEPPER left the Senate after a long and distinguished career, he could have rested on his laurels, practiced law and enjoyed the good life but that is not CLAUDE's style. Public service is just too important to him.

Always a champion of the less fortunate, CLAUDE PEPPER has done more than anyone in either body of Congress to advance the cause of the Nation's elderly.

His awesome talents and energies have been directed toward advocating the rights of the elderly and he has proved to be a most able advocate indeed. I think that one reason he has been so successful in improving the quality of life for older Americans is the fact that he is not a 35-year-old social scientist but a shining example of maturity and wisdom. The list of legislative achievements including ending mandatory retirement on the Federal level is a long and impressive one. Yet he has only begun to fight.

CLAUDE has often said that some day he will retire. He likes the sound of the year 2000. I, for one, am skeptical that this will ever happen.

CLAUDE, let me wish you all the best on this special occasion and may you have many, many more.●

● Mr. LEHMAN. Mr. Speaker, I am pleased to join with my colleagues in honoring CLAUDE PEPPER on the occasion of his 80th birthday. We are all grateful for the many years of public service which CLAUDE has given to his country.

Most of my colleagues are well aware of the important role CLAUDE PEPPER has played in championing the cause of the elderly and standing up for other disadvantaged groups in this country. I would like to honor him also for his courage and foresight during his years as a U.S. Senator.

He was President Roosevelt's point man in the Senate on major foreign policy initiatives. He recognized the threat to world democracy posed by the Axis powers at a time when America was steeped in isolationism.

Without CLAUDE PEPPER's courageous efforts, there would not have been a lend-lease program. Without his leadership, congressional approval of Roosevelt's decision to exchange destroyers for bases would not have been forthcoming.

This exchange was extremely controversial in 1940 and 1941. It supplied the British with 50 U.S. destroyers while the United States gained bases in places like Bermuda and the Bahamas. Today most scholars agree that the destroyers were instrumental in saving Great Britain from the might of Nazi Germany. This action also put the United States on record as supporting the cause of Great Britain and the many countries which Hitler had ruthlessly conquered.

These were critical decisions and CLAUDE PEPPER was not afraid to press for what he thought was right. World War II became the proving ground for U.S. world leadership, and I believe that we would not have as great a country today if it were not for CLAUDE PEPPER's magnificent contributions as a U.S. Senator.●

● Mr. SEBELIUS. Mr. Speaker, I would like to join my colleagues in paying tribute to our distinguished Member from Florida, the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

CLAUDE PEPPER has not only been an inspiration to his fellows in the Congress, but has been the champion of senior citizens throughout our great country. Because of his efforts, many Americans have been able to remain on their jobs and not be forced into retirement at the arbitrary age of 65. CLAUDE PEPPER knows what an up hill battle older Americans have to face. He has served almost half his congressional career after his 65th birthday.

Congressman PEPPER is truly an example of a man with courage and stamina. After having served in the U.S. Senate from 1936 through 1950 and being defeated in that year, he went home to Miami. Ten years later, CLAUDE PEPPER was back on Capitol Hill, representing his district in the House at the age of 60. And now, 20 years later, he is still among us and celebrating his 80th anniversary.

I know I speak for the entire House when I offer my best wishes and many happy returns of the day.●

● Mr. PREYER. Mr. Speaker, I am happy to join my colleagues in hailing CLAUDE PEPPER's 80th birthday.

After all the praise heaped on him, CLAUDE must know how a pancake feels after the syrup has been poured over it.

I will not add much more to all the great things said about CLAUDE's remarkable career, but I did want to mention one side of his career that might otherwise be overlooked. That is the significant role he has played through the years in the Inter-Parliamentary Union.

He has played this role with his usual flair, exuberance, and warmth. He makes great speeches not only on the stump in the United States but also before representatives of Parliaments and Congresses of the world. He has been a superb ambassador of good will for our country. When he speaks, it makes you proud to be an American.

I want my colleagues to know that not only our country, but the world, loves CLAUDE PEPPER.●

● Mr. RATCHFORD. Mr. Speaker, it is with a sense of deep pride and great respect that I join my colleagues in the House today in honoring our distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday.

In the midst of these hectic final weeks of the session, it is most fitting that we pause today to pay tribute to the senior statesman from Florida. As chairman of the House Select Committee on Aging and as the foremost advocate for older Americans in the House, we all marvel at the strength and the vitality which CLAUDE PEPPER brings to the Congress as he reaches this landmark 80th birthday. He serves as a continuing source of inspiration to all of us, and offers a living testament to the importance of his work on behalf of our older Americans.

As a member of Chairman PEPPER's Select Committee on Aging, I am struck by the sense in which my distinguished colleague has shaped and strengthened the role of the select committee in the House, defining a mandate for the committee which has placed it at the heart of the legislative process. Under his most able leadership, the select committee provides an essential focus on the needs of older Americans, a focus sorely lacking prior to the start of Chairman PEPPER's tenure as ranking member of the committee in the 95th Congress. Chairman PEPPER has already forged a record of commitment and accomplishment in the field of aging which will be long remembered in the halls of Congress and throughout the Nation.

The achievements of Chairman PEPPER in this Congress alone demonstrate the profound impact which he has had on legislation to improve the quality of life for older Americans. Chairman PEPPER has fought to insure adequate funding levels in this difficult year for elderly nutrition projects and emergency fuel assistance, both of which offer the most basic necessities to older Americans in need. He has championed changes in the medicare program which render home health care a meaningful alternative to institutionalization and he has led us through the first steps of a Federal response to the serious problem of fraud and misrepresentation in the sale of medical insurance supplementing medicare. Following the major policy theme of his successful effort to raise the mandatory retirement age from 65 to 70, Chairman PEPPER brought our attention to the problems associated with mandatory retirement for airline pilots and directed the National Institutes of Health to investigate relevant medical evidence in this important area. Finally, Chairman PEPPER won approval for fare discounts for older Americans on the AMTRAK system as a means of increasing ridership while meeting the real transportation needs of older Americans.

This list of achievements is only a glimpse of our colleague's outstanding record of service in the Congress. Chairman PEPPER's leadership in the field of aging is beyond dispute, and his fingerprints are to be found on virtually every major piece of legislation affecting the lives of older Americans. He continues to force us to look at the difficult questions of growing old—of how to provide an adequate income in retirement years, of how to meet the burdensome health care needs of an aging population, of how to provide opportunities for a life of dignity and security for our older Americans. Chairman PEPPER has come to serve as both our heart and our conscience, and in so doing he has earned our deepest respect.

Mr. Chairman, I am most honored to have the opportunity to join in this tribute to CLAUDE PEPPER as he celebrates his 80th birthday. I know I am joined by all of my colleagues in the House in wishing him many more years of health and service in the 1980's.●

● Mr. HOLLENBECK. Mr. Speaker, I join with many of my colleagues today to honor a man who has dedicated most of his life to public service—our distinguished colleague from Florida, CLAUDE PEPPER. On the occasion of his 80th birthday, it is indeed my honor to commend the gentleman for his long and outstanding service as a Member of Congress.

Along with holding a crucial position on the House Rules Committee, CLAUDE was the "driving force" behind the establishment of the House Select Committee on Aging. As a member of this committee I have had the privilege of serving with Chairman PEPPER for the last 2 years and have seen firsthand his sensitivity to issues affecting the aged. His strong leadership as chairman of the Aging Committee has led to the raising of the mandatory retirement age from 65 to 70 for most employees. Today, he still is a leader in the fight to abolish mandatory retirement altogether. His experience in Congress and his dedication to the service of this Nation serves notice that older Americans can and do contribute to the wealth of this country. It is therefore fitting that on his 80th birthday, we as Members of this body extend our best wishes and congratulations to CLAUDE and wish him continued success in the years to come.●

● Mr. OBEY. Mr. Speaker, I would like to share in this special order on behalf of our colleague, CLAUDE PEPPER.

CLAUDE PEPPER's service to the American people is probably unparalleled by anyone serving with him in this body today. He has been a voice for progress, humanity, and decency in Washington for over 40 years.

I will never forget appearing with CLAUDE on a platform in Chicago in 1976 when he and I received awards from the National Council of Senior Citizens. Without notes he gave a speech that was a model of clarity, humor, and emotional power. He is probably today the best stump speaker of anyone in the House of Representatives.

The Nation is fortunate that CLAUDE has used that gift for good purposes.

I wish him well for many years to come.●

● Mr. REUSS. Mr. Speaker, I am delighted to join my colleagues in extending the happiest of birthday wishes to our friend and colleague, CLAUDE PEPPER, who today celebrates his 80th birthday. His career, first in the Senate and since 1962 in the House of Representatives, has been one of the most distinguished in the history of Congress. I think, in particular, of his vigorous leadership as chairman of the House Select Committee on Aging, and his successful efforts to restrict mandatory retirement, so that people will have the choice of whether they want to work or to retire.

Chairman PEPPER is further proof that energy and ability are not limited by age. His experience is invaluable to us, and I hope that we will have the benefit of his service for many years to come. Happy birthday.●

● Mr. DOWNEY. Mr. Speaker, it is with great pleasure that I add my wishes to those of all my colleagues on the occasion of Chairman PEPPER's 80th birthday.

When I first came to Washington and joined the Aging Committee I was 25 years old—the youngest Member of the House of Representatives, and CLAUDE PEPPER was 74. Many things have changed since then. I have gained knowledge and insight from my association with the "Senator," and I have watched him inveigle and cajole Members into supporting legislation he believed in.

Eighty years used to seem very old to me. After working with my energetic colleague I know that these years can be fruitful and exciting. Looking back on these last 6 years, the list of major legislation that CLAUDE PEPPER is responsible for is very impressive. No longer is retirement at age 65 mandatory and, as I know from our long association, retiring at that age can be a significant loss to the employer and employee alike. Senior citizens no longer have to fear scare tactics when buying extra medical insurance to supplement medicare coverage. Chairman PEPPER's medigap bill will go a long way in saving older Americans needless fear and disappointment.

Again, my congratulations to the "Senator" and my best for the healthy and happy career I know still lies ahead.●

● Mr. WAXMAN. Mr. Speaker, I am honored to join with my colleagues in paying tribute to CLAUDE PEPPER on his 80th birthday. His career in Congress spans two generations; his legacy will last for generations to come. This great milestone in his life is not merely a personal one. It holds significance for all Americans. CLAUDE PEPPER's record of public service extends to so many areas—such as criminal justice, foreign policy, and environmental protection—but he is rightfully known as the champion of the rights and needs of our millions of senior citizens.

As chairman of the Select Committee on Aging, CLAUDE PEPPER has continually brought national attention to bear on the critical issues facing our elderly. His sole motivation has always been a firm belief that our Nation must live up to its commitment to the elderly to meet their needs in housing, health care, employment, and social services. There is no stronger or more determined voice in Congress on behalf of our senior citizens than CLAUDE PEPPER's.

At age 80, CLAUDE is a living testament to his greatest legislative achievement: The increase in the mandatory retirement age from 65 to 70. No other issue has greater relevance to the question of recognizing the ability of senior citizens to remain active in their later years—to continue to have lives that are rewarding, challenging, and productive.

More than half of Claude's congressional career has occurred since his 65th birthday. Both the country and Congress would have been far poorer had an arbitrary barrier of age stood between Claude's desire to serve the public and his eligibility to do so.

Claude Pepper was one of my heroes long before I ever was elected to Congress. It has been especially gratifying to have him as my chairman on the Select Committee on Aging. He is a courageous leader, an extremely sensitive and compassionate man, a committed individual, and a truly inspiring figure.

I extend my very best wishes on his birthday, and look forward to continuing to serve with him in the future.●

● Mr. JOHNSON of California. Mr. Speaker, it is a pleasure and an honor for me to join in paying tribute to my good friend, Claude Pepper, on the occasion of his 80th birthday.

Birthdays are times to reflect on the past and to anticipate the future. With Claude Pepper, both of these pursuits are pleasant undertakings. Claude can look back on some 63 years of public service and tens of thousands of people whose lives have been made better by his work.

Claude can look forward to even greater service in the years to come. He can look forward to providing inspiration to old and young alike.

Our older citizens will see in Claude Pepper an example to follow for continued productivity. They will see a living argument against manadatory retirement as this great American continues to lead an active life of leadership in the U.S. House of Representatives.

For the young, Claude Pepper will inspire early and lengthy involvement in public service, since he began teaching school at the age of 17 and was elected to the U.S. Senate at the age of 36. His life provides a fine model for any young person to follow.

Like old wine on the table, old wood in the fireplace, and old friends for companionship, Claude Pepper has gotten better and more effective as the years have passed. We can look forward to many more years of solid contribution from this great American. I look forward personally to his continued friendship and his leadership, and I wish him the happiest of birthday celebrations.●

● Mr. CONYERS. It is a privilege to join my colleagues in the special orders honoring a dear friend and esteemed colleague, Representative Claude Pepper.

Claude Pepper has brought distinction to both the Senate and the House since the beginning of his legislative career in 1936. His dedication to public service and his particular legislative accomplishments in the fields of health care and matters concerning older Americans is unrivalled. He has brought to his work a rare intelligence, judgment, and experience which is and always will be an example for us all. As he celebrates his 80th birthday, he should know that we expect and look forward to many more years of his service and guidance.●

● Mr. GUDGER. Mr. Speaker, I have had the privilege of serving with the distinguished gentleman from Florida in this 96th Congress on his Select Committee on Aging. I feel fortunate to have had the opportunity to work with this remarkable patriot, who was elected to the U.S. Senate the same year I graduated from high school. Claude Pepper has so much political experience that this two term Congressman can but marvel.

I am sure of this. All Americans can be more comfortable in their awareness of the inevitability of advancing age, because of this man's efforts to improve the status and living conditions of our senior citizens. His dedication to their cause is tireless, his vision for their future unfading, and his progress toward that goal relentless. Who could help but be inspired by the Senator, who while approaching this the 80th anniversary of his birth likes to tell us that his concern for senior citizens stems from the fact that someday, he too might become elderly.●

● Mr. BENNETT. Mr. Speaker, today we celebrate Congressman Claude Pepper's 80th birthday. In the "Almanac of American Politics" it is said of him that he is "the grand old man of Florida politics." The "grand" part of that statement rings true in my estimation. Chronologically, Claude is an "old" man because he was born 80 years ago but in every other way he is young. Certainly he is young in spirit, mind, and soul.

He is a pleasure to be with, always. His oratory is the best in Congress and his many well achieved honors for accomplishments as a statesman, should, I guess put one in awe of him. But his warm friendship, easily extended and there for the asking, make every minute with him a pleasure.

I am honored today, as the chairman of the Florida delegation in Congress, to pay not only my own tribute to him but to do this for all of the Florida delegation in Congress.

Every Member of Congress loves this great man for his leadership for human rights, his fight against crime, and for the aged, and for better health conditions in our country. He is a magnificent leader and we are all so glad that he stays among us to continue his battles for what is best for America and for mankind. Congratulations Claude.●

● Mr. RINALDO. Mr. Speaker, I would like to take this opportunity to pay tribute to our esteemed and distinguished colleague Claude Pepper, who today celebrates the 80th anniversary of his birthday.

I want to express my own personal admiration for the fine example he has set during his more than 30 years of service in Congress, first in the Senate, and since 1962 in the House. Congressman Pepper has won the plaudits of his colleagues for his unselfish and unswerving devotion in serving his fellow Americans.

While Representative Pepper has sponsored a plethora of legislation over the years that somehow touches all of us, I believe that some of his most important legislation is aimed at benefiting and protecting our senior citizens. As chairman of the House Select Committee on Aging, he is keenly aware of the needs of our elderly, and has consistently sought to meet the needs.

He was responsible for a law providing for the voluntary certification of insurance policies supplementing medicare to protect the elderly against insurance frauds. He introduced legislation authorizing the congregate housing program, which allows senior citizens to receive the necessary support services to remain independent, and he was the author of the Older Americans Act to provide social services to the elderly in an organized and effective manner.

This is just the beginning of an endless list of outstanding services Representative Pepper has provided America. He is a man of rare talent whose representation will be cherished long after he has left the service of his country.●

● Mrs. HECKLER. Mr. Speaker, this is a very special day for our colleague from Florida and a very special day for us. It is Claude Pepper's 80th birthday today—a time for him to celebrate his many years of achievements and outstanding service in both the House and the Senate. It is a special day for us because we have this opportunity to express our gratitude and appreciation for one of the kindest and most able persons to ever grace these Chambers.

I feel very fortunate because I have had the chance to work with Claude on legislation geared to the needs of senior citizens. This special area requires insight and sensitivity. Claude has both qualities. Add to this Claude's own special brand of enthusiasm, charm, and wit and you have an unbeatable combination—which describes our colleague who today celebrates being 80 years young.

Ralph Waldo Emerson described an institution as the lengthened shadow of one man. I am sure we would all agree today that if we had to name one man who has cast his shadow on the institution of Congress in the most salutory and productive way, we would come up with the same name—Claude Pepper. May all good wishes and gifts come to him on this birthday. His enduring presence is a gift to a nation and to us.●

● Mr. VAN DEERLIN. Mr. Speaker, perhaps we do Claude a disservice by calling attention to his birthday. His constituents never would have guessed that this man is 80.

I find it difficult to accept myself. Twice I have had the pleasure of traveling overseas with our Florida colleague—first in the Scandinavian countries, later in mainland China. On both trips our party remained no longer than 2 days at any stop; combined with jet lag, the brisk schedule left many younger Members weary. But Claude Pepper seemed to defy nature. When the rest of us were ready to collapse, he would often be leaving us for his own private inspection of a housing complex for the elderly, a children's hospital, or a farm commune.

On hearing criticism of congressional "junkets," I often wish voters could get a look at Congressman Pepper in action.

The man's legislative achievements, of course, are legendary, spanning both

Houses of Congress and a career interrupted by a dozen years' absence from our legislative halls. Doubtless his greatest legacy will prove to be the new liberation he has won for elderly Americans through his Select Committee on Aging.

At this point, Mr. Speaker, I feel a conflict of interest. I expect to be leaving this body long before CLAUDE does—and I very much want him to stay on the job, protecting the interests of us retired folk.●

● Mr. PICKLE. Mr. Speaker, over its two centuries of existence, this great body has been blessed from time to time with exceptional Members who mark the pages of history—and our daily lives—by their wisdom and their compassion. In that league stands the House's own Senator, CLAUDE PEPPER. His life has spanned over one-third of the history of this Republic. But his reputation and his impact stand for all time. He is a Conscience to this House, reminding us always of our ultimate duty—concern for the people. He is an able legislator who never deviates from the highest code of fair play. He is a gentleman. And, today, on his 80th birthday, I am proud to have this opportunity to honor the distinguished member from Florida, Senator PEPPER, the Grand "Old" Man of the House, who remains young in his outlook, young in his energy, young in his enthusiasm, and young in our hearts and minds. His courage is well known. From the stormy days of the New Deal, through the controversies of the 1950's and back again into the fray in the 1960's and 1970's, he has never shied from battle or betrayed his own beliefs. It is fitting that this Congress commemorates its first year of a new decade with a new decade of service from one of its greatest and most beloved Members.

Senator PEPPER—and his late and beloved Mildred—were as loved and respected as any couple who ever served in this body. As a member of the 88th Club I can vouchsafe that Mildred and CLAUDE PEPPER brought happiness and love to every Member. CLAUDE PEPPER is doing that today.

On a personal basis, the Senator from Florida and I have joined in many a Pickle-Pepper bill, or amendments. We feel we have been progressive and helpful. I treasure my relationship with this outstanding gentleman.

I join many others in wishing Senator PEPPER a most happy birthday.●

● Mr. DERWINSKI. Mr. Speaker, it is a special pleasure for me to join this afternoon in wishing our colleague, CLAUDE PEPPER, much happiness on the occasion of his 80th birthday. CLAUDE has earned a great deal of respect from both sides of the aisle for his warmheartedness and for his outstanding legislative abilities. We all appreciate the great inspiration and guidance that he gives us.

On a number of occasions, I have traveled abroad with CLAUDE in connection with our assignment with the Interparliamentary Union, and I can attest to his excellent diplomatic representation of the United States and as being an effective voice of our foreign policy.

It is a pleasure to join in this special greeting to a very fine human being and a very loyal public servant to the people of Florida and the country. Thirty-one years in any career is a landmark, but CLAUDE has done more than put in his time. He has helped to make history by serving his country well. His great spirit and zest have impressed all of us who have had the opportunity to serve with him.

I extend my warmest wishes and sincere congratulations to CLAUDE on this memorable occasion. Best wishes for many more years of good health and service to your country.●

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House of Representatives in honoring CLAUDE PEPPER, my neighbor in the Rayburn Building, who is celebrating his 80th birthday today.

At 80, CLAUDE has given a total of 32 years of his life in service to the people of Florida and of the Nation in both Senate and House.

Presently the oldest Member of the House, CLAUDE PEPPER has served fully 15 of his 18 years in the House after reaching age 65, supposedly the "going out to pasture" age.

His leadership in raising the mandatory retirement age for most jobs in the United States has affected profoundly America's life and working patterns. It would be a fitting legislative memorial for most Members of Congress, but for CLAUDE, it is just the first of many more to come in his brilliant career.

I send best wishes for health and happiness to "Senator" CLAUDE on his 80th birthday.●

● Mr. WAMPLER. Mr. Speaker, I wish to extend my warmest birthday greetings to my friend and colleague, CLAUDE PEPPER. I have enjoyed serving with him since the 90th Congress. During those years, I have watched CLAUDE become a legend in his own time. We have worked together, hand in hand, on the Select Committee on Aging since it was created in 1974.

Under CLAUDE's leadership, we have seen age discrimination virtually eliminated, home health become a reality, and the Older Americans Act touch millions of lives daily through the expansion of nutrition programs and senior centers. He is truely an advocate for the well-being of our Nation's growing older population.

CLAUDE's commitment to making life better for all Americans and his success as a legislator and an orator have made him a true statesman of the people. I am honored to have him as my friend and wish him many more happy birthdays.●

● Mr. ROYBAL. Mr. Speaker, it is with great personal pleasure that I extend congratulations to the Honorable CLAUDE PEPPER on the occasion of his 80th birthday.

Clearly, Mr. PEPPER's record of achievement during his many years of service in the U.S. Congress has been extraordinary. As a member of the Select Committee on Aging, I have had the opportunity to work closely with Mr. PEPPER and can bear witness to his deep concern for the people of this country and his tireless efforts on their behalf. This concern has been evident ever since Mr. PEPPER's election to the U.S. Senate in 1936.

Even when many of his colleagues became disillusioned with F. D. R. and the New Deal, CLAUDE PEPPER had the courage to defend both the President and his domestic policies. This unpopular stand, as well as his ahead-of-the-times devotion to civil liberties earned him the nickname "Red Pepper" and cost him his Senate seat in 1950. Many people would have settled down to lucrative positions as consultants or lobbyists, but this was not the course that CLAUDE PEPPER chose. His great devotion to and concern for the people of this country led him to the House of Representatives in 1962. And this body has definitely benefited from his return.

I will not try to recount here CLAUDE PEPPER's long and impressive list of accomplishments. We all know of his successful efforts against crime and for the benefit of the elderly. Among his greatest accomplishments was passage of the bill raising the mandatory retirement age for most jobs from 65 to 70. This legislation will influence and improve the lives of the people of this country for generations to come.

Once again, I salute CLAUDE PEPPER on yet another great accomplishment. Happy 80th birthday, CLAUDE, and many more to come.●

● Mr. BROOKS. Mr. Speaker, I would like to join with other Members in honoring our esteemed colleague, the Honorable CLAUDE PEPPER on his 80th birthday. He has always been a great friend and a champion for the elderly and I look forward to continuing to work with him on his many, many efforts to improve the living conditions and economic situations of our senior citizens in the future.

Happy birthday, CLAUDE.●

● Mr. BRINKLEY. Mr. Speaker, I wish to join in this birthday salute to our friend and colleague, CLAUDE PEPPER, an uncommon man and outstanding American.

From humble origins in Alabama to the pinnacle of public service in Florida and the Nation, this man never forgot his beginnings, nurtured in principle and sustained by commonsense.

We learned to appreciate him even more deeply by the insight gained when he spoke on several occasions at the weekly prayer breakfast.

His concern for the aged, his urgent interest in cancer research, and his commitment to fairplay put CLAUDE's report card at the top of the class.

Hats off to him and happiest of birthdays.●

● Mr. FUQUA. Mr. Speaker, September 8, 1900, was an auspicious date. On that day, on a farm near Dudleyville, Ala., our distinguished friend and colleague, CLAUDE DENSON PEPPER, was born. In the 80 years since that date, CLAUDE PEPPER has accomplished enough to last three lifetimes and he is still going strong. It would take far too long to try and list all of his accomplishments. His record of public service began in the Florida State House of Representatives in 1929 and includes 14 years of service in the U.S. Senate (1936–50) and service in the U.S. House of Representatives which began in 1963 and continues.

CLAUDE has always been in the public eye. He has sacrificed a private life in order to serve with selfless distinction. Throughout his career he has been the recipient of many awards and citations and he recently, very graciously, has announced that he will donate his public papers to Florida State University.

I think more than anything, as we say "Happy Birthday" to our dear friend, we should recognize the important work he is doing today. After giving so much of himself to his country. CLAUDE PEPPER continues to do outstanding work as chairman of the Select Committee on Aging. His committee is directly responsible for much of the good legislation approved by Congress in recent years to insure the rights of older Americans and, by serving as an example himself, he has demonstrated that age is no barrier. Nobody can look CLAUDE PEPPER in the eye and say to him someone is "too old" to get a job done or to make a valuable contribution. CLAUDE would simply stare back at you with his sharp, keen eyes and tell you that it's what is in the mind and in the heart that counts. I urge my colleagues to join me in pausing today to say "Happy Birthday, CLAUDE," and may you enjoy many more years of fruitful service.●

● Mr. ADDABBO. Mr. Speaker, I would like to take this opportunity to offer birthday congratulations and pay tribute to one of the finest public servants this Nation has ever known, my distinguished colleague CLAUDE PEPPER of Florida who today is celebrating his 80th birthday.

I have known and worked with CLAUDE PEPPER for many years and have come to the conclusion that there are few men in Washington who are as respected and admired than he. He is respected, admired, and loved because of the work he has accomplished and for the fine gentleman he has always been. I consider him one of the most valuable Members of Congress today and certainly the most likeable. He has proven that to reach the age of 80 is not the time to sit back and watch others take care of business, with his seemingly endless supply of energy and vigor all too often putting colleagues 20 years his junior to shame.

He has been involved in the enactment of countless pieces of legislation but I consider his tireless work on behalf of the senior citizens in this country to be his greatest accomplishment. His bill which raised the mandatory retirement age for most jobs in the United States to age 70, as well as his outstanding work as chairman of the Select Committee on Aging are two examples why many believe he has done more for the senior citizens of this country than any other member in recent memory and I am confident he will continue to represent their views.

On this, his 80th birthday, I wish him the very best for many more happy and healthy years to come and I will continue to look forward to serving with him.●

● Mr. LENT. Mr. Speaker, it is a great pleasure and distinct honor to joint in this well-deserved tribute to our most distinguished colleague from Florida, the Honorable CLAUDE PEPPER, on his 80th birthday.

What a record of public service our colleague has established during those 80 years. He has held a public office in seven of the eight decades of this century. He has served 14 years in the U.S. Senate and 18 years in the U.S. House of Representatives. His nine terms as a Member of this body alone establish him as one of the most experienced Representatives, outranking the vast majority of his colleagues.

This truly unique record of outstanding public service would, by itself, be sufficient to deserve the outpouring of admiration, affection and respect in which we are joining today. But, Mr. Speaker, the greatest tribute we can pay to CLAUDE PEPPER is to acknowledge the fact that in his eighth decade, he is among the most active Members in our legislative deliberations, both in committees and on the floor. Especially is this true in his work as chairman of the Select Committee on Aging, where his legislative studies and proposals have done much to benefit older Americans.

Furthermore, Mr. Speaker, CLAUDE PEPPER has never allowed the work of his Select Committee on Aging to become a partisan matter. Although I sit on the opposite side of the aisle from the gentleman from Florida, I can testify that he and his committee welcome legislative sugestions and give them careful consideration with not the slightest partisan constraint.

Mr. Speaker, if anyone ever deserved the title of Mr. Senior Citizen, U.S.A., it is our distinguished colleague, the Honorable CLAUDE PEPPER, who in his 80th year continues undiminished his productive and beneficial legislative career.

I know that my colleagues join me in the wish that our good friend will continue to offer us the benefits of his outstanding intelligence, his persuasive, articulate speaking abilities, his experience in public service, and, above all, his tremendous youthful enthusiasm, for many years to come.

A happy birthday to Mr. Senior Citizen, U.S.A.●

● Mr. CARTER. Mr. Speaker, I am pleased to join in wishing a happy birthday to one of my good friends and one of this body's most distinguished members, our colleague from Florida, CLAUDE PEPPER.

Few men have served as ably and honorably as has CLAUDE PEPPER in the U.S. Congress, nor won the admiration of so many. He is a gentleman and a fervent advocate of what he sees as right, especially as it relates to health matters and to that group of Americans for whom he has become a special supporter and role model, our senior citizens.

Fourscore years is a long time for the Lord to allow anyone to serve on this Earth. Like the good and faithful servant, CLAUDE PEPPER has used his years and his God-given talents to the fullest. May he have many, many more years in which to serve the people of Florida.

I wish the very best to a gentleman and a friend; it has been an honor and a privilege to have served with him. Happy birthday, CLAUDE.●

● Mr. GREEN. Mr. Speaker, today is the 80th birthday of one of our most distinguished colleagues, Representative CLAUDE PEPPER. As a longtime Member of Congress and one who once served in the Senate, Mr. PEPPER has demonstrated a tremendous commitment to the public he serves, and I would like to take this opportunity to express my great respect for Mr. PEPPER personally, and admiration for his career of service to our Nation.

As a member of the Select Committee on Aging, which Mr. PEPPER initiated, and of which he is chairman, I have had the opportunity to work with Mr. PEPPER on several issues which affect the seniors of our Nation. He has worked tirelessly toward the passage of legislation which seeks to eliminate the mandatory retirement age entirely, and has made an effort to promote programs which seek to make seniors full-time, participatory members of our society. Senior citizens as a group have been and are now productive contributors to our well-being as a nation. Mr. PEPPER has made an effort to restore dignity to the elderly and to allow them to participate in all aspects of our activities as a nation.

Mr. PEPPER himself is a senior who has demonstrated a capacity for productivity which should be an example to us all as we consider legislation which affects our Nation's elderly population. Throughout his long career, he has shown a commitment to the Nation and to the elderly which is admirable. His service should be an example to us all of the valuable contributions which seniors can make, and of the extent to which older Americans who care, and who have committed themselves, can perform.

I would emphasize my deep respect for Mr. PEPPER, and to extend to him my wishes for a joyful 80th birthday, and many more to come.●

● Mr. O'BRIEN. Mr. Speaker, I wish to extend my deepest personal congratulations to my distinguished colleague, CLAUDE PEPPER, as he celebrates his 80th birthday today.

Senator PEPPER should feel great achievement on this day because he has reached a very special point in his life. The fact that he is the oldest Member of the House of Representatives and has served almost half of his congressional career past the age of 65 is also cause for much pride.

At age 36, Senator PEPPER began his career as a young Senator whose Southern style and devotion to civil liberties earned him the name "Red Pepper." This name still holds true today as Senator PEPPER has fought continuously for legislation to benefit the aging.

His fight to raise the mandatory retirement age and to possibly get rid of mandatory retirement altogether will give many the choice of whether they wish to retire or to continue working.

Senator PEPPER has been called "the grand old man of Florida politics," and on his special day I would like to say with great respect that this man has touched the hearts of many who have come to know him.

Again, I wish him only the very best in the years to come.●

Mr. FASCELL. I thank the gentleman from California. I think his last remarks there as well as everything else he said about the man we honor here today, CLAUDE PEPPER, very thoroughly summarizes what needs to be said or should be said about CLAUDE PEPPER.

I want to say to the gentleman from California (Mr. DANIELSON) that I might just add to his remarks by saying that CLAUDE has also created a problem all of the time that he has been here and it has made it tough for the rest of us because he has either thought of it or already done it. I do not care what the problem is, we will find that CLAUDE PEPPER has been out there somewhere on that problem, and I do not care how far we go back. But it exemplifies the kind of service that he has not only given but continues to give. Age does not mean a thing. It is certainly not any barrier, not in his case, that is for sure.

CLAUDE, I just want to say here as we conclude this special order this evening that you can tell from the remarks of your colleagues who are here, and I can tell you from the many, many remarks which have been put into the RECORD, which I know you will cherish, the esteem that all of us have for you which is very sincere, very earnest and it most certainly has been earned by any criteria or measurement or standard.

□ 2000

To have that kind of acknowledgement from your peers at any point in life has to be one of the most satisfying things that any individual could have. Goodness knows you have made enough sacrifices and you have given enough time to everybody and everything.

I must say I would imagine right now that you must feel kind of warm about all the good things that have been said and I think rightly so. They were well-deserved, CLAUDE. We all join in congratulating you on a remarkable life of achievement in these past 80 years. We wish you all the best for many, many more years and we just want to be around to celebrate them with you.

GENERAL LEAVE

Mr. FASCELL. Mr. Chairman, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on behalf of our honored and distinguished guest here this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Again, Mr. Speaker, I want to thank the distinguished gentleman from Georgia for deferring his special order tonight so that we could pay proper homage and tribute to a great American.

THE CONCEPT OF GOVERNING AND THE CONCEPT OF ACCOUNTABILITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGRICH) is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I want to take this opportunity to talk about the concept of governing and the concept of accountability in American Government and the notion that the Congress is, in fact, run by teams. Individual Members may have an impact on American history, but the real effect and the real ability to change the laws by which we are governed and the Government which provides goods and services to the American people is inherent in a team system.

Mr. Speaker, I certainly want to talk about an event which will take place next Monday, September 15, which I think will be a unique event in American political history and which I hope will set a precedent for future efforts to communicate to the American people the nature of team government and the concept of working together in a way that is accountable.

Next Monday, September 15, all of the Federal candidates for election and reelection in the Republican Party will be gathered on the Capitol steps to talk with the American people as a group, to offer a unified hope for real change, to create a covenant, a solemn pledge to achieve certain goals, to say in effect, "Give us a chance to govern and we will give you a chance to improve the quality of your life."

We will specifically indicate in a legislative platform what an executive branch and legislative branch working together under Republican control can attempt to do.

When this event occurs on September 15, the news media will undoubtedly focus on the substance of the pledges: What precisely did we Republicans choose; what precisely do we promise?

I would suggest that the pledges are not the real story. The real story is the gathering of all Republican Federal candidates in the Nation's Capital. It is a first in American history. The first time that the candidates for Federal office in both the legislative and executive branches have gathered from around the country in an act of unity and commitment.

The real story is that this is a major invention in the political process comparable to the invention of the National Convention system in the 1840's or the rise in the British political party's central office by Disraeli in the 1860's.

The real story is that this is the first step toward a de facto constitutional amendment that will give us accountable party government by giving us accountable party campaigns and accountable party records.

To appreciate how breathtaking this gathering on the steps is, we have to look at the American political tradition with which it breaks.

Our Founding Fathers' greatest fear was the tyranny of centralized power. They focused on the Whig tradition dating from the English civil war. Their grievances were with the strong Hanoverian kingship of George III.

Our Founding Fathers believed that power inevitably tended to concentrate and lose accountability. They feard the aloofness and uncontrollability of a monarch. They equally feared the raw passion and the violent swings in public opinion of democracies. As a consequence, the Founding Fathers invented an amazingly intricate and balanced system for the division of powers. They designed a system which is, frankly, engineering rather than philosophy, which sets out, in a series of very precise steps, ways for achieving goals they believed in, in this case, the goal of dividing power.

The other body is elected for 6 years, the Presidency for 4 years. They decided one branch should remain permanently scared and thus the House is elected every 2 years and is permanently accountable and permanently required to return home.

Not only were the three institutions elected for different periods, they represent radically different constituencies. The President speaks for the Nation, the other body speaks for States but the House speaks for individual constituencies, for people, and that is why early in its career the House was referred to as the people's body, the People's House. Having set up different schedules and different constituencies to guarantee that every interest was heard and every argument considered, the Founding Fathers then distributed power and legal responsibility in such a way that they had to cooperate to get anything done.

Not only could each branch check the other, but without all three agencies, the other body of the House and the Presidency cooperating, nothing was possible. This centrifugal system balanced against centripetal responsibilities diffused power and responsibility among all three agencies. While requiring teamwork to accomplish anything, it makes teamwork very difficult to achieve. As Americans we have wrestled with this problem of diffused power and tried to solve it in several ways over the last 200 years.

We have had strong Presidents such as Washington, Jackson, Theodore Roosevelt, and Franklin Roosevelt. We have had periods of congressional domination such as the 1850's and the 1880's. In fact, Woodrow Wilson, in his book "Congressional Government" in the 1880's, argued that since Congress was obviously going to dominate, the Cabinet officers should be Congressmen. He despaired of the Presidency gaining strength and gave up hope that power would ever leave the Congress.

Later, while Franklin Roosevelt led the country and the Congress from 1933 to 1937, his ability to get legislation passed declined dramatically after 1937, and the period of real domestic domination for Roosevelt was a very brief 4 years. In fact, in Richard Strout's collective essays entitled "T.R.B.," he laments the difficulties of congressional Presidential relations in virtually every Presidency beginning with Franklin Roosevelt during World War II. Strout clearly despairs of our divided system and prefers a parliamentary style of government with clear lines of authority and responsibility.

Many people agree that our system lacks clear mechanisms for governing and for accountability. However, most proposed reforms are milder than Strout's. David Broder in his book, "The Party's Over," argues for a rebuilding of political parties, for a centripetal force that brings us together for responsibility in an institutional sense, for accountability that extends beyond individual careers and individual elections.

A wide range of political scientists including James McGregor Burns, Frederick Sonntag, Manning Dauer, Jack Saloma and others, have urged steps to strengthen the party system. There is a growing consensus that a weak party system leads to irresponsibility, to single issue politics and to domination by special interests. Furthermore, there is a growing belief that personality politics focused on individual candidates heightens irresponsibility and the lack of accountability.

Committee chairman of the governing party disclaim any burden of accountability, even in their own zones of responsibility. They say, "It is my effort to help you and it is other people's efforts that hinder you."

Individual Congressmen hide behind the mountain of incumbency advantages, and shirk the responsibility to bear the burden of governing and to remain accountable for their behavior in Washington. They blame someone else and blaming others becomes the height of incumbency reelection efforts. In effect, "We work for you, but someone bad stopped us."

Even Presidents disclaim responsibility for governing. Three Presidents in a row have blamed Congress for the country's woes. Presidents Nixon and Ford at least have some partisan plausibility in assailing Congress. From 1969 to 1977 we had genuinely divided Government. One party controlled the Congress, the executive branch and the other party controlled the legislative branch.

However, it boggles the mind to have President Carter in effect running against the Congress his party controls. The Democrats currently run the country but cannot admit it. The public is in no mood to reward a governing party for inflation, unemployment, high taxes and a weak defense structure. In fact, things are so bad that for the first time in 28 years the public favors a Republican Congress, according to some major polls.

□ 2010

Yet the reality is that individual Congressmen will be able to hide behind the advantages of incumbency and avoid responsibility. If we had a parliamentary system such as Great Britain's, Germany's, or Japan's, we would see a shift in 1980 of 60 to 90 seats based on the polls, but because of the fragmented nature of our system we are likely to see a shift of, at most, 15 to 30 seats.

The Presidential race reveals an even higher level of irresponsibility and lack of accountability than the congressional branch. President Carter is campaigning for reelection on new programs and new proposals, as though he were the challenger. He is attacking Governor Reagan as though the last 4 years were Reagan's fault. If we have economic decay, it is Reagan's irresponsible policies. If we have a weak national defense, it is Reagan who is dangerous.

The economic program recently announced by President Carter continues the tradition of fantasy and irresponsibility. According to one account, it is the eighth new economic policy in 4 years. Like its predecessors, this eighth edition economic policy has no hope of passing.

Despite 4 years of Democratic control of the White House and the Congress, there are no achievements they can run on. The recent Democratic National Convention illustrated the collapse of responsible self-government. The Speaker of the House was permanent chairman; the chairman of the Judiciary Committee in the other body was the challenger; the incumbent President became the nominee. The Democratic National Convention was in fact the gathering place of America's governing establishment.

However, no observer of that week's convention activities could detect any sense of responsibility or accountability. Everyone had drawn their paychecks, accepted their perquisites, and occupied their positions of power and visibility. Yet, no one wanted to say, "Taxes are high; we did it. Unemployment is rising; we did it. Bureaucracy has grown; we did it. Our defense establishment is falling apart; we did it."

Instead, the focus and the burden of the convention was on a man who had not been in power, had not been in Washington, and was not accountable for the last 4 years. The focus of the convention was as though the dominant governing party of this country were the challenging party. Since irresponsibility is the key to incumbent reelection campaigns, everyone runs away from their own record. Next Monday's gathering on the Capitol's steps is the first step toward rebuilding accountability. It is the first step toward reknitting the threads of party ties and rebuilding the structure of party behavior.

What we will do is simple. Federal candidates for election or reelection from across the country will gather. We will sign a covenant to take five steps to improve the quality of American life. We will, in effect, pledge to pass a set of measures in a joint effort between the legislative and the executive branch that will represent a change of direction for America. We will prove by the very act of standing together that we are a team, ready to govern.

The contrast between the current Democratic Party's inability to govern and our ability to do so will be made evident by contrasting our commitment with their confusion, our unity with their division. We will also focus attention on the reality that America needs more than the White House to govern here. For too many years Americans have focused on the Presidential speeches when it is congressional votes that change laws. If all the Presidential speeches on tax laws in the last 30 years were stacked one on top of the other and analyzed, and if all the votes of the Ways and Means Committee were stacked one upon the other and analyzed, it would be clear to every American where the real power in Government lies. For it is in the votes of the Ways and Means Committee in the House and in the other body that real law is made, not in the Thursday evening press conference or a Saturday afternoon speech by Presidents. Presidents propose—Congress diposes, and only together can they govern the country.

It is time to refocus the public's attention on the Constitution, on the need for joint executive-legislative cooperation. If you want change, you have to change the House and the other body, as well as the White House. However, just electing a party in both branches is not enough. The last 4 years proved that. The same group can in fact claim nominally to be in charge, and yet there is no teamwork. They can all wear the same uniform, and run in opposite directions. You have to also have a commitment to be a team to govern.

The concept of Government is something we have ignored for too long. For to long we focused on the good answer at the press conference, the good explanation of failure, and the glib ability to communicate through television that we mean to do better, that it is not our fault, that no one is in charge. It is time to go back to a basic civics lesson, to pose the great pragmatic American question: Does it work?

If it does not work, as a matter of habit, we should change the people in charge—not just in the White House, but in Congress—and demand of the new people, not just, "What will you do," but also, "Tell us so clearly that we can measure in 2 years whether or not to retain you, whether you have in fact kept your contract."

We intend to pose a simple question for the voter in November. One side has had all the reins of power, and if you like what they have done, you should relect them, but if you do not like the condition of your pocketbook, of your job, of your neighborhood, the condition of the national defense, then you should change the whole team, not just part of the team.

We are also setting up a yardstick for measuring us in 1982. "Should you elect us, look at our covenant and measure our achievements against what we say we will do as a team."

Taken all in all, a national event, attracting all the Federal candidates for the House, the other body, and the Presidency, offering accountability and team effort, a solemn covenant, focusing on the concept of governing, is in many ways the biggest change in models of government since Franklin Roosevelt, at his peak, developed the strong Presidency. That is what September 15 is all about. The Republican Federal candidates standing on the steps represents a commitment to finding new and more effective ways of making the Constitution work in difficult times.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think the gentleman has pointed out to us the significance that we hope to establish with respect to our activities on September 15. Whatever the failings that the parliamentary systems of European democracies may have, they are superior to our more loosely knit representative system in one respect: That respect the gentleman has referred to as accountability.

When a British worker goes to cast his vote for his representatives in the House of Commons, there is little doubt in his mind as to which party to hold accountable for the current state of affairs in his country.

But here in our country, where legislators are responsible for myriad constituent services; where regional, State, and ethnic identities are strong; where members of the legislative branch are not structurally tied to the Chief Executive of their own party, the accountability for the current state of affairs tends to be blurred in the minds of the citizenry. At present, with our economy reeling on the brink of chaos, with our national defense posture sagging, and with our continued vulnerability to the whims of foreign oil oligarchs, the members of the majority party are doing their best to further blur the sense of accountability in the minds of the electorate. Parenthetically, I guess I can say that I do not blame them, but really, is that the function of our system?

We members of the minority ought to be heard on the accountability question. Perhaps we have not done a good enough job in the past in pointing out that we have a job to do, to suggest an alternative, to suggest there is a different way to go and suggest that we have the courage and the guts to present that alternative. Members of the minority cannot allow that to go unchallenged because the undeniable truth is that members of the majority party have been marching in lock-step to the orders of their party who currently occupies the White House.

Just today, we found when we discussed one bill that is in the area of regulatory reform, we even had members of the majority party suggest that the major piece of regulatory reform, the regulatory reform bill before the committee I happen to serve on, the Judiciary Committee, has been taken off our consideration and has been held from us for about 6 weeks. Why? Because the White House objected to the fact that we would have really the assertiveness to suggest that there ought to be a legislative veto provision considered. It was not even a one-House legislation veto; it was a two-House legislative veto, and as soon as we adopted that on a very close vote in committee, the words came down from the White House and that was pulled from our committee and has not been seen since.

We were scheduled tomorrow to consider that very important legislation, and mysteriously that particular decision with respect to that committee was changed, and tomorrow we are not going to have that committee meeting and we are not going to go forward with regulatory reform, which the Carter administration has suggested to the American people is one of the things that is important and a priority on their schedule of things.

Even if we do have a lameduck session, which many of us hope we will not have because we do not think it will truly be representative, there is great question whether it would even get on the schedule at that time. So, we have an obligation here, I think, as members of the minority, to point out that we do have a leadership here in the majority party that is in lock-step with the White House and doing its bidding.

According to the 1980 Congressional Quarterly study of congressional support for President Carter, this legislative body chalked up a 76-percent level of support for Carter, in spite of the fact that members of the minority party voted in accord with the President's wishes only 34 percent of the time.

☐ 2020

When President Carter wanted legislation to pave the way for the Panama Canal giveaway, his party colleagues in the House were behind him all the way. When Carter pushed the $14 billion Department of Education, his party colleagues were behind him all the way. When Carter opposed one substantive balanced budget proposal after another, his party colleagues in the House were behind him all the way. When Carter opposed attempts to clean up the wasteful and fraud ridden food stamp program, his party colleagues were behind him all the way.

If in fact they were not behind him all the way, he would not have been successful in doing those things, but unfortunately we, the members of the minority, have not done a good enough job of making that clear to the American people. But I truly wonder how many of these positions the members of the majority will boast about when they return home to hit the campaign trail. My guess is very few, perhaps none of them, because the positions are, in and of themselves, indefensible.

There are members of the majority party, I know, who chalked up levels of support for Carter approaching 80 percent, yet they are already going back to the people in their districts and trying to paint a picture of themselves as ardent foes of Jimmy Carter's excesses.

We of the minority have an obligation not to allow this to be done. We cannot allow them to get away with it.

We did not vote for these spending measures. We did not put obstacles in the way of meaningful tax relief. We did not support the gradual dismantling of our national defenses.

On so many occasions some of the leaders of the majority say that there is only one purpose for the minority party here, and that is to form a quorum, which is a backhanded way of saying that they want to take responsibility for the decisions that are made in this House. If that is the case, then they ought to accept the responsibility for the failures.

We do not say this for the sake of partisanship; we say this for the sake of our Nation, because the Nation will be benefited when we have both parties joined in debate about issues that are important to the American people.

To succeed, however, this message must clearly be brought home to the American people. They must know that, like the British worker voting for his representative in the House of Commons, they have a clear choice. They have a clear choice between the team that is responsible for the present state of affairs and the team that has ardently and very, very strongly worked to reverse the situation.

The majority team is to blame, and once the American people hear and understand the truth of that message, they will say to them, as Cromwell said to Parliament some three centuries ago:

> You have sat here too long. No good has been done by it. Depart, I say, and let us have done with you. In the name of God, go!

Mr. Speaker, I thank the gentleman for yielding.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from California (Mr. LUNGREN) for his comments, and I yield back the balance of my time.

AMENDMENTS TO THE RAIL ACT OF 1980

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ECKHARDT) is recognized for 15 minutes.

● Mr. ECKHARDT. Mr. Speaker, this is in pursuance of my promise on the floor last Friday to notify you exactly what my substitute will be when offered at about 1 p.m. on Tuesday, September 9.

First: The major substance of the substitute remains unchanged. It will include exactly the language that was first printed in the Record on July 1, 1980, p. 18046, regarding striking of surcharges and inserting a requirement that new divisions of joint rates be decided speedily by the ICC. Furthermore, the substitute on surcharges will contain no new material that has not hitherto been published. The only addition will be the acceptance of the Staggers-Rahall-Lee-Loeffler amendment provisions concerning the Rock Island and Milwaukee Railroads. I have all along indicated that I favor the labor protection provisions but I had not thought they were germane to title III until the chairman ruled on Friday that these provisions are germane to title III. Since it is so pressing that these emergent problems be taken care of, I think it desirable to remove them from controversy by placing them in my substitute.

To summarize, the major difference between the Eckhardt substitute and the Staggers, et al. amendment in the nature of a substitute is as follows: The Staggers amendment in the nature of a substitute would wipe out the action of the House taken on July 1 affecting the Eckhardt amendment which provided a 160 percent of variable cost threshold for ICC jurisdiction. Acceptance of the Eckhardt substitute would retain previous action on title II.

The Staggers amendment in the nature of a substitute would retain the surcharge provisions of section 301. It would not give reasonable or substantial relief to the shortline railroads from these provisions. It leaves in effect a surcharge provision by which shortline railroads may be forced to reduce their own rates in order to make a joint rate viable when a larger railroad has imposed a surcharge unilaterally. That is the effect of section 301 which the Eckhardt substitute would strike. Some 60 shortline railroads support my amendment because they feel they may be forced out of business by their larger railroad associates in joint rate situations.

Section 301 must also be considered with section 502 of the bill because a line which is subject to a surcharge then becomes vulnerable to de facto abandonment by ICC under these provisions of title V.

My amendment would substitute for section 301 of title III—which permits surcharges—the provisions of the Senate bill that expedite ICC action in reviewing joint rate agreements. This provision, which is the gravamen of my amendment, was printed in the RECORD on July 1, 1980, and was reinserted by Mr. FLORIO in the RECORD of September 5, 1980.

Thus, to summarize, the amendment:

First, leaves the previous action on title II alone;

Second, strikes out surcharges and substitutes expedited ICC procedure; and

Third, provides for saving the Rock Island and Milwaukee Railroads.

Mr. Speaker, I wish to insert here letters in support of my substitute from consumers, farm and labor groups and the joint letter of Senators MCGOVERN and DOLE encouraging my removal of the surcharge provisions of the bill.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 4, 1980.

DEAR REPRESENTATIVE: H.R. 7235, the "Rail Act of 1980," is once again scheduled for consideration by the House on September 5. Support for the Eckhardt-Rahall amendment is strong and has been growing to include many consumer groups since its July 24th passage.

Consumers need your support of this amendment, which will serve as protection against imminent railroad monopolies that will drive smaller lines out of business, allow for discrimination against certain ports, force captive shippers to pay exorbitant rates and cost consumers millions of dollars. If Title 3 remains intact, railroads will acquire the power to surcharge at their discretion. Conrail alone has stated its intention to increase in excess of 285,000 rates.

The Rahall-Staggers-Lee compromise recently offered fails to protect consumers, captive shippers, and small railroads. A report submitted by the Public Interest Economics Center to the Federal Railroad Administration clearly substantiates these concerns as well as numerous other undesirable consequences that will materialize without inclusion of the Eckhardt-Rahall amendment as accepted on July 24.

The amendment has been incorporated into the Rail Bill, illustrating Congress' concern for consumer protection. The Consumer Federation of America urges you to continue supporting the Eckhardt amendment, and oppose the Rahall-Staggers-Lee "compromise" which will negate all virtues of the original Eckhardt-Rahall amendment.

STEPHEN BROBECK,
Executive Director,
Consumer Federation of America.

CONSUMER ENERGY COUNCIL
OF AMERICA,
Washington, D.C., September 4, 1980.

Re: H.R. 7235 The Rail Act of 1980

DEAR REPRESENTATIVE: The House is once again considering H.R. 7235, The Rail Act of 1980. The Consumer Energy Council of America, a broad based coalition of major national consumer, labor, farm, public power, rural electric cooperative, urban, senior citizen and low income organizations urges you to support all aspects of the Eckhardt amendment—including those already adopted, and to reject the Staggers-Rahall amendment, which is a major step backward.

The bill, as amended on July 24, 1980, provided the minimum protection that consumers of heavy bulk commodities such as coal and grain deserve. Coupled with the other provisions of the Eckhardt amendment, which would protect small railroads and ports, the bill would strike a balance between shippers, consumers, and railroads. The Staggers-Rahall amendment is not a compromise in any sense of the word and it would remove the protection for the consumer, which the House has already voted.

We urge you to reject the Staggers-Rahall amendment and vote for the Eckhardt amendment which would prevent dramatic, inflationary increases in coal and grain prices. Should the Eckhardt amendment fail, we urge you to vote against the bill.

Sincerely,

ELLEN BERMAN,
Executive Director.

NATIONAL FARMERS UNION,
Washington, D.C., September 8, 1980.

Hon. BOB ECKHARDT,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: I am directing this letter to you because of the information I have received in regard to your concern over rail deregulation legislation—H.R. 7235.

As the Senate acted on this legislation, we were closely associated with Senator George McGovern, and he provided us with the leadership that established Farmers Union's position on the Senate-passed bill. We are still in consultation with members of his staff and are being guided as to our attitude on H.R. 7235.

We are very pleased to find that you apparently have been exercising leadership into some of the problems that this legislation would create for rural and farm America. We have serious problems with Section 301, and we understand that you also are attempting to amend the legislation to prevent defacto abandonments of rural branch lines through excessive surcharges that this section authorizes.

It appears that other members may have problems with the legislation, particularly with regard to how it would affect rural agricultural shippers. Irrespective of the problems with other provisions of the bill, H.R. 7235 is unacceptable to the Farmers Union unless Section 301 can be amended to prevent the problem that we have indicated above.

I would deeply appreciate it if you share our concern, as I understand you do, that you would make opposition known to other members of the House when the bill comes up for debate and vote. I would also appreciate having your response as to other action we could instigate to make known our views if you have any suggestions.

Best regards.

Sincerely,

REUBEN L. JOHNSON,
Director of Legislative Services.

THE SEAFARERS INTERNATIONAL
UNION OF NORTH AMERICA,
Washington, D.C., September 4, 1980.

DEAR CONGRESSMAN: The Seafarers International Union of North America, AFL–CIO, urges your support for an amendment to the Rail Act of 1980 that will be introduced during upcoming deliberation on the House floor. The amendment to be offered by Congressman Eckhardt is required to correct deficiencies in the legislation that would adversely affect the livelihood of SIU members throughout the country.

Congressman Eckhardt will offer language to amend Section 301 which deals with joint rate surcharges. This section, as presently drafted, would allow major rail carriers to arbitrarily cancel both joint rates and through rates. It also would lift the restraints of Interstate Commerce Commission regulations on unreasonable and discriminatory rail rates. These actions would result in the loss of jobs for SIU members who are employed by small line railroads in various port cities.

Congressman Eckhardt's amendment to strike Section 301 will correct this problem by substituting the language contained in Section 107 of the Senate version of the bill. This proposed amendment would provide protection to shippers and short haul railroads alike by maintaining existing recourse through ICC review of all joint rate surcharges and divisions.

We strongly urge your support for this amendment because it will insure that marine workers engaged in rail-related cargo movements will not be unfairly treated through the imposition of arbitrary joint rate surcharges.

Sincerely,

FRANK DROZAK,
President.

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., September 5, 1980.

Hon. BOB ECKHARDT,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable general rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surchage and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments.

Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

ROBERT DOLE.
GEORGE MCGOVERN.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 10 minutes.

● Mr. NEAL. Mr. Speaker, I am submitting to the House today a notification on the U.S. Export-Import Bank's proposal to provide $150 million in loans and guarantees to help finance the purchase of five American-made Lockheed L1011-500 jet aircraft by Transportes Aereos Portuguese (TAP), Portugal's national airline.

The total value of the five jetliners, plus related spare parts and services, will be $250 million, so the Eximbank will be financing or guaranteeing 60 per cent of the purchase price. The Portuguese Government, which owns TAP, will guarantee payment of the airline's indebtedness under the Exibank financing.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Exibank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification giving the terms and details of the proposed financing. I would welcome any comments or questions my colleagues might have on this proposal.

The Eximbank material follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

Hon. STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room,
H-209, U.S. Capitol,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Portugal.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing in the form of loans and guarantees (Eximbank Financing) of $150,000,000 to Transportes Aereos Portuguese (TAP), Lisbon, Portugal. The purpose of the Eximbank Financing is to facilitate the purchase in the United States by TAP of five new Lockheed L-1011-500 jet aircraft and related spare parts and services. The total U.S. export value for this transaction is estimated to be $250,000,000.

2. Identity of the parties

(a) TAP

TAP, established in 1944, is Portugal's national air carrier and provides scheduled and charter service on both domestic and international routes. It is 100% owned by the Government of Portugal.

(b) Guarantor

The Government of Portugal, acting by and through its Ministry of Finance, will unconditionally guarantee payment of TAP's indebtedness under the Eximbank Financing.

3. Nature and use of goods and services

The principal goods to be exported from the United States are five commercial jet aircraft to be used by TAP on its international routes. The airframes for the L-1011-500's will be manufactured in California by the Lockheed California Company. In addition, other U.S. suppliers will furnish components and spare parts. The engines for the aircraft will be supplied by Rolls-Royce supported by official export credit financing provided by the United Kingdom.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reason

The Eximbank Financing of $150,000,000 will facilitate the export of $250,000,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their sub-contractors are heavily dependent upon exports. Through 1990, aircraft purchases by foreign airlines are expected to account for approximately 40 percent of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80 percent of the world market for commercial aircraft.

The export of the five commercial jet aircraft which are the subject of this letter depends to a significant degree upon the availability of Eximbank support for the medium and long term maturities. Commercial lenders are unable to commit themselves in Portugal at fixed interest rates or for the full repayment term involved in this case, a ten year amortization after a four year delivery period. Therefore, the Eximbank Financing is necessary to provide repayment terms that would make the transaction economically feasible for TAP.

Lockheed estimates that the construction of each aircraft involves 600 man/years of employment evenly divided between Lockheed and its suppliers. Additional benefits which will flow to the United States from the transaction include sizeable follow-on exports of spare parts and related equipment.

2. The financing plan

The total cost of United States goods and services to be purchased for this project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$37,500,000	15
Unguaranteed private financing	62,500,000	25
Eximbank financing	150,000,000	60
Total	250,000,000	100

It is expected that forty percent of the Eximbank Financing will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank (Blended Eximbank Financing). The remaining sixty percent of the Eximbank Financing will consist of a loan by a financial institution guaranteed by Eximbank.

(a) Eximbank Charges

The financial charge on the Blended Eximbank Financing to be paid by TAP will be 8% per annum payable semiannually, a rate established in a Preliminary Commitment authorized by Eximbank for TAP on July 5, 1979. A commitment fee of $0.5% per annum will also be charged on the undisbursed portions of the Eximbank Financing.

(b) Repayment Terms

The Eximbank Financing and the Unguaranteed Private Financing will be repaid by TAP in two schedules of 20 semiannual installments beginning October 25, 1983 and October 25, 1984. The Unguaranteed Private Financing will be repaid from the early installments of each such schedule.

Attached is certain additional information on Eximbank activity in, and economic data about, the country involved in this transaction.

Sincerely,

H. K. ALLEN.

PORTUGAL

Area: 92,072 sq. km.
Population (end 1979): 9.3 million.
Population Density: 101/sq/km.
GDP per capita (in 1979US$): 2,154.

GDP

[In percent]

Expenditure Structure (1979):	
Private Consumption	73
Government	15
Investment	22
Exports	25
Imports	—35
	100
Origin of GDP (1977)	
Agriculture	14
Industry	45
Services	41
	100

	1976	1977	1978	1979 (P)
GDP data:				
Millions of dollars (nominal)	14,821	15,730	16,994	20,028
Growth rate (real) (percent)	6.9	5.3	3.2	4.0
Fiscal and monetary data:				
Government deficit (millions of dollars)	1,585	1,142	1,941	1,981
Deficit as percent of GDP	10.7	7.3	11.4	9.9
Increase in money supply (MI) (percent)	8.4	11.8	14.5	25.9
Savings ratio (percent)	14.3	13.2	16.3	19.7
Price data (percent change over previous year):				
CPI	21.1	27.4	22.1	24.2
WPI	19.2	28.7	31.6	NA
Labor data:				
Wages (monthly earnings) (percent change)	11.9	12.0	11.0	NA
Unemployment rate (percent)	6.9	7.9	8.4	10.0
External debt (millions of dollars):				
Outstanding debt	2,892	4,427	5,420	6,583
Private	1,752	2,488	3,433	3,721
Public	1,140	1,939	1,987	2,862

	1976	1977	1978	1979 (P)
Debt service ratio (public debt only) (percent)	5.0	6.1	5.3	NA
Total debt/GDP (percent)	19.5	28.1	31.9	32.9
Balance of payments (millions of dollars):				
Exports, f.o.b	1,823	2,027	2,410	3,594
Imports, f.o.b	3,932	—4,533	—4,791	—6,016
Trade balance	—2,109	—2,506	—2,381	—2,422
Tourism (net)	186	268	431	695
Net services	—107	—863	—54	100
Unilateral transfers (net)	972	1,134	1,635	2,472
Of which emigrant remittances		1,174	1,671	2,446
Current account balance	—1,244	—1,499	—800	150
Capital account balance	277	636	760	1,259
Overall balance	—1,967	—863	160	1,352
Reserves (millions of dollars):				
Foreign exchange (excluding gold)	176	366	871	940
Gold (London average price)	3,454	3,562	4,276	12,262

Note: Exchange rate: Escudos/U.S. dollar—1976=31.549, 1977=39.855, 1978=46.010, 1979=49.781.

Sources: I.F.S., OECD Survey, IMF—Recent economic developments.

EXIMBANK EXPOSURE IN PORTUGAL

[As of July 31, 1980]

	Outstanding	Undisbursed
Direct loans	$75,295,058.21	$11,833,288.82
CFF loans	1,128,425.70	1,333,288.82
Financial guarantees	2,658,426,92	
Bank guarantees and other	111,093.95	1,521,280.00
Insurance:		
Medium term	260,637.98	499,959.00
Short term	1,699,026.76	93,543,202.48
Total exposure	81,152,669.52	108,731,019.10

DEFAULTS AND RESCHEDULINGS

In the past ten years there have been no defaults or reschedulings of Export-Import Bank direct credits for U.S. export sales in Portugal.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 27, 1980.

THE SPEAKER OF THE HOUSE,
The Speaker's Room, H-209, U.S. Capitol,
Washington, D.C.

Dear Mr. Speaker:

Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Mexico.

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available financing to Hylsa, S.A. in the form of loans and guarantees ("Eximbank Financing") of $178,110,000 covering U.S. costs of $151,393,500 and local costs of $26,716,500. The purpose of the financing is to facilitate the purchase in the U.S. for export to Mexico of various equipment and services required for the expansion of the Borrower's integrated steel facilities and port facilities at Tampico, Mexico. The total U.S. export value for this transaction is $178,110,000.

2. Identity of the borrower

Hylsa, S.A. is one of Mexico's leading producers of steel, and a wholly owned subsidiary of Grupo Industrial Alfa, S.A., which is Mexico's largest privately owned and most diversified company. Eximbank's experience with the Borrower has been satisfactory.

3. Nature and use of goods and services

Various items of equipment and services to be used in the expansion of the Borrower's steel port facilities.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank Financing of $178,110,000 will facilitate the export of that amount of U.S. goods and services. U.S. equipment firms are having a difficult time winning jobs against Japanese and European bidders, all of whom offer competitive pricing and financing. Eximbank has been informed by the U.S. suppliers that their backlogs are way down, particularly since there are no major expansions contemplated by U.S. steel plants; thousands of U.S. jobs are therefore dependent in large part upon the ability of the U.S. suppliers to compete for steel mill jobs overseas. Recent OECD exchanges make it clear that Japan and England are supporting financial packages for this project of 85% of fixed rate financing, in addition to 15% of local costs, all at an interest rate of 7.5%. The Eximbank Financing will assist in the generation of some 7,120 jobs in the U.S.

2. The financing plan

The total U.S. and local costs of the project will be financed as follows:

	Amount	Percent of U.S. costs
Cash	$26,716,500	15
Eximbank financing:		
(a) U.S. costs	151,393,500	85
Total		[1] 100
(b) Local costs	26,716,500	15
Total	204,826,500	

[1] U.S. costs.

It is expected that the Eximbank Financing for the U.S. Costs will consist of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

a. Eximbank Charges

The financial charges on the Eximbank Financing to be paid by Hylsa will be 8.25 percent per annum, payable semianually, a rate established in a Preliminary Commitment authorized by Eximbank for Hysla on March 6, 1980. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

b. Repayment terms

Hylsa will repay the Eximbank Financing in 20 semiannual installments, beginning on January 10, 1985.

Attached is certain additional information on Eximbank activity in and economic data about the country involved in this transaction.

Sincerely,

H. K. ALLEN.●

SOUTH AFRICA'S RACIAL POLICIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. STEWART) is recognized for 30 minutes.

● Mr. STEWART. Mr. Speaker, recently, I wrote to the Honorable A. L. Schlebusch, M.P., Minister of Justice for South Africa. In my letter to the Minister I expressed my concern for Mr. Govindsamy Reddy, a political prisoner in South Africa. The Minister responded to my letter on June 10, 1980 and indicated that he was "not prepared to withdraw his (Mr. Reddy's) restrictions at this stage."

In his letter, the Minister also attempted to draw an analogy between the situation in South Africa and "the recent outburst in Miami."

I reject the analogy.

However, I did request the Congressional Research Service of the Library of Congress to review the Minister's letter. I am enclosing the Library's memorandum to me at this point in the RECORD.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., August 5, 1980.

To: Honorable Bennett Stewart. Attention: Coleman J. Conroy.

From: Brenda Branaman, Analyst in African Affairs, Foreign Affairs and National Defense Division.

Subject: A comparison of the racial situation in South Africa and the United States with particular attention to the causes of the Miami, Florida riots.

Both similarities and differences exist between the racial situation in South Africa and that of the United States. The most significant distinguishing feature between them is that South Africa pursues an official separate development policy while the United States in contrast has established legal guarantees of freedom and equality.

Until the early 1950's discrimination against blacks was practiced in both South Africa and the United States through legal measures and by a variety of informal social practices. Since that time the two countries have taken separate paths in the black struggle for equal rights. The United States began to move toward the elimination of discrimination with the 1954 Supreme Court's landmark decision in the case of *Brown* vs. *Board of Education of Topeka* which held that "separate but equal" educational systems are inherently unequal. This decision encouraged a campaign of nonviolent resistance against segregation laws in the South, culminating in the 1963 March on Washington. Subsequently civil rights legislation eliminated the legal barriers to racial equality and the position of many American blacks substantially improved. Problems in the implementation of this legislation continued through the late 1960's and 1970's, especially with respect to those laws which relate to social and economic rights. American blacks, however, now have the power of the vote with which to carry on their struggle, a political tool that continues to be denied to South African blacks.

In 1948 when the South African Nationalist Party came to power the policy of separate development was officially established. Implementing legislation began in 1949 which prohibited marriage and sex across racial lines and continued with a series of legislation that divided the population into racial categories, provided for separate racial residential areas in the cities and established the practice of banning organizations, publications and persons who disagreed with the government's apartheid policy. In 1952 South African blacks and Indians joined together to conduct a campaign of passive resistance to the apartheid laws. In 1956 they were joined in their resistance by the coloreds (those of mixed race). The three groups met to draw up a Freedom Charter, a document which laid down principles for a nonracial democratic South Africa. Authorities severly suppressed these peaceful resistance efforts and blamed the 1952 Port Elizabeth riots on the campaign. The government responded to periodic riots in the following years by passing progressively more restrictive legislation. This legislation established separate educational systems for each racial group, created the passbook system requiring blacks to carry identity documents, made strikes by black workers illegal and prevented black unions from participating in collective bargaining, established job classifications by race eroded the limited franchise previously enjoyed by Indians and coloreds, and established segregation in public places. After the 1960 Sharpville killing by South African police of blacks demonstrating against the passbook system, the government banned the African National Congress (ANC) and Pan-African Congress (PAC) and detained 1,900 people, including some whites. During the following two decades a small number of black leaders turned to violence as a method of resistance but their activities were effectively frustrated by the South African security forces.

The United States experienced its own pattern of violence in protest against economic deprivation and inequality beginning with the Harlem riot of 1964 and the Watts riot of 1965 and continuing through the late 1960's. The Black Panther Party and other separatist groups emerged during this period. They never gained widespread black acceptance, but neither did the ideas of these groups completely disappear. According to some observers the frustration and despair that produced the riots and these organizations in the sixties emerged again in 1980 in the form of the Miami riots.

REASONS FOR THE MIAMI RIOTS

The rioting which occurred in Miami's Liberty City in May 1980 was the immediate result of a number of trials by white juries whose verdicts were perceived as unjust by blacks. The specific case to which the black residents reacted was the McDuffie case. In that case an all-white jury found four white policemen not guilty of charges that they had beaten to death a black businessman. The trial was conducted in an atmosphere of extremely poor relations between the police and the black community. This incident provided only the spark which ignited a much more serious problem.

The underlying reasons for the May riot were frustration resulting from a high employment rate, especially among black youths, aggravated by frictions with Cuban refugees and government cutbacks in social programs intended to improve the quality of life in low-income areas. These conditions exist in other cities across the United States and it is the assessment of many black leaders that racial unrest similar to that in Miami could occur elsewhere in the country.

The Kerner Commission Report released under the Johnson Administration in March 1968 cited the lack of jobs as a factor contributing to violence in American cities in 1967. Some black leaders are saying that the government does not need new commissions to study the causes of riots but that the need is take effective action now. An official of the U.S. Commission on Civil Rights recently commented that all of the causes cited in the Kerner Commission Report were as relevant in 1980 as they were in 1968 and that the government should simply put a new date on it. The White House response to the Miami riot in May was to set up a task force to study the causes of the unrest.

The friction between American blacks and refugees appears to be a problem without a parallel in South Africa. Many American blacks believe that refugees are being hired for jobs that otherwise would be held by blacks. This belief is especially intense among black in Miami, a city which has experienced heavy influxes of refugees from Cuba and Haiti. The other problems underlying the Miami riots exist in South Africa, as well.

COMPARISON OF GENERAL CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

Legal system. In South Africa the legal barriers to racial equality remain in the forms of an intricate system of apartheid laws enforced by an extensive police and intelligence network. Although de facto discrimination remains in many cases in the United States, legal barriers to racial equality have been removed.

South Africa's system of government is highly centralized, and power is concentrated in the Executive Council consisting of the Prime Minister and his cabinet. This body controls parliament and the judiciary has no power to review legislation. Such a system make it extremely difficult for South African black to work for change through the legal system. On the other hand, American blacks have been able to appeal separately to any one of three branches of the more decentralized American government. They achieved legal changes through both litigation and legislation. Literature of the South African Foundation indicates that the changes made in South Africa within the last five years have come about as a result of executive policy in cooperation with the private business sector.

Focus of change. Since racial discrimination is incorporated into the South African legal system, groups working for change in that country focus their efforts on political and economic issues. The government of Prime Minister Botha has proposed the creation of a President's Council that could consider a new constitution. The council would include whites, Asians and coloreds. He has even indicated willingness to include an advisory role for urban blacks on the Council, but he also has made clear that blacks will not be granted the vote in the near future. Botha has focused most of his reform efforts on economic issues such as jobs and unions and changing petty apartheid laws which segregate public facilities. Some black leaders inside the country accept the idea of economic change and the postponement of political power sharing. But most black activists, both within and outside the country, oppose the "separate development policities of the government, which would channel black political activity into the homelands. These blacks want a unitary state with full political participation as well as economic changes. In short, they want the total elimination of apartheid.

Historically, American blacks have believed that acquisition of political power was necessary to obtain the economic benefits of U.S. prosperity. Consequently, for many years the black struggle for equality focused on obtaining the vote. Since the court decisions and legislation passed as a result of the civil rights movement in the 1950's and 1960's, the legal barriers to racial equality have been removed. The struggle by blacks in the United States now focuses on economic and sociological issues.

Values of society. The American value system includes a belief in political and social equality and equal economic opportunity. These values over time have come to include blacks and other minorities as well as whites. Blacks can therefore appeal to a segment of white public opinion to force a government response in the struggle for equal rights. In South Africa, the value system prevailing among whites treat differences between blacks and whites as divinely ordained and ineradicable. Consequently, there is no substantial element in white public opinion believing in equality of the races to which blacks can appeal.

COMPARISON OF SPECIFIC CONDITIONS IN SOUTH AFRICA AND THE UNITED STATES

This section will look at selected conditions which affect race relations in the two countries. It is not intended to be a comprehensive list.

Education. Equal access to education for blacks and whites remains a problem in both countries. The 1954 *Brown* decision and the 1964 Civil Rights Act promoted school desegregation in the United States as a means of providing quality education for blacks and other minorities on an equal basis with whites. Twenty-five years after the court decision half of all minority children in the United States still attend segregated schools according to the U.S. Civil Rights Commission. Desegregation has been more complete in the rural South than elsewhere in the country. In most big cities public schools remain primarily black because of a white exodus to the suburbs. Quality education has become a concern of black parents and leaders since these schools are producing large numbers of functionally illiterate dropouts and graduates. The Carter Administration has proposed a youth employment program that would attack the problem of illiteracy, a major cause of high minority youth unemployment. Despite these problems, American black participation in higher education has dramatically increased in recent years. In 1976 blacks composed 9.3 percent of the total college enrollment, compared to 11.5 percent of the total U.S. population.

In South Africa 90 percent of the white children attend public schools. The remaining 10 percent are mostly English-speaking students attending private schools run by the Catholic and Anglican churches. These private schools have been allowed limited integration in recent years, but this change has not improved the educational opportunities for the majority of non-white children. School attendance for white children between ages 7 and 16 is free and compulsory. Only since 1976 has schooling been compulsory for black children ages 7 through 11. Unlike whites, black parents must pay fees for tuition, textbooks, and uniforms for their children attending school.[1] During the recent school boycott initiated by the colored children, but later joined by many blacks, Prime Minister Botha acknowledged that there were inequalities in government spending on education for non-white groups and he promised to look into the matter. One of the most prominent inequalities in the segregated school system is the disparity between government educational expenditures on the racial groups.

The government spends 11.5 times more per student on whites than blacks. Until recently the government did not concern itself with this problem, but emphasized growing black enrollment, the growing number of new teachers and new schools. Even so, improvements in non-white school systems seem modest compared to their needs.

Employment/unemployment. In both the United States and South Africa black unemployment is a major problem and a direct result of past inequalities of education and general discrimination as well as the general state of the economy. However, the gap between black and white unemployment is smaller in the United States than in South Africa. In South Africa the level of black unemployment was at least four times as high as white unemployment in 1977. Government figures show 13.0 percent unemployment for blacks and 3.6 percent for whites, but unofficial estimates place black unemployment at between 20 and 25 percent counting underemployment and subsistence farmers in the homelands. In the United States black unemployment is consistently double that of white unemployment. In 1977 black unemployment was 13.9 percent and white unemployment was 6.2 percent. Youth unemployment for both blacks and whites was considerably higher but again figures for blacks are about double those for whites (1978—38.6 percent for blacks, 16.3 percent for whites).

There is a considerable wage gap between blacks and whites in the United States, but it is much smaller than the gap in South Africa. In 1978 the per capita income of black men in the United States was 59 percent of the per capita income of white men. In South Africa black per capita income was only 6.9 percent of white per capita income in 1975—a ratio of white-to-black per capita income of 14 to 1, according to the unofficial South African Institute of Race Relations. In South Africa a majority of black families live below the poverty level, while in 1977 28.2 percent of black families in the United States lived below that level. But poverty may not be defined the same way in both countries.

The United States has a substantial black middle class, partly as a result of the passage of the Civil Rights Act of 1964, which prohibited job discrimination on account of race, religion, or sex. American blacks still experience job discrimination but they have gained access to a number of jobs previously unavailable to them, especially in government (Federal, State and local) and the professions. South Africa on the other hand, has an extremely small black middle class because of a history of legally sanctioned job reservations for white workers. The Botha government in cooperation with the business sector has encouraged the gradual elimination of these job reservations, but recent legislation responding to recommendations of the government's Wiehahn Commission retained the use of "closed shop" contracts to prevent the hiring of blacks.

Freedom of movement. In the United States there have been no legal prohibitions on freedom of movement for blacks since the elimination of slavery. Discrimination against blacks in housing and employment was outlawed with the passage of the 1968 Fair Housing Act and the 1964 Civil Rights Act.

In South Africa, on the other hand, an intricate system of influx control is the mechanism by which the South African government enforces its separate development policy. The government has established nine ethnic homelands where blacks must live unless they are employed elsewhere. If found unemployed in the urban areas, blacks are forcibly returned to their homeland. Blacks who are able to get jobs in the urban areas must carry passbooks which identify them as having government permission to travel, reside, and work there. Large numbers of blacks are arrested each year for passbook violations since they migrate illegally from the homelands to the cities looking for jobs. There are an insufficient number of jobs available in the homelands and overcrowding makes subsistence farming very difficult. The South African government has attempted in recent years to develop industries near the homeland borders, but to date these efforts have failed to alleviate unemployment in the homelands.

Housing. Segregated residential housing exists in both countries but in sharply differing degrees. In the United States the 1968 Fair Housing Act gives blacks who can afford it access to housing on an equal basis with whites. Despite this legislation, discriminatory practices and separate neighborhoods persist, although integrated residential areas are growing. Efforts are being made in 1980 to pass legislation which would strengthen the Federal Government's fair-housing enforcement mechanisms, enabling it to more effectively implement the Fair Housing Act.

In South Africa the Group Areas Act of 1950 authorized the government to designate zones according to race in urban areas. Consequently there are no integrated neighborhoods, and even if a black family can afford to live in a white area it is prevented from doing so by law. Prime Minister Botha announced in 1979 that he was prepared to amend the Group Areas Act, but this has not been done. Urban blacks cannot own land or houses within their townships and are forced to rent, although this law was relaxed in 1979 to allow 99-year leases on land in the townships.

Both countries have problems concerning inadequate housing for low-income blacks. Shanty towns, also known as squatter camps, exist in South Africa, while the United States has inner city slums or ghettos. Both countries have public housing programs which have proved insufficient for the needs of low-income blacks. In both countries these blacks find it difficult to afford decent housing and must often live under conditions of severe overcrowding in unsafe buildings and with poor sanitation. Conditions in the two countries do differ, however. When it became clear that the government would be unable to provide enough units to keep up with the demand, the United States turned to methods other than construction of public housing such as a rent supplement program. South Africa, on the other hand, has continued to rely on public housing as the only solution and maintains a policy of restricting the number of units constructed as a means of encouraging blacks to remain in the homelands. The South African government continues to bulldoze the squatter settlements created by blacks illegally residing in urban areas.

Political participation. In South Africa only whites have the franchise and the privilege of full political participation. Blacks may vote and hold office within their respective homelands but not on a national basis. Asians and coloreds have no vote on a national level but have a limited franchise in selecting advisory councils to the government for their respective groups. In the United States blacks are guaranteed the right to vote. Poll taxes and other discriminatory practices hampered the exercise of this right until the passage of the Voting Rights Act of 1965. Since then, blacks have been elected to more public offices and have increasingly influenced Presidential elections. Currently, however, there are no black Senators.

Political prisoners and police/community relations. The United States has on occasion been charged by human rights organizations with having political prisoners and perhaps the best-known recent case involved the Wilmington 10. Cases involving American Indians have been publicized by Amnesty International. These cases are few in number, and many observers question the validity of charges that they amount to political imprisonment. South Africa, on the other hand, regularly arrests and detains without charge persons dissenting against the apartheid system, whites as well as blacks and other non-whites.

Most recently large numbers of colored school children were detained as a result of their boycott protesting the segregated school system. South Africa also regularly bans persons (legally restricts their movement, contacts, and rights to express themselves) especially blacks, and periodically bans organizations which work for the elimination of apartheid. In recent months several prominent blacks were banned, including religious leaders such as Bishop Tutu. In 1977 a large number of anti-apartheid organizations were banned following a government investigation of the death in detention of Steve Biko. During the 1970's there was a number of unexplained deaths in detention—deaths that were alleged by some observers to have been caused by brutal interrogation methods, but described by police as suicides.

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[1] The government several years ago promised to provide free textbooks for all students through grade 12 by the end of 1979.

Both South Africa and the United States are periodically charged with instances of police brutality. Police/community relations are generally poor in low-income black communities in both countries. Some American cities have attempted to improve these relations through police/citizen liaison groups and by increasing the number of blacks on the police force. Washington, D.C., for example, now has a 50 percent black police force and Detroit's force is more than 60 percent black. Most American cities, however, continue to have low proportions of blacks on their police force. In South Africa there are substantial numbers of blacks on the police force inside the urban black townships, but this does not appear to favorably affect relations between the black communities and the police.

CONCLUSION

A fundamental difference between the racial policies of the two countries exists. The South African government gives legal support to discrimination according to race and takes severe actions against those who dissent against the apartheid system. On the other hand, the United States has over the past 26 years worked toward eliminating discrimination through removal of segregation laws and the passage of laws guaranteeing equality.

Both governments claims that they are moving toward racial equality as quickly as possible, and South African Prime Minister Botha establishes commissions to make recommendations for change and delivers speeches instructing the white population to "adapt or die." American President Carter addresses the NAACP and notes his appointment of federal judges and his actions to curb inflation and proposes such programs and new youth employment program. Although the level of government commitment may be greater in the United States, many blacks in both countries, as well as other non-whites in South Africa, perceive that their respective governments are not moving fast enough to eliminate inequalities between the races. Some among them believe that the actions that have been taken are merely cosmetic and that their governments basically are not interested in creating a genuine equality. Whites in both countries, however, have a different view than non-whites. In the United States many whites believe that all racial barriers have been removed and do not see the need for continued government programs to assist blacks and other minorities. In South Africa large numbers of whites oppose Botha's reforms and it is for this reason many of his announced changes have been difficult to implement. However, some whites in both countries favor programs for equalizing opportunities available to blacks and other groups.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Porter (at the request of Mr. Rhodes), for today, on account of a death in the family.

Mr. Russo (at the request of Mr. Wright), for today, on account of illness in the family.

Mr. Rodino (at the request of Mr. Wright), for today, on account of illness in the family.

Mr. Nelson (at the request of Mr. Wright), for today, on account of official business.

Mr. Corman (at the request of Mr. Wright), for today, on account of official business.

Mr. Wolff, for September 9, on account of official business—Narcotics Committee.

Mr. Chappell (at the request of Mr. Bennett), for today, on account of official business in district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Loeffler) to revise and extend their remarks and include extraneous material:)

Mr. Bethune, for 10 minutes, today.

(The following Members (at the request of Mr. Gudger) to revise and extend their remarks and include extraneous material:)

Mr. Fascell, for 60 minutes, today.
Mr. Gonzalez, for 15 minutes, today.
Mr. Annunzio, for 5 minutes, today.
Mr. Lederer, for 5 minutes, today.
Mr. Eckhardt, for 15 minutes, today.
Mr. Neal, for 10 minutes, today.
Mr. Stewart, for 30 minutes, today.
Mr. Conyers, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Seiberling and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $1,768.50.

(The following Members (at the request of Mr. Loeffler), and to include extraneous matter:)

Mr. Vander Jagt.
Mr. Carter in two instances.
Mr. Green in two instances.
Mr. Derwinski in three instances.
Mr. Livingston.
Mr. Shumway.
Mr. Lewis in two instances.
Mr. Collins of Texas in two instances.
Mr. Dornan in two instances.

(The following Members (at the request of Mr. Gudger) and to include extraneous matter:)

Mr. Blanchard.
Mr. Murtha.
Mr. Simon in two instances.
Mr. Anderson of California in 10 instances.
Mr. Gonzalez in six instances.
Mr. Brown of California in 10 instances.
Mr. Annunzio in six instances.
Ms. Holtzman in 10 instances.
Mr. Jones of Tennessee in 10 instances.
Mr. Boner of Tennessee in five instances.
Mr. Roberts.
Mr. Patterson in two instances.
Mr. Barnes.
Mr. Drinan.
Mr. Brodhead.
Mr. Oberstar.
Mr. Rangel.
Mr. Mazzoli.
Mr. Ford of Michigan.
Mr. Skelton.
Mr. Rodino.
Mr. Markey in five instances.
Mr. Gibbons.
Mr. Bedell.
Mr. McDonald.
Mr. Ottinger.
Mr. AuCoin.

ADJOURNMENT

Mr. FASCELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 23 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 9, 1980, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5236. A letter from the Director, National Institute of Corrections, transmitting the fourth annual report of the Institute, pursuant to 18 U.S.C. 4352(b); to the Committee on Education and Labor.

5237. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the Federal Republic of Germany for permission to transfer certain U.S..-origin defense equipment to Greece, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5238. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5239. A letter from the Acting Administrator, U.S. International Development Cooperation Agency, transmitting the annual report on military expenditures by recipients of U.S. economic assistance, pursuant to section 620(s) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5240. A letter from the Records Officer, U.S. Postal Service, transmitting notice of two proposed new records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5241. A letter from the Secretary of the Interior, transmitting notice of the leasing systems to be used in oil and gas lease sale No. 55, Eastern Gulf of Alaska, to be held on October 21, 1980, pursuant to section 8(a)(8) of the Outer Continental Shelf Lands Act, as amended; to the Committee on Interior and Insular Affairs.

5242. A letter from the Secretary of Health and Human Services, transmitting notice of a further delay in the submission of the report on the study of the establishment of a federal system to assist in locating individuals who have been or may have been exposed to hazardous substances to determine the effect on their health of such exposure and to assist them in obtaining appropriate medical care and treatment, required by section 306(1)(3) of the Public Health Services Act, as amended (92 Stat. 3453); to the Committee on Interstate and Foreign Commerce.

5243. A letter from the General Counsel, Department of Energy, transmitting notice of various meetings relating to the international energy program to be held on September 10, 11, and 12, 1980, in New York and on

September 16 in Paris; to the Committee on Interstate and Foreign Commerce.

5244. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204(d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

5245. A letter from the Comptroller General of the United States, transmitting a report and recommendation concerning the claim of The Brooklyn Times against the United States, pursuant to the Meritorious Claims Act of April 10, 1928; to the Committee on the Judiciary.

5246. A letter from the Secretary of Commerce, transmitting the annual report for calendar year 1979 on implementation of the national voluntary laboratory accreditation program; to the Committee on Science and Technology.

5247. A letter from the Comptroller General of the United States, transmitting a report on progress in improving program and budget information for congressional use, pursuant to section 202(e) of the Legislative Reorganization Act of 1970, as amended (PAD-80-90, August 29, 1980); jointly, to the Committees on Government Operations, Appropriations, and the Budget.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 1316. A bill for the relief of Kuo-Yao Cheng (Rept. No. 96-1303). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4139. A bill for the relief of Feeronaih Abbosh; with amendment (Rept. No. 96-1304). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 4778. A bill for the relief of Seung Ja Kim and Lada Kim; with amendment (Rept. No. 96-1305). Referred to the Committee of the Whole House.

Ms. HOLTZMAN: Committee on the Judiciary. H.R. 6739. A bill to confer U.S. citizenship posthumously upon Leopoldine Marie Schmid (Rept. No. 96-1306). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PHILLIP BURTON (for himself, Mr. JOHNSON of Colorado, Mr. SEBELIUS, Mr. LAGOMARSINO, Mr. GUDGER, Mr. REUSS, Mr. JOHN L. BURTON, and Mr. MINETA):

H.R. 8087. A bill to amend the National Trails System Act by designating additional national scenic and historic trails, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. GIBBONS:

H.R. 8088. A bill to amend the Internal Revenue Code of 1954 to allow individuals a 50-percent credit for retirement savings and to otherwise encourage, expand, and simplify independent individual savings for retirement; to the Committee on Ways and Means.

By Mr. BUCHANAN:

H.R. 8089. A bill to amend the Internal Revenue Code of 1954 to provide an additional personal exemption for the taxpayer, the taxpayer's spouse, or a dependent, who has a disability requiring the use of a wheelchair; to the Committee on Ways and Means.

By Mr. GINN (for himself and Mr. BARNARD).

H.R. 8090. A bill to amend the Consolidated Farm and Rural Development Act to require that the rate of interest applicable to real estate loans made for irrigation purposes not exceed 7 percent; to the Committee on Agriculture.

By Mr. IRELAND:

H.R. 8091. A bill to amend the Longshoremen's and Harbor Workers' Compensation Act to provide that in the case of injuries to persons covered by such act the liability of owners, operators, or charterers of vessels engaged in activities on the Outer Continental Shelf shall be limited to damages attributable to their negligence; to the Committee on Education and Labor.

By Mr. PHILIP M. CRANE:

H. Res. 783. Resolution requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called Stealth technology for military aircraft; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII,

525. The SPEAKER presented a memorial of the Legislature of the State of California, relative to the Philippine Scouts, which was referred to the Committee on Armed Services.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 204: Mr. LEACH of Iowa, Mr. TRIBLE, Mr. PETRI, Mr. HUBBARD, and Mr. VANDER JAGT.

H.R. 1785: Mr. WHITTEN, Mr. ALBOSTA, Mr. HARKIN, Mr. KILDEE, Mr. MYERS of Pennsylvania, Mr. GEPHARDT, Mr. ROTH, Mr. HAWKINS, Mr. CLAUSEN, Mr. STENHOLM, Mr. BEREUTER, Mr. RUDD, Mrs. SMITH of Nebraska, Mr. GRAY, and Mr. DASCHLE.

H.R. 1918: Mr. FITHIAN and Mr. GRASSLEY.

H.R. 2542: Mr. LEACH of Iowa and Mr. HARRIS.

H.R. 5099: Mr. MARKEY, Mr. BALDUS, Mr. BONER of Tennessee, Mr. QUAYLE, Mr. PORTER, Mr. DERWINSKI, Mr. FAZIO, and Mr. BOWEN.

H.R. 5305: Mr. LOWRY.

H.R. 5965: Mr. LEHMAN, Mr. DE LA GARZA, and Mr. WYATT.

H.R. 6203: Mr. PEYSER.

H.R. 6472: Mr. DOUGHERTY.

H.R. 6866: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6867: Mr. O'BRIEN and Mr. KOGOVSEK.

H.R. 6906: Mr. TAUKE, Mr. HANCE, Mr. FAZIO, and Mr. GILMAN.

H.R. 7069: Mr. ROE and Mr. FITHIAN.

H.R. 7129: Mr. GRISHAM.

H.R. 7287: Mr. WHITLEY and Mr. HEFNER.

H.R. 7485: Mr. MARRIOTT.

H.R. 7559: Mr. SEIBERLING.

H.R. 7688: Mr. TAUKE, Mr. WON PAT, Mr. BARNARD, Mr. DASCHLE, Mr. ALBOSTA, Mr. DODD, Mr. FITHIAN, Mr. GUARINI, Mr. MOLLOHAN, Mr. HUGHES, Mr. SEIBERLING, Mr. ROSE, Mr. MATSUI, Mr. FLORIO, Mr. SANTINI, Mr. HUBBARD, Mr. PANETTA, Mr. DIXON, Mr. DONNELLY, Mr. PEASE, Mr. HOWARD, Mr. BRODHEAD, and Mr. JENKINS.

H.R. 7704: Mr. SNYDER, Mr. TRAXLER, and Mr. GREEN.

H.R. 7773: Mr. MARLENEE.

H.R. 7781: Mr. LEACH of Louisiana, Mr. MUSTO, Mr. STUMP, Mr. UDALL, Mr. ANDREWS of North Carolina, Mr. CARTER, and Mr. OTTINGER.

H.R. 7793: Mr. WILLIAMS of Montana.

H.R. 7885: Mr. FAZIO, Mr. ROSE, Mr. LAGOMARSINO, and Mr. BOWEN.

H.R. 7891: Mr. BLANCHARD.

H.J. Res. 69: Mr. WOLFF and Mr. YOUNG of Florida.

H.J. Res. 389: Mr. BETHUNE, Mr. TAUKE, and Mr. MOLLOHAN.

H.J. Res. 511: Mr. HUGHES.

H.J. Res. 598: Mr. OBERSTAR, Ms. OAKAR, Mr. DUNCAN of Tennessee, Mr. ANDREWS of North Carolina, Mr. SAWYER, Mr. YOUNG of Missouri, Mr. MAGUIRE, Mr. WOLPE, Mr. MITCHELL of Maryland, Mr. KILDEE, Mr. STARK, Mr. BONIOR of Michigan, Mr. HUGHES, Mr. SIEBERLING, Mr. MOTTL, Mr. FORD of Michigan, Mr. MURPHY of Pennsylvania, Mr. MURPHY of Illinois, Mr. FORSYTHE, Mr. RAHALL, Mr. BENJAMIN, Mr. MURTHA, Mr. FROST, Mr. HOLLENBECK, Mr. FORD of Tennessee, Mr. HAMILTON, Mr. SNYDER, Mr. NEDZI, Mr. ROSE, and Mr. STRATTON.

H. Con. Res. 395: Mr. SIMON.

H. Con. Res. 399: Mr. MURPHY of Pennsylvania, and Mr. ZABLOCKI.

H. Res. 774: Mr. ROSENTHAL, Mr. OBERSTAR, Mr. WEISS, Mr. LOWRY, Mr. HARKIN, Mrs. CHISHOLM, Mr. JEFFORDS, Mr. MATSUI, Mr. DONNELLY, Mr. VENTO, Mr. DRINAN, Mr. SCHEUER, Mr. BONIOR of Michigan, Mr. MINETA, Mr. CORRADA, Mr. WOLPE, Mr. DELLUMS, Mr. FAZIO, Mr. MARKEY, Mr. LEHMAN, Mr. PEASE, Mr. MAVROULES, and Mr. PEPPER.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7235

By Mr. ECKHARDT:

(Substitute to the amendment of Mr. STAGGERS.)

—Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

SEC. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take the final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 152, following line 13, insert the following new section:

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 310. (a) (1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.), shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeals is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b) (1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e) (1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b) (7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b) (7)) is amended by striking out 'and the Milwaukee Railroad Restructurign Act' and inserting in lieu thereof', the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act' ".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d) (1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(n) (1) All obligations to the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceleld when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h) (1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1) (A), by striking out

"$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

By Mr. FRENZEL:

(Substitute to the amendment offered by Mr. STAGGERS.)

—On page 83, line 13 of the substitute, strike "SEC. 328—Loan Guarantees" through page 84, line 5.

And renumber the sections accordingly.

By Mr. LEVITAS:

—At the end of the bill, insert the following new section:

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 804. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives Except as provided in subsection (b), the rule shall not become effective, if—

(1) within 90 calendar days of continuous session of Congress after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the ———— dealing with the matter of ————, which rule was transmitted to Congress on ————.", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

EXTENSIONS OF REMARKS

WEAPONS STRATEGY: MORE? BETTER?—OR BOTH?

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. VANDER JAGT. Mr. Speaker, today a great debate rages in the United States over the issue of defense preparedness. This issue involves both the level of spending and the quality of the American defense arsenal.

For years we in the United States have been assured that our military preparedness is more than adequate on the basis of our superior technology. We are now hearing more and more that this technological lead is evaporating, and evaporating quickly. Thus, we are urged to assume greater expenditures to meet new technology demands along with the need to assure adequate numbers of weaponry in view of vast defense expenditures by our potential foes.

A fine focus for this debate is the issue of the turbine engines slated for use in our newest generation of battlefield tanks, the XM-1. We have sacrificed an ongoing need for maintaining adequate numbers of conventional tanks in the field for the promise of the supertank. Many of us have felt that the questionable adequacy of turbines for battlefield conditions required simultaneous development of a standard engine of proven capability. While we have fiddled with new technology, our field commands have burned for the lack of adequate resources. I would be the first to say that if we can prevail through technology, we have an obligation to keep pace. However, we cannot and must not let the drive for technological superiority jeopardize our preparedness for the immediate future. I submit the recent analysis of this issue from Forbes magazine for the review of my colleagues. I hope that we will stand back a bit and take a look at the direction we are going. I am convinced that we must move more broadly to insure the preparedness of our military efforts, and I urge that the appropriate committees of the Congress take into account the considerations expressed in the attached article.

The article follows:

THE GREAT PUSH-BUTTON DELUSION

(By Subrata N. Chakravarty)

Beginning in July the U.S. airlifted 500 men and over 2,000 tons of equipment to Egypt. All this for a 90-day exercise for 12 F-4 jet fighters. That's right: 167 tons of equipment and 42 men per plane. Expensive? Staggeringly so. In today's high-technology military, the U.S. places its faith in small quantities of expensive, and highly complex, quality weapons with large support systems to counter the massive quantities of tanks, ships, planes and guns of the Soviet Union. Push-button warfare.

That's nothing new, of course. What's new is that the decision makers at the highest levels of the military are beginning to worry about the viability of that policy. In February of this year, in an internal memo to the Air Force and Navy that was leaked to the respected Armed Forces Journal International, Defense Secretary Harold Brown said: " . . . Because of our belief that we must compensate for a quantitative inferiority by ensuring qualitative superiority, that has been the direction we have emphasized in applying our technology. That choice has brought with it an increasing sophistication and complexity in equipment, as we understood it would. What we may not have understood as well were the consequences."

What are those consequences?

The U.S. military, which moans about manpower shortages, is now the most bloated in the world. A U.S. division with its high-techology weapons now utilizes over 40,000 men with nondivisional support personnel—roughly 10,000 combatants—compared with 26,000 for a European army division and 17,000 for the Soviets.

Because the weapons are so expensive, the U.S. can't afford many of them and is now not merely outnumbered, but far outnumbered, by the Soviet Union. In 1979 the U.S. had 12,700 tanks, for example, vs 50,000 for the Russians; 23,000 armored fighting vehicles vs 55,000; 18,000 pieces of artillery vs 40,700; 5,200 combat aircraft vs 7,800. In 1980, 123 submarines vs 357; 165 major surface combat ships vs 273. Only in aircraft carriers is the U.S. clearly ahead: 13 to 2.

The lineup is, of course, not merely the U.S. versus the U.S.S.R. but the U.S. and NATO versus the U.S.S.R. and the Warsaw pact nations. Add in those figures and the gap narrows, but only somewhat and, overall, the gap is widening. The 1980 figures due to appear shortly are expected to show an imbalance worse than 1979's. The Soviets are outproducing us every year. In fiscal year 1981, for example, the U.S. Army will order 569 of its XM-1 Abrams tanks; the Soviets produce around 2,600 tanks a year. The U.S. will produce 378 combat aircraft in fiscal 1981 to the Soviets' 1,000-plus; 530 armored vehicles to 3,600; 96 helicopters to 500. Only in shipbuilding are the figures even close: nine major fighting surface ships for the U.S. to ten for the Soviets, and two U.S. attack submarines to five Soviet ones.

A paradoxical result of the U.S. attempt to emphasize quality—or rather complexity—over quantity is that the U.S. often falls behind in quality as well for long periods of time. The current U.S. main battle tank, for example, is the M60, which appeared in 1959. The new Chrysler-built XM-1 will have a revolutionary engine, revolutionary armor, a revolutionary fire-control system and, eventually, a larger gun. But since 1965, while the U.S. fiddled with its ideal tank, the Soviets have introduced four new generations of tanks, each one a significant improvement over the last. The XM-1, when it arrives in quantity in 1982 or later, may well be better than the Soviets' current T72—indeed, Dr. William J. Perry, undersecretary of defense for research and engineering, says it will be 20 percent to 30 percent better. But for 15 years American soldiers have been facing progressively improved Soviet tanks in an increasingly obsolescent tank of their own. "American weapons development—in my opinion wrongly—goes for order of magnitude improvement and all-round improvement," says Edward Luttwak of Georgetown University's Center for Strategic & International Studies, an adviser on defense policy to Ronald Reagan. Luttwak, a highly regarded military analyst, adds: "In the Soviet case you improve the characteristics one by one in sequential modification."

Secretary Brown's February memo went further. It said:

"It is time to reexamine our technological emphasis on performance to see whether the improvement we sought in combat effectiveness exists now as much in fact as it did in theory when we made the choice. If it does not, as is strongly implied, we must consider redirection of our technology away from sheer performance in favor of less complex and more practical weapons that we can buy in greater quantity, that we can support generously in the field, that we can maintain easily with service personnel, that we can train realistically with in peacetime and that will be more reliable and available and, on balance, more effective in war."

Here's an irony: The less-is-better, quality-over-quantity, push-button-warfare concept represents a sharp break with the U.S. weapons policies that played such a major role in winning World War II. When Franklin D. Roosevelt electrified the world by calling for production of 50,000 airplanes in 1944 he was, in effect, saying to the Axis: We will bury you in sheer numbers of equipment, we will crush you under the weight of our steel. It was the Germans who led in jet aircraft technology and in missile technology, but German technology went down under the impact of workmanlike but workaday U.S. tanks, ships and aircraft. The Axis laughed at Roosevelt, regarding it as mere propaganda. In the end the U.S. made that goal look like peanuts, producing 104,000 airplanes in 1944 alone, 16,000 tanks a year and 104 ships in just 2 years.

These WWII machines weren't fancy. Henry Kaiser's famed Liberty Ships were unlovely tubs. But they were cheap and they did what they were supposed to do—they got the men and equipment to Europe in large numbers. In WWII the M4 Sherman tank was possibly the least impressive tank in Europe. But waves of them overwhelmed Hitler's outnumbered technological marvels, the Panthers and the Tigers. American equipment may not have been the best, but it carried the day because there was so much of it.

The U.S. has adopted exactly the opposite strategy since then. But the Soviet Union has not. "Quantity has a quality all its own," said V. I. Lenin. Soviet Admiral Gorshkov puts it another way: "Best is the enemy of good enough," meaning that insisting on the best equipment instead of good enough to do the job may jeopardize the ability to do the job at all. Says Professor John Erickson of Edinburgh University, an expert on the Red Army: "The Russian equipment is not so sophisticated, and it is soldierproof." The late General Creighton Abrams, after whom the XM-1 is named, once was reported as saying after inspecting a captured Soviet tank: "It didn't have all the fancy things the colonels want in our tanks, but it could do every damn thing you want a tank to do."

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

The difference in the two approaches involves things familiar to any businessman. One is the difference between the learning curve and the drawing board—between production and R&D.

The Soviets tend to produce a weapon and then improve it, not only in tanks but in ships and planes as well. Only in the past decade did they launch the first two of their Kiev-class aircraft carriers—small carriers with vertical-and-short-take-off-and-landing planes, much smaller than the U.S. huge nuclear Nimitz-class supercarriers. Now, however, a full-flight-deck nuclear-powered Soviet carrier is apparently on the way. Starting with submarines on average much smaller than those of the U.S., the Russians are due soon to deliver the first of their new Typhoon class; at 20,000 tons it is bigger then the U.S. Trident. They have introduced several new aircraft since 1970 and more are known to be coming.

The Soviets, don't avoid revolutionary improvements completely. The Soviet guided-missile ships were a revolutionary new response to aircraft carriers, and Russia's BMP mechanized infantry combat vehicle was designed from the ground up to replace the boxy armored personnel carriers of World War II.

But the Soviet Union clearly emphasizes evolution while the U.S. strives for revolution. It is rather like a race between a frog and a turtle. The turtle plods along while the frog sits still. Every once in a while the frog jumps, ahead of the turtle, it is to be hoped. But a just-released study by John M. Collins, senior specialist in defense at the Library of Congress, indicates that often the U.S.-Soviet military balance is otherwise. In many areas of practical technology, Collins says, the Soviets have moved ahead of the U.S.

"It has come to this," says one staff assistant for defense with a senator on the Armed Services Committee. "You get someone saying we shouldn't buy more improved Hawk air-defense missiles because we're going to have a Patriot air-defense system that will have all of these whiz-bang things. Okay, so you stop producing I-Hawks. Then the guy comes back and says it's taken us a little bit longer—20 years longer—to develop the Patriot than we thought it would. Then you find that the Patriot even after a 20-year development period does not have all the capabilities that were promised for it."

That's the disadvantage of staying on the drawing board instead of getting on the learning curve. It's not much different when an army does it than when a company does it—except that the stakes are so much higher.

Every high-technology company, too, knows how programs lag and reliability suffers when technology itself, instead of the market and the constraints of manufacturing, begins dictating the product line—when engineers begin doing things solely because nobody has ever done them before. Something like this may have been happening in the U.S. military ever since WWII. It was exacerbated by the McNamara era in the Pentagon, which saw the ascendancy of systems analysis in weapons-procurement decisions.

Like the McNamara computers that kept telling us we were winning in Vietnam, the McNamara systems analysis was increasingly theoretical. Add to that the constant pressure by Congress and the voters to reduce costs, and the temptation to stake all on state-of-the-art technology was overwhelming. "We all have a shared responsibility for the fact that the armed forces of this country are junkies for technology," says Frank Gaffney, staff assistant for defense affairs to Senator Henry Jackson.

It has led to such curious enterprises as the effort to get the F-4 up from Mach 1.7 (Mach 1 is the speed of sound) to Mach 2. In a recent article in the Naval War College Review, two Air Force officers, Major Charles Fox and Lieutenant Colonel D. A. Lorenzini, point out, "In representative combat situations, the F-4 will run out of fuel long before it gets to Mach 2."

Curious, too, is the Army's 9-year effort to develop a turbine engine for the XM-1 tank. Gas turbines have already been rejected by the Germans, the British and the Soviets because of their high susceptibility to dust (with which battlefields abound), their relatively poor fuel efficiency and need for large air intake vents, which makes the tank more vulnerable. These are strict battlefield criteria. The Army picked the gas turbine because it gives greater acceleration and therefore greater agility. But that advantage is offset by the additional fuel weight it must carry to range as far as a diesel-driven tank.

Says Luttwak: "The U.S. Armed Forces have drifted away from the values of the military profession, which is combat capability, and has been seduced into the pursuit of engineering and managerial efficiency for its own sake." Lieutenant General Orwin C. Talbott, former commander of the First Infantry Division, says the fascination with technology comes from "all these Pentagon scientists trying to get the last ounce out of technology whether or not they're able to apply that last ounce effectively on the battlefield. The longer a man is in a command position in the battlefield, the less enamored he is of the technological edge and the more obsessed he becomes with trying to make what he has work."

As any company trying to meet government antipollution standards will tell you, the cost of 85 percent compliance is relatively low; the last 15 percent may cost double or triple. The same in the military. In a 1978 article in Foreign Affairs, Air Force Colonel Richard G. Head estimated that the cost per unit of new weapons had increased an average of 4½ times every decade in constant dollars since 1950, while improvements in existing designs only increased by a factor of two.

Result: fewer of everything. When an F-14 costs close to $23 million, the Navy gets only 467 instead of the 521 it says it absolutely needs and the 700-plus it originally wanted. There can be only 729 of those $20 million F-15s, only 7,000 of the $1.5 million XM-1s, only one or two of the $2.4 billion nuclear aircraft carriers. Each generation, the number of weapons that can be purchased decreases because the costs increase.

Some of the consequences are almost ridiculous. Like a family in straitened circumstances insisting on serving champagne and caviar while it can't buy milk for its children, the U.S. splurges on high technology but actually runs short of ammunition (FORBES, Sept. 1). Because so much is spent on $20 million-plus airplanes, $1 million missiles and $2 billion carriers, supplies are short all along the line. When the U.S. resupplied Israel after the 1973 Mideast War, for example, it had to take equipment intended for front-line U.S. Army units in Europe and National Guard units at home; the Soviet Union, on the other hand, resupplied its Arab clients from its spare inventories.

That, in turn, reduces training. For example, the U.S., according to the Brown memo, has never conducted operational training with an F-14 fighter firing Phoenix missiles against multiple targets, its primary role for protecting the U.S. fleet from attack, because each Phoenix costs nearly $1 million. Although 1,400 to 1,500 aircraft carry the Maverick air-to-ground missile, the U.S. can afford to fire only 200 each year. In contrast, U.S. pilots flying the close-support A-10 aircraft are able to train with live ammunition because it is cheaper to use 30mm cannon shells. A decade ago, Air Force pilots flew 26 hours of training per month. In fiscal 1979 they flew far more complex planes only 16 hours.

The more complex the weapon, too, the more maintenance problems there are, as the Brown memo made clear and in today's volunteer army that maintenance is done by ever-less-capable military personnel. In fact, the task is often beyond them. "We're moving toward relying on factory manpower as opposed to blue-suit [uniformed] manpower to maintain sophisticated weapons systems," says Frank Gaffney. "I don't know how you fight a war when you have to send equipment back to the plant for spare parts."

The F-15 fighter. It has an "avionics intermediate shop" machine to test its highly complex systems. The diagnostic machine itself has over 40,000 parts, which fail frequently. Result: The Air Force has a problem just maintaining a parts inventory for the machine, which is down 50 percent of the time.

It is true, of course, that U.S. military equipment in the hands of the Israelis has beaten Soviet equipment manned by Arab armies. Does that vindicate quality over quantity? Not necessarily. The superior training, education and motivation of the Israeli citizen army undoubtedly plays the major role. It would be more than a little dangerous to assume that the Israelis win only because they have American equipment. Says Jeffrey Record of the Institute of Foreign Policy Analysis and another Reagan Adviser: "We've reached the point now where we may have the most elegantly equipped Army but one that is simply too small to be able to survive anticipated rates of attrition." Adds Luttwak: "It's not necessarily that numbers allow you to overwhelm the enemy. It's that numbers give you flexibility and maneuverability. That's why there is terrible danger in what we're doing—terrible danger."

Will the military's internal debate lead to any fundamental changes? The signs are mixed. Internally, Secretary Brown calls for a reexamination, but publicly, he has stated that our technology will "save" us. In congressional testimony in January Deputy Defense Secretary W. Graham Claytor Jr. said: "We intend to avoid the 'wonder weapon' syndrome that infatuated the Third Reich in the latter stages of World War II." Yet Pentagon-sourced stories proclaim the impending obsolescence of tanks and planes because of the arrival of "fire-and-forget" homing missiles. The fact is that precision guided munitions have not been nearly as effective in battle, where targets can react, as they promised to be in theory against sitting ducks. Missiles used in Vietnam has an accuracy of only 10 percent to 20 percent. The new generation of wonder weapons promises to be complex, hard to maintain and enormously expensive. The first fire-and-forget missile, the Sidewinder, cost $3,000 when it was used in Vietnam. The "improved" Sidewinder, according to one expert, will cost around $160,000.

Meanwhile, the XM-1 goes ahead at $1.5 million a copy, as do the $900 million Aegis cruiser and the F-15, along with a good deal of wishful thinking about—irony on irony—the increasing complexity of the *Soviet* military effort. "Ex-Defense Secretary James Schlesinger pointed out years ago that the Soviets are now in the grip of an R. & D. cartel that will make ours look like little Boy Scouts," says one former defense official. "They have now fallen prey to the complexity disease. The one encouraging thing about the whole trend is that we've sold complexity to the Russians and they'll do worse with it than we did."

Counting on one's opponent to make mistakes is a poor strategy, however. The superficially attractive idea that push-button technology can somehow eliminate the need for a citizen army and large-scale military production could well turn out to be ultimate, fatal opiate of American democracy.●

FRIENDSHIP DAY

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LEWIS. Mr. Speaker, I rise today to commend George Byer for his efforts on behalf of Friendship Day.

This year, June 22 was designated "Friendship Day" for nations across the world. Mr. Byer received support from all parts of the United States: from Senator Ted Stevens of Alaska; the Governors of Arkansas, New Mexico, Washington, Hawaii, Texas, Wisconsin, and Puerto Rico; Members of the U.S. House of Representatives and the California State Legislature; even from the White House. But he has reached even farther: C. A. Chevallez, President of Switzerland; T. H. Yeh, director of the information office, Republic of China; and R. J. Ellicott, minister of home affairs of Australia have all recognized his efforts on behalf of international friendship.

Seeking even more people-to-people contact, George Byer hopes to extend the effort to Friendship Days, June 22, 23, 1981. One can easily see the wide-based support for the activity of this former mayor of Anchorage, Alaska. Indeed, his exemplary work toward international communication and friendship is to be lauded and supported on behalf of all Americans.●

ELECTRONIC MAIL

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, valuable time has been squandered in the continuing controversy over the U.S. Postal Service's attempt to apply modern-day technology to the movement of mail. It now appears the Postal Service's entry into the electronic field will not come until January 1982, and then on a trial basis, unless the courts decide otherwise.

The Federal Times, one of the few publications to concern itself with the ramifications of electronic mail, views the latest development as a step in the wrong direction. The Federal Times September 1 editorial follows:

Classic Example

This newspaper has never been a big defender of the U.S. Postal Service board of governors, although in recent years we have not given the nod to those forces—both union and non-union—who have diligently lobbied to put the august governors on the endangered species list.

But we are having second thoughts, especially following the board's less-than-courageous stand on what amounts to a no-role for the postal service in electronic mail.

The board's endorsement of the Postal Rate Commission's electronic mail scheme is a classic example of how an articulate minority—that is, Governor William Sullivan—by standing pat for eight months was able to stampede the majority, his feckless colleagues, into accepting a "public policy" ruling that will be the death of the postal service.

And get this from the board:

"The governors' decision is made in the spirit of cooperation with the commission on the [electronic mail] system."

No matter that this "spirit" of questionable amity pulls the rug out from under Postmaster General William F. Bolger and board Secretary Lou Cox.

Dissident PRC commissioners James Duffy and Kieran O'Doherty have charged—for good reason—that the electronic mail ruling is both amateurish and unworkable. It also indirectly pumps some $50 million into the coffers of Western Union, which inexplicably left the postal service holding the regulatory bag just several weeks before Fritschler and Co. rejected the USPS electronic mail proposal and, instead, substituted their own destructive plan.

As for the U.S. Postal Service board, we wonder:

Whose side are you guys on?●

THE "ME DECADE" COMES HOME TO ROAST IN MIAMI

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SIMON. Mr. Speaker, the most perceptive comment I have read on the tragedy of the explosion in Miami was written by Robert D. Reid, a columnist for the Southern Illinoisan in my district and some other newspapers. Mr. Reid also teaches journalism at the University of Illinois.

He is asking for a less self-centered approach to the problems of society and, even more, he is asking that we are willing to face the tough questions and come up with the tough answers.

I cannot help but wonder, for example, if we had a policy of guaranteed job for all Americans, whether we would not only have reduced welfare rolls but we would have made much less likely the Miami type of explosion. But to achieve that we need to look at policies that are more than a response to an immediate situation.

I urge my colleagues in the House and Senate to read the Robert Reid column.

The column follows:

The "Me-Decade" Comes Home To Roast in Miami

Miami went up in smoke along with Mount St. Helens, and nobody seemed to have much of an idea about what to do about either disaster.

Futility in the face of tragedies brought about by the forces of nature is customary, bringing out the editorialists' reminders of the vulnerable nakedness of Technological Man in a cruel natural world.

For all America's failures in race relations and in bringing anything approaching justice to its inner cities over the past two decades, futility was not in the past the general response to explosions like that which occurred in Miami.

But as we begin the 1980s, America has no Martin Luther King, no John Kennedy nor Lyndon Johnson to summon American ideals and resources to deal with the continuing human crisis that our inner cities represent.

The voices of caring leadership are stilled across our land and on Capitol Hill. Budget cutting to allow more conspicuous consumption and more use of inflation-inducing foreign oil is the political order of the decade. What extra money might be available to deal with the human problems of America's tormented inner city residents is being thrown at defense projects that few believe will do much to promote our national security. Defense spending is to Capitol Hill and President Carter what the blanket is to Linus.

Political caring is out, political commercials are in.

Violence will solve nothing, President Carter tells the despairing of Miami, while he concedes Dixy Lee Ray's point when she reminds him that what the volcano-dusted people of Washington state need is "M-O-N-E-Y."

Yet Jimmy Carter is a compassionate man. He told us so in his campaign four years ago. He no doubt attempts to convey that message in his prayers. For those not convinced, there is the reminder embodied by Ronald Reagan that all things, even compassion, are relative.

Few in the Congress seem much disturbed by any of this, despite the thrashing about below the political surface in the Democratic Party to produce some alternative to Carter other than Ted Kennedy. Our congressmen, too, seem to feel a sense of futility, seem unable to muster a sense of outraged conscience sufficient to bind them together in some form of program of action, either behind Carter or to replace him.

Until the majority Democrats in Congress can somehow agree to do that, no president—not Jimmy Carter, not Ted Kennedy, not Ronald Reagan, not John Anderson—will be able to lead this country effectively, to save us from the tragedy of watching our civilization—our once-potent ideal of brotherhood and human decency—crash piece by piece before our eyes night after night on the evening news.

What's wrong with America is not the rising consumer price index nor the rising unemployment rate. Those are merely terrible symptoms of our problems, problems that in a more fundamental sense are rooted in the ways that those of us in America who are more affluent live and think.

For the fact is that despite years of public education about the problems of rural and inner city poverty, about the energy crisis, about what we are doing to our public environment and our private health, about the malnutrition and worse that stalk much of the Third World, we still want to return to a late 20th Century version of what Warren Harding once called "normalcy."

It won't work.

We have to change almost everything about the way we live—from our gas-guzzling cars to our air-conditioned skyscrapers and shopping malls to our non-benign neglect of the poor in our nation and in much of the rest of the world.

We have to, that is, if we wish to ease those problems of inflation, unemployment and insecurity that increasingly fluster America's great middle classes and make the future seem so empty of hope, or of noble challenges.

We need leaders who can lead in a sense other than manipulating the evening news or the Gallup Poll, and we need them not just in the White House, but on Capitol Hill, in governors' mansions, in legislative chambers, in county courthouses, city halls and local political caucuses.

We need more interest groups with a perspective broader than protecting the interests of one already-well-heeled group at the expense of others.

We need more educational leaders with a perspective for the nation, for their state and for the region of their university or school district that reaches beyond a scramble to come up with the money for the next budget.

Above all, we need from all these people, and from ourselves, enough boldness to ask basic questions that go beyond "who is ripping me off and what can I do about it?" We need instead the raw courage and the practical foresight to ask ourselves, "What am I, what are we doing to rip off other people and what can I, what can we, do about it?"

By itself, of course, that is no ultimate answer to the problems that face us as a people and as a society—a people and a society that for all our shortcomings still are the best, perhaps last hope for democratic institutions before something like George Orwell's 1984 descends upon mankind.

But we shall find no good answers until we begin asking tougher, more imaginative, less self-centered questions of ourselves, as a nation and as individuals, than either we or our politicians have been willing to ask in recent years.

What happened at Mount St. Helens was beyond our capacity to have prevented. What happened in Miami could have been prevented, not by tougher police work, for tougher police work was the spark that ignited the Miami fires of despair, destruction and death. What happened in Miami could have been prevented if our political leaders and our citizens had not squandered the decade-plus since Martin Luther King's death.●

McDONNELL TOWER OF SOUTHFIELD, MICH., PROVIDES GOOD LIVING FOR SENIORS

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BRODHEAD. Mr. Speaker, the people of Southfield, Mich., are justifiably proud of McDonnell Tower, a unique combination of housing and recreation/service center for senior citizens. Southfield seniors enjoy a spacious city recreation center which focuses the city's many services for retired citizens. At the same time, the adjoining apartments have been so popular that there is a 5-year waiting list. I would like to share with my colleagues a story about this remarkable project which appeared in the Detroit News on September 1, 1980.

The article follows:

Most people would resist—at first—the idea of moving into an apartment in something labeled "subsidized senior citizens housing."

It has a flavor of "over the hill to the poorhouse." And it conjures up a picture of a bunch of old people sitting around rocking and knitting, retired from the world and waiting to die.

In Southfield they've proved that does not have to be that way at all.

Residents of McDonnell Tower dance, shoot pool, bowl, swim, take part in civic and club affairs, garden, go shopping, take gym workouts, travel, entertain guests and even publish their own newspaper, among other things.

"Uncle Tom" Rosenberg, 77, a retired salesman, recalls being reluctant to move into "an old man's home" after his wife died. But he followed his son's advice and finally moved in two years ago.

"Most people have the same reaction to living in these places," he said. "They think of them as being the last stop. But I'm glad I moved here. You get more here than you could anywhere else."

Jean McDonnell, who retired this year after 22 years on the Southfield city council—and who fought 14 of those years against community and political opposition to get the complex built—calls it "Heaven on Earth built in the Garden of Eden."

Perhaps she's a little prejudiced—it's her baby and it was named after her—but most of the residents seem to agree that it's a great place to live.

Even more convincing evidence is that every one of McDonnell Tower's 345 one- and two-bedroom apartments is filled, and there's a five-year waiting list for vacancies.

The Tower—actually two high-rise apartment buildings called Phase I and Phase II—is the first development in Michigan to include both housing and a recreation and service center for older people.

The 9,000-square-foot community recreation center, called the Bright Spot, links the two buildings and is leased by the City of Southfield to serve not only the residents of the complex but the more than 13,000 people 60 or over in Southfield. It provides a full range of free services.

The complex is surrounded by 5.9 acres of wooded area at 24300 Civic Center Drive. Most of the apartment terraces on all four walls of both buildings are adorned with flowers, plants and even small vegetable gardens.

Groups of oldsters gather in roomy, carpeted lobbies, with windows lined with greenery.

The multimillion-dollar complex is privately owned by developers Stanley Berger and Arnold and Walter Cohen, but is operated by the Southfield Non-Profit Housing Corp., created by the city council and managed by Phyllis Snider of Southfield.

The 12-story Phase I building opened in 1975. Phase II, one story higher, opened three years later.

Nearby stand 62 townhouses for moderate-income families. A third senior citizens housing complex of 100 units, Wood Ridge Apartments on Grodan Drive, was finished and filled this year.

Ms. Snider said that to qualify, prospective tenants must be 62 or older, or handicapped. They also must be able to care for themselves. To qualify for an apartment in McDonnell Tower, Ms. Snider said, one need only be 62 or older, disabled or handicapped and be totally independent. Each apartment includes a walk-in closet, a private bathroom, one or two bedrooms, a living room and a kitchen complete with appliances.

Phase I apartments operate under a program which charges residents a basic rent and offers rental assistance according to individual income. Phase II and Wood Ridge, under another federal program, set rents at 25 percent of the tenant's total income.●

TRIBUTE TO FATHER DRINAN

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. RANGEL. Mr. Speaker, I would like to express my admiration and appreciation for one of the most distinguished and honorable Members of this body, Father ROBERT DRINAN. Father DRINAN's departure is a loss to us, to his constituents, but most of all, a loss to this Nation, which relies on the leadership and courage that he has always provided in times of crisis.

It is not necessary to list all of Father DRINAN's achievements since he entered the House with me in January of 1971. He has championed the efforts to achieve peace, beginning with his courageous opposition to the Vietnam war and continuing on to today. He has steadfastly and tirelessly advanced the cause of equal rights for all Americans, and is responsible for amendments to strengthen the Voting Rights Act and expanding the scope of the Fair Housing Act that recently passed the House. The poor, the handicapped, and the persecuted of all nations all had a voice in the House of Representatives in Father DRINAN.

While serving on the Judiciary Committee during the Nixon impeachment proceedings, I saw firsthand the brand of courageous leadership and integrity that Father DRINAN possesses. His principled voice, ringing strong and clear, provided impetus to the consideration of the articles of impeachment, and his performance will remain as a testament to our most cherished principles of democracy and obligation. The departure of this well-respected man from this House will leave a vacuum that will not be filled for a long time.●

TENANT TAX JUSTICE

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GREEN. Mr. Speaker, in the midst of the current debate over which taxes should be cut and which tax exemptions should be granted, we should consider the deplorable tax treatment of people who rent rather than own their living space. The issue of renting versus owning and the longtime policy of the Federal Government to provide tax writeoffs only for owners has contributed to the housing crisis we are experiencing in this country today. Because I feel so strongly that this situation must be remedied, I testified before the House Ways and Means Committee. That testimony follows:

STATEMENT OF HON. S. WILLIAM GREEN

Mr. Chairman; seventy-four of my colleagues and I sent a letter to this committee last year urging that some measure of equity for renters be instituted in our tax laws.

Since the 1930's, the Government has allowed property owners to deduct local and State property tax payments from their taxable income. However, 35 percent of the households in this country rent and they do not receive similar treatment. The need for renters' tax relief is becoming more severe as inflation continues to outpace earnings. The cost of renting decent housing is, in many areas of the country, rising faster than the ability of moderate and lower income families to afford such housing.

A recent law in New York State tried to deal with this situation by stating that landlords pay real estate taxes as agents for their tenants. However, though it seems obvious that a portion of a tenant's rent covers the property taxes for the living space, the Internal Revenue Service recently ruled that this will not be the case for Federal tax purposes.[1] In light of this ruling, it is evident that the Congress will have to take the lead if any relief for renters is to be achieved.

In the 96th Congress, several bills have been introduced to establish equity for our renters. These bills cover a broad range of remedies to the present situation, but they share a common theme. The message implicit in all these bills is that the renters in our country deserve fairer tax treatment.

Any law implementing tax relief for renters will obviously affect housing in the United States, and such a change is drastically needed to address the present troubles in our rental housing market that is reaching crisis proportions. One of the reasons that rental housing has been decreasing is that middle-class renters are forced into home ownership because of the tax benefits and incentives for appreciation. As inflation pushes up the costs (and rents) of rental housing, the relative costs of ownership versus renting have been changed by our Tax Code. I do not suggest that owners lose their present tax benefits, but that renters receive equitable treatment. Furthermore, as rents need to rise to meet inflation, less affluent renters cannot pay sufficient rents, further discouraging the construction of rental housing geared toward this market.

The costs of tenant tax relief proposals are not insignificant, but neither are the costs of various rent supplement and operating subsidies that are in the embryonic stages in both the congressional and administrative branches of Government. While some may feel that tax policy should not be used as a vehicle to alter housing in this country, the simple truth is that tax policy already has changed the nature of housing.

The seriousness of the problem at hand cannot be overemphasized. I urge the Committee on Ways and Means to examine the effects our Tax Code is having on rental housing and consider possible changes to the code during this series of hearings on major tax legislation.●

KEY ECONOMIC ISSUES

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. MURTHA. Mr. Speaker, for the information of people in the 12th Congressional District, these remarks outline the key economic issues facing Americans.

BUDGET

Earlier this year, Congress approved the first balanced budget resolution since the 1960's, but because of the recession and rising unemployment the Government will receive less revenue and pay more in programs for the unemployed, likely leading to another budget deficit. The balanced budget, though, remains a reachable and necessary goal in the near future.

TAXES

I endorsed a tax cut for 1981 aimed at increasing productivity and getting Americans back to work. Two key parts of a tax change should be: A business tax cut aimed at enlarging business investments to create plant expansion and job growth; and a stimulus for the auto industry by providing an incentive for Americans to purchase new American-built cars.

CONTROLS

No wage and price controls will be enacted in the near future because of opposition in Congress. If inflation declines, they are not needed, but if it restimulates, then they must be considered.

RETIRED

Another round of scare stories frightened many retired citizens about social security. I say very flatly, the system is and will remain sound. Also, no citizen need worry about rumors that benefits will be taxed.

RECESSION

A tax cut to stimulate jobs will help control unemployment. Americans must be put back to work by attacking specific unemployment pockets such as the auto, steel, and coal industries. Broad solutions from the past will not work; the country must attack specific unemployment problems in the 1980's.●

BLAME IT ON HAVANA

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, the continued abuse that the people of Cuba experience under the Castro dictatorship has never been more evident than in their recent exodus from that island to the United States.

In a very thoughtful and penetrating editorial of September 4, the Suburbanite Economist, serving suburban Cook County, Ill., comments on the series of airplane hijackings that have taken place recently. I insert the editorial at this point:

BLAME IT ON HAVANA

There is something bizarre about the rash of airline hijackings by Cuban refugees who want to go back where they came from. It is not surprising that some of the 120,000 Cubans who joined the boat-lift to Florida last spring have changed their minds. But why the desperate and reckless resort to hijacking planes from Miami?

The State Department says it has been trying to establish an "orderly and safe" way for disillusioned refugees to return to Cuba, but has received only rebuffs from Havana. Since Fidel Castro has made it clear he doesn't want any of the refugees back, why do the hijackers think their reception in Havana will be anything but hostile?

One can speculate that the hijackings are part of a plot—that the disgruntled refugees are actually "agents" assigned to cause embarrassment to the United States. But this is far-fetched, and the Federal Bureau of Investigation says it can find no evidence to back up such a scenario.

The American people owe no apologies to Cuban refugees who complain that their reception here was something other than what they expected. The sudden arrival of 120,000 homeless people put an extraordinary strain on our immigration services and refugee resettlement programs. The burden is especially heavy in the Miami area, where some 45,000 newly-arrived Cubans remain concentrated amid 15,000 Haitian refugees in an area with high unemployment among its native-born population.

Unless the government in Havana lets its door swing both ways and agrees to repatriate refugees with second thoughts, the stepped-up protection against hijackings on flights from Miami must continue. Recent experience indicates those measures had become too relaxed in the first place.

Both the Cuban boat-lift and this troubling aftermath can be traced to the same problem, which is living next door to a communist dictatorship.●

GREEN NOTES TAMA COUNTY FAIR

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GREEN. Mr. Speaker, on Sunday, September 7, the Third Avenue Merchants Association sponsored the fifth annual TAMA county fair along Manhattan's Third Avenue from 14th to 34th Street to showcase the unique and diverse attractions of this historic and colorful avenue.

Each year hundreds of thousands of visitors from the tristate area attend this urban county fair and acquaint or reacquaint themselves with one of New York's most vital commercial and residential communities.

The Third Avenue Merchants Association, an organization of small business men and women on Manhattan's East Side, has contributed greatly to the financial well-being and to the overall neighborly ambiance of New York City with its many community projects.

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[1] Rev. Rul. 79-180, I.R.B. 1979-23, p.7.

This year TAMA paid special tribute to Grandparents Day in recognition of the many generations that have lived here as children, students, young adults, parents, and now grandparents. First recognized as a "day-set-aside" 6 years ago, Grandparents Day was first declared a holiday in 1978. Last year it was made a permanent day of recognition. I think this tribute is indicative of the sensitivity that TAMA shows year around to the neighborhood it serves.●

NEW MELONES WATER AND RIVER PROJECT

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SHUMWAY. Mr. Speaker, a misguided legislative effort exists to confer wild and scenic river status on a 9-mile section of the Stanislaus in California, thus precluding the full utilization of the New Melones water and power project.

Initially authorized by Congress in 1944, and reauthorized in 1962, New Melones has been completed at a cost to the taxpayers of nearly $350 million. The project now stands ready to provide hydroelectric power, water for irrigation, and the mitigation of ground water overdrafting, flood control, and environmental and recreational benefits.

To effectively deauthorize the New Melones project, as wild and scenic legislation would do, would be a contradiction of the express wishes of the people of California, who have consistently supported the project as authorized. In fact, the California Legislature, by an overwhelming margin, recently adopted a resolution calling upon the President and Interior Secretary Andrus to operate New Melones to its authorized capacity.

The devisive debate over New Melones has gone on for too long. The project has been completed, the benefits which will accrue are apparent, and the desires of the citizens of California are clear.

Mr. Speaker, I ask that a recent editorial which appeared in the Modesto Bee be printed in the RECORD at this time.

DEFINING THE ISSUE

Two days of testimony have been taken by Rep. Phil Burton's national parks and insular affairs subcommittee on the proposal to include a Stanislaus River section in the federal wild and scenic rivers system, and it is reported that those wanting to testify were given that opportunity and that pro and con arguments were pretty well balanced. So far, so good, but on the whole, the issue as argued tends to be oversimplified—to fill or not fill New Melones Reservoir—and needs more specific definition so we know just what Congress is being asked to approve.

Designating the Stanislaus a wild and scenic river now to prohibit water from rising in a nine-mile section used by commercial rafters would be like giving that designation to the Tuolumne River after New Don Pedro Dam was completed in 1971, canceling out the many benefits it has provided. New Melones was completed in 1978, but it hasn't been permitted to fulfill its mission due to countless challenges and resultant operating restrictions.

The time to legislate that label was before the dam was authorized, not after it was built. That is the crux of the issue, and there can be no compromise now without compromising the flood control, irrigation, hydroelectric power, water quality and recreation benefits designed into the $341 million project and authorized by Congress after many years of hearings and public input. While the special-interest lobbying which now obstructs the project's full implementation has risen in proportion to the growing popularity of rafting in the region, significant challenges were raised by environmentalists in 1972. Their input led to project revisions—before the dam's contract was awarded—which strengthened and expanded its multiple benefits. Then came the state voters' rejection of the proposed wild and scenic river classification in 1974—the same question before Congress now. That election should have ended once and for all time the special-interest obstructions.

Can it ever be too late to say, "We made a mistake and the dam shouldn't have been built?" Not necessarily. But that is not the case here.

While being generally sympathetic with wild and scenic river proposals where better resources conservation and management practices than exist are implied, we feel that, as a practical matter, two factors in the case of the Stanislaus proposal weaken the Friends of the River position in their campaign to prevent the intended use of the New Melones project: (1) California voters in 1974 by a large margin defeated a similar proposal—advanced before construction of the dam—and (2) there is some artificiality in labeling as wild and scenic a Stanislaus section whose white-water rapids depend on two upstream dams of the Tri Dam Project and the power-generation schedule of Pacific Gas & Electric Co.'s Stanislaus Powerhouse to produce the flow so valued by the rafters. Before the Tri Dam Project was completed, one could walk across the river under the Parrotts Ferry Bridge most summer days.

For Congress to ignore the long list of revisions in the New Melones Project to accommodate public input and the then-determined best interests of this region and to also overlook the 1974 mandate of California voters would be a disservice of great magnitude.

The project should not be compromised, as the state's resources director has proposed. To do so would compromise the will of Congress and the public, to say nothing of the project's integrity and maximum benefits.

Following the Labor Day recess, Burton's subcommittee is expected to consolidate 12 related pieces of legislation, including the Stanislaus proposal, into an omnibus bill and pass it on to the House Interior and Insular Affairs Committee. That panel is expected to approve it and move it to the House floor, where Reps. Tony Coelho, Harold T. "Bizz" Johnson, Norman Shumway and Charles "Chip" Pashayan will attempt to remove the Stanislaus River amendment from the bill, as well they should.

The New Melones issue, as Coelho aptly defined it in his testimony before Burton's subcommittee, is not the preservation of a "wild and scenic river;" it is the operation of a developed project as intended and authorized by Congress, starting three decades ago.●

PERSONAL EXPLANATION

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LIVINGSTON. Mr. Speaker, due to prior commitments in my district on September 4, I was not present for the final vote on H.R. 7765, the Omnibus Reconciliation Act of 1980.

Earlier this year, I voted against the first concurrent resolution because it was based on false economic assumptions and advocated, at that time, a balanced budget solely achieved by raising revenues through increased taxation. However, during consideration of the first concurrent budget resolution, I did support efforts to retain the reconciliation provision of that resolution because it is in principle terribly important to the budget process and to our need to truly balance the budget.

For these reasons, had I been present for the final vote on H.R. 7765, the Omnibus Reconciliation Act of 1980, I would have voted "aye."●

HAROLD B. SAY, JOURNALIST AND VETERANS' ADVOCATE

HON. RAY ROBERTS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. ROBERTS. Mr. Speaker, on Wednesday, September 3, the Nation, and most especially our Nation's veterans, lost a true advocate with the passing of Harold B. Say. Mr. Say combined a professional background in journalism with a long and distinguished career in the U.S. Navy. Upon his retirement with the rank of captain, he continued that service using his outstanding skills as a journalist, editor, and legislative analyst in support of those who had served with him in three wars.

A faithful member of the American Legion and the Veterans of Foreign Wars, he was a staunch supporter of all our Nation's veterans, but through his work gave special emphasis to the needs of those who fought in the First World War. He served for many years as legislative director of the Veterans of World War I and as editor of the organization's national magazine, the Torch. His work appeared in newspapers and leading veterans publications throughout the country.

Harold Say served with distinction in the U.S. Navy. He fought during the First World War with the 65th Artillery (CAC) and saw action from the Battle of St. Mihiel, September 12, 1918, until the end of the war. During World War II he was chief press and radio censor for the Navy Department, participated in the operations of the Normandy invasion under Admiral Ramsay, and was later attached to the staff of Adm. Chester W. Nimitz in the Pacific.

Captain Say was recognized as one of the U.S. Navy's top security experts during the World War II years. After the war he served on the staff of three NATO fleet commanders on Atlantic-European maneuvers.

Throughout his career as a writer, an editor, or as a veterans advocate, Harold Say was a pro in every sense of the word. He understood the meaning of good journalism, the value of objective reporting, and the importance of the truth as expressed in the written word.

Mr. Speaker, the House Committee on Veterans' Affairs has had a long and a very productive relationship with Harold Say. As chairman, I was privileged to receive his good advice; the same good counsel that he so often shared with my predecessors and with many who serve on the committee at the present time. He was a student of the legislative process. He understood the problems and the difficult decisions confronting our committee during these many years. We will miss his active participation in our work. Our Nation's veterans of all ages and from all wars have lost a true friend.●

LATVIA WAS VICTIM OF SOVIET GENOCIDE

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DERWINSKI. Mr. Speaker, the Spotlight newspaper is a controversial publication, with which I often do not agree. However, in the area of foreign affairs, the publication reflects a very legitimate concern over the continued threat to freedom posed by the Soviet Union and its plans for world domination.

In its edition of September 15, 1980, columnist John Tiffany writes on the small nation of Latvia. It has now been 40 years since the three Baltic States, Estonia, Lithuania, and Latvia, were seized by the Soviet Union. Many Americans have little knowledge of the fate of these heroic Baltic peoples. Therefore, I would like to insert Mr. Tiffany's article at this point:

LATVIA WAS VICTIM OF SOVIET GENOCIDE

(By John Tiffany)

Some 4,000 or 4,500 years ago, an Indo-European people settled at the eastern shore of the Baltic Sea, in Central Europe (now called Eastern Europe). Gradually the Indo-European Baltic tribal states diverged into two nations: Lithuania in the south, and Latvia in the north.

(Just north of Latvia is a third Baltic nation, Estonia; but the Estonians speak a non-Indo-European language related to Finnish.)

The Lithuanians and Latvians are racially Nordic, as apparently has been true of all the Indo-European (Aryan) peoples in history—at least, before admixture with non-Aryans.

Although the Lithuanians and Latvians had their own religion, known as Dievturi, most of them converted (at least nominally) to Christianity in the 12th century. (The old religion, however, is still observed by Latvians in America, in Chicago, Milwaukee, New York, Boston and Philadelphia, and in Toronto.) Lithuania was the last nation in Europe to convert to Christianity. Lithuania, with a population of 2.7 million, is 80 percent Roman Catholic, Latvia (population 2 million) is about 57 percent Lutheran, 24 percent Catholic, and 9 percent Greek Orthodox. (Estonia, with a population of 1.2 million, is 78 percent Lutheran and 19 percent Greek Orthodox.)

Some scholars believe the Lithuanians inhabited the Baltic area as early as 2500 BC. In the 14th century the Jagellon dynasty established, by conquest, a Lithuanian empire reaching as far south as the Black Sea (Spotlight, Jan. 17, 1978; July 7, 1980). Today Lithuania is about the size of West Virginia, as are the other Baltic nations—and all three nations have been conquered by the oppressive Soviet empire.

Latvia's frontiers are defined by international treaties. There are no border disputes with the USSR nor any other adjoining state. Latvians are neither Teutons nor Slavs, but speak a language of their own, related closely to Sanskrit, and the ancient tongue of the Aryans who conquered India more than 1,000 years before Christ.

AN ANCIENT LAND

Latvia is an agrarian and seafaring country. The capital, Riga, existed as early as the 12th century. The crimson and white flag of Latvia was known by the 13th century. The Latvians have inhabited their land since at least 1500 BC—the Bronze Age. The country is divided into four provinces; from west to east, these are Kurzeme, Zemgale, Vidzeme, and Latgale. Kurzeme is better known to historians as Kurland, and Vidzeme is known as Livonia.

Latvia has had an unending struggle for survival. From 800 to 1150 AD, the vikings raided from the west, while the Russian bear beset the Latvians from the east. Of the 320 sites of castles in those days, some 160 were placed along the eastern border to protect against the Russian threat.

The southwest half of Latvia—up to the Daugava River, which is the dominant topographic feature of the country—was taken over by Poland in 1561. The Duchy of Kurland emerged (including Zemgale); and, while the duke was nominally a vassal of the king of Poland, Kurland remained practically independent, with its own army, navy, and currency, until the third partition of Poland in 1795.

For 68 years Poland held central Livonia until (in 1629) a defeat by Sweden made Livonia Swedish except for Latgale in the east, which fell to Russia in 1772.

The Great Northern War, involving Sweden on the one side, and on the other side a coalition of Russia, Poland-Saxony and Denmark, lasted from 1700 to 1721. Defeated, Sweden yielded Livonia and Estonia to Russia. But it was not until 1795 that Russia finally gained dominion over all of Latvia.

But the twin spirits of freedom and nationalism were abroad in the land. Serfdom was abolished in Kurland, Estonia and Livonia in 1817-1819, and the rest of Latvia in 1861.

When Russia had an abortive revolution in 1905, Latvia also revolted, and Latvians actually administered their own affairs for a short while, only to have their national revolution drowned in blood and tears a year later.

With World War I, in 1915, German armed forces occupied Kurland. More than half a million Latvians fled or were evacuated to the interior of Russia. To stem the German advance, the czar consented to forming purely Latvian rifle regiments. These regiments heroically defended the approaches to Riga for two years.

REDS OPPOSED FREEDOM

On November 29, 1917, Latvian patriots established a Provisional Latvian National Council in the town of Valka. The move was violently opposed by the new Soviet government and by Reds within Latvia. The National Council proclaimed that henceforth "Latvia shall be an independent, democratic republic . . . its future political status to be determined by a duly elected constituent assembly, free from interference by outside powers." This was a warning to Soviet Russia that Latvia would not be pushed around.

Formal recognition by Britain, France and Italy came on January 26, 1921. On September 22, 1921, Latvia (along with Lithuania and Estonia) was admitted to full membership in the League of Nations. The U.S. recognized Latvia on July 28, 1922.

Soviet Russia first tried to take over the Baltic nations from 1918 to the 1920's. Had the Bolsheviks been successful in this, the consequences for Europe would have been devastating. "Already then, the Bolsheviks would have begun their program of expansion, with the aim of conquering Scandinavia, as far as the Atlantic," writes Oskar Angelus ("ABN Correspondence," May-June, 1972). "At this time in particular it was shown to an exceptional degree what inner strength lived in the Baltic people, who in the shortest time built up their own armed forces and beat back the many-times stronger Russians. In this way, the great powers in Western Europe, weakened by the first world war, were given a breathing spell for 20 years."

According to the German-Russian Peace Treaty of Brest-Litovsk, signed on March 3, 1918 (and a supplementary agreement of August 27), Soviet Russia renounced any claim to sovereignty over the Baltic states, with an understanding that their future would be determined by the will of the people.

SOVIETS BEATEN BACK

Breaking its promise, as usual, the USSR formed a communist "Latvian government" in Moscow. In December, 1918, the Red army invaded Latvia, close on the heels of the retreating German army. On January 3, 1919, the Reds rumbled into Riga, and the Latvian provisional government retreated to Liepaja, in the westernmost corner of the country.

The free Latvians found an ally in the German forces. Led by the legendary Col. Oskars Kalpaks (who died in the course of the campaign), the Latvians and the allies advanced to Riga and succeeded in expelling the Soviet communist forces from the country. The remnants of the Red forces were mopped up from Latvia's eastern borderlands, in alliance with Poland, in January, 1920.

The Soviet dictatorship then entered into peace negotiations with Latvia, and on August 11, 1920, a peace treaty was concluded in which Soviet Russia renounced her sovereignty over Latvia "forever"—but this was as worthless as the Bolsheviks' earlier promise, as time was to prove.

Now Latvia forged forward as a successful and progressive nation. The last vestiges of feudalism were abolished in an agrarian reform program. Communal land was parceled into individual holdings. Diversification of the economy was encouraged. The populist program of the state included credit for farmers at low interest rates, with price supports. Advances in industry and trade were nurtured.

Latvia's economic position was sound, despite the worldwide Depression of the 1930s: Her foreign debts were small, and she had proven herself a good international credit risk. The currency, the lat, was based on the standard of the Swiss gold franc.

In 1932, Latvia signed a nonaggression pact with Soviet Russia; this was extended to another 10 years in 1934. In 1939, as World War II was starting, Latvia proclaimed her adherence to a policy of neutrality.

In April of 1939, Britain and France negotiated with Stalin to wage a two-front war against Germany. Stalin demanded, as his price, a free hand to seize the Baltic republics; but the Western Allies refused.

INDEPENDENCE CRUSHED

On September 17, Soviet troops invaded Poland. By encircling the Baltic lands with naval and army forces, the Reds were able to impose on the Balts so-called "pacts of mutual assistance"—allegedly against foreign aggression. The Latvian pact was signed on October 5, 1939. The pacts with the three Baltic victims were virtually identical: The Baltic republics were to "lease" military bases to the Reds for a period of 10 years and to admit Soviet garrisons of about 30,000 men each. The Soviets, in return, promised to provide the Baltic states with arms for their defense; but these arms never came. On June 17, 1940 the Red army invaded Latvia. Most of the Western World followed the lead of the U.S. and declined to recognize the illegal annexation of the Baltic states by the aggressor.

PRESIDENT KIDNAPPED

Private property was "nationalized," and the standard of living dropped. A ruthless war of oppression was waged on the churches and all resistance to communism. Study of the Russian language and Soviet communism were made compulsory subjects in the schools. Thousands of Latvian patriots, army officers and officials, including President Karlis Ulmanis and members of his Cabinet, were promptly arrested and deported to the USSR.

Large-scale deportations of tens of thousands of Balts to slave labor camps in Siberia, northeast Russia, Arctic regions, Central Asia and the Far East were carried out. Fifteen thousand Latvian citizens—men, women and children—were rounded up and loaded into cattle cars for deportation under the most inhumane conditions. Consequently, June 14 of each year has became known as Latvian Mourning Day.

The large-scale deportations were carried out in accordance with secret Soviet instructions. A list of those to be deported had been drawn up in advance. Stalin knew the Germans were about to invade, so he acted fast. People were taken from their homes in the middle of the night and were allowed to take almost nothing with them. Trucks transported families to the railroad station, where men and even children were separated from their families and put into freightcars without even the most primitive facilities. Many died of hunger or thirst during the journey.

The names of 35,828 of those deported are known, but there are tens of thousands of others who were murdered, imprisoned, or deported. In 1940-1941, the Baltic countries lost about 130,000 inhabitants by deportation. Only a fraction of them were still alive by the mid-1950s.

During the first Soviet occupation of Latvia, 1940-'41, soldiers from the Latvian National Armed Forces were forcibly transferred to the newly established Soviet Latvian Territorial Corps. Many national-minded Latvian soldiers were murdered, along with many civilians, by the Soviets just prior to the Soviet retreat from the advancing German forces.

Hitler invaded in June, 1941. The Germans were greeted as liberators by the Balts. The swift German advance was aided by the spontaneous uprising of Baltic partisans against the Soviet overlords. But after a successful offensive in the winter of 1943-44, the Red army again overran the Baltic lands, aided by lend-lease assistance from the Western Allies—especially the U.S.

Many Latvian soldiers joined the German army to fight the hated Soviets and to revenge the murders and deportations of their people and the destruction of their land.

The Soviets well remember the Latvian legion, who inflicted many casualties and heavy defeats on the Soviet forces from 1943 till 1945. Nor are the Latvian soldiers and their deeds forgotten by enslaved Latvians at home and by free Latvians in exile.

LATVIA'S "ALAMO"

One Latvian legion division, along with a German army corps, was trapped by the Reds in Kurland. For seven months "Fortress Kurland" held out against savage assaults by the Soviets, and did not surrender until Germany surrendered to the Allies on May 7, 1945. Some legionnaires, hiding in the woods, escaped surrendering to the Reds, and harassed the occupation forces for years as guerrilla partisans. Of those legionnaires who did surrender, about 14,000 Latvians were captured and shipped to Soviet slave labor camps.

According to conservative estimates, at least 10 percent of Latvia's inhabitants were sacrificed to Soviet genocide until the death of Stalin in 1953. To this day, no one in Latvia is safe from the dread "midnight knock."

A second deportation wave rolled over the Baltic lands from 1944-45, as the Red army re-occupied the area. This time no list of deportees had been prepared; it was done by improvisation. The purpose, as before, was to remove elements of the population suspected of anti-Soviet tendencies. The total number deported in this wave, for all three Baltic peoples, is roughly estimated to have reached 200,000. These were mostly men.

Still, a third wave of deportation hit in 1948-49, with forced collectivization; farm families who "might resist" collectivization were listed for deportation. This time the families deported were kept mostly intact. They were shipped to collective farms or "kolkhozes" in Siberia and Central Asia; a higher percentage survived than in the earlier deportations.

The total number of deportees from the Baltic countries is estimated at 500,000 to 700,000. No mass deportations occurred after 1950, and beginning in the mid-'50s, surviving deportees were amnestied. But individual deportations go on even today.

ALIENS FLOCK IN

Today in Latvia, systematic russification is in full swing. In 1935, 75.5 percent of all 2 million people were ethnically Latvians. In 1966, only 58 percent of 2.3 million were Latvians. Only 23 percent of all radio programs in 1968 were in Latvian, 55 percent of all books, and 65 percent of all newpapers.

In 1972, in Latvia, there was already one Russian for every two Latvians. The Latvians have a low rate of reproduction, which aggravates the problem of their fading national identity as foreigners continue to flood in. Every year 14,000 outsiders settle in Latvia.

As of January, 1970, the population (combined) of the three Baltic Captive Nations had increased from 6 million in 1959 to 6.8 million. The increase is entirely due to an influx of Russians, Byelorussians, Ukrainians and others. The aim of this continuous flow of immigrants is to immerse the Baltic lands in the melting pot of russianization.

While the Establishment mass media continually harp on alleged "Nazi crimes," Soviet crimes in Latvia alone (not to mention the long list of other victim nations)—all unpunished and "OK" under the Genocide Treaty (Sen. William Proxmire's (D-Wis.) favorite)—have been worse than anything the Nazis did.

What lies ahead for Latvia? Despite half a century of Soviet communist dictatorial rule, nationalistic antagonism, especially between Russians and non-Russians, in the USSR is even greater today than ever. The Balts and other Captive Nations continue to yearn for independence; they are among America's best allies against the Kremlin. It is inconceivable that a civilized nation like Latvia should continue to have less independence than Outer Mongolia.

History has shown us that great empires can disintegrate overnight. In the Soviet empire, there are already cracks visible in the wall.●

PROJECTS WITH INDUSTRY

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SIMON. Mr. Speaker, in the effort to help handicapped Americans help themselves, making job training and employment opportunities more widely available has been of great importance.

I am pleased to be able to share with my colleagues a continuing success story in that regard: "Projects With Industry," administered by the Rehabilitation Services Administration.

Projects With Industry is a rehabilitation program designed to prepare persons with disabilities for specific skill needs identified by businesses and industries in each participating community. PWI is a cooperative venture, based on a partnership among 2,500 businesses, large and small, and 400 rehabilitation agencies.

Since its inception, Mr. Speaker, PWI has placed more than 25,000 handicapped persons into unsubsidized jobs in competitive employment. Of the 6,500 clients served just last year, fully 5,000 were placed into competitive jobs, a truly impressive record.

Herbert B. Mosher, director of rehabilitation programs for the Menninger Foundation in Topeka, Kans., has written an article in the Washington Post describing the achievements of Projects With Industry in somewhat more detail. I commend this most interesting article to the attention of my colleagues:

PROJECTS WITH INDUSTRY

(By Herbert B. Mosher)

"We used to hire only Greek gods," is how the personnel director of one of America's leading manufacturing firms explains his company's previous recruiting philosophy.

"Then I looked at our board of directors. The chairman has a heart condition and the president is a diabetic. Now we try to fit the right person to the best job regardless of a disability."

This about-face on accommodating handicapped workers is shared by many companies today.

International Telephone and Telegraph Corp. used to refuse applicants with epilepsy, cancer, and other disabilities as poor insurance risks. Recently, ITT dropped these restrictions and began to actively recruit workers with severe disabilities. Moreover, the company installed ramps, modified restrooms and put up brailled signs to bring aboard workers who have physical limitations.

Result? An ITT performance survey reveals that disabled employees show higher productivity and have fewer accidents and less absenteeism than other employees. And the modest cost of plant modifications was deductible under provisions of the Tax Reform Act.

Federal law requires affirmative action for the handicapped in all businesses receiving government monies. A key section requires employers to make "reasonable accommodation" to meet specific needs of disabled workers. Modifications may include adaptive equipment, job restructuring or alteration of the work site.

For blind secretary Caroline Christ, the Continental Bank of Chicago restructured certain clerical responsibilities to allow her to type from dictation and use a braille dictionary.

Thirty supervisors of the Xerox Corp. learned sign language to better communicate with deaf workers recently hired as technicians.

Security Benefit Life Insurance Co. offers its managers extensive training to help them become aware of problems encountered by workers with psychiatric or drug problems.

Can severely handicapped workers operate computers? International Business Machines thinks so. The company adapted its training and equipment for individuals with mental retardations, cerebral palsy or severe paralysis.

IBM was not surprised when demand for program graduates exceeded supply. Starting salaries for top programmers average $18,000 annually.

Employers and disabled individuals frequently need help pairing skills with a specific job. It's available through Projects With Industry, a federally funded program initiated by the government's Rehabilitation Services Administration.

Based on a partnership between 2,000 corporations and 400 rehabilitation agencies, Projects With Industry gives extensive career services to the disabled, as well as guiding employers on eliminating both architectural and attitudinal barriers to employing the handicapped.

"PWI looks at corporate needs, listens to career interests of disabled individuals and links good workers with cooperating companies," according to the program's national director, Thomas J. Fleming. More than 11,000 handicapped workers across the nation have entered competitive careers through PWI.

One such worker, Dwight Young, joined ARCO Pipeline. He sums up the feelings of many disabled people: Two years ago, I had a broken back, no job and little self-respect. Today I'm a well-paid technician in the expanding energy business. It meant my whole life to get this job."

American industry is beginning to see that disability is only a label—that the Greek-god hiring standard was itself a myth.

In ancient legends, Hephaestus—the Greek god of crafts—used his strong arms over the fires of his smithy to create marvelous crafts. He was lame.

For more information on Projects With Industry, write to Thomas J. Fleming, PWI, Rehabilitation Services Administration, 330 C St. S.W., Washington, D.C. 20201.●

LIEUTENANT GOVERNOR ORR, MAYOR McMAHAN, AND MAYOR DAILY TESTIFY BEFORE AUTO TASK FORCE

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. HILLIS. Mr. Speaker, on September 2, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held a hearing in Detroit in order to hear from State and local officials on the impact the auto industry's slump is having on their areas. We were fortunate to have Lt. Gov. Robert Orr of Indiana, Mayor Thomas McMahan of Anderson, and Mayor Stephen Daily of Kokomo appear before the task force.

In order to share with my colleagues the testimony from these Hoosier leaders, I am placing portions of their testimony in the RECORD at this point.

TESTIMONY OF LT. GOV. ROBERT ORR

Let me begin by expressing my appreciation to this group, and specifically to the distinguished Congressman from Indiana's Fifth District, Elwood H. (Bud) Hillis, for inviting me to appear here.

I do not come here as an expert on the auto industry. Neither am I here to suggest that I have definitive answers to problems currently being experienced by a troubled American auto industry.

Instead, I can speak from the perspective of a businessman who operated several enterprises before entering politics. I also can bring to your discussions the perspective of an individual who, as Indiana's Lieutenant Governor, has been deeply involved in job creation and economic development in the Hoosier state for nearly eight years.

What you are about is important. It is important to Indiana and to Michigan, both of which have heavy automotive industry concentrations, and it is important to the nation. Some people may claim that the advent of costly gasoline may have ended American's love affair with the automobile, but I don't believe it. The automotive industry still is the starter engine for our national economy. To the extent that the automotive industry runs sick, then the national economy also fails to hit on all eight cylinders.

In Indiana, we tend to feel the effects of recession in the auto industry as quickly as Michigan and more quickly than most states. Recession in that industry tends to drive up unemployment rapidly in our state to higher levels than most states. We also tend to recover more rapidly.

The current recession has been particularly severe in Indiana. Two major automotive industry centers—Kokomo and Anderson—recently have had the highest or nearly highest unemployment rates of any SMSA in the country. Other centers with automotive concentrations, such as Muncie, have unemployment nearly as high. There is a ripple effect in these communities when auto sales start skidding, since many other firms are suppliers or subcontractors of these major auto industry installations.

Perhaps the most serious effect of the recession in the auto industry has been the damage to other segments of the auto manufacturing and distribution chain. For example, almost daily for several months now, we see stories about auto dealers voluntarily quitting business, or going under, or going into reorganization under the bankruptcy laws.

These dealers have been caught in a squeeze which includes declining sales, skyrocketing interest rates and ever-inflating operation expenses. Some could not survive that squeeze and I suspect there are many more whose operations will become casualties before we are out of our current dilemma. These failures cost us jobs and economic strength, too, and they weaken the future ability of dealer organizations to sell and service automobiles.

I think it is important that we not allow ourselves to be deluded into thinking that a quick fix of the auto industry's problems also will be a quick fix on the nation's total economic problem.

The auto industry by no means is the only basic component of our economy adversely affected by the current recession.

We also see, in the Hoosier state, a dramatic effect on producers of non-automotive durable goods. The unsettled state of the economy, coupled with still-rampant inflation and still-high interest rates, seems to have encouraged people to make do with old dryers and dishwashers just as they are making do with their old cars.

And, finally, we in Indiana see a major recession in the construction industry, involving industrial, commercial and residential building.

Each of these components of the total economy is in trouble and their troubles translate into continuing difficulty for our nation as it strives to work its way out of the recession. More importantly, the troubles which afflict each basic industry translate into personal financial crises for hundreds of thousands of American families.

In these hearings, however, you are concerned solely with the automotive industry and I will target the remainder of my remarks to that industry.

Specifically, I would make these suggestions:

(1) Avoid quick-fix, band-aid approaches to the auto industry's problems. It's likely that normal recovery from the recession will occur before any surface approach can make a difference. There are, as I am sure many earlier witnesses have testified, major problems for the auto industry below the surface. It is these problems—such as overly-restrictive regulation of automobile manufacturers, which has forced car prices ever higher, and the factors which cause double-digit inflation and high interest rates—to which you should address yourself.

(2) Do something specific at the national level to encourage purchases of American-made cars. One example, which I support, is the proposal by Congressman Hillis and Dan Quayle, of Indiana's Fourth District, to provide, for a limited time period, a federal income tax credit for the purchase of fuel-efficient, made-in-the-U.S.A. autos.

(3) Do something specific to encourage American automakers to invest in newer, more technologically-advanced plants capable of greater productivity and likely to restore greater competitiveness to American-made cars. Investment credits are just one

of several options available to you in this regard.

(4) Have the courage to hold spending in check and thereby bring interest rates down. Few Americans can finance the purchase of a car at today's interest rates, to say nothing of the 20-percent level that prevailed last April.

(5) From a humane standpoint, make certain that assistance is available to workers whose livelihood has been disrupted by a soured economy. This assistance should include retraining programs for displaced workers resulting from either foreign competition or the effect of technology.

I do not believe that you should erect barriers to trade by imposing still-higher tariffs on foreign-made cars. As Lieutenant Governor, Commissioner of Agriculture and Director of the Indiana Department of Commerce, I am acutely aware of the opportunities which exist for overseas market development. To the extent that we resort to higher tariff barriers for foreign-made cars in order to give our American automakers an advantage, we encourage other nations to erect similar barriers against our industry and agricultural products.

There is a much larger market for these American products worldwide than there is an American market for all foreign-made products. We need to exploit that potential, not endanger it by throwing up new barriers to competition by foreign firms in the United States.

I do not oppose, however, requiring foreign manufacturers to produce products in American plants. That may be an answer to some of the sting of foreign competition.

Thank you.

TESTIMONY OF MAYOR THOMAS R. MCMAHAN

My name is Tom McMahan, Mayor of Anderson, Indiana. We have experienced auto industry unemployment unsurpassed by any community in the nation.

Anderson is a "General Motors Town" and we're proud of it. Delco Remy and Guide Divisions both had their origins in Anderson in the early 1920's and have always been regarded as good citizens and good employers.

In June, 1979, employment at Delco-Remy stood at 15,300. Today, it's just over 11,000. 4,279 or 28 percent with seniority dates back to 10/27/65, are on lay-off. Guide's employment last June was 6,000. Now it is 4,880, with 1,120 or 19 percent on indefinite lay-off back to April 26, 1976. Other manufacturing in Anderson includes recreation equipment, pumps, glass machinery, corrugated paper boxes, meat packing, dairy products, mattresses, railroad equipment and springs for furniture. These firms constitute a total employment of about 2,500.

The downturn in employment in Anderson began in July, 1979, at which time the unemployment rate stood at less than 7 percent. It steadily worsened, reaching the double digits in November. By December it had reached 14.8. The rate hit its peak in June, 22 percent. Labor force estimates for July for the Anderson SMSA, to be announced this week, will indicate an unemployment rate of 20.2 percent. Our labor force stands at 58,900 with 47,000 working and 11,900 unemployed. In addition to the 5,399 auto workers laid off, it is conservatively estimated that the toll taken by the "ripple effect" is an additional 2,500.

Recent figures from the Anderson office of the Indiana Employment Security Division indicate 3,750 claims for regular unemployment benefits and 1,766 extended benefits are being processed weekly. From January to July, 1980, 3,328 persons have exhausted their regular benefits and approximately 1,500 have exhausted their extended benefits.

These are more than cold statistics on unemployment in the Anderson community. These are real people with families, homes, children, obligations and hopes for a decent, productive future. This should be the true perspective, the thrust, of our meeting today. This is why I am here!

A visit to Anderson would belie some of the cold facts which have been presented. The community has endeavored to anticipate unemployment as it increased. This has been accomplished by close communication and interaction between social agencies, churches, labor unions, financial institutions, utility offices, businesses and the city administration. Township and County Welfare agencies have been severely taxed. For example, the issuance of food stamps increased 60 percent the first six months of 1980.

The greatest salvation has been Supplemental Unemployment Benefits (SUB) paid to nearly 6,000 Delco Remy and Guide Division employees. However, over 1,100 have now exhausted their 52 weekly benefits. Furthermore, the SUB Credit Unit Cancellation Rate continues to increase: i.e., an employee with 5 to 10 years seniority now needs 2.0 units for each weekly benefit. Less than 5 years, the cancellation rate is 2.5! Depending upon the dollars of TRA payments reverting back to the SUB fund and the implementation of Federal Supplemental Benefit payments, most SUB benefits could cease by November!

With unemployment and extended benefits being used up at a rapid clip, the approaching exhaustion of SUB benefits, the uncertainties of the general economy and winter coming on, it is incumbent upon us all to sharpen our strategy to combat this critical problem.

STRATEGY—IMMEDIATE

1. Implement Federal Supplemental Benefits. The amount payable on an FSB Unemployment claim would equal the total maximum benefit amount of the original claim, with 26 weeks being the maximum number of weeks payable. This program was last used in 1975. It would relieve hardships among those who have exhausted regular and extended benefits and prolong life of SUB fund.

2. Appropriate funds for the Energy Crisis Assistance Program and release any unspent funds from 1980 appropriation now being withheld by the June 30th deadline. Energy assistance is critical to low income people and families. Through Project Safe last winter, 2000 Anderson households were assisted to the tune of $500,000.

3. Inventory and coordinate local sources of assistance—material, psychological and spiritual—for maximum utilization of resources.

4. Auto Community Adjustment Program—Phase I. Anderson will complete and submit its application to the Department of Commerce's Economic Development Administration to finance a strategy study leading to positive steps toward adjustment of the community to economic reality which it faces, or could face, as the result of transitions of the auto industry. We understand that funds are set aside, for 20 adjustment planning communities, that our application will be approved before September 30 and that we can proceed with our strategy study immediately. The amount of the grant is understood to be $75,000.

5. Demonstrate and encourage conservation of resources by individuals.

STRATEGY—SHORT RANGE

1. Recall of laid-off workers to Delco Remy and Guide Division—national level. These are among the best paying, highest benefit jobs in the world! No wonder we want them back. But they are in jeopardy.

The prospects for this recall depend first upon the transition of the nation's auto industry, the strength of the national economy and the moods of the buying public. Considering the multitude and multi-faceted causes leading to this dilemma, primary solutions must materialize through the close and prompt cooperation of the public and the private sectors.

Some of the major causes, in my opinion, are:

The rapid escalation and high cost of fuel.

Foreign imported cars and trucks.

High interest rates.

Unrealistic, excessive and counter productive federal regulations of emission and safety standards.

The sudden shift of customer demand to fuel-efficiency cars.

The high price of automobiles and inflation in general.

2. Recall of laid-off workers to Delco Remy and Guide Division—local level. Notwithstanding the causes leading to the downturn of the auto industry and the resulting unemployment, the trend will be reversed as the transition to more fuel-efficient cars takes place. But we need more than a "model change" of our product. We desperately need a "model change" of our attitude toward our jobs. The old attitudes have been left tied to the post. We've lost our competitive edge and our quality is no longer good enough. If we intend to compete in the market place we must meet our competition toe-to-toe.

This will require the teamwork of management, supervision, the worker in the office and on the assembly line and the labor union who represents them.

If we ever needed a complete and frank understanding and concurrence of the need for a new standard of productivity, quality and job appreciation, we need it now. The auto industry and its jobs are coming back. We expect them to come back to our Anderson plants.

3. Diversification of Business and Industry. The pitfalls of over-dependence on one industry by a community is graphically illustrated in the case of Anderson, Indiana. Unfortunately, we didn't get serious about diversification until this time last year. We formed a local development corporation called the Anderson Business Development Corporation (ABDC), funded by HUD through a community action block grant. Since then ABDC has acquired a vacated plant facility well situated on 36 acres of ground. The plant was a gift from the previous occupant and owner. Although prospective employees are scarce, few escape the watchful eye of ABDC. Activities of the group also include promoting the sale and imminent occupancy of another sizeable vacant factory site. Close cooperation exists with the Indiana Department of Commerce.

The city actively promotes the use of Industrial Revenue Bonds, Tax Abatement and other redevelopment tools.

STRATEGY—LONG TERM

1. Continuation of Business and Industry Diversification.

2. Auto Community Adjustment Program—Phase 2.

Taking a lesson from the present as well as the past, Anderson aims to pursue planning that will facilitate positive adjustment of the community to the new economic realities. We hope to earn help through Title IX grants and other assistance from the Economic Development Administration.

3. Youth Training and Employment Programs. We are particularly aware and disturbed by the perennial problem of youth

unemployment in our community. With this in mind, we are watching with great interest the progress of HR 6711, a bill "to extend the authorization of youth training and employment programs". Dovetailed with our existing school system, technical vocational training facilities and the participation by the private sector, a comprehensive program would be a decided advantage to the future economic well-being of our community.

Finally, I am venturing the prediction that the community of Anderson will respond from this lapse in employment stronger than ever. It has learned to appreciate what it has and what it could lose—the challenge of pulling together and the need to plan ahead.

MAYOR STEPHEN DAILEY

Kokomo, Indiana is a lucky place. Our plants are not closing. Instead they are shifting the focus of their operation in order to remain competitive in an industry that is changing very rapidly.

So we're not going to die as a result of changes in the auto industry . . . but we are going to see important changes in the number and type of workers employed in our city.

And I want to emphasize one thing very strongly today. The City of Kokomo does not have its hand out. We come from an old and proud midwestern tradition which says that you solve your own problems.

We will do that in Kokomo.

Since January, Kokomo has undertaken intensive long range planning efforts aimed at diversifying our economy. We have worked with the federal Department of Housing and Urban Development in three of their programs. We have worked with the federal Economic Development Administration and the Indiana Department of Commerce. And we can solve our problems, given time.

Kokomo is familiar with the ups and downs of the auto industry.

We have come back, stronger and better than before, and I know, though this time the recession is longer, harder and more difficult than ever, Kokomo will return once more, stronger and better, and with a more diverse economy and more jobs for its citizens.

Our long range plans to improve our plight will work.

If we can keep the people of Kokomo from losing hope and moving on.

The City of Kokomo has struggled with an unemployment rate in excess of 10 percent for 8 of the last 9 months since November, 1979. In May of this year we led the nation at 23.9 percent.

With sub pay, unemployment and TRA, our workers have retained the ability to pay the most pressing of their bills, but they still represent over 20 percent of our food stamp recipients.

This figure will jump significantly when TRA runs out at the end of this week. The expected rush is so great that the food stamp people have opened a second office—in the union hall—to register them. They expect 1,500 additional applicants in one week. Approximately 1 in 10 people are presently on food stamps in Kokomo. That ratio will get worse.

The impact these lay-offs has had on the Welfare department and the Trustee's Office, on the restaurants and clothing stores, on school book rental collections and on apartment managers whose tenants are moving back in with their parents is devastating.

I said before that I do not have my hand out . . . and I meant it. But there are some things the federal government can do to make our jobs easier . . . and a little more possible.

You can help us keep our workers in Kokomo. Help us make it possible for people to wait out this decline as they have waited out others before.

1. Extend TRA benefits.

A. Longer period for auto workers.

B. Make auto related industries eligible.

2. Open up public works money.

A. Direct grants are best, but

B. Matches are O.K.

C. Anything to employ those who normally build plant expansions and new homes.

You can help business remain competitive in the new market place.

1. Give tax breaks to expansion.

2. Offer incentive to stay where they are.

3. Help people refinance their own retraining or let the industries retrain and help them do it.

4. Give the cities long term planning money to aid them in assessing the impact a changing auto industry will have . . . and prepare to deal with it.

In the longer range, you can:

1. Soften the requirements of HUD's UDAG program.

A. Cost per job—high technology, modern industries have high cost to job ratio. Yet they are the kind of industries—and jobs—we need. Present UDAG regulations practically limit UDAG's to shopping centers and new startups. We are more concerned with helping the industries we have modernize to remain competitive. Place more, reasonable emphasis on jobs retained.

2. Increase the risk that the SBA is allowed to assume under the loan guarantee programs. There seems to be too large a gap between programs too big for SBA and too small for UDAG or EDA.

And, finally, the federal government can liberally fund the one existing program which is specifically designed to handle financial emergencies like ours. That is the EDA's Sudden and Severe Economic Displacement program. For years this agency has had the smallest budget among the major funding sources. Now industry and government need those programs more than ever—and they should be funded accordingly.

I have said before that I'm not here to ask for a handout—only a hand. That is why I am here today.●

JIM DILLEY—SIGNIFICANT CITIZEN OF THE DECADE

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PATTERSON. Mr. Speaker, the residents of Laguna Beach have selected Mr. Jim Dilley as their "Significant Citizen of the Decade" and will formally honor Mr. Dilley in a formal ceremony on September 21. Ten years ago, Jim had a vision of a major greenbelt which would surround the city of Laguna Beach and for 10 years he worked to make that dream a reality.

His personal persistence and commitment to the idea of saving our environment and his continual efforts to prevent the uncontrolled spread of asphalt throughout the county served as an inspiration to the people of Laguna Beach and fostered the birth of the Laguna Beach Greenbelt Committee. From this seed there grew a community-wide effort to preserve the green space which surrounded the city. The city effort grew to include county and statewide support and today there are plans for a large urban park.

The dedication and inspiration of Jim Dilley was a key force in making this dream a reality. His personal efforts and successes should serve as an inspiration to each of us. Mr. Speaker, I ask my colleagues to join with the residents of Laguna Beach in honoring this man of vision, who was also a man of action, for his many contributions to Orange County and the many generations of people who will live and visit the living monument he leaves behind.●

MARKEY SUPPORTS SEMIANNUAL COST-OF-LIVING ADJUSTMENTS

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. MARKEY. Mr. Speaker, due to a prior commitment in my district in Massachusetts I was not able to vote on the Bauman amendment to the Omnibus Reconciliation Act of 1980.

Had I been present on September 4, 1980, I would have cast my vote in favor of the Bauman amendment. I believe that there are better, more equitable ways to reduce Federal expenditures than by cutting sorely needed benefits for military and Federal retirees.●

FEDERAL ELECTION COMMISSION "WATCHDOGS" NEED WATCHING

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. DORNAN. Mr. Speaker, for the information of my colleagues, and the public, I have included the following discrepancies which are written after a lengthy investigation of the FEC's inept review of Senator STEWART's and Carey Peck's campaign finances.

I am a firm believer that justice and truth will finally win out in this scandal. In my office I have assembled hundreds of pages of evidence on this matter, some of which I have already inserted in the RECORD, which I invite you to review.

The fact remains that the FEC has allowed a Member of the other body to keep corporate money, embezzled money at that. They have still not collected a fine, their largest ever, which they levied September 6, 1979. They have cleared these two campaigns of wrongdoing, without even the most obvious evidence—a canceled check, not one from either campaign.

As I mentioned on the floor of the House, I fully support the concept of campaign disclosure, as well as the concept of monitoring campaigns to keep them free of dirty money.

Hopefully my exposure of these discrepancies will bring to light the ineptness and conscious looking the other way for political reasons, of which I believe the FEC is guilty.

The material follows:

FEC Does Not Cash $2,000 Check From Dennis as Partial Payment of Fine; Finally Files Civil Suit on May 1, 1980, To Collect Fine After Heavy Criticism

Charles N. Steele, currently is the General Counsel for the Federal Election Commission. He worked under William Oldaker who supervised the non-investigation of the Peck/Peck/Dennis/Stewart scandal and then subsequently left the Office of General Counsel to go immediately to work for the Edward M. Kennedy presidential campaign (In 1973, Oldaker was suspended for five weeks, and demoted from his position with the Equal Employment Opportunity Commission in Denver because of falsifying public records, according to an article in Rocky Mountain News).

On October 16, 1979, the F.E.C. received a letter and a $2000 check from James Dennis indicating that he was able to put up $2000 of the $18,000 fine, and that he would "send additional monies as I can spare them." (see MUR-970, Dennis letter to Hal Ponder, O.G.C., F.E.C.). The $2,000 was a draw on the General Client Trust Account of the law firm of Groendyke and Salter and made out by Steve Salter on October 15, 1979. It was made payable to "James H. Dennis, Sr., and the Federal Election Commission." The check and Dennis letter were sent via Federal Express (MUR-970). Dennis had endorsed the check and the check only needed an F.E.C. endorsement in order for it to be cashed.

On October 22, 1979, former General Counsel William Oldaker sent a memo to the Commission. He mentioned that Salter indicated a full payment "would be forthcoming. Mr. Oldaker recommended that the Commission give Dennis "a 30 day extension . . . for full payment of the civil penalty and to notify his lawyer . . ." Mr. Oldaker sent Dennis' lawyer, Steve Salter, a letter on October 25, 1979, acknowledging receipt of the $2,000 check and the Dennis request for an extension on the remainder of the civil penalty. Oldaker told Salter that "The Commission voted to give Mr. Dennis thirty days from receipt of this notification in order to submit full payment of the civil penalty to the Commission (see MUR 970)."

On December 14, 1979, Charles Steele himself (who had replaced Mr. Oldaker as General Counsel) sent Dennis' lawyer, Salter, a letter which stated in part, "As of this date, we have not received the outstanding portion of Mr. Dennis' civil penalty, $16,000." Mr. Steele also said that unless the Commission received the remainder of the money by Dec. 19, 1979, the Commission would go to Court. The Commission finally went to Court on May 1, 1980.

On December 20, 1979, Salter received the December 14, 1979 Steele letter and wrote back to Mr. Steele on the same day. He stated that Mr. Dennis had discharged him (Salter) from the case and "under the circumstances, I have stopped payment on the $2000 check previously forwarded to you." (See MUR 970).

On June 6, 1980, Congressman Dornan and one of his staff aides went to the F.E.C. on K Street in downtown Washington—a short drive from Capitol Hill. They asked Mr. Steele (O.G.C.) why the $2000 check remained uncashed for over 2 months. General Counsel Steele said that by cashing the $2000 check, Dennis would have interpreted that as the F.E.C. accepting the $2000 amount as full payment of the $18,000 fine. Why?

How Mr. Steele could say this in light of his experience with the matter and the numerous F.E.C. documents including a conciliation agreement signed by Dennis and the F.E.C. (agreeing to pay the $18,000) is puzzling to say the least. A reasonable person would naturally conclude that Mr. Steele and perhaps others, have something to hide in this matter.

To date, this so-called "watch dog" agency has not collected a cent of the $18,000 fine, even though the F.E.C. had two thousand dollars in their hand for two months. Please remember that the F.E.C. originally fined Dennis $36,000 which they later reduced to $18,000 at the "request" of James H. Dennis. The original fine of $36,000 would have been the biggest fine ever levied by the F.E.C., and remains the biggest scandal.

At one point in the so-called F.E.C. investigation, James H. Dennis told an Alabama Reporter that the F.E.C. would never really do anything to him because people "high up in Washington will make sure of it." It seems that Mr. Dennis' prophetic statement about "nothing happening to him" is still all too true.

FEC CLAIMS THEY STARTED INVESTIGATION OF ILLEGAL DENNIS CONTRIBUTIONS TO PECK AND STEWART "ON THEIR OWN"

The Conciliation Agreement proposed by the O.G.C./F.E.C. on August 16, 1979 stated: "This matter was initiated by the Federal Election Commission on the basis of information ascertained in the ordinary course of carrying out its supervisory responsibilities." (Simply not true!) The Conciliation Agreement originally signed by General Counsel Oldaker for the Commission and by James Dennis, also repeated this statement.

This is not correct. It is a deliberate distortion of truth. James Dennis himself was the one who initiated this case after a number of newspaper articles appeared in Alabama listing himself as a source of illegal money for Stewart, and eventually one story about illegal money for Carey Peck. And certainly there was no Sherlock Holmes at the F.E.C. who by his or her cunning, master-minded a confession from Dennis about his Peck contributions. Dennis volunteered some of the information to more than one Alabama reporter. Dennis had even said in front of the F.B.I. and Congressman Dornan that O.G.C./Oldaker said in his (OGC) office, "Don't you understand, we're not interested in Peck." Actually, the F.B.I. told the Congressman to ask Dennis about this incredible cover-up type statement.

And when James Dennis came to Washington on June 1, 1979 to go to the F.E.C.'s General Counsel William Oldaker, what kind of reception did he get? Dennis was put in a room by himself and was asked by then General Counsel Oldaker to find the names he used for the phantom illegal contributions given to Peck and Stewart. Dennis told Congressman Dornan he felt he was in charge of his own investigation. To repeat, "It was a joke," he laughed, "Me investigating myself."

While Dennis was presenting this information to Congressman Dornan in the Talledega prison interview, the F.B.I. agent present said, "Didn't Oldaker say, "We're not interested in Peck?" Dennis gleefully elaborated.

The entire F.E.C., O.G.C. non-investigation bears out this attitude. Even though Dennis used corporate money (a dummy corp.) to make his $13,000 contribution to Carey Peck, illegal under the F.E.C. Act, the O.G.C. was prepared to ask for only $12,000 back (see proposed F.E.C. letter to Peck. This letter omitted references to the illegal corporate origin of the Dennis money). This is also evident from Bill Oldaker's August 31, 1979 memo to the Commission. He states, based on hearsay evidence, "that Mr. Dennis was refunded $12,000 from the Carey Peck for Congress Committee . . . Mr. Salter stated that a "full return of the money had been received." (Salter) it seems, was "in the dark" and was apparently going on hearsay evidence or known lies.)

Yet, the Peck F.E.C. forms in the possession of the F.E.C. since July 11, 1979, listed the alleged return of the Dennis money, indicates a "return" of $13,000 to Dennis, not $12,000 as Oldaker insists. This same fetish also applied to the Dennis contribution to Stewart. The F.E.C. Office of General Counsel conciliation statement prepared by Bill Oldaker, and defended even now by the current F.E.C. General Counsel Charles N. Steele, was satisfied to let Dennis give Stewart $23,150 (actually $23,190) in illegal dummy corporate money and have Stewart "return" (as he claims) only $22,000 to Dennis. (To this day, September 8, 1980, the U.S. Senator retains the "stolen from California" dummy corporate illegal sum of $1,150) actually $1,190.

Neither General Counsel Oldaker or Steele ever wrote to the Peck and/or Stewart campaigns requesting a front and back copy of what may be the "U-turned" checks of $13,000 (Peck) and $22,000 (Stewart).

There are other omissions in the face of implicating evidence making it quite clear that the O.G.C. neither initiated, nor carried out anything even approaching a real investigation.

FED SAYS IT CANNOT COMMENT ON DENNIS CASE YET

An October 8, 1979 Montgomery Advertiser article reported that the F.E.C. could not publicly comment on the Dennis/Stewart case, as the files had not been made public yet. (By September 1979, the Los Angeles Herald Examiner is already working on the Peck angle to all this.)

However, Dennis himself had publicly outlined settlement of the case more than a month before the article is written. He told newsmen that he signed a Conciliation Agreement admitting three violations of F.E.C. law. He stated that he was fined $36,000. (A form of weird bragging. Big time operator.) In fact, an Alabama high federal official J. R. Brooks had also told a California reporter, Mike Quarles, that same week that Stewart had been "completely cleared." (Maybe this was the beginning of the cover up.)

The F.E.C.'s public record does not contain any evidence that Dennis or the "high federal official" were reprimanded for divulging information then under consideration by the 6 F.E.C. commissioners.

Congressman Dornan has been informed by the F.E.C. General Counsel that discussion of such matters "would be forbidden" if the Congressman were to file a complaint. And with the Office of General Counsel's policy of selective prosecution (based on political friendship and/or ideology?) we could suspect that the rules would be applied differently if a complaint were filed that required the O.G.C. to actually undertake a real investigation instead of what is probably a deliberate whitewash.

At one point, in order to induce Congressman Dornan into filing an F.E.C. complaint, and therefore, indefinitely silence him, F.E.C. General Counsel Charles Steele offered to give Congressman Dornan the six known documents which were removed from F.E.C. MUR 970, and which he is now forced into a legal court challenge to obtain. (This very document the reader is studying is an expanded court challenge to force the F.E.C. to turn over to Congressman Dornan six "removed" documents.)●

JIM SLOAN

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LEWIS. Mr. Speaker, I would like to take this opportunity to recognize one of the truly fine men in my congressional district who is an inspiration to the youth and community of Redlands, Calif., and the entire Inland Empire.

James Sloan is a resident of Redlands for 54 years, and his many contributions to our community are highlighted by his dedication to Scouting. As a former Eagle Scout, he knows firsthand the benefits of Scouting. In an effort to pass on this legacy he has served as a Scoutmaster and served for 15 years on the executive board of the California Inland Empire Council of the Boy Scouts of America.

Given his extraordinary talent in photography, Jim Sloan has contributed monetarily to Scouting by publishing books of his photography and donating the proceeds to the Boy Scouts. For this and his many contributions to Scouting, he was awarded the Silver Beaver Award presented by the National Council of the Boy Scouts of America.

Beyond the Boy Scouts, Jim Sloan has contributed to the Redlands community in many ways. He has been president of the Redlands Boys' Club and president of the Redlands Chamber of Commerce. He has served his country as a naval photographer during World War II and later graduated from the University of Southern California. Because of these and countless other good works, James Sloan is being recognized as the Citizen of the Year at the annual Grayback Distinguished Citizen Dinner in Redlands.

Mr. Speaker, it is truly an honor to recognize James Sloan today and commend him to the House of Representatives.●

STIMULATING TECHNOLOGICAL PROGRESS

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. AuCOIN. Mr. Speaker, as chairman of the House Task Force on Innovation, I thought the Members of the House would be interested in the results of a recent study by the Committee for Economic Development. The study concludes that the United States must do much more to encourage technological growth if we want to improve productivity and slow inflation. The report, "Stimulating Technological Progress," states that while technological progress is perhaps the most important source of future economic vitality and social achievement, there are serious signs that the Nation is losing its technological edge.

It was because of this very concern that I formed the task force on industrial innovation more than 1 year ago. The members of the task force have common interest in passing legislation to boost productivity and stimulate innovation. The task force is helping to bridge the gaps which exist between committees having jurisdiction over an innovation program.

As chairman of the task force, I have reviewed a large number of articles and studies on the need to increase innovation. The report by the Committee for Economic Development is one of the best I have seen. The committee, which is an independent research and education organization whose 200 trustees are prominent business leaders and university presidents, has correctly concluded that unless there is speedy correction of public policies that inhibit the development and application of new products and procedures, the Nation will find it increasingly difficult to solve its other economic problems or achieve its social objectives.

At this time, I would like to insert in the RECORD a special summary of the CED report:

ECONOMIC PROBLEMS AND TECHNOLOGICAL PROGRESS

Control of inflation, employment growth, and improving real living standards are among the most important economic issues facing the nation.

The achievement of these goals requires the economy to have an innovative industrial base with the capacity to meet the demands of society and compete technologically with our international competitors.

United States productivity growth rate is declining and has been consistently lower than other industrial countries. Technologically, the United States is beginning to fall behind some other industrial countries.

Inadequate capital investment has held back the innovation rate in the United States.

As a proportion of output U.S. capital investment in manufacturing has for two decades been about one-third the rate for Japan, about one-half the rate for Germany, and lower than all major industrial nations.

Inflation has caused grave discrepancies between depreciation based on past costs and the actual current replacement cost of plant and equipment.

Current tax policies with outmoded capital-recovery allowances and failure to control inflation have lowered the real rate of return on investment in innovative plant and equipment.

Excessive and uncertain government regulatory activities have increased the risks to would-be investors and innovators and reduced the return on innovative investments.

Industry has been directed to divert resources to meet specific compliance methods rather than being allowed to achieve regulatory goals in the most efficient way.

The return on innovative investments has been reduced through regulatory delays in approving new processes and products.

Costs have been raised through unreasonable and frequent changes in regulatory standards.

The patent system only partially encourages innovation.

The patent system is unnecessarily complicated and unreliable.

It also imposes substantial costs on business and the public without adequately providing significant discoveries with the protection required to encourage innovation.

RECOMMENDED REMEDIES

INCREASING INNOVATION THROUGH THE MARKET ECONOMY

Innovation in the market economy is essential for productivity improvement and the long-run control of inflation.

Public policy should focus on creating an environment in which all sectors of the economy have the incentive to innovate.

The government should avoid trying to determine which specific types of innovation and industrial sectors should be stimulated.

RAISING INVESTMENT IN NEW PLANT AND EQUIPMENT THROUGH TAX POLICY CHANGES (CHAPTER 4, PAGE 29)

Tax changes to encourage innovation should be a top priority. These would stimulate commercialization of existing knowledge and diffusion of innovation throughout all sectors of the economy. Priority and consideration should be given to:

A more rapid capital recovery allowance by replacing the traditional method of depreciation over the useful life of assets. Write-offs would be more in line with replacement costs.

"Flexible depreciation" of fixed R&D assets. Assets could be fully depreciated in the first year or by any other method desired with the benefit of allowable tax credits being retained.

REDUCING REGULATORY UNCERTAINTIES AND CONSTRAINTS (CHAPTER 4, PAGE 43)

The Administration and Congress should increase their efforts to achieve regulatory reform.

Regulatory goals should be achieved through performance standards rather than design standards since this will encourage business to develop least cost regulatory techniques.

The government should achieve regulatory goals through a system of economic incentives and penalties whenever possible.

The potential adverse impact on future innovation should be taken into account when preparing regulations.

IMPROVING THE EFFECTIVENESS OF THE PATENT SYSTEM (CHAPTER 6, PAGE 51)

Several major reforms are necessary to make the patent system more efficient and effective.

Voluntary arbitration to speed up the settlement of patent disputes.

A single court of appeals for patent disputes to enhance uniformity in patent law.

A first-to-file patent system to reduce the cost of acquiring and defending patents.

DIRECTING FEDERAL R. & D. SUPPORT TOWARDS BASIC RESEARCH (CHAPTER 7, PAGE 58)

Increased public support for basic research in universities should be made. Federal involvement in applied research aimed at commercial application should only be undertaken under extremely limited circumstances which might include applied research to meet direct government needs (i.e., defense, space) and research to meet national priorities (i.e., energy).●

JACK O. WHEELER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. SKELTON. Mr. Speaker, recently, a well-known Missourian and good friend of mine passed away. Jack O. Wheeler, Kansas City, Mo., who was most successful in the stock brokerage business, displayed dedicated loyalty to ideas that helped better our American way of life.

He was most active in the Sigma Chi fraternity, which recognized him with its highest awards—Significant Sig and Constantine Sig. Sigma Chi was a dominant interest with Jack after the time he graduated from the University of Missouri until his death.

In the area of sports, Jack worked on both the college and professional level. When college basketball was having times of trial over gambling, cheating, and fixing, Jack urged the Blue Hills American Legion Post to commend the school that displayed the best sportsmanship during the season and recognize excellent qualities in the players by awarding a trophy. The award was given to those outstanding players and school at an inspiring dinner each year.

Jack also worked on the board of management for the Kansas City Chiefs and founded the Committee of 101 which consisted of 100 boosters and Lamar Hunt, Chief's owner. They met yearly at an elaborate dinner and chose the leading figures from the football world for recognition and acclaim.

Working with the Blue Hills American Legion Post, Jack was a commander, organizer, and leading life sustainer.

Jack Wheeler was a dreamer, organizer, and doer. He will be remembered for the high standards for which he lived and worked; his beliefs in the good causes of life and his ability to always recognize the best in his fellow man will long be remembered.●

THE HIGHER EDUCATION CONFERENCE REPORT: FABLES BY JANE BRYANT QUINN

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. FORD of Michigan. Mr. Speaker, last Wednesday, September 3, on CBS "Morning News," Jane Bryant Quinn, a business columnist, commented on the Higher Education Act conference report. This commentary is a tissue of falsehoods and deceptive innuendoes. I would like to address point by point some of the most egregious statements contained in the transcript of Ms. Quinn's commentary, which I include at the conclusion of my remarks.

Ms. Quinn—The higher education bill "makes it almost unnecessary for anyone to save money for a college education."

Fact—The maximum annual borrowing limit for a student and that student's parents is $5,500—not, incidently, $5,000 as Ms. Quinn states. The college board estimates that the average cost of attendance for the coming school year at a public 2-year college will be $3,123, at a public 4-year college $3,409, and at a private 4-year college $6,082. Thus, a student and his or her family could theoretically borrow enough to cover the average cost of a public 2- or 4-year college. They clearly could not borrow enough to pay the bills at an average 4-year private college. They also could not meet the cost at some of the more costly public colleges. They would be a very long way indeed from paying at the most expensive private colleges, where the cost ranges as high as $10,000 per year. In addition, loans are not grants. They have to be paid back with interest. The only real difference between saving or borrowing for a college education is that, in one case, money was put in a bank in the past and drew interest and, in the other case, money is paid to a bank in the future with interest.

Ms. Quinn—"The Carter administration has opposed this bill."

Fact—The Carter administration has opposed some provisions of earlier versions of this bill. The Carter administration supports the bill as embodied in the conference report.

Ms. Quinn—Parents borrowing under the new parent loan program "can pay nothing at all for 4 years, and then repay at 11 percent. A family can pay back nothing at all for 4 years. It pays to use the Government free money and keep your own money in the bank earning interest."

Fact—If parents elect to begin repayment on a parent loan within 60 days, the interest rate will be 8 percent. If they choose to begin repayment more than 60 days after taking out the loan, they are charged an interest rate of 11 percent during the entire period prior to beginning repayment on the principal of the loan. They can choose to begin repayment on the principal as long as 4 years after taking out the loan—provided that the student is in school that long. During this period the parents can either pay the 11 percent right along or they can have it deferred until they begin repayment of the principal. At that point, the deferred interest which has accrued must either be paid in a lump sum or it is added to the principal amount of the loan. Then repayment would be on the principal—with or without the accrued interest—at 11 percent interest. At no time will parents have "free money" from the Government. If there is a period during which parents will be paying "nothing at all," it is only because the interest is being deferred and accrued.

Ms. Quinn—The "new maximum" on loans to students is $2,500.

Fact—The annual loan maximum for undergraduate dependent students was set at $2,500 in 1972. The bill retains that limit through 1985. Thus, under the bill this limit will not be increased during a highly inflationary period of 13 years. Indeed, this limit was not raised precisely in order to encourage more borrowing by parents, since loans to parents will be much less subsidized and therefore much less costly to the Government.

Ms. Quinn—"Even if you don't need a loan, it pays to use the Government's free money and keep your own money in the bank earning interest."

Fact—Putting aside the issue of "free money," which I commented on above, "if you don't need a loan," it is a Federal crime to get one. The maximum amount of a loan to a student or to a student and his or her parents in combination may not exceed the cost of attendance at the college minus other aid that the student receives. See section 177.401(b)(2)(iv) of the program regulations and section 419 of the conference report, page 62. Thus, for example, if the student is attending a college with a cost of $3,500, that student and his or her parents could not together borrow more than that amount, assuming the student received no other aid. They could not borrow up to the full limit of their combined eligibility, $5,500. A student and a parent borrower will be required to file a statement that the loan "will be used solely for expenses related to attendance or continued attendance" at the higher education institution. This is also true for students under current law. See section 498 of the Higher Education Act and section 451 of the conference report, page 89. Current law, as continued by the conference report, provides for a criminal penalty of not more than 5 years imprisonment and a $10,000 fine for anyone who obtains a student loan by making a false statement either with respect to the amount needed or with respect to the purpose of the loan. See section 440(a) of the Higher Education Act and section 451 of the conference report, page 94. It only pays to take out a student loan if you don't need one if you want room and board in a Federal prison.

Ms. Quinn—In the conference report, Congress "has stretched the meaning of needy to cover people of greater wealth" under the grant program.

Fact—Under current law the discretionary income of a family is assessed at a rate of 10.5 percent to determine how much they can be expected to contribute for the education of their child and, therefore, what grant assistance, if any, the student is eligible for. The conference report makes a number of adjustments in the determination of a family's discretionary income to make this calculation more fair and equitable. However, the conference report actually increases the assessment rate on the discretionary income of a family from 10.5 percent to 14 percent. The result is that a student from a typical family with an adjusted gross income of $25,000 will receive the minimum basic grant of $200 under both current law and the conference report. In short, the conference report seeks to maintain the status quo with respect to eligibility for grants and does not expand it to "cover people of greater wealth."

Ms. Quinn—"If you own a house, no matter how valuable it is, it will no longer be counted in figuring what you ought to pay for your child's education. What this means is that a parent with a big house but no money in the bank may be considered needy by the Government, but a parent who saved money and lived in a smaller house might not get a grant, because of the size of his bank account."

Fact—First, it is absurd to imply that families will purchase large expensive houses to increase the eligibility of their children for student grants. Second, the value of a family's house should not be counted in determining their ability to pay for their children's education. Highly inflated home values are not a liquid asset that can be used to finance a higher education for your children. You cannot sell your child's bedroom to pay the education bills when he or she goes off to college.

Finally, Mr. Speaker, there runs through Ms. Quinn's entire commentary an implication that the Federal student aid programs are biased in favor of the wealthy or are being exploited by the affluent. With the exception of the guaranteed student loan program, all of the student aid programs under the Higher Education Act provide grants, loans, and work opportunities to students based on their demonstrated financial need. The guaranteed student loan program often serves the same purpose of meeting the financial need of students beyond what is provided by Federal programs or from other sources. In addition, this program enables students and some parents from hard-pressed working and middle-income families to meet through borrowing their need for liquidity and their need to spread out the costs of higher education. The Subcommittee on Postsecondary Education, which I chair, held 35 days of hearings, including 7 days exclusively on the student loan programs, in preparation for the reauthorization of the Higher Education Act. The 1,106 pages of the record of the hearings on the loan program contain no evidence that the rich and affluent are abusing or manipulating these programs for their own enrichment.

Ms. Quinn's commentary follows:

TRANSCRIPT

JANE BRYANT QUINN. Thank you, Bill. I have some news for parents who are sending children to college. Congress is putting the finishing touches on an amazing new student aid bill. It makes it almost unnecessary for anyone to save money for a college education. Furthermore, if you are old-fashioned enough to save anyway, you may even be penalized for it. The Carter Administration has opposed this bill, but Congress felt that it's what the American people want. For the school year starting next September, there is a brand new taxpayer-subsidized parent loan program. These loans are open to everyone, even the rich. Parents can now borrow up to $3,000 a year at participating banks. You're charged only eight percent interest if you repaying right away. Or you can pay nothing at all for four years, and then repay at 11 percent. Students themselves can still get subsidized student loans. The interest rate is up one point to eight percent, for a new maximum of $2,500 a year. Counting both loans, a family can now borrow as much as $5,000 a year for college and pay back nothing at all for four y[illegible]s. Even if you don't need a loan, it pays to use the government's free money and keep your own money in the bank earning interest.

Moving right along, Congress has also enlarged the free grant program for needy students. And it has stretched the meaning of needy to cover people of greater wealth. If you own a house, no matter how valuable it is, it will no longer be counted in figuring what you ought to pay for your child's education. What this means is that a parent with a big house but no money in the bank may be considered needy by the government, but a parent who saved money and lived in a smaller house might not get a grant, because of the size of his bank account.

You know, in this election year, we keep hearing that people want government to do less. But on student aid, Congress is definitely getting the message that people want more and more and more.●

LEE KEARNEY—TESTIMONIAL

HON. JERRY M. PATTERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PATTERSON. Mr. Speaker, the City of Hope, an institution renowned for its great achievements toward finding cures to catastrophic maladies like cancer and leukemia, heart, blood and lung diseases, diabetes, and other disorders of heredity and metabolism, honors, on occasion, an individual for his dedication, his sacrifice, and leadership to humanitarian causes.

This year the City of Hope honors with their Humanitarian Award a pillar of our community and a personal friend, Mr. Lee Kearney.

Lee is best known as the secretary-treasurer of the Teamsters Union Local 952, a position he has held for 31 years. In that time local 952 has become one of the largest locals in the International Brotherhood of Teamsters. Lee and local 952 have taken some great strides and obtained impressive accomplishments together.

Under Mr. Kearney's leadership, local 952 has constructed one of the largest group practice dental facilities in Orange County and has comparable facilities for medical, vision, and prescriptions, serving all of the teamsters and their families.

Lee Kearney has demonstrated skilled statesmanship and determination in the many contract negotiations he made on behalf of his membership. His skills and dedication have earned the respect and admiration of both management and labor. It was out of this respect and admiration that Orange County labor recognized Lee as "Labor Man of the Year in 1973." In addition Lee has accepted the great responsibility of serving as a trustee on the western conference of Teamster's pension trust.

Mr. Speaker, there is also another facet to Lee Kearney. Aside from his commitment to the working man and woman, Lee has dedicated himself to helping those who suffer, a commitment best described by the credo of the City of Hope that "Health is a human right for all."

Lee's work extended further when he was appointed by Governor Jerry Brown to a term on the California Hospital Advisory Council which disbursed Hill-Burton funds for new hospital construction. He was instrumental in establishing the first Leukemia Society chapter in Orange County and has served on the National Leukemia Society Board of Trustees. Lee has served on a number of other charity boards including the United Way of Orange County Board of Directors.

Mr. Speaker, it is with great honor I ask my colleagues in Congress to join me, his friends and family, and the City of Hope in bestowing the 1980 Humanitarian Award to Lee Kearney, leader, statesman, and humanitarian.●

A REVISED BILL TO EXPAND INDIVIDUAL RETIREMENT SAVINGS INCENTIVES

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. GIBBONS. Mr. Speaker, in July of this year, I introduced the Gibbons work and savings incentive plan, a 5-point tax cut proposal. This plan would expand individual retirement accounts and open them up to participants in pension plans and nonworking or low-earner spouses. It would also, for the first time, make IRA's attractive to modest income workers by significantly increasing the incentives for IRA savings by these individuals, who are too often shortchanged in their efforts to obtain private retirement benefits. In addition, my tax cut plan would eliminate the marriage penalty, spur trade by decreasing the tax on Americans working abroad, provide for greater business investment through faster depreciation, and liberalize the earned income credit.

Today I am introducing a new version of my bill to expand individual retirement savings incentives as part of my work and savings incentive package. Amendments have been made to allow employees to receive the 50-percent tax credit I have proposed not only for contributions to an IRA, but now also for voluntary contributions to an employer's pension plan. The same increased limit on contributions of $3,000 would apply in both cases. Subsequent distributions of credited contributions to a plan would be treated similarly to such distributions from a regular IRA. These changes will serve to maintain parity and balance in the tax law treatment of individual retirement accounts and pension plans, and thus will help to preserve our system of private pensions.

In addition to introducing the revised bill today, I am also making available a detailed explanation of its specific provisions. My proposal offers us the means to achieve a tremendous step forward in providing Americans with adequate retirement income, while at the same time greatly assisting capital formation. I invite your support for this proposal, and for the other elements of my work and savings incentives plan, H.R. 7871, 7872, and 7935.

The section-by-section analysis of H.R. 8088 follows:

SECTION-BY-SECTION ANALYSIS OF H.R. 8088, RELATING TO EXPANDED INCENTIVES FOR INDIVIDUAL RETIREMENT SAVINGS

Section 1. Short Title: "IRA Work and Savings Incentive Act of 1980."

Section 2. Allowance of Credit. This section provides a tax credit to replace the present law IRA deductions, which are based on a contribution limit of the lesser of $1,500 or 15 percent of compensation.

Subsections (a) and (b) of the new Section 44F allow any individual to contribute up to $3,000 of compensation to an IRA or a qualified employee plan and receive a 50 percent nonrefundable tax credit on such contribution, for a maximum credit of $1,500.

Other rules added by Section 2 of the bill to Section 44F are as follows:

No credit is allowed for contributions to an IRA for any taxable year ending after an individual has attained age 59½. (Persons who have attained 59½ are still permitted to make tax deductible contributions to an IRA, up to the new $3,000 limit.) Section 44F(b)(3).

In the case of a simplified employee pension, the employee is allowed the credit for employer contributions to the SEP, but only to the extent of the employee's contribution limit as reduced by all other contributions made by or on behalf of the employee to an individual retirement plan. Section 44F(b)(4).

No credit is permitted for any rollover contribution to an IRA. Section 44F(b)(6).

The credit is available with respect to voluntary contributions that an employee makes to a tax-qualified plan, so long as the employee designates that such contributions are creditable before the close of his taxable year. Employers, however, are given the option to not accept creditable contributions to their plans. If an employer decides to accept creditable contributions, then reports on the amount of such contributions must be made to the IRS. Section 44F(c).

The current spousal IRA rules are repealed and instead, each spouse may contribute up to $3,000 to a separate, independent IRA. The 50 percent credit is then allowed separately for each individual for contributions made to an IRA. Nonworking or low-earner individuals are permitted to make such IRA contributions based on the greater of their own or their spouse's compensation. Section 44F(d)(2).

Present law rules are retained which permit an individual to establish and make contributions to an IRA for a year up to the time for filing the individual's tax return for the year, including extensions. This rule, however, does not apply in the case of contributions to qualified plans. Section 44F(d)(3).

Present rules concerning excess contributions are retained; however, the phrasing of these rules is changed to reflect the new 50 percent nonrefundable credit available for certain IRA contributions. Section 44F(d)(4).

In order to maintain the present level of penalties for premature IRA distributions while reflecting the change in the level of tax subsidy to be provided IRA contributions, Section 2(d) of the bill also modifies the current rules on the taxability of premature distributions. If any portion of a distribution made prior to age 59½ is attributable to contributions for which the 50 percent credit was received, then such portion is not includible in gross income but is taxed at a special 50 percent rate to recapture the credit received. The portion of a distribution attributable to deductible contributions is includible in gross income, as per present law. In addition, the present 10 percent penalty tax is retained for all premature distributions, whether of creditable or deductible contributions. Section 2(b) of the bill provides similar rules for premature distributions of creditable contributions from tax-qualified plans.

Section 3. Increase in Deduction for Plans for Self-Employed. This section increases the maximum deduction allowed for employer contributions to a qualified plan on behalf of self-employed individuals, i.e., for contributions to "Keogh" or "H.R. 10" plans. The maximum deductible amount is increased from $7,500 to $10,000. This section also provides an identical increase in the amount that may be excluded from gross income by a shareholder-employee in the case of a contribution by a Subchapter S corporation to a qualified plan on behalf of such shareholder-employee.

Section 4. Revision of Section 219. This section increases from $1,500 to $3,000 the maximum annual deduction for contributions to an IRA. The IRA deduction is retained for those individuals who do not qualify for the 50 percent credit, namely, IRA owners who have attained age 59½ before the close of the taxable year. As under present law, contributions to an IRA are no longer deductible by the IRA owner starting with the taxable year in which age 70½ is attained. For individuals in the same age bracket, a new deduction is provided for voluntary employee contributions to tax-qualified plans. Rules for such contributions are similar to those applicable in the case of creditable contributions to qualified plans.

This section also repeals the eligibility restrictions under present law. Thus, active participants in qualified plans, government plans and Section 403(b) tax-sheltered annuities are permitted to contribute to an IRA, up to the increased contribution limit of $3,000.

In the case of a simplified employee pension, this section increases the maximum deduction for employer contributions to $10,000. In addition the employee is allowed to contribute an additional $3,000 to the same or a different IRA and obtain the 50 percent credit with respect to the contribution if the employee is under age 59½, or a deduction if age 59½ or over. If the employee does not himself contribute the full $3,000, employer contributions in an amount equal to the unused balance are eligible for the 50 percent tax credit in the case of an employee under age 59½.

Section 5. Technical and Conforming Amendments. This section makes a series of technical and conforming amendments necessary to accomplish the described purposes of the preceding sections.

Section 6. Effective dates are established for taxable years beginning after December 31, 1980.●

IT IS ABOUT TIME

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. McDONALD. Mr. Speaker, more and more these days the fresh winds of sanity and reason are blowing through the clouded intellect of liberaldom. With the moral outrage of middle America finally having broken out of its media, establishment corral, shock waves are being felt all over. One can only say, it is about time. The country is alive with a revitalized commitment to still live what their overwhelming sense of right declares proper. This tenacious impulse is finally being felt at the polls, according to the early returns in this election year and also in a balancing of reason by even those who for years have embraced in mindless stupor the unembraceable.

The following article by Meg Greenfield entitled "The Feds and the Family," Newsweek, September 8, 1980, is a perfect example of the reformation that has just been addressed. The shrill battle cry of feeble, pointy headed liberalism is found broken in midsentence by the jerking realization that they have been standing in front of the whole world with their intellectual pants down for nigh on 50 years or longer. And again I can only repeat, it is about time. It might also be observed, too, that having the Newsweek article also printed on the Op-Ed page of the Washington Post, come from such an unexpected source demonstrates how far-reaching this reform has come. Let us now hope that not too much water has passed over the dam, making impossible any civil or peaceful return to a more sane and honest sense of Government and society. I commend "The Feds and the Family" to the attention of my colleagues:

THE FEDS AND THE FAMILY

(By Meg Greenfield)

The evangelicals are coming. Not since Genghis Khan rode west, we are informed, has anything so ominous been in prospect. These are said to be the values-police, the would-be enforcers of rigid, outmoded morality, an unenlightened, vengeful, churchy crew that has worked its will on the Republicans' platform and is now propelling Ronald Reagan into office.

What's the truth of it? Certainly there is a component of the growing right-wing reaction on social issues—I don't know how big—that fits this description. But there are also vast numbers of people sympathizing with the trend who are merely reacting in predictable, normal and valid ways to various terrible features of modern life. And what interests me most is that, in a way, we asked for it. By "we" I mean that mild, moderate, liberalish majority that has been roosting near the center of the nation's politics for years. Our first contribution to the phenomenon was the promiscuity and mindlessness with which we have made private-values questions Federal-government business. The second was our flight from moral judgment in the face of some of our most gross handiwork.

It is true that some private-values questions can only be resolved in the Federal-government context. Once the Supreme Court had ruled against formal prayer in schools, for instance, or once it had in effect "decriminalized" abortion, it was inevitable that the consequences of these Court rulings would be fought out in the national political arena—and that is as it should be. But relatively few of the private-values issues that have got entangled in our national politics have comparable constitutional connections.

Concerns: In the horror now being expressed over the Republican intrusion into the web of delicate private and personal concerns that these values-issues represent, it is useful to remember that Federal-government support and sustenance of the family was pronounced a principal issue by the Carter-Mondale campaign last time. Thus was going to be a very big deal in their Administration, both men promised, and so it has been. There has been terrible warfare among the Administration organizers of the White House Conference on Families and practically everyone else: pro- and anti-gay groups, pro- and anti-abortion groups, innumerable other organized lobbies and even Administration staff named to serve the conference.

It figured, and that is the point. Do-good governmental meddling at the national level can be in its own way as destructive an influence as do-bad efforts to use government to enforce social and moral conformity. Both engage the state where it has no business and in what it does worst. Still, it seems as though every group in the country has by now come to believe that its interests can only be served and its worth affirmed by some kind of national—i.e. Federal government—involvement.

I was going to say that I don't know how the state—the central authority, the guys with the jails and the guns—got to be so well beloved of liberaldom and its middle-right, middle-left constituency, but I do. Past struggles over eradicating brutal racial repression in particular and a variety of crimes of indifference to public welfare in general in the states led a lot of people to assume, automatically, that you needed the Feds to get anything reasonable, fair, humane or generous done. It is a concept that has demonstrably outlived its usefulness, at least as a generally applicable rule. But it has gotten bigger, not smaller, as a shared national assumption.

What is wrong with it is obvious. Here is a recommendation of the White House family conference: "Delegates . . . agreed on the vital need for family-life education, and that government at all levels should assist the public and private sectors by providing appropriate courses for children and parents." Who needs government courses in family affairs? Why should this be? I don't think we're just talking about something harmless or anodyne here. All that high-class palaver about how presidents are helping us to find our values has got it absolutely backward: they should be expressing our better values; we should not be buying the ones they work out in committee.

New Conservative Wave: Government grown values are by definition and necessity spiritually deformed. They tend to be lowest-common-denominator generalities or pressure-group-cooked outrages. Whoever lays it on them, whatever qualifies as "a problem" and has a few lobbyists (maybe only people who profit from curing the "problem") prevails. I haven't yet heard of a White House conference on kinky sex or an International Year of the Transvestite. But then I haven't turned on the 6 o'clock news yet.

How could those of us who have been pushing this stuff for years ever have thought that in a national context, a referendum of sorts, anything but what is now happening would? Fundamental, stabilizing personal and family values represent the real majority and, when ridiculed or grossly affronted, they will compel revenge. And that raises the second way in which the antagonists of the new conservative wave have asked for it. We have refused to view practically any indecency, outrage or pathological assault on our sense of rightness in any way except as a civil-liberties problem—protecting the abstract right of the sickos to come to dinner.

I don't mean this concern should be forgotten or abandoned. But it has become an instead-of, a dodge. It relieves us, we think, of saying what our feelings are about much of what we are defending in dissent and First Admendment terms. We are even afraid sometimes to render negative judgments, knowing the illogical leap will at once be made by our listeners who suppose we are recommending repression of the deviates, illiberality and—it is always mentioned next—genocide.

If those of us in the complaisant liberal middle don't want to be known (justly) in time as the wonderful folks who brought you President Jerry Falwell, then we will have to stop inviting the Feds into people's every personal decision and we will have to assert a moral sensibility of our own.●

UNION OF COUNCILS FOR SOVIET JEWS HONORS REPRESENTATIVE DRINAN IN SPECIAL HOUSE CEREMONY

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BARNES. Mr. Speaker, this morning I participated in a special ceremony with other colleagues, members of the Union of Councils for Soviet Jews, and close associates of the Washington Committee for Soviet Jewry to honor Representative Robert F. Drinan's decade in Congress.

I commend these organizations for sponsoring this tribute to our outstanding and dedicated colleague, Mr. Drinan, and I submit for the Record remarks made earlier today by Representative Andrew Maguire and myself on Father Drinan's global human rights leadership:

Statement of Congressman Andrew Maguire

This morning I find myself the grateful legatee of the responsibilities originally accorded our colleague Lester Wolff who was first asked to host this morning's salute to our friend Bob Drinan. Lester is preparing for an important hearing and so I gladly accepted the offer tendered by the Union of Councils for Soviet Jews to function as moderator for this important event.

This year I am chairman of the "Spirit of Helsinki Vigil," the congressional monitoring group which acts as an advocate for the rights of Soviet Jews (and in fact Russian citizens of all faiths) to emigrate to dissent and to exercise their moral, political and religious rights which are ostensibly protected in the Soviet Union by that country's acceptance of the Helsinki accords. Bob Drinan is a stellar member of our group, but it is more appropriate to say that we act to emulate him. For since Bob came to Congress in 1971 on an antiwar, pro-human needs platform, he has always acted—consistently and persistently—as a forceful advocate for human rights.

The great moral philosopher Reinhold Neibuhr once said, "Man's capacity for justice makes democracy possible, but man's inclination toward injustice makes democracy necessary." Bob Drinan has used his forum in the House of Representatives—the people's House—to plead the cases of important causes time and again. One of his most important achievements is the manner in which his advocacy of the case of Anatoly Shcharansky (although we haven't been successful in freeing him) has elevated the Soviet's treatment of dissident Jews high into the consciences of Americans.

In 1975, Anatoly Shcharansky served as Bob Drinan's guide and translator during a visit to the Soviet Union to examine Soviet policies toward Jews and other minorities. Two years later, on March 15, 1977, KGB agents burst into Anatoly's apartment and placed him under arrest. After one year's imprisonment, Shcharansky was convicted and sentenced to 13 years incarceration for "anti-Soviet" activity. It was another case of Soviet abuse of the human rights of one of their Jewish citizens. But it wasn't merely another case to Bob Drinan. And so, for the last three years, Bob has been applying his valuable skills and unusual personal resources to publicize Shcharansky's case. His efforts have been so extraordinary that Shcharansky's name is synonomous with all victims of religious persecution everywhere. Bob's work, too, is a metaphor for congressional action on human rights issues in general.

Most of the participants in today's ceremonies are familiar with many of Bob Drinan's very personal efforts in the Shcharansky case. There is a committee in New York called International Committee to Save Anatoly Shcharansky that Bob chairs which has worked to raise the consciousness of caring people the world over regarding Anatoly Shcharansky's fate. We have participated in special orders organized by Bob which have brought this message to Congress. Many of us cosponsored Bob's resolution which urged the U.S. to move the Olympic games out of Moscow which was introduced on January 15, 1979. His cry was "Olympics DA, Moscow NYET," and no one can question that events bore him out. Bob has been instrumental in showing comfort to Avital, Anatoly's wife, and in providing her with forums from which she communicates the personal side of this on-going political and human rights tragedy.

Most recently, in March, 1980, when the House remembered the anniversary of Anatoly Shcharansky's arrest, Bob talked about the responsibility we have of keeping the pressure up in hopes of securing Shcharansky's release. He said: "We cannot allow the world to forget the Shcharansky case. We must lodge our protests with greater and greater intensity until the Soviet Government hears and understands that we will not rest until Shcharansky is free and allowed to rejoin his wife, Avital, in Israel."

Bob, I think that you can tell from the impressive gathering we have here this morning that your colleagues intend to take your lead to insure that the Soviet Government does not forget. Similarly we are not going to forget your courage and the examples you have set with the stands you have taken and the tough votes you have cast. Your dedicated concern for the welfare of Soviet Jewry will be remembered and we intend to keep the struggle alive.

"Ideas," as William O. Douglas once said, "have been the most dangerous forces in the history of mankind." What you have taught us is that in the struggle against repression, ideas can be as powerful as any weapon. From whatever forum you choose in the future, we will look to you as a wellspring for more powerful ideas to help us fight the battle that has brought us together today.

I would be happy to yield to any of my colleagues who would like to speak at this time.

REMARKS OF MICHAEL D. BARNES IN TRIBUTE TO ROBERT F. DRINAN

I am deeply touched to be asked to speak here today in honor of my extraordinary and gifted colleague, Robert F. Drinan, the great Massachusetts Congressman.

As I stand before you on the floor of the House of Representatives, I find it hard—even painful—to accept the fact that after a decade of service to his Nation and his fellow man in Congress, Robert Drinan's last term is coming to a close.

Congressman Drinan has been more than a colleague during my own freshman term. He has been my friend, my model, and my inspiration—especially in the work of the House Judiciary Committee, where I have had the privilege to serve with him, and in the field of human rights.

It was he who urged me to seek out the Judiciary Committee, which I did—and as I serve especially on the Immigration, Refugees, and International Law Subcommittee, I realize the tremendous impact that the Congress of the United States does have on the lives of people who are remote from our own continent, but who share the same time span, the same destiny on this earth, the same hopes, needs, and dreams for freedom, dignity, and a meaningful existence that characterize humanity.

In his outstanding accomplishments on the Judiciary Committee, as chairman of the Subcommittee on Criminal Justice, and as a spokesman for global human rights causes—it is certainly his own personal sense of fairness, his respect for the rights of the individual, and his reverence for life that have prompted his contributions to the American people and—in a larger sense—to the family of man.

When Father Drinan came to Capitol Hill as a freshman Congressman, he was one of the first Members to emerge and be elected on an anti-Vietnam war platform, sponsoring much of the original legislation aimed at ending U.S. military involvement in Indochina.

It was from his earliest days in these halls that Father Drinan stood apart from the crowd to speak—often in a lone voice—of his convictions and of truth, as he so correctly perceived it. And some of us learned to listen to this prophet of justice, this prophet of caring, to listen, to learn, and to act in an equitable and responsible manner toward all.

We learned about men and women in remote villages and steppes in Russia, who were deprived of their rights to be themselves. And he taught us to care about them and to know how relevant their lack of liberty was to our own full lives . . . to know that while one man is deprived of his inalienable right to be free, so does all mankind suffer.

Worldwide, there is no more dedicated champion of Soviet Jews, Christians, and dissidents than Congressman Robert Drinan, who is the founder of the National Interreligious Task Force on Soviet Jewry and who chairs the international Committee for the Release of Anatoly Shcharansky.

Through Father Drinan's intercession, we have come to know, for example, Anatoly and Avital Shcharansky—not only as victims of oppression, but as real people, as lovers forced to live their married years nations apart, perhaps never to bear children together, perhaps to be separated for eternity.

Here on the Hill, there is no question that Father Drinan is the dean of human rights causes. And his magnificent presence—though it can never be replaced—must somehow be filled. In the past, we have looked to Father Drinan and to his outstanding staff for leadership and new ways to aid prisoners such as Shcharansky, Joseph Mendelevich, Ida Nudel, Vladimir Slepak, Andrei Sakharov, and other exiled and jailed martyrs. Frankly, his dedication and zeal has inspired much of our own recent efforts on behalf of Soviet Jewish emigration.

Together—with the help of organizations such as the Union of Councils for Soviet Jews (celebrating its tenth anniversary this year), the Washington Committee for Soviet Jewry, Amnesty International, and the National Conference on Soviet Jewry, we have made some strides. But the road ahead is rugged. Tyranny, hate and ignorance are still with us. And we need new directions to fulfill our purpose.

Father Drinan, you who have been our heart and our conscience, must continue to challenge us from the outside and be our harbinger of change to meet the test of these difficult times. Only in this manner can we bear the fact that you are leaving . . . even though we understand that you will continue your mission on behalf of humanity in other equally important ways.

You must keep reminding us of life's soundest values so that we who remain in the political arena can reconsecrate ourselves to the nobler and more fundamental needs of society that you have so beautifully and effectively espoused.

Congress must not view your taking leave of us as a loss, but rather as our opportunity to pay you our finest tribute . . . to carry on your good work from this day on. To that I pledge myself, and I know that I speak for literally hundreds of your colleagues.●

FAIRNESS AND THE FOREIGN SERVICE ACT

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. OBERSTAR. Mr. Speaker, the Western World has watched the recent events in Poland with great attention and hope. The image of Polish workers demanding to have free and independent trade unions and, with steady courage, simply exercising the right to strike has electrified working people around the globe.

From the docks of Duluth to the mines of the Iron Range, my own home district has been enriched by the labor of thousands of immigrants from all the ancient states of Eastern Europe and the Baltic. In my district, the kinship we claim with those in the shipyards of Gdansk and the mines of Silesia is more than spiritual. We cannot resist sharing the pride which the Poles have earned the right to feel.

We are also proud of the efforts of Radio Free Europe and the Voice of America to insure that the people of Poland and those in the other captive nations get accurate information about these historic events. For decades, the Voice, Radio Free Europe, and Radio Liberty have provided the only consistent source of free news and information for millions of Europeans. Recently, the effectiveness of these broadcasts was readily demonstrated when the Soviet Union so feared the truth's effect on its people that it, in another violation of a solemn international agreement, resumed jamming Western broadcasts.

The people who prepare and present these broadcasts are often refugees from the very countries who are served by their current efforts. With great interest they are also watching developments on the Foreign Service Act of 1980, H.R. 6790.

When that bill comes to the floor later today, I will offer an amendment to preserve the rights of employees in the International Communication Agency's Voice of America under an agreement between the Agency and the employees' bargaining representative. The agreement established the right of these employees to be free from being involuntarily converted from the Foreign Service to the civil service.

This 1977 agreement has worked well and, during House hearings, both the Agency and the employee organization opposed the State Department's attempt to legislate a change to mandatory conversion.

For the Congress to enact legislation which violates the conditions of employment established by a free agreement between an agency and its employees, especially when both parties oppose such a violation, would be particularly inappropriate in light of the recent events. At the very moment that ICA employees are broadcasting to Eastern Europe about the efforts of Polish workers to obtain basic labor rights from their government, these employees know that their own department of state is attempting to overturn a collective-bargaining agreement between ICA and their elected representative. While ICA employees broadcast to the world the advantages of the free and fair system of labor relations in America, they should not be burdened by an action which would destroy the work of both their employer and their own labor representative.

For the benefit of my colleagues, I wish to present some background information on this ICA amendment. Although the amendment would change only 2 lines in a bill which is 268 pages long, the amendment will prevent a substantial injustice from being committed.

In 1977, the International Communication Agency and the representative of its employees entered into a negotiated agreement pursuant to the Nixon Executive order on labor-management relations. In essence, this agreement provided three central features. One, the Foreign Service "domestic specialists" at ICA would at no time be forced to convert to civil service status. Two, these employees were given the option until June 1981 to voluntarily convert with the terms and conditions of their willing conversion guaranteed by the agreement until that date. Three, ICA would discontinue hiring new employees as domestic specialists.

The proposed act would violate the agreement's open-ended prohibition against forced conversions. Both ICA and the representative testified at the hearings on the bill, and both Agency management and the employee representative opposed this agreement. The facts can best be summarized by presenting excerpts from their testimony.

The Honorable John Reinhardt, Director of the International Communication Agency, stated the basic facts succinctly:

> (W)e have over 900 Agency employees classified as Foreign Service "domestic specialists," known as FAS employees. They work as Voice of America technicians and broadcasters, magazine editors, exhibit designers, and in many of the positions are essential to the support of our missions overseas. Experience has shown that the features of the civil service personnel system are more suitable for this class of employees than are the procedures of the Foreign Service system. For example, promotions for a domestic complement can be made more equitably under the rank-in-job system than under the rank-in-person system. For these reasons, we have moved in recent years toward the use of civil service procedures for domestic personnel, regardless of whether they are categorized as Foreign Service or civil service.
>
> In 1977 we entered into an agreement with Local 1812 of the American Federation of Government Employees, the exclusive bargaining representative of our Foreign Service personnel. That agreement provides that USICA's Foreign Service "domestic specialists" would not be subject to mandatory conversion to civil service, though they have the option, through June 30, 1981, of converting voluntarily. Under the agreement, those who do not exercise this option would remain in the Foreign Service. A corollary provision states that no new domestic specialists would be brought into USICA's Foreign Service.
>
> Because of USICA's agreement with AFGE, special provision is made in the proposed act for the temporary exemption of USICA "domestic specialist" employees from mandatory conversion until July 1, 1981, the period allowed for voluntary conversion under the contract. Thus, the proposed legislation endeavors to preserve the essential thrust of the agreement with AFGE, while providing better personnel management and following the policy and procedures proposed for other foreign affairs agencies.
>
> However, I must be candid in stating that in the discussions regarding the preparation of this bill, and in view of the agreement with AFGE, I have opposed the application of this provision to our employees. Many of the affected employees have expressed strong objection to mandatory conversion. I am sure you will hear the testimony of their representatives.
>
> Mrs. SCHROEDER. Thank you very much, Mr. Reinhardt. We are very pleased to have you again with us this morning.
>
> Let me yield first to my colleagues for questions, and we will proceed on, then. Congressman Fascell, do you have any questions?
>
> Mr. FASCELL. Thank you very much, Madam Chairman.
>
> I am just trying to catch up with a contract for which a special exemption has been made in the proposal. Did I understand you correctly?
>
> Mr. REINHARDT. You did, sir.
>
> Mr. FASCELL. And this contract runs out on July 1, 1981?
>
> Mr. REINHARDT. Only as it applies to the voluntary conversion portions of the agreement. That is, the approximately 900 employees in USICA have until June 30, 1981, to make a decision as to whether they want to convert to the civil service or remain in the Foreign Service.
>
> Mr. FASCELL. You mean that is in the contract?
>
> Mr. REINHARDT. That is in our agreement with the union.
>
> QUESTIONS SUBMITTED IN WRITING TO HON. JOHN REINHARDT, DIRECTOR, INTERNATIONAL COMMUNICATION AGENCY, AND RESPONSES THERETO
>
> Question. Exactly what does the USICA-AFGE agreement seek to protect?
>
> Answer. The USICA-AFGE agreement outlines the Agency's revised personnel system for Foreign Affairs Specialist employees (comprising Foreign Service Reserve officers with limited and unlimited tenure, and some Foreign Service Staff personnel) and guarantees the conditions under which domestic FAS employees can convert to GS until June 30, 1981. After June 30, 1981 the option to convert to GS will not necessarily be foreclosed, but the requirements and conditions for conversion will be based on the Agency's personnel situation at that time and could be very different from the conditions outlined in the circular. It was a specific concern and intent of the union and management that these employees would not be forced to convert to GS and thereby be deprived of the advantage of Foreign Service status, but that such conversions would be made strictly on a voluntary basis.

Mr. Speaker, the employee representative also appeared at the hearings and testified:

> Within a brief time, the weaknesses of the program became apparent, even to management. A new administration in USIA finally proposed that the program be brought to an end. Local 1812 heartily agreed and together union and management negotiated a way to phase out the program in a manner preserving the rights of all parties: First, the Agency stopped hiring FAS employees and agreed to bring all new domestic employees into the civil service. Second, selection boards ceased to decide promotions and FAS employees were brought under a new merit promotion plan incorporating civil service principles and applying to all domestic employees. Third, FAS employees were offered the opportunity to convert back to civil service by a transfer to the civil service retirement system. With regard to voluntary conversion, the Agency wanted a cutoff date for employees to make their decision and the union agreed to make that date June 30, 1981.
>
> With regard to other elements of the agreement—the voluntary nature of conversion, the merit promotion procedures, et cetera—these the parties intended to continue beyond June 1981 unless other terms were agreed to.
>
> Since the date of this agreement, many employees have converted to the civil service and, by this means, and through attrition, the number of FAS employees has begun to decrease. It was in the midst of this process that we received the State Department proposal to force conversion to the civil service of not only its employees but those at USICA as well.
>
> We objected and still object to this effort to cancel a negotiated agreement by legislation—an agreement based on the good faith judgments of both the union and management that a voluntary conversion system is likely to do the least amount of violence to both the rights and sensibilities of a group of employees who are wearied by a succession of personnel experiments undertaken at their expense and never in their interests.
>
> Mrs. SCHROEDER. I have many further questions. I think what we might do is offer to keep the record open and have people submit questions for the record. I just wanted to ask one brief one. Do you have a collective bargaining agreement between the ICA and AFGE that will expire on June 30 of 1981?
>
> Mr. ABE HARRIS. No.
>
> Mrs. SCHROEDER. What is going to happen?
>
> Mr. ABE HARRIS. The agreement was open ended. Just as Mr. Koczak explained, 1981 was purely the date where you could convert the GS voluntarily and basically at that time USIA, when this agreement was made, could live with the fact it would take 15 years to 20 years to phase out this FAS program whereas now apparently State Department has continued this program up to about 6 months ago, I believe, when they stopped hiring people. AMSA wants to terminate very quickly.
>
> Mrs. SCHROEDER. So you have a real contract problem.
>
> Mr. ABE HARRIS. We think the fundamental issue, if the State Department does not like a labor management agreement that USIA and local 1812 concluded, should they come to Congress and ask them to rewrite that agreement?

Mr. Speaker, finally, I would like to point out the language used by the U.S. Information Agency—now ICA—when it announced the agreement in a December 1977 circular. The Agency first noted:

> The agency has negotiated with AFGE, the exclusive bargaining representative for USIA's Foreign Service employees, a revised personnel system that will replace the Foreign Affairs Specialist (FAS) program. The purpose of this circular is to announce the revised personnel system.

The circular summarized those rules governing voluntary conversion to the civil service general schedule. The circular clearly stated in its conclusion that "The time limit for submitting applications for conversion to General Schedule under the conditions described in this circular is June 30, 1981." Following the summary of rules for voluntary conversion, the circular stated:

> These conversion rules will remain in effect until June 30, 1981. It is felt that this 3½ year period provides a reasonable time for present FS employees to decide whether they wish to convert to GS or to remain in the Foreign Service. Conversion to GS after June 30, 1981, will be subject to whatever requirements and conditions may be established at that time for conversion.

Consistent with the later congressional testimony of both the agency and the employee representative, the circular prohibited mandatory conversion without any time limit. It stated, in underlined text: "Conversion from FS to GS will be entirely voluntary at the option of the employee."

I believe this information needs no further explanation, and I appreciate the support of my colleagues from both sides of the aisle.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 9, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 10

9:00 a.m.
Finance
Taxation and Debt Management Generally Subcommittee
To hold hearings on H.R. 6883, to revise certain provisions relating to the tax treatment of installment sales of realty and incidental sales of personal property, and on miscellaneous tax bills, S. 2512, 2900, 2915, 2916, 3076, 3080, and 3070.
2221 Dirksen Building

9:30 a.m.
Judiciary
Business meeting, to consider pending legislation and nominations.
S-145, Capitol

Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of Education For All Handicapped Children Act (Public Law 94-142).
4232 Dirksen Building

Veterans' Affairs
To hold hearings to review current studies conducted by certain Government agencies on the long-term health effects of agent orange.
412 Russell Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Finance
International Trade Subcommittee
To resume hearings on the trade and economic issues confronting the United States, and on an international trade strategy for the United States.
6226 Dirksen Building

Foreign Relations
To hold open and closed hearings on proposed nuclear fuel shipment to India; and to consider Senate Concurrent Resolution 109, disapproving the proposed export of low-enriched uranium to India.
4221 Dirksen Building

Governmental Affairs
Business meeting, to consider pending calendar business.
3302 Dirksen Building

Rules and Administration
To hold hearings on S. 16 and 964, providing for changes in the Presidential primary system, and Senate Joint Resolution 189, establishing a Commission on Presidential Nominations; and to consider other legislative and administrative business.
301 Russell Building

10:30 a.m.
Appropriations
Interior and Related Agencies Subcommittee
To continue hearings on H.R. 7724, appropriating funds for fiscal year 1981 for the Department of the Interior and related agencies, focusing on the Department of Energy's gas rationing policy.
1114 Dirksen Building

Judiciary
Criminal Justice Subcommittee
To hold hearings on S. 252, to improve and coordinate Federal strategy of assistance to State and local governments in arson fighting training and technical assistance.
2228 Dirksen Building

3:00 p.m.
Conferees
On S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.
5302 Dirksen Building

3:30 p.m.
Select on Ethics
To resume closed hearing to discuss FBI allegations involving Senator Williams in a bribery scheme.
S-126, Capitol

SEPTEMBER 11

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate calendar).
235 Russell Building

10:00 a.m.
Energy and Natural Resources
Parks, Recreation and Renewable Resources Subcommittee
To hold hearings on S. 2630, establishing the Martin Luther King, Jr., national historic site in the State of Georgia, and S. 3091, establishing the Chaco Culture National Historical Park in the State of New Mexico.
3110 Dirksen Building

Finance
To hold hearings on provisions of section 5, to establish in the Treasury of the United States a hazardous substance response fund, of S. 1480, proposed Environmental Emergency Response Act.
2221 Dirksen Building

Rules and Administration
Business meeting, to consider Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.
301 Russell Building

2:30 p.m.
Appropriations
Business meeting, to mark up H.R. 7584, appropriating funds for fiscal year 1981 for the Departments of State, Justice, Commerce, and the Judiciary, and H.R. 7583, appropriating funds for fiscal year 1981 for the Department of the Treasury, the Postal Service, and general Government programs.
S-128, Capitol

SEPTEMBER 12

9:30 a.m.
Commerce, Science, and Transportation
To continue hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate Calendar).
235 Russell Building

10:00 a.m.
Labor and Human Resources
Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to respondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.
4232 Dirksen Building

SEPTEMBER 15

9:30 a.m.
Judiciary
To hold hearings on pending nominations.
2228 Dirksen Building

SEPTEMBER 16

10:00 a.m.
Energy and Natural Resources
To hold oversight hearings on the growing importance of coal in international trade.
3110 Dirksen Building

Labor and Human Resources
To hold oversight hearings on the implementation of certain compensation programs for longshoremen.
4232 Dirksen Building

*Special on Aging

To hold hearing to examine proposals for possible changes to the social security system.

5110 Dirksen Building

SEPTEMBER 17

9:30 a.m.

Labor and Human Resources

To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

Business meeting, to consider pending calendar business.

3110 Dirksen Building

Rules and Administration

Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.

301 Russell Building

SEPTEMBER 18

9:30 a.m.

Agriculture, Nutrition, and Forestry

Foreign Agricultural Policy Subcommittee

To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.

324 Russell Building

Labor and Human Resources

To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

To resume oversight hearings on the growing importance of coal in international trade.

3110 Dirksen Building

SEPTEMBER 19

9:30 a.m.

Commerce, Science, and Transportation

Science, Technology, and Space Subcommittee

To hold oversight hearings on the scope of science and technology policy

235 Russell Building

SEPTEMBER 23

10:00 a.m.

Labor and Human Resources

To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.

4232 Dirksen Building

11:00 a.m.

Veterans' Affairs

To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion

318 Russell Building

2:00 p.m.

Office of Technology Assessment

The Board to meet and discuss pending business items.

EF-100, Capitol

SEPTEMBER 24

10:00 a.m.

*Labor and Human Resources

To hold oversight hearings on the implementation of the home energy assistance program.

4232 Dirksen Building

10:30 a.m.

Commerce, Science, and Transportation

To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries.

235 Russell Building

SEPTEMBER 25

10:00 a.m.

Commerce, Science, and Transportation

To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries.

235 Russell Building

CANCELLATIONS

SEPTEMBER 12

10:00 a.m.

Labor and Human Resources

Education, Arts, and Humanities Subcommittee

Business meeting, to resume markup of title II, providing financial assistance to meet basic and employment skills needs of secondary school youth of S. 2385, proposed Youth Act.

4232 Dirksen Building

SENATE—*Tuesday, September 9, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

Rabbi Stanley Rabinowitz, Adas Israel Synagogue, Washington, D.C., offered the following prayer:

Dear friends, let us pray.

God of Heaven and Earth, make real the dreams that rainbow our Nation's history.

Let there come to pass a day when no person shall be hostage for the land of his birth, and none shall suffer for his father's color, nor his mother's faith.

May those who strive for a world in which vine and fig tree will shelter each household find their vision strengthened by our example.

We pray not to be relieved of burdens, but for strength to bear them; not for evasion of challenges, but for courage to meet them.

Long may our land be bright, with freedom's holy light, Great God, our King. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 9, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. HEFLIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MILITARY REGISTRATION

Mr. ROBERT C. BYRD. Mr. President, Selective Service System Director Bernard Rostker has announced that 93 percent of the individuals who are required to register for the draft this year have registered. Most of the remaining individuals are expected to register during the remainder of this year.

This is a very high success rate, particularly since the registration program was started late in the calendar year, and under considerable controversy. By comparison, the corresponding figure for the last full year of registration—1973—was 83 percent.

This year, men born in 1960 and 1961 are required to register. These men form a targeted population of 3.88 million individuals. Of those, the Selective Service has been able to register 3.59 million.

One of the top priorities of our military forces today is preparedness—the ability to respond quickly to unforeseen emergencies of a military nature. Two Members of the Senate—Senator STENNIS and Senator NUNN—have taken the lead in strengthening our readiness. The contribution of military registration to readiness was first brought to the attention of the Senate last year by Senator STENNIS and Senator NUNN. Last January, President Carter proposed the resumption of military registration in his state of the Union address to Congress. Later in the year, after a full and public debate, Congress appropriated the necessary funds.

I congratulate the President and I congratulate Senator STENNIS and Senator NUNN for their role in getting the military registration program started again, and for its impressive initial success.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, does the Senator from Wisconsin wish some time?

Mr. PROXMIRE. I appreciate the courtesy of the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. PROXMIRE. I thank the distinguished majority leader.

THE TECHNOLOGY OF GENOCIDE

Mr. PROXMIRE. Mr. President, one of the most disturbing accompaniments to scientific progress is the ever greater ease and efficiency with which man can exterminate masses of his fellows. The increased sophistication of deadly gasses, lasers, radiological devices, and biological weapons invite a repetition of the gruesome genocide we have known as the holocaust.

It is too often overlooked that weapons of even the most devastating character exist for only one purpose: To be used. The atomic bombing of Hiroshima and the apparent use of gas in Afghanistan by the Soviets indicate that few States can resist the appeal of the latest, most deadly inventions. Today's remarkable hardware of human destruction stands as a warning: We must not let another holocaust occur, for the scale of future acts of genocide will dwarf what has gone before.

The quality of these new weapons, as well as the quantity of their destructive potential, is a second source of alarm. One of the stark features of the Nazi holocaust was the cleanliness of the gassing process. Men were spared the rivers of blood that otherwise would have flowed from the death of 6 million. Gas enabled the Nazis to accomplish the massive task of transport and extermination with a minimum of human involvement.

Less than a dozen armed soldiers were able to dispose of a trainload of human cargo containing over a thousand individuals. The almost hygienic quality of the holocaust enabled men to play key roles in carrying out the final solution, men who may have balked at the gore and cruelty of messier forms of murder.

The typical bureaucrat crucially involved in the execution of the final solution need never have seen a dead Jew, much less murdered one himself. In fact, it is well known that Jews themselves were enlisted to operate the chambers and ovens of Auschwitz and Buchenwald.

To sum up, Mr. President, genocide is, physically and psychologically, a much easier act to commit than we might think. And scientific progress is making it easier all the time. Our lust for new technology is not dimmed by the harmful purposes to which it is so often put.

A German playwright, Rolf Hochhuth, exposed this problem in his efforts to portray on stage the spectre of the camps:

> We lack the imaginative faculties to be able to envision Auschwitz, or exploratory flights into space, or even more mundane matters such as industrial capacity and speed records. Man can no longer grasp his own accomplishments.

We are in a catch-22 situation, Mr. President. Because our accomplishments are so huge and so terrible, we have not concerned ourselves with our own destructive potential. Yet, because that destructive capability is so great, we must act to see that it is never used.

In an age when the push of a button can mean the end of a continent, a treaty that condemns and punishes acts of a logical first act—a small and affordable gesture. If we could accord to the prevention of genocide a small fraction of the effort that we now expend on the weapons of genocide, the future might be free of the terrors of the past.

Mr. President, once again, I thank my good friend, the majority leader, and yield the floor.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. Mr. President, does the Senator from North Dakota wish any time?

Mr. BURDICK. No, Mr. President.

Mr. ROBERT C. BYRD. Does the minority leader wish any time?

Mr. BAKER. Mr. President, I have no request for time.

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized.

Mr. BAKER. Mr. President, I have no need for my time and no requests. Therefore, I yield back my time.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 7590, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill (H.R. 7590) which had been reported from the Committee on Appropriations with amendments.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business for not to exceed 10 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The Senate continued with the consideration of H.R. 7590.

Mr. COHEN. Mr. President, I ask unanimous consent that Thomas Heyerdahl of my staff be granted privilege of the floor during consideration of the energy and water development appropriation bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I am pleased to bring before the Senate today the first of the 13 regular, annual appropriation bills for the fiscal year 1981 which begins on October 1, 1980 and ends September 30, 1981.

And, I am especially proud and pleased that the first appropriation bill for the ensuing fiscal year to be considered by the Senate is the energy and water development appropriation bill. Our Appropriation Subcommittee on Energy and Water Development, which I have the honor of chairing, has worked many hours in hearings, study, examination and markup to produce a well-balanced and sound bill. Our subcommittee membership approaches our work and responsibilities in a totally nonpartisan manner, acting on hundreds and hundreds of individual items. At the outset of my remarks, I want to say a special word of appreciation to our distinguished ranking member, the Senator from Oregon (Mr. HATFIELD) for his leadership on our subcommittee.

It is a real pleasure to work with him, with his very capable staff. I can say without any fear of contradiction, Mr. President, that the bipartisan effort as displayed between our staffs and the ranking minority member and myself and, indeed, with all the members of the committee is something that I would like to see emulated throughout the Senate and throughout the Congress. I believe our committee acts in the national interest without regard to partisan politics, and that is a big mouthful to say, but I think it is exactly true.

We have an excellent subcommittee, Mr. President. Our membership is extremely interested in this jurisdiction. We had present at the markup, if I recall correctly, 13 members, which is a full quorum of the full committee, and we had 13 members throughout the markup of the subcommittee, which shows the seriousness with which our subcommittee approaches this work.

Mr. President, as stated in previous years, energy and water are the fundamental, inseparable subjects of this appropriation bill. Simply stated these resources are the Nation's lifeblood. Only with secure supplies and careful management of these, our most precious resources, can our Nation be assured of a secure, stable, and prosperous future. And, the wise use, development and management of these resources for current needs and thoughtful conservation for future needs are essential.

What we have here, Mr. President, is a capital investment bill, an investment bill, not an expenditure bill.

The purpose of this bill is to provide appropriations for the fiscal year 1981 beginning October 1, 1980, and ending September 30, 1981, for energy and water development, and for other related purposes. It supplies funds for the Department of Energy (except for fossil fuel programs, and certain conservation and regulatory programs) in title I; for water resources development programs and related activities of the Department of the Army, civil functions—U.S. Army Corps of Engineers' civil works program in title II, for the Department of the Interior's water and power resources service in title III; and for related independent agencies and commissions, including the Appalachian Regional Commission and Appalachian regional development programs, the Nuclear Regulatory Commission, the Nuclear Safety Oversight Committee, the Tennessee Valley Authority, and the Water Resources Council in title IV.

The Subcommittee on Energy and Water Development of the Committee on Appropriations held 27 sessions of hearings (19 different days) in connection with the fiscal year 1981 appropriation bill. One closed hearing session was held on classified matters in this bill. Witnesses included officials and representatives of the Federal agencies; numerous Members of the Senate and House of Representatives, Governors, State and local government officials and representatives; and hundreds of citizens of all walks of life from throughout the United States. Testimony, both for and against many items, was presented to the subcommittee.

The subcommittee, by unanimous vote of a quorum present, on August 26, 1980, recommended that the bill, as amended, be reported to the full Committee on Appropriations.

The committee, by unanimous vote of a quorum present on September 4, 1980, recommended that the bill, as amended, be reported.

SUMMARY OF BILL

The President's fiscal year 1981 budget estimates, as amended, for this bill total $11,988,111,000 in new budget (obligational) authority. The recommendation of the committee totals $12,054,520,163. This is an increase of $66,409,163 over the amended budget estimates and $99,407,163 more than the House bill, which totaled $11,955,113,000 as passed by the House. However, the committee considered additional budget estimates not considered by the House totaling $136,252,000. Thus, on a comparable basis, the bill would be under the House-passed bill.

Mr. President, I will not undertake to elaborate on the details of the recommended bill as the report accompanying the bill fully explains the changes recommended. I will summarize or highlight the major programs and activities.

BILL HIGHLIGHTS

ATOMIC ENERGY DEFENSE ACTIVITIES

The amount recommended in the bill includes $3,508,828,500 for atomic energy defense activities. Major programs and activites include:

Inertial confinement fusion	$213,000,000
Naval reactors development	303,350,000
Weapons activities	2,083,523,000
Nuclear materials production	541,700,000
Defense waste management	295,160,000

ENERGY SUPPLY, RESEARCH, AND DEVELOPMENT

The bill recommended by the committee provides a total of $2,648,912,000 for energy supply, research, development and demonstration programs including:

Solar energy	$564,886,000
Geothermal energy	153,021,000
Hydropower	21,800,000
Nuclear fission	787,255,000
Magnetic fusion	394,117,000
Environmental research	235,794,000
Basic energy research	267,285,000

GENERAL SCIENCE AND RESEARCH

The committee recommendation also provides $514.215,000 for general science and research activities in life sciences. high energy physics and nuclear physics including:

Life science and nuclear medicine applications	$46,900,000
High energy physics research	358,845,000
Nuclear physics	108,470,000

REGULATORY AND OTHER INDEPENDENT AGENCIES

Also recommended in the bill is $1,177,978,000 for various regulatory and independent agencies of the Federal Government. Major programs and activities include:

Appalachian regional development programs	$329,300,000
Federal Energy Regulatory Commission	74,374,000
Nuclear Regulatory Commission	452,520,000
Tennessee Valley Authority	287,563,000
Water Resources Council	32,777,000

	1980 enacted to date	1981 budget estimates	1981 House bill	Committee recommendation	Recommendation compared with—		
					1980 enacted	1981 budget estimates	1981 House bill
Title I—Department of Energy	$6,802,237,000	$7,304,054,000	$6,943,725,000	$7,247,670,500	$445,433,500	−$56,383,500	+$303,945,500
Title II—Department of Defense—Civil	3,251,076,000	2,872,914,000	3,108,671,000	2,926,692,000	−324,384,000	+53,778,000	−181,979,000
Title III—Department of the Interior	615,941,000	806,752,000	814,690,000	789,878,000	+173,937,000	+16,874,000	−24,812,000
Title IV—Independent agencies	1,006,658,000	1,004,391,000	1,088,027,000	1,107,604,000	+100,946,000	+103,213,000	+19,577,000
Title V—General provisions				−17,324,337	−17,324,337	−17,324,337	−17,324,337
Grand total of the bill	11,675,912,000	11,988,111,000	11,955,113,000	12,054,520,163	+378,608,163	+66,409,163	+99,407,163

In conclusion, Mr. President, we believe this is an excellent, well-balanced bill reflecting high priority requirements but fiscally prudent. Over $400 million worth of items requested by the public and Members of the House and Senate could not be accommodated—and most of these are very meritorious, needed projects and activities. The bill is within our allocation from the amount allocated from the first budget resolution; $12.1 billion in budget authority and $12 billion in outlays. And we simply do not have any room left in our allocation.

We request that the Senate support the committee's recommendations, act on and pass the bill as soon as possible in order that we can get the bill to conference with the House—resolve the differences, and agree to a conference report—all between now and October 1.

WATER RESOURCES DEVELOPMENT

The committee has also recommended appropriations totaling approximately $3,780,737,000 for Federal water resource development programs. This includes projects and related activities of the U.S. Army Corps of Engineers—civil, the water and power resources services, and the Tennessee Valley Authority. The Federal water resources development program provides lasting benefits to the Nation in the areas of: flood control, municipal and industrial water supply, irrigation of agricultural lands, water conservation, commercial navigation, hydroelectric power, recreation, and fish and wildlife enhancement.

Major programs related to water resources development include:

Corps of Engineers—Civil:	
General investigations	$137,112,000
Construction activities	1,695,973,000
Operations and maintenance activities	978,817,000
Water and power resources service:	
General investigations	36,946,000
Construction activities	603,665,000
Operations and maintenance activities	111,117,000
Tennessee Valley Authority:	
Construction activities	50,032,000
Operating expenses	14,135,000

Mr. President, I want to point out that our recommendations for the fiscal year 1981 provide for a total net increase of approximately $378.6 million over the levels provided for the current fiscal year 1980. However, when one considers that about a $500 million increase over fiscal year 1980 is budgeted and approved for atomic energy defense activities, nuclear weapons production, dealing with our national security requirements, it is easy to see that we are providing less funds for energy supply research and development and water resources development than are available for the current fiscal year. I will review these changes by titles in the bill.

Mr. President, I am pleased to say that we have brought this bill in under the limit as established by the Budget Committee and as allocated by the Appropriations Committee. The Appropriations Committee, acting with the Budget Committee, allocated to us budget levels of $12.1 billion in budget authority, and $12.0 billion in outlay authority. We have brought this bill in under those totals.

The President's fiscal year 1981 budget estimates, as amended for this bill, total $11,988,111,000 in new budget obligational authority. The recommendation of the committee totals $12,054,520,163. This is an increase of $66,409,163 over the amended budget estimates, and $99,407,163 as passed by the House.

However, the committee considered additional buget estimates, not considered by the House, totaling $136 million. Thus on a comparable basis this bill is under the House bill.

Mr. President, I will not detail all of the moneys provided under this bill to the myriad of different agencies. I have left that to the record to point that out, but I do want to emphasize that we have brought this bill on a comparable basis at less than the House bill. We have brought this bill in under the budget target and within the appropriation allocation.

It was a most difficult thing to do, Mr. President, to pare down the various functions of Government in both energy and water resources to fit within those Budget and Appropriations Committee allocations.

It is a curious, a ridiculous, thing, in my view, that at a time of energy crisis the Budget Committee, and Congress later, should cut these functions back so far on the amount of money available to it in budget authority. It just simply does not make sense. Our rhetoric does not match our actions in this Senate on that score.

When the windfall profit tax was up we had wonderful speeches about the uses of the windfall profit tax money for the purpose of helping energy projects.

However, when the reality comes through the budget process, with the allocations made and that, in turn, are allocated by the Appropriations Committee, it gives us not only insufficient room to do many things we would like to do, but we have to pare down and eliminate in some cases many very important and useful projects.

The gas-cooled breeder reactor program, for example—a good program—was completely eliminated from this budget and zeroed out of future Government operations for lack of money.

The Portsmouth centrifuge project. We would have liked to have added another $170 million on that project, which would have completed the first phase a year earlier. But there simply was not enough money to go around.

We cut water resources projects from the House level by $200 million, cutting down and in some cases eliminating many very good projects, projects which I and the committee believe in but we simply did not have the money to go around.

So, Mr. President, to say that this is a tight budget is to very much understate the fact. The fact is that it is a barebones budget with some of the bones eliminated and broken. It is so bare bones because of the fact that the Budget Committee and the Congress, acting on the budget resolution, and our committee's allocation simply did not afford the degree of priority to these essential functions of Government, energy and water, that they deserve.

I hope the Senate will quickly approve this bill this morning. I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I know that we go through a normal litany here on the floor at the beginning of the presentation of a bill between the chairman and the ranking member complimenting one another for extraordinary work and so forth. But I think what the Senator from Louisiana has already stated this morning in reference to the harmonious working relationship that exists on this committee and its nonpartisan character is really something far beyond the normal litany that is exercised here on the floor.

I think part of this is due to the extraordinary capability and devotion of our staff. And I am not in any way saying that other staffs on other committees are less devoted, but certainly on our committee, Proctor Jones and Keith Kennedy, representing the majority and minority staff, have both the professional competence to handle the work and certainly have the devotion to the cause of good legislative procedure.

I not only wish to thank the staff but also express my appreciation for the thoughtfulness and consideration of the Senator from Louisiana in working out these very complex matters.

Mr. President, I rise to support H.R. 7590 and urge its prompt adoption by the Senate. This bill provides $12,054,520,163 in new budget authority for fiscal year 1981 for energy and water development through the activities of the Department of Energy, the Corps of Engineers, the Water and Power Resources Service, and several independent agencies.

The bill also provides for a gratuity for Mrs. Dorothy Runnels, the widow of the late Representative Harold Runnels of New Mexico.

The amount recommended is the result of long hours of testimony from agency officials and private citizens during 27 hearings and two markup sessions.

I know of no committee that has more citizen participation—county commissioners, local government officials generally and citizens at large, preservation organizations, conservation organizations, professional organizations. An amazing array of citizens participate in our hearings, and their testimony is most helpful.

While I do not agree with all the individual matters addressed in the bill—and I do not think anyone really would if they looked in detail at each and every item—I believe, it is fair and reasonable on the whole, providing necessary funds for the urgent national priorities of energy and water development while exercising restraint in less critical areas.

I must emphasize that this committee was under a fiscal restraint, not only in terms of ceilings under the budget resolution, but in its whole approach to these requests in these projects, in keeping with Chairman JOHNSTON's and my concern for responsible Federal spending.

The recommended bill is very close to our subcommittee's allocation by the full committee under the first concurrent resolution on the budget. Our allocation is $12.1 billion in budget authority and $12.0 billion in outlays; this bill provides $12.055 billion in budget authority and $11.8 billion in outlays. Being this close to the allocation ceiling, it will be most difficult to accommodate any floor amendments proposing significant increases without making offset reductions elsewhere in the bill.

And I have to again underscore this particular point. We are at that ceiling level or so close to it that it will not be possible to do anything other than reject, I think, most amendments that will be offered if they are offered to add funds to this subcommittee budget.

If any of my colleagues is looking for a place to cut, may I suggest looking at the $3.5 billion provided for atomic energy defense activities, nearly 30 percent of the amount provided in the entire bill, and an amount greater than that provided for energy supply, research, and development.

Atomic energy defense activities is the one account where we have provided increases over the budget request sufficient to keep pace with inflation. The level of effort in other areas will decline despite some increases over fiscal year 1980, because the increase does not offset the erosion of inflation.

But not in this area. Let me emphasize again that nearly 30 percent of the total amount provided in the bill is dedicated to this weapons program.

Some of my colleagues may not be aware that this bill provides funds for naval reactor development, warhead production, testing of nuclear devices, and production of the special nuclear materials required to fabricate and maintain our nuclear arsenal. I direct their attention to pages 24–27 and 52–62 of our committee report for a description of these programs and the funds provided, and remind them that when we labor under the allocation ceiling of the first concurrent resolution, every dollar added for construction or testing of a nuclear warhead is $1 less for energy research and development. That is the tradeoff. And I do not think we need to play games or try to create illusions that somehow we are overfunding the energy development needs of this Nation when we have these overcommitments to the development of a greater capacity to kill.

I submit that energy security is every bit as important to our national strength and security as is our nuclear weapons stockpile. And I do not say it is an either/or, but I do think that we have tended to think of our national security exclusively in terms of hardware, whereas our national security incorporates and must incorporate many components, including less energy dependence and certainly a stronger and less inflation-ridden economy as two examples of important components to our total national security picture.

But we have become so mesmerized, so fascinated, by the sophisticated weapons provided here in this budget and others, that we have, I think, become caught up in this fallacious reasoning that somehow our whole national security is dependent solely on military hardware.

I sometimes refer to that as a "Shah of Iran mentality," sort of a maginot line mentality. It has been proven to be fallacious in the past. It would be just as fallacious if we adopt it in the 1980's.

In the pursuit of energy security through the development of new and improved energy sources, the committee is recommending $564,886,000 for solar energy, $153,021,000 for geothermal energy, $394,117,000 for fusion, and $21,800,000 for hydropower.

Funds for nuclear waste management and the breeder base program, among others, are included in the $787,255,000 provided for nuclear fission programs.

Within the funds for nuclear fission, $10,000,000 is recommended under the plant and capital equipment account to initiate preliminary activities and allow negotiations for acquisition of away-from-reactor (AFR) storage capacity for domestic spent fuel pursuant to the provisions of S. 2189.

The Senate is aware that we went through a great debate period and a number of votes to finally adopt an amendment that I offered on the floor during the debate of S. 2332 in order to stress the importance of moving with some commitment and some strength of commitment to the objective of controlling and developing a domestic spent fuel storage and handling program. I stress that these funds are for preliminary activities and the initiation of negotiations for AFR acquisition.

Again, as my amendment incorporated during that debate, the committee has directed that no final contracts, transfer arrangements, or agreements on AFR acquisition can be consummated without further congressional approval. This was agreed to by Senator JOHNSTON, our subcommittee chairman, as we raised this question in committee, and we have reached, I believe, a common agreement and complete understanding that we are, in effect, respecting the amendment that was offered and passed by this Senate to S. 2332 in this appropriation measure.

It is the clear intent of the committee as expressed on page 44 of our report and the intent of the Senate, should it enact this bill, that no final contract or transfer or title or final agreement on acquisition can be consummated without further express approval by Congress.

I must underscore that as strongly as possible.

Funds provided are for preliminary activities and negotiations only, so we can begin to address the serious problem of AFR storage.

It would seem to me, Mr. President, and I made clear at the time of the debate on S. 2332, we could not make commitments until we had in place knowledge of what our policy was to be. Otherwise, it was putting the cart before the horse.

In the area of water development, Mr. President, I would like to highlight a few projects.

First, the Tennessee-Tombigbee Waterway project. On every Senator's desk will be found a committee print which addresses all the numerous allegations that have been made against this project, and successfully rebuts everyone of them. Total cost, interest rate, authorized width of channel, benefit-cost ratio, environmental impact, future traffic projections, are all discussed in this committee print. This print was prepared at my suggestion, and I commend its reading to every Senator and concerned staff. The Tenn-Tom is a sound project with the promise of lasting benefits to the Nation, and it should be finished.

Next, Orme Dam. This component of the central Arizona project has been the subject of some controversy, and was on the so-called "hit list" a few years ago, the Carter "Hit List." As a result of that dispute, a study was commissioned to examine the alternatives to Orme, a structure which would provide significant flood control protection to Phoenix, Ariz., but would also flood out a substantial portion of the Fort McDowell Indian Reservation. Our committee recommendation provides for funds to continue the study, and also funds for preconstruction planning of some structure at the Orme site, in anticipation of that being the study's recommendation. No options are foreclosed by this committee directive.

Finally, Mr. President, this bill provides $185,000 for advanced engineering and design of the jetty modifications at the Siuslaw River and Bar, Oreg. This project is of great importance to me and the people on the coast of Oregon, and I want to thank Chairman JOHNSTON for his special cooperation and help on this matter.

And, in closing, Mr. President, I want to express my appreciation to Chairman JOHNSTON and all members of the subcommittee, and all staff, including those mentioned before and Cathy O'Connor of the minority staff and Dave Gwaltney and Gloria Butland of the majority staff for the hours of hard work that have gone into this bill.

Mr. President, I think this is a fair, lean, and responsible bill. I would hope the Senate would see fit to act upon it expeditiously and keep this bill as clear as possible of amendments that add funds to a bill that has already reached the ceiling of its allocation authority and budget authority.

Mr. President, I yield the floor.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I will not detain the Senate but for just a very few minutes.

Mr. President, I have been a long time member of the subcommittee that considered and reported this bill. I would be derelict if I did not warmly thank the chairman of the subcommittee, the Senator from Louisiana, and the ranking minority member, the Senator from Oregon, for the long months and months of work, learning, know-how, diligent application they have put into this bill.

Just about 6 years ago, this bill started changing rapidly in legislation, and now it encompasses our enormous energy program for which we have authorized many, many billions of dollars. We have appropriated many of those billions of dollars in this new problem field. It is the most sweeping thing that has ever come before the Senate, in my opinion, I know since I have been here.

There is this proposition of adjusting to new conditions, further utilizing our energy sources that we do have, and developing new energy sources, handling them, how far we are going to subsidize, how far we are going in the laboratories with the scientific developments that are necessary.

In this bill, and I do not have the figures in mind, there are many, many millions of dollars which are included, and they will be coming.

It was one of the most amazing discoveries I made 5 or 6 years ago, when I saw how this was going to add up.

For someone to manage this bill, to steer it on its course, is absolutely indispensable to our entire economy. There is no doubt about it. That includes all of our major preparedness programs.

When we talk about what we are going to do on one side of the world, what we are going to do in the Pacific, what we are going to do at home, what we are going to do in the Mediterranean and the other trouble spots of the world, we are not going to be able to be effective in any of them unless we are effective, sound, and timely on these energy programs.

We are greatly indebted in our authorizing committee to these distinguished Senators, though there was slow progress made for a while when we could not get the bill agreed upon and passed, and they are entitled to a tremendous amount of credit. I point this out with pride as to what these two men have done, and what other members of the subcommittee have done.

If I may say, I can look back upon the work of this committee here at home concerning water resources, water development, and all the things that go with it, and now in this energy field, and I look upon that with more satisfaction than anything else it has been my privilege to deal with.

I am glad of a chance to say these few words. Again, I appreciate very much what these gentlemen and the other members of this subcommittee have done.

I yield the floor. I thank the Senator again.

Mr. COHEN addressed the Chair.

Mr. JOHNSTON. Mr. President, I yield to the distinguished Senator from Maine.

Mr. COHEN. Mr. President, I have an unprinted amendment which I send to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, will the Senator withhold so we can adopt some of the committee amendments?

Mr. COHEN. I withhold that, Mr. President.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the committee amendments, except the amendments appearing on page 2, line 9 under "Energy Supply R. & D. Operating Expenses;" page 5, line 7 to line 12; page 5, line 24; and page 15, line 10, be agreed to en bloc and that the bill be considered as original text for the purpose of further amendment, provided that no point of order shall be considered as having been waived by reason of this unanimous-consent agreement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The committee amendments agreed to are as follows:

On page 2, line 19, strike "$1,007,040,000" strike "$1,009,040,000";

On page 3, line 3, after "collections" insert a colon and the following:

Provided further, That this appropriation as well as all prior year balances are merged with the Uranium Supply and Enrichment Activities Plant and Capital Equipment Appropriation

On page 3, line 11, strike "$367,515,000" and insert "$382,015,000";

On page 3, line 17, strike "$2,756,023,000" and insert "$2,890,623,500";

On page 3, beginning with line 20, strike through and including page 4, line 3;

On page 4, line 5, strike "general management, program administration, field office and program support functions" and insert "departmental administration";

On page 4, line 9, after "vehicles" insert "and official reception and representation expenses" (not to exceed $35,000);

On page 4, line 11, strike "$388,572,000" and insert "$397,443,000";

On page 6, line 7, after "collections" insert a colon and the following:

Provided further, That this appropriation as well as all prior balances are merged with the Uranium Supply and Enrichment Activities Operating Expenses Appropriation

On page 6, line 21, strike "$120,100,000" and insert "$132,200,000";

On page 7, line 11, strike "$533,205,000" and insert "$618,205,000";

On page 8, line 9, beginning with the colon, strike through and including line 13 and insert a period;

On page 11, line 7, strike "$72,949,000" and insert "$74,374,000";

On page 14, line 16, strike "$140,238,000" and insert "$133,367,000";

On page 14, line 16, after "expended" insert a colon and the following:

Provided, That $200,000 is available for cooperative efforts with foreign governments pertaining to river and harbor and flood control improvements: *Provided further*, That none of the funds made available in this paragraph shall be obligated or expended for the study of Diversion of Lake Michigan at Chicago, if such study would result in any diminution of generation at hydro-electric facilities on the Niagara or St. Lawrence Rivers

On page 15, line 24, strike "$1,500,000" and insert "$1,800,000";

On page 16, line 1, after "and" insert "for revetment repairs nearby, and";

On page 16, line 2, after "expended" insert a colon and the following:

Provided further, That funds appropriated for the Siuslaw River and Bar, Oregon navigation project, authorized by the Rivers and Harbors Act of 1910, as amended and modified, shall be used to design and construct further modifications to that project in accordance with the Report of the Division Engineer, North Pacific Division, dated 16 June 1976

On page 16, line 13, strike "$239,324,000" and insert "$228,970,000";

On page 17, line 8, after "officials" insert a colon and the following:

Provided further, That funds in this Act for the Tensas Basin Red River Backwater Area, Louisiana project are to be used to construct features for flood control and allied purposes for Sicily Island and Below Red River including pumping stations and such other modifications of these or existing features in this area as the Chief of Engineers determines advisable, subject to non-Federal cooperation for each separable feature of such work at the time of construction as is required for work pursuant to the August 18, 1941, authorization

On page 18, line 5, strike "$951,259,000" and insert "$900,397,000";

On page 18, line 6, after "expended" insert a colon and the following:

Provided, That not to exceed $1,000,000 shall be available to reimburse non-Federal public interests for the costs of diking dredged disposal areas at Federal projects provided by non-Federal public interests and for funds contributed or advanced to the Secretary of the Army by non-Federal public interests for diking of dredged disposal areas at Federal projects, during the period October 1, 1978, to December 3, 1979, where the Secretary of the Army, acting through the Chief of Engineers, determines that such costs of diking or funds contributed or advanced and expended were not specifically required of such non-Federal public interests by project authorization.

On page 18, beginning with line 19, strike through and including line 20, and insert in lieu thereof the following:

For design and construction of hopper dredges, and for the purchase of one aircraft, $43,225,000, to remain available until expended: *Provided*, That approximately $8,500,000 of this amount will be used for the purchase of one aircraft for replacement of the existing aircraft of the Chief of Engineers.

On page 21, line 3, strike "$40,079,000" and insert "$36,946,000";

On page 21, line 4, strike "$40,029,000" and insert "$36,896,000";

On page 21 line 11, strike "$596,216,000" and insert "$580,741,000";

On page 22, line 20, after "safety" insert a colon and the following:

Provided further, That no part of the funds herein approved shall be available for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument: *Provided further*, That of the amount herein appropriated not to exceed $6,000,000 for the Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona, shall be available for improvement of the Gila River Channel to facilitate drainage of lands within the District under a repayment obligation heretofore established by existing contract between the Secretary of the Interior and the District.

On page 23, line 12, strike "$114,117,000" and insert "$111,117,000";

On page 24, line 4, strike "$26,128,000" and insert "$22,924,000";

On page 29, line 20, strike "$339,300,000" and insert "$329,300,000";

On page 29, line 21, strike "$214,600,000" and insert "$209.600,000";

On page 31, line 16, strike "$437,220,000" and insert "$452,520,000";

On page 32, beginning with line 3, insert the following:

NUCLEAR SAFETY OVERSIGHT COMMITTEE

For expenses necessary for the Nuclear Safety Oversight Committee, $1,500,000, to remain available until expended.

On page 32, line 23, strike "$290,563,000" and insert "$269,563,000";

On page 33, line 8, strike "$17,000,000" and insert "$18,000,000";

On page 33, beginning with line 10, insert the following:

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962-1962d-3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a-4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a-4 (6)), $32,777,000 to remain available until expended, including $4,748,000 for expenses in administering the Act (42 U.S.C. 1962d(b)), $4,186,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), $3,443,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), $18,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and $2,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. 1962b-3).

On page 34, beginning with line 18 strike through and including line 23, and insert in lieu thereof the following:

SEC. 504. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than 45 days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 505. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within 6 months of completing the initial audit report.

SEC. 506. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 507. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under the Act for procurement of consultant services shall be reduced by the following amounts: Nuclear Regulatory Commission, $897,000; Corps of Engineers, $3,455,000; and Department of Energy, $13,033,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the needs for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

SEC. 508. There is appropriated, out of any money in the Treasury not otherwise appropriated, for payment to Dorothy Runnels, widow of Harold Runnels, late a Representative from the State of New Mexico, $60,663.

Mr. JOHNSTON. Mr. President, the first amendment is that of the distinguished Senator from Maine, dealing with the Dickey-Lincoln project. I ask unanimous consent that it be in order to consider the amendment of the Senator from Maine with respect to the Dickey-Lincoln project at this point, before acting on the other committee amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. COHEN. Yes.

Mr. DOMENICI. I ask unanimous consent that Harold Brayman, Paul Gilman, and Steve Bell be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1552

(Purpose: To eliminate funds relating to the Dickey-Lincoln hydroelectric project on the St. John River, Maine)

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Maine (Mr. COHEN) proposes an unprinted amendment numbered 1552:

On page 15, line 10, strike out "$1,534,703,000" and insert in lieu thereof "$1,533,908,000".

On page 16, line 8, immediately before the period at the end of the line, insert a colon and the following: "*Provided further*, That none of the funds appropriated under this paragraph may be obligated or expended in connection with the proposed Dickey-Lincoln hydroelectric project on the St. John River, Maine".

Mr. COHEN. Mr. President, I intend to ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. There is not a sufficient second at this time.

Mr. JOHNSTON. Will the Senator repeat his request?

Mr. COHEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. COHEN. Let me state to the Chair that, rather than suspend the proceeding at this point, at the conclusion of the debate, I shall call for the yeas and nays.

Mr. President, this amendment returns the Senate to an all too familiar locale—the banks of the St. John River in northern Maine. We are here, once again, to debate the future of the Dickey-Lincoln School hydroelectric project, an issue that has been before this body on many occasions since 1965.

It is hardly arguable that Dickey-Lincoln is in deep trouble in Congress. Our colleagues in the other body have voted no fewer than 14 times since 1965 to terminate the project, including a deauthorization vote earlier this year. For the third year in a row, the House-passed energy and water resource development appropriations bill includes no money for Dickey-Lincoln.

The Senate, which has been a traditional bastion of support for Dickey-Lincoln over the years, narrowly rejected an amendment I offered last July denying funds for the project. In both Houses of Congress, a solid majority of the New England delegation is strongly opposed to construction of the Dickey-Lincoln project.

Opposition to Dickey-Lincoln extends far beyond the Halls of Congress. Former Maine Gov. James B. Longley—who recently passed away—after an extensive review, outlined his strong objections to Dickey-Lincoln in a comprehensive report to President Carter who, incidentally, initially included the project on his now famous—or infamous—"hit-list," which the Senator from Oregon referred to earlier.

In 1977, a blue-ribbon panel of Maine citizens assembled by Governor Longley to study Dickey-Lincoln voted 6 to 4 against construction of the project.

Nearly every major newspaper in the State of Maine has taken an editorial position against Dickey-Lincoln, even in the face of my State's serious energy problems.

The U.S. Fish and Wildlife Service, after assessing the large-scale destruction of terrestrial and aquatic resources that would result from construction of Dickey-Lincoln, has recommended that the project not be built.

The Environmental Protection Agency has continually expressed grave reservations over the project's impact on Maine's environment during the environmental review process on the project.

Last, but certainly not least, an increasing number of Maine and New England citizens, the presumed beneficiaries of Dickey-Lincoln, have said "no" to the project after weighing its environmental, economic, and social costs against its projected power benefits.

Mr. President, several factors are responsible for the erosion of support for Dickey-Lincoln in and out of Congress. In a sentence, they include the cost-effectiveness of the project, New England's rapidly changing energy situation, the massive devastation Dickey-Lincoln would inflict on Maine's landscape, and the increasing attractiveness of alternative sources of power generation for Maine and New England. Each of these factors merits further discussion and consideration.

To date, over $11 million has been spent studying Dickey-Lincoln. Most of these funds have been earmarked for the preparation of a final environmental impact statement, which will be filed within weeks. No further appropriations are required for this effort. The $795,000 which the Appropriations Committee has recommended for Dickey-Lincoln are designated for fish and wildlife mitigation planning, further engineering and site geology work, road relocation surveys, real estate studies, and administrative expenses. Approval of my amendment to strike these funds will in no way jeopardize the filing of the final environmental impact statement.

At October 1979 price levels, the Corps of Engineers estimates that the total price tag for constructing Dickey-Lincoln would be $862.4 million, based on an interest rate of 3¼ percent, and $954.8 million using an interest rate of 7⅛ percent. Significant, neither interest rate accurately reflects present money market conditions, where the Federal long-term cost of borrowing is running in the 10-percent range. I doubt whether even the most ardent supporter of Dickey-Lincoln would argue that the project could pass economic muster at 10 percent. After all, the project barely passed the Corps' economic analysis at 7⅛ percent.

When Congress assigns an absurdly low interest rate to a project such as Dickey-Lincoln in order to produce an artificially favorable benefit-cost ratio, it is engaging in a fiscal sleight of hand which is deceptive at best, and dishonest at worst.

I challenge the supporters of Dickey-Lincoln to tell the Members of the Senate and the American taxpayers where the Federal Government is going to borrow roughly a billion and a half dollars—the true cost of Dickey-Lincoln—at 3¼ percent interest. All of us who are forced to pay double-digit interest rates on home, auto, and personal loans would love to get a piece of the action at such a favorable rate.

If ever a truth-in-lending statement was in order, here is the case.

In determining which power projects are sound investments, the private sector appropriately takes into account the impact inflation will have on the ultimate cost of the facility. The Federal Government, hesitant to acknowledge that inflation will be part of our lives in the future, conveniently ignores this possibility altogether. In essence, we provide the Army Corps of Engineers with a signed blank check with little or no notion of what the final tab will be. This is the out of sight, out of mind school of economics at work.

In the past year alone, price escalation has driven up the cost of constructing Dickey-Lincoln by $76 million. Should inflation average 7 to 8 percent a year between now and 1990, the earliest date by which Dickey-Lincoln could become operational, the total price tag for the project will almost certainly approach a billion and a half dollars. This is the dollar figure the Senate needs to keep firmly in mind when weighing the fate of Dickey-Lincoln.

I hardly need to remind my colleagues that questionable billion and a half-dollar projects such as Dickey-Lincoln make easy targets for extinction, particularly as the pressure to balance the Federal budget increases, and will continue to increase in the future. In fact, this project has already been rejected in the other body, and I believe it is only a question of time before the Senate follows suit.

Beyond its enormous price tag, Dickey-Lincoln has fallen victim to the energy transformation now taking place in Maine and New England. Long-range forecasts of electrical energy demand have been significantly adjusted downward in recent years, reflecting the conservation efforts of our citizens. The New England region has experienced an average annual growth rate of only 1.4 percent for winter peak, a figure which traditionally rose at an annual rate of 7 percent or higher prior to 1974. In its latest load and capacity report for the 1980–95 period, the New England Power Pool Planning Committee has again revised its winter peak projections downward, this time by a full 1.1 percent below the previous year's forecast.

Mr. President, I ask unanimous consent that excerpts from the New England load and capacity report (1980–95) appear in the RECORD at this point, along with an April 2, 1980 Boston Globe article entitled "New England Utilities Cut Projected Demand."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEW ENGLAND POWER PLANNING,
West Springfield, Mass., March 14, 1980.

NEPOOL Planning Committee Members.

GENTLEMEN: This "New England Load and Capacity Report—1980–1995" dated April 1, 1980 summarizes forecasts of electrical peak load, capabilities and reserves for the period and the 1979 summer and winter peak information. The summer peak of 14341 MWs occurred on August 2, 1979 and the 1979/80 winter peak of 15311 MWs occurred on December 19, 1979.

The "NEPOOL Model for Long Range Forecasting of Electrical Energy and Demand" has been used to produce this regional forecast, incorporating, for the first time, some load management concepts. Specificially, controlled storage-type electrical space heating and water heating are assumed for the region resulting in about an 800 MW decrease in the otherwise expected 1995 winter peak. The resultant annual compound growth rate for 1979 through 1995 is 2.0 percent for summer peak, 2.7 percent for winter peak and 2.6 percent for energy. This is a decrease in the growth rate of about 1.1 percent in winter peak and energy and 1.7 percent in summer peak from the April 1, 1979 report.

Adequate reserves are indicated for the expected peak loads through 1991/92, assuming all five "NEPOOL Planned" units are in service as scheduled, even though two units do not, as yet, have construction permits. Additional capacity will be required for 1992/93 and beyond.

However, with approximately 60 percent of the existing capacity in oil-fired units, energy deficiencies could occur in the mid 1980s. It is especially critical that all non-oil-fired capacity be built as scheduled and that conservation and loan management efforts be continued to prevent energy deficiencies and to achieve the lowest possible price for electric energy.

Appendix "B" details the schedule of "NEPOOL Planned" units, as well as some of NEPOOL's planned commitments to other than oil-fired generation (such as hydro, wood, refuse and coal).

This report includes the latest data available at the time of publication and is intended as a long-range planning guide to meet the future electrical energy and demand requirements of New England.

Sincerely,

JAMES R. SMITH,
Secretary, NEPOOL Planning Committee.

SUMMARY—SYSTEM CAPABILITIES AND ESTIMATED PEAK LOAD, WINTER 1980/81–1995/96

[Megawatts]

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
Total capability,[1] item No. 25	21,977	22,237	22,556	23,718	23,692	25,790.	26,723	26,596	26,596	27,166	27,166	27,166	27,122	27,120	27,120	27,120
Total peak load, item No. 26	16,110	16,250	16,590	16,960	17,390	17,870	18,420	18,960	19,500	20,040	20,650	21,280	21,930	22,620	23,370	24,170
Reserve before maintenance	5,867	5,987	5,966	6,758	6,302	7,920	8,303	7,636	7,096	7,126	6,516	5,886	5,192	4,500	3,750	2,950
Reserve before maintenance (percent)	36.4	36.8	36.0	39.8	36.2	44.3	45.1	40.3	36.4	35.6	31.6	27.7	23.7	19.9	16.0	12.2
Scheduled maintenace, item No. 27	242	133	913	133	1,000	500	500	500	500	500	500	500	500	500	500	500
Reserve after maintenace, item No. 28	5,625	5,854	5,053	6,625	5,302	7,420	7,803	7,136	6,596	6,626	6,016	5,386	4,692	4,000	3,250	2,450
Reserve after maintenance (percent), item No. 29	34.9	36.0	30.5	39.1	30.5	41.5	42.4	37.6	33.8	33.1	29.1	25.3	21.4	17.7	13.9	10.1

[1] Additions include only "NEPOOL Planned" and company authorized generation capacity. Refer to p. 60 for Summary of Deactivated Reserve Units.

SUMMARY—GENERATION ADDITIONS, RERATINGS AND RETIREMENTS, WINTER

[Megawatts]

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
Existing capability	21,672	21,669	21,588	21,725	21,722	21,696	21,515	21,299	21,172	21,172	21,174	21,174	21,174	21,129	21,128	21,128
Retirements	−17	−14	−19	−5	−6	0	−17	−126	0	0	0	0	−45	0	0	0
Reratings	+5	0	+13	0	−1	0	+1	0	0	2	0	0	0	−1	0	0
Adjustments for purchase and sales	+9	−90	+143	+2	−20	−2	0	−1	0	0	0	0	0	−1	0	0
Mepco/NB purchase change						−200	−200									
Net capability (active)[1]	21,669	21,565	21,725	21,722	21,696	21,494	21,299	21,172	21,172	21,174	21,174	21,174	21,129	21,128	21,128	21,128
Deactivated reserve	296	296	273	273	273	273	252	252	252	252	252	252	252	252	252	252
COMPANY AUTHORIZED SMALL UNITS																
Dwight & Bantam HY (January and June 1980)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Barker Mill HY (February 1980)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Chicopee D, Nos 1, 2, 3 (November 1980)	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Lawrence HY Nos. 1, 2 (July 1981)		17	17	17	17	17	17	17	17	17	17	17	17	17	17	17
Garvins HY Nos. 1, 2 (November 1981)		6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
Brunswick Topsham HY (February 1982)			12	12	12	12	12	12	12	12	12	12	12	12	12	12
Hadley Falls HY No. 2 (June 1983)				15	15	15	15	15	15	15	15	15	15	15	15	15

	1980/81	1981/82	1982/83	1983/84	1984/85	1985/86	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96
NEPOOL PLANNED UNITS																
Stony Brook CC (November 1981)		341	341	341	341	341	341	341	341	341	341	341	341	341	341	340
Stony Brook GT (November 1982)			170	170	170	170	170	170	170	170	170	170	170	170	170	170
Seabrook No. 1 NP (April 1983)				1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Seabrook No. 2 NP (February 1985)						1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Pilgrim No. 2 NP (December 1985)						1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Millstone No. 3 NP (May 1986)							1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150	1,150
Sears Island No. 1 COL (November 1989)										568	568	568	568	568	568	568
Total capability [1] [2]	21,977	22,237	22,556	23,718	23,692	25,790	26,723	26,596	26,596	27,166	27,166	27,166	27,122	27,120	27,120	27,120

[1] All figures are shown rounded to the nearest whole number, thus summing the rounded capabilities may differ from the indicated totals.

[2] Additions include only "NEPOOL Planned" and company authorized units. Deactivated reserve detail is shown on p. 60.

[From the Boston Globe, Apr. 2, 1980]

N.E. UTILITIES CUT PROJECTED DEMAND

(By Jerry Ackerman)

New England's electric utility companies yesterday said energy conservation efforts and increasing prices have led to a sharp cutback in the growth expected in the region's demand for electricity over the next 15 years.

The utilities' planning arm, the New England Power Pool (NEPOOL) said demand for electricity is now expected to increase only an average of 2.6 percent a year through 1995.

The projection represents a reduction of 40 percent from last year's forecast of 4.3 percent annual growth over the same period. That forecast became outdated in less than a year as 1979 sales of electricity in New England rose by barely 2 percent.

NEPOOL's forecasts, often criticized for their optimism by opponents of new nuclear power plants, are used by member companies and public officials for scheduling new power-plant construction and retirement of obsolete generating equipment.

The projections have been declining annually since 1973, when an oil embargo started driving up prices and encouraging conservation by customers. Before then NEPOOL consistently projected sales growth at 7 percent a year and more.

NEPOOL said in the report it filed yesterday with the Massachusetts Energy Facilities Siting Council that with completion of plants now being built or planned, the region will have excess, or reserve, generating capacity through 1992.

That reserve capacity will reach its peak in 1986–87 at 42.4 percent, or more than double what the power-generating industry considers to be a safe margin, if four nuclear plants now under construction are completed on schedule.

Those four, and their scheduled completion dates, are the Public Service Co. of New Hampshire's two reactors at Seabrook, N.H. (April 1983 and February 1985); Boston Edison Co.'s Pilgrim 2 reactor at Plymouth (December 1985), and Northeast Utilities' Millstone 3 reactor at Waterford, Conn. (May 1986).

Until then, however, NEPOOL planning director James R. Smith said, the region will remain heavily dependent on oil for its electrical generation. "It is especially critical that all non-oil-fired capacity be built as scheduled . . . to prevent energy deficiencies and to achieve the lower possible price . . .," he said.

Smith said the largest adjustment incorporated into the long-term forecast this year is an expectation of a surge in use of controlled storage space heating and water heating equipment.

Widespread use of these devices, which draw electricity intermittently to even out present twice-a-day peak demands for power will reduce the needs for new generating capacity by 800 megawatts, about equal to one large coal-fired or nuclear plant.

Mr. COHEN. Mr. President, while the downward trend in electricity growth rates in New England is very encouraging, it does not obviate the need for additional nonoil-fired baseload capacity to replace existing oil-fired units. It does, however, call into serious question the need for large scale, costly peaking power projects such as Dickey-Lincoln which are designed to operate only a few hours a day.

As the April 1980 New England power pool forecast clearly shows, insufficient electrical generating capacity is not, I repeat not, New England's problem. If peak demand should continue to grow at the same rate that it has since 1974, the reserve margin in the NEPOOL system could rise to near 50 percent in 1990, or more than double what the power-generating industry considers a safe margin. That is an enormous amount of excess capacity which, of course, has to be paid for by electric power consumers.

The issue that New England must concern itself with is that approximately 60 percent of existing capacity is in oil-fired units. This condition has not only led to electrical costs which are 37 percent higher than the national average, but has placed the region at a serious disadvantage in competing with other parts of the country for industrial development and economic growth.

To some, it may appear that this point alone is persuasive evidence that Dickey-Lincoln should be built. However, a closer look at oil consumption patterns in the New England utility sector shows clearly why Dickey-Lincoln is an inappropriate response to the problem.

According to data compiled by the Department of Energy, in 1979, New England utilities burned nearly 73 million barrels of oil to produce electricity. Approximately two-thirds of this total was burned by utilities in one State, Massachusetts.

Over 99 percent of the 73 million barrel total was used by utilities to fuel baseload and intermediate generating units. Less than 1 percent of the total was used to fuel peaking units. Stated differently, New England utilities used an average of less than 1,900 barrels of oil a day to meet peak energy demands, or a minute fraction of the oil used daily in the region.

Mr. President, the message could not be clearer. The essence of the energy challenge confronting New England utilities is to replace existing oil-fired baseload units with nonoil fired baseload capacity. And that is precisely what is reflected in the present building plans of investor-owned utilities in the region. A peaking power project such as Dickey-Lincoln, which would displace only 2.3 million barrels of oil annually, is clearly not geared to the present needs of Maine and the rest of New England. This point has been emphasized over and over in recent discussions I have conducted with power planners in my State.

I do not know who the Corps of Engineers and the Department of Energy are talking to, but they have obviously failed to consult with those parties who have the responsibility for assessing the power needs of New England. Had they done so, they could only conclude that Dickey-Lincoln is unnecessary.

Mr. President, the Department of Energy's most recent power marketing feasibility study for Dickey-Lincoln pointedly demonstrates that the peaking capacity provided by the project is not an urgent requirement in New England. Let me take just a moment to discuss the report's findings.

According to DOE, Dickey-Lincoln would be able to produce a total of 100 megawatts of intermediate power and 800 megawatts of peaking power. The 100 megawatts of intermediate power and 100 megawatts of peaking power would be reserved for sale in the State of Maine. The balance of 700 megawatts of peaking power would be marketed in the other New England States.

By DOE's own admission, the so-called "preference customers" throughout New England, to whom Dickey-Lincoln power would be sold, could not even absorb one-half the power made available by the project when it is initially scheduled to come online in 1990. Even assuming generous growth rates, DOE concluded that Maine preference customers would not be able to fully utilize the intermediate power produced by Dickey-Lincoln until 1996 at the earliest.

That still leaves the Department of Energy with the task of disposing of the

100 megawatts of peaking power reserved for Maine for which there is no market in the foreseeable future. Of the remaining 700 megawatts of peaking power available to the other New England States, DOE found that only 350 megawatts could be absorbed by preference customers in 1990.

As my colleagues know, Federal law requires that the total costs of power production and transmission, including annual operation and maintenance expenses, be repaid with interest over 50 years. If there is no market for as much as one-half of the power Dickey-Lincoln would generate, this obviously raises some serious questions.

Perhaps the proponents of the project could enlighten the Senate as to how the taxpayers of this country are going to recover their billion and a half dollar investment in Dickey-Lincoln if large quantities of power go unsold, which is certainly a possibility, at least in the State of Maine. It would also be interesting to learn how Dickey-Lincoln power is going to be used in a system which may have a 50-percent reserve margin in 1990.

Is the sharp cutback in electricity demand that New England has experienced since 1974 an aberration? Is the rate of growth for peak demand likely to rise to pre-1974 levels in the years ahead?

Most power planners in New England do not think so.

New England Electric System (NEES), one of the largest utilities in New England, has unveiled an innovative and ambitious plan which assumes an average annual peak load growth rate of only 1.9 percent between now and 1995. At the heart of the plan is a major conservation and load management program which is expected to reduce the need for additional generating capacity some 300 megawatts.

Commenting on the NEES plan, the chairman of the Maine Public Utilities Commission wrote to me as follows:

> We are aware that the New England electric system, operating in Massachusetts, New Hampshire, Vermont and Rhode Island has set a long-term peak load growth goal at 1.9 per cent as stated in their NEESPLAN. The Commission has made no determination as to the reasonableness or appropriateness of NEESPLAN type goals for Maine, although I can say that I personally believe the plan has considerable merit.

Let me quote from a letter I received in March from the executive secretary of the Division of Public Utility Control for the State of Connecticut:

> Meeting projected peaking power needs of the residents of Connecticut does not appear to be a major problem at this time and we expect that Northeast Utilities, Connecticut's largest electric utility, will cotinue to operate at an average 18 per cent excess capacity through the year 2000.
>
> Finally, the assistant to the president of Bangor Hydro-electric offered the following observation in a recent letter to me: "Peaking (power) is not New England's problem. New England needs non-oil base loaded (not peaking) capacity to reduce its dependence on oil."

Mr. President, one of the most significant energy bills approved by the Congress in recent years is the Public Utility Regulatory Policies Act of 1978. This act requires State utility regulatory agencies to consider a number of alternative rate structures and load management techniques, many of which are being employed successfully by electric utilities throughout the Nation. By altering the pattern of electric use, these techniques can improve the efficiency of existing electric energy systems, reduce reserve requirements for generation and transmission capacity, improve reliability of service, and even lower the cost of power to consumers.

The attractiveness of conservation increases with each hike in oil prices. Implementation of a strong conservation and load management effort, while still in its infancy in this Nation, is already beginning to have a significant effect in reducing the need for large-scale peaking power projects such as Dickey-Lincoln. It represents a philosophical departure from traditional utility practices, but it can pay big dividends to both utilities and their customers. It should be given a chance to work before we proceed with large-scale projects such as Dickey-Lincoln.

Mr. President, I ask unanimous consent that a recent National Journal article entitled "Utilities Turn to Conservation—With a Little Help From the Feds" be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. EXON). Without objection, it is so ordered.

(See exhibit 1.)

Mr. COHEN. Mr. President, while replacing existing oil-fired generation in New England with nonoil fired capacity is going to take time and money, I can report many encouraging developments on this front.

Coal is returning to the New England energy scene, and is expected to make a significant contribution to reduced oil use in the utility sector in the years immediately ahead. An exhaustive study completed by the New England Congressional Caucus in August of 1978 concluded that converting to coal could save up to 31 million barrels of oil annually.

Wood, New England's "green gold," has been reborn as an energy source, and now provides heat to one-third of all households in the region. Estimates are that as much as 4 percent of New England's energy demand is met by wood for an oil displacement savings of between 21 and 24 million barrels of oil per year.

A recent study conducted by the New England River Basins Commission concluded that of the nearly 11,000 existing dams in the region, approximately 1,750 could provide a practical contribution to New England's power needs and to the reduction of the region's dependence on foreign oil. In the State of Maine alone, 465 sites were identified as having feasible hydropower potential, including several sites in the Dickey-Lincoln area.

An estimated 6,000 homes in New England now depend in whole or in part on solar energy for heating and cooling. Federal tax incentives and low-interest loans can only accelerate solar energy use in New England in the future.

A recent study completed by the energy research group for the New England Electric System indicates that there is a potential of 400 megawatts of generating capacity from solid waste in New England based on refuse availability.

The potential output of projected resource recovery plants in New England, if used only to fuel electric generating plants, could cut present residual fuel imports by 22 percent. For a fraction of the cost of Dickey-Lincoln, New England could generate enough electricity from solid wastes by the year 2000 to displace over 2 million barrels of oil annually, or over three times as much oil as Dickey-Lincoln would displace. The capacity to cogenerate steam and the additional service performed by reducing community disposal and landfill dilemmas does indeed promise an attractive economic potential for solid waste electricity generation over the next 20 years.

The dream of harnessing the great tides in the Cobscook Bay region of Maine as a means of generating electrical energy remains very much alive today. Officials of the Army Corps of Engineers are now preparing an updated assessment of the economic and environmental feasibility of a tidal project in Cobscook Bay, and will report their findings to the Congress later this year. On another front, the Department of Energy has funded a feasibility study of a smaller tidal power project in the Half Moon Cove area in eastern Maine.

Finally, earlier this summer, the Department of Energy agreed to support feasibility studies of several promising synthetic fuels projects in New England. Included in the awards are study funds for a combined-cycle, coal gasification facility with 1,000 megawatts electrical generating capacity proposed for Fall River, Mass., and a 480 megawatt combined-cycle medium Btu coal gasification facility at Sears Island, Maine. These extremely promising projects, along with other innovative energy proposals now under active consideration, offer the possibility of further accelerating New England's shift away from insecure and expensive foreign oil supplies.

Mr. President, it should be abundantly clear that New England's energy future is not inextricably linked to construction of Dickey-Lincoln as proponents of the project suggest. We have a number of alternatives which are cheaper, more economically efficient, and less environmentally destructive. Most importantly, these alternatives can produce the type of power New England needs—baseload power.

Before commenting on the environmental consequences of Dickey-Lincoln, I would like to take a moment to clarify certain misunderstandings which have arisen in connection with the project. Two points in particular deserve attention: Who will benefit from construction of the project and will Dickey-Lincoln serve as a magnet attracting new industry to economically depressed areas of Maine?

The answer to the first question lies in the Federal requirement that publicly-owned utilities and cooperatives receive preference in the sale of power from Government built facilities. There are presently 79 so-called "preference agencies" in New England, including nine in the State of Maine.

I ask unanimous consent to have printed in the RECORD at this point a State-by-State listing of the preference agencies in New England.

There being no objection, the material was ordered to be printed in the RECORD as follows:

PREFERENCE AGENCIES IN THE NEW ENGLAND STATES

MAINE

Houlton, Kennebunk, Lubec, Madison, Van Buren, Eastern Maine EC, Fox Islands EC, Swan's Island EC, Union River EC.

NEW HAMPSHIRE

Ashland, Littleton, New Hampton, Wolfeboro, Woodsville.

New Hampshire EC.

VERMONT

Barton, Burlington, Enosburg Falls, Hardwick, Hyde Park, Jacksonville, Johnson, Ludlow, Lyndonville, Morrisville, Northfield, Orleans, Readsboro, Stowe, Swanton.

Vermont EC, Washington EC.

MASSACHUSETTS

Ashburnham, Belmont, Boylston, Braintree, Chester, Chicopee, Concord, Danvers, Georgetown, Groton, Groveland, Hingham, Holden, Holyoke, Hudson, Hull, Ispwich, Littleton.

Mansfield, Marblehead, Merrimac, Middleboro, Middleton, North Attleboro, Norwood, Paxton, Peabody, Princeton, Reading, Rowley, Russell, Shrewsbury, South Hadley, Sterling, Taunton, Templeton, Wakefield, Wellesley, West Boylston, Westfield.

RHODE ISLAND

Pascoag Fire District.

CONNECTICUT

Groton, Jewett City, Norwalk, Norwich, South Norwalk, Wallingford.

Mr. COHEN. Mr. President, at the present time, private utilities in Maine provide 97 percent of the electricity which is consumed annually in the State. Preference customer loads total only about 3 percent. Because of the Federal requirement that I referred to earlier, 97 percent of my State's electrical consumers are not likely to receive any tangible benefits from Dickey-Lincoln. Their power costs will be unaffected by Dickey-Lincoln, even if they happen to live next door to the project but are served by a private utility, as are most consumers in the project area. Only the small percentage of Maine electrical consumers served by preference agencies are likely to experience any savings in their power costs over the 50-year repayment period of the project.

The situation does not appear to be much different in the five remaining New England States. Rhode Island has only 1 preference customer, Connecticut and New Hampshire each have only 6, and Vermont has 17. While there are 40 preference customers in Massachusetts, they account for only a small percentage of the electrical power consumed in the Commonwealth.

The inflated claims relative to Dickey-Lincoln's job creating potential are dismissed in the corps' own environmental impact statement. Let me quote from the report:

> A few energy intensive industries are usually attracted by the availability of low cost power. However, peaking power is not particularly suited to fulfilling this need. To the extent that baseload power is better utilized through load diversification, peaking power may be helpful in keeping existing industry and encouraging new light industry.

As I acknowledged earlier, 100 megawatts of intermediate power from Lincoln School will be reserved for sale in Maine. This power, however, is not expected to yield the significant cost differential necessary to attract industry.

That construction of the Dickey-Lincoln project would result in unparallelled environmental destruction in the St. John River basin—the last great near wilderness ecosystem in the northeast United States—is obvious to anyone familiar with the corps' environmental impact statement.

I ask unanimous consent that an excerpt from the revised draft environmental impact statement on Dickey-Lincoln detailing the adverse effects of the project which cannot be avoided be included in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. COHEN. Mr. President, let me briefly highlight the corps' findings for my colleagues.

Dickey-Lincoln would destroy 278 miles of the St. John River, the last great free-flowing river in the Northeast United States. The project would also flood 30 ponds and lakes, and destroy acres of valuable wetlands and deer yards.

Construction of the project would severely erode the forest resource base of Maine. Nearly 90,000 acres of timberland would be flooded, an additional 124,210 acres would be taken from production for wildlife mitigation purposes, and over 200,000 acres of harvestable timber would be isolated from Maine by the reservoir behind Dickey Dam. The proposed mitigation lands are a source of employment for approximately 150 personnel at the present time—jobs which could be permanently lost if Dickey-Lincoln is built.

The extension transmission network that would be necessary to carry Dickey-Lincoln power from the far reaches of northern Maine to markets hundreds of miles to the south will cut a wide swath through Maine, New Hampshire, and Vermont. A ditch-type environment will replace the beautiful fields and countryside which now characterizes this area of New England.

An estimated 161 families and 16 commercial facilities would have to be relocated as a result of the project. Unavoidable economic, physical, psychological, and social hardships would inevitably occur. At a public hearing in Fort Kent, which is near the Dickey-Lincoln site, a vast majority of witnesses expressed strong opposition to the project.

Inundation caused by the project would result in the total destruction of over 88,000 acres of terrestrial habitat and its associated aquatic ecosystem. Involved in the loss of this habitat is all current use of this area by all forms of life, including man.

Were Dickey-Lincoln capable of generating truly significant amounts of electrical energy now provided by oil, the environmental and societal tradeoffs might be more palatable. But it will not.

Were Dickey-Lincoln the most cost-effective way of meeting the future energy needs of New England consumers, the environmental and societal costs might be acceptable. But it is not.

Were Dickey-Lincoln to yield widespread economic benefits throughout Maine and New England, the environmental and energy equation might be balanced differently. But it will not.

Were Dickey-Lincoln an affordable and appropriate response to New England's energy problems, today's debate might not be necessary. But it is not.

Mr. President, I was a first year law student when Dickey-Lincoln was initially conceived. The project was authorized at a time in which Federal spending had still not topped the $100-billion mark. Eight different Congresses have debated Dickey-Lincoln at length, and over $11 million has been spent studying the project.

Clearly, it is time to write the final chapter in the long and tortuous history of Dickey-Lincoln. We have studied the project from every possible angle, and it just does not measure up.

The St. John River is among Maine's most valuable energy and environmental assets. I am not unalterably opposed to harnessing the hydroelectric potential of this great river as long as it can be done in a responsible manner.

But I will not stand idly by and allow the Federal Government to preempt this resource to build a project which is not structured to my State's power needs.

I cannot urge my colleagues too strongly to approve my amendment and terminate the marathon debate on Dickey-Lincoln. Let us put the project to rest, once and for all, and end the divisiveness which has impeded efforts to plan an imaginative, responsible, and affordable energy future for Maine and New England.

Mr. President, I ask unanimous consent that a letter from Governor Longley addressed to President Carter be printed in the RECORD at the conclusion of my remarks along with several editorial pieces expressing their strong opposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. COHEN. Mr. President, I thank my colleagues for their consideration, and I urge the adoption of the amendment.

EXHIBIT 1

UTILITIES TURN TO CONSERVATION—WITH A LITTLE HELP FROM THE FEDS

(By Neal R. Peirce and Carol Steinbach)

Like many other utilities, the New England Electric System has discovered energy conservation.

Rejecting the traditional strategy of building more power plants to meet the growing demands of its customers, it is embarking on a course that combines techniques for cutting energy use with reliance on nontraditional sources of energy production.

It has patented a remote-control system for turning large commercial air conditioners on and off during hot summer afternoons, thus reducing electrical consumption at a time when demand is greatest. In the winter, it is exploring using electricity at night, when demand is lowest, to produce heat that can be stored in ceramic bricks or water and released the next day.

It is not only converting its oil-burning plants to coal but also beginning to use hydroelectric plants, solar and even wind-driven generators. The planned payoffs: reducing the utility's reliance on foreign oil from 73 to 10 percent of its fuel needs and trimming its capital costs from $6.6 billion to $5.1 billion, thus cutting the U.S. balance of payments deficit by $5 billion and saving its own customers $1.2 billion during the next 15 years.

Public utilities such as New England Electric, and the state commissions that regulate them, have hardly had a reputation over the years as innovators of energy policy. But in the past two years, many of them, prodded both by new economic realities and by the federal government, have begun following the same trail as New England Electric.

In legislation enacted in 1978 and 1980, Congress ordered utilities and utility commissions, which traditionally had promoted energy consumption, to help their customers conserve electricity and to find new and less expensive ways to generate power. And with the arrival last year of Secretary Charles W. Duncan Jr. and deputy secretary John C. Sawhill, the Energy Department has stressed conservation as never before.

For some states, the high cost of generating electricity prompted conservation even before the federal government got into the act. "The days of cheap energy are gone forever," said Lee Calloway, director of conservation services for Pacific Gas & Electric Co. in San Francisco. "Now it's cheaper to save energy than to buy or generate it tomorrow."

California has been a leader among states that have moved on their own to substitute energy conservation for construction of more and bigger power plants. "If our projections come out the same for building a new power plant or for putting attic insulation in 100,000 homes, we're going with the attic insulation," said John Bryson, president of the California Public Utilities Commission.

Like Bryson, many utility company officials and state utility commissioners are finding that it's not only cheaper but also less risky to resort to conservation than to rely on power plants—particularly nuclear plants—that can take years to build and may have to be shut down for safety reasons. Conservation also means less pollution, and it lets utility companies avoid the political controversies that usually swirl around power plant construction.

"In 15 years, the utility industry will be dramatically different from today," said Richard Cotton, special counsel to Sawhill at the Energy Department. "The change will go gradually, utility by utility. More building was the absolute byword of the first three-quarters of this century, but utilities are not plunging unthinkingly into building any more. Over the next two decades, they're going to be asking a whole series of new questions."

ECONOMIC PRESSURES

Those new questions are already being raised now that the good old days when electricity cost next to nothing to produce are gone.

"For years, every time we added a new power plant, the average cost of electricity came down," Calloway said. "The more electricity people used, the cheaper it got."

But during the 1970s, escalating fuel costs, high interest rates, inflation and increasing construction costs associated with stricter federal and state environmental and safety regulations halted nearly a century of unfettered economic inducements to utility growth. Today, expensive new power plants are undertaken at enormous financial risk. Generating capacity that cost $150 a kilowatt to build only a decade ago now costs 10 times that amount or more.

In addition, demand for new power, which grew steadily at about 7 per cent annually for many years, has now dropped about in half in the United States—and by considerably more in some areas of the country.

"The whole underlying economics have changed so dramatically that utilities are in flux," said Bryson.

Because of the time required by state utility commissions to approve rate increases, some utilities have had to borrow funds to build new generating capacity at interest rates higher than the rate of return that the commissions permit them to earn. Under those conditions, "no utility in its right mind had better invest in new capacity because you're diluting your stockholders' equity," said Clark Bullard, former director of the Energy Department's conservation and solar policy office. "If this practice continues, the resource utilities may find scarcest is people to buy their stock."

The transition to conservation has proved difficult for many utility executives who remain unconvinced that the build-more philosophy is out of date. A California Public Utilities Commission official said many executives question whether investors will accept a shift "from big plants and big capital investments to an industry with dinky little things on people's roofs and insulation in their walls."

The utility industry still has some of "the most troglodytic, traditional utility managers to deal with," added a House subcommittee staff member.

Most state commissions have also been slow to push conservation programs or order utilities to revise traditional pricing practices. As a result, the over-all record of utility conservation remains spotty.

The three largest utilities in the conservation-minded Pacific Northwest, for example, have weatherized only 5 per cent of the 276,000 electrically heated homes in their service districts since 1978, at a total investment by the utilities of about $19 million. By comparison, according to a report by Roger Cavanaugh in *Amicus Journal*, public utilities will pay $20 million per month as a result of construction slippages predicted for 1980 for two nuclear facilities in Washington.

The value of conservation varies significantly from state to state and even among utilities within a state. Factors include the state's growth rate, the climate, the season of peak energy use, the kinds of fuel the utility burns, the percentage of homes and businesses using electricity or gas, the price of producing or purchasing added power and the amount of the utility's reserve electrical generating capacity.

Conservation is likely to be especially attractive in growing regions where capacity is running out and utilities soon must purchase more high-priced fuels or construct more power plants. But even here, programs that are cost-effective in one state may be of lesser value to another.

Attic insulation is very useful in Portland, Ore., where electrical demand is greatest during the cold winter months. But attic insulation is not as effective in keeping a house cool, and so for utilities that are busiest during the summer—and the majority probably are—programs to cycle air conditioners on and off are more valuable. Utilities with large reserve generating capacity and slow growth in demand—Consolidated Edison Co. of New York Inc., for instance—may not find any form of conservation compelling, at least in the short run.

But even utilities in states with high energy reserves may find weatherization and other conservation measures desirable under some circumstances. By conserving, utilities can delay the time when worn plants have to be replaced with expensive new ones. And, said Bryson, "you can't name one state without some reliance on oil and gas and where some plants won't have to be phased out" to comply with the gradual but mandated shift from oil and gas to coal required by the 1978 Power Plant and Industrial Fuel Use Act.

FEDERAL PRESSURES

That act is one of five parts of the omnibus 1978 National Energy Act, which signaled an end to the federal government's traditional hands-off approach to electrical utility regulation.

In addition to mandating conversion to coal, the 1978 act requires the states to prepare residential conservation plans (the National Energy Conservation Policy Act), provides tax credits for investments in energy conservation (the Energy Tax Act) and requires state regulatory commissions to move toward rate structures that encourage conservation (the Public Utility Regulatory Policies Act).

In the conservation policy act, Congress gave the states until June of this year to draw up energy conservation plans for their regulated utilities. At a minimum, the utilities had to provide consumers with information about conservation, audit homes for energy efficiency and agree, as a "project manager," to arrange for installing and financing improvements chosen by customers.

The law specifically prohibited utilities from selling or installing the improvements themselves. Utilities might make loans for some consumer conservation measures, but only up to $300. The only exception to the financing ban was for utilities such as the Tennessee Valley Authority (TVA) and Oregon's Pacific Power & Light Co. that were already operating financing programs or had announced plans for them.

The law also forbade utilities from paying for their conservation programs by including their costs in their rate base—the technique by which they finance new power plants and other capital investments.

These prohibitions grew out of several concerns. Some Members of Congress viewed the utilities as poor innovators and opposed allowing them too much involvement in the conservation business. Banking groups were upset at the prospect of utilities poaching on their territory by becoming lenders to small depositors. Environmental and solar groups expressed fear that utilities were embracing conservation solely out of a desire to profit from the new market.

The most serious objection was that if they were allowed to finance and install conservation equipment and alternative energy devices, the utilities might use their status as monopolies to engage in anticompetitive practices and freeze out smaller independent businesses.

But by late 1979, most of the opposition to greater utility company involvement had dissipated. Fears associated with utility financing, many conservation advocates felt, had been overblown.

"Whether we like utilities or not, they reach just about every building in America and provide the best potential delivery system for conservation measures that is presently available," TVA chairman S. David Freeman told the House Interstate and Foreign Commerce Subcommittee on Energy and Power in October.

Other witnesses before that committee confirmed that in the absence of one-stop shopping, homeowners did not bother to invest in energy conservation. Existing federal and state weatherization incentives had induced less than 6 percent of the population to install conservation materials, said John H. Gibbons, director of the congressional Office of Technology Assessment.

Most homeowners who were taking advantage of the new tax credits, in fact, had high incomes. Middle-income homeowners who realized the value of conservation did not have the means to take advantage. "All the price signals in the world are not going to help somebody making $12,000 a year who doesn't have any capital to respond," Freeman said.

Energy Department officials testified that there was probably $100 billion in residential weatherization and other conservation improvements waiting to be done. That was enough, they said, to save yearly the equivalent of two oil fields the size of Alaska's North Slope by 1990.

In this year's synthetic fuels law, Congress included provisions withdrawing the ban on utility company financing of conservation measures and relaxing the prohibition on utility company installation. Conservation advocates such as Bryson, who had complained that the financing ban threatened to hamstring California's plans for utility financing of homeowner weatherization and solar equipment, felt they had scored a major victory.

Under the synfuels act, utilities can supply and install conservation equipment, but only by working through independent contractors. The act directs the Federal Trade Commission to work with the Energy Department to prevent anti-competitive practices.

The new law also removes the 1978 provision that prohibited companies from including in their rate base the cost of the utilities' weatherization programs. This means that utilities can invest in conservation on an equal footing with new power plants—"a real conceptual leap," according to Calloway, that allows utilities to earn profits and stockholders to earn dividends on conservation investments.

In addition, the synfuels act also expands the energy audit requirements of the 1978 conservation program to include, beginning in 1982, small commercial buildings and apartments, and it allows utilities to charge up to $15 for audits.

RATE REFORMS

Perhaps the most significant piece of the 1978 omnibus energy legislation will prove to be the Public Utility Regulatory Policies Act, which requires the states to hold hearings on a variety of utility rate and regulatory reforms and decide by November 1981 whether to impose them on their utilities. Although the reforms are not mandated, a few states have already begun to discard pricing policies that have impeded conservation.

Among the new pricing strategies is the "lifeline" system, which the California Public Utilities Commission adopted as long ago as 1976. Lifeline pricing reverses traditional utility pricing by offering the cheapest rates not to the heaviest users of power but rather to those that economize in their use of energy. Customers whose energy consumption does not exceed estimates of basic need (hence the term "lifeline") pay as little as half as much per kilowatt as those who use more.

"The system has an equity factor by protecting those least able to pay for these very sharp price increases generated by foreign oil," Bryson said, "and it provides a conservation incentive." The commission has asked utilities to print a notice in block letters on bills: "Consumption above lifeline is twice as costly."

According to a survey of state conservation policies by Common Cause last December, 16 states had prohibited or restricted the use of declining rates for additional increments of electrical consumption. "Declining block rates" were devised when utilities could produce additional electricity more cheaply than their basic production. Declining block rates reward large power consumers, and six states—Idaho, Michigan, New York, Oregon, Texas and Wisconsin—have banned them across the board. TVA has tentatively joined in the ban.

Four states—California, Colorado, Oregon and Wisconsin—have instituted "time of day" pricing for at least their large industrial and commercial customers. Under this reform, users pay higher rates during the hours (generally between noon and 6 p.m.) when the greatest demand is placed on the utility's generating capacity. Because utilities must have enough capacity to meet peak demand, this reform is aimed at reducing the need for additional power plants. At least 22 other states are experimenting with time-of-day pricing, and TVA plans shortly to phase it in.

Helping to pioneer this reform was the Wisconsin Public Service Commission, which imposed it on Wisconsin Power & Light Co. in 1976. When the utility reported the following year that 20 megawatts of electrical demand (1.6 per cent of total peak demand) had been shifted from peak to off-peak hours, the commission ordered all other utilities to impose time-of-day pricing.

Because of the success of experiments such as this, some states are considering whether to require their utilities to charge higher rates during peak seasons.

The Common Cause survey showed that 31 states had instituted "load management" programs that permit utilities to control electrical demand during peak hours. Generally, utilities offer customers discount rates for allowing them to use remote-control radio signals to turn off their air conditioners, water heaters and other appliances for brief cycles during peak load hours.

Pacific Gas & Electric plans to install such devices on 47,000 air conditioners—8 per cent of its service area—and 8,000 electric hot water heaters within the next two years in hopes of saving an estimated 50 megawatts of peak power. It is also offering swimming pool owners a free pool chemical test kit if they will let the utility shut off pool heaters during peak times.

In determining the rates their utilities will be allowed to charge, public utility commissions have historically averaged in all the costs of generating power. Known as "average cost pricing," this approach made sense when each new unit of power cost less than the last. Today, however, average cost pricing disguises the true cost of supplying additional power and encourages consumers to demand more energy than they would if they had to meet the full costs of the added generating capacity.

So utility commissions in California, New York and Oregon, according to the Common Cause survey, are experimenting with "marginal cost pricing," which is designed to reflect the true cost of supplying each additional unit of power. Five other states are examining this technique.

The 1978 regulatory policies act requires the states to consider adopting lifeline rates, time-of-day pricing, seasonal rates, marginal cost pricing, bans on declining block structures, load management techniques and several other rate and regulatory reforms. In addition, it mandates that utilities pay a higher price for power supplied through "co-generation," in which waste heat, steam and gas resulting from industrial and commercial processes are fed into generating turbines to produce electricity. The process also works in reverse, with the waste steam left over from electrical generation put to use a second time in adjacent or nearby commercial or industrial applications.

The concept has been employed for decades: co-generation supplies up to a third of the power in Sweden and significant percentages in other European nations. It was once used more widely in the United States, but since the 1930s few U.S. industries have used waste heat for power, primarily because electricity from utilities was so cheap. Dow Chemical Co. and some oil refineries, paper mills and lumber mills still co-generate their own power. Today, with rising power costs, co-generation has the potential to be industry's "Alaskan oil strike," write Robert Stobaugh and Daniel Yergin of Harvard University in Energy Future (Random House, 1979).

Traditionally, utilities have paid extremely low prices for electricity supplied by co-generators, even while charging a co-generating industry high rates for necessary backup power. The 1978 law requires utilities to pay co-generators the "avoided cost" for their electricity—the price the utilities would otherwise have to spend to produce or purchase the power. In areas where co-generators displace high-priced fuels or obviate the need for expensive new generating capacity, the avoided cost could be significant.

The law also exempts co-generators and small power producers from state and federal regulation, which had inhibited many industries.

PIONEERS

Even before the federal government began promoting conservation, several utilities and state regulatory commissions were hard at work. Among them: the commissions in California, Minnesota, New York, Oregon, Rhode Island and Wisconsin and such utilities as New England Electric, Pacific Gas & Electric, Pacific Power & Light and TVA.

TVA rivals California for the lead as the national innovator in utility and residential conservation. Its conservation programs include a broad interest-free weatherization plan for homes that resulted, as of May, in 200,000 audits and 93,000 loans. Eventually, Freeman hopes to insulate 400,000 or more homes at a total cost of $200 million, making it unnecessary to build a nuclear power plant for $1.5 billion. An independent study of the first 27,000 homes weatherized under the TVA program showed an energy saving of about 20 percent.

TVA also provides homeowners with loans at 8.5 percent to install heat pumps, which it says can cut energy used for heating by a third.

TVA's weatherization activities also include its 290,000 commercial and industrial customers—consumers of two-thirds of its power. TVA offers them free energy audits and loans up to $100,000 at an interest rate 1 percentage point above the cost of money to TVA.

"We have 160 distributors of TVA power, old-line power people who have been in the business for 45 years," Freeman said. "[They] tell me almost without exception that our conservation program is the most popular thing we have done in decades."

Two utilities in the Northeast, New England Electric and General Public Utilities Corp., represent "the first significant migration eastward" of conservation by investor-owned utilities, according to Cotton.

On March 28, 1980—a year to the day after the celebrated accident at its Three Mile Island nuclear plant—General Public Utilities asked the Pennsylvania and New Jersey utility commissions to approve an inch-thick conservation and load management plan that the utility hopes will save its customers about $1 billion dollars over the next decade. With part of its nuclear capacity inoperate and its reputation tarnished, the utility wants to reduce the growth of electrical consumption from the current 3 per cent to 1.5 per cent annually, using time-of-day pricing, solar technology, free energy audits, load management and expanded co-generation. The program, directed especially at the commercial sector, has a budget of nearly $600 million over the next decade. General Public Utilities is the first utility to seek federal funds to help defray program costs; the Energy Department is considering its $500,000 loan request.

New England Electric, the largest in its part of the country, has explicitly rejected the traditional pattern of building more power plants to meet unlimited growth, said executive vice president Bruce McCarthy.

McCarthy said state utility commissions will have to reorient rate structures to provide greater rates of return for conservation-minded companies. "We're saving investment dollars and reducing sales, which has the effect of reducing revenues," he said. "In the long range, we know that will pay off and save our customers a lot of money. But in the short range, you have to keep a company healthy."

With the exception of TVA utilities in the South have not pushed conservation as strongly as elsewhere—partly because that part of the country enjoys the greatest advantages from relatively inexpensive natural gas. But Arkansas is currently contemplating a utility-financed program of interest-free weatherization loans to homeowners similar to Oregon's and TVA's.

The North Carolina Utilities Commission has become apparently the first to establish a quasi-public, nonprofit corporation to cut power plant construction by encouraging conservation and solar alternatives. Called the Alternative Energy Corp., it will be financed by ratepayers and is expected to generate conservation investments of about $2 million in its first year, according to a report in *Electrical Week*.

Finally, the Georgia Power Co. may team up with the Columbia Nitrogen Corp. to build a co-generation facility that would use garbage as part of its fuel—another possible first in the nation.

A NEW LOOK

Only in the past year or so has the Energy Department vigorously joined the effort to promote conservation by utilities. "It's been slow in coming, to be sure," said Cotton. "It's really a dramatic change."

Sawhill has designated Cotton to coordinate a department-wide review of current programs and possible federal initiatives to encourage utility conservation. He has asked the department's program offices to examine barriers, financial and otherwise, to conservation. The end product will be a policy paper embodying suggestions from the review and from meetings Sawhill has held with utility executives, consumer groups and state regulatory commissioners.

The Energy Department has asked Congress for $24.6 million to conduct a demonstration program in the utility conservation field. It may propose a bill to eliminate federal tax barriers inhibiting investments by some utilities in co-generation.

It may also ask to expand two programs of its Economic Regulatory Administration, one that provides $10 million to $20 million annually to demonstrate conservation-oriented rate reforms and one that dispatches department officials to testify in support of rate reforms before state commissions.

Cotton said the department is not contemplating legislation that would impose new conservation requirements on utilities. But he did not rule it out in the future.

"Over the next year or two, it will be up to the states," he said. "It will be up to the utilities, at least at this point, without the club of federal legislation. It will be a time of testing, to see how much the utilities will do on their own and how much they will do in cooperation with state commissions. Depending upon whether that is more or less, you may find another round of federal legislation."

CONSERVATION OF ELECTRICITY—IT ALL BEGAN IN CALIFORNIA

SAN FRANCISCO.—When Pacific Gas & Electric Co. (PG&E), the nation's largest residential utility, announced it was delaying construction of a $5 billion coal plant near here for up to two years, it offered none of the usual reasons—siting delays, environmental protests and cost overruns. Instead, it said conservation had temporarily made the new plant unnecessary.

That was good news to the California Public Utilities Commission, which is setting the national standard for utility conservation in the 1980s much as California did in air pollution control in the 1960s and 1970s.

"Every state has some conservation programs, but no other has approached energy conservation as seriously as has California," wrote Mary Ellen Leary last year in *California Journal*. "When the national energy program was signed into law by President Carter [in 1978], its principal recommendations read like a report card on the California [commission]."

Just within the past year, the commission and the utilities it regulates have inaugurated:

Free energy audits and zero-interest loans for residential weatherization — steps that could reduce homeowners' gas and electricity demands by 25 per cent;

Significantly higher payments by utilities to industrial co-generators and small power producers that produce excess energy to feed into the power grid;

A broad utility program to equip more than 250,000 California homes with solar water heating by 1983—the largest solar demonstration ever undertaken.

All three programs have their roots in a computer model of the Environmental Defense Fund Inc. that purported to show two years ago that aggressive conservation policies, more co-generation of electricity and expanded solar programs could meet PG&E's power needs at less cost than new generating facilities. When utility industry and state regulatory consultants confirmed the validity of the Environmental Defense Fund's model, the Public Utilities Commission ordered the programs. (The environmental group is now preparing similar cost analyses for Michigan and other states.)

The commission is stocked with conservation-minded appointees of Gov. Edmund G. (Jerry) Brown Jr. under the direction of 36-year-old John Bryson, who earned a reputation for innovation while chairman of the state's Water Resources Control Board. Before that, he helped found the Natural Resources Defense Council Inc.

"Conservation is so terrifically attractive vis-a-vis other energy sources that it becomes our No. 1 priority," said Bryson. "Conservation isn't free, but in a dynamic system in which there's going to be growth, it's clearly the least costly way of adding supply."

Like virtually all state public utility commissions, California's has been buffeted by utilities seeking rate increases—$2 billion in one year—and angry consumers demanding relief from rising utility bills. "Utilities are struggling with immense added costs which don't add to their profits but add enormously to their grief," said Joseph Bodovitz, the commission's executive director. "We're besieged with utilities wanting to be made whole."

California adopted its conservation-first approach in 1975, when the commission informed utilities that it intended "to make vigor, imagination and effectiveness of a utility's conservation efforts a key question in rate proceedings." That admonition, according to Lee Calloway, director of conservation services for Pacific Gas & Electric, "got our attention."

As the state's population has grown by about 1.5 per cent annually and its economy has flourished, demand for electricity has rocketed. But electric utility reserves, particularly in northern California, are well below those that most utilities like to maintain as cushions against blackouts or unexpected plant failures. To construct electric generating facilities can cost as much as $2,000 per kilowatt.

One option that appears shut off is nuclear. Virtually no California utilities are contemplating nuclear plants—beyond some already on the drawing board—because of exorbitant costs, strong anti-nuclear public sentiment and time-consuming regulatory procedures. One finished plant, the earthquake-troubled Diablo Canyon facility, could become a $1.5 billion white elephant, never allowed to operate because of environmental concerns.

When the commission ordered utilities to develop a low-interest plan for financing homeowner conservation improvements, Pacific Gas & Electric borrowed the zero-interest weatherization financing plan from Oregon's Pacific Power & Light Co. PG&E is testing the plan in 10 counties in San Joaquin Valley at a cost to the utility of $10 million. It expects to expand the program next year to its entire system, encompassing 9.1 million people in 45 counties.

Responding to requests, utility officials audit customer's homes and measure the potential of more than 50 energy-saving measures: insulation, storm windows and doors, automatically timed thermostats, weather stripping and caulking, more efficient lighting systems, insulation of ducts and water heaters. The utility offers interest-free financing for all improvements calculated to cost less than the electricity they save in up to 20 years. Because federal law prohibits it from doing the work itself, it refers consumers to approved contractors and offers to arrange to have bids solicited and the work done.

When the work has been completed, a utility technician certifies that the materials and workmanship meet approved standards. The utility pays the contractor directly—the average cost is expected to be about $1,500. Consumers can pay the utility in monthly payments added to their utility bills or in a lump sum when the house is sold. Pacific Gas & Electric will recoup its entire investment—an estimated $150 million annually—by increasing its rates enough to cover the interest costs.

Critics charge that the utility has unfairly raised all customers' rates to finance weatherization loans for a relative few. That argument doesn't hold up, according to utility officials. "Even if your rates do go up a little to help pay for insulation in other people's houses, they are going up less than if you have to pay for a new power plant to serve other people's houses," said Bodovitz.

In another move, California's four major investor-owned utilities began submitting plans this spring for a mammoth solar water heating demonstration ordered by the commission. PG&E proposed putting solar panels on the homes of nearly 100,000 customers within three years, making loans to homeowners at low or no interest. Southern California Gas Co. proposed zero-interest financing of solar water heating for more than 77,000 of its customers.

Rate reforms ordered by the commission may reward consumers who conserve. They include low rates for economizing households, time-of-day pricing for commercial customers, bans on some declining block rates, marginal cost pricing for certain customers and load management techniques. "We're putting our money where our mouth is by providing people with the financial incentive to reduce their energy consumption," said Gray Davis, a top aide to Brown. "The energy efficient are being subsidized by the conspicuous consumers of energy."

Last December, 15 months before a similar federal order was set to take effect, the commission ordered utilities to pay the same price to industry for cogenerated electricity that they would have to pay for electricity generated by their own facilities. The commission recently penalized Pacific Gas & Electric $7 million in a rate proceeding for not moving aggressively enough on cogeneration. The utility can recoup the fine if it obtains commitments for new cogeneration facilities capable of producing 2,000 megawatts of power.

Some California utilities have also moved on their own to institute conservation programs. This spring, Pacific Gas & Electric announced a pilot program to award three California cities $10,000 for every percentage point they reduce energy consumption during peak hours this summer and next compared to 1978. The maximum each can receive is $100,000 per year. A committee of local residents will determine how the money is to be spent.

Another Pacific Gas & Electric innovation, begun in 1978, is the nation's first weatherization training center, in Stockton. Partially supported with federal and state funds, the center trains mostly minority citizens in auditing and installing energy conservation equipment in homes. The 500 graduates are being dispatched to weatherize the homes of California's low-income, elderly and handicapped residents.

EXHIBIT 2

EXCERPTED FROM REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT ON DICKEY-LINCOLN SCHOOL LAKES, SEPTEMBER 1978

5.00 ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT RE AVOIDED

5.01 General.—Adverse impacts which would arise from project implementation fall into two general categories. These categories are those impacts which arise from inundation and those which arise from the construction and operation of the proposed facilities. Some of the adverse effects can be mitigated to some extent but mitigation in itself does not eliminate the effect.

5.02 Adverse Effects Caused By Inundation.—Inundation caused by project implementation would cause the toal destruction of 88,000+ acres of terrestrial habitat and its associated aquatic ecosystem. Involved in the loss of this habitat is all current use of this area by all forms of life now indigenous to it. This includes man.

Although the known gravel and sand deposits are of low quality, they are still used in a sporadic manner. Inundation would cover the known sites and render them unusable. The reservoir system would act as a trap for the transportation of these materials downstream thus slowing the replenishment of any deposits located further downstream.

Impoundment would raise the local groundwater levels. This is expected to create localized ponding by altering drainage patterns and creation of new springs. The use of water at shallow depths downstream of Dickey Reservoir, such as dug wells and spetic systems, is expected to be adversely impacted.

Climatically, the creation of a reservoir of this magnitude would be expected to create local fogging conditions during the late summer. This condition would be for early morning hours and is not expected to be any different than other sizeable lakes in northern Maine.

A major adverse impact that would arise from project implementation involves the relocation of 156 households and 12 commercial facilities for the reservior systems. These families would be required to move at Government expense into facilities which are anticipated to be much different than those to which they are accustomed. These homes may be more expensive to maintain and may create economic hardships. The reality of the loss of their old homes, land and habits is expected to create a sense of real loss for their old homes. The proposed transmission line could cause the relocation of up to six households depending upon the exact alignment of the route.

The impacts of inundation on the timber management and industry are of prime concern to the region. Project implementation would disrupt current management plans. Disruption would come in several forms such as the loss of approximately 75 miles of existing access roads now in use for hauling cut timber, the shifting of emphasis in harvesting and a replanning process to account for the lost timber. Opportunity costs due to timber lost include lost wages, taxes, and other income. The lost jobs in the timber industry are estimated as being comparable to a small to medium size sawmill. There is anticipated a general increase in the cost of transportation of timber should the project be implemented. The timber management companies consider the project area as being prime land for timber production. This consideration is borne out by the data. Loss of this prime land would impact future intensive management schemes. The costs to manage the remaining land would be higher due to more difficult terrain and poor accessibility. The loss of this prime land would create a more costly program of management in order to obtain the same productivity. At present, the loss of annual net growth would be between 25,825 and 34,525 cords.

Taxes accrued to the townships and state on lands which would be acquired would be partially lost. Partial reimbursement as outlined in Section 4.08.2.4.1.2 would mitigate some of the loss.

White water canoeing would be eliminated and replaced by flatwater boating. The project would inundate the prime stretch of river for canoeing. The freeflowing upper St. John River would be eliminated as a unique and irreplaceable recreation resource. Both above and below the project area, the numbers and magnitude of the rapids are small. Approximately 2300 user days of canoeing were recorded for 1975. This usage would be lost.

Inundation would cause the loss of some 267 miles of freeflowing streams and river within the Dickey impoundment. These waterways provide habitat for a native brook trout fishery. In addition to the loss of flowing waters, the project would flood 30 ponds and lakes and numerable beaver ponds. All of these waterways provide a source of habitat which would be adversely impacted.

Wildlife populations residing within the reservoir area would be adversely affected in varying degrees. Those forms which are relatively non-mobile would be lost in their entirety. These include burrowing forms as well as tree dwellers. Approximately 80,455 acres of terrestrial habitat would be lost and an additional 6030 acres would be modified by the transmission line. Inundation would destroy 36.893 acres of deer wintering habitat with the resulting loss of approximately 50 percent of the deer herd and those species dependent upon it for survival. Other species in the area would be affected to varying degrees. Fauna ending up on islands would stress the habitat and as a result decline in number due to a lowering of the carrying capacity.

Cultural resources would be adversely affected and salvage of the known sites would be required to mitigate a total loss of this resource.

Rare and unique plants would lose their habitat. The majority of these forms are found along the interface of the land and water. One species of plant life which would be adversely affected would be the Furbish lousewort. This plant is currently known only from the St. John River Basin. Inundation would destroy the majority of the known populations. More important is the loss of the unique zone along this river where the majority of these plants reside. There is documentation in the popular literature that claims this ecotone to be unsurpassed for its variety and uniqueness.

5.03 Adverse Effects Caused by Construction and Operation.—Impacts of sedimentation and nutrient loading attributable to the dams and reservoirs on downstream waters are expected during the construction phase. These impacts would be controlled to lessen their severity. Sediments would reduce the productivity and cause the loss of bottom dwellers not tolerant to inputs of sediments. Nutrient enrichment in small amounts can have positive effects, but usually the impacts are negative. An unavoidable short-term increase in runoff and erosion would result from vegetation removal and surface compaction during construction of transmission line facilities. Soil would be permanently displaced. Subsoil disturbance would occur at tower locations and where footing excavations and access road cuts and fills are required. This would result in the disruption of soil profiles. The rate of erosion would decrease as revegetation progresses. Adverse impacts on hydrological resources include increased surface runoff and erosion, increased turbidity and sedimentation, the possible introduction of small amounts of herbicides, and possible channel alteration by vehicular traffic. Slight increases in water temperature could have secondary impacts on other ecological resources where vegetation has been removed from stream and pond banks. Most of the impacts would occur during construction and would disappear shortly after the construction is completed.

Operational releases would alter the hydrologic regimes of the downstream reaches. This change would increase the amount of shoreline inundated and adversely affect the existing shoreline vegetation. This impact would be realized for a distance downstream to Fort Kent, Maine.

Although no historic properties would experience direct impacts from the construction or operation of the transmission line and despite the intensive survey which would be made, the increased accessibility to some areas would increase pothunting and vandalism. Disturbance or destruction of undisclosed archaeological sites is possible due to construction activities, and such impacts are not totally avoidable.

Debris would be a continual problem although to a lesser extent after the first few years. The adverse effects would be in the form of navigation hazards to boating and to the aesthetic appeal of the reservoir. Disposal of the debris would create local and short term adverse impacts, but if the disposal is done correctly, these impacts would be negligible.

During construction some unavoidable adverse impacts on air quality would be caused by dust from disturbed soils, combustion byproducts from the burning of unmerchantable wood products, vehicle and equipment exhaust emissions and fumes and odors from various operations. These impacts are expected to be localized and short-lived. Small amounts of ozone would be introduced into the atmosphere during line operation.

During construction, wildlife populations would be subjected to severe stress from many different points. Clearing operations and man's presence would drive the existing populations out to other habitat. This would cause an overcrowding condition in that habitat. The results of this overcrowding would be overbrowsing to the detriment of the habitat, mortality of the populations due to starvation, increased predation and interspecies competition for the available habitat.

Existing vegetation would be disturbed or removed along the entire transmission line route. The primary impacts that would result from this loss of vegetation include the alteration of growth patterns and forms, disruption of successionary stages, changes in community composition both within and outside the rights-of-way, and possible disturbance of rare or sensitive plants. Secondary impacts from snowmobile and other recreational vehicle use of rights-of-way and access roads are largely unavoidable. The amount of habitat would be reduced for some forest species, directly reducing their numbers and, in turn, their overall productivity. Increased disturbance of certain species during construction would result in significant stress and the possible temporary abandonment of preferred habitat. Disturbance would continue after construction, owing to human activity along new access roads.

Impacts on aquatic wildlife from changes in stream temperature primarily due to transmission line development and maintenance would be long term and potentially quite adverse. The effect of herbicides introduced into the food chain will depend on the type used and the methods used to control vegetation. Aquatic wildlife could experience intense, though short-term and localized, impacts from increased turbidity, sedimentation and disturbance of streambeds.

Lake ice during the winter on the reservoirs would present another stress on those organisms moving about during the winter. Animals venturing out onto the ice would be subjected to falling, standing, predation and drowning.

Adverse microclimatic changes may occur along the rights-of-way where forest vegetation has been altered. Removal of this vegetation would cause minor, long-term microclimatic changes in air temperature, solar radiation and wind velocities. Some windthrow around the edges of the reservoirs is expected and unavoidable.

The agricultural and forest industries would be adversely impacted by demand for skilled workers. The resulting job gaps would be filled by less skilled unemployed.

A major adverse impact on current timber landowners would be large capital gains which would be taxed. There is no shelter available for these large windfalls of unwanted monies nor are there lands available for reinvestment. Landowners owning small parcels of land would be similarly affected but they would be assisted in purchasing new lands under the Uniform Relocation and Assistance and Real Property Acquisition Policy Act.

Loss of economic production on cultivated lands would occur at tower sites along the transmission line. The long-term, unavoidable loss of economic production on forest lands within the rights-of-way would be more severe.

Flooded reservoir areas and rights-of-way clearing would cause 81,946 acres of timber land to be removed from production resulting in a net loss of annual growth of timber of 25,825 to 34,525 cords. Opportunity costs due to foregone timber lost would be significantly below the previously reported $216 to $322 million range over the 100-year economic life of the project. The required downward revision of the potential opportunity cost is based on an analysis of the impact of the spruce budworm on the proposed project area timber stands.

Adverse impacts on human communities during construction are associated with an influx of construction workers to the area. There are several adverse impacts related to construction which include: construction noise, minimal housing available, value systems clash, overburden of municipal services, recreational facilities, and highway use.

Social problems of alcoholism, crime, and drug abuse are expected to increase slightly during the construction phase. This increase is a function of population density and is expected to subside with the end of construction.

The proposed plan would restrict land use within the right-of-way to types compatible with high voltage transmission lines. Land use at substation and tower sites would also preempt current and future proposed land use.

Local noise levels would increase during construction. Though unavoidable, these impacts are expected to be intermittent and of short duration. Line and substation operation would result in minor, long-term increases in local noise levels. Overall, such noise levels are considered annoyances with no adverse health effects.

The aesthetic appeal of the river would be adversely impacted. Construction scars and a change in the overall appearance of the valley would be an adverse effect to those that currently recreate and reside in the valley. Construction scars would be minimal after project completion but nevertheless they would have an adverse impact on the aesthetics. Summer drawdown of the power pool would expose 1500 acres of shoreline. Drawdown would also adversely impact the plants and animals of the nearshore regions of the reservoir. This impact and the winter ice scour precludes the successful development of shoreline vegetation.

The transmission lines would be built through areas looked upon as having "wilderness character." Many recreational activities in these areas along the proposed route focus on natural visual amenities. Thus, views of the lines would conflict with these activities and detract from the recreation experience. The line would be visible from several scenic highways, a small portion of the Allagash Wilderness Waterway, and from several other rivers which are candidates for inclusion in the National Wild and Scenic River System. Towers, lines and rights-of-way, together with the visual consequences of certain necessary construction practices, would result in unavoidable visual impacts. Varying degrees of impact are expected on the quality of the visual landscape, the visual attractiveness of individual sites, and on recreation, residential, and transportation-related viewers. The introduction of visual elements out of character with historic properties could possibly alter their settings.

EXHIBIT 3

OFFICE OF THE GOVERNOR,
Augusta, Maine, October 26, 1978.

Re Dickey-Lincoln Water Project.
President JIMMY CARTER,
White House,
Washington, D.C.

DEAR PRESIDENT CARTER: First of all, I want you and the staff at the White House to know that I am deeply appreciative for the input, suggestions and counsel provided me as Governor of Maine with respect to the Dickey-Lincoln and related type water projects. As a matter of fact, very early in my deliberations on this proposed project, which many feel could either be the best thing to happen to Maine or the worst thing to happen to Maine for present and future generations of Maine people, I was provided a copy of a handwritten memo by Governor Jimmy Carter dated October 1, 1973 as it relates to the Spewrell Bluff Dam, by some of our mutual friends who felt your and my approach in matters of consequence and government are similar; as is the problem you faced and I am now facing with respect to the Dickey-Lincoln Project.

More than coincidentally, I have referred to and read your memo a number of times and now have it before me and there is also a similarity to the extent of our mutual experiences. I say this because your very opening sentence in your memo states to wit: "My decision on whether Spewrell Bluff Dam should be built is one of the most difficult I have had to make with the exception of state government reorganization which has been the most time-consuming." With the exception of the fact that I have spent much more time on the unfortunate Indian Land Claim than state government reorganization, my experience has unfortunately been the same as your own experience as Governor of Georgia.

I too "have personally read all the written reports and transcripts of oral testimony made available to me" as you indicated in your memo. I too have consulted with many people and delegations and I too have read and analyzed thousands of letters and telegrams and petitions and resolutions. I too have traversed the river and area by foot, by vehicle, canoe, as well as by helicopter. My family, too, has used the privacy of our homes to receive as well as discuss differing views.

While your memo also indicates "there is no way to win politically because of the large number of people who insistently and intensely either favor or oppose construction of this dam," I too have tried to divorce politics from my determination and perhaps as an Independent Governor not concerned with or seeking re-election or election to any office, I have had some relief from pressure groups and what you also refer to as "special interests" to the extent that I have probably been spared some of the pressure that was applied to you in your decision.

On that note, as you are undoubtedly aware, there is considerable speculation that the White House is currently directly or indirectly playing "political games" on-this question by virtue of the fact they have "impounded" or at least "embargoed" the Final Environmental Impact Statement which was promised as late or as early as August 17th by the Corps of Engineers. However, I want to be extremely fair to the Corps and specifically to Colonel Chandler who I think has been outstanding and a credit to the United States Army, the White House and to the people of America.

I say this because you are well aware and one or more mutual friends have told you and I, that the press frequently reports the Corps of Engineers "plays games" or has been accused in the past on other projects of having total disregard for the land or the water or the environment, and that it wants to build projects anywhere or everywhere to justify its existence and its budget and too frequently proceeds on the basis that "the end justifies the means." From my standpoint, this type of accusation and criticism is totally unfair as it relates to Colonel Chandler and the Corps of Engineers regarding the Dickey-Lincoln Project. I have nothing but commendation as well as pride and appreciation for the fair method and manner with which Colonel Chandler has treated the citizens of Maine and this Governor during the course of his studies and hearings and his responsiveness on the Dickey-Lincoln Project.

Therefore, while I do not want to lend any credence to criticism of you or the White House, I would say that if politic games are being played in withholding the FEIS until after the present election on November 7th or later, or until there is a new Congressional Delegation and/or Governor of Maine. . . . I have already received sufficient information relative to the FEIS so that I feel I am able to make a final decision and my recommendation to you as President. In other words, even though I am advised there is some unhappiness on the part of your staff with the Corps of Engineers or the FEIS on a Section 404 problem or sufficient detail concerning wet lands or fisheries and wildlife, I am advised that they are inconsequential and de minimus as it relates to the total project and the overwhelming facts and factors that we have already studied.

As a matter of fact, based on your previous expression on water projects and budgetary concerns for waste and bureaucracy and your excellent anti-inflationary challenge, I cannot believe you would follow any different approach as Governor of Maine or as Governor of Georgia than I am forwarding today.

Also, more than coincidentally, I share completely and unequivocally the additional statements contained in your memorandum of October 1, 1973 on the Georgia project, which convey my strong and unequivocal feelings on the State of Maine project, to wit: "As Governor, as an outdoorsman, as a businessman interested in the optimum economic development of Georgia (Maine), and as one who perhaps will make the final decision on this project, I have tried to assess fairly all factors involved." Very candidly, I feel this applies equally to the State of Maine—unless you now as President of the United States apply a different standard to an independent Governor of Maine than you expected and obviously received from a Republican President out of respect to you as the Democratic Governor of Georgia in 1973.

Another excellent sentiment and quote from your very judicious memorandum demonstrates once again there is a very strong similarity of resolution as well as in approach between one Jimmy Carter and one Jim Longley to the extent you also said:

"In my mind there is no doubt that I have made the correct recommendation or decision."

As a former Governor, now the President of the United States, you have also indicated and I will now reiterate that "it is impossible to analyze in a brief statement all the complicated and constantly changing issues" . . . but you will find enclosed herewith an in-depth analysis of the major points of consideration and my conclusion based on the best expertise provided me and my own analysis and research that . . .

"The proposed Dickey-Lincoln water project, as presently constituted, would be grossly unfair to the present and future generations of Maine people and a waste of Federal and State of Maine taxpayer dollars . . . and I, therefore, as Governor of Maine, do in fact express my opposition to this project and respectfully request that you as President support this recommendation."

More than coincidentally, I felt that it would also be inflationary as well as a slap-in-the-face and a breach of faith to the voters of Maine for this Governor, or any Governor of Maine for that matter, to do other than strongly oppose this project as presently contemplated based on the facts and the overwhelming expression of the voters of Maine in opposition to a public power question in 1973. Furthermore, my recommendation that you deny this project or avoid further waste of taxpayer dollars on this specific project is based on the following additional specifics:

(1) The voters of Maine in 1973 overwhelmingly voted against public power and at the very least, a Governor should not approve or even condone or support any effort toward state or federal public power projects in Maine, in denial of the due process as demonstrated at the ballot box by the voters of Maine in 1973, without allowing the voters of Maine to vote on any public power project, federal or state.

(2) Separate and apart from the public power issue, I oppose this project because despite very obvious advantages of federal dollars and/or job benefits, the adverse impacts of "the bust cycle" and the destruction, or at the very least, negative disruption of a beautiful river plus the land and natural resources combined with a negative social economic impart on present and future generations of Maine people far outweigh any present short range economic advantages.

(3) Despite repeated attempts and requests of supporters of the project and despite diligent research and analysis by independent and state government expertise, I have been provided with very little evidence, almost totally speculative, that there is any substantial economic or environmental benefit for the people of Maine once the project is completed. On the other hand, I have given great consideration to an excellent point made by our mutual good friend, Senator Ed Muskie, to the effect that "once the project is completed and water starts flowing, it is very unlikely the unit cost(s) will ever increase."

(4) Despite extensive research and development of cost benefit data as it relates to present and future energy considerations, there is lack of convincing evidence that this is the best present form of energy development for the State of Maine and the region or the nation as it relates to either long range or short range energy advantage(s) and/or even a comparative advantage as it relates to the potential for one or more alternatives in the form of improved conservation, nuclear, tidal, wood, solar, wind, methanol, hydro, including present small dam capability here in Maine, let alone exciting developments my research has uncovered in the areas of improved technological and scientific developments in refinery capability, offshore both surface as well as ocean floor development, predicated on the submarine expertise and experience with which you are familiar, which could actually lead to ocean floor refineries and/or communities involved with energy as well as aquaculture development.

Yes, we have done both our homework and the time spent in research and in studying this problem is at least the equal of what you indicated directly and I have heard indirectly you invested in behalf of the people of Georgia. I want you to know that I have done this not only in behalf of the people of Maine, but by virtue of the changing energy picture since your decision in 1973. I have also very carefully considered the problem and the potential benefit of Dickey-Lincoln as it relates to the region and the nation as well, by virtue of the emergence of the energy program even though I am not certain I agree with your extreme position that it is "the moral equivalent of war."

However, to the extent your statement was a challenge to America, then I think Americans—including this Governor—have tried to be responsive and as Dr. Schlesinger well knows, this Governor was among the first—if not the first—to initially embrace your energy objectives, subject to minor refinements, and I was also most responsive to the calls from your staff, including Dr. Schlesinger in recent months, in seeking the support of the Maine Congressional Delegation and others, for your program. So, I am as delighted as you must be to see that the Congress has finally passed energy legislation.

For your further information and background, I am also sharing with you additional specifics with respect to the research and thinking, and factors we carefully studied and analyzed in the following areas:

(1) Thousands of Maine citizens have expressed themselves through numerous forums, including the National Environmental Protection Act (NEPA) process on this project. Additionally, I commissioned a blue-ribbon panel of Maine citizens as a project review committee to consider the project from the widest possible perspective. The State Department of Conservation, the State Office of Energy Resources and the State Development Office have each conducted independent reviews. Finally, I have spoken to hundreds of Maine citizens and individuals from all over our Country with specific expertise relating to this project; and personally journeyed to the project site on a number of occasions to assure a first-hand knowledge of the location and geography before I reached the conclusions and decisions and recommendation as already stated.

(2) Mr. President, the decisions I have reached are in consonance with Maine's Energy Plan which provides for developments only when economically sound and environmentally feasible. The economics of this project are questionable at best. Numerous benefit-cost studies have been done, each with a different conclusion. The myriad of possibilities and the overwhelming uncertainties of the 100-year projections precludes definitive economic analysis and thus leaves one the opportunity to pick his own expert with his figures to support almost any position. Even the most ardent proponents of the Dickey-Lincoln project agree that the environmental impact of Maine's land resources are a major consideration. One land use consultant has estimated that the area directly affected would be at least 500,000 acres.

(3) I have come to the conclusion that the St. John River may well be essential to our economic health and energy requirements. However, I am not satisfied that we have in the Dickey-Lincoln Project the optimum use of the River's resources. Approximately 33 percent of any power benefit derived for Maine from Dickey-Lincoln would not come from the project per se, but from downstream Canadian generation at the discretion of the Canadians at a cost to be set at some future date. Additionally, Dickey-Lincoln is designed primarily as a peaking-power project. A Maine-oriented base-load development on the St. John would be much more important to Maine's long-term economic health than would the present proposal. I am advised that very little if any industrial development is influenced by peaking power as contrasted by base load power.

(4) We have embarked on serious considerations of several alternate energy sources for Maine. We are anxious to pursue several viable energy opportunities to reduce our State's dependence on oil energy. We are convinced that proper integration of the many diverse sources available to us can provide a solution that will improve the economy immeasurably without the cost or risk of Dickey-Lincoln. Conservation alone can save the equivalent of 11,600,000 barrels of fuel by 1985. Conservation should not be viewed as going without or reducing our standard of living or economic growth, but as an attack on wasted energy. Proper building insulation alone would be a major investment; however, the results are semi-permanent and significant.

A recent study indicates that 56 percent of Maine homes now use wood in some form for heating. One of Maine's major industries recently chose to build a wood fuel-fired facility over oil or a hydro-electric plant. The use of wood for fuel is moving swiftly, and surely now is the time to consider the implications of 100 percent use of Maine's timber growth. These and the integrated and proper use of Maine's existing dam sites, the proper utilization of coal, solar, wind, nuclear and co-generation are urgent considerations.

Every day the Maine Yankee Plant at Wiscasset simply dissipates heat equivalent to 960,000 gallons of No. 2 fuel into the river.

These alternate sources of energy require an injection of research and implementation effort because they contribute positively to our Balance of Payments and inflation problems and reduce our dependence on OPEC.

(5) One of the major impacts of this project, and one that has not received sufficient attention is the devastating impact of the transmission system which would cut a swath through some of Maine's most wild and scenic areas and across free-flowing rivers for 206 miles with a 150 foot right-of-way and require 4,080 acres.

In addition to the information which we have supplied in this letter, we have also prepared supplemental data and attachments which will be provided you.

My request, Mr. President, is that you will appreciate the integrity of my decision, to oppose this project for my reasons as already stated to wit:

"The proposed Dickey-Lincoln water project, as presently constituted, would be grossly unfair to the present and future generations of Maine people and a waste of Federal and State of Maine taxpayer dollars . . . And, I therefore, as governor of Maine, do in fact express my opposition to this project and respectfully request that you as President support this recommendation."

Very truly yours,

JAMES B. LONGLEY.

[From the Bridgton News, May 17, 1979]

DICKEY-LINCOLN

Senator Bill Cohen has introduced a bill in the U.S. Senate to terminate the Dickey-Lincoln hydroelectric project in northern Maine. He said he made this move in order to insure a full debate of the issue in the Senate.

Sen. Cohen has been a long-time opponent of the project and sees no justification for spending additional money on it. Already Congress has poured $10 million into the project.

He feels the economic benefits do not justify spending billions of dollars for construction of Dickey-Lincoln when the return would be only 67 cents in power benefits for every dollar invested. He feels the environmental damage the project would cause does not justify the project.

We agree with Sen. Cohen that it's high time to turn attention away from Dickey-Lincoln and concentrate on developing additional energy alternatives that are more feasible. To mention a few—Tidal power now being investigated in Passamaquoddy Bay, energy potential of wood and existing small dams throughout Maine, purchasing excess power from Canada, a possible run-of-the-river hydro project on the St. John River.

If Dickey-Lincoln project goes forward, the loss to the taxpayer would be 33 cents on every dollar invested. At a time when Congress is budget-conscious, surely a loss such as this will be weighed heavily when Dickey-Lincoln is debated.

[From the Bangor Daily News, July 17, 1980]

DEAUTHORIZE DICKEY-LINCOLN

Sen. George Mitchell, having assumed the office and mantle of Secretary of State Edmund Muskie, is trying valiantly and honestly to dispose of one of the most onerous burdens that came with the job: Dickey-Lincoln.

Once an issue of legitimate debate and serious contention, the hydroelectric project has become a forlorn matter—even in light of the continuing energy dilemma its proponents in the labor movement and construction industry cannot muster a convincing argument in its behalf.

Lugging this slippery pork-barrel albatross around the Senate was a formidable challenge for Sen. Muskie. Even with the advantages of seniority, his posiiton on the budget committee and the opportunities for backroom quid pro quos afforded him, the Dickey thing must have been a strain.

George Mitchell is an intelligent and savvy individual. He has watched his friend and mentor struggle with and for Dickey these many years—without success. He has seen what it did for William Hathaway.

It did not take Sen. Mitchell long to size the situation up and decide to dispose of this carcass with as little ceremony as possible.

If he appears to be acting hastily or precipitously, he isn't. He will be in the thick of a re-election fight in little more than a year. He would probably prefer to do battle on his own terms—choose his own weapons and issues.

The compromise offered by Mitchell, and which has been curiously seconded by Robert Gardiner and the Natural Resources Council, is for abandonment of the Dickey portion of the project and construction only at the Lincoln School site.

Since the NRC has done a creditable job of remaining, or at least appearing, nonpartisan, it can only be assumed that Gardiner and his group have tired of the fight. But with Muskie out of the way and Mitchell clearly not enamoured of the project, it remains something of a mystery why that group would choose to negotiate an end to one of the most serious environmental challenges in the state's history when they had the decision almost won.

Both incumbent Republican congressmen in the state, David Emery and Olympia Snowe, have long been on record opposing the dams, and their two opponents this November, Democrats Hal Pachios and Harold Silverman, appear determined to have this thing die a partisan issue.

Which is too bad, really. Both Silverman and Pachios would benefit from allowing this thing to expire without further tainting either party.

Why not compromise?

Very simply, the Dickey-Lincoln plan was a poor one, and should be scrapped in its entirety before efforts are made to salvage portions of it.

If Lincoln School is the appropriate site for a dam to generate power for Aroostook County, and it appears to have this potential, it should be examined on its merits—not prejudiced by its affiliation with the total Dickey-Lincoln package.

It is easy to forget that most of the country and the majority of the New England delegation are against Dickey-Lincoln's construction. A scaled-down version, sans the power lines and impoundments, might fare better if it were clearly divorced from the original project.

In addition, there is also the realistic fear that the federal government and the Army Corps of Engineers might not get the Dickey message clearly if it is diverted onto the Lincoln School dam issue too soon.

The Dickey-Lincoln project should be done in, formally, clearly and unambiguously so that there can be no confusion later as to what, exactly, was intended.

[From the Bangor Daily News, Oct. 29, 1979]

THE FINAL SOLUTION

Last week was a difficult one for proponents of Dickey-Lincoln. The report on alternative hydroelectric sites from Congressman David Emery's office and the tough stand of Maine officials on the issue of salvaging fish and wildlife from the area that would be rendered uninhabitable by the project dramatically made a key point in the controversy:

The mammoth Dickey-Lincoln scheme is assailable and extremely vulnerable as a concept; but its most serious flaws are where it should be strongest, in the area of fundamentals.

Dickey-Lincoln is a proposal for generating electricity that will cost $1.2 billion or more and take 88,000 acres out of service for wildlife habitat, recreation and timber production.

It is a significant one-time investment by the American taxpayer and a tremendous perpetual sacrifice by the people of the state.

A basic question that begged an answer was this: Is there a better, more efficient and less harmful way that a significant portion of northern Maine's latent hydro potential can be tapped?

According to Emery's office and a 177-page study produced by his three student interns from Worcester Polytechnic Institute, six smaller dams could be built in Aroostook County that would have a combined generating capacity equal to 72 percent of the power Maine would be allocated from Dickey-Lincoln.

The important finding by Emery's group is that this substantial generating capacity can be accomplished for one-third the investment in Dickey-Lincoln and by inflicting less than one-fifth the damage to the forested area that would be sustained under the larger project.

Maine still makes sacrifices, the taxpayer will still be committed to an expensive hydro program, but both the state and the taxpayer will realize a return in hydro energy more commensurate with what they are giving up.

On the issue of mitigation, the official act of softening the blow to wildlife, habitat and recreation, the Corps of Engineers is already trying to mitigate the impact this will have on the total Dickey budget by trimming the recommendations made by other federal agencies.

Following its own appraisal of Dickey's impact, the Interior Department's Fish and Wildlife Service proposed that the federal government purchase 160,000 acres for wildlife management and construct a $6.5 million fish hatchery.

The engineers want to cut this back to a 100,000-acre purchase and no hatchery, a decision that most state officials, even those toeing the official administration line on the dam, find unacceptable.

The Corps may be right on one point. No hatchery will ever replace the 258 miles of running water, habitat for native species, that will be destroyed by the dam.

But the piece de resistance in the Corps' mitigation plan is its final solution for the 3,000 deer which would be casualties of the dam: a special season.

The logic of this proposal is that deer in the impoundment area could be relentlessly hunted for two or three years before flooding occurs. Cloven-hoofed critters thus exterminated will not die when Dickey's gates are finally closed.

We should all be so thoughtfully mitigated.

[From the Lewiston Evening Journal, July 20, 1979]

DICKEY-LINCOLN VOTE

Once again the U.S. Senate has approved additional funding for the Dickey-Lincoln hydroelectric project. But the vote against deleting $710,000 for further study of the proposal was close. The count stood 51 against deletion and 46 in favor. Of at least equal significance was the 6–5 margin by which New England senators approved of cutting the funds.

The Journal article Wednesday by Nancy Grape disclosed a dramatic shift in the Senate's position from the last major debate in 1975. Then only 13 senators favored dropping the project.

Maine's senators split. Senior senator Edmund S. Muskie continued his solid voting record to pursue Dickey-Lincoln, while Senator William S. Cohen voted for deletion. Their votes were predictable.

Now the issue will go to a joint conference committee with the House, which approved an end to funding. While the Senate position has prevailed in previous years due to the one-sided support given the project, this year's close vote in the upper chamber may signal at least a temporary end to the plan.

We believe there are serious questions about the viability of Dickey-Lincoln. The cost of building the two dams has escalated enormously since the idea surfaced. This reduces the benefits to cost ratio. It may be some other plan for the St. John River would make more sense. Certainly a breathing period to consider alternatives seems logical.

In earlier years the Journal backed Dickey-Lincoln. At that time the benefits to cost ratio was appraised at approximately 2–1 on a cost under $300 million. Now the project would run at least $800 million, and probably closer to a billion dollars.

Also warranting consideration is the fact Maine's neighbor to the north, Quebec Province, has a surplus of power. It may prove much less expensive to import Canadian power than to undertake the construction of a hydroelectric complex that would flood over a substantial acreage of timber and occasion other environmental damage.

[From the Journal Tribune (Biddeford), Feb. 5, 1980]

Cut Dickey Funds

When Congress looks for ways to cut the $616 billion federal budget submitted last week by President Carter it should lock its collective eyes on the $800,000 ear-marked for a feasibility study of the proposed Dickey-Lincoln hydroelectric dam project in northern Maine.

The first thing many of the members might have to stop and consider is why is another feasibility study needed now, in 1980, for a project that was first dreamed up in the New Deal days of President Franklin Delano Roosevelt? If it was such a good idea, wouldn't the opposition have been dissuaded by now?

Ironically, the Dickey-Lincoln proposal surfaced in the 1930s as a supplement to a scheme to harness the tides in Maine's Passamaquoddy Bay. The tidal drop would turn turbines in the dams and generate electricity.

Planners soon decided Passamaquoddy was impractical, because the generation of electricity, dependent as it was on the tides, was too irregular, looked upstream at the idea of damming up the St. John River, a vast wilderness area which has been preserved almost in its natural state.

World War II put off the proposals and then conservationist groups in Maine organized to stop the dam proposals. The Natural Resources Council came into being to halt the construction of Dickey-Lincoln and of another project, the Rankin Rapids dam, that was shelved without too much of battle. The Allagash Wilderness Waterway was created and the Rankin idea went down the river.

But Dickey-Lincoln lived on. It was authorized by Congress and once a project is authorized it lives until it can be deauthorized.

Another push to bring the project to fruition came with the Arab oil embargo in 1973 as Dickey-Lincoln was cited as a good way to bring cheap energy to the region.

Unfortunately, Dickey-Lincoln would provide only an estimated five percent of New England's energy needs by the middle of the decade (if work were to start right away). To provide this it would mean the flooding of 82,000 acres of timberland, the destruction of 278 miles of rivers and streams and some 30 lakes and ponds.

It would forever destroy lands that should remain forever wild.

There are alternatives: putting some of the 10,000 dams along New England rivers to work generating electricity is one. The New England River Basin Commission has estimated that 2,000 of these dams have considerable potential to add to our energy production capabilities. Tides are another. The Passamaquoddy tides are still rising and falling. Congress would be well advised to channel its funds toward re-investigating the possibilities of harnessing the huge amounts of tidal energy available for free in the Bay of Fundy.

We support the statement the other day of Sen. William S. Cohen who pledged himself to ". . . strenuously oppose the inclusion of funds for Dickey-Lincoln, which has become a perennial and pointless expenditure."

Any budget needs to be cut and this one can be cut by beginning at the top of the country, up by the Canadian border, and putting to rest a project that has not been able to get off the ground in half a century.

[From the Bangor Daily News, Feb. 21, 1980]

The Sunshine

Sen. William Cohen has set the stage for what could be a lively, significant and perhaps historic confrontation over the Dickey-Lincoln hydroelectric project. He plans to introduce a measure that would deauthorize Dickey funding.

After a recent vote in the House in which a deauthorization amendment was passed, supporters of Dickey, notably those in the office of Democratic Sen. Edmund Muskie, appeared unruffled because for anti-Dickey forces, marchining on the Senate has had the historical success of military marches on Moscow.

The Senate has been Dickey's bastion.

Now, however, Maine's two senators are on opposing sides in this issue, and the ensuing debate, should there be any, may be spirited.

And, if it is considered by the Senate, the hope here is that it will be considered out in the open and not in recesses and shadows.

Dickey is an immensely expensive project to the taxpayers, and for that reason deserves public airing, but a more selfish reason for wanting the sunlight to shine on the proposal is that it will not be able to stand the exposure, the scrutiny.

It is an anachronism, a concept that should have been superseded by superior alternatives or abandoned for its own lack of merit years ago, but wasn't for one reason: Politics.

The rest of the country, the people footing the bill, must be aware of this so they can hold their own senators accountable.

[From the Aroostook Republican and News, Aug. 8, 1979]

A Pork Barrel Project

It's getting so it's not easy to work up some dismay at Gov. Joe Brennan's recent endorsement of the Dickey-Lincoln project—or rather, his endorsement of Sen. Ed Muskie's hysterical push for the project.

It's even getting so one doesn't expect a Democrat to be reasonable on the question.

What's the sense in suggesting the decision should be made on the grounds of whether the project is worth it: would it produce enough energy to justify the cost of the project and the destruction of thousands of acres of woodland?

Of course, some politicians don't care what a project would cost if they think it would earn them some votes or support of a fellow politician. Why should they? They make a good living and give themselves healthy raises whenever they want them. In their bureaucratic cocoons, they are protected from the problems and concerns that affect the rest of us, the sweaty public that pays their salaries and funds their projects ad nauseam.

Because the project rests so clearly in the hands of politicians, let's hope the Republican forces fighting against the dam have enough clout to talk Congress into an end to funding for studies of the project, which is demonstrably too expensive for the temporary benefits it would give Aroostook County in terms of jobs.

The project has been condemned by the federal Environmental Protection Agency and by the Northern Maine Regional Planning Commission, among others. Might that not indicate it is somewhat lacking environmentally and economically?

Brennan talks about using the project as a "psychological catalyst" to show the state is concerned with some form of development—this, mind you, at the cost of all U.S. taxpayers. We suggest he talk to Leighton Cooney, his liaison with the Loring Readjustment Committee, and learn that the state, Aroostook in particular, is indeed concerned with a wide range of development, but development that pays for itself with concrete rather than psychological benefits.

Dickey-Lincoln is a pork barrel project. Let's salt it away and have done with it.

[From the Maine Sunday Telegram, Sept. 11, 1977]

No to Dickey-Lincoln

The Dickey-Lincoln hydroelectric power project on the St. John River in northern Maine should not be built.

We're persuaded that the construction of what has been called the largest public works project ever proposed in New England would not be in the best interests of either Maine or the nation.

On the one hand, construction of a world class dam at Dickey on a scale rivaling the Aswan Dam in Egypt, the creation of an 88,000-acre reservoir, and the construction of a huge transmission network through the forestlands of western Maine, would result in environmental damage on a scale which cannot be justified.

And, on the other hand, the giant project can barely be justified either on the amount of electricity which it would produce or on the basis of cost projections which are widely believed to be artificially low.

Moreover, if the project is approved by Congress, Maine will be asked to absorb virtually all of the negative aspects of the project in return for a relatively small percentage of the benefits. Maine alone would bear the burden of the massive environmental scars but the bulk of the electricity generated by the dams at Dickey and at Lincoln School would be marketed outside the state.

Our decision to oppose Dickey-Lincoln is not lightly made. We recognize that the demand for electrical energy in Maine and New England is growing rapidly and that peak load demand (the kind Dickey-Lincoln would partially satisfy) is expected to more than double in the region over the next decade. And we are all too painfully aware that New England now must rely on increasingly expensive and scarce petroleum for the generation of approximately three-fourths of all the electricity we consume.

Nonetheless, Dickey-Lincoln extracts far too high a price in terms of economic, social and environmental costs in order to partially meet the region's increasing energy requirements. It would ask Maine and its people to pay far too much in return for far too little.

The chronicle of environmental devastation which would accompany the construction of Dickey-Lincoln is enormous. It would forever destroy 278 miles of free-flowing streams and rivers, flood 30 lakes and ponds, inundate 36,893 acres of deer yards and cut a giant swath through western Maine in order to accommodate high voltage transmission lines. The magnitude of that kind of environmental upheaval would irretrievably alter the character of much of Maine's land mass.

Were Dickey-Lincoln capable of generating truly significant amounts of electrical energy the environmental and societal tradeoffs might be more palatable. But it will not. Dickey-Lincoln's output—even conceding the importance of the peaking power which it would largely generate—would equal only two per cent of all the electricity produced in New England in 1975.

In addition, the cost estimates developed by the Army Corps of Engineers are suspect. The initial price tag of $757.5 million is based on a thoroughly unrealistic 3.25 per cent interest rate. The cost immediately soars to $822.4 million if the prevailing interest rate of nearly 6.5 per cent is used. Finally, the cost estimates are based entirely on March 1977 price levels and do not include any consideration of inflation. Even conservatively projecting the inflation rate between now and 1988 when the project is targeted for completion brings the total price tag into the billion dollar range.

In short, Dickey-Lincoln asks Maine to make an enormous sacrifice for a meager return. And those few scant benefits simply aren't worth the destruction of the last remaining major wild river in the eastern United States.

[From the Katahdin Times]

Forget It!

The proponents of the Dickey-Lincoln School Dam proposal continue to believe the myth that the destruction of 80,000 acres and more of Maine wilderness will ease Maine electrical costs, provide essential energy resources and stimulate decent jobs and an opportunity for Maine to enjoy a better future.

Neither the proponents nor the U.S. Army Corps of Engineers, primary architects of the scheme, will statistically refute the evidence that insists the billion dollars boondoggle would, in fact, provide little employment for Mainers, would generate an insignificant amount of electrical energy and would inflict a needless measure of destruction upon the quality of Maine's natural resources.

Dickey-Lincoln should be laid to rest and forgotten for all time. And Maine's distinguished congressional delegation should push diligently for the harnessing of the tides at "Quoddy Bay." Is anyone in Washington listening?

[From the Maine Sunday Telegram, Feb. 24, 1980]

Dickey and Timber

Maine's 17 million acres of forest seems immense, its timberland seemingly so vast as to be beyond depletion. And, historically, that's been true; for decades Maine has had a surplus of wood.

Recently, however, all that's been changing. The pulp and paper plants and our sawmills increasingly need all the timber they can lay their hands on in order to meet growing demand.

That fact oughtn't to be lost in the latest congressional debate over funding for the proposed Dickey-Lincoln hydroelectric power project on the St. John River in Northern Maine. For whatever may be said of Dickey-Lincoln's ability to supply inexpensive electricity for peak-time use in Maine and New England, the dams would destroy a significant amount of productive timberland.

Fully 88,000 acres of valuable timberland would be flooded by the giant reservoir behind the two dams. Another 5,000 acres would be destroyed by the network of transmission lines needed to carry the electricity to market. And another 100,000 acres or so would be removed from private ownership to establish a wildlife habitat to "replace" the land flooded by the reservoir.

That's a sizable amount of acreage to lose even if the government does permit harvesting in the wildlife habitat area.

Face it, there's a growing market for the timber which would be destroyed by Dickey-Lincoln. Within the past 10 years or so the major paper companies in Maine have doubled their total plant capacity in an unparalleled modernization program. Just a few days ago a Madison paper mill announced plans for a $185 million expansion program which will quintuple its cordage consumption.

In short, there's no longer a surplus of timber in Maine. There may soon be a commercial need for every tree the state can grow. If that's the case Dickey-Lincoln would hardly seem to constitute the best possible method of protecting our forest resources.

[From the Portland Evening Express, Apr. 6, 1978]

Dickey on Its Last Legs

Although most of Maine's political leaders have long since taken a firm stand for or against construction of the Dickey-Lincoln power project. Governor Longley has yet to make his feelings known.

Whatever the governor's decision, it appears less and less likely that it will have a significant impact on whether the project goes forward.

True, if he comes out against the project it could be the coup de grace for the badly wounded dam proposal, but if he decides to support the project, it is highly doubtful that would be enough to rescue the controversial proposal from eventual oblivion.

For one thing, the governor's influence in Washington has necessarily been weakened considerably by his announced decision not to run for another term.

Even more to the point, the fact that the Maine congressional delegation is split right down the middle over Dickey all but assures that the project will not go forward.

The northern Maine hydroelectric power project had difficulty enough getting feasibility study funds over the years when the Maine delegation was united behind it. Now that both Representatives Emery and Cohen have taken positions against the proposal, the likelihood of its winning many further stays of execution is practically nil.

The two Maine congressmen are not alone in their opposition. Rep. Sylvio O. Conte of Massachusetts, who has fought Dickey from the very outset, recently released a poll indicating a majority of his congressional colleagues from all six New England states are against the power project.

Conte appeared before a House Appropriations subcommittee Monday to argue against a $1.7 million budget request by the Corps of Engineers for "advanced engineering and design work" for Dickey.

Said Conte: "The corps is leaping ahead of the prescribed process by asking for funding for the next stage of activity, which should be considered only after Congress reviews the final environmental impact statement."

Exactly. There is no possible justification for approving engineering and design funds before a decision is made whether to go ahead with construction of the huge power project.

If the budget item reaches the House floor, both Reps. Emery and Cohen are expected to fight for its deletion.

That kind of opposition—coming from representatives of both the state and the region slated to benefit most from a public works project of this kind—surely will not be lost on the full House.

Regardless of which way the governor goes on this issue. Dickey-Lincoln appears to be in the final throes of its checkered life.

[From the Bangor Daily News, Oct. 11, 1979]

Aroostook Power

In the methodical and deliberate way that is his trademark, Rep. David Emery is tackling the issue of alternatives to the Dickey-Lincoln hydroelectric project—seizing a theme that the state will likely hear much more of in the months ahead.

Emery, regarded as a pragmatist and a conservative, is opposed to the Dickey project, but true to his instincts and his philosophy he is attempting to dispose of the two problems that are at the root of the Dickey controversy.

Problem One is Dickey-as-boondoggle—a political item that would eventually waste $1 billion or more in receipts from the federal taxpayers in order to fatten the collection of Democratic IOU's.

The problem is handled in Washington.

The second problem is equally important and urgent. Although Dickey deserves to fall on its lack of merit, Maine still needs new sources of non-petroleum energy. In Northern Maine hydro power is used extensively but a tremendous latent potential remains untapped, unexploited.

In its report "Energy in Northern Maine" the Northern Maine Regional Planning Commission acknowledged this situation and cited hydro power as one of a diverse collection of alternatives that could contribute significantly to the region's energy future.

The commission's approach, observations and recommendations jibe closely with Emery's on at least one key point:

The hydro potential of that region would be best and most efficiently used in the northern part of the state. In the trade-off of wood power lost in transmission and the other elements that are an integral part of dam construction and impoundment flooding, the positive aspect of hydro generation, electrical energy, should accrue to local communities.

The commission has endorsed the floating of state bonds to finance a scaled-down hydro project at Lincoln School and Emery's office is backing the efforts of a three-student team from Worcester Polytechnical Institute that is examining the small dam potential of Aroostook County.

Among the sites that the students have examined and been favorably impressed with are Lincoln School and Castle Hill and Aroostook River location also mentioned by the planning commission as a good site for development in the near future.

Although it is not the responsibility of opponents to Dickey, or any other undesirable or ill-conceived project, to provide alternatives along with their criticisms, it is important that constructive proposals emerge from these controversies.

It is not enough to be right when the basic job remains undone.

[From the Bangor Daily News, Jan. 2, 1980]

The Gold Mine

The U.S. Army Corps of Engineers deserves tribute for its perseverance in relentless pursuit of the Dickey-Lincoln Hydroelectric Project, but despite its best efforts it is still unable to make a convincing case for such a destructive and expensive project.

In its latest announcement, the Corps has elevated the series of dams and impoundments to the status of an energy gold mine. And it is, for a few unions, a handful of politicians, some contractors and a few businesses—they'll get the gold.

The average taxpayer, the Maine resident, the forest industry workers and the river and forest land detrimentally affected by the project will get what remains . . .

The Corps has pointed out that the cost of oil is going up four times as quickly as the cost of the Dickey project. In the year ending in October the projected cost of the hydro project went up by 11 percent while power costs in this part of New England leapt 45 percent.

All very true probably, but such numbers hardly transform Dickey into a figurative gold mine. Gold, don't forget, has increased in value by 100 percent during the same period.

The Maine forest, a vital component of the Dickey equation, is also becoming more valuable with each passing month. The same inflation that is driving up the cost of concrete and oil is pushing up the price of paper, building materials and, to a lesser extent, fuelwood.

In rebuttal to the Corps' gold mine pronouncement, the Natural Resources Council reminded the engineers that Dickey might look impressive when compared one-on-one with OPEC oil, but it fares not so well when compared with some of the other alternatives, including hydro.

A variety of hydroelectric projects have been proposed for the Aroostook County area, all of them in total being less costly and bringing more direct benefit to Maine.

Congressman David Emery has promoted a scaled down Dickey project with additional hydro sites on the Fish and Aroostook rivers. Emery, himself an engineer and a deliberate individual, made his recommendations following a survey done through his office by a group of engineering students.

True, the price of oil makes Dickey look better, but it also improves the appearance of its alternatives.

And the spate of OPEC increases does not negate the fundamental objection to Dickey: it does too much damage and is too expensive an investment for the return in power.

Given our technology, for $1 billion there are far better ways to produce or conserve an equal amount of energy on an annual basis.

[From the Lewiston Sun, June 26, 1979]

Scaled Down Project

There is renewed interest in a scaled-down version of the Dickey-Lincoln School hydroelectric project on the St. John River, in northern Maine, which would involve only one dam, at Lincoln School, and virtually no flooding of the wilderness. It certainly deserves full study, in view of today's energy needs.

The single-dam project initially was proposed by former Senator William D. Hathaway of Auburn in 1972. He considered it an acceptable alternative to the full scale project which involves the flooding of 88,000 acres of Allagash forestland. But the emphasis has been on the full project.

Recently, the Northern Maine Regional Planning Commission gave a tentative outline of the single-dam plan to Gov. Joseph E. Brennan. The proposal has the strong support of John Joseph, the director of the state Office of Energy Resources.

The estimated cost of the single-dam proposal is $100 million, to be financed entirely by state bonds and private funds. Dickey-Lincoln cost is estimated at between $800 million and one billion dollars, all federal funds.

Whereas most of the peaking power from Dickey-Lincoln would go out of state, the power from the single dam would provide about one half of the energy needs of Aroostook County.

Maine Public Service, the state's third largest electric facility which services northern areas, has been invited to join the Lincoln School dam project and is giving it serious consideration, according to a spokesman.

Meanwhile, our congressional delegation sharply is divided on the Dickey-Lincoln project, on party lines. Senior Senator Edmund S. Muskie favors the project and is leading the fight in the Senate for a $710,000 appropriation for a final environmental impact study. Sen. William S. Cohen and House members Olympia Snowe and David Emery, all Republicans, are opposed to the project and to spending any more money on studies by the Army Corps of Engineers. The very fact of the division in our delegation practically rules out favorable action in Congress.

The proposal now being studied by Gov. Brennan and delegation members may provide the vehicle for agreement at the state level of development.

[From the Kennebec Journal, Oct. 24, 1979]

The Corps Tries a Hand at "Mitigating"

The Army Corps of Engineers continues to play wild cards in efforts to get its sweaty hand on the upper St. John River. The New England Division last week submitted what it called a "project mitigation" on the Dickey-Lincoln hydroelectric proposal.

"Mitigation," by one definition, means to render less painful. There is nothing in the Army's attempt at "mitigating" the murder of a wild river that renders it in any way less painful. On the contrary, it succeeds in making the suggestion even more unthinkable.

The Army proposes now that the federal government buy about 100,000 acres in the vicinity of the Allagash Waterway System for "fish and wildlife management to offset the loss of wildlife habitat which would be eliminated" if Dickey-Lincoln is built.

Such a proposal would add $15,700,000 to the cost of building a hydro generating plant on the St. John, already estimated at about $800,000,000 in addition to $50,000,000 a year to operate.

But, but, you expostulate, that is an acceptable price to pay for an alternative energy source.

Consider what the price entails, and what it buys:

It would make a flooded wasteland of 84,600 acres of which about 54,000 are regular producers of a tree crop.

It would kill a wild river, a river that enriches us and posterity because it is there even though we ourselves may never see it.

The two dams—a large one at Dickey and a smaller downstream at Lincoln School—would also flood out some of the East's best spawning beds for brook trout;

They would isolate from the rest of Maine an additional 200,000 acres of producing timberland;

They would drown forever an estimated 35 deer wintering yards.

And for what? To produce electricity for 2½ hours a day; the volume of water on the St. John will allow no more.

The cruelest cut of all in this dam-the-St. John business is that the Corps' own financial study indicates less than a third of the generated power would be for Maine's use. The balance will be shipped via a broad swath of transmission line to the air conditioners and Water Piks of southern New England.

The key words that keep this monster alive (still viable thanks to fresh money for preconstruction planning in the appropriations measure signed by the president only last month) are peaking power. Anyway, the obvious key words, discounting another potent pair: Democratic politics.

At any rate, the need for peak load capacity is used by utilities to justify new facilities. This argument is hollow in the face of such practical alternatives as energy conservation laws and utility rate structures that would inhibit peak load demand. If the peak load users had to pay a premium price for their habits it is reasonable to expect the peaks would be leveled very quickly without the need for bulldozing and consequently drowning an enormous tract of Maine woodland.

The Army Corps of Engineers wants to dribble away $15,700,000 more of your money to "mitigate" Dickey-Lincoln, not to mention another million dollars annually to manage the new tract. Their plan sets aside an unspecified number of acres for "deep woods" conservation, thus removing even more producing land from the economy. Far from mitigating anything, the Army proposal compounds the felonious assault still being plotted against the north Maine woods.

[From the Bangor Daily News, July 30, 1979]

Dickey Compromise

Thursday's action by the House Public Works Committee—its surprise 24–17 vote to deauthorize funds for further study of the Dickey-Lincoln—would be more encouraging if the Congress as a whole were not so schizophrenic in the issue.

Although we heartily applaud the committee's courage and good sense, we would feel better if we were certain that Congress had at long last seen the light on this proposal and that this was not just another flourish of sanity that will be smothered later by the oppressive politics of the Dickey controversy.

Just a few days prior to the Public Works Committee vote, the see-saw was on its way down.

Despite overwhelming opposition from the New England delegation and a lopsided 3–1 show of non-support by the elected representatives of the State of Maine, the Senate and conference committee of senators and congressmen voted to prop up the shaky hydro project for another year.

The big losers were not the state or regional delegates, who argued and lobbied in vain, but the public, whose representatives were ignored and who were expected to cough up another substantial sum, $710,000, for further study of a project they didn't want.

A week before that action, Sen. William Cohen's attempt to delete funds for the study was narrowly rejected, 51–46, by the Senate.

Following the conference committee vote, which was not preceded by debate, an aide to Sen. Edmund Muskie, the only Maine delegate who favors the project, remarked that both the Senate and the conference committee were persuaded of the merits of the dam proposal.

Not at all.

What these votes represented were triumphs of political strength, with roots deep in partisanship and the darker aspects of Washington politics, the favors and deals and reciprocal backscratching.

There was no conviction there, no victory through persuasive argument or presentation of evidence.

In fact, if there was any moral victory—a small consolation to losing another $710,000 to balm a party and an ego—it was won by opponents of the Dickey project.

The public works vote was a tactical surprise that outmaneuvered but didn't outgun the formidable political and institutional forces behind Dickey.

The real test of congress' new conviction on the dam will come in the full House and Senate.

In spite of the almost oppressive weight and preoccupation with energy matters, the willingness of government and the electorate to squeeze oil out of rocks, harness the tides, grow alcohol fuel stocks, tap the sun and tinker with the basic building blocks of matter, support for Dickey-Lincoln remains slim and lukewarm.

The preponderance of political power has been behind it, the Corps of Engineers and other formidable agencies of government have wanted it, but the millions of dollars invested in studies and reports have failed miserably to present a convincing case for that dam.

We're running out of time.

There are too many imperatives and too much at stake for this delegation and this country to be stumbling over the Dickey boondoggle every time it attempts to improve the energy situation for this region.

Egos and partisanship must be shelved.

Edmund Muskie, Rep. Edward Boland of Massachusetts and those others who still cling to this threadbare proposal need to demonstrate a willingness to compromise on such alternatives as a more modest dam on the St. John River which would provide flood control and baseload power at a substantially lower cost in money, timber resources and environmental destruction.

Dickey, as originally conceived and promoted, does not make sense, economically, environmentally or in terms of our need and latent ability to produce energy.

Some reportedly big and unarguably powerful members of the New England congressional delegation need to accept that reality.

[From the Lewiston Evening Journal, Oct. 27, 1977]

As We See It—Dickey-Lincoln Report

The study of the proposed Dickey-Lincoln hydroelectric project undertaken by the state Department of Conservation with assistance from the Planning Department was made public Wednesday at Governor James B. Longley's press conference. It revealed benefits would exceed costs.

It is important, however, to recognize the fact that a $53 million benefit over a period of 100 years, which is what the report indicated, isn't a tremendous amount of money. Conservation Commissioner Richard E. Barringer put this in perspective by saying it represented a benefit of approximately 50 cents a year to each Maine resident. Even prior to the rapid inflation of the past 20 years, an annual award of 50 cents hardly would set anyone's heart racing.

At the same time, Barringer said the study did not indicate the building of the dams would have any major impact on economic development within the state. So arguments that Dickey-Lincoln would bring in a lot of new industry seemingly cannot be based on solid ground.

If the project has to rest solely upon its monetary benefits or what it would do to encourage economic growth, then the conclusions one is to draw from the study have to be that it probably isn't worthwhile. There is one additional area deserving consideration. Indeed, it represents the most significant concern at the present time.

We refer to the fact our New England area needs more energy; particularly energy not resulting from the use of oil. Dickey-Lincoln may be justified in terms of this need. The dams would provide peaking power quite faithfully. They would serve in the place of some new oil or coal-fired steam plant.

Yet even here there is reason to question the practicality of the project. The amazing advances science already has made toward utilizing the unlimited energy pouring in on the earth daily from the sun suggests the proposed hydroelectric complex might be of little worth 10 or 20 years from now. Certainly there is no assurance the dams would be offering a benefit a century from now.

Originally we supported Dickey-Lincoln strongly. At the time the cost benefit ratio was far superior to the one outlined in the Conservation Department study Wednesday. The reason was that the project could have been completed at that time for between a quarter and a third of the cost required today. This latest report indicates the project may be feasible, but it really doesn't disclose compelling reasons why it should be carried out.

[From the Maine Sunday Telegram, Dec. 12, 1979]

Save the Forests

The proposed Dickey-Lincoln hydroelectric power project on the St. John River is a bad idea. And it's made worse, not better, by the proposal to set aside more than 100,000 acres as a wildlife habitat.

Dickey-Lincoln dams would flood 88,000 acres of valuable timberland, including almost 37,000 acres of deer yards. The federal government proposes the wildlife habitat as a means of counteracting the loss of the flooded land.

It can't be done. Not even Washington can create land by buying it. All the government's plan will do is take even more valuable and productive forestland out of private ownership.

It's difficult to imagine a worse time than now to further deplete the state's timberland. Although Maine has 17 million acres of forest there is no longer a huge surplus of wood here.

Within the past decade the state's major paper companies have undertaken a vast modernization program which has almost doubled plant capacity. The number of sawmills has increased substantially during the same period. This increased demand for timber, when coupled with losses caused by the spruce budworm epidemic, means the paper industry needs about all the timber it can grow. As an example, Great Northern Paper, which owns at least 40 percent of the land in the proposed wildlife habitat area, now uses all the spruce and fir it can lay its hands on.

In short, the state's best long range interests aren't served by flooding 88,000 acres of productive timberland and removing another 100,000 acres or so from private ownership to establish a wildlife habitat.

We'd be better off forgetting Dickey-Lincoln and concentrating instead on preserving our forest resources.

[From the Bangor Daily News, Sept. 3–4, 1977]

Dickey Study

"All forms of life now indigenous" to 88,000 acres of Maineland, including man, will no longer find the land habitable.

Some 88,455 acres of wildlife habitat, including 36,893 acres of deer wintering grounds, will be wiped out. The effect will be to cut by one-half the number of deer in the area.

Seventy-five miles of logging road and 76,173 acres of timberland will be permanently destroyed—lost forever to a state that derives its economic base from its woodlands. In cords and dollars and cents, that works out to 50,351 cords of wood generated each year for a value of up to $311 million over the next century.

What could do such damage to the Maine woodlands? An earthquake? Flood? Meteor? Nuclear weapon?

All of the above could do the job quite nicely, but the culprit in this instance is the Dickey-Lincoln Dam, and the figures quoted above are the hard facts about the dam contained in the environmental impact statement on the $700 million project.

Released this week, the 196-page study creates a depressing scenario that would follow construction of the hydroelectric project.

In addition to lost habitat and timberland, 278 miles of flowing streams and rivers will be erased from the face of Maine along with some 30 lakes and ponds.

Among the assets that would be an "irreversible and irretrievable" loss to Maine if the project goes through, is some 55 miles of the St. John River.

Instead of miles of freely flowing water where man can enjoy recreational activity using canoe, arms, gravity and falling water, this energy program will create a mammoth lake where mile-to-the-gallon inboards and outboards will predominate.

The lake itself will be an alien form in Maine. The study predicts that there will be "a continual problem" each summer as the power pool is drawn down, exposing 1,500 acres of shoreline debris.

A subjective but no less important point: The St. John Valley, a beautiful piece of real estate by anyone's standards, will lose its looks to the scars of construction and or will be washed out by the new lake.

The report also contains a message for those who live in northern Maine and who see, in the dam, the potential for relatively short-run economic gain during the construction phase.

The influx of workers, says the report, will have an adverse impact on housing. Municipal services will have to be beefed up (that's taxes folks), recreational facilities will need to be improved and so will highways. (While the latter might be welcome, it should be remembered that that is just more money out of the public till and it must be weighed against all the other considerations—$700 million will pave a lot of road.)

For those concerned about their way of life, the report predicts increased problems with prostitution, alcoholism, crime and drug abuse during the construction phase.

Somewhat hidden in a portion of the study that isn't likely to attract much attention or sympathy, is the essence of the problem with Dickey-Lincoln.

The report relates that when the government takes the land necessary for construction of the dam, the major landowners will be left with large amounts of money on which they will wind up paying substantial capital gains taxes.

"There is no shelter available for these large windfalls of unwanted monies," says the report, "nor are there lands available for reinvestment" of the unwanted income from the eminent domain acquisitions.

Land is a finite commodity. When there isn't any more, you can't make any more. You can't grow trees on a lake.

Mr. COHEN. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATFIELD. Is there any time limitation or time agreement on the amendment?

The PRESIDING OFFICER. There is no time limitation on the amendment.

Mr. MITCHELL. Mr. President, we are faced here today with an amendment offered by my colleague and friend, Senator Cohen, which would delete $795,000 from the energy and water resources appropriations bill and preclude the expenditure of funds related to the Dickey-Lincoln hydroelectric and flood control project on the St. John River in northern Maine. His intent, as I understand the amendment, is to terminate completely and finally all work toward development of this project, specifically the environmental studies, the fish and wildlife mitigation studies and the preconstruction engineering studies which are funded by this appropriation.

Senator Cohen has truly been a friend during my early months in the Senate. My respect for his skill as a legislator has increased as we have worked together. I regretfully disagree with him on this issue and rise to oppose his amendment. I do so because I am persuaded that he is wrong. The adoption of his amendment would be contrary to the interests of our State, our region, and our country.

The issue presented by Senator Cohen's amendment is not new to the Senate. It has been debated over the last decade and his position has been consistently rejected. It was rejected by rollcall vote when he offered it last year and it was rejected in 1975.

The Senate has heard extensive debate and is familiar with the views of both sides. I do not intend to restate all of the arguments here today, but I will set forth some of the basic reasons why I believe this amendment should be rejected.

President Carter in his budget request of 1981 asked Congress to provide $795,000 for fish and wildlife mitigation studies and for preconstruction engineering studies on the Dickey-Lincoln project. I have talked to OMB officials and can report that the administration continues to support the appropriation provided in this bill.

The Subcommittee on Energy and Water Resources and the full Appropriations Committee voted, I believe without dissent, to include these moneys requested by the President in the energy and water development appropriations bill after hearings on the project earlier this spring.

First, this project has widespread support in the State of Maine.

At hearings earlier this year, Maine's Gov. Joseph E. Brennan submitted testimony in support of this appropriation, as did then Senator Muskie, the speaker of the House in Maine, and numerous members of the Maine Legislature. This appropriation is supported by the Northeast Public Power Association, representing municipal and cooperative electric systems in Maine and New England, the Maine and National AFL–CIO and the American Public Power Association and the Rural Electric Cooperative Association. I shall submit for the Record statements of support from many of these individuals and organizations.

Mr. President, I ask unanimous consent to have printed in the Record the material to which I have made reference.

There being no objection, the material was ordered to be printed in the Record, as follows:

State of Maine,
Office of the Governor,
Augusta, Maine, March 25, 1980.

Hon. J. Bennett Johnston,
Senate Appropriations Committee, Chairman, Subcommittee on Energy and Water Development.

Dear Mr. Chairman: This statement is being provided to inform you and the members of your subcommittee of my continued support for the Dickey-Lincoln hydroelectric project in Aroostook County, Maine, and for the preconstruction funds necessary to carry this project forward.

My support is based primarily on the energy cost and supply problems which I believe to be of urgent importance to the State of Maine and New England.

This project is one of the few opportunities available in New England to develop a native, renewable, significant energy source. Now Maine is a net energy-importer State, even though we are rich in natural resources that could be utilized in the production of energy in this State. One of our more important natural resources is our hydroelectric power potential. As a hydroelectric project, Dickey-Lincoln energy would have the compelling characteristics of being a continuous, safe, clean, and virtually inflation proof source of electricity.

We in Maine are still dependent on oil to a degree perhaps greater than that of any other state. We have in Maine made significant strides in the area of energy conservation. Maine has been a leader in reducing its oil consumption. For example, it is estimated that there has been a 20 percent decrease in fuel oil consumption this winter compared to last. However, notwithstanding all the attention paid to conservation in the past few years, despite the 55-mile-an-hour speed limit, despite a dramatic increase in the use of wood for primary or supplemental home heating in Maine, we have to face the stark reality that this State and the region remain overly dependent on petroleum for their energy needs.

This project offers real promise for Maine and New England. It offers potential to decrease our over-reliance on petroleum. The plant at Dickey-Lincoln dam would generate 1.4 billion kilowatt-hours of electricity to meet projected peaking power needs. I remain impressed by figures which show that it would take 2.3 million barrels of oil to produce an equivalent amount of electrical energy. Dickey-Lincoln would provide 20 percent of New England's estimated peaking power needs in the 1980's. This represents a significant amount of renewable energy for the State and the region.

We, of course, recognized the obstacles to the development of this potential source of energy. There have been many proposals for projects to help lessen our energy problems. Each has been strongly opposed by the large segments of our population, and Dickey-Lincoln is among them. Nevertheless, I agree with the logic of Senator Muskie, who has said that if we are truly serious about meeting our future energy needs, we cannot oppose everything—the Pittston Company's proposed refinery at Eastport, expanded reliance on nuclear power, greater use of coal, Dickey-Lincoln and others. We must make choices based on a careful consideration of what serves both the immediate and long-range interests of the State of Maine and New England and the Nation. With the continued escalation of oil prices and the uncertain future of nuclear power, it has become even more imperative that we seek realistic alternative sources of power to meet the State's and region's energy needs.

In summary, I support the continued funding of the Dickey-Lincoln hydroelectric project. I can think of no better investment to federal energy and public works dollars than this, which would develop the renewable, indigeneous power of the St. John River to further the energy independence of Maine, New England and the Nation.

Thank you for your courtesy and consideration.

Sincerely,

Joseph E. Brennan,
Governor.

Dickey-Lincoln Hydroelectric Project

We, the undersigned members of the 109th Maine Legislature, wish to express our hope that the United States Congress will act favorably during the current session on the proposed Dickey-Lincoln hydroelectric project in northern Maine.

We favor the construction of this energy project for the following reasons:

1. The project would provide 45 percent of its output in the form of base and intermediate load power to be consumed within the State of Maine.

2. The project would provide 55 percent of its output in the form of peaking power to meet 17 percent of the region's peaking power needs.

3. The two main dams, at Dickey and at Lincoln School, would provide invaluable assistance to the citizens and businesses of the St. John Valley in controlling the annual spring run-off which frequently floods low-lying areas and does millions of dollars of damage.

4 The project, unlike other real alternatives available to Maine, provides clean, dependable energy at reasonable and inflation-proof prices.

5. The project would reduce our dependence on imported oil and uranium.

6. The project would allow and facilitate the development of additional sources; alternatives to current, conventional, nonrenewable energy sources, many of which must be imported from outside the United States.

7. The project would provide reliable power to stabilize our increasingly unstable energy supply system which all too frequently suffers from plant shut-downs, oil embargoes and international political chaos.

We recognize that the State of Maine has a responsibility and an obligation to share the energy burden of the United States to the extent that our state is able. Our state has no proven oil reserves, no coal deposits and no sources of uranium. The only major energy project feasible in Maine is the hydroelectric project at Dickey-Lincoln. All other possible projects currently being considered require either non-renewable or foreign sources of fuel, thus further increasing our dependence on other nations for our energy supply.

We ask for your assistance in placing funds in the Federal Budget for 1980–81 to begin the construction phase of the Dickey-Lincoln hydroelectric project. Each year of delay raises the cost of the project and sets back the time when Maine, New England and the United States will begin to benefit from the power to be generated by the project

Thank you for considering this important matter.

Yours truly,

Signed by 50 members of the Maine Legislature.

Statement of the Northeast Public Power Asssociation

Mr. Chairman and members of the Energy and Water Development Subcommittee on Appropriations, my name is Jack Wark. I am information director of the Northeast Public Power Association, a non-profit service organization based in Wellesley, Massachusetts and representing the 81 consumer-owned electric utilities in New England. I appreciate the opportunity to appear here today to express my organization's enthusiastic support for Dickey-Lincoln, the hydroelectric project planned for the St. John River in northern Maine, and, more specifically, for the President's proposed $795,000 advanced planning and engineering appropriation now being considered by this subcommittee.

New developments make Dickey-Lincoln more attractive—and more necessary—than ever before. Foreign oil supplies are becoming more costly and less reliable. Domestic energy options are shrinking. Fossil fuels are being consumed at an alarming rate. Set against this gloomy backdrop, the case for Dickey-Lincoln becomes especially compelling. Dickey-Lincoln would utiilze a "fuel"—namely, the waters of an American river—that costs nothing, that is inflation-proof, that is safe, abundant, clean and renewable.

That Dickey-Lincoln's value is growing, is a reality that can be expressed in terms of real dollars, real jobs and real energy. Consider, if you will, some of Dickey-Lincoln's economic advantages:

First, the U.S. Army Corps of Engineers has determined that the value of Dickey-Lincoln's power is increasing four times faster than is the cost of constructing the 830 megawatt facility. Between Fall, 1978 and Fall, 1979, the estimated construction cost of the project increased about 11 percent to $825.5 million. Meanwhile, Federal Energy Regulatory Commission statistics indicate that, as a result of oil price hikes, power costs in New England are 45.2 percent higher this year than last for the type of power that Dickey-Lincoln would supply.

Second, Dickey-Lincoln's low-cost power would help stabilize New England's electric rates, which are, according to a recent U.S. Department of Energy report, 31 percent above the national average. Various studies support this point. One such study, commissioned by Municipal Electric Association of Massachusetts and performed by R. W. Beck and Associates of Wellesley, Massachusetts, indicated that Dickey-Lincoln would save Massachusetts consumers some $20 million in the project's first year of operation, with escalating annual savings for the 100-year life of the project. Another study, this one made by Robert V. Clark, Eastern Maine Electric Cooperative, Inc. general manager, showed that Dickey-Lincoln would save Maine consumers more than $20 million in the project's first year of operation and that the savings would annually escalate for the project's life. Another study, this one conducted by the Maine Department of Conservation, showed that the benefits of Dickey-Lincoln to Maine would outweigh its costs by $53 million.

Third, Dickey-Lincoln is particularly valuable because its primary function would be to provide peaking power—that is, power used when electric demand is greatest. The project would provide 17 percent of New England's peaking requirements in the 1980's, a fact whose significance is underscored by projections indicating that the region's demand for peaking power will leap by more than 70 percent in the 1980's.

Fourth, Dickey-Lincoln would lessen New England's economically debilitating dependence on imported oil. To generate the same amount of power as Dickey-Lincoln, would require 2.3 million barrels of oil annually, or about 230 million barrels over the project's 100-year life. The value of this oil—using the extemely conservative assumption that oil prices will not rise above current levels—is well over $4 billion.

Other factors argue for Dickey-Lincoln's construction. Among them are these:

Although it would probably cost the Federal Government close to $1 billion to build Dickey-Lincoln, the Government would recoup about 98 percent of its construction costs through the sale of power from the project. Moreover, the power would sell for prices consideraby lower than if the project were built by a privately-owned utility.

The project would mean jobs—about 2,000 on-site construction jobs plus thousands of others that would result from the improved New England economy that Dickey-Lincoln could be expected to foster.

Dickey-Lincoln offers numerous advantages to Maine, the State in which it would be built. First, of the power generated by the project, 44 percent would remain in Maine—or, in other words, Maine, with less than 10 percent of New England's population, would receive almost half of the power output from a regional project financed by Federal money. Moreover, Dickey would provide 25 percent of Maine's total peaking power requirements. In addition, the project would provide badly-needed protection from floods that now, on an almost annual basis, devastate communities along the St. John River.

Opponents of the project have advanced many arguments which are incorrect, incomplete or entirely misleading. For example, they have claimed that there is no public support for Dickey-Lincoln. In fact, every major public opinion poll of Maine residents shows more people support the project than oppose it. A survey, conducted late in 1979 by the University of Maine's Social Science Research Institute at the request of the Maine Office of Energy Resources, showed 41.5 percent of the Maine public favoring the project's construction and 35.8 percent opposing it. Another poll—this one commissioned by L. L. Bean, a Maine-based manufacturer of outdoor clothing and equipment and avowed opponent of Dickey-Lincoln—showed 38 percent for the project; 30 percent against; and 32 percent undecided. A poll by U.S. Senator Edmund S. Muskie, the Maine Democrat, found 48 percent supporting Dickey-Lincoln, 40 percent opposing it and 12 percent undecided. In the county where Dickey-Lincoln would be built, the Aroostook County commissioners found 57 percent in favor of the project, 20 percent against, and 23 percent undecided.

Opponents claim that Dickey-Lincoln is not worth the environmental damage that it would cause. This claim, in our view, smacks of "environmental extremism." The area that would be altered by Dickey-Lincoln represents less than one-half of one percent of Maine's total wilderness area and more than 90 percent of Maine is forest. This is not to suggest that the 127,000 acres that Dickey-Lincoln would alter, is insignificant; rather, it is to place in perspective the amount of land at issue. Second, inundation by the Dickey reservoir does not represent the utterly destructive action that project opponents claim. In fact, it will produce a lake suitable for various recreational activities and, thus, represents a relatively benign form of land use.

A third consideration about the environmental impact is that the project area simply is not a pristine wilderness. As anyone who has visited the area knows, it has been fairly ravaged by wood-cutting operations, with hauling roads and skid trails sometimes just yards apart.

Another claim advanced by project opponents is that conservation and the so-called "soft" technologies represent alternatives to Dickey-Lincoln. This claim misses the point of Dickey-Lincoln, which of course is to reduce New England's oil dependence. To substitute one oil-saving alternative for another, is, in our judgment, a self-defeating enterprise. We need all oil-saving energy alternatives. We need Dickey-Lincoln and conservation and the "soft" energy forms.

Worth noting is that Dickey-Lincoln could enhance the use of such energy forms as low-head hydro, solar, wind, etc. These alternative energy forms, though obviously valuable, tend to be erratic in their production of energy. Dickey-Lincoln, with its enormous and reliable reserve potential, could provide necessary back-up capacity for smaller, less reliable alternative energy projects.

Another energy alternative which Dickey-Lincoln would enhance is the possibility of importing Canadian power. The transmission facilities from Dickey-Lincoln would be only 40 or 50 miles from an interconnection point on the Canadian power grid. Having Dickey-Lincoln, in other words, would open the door for a valuable exchange of electric power between this country and Canada.

Our conclusion is that we need Dickey-Lincoln and that we need it as soon as possible. The Northeast Public Power Association urges this Subcommittee to act favorably on the proposed budget request for Dickey-Lincoln. Thank you for your consideration.

STATEMENT OF PHILIP MERRILL, MAINE CITIZENS FOR DICKEY-LINCOLN

Mr. Chairman, I want to thank you for the opportunity to appear here today on behalf of Maine Citizens for Dickey-Lincoln. Our group represents a cross section of Maine people; businessmen, professionals, bankers, leaders of labor unions and average citizens who want to see the St. John River used to produce electric power for the Northeast.

No issue is more on the mind of the American people than energy, and the attention given the subject by this Congress reflects that fact. And if energy is an issue here, you can imagine our intensity of concern in the Northeast corner of the country. Our cold climate and disparate population intensify our need for energy. And we are not a region rich in indigenous energy resources. The bulk of our electricity in the Northeast is produced with oil. Most of that is imported. Most of our homes are heated with oil, and most of that is imported.

In my state, people have responded to the energy crunch by sharp cutbacks in oil use through conservation and the burning of wood. We are working now to put our low-head hydro dams back into use and as an attorney, I'm involved in that effort.

These efforts are important and they will continue because they must and because Maine people are, by nature, conserving people who will do their share to help solve this national problem. But these efforts only mark a beginning of what must be done to free our region and our country from its frightening reliance on foreign oil.

As every member of Congress knows, we pay a high price for every gallon of oil we burn. A price measured in consumer dollars, in trade deficits, in inflation, and in weakening our defense posture and our hopes for peace. Construction of the Dickey-Lincoln School Dams would replace the need for 2.6 million barrels of oil a year, over 110 million gallons. At the present cost of oil, at $35 a barrel, that savings would offset the cost of construction in 10 years.

Now, of course, there is a cost to money itself—anyone trying to buy a home today knows how important this fact is. And this question of the cost of interest is a favorite of the opponents of all water projects. I won't join in the debate today about what is the real cost of money on which these projects should be based; there are experts that work for you that know more of this than I do, but let me suggest that the real cost of money, the real interest rate, is the difference between the interest rate paid and the inflation rate of oil. I think it is conservative to say that oil prices will increase over the next 20 years at a rate in excess of 4 percent ahead of the average inflation rate. If the percent increase of the oil Dickey-Lincoln replaces is subtracted from the actual interest rate paid by the Federal government to build this project, the project will certainly have paid back the American taxpayers in less than 20 years.

Beyond these direct economic benefits, there is the indirect benefit of reducing the demand for oil. The recent highly publicized energy study done by the Harvard Business School spent considerable time developing the case that every barrel of imported oil saved represented a savings of several dollars by reducing the tension on the supply demand curve. These savings will be enjoyed by all Americans, in all regions.

The critics of Dickey-Lincoln attack the project as being too small and, at the same time, without so much as a nod to consistency, as being too big. Too small, they say, because it will generate only 1 percent of New England's energy needs. Let me say that even if this characterization were accurate, we should not eliminate this project from consideration. Big bang, single-stroke solutions to our energy problems do not exist. The solution will involve thousands of pieces to the puzzle. But, in fact, this project will expand New England's grid capacity by 18 percent. The foes of the project miss the figure by 1,800 percent because they refuse to recognize the fact that Dickey-Lincoln would produce most of its kilowatts in the form of peaking power. The fact that we need more electricity during some periods of the day than others, or during certain periods of the year, isn't going to go away because some Pollyanna wishes it were so. Our need for peaking power is increasing in Maine. Over half the homes being built are being built with electric heat because it is cheap to install and it is compatible with wood as a backup. Many of the new low-technology energy resources like solar, wind, and hydro are not reliable on a 24-hour, 365-day-a-year basis. The fact is, our new increasing reliance on these soft energy sources will greatly increase the fluctuation in the electricity demand curve. I don't say this to criticize these new sources; I have worked for their development in both my public and private professional life, but advocates of solar, small hydro and wind must face facts, and if they do, they will put a high premium on Dickey-Lincoln's ability to provide economic power on demand.

Dickey is attacked as too big because it would be a costly project, would produce a lake of 88,000 acres, and would involve construction of a large dam, 10,000 feet long, with a maximum height of 335 feet. Opponents hold that if smaller is beautiful, then the contra positive is true; not small is ugly. In fact, the glaciers brought by the ice age created hundreds of lakes in our state; none are considered ugly. My family owned a camp on such a lake in more populous southern Maine—Sebago Lake, a lake of about 85,000 acres. Thousands of people visit that lake every year. No one, to my knowledge, ever suggested draining that lake as an aesthetic improvement or to restore the area to forest production.

The St. John River does offer good white water canoeing for a few weeks early every summer. And construction of the dam will end that. This is a real loss, but I suggest it's a tolerable one. Recent times have seen people enjoy this sport for 447 visitor days a year . . . a total roughly comparable to the number of people on free pass at any given Red Sox game. When measured in comparison to the cost of oil replaced by the project, the cost would equal $1.6 million dollars per canoe day.

The area that would be flooded is not virgin forest. It has, in fact, been heavily harvested by Canadian companies; work that is done primarily with Canadian labor with very little benefit to Maine or this country.

It should be further noted that this project will prevent flooding downstream in Fort Kent; flooding which is now almost an annual occurrence.

In short, Dickey-Lincoln will bring environmental change, but compared to the real tough energy U.S. environmental decisions we face, this one is easy. It will produce no acid rain, no radioactivity waste with a half life of thousands of years, and does not expose us to the threat of war in order to assure its continued availability.

Dickey-Lincoln is not a new issue. These studies being funded here have gone on for some time. During that time, opposition from several so-called environmental organizations has been constant. One of their favorite themes has been that the people of Maine don't want the project, and that, I can tell you with certainty, is not the case. Maine support for the project remains strong. Polls still favor the project. The project is most strongly supported in Aroostook County, the county in which it will be constructed.

The Governor of the State supports the project, and defeated a candidate who opposed it in his 1978 campaign.

I have personally traveled throughout the St. John Valley and talked to the people there. They want this project—they need the power it will produce. In fact, the most often stated concern is why it has taken so long to get to construction. With your continued support, that day is near and we look forward to it.

STATEMENT OF SENATOR HAROLD SILVERMAN

Senator SILVERMAN: I was born and raised in rural Washington County in northern Maine. It is one of the most beautiful spots on earth, and one of the most rugged.

Growing up in Maine is a wonderful experience. Maine people are unique, I believe. They must learn at an early age to use what resources are available. For many years Maine people have fished and farmed. They have heated their homes with wood, because wood is plentiful

What we do not have in Maine is oil, or coal, or natural gas, or uranium. When oil was cheap, we imported it, just as other people in other areas have done. But Maine people are turning away from the fossil fuels. They are returning to the woodlot, to the resources that are close by and available.

One resource that we have underdeveloped is our water resources, Maine has many streams and rivers that could be harnessed to produce electrical energy.

The Saint John, which would host the Dickey Lincoln project, is such a river. Each year the Saint John carries one trillion gallons of water to the sea. That water could produce 20 per cent of new England's peaking power needs during the 1990s if Dickey Lincoln is built. About 45 per cent of the power generated would stay in Maine, for the benefit of Maine people.

The cost would be high. But the benefits would be substantial.

Dickey Lincoln would be paid for in 50 years, but it would produce dependable, inflation proof power for 100 years. It would save 2.3 million barrels of oil per year. And at $30 per barrel, we would spend more on oil in just 12 years than we would spend to build Dickey Lincoln.

The people of northern Maine want Dickey Lincoln. I know that first hand. Two years ago I campaigned in northern Maine for election to the Maine Senate. I ran as an independent, against a Republican opponent and a Democratic opponent. I campaigned strongly for Dickey Lincoln at that time. And I was elected to the Senate, the first independent member of that body since 1880.

As our energy picture looks darker, the future of Dickey Lincoln looks brighter. Maine will need dependable, inflation proof power in the decades to come. Dickey Lincoln can provide that power.

Mr. MITCHELL. Mr. President, I have only recently joined this institution and I am the most junior of the 100 Members of this distinguished body. I am humbled by the fact. Yet I feel that my experience can be of value in approaching the question before us. I came to the Senate after serving as U.S. district court judge for Maine and before that as U.S. attorney for Maine. I always found it useful as a judge and a practicing attorney, when confronted with conflicting emotional and sometimes distorted arguments, to focus on the specific issue in dispute. Narrowing the question carefully increased my confidence in the decisions I was required to make as judge and allowed me to carefully hone the arguments in support of my case as U.S. attorney.

I have observed in my brief experience in Washington an inclination here to do precisely the opposite—to translate specific narrow questions into broad symbolic issues. I am afraid that too much of our public policymaking has become embroiled in expansive gesturing and rhetoric with too little attention to what specifically is at stake. I would venture further that our energy policy and our environmental policy have been particular victims of this process and that the debate on Dickey-Lincoln on both sides has been an outstanding example.

So let me state precisely what I think is the question before the Senate in the most direct, narrow terms.

The question before the Senate is, "Shall we continue to evaluate the environmental implications and engineering features of a controversial but significant energy source in northern Maine?"

The President has asked for $795,000 for studies of fish and wildlife mitigation requirements and preconstruction engineering studies on Dickey-Lincoln and the Appropriations Committee has agreed and provided those funds in this bill. Senator COHEN has proposed to delete funds from the bill so that there will be no studies in the next fiscal year.

That is the sum total of the issue. Construction of Dickey-Lincoln is not proposed in this bill, and none of these funds are directed toward that end.

We are not deciding the fate of the upper St. John River or of hydroelectric power. We are deciding whether this project is worth further examination. The Federal Government has spent $11,500,000 on evaluating the project since 1973. During that time both energy concerns and environmental values have heightened, so the process has been thorough, tedious, and expensive.

New environmental concerns have arisen and environmental standards have increased over this period. These concerns have been addressed and the project measured against those standards. During the same period energy economics have changed drastically, and the value of the power Dickey-Lincoln could produce for consumers in Maine and New England has dramatically increased.

We still do not have all the information that environmental analysis or budget planners desire for a decision on whether or not to commit the Federal Government to construction of this project. They are nearing a conclusion, but the requirement for extensive fish and wildlife mitigation studies needs to be addressed further and engineering updates estimated.

This money will allow those studies to continue. Whatever reservations you may have about a final construction decision, I urge you to recognize that it deserves to be evaluated on the environmental and economic criteria we have established. To vote for deletion of funds is to vote for abandonment of the very procedures and standards Congress has used to measure such projects.

I am sure that some have urged this amendment upon you as a critical environmental issue, determining variously the fate of a white water canoeing river, the Maine timber industry or the Maine deer and moose herds. I must tell you that the funds provided here will not be used to move one shovelful of dirt or stir the fur of one moose. These funds will allow us and decisionmakers at all levels to reach a better and more informed judgment on this project and the future of the resources in this part of my State.

If I may stretch an analogy from my courtroom experience, the amendment by Senator Cohen is in the nature of a motion to dismiss before the evidence has been presented. He carries a very heavy burden, and he has not met it. His amendment to strike these funds should be rejected.

But broader issues of energy policy and environmental policy have been raised in this debate and the underlying merits of Dickey-Lincoln have been seriously challenged. I would like to respond to those broader issues even though I do not believe they are directly involved in the vote to be cast today.

We are still struggling to shape a national energy policy which is consistent with the needs of our people and our economy, and with environmental values. I share the concern of every Senator in this difficult area. Indeed, I have special concerns. My State is poor, it is energy dependent and it is environmentally vulnerable-dependent on the resources of the land and the sea. We in Maine face some crucial decisions which will affect the future of Maine for decades to come. I approach those decisions knowing they will be difficult, knowing compromise will be necessary and useful. But I refuse to approach those decisions by closing off opportunity for my State or for my country because the decisions will be controversial. I accept controversy as inherent in any tough decision and tough decisions are necessary if we are to achieve sound policies.

Rejecting Dickey-Lincoln or any other project from consideration because it is controversial would be a failure of leadership and is inconsistent with our responsibilities in this body. I urge you to reject that course and this amendment.

The ultimate decision on the merits of this project will be decided at a later time. We are deciding here only whether to continue to evaluate the project. But the merits of Dickey-Lincoln have been raised, so I would like to discuss them briefly.

Dickey-Lincoln is a hydroelectric and flood control project which will be constructed on the upper St. John River in northern Maine. It will consist of two dams: A large storage dam which will capture the spring runoff from the snowmelt, provide flood control to eliminate floods in the St. John Valley which cost an average of $6.5 million per year, and generate 1,183,000,000 kilowatt-hours of power as required for New England consumers.

The second dam will be a regulating dam downstream which will capture the water released from Dickey and discharge it over a period of time to generate 262 million kilowatt-hours of energy annually and provide a steady flow on the river. That regular flow will enhance generation at existing downstream dams by an additional 350 million kilowatt hours per year. The total annual power resulting exceeds 1.8 billion kilowatts.

In current dollars, the total cost for construction of the project, including both dams and transmission lines, is $825.5 million.

The Federal Government will build the project with funds appropriated by Congress. The cost will be repaid to the Federal Government with interest over the first 50 years of the project. Because much of our region's peaking power is now generated by burning heating oil, the project will reduce oil consumption in New England by 2.3 million barrels a year. At today's prices, it would displace more than $60 million a year in oil that will otherwise be imported to New England.

No one knows what oil might cost in 10 or 20 years, but even at today's prices, New England will spend $850 million in 15 years for the oil Dickey-Lincoln would have displaced if it were on the line. Dickey-Lincoln would pay for itself with the sale of power in less than 50 years. And it would still be producing power in 100 years—quite literally free, inflation-proof power. The Department of Energy reaffirmed this in a report last month. I submit a Corps of Engineers statement summarizing that report for the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

Government Expects to Recover Dickey-Lincoln Power Costs From Energy Sales to New England Utilities

Waltham, Mass.—Electrical energy from the proposed Dickey-Lincoln School hydropower project in Northern Maine could be sold at competitive wholesale rates to New England utility customers according to an updated financial feasibility report prepared by a Federal power marketing agency for the U. S. Army Corps of Engineers.

The Southeastern Power Administration (SEPA), an arm of the U.S. Department of Energy, reaffirmed its previous finding that all of the Federal power investment required to build and operate the project would be recovered during the first 50 years of the project's life through the sale of power at rates competitive with other sources. (The Department of Energy is responsible for transmission and sale of power produced at Federally-funded facilities.)

SEPA's new analysis reflects changes in energy consumption which have reduced the projected rate of growth in demand in the six-state New England region.

Confirmation that Dickey-Lincoln continues to be financially feasible from a marketing viewpoint could be a major consideration in the recommendation of the Corps of Engineers will submit when it forwards a final environmental impact statement later this year.

Colonel Max B. Scheider, New England Division Engineer for the Corps, noted that questions have been raised about the need for a large hydro station on the Upper St. John River in Northern Maine to supply peaking power on a regional scale.

"This finding by the Department of Energy is a factor in answering that question," Colonel Scheider said, adding that "we still need to be sure that the project is cost effective and preferable to other types of peaking generation before making a recommendation on the project."

Previous proposals for the allocation of power between Maine and the rest of New England are unchanged in the updated study. Two hundred megawatts, roughly, 22 percent of the total capacity of the project will be reserved for Maine utilities providing 533,000,000 kilowatt hours of electricity yearly. The latter figure is approximately 44 percent of the project's net annual output of 1.2 billion kilowatt hours available for sale. The remaining 700 megawatts of peaking capacity and energy would be marketed within the other five states of the New England region.

Federal policy requires that preference be given to publicly-owned utilities and cooperatives in the sale of power produced at Government built power plants, at rates sufficient to repay all costs associated with the production and distribution of electrical energy.

The exact price and terms for the sale of Dickey-Lincoln power by the Federal Government to utility customers would be subject to negotiations after a firm date is set for the project to begin producing power. A construction commitment by Congress is needed, to meet a proposed schedule of bringing Dickey-Lincoln on line in 1990.

The DOE marketing report advances the opinion that customers purchasing power from the project would receive worthwhile savings in their power costs over the 50-year repayment period of the project.

Mr. MITCHELL. Dickey-Lincoln actually entered public debate as something of a stepchild. Initial interest in Federal energy development in Maine was directed at the potential for generating electricity from the tides in eastern Maine and New Brunswick. The Federal Government, under President Roosevelt, actually began construction of the Passamaquoddy project in the thirties, but stopped development after 1 year.

When President Kennedy took office in 1961, he agreed to take another look at Passamaquoddy. In the course of those studies, it became clear that tidal power would not be economically feasible on its own, but might be if accompanied by a conventional hydro project that could "smooth out" the 12-hour tidal cycle. So we looked at the upper St. John River in the early sixties and reached a point where President Johnson, in July of 1965, recommended construction of the Dickey-Lincoln project. Congress authorized construction of Dickey-Lincoln in the Flood Control Act of 1965.

Dickey-Lincoln is the first major Federal hydroelectric project authorized for construction east of the Mississippi and north of the Mason-Dixon line. New England consumers pay a tremendous price for that anomaly. It is a price we can no longer afford. New England is 80 percent dependent on oil for its energy, compared to a national average of 47 percent. Most of New England's oil is imported, and most of that is from OPEC. New England's energy costs are 26 percent higher than the national average.

Recent international events clearly demonstrate the vulnerability of oil supplies abroad. Disruptions and continuing price increases are weakening our national economy, driving inflation up and complicating our international relations. The entire Nation is affected. But in many ways, Maine is affected most directly and most severely.

Mr. President, last night the Washington Star carried a story describing the average per capita income levels of the various States. In that listing, Maine was ranked as the fourth poorest State; 47th among the 50 States. And when energy costs are factored in, Maine may well be the poorest State in the country.

The debate in which we are engaged relates very much to those energy costs and to the economic future of my State. The same story which reported Maine as the fourth poorest State in the country listed our sister State in the northwest corner of the United States, Washington, as the seventh wealthiest in terms of per capita income.

There are a number of factors which influence the economic vitality of a State, but it is noteworthy as we contemplate the relative status of Maine, the northeasternmost State in the continental United States and Washington, the northwesternmost State, that Washington's energy, commerce, and agriculture industries and consumers enjoy a tremendous advantage in the rates they pay for electricity due to the presence of one of the largest hydroelectric projects in the country—the Bonneville Power System on the Columbia River. Maine enjoys no such Federal hydroelectric development and, along with New England, pays some of the highest energy costs in the country. A potato processing plant in Aroostook County pays a mill rate of 70.83 for electricity, while a competitor in Washington State, which enjoys the benefit of Federal power, pays a mill rate of 17.5. I do not pretend that Dickey-Lincoln is the whole answer to the economic problems of Maine, but those potato processors have testified that energy costs are a major disadvantage to them and that Dickey-Lincoln is a significant part of the answer to their problems.

So the question before us is critical to the future of Maine and New England, and particularly to the future of my constituents in some of the more depressed parts of my State, northern and eastern Maine.

The current interest rate established by the Water Resources Council for Water Projects is 7⅛ percent. Applying that interest, Dickey-Lincoln enjoys a benefit-to-cost ratio of 1.5 to 1. Because Dickey-Lincoln was authorized in 1965 and received local commitments for cost sharing in 1968, it has an authorized rate of 3¼ percent. At that rate, Dickey-Lincoln's benefit-to-cost ratio is 2.7 to 1.

At either rate, it is clear that Dickey-Lincoln is a potentially sound investment we should not reject before all the evidence is in.

The lakes created by Dickey-Lincoln will cover 88,000 acres of the St. John Valley. 55 miles of the St. John River and 200 miles of tributaries would be flooded to create the reservoir behind Dickey Dam. That impoundment represents a significant alteration to the face of northern Maine. But we have harnessed rivers throughout Maine for more than a century, creating lakes and providing power. We can accept that as a potential tradeoff on this river in northern Maine and may find the enhanced access to previously remote areas provided by this lake a boon to hunting, fishing, and canoeing.

The St. John Valley is truly beautiful. But it is not a pristine wilderness of virgin forests. It has been heavily and continuously cut in the last century, largely by Canadians. And although the valley will be changed by the Dickey impoundment, it will not be destroyed and may well be enhanced; it will certainly be accessible to more people.

We do not have to decide those questions here today. But I submit that the economic and energy benefits of Dickey-Lincoln are substantial to Maine and New England, with every dollar returned to the Federal Government with interest. And the environmental tradeoffs are neither so clear nor so overwhelming that we should refuse to look at mitigation potentials.

I am new among you and I cannot claim the expertise enjoyed by my predecessor. I can and do ask you to look carefully at the questions before you and to evaluate it on the merits. I am confident that on that basis, you will reject this amendment.

Mr. President, I would like to make a couple of brief extemporaneous remarks.

There is implicit throughout all of the debate on Dickey-Lincoln, which has gone on in this body for several years, that those who support Dickey-Lincoln are not concerned with the environment while those who oppose Dickey-Lincoln are.

I would like to cite a little bit of the history of the project to refute that implication.

When this project was first conceived it contemplated a single dam to be built below the confluence of the St. John and Allagash Rivers. That dam would have flooded both of those rivers. Valid environmental objections were raised, and I was one raising them, as was then Senator Muskie, and others.

To meet and to accommodate those objections, the location of the dams was moved to above the confluence so the Allagash River would not be flooded, and thereafter through the efforts of then Senator Muskie and State Senator Elmer Viollette, as the leaders, the Allagash Wilderness Waterway was created, a unique concept in this country of a State wilderness waterway funded initially with Federal funds.

The Allagash Waterway is a priceless heritage to the State and the Nation, and it is largely the result of efforts by persons who support the Dickey-Lincoln project. So those who support Dickey-Lincoln have no less concern for the environment and conservation values than those who oppose Dickey-Lincoln.

Let me say finally that there have been over 170 public power projects built in this Nation's history throughout all of the country except in the Northeast. Those projects were built with taxpayers' money from Maine and New England. We supported those projects because we believe, as most American political leaders have believed throughout this Nation's history, that what is good for Washington is good for the country. What is good for Oregon and New Mexico and Nebraska and Louisiana and Mississippi and Tennessee is good for the country, because we are all Americans in the last analysis, and I say that that principle applies to the Northeast. What is good for Maine, what is good for New England, is also good for the country, and I say it is about time that we in the Northeast had a public power project to enable us to have lower electricity rates.

It is no coincidence that the State of Washington, which has 90 percent of its power produced through hydro, has the lowest electrical rates in the country. The Northeast, which has no major power projects, and which has the lowest percentage of hydropower in the country, has the highest electric rates in the country.

I urge the Members of the Senate to apply now the same standard they have applied over many past decades in approving projects for other parts of the country because the people of Maine and the Northeast are Americans too, and what is good for them is good for all Americans.

I thank the Chair.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I might say for the benefit of my colleagues that in just about 2 minutes I will move to table the amendment.

Let me just give you the very barebones argument for this project. In about 2 weeks, a referendum will be held in Maine on whether they are going to shut down nuclear power already existing in Maine. The argument against nuclear power is "Let us take up its place with hydroelectric." Well, this is the hydroelectric, and it is 830 megawatts, Mr. President, 1.4 billion kilowatts annually.

This is actually the last phase of planning money, only $795,000 after which time this project will be in a position so that Congress can make a decision to construct or not to construct this project.

I believe we ought to construct Dickey-Lincoln because it is 830 megawatts, almost as big as a large-scale nuclear plant and as large as the average coal-fired generating plant.

There is a cost/benefit ratio of 2.7 to 1. This hydroelectric power is clean, it is nonpolluting, it is not dangerous, it emits no radiation, it is noninflationary, it is not subject to strikes. This project would produce the most highly valuble power increment—that is peaking power—which is so costly to produce. How in the world we could be seriously considering here in 1980 shutting down such a project in the planning stage when it produces 830 megawatts I do not know.

Mr. President. I hope the Senate will have the good sense not to do so, and I therefore move to table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana to lay on the table the amendment of the Senator from Maine. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BIDEN (after having voted in the negative). Mr. President, on this vote, I have a pair with the distinguished Senator from North Carolina (Mr. MORGAN). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. KENNEDY (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from New Jersey (Mr. BRADLEY), the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Alabama (Mr. STEWART), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Iowa (Mr. JEPSEN), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 46, nays 37, as follows:

[Rollcall Vote No. 393 Leg.]

YEAS—46

Baucus
Bayh
Bellmon
Bentsen
Boren
Bumpers
Burdick
Byrd, Robert C.
Cannon
Chiles
Church
Cranston
Culver
DeConcini
Eagleton
Exon
Ford
Glenn
Gravel
Hatfield
Heflin
Huddleston
Inouye
Jackson
Johnston
Laxalt
Magnuson
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Pell
Randolph
Ribicoff
Riegle
Sarbanes
Sasser
Stafford
Stennis
Stevenson
Talmadge
Williams
Young
Zorinsky

NAYS—37

Baker
Boschwitz
Byrd,
Harry F., Jr.
Chafee
Cochran
Cohen
Danforth
Dole
Domenici
Durenberger
Garn
Hatch
Hayakawa
Heinz
Helms
Humphrey
Kassebaum
Leahy
Levin
Lugar
McClure
Nelson
Packwood
Pressler
Proxmire
Pryor
Roth
Schmitt
Schweiker
Simpson
Stevens
Thurmond
Tower
Tsongas
Wallop
Warner
Weicker

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Biden, against.
Kennedy, against.

NOTING VOTING—15

Armstrong
Bradley
Durkin
Goldwater
Hart
Hollings
Javits
Jepsen
Long
Mathias
McGovern
Morgan
Percy
Stewart
Stone

So the motion to lay on the table UP amendment No. 1552 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I yield to the distinguished floor manager.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order for Senator CRANSTON to offer an amendment out of order at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1553

Mr. CRANSTON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order. The Senate will please be in order.

The assistant legislative clerk read as follows:

> The Senator from California (Mr. CRANSTON), for himself and Mr. HAYAKAWA, proposes an unprinted amendment numbered 1553.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 16, line 8, add ***Provided further***, That the Chief of Engineers is directed to spend not more than $3 million to provide beach nourishment to replenish the authorized project for beach erosion control at Oceanside, San Diego County, California to its previous configuration from any materials that he may reasonably obtain for that purpose.

Mr. CRANSTON. Mr. President, this is a noncontroversial amendment that has no effect on the spending level in the bill. There is already authorized in Public Law 87-9, March 29, 1961, that a project for beach erosion control at Oceanside in San Diego County, Calif., may be carried on by the Corps of Engineers. The language of that present authorization would apparently limit the acquisition of sand to Camp Pendleton. It is difficult to carry on the Oceanside project only with sand taken from Camp Pendleton. This amendment would remove that limit and make it possible to get the sand at any convenient place.

There is a problem in the city of Oceanside, in San Diego County, because a breakwater built at Camp Pendleton has caused erosion of sand on the beaches south of there that needs to be replenished. There are funds available for that purpose.

This amendment simply makes plain that the sand can be gotten anywhere. Senator HAYAKAWA, of California, is a cosponsor of my amendment. I have discussed it with the distinguished floor leader, and I gather it is acceptable.

The PRESIDING OFFICER. The Senate will please be in order.

The Senate has heard the amendment offered by the Senator from California.

Without objection, the amendment is agreed to.

The amendment (UP No. 1553) was agreed to.

Mr. JOHNSTON. This is the amendment of the Senator from California?

Mr. CRANSTON. That is right.

Mr. JOHNSTON. Mr. President, I was going to accept the amendment. It is a technical clarification. We did not agree to it at the subcommittee level or at the full committee level because there was a question about whether or not there was full authority for this. Obviously, the amendment is either one of two things: It has now been changed by a clarification of that authority, or the question of authority has been obviated by legislation on an appropriation bill. In either event, we are for it. So, ex post facto or posthumously, I ask the Senate to approve the amendment.

Mr. CRANSTON. I thank the Senator very much.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I say for the benefit of my colleagues that I understand there is a Republican policy luncheon, so we shall have no votes until 2 p.m., according to the usual procedure. So the bill is open for speeches or amendments. We are ready for third reading.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1554

(Purpose: To provide funds for small community solar demonstration projects)

Mr. DOLE. Mr. President, I ask unanimous consent that I be permitted to offer an amendment at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas.

Mr. DOLE. Mr. President, I understand that the floor managers of the bill are temporarily away from the Chamber. It has been suggested I just offer the amendment, make the statement, and wait until they return before disposition.

Is that satisfactory to the Senator from Mississippi?

Mr. STENNIS. That is the way I understand the situation. It will be satisfactory.

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) for himself, Mrs. KASSEBAUM, Mr. GOLDWATER, Mr. MCGOVERN, Mr. PRESSLER, Mr. INOUYE, and Mr. MATSUNAGA proposes an unprinted amendment numbered 1554.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SMALL COMMUNITY SOLAR DEMONSTRATION PROJECT

For carrying out the demonstration program for small communities authorized by section 4 of the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 (Public Law 95–590) $3,750,000 to remain available until expended.

Mr. DOLE. Mr. President, I am pleased to have Senators KASSEBAUM, GOLDWATER, MCGOVERN, PRESSLER, INOUYE, and MATSUNAGA join me in attempting to restore much-needed funds for the development of solar energy.

Mr. President, the intent of this amendment is quite simple and straight forward. Those of us who support the restoration of $3.75 million for community solar demonstration projects feel very strongly that solar is an integral ingredient in any overall national energy program. Now there has been some concern that due to the fact that these funds were cut in a House subcommittee and not restored by the Senate Appropriations Committee that there is little hope the funds will be retained if this bill goes to conference. Well, I can assure my colleagues, as most are already aware, no one can accurately predict what will ever come out of a conference committee. It would be irresponsible for this body to act on the premise that the other body will not go along with our decision. We have never been guided by that premise before, and we must not be guided by it today.

But it would seem to me that the responsible thing to do is restore the funds and see what happens.

At a time when all are asking for as much budget restraint as possible $3.75 million may seem like a large sum, but when that figure is related to bringing about energy independence for our Nation, it is a very small sum indeed. If this Congress can appropriate $88 billion for a massive synthetic fuels program, can we in good conscience deny the appropriation of $3.75 million for community solar projects?

Mr. President, virtually every form of energy sold in this country with the notable exception of solar energy has received massive Federal subsidies for development, transmission, and use. Nuclear power, for example, has received a generation's worth of Government-sponsored research and development at no metered cost to those buying electricity from a nuclear powerplant. Every stage of the nuclear fuel cycle from the enrichment of uranium to the disposal of radioactive waste continues to receive Federal subsidies.

When the House passed the energy and water appropriation bill, the $3.75 million requested for the small community demonstration project planned by the Department of Energy for fiscal year 1981 were deleted. Last week the Senate Appropriations Committee followed suit and the funds were not restored. I am asking for your help in getting these funds restored.

A transition to solar resources as a major energy source must be catalyzed by Federal incentives. Americans are beginning to appreciate the social, environmental, and economic advantages of solar energy. Recent polls suggest that in an era when most new energy sources are deeply embattled with a hostile public 94 percent of the American people favor the rapid development of solar sources.

Economic history demonstrates that two major energy transitions have swept the United States in the last 125 years. First, coal replaced wood as the dominant source of commercial energy. Then coal itself was displaced by oil and gas. Both these changeovers occurred in a short period of time. In 1850 coal contributed only 10 percent of the U.S. energy supply; just 25 years later, it provided more than half the Nation's fuel. In 1910 less than 10 percent of the U.S. energy supply came from oil and gas; 35 years later oil and gas accounted for half the Nation's energy.

We are entering another transition. Renewable energy sources are the key to this Nation's energy future. The critical question is whether this transition will proceed fast enough to enable us to avoid massive economic and social disruptions. The amendment which I propose to offer would add $3.75 million to the energy and water appropriation bill and is a step in the right direction toward insuring energy independence for our country.

Mr. President, in accordance with the understanding, I suggest the absence of a quorum until Senators HATFIELD and JOHNSTON return to the floor.

The PRESIDING OFFICER (Mr. BOREN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may, on behalf of my colleague, Senator RANDOLPH, and myself, called up an amendment out of order, that the pending amendment be laid aside temporarily, and that the rules be suspended to permit an amendment legislative in nature. I have cleared this with Mr. BAKER. Mr. HATFIELD is here and Mr. JOHNSTON is here.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1555

(Purpose: To authorize and direct the design and construction of flood control projects in West Virginia and Kentucky)

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for himself and Mr. RANDOLPH, Mr. HUDDLESTON, and Mr. FORD proposes an unprinted amendment numbered 1555.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, between lines 14 and 15, insert the following:

FLOOD CONTROL PROJECTS

SEC. 202. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to design and construct, at full Federal expense such flood control measures at or in the vicinity of—

(1) Pikesville, Kentucky, and of Grundy, Virginia, an the Levisa Fork of the Big Sandy River,

(2) Pineville, Kentucky, on the Cumberland River, and

(3) Williamson and Matewan, West Virginia, on the Tug Fork of the Big Sandy River,

as the Chief of Engineers determines necessary and advisable to afford these communities and other flood damaged localities and their immediate environs on both the Levisa and Tug Fork of the Big Sandy River and Cumberland River a level of protection against flooding at least sufficient to prevent any future losses to these communities from the likelihod of flooding such as occurred in April 1977, at an estimated cost of $284,000,000. Non-Federal interests shall hold and save the United States free from damages due to construction works referred to in this section, and maintain and operate all such works after their completion in accordance with regulations prescribed by the Secretary of the Army.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(c) The Congress finds that the benefits attributable to the objectives set forth in section 209 of the Flood Control Act of 1970 exceed the cost of the flood control measures authorized by this section.

Mr. ROBERT C. BYRD. Mr. President, this amendment is legislation that has passed the Senate three times. As my distinguished senior colleague, the chairman of the Public Works Committee, will state, it has passed the Senate three times.

Mr. RANDOLPH. It has actually been four times, I say to the majority leader.

Mr. ROBERT C. BYRD. Four times.

Mr. RANDOLPH. Most recently last year.

Mr. ROBERT C. BYRD. So the Senate has already acted on this amendment four times, and it has run into obstacles in the other body.

For that reason my colleague and I feel that the Senate is justified in passing this legislation again.

It authorizes $284 million in flood protection measures for a water resource project vital to our country.

The Tug Fork River Valley of West Virginia is a vital energy-producing area and is highly flood prone.

Mr. President, I made a pledge to the people of the Tug Fork Valley of West Virginia.

That pledge is this: I would do my best to see that the Nation recognizes the suffering this valley has sustained, and that this Senate would react by providing flood relief to the beleaguered area.

Four times the U.S. Senate has responded to my plea, along with the requests of my colleague, Senator RANDOLPH, and has provided authorization for extensive flood relief.

The legislation bogged down in the House of Representatives three times, and once was vetoed by the President.

While I have kept my pledge, the hopes of these people remain unfulfilled. For this reason, my colleague and I feel that the Senate is justified in passing this legislation again.

It authorizes $284 million in flood protection measures for a water resource project vital to our Nation.

It is, perhaps, a little known fact that 5 percent of this country's recoverable coal comes from the Tug Fork Valley Area. It is a mother lode of energy potential.

Yet, on the other hand, the area is "another disaster" waiting to happen. The valley today is no more protected from a flood disaster than it was in April 1977, when $200 million in damages and untold misery were caused.

At the time, the U.S. Army Corps of Engineers labeled it a 500-year flood. However, to the people of Mingo County, when one is visited by floods 13 times in 66 years, as those people have been, each threatening rain cloud portends a disaster.

All floods are devastating. They all mean a virtual cessation in coal production. They all mean unemployed workers. They all mean businessmen will have to go into debt to get a new start.

It was only 9 months after the so-called 500-year flood, in January 1978, that another major flood caused $9 million in damages to the valley.

For the price of those two floods within a year of one another, we could have paid the bill for flood protection, and it would have been a down payment on our energy future. But inflation has since greatly increased the cost.

I have visited with the people of the Tug Fork Valley. On numerous occasions they have been in my Capitol Building office. I have met untold times with the Corps of Engineers, and with the agency people involved in flood relief.

We have worked together. I have watched with amazement and admiration as the people of the Tug Fork Valley have rebuilt their lives and their businesses after each crushing blow.

On their last visit to Washington, D.C., the publisher of the Williamson Daily News, Lou Harvath, pointed with pride to current pictures of Mingo County towns and communities.

He showed vibrant, thriving communities. But the question on his mind that day, as well as on the minds of Williamson Mayor Sam Kapourales, Mingo County Commissioner Truman Chafin and others was—what happens the next time? What is the future of Mingo County?

Following the great flood of 1977, I visited Mingo County. I saw firsthand the destruction. On my return, I began working for disaster relief.

I was able at that time to secure lower interest rates on small business loans being sought by businessmen who had had their stores destroyed.

But that was only a partial remedy to the suffering, not a solution to the cause of the problem.

So, I, along with Senators RANDOLPH, HUDDLESTON and FORD, attempted to secure authorization to expend money for a flood relief project in the Tug Fork Valley.

On four previous occasions we were successful in our endeavors in the Senate. But no matter how badly needed the legislation is, it still has not become law.

During this Congress, the House included $100 million for the Tug Fork Valley in its massive public works bill. However, this measure is laden with projects and the administration has promised a veto.

Mr. President, the people of the Tug Fork Valley have come so close, yet continue to be so far away from the safety and security that all Americans deserve.

This is why I am asking today that we once again approve this authorization.

By attaching this amendment to an appropriations bill, it should stand as good a chance, or a better chance, than our four previous efforts.

Mr. RANDOLPH. Mr. President, the majority leader is correct in focusing attention on the crucial problem that we face in the southern area of West Virginia and in the neighboring State of Kentucky. It is very important to realize that this project has been in the Senate as recently as January of this year when we acted favorably on this matter of the Tug Fork and the adjacent areas from the standpoint of programing adequate flood control to protect the people, to protect the industries, to protect an energy-producing section of the United States that is highly important.

We have been spending huge sums of money to take care of the cleanup program and the rehabilitation program that follow the floods that continue to plague the area.

I commend to my colleagues, with all the persuasion at my command, the amendment before us again proposing authorization for flood control measures in the Tug and Levisa Forks of the Big Sandy River in West Virginia and Kentucky.

This action is long overdue. These activities have already been authorized by the Senate on four previous occasions in substantially the same form. Legislation containing the Tug Fork program, however, has failed, for various reasons, to become law.

The need for this measure has been obvious and urgent since the dark days of April 1977, when storms literally devastated the Tug Fork Valley and inspired the type of comprehensive emergency program which I introduced shortly thereafter.

That urgency has increased, rather than diminished, with the passage of time. There have been other storms and threats of storms that have clouded the economic posture and prospects for the area in the succeeding years, compounding the problems of business, industry, and the people of the region.

The cumulative cost of these recurring storms has been immense—some $200 million by the last accounting—and the price incalculable in terms of human resources.

A practical, workable, and innovative approach to correction of these conditions is being devised by the Army Corps of Engineers. It can be initiated without undue additional delay under the authority provided by this amendment.

I urge that the Senate make it available so that the region can fulfill its economic and energy-related potential and that the people who call it home can be assured of security from the constant fear under which they now live.

Mr. JOHNSTON. Mr. President, the two able Senators from West Virginia are correct. This matter has passed the Senate on—I thought three times, but I am told and have been advised on—four occasions. It is a flood control project in one of the valleys of West Virginia where the water has no place to go. There is not a big flood plain; they have mountains on both sides.

There is huge property damage and loss of life associated with this which will be obviated by giving the Corps of Engineers this authority which, of course, would be subject to annual appropriations.

But it involves a combination of methods. including levees, snagging, clearing, rediversion channels, nonstructural measures, floodwalls, a whole series of things which are designed to relieve this river valley of the misery which the floods do inflict there.

It is quite an unusual project or an unusual situation, should I say, because of the acute nature of the danger particularly to life and, to a great extent, property, which is the reason, of course, why the Senate on four different occasions has approved the legislation.

Mr. President, it is, as I say, a much-needed project, and we are pleased to accept the amendment.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished manager of the bill.

Mr. HATFIELD. Mr. President, I am aware of the past history of this amendment, and I am disposed to support it and, hopefully, we can support it in conference with the House.

Mr. JOHNSTON. Mr. President, I might add that we had over 400 people from the environs of this project, mainly people of very modest means, who chartered trains, buses, and automobiles to come to testify on this project before our committees in the past.

To say it is a matter of priority interest in West Virginia is to put it very mildly and understate the case.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

Mr. ROBERT C. BYRD's amendment (UP No. 1555) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my gratitude to Mr. HATFIELD also, again to both managers, for their having accepted the amendment.

Mr. RANDOLPH. I join in that appreciation because I think you have acted as leaders of this legislation in a well-reasoned manner on a problem that continues to deepen each day that we allow it not to be attended to as you are doing today.

UP AMENDMENT NO. 1554

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Kansas.

Mr. JOHNSTON. Mr. President, I wonder if I might engage in some conversation with the able Senator from Kansas on this matter?

Mr. DOLE. Surely.

Mr. JOHNSTON. Mr. President, this matter was originally an administration request which was deleted by the House and not appealed by the Department of Energy. It is for small community assistance applications experiment No. 1.

The problem that the House had, and the problem we had, on this matter is that the definition phase and the details of this project have not been completed and submitted.

I think our committee and, indeed, the Senate, are very much for solar energy. Indeed we have a total of about $1.7 billion for solar energy this year, both directly through appropriations and through tax credits and tax relief, this year, $1.7 billion. So our commitment to solar energy is very strong.

But we simply do not know the details at this point. What is the definition of the project? How many cities? When is it to be phased in? What is the cost, the total cost? Therein lies the problem.

If the Senator could, perhaps, tell us of those—frankly I do not think the project has been defined and, if not, I wonder if the Senator would consider deferring this until next year, at which time we will have the details where we might be in position to look at it more favorably?

Mr. DOLE. I think the Senator is correct. I do not think it has been defined. I am just checking with staff.

It was, as the Senator has indicated, properly requested, but it was deleted from the fiscal year 1981 appropriation in the House, and last week, as I understand, the Senate Appropriations Committee followed suit.

I am just suggesting that we take it to conference and try to figure out some way to accomplish it there. We are talking about a very minimal sum, $3.75 million. It does not do violence, as I understand it, to the limit or the lid of the budget requirements, and it would seem to me that that is a matter that could be resolved in conference, and I hope my colleague from Louisiana might look at it in that way.

Mr. JOHNSTON. Mr. President, I am not adverse to taking a good matter to conference where some details might be fleshed out in the meantime, but I am hesitant on this project because there is no definite plan as we understand it, the details of which can be furnished. If it were a question of acquiring more information between here and the conference, that is one thing. But I think it would be a very bad precedent to approve a matter without the details being fleshed out.

Mr. HATFIELD. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. HATFIELD. I think the Senator has a point, but I would urge the manager of this bill to accept this amendment on this basis: that we take this amendment to conference, and I have a feeling it will be like on other occasions when we have experienced in the past that taking it to conference will force the agency's hand whereas, if we continue to wait upon the agency, we may be waiting for an indeterminable period of time.

I think we have a good chance of accepting this amendment, taking it to conference, and in that way we can put the pressure and leverage upon the agency to come up with the details of the plan.

It has been authorized, I remind the manager of the bill, so there has been planning and thought given to this. This is not a proposal that is created on the spur of the moment, but we have had some good study on it, and I really believe this may well be the very specific leverage we could apply on the agency. We do not lose anything by accepting this and taking it to conference on that basis, and I think we have much to gain.

Mr. DOLE. I appreciate the Senator from Oregon's comments, if he will yield, Mr. President.

It is my understanding that there are five States which have already fulfilled every requirement, made the application, studies have been had. These are South Dakota, Washington, Arizona, Hawaii, and, of course, the State of Kansas, so it is not something we are searching for. The application has been completed. It is my understanding that all the work has been done, and I hope there will be some way in conference to finally get it resolved.

I think that is what it needs is a little push. I think that is what the Senator from Kansas is doing here.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Senators HUDDLESTON and FORD be added as cosponsors to the Tug Fork amendment just accepted previous to this one.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that Senator INOUYE be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I have expressed the misgiving I have about this amendment, but I think there is logic, in effect, in giving a chance to the Department to flesh out the details of this amendment so that we can evaluate it properly before conference

I want the Senator from Kansas to understand that if they cannot flesh out those details, it will have, probably, a tough time in conference at this time. On the other hand, if they can flesh out the details and it appears to be good, I, for one, would be most happy to take it.

Under that arrangement, Mr. President, and because of the strong support of my revered ranking minority member, on behalf of the committee, I will accept this amendment.

Mr. DOLE. Mr. President, I wish to thank my colleagues, both Senators JOHNSTON and HATFIELD. We will do all we can to make certain we can flesh it out between now and the time of the conference.

Mr. MATSUNAGA. Mr. President, as a cosponsor of the Dole amendment, I rise in its support and urge the restoration of $3.75 million for the small community solar thermal program.

The small community solar thermal program combines the best of both worlds—an innovative high solar technology which is geared for the small community. A sum of nearly $120 million has been appropriated this year for solar thermal energy conversion. Unfortunately, the lion's share of this amount will go to the Barstow power tower, a project which, on the one hand, I support in concept, but on the other hand, cannot accept as a total substitute for the small community program.

However, I fully appreciate the critical minimums required to continue and complete those solar thermal programs to be supported under the $120 million, and rather than cannibalize from this appropriated amount, would like to urge my colleagues to augment this sum by 3 percent to allow the small community solar thermal program to blossom into the promise it has shown thus far.

Mr. President, let me expand on why I am so optimistic about this direct solar option. Our Sun daily makes available 20,000 times as much energy as is needed by all the peoples of the world.

In the United States alone, the Department of Energy has pinpointed at least six sites deemed ideal for utilization of the principal of solar thermal energy conversion: South Dakota, Washington, Kansas, South Carolina, Arizona, and Hawaii. It is obvious, then, that any State in the Union will be able to gather the rays of the Sun in any small community by the process of solar thermal energy conversion.

Mr. President, it makes good commonsense to foster this renewable, indigenous energy alternative which can be utilized across the country. The sum in question, $3.75 million, is a responsible one during this time of budgetary crunch, and worthy of support by my colleagues.

I urge adoption of the pending amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas (Mr. DOLE).

The amendment (UP No. 1554) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1556

(Purpose: To allow the North Fremont Gravity Pressure Irrigation Committee to participate in the federal Rehabilitation and Betterment Program)

Mr. CHURCH. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator ask unanimous consent to set aside the pending committee amendment?

Mr. CHURCH. Mr. President, I ask unanimous consent that the pending committee amendment be temporarily set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Idaho (Mr. CHURCH), for himself and Mr. McCLURE, proposes an unprinted amendment numbered 1556:

On page 23, line 5, strike the period at the end thereof and insert the following ": *Provided further*, That of the amount herein appropriated not to exceed $10,000 shall be available to the Fremont-Madison Irrigation District to initiate a rehabilitation and betterment program under the Act of October 7, 1919, (63 Stat. 724), as amended, to be repaid in full under conditions satisfactory to the Secretary of the Interior."

Mr. CHURCH. Mr. President, this is a simple amendment to allow a very worthwhile project in southeastern Idaho to proceed under the water and power resources service's rehabilitation and betterment program.

Earlier this year, I was contacted by representatives of the North Fremont Gravity Pressure Irrigation Committee, an organization comprised of five irrigation canal companies located along the Henry's Fork of the Snake River in Idaho.

These irrigation committees have banded together in order to develop a gravity pressure irrigation system to take the place of the out-dated system of open ditches and canals which serves some 32,000 acres of land in this vicinity.

According to the data already compiled by the irrigators, the new gravity pressure system would not only conserve water and decrease the demand for electricity for pumping, but it would actually provide a net gain in electricity for the area. The preliminary engineering study they have sponsored indicates that replacing the existing system will enable them to conserve some 25,000 acre feet of water and produce an extra 56 million kilowatts of electricity each year. In an era of scarce water and energy supplies, such savings are significant.

Because the project is estimated to cost approximately $77 million, the North Fremont irrigators are not eligible for Federal assistance under the small reclamation projects loan fund. Similarly, the project does not qualify for assistance under the rehabilitation and betterment program, because the irrigators themselves will do the project work.

In the past, when similar situations have arisen, Congress has provided assistance to meritorious projects by adopting provisions in the public works appropriations legislation which provide specific eligibility for irrigation districts to participate in the rehabilitation and betterment program. For example, back in 1971, we enabled three irrigation districts—two in Oregon and one in Washington—to participate in the R. & B. program notwithstanding the fact that those projects were not constructed by the Government.

My amendment follows up on a request I made to the Public Works Subcommittee on June 30 of this year. On that date, I wrote to the distinguished floor manager of this bill, Senator JOHNSTON, laying out the merits of the North Fremont project. I never received a response to my letter, and I felt it only appropriate to reiterate my request when the present bill was called up.

This amendment does not affect the funding levels contained in the bill. All it does, is earmark $10,000 under the "construction program" category so that a feasibility investigation of the proposed project can be prepared. The construction program category includes a $1 million appropriation for continued work at the Teton Dam project on the Teton River. As you will recall, the Teton Dam failed in 1976, and we have been continuing to provide appropriations for this project for necessary work ever since. It is my opinion that $10,000 of the amount which the Appropriations Committee has earmarked for the Teton project, would be better spent for the initiation of the feasibility investigation of the North Fremont gravity pressure irrigation project on the nearby Henrys Fork of the Snake River. My amendment is offered with the assumption that such a change will be made. Ninety-nine percent of the money earmarked for the Teton Dam project would still be spent there.

Mr. President, I ask unanimous consent that a copy of my June 30 letter to Senator JOHNSTON, a summary of the project, and a legal opinion used by the Department of the Interior to justify denying the North Fremont committee's participation in the R. & B. program, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

JUNE 30, 1980.

Hon. J. BENNETT JOHNSTON,
Chairman, Subcommittee on Public Works, Committee on Appropriations, U.S. Senate.

DEAR MR. CHAIRMAN: I have recently been in touch with members of the North Fremont Gravity Pressure Irrigation Committee, an orgazination comprised of five irrigation canal companies located along the Henrys fork of the Snake River in Eastern Idaho.

This committee has proposed a gravity pressure irrigation system be installed on some 32,000 acres of land in Fremont County to take the place of the present system of open ditches and canals. Such a move would not only conserve precious water supplies, and decrease the demand for electrical energy for pumping, but provide a net gain in the generation of electrical energy. Preliminary engineering studies indicate that by replacing the existing system, local irrigators will be able to conserve an estimated 25,000 acre feet of water per year, and provide a net power increase of some 56 million kilowatt hours per year. The additional electrical energy will be most important for residential and industrial uses in Fremont County, where the project lands are located.

Because of the size of the cost of the anticipated project ($77.6 million) the North Fremont Committee is not eligible for assistance under the WRP's Small Reclamation Projects loan program. Similarly, the Committee is not eligible for direct assistance through the Rehabilitation and Betterment (R&B) program.

In the past, when similar situations have arisen, Congress has provided assistance through the R&B program by adopting language in the Public Works Appropriations bill. I have enclosed, for your information, a copy of P.L. 91–439, where eligibility for three irrigation districts to receive assistance under the R&B program was established.

Mr. Chairman, I fully realize the extraordinary demands placed upon your Subcommittee this year. However, in light of the water and energy savings which could accrue from the proposed gravity pressure project, I would hope that you could adopt language in the fiscal year 1981 appropriations bill which would declare the North Fremont project eligible for assistance under the R&B program. It is my understanding that an appropriation of $10,000 under the "construction and rehabilitation" category would be sufficient to begin the preparation of a feasibility investigation of the proposal.

Please let me know if there is any way that I can be of assistance to your subcommittee as you consider this request.

With best wishes,
Sincerely,

FRANK CHURCH.

NORTH FREMONT GRAVITY PRESSURE IRRIGATION PROJECT FEASIBILITY STUDY: A SUMMARY

INTRODUCTION

In recent years, Idaho canal companies in the Fremon-Madison Irrigation District, part of the Minidoka Project on the upper Snake River, have become increasingly concerned about rising power costs and the declining efficiency of their open ditch distribution systems. The Marysville, Farmer's Own, Yellowstone, Squirrel Creek, and Silky canal companies have spearheaded investigations to determine the feasibility of conserving both energy and water by converting their open ditch system to a gravity pressurized pipe system.

In May 1979, representatives from the five participating canal companies formed the North Fremont Gravity Pressure Irrigation Committee. Together, these companies provide water to about 32,000 acres near Ashton. In April 1979, the Idaho Water Resources Board authorized matching grant funds for the Commitee's use in conducting a reconnaissance-level feasibility study to evaluate and determine the technical feasibility, cost, and possible hydropower generating potential of a gravity pressurized pipe system. CH2M HILL, an international engineering firm with special expertise in agricultural engineering, was retained by the Committee to conduct the reconnaissance study out of its Boise Office.

THE PROBLEM

In 1979, Fremon County farmers paid about $10 to $15 per acre for water pumped from canals and ditches to irrigate their potato, alfalfa, and small grain crops. By the beginning of 1980, a 40 percent increase by the Fall River REA and a 23 percent rate hike by Utah Power had already increased Fremont irrigation costs to $14 to $18 per acre.

The multitude of individual pumps used for sprinkler irrigation in the project area consume about 20 million kWh annually, valuable power that could be utilized for other purposes. In addition, the open ditch system currently loses an estimated 40 to 50 percent of its diverted water to seepage and evaporation before it reaches the headgate. These heavy irrigation losses have forced farmers at the extreme ends of the system to resort to pumping out of springs, wells, or streams to obtain a more reliable water source.

THE PROPOSED SOLUTION

The solution identified by CH2M Hill engineers incorporates the service areas of all five canal companies, plus three outlying areas. Total project acreage is estimated at 32,000 acres, with a seasonal water requirement of up to 64,000 acre-feet and a peak flow rate of up to 395 cubic feet per second (cfs).

The proposed project will allow irrigators to convert from pump to gravity pressurization, eliminating nearly all of their previous power consumption. Excess pressure in the system will be used to generate approximately 36 million kWh of hydroelectric power annually. Considering all the potential energy benefits represented in the project, a net increase in power availability of 56 million kWh can be realized by the Fremont County area.

The project would involve the construction of two power generation facilities. The first is a 3.5 MW in-line generator located in a 96-inch pipe that will produce more than 25 million kWh annually. The other generator will be located south of the in-line generator along Falls River. An overflow pipe will be installed immediately following the in-line generator to carry excess flow to the power plant. This 2.2 MW generator will produce approximately 11 million kWh annually.

In addition to the potential for significant energy savings, the system could result in an estimated savings of up to 25,000 acre-feet of water currently being lost to seepage and evaporation. The closed pipe would reclaim these water losses, and each irrigator would be assured of receiving his full entitlement.

FINANCING

Total construction costs for the North Fremont Gravity Pressure Irrigation Project are estimated at $77.6 million, based on a projected 1985 construction completion date. The project is proposed to be financed by a combination of two sources. The first, administered by the Water and Power Resources Service (WPRS) under the Rehabilitation and Betterment (R&B) Act, would provide the necessary funding for upgrading the irrigation system. The Fremont-Madison Irrigation District will be the responsible contracting agency for the R&B loan. A second source of funding would be used for construction of the two hydropower plants. Possibilities are: (1) the Department of Agriculture's Rural Electrification (REA) loan program, administered through the Fall River REA; (2) participation from investor-owned public utilities; and (3) other cooperatives.

By financing the project through a combination of these services and revenues generated by the sale of power, the annual per acre costs are estimated to range from $25 to $30. Since power costs per acre for pumping out of canals and ditches are expected to double to $20 to $30 by 1985, costs to each individual irrigator in that year should be about the same with the new gravity pressurization system as without it. After 1985, the gravity system will actually cost less than continued use of the canal system.

PROJECT SUMMARY

The open ditches will be replaced with a pressure pipe, 6 to 144 inches in diameter.

Irrigated area: Approximately 32,000 acres within the Fremont-Madison Irrigation District, which is part of the Minidoka Project on the Upper Snake River.

Power saved by eliminating sprinkler pumps: 11,000 kW, or 20 million kWh/year (the equivalent of 33,000 barrels of oil).

Power generated through new hydroelectric facilities: 8,000 kW, or 36 million kWh/year (60,000 barrels of oil).

Net power increase: 19,000 kW, or 56 million kWh/year (93,0000 barrels of oil).

Water saved: 25,000 acre-feet (estimated).

Project cost (1985): $77.6 million.

Additional benefits:

Some canal right-of-way can be reclaimed for crop production.

Irrigation system reliability will be improved.

The open-ditch safety hazard will be eliminated.

Funding for irrigation improvements:

Rehabilitation and Betterment Act loan.

Possible funding for power plants:

REA loan, administered through Fall River REA.

Investor-owned public utilities.

Other cooperatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., June 10, 1977.

MEMORANDUM

To Commissioner of Reclamation.

Through Assistant Secretary-Land and Water Resources.

From Acting Associate Solicitor, Energy and Resources.

Subject Eligibility of Settlers Irrigation District for Rehabilitation and Betterment Funding.

You have asked for an opinion as to whether the Settlers Irrigation District, a privately constructed irrigation system organized under State law, is eligible for rehabilitation and betterment funding under the Rehabilitation and Betterment Act of October 7, 1949 [R&B Act], 43 U.S.C. § 504. For the reasons set forth below it is our opinion that the District is not eligible for rehabilitation and betterment funding under the R&B Act.

Although the District's irrigation system is privately developed, in order to assure a dependable water supply it contracted under the Warren Act of February 21, 1911, 43 U.S.C. § 523, to purchase surplus water from a Reclamation reservoir, Arrowrock. As a precondition to the delivery of that water, the District agreed to the acreage limitations set out in section 2 of the Warren Act. In later years, the District purchased storage rights in Arrowrock and Anderson Ranch reservoirs and assumed a repayment obligation as a general obligation of all lands in the District.

Based on these facts, the Field Solicitor, Boise, concluded in a memorandum to the Regional Director of April 1, 1977, that the District was now "governed by the Federal reclamation laws," as required in the R&B Act, and was therefore eligible for R&B funding. We regret that we cannot concur with that conclusion.

A privately developed irrigation district such as Settlers does not become eligible for R&B funding merely by purchasing water from our storage capacity in a Reclamation reservoir and agreeing to certain conditions in connection with such purchase. The R&B Act was intended to apply only to irrigation systems constructed by the United States and which the United States is authorized to operate and maintain. In explaining the purpose of the Act, the Senate Report stated:

"H.R. 1694 would not authorize any work on reclamation projects since the performance of necessary maintenance is already authorized by law. It merely authorizes the Secretary of the Interior to make the necessary repayment arrangements with the water users." S. Rep. 501, 81st Cong., 1st sess., at 1.

We interpret this statement to mean that Congress intended the funding provisions of the R&B Act to apply only to the rehabilitation of projects for which maintenance work was already authorized by other legislation. Such work is authorized on Reclamation-constructed projects—either in specific authorizing acts or generally (see section 6 of the Reclamation Act of June 17, 1902, 43 U.S.C. § 491)—but not on privately constructed irrigation systems like Settlers.

This interpretation is confirmed by the House and Senate Reports accompanying P.L. 94–102, Act of October 3, 1975, which amended the R&B Act to include projects funded under the Small Reclamation Projects Act, 43 U.S.C. § 422a *et seq*. The Senate Report stated:

"In 1949, the Congress recognized the need to provide a mechanism for funding rehabilitation and betterment activities associated with irrigation projects *constructed* under Federal reclamation laws." S. Rep. 94–380, 94th Cong., 1st sess., at 1. [Emphasis added]

Likewise, the House Report stated:

"The Rehabilitation and Betterment Act of 1949, as amended, provides that the Secretary of the Interior may make loans to entities operating irrigation systems, *constructed* under the Federal Reclamation law, for the purpose of rehabilitating and betterment of such systems." . . . H.R. Rep. 94–102, 94th Cong., 1st sess., at 2. [Emphasis added]

In view of this restriction under the 1949 R&B Act, the 1975 amendment was necessary to fund R&B work programs on privately constructed small reclamation projects. Without such express authorization, a small reclamation project would not have been eligible for R&B funding, and we must conclude that a privately constructed project like Settlers would be similarly ineligible.

In like manner Congress has in some cases authorized R&B work on privately constructed irrigation systems. In these cases the authorization was expressly provided in an appropriation act, such as P.L. 91–439, 84 Stat. 890, at 894. The latter legislation, in addition to appropriating funds for the rehabilitation of Reclamation projects generally, specifically approved R&B work on the Westland and Tumalo Districts in Oregon and the Ellenberg District in Washington, notwithstanding that those projects were not constructed under the Reclamation laws. For this purpose, however, the congressional intent must be clear, and it would not be enough merely to point to other assistance that such projects may have received from Congress through the appropriation process, such as limited expenditures for the emergency repair of certain project's facilities. See memorandum of March 12, 1956, from Acting Associate Solicitor to Commissioner, "Proposed supplemental repayment contract for rehabilitation and betterment work—Arnold Irrigation district—Arnold Project."

We conclude, therefore, that Settlers is not an irrigation system "governed by the Federal Reclamation laws" within the meaning of the R&B Act, so as to permit R&B funding of its maintenance work. We note, however, that Settlers would appear to be eligible for such funding under the Small Reclamation Projects Act, which is specifically designed to apply to privately constructed irrigation systems such as Settlers.

Your note on this subject, with attachments, is returned herewith.

JOHN C. McDOWELL.

Mr. CHURCH. Mr. President, in summary, all my amendment does is to obtain eligibility for the North Fremont project under the R. & B. program and earmark enough money to allow the Water and Power Resources Service to work with the irrigators in initiating the feasibility efforts required for the formal application for the project. Approval for the project and construction funding will have to be worked out in the future, through normal channels. I urge the adoption of the amendment.

Mr. JOHNSTON. Mr. President, I think the Senator from Idaho correctly states the amendment, and on behalf of the majority side we have no objection.

I yield to my colleague from Oregon.

Mr. HATFIELD. Mr. President, I want to be cooperative and assist in every way possible our friends and neighbors in Idaho.

This amendment by the Senator from Idaho (Mr. Church), supported by the junior Senator from Idaho (Mr. McClure), as I understand calls for a transfer of $10,000 from the Teton project in Idaho so that it is not really an add-on amendment but, rather, a matter of sharing out of the item I referred to, the Teton project.

Is that correct?

Mr. CHURCH. The Senator is correct. It would not add to the total amount of the bill.

Mr. HATFIELD. Mr. President, on behalf of the minority, I am very happy to accept the amendment.

Mr. CHURCH. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 1556) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the first committee amendment not agreed to.

The legislative clerk read as follows:

On page 2, line 9, strike "$2,268,754,000" and insert "$2,262,575,000";

Mr. JOHNSTON. Mr. President, this is the appropriation that I believe the Senator from Massachusetts (Mr. Tsongas) wanted to amend. We will withhold and suggest the absence of a quorum at this point.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I shall like to ask the distinguished subcommittee chairman, Mr. Johnston, a question or two regarding the breeder base program. It is my understanding that the actions of the House and Senate Appropriations Committees have resulted in a decrease in the operating funds for this important activity without any recognition of the high rate of inflation impacting research activities. Is it the intention of the Senator to try to maintain the highly trained technical team that is essential to a viable national breeder program?

Mr. JOHNSTON. Yes, Mr. President, I support the breeder program with an enthusiasm approaching or equal to that of the senior Senator from Idaho, whose support is unsurpassed. The committee report gives the Department of Energy latitude to move funds from the plant and capital equipment account to operating expenses to mitigate the impact of a tight budget on key personnel.

Mr. CHURCH. I ask the Senator if he will carefully monitor and review the impact on the program during the first few months of the fiscal year and support a supplemental appropriation for the LMFBR base program if serious problems then exist for the program.

Mr. JOHNSTON. Yes, Mr. President, I will carefully review the status of the program early next year, with a clear intent to provide as much additional support as this extremely tight budget situation will permit.

Mr. CHURCH. With these understandings, I shall not offer an amendment to this bill for additional funds for the LMFBR base program.

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Levin). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1557

Mr. JOHNSTON. Mr. President, I have an amendment, which I intend to offer shortly, on behalf of myself and the distinguished Senator from Massachusetts (Mr. Tsongas), the effect of which will be to add $6 million for solar energy in research and development, principally for solar applications, including biomass, photovoltaics, wind, and ocean systems. We have a number of differences in our mix of items as shown in the report on the solar energy budget.

What we would be doing, Mr. President, is working out an arrangement—the Senator from Massachusetts and I—whereby we could increase the amount in solar applications in research and development by the sum of $6 million, which would bring the total Senate R. & D. appropriation amount up to the total House amount in this overall account of Energy Supply R. & D. operating expenses appropriations.

We wanted to be sure that the $6 million went into the account of solar energy applications R. & D., because there are other programs in this overall account for which the Senator from Massachusetts had prepared an amendment and which he intended to offer.

What we have done is worked out an amendment in lieu of the committee amendment which will insure not only that we add the $6 million for the account that the House had but also will insure that the $6 million goes to solar energy R. & D.

Does the Senator from Massachusetts have any comment, before I offer the amendment?

Mr. TSONGAS. No.

Mr. JOHNSTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Louisiana (Mr. Johnston), on behalf of himself and Mr. Tsongas, proposes unprinted amendment numbered 1557.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 9, in lieu of the matter proposed to be inserted, insert the following: "$2,262,575,000, and in addition, $6,000,000 for solar energy research and development and solar applications, including biomass, photovoltaics, wind and ocean systems.".

Mr. JOHNSTON. Mr. President, the amendment has been explained. It insures that we increase this appropriation account by the $6 million, but it insures that this $6 million will go to solar energy applications and research and development; and we particularly flag those subaccounts that were of interest to the Senator from Massachusetts, which are solar applications, biomass, photovoltaic, wind, and ocean systems.

This compromise amendment has the principal advantage of keeping our total bill within the amounts allocated to us by the Appropriations Committee. The original amendment which the Senator from Massachusetts had proposed, which would have increased the solar budget by a larger amount, would have thrown us out of balance and would have possibly prevented us from having the bill enrolled.

So I thank the Senator from Massachusetts for working this out, which is a victory for solar energy, by increasing it by a small amount, but it still allows us to keep this under the budget allocations and restrictions.

Mr. TSONGAS. Mr. President, the Senate has debated the energy issue back and forth. No one here questions how critical a problem the energy crisis is. We recognize that our national economic crisis is closely tied to our energy dilemma. We recognize that our national security crisis, brought on by the unstable political situation in the Middle East, and by our Nation's heavy dependence on oil production in that part of the world, is also closely tied to our energy dilemma. Consequently, I believe there are many Senators who would seek major new energy programs and significant increases in existing programs in this year's budget. But we are coming to understand that we are in a zero sum game with regard to balancing the budget, providing tax incentives for investment, and controlling the money supply.

The distinguished floor manager knows that I would like to see a significant increase in funding in real dollars for solar programs. He knows of my reservations about the $20 billion to be spent on synfuels and the billions on backing out imported oil. But I do not seek to redress what I perceive to be an imbalance in our energy policy. The goals of this amendment are modest.

This amendment seeks only to restore DOE solar funding to the level of the House-passed bill. It should be noted that as it passed the House, H.R. 7590 was already some $19 million below the President's revised budget request and more than $48 million below the administration's initial budget request. In addition, the solar program just suffered a $22 million cut in the last quarter of fiscal year 1980.

The President established last year the goal of 20-percent solar by the year 2000. The Harvard Business School Energy Future report said this is realistic. The Office of Technology Assessment said this is realistic. The Council on Environment Quality said this is realistic. When the administration announced its fiscal year 1981 budget, it was criticized as insufficient to meet the 20-percent goal. The committee's bill goes well below even that level. It would result in major delays in many critical areas.

I have supported the efforts of my distinguished colleagues to pare the fat from bloated Federal programs. But I believe that this reduction of Federal solar funding cuts into the very muscle of a program vital to our national security.

The programs cut by the committee's bill constitute the Government's side of a critical Government-industry partnership aimed at creating new growth industries in wind, photovoltaics, OTEC, passive solar, biomass, and solar thermal. These are sunrise industries that need Government support at the early stages. Many of the DOE solar programs are being carried out in cooperation with industry. What the committee's bill does is send a signal to industry that you cannot rely on the Government's contribution. If funding levels are not predictable—or at least stable—industry cannot reasonably make investment decisions. If we want these investments in our country's energy future, we must show Government commitment to existing programs. Our amendment has no new starts. It merely tries to mitigate the budget cut in ongoing programs.

Briefly, our amendment does the following. It restores $18 million to the solar applications program, $11.7 million to the biomass program, $3 million to the photovoltaics program, $1 million to the wind program, and $1.5 million to ocean systems, for a total of $35.2 million.

The solar applications money would be restored to programs designed specifically to get solar energy off the drawing boards and into public use. These programs have a very high "bang for the buck" ratio. In fact, DOE has estimated that for every $1 that taxpayers save in 1981 through solar applications budget cuts, they will pay over $30 in 1985 for imported oil (or its equivalent) which would not be needed if the programs are fully funded. (The actual figures are: $18 million saved in fiscal year 1981, $559 million spent for oil in fiscal year 1985.)

The funds for photovoltaics would keep the residential demonstrations of this exciting technology on schedule. Without them, the tests of these solar cells that convert sunlight directly into electricity would be seriously delayed. The funds would also keep the search for cheaper production processes on schedule. The proposed cut would have required a significant reduction in the industry-Government effort to reduce the costs of producing silicon, the raw material for photovoltaic cells.

The biomass restoration would continue the research into small scale production of methane and other liquid fuels. These will be needed to support the commercialization activities mandated by Congress in S. 932. Much of this work is being done with Energy Department funds by farmers and farm cooperatives, through an agreement with the Department of Agriculture. If the proposed cut is not restored, this work, as well as research at several agricultural universities, will come to a halt.

The wind money, if restored, would keep DOE's large wind machine program on schedule. This program has the single highest near-term potential of any solar electric program. Otherwise, the program will be delayed significantly, despite the fact that the House of Representatives gave overwhelming approval to an aggressive wind energy bill last year.

The ocean systems money allows continued research on a series of alternate ocean energy technologies—wave power, current power, and salinity gradient.

Mr. President, we speak so often these days about reinvestment in America—investing in our future to make us competitive and productive. These solar programs are just such programs. They are investments in our energy future. Cutting back such investments is pennywise and pound foolish. An internal DOE study found that for every dollar spent in the solar applications program, $30 is saved in 1985. For every million dollars we cut today, we will pay $30 million in 1985 for imported oil.

The funding in this amendment is a commonsense investment in our own self-interest. It is a basic step that addresses America's energy dependence and the strategic weakness caused by our dependency. Quite simply, we must now invest in a safe energy future. Otherwise, the future economic cost of our inaction will be many times higher. For this Nation's economy and our very security, I urge my colleagues to restore this vital investment.

Mr. President, I ask unanimous consent to have printed in the RECORD a table which sets out where our proposed amendment would make its restoration.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

[In thousands of dollars]

	H.R. 7590 House allowance	Senate mark	Mathias amendment
SOLAR APPLICATIONS			
Systems development:			
Operating expense	$49,500	$47,500	+$2,000
Capital equipment	1,500	1,500	----------
Subtotal	51,000	49,000	+2,000
Market test and application:			
Operating expense:			
Buildings	17,000	15,300	+1,700
AIPH	20,800	19,000	+1,000
PV	20,200	15,200	+5,000
Capital equipment	1,000	1,000	----------
Subtotal	59,000	51,300	+7,700
Market development and training: Operating expense	39,500	31,200	+8,300
Solar international: Operating expense	4,000	4,000	----------
Program direction: Operating expense	2,786	2,786	----------
Total, solar applications	156,286	138,286	+18,000
SOLAR TECHNOLOGY			
Biomass:			
Operating expense:			
Alcohol fuels	15,100	19,100	----------
Other biomass	47,650	35,950	+11,700
Capital equipment	750	750	----------
Construction funds	2,500	2,500	----------
Subtotal	66,000	58,300	+11,700
Solar thermal:			
Operating expense	$83,100	$83,100	----------
Capital equipment	3,500	3,500	----------
Construction funds	5,800	5,800	----------
Subtotal	92,400	92,400	----------
Photovoltaics:			
Operating expense	133,000	130,000	+$3,000
Capital equipment	7,000	7,000	----------
Subtotal	140,000	137,000	+3,000
Wind:			
Operating expense	77,900	76,900	+1,000
Capital equipment	2,100	2,100	----------
Subtotal	80,000	79,000	+1,000
Ocean:			
Operating expense	38,300	36,800	+1,500
Capital equipment	700	700	----------
Subtotal			+1,500
Solar international: Operating expense	8,000	8,000	----------
Solar information: Operating expense	1,400	1,400	----------
SERI facility: Construction funds	7,000	7,000	----------
Tech. support and util			
Program direction	4,000	4,000	----------
Total, solar technology	437,800	424,600	+17,200
Total, solar energy	594,086	562,886	+35,200

Mr. TSONGAS. Mr. President, I ask unanimous consent to have printed in the RECORD three tables showing the House categories and the proposed amendment's Senate categories.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

FISCAL YEAR 1981 CROSSWALK

BUDGET AUTHORITY OPERATING FUNDS

[In thousands of dollars]

Previous solar budget structure	H.R. 7590 House allowance	Proposed Senate solar budget structure and Senate marks											
		Buildings			Industry		Power						
		Active	Passive	PV	Biomass	Thermal	Wind	Ocean	Alcohol fuels	International	SERI facility	Information	Program direction
SOLAR TECHNOLOGY													
Biomass:													
Alcohol fuels	15,100								19,100				
Other biomass	47,650				35,950								
Subtotal	62,750												
Solar thermal	83,100					83,100							
Photovoltaics	133,000			130,000									
Wind	77,900						76,900						
Ocean	38,300							36,800					
Solar international	8,000									8,000			
Solar information	1,400											1,400	
Program direction	4,000												4,000
Subtotal solar technology	408,450	0	0	130,000	35,950	83,100	76,900	36,800	19,100	8,000	0	1,400	4,000
SOLAR APPLICATIONS													
System development	49,500	15,750	13,500			18,250							
Market test and applications:													
Buildings	17,000	10,300	5,000										
AIPH	20,800				5,000	14,800							
PV	20,200			15,200									
Market development and training	39,500	11,400	11,700		2,000	3,800	2,300						
Solar international	4,000									4,000			
Program direction	2,786												2,786
Subtotal solar applications	153,786	37,450	30,200	15,200	7,000	36,850	2,300	0	0	4,000	0	0	2,786
Total solar energy	562,236	37,450	30,200	145,200	42,950	119,950	79,200	36,800	19,100	12,000	0	1,400	6,786

BUDGET AUTHORITY CAPITAL EQUIPMENT

[In thousands of dollars]

Previous solor budget structure	H.R. 7590 House allowance	Proposed solar budget structure						
		Buildings			Industry		Power	
		Active	Passive	PV	Biomass	Thermal	Wind	Ocean
Solar technology:								
Biomass	750				750			
Solar thermal	3,500					3,500		
Photovoltaics	7,000			7,000				
Wind	2,100						2,100	
Ocean	700							700
Subtotal solar technology	14,050	0	0	7,000	750	3,500	2,100	700
Solar applications:								
System development	1,500	750				750		
Market test and applications	1,000	500	500					
Subtotal solar applications	2,500	1,250	500	0	0	750	0	0
Total solar energy	16,550	1,250	500	7,000	750	4,250	2,100	700

BUDGET AUTHORITY CONSTRUCTION FUNDS

[In thousands of dollars]

Previous solar budget structure	H.R. 7590 House allowance	Proposed solar budget structure			
		Industry			
		Biomass	Thermal	SERI facility	Alcohol fuels
Solor technology:					
Biomass	2,500				2,500
Solar thermal	5,800		5,800		
SERI facility	7,000			7,000	
Total solar energy	15,300	0	5,800	7,000	2,500

Solar applications for buildings:

To restore $5 million for active systems, $2.7 million for passive systems, and $8 million for photovoltaics (restoring the second silicon pilot plant and funds according to the following: $700,000 for market test and applications and $2 million for market development and training).

Solar applications for industry:

To restore $13.5 million for biomass activities, along the lines of the committee's reductions in market test and applications, technology, and applications.

Solar power technology:

To restore $6 million, of which $4.5 million is for wind energy conversion systems, and $1.5 million is for ocean systems.

Mr. TSONGAS. Mr. President, I ask unanimous consent that the names of Senators MATHIAS, PACKWOOD, MATSUNAGA, KENNEDY, WILLIAMS, LEAHY, DURKIN, STEWART, SARBANES, and BUMPERS be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TSONGAS. Mr. President, I note for the record that the amendment is supported by the solar lobby and the American Wind Energy Association, which comes as a surprise to nobody. It is also supported by the AFL-CIO, the Sheetmetal Workers, ARCO, Exxon Solar, Lockheed, GE, Boeing, and Bethlehem Steel. So, clearly, there is a broad base of support.

The original amendment, which I intended to have brought up today, which was put together by me and Senator MATHIAS principally, would have offered to restore $35.2 million for research in commercialization of solar energy, and that would have brought it up to where the House-passed bill is at this point. Because of the concern over the budget resolution and the budgetary and parliamentary situations in which we find ourselves, and after discussions with the Senator from Louisiana, we have decided to increase it by only $6 million.

We have discussed the position of the Senator from Louisiana vis-a-vis the conference, in which he has indicated that he will take a hard look at the House position and perhaps, to the extent possible, nod toward the House position when it comes to conference. I accept that as a good faith effort. I am sure that when he has a chance to look at the merits of the issue in conference, the House position will be acceeded to by the Senate conferees. I appreciate the willingness of the Senator to accommodate my wishes and those of the other 11 cosponsors.

I thank the Senator from Louisiana.

Mr. HATFIELD. Mr. President, I should like to engage in a brief colloquy with the Senator from Louisiana.

Do I correctly understand that by the adoption of this amendment, we are still within the budgetary limitations and the allocation limitations of the committee?

Mr. JOHNSTON. The Senator is correct.

Mr. HATFIELD. Do I correctly understand that this in no way impinges upon the present allocation and commitments we have made to the program for geothermal and other renewable sources of energy?

Mr. JOHNSTON. The Senator is correct. It does not change the allocations shown in the report for energy supply R. & D. operating expenses. The additional $6 million was not taken from any of those accounts but simply was added on, as an addition for these solar applications and R. & D. programs only.

Mr. HATFIELD. Mr. President, on behalf of the minority, I am happy to accept the amendment, predicated on those two points.

I have long been a strong advocate of alternative systems of energy development, especially renewable sources of energy, the potential we have there and not realized; but I want to make certain that we not make this at the expense of the other ongoing programs.

I would have liked to have seen this brought about through deducting that $6 million from the warhead program, but I realize the political realities of that problem. So, in lieu of having it brought about through that system, I am happy to accept this amendment, as stated, by the Senator from Louisiana and the Senator from Massachusetts.

Mr. TSONGAS. Mr. President, I share the sentiment that that opportunity will arise in conference.

Mr. MATSUNAGA. Mr. President, I rise in strong support of the Tsongas amendment, as one of its cosponsors.

We have a very serious energy problem which is only going to get much worse during the decade of the eighties. Our import oil bill has skyrocketed by 3,000 percent in 10 years, and worse still, while in 1973 only 15 percent of this importation came from Arab countries, in 1980 half of our imports will have this origin.

According to the Institute of Gas Technology, the "true" cost of imported oil is really $80 to $109 per barrel. The analysis took into account the effects of U.S. oil imports on world oil prices, trade balance, value of the dollar, inflation, output of the economy and national security costs. If this is true, then our import oil bill for this year will not approach $100 billion, but will, in fact, be three times this amount.

The Congress has reacted with reasonable dispatch, having passed the National Energy Act in 1978 and both the Windfall Profit Tax Act and Energy Security Act this year. We have authorized in response to the impending national and world energy crisis, but in reaction to the hysteria of a cyclical budget crunch, have become ultraconservative in appropriating this sum. While energy headlines have saturated the media, in fiscal year 1979 only 1.6 percent of the total Federal budget went for energy. In fiscal 1981, the energy outlay percent is expected to shrink to 1.4 percent. Mr. President, I ask my colleagues, what are our priorities?

The solar budget epitomizes our skewed sense of priorities. Every analysis and review of our Federal solar energy program has underscored the obvious—our national goal of the renewables providing 20 percent of the Nation's total energy in the year 2000 will not be met at the present level of support. The restoration of $35.2 million for research and commercialization of solar energy is absolutely necessary to maintain the momentum toward energy independence, but perhaps even more so as a symbol, to show that we are serious about finding a solution to our energy problems.

Mr. President, I urge my colleagues to vote with me in support of this pending amendment which would in effect accept the House appropriation for the solar budget.

Mr. President, it is my understanding that a compromise amendment has been agreed to by the Senator from Massachusetts and the Senator from Louisiana. In the further understanding that the Senator from Louisiana will agree in conference to a restoration of a major portion of the funds for solar energy programs, this Senator from Hawaii will not object to the compromise amendment.

I appreciate the correction.

Mr. JOHNSTON. If the Senator will withhold a moment—the original Tsongas amendment that was proposed is not being offered. We have now a compromise. Mr. President, the situation is a little more complicated than just not putting up a fight, but I will do what is necessary and appropriate to try to get this additional $6 million over our amounts for solar energy, whether it means accepting the House amounts or fighting for the additional dollars for solar energy.

Mr. TSONGAS. Mr. President, as a point of clarification, $6 million is in here because of the amendment. The issue raised is between this and the House position in this particular category.

Mr. JOHNSTON. I say to my friend that the House of Representatives had a total of $2,268,000,000 for an overall account which includes a number of things, including geothermal, nuclear, hydro, basic sciences programs and other matters which are nonsolar. So what we have done is added onto that total Senate amount to bring the total amount up to the House, which is $2,268,000,000, and then we have in our amendment specified the part of the total account in which that would be spent.

I believe that we will be successful in being able to do that, but simply acceding to the House level would probably not do it. We have to insist that the additional $6 million be spent in the solar account which I believe we can do, I hope and I trust, without a great deal of difficulty.

But the point I am making to the Senators from Massachusetts and Hawaii is that I will do my very best for what is in their interest to get this money allocated to the solar accounts.

Mr. TSONGAS. If I may pursue it just for a moment, what is the Senator's position as to the difference between what will now be the Senate position and the House position? My understanding of our discussion was that although not committed to the House position the Senator would be inclined to give the Senate position to the House position as to the remaining $29 million.

Mr. JOHNSTON. The Senator is correct. We will very sympathetically look at all of those items.

Mr. TSONGAS. I appreciate the Senator's statement.

Mr. DOMENICI. Mr. President, I wonder if the Senator from Massachusetts will yield.

The PRESIDING OFFICER. Does the Senator from Louisiana seek recognition?

Mr. DOMENICI. Has the Senate passed the Tsongas amendment? I was going to ask to be added as a cosponsor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senators from Louisiana and Massachusetts.

Mr. DOMENICI. Mr. President, I object. I was trying to be added as a cosponsor. That is why I arose.

Will the Senator from Massachusetts add the Senator from New Mexico as a cosponsor?

Mr. TSONGAS. Yes.

Mr. DOMENICI. And I commend him for his efforts.

Mr. TSONGAS. Mr. President, I so ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico will be added as a cosponsor.

The Chair misunderstood the Senator from New Mexico, and I apologize.

Mr. DOMENICI. I thank the Chair.

Mr. JOHNSTON. Mr. President, I now move adoption of the second-degree amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senators from Louisiana and Massachusetts.

The amendment (UP No. 1557) was agreed to.

Mr. JOHNSTON. Mr. President, I now move the committee amendment, as amended.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment, as amended, was agreed to.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wonder if my good friend from Louisiana will discuss with me the so-called waste isolation pilot project. I believe it is referred to on page 61 of the report.

Mr. JOHNSTON. Will the Senator withhold momentarily on that? I promised the distinguished senior Senator from Mississippi I would meet with him immediately after this, if the Senator could withhold for a moment.

Mr. DOMENICI. I am pleased to withhold.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The clerk will state the next committee amendment.

The legislative clerk proceeded to read the amendment.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 6, strike "$330,837,000," and insert "$376,337,000 and in addition, $10,000,000 for the construction or acquisition by the Secretary of Energy of capacity for the away from reactor storage of spent nuclear fuel from electric powerplants licensed under the Atomic Energy Act of 1954, pursuant to the Nuclear Waste Policy Act (S. 2189) as passed by the Senate on July 30, 1980, all";

Mr. JOHNSTON. Mr. President, I am not aware of any amendment to this committee amendment. I have not been informed of any.

Mr. President, the pending amendment relates to plant and capital equipment for energy supply research and development activities on page 5. I am not aware of any proposed amendment to this. None has been offered. That is now the pending business. With the concurrence of the Senator from Oregon, I shall move its adoption.

Mr. HATFIELD. Mr. President, I support the motion.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the next committee amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 5, line 24, strike "$275,760,000" and insert "$276,760,000."

Mr. JOHNSTON. Mr. President, this amendment relates to uranium supply and enrichment activities. I notice the Senator from Ohio, at one point, had some interest in this. I have not been told of any amendment to be offered, but the Senator from Ohio is in the chair. I ask whether he is ready for us to have this considered.

The PRESIDING OFFICER (Mr. METZENBAUM). Speaking in my capacity as the Senator from Ohio, let me state that the senior Senator from Ohio has indicated that he wishes to come to the floor to offer an amendment which I shall cosponsor. I would appreciate it if the Senator from Louisiana would be good enough to lay this aside until we can check that.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that this amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the next committee amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 15, line 9, strike "$1,657,095,000" and insert "$1,534,703,000."

Mr. JOHNSTON. Mr. President, I shall not ask that this amendment be agreed to, but that it be the pending business. I ask unanimous consent that it be temporarily laid aside. This amendment would be the appropriation account in which the Tenn-Tom amendment would come. I therefore ask unanimous consent that it be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1558

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1558.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Provided, however, That up to $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards and the development of improved regulatory requirements for safeguarding the transportation of spent fuel.

Mr. McCLURE. Mr. President, this amendment simply provides that of the money appropriated to the Nuclear Regulatory Commission, up to $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvement of material control and accounting safeguards, and the development of improved regulatory requirements for safeguarding the transportation of spent fuel.

Mr. President, the only reason I am offering this amendment is not that there is any disagreement among the people in the Nuclear Regulatory Commission or the people in industry, because there is substantial agreement that they need to go forward, and are going forward with the adoption of regulations in these two areas, the accounting for nuclear materials within the various processing and industrial areas of the country, and second, the transportation of the spent fuels on the highways or railroads within the United States.

My concern and the concern of many people is that in spite of this uniform demand that regulations be developed, it is proceeding far too slowly.

We have a contract in one of these areas and the contract performance schedule keeps being changed and lengthened. We keep operating under an interim regulation, or interim regulations, and the NRC says that they are willing to go forward, and are going forward. But still we see a stretchout in the schedule for what I think everybody says must be attained and the NRC agrees will be attained.

All I seek to do in this amendment is to provide that they may, not that they have to or that they shall, but that they may, use up to $180,000 of the money appropriated to them and may, out of the additional positions which have been allocated to them, go up to six additional positions dedicated to these two areas of the development of regulation.

I hope, if the amendment is adopted, and I see no reason why it should not be, that the NRC would take this as a signal that we want them to complete the work they have started on in these two areas.

I hope the managers of the bill on both sides would see fit to accept the amendment. I am, personally, prepared to answer any questions which might be addressed to me on this amendment, on either of the suggestions embraced in it.

Mr. JOHNSTON. Mr. President, I do not know of any particular problem areas with this amendment. None have come to our attention. I believe the Senator from Idaho correctly states the amendment.

We will be glad to take it to conference, determine if there are any problem areas, and if not, I think it can accomplish all the things the Senator from Idaho has said.

So, on behalf of the majority, we will be pleased to take it to conference.

Mr. HATFIELD. Mr. President, on behalf of the minority, I think the Senator from Idaho has raised a very legitimate concern and expresses here in this amendment what we all have. I think it may well accomplish his purposes.

I would accept it on behalf of the minority.

Mr. McCLURE. I thank the Senator.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment (UP No. 1558) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1559

(Purpose: To maintain the Portsmouth Gas Centrifuge Plant on the schedule submitted by the Department of Energy in its January 1980 budget request)

Mr. GLENN. Mr. President, I send to the desk an unprinted amendment and ask for its consideration.

The PRESIDING OFFICER. By unanimous consent, the section of the bill pertaining to this matter has been set aside. Does the Senator from Louisiana wish to bring the issue back before the Senate?

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order for the Senator from Ohio to bring up at this time his amendment to the uranium supply, resource, and enrichment activities and make it the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. I thank the Chair, and I thank the distinguished Senator from Louisiana.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN), on behalf of himself, Mr. METZENBAUM, Mr. BAKER, and Mr. SASSER, proposes an unprinted amendment numbered 1559.

Mr. GLENN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 24, strike "$275,760,000" and insert in lieu thereof, "$445,760,000".

Mr. GLENN. Mr. President, this amendment is submitted on behalf of myself as well as the current occupant of the chair, the Senator from Ohio (Mr. METZENBAUM), and the Senators from Tennessee (Mr. BAKER and Mr. SASSER).

This amendment provides an additional $170 million for the Portsmouth Gas Centrifuge Enrichment Plant (GCEP), as requested by the Department of Energy in its January 1980 budget submission. The gas centrifuge technology being developed at Portsmouth is highly energy efficient, using only 4 to 5 percent of the tremendous amounts of energy required by the gaseous diffusion enrichment process currently utilized.

Timely completion of the Portsmouth GCEP is a key component of the Department of Energy's highly successful uranium enrichment program. This program supplies all defense requirements for highly enriched uranium including the requirements of the Nation's naval nuclear propulsion fleet. The program has also been the sole supplier of all enrichment services to domestic civilian reactor customers since the Shippingport reactor started up in 1957 as the first U.S. power reactor. In addition, the uranium enrichment program has supplied much of the free world's uranium enrichment needs as well.

The statistics generated by the U.S. uranium enrichment program are impressive. To date, we have provided more than 100 million separative work units (SWU) for U.S. and foreign civilian nuclear power facilities, representing over 90 percent of the total free world production. To produce the equivalent electrical energy from this quantity of enriched uranium would have required about 10 billion barrels of oil. Foreign sales of enriched uranium have contributed about $2.8 billion to the U.S. balance of trade. Our total enrichment revenues for fiscal years 1980 and 1981 are projected to be about $1.1 billion each year.

Today, some 10,000 people are employed in the operation, maintenance and support of the three diffusion plants at Oak Ridge, Tenn.; Paducah, Ky.; and Portsmouth, Ohio. In addition, there are now in excess of 3,000 people at all locations, engaged directly in the design and construction of the Portsmouth GCEP. These GCEP numbers do not include the subcontractors who supply components, materials and services—perhaps another 5,000 to 7,000 people—nor do they include the indirect activities induced by these primary activities not only in my State of Ohio, but also in the home States of the contractors and subcontractors. These States include, among others, Alabama, California, Connecticut, Georgia, Kentucky, Maryland, Michigan, Minnesota, New Jersey, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, and West Virginia.

It is clear that uranium enrichment has an important economic impact, as measured in U.S. jobs, balance of trade, and efforts here and abroad to reduce dependence on oil. It is also clear that the Portsmouth GCEP is truly a national effort, and one that cuts across narrow State or regional interests.

President Carter stated in 1978 that "the United States must restore confidence to the world in its ability and willingness to supply enriched uranium enrichment services for commercial applications." I agree with the President's statement.

It is vitally important for the United States to remain a principal supplier of foreign enrichment needs for several reasons. First, we will be able to exert maximum influence on foreign users to cooperate in our nuclear nonproliferation objectives. If nations continue to develop their own enrichment capability, then this could also be a source of nuclear weapons materials. Second, we will continue to reap the benefits of helping to reduce our balance-of-payments deficit. Third, we will be able to optimize the use of our available enrichment capacity in order to minimize the cost for all customers, both domestic and foreign.

To provide further assurance to our domestic and foreign customers that the United States is the most economical and reliable source of enriched uranium, the Department of Energy plans to expand its uranium enrichment capacity by the 8.8 million SWU per year provided by the Portsmouth GCEP. Even this additional capacity may not be enough. As recently as the August 4, 1980 project review of the Portsmouth GCEP, officials from the Department of Energy stated the following:

> We now have 298 contracts for enrichment services with U.S. and foreign utilities, extending beyond the year 2000, with a total value of $75 billion. To sustain this contract level at a tails assay of less than 0.25 percent U235 will require more than the full 8.8 million SWU/year capacity projected to be supplied by GCEP. We anticipate that some of these contracts will be terminated and the scheduled delivery for others will be vulnerable to further delays, but we are confident that our marketing efforts, supported by advanced technologies and the resulting SWU cost-reductions, will offset contract terminations. Nevertheless, more than enough contracts exist which are firm or solidly on schedule to require most of the 8.8 million SWU GCEP plant capacity. And our demand projections indicate additional capacity beyond GCEP may be needed in the late 1990's.

The Department of Energy's January budget submission for fiscal year 1981 requested a total of $319 million so as to complete the first 2.2 million SWU's of the GCEP by 1988 in order that the GCEP could, in the words of DOE's Assistant Secretary for Resource Applications, Dr. Ruth Davis:

> Be operated integrally with our gaseous diffusion plants, and moreover bring to the enriched uranium marketplace the prominent advantages of the centrifuge separation process. These centrifuge separation advantages include: (1) operation using only 5 percent of the power of the diffusion process; (2) adaptability to construction in increments consistent with market expansion; and (3) opportunity to develop and utilize second generation centrifuges which promise even more attractive economics when fully developed in mid to late 1980's.

The administration, in its March 1980 budget revision, deleted $170 million from the GCEP. This will result in a year's delay in completion of all phases of the project. As I see it, this 1 year delay will be very, very costly for the following three reasons:

First. Contracts in excess of one-half billion dollars have been placed and are in work. A 1-year stretch-out will, in addition to inflation, add an additional year of overhead, capital, and administrative costs to these contracts. The total additional costs could be as much as $80 million on this alone.

Second. If the first 2.2 million SWU of GCEP are delayed by a year and if electricity costs rise at a moderate rate of 12 percent per year, there will be a need for an additional 5 billion kilowatt hours of electricity to be generated for nuclear enrichment purposes at a cost of almost $300 million in the 1987–88 timeframe.

Third. A schedule slide could result in a reduction of production rates of centrifuge machines and other hardware needed for GCEP. The degradation of efficiencies resulting from a schedule slide could cost as much as $50 to $100 million if manufacturing rates are significantly impacted.

In addition, Mr. President, there is the question of jobs. The total number of jobs nationally involved in this project would be on the order of 2,500 jobs in various parts of the country and not all of them in Ohio due to the national character of the project.

At a time when our economy could use a shot in the arm, it appears to me we should do all we can to boost the job market, and this project is clearly significant in that respect. Finally, Mr. President, all of the relevant Senate and House authorizing committees have stated their objection to this budget reduction and the subsequent delay in the project.

Mr. President, I yield the floor for any further statements or any comment that the distinguished floor manager of the bill might wish to make. I know the Acting President of the Senate wishes to make a statement on this, and I yield the floor to whomever might wish to make comments.

Mr. JOHNSTON. Mr. President, does the Acting President wish to make a statement at this time?

The PRESIDING OFFICER. He does.

(Mr. MOYNIHAN assumed the chair.)

Mr. METZENBAUM. I thank the Senator from Ohio (Mr. GLENN) and the Senator from Louisiana.

Mr. President, I do indeed wish to address myself to this subject because it is of major concern to my State and to the country.

Mr. President, earlier today, the distinguished chairman of the Appropriations Subcommittee on Energy and Water Development stated that the legislation before us does not provide adequate funding for a number of vital energy projects.

I fully agree with the Senator. And I share the view he has often expressed that this Nation cannot afford a skinflint approach in the absolutely vital area of energy development.

It is for that reason that I join Senator GLENN in offering this amendment today which will go a small way toward putting some flesh on what the Senator from Louisiana has himself described as a "barebones" budget.

Our amendment will restore funding for the gas centrifuge uranium enrichment plant at Portsmouth, Ohio, to the level authorized by the Committee on Energy and Natural Resources.

By so doing, it will permit this absolutely vital project to move ahead on schedule.

Our amendment will save a vast amount of energy. The gaseous diffusion enrichment technology currently in use at Portsmouth consumes fully 20 times the energy that is required by the centrifuge process.

In electric power alone, the cost of delaying the centrifuge plant will come to a staggering $500 million. And DOE has itself estimated that a year's delay will add two hundred million fiscal year 1980 dollars to the total cost of the project.

Mr. President, we have been told that the delay is an economy move, that it will cut $170 million from the fiscal year 1981 budget. But it is a false kind of economy.

It is beyond my comprehension that anyone—even the financial geniuses we have at DOE—would propose to "save" this money in the sure and certain knowledge that "saving" $170 million is going to cost the taxpayers $700 million.

Is there anyone here who wants to make that kind of a "saving" for the people of this country? I think not. But unless our amendment is accepted, that is precisely what we will be doing.

Mr. President, more than money is at stake. When we enacted the Nuclear Non-Proliferation Act of 1978—and no one knows this legislation better than my distinguished colleague from Ohio—we did so on the assumption that this country could and would be a reliable supplier of enrichment services to other nations.

Yet it is clear, Mr. President, that a growing number of countries do not consider us reliable.

Since June 1978, DOE has had 10 terminations of foreign enrichment contracts at a loss to this country of $29 billion over what would have been the period covered in those agreements.

Some foreign customers have gone to suppliers in Western Europe. Others have turned to the Soviet Union.

And each year between now and 1995, we stand to lose $90 million in foreign orders as contracts expire and are not renewed.

Yet we are told that we can afford to delay the Portsmouth project. I recognize that the question of delay is in and of itself a debatable issue, and I know that the distinguished chairman of the subcommittee feels that there will not be any delay involved in the project, and in a colloquy I hope to explore that further with him.

I ask him is it his understanding that with the appropriation as provided for in this legislation there will be no delay caused so far as going forward with the project is concerned?

Mr. JOHNSTON. Mr. President, that is our understanding. For example, there were some contracts this spring which were slipped, not due to underfunding but due to the human inability of those who were running the project to meet the schedule. So even if we added back in this money we doubt if it could be put back on the original full schedule.

We do not believe this would result in a further delay on the project. We believe that we can make the revised schedule, which is 140,000 SWU's by 1985, and the completion of the first train, which is, what, some four modules, by 1989, which would be the full 2.2 million SWU's, separative work units.

Mr. President, we do not believe this would result in any delay in the project.

Shall I tell the Senator also some of our thinking at this point?

Mr. METZENBAUM. Please do.

Mr. JOHNSTON. Mr. President, I would point out that we have in this budget $284 million for fiscal year 1981. If you look at the level of funding from the time we started the project in 1976, this is a tremendous increase over any prior year.

Prior year funding has been for the years 1976 through 1981, both inclusive, as follows: $12 million, $167 million, $150 million, $150 million, $187 million, and $284 million. So we are at an increase of about $100 million, $97 million, over 1980, almost double what we were in 1979. That is, of course, including the money which was deferred, which is available for this year.

I might also point out that we actually cannot spend the full $284 million. The uncosted obligations exceed $300 million.

I know of the great interest of the Senator from Ohio in seeing that the employees during the coming fiscal year will be increased under this budget, not only increased over last year, but increased over the amount that would result from the Senator's amendment.

How could that be that you would add money and lose employees? Well, the reason for that is if you added in this $170 million you would divert efforts and attention from the ongoing work to get out new contracts and apply that money actually in obligational authority, the entering into of contracts which would involve planning, design, architecture, and engineer work, whereas through this method we will be able to concentrate on those contracts already let which will require large numbers of employees. So that as contradictory as it may sound, we understand it to be a fact that total man-years of employment will be higher in fiscal year 1981 under the administration's and our formula for funding than would be employed under the accelerated schedule or formula of the Senators from Ohio. That is, as I say, due to existing employment levels being maintained and increased in 1981 as recent construction awards and those scheduled for 1981 are fully manned and carried out.

I might point out that most important, Mr. President, is that our commitment to this project on the committee is completely undiminished. This is an excellent project. What the Senators have said about energy efficiency is very much true. Uranium enrichment through a centrifuge uses only a minimum of electric power as compared with enrichment through gaseous diffusion, which is the primary reason for going to the centrifuge as opposed to the gaseous diffusion. It is not that we lack energy, but because this is so energy inefficient, and that is why we are so committed on the committee to following this through, meeting this revised schedule and, if possible, moving the schedule up.

Frankly, I think in the real world we can stay on the revised schedule not through funding—we intend to provide the funding—but if we can stay on the revised schedule in the sense of getting all the architects, all the engineers, all the contractors, all the project managers to move efficiently and in unison we will be doing very well, we think, to meet that schedule of 140,000 SWU's by 1985, and 2.2 million by 1989, and I can tell the Senators from Ohio that it is our commitment on the committee to do so.

Our agreement with the administration on the slipping of the money has nothing to do with a diminishing of our commitment to this project, and I want to underline and emphasize that. We will fight for this project and to keep it on the revised schedule.

I might also add that there is about a $1 billion commitment already available, including the fiscal year 1981 amounts, some spent, but a good portion of it in uncosted obligations. Of that, $350 million is uncosted obligations at this time. So we have a tremendous commitment ongoing with an additional budget authority of $284 million in this budget for fiscal year 1981.

Mr. METZENBAUM. I appreciate the comments of the Senator from Louisiana and his indication of recognition that we are concerned about the unemployment problem in Portsmouth and the need for additional jobs.

His assurances with respect to the fact that there will be more payroll, more jobs during this period rather than less in spite of the fact that there will be less money are reassuring. But more important than that is the fact that this Senator from Ohio has worked with the Senator from Louisiana for several years and knows that the Senator from Louisiana has consistently been a supporter of the Portsmouth enrichment plant and knows from previous conversations I had with him that he has indicated if there is need for additional funding, if there is a readiness to use it, if there is a demand for the uranium, if there is a reason to provide additional funds, that he would not turn a deaf ear to those of us who are particularly concerned with this subject, and I hope the Senator from Louisiana can indicate that I have interpreted his position in the past accurately as I have expressed it now on the floor.

Mr. JOHNSTON. Mr. President, the Senator is correct. I can even go stronger than that. And that is, under the conditions the Senator has outlined, I would not only not turn a deaf ear, but I would be helping to lead the fight to expedite the project over and above this revised schedule.

I believe that this revised schedule will put the additional enriched uranium supply from this centrifuge project make it available, and it will be available at the time it is needed. But if world indications depend on supply or domestic indications are that we need more than this, then I think we ought to give whatever funds are necessary to meet it.

I believe that the revised schedule, however, puts it on the critical path, so that it does not anticipate unduly the need for the enriched uranium to be produced by this.

Mr. METZENBAUM. I thank the Senator from Louisiana. I yield back the floor to Senator GLENN.

Mr. BAKER. Mr. President, I wish to commend the Committee on Appropriations for the commitment to America's energy development program which the committee has displayed in the Energy and Water Development Appropriations Act of 1981.

In particular, I note the very positive statement made in the committee report in support of the gas centrifuge enrichment plant, in Portsmouth, Ohio, is a most appropriate congressional affirmation of a most worthwhile project.

Furthermore, I applaud the efforts of the distinguished Senator from Ohio (Mr. GLENN) for his concern expressed in this amendment, which I am pleased to cosponsor, that the funding of the centrifuge project be consistent with the most rapid possible timetable.

In several energy-related areas, and I am thinking specifically of the Clinch River breeder reactor program in my own State, the Federal Government in recent years has been less than wholly enthusiastic in the development of much-needed new technology.

And while I sympathize with President Carter's desire to reduce Federal spending, this project is of such importance we must press ahead with it as rapidly as possible. Thus, I was pleased that the committee report recommended its continuation on the most efficient and expeditious timetable and funding level possible.

With every day of delay in the centrifuge complex, the Government incurs further losses in construction costs of the facility, as well as the additional financial burdens of inflation, overhead, administrative costs, and the higher cost of continued enrichment by the current diffusion process.

As private industry in Oak Ridge, Tenn., will be manufacturing the centrifuge machines to be utilized in the Portsmouth plant, I know firsthand of the benefits this new technology will bring to our campaign for energy independence.

Once operational, the centrifuge facility will save 5.6 billion kilowatt-hours of electricity each year over the same quantity of diffusion enrichment, while the process will consume only about 4 to 5 percent of the electricity needed by the diffusion process. This level of energy conservation is far too significant for us to pass it by or delay its attainment one day longer than necessary. Surely, we know by now that there is no time to lose. Indeed, too much time has already been lost by our failure to push forward with such energy conservation measures.

This gas centrifuge enrichment project, Mr. President, will conserve energy, will produce revenue, will indicate to the private sector that the Federal Government is truly enthusiastic and encouraged about private sector energy development programs. Finally, it will demonstrate to the world that the United States has every intention of remaining a competitive, reliable supplier of enrichment services.

In conclusion, I believe this to be a most worthy project in every aspect, and I am delighted the Appropriations Committee shares that belief. I particularly wish to thank my distinguished colleague, the Senator from Louisiana (Mr. JOHNSTON) for recognizing and supporting the concern I share with my good friends, the Senators from Ohio, that the Portsmouth gas centrifuge enrichment program to be kept on the most expeditious possible timetable.

● Mr. SASSER. Mr. President, I want to lend my support to the efforts of Senator GLENN to restore funds for the Portsmouth Gas Centrifuge Enrichment project. The reduction of funds to $170 million below the original fiscal year 1981 budget request will result in a delay of this project and the first increment of enrichment capacity by 1 year. This will ultimately add to the costs of the project—some say by as much as $700 million.

In addition, the delay will reduce the revenues which the Federal Government can collect upon completion of the plant from the sale of enriched uranium.

I would point out to the Members of the Senate that this particular project has substantial support from the private sector. Industrial capacity is being built by private sector firms at their own expense to fabricate the centrifuge machines and other hardware for the project. Over 1,100 jobs are impacted in the subcontracts on this project which are located in Ohio, Tennessee, Alabama, Maryland, Washington, California, Michigan, and Pennsylvania.

The activities of these private sector firms have been based on a schedule calling for the completion of the first train in 1984. I feel strongly that we should make every effort in the Senate to insure that this project be kept on schedule. We need to be encouraging the support of private industry in this project—without their contribution we will have no project.

This new enrichment capacity will improve the ability of the United States to meet foreign competition by providing the needed evidence of our intention to remain a reliable supplier of enrichment services—a goal which is in support of our nuclear nonproliferation policy.

The cost of production of enriched uranium in gaseous diffusion plants is increasing annually with the cost of electricity. The new centrifuge enrichment capacity will produce enriched uranium at substantial savings.

I think the facts are clear. We need the additional enrichment capacity which will be provided by this project. We need the enrichment capacity on line with the minimum delays. I want to join my colleagues on this amendment in supporting sufficient funding to maintain the gas centrifuge enrichment project on schedule with the first production train online in 1984.●

Mr. GLENN. Mr. President, I would like to ask the distinguished floor manager a question or two. I had understood, and it had been my information from the Department of Energy, that if we were able to retain this $170 million, that that would have been sufficient to keep us on the original schedule. Is that the Senator's understanding?

(Mr. METZENBAUM assumed the chair.)

Mr. JOHNSTON. Mr. President, we believe that the original schedule was lost by other factors, principally the contracts which were not met and slipped this spring before the $170 million was taken out in the revised budget.

Now, whether or not adding $170 million would advance the project or not could be argued. But we do not believe it could be advanced sufficiently to keep the original schedule. There are many factors other than funds, as we all know too well, impacting on schedules.

Mr. GLENN. Mr. President, I would add that Senator METZENBAUM and I and the other Senators from the Portsmouth area are obviously very much concerned about the impact on employment and jobs and general business welfare in that part of the country. In addition, from a national standpoint I think it is well to note that this is one Government program that is a moneymaker. We sell nuclear fuel abroad to foreign plants. We have contracts, as I indicated, on the order of 298 existing contracts for enrichment services with United States and foreign utilities extending beyond the year 2000, with a total value of $75 billion.

If I may digress for a moment, I might add that I have other legislation pending before the Senate now which would set up a revolving fund enabling the program to be supported by enrichment revenues. Then we would have some of these appropriation difficulties on a year-in and year-out basis. But debate on that will come at a later time.

Returning to the matter at hand, Mr. President, I did want to point out that this project could be a significant moneymaker for the Government over the long haul. If you have confidence that, once we absorb all the lessons of Three Mile Island, we will get back to the building of more nuclear plants around the world, then this will mean more requirements for uranium enrichment services; services which this plant provides. This will, in turn, mean profits for the U.S. Government and help out with our balance-of-payments problem.

I have been very glad to hear the distinguished Senator, the manager of the bill, indicate his support and relay his impression of the Appropriations Committee's support for this project and for the need for these enrichment services in the future.

Mr. President, I am very much aware of the budgetary limitations this year. I realize that the climate being what it is with regard to desires for a balanced budget, that there is no realistic chance of this amendment being adopted without the support of the Appropriations Committee and the administration. I have been, however, very glad to hear the expressions that the Appropriations Committee will be supportive of the spirit of this amendment.

In the interest of expediting the Senate's business and knowing the likely outcome of a rollcall vote if I went ahead with such a record vote, Mr. President, I ask that the amendment be withdrawn.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senators from Ohio. I think they have contributed to the knowledge of the Senate on this most important subject matter.

I reiterate that I am a strong supporter of this, as our committee is, and we will stay behind the Portsmouth centrifuge project and do everything possible and appropriate to keep it on the revised schedule. I want the Senator to know that it is the revenues from uranium enrichment services which support the program now. These revenues are an offset now.

Mr. President, I move the committee amendment at this time.

The PRESIDING OFFICER. The question is on agreeing to the third committee amendment.

The third committee amendment beginning on page 5, line 24, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

UP AMENDMENT NO. 1560

Mr. McCLURE. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The fourth committee amendment has been temporarily laid aside.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the fourth committee amendment be again temporarily laid aside in order that the Senator from Idaho may bring up his amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 1560.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13 following line 21 add the following new section:

"SEC. 104. In carrying out the responsibilities of Sec. 31(a)(5) of the Atomic Energy Act of 1954, as amended, and within the amounts appropriated to the Department of Energy herein, the Secretary shall establish a research, development, and demonstration program for improving the safety of nuclear powerplants. As part of such program, the Secretary shall—

(1) develop potentially cost-effective concepts for improving the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from nuclear powerplants, and (B) reduce radiation exposure to workers during plant operation and maintenance;

(2) develop potentially cost-effective methods and concepts that will significantly improve the performance of operators of nuclear powerplants under routine as well as abnormal and accident conditions;

(3) determine the effect of total or partial automation of nuclear powerplant systems on plant safety, operation, reliability, economics, and on operator performance;

(4) support applied science and technology useful in the improvement of nuclear powerplant safety;

(5) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions;

(6) provide for the examination and analysis of any nuclear powerplant fuels, components, and subsystems which the Secretary deems to offer significant improvement in plant safety; and

(7) in cooperation with other appropriate Government agencies, conduct an in-depth study and evaluation and prepare a report which identifies for each significant and potentially significant electrical energy source, the health and safety risks associated with all aspects of using, or not using, each such source; and the probability of serious accidents occurring within each portion of the fuel cycle, including the production, handling, and storage of fuels and wastes; and

(8) the Secretary shall initiate a study of the feasibility of creating a reactor engineering simulator facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under off-normal conditions and other associated activities.

(a) In performing the study, the Secretary shall consider relevant factors including, but not limited to—

(1) the savings of cost and time that would accrue from the establishment of such a versatile national simulator facility;

(2) the extent to which such a facility would further the generic safety research and development programs established by this Act;

(3) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(4) the potential for international cooperation in the generic safety research and development program;

(5) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility.

(b) The Secretary shall submit by July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the study and the resulting conclusions and recommendations.

(9) In carrying out the research, development, and demonstration program established under this Act, the Secretary—

(1) shall, to the extent practical, coordinate his activities with those of other Government agencies, foreign governments, and industry, to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs under consideration;

(2) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems (including secondary systems) and operations; and

(3) shall utilize, to the extent feasible, federally owned research facilities, along with the associated personnel.

(10) The Secretary shall assure that full and complete information with respect to any project or other activity conducted under this Act is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(11) The Secretary is authorized and directed to prepare an annual comprehensive program management plan for the conduct of research, development, and demonstration activities under this Act, consistent with the provisions of section 104. In the preparation of such plan, the Secretary shall consult with the heads of such other Government agencies, and such public and private organizations as he deems appropriate.

(12) Of the amounts appropriated to the Department of Energy, not less than $5,000,000 shall be available for the purposes of this section, to remain available until expended.

Mr. McCLURE. Mr. President, I have given both of the floor managers of the bill a copy of the amendment which I have proposed.

Mr. President, today I am offering an amendment to the energy and water appropriations bill which is intended to improve nuclear powerplant safety and establishes specific responsibilities for DOE in the area of nuclear safety research, development, and demonstration. This amendment parallels H.R. 7865, the Nuclear Safety Research, Development, and Demonstration Act of 1980, which was passed by the House of Representatives on August 25. H.R. 7865 was introduced by Congressman MIKE McCORMACK and cosponsored by 34 Members of Congress. It was reported out of the Committee on Science and Technology by a 35 to 1 vote.

I might add that the McCormack bill is in a sense a response to the accident at Three Mile Island. The bill is the result of more than a year's work by the Subcommittee on Energy Research and Production. The subcommittee determined that the accident at TMI has demonstrated that in spite of considerable attention to safety in the design and operation of nuclear plants, that there are improvements that can and should be made to further improve the safety of nuclear powerplants.

Since the greatly increased focus on nuclear safety is a direct result of the TMI accident, I think it is appropriate to focus briefly on the primary conclusions of the two Senators who ran the TMI investigation. Those conclusions, as included in their individual remarks on July 2, were:

First. That nuclear power is an absolutely necessary, critical, and essential element in the energy supply of the United States through the remainder of this century,

Second. That nuclear powerplants now operating and under construction should go forward without any interruption in activity while remedial actions are being taken,

Third. That the industry and Government can make the necessary improvements to continue to operate existing and new plants safely, and

Fourth. That the industry and Government have already made an important start in taking the actions necessary to remedy identified deficiencies and are doing so with a clear commitment to achieving that end.

I strongly endorsed the conclusions of Senator HART and Senator SIMPSON; and I believe that it is extremely noteworthy that the two Senators most intimately involved in this investigation of TMI both have reached these same conclusions. Further, I would hope that these conclusions will settle once and for all many of the unfounded fears and concerns which have surrounded much of the media and public discussion of TMI over the last year.

I also want to point out that this Senator, in June of last year after TMI, offered a nuclear safety R. & D. amendment in the full committee markup of S. 688, last year's Department of Energy authorization. The amendment would have authorized and directed the Secretary of Energy to proceed immediately to develop a program quite similar to that in H.R. 7865. The amendment was deferred to the Senate floor after opposition was expressed to the effect that such an effort was premature. Certainly, the administration was less than enthusiastic about the amendment.

Six months later, the President in his response to the Kemeny Commission called for an increased emphasis on nuclear safety R. & D. by government and industry. Typical of this administration, however, his DOE budget request for fiscal year 1981 actually proposes a reduction in funding for the applicable budget category from the fiscal year 1980 appropriation. Also, the administration continues to oppose further commitments to the safety research facility—commitments made personally by the President.

So, here we are; another year has passed and still no emphasis has been made on nuclear safety research. I hope that this amendment will mark a fresh start in attempting to achieve that emphasis.

Substantial improvements in nuclear safety have already been made in the wake of TMI by the nuclear industry, the NRC, and the DOE. Other improvements will require extensive evaluation to consider their real merit and further research, development, and demonstration should be done on still other changes based on the evaluation of old and new information as it rises.

Mr. President although the DOE already has the generic authority under the Atomic Energy Act of 1954 to conduct nuclear safety research programs, there is no specific legislative directions relative to the type of program envisioned in H.R. 7865. Therefore, the DOE has not pursued nuclear safety research, development and demonstration with the type of commitment that is necessary.

My amendment directs DOE to undertake eight primary activities in the areas of research, development, and demonstration.

First. Develop potentially cost-effective concepts for improving the generic design and operation of nuclear powerplants that can significantly reduce the risks from unintentional release of radioactive material from nuclear powerplants, and reduce radiation exposure to workers during plant operation and maintenance;

Second. Develop potentially cost-effective methods and concepts that will significantly improve the performance of operators of nuclear powerplants under routine, as well as abnormal and accident conditions;

Third. Determine the effect of total or partial automation of nuclear powerplant systems on plant safety, operation, reliability, economics, and on operator performance;

Fourth. Support applied science and technology useful in the improvement of nuclear powerplant safety;

Fifth. Identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions;

Sixth. Provide for the examination and analysis of any nuclear powerplant fuels, components, and subsystems which the Secretary deems to offer significant improvement in plant safety; and

Seventh. On cooperation with other appropriate Government agencies, conduct an indepth study and evaluation and prepare a report which identifies for each significant and potentially significant electrical energy source, the health and safety risks associated with all aspects of using, or not using, each such source; and the probability of serious accidents occurring within each portion of the fuel cycle, including the production, handling, and storage of fuels and wastes.

Eighth. The Secretary shall initiate a study of the feasibility of creating a reactor engineering simulation facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under abnormal conditions.

To summarize, Mr. President, let me characterize it in this fashion as briefly as I can.

As I said, this amendment parallels H.R. 7865, the Nuclear Safety Research, Development, and Demonstration Act of 1980, which has been passed by the House of Representatives on August 25 of this year. It was introduced by Congressman Mike McCormack, was cosponsored by 34 Members of the other body, and reported out of the Committee on Science and Technology by a vote of 35 to 1.

I would say that that bill which has just been acted on by the other body was the response, in a sense, to the accident at Three Mile Island. But I think it is more important for us to look at the recommendations that have been made by the investigating committee in this body, the Committee on Environment and Public Works and its subcommittee chaired by Senator Hart, on which Senator Simpson is the ranking minority member, with respect to nuclear power plants and the need for enhanced safety.

I strongly endorse the conclusions which they stated in their report, which I have already noted in my statement in more detail.

I also want to point out that this Senator, the junior Senator from Idaho, in June of last year, after TMI, offered a nuclear safety R. & D. amendment in the full committee markup of S. 688, last year's Department of Energy authorization.

As you know, Mr. President, we have been conducting this activity in the Department of Energy on a continuing resolution and under the original authorization. Until this year, we have never passed the DOE authorization bill. We had directed DOE by way of the appropriation acts and continuing resolutions and directions on continuing resolutions. So that, in spite of the fact that it was offered last year, we never had an opportunity to vote on it on the floor of the Senate.

Since that time, many of the recommendations which have been made were merged into and covered in the same way by H.R. 7865 and are embodied in this amendment.

At that time, in June of 1979, the President was not as supportive of this action as he has since become with the filing of the Kemeny Commission report. He now states his full support for most, if not all, of the initiatives taken in this amendment which I offer today.

But this amendment is to direct the Department of Energy to do what the Department of Energy has the authority to do under the Atomic Energy Act of 1954.

It does not add authority; it simply says that that authority which they have shall be used and they shall do these things which are required by that act. I outline a number of things which must be done, in my judgment, in connection with the development of nuclear safety programs. I think they need to be doing these things. I think they need to look at cost-effective concepts for improving generic design and operation of nuclear power plants. They need to be developing potentially cost-effective methods and concepts and the need to determine the effect of total or partial automation in nuclear powerplant systems.

They need to support applied science and technology, and they have to look at personnel attitudes and training and planning levels. I think they must look at examination and analysis of nuclear powerplant fuels and components, and so on.

I think they need to cooperate with other Federal agencies in developing these programs.

Finally, Mr. President, it seems to me, and this amendment would so authorize, the Secretary should, in carrying out the requirements of the Atomic Energy Act of 1954, initiate a study of the feasibility of creating a reactor engineering simulation facility at a national laboratory for the purpose of improving the simulation of the performance of various types of reactors under abnormal conditions.

Mr. President, if there is one thing we learned as a result of TMI it was that we needed to do a number of these things, not the least of which was to use the engineering facilities which are already in place to be able to deal with the rapid changing of conditions during an event of the nature of Three Mile Island.

Mr. President, as I said earlier, I have given a copy of this amendment to the floor managers of the bill. I originally suggested that the total operations account be increased by $5 million to accommodate what I think might be reasonably spent during fiscal 1981 on this activity. That would be subject to a point of order because that total figure has already been adopted under the procedures that have been followed and as a committee amendment is, therefore, not subject to further amendment.

Therefore, I will have stricken from that the increase of $5 million and it would simply be taken out of the total operating accounts of $2,262,575,000.

(Mr. MITCHELL assumed the chair.)

Mr. HATFIELD. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. HATFIELD. As I understand the amendment of the Senator, it raises some rather far-reaching and very significant policies, matters, and issues.

Am I not correct that this has not been really discussed or handled by the authorizing committee? It seems to me that the Senator has made an excellent record here, but I wonder if the Senator would consider letting this matter be referred to the Energy Committee for consideration rather than try to crank in all this rather significant, detailed language into the appropriations bill, which seems to me to be perhaps not the right vehicle, and particularly in light of the fact that the authorizing committee of the Senate has not taken this matter up. I think it deserves a great deal of attention. I sincerely believe that the Senator has put his finger on a very important matter that should be brought up on the authorizing committee's agenda.

I would certainly support the Senator strongly in his effort to bring it before the Energy Committee in bill form or other vehicle. But I do question the propriety of putting this kind of language on an appropriation measure.

Mr. McCLURE. If the Senator will yield, I am quite aware of that, and in other circumstances I perhaps would not have attempted to do it, other than simply to make the record. But the Senator from Oregon knows, as does the Senator from Louisiana, that we are now in the season, with the election approaching us, and with the legislative schedule being what it is, that the likelihood of legislating in this field in the remainder of this year is very, very slight.

Since I first raised this issue, both in the committee and at various times in various forums over the last 15 months or more, we have received no congressional action and with no prospect of final action during the remainder of this year. It seemed to me that rather than wait until the next legislative year I ought to take this opportunity to move us forward on the beginnings of a program that I am certain we are going to adopt. As I say, in the other body the House committee reported it out by a vote of 35 to 1. It was adopted by the other body last month.

We have had one hearing in the Energy and Natural Resources Committee on this general subject. But the likelihood of us being able to go through a further markup and get it through conference with the House and into form for final passage seems to me to be very remote.

Mr. HATFIELD. If the Senator will yield once more, will the Senator agree that this also has a great vulnerability in that it could well be raised as a point of order on the floor as a matter of legislating on an appropriation bill?

Mr. McCLURE. Let me say this: I think it is right on the fulcrum point of that judgment. Is it new legislation or is it simply directing the Secretary as to what shall be done with an appropriation, how shall he spend the money to carry out a responsibility which he already has in the 1954 act?

Regardless of how an individual Member of this body or an individual Member of the other body might act with respect to raising a point of order, it might be raised and it might be sustained. I would hope it was not raised or would not be sustained because I would hope there is a feeling of urgency on the part of people both in this body and the other body to start moving ahead on what I think are not very arguable initiatives in the field of nuclear safety, plant design, and so on. I think these things are going to be done.

All we have gained here is a few months' time in getting the Department of Energy moving toward that goal following October 1 of this year and before we could get authorizing legislation to them next year that would more specifically direct them.

Mr. HATFIELD. I appreciate the Senator's comments on that. I would only point out one further complexity that I see in this. As the Senator realizes, this is September 9 and we are scheduled to go out of here on October 4. There is a wonderful rumor floating around today that we may even go out earlier. I think, for the sake of the Republic, that might be a little better.

Whatever we may end up doing as far as recessing or adjourning, what have you, I think this bill has a fairly good chance of moving through conference to final adoption before the recess or the adjournment. Otherwise, we are going to be thrust back into a continuing resolution status for these agencies. Then the Senator would agree that the whole matter would become moot anyway.

All I am pointing out is that the more we encumber this bill in matters of this kind, as I view it, the more difficult that conference is going to be, and the less likely the time available for us to get any bill out.

I acted on the basis of trying to keep this bill as free from those controversial matters as possible in the hope that we could get this to the White House for signature.

I am really rather doubtful that we are going to find any bills from the 13 appropriations measures passing through both Houses of the Congress and getting down to the White House by October 4, September 26 or September 27, or whatever date we may finally adjourn. Therefore, I again urge the Senator to consider this seriously in terms of the time frame and the practicalities that we just have to face up to on that basis.

Mr. McCLURE. Mr. President, I appreciate the point the Senator makes in that it deals with my desire not to complicate this process, either for the managers of the bill on the floor now or in the conference. I think I recognized when I drafted this amendment and offered it that if it ran into any controversy, it was not going to fly. If anybody really does not want it, it is not going to go. I think I recognize that.

I guess I can candidly state my hope that the subject matter, being not controversial—and I do not think it is. I do not think there is any argument in the field of nuclear safety about operating the plants except for the fact that we do not have enough of it.

Mr. JOHNSTON. Will the Senator yield?

Mr. McCLURE. I am happy to yield.

Mr. JOHNSTON. Mr. President, I am advised that a bill of this same subject matter is ripe for markup in the morning in the Energy Committee and that this could be amended into that. I do not know in what respects it does differ.

I think the Senator very correctly gages the sentiment here. I value very, very highly the advice and the initiatives in the nuclear field of the Senator from Idaho, as he knows. We are almost never on opposite sides. My hesitancy here, of course, is that this is a new matter which would probably not survive the conference, anyway, even if we were to override the Energy Committee and draft it as legislation here, because there is extreme jurisdictional jealousy in the conference.

Mr. McCLURE. Will the Senator yield on that point?

Mr. JOHNSTON. Yes.

Mr. McCLURE. Mr. President, may the Senator from Idaho make this suggestion? Again, I do not want to put the Senator from Louisiana or the Senator from Oregon in an untenable position on this amendment at all. I will, of course, accede to their wishes.

As I said earlier, the only reason I offered the amendment today is the legislative time and the legislative procedures seem to me to make it very unlikely that additional authorizations proceeding through committees will get to the floor and be then sent to conference, then agreed upon in conference, in time for us to act before we go out, whenever it is we go out this fall, whether it be October 4 or prior to that time. Because I thought this was an item that should not wait until next year, I decided to try to present it today.

My suggestion would be that, rather than reject the amendment now, accept the amendment with the understanding that, if the authorizing committee moves expeditiously on it and we have the prospect of getting that through, we shall drop it when we get to conference, or if, as a matter of fact, the House conferees object to it, we shall drop it anyhow, not make a major fight about it in the conference if it is going to be an obstruction to agreement in the conference on this bill. But do not abandon the opportunity to get it through in the event the authorizing legislation does not move in committee tomorrow or on the floor later or in conference later.

Mr. JOHNSTON. Mr. President, let me say to the Senator that, while we occasionally violate the rule of no legislation on an appropriations bill, it is, to my knowledge, never done by engrafting, in effect, a whole bill but, rather, some explanatory little matter in connection with the expenditure of some dollars. So, while I do not want to plead purity in allegiance to the principle of nonlegislation on an appropriation bill, I would say it has never been as egregiously violated as this amendment would do.

Mr. McCLURE. I say to my friend from Louisiana—and I realize he said that in good faith and with a smile on his face—I would hate to read back from the Record how many times we have done this and more—I suspect, upon occasions, on the suggestion of the Senator from Louisiana. Again, I say that with a smile on my face.

I think we can do it if we want to do it. The question is, if we do not want to do it, let us not.

Mr. JOHNSTON. I hope that the Senator will, in the one instance, let us join with him in urging expediting consideration of this measure in the Energy Committee. There are three of us—actually, four of us—on the floor here who are on the Energy Committee and two others, Senators JACKSON and CHURCH, have a bill covering this subject matter. This may well be, and I hope it will be, one of those matters that can be quickly adopted in the committee and fly through the Senate on the noncontested calendar and through the House in the same way.

I think that is probably the most expeditious way to get it enacted.

Mr. McCLURE. As I say, I accept the advice of my friend from Louisiana knowing that, as a matter of fact this causes us some problems. I do not want to cause us those problems.

The other side of it is that we are taking a chance in an area that I do not think we can afford to take a chance in. We are taking a chance that the legislative process may, as a matter of fact, not yield that result. The Senator knows what the jam is on the markup calendar, he knows the difficulty of getting a quorum to act in the Energy and Natural Resources Committee. We have a markup session tomorrow. I hope this will come up and be acted on. If it is acted upon, I shall assist and I shall applaud and then ask to take those other steps. But we are taking a chance that it cannot. We are setting aside what might be done now in the hope that it may be done in the future. I think in this area, we ought to be getting on to it.

Mr. President, if the advice of the Senator from Louisiana and the continued encouragement of the Senator from Oregon is to pull the amendment down, I shall do so.

Mr. JOHNSTON. Mr. President, I very much thank the distinguished Senator from Idaho, not only for his cooperation but for his bringing this very important matter up and highlighting it for future action. I think he is going to get more than cooperation; I think he is going to get some help in the Energy Committee on this matter. I thank him for his cooperation.

Mr. HATFIELD. Mr. President, I express my appreciation to the Senator from Idaho as well, because I certainly have no great problem in accepting his thesis or his proposal to remedy the problem as established by his thesis. I, too, as a member of the Energy Committee, will be there at the markup session tomorrow. I have a WAPA bill and a few others that I am personally concerned about. I think we can get a quorum. I shall write that in as a member of the committee and assist the Senator from Idaho in getting that considered.

Mr. McCLURE. Mr. President, I thank the Senator from Oregon and the Senator from Louisiana.

Again, Mr. President, I want to point out that that committee agenda is loaded tomorrow with things that various members of the committee want to get done this year. There is going to be a contest for the time and attention of that committee if, as, and when a quorum is established. It is going to be difficult, at best, for that committee to complete the agenda. It certainly cannot complete all of the agenda items on tomorrow.

That is the reason that I took the opportunity to bring forth this legislation. With the assurances given and the comments of the managers of the bill, Mr. President, I withdraw the amendment.

The amendment (UP No. 1560) was withdrawn.

UP AMENDMENT NO. 1561

Mr. DOMENICI. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the pending amendment previously temporarily laid aside be further laid aside for consideration of the Domenici amendment at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

The assistant legislative clerk read as follows:

> The Senator from New Mexico (Mr. DOMENICI) proposes an unprinted amendment numbered **1561.**

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> Page 3, line 6, strike the period at the end thereof and insert in lieu thereof the following: ": *Provided additionally*, That none of the funds appropriated in this Act or any other Act making appropriations for Energy and Water Development may be used to enrich feed material of foreign origin which is intended to be used in a domestic utilization facility, where the fraction of feed material furnished by the enrichment customer which is foreign origin exceeds ten percent (except for any contract for enrichment services entered into prior to October 1, 1980):
>
> *Provided further*, That such sums as are necessary shall be available for the Secretary to conduct as expeditiously as possible a rulemaking on the record after an opportunity for an agency hearing, pursuant to 5 U.S.C. 553, 556 and 557, to establish restrictions on enrichment of foreign origin uranium for domestic use pursuant to the provision of subsection 161. v. of the Atomic Energy Act of 1954, as amended, requiring that the Secretary, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer enrichment services for materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States."

Mr. DOMENICI. Mr. President, I have discussed this amendment with the distinguished majority floor manager, the Senator from Louisiana, and the distinguished minority manager, the senior Senator from Oregon. It is my understanding that they are willing to accept this amendment. I am not going to go into any great detail except to say that this country has seen recently the specter of high unemployment. For example, when automobiles that are being imported into this country become such an economic force that American competitors have to close down and thousands and thousands of people are without work.

In a sense, I am concerned about a very small industry, but one that is vital to America's energy future and to its security. That is, the stability of the uranium industry in America.

The facts are serious. Exploration is down 1979 by 15 percent as compared with 1978. Exploration projections are down another 14 percent for 1981, and with the exception of Texas and Utah, drilling and development is down.

Unemployment has risen 20 percent in some areas for miners and local processors of uranium. Prices have dropped. Four mines have closed in the last month. The largest open pit mine where uranium was first found in the United States of America on the Pueblo of Laguna has been announced for closure only recently.

This amendment is a serious expression of concern about that and merely says that we will not spend, with the enrichment moneys here, more money in this appropriation than that which is required for 10-percent share of foreign uranium for domestic use.

In addition, it says, however, if there are long-term contracts, that they will be excluded from this restriction.

It is my understanding we are at about 7- or 8-percent foreign-source uranium in domestic use now.

The problem is that under a 1973 action by the Atomic Energy Commission which we did not begin to implement until 1977, the previous restriction on all enrichment of foreign uranium for domestic use was eased and is now up to an allowable of 30 percent, and it will go up 20 percent each year, all the way up to 100 percent allowable of imported uranium going through our enrichment facilities in 1984.

This amendment says two things. First, we will only spend money under the enrichment program up to 10-percent foreign source uranium for domestic use, unless there are existing long-term contracts. Then it proceeds to say that the Secretary shall proceed forthwith with rulemaking, and do that as quickly as possible, to determine the viability of the uranium industry in the United States with a rule toward a percentage, or some kind of policy for allowable levels for imports of uranium into this country that is related to a present day analysis of the viability of uranium and uranium mining, the uranium industry in this country.

I do not want to spend a great deal of time. I am very concerned about this issue, Mr. President. I am aware that there are many reasons for the extreme slump, the so-called extreme softness in the uranium industry today.

But, obviously, the United States of America has an adequate supply of uranium for many, many years to come, in terms of its reserves.

While I do not want to be one that totally protects from imports, I am very concerned that while this industry is going through that kind of a slump I have just described in terms of exploration and mines closing, I am very concerned we are acting under a policy that was adopted basically in 1973, that was deferred for implementation then because we had a soft market.

It started in 1977, but we are now on a path that is extreme. It will allow imports for domestic use to go up to 100 percent, increasing on an annual basis of our enrichment capacity. I merely want to make a stop, look, and listen, and do a current evaluation of the viability of the American uranium industry in light of this softness in the market here in America. This amendment will do that.

I hope that the managers will take it. Hopefully, it will begin the process of reevaluating the viability of this very important energy ingredient and piece of America's future energy policy. We need to review the ability of our domestic mining and processing industry to meet future domestic needs of uranium for the nuclear energy aspect of America's energy policy for the future.

Mr. President, unless there are any questions from the floor managers, I will yield the floor and move adoption of the amendment.

Mr. JOHNSTON. Mr. President, the Senator's amendment deals with a very acute problem. That is, the decline of the American uranium resource industry. It attempts to deal with that in a constructive way.

I have some hestitation and some questions on the amendment because it has newly come to our attention. We have not had time fully to study it.

But it appears to be going in the right direction, Mr. President. So, therefore, because of that constructive direction, I would be willing to take this matter to conference, to study carefully the language, the effect of the amendment, and either, hopefully, to have it accepted in conference, or if not, modified or deferred until some later date.

In that spirit, Mr. President, I believe we can take it to the conference table.

I am advised that Senator HATFIELD will also accept the amendment.

Mr. DOMENICI. Mr. President, I am most appreciative of the statement by my good friend from Louisiana, and also the previous indication by the good Senator from Oregon that he would accept it.

I am certain the analysis of it is absolutely right. Something has to be done. We have to begin to move in some way in this direction.

As the Senator knows, when we find an acute problem like this, we have to attempt to solve it as best we can.

I do say to the floor managers, it is not my habit to come to the floor on appropriations and do this because we would have had an opportunity to study and explore it. But I think the situation is critical and should not compound it, while providing enrichment appropriation funds under an allowable that is going up every year for importation, while our domestic industry is critical, as it is, is literally drying up in a bind without somebody taking a good hard look as to why.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (UP No. 1561) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the last committee amendment.

Several Senators addressed the Chair.

Mr. DOMENICI. Mr. President, I wonder if the floor manager would agree to lay that amendment aside while he and I engage in a dialog about the waste isolation pilot project funding in this bill?

Mr. JOHNSTON. I think the Senator said he wanted to enter into a colloquy?

Mr. DOMENICI. At this point I want to enter into a colloquy. I am hopeful it will promote some thought over the evening as to making this part of the bill more specific. But I do not have that in mind this evening, just to point out some very serious concerns I have about this section of the bill.

Mr. JOHNSTON. If the Senator would proceed, I would not want to lay the amendment aside at this point, unless it is necessary; if the Senator would proceed.

Mr. DOMENICI. Mr. President, I wonder if my good friend from Louisiana would find page 61 of the report of the energy and water development appropriations bill for 1981. I will be referring specifically to the last item on the bottom of the page, "Terminal Storage":

> *Terminal storage.*—The Committee recommends an appropriation of $15,000,000 to continue Project 77-13-F, the Waste Isolation Pilot Plant (WIPP) Delaware Basin, N. Mex., in accordance with section 213 of Public Law 96-154 and the Department of Energy National Defense Programs Authorization Act of 1981. The Committee concurs with the Committee on Armed Services' views and comments contained in Senate Report 96-920 concerning the WIPP project.

I say to my good friend from Louisiana, first of all, that this bill refers to the 1981 authorization for the waste isolation program, and it is true that that has not been adopted as yet by both parties. It is not law. Is that correct?

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. What concerns me is that since the administration did not recommend any additional funding for 1981, we do not have anything in the appropriations bill of the Senate as to what we will use the $15 million for.

It is very critical to us in our State that we have a clear understanding of what we will use the money for, because what has happened, as the Senator knows, is that the 1980 authorization bill provided a mechanism for consultation and cooperation by way of an agreement between the United States of America and the State of New Mexico. Clearly, that agreement contemplates that certain steps be taken before money is used to begin actual construction of this project.

We also know that a great deal of the land involved that will have to be banked is presently under mineral lease and will have to be acquired.

Our State is genuinely concerned in exercising the rights it already has under the 1980 authorization bill with reference to cooperation and consultation before construction of this project commences.

So I must object, unless we end up being very specific about what this money will be used for.

Second, while the Armed Services Committee has reported a bill which will reauthorize for 1981, and while that is pending on the calendar, we are now negotiating with them as to whether or not there will be any amendments to the so-called consultation and cooperation language in light of the bill we passed in the Senate on nuclear waste, which, as the Senator will recall, dealt with both military and civilian permanent disposal, and certainly dealt with both military and civilian deep geological permanent disposal.

There were a few additional rights that the States received under that generic law that we have to negotiate with the Armed Services Committee, to see whether, in equity, they will give that to New Mexico, also, even though WIPP is the subject matter of a very precise and specific authorization.

So what I am saying is that this Senator cannot watch a broad appropriation, although it is not for a great deal of money, go through on WIPP, without better defining its use and without further negotiations with the Armed Services Committee as to what they are going to do about the consultation and cooperation sections of the WIPP authorization bill.

I say to the Senator tonight that while I certainly do not have an amendment in mind for the reasons I have stated, I want him to know and I want the minority leader to know, as well as Senator JACKSON, Senator TOWER, and Senator STENNIS, who are on the Armed Services Authorization Committee, that it is very important that we get some agreement as to what the authorization is going to permit the money to be used for and what they are going to do about providing New Mexico with the same kind of basic rights that they are going to give other States on military disposal projects of this type.

In all sincerity, we must get that worked out, or we will be adding more confusion to a situation which is rather confused, precisely because of administration decisions years ago and statements by a former Secretary of Energy about State veto rights and the like.

We seem to be on a track that might lead to some successful negotiations with New Mexico. We would not want to find that the bureaucracy has an open, free hand as to what they do next, while New Mexico is working under a 1980 authorization. We hope that before permanent construction starts, there will be an opportunity to finish up an agreement between the States and to understand what our ultimate rights are going to be regarding this disposal, the military waste disposal, which gives the States some additional remedies, such as final appeal to Congress and the like, which we worked out on the generic and historic nuclear waste bill we passed here.

Mr. JOHNSTON. Mr. President, as the Senator from New Mexico knows, this money is made available under existing law for the waste isolation pilot project, which is a military waste facility only in New Mexico. Quite frankly, were this money to be withdrawn, I believe there is a large body of opinion that WIPP would be a dead project, simply having run out of steam. It is a monument, I believe, to the skill of all those involved, both in the Department of Energy and in the State of New Mexico, that they have been able to sort of reincarnate this moribund project to work out the details, as we understand, under which at least we will be able to continue the work on this project as authorized.

The money here would not be a new start; it would not be new construction. It would be for three purposes and three purposes only: to continue the advanced engineering and design, to do site characterization work, and to initiate work on the test shaft.

It is our understanding that within the framework of last year's act, the Energy Department and the State of New Mexico have established consultative arrangements that appear to be working well. We hope that is true.

In any event, this money really just keeps the project going on advanced engineering and design, the test shaft, the site characterization, and related purposes, and it is not full blown construction of the project.

I hope I am correctly advised that consultative procedures and processes have worked out successfully. If not, while work is being done on the advanced engineering and design, the test shaft, the site characterization, and related purposes, there will be time to flesh out further the terms of whatever agreement they now have or intend to make. But in no event would it provide for the taking of action, the construction of the actual full facilities to which the State of New Mexico would or might have any objection. It is only for these purposes the advanced engineering and design mainly and limited by a rather modest sum of money.

Frankly, we understood that there was strong support for this action of the committee in New Mexico.

I hope that allays any concerns the Senator from New Mexico has about this project. It is not to initiate full blown or all out construction.

Mr. DOMENICI. I ask this of my good friend from Louisiana: The purposes for which the $15 million can be used, to which the Senator has alluded, I take it, are the authorized uses that were included in the 1980 authorization bill. Is that correct?

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. So that while we refer in this bill to a not-yet-passed 1981 authorization bill, the Senator is saying that the purposes for which this money is being appropriated are to complete the advanced engineering, site characterization, and other items, but not permanent construction, not to start the permanent construction of this deep geological waste isolation pilot project. Is that correct?

Mr. JOHNSTON. The Senator is correct with the one exception that he did not mention, we understand the test shaft work is included. He did not mention related purposes. But those are the three subjects for which this $15 million would be used.

Mr. DOMENICI. Yes. But the test shaft has always been characterized as site characterization.

Mr. JOHNSTON. That is correct, I understand.

Mr. DOMENICI. There is engineering and actual construction work, but all aimed at site characterization.

Mr. JOHNSTON. That is correct. I mentioned that, and I wish to underline it, because some would say that is some sort of construction. I think it is site characterization. I think it should be characterized as site characterization, but in any event it would cover the drilling of the test shaft.

Mr. DOMENICI. I say to my good friend it has been carried technically on the Department of Energy ledgers as site characterization work. The National Academy of Science has indicated that that kind of a shaft would have to be put in place not as part of permanent construction but rather to adequately evaluate such a facility.

Mr. JOHNSTON. The Senator is correct.

Mr. DOMENICI. The Senator knows we do not have a new authorization yet and we are going with an appropriation. I wish to make sure that we are in no way in the middle of this process of consultation saying that we are changing the rules in an appropriations process and saying we can begin construction. As long as the Senator can assure me of that, I will have no objection to including this money in this manner.

I still have great concern as to whether or not the authorization language is going to be changed. Obviously the Senator cannot do that here. But I will continue to seek the same kind of equity in terms of ultimate appeal to Congress, if they have an objection with the Department of Energy such as we worked out in the new generic military and civilian permanent waste bill that passed the Senate by rather significant margins the other day.

Mr. JOHNSTON. Mr. President, I think the concerns of the Senator from New Mexico are fully answered by the intent of this bill as well as the language of the prior year authorization.

I believe that this simply keeps the matter going and, more than that, I believe and hope that the consultative process, satisfactory to both the Department of Energy and the State of New Mexico, will be worked out for this matter which is extremely sensitive, of course, since it is a defense waste management facility.

But I believe it can, will, and hopefully has been worked out. I thank the Senator for bringing these matters to our attention.

Mr. DOMENICI. I am most appreciative of the comments and that disposes of the concerns of the Senator form New Mexico in this area.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Is an amendment which would modify page 15 by striking language in order at this point?

The PRESIDING OFFICER. Page 15, what line?

Mr. DOMENICI. Page 15, line 10. Is that amendment in order at this point?

The PRESIDING OFFICER. Does the proposed amendment change the figure on page 15, line 10?

Mr. DOMENICI. No, it does not change the overall figure.

The PRESIDING OFFICER. Until the pending committee amendment is disposed of it will not be in order except by unanimous consent.

Mr. DOMENICI. The floor manager has the amendment before him. I ask unanimous consent that the pending amendment be set aside and that I be permitted to offer this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1562

(Purpose: To delete language authorizing expenditures out of the Inland Waterways Trust Fund)

Mr. DOMENICI. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The clerk will report.

Mr. DOMENICI. Before the clerk reports, I ask unanimous consent that the pending amendment be temporarily set aside so that the Senator from New Mexico's amendment might be considered.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI), for himself and Mr. MOYNIHAN, proposes an unprinted amendment numbered 1562:

On page 15, on line 10, strike all beginning with the word "*Provided*," through "95-502:" on line 15.

Mr. DOMENICI. Mr. President, I believe the amendment is self-explanatory, and unless the floor managers have questions I move its adoption.

Mr. HATFIELD. Mr. President, on behalf of the minority I would be willing to accept the amendment and take it to conference.

Mr. DOMENICI. I thank my friend from Oregon.

Mr. JOHNSTON. Mr. President, the waterways trust fund will begin to collect money on January 1. There is provided in Public Law 95-502 a list of certain navigational projects for which this money can be spent.

In making available $30 million from this fund, which is the estimated amount that could be utilized for construction and rehabilitation expenditures as authorized in section 204 of the public law just referred to for those navigation projects specified, we had thought we were acting fully in consonance with that public law.

A question has now arisen, which is raised by the amendment of the Senator from New Mexico, as to whether that, in fact, is the proper intent and effect of that section 204 of the public law referred to.

It would call for a further examination of the intent of the law. It is a legal question. It is one that our colleagues in the House will be very much interested in, and I, for one, would be willing to take it to conference and try to unravel this legal meaning involved.

I would be surprised if the Senator from New Mexico would be opposed to what we are trying to accomplish as a substantive matter, and I will certainly work with him in trying to unravel the meaning of the law.

If, in fact, he is correct on this law, we will probably have to go back on other authorization bills and make them more clear than they are now. Perhaps there is an ambiguity. In any event, we are willing to take it to conference and work it out there.

Mr. DOMENICI. I thank the Senator. That is precisely the point. As the Senator from Louisiana knows, and as the Senate knows, I engaged in the adoption of this law for 2½ years, and I truly believe specific authorization was required. But if we will strike it for the time being then we can proceed as described by the Senator from Louisiana to iron out the legal difficulties and perhaps decide in the final bill what the Senate and the House collectively think the intent of the basic bill was in terms of how the money can be spent, and I so move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

Mr. DOMENICI's amendment (UP No. 1562) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1555

Mr. MOYNIHAN. Mr. President, I thank the Chair for his courtesy in recognizing me.

I rise at this moment, seeing that our distinguished and so greatly admired majority leader is on the floor, so that he might wish to at least hear what the Senator from Louisiana and the Senator from Oregon may have to say in response to a number of simple queries that I would like to make with respect to the unprinted amendment which was adopted this morning. This amendment, No. 1555, submitted by the two Senators from West Virginia, deals with what is commonly known as the Tug Fork flood control program in Kentucky and West Virginia.

I rise in my capacity as chairman of the Subcommittee on Water Resources of the Committee on Environment and Public Works to say, first, that the majority leader was altogether open and direct in the way he proceeded.

I can imagine the impatience which he, as a West Virginian, must feel with an enterprise that will have four times passed this Senate and has not yet passed the House; which one disastrous flood after another only brings once again to the official and institutional mind, yet nothing ever seems to happen.

I wanted him to know that the subcommittee has been marking up a water resources bill which some might say is considerably smaller in scope than had been previously contemplated, smaller than that which has already been adopted in the House. The administration made it clear it could not accept it, the President would not accept either of these previous versions. Our hope is that he will accept the version we are working on.

In this legislation, which we have now about finished—we intended to finish this afternoon, to be precise—we have a provision to authorize the Tug Fork flood control program.

Our committee is concerned that the authorizations of major programs originate in the authorizing committee. If not, we can do with just the Budget Committee and the Appropriations Committee and we will not need any other structure in the Senate. Maybe that is a good idea. It is not one as yet agreed to by the majority of the body and certainly not by the majority leader and, a point of which I am sensitive.

The measure we authorized this morning contemplated expenditures in excess of $1 billion. One billion dollars—a large sum. A billion minutes ago St. Peter was 10 years dead. So these are not just zeros on the end of integers.

The population involved is not large. The Tug Fork project itself, for example, contemplates the relocation of approximately—3,772 houses—perhaps, 12,000–13,000 people—a third of a billion dollars for 13,000 people directly involved.

Now, I wish to make two points. The first point is that the project taken up by unanimous consent and then agreed to this morning is not the project which we have approved at this moment in the Subcommittee on Water Resources. It is not incompatible with, but it is less than, the project that we have talked about.

As the distinguished Senators managing this legislation will know, there has been for some time a basic dispute in the theory and practice of flood control between structural solutions and nonstructural solutions. It is the view of the Corps of Engineers that a nonstructural approach to Tug Fork and to the Virginia and Kentucky aspects of this legislation is in order. Of course, by "structural" I mean a large impoundment structure is not contemplated.

What we have authorized this morning is something that I was not aware of—although I wish I had been. I genuinely wish that the chairman of the committee had been informed that this was taking place, because it would have given me the opportunity to address this question at the time. We have authorized those aspects of the solution and program which are incorporated in our bill. We have authorized the structural aspects, because they are small, and deal with the structures to contain the water as it moves in certain areas. This being principally a cutoff at Matewan in order to solve the problem of a large bend in the river which has invariably produced flooding on the plain on either side.

Those minimal structural provisions are incorporated in this amendment. The relocation activities, which are contemplated in the measure we have adopted, are not in this amendment.

The cost per person, if anybody would like to know, at this point is roughly $76.923 based on the ultimate $1 billion project. I would like the Chair to hear that, because it is not without some relevance that we are talking about a project which the Federal expenditure per capita is $76,923. That is an item of spurious precision. Nobody knows whether that last $23 will be $24, $25, or $26. But a quarter of a million dollars per family of four is a large sum.

While the structural matters are provided for, the relocation program is not. I think the true course of policy in this field is to move away from protecting floodplains to getting people off of floodplains.

And for the information of the majority leader and my distinguished and beloved chairman, who I see is in the Chamber, the present estimate of the Corps of Engineers for the Matewan Big Bend cutoff is $12,195,000 to dig the cut and $91,000,575 to relocate the persons who will need relocation in order for that cut to be effective. So relocation is the heart of this enterprise.

We have not provided for it in this measure. That does not trouble me for two reasons. One reason is that we have provided it in the other bill that is being marked up in our commitee and which was to have been finished this afternoon. We scheduled a 2 o'clock meeting, and, having only a few things remaining, thought that we would be finished by now. But this does not trouble me for two reasons. First, because as I say, this matter is making its way through the authorization committee. Second, because the distinguished majority leader has assured me that he would hope to see a water bill come to the floor of the Senate during this Congress, which means in the remainder of this month.

We are ready, I can tell the majority leader. The House has passed a bill. Both the majority leader and the distinguished Senator from Louisiana knew that we have not passed a water bill during the Presidency of Jimmy Carter. It is not a system that is working well.

My friend from New Mexico and I have proposed alternate and parallel arrangements which we think would make the system work well. This is a system that has broken down, that has blocked itself. But it is possible, as it was 4 years ago when President Ford was in a not altogether different situation, to get a small bill through. We think we can get a small bill through.

I would like to inform the Senate that the measure that was authorized this morning is not the measure now contemplated. I would conclude with two additional points: First, that the measure now contemplated is in our bill being marked up; and, second, the majority leader has indicated his hope and expectation that that bill will be on the floor before we adjourn sine die.

(Mr. BUMPERS assumed the chair.)

Mr. DOMENICI. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the Senator.

Will the Senator from New Mexico allow me to yield to the majority leader? The Senator from West Virginia was on his feet and he was asking for recognition and he is the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I would be glad to wait for the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will take only a couple of moments to state for the distinguished majority leader and the distinguished chairman of the full committee, I am the ranking Republican on the Water Subcommittee. As Senators know, we suffer under some very serious impediments, not the least of which has been described here, that we just cannot seem to reach an agreement between the Congress and the President on some matters that not only concern projects but also some evaluation mechanisms that the White House insists be part of the water law of this country.

While we are working under some serious impediments, we have, on a number of occasions, as a matter of authorizing legislation, recognized the enormous problem that the States of West Virginia and Kentucky have, and that the two distinguished Senators, including our majority leader and my distinguished chairman, the chairman of the Public Works Committee, with whom I have served since the day I arrived here, have been constantly working on. I sympathize with them.

I, too, want to say I have very great concerns. We go to work with the Corps of Engineers and they go out into the field in the States of Kentucky and West Virginia. Then they come and testify before our subcommittee. They tell us that they are going to try a nonstructural solution, that they are going to try relocation. They tell us what it is they are doing about it. They will hire some personnel to make sure their appraisals are right.

We are going to do our best to report out a bill that will make this a truly historic approach to helping some of the problems of Kentucky and West Virginia.

Then I must say today on an appropriation bill nobody sought any money for this project. We just come along and put a brand new authorization into this appropriation bill. It really is not what is presently being contemplated in the authorization committee, which is a dramatic change from where we were before.

If my good friend from New York will remember, every time we supported the majority leader and our chairman on the floor it has been with reference to a bill that was then thought to be the best approach. In the meantime, we have a whole new approach that is being recommended by the experts, and that is not the approach in this new authorization language.

I am concerned because I know Senators want us in the authorizing committee to get on with this business. We have tried against very difficult odds. We spent 2 days last week going through Tug Fork. We know that the Senate has approved it in the past, so we very meticulously thought through with the corps how to put authorizing language in that will do the job.

I just want to say there is nothing that can be done now. It has been authorized and there has been a motion to reconsider and table so that is in the law. But I am very concerned that we would come along at this point and put this into an appropriation bill in a much different form than is being contemplated by the experts who are advising us, who. I think, have the best interests of West Virgina and Kentucky at heart. It leaves us in an awkward position, I say to the leader and the chairman. I say that for myself, the Senator from New Mexico.

It makes the whole process we are working under very awkward and very difficult. I wanted to share that with Senators on the floor, making sure that while I said that, that the Senators know I know they have serious problems. I have not raised objections in the past and I will not here today, but I thought I had to mention how I felt about it in the light of the work we are trying to do. I thank my friend, the majority leader, for permitting me to speak.

Mr. ROBERT C. BYRD. Mr. President, may I begin by saying that I have a very great regard, respect, and admiration for the distinguished Senator from New York (Mr. MOYNIHAN), who is so ably chairing the subcommittee which has jurisdiction over the authorization of projects such as the Tug Fork flood control project. He is moving with dispatch in marking up a bill. I hope that he will continue to do that. I know he will.

I would like to see the water resources bill taken up and disposed of before this Congress adjourns. I hope it will be possible to do that.

I appreciate very much his feelings concerning the action that has been taken by the Senate in adopting the amendment which I offered in behalf of my distinguished senior colleague (Mr. RANDOLPH) and the two Senators from Kentucky (Mr. HUDDLESTON and Mr. FORD).

His concern is not that the Senate has taken an action that is worthwhile and which is needed, but his concern is that the bill on which he is working, in which Mr. DOMENICI has joined, is nearing the completion of markup, and is the normal and proper approach to securing authorization for water projects.

So what I say now is not at all in denigration of his position, but in recognition of his position and in appreciation of it.

On the other hand, so he may understand better the position that I am in, and the situation that confronts the two West Virginia Senators and the two Kentucky Senators, and more importantly the people who are represented by these four Senators—the people of Tug Fork Valley have waited and waited and waited. They have seen their homes washed away. They have seen their property destroyed. They have been thrown out of work. They have been prevented from producing the coal which this country needs. They live in constant fear of repetitions of these devastating floods that have ravaged the area.

Each time a summer cloud approaches on the horizon, they have visions of the devastation that could come from a flash flood. Each time the snow thaws in the spring they have visions of the devastation caused by floods.

Why they would have the heart and the courage to go back into the homes that are left standing and shovel out the black mud, clean up the place again, buy new furniture, go into debt for new furniture, and live at the same place is beyond me to understand. But they nevertheless do it. I have seen them do it time and time again. They go back into those homes, shovel out the black mud, clean up the place, spend many dollars in repairs and in refurnishing their homes, only to live in constant danger of new devastations.

My good friend from New York quite appropriately said that $1 billion represents $1 for every minute since 10 years prior to the death of Saint Peter. But what he did not say when he spoke of the $284 million was that the cost to the taxpayers of the last flood in 1977 was over $200 million. That represents $1 for every minute going back 400 years prior to the settlement of Jamestown, prior to the publication of the King James version of the Bible—$1 for every minute; $200 million down the river, washed out.

Mr. DOMENICI. Did the leader just do that calculation right then?

Mr. ROBERT C. BYRD. Oh, yes.

Mr. DOMENICI. That is very good.

Mr. ROBERT C. BYRD. Here is how I did it: It has been 1 billion minutes since Jesus Christ was born 2,000 years ago. Two hundred million being one-fifth of 1 billion, then one-fifth of 2,000 years is 400 years—the year 1580. Jamestown was settled after 1580, and the King James version of the Bible, which first appeared in 1619, was already 29 years in use.

These are ways in which people can better grasp an understanding of what we are talking about when we speak of millions of dollars and billions of dollars.

The Senate has, four times previously, passed this legislation, only to see it flounder on the rocks of obstruction, defeat, and oblivion in the other body. With time running out and the sands dropping faster and faster in the hourglass as far as this Congress is concerned, my colleagues and I sought, in desperation and out of necessity—necessity being the mother of invention—to send the same authorizing language back to the House again and, in this instance, choose a vehicle that, we hope, will give the amendment a little better chance of survival.

Having said that, I want to assure the distinguished Senator from New York that I support the work he is doing as chairman. I commend him on his work, on his dedication and sense of purpose. He has only been chairman of the subcommittee for a few weeks. But he has worked long and hard, and I express the hope again that the Senate can pass the bill which he expects to report out of his subcommittee and out of the full committee that is chaired by my distinguished senior colleage. I hope that the Senate can pass that legislation before the Senate adjourns.

We do not have much time, however, Mr. President. The Senate will adjourn, I would say, no later than October 2. So that does not give us much time.

I can appreciate the Senator's frustration, but I want to assure him that the work of the two Senators from West Virginia and the two Senators from Kentucky today has not been out of any doubt on our part that the Senator is doing his work well and expeditiously. He has moved with dispatch since he has become chairman, and I respect him for that. I hope, however, that he will have some empathy—as I know he does—with the frustrations that the senior Senator from West Virginia (Mr. RANDOLPH) and the junior Senator (ROBERT C. BYRD) have continued to experience as we have, time after time after time and, after the fourth time, decided that we ought to try again as the fleeting last moments of this Congress are passing.

Mr. MOYNIHAN. Mr. President, I

thank the majority leader for his generous remarks to me and to my distinguished colleague, the Senator from New Mexico (Mr. DOMENICI). I have the majority leader's attention. That is a rare commodity that is in great demand and I want to be sure of one thing. I have already lost his attention. I have it back. One does not get that often.

My concerns were only marginally jurisdictional. That does not interest me very much in life. I wanted the majority leader to know that the program approved and incorporated in this bill is not, I think, the program that he will think the best one, not the one which the corps is now approving or has now proposed, and not the one which our subcommittee has incorporated in its legislation.

Mr. President, this measure adopted today is costed at $284 million. The majority leader will want to know that the measure we have proposed and incorporated in our drafted bill is costed at $340,000,000. It is a large project, because it involves relocation and, absent relocation, I think the case can be made that there is no hope in the situation. So he should know that it is to the quality which I speak. We have what we think is a better program coming along.

Mr. ROBERT C. BYRD. I appreciate that and I hope that the "better program" to which the Senator alluded will pass the Senate. I want to support it. But suppose it does not? At least the amendment is in the appropriations bill, and perhaps we can begin to see some light at the end of the tunnel.

I am advised that the two approaches are not incompatible.

I shall yield now to my senior colleague (Mr. RANDOLPH).

Mr. MOYNIHAN. Mr. President, the two are not incompatible. One supplements the other in the more important aspect, however; without the first phase, the second would not get you a very good solution.

Mr. RANDOLPH. Mr. President, it is my understanding that the Senator from New York (Mr. MOYNIHAN) has the floor. Am I correct, or has he yielded the floor?

Mr. MOYNIHAN. Mr. President, I yield the floor to the chairman, if I do have the floor.

Mr. RANDOLPH. Mr. President, I shall try to put first things first. I think it is very important for us to realize that a project of this kind and of a similar nature, although in different localities of the country, have not been the reason why, over and over again, we have been unable to have the approval of the President of the United States on measures that are passed by the House and Senate to do with water resources. I think that Senator DOMENICI, if he is on the floor, would indicate to all of us that, not once but many, many times, we have had a series of worthwhile projects agreed to in the House and Senate by comfortable margins; yet they have been turned down at the White House. So I bring in that element as a very important matter in connection with the very painstaking work that is being carried on now by the knowledgeable Senator from New York who chairs our Subcommittee on Water Resources and also by his colleague, the ranking minority member of the subcommittee, who has been long at this effort, the Senator from New Mexico (Mr. DOMENICI).

Mr. President, I am only mentioning this to say that this is only a part of what we have had to contend with, years upon years. I remember very well the words of Senator GARY HART, speaking about a project in the West. He said that if we did not have these public works projects, these water resource projects, these irrigation projects, these flood control projects—and I am almost quoting his words—that a great area of the United States would have remained a desert.

Mr. President, that is exactly true. California knows it. The majority whip (Mr. CRANSTON) knows what has happened from the standpoint of projects that have benefited the State of California as well as the other areas which were included in the thinking of GARY HART, who is a member of our committee.

This Congress has a responsibility which Members of the Senate, like those on the floor now, in the committee, and on the committee handling this bill, to develop programs of projects to meet the water resources needs of this country. I have heard it over and over again—these projects being called pork barrel projects. Pork barrel projects are projects which are an investment where not only the 100 cents in the project are returned with the dollar, but dividends in better living and safer living for the people of the areas which are involved.

I commend Senator MOYNIHAN. This is not a pleasantry. I commend him for the work he is doing in the effort now underway. I say to him that I hope he will not misunderstand, or any Senator in the Chamber will not misunderstand, I do not believe there is any chance to pass an overall water resources bill in this session, the 2d session of the 96th Congress. I do not believe it.

I believe we are going to have a veto by the President of the United States. I cannot speak, of course, for anyone, not the President, or any of his advisers. But I think that is what we are faced with in connection with what we call new subject matter by way of water resources.

Mr. MOYNIHAN. Did I understand my beloved chairman to mean, when he said that there is no chance to pass, that there is no chance to see it enacted?

Mr. RANDOLPH. That is a better phrase.

Mr. MOYNIHAN. Because we might very well pass it.

Mr. RANDOLPH. Yes. We might very well, as we have in times past.

Over and over again we have been thwarted at the White House, not here on the Hill.

There are differences of opinion about projects. I understand that very well. I know that in what we are doing today, the last act I would want to commit is to try to go around and cut corners. I do not want to do that. I have not done it here on the Hill.

It would appear here that perhaps we have moved in with an amendment I am privileged to cosponsor with the Senators from Kentucky, and under the leadership of Senator ROBERT C. BYRD, and if that is involved I would not want to be taxed with such an effort.

Mr. MOYNIHAN. I will restate what I remarked earlier, unanimous consent was requested that this be done openly and in the clear light of day.

Mr. RANDOLPH. I am very grateful for that observation, which is true.

Now, we need the Tug Fork project, as the majority leader said. We need it now. We can come back later to modify this authorization to include the relocation aspect to which the Senator has correctly called our attention.

Has not the Corps of Engineers discussed the relocation proposal?

They have discussed it with the Senator, I want to be certain about that.

Mr. MOYNIHAN. It has been adopted by our subcommittee, incorporated in the draft language.

Mr. RANDOLPH. I had the feeling, and I can be incorrect, that the corps had not given the Senator, or the subcommittee, or to us, enough information to authorize more than just the first phase. I am not certain of that, but I believe that is factual.

We will need more specific information before we can authorize the full project that is currently being finally developed, as I understand it, by the Corps of Engineers. I think it is correct to say that we hope to have a report by the middle of next year which will be in sufficient detail on which the Congress can act.

But I come back to the words I used a moment ago, "We must act now."

When I say this, we must look to this legislation to initiate construction of such a project, in connection with the structural elements of the best project to alleviate the flooding which has been referred to by the majority leader.

We have mentioned certain costs, and the cumulative costs are now running well over, perhaps, $200 million, $250 million. I believe, if we take all these floods in recent years.

So we have these costs that come with the recurring floods, and I can well understand the concern. In fact, I agree with the concern of the Senator from New York, who is knowledgeable in these matters. I can say without reservation that he has applied himself to this subject matter, and within our committee and the structure of it, members both Democrat and Republican, there has been nothing but the most careful attention to this project, as well as other projects.

Perhaps I have not addressed myself to all the issues that we could use to bring this matter into focus. But I say that what we are doing here now will be helpful. What we can do later will be helpful.

But I fear that water resources legislative proposal passing the Senate and the House will not be signed by the President of the United States. Here, on this legislation, I believe the majority leader would say that, hopefully, this measure can become law.

Mr. ROBERT C. BYRD. I would hope so.

Mr. RANDOLPH. I would hope so.

Having said this, I again, not as a pleasantry, but as a truism, thank the Senator from New York (Mr. MOYNIHAN), the Senator from New Mexico (Mr. DOMENICI), and all the members of our committee who labored to cooperate together.

In this instance, we do not want to vitiate such a program that we have had. We want to keep it intact.

I thank the Senator very much for this opportunity to comment in connection with what has been done earlier today.

Mr. MOYNIHAN. Mr. President, I thank my incomparable chairman for his remarks; and I thank our distinguished majority leader.

I think this matter is settled. I think it is clear. I would hope that we have contemplated the full program. If it does, and I know it does, we will need more from the corps as the program develops.

I have not lost faith in the President of the United States, not in the last week of the election campaign. We could be amazed by the perceptions that settle in the Oval Office.

President Ford, a man who previously had been impervious to arguments in these matters, saw in October of 1976 opportunities where previously he had seen only waste and dissipation of scarce public resources.

We shall press on because the Senator from Louisiana has made the point which needs to be repeated. We are not spending enough money on water resources. We are at the edge of disinvestment.

If we are serious about producing, consuming, and exporting coal, we have an extraordinary set of projects ahead of us in inland waterways and in harbor development.

It is, in its effort, in its enterprise, not that much smaller than the construction of the interstate highway program.

We do not have any conception of how large it is, and we will have to learn it.

On the other hand, it is intensely regional. These whole programs have been altogether too regional, and the reason they are not passing is that they do not have that wide base of support which is necessary for decisionmaking in a democracy.

I am not complaining one bit, but here is yet another appropriations bill for which the State of New York, if one consults the Treasury, will put up 12 percent of the money in revenues; we get 8/10ths of 1 percent. That is high for us. If we ever grossed 1 percent in one of these projects, I could seek a second term with some prospect of worthiness.

The majority leader has risen.

Mr. ROBERT C. BYRD. I just want to remind my congenial, delightful, amicable friend that it is those coal mines in the Tug Fork Area of West Virginia that supply the black power to provide the lights for New York City and New York State and Washington, D.C., and the great cities of the East. Without that coal, the lights would go out.

Mr. JOHNSTON. Broadway would not glitter. [Laughter.]

Mr. ROBERT C. BYRD. Broadway would not glitter.

Mr. MOYNIHAN. The Senator would be surprised by the resources to which civilization would turn if the prospect of turning out the lights on Broadway were to become realized someday. The whaling industry would be revived. There was a Broadway before whaling, and it can be that again. However, I do not wish to enter into a parochial discussion.

One cannot explain the pall that has settled over the enterprise of water resources development except by the regional imbalance, that plus the advent of environmental concerns of a kind that are legitimate, too.

I make the point, once again, that we have to break out of this institutional deadlock or we are not going to produce the water transportation and facilities we need to export and consume coal.

In the coal conversion bill that passed this body about 3 months ago, 25 percent of the oil burning capacity for power generation that was to be converted to coal was in the State of New York. We were more than happy to have it. We cannot do it unless we have harbor facilities and railroad facilities.

In one particular specific, we had asked that the largest power generating plant in the Nation be taken off the list because it is on Long Island. Long Island is an island in the North Atlantic, and we have a small commuter railroad called the Long Island Railroad, which evidently the Department of Energy thought would be transporting 1,000 carloads of coal a day out to this Northport plant. But better transportation would have got coal there, and we would have welcomed coal there.

We will have to make this system work, and it is not working.

Mr. HUDDLESTON. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I yield the floor.

Mr. HUDDLESTON. Mr. President, I commend the distinguished Senator from New York not only for the job he is doing as subcommittee chairman in this very important area but also for his scope of understanding of the problems with which we are confronted in this country, including our transportation system; also, for his great breadth of understanding and consideration for the needs of the rest of the country, in addition to those of his own area, New York State, not only in this instance but also in many other areas that have come before this body. I want him to know that we appreciate that.

Mr. MOYNIHAN. I thank the Senator from Kentucky, and I should like to make a further point.

We will have to develop a shipbuilding industry. We must build a supertanker for coal.

Mr. HUDDLESTON. That is correct.

Mr. MOYNIHAN. It is being built in Japan.

Mr. HUDDLESTON. We also need the waterways on which to carry it, which includes the Tennessee-Tombigbee.

Mr. MOYNIHAN. There may be some discord on that—but waterways, yes.

Mr. HUDDLESTON. The Senator refers to possibly returning to the whaling industry. He is not suggesting that we nuke the whales, is he?

Mr. MOYNIHAN. There are those on both sides of the question.

Mr. HUDDLESTON. Mr. President, I strongly support the amendment of the majority leader, my colleague from West Virginia.

For more than 30 years, the people who live along the Tug and Levisa Forks of the Big Sandy River and those who live in the Upper Cumberland River Valley have been subject to periodic, devastating floods. These floods have caused millions of dollars worth of damage, have ruined thousands of homes, and have taken many lives.

I have been to these flooded areas and seen first hand the terrible devastation. The people whose homes were ruined will spend years and thousands of dollars trying to put their lives back together. According to the Corps of Engineers, during the past 5 years there have been 85 floods in Kentucky causing actual damages amounting to more than $182 million. It is estimated that the floods in April 1977 caused property damages of well over $100 million to 15 southeastern Kentucky counties and took the lives of four people.

Two years ago, more than 700 people from the area came to Washington to express their frustration and their desire to see some action taken on this problem. I told them then and I will tell you now that I share their frustration; I have been working on this problem during my entire 8 years in the Senate and my colleagues from West Virginia have been working on it even longer than that.

The cost-benefit ratio does serve a useful purpose, but I do not believe it was meant to be cast in stone. This is an exceptional case, and exceptional cases do not always fit into Government formulas and ratios.

It is only logical and humane to try to prevent these floods in the first place. We have waited already far too long, and I urge my colleagues to support this amendment.

Mr. President, as to the procedure that has been adopted here by the Senate today in moving forward with this very much needed and studied and worked on project, providing some flood control assistance to sections of West Virginia and Kentucky, it is unusual, as the majority leader has indicated; but he also has indicated the dire circumstances that prevail which call for unusual action.

I believe that as these measures proceed through the legislative process—the bill that is being marked up by the distinguished Senator from New York and his subcommittee—we will have an opportunity to reconcile these two approaches and come forward with what I hope to be the best for the area and the best for the country.

These people have suffered a long, long time, as the distinguished Senators from West Virginia already have indicated. They have exhausted nearly every remedy they know of in dealing with their Government, in trying to secure some assistance.

When they see us appropriate here more than $500 million, for example, to accommodate the Cuban refugees who have come to this country very recently, just for the period between now and October 1, it is hard for them to understand why there cannot be some assistance that will provide for long-range correction of a difficulty with which they have suffered for generations.

So while the approach by the Senator from West Virginia, who has offered the amendment that was accepted, is somewhat ingenious, the problem requires it, and I believe we should proceed with it as the Senate already has acted. I am happy to join him in support of that amendment.

Mr. ROBERT C. BYRD. I thank my distinguished friend.

Mr. FORD. Mr. President, will the Senator yield me 10 seconds?

Mr. ROBERT C. BYRD. Mr. President, am I recognized?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. I yield to the Senator from Kentucky.

Mr. FORD. Mr. President, I take this opportunity to once again express my strong support for the Tug Fork project. It is my pleasure to cosponsor this measure which will greatly assist people who have suffered the agony of disastrous flooding, year in and year out.

This legislation authorizes additional flood protection to the people of eastern Kentucky and southern West Virginia. Under the bill, the Army Corps of Engineers is authorized to design and construct new flood control measures to prevent another disaster of similar magnitude and severity from occurring again.

This bill which authorizes $284 million will make the much needed improvements in the area and let the local people know that we care about the problems they are facing and that a solution is within reach.

Mr. President, we have tried four previous times to include this provision in legislation and to get it into law. We have an obligation to help relieve the ever-present threat of severe flooding for the people in that area.

ORDER OF PROCEDURE TOMORROW—UNANIMOUS CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I propound a unanimous-consent request which has been discussed with the distinguished minority leader, Mr. Baker, the distinguished ranking manager, Mr. Hatfield, and the disinguished manager, Mr. Johnston, as follows.

Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 tomorrow morning; that the time of the two leaders be reduced to 10 minutes, to be equally divided; that upon the disposition of the standing orders for the recognition of the two leaders or their designees, the Senate resume consideration of the pending measure; that Mr. Chafee be recognized at that point to call up his amendment; that there be 2 hours for debate of the amendment, the time to be equally divided in accordance with the usual form; that upon the disposition of the amendment by Mr. Chafee, the junior Senator from West Virginia then be recognized to make a motion to suspend the rules of the Senate—paragraph 4 of rule XVI—for the purpose of proposing an amendment to the bill.

I will file the notice in writing to suspend the rules before this day is out, and on tomorrow I will make the motion to suspend the rules. If that motion is agreed to by a two-thirds vote, then I will offer an amendment which is legislative in nature but against which no point of order then could be made.

The purpose of the amendment would be to disallow the proposed pay increase that otherwise would be accorded to the executive, judicial, and legislative branches on October 1.

So my consent agreement entails the making of the motion to suspend the rule and not to exceed 20 minutes to be equally divided between the majority and minority leaders, or their designees, for discussion of that motion, and if the motion carries by two-thirds vote, the calling up of the amendment by the junior Senator from West Virginia with no further debate thereon, a vote on the amendment up or down and immediately upon the disposition of that vote on that amendment if the rules are suspended or in any event the Senate will then proceed to third reading without further amendment, without further debate or motion, and immediately to final passage of the bill without further motion or debate and that any motion to reconsider the vote by which the bill is passed have no time for debate thereon.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the reservation is simply for the purpose of clarifying a few points that I have already discussed with the majority leader and spreading them on the Record as I understand them.

To begin with, the majority leader has indicated his intention to file the notice of his intention to move to suspend the rules on tomorrow. He has that right. Members on this side have been notified of the majority leader's intention so to do.

I prefer that method, frankly, I may say, to that which we have sometimes followed in submitting questions to the Chair and then voting on the ruling of the Chair in respect to germaneness.

On tomorrow, under any circumstances pursuant to that notice the majority leader, on being recognized, could move to suspend the rules, as I understand the situation. In any event the unanimous consent agreement does provide for his recognition and does provide for 20 minutes to be equally divided on the motion to suspend and assuming that the motion to suspend is carried by the requisite two-thirds vote, and I expect that it will be, then to proceed immediately to the consideration of the amendment which could be adopted, as I also expect it to be, by a simple majority vote. Following on that, there would be a third reading of the bill and we would proceed to final disposition.

Mr. President, I think this is a good arrangement. It does provide that anyone who has amendments, other than the Chafee amendment which will be considered tomorrow under this arrangement, might do so this evening and no one's right to offer amendments is being truncated or extinguished by this agreement. Indeed and in fact, we have gone to some lengths to try to find out if there are other amendments that other Members wish to offer.

Mr. President, I have just been advised, if the majority leader will bear with me for a moment, the distinguished Senator from Alaska, the assistant Republican leader, is on his way to the Chamber, and I observe that the Senator from Louisiana may have a reservation. I wonder if we could forgo putting down this order until the distinguished Senator arrives.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. I do not wish to object, but I wish to have 5 minutes to make a speech on the bill before it passes at any time. Will the Senator provide for that in the unanimous-consent agreement?

Mr. ROBERT C. BYRD. Yes. I ask unanimous consent that Mr. Proxmire may have 5 minutes on the bill immediately prior to passage, that Mr. Johnston may have 5 minutes, and that Mr. Hatfield may have 5 minutes on the bill immediately prior to passage.

Mr. JOHNSTON. Mr. President, reserving the right to object, the agreement should be modified to provide that immediately upon the adoption of the disposition of the Tenn-Tom amendment, then we adopt the committee amendment which the Tenn-Tom amendment seeks to change.

Mr. ROBERT C. BYRD. Very well.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Chair rescinds the order. The Senator from Oregon has reserved the right to object.

Mr. HATFIELD. Yes; I only reserve the right to object to give an opportunity to the Senator from Alaska to make his view known if he wishes.

Mr. CHAFEE. Mr. President, I wish to reserve the right to object if I may.

Mr. STEVENS. Mr. President, I reserve the right to object. I have been trying to get an opportunity to review the amendment that the distinguished majority leader intended to offer concerning the pay raise to see if we could have it analyzed by the staff of the Governmental Affairs Committee that works on this matter of impact of pay raises on the Federal Establishment.

I am not opposed to the concept of limiting it as far as the legislative branch is concerned, particularly elected members, but I do think we run into a serious problem in Government if we start compacting the problem of denying pay increases to those who are impacted by a pay cap and it has a pyramiding effect year by year which is a disincentive to keeping good people in the Government.

So I wish an opportunity to discuss with my good friend and see what the version of the amendment is and how it affects the executive branch and how it affects the judicial branch employees.

Could my friend tell me is it going to be an all-encompassing amendment?

If the distinguished Senator from Rhode Island wishes to reserve the right to object, I will take a moment or two to examine this.

Mr. CHAFEE. Mr. President, I wonder if I might direct a question to the distinguished majority leader.

One, I understand that on the time before the Tombigbee amendment we cut that 2 hours equally divided starting around 9:40. The Senate is coming in at 9:30.

Mr. ROBERT C. BYRD. Yes.

Mr. CHAFEE. The earlier we come in the better as far as I am concerned but the majority leader decided 9:30?

Mr. ROBERT C. BYRD. Yes.

Mr. CHAFEE. I ask a question on this pay raise. As I understand, the idea is to put a cap on the pay of the legislators, that is, the Members of Congress and also some of the civil service; is that right, the general service?

Mr. ROBERT C. BYRD. Yes; and in the judicial and the executive branches.

Mr. CHAFEE. That as I am sure the Senator has given attention to has a lot of adverse effects. Let us set aside Congress. But in the top people in the executive it works out to a situation where there is a tremendous inducement for top people to retire where they get the COLA semiannually or annually, however it works out, and their retirement does not increase if they stay on the job since their pay is frozen. I wonder why the majority leader feels that we have to restrict those people. If we want to suffer, I am not enthusiastic about it, but I can understand it. But I do not quite understand why we work the same onerous effects on the top civil servants.

Mr. ROBERT C. BYRD. I can appreciate the compressor effect, and I share with the distinguished Senator his feeling of concern about those employees.

We had the same problem, of course, that accumulated over time some few years ago.

It was I, I think, who led the fight as much as anyone to support the pay increase across the board.

As to the judicial branch, I think so far as I am concerned that it is pretty obvious why I have included that branch. With all due respect to the members of the judiciary they have about the best thing going. They pay nothing, not 1 penny, into their retirement; yet, when they retire they retire at full pay, so I for one am not going to shed any tears with respect to the judicial branch.

(Mr. MATSUNAGA assumed the chair).

Mr. CHAFEE. I join the majority leader in not shedding any tears for that group.

Mr. ROBERT C. BYRD. If we merely limit this to Congress there will be a saving of about $6 million. If we apply it across the board there will be a saving of something like $90 million to $95 million. So it represents a clear saving of more money.

Then, too, while I personally feel there are people in the executive branch who are entitled to the pay increase that would otherwise go into effect, on the other hand, there are thousands of people there who, if the increase is allowed to go into effect, would not be very far from receiving salaries that would be higher than Members of Congress, and I am not yet quite ready to state that I believe that members of the executive branch in general are entitled to more money than are the Members of Congress.

I happen to be one who believes that there are Members of Congress who are entitled to every dollar they receive, and more. I do not have one bit of compunction about looking into the mirror when I receive my paycheck. But I do not believe we ought to, at this time, eliminate the Members of Congress and the judiciary and not also eliminate the top grades in the executive branch, notwithstanding the fact that a very strong argument can be made for the Senator's viewpoint, and I share it to a great extent, because there comes a time when the compressor effect is so damaging that good people, very able people, leave the service of Government.

Mr. CHAFEE. If I might say to the majority leader, it is not only the compressor effect, in other words, of the person who works for the leader of the unit earning as much, but it is this retirement situation.

It is my understanding that recently 80 people in the Central Intelligence Agency retired because of this effect. We lost a lot of very fine talent because if they are going to retire in 4 or 5 years there is no incentive for them to stay on since their retirement is based upon their highest pay, and the highest pay has to be in effect for 3 years. If we keep postponing this, there is every reason in the world for them to retire immediately.

I have a great reservation. What is the rationale for proceeding with a pay cap for Members of the Legislature? Is it that it would be unacceptable in these times to receive the pay raise?

Mr. ROBERT C. BYRD. Well, as I said, as far as I am personally concerned I have no compunction about seeing a pay raise go into effect for the Members of the Senate. I have no compunction about that. I think they earn their pay, and I do not know of any board of directors in this country that is as important as this board of directors that represents 223 million people.

But I do not think the mood of the country is such that it would look with favor upon an increase in the pay of Members of Congress at this time, and especially in light of the inflation the country faces, in face of the unemployment that the country faces, and in face of the need for restraint in Government spending. I think we have to set the example. That is, of course, an old story which has been played and replayed, but again I say I did not look for any rock to hide under. I took a stand, an open, frank, candid stand, in support of the pay increase that went into effect a couple of years ago and, by the way, Congress had only had—at that time—about 10 or 15 pay increases since 1789, and some of those were not permanent increases.

But, in any event, I took a stand then and I do not hesitate to take a stand today. It can be justified. But I think the right thing to do is to limit this increase and to exempt at this particular time in history the Members of Congress, and, along with the Members of Congress, the members of the judiciary and those in the upper levels of the executive branch, as much as I recognize the validity of the argument made by the distinguished Senator.

Mr. CHAFEE. Might I ask this of the majority leader: Obviously I have some thoughts on this and do not have my ammunition all prepared, but is it necessary that we proceed with this tomorrow? Is there something essential that we have got to attach this to, to move forward, this pay situation?

Mr. ROBERT C. BYRD. It is necessary that we proceed before October 1, otherwise the pay increase will take effect, and I think it would amount to something like over a 9-percent increase. So it is necessary that there be some haste about it, and I know of no better way to proceed than now.

I will turn the question around. Why wait?

Mr. CHAFEE. Well, I would like to wait just to—I am not saying to postpone it forever. I am just saying I think this is a matter of some import, and I would like to wait a week or something like that. I am not trying to upset the majority leader's schedule on this, but I personally would prefer to wait and, perhaps the Senator could find some convenient time which would give us a little chance to analyze this and think about it.

Mr. ROBERT C. BYRD. May I suggest to the distinguished Senator if he wishes he may offer an amendment to my amendment, and he can have a vote on it. But I intend to file the notice today to suspend the rules.

Whether the Senate wants to by a two-thirds vote suspend the rules on tomorrow is a matter for the Senate. But any Senator, including my distinguished friend—and we have stood together on many things here—may also file a notice to suspend the rules to amend my amendment tomorrow.

Mr. STEVENS. Mr. President, will the Senator yield to me right there? That is my problem, and I was trying to address the majority leader about it.

It is my understanding that this notice is filed to suspend the rules that pertain to this amendment, and this amendment cannot then be amended without a similar notice; is that not correct?

Mr. ROBERT C. BYRD. It could be amended.

Mr. STEVENS. Would not that be the effect?

Mr. ROBERT C. BYRD. It could be amended by striking out—in other words, any Senator could, without filing a notice to suspend the rules, for example, strike out the word "executive." But for a nongermane amendment to my amendment, a notice of suspension of the rules would have to be filed today.

Mr. STEVENS. I might say to my good friend the problem is again that we have got a very difficult situation because this will be attached to an appropriations bill. We have a committee that has the staff, and we pay a great deal of money to our staff to keep up with the whole problem of pay and pay increases, and the impact of these increases that we call compression, the compressor effect the Senator from West Virginia has mentioned.

As I understand the amendment the Senator has graciously allowed me to review, it would, in fact, bring about an acceleration of the compression effect because it would say that the pay is limited to the pay level of level 5 for the executive schedule as it existed on September 30 of 1980. The pay increase will not go into effect, as I understand it, until October 1. So this is, in effect, saying that any person whose pay would be raised above the level 5 level now could not have this pay raise. That puts the ribbon of compression into effect in the executive branch and the legislative branch and the judicial branch.

I do not argue with the Senator from West Virginia about those of us who are in political life with a decision for not to have the pay raise for elected members of the legislative branch, to appointed members of the judicial branch, of those who hold offices confirmed by the Senate, and those in the executive branch who are there by virtue of the executive schedule.

But the amendment could be drawn so it does not affect those who are in career positions and, at the same time, in effect, give them that pay raise which they would be entitled to up to the cap that we establish.

I am reminded of the long argument that we have had before on this floor about those affected by compression. But when the compression was in effect previously, we saw the situation that we could not get ahead of NIH for 4 years. We saw the maximum number of middle-level career people leaving the Government. The impact of compression on the Government means that, in effect, we are sending a signal out to midcareer people that you have reached the top level of your compensation and they leave the Government so rapidly that we lose management capability.

I think this amendment could be drawn so that it would not have a compression effect on those who are in career service.

Mr. JOHNSTON. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. JOHNSTON. I am advised that if the Senate does vote pursuant to the notice to suspend the rules tomorrow, which then puts the Byrd amendment in order, that the Byrd amendment would then be amendable in the second degree by germane amendments, either to strike the provision or otherwise modify it with respect to Government employees which, frankly, I would favor.

I am not going to object to the majority leader's unanimous-consent request, because he has the responsibility of running this shop. I would urge him to consider putting this on another bill, because I think it does deserve a little more mature consideration.

Just to be plain about it, we are not going to approve the pay raise for us because it is an election year. And that sums it all up. That, plus the mood of the American people. We may never get another pay raise if we wait for the mood of the American people to be right. And I suspect that we are going to be very attentive to that mood of the American people.

But we should not, it seems to me, hurt Federal employees just because we want to deny ourselves that right. We have ranting and railing here on the floor about using outside consultants. One of the reasons is we cannot get the top people in Government any more. We cannot retain them.

It seems to me that we need to be very attentive to those topmost people in Government who provide the highest kinds of skills and not let them escape.

I commend that to the consideration of the majority leader. I am not going to object, because we can have this debate tomorrow. I would prefer we have it on another bill so that we have more time to consider this and maybe we even have the time to consider this in the Appropriations Committee.

Mr. STEVENS. Mr. President, I might say to both of my good friends that the difficulty I have is simply I am the last surviving member of the Post Office and Civil Service Committee who has elected to stay with the Governmental Affairs Committee when the reorganization took place. I see more and more of the work of that former committee being done here on the floor without regard to the fact that we have kept the staff there as a subcommittee of the Governmental Affairs Committee.

I do not know how many people this will affect. I do not know how to reduce the compression factor so that the impact on the career service would be lessened until we get a chance to analyze it and get some opportunity to talk to members of the executive branch and the Office of Management and Budget.

I agree with what the Senator from Louisiana states, that from a political point of view we are going to pass a bill that says we are not going to take this pay increase. Anyone that disputes that does not read the mood of the Senate or the leadership as I see it.

But why should that create more problems now for us in terms of the disincentives here? The President just signed a bill that gives the military branch a 10.1-percent increase. That means that generals and colonels and all of those people have already received 10.7 percent. Now, we are saying to the executive branch, to the legislative branch, and to the judicial branch: "But this does not mean you. You do not get the 9.1 percent."

The disincentives here, in terms of the career service, are going to be immense unless we take pains to be sure what we are doing with the compression factor. I think this could be drawn to eliminate it. I think this could be drawn to say that what we mean to say is everyone gets his part of the raise up to the cap, whatever the cap is.

But what this says is, "No, you are not going to get it because you can't get any more than a level 5 as of September 30 and the pay raise does not take place until October 1." So it is a real technical problem I have with the amendment.

With all due respect to my friend from West Virginia, I hope that we could get some understanding that we do not want to have those adverse effects of the compression take place. We can list it as a cap and say: "No one in the executive branch or the judicial branch of the legislature branch is going to get more than $52,000." If you want to say that, it is a simple matter.

Mr. ROBERT C. BYRD. Mr. President, perhaps there should be some time for debate tomorrow on my amendment. I would be glad to add that provision to the request.

The matter can be resolved in conference. If there should be some changes made, that can be done in conference.

In addition to that, as I say, any Senator may file a notice of a suspension of the rules and provide for amendments in the second degree.

May I have a clarification from the Chair? I am under the impression that certain amendments might be in order, one striking out a word there, for example, the word "executive," that would be in order without a motion to suspend being filed?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, I might say to my good friend that to my knowledge I am the only one that would do that and I do not have the time to draft the amendment, because I would have to file it at the same time as the Senator has his.

I do not have right now the capability of analyzing this amendment and coming up with an amendment to it that would carry out what I consider to be the proper procedure for the Senate to go through. It is too technical. Obviously, the Senator's amendment is very well drawn. It is a very technical amendment. In order to amend that to take out the compression factor, it would take some time to make sure that I did not cause more problems than I tried to eliminate. I just could not do that. I do not intend to do that.

I hope that we would not proceed with this at this time and give us a chance to agree on an amendment that would carry out what I think it intends to do without getting back into compression again.

Mr. ROBERT C. BYRD. Mr. President, I intend to file the notice.

In fairness to the distinguished Senator from Alaska, however, I would have no problem with asking unanimous consent that one amendment in the second degree be in order, to be offered by the distinguished Senator, with the clear understanding of what that amendment would comprehend. Not in detail, but certainly a general understanding of what it would comprehend.

Mr. STEVENS. I thank the Senator. I would state for the record that it would be my intention, if we can prepare such an amendment in the second degree to this amendment, to offer an amendment which would limit the impact of this so that it, in fact, would set a pay cap without having a compression factor upon those people in career service in the three branches of Government. If that can be done, I would request that that unanimous consent be granted and that we do attempt to do that, if it is possible, so that we do not get back into the situation.

I am sure the Senator knows—and maybe other Members of the Senate do not realize it—that if you do this this year and then do it the next year, each year the compression factor lowers it down further. At one time, we got down to the point where a grade 14 was impacted because of the way these amendments were drawn. I think everybody intended that there be a pay cap at a particular level of Government.

Mr. ROBERT C. BYRD. Mr. President, we could debate this ad infinitum tonight.

I would not agree to a unanimous consent that an amendment would be in order in the second degree as explained by the distinguished Senator. As I understood it, he would make it cover all three branches, judicial, executive, and legislative.

Mr. STEVENS. It would say that the limits of the basic pay for level 5 would be the limit of pay for the three branches of Government, in effect. That is what I would seek to do. That would eliminate the compression factor.

Mr. ROBERT C. BYRD. The three branches trouble me. Let me temporarily withdraw the request and maybe we can work something out.

The PRESIDING OFFICER. The request is withdrawn.

Mr. ROBERT C. BYRD. The President, I have not yielded the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I want to accommodate the distinguished Senator in some way, but I do not want to give away all my bargaining strength here.

Mr. STEVENS. Mr. President, I am not going to object to the Senator's unanimous-consent request, but I will seek tomorrow to see if I can get unanimous consent to offer an amendment in the second degree if we can frame it in the proper way.

Mr. ROBERT C. BYRD. Or even before this day is over.

I present my request again.

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Reserving the right to object, I wonder if the distinguished majority leader would be willing to amend his request to provide for 1 hour of debate on the amendment itself, assuming that the rules are suspended, because the only time that has been requested is for 20 minutes to be equally divided between the two leaders on the question of suspending the rules. It seems to me we ought to have some opportunity to get into the substance of the amendment once those rules are suspended.

Mr. ROBERT C. BYRD. Mr. President, I think that is a good suggestion and I add that proviso to my request, with the additional proviso that, if unanimous consent is given to allow the offering of one amendment in the second degree, there be 30 minutes equally divided on such amendment in the second degree.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, I hate to ask this, but I wonder if the Senator would restate the whole request, if that is not unreasonable.

Mr. ROBERT C. BYRD. Not at all.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that when the Senate convenes at 9:30 in the morning, the time of the two leaders be limited to 5 minutes each; that immediately upon the consumption of that time, or the yielding back thereof, the Senate resume consideration of the pending business, at which time the Senator from Rhode Island (Mr. Chafee) be recognized and that he call up his amendment, the Tombigbee amendment, at that time, that there be a time limitation thereon of 2 hours to be equally divided in accordance with the usual form; that upon the disposition of the amendment by Mr. Chafee, without further debate, motion, or amendment, the committee amendment to which that amendment is directed be disposed of; that upon the disposition of the committee amendment, as amended, if amended, the junior Senator from West Virginia be recognized to make a motion to suspend the rules; that there be 20 minutes to be equally divided on that motion to suspend the rules to allow the calling up of a legislative amendment to this appropriation bill; that if the motion carries, which would require two-thirds vote, the junior Senator from West Virginia then call up his amendment; that there be 1 hour for debate on that amendment to be equally divided in accordance with the usual form, and that if unanimous consent is granted for the calling up of an amendment in the second degree to the amendment in the first degree by Mr. Robert C. Byrd, there be a 30-minute time limitation on such amendment in the second degree to be equally divided in accordance with the usual form; that upon the disposition of the Byrd amendment, as amended, if amended, there be 15 minutes of debate—5 minutes under the control of Mr. Proxmire, 5 minutes under the control of Mr. Johnston, and 5 minutes under the control of Mr. Hatfield—after which the Senate proceed without further debate or motion to passage of the bill, and that there be no time for debate on any motion to reconsider action on the bill.

The PRESIDING OFFICER. Is there objection?

ORDER TO CONVENE AT 9:30 A.M. TOMORROW

Mr. HATFIELD. Mr. President, reserving the right to object, could I ask the indulgence of the majority for one other point? That is, instead of 9:30, would the Senator agree to coming in at 9:15 in the morning?

Mr. ROBERT C. BYRD. I make that change, Mr. President. 9:15.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators.

UP AMENDMENT NO. 1563

(Purpose: To make available $6,000,000 only for certain flood control projects)

Mr. ROBERT C. BYRD. Mr. President, I send an amendment to the desk on behalf of my colleague, Senator Randolph, and the two Senators from Kentucky (Mr. Huddleston and Mr. Ford), and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. Robert C. Byrd), for himself, Mr. Randolph, Mr. Ford, and Mr. Huddleston, proposes an unprinted amendment numbered 1563.

On page 16, line 8, immediately before the period insert the following: "*Provided further*, That within available funds under this paragraph, $6,000,000 shall be available to carry out the purposes of section 202 of this Act".

Mr. ROBERT C. BYRD. Mr. President, the reading of the amendment explains the amendment. I suggest the amendment to the managers of the bill. I hope they will accept it.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I am not sure what this does.

Mr. JOHNSTON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Rhode Island yield to the Senator from Louisiana?

Mr. CHAFEE. Yes.

Mr. JOHNSTON. Mr. President, this makes available some $6 million from within available funds, which might be from savings, slippages, or other available funds, $6 million to begin work on the Tug Fork project, which has just been adopted by the Senate. That is all it does. It is acceptable to the majority.

Mr. CHAFEE. We have previously authorized this today?

Mr. JOHNSTON. That is correct.

Mr. ROBERT C. BYRD. For the fifth time.

Mr. CHAFEE. And now we are appropriating for it?

Mr. ROBERT C. BYRD. Not appropriating, but just making provision that out of available funds, slippages, savings, et cetera, up to $6 million may be used on Tug Fork.

Mr. CHAFEE. That is very fast work.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1563) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1564

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and Mr. STONE, proposes an unprinted amendment numbered 1564.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 18, line 17 add the following: *Provided further*, That the authorized project dimensions for East Pass Channel, Florida, are hereby modified to provide a channel length of approximately 3800 feet in lieu of 2000 feet from the East Pass Channel into Old Pass Lagoon, with no changes in width and depth.

Mr. JOHNSTON. Mr. President, I am offering this amendment for myself and the distinguished Senator from Florida (Mr. STONE) to clarify the Army Corps of Engineers' authority to perform maintenance dredging at the East Pass Channel in Florida. This amendment will enable the corps to continue to serve the basic purpose of the project, which is to maintain a channel from the East Pass into Old Pass Lagoon.

This amendment has been, as I understand it, cleared with Senator MOYNIHAN, chairman of the Authorization Subcommittee.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1564) was agreed to.

THE TENNESSEE-TOMBIGBEE

Mr. CRANSTON. Mr. President, I rise briefly to support construction of the Tennessee-Tombigbee Waterway. I know of no project that has been studied and restudied as much as the Tennessee-Tombigbee. This project is being built to provide an important link in our national transportation system and inexpensive water transportation for coal and agricultural commodities to the Gulf of Mexico.

The Senate has voted to fund construction of this project since 1972. To date, Congress has appropriated $879 million for the construction of the Tennessee-Tombigbee project. This is over half of the projected Federal cost of $1.75 billion. It is my understanding that 46 percent of the project's navigation features have been constructed thus far and that over 70 percent of the total Federal cost has been expended or is committed in ongoing contracts.

Thus, one-half of the project's costs have already been invested and are unrecoverable. If the project were stopped, the expenditure of $879 million plus the termination costs of $130 million would be lost.

But the vast majority of the project's benefits—some estimate that it will yield as much as $100 million annually—will come from providing transit navigation. This can, of course, only be realized if the project is completed. Given this Federal investment in the Tennessee-Tombigbee Waterway, it does not make good economic sense to stop the project now. I, for one, am going to support its completion.

NOTICE TO SUSPEND RULE XVI

Mr. ROBERT C. BYRD. Mr. President, I send to the desk the notice in writing which I referred to in earlier colloquy.

The PRESIDING OFFICER. The clerk will state the notice.

The assistant legislative clerk read as follows:

Mr. President, I submit the following notice in writing: "In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill (H.R. 7590), making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, the following amendment; namely:

AMENDMENT NO. 2302

(Purpose: To impose a ceiling on pay of certain higher paid Government employees)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, between lines 6 and 7, insert the following new section:

SEC. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

TENNESSEE-TOMBIGBEE

The PRESIDING OFFICER. The Senator from Missouri (Mr. DANFORTH) is recognized.

Mr. CHAFEE. Mr. President, will the Senator from Missouri yield to me for 1 minute?

Mr. DANFORTH. I am happy to yield.

Mr. CHAFEE. Mr. President, we have heard some discussion this evening on the Tennessee-Tombigbee project. I submit for the RECORD a series of editorials, not all from the frost belt by a long shot. The lead one is from the Atlanta Constitution and there are a variety of others, including one from the Raleigh News Observer. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Atlanta (Ga.) Constitution, July 3, 1980]

ROBBERS WITHOUT GUNS

The most famous of American boondoggles, the Tenn-Tom dredging project, has been down many times but never out. The supporters of this project have successfully raided the national treasury on so many different occasions and with such brashness that they no longer even need masks or guns.

And they are about to do so again. Last weekend the Senate voted some $58 million in supplemental allocations for Tenn-Tom, despite the growing suspicion that dollars generated by the waterway will flow into the pockets of wealthy landowners rather than into the hands of the jobless poor.

The idea behind Tenn-Tom is to connect Alabama's Tombigbee and Tennessee rivers by means of a 250-mile-long barge canal and a complex series of locks, dams and "fixed crest" spillways, creating thereby a vast inland waterway that will carry ocean-going vessels into the heart of America's corn and wheat country.

The Tenn-Tom has been a Deep South dream ever since the time of the first French explorers. It was an issue at various times all during the 19th century and finally became a reality in the time of President Nixon, who viewed it as a worthy cog in the much-vaunted "Southern strategy" by which he hoped to transform the South into a reliable outpost of the Republican Party.

But, in trying to make amends for the folly of 19th century Republican carpetbaggers, Nixon may have overreached himself. True, there will be plenty of economic benefit for the wealthy plantation owners whose property straddles the sluggish Tombigbee—sites for cattle feeding lots and marinas and roadside tourist attractions. And all day long barges loaded with wheat and coal and fertilizer will float up and down the barge canal, in and out of the locks and "fixed-crest" spillways. But the industrial boom that was supposed to spread through the river valley in the wake of Tenn-Tom, creating jobs for former tenants and sharecroppers, may never really materialize.

All that quite leaves aside the disastrous environmental impact of Tenn-Tom. The lovely "slack water impoundments" built by the Corps of Engineers will be sure to bring in the tourists and fly fishermen and water skiers, and may even attract the attention of migrating flocks of waterfowl. But the destruction of rare species of fish life goes on apace—even as politicians are wrangling and courts adjudicating—while back in the dense forests that line the river banks the swamp owls and loons and beasts of prey busily flee the unceasing clangor of bulldozer and piledriver.

The Senate knows all that. But it voted for the supplemental appropriation anyway, mostly, one suspects, because the nation has already invested so much money in this Nixon hoax that it can't afford to stop now. The Watergate scandal spread into some unexpectedly exotic corners of our national life. But for some inexplicable reason it never did spread to the Tenn-Tom.

[From the Wichita (Kan.) Eagle, July 29, 1980]

MONEY DOWN THE TENN-TOM

The Tennessee-Tombigbee Waterway project, perhaps more appropriately called the Old-Boy Network Memorial Ditch, is an insult to the American taxpayer. Its estimated cost has ballooned by more than a billion dollars in a year's time, to $3 billion, and as columnist James Kilpatrick says elsewhere on this page, even that figure may be "as phony as all the estimates that have gone before."

The Senate soon will have a chance to end this nonsense, and we hope Sen. Bob Dole, R-Kan., will add his voice to the growing outrage over the Tenn-Tom taxpayer ripoff, as his colleague, Sen. Nancy Kassebaum, R-Kan., did on an earlier vote. Interestingly enough, it generally has been the newer members of Congress who have opposed this certifiable boondoggle, and the older members who have rallied to the defense of the entrenched Southern congressmen who have promoted the scheme over the years.

The plain truth is that there is no defense for a project:

That is not needed, its few major potential customers either having gone out of business or expressed no interest in using the Tenn-Tom canal instead of the nearby Mississippi River.

Whose favorable cost-benefit ratio is calculated by using an archaic 3¼ percent interest rate, when independent analysis shows the project would lose 70 cents on every dollar spent.

When the affected states have not agreed to defray their share of the cost of highway bridges and recreation developments, expenditures that would be in the hundreds of millions of dollars.

That would eliminate 40.000 acres of prime hardwood timber and associated wildlife habitat, and 17,000 acres of productive farmland; and that would mix the ecosystems of the Tennessee and Tombigbee rivers, with unknown results.

The Tenn-Tom project originally was conceived to speed barge traffic between the Tennessee River system and the Gulf of Mexico, with the savings to shippers to come from the taxpayers' pockets. The waterway wasn't justified then—when the estimated cost was $323 million—and it hardly is justified now, at almost 10 times the original cost.

Though the project is about a quarter completed, "there is no point," as the National Taxpayers Union says, "in throwing good money after bad." Sens. Dole and Kassebaum can do something about that when the Senate votes on a $225 million proposed additional contribution to the Tenn-Tom money pot in the fiscal year 1981 water development appropriations bill.

[From the Los Angeles Times, July 27, 1980]

GOOD MONEY FOR A BAD PROJECT

When members of Congress return to Washington this week after their recess, they must decide whether to waste another $283 million on the Tennessee-Tombigbee Waterway.

The project, in construction since 1972, eventually will cost more than $3 billion, although its benefits can never justify such a massive outlay of public funds. Its scope is just as massive, the Army Corps of Engineers would have to move as much earth as it did to build the Panama Canal.

The waterway is being built for only one reason—three powerful southern politicians want it—and the Corps of Engineers, to its discredit, is going along with the boondoggle.

The plan is to connect the Tennessee and Tombigbee rivers with a canal, then deepen and widen them to allow coal barges to pass 450 miles from southern Tennessee through Alabama and Mississippi to the Gulf of Mexico at Mobile.

Never mind that railroads of the Southeast now transport the coal from Tennessee to the gulf. Never mind that a parallel waterway already exists—the Mississippi River. Never mind that the corps' cost justification requires maximum use of the waterway for half a century, although the volume of traffic that the engineers project would exhaust the coal in southern Tennessee in 15 years.

Congress continues to throw good money after bad—$800 million already has been spent—because of the political muscle of Sen. John C. Stennis (D-Miss.), Rep. Jamie L. Whitten (D-Miss.) and Rep. Tom Bevill (D-Ala.). Stennis heads the Senate Armed Services Committee and is a ranking member of Appropriations. Whitten chairs the House Appropriations Committee, and Bevill runs the Public Works Committee.

Their clout—and nothing else—has kept the project alive, and only because the construction dollars help the economy in poorer sections of Mississippi and Alabama.

But the bulldozers and dredges are destroying 100,000 acres of farms and forests, and are causing irreparable damage to wildlife and to the river environment—and all for nothing. The project can yield nothing but deficits, and could cost the competing railroads up to $70 million a year.

The waterway would have no flood control, irrigation or energy benefits, yet Congress continues to vote money for what has to be the most dubious pork-barrel project in the nation's history. The latest request is for a supplemental appropriation of $58 million for this year and a new appropriation of $225 million for 1981.

The $800 million already spent is not a total waste. Work on the Tombigbee has made it more navigable, and the government could recoup much of its investment by selling off its huge land acquisitions for the waterway at much higher prices than were paid.

Every additional dollar for the project makes it more certain that the taxpayers eventually will be stuck for the full $3 billion or more.

The good faith of Congress and the Carter Administration in declaring that they are determined to halt unnecessary expenditures is now at stake. It is time to cut the losses on Tennessee-Tombigbee, and that can be done only by refusing further appropriations.

[From the Washington Star, July 29, 1980]

WHY THIS $3 BILLION BOONDOGGLE?

(By James J. Kilpatrick)

A critical vote is approaching in the Senate in the matter of the Tennessee-Tombigbee waterway. If this $3 billion boondoggle ever could have been defended, it has become indefensible now. The Senate should kill it.

The Tenn-Tom. as it is known, first was authorized by Congress in July 1946. The idea was to dig a ditch 100 miles long, 170 feet wide and not less than 9 feet in depth, that would connect the Tombigbee River at Demopolis, Ala., with the Tennessee River at a point west of Florence near the Mississippi-Tennessee border.

Proponents never could justify the Tenn-Tom. in terms of flood control or hydroelectric power. Some recreational benefits were thrown in as a make-weight, but the project was defended almost entirely for the barge traffic that would be created. Vast quantities of coal and other bulk cargoes, it was said, could be moved down the Tenn-Tom to Mobile at significant savings to shippers and ultimately to consumers. In 1971, when Congress at last got around to appropriating funds to get the work under way, the cost was estimated at $323 million.

The cost now is estimated at $3 billion, and the end is not in sight. Under intense scrutiny from knowledgeable critics, the supposed barge traffic has tended to evaporate. It transpired that one large potential shipper of coal had gone out of business entirely; other prospective users have denied that they would shift their cargoes from the Mississippi. Where are the positive, demonstrable benefits? They cannot be found.

Other objections loom almost as large. Almost from its inception, the Tenn-Tom has been tainted by political and bureaucratic manipulation. The original authorization was for a canal 170 feet wide. Somehow, somewhere, sometime, the Corps of Engineers changed the specifications to read 300 feet instead.

The project would lose most of its value unless the Tombigbee were widened from Demopolis south of Mobile; without specific congressional authorization, somehow this costly addition got factored in. Time after time, the corps has withheld its honest estimates of cost from public consideration.

"I would recommend," wrote the supervising engineer in 1974, "that we hold the federal cost under $1 billion. Say $975 million. Considering the size of the estimate, $975 million is no less accurate than $1 billion, and it has less emotional impact."

At that time, the actual internal estimate within the Corps of Engineers was $1.159 billion.

Perhaps duplicity is too strong a word to apply, but internal memoranda that surfaced during a suit brought by the Louisville & Nashville Railroad, seeking to halt the Tenn-Tom. suggest a pattern of fiscal rejiggering to make benefits fit the spiralling costs. Partly because of this litigation, truly searching inquiries by congressional committee or by the General Accounting Office repeatedly have been stalled.

In the pale light of this murky record, proponents of the Tenn-Tom lately have been reduced to a single bad argument: So much money already has been spent in land acquisition and construction that it would be wasteful to stop now.

To be sure, there are times when it is best to throw good money after bad; the case of the Tellico Dam on the TVA system, which was 95 per cent complete when a court order suspended work, provides a melancholy example. But the Tenn-Tom is not even half complete, and the record strongly suggests that the latest $3 billion estimate is as phony as all the estimates that have gone before.

Congress use to be agreeable to going along with such influential Southerners on the Hill as John Stennis and Jamie Whitten of Mississippi. Now support is fading rapidly. On June 25 the Tenn-Tom survived a House test by a margin of 216 to 196. Three days later the Senate kept the project alive in fiscal '80 by a vote of only 47-36. Now a vote is coming up on a water development appropriations act for fiscal 1981. The act would invest another $225 million in the venture.

At a time when Treasury faces a deficit of $60.9 billion in the current fiscal year and another $29.8 billion next year, surely second thoughts should compel a suspension. In the name of fiscal sanity, enough is enough.

[From the New York Times, June 24, 1980]

RIVER OF NO FINANCIAL RETURN

Anyone credulous enough to believe that Congress seriously wants to hold down expenditures had better take a close look at the $3-billion Tennessee-Tombigbee Waterway. The estimated cost of this pork barrel rises higher every year while its alleged benefits fade. Yet Congress keeps appropriating more funds to push the waterway onto depressed areas of Mississippi and Alabama. It is a triumph of political muscle over common sense.

The waterway has been a boondoggle from the start. It would create a barge route from the Tennessee River to the Gulf of Mexico, paralleling another perfectly usable route—known as the Mississippi River. Calculations of benefits and costs have repeatedly been jiggered to justify the construction while unfavorable audits have been suppressed. Yet the project advances, apparently because the Army Corps of Engineers is eager to build and powerful Southern legislators are determined to see it built.

The only encouraging news is that this Federal beneficense is becoming so embarrassingly expensive that other members of Congress are having second thoughts. The waterway's northern section, the only part so far authorized, would cost almost $2 billion; the southern section, which would be needed to complete the route, would cost at least $1 billion more. Mississippi and Alabama have shown little enthusiasm for putting up their own money, as required by law, for related costs. In fact, they have contrived to get some other Federal funds for bridge construction counted as their contribution.

The House approved a supplemental appropriation for the waterway last week, by a surprisingly close vote of 230 to 185. Another key vote is due this week. The project's supporters contend that it is too far along to stop now. Indeed, about $800 million has been appropriated. But half that amount could probably be recovered by selling off the already acquired land. It seems wiser to cut the nation's losses now, at $400 million, than to waste $2 billion more.

[From the Washington Post, June 28, 1980]

THE $3,000,000,000 DITCH

"Everybody agrees that we are going to complete the [Tenn-Tom]," Rep. Jamie L. Whitten told his colleagues in the House the other day. A few minutes later, the votes revealed that everybody does not agree. The Tennessee-Tombigbee Waterway—the nation's most expensive ditch—is in trouble. Support for its completion is wobbling in the House and a full-scale assault is under way in the Senate.

The Tenn-Tom was a bad idea when it was first proposed a century ago. It has not improved with age. Designed to create a 449-mile waterway from Tennessee to the Gulf of Mexico about 150 miles east of the Mississippi River, this project has never made economic sense. That fact is slowly settling in on members of Congress who have finally become concerned about the way federal money is spent on the pet projects of powerful members.

Construction of the Tenn-Tom was authorized by Congress in 1946. During the 1950s and 1960s, the House Appropriations Committee refused to provide funds for it because the projected return on the government's investment was marginal, at best. On its fourth try, however, the Corps of Engineers came up with a cost/benefit study that the committee (and Congress) found sufficiently persuasive to appropriate the first construction money in 1971.

Since then, almost everything about the Tenn-Tom has been seriously questioned. The cost estimates have gone from $323 million in 1970 to $2 billion last year to $3 billion this year. The validity of the Corps' projection on how many barges the new waterway would attract (and, therefore, the validity of its cost/benefit analysis) is in hot dispute.

These complaints, and even a request for a GAO study, have been routinely turned aside. Federal spending on the Tenn-Tom has passed the three-quarter-billion mark, and the House just voted to give it another quarter billion—$58 million of that as supplemental funding to be spent in the next three months.

It was in the debate over that supplement appropriation that Rep. Whitten made his confident statement about the Tenn-Tom's future. Two relatively junior members of the House, Reps. Joel Pritchard and Robert Edgar, had challenged the appropriation on the House floor. They lost 210 to 185, that day and lost again, 216 to 196, last Wednesday when they challenged the 1981 appropriation.

But Mr. Whitten had to pull out all the stops to keep Tenn-Tom alive. There were veiled threats, and some not so veiled, about the fate of other water projects. For some reason, comments about Mount St. Helens and the money's being appropriated to help victims of its eruption kept cropping up in the debate: Rep. Pritchard is from Seattle. Yet, a majority of the members of the House elected since 1970 voted to defy Mr. Whitten's wishes and only the 2-to-1 support he got from the body's more senior members kept Tenn-Tom in the budget.

The effort to kill the Tenn-Tom and start reclaiming about half the federal investment in it by selling the land the Corps has acquired now shifts to the Senate. We wish it well. The idea of building an alternative to the Mississippi River makes even less sense now than it did in 1874.

[From the Raleigh News & Observer, July 14, 1980]

IN THE TENN-TOM DITCH

U.S. taxpayers have been given the privilege of anteing up another $225 million for the Tennessee-Tombigbee Waterway project, which The Atlanta Constitution calls "that most famous of American boondoggles." The Atlanta editors are turned off mainly by the adverse environmental impact of the 232-mile canal through Mississippi and Alabama. But the public can hardly rejoice, either, over the ultimate $2 billion cost and distorted cost-benefit ratio of the project.

Despite its recent frenetic efforts to balance the fiscal 1981 budget, Congress blanched when faced with lopping off some of the pet public works projects of its members. The House came close on Tenn-Tom, defeating an amendment for a $200 million 1981 reduction by a 20-vote margin—but it still gets no cigar. The vote continued the politically charmed life of this regional greased pig of a project.

But Congress wasn't alone in allowing this slab of Dixie porkbelly to slip through its fingers. President Carter put Tenn-Tom on his 1977 water project hit list and then backed off when the squealing from his fellow Southerners began. The White House didn't even attempt to take on the Mississippi-Alabama politicos in this election year. Besides, Tenn-Tom has become something of a North-South issue, and with hundreds of millions of dollars already invested in the barge canal, the taxpayers almost certainly will be kept in the ditch until the bitter end.

Years ago, not long after Richard Nixon gave the Tenn-Tom a green light to buttress his Southern strategy, the General Accounting Office got the canal in its sights for underestimated costs and overestimated benefits. Sen. John Stennis, D-Miss., stymied the GAO with a few deft turns of the thumbscrew. The Tenn-Tom lobby has enjoyed success ever since.

The moral, perhaps, is that the only way to make certain you don't have to live with a boondoggle is to pinch off its head at birth.

[From the Fort Myers (Fla.) News-Press, July 19, 1980]

HERE'S A PLAN FOR SPEWING $3 BILLION DOWN THE DRAIN

Federal fish and wildlife officers over-burdened taxpayers and more than five million conservationists have said no to the Tennessee-Tombigbee Waterway.

But the Carter Administration continues to say yes to what has appropriately been described as "the nation's biggest pork barrel project." (The ultimate project cost has skyrocketed from $1.8 billion to over $3 billion in a single year.)

Meanwhile, the U.S. Fish and Wildlife Service has raised grave questions about the project. Among other things, there's evidence that the U.S. Army Corps of Engineers has illegally restricted its environmental review to only half of the project area.

Wildlife officers predict horrendous environmental destruction; so much so, in fact, that the acquisition of up to one million acres may be necessary to mitigate the loss of fish and wildlife habitat caused by the barge canal.

Dozens of major environmental groups have formed a Coalition for Water Project Review (1412 16th St. N.W., Washington, D.C. 20036), to try to stop the devastation.

Taxpayers who advocate a balanced budget also are alarmed. And rightfully so. Any hope for a balanced budget can only be undone by continued efforts to pump even more money into the barge canal.

Since existing rail lines and waterways presently link Tennessee and Alabama, some experts say the project is designed solely for the benefit of a few barge companies—at the expense of nature and the nation's taxpayers.

National pressure is mounting to put an end to the devastation. Nevertheless, the Carter Administration is seeking even more money to speed up the Tennessee-Tombigbee project.

Happily, U.S. Rep. L.A. "Skip" Bafalis, R-Fort Myers Beach, is likely to oppose that effort. Bafalis has consistently voted against the boondoggle.

Unfortunately, Florida Senators Richard Stone and Lawton Chiles—both Democrats—have voted in favor of the project. They'll get a chance to change their minds in a final vote on or before July 27. We recommend that they do so.

[From the Gainesville Sun, July 21, 1980]

STROKING THE TURKEY

The U.S. Corps of Engineers, some wag observed, does what God would do if he had the money.

The Corps' big ongoing project is to clone the Mississippi River, placing it along the Alabama-Mississippi line and ending at Mobile. Any correlation between the routing and certain congressmen in key committee spots is totally deliberate.

The project is called the Tennessee-Tombigbee Waterway, or Tenn-Tom for short. It involves digging a 40-mile canal in northern Mississippi to link the Tennessee River to the Tombigbee River. Then the Tombigbee is to be dammed, dredged and widened for a whopping 400 miles, before it empties into the Gulf of Mexico.

The Tenn-Tom is a tax-paid abomination. But with waterways, as Washington Swamp observers well know, congressmen scratch each other's back—ultimately expecting to call in the chips at a later date. So these turkeys are popular with congressmen, because one politician's turkey is another politician's peacock—and ultimately vice versa.

Tenn-Tom has the support of Florida's two Senators, Lawton Chiles and Dick Stone. It also has the support of U.S. Rep. Don Fuqua of North Florida. Examine the facts and gauge their breathtaking error.

Tenn-Tom is one of those silly century-old dreams, like the late unlamented Cross Florida Barge Canal. It was just that, a dream, until President Richard Nixon decided he would like re-election in 1972 by acclamation. He induced Congress to put Tenn-Tom on the federal dole in 1971.

It took some conniving, because even the ever-ready Corps of Engineers could not make this turkey fly fiscally in less than four attempts. And get this. The cost was to be a whopping $300 million.

Whopping? Here it is, nine years later. Tenn-Tom already has claimed $926 million, and the total bill is to be a staggering $3 billion—of your tax money.

Why such a magnificent escalation? It starts with absolute deception by the Corps of Engineers, which unilaterally proceeded to double the width of the project without congressional approval. It got away with it because of the personalities involved, who are Southern congressmen sitting in catbird seats because of their seniority.

Among these include Mississippi's Rep. Jamie Whitten who chairs appropriations and Sen. John Stennis who chairs armed services and defense appropriations. Also Alabama's Rep. Tom Bevill, chairman of energy and water development, formerly deemed public works but relabeled because it stank of wet turkey feathers.

The Corps is sticking to its guns, making wild claims about barge traffic which will be generated. It figures Tenn-Tom will return $2.50 of economic benefit for each dollar spent. But don't hold your breath, because outside experts call that sheer fabrication, deeming 30 cents on the dollar more like it.

Tenn-Tom was in the federal budget this year for $165 million. The Corps was running out of money so Congress in the past few weeks provided $58 million more—with an assist from Florida's Chiles and Stone and Fuqua. That's $223 million for this year alone.

And the bird is down for $225 million more in 1981 budget, which will come before the Senate in early August. This is a magnificent opportunity to end it all—a savings of $2 billion, thereby kissing off $1 billion as tuition for the pickpocketing education provided by President Nixon and his congressional cohorts.

That means a turnabout for Florida Sens. Chiles and Stone and North Florida's Rep. Fuqua. But what are those fellows doing with their shovels in Tenn-Tom anyway?

Each and every one claims to be a fiscal conservative. Would Sen. Chiles, who makes such a big thing of unused desks warehoused in Washington Swamp by the General Service Administration, boast about wasting your money? No he would not. Would Sen. Stone, up for re-election against stiff opposition this year, throw tax dollars from the Washington Monument for kicks? No he would not. Would Rep. Fuqua, who claims to pinch pennies until Lincoln bites his ear, boast about lighting cigars with tax dollars? No he would not.

So why in heaven's name are they voting to throw away $3 billion—when the economy is painfully crimped, when governmental thrift is deemed essential to combat inflation—for stroking the ego of a handful of congressional roosters ostentatious enough to covet a frontyard ditch?

Messrs. Chiles and Stone and Fuqua can stroke this turkey until Hogtown Creek freezes solid, but it never will grow peacock feathers.

[From the Courier, July 17, 1980]

DUMP TENN-TOM

The Tennessee-Tombigbee Waterway was a bad idea when it was proposed more than 100 years ago. And the 449-mile barge and pork-barrel canal from the Volunteer State to the Gulf of Mexico remained a bad idea when Congress authorized its construction in 1946, and when it appropriated the first millions for it in 1971. Now it's risen to the level of being preposterous.

Since 1971, the cost-benefit aspects of the project have been vigorously disputed because of questionable data supplied by the U.S. Army Corps of Engineers. The corps, as many know, is known to have its own interests in such projects; indeed, so do some senior federal lawmakers and others from the proposed waterway area that stretches from Tennessee, through Mississippi and Alabama, to the Gulf.

But with costs now about 10 times the original estimate, and rising, the Tenn-Tom has become an insane boondoggle, an economic threat, an environmental nightmare. Its exorbitant cost alone threatens truly worthwhile projects.

In the context of what Congress has been saying about strengthening the economy, the Tenn-Tom also constitutes a threat to the legislative body's credibility if it is pursued any farther. In 1971 the waterway was estimated to cost $323 million; new estimates are more than $3 billion.

Already Congress has spent three-quarters of a billion dollars of taxpayers' money on the partially undertaken project—that's more than twice the original estimate for the whole project. The House recently voted to give it a supplemental $58 million to cover the next three months' work. That vote was hard won, we are glad to say, because support for the project has been melting away steadily.

It is, of course, reasonable to ask why the Tenn-Tom project is a bad idea. The answer is that it is and always was unnecessary, it closely parallels a superb engineering and construction effort completed eons ago and still in operation: The Mississippi River.

Congress can never hope to cut its spending, balance the federal budget and bring economic sanity back to this nation with wasteful efforts like the Tenn-Tom Waterway. Its members would do themselves and the American public a great boon if they scrapped this expensive boondoggle before it costs yet more deficit billions this country can't afford.

As the matter moves on to the Senate and an expected showdown vote, perhaps this month, we fervently hope that realistic minds prevail. Let's end the Tenn-Tom project once and for all, sell the land already acquired the business of running this country sensibly. to recoup the money spent, and get back to

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[From the Chattanooga News Free Press, June 29, 1980]

WHO NEEDS TOMBIGBEE?

(By J. B. Collins)

City and county officials are on record as favoring financing to complete the multibillion-dollar Tennessee Tombigbee Waterway project, which would cut off some 681 river miles between Chattanooga and the Gulf Coast.

The project, the officials say, will be a boon to this area's economy.

But at least one local businessman isn't all that enthusiastic about it. In fact, W. C. Hudlow, Jr., who has been in the river transportation business here some two decades, just isn't turned on by those three magic words: Tennessee Tombigbee Waterway.

"The simple facts," he said recently in a letter to a leading area planner, "are that the completion of the . . . project will have, at best, minimally advantageous effect on the Chattanooga area, and it is much more likely to have, over the long haul, some detrimental effect."

He said that most of the riverborne commodities originate on the Mississippi River above Memphis and on the Missouri, the Illinois and the Ohio rivers and on certain of their tributaries.

"It is absurd to think that any of this traffic would use the Tennessee Tombigbee to the Chattanooga area."

And it is "almost as absurd," Hudlow added, to think that any of the petrochemical industry or other traffic in salt, sulphur, etc., originating west of New Orleans on the Texas Ship Canal would use the Tenn-Tom.

This traffic, he said, would use the Mississippi River instead.

Maneuvering barges through locks is a major problem for river transportation, Hudlow said. "It simply takes a lot of time."

The proposed Tenn-Tom route between Mobile and Chattanooga would include some 17 locks, compared with only six on the alternate (Mississippi) route.

And the Tombigbee River is "a six-barge river," said Hudlow, while 40, 50 even 60 barge tows are not uncommon on the Mississippi.

Most of Chattanooga's river transportation business comes from ports above the Tombigbee not below it, according to the Chattanoogan.

In support of his contention that the completed Tenn-Tom could actually be a detriment to the Chattanooga area rather than a boon, Hudlow said:

"Consider the hundreds of miles of river bank available to industry in areas in Alabama and Mississippi that the Tenn-Tom will create. These will be closer than Chattanooga to river tonnage from the North, West and Southwest, with consequent rate and time advantages on all river traffic, including that moving on the Tenn-Tom.

"As a matter of fact, our terminal, as well as other existing terminals in Alabama, have already lost business to the new terminal at Yellow Creek at the mouth of the Tennessee Tombigbee Waterway on the basis of barge rate savings plus comparative motor freight rates to Alabama points."

Also in his letter Hudlow claimed that the proposed location for the riverport here is in the wrong place. In fact, be said the site (along the south bank near the Quaker Oats plant on Amnicola Highway) is "one of the worst."

Because of federal water and air quality standards "heavy and medium industry cannot be located there." And why, he wants to know, would you locate a riverport and industrial area where you can't have heavy and medium industry?

He said the Staley Manufacturing Co. local officials and community leaders are urging to locate a plant here wouldn't accept "that location" even if Southern Railroad (which owns it) gave it to Staley free.

Staley people claim they can't meet air quality standards in that "containment" area, even if it spent up to $15 million for air pollution control equipment, which it would be prepared to do.

Hudlow is opposed to spending public money to build a riverport here. He said it isn't needed and, further, he doesn't want to be placed in the position of being taxed to finance a facility that would be competing with his own business.

But if a public riverport and industrial park should be built here, it should be located on Mocassin Bend, where the city and county already own the property, or on Williams Island.

Williams Island could be developed into an area like Memphis' Presidents Island, he said.

"But," he urged, "don't waste the taxpayers' money on the site at Amnicola."

In a lighter vein, Hudlow has converted an old river boat into a tug he plans to use to push barges back and forth between Chattanooga and Knoxville.

He refurbished it, adding "a nice galley and a guest room."

And he has named the boat *The Joann H*, after his wife.

Now, how is she going to escape the inevitable nickname: Tugboat Joannie?

When Uncle Sam asks you to move he says "please," and he has a special way of saying it.

During the recent public hearing on a proposal to redevelop and rehabilitate a 400-plus-acre area in the Fort Wood section it was pointed out that families, individuals and businesses that would be required to move would be compensated beyond actual costs.

Not only would the owners be paid (and usually well) for their property, they could receive an extra $15,000 each toward buying another home. A renter would get up to $4,000 to relocate in another apartment. This is tax-free money.

And each family or individual moved would be paid up to $500 each for moving expenses. Businesses would get up to $10,000 each.

Those who stay and qualify may get a tax-free grant of up to $5,000 each to improve their property to meet standards, or may borrow up to $27,000 for 20 years at an interest rate as low as 3 percent to remodel.

It almost makes one wish he were living in that area so he would be required to move out.

Uncle Sam is quite generous some times. But he can afford to be. It isn't his money.

It's yours!

[From the Champaign-Urbana News Gazette, June 22, 1980]

Another Place To Cut the Budget

Imagine being the owner of a trucking company or a railroad. You'd like to develop a faster, cheaper route to transport one of your more lucrative commodities to a major market.

But you don't want to pay for it.

Tough luck, buster. But if you own a barge company. . . . Well, sit down, maybe we can help you out.

That scenario is going on right now but Congress will get another chance to end this outrageous freebie this week when the House votes on an amendment to cut off nearly all funding to the Tennessee-Tombigbee Waterway in Alabama and Mississippi.

This waterway project, which has the blessing of that budget-cutting crusader, Jimmy Carter, already has drained $800 million from the U.S. treasury. When it's all over, it will cost at least $3 billion.

But the House will vote on an amendment this week to cut off $200 million of the $225 million budgeted this year for the project. The amendment also urges the General Accounting Office to take a look at this pork barrel project. (The GAO was looking at the water project until Sen. John Stennis, D-Miss., let it be known that he didn't want any bad publicity for Tennessee-Tombigbee. The GAO "investigation" was terminated.)

An identical amendment failed in the House last week but the vote was so close that opponents have undertaken a renewed effort to beat the boondoggle.

Among those who still need to be convinced of the folly of the project are Congressmen Edward Madigan (who was absent in last week's vote), George O'Brien of Joilet and Paul Findley of Springfield.

The Tenn-Tom project, as it has been known since being authorized in 1946, is the largest Army Corps of Engineers project ever. It proposes to construct a 300-foot wide channel through about 250 miles of Mississippi and Alabama. It would give the barge company boys a faster route to the Gulf of Mexico.

It also would cut through 40,000 acres of timber, 17,000 acres of farmland and eliminate more rich river flora and fauna. The project has no flood control or hydroelectric benefits.

Almost as important, it would present another federally subsidized competitor to the railroads. It would threaten now-profitable lines like the Illinois Central Gulf route to the Gulf.

The project is opposed by dozens of conservation and environmental groups, the National Taxpayers Union, the League of Women Voters, Common Cause and several railroad union groups.

But the barge companies have proven to be tough cookies to crack. They won the battle over Lock and Dam 26 and helped kill a side issue that would have levied a 10-cent tax on each gallon of diesel oil they purchased—the only user fee the barge owners pay. The barge operators are paying a 4-cent-a-gallon levy—but only on fully completed rivers or channels.

If the Congress is looking for places to cut its so-called balanced budget, here's a place to save at least $200 million and maybe $2.2 billion.

[From the Memphis Commercial Appeal, July 3, 1980]

Tenn-Tom Critics Become Embarrassing

(By John Bennett)

Washington.—Mississippi and Alabama members of Congress find it tough this year standing up against a growing number of critics of the Tennessee-Tombigbee Waterway project.

The questions have been more difficult, more embarrassing, about a project whose costs have risen dramatically and whose benefits are viewed as doubtful by many responsible lawmakers.

This year Southerners with seniority and power have resorted to reminding their colleagues from other parts just how much they've done for water projects in their areas.

These reminders by Rep. Jamie Whitten (D-Miss.), chairman of the House Appropriations Committee, and Rep. Tom Bevill (D-Ala.), chairman of the subcommittee with control over Tenn-Tom, come across as slightly veiled threats of reprisal.

It marks the first time many members can recall Whitten and Bevill getting so worked up and out front—a chink in the armor of Southern power over pork barrel.

Rep. Bob Edgar (D-Pa.), leading House critic of the Tenn-Tom, calls it an exercise in the good-old-boy manhood ritual that says join the team, scratch my back and I'll scratch yours. He charges many Tenn-Tom votes were cast from fear of the pork-cutting power of the Democrat from Mississippi.

Critics raised a series of questions in debates—some of which were either dodged or glossed over by Southerners—that helped them get more votes against Tenn-Tom than ever before.

Their major charges against the project include:

Lack of validity of claimed navigation benefits and benefit-cost ratios; dramatic increases in project width and design without explicit authorization from Congress; the "suppression" of large cost increase estimates by the U.S. Engineers; failure of the states of Mississippi and Alabama to meet their share of project costs; the need for another $1 billion on the lower Tombigbee to make the waterway functional; the acceleration of the construction schedule; additional costs that could be in the hundreds of millions to comply with the Fish and Wildlife Coordination Act, and the true impact on transportation once the project is complete.

What about the unpublished U.S. Engineers audit report that Mississippi and Alabama may fall short by as much as $170 million in local contributions to the Tenn-Tom?

Why has Mississippi been allowed to spend only $8 million to meet its share of costs, and Alabama even less?

Since the authorizing act for Tenn-Tom requires local sponsoring agencies in Alabama and Mississippi to fully defray costs of highway bridges for the project, how could they not do so?

Why wouldn't Congress get upset when its members read testimony by Whitten himself explaining how the federal law was rewritten to allow those two states to use the federal bridge money as the state share, in effect matching federal dollar with federal dollar?

"When we got this change in the law, and it was written because of the Tennessee-Tombigbee project, then there was a matter of the appropriation," Whitten said in committee testimony this year. "This action shows the support and the knowledge of the Congress in not only passing the authorization but the appropriations that have been made through the years."

One critic described the "action" another way.

"Rather than paying for their legally-required share of the project, the states of Alabama and Mississippi have secured a federal 'bailout' of those responsibilities which rivals any given to American industry," charged Rep. Floyd Fithian (D-Ind.). "This abject failure of local efforts is especially noteworthy at a time when we are being asked to throw more federal money at the project. Until they get their own houses in order, it would be a grave error for this Congress to continue a high rate of funding for the project."

Why wouldn't Congress also have grave doubts about allegations that another Mississippian—Sen. John Stennis (D-Miss.)—suppressed a General Accounting Office (GAO) study on the cost-benefits of Tenn-Tom?

Who would really doubt those allegations when an auditor for GAO writes them on a report detailing how Stennis and his office staff succeeded in halting the GAO study in 1977?

Why wouldn't America's most expensive civil works project—one estimated to eventually cost $3 billion—deserve a full and objective cost-benefit review by a federal agency?

When Mississippians can insist on federal scrutiny of food stamp programs, school lunch programs, health programs and other social service programs, then why not the Tenn-Tom?

When Mississippians are in the lead for cutting the federal budget, why wouldn't they be interested in finding out if there's any waste, present or future in Tenn-Tom?

[From the Lexington Herald, July 17, 1980]

Trying to Clone the Mississippi Is a $3 Billion Pork-Barrel Waste

From the beginning, the Tennessee-Tombigbee Waterway didn't make a whole lot of sense. Just 150 miles to the west, the Mississippi River was fulfilling the purpose the Tenn-Tom was designed for—providing a waterterway from the Ohio and Tennessee river valleys to the Gulf of Mexico. And the Mississippi was doing it naturally, by just rollin' along.

That wasn't good enough for the U.S.Army Corps of Engineers, which doesn't like the way nature designed the United States. And it wasn't good enough for some powerful Southern members of Congress, who can think of no better way to justify their existence than by sending federal dollars back home through massive pork barrel projects.

So, we have Tenn-Tom, a $3-billion monument to political clout and government waste. Approved in 1946 and funded first in 1971, the project includes the damming, dredging and widening of the 400-mile Tombigbee River in Mississippi and Alabama and the construction of a 40-mile canal connecting that river with the Tennessee River.

The project has been under attack from its inception—and with just cause—by a diverse coalition including environmental groups, railroad unions, Common Cause, the League of Women Voters, the National Taxpayers Union and others. That it has survived this long and cost the taxpayers $800 million already demonstrates to the power of people like U.S. Sen. John Stennis, D-Miss., who just happens to have a financial interest in a company that will benefit from the project and who intimidated the General Accounting Office into withholding a report critical of the corps' cost-benefit analysis of the project.

Although there are environmental questions involved—including loss of farm land and the potential for increased flooding along the Tombigbee—it is the corps' cost-benefit analysis that has generated the most criticism.

The corps would have Congress and the public believe the project will produce $2.50 in benefits for every $1 spent on construction. Two independent analyses have concluded that benefits will be about 30 cents for every $1 of cost.

How can there be such a disparity? An unsuccessful suit to stop the project made public corps documents that showed the corps had withheld the full cost of the project from Congress to lessen the "emotional impact" of that cost. The corps' cost-benefit analysis, for instance, does not include $1 billion in work on the lower Tombigbee that would be necessary for the project to be viable.

The corps' analysis was also based on estimates of shipping from coal firms and other businesses, some of which no longer exist, never mined coal in the first place or had never been asked if they would use the canal and had no intention of doing so if they were asked. Coal industry spokesmen have called the corps' estimates a "pipe dream." Even the U.S. Army Audit Agency has criticized the corps' analysis as unrealistic "because costs were either not adjusted for price level increases or the adjustments made did not reflect actual market conditions."

A strong congressional opposition to Tenn-Tom has been mounting. The opponents of the project are getting closer to stopping it on each vote that is cast. Supporters of Tenn-Tom have changed their arguments from saying its benefits are worth the cost to saying too much has been spent on it already to stop it now. However, about half the money already spent could be recovered by selling the land condemned by the government for the project.

The next vote on Tenn-Tom will come in the Senate later this month when a $225 million appropriation for fiscal year 1981 is considered. Both of Kentucky's senators, Wendell Ford and Walter Huddleston, have supported Tenn-Tom in the past. We think it is time they stopped supporting a $3 billion boondoggle. We also think it is time Kentuckians concerned about rising taxes and wasteful government spending let the senators know it's better to cut our losses now than waste another $2.5 billion on Tenn-Tom.

[From the Chicago Tribune, July 22, 1980]

From Your Congress—Mississippi River No. 2!

(By Michael Kilian)

WASHINGTON.—Despite mounting budget deficits, your Congress is moving ahead with plans for completion of the $1.8 billion Tennessee-Tombigbee Canal, which would give the South a new long-distance waterway just a few miles east of the Mississippi River.

As this is an election year, your Congress would be interested in knowing if you agree that this vital project fills an urgent need. Also, your Congress would appreciate your suggestions on other worthwhile ways to spend your billions.

Please fill out the following questionnaire and send to: "Austerity," c/o Sauna Room 9, Newest Senate Office Building, Washington, D.C.

1. The Tennessee-Tombigbee project was first proposed in 1876. What do you think about the Congress' completing it now?

A. This seems unusually fast for Congress.

B. Who proposed it, Mark Twain?

C. Does this have something to do with the Bicentennial?

2. What other projects proposed more than a century ago would you like to see Congress spend billions on to complete?

A. Finding the Northwest Passage.

B. Providing federally-funded balloon service between Paducah, Ky., and Cape Girardeau, Mo.

C. Extending the Erie Canal to Erie, Pa.

D. Providing the nation with a network of passenger railroads.

3. Establishing yet another waterway next to the Mississippi River will be a tremendous boon to the American barge industry. Can you think of any other advantages?

A. The post office can institute barge-class mail service for letters going from Ohio to Pascagoula, Miss.

B. If they did institute barge-class mail service they could fill the barges with all the junk mail I get.

C. If they instituted barge-class mail service it would probably be faster than it is now.

4. One advantage cited during Senate debate was that the canal would permit Appalachian coal to be shipped from West Virginia all the way to Japan. Isn't that nice?

A. Shipped how, through the Tombigbee and around the Straits of Magellan?

B. Why not dig a canal from West Virginia to the Atlantic via Washington, D.C.? They could make it 30 miles wide.

C. Would this stop the Japanese from sending us all those cars?

5. How do you suppose the Tombigbee got its name?

A. It was named for this big.bee named Tom.

B. It's the Indian word for boondoggle.

C. It's the Indian word for brothels patronized by bargemen.

6. This is another project of the United States Army Corps of Engineers. Who do you suppose is in command of the Corps?

A. Sen. Howard Baker.

B. The outboard motor industry.

C. Why can't the army master anything besides digging holes in the ground?

7. The clash in the Senate over approving the project was between Southerners in support of it and Northerners against it. How do you explain this regional split?

A. The South is secretly trying to win the Civil War by bankrupting the federal government.

B. The Northerners were holding out for authorization for the Corps to dig another Great Lake.

8. How will you feel having two Mississippi Rivers in America?

A. Worse.

B. Proud because the godless Commies don't even have one.

C. Confused, especially if I was a barge captain.

9. Do you expect to make use of the Tennessee-Tombigbee Canal?

A. Yes, I am going to get in my outboard and flee the country before inflation goes over 50 percent.

B. Yes, I'm going to get a houseboat just like the one Elizabeth Ray said she visited congressmen on.

C. Yes, I'm going to send in my income tax returns via barge-class mail.

[From the St. Louis Post-Dispatch, Dec. 12, 1970]

A Wasteful Water Project

Members of the U.S. Senate, who have done a lot of talking this year about budget-balancing and cutting wasteful expenditures, will have a chance to show whether they really mean it when they vote late this month on an $11.7 billion appropriations bill for energy and water development for fiscal 1981. The bill contains a $225 million allocation for the $3 billion Tennessee-Tombigbee (Tenn-Tom) Waterway, which has been aptly characterized as one of the most wasteful projects ever to be promoted by pork barrel lawmakers. It also holds the potential for sweeping environmental damage.

The proposed Tenn-Tom Waterway involves damming, dredging and widening the Tombigbee River in Mississippi and Alabama and linking it, via a 40-mile canal and a series of 17 locks, with the Tennessee River in northwest Mississippi. The project—designed to provide a 450-mile water link from Tennessee to the Gulf of Mexico about 150 miles east of the Mississippi—was estimated in 1970 to cost $323 million; the estimated cost rose to $2 billion last year and to $3 billion this year. If completed, it would be the most expensive civil works project in the nation's history. And for what? To create at enormous cost a water transportation route that parallels one (the Mississippi) already in existence. Completion of the project moreover would, among other things, violate water quality standards, fill 51 valleys with 160 million cubic yards of excavation dirt, destroy extensive groundwater supplies and eliminate 67,000 acres of farm land, scenic forest and unique wildlife habitat.

Despite growing opposition in Congress, Tenn-Tom continues to command enough support from pork barrel vote traders among the lawmakers to retain its momentum. Last month the House voted, 230–135, for $58 million in supplemental funds for Tenn-Tom in fiscal 1980; and a little later it voted, 216–196, for the fiscal 1981 energy and water development bill that includes Tenn-Tom. On June 28 the Senate voted, 47–36, for the 1980 supplemental appropriations bill—with the four senators from Missouri and Illinois, to their credit, voting to strike the $58 million for Tenn-Tom. In its vote later this month on the full 1981 appropriations bill, the Senate will have another chance to express its view on the project.

Powerful Tenn-Tom supporters, like Sen. Stennis and Rep. Whitten of Mississippi, maintain that the project is too far along to be stopped now. But of the $300 million so far appropriated, perhaps $400 million could be recovered by selling off land that has been acquired. It would be far better to lose $400 million than to squander $2.2 billion more—and perhaps far in excess of that—on a boondoggle that has been sold on the basis of phony cost/benefit analyses by the Army Corps of Engineers. One study, for example, projects use of the waterway by shippers who say they have no intention to do so.

President Carter, who has crusaded as a budget-cutter and an opponent of water projects of undemonstrated value, has so far given Tenn-Tom his blessing. If the president were to apply to this dubious project the same disqualifying criteria he has applied to other water projects, he would be working to defeat it and at the same time helping to bring the budget into balance or at least to save funds for more worthwhile causes.

[From the Philadelphia Inquirer, July 19, 1980]

A Crucial Battle Continues Against the Pork Barrel

At a time when members of both chambers of the Congress have made loud noises about fiscal responsibility, they have rejected efforts to cut appropriations for one of the most wasteful federal public works projects in history: the Tennessee-Tombigbee Waterway, now estimated to cost $3 billion, up $1 billion from 1979 estimates.

On two occasions in the House and once in the Senate, amendments to appropriations bills that would have sharply reduced funds for the 440-mile waterway were voted down. Opponents of the project were somewhat encouraged by the closeness of the vote and have vowed to continue their fight when Congress returns for final voting on the fiscal 1981 budget next September.

Every taxpayer in the United States has the right, and the responsibility, to challenge votes by their elected officials in Washington to continue financing this immense pork-barrel project. By and large, the Congressmen from the Pennsylvania, New Jersey, Delaware area properly voted to cut back funds. There were exceptions, however, and the pork-barrel waste supporters should hear from irate constituents. The residents of the northeastern United States have special reason to criticize these appropriations, for many of the programs eliminated by the congressional budgetcutters were those of tremendous importance to this region, involving jobs, social programs and economic benefits.

The Tennessee-Tombigbee Waterway, which would link the Tennessee River with the Gulf of Mexico, has been the pet project of several powerful congressmen, who have used their positions of authority to threaten and intimidate those who oppose funding the barge canal. Coupled with the tradition on Capitol Hill that nobody challenges a public works project in another congressman's district, the waterway has had a gilded life. That all may be changing, due to the spirited efforts of U.S. Rep. Robert Edgar (D-Pa.), who has forged an active and dedicated coalition of colleagues in the House as well as in the Senate.

The federal government has already spent more than $800 million for the project. The 1980 budget contained an appropriation of $240 million. The Army Corps of Engineers, concerned about growing criticism in Congress, speeded up work on the project this year hoping it could add new weight to its recurrent argument that too much work and money had been expended to abandon the project. That overtime exhausted the 1980 appropriation and the Corps of Engineers returned to Congress for a supplemental appropriation of $53 million, which was approved in the House on June 18 by a vote of 230–185, and in the Senate on June 28 by a vote of 47-36.

Reps. Edgar and Joel Pritchard (R-Wash.) then sought to slash by 90 percent the $192 million budgeted for the waterway in fiscal 1981. That amendment was defeated on June 25 by a narrow vote of 216–196.

Although the measures lost, the growing discontent in Congress with the project is apparent, especially among junior members, who have solidly voted to reduce the appropriations. In addition, Sen. Daniel P. Moynihan (D-N.Y.), the new chairman of the subcommittee on water resources of the Environment and Public Works Committee, has announced he will hold hearings on the project this summer to explore, among other things, serious discrepancies in cost-benefit statistics used by the Corps of Engineers to justify the project and those prepared by private consultants.

Although the hearings should demonstrate to those unenlightened members of Congress that the waterway is a boondoggle of stupendous magnitude and even greater wastefulness, the public also must make its sentiments known.

These Congressmen voted in favor of continued funding for the project. The vote in the House involved the 1980 supplemental appropriation as well as the 1981 budget appropriation; in the Senate, the vote was on supplemental funds. The vote on the 1981 budget has not yet been taken.

PENNSYLVANIA

Sen. Richard S. Schweiker (R).
Rep. Michael O. Myers (D).
Rep. Charles F. Dougherty (R).
Rep. Richard T. Schultz (R).

NEW JERSEY

Rep. James J. Howard (D).

Reps. Frank Thompson Jr. (D., N.J.,) and Raymond F. Lederer (D., Pa.) voted for the supplemental appropriation but against the 1981 budget appropriation.

Those Congressmen voting against the appropriations for the waterway were: Pennsylvania: Sen. H. John Heinz 3d (R), Rep. William H. Gray 3d (D), Rep. Robert W. Edgar (D), Rep. Peter H. Kostmayer (D), Rep. Lawrence Coughlin (R), and Rep. Gus Yatron (D), New Jersey: Sen. Harrison A. Williams Jr. (D), Rep. James J. Florio (D), Rep. William J. Hughes (D), Rep. Millicent Fenwick (R) and Rep. Edwin B. Forsythe (R), Delaware: Sen. William V. Roth Jr. (R), Sen. Joe Biden (D), Rep. Thomas B. Evans Jr. (R).

Sen. Bill Bradley (D., N.J.) was absent when the Senate vote was taken.

[From the St. Petersburg Times, July 1, 1980]

Waste Wins Again

Florida's congressmen soon will be trooping home to boast how they have fought waste and corruption.

Give them a Bronx cheer.

With three lonely exceptions, the Floridians put their consciences and good sense in mothballs last week and voted to continue building the Tennessee-Tombigbee Waterway.

That waterway will cost at least $3 billion, and never were so many taxed so much for the sake of so few. Nobody will benefit but the builders, the bureaucrats and the barge lobby. The project is an environmental desecration predicated on economic falsehoods.

The Army Corps of Engineers deliberately deceived Congress as to the probable cost and proceeded to build the canal at nearly twice the width that Congress had authorized. To show a favorable cost-benefit ratio, the Corps put in barge traffic that will not exist and left out the $1 billion that it will cost to dredge the Tombigbee River to accommodate big barges.

The waterway survives only because of the particular influence of its sponsors in Congress. Its most powerful patrons are Mississippi Democrats Jamie Whitten, chairman of the House appropriations committee, and John Stennis, chairman of both the Senate armed services committee and the defense appropriations subcommittee.

That's why the public lost when the House and Senate, after years of avoiding the issue, were finally forced to vote on stopping the project. Party loyalty and pork-barrel politics won out.

Last week the House took up a $225 million appropriation for fiscal 1981 and defeated, 216 to 196, a motion to kill the canal by deleting nearly all the money. The Senate then voted 47 to 36 to invest another $58 million for the current fiscal year.

Of Florida's 15 House members and two senators, only the three Republicans in the House—C. W. Bill Young, Richard Kelly and L. A. "Skip" Bafalis—voted against the waterway.

Mark the others: Senators Lawton Chiles and Richard Stone, and Representatives Charles Bennett, William Chappell, Dante Fascell, Don Fuqua, Sam Gibbons, Earl Hutto, Andy Ireland, William Lehman, Dan Mica, Bill Nelson, Claude Pepper and Edward Stack. All voted to continue throwing the public's money away.

Had Florida's 12 Democratic House members voted the other way, the waterway would be dead.

It is hyprocrisy for Chiles to battle fraud and waste in the General Services Administration (GSA) only to reward it in the Corps of Engineers. What is the difference? Is it that the Corps has friends in Congress and the GSA does not?

The waterway would link the Tennessee River with the Gulf of Mexico, bypassing the Mississippi. A 232-mile-long canal would connect the Tennessee and Tombigbee Rivers. The Tombigbee would be "improved" for 217 miles south of Demopolis, Ala.

Stone is campaigning for reelection as a born-again fiscal conservative. Will the real Richard Stone please stand up?

And what of Fascell, Gibbons, Ireland, Lehman, Mica, Nelson and Stack? They were supposed to be the bright, tough, public-spirited members of Florida's House delegation. If they can't vote against waste as flagrant as the Tennessee-Tombigbee, when will they earn their keep?

If there is any bright side to all this, it is that the fight is not over and the boondoggle is losing support. Two weeks ago, the margin in the House was almost twice as great on a motion to delete the $58-million supplemental appropriation for the current fiscal year.

That fight is over. Both houses have approved it. By year's end the public will have lost a total of $926-million on the waterway. But the issue of continuing beyond 1980 remains open in the Senate; a vote is expected this month.

Stopping the project would save the taxpayers more than $2-billion. Much of the $926-million that has already been spent could be recovered by selling land that was acquired for right-of-way.

The nation can't afford to drop another $2-billion on the whims of Whitten and Stennis. For Florida's delegation, the choice should be clear.

Mr. CHAFEE. Mr. President, we have just heard from the distinguished majority whip that we have spent so much, so let us keep going. That is a standard argument that we always hear around here for every expenditure project. We are going to hear it a good deal tomorrow in connection with a matter which we shall be debating. I alert Members to the fact that that is a rosy path down which we have been led many, many times, with the result that there have been all kinds of wasteful expenditures on public projects by this Nation.

I thank the Senator from Missouri for yielding me the time.

THE HARRY S TRUMAN DAM AND RESERVOIR

Mr. DANFORTH. Mr. President, I have considered and still may offer an amendment relating to the hydropower facilities at the Harry S Truman Dam and Reservoir in west-central Missouri. It is my present intention not to offer that amendment, but I should like to proceed to the subject and perhaps engage the manager of the bill in a short colloquy on this question.

Mr. President, the bill includes $800,000 for the Harry S Truman Dam and Reservoir to begin work to mitigate the impacts of water stage fluctuations due to hydropower operations. The Truman Dam, near Warsaw, Mo., is an example of overreach of authority by the U.S. Army Corps of Engineers. The dam was originally authorized in 1954 as a flood control project with no power. In 1962, plans for the dam were changed to provide a multipurpose project that would include power production in a larger lake than that originally envisioned. The 1962 plans called for a powerplant of a 100-megawatt capacity that required no pumpback facility. In fact, the Corps of Engineers noted the potential problems that pumping would create; although corps officials said that pumping would be studied for possible inclusion at a later date, it was only a footnote to the 1962 authorizing document.

In the midsixties, however, the corps went on to make important design changes in the dam, increased its capacity to 160 megwatts, and added a pumping operation. These changes—which according to the GAO, the corps made without fully informing the appropriate congressional committees—greatly increased the amount of water released by the dam into the Lake of the Ozarks, and herein lies a very serious problem of the Truman Dam.

According to Missouri State agencies, between 20 and 30 miles of the Lake of the Ozarks shoreline will be subjected to extensive erosion, loss of vegetation and interference with recreation due to the vast fluctuations in water levels created by the pumping system. The corps completely ignored the potential for damage until the late 1970's. Now, corps officials insist they have addressed the damage problem adequately by mitigating damages caused by flooding in a 1.6 to 2.6 mile area immediately downstream from the dam. But the Missouri Departments of Natural Resources and Conservation and the Missouri attorney general disagree. Experts from the State's leading agencies for environment, energy, and recreation foresee great harm occurring in the future, and they share the fear that the corps will not accept responsibility for it.

Mr. President, in an effort to get to the bottom of this disagreement, I held hearings in July. The Missouri State officials who testified in those hearings cited specific examples of the extensive damage which they expect to occur. High water velocities resulting from the operation of the powerplant are expected to ruin fish habitats, erode shoreline, damage riparian woods, and eliminate boat recreation. Above the dam, dense weedy areas along the shoreline of the shallow pool are expected to inhibit recreation and create mosquito infestation. In short, these experts believe that the overall environmental impact of the Truman Dam operating at full hydroelectric capacity will be a catastrophe for the Lake of the Ozarks, and will create unsightly and unhealthy shorelines above the dam.

At those same hearings, we heard testimony from the Corps of Engineers. As could be expected, corps officials did not share the assessment of the State officials.

The corps does not agree that the level of damages is that described by the Missouri agencies responsible for the State's environment and recreation. As I noted in the hearing, maybe the corps is right. If it is, that would be wonderful—the Truman Dam may in fact create a fisherman's paradise, and become a hydroelectric miracle. But if the corps is not right—if the projections of the Missouri State agencies are correct, then the question is this: Will the Corps of Engineers act as an insurer of the project it constructed? Will the corps set things right?

Mr. President, in answer to that question, General Heiberg of the corps responded:

> If it is a direct result of our pro'ect, we do try to do our best to make it right. We have a responsibility for the effects of our project.

My question now, Mr. President, is what is the committee's position on this issue?

Mr. President, the problem that I want to call to the attention of the Senate today is, suppose the State officials are correct, suppose that the Truman Dam proves to be an environmental disaster, suppose that extensive erosion occurs because of greatly varying changes in the water level, suppose the rush of water from the dam when it is fully operating is of such high velocity to make boating dangerous, create fishkills, and the like, suppose mud flats are created above the dam?

Then, is it the position of the managers of this bill that Congress is not just going to turn its back and walk away, that we are not going to simply appropriate funds for the creation of what amounts to an experimental hydroelectric plant, conduct minimal mitigation within 1.6 to 2.6 miles below the dam, without paying any attention to the greater problems that exist for 25 or 30 miles below the dam, and also above the dam, will we turn away from the problem or, instead, do we recognize that we have a continuing obligation in the Congress not to create a Frankenstein's monster?

Mr. JOHNSTON. Mr. President, the corps is now prepared to undertake remedial or mitigation work for downstream discharges.

We believe, Mr. President, that the corps has sufficient authority and funding for taking care of all expected difficulties that may arise by virtue of the operation of the Harry S Truman Dam.

However, to the extent that additional funding is required, or additional authority would be required, in the event of unexpected adverse downstream effects, I, for one, and I think I could speak for the committee, would consider that to be an obligation undertaken by virtue of the Harry S Truman Dam.

I think if we look at our record, that we have in other instances, in effect, completed the project.

We do not believe that will happen. We certainly are hopeful it will not happen, Mr. President. But to the extent that the corps lack money or authority, which we believe they have sufficient of both to take care of the adverse effects from these discharges, then we on the committee, I am certain, will support it.

Mr. DANFORTH. Mr. President, I very much thank the Senator from Louisiana for his assurance.

I agree with him. I hope this does not occur. The Corps of Engineers does not think that the problems will occur to the extent that the State officials do.

I am not interested, as I said at the time of the hearing, in trying to unscramble an egg, and once a project is in place, we cannot very well, responsibly, simply tear it down.

But I do believe that if things go sour, and there are those who have a degree of expertise in State government who believe it will go sour, I very much appreciate the assurance of the Senator from Louisiana that we will not turn our backs on the people who are affected.

Mr. EAGLETON. Mr. President, I have long been a strong supporter of the Harry S Truman Dam and while I respect Senator DANFORTH's concerns over the environmental effects of hydropower generation, I must nevertheless oppose the amendment he contemplated offering. I shall speak in terms as if Senator DANFORTH's amendment were before us.

I have two major reasons for my opposition. The first of these concerns, the pressing need for alternative energy resources in our Nation—energy which can be generated at home without reliance on costly fossils fuels from abroad or from domestic supplies.

In light of this, the 160,000 kilowatts to be generated at Truman is a vital contribution to our goal of energy independence. Senator DANFORTH's proposal to limit hydropower generation to 100,000 kilowatts not only ignores the energy needs of the region, but is also fiscally irresponsible.

The need for full power generation at Truman Dam has been documented by the Southwest Power Administration, the Federal agency responsible for marketing power from 23 corps lakes in Arkansas, Missouri, Oklahoma, and Texas. The total capacity of the entire system is 2,140,800 kilowatts. And the agency has requests pending for an additional 2.5 million kilowatts.

Let us be mindful that there are just two projects now underway to meet this huge demand—Harry S Truman and Cannon Dam, both in Missouri, which will add a total of 218,000 kilowatts to meet these major energy needs.

My second objection to Senator DANFORTH's amendment involves the cost of energy produced at Truman Dam, which will double if power generation is reduced. If the dam output is cut back, power costs will increase from 10 cents per kilowatt-hour to 20 cents per kilowatt-hour. This will come at a time when consumers are already hard pressed by inflation and skyrocketing energy costs.

Moreover, reducing the output of Truman Dam, as Senator DANFORTH has proposed, would be like shooting ourselves in the foot. Cutting back Truman Dam is not going to make the demand for those 2.5 million kilowatts requested from the Southwest Power Administration disappear.

In fact, the loss will have to be made up at a time when we are being held hostage by foreign oil producers—at a time when we are fighting to make ourselves energy self-sufficient.

I have shared Senator DANFORTH's concern over the downstream effects of power generation and I have been especially critical of the corps' procrastination over developing a plan to protect the city of Warsaw, Mo., from flooding.

Always supportive of the project for the benefits of the region as a whole, city officials patiently worked with the Army Corps of Engineers to come up with a plan that would protect the city from flooding when power was reduced at Truman. Thirteen frustrating years of diligent effort were finally rewarded this summer when the corps agreed it could undertake the protection plan with current project authority. I am pleased that the committee has recognized the need for this mitigation work by including in this appropriation bill $800,000 to initiate construction of the plan for the city of Warsaw.

Despite the shortcomings and mistakes that have plagued Truman Dam from the beginning, I think we have been able to solve the most serious ones. The original purposes for which Truman Dam was conceived are still sound and valid. In the case of hydropower benefits, which are even more necessary to our national security than ever before, I can find no justification for reducing the power output at Truman when we need every kilowatt we can develop from sources which provide alternatives to our dependency on foreign oil or other costly fuels.

Mr. JOHNSTON. Mr. President, I do not believe there are further amendments.

I would make one comment before we shut the Senate down for the night. That is, to call the attention of Senators to the Senate printed hearing and the Senate documents placed on all Senators' desks entitled "Tennessee-Tombigbee Waterway Allegations, Responses and Discussions."

Mr. President, these documents fully, completely, fairly, dispassionately, definitively, dispose of all the allegations made against the Tennessee-Tombigbee Waterway.

I say, Mr. President, that I have never seen an issue so misunderstood and misrepresented. I have been leafing through some of these editorials that have been brought to our attention. We find such egregious statements, errors of fact. For example, the Washington Post editorial on the $3 billion ditch.

Mr. President, it is not a $3 billion project. It is a $1,760,000,000 project. It has never been a $3 billion project. I would hope the opponents will correct these assertions.

For it to be a $3 billion project, the Congress of the United States would have to undertake a brand new, different authorization bill.

That is not authorized, it is not necessary for the Tenn-Tom project, and it is not contemplated for authorization. It is not essential to carry out the Tenn-Tom project which is authorized.

I simply mention that as one fact which is totally destroyed by the hearing and the facts as shown by these documents which we have prepared.

I wish we had all Senators on the floor to at least hear that comment. They will, at least, have the benefit of the RECORD tomorrow. I would commend these documents to my colleagues and to members of the press. My hope is that they will be educated and will be sorry for all the wrong things they have said about the Tennessee-Tombigbee Waterway.

● Mr. TALMADGE. Mr. President, I want to express my support for H.R. 7590, the Energy and Water Development Act, and, in particular, the provisions which include funding for the Dalton Lake project in northwest Georgia.

Although the Corps of Engineers, in 1974, gave this project a highly favorable rating and described the benefits as being numerous, to date, no funds have been appropriated to initiate the corps' general design memorandum.

This funding is badly needed because of the increase in industrial and recreational development in the northwest Georgia area, particularly in the carpet and related industries, which require heavy volumes of water. I am very pleased that the Senate Appropriations Committee followed the recommendations which Senator NUNN and I made to include $200,000 in funding in fiscal year 1981 to conduct a reconnaissance report to update the findings of the original authorization. This appropriation is very important to the continued growth of Whitfield County, Ga., and surrounding counties. The maintenance of adequate water resources is vital to future industrial and recreational development of this area of my State.

I am most appreciative of the efforts of the Walton-Whitfield County Chamber of Commerce and the elected State and local officials in this area for their continuing cooperation in working on this important project.●

CORRECTION TO UNPRINTED AMENDMENT 1549—S. 1188

Mr. CRANSTON. Mr. President, last week during Senate consideration of S. 1188, the disabled veterans rehabilitation bill, a provision was inadvertently omitted from an amendment which I offered with Senator SIMPSON although, during my floor statement on the amendment, I described the amendment as if the missing provision were included in it.

Mr. President, the original amendment was adopted without any opposition. This correction has been cleared on all sides, and I thus ask unanimous consent that, in the engrossment of S. 1188, the proposed Disabled Veterans Rehabilitation Act of 1980, the provision, which I send to the desk, on behalf of myself and Mr. SIMPSON, be considered adopted as part of my unprinted amendment No. 1549 to that legislation which was adopted during Senate consideration on September 4.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Reserving the right to object, Mr. President, I shall not object. I reserve only for the purpose of advising the assistant majority leader that the change in the engrossment requested in the request for unanimous consent has been cleared with the principal author on this side (Mr. SIMPSON), and there is no objection.

Mr. CRANSTON. I thank the distinguished minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The provision follows:

At the end of Unprinted Amendment No. 1549 add the following:

"(C) The Administrator may, in carrying out the study provided for by paragraph (A) or the review and analysis of the literature provided for by paragraph (B), or both, enter into such contracts or agreements with private or public agencies or persons for such necessary services, including design of the protocol for or the conduct, in whole or part, of such study, or both, or such review and analysis of the literature, or both, as the Administrator may deem practicable and necessary.".

SENATOR MARGARET CHASE SMITH

Mr. MITCHELL. Mr. President, Newsweek magazine this week published an article on a former colleague and a great lady known and loved throughout the State of Maine and the Nation, Senator Margaret Chase Smith.

Senator Smith's 32-year-long congressional career spanned a particularly important and formative period in our Nation's history. Senator Smith was the first—and remains the only—woman elected in her own right to the House of Representatives and to the Senate, and her career amply illustrates the qualities that made this achievement possible. Her Senate votes on some of the most controversial issues of the time—the ABM, the SST—reflected her astute grasp of public policy and her principled stand on the issues. Senator Smith was, indeed, "the conscience of the Senate."

Today, her students reap the benefits of her knowledge, her experience, and her sound commonsense, as she pursues an active and vigorous career in the educational field.

The principles, the intelligence, and the integrity that Margaret Chase Smith brought to her Senate work remain very appropriate guidelines for this Senate, as well. It is for this reason that I ask unanimous consent that the Newsweek article be printed in the RECORD at this point.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

THE FEISTY LADY FROM MAINE

She was the first Republican woman senator and the first woman to serve both in the Senate and the House. But in 1972, after 32 years in office, Maine's Margaret Chase Smith lost her bid for re-election. Although she was disappointed at the time, says Smith, now 82, she has since adjusted so well to private life that her defeat seems like "a blessing in disguise."

Smith, who divides her time between Silver Spring, Md., and Skowhegan, Maine, still sounds off on the issues—sometimes angering the liberals and sometimes the conservatives. She co-sponsored the Equal Rights Amendment in 1927, yet disapproves of the special treatment it got when Congress extended the time limit for ratification until 1982. She is a strong advocate of drafting women into the military, but believes such draftees should have the right to choose—or refuse—combat duty. She also thinks something must be done to eliminate waste in the welfare system. "There are people in Skowhegan buying lobsters with food stamps," complains the ex-senator. "The American creed is becoming, 'If my neighbor does it, why shouldn't I?' "

Simple and Useful: A tireless worker who once set a record of 2,941 consecutive Senate roll-call votes, Smith still puts in full days. She is a board member of the Medical College of Pennsylvania, has been a visiting lecturer at several schools (including Notre Dame and the University of Oklahoma) and even now spends hours letting students pick her brain. In fact, she laughs, "I'll just about write their papers for them if they ask me enough questions."

One of her fondest projects is the Margaret Chase Smith Memorial Library, located in six rooms of her Skowhegan home. Smith has already deeded the house and 12 acres to the Northwood Institute, the Michigan-based liberal-arts center that operates the library. She has long respected the institute, and it has agreed to let her live in the remaining two rooms rent-free for life. When finished, the library will contain film clips, copies of her speeches and Smith's private papers on such matters as her unsuccessful run for President in 1964. The library, says Smith, should be "simple and useful—like my life."

LABOR DAY 1980—CONTRASTS WITH WORKER UNREST IN POLAND

Mr. RANDOLPH. Mr. President, on Labor Day, throughout this country, there were many celebrations. There were events that called attention to the development of not only the understanding, which I always hope for, between management and labor, and labor and management, as a foundation stone to the well-being of this country—among people everywhere, throughout all of our States. It was my privilege to be in the House of Representatives and to participate in the work that was done in 1935 in the preparation and passage of the National Labor Relations Act.

My reason for mentioning that law at this time is to refer to the fact that, as I talked to perhaps 3,000 or 4,000 West Virginia coal miners on Labor Day afternoon at Grandview Park, in Raleigh County, near Beckley, I could not help but think of those miners and other laborers throughout the United States of America who have trade unions, who were given not only the right by the National Labor Relations Act but the responsibility of furthering collective bargaining, negotiations back and forth between management and labor and labor and management.

The Labor Day celebration near Beckley was the largest in the State of West Virginia, and was sponsored by District 29 of the United Mine Workers of America. Gov. Jay Rockefeller and a number of other public officials appeared during the daylong event. The formal program included an invocation by Rev. Wesley Grose, pastor of the Beckley Conference Freewill Baptist Church at Mount Tabor, and remarks by Beckley Mayor John Howard McCulloch. Dennis Saunders, president of District 29, UMWA, gave the welcoming address, and UMWA International President Sam Church delivered a major speech in which he urged both labor and management to employ both reason and understanding in approaching negotiations for a new contract agreement. The present contract expires next March.

I was thinking of faraway Poland, where the coal miners of that country are attempting to secure at least partially from not an elective government in the sense we have in this country, but a satellite of the Soviet Union, those coal miners in Poland are working together in what I believe to be a worthwhile cause to have what had been established by the action of the Senate and the House of Representatives in 1935.

It was a Magna Carta for labor when it was signed into law by President Franklin Roosevelt.

I refer to Poland only to indicate that I trust that those within that country and other countries of the world can come to that period of understanding and development that gives the workers not only the opportunity but the responsibility, not for violence, that is not involved, not for the mere act of striking, that often is important, but for legislation grounded in the legislative history of this country which challenged management and labor to proceed as partners in the economic strengths of this country and the productivity of the workers of our Nation.

Again, I refer to Poland and the coal miners of that country who are now struggling for the same privileges and responsibilities given in this country in 1935 and exercised in the Nation, as we know, as a part of our process of production in 1980.

URANIUM SHIPMENTS TO INDIA

Mr. GLENN. Mr. President, tomorrow, September 10, 1980, the Senate Foreign Relations Committee will mark up a resolution disapproving President Carter's decision to permit the export of 38 tons of enriched uranium for the Tarapur reactors in India. Under the terms of the Nuclear Non-Proliferation Act of 1978 (NNPA) the full Senate would then consider the resolution pursuant to expedited procedures prior to September 27.

I have previously expressed at length my view that permitting these exports to go forward would result in a devastating blow to our worldwide efforts to curb the spread of nuclear weapons. See CONGRESSIONAL RECORD of July 25, 1980. The essential point that I made at that time is that under the terms of the NNPA nuclear exports are forbidden to nations which after March 10, 1980, have not accepted inspections—"safeguards"—of the International Atomic Energy Agency on all their nuclear facilities. These comprehensive safeguards, which have been accepted by over 116 nations, help to ensure against the development of nuclear weapons. India, however, has adamantly refused to accept them and possesses a number of critical installations, including those used to produce material for her 1974 nuclear detonation, not subject to these international inspections. This gives India an ongoing option to produce nuclear weapons, a matter of grave concern in light of Mrs. Gandhi's recent refusal to rule out further nuclear explosive tests "in the national interest."

The pending exports are the first after the NNPA deadline to a nation which has refused comprehensive safeguards. As such, these exports represent a crucial first test of our commitment to this vital nonproliferation regime, a test which will have worldwide repercussions. For this reason I have repeatedly urged that the Senate reject these exports. As a CRS analysis shows, such rejection would be legally permissible under the fuel supply arrangements agreed to by the United States and India.

Since the time of my last remarks, Dr. Joseph Nye, formerly Deputy Under Secretary of State for Security Assistance, Science, and Technology, and now a professor at Harvard University, and certain Members of the House and Senate have suggested possible "compromise" arrangements for dealing with the Tarapur exports. In fact, however, these compromises would severely undercut our broader nonproliferation efforts and would have an impact virtually indistinguishable from that of approving both of the pending fuel exports.

Under Dr. Nye's approach, Congress would not disapprove either of these shipments, which as a legal matter would give the President the right to authorize the exports at any time. Congress would, however, urge the President by resolution to hold the second license for approximately 1 year (or until such time as it was specifically needed by the Indians) and then to issue the license only if India had not moved any further toward the development of nuclear weapons than she is today. In other words, India would get one license now, even though she is not in compliance with the requirement of U.S. law that she accept international inspections on all her nuclear facilities, and she would get the second license a year or so from now even though she took no steps whatsoever toward fulfilling this requirement. Moreover, Congress would have no control over the President's subsequent authorization of the second export, since there would be no right of congressional disapproval.

What makes the proposal particularly invidious is that it drastically redefines the type of control necessary to obtain U.S. nuclear cooperation. Under the Nye proposal, a country could, first, actually test a nuclear device (as India did in 1974) and, second, fully preserve the option to develop nuclear weapons in the future by keeping some facilities outside the international inspection regime and still be eligible for U.S. exports, as long as we could not ascertain that the country had not actually begun manufacturing or otherwise acquiring weapons. The Nye proposal, if adopted, would set the clock back at least 3 years in terms of the development of nonproliferation policy in the United States. The vacuousness of this "compromise" is underscored by noting that the test to be used by the President on the second shipment represents an abandonment of one of the most important provisions of the NNPA, and is therefore totally consistent with the position taken by the State Department on this issue. In the end, this abandonment of the full-scope safeguards criterion would mean the United States would be giving up its nuclear export standard established by law only 2 years ago, giving up an important test for determining a country's proliferation intentions, and giving up in its attempts to establish a clear and consistent foreign policy on this issue.

That, of course, is not coincidence. Dr. Nye is a paid consultant to the State Department, and it would have been a surprise if his testimony before the House Foreign Affairs Committee reflected anything other than the substance of the State Department position.

Mr. President, as time goes on, we will undoubtedly hear more talk about "compromise" in which at least one shipment of uranium would be sent to India with no conditions attached. Such proposals are essentially equivalent in their effect (or lack of it) to the Nye proposal and the State Department position for the following reasons:

First. There is no evidence that sending one shipment will have any substantive effect on India's foreign policy orientation. The President's decision to send both shipments has been followed by Indian decision to enter into a trade agreement with Iran, to sign a $1.6 billion arms agreement with the Russians, and to give recognition to the Soviet-backed regime in Kampuchea.

Second. Sending one shipment does have the effect of increasing the Indian fuel stockpile to at least a 3-year supply. That provides enough time for the Indians to develop a mixed-oxide fuel capability, that is, use of plutonium, in order to render ineffectual any future interruption of U.S. supply; and

Third. Arguments to the contrary notwithstanding, outside observers will make no distinction between one shipment and two. The sending of any fuel at this time without any conditions attached and in the absence of any discernible progress in negotiations after 2 years will send a signal around the world that a substantive change has occurred in the U.S. commitment to its nonproliferation policy.

Mr. President, the most effective way to demonstrate our commitment to full-scope safeguards as the basic and essential requirement for continued nuclear exports from the United States is for the Congress to reject the pending licenses. As I have stressed in my previous remarks, the Indians do not currently need the fuel at issue. It could be exported as late as February 1982, and the Tarapur reactors would still have sufficient fuel to be operated without interruption. During this interim period negotiations on the full-scope safeguards question could continue under circumstances where the United States had made it absolutely clear to the Indians that this standard was, in fact, the basic requirement for U.S. exports. If progress is achieved or some material change in circumstances occurs, the President could resubmit these licenses and Congress could permit them to go forward at that time.

In the meantime, it is important to bear in mind that U.S. nuclear cooperation with India is but one of many economic and political ties we have with that country. We are India's largest commercial trading partner, importing from her approximately $1 billion worth of goods each year and exporting a similar amount to her. Last year, for example, India imported from the United States hundreds of millions of dollars' worth of aircraft and spare parts, fertilizers, and vegetable oils and exported to the United States similar quantities of food products, textiles, and other manufactured goods. Our assistance program of development grants and loans for India also amounts to hundreds of millions of dollars each year and we have recently concluded an important military sales agreement with her involving some 3,700 TOW antitank missiles. What this means is that while our decision on these exports is of vital importance to our worldwide efforts to stop the spread of nuclear weapons, in the overall fabric of United States-Indian relations rejection of these exports, though not trivial, would be of relatively limited importance.

Mr. President, editorial comment on the pending exports to Tarapur has been overwhelmingly against permitting these shipments. I have identified at this time 90 editorials that have been published arguing against these ill-conceived exports. I ask unanimous consent that the list of editorials expressing opposition to these shipments be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

EDITORIALS OPPOSING FUEL SHIPMENT TO INDIA

1. Wall Street Journal Editorial, May 9, 1980.
2. Philadelphia Bulletin Editorial, May 1980.
3. Worcester Gazette Editorial, May 10, 1980.
4. Cincinnati Post Editorial, May 12, 1980.
5. Pittsburgh Press Editorial, May 12, 1980.
6. Toledo Blade Editorial, May 13, 1980.
7. Northern Virginia Sun Editorial, May 15, 1980.
8. Hartford Courant Editorial, May 16, 1980.
9. Benton Harbor Herald-Palladium Editorial, May 16, 1980.
10. Norwalk Hour Editorial, May 17, 1980.
11. Terre Haute Star Editorial, May 19, 1980.
12. Boston Globe Editorial, May 20, 1980.
13. Shreveport Times Editorial, May 20, 1980.
14. Washington Post Editorial, May 20, 1980.
15. Wall Street Journal Editorial, May 21, 1980.
16. Philadelphia Inquirer Editorial, May 24, 1980.
17. Poughkeepsie Journal Editorial, May 24, 1980.
18. Philadelphia Bulletin Editorial, May 26, 1980.
19. Los Angeles Times Editorial, May 26, 1980.
20. Providence Journal Editorial, May 26, 1980.
21. New York News Editorial, May 29, 1980.
22. Norfolk Ledger-Star Editorial, May 30, 1980.
23. Palm Beach Post Editorial, May 31, 1980.
24. El Paso Herald-Post Editorial, June 4, 1980.
25. Florence News Editorial, June 7, 1980.
26. Waterbury Republican Editorial, June 8, 1980.
27. Sacramento Bee Editorial, June 12, 1980.
28. Hattiesburg American Editorial, June 13, 1980.
29. Toledo Blade Editorial, June 14, 1980.
30. San Jose News Editorial, June 20, 1980.
31. Richmond Times Dispatch Editorial, June 20, 1980.
32. Pine Bluff Commercial Editorial, June 20, 1980.
33. Wichita Eagle Editorial, June 20, 1980.
34. Los Angeles Times Editorial, June 20, 1980.
35. San Jose Mercury Editorial, June 20, 1980.
36. Cheyenne, Wyoming State Tribune Editorial, June 20, 1980.
37. Garden City Newsday Editorial, June 20, 1980.
38. Tallahassee Democrat Editorial, June 21, 1980.
39. Martinsburg Journal Editorial, June 21, 1980.
40. Cleveland Plain Dealer Editorial, June 21, 1980.
41. Hutchinson News Editorial, June 22, 1980.
42. Haines City Herald Editorial, June 22, 1980.
43. Cocoa Today Editorial, June 22, 1980.
44. New York Times Editorial, June 22, 1980.
45. Washington Post Editorial, June 22, 1980.
46. Los Angeles Times Editorial, June 22, 1980.
47. Macon Telegraph Editorial, June 22, 1980.
48. Salt Lake City Desert News Editorial, June 23, 1980.
49. Bethlehem Globe-Times Editorial, June 23, 1980.
50. Oklahoma City Oklahoman Editorial, June 23, 1980.
51. Little Rock Arkansas Gazette Editorial, June 23, 1980.
52. McKeesport News Editorial, June 24, 1980.
53. Seattle Post-Intelligencer Editorial, June 24, 1980.
54. Philadelphia Bulletin Editorial, June 24, 1980.
55. Toledo Blade Editorial, June 24, 1980.
56. Westerly Sun Editorial, June 24, 1980.
57. Youngstown Vindicator Editorial, June 25, 1980.
58. Asbury Park Press Editorial, June 25, 1980.
59. West Palm Beach Post-Times Editorial, June 25, 1980.
60. Albany Times-Union Editorial, June 25, 1980.
61. Fresno Bee Editorial, June 26, 1980.
62. Fullerton Daily News Tribune Editorial, June 26, 1980.
63. Roanoke Times & World-News Editorial, June 26, 1980.
64. Cincinnati Enquirer Editorial, June 27, 1980.

65. Wichita Falls Times Editorial, June 27, 1980.
66. Milwaukee Sentinel Editorial, June 27, 1980.
67. San Antonio Light Editorial, June 27, 1980.
68. Lebanon Valley News Editorial, June 27, 1980.
69. Casper Star-Tribune Editorial, June 27, 1980.
70. Harrisburg Patriot Editorial, June 28, 1980.
71. Richmond Times-Dispatch Editorial, June 28, 1980.
72. Little Rock Arkansas Gazette Editorial, June 29, 1980.
73. Framingham So. Middlesex News Editorial, June 30, 1980.
74. Norristown Times Herald Editorial, June 30, 1980.
75. Austin American-Statesman Editorial, July 1, 1980.
76. Lynchburg Advance Editorial, July 2, 1980.
77. Palatka News Editorial, July 3, 1980.
78. Huntington Herald-Dispatch Editorial, July 7, 1980.
79. Houston Chronicle Editorial, July 14, 1980.
80. Newport Plain Talk Editorial, July 16, 1980.
81. New York Times Editorial, July 23, 1980.
82. Dayton News Editorial, July 28, 1980.
83. Washington Post Editorial, August 3, 1980.
84. Wilkes-Barre Times-Leader-News-Record Editorial, August 5, 1980.
85. Miami Herald Editorial, August 12, 1980.
86. Garden City Newsday Editorial, August 15, 1980.
87. Wall Street Journal Editorial, August 19, 1980.
88. Philadelphia Inquirer Editorial, August 19, 1980.
89. Freeport Journal Standard Editorial, undated.
90. Melbourne Age Editorial, May, 1980.

THE SALE OF NUCLEAR FUEL TO INDIA

Mr. HARRY F. BYRD, JR. Mr. President, tomorrow, the Senate Committee on Foreign Relations will make a critical decision. The committee must decide whether to recommend to the Senate the disapproval of the Carter administration proposal to sell nuclear fuel to India or whether to recommend approval.

If the committee fails to act, the committee will automatically be discharged from further consideration of the submission of the President, and it will be in order to introduce a concurrent resolution of disapproval to be placed immediately on the Senate calendar.

I urge the Committee on Foreign Relations to face the issue squarely, and to recommend disapproval of the proposed sale of enriched uranium to India. I have introduced such a resolution and it has been referred to the Foreign Relations Committee; I am also cosponsor of a similar resolution offered by the Senator from Ohio, Mr. GLENN.

The central point of the issue is this: In this highly dangerous nuclear age, we must do everything possible to prevent the spread of nuclear weaponry. The Carter proposal would put in jeopardy the containment of the spread of nuclear weapons. In 1974, India exploded a nuclear weapon in open defiance of an agreement with the United States. Since then, India has consistently refused to permit nuclear safeguards or international inspection.

The U.S. Nuclear Regulatory Commission determined that the proposed export of 38 tons of enriched uranium to India did not satisfy the requirements of the Nuclear Non-Proliferation Act.

The President declined to abide by the Nuclear Regulatory Commission decision; therefore, Congress should act to block the sale.

The alleged justification for shipping nuclear material to India is to seek improved relations with that nation. But the United States has been seeking improved relations with India for decades and has nothing to show for its efforts but the expenditure of more than $10 billion in aid.

Again, I say, that President Carter's proposal would put in jeopardy the containment of the spread of nuclear weapons.

Again, I urge the Foreign Relations Committee to recommend disapproval of the Carter administration's proposal to sell nuclear fuel to India.

I ask unanimous consent to have printed at this point in the RECORD an editorial from the New York Times of September 9, 1980, dealing with this subject.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

DON'T RELOAD TARAPUR

Two years ago, with the aim of slowing the spread of nuclear weapons, Congress barred shipments of nuclear fuel to countries that refuse to open their civilian nuclear facilities to outside inspection. India, which used Canadian reactor fuel to build its first atomic bomb in 1974, has made clear that it will not comply with that requirement. But President Carter wants to continue selling uranium to India, arguing that good relations on the subcontinent take precedence over efforts to contain nuclear weapons. Now Congress has until Sept. 27 to stop the shipment—and save what remains of the Administration's nonproliferation policy.

The United States has been shipping enriched uranium to India since 1963 to load, and reload, two American-built power reactors at Tarapur. The agreement with India includes strict inspection of the Tarapur project, and India has thus far honored that agreement. But the Indians did divert fuel from *other* reactors to build their bomb, and have resisted pressures to halt the weapons program.

The 1978 Nuclear Non-Proliferation Act gave America's nuclear customers two years to negotiate safeguards against the military use of nuclear fuel from any civilian project, American or not—or face a fuel cutoff. Yet no agreement has been reached with India, which refuses to slow weapons development in return for secure fuel supplies. So the Nuclear Regulatory Commission voted unanimously in May to stop a reload shipment of 38 tons of uranium.

The law lets the President overrule the commission, provided both houses of Congress go along. Hence Mr. Carter's dilemma: alienate the Government of India or help undermine his own policies against nuclear proliferation. In June, he chose the latter course, authorizing the Tarapur shipments and leaving the final decision to Congress.

Although the State Department has made some effort to cast the Administration's case in legalistic terms, the real issues are practical and diplomatic. Administration officials assert, correctly, that blocking this particular shipment will not prevent India from building more bombs; it already has 250 tons of spent reactor fuel to draw upon. Moreover, at a time when Soviet arms have moved southward in Asia, the United States wants to avoid pushing India still closer to Moscow.

This second argument is weaker than it may appear. A fuel cutoff is sure to anger New Delhi. But for India to turn to the Soviet Union for fuel on less guarded terms is easier said than done. The Russians, in fact, have always imposed tough safeguards on nuclear fuel exports. Besides, America's economic and military ties with India go far beyond the nuclear issue and are unlikely to be ruined by a nuclear embargo. If Mr. Carter wants to please Mrs. Gandhi more surely than by providing uranium, he might consider lowering American barriers to Indian textiles, which irritate New Dehli more than than any nuclear issue.

The basic question, in any case, is whether the United States will stick by its non-proliferation policy when it is diplomatically inconvenient. That policy is already under attack from European exporters of nuclear reactors, who see the American position as a way of stifling competition for sales in third world countries. To sell uranium now to defiant India would risk the collapse of practical efforts to limit nuclear weapons, there and elsewhere. President Carter seems ready to take that risk. We hope Congress is not.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—PM 238

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I am pleased to transmit to you the 15th Annual Report of the Department of Housing and Urban Development. It contains a narrative record of the major activities under all of the programs administered by the Department during 1979.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

PROPOSED LEGISLATION TO AMEND THE INTERNAL REVENUE CODE—PM 239

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States;

which was referred to the Committee on Finance:

To the Congress of the United States:

I have determined that the provision of Canadian tax law which denies a deduction for the cost of advertising placed with a foreign broadcaster and directed primarily at the Canadian market is an unreasonable practice which burdens U.S. commerce within the meaning of section 301(a)(2)(B) of the Trade Act of 1974 (19 U.S.C. 2411). The Canadian law was intended to strengthen the Canadian broadcast industry as an aspect of Canadian culture. However, the law places the cost of attaining its objectives on U.S. companies and thus unreasonably and unnecessarily burdens U.S. commerce. It is estimated that U.S. broadcasters have lost access to more than $20 million in advertising revenues annually as a result of this law.

Therefore, I am proposing legislation which would amend the Internal Revenue Code to deny a deduction, otherwise allowable under the Code, for expenses of an advertisement placed with a foreign broadcast station and directed primarily to a market in the United States if a similar deduction is denied to advertisers, in the country in which such station is located, for the costs of advertising directed primarily to a market in that country when placed with a U.S. broadcast station. The effective date of the proposed amendment would be for taxable years beginning after December 31, 1981.

This legislation will establish a disincentive for the transfer of U.S. advertising revenues to foreign broadcasters only if the laws of the country in which such broadcasters are located create a similar disincentive vis-a-vis U.S. broadcasters. Thus, if Canada should repeal its law, this amendment will cease to apply to Canada.

I urge the early passage of this legislation.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

REVIEW OF EXPORT PROMOTION AND DISINCENTIVES—MESSAGE FROM THE PRESIDENT—PM 240

The **PRESIDING OFFICER** laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent:

To the Congress of the United States:

In accordance with the requirements of Section 1110(a) of the Trade Agreements Act of 1979, I have had a review conducted of Executive Branch export promotion functions and of potential programmatic and regulatory disincentives to exports. I am submitting today my report on these matters along with the full text of the comprehensive review, which was prepared by the Secretary of Commerce and the U.S. Trade Representative. Their detailed review, while not a statement of Administration policy, reflects an extensive canvass of the views of our exporting community which should assist the Congress and the Executive Branch in the development of policies in this area. My report expresses this Administration's policies.

The expansion of U.S. exports has been, and continues to be, a high priority objective of my Administration. Global events have made international trade substantially more important to the United States than in earlier years, and a strong export position has become a matter of great significance to the economic strength and welfare of our Nation, to the strength of the dollar, and to employment. Exports now account for one in every eight jobs in America's factories, and one in every four on America's farms. I am pleased to be able to report that our recent export performance has been strong. The value of America's merchandise exports has grown 50 percent in the last two years. In the same period, the volume of U.S. merchandise exports has grown at an annual rate of 10 percent, compared to a 6 percent annual growth rate for world trade.

Largely because of this export growth, we achieved a virtual balance in our current account in 1979, despite huge increases in the price of oil imports. It is vitally important that our international accounts be kept in balance. That goal cannot be reached without strong export growth. Over the longer run, the United States has suffered a declining share of world trade and a rate of export growth that has not kept up with imports. Business, agriculture, labor and government must work together to ensure that this historical trend is reversed.

The successful conclusion of the Multilateral Trade Negotiations—the Trade Agreements Act was ratified by Congress in 1979—makes this effort all the more important. The MTN agreements pose challenges to some producers in the form of tougher import competition. But they also present dramatic new opportunities for U.S. exports through the reduction of foreign trade barriers. The average tariff rate for most developed countries will fall by about 30 percent over the coming seven years, and roughly $21 billion in foreign government purchasing will now be opened to international competition. Other countries are moving aggressively to take advantage of these new trade opportunities. We must do the same.

However, strong export growth depends on the competitiveness of the American economy. We need more innovation, faster growth in productivity, and greater investment in more efficient plant and equipment. And we must reduce the rate of inflation lest we price ourselves out of competition with foreign producers. Only when inflation is under control will our economy be on a sound footing to undertake greater investment. U.S. producers and labor must retain the ability to offer the world high quality goods and services at attractive prices.

Government policies also affect our export position. Improving incentives and reducing or eliminating unintentional disincentives to exports is a continuing and complex process, for policies to encourage exports sometimes conflict with other national goals—such as budgetary soundness, national security, nuclear non-proliferation, health and safety, human rights, discouraging aggression and maintaining respect for diplomatic immunity. Our task is to reduce negative effects on exports without weakening other national objectives.

In response to this challenge, my Administration announced a National Export Policy in September 1978. We assigned exports a higher priority within the Executive Branch, we called on business and labor to devote more effort to exporting, and we initiated a set of measures confirming our commitment to export growth.

In 1979, in order to strengthen and centralize the government's ability to address the export needs of the Nation, my Administration proposed and Congress agreed to a reorganization of trade functions in the Executive Branch. The authority of the United States Trade Representative was expanded to cover export policy and other trade-related policies for which responsibility had previously been scattered among various agencies. Responsibility for the operational aspects of international trade, for the day-to-day implementation of the MTN, and for other trade policy decisions regarding nonagricultural products was concentrated in the Commerce Department.

This reorganization—in effect only since January 1980—has already begun to produce solid results. We are beginning to pursue vigorously our rights and opportunities under the MTN. We have also begun to act more quickly and decisively on matters of export policy, as shown by the Administration's timely interaction with the Congress on the Export Trading Company proposal and on legislation to preserve the confidentiality of Shipper's Export Declarations. Within the interagency mechanisms of government decision-making, we are providing a stronger voice in support of actions to promote our export growth.

In charging the Secretary of Commerce and the U.S. Trade Representative to review export promotion and export disincentives, I asked them to consult with other agencies and with business and labor. I also asked the President's Export Council for its views.

The review, now completed, shows significant progress in combining our promotion programs with the implementation of the MTN agreements. For example, the Commerce Department has initiated programs to publicize the opportunities stemming from the MTN and to help U.S. companies take advantage of those opportunities. Promotion initiatives are being targeted to the U.S. industries with the greatest potential to expand their exports. The Agriculture Department's Foreign Agricultural Service is working to ensure that the agricultural sector benefits fully from concessions received in the MTN. The Office of the U.S. Trade Representative has set up a trade policy coordination mechanism to guard our rights under the MTN codes.

In the area of potential programmatic

and regulatory disincentives, however, there is no question that certain government policies and programs are perceived as having a detrimental effect on the ability and willingness of U.S. companies to export. Our national interest requires that such policies and programs be reviewed.

In February 1980 I released an interim progress report on the reduction of export disincentives. That report announced certain procedural reforms to reduce further the burden of government requirements and stated that I would convey additional views on export promotion and disincentives to the Congress. On the basis of the review just completed, I have concluded that further actions are necessary to ensure a better balance between our trade policy and other national objectives.

SMALL BUSINESS

The participation of small businesses in exporting must be increased. One hundred companies account for approximately 50 percent of our manufactured exports, and only 10 percent of the nearly 300 thousand U.S. manufacturing firms are exporters. Thousands more produce goods that could be exported but are not. All of the export promotion resources of the Small Business Administration and most of those of the Commerce Department are aimed at encouraging small and medium-sized companies to market their products abroad. But we must do more to encourage these companies to export.

For this reason, my Administration has worked with Congress to develop the Export Trading Company proposal, which would greatly increase the attractiveness of export marketing for thousands of small and medium-sized firms. Export trading companies buying and selling on their own account and offering one-stop service to exporters could materially increase our exports. The key features of this proposal are: (1) to provide U.S. firms limited anti-trust immunity in competing abroad, immunity that would not adversely affect competition within the United States; and (2) to permit U.S. banks to invest in export trading company ventures, as foreign banks are allowed to do, bringing the vast international experience and financial resources of our banking industry more fully to bear on developing U.S. exports.

I believe this proposal is essential to the increased participation of small and medium-sized firms in export markets, and it has the full support of my Administration. I call on the Congress for speedy consideration and passage of this important legislation.

EXPORT FINANCING

Eximbank financing is the most important official incentive for U.S. exports, and my Administration has consistently supported an effective and adequately funded Eximbank. I asked Congress to increase Eximbank lending authority to $5.1 billion for FY 1980. This increase is made essential by present economic and competitive conditions and was approved by both the House and the Senate on August 18. However, while awaiting Congressional action on its authorization, Eximbank exhausted nearly all of its direct lending authority for this fiscal year, and many worthwhile requests for export support have had to be deferred. Congress and the Administration must work together to alleviate this kind of budgetary problem and to ensure adequate and reliable Eximbank financing in the future.

In addition to providing timely and adequate funds for Eximbank, my Administration seeks to reduce the financial subsidies given by our competitor nations and to move to a more market-related system of export credit interest rates. I pursued this matter vigorously at the Venice Economic Summit, and the six other major industrial nations agreed that a new international credit arrangement should be negotiated by December 1, 1980. Such an agreement would substantially lessen the difficulties now faced by many American exporters trying to cope with heavily subsidized foreign credits.

But we must also seek to avoid a recurrence of this year's shortfall. Accordingly, I will be working with Congressional leaders and members of my Administration this fall to determine how best to ensure adequate and reliable Eximbank financing in the years ahead, taking into account progress in international negotiations.

TAXATION OF AMERICANS ABROAD

The Internal Revenue Code (sections 911 and 913) provides special deductions for extraordinary living expenses incurred abroad, a deduction for hardship conditions, and an alternative $20,000 exclusion of foreign earnings for individuals living in camps in remote hardship areas. These provisions were enacted in November 1978, in the Foreign Earned Income Act of 1978.

Many U.S. companies have pointed out that the United States is the only major nation that taxes the earnings of its citizens abroad and have criticized the current rules as insufficiently generous, excessively complicated, and discouraging to exports.

The Secretary of Commerce and the U.S. Trade Representative have undertaken a review of this matter. They report an increasing tendency to replace Americans overseas with foreign nationals, since, in many cases, our tax laws make it more expensive for American firms to employ Americans than foreigners.

Most of our competitor nations exempt from tax all or many of their nationals who reside and work abroad. The tax liability of American citizens employed abroad makes it more costly to hire Americans wherever the local income tax is lower than the U.S. tax. Various segments of the exporting community argue that these additional costs have some or all of the following consequences:

1. U.S. companies are replacing many of their American personnel with foreign personnel.

2. When American companies engaged in engineering or construction work abroad hire Americans in spite of the greater cost—because the companies are more confident of the skills and reliability of American employees—the companies risk losing contracts for overseas projects as a result of the higher cost of employees, and U.S. exports are lost.

3. When companies hire the nationals of other countries instead of Americans, they may gain the contracts, but much of the valuable followup exports of supplies and equipment are lost because foreign nationals favor foreign suppliers who are more familiar to them.

4. Foreign operations by American companies tend to create exports from the United States and also to generate substantial earnings that benefit the U.S. balance of payments. Some companies feel they can conduct such operations more successfully if they are free to use American rather than foreign employees.

5. American companies operating abroad sometimes pick up or develop valuable technology in the course of their foreign operations. This technology is less likely to be lost with American employees than with foreign employees, who are more apt to move to foreign-owned companies when they change employment.

6. The present detriment to competitiveness has a snowballing effect on future competitiveness as foreign companies gain strength at our expense.

7. The special deductions allowed for foreign living costs and hardship conditions under present law are insufficiently generous and too complicated.

The cornerstone of U.S. tax policy has always been that all citizens must share in the obligation to finance their government. This policy must not be set aside lightly. In addition, it is difficult to quantify the effect of U.S. tax policy on exports in the aggregate. Not all Americans working abroad have an effect on exports. Many pay high foreign taxes, and therefore pay little or no U.S. tax after the foreign tax credit. And of course other factors, such as increased foreign competition, affect the success of U.S. exports as well. Taxation of U.S. employees working abroad is not solely responsible for the difficulties exporters are encountering.

The U.S. tax is most likely to be significant where employees are in a position to influence exports, where the foreign tax is low (so the foreign tax credit does not eliminate the U.S. tax liability), where compensation is necessarily high to offset hardship conditions (so the tax bracket is also high), or where the industry in question is labor intensive (so the tax cost of U.S. personnel is a significant component of total costs). Various combinations of these and other factors can give the U.S. tax greater impact than it might otherwise have.

Clearly, those who single out the tax factor as a serious export disincentive are convinced that further tax relief for Americans overseas is desirable and important. It is also clear that the consequences of recent changes in the tax laws affecting overseas Americans are likely to vary with the taxpayer's situation. Americans subject to a high foreign tax can be expected to profit little from changes in sections 911 and 913, because their foreign income tax presently offsets most or all of their U.S. tax liability.

It is difficult to measure the aggregate effects of taxation with any precision.

The attempts undertaken to date have been inconclusive. Political factors, such as the removal of the U.S. presence from Iran, and other economic factors such as marketing technology and quality control, complicate the picture. We do not yet have data on how the new tax provisions are operating. (Data will be available in the spring of 1981.)

Although we do not have answers to all the relevant questions, the evidence gathered in preparing this report does illustrate the importance that the export community attaches to this tax issue. U.S. taxes on the earned income of U.S. individuals abroad do clearly have an adverse effect on the ability of some U.S. exporters to compete in some markets. Accordingly, I will propose to the Congress, in my 1981 legislative program, revisions of the current law in order to deal with this problem.

FOREIGN CORRUPT PRACTICES ACT

The Foreign Corrupt Practices Act (FCPA) was passed unanimously by the Congress in the wake of disclosure of widespread illicit payments by many American companies. The Administration and the Congress have taken the unequivocal position that corruption in international business transactions is morally repugnant and economically unnecessary. I remain deeply committed to the principles of the Act and am steadfastly opposed to weakening the intent of the Act. Eliminating illicit payments in international business should be a matter of concern to all nations. My Administration has been pressing—unsuccessfully to date—for a multilateral agreement in the United Nations.

At the Venice Economic Summit meeting in June 1980 I urged that these seven industrial democracies renew efforts to work in the United Nations toward an agreement to prohibit illicit payments by their citizens to foreign government officials; and, if that effort falters, to seek an agreement among themselves, open to other nations, with the same objective. While we did not set a time by which an agreement should be reached in the United Nations, I believe that one further year of negotiation should be sufficient. Accordingly, if an agreement has not been obtained in the United Nations General Assembly, I intend to ask the other heads of government at the 1981 Economic Summit to direct the prompt negotiation of such an agreement among our seven nations, but open to others.

Some in the business community have expressed their uncertainty about what conduct is prohibited and what conduct is not prohibited by the FCPA. Because of this uncertainty, some businessmen say that they are acting with a degree of caution that is resulting in the needless loss of exports. In an effort to deal with the problem of uncertainty, I announced in February 1980 the Justice Department would begin providing guidance under the Act to inquiring companies on proposed international transactions. This guidance is now available through the FCPA Review Procedure, and I urge business to use that procedure.

I also announced in February that the effectiveness of this procedure would be examined by the Attorney General and the Secretary of Commerce after one year of operating experience. I believe that, until the review is completed, it is premature to judge the effectiveness of the Review Procedure. I am transmitting the review conducted by the Secretary of Commerce and the U.S. Trade Representative for the information of the Congress and not as a final judgment on the effectiveness of the Review Procedure.

I have directed that the Attorney General and the Secretary of Commerce report to me by March 1, 1981, not only their assessment of the first year of operation of the FCPA Review Procedure, but also their recommendations of whatever actions may then be necessary to remove any ambiguities in the Act. Uncertainties should not be allowed to hamper exports, but in no event will I propose nor will I support any amendments which would weaken the Act's proscription of bribery or which would result in loopholes for bribery of foreign government officials.

EXPORTS CONTROLS

Another key concern of exporters has to do with the use of export controls when the goods being controlled are available from other supplier nations. I addressed this concern in my February 27 statement on export disincentives. In considering new export controls to achieve foreign policy objectives and in reassessing current sanctions—except in the field of arms exports—my Administration would be highly selective in the use of controls where the affected country has access to alternative supply. I reaffirm that position today.

In addition, my Administration continues to confront the problem of the administrative costs and delays associated with export control licensing. Based on the present review, I have decided on a change in the licensing requirements for our national security export controls that will lessen the burden on business without weakening the effectiveness of our controls or our ability to protect vital national security interests. The change is that we will stop issuing a separate U.S. reexport license in cases where we have already approved reexport of the same product as part of the COCOM process (the multilateral review procedure which oversees exports of strategic commodities to certain communist countries). In such cases, the separate U.S. licensing procedure is redundant.

We will continue to examine the export control system to seek additional ways of streamlining the process while assuring that national security needs are met.

FUTURE ACTION

The just completed review of export promotion and potential disincentives to exports is the most comprehensive study of its kind ever undertaken by the U.S. government. It contains a considerable amount of information that must be weighed and examined, and will serve as a solid basis for future actions by the Federal government. I look forward to close cooperation with the Congress in this important process.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message received from the President of the United States today, pursuant to the provisions of the Trade Agreements Act of 1979, relative to a review of export promotion and disincentives, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPETITIVE POSITION OF THE UNITED STATES IN WORLD MARKETS—MESSAGE FROM THE PRESIDENT—PM 241

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs, jointly, by unanimous consent:

To the Congress of the United States:

In accordance with the requirements of Section 1110(b) of the Trade Agreements Act of 1979, I hereby submit to the Congress a study of the factors bearing on the competitiveness of U.S. producers and the policies required to strengthen their relative competitive position in world markets. This study is submitted in conjunction with a report reviewing Executive Branch export promotion activities and potential programmatic and regulatory disincentives to exports, as called for in Section 1110(a) of the Trade Agreements Act. The greater part of the present study was prepared by the staff of the Department of Labor under the guidance of the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative. Contributions to this study were also made by several other agencies.

The study outlines the broad dimensions of various aspects of the competitiveness of U.S. producers in world markets. It also delineates our competitive position relative to our various competitors on a sectoral basis. Finally, the study directs attention toward the most important general areas for economic and trade policy formulation to strengthen our export competitiveness.

The study finds that during the past two decades there was an erosion in U.S. competitiveness in foreign and domestic markets. The increased international competition facing U.S. producers is in large part the result of increasing supplies of human and capital resources and expanding technological capabilities. Because of higher rates of growth in investment and expanded research activities in other countries, their competitive positions improved, and the United States experienced a relative decline in its trade performance even though the value of U.S. exports increased substantially, particularly in recent years. That decline has not affected all products, nor has it continued steadily. However, there remains much room for improvement in our competitive position through improvements in productivity.

Problems in our international competitiveness have combined with rapid increases in the cost of oil imports to create persistent merchandise trade deficits.

Despite the reduced U.S. role in world trade and our trade deficits, the United States remains the world's largest exporter. Approximately one dollar out of every five dollars worth of goods produced in the United States is now exported. Further, the United States continues to be competitive with other countries in a wide range of products. Record trade surpluses were recorded in our strongest export sectors in 1979: $18 billion in agriculture and $33 billion in industrial capital equipment.

The evidence presented in the study suggests the following three areas where policies should be considered to improve the competitive position of U.S. producers in world markets:

1. Expanded investment and innovation to enhance the productive capacity of the U.S. economy and raise the productivity of the labor force;

2. Strengthened programs to assist workers in adjusting their skills to shifts in the sectoral structure of the U.S. economy brought about by changes in trade;

3. New policies and programs to implement the Tokyo Round agreements liberalizing access for U.S. exports and, further, identification of the significant remaining barriers to U.S. exports in certain sectors and negotiation to eliminate them.

I believe that export expansion is critical to the health of our economy. The policy emphasis that I have given to increasing exports has been demonstrated in three areas:

1. The National Export Policy that I announced on September 26, 1978;

2. The successful completion of the Tokyo Round of Trade Negotiations and signing of the Trade Agreement Act of 1979; and

3. The reorganization of the trade functions of the Executive Branch carried out earlier this year.

The National Export Policy articulated this Administration's intention to expand exports by increasing direct assistance to U.S. exporters, reducing domestic barriers to exports, and reducing foreign obstacles to our exports. The Tokyo Round agreements allow our exporters to take advantage of greater access to markets overseas through the liberalization of foreign nontariff restrictions and the reduction of foreign tariffs. The Executive Branch trade reorganization centralizes U.S. trade policy functions in the Office of the United States Trade Representative and places trade administration and export promotion functions in the Department of Commerce. This reorganization has greatly enhanced the ability of the Federal government to implement policies for meeting the competitive trade challenges of the 1980s.

This study is the most comprehensive and detailed analysis of the competitive position of the United States in world markets ever undertaken by the U.S. Government. Its findings will be of immediate assistance to me and, I believe, to the Congress as we consider both broad economic policies and special measures to encourage more vigorous gains in our industrial productivity and to improve our international competitive position. I expect to address these matters extensively in the months ahead.

JIMMY CARTER.

THE WHITE HOUSE, *September 9, 1980.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message received from the President of the United States today, pursuant to the provisions of the Trade Agreements Act of 1979, relative to a study of the relative competitive position of the United States in world markets, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 10:36 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks announced that the House has passed the bill (S. 1650) to provide for the development of aquaculture in the United States, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

At 2:30 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks announced that the House has passed the following bill, without amendment:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 121. Concurrent resolution to correct the enrollment of S. 299.

At 3:26 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1981 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. ASHLEY, Mr. MURPHY of New York; Mr. BIAGGI, Mr. OBERSTAR, Mr. HUGHES, Mr. ULLMAN, Mr. ROSTENKOWSKI, Mr. VANIK, Mr. CORMAN, Mr. McCLOSKEY, Mr. PRITCHARD, Mr. EVANS of Delaware, Mr. CONABLE, and Mr. DUNCAN of Tennessee were appointed as managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 6940) to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HUDDLESTON, from the Committee on Appropriations, with amendments:

H.R. 7592. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes (Rept. No. 96–931).

By Mr. BAYH, from the Committee on Appropriations, with amendments:

H.R. 7831. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 31, 1981, and for other purposes (Rept. No. 96–932).

By Mr. BAYH from the Committee on Appropriations without amendment:

S. Res. 517. An original resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 7831. Referred to the Committee on the Budget.

By Mr. CHURCH, from the Committee on Foreign Relations:

Special report entitled "Report of the Committee on Foreign Relations Pursuant to Section 302(b) of the Congressional Budget Act of 1974" (Rept. No. 96–933).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as follows:

By Mr. DURENBERGER:

S. 3103. A bill to provide for a study committee to examine methods by which federal, state, regional and local governments can cooperate to enhance the recreational opportunities along the Mississippi, Minnesota and St. Croix Rivers which traverse the Twin Cities Metropolitan Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI:

S.J. Res. 202. Joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week"; to the Committee on the Judiciary

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURENBERGER:

● S. 3103. A bill to provide for a study committee to examine methods by which Federal, State, regional, and local governments can cooperate to enhance the recreational opportunities along the Mississippi, Minnesota, and St. Croix Rivers which traverse the Twin Cities Metropolitan Area, and for other purposes, to the Committee on Energy and Natural Resources.

METRO RIVER CORRIDORS STUDY

Mr. DURENBERGER. Mr. President, today I am introducing a bill which would authorize a study of the three major river corridors within the seven-county metropolitan area of Minneapolis and St. Paul.

The purpose of the study authorized in this bill would be to examine methods by which Federal, State, regional, and local governments could cooperate with each other and with private interests and citizens of the area to improve and enhance the recreational opportunities along the Mississippi, Minnesota, and St. Croix Rivers which traverse the Twin Cities Metropolitan Area.

The Lower St. Croix River was designated by Congress in 1972 as a component of the National Wild and Scenic Rivers System; the Lower Minnesota River Valley was designated by Congress in 1976 as a National Wildlife Refuge and Recreation Area. The Mississippi in the Twin Cities Area was recognized as early as 1970 by then Secretary of Interior Walter Hickel as a possible national recreation area.

Minneapolis/St. Paul is the head of river navigation and commerce on the Mississippi and is the confluence of the Minnesota River providing both an historical and contemporary fountainhead for one of the world's greatest commodity transportational systems.

Minnesotans have long recognized that the three rivers which traverse the Twin Cities metropolitan area provide tremendous recreational opportunity for the citizens of the State/region and the Nation. State and local grants, with the assistance of the metropolitan council and its park and open space board, have designated thousands of acres along the corridors for park and open space use and land and developed much of it. The study provided in the bill is an opportunity for the citizens of the region, in partnership with the Federal agencies, to look at the three metropolitan river corridors as a whole and make recommendations for use of this resource.

With the energy crisis we are facing, it is crucial that we examine, encourage and stimulate the use of recreational opportunities where people live—in urban areas. The population of the metropolitan area of Minneapolis and St. Paul is 2 million and the pressure on the natural resources is intense in some areas while underdeveloped in others. For example, on the St. Croix, a recent Minnesota-Wisconsin Boundary Area Commission study found that recreational boating use increased 133 percent between 1970 and 1977. In fact, boating usage has increased so dramatically that on weekends and holidays overcrowding has become a serious issue. Providing other recreational boating opportunities on the Mississippi could help alleviate this problem.

The St. Paul Dispatch recognized the need and stated it clearly in an August 7, 1980, editorial in support of the metropolitan reconnaissance study when they noted that:

> Certainly the Twin Cities can use all the help available to provide greater recreational opportunities along the river. As the cost of travel continues to increase, more metropolitan area residents will be spending their vacations in their own backyards. Managed properly, the Mississippi can be close-to-home refuge from the concrete and bricks of the city.

In addition, expanding energy demands and expanding exports for the Nation's agricultural breadbasket have substantially increased the transportation use of the rivers. This increased usage has magnified the need to utilize river corridor lands for transportation-related activities. The community has experienced the problem of potentially conflicting uses as it faced the decisions necessary to meet the demand for increased recreation and open space, and the demand for increased river transportation.

Those of us who have worked with the river and have worked with those who have policy responsibility for implementing its future know that this incredible resource is not limited to one or the other use. The three rivers have been and can be more accessible to the public need for both, if only this public finds a way to chart a logical course through the layered Government goals and policies which relate to river corridor planning, preservation, and utilization.

A look at all three river corridors is essential to develop a systems approach for their use. In the fall of 1979, I formed an ad hoc advisory committee composed of Federal, State, regional and local government officials, and interested citizens to explore areas for intergovernmental and private sector cooperation to determine ways by which the recreational opportunities could be enhanced.

In January 1930, four other members of the Minnesota congressional delegation—Congressmen SABO, HAGEDORN, VENTO, and ERDAHL—joined me in requesting a reconnaissance study of these metropolitan river corridors. The National Park Service is conducting this study out of available funds. The ad hoc committee has been assisting the National Park Service over the last few months in this effort which is now nearing completion.

The bill is an outgrowth of the work by the ad hoc committee and the reconnaissance study. It would establish a 15-member study committee composed of Federal, State, regional, and local government officials and private citizens. Members would be appointed by the Secretary of Interior upon recommendations submitted by the Governor, the mayors of Minneapolis and St. Paul, and the chairman of the metropolitan council. The study committee would be in existence only for the 2-year life of the study and would be administered through the metropolitan council, the regional planning agency.

The objectives of the study would be to make recommendations to the President, Congress, and appropriate governmental units regarding the long-term recreational management of these river resources. This would include recommendations, findings, and conclusions with respect to:

First, actions which would be taken to preserve, enhance, and utilize these recreational resources;

Second, any institutional changes which should be made to provide permanent management of these recreational areas;

Third, specific areas where local, regional, State, and Federal agency cooperation would help achieve better management of designated recreational areas; and

Fourth, actions which should be taken by governmental units in furtherance of the purpose and existing designations by Congress of the Minnesota and St. Croix Rivers.

Perhaps the most unique aspect of this proposal is that it involves developing a consensus of governmental and private sector interest at the local level, with the participation of the Federal Government.

Through this process, the Federal Government's role has been to facilitate the solution. In contrast, when this grassroots approach is not used the Federal Government is seen as a part of the problem, not an answer to the concerns of local government and citizens.

The State, regional, and local governments have already made outstanding contributions toward the preservation, enhancement, and recreational use of these rivers.

In addition, funding from private foundations has been utilized to assist in the public participation effort to develop consensus on a course of action which would provide a more coordinated approach to meeting these public needs.

In short, what the people of the region and the State are asking for from the Federal Government is a helping hand, not a handout, in reviewing the three river corridors of the region which have a heavy overlay of Federal programs and defined national significance.

Considerable time has already been invested in this process by all levels of government and the private sector. I believe it has been time well spent. This bill will enable this process to continue to its logical conclusion within 2 years.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. FINDINGS. The Congress finds that those portions of the Mississippi, St. Croix and Minnesota River corridors lying within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, State of Minnesota.

(a) represent a significant recreation resource, which would benefit a large population in the immediate vicinity;

(b) represent a significant historical and cultural resource worthy of preservation for the enjoyment and benefit of present and future generations;

(c) contain significant natural and scientific values that enhance the diversity and aesthetic character of the metropolitan area;

(d) are important commercial resources vital to the continued economic well-being of the region and the nation;

(e) are of national significance and constitute an area of national concern;

(f) are in need of cooperative recreational planning and management so as to improve efforts to further the preservation, enhancement and use of these recreational resources.

SEC. 2. (a) STUDY COMMITTEE. A Study Committee consisting of 15 members shall be established to examine methods by which federal, state, regional and local governments can cooperate to enhance the recreational opportunities along those portions of the Mississippi, Minnesota, and St. Croix Rivers described in Sec. 1 of this Act. The members of the Study Committee shall be selected as follows:

(1) A Chairperson shall be appointed by the Secretary of the Interior. The Secretary shall appoint the Chairperson from a list of nominees submitted by the Governor of Minnesota;

(2) A representative designated by the Secretary of the Interior shall serve as Vice Chairperson;

(3) One representative shall be designated by each of the following: The Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Secretary of Defense;

(4) Nine other members shall be appointed by the Secretary of the Interior. The Secretary shall appoint these members from a list of nominees submitted by the Governor of Minnesota, the Metropolitan Council, and the Mayors of Minneapolis and St. Paul;

(5) The nominations and appointments required by Sec. 2(a) shall include representatives of each of those interests set forth in Sec. 4(e).

(b) The Governor of Minnesota, the Metropolitan Council, and the Mayors of Minneapolis and St. Paul shall submit the nominations called for in Sec. 2(a) within 45 days of the date on which this Act is signed into law. All appointments called for in Sec. 2(a) shall be made within 60 days of the date on which this Act is signed into law.

(c) Each member of the Committee who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Study Committee.

(d) All members of the Study Committee shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in the performance of the duties invested in the Study Committee from funds appropriated for this purpose.

(e) The Chairperson of the Study Committee, if other than one to whom paragraph (c) applies, shall receive per diem at the maximum daily rate for a GS 11 of the general schedule when engaged in the actual performance of duties vested in the Study Committee from funds appropriated for this purpose.

(f) The Study Committee shall terminate within two years and two months from the date on which the initial appropriation for this Act is signed into law. The funds appropriated under this Act shall be available until expended.

SEC. 3(a). REGIONAL PLANNING AGENCY. If a multifunctional regional agency authorized by state law to plan for and coordinate the development of the seven counties described in Sec. 1 is in existence on the date this Bill is signed into law, the Governor of the State of Minnesota shall designate such multifunctional regional agency to assist in carrying out the study directed in this Act. This Agency shall hereinafter be referred to as "Regional Planning Agency".

(b) The Regional Planning Agency shall assist the Study Committee in carrying out the study mandated in Sec. 4 of this Act.

(c) From funds appropriated for this purpose, the Regional Planning Agency shall provide the Study Committee with Financial, administrative and other necessary support services.

(d) The Regional Planning Agency, after consultation with the Study Committee, shall have the power to appoint and set compensation of such additional personnel as may be necessary to carry out its duties under this Act without regard to the provisions of the civil service laws and the Classification Act of 1949; from funds appropriated for this purpose.

(e) The Regional Planning Agency, after consultation with the Study Committee, may also procure without regard to civil service laws and the Classification Act of 1949, temporary and intermittent services to the same extent as is authorized for the executive departments by Section 15 of the Administrative Expenses Act of 1948, within available appropriations for this purpose, but at rates not to exceed $100 per diem for individuals, as necessary to carry out the duties under this Act.

(f) To the extent of available appropriations, the Regional Planning Agency may obtain, by purchase, donation or lease, facilities, equipment and services as may be needed to carry out the duties under this Act.

(g) To the extent feasible and practicable, the Regional Planning Agency may utilize personnel available under the authority provided in the Intergovernmental Personnel Act of 1970 as amended to assist in carrying out its duties specified in this Act.

(h) No later than 45 days after receiving the report required by paragraph 4(b), the Regional Planning Agency shall provide the Study Committee with written comments on that report. Upon receipt of those comments, the Study Committee shall submit the report, along with the written comments, to the President, the Congress, and appropriate state, regional, and local government units.

SEC. 4(a). RESPONSIBILITIES OF THE STUDY COMMITTEE. The Study Committee shall conduct a study on the preservation, enhancement, protection, and use of the designated recreation areas along the river corridors described in Sec. 1 of this Act. For the purpose of this Bill, designated areas shall be defined as those park, open space, recreation or historical sites designated in an adopted federal, state, regional or local government plan.

(b) No later than two years from the date on which the initial appropriation for this Act is signed into law, the Study Committee shall provide the Regional Planning Agency with a written report on the findings and conclusions of this study, along with recommended policies.

(c) In its report, the Study Committee shall make recommendations as to the policies which should be adopted, and actions which should be taken to optimize the recreational, fish and wildlife, historic, natural, scientific, scenic, and cultural values of the river corridor areas referred to in Sec. 1 of this Act. The study may also include, but need not be limited to, recommendations for institutional changes, if any, which the Study Committee deems desirable and feasible to provide permanent management of the designated recreational areas along these river corridors. The report may also include recommendations for specific areas of local, regional, state and federal agency cooperation for river corridor management of the designated recreational areas. However,

(1) The Study Committee shall recommend no policy or action which would place unreasonable restrictions on existing or compatible economic uses of these resources.

(2) All policies and actions recommended by the Study Committee shall be compatible with, and maintain the integrity of, existing federally designated management programs and units on the St. Croix and Minnesota River corridors.

(d) The Study Committee shall review and utilize existing studies, and consider existing plans, programs and policies as they affect the present and future recreational use of the river corridors described in Sec. 1 of this Act.

(e) The Study Committee shall provide for public participation in the planning process in order to account for the concerns of recreational, commercial, cultural and environmental interests, and state, regional and local governments.

SEC. 5 AUTHORIZATION. There are hereby authorized to be appropriated $300,000 for the purposes of this Act.●

By Mr. DOMENICI:

S.J. Res. 202. Joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week," to the Committee on the Judiciary.

ITALIAN-AMERICAN HERITAGE WEEK

● Mr. DOMENICI. Mr. President, our Nation is marked by a most unique history. Immigrants from every country in the world made these United States a "melting pot" of cultures, skills, ideas, religions, and people. Together, these immigrants formed the greatest free democratic society in history. Today, Mr. President, on behalf of the Order of the Sons of Italy in America, I request that Congress recognize the contributions of Italian-Americans to this great American society.

As the oldest and largest Italian organizations, the Order of Sons of Italy in America proudly represents a group of Americans that have made significant achievements to the development and growth of this country. Since its founding, by Christopher Columbus, Italians have played major roles in American history. The Western Hemisphere is named for the renowned Italian explorer Amerigo Vespucci. During the late 19th and early 20th centuries, Italians immigrated to this country to share in the American way of life. They left their home to build better lives for themselves, their children, and their fellow Americans. Through their hard work, sweat, and hopes, they added significantly to make this country the greatest Nation.

Mr. President, the Italian-Americans have proven themselves to be patriotic and loyal citizens of the United States of America. When American ideals and values were being threatened during World Wars I and II, the Korean war, and the Vietnam war, they distinguished themselves as courageous people along with all the other ethnic groups in this country.

We should recognize the national and cultural heritages and contributions of all peoples of the United States. Today, on behalf of the Order of the Sons of Italy in America, I request that Congress recognize the heritage of millions of Italian-Americans. Therefore, I am introducing a joint resolution to establish October 12 to October 19, 1980, as "Italian-American Heritage Week." This designation coincides perfectly with the traditional celebration of Columbus Day October 13, which has a special meaning for all Americans. I request the support of Congress in establishing this week in recognition of the contributions that the Italian-Americans have made to this great Nation of ours.●

ADDITIONAL COSPONSORS

S. 1867

At the request of Mr. DURENBERGER, the Senator from New Hampshire (Mr. HUMPHREY) was added as a cosponsor of S. 1867, a bill to amend the Internal Revenue Code of 1954 to provide that the amount of the charitable deduction allowable for expenses incurred in the operation of a motor vehicle will be determined in the same manner Government employees determine reimbursement for use of their vehicles on Government business.

S. 2818

At the request of Mr. TALMADGE, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2818, a bill to amend the Internal Revenue Code of 1954 with respect to the treatment of mutual or cooperative electric and telephone companies.

S. 2857

At the request of Mr. PACKWOOD, the Senator from Kentucky (Mr. FORD) and the Senator from New York (Mr. MOYNIHAN) were added as cosponsors of S. 2857, a bill to amend the Social Security Act to provide for interfund borrowing between old-age, survivors, disability and hospital insurance trust funds.

S. 2920

At the request of Mr. RANDOLPH, his name was added as a cosponsor of S. 2920, a bill to amend the Internal Revenue Code of 1954 to provide an income tax credit for social security taxes paid in 1981 and 1982.

S. 3087

At the request of Mr. SASSER, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

SENATE JOINT RESOLUTION 114

At the request of Mr. STONE, the Senator from Maine (Mr. COHEN), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Utah (Mr. GARN), the Senator from Wyoming (Mr. WALLOP), and the Senator from Minnesota (Mr. BOSCHWITZ) were added as cosponsors of Senate Joint Resolution 114, a joint resolution to provide for the orderly restructuring of the Milwaukee Railroad, and for the protection of the employees of such railroad.

UP AMENDMENT NO. 1467

At the request of Mr. CHAFEE, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of UP amendment No. 1467 proposed to S. 1076, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, for the purpose of improving retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, authorizing plan preservation measures for financially troubled multiemployer pension plans, and revising the manner in which the pension plan termination insurance provisions apply to multiemployer plans.

SENATE RESOLUTION 517—ORIGINAL RESOLUTION REPORTED TO WAIVE CONGRESSIONAL BUDGET ACT

Mr. BAYH, from the Committee on Appropriations, reported the following original resolution, which was referred to the Committee on the Budget.

S. RES. 517

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of H.R. 7831, a bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1981, and for other purposes.

Such waiver is necessary to permit the appropriation of $166,000,000 to become available for a fiscal year for which the first concurrent resolution on the budget has not been agreed to. Specifically, the spending authority would become available for fiscal year 1982 for the capital program of the National Railroad Passenger Corporation. This advance appropriation as authorized under the provisions of Public Law 96–73, the Amtrak Reauthorization Act of 1979. The legislation recognizes that in purchasing passenger equipment, Amtrak must be able to make multiyear commitments, and that Amtrak has successfully initiated cost-effective purchasing programs using this authority.

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN SERVICE ACTS AMENDMENTS OF 1980—S. 3058

AMENDMENT NO. 2290

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

AMENDMENT OF INTERNAL REVENUE CODE PROVISIONS RELATING TO FEDERAL UNEMPLOYMENT TAX—H.R. 4007

AMENDMENT NO. 2291

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BOREN submitted an amendment intended to be proposed by him to the bill (H.R. 4007) to amend the Internal Revenue Code to provide that the provisions which increase the Federal unemployment tax in States which have outstanding loans will not apply if the State makes certain repayments.

ENVIRONMENTAL EMERGENCY RESPONSE ACT

AMENDMENT NO. 2292

(Ordered to be printed and to lie on the table.)

Mr. RANDOLPH submitted an amendment intended to be proposed by him to the bill (S. 1480) to provide for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

AMENDMENT NOS. 2293 THROUGH 2301

Mr. RANDOLPH (for himself, Mr. CULVER, and Mr. STAFFORD) submitted nine amendments intended to be proposed by them to the bill S. 1480, supra.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981—H.R. 7590

AMENDMENT NO. 2302

(Ordered to be printed and to lie on the table.)

Mr. ROBERT C. BYRD submitted an amendment intended to be proposed by him to H.R. 7590, an act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

NOTICE TO SUSPEND RULE XVI

Mr. ROBERT C. BYRD submitted the following notice in writing:

In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 4 of Rule XVI for the purpose of proposing to the bill (H.R. 7590), making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes, the following amendment:

AMENDMENT NO. 2302

On page 38, between lines 6 and 7, insert the following new section:

SEC. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President in the case of any office or position within the executive branch

or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5 United States Code or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution or which imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

(The remarks of Mr. ROBERT C. BYRD when he submitted the notice and amendment appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources will hold an oversight hearing on the Longshoremen's and Harbor Workers' Compensation Act on Tuesday, September 16, 1980, from 9:30 a.m. to 12:30 p.m., and from 1:30 to 3:30 p.m., in room 4232, Dirksen Senate Office Building. The hearing will focus on the Department of Labor's administration of the Longshore Act and problems which have arisen under the act. For further information regarding the hearing, please contact Darryl Anderson of the committee staff, at (202) 224-3674.

SUBCOMMITTEE ON ENVIRONMENT, SOIL CONSERVATION, AND FORESTRY

Mr. MELCHER. Mr. President, I wish to announce that the Subcommittee on Environment, Soil Conservation, and Forestry has scheduled another in its series of hearings on the Resources Planning Act assessment report submitted earlier this summer by the U.S. Department of Agriculture.

At our previous hearings, the subcommittee heard from the administration, but for the upcoming hearing, I have requested testimony from the public sector.

The hearing will be held on Tuesday, September 16, beginning at 9:30 a.m. in room 1202, Dirksen Senate Office Building.

Anyone wishing further information should contact the Agriculture Committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE TO INVESTIGATE INDIVIDUALS REPRESENTING INTERESTS OF FOREIGN GOVERNMENTS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee to Investigate Individuals Representing Interests of Foreign Governments of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold an executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Antitrust, Monopoly and Business Rights Subcommittee of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a hearing on the Small Business Motor Fuel Marketer Preservation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Water Resources Subcommittee of the Committee on Environment and Public Works be authorized to meet during the session of the Senate today to hold a markup session on the omnibus water resources amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Energy Resources and Materials Production of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider legislation to amend section 21 of the Mineral Leasing Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS, RECREATION AND RENEWABLE RESOURCES

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Recreation and Renewable Resources of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider legislation to establish a Rattlesnake National Recreation Area in the State of Montana.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hear Secretary of State Edmund Muskie on proposed nuclear fuel shipment to India (Tarapur).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hold a markup session on the Power Marketing Revolving Fund Act; legislation to expand the Indiana Dunes and other pending calendar business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, September 10, 1980, to hold a hearing on legislation concerning the nomination of the President of the United States; an original resolution relating to the U.S. Capitol Historical Capital Calendars; and Senate Resolution 494, legislation authorizing the printing of a report entitled "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" as a Senate Document.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DOMESTIC SUGAR POLICY

● Mr. CHURCH. Mr. President, the sugar beet industry in Idaho and across the Nation has weathered some very rough years. However, due to increasing world consumption of sweeteners and declining sugar harvests in the Soviet Union, Brazil, Cuba, India, and Thailand, domestic growers are finally doing much better.

For 6 years, our Nation has been without a domestic sugar policy. Since 1974, the Senate has responded repeatedly to the need to provide adequate supplies of sugar at reasonable, stable prices, while protecting domestic producers from foreign sugar being dumped on U.S. markets. Beet growers appreciate the support in the Senate repeatedly given to my efforts to enact an adequate sugar bill. Unfortunately, the House has rejected sugar legislation, and we have seen our domestic industry further crippled by unfair trade practices, documented by the International Trade Commission.

Next year, the Congress will consider a new, 5-year omnibus farm program. As I have earlier indicated, this will present the occasion to put in place a sugar policy that will be fair both to growers and consumers. The 1980 summer issue of the Sugar Producer contains an article in which Mr. Clyde Greenwell, president of the Idaho Beet Growers Association, discusses the issues surrounding the need for domestic legislation. Clyde is an articulate, hard-working farmer who has a clear grasp of the sugar beet industry and how it works. I commend his views to my colleagues and ask that the article be printed in the RECORD.

The article follows:

GROWER, CLYDE GREENWELL

(By Lyman Hafen)

Clyde Greenwell has been growing sugar beets in the Paul, Idaho area since he "was a kid." He's seen a lot of good years of sugar beet growers and some that weren't so good.

Even though this year hasn't started out well—he recently had a bout with pneumonia—he is confident and optimistic about the prospects for a good return on his crop in 1980.

Greenwell has served "a good many years" as president of the Idaho Beet Growers Association and of the Minidoka Beet Growers Association. In fact he says he's served so many terms as president of the two organizations that he can't put a number on them without going back through years of records.

Presently he is serving again as president of the two associations.

The Idaho Beet Growers Association is comprised of four associations including the Minidoka, Cassia County, Twin Falls and Jerome growers associations.

This experienced Idaho beet grower says he puts in about 100 acres of sugar beets each year. Beets are his main crop and he rotates hay and grain with them.

Growers in the area take their beets to the Amalgamated Sugar Company factory in Paul, Idaho for processing. The company has its head offices in Ogden, Utah and has three other factories besides the ones in Paul. The Paul factory was built in 1917. A factory in Twin Falls, Idaho was built in 1916, one in Nampa, Idaho in 1942 and one in Nyssa, Oregon in 1938. Greenwell said the first factory built in the area was in Burley, Idaho in 1912 but it was closed down after the factory in Paul was remodeled and enlarged.

On the topic of the depressed sugar situation over the past few years, Greenwell said, "As long as we had the Sugar Act, up until 1974 when we lost it, we always made a little money." He said after the 1973–74–75 period when sugar prices went out of sight there was only one way sugar could go and that was down.

"It couldn't stay down though," he said, "there was no way it could stay down."

Greenwell said he predicted that sugar prices would get back up again and "Now they are up," he said. He's optimistic about this year, "Sugar will get higher," he said. "It'll get higher before it gets lower."

"I hope we can get some kind of domestic sugar program worked out so we can stabilize the sugar situation to where we can stay in business and make a little money and not have to close down any more sugar plants," he said, referring to the closure of four U&I Sugar Company plants in 1978.

"We need a stable sugar act; a good domestic program," he said.

"With the United States only producing 50 percent of the sugar consumed, we should have worlds of room of our production and a little profit and still have cheap sugar," he said.

Greenwell said in his opinion the International Sugar Agreement has helped the overall sugar situation. "The ISA shows we have good faith in dealing with the foreign countries," he said.

He is confident that the Idaho Congressional Delegation will be instrumental in getting a domestic sugar program attached to the next farm bill. A program that growers "can live with," he said.

"I think we'll get a domestic program and I think we need one," he said. "We just can't continue growing beets without one.

On the topic of the Carter Administration, Greenwell said he doesn't feel the president has given much help to sugar beet growers. "You see what OPEC has done to the oil industry, the sugar industry could end up the same way," he said. Greenwell says the administration hasn't seen the sugar situation in the same light as the oil situation and is not making provisions to prevent the same thing happening to sugar as happened to oil.

Speaking of oil, Greenwell said with fuel prices as high as they are and with the prospects of continued rises in fuel prices as well as other production costs such as machinery, interest rates, fertilizer and labor, it is almost impossible for beet growers or any other farmer to realize a profit. "This is the reason we need a good domestic sugar program to compensate for rising fuel costs and rises in other production costs," he said.

"There is plenty of gas," he said. "If they'd just let us have it."

On the much discussed topic of gasohol Greenwell is very optimistic. "I think growers will be making a lot of their own fuel in the future," he said. "I think the prospect of alcohol production for fuel is a wonderful thing if we can just get it off the ground." With all the red tape the government requires, Greenwell questions whether alcohol production for fuel will be rolling on a large scale in the near future.

"But we need it," he said, "We need it bad." He said fuel costs are getting to the point now where gasohol production can pay off. "I think eventually a lot of the bigger farmers will put in their own plants," he said.

Even though fuel and other production costs are up considerably this year, Greenwell feels the sugar prospects are good in his area. He speaks highly of the Amalgamated Sugar Company and says that they are one of the keys to their success. "We've got a good healthy company here with good men at the helm running it," he said. "If we didn't have a company like this we wouldn't be in business."

Greenwell said the growers are not involved in the management of the Amalgamated factories. "We're on a participating contract and when the sugar is refined we get a percent and they get a percent," he said.

"But, what we the growers think is very important to the company officials and when we all agree on a contract everybody that is growing beets knows where his crop is going," Greenwell explained.

There have been no problems with labor at the Amalgamated factories, Greenwell said, but if it ever came to it, he says the growers would go in and process their own beets. "We've never had to do it before and I don't anticipate we ever will have to," he said. "Labor has always been helpful in getting the beets processed in an efficient manner," he added.

Amalgamated officials are forecasting a good business cycle in the sugar beet industry for the next few years and this optimism is common among most Southern Idaho growers.

The U&I Sugar Company, which closed its doors in November of 1978, had a factory in Idaho Falls, Idaho that served many growers in the Southeastern Idaho area. Many Southeastern Idaho growers who grew beets for the factory are no longer in the beet business. But some of the growers are continuing to grow beets and are now under contract to Amalgamated.

Greenwell said he isn't aware of all the reasons U&I closed down but he said, "I don't think they should have closed." He went on, "Sugar was pretty well depressed at the time they closed, but the situation was bound to turn around and the closing put a lot of growers and factory workers out of business and out of jobs."

With the beet growing future looking brighter, growers in Southern Idaho are taking steps in preparing for that future. Greenwell said sugar beets are a mainstay in the area. "This area has an ideal climate for beets, they adapt well here and the sugar is good," he said.

An example of the importance the growers have placed on the beet industry in their area is evident in a project brought about by the efforts of the Minidoka Beet Growers Association. The Association and the University of Idaho are funding a University of Idaho sugar beet specialist to do research and aid the growers in their sugar beet production.

John Gallian, a University of Idaho plant pathologist, has been working in sugar beet research in the Southern Idaho Area since April of 1979. Through his work sugar beet research throughout the state is being coordinated.

Some of the research being conducted by Gallian includes variety testing of commercial and experimental lines of sugar beets, weed control testing, pest management studies, chemical control of nematodes, powdery mildew spray and resistance trials, and many other sugar beet research projects.

Greenwell said the research is coordinated with a research committee of the Minidoka growers association chaired by Clarence Bellem of Rupert.

Both Greenwell and Bellem were instrumental in bringing the whole program about and according to Gallian, "The first year has been very successful and the grower's support and enthusiasm has been tremendous."

Another joint venture that the beet growers of Magic Valley and Upper Valley are taking part in is the upcoming construction of a $21,000 greenhouse facility at Kimberly, Idaho on the U of I farm under the direction of John Gallian and the grower's research committee. Gallian said some of the first research activities that will take place in the greenhouse facility will include experimenting to improve stand establishment through testing of various chemicals for disease control. Also he will be approaching the soil crusting problem that is prevalent in some areas.

Gallian's sugar beet research has and will continue to include the study of various varieties of fodder beets in a cooperative program with the USDA Crops Research Lab in Logan, Utah. Gallian said about 50 varieties of fodder beets from all over the world are being studied to evaluate their potential for use in alcohol production.

Greenwell is happy with the progress the sugar beet research program is making and is proud to have been a part on the creation of this unique grower-university relationship. Gallian said, "This is something Clyde worked very hard for, he was instrumental in getting the project going; he ought to be proud."

With the optimism of growers like Clyde Greenwell and the positive efforts of the Amalgamated Sugar Company, beet growers in Southern Idaho can't help but have a good year this year.

"We'll have a big crop this year, as big as last," Greenwell said. We're working hand in hand with the company and getting along well with them; they do a good job of getting the beets out and we don't have to wait on our money," he added.

"We've got some tremendous growers in this area, both big and small," he said. "Without all these good growers and without the good company we have to grow for, we wouldn't be in business."

Clyde Greenwell is no doubt one of those "good growers." He knows the business well and cares about its future. With his positive leadership of the Idaho Beet Growers Association, the growers can look forward to a bright future.●

GRAND OPENING OF THE RAILROADERS MUSEUM IN ALTOONA, PA.

● Mr. HEINZ. Mr. President, I am pleased to announce an event which will have strong appeal for railroad enthusiasts, students of American history and citizens everywhere who take an interest in our heritage. This is the grand opening, on September 21, of the Railroaders Memorial Museum in Altoona, Pa.

The museum promises to be both instructive to the children of the community, who will find there the background of their railroad heritage, and to all citizens with an interest in rail history. Exhibits include the "Loretto," a beautiful private railroad car built in 1917 for Charles Schwab, with a private dining room, parlor and bedroom paneled in walnut, marble baths, service quarters and a complete kitchen; a K4 locomotive; a large working model train layout; and a variety of railroad memorabilia.

It is altogether fitting that Altoona should be the site of this major new museum. The town itself was originally laid out in 1849 to meet the need for servicing the additional locomotives required to haul freight over the nearby mountains. And since that time, the citizens of Altoona have faithfully and skillfully kept our rail lines operating, gradually progressing from repairing locomotives to building them as well. By 1890, the famous Juniata Shops were constructed to handle the growing demand for service and construction of rail hardware, and Altoona became the site of one of the largest roundhouses in the world. Immigrants from around the world flocked to the city for the work they could find there. Today, the city and surrounding Blair County remain a vital center for Conrail activities.

The museum which memorializes this history is itself a tribute to the effort and community pride of the citizens of Altoona. A distinguished group of Blair County citizens formed the Railroaders Memorial Museum Building Fund Campaign and launched a massive local fundraising campaign in the spring of 1979. Over 280 businesses, individuals and service organizations have generously responded, and the Railroaders Museum is now a reality. In an age all too eager to turn to the Federal Government for the solutions to any and all problems, I salute the Altoona community for its initiative and independent spirit. I encourage my colleagues and their constituents to visit this new and interesting museum.●

HUMAN RIGHTS MUST REMAIN A MAJOR ISSUE AT MADRID CONFERENCE

● Mr. CHURCH. Mr. President, we have recently marked the fifth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe by the United States, Canada, and 33 European nations at Helsinki, Finland. In signing that document, both we and the Soviet Union committed ourselves to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all without distinction as to race, sex language or religion."

One of the principles embodied in the Final Act confirms the right of the individual to know and to act upon his rights and duties. In conformity with that principle, citizens of many signatory nations have formed public groups to monitor and promote full implementation and compliance.

An American group known as the Commission on Security and Cooperation in Europe recently released a report to the Congress on implementation of the Helsinki Final Act which reveals that the Soviet Union and its East European allies have failed to live up to many of their commitments made at Helsinki, particularly in the area of human rights. What is especially appalling is that the Governments of the Soviet Union, Czechoslovakia, and other countries have imprisoned, exiled, and harassed members of monitoring groups.

Since 1978, the commission report shows, more than 280 Soviet human rights activists have been imprisoned. Just since January of this year, 57 persons have been imprisoned by Soviet authorities for seeking to exercise the basic human rights guaranteed them under the Helsinki accords. Persecution of Soviet religious activists is increasing, with 180 jailed in 1979 and 264 in prisons this year.

By its brutal military intervention in Afghanistan last December the Soviet Union violated at least 5 of the 10 principles of international behavior contained in the Helsinki Final Act. The invasion was followed by the banishment to internal exile of Nobel Peace Prize laureate Andrei Sakharov, a respected scientist who has won worldwide acclaim for his courage and devotion to the cause of human rights.

Both the provisions of the Final Act relating to the reunification of families, and article 12 of the International Covenant on Civil and Political Rights which guarantees the right of emigration are intended to insure that all persons have the right to leave any country, including their own. This right still does not exist in the Soviet Union and many other countries.

One has only to consider the case of Vladimir Kislik, a distinguished Soviet scientist who was denied the right to emigrate to Israel with his wife and son in 1973 and has been subjected to the most brutal harassment ever since. Like so many others, Kislik has endured beatings, interrogation, and even commitment to a mental hospital. His mistreatment is intended to discourage others from seeking official permission to leave the Soviet Union.

In a few weeks time, representatives of the 35 Helsinki signatory countries will meet in Madrid to prepare for a November conference to review implementation of the Final Act and to discuss new measures to advance European cooperation and security.

The Soviet Union and its allies are making a concerted effort to avoid discussion of Afghanistan, Andrei Sakharov and human rights issues at Madrid. They are warning that if so-called "disagreeable issues" are stressed by the United States and the Western powers, the Madrid conference could end in stalemate. The Russians are determined to have the conference focus on security issues and to endorse a Warsaw Pact proposal for a European conference on disarmament.

I think the Russians are in for a surprise at Madrid. There will be no sidestepping of human rights issues. The U.S. delegation has been instructed to insist on a balanced agenda and a balanced conference. This means a fair review of every element of the Helsinki accords.

By signing the Helsinki Final Act, the U.S.S.R. assumed certain obligations and subjected itself to international scrutiny and criticism on the human rights issue. If it will not live up to those obligations then let it pay the consequences in terms of the international opprobrim that it deserves.●

THE REGULATORY FLEXIBILITY ACT—AN IMPORTANT REFORM FOR SMALL BUSINESSES

● Mr. CULVER. Mr. President, the 96th Congress today scored a great victory for America's small businesses when the House of Representatives adopted S. 299, the Regulatory Flexibility Act.

I am very pleased that the House of Representatives today overwhelmingly passed S. 299, which will cut redtape and paperwork for the Nation's small businesses and small cities. I first introduced the Regulatory Flexibility Act 3 years ago and the Senate has passed it twice—the last time on August 6. Now the measure can go to the President for his signature.

S. 299 creates a more fair, efficient, and responsive Federal regulatory system for America's small businesses—the innovative and productive heart of our economy. It establishes the principle that Federal regulations should be tailored to fit the size and scale of the businesses, organizations, and governments subject to those rules. It institutionalizes the important concept that the same rules designed for General Motors often make no sense when applied to a small machine shop in Des Moines.

With the passage of this act, Federal regulations will have to be developed only after agencies thoroughly assess their impact on small businesses, small organizations or small governmental jurisdictions.

Agencies will be required to assess the cost of compliance with regulations for small entities. They will have to prepare an assessment of the paperwork burden which a new regulation would impose. And they will have to give small concerns a greater opportunity to participate in shaping rules which would affect them.

Over the past two decades, our country has made great strides in providing safer places for our citizens to work, cleaner air to breathe and water to drink, and insuring the manufacture of safer products. Many of these benefits are the result of new laws which Americans still support and which continue to provide important safeguards for all of us. It is not the intent of regulatory flexibility legislation to undermine these important achievements.

Rather it is a recognition that we can do better in implementing these laws. In our efforts to secure benefits for the public at large, we often have created conflicting standards or needlessly complex reporting or compliance requirements for small businesses. This legislation requires agencies to address that problem squarely and directly.

Mr. President, the passage of this bill is the culmination of 3 years of work on regulatory flexibility. I wish to thank my distinguished colleagues, Senator GAYLORD NELSON of Wisconsin, who, with me, first introduced the bill in August 1977, as S. 1974. His leadership, as chairman of the Senate Small Business Committee, has helped establish a range of new Federal policies and programs to benefit small business. I would also like to thank Senator PAUL LAXALT of Nevada, whose work on regulatory reform and regulatory flexibility has proved invaluable.

In S. 299, we have established a series of measures which can assure that agencies address the special needs of small entities.

First, we require each Federal agency to prepare a regulatory flexibility analysis of proposed rules, in which they must estimate the economic and paperwork impacts of proposed rules before they are issued and develop alternatives which can be less burdensome for small businesses, small organizations and small governmental jurisdictions. And this analysis will be subject to appropriate judicial oversight.

Second, to insure timely notice of pending actions, S. 299 requires agencies to publish a regulatory flexibility agenda once every 6 months. The agenda is designed to give people outside of Washington, D.C., the time and opportunity to comment on proposed agency rules which will have a significant impact on a substantial number of small entities.

Third, to further assure that small businesses, organizations, and governmental units are given an appropriate role in the regulatory process, agencies will be directed to develop a number of outreach programs such as more public hearings and open conferences.

Fourth, the bill establishes a procedure for reviewing significant regulations at least once every 10 years to determine whether they can be rewritten to minimize their impact on small businesses, organizations, and local governments.

Finally, the bill permits the Office of Advocacy in the Small Business Administration to appear in court cases involving Government regulations to present the small business perspective.

Mr. President, S. 299 passed the Congress with the support of a broad coalition of interested persons and groups. Particular credit should be given to the National Federation of Independent Business, the National Small Business Association, and the Office of the Chief Counsel for Advocacy in the Small Business Administration. The bill also has had the continued and constructive cooperation of President Carter, organized labor, and public interest groups.

In the House of Representatives special thanks goes to the Speaker, my friend, Chairman NEAL SMITH of the House Small Business Committee, and all the other members of that committee who worked hard for the passage of S. 299. Special mention should be made of the efforts by Congressmen ANDY IRELAND and MARTY RUSSO. Also instrumental in this accomplishment were Chairman PETER RODINO, Congressman ROBERT KASTENMEIER, and other members of the House Judiciary Committee who have labored long and hard on regulatory reform legislation.

Finally, I wish to thank the staff of the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, including Bob Nichols, John Podesta, Jim Davidson, and Al Regnery, and Tom Cator of the Small Business Committee for their tireless efforts in drafting the version of S. 299 which the Congress has now adopted. In addition, I appreciate the fine staff work performed by Jim Morrison, George Gilbert, and Chuck Nelson on earlier versions of this bill.●

THE SALE OF TRIDENT TO GREAT BRITAIN

● Mr. CHURCH. Mr. President, on July 15, the Governments of Great Britain and the United States announced a decision which will insure a viable independent British nuclear force well into the next century.

I refer to the decision made to modernize the British Polaris submarine-launched ballistic missile force, beginning in the early 1990's, with MIRV'ed Trident I missiles. The greater range of these missiles will permit British submarines to patrol much wider areas of the Atlantic, evading Soviet efforts to locate and track them and, in the event of hostilities, to destroy them. The additional warheads on the MIRV'ed Trident I will bring the number of British strategic nuclear weapons back up to approximately the same percentage of United States and Soviet warheads as it had in the early 1970's when the four British Polaris boats were first put to sea.

On July 21, the Congress received formal notification of the proposed sale pursuant to section 36(b) of the Arms Export Control Act. Thirty calendar days have now elapsed since that notification and the sale will go forward.

Mr. President, this is an extremely important strategic decision for Great Britain and the United States, culminating a very lengthy bilateral discussion and analysis. Since the dawn of the nuclear age the United States has cooperated intimately with Great Britain on the full range of nuclear matters. During the Second World War American and British scientists worked together on developing the first nuclear weapons. In 1962 President Kennedy agreed at Nassau to assist the development of an independent British nuclear deterrent, by selling Polaris missiles to the United Kingdom. The U.S. decision to assist Great Britain in modernizing its deterrent with the Trident missile signals a continuation of this historic relationship, which is a central element in the close security cooperation between our two countries.

Mr. President, I believe all Senators are well aware that the British strategic nuclear force is committed to the North Atlantic Alliance and that it makes an important contribution to the ability of NATO to deter Soviet aggression. I would add that this joint step by our two nations is only a part of our broader efforts, with our European allies, to strengthen NATO's defense capabilities in the face of continuing Soviet military buildup. These efforts, including 3 percent real growth in defense budgets, the NATO long-term defense program, and modernization of long-range theater nuclear forces, insure the continued security of Western Europe and the maintenance of world peace.

To be sure, modernization of the British strategic nuclear force represents a substantial expenditure, which must be balanced with other NATO and British security needs. Although Britain will pay a share of Trident I research and development costs, by purchasing these missiles from the United States the United Kingdom is saving up to $4 billion from the cost of independently developing a new British missile. In that regard I was pleased to note that Prime Minister Thatcher, in a letter to the President, reiterated her government's continued support for strengthening NATO's conventional forces. The British Government specifically intends to take advantage of the economies made possible by the purchase of Trident in order to reinforce its efforts to upgrade British conventional forces.

Mr. President, the conclusion of effective, equitable arms control agreements with the Soviet Union can also contribute importantly to Western security. As my colleagues are aware, the United States and the Soviet Union are currently preparing to hold informal, preliminary discussions on limiting long-range theater nuclear forces. Although there are many differences between the two sides and any future negotiations on theater nuclear forces are bound to be long and difficult, both sides agree that the British strategic nuclear force should not be included in these theater nuclear discussions or, indeed, in the next round of SALT negotiations.

Nor is the proposed sale of Trident inconsistent with the pending SALT II treaty. During the Committee on Foreign Relations hearings on the treaty last year, the relationship between SALT and our nuclear cooperation with our allies was thoroughly examined. Many members of the committee—including me—were concerned that article XII of the treaty, the noncircumvention provision, could be interpreted in such a way as to interfere with the existing patterns of collaboration and cooperation with our allies. Thus the committee unanimously recommended to the full Senate an understanding to the treaty which made clear that such cooperation would not be prevented by SALT II. Since that time, I believe actions taken by the United States have amply demonstrated our will and determination to continue to cooperate with our allies when it is in our overall security interests. I refer specifically to both the sale of Trident I missiles to the United Kingdom, and the decision of NATO ministers last December to modernize NATO's theater nuclear forces with the deployment of 572 additional intermediate-range missiles in Europe.

Mr. President, I heartily support both the British decision to modernize their nuclear forces, and the U.S. decision to assist British modernization with the Trident. I believe it is the correct course for our two nations to follow. It is important that Great Britain continue to maintain its independent deterrent, to do so within the framework of the NATO Alliance and our historic relationship. I welcome this step as a means of strengthening our collective security.●

THE DEPORTATION OF MOHAMMED MILHEM

● Mr. STEVENSON. Mr. President, voices of restraint and moderation are lost in the much publicized comments of Palestinian and Israeli extremists. Thus, I was pleased to find in the Washington Post of August 28 a letter from Merle Thorpe, Jr., President of the Foundation for Middle East Peace. He singles out a Palestinian moderate, Mayor Mohammed Milhem, for recognition. I ask that his letter be printed in the RECORD.

The letter follows:

THE DEPORTATION OF MOHAMMED MILHEM

The Israeli Supreme Court's ruling last week, upholding the deportation of West Bank Mayor Mohammed Milhem, prompts comment on the interesting op-ed column by Nick Thimmesch ["A Plea to the Palestinians," July 8], in which he asked the whereabouts of peace-minded Palestinians.

"Only last week," Mr. Thimmesch wrote, "a group of 56 prominent American Jews issued a statement urging Israeli concessions . . . I am still looking for Palestinian counterparts to the fair-minded, intelligent Jews who want to resolve the Palestinian question."

Mr. Thimmesch identified, appropriately, three outstanding Jewish spokesmen for peace and recognition of a Palestinian state—Nahum Goldmann, Mattityahu Peled, Simha Flapan. I won't attempt to analyze certain Palestinian counterparts, such as Walid Khalidi, Edward Said and Issam Sartawi, but I would like to identify, by reference to this foundation's experience with one Palestinian, a problem facing peace-oriented Palestinians who are directly involved in the conflict.

Mr. Milhem was, early this year, together with a distinguished Israeli, to have been the recipient of a $10,000 peace award of this foundation. He was selected on the basis of acts and statements that showed him prepared for peace with Israel. The appropriateness of the selection was borne out by subsequent remarks he made to 150 Israelis (The Monday Night Club) in West Jerusalem in March. I believe you will agree that the following extracts from the transcript's question-and-answer period are representative.

"I want to bring the Palestinians to a Palestinian state, you want to bring Israelis to an Israeli state. We'll have to watch, both of us, that those who come will not determine the states—Jews or Arabs. . . .

"These boundaries of 1967 can be the boundaries of the state, provided the refugees get compensation and the return of the number that would be accepted by Israel.

"We won't want [expect] to see the Israeli army withdraw in one month. It can't happen. It may take 5, 6 or 10 years to withdraw. This is enough time to put the minds of the Israelis at rest and to test the good will of the Palestinians."

Mr. Milhem, who was applauded vigorously, was not speaking as a Palestinian-American or as a "friend" of a peace group. He was speaking as one in the center of the conflict, the elected representative of Palestinians in Halhoul, a West Bank municipality under occupation.

On May 3, following the Hebron shootings, Mr. Milhem (together with Hebron's Mayor Kawasmeh) was deported to Lebanon, unceremoniously, in the middle of the night, without trial or hearing, for prior, unspecified "inflammatory remarks." (Of Hebron, Mr. Milhem had told his Monday Night Club audience: "The time is not mature for Jewish owners to live in the middle of Hebron. Once we prepare the ground for it, everyone can live. . . . I'll take an Israeli passport and abide by Israeli laws, and you'll take an Arab passport and abide by their regulations.")

Mr. Milhem's offensive appears to have been his strong advocacy of peace with Israel on the basis of Palestinian self-determination in the 28 percent of Palestine represented by the West Bank and Gaza, an approach advocated by virtually all nations of the world except the United States and Israel.

One doesn't have to accept all of Mr. Milhem's views to acknowledge that he spoke constructively. Israeli journalist Amos Elon has written in Ha'aretz:

"They [Mr. Milhem and Mr. Kawasmeh] told whoever was willing to listen that they are prepared for a full peace with Israel, but in their own independent state . . . We were wrong in expelling two of the most outstanding and serious of these new leaders."

In conclusion, at least as to Palestinians under occupation, there are severe obstacles to the type of peace expression that Mr. Thimmesch seeks.

Typo

In my letter ["The Deportation of Mohammed Milhem," Aug. 28] a typographical error, unfortunately, left a key Milhem quote rather confusing. Milhem said:

"I want to bring the Palestinians to a Palestinian state, you want to bring the Israelis to an Israeli state. We'll have to watch, both of us, that those who come will not *undermine* [not 'determine'] the states—Jews or Arabs."

MERLE THORPE, Jr.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that 15 such notifications were received: one on August 21, two on August 25, two on August 26, nine on August 28, 1980, and one on September 2.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S–116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 21, 1980.
Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.
Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.
Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 26, 1980.
Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 26, 1980.
Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by

Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a NATO country tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of the State, I wish to provide the following advance notification.

The Department of State is considering an offer to an African country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 2, 1980.

Dr. HANS BINNENDIJK,
Committee on Foreign Relations,
Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country for major defense equipment tentatively estimated to cost in excess of $7 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the

Arms Export Control Act, we are forwarding herewith Transmittal No. 80-93, concerning the Department of the Army's proposed Letter of Offer to Sudan for defense articles and services estimated to cost $14.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-93]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Sudan.

(ii) Total estimated value: Major Defense Equipment,* $13.0 million; Other, $1.5 million; Total, $14.5 million.

(iii) Description of articles or services offered: Eighty full tracked armored personnel carriers, M113A2, including ammunition and logistics support.

(iv) Military department: Army (UAM).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 Report: Included in report for quarter ending 31 March 1980.

(viii) Date report delivered to Congress: August 25, 1980.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 25, 1980.

In reply to: I-6564/80 ct

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-95, concerning the Department of the Army's proposed Letter of Offer to Sudan for defense articles and services estimated to cost $9.5 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-95]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Sudan.

(ii) Total estimated value: Major Defense equipment,* $8.5 million; Other, $1.0 million; Total, $9.5 million.

(iii) Description of articles or services offered: Eight M163A1 self-propelled Vulcan air defense guns.

(iv) Military department: Army (UAP).

(v) Sales commission, fee, etc. Paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 report: Included in report for quarter ending 31 March 1980.

(viii) Date report delivered to Congress: August 25, 1980.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-89, and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter of Offer to Malaysia for defense articles and services estimated to cost $38.2 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-89]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Malaysia.

(ii) Total estimated value: Major Defense Equipment,* $36.2 million; Other, $2.0 million; Total, $38.2 million.

(iii) Description of articles or services offered: Two RF-5E reconnaissance aircraft with government furnished aeronautical equipment spare parts, and support equipment.

(iv) Military department: Air Force (SLA).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date Report Delivered to Congress: August 28, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 28, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-92, concerning the Department of the Army's proposed Letter of Offer to Egypt for defense articles and services estimated to cost $31.9 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-92]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS CONTROL ACT

(i) Prospective purchaser: Egypt.

(ii) Total estimated value: Major Defense Equipment,* $29.9 million; Other, 2.0 million; Total, $31.9 million.

(iii) Description of articles or services offered: Fifty-two improved TOW combat vehicles, M901, with TOW launchers, missiles. ancillary and support equipment, ammunition, related spare parts, training and other associated services.

(iv) Military department: Army (UBE).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: August 28, 1980.

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., September 4, 1890.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-118, concerning the Department of the Army's proposed Letter of Offer to Greece for defense articles and services estimated to cost $12.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620c(d) of the Foreign Assistance Act of 1961 that this action is consistent with Section 620c(b) of that statute.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-118]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Greece.

(ii) Total estimated value: Major Defense Equipment,* $11.6 million; Other, $.4 million; Total, $12.0 million.

(iii) Description of articles or services offered: Ten M728 combat engineer vehicles and 12 M113A2 armored personnel carriers.

(iv) Military department: Army (WIV).

(v) Sales commission, fee, etc. paid, offerred or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense services proposed to be sold: None.

(vii) Section 28 Report: Included in report for quarter ending 30 June 1980.

(viii) Date report delivered to Congress: September 4, 1980.

UNDER SECRETARY OF STATE,
Washington, D.C.

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended, and the authority vested in me by section 1(a) (1) of the Department of State Delegation of Authority No. 145, I hereby certify that the provision of M-728 engineer vehicles and M113A2 armored personnel carriers to the Government of Greece is consistent with the principles contained in Section 620(b) of the Foreign Assistance Act of 1961, as amended.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

MATTHEW NIMETZ.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 4, 1980.

Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-115, concerning the Department of the Army's proposed Letter of Offer to Austria for defense articles and services estimated to cost $117.6 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Acting Director.

[Transmittal No. 80-115]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(B) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Austria.

(ii) Total estimated value: Major defense equipment*—$113.8 million; Other, $3.8 million; Total, $117.6 million.

(iii) Description of articles of service offered: One hundred twenty M60A3 turrets, 80 M60A1 turrets, and 120 modification kits (M60A1 to M60A3).

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*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iv) Military Department: Army (UTB).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid: None.

(vi) Sensitivity of technology contained in the Defense articles or Defense Services proposed to be sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date report delivered to Congress: September 4, 1980.●

JANE HART

● Mr. HUDDLESTON. Mr. President, I am certain all my colleagues in the Senate will be most interested in a book recently published by Penguin Books and cowritten (with Beverly Jones) by my friend and constituent, Jane Hart of Frankfort, Ky. Jane's book, entitled "Where's Hannah," is her personal story of living with and dealing with a problem that concerns us all: the education, development, and care of learning-disabled children.

"Where's Hannah" gives clear evidence that a severely developmentally disabled person can grow, learn, and change through proper attention so difficult for many to find. It explores Movigenics, the theory that examines the relationship between movement and learning efficiency for the "special child." There are thousands of children like Hannah and thousands of parents who have faced the same problems as Jane and her husband, Ken. Hannah is but a single representative of these thousands of children labeled "special" who must face an educational maze. As Jane states:

> Only when we stop dividing the population into arbitrary, usually hurtful, categories and start looking at all people as living beings will no children be condemned to special classes, special categories, special institutions and special places in society.

Jane Hart assisted in establishing the first public-school class in Kentucky for perceptually handicapped children and for the past decade has worked for the Kentucky Department of Mental Health developing educational materials. She is to be personally commended. But more importantly, Jane's book is of value to our society because of the guidance and insights it offers to others who struggle with these problems and questions daily. I recommend "Where's Hannah" as an important book to all of us who are interested in the education and care of learning-disabled children.●

CELLULOSE INSULATION

● Mr. McCLURE. Mr. President, the process of Government regulation of the economy is a major issue of our time. Regulatory rigidity and incompetence has been identified as a significant cause of declining productivity and increasing costs.

The Consumer Product Safety Commission seems to be well on its way to providing us with another example of just that kind of counterproductive regulation. In 1978, with the support of most manufacturers of cellulose insulation, Congress directed the CPSC to adopt a standard for cellulose insulation that would assure that it was not subject to dangerous flammability or corrosion. We directed that CPSC follow existing GSA specifications, and to follow GSA modifications, unless it decided otherwise. Well, CPSC did decide otherwise, and adopted a different set of tests, which have proved to be wildly variable and unreliable in actual operation.

Cellulose insulation has been made in America for over 50 years. With the growing emphasis on energy conservation, it has become an important source of energy savings—especially in the "retrofit" market. The files of the CPSC contain only one instance of injury attributed to this insulation: someone stepped on smoldering insulation that had been thrown out of a house.

Cellulose insulation is made by a host of small manufacturers across the country. Perhaps 200 to 500 exist today, though there were more than 800 before CPSC began its crusade against cellulose. Most of these manufacturers subscribe to testing programs by major independent testing laboratories, such as Underwriters' Laboratories, Factory Mutual, and others. They also conduct repeated periodic testing for quality control by their own employees.

What has been happening throughout the country now is that a manufacturer, having passing test results from a private certifying laboratory, finds that CPSC has found his product out of compliance, and told him to close up shop. In fact, in the first round of its enforcement testing conduced in late 1979, over 75 percent of all manufacturers tested by the CPSC failed. In many of these cases, the business has taken from the assembly line the very next bag to that taken by CPSC, had it tested privately, and found that it passed.

Yet the tests that mean life or death for many small businesses are very widely variable. When CPSC asked 10 labs, including its own, under NBS supervision, to test each of 7 samples, in only 3 of the 7 cases could the labs agree on whether the material passed or failed, let alone agree on what the exact results were. Analysis of these tests reveal that the results of the tests can vary by up to 58 percent.

These results are hardly surprising when you consider some of the tests. One of them tests cellulose insulation's resistance to smoldering. This test is begun by placing a cigarette in a box of insulation. CPSC is apparently uninterested in the fact that the heat of the cigarette can vary by over 70 percent, from under 500° to over 850°. In other cases, CPSC's own material indicates that highly important conditions, such as temperature and humidity, have not been held constant as required by the test manual. It is little wonder that the outcome for any individual manufacturer is little better than a lottery.

Let me emphasize that this is not a case where the regulated industry wants to do away with a standard or regulation. The industry wants a consistent, scientifically accurate standard and tests that can accurately distinguish between complying and noncomplying insulation.

Nor is this a case where the regulators have said, "You failed because of this defect—do it this other way." If that were the case, the beleaguered manufacturer could at least try to comply, even if he did not agree. Here, however, CPSC gives no clue as to why the material is failing its tests.

After the very large failure rate on the first round of tests, CPSC has been giving people to believe that it worked to help bring companies into compliance, and that it is essentially only a few malcontents who continue to complain. This is not true. In fact, in the second round of testing, earlier this year, the failure rate at CPSC was essentially unchanged, ranging over 75 percent.

CPSC has been unwilling to accept an offer by members of the cellulose industry to participate in, at the industry's expense, a program to "calibrate" all testing laboratories who wanted to participate, so that consistent results could be obtained.

Apparently stymied by bureaucratic inertia, these small businesses turned to Congress. I have spoken to companies in my State, and I am sure some of my colleagues have done the same. The Appropriations Subcommittee now considering the CPSC budget has noted in its report that:

> We encourage the Commission to strive for scientific consensus on the means and procedures for conducting tests under the amended standard. The Commission should continue to work with independent testing laboratories and the industry to insure that all tests conducted on the same material will yield consistent results. The Commission should also continue its efforts to assist manufacturers to comply with the standard, including explaining deficiencies in product characteristics that lead to test failure.

Although this is couched in the cautious language appropriate to the Appropriations Committee, its meaning is clear, and I welcome this display of concern with the CPSC program. Congress simply should not support an agency that is unwilling to submit itself to scientific scrutiny, an agency that will attempt to ruin small business based on tests that do not meet standards of scientific accuracy.

We are dealing here with essentially a technical scientific problem, not primarily a political or legal one. However, CPSC has made it political. If CPSC were willing to participate in a program with private testing labs and industry to assure that all labs were calibrated to produce the same results on the same material, the largest part of the problem would disappear. I trust that the wisdom of that course will soon break through the bureaucratic shell of the CPSC, and allow reason and science to alter the current course of the CPSC's administration of its cellulose insulation standard.●

MARINE PROTECTION, RESEARCH AND SANCTUARIES AUTHORIZATIONS—TITLE II

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1123.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1123) entitled "An Act to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such Act for fiscal year 1980", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That section 203 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1443) is amended to read as follows:

"SEC. 203. (a) The Administrator of the Environmental Protection Agency shall—

"(1) conduct research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of—

"(A) determining means of minimizing or ending, as soon as possible after the date of the enactment of this section, the dumping into ocean waters, or waters described in section 101(b), of material which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities, and

"(B) developing disposal methods as alternatives to the dumping described in subparagraph (A); and

"(2) encourage, cooperate with, promote the coordination of, and render financial and other assistance to appropriate public authorities, agencies, and institutions (whether Federal, State, interstate, or local) and appropriate private agencies, institutions, and individuals in the conduct of research and other activities described in paragraph (1).

"(b) Nothing in this section shall be construed to affect in any way the December 31, 1981, termination date, established in section 4 of the Act of November 4, 1977 (Public Law 95-153; 33 U.S.C. 1412a), for the ocean dumping of sewage sludge.".

SEC. 2. Section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1444) is amended—

(1) by striking out "and" immediately after "fiscal year 1977,", and

(2) by striking out "fiscal year 1978." and inserting in lieu thereof the following: "fiscal year 1978, not to exceed $11,396,000 for fiscal year 1981, and not to exceed $12,000,000 for fiscal year 1982.".

UP AMENDMENT NO. 1565

(Purpose: Add section relating to scientific assessment of damages to natural resources from spills of petroleum or petroleum products)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate concur in the House amendment with an amendment, which I send to the desk, and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. CANNON, proposes an unprinted amendment numbered 1565.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of such Act, insert the following new section:

"SEC. 3. Section 202(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(a)) is amended by inserting the following immediately after the first sentence thereof: 'These responsibilities shall include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products.' ".

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FISH AND WILDLIFE CONSERVATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 3292, the Fish and Wildlife Conservation Act of 1980, be discharged from the Committee on Environment and Public Works and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3292) to assist the States in developing fish and wildlife conservation plans, and for other purposes.

UP AMENDMENT NO. 1566

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CULVER, I send to the desk an amendment to H.R. 3292 in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), on behalf of Mr. CULVER, proposes an unprinted amendment numbered 1566 in the nature of a substitute.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Fish and Wildlife Conservation Act of 1980".

SEC. 2. DECLARATION OF FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more esthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, devise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) The term "approved conservation plan" means the conservation plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, esthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, such term means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any of such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mam-

mal Protection Act of 1972 (16 U.S.C. 1362 (5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Sec. 4. Conservation Plans.

The conservation plan of any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, esthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should should be taken to conserve the plan species and their significant habitats;

(6) establish priorities for implementing the conservation actions determined under paragraph (5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years;

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies.

Sec. 5. Approval of Conservation Plans and Certain Nongame Fish and Wildlife Conservation Actions.

(a) Approval by Secretary of Plans.—(1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such manner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii) is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and the modifications required for approval.

(b) Effect of Approval of Plans.—If the Secretary approves the conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation shall be deemed to be an approved plan for the purposes of section 6(a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(c) Conservation Action.—If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursement is available under section 6.

(d) Nongame Conservation Actions in the Absence of an Approved Plan.—In the absence of an approved conservation plan, and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design.

Sec. 6. Reimbursement of State Costs for Developing, Revising, and Implementing Conservation Plans and Implementing Certain Nongame Fish and Wildlife Conservation Actions.

(a) In General.—Any State may apply to the Secretary for reimbursement under this section for costs incurred by the State for the following:

(1) The development of a conservation plan.

(2) The revision of an approved conservation plan.

(3) The implementation of nongame fish and wildlife conservation actions approved under sections 5(c) and (d).

(4) The implementation of conservation actions specified in an approved conservation plan.

(5) The coordination, consolidation, or implementation of the conservation plan or conservation actions approved under this Act with other related plans or actions developed pursuant to the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act and the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(b) Applications.—Application for reimbursement under this section shall be made in such manner as the Secretary shall by regulation prescribe and shall contain such information whether the State meets the eligibility requirements set forth in subsection (c).

(c) Eligibility.—No State is eligible for reimbursement under this section unless the Secretary finds that the costs, for which reimbursement is sought, have been incurred by the State as follows:

(1) If reimbursement is sought under subsection (a)(1), such costs have been incurred in developing a conservation plan that meets the requirements set forth in section 4.

(2) If reimbursement is sought under subsection (a)(2), such costs have been incurred in revising the plan in a manner consistent with such requirements.

(3) If reimbursement is sought under subsection (a)(3), such costs have been incurred in implementing the conservation actions as approved by the Secretary.

(4) If reimbursement is sought under subsection (a)(4), such costs have been incurred in implementing conservation actions specified in, and in a manner consistent with, the approved conservation plan.

(5) If reimbursement is sought under subsection (a)(5), such costs have been incurred in consolidating, coordinating or implementing conservation plans and actions approved under this Act with approved plans and actions under the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act and the Act of September 2, 1950 (16 U.S.C. 6690e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act in a manner consistent with sections 2 and 4 of this Act.

(d) Reimbursement.—Subject to the limitations in subsection (c) and the terms and conditions imposed under section 7, and to the availability of funds appropriated under section 11, the Secretary shall reimburse each State which the Secretary finds to be eligible therefor under subsection (c).

(e) Limitations.—(1) The total amount of the reimbursement paid to any State under this section with respect to any fiscal year may not exceed the allocation available to the State under section 8 for such year.

(2) No reimbursement may be paid under this section to any State for any cost incurred by the State during any fiscal year—

(A) after September 30, 1991, in developing a conservation plan;

(B) after September 30, 1986, for costs incurred in implementing certain nongame fish and wildlife actions approved under section 5(d);

(C) in which less than 80 percent of the costs to be reimbursed are for the principal benefit of nongame fish and wildlife or the users of nongame fish and wildlife;

(D) in implementing an approved conservation plan, unless the cost was incurred in implementing actions approved under section 5 (c) or (d);

(E) in implementing an approved conservation plan covering only nongame fish and wildlife, or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that more than 10 percent of such costs are paid for with moneys collected during such year by the State—

(i) from the sale of hunting, fishing, and trapping licenses, and

(ii) as penalties (including forfeitures) for violations of the hunting, fishing, and trapping laws of the State; or

(F) in implementing an approved conservation plan or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that—

(i) more than 10 percent of such costs are applied for purposes of conservation law enforcement under any such plan or action, and

(ii) more than 10 percent of such costs in any such year are accounted for by personal service or other inkind contributions.

(3) The amount of the reimbursement paid to any State under this section with respect to any fiscal year—

(A) may not exceed 75 percent for the development of a conservation plan except that during fiscal years 1982, 1983, and 1984 such amount shall not exceed 90 percent;

(B) for the implementation of nongame fish and wildlife conservation actions approved under section 5 (c) or (d), may not exceed 75 percent of the cost of implementing the action during such fiscal year, except that if such action is undertaken by two or more States such amount shall not exceed 90 percent;

(C) during and after the fiscal year in which the conservation plan of the State is approved under section 5(a), may not exceed 75 percent of the cost of implementing and revising the conservation plan during such fiscal year, or if two or more States cooperate in implementing or revising such plan, such cost shall not exceed 90 percent, and

(D) after September 30, 1991, may not exceed—

(i) 50 percent of the cost of implementing and revising the plan during the fiscal year, if the approved conservation plan of the State covers only nongame fish and wildlife, or

(ii) 75 percent of the cost of implementing and revising the plan during such fiscal year, if the approved conservation plan of the State coordinates and consolidates planning for fish and wildlife.

(4)(A) In computing the costs incurred by any State during any fiscal year in developing or revising conservation plans, in implementing approved conservation plans, or in implementing nongame fish and wildlife conservation actions approved under section 5 (c) or (d), for which reimbursement may be available under this section, the Secretary shall—

(i) take into account, in addition to each outlay, the value of inkind contributions and real and personal property received and applied during such year by the State for such purposes; and

(ii) not include any other Federal moneys received by such State and applied by it, directly or indirectly, for such purposes.

(B) For purposes of subparagraph (A), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies regarding fish and wildlife. The Secretary shall by regulation establish (i) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as inkind contributions; and (ii) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be final and conclusive.

SEC. 7. TERMS AND CONDITIONS OF REIMBURSEMENT.

Reimbursements made to the States under section 6 shall be subject to such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. Such terms and conditions shall include, but not be limited to, the following:

(1) Each State and each designated State agency shall keep such records as the Secretary shall require as being necessary or appropriate for fully disclosing the amount and purposes of costs incurred by the State for which reimbursement under section 6 is, or may be, sought. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to such records.

(2) Upon a finding by the Secretary, after notice and opportunity for an agency hearing on the record, that any State has received reimbursement under section 6 for which it is not eligible, or has violated any term or condition imposed under this section, the State shall thereafter be ineligible to receive reimbursement under such section until restitution satisfactory to the Secretary is made, such violation ceases, or adverse effects resulting from such violation are remedied.

SEC. 8. ALLOCATION OF FUNDS FOR ADMINISTRATION AND REIMBURSEMENT OF STATES.

(a) IN GENERAL.—The total amount appropriated pursuant to section 11 for any fiscal year shall be available for administration and for allocation among the States as provided in this section.

(b) ALLOCATION FORMULA.—Of the total amount appropriated for any fiscal year pursuant to section 11—

(1) the Secretary shall deduct so much, but not to exceed 8 percent thereof, as may be necessary for administering during such fiscal year the provisions of this Act relating to the purposes for which so appropriated;

(2) less the deduction under paragraph (1), the Secretary shall allocate—

(A) for the District of Columbia and the Commonwealth of Puerto Rico each a sum equal to not more than one-half of 1 percent of such amount; and

(B) for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands each a sum equal to not more than one-sixth of 1 percent of such amount; and

(3) less the deduction under paragraph (1) and the sums allocated under paragraph (2), the Secretary shall allocate for each of the States (other than those provided for in paragraph (2)) a sum—

(A) one-third of which is based on the ratio to which the area of such State bears to the total area of all such States, and

(B) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States,

except all sums allocated under this paragraph shall be adjusted equitably so that no State shall be allocated a sum which is less than one-half of 1 percent of the amount available for allocation under this paragraph for any fiscal year or more than 5 percent of such amount.

(c) TREATMENT OF AMOUNTS ALLOCATED BUT NOT USED FOR ANY FISCAL YEAR.—(1) That portion of any amount deducted by the Secretary under subsection (b)(1) for administrative purposes for any fiscal year and not expended during such fiscal year shall remain available for administrative purposes until the close of the next succeeding fiscal year and if not obligated or expended by the close of such succeeding fiscal year shall be available for disbursement by the Secretary without regard to subsection (b), to the States to carry out the purposes of this Act.

(2) That portion of any amount allocated to any State under subsection (b) (2) or (3) for any fiscal year and not disbursed to the State for such fiscal years under section 6 shall remain available for disbursement to the State under such section for the next succeeding fiscal year and if not disbursed for such succeeding fiscal year shall be available for disbursement by the Secretary, without regard to subsection (b), to the States to carry out the purposes of this Act.

SEC. 9. OTHER FEDERAL ASSISTANCE AND ACTIONS.

The Secretary and the chief executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans.

SEC. 10. DISCLAIMERS.

Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the States to manage, control, or regulate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary of Agriculture under the Act of March 2, 1931 (46 Stat. 1468–1469; 7 U.S.C. 426–426b).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for purposes of making reimbursements under section 6 to States for the development and implementation of conservation plans and for administration of this Act under section 8 net to exceed $5,000,000 for each of fiscal years 1982, 1983, 1984, and 1985.

SEC. 12. STUDY.

The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct, out of funds available for the administration of this Act a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this Act, including, but not limited to, funding by means of an excise tax on appropriate items. On or before the expiration of the 30-month period following the date of enactment of this Act, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto.

Amend the title so as to read: "A bill to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CULVER, I am authorized to say that this legislation, which would encourage States to develop management programs for nongame species of wildlife, is similar to the bill S. 2181 which passed the Senate on May 22, 1980. The Senate bill was passed after H.R. 3292 had been approved and sent to the Senate for consideration. The intention of today's action is to pass the House bill with provisions to which both the House and Senate can agree.

Essentially, the compromise bill would encompass the provisions of the Senate bill except that the discretion of the States to establish management programs for invertebrate species would be deleted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

● Mr. CHAFEE. Mr. President, I believe that H.R. 3292 is a landmark in U.S. conservation efforts. With this approval Congress is recognizing that conservation and management of a broad spectrum of wildlife species not only makes good scientific sense but is also in the national interest. Today's legislation will allow State wildlife agencies in the future to coordinate, integrate and design complimentary programs for both traditional game species and so called nongame species of wildlife. In reality this will mean the States now have the opportunity to manage major portions of ecosystems. This broader management flexibility should result in major benefits to both consumptive and nonconsumptive users of our wildlife resources.

On the committee we have seen a tremendous amount of support for this particular legislation from all the States and from organizations throughout the wildlife conservation community. The committee has held two hearings and the testimony we received indicates that in addition support for the legislation exists among other interest groups, such as agriculture and forestry.

The bill the Senate is approving today is the result of efforts made over the last few weeks to resolve differences between Senate and House bills, both of which have been approved on this subject. I believe the legislation resulting from these efforts retains the best characteristics of both bills and at the same time recognizes that realistic limits must be placed on this new program. The final version retains two elements of the Senate-approved bill which are significant. It contains as did the Senate bill an authorization for programmatic moneys so that existing State "nongame" programs or approvable portions of State "nongame wildlife" plans can apply for Federal aid in fiscal year 1982. It is the committee's understanding that this will be of immediate benefit to perhaps 21 States.

Today's bill also includes a study of potential financing mechanisms for the programs envisioned in this legislation. Many witnesses who testified before the committee believed it to be both practical and equitable to finance this new program with an excise tax similar to that used to finance the Dingell-Johnson and Pittman-Robertson programs. The committee will be interested in receiving the results of this study and hopes that some mechanisms other than appropriated funds can be identified.

One of the major changes from the Senate bill which is contained in the final legislation is the deletion of invertebrates from the coverage of the law. While I understand the rationale for this position—the potential number of invertebrate species could quickly exhaust the money and overwhelm the planning process of the proposed programs—this deletion should not be viewed as an indication that invertebrates are not important parts of any wildlife management schemes. It should be remembered that the States can apply their own resources to invertebrates if such species appear to be in need of management efforts.

In addition, the committee would point out that when such species are threatened or endangered or crucial to the survival of another threatened or endangered species it is possible that the conservation management funds under section 6 of the Endangered Species Act may be available for management of the species. Such use of these funds would be consistent with the philosophy in today's legislation: effective and wise management of wildlife and the ecosystem on which they depend will avoid such species being a candidate for either threatened or endangered species.

Finally, I would note that both the House and Senate bills which were approved were consistent on the point that in the future the States should make every effort to expand in scope and integrate all their wildlife planning efforts. Both bills agreed that wise "ecosystem" management would be in the best interest of this Nation's wildlife resources and those who wish to enjoy these resources. The final version of this legislation retains this concept and provides incentives to the States to move their programs toward such a comprehensive management scheme. I hope the States will respond positively to this challenge, and I am sure they will.

Mr. President, before closing, I would also like to compliment Senator CULVER, chairman of the Environment and Public Works Committee's Subcommittee on Resource Protection for this support and concern regarding this legislation. I also would like to mention the hard work and attention given this subject by Congressmen FORSYTHE and BREAUX, ranking member and chairman of the Subcommittee on Fisheries and Wildlife of the House Merchant Marine and Fisheries Committee. The staffs, both majority and minority, of both committees have been tireless in their efforts on this bill and I would also like to thank them for their help and advice.

Thus, Mr. President, I wholeheartedly support this legislation we are passing today and the landmark steps it envisions. I urge each of my colleagues to do the same.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HARLEY O. STAGGERS FEDERAL BUILDING

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 6511 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

it is so ordered.

The legislative clerk read as follows:

A bill (H.R. 6511) to designate the building know as the Federal Building in Morgantown, West Virginia, as the "Harley O. Staggers Federal Building".

UP AMENDMENT NO. 1567

(Purpose: To provide an effective date for the authorization)

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. RANDOLPH, I send to the desk an amendment to H.R. 6511.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for Mr. RANDOLPH, proposes an unprinted amendment numbered 1567:

On page 2, after line 2, insert the following:

SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR H.R. 6372, H.R. 7466, AND H.R. 7666 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as they arrive in the Chamber, H.R. 6372, H.R. 7466, and H.R. 7666 be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 990, 1004, 1011, 1012, and 1013.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the five calendar items identified by him have been cleared on our calendar and we have no objection to their consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader.

SOUTHWEST POWER ADMINISTRATION ADMINISTRATIVE PROVISIONS

The Senate proceeded to consider the bill (S. 1519) to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, line 7, strike "all other reimbursable costs of said system have been returned to the Treasury" and insert "January 1, 2027";

On page 2, line 19, after "Act" insert a colon and "*Provided*, That nothing in this Act is intended to endorse the rate limitation provisions of said contract';

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Energy (hereinafter referred to as the "Secretary") is authorized and directed to adjust the power system average rate and repayment schedule of the Southwestern Power Administration System to defer for repayment until all other reimbursable costs of said system have been returned to the Treasury, January 1, 2027, an amount representing the difference in revenue realized from past and future sales of power and energy to the Arkansas Power and Light Company, an Arkansas corporation, pursuant to contract numbered Ispa-514, dated January 29, 1952, and the revenues that would have been or would be received from sales of an equal amount of power and energy marketed under established system rate schedules.

SEC. 2. The Secretary is further authorized and directed to waive all interest charges heretofore or hereinafter incurred on such amounts the repayment of which is authorized and directed to be deferred by this Act. Act: *Provided*, That nothing in this Act is intended to endorse the rate limitation provisions of said contract.

SEC. 3. Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) is amended by removing the period at the end of the second sentence and inserting a comma in its place and adding the phrase "and, in the case of the Southwestern Power Administration, that period shall not exceed sixty years.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-908), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

The purpose of this measure, as reported by the Committee on Energy and Natural Resources, is to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration (SWPA), to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944.

In 1952, SWPA signed a contract with Arkansas Power & Light Co. and the Reynolds Aluminum Co. in which SWPA was required to furnish 150 megawatts of power to the power company for resale to the aluminum company. Most of the power was, and still is, being used for the production of aluminum at a plant located at Arkadelphia, Ark.

This contract is for a fixed term of 30 years, and contains provisions which have not allowed the establishment of rates high enough to compensate SWPA for the cost of investments and operation. The contract provides for an annual limitation on rate increases as distinct from the normal contract used by the Federal Power Marketing Administrations in which rates are allowed to be adjusted from time to time by the Administration to cover such costs. In the case of the Arkansas Power & Light contract, this special arrangement was deemed to be warranted in the interest of strengthening aluminum production for meeting defense needs during the Korean war.

However, because of the contract limitation on rate increases, the proceeds from the sale of this resource to Arkansas Power & Light Co. have been much less over the past twenty-seven (27) years than would have been realized if SWPA had sold the power to preference customers in the area under normal contract provisions. At the present time, the deficiency in revenue for repayment of the cost of the SWPA system resulting from this contract is approximately $18,500,000.

Also, the effect of this revenue shortfall has been to increase interest on unpaid investment by approximately $13,500,000; thus, increasing the total balance to be repaid to about $32 million above the balance that would now be on the books if the contract had not been executed. By the end of the 30-year contract term (1983), this sum will have escalated to about $49 million. In the proposed rate increases for the preference customers of SWPA, the Administration proposes to make up this existing and potential revenue deficit by increasing the rates to the preference customers by the system.

Currently, a suit brought by Arkansas Power & Light Co. is pending against SWPA regarding the rates to be paid for the remaining term of the contract. Contrary to the contract terms, SWPA proposes to raise power rates to AP&L to correspond to prevailing systemwide rates, arguing that the original contract rate provisions are illegal.

The committee believes that section 1 of this legislation codifies established policy with regard to the scheduling of repayment of debts incurred by SWPA due to the Arkansas Power & Light contract by delaying the repayment. That policy was established in 1956 when a White House directive specified that SWPA customers would not be asked to bear the financial burden of making up the losses from the contract during the repayment period. That policy had been followed by the Administration until 1978 when SWPA proposed a general increase in wholesale rates which included an assessment for the AP&L contract debt. The committee finds the remedy provided by S. 1519 to be necessary in order to ease the financial burden on SWPA customers created by the sharp rise in power rates required for the collection of past debts during the system repayment period. Deferral of the repayment of this debt would smooth the price effects of debt reimbursement.

The policy changes embodied in section 2 and 3, the waiving of interest charges on the deficit created by the AP & L contract and the extension of system repayment periods reflects the committee's intent to assist SWPA customers in the repayment of accumulated SWPA debts.

This debt accumulation has resulted not only from the AP & L contract, but also from several other noncompensatory contracts entered into by SWPA between 1950 and 1962.

Because SWPA did not begin to repay principal debts on a number of projects from which power was sold under these contracts until 1975, SWPA customers are now obligated to repay this principal and accumulated interest on a foreshortened repayment period. The provisions of section 2 and 3 are designed to provide relief to customers by waiving the interest on a major component of this debt, the AP&L contract, and extending the repayment period for other obligations.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

POLITICAL CONTRIBUTIONS

The Senate proceeded to consider the bill (H.R. 6702) to amend section 603 of title 18, United States Code, with respect to certain political contributions, which had been reported from the Committee on Rules and Administration with an amendment to strike all after the enacting clause and insert the following:

That section 603(a) of title 18, United States Code, is amended by inserting "immediate" before "employer or employing authority".

SEC. 2. The provisions of this Act shall become effective January 1, 1981.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 96-922), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

When the Senate passed H.R. 5010, the Federal Election Campaign Act Amendments of 1979, one of the provisions was an amendment to 18 U.S.C. 607 (redesignated by the bill as 18 U.S.C. 603). The provision generally allowed Federal employees of all branches of the government to make voluntary campaign contributions to Federal candidates, but prohibited such contributions to a Member of Congress or the President from persons in his or her employ.

The language of the provision prohibiting contributions by executive branch personnel to the President unintentionally cast some doubt on which executive branch personnel were included within the scope of that prohibition.

H.R. 6702, as passed by the House of Representatives, would limit the applicability of this prohibition on political contributions to employers to the legislative branch, and would not apply to the executive branch employees.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 504) to waive section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3027, authorizing funds for fiscal year 1981 for the Disaster Relief Act, was considered and agreed to as follows:

Resolved, That section 402(a) of the Congressional Budget Act of 1974 is waived with respect to the consideration of S. 3027. The legislation, which was unanimously approved by the Environment and Public Works Committee on July 25, 1980, authorizes a simple one-year extension of the disaster relief program.

The bill recognizes the continuing need for Federal assistance to mitigate the effects of natural or physical disasters. The committee did not report the legislation prior to May 15 because of problems with the administration on clarification of the type occurrences to be covered by the Act. This problem was satisfactorily resolved by a letter from the administration on July 8, 1980.

Therefore, a budget waiver is requested for consideration of fiscal year 1981 funding.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 507) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3059, was considered and agreed to as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3059, a bill to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 3059 as reported by the Committee on Armed Services.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

The resolution (S. Res. 511) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3074, was considered and agreed to as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3074, a bill to authorize appropriations to the Department of Energy for national security programs for fiscal year 1981 and fiscal year 1982, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 3074 as reported by the Committee on Armed Services.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HIGHER EDUCATION AMENDMENTS OF 1980—H.R. 5192

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, on behalf of Mr. Pell, that with regard to H.R. 5192 the Senate further insist upon its amendments and request a further conference with the House of Representatives on the disagreeing votes thereon and that the Chair be authorized to appoint conferees on the part of the Senate, this request having been cleared through Mr. Pell, Mr. Metzenbaum, and Mr. Hollings.

There being no objection, the Presiding Officer appointed Mr. Pell, Mr. Williams, Mr. Randolph, Mr. Kennedy, Mr. Eagleton, Mr. Stafford, Mr. Schweiker, and Mr. Javits conferees on the part of the Senate.

RECESS UNTIL WEDNESDAY, SEPTEMBER 10, 1980, AT 9:15 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 9:15 a.m. tomorrow morning.

The motion was agreed to; and the Senate, at 7:13 p.m., recessed until Wednesday, September 10, 1980, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate September 9, 1980:

Government Printing Office

Gerald R. Dillon, of Minnesota, to be Public Printer, vice John J. Boyle, resigned.

In The Army

The following-named officer under the provisions of title 10, United States Code section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. William Joseph Hilsman, 500-30-3135, Army of the United States (brigadier general, U.S. Army).

In The Air Force

The following Air National Guard of the U.S. officers for promotion in the Reserve of the Air Force under the provisions of section 593 (a) title 10 of the United States Code, as amended:

LINE OF THE AIR FORCE

To be lieutenant colonel

Maj. James H. Addy, [redacted].
Maj. James H. Bassham, [redacted].
Maj. Walter R. Bono, [redacted].
Maj. Laurence N. Brady, [redacted].
Maj. Donald F. Brown, [redacted].
Maj. Gordon J. Buchanan, [redacted].
Maj. Davis H. Crenshaw, [redacted].
Maj. Thomas A. Crozier, [redacted].
Maj. Paul H. Deaderick, [redacted].
Maj. Thomas G. Deroche [redacted].
Maj. Larry A. Drury, [redacted].
Maj. Edward L. Grace, [redacted].
Maj. John V. Greene, [redacted].
Maj. James H. Greshik, [redacted].
Maj. Manuel A. Guzman, [redacted].
Maj. Joseph D. Helsing, [redacted].
Maj. John C. Herringshaw, [redacted].
Maj. Blaine Hiatt, [redacted].
Maj. James K. Iwamura, [redacted].
Maj. Jerre L. Kauffman, [redacted].
Maj. Robert Kennedy, [redacted].
Maj. Richard S. Kenney, [redacted].
Maj. Albert C. Lloyd, Jr., [redacted].
Maj. Woodrow D. Malone, [redacted].
Maj. Joseph M. Marlar, [redacted].
Maj. William F. McGaffin, [redacted].
Maj. Ronald E. McGlothlin, [redacted].
Maj. Raymond E. Meshell, [redacted].
Maj. Thomas J. Monforte, Jr., [redacted].
Maj. Allan W. Ness, [redacted].
Maj. Robert R. Neville III, [redacted].
Maj. Thomas F. Noel, [redacted].
Maj. Joseph F. O'Donnell, Jr., [redacted].
Maj. William H. Page, [redacted].
Maj. Daniel S. Percival, Jr., [redacted].
Maj. Maxey J. Phillips, [redacted].
Maj. James L. Pollnow, [redacted].
Maj. James H. Renschen, [redacted].
Maj. James H. Scarbrough, [redacted].
Maj. Loran S. Schnaidt, [redacted].
Maj. Howell B. Simmons, [redacted].
Maj. Arthur H. Smith, Jr., [redacted].
Maj. Sam R. Smith, [redacted].
Maj. Rodney A. Stecher, [redacted].
Maj. David L. Van Winkle, [redacted].
Maj. Aurelio Vazquez-Flores, [redacted].
Maj. Roy A. Veal, [redacted].
Maj. Salvatore Villano, [redacted].
Maj. Charles J. Wolf, [redacted].
Maj. Kinsley N. Wood, [redacted].

JUDGE ADVOCATE

Maj. Thomas G. Mooney, [redacted].

MEDICAL SERVICE CORPS

Maj. Ronald F. Flanders, [redacted].

MEDICAL CORPS

Maj. Reynaldo A. Aseron, [redacted].
Maj. Boyd N. Cole, [redacted].
Maj. Meade O. Davis III, [redacted].
Maj. Albert T. Lojko, [redacted].
Maj. Priscillano V. Parilla, [redacted].
Maj. William F. Ryckman, [redacted].

DENTAL CORPS

Maj. Ronald C. Szarlan, [redacted].

HOUSE OF REPRESENTATIVES—*Tuesday, September 9, 1980*

The House met at 12 o'clock noon.

Rev. Andrew Leigh Gunn, senior pastor, John Wesley United Methodist Church, offered the following prayer:

Eternal God, our Father, whose love will not us go and whose light follows us all our days, help us to begin this session of Congress conscious of Thy presence and ready to work diligently for the welfare of our Nation.

We ask Thy divine blessing on these Representatives. Guide their deliberations, give them wisdom and understanding, that their work will preserve our Republic.

We pray for our beloved country. With gratitude we remember the faith and fortitude of our forefathers who worked so hard to make the dream of freedom a blessed reality in our land. May we with the same faith and fortitude continue to labor to make liberty and justice a living reality in our own day. And may freedom's holy light continue to burn brightly in our noble land.

In the spirit of Him who set men free, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) entitled "An act to improve and expand the Federal crop insurance program, and for other purposes."

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The message also announced that the Senate insist upon its amendments Nos. 1, 2, and 3 to the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 3904) entitled "An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes", disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Williams, Mr. Randolph, Mr. Metzenbaum, Mr. Long, Mr. Matsunaga, Mr. Boren, Mr. Schweiker, Mr. Javits, Mr. Dole, and Mr. Chafee to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 1625. An act to amend the Act of December 20, 1944, as amended.

The message also announced that the Vice President, and upon the recommendation of the minority leader, pursuant to the provisions of section 276 of title 22, United States Code, as amended by Public Law 95–45, appointed Mr. Pressler to attend the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16–24, 1980.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 988) entitled "An act entitled the 'Health Sciences Promotion Act of 1980,'" requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Kennedy, Mr. Williams, Mr. Pell, Mr. Nelson, Mr. Cranston, Mr. Metzenbaum, Mr. Schweiker, Mr. Javits, Mr. Hatch, and Mr. Humphrey to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 121. Concurrent resolution to correct the enrollment of S. 299.

REV. ANDREW LEIGH GUNN

(Mrs. BYRON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BYRON. Mr. Speaker, it is my pleasure to be able to introduce to my colleagues the Rev. Andrew Gunn, who is the senior pastor of the John Wesley United Methodist Church in Hagerstown, Md. Reverend Gunn and his family are relative newcomers to Hagerstown, yet the reverend is no stranger to Washington, having served as chairman of the legislative committee of the General Board of Church and Society of the United Methodist Church.

Reverend Gunn has also been called upon to testify before Senate and House committees on various issues.

Reverend Gunn is here today because of the guidance that he received from one of Chaplain Ford's former colleagues, Reverend Latch.

Reverend Gunn is a graduate of Oberlin College and Yale Divinity School, and continued his graduate studies at American University and Wesley Theological Seminary. He has served as chairman of the Baltimore Annual Conference Council on Ministries, and has worked on the publication of Church and State, a magazine with which many of you are familiar.

I would like to thank Reverend Gunn for sharing his thoughts and his prayers with us today.

SYLVANUS THAYER AWARD PRESENTED TO REV. THEODORE M. HESBURGH

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, few Americans have contributed so much in so many constructive ways to the life of our country as has the Reverend Theodore M. Hesburgh, C.S.C., the distinguished president of the University of Notre Dame.

It is therefore, Mr. Speaker, most fitting that Father Hesburgh should this week be presented the Sylvanus Thayer Award by graduates of the U.S. Military Academy.

This award is given to those who exemplify the motto of the Academy, "Duty, Honor, Country."

Mr. Speaker, every President of the United States since President Dwight D. Eisenhower has called upon Father Hesburgh to serve in positions of important responsibility. Father Hesburgh has served as Chairman of the U.S. Commission on Civil Rights and Chairman of the Select Commission on Refugee and Immigration Policy as well as a member of a number of special commissions to study major concerns, such as an All-Volunteer Army, the future of higher education in the United States, and foreign aid. He

☐ **This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.**

● **This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.**

also served on the panel judging clemency petitions from persons who rejected the draft during the Vietnam war and is a member of the U.S. council to recommend a memorial to victims of the holocaust.

There are many reasons that I count it a privilege to represent the people of the Third Congressional District of Indiana but certainly, Mr. Speaker, one of those reasons is that one of my constituents is the Reverend Theodore M. Hesburgh, C.S.C.

I congratulate Father Hesburgh on the Sylvanus Thayer Award as I know will all those who know him.

At this point in the RECORD, Mr. Speaker, I include a list of other outstanding Americans who have received this award:

SYLVANUS THAYER AWARD RECIPIENTS

Doctor Ernest O. Lawrence, 1958.
The Honorable John Foster Dulles, 1959.
The Honorable Henry Cabot Lodge, 1960.
President Dwight D. Eisenhower, 1961.
General of the Army Douglas MacArthur, 1962.
The Honorable John J. McCloy, 1963.
The Honorable Robert A. Lovett, 1964.
Doctor James B. Conant, 1965.
The Honorable Carl Vinson, 1966.
Francis Cardinal Spellman, 1967.
Mr. Bob Hope, 1968.
The Honorable Dean Rusk, 1968.
The Honorable Ellsworth Bunker, 1970.
Mr. Neil A. Armstrong, 1971.
Doctor William F. Graham, 1972.
General of the Army Omar N. Bradley, 1973.
The Honorable Robert D. Murphy, 1974.
Governor W. Averell Harriman, 1975.
The Honorable Gordon Gray, 1976.
The Honorable Robert T. Stevens, 1977.
Doctor James R. Killian, Jr., 1978.
The Honorable Clare Boothe Luce, 1979.

PUBLIC BROADCASTING SYSTEM'S OBJECTIVES

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, in earlier times the Public Broadcasting System was criticized for leaning toward so-called liberal doctrines and positions. However, more recently we have been overwhelmed with the economic positions of Milton Friedman, William Buckley, and Ben Wattenberg who, as I understand it, is due for a new series on conservative policy.

It would be as wrong for Public Broadcasting to become a rightwing network as it would to become a leftwing network. It should become and continue as a fair, objective, and unbiased news source which gives to the public solid, factual, and balanced reporting on current economic and political issues so that the citizen can come to an informed decision on the critical issues of the day. An example of what I refer to is "Washington Week in Review," "Wall Street Report," and "Agronsky and Company."

Public Broadcasting must be what the name implies—broadcasting to the public the facts which are the essential tools of decision—with balanced analysis from all sides of the opinion spectrum. Public Broadcasting should seek always to maintain the highest standards of fair and impartial reporting and balanced analysis.

STALL ON REGULATORY REFORM

(Mr. LEVITAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, I am again trying to find out whatever happened to the regulatory reform legislation that was the centerpiece of the administration's streamlining of Government. The bill, which has widespread support in this House, has been languishing in the Judiciary Committee, waiting for a final markup, since May of this year. I understand that there was to be a markup of this bill today, and suddenly yesterday it was canceled. I had been told, incorrectly, that it had been canceled at the insistence of the White House. I am now told that the White House did not intervene to block the markup. The administration has decided that it will not try to impede the markup of this bill. But I am now told that the markup was canceled at the request of the AFL–CIO.

Now, who is running this House? Is it the White House? Is it the AFL–CIO? Is it big business? I thought this House was supposed to be run by the Members of this body. The time for getting regulatory reform legislation reported to the House is long past due, and I hope it will be reported out forthwith. Let the voice of the people be heard. Let this House of Representatives work its will on the important and needed regulatory reform bill. Let us do it now.

□ 1210

ESTABLISHING A COMMITTEE OF PROCEDURES FOR ELECTION OF THE PRESIDENT

(Mr. JOHN L. BURTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHN L. BURTON. Mr. Speaker, today I am introducing a resolution calling for the establishment of a Select Committee on Procedures for Elections of the President.

In the event it is thrown into the House of Representatives, the duties of the committee would be to review existing statutes, rules and procedures, and precedents relating to the election of the President under the 12th article of the amendment. The extent to which statutes, rules, procedures, and precedents are appropriate for the present conduct of such an election by the House of Representatives and any changes or suggestions that might be made by the House before November 4, 1980, as such statutes, rules, and procedures may not be relevant to the present term, it calls for the appointment of a 10-member committee selected by the Speaker, with 4 persons of those 10 to be nominated by the minority leader.

I think it is very important if the election is thrown into the House that we know exactly and specifically what rules and procedures will guide us, for it has been since, I believe 1825 was the last time the House had this pleasure, and we may well have this task on us again.

SMALL BUSINESS HAS ROUGH SLEDDING UNDER CARTER ADMINISTRATION

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, over 13 million small businesses in this country have had rough sledding under the Carter administration. Let us look at the facts. First, last year small business bankruptcies increased by 48 percent; second, nearly 700,000 small businesses will fail this year; third, the interest rates for small business loans have more than doubled since President Carter took office; fourth, the small businessman and American labor force will lose some 3 million jobs this year; and fifth, Government paperwork has cost the small businessmen between $15 and $20 billion this year. Soaring business failures, interest rates out of sight, inflation run wild, and a declining share of the shrinking market are the issues for American small business.

I hope that President Carter will address his record on the campaign trail.

RESOLVE THE FLCRA PROBLEM

(Mr. GOODLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODLING. Mr. Speaker, I am pleased to participate in the effort to solve the problems with the Farm Labor Contractor Registration Act.

On August 26, 1980, I introduced H.R. 8026, which would restore the act to its original intent as we amended it in 1974. My colleague, Mr. ASHBROOK, the ranking Republican on the Education and Labor Committee, joined me in introducing the bill.

My bill is identical, except for technical improvements, to the Panetta bill and the Boren amendment to the child nutrition bill. I felt it was important to introduce the bill to demonstrate that members of the Education and Labor Committee are prepared to take action on the matter.

The Labor Department's interpretation and application of law has been a serious and widespread problem in Pennsylvania and there is a potential for an even greater problem in the State. The Department has incorrectly tried to regulate Pennsylvania farmers, mushroom growers, apple growers and processors as farm labor contractors under the act. These agricultural employers have had to register, be fingerprinted, get a special medical examination, comply with numerous and unwarranted requirements, and fill out a great deal of paperwork under the act. This is all contrary to the intent of Congress.

As the ranking minority member on the Subcommittee on Elementary, Secondary, and Vocational Education, I will be a conferee on the child nutrition bill, and specifically, on title III of the bill. The conference should be scheduled in the near future.

I hope we can adopt the Boren amendment and resolve this problem.

THE PRESENCE OF CUBAN MILITARY ADVISERS IN AFGHANISTAN

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, once again, we have reports of Cuban troops involved in military adventures far from Castro's island in the Caribbean. This time, the State Department says there are about 100 Cuban military advisers helping the Soviets in Afghanistan.

Although other reports have indicated as many as 10,000 Cubans in Afghanistan, in this case, we probably can accept the State Department assessment for a change.

We have already heard that Castro told U.N. Ambassador McHenry that he would be quiet and be a good boy during the Presidential elections. Apparently, Fidel Castro wants to make sure he does not do anything that would help elect Reagan as President.

Whatever the real number of Cuban military advisers in Afghanistan may be, there is no doubt that their presence in that country, in Angola and Ethiopia and in Nicaragua and other Caribbean and Central American countries only serves to further the goals of Soviet expansion in the world.

A TRIBUTE TO LENCOLA SULLIVAN, MISS ARKANSAS

(Mr. BETHUNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BETHUNE. Mr. Speaker, last Saturday night all Arkansas was proud of our Miss American candidate, Lencola Sullivan, who is from my district in the center of Arkansas. She was elected, as the Members know, the fourth runner up to Miss America. She impressed a nationwide TV audience just as she has impressed so many Arkansans with success after success, in her young but blossoming career.

She has been Miss UCA, Miss White River, and Miss Arkansas; and judging by this latest accomplishment, she is destined for even greater things in the future. We in Arkansas are proud of her.

ANOTHER 79-PERCENT INCREASE IN FEDERAL SPENDING IF PRESIDENT CARTER IS ELECTED FOR 4 MORE YEARS

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. RUDD. Mr. Speaker, President Carter's Budget Director, James McIntyre, complained to the House Budget Committee yesterday that Governor Reagan's tax cut proposals would not allow a proposed increase of more than 78 percent in certain Federal spending that a Carter administration would promote over the next 4 years.

Mr. McIntyre said that under President Carter's spending projections through 1985 three of the largest social welfare programs would increase $150.6 billion—or 78.3 percent above their projected 1981 levels—and that defense spending would increase $142.5 billion—or 90.5 percent over next year's level.

At least the American people have a clear choice this November.

Governor Reagan wants to cut taxes and reduce the overall size and cost of the Federal Government.

President Carter, if one is to believe his top administration officials, would bring us a further gigantic increase in Government spending if elected for another 4 years.

THE POLITICS OF AMNESIA

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MICHEL. Mr. Speaker, I understand that President Carter has caught up with Ronald Reagan in at least one of the popularity polls.

Jimmy Carter is the master of underdog politics. Now that he is no longer the underdog, I hope we can get him to quit turning somersaults and fetching sticks long enough to answer a few questions about his last 4 years in office.

He's gotten away with the politics of amnesia long enough.

Maybe he will tell us why 2 million people have lost their jobs since January. Maybe he can tell us why he used those people to slow down inflation. Maybe he can tell us why inflation is still more than double the 4 percent he promised it would be 4 years ago. Maybe he can tell us why the budget is not balanced like he said it would be. Maybe he can explain why Federal revenues have gone up more than $250 billion in 4 years. Maybe he will tell us why he raised taxes to record heights when he promised 4 years ago there would be no tax increases at all.

President Carter is the only one in this country on the gravy train. It is high time for him to do more than simply roll over and play dead every time these serious issues are raised.

□ 1220

RELEASE THE HOSTAGES, LET YOUR PEOPLE GO

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, it is not often that a Member from this side of the aisle feels compelled to speak out for Members of the majority. They usually do a fine job on their own. However, as an empathetic viewer of the plight of certain members of the silent majority, I feel I must speak out.

Some Members of the Democratic side have confided to me that they do not wish—nor believe necessary—a lameduck session. Yet they dare not speak out publicly. I suspect they fear the hand of majority party discipline if they do so.

So, Mr. Speaker, on behalf of some of your comrades, I say "release the hostages."

Mr. Speaker, "Let your people go."

JAPANESE STEEL

(Mr. O'BRIEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'BRIEN. Mr. Speaker, Japanese steel companies recently have been awarded six out of eight contracts for construction of synthetic fuels plants being built in this country with Federal loan guarantees.

What these six contracts mean is that out of approximately 18,500 tons of steel, approximately 15,700 tons will be fabricated in Japan.

This will only contribute to the rising cost of our economy in terms of lost corporate, Federal, and State taxes, purchasing power, wages and salaries, individual Federal, State, and local sales taxes, and social security taxes. Along with the higher unemployment levels we will continue on our inflationary spiral.

Is it not ironic? Would it not seem reasonable that a program designed to provide energy self-sufficiency for the United States would require that orders for heavy capital equipment would be placed with U.S. companies—revitalizing our Nation's economy—rather than tend to increase our dependence on foreign steel?

I have written the President strongly urging that he take whatever corrective action is necessary and ask my colleagues to do the same.

CARTER'S FAILURE—TIME FOR A CHANGE

(Mr. DEVINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEVINE. Mr. Speaker, last night former President Gerald Ford explained why America must elect a new President this year.

He said:

> The Carter Administration has failed this country and our national security forces. . . . The Carter administration has failed this country in mastering the domestic economy.

Mr. Speaker, it is obvious to millions of Americans that President Carter has failed. His economic policy of wreckless deficit spending has produced the worst inflation in over a generation.

Mr. Carter and his allies in Congress have given us the highest interest rates in this century. Millions of Americans cannot buy homes because Carter's economic policies have failed.

In 1976 Mr. Carter said: "Why not the best?" Well, if this performance in the past 3½ years is the best he can do, it is time for a change. America deserves something better.

PROVIDING FUNDS FOR MEMBERS' ELOCUTION LESSONS

(Mr. MITCHELL of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MITCHELL of Maryland. Mr. Speaker, I have mentioned fairly frequently about the quality of the 1-minute speeches that come from the other side when they are purely partisan. Unfortunately, the quality continues to deteriorate.

I would recommend that we find a small bill and get some money for elocution lessons for those who want to make purely partisan 1-minute speeches. A 1-minute speech is difficult to deliver. You have to start from a sort of calm mood and move to an emotional crescendo, and they just are not pulling it off.

First, let us get the minority some help. Let us find some money for elocution lessons.

Second, I would strongly suggest that maybe some of the Members on the other side might do a wee bit better in their purely partisan speeches if they wrote them themselves. Maybe they do, but it sounds like these are canned speeches, written by someone else, and they come off in a very desultory, I really kind of fashion.

Find some money, let us get some elocution lessons for these makers of partisan 1-minute speeches. I am sure the whole Nation will be benefited by the new oratorical heights.

H.R. 7824, FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. PANETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PANETTA. Mr. Speaker, I would like to thank my colleagues for their remarks in support of H.R. 7824, the Farm Labor Contractor Registration Act. As you know, this issue will be decided shortly by the House and Senate conference committee on the Child Nutrition Act. I am hopeful that the remarks we have heard today will impress upon the House conferees the importance of adopting the provisions of H.R. 7824 which has already passed the Senate by a vote of 57 to 37.

I would also like to add the names of 111 of my colleagues who have asked to be cosponsors of H.R. 7824. Upon examining this list, I think my colleagues will find that this legislation enjoys broad bipartisian support.

Mr. Speaker, H.R. 7824 preserves and enhances some very important protections that the law provides for farmworkers. It does this by forcing the Department of Labor to focus on the real problem—the elusive and noncooperative farm labor contractor—instead of harassing farmers and fixed site agricultural employers.

It is easy to understand why the Department of Labor has directed its efforts on registering and regulating farmers and their supervisory employees. Farmers and fixed site agricultural employers are easy to find, and when they are located and fined, they can and do try to comply with Department of Labor demands an court orders. By contrast, crew leaders are hard to find, uncooperative, and wrongs can frequently be remedied only through legal actions. Statistics show almost all Department of Labor activity in the last several years has been devoted to suing farmers and their field employees for lack of registration or other document deficiencies. Very few cases have been made against elusive crew leaders for substantive abuses of workers.

My legislation would turn this around. It would force the bureaucracy at Department of Labor to undertake the difficult and unpleasant task of going after those who are truely abusing our Nation's farmworkers. Through the Department of Labor's failure to focus on the real targets, farmworkers are actually being denied the protections the Congress sought to provide for them.

I urge your support for H.R. 7824.

PERMISSION FOR AD HOC SELECT SUBCOMMITTEE ON MARITIME EDUCATION AND TRAINING OF COMMITTEE ON MERCHANT MARINE AND FISHERIES TO SIT DURING 5-MINUTE RULE

Mr. AuCOIN. Mr. Speaker, I ask unanimous consent that the Ad Hoc Select Subcommittee on Maritime Education and Training of the Committee on Merchant Marine and Fisheries be permitted to sit while the House is proceeding today under the 5-minute rule.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

MISCELLANEOUS REVENUE ACT OF 1980

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7956) to make various changes in the tax laws, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Revenue Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—AMENDMENTS RELATING TO INCOME TAX GENERALLY

SEC. 101. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

(a) GENERAL RULE.—Part I of subchapter B of chapter 1 (defining gross income, adjusted gross income, taxable income, etc.) is amended by adding at the end thereof the following new section:

"SEC. 66. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART.

"(a) GENERAL RULE.—If—

"(1) 2 individuals are married to each other at any time during a calendar year;

"(2) such individuals—

"(A) live apart at all times during the calendar year, and

"(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

"(3) one or both of such individuals have earned income for the calendar year which is community income; and

"(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

"(b) DEFINITIONS.—For purposes of this section—

"(1) EARNED INCOME.—The term 'earned income' has the meaning given to such term by section 911(b).

"(1) from a nonmember telephone 'community income' means income which, under applicable community property laws, is treated as community income.

"(3) COMMUNITY PROPERTY LAWS.—The term 'community property laws' means the community property laws of a State, a foreign country, or a possession of the United States."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 66. Treatment of community income where spouses live apart."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1979.

SEC. 102. AMORTIZATION OF START-UP EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 194. START-UP EXPENDITURES.

"(a) ELECTION TO AMORTIZE.—Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the business begins).

"(b) START-UP EXPENDITURES.—For purposes of this section, the term 'start-up expenditure' means any amount—

"(1) paid or incurred in connection with—

"(A) investigating the creation or acquisition of a trade or business, or

"(B) creating a trade or business, and

"(2) which, if paid or incurred in connection with the expansion of an existing trade or business (in the same field as the trade or business referred to in paragraph (1)), would be allowable as a deduction for the taxable year in which paid or incurred.

"(c) ELECTION.—

"(1) TIME FOR MAKING ELECTION.—An election under subsection (a) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the business begins (including extensions thereof).

"(2) SCOPE OF ELECTION.—The period selected under subsection (a) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

"(3) MANNER OF MAKING ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary shall by regulations prescribe.

"(d) BUSINESS BEGINNING.—For purposes of this section, an acquired trade or business shall be treated as beginning when the taxpayer acquires it."

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 194. Start-up expenditures."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date.

SEC. 103. REVISING AND MAKING PERMANENT RULES ALLOWING DEDUCTION FOR CONTRIBUTIONS FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—Paragraph (3) of section 170(f) (relating to denial of deduction in case of certain contributions of partial interest in property) is amended by striking out subparagraphs (B) and (C) thereof and inserting in lieu thereof the following new subparagraph:

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) a contribution of a remainder interest in a personal residence or farm,

"(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

"(iii) a qualified conservation contribution."

(b) QUALIFIED CONSERVATION CONTRIBUTION DEFINED.—Section 170 is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

"(h) QUALIFIED CONSERVATION CONTRIBUTION.—

"(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term 'qualified conservation contribution' means a contribution—

"(A) of a qualified real property interest

"(B) to a qualified organization,

"(C) exclusively for conservation purposes.

"(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term 'qualified real property interest' means any of the following interests in real property:

"(A) the entire interest of the donor other than a qualified mineral interest,

"(B) a remainder interest, and

"(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

"(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term 'qualified organization' means an organization which—

"(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

"(B) is described in section 501(c)(3) and—

"(i) meets the requirements of section 509(a)(2), or

"(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

"(4) CONSERVATION PURPOSE DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'conservation purpose' means—

"(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

"(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

"(iii) the preservation of open space (including farmland and forest land) where such preservation is—

"(I) for the scenic enjoyment of the general public, or

"(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

"(iv) the preservation of an historically important land area or a certified historic structure.

"(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term 'certified historic structure' means any building, structure, or land area which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district (as defined in section 191(d)(2) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

"(5) EXCLUSIVELY FOR CONSERVATION PURPOSES.—For purposes of this subsection—

"(A) CONSERVATION PURPOSE MUST BE PROTECTED.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

"(B) NO SURFACE MINING PERMITTED.—In the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

"(6) QUALIFIED MINERAL INTEREST.—For purposes of this subsection, the term 'qualified mineral interest' means—

"(A) subsurface oil, gas, or other minerals, and

"(B) the right to access to such minerals."

(c) DEDUCTION FOR CONTRIBUTIONS FOR CONSERVATION PURPOSES MADE PERMANENT.—Section 309(b)(1) of the Tax Reduction and Simplification Act of 1977 and section 2124(e)(4) of the Tax Reform Act of 1976 are each amended by striking out ", and before June 14, 1981".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to transfer made after the date of the enactment of this Act in taxable years ending after such date.

SEC. 104. INVESTMENT TAX CREDIT ALLOWED FOR CERTAIN REHABILITATED BUILDINGS LEASED TO TAX-EXEMPT ORGANIZATIONS OR TO GOVERNMENTAL UNITS.

(a) USE BY TAX-EXEMPT ORGANIZATIONS.—Paragraph (4) of section 48(a) (relating to property used by certain tax-exempt organizations) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the tax-exempt organization pursuant to a lease."

(b) USE BY GOVERNMENTAL UNITS.—Paragraph (5) of section 48(a) (relating to governmental units) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the governmental unit pursuant to a lease.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to uses after July 29, 1980, in taxable years ending after such date.

SEC. 105. REVISION OF SOURCE RULES FOR INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT.

(a) IN GENERAL.—Subsection (e) of section 861 (relating to election to treat income from certain aircraft and vessels as income from sources within the United States) is amended to read as follows:

"(e) INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

"(1) IN GENERAL.—For purposes of subsection (a) and section 862(a), if—

"(A) a taxpayer owning a craft which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such craft to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and

"(B) such craft is manufactured or constructed in the United States,

then all amounts includible in gross income by the taxpayer with respect to such craft for any taxable year ending after the commencement of such lease (whether during or after the period of such lease), including gain from sale, exchange, or other disposition of such craft, shall be treated as income from sources within the United States.

"(2) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes a craft to which paragraph (1) applied and the basis of such craft in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, paragraph (1) shall continue to apply to such craft in the hands of the transferee or distributee.

"(3) CRAFT DEFINED.—For purposes of this subsection, the term 'craft' means a vessel, aircraft, or spacecraft."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property first leased after the date of the enactment of this Act.

SEC. 106. TAXATION OF HOMEOWNERS ASSOCIATIONS.

(a) GENERAL RULE.—Subsection (b) of section 528 (relating to tax imposed with respect to certain homeowners associations) is amended to read as follows:

"(b) TAX IMPOSED.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1980.

SEC. 107. TREATMENT OF CERTAIN INCOME OF MUTUAL OR COOPERATIVE ELECTRIC AND TELEPHONE COMPANIES.

(a) TREATMENT OF CERTAIN INCOME OF PURPOSES OF TAX-EXEMPT STATUS.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended—

(1) by striking out "(12)" and inserting in lieu thereof "(12)(A)",

(2) by striking out the second sentence, and

(3) by adding at the end thereof the following new subparagraphs:

"(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

"(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

"(ii) from qualified pole rentals, or

"(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

"(D) For purposes of this paragraph, the term 'qualified pole rental' means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

"(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

"(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term 'rental' includes any sale of the right to use the pole (or other structure)."

(b) ENGAGING IN POLE RENTALS TREATED AS NOT ENGAGING IN UNRELATED TRADE OR BUSINESS.—Section 513 (defining unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN POLE RENTALS.—In the case of a mutual or cooperative telephone or electric company, the term 'unrelated trade or business' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D))."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to all taxable years to which the Internal Revenue Code of 1954 applies.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1969.

SEC. 108. EXEMPTION FOR CERTAIN SUBSISTENCE ALLOWANCES RECEIVED BY CERTAIN POLICE OFFICERS BEFORE JANUARY 1, 1978.

(a) GENERAL RULE.—Subsection (b) of section 3 of the Act of October 7, 1978, entitled "An Act to prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes" is amended—

(1) by striking out "January 1, 1977" and inserting in lieu thereof "January 1, 1974", and

(2) by striking out "calendar year 1977" and inserting in lieu thereof "calendar year 1974, 1975, 1976, or 1977".

(b) STATUTE OF LIMITATIONS.—In the case of any allowance received during calendar 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 shall be applied by substituting the date one year after the date of the enactment of this Act for "April 15, 1979" each place it appears.

SEC. 109. TREATMENT OF CERTAIN EXPENSES INCLUDABLE IN THE INCOME OF THE RECIPIENT.

(a) IN GENERAL.—Subsection (e) of section 274 (relating to specific exceptions to application of disallowance of certain entertainment, etc., expenses) is amended by inserting after paragraph (9) the following new paragraph:

"(10) EXPENSES INCLUDABLE IN INCOME OF PERSONS WHO ARE NOT EMPLOYEES.—Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.

TITLE II—AMENDMENTS RELATING TO PENSION PLANS

Subtitle A—Prevention of Abuse of Certain Pension Plan Provisions

SEC. 201. PREVENTION OF ABUSE OF CERTAIN PENSION PLAN PROVISIONS THROUGH THE USE OF SEPARATE CORPORATIONS OR OTHER ORGANIZATIONS.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules relating to pension plans, etc.) is amended by adding at the end thereof the following new subsection:

"(m) EMPLOYEES OF AN AFFILIATED SERVICE GROUP.—

"(1) IN GENERAL.—For purposes of the employee benefit requirements listed in paragraph (7), all employees of the members of an affiliated service group shall be treated as employed by a single employer.

"(2) AFFILIATED SERVICE GROUP.—For purposes of this subsection, the term 'affiliated service group means a group consisting of—

"(A) a specified service organization, and

"(B) one or more adjunct service organizations which are related to the specified service organization.

"(3) SPECIFIED SERVICE ORGANIZATION DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'specified service organization' means an organization the principal business of which is the performance of one or more specified services.

"(B) SPECIFIED SERVICES DEFINED.—The term 'specified services' means services in any of the following fields:

"(i) health,

"(ii) law,

"(iii) engineering,

"(iv) architecture,

"(v) accounting,

"(vi) actuarial science,

"(vii) performing arts,

"(viii) consulting, or

"(ix) any other service field which the Secretary designates by regulations as a field in which separate organizations are used to avoid any employee benefit requirement listed in paragraph (7).

"(4) ADJUNCT SERVICE ORGANIZATION DEFINED.—For purposes of this subsection, the term 'adjunct service organization' means an organization a significant portion of the business of which is the performance of services—

"(A) for the specified service organization, and

"(B) of the kind historically performed by employees of this type of specified service organization

"(5) RELATIONSHIP OF ORGANIZATION.—For purposes of this subsection, an adjunct service organization is related to a specified service organization if—

"(A) the specified service organization regularly uses the services of the adjunct service organization or is regularly associated with the adjunct service organization in performing specified services for third persons, and

"(B) 10 percent or more of the interests in the adjunct service organization is owned by persons who are—

"(i) individuals performing specified services for such specified service organization, or

"(ii) owners of such specified service organization.

"(6) CERTAIN SHAREHOLDERS AND PARTNERS IN SPECIFIED SERVICE ORGANIZATION TREATED AS PART OF AFFILIATED SERVICE GROUP.—For purposes of this subsection, all specified service organizations which are shareholders or partners in a specified service organization and which are regularly associated with the specified service organization in which they are shareholders or partners in performing specified services for third persons shall be treated—

"(A) as part of the specified service organization in which they are shareholders or partners, and

"(B) as members of an affiliated service group which includes the specified service organization in which they are shareholders or partners.

"(7) EMPLOYEE BENEFIT REQUIREMENTS.—For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

"(A) paragraphs (3), (4), and (7), and (16) of section 401(a),

"(B) sections 408(k, 410, 411, and 415,

"(C) section 105(h), and

"(D) section 125.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ORGANIZATION DEFINED.—The term 'organization' means a corporation, partnership, or other organization.

"(B) OWNERSHIP.—In determining ownership, the principles of section 267 shall apply.

"(9) PREVENTION OF AVOIDANCE.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance with respect to service organizations, through the use of separate organizations, of any employee benefit requirement listed in paragraph (7)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (8) of section 105(h) (relating to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan) is amended—

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof 'CONTROLLED GROUPS, ETC.".

(2) Paragraph (4) of section 125(g) (relating to special rules for cafeteria plans) is amended—

(A) by striking out "subsection (b) or (c) of section 414" and inserting in lieu thereof "subsection (b), (c), or (m) of section 414", and

(B) by striking out "CONTROLLED GROUPS" in the paragraph heading and inserting in lieu thereof "CONTROLLED GROUPS, ETC.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years ending after July 30, 1980.

(2) PLANS IN EXISTENCE ON JULY 30, 1980.—In the case of a plan in existence on July 30, 1980, the amendments made by this section shall apply to plan years beginning after July 30, 1980.

Subtitle B—Amendments Relating to Employee Stock Ownership Plans

SEC. 221. CASH DISTRIBUTION OPTION AND PUT OPTION FOR STOCK BONUS PLANS.

(a) IN GENERAL.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting immediately before the last sentence thereof the following new paragraph:

"(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409A(h)(2)."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to plan years beginning after December 31, 1980.

Sec. 222. Limitation on Annual Additions to Participant Accounts Under Employee Stock Ownership Plans.

(a) In General.—Subparagraph (A) of section 415(c)(6) (relating to special limitation for employee stock ownership plan) is amended by inserting ", or purchased with cash contributed," after "contributed".

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to years beginning after December 31, 1980.

Sec. 223. Valuation of Employer Securities In Tax Credit Employee Stock Ownership Plans.

(a) In General.—Clause (i) of section 48(n)(6)(B) (defining value for employer securities) is amended by striking out "the due date for filing the return for the taxable year (determined with regard to extensions)" and inserting in lieu thereof "the date on which the securities are contributed to the plan".

(b) Effective Date.—The amendments made by subsection (a) shall with respect to taxable years beginning after December 31, 1980.

Sec. 224. Participation of Subsidiary Corporation In Tax Credit Employee Stock Ownership Plan.

(a) In General.—Paragraph (4) of section 409A(1) (defining controlled group of corporations) is amended—

(1) by striking out the caption and inserting in lieu thereof "(4) Application to controlled group of corporations.—",

(2) by striking out "Common parent may own only" in the caption of subparagraph (B) and inserting in lieu thereof "Where common parent owns at least", and

(3) by adding at the end thereof the following new subparagraph:

"(C) Where common parent owns 100 percent of first tier subsidiary.—For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to qualified investment for taxable years beginning after December 31, 1980.

Sec. 225. Participation Rules for Tax Credit Employee Stock Ownership Plan Which is Only Employer-Provided Alternative to Individual Retirement Savings.

(a) In General.—Subsection (b) of section 410 (relating to eligibility) is amended—

(1) be redesignating paragraph (2) as (3),

(2) by striking out "paragraph (1)" in paragraph (3) (as so redesignated) and inserting in lieu thereof "paragraphs (1) and (2)", and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) Special rule for certain plans.—A trust which is part of a tax credit employees stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of paragraph (1) if—

"(A) it benefits 50 percent or more of all the employees who are eligible under the plan (excluding employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation), and

"(B) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year."

(b) Conforming Amendments.—

(1) The last sentence of section 401(a)(4) is amended by striking out "section 410(b)(2)(A)" and inserting in lieu therof "section 410(b)(3)(A)".

(2) Subparagraph (B) of section 401(d)(3) is amended—

(A) by striking out "section 410(b)(2)(A)" and inserting in lieu thereof "section 410(b)(3)(A)". and

(B) by striking out "section 410(b)(2)(C)" and inserting in lieu thereof "section 410(b)(3)(C)".

(3) The last sentence of section 408(k)(2) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(4) Clause (i) of section 408(k)(3)(B) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(c) Effective Date.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1980.

Sec. 226. Application of Cash or Deferred Arrangement Rules to Cafeteria Plans.

(a) In General.—Paragraph (2) of section 125(d) (relating to deferred compensation plans excluded) is amended by adding at the end thereof the following: "The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1980.

TITLE III—AMENDMENTS RELATING TO ESTATE TAX

Sec. 301. Allowing Election to Use the Alternate Valuation Date on Return Filed Late.

(a) In General.—Subsection (c) of section 2032 (relating to election of alternate valuation) is amended to read as follows:

"(c) Time of Election.—The election provided for in this section shall be exercised by the executor on his return not later than the time such return is filed."

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to estates of decedents dying after December 31, 1980.

Sec. 302. Additional 2 Years Allowed to Amend Governing Instruments to Meet Requirements for Gift of Split Interest to Charity.

(a) Charitable Lead Trusts and Charitable Remainder Trusts in the Case of Estate Taxes.—The first sentence of paragraph (3) of section 2055(e) (relating to disallowance of deductions in certain cases) is amended by striking out "December 31, 1978" each place it appears and inserting in lieu thereof "December 31, 1980".

(b) Effective Date.—

(1) In General.—The amendment made by subsection (a) shall apply in the case of decedents dying after December 31, 1969.

(2) Charitable lead trusts and charitable remainder trusts in the use of income and gift taxes.—Section 514(b) (and section 514(c) insofar as it relates to section 514(b)) of the Revenue Act of 1978 shall be applied as if the amendment made by subsection (a) had been included in the amendment made by section 514(a) of such Act.

The SPEAKER. Is a second demanded?

Mr. DUNCAN of Tennessee. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Illinois (Mr. Rostenkowski) will be recognized for 20 minutes, and the gentleman from Tennessee (Mr. Duncan) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. Rostenkowski).

□ 1230

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 7956 makes a number of miscellaneous changes in the tax laws. The bill was introduced to consolidate 13 minor bills on which individual hearings have been held by the Subcommittee on Select Revenue Measures and which were approved by the subcommittee in July.

Both the underlying policy and the technical operation of these changes were carefully reviewed by the subcommittee in close consultation with the Treasury Department, and I know of no provision which has substantive opposition. With minor amendments, this legislation was approved by the full committee 36 to 0.

In general, this bill clarifies the treatment of startup costs for new businesses, extends and improves the expiring provision regarding gifts of partial interests of property for conservation purposes, broadens the availability of the investment credit to rehabilitate older structures, and makes various other minor income tax changes. In the pension area, the bill addresses one area of abuse—where some professional corporations have attempted to avoid the rules regarding coverage of their employees, and makes several technical changes in the employee stockownership plans and similar benefit plans.

Finally, two estate tax changes, though minor in nature, help to promote flexibility in this area.

Mr. Speaker, I will very briefly review the individual provisions of this legislation:

Section 101 (originally H.R. 6247) amends current law to provide that community property laws would be disregarded for income tax purposes when spouses have lived apart for the entire year and no portion of the income earned by one spouse has been transferred to the other. This provision is intended to provide relief for abandoned spouses who are presently taxed on a portion of the income earned by the other spouse but have received no benefit from that income.

Section 102 (originally H.R. 5729) provides an election to amortize certain expenditures incurred in the investigation, creation or acquisition of a new trade or business. This provision addresses an area of law that is unclear and provides a straight-forward approach to the treatment of these costs.

Section 103 (originally H.R. 7318) revises current law allowing deductions for charitable contributions of easements and other partial interests in real estate contributed for conservation purposes. This section would expand the types of partial interests which qualify to include the entire interest of the donor in real property other than the rights to subsurface minerals. This provision makes permanent these types of deductions in recognition of the increasingly important role that conservation easements are playing in the efforts to preserve the Nation's natural resources and cultural heritage.

Section 104 (originally H.R. 7276) would make the present exception denying the investment tax credit in the case of rehabilitated buildings leased to tax-exempt organizations and governmental units inapplicable in the case of qualified rehabilitation expenditures to rehabilitate existing buildings. This provision eliminates a significant obstacle to the rehabilitation of the older commercial areas of this country and simplifies compliance with, and administration of, the tax law.

Section 105 (originally H.R. 4634) provides that income from aircraft, vessels, and spacecraft leased to a U.S. person and manufactured or constructed in the United States shall be treated as U.S. source income. This provision makes an improvement in the source rules of present law, providing a more rational result for these unique types of property.

Section 106 (originally H.R. 4511) provides that the taxable income of a homeowners association shall be subject to a 30-percent rate of tax. This more closely approximates the average marginal income tax rate of the members of these associations than the 46-percent rate applicable under present law.

Section 107 (originally H.R. 7520) provides that income from qualified pole rentals or from display listings in a telephone directory is to be disregarded in applying the 85 percent membership income test to mutual or cooperative electric and telephone companies. It also provides that income from qualified pole rentals would not be subject to the tax on unrelated business income.

Section 108 (originally H.R. 6935) provides for a refund or credit of tax paid by a State police officer for cash meal allowances during calendar years 1974, 1975, and 1976. In 1978, the Congress enacted legislation (Public Law 95–427) in response to the Supreme Court's determination in *Commissioner* v. *Kowalski* (434 U.S. 77 (1977)) that meal allowances received by State troopers were taxable. The 1978 legislation addressed primarily those troopers who in the past had failed to treat such allowances as income. In granting relief from tax to these individuals for years before the Court's definitive ruling. Congress did not allow troopers who had included such payments in income pending the Court's ruling to receive relief other than for 1977. This provision corrects that inequity.

Section 109 (originally H.R. 7392) provides that disallowance of deductions for entertainment, amusement, or recreation expenses does not apply to expenses which are includible in the gross income of the recipient as compensation for services or as a prize or award if the payor files any required information return. This makes permanent a temporary rule enacted as part of the 1979 Technical Corrections Act.

Section 201 (originally H.R. 6140) would expand the pension aggregation rules with respect to the treatment of certain professional and service organizations for purposes of satisfying requirements for qualified retirement plans. This change prevents the avoidance of employee benefit requirements designed for rank-and-file employees through the use of separate entities which is possible under present law.

Sections 221–226 (originally H.R. 7606) make six technical modifications of the rules dealing with employee stock ownership and similar employee benefit plans. Generally, these changes improve the operation of these benefit plans by providing additional flexibility for both the employer and employee.

Section 301 (originally H.R. 4544) permits the executor of a decedent's estate to elect the alternate valuation date for purposes of establishing the value of property in the estate on the first estate tax return filed. This change promotes flexibility in the operation of this election.

Section 302 (originally H.R. 7220) extends for 2 years, until December 31, 1980, the time to amend instruments of both charitable lead trusts or charitable remainder trusts which were executed before December 31, 1977, in order to conform such instruments to the Tax Reform Act of 1969 requirements for a charitable deduction. This extension provides additional time not only for taxpayers to correct document errors but also for Treasury which is studying the possibility of a permanent rule to eliminate the problems that keep occurring in this area.

Mr. Speaker, it is estimated that H.R. 7956 will reduce revenues by $26 million in fiscal year 1981. This amount is well within the budget revenue figures for the upcoming fiscal year. In fact, excluding the revenue loss attributable to the treatment of business startup costs under section 102, all the other provisions of the bill combined have a net positive revenue impact in the long run.

Mr. Speaker, I urge the prompt adoption of H.R. 7956.

Mr. Speaker, I yield such time as he may require to the gentleman from New Jersey (Mr. MINISH).

Mr. MINISH. Mr. Speaker, I rise in support of H.R. 7956. I am particularly interested in section 108, the exemption for certain subsistence allowances received by certain police officers. Let me explain briefly why this provision is necessary.

Section 108 corrects an apparent oversight in Public Law 95–427, a law which we passed in 1978 to prevent retroactive taxation of State police subsistence allowances. Until that time, on the basis of a 1954 court of appeals decisions, troopers all over the country had not included such allowances in their taxable income. In 1977, however, the Supreme Court handed down its decision in the Kowalski case that these subsistence allowances, which were paid to troopers in 15 States, did constitute taxable income. On June 28, 1978, the House passed Public Law 95–427 by a vote of 386 to 12, with the Senate later concurring by a voice vote. Congress recognized that troopers who had continued to exclude subsistence income during the lengthy Kowalski litigation period of 1970–77 would otherwise be liable to back tax assessments which in many cases would have been disastrous. The new law directed that the taxation of subsistence allowances would, in effect, begin as of the 1977 Supreme Court ruling. Thus troopers who had excluded this allowance all along were relieved of the prospect of crippling tax payments and possible bankruptcy.

However, many troopers had included their subsistence income in their tax returns all along on the advice of the Internal Revenue Service. I am informed that IRS uniformly granted refunds to these taxpayers, who had filed amended returns for the disputed years. In New Jersey, however, a particular problem arose. The Newark office of the IRS had advised troopers there who included subsistence in their taxable income that they could keep the matter open pending the outcome of the Kowalski litigation simply by filing form 872, an in-house IRS time extension form, rather than filing amended return for the years in question. After the Supreme Court decision and the passage of Public Law 95–427, these troopers learned that the advice which they had followed was not correct, and that the forms 872 which they had submitted did not in fact guarantee them refunds for 1974, 1975, and 1976, which amended returns for those years would have guaranteed. These 200 or so troopers were denied the refunds which their colleagues elsewhere had received.

The Treasury Department has recognized that this latest IRS ruling is not compatible with the intent of Public Law 95–427 but says that it cannot remedy matters without corrective legislation. Assistant Secretary for Legislative Affairs Gene E. Godley has assured the New Jersey Governor's office in writing that Treasury will not oppose legislation which would relieve these particular taxpayers, who should be allowed refunds to achieve treatment equal to that given their colleagues under Public Law 95–427. Treasury has repeated this assurance before the Subcommittee on Select Revenue Measures and before the full Ways and Means Committee. I understand that the Treasury, recognizing an inequity, will not oppose appropriate legislation to correct it.

I should mention here that the bill which I originally submitted has been amended at the request of Treasury to provide specifically for their principle of a statute of limitations. I understand that, as amended, what is now section 108 of this bill still guarantees refunds to those individuals who extended their returns for 1974, 1975, and 1976 by means of the form 872. Thus these taxpayers will now get the same treatment under Public Law 95-427 as those who filed amended returns for the years in question.

I wonder if the chairman would respond to a question.

Mr. Speaker, is it the Chairman's understanding that the language of section 108 of H.R. 7956 as it is now amended will correct this inequity and allow these troopers refunds for their 1974, 1975, and 1976 returns?

Mr. ROSTENKOWSKI. Mr. Speaker, will the gentleman yield?

Mr. MINISH. I yield to the Chairman.

Mr. ROSTENKOWSKI. The gentleman from New Jersey is correct. That is my understanding.

Mr. MINISH. I thank the Chairman, and I yield back my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee (Mr. Gore).

Mr. GORE. Mr. Speaker, I would like to urge my colleagues to support H.R. 7956, the Miscellaneous Revenue Act of 1980, which contains a provision which I introduced. Section 107 of this bill is a slight variation of H.R. 5643 which was cosponsored by 130 of my colleagues and is identical to H.R. 7520 which was sponsored by Congressman Ullman and myself. Section 107 is designed to preserve the tax exempt status of rural electric and telephone cooperatives by allowing these cooperatives to disregard income from pole rentals and display listings in unrelated business income determinations. I want to commend Chairman Ullman, and Mr. Rostenkowski for their leadership in pursuing this important issue.

Electric and telephone cooperatives are the backbone of rural America. Congress helped nurture the growth of co-ops in the 1930's and 1940's in order to improve the quality of life in rural areas. Privately owned utilities brought necessary services to urban centers, but they either could not or would not furnish the needs of rural areas.

The goal of cooperatives is not to make profits but to bring reliable service at the lowest possible price. This is one of the principal reasons why we have seen co-ops on the forefront of major technological changes and innovative, cost-cutting measures.

There are more than 1,000 electric co-ops in this country in 46 States. They provide service to 25 million people and cover more than 50 percent of the land area in the United States. Telephone co-ops operate in 30 States and provide telephone service to more than 750,000 people. Co-ops are an indispensable part of rural life and continue to provide opportunities for growth and development.

Unfortunately, it seems that the Internal Revenue Service does not share the enthusiasm of Congress for cooperatives. Recent technical advice memoranda by the IRS have attempted to chip away at their tax-exempt status and have placed unnecessary and unreasonable burdens on cooperatives. The IRS memorandums have said that income from pole rentals and display listings in "Yellow Page" directories is unrelated business income and therefore taxable.

The IRS actions have two adverse implications for co-ops. First, co-ops will be required—for the first time—to pay taxes on this type of income. In Tennessee, our 22 electric cooperatives could have to pay as much as $800,000 in additional taxes from pole rental income. Similar costs can be expected from other States. While this may not add up to a large tax revenue for the IRS, it is the type of unnecessary cost which causes electric rates to soar.

Second—and more importantly—these IRS rulings could jeopardize the tax-exempt status of co-ops altogether. Under present law, a rural electric or telephone cooperative is tax exempt provided that 85 percent or more of its income consists of amounts collected from members for the sole purpose of meeting losses and expenses. If the IRS position is allowed to stand, many co-ops may be faced with losing their tax-exempt status. Worse still, if an electric cooperative is in danger of reaching the 15 percent limit because of pole rental income, it may be forced to tell the telephone cooperative to build its own poles. Imagine the esthetics, to say nothing of the stupidity, of having two poles side by side, one providing electricity and one providing telephone service.

The IRS technical advice memorandum on pole rentals argues that the leasing of space on utility poles does not have a substantial causal relationship to the achievement of the exempt purpose of the cooperative. I believe that, even in the absence of this legislation, a strong case can be made that this ruling is erroneous. And on the face of it, the ruling strains simple logic.

Leasing pole space is integrally related to the purpose of cooperatives. The purpose of electric cooperatives, as seen by the legislative history of the Rural Electrification Act, is to promote the public good by providing area service to the largest number of people at the lowest possible cost. To effect this purpose, REA has urged co-ops to enter into reciprocal agreements for the joint use of poles. The legislative history of the 1949 amendments to the Rural Electrification Act is replete with expressions of congressional intent to cut costs by encouraging joint pole use.

The purpose of joint pole use is to eliminate duplication, to reduce maintenance expenses, to promote sound engineering practices, and to reduce the need to obtain new rights-of-way. All of this is precisely within the purpose REA and Congress envisioned for cooperatives.

However, the issue becomes clouded because Congress did not enact the first unrelated business income tax until 1950, and cooperatives were not subject to it until 1969. Thus, IRS can correctly argue that Congress did not speak to this precise point despite the fact that the intent to encourage joint pole use is very clear.

Yet by looking to the policy behind the unrelated business income tax, there is further evidence that pole rentals should not be included. The tax was designed to prevent unfair competition with taxable businesses. The IRS, for example, would argue that money gained at a church supper is taxable because the church is in competition with the local restaurant. But there is no such competition with utility poles. Once one set of poles is erected, all other utilities will want to share that pole, not build one of their own.

I regret that IRS, in my opinion, misconstrued the congressional intent in its recent technical advisory opinions. Unfortunately, Congress must now reaffirm its intent to exclude pole rentals and display listings from unrelated business income definitions. Otherwise, co-ops around the country are going to have to dig into their pockets and ultimately increase rates to consumers.

I applaud IRS efforts to tighten the tax laws, but I am afraid their efforts in this area are totally misguided. Enactment of this bill will not provide any revenue loss to the IRS because very little, if any, money has been collected yet. However, if this ruling is allowed to stand, it will ultimately be translated into significant costs for co-ops, and it will frustrate their efforts to meet the needs of their customers.

On behalf of the 130 cosponsors of my original bill and the many supporters of the revised bill, I urge my colleagues to act favorably on this important measure.

Mr. ROSTENKOWSKI. Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 7956 which makes several significant changes to the Internal Revenue Code of 1954.

The bill also clarifies a number of important tax issues. For example, it is currently unclear how certain expenses incurred in establishing a new business are to be treated. The bill clarifies this area and will reduce needless litigation.

Another area clarified by the bill relates to certain kinds of income earned by mutual or cooperative telephone and electric companies. The Internal Revenue Service has adopted positions that could revoke the tax exemption of many mutual or cooperative telephone and electric companies. The bill establishes special rules which will prevent this revocation and allow the telephone and electric companies to function more effectively.

H.R. 7956 also encourages the preservation of our environment by establishing new rules concerning the charitable contribution deduction allowed for the donation of easements and other partial interests in real estate for conservation purposes.

Last Congress we passed legislation that allowed tax refunds to certain State troopers in very limited situations. The bill expands this treatment to include certain State troopers who were inadvertently omitted from the earlier legislation.

Recently, two court decisions have highlighted certain pension plan avoidance devices. If allowed to continue many employees could be deprived of their pension and the Treasury could lose millions of dollars of revenues. The bill corrects this situation by establishing more comprehensive rules and guidelines.

H.R. 7956 also clarifies several provisions of the Code relating to employee stock ownership plans as well as making additional substantive changes in the tax laws.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. CONABLE), senior Republican member on the Committee on Ways and Means.

(Mr. CONABLE asked and was given permission to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, as Chairman ROSTENKOWSKI and other Members have already described the legislation, it consolidates several bills addressing various minor but worthwhile changes in the tax law.

I would like to focus on section 102 of the bill regarding the amortization of startup expenses where we have had some problems. Section 102 embodies the substance of H.R. 5729, a bill on this issue which I introduced on October 29 of last year.

Section 102 is designed to provide a more generous tax treatment of business startup expenses than is allowed under current law. Many times the investigatory and startup expenses of a business are not currently deductible but have to be capitalized. This means these expenses are added to the taxpayer's basis in the business and recouped only when the business eventually is sold. Examples of preopening expenses are market surveys, advertising, employee training, legal and accounting services in setting a business up.

Section 102 would allow taxpayers to elect to amortize preopening startup expenses over 60 months. This would allow the taxpayer to recoup these expenses in the early years of the business and not have to wait until the business is sold.

For many businesses a 60-month amortization period may be more desirable than immediate deductibility. This is because the first few years of a business operation often show low profits so that immediate deductibility might generate a net operating loss. A net operating loss can be complicated for a small businessman to handle. Thus, spreading the deductibility of startup expenses over 5 years may correspond more closely to the earnings growth of a new business.

Mr. Speaker, I believe the amortization of startup expenditures contained in section 102 will assist in the formation of competitive new businesses and, therefore, will help the competitiveness of our economy.

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman for his contribution, and I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL), a member of the committee.

Mr. FRENZEL. Mr. Speaker, H.R. 7956, as has been indicated by the distinguished chairman of the subcommittee, the gentleman from Illinois (Mr. ROSTENKOWSKI), and the distinguished ranking member, the gentleman from Tennessee (Mr. DUNCAN), is a good bill. However, passage of this bill under the suspension procedure is exactly the wrong way for the House to be operating.

There has been a great deal of criticism from both sides of the aisle and from outside observers about misuse, and overuse, and abuse of the suspension procedure. Nevertheless, the leadership of this House continues to use the process without limitation, usually whenever it feels it is necessary to avoid a difficult decision.

No bills dealing with significant sums of money should ever be handled by this body under a process that limits debate and eliminates amendments. This particular bill, H.R. 7956, contains about $120 million of lost revenue. As I said earlier, Mr. Speaker, I do not regret the loss of that revenue. It is a good bill. The provisions are fair and reasonable.

The suspension procedure was created to handle minor, noncontroversial bills. Yet, every week our leadership here uses the process merely because the handling of a bill in the right way is inconvenient.

The bill itself is worthwhile. The committee amalgamated 13 separate bills into one single bill. There is nothing wrong with that strategy because the other body has a habit of giving cavalier treatment to our smaller bills.

But what is wrong with the procedure is there cannot be any vote on a rule, there cannot be any amendments, and debate on this particular measure is restricted only to 40 minutes.

□ 1240

There are no substantive features of the bill that I oppose. I do, however, continue to oppose any attempt to gag this body or to shortcut the regular order. It is only for this reason that I object. The bill ought to be defeated so that it can be brought before the body under the normal procedures.

I yield back the balance of my time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I reserve the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield so much time as he may require to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I rise in strong support of the bill. I wish to thank my distinguished friend and colleague, the chairman of the subcommittee, the gentleman from Illinois (Mr. ROSTENKOWSKI), who has handled this bill with rare distinction and ability, and also his staff, and the gentleman from Oregon, the chairman (Mr. ULLMAN).

The provisions in which I am most particularly interested contained in section 103, are formerly the provisions of H.R. 4611 and H.R. 7318, cosponsored by my good friend, the gentleman from Indiana (Mr. JACOBS), which has the support of most of the major conservation organizations of the United States and will establish a mechanism whereby large amounts of land could become available for donation to the Government of the United States, to the governments of the States, local units of government, and also to the private nonprofit organizations like the Nature Conservancy, the Audubon Society, and so forth. It is a fine piece of conservation legislation for which the gentleman from Illinois (Mr. ROSTENKOWSKI) may take a great deal of credit. I again commend him for the fine and capable way in which he worked. It has been a privilege, I wish it to be known, for me to have worked with the gentleman from Illinois.

• Mr. FISHER. Mr. Speaker, I would like to make a few comments on section 103 of this bill, which deals with the current tax treatment on conservation easements. Through the easements program, individuals can keep the land itself, but make a promise, in exchange for a tax deduction, not to use the land in any way which would interfere with the conservation purpose.

This section represents an improvement over current law in that the easement program is permanently established in the Tax Code, whereas it would have terminated in 1981. Furthermore, landowners will be allowed a deduction if they give up all the interests in the land except the mineral interests, so long as the minerals are not removed from the land by strip mining methods. This is the type of accommodation which is necessary and proper if we are to preserve the environment while at the same time meet our Nation's energy needs.

In addition, the current law is tightened up in order to prevent it from being exploited by those individuals looking for tax loopholes. Under the legislation which we are considering today, the entities which are allowed to receive these easements are limited to governmental units, publicly supported charities, or any private organization controlled by publicly supported charity or government unit. This will help to prevent the creation of sham transfers to organizations which are not really interested in seeing that the promise is kept to preserve the land for conservation purposes.

Finally, the definition of an "open space easement" for conservation purposes is also clarified by this bill so as to insure that the purposes which have already been allowed by the IRS will still be allowed in the future. I am pleased that the committee agreed to my request that the report accompanying this bill specify in what cases easements for the preservation of open space, including farmland and forest land, qualify for a tax deduction. I am glad to see that items such as water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in or related to a Government-approved master plan or land management plan now clearly meet the test as to whether the donation of a real estate interest is pursuant to a clearly defined governmental conservation policy and yields a significant public benefit.

In the final analysis, aside from the conservation benefits which will result from this legislation, the conservation easements provided for also constitute an economy move. It would cost the Government much more to buy the land and preserve it than is lost in terms of revenue through giving the tax deduction.

I urge my colleagues to support this worthwhile piece of legislation.●

● Mr. HUGHES. Mr. Speaker, there is a provision in this bill which will be well received by New Jersey State troopers and those in other States who paid back taxes on their meal allowances.

This is an issue that has bounced around the courts and the legislature for 10 years. In 1970, a New Jersey State trooper filed suit to determine the policy on taxing subsistence allowances. In 1977, the U.S. Supreme Court reached a decision in favor of the Internal Revenue Service's position that meals given to the State troopers were taxable. Since there was no clear-cut position during the 7 years before the Supreme Court decision, troopers were left to their own discretion whether or not to declare this as income on their Federal tax returns. Some paid taxes on this allowance others did not. As a result, many troopers found themselves liable for 7 years of back taxes on those meals.

In 1978, Congress passed legislation to relieve those individuals liable for the back taxes and to reimburse those who chose to go ahead and pay the taxes. Unfortunately, the 1978 law was deficient and the New Jersey troopers who paid income taxes on their subsistence allowances for 1974, 1975, and 1976 were not relieved at all. In fact, by being good guys and trying to do the right thing, they found themselves out a substantial amount of money.

This is one of those horribly ironic situations that all of us in Congress dread, giving with one hand and taking away with the other. That is why Congressman MINISH and I introduced legislation in this Congress to clear up the situation once and for all.

Perhaps one could even say that this is an example of how the good guys finally won. With the passage of this bill, those who did the right thing will be rewarded finally by either a tax credit or a refund for the taxes they paid on their meals. There are about 150 such State troopers in New Jersey who paid as much as $1.800 in taxes on their subsistence allowances. State troopers do not earn a great deal of money and these back taxes caused many of them a good deal of financial hardship. While it is true that justice is its own reward, it is also nice to know that your Government will not continue to penalize you because you did the right thing. I urge my colleagues to join with me and support this bill.●

Mr. ROSTENKOWSKI. I thank the gentleman for his comments.

Mr. Speaker, I have no further requests for time.

Mr. DUNCAN of Tennessee. Mr. Speaker, I have no further requests for time and yield back the remainder of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. ROSTENKOWSKI) that the House suspend the rules and pass the bill, H.R. 7956, as amended.

The question was taken.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 375, nays 6, not voting 51, as follows:

[Roll No. 526]

YEAS—375

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gaydos
Gephardt
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—6

Bennett
Cleveland
Dannemeyer
Frenzel
Kelly
Mottl

NOT VOTING—51

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Campbell
Chappell
Chisholm
Ferraro
Garcia
Giaimo
Gibbons
Grassley
Hance
Harsha
Hinson
Holtzman
Ireland
Jenkins
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marriott
Mattox
Moorhead, Pa.
Murphy, N.Y.
Nolan
Ottinger
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Traxler
Wilson, C. H.
Wolff
Wylie
Young, Alaska
Zeferetti

□ 1250

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.
Mrs. Boggs with Mr. Railsback.
Mr. Giaimo with Mr. Royer.
Mr. Murphy of New York with Mr. Wylie.
Mr. Pepper with Mr. Kemp.
Mr. Thompson with Mr. Marriott.
Mr. Zeferetti with Mr. Leach of Iowa.
Mr. Wolff with Mr. McKinney.
Mr. Russo with Mr. Harsha.
Mr. Lederer with Mr. Hinson.
Mr. Chappell with Mr. Grassley.

Mrs. Chisholm with Mr. Campbell.

Mr. Patten with Mr. Beard of Rhode Island.

Mr. Mattox with Ms. Ferraro.

Mr. Moorhead of Pennsylvania with Mr. Buchanan.

Mr. Jones of Tennessee with Mr. Charles H. Wilson of California.

Mr. Jenrette with Mr. Traxler.

Mr. Breaux with Mr. St Germain.

Mr. Gibbons with Mr. Steed.

Mr. Ottinger with Mr. Garcia.

Mr. Tauzin with Mr. Richmond.

Mr. Lehman with Mr. Nolan.

Mr. Jenkins with Mr. Leland.

Mr. Ireland with Ms. Holtzman.

Mr. Hance with Mr. Leach of Louisiana.

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday, September 10, 1980, be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

INFANT FORMULA ACT OF 1980

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 6940, to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

□ 1300

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:

"REQUIREMENTS FOR INFANT FORMULAS

"SEC. 412. (a) (1) An infant formula shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (g);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (g);

"(B) revise the required level for any nutrient required by subsection (g);

"(C) establish requirements for quality factors for such nutrients; and

"(D) establish such quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formulas to determine whether they are in compliance with this section.

"(b) (1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provides the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to quality control procedures prescribed by the Secretar under subsection (a) (2) (D).

"(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—

"(A) such infant formula provides nutrients in accordance with subsection (g) and meets the quality factor requirements prescribed by the Secretary; and

"(B) the processing of such infant formula meets the quality control procedure requirements prescribed by the Secretary.

"(3) Before the first processing of any infant formula for commercial or charitable distribution for human consumption—

"(A) after a change in its formulation, or

"(B) after a change in its processing,

which the manufacturer reasonably determines may affect whether the formula is adulterated as determined under subsection (a) (1), the manufacturer shall notify the Secretary of such changes and that the formula provides nutrients in accordance with subsection (g) and meets the quality factor requirements prescribed by the Secretary and that the processing of such infant formula is in compliance with the quality control procedures prescribed by the Secretary.

"(c) (1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (g); or

"(B) (i) may be otherwise adulterated or misbranded, and

"(ii) if so adulterated or misbranded presents a risk to human health,

the manufacturer shall promptly notify the Secretary of such noncompliance or risk to health.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(d) (1) If a recall of an infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary may prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(e) (1) Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. No manufacturer shall be required under this subsection to retain any record respecting the distribution of an infant formula for a period of longer than 2 years from the date the record was made.

"(2) To the extent that the Secretary determines that records are not being made or maintained in accordance with paragraph (1), the Secretary may by regulation prescribe the records required to be made under paragraph (1) and requirements respecting the retention of such records under such paragraph. Such regulations shall take effect on such date as the Secretary prescribes but not sooner than the 180th day after the date such regulations are promulgated. Such regulations shall apply only with respect to distributions of infant formulas made after such effective date.

"(f) (1) Any infant formula which is represented and labeled for use by an infant—

"(A) who has an inborn error of metabolism or a low birth weight, or

"(B) who otherwise has an unusual medical or dietary problem,

is exempt from the requirements of subsections (a) and (b). The manufacturer of an infant formula exempt under this paragraph shall, in the case of the exempt formula, be required to provide the notice required by subsection (c) (1) only with respect to adulteration or misbranding described in subsection (c) (1) (B), and to comply with the regulations prescribed by the Secretary under paragraph (2).

"(2) The Secretary may by regulation establish terms and conditions for the exemption of an infant formula from the requirements of subsections (a) and (b). An exemption of an infant formula under paragraph (1) may be withdrawn by the Secretary if such formula is not in compliance with applicable terms and conditions prescribed under this paragraph.

"(g) An infant formula shall contain nutrients in accordance with the table set out in this subsection or, if revised by the Secretary under subsection (a) (2), as so revised:

"NUTRIENTS

"Nutrient	Minimum*	Maximum*
Protein (gm)	1.8†	4.5.
Fat:		
Gm	3.3	6.0.
Percent cal	30.0	54.0.
Essential fatty acids (linoleate):		
Percent cal	2.7	
Mg	300.0	
Vitamins:		
A (IU)	250.0 (75 μg‡	750.0 (225 μg).‡
D (IU)	40.0	100.0.
K (μg)	4.0	
E (IU)	0.7 (with 0.7 IU/gm linoleic acid)	
C (ascorbic acid) (mg)	8.0	
B_1 (thiamine) (μg)	40.0	
B_2 (riboflavin) (μg)	60.0	
B_6 (pyridoxine) (μg)	35.0 (with 15 μg/gm of protein in formula).	
B_{12} (μg)	0.15	
Niacin (μg)	250.0	
Vitamins—Continued		
Folic acid (μg)	4.0	
Pantothenic acid (μg)	300.0	
Biotin (μg)	1.5**	
Choline (mg)	7.0**	
Inositol (mg)	4.0**	
Minerals:		
Calcium (mg)	50.0††	
Phosphorus (mg)	25.0††	
Magnesium (mg)	6.0	
Iron (mg)	0.15	
Iodine (μg)	5.0	
Zinc (mg)	0.5	
Copper (μg)	60.0	
Manganese (μg)	5.0	
Sodium (mg)	20.0	60.0.
Potassium (mg)	80.0	200.0.
Chloride (mg)	55.0	150.0.

*Stated per 100 kilocalories.

†The source of protein shall be at least nutritionally equivalent to casein.

‡(Rentinol equivalents.

**Required to be included in this amount only in formulas which are not milk-based.

††Calcium to phosphorus ratio must be no less than 1.1 nor more than 2.)"

SEC. 3. Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

"(aa) The term 'infant formula' means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.".

SEC. 4. Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) is amended—

(1) in the first sentence, by inserting "(1)" before "For purposes" and by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(2) in the third sentence, by inserting "or by paragraph (3)" after "preceding sentence";

(3) in the sixth sentence, (A) by striking out "The provisions of the second sentence of this subsection" and inserting in lieu thereof the following:

"(2) The provisions of the second sentence of paragraph (1)",

and (B) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(4) by adding at the end the following:

"(3) An officer or employee making an inspection under paragraph (1) for purposes of enforcing the requirements of section 412 applicable to infant formulas shall be permitted, at all reasonable times, to have access to and to copy and verify any records—

"(A) bearing on whether the infant formula manufactured or held in the facility inspected meets the requirements of section 412, or

"(B) required to be maintained under section 412 ".

SEC. 5. (a) Section 301 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

"(s) The failure to provide the notice required by section 412(b) or 412(c), the failure to make the reports required by section 412(d)(1)(B), or the failure to meet the requirements prescribed under section 412(d)(2).".

(b) Section 301(e) of such Act is amended (1) by striking out "section 703" and inserting in lieu thereof "section 412 or 703", and (2) by striking out "section 505" and inserting in lieu thereof "section 412, 505".

(c) Section 301(j) of such Act is amended by inserting "412," before "505".

SEC. 6. Section 412 of the Federal Food, Drug, and Cosmetic Act (added by section 2) shall apply with respect to infant formulas manufactured on or after the 90th day after the date of the enactment of this Act.

SEC. 7. (a) The Secretary of Health and Human Services shall conduct a study to determine the long-term effect on infants of hypochloremic metabolic alkalosis resulting from infant formulas deficient in chloride. The Secretary shall report the results of such study to the Congress.

(b) The Secretary of Health and Human Services shall conduct a review of existing Federal requirements for the labeling of infant formula to determine the effect of such requirements on infant nutrition and proper use of infant formula. Not later than the 180th day after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives containing the results of the review and including recommendations for any legislative or administrative action with respect to the labeling of infant formula as the Secretary determines appropriate.

(c) The Secretary of Health and Human Services shall conduct a review of issues concerning the export of infant formula that, if marketed in the United States, would be in violation of section 412 of the Federal Food, Drug, and Cosmetic Act. Not later than the 180th day after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, containing the results of the review and including recommendations regarding appropriate legislative or administrative action to improve current export policies, as the Secretary determines appropriate.

SEC. 8. (a) Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended by adding at the end the following new subsection:

"(c) The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.".

(b) Section 203 of the Psychotropic Substances Act of 1978 (Public Law 95–633) is amended by striking out subsection (d).

(c) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) by striking out "except as provided in paragraphs (4) and (5) of this subsection" in the first sentence of subsection (b)(1)(B) and inserting in lieu thereof "except as provided in paragraphs (4), (5), and (6) of this subsection"; and

(2) by adding after paragraph (5) of subsection (b) the following new paragraph:

"(6) In the case of a violation of subsection (a) involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this title, title III, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than $250,000.".

Mr. WAXMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MOAKLEY). Is there objection to the request of the gentleman from California?

Mr. CARTER. Mr. Speaker, reserving the right to object, I am most happy to yield to the most distinguished gentleman from Tennessee (Mr. GORE), one of the original authors of the bill.

Mr. GORE. Mr. Speaker, I thank my colleague for yielding. I would like to thank him and the subcommittee chairman, the gentleman from California (Mr. WAXMAN), and urge my colleagues to allow this unanimous-consent request to go through.

Mr. Speaker, this legislation's purpose is to correct serious shortcomings in the design, testing, and marketing of infant formulas. Under current law, any substance whatsoever can be mass-marketed as the sole source of nourishment for infants. As a result, infant formulas that were deficient in vital nutrients were sold to unsuspecting parents. Thousands of American infants consumed deficient formulas and of these at least 150 suffered growth and developmental abnormalities directly attributable to the inferior formulas. Several months after this tragedy was discovered, the adulterated formulas were still being sold.

This legislation will require for the first time that all infant formulas sold in the United States contain all the ingredients essential to a child's proper development and growth. It also requires that formulas be tested before they are marketed. The bill also authorizes the Food and Drug Administration to prescribe procedures for removing adulterated formulas from store shelves, authority that hopefully will be unnecessary after these new nutritional quality standards are in place. Specifically, FDA will be authorized to issue a mandatory, high-priority recall of any defective formula found on the shelves. The FDA would also be required to insure complete compliance with the recall.

The infant formula legislation represents a significant effort to alleviate the problems that led to the physical harm that was needlessly inflicted upon these infants.

Mr. MOTTL. Mr. Speaker, will the gentleman yield?

Mr. CARTER. Mr. Speaker, I yield to the distinguished gentleman from Ohio (Mr. MOTTL), also one of the authors of the legislation before us.

Mr. MOTTL. Mr. Speaker, I rise in enthusiastic support of the Senate amendment to H.R. 6940. Approval of the amendment will avoid the need for a conference committee and will speed this critical legislation to the President for his signature.

I want to commend and express my personal thanks to the distinguished subcommittee chairman, Mr. WAXMAN, and the ranking minority member, Dr. CARTER, and Congressman AL GORE, for their effort and success in encouraging swift consideration of this bill at every stage in the legislative process. I would also like to take this opportunity to express my sorrow that Dr. CARTER has announced his retirement from Congress. He is certainly one of the finest doctors in the United States and one of the greatest legislators we have in the House of Representatives. We are going to miss him dearly.

Mr. Speaker, I would like to note and express strong support of provisions contained in the Senate amendment which would clarify the definition of "quality control procedures." The amendment provides the Secretary with clear authority to require the periodic testing of infant formula prior to marketing. While this authority was provided in the original House bill, I do not believe it hurts to increase legislative clarity on an issue of such importance.

One of the major findings of the Subcommittee on Oversight and Investigations' study of this issue was that inadequate premarket testing was a major factor in the sale last summer of two formula products critically deficient in chloride. Chloride is a nutrient vital to sustain life. The tragic event afflicted over 150 infants with a rare and potentially fatal blood disorder known as hypochloremic metabolic alkalosis. In combination with mandatory ingredient standards, conscientious and periodic testing of infant formula during the manufacturing process is the best protection against a repetition of last summer's tragedy.

Mr. Speaker, H.R. 6940 is a bill of which we can all be proud. It is legislation which was carefully crafted in close cooperation with pediatricians, consumers, and industry. It has wide endorsement and that is no insignificant achievement. I think the overwhelming level of support for this legislation underscores our common concern as legislators and parents about the need to protect this Nation's most valuable natural resource—our children.

The passage of H.R. 6940 will restore the confidence of thousands of parents that the infant formula upon which their children depend for nourishment is safe and effective. We have corrected a grievous deficiency in the Federal Food, Drug and Cosmetic Act and have taken a major step toward upgrading the quality of infant nutrition in this country.

I am proud of this achievement in which I had the opportunity to play a major roll and pledge to work closely with the Subcommittee on Oversight and Investigations and the Subcommittee on Health and the Environment to see that this new law is carefully enforced.

Mr. Speaker, I urge support for the Senate amendment.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I am pleased to have this opportunity to present H.R. 6940, the Infant Formula Act of 1980 and accompanying Senate amendment to the House of Representatives. The amendment represents an amicable compromise between the original House passed bill and S. 2490, Senate companion legislation. The compromise was the result of lengthy negotiations between the Subcommittee on Health and the Environment and the Senate Labor and Human Resources Subcommittee on Health and Scientific Research. Approval of the Senate amendment will speed final passage and avoid the necessity of a conference on an issue which possesses overwhelming bipartisan support.

Mr. Speaker, this legislation is a popular measure. The bill was approved by unanimous vote of the Interstate and Foreign Commerce Committee and approved by the full House—388 to 15—on May 22, 1980. Yesterday, the Senate endorsed passage of H.R. 6940 by unanimous consent.

In every respect the Senate amendment reflects the spirit and content of H.R. 6940. In addition to minor technical and conforming changes, the amendment adds four provisions not contained in the original House-passed bill. The first provision clarifies the definition of "quality control procedures" in subsection (a)(2)(D) to permit and encourage the Secretary to prescribe by regulation the periodic testing of infant formulas to insure safety and nutritional quality. The second provision, contained in subsection (b)(1), provides that until such time as these regulations become effective, manufacturers must notify the Secretary every 90 days that their infant formulas are in compliance with the required nutrient standard.

The notification provision is intended to encourage manufacturers to voluntarily develop premarket testing protocols prior to the establishment of mandatory quality control procedures. The committee strongly supports these provisions as the promulgation of quality control procedures may be a lengthy process and testing of infant formula prior to marketing is a critical factor in manufacturing a high quality product. The committee recognizes that the absence of effective quality control procedures and particularly premarket testing standards lead to the sale of two nutritionally deficient formulas last summer.

The remaining provisions not contained in the original House passed bill are contained in section 7 (b) and (c) of the amendment and relate to the preparation of reports by the Secretary of the Department of Health and Human Services. The first report entails a thorough review of Federal requirements respecting the labeling of infant formula. The Department is expected to study and make recommendations to Congress on whether incidents of formula misuse could be deterred through adoption of various label alternatives such as color coding or the use of picturegraphs. Formula misuse appears to most often occur among illiterate or non-English speaking Americans who confuse formula "concentrate," which requires dilution, from "ready to feed" preparations.

The committee recognizes that formula misuse can result in serious health effects and therefore believes this is an appropriate topic for further inquiry.

The second report involves a study of the nutritional quality of infant formula manufactured in this country for export. In particular, the report seeks an analysis of the impact of a Federal prohibition on the export of infant formula which does not comply with U.S. nutritional and processing standards.

Mr. Speaker, these Senate provisions are noncontroversial and greatly strengthen H.R. 6940. The committee has discussed their impact with industry representatives, the American Academy of Pediatrics, the Food and Drug Administration and consumer groups. I know of no objection to their inclusion in H.R. 6940 and therefore strongly recommend support of the Senate amendment.

Mr. Speaker, several Members have expressed interest in the status of the miscellaneous drug enforcement provisions contained in H.R. 6940. The original House bill contained three provisions which provided for continuing existing reporting requirements for the PCP precursor piperidine, the expansion of technical assistance provided States to control retail diversion of dangerous drugs and increasing criminal penalties for trafficking in large quantities of marihuana. The provisions were included in H.R. 6940 to obtain swift Senate consideration and enactment.

I am pleased to report that the Senate included all three House provisions in S. 2490 as well as the Senate amendment to H.R. 6940.

Mr. Speaker, I want to take this opportunity to once again recognize three members of the committee for their dedication and tireless efforts in working to see this vital bill through the legislative process. On behalf of the committee and the House I want to recognize the efforts of Representatives ALBERT GORE, RONALD MOTTL, and Dr. TIM LEE CARTER, ranking minority member of the Subcommittee on Health and the Environment. This legislation is a reflection of their thoughtful input.

I also want to note that Representatives GORE and MOTTL were personally responsible for writing the first legislative proposals on this issue following an extensive inquiry conducted by the Subcommittee on Oversight and Investigations of which they are leading members. They, as much as any member, deserve credit for first calling attention to serious deficiencies in the Federal Food, Drug, and Cosmetic Act and for giving birth to the legislation currently under consideration by this body. As Members of Congress, their dedication to duty—to serving the public interest—is of a caliber the House of Representatives can be justly proud.

Mr. Speaker, I would also like to express my appreciation to the Senate floor manager and author of the Senate amendment to H.R. 6940, Senator HOWARD METZENBAUM. Senator METZENBAUM's efforts were critical in gaining swift Senate consideration of this legislation and reflect favorably upon the high standards of comity and commitment to duty which have characterized relationships between the two Houses of Congress.

Mr. Speaker, parents must have confidence in the quality of formula upon which their children depend. They must be assured that formula contains all essential nutrients and that it has been adequately tested prior to marketing. The adoption of H.R. 6940 will restore public confidence in the safety and quality of infant formula. It deserves every Member's support.

Mr. CARTER. Mr. Speaker, further reserving the right to object, I would like to indicate my strong support for the infant formula bill and the Senate amendments thereto. This legislation would help safeguard the early growth and development of millions of our youngsters who rely upon infant formula as their primary source of nutrition in their early months of life. This measure would also help address the concern that many parents have about the quality and safety of infant formulas.

The need for this legislation became apparent when we found that 100 babies across the country developed a condition known as metabolic alkalosis, a condition which inhibits growth and development. This condition was traced to the infant formula fed these children which, it was later determined, contained an insufficient amount of chloride.

More than 10 million cans of this formula were produced in the first 6 months of 1979, and to this date we do not know precisely how many babies were affected by this deficient product. Months after the manufacturers initiated a recall, cans of it were still found on shelves of stores around the country.

Under present law the FDA has authority only to assure that the formulas are produced under sanitary conditions and are properly labeled.

This bill would go a long way toward assuring that infant formulas meet accepted nutritional standards and that good manufacturing practices are followed in their production.

The legislation provides the FDA with enough flexibility to adjust nutritional standards for formulas so they comply with the latest scientific knowledge and allow for variations for infants with special dietary needs such as phenylketonuria, called in common parlance PKU.

On addition, it will allow the FDA to more closely monitor recalls of formula and will provide for a long-term study of the infants who suffer from taking the chloride deficient formula. Actually, we have known of the necessity of chlorides for many years, and it seems passing strange that sufficient chlorides should not have been included in the formula up to this time.

This legislation requires that the chlorides, as well as every other essential element be included in infant formulas. The American Academy of Pediatrics will be consulted regularly as to the sufficiency of the proteins, vitamins, and minerals which are included in the formulas.

Mr. Speaker, today there is an amendment to this bill which would increase the penalties for persons trafficking in marihuana in quantities of over 1,000 pounds. Mr. Speaker, in 1970, I was a member of the Commerce Committee when it passed the Controlled Substances Act. Unfortunately, we did not make the penalties for marihuana as strict as they should have been.

In the past few years the sale of marihuana has become a big business. It is said that planes come into our country and dump tons and tons of marihuana. In order to receive pay for the marihuana delivered, the traffickers' money is weighed, not counted, to pay for the marihuana.

The people who may be caught and taken to court as a result of the sale of marihuana or having possession of it are usually let out on bail and, because the money they make from the sale of marihuana is so great, they skip bail. They make hundreds of thousands of dollars on each delivery. For this reason this bill increases the penalty for trafficking in marihuana in amounts greater than 1,000 pounds to 15 years and a fine of no less than $125,000 for that offense. Also if the accused were a second offender, then he would be fined $250,000 and he could be sent to the penitentiary for as long as 30 years.

In my opinion, Mr. Speaker, this legislation is necessary today to stop this monopoly, this wealthy group of people who are violating our laws and bringing marihuana into this country. We must take action now to halt the increasing threat of marihuana trafficking to our society.

Mr. Speaker, young adulthood, from age 18 to 25, represents the peak period for marihuana use. Three out of five in that age group have reported having ever used marihuana. Among children between ages 12 and 13, 8 percent have used marihuana, a figure which climbs to 29 percent for 14- and 15-year-olds and to 47 percent for those ages 16 and 17. These percentages have all significantly increased in the last 3 years. Clearly, we are faced with an epidemic of marihuana use among our young people.

The marihuana trafficking amendment only affects those trafficking in more than 1,000 pounds of marihuana—an amount worth approximately $250,000—using a conservative estimate. The amendment does not affect a small-time seller of the drug.

The marihuana trafficking amendment will insure that these people are sent to prison long enough to get them out of the business. Most importantly it will make the penalties commensurate with the possible gains.

For those reasons, Mr. Speaker, I think it is extremely necessary we pass this legislation.

• Mr. STAGGERS. Mr. Speaker, few bills in my recollection have enjoyed the broad base of support possessed by H.R. 6940. The Infant Formula Act of 1980 was passed by the House on May 20, 1980 by the overwhelming vote of 388 to 15. Yesterday our colleagues in the Senate considered this same legislation and following the inclusion of several minor amendments, ordered it reported by acclamation.

The legislative history indicates the H.R. 6940 is an enormously popular measure. It provides important new authority to the Secretary of the Department of Health and Human Services to insure the safety and quality of infant formula.

Mr. Speaker, this legislation is vitally important to the health of our most important constituency—our children. Each day, tens of thousands of infants, many under the age of 6 months, depend upon formula as their sole source of nourishment.

Like many members of our committee, I was deeply disturbed to learn that existing law does not require that infant formula contain all nutrients known to be essential. I believe parents have a right to expect that every reasonable step will be taken in the manufacturing process to insure that formula is safe and will promote healthy growth.

Today, no one enjoys advocating Government regulation. However, the information developed by the committee during its consideration of this legislation strongly indicates that Federal authority in this area of food policy is inadequate and in need of revision. Infant formula is a unique food product which deserves the special attention provided by this legislation.

Mr. Speaker, H.R. 6940 is good for the health of our country. I urge the support of every Member.●

Mr. CARTER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their own remarks on the bill, H.R. 6940, just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed on Monday, September 8, 1980, in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R.7817, by the yeas and nays;

H.R. 6629, de novo;

S. 299, de novo.

The Chair will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings.

CRIMINAL PROCEDURE AND EVIDENCE RULES AMENDMENTS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7817, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. DRINAN) that the House suspend the rules and pass the bill, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 241, nays 145, not voting 46, as follows:

[Roll No. 527]

YEAS—241

Akaka
Albosta
Alexander
Ambro
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
Atkinson
AuCoin
Bailey
Baldus
Barnard
Barnes
Bedell
Beilenson
Benjamin
Bennett
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burlison
Burton, John
Burton, Phillip
Byron
Carr
Carter
Cavanaugh
Clay
Coelho
Collins, Ill.
Conte
Conyers
Corman
Courter
D'Amours
Danielson
Daschle
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Calif.
Ertel
Evans, Del.
Evans, Ga.
Fary
Fascell
Fazio
Fenwick
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gradison
Gramm
Gray
Green
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Holland
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutto
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kastenmeier
Kazen
Kelly
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lent
Levitas
Lloyd
Long, Md.
Lowry
Luken
Lundine
McCloskey
McCormack
McDonald
McHugh
Maguire
Markey
Marks
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moore
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Pa.
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patterson
Paul
Pease
Perkins
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quillen
Rahall
Rangel
Ratchford
Reuss
Rinaldo
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Sabo
Scheuer
Schroeder
Seiberling
Shannon
Sharp
Shelby
Simon
Skelton
Smith, Iowa
Solarz
Spellman
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Studds
Swift
Synar
Traxler
Udall
Ullman
Van Deerlin
Vanik
Vento
Walgren
Waxman
Weaver
Weiss
White
Williams, Mont.
Williams, Ohio
Wirth
Wolpe
Wyatt
Yates
Yatron
Young, Mo.
Zablocki

NAYS—145

Abdnor
Anderson, Calif.
Applegate
Archer
Ashbrook
Badham
Bafalis
Bauman
Beard, Tenn.
Bereuter
Bethune
Bouquard
Bowen
Broomfield
Brown, Ohio
Broyhill
Burgener
Butler
Campbell
Carney
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, Mich.
Derwinski
Devine
Dickinson
Dougherty
Duncan, Oreg.
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Evans, Ind.
Findley
Florio
Frenzel
Gaydos
Gingrich
Goldwater
Goodling
Grisham
Guyer
Hagedorn
Hansen
Hillis
Holt
Hopkins
Hubbard
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Jones, Okla.
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lewis
Livingston
Loeffler
Long, La.
Lott
Lujan
Lungren
McClory
McDade
McEwen
McKay
Madigan
Marlenee
Martin
Michel
Mitchell, N.Y.
Montgomery
Moorhead, Calif.
Mottl
Myers, Ind.
Natcher
Neal
Nedzi
Pashayan
Petri
Pritchard
Quayle
Regula
Rhodes
Ritter
Roberts
Robinson
Roth
Rousselot
Rudd
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sensenbrenner
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stanton
Stockman
Stratton
Stump
Symms
Tauke
Taylor
Thomas
Trible
Vander Jagt
Volkmer
Walker
Wampler
Watkins
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Bob
Wilson, Tex.
Winn
Wydler
Young, Fla.

NOT VOTING—46

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Chappell
Chisholm
Ferraro
Garcia
Giaimo
Grassley
Harsha
Hinson
Holtzman
Ireland
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marriott
Mattox
Moorhead, Pa.
Murphy, N.Y.
Nolan
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Wilson, C. H.
Wolff
Wright
Wylie
Young, Alaska
Zeferetti

☐ 1310

The Clerk announced the following pairs:

On this vote:

Mr. Chappell and Mr. Lederer for, with Mr. Jones of Tennessee against.

Until further notice:

Mr. Addabbo with Mr. Young of Alaska.
Mr. Jenrette with Mr. Wylie.
Mr. Thompson with Mr. Royer.
Mr. Zeferetti with Mr. Kemp.
Mr. Wolff with Mr. Leach of Iowa.
Mr. Wright with Mr. Railsback.
Mr. Pepper with Mr. Marriott.
Mrs. Boggs with Mr. Hinson.
Mr. Breaux with Mr. McKinney.
Mr. Mattox with Mr. Harsha.
Mr. Murphy of New York with Mr. Grassley.
Mr. Russo with Mr. Buchanan.
Mr. Richmond with Mr. Nolan.

Mr. Lehman with Mr. Charles H. Wilson of California.

Mr. Moorhead of Pennsylvania with Mr. Steed.

Mr. Patten with Mr. Tauzin.

Mr. Beard of Rhode Island with Mr. St Germain.

Mrs. Chisholm with Mr. Leach of Louisiana.

Mr. Giaimo with Mr. Leland.

Mr. Ireland with Mr. Garcia.

Ms. Ferraro with Ms. Holtzman.

Messrs. DINGELL, MURPHY of Pennsylvania, MYERS of Pennsylvania, and SHARP changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b)(3), rule XXVII, the Chair announces he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the additional motions to suspend the rules on which the Chair has postponed further proceedings.

INDIAN HEALTH CARE PROGRAMS

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 6629, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 6629, as amended.

The question was taken.

RECORDED VOTE

Mr. ASHBROOK. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 311, noes 70, not voting 51, as follows:

[Roll No. 528]

AYES—311

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N. C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Ashley
Aspin
Atkinson
AuCoin
Bafalis
Bailey
Baldus
Barnes
Bedell
Beilenson
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Byron
Carney
Carr
Carter
Cavanaugh
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Courter
D'Amours
Danielson
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Fary
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hamilton
Hammerschmidt
Hanley
Harkin
Harris
Harsha
Hawkins
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Horton
Howard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Levitas
Lewis
Livingston
Lloyd
Long, La.
Long, Md.
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
Madigan
Maguire
Markey
Marks
Martin
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moore
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patterson
Pease
Perkins
Peyser
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Shannon
Sharp
Shelby
Shuster
Simon
Smith, Iowa
Smith, Nebr.
Snowe
Solarz
Spellman
Stack
Staggers
Stangeland
Stanton
Stark
Stewart
Stockman
Stokes
Studds
Swift
Synar
Tauke
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
White
Whitley
Whittaker
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wydler
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NOES—70

Archer
Ashbrook
Badham
Barnard
Bauman
Beard, Tenn.
Benjamin
Bouquard
Brown, Ohio
Butler
Campbell
Cleveland
Collins, Tex.
Cotter
Coughlin
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Derwinski
Devine
Evans, Ga.
Evans, Ind.
Gingrich
Gramm
Hall, Tex.
Hance
Hansen
Holt
Hopkins
Hubbard
Ichord
Kelly
Kramer
Latta
Leath, Tex.
Lee
Lent
Loeffler
Lott
McDonald
Mathis
Michel
Miller, Ohio
Moorhead, Calif.
Mottl
Murtha
O'Brien
Paul
Petri
Pickle
Ritter
Robinson
Rousselot
Satterfield
Sensenbrenner
Shumway
Skelton
Snyder
Solomon
Spence
Stenholm
Stratton
Stump
Symms
Walker
Wampler
Whitehurst
Wyatt

NOT VOTING—51

Addabbo
Anderson, Ill.
Beard, R.I.
Boggs
Breaux
Buchanan
Chappell
Chisholm
Downey
Fascell
Ferraro
Garcia
Giaimo
Grassley
Heckler
Hinson
Holtzman
Ireland
Jenrette
Jones, Tenn.
Kemp
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McKinney
Marlenee
Marriott
Mattox
Moffett
Moorhead, Pa.
Murphy, N.Y.
Nolan
Patten
Pepper
Railsback
Richmond
Royer
Russo
St Germain
Steed
Tauzin
Thompson
Whitten
Wilson, Bob
Wilson, C. H.
Wolff
Wylie
Young, Alaska
Zeferetti

☐ 1320

The Clerk announced the following pairs:

On this vote:

Mr. Chappell and Mr. Lederer for, with Mr. Jones of Tennessee against.

Until further notice:

Mr. Addabbo with Mr. Young of Alaska.

Mr. Moorhead of Pennsylvania with Mr. McKinney.

Mr. Zeferette with Mr. Wylie.

Mr. Murphy of New York with Mr. Royer.

Mr. Pepper with Mr. Bob Wilson.

Mr. Fascell with Mr. Railsback.

Mrs. Boggs with Mr. Kemp.

Mr. Giaimo with Mr. Leach of Iowa.

Ms. Ferraro with Mr. Marlenee.

Mr. Ireland with Mr. Hinson.

Mr. Jenrette with Mr. Marriott.

Mr. Russo with Mrs. Heckler.

Mr. Thompson with Mr. Buchanan.

Mr. Whitten with Mr. Grassley.

Mr. Patten with Mr. Garcia.

Mr. Lehman with Ms. Holtzman.

Mr. Mattox with Mr. Leach of Louisiana.

Mr. Nolan with Mr. Charles H. Wilson of California.

Mr. Moffett with Mr. Tauzin.

Mr. Leland with Mr. Steed.

Mr. Breaux with Mr. St Germain.

Mr. Downey with Mr. Beard of Rhode Island.

Mr. Richmond with Mr. Wolff.

Mrs. Chisholm with Mr. Anderson of Illinois.

Mr. BETHUNE changed his vote from "no" to "aye."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

☐ 1330

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2728) to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2728

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asesmbled, That (a) this Act may be cited as the "Indian Health Care Amendments of 1980".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (90 Stat. 1400).

DEFINITIONS

SEC. 2. (a) Section 4(a) is amended by striking out "Secretary of Health, Education, and Welfare" and inserting in lieu thereof "Secretary of Health and Human Services".

(b) Section 4(h) is amended by striking out "composed of urban Indians" and inserting in lieu thereof "governed by an Indian controlled board of directors".

INDIAN HEALTH MANPOWER

SEC. 3. (a) Section 102(c) is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $2,300,000 for the fiscal year ending September 30, 1981, $2,600,000 for the fiscal year ending September 30, 1982, $3,000,000 for the fiscal year ending September 30, 1983, and $3,500,000 for the fiscal year ending September 30, 1984.".

(b)(1) Section 103(b) is amended to read as follows:

"(b) Scholarship grants made pursuant to this section shall be for the following purposes:

"(1) Compensatory preprofessional education of any grantee, such scholarship not to exceed two years.

"(2) Pregraduate education of any grantee leading to a baccalaureate degree in an approved premedicine, predentistry, preosteopathy, preveterinary medicine, preoptometry, or prepodiatry curriculum, such scholarship not to exceed four years.".

(2) Section 103(c) is amended by adding the following new sentence at the end thereof: "Scholarship grants made pursuant to this section shall be awarded by such day certain that grant money shall be received by each grantee at least fifteen days prior to the date such grantee shall register for classes.".

(3) Section 103(d) is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $3,510,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, $4,620,000 for the fiscal year ending September 30, 1983, and $5,300,000 for the fiscal year ending September 30, 1984.".

(c) Section 105(d) is amended by striking out the last sentence thereof and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this section $990,000 for the fiscal year ending September 30, 1981, $1,140,000 for the fiscal year ending September 30, 1982, $1,310,000 for the fiscal year ending September 30, 1983, and $1,510,000 for the fiscal year ending September 30, 1984.".

(d)(1) The first sentence of section 757 (a) of the Public Health Service Act is amended by striking out " and for each of the succeeding four fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting in lieu thereof "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 the fiscal year ending September 30, 1984.".

(2) Section 757(b)(1) is amended by adding the following new sentence at the end thereof: "Scholarship grants made pursuant to this section shall be awarded by such day certain that grant money shall be received by each grantee at least fifteen days prior to the date such grantee shall register for classes.".

(3) Section 757(b)(2) is amended—

(A) by striking out "his" and inserting in lieu thereof "the applicable"; and

(B) by striking out "him" and inserting in lieu thereof "the Secretary".

INDIAN HEALTH SERVICES

SEC. 4. (a)(1) Section 201(c)(1) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $20,250,000 for the fiscal year ending September 30, 1981, $23,000,000 for the fiscal year ending September 30, 1982, $26,500,000 for the fiscal year ending September 30, 1983, and $30,500,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year."

(2) Section 201(c)(2) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $6,400,000 for the fiscal year ending September 30, 1981, $7,350,000 for the fiscal year ending September 30, 1982, $8,450,000 for the fiscal year ending September 30, 1983, and $9,700,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c)(3) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $1,875,000, for the fiscal year ending September 30, 1981, $2,150,000 for the fiscal year ending September 30, 1982, $2,500,000 for the fiscal year ending September 30, 1983, and $2,875,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(b)(1) Section 201(c)(4)(A) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $2,500,000 for the fiscal year ending September 30, 1981, $2,875,000 for the fiscal year ending September 30, 1982, $3,300,000 for the fiscal year ending September 30, 1983, and $3,800,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(2) Section 201(c)(4)(B) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $750,000 for the fiscal year ending September 30, 1981, $870,000 for the fiscal year ending September 30, 1982, $1,000,000 for the fiscal year ending September 30, 1983, and $1,150,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c)(4)(C) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $2,350,000 for the fiscal year ending September 30, 1981, $2,700,000 for the fiscal year ending September 30, 1982, $3,100,000 for the fiscal year ending September 30, 1983, and $3,600,000 for the fiscal year ending September 30, 1984, and such further positions are authorized as may be necessary for each such fiscal year.".

(4) Section 201(c)(4)(D) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $460,000 for the fiscal year ending September 30, 1981, $525,000 for the fiscal year ending September 30, 1982, $600,000 for the fiscal year ending September 30, 1983, and $690,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(5) Section 201(c)(4)(E) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $250,000 for the fiscal year ending September 30, 1981, $285,000 for the fiscal year ending September 30, 1982, $325,000 for the fiscal year ending September 30, 1983, and $375,000 for the fiscal year ending September 30, 1984.".

(c)(1) Section 201(c)(5) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $16,500,000 for the fiscal year ending September 30, 1981, $19,000,000 for the fiscal year ending September 30, 1982, $22,000,000 for the fiscal year ending September 30, 1983, and $25,100,000 for the fiscal year ending September 30, 1984.".

(2) Section 201(c)(6) is amended by adding the following sentence at the end thereof: "There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1981, $5,750,000 for the fiscal year ending September 30, 1982, $6,600,000 for the fiscal year ending September 30, 1983, and $7,600,000 for the fiscal year ending September 30, 1984, and such further additional positions are authorized as may be necessary for each such fiscal year.".

(3) Section 201(c) is amended by striking out paragraph (7).

INDIAN HEALTH FACILITIES

SEC. 5. Title III is amended by adding the following new section at the end thereof:

"SEC. 305. There are authorized to be appropriated to carry out sections 301 and 302 for the fiscal year ending September 30, 1981, for the fiscal year ending September 30, 1982, for the fiscal year ending September 30, 1983, and for the fiscal year ending September 30, 1984, such sums as may be necessary.".

ACCESS TO HEALTH SERVICES

SEC. 6. Title IV is amended by adding the following new section at the end thereof:

"GRANTS TO AND CONTRACTS WITH TRIBAL ORGANIZATIONS

"SEC. 404. (a) The Secretary, acting through the Service, shall make grants to or enter into contracts with tribal organizations to assist such organizations in establishing and administering programs on Federal Indian reservations and trust areas and in Alaska Native villages to assist individual Indians to—

"(1) enroll under section 1818 of part A and sections 1836 and 1837 of part B of title XVIII of the Social Security Act;

"(2) pay monthly premiums for coverage due to financial need of such individual; and

"(3) apply for medical assistance provided pursuant to title XIX of the Social Security Act.

"(b) The Secretary, acting through the Service, shall place conditions as deemed necessary to effect the purpose of this section in any contract or grant which the Secretary makes with any tribal organization pursuant to this section. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake to—

"(1) determine the population of Indians to be served that are or could be recipients of benefits under titles XVIII and XIX or the Social Security Act;

"(2) assist individual Indians in becoming familiar with and utilizing such benefits;

"(3) provide transportation to such individual Indians to the appropriate officers for enrollment or application for medical assistance;

"(4) develop and implement a schedule of income levels to determine the extent of payment of premiums by such organization for coverage of needy individuals; and

"(5) make recommendations to the Secretary and Federal, State, and local agencies with respect to methods of improving the participation of Indians in receiving the benefits provided pursuant to titles XVIII and XIX of the Social Security Act.

"(c) There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1981, $5,750,000 for the fiscal year ending September 30, 1982, $6,615,000 for the fiscal year ending September 30, 1983, and $7,610,000 for the fiscal year ending September 30, 1984.".

HEALTH SERVICES FOR URBAN AND OTHER NONRESERVATION INDIANS

SEC. 7. (a) Section 506 is amended to read as follows:

"AUTHORIZATIONS

"SEC. 506. There are authorized to be appropriated for contracts with urban Indian organizations under this title $18,750,000 for the fiscal year ending September 30, 1981, $21,500,000 for the fiscal year ending September 30, 1982, $24,725,000 for the fiscal year ending September 30, 1983, and $28,500,000 for the fiscal year ending September 30, 1984.".

(b) Section 507 is amended to read as follows:

"OTHER NONRESERVATION HEALTH PROJECTS

"SEC. 507. (a) The Secretary, acting through the Service, is authorized to provide such assistance as deemed necessary to make health services more accessible to any individual who is an Indian, or any group of individuals who are Indians, within the meaning of section 4(c) and who are not currently receiving health services from the Service nor are entitled to receive services from an urban Indian organization under a contract made pursuant to section 502 of this title.

"(b) There are authorized to be appropriated to carry out this section $9,375,000 for the fiscal year ending September 30, 1981, $10,750,000 for fiscal year ending September 30, 1982, $12,362,500 for the fiscal year ending September 30, 1983, and $14,250,000 for the fiscal year ending September 30, 1984.".

(c) Section 508 is amended to read as follows:

"REVIEW OF PROGRAM

"SEC. 508. Not later than the date six months after September 30, 1983, the Secretary, acting through the Service and with the assistance of the urban Indian organizations that have entered into contracts under this title and other nonreservation Indians, shall review the program established under this title and submit to the Congress an assessment thereof and recommendations for any further legislative efforts the Secretary deems necessary to meet the purpose of this title, including section 507. Such report shall contain an assessment of the unmet health needs of the urban Indian population and the Indian population in other nonreservation areas, including the needs of urban centers not previously serviced by an urban Indian organization under a contract entered into under this title.".

(d) The heading of title V is amended by inserting "AND OTHER NONRESERVATION" after "URBAN".

MISCELLANEOUS

SEC. 8 (a) Section 704 is amended by adding the following new sentence at the end thereof: "Property leased by the Secretary from an Indian tribe may be reconstructed or renovated by the Secretary pursuant to an agreement with such Indian tribe.".

(b) Title VII is amended by adding the following new sections at the end thereof:

"RESOURCE ALLOCATION PLAN

"SEC. 706. Within one year from the date of the enactment of this section, the Secretary shall submit to the Congress a resource allocation plan. Such plan shall explain the future allocation of services and funds among the service population of the Service and shall provide a schedule for reducing deficiencies in resources of tribes and nontribal specific entities.

"NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS

"SEC. 707. (a) The Secretary and the Service shall conduct, in conjunction with other appropriate Federal agencies and in consultation with concerned Indian tribes and organizations, a study of the health hazards to Indian miners and Indians on or near Indian reservations and in Indian communities as a result of nuclear resource development. Such study shall include—

"(1) an evaluation of the nature and extent of nuclear resource development related health problems currently exhibited among Indians and the causes of such health problems;

"(2) an analysis of the potential effect of ongoing and future nuclear resource development on or near Indian reservations and communities;

"(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear powerplant operation in construction, and nuclear waste disposal;

"(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the five years prior to the date of the enactment of this section that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

"(5) the efforts that have been made by Federal and State agencies and mining and milling companies to effectively carry out an education program for such Indians regarding the health and safety hazards of such nuclear resource development.

"(b) Upon completion of such study the Secretary and the Service shall take into account the results of such study and develop a health care plan to address the health problems studied under subsection (a). The plan shall include—

"(1) methods for diagnosing and treating Indians currently exhibiting such health problems;

"(2) preventive care for Indians who may be exposed to such health hazards, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or affected by other nuclear development activities that have had or could have a serious impact upon the health of such individuals; and

"(3) a program of education for Indians who, by reason of their work or geographic proximity to such nuclear development activities, may experience health problems.

"(c) The Secretary and the Service shall submit to Congress the study prepared under subsection (a) no later than the date eighteen months after the date of enactment of this section. The health care plan prepared under subsection (b) shall be submitted in a report no later than the date one year after the date that the study prepared under subsection (a) is submitted to Congress. Such report shall include recommended activities for the implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address such health problems.

"(d)(1) There is established an Intergovernmental Task Force to be composed of the following individuals (or their designees): the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Director of the Bureau of Mines, the Assistant Secretary for Occupational Safety and Health, and the Secretary of the Interior.

"(2) The Task Force shall identify existing and potential operations related to nuclear resource development that affects or may affect the health of Indians on or near an Indian reservation or in an Indian community and enter into activities to correct existing health hazards and insure that current and future health problems resulting from nuclear resource development activities are minimized or reduced.

"(3) The Secretary shall be Chairman of the Task Force. The Task Force shall meet at least twice each year. Each member of the Task Force shall furnish necessary assistance to the Task Force.

"(e) In the case of any Indian who—

"(1) as a result of employment in or near a uranium mine or mill, suffers from a work related illness or condition;

"(2) is entitled to receive diagnosis and treatment services from a Service facility; and

"(3) by reason of such Indian's employment, is entitled to medical care at the expense of such mine or mill operator;

the Service shall, at the request of such Indian, render appropriate medical care to such Indian for such illness or condition and may recover the costs of any medical care so rendered to which such Indian is entitled at the expense of such operator from such operator. Nothing in this subsection shall affect the rights of such Indian to recover damages other than such costs paid to the Service from the employer for such illness or condition.

"(f) There is authorized to be appropriated $300,000 to carry out the study as provided in subsection (a), such amount to be expended by the date eighteen months after the date of the enactment of this section.

"ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 708. (a) The State of Arizona shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to Indians in such State.

"(b) The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of Arizona if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).".

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall become effective October 1, 1980.

MOTION OFFERED BY MR. UDALL

Mr. UDALL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. UDALL moves to strike out all after the enacting clause of the Senate bill, S. 2728, and to insert in lieu thereof the provisions of H.R. 6629, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 6629) was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The SPEAKER pro tempore. The unfinished business is on the question of suspending the rules and passing the Senate bill, S. 299.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INSTRUCTING SECRETARY OF SENATE TO MAKE CHANGE IN ENROLLMENT OF S. 299

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 121) instructing the Secretary of the Senate to make a change in the enrollment of S. 299, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LEVITAS. Mr. Speaker, reserving the right to object, would the gentleman from California (Mr. DANIELSON) explain what this does.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from California.

Mr. DANIELSON. I will be pleased to explain.

This is simply to make a correction in the enrollment of the bill as it left the other body, and it follows upon the passage of S. 299 here in order that both Houses concur in correcting the enrollment of the bill. It does not make an amendment in substance. It cross-references two sections of the bill.

Mr. LEVITAS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. DANIELSON)?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 121

Resolved by the Senate (the House of Representatives concurring), The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made: In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . .".

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1979

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York? The Chair hears none, without objection, appoints the following conferees: Messrs. ASHLEY, MURPHY of New York, BIAGGI, OBERSTAR, HUGHES, ULLMAN, ROSTENKOWSKI, VANIK, CORMAN, MCCLOSKEY, PRITCHARD, EVANS of Delaware, CONABLE, and DUNCAN of Tennessee.

There was no objection.

RAIL ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7235, with Mr. AUCOIN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, September 5, 1980, title III was open for amendment at any point. Pending was an amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I ask unanimous consent to be allowed to proceed for 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Chairman, I take one moment to say to one of my colleagues, the gentleman from Florida (Mr. GIBBONS) that I am very sorry about the remarks I made to the gentleman the other day concerning this bill. I was misinformed about the gentleman's intentions and what he was trying to do.

The gentleman from Florida, SAM GIBBONS, is one of the real gentlemen of this House, one who has served his Nation well, who has been a good friend and a great American, and I am sure that whatever he decides to do will be for the right, as he sees it. I believe that his constituents were wise in sending him here, and certainly I hope that they will send him back as he deserves to be reelected to the House.

Mr. Chairman, I rise in support of my amendment, an amendment that has been carefully crafted since H.R. 7235 was last on the House floor in July. Mr. RAHALL and Mr. LEE are also cosponsors of this compromise—they have worked diligently to turn out a bill that is supported by groups as diverse as the AFL-CIO and the American Farm Bureau. I believe this compromise deserves the support of each and every Member of the House who is concerned about the deteriorating condition of our Nation's rail system.

What we have attempted to do in this amendment is give the railroads the flexibility to price transportation services according to the marketplace, up to a certain threshold level. Over that threshold level, the ICC retains jurisdiction over rates. The amendment gradually lifts that threshold level over a period of 4 years, but the threshold never rises above 180 percent of variable cost. Similarly, we have provided a zone of freedom for railroads to raise rates without the fear of having such increases suspended or investigated unless the rate is 20 percentage points above the threshold. I emphasize that these are indeed gradual, orderly forms of pricing flexibility that will not bring chaos to rail shippers.

Other provisions of the compromise are also significantly improved. The surcharge proposal permits a railroad to recover its costs expended in making a particular movement, but provides protection for short-line railroads and shippers. Members from agricultural States have impressed upon us the need to repeal demand-sensitive rates and the need for a shipper's needs board to address the continuing concerns of rail shippers. This we have done. Intrastate rail movements rates will continue to be regulated by State regulatory agencies with uniformity and consistency. Provisions are included in the compromise that provide transaction assistance for lines of the Rock Island and the Milwaukee Railroads that have been abandoned and for which there are purchasers and the necessary legal protections for the Rock Island Railroad to permit the benefits we enacted in the Rock Island Transition Act to flow without further delay.

☐ 1340

I would just like to mention a few of the cosponsors of this bill, the ones who are for it now:

The American Farm Bureau supports this compromise.

The United Mine Workers.

The Railroad Labor Executives Association.

The Brotherhood of Railway and Airline Clerks.

The American Short Line Railroad Association.

The American Association of Railroads.

The United Transportation Union.

The AFL–CIO.

The Chemical Manufacturers Association.

Sears, Roebuck & Co.

The Mining and Reclamation Council.

The coal industry.

The Aluminum Manufacturers Association.

The Sierra Club.

American Association of State Highway and Transportation Officials.

The National Wildlife Federation.

Environmental Action.

The Audubon Society.

Friends of the Earth.

Amtrak.

National Railroad Passenger Association.

National Grange.

American Feed Manufacturers Association.

The Pacific-Northwest Traffic League that represents over 1,000 shippers in the Northwest.

The Farm Land Industries.

The Cotton Council.

The California Association of Port Authorities.

The Northwest Marine Terminal Association.

The Committee of Rail Shippers, such as the Georgia-Pacific, General Motors, Ford, Bethlehem Steel, Republic Steel, Du Pont, Union Carbide, Allied Chemical and Corning Glass.

The National Governor's Association.

The State of New York, the State of Pennsylvania, the State of Massachusetts, the Congress Watch, and the Transportation Consumer Action project.

Such others as K-Mart, Whirlpool, Carnation, Lever Brothers, City Products Corp., American Retail Federation, Western Traffic Conference; the Georgia Freight Bureau, which represents 425 Georgia shippers and receivers, and the Fertilizer Institute. All these groups support the Staggers-Rahall-Lee-Loeffler compromise amendment.

I would like to add that I have four letters here in support; one from the White House, one from the Department of Agriculture, signed by the Secretary; one from the Secretary of Transportation and we have one from the Secretary of Energy, all supporting this legislation.

Mr. Chairman, I submit these letters, as follows:

THE WHITE HOUSE,
Washington, September 4, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Having just returned to the city, I have been studying the compromise amendment which you and Congressman Rahall have proposed to H.R. 7235, the Harley O. Staggers Rail Act of 1980. I know how difficult your job has been and I congratulate you on your success. As you know, consumers have an important stake in the health of the railroad industry and that industry is not healthy. Reform of Federal regulations is a vital element of renewed health for the rail industry and I consequently support your proposed compromise amendment. The bill, as modified by your compromise, will benefit both consumers and railroads.

Your proposal assures that H.R. 7235 will balance the competing demands for legislation to modernize rail regulatory policy. It assures competitive pricing wherever possible, and provides necessary protection for captive shippers. It phases in rate flexibility to avoid harshly imposing the burden of reforms, and responds to concerns raised about the level of the "cost recovery percentage".

It appears to me that the bill, as amended by your proposal, is a fair compromise that addresses and meets the needs of consumers. As workers, as taxpayers, as purchasers of goods and as users of energy resources, consumers need an efficient, healthy railroad industry. A sound rail system is a critical element of our economy and consumers should support this legislation which provides for phased reforms resulting in a more rational rail policy. The alternative for consumers is not attractive: higher transportation costs as railroad service declines, additional bankruptcies, and repeated demands for Federal subsidies.

I urge approval of your amendment and passage of H.R. 7235 without further amendment.

Sincerely,

ESTHER PETERSON,
Special Assistant to the President for Consumer Affairs.

THE WHITE HOUSE,
Washington, September 4, 1980.

Hon. BOB ECKHARDT,
House of Representatives,
Washington, D.C.

DEAR BOB: When we first discussed the issue of railroad regulatory reform earlier this summer, you raised three major objections to the captive shipper provisions of H.R. 7235. I am pleased to see that those issues have been addressed by the compromise being proposed by Congressmen Rahall and Staggers.

First, the revenue threshold for ICC rate jurisdiction has been lowered and the rate freedom contained in the bill is phased in to avoid harsh increases for shippers. A reasonable limit is specified for the "cost recovery percentage." Second, the bill distinguishes profitable and unprofitable railroads for the purposes of the 4 percent zone of rate flexibility. Third, your concern about the "reasonable transportation alternative" concept has been addressed. Your efforts have made an important difference in this legislation and assured that the compromise covers these issues. With the resolution of these issues, I can now support the bill and I have indicated this support in a letter to Congressman Staggers, a copy of which I have enclosed.

We all recognize the pressing need for rail regulatory reform. The months of work on this bill by you and your staff have helped lead to the Staggers-Rahall compromise which will benefit not only railroads and shippers, but consumers as well. I am grateful for your work and your patience in dealing with this difficult issue.

Sincerely,

ESTHER PETERSON,
Special Assistant to the President for Consumer Affairs.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 4, 1980.

Hon. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I am pleased to add my voice of support to H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be modified by the Rahall-Staggers compromise. As Secretary of Agriculture and a former member of Congress from an agricultural State, I am acutely aware of the importance of a strong rail system to the success of the agricultural economy of this country. However, I am similarly aware of the difficulties farmers and grain elevators, particularly the smaller shippers, have had in getting adequate rail service at nondiscriminatory and reasonable prices.

Many agricultural shippers expressed concern that H.R. 7235, as reported by the Interstate and Foreign Commerce Committee, did not afford them adequate protection. They feared having to bear an unreasonable portion of the dislocation associated with a movement toward a more flexible system of railroad rates and services. While I was, and am, of the opinion that the amendments offered by Mr. Madigan on the floor responded to these concerns, agricultural shippers continued to have some difficulty with the bill, perhaps because those amendments relied on new concepts to deal with highly complicated issues.

I am pleased that the Rahall-Staggers compromise responds to the expressed needs of agriculture so fully. First, removing the "reasonable transportation alternative" test and retaining existing law on market dominance, combined with the decreased revenue-to-variable cost ratio threshold for determining ICC review, will assure shippers a forum to protest rates they believe to be noncompetitive. Second, the contracts provision has been revised to retain, for agricultural shippers, the right to protest a proposed contract as unfairly discriminatory. Third, the provisions of existing law regarding demand-sensitive rates, which have troubled agricultural interests, will be repealed. Fourth, the Shipper Needs Board will be established to study and make recommendations on some carefully defined and important agricultural transportation issues. Finally, this Department will be given authority to establish regional agricultural transportation representatives to assist agricultural shippers in getting the best and most reasonably priced rail or alternative transportation, and to help them with any transitional problems that may develop.

I am pleased to support H.R. 7235, as modified by the Rahall-Staggers compromise, I urge all members, particularly those representing agricultural districts, to vote for a strong but fair railroad system by voting for the Rahall-Staggers compromise and for H.R. 7235 with no further amendments.

Sincerely,

BOB BERGLAND,
Secretary.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 3, 1980.

Hon. HARLEY O. STAGGERS,
House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR HARLEY: On behalf of the Administration, I am most pleased to support, and urge the enactment of, H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be modified by the Staggers-Rahall-Lee compromise. The bill, as amended, will be an extremely important step forward toward meeting the twin goals of reducing unnecessary regulation and improving the financial health of the railroad industry, an essential element of the nation's economy.

As you are undoubtedly aware, the railroad industry has been plagued in recent years by extremely low rates of return on investment. The result has been decreased maintenance, poor service, more accidents and higher rates. Although it is clear that overregulation is not the sole cause of this problem, it is a significant part of it. And H.R. 7235, with the Staggers-Rahall-Lee compromise, is a vital part of the solution.

We recognize that many shippers, as well as some of the smaller railroads, were concerned that as reported by the Interstate and Foreign Commerce Committee, the bill would not have adequately protected their interests. It is clear that in a transition to a more flexible rate and service system for railroads, there is a potential for some individual difficulties. The original bill attempted to balance the competing interests. The Staggers-Rahall-Lee compromise builds on this, and should, in our opinion, provide adequate reassurance to shippers that the burden of the transition will not fall unfairly upon them.

In particular, in lieu of the initial threshold for Interstate Commerce Commission (ICC) review of rail rates provided by the bill as reported (estimated to be 200 percent of variable cost), the Staggers-Rahall-Lee compromise would set the threshold level at 160 percent for the first year after enactment, increasing gradually to a maximum of 180 percent after five years. In addition, a major source of concern to shippers, the "reasonable transportation alternative test" (proposed section 10709(c) (2) (A) (ii)), has been eliminated, and the Staggers-Rahall-Lee compromise would maintain existing law on market dominance. This agreement recognizes the need for further study and analysis by the ICC of the difficult concepts of product, market and geographic competition.

The compromise also explicitly responds to the particular concerns of agricultural shippers and ports. The compromise language will make clear that the new rate and service flexibility (particularly surcharges) will not abrogate or in any way adversely affect existing law as it relates to inter- and intra-port relationships. In addition, the compromise strikes existing law permitting the establishment of demand-sensitive rates, and will, for agricultural shippers and ports, allow a proposed contract to be challenged on the grounds that it unfairly discriminates against other similarly situated shippers. These changes, together with the elimination of the reasonable transportation alternative test, respond to the major concerns voiced by agricultural shippers.

The surcharge section, section 301 of H.R. 7235, would be amended in several important respects to respond to the concerns of small railroads, ports, and small shippers. In essence, the revised provision would limit surcharges to the level needed to cover the direct operating costs of a movement. Thus, shippers will no longer have to suffer poor service from a railroad that loses money on every shipment, and short line railroads will be assured that larger carriers will not be able to use unreasonably high surcharges to divert traffic away from smaller carriers. In addition, the total joint rate that results from a surcharge would be subject to review by the ICC under the maximum rate provisions discussed above. I wish to emphasize that the surcharge provision under the compromise does no more than guarantee a railroad that it will no longer be forced to carry goods at less than its out-of-pocket costs. This proposition is essential to a strong and sound railroad system and I urge you to vote against any attempt to weaken it.

In summary, our economy needs a financially healthy and productive railroad system, in private hands. In an age of diminishing energy resources, the energy-efficient railroads are essential. H.R. 7235, as modified by the Staggers-Rahall-Lee compromise, will move us closer to a healthy railroad industry, with manifest benefits for shippers, employees, and consumers. The Administration strongly supports the bill. I urge all Members to vote for the Staggers-Rahall-Lee compromise, and for H.R. 7235 with no further amendments.

Sincerely,

Neil Goldschmidt.

The Secretary of Energy,
Washington, D.C., September 4, 1980.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Mr. Chairman: I urge the House of Representatives to adopt H.R. 7235, the Harley O. Staggers Rail Act of 1980, as it will be amended by the Rahall-Staggers compromise. This legislation is necessary if the Nation is to move toward an adequate rail transportation system in the 1980s which will link producers with domestic and foreign consumers.

We have sufficient coal resources to lessen our over-dependence on expensive imported foreign oil—imports that are estimated to cost more than $80 billion in 1980. For coal to meet our Nation's energy needs, however, our railroad industry must be revitalized. Railroads will have to invest substantial capital over the next decade to upgrade rail facilities and equipment to meet the expected growth in domestic and foreign coal demand. Without meaningful regulatory reform railroads will have great difficulty in undertaking this commitment. There is a need for a regulatory environment in which railroads are allowed to earn or borrow investment capital needed to fulfill national energy goals and which ensures that coal is available at reasonable rates.

The Rahall-Staggers amendment balances the needs of railroads and shippers. It permits railroads to adjust rates to meet competition while encouraging them to provide better service. This will enable railroads to attract additional capital for needed investment. The Rahall-Staggers amendment also maintains adequate regulatory oversight to assure reasonable rail rates for coal-burning utilities. Specifically, the compromise provides a threshold at which a rate becomes subject to ICC review that is significantly lower than the revenue-to-variable cost ratio under the original House bill. It also eliminates the alternative transportation test definition of a captive shipper that was of concern to utilities and some other shippers.

The regulatory system governing railroads needs to be brought up to date so that the railroads can obtain needed capital while captive shippers continue to be assured of reasonable rates. The Rahall-Staggers compromise accomplishes these objectives. It will help us to achieve national energy goals. I urge the House of Representatives to adopt the compromise and agree to final passage of H.R. 7235.

Sincerely,

Charles W. Duncan, Jr.,
Secretary.

Mr. Chairman, all of those are responsible people that I know of. I do not say those are irresponsible who are not supporting the amendment, but we have tried to be fair to one of the great industries of America that we need. We do not want any more Milwaukee situations coming up or any more Conrail situations coming up.

We think that when a shipper uses the railroad that the shipper should be treated fairly and this is why the shippers, and these associations have backed the compromise.

In time of emergency we need the railroads of this land. If we had an emergency now and had to transport large machinery anywhere across the Nation, we need the railroads. We need them to transport troops across this Nation. We would have to have railroads in order to do that. So I think we need a healthy railroad system.

I think anyone if they would think about it will say that we have tried to be fair to every section of the country.

I know that there have been some of those in some parts of the country that have been persuaded that they will be charged exorbitant rates, but we have tried to take care of that and the surcharges that it will bring to railroads to insure them that the railroads will not have to carry freight at a loss nor will the shippers lose service.

Now, I cannot see how anybody would object to this as being unfair. I just cannot do it, because if they do, they are viewing it from a different point than I am.

I have travelled in practically every nation that has railroads. Ours as a system is less than healthy, right here in America: even in China they have far better railroads than we have.

So I just cannot understand why we do not try to pass a bill that will see that the railroads are healthy and try to protect the shippers, too. The shippers have endorsed this compromise almost entirely down the line.

So I cannot understand why anyone would vote against the compromise at all.

I know that there are those who want to offer amendments to it. I would say let us turn all those amendments down and vote on this bill and pass it, because in my view it is one of the most important bills we can have for the future of transportation in America.

Mr. Chairman, I urge the Members of the House to support this compromise without further amendment, as it represents a truly balanced bill that is a great step forward to the improvement of the safety and service of our Nation's railroads.

Mr. Chairman, I yield my remaining 3 minutes to the gentleman from West Virginia (Mr. Rahall).

Mr. RAHALL. Mr. Chairman, I thank the distinguished chairman for yielding.

Mr. Chairman, I am delighted to join with the distinguished chairman of the Commerce Committee and my senior colleague from the State of West Virginia, Harley Staggers, in cosponsoring the compromise amendment with him and the distinguished gentleman from New York, Mr. Gary Lee.

This amendment to H.R. 7235 in the nature of a compromise I believe injects a vital balance in provisions of this bill in order to meet both rail carrier and shipper needs and allow this important legislation to move forward.

We can quote from various ICC figures, Mr. Chairman, that show the financial condition of our Nation's railroads. From all these figures, we can certainly see the clear signal that in many instances the financial health of U.S. railroads must be restored in order to forestall unconscionable deterioration and critical loses of basic railroad services across the United States.

At the same time, Mr. Chairman, we cannot disregard the fact that shippers who have no practical alternative to railroad transportation, no alternate means of competition—for instance, chemicals, coal, fertilizers, grain, ore, steel and other heavy bulk commodities in particular—and thus are captive to one railroad in many instances, must not be faced with unreasonably high rail rates and no readily available source of immediate relief from such damaging circumstances. As an example, coal, which is the leading commodity carried by U.S. railroads representing almost 30 percent of all railroad freight tonnage, now relies on railroad transportation to move about 65 percent of total annual production from mines to electric utilities, industrial plants, and coastal ports for transfers to ocean vessels in service to foreign customers.

Furthermore, about 85 percent of the coal that is moved by the railroads has no practical alternative mode of transportation available, a clear case which shows the importance of having a sound system of railroads to carry this valuable domestic resource, coal, to its user destinations, as well as an effective point for recourse against unjustifiably high railroad rates, a major role for the Interstate Commerce Commission, now and in future years as provided in this compromise.

As our railroads are called upon to haul our increased coal production, it must be realized that the captive shippers must have timely access to the Interstate Commerce Commission for review of exorbitantly high rates charged by the railroads.

H.R. 7235, as originally brought to the floor, had substantial merits in eliminating counterproductive railroad regulations, but the bill did not furnish this critical captive shipper protection and, therefore, along with the gentleman from Texas (Mr. ECKHARDT) with whom I have worked closely on this legislation, the distinguished subcommittee chairman, the gentleman from New Jersey (Mr. FLORIO), the committee chairman, the gentleman from West Virginia (Mr. STAGGERS); the ranking member, the distinguished gentleman from Illinois (Mr. MADIGAN) and with other parties, we have worked out what I believe is an effective compromise.

The CHAIRMAN. The time of the gentleman from West Virginia has expired.

(By unanimous consent, Mr. RAHALL was allowed to proceed for 5 additional minutes.)

Mr. RAHALL. Mr. Chairman, the original Eckhardt-Rahall amendment that was adopted by this House on July 24 by a 7-vote margin created what I believe is a solid foundation for moving forward with a balanced railroad deregulation bill. I regretted at that time that the sponsors of the bill pulled the legislation from further floor consideration. I supported the Eckhardt-Rahall amendment at that time and still support the principles upon which that amendment is based.

This compromise amendment today is not undoing what the original Eckhardt-Rahall amendment accomplished.

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We are not "selling out" as was described last Friday on the floor of this House. We are using reason and logic in what I believe is a sound attempt to move this railroad deregulation bill forward. Many other Members have worked with us in an attempt to pass a meaningful rail deregulation bill, a bill which all will admit is in the best interests of all parties, the railroad shippers, labor, consumers, and the many other groups that the distinguished chairman has listed as supporting this measure.

As a direct result of this legislative process, it has become possible to achieve a just solution. I earnestly hope that this amendment is adopted. It will provide guidance for the Interstate Commerce Commission from this Congress. It will assure that the Interstate Commerce Commission does not proceed headlong into deregulation without guidelines and without a bill from the Congress. If this measure were allowed to die, the circumstances that face captive shippers across our Nation would be in much more dire circumstances. This compromise amendment starts at the previously adopted Eckhardt-Rahall threshold level of 160 percent revenue-variable a cost percentage above which ICC review would be triggered. This revenue variable cost percentage, of 160 percent compares with the original 200-percent threshold level that previously existed in the original bill. The 160-percent level for 1981 is followed by 170 percent for 1982, 175 percent—or the cost recovery percentage, whichever is less—for the year ending September 1983.

After 1984 the threshold level that triggers access to the ICC and timely review of unreasonable rates for captive shippers, would be set at the cost recovery percentage, which in any event would not be less than 170 percent or more than 180 percent. I believe this is an effective compromise. It is a much better rate than the original 200-percent level that existed in the original legislation from date of enactment. It would assure a healthy, viable system of railroads across the United States, and yet it would provide timely review to the Interstate Commerce Commission by captive shippers who feel they are facing exorbitant rates in the transportation of coal or other bulk commodities.

In conclusion, Mr. Chairman, I want to issue this warning as we enter into this legislative debate on this complex and very timely compromise amendment. As coal production and coal markets grow in the future, any boom for both the coal industry and the railroad industry with its related increase in employment of men in both fields, will never be achieved unless domestic rail rates are kept at reasonable levels to permit U.S. coal to compete in world markets.

The Staggers-Rahall compromise will protect captive shippers by increasing over a 4-year period the jurisdictional threshold at which a rate would be reviewed by the ICC, and it preserves the market dominance test which exists under present law. It reduces the zone of flexibility for rates subject to ICC jurisdiction. It provides protective provisions for shippers under section 301 surcharges and cancellations.

I believe that this compromise is good. It is good for not only coal upon which our national security depends in the future, but it is good for consumers and the many other parties that have endorsed this legislation. I would hope that the House sees fit to adopt this compromise and pass this deregulation bill today.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. RAHALL. I will be glad to yield to the gentleman from Texas.

Mr. ECKHARDT. The gentleman used my name, and he used it in a very complimentary way, and I thank him for it. There is one thing, however, that he mentioned that I do not know the derivation of, and that is that someone has "sold out." I do not recall anybody saying that. I certainly did not.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MADIGAN, and by unanimous consent, Mr. RAHALL was allowed to proceed for 1 additional minute.)

Mr. MADIGAN. Will the gentleman yield?

Mr. RAHALL. I yield to the gentleman from Illinois.

Mr. MADIGAN. I thank the gentleman for yielding. I would respond to the gentleman from Texas (Mr. ECKHARDT) by saying that that comment was made in the debate Friday afternoon by a colleague of his from Texas who is sitting here acknowledging being the man responsible for making the comment. I believe at that time that the other gentleman from Texas who is standing had some laudatory things to say about the comment.

Mr. ECKHARDT. If the gentleman will yield, I did not understand the last statement of what I did in connection with the statement.

Mr. MADIGAN. I believe that the gentleman had some laudatory comments to make about the other gentlemen from Texas, the one who made the comment to which the gentleman from West Virginia has referred.

Mr. ECKHARDT. If the gentleman will yield further, if I may say so, making a laudatory statement about my colleague, the gentleman from San Antonio, I do not join in all his views.

Mr. MADIGAN. Specifically, if the gentleman will yield further——

The CHAIRMAN. The time of the gentleman has expired.

Mr. MADIGAN. Mr. Chairman, I rise in support of this compromise.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield for clarification?

Mr. MADIGAN. Certainly, I will be happy to yield to the gentleman from Texas.

Mr. GONZALEZ. The record will show that I did make the statement that this did not represent a compromise; it was a sellout. I reiterate it because I cannot think of any other term to describe it adequately.

Mr. MADIGAN. I want to thank the gentleman for acknowledging the remark he made last Friday.

Mr. RAHALL. Will the gentleman yield?

Mr. MADIGAN. I would be happy to yield.

Mr. RAHALL. I thank the gentleman for yielding. I might say in response to my distinguished colleague, the gentleman from Texas, that I view this as an effort to inject reason and logic in this legislative process in order to reach a solution to this problem; reason and logic that I feel the gentleman from Texas has used very effectively over his 10 terms in Congress. I offer this amendment in that same spirit.

Mr. MADIGAN. Mr. Chairman, before we get too far off the track, I rise in support of the Staggers-Rahall-Lee-Loeffler compromise which, as has been indicated by the chairman of the Committee on Interstate and Foreign Commerce, is a compromise that enjoys broad support now, not only from the railroad industry but from the short line railroad associations, from the major railroad bulk shippers across the country and the agriculture community. I want at this time to yield to the gentleman from New York (Mr. LEE), the minority sponsor of the amendment, such time as he may consume.

Mr. LEE. Mr. Chairman, I rise in support of the compromise amendment offered by the distinguished chairman of our full committee, the gentleman from West Virginia (Mr. STAGGERS), and our distinguished colleagues, the gentleman from West Virginia (Mr. RAHALL), and the gentleman from Texas (Mr. LOEFFLER), who are cosponsors of this.

Mr. Chairman, H.R. 7235, the Rail Act of 1980, may be the most important Federal legislation concerning the railroads since the enactment of the Interstate Commerce Act in 1887. Within the last year and a half the Transportation and Commerce Subcommittee, of which I am a member, spent countless hours in hearings and meetings concerning the problems facing America's railroads.

We in the Northeast know firsthand about the problems facing railroads. It was but a few years ago that the six major railroads in the Northeast were bankrupt. With the establishment of Conrail, Congress provided some relief for shippers in the Northeast. However, it also became apparent that overregulation of railroads continues to make it very difficult for shippers to get good service.

During this Congress we have seen that the problems experienced in the Northeast have also been experienced in the Midwest. We have had to enact the special legislation because of the Milwaukee bankruptcy and the Rock Island bankruptcy. The situation will continue to be bleak unless there is change in railroad regulation.

This legislation frees up the regulation of railroads. It will permit them to provide service tailor made to the shipper needs. It will permit railroads to use the marketplace rather than a hearing room for pricing decisions. Above all, it will permit railroads to earn an adequate return on investments, so as to put some money back into the railroad industry.

The present system of rate regulation for the railroad industry creates inflexibility in pricing. It also causes some railroads to have to carry traffic below cost. That is the reason for section 301 of the bill, which permits surcharges and route cancellations.

As you know, Mr. Speaker, that section caused great concern for short line railroads. I had an amendment adopted in committee which partially solved the problem. In addition, Mr. MADIGAN, Mr. FLORIO, Mr. BROYHILL, Mr. STAGGERS and I have worked with the short line railroads since that time. With the adoption of the Staggers-Rahall-Lee substitute amendment the Short Line Association wholeheartedly endorses this bill. Mr. Speaker, it is important that this legislation be enacted as soon as possible. I hope that the House will approve the bill.

I rise in support of the compromise amendment offered by the distinguished chairman of our full committee, Mr. STAGGERS. I believe that the compromise represents a true middle ground which can be supported both by the supporters of the bill as reported from committee and supporters of the Eckhardt amendment. Mr. STAGGERS and I were both supporters of the bill as reported from committee. Mr. RAHALL and Mr. LOEFFLER, who have joined us in this amendment, had voted for the Eckhardt-Rahall amendment.

The chairman of the subcommittee (Mr. FLORIO) and the ranking minority member (Mr. MADIGAN) and the ranking minority member of the full committee (Mr. BROYHILL) join us in supporting this compromise.

The compensatory joint rate provision of the committee bill caused concern for many smaller railroads. Because of that concern, I worked closely with the short line railroads in my district and the American Short Line Railroad Association. Together, we considered ways and means for making certain that larger carriers could not use the surcharge and cancellation provisions to the detriment of small railroads. Had we proceeded with consideration of the committee bill last July 24, I was prepared to offer an amendment which had been endorsed by the American Short Line Railroad Association as providing significant protection for short line railroads. The compromise amendment we are offering today contains all of those protections. In addition, provisions have been added to afford shippers and short line railroads additional protection against unreasonable surcharges or cancellations of joint rates by railroads.

Let me take a minute to describe the protections afforded short line railroads. As you know, the surcharge and cancellation provisions only come into play when a railroad is not covering its costs for a particular movement.

Furthermore, if a railroad is earning adequate revenues over its system as a whole, it may not utilize the surcharge provisions. Since 70 percent of the railroad traffic is handled by two or more railroads, the pricing system used is one of joint rates and predetermined divisions of revenue. Under existing law, once a joint rate has been established, it cannot be changed without the concurrence of all the railroads participating in that particular movement. Likewise, the division of revenues formula cannot be changed without the agreement of all the carriers participating in the movement. This pricing mechanism has created such inflexibility that some of the participating carriers have been forced to carry traffic at below cost.

The surcharge provision represents a simple way to insure that each carrier is covering his cost. For determining cost, 110 percent of variable costs, as reported on rail form A—the standard form used for reporting costs to the Interstate Commerce Commission—is used to provide a simple method of calculating the revenue to variable costs ratio for a particular movement. Any railroad that can demonstrate that its division of revenues from a particular joint rate gives it less than 110 percent of its variable costs can apply a surcharge.

The objective of this surcharge is to provide the carrier with revenues equal to 110 percent of its variable costs for the movement. Other carriers involved in the movement in question, or shippers under the compromise amendment, can challenge a surcharge in a variety of ways.

For example, any other carrier participating in a movement can adjust the division of revenues or propose a new rate in lieu of accepting a surcharge. Simply stated, anything can be done to bring the surcharging carrier's revenues up to 110 percent of its variable cost, thereby alleviating the need for the surcharge. In addition, a shipper or a carrier can bring the surcharge down so that revenues are no more than 110 percent of variable cost if the surcharging carrier has published a surcharge which is too high.

The cancellation provisions work in a similar way. Even though a carrier with revenues less than 110 percent of its variable cost can propose to cancel a joint rate, the other participating carriers can prevent the cancellation by providing a new rate or a new division which gives the canceling carrier revenues equal to 110 percent of its variable costs. In addition, a shipper or a carrier can prevent the joint rate from being canceled by providing a surcharge which will bring the surcharging carrier's revenues up to 110 percent of its variable costs.

In recognition of the public interest in preserving short line railroads as effective competitors, short line railroads are given additional protections whenever a surcharge or cancellation affects the short line's ability to compete effectively with a trunkline. The short line can obtain review by the Commission of either a surcharge or a cancellation if the surcharge or cancellation will have an adverse effect on the ability of a short line railroad or one of its shippers to compete effectively, or if it will affect the short line railroad's last available route for a particular movement, or if it will produce higher rates for shippers or receivers located on the short line than for a competitor in the same geographic area.

The Commission may rescind the surcharge or cancellation and may require the surcharging or canceling carrier to carry the traffic at less than 110 percent of its variable costs if necessary to preserve competition or service by the short line railroad. The committee intends that these extraordinary provisions for short line railroads are to be interpreted and applied by the Commission to prevent anticompetitive, predatory, destructive, or unwarranted surcharges or cancellations which would impair the vitality of short line railroads.

In addition, the committee intends that short line railroads will have the Federal antitrust laws available to protect against improper use by larger railroads of the compensatory joint rate relief provisions and the contract provisions of the bill.

I want to thank all the members of the American Short Line Railroad Association and a number of individual short lines for the time and effort they put in on working out this compromise. With this compromise, we have been able to preserve a simple and fair method for assuring that railroads involved in joint rates and through routes at least recover their costs, except in those situations where the special circumstances of a short line railroad's operations justify requiring rates below 110 percent of variable costs. I believe that that was the goal every member of the Commerce Committee wanted to achieve and section 301 of the compromise provides the means for achieving that goal.

All members have received a copy of the letter from the American Short Line Railroad Association endorsing the compromise and the bill. I think that the last sentence of that letter sums up the attitude of the short line railroad industry and the attitude of all of us who are pleased with this compromise. That sentence states:

> We genuinely appreciate the efforts by everyone to assure the future strength of not only the short line railroads, but the entire railroad industry.

The section 301 joint rates portion of this legislation has, as you know, been one of the most complicated provisions in the bill and has been a matter of considerable debate within the railroad industry. This provision reflects a compromise reached between railroad and shipper interests and contains a number of specific protections for class III carriers and for shipper interests.

There is still discussion over specific impacts of portions of the provision and I am committed to look at further problems which may arise under this section as the bill moves to the Conference Committee. I would like to mention one such matter to the House and will discuss it further with you as the bill moves through the conference. It involves the truly captive shipper who makes an overall contribution to a railroad.

In many cases the traffic from a specific large shipper will be overwhelmingly profitable for the railroads carrying that traffic. However, a small portion of the traffic generated by that shipper may be marginal or even fall below the 110 percent of variable costs established by section 301 as the point at which surcharges may be applied. In those instances where a very small portion of the traffic generated by a shipper falls below the 110 percent figure, the underlying reason is generally a competitive one. I strongly feel that railroads which are, overall, making a very healthy profit on the traffic generated by a shipper should not place surcharges on the limited amount of traffic that shipper generated which is being carried at a lower rate. This is particularly true when such a surcharge will cost the shipper the business and will put him at a serious competitive disadvantage.

I note that the committee consistently has argued that railroads must have the ability for differential rate structures based on competitive circumstances. The situation which I have described certainly fits within the concepts our committee has set forward in order to provide maximum service and opportunity for rail service to the Nation's shippers.

I intend that the conference committee would give consideration to this situation and look for language which would clarify congressional intent that overall contribution of a shipper to the income of a railroad be considered by that railroad in the imposition of surcharges.

A purpose of this legislation is to foster a healthy and diverse railroad system composed of large and small carriers. In my activities on the Subcommittee on Commerce and Transportation I have given special attention to insuring that the new regulatory freedoms will not be used to stifle the development of our smaller class II and class III carriers which are an important element, and a growing element, in the national rail network.

Most of my attention has been directed to section 301, joint rate surcharge and cancellations, because that is the area where there is room for the greatest mischief. I want to be clear, however, that it is our intent to promote development of class II and class III carriers and other sections of this legislation are not to be used by the Interstate Commerce Commission or any other entity in a fashion that intends an adverse impact on one or more class II or class III carriers. It is not desirable to try to cover every eventuality by statutory language. This generally creates more problems than it solves. Our intent is clear, and I wish to underscore it here.

As a general guideline, I will cite some examples of the kinds of actions that would not be acceptable as tools against class II and III railroads by class I carriers. In this bill we broaden the exemption clause creating a simpler standard. In no case should the exemption clause be allowed in a circumstance that would allow a large carrier to utilize its market power to squeeze a smaller carrier on a joint rate or division or to force a de facto cancellation. In other words the exemption clause should never be used to "end run" the joint rate provisions contained in section 301. Another example is the entry and reciprocal switching provisions easing the way for entry if the public interest "permits." These provisions must never be used by a large carrier to force its way into traffic originated or terminated by a class II or III carrier and interchanged with the large carrier.

This kind of action would be anticompetitive and would enhance the potential for growing dominance and abuse of a few gigantic rail carriers against the smaller carriers. A third example is the deregulation of car service orders. Over a period of time the ICC has developed the car service order as a tool to provide interim operating authority over lines that would otherwise be abandoned until it is possible to issue permanent authority. This has been useful and it is entirely appropriate for the Commission to treat any potential abandonment, where there is an offer of continued service, as an "emergency" of appropriate magnitude to allow issuance of a car service order.

The above examples are by no means a complete list. Simply put, we do not intend that the various sections of this legislation be used so that the expanded power and flexibility given large carriers can be applied against class II and class III carriers in an adverse fashion that would impair a smaller carrier's ability to attain financial health.

The Rail Act of 1980, represents a comprehensive effort to provide financial stability to America's freight railroad system, so that it can flourish within the private sector of our economy. Most of the debate on this legislation revolves around our efforts to reform the regulatory process to allow hard-pressed railroad companies to function more like other businesses. However, we must not lose sight of the reality that railroads, in major portions of this Nation, are in financial distress and it is unlikely that regulatory reform will, in the short term, produce the necessary added income to allow railroads like Conrail and the Milwaukee to become viable and self-sustaining.

Our subcommittee has identified a capital shortfall of between $16 and $20 billion in the railroad industry by 1985. There are only three ways to address the problems of rail deterioration, poor service, and unsafe conditions that result from the deferred maintenance and rundown plant condition of this grossly undercapitalized industry. The first is to do nothing. The second is to allow railroads to price their transportation product so that enough revenue is generated from the shippers to allow the industry to make the necessary investment. The third is Government financial assistance adequate to address the problem.

The first solution, to do nothing, is unacceptable. That is the kind of policy that ultimately led to the reorganization of the northeast bankrupts with massive Federal financial obligations and the liquidation of the Rock Island. The second alternative, increasing the financial stability of the industry through regulatory reform, is a principal goal of this act.

Let us not delude ourselves however. Knowledgeable railroad marketing and operating people tell me that even full rate deregulation will have a limited impact on corporate revenues, at least in the early years. H.R. 7235 only deregulates rates in the case of competitive traffic. Because rail shippers have large and sophisticated marketing divisions, a high percentage of this competitive traffic is already regulated by the marketplace. In the case of the truly captive shippers, this bill continues regulation. As we all know, efforts by various categories of shippers, including agricultural, coal and chemical companies among others, has resulted in a lower threshhold rate for regulation that was originally approved by the House Commerce Committee.

Therefore, railroads can not expect any significant windfall from rate deregulation. In fact, I have heard directly from New England railroad chief executives that the ICC has not held down rates to any significant degree and for practical purposes, there has been a de facto upward rate flexibility for several years. Northeast railroads, while for the most part supporting rate freedom, see little real world benefit in the near term. This is a region that has not experienced any region-wide, ordinary operating income for over a decade.

Therefore, if we are going to realistically address deferred maintenance and overall railroad deterioration, we must, at least for an interim period of probably a decade or so, move to address the problem at least partially through Federal financial assistance involving both loans and grants.

I wish to make two overview observations at this point. The first is that I have no philosophical difficulty in recommending a continuation and expansion of financial assistance for the upgrading of railroad rights-of-way. A fundamental reason that our railroads are in the condition they are is because of the hundreds of billions of dollars of Government money that have gone into the highway and waterway systems, creating a subsidy for truck and barge, putting railroads at an enormous economic disadvantage.

On a graph, you can track the decline of the Northeast railroads with the construction of the Interstate Highway System and the St. Lawrence Seaway. Here we have two choices. One is to take away that subsidy, leaving each mode fully paying its own way; or two, we can establish an equal subsidy account for railroads based on a standard of rough equivalency in Federal treatment of the freight modes. Because of the political realities, the second is the only practical choice.

My second observation is that after a good start by President Ford in establishing the Conrail program and the national Federal loan program of the 4R Act, the Carter administration has failed to develop a comprehensive approach to financial assistance to the freight railroad system.

In H.R. 7235 we propose to continue the existing redeemable share program, which allows financial assistance to reduce deferred maintenance on essential track segments, and we adopt the administration's proposal for restructuring assistance which is a 5-year program with an authorization level of $1.75 billion.

With this bill, we put into place a basic structure of loans and other repayment credits that will allow essential track work and restructuring to continue.

Within the framework we establish in H.R. 7235, we should initiate in the next Congress a major reassessment of the appropriate role of Federal assistance to rehabilitate railroads.

At this time I wish to highlight two of the policy issues identified in a June 27, 1980, report to the Congress by the Comptroller General. The first issue is whether or not there is a need for continued assistance to end deferred maintenance, and the second is the need for restructuring assistance.

The first issue is whether there is a continuing need for assistance to overcome deferred maintenance. The existing program has furnished, so far, $518 million to rehabilitate more than 2,100 miles of track and to restore 8,800 freight cars. This has been an important and productive program. That work would not have been done without it. Yet, this program has not kept the overall system from falling farther and farther behind, as evidenced by the failures of the Rock Island and the Milwaukee and the overall capital shortfall in the industry, which approaches $20 billion. Regardless of whether or not there is restructuring, there will be a need to cure the deferred maintenance problem on the essential track of many railroads.

The GAO concludes that Federal assistance to end deferred maintenance is not essential because there has been limited demand for the existing program. The Department of Transportaion apparently disagrees and feels that Federal assistance solely to overcome existing deferred maintenance continues to be essential.

I agree with the view of the DOT on this critical issue. My own investigations show that the reason for the limited demand—is that statutory and regulatory restrictions on the program have posed insurmountable barriers to all but those railroads in the most unfortunate financial circumstances. For those eight participants in the program, there have been stringent security findings that must demonstrate to the Government the ability to pay back the loan. Therefore, if a railroad has a need for a $100 million program of rehabilitation of essential roadbed, they may only be able to qualify for a $25 million loan because of the security finding. These two factors, that is the terms and conditions that make the program unattractive to most carriers, and the security findings for marginal carriers, have coalesced to drastically limit the effectiveness of the program. Only 30 percent of the funds authorized under the Ford program have been committed. The need however, is undeniable. If we do not move to clear the roadblocks to the program's effectiveness, I greatly fear we will experience more Rock Islands throughout the country.

I am confident in saying that the Commerce Committee agrees with my own view on the need to continue "deferred maintenance" financing since it unanimously accepted my amendment to continue this important program. The Senate Commerce Committee also unanimously reported and the Senate passed a financial assistance bill which continue the program for curing deferred maintenance. We must and will however, in the next Congress, address the important policy issues here and in the Comptroller General's report.

The next and more complex area is the need for financial assistance to aid in the restructuring of the railroad system. In this area, the GAO report concludes that Federal assistance to achieve restructuring for an efficient national rail system is useful. The restructing concept is at the heart of the administration's program.

The critical policy issue here is whether the restructuring proposals should be generated from within the industry or whether the Federal bureaucracy should define the national rail system that would be eligible from Federal financial assistance. The GAO believes that a Government framework for the restructured system is desirable. The DOT counters that the framework, or map drawings if you will, of the restructured systems should be initiated from within the industry, including requests for appropriate financial assistance which would be passed upon by the DOT.

I agree that this is a critical issue and firmly identify myself with the viewpoint expressed by the DOT. To the maximum extent possible, the shape and structure of the future rail system should be designed from within the private sector. The last thing we need is Government bureaucrats, with all the political pressures to which they must respond, designing the national rail network. This is indeed a critical policy issue and it runs to the very core of whether we can retain a private sector railroad system.

If we turn the design of the system over to the Government planners, I submit it will be ultimately run by those planners and other bureaucrats. Further, it will not be run very well. Government can be efficient in raising and dispensing funds. It is not efficient as an operator of enterprises. I would hope that the ultimate restructured system which results from private enterprise planning, will give us a sleek racehorse. If it is designed by Government, we will end up with, at best, a lumbering camel—probably with three humps.

H.R. 7235 make a good beginning at a new multiyear financial assistance authorization. With it the railroads can begin to develop longer term projects that can be accomplished within a 5-year time frame. The need is clear. In the midwest there must be adequate funds in title V for the acquisition and rehabilitation of Rock Island and Milwaukee lines. This will be expensive. For example, the price tag to rehabilitate the Rock Island line from the Twin Cities of Minnesota to Kansas City, Mo., and the grain lines in Iowa that feed into it, is estimated at $178 million. But it is the breadbasket of America and public policy can not allow this Rock Island mainline and its essential feeder lines to be abandoned. The marginal economics of these lines makes private financing impossible. Government financing is the only alternative.

Likewise, in the New England and upstate New York which I represent, studies and railroad analyses have identified better than $150 million of essential rehabilitation work that is critical to the non-Conrail, New York and New England railroads, if those systems are to end the cycle of deferred maintenance and service deterioration. While I am hopeful that there will be substantial restructuring in this area, the track involved here is a part of the essential national system and will continue in service regardless of whether the corporations presently operating that track survive. This track must be fixed and Federal assistance is the only alternative for the foreseeable future.

I am pleased that H.R. 7235 makes a good step forward in assisting with the financing of the rehabilitation of the rail system, but it is only one step. There are other important policy issues with which we have not yet come to grips. For example, we have begun the financing of social objectives such as labor protection and the acquisition and maintenance of feeder lines that may not be economically viable but are important to local communities. What should the extent and scope of these "social" programs be?

Second, the relationship of these title V programs to our national energy goals must be addressed and decided. Section 511 loan guarantees seem particularly appropriate for encouraging investments that will result in increased capacity to move coal to meet our goal of energy independence. A third issue is the relationship of Conrail and its financial needs to the rest of the railroad industry.

Mr. LEE. Mr. Chairman, in the Staggers-Rahall-Lee amendment there is clarification of congressional intent with regard to abandonments under the Milwaukee Act. There is one ambiguity in the language that I would like to have clarified at this time.

The amendment refers to "major" rail carriers. It is my understanding that the thrust of this amendment is to address the specific situation in the Midwest which gives rise to the Milwaukee and Rock Island Acts. The word "major" does not have a specific meaning in the law and history of the Interstate Commerce Commission. I understand that this amendment is directed to major or larger carriers—that is, class I carriers such as the Rock Island. Is my understanding correct?

Mr. FLORIO. The gentleman is correct.

Mr. LEE. I thank the gentleman from New Jersey. There is a great deal of law and legislative history and administrative history relating to the subject of labor protection. My major involvement in this legislation has been to insure that the smaller class II and class III carriers who are such an important part of our national railroad system will benefit and not be harmed by deregulation legislation. With much of our railroad industry in trouble, one answer in continuing service on troubled major railroads is going to be development of light density railroads. One carrier that operates in upstate New York, northern Pennsylvania, and northern New Jersey, the Delaware Otsego System, operates several lines as independent shipper controlled railroads that would otherwise be lost to the rail system. Our congressional policy is to encourage transactions involving class III carriers especially in situations where the alternative to continuation of service may well be liquidation of service.

Because of the importance of this segment of our railroad system, I feel it is important to clarify that this amendment is making reference to abandonment of class I rail carriers and that the Milwaukee Restructuring Act was intended to impose employee protection on such abandonments and not in cases where there has not traditionally been such protection. I was prepared to offer an amendment to clarify this point, but if the gentleman can assure me that my understanding is correct, I will not offer the amendment.

Mr. FLORIO. The gentleman's understanding is correct on the purpose and intent of this amendment.

Mr. LEE. I thank the gentleman. Mr. MADIGAN, do you agree?

Mr. MADIGAN. I agree.

Mr. LEE. Thank you.

□ 1400

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has again expired.

(At the request of Mr. LEE and by unanimous consent, Mr. MADIGAN was allowed to proceed for 5 additional minutes.)

Mr. MADIGAN. I should like to thank the distinguished gentleman from New York (Mr. LEE) for all of his assistance on this bill throughout the year and a half period of time that we have been working on it.

Mr. Chairman, I want to take this opportunity to point out that Chairman JOHNSON of the Public Works and Transportation Committee has been most helpful to us in resolving the differences between the interested parties with respect to this bill. He has demonstrated that he is truly the senior statesman of northern California in assisting us in placating the fears of ports with respect to the surcharge provisions of this bill. Chairman JOHNSON has spent considerable time in helping us. He has met with a number of port authorities, the administration, and railroads in working out provisions which protect ports. Those provisions are contained in the compromise amendment and I would be remiss if I did not acknowledge the considerable help of Chairman JOHNSON.

Mr. LOEFFLER. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I will yield at this point, Mr. Chairman, to the minority sponsor of the compromise, the gentleman from Texas (Mr. LOEFFLER).

Mr. LOEFFLER. Mr. Chairman, I rise in support of the Staggers-Rahall-Lee-Loeffler amendment. The details of this compromise have been ably explained, so I will limit my remarks to the reasons why I feel the compromise is reasonable and workable—why it goes a long way toward achieving the balance needed to allow the railroads sufficient ratemaking flexibility while at the same time providing those shippers who are completely dependent on the railroads for service the necessary protections.

I opposed this legislation when it was considered in the Commerce Committee on which I served and I supported the amendment offered by my colleague from Texas (Mr. ECKHARDT) during floor debate last July. I am not, however, against the concept of fair and equitable deregulation.

While the railroads deserve and should receive a fair return on investment, what I want to make crystal clear is that I am dead set against a monopolistic railroad taking obvious advantage of a situation in which it can basically insure its system's financial health by gouging a captive shipper. I make no bones about the fact that I represent a city that is uniquely sensitive to just this situation. San Antonio, Tex., after being subjected to what the ICC has referred to as "bait and switch" tactics regarding the originally proposed rate for the transportation of its coal, nevertheless went on to convert, in the period from mid-1977 to the first of this year, over 65 percent of its municipally owned utility from oil and gas to coal. The city of San Antonio has seen its transportation rate increased by some 260 percent. For this reason, adequate steps are taken in this compromise to grant deserved relief in this case.

While this case is unique, however, its lessons point to the need for a well reasoned approach to deregulation that treats both industry and consumers fairly.

Since July, efforts have been ongoing to arrive at such an approach—one that is truly farsighted and equitable. The compromise we have before us approaches this description—it provides meaningful ratemaking flexibility while at the same time leaving open a shipper's access to protest rate increases it feels are unwarranted. The bill as reported from committee would have effectively prohibited the ICC from exercising jurisdiction over rates below 190 to 200 percent of variable costs and would have permitted 10 percent incremental raises without challenge. This was absolutely unacceptable to me. The compromise we have before us today provides for deregulation in orderly stages by raising the jurisdictional level of the ICC from a starting point of 160 percent with annual increments of 5 percent up to 180 percent of variable costs. The ICC would maintain jurisdiction over rates above the threshold.

This compromise opens the door, which was definitely not open in the committee bill, for shippers to cross the threshold into the regulatory jurisdiction of the ICC. It no longer leaves captive shippers virtually at the mercy of the railroads as did the committee bill.

In addition, the compromise means that our Nation's long term energy goals will be taken into account in determining whether or not a proposed rate increase should be investigated.

The compromise also precludes the use of foreign coal as a competitive alternative, thereby closing a gap that would have adversely affected certain captive shippers.

Further, the compromise mandates the Department of Transportation to rule on a pending loan guarantee application that could result in vastly increased competition for the transportation of coal to the southern parts of our country.

The compromise allows those shippers whose rates are currently tied up in court challenges to benefit from favorable judicial determinations.

For these reasons, I support the compromise and urge its adoption, all parts of which are essential to insure that equity is achieved for industry and consumer alike.

Mr. Chairman, I wish to offer my expression of thanks to the distinguished chairman of the Interstate and Foreign Commerce Committee (Mr. STAGGERS), to the gentleman from West Virginia (Mr. RAHALL), the gentleman from New York (Mr. LEE), and to the distinguished subcommittee chairman and the distinguished ranking minority member for their assistance in this very effective and workable compromise approach.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has again expired.

(By unanimous consent Mr. MADIGAN was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I am happy to yield to the gentleman.

Mr. ECKHARDT. I thank the gentleman for yielding. I want to thank the gentleman in the well for his statement concerning the fight against monopoly prices in railroad rates. I think he has conducted a splendid battle in that area. Though he may disagree with me with respect to the desirability of this substitute, there is no question but that he has done yeoman's work in bringing the amendment in that nature of a substitute to the point where it is, providing a threshold for ICC jurisdiction at 160 percent of variable cost within the first year of its operation. He has also done yeoman's work with respect to protecting his area against one of the greatest depredations I think I have ever seen by a railroad against a community.

□ 1410

I thank the gentleman for his support on my first amendment.

I also have the same attitude toward the gentleman from West Virginia (Mr. RAHALL) and others who have supported my first amendment but do not support me now. There is no scintilla of resentment on my part toward those who have sought to obviate their opposition to the Rail Act by obtaining needed correction that initially very severly and adversely affected many sections of the country and many groups. We may disagree on our procedures but we do not disagree on our major direction.

Mr. Chairman, I thank the gentleman for yielding.

Mr. LOEFFLER. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Texas.

Mr. LOEFFLER. Mr. Chairman, I thank the distinguished ranking minority member for yielding and I, too, would like to say to my colleague from Texas that it has been my pleasure to work with the gentleman. There will be other times we will again be working together. I also concur with the gentleman's final statement, that while we do not agree with regard to the present means available, we do agree and have worked together toward common end results.

Mr. FLORIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the compromise that is proposed. I would like to begin my statement in support by noting that it is important to appreciate what this controversy is all about. It is not about the reasonableness of a particular rate. Rather, it is about the point at which the ICC becomes involved in reviewing those rates as to reasonableness.

There is a strong argument that can be made—and I have made it—that the Interstate Commerce Commission's involvement in ratemaking over the years has been so all pervasive that it has effectively strangled the railroad industry. By imposing regulation upon regulation upon regulation, to the point that the railroad industry has lost traffic to competing modes, the industry currently finds itself in a situation where it is earning, on average, a 2-percent return on investment. This, of course, does not allow the railroad industry to grow or to prosper. The result is the continued deterioration of the railroads' physical plant and service declining further, as I am sure each and every Member of this body knows.

The Staggers proposal sets a series of thresholds below which rates can be adjusted without regulatory intervention. The justification for this approach is that those thresholds represent the approximate point at which the railroads begin to recover their costs. If a rate is not even contributing to the costs of the railroad, to say nothing of profits, there is no reason for saying that a rate is unreasonable. Accordingly, the rate should not be subjected to a prolonged regulatory proceeding.

The compromise threshold that is contained in the Staggers proposal starts out at a ratio of 160 percent of revenues to variable costs. This, as has been stated, is the level the gentleman from Texas advocated under the amendment he previously offered before this House and that this House has accepted.

It is important to explain what we are talking about when we refer to 160 percent of variable costs. The significance of 160 percent is that the 100-percent component means that the railroad is simply earning revenues sufficient to meet variable costs. Variable costs refer to fuel, labor costs, and other out-of-pocket costs of the movement. Anything above the 100-percent level is the amount of revenues which contribute to the fixed costs of the railroad. As one can appreciate in a very capital intensive industry such as railroads, those fixed costs are rather substantial.

The level in this proposal then increases, I think rather modestly, over a 4-year period at the rate of 5 percent a year until the cost recovery percentage is reached. The cost recovery percentage is kept within a certain range in order to protect shippers when the rail industry is earning adequate revenues and to allow more rate flexibility when the industry is not earning adequate revenues.

To prevent undue fluctuations, the cost recovery percentage contained in this compromise is not permitted to rise above 180 percent or to sink below 170 percent. This amendment also permits the ICC to allow rate increases within a 6-percent zone. Incidentally, this is a reduction from the 10-percent zone which is included in the original proposal, and is above the jurisdictional level.

The ICC still retains jurisdiction over those rates and may, in fact, deny any railroad even the 6-percent increase.

Mr. Chairman, this is a meaningful compromise which protects shippers and others from unreasonable price increases by railroads.

Mr. Chairman, I commend the hard work of the sponsors of this amendment and believe that the broad base support of this amendment that was indicated by the gentleman from West Virginia (Mr. STAGGERS) is recognition of the fairness of the approach. All of the members of the subcommittee worked very hard to perfect this amendment. I would like to single out a number of other people who worked very hard in perfecting this compromise. I would mention the gentleman from Iowa (Mr. HARKIN), the gentleman from Montana (Mr. WILLIAMS), the gentleman from Montana (Mr. MARLENEE), the gentleman from Kansas (Mr. GLICKMAN), and the gentle from New York (Mr. HANLEY).

After spending 1½ years working on this subject, I can assure you that this legislation is critical to the transportation needs of the Nation. Without it we will inevitably see more railroad bankrupticies and bailouts, all calling for more Federal expenditures.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. As has been mentioned on numerous occasions, this Federal Government in the last 5 years has spent some $11 billion in rail subsidies. The end of that generosity is near. If the railroad industry cannot survive in a free enterprise system then perhaps it should not survive. I believe it can. The proposed amendment will put the railroads to the test in the marketplace. This compromise does not—I emphasize "not"—remove rate regulation over railroads. It maintains the control of the Interstate Commerce Commission but at a reasonable level. Shippers will continue to be able to go to the ICC to ask for relief from unreasonable rate increases.

What this amendment does do is create a more flexible regulatory system which will permit railroads to respond to the challenge of competition from other modes and other rail carriers. With this legislation as amended by the Staggers compromise, we create a climate where Federal regulation will allow railroads to respond innovatively to the marketplace and to meet competition. Without this proposal, we will see the continued deterioration of rail service. We will undoubtedly see more bankruptcies and, most assuredly, we will see more railroads and their supporters coming to the Congress asking for more Federal money to bail out railroads.

Mr. Chairman, I would urge support for the amendment.

Ms. MIKULSKI. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentlewoman from Maryland, an important member of the subcommittee.

Ms. MIKULSKI. Mr. Chairman, I thank the gentleman for yielding and I would like to associate myself with the remarks he has just made. I, too, along with the gentleman, support the Staggers-Rahall-Lee compromise. I carefully examined the amendment and find that it meets the very important test that I had on how it would affect the ports of America. I am satisfied that the economic viability of ports will be protected. I think it especially does a service to ports like my own, ports hope to be engaged in the coal export business.

Mr. Chairman, I thank the gentleman for his leadership in the committee as well as the leadership of the chairman of the Committee on Interstate and Foreign Commerce.

Mr. BRADEMAS. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Indiana.

Mr. BRADEMAS. Mr. Chairman, I would like to ask the gentleman from West Virginia about two sections of his amendment. First, with respect to section 301 in general, the surcharge section, is it not the case that these surcharges are only a temporary solution to the joint rate problem?

Mr. STAGGERS. That is correct, and that is why the surcharge authority is limited to 3 years, and why we have adopted the Senate's language which would speed up divisions cases. A number of carriers have a very severe problem right now, caused by 100 years of incremental regulation, in that they are carrying large amounts of interline traffic at less than the out-of-pocket cost to haul it. The surcharge section is meant to give them a chance to get out of that bind, so they have an incentive to provide better service to shippers. On the other hand, it is clear that in many cases, what is needed more than a surcharge is a change in the division of the joint rate. The restrictions on the amount of the surcharge, the time limitation, and the speed up in divisions cases are all meant to assure that surcharges will merely be an incentive to a rationalization of the basic joint rate structure.

Mr. BRADEMAS. I thank the gentleman. Now, let me ask about proposed section 10707a(h), added by section 305 (a) of the bill. That section says that the authority of the ICC to determine rules, classifications and practices cannot be used to limit rates to which carriers would otherwise be entitled under the bill. Am I correct that this is not meant to restrict the Commission's ability to prevent railroads from making arbitrary changes in commodity classifications, demurrage rules, and so forth, which would do nothing other than increase rates more than is allowed under the bill?

Mr. STAGGERS. The gentleman is correct. Just as the Commission may not put extra restrictions on the carriers that would contradict the rate freedom granted in the bill, so the carriers may not, by arbitrary changes in rules and classifications, get around the restrictions on that freedom.

□ 1420

Mr. BRADEMAS. I thank the gentleman from West Virginia, and I am grateful to the distinguished chairman of the subcommittee for allowing me to engage in this colloquy.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I should like to pursue the questions of the gentleman from Indiana for a moment with respect to the 3-year period in which surcharges may be applied. I understand that a surcharge may be applied only for the first 3 years, but the surcharge having been applied, is not terminated within the 3 years. It may continue after that period of time, may it not?

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. FLORIO was allowed to proceed for 5 additional minutes.)

Mr. FLORIO. Could the gentleman pose his question again?

Mr. ECKHARDT. The question is this: As I understand it, the surcharge may not be applied for a period of over 3 years, but a surcharge once applied within that window of 3 years is not terminated at the termination of the 3 years.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. Another question I would like to ask the gentleman is with respect to the 180 percent of revenue to variable cost ratio which constitutes the upward limit, as I understand, in the proposed amendment in the nature of a substitute which we are now considering. As I understand, the 180-percent revenue to variable cost threshold may go into effect if, at that time, the formula reaches that point or higher. Is that correct?

Mr. FLORIO. If we are talking about the end of the 4-year period, it will go up to the cost recovery threshold point or 175 percent, whichever is lower. Beyond that, time period, the cost recovery percentage will be the threshold level, with the limitation that it not be in excess of 180 percent.

Mr. ECKHARDT. So the effect of that is, if the cost recovery percentage is in excess of 180 percent, then the figure will be 180 percent as the threshold figure at that time?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. I note in the dear colleague letter that was sent on August 28, the gentleman stated that rates above that 180-percent level may be challenged as unreasonable, as under existing law. Now, I want to ask the gentleman if he does not wish somewhat to modify that statement. Let me go back just a moment, Under existing law, as I understand it, the ICC may at any time institute an investigation of a rate if it is a rate instituted by carrier possessing market dominance. Is that correct?

Mr. FLORIO. That is my understanding.

Mr. ECKHARDT. If an investigation is instituted respecting a rate, is it not true that the burden of proof is on the carrier to justify the rate?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. Now, do I not also understand that even after the 4-year period, and when the 180-percent figure as a threshold for ICC consideration goes into effect, that there is what you call a zone of reasonableness which may, if the carrier has not previously used up that opportunity, go to 6 percent additional above the 180 percent? That does not change the threshold, I understand that.

Mr. FLORIO. This has been a point in dispute, that perhaps has confused Members as they read the differing dear colleague letters that were circulated. The 6 percent does not in any way mean that 6 percent above 180 percent would now be the new threshold. One hundred and eighty percent is the absolute threshold, and shippers would be able to go before the ICC to test the reasonableness of a rate at 180 percent.

Mr. ECKHARDT. I understand that,

but there is a zone of reasonableness that would go, if the entire 6 percent were used at that time—it is approximately 190 percent of variable cost. Now, up to 190 percent of variable cost, as I understand under this bill, the ICC may not institute an investigation. The shipper may institute or file a complaint, but the ICC may not institute an investigation as it could presently do in any dominant carrier situation, is that correct?

Mr. FLORIO. No, that is not correct. As the gentleman will recall from reading the proposal, by the time we get to the 180-percent level we are no longer dealing with the 6-percent zone of reasonableness. We have shifted into a 4-percent zone, and that 4 percent is only for railroads that have not earned adequate revenues as determined by the ICC.

Mr. ECKHARDT. What if the carrier has not used any of his 6-percent figures prior to that time; may he use that at that time?

Mr. FLORIO. The answer is no.

Mr. ECKHARDT. He may not?

Mr. FLORIO. That is correct.

Mr. ECKHARDT. We may be assured that the gentleman's bill so provides?

Mr. FLORIO. The gentleman may be assured.

Mr. ECKHARDT. But after that period of time there is a 4-percent figure that may be used the first year, and another 4-percent figure the second year, and so on down the line in the case of revenue in adequate railroads.

Mr. FLORIO. Just to emphasize that point, that is only for railroads that have not yet reached a level of adequate revenues, as determined by the ICC.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 1 additional minute.)

Mr. FLORIO. In fact it has no impact upon the threshold; the threshold is still 180 percent.

Mr. ECKHARDT. I understand that, but about two-thirds of the class I railroads are now revenue-inadequate railroads, as I understand it. Now, after that period of time you have got a 4-percent-per-year figure going upward, in which level the burden must be on the shipper to show that the rate is unreasonable. Is that not correct?

Mr. FLORIO. That is correct, unless the rate exceeds the Long-Cannon provision, which I am sure the gentleman is familiar with, that is if we have rates beyond the 20-percent range.

Mr. ECKHARDT. That is right, but up to that point you do change the burden of proof from what existed in existing law, so you would have to slightly amend your statement here, that rates above that level may be challenged as unreasonable, as under existing law. You change the standard within the range of flexibility so that in that range the burden would have to be on the shipper. Is that not correct?

Mr. FLORIO. I do not agree with the gentleman's interpretation.

Mr. GLICKMAN. Mr. Chairman, I move to strike the requisite number of words,

Mr. Chairman, I rise in support of the amendment offered by the gentleman from West Virginia, (Mr. STAGGERS). I think the real issue in this entire debate, once we get through some of the technicalities of the progression of rate increases is, can this Nation have a safe, efficient, modern railroad system as part of a larger, modern transportation system in America? Can the shippers of this country have not only access to reasonable rates, but can they have access to a viable, energy-efficient rail system to move their goods?

The answer is that they cannot without some additional, fare flexibility that this bill provides. The bill also provides reasonable protection to shippers from arbitrary and excessive rate increases. The Staggers amendment also includes the Glickman rail safety amendment adopted by the full House during the initial consideration of this bill, and which I will describe at the end of my remarks.

I think that the work that the gentleman from West Virginia (Mr. STAGGERS), the gentleman from Illinois (Mr. MADIGAN), and my colleague from New Jersey (Mr. FLORIO) have done is to strike that balance so that shippers have reasonable protection against arbitrary rate increases, but at the same time known that we can develop viable railroads in America so that my grain operators and elevators in Kansas know that 20 years from now they are going to have railroads to ship their grain.

□ 1430

Coal companies will know 20 years from now that there will be more than one railroad left in America to ship their coal. There is just no way that can be done without the regulatory flexibility provisions in the bill, and particularly those in the substitute amendment.

I have the Rock Island in my area, and I predict that we are going to have Rock Island after Rock Island in America unless we give our railroads the same degree of regulatory flexibility we have given our airlines, our trucking units, and all other modes of transportation. At the same time we do have to protect our shippers, and I think this amendment has done it.

Now, Mr. Chairman, I would like to talk about an issue in which I have made a bit of a crusade in this House, and that is rail safety, and the relationship between rail deregulation and rail safety. We have seen in America a situation develop where we are having train derailment after derailment, where much of the track in America is downgraded, where we cannot get grain cars because we cannot move them fast enough to get to other places because of bad trackage, where the economy has been made less productive because of ill-maintained trackage in many parts of the country, where thousands of Americans have been injured or killed over the past 10 years as a result of rail accidents, where businesses have lost billions of dollars because of inadequate movement of goods and commerce, and where we have seen slowdowns because our whole rail transportation system, and particularly our maintenance, has seriously deteriorated in the last 20 years.

In my judgment, the only way the railroads are going to be able to build their tracks, make them safe, and keep American citizens and my constituents safer from derailments of all sorts of materials, including dangerous toxic materials, is to have financially strong, viable railroads.

We need railroads which are not only strong, but railroads which will plow back these increased revenues we are giving them under rail deregulation into new track, into safer operations, and into better equipment. That is the only way in America that we are going to have a rail system that works and is safe over the long term.

I had offered an amendment to the original bill which the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Illinois (Mr. MADIGAN) accepted, and which is now incorporated in this substitute to provide the assurance that these increased revenues will be plowed back into making the railroads safer. I just thought I would like to alert my colleagues to it. It amends the safe railroad reinvestment provisions of the bill to make them much stronger.

My amendment deals with the need to strengthen the provisions in the basic bill relating to track safety and maintenance, and my amendment, which is incorporated in this substitute, does the following things:

First, it says that the Secretary of Transportation is required to report railroad violations of safety standards to the ICC. Therefore, if there are track safety or other railroad maintenance problems that the Secretary of Transportation and the Federal Railroad Administration are aware of, they must report these safety violations to the ICC.

Second, the amendment requires annual inspections of track under the direction of the Secretary of Transportation, and the reports which are based on this section are to be made at least once a year. Now these inspections are made, in many cases, rarely if ever. Much of the track in this country is never inspected, and that is the same track where we have derailment after derailment. This bill and this substitute provides that these tracks are going to be inspected in America, and I think that is an important point.

Finally, the amendment would clarify that DOT rail safety reports to the ICC could definitely include information with regard to those railroads that excessively have deferred their maintenance without good cause, and the ICC will have the authority to consider the deferral of railroad maintenance when it deals with and considers rail rate increases. What we are saying here is that with the benefits of deregulation, if the ICC sees that those railroads are not putting their money back into track maintenance, the ICC can retain jurisdiction over increased rail rates.

Given the very mixed record that the various railroads have in terms of committing the financial resources which they do have available to necessary track maintenance work, this clarification will reinforce the point that the Federal Railroad Administration and the Department of Transportation will be watching them more carefully to insure that the railroads do what is expected of them. We say, "Yes, we are going to give you more regulatory flexibility in revenues, but at the same time you had darned better well improve your track, your maintenance, your equipment, and your general safety standards or we may review more carefully your rate increases and route changes.

Because of these provisions which are included in the substitute and which are part and parcel of deregulation, we cannot give the railroads this kind of deregulation without providing this clarification. The health and safety of our constituents demand at least this much.

The CHAIRMAN. The time of the gentleman from Kansas (Mr. GLICKMAN) has expired.

(By unanimous consent, Mr. GLICKMAN was allowed to proceed for 2 additional minutes.)

Mr. GLICKMAN. Mr. Chairman, it just seems to me that we cannot give railroads deregulation without insuring that they plow this money back into their track, their equipment, their maintenance, and their operations. That is what the substitute amendment offered by the gentleman from West Virginia (Mr. STAGGERS) does as amended by the Glickman amendment.

In conclusion, I think this substitute amendment is a responsible one. There is a balancing of interests here. We must and will protect consumers and shippers. However, we cannot keep price controls on freight rates forever without jeopardizing the survivability of this Nation's railroads. That just cannot be done in a free market system and in the economy in which we operate.

Mr. Chairman, I think this is the best possible solution. I commend it to my colleagues. I urge adoption of the Staggers substitute as modified by the Glickman rail safety amendment, and I urge rejection of the Eckhardt amendment.

Mr. HARSHA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield to me?

Mr. HARSHA. I am happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, the pending business is the Staggers compromise, which will be followed by the Eckhardt substitute. Is it the gentleman's intention to speak for the Staggers compromise?

Mr. HARSHA. Mr. Chairman, the gentleman is correct. I was under the impression that the substitute of the gentleman from Texas (Mr. ECKHARDT) was in order at this time. I wish to speak in behalf of the Staggers-Rahall-Lee amendment to the initial amendment offered by the gentleman from Texas.

Mr. Chairman, let me say to the Members of the Committee that I normally, as they know, do not get up very often and speak on matters that do not appear before the committee on which I have the privilege of serving. But because the issues involved in this legislation correlate with those involved in the truck deregulation, I think it is important for me to make a few observations.

Mr. Chairman, the Committee on Interstate and Foreign Commerce has worked very long, very diligently, and very effectively in trying to formulate a balanced bill. Obviously, when we get legislation that is this technical and involves so many segments of our economy, touching upon so many special interests, it is utterly impossible to satisfy all of those interests in legislation of this magnitude.

If we are going to have meaningful rail deregulation, we have to accept the bill that was reported out by the committee with the Staggers-Rahall-Lee amendment added to it. Otherwise we are not going to have meaningful rail deregulation. I say that simply because, having gone through the trauma and the experience of trying to resolve all of the various issues that were presented in the truck deregulation and dealing with the industry, with the unions and labor involved, with the consumers, with the shippers, with the agricultural movement, and with many other special interests in addition to the administration and the other body, I know it is extremely difficult to fashion a bill that will satisfy all of those various interests and segments of the economy. It is utterly impossible.

So the best we can do is to try to achieve a balance where each segment of the economy has to yield somewhat, where each segment has to give a little and some segments get a little. But we strike a balance, and no particular segment gets an advantage over the other.

In my judgment, the bill that is now fashioned, with the Staggers-Rahall-Lee amendment, achieves that balance, and if we want meaningful deregulation and rail regulatory reform, we have to give the railroads an opportunity to become competitive with other modes of transportation in today's economy. The only way to do that is to support the Rahall-Staggers-Lee amendment to the committee bill.

Mr. Chairman, I urge the Members of the House to join me in that support, and I yield back the balance of my time.

Mr. HARKIN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, this amendment is very long and very complex. I do not agree with every line. I suspect that no Member agrees with every provision.

I am hopeful that it will provide the impetus to get our railroads moving again.

I know that in my part of the country, we have experienced a major collapse of two of our most significant railroads. Our other railroads continue to face major difficulties. It has been argued that shippers may pay more under this amendment. Well, right now they have no service at all. Hopefully, with this amendment some of those shippers will again receive service. We must allow our railroads to have the flexibility to succeed. We must create a climate that will see railroads desiring to expand, not looking to get out of the business.

I would like to point out that the amendment provides language that will enable Rock Island employees to finally receive their severence pay which they have long been denied by court procedures.

With the collapse of the Rock Island and Milwaukee Railroads, many grain elevators and farmers face real hardships. The cost to move grain by alternative means is excessive. It is not unusual for the extra transportation cost of truck versus rail to amount to 10 percent of the gross price of the crop. In many cases, this is the whole profit and sometimes more than what would have been profit.

The loss of a local line can cause a permanent loss of efficiency. Farmers will pay more to move crops and fertilizer, most of it in fuel which we have to import. This will cause increased food costs and less profits for the farmer. The economy of the small towns will also be seriously damaged.

Many lines do not look profitable to the major railroads. The line may have poor historical cost-benefit ratios. Often the cars are not available. The bankrupt railroads, in many instances, did not have the locomotives. In my area, there are new grain-producing areas that used to be grazing areas. Now they have gone to row-cropping and there is a lot of grain shipment out of the area, so you cannot look at the historical patterns.

Railroads are now being asked to decide what portions of the Rock Island and Milwaukee they would like to purchase. The railroad industry is critically short of capital. Comparatively healthy railroads are operating at well below a reasonable return. In 1979, railroads averaged only a 2.6 percent return on investment. Adding to the problem are the high rate of interest, the tight credit situation, and the beginning of a recession. This is perhaps the worst time to seek private capitalization of major railroad projects.

The Congress in the Rock Island Transition and Employee Assistance Act recognized a need to aid those who found no major carrier with an interest in operating their track. It provided an earmarking of funds specifically for shippers, railroad employees, governments, or some combination of those groups who could put together a viable plan to purchase and operate a line. It is a case where the Government is providing loan money so these people can help themselves.

The amounts provided by the Rock Island bill was small—$25 million was earmarked for the Rock Island and $18 million for the Milwaukee. I had prepared an amendment to increase these amounts by $13 million for the Rock Island and $9 million for the Milwaukee, an increase of 50 percent for this transaction money. I am happy to see that the gentleman from New Jersey, Mr. FLORIO, and the gentleman from Illinois, Mr. MADIGAN, have included this amendment in the Staggers-Lee-Rahall amendment.

Another point of major concern to the upper Midwest is the Rock Island grain corridor.

On January 30, 1980, the Carter administration made a commitment to the people of the upper Midwest to improve grain transportation in the Corn Belt and repair the track of the bankrupt Rock Island Railroad through a $100 million loan guarantee program.

A high percentage of our grain crops in Iowa are grown for the export market. This market is entered primarily through the gulf ports of Louisiana and Texas—reachable only by rail or rail-barge corridors paralleling the Mississippi River. Because of the limited barge capacity and the perishable nature of some of these commodities, the bulk of these grain movements depend upon the service of the north-south line of the Rock Island system, connecting Minneapolis-St. Paul to rail service at Kansas City. The grain-gathering branch lines which feed the north-south line are in some cases under directed service: in other cases, not being operated at all. The main line itself, while in directed service, is in terrible condition, increasing by many days the turn-around time to the gulf ports.

We are in a perilous position. The harvest of export grain is only a very few weeks in the offing. The bankrupt condition of more than half our rail system in Iowa will sharply accentuate the seasonal overload which the Midwest rail system normally suffers under even the best of conditions. Realistically, nothing can be done about the problem this year. Legal questions on the Milwaukee and acquisition of both Rock Island and Milwaukee lines are not to be soon resolved. And for all practical purposes, this year's maintenance season is over. Yet we can and must look to the future so next year is not a repeat of the current crisis. To this end, the people of Iowa were much encouraged by Vice President MONDALE's commitment in behalf of the administration that loan guarantees would be available for the rehabilitation of the most vital link in this system, the north-south line.

Funds for facilities maintenance, rehabilitation, improvement, and acquisition on the 500-mile Rock Island line between Minneapolis-St. Paul and Kansas City will be made available by the Federal Railroad Administration. FRA officials estimate that approximately 4 years of intensive rehabilitation activity will be needed to unclog the region's badly congested grain transportation network. The program would reduce by about one-third (to about 6 days) the time it takes to get a grain-laden hopper car from Iowa to the ports on the Gulf of Mexico. Rehabilitation would boost the annual capacity of the route to approximately 40 million tons of goods.

Vice President MONDALE's announcement presumed additional appropriations for the operation of FRA's rail fund. Those appropriations have not yet materalized in this Congress, however, and may be jeopardized by the budget process. What has materialized in the meantime is an even more aggressive commitment on the part of both the administration and the Congress to the revitalization of the Nation's railroads through expenditure of the windfall profit tax proceeds. Section 102 of the Crude Oil Windfall Profit Tax Act of 1980 dedicates 15 percent of net revenues for energy and transporation programs—a sum in the many billions of dollars which is more than adequate to deal with essential energy development and the rehabilitation of key transportation corridors.

The Rock Island grain corridor received "first notice" in this administration's evaluation and recognition of rail bankruptcy priorities. I would welcome a commitment from my colleagues, then we will work together over the next few years to restore a vital chain in the production and marketing of the abundant offering of grains which Iowa and the Midwest offer this Nation and the world.

□ 1440

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HARKIN. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I appreciate the statement of the gentleman from Iowa. His singular efforts were the prime reason for the increase in transaction assistance which has been included in the amendment. His work on behalf of those who have been adversely affected by the collapse of the Rock Island and Milwaukee are well known to those who serve on the Commerce Committee.

Regarding your concerns for the rehabilitation of the north-south line of the Rock Island, I have been consulting with the administration on a regular basis in an effort to establish priorities and resolve the crisis of the bankrupt railroads. As a matter of fact, the legislation we are considering today contains a number of provisions which are essential to that effort.

My colleague is correct in noting that the north-south line of the Rock Island is one of the most vital rail links in the Nation's agricultural transportation system. Recognizing the high priority which must be placed on its rehabilitation, the administration—speaking through Vice President MONDALE—has made a forceful commitment for the availability of Federal funds to restore and modernize that line.

I want to assure my colleague from Iowa that the Subcommittee on Transportation and Commerce, along with our leadership on the full committee, are similarly committed to early rehabilitation of the north-south line. The problem is not one of limited regional concern; it is national in scope and deserving of the full cooperation of this Congress. I thank my colleague for bringing it to our attention at a most appropriate point.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I just want to clarify one point that was made by the distinguished gentleman from West Virginia, my distinguished chairman, for whom the bill is named. I believe he stated in his presentation that the shippers supported the amendment. I am sure that he did not mean that all shippers support the amendment. As a matter of fact, I have here a considerable list of shippers that do not support the amendment.

I shall more appropriately point it out with respect to the substitute that I shall offer. But I think he also stated that Congress Watch supported it.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman.

Mr. STAGGERS. I only mentioned some of the big railroad shippers of America, such as General Motors, Ford, Bethlehem Steel, Republic Steel, duPont, Union Carbide, Allied Chemical, Corning Glass, and several others that are nationally known and really use the railroads to a great extent all the time and have to use them. I have a complete list here.

Mr. ECKHARDT. United States Steel is on the other side.

Mr. STAGGERS. U.S. Steel is opposed to Bethlehem Steel and Republic Steel and General Motors and Ford and a lot of others, that is true.

Mr. ECKHARDT. And all of the utilities, who are also shippers, that have taken a stand are opposed to the amendment, as I understand.

Mr. STAGGERS. That could be.

Mr. ECKHARDT. At any rate, we have considerable division among shippers, I think we can agree to that.

Mr. STAGGERS. I think we have the important ones of America. We have letters from them saying they are in complete accord, complete support. I think they are the major shippers of the land.

Mr. ECKHARDT. Did I also understand that Congress Watch supported the amendment?

Mr. STAGGERS. Congress Watch is listed as one of the supporters.

Mr. ECKHARDT. I have a letter here from Ralph Nader, dated September 5, that says:

> In the competing amendments to the railroad deregulation bill, Congress Watch believes that the Eckhardt amendment is superior.

Mr. STAGGERS. They could have changed, that is true.

Mr. ECKHARDT. And I believe it is also true that all of the other consumer groups are opposed to the amendment, including the Consumer Federation, the Consumer Energy Council and, of course, the Congress Watch group.

I think it is very significant that those who oppose the amendment are those who are ratepayers, those who are consumers, or those who are utilities on the frontline to the consumers, they must deal directly with the consumers. I think that that ought to be pointed out. It has been very difficult, to oppose the position of the committee, when it has been constantly said in the halls that everyone but a very few of us—sometimes I am mentioned as alone—oppose this amendment.

I just want to point out that there are a great number of persons, agricultural groups, consumers and utilities that oppose the amendment, but I shall mention them in detail when I offer my amendment.

I would like to take this time, though, in going back to the question that was argued by the distinguished gentleman from New Jersey, the chairman of the subcommittee, concerning the virtue of his bill as stemming an inordinately high rate by railroads to be charged their captive shippers. It is true that in the original bill the cost recovery percentage formula of title II provided for a threshold of about 200 percent of variable costs. That point had to be reached before one could even go before the ICC. My amendment cut that threshold back to 160 percent. The gentleman from New Jersey pointed out that his own amendment had finally yielded to that position in the first year. I think it is now obvious that the original figure had to be cut back in order for the bill to get the votes necessary to pass it. So now, in the first year of the amendment which is now being offered the threshold figure would be 160 percent of variable cost.

Now, let us talk a little about a threshold of 160 percent of variable cost and see what it is.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. It is very difficult for most people to conceive about what the variable cost, or what a percentage of variable cost is in real terms. The ICC has estimated that a rate of about 150 percent of variable cost results in a return on equity after taxes of about 16 percent. Now, that is a whopping big earning for any corporation today. A rate of 160 percent of variable cost, according to the ICC's estimations, results in a return of approximately 22 percent of earnings on equity after taxes. That is enough to provide a very significant rate cushion to permit a railroad to compete at closely clipped earning in areas where it must meet stiff competition. But if one goes up to the figure that this bill would permit, before there can be an effective contest by the shipper of the ICC's rate, which figure is approximately 187 percent of variable cost that equates to about 37 percent earning on equity after taxes; 187 percent is 180 percent plus the range of zone of flexibility, 4 percent of 180 percent. It must be understood that when you get into the zone of flexibility, the ICC may not institute an investigation. The ICC comes in only on a shipper complaint. When the matter comes up in this way the burden is on the shipper to prove that the rate is not reasonable.

□ 1450

So, practically speaking, 187 percent of variable cost must be reached in 1984 before a rate can even have a chance of a successful challenge.

That means that captive shippers all over this country, captive shippers who must depend on a single railroad to haul coal for instance from Wyoming to San Antonio like the Burlington Northern, captive shippers who must depend on railroads who haul wheat out of Kansas on a single railroad, like the Sante Fe, captive shippers who must depend on the hauling ore or coal in the East to the steel mills, all of those captive shippers will be stuck for an earning on investment for that particular haulage of around 37 percent on equity after taxes. That constitutes a very big subsidy of other competitive haulages.

What we are talking about in the provisions that are being offered in the Staggers amendment is a substitute for about 22 percent on equity, and a handsome opportunity for railroads to pull themselves out of the hole, because 22 percent is far above what most corporations earn. But a figure at which ICC enters the field at 37 percent of earnings on equity is really a shockingly high earning. It may be that some railroads do need that much to double up and catch up, or to steal from Peter to pay Paul, to make up for certain deficiencies in their existing lines and indeed, deficiencies in their management. I think ConRail is in that boat. I think we are going to have to keep on subsidizing ConRail anyway to keep it going whether this bill passes or not. I say to my colleagues that we should not draft a bill that creates a threshold figure for ICC consideration that is designed to take care of ConRail. We should set a threshold which is low enough for the ICC to treat differently those railroads that are rich and prosperous, that will use that 37-percent earning on equity to stick in their pockets, or pay to their stockholders, or to buy coal interests rather than spending their earnings on track and railway equipment.

We should permit the ICC to look into the specific question. It has been said that my amendment that we passed on the 24th of July, increases ICC control rather than reducing it.

I ask my colleagues, how in the world can we come to that conclusion when the RRRR Act permitted ICC review of every rate by any dominant carrier, no matter what the earning may have been?

What I did in the amendment that was offered on July 24 is recognize that an earning around 22 percent on equity was not going to be challenged. That is pretty high, but when one runs that figure up to 180 percent for the threshold and 7 percent above that as a margin, that is excessive and really an outrageous yielding to monopoly power.

Mr. GONZALEZ. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the railroads already know what they will do if this particular version passes. The general public does not. Our responsibility as representatives is to ask if this bill meets the test of promoting the general welfare. Within a very few years this country will have just about five gigantic railroads. In the parlance of the industry, they are known as megarailroads. Some of the mergers required to create these giants have already taken place. Others are well along in the planning stage. If this bill with this version passes, the process of railroad mergers will accelerate and the business will be transformed almost overnight. It will happen just as fast as the lawyers and the accountants and corporate chieftains can make it happen.

At the same time the number of railroads start diminishing, there will be an accelerating number of service abandonments. Lines that do not make a profit will be abandoned even if they provide an essential service, unless the shippers can pay enough to make those lines profitable. There will be hundreds of communities or thousands of shippers who will find that they neither have an alternative to rail shipment, nor can afford to pay what the railroads will demand as a price of keeping the service. While that is going on, the cost of railroad service will increase dramatically. This bill guarantees that the railroads will not just have a profit, but a handsome and a quite unconscionable profit regardless. In anticipation, for example, the rail stocks are being bid up by investors who are expecting a very rich profit. This is reality.

In this bill the House would not just guarantee the right of railroads to operate. We would guarantee that they can never lose any money no matter how inefficiently they operate. We allow the railroads to exercise virtually all the power a monopoly can get, and where there is competition, the bill assures that it will never be competition harsh enough to cut profits.

In the ordinary free market business, profitmaking is a function of risk, but this bill removes risk from railroading by guaranteeing fat profits.

The end result of this bill is easy to see. We will have fewer railroads with fewer lines providing less service at vastly higher cost. How can we say that this serves the public interest or advances the general welfare of the Nation?

I am particularly distressed that some of my colleagues have been persuaded to abandon their support for the amendment of the gentleman from Texas (Mr. ECKHARDT), which was passed by the House on July 24 through the device of section 305(c) in this amendment, which prescribes a favorable coal rate for my particular area, the city of San Antonio only.

The fact is that section 305(c), as most anybody here would recognize, would have a pretty hard chance to survive in conference and practically little to survive a court test. I think that is a fair statement. This provision is vigorously, incidentally, opposed by the rail industry. I think every Member of this body probably received a mailogram by now indicating that. It would be shortsighted of me or anybody else to back away from the Eckhardt amendment on the basis of the chimerical promise, illusory promise, of section 305(c).

The so-called compromise presented today actually is a simple splitting of the difference between the Eckhardt amendment we adopted in July and the original committee bill. The so-called compromise weakens protection for American consumers and industry by half. We are being invited to think that consumers might not noticed being choked, whereas, they would object to being hanged.

I suggest that the people of my State recognize that there is no essential difference between a hangman's noose and a Spanish garrote and would find, equally most uncomfortable.

Mr. CHARLES H. WILSON of California. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I recall that the leadership in favor of the deregulation of gas and oil was led by the Texas delegation.

It seems to me that the leadership against deregulation of the railroads at this time is being led by Texans.

The CHAIRMAN. The time of the gentleman from Texas (Mr. Gonzalez) has expired.

(At the request of Mr. Charles H. Wilson of California and by unanimous consent, Mr. Gonzalez was allowed to proceed for 2 additional minutes.)

Mr. CHARLES H. WILSON of California. If the gentleman will yield further, I would like to know in the case of this particular bill, what is the problem in Texas that causes those folks to be opposed to this particular bill as it came from the committee.

Mr. GONZALEZ. First, may I explain to the gentleman from California that I was in the minority with the Texas delegation on deregulation of gas.

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I was most unorthodox from that standpoint.

The real essential thing here is represented by this attempt to address itself to the specific, the unconscionable situation confronting the city of San Antonio, where it was and is the first major city in the United States—after all, San Antonio is No. 10 in the country, No. 3 in Texas—it was the first one at a cost of half a billion dollars to provide for the conversion from gas firing to coal burning to fire up the boilers to produce electricity, even though we are surrounded by the gas producing fields of the United States that produce 40 percent of the total production in the United States. If somebody from Mars were to study us, they would know that we are insane, because here we are in the city of San Antonio, surrounded by gas, having to go a thousand miles to Wyoming to ship coal, only to find that the rail monopoly on the shipping of coal reneged on its original contract, which was around $7 a ton, to the astronomical fee of $21 which, of course vitiates the national policy of conversion from gas to coal burning by making that practice impossible.

Essentially, this is the problem. It is one that is beginning to be felt in other sections of the country, because the railroad has the monopoly in the shipment of coal.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(At the request of Mr. Florio, and by unanimous consent, Mr. Gonzalez was allowed to proceed for 1 additional minute.)

Mr. FLORIO. Mr. Chairman, would the gentleman yield?

Mr. GONZALEZ. Certainly.

Mr. FLORIO. In response to one of the points the gentleman made, he expressed some concern, as a matter of fact, he went further than that, to say he was convinced that section 305 would not survive the conference committee process.

I represent to the gentleman, and I think I can speak authoritatively for the minority in this matter, that it is our intention to go into conference to preserve each and every part of this bill. We will work very, very diligently to preserve section 305 and all other sections of the bill as it is finally enacted into law by this body.

Mr. GONZALEZ. Oh, I am pretty sure that is correct, but the gentleman cannot tell this House that he can guarantee that the Senate, that the Senators on their part of the conference, have given the gentleman a written assurance. Senator Magnuson has not given an assurance that he is going to abide by it.

Mr. FLORIO. If the gentleman will yield further, of course, no one gives written assurances about anything when one goes to conference.

Mr. GONZALEZ. That is the point.

Mr. FLORIO. I just wanted to make it clear that it is the intention of the conferees, as I understand who the conferees may be, to go forward and make every effort to keep everything that is in this bill when we conclude in the House in the conference report.

Mr. GONZALEZ. Let me say, I do not doubt the gentleman's word.

Mr. LOEFFLER. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

With respect to the unique situation with the city that I represent, San Antonio, Tex., we have what has often been referred to as "bait and switch" tactics that occurred regarding the originally proposed rate for coal transportation, which brings about the uniqueness of the particular situation. As a result of this action we have seen the transportation rates escalate 260 percent since 1973. At the same time, the city of San Antonio in the period from 1977 through the first of this year has converted from total reliance on oil and gas to 65 percent reliance upon coal to fire the municipally owned utility burner tips.

I support this compromise. I support it because it is in the best interests of the country and also in the best interests of the city which I represent.

I know that the gentleman from Illinois and I have been in discussion with respect to the conference.

I would like to yield to the gentleman for that purpose.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and just state for the benefit of the understanding of everyone that is assembled here that the commitment that I have made to the gentleman from Texas is that I will not sign or support any conference report that does not contain the provision which the gentleman has put in this bill.

Mr. LOEFFLER. Mr. Chairman, I thank the gentleman from Illinois, and as I understand it, the subcommittee chairman has made the same commitment, so I yield to the subcommittee chairman to also verify that.

Mr. FLORIO. Well, if the gentleman will yield, it is our full intention to go forward and we are committed to including this provision in the bill, along with the rest of the bill.

Mr. LOEFFLER. Mr. Chairman, I thank the gentleman.

I yield to the distinguished gentleman from West Virginia (Mr. Staggers).

Mr. STAGGERS. I just wanted to reassure the House that when we go to conference we will try to protect every item that is in the bill. We have always done that and we will continue to do that. We have never tried to knock anything out of a bill.

Mr. LOEFFLER. Mr. Chairman, reclaiming my time, I would like to emphasize what the particular provisions dealing with San Antonio really do for the future. In the most conservative interpretation, the savings to the San Antonio consumers in the first 7 years is approximately $45 million. Therefore, millions of additional dollars in savings will be realized as annual increments not to exceed 4 percent plus inflation will be allowed until the rate reaches the cost-recovery percentage. Therefore, with respect to the city of San Antonio and the uniqueness of the situation, what we have done is provide protection where a monopolistic railroad has absolutely gouged the consumer. We have now the assurances from the subcommittee chairman, as well as the ranking minority member, that every effort will be made to preserve the San Antonio language, the language which I have authored.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my good friend, the gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I thank the gentleman from Texas for yielding. He has mentioned the benefits to the consumers in his area of this compromise amendment.

I would like to draw the attention of my colleagues to a letter from the leading consumer advocate in the administration, Esther Peterson, in support of this compromise amendment and in her letter she expresses the belief that this will benefit both the consumers and the railroads; so I draw that to the attention of my colleagues.

Another point I would like to address myself to, if the gentleman still yields.

Mr. LOEFFLER. I yield to my colleague.

Mr. RAHALL. That is the comment made by the other two gentlemen from Texas that the return on equity at the 160-percent threshold level at which the Staggers-Rahall compromise amendment begins provides a return to the railroads of 20 or 22 percent return on equity. With this handsome return, the railroads would be sticking it in their pockets, I believe was the quote.

I would like, if I might, to draw the attention of my colleagues to the work that is being done in many of the ports on the eastern seaboard at the present time, work that shows that the railroads are returning and are using a great deal of capital investment in the construction and in the upgrading of port facilities to try to cut down on the backlog of railroad cars that are lined up at these ports to ship coal to foreign buyers. The delays of several weeks sometimes are costing the buyers of American coal as much as $15,000 a day. It is adding $4 or $5 to the delivery price of coal and the efforts that are being made by both the rail industry and the coal industry to upgrade these ports. I refer specifically to efforts that are being made at the piers at Hampton Roads in Baltimore, efforts that are being undertaken by Conrail and Shell Oil and A. T. Massey Co. and Norfolk & Western Railroad, the Chessie System and many such projects of this nature, Mr. Chairman, are helping to cutback on the delay of delivered coal to the foreign buyers. This shows that the railroad companies are, indeed, putting any return on equity they have at the present into good usage.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(By unanimous consent, Mr. LOEFFLER was allowed to proceed for 1 additional minute.)

Mr. LOEFFLER. Mr. Chairman, to conclude my remarks with respect to the city I represent, San Antonio, there is also language in addition to the Loeffler language which is most important to the city of San Antonio. There is provided an opportunity whereby we can have competing lines coming out of the Powder River Basin. This is with respect to language that deals with the mandate of the Department of Transportation to rule on a pending loan guarantee in order that another rail might be in position to compete with the Burlington-Northern.

In addition, when we talk about competitive alternatives, it is important to the city of San Antonio that there be access to foreign coal in the event they wish to purchase it without jeopardizing the opportunity of being able to acquire the coal within the United States at a reasonable rate. In other words it is necessary to pass the protection currently contained in the Staggers compromise amendment.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(By unanimous consent, Mr. LOEFFLER was allowed to proceed for 1 additional minute.)

Mr. ABDNOR. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my colleague, the gentleman from South Dakota.

Mr. ABDNOR. Mr. Chairman, quite apart from the issue of rates, which is the central focus of the debate over the Eckhardt amendment, South Dakotans have an overriding concern in the context of this legislation. I would like to discuss that concern further.

We could lose service on virtually all of the 1,320 miles of the bankrupt Milwaukee Railroad in our State. Certain of these lines are absolutely essential to our agriculturally based economy, as well as to the transport of coal to a major electric powerplant. The State of South Dakota is taking decisive action to preserve service on these lines, but the State cannot do so without Federal rail rehabilitation financing under section 505 of the Railroad Revitalization and Regulatory Reform Act.

Section 505 is scheduled to expire at the end of this fiscal year, on September 30th, and a 2-year extension is contained in the measure before the House again today. It is vital to the interests of my State that this authority be extended and that additional funding be provided for the coming fiscal year. The Appropriations Committee has assured me that additional funding will be considered on a timely basis, despite its exclusion from the fiscal year 1981 transportation appropriations passed by this body; but those funds cannot be provided until the legislative authority is extended.

Thus, it is imperative that the authority for the section 505 program be extended as soon as possible, and I would like to engage the distinguished chairman of the Subcommittee on Transportation and Commerce in a colloquy on that point.

If I may ask the gentleman from New Jersey (Mr. FLORIO), what are the prospects for extending the 505 program if the measure before the House today is not enacted?

Mr. FLORIO. Mr. Chairman, if the gentleman will yield, I recognize the concern of my colleague from South Dakota, and I would say to him that there is little chance the 505 program will be extended this year if the Rail Act cannot be passed in an acceptable form.

Mr. ABDNOR. Do I understand the gentleman to say that H.R. 7235 as amended by the Eckhardt amendment will not be enacted?

Mr. FLORIO. That is my view. Enactment of the Eckhardt amendment would be a significant step backward, and it will not happen. The committee is offering more acceptable language, and I would say to my colleague that adoption of this language is the best way to insure extension of the 505 program this year.

Mr. ABDNOR. I thank the chairman for those comments, but there are a couple additional points which must be addressed as well if the rail transportation interests of my State are to be served.

At this point in the RECORD I would like to include the text of a letter from the Washington counsel of the South Dakota Division of Railroads:

BILLIG, SHER & JONES, P. C.,
Washington, D.C., August 19, 1980.

Re H.R. 7235, Sections 304(e) and 309.

Hon. JAMES ABDNOR,
1224 Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ABDNOR: This letter responds to the request made on your behalf by John C. Wiles, Special Counsel, South Dakota Department of Transportation for a brief overview of the potential impact of sections 304(e) and 309 of H.R. 7235 on state rail service continuation programs undertaken in response to the bankruptcy of the Milwaukee Road and other major railroads.

Faced with the loss of essential rail services as a result of these major railroad bankruptcies, the State of South Dakota and other states similarly situated are now in the process of implementing rail service continuation programs under which a state or its subdivisions acquire abandoned lines of the bankrupt railroad and arrange for continued service over these lines by private operators. Whether such programs are to prove ultimately successful is, of course, largely dependent upon the ability of the private operators contracting with the state or its subdivisions to realize operating efficiencies sufficient to overcome the necessarily marginal nature of the newly-acquired lines. On the assumption that these efficiencies can be obtained by operators free to tailor service to the demonstrated needs of involved shippers, without the mandatory imposition of labor restrictions and requirements, South Dakota and other states are committed to the expenditure of substantial public funds for the purpose of acquiring and rehabilitating lines abandoned by the bankrupt railroads which are deemed essential to state transportation needs.

Under existing law, the full cost of mandatory labor protective conditions in favor of employees of the bankrupt railroads adversely affected by the authorized abandonments is borne by the bankrupt's estate, with the result that states and other non-carrier acquiring entities will not be required to divert scarce investment and start up capital to finance employee benefits, wage rates, work rules, and similar conditions imposed without regard to the extent to which they are required by market conditions. Furthermore, new operators are provided with the opportunity to determine for themselves their labor-related costs in order that they might succeed in achieving profitability despite the necessarily marginal nature of the lines over which they will operate.

Both sections 304(e) and 309 of H.R. 7235 may be read to allow the imposition of labor protective conditions on newly-formed operators contracting with states and other non-carrier entities acquiring previously abandoned railroad lines for operations pursuant to state rail service continuation programs. Thus, while section 304(e) appears to change existing law to provide for the mandatory imposition of labor protective conditions in proceedings conducted pursuant to section 10901 of the Interstate Commerce Act, 49 U.S.C. §10901, only where approval for construction and operation of a railroad line is sought, the present wording of this provision may allow a broader interpretation which could result in the imposition of such conditions on new operators seeking authority to provide service over previously abandoned lines acquired by states pursuant to a rail service continuation program.[1] Similarly, section 309, as presently drafted, may be viewed as al-

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[1] It is the position of the State of South Dakota that under existing law, the Commission is without statutory authority to impose such conditions upon a grant of authority pursuant to 49 U.S.C. § 10901. See, Finance Docket No. 29392, State of South Dakota—Petition for Declaratory Order.

> lowing a bankruptcy court to look beyond the abandoning carrier in allocating the burden of labor protective conditions in favor of adversely affected employees of the bankrupt, with the result that newly formed carriers contracting with states for operations over the subject lines may be required to bear all or part of the burden of such conditions.
>
> The imposition of labor protective conditions on newly-formed operators providing essential rail service over abandoned lines acquired by states pursuant to rail service continuation programs would significantly limit the effectiveness of such programs, and may in some situations render continued rail service wholly infeasible. It is certainly doubtful whether a new operator could be obtained, absent heavy state subsidization, if it must operate subject to the same labor benefits and conditions applicable to the bankrupt railroad. Substantial increases in the amount of public funds expended by the states solely to finance union pay scales, work rules, working conditions and benefits which may not otherwise be required would place a serious strain on limited state resources. Finally, it is highly unlikely that any potential operator with employees at other locations not subject to such conditions would risk the obvious problems which would arise if only part of its work force became subject to them. In short, it is doubtful whether states and their operators could succeed where the bankrupts failed if they are to be saddled with many of the same burdens which contributed to the bankruptcies in question.
>
> It is the position of South Dakota, as well as other states, that the interests of employees adversely affected by abandonments granted bankrupt railroads are adequately protected under existing law without further impairment of the ability of the states to effectively deal with the adverse effects of such abandonments on their local economies, and for this reason South Dakota opposes sections 304(e) and 309 of H.R. 7235 as presently drafted.
>
> Very truly yours,
>
> JACOB P. BILLIG.

This letter points out that the current language of sections 304(e) and 309 of H.R. 7235 could preclude implementation of the plans of the State of South Dakota, even if the 505 program is extended and funding is provided. It is my understanding, however, that the committee will offer changes in these sections to insure that neither the State nor any operator the State may retain will be burdened with labor protection costs in maintaining service on rail lines abanboned by other carriers.

Mr. FLORIO. That is correct. The committee will offer language to alleviate the concern of the State of South Dakota with regard to labor protection costs.

Mr. ABDNOR. Again, I thank the chairman for his recognition of the vital interests of my State in the legislation before us today.

Mr. FLORIO. I assure the gentleman from South Dakota that the committee is well aware of the rail transportation interests of his State. We understand, too, that the Federal Railroad Administration is working closely with the State and is very receptive to providing 505 program assistance for the so-called Miles City line in particular. It is the committee's intent in including in H.R. 7235 a 2-year extension of the 505 program that both the Miles City line and other lines the State deems to be essential shall receive every consideration for Federal rehabilitation financing.

Mr. ABDNOR. With those assurances, Mr. Chairman, it is my belief the best interests of my State will be served if I support the amendments offered by the committee today. It is no benefit to my constituency to quibble over ratemaking procedures if the means to preserve rail service itself is denied. With the committee's support for the interests of my State, I intend to support the committee's amendments, so that H.R. 7235 can be passed and taken to conference with the Senate-passed bill (S. 1946) without delay. Despite any flaws which may remain in H.R. 7235, my overriding concern must be to obtain extension of FRA's authority to provide rail rehabilitation financing under the section 505 program.

● Mr. FLORIO. Mr. Chairman, I have just received the following letter from Chairman Darius Gaskins, of the Interstate Commerce Commission:

> DEAR CHAIRMAN FLORIO: This is in response to your request that we analyze the potential effects on abandonments of H.R. 7235 and the Proposed Compromise Amendment offered on September 2, 1980. In that time is short, I offer my personal views, not those of the Commission as a whole.
>
> In my view, there is no provision in either of these pieces of legislation that makes abandonment procedures is a comparison of under current legislation. Indeed, the bill may reduce the frequency of abandonments.
>
> Today a carrier is generally permitted to abandon a route if it can show that it is losing money by continuing to operate over the route and that the prospects for earning additional revenues are unlikely to improve. There is no provision in the draft legislation that would change this policy.
>
> However, there are several provisions that may affect it indirectly. Central to current abandonment procedures is a comparison of revenues and costs. The legislation gives carriers greater rate flexibility in general and specifically gives them flexibility to assess surcharges on lightly-used branch lines that are losing money. If carriers use the greater rate flexibility offered by the legislation to increase revenues on money-losing lines, the effect would be to forestall abandonments that would otherwise occur.
>
> Further, the contracts provision of the bill permits shippers to assure carriers of continued revenues for a set period of time. Such legally enforceable assurances will make the investment of funds in line rehabilitation a more attractive business proposal for many railroads.
>
> In sum, the legislation has no impact on a carriers' ultimate ability to abandon money-losing lines. However, to the degree that the legislation offers carriers greater ratemaking flexibility, it can only increase the revenue potential of such lines, thereby diminishing the likelihood that carriers will seek to abandon lines.
>
> Sincerely yours,
>
> DARIUS W. GASKINS, Jr.,
> *Chairman.*

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Mr. ALBOSTA. Mr. Chairman, I move to strike the requisite number of words, and rise in opposition to the amendment.

Mr. Chairman, I do not believe the changes proposed in the amendment offered by the distinguished chairman of the Interstate and Foreign Commerce Committee and others will really make a difference in the way carriers like Conrail can impose surcharges that will hurt the traffic carried on short line railroads. I believe the amendment could very well lead to some of these lines going out of business.

Within my own State of Michigan we have a number of short lines that strongly support the elimination of section 301 from the Rail Act. Lines such as the Hillsdale County Railroad Co., The Lenawee County Railroad and, within my own district, the Michigan Northern Railroad and the Ann Arbor Railroad oppose section 301. These railroads believe that carriers such as Conrail will put a surcharge on the traffic they handle with these short lines that will then encourage shippers to either use other routes or other types of transportation to get their goods to market.

The reason Conrail might very well impose a surcharge is so that they can abandon lines that they, Conrail, find unprofitable for their system. In doing so, areas of the country will see their rail service either cut back or eliminated to the detriment of the local economy.

As one example, I have a letter from the Michigan Northern Railroad with me which clearly describes the problems the imposition of surcharges has caused the railroad in the last 3 years. I would like to read parts of the letter because I feel they are important in considering whether to keep section 301 in the present bill we are considering today.

The letter states:

> In the interest of competition as set forth by proponents of H.R. 7235, Michigan Northern has had reduced freight rates on all joint routes in which it has been a participant since the 5 percent general increase of 1977 which it declined to effectuate.
>
> As a result, a relatively small but most welcome volume of west to east traffic has resulted, mostly lumber, uses our Mackinac Gateway route. Included in this traffic was Canadian originated lumber movements. A number of larger U.S. railroads attempted, through the Interstate Commerce Commission, to close rates and routes using the Michigan Northern.

Mr. Chairman, this is important because:

> Michigan Northern battled successfully and the routes are still open and beneficial to the railroad and its customers.
>
> However, in 1979 the two major Canadian railroads used their Canadian authority to unilaterally terminate the routes in which the Michigan Northern was a part. The immediate effect of this was to cut our transcontinental traffic by about 40 percent. The result for their U.S. customers was to increase their freight bill about 6¼ percent because of the higher rates the remaining routes carried.
>
> Under the present de-regulation bills in the House and Senate, Michigan Northern traffic could be terminated in one or more of the following ways:
>
> (1) A surcharge added to the freight bill by Conrail and this would abolish the present discount and only create an actual increase over other routes.
>
> (2) Closing the routes, including the Michigan Northern, since a Chicago interchange has always been the preferred one by several transcontinental carriers.
>
> (3) Refusal to accept freight from the Michigan Northern because it did not com-

pensate to the level of 110 percent of variable costs.

The Chicago Gateway is an old American institution but it must be remembered because it is the only high capacity gateway in the northern part of the country. If this bill results in abolishing the Mackinac gateway, this country's rail transportation alternatives will be severely limited in the future.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. ALBOSTA. If I could now point out on this map to the Members what is happening and going to happen in Michigan:

We have this rail system here which feeds into this gateway in Chicago and if we lose that, for one reason or another, we have no way of bringing this traffic across except through the upper peninsula of Michigan and down through the center part of Michigan. The Northern Railroad goes from Cadillac down to Grand Rapids. That railroad may very well be put out of business if section 301 stays in this bill. There is no question in the minds of any of the people on that railroad and there is no question in the minds of the people who have designed this particular bill that the short-line railroad's future could be jeopardized. It is the only railroad there and closing it will not only hurt the local economy of Michigan but affect this country's ability to bring rail traffic through another route besides the Chicago gateway.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. Yes.

Mr. MADIGAN. I thank the gentleman for yielding. If I may, I would like to read to the gentleman two paragraphs from a letter which I have just received today from the Chairman of the Interstate Commerce Commission. This is a copy of a letter that the Chairman of the Interstate Commerce Commission has written to the gentleman from New Jersey (Mr. FLORIO), the chairman of the subcommittee.

In the first paragraph the Chairman of the Interstate Commerce Commission says:

> This is in response to your request that we analyze the potential effects on abandonments of H.R. 7235 and the Proposed Compromise Amendment offered on September 2, 1980.
>
> In my view, there is no provision in either of these pieces of legislation that makes abandonments more likely than they are under current legislation. Indeed, the bill may reduce the frequency of abandonments.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. MADIGAN. Will the gentleman yield further?

Mr. ALBOSTA. I will continue to yield.

Mr. MADIGAN. Earlier the gentleman from Kansas (Mr. GLICKMAN) made the point, as did the gentleman from Iowa (Mr. HARKIN) make the point that if it is not possible to make money on these lines, these lines are going to be abandoned. In fact, these surcharge provisions provide the shippers another opportunity to keep the service, and that is to pay enough for the service that the railroads actually recover their cost of providing the service.

It is our intention to join in and to encourage them to stay in business and not to abandon.

Mr. ALBOSTA. I would disagree with the gentleman on the short line railroads having the capability of providing the surcharge. The surcharges can only be imposed by the major lines, the major carriers, if I understand the bill correctly.

Mr. MADIGAN. Later in the day, if the gentleman will yield further, I intend to speak specifically on this. However, at this time I would like to insert for the record some remarks discussing the importance of providing transportation to agricultural shippers.

Agricultural shippers are important not only to railroads but also to the welfare of the country. Year after year one of the most positive signs in our Nation's balance of payments ledger is the sale of agricultural commodities to other countries. Railroads play an important role moving agricultural commodities from the farm to storage facilities, and from storage facilites to ports.

Both the bill and the compromise amendment recognize the important link between agriculture and railroads. The key element in maintaining fairness to agricultural shippers and the continued growth of the agricultural export market is the common carrier responsibility that railroads have with respect to agricultural shippers. In the contract provision of the bill, for example, it is made clear that railroads continue to have a common carrier responsibility. That common carrier responsibility is assured by requiring each and every contract to have approval by the Interstate Commerce Commission. Moreover, the Commission has a responsibility to assure that railroads go so far with contracts so as to lose their capacity to carry out their common carrier responsibility. The contract approval provisions are, in fact, a monitor on preserving the railroads' ability to carry out their common carrier responsibilites.

Once a contract has been approved, the railroad has an obligation to carry out the terms of that contract. Similarly situated agricultural shippers may, in timely fashion, request and obtain a contract from a railroad. Shippers who do not enter into a contract, however, cannot allege discrimination if the contract has been approved by the Commission. Those shippers can, however, expect and receive service from the railroad as a common carrier using published tariffs.

This bill is to the shipper new bargaining power with the railroad. The contract provision is but one example of that bargaining power. The section on permissive limited liability gives the shipper the ability to voluntarily accept the limit or deductible on the railroad's strict liability for lading. It is the shipper, not the railroad, who has the power to decide whether or not to accept a limit on liability in exchange for some other consideration.

Shippers on branch lines are given two new alternatives to traditional bad service or abandonments. The first protection is in the surcharge provision which applies to lines carrying less than three million gross tons a year. Under that provision railroads are given the opportunity to apply a surcharge which can be distributed among the shippers on that particular branch line. The surcharge is only designed to make the railroads whole by providing compensatory rates and the reasonably expected cost for improving or maintaining a branch line. The reasonably expected costs will vary depending upon the level of quality wanted by the shippers or carriers for the branch line involved. Obviously 40 miles per hour track will be more expensive than 15 miles per hour track. In either case shippers should have a voice in conjunction with the carriers involved or the State or local government in deciding how much improvement should be made on a branch line.

It is anticipated that the shippers will have a strong voice in deciding such things as the level to which they expect the branch line to be improved and the apportionment or allocation of the surcharge between and among the various shippers served by the branch line. Moreover, States or local government should be encouraged to help branch line shippers pay the added cost, if needed. States already are given funds under the branch line subsidy program which could be used to cover some costs.

Compare that situation with the present law. Under the present law, if a railroad is losing money on a branch line, it will inevitably begin slow motion abandonment. Slow motion abandonment is divided into two phases. Phase 1 is where the railroads stop spending any money to maintain a branch line, causing it to literally fall apart. As it falls apart, service becomes progressively worse. Finally, trains cannot be operated safely on the line, and the need to spend money in order to keep the line operative becomes clear. At that point, the railroad enters phase 2. Phase 2 is the filing of an application for abandonment which the Commission almost always approves. Any shippers on the line are driven away from using rail service during phase 1 because the service is so poor. The shippers that are left are usually shippers of goods or commodities for whom the railroad is a necessity. Once the line is abandoned, those shippers either go out of business or are faced with very high transportation costs by truck.

Under the new law, shippers should not be faced with slow motion abandonment because the railroad can apply surcharge in order to recover their costs.

In the event shippers are given poor service, the bill provides the second alternative to abandonment. The second alternative to abandonment is contained in the Madigan amendment establishing a feeder railroad development program. Under the feeder railroad development program, a railroad providing inadequate service to a shipper on a branch line can lose his operating rights in that territory through a Commission proceeding. Whenever a shipper, a group of shippers, or a governmental entity finds that service is inaedquate on a branch line, they may decide to take over the operation of the line themselves. The feeder line development program establishes a method for them to do just that.

Under the feeder line program any financially responsible person can petition the Commission for a proceeding to require the railroad to sell to it the branch line property at the constitutional minimum value. If the Commission finds that the service is inadequate and that the transfer of the property is called for, it can set the price and transfer the property to the new owners. The new owners may then operate a feeder railroad which is given certain privileges under the new law.

In my judgment, these two alternatives are preferable to the present law which permits railroads to downgrade and then abandon service. With the enactment of H.R. 7235, shippers are given great leverage to demand and expect good service from the railroad. In fact, these provisions put some teeth into the traditional requirement that a railroad has a responsibility as a common carrier to provide adequate service.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman. I think the gentleman from Michigan has made a very important point, and that is that the bill does lend strong reason to one who reads it to assume that, first of all, if a surcharge is imposed on a rail carrier which transports less than 3 million ton miles a year, the ICC may find that a "de facto abandonment" has taken place.

□ 1520

The phrase "de facto abandonment" is not defined or mentioned anywhere in the bill. This leads me as a lawyer to read that the ICC may either, at is discretion, or by compulsion of the language of the bill, be compelled to find that the line has, in fact, been abandoned with all the circumstances that are attendant thereon.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. DINGELL and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Will the gentleman continue to yield?

Mr. ALBOSTA. I do yield to the gentleman from Michigan.

Mr. DINGELL. I rise in support of the Eckhardt amendment, particularly with respect to its provisions to strike section 301 of the Staggers-Rahall-Lee substitute.

What you have before you is a clear choice. If you go with the Staggers-Rahall-Lee substitute, you will endorse a proposal written at the request of Conrail—and other larger railroads—and one which allows for blatant discrimination aganst small short line railroads. shippers, utilities and consumers. If you go with the Eckhardt amendment, you reaffirm the prudent decision made by this House on July 24 to retain a reasonable threshold on rates and allow the ICC the flexibility to resolve joint rate divisions between railroads.

The proponents of the so-called compromise argue that a surcharge and cancellation provision is necessary to insure that railroads do not have to operate at a less-than adequate level of revenues. And I agree that railroads ought not be forced to operate in the red.

However, the Staggers-Rahall-Lee compromise attempts to solve the problem of a minor dislocation with major surgery. The compromise does, in fact, create a system whereby larger railroads—the Conrails and the Southerns—can enrich their incomes. But it is a Machiavellian scheme where the end attempts to justify the means.

The provisions of the Staggers-Rahall-Lee compromise can be used in a discriminatory fashion to allow large railroads the ability to surcharge and cancel joint rates and can be used to force small shippers to use other modes of transportation to pay exorbitant rates thereby making them noncompetitive.

At the same time, rates for competing traffic can be held down leaving shippers with no other alternative than to abandon the service of certain small short line railroads to the whim and caprice of a larger monopolistic railroad.

The end result of this arbitrary and offensively discriminatory rate manipulation is clear to me—wholesale abandonment of hundreds of small short line rail carriers across the Nation, straight into the hand of the railroad monopoly.

Furthermore, the ability to engage in discriminatory rate practices will certainly result in long-range inefficiencies in the shipment of goods in the process of running unwanted short line railroads out of business. Such practices, as I have stated before, will have detrimental impacts on railroads, shippers, and major industries, as well.

I offer an example of how the Staggers-Rahall-Lee compromise section 301 might adversely affect the automobile industry in Michigan, an industry which is already on the brink of economic collapse:

Today there is a basis of rates to Los Angeles, Calif., via cross-lane car ferry routes which saves an auto company in my district $50 to $100 per new automobile delivered to the west coast.

This company has based its entire effort to compete with import cars on the availability of these rates. It permits this company to save $2 million to $4 million per year. Without these rates, it could not compete with Japanese cars. The company will ship 26 carloads of 18 automobiles each to the Los Angeles area next year. The average revenue per car will be $4,045. This will generate $10,500,000 in freight revenue to the railroads. Ann Arbor Railroad, a short line carrier in Michigan, has a rate division of $400 per car. If, for example, $1,000 per carload surcharge is imposed to equalize with current rail rates via Chicago, Ann Arbor Railroad could not asbsorb this amount and the auto marketing plan would be seriously jeopardized or fail. The end result would be to provide Japanese importers with a distinct competitive advantage because of cheap water transportation to Los Angeles.

The proponents of the compromise argue that shippers have the right to challenge a surcharge. However, the only remedy is that a surcharge may only be brought down to 110 percent of variable cost. It is important to note that disruption of competitve relationships does not qualify as a prerequisite for challenging a rate. It should be noted that provisions of the Staggers-Rahall-Lee compromise create an exemption for the provisions of this provision from rate discrimination. (See p. 58 of amendment.)

Under the Staggers-Rahall-Lee amendment, class III railroads are offered only marginal protection—and that is only limited to those class III short lines which originate and terminate traffic. Under the provisions of this "compromise" the Ann Arbor Railroad which transports Ford motor cars would have virtually no protection from the arbitrary rate discrimination permitted by this bill.

I reiterate that my colleagues have a choice. You can support the Eckhardt amendment which provides for a fair and expedited rate proceeding in rate division cases of rate divisions between railroads or you can accept the Staggers-Rahall-Lee Conrail compromise which promotes arbitrary rate discrimination, demise of smaller railroads, and wholesale abandonments of short line carriers.

The choice is clear in my mind.

Mr. Chairman, moreover, I would hope that my colleagues would understand that the law now contains crystal clear provisions with regard to burdens, obligations, the rights and the duties of all parties, carriers, and shippers alike, with regard to abandonment.

The language relating to de facto abandonments in this compromise is of such character that I am not able to tell my colleagues whether or not that the provisions, in fact, amend the conventional language contained in the Interstate Commerce Commission Act.

Mr. Chairman, it is the position of the gentleman from Illinois that that is not so. I am told he intends to offer clarifying language. This I applaud. I am told by my good friend, Mr. FLORIO, the distinguished chairman of the subcommittee for whom I have the highest regard, that while not the intended, the bill is ambiguous. It does leave this unfortunate misconception in the minds of many and it is a rich load of potential litigation involving the rights of shippers and involving the rights of railroads.

Now, if an amendment was offered to do away with this it would help the bill.

Mr. ALBOSTA. Mr. Chairman, I do want to point out the gentleman is correct. I will refer to a letter sent from Mr. P. H. Croft, president of the American Short Line Railroad Association, to the subcommittee chairman, the gentleman from New Jersey (Mr. FLORIO). The letter reads in part as follows:

> Particularly, class 2 railroads are not

accorded a number of protections contained in the Staggers-Rahall-Lee amendment.

If they are going to afford protection by classes of railroad in this particular amendment, what chance is a second- or a third-class railroad in this country going to have? Where are the second- and third-class railroads in this country? This is one right here, the Michigan Northern. We have the Ann Arbor. We have these little railroads down in the section of the country where all the red lines are. Most every one of those are going to be second- or third-class railroads. We may have much less second- and third-class railroads left in this country should this bill pass with section 301.

Mr. Chairman, I believe very strongly that we ought to defeat this amendment, that we ought to go ahead with the substitute that the gentleman from Texas (Mr. ECKHARDT) offers and we ought to try to get this bill in its proper form so that we do not damage every small railroad in this country, damage our national defense posture, and lose thousands of miles of track. In a few years we may not have anything but a couple of lines across the country and three or four railroads.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I do yield to the gentleman from Texas.

Mr. ECKHARDT. The gentleman from Illinois was addressing the argument of the gentleman from Michigan a moment ago with a letter that referred to both the Staggers amendment in the nature of a substitute and my substitute.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman continue to yield to me?

Mr. ALBOSTA. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman correctly stated the letter's statement that the question of abandonment is not directly addressed in either of these instruments. The thing is, though, that the provisions by which a surcharge may be granted are linked with section 502 of the bill, that say that where a surcharge has been made, this may be treated by the ICC as de facto abandonment.

I am not quite sure whether the authors of the bill are willing to withdraw from their position in section 502 and remove that section or not, but if it is not removed what occurs is a rather truncated procedure for abandonment in which shippers are not brought into the game but ICC may act on relatively short notice and without the ordinary protests that are usually available to both shippers and communities. Perhaps if that is to be removed we should know that it is to be removed.

Mr. ALBOSTA. Mr. Chairman, I will yield to the subcommittee chairman to respond to that question.

(At the request of Mr. FLORIO and by unanimous consent, Mr. ALBOSTA was allowed to proceed for 3 additional minutes.)

Mr. FLORIO. Will the gentleman yield, Mr. Chairman?

Mr. ALBOSTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. To get the definitive word as to what the ICC regards as the abandonment impact potential of, not the amendment of the gentleman, but the original bill, H.R. 7235, and the proposed Staggers compromise. I have here a letter directed to the committee by the Chairman of the Interstate Commerce Commission, Mr. Darius Gaskins. This is a response to my request for him to analyze the potential effect on abandonment of the original bill and the Staggers compromise. This is the response:

> In my view, there is no provision in either of these pieces of legislation that makes abandonments more likely than they are under current legislation. Indeed, the bill may reduce the frequency of abandonments.
>
> Today a carrier is generally permitted to abandon a route if it can show that it is losing money by continuing to operate over the route and that the prospects for earning additional revenues are unlikely to improve. There is no provision in the draft legislation that would change this policy.

Mr. Chairman, I think that is directly addressed to the gentleman's point.

> However, there are several provisions that may affect it indirectly. Central to current abandonment procedures is a comparison of revenues and costs. The legislation gives carriers greater rate flexibility in general and specifically gives them flexibility to assess surcharges on lightly-used branch lines that are losing money. If carriers use the greater rate flexibility offered by the legislation to increase revenues on money-losing lines, the effect would be to forestall abandonments that would otherwise occur.
>
> Further, the contracts provision of the bill permits shippers to assure carriers of continued revenues for a set period of time. Such legally enforceable assurances will make the investment of funds in line rehabilitation a more attractive business proposal for many railroads.
>
> In sum, the legislation has no impact on a carriers' ultimate ability to abandon money-losing lines. However, to the degree that the legislation offers carriers greater ratemaking and marketing flexibility, it can only increase the revenue potential of such lines, thereby diminishing the likelihood that carriers will seek to abandon lines.

Mr. Chairman, I thank the gentleman for yielding the time to clarify this matter.

Mr. ALBOSTA. First of all, we are not necessarily talking about a railroad that is losing money. The Michigan Northern is not a railroad that is losing money. The Michigan Northern is a railroad that is making money. This railroad is going to be put out of business simply because someone else is going to say that you must have a surcharge on any freight that you take through its line and thereby lose profitable rail traffic. There is no other way that it can be done except that the surcharge is put on by another carrier and that line then loses enough business out of operation.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ALBOSTA. I cannot yield at this point, Mr. Chairman. If we stop the traffic that is coming from the west coast up through this area here and across through the upper part of Michigan by putting a surcharge on that freight, then that freight is going to come down through here.

I talked to the Chesapeake & Ohio Railroad people in my office the other day. They went back to their office, checked through it all, they said, "You are correct." The Michigan Northern Railroad will be hurt, so will the Soo Line, so will most of the lines that are in this whole section of Michigan. The only place we will have enough lines left will be in this area here where there is a great amount of freight to justify it. You are going to cut off all-through freight in this part of this State. So you are going to lose the service because with the surcharges we cannot generate enough of it locally.

Mr. ANDREWS of North Dakota. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to this debate with a good deal of interest. I have the utmost respect for the men who are handling this legislation on both sides of the aisle but I am frankly concerned. I am concerned because of a number of things that have come up. Back when our State was first settled, the railroads were known as robber barons. I think they are still so considered in the bones and sensitivities of those of us who are farmers. The rates continue to go up and up and up and we need some protection so we can move our grain.

Mr. Chairman, a moment ago the gentleman from Michigan had a chart in the well of the House that was put together by our colleague, the gentleman from Michigan (Mr. DINGELL), or, at least, the gentleman from Michigan is the one who showed it to me first. Outlined in red were the rail lines that could be abandoned under this bill. It includes everything in the State of North Dakota with the exception of the old mainline of the Northern Pacific and the old mainline of the Great Northern.

I look at the section of the bill, and I have been given an explanation on branch line surcharges and I would like to try to clarify it because, quite frankly, I am confused, and, when we get confused when we compose this type of legislation, then after the bill passes and goes into effect what happens, tragically, is that the railroads have those very competent and well-paid attorneys to solve our confusion and the local country elevator does not have quite that well-paid an attorney. The decision always seems to come down on the side of the railroad.

□ 1530

Now, as I read this—and I would like some explanation—any line that carries less than 3 million tons per year can apply for a surcharge, and that surcharge can take into effect, as it says in the bill on page H8342, 110 percent of such carrier's variable cost in transporting the traffic plus 100 percent of such carrier's reasonably expected cost of continuing to operate such line, which shall include all costs necessary to sustain service on the line. I would assume that means building new bridges, upgrading the embankments, and all the other things and these costs will be determined by railroad management.

In the case of a short line railroad, that is one problem, but in the case of the Burlington Northern, which runs through my State, and in the case of the unique grain traffic that we have, or the coal traffic, the branch line is a 50-mile section from which the grain cars originate. They get to the main line, and go 1,950 miles to the west coast or the gulf coast or the east coast. They travel some 2,000 miles. They derive as revenue let us say for an example, about $4,000 per car. That is about what it costs to ship a car of grain to the west coast. If we take that $4,000, that is $2 per mile.

Does that mean that they can have a surcharge on the 50-mile branch line to get it up to a $10 a mile cost to ship it over the branch line? Attorneys have told me that that is what the bill would do. That is what bothers me, because if the bill does that, and if the railroad says, "Although we take $4,000 revenue from this car; total journey, we have got to charge $10 or $20 per mile for the first 50-mile branch line segment that brings it from Pingree, N. Dak., or wherever, down to the main line where it then moves the balance of 1,950 miles of its journey on the heavily used main line, and none of the income from that main line applies back," we are going to see abandoned, on the chart the gentleman from Michigan has shown the House, every branch line in the State of North Dakota; every branch line in the State of South Dakota, and chaos will result because local elevators will then be forced to load the grain into trucks, pass it down to some central receiving point on the main line where it will be transshipped into the cars, and all we will have left is the main line.

Is this what this legislation does? Does this bill allow the railroads to determine the separate cost on the branch line sufficient to cover the costs of moving the grain over that branch line, or does the total revenue of the car have to be applied?

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I will be glad to yield.

Mr. MADIGAN. If I may in broad sense speak to two of the concerns that have been raised: First, the surcharge. When it is applied, shippers may get redress from the Commission in order to determine the proper level of the surcharge, and whether or not the surcharge is being fairly allocated and among the various shippers. In other words, these provisions assure that the surcharge has a ceiling, first of all, of 110 percent of variable cost.

The CHAIRMAN. The time of the gentleman from North Dakota has expired.

(By unanimous consent, Mr. ANDREWS of North Dakota was allowed to proceed for 5 additional minutes.)

Mr. ANDREWS of North Dakota. Could I interrupt just for a second on that? That is what I read, the 110 percent of cost, but then does it not also automatically apply the 100-percent cost of sustaining service on that rail line? Cannot that carrier—in this case, Burlington Northern—go out and say it is going to cost $750,000 to rehabilitate this 20-mile section of track, and therefore they have to apply that surcharge against any grain originating on that track?

Mr. MADIGAN. Yes, that is the case, but if that is the cost of providing the service, and if the railroad is not able to recover the cost of providing the service then, as has been pointed out in the letter from the Chairman of the Interstate Commerce Commission to the gentleman from New Jersey, the likelihood is that the railroad is going to abandon the line.

Consequently, the service is not going to be there at all. So, that is the decision that has to be made, but both the bill and the Staggers compromise are crafted so that there is a limit upon that surcharge of 110 percent of its cost. The limit may be caused to come into play by the Interstate Commerce Commission upon complaint of another railroad or shipper, either one.

Now, this particular provision is not so different than the existing law, because surcharges can be applied under the existing law. What is substantially different here is that we are calling for this 110-percent cap of variable cost, with the right of both another railroad or shipper to go to the Commission and see that this cap will be applied.

If I may, while I am on my feet, if the gentleman will yield further, respond to the concerns raised by the gentleman from Michigan about section 502. It is the intention of the gentleman from California (Mr. ANDERSON) and myself to strike section 502; not because I believe that it does what has been suggested here, because there is a legitimate question of opinion about that, but instead to remove the doubts from the minds of people like the gentleman in the well and the gentleman from Michigan (Mr. DINGELL). We intend to strike section 502 and substitute for that the branch line or feeder line development program, which I think the gentleman has been exposed to.

I thank the gentleman.

Mr. ANDREWS of North Dakota. I appreciate the explanation. Yet, the explanation still leaves us with the fact that this bill will, in effect, authorize wholesale branch line abandonments by applying to traffic over the branch line the total cost of originating on the branch line, but not applying the total revenue the railroad gains from the 1,900 miles of travel that car is going to go on over their regular line. So, if the railroad is charging $4,000 to ship this car of wheat to the west coast and makes a $2,000 profit, it will apply, if it is a 2,000-mile haul, it will only apply 50 miles worth toward the cost of the branch line, as I understand it.

Mr. MADIGAN. The Commission has authority to determine whether or not what the railroad proposes to do is reasonable, and the Commission has the authority to determine what the limit of the surcharge should be.

Mr. ANDREWS of North Dakota. But, for the purposes of making legislative history, does the gentleman then state that the committee's intent is that in the case of this freight car I am talking about, with a $4,000 charge to go 2,000 miles, that that charge will not be allocated evenly at $2 per mile?

Mr. MADIGAN. If the gentleman will yield——

Mr. ANDREWS of North Dakota. Be glad to.

Mr. MADIGAN. It would be the intention of the gentleman from Illinois, as the cosponsor of the bill and as a supporter of the Staggers compromise, that the Commission would have, upon complaint from a shipper, the opportunity to investigate situations like the gentleman is describing, and determine whether or not the surcharge would be reasonable; and if not reasonable, set it at a level that would be reasonable.

Mr. ANDREWS of North Dakota. But the gentleman cannot assure me that the intention of the committee is to make sure that the total $2,000 revenue, if that part of the $4,000 is profit, is applied over the entire shipment distance, or if it is done on a mile-by-mile basis. That is my problem, because if we abandon the first 50 miles of branch line because it costs more per mile to move it over that 50 miles than it does to move it over the main line, you are not going to have any branch lines around. You are going to have more and more overloaded trucks crowding smaller and smaller cars over inadequate highways in my State. We are going to have to open up new central elevators on the main line, and we are going to have to go through a whole lot of expenses that we cannot afford.

The CHAIRMAN. The time of the gentleman from North Dakota has again expired.

(At the request of Mr. ECKHARDT and by unanimous consent, Mr. ANDREWS of North Dakota was allowed to proceed for 3 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, there are several things I think need clearing up here. I would like to ask if the gentleman understands the bill the same way as I do; that is, that the Conrail case held that surcharges may not be imposed by one of the participants in a division, but may only be imposed by agreement of all parties to the division. That is what this amendment I offer is all about. There is no authority now to surcharge unilaterally as I understand it.

□ 1540

Mr. ANDREWS of North Dakota. Mr. Chairman, I am afraid that if we do not adopt the Eckhardt amendment, we are going to allow Conrail and the Burlington Northern and other railroads like them to shed themselves of branch lines all over this country, at tremendous impact and cost to the grain shippers, the hardware shippers, the automobile shippers, and the rest of this Nation.

That is what concerns me with this bill as I have read it.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I am glad to yield to the subcommittee chairman.

Mr. FLORIO. Mr. Chairman, to clarify the point the gentleman from Texas (Mr. Eckhardt) makes, it is because of the lack of clarity that we need the legislation. The concern he has is addressed by the protective features we have in this bill providing that the connecting carriers can unilaterally lower the rate and cancel the rate beyond 110 percent. The 110 percent is regarded by all as that amount needed to cover the variable costs of the movement.

To admit the contrary is to say by statute or, administratively by operation of the ICC, that railroads should be required to carry traffic at a loss. I do not think anybody here wants that to happen. We have protection in the bill—and this addresses the other gentleman's concerns—that the connecting carrier can terminate the increase if it goes beyond 110 percent.

Mr. ANDREWS of North Dakota. Mr. Chairman, the gentleman has made an excellent point. The problem that I have with this is that the railroads, as the gentleman said, should not be forced to carry grain at a loss, that is right, but if they are getting an average of $2 per-mile revenue for moving that grain for its total trip and it costs them $5 a mile to move it over the branch line, but it would only cost them a dollar a mile to move it over the main line, they should not be allowed to shut down the branch line because they make a profit on the total trip.

I do not think it is in the interest of this Nation for them to be able to shut down that branch line because they are going to complain then and say, "We cannot afford just a $2 per-mile revenue we get for that 50 miles, although we only ship it on the branch line for 5 percent of the total trip."

Mr. FLORIO. Of course, Mr. Chairman, it is not done on the per-mile basis. I do not purport to be an expert with regard to grain freight rates, but the gentleman is able to assure us, I am sure, that the present rates we are talking about are far in excess of 110 percent of variable costs.

Mr. ANDREWS of North Dakota. Mr. Chairman, the problem I have is the second paragraph. We have not only 110 percent of the variable costs but the 100 percent of reestablishing the validity of that branch line. They can then go in willy-nilly and arbitrarily say, "It costs us $10 per mile to move it the 50 miles over the branch line," and they can up the rate that much for the shipment over the branch line.

The CHAIRMAN. The time of the gentleman from North Dakota (Mr. Andrews) has expired.

(On request of Mr. Eckhardt, and by unanimous consent, Mr. Andrews of North Dakota was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of North Dakota. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the point that the gentleman has just made is exactly the issue. The bill does not only say that the railroad may surcharge up to 110 percent without review by the ICC—or indeed if there is review or the ICC does review it to determine if it is in excess of 110 percent—but it also provides in the case of branch lines that the railroad may recover in its costs—and I quote from the language of the bill—the reasonably expected costs of continuing to operate such line.

The point is simply this: that if we permit that kind of surcharging both to shippers and to small line railroads, they are put in jeopardy by the railroad which may in any case go up to 110 percent without any effective review.

Mr. ANDREWS of North Dakota. Mr. Chairman, that is right, and as the gentleman points out, it says, "plus any reasonably expected cost necessary to bring the branch line up to a certain standard," which means that they can arbitrarily arrogate unto themselves ruinously high shipping rates for traveling over that 50 miles of branch line. That would force everybody to revert to trucks to go to the main lines and carry all shipments on the main lines, which would be tragic in a State like mine and tragic in the bulk handling of grain.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. ANDREWS of North Dakota. I am glad to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, there is another point. It is true that the Conrail case, in saying that surcharges cannot be unilaterally made, did say that there could be cancellation, but in the case of the cancellation two processes are activated:

No. 1, the other railroads affected by the cancellation have an opportunity to protest the cancellation before the ICC. The second thing that can happen is that after a cancellation a local rate must be estblished by the canceling railroad, in which case the shippers have an opportunity to come in and protest that right if a dominant carrier is involved.

Mr. Chairman, there is a lot of difference between these processes under existing law and the summary and ex parte process of section 301 providing for a surcharge.

The CHAIRMAN. The time of the gentleman from North Dakota (Mr. Andrews) has expired.

The Chair recognizes the gentleman from West Virginia (Mr. Staggers).

Mr. STAGGERS. Mr. Chairman, I rise to see if we cannot set some kind of a reasonable limit on debate. We have talked and talked on this now. I think that we have completely talked this compromise to death.

I would suggest that we limit the discussion on this part, because that would then allow the gentleman from Texas (Mr. Eckhardt) to offer his substitute.

Mr. Chairman, I ask unanimous consent that we limit the debate on this amendment and all amendments thereto to 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

Mr. ECKHARDT. Mr. Chairman, reserving the right to object, I had wanted to get recognition, and I had spoken to the Chair to get recognition immediately on the substitute at this time.

Mr. STAGGERS. Mr. Chairman, I would be very happy for the gentleman to get recognition at this time.

Mr. FRENZEL. Mr. Chairman, reserving the right to object, may I be heard?

Mr. STAGGERS. Mr. Chairman, I withdraw my request.

Mr. FRENZEL. Then, Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from West Virginia (Mr. Staggers) withdraws his unanimous-consent request.

AMENDMENT OFFERED BY MR. ECKHARDT AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. ECKHARDT. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Eckhardt as a substitute for the amendment offered by Mr. Staggers: Page 125, strike out line 14 and all that follows through line 17 on page 138 (including the material between lines 17 and 18) and insert in lieu thereof the following:

EXPEDITED DIVISION OF REVENUE PROCEEDINGS

Sec. 301. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(A) when the proceeding involves a railroad in reorganization or a contention that the divisions at issue do not cover the variable costs of handling the traffic, the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(B) in all cases other than those specified in subparagraph (A) of this paragraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this subparagraph, it must report its reasons to Congress.".

Page 152, following line 13, insert the following new section:

ROCK ISLAND AND MILWAUKEE RAILROAD'S AMENDMENTS

Sec. 310. (a)(1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"Sec. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Railroad Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b) (1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e) (1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

(f) The first sentence of section 7(b) (7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b) (7)) is amended by striking out "and the Milwaukee Railroad Restructuring Act" and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistatnce Ace".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated;

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(a) (1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(b) (1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h) (1) (A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1) (A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1) (B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

Mr. ECKHARDT (during the reading). Mr. Chairman, since this amendment has been previously printed in the RECORD, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

The CHAIRMAN. The gentleman from Texas (Mr. ECKHARDT) is recognized for 10 minutes in support of his amendment.

Mr. ECKHARDT. Mr. Chairman, I want to explain very carefully what my substitute does. The substitute does three major things.

First, the substitute does not touch title II, so, therefore, if it is adopted, we would in effect leave title II as we amended it on July 24. Title II contains a threshold for ICC review of rate reasonableness of 160 percent of variable costs for a period of 3 years, and thereafter utilizes the cost recovery percentage as the formula for determining the threshold.

The Staggers amendment puts the cost recovery percentage in effect in 1984, except that it gives an absolute guarantee to the railroads that the cost of recovery percentage will not go below 170 percent.

Now, what we have attempted to do in the original amendment is assure the shipping public—and, of course, to give assurance to the railroads, too—that the threshold rate of 160 percent will be the threshold at which the ICC may come in to consider the rate and below which the ICC will not enter the field. As I have previously said, that a rate of 160 percent of variable cost represents for a railroad an earning of about 22 percent on equity after taxes. I think that is a pretty generous percentage.

However, it does not mean that the ICC could not grant a railroad like Conrail a recovery of perhaps 200 or 210 percent on variable costs if it needs it. ICC review of rate reasonableness at the 160 percent revenue to variable cost ratio insures that railroads that do not need more revenues may not automatically draw that exorbitantly high rate.

Mr. Chairman, it is because of this protection provision that the amendment is supported by a number of utilities and public power groups such as the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperatives.

Also, as I have said previously, all of the consumer groups which have spoken on the subject have opposed the Staggers amendment and have supported the Eckhardt substitute. It is, of course, true, as the gentleman from West Virginia (Mr. RAHALL) said, that the consumer spokesperson for the administration and indeed, I think, all administration spokesmen have supported the Staggers amendment, but I think that is pretty understandable under the circumstances. All of those who are free, all of those who are not connected with the administration and who have spoken have come out in favor of the Eckhardt substitute.

The amendment does a second thing. This is what we have been discussing in the last several minutes, and it is the reason the amendment is so important to groups like the National Council of Farmer Cooperatives, the American Association of Port Authorities, the American Feed Manufacturers Association, the American Soybean Association, the National Corn Growers Association, and the grain and feed dealers' associations of 11 States.

□ 1550

It does this: It strikes out the provision of section 301 that would permit one railroad in a division, without any ICC action whatsoever, to apply a surcharge up to 110 percent of variable cost.

In the case of a branch line it does more than this. It permits the railroad to receive its 100 percent of variable cost and then an extra 10 percent. In addition the railroad may charge what is the reasonably expected cost of continuing to operate such line.

Well, who knows what are the reasonably expected costs to operate such a line? Who can answer that question other than the railroad itself? The facts necessary for the ICC to review a contest of such a surcharge are so peculiarly within the ability of the railroad to show, that the shipper is in a bad position when he must come in before the ICC and say that a given rate is more than 110 percent of variable cost. And unless he can show that there has been an excess cost above that permitted in the bill, then the railroad may absolutely impose that cost.

Now, who may impose the costs? In the case of routes of under 3 million tons per year, any railroad may surcharge. In the case of routes above 3 million tons per year—a revenue-inadequate railroad may do so even in that event. Now, that means that every shipper in this country is put in jeopardy if one of the railroads in a division decides unilaterally to put into effect an additional cost which he says is necessary for his anticipated costs to continue the operation of that route plus 110 percent of variable cost.

It also creates a very, very difficult situation for other members of the division. Let us say that there are three railroads in the division and a railroad such as like Conrail which is asking for 190 percent of variable cost, has most of the line, the largest percentage of the division.

When it applies a surcharge—which it may do without contest as long as it stays within the limitation of the provision—it is very likely that if that particular route is to be viable, the two short-line railroads on the route are going to have to absorb the difference; in other words, when Conrail goes up and its percentage of the total revenue is, say, 50 percent, then in order to offset that, the other railroads will have to go down in their rates to a greater extent than Conrail goes up to reach its 190 percent of variable cost. That will be necessary in order to continue to invite use of that particular line as against perhaps a line to another port or another location in which a single railroad reaps the entire rate. That means the freezing out of many of the short lines.

There are many reasons why this is advantageous to the larger line which may in that way put the short lines at jeopardy.

Now, let me answer a point that has been made here that I think incorrectly states the facts of this situation, I am sure inadvertently.

It is, of course, true that under the present law, under the Conrail case, a member of a division may cancel the entire rate. But it may not surcharge, it may not put into effect a surcharge which is substantially without any review by ICC. If it cancels, it subjects itself to ICC review at two points, and that is the reason these lines want the surcharge and that is the reason the agricultural organizations I have named say it makes a difference. If a railroad cancels the rate, first of all, the cancellation itself is challengable by the other railroads.

They are put in a disadvantageous position when their partner is no longer willing to haul its share of the traffic. The cancellation could be refused by the ICC, or it could be granted, and it probably would be, with the present ICC, if the rate were below 120 percent of variable cost.

The second attack that may be made in case of a cancellation is that if the railroad cancels the joint rate, it must then put into effect——

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. If the railroad puts into effect a local rate, that railroad rate is itself challengeable, if the railroad is a dominant carrier, before the ICC. The ICC may then hear the shippers' complaints and the shippers may get relief from ICC at that point.

What shippers are concerned about is a surcharge in which they have no opportunity to have a voice unless the surcharge pierces the 110 percent of variable cost and the surcharge goes above the limitations placed on reasonably expected costs of continuing to operate such line.

Mr. FLORIO. Mr. Chairman, will the gentleman yield for a question at that point?

Mr. ECKHARDT. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Through all of the testimony that we had before our committee—and the gentleman testified before our committee—no one until this very point has raised the suggestion that 110 percent of variable cost was anything other than the actual cost of the movement over a line and that in fact if the gentleman is now talking about piercing 100 percent, is he in fact saying that there should not be a system whereby the railroad should have the opportunity to get back at least the costs of movement?

Mr. ECKHARDT. The costs include, under the language of the gentleman's bill, the reasonably expected cost of continuing to operate such line. Now, that might be folded into the 110 percent. But the point which I am making here is, what is a reasonably expected cost to continue to operate such line is so peculiarly within the ability of the railroad to establish and so difficult and remote from the shippers' opportunity to prove, that in effect the surcharge may be put into effect without reasonable restraint.

Now, what I am suggesting is that the gentleman's committee has not sufficiently looked into this question. This question, as I recall, first originated—this whole idea—in the Senate bill on a floor amendment. Then it was given consideration at a relatively late stage in the development of this bill in the committee on the House side.

What I am suggesting here is simply to strike out that section of this bill at this time. This is a question of great difficulty and complexity, as we can see from our discussion here. Strike it out at this point, but provide relief for the legitimate complaints of both the railroads and the shippers, and that is that the ICC has frequently taken as many as 15 months or more to act as an umpire with respect to the division rate. Of course, nobody thinks that a railroad should be compelled to carry goods at a loss. But who should be the umpire? Should it be that railroad that is the biggest and the strongest in the division?

Indeed, I agree that the cancellation process that is now available is not an adequate answer to the question. But it is even worse to permit one of the railroads to put into effect up to 110 percent of variable cost without regard to what it does to the railroad that derives nearly all of its revenue from the short line. It is wrong to permit that one railroad to squeeze out its smaller partners and get rid of the umpire.

□ 1600

All we are saying here is let us keep the umpire—let us keep the ICC—but let us make the umpire make a ruling on the ball field and not wait until he gets home and has spent 2 or 3 months or maybe a year or so studying the question.

Now, I am not against doing something about what section 301 attempts to do. But I am against doing it without understanding what its effect would be on shippers all over the country.

I have here a letter from two extremely separate and diverse sources in the U.S. Senate: Senator GEORGE MCGOVERN and Senator DOLE.

I suppose the only thing these gentlemen can come together on is a question involving agriculture.

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. They state:

> We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agriculture products through increased food prices.
>
> Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Mr. Chairman, I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I will attempt to be as brief as possible, because I think most of the issues have been discussed rather thoroughly.

It is sufficient to say there are three major provisions of the gentleman's substitute that differ from the compromise that has been offered by the gentleman from West Virginia. The first is the pricing mechanism. We have talked about that.

The gentleman effectively repeals everything that has been done in the compromise provisions and reverts back to his proposal that is in title II of the bill. There is a difference of opinion on this point; however those of us who feel that the gentleman's approach provides for more regulation than now exists would vigorously oppose this amendment on the basis of that provision alone.

The second part that the gentleman addresses is the need to expedite divisions. I would say that that is important. It is something that is very effective as a means of achieving some regulatory reforms. This is why we have that provision in the bill already. His provision adds nothing to the bill. We have included the provisions for expediting division cases in the proposal we are talking about.

The heart of the gentleman's amendment is his elimination of the surcharge mechanism in 301.

I would emphasize a number of points. One is that it is a 3-year provision that will authorize the surcharge device to be utilized over the next 3 years.

The significance of that period is that another provision in this bill provides for uniform accounting provisions and in 3 years we fully expect to have that uniform accounting system in operation. This addresses the gentleman's concerns about the fact that one cannot rely upon information that may be coming from railroads.

Another very important and key point that has to be emphasized is that the surcharge is only able to be applied by a railroad that has inadequate revenues as determined by the ICC, the "umpire," as he expressed.

Surcharges are needed to allow the railroads to recover their variable costs on a freight movement. That seems fundamental. But the concern of some is whether the surcharge be used to the detriment of other carriers or used to the detriment of other shippers. We believe the answer is no.

With regard to other shippers, the connecting carrier has the unilateral authority to reduce any surcharge that goes above 110 percent. If there is a dispute as to whether it is above 110 percent or not, clearly the ICC has jurisdiction under our proposal to review and to make the ultimate determination as to whether it is above or below 110 percent, that is the effective cost of the movement.

Shippers have almost the same rights as do the connecting carriers. They are protected with the forum of the ICC and the opportunity to insure that a rate does not go beyond recovering the variable costs of that movement.

A lot has been made about shortlines. The American Shortline Association supports the bill because they know that they have the same rights as the connecting carrier as well as some extra rights. That is, it says that if a shortline determines that the surcharge is in excess of 110 percent, they can not only have the surcharge rolled back to 110 percent, but they can have it rolled back to 100 percent. There is added protection for the shortlines.

I think what we come to is whether this Congress is going to stand for the proposition that the existing law should stand, which allows and, in fact, requires railroads to carry shipments of materials at a loss. Further, what we ultimately come to is whether those lines are going to be required to be maintained by the railroad and carried at a loss and whether the people who use the railroads are not going to be required to pay for the operation of the railroads. We have two choices. The railroads will go under or the railroads and their supporters will come to the Congress periodically, as they do, and ask for more money.

I do not think that either of those two choices is acceptable to the American people. They are not acceptable and should not be acceptable to us if we want a healthy railroad system as part of a good transportation system.

Accordingly, this provision is not acceptable to those who want a good transportation system. The Eckhardt proposal should be defeated. The Staggers proposal should be supported.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. I would like to join in the remarks which the gentleman has just made.

I look at this bill and the various amendments and substitutes which have been brought to the floor from a particular vantage point as I guess all of us do.

The CHAIRMAN. The time of the gentleman from New Jersey (Mr. FLORIO) has expired.

(At the request of Mr. DUNCAN of Oregon and by unanimous consent, Mr. FLORIO was allowed to proceed for 3 additional minutes.)

Mr. DUNCAN of Oregon. If the gentleman will yield further, I look at it from my position as chairman of the Committee on Appropriations subcommittee dealing with transportation.

When the gentleman talks about the

railroads and the shippers and those of his constituents who are interested in the continuation of a particular service, says that they are going to come down here to the Congress of the United States and ask us to put the money in it—he is absolutely right.

We have had to deal with bankruptcy after bankruptcy. I have checked some figures, and I find that this Congress has been asked to and has put over $3½ billion into the bankrupt railroads of the Northeast alone. That includes this operation which we know as Conrail.

Having difficulty? Why? Because of the precise thing that the chairman of the committee mentioned, being required to haul goods and commodities at less than the avoidable cost of actually hauling it. We have not only had Conrail, but we have had to put money here in these last 2 years into the bankrupt operation of the Milwaukee and the bankrupt operation of the Rock Island.

The information I have is that there are three and possibly four more railroads in the Middle West that are following along the precise path of the Milwaukee and the Rock Island.

I have not even mentioned the cost we have had in trying to preserve a passenger rail system which has not been able to meet the economic test. I totalled up the amount of your taxpayers' dollars that you have been putting into these nonviable uneconomic railroads as well over $9 billion.

My colleague from New Jersey has the figure up to where? Eleven, I guess.

Mr. FLORIO. It is $11 billion that we have spent over the last 5 years. The Department of Transportation projects a $15 billion capital shortfall in the needs of our railroads over the next 5 years.

Mr. DUNCAN of Oregon. If the gentleman will yield further, I think that is a very, very serious problem that we ought to look at from the standpoint of our shippers and our local communities as well as the health of the railroads. Abandonment and bankruptcies do not help shippers or your communities.

☐ 1610

Now, it seems to me that there have been three major problems that the railroads have had. One has been some antiquated work rules that involve labor-management relations. Another is management which has been locked, as some say, into the 19th century.

The third thing has been the impact of Government regulations on the railroads ability to operate an economic transportation system.

Now, it has been my observation that labor and management are getting together and the work rules are in the process of being revised. I think the brotherhoods are beginning to take the lead because they look at their membership and they see they have got about a half a million members now and 10 or 15 years ago they had a million and a half. If they are going to make this a productive enterprise for their own people to furnish jobs, they have got to do something about it.

We find management beginning to move into the 20th century. The thing that we can do here is attempt to strike some of the shackles that are presently inhibiting the revitalization of the railroads.

While I do not believe the gentleman's bill is perfect and we are going to need to work it over in the next few years, it is a substantial start and I think it would be a mistake for the Congress not to avail itself of this opportunity to strike a real blow for a balanced and economically viable transportation system.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. ECKHARDT, and by unanimous consent, Mr. FLORIO was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Texas.

Mr. ECKHARDT. I would like to ask a question of the gentleman from New Jersey. On page 6 of the amendment in the nature of a substitute, it is said that a rail carrier may apply for a surcharge which can cover: 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line plus 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

Now, ordinarily we consider that as a part of a 100 percent variable cost; but do I assume that certain fixed costs, certain additional capital investments, like additional trackage, new trackage, heavier tracks, a bridge or something of that nature, could be included in addition to what would be variable costs, 100 percent of variable costs?

Mr. FLORIO. Mr. Chairman, if the gentleman would yield, the gentleman is making reference to the branch line provision of the amendment. I hope the gentleman is clear on that.

With respect to the surcharge in general the 100-percent limitation applies on all lines.

The gentleman is making reference only to the branch-line provision when he adds the second consideration.

Mr. ECKHARDT. That is right. With respect to lines other than branch lines, the 110 percent is an absolute cutoff, if I understand correctly.

Mr. FLORIO. That is correct.

Mr. ECKHARDT. But with respect to the branch line, what does (B) include? It would seem to me to include certain capital investment in addition to what is ordinarily called variable costs.

Mr. FLORIO. The gentleman is correct with regard to capital costs.

The determination as to what are appropriate capital costs to maintain the traffic over that branch line, should there be a dispute, would certainly be resolved by the ICC.

The CHAIRMAN. The time of the gentleman from New Jersey has again expired.

(By unanimous consent, Mr. FLORIO was allowed to proceed for 1 additional minute.)

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, it could be actually, say, 160 percent or 170 percent of variable costs and could include some of the fixed costs involved with respect to the branch line.

Mr. FLORIO. The answer is no to the gentleman's last hypothetical situation. We are talking about 110 percent, which is effectively the cost of the movement over the branch line.

The second provision deals with the moneys needed for rehabilitation of that branch line so as to be able to move the traffic over it.

Mr. ECKHARDT. That sounds to me like fully allocated costs, rather than simply variable costs, because we are taking into account, as I understand here, fixed costs and additional investment with respect to the branch lines.

Mr. FLORIO. With respect to branch lines, the 100 percent, if the gentleman is implying that the 10 percent over the actual 100 percent will deal with all the fixed costs needs of the movement over the branch line, I do not agree with that supposition.

Mr. HILLIS. Mr. Chairman, I move to strike the requisite number of words, and I rise to oppose the Eckhardt substitute amendment and in support of the Staggers amendment. The need for railroad deregulation is generally well recognized. The issue before us is how to write the best possible deregulation legislation. That is, how to best balance the need to ease railroad rate regulation with the necessity of protecting those who must rely on and/or use the railroads during their course of business.

Many railroads are hard-pressed financially. They are unable to raise the requisite capital to rebuild and modernize. This is because the rates the railroads have been allowed to charge under ICC regulation have been woefully inadequate.

The dilemma we are faced with is to best cojoin higher revenues for the railroads with the desire to minimize the inevitable impact on consumers. Obviously, consumer prices will have to increase if the railroads are to realize a better return. But to argue that consumer prices will not increase if we restrict the railroads from increasing their revenues is unsound. Without adequate rail transportation, shippers will be forced to use other more expensive modes of transportation if they are to continue to supply their services. That is the reality of the situation.

The only reasonable option we have is to accept the fact that consumer prices will have to be increased. Once we accept that premise, then there are three factors to be taken into consideration, rate flexibility, joint rates, and antitrust immunity.

Railroads must be able to change their rates to reflect changes in the marketplace without having to contend with a labyrinth of bureaucratic regulations. Second, railroads must be able to negotiate with each other in order to establish joint rates. And last, under deregulation, railroads should be prohibited from collective ratesetting.

The Staggers amendment presents us with a means of appropriately interfacing these various aspects of ratemaking. Unlike the Eckhardt amendment, the amendment offered by Mr. STAGGERS will allow Federal intervention in the ratemaking process to be minimized. Under the Eckhardt amendment, bulk shippers are overly protected by denying railroads the right to reasonably charge more than the average cost of the service without having to go before the ICC.

The Staggers amendment represents a good compromise from what was originally in the bill. It allows the railroads to earn sufficient revenues to maintain and improve or modernize our rail system. At the same time it more adequately restricts the increase in rates the railroads may charge without ICC review.

In short, the Staggers amendment goes a long way in addressing the concerns expressed about the original bill. It provides the necessary regulatory freedom to allow for future improvements without unnecessary Federal involvement. I urge passage of the Staggers amendment.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Eckhardt amendment and in opposition to the Staggers amendment.

Mr. Chairman, my good friends, the gentleman from New Jersey, the chairman of the subcommittee, has, I think, moved a long way in the proper direction. I commend him for that. I also commend the chairman of the Commerce Committee, my distinguished friend of long standing, the gentleman from West Virginia (Mr. STAGGERS) for the movement that he has made on this. I believe it is very good. I believe it is very desirable.

The regrettable thing that compels me to rise in opposition to their amendment and in support of the amendment which has been offered by my good friend, the gentleman from Texas (Mr. ECKHARDT) is that the proposal offered as a compromise is, in fact, not a compromise, but is afflicted with the defects which I found plaguing the original bill.

The bill as originally construed was written as a sort of private relief bill for Conrail and some of the larger other railroads. That situation remains a fact. The original proposal allowed for the first time since the 1880's the railroads to lay in place differentials between rates which would make long hauls less costly to shippers than short hauls.

In addition to that, the proposal is discriminatory and hurtful to the short line railroads and it permits discrimination between shippers.

In addition to this, because of the admitted ambiguities in that proposal, it permits a strong potential, if not a certainty, that the amendment would permit discontinuation of service outside the scrutiny of ICC, triggered by the potentially discriminatory actions of the carriers themselves.

□ 1620

In addition to this, the proposal contains a surcharge and cancellation provision, which has been argued to be necessary to assure that railroads do not have to operate at less than adequate levels of revenue.

The argument has been made that railroads ought not be forced to operate in the red. That fact, regrettably, is now the law.

The so-called compromise before us attempts to solve the dislocations that they find here by major surgery. The compromise, in fact, creates a system whereby larger railroads, Conrail, Southern, and others, can enrich their income; but they can do so not only at the expense of shippers, especially in cases where such a shipper is held "captive" by a rail carrier, but also at the expense of the short line carriers to which I want to address myself shortly.

It appears to me that the surcharge and cancellation provision of the Staggers-Rahall-Lee compromise can be used in discriminatory fashion to allow large railroads the ability to surcharge and cancel joint rates and can be used to force small shippers to use other modes of transportation, to pay exorbitant rates, thereby making them noncompetitive.

It should be pointed out that it only takes a matter of a few cents per ton mile or a fraction of a cent per ton mile to move the grain milling industry anywhere in this country that it wants. At the same time, it must be remembered that the so-called compromise permits the rates for competing traffic to be held down, leaving shippers with no alternative other than to abandon the service of certain small shortline railroads to the whim and caprice of the very large railroads, which are achieving striking new freedoms with regard to competing fairly or unfairly with the short lines that carry commodities and that are an essential part of the rail service and transportation system of this country.

The end result of this arbitrary and offensively discriminatory rate manipulation is clear to me—wholesale abandonment of hundreds of shortline rail carriers across the country. The problem is exacerbated by reducing costs to some shippers on one hand and increasing charges on the other, taking the movement of freight away from small carriers and the short lines across the country. Such discriminatory action is placed in the hands of the railroad and laid at the judgments of the major rail carriers of this country.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. DINGELL) has expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. DINGELL. Mr. Chairman, it has been said that the shortline railroads are now content with the arrangements which have been made with regard to the compromise. I would like first of all to read a letter from Mr. George Smathers, on his letterhead, speaking as an attorney and client for a large number of shortline railroads, in which he states as follows:

SMATHERS, SYMINGTON & HERLONG,
ATTORNEYS AND COUNSELLORS AT LAW,
Washington, D.C., August 22, 1980.

Hon. JOHN DINGELL,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DINGELL: As you are aware from the urgent pleas of the many small railroads in Michigan, the surcharge and cancellation of joint rates provision of the Rail Deregulation Bill, Section 301 of H.R. 7235, even as amended by the proposed "Lee Amendment" presents the utmost danger for small railroads, their shippers, ports and receivers of goods throughout the United States.

Perhaps most revealing is the fact that the Chairman of the Subcommittee actually wrote to the Chairman of Conrail expressing the fear that the surcharge and cancellation powers would be abused by the large railroads. Unfortunately, Mr. Florio's response to that fear is a mere annual reporting requirement by the ICC to the Congress. Small railroads and small shippers could be forced out of business between the time a surcharge is imposed and the time that the Congress receives, reads and acts upon a report from the ICC.

The small railroads strongly object to the surcharge and cancellation power because it can be used in an extremely discriminatory fashion against them. While the alleged ceiling on a surcharge is 110% of variable costs and while cancellation of a joint rate can be nullified by giving the cancelling carrier 110% of its variable costs, in point of fact the economic leverage provided by Section 301 can be enormous.

Surcharges can be imposed on certain rates and withheld on competing rates even though the latter could be below 110% of variable costs. The dominant railroads could do this in order to favor certain shippers or certain areas of the country where in the long run they will make more money either through creating a monopoly or because they will be able to reduce their costs through increased traffic. Shippers, small railroads, ports and the communities in which they are located will suffer drastically. The minor increases in revenues to the large railroads will be greatly overshadowed by the costs to the state and federal governments in supporting these communities.

As you are aware there are endless examples of the methods by which large railroads can injure the smaller railroads using these powers. We would be most happy to describe them should you so request. An attempt to include them in this letter would make it unduly lengthy.

Attached is a list of railroads which are opposed to Section 301 even as it is proposed to be changed by the "Lee Amendment." You will note that the list includes nine members of the Board of Directors of the American Short Line Association which, when it stood alone without the support of the thousands of shippers and many ports now opposing Section 301, adopted the Lee Amendment. In addition we have been advised directly by at least ten other railroads located throughout the country that they oppose Section 301 as amended by Mr. Lee; that they are contacting their Congressional representatives to urge them to support Eckhardt's substitute; but that for very understandable reasons do not wish to be included in the attached list.

In closing, we wish to thank you for previous efforts on behalf of the small railroads on this issue and urge you to continue this most important effort.

Very truly yours,

GEORGE A. SMATHERS.

SMALL RAILROADS WHICH SUPPORT ELIMINATION OF SURCHARGE AND CANCELLATION PROVISION, 301

*Green Bay and Western Railroad Company, Wisconsin.

Ahnapee and Western Railway Company, Wisconsin.
McCloud River Railroad, California.
Hartford and Slocomb Railroad Company, California.
Apalachicola Northern Railroad Company, Florida.
New York Dock Railway, New York.
Hillsdale County Railway Company, Inc., Michigan.
Lenawee County Railroad, Michigan.
Florida East Coast Railway Company, Florida.
Chippewa River Railroad Company, Wisconsin.
Ann Arbor Railroad System, Michigan.
*Minneapolis, Northfield and Southern Railway, Michigan.
*Brooklyn Eastern District Terminal Railroad, New York.
Brillion and Forest Junction Railroad Company, Wisconsin.
Chicago, Madison and Northern Railway Company, Wisconsin.
Nicolet, Badger and Northern Railroad, Wisconsin.
Railroad Task Force Northeast Region, Inc., Pennsylvania.
Little Rock and Western Railroad, Arkansas.
Michigan Northern Railway Company, Michigan.
Massachusetts Central Railroad Company, Massachusetts.
*North Louisiana and Gulf Railroad Company, Louisiana.
Prairie Trunk Railway, Illinois.
*East Camden and Highland Railroad Company, Arkansas.
*Stockton Terminal & Eastern Railroad, California.
Roscoe, Snyder and Pacific Railway Company, Texas.
Tulsa-Sapulpa Union Railway Company, Oklahoma.
Transkentucky Transportation Railroad, Inc., Illinois.
Toledo, Peoria and Western Railroad, Inc., Illinois.
*Canton Railroad Company, Maryland.
La Salle and Bureau County Railroad, Illinois.
Gettysburg Railroad Company, Pennsylvania.
Mercersburg Railroad Company, Pennsylvania.
Texas Central Railroad Company, Texas.
Madison Railroad, Indiana.
New Hope and Ivyland Railroad Company, Pennsylvania.
Louisiana Midland Railway, Louisiana.
Lamoille Valley Railroad, Vermont.
The Vermont Railway, Inc., Vermont.
Wisconsin and Southern Railroad, Wisconsin.
*Denver and Rio Grande Western Railroad, Colorado and Utah.
Green Mountain Railroad Corporation, Vermont.
Bath and Hammondsport Railroad Company, New York.
Kansas City Southern Railway Company, Missouri.
Port of Tillamook Bay Railroad, Oregon.
Soo Line Railroad Company, Minnesota.
*South Buffalo Railway Company, New York.
Longview, Portland & Northern Railroad, Oregon and Washington.
*Georgetown Railroad Company, Texas.
*Salt Lake, Garfield & Western Railway, Utah.
Yancey Railroad Company, North Carolina.

It has been stated that the so-called substitute or compromise takes care of the Milwaukee and the Rock Island Railroad. That same language is present in the Eckhardt amendment.

It has also been stated that there are labor protection provisions in the Staggers-Rahall provision, and I would point out to my colleagues that, again, that identical same language is in the Eckhardt provision.

The House, after very lengthy debate, and I think intelligent and enlightened debate, adopted the Eckhardt proposal, wisely so, because the Eckhardt proposal makes it very clear that whenever a monopoly situation on fairly disadvantaged captive shippers there should be reasonable regulatory oversight by the ICC. Mechanisms should remain in the bill which will protect not only the consumers against excessive prices but also which will protect other railroads and other carriers and other forms of transportation from the kind of sharpshooting that railroads have engaged in over the years.

Let us understand what is available to us here; it is a choice between the ability of railroads to engage in discriminatory rate practices as opposed to reasonable controls where monopoly is found to exist. What is really at stake here is the question of high bulk commodities on which railroads are being freed up, not where there is competition, but freed up where there is no competition. If my colleagues want to see to it that the consumers and the industries of this country which are dependent on iron ore, on coal, on limestone, on grain, and to see whether the farmers of this country and others who are dependent on grain movement are fairly treated, I think they must in good conscience vote for the Eckhardt amendment.

Let me tell my colleagues about one set of circumstances which has come to my attention. It is with regard to the cancellation and surcharge provisions of the bill which might adversely affect the automobile industry in Michigan, an industry which I point out to my colleagues is in substantial economic difficulty. Today there are a series of rates between shorthaul carriers in Michigan and longhaul railroads carrying automobiles to the west coast, an area which is subject to intense penetration by Japanese imports because of cheap water transportation. This line utilizes the services of a shortline railroad, the Ann Arbor in Michigan. The savings to the auto producers is about $50 to $100 per new automobile. The U.S. company which is manufacturing the cars and trying to market them on the west coast has constructed its marketing plan based on the availability of these rates. This permits the company to save something like $2 million to $4 million a year. There is a potential, according to this company, that a surcharge of as much as $1,000 a freight car could be imposed on rates charged by Ann Arbor Railroad. This surcharging action could increase the costs of that company to market its product to the point where, in its view, it could probably not compete with the Japanese imports on the west coast.

The proponents of the compromise argue that the shippers have the right to challenge a surcharge. However, the only remedy that I find in the bill is that a surcharge may only be brought down to 100 percent, 110 percent of variable costs.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

(By unanimous consent Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. Mr. Chairman, it is also important to note that the disruption of competitive relationships does not qualify as a prerequisite for challenging a rate. It should be noted that the provisions of the so-called compromise would create an exemption for the provisions of this substitute from being defined as rate discrimination. Under the so-called compromise class III railroads are offered only marginal protection, and that protection is only limited to those class III shortlines which originate and terminate traffic. Under the provisions of this compromise the Ann Arbor Railroad in Michigan, which transports automobiles, to which I used in my example, would have virtually no protection from arbitrary rate discrimination permitted by this bill.

□ 1630

I reiterate that my colleagues have a choice here. We can support, as we have I think wisely done, the Eckhardt amendment which provides for fair and expedited rate proceedings in cases of rate divisions between railroads, or the House can accept the so-called compromise which permits, in my view, arbitrary rate discrimination, the possible demise of smaller railroads, and the wholesale abandonment of shortline carriers. The choice, I think, is clear.

Mr. LOEFFLER. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, I rise in opposition to the amendment basically for three primary reasons: No. 1, the Eckhardt amendment eliminates or deletes the provision of the Staggers-Rahall-Lee-Loeffler compromise which would provide competition for coal transportation from the Powder River Basin to areas in Texas, as well as the southwestern part and the southern part of the United States. What we need to prevent the outrageous price gouging that has occurred throughout the South and Southwest in the past several years, as one railroad has been the monopolistic rate setter of the area, is to have true and lasting competition. I believe in competition, and the Eckhardt amendment does not provide for expeditious treatment with respect to providing an opportunity for an additional line out of the Powder River Basin.

No. 2, the Eckhardt amendment does not exclude foreign coal as a competitive alternative in determining effective competition in many areas in the Southwest, such as the city of San Antonio. There are currently pending negotiations to purchase coal from abroad. In the event we do not have this exclusion that currently is embodied in the Staggers-Rahall-Lee-Loeffler amend-

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*Members of the Board of Directors of the American Short Line Railroad Association.

ment, we would be in a position whereby utilities would attempt to purchase coal from abroad and thereby lose the protection against exorbitant price increases that could be occurring on the domestic side.

Finally, the Eckhardt amendment deletes the Loeffler language which provides relief in the unique situation of the city of San Antonio.

Mr. Chairman, I believe in the Staggers-Rahall-Lee-Loeffler amendment because it provides a workable and a reasonable approach to phased deregulation, one that protects the industry as well as the consumer itself. I urge my colleagues to vote down the Eckhardt amendment and to support the Staggers, et al., compromise amendment to this particular bill.

Mr. RAHALL. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to my good friend, the gentleman from West Virginia.

Mr. RAHALL. I thank the gentleman from Texas for yielding.

Mr. Chairman, I rise in reference to the comments made by my distinguished colleague, the gentleman from Michigan (Mr. DINGELL), a man for whom I have a great deal of respect. He has mentioned the problems in the auto industry and the reason why the Eckhardt substitute should be supported by those concerned with the problems of the auto industry. I sympathize with those problems. The ups and downs of the auto industry certainly affect my home State of West Virginia and many other portions of this country. I would remind my colleagues that the General Motors Co. and Ford, as part of the Committee of Rail Shippers, are in support of the Staggers-Rahall-Lee-Loeffler compromise amendment, and opposed to the Eckhardt substitute. Not only are these two major automobile manufacturers in support of the Staggers compromise, but also Bethlehem Steel, Republic Steel, and other companies that do provide many goods and materials that are so vital to the functioning of the auto industry.

I thank my colleague for yielding.

Mr. LOEFFLER. I thank the gentleman.

Mr. Chairman, I yield back the remainder of my time.

Mr. LEE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the Eckhardt amendment.

Mr. Chairman, I oppose the Eckhardt amendment for several reasons, but I would like to focus on one particular aspect more substantially than the others. It explicitly revolves around the point of the short-line railroads. There have been several references by some of the distinguished speakers who have gone in the last several minutes making significant reference to the fact that there is a serious deficiency pertaining to the short-line protection, and I think that the House should be assured that there have been extensive efforts in work by the committee to insure that the appropriate protections are written into the Staggers Substitute; to insure that capricious and arbitrary actions cannot be taken by class 1 or class 2 railroads against the so-called short-line railroads through abandonment procedure or through the surcharging procedure; that there is appropriate protection through the 45-day notification, when such action is taken by one of the Class 1 railroads to implement a surcharge or an abandonment procedure; to insure that the ICC is brought into the situation under a 30-day timetable to make a final decision to prevent against, a capricious or arbitrary action via the cancellation or surcharge mechanisms.

Second, my distinguished colleague, the gentleman from Michigan (Mr. DINGELL) made reference to a list of groups that are opposed to the so-called Staggers-Rahall-Lee compromise. I think that he conceivably misspoke, because some information that I have indicates, for example, that the Florida East Coast Railway is a class 1 railroad, not a short-line railroad, and I think his information to be in error.

The other aspect I would make is that the Short Line Railroad Association, constituted of some 250 members, supports this amendment, the Staggers amendment, as does the American Farm Bureau and numerous other organizations too lengthy to review.

Mr. DINGELL. Mr. Chairman, will the gentleman yield. The gentleman used my name.

Mr. LEE. Yes, sir, I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman. I will put the entire list of short line and small railroads opposed to this proposal into the CONGRESSIONAL RECORD, together with the letter enclosing it so that it may speak for itself. I count 50 railroads. They are reported to me to be different classes short-line railroads. I assume they are short-line railroads, and they are opposed to section 301 of the Staggers-Rahall compromise. They are represented in the letter as opposed to section 301 of the Rail Act of 1980, even as amended by the Lee amendment.

Mr. LEE. I will say to the gentleman from Michigan that the reference I make is to the Florida East Coast Railway, which is one I think the gentleman referred to, which is a class 1, not a short-line railroad.

Mr. DINGELL. I am talking about short lines of which there are class I, class II, and class III categories.

Mr. LEE. Regarding the short lines, there is a letter dated September 3 addressed to the gentleman from New Jersey (Mr. FLORIO) and the gentleman from Illinois (Mr. MADIGAN) supporting the Staggers-Rahall Act of 1980 and the compromise, citing, "As you know, this association and its more than 250 members have been greatly concerned with the potential impact of this legislation." They do give their support to this.

Mr. DINGELL. Included in the list that I have submitted is a list of 9 short-line railroads which have representation on the board of the American Short-Line Railroad Association, and 50 railroads in toto which are opposed. I am advised that were they not afraid of retribution if this bill passes, 10 more railroads would have signed the letter in expressing their opposition to the proposal.

Mr. LEE. I thank the gentleman.

● Mr. SEBELIUS. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. ECKHARDT).

Before dealing with the specific provisions of the proposed substitute, I would like to focus attention on an aspect of this proceeding which troubles not only me, but also others of my colleagues as well.

On May 15, the Committee on Interstate and Foreign Commerce reported H.R. 7235, the bill before us today. It was not until May 29 that copies of that 100-page document were made available. Then, the committee leadership, working with the House leadership and the Carter administration, attempted to bring this bill to the floor for action the first week of June. We asked for a 1-month delay to study the highly technical provisions of this bill so we could understand how passage would affect shippers and consumers in this country. We received no commitment from the leadership that we would have an opportunity to study this bill.

As a result, we spent a great deal of time—time which easily could have been spent studying and understanding the provisions of this bill—working with a coalition of shippers to delay consideration until we had had time to study it.

I want to stress, Mr. Chairman, that we never received a commitment from the leadership that this bill would be delayed so we could work with the committee to understand it and, if necessary, to improve it. The committee exerted constant pressure for immediate consideration.

During the July recess, we had an opportunity to study the provisions of this bill and a number of us did not like what we found. We suggested amendments to the committee staff—amendments which would have made this bill more acceptable to many of us—but our suggestions were ignored. For that reason, our coalition moved forward under the leadership of the gentleman from Texas (Mr. ECKHARDT). On July 24, the House adopted a number of the amendments we suggested and the bill was pulled from the floor.

It was only then that the committee staff indicated what I would consider to be a genuine interest in working with us. I appreciate that and I want to commend the gentlemen from New Jersey (Mr. FLORIO), Illinois (Mr. MADIGAN) and West Virginia (Mr. STAGGERS) for some of the provisions in the amendment before us today.

However, my concern, and the concern of many of my colleagues, is the same as it was that first week of June. Once again, we are confronted with a massive document—made available in final form just 2 hours before it was to be considered Friday—on which we are asked to vote. The intent of the gentleman from New Jersey (Mr. FLORIO), as stated in the RECORD of last Friday, was to bring that amendment up for a vote at that time. I understand his concern. But, after reviewing the document, I find I have concerns of my own.

It is my understanding that section 328 requires final action within 45 days on an application for millions of dollars in Federal loan guarantees so two railroads can build a new line into the Powder River Basin of Montana and Wyoming to transport coal. That area already is served by the Burlington Northern. At a time when railroads all over the country are short of funds for rehabilitating existing lines, why are we encouraging construction of new lines to serve areas already served by an existing line, particularly an existing line which spent millions of private capital to upgrade its track without the kind of assistance we are proposing.

What is worse is that we are waiving provisions of the 4–R Act which: First, require justification by the present and probable demand for rail service; second, that the guarantees meet demonstrable needs for rail service; and third, that the prospective earning power of the United States with reasonable security and protection.

Now, I would like to deal with the amendment offered by my colleague from Texas (Mr. ECKHARDT). It is my undertanding that this substitute amendment would strike section 301 of the bill. This section relates to surcharges and the cancellation of rates.

Mr. Chairman, this morning I received a copy of a letter from Senators BOB DOLE and GEORGE MCGOVERN to my colleague from Texas (Mr. ECKHARDT). The letter states:

> DEAR CONGRESSMAN ECKHARDT: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.
>
> The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.
>
> The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.
>
> We recognize that House compromise proposal contains acceptable rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.
>
> Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surcharge and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.
>
> Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments. Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.
>
> We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.
>
> Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers, we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provision of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.
>
> Sincerely,
>
> ROBERT DOLE.
> GEORGE MCGOVERN.

Mr. Chairman, as this letter indicates, a number of our colleagues here and in the Senate are concerned about the provisions of the bill before us. Since the committee and the House leadership has not seen fit to work with us in helping us understand the provisions of this legislation prior to floor action, I must, with deepest regrets, urge my colleagues to oppose the amendment offered by the gentleman from West Virginia (Mr. STAGGERS) and to join me in supporting the amendment offered by the gentleman from Texas (Mr. ECKHARDT).●

● Mr. DEVINE. Mr. Chairman, I rise in opposition to the most recent Eckhardt amendment. On July 24, you will recall, Mr. ECKHARDT had another one of his substitute amendments. That amendment nearly killed the rail bill. The managers of the bill withdrew it from further consideration because the Eckhardt amendment created far more opposition than approval. It created opposition because his amendment was upon reflection not a well-reasoned compromise amendment, even though it prevailed by a slim 204 to 197 margin.

The Staggers-Rahall-Lee-Loeffler amendment is a compromise that has been hammered out over the past month and a half. It has broad-based support, including:

American Farm Bureau.
United Mine Workers.
Railroad Labor Executives Association.
Brotherhood of Railway & Airline Clerks.
American Short Line Railroad Association.
American Association of Railroads.
United Transportation Union.
AFL–CIO.
Chemical Manufacturers Association.
Sears, Roebuck & Co.
Mining and Reclamation Council.
Coal industry.
Aluminum Manufacturers Association.
National Cattlemen's Association.
Sierra Club.
National Wildlife Federation.
Environmental Action.
Audubon Society.
Friends of the Earth.
Amtrack.
National Railroad Passengers Association.
K-Mart.
Whirlpool.
Carnation.
Lever Bros.
City Products Corp.
American Retail Federation.
Western Traffic Conference.
Georgia Freight Bureau, (represents 425 Georgia shippers and receivers).
Fertilizer Institute.
National Grange.
American Feed Manufacturers Association.
Pacific-Northwest Traffic League (represents 1,000 shippers in the Northwest).

COMMITTEE OF RAIL SHIPPERS

Georgia Pacific.
General Motors.
Ford.
Bethlehem Steel.
Republic Steel.
National Steel.
DuPont.
Union Carbide.
Allied Chemical.
Corning Glass.
National Governors' Association.
State of New York.
State of Pennsylvania.
State of Massachusetts.
Congress Watch.
Transportation Consumer Action Project.

Railroad service now gets worse and worse every year. Mr. ECKHARDT would assure a continuation of that trend. I think the time has come for us to reverse that trend.

The committee bill with the Staggers compromise continues the policy of orderly deregulation which was begun in the Ford administration. I urge you to vote against the Eckhardt substitute so that we can vote for the Staggers compromise. The time has come for the leadership of this body to stop stalling railroad deregulation. This side of the aisle has supported railroad deregulation and will continue to do so.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT) as a substitute for the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ECKHARDT. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 529]

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Speilman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

☐ 1650

The CHAIRMAN. Three hundred and seventy-two Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Texas (Mr. ECKHARDT) for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 83, noes 296, answered "present" 1, not voting 52, as follows:

[Roll No. 530]

AYES—83

Albosta
Ambro
Anderson, Calif.
Andrews, N.Dak.
Annunzio
Ashbrook
Baldus
Bauman
Bennett
Bereuter
Blanchard
Brooks
Carr
Chappell
Conyers
Davis, Mich.
de la Garza
Dicks
Dingell
Eckhardt
Edwards, Okla.
English
Evans, Ga.
Fary
Fascell
Ford, Mich.
Frenzel
Frost
Fuqua
Gibbons
Ginn
Gonzalez
Goodling
Gore
Gramm
Hagedorn
Hall, Tex.
Hightower
Huckaby
Hutchinson
Hutto
Ireland
Jacobs
Jenkins
Jones, Okla.
Kastenmeier
Kazen
Kildee
Leath, Tex.
McKay
Mathis
Mica
Michel
Mottl
Murphy, Ill.
Nedzi
Nelson
Oberstar
Patterson
Pickle
Pursell
Rosenthal
Rostenkowski
Scheuer
Sebelius
Sensenbrenner
Smith, Nebr.
Stangeland
Stark
Stenholm
Synar
Traxler
Vander Jagt
Vanik
Vento
Watkins
Weiss
White
Wilson, Tex.
Wright
Wyatt
Yates
Young, Fla.

NOES—296

Abdnor
Akaka
Andrews, N.C.
Anthony
Applegate
Archer
Ashley
Aspin
AuCoin
Badham
Bailey
Barnard
Barnes
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bethune
Bevill
Biaggi
Bingham
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, S.C.
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Emery
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Gaydos
Gephardt
Giaimo
Gingrich
Glickman
Goldwater
Gradison
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hall, Ohio
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Hughes
Hyde
Ichord
Jeffords
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Kemp
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nichols
Nowak
O'Brien
Oakar
Obey
Ottinger
Panetta
Pashayan
Paul
Pease
Perkins
Petri
Porter
Preyer
Price
Pritchard
Quayle
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Tauke
Taylor
Thomas
Thompson
Trible
Ullman
Van Deerlin
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Winn
Wirth
Wolff
Wolpe
Wydler
Wylie
Yatron
Young, Mo.
Zablocki

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—52

Addabbo
Alexander
Anderson, Ill.
Atkinson
Beard, R.I.
Boggs
Boland
Brown, Ohio
Chisholm
Cotter
D'Amours
Fish
Garcia
Gilman
Grassley
Hinson
Holtzman
Hopkins
Howard
Jenrette
Jones, Tenn.
Kelly
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Marriott
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Nolan
Patten
Pepper
Peyser
Railsback
Richmond
Roberts
Rose
Royer
Russo
St Germain
Steed
Tauzin
Udall
Young, Alaska
Zeferetti

□ 1700

The Clerk announced the following pairs:

On this vote:

Mr. Leland for, with Mr. Lederer against.

Mr. Jenrette for, with Mr. Jones of Tennessee against.

Mr. Garcia for, with Mrs. Boggs against.

Mr. Tauzin for, with Mrs. Chisholm against.

Mr. Leach of Louisiana for, with Mr. Pepper against.

Mr. EVANS of Delaware and Mr. WOLFF changed their votes from "aye" to "no."

So the amendment offered as a substitute for the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BOLAND. Mr. Chairman, on rollcall 530, I was unavoidably detained by a briefing on an intelligence matter and thus was not recorded. Had I been present, I would have voted "no" on the Eckhardt amendment to the Staggers amendment to H.R. 7235, the Rail Act of 1980.

AMENDMENT OFFERED BY MR. FRENZEL TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. FRENZEL. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. FRENZEL to the amendment offered by Mr. STAGGERS: On page 83, beginning with line 13, strike all that follows through page 84, line 5.

And renumber the following sections accordingly.

Mr. FRENZEL. Mr. Chairman, the amendment that I am proposing repeals section 328 of the Staggers-Rahall-Lee amendment. That section refers to loan guarantees and provides a special fast track for a loan guarantee application made to serve the Powder River Basin by two railroads acting in a kind of an amalgam. The current law provides that when there is a loan application, the Secretary of Transportation conducts a hearing and makes a determination, taking into account certain procedures and conditions.

Mr. Chairman, the normal procedure is for the Secretary to make a determination based on some conditions which are required under the 4-R Act: That is, with reference to the taxpayers' security interest, that the loan be secured, that the payment be made over a certain time, that the financing be justified by demand, that the facilities be efficiently used, that the earning power be sufficient for the security protection of the taxpayers' interest, and that there will be improvements in hauling freight.

□ 1710

This amendment, however, repeals all of those conditions for just this one special intent application.

The Secretary is also required under the act to consult with other departments and with the States, in case any of the land in question may be dedicated to wildlife protection or have esthetic beauty or may have historical or recreational use. And if any land is to be used that comes under those categories, the Secretary must show that there is no alternative for such use other than the transportation plan in question.

For some reason, this special fast track has eliminated both the environmental and esthetic and recreational protection and taxpayer protection for this one loan application of $300 million. The principal beneficiaries on this application are the Chicago Northwestern Railroad and the Union Pacific. In my judgment, the Union Pacific is the major beneficiary.

It happens to be one of the wealthiest corporations in the United States, because it happens to be, fortunately, the owner of some oil properties and some coal properties, as well as its rail-hauling facilities. For that reason, it has been a very successful company.

It seems to me that there is no good reason to waive the security interests of the taxpayers and to waive the environmental considerations, which the Secretary is obligated to consider under the National Transportation Act, for the benefit of this one company. As a matter of fact, the $300 million loan, as I described it in my letter to my colleagues, is one that will duplicate services from the Powder River Basin throughout the country.

The original loan guarantee program under the 4-R Act was created by this Congress to improve railroad facilities where we needed them for a single service. It was supposed to make up the difference for the deferred maintenance that had allowed our facilities to deteriorate. But here we have a situation in which there is one perfectly good service, and still we are going to use $300 million of the taxpayers' money as a guarantee to provide a duplicate service, and this for a company which is one of the richest in the United States.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to my colleague, the gentleman from Minnesota.

Mr. OBERSTAR. I thank the gentleman for yielding.

Is not this Union Pacific Railroad the one that is owned by the Brown Brothers and the Harriman Trusts, one of the wealthiest corporations in America?

Mr. FRENZEL. I do not have any information on that, but I will take the gentleman's word.

Mr. OBERSTAR. And is not one of the arguments for the upcoming Staggers amendment that there will be competition on these various routes, particularly movement of coal from Wyoming and Montana into the Upper Great Lakes, competition that will be provided by this new rail line to haul coal out of the Powder River Basin, and that this competition is going to be provided by the generosity of Uncle Sam in giving a loan guarantee to one of the wealthiest corporations in America?

Mr. FRENZEL. That is my understanding. We have rail service all over the United States that is not adequate with one carrier, and now we are going to use the taxpayers' money for a very wealthy carrier where there is adequate service already.

The CHAIRMAN The time of the gentleman from Minnesota (Mr. FRENZEL) has expired.

(By unanimous consent, Mr FRENZEL was allowed to proceed for 3 additional minutes.)

Mr. OBERSTAR. If the gentleman will yield further, it strikes me as preposterous that this Congress should approve legislation to establish competition for an area where we are already providing some protection from competition. We are just doing contradictory things in this same piece of legislation.

I think the gentleman's amendment makes good sense, and I hope that the body will support the gentleman.

Mr. FRENZEL. I thank the gentleman for his contribution.

There has been a hearing on the application for a loan. The testimony has been closed. The Secretary is going to make his decision. I am not telling him to make a negative decision. I am merely saying: Let the normal procedure go forward, do not in this bill direct the Secretary to do something, particularly waiving these important environmental and taxpayer security interests.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. Mr. Chairman, I appreciate the contribution of the gentleman, and this is doubly confounding when we see that this bill provides $300 million in loan guarantees to the wealthiest corporate railroad, or one of the wealthiest corporate railroads in the Nation, the Union Pacific, to duplicate existing service into the Powder River Basin, when in our own area of Minnesota and North and South Dakota, the Milwaukee Railroad is bankrupt and there is a power generating plant, a 437-megawatt station that will have to be shut down if there is no infusion of funds to that section of road because it is the only way the railroads can bring the coal in.

Does this bill provide any relief for this particular generating plant owned by a number of electric utilities?

Mr. FRENZEL. If I may respond, as near as I can figure, this section 328 applies to only one area and only two roads through an application of an outfit called the Western Railroad Properties, Inc., of whom the beneficial owner is the Union Pacific, and there is also a loan application to CNW. I do not know of any other application, even though there is great need around the country, that is covered in this bill.

Mr. ANDREWS of North Dakota. If the gentleman will yield further, I have a brochure put together by the public utilities of Minnesota and North and South Dakota, pointing out that electric rates could double if this plant is forced to shut down, a virtually new plant that is on the end of 180 miles of railroad track about to be abandoned by the Milwaukee, and instead of providing relief for that much needed area where there is no substitute, this bill specifically provides $300 million to duplicate already existing service.

I appreciate the fact that the gentleman is bringing this up, and I would hope that our colleagues would address this and tell us why $300 million for one area for duplication and not 1 cent to save a powerplant that represents about 22 percent of the generating capacity of our area.

Mr. FRENZEL. I thank the gentleman for his statement.

The CHAIRMAN. The time of the gentleman from Minnesota (Mr. FRENZEL) has again expired.

(By unanimous consent, Mr. FRENZEL was allowed to proceed for 1 additional minute.)

Mr. FRENZEL. I think it would be wise for this body to let the normal procedures take their course. We have had a hearing, there is an application in process. We should not waive these special restrictions which we as a body decided were very important, that is, the taxpayers' security interest. We should not leave the taxpayers on the hook. And we should not waive all of those environmental, recreational, wildlife, historical and esthetic considerations. They also need the close scrutiny of the Secretary.

I hope that the amendment will be adopted.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the discussion that we have just heard is very interesting, and I am sure it is very significant. Unfortunately, it has no relevance whatsoever to the amendment that is being offered here in terms of changing the law. Whether there should be another line running out of the Powder River Basin or not, running to other areas, is a matter of debate. I am sure our friends from Texas would feel very strongly that there should be; others feel that there should not be. We are not talking about making the decision here. We are talking about the integrity of the process.

There is an application on file before the Federal Railroad Administration. The application has been pending for 2½ years. This is a very important decision for them to make as to how this money should be allocated, whether it should or should not be provided to have a competitive line going down to Texas, or wherever else it is going to go, whether it should or should not be granted to the applicant or to another railroad. What we are saying is that in fact a decision should be made.

I would like to correct one misimpression that I are sure inadevertently was conveyed that the environmental laws are somehow being waived categorically. That is not the case. So I am just saying, particularly for my friends on the other side of the aisle, who constantly lament regulatory delays and the fact that the bureaucracy takes too long, what we are saying is that the bureaucracy should make a decision, make a decision on the merits, make a decision on how they see fit to make that decision, but make it.

This is a procedural vote, and I would ask for opposition to the gentleman's amendment.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, the gentleman said this application has been pending for 2½ years. The applicant, which is this Western Railroad Properties, Inc., was only formed in May. The application has only been pending since May.

Now, there have been previous applications which have been turned down and withdrawn. But in this particular case, I think the gentleman will agree that this is a new application.

Mr. FLORIO. The Chicago & North-Western Railway put this application in 2½ years ago. The gentleman is making the point that since that time the same body is working in conjunction with another entity. But this is the same application that has been pending for 2½ years.

Mr. FRENZEL. If the gentleman will yield, it is a different applicant and a different line. That is just plain fact.

□ 1720

Mr. ECKHARDT. Mr. Chairman, I rise in opposition to the amendment.

Our Subcommittee on Oversight and Investigations considered in considerable depth the problem of the Chicago & Northwestern attempts to go into the Powder River Basin. There is only one line which controls access to the Powder River Basin, the Burlington Northern. That line is in a complete monopoly position in the situation involved.

Certainly the position of the committee and of the subcommittee is a correct one. It calls for competition in that area, and it is at least in part an answer to the arguments and the positions that we have been taking here on the floor. I think the area of the gentleman from Texas (Mr. LOEFFLER) is very strongly affected by this provision. I think on this point we can all agree with the committee and the subcommittee that the language of the bill is good.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. I thank the gentleman for yielding.

I have been told time after time by experts in the field of railroad legislation that one of the problems is overbuilding in the first place; 100 years ago we overbuilt. Now we are planning to build an extra line into the Powder River Basin so they can have two lines in that area, when we have not taken care of the needs of the Big Stone powerplant that has only one source of getting coal to it. All I am saying is before we put priorities in a bill to, in effect, double the service to one area, we ought to maintain original service to another area that has no other choice.

Mr. ECKHARDT. If the gentleman will examine a map of that area, there are many railroads that come within a reasonable distance of the Powder River Basin, but the bottleneck is Burlington Northern. There are many railroads that, if there were means of competitive transportation out of the Powder River Basin through other railroads feeding into the Union Pacific and others, we could have real competition in rail service out of the basin.

Under the present circumstances, Burlington Northern carries the coal out of the Powder River Basin, does not connect with the other railroads, and carries it on their own lines all the way to Fort Worth, where they then send it on on Southern Pacific or Sante Fe. But if there were another line in there to compete, one could send coal on many other roads that would compete. It is not a matter of many duplicating lines over long distances. It is the situation of a bottleneck only that would be duplicated, and duplication for competition's sake is most valuable and necessary.

Mr. LOEFFLER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would like to associate myself with the remarks of my friend and colleague from Texas (Mr. ECKHARDT). The gentleman has precisely laid out the position with respect to the interest of Texas and other areas in the country that are currently becoming very dependent upon the richest low-sulfur coal deposit in the United States.

What we are seeking is competition, and the colloquy earlier pointed out that the Union Pacific was very sound financially. I say the Burlington Northern is, too. Why is the Burlington Northern so worried about possible competition in the Power River Basin?

Mr. Chairman, at this time, I would like to yield to the gentleman within whose district the Powder River Basin lies.

Mr. CHENEY. Mr. Chairman, will the gentleman yield?

Mr. LOEFFLER. I yield to the gentleman from Wyoming.

Mr. CHENEY. Mr. Chairman, let me say, there has been a little bit of confusion over exactly what is involved here. The bill does not require that the line be built. It does, in fact, instruct the Secretary to make a speedy and a timely decision. It does not tell him what decision to make. The chief beneficiary of the loan guarantee that has been applied for is the Chicago & Northwestern Railroad, not the Union Pacific Railroad.

It is true that the purpose of the connector line is to provide competition for moving coal out of the Powder River Basin, but, to respond to the comment of the gentleman from North Dakota about being overbuilt, the fact of the matter is that the 110-mile connector line that has already been constructed in the area by Burlington Northern with some support from Chicago Northwestern, is the first major addition of track in this country in the last 50 years. What we are talking about here is a relatively short connector line. It would provide for competition to move coal out of the Powder River Basin. If we are serious about developing the resources of States like Wyoming, if we are serious about developing our energy capability, if we are serious about developing our coal resources, then this is exactly the kind of proposal we ought to move forward with.

I would hope, speaking on behalf of the district that is specifically directly affected by it, that the committee would defeat the Frenzel amendment.

Mr. LOEFFLER. Mr. Chairman, again, as the distinguished subcommittee chairman pointed out, this merely expedites the decision, a decision up or down, but a decision so we know whether there can be competition or there cannot be. Present monopolistic pricing strategies on Powder River coal moving to the Southwestern and Southern part of the United States and rising consumer prices for energy establish a clear need for head-to-head competition. Further delay in the initiation of this project will cause its cost to increase while the electric ratepayers are burdened with the cost of not having effective transportation that will provide competition.

As long as the final decision is delayed, the cost of the project mounts and electric ratepayers are burdened with the cost of a monopolistic coal carrier.

I urge the defeat of the pending amendment, Mr. Chairman, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. Frenzel).

The question was taken and on a division (demanded by Mr. Frenzel) there were—ayes 11, noes 42.

Mr. FRENZEL. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. HANLEY TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. HANLEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Hanley to the amendment offered by Mr. Staggers: On page 84 of the amendment, in proposed section 329, insert "(a)" immediately after "Sec. 329." and add at the end thereof the following new subsections:

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

☐ 1730

Mr. HANLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ERTEL. Mr. Chairman, would the gentleman yield so that I might have a brief colloquy with the gentleman from New Jersey (Mr. Florio)?

Mr. HANLEY. I would be delighted to yield to the gentleman from Pennsylvania.

Mr. ERTEL. Mr. Chairman, I thank the gentleman from New York.

Mr. Chairman, I would like to ask the gentleman from New Jersey (Mr. Florio) a question. The legislation before us contains a provision permitting the ICC to exempt rail transportation as part of a continuous intermodal movement which is part of the gentleman's amendment.

Was it the gentleman's understanding in accepting the amendment, as it was in mine, in offering it, that the provisions of section 803 of H.R. 7235 apply to my amendment?

Mr. FLORIO. The gentleman's understanding is my understanding as well.

Mr. ERTEL. I thank the gentleman and I thank the gentleman for yielding. I appreciate his indulgence.

Mr. HANLEY. The gentleman is most welcome.

Mr. Chairman, the purpose of this amendment is to make certain technical changes in wording contained within the Staggers-Rahall substitute which would allow the Delaware and Hudson Railway to continue receiving Government-guaranteed loans, while the Department of Transportation moves to implement a just completed study to reorganize the D. & H., and maintain it as a competitive force in the Northeastern rail transportation network. From our discussions with the U.S. Railway Association, the lending agency, it became clear that the wording contained within the Staggers-Rahall substitute would not be adequate. I urge adoption of this clarifying language which will help assure continued effective competition in the Northeast.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HANLEY. I would be delighted to yield to the chairman of the committee.

Mr. FLORIO. I thank the gentleman for yielding.

The amendment does not authorize any new money. It reallocates money already authorized.

Accordingly, I have no difficulty with the amendment.

Mr. HANLEY. Mr. Chairman, I thank the gentleman for his support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Hanley) to the amendment offered by the gentleman from West Virginia (Mr. Staggers).

The amendment to the amendment was agreed to.

Mr. DUNCAN of Oregon. Mr. Chairman, I move to strike the last word.

I do so for the purpose of engaging in a colloquy with the distinguished chairman of the committee, the distinguished ranking minority member.

I have some questions about the meaning of some terms in the bill. I am referring to section 204 of the original bill which amends 49 U.S.C. 10–712. I believe, but I am not certain, that it is contained in section 309 of the Staggers amendment.

I want to know if the term in that section, those sections, "purchasers of rail services" mean not only the direct purchasers for their own account, but also middlemen or freight forwarders.

For example, could a trucking company or a barge operator or a co-op or a company which is formed for the purpose of consolidating shipments or which does, in fact, consolidate shipments enter into a contract or contracts with the railroads for the transportation of the goods of its own clients?

I yield to the chairman.

Mr. FLORIO. The gentleman is correct in his interpretation.

Mr. DUNCAN of Oregon. I yield to the ranking minority member.

Mr. MADIGAN. I would say that I am in complete agreement with the gentleman from New Jersey. That is our interpretation.

Mr. DUNCAN of Oregon. I thank the gentlemen for their answers.

I would also like to ask both gentlemen another question regarding a component of this same contract section 204 in the original bill. I think it is specifically 204(f), where the reference is to the term "agricultural commodities."

I would ask if the term "agricultural commodities," as it appears in that section and elsewhere in the bill includes all forest products?

I yield to the gentleman.

Mr. FLORIO. That is the committee's intention.

Mr. DUNCAN of Oregon. I yield to the gentlemen for their answers.

Mr. MADIGAN. I concur in that answer.

Mr. DUNCAN of Oregon. I thank the gentleman for their answers.

AMENDMENT OFFERED BY MR. CHENEY TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. CHENEY. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Cheney to the amendment offered by Mr. Staggers: Page 84 of the amendment, line 5 following "." insert:

(d)(1) The Secretary of Transportation shall review the proposed Chicago & North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land and, (B) the proposed route construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use; provided, however, that the Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago & North Western line on the authority of this subsection. This review of a proposed route shall be conducted within ninety days after the "final action" specified in subsection (a);

(2)(A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each land owner whose agricultural holdings are divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of "final action" as described in subsection (a) of this section. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(C) When the Secretary requires the construction of a grade crossing under this paragraph, he shall require that the land holder and the railroad enter into an agreement which shall limit the liability of such railroad for accidents at such crossing to $25,000, provided that such railroad has constructed such grade crossing in a manner calculated to avoid reasonably foreseeable accidents to persons and livestock. Maintenance of safety features such as fences for such crossings shall be the responsibility of the land holder.

Mr. CHENEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

Mr. CHENEY. Mr. Chairman, my amendment simply provides a needed degree of protection for the agricultural interests that will be affected should the Chicago-Northwestern Railroad construct its proposed connector line from Crandall, Wyo., to Joyce, Nebr. Farmers and ranchers in eastern Wyoming and western Nebraska have been extremely concerned about what effects the connector line would have on such things as irrigation patterns and land access. These concerns have a right to be addressed and my amendment does exactly that.

My amendment primarily does two things. First, it grants the Secretary of Transportation the authority to review Chicago-Northwestern's final route proposal and to determine within 90 days whether or not the route minimizes the harm such use will inflict on agricultural operations. It also insures that the route is the most prudent and feasible alternative to the use of such land. Simply put, this amendment attempts to guarantee that the final route will have as little harmful effect on agriculture as possible.

Second, my amendment grants the Secretary of Transportation the authority to require Chicago-Northwestern to provide a private grade crossing to each landowner whose land is divided by the connector line when the Secretary finds that such division causes substantial disruption to the agricultural use of the land. The landowners must file a request for the grade crossing within 180 days of the final action taken by the Secretary on Chicago-Northwestern's application for loan guarantees and the Secretary must then render a decision on each request within 180 days of its receipt. This portion of my amendment commits the railroad to address the problems the landowners may face in accessing portions of their property as a result of the connector line. Neither of these amendments are designed to unnecessarily impede the construction of the connector line but are simply designed to grant needed protection for agricultural interests of the area.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. CHENEY. I would be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and say that we have had an opportunity to review the amendment and think that it is a good addition to the bill and intend to support it.

Mr. CHENEY. I thank the gentleman.

Mr. FLORIO. Mr Chairman, will the gentleman yield?

Mr CHENEY. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I concur in the representations made by the gentleman from Illinois (Mr. MADIGAN). We think it is a helpful amendment and do support it.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. CHENEY. I would be happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I presume if the Secretary makes such a determination that the rail line will have to use its own money?

Mr. CHENEY. That is correct. It would require the railroad to build crossings using their own funds. It does not involve any Federal funds.

Mr. FRENZEL. They would not be able to use, as the gentleman interprets the amendment, the taxpayers' loan guarantees to provide those crossings?

Mr. CHENEY. Well, if they were to acquire the loan guarantees, presumably they would then go into the private sector, the private market, and borrow money to construct the rail lines.

The amendment does not specify which part of the money they would be required to use.

Mr. FRENZEL. It is the gentleman's intention that this be the contribution of private moneys to the railroad companies.

Mr. CHENEY. That is correct.

Mr. FRENZEL. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wyoming (Mr. CHENEY) to the amendment offered by the gentleman from West Virginia (M. STAGGERS).

The amendment to the amendment was agreed to.

Mr. MATSUI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to enter into a colloquy with the distinguished chairman of the subcommittee and the ranking minority member of the subcommittee also.

It is my understanding under section 309 that a port may file a complaint if the contract between the shipper and the carrier results in unreasonable discrimination. Subsection (H) of 309, however, states that if a contract is approved by the ICC, it may not be challenged.

It is my understanding that if a contract is amended or modified, however, it would then result in the ability of the port to file a complaint within a 30-day period. Is that the understanding of the chairman and the distinguished ranking minority member?

Mr. FLORIO. The gentleman is correct.

Mr. MADIGAN. If the gentleman will yield, I agree with the understanding reached by the two gentlemen.

Mr. MATSUI. I have one other colloquy, if I may. This pertains to section 314, subparagraph (e). As the chairman and ranking minority member know, the ICC cannot exempt a carrier from certain liability standards under this section; however, on page 60 of the report language it states that the amendment applies prospectively. It uses the phrase "prospective change."

It is my understanding that this section applies to exemption orders issued before the enactment of this legislation. Is this, in fact, correct?

Mr. FLORIO. That is correct as well.

Mr. MADIGAN. Mr. Chairman, if the gentleman would yield, again I concur with the answer given to the gentleman by the gentleman from New Jersey.

Mr. DASCHLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to voice my support for the Harley O. Staggers Rail Act of 1980 and the Staggers-Lee-Rahall amendment to it. Like many members from agricultural States, I voted for the Eckhardt amendment when this bill was on the floor several weeks ago. Many Members were concerned that the Rail Act did not provide adequate protection for shippers, especially captive shippers against unfair pricing by the railroads. This is a very difficult issue as the railroads and the agriculture and coal industries are dependent upon one another.

As a Representative of South Dakota and a member of the Agriculture Committee my energies are largely focused on efforts to insure a fair deal for the family farmer. That is why I support parity, why I authored legislation to help beginning farmers, why I introduced a bill which the House passed last April to encourage subterminal planning and construction, why I am very active in the area of alcohol fuels which enable the farmer to be more independent regarding his energy needs, and why I was a party to discussions with Canadian officials concerning a wheat agreement between our two countries.

But without a viable rail system, farmers, coal dependent utility companies and other shippers are up a creek. The trucking industry cannot handle the coal traffic and is not the best vehicle for long hauls of grain. Farmers in South Dakota are currently suffering the effects of 900 miles of embargoed rail line. I am hopeful that the South Dakota plan to purchase the lines and contract with a rail carrier will be successful and that service on some of those lines can begin again. Any new rail carrier in South Dakota will and should expect an adequate rate of return. On the average, railroads do not receive an adequate rate of return, and a rate of 2.7 percent for an industry is simply not acceptable. The current regulatory system is not the only reason for the bad financial condition of many of our railroads, but to the extent that the regulatory system has caused an unfair rate of return, then we should correct it.

I congratulate the members and staff of the Commerce Committee for their diligent work with the railroads and those who utilize the railroads in working out a revised rate provision which provides better protection for shippers while at the same time allowing the railroads some necessary flexibility. I would also like to thank the committee for their cooperation in making two technical wording changes which, while not of a substantative nature, were necessary to clarify the provisions in question.

This legislation is of particular importance to South Dakota because it is the reauthorization of the 505 and the authorization of the 518 programs which provide loan money for rail rehabilitation. The Milwaukee Road is currently in a reorganization process—the Milwaukee trustee has said that keeping the Milwaukee line from the Twin Cities to Miles City, Mont., in any reorganization plan is dependent upon their obtaining loan money to rehabilitate this line. This line is vital to South Dakota as it is our only main line and our link to the west coast.

Other provisions in the Rail Act provide for forgiveness of a low priority ERSA loan to the Milwaukee if the railroad is successfully reorganized or purchased. This loan is of such a low priority that the bankrupt Milwaukee may not have been able to repay it anyway, but it will be helpful in the effort to fight off liquidation of the entire 10,000-mile railroad. And finally, this legislation provides for an additional $9 million (bringing the total to $27 million) in transaction assistance available to States and other groups for purchase, lease or rehabilitation of Milwaukee lines.

I urge my colleagues to join me in voting for the Harley O. Staggers Rail Act.

Mr. O'BRIEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I take this opportunity to address a rather lengthy question to my long time friend, the gentleman from Lincoln, Ill. (Mr. Madigan).

On May 31, 1980, the Rock Island Transportation and Employee Assistance Act was passed into law. That act contained certain provisions for the protection of the Rock Island employees who were laid off in the course of the bankruptcy of the line.

It is my understanding that the Federal trial court, enjoined the application of the employee protection provision of that act as being in the nature of an improper preference and doing an injustice to creditors' rights. That decision was tentatively approved in the Supreme Court. Following the Court decision I introduced a bill (H.R. 7834) which is directed at overcoming the Court's objection.

I have also prepared an amendment which in substance is similar to my bill (H.R. 7834); however, as I review the Staggers bill, as amended by the Staggers-Rahall-Lee-Loeffler amendment, I draw certain conclusions which would, if correct, render my amendment unnecessary. I would like to know if you concur in these conclusions.

First, the bill as now constituted grants to the Rock Island employees substantially the same benefits that we provided to the employees, laid off the Milwaukee Road reorganization.

Second, approximately the same sum of money, $75 million, would be provided as was intended under the Transition and Assistance Act of May 31, 1980.

Finally, should a creditor of the Rock Island deem itself aggrieved by the passage of this bill into law, it is clear that such creditor has a clear remedy under the Tucker Act. Am I correct in those conclusions?

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. O'BRIEN. I would be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. At the outset in responding to the gentleman, I would like to thank the gentleman and also our colleague, the gentleman from Illinois (Mr. Railsback) for all the assistance that the gentleman has given us in our various efforts in trying to move forward with a comprehensive rail bill that would also take care of these very special problems that the Rock Island employees have and about which the gentleman has been concerned and to which the gentleman has referred.

□ 1740

Specifically responding to the gentleman's question, the same benefits, and the same number of dollars as was provided for the Milwaukee employees is provided here for the Rock Island employees. The gentleman's specific reference to the Tucker Act remedy is correct.

Mr. O'BRIEN. I thank the gentleman.

AMENDMENT OFFERED BY MR. TAUKE TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. TAUKE. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Tauke to the amendment offered by Mr. Staggers: Page 86 of the amendment, line 7, strike out "and" after "Labor;".

Page 86, line 8, immediately after "Commission" insert ", and two shipper representatives from national agricultural organizations appointed by the President".

Mr. TAUKE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. TAUKE. Mr. Chairman, I rise today to offer this amendment adding two agricultural shipper representatives appointed by the President to the Rail Shipper Needs Board which is newly created by the Rail Act of 1980. It is vital to our Nation's agricultural community that Congress provide effective oversight of the impact this legislation has on agriculture and rural America.

It is my belief that the newly created Rail Shipper Needs Board will play a significant role in this oversight responsibility. Therefore, it is important that agricultural shippers be included as representatives to add their expertise and first hand experience to the Board's deliberations and final report. It only makes sense that agricultural shippers be represented when Congress creates a Shipper Needs Board to review the effects this legislation has on agricultural communities.

By enactment of this legislation, agricultural shippers are entering into a new world of lessened Federal regulation of our Nation's railroads. Provisions of this legislation such as the "captive shipper" situation, contracts surcharges, and consolidation and merger of railroads will greatly change the manner in which railroads and shippers do business. Therefore, in order for Congress to better judge the impact this legislation has on agriculture and rural communities, I ask that this important amendment be adopted.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. I am pleased to yield to the chairman of the subcommittee.

Mr. FLORIO. I have reviewed the amendment and the amendment is very helpful. I am prepared to support the amendment.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. TAUKE. I am happy to yield to the ranking minority member.

Mr. MADIGAN. I want to thank the gentleman for yielding and state we have had an opportunity to review the amendment and believe it is a good amendment to the bill. I intend to support it.

Mr. TAUKE. I thank the gentleman.

Mr. BREAUX. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am not certain whether I rise in opposition to the amendment or in support of the amendment, but I rise to talk on the amendment and, quite frankly, I do not know what the amendment does. But I take this time to try and see if someone who has spent so much time working on this railroad deregulation bill, which I may be for, and I may be for the substitute of the chairman of the committee who has worked so hard to put this together, to try to see if someone can tell me what will happen when we have another little piece of legislation that we have been working on and that the railroads also have been working on, and that is the coal slurry pipeline bill. The reason I think it is appropriate to maybe try and get an answer at this point is I want to know what position are we going to be in in this body in 1 week or 2 weeks when we try and come to the floor with a coal slurry pipeline bill to provide another means of transporting coal in this country in competition with the existing means of transporting coal, which right now just about the only means is the railroads, are we going to be in a position, can anyone who is for railroad deregulation answer this, are we going to be in a position of on Tuesday deregulating the railroads and then on Tuesday of next week have every person who is trying to do something for the railroads do everything they can to kill a coal slurry pipeline bill?

I think this is important because I do not want to be caught saying I support deregulation, I support the chairman, and I support the gentleman from New Jersey (Mr. Florio) in their great efforts to get the Government out of the business and let the railroads run deregulated, and then as soon as we bring this coal slurry pipeline bill to the floor have the railroads do everything they can, legitimately, in a lobbying effort to assure that we do not have a coal slurry pipeline bill because it is unfair competition. I think that is a legitimate question.

If I do not get an answer I do not know how I am going to be able to vote to deregulate the railroads. If they are going to be truly deregulated on Tuesday, on Tuesday or Friday of next week, they should not be afraid of some additional competition from yet another segment and means of providing transportation for coal in this country.

I do not know if anyone can answer, and I will be glad to yield to the chairman if he can.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I yield to the chairman.

Mr. FLORIO. I will just make my representation that I will not insist that the entire bill be read.

Mr. BREAUX. I am not in that battle at all. I am just trying to find out something which I think is a legitimate question and whether you read the coal slurry bill or the railroad bill, that is for somebody else in a different forum to decide. I am just trying to say, are these people who are now advocating deregulation going to be in the battlefield leading the fight against another form of competition to the railroads next week. I am sorry I am messing up everybody's time. I think it is a legitimate question to ask.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am happy to yield to the gentleman.

Mr. STAGGERS. I would say to the gentleman we certainly will listen with interest when it comes up.

Mr. BREAUX. I am listening with interest today.

Mr. STAGGERS. I never cross a bridge until I get there and I would not buy a pig in a poke until we listen to what is going on.

Mr. BREAUX. The problem, Mr. Chairman, is we might not get to that bridge if we do not have enough people who are convinced today that maybe we would vote to deregulate the railroads if we could get some kind of fair treatment from them when another form of open competition is offered on the floor of this House. No one can make promises and we are all oging to give it real consideration, but I will bet anybody who is here today, or maybe even in our listening audience who is somewhat concerned about these two issues, they know what we are talking about. So I am not sure whether I support the gentleman's amendment, but I am trying to make up my mind and get answers.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. BREAUX. I am glad to yield to the gentleman from Texas.

Mr. ECKHARDT. I join the gentleman in everything he has said and I would like to point out in sort of indirect response from the chairman's question that neither the gentleman in the well nor I in any way supported any delay on this bill, nor did we intend any other person to do it, as I understand it. I think the gentleman would say that is true on his part.

Mr. BREAUX. I know that no one can accuse this person of having people sit up here and read. I think it is something that is unnecessary, I do not like it, and I would not stay here long enough anyway. I guess my final point is that I do not know what I am going to do because I cannot get any final assurance that if we are going to deregulate today then tomorrow or next week we are going to have the same people that voted for deregulating today leading the fight against another form of legitimate competition.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had published in the Record an amendment to the amendment in the nature of a substitute of Mr. Staggers which he had conceived of as being something of a real compromise with respect to rates. It essentially permitted rates to go up to 180 percent after 4 years, as the bill now does, but did not permit the exhorbitant increase after that, which may carry rates rapidly to up to 200 percent of variable costs.

I do not in any way want to slow down the process of this bill. I must say that I feel somewhat like the gentleman from Louisiana (Mr. Breaux) last in the well about the question of those who call for competition as the only means of controlling price and, at the same time, oppose competition. But we will have to see how that comes out, as the distinguished chairman of the full committee has said, when the bill comes up.

I shall not, therefore, offer at this time the amendment I had to this amendment in the nature of a substitute—I see no point in fighting this battle essentially over again.

Furthermore, we all know here, I think, that the difference between the bill as it will be after the Staggers amendment in the nature of a substitute and the Senate bill is sufficiently wide in order for us to further attempt to fashion some reasonable bill, taking care of the shortline railroads and also taking care of exhorbitant rates to shippers.

□ 1750

Therefore, I think we should get along with this matter. I shall not offer the amendment, and I shall do everything I can to facilitate the rapid passage of this measure. I may not be able to support it unless I get some kind of assurance, as the gentleman from Louisiana (Mr. Breaux) has indicated, that there will be some opportunity for competition. Yet I think procedurally we should move as rapidly as we can.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. Tauke) to the amendment offered by the gentleman from West Virginia (Mr. Staggers).

The amendment to the amendment was agreed to.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Gonzalez to the amendment offered by Mr. Staggers: Page 23, line 7, strike the word "quarterly" and insert in lieu thereof "annually".

Mr. MADIGAN. Mr. Chairman, I reserve a point of order. We have not had an opportunity to see the amendment and I would have to reserve a point of order.

Mr. GONZALEZ. The gentleman should have a copy there as of at least 2 hours ago.

Mr. Chairman, the amendment is very simple. It is about a half sentence long. The gentleman from Illinois (Mr. Madigan) should have a copy of a series of amendments. It is very simple. If the gentleman would like to have another reading, I am perfectly willing to agree to that because what I have to say will not take all of the 5 minutes. In effect under the existing substitute now, the railroads are given the right to jack up their variable costs on a quarterly basis.

I suggest that this is too much. Even the big bad devil, OPEC, raises its prices only once a year. We allow retired employees an inflation adjustment only twice a year, and that is being fought. The unions get a wage increase only once a year, if that often at all. Why should the railroads be permitted to adjust their variable cost formula every quarter? Their costs do not increase all that much. The answer is that the substitute amendment is giving them the right not just to compensate for cost increases but to charge the public a kind of compound interest—the right to add to inflation, not merely compensate for its costs.

It makes sense to have some kind of an adjustment. An annual adjustment, I believe, is realistic. It is right. It is just. But four times a year is too much. I think it is a shame. I think it is an outrage.

The CHAIRMAN. Does the gentleman from Illinois (Mr. Madigan) insist on his point of order?

Mr. MADIGAN. I withdraw my reservation of a point of order, Mr. Chairman.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I would oppose the gentleman's amendment on the basis of the fact that the Staggers amendment includes a well-thought-out provision that seems to have the concurrence of all parties. This is identical to the provision that is in the bill in the other body, and the quarterly determination is the practice. At this 11th hour, without some thought being given to it, it seems to me inappropriate to modify this time-honored practice. I would oppose the provision.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Illinois.

Mr. MADIGAN. I want to thank the gentleman for yielding and say that I agree with his comments. I understand the gentleman from Texas now has some three or four amendments to offer, some of which do the same thing. No one has made any attempt to discuss these things with us and give us any amount of time to think about them. Consequently, and unfortunately, I must oppose them.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. Gonzalez) to the amendment offered by the gentleman from West Virginia (Mr. Staggers).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS: Page 45, line 21, strike the word "quarterly" and insert in lieu thereof the word "annually".

Mr. FLORIO. Mr. Chairman, I reserve a point of order. I do not have a copy of the amendment, and I would appreciate receiving it.

Mr. GONZALEZ. I am really surprised, Mr. Chairman, and I certainly do not want to be guilty of that which I protested last Friday. I thought that both the majority chairman, the subcommittee chairman and the minority had copies of this as of at least 2 hours ago. I am sure somebody on the gentleman's staff was delivered these copies at least 2 hours ago. They may not have been brought to the gentleman's attention, even though the page was instructed.

Mr. FLORIO. Mr. Chairman, I withdraw my point of order.

Mr. GONZALEZ. Mr. Chairman, this is a similar or identical amendment to the amendment I offered the first time, except that it has to do with inflation-based rate increases.

In the committee bill, this section says that the Interstate Commerce Commission can jump rail rates four times a year to compensate for inflation.

We have been told that giving a twice-yearly pension adjustment to retirees actually results in their getting a bigger adjustment than inflation actually justifies. We have been told that this twice-yearly adjustment for retirees creates a compounding effect, much like compounding of interest, so that the retirees in the final analysis get more than they should, to compensate for inflation. If that is the case with people, is it not also the case with railroads?

We all know that the rail unions get a pay increase of once a year, if that often. We know that even OPEC increases its prices only once a year (or twice, if the conditions are right). Yet here we are offering the railroads a boost four times a year. That is too much. A once-a-year adjustment is all that is necessary, and my amendment provides that the railroads ought to be allowed only a one-time a year rate adjustment for inflation. The bill is more than generous to the railroads already. There is no need to slap the public in the face an additional four times a year. The railroads can survive with the same kind of once-a-year increase that their employees get along on, or a once-yearly increase that most working people—if they are lucky—have to take. If the rest of us have to swallow the cost of inflation, the railroads should, too. The committee bill gives railroads the right not only to compensate for inflation, but to profit on it. There is no need for us to let them charge us compound rates, when their revenue needs are already more than amply provided for in this bill. Surely it is enough to allow them to have all the cookies. I seek only to give consumers a fighting chance to at least hold onto the cookie jar. Surely the committee and this House would allow the public that much.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I renew my arguments I made on the previous amendment. The principle is the same, and I would oppose the amendment on the same basis.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS: Page 86, line 1, insert a new section 332 and renumber succeeding sections accordingly:

PLAIN LANGUAGE RATE PUBLICATION

SEC. 332. (a) All rates, tariffs, charges, surcharges and inflation adjustments issued pursuant to this Act shall be published in written form and made available to all shippers. Any shipper who is a person having limited command of the English language shall be entitled to have such rates, tariffs, charrges, surcharges and inflation adjustments translated into the language of his choice, at the expense of the carrier.

(b) All publications of rates, tariffs, charges, surcharges, and inflation adjustments shall be printed in language clearly understandable to a lay person. Carrier charges shall be expressed in terms of ton-miles as well as such other terms as may be most useful and informative to shippers and the general public.

Mr. GONZALEZ. Mr. Chairman, I would like to inquire of the respective Members handling the bill if they have copies of this amendment.

This is what is known as the plain language of plain English and non-English-language amendment. It specified that the carriers have to publish their charges, and that those publications have to be in language that people can understand, and that they have to be readily available.

The object of this amendment is to give shippers and the public an easy way to understand what the cost of rail transportation is, so that they will have an easy basis for comparison.

We have in other statutes required that language minority persons receive published information in their own language. In my State, for example, all important public rulemaking proposals and voting information have to be offered in Spanish as well as English. This amendment likewise provides that the carriers must do everything in their power to inform the shipping public of their charges, in the plainest and simplest language possible, including a language other than English, if the shipper desires it.

I do not know how many of my colleagues have ever tried to read a tariff schedule. If you have, you will sympathize with my aim to give shippers information that they can use without having to employ a transportation specialist or renowned lawyer for interpretation. If shippers are going to make informed choices, those choices have to start with adequate information, which is all that my amendment asks for.

My amendment deals specifically with rates and the publication thereof. The Chair ruled last Friday that we are dealing with a broad issue and that an amendment that deals "inter alia, with the subject of railroad rates * * * even though they may be applicable only to specific railroads or to specific commodities transported by rail" is germane.

I rely upon the specific decision of the Chair last Friday that this amendment dealing with rates is in fact germane.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment. I would say that in the 2 years that I have been chairman of this subcommittee, in the multitude of hearings that we have had about this bill and other bills, this subject has never been brought to our committee as a subject of serious concern.

☐ 1800

I would, in deference to my respect for the gentleman, indicate to the gentleman that I will go forward from this point, and I think the gentleman from Illinois (Mr. MADIGAN), the minority member of the subcommittee, will go forward from this point with a diligent concern for the possibility of this problem arising. We will continue to exercise oversight over this matter and, should this matter be brought to our attention with some degree of detail, we will be happy at that point to consider modifications in the law.

Mr. Chairman, I thank the gentleman, but I think it is probably premature to act on this amendment, and accordingly we would oppose it.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and regrettably join in opposition to this amendment because as I read it a French company doing business in the United States could demand that all rates, tariffs, charges, surcharges and adjustments could all be prepared in French; that a German company could demand that it all be done in German and a Chinese trading company could demand that it all be done in Chinese. This seems to make an unreasonable demand upon the railroad and for that reason I would have to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GONZALEZ) to the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

AMENDMENT OFFERED BY MR. GONZALEZ TO THE AMENDMENT OFFERED BY MR. STAGGERS

Mr. GONZALEZ. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GONZALEZ to the amendment offered by Mr. STAGGERS. On page 90, line 14, insert new section 333:

ABANDONMENT

SEC. 333. Whenever a railroad elects to abandon service pursuant to this Act, all such real property as is abandoned for railroad use shall revert to public ownership. Abandoned real property within incorporated city or town limits shall revert to ownership of such city or town. Abandoned property outside of incorporated city or town limits shall revert to ownership of the county in which it lies. Such property shall be used or disposed of in a manner that will directly benefit the public.

Mr. GONZALEZ. Mr. Chairman, by way of preface I would like to say I appreciate the remarks of the distinguished subcommittee chairman with regard to the last amendment. It may have appeared to contain levity but we must also remember that this Member did not have a chance to do anything about examining and proposing amendments except when the amendment was read and I had a copy in my hands 2 hours after it was read and, therefore, I spent the weekend examining four amendments, regardless of the outcome of the so-called Eckhardt amendment. My amendments are offered in good faith. Perhaps the amendments are not written as well as they may have been had I been able to give them further thought. I might have changed the contents of this amendment but the thrust of the amendment is offered in seriousness and earnestness because tariff scheduling in legible language readily understood, I think, is a vital necessity.

Mr. Chairman, this amendment simply says that railroads abandoning their property, when they abandon the rail line, turn it over to where it came from to begin with. To public use and benefit. The vast majority of all railroad right-of-way and related property was given to the railroads to begin with at no cost. This property came, most of it, from land that was publicly dedicated and owned. Most of what came from private ownership came from people who were eager to have rail service and so gave up their land, free, simply in order to have rail service which is not being abandoned.

The railroads were formed and still operate to provide public service. This is constantly forgotten. Public use and convenience is still the phrase. Their holdings and right-of-way came from the public. Those holdings, if they are no longer used for public benefit or to serve public convenience and necessity ought to revert to the same people whose forebearers provided them and underwrote building of the railroads. The people are entitled to have their property back if they lose the benefits for which it was intended.

Unused railroad right-of-way can be used in cities, towns, areas or hamlets for strip parks, for bike paths or picnic areas. Station property and yard property could be used for redevelopment or to provide sites for public parks and buildings. Abandoned rail property not otherwise used for public benefit could be sold and the proceeds used to reduce local tax burdens.

What started with gifts from the public ought to be ended with a benefit to the public. If the people can no longer get rail service, they are at least entitled to get some return on the land that the railroads generally took from the public trust in the first place, or got from private owners free of charge, all for the same reason—to gain access to a necessary public service. With that service gone, the public is entitled to get its original investment back, at least so much of it as exists in the form of property that is now used for rail service.

I do not ask that the railroads give up the millions of acres of land that went to them to entice the construction of lines—all I ask is that they give up that small segment of their bounty that was actually turned into railways, stations, and yards, and which now stands subject to abandonment.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. GONZALEZ. I will be delighted to yield.

Mr. HALL of Texas. Without the gentleman's amendment, where would the property revert to in the event of the happening that the gentleman mentions, under the present structure of this bill?

Mr. GONZALEZ. I believe it would be conceded it is just abandoned and in possession of the railroads.

Mr. HALL of Texas. Mr. Chairman, could I ask the gentleman from New Jersey (Mr. FLORIO) if he would attempt to answer the question?

Mr. FLORIO. Mr. Chairman, will the gentleman yield to me?

Mr. GONZALEZ. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, upon abandonment, the property is still the property of the railroad. The railroad then has the option of doing whatever it wants to do with the property.

We have established a number of programs, some established in this bill, to facilitate the transfer of abandoned lines to other railroads, to shippers groups and other organizations that could use it as rail property or conceivably could use it as nonrailroad property, for community or other purposes.

Mr. Chairman, to save some time at this point I would express my opposition to the bill on the very fundamental ground that this constitutes a taking. In effect, what this amendment says is that the railroad property shall be taken from the railroad without compensation. I think that violates the due process provision of the Constitution and would clearly be unconstitutional.

Mr. GONZALEZ. Let me reply quickly. The whole purpose of this bill is to return to public use that which was given by the people something for the stated purpose of public service use and convenience and which is now being abandoned for that purpose and is retained wholly as part of a private profitmaking venture.

I say, if you are not going to use it as it was given to you to use, let it revert back to the people, to the public.

The CHAIRMAN. The question is on the amendment of the gentleman from Texas (Mr. GONZALEZ) to the amendment of the gentleman from West Virginia (Mr. STAGGERS).

The amendment to the amendment was rejected.

● Mr. HANLEY. Mr. Chairman, I rise in support of the Staggers-Rahall substitute amendment to H.R. 7235. This amendment is the result of a serious good faith effort to reach a compromise that will both maintain regulatory protection for this Nation's shippers while allowing the deregulation so necessary to assure a healthy railroad industry in the coming decade. Chairman STAGGERS, Mr. RAHALL, and Chairman FLORIO are to be congratulated and supported. Through their efforts we meet the challenge set for us by the President to remove burdensome regulations and promote effective competition. The public and all sectors of industry and labor are well served by this amendment.

The Staggers-Rahall amendment also contains a provision of vital interest to New York State through the promotion of effective rail competition in the Northeast. Contained within the amendment is language that will allow the U.S. Railway Association to continue providing Government-backed loans to the Delaware & Hudson Railway. The D. & H. is the last true competitor to Conrail in the Northeast. Continuance of these loans will allow it to operate while a Federal reorganization study is implemented and a healthy, profitable railroad is created to overcome the failures of the basic restructuring of Northeastern railroads carried out under the Regional Railroad Reorganization Act of 1973. The goal is continued competition in the Northeast and a viable means of meeting national policy.

In summary, I strongly support the Staggers-Rahall substitute and I ask that you join me in moving to create a strong, competitive rail system.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. STAGGERS), as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. RUDD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 369, noes 6, answered "present" 1, not voting 56, as follows:

[Roll No. 531]

AYES—369

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin

Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rosenthal
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yatron
Young, Fla.
Young, Mo.
Zablocki

NOES—6

Dingell
Eckhardt
Frenzel
Stangeland
Weiss
Yates

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—56

Addabbo
Ambro
Anderson, Ill.
Atkinson
Beard, R.I.
Boggs
Brown, Calif.
Brown, Ohio
Campbell
Chisholm
Cotter
D'Amours
Evans, Del.
Fish
Fithian
Fowler
Garcia
Gilman
Grassley
Hinson
Holtzman
Hopkins
Howard
Jeffords
Jenrette
Kelly
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Lewis
Marriott
Mathis
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Nolan
Patten
Pepper
Peyser
Richmond
Rose
Rostenkowski
Royer
Russo
St Germain
Steed
Tauzin
Young, Alaska
Zeferetti

☐ 1820

Mr. MINISH changed his vote from "no" to "aye."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

Mr. KASTENMEIER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to propound a question of the distinguished gentleman from New Jersey (Mr. Florio), the floor manager of the bill.

Mr. Chairman, a number of State and local officials in Wisconsin have brought to my attention a provision in H.R. 7235 which could have an adverse impact on short line carriers who are seeking to continue service on branchlines abandoned by the Milwaukee Road Railroad. These officials have a vital stake in the continued operation of these lines because the State has purchased the lines as part of Wisconsin's branch line preservation program. This State program was primarily established in response to the bankruptcy of the Milwaukee Road. The State and local governments in partnership with short line operators hope to revitalize and rehabilitate these lines so that they may remain part of the Wisconsin transportation system.

Specifically, State and local officials are concerned over section 304(e). They have questioned whether this provision will require a short line operator who takes over an abandoned line to accept responsibility for providing employment protection under section 11347 for those employees of the previous operator who were affected by the abandonment. They contend that such an interpretation of this provision would destroy the economic viability of most short line operations.

I would appreciate it if the distinguished floor manager would explain whether this provision will require a short line which operates lines, such as those I have described in Wisconsin, to provide employment protection under section 11347 of title 49 of the United States Code.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I am happy to provide some guidance for my colleague from Wisconsin on this point. Section 304(e) mandates the Interstate Commerce Commission to impose labor protection requirement on any rails carrier or other entity proposing to construct and operate a railroad line under section 10901 of the United States Code. Although ICC approval to either construct or operate a new rail carrier must be sought under section 10901, it has never been the intention of the committee to apply section 304(e) to a rail carrier or other entity that is proposing solely to operate or acquire an existing line. Section 304(e) is intended to apply only to new construction or an extension of an existing line.

Mr. KASTENMEIER. Mr. Chairman, I thank the gentleman from New Jersey (Mr. Florio) for that interpretation, and I yield back the balance of my time.

AMENDMENT OFFERED BY MR. HANCE

Mr. HANCE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Hance: Page 144, line 25, insert after "of this title" the following: "when such carrier is transporting grains, soybeans, rice, cotton or".

Mr. HANCE. Mr. Chairman, I have an amendment that reinstates the long haul short haul provision as it is in existing law. This will protect the small country elevators from outrageous rate increases. It will require that the same discount and/or rate be charged for a short haul as it is for a long haul over the same route.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. HANCE. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review the amendment offered by the gentleman from Texas (Mr. Hance), and we intend to support it on this side of the aisle.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. HANCE. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I concur in the statement of the gentleman from Illinois (Mr. Madigan). We accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. Hance).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title III?

If not, the Clerk will designate title IV.

Title IV reads as follows:

TITLE IV—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEM

Sec. 401. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 11142. Uniform accounting system

"The Interstate Commerce Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.".

RAILROAD COST ACCOUNTING

Sec. 402. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"§ 11161. Railroad Accounting Standards Board

"(a)(1) There is established a Railroad Accounting Standards Board which shall be within and responsible to the legislative branch of the Federal Government.

"(2) The Board shall be composed of the Comptroller General of the United States, who shall serve as chairman, and six members to be appointed by the Comptroller General.

"(3) The Comptroller General shall appoint members of the Board from among persons who are well qualified for such position by virtue of experience in or knowledge of rate regulation, accounting, or cost determinations. Of the members of the Board so appointed—

"(A) one shall be from the accounting profession;

"(B) one shall be from the railroad industry;

"(C) one shall be a representative of major rail shippers;

"(D) one shall be from the Interstate Commerce Commission;

"(E) one shall be a representative of small rail shippers; and

"(F) one shall be from the economics profession.

"(4) The term of office of each appointed member of the Board shall be three years, except that any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

"(5) The Board shall not act in the absence of a quorum, which shall consist of three members.

"(b) Each appointed member of the Board shall receive compensation at a rate equal to 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of of title 5, for each day (including traveltime) in which he is engaged in the actual performance of duties vested in the Board.

"(c) (1) The Board may utilize personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities under this subchapter.

"(2) Individuals appointed by the Board under this subsection may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(d) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

"(e) Members and employees of the Board and all other individuals appointed under this subsection having or having had access to information in the possession of the Board shall be subject to the provisions of section 1905 of title 18.

"(f) The Board shall cease to exist three years after the effective date of the Rail Act of 1980.

"§ 11162. Cost accounting standards

"(a) Within two years after the effective date of the Rail Act of 1980, the Railroad Accounting Standards Board shall establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, principles for obtaining economically accurate railroad costs directly and indirectly associated with particular movements of goods, identifying the variable costs associated with particular movements of goods or such other costs as the Board believes most accurately represent the economic costs of such movements, including principles to govern the compilation of actual cost data, and to what degree of reliability indirect costs can be attributed to particular movements of goods. Such principles shall govern the determination of all railroad costs for specific regulatory proceedings under this title.

"(b) In developing cost accounting standards under this section, the Board shall take into account the following considerations:

"(1) The specific regulatory purposes for which railroad costs are required.

"(2) The degree of accuracy of the cost infirmation which is needed to meet regulatory purposes.

"(3) The existing capability and the probable future capability of rail carriers to provide such information and the relative benefits and costs of requiring development of additional capability.

"(4) The means by which the degree of economic accuracy required can be obtained at the least possible expense and with the least possible information reporting.

"(5) The means by which the confidentiality of such costs can best be maintained while meeting the need for such information in regulatory proceedings.

"(c) The cost accounting standards established by the Board shall require that cost information be reported or disclosed only for the essential regulatory purposes defined by the Board.

"§ 11163. Implementation of cost accounting standards

"Upon the establishment of cost accounting standards by the Railroad Accounting Standards Board under section 11162 of this title, the Interstate Commerce Commission shall immediately promulgate rules to implement and enforce such standards. Not less than once every five years after the promulgation of the original rules, the Commission shall review the standards of the Board and shall, by rule, make such changes in such standards as are required to achieve the regulatory purposes of this title and the goals of this subchapter. The Commission shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes.

"§ 11164. Certification of rail carrier cost accounting systems

"(a) Within 180 days after the effective date of the Rail Act of 1980, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a request for preliminary certification of its cost accounting system. The Commission shall grant such preliminary certification if it determines that the cost accounting system of such rail carrier is in compliance with the accounting standards of the Commission in effect on the day prior to the effective date of the Rail Act of 1980.

"(b) (1) As soon as practicable, but not later than 9 months, after the promulgation of rules by the Commission under section 11163 of this title, each rail carrier described in subsection (a) of this section shall file with the Commission a request for final certification of its cost accounting system.

"(2) Within 90 days, or such additional time as the Commission finds necessary, after a rail carrier files its request for final certification under paragraph (1) of this subsection, the Commission shall grant such final certification to such carrier if the Commission determines that the cost accounting system of such carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title. If the Commission denies such final certification, the rail carrier shall revise its cost accounting system and file a new request for certification within 90 days after the date of such denial. The Commission shall thereupon grant final certification if it determines that such cost accounting system, as revised, is in compliance with such rules. If the Commission again denies final certification to the rail carrier, the Commission shall prescribe a cost accounting system which such carrier shall adopt within a reasonable time and which shall be considered a finally certified cost accounting system for purposes of this section.

"(c) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Commission under section 11163 of this title.

"(d) (1) Certification under this section that the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title shall be valid until the promulgation of new rules by the Commission.

"(2) After the cost accounting system of a rail carrier is certified under this section, such rail carrier may, after notifying the Commission, make modifications in such system unless, within 60 days after the date of notification, the Commission finds such modifications to be inconsistent with the rules promulgated by the Commission under section 11163 of this title.

"(e) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission, the Commission shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

"§ 11165. Cost availability

"Consistent with the rules of the Interstate Commerce Commission governing discovery in Commission proceedings, rail carriers shall make a relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Commission proceeding in which such data is required.

"§ 11166. Accounting and cost reporting

"(a) To obtain expense and revenue information for regulatory purposes, the Interstate Commerce Commission may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings pursuant to this title, such rules shall be promulgated in accordance with the cost accounting standards established by the Railroad Accounting Standards Board under section 11162 of this title.

"(b) Any reports required by the rules established by the Commission under this section shall include only information considered necessary for disclosure under the cost accounting standards established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

"§ 11167. Reports

"The Railroad Accounting Standards Board shall, within 2 years after the effective date of the Rail Act of 1980, submit the following reports to the Congress:

"(1) A report comparing the probable costs of the implementation of cost accounting standards established under section 11162 of this title, including any inflationary effects, to the possible benefits of the implementation of such standards, including the availability of more precise data for use by rail carriers and shippers in proceedings before the Commission.

"(2) A report setting forth any recommendations of the Board for appropriate legislative or administrative action in order to integrate the cost accounting standards and the cost accounting system certification process under this subchapter into existing rail carrier rate regulation under this title, including determinations of the absence of effective competition under section 10709 of this title.".

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"11161. Railroad Accounting Standards Board.
"11162. Cost accounting standards.
"11163. Implementation of cost accounting standards.
"11164. Certification of rail carrier cost accounting systems.
"11165. Cost availability.
"11166. Accounting and cost reporting.
"11167. Reports.".

CIVIL PENALTIES FOR VIOLATIONS OF ACCOUNTING STANDARDS PROVISIONS

SEC. 403. (a) (1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 11913a. Accounting standards violations

"Any rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that fails to obtain final certification of its cost accounting system under section 11164(b) of this title shall be fined not less than $50,000.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting standards violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A person that knowingly discloses confidential data made available to such person under section 11165 of this title by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall be fined not more than $50,000.".

□ 1830

The CHAIRMAN. Are there amendments to title IV? If not, the Clerk will designate title V.

Title V reads as follows:

TITLE V—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISTANCE

COORDINATION OF FEDERAL ASSISTANCE

SEC. 501. (a) The Secretary of Transportation, in administering the provisions of this title, shall be guided by the goal of achieving a safe and efficient transportation system by providing transitional financial assistance which facilitates—

(1) restructuring of railroad facilities and related projects that emphasize higher density operations and the elimination of uneconomical plant;

(2) improved asset and manpower utilization; and

(3) the encouragement of a strong system of self-supporting shipper-operated or State-operated rail lines.

(b) Within 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal or providing a safe and efficient transportation system.

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 502. (a) Section 10906 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "When"; and

(2) by adding at the end thereof the following new subsection:

"(b) (1) When the Commission finds under section 10903 of this title that the present or future public convenience or necessity require or permit abandonment or discontinuance, and an offer to purchase is made by a purchaser other than a class I or class II carrier, and the Commission finds that the potential purchaser will continue to provide rail service, the Commission shall require the abandoning carrier to sell such property at net liquidation value, as established by the Commission, but in no event for less than the constitutional minimum.

"(2) For any line subject to sale under paragraph (1) of this subsection, the Commission may, to allow the purchasing carrier a reasonable interchange with the abandoning carrier, require the abandoning carrier to provide to the acquiring trackage rights to a reasonable interchange point or points, as determined by the Commission, with such compensation as the Commission may require.

"(3) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the line subject to the sale.

"(4) Until a purchasing carrier under this subsection has revenues from the purchased line adequate to provide the carrier a rate of return on the purchased line equal to that established by the Commission under 10704 (a) (2) of this title, all traffic and operations on that line shall, if such carrier so chooses, be exempt from all or any of the provisions of this subtitle, other than paragraph (3) of this subsection.

"(5) Whenever a rail carrier applies a surcharge under section 10705a(b) of this title, the Commission may find that there has been a de facto abandonment and require such carrier to be subject to the provisions of this subsection.".

(b) Section 10904(d) (2) of title 49, United States Code, is amended by adding, without paragraph indentation, the following new sentences after subparagraph (B):

"No carrier may identify a line under subparagraph (B) of this paragraph unless such carrier certifies to the Commission that it has attempted to find a potential purchaser for such line who will operate such line and continue to provide rail service. If the Commission finds, in a proceeding under this section, that the abandoning carrier did not make a reasonable effort to find a potential purchaser, the Commission shall not issue a certificate under this section.".

RESTRUCTURING ASSISTANCE

SEC. 503. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et. seq.) is amended by adding at the end thereof the following new section:

"RESTRUCTURING ASSISTANCE

"SEC. 518. (a) GENERAL.—The Secretary is authorized to provide financial assistance to any railroad or subsidiary of a railroad to pay any share of the cost of restructuring its facilities, including related labor protection costs, and acquiring securities pursuant to a restructuring. Financial assistance under this section shall be through repayable credits constituting a debt or equity financing, and shall be made available by the Secretary only if the Secretary determines that—

"(1) (A) the assistance will result in significant railroad restructuring and such restructuring would not be likely to be achieved unless such assistance is provided; and

"(B) (i) the railroad has agreed to restructuring under a plan submitted in accordance with subsection (h) of this section, or (ii) the assistance will be used to fund a project approved by the Secretary under section 5(a)-(d) of the Department of Transportation Act (49 U.S.C. 1654(a)-(d)), and the railroad shows that such project will result in significant restructuring; or

"(2) the assistance will be used for purchase or rehabilitation of feeder lines.

"(b) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance under this section by purchasing a fixed debt obligation issued by a railroad, except that if the Secretary determines that an equity financing is essential to a restructuring, the Secretary may provide financial assistance under this section by purchasing senior preferred stock. The Secretary may purchase a fixed debt obligation issued as a trustee certificate by the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act, but only if the Secretary determines that the restructuring is necessary for the establishment of a self-sustaining railroad.

"(c) CHARACTERISTICS OF FIXED DEBT OBLIGATIONS.—(1) A fixed debt obligation purchased by the Secretary under this section shall provide that—

"(A) on the 5th anniversary of the date of original issuance, interest (at three-fourths of the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) shall begin to accrue; and

"(B) beginning on the 6th anniversary of the date of original issuance, accured interest and principal shall be payable annually in equal aggregate installments such that on a date not later than the 20th anniversary of the date of original issuance, the principal and all accrued interest shall have been repaid.

"(2) Consistent with subsection (f) of this section, the Secretary may require a railroad or a subsidiary receiving assistance under this section to convey to the Secretary a security position which accords the Secretary a lien and priority of payment which are subordinate to those of the railroad's or subsidiary's present and prospective secured creditors (and any claims having a priority of payment senior to secured creditors) but are first in time and right to those of all present and prospective unsecured creditors.

"(d) EXCHANGES.—Where the Secretary makes a determination under subsection (b) of this section, the Secretary may, in purchasing trustee certificates or at any time thereafter, agree with the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act to exchange trustee certificates for senior preferred stock issued in connection with a plan of reorganization approved by the reorganization court.

"(e) CHARACTERISTICS OF SENIOR PREFERRED STOCK.—Senior preferred stock purchased by the Secretary under this section shall be an **equity security issued by a railroad or its sub-**

sidiary. Each share of senior preferred stock shall—

"(1) in accordance with laws of the issuer's State of incorporation governing dividends on and redemption of preferred stock—

"(A) be subject to redemption at par commencing no later than the 6th anniversary of the date of original issuance and ending not later than the 20th anniversary of the date of original issuance in amounts which will aggregate the initial par value of the share and return the aggregate of dividends cumulated and due;

"(B) have dividends payable annually (at one-half the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) beginning on the 6th anniversary of the date of original issuance and computed on the average outstanding par amount of the share for the 12 months preceding each payment; and

"(C) have dividend and redemption declarations and payments which are cumulative and not subject to the discretion of the issuer's board of directors or shareholders;

"(2) be optionally redeemable by the issuer, and upon any optional redemption, shall return the outstanding par value plus the aggregate of dividends cumulated and due (pro rata for any part of a year after the 5th anniversary of the date of original issuance) as of the date of an optional redemption;

"(3) be nonvoting and have an initial par value of $10,000;

"(4) be senior in right with respect to dividend and redemption payments and in case of any liquidation or dissolution of the issuer only to all of the issuing corporation's equity securities whenever issued; and

"(5) be issued by the corporation (A) that owns all of the facilities to be rehabilitated or improved, or (B) that will, at the completion of an acquisition, own all of the facilities acquired in whole or in part with assistance provided under this section and that has a capitalization at the time of issuance which consists solely of equity.

"(f) TERMS AND CONDITIONS.—Before providing any financial assistance under this section, the Secretary shall require the railroad or the subsidiary receiving assistance to agree to such terms and conditions as are sufficient, in the Secretary's judgment, to assure that—

"(1) significant restructuring will occur;

"(2) all financial assistance provided under this section will be used as prescribed by the Secretary; and

"(3) that there is a reasonable likelihood that such financial assistance will be repaid.

"(g) DEFAULT.—Whenever a railroad or a subsidiary receiving assistance under this section defaults on any provision of a financing agreement or a security purchased pursuant to this section, the Secretary may (but is not required to) appoint from time to time two members to the board of directors of the railroad or the subsidiary (or both), at the Secretary's option, who shall serve until the financial assistance has been repaid in full or for a lesser period as determined by the Secretary. The Secretary may also exercise all remedies in law or equity and may request the Attorney General of the United States to commence a civil action for damages, specific performance, or any other available remedy in any appropriate court.

"(h) RESTRUCTURING PLANS.—(1) Each railroad or subsidiary which applies for assistance under subsection (a)(1)(B)(i) of this section shall submit a restructuring plan that—

"(A) has been approved by the railroad's board of directors;

"(B) demonstrates the railroad's or the subsidiary's ability to repay the financial assistance; and

"(C) identifies specific coordinations, consolidations, or other restructuring actions which the railroad or the subsidiary proposes to undertake.

"(2) The Secretary shall establish regulations governing the scope, content, and format of the restructing plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 504. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this title, is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 519. There is authorized to be appropriated to the Secretary for purposes of providing financial assistance under section 518 for fiscal years 1980 through 1984, without fiscal year limitation, such sums as are necessary, not to exceed $1,475,000,000, of which no less than 5 percent shall be available for the purchase or rehabilitation of feeder lines. Sums appropriated under this section are authorized to remain available until expended.".

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 505. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" and inserting in lieu thereof "September 30, 1982".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 506. (a) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821) is amended—

(1) in paragraph (6), by inserting "trustee certificate," after "note," and by inserting ", or to facilitate a restructuring" after "improvement"; and

(2) by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(9) 'subsidiary' means any corporation in an unbroken chain of corporations beginning with a class I railroad, if each corporation other than the last corporation in the chain owns voting securities possessing more than 50 percent of the total combined voting power in one of the other corporations in the chain.".

(b) Section 510 of such Act (45 U.S.C. 830) is amended—

(1) by inserting ", obligations, or senior preferred stock" after "shares"; and

(2) by inserting "to the Federal Government" after "railroads".

(c) The table of contents for title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding at the end thereof the following new items:

"Sec. 518. Restructuring assistance.

"Sec. 519. Authorization of appropriations.".

The CHAIRMAN. For what purpose does the gentleman from Illinois (Mr. MADIGAN) rise?

Mr. MADIGAN. Mr. Chairman, I have an amendment at the desk.

Mr. ECKHARDT. Mr. Chairman, am I not entitled to recognition as a senior Member on the floor?

The CHAIRMAN. For what purpose does the gentleman from Texas (Mr. ECKHARDT) rise?

Mr. ECKHARDT. To offer an amendment, Mr. Chairman.

The CHAIRMAN. The Chair will state to the gentleman from Texas that the gentleman from Illinois (Mr. MADIGAN) was on his feet. The Chair heard the gentleman from Illinois first, and the has the prerogative of recognizing Members at his discretion. The Chair is attempting to be fair. I think the Chair has been fair in this instance.

Mr. ECKHARDT. The gentleman from Texas was on his feet also.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. MADIGAN).

AMENDMENT OFFERED BY MR. MADIGAN

Mr. MADIGAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MADIGAN: Page 164, strike out line 6 and all that follows through line 5 on page 166 and insert in lieu thereof the following:

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 502. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new sections:

"§ 10910. Railroad development

"(a)(1) Whenever the Interstate Commerce Commission finds—

"(A) (i) under section 10903 of this title, that the present or future public convenience or necessity require or permit the abandonment or discontinuance of a railroad line, or (ii) under subsection (b) of this section, that transportation provided over a particular line of railroad by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title is inadequate; and

"(B) that an application to purchase such line has been filed, in accordance with section 10911 of this title, by a financially responsible person (including a governmental authority) other than a class I or class II rail carrier, and that such person will continue to provide railroad transportation over such line,

the Commission shall require the rail carrier owning the line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

"(2) For purposes of this subsection—

"(A) the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater; and

"(B) a financially responsible person is a person who (i) is capable of paying the constitutional minimum value of the line proposed to be acquired, and (ii) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

"(b)(1) For the purposes of this section, transportation over a particular railroad line shall be deemed to be inadequate if the Commission determines, after a hearing that—

"(A) the transportation over such line is unacceptable to and for the majority of shippers who can transport traffic over such line;

"(B) the rail carrier operating such line is not making reasonable efforts, as judged on the basis of the performance of an efficient rail carrier providing quality transportation, to provide service sufficient to meet the needs of shippers who can transport traffic over such line;

"(C) the sale of such line will not impair the financial ability of the rail carrier providing transportation over such line to perform its obligations to the public;

"(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier providing transportation over such line; and

"(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such

"(2) In a proceeding under this subsection, the burden of proving that rail transportation over a particular line is inadequate is on the person filing the application to acquire such line. If the Commission finds under this subsection that rail transportation over a particular line is inadequate, the Commission shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(c) In the case of any line subject to sale Commission may, to allow the purchasing carrier a reasonable interchange with the selling carrier, require the selling carrier to provide to the acquiring carrier trackage rights to a reasonable interchange point or points as determined by the Commission. The Commission shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

"(d) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a line subject to a sale under this section.

"(e) Whenever a purchasing carrier under this section petitions the Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Commission shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable compensatory joint rates and divisions over such route.

"(f)(1) Any person operating a railroad line acquired under this section shall be exempt (A) from the provisions of sections 10901 and 10903 of this title and (B) except with respect to interstate traffic or participation in a joint rate from the provisions of chapter 107 of this title.

"(2) This subsection applies only to a railroad line acquired pursuant to this section and section 10911 of this title.

"(3) Nothing in this subsection shall preclude a person acquiring a railroad line under this section from applying for a certificate of public convenience and necessity under section 10901 or section 10903 of this title for such line.

"(g) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased line such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made as adjusted to reflect inflation.

"(h) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

"(i) Nothing in this section or section 10911 of this title shall be construed as affecting any obligation imposed or remedy available under subchapter I of chapter 111 of this title.

"§ 10911. Filing and procedure for acquiring railroad lines

"(a) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall, at least 30 days prior to filing an application under this section, notify the Commission, the rail carrier owning such line, and other interested parties that such person intends to file such application.

"(b) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall file an application with the Commission in accordance with this section. Such application shall include the following information:

"(1) The name and address of the person proposing to operate the line and, unless such operator is an existing rail carrier—

"(A) its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

"(B) the names and addresses of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

"(C) Sufficient information to establish its financial responsibility.

"(2) The exact dates of the period of operation which have been agreed upon by the operator and the financially responsible person that owns the line (including a copy of any written agreement between such parties).

"(3) A description of the transportation to be provided, including, where applicable, a description of—

"(A) the line over which transportation is to be provided;

"(B) all interline conections, including the names of the connecting railroads;

"(C) the nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

"(D) any preconditions which shippers must meet to receive service.

"(4) The name and address of any person subsidizing the operation of transportation over the line.

"(5) Sufficient information to establish the financial responsibility of any person proposing to subsidize such operation, and, if such person is a State, information establishing that it has authority to enter into the agreement to provide such subsidy.

"(c) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, the rail carrier owning such line shall promptly provide to such person—

"(1) the constitutional minimum purchase price for the line;

"(2) an estimate of the amount of funding necessary each year to keep the line in operation;

"(3) the rail carrier's most recent reports on the physical condition of the line; and

"(4) any other information that the Commission considers necessary to allow a potential offeror to calculate the constitutional minimum purchase price.

"(d)(1) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, such person shall also file a notice of intent to acquire, which shall include—

"(A) an accurate and understandable summary of such person's application and the reasons for proposing to acquire the line;

"(B) a statement indicating that any interested party is entitled to recommend to the Commission that it approve, deny, or take other action with respect to such application; and

"(C) a statement that other interested parties may also propose to acquire the line.

"(2) A financially responsible person that files an application to acquire a railroad line under section 10910 of this title shall—

"(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed acquisition;

"(B) post a copy of the notice in each terminal and station on each portion of the line proposed to be acquired;

"(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each portion of such line is located;

"(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) of the line during the 12 months preceding the filing of the application; and

"(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A) through (D) of this paragraph have been satisfied, and certifying that clauses (A) through (D) have been satisfied within the most recent 30 days prior to the date application is filed.

"(e)(1) Within 30 days after an application to acquire a line is filed under this section (other than a line described in section 10910(a)(1)(A)(i) of this title), any interested party may file with the Commission a protest of the sale of such line.

"(2) If protest is not filed within the 30-day period described in paragraph (1) of this subsection, and the Commission determines—

"(A) that, under section 10910(b) of this title, service over the line to be acquired is inadequate; and

"(B) that the application has been filed in accordance with this section and the financially responsible person filing the application will continue to provide rail transportation over such line,

the Commission shall, within 45 days after the date such application is filed, issue a certificate permitting the applicant to acquire the line.

"(2)(A) If a protest is filed within 30 days after the date an application to acquire a line is filed, the Commission shall, within 45 days after the date such application is filed, determine whether an investigation is needed to assist in determining the appropriate disposition to make of such application.

"(B) If the Commission determines that an investigation is not needed, the Commission shall, within 75 days after the date the application is filed, determine whether it is able to make the findings set forth in paragraph (1) of this subsection. If the Commission makes such findings, it shall, within 90 days after the date the application is filed, issue a certificate permitting the applicant to acquire such line within 120 days after such date.

"(C) If the Commission determines that an investigation is needed, it shall complete the investigation within 135 days after the date the application is filed, and render an initial decision within 165 days after such date.

"(D) The initial decision of the Commission under subparagraph (C) of this paragraph shall, at the end of the 30-day period beginning on the date it is rendered, become the final decision of the Commission, unless during such period the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall render a final decision within 255 days after the date the application was filed.

"(C) Whenever the Commission renders a final decision making the findings set forth in paragraph (1) of this subsection, the Commission shall, within 15 days after the date of such final decision, issue a certificate permitting the applicant to acquire the line within 75 days after such date.

"(f) The Commission shall give preference to any application filed by a shipper under this section to acquire a railroad line under section 10910 of this title.

"(g) Section 10505 of this title does not apply to transportation provided over a line of railroad acquired under this section and section 10910 of this title. The Commission shall not construe the issuance of a certificate under this section as grounds for granting an exemption under such section 10505.".

(c) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new items:

10910. Railroad development.
10911. Filing and procedure for acquiring railroad lines.

Page 173, immediately before the period on line 7, insert the following: ", except that no such funds shall be authorized for appropriations for the purchase or rehabilitation of a line of railroad unless such purchase or rehabilitation is consistent with the rail plan (as defined under section 5 of the Department of Transportation Act) of the State in which such line is located".

Page 173, after line 16, insert the following new section:

GOVERNMENT INCLUSION

SEC. 506. (a) Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this Act, is further amended by adding at the end thereof the following new section:

"GOVERNMENT INCLUSION

"SEC. 520. The Secretary of Transportation, in administering the provisions of this title and the Department of Transportation Act, may allocate financial assistance provided under section 511 and section 518 of this title and section 5(f)-(p) of the Department of Transportation Act to Government entities or private entities if the Secretary finds that—

"(1) rail shippers would be denied rail transportation over a rail line but for such assistance; or

"(2) service provided by a private rail carrier on a rail line is inadequate to or for a majority of rail shippers.".

Redesignate the following section accordingly.

Page 174, in the matter between lines 17 and 18, strike out the closing quotation marks and the following period after "appropriations" and insert below the item relating to section 519 the following new item:

"SEC. 520. GOVERNMENT INCLUSION.".

Page 98, after the item relating to section 505, insert:

Sec. 506. Government inclusion.

Redesignate the following item accordingly.

Mr. MADIGAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MADIGAN. Mr. Chairman, I rise in support of my feeder line amendment.

The branch lines in America today are in a state of perpetual decline. As existing lines continue to deteriorate, shippers either move of find alternative transportation modes. Once a line deteriorates, it is unlikely that good service will ever be resumed. Each year more and more of these transportation arteries are abandoned.

Under existing law, States may offer financial assistance to lines scheduled for abandonment. However, there is no requirement that the rail carrier must accept a reasonable offer of financial assistance to continue the service. Furthermore, if a State or shipper wants to insure good service by purchasing the line for rail purposes, the rail carrier is under no obligation to sell the line.

My amendment addresses the problems of deteriorating service on branch lines in several ways.

First, it provides a mechanism where a rail carrier must turn over a feeder line to a Government entity, short-line railroad, or a shipper group, for the constitutional minimum amount, if the line is scheduled for abandonment or if service upon a line is inadequate as determined by the Commission.

Second, it gives shippers the power to acquire the branch lines prior to the total deterioration of the service on such line.

Third, it provides incentives for the creation of short lines by giving them a special status under the act.

Fourth, short-line railroads may require connecting carriers to enter into compensatory joint rates. This means that all railroads participating in the joint rate shall at least recover their costs of providing that service.

The Interstate Commerce Commission has, by regulation, already exempted lines approved for abandonment by the Commission or a bankruptcy court from many Commission regulations if States provide financial assistance to these lines. My amendment extends certain exemptions to the person acquiring a line. Only exemptions authorized in the section may be granted. Moreover, my amendment will give preference to feeder lines proposed by shippers who are financially responsible and have applications in competition with governmental agencies.

This amendment, along with the authorization in the bill for financial assistance to feeder lines, will go a long way toward improving the deteriorating branch lines in America today.

I urge the adoption of this amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the chairman of the subcommittee, the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. Chairman, this provision is one of the really truly innovative new programs that is being incorporated into this legislation. I think it addresses the concerns that some have expressed with regard to the abandonments, and I think it is a very fine amendment. I am happy to support it.

Mr. MADIGAN. I thank the gentleman for his comments.

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the cosponsor of the amendment, the gentleman from California (Mr. ANDERSON).

Mr. ANDERSON of California. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of this amendment to section 502 of the Rail Act. Several months ago, upon reviewing the bill as reported from committee, I noticed a particular provision that would permit the de facto abandonment of rail lines without certificates of public convenience and necessity from the Interstate Commerce Commission.

Such de facto abandonments could be triggered by a railroad's unilateral decision to impose a surcharge on a line as permitted under section 301 of the bill.

In response to this problem, I had prepared an amendment which would strike that language in section 502 which I deemed offensive. And to help illustrate the problem to our colleagues, I obtained a map from the Department of Transportation that indicated those lines which could, without my amendment, become eligible for abandonment. In discussions and correspondence, I brought the problem to the attention of the White House, DOT, and the Committee on Interstate and Foreign Commerce.

As reported from committee, those rail lines directly serving the ports of Los Angeles and Long Beach, and nearly all lines serving other ports in California and the Nation, could have been eligible for de facto abandonment.

So, I am pleased that our able colleague from Illinois (Mr. MADIGAN) is introducing this amendment today. The amendment before us eliminates the de facto abandonment provision while maintaining other provisions from section 502 which the committee finds necessary.

De facto abandonment should be eliminated from the Rail Act. I, again, congratulate the gentleman from Illinois for introducing this amendment, and am pleased to sponsor and support its passage.

I recommend its adoption to all our colleagues.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for his assistance throughout this process, especially with regard to this amendment.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I want to compliment the gentleman for offering this amendment. I had intended to offer an amendment striking section 502, but I recognize that this amendment is superior to that approach. I particularly want to compliment the gentleman from California (Mr. ANDERSON) for leading in this fight.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. MADIGAN) has expired.

(On request of Mr. ALBOSTA and by unanimous consent, Mr. MADIGAN was allowed to proceed for 1 additional minute.)

Mr. ALBOSTA. Mr. Chairman, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Michigan.

Mr. ALBOSTA. Mr. Chairman, I, too, would like to compliment the gentleman from Illinois (Mr. MADIGAN). I think I can see some of the problems that I had with short-line railroads might be solved with the gentleman's amendment, or at least it certainly will help. I want to commend the gentleman. I think it is a real addition to this bill.

Mr. MADIGAN. I want to thank the gentleman from Michigan for his kind remarks.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. MADIGAN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WILLIAMS OF MONTANA

Mr. WILLIAMS of Montana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Williams of Montana: Page 173, after line 9, insert the following new section:

TRANSACTION ASSISTANCE

Sec. 505. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1)(B) of this subsection may be used to purchase for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

Redesignate the following sections accordingly.

Page 98, immediately after the item in the table of contents relating to section 504, insert the following new item:

Sec. 505. Transaction assistance.

Redesignate the following sections accordingly.

Mr. WILLIAMS of Montana (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. WILLIAMS of Montana. Mr. Chairman, over the past year and a half there have been two major efforts to maintain rail service over the Milwaukee System in Montana. While neither has succeeded, we intend to continue the effort. The loss of Milwaukee has left Montana at the mercy of a single rail carrier.

Because of the widespread concern about the effects of deregulation in Montana, this bill is an especially appropriate vehicle for my amendment, to help guarantee that competitive rail service may one day be reestablished in Montana.

The fiscal year 1980 supplemental appropriations bill contained $15 million of 4R section 505 funds for acquisition of Milwaukee lines. The Staggers-Rahall-Madigan substitute authorizes use of the $15 million. My amendment simply broadens that authorization so that these funds can also be used for railbanking purposes.

It has become apparent in these past months that nearly everyone, the State of Montana, New Milwaukee Lines and even the Milwaukee Road itself agree on one point—that someday a profitable, transcontinental railroad can be operated over the Milwaukee lines. The Milwaukee Road's own Booz, Allen, and Hamilton analysis of eight system configurations identified the Louisville-Transcontinental alternate as having not only the highest potential long-term net return on investment (NROI) but the second highest short-term NROI as well. The Milwaukee lines span a growing region whose abundant resources of food, timber, and particularly coal are in increasing demand worldwide. The State of Montana is fully committed to railbanking these lines if adequate funds are available. According to estimates by the Montana Department of Agriculture, a combination of the funds in this legislation and State funds would be adequate to railbank the Montana portion of the Milwaukee main line.

I urge the adoption of my amendment as a prudent, sound decision to help preserve this transportation corridor that in the not too distant future may once again become a vital link in our Nation's transportation network.

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Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Montana. I yield to the gentleman from New Jersey.

Mr. FLORIO. We have had an opportunity to review the gentleman's amendment. The gentleman's amendment is discretionary with regard to broadening the scope of the funds. Accordingly, I have no difficulty supporting it.

Mr. WILLIAMS of Montana. I appreciate the gentleman's support.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Montana (Mr. Williams).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GRAY

Mr. GRAY. Mr Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gray: Page 173, after line 16, insert the following new section:

ELECTRIFICATION LOAN GUARANTEES

Sec. 506. Section 211(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(1)) is amended—

(1) by inserting "or any other railroad" immediately after "The Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or any other railroad, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to achieve the goals of the national energy policy. In guaranteeing obligations pursuant to the preceding sentence, the Secretary may waive the requirements of section 511(g) of such Act."

Redesignate the following section accordingly.

Page 98, immediately below the item in the table of contents relating to section 506, insert the following new item:

Sec. 506. Electrification loan guarantees.

Redesignate the following item in the table of contents accordingly.

Mr. GRAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GRAY. Mr. Chairman, under the 3-R Act, the Regional Rail Reorganization Act, $200 million of loan guarantees were made available to Conrail for electrification of Conrail lines. It has become clear that it is not economical for Conrail to use those funds for electrification.

This amendment would achieve the same purpose as that intended by the original authorization of loan funds. It would help to achieve the goals of our national energy policy by reducing dependency on oil and encouraging the use of coal.

The amendment, which is also cosponsored by my colleague from Pennsylvania (Mr. Lederer), would allow the Secretary to guarantee loans to Conrail for capital improvement which would further national energy policy. We are all aware that we have vast coal deposits in the country. Even in the eastern part of the country, in the State of Pennsylvania, we have large reserves. Yet, we need a transportation system to move the coal and facilities to store it. We are improving our coal mining capacity in the East, and we must continue to improve our ability to transport and export coal. This amendment will give the Secretary of Transportation the authority to guarantee loans to Conrail and other carriers for the development of needed facilities and other capital improvements.

I would also point out that these are loan guarantees, not grants. These projects have the potential to earn significant revenues for all involved, earn a return more than sufficient to justify the loan.

The loan funds are made available at near prevailing rates, so the Federal Government is not subsidizing these projects. It is simply insuring that capital will be made available to undertake the projects.

We have a great coal reserve, not only in the eastern part of this country, but elsewhere. We must begin to use them. Energy independence can only be achieved if we use the resources we have.

In addition, if electrification projects are feasible, not only on Conrail, but on other carriers, this amendment would still allow other carriers and Conrail access to loan guarantees.

I urge support of the amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. GRAY. I yield to the gentleman from New Jersey.

Mr. FLORIO. I am in support of this amendment. I think it is a very important amendment and would urge the body to support the amendment as well.

● Mr. LEDERER. Mr. Chairman, I rise in support of the amendment.

Under the 3R Act (the Regional Rail Reorganization Act), $200 million of loan guarantees were made available to Conrail for the electrification of Conrail lines. At the time of this original legislation, it was believed that electrification was an economically feasible way to move large amounts of rail cargo. However, this has not been proven to have been a correct assessment. The expense of electrification of rail lines is now too expensive except in the case of passenger rail lines, as along the Northeast corridor.

The amendment I have offered would achieve the purpose intended by the

Original 3R authorization of guaranteed loan funds. This amendment would help to achieve the goals of our national energy policy by allowing Conrail and other railroads to apply for the guaranteed loan funds for capital improvements. And these improvements would further our national energy policy and help to reduce our dependence on oil by encouraging the mining and transportation of our coal from our Western States.

Even in the eastern part of the country, in my own State of Pennsylvania, we have vast coal resources. Yet, we need a transportation system to move that coal, and facilities to store it.

We are improving our coal mining capacity in the East, and we must continue to improve our ability to transport and export coal. This amendment will give the Secretary of Transportation the authority to guarantee loans to Conrail for the development of needed facilities and other capital improvements.

The States, cities, and ports involved can join with Conrail to create a transportation system that is capable of handling the coal which we mine. The city of Philadelphia is currently embarked on the development, with Conrail, the port, mining companies, workers, and related industries, of a port storage and shipping facility that would handle coal. This amendment would make such a project, and the future development of Port Richmond, Camden, and other coal storage and handling facilities, easier through the guaranteeing of capital improvement loans.

I would also point out that these are loan guarantees, not grants. These projects have the potential to earn significant revenues for all involved, and earn a return more than sufficient to justify the loan. The loan funds are made available to near the prevailing rate, so the Federel Government is not subsidizing these projects, it is simply insuring that capital will be available to undertake the projects.

This amendment would make loan guarantee funds available to all railroads, and would allow Conrail to use the funds for any capital improvements which will help achieve the goals of national energy policy. In guaranteeing obligations for such capital improvements, the Secretary may waive the requirements of a section of the 511 loan program, which under the regulations, establishes conditions under which loans will be made. This waiver authority is necessary to insure the loan funds can be used for facilities such as coal loading and storage facilities.

Opponents of this amendment raise three points:

The amendment is likely to help only Camden;

The amendment will jeopardize the opening of a coal facility at Port Richmond, and the amendment will undermine efforts to find financing for the electrification of the Harrisburg-Pittsburgh rail line.

In response to the first point, Camden is not the only facility that will benefit. In fact, all of the coal facility projects being discussed at present were initiated and are supported by Pennsylvania and local business and labor groups, and are located in Pennsylvania, as well as New Jersey.

In response to the second point, we believe that the Port Richmond facility will be constructed, as the total tonnage possible through Camden is considerably less than the potential output of coal from the Pennsylvania coal mining regions. In fact, facilities in addition to Port Richmond will be necessary in order to handle Pennsylvania's future coal production. Inasmuch as financing must be arranged, this amendment will allow for the application of guaranteed loan funds for all these projects.

In response to the third point, we believe that the electrification and energy-related capital improvement projects all have great merit. The largest facility under consideration at the Port of Philadelphia is estimated to cost $80 million, only a part of which would be eligible for financing by Conrail, thus leaving a considerable pool of the $200 million of federally guaranteed loan funds available as a base or cornerstone for an electrification project. The Harrisburg-Pittsburgh electrification project is estimated to cost at least $770 million, only a part of which can come from the $200 million loan pool.

This Pennsylvania amendment only states that the kind of projects eligible to apply for guaranteed loan funds should include energy-related capital improvements, as well as electrification projects. Conrail, and other railroads, must still decide whether to apply for such loan guarantees and the Secretary of Transportation must also decide whether the recommended projects comply with our Nation's energy policy.

We have great coal reserves in the western part of this country, and we must begin to use them. Energy independence can result only if we use the resources we have.

In addition, if electrification projects are feasible, not only on Conrail but on other carriers, this amendment would allow other carriers access to the loan guarantees.

I urge your support of the amendment.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GRAY).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ALBOSTA

Mr. ALBOSTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ALBOSTA: Page 166, after line 5 insert the following new section:

RAIL BANK

SEC. 503. (a) Section 10906 of title 49, United States Code, is amended to read as follows:

"§ 10906. Rail banking

"(a) When the Commission finds under section 10903 of this title that the present or future public convenience or necessity requires or permits abandonment or discontinuance of rail properties and such properties are not disposed of under sections 10910 and 10911 of this title, the Secretary shall either (1) enter into appropriate arrangements to acquire property rights, other than fee simple title, with respect to such properties to ensure their future availability for railroad purposes, including, but not limited to, the leasing of the property or the acquisition of easements, or (2) if no arrangements described under clause (1) are feasible, purchase such properties. Any property rights or properties acquired under the preceding sentence shall be included in the Railroad Land Bank established under section 503(b) of the Harley O. Staggers Rail Act of 1980. In the event that sufficient funds are not available in any fiscal year to acquire all such property rights or properties, the Secretary shall determine which property rights or poperties will be acquired for inclusion in the Railroad Land Bank on the basis of the factors set forth in paragraph (3)(A) of such section 503(b). In no event shall the amount paid for the acquisition of such property rights or properties exceed the net liquidation value, as established by the Commission.

"(b) As used in this section and in section 503(b) of the Harley O. Staggers Rail Act of 1980, the term 'rail property' shall not include railroad cars, engines, or other rolling stock or property other than real property, fixtures thereto, and any appurtenant rights.".

(b)(1) The Secretary of Transportation shall, within 90 days after the effective date of this Act, establish within the Department of Transportation a Railroad Land Bank for purposes of holding, preserving, and facilitating the return to service of abandoned rail properties. The Secretary shall include in such Railroad Land Bank all rail properties and property rights acquired under section 10906 of title 49, United States Code (hereinafter in this subsection referred to as "rail properties").

(2) The Secretary shall encourage the use of rail properties included in the Railroad Land Bank established under this subsection to the extent that such use does not substantially impair the future availability of such properties for railroad purposes. Such use shall include, but need not be limited to, bicycle paths, power transmission lines, and forms of mass transportation and communication that do not require removal of substantially sound railroad track. The Secretary may require reasonable fees for the use of such rail properties.

(3) The Secretary shall, at the end of the four-year period beginning on the effective date of this Act and at the end of each subsequent four-year period, submit a report to the Congress containing—

(A) his recommendations with respect to which rail properties acquired for the Railroad Land Bank during the preceding four years should continue to be included in such Bank because—

(i) the benefits afforded by retaining such properties in such Bank are significantly greater than the costs of such retention; or

(ii) the availability of such properties for future rail service is important to energy production and conservation, the national defense, or agricultural production; and

(B) a listing of any rail properties acquired for the Railroad Land Bank during the preceding four years which are not recommended for retention under subparagraph (A).

In making the determination described under subparagraph (A), the Secretary shall take into consideration, to such extent as he determines to be appropriate, the factors used by the States in the development of their rail services plans under section 1654(j) of title 49, United States Code.

(4) If, during the ninety-day period beginning on the date of the submission of any report to the Congress under paragraph (3),

either House of the Congress passes a resolution—

(A) disapproving any recommendation for retention of rail property made in such report, such property shall be subject to disposition under paragraph (5); or

(B) disapproving any recommendation for the sale of rail property made in such report, such property shall not be subject to disposition under paragraph (5).

(5) (A) After submission of each report to the Congress under paragraph (3), the Secretary shall, after the end of the ninety-day period referred to in paragraph (4), provide for the sale of—

(i) any rail properties which are listed in the report, pursuant to paragraph (3) (B), as properties not recommended for retention in the Railroad Land Bank, unless the recommendation to dispose of such property was disapproved by a resolution of either House of the Congress under paragraph (4); and

(ii) any rail properties recommended for retention in the report, pursuant to paragraph (3) (A), but subject to disposition under this paragraph as the result of a resolution of either House of the Congress under paragraph (4) disapproving of the Secretary's recommendations.

Such property shall, in accordance with any other applicable requirements of law not inconsistent with the provisions of this paragraph and after adequate public notice thereof, be sold by the Secretary to any person submitting an offer to purchase of the highest amount, subject to subparagraph (B).

(B) In disposing of property under this paragraph the Secretary shall give priority to any reasonable offer to purchase submitted by any person who indicates an intention to use such property for the purpose of providing rail service. If more than one person submits an offer to purchase such property for such purpose at an amount determined by the Secretary to be reasonable, the Secretary shall sell the property to the person intending to use the property for rail service who submits such an offer to purchase for an amount higher than any amounts offered by other persons intending to use the property for such purposes. If the case of any sale made under this subparagraph, the property shall be sold subject to the condition that the property shall be used for the purpose of providing rail service during a period of 20 years beginning on the date of the sale of the property under this subparagraph and that before the property may be sold or used for any other purpose during such period, the owner thereof shall first provide the Secretary with the right to purchase such property at its net liquidated value.

(5) There are authorized to be appropriated for fiscal years 1981, 1982, 1983, and 1984 not to exceed $50,000,000 per year for purposes of carrying out the provisions of this subsection and for the acquisition of rail properties under section 10906 of title 49, United States Code.

Mr. ALBOSTA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. ALBOSTA. Mr. Chairman, my amendment would create a Federal Railroad Land Bank. This bank would preserve rights-of-way, track, and other real property that would otherwise be abandoned.

This amendment does not change the current process, and it does not change the many improvements in the process contained in the Rail Act we are considering today: It simply adds one final stop before we abandon, forever, rights-of-way that can never be replaced.

My amendment would require the Secretary of Transportation to evaluate lines that are about to be abandoned. The potential costs and benefits of keeping them on hand would be weighed along with their significance for agriculture, energy production and conservation, and the national defense. The Secretary would then acquire whatever rights are necessary to preserve the best real property, not the rolling stock, that the bank can afford. After 4 years we would be able to judge what to keep and what not to keep for the long run based on a study and report by the Secretary to the Congress, and based on the 4 years of experience with the new process provided by this legislation. At that point, the Secretary could sell the properties that are not to be retained, but either House of Congress could veto the sale. Either House could force a sale of unneeded property, as well.

In 1976, a Railroad Land Bank was established, but it was abandoned 2 years later when the States were given a greater role in rail planning. We now give over $80 million a year to the States for rail planning and rehabilitation.

Although States are allowed to bank rail lines, most spend what funds they have to preserve operating lines, and not every State has the authority to purchase these properties.

Now that we are proposing to embark on a major deregulation, it is essential that we not go ahead with mass abandonments when there is no way to protect national interests and future needs.

There are those who say that the Rail Act will not result in increased abandonment. I say to them that if that is so, then they should not be worried about a Railroad Land Bank that will not have to acquire much property in the long run. If only worthless rights-of-way are to be abandoned, then we will not have to pay much to begin with, and we certainly will not have to keep it long. If, on the other hand, there is a value to the Nation now, or in the foreseeable future, in holding that rights-of-way, then we will be very glad we had the means to hold it.

In the meantime, the Secretary will encourage the use of these properties in ways that preserve their character and allow them to be returned to service. Transmission lines for electricity, telephones, and newer technologies can be allowed; bicycle paths, hiking trails, or even occasional rail traffic might be allowed. The fees afforded by some of these uses would help pay for the Railroad Land Bank.

Furthermore, when the decision to dispose of the properties, or return them to service is made, the bank can recover the costs of acquiring them in the first place, so the net costs of the rail bank will be very small.

The cost that is far too high for this country to pay is the cost of building railroads or even acquiring rights-of-way where old lines have been abandoned and built over. Los Angeles once had miles of rail that are now highways—as little as 20 years ago they thought they would never need rail lines, but now that they need rail transportation, they expect that they may have to pay as much as $100 million a mile for subways. This is a more dramatic example than some, but the principle is still the same: We should cross off these tracks with caution, for we may never be able to bring them back, even in an emergency.

The Rail Act is like major surgery; we are allowing railroads to cut off limbs to save the trunk. Yet we could someday have the need and the ability to go back and save those limbs. Why destroy them without at least waiting to see whether we truly need each limb, or whether we can save the health of the American railroad system and bring it back to a point where its arteries are full of life again, and the trunk can support the limbs again?

COSTS OF RAIL LINES

Over the past 10 years, the average number of miles abandoned each year has been about 2,100.

Recent prices for rail lines have varied widely but average at $40,000 per mile.

Therefore, if we paid the market price, and if the number of abandonments did not exceed the average by much, it would cost about $84 million per year to buy up all the abandoned lines each year.

However, the costs will not be quite the same for the Rail Bank:

There probably will be more miles abandoned in the next few years than in the past due to easier abandonment;

But the bank is authorized to pay only "net liquidation value" which is less than fair market value. Therefore, the cost per mile will be less—but we do not know how much less; and

Furthermore, these lines will be less valuable at the moment than the lines that have been purchased recently, so that will make the average cost lower as well.

So, we are not asking for enough money to buy all lines abandoned. We are asking for funds to purchase only a substantial portion of the lines expected to be abandoned if we ask for $50 million a year.

In fact, all the lines that are subject to present or future potential abandonment proceedings total 18,438 miles (October 1979). At the average market price, they would cost a total of $737 million.

That boils down to the fact that we could buy all the track to be abandoned in the country for the price of 10 miles of urban subway. We are asking for only a small part of that.

I am asking the chairman if he has changed his mind. Has the gentleman a position on this particular amendment?

Mr. FLORIO. No. We will ask for time when the gentleman concludes.

Mr. ALBOSTA. I thank the gentleman.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I sympathize with the gentleman's concern about abandonments, but I think we have more than fully addressed that problem in this legislation, as well as in previous legislation. We have a multitude of programs, branch line assistance programs, and a rail banking provision in the Amtrak Act. We have the new programs of the gentleman from Illinois (Mr. MADIGAN) and the gentleman from California (Mr. ANDERSON) dealing with the opportunities to stop inappropriate abandonments.

What the gentleman is saying is that we should direct DOT to acquire all those lines that may be abandoned and he authorizes some $50 million a year for the next 4 years.

I just think the amendment is inappropriate and reluctantly have to oppose it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. ALBOSTA).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ALBOSTA. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 532]

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Carr
Carter
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Jacobs
Jeffries
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Roe
Rosenthal
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

☐ 1910

The CHAIRMAN. Three hundred and thirty-nine Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Michigan (Mr. ALBOSTA) for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will advise Members that 5 minutes will be allowed to record the vote.

The vote was taken by electronic device, and there were—ayes 45, noes 310, answered "present" 1, not voting 76, as follows:

[Roll No. 533]

AYES—45

Abdnor
Albosta
Andrews, N.Dak.
Baldus
Bedell
Blanchard
Bonior
Brodhead
Carr
Clinger
Conyers
Daschle
Davis, Mich.
Dingell
Eckhardt
Erdahl
Ferraro
Ford, Mich.
Gonzalez
Gore
Harkin
Hutchinson
Kastenmeier
Kildee
Kogovsek
Leath, Tex.
Long, Md.
Maguire
Marlenee
Murphy, Pa.
Oberstar
Obey
Roe
Sabo
Simon
Stangeland
Tauke
Traxler
Vento
Volkmer
Weiss
Williams, Mont.
Wirth
Wolpe
Young, Mo.

NOES—310

Akaka
Alexander
Anderson, Calif.
Andrews, N.C.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bailey
Barnard
Barnes
Bauman
Beard, Tenn.
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Boland
Bolling
Boner
Bonker
Bouquard
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Calif.
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Butler
Byron
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dodd
Donnelly
Dornan
Downey
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fisher
Flippo
Florio
Foley
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Goodling
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kemp
Kostmayer
LaFalce
Lagomarsino
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Markey
Marks
Martin
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Rosenthal

Roth
Rousselot
Roybal
Rudd
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Taylor
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Walgren
Walker
Wampler
Watkins
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wolff
Wright
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Zablocki

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—76

Addabbo
Ambro
Anderson, Ill.
Atkinson
Beard, R.I.
Bingham
Boggs
Bowen
Brown, Ohio
Burton, Phillip
Campbell
Carney
Chisholm
Cotter
D'Amours
Davis, S.C.
Dixon
Dougherty
Duncan, Oreg.
Evans, Del.
Fish
Fithian
Ford, Tenn.
Garcia
Giaimo
Gilman
Grassley
Harsha
Hinson
Holtzman
Hopkins
Howard
Ichord
Ireland
Jeffords
Jenrette
Kelly
Kindness
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Lott
Lowry
Marriott
Mathis
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Nedzi
Nolan
Pepper
Peyser
Quayle
Richmond
Roberts
Rose
Rostenkowski
Royer
Russo
Scheuer
St Germain
Steed
Tauzin
Waxman
Wilson, Bob
Wilson, C. H.
Wydler
Young, Alaska
Zeferetti

Mr. DICKS and Mr. BONKER changed their votes from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title V? If not, the Clerk will designate title VI.

Title VI reads as follows:

TITLE VI—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 601. Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1) (A) Effective on the effective date of the Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversey affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective on the effective date of the Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee for service actually performed on a straight-time basis basis (which shall be construed to include vacation and holiday allowances but to exclude monthly compensation guarantees). during the 12 calendar months immediately preceding January 1, 1978, and divided by 12. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid 75 per centum of the difference between his straight-time earnings, if any, and the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective on the effective date of the Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such date of enactment, but subject to a maximum amount equal to one-twelfth of the average annual earnings per employee, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount, whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been forced, assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such employee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(4) Effective on the effective date of the Rail Act of 1980 a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such date of enactment. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.".

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 602. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service on such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought.

The entitlement of an employee to an allowance shall be approved or denied within 150 days (unless otherwise agreed upon by the employee, or his representative, and the employer) after the claim therefor is made.".

TRAINING AND TRANSFER

SEC. 603. (a) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 755(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(D) When no bona fide vacancies exist in a marine craft or class on the Corporation's system, or in the craft or class of an employee of Penn Truck Lines, Incorporated, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this subsection, such training shall be provided by the Corporation at no cost to the employee.".

(b) Section 505(1)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(1)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 604. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of this title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacement operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Rail Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by or in connection with the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

TECHNICAL AMENDMENTS

SEC. 605. (a) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C 701 et seq.) is amended to read as follows:

"SEC. 509. Payment, audit, and report.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) by amending subsection (d)(2) to read as follows:

"(2) three Government members, who shall be the Secretary, the Chairman of the Commission, and the Secretary of the Treasury, acting directly or at any time through their respective designated representatives and, in the case of the Chairman, through the Vice Chairman of the Commission; and";

(2) in the first sentence of subsection (i), by striking out "Deputy Secretaries" and inserting in lieu thereof "designated representatives"; and

(3) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

EFFECT ON OTHER LAWS

SEC. 606. Nothing in this title is intended to affect any law, regulation, court order, or obligation relating to equal employment opportunity.

☐ 1920

AMENDMENTS OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FLORIO: Page 175, line 8, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 177, line 9, strike out "effective on" and insert in lieu thereof "effective the first day of the first month commencing after".

Page 177, strike out lines 12 through 18 and insert in lieu thereof the following: "is defined as the total compensation received by such employee during the 12 months immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of".

Page 177, strike out lines 22 and 23 and insert in lieu thereof the following: "employee shall be paid the difference between his straight-time earnings, if any, and 80 percent of the".

Page 178, line 14, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 181, line 11, strike out "Effective on" and insert in lieu thereof "Effective the first day of the first month commencing after".

Page 184, line 8, strike out the closing quotation marks and the following period.

Page 184, after line 8, insert the following new paragraph:

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974 during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employer shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.

Page 185, immediately before the period on line 25, insert the following: ", except that such 3-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title".

Page 186, strike out lines 1 through 4 and insert in lieu thereof the following: "Unless otherwise agreed upon by the employee or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 150 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

Strike out title II of the bill, as inserted by the amendment offered by Mr. Eckhardt, redesignate the following titles accordingly, and make appropriate changes in the table of contents.

Strike out title II of the bill, as inserted amendment offered by Mr. Staggers, redesignate section 332 as section 331, and make appropriate changes in the table of contents.

Page 190, after line 6, insert the following new section:

RAILROAD HIRING

SEC. 605. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

Redesignate sections 605 and 606 as sections 606 and 607, respectively.

Page 190, line 8, insert "(1)" immediately after "(a)".

Page 190, after line 10, insert the following new paragraph:

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"Sec. 510. Railroad hiring.".

Page 98, insert after the item in the table of contents relating to section 604 the following new item:

Sec. 605. Railroad hiring.

Redesignate the following items in the table of contents for title VI accordingly.

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, could the gentleman from New Jersey tell us what are his plans for the evening so that the rest of us can make our plans? I understand there are six amendments still pending.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. I do yield to the gentleman from New Jersey.

Mr. FLORIO. I can tell the gentleman what my understanding is for the proceedings for the rest of the evening. I know of six amendments, all of which are acceptable to the committee. There may be other amendments, but those are the amendments I know of. It is my hope we can proceed and be done within an hour.

Mr. BAUMAN. Further reserving the right to object, Mr. Chairman, I yield to the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. BAUMAN. Yes.

Mr. LEVITAS. Mr. Chairman, I have filed amendment at the desk relating to a matter in title VIII. I believe I do not know whether the statement of the gentleman from New Jersey, that amendments are acceptable, applies to that amendment as well.

Mr. FLORIO. My remarks did not include the gentleman's amendment to title VIII. Therefore, there would be seven amendments remaining.

Mr. BAUMAN. Further reserving the

right to object, it appears to me if you have seven amendments pending, one of which is going to be controversial and a likelihood of rollcalls on amendments, we may be here until 9 or 10 o'clock so the gentleman is saying we will stay and finish the bill tonight?

Mr. FLORIO. It is my understanding the Speaker has suggested that we finish this bill this evening. I will be happy to go forward as rapidly as possible in order that we may conclude as soon as possible.

Mr. BAUMAN. I thank the gentleman and I withdraw my reservation of objection.

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I will be happy to yield if I may first ask the chairman to state the parliamentary situation.

The CHAIRMAN. The amendments are considered as read and will be considered en bloc.

Mr. FLORIO. I will be happy to yield to the gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, I thank the gentleman for yielding. I ask the gentleman to yield for the purpose of entering into a colloquy with the gentleman from California (Mr. ANDERSON).

The committee has already adopted what seems to be a related amendment in the Staggers-Rahall compromise to the one which you offered to title I of the bill. In explaining your first amendment, you referred to a report by the Subcommittee on Transportation and Commerce regarding the constitutional obligations of rail carriers having the power of eminent domain. In fact, several pages of that Committee Print 95-56 appear in the RECORD of July 2 at pages 18281-18283. Mr. Chairman, those pages indicate opposition to coal pipelines and a view that contracts for the carriage of coal and common carrier status are somehow mutually exclusive. Does the gentleman from California cite the provision in support of those contentions?

Mr. ANDERSON of California. To answer the gentleman, Mr. Chairman, I must state that I did not cite that report of the Subcommittee on Transportation and Commerce either in opposition to eminent domain powers for coal pipelines or in support of the contention that common carriers cannot employ ratemaking with contractual features. I cited that report for the effective manner in which it sets forth the constitutional dimensions of common carrier obligations and the Supreme Court decisions, in particular. I certainly do not agree with its characterization of coal pipeline transportation.

No court has ever arrived at those conclusions regarding some inherent conflict between common carrier status and contract ratemaking. In all these matters, I believe the Congress must maintain the common carrier obligation, including the prohibition against unreasonable discrimination. Furthermore, I believe that a common carrier railroad may and should offer contracts for transportation services. Section 10741 of title 49 does not prohibit contract ratemaking and neither does the constitutionally imposed common carrier obligations.

Simply stated, contract ratemaking, like all common carrier ratemaking, must not unreasonably discriminate. However, in no way does contract ratemaking inherently violate the Interstate Commerce Act—any arcane reading of this body of law to the contrary notwithstanding. The Interstate Commerce Commission permits contract ratemaking by railroads today and section 10741 is the law of the land today.

Mr. BREAUX. Mr. Chairman, I thank the gentleman for his explanation, and I thank the chairman of the subcommittee for yielding.

Mr. MADIGAN. Mr. Chairman, will the gentleman from New Jersey yield?

Mr. FLORIO. I will be happy to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review the amendments on this side. They are technical amendments, and we would urge that the committee support the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from New Jersey (Mr. FLORIO).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. MATSUI

Mr. MATSUI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MATSUI: Page 190, after line 18, insert the following new paragraph:

(1) in subsection (d), by striking out "11 individuals" and inserting in lieu thereof "12 individuals";

Page 190, line 19, strike out "(1)" and insert in lieu thereof "(2)".

Page 190, line 21, strike out "three" and insert in lieu thereof "four".

Page 190, line 22, strike out "and".

Page 190, line 23, immediately after "Treasury," insert "and the Attorney General of the United States,".

Page 191, line 3, strike out "(2)" and insert in lieu thereof "(3)".

Page 191, line 6, strike out "(3)" and insert in lieu thereof "(4)".

Page 192, after line 4, insert the following:

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "if such State" and all that follows through "service".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 606. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $28,500,000. Sum appropriated under this subsection are authorized to remain available until expended.".

Redesignate the following section accordingly.

Page 98, immediately below the item in the table of contents relating to section 605, insert the following new item:

Sec. 606. USRA authorization of appropriations.

Redesignate the following item in the table of contents for title VI accordingly.

Mr. MATSUI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MATSUI. Mr. Chairman, this amendment authorizes $28.5 million for the expenses of the U.S. Railway Association for fiscal year 1981.

The amendment contains an authorization identical to the substance of H.R. 7320, which was reported out of the Commerce Committee unanimously. The amendment is germane to this bill, and will allow the House to dispense with dealing with this as a separate bill.

The amendment also includes the Attorney General among the USRA Board of Directors, and makes a minor change concerning commuter rail.

All Members are aware of the extraordinarily tight schedule facing us for the remainder of the year. Instead of considering this as a separate piece of legislation, I believe it is in the best interests of all to consider it here.

The amount authorized is the same as last year and $300,000 less than that requested by the President in his budget.

I urge the adoption of the amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the gentleman's suggestion as to how to proceed in this matter is appropriate. We are expediting the calendar of the House and I, therefore, support the bill.

Mr. MADIGAN. Will the gentleman yield, Mr. Chairman?

Mr. MATSUI. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I thank the gentleman for yielding and I urge that the committee accept the man from California (Mr. MATSUI).

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. MATSUI).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate title VII.

Title VII reads as follows:

TITLE VII—SUPPLEMENTAL TRANSACTIONS

SUPPLEMENTAL TRANSACTIONS

SEC. 701. (a) (1) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended to read as follows:

"SUPPLEMENTAL TRANSACTIONS

"SEC. 305. (a) PROPOSALS.—(1) If the Secretary determines upon his own initiative or upon the request of a State, a railroad, a shipper, or a group of shippers, that further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of financially self-sustaining rail service in the region, the Secretary shall develop a proposal or proposals for such supplemental transactions as are necessary.

"(2) The Secretary shall develop a proposal under this section only if he determines that—

"(A) restructuring of rail properties in the region through a supplemental transaction or transactions would preserve and enhance rail service in the region;

"(B) any proposed transferee rail carrier or carriers under such a transaction or transactions would be financially and operationally capable of assuming the operations and service obligations of the transferor carrier on a financially self-sustaining basis; and

"(C) if the proposed transaction involves the transfer of property of the Corporation, such transaction will either—

"(i) not have any adverse effect on the Corporation's financial and operating performance; or

"(ii) result in a net financial benefit to the Federal Government, if such transaction is to be consummated prior to—

"(I) any redemption of certificates of value or the determination of the base value of such certificates of value pursuant to section 306(c) of this Act; or

"(II) the consummation of any agreement, between the transferors of properties transferred to the Corporation pursuant to section 303(b) of this Act and the United States, with respect to the obligations of the United States to such transferors arising out of such transfers.

The determination described in subparagraph (C) of this paragraph shall not be required if the Secretary finds that the insolvency of the Corporation is imminent.

"(3) Any commitment by the Finance Committee to forgive, cancel, or return to the Corporation pursuant to section 216(e) of this Act securities or obligations of the Corporation held by the Association may be considered by the Secretary in determining, under paragraph (2)(C) of this subsection, whether a proposed transfer will have an adverse effect on the Corporation's financial or operating performance or result in a net financial benefit to the Federal Government. For purposes of this paragraph, any securities or obligations of the Corporation that are forgiven, canceled, or returned shall be valued at their present value at the time of the transaction involved.

"(4) Each proposal developed by the Secretary under this section shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the manner in which such terms are consistent with this section, and such other information incidental thereto as the Secretary may prescribe. Each proposal shall be submitted to the Association and the Commission, and the proposal, with a summary, shall be published in the Federal Register.

"(5) If the Secretary fails to develop a proposal for a transaction under this section in response to the request of a State, the Secretary shall, within 90 days after the request is made, publish in the Federal Register the reasons why the Secretary finds such proposal should not be developed

"(6)(A) Each proposed supplemental transaction requiring the transfer of properties from the Corporation shall provide that the Corporation shall receive as compensation—

"(i) not less than the minimum value of such properties which the Corporation would be entitled to receive, at the time such transaction, under constitutional principles, taking into account the common carrier obligation under subtitle IV of title 49, United States Code; or

"(ii) if such transaction is to be consummated prior to an event described in paragraph (2)(C)(i) of this subsection, not less than the difference between the value of the net financial benefit of such transaction to the Federal Government and the minimum value of such properties which the Corporation would be entitled to receive, at the time of such transaction, under constitutional principles, taking into account the common carrier obligation under subtitle IV of title 49, United States Code.

"(B) Any forgiveness, cancellation, or return of securities or obligations of the Corporation pursuant to paragraph (3) of this subsection shall be considered as compensation for purposes of this paragraph.

"(b) EVALUATION BY THE ASSOCIATION.—The Association shall analyze each proposal containing one or more supplemental transactions developed under subsection (a) of this section, and shall, within 120 days after transmittal of the proposal to the Association, submit its comments to the Secretary. Such comments shall include the Association's analysis of the effects of the proposal on the Corporation. The Association shall afford the Corporation the opportunity to comment, and shall give due consideration to its comments.

"(c) REVIEW BY THE COMMISSION.—Within 120 days after receipt of a proposal from the Secretary, the Commission shall submit its comments to the Secretary with respect to the proposal. The Commission shall afford interested parties the opportunity to comment, and shall include in its comments to the Secretary a summary of the comments made by the interested parties. The Commission may recommend such conditions with respect to such supplemental transaction as it considers to be in the public interest.

"(d) DETERMINATION BY THE SECRETARY.—(1) Within 90 days after receipts of comments from the Association and the Commission, the Secretary may make such modifications as he considers necessary after reviewing the comments of the Association and the Commission, and shall publish the proposal, with any modifications, in the Federal Register.

"(2) If any proposed transferor (other than the Corporation) or transferee fails to notify the Secretary before the Secretary petitions the special court that any proposal supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceeding shall be conducted with respect to such proposed supplemental transaction.

"(3) The Secretary shall determine, within 30 days after making any modifications in a proposal or within 120 days after receipt of comments from the Association and the Commission, whether to petition the special court for the approval of such proposal. If the Secretary determines not to petition the special court, he shall publish his reasons therefor in the Federal Register.

"(e) SPECIAL COURT PROCEEDINGS.—(1)(A) Within 180 days after the filing of a petition under subsection (d) of this section, the special court shall decide, after a hearing (i) whether the proposed supplemental transaction is consistent with subsection (a)(2) of this section, and (ii) whether the compensation to be received complies with subsection (a)(6) of this section.

"(B) If the special court determines that a proposed supplemental transaction is consistent with subsection (a)(2) of this section and complies with subsection (a)(6) of this section, the court shall issue such order as may be necessary to direct the Corporation to consummate such transaction.

"(C) If the special court determines that the compensation to be received in a proposed supplemental transaction does not comply with subsection (a)(6) of this section, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Secretary may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. Within 90 days after the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification complies with subsection (a)(6) of this section.

"(2) The Corporation is authorized to petition the special court and to be represented with respect to any proposed supplemental transaction contained in any proposal developed by the Secretary which involves the properties of the Corporation.

"(3) In proceedings under this subsection, the special court is authorized to exercise the powers of a judge of a United States district court with respect to such proceedings and such powers shall include those of a reorganization court.

"(4) Any proposal or evaluation by the Secretary, the Association, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

"(5) Notwithstanding any other provision of this Act, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

"(6) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewed in the same manner as provided in section 209(e)(3) of this Act.

"(f) SUBSEQUENT TRANSFERS.—Whenever a rail carrier that acquires property of the Corporation pursuant to a transaction under this section proposes, within 5 years after the date of such transaction, to sell such rail properties, the Federal Government shall have the right of first refusal to purchase such properties at a price equal to the compensation received by the Corporation in such transaction, as adjusted to reflect inflation.

"(g) EXPEDITED PROPOSALS.—Within 180 days after the effective date of the Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. The Secretary shall develop such a proposal if he determines that the conditions of subsection (a)(2) of this section can be met with respect to such transaction.".

(2) The item relating to section 305 in the table of contents of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"Sec. 305. Supplemental transactions.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702(19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act,".

(c) The second sentence of section 508(a)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 778(a)(1)) is amended by striking out "purchase agreements pursuant to section 206(d)(4)" and inserting in lieu thereof "supplemental transactions under section 305".

AMENDMENT OFFERED BY MR. DODD

Mr. **DODD**. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DODD: Page 192, strike out line 9 and all that follows through line 5 on page 201 and insert in lieu thereof the following:

TITLE VII—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Sec. 701. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof of the following new subsection:

"(g) Expedited Proposals.—(1) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(8) of this Act, the Secretary shall develop such a proposal and may, after providing the Association and the Commission an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section 508 and in effect on the date of enactment of the Harley O. Staggers Rail Act of 1980.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act,".

Page 98, strike out the items relating to title VII and section 701 and insert in lieu thereof the following new items:

TITLE VII—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Sec. 701. Expedited supplemental transaction proposals.

Mr. DODD (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. DODD. Mr. Chairman, at the outset, I would like to extend my congratulations to my colleague, the gentleman from Connecticut (Mr. Moffett) for his assistance on this amendment in the committee. I would also like to thank the chairman of the subcommittee and the ranking minority member for their assistance in working out the language of this amendment.

Briefly, the amendment does two things. It strikes title VII of the committee bill and replaces that with a process that establishes a process which permits the Secretary of Transportation to initiate and consider the feasibility of transferring Conrail property in the States of Connecticut and Rhode Island to another railroad. Since title VII was adopted by the committee there have been serious concerns raised by everyone involved including Conrail, the Department of Transportation, the USRA, and labor organizations.

The major problems are all very complex and involve the constitutional rights of Conrail shareholders, the rights of Conrail as a corporation, the rights of employees of Conrail, and the rights of an acquiring railroad. Despite these problems the committee recognizes the need for a new title VII.

Mr. Chairman, the amendment that I am offering would, as the current provision in title VII, provide "permits the Secretary of Transportation to initiate an expedited supplemental transaction proposal for Connecticut and Rhode Island."

This new transfer process would apply only to the two States of Connecticut and Rhode Island.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. DODD. I will be glad to yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, we have had an opportunity to review this amendment. We urge the committee to support the Dodd amendment.

Mr. DODD. Mr. Chairman, I thank the gentleman for his comment.

Mr. Chairman, I would add this is only for a limited period of time. It would run 180 days and no longer than that. The criteria that must be established by the acquiring railroad are rather stringent, including their own financial feasibility among other things.

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Mr. MOFFETT. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to my colleague from Connecticut.

Mr. MOFFETT. Mr. Chairman, I congratulate the gentleman on his amendment.

The hour is late and the Members are understandably weary, but this is a very important amendment.

Unlike some areas of the country, we in Connecticut do not have large, successful, private railroads. We are basically in the hands of a bankrupt-bound Conrail, a Conrail that has needed a rather incredible Federal subsidy in the past, and from all projections will need still more if some action is not taken.

We do, however, have a small railroad, the Providence and Worcester, and other regional railroads that have indicated an interest in taking over Conrail lines. Various assurances have been made that these lines will be given a fair chance to make it under the control of these private carriers.

Mr. Chairman, I have more than a little skepticism about the feasibility of running railroads in our area on a strictly profitable basis. We have handicaps that other regions do not have: We have shorter distances between stops. It is difficult for our rail service to be as efficient as in other areas. We are also at a disadvantage whenever a narrow definition of profitability is used to gage the feasibility of various lines. I have faced this in my own district with the Waterbury-to-Torrington line, long in line for Conrail abandonment, and the Berkshire Line, long since abandoned.

It remains to be seen whether the P. & W. or other private lines can provide the kind of service we need. But it is clear that this Congress has grown increasingly impatient with more and more subsidies for Conrail in our region. There is little assurance that funding at appropriate and necessary levels would continue.

So we are really in the position here of being forced to try something new. Deregulation is nearly a reality. We have to face that. This amendment merely gives us a better chance under deregulation to continue service in our area. That is why I offered it in the committee. That is why my colleague (Mr. Dodd) offers it here tonight.

Mr. RATCHFORD. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to my colleague.

Mr. RATCHFORD. Mr. Chairman, it is a pleasure to rise today to support the Dodd amendment to the Rail Act of 1980. I am pleased to note that the Dodd amendment has a wide range of support from both the Connecticut and Rhode Island delegations. This amendment will insure that any transfer of lines will be made to rail companies that are financially, and operationally, capable of assuming, and most importantly, continuing existing freight services in Connecticut and Rhode Island. In addition, the Dodd amendment makes sure that the transfer of these rail lines in Connecticut and Rhode Island will provide for a financially self-sustaining rail service.

I need not remind my colleagues from the Northeast region of the importance of freight transportation services, which are presently provided by Conrail. The Dodd amendment to the Rail Act of 1980 will assure the businesses in these States that they will not lose a vital freight transportation mode. I welcome the incorporation of the Dodd amendment in the Rail Act which will permit the purchase, and operation, of the rail freight system in Connecticut and Rhode Island.

In the last 20 years, New England businesses have been deserted by numerous rail companies that could not provide services to freight shippers. This unfortunate trend may continue because Conrail may have no alternative but to abandon a number of rail lines in Connecticut and Rhode Island. Only the adoption of the Dodd amendment will assure the operation of a freight system in New England which has a direct link to markets throughout the Nation.

I am pleased to know that the small companies in my district, which are dependent on freight transportation, will have an alternative to the disruption of rail services. A study recently sponsored by the Federal Railroad Administration, and the U.S. Railway Association, entitled "Alternatives to Conrail" indicated that an independent rail company could provide the same services to this region that Conrail does today. The Dodd amendment will assure the sound transfer of Conrail's lines to an independent rail company that will not abandon small shippers.

The Providence & Worcester Rail Co. (P. & W.) has indicated a willingness to purchase and operate Conrail lines in Connecticut and Rhode Island for a period of at least 5 years without any Federal or State subsidies. The P. & W. has already proven its economic strength, purchasing several bankrupt rail lines, and securing an increasing share of the region's rail market after only seven years of independent operation. This company has pledged to provide services to any users currently threatened with discontinuation of rail services. Today, the P. & W. owns all its own facilities and trackage and remains debt free. I applaud P. & W.'s initiative in this important area, and welcome its interest in purchasing the rail lines in Connecticut and Rhode Island.

I am most pleased to note that the approval of the Dodd amendment to the Rail Act of 1980 will assure the employees of Conrail in Connecticut and Rhode Island that their jobs will not be lost. Congressman Dodd's amendment assures Conrail's employees that their labor contracts will reach full agreement before the transfer of any rail lines. The inclusion of this important section of the Dodd amendment will make sure that employees of Conrail will not have to go to the unemployment lines because of labor disputes.

Today, the House of Representatives has the opportunity to enact the Rail Act of 1980, and thus remove the restrictions that have kept this industry from becoming profitable. If the House fails to follow the initiative of the Senate and pass this important bill, I fear that this country will be in jeopardy of losing freight services.

The Rail Act of 1980 is an important step in assuring the continued viability of our rail transportation system: A system that offers businesses, and consumers, a maximum of efficiency and dependability at a minimum cost. The Rail Act of 1980 is crucial to the survival of key industries in this country which have grown as the railroads have grown, and which will be threatened by the continued inhibitions to growth overregulation have imposed on the railroads.

It is in this context, Mr. Chairman, that I join my colleagues and urge the passage of the Rail Act of 1980. This Nation must have a fully utilized freight transportation system. We cannot abandon a system that was the backbone of our economy for more than a century. The railroads must be deregulated, as the Congress has so wisely done for the airlines and trucking industries before them. I strongly urge my colleagues in the House to join the Senate and pass this historic initiative. If we believe in the record and the promise of efficient rail transportation in our country, we can send no clearer signal of support for that system than an overwhelming vote for the Rail Act of 1980.

Mr. DODD. I thank the gentleman for his comments.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. DODD. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, this is a very valuable amendment. I accept the amendment.

Mr. DODD. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. Dodd).

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate title VIII.

Title VIII reads as follows:

TITLE VIII—MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

Sec. 801. (a) Except as provided in subsection (b) of this section, the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980.

(b) Sections 601, 602, 603, 605, and 606 of this Act shall take effect on the date of enactment of this Act.

EFFECT ON PENDING MATTERS

Sec. 802. Any application, action, or proceeding pending before the Secretary of Transportation, the Interstate Commerce Commission, or any court on the effective date of this Act shall be adjudicated or determined as if this Act had not been enacted.

CONSTRUCTION OF AMENDMENTS

Sec. 803. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it would ordinarily be at this point when a substitute would be offered to the entire bill. Frankly, I had thought that one should be offered, particularly to take care of two questions: First, a reasonable compromise on the title II threshold for ICC jurisdiction; and second, a reasonable approach to the question of surcharges and their relation to short-line railroads.

But, there is no question that this bill and the Senate bill are far enough apart to permit a resolution of these questions in conference. Indeed, I doubt that the mood of this body is sufficiently reflective at this time to provide much reasonable compromise in the area. Therefore, I shall not offer my substitute.

At the same time, I would like to say that the bill is a very imperfect bill in its present stage, and I would hope that this body would consider very seriously trying to remedy some of those imperfections from here on out, as this body has remedied some of them over the period of time since this bill has laid fallow. I am glad to say that perhaps I have influenced the committee somewhat in its movement away from a jurisdictional threshold of 200 percent of variable cost that would have absolutely denied captive shippers an audience before the ICC. I think that much more needs to be done. There is more than one position in conference, and I hope that fact would be considered as we move forward on this bill.

AMENDMENT OFFERED BY MR. SHUSTER

Mr. SHUSTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Shuster: At the end of the bill add a new section:

Sec. 804. Notwithstanding any other provision of law, those rail corporations which receive direct Federal monetary support, shall be considered a Federal agency for the sole purpose of Department of the Army Regulations 735–5, Paragraph 1–16. Said Rail Corporations may enter into a contract under the authority granted by this section only when they determine that the safety of the public so requires.

Mr. SHUSTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, I do so only because I just discovered while walking into the cloakroom for a minute that one of the amendments that was whizzed through here added $28 million for the U.S. Railway Administration authorization, which is by most measures extraneous to this endeavor.

I would like to know what the rest of the amendments are tonight, if that is the way we are operating. I do not want to in any way cause concern to my colleague from Pennsylvania, but could he explain what his amendment does before we dispense with the reading?

Mr. SHUSTER. I will be happy to explain it.

Mr. BAUMAN. I yield to the gentleman.

Mr. SHUSTER. Mr. Chairman, this amendment would make a railroad eligible to borrow excess equipment from the Department of the Army. Now, the affected community must pay a rental fee of the fair market value, which is too high for most local communities. The amendment would set up a two-step process for obtaining the needed equipment (bridge, for example). The first would be an application by the railroad to the Army for a contract to borrow the bridge; this would occur only after the railroad has determined that public safety required such action. After the railroad and the Army have concluded negotiations, the railroad would enter into a contract with the local community to pay for the transportation of the bridge to the site and for routine maintenance.

Mr. Chairman, it should be emphasized that this amendment originated with

Congressman LYLE WILLIAMS of Ohio. Congressman WILLIAMS did the work on this and asked me to offer the amendment because of my involvement in transportation matters in the House. While the language of the amendment is general, it is specifically aimed at solving a problem in the city of Niles, Ohio, where the West Park Avenue Bridge going over Conrail tracks was damaged and traffic is now being rerouted through a public park. This creates a hazardous and dangerous condition for the many children in the area.

Congressman WILLIAMS, although only a freshman Member, has aggressively worked to solve this problem and I am pleased to support his efforts on behalf of the people of Trumbull County, Ohio.

Mr. BAUMAN. I thank the gentleman very much for the explanation.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the distinguished chairman of the subcommittee.

Mr. FLORIO. Mr. Chairman, this is an amendment that I support.

Mr. SHUSTER. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the distinguished ranking minority member.

Mr. MADIGAN. Mr. Chairman, I thank the gentleman for yielding, and I also support the amendment.

Mr. SHUSTER. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. SHUSTER).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. PANETTA

Mr. PANETTA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PANETTA: Page 201, after line 25, add the following new section:

EFFECT OF MERGERS ON COMPETITION

SEC. 804. (a) Section 11344(b) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

Mr. PANETTA. Mr. Chairman, with the support of the American Farm Bureau, I am offering an amendment to the Rail Act of 1980 to specifically direct the Interstate Commerce Commission to consider the question of rail competition whenever making a determination of a railroad merger transaction.

The escalation of rail mergers now taking place in the industry is causing concern among our Nation's farmers and ranchers as well as other rail shippers. The Interstate Commerce Commission is facing decisions on several mergers that would have the effect of eliminating or nearly eliminating rail competition within entire sections of the country. I think it is important, therefore, that the ICC consider the question of competition as a regular part of the process of evaluating whether to allow mergers.

My amendment is not intended to in any way tie the hands of the ICC on the question of mergers. There is no question but that in many areas of the country we have too many lines and that restructuring is needed to build and sustain a viable rail system.

The Chairman of the ICC, Mr. Darius Gaskins, has made it clear that competition plays an important role in the Commission's decisionmaking on railroad mergers. This is as it should be. My amendment would insure that this remains the case.

I propose to add a new paragraph to section 11344(b) of the Interstate Commerce Act, the section dealing with consolidation, merger, and acquisition of control: General procedures and conditions of approval. The new paragraph would require the ICC to consider, as a part of its assessment of the public interest, the effect a proposed merger would have on competition between and among rail carriers within a region.

I urge your support for my amendment.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, certainly competition is the essence of what this bill is about, and the gentleman's concerns are legitimate. We accept the amendment.

Mr. PANETTA. I thank the gentleman.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and for his earlier coming over to explain the amendment. We had an opportunity to review it, and would urge that it be supported.

Mr. PANETTA. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. PANETTA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Chairman, I offer and amendment.

The Clerk read as follows:

Amendment offered by Mr. FLORIO: Page 201, after line 25, insert the following new section:

STUDY OF ALASKA RAILROAD RATES

SEC. 805. Within 6 months after the effective date of this Act, the Interstate Commerce Commission shall commence and complete a study to determine whether the rates charged by the Alaska Railroad pursuant to ICC-ARR Freight Tariffs 4108 and 4109 (as supplemented by supplements 1-4) would, if such rates had been entered into after the effective date of this Act, have constituted a violation of section 10701a(c)(1) of title 49, United States Code, as amended by this Act.

Page 99, after the item in the table of contents relating to section 803, insert the following new section:

Sec. 905. Study of Alaska railroad rates.

Mr. FLORIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. BAUMAN. Mr. Chairman, reserving the right to object, is this the Alaska amendment?

Mr. FLORIO. Correct.

Mr. BAUMAN. I thank the gentleman, and withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FLORIO. Mr. Chairman, this amendment is simply a study. I think it is a noncontroversial one. There have been allegations made that the Alaska Railroad is engaged in predatory pricing practices. This amendment directs the ICC to investigate such allegations and report back to the Congress within 6 months.

Mr. MADIGAN. Mr. Chairman, will the gentleman yield?

Mr. FLORIO. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Chairman, I want to thank the gentleman for yielding and concur that it is merely a study and, as the gentleman has said, noncontroversial. I would hope that the committee would support the amendment.

Mr. FLORIO. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. FLORIO).

The amendment was agreed to.

Mr. ALBOSTA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had an amendment—at least a study; I do not know if it needs to be put into an amendment, but of course my Rail Bank amendment failed. I think we obviously did not do our homework well enough or people would have been informed better of it, but what I would like to propose, and the chairman of the subcommittee has agreed with me, is that we should get a study by the Transportation Department as to whether or not these lines should be abandoned and have a report back to Congress in 4 years.

I would like to offer that as an amendment, and get the chairman to agree to it.

The CHAIRMAN. Does the gentleman have an amendment at the desk?

Mr. MADIGAN. Mr. Chairman, who has the time?

The CHAIRMAN. The gentleman from Michigan is recognized.

Mr. MADIGAN. For what?

The CHAIRMAN. The gentleman is recognized to strike the last word.

Mr. MADIGAN. Would the gentleman from Michigan yield to the gentleman from Illinois?

Mr. ALBOSTA. Yes, I yield.

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Mr. MADIGAN. Mr. Chairman, I wonder if the gentleman will agree on the essentials, and if the gentleman from New Jersey (Mr. FLORIO) would concur with me, that we might best resolve this matter by simply having the gentleman accept the commitment from the two of us that we will have hearings of the subcommittee on the subject in which the gentleman is interested.

Mr. FLORIO. Mr. Chairman, will the gentleman yield further?

Mr. ALBOSTA. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, the whole concept of rail banking is one that this committee has concerned itself with. As I indicated before, the rail banking concept has been enacted into law in certain pieces of legislation that Congress has previously passed.

The suggestion of the gentleman from Illinois (Mr. Madigan), is a very good one. It is a good way of our expediting the business tonight and providing the gentleman with the assurance that this committee will have oversight hearings and will continue to follow the operation of this legislation and see how it impacts on the question of abandonments.

As I represented on a couple of occasions, we think we have done what should be done to be concerned about that area. I will represent that we will go further and make a point of investigating how this law affects abandonments and then formulate some decisions as to whether further rail banking is required.

Mr. ALBOSTA. Mr. Chairman, if the gentleman would allow me to reply, I do not mean to question the fact that he did agree to this study prior to my running a vote on the rail banking amendment that I proposed. I do not think that we should create hard feelings here on the floor because of that. I do not disagree that the word of the committee members on the majority side and the minority side is good.

But it is not only hearings that we want. It is a study that we want to have done by the Department of Transportation. I think that can be requested in the bill or just in our discussions, and that could take place, because I think they have the authority to do it as long as they know it is to be done, if the subcommittee chairman would agree and if the minority side would agree.

Mr. Chairman, I withdraw the amendment. I can see that the Members here want to vote, and I withdraw the amendment.

The CHAIRMAN. The Chair will state that the amendment to which the gentleman referred was not offered.

Are there further amendments to title VIII?

Mr. LEVITAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have an amendment which was published in the Congressional Record of yesterday which would provide an opportunity for the Congress to review the regulations issued by the Interstate Commerce Commission with respect to rail carriers and, where appropriate in the judgment of the Congress, veto those regulations.

The reason or a reason for this amendment is that an examination of the legislation before us indicated to me that the Interstate Commerce Commission is being given rather significant powers with respect to legislating the issues that will be resolved under this legislation. For example, section 204 of the legislation provides that the ICC can issues rules to define the term, "agriculture or other bulk commodities," in relation to entering into contracts.

Section 306(c)(1) of the legislation provides that the ICC shall establish conditions and terms of compensation for switching agreements and joint service agreements.

Another provision, section 402, provides that the ICC shall insure that rules promulgated under the section will deal with accounting standards which are the basis for all of the rates which are made.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I am going to ask the gentleman, is he going to propose an amendment or is he not?

Mr. LEVITAS. I am probably going to propose an amendment.

Mr. JOHN L. BURTON. Could we expedite matters and save time by doing it, then?

Mr. LEVITAS. Mr. Chairman, I am trying to give an opportunity for some other Members to come to the floor so that maybe we can resolve this issue.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I will be happy to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman has also not mentioned another extremely important provision in this bill, and that is that not only the power of ratemaking may be taken away from the States but also powers outside the area of ratemaking, an authority that the ICC has never before dared to exercise.

I merely submit that this is a very important change in the bill.

Mr. LEVITAS. Mr. Chairman, the gentleman from Texas (Mr. Eckhardt) is correct. In fact, I took occasion to cite some of the areas where the ICC presently does not have the authority to regulate and which have traditionally been the subject of State regulation.

For example, the ICC under section 212(a)(c) would be able to establish, through rulemaking, rules relating to guidelines for authorized business solicitation and entertainment expenses. That is in addition to regulations which would deal with abandonment of railroad lines, company uniform systems or accounts, discontinuance or change of operations, rail service continuence of subsidies, and the like.

I will be quite candid about this. Frankly, I would prefer that this matter be dealt with in an arena or in a forum outside this legislation. I think the opportunity for dealing with this problem would easily be resolved, for example, if this House had an opportunity to consider and vote on the Regulation Reform Act which has been languishing in the Committee on the Judiciary since May of this year rather than dealing with it in this particular piece of legislation.

But, Mr. Chairman, I do believe that it is important that the Congress ultimately have the say-so about which regulations become law and which are put in place by unelected bureaucrats.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Chairman, I thank the gentleman from Georgia for yielding.

Mr. Chairman, I have read the gentleman's amendment. The language in the Levitas amendment is similar to other amendments which we vote for in every piece of legislation that comes down the pike.

Mr. LEVITAS. Or that comes down the track.

Mr. BAUMAN. Excuse me. In this case, that is correct. In every piece of legislation that comes down the track, as in this one, we provide for a congressional review of proposed rules.

I hope that the gentleman from Georgia (Mr. Levitas) will offer the amendment, and that it will be embraced by the proponents of the bill as part of this complex legislation, because certainly we do want to review these regulations.

So, Mr. Chairman, if the gentleman from Georgia will yield further, I note that the gentleman from California (Mr. John L. Burton) has urged that the gentleman offer the amendment, and I also urge that he offer it.

Mr. LEVITAS. Mr. Chairman, I thank the gentleman for his observations and for his ardent support.

AMENDMENT OFFERED BY MR. LEVITAS

Mr. LEVITAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Levitas: At the end of the bill, insert the following new section:

CONGRESSIONAL REVIEW OF PROPOSED RULES

Sec. 806. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b), the rule shall not become effective if—

(1) within 90 calendar days of continuous session of Congress after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the   dealing with the matter of   , which rule was transmitted to Congress on   .", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous

session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous session of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

Mr. JOHN L. BURTON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. FLORIO. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk concluded the reading of the amendment.

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Mr. LEVITAS. Mr. Chairman, as the gentleman from Maryland has stated, this is the amendment which has been offered on a number of occasions and which has been accepted by this body overwhelmingly. I have explained the purpose for the offering of this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. FLORIO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I reluctantly rise in opposition because of the hour; I enthusiastically rise because of the merits. This is certainly the opposite direction that we should be going in. We are trying to deregulate. We want the marketplace to make the determinations in the rail industry. All of the same arguments that prevailed when we dealt with trucking deregulation when this amendment was rejected by this House apply equally here.

We are not talking about a system that is going to provide for regulations that result in greater Government regulation. What we are trying to say is that we want to get out of the regulatory framework. We want the railroads and the shippers to make decisions based upon marketplace conditions. This is the direct opposite way we want to go.

Accordingly, I would ask for those who believe in the free enterprise system, those who believe in the marketplace, to reject this so that we can go forward with true deregulation legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. LEVITAS).

The amendment was agreed to.

● Mr. DINGELL. Mr. Chairman, I wish to commend and thank my colleague from New Jersey (Mr. FLORIO) for including in the contract provisions of the bill a section which will insure that existing contracts have the same force and effect as the bill provides for new contracts entered in accordance with its terms. I refer to subsection (i) to new section 10713. This subsection dispels any doubt about the standing and enforceability of previously entered rate contracts, particularly those which were entered before the ICC announced its 1978 policy favoring contracts between railroads and shippers.

The electric utility serving the people of the Greater Detroit area has such a contract with the railroad which, under its terms, will carry the 170 million tons of western coal still to move under a 26-year take-or-pay coal purchase contract running through the year 2001.

In prescribing the maximum reasonable rate that Burlington Northern Railroad could charge Detroit Edison for Montana Coal shipments, the ICC, in March, relied upon the rate stipulated in a so-called letter of understanding between the two parties. In subsequent action, in the Superior Coal case, the ICC refused to grant Burlington Northern authority to impose an outrageous 41-percent increase in excess of the stipulated agreement in the letter of understanding. Burlington Northern attempted to implement this policy after Detroit Edison had spent millions of dollars in the development of support facilities which effectively committed it to the Burlington Northern-carried western coal. Detroit Edison made these commitments on the strength of Burlington Northern's previous rate quotations and signed its 26-year coal contract in Burlington Northern's own offices.

The provision I support was designed to preserve rights related to preexisting rate agreements whether or not such agreements were previously enforceable. It gives to such contracts the same standing and enforceability as if they were negotiated and signed after the contract provisions of the bill were enacted into law. But it also preserves the legitimate rights of the railroads by guaranteeing that they will be able to challenging the existence of a previously entered lawful contract.

This amendment was not intended to worsen the existing situation of any railroad, but only to preserve the status quo ante insofar as it concerns the level of rates lawfully maintainable hereafter where rates in effect when the bill is passed reflect those stipulated in an existing agreement. The provision accomplishes this end and I again compliment the gentleman's wisdom for its inclusion in the bill.●

● Mr. ANDERSON of California. Mr. Chairman, after many weeks and months of work, the House today will shortly be completing its work on H.R. 7235, the Rail Act of 1980. This legislation has been frequently referred to as the "railroad deregulation bill" and that would also certainly be an apt title for it. The bill is really all about deregulating the railroad industry, by allowing its companies increased flexibility to help meet public needs, and in establishing a rate structure to determine the cost to the public for rail service.

The railroad industry today is in deep trouble. In the 96th Congress alone, we have seen the demise of two great railroads; the Milwaukee and the Rock Island. And I do not think there is one of us here who is not sick and tired of subsidizing Conrail. Clearly, something must be done, because railroads play a vital role—and let us make no mistake about that—it is an absolutely vital role, in the transportation of cargo in our Nation. Rail lines provide a key link in the tying together of the continental United States. They must be preserved.

It is interesting. In these past few months that I have been actively working on the bill, nonrail parties whose interests have not always coincided with those of the railroads, have all agreed that our rail industry must be allowed to exist. It cannot be permitted to strangle and die in a mass of Federal regulations. Everyone agrees that when a railroad dies, nobody benefits.

As you know, I have been working hard to try and protect the interests of our Nation's ports in this legislation. The ports of Long Beach and Los Angeles, and ports throughout California and the Nation, all had grave concerns about the effects that this legislation would have on their wellbeing. And this concerned me, because just as our Nation must also maintain a strong port industry.

And anything Congress would do to help the rails but damage the ports needs to be closely examined and evaluated. My evaluation of the situation indicated that our ports and our Nation could not afford the enactment of the rail bill with the so-called 208(f) section pertaining to discrimination intact.

So, I offered an amendment on the House floor to delete that provision. Unfortunately, my amendment was defeated. But now, I am pleased to say, the bill we will soon be voting on includes language which does address the problem my amendment would have solved.

I have worked very closely with the California Association of Port Authorities, and they approve of this language. It does not go as far as they might have liked, but it does meet their needs. It does coincide with their "bottom-line" position.

I know that there is no unanimity among the ports nationally on this matter. I make no claims to speak on behalf of the Congressional Port Caucus or the port industry in general. But I will make the claim that the bill which is before us now is considerably improved over the one we were looking at a month ago. It is a fact that this bill would have been made stronger still with the passage of the Eckhardt amendment, but that amendment failed.

This legislation was strengthened by the adoption of an amendment I offered to title 1 of the bill, reaffirming the preeminence of the Constitution in the application and implementation of railroad deregulation. Article I, section 9, clause 6 of the Constitution begins, "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another." When interpreting the intent of this legislation years from now, courts will look at the instructions we have given them in this amendment when deciding on matters such as the port discrimination issue which I have already mentioned.

Mr. Chairman, this bill has also been strengthened by our adoption earlier today of our Illinois colleague's (Mr. Madigan) amendment eliminating that language in section 502 which would have permitted the de facto abandonment of certain rail lines under specified conditions. Those rail lines which might have been eligible for this de facto abandonment included all the lines directly serving the ports which I represent, as well as most other ports around the country. This was a crucial amendment, and one which I was pleased to help sponsor and support.

So, with these changes now made in the bill, we must ask ourselves, "Is our Nation better off if this bill passes in its present form, or if it fails?" On an issue so complex, the answer to this question does not come easily. But that answer, when we really study the issue, is affirmative.

Our Nation needs a healthy rail system. Our port industry depends on a healthy rail system. This legislation is no panacea. It will not assure all that its sponsors purport. I think that, with or without its passage, in a decade there will be far fewer railroads in existence than there are today. We will continue to see mergers, we will continue to see bankruptcies and failures.

But the passage of H.R. 7235 should help minimize these failures. And, as I have said, it does help assure the legitimate interests of many of our Nation's ports.

I do not want to disparage those port leaders who might not agree with my assessment of the situation. I do simply want to point out to them that there are many other port officials who believe that ports, with our hard work, are adequately protected, and that with this protection, we must now get on with the business of passing the Rail Act of 1980.

Mr. Chairman, 2 months ago, I had serious problems with this bill. Despite my strong belief in the need to deregulate transportation industries in this country, and the role I played in successfully helping deregulate the air and trucking industries, I was hesitant to support this bill.

But through our work with the California Association of Port Authorities, and those who initially supported this bill, I feel that the bill before us today is a stronger one. Despite the fact that the Eckhardt amendment did not pass, it is now legislation which is worthy of our support.●

The **CHAIRMAN**. Are there further amendments to title VIII? Are there further amendments to the bill? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The **CHAIRMAN**. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Brown of California) having assumed the chair, Mr. AuCoin, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7235) to reform the economic regulations of railroads, and for other purposes, pursuant to House Resolution 716, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The **SPEAKER** pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the Committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The **SPEAKER** pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The **SPEAKER** pro tempore. The question is on the passage of the bill.

Mr. **FLORIO**. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 337, nays 20 answered "present" 1, not voting 74, as follows:

[Roll No. 534]

YEAS—337

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
AuCoin
Badham
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Broomfield
Brown, Calif.
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Carr
Cavanaugh
Chappell
Cheney
Clausen
Clay
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
Erdahl
Erlenborn
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Goodling
Gore
Gradison
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hillis
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Leath, Tex.
Lee
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Rodino
Roe
Rosenthal
Roth
Rousselot
Rudd
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Zablocki

NAYS—20

Andrews, N. Dak.
Brooks
Dingell
Eckhardt
English
Frenzel
Gonzalez
Hightower
Holland
Hutchinson
Kazen
Marlenee
Roberts
Stangeland
Traxler
Vanik
Watkins
Weiss
Williams, Mont.
Young, Mo.

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—74

Addabbo
Ambro
Anderson, Ill.
Andrews, N.C.
Atkinson
Beard, R.I.
Boggs
Brown, Ohio
Buchanan
Campbell
Carney
Carter
Chisholm
Cotter
D'Amours
Dixon
Dodd
Duncan, Oreg.
Evans, Del.
Fish
Ford, Tenn.
Garcia
Giaimo
Gilman
Grassley
Harsha
Hefner
Hinson
Holtzman
Hopkins
Howard
Ichord
Ireland
Jeffords
Jenrette
Kelly
Kramer
Latta
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lent
Lowry
Marriott
Mattox
Mollohan
Moorhead, Pa.
Murphy, N.Y.
Myers, Pa.
Nolan
O'Brien
Pepper
Peyser
Quayle
Richmond
Rose
Rostenkowski
Roybal
Royer
Russo
Santini
Scheuer
Sebelius
St Germain
Steed
Tauzin
Waxman
White
Wilson, Bob
Wilson, C. H.
Young, Alaska
Zeferetti

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The Clerk announced the following pairs:

Mr. Addabbo with Mr. Young of Alaska.

Mrs. Boggs with Mr. Kramer.

Mr. Ambro with Mr. Latta.

Mr. D'Amours with Mr. Brown of Ohio.

Mr. Zeferetti with Mr. Fish.

Mr. Jenrette with Mr. Kelly.

Mr. Tauzin with Mr. Grassley.

Mr. Rostenkowski with Mr. O'Brien.

Mr. Roybal with Mr. Sebelius.

Ms. Holtzman with Mr. Lent.

Mrs. Chisholm with Mr. Royer.

Mr. Giaimo with Mr. Quayle.

Mr. White with Mr. Leach of Iowa.

Mr. Lehman with Mr. Marriott.

Mr. Leach of Louisiana with Mr. Buchanan.

Mr. Mollohan with Mr. Carney.

Mr. Scheuer with Mr. Evans of Delaware.

Mr. Moorhead of Pennsylvania with Mr. Hopkins.

Mr. Richmond with Mr. Harsha.

Mr. Murphy of New York with Mr. Jeffords.

Mr. Ichord with Mr. Campbell.

Mr. Hefner with Mr. Carter.

Mr. Mattox with Mr. Gilman.

Mr. Pepper with Mr. Hinson.

Mr. Lederer with Mr. Myers of Pennsylvania.

Mr. Waxman with Mr. Peyser.

Mr. Dodd with Mr. Russo.

Mr. Atkinson with Mr. Santini.

Mr. Howard with Mr. Steed.

Mr. Lowry with Mr. Ireland.

Mr. Cotter with Mr. Garcia.

Mr. Andrews of North Carolina with Mr. Ford of Tennessee.

Mr. Beard of Rhode Island with Mr. Dixon.

Mr. Nolan with Mr. Rose.

Mr. Duncan of Oregon with Mr. Charles H. Wilson of California.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE TECHNICAL AND CONFORMING CORRECTIONS IN THE ENGROSSMENT OF HOUSE AMENDMENT TO S. 1946, RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that, in the engrossment of the House amendment to the Senate bill S. 1946, the Clerk be authorized to correct section numbers, punctuation, and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the House bill, H.R. 7235.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7235.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

RAILROAD TRANSPORTATION POLICY ACT OF 1980

Mr. FLORIO. Mr. Speaker, pursuant to the provisions of House Resolution 716, I call up from the Speaker's table the Senate bill (S. 1946) to reform the economic regulation of railroads, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FLORIO moves to strike out all after the enacting clause of the Senate bill, S. 1946, and to insert in lieu thereof the provisions of the bill, H.R. 7235, as passed, as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Harley O. Staggers Rail Act of 1980".

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Goals.

TITLE I—RAIL TRANSPORTATION POLICY

Sec. 101. Rail transportation policy.

TITLE II—RAILROAD INTER-CARRIER PRACTICES

Sec. 201. Compensatory joint rate relief.
Sec. 202. Expedited division of revenues proceedings.
Sec. 203. Regulation of railroad rates.
Sec. 204. Determination of market dominance.
Sec. 205. Zone of rate flexibility.
Sec. 206. Rate regulation proceedings and study.
Sec. 207. Inflation-based rate increases.
Sec. 208. Investigation and suspension of rates.
Sec. 209. Contracts.
Sec. 210. Demand sensitive rates.
Sec. 211. Phaseout of capital incentive rates.
Sec. 212. Permissive limited liability rates.
Sec. 213. Rate discrimination.
Sec. 214. Exemption.
Sec. 215. Intrastate rates.
Sec. 216. Customer solicitation expenses.
Sec. 217. Efficient marketing.
Sec. 218. Rate bureaus.
Sec. 219. Long and short haul transportation.
Sec. 220. Railroad entry.
Sec. 221. Service during periods of peak demand.
Sec. 222. Reciprocal switching.
Sec. 223. Car service compensation.
Sec. 224. Car service orders for exigent circumstances.
Sec. 225. Employee protection.
Sec. 226. Safe railroad reinvestment requirements.
Sec. 227. Rock Island and Milwaukee Railroad amendments.
Sec. 228. Loan guarantees.
Sec. 229. Amendment to the Regional Rail Reorganization Act of 1973.
Sec. 230. Savings provisions.
Sec. 231. Rail Technology and Shipper Needs Board; other shipper assistance.

TITLE III—RAILROAD COST DETERMINATIONS

Sec. 301. Uniform accounting system.
Sec. 302. Railroad cost accounting.
Sec. 303. Civil penalties for violations of accounting standards provisions.

TITLE IV—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISTANCE

Sec. 401. Coordination of Federal assistance.
Sec. 402. Feeder railroad development program.
Sec. 403. Restructuring assistance.
Sec. 404. Authorization of appropriations.
Sec. 405. Transaction assistance.
Sec. 406. Extension of redeemable preference share financing.
Sec. 407. Electrification loan guarantees.
Sec. 408. Government inclusion.
Sec. 409. Technical and conforming amendments.

TITLE V—CONRAIL TITLE V LABOR PROTECTION

Sec. 501. Monthly displacement allowance.
Sec. 502. Duration of monthly displacement allowance.
Sec. 503. Training and transfer.
Sec. 504. Payment, audit, and report.
Sec. 505. Railroad hiring.
Sec. 506. Technical amendments.
Sec. 507. USRA authorization of appropriations.
Sec. 508. Effect on other laws.

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

Sec. 601. Expedited supplemental transaction proposals.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Effective dates.
Sec. 702. Effect on pending matters.
Sec. 703. Construction of amendments.
Sec. 704.
Sec. 705. Effect of mergers on competition.
Sec. 706. Study of Alaska Railroad rates.
Sec. 707. Congressional review of proposed rules.

FINDINGS

SEC. 2. The Congress hereby finds that—

(1) historically, railroads were the essential factor in the national transportation system;

(2) the enactment of the Interstate Commerce Act was essential to prevent an abuse of monopoly power over captive traffic by railroads and to establish and maintain a national railroad network;

(3) today, while much transportation within the United States is competitive, some amount of traffic is alleged to be captive to rail;

(4) many of the Government regulations affecting railroads have become unnecessary and inefficient;

(5) nearly two-thirds of the Nation's intercity freight is transported by modes of transportation other than railroads;

(6) earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements;

(7) by 1985, there will be a capital shortfall within the railroad industry of between $16,000,000,000 and $20,000,000,000;

(8) failure to achieve increased earnings

within the railroad industry will result in either further deterioration of the rail system or the necessity for additional Federal subsidy; and

(9) modernization of economic regulation for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads in order to save energy and combat inflation.

GOALS

SEC. 3. The purpose of this Act is to provide for the restoration, maintenance, and improvement of the physical facilities and financial stability of the rail system of the United States. In order to achieve this purpose, it is hereby declared that the goals of this Act are—

(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;

(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;

(3) to assist the rail system to remain viable in the private sector of the economy;

(4) to provide a regulatory process that balances the needs of carriers, shippers, and the public; and

(5) to assist in the rehabilitation and financing of the rail system.

TITLE I—RAIL TRANSPORTATION POLICY

RAIL TRANSPORTATION POLICY

SEC. 101. (a) Chapter 101 of title 49, United States Code, is amended by inserting after section 10101 the following new sections:

"§ 10101a. Rail transportation policy

"In regulating the railroad industry, it is the policy of the United States Government, consistent with and subject to those obligations which the Constitution of the United States imposes on rail carriers having the power of eminent domain—

"(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

"(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

"(3) to promote a safe and efficient rail transportation system by allowing efficient rail carriers to earn adequate revenues, as determined by the Interstate Commerce Commission while maintaining reasonable rates;

"(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

"(5) to foster sound economic conditions in transportation and to insure effective competition and coordination between rail carriers and other modes;

"(6) to provide rate regulation where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

"(7) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the automatic passthrough of inflationary cost increases through rate increases of general applicability;

"(8) to encourage fair wages and safe and suitable working conditions in the railroad industry;

"(9) to prohibit predatory pricing and practices and to avoid undue concentrations of market power;

"(10) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

"(11) to cooperate with the States;

"(12) to encourage honest and efficient management of railroads and, in particular, the elimination of noncompensatory rates for rail transportation;

"(13) to encourage and promote energy conservation; and

"(14) to encourage and promote energy conservation and reasonably priced rail transportation of coal in accordance with the nationally stated objectives of energy independence.".

(b) With respect to the transportation of commodities that are manufactured or produced by a rail carrier, none of the amendments to title 49, United States Code, made by the Harley O. Staggers Rail Act of 1980 shall be construed to modify the application of existing law with respect to prohibiting a rail carrier from transporting an article or commodity that: (1) is manufactured, mined, or produced by the rail carrier or under its authority; or (2) is owned by the rail carrier or in which it has an interest.

(c) With respect to the relationship between rail carriers and water carriers, none of the amendments to title 49, United States Code, made by the Harley O. Staggers Rail Act of 1980 shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

(d) Section 10101(a) of title 49, United States Code, is amended by striking out "To ensure" and inserting in lieu thereof "Except where policy has an impact solely on rail carriers, in which case the principles of section 10101a of this title shall govern, to ensure".

(e) The section analysis of chapter 101 of title 49, United States Code, is amended by inserting after the item relating to section 10101 the following new item:

"10101a. Rail transportation policy.".

TITLE II—RAILROAD INTER-CARRIER PRACTICES

COMPENSATORY JOINT RATE RELIEF

SEC. 201. (a)(1) Chapter 107 of title 49, United States Code, is amended by inserting after section 10705 the following new section:

"§ 10705a. Joint rate surcharges and cancellations

"(a)(1)(A) Except as provided in subparagraph (B) of this paragraph, a rail carrier providing transportation subjects to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may publish and apply a surcharge increasing or decreasing the through charge applicable to any movement between points designated by the surcharging carrier subject to a joint rate. Such a surcharge may be applied without the concurrence of the other carriers that are party to such joint rate.

"(B) A carrier earning adequate revenues (as defined in section 10704(a)(2) of this title) may not apply such a surcharge to any movement on a line operated by such carrier which carried more than 3,000,000 gross ton miles of traffic in the preceding calendar year.

"(C) Any surcharge applied pursuant to this subsection must be applied in equal dollar amounts to the movement subject to the surcharge over all routes between the points designated by the surcharging carrier which such carrier participates in under the joint rate involved, and, when the surcharge increases the through charges, under any of such carrier's single line rates between the same points.

"(2)(A) Whenever a rail carrier applies a surcharge increasing a through charge pursuant to paragraph (1) of this subsection, any other rail carrier that participates in any movement subject to such surcharge may cancel the application of such surcharge to any route participated in by such carrier, if such carrier makes the demonstration described in subparagraph (B) of this paragraph.

"(B) A rail carrier may cancel the application of a surcharge under this paragraph if such carrier demonstrates to the Commission that the surcharging carrier's share of the revenues, at the time the surcharge was filed with the Commission, from its participation in the movement over the route involved would have been equal to or greater than 110 percent of its variable costs of providing service over such route, under either—

"(i) the applicable joint rate, in effect at the time the surcharge was filed with the Commission, without the surcharge;

"(ii) a new rate division increasing the share of the surcharging carrier;

"(iii) a new higher lawful rate published by the canceling carrier; or

"(iv) a new, lesser surcharge which shall be prescribed by the Commission upon and in conformity with the request of the carrier proposing to cancel the surcharge. Any such prescribed surcharge shall, in conjunction with the surcharging carrier's division of the joint rate in effect on the date the original surcharge was filed with the Commission, provide the carrier proposing the original surcharge revenues equal to or greater than 110 percent of such surcharging carrier's variable cost of providing service over such route.

"(C)(i) The cancelling tariff shall only become effective if the rail carrier proposing to cancel the application of the surcharge makes the demonstration described in subparagraph (B) of this paragraph.

"(ii) If the demonstration described in clause (i) of this subparagraph is made on the basis of the applicable joint rate in effect at the time the surcharge was filed with the Commission, without the surcharge, the tariff shall become effective on one day's notice.

"(iii) If the demonstration described in clause (i) of this subparagraph is made on the basis of a new rate, division, or surcharge prescribed pursuant to subparagraph (B)(iv) of this paragraph, the tariff shall become effective the date such new rate, division, or surcharge becomes effective.

"(D) The remedy available to a rail carrier cancelling the application of a surcharge under this paragraph shall be in addition to any other remedy available to such carrier under this chapter.

"(3)(A) The Commission may cancel the application of a surcharge to a route to which such surcharge applies if a shipper moving traffic over such route demonstrates to the Commission that—

"(i) there is no competitive alternative to such route for the movement of the traffic involved that is not subject to such surcharge; and

"(ii) the surcharging carrier's share of the revenues from its participation in the movement over the route to which such surcharge applies, under the applicable joint rate in effect at the time the surcharge was filed with the Commission, with the surcharge, would be greater than 110 percent of its variable cost of providing service over such route.

"(B) If the Commission cancels the application of a surcharge to a particular route pursuant to subparagraph (A) of this paragraph, the Commission shall determine the level of surcharge which, in conjunction with the surcharging carrier's division of the joint rate in effect at the time the surcharge was filed with the Commission, would equal 110 percent of the surcharging carrier's variable cost of providing service over such route, and shall authorize such carrier immediately to apply such a surcharge without any further proceedings under this subsection.

"(4) A rail carrier may not apply a surcharge under this subsection unless, for the one-year period preceding the surcharge, such carrier has concurred in all rate increases of general applicability applicable to the joint rate to which such surcharge applies and agreed to by all other carriers that are party to such joint rate.

"(5) A rail carrier may not apply a surcharge under this subsection increasing a through charge applicable to a particular movement more than once each calendar year.

"(6) Notwithstanding any other provision of this subsection, a rail carrier may, by tariff, reduce the total charges applicable to a movement over any specific joint line or single line route or routes in which such carrier participates, if such reduction does not lower the total charges applicable to such movement to a level that is less than the lowest total charges applicable to the same movement over a competing route. Any such reduction may be made without the concurrence of any other rail carrier, and shall be borne solely by the carrier reducing the charge.

"(b)(1) Notwithstanding subsection (a) of this section, a rail carrier may publish and apply a surcharge applicable to traffic originating or terminating upon any of its lines that carried less than 3,000,000 gross ton miles of traffic per mile, in the more recent calendar year for which traffic data is available. Such a surcharge may be applied without the concurrence of any connecting rail carrier.

"(2) A rail carrier may apply a surcharge under this subsection if, prior to the application of such surcharge, that portion of the charges applicable to traffic to and from the line to which the surcharge applies and accruing to the surcharging carrier does not provide such carrier revenues adequate to cover—

"(A) 110 percent of such carrier's variable cost of transporting the traffic involved to or from such line; plus

"(B) 100 percent of such carrier's reasonably expected costs of continuing to operate such line, which shall include all costs necessary to sustain service on the line.

"(3)(A) Upon petition of a shipper located upon a line to which a surcharge under this subsection is applied, the Commission may cancel the application of a surcharge under this subsection if such shipper demonstrates to the Commission that, after application of the surcharge, the surcharging carrier's revenues from all traffic originating or terminating upon the line to which the surcharge applies exceed 110 percent of such carrier's variable cost of transporting all traffic to or from such line plus such carrier's reasonably expected costs of continuing to operate such line.

"(B)(i) A rail carrier's revenue from all traffic originating or terminating upon a line shall be presumed to exceed 110 percent of its variable cost of transporting all traffic to or from such line plus its reasonably expected costs of continuing to operate such line if the complaining shipper demonstrates that the carrier is earning revenues from all traffic originating or terminating upon such line equal to or greater than the percentage set forth in section 10701(e)(1) of this chapter (as adjusted therein) of its variable costs.

"(ii) A surcharging carrier may rebut the presumption set forth in clause (i) of this subparagraph by demonstrating to the Commission that its reasonably expected costs for operating the line to which the surcharge applies exceed the percentage of variable cost set forth in such clause (i).

"(C) Upon a finding by the Commission that application of the surcharge will produce revenues in excess of 110 percent of the surcharging carrier's variable cost of transporting traffic to or from the line plus its reasonably expected costs for operating the line, the Commission shall determine the level of surcharge which would produce revenues equal to such figure and shall authorize such carrier immediately to apply such surcharges as will generate such revenues without any further proceedings, subject only to the right of a shipper to proceed under paragraph (4) of this subsection.

"(4)(A) A rail carrier may not apply a surcharge under this subsection that results in any shipper being required to bear more than a reasonable proportion of the reasonably expected costs of continuing to operate the line to which such surcharge applies.

"(B) Upon complaint of a shipper, the Commission shall determine whether the shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph.

"(C) If the Commission finds that a complaining shipper is being required to bear more than a reasonable proportion of the costs described in subparagraph (A) of this paragraph, the Commission may reallocate the surcharge among the traffic originating or terminating on the line to which the surcharge applies, but may not order relief which would result in the surcharging carrier earning revenues less than those which the carrier would have earned had the surcharge been applied as filed.

"(5) A shipper may, in a single complaint, seek relief under paragraphs (3) and (4) of this subsection. In any such complaint, the Commission shall first determine the right to relief under paragraph (3) and shall grant such relief as is appropriate under such paragraph.

"(6) In any proceeding brought before the Commission challenging the application or amount of a surcharge under this subsection, whether the surcharge is claimed to violate this subsection or some other provision of this chapter, the Commission shall not suspend the application of any such surcharge unless the person filing the verified statement required by section 10707(c) of this title, in addition to the matters required by such section, also makes the demonstration required by paragraph (3)(A) of this subsection. If the demonstration required by paragraph (3)(A) is made, the Commission may suspend the application of only so much of the surcharge as will produce revenues in excess of the amount so demonstrated.

"(c)(1) Notwithstanding any other provision of this title, any prior agreement in effect on the effective date of the Harley O. Staggers Rail Act of 1980, or any requirement of the Commission, a rail carrier may cancel the application of a joint rate to a through route in which it participtaes, without the concurrence of any other rail carrier that is a party to such joint rate, unless another rail carrier that participates in such through route or a shipper that has no competitive alternative to such route makes the demonstration described in paragraph (2) of this subsection.

"(2) The application of a joint rate to a through route may not be canceled under this subsection if a rail carrier that participates in such through route or a shipper that has no competitive alternative to such route from an origin or destination served by such route demonstrates to the Commission that the canceling carrier's share of the revenues, under the joint rate in effect at the time the application of the joint rate is canceled, is equal to or greater than—

"(A) 110 percent of the canceling carrier's variable cost of providing service over such route; or

"(B) such lesser percent of the canceling carrier's variable cost as such carrier earns over a competing through route to which application of the joint rate has not been canceled, or over a competing single line route.

"(3) When a complaining party is unable to make the demonstration required by paragraph (2) of this subsection, the Commission may suspend the tariff canceling the joint rate only if—

"(A) a complaining carrier publishes a new rate division or a new higher lawful rate which increases the canceling carrier's share of the revenues over such route to the amount calculated under paragraph (2)(A) or (2)(B) of this subsection, whichever is less; or

"(B) a complaining carrier or shipper petitions the Commission and the Commission imposes a surcharge, in conformity with such petition, upon the joint rate which will accrue solely to the canceling carrier and which, in conjunction with the canceling carrier's division of the joint rate in effect on the date the tariff canceling the joint rate was filed, will provide the canceling carrier revenues equal to or greater than 110 percent of its variable cost of providing service over such route.

Unless a new rate, division, or surcharge described in this paragraph becomes effective within 120 days after the proposed effective date of the rate cancellation, the canceling tariff shall, nevertheless, become effective.

"(4) If the demonstration described in paragraph (2) is made or a new rate, division, or surcharge described in paragraph (3) becomes effective, the tariff canceling the joint rate shall be considered by the Commission in accordance with section 10705 of this title. The existing joint rate or the new rate, division, or surcharge, as appropriate, shall remain in effect during the pendency of the Commission's consideration.

"(5) Whenever the application of a joint rate to a through route is canceled under this subsection and a rate other than a joint rate is or has been published by the canceling carrier to apply to such route, such rate shall thereafter apply in lieu of all other rates (except joint rates subsequently agreed to by such carrier) and any through rate of which such rate is a factor shall divide as the separate factors of such rate are made.

"(6) Nothing in this subsection shall be construed to limit the authority of the Commission under section 10705(a) of this title to prescribe joint rates which provide a rail carrier participating in such joint rate revenues equal to or greater than 110 percent of its variable cost of providing service over each route to which such rate applies.

"(d)(1) Except as provided in paragraph (2) of this subsection, any increase or decrease in revenue resulting from the application of a surcharge under subsection (a) of this section, or from the cancellation of the application of a joint rate under subsection (c) of this section, shall accrue solely to or be borne solely by the carrier applying the surcharge or canceling the application of the joint rate, as the case may be.

"(2) Whenever a class III rail carrier which participates in a through route to which a surcharge has been applied under subsection (a) of this section by a carrier operating in the same rate territory as such class III carrier demonstrates to the Commission that the application of such surcharge to such route provides, in the absence of any increase in the joint rate in effect on the date the surcharge was filed with the Commission, revenues from traffic moving over such route to such surcharging carrier in excess of 110 percent of its variable costs over such route, such surcharging carrier shall, from the date of such demonstration, share those revenues from such route, from the surcharge and the applicable joint rate in effect on the date the surcharge was filed with the Commission, in excess of 110 percent of its variable costs with all class III rail carriers participating in such route, on the basis of their existing divisions of the joint rate to which the surcharge applies.

"(e)(1) Except as provided in paragraph (2) of this subsection, whenever a rail carrier proposes to apply a surcharge under subsection (a) of this section or to cancel the application of a joint rate under subsection (c) of this section and another rail carrier subsequently agrees to a new rate division or a new lawful rate that increases the surcharging or canceling carrier's share of the total through charges for a movement over a particular through route subject to a joint rate, such other rail carrier shall also agree to any other new rate and new lawful rate—

"(A) that is proposed within 120 days after the date of the first agreement; and

"(B) that increases the surcharging or canceling carrier's share of the total through charges for movements over a competing through route subject to such joint rate.

"(2) A rail carrier shall not be required to agree under this subsection to any proposed new division or new rate which would—

"(A) reduce such carrier's share of the total through charges for a movement over any through route to less than (i) 110 percent of its variable costs of providing service over such route, or (ii) such lesser percent of its variable costs as such carrier earns from such movement over a competing through route with respect to which such carrier has agreed to a new division or rates.

"(B) increase the surcharging or canceling carrier's share of the total through charges for a movement over any through route to an amount in excess of 110 percent of its variable costs of providing service over such route;

"(C) reduce such carrier's share of the total through charges for a movement over any through route by a dollar amount in excess of the greatest dollar reduction which such carrier has agreed to make, for purposes of increasing the surcharging or canceling carrier's share, to its share of the total through charges for a movement over any competing through route; or

"(D) reduce such carrier's share of the total through charges for a movement over any through route in an amount in excess of such carrier's pro rata share (based on established divisions for movements over such route) of the increase of the surcharging or canceling carrier's share of the total through charges for movements over such route.

"(f) A rail carrier applying a surcharge or canceling the application of a joint rate under this section shall file a tariff with the Commission in accordance with section 10762 of this title. Such a tariff may not become effective until the expiration of the 45-day period (or such longer period as the filing carrier specifies) beginning on the date such tariff is filed.

"(g)(1) Any rail rate to which a surcharge is applied under this section shall be subject to section 10701a and 10709 of this title, and any such surcharge shall constitute a rate increase for purposes of such section.

"(2) For purposes of rate regulation under section 10701a of this title—

"(A) only the rail carrier proposing a surcharge under this section shall be required to defend such surcharge; and

"(B) the reasonableness of the surcharge and the revenues received by the rail carrier proposing the surcharge under the joint rate to which the surcharge applies shall be determined without regard to amounts received and services performed by other rail carriers that are party to such joint rate.

"(3) Except as provided in subsection (i), (j), or (k) of this section, if the application of a surcharge or the cancellation of the application of a joint rate under this section is found to constitute a violation of any provision of this title, such violation shall not be ordered remedied in any manner which—

"(A) requires the carrier applying a surcharge under subsection (a) of this section or canceling the application of a joint rate under subsection (c) of this section to provide service over any route under a rate that provides revenues to such carrier that are less than 110 percent of its variable costs of providing such service; or

"(B) which requires the carrier applying a surcharge under subsection (b) of this section to provide service over the route to which such surcharge applies in a manner that provides revenues to such carrier that are less than 110 percent of such carrier's variable cost of transporting the traffic involved to or from the line to which the surcharge applies, plus such carrier's reasonably expected costs of providing service over such line.

"(h) Within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation under this section, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or canceling the application of the joint rate.

"(i)(1) Whenever a class III rail carrier, in a protest filed with the Commission, makes a prima facie showing that the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section will have an adverse effect on competition, the Commission shall investigate such protest. If on the basis of such investigation the Commission finds that the protested surcharge or cancellation is, or is intended to be, anticompetitive, the Commission shall, within 30 days after the date such protest is filed, enter an order rescinding such surcharge or cancellation, and may, on presentation of an adequate record, prescribe new joint rates or divisions of joint rates.

"(2) No order prescribed under this subsection shall require a carrier to provide service over any route under a rate which provides revenues less than 110 percent of the viarable cost of providing such service unless the Commission determines that the public interest requires a lesser revenue to variable cost ratio to avoid anticompetitive action and to preserve service on the route involved.

"(j)(1) Any class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section may protest such surcharge or cancellation whenever—

"(A) such surcharge or cancellation affects the sole remaining route available to that carrier for that traffic; and

"(B)(i) such carrier demonstrates that alternative transportation is available or that a shipper dependent on that carrier will suffer significant market loss because of such surcharge or cancellation; or

"(ii) such surcharge or cancellation, alone or when considered in conjunction with other surcharges or cancellations affecting the carrier, is likely to unduly impair a carrier's ability to earn an adequate rate of return

"(2)(A) The Commission may, after an investigation on the basis of a protest under this subsection, prescribe a lesser surcharge or a different division of the joint rate. The Commission shall grant the surcharging or cancelling carrier revenues not less than 110 percent of its variable cost of the movement involved, unless it determines that the public interest requires a lesser revenue to variable cost ratio to preserve service on the route involved. Any action by the Commission based on a protest under this subsection shall be taken within 30 days after the date such protest is filed.

"(B) If the Commission prescribes a different division of a joint rate under this paragraph, the Commission shall, upon petition of the surcharging or cancelling carrier or the protesting class III rail carrier, reopen the proceeding in which such division was prescribed to reconsider whether such prescribed division is reasonable. If, on the basis of such reconsideration, the Commission determines that such division is not reasonable, it shall prescribe a new, reasonable division of the joint rate to which the surcharge or cancellation applied.

"(k)(1) Upon the complaint of a class III rail carrier which originates or terminates traffic subject to the application of a surcharge under subsection (a) of this section or the cancellation of the application of a joint rate under subsection (c) of this section that such surcharge or cancellation will result in differences or greater differences in rates, including any surcharges, for the traffic to which the surcharge or cancellation applies over different routes in which the surcharging or cancelling carrier participates—

"(A) from a single origin point to destination points within a 75 mile direct radius from the destination point on such class III rail carrier; or

"(B) to a single destination point from origin points within a 75 mile direct radius from the origin point on such class III rail carrier,

the Commission shall investigate such complaint and shall, within 30 days after the date such complaint is filed, take such actions, including rescinding surcharges or cancellations or prescribing new joint rates or surcharges, as it determines are required to eliminate such differences in rates, unless it finds that such actions are not warranted by the public interest in ensuring effective competition among rail carriers or in the preservation of rail service on the route involved.

"(2) No action taken by the Commission under this subsection shall require a carrier to provide service over any route under a rate which provides a revenue to variable cost ratio over such route less than that provided under the joint rate to which the surcharge or cancellation was applied or less than 110 percent, whichever is greater, unless the Commission determines that the public interest in ensuring effective competition among rail carriers or in preserving service over such route warrants requiring the surcharging or cancelling carrier to provide service at a lesser revenue to variable cost ratio.

"(3) Notwithstanding subsection (m)(1) of this section, if, in a proceeding under this subsection or under subsection (i) or (j) of this section, the Commission considers whether to require the revenues of a carrier applying a surcharge under subsection (a) of this section or cancelling the application of a joint rate under subsection (c) of this section to be less than 110 percent of its variable costs (as calculated using the Commission's Rail Form A cost finding methodology), such surcharging or cancelling carrier may prove its actual variable costs on the basis of evidence other than unadjusted costs calculated using such Rail Form A cost finding methodology. Such evidence shall be prepared in accordance with generally accepted accounting principles.

"(l) Whenever the application of a joint rate to a through route is cancelled under subsection (c) of this section, the Commission shall, upon petition by a class II or III rail carrier participating in such route, prescribe a new compensatory through rate or rates over such route within 30 days after the date such petition is filed.

"(m) For purposes of this section—

"(1) variable costs for a class I rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Commission's Rail Form A cost finding methodology (or an alternative methodology adopted by the Commission in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates;

"(2) variable costs for a rail carrier other than class I shall be presumed to be the average variable costs of all class I rail carriers in the region in which such carrier operates (as determined under paragraph (1) of this subsection) unless a rail carrier reports such presumption with other proof of variable costs; and

"(3) at the option of a carrier applying a surcharge or cancelling the application of a joint rate under this section, revenue share may be determined by reference to past revenue settlements actually made in the most recent calendar year by connecting lines.

"(n)(1) The authority to apply a surcharge under subsection (a) of this section, and (except as provided in paragraph (2)) the authority to cancel such a surcharge, shall expire 3 years after the effective date of the Harley O. Staggers Rail Act of 1980 unless extended for one additional year by the Commission upon petition of any rail carrier and for good cause shown.

"(2) Any surcharge lawfully applied under subsection (a) of this section shall remain in effect in accordance with its terms following the expiration of the provisions of this section. Any such surcharge applied during the 45-day period immediately preceding the date of the expiration of the provisions of this section shall, notwithstanding such expiration, be subject to cancellation under subsection (a)(2) or (a)(3) of this section during the 45-day period beginning on the date such surcharge is applied.".

(2) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10705 the following new item:

"10705a. Joint rate surcharges and cancellations.".

(b) For purposes of section 10705a of title 49, United States Code, the Interstate Commerce Commission shall classify all rail carriers on the basis of revenues, shall from time to time review its regulations setting forth revenue-based classifications for rail carriers, and shall make appropriate changes in such regulations in order to reflect inflation. The Commission shall not reclassify switching and terminal carriers, or any other rail carriers not classified on the basis of revenues on the effective date of this Act, for any purpose other than for purposes of such section 10705a.

(c)(1) The Interstate Commerce Commission shall include in its annual report to the Congress under section 10311 of title 49, United States Code, a report with respect to the application of surcharges and the cancellation of the application of joint rates by the Consolidated Rail Corporation and other rail carriers, during the preceding year, under section 10705a of title 49, United States Code. Each such report shall include—

(A) an analysis of the effect of application of surcharges and the cancellation of the application of joint rates under such section 10705a on shippers, ports, class II and class III rail carriers, railroad employees, and other elements of the rail system;

(B)(i) the number of surcharges applied by the Consolidated Rail Corporation and all other rail carriers under such section 10705a and the amount of revenue received by the Corporation and all other rail carriers from the application of such surcharges, (ii) the number of surcharges applied by the Corporation and all other rail carriers that were canceled under the procedures of such section 10705a, and (iii) the number of cancellations of the application of a joint rate by the Corporation and all other rail carriers under such section 10705a; and

(C) an analysis of the operation of the remedies made available to class III rail carriers under subsections (i), (j), and (k) of such section 10705a and to class II and class III rail carriers under subsection (l) of such section 10705a.

(2) The Interstate Commerce Commission shall, within 2 years after the effective date of this Act, submit a report to the Congress with respect to whether the provisions of section 10705a of title 49, United States Code, have adequately addressed the joint rate problems of rail carriers. The report shall include such recommendations with respect to such joint rate problems as the Commission considers necessary and appropriate.

EXPEDITED DIVISION OF REVENUES PROCEEDINGS

SEC. 202. Section 10705(e)(1) of title 49, United States Code, is amended to read as follows:

"(e)(1)(A) The Commission may begin a proceeding under subsection (a) or (b) of this section on its own initiative or on complaint. The Commission must complete all evidentiary proceedings to adjust the division of joint rates for transportation by a rail carrier within 9 months after the complaint is filed if the proceeding is brought on complaint or within 18 months after the commencement of a proceeding on the initiative of the Commission. The Commission must take final action by the 180th day after completion of the evidentiary proceedings, except that—

"(i) when the proceeding involves a railroad in reorganization or a contention that the divsions at issue do not cover the variable costs of handling the traffic the Commission shall give the proceedings preference over all other proceedings and shall take final action at the earliest practicable time, which in no event may exceed 100 days after the completion of the evidentiary proceedings; and

"(ii) in all cases other than those specified in clause (i) of this subparagraph, the Commission may decide to extend such a proceeding to permit its fair and expeditious completion, but whenever the Commission decides to extend a proceeding pursuant to this clause, it must report its reasons to Congress.

"(B) The provisions of this paragraph imposing time limitations upon Commission action shall not apply to any division proceeding involving a joint rate participated in by a class III rail carrier.".

REGULATION OF RAILROAD RATES

SEC. 203. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10701 the following new section:

"§ 10701a. Standards for rates for rail carriers

"(a) Except as provided in subsection (b) or (c) of this section and unless a rate is prohibited by a provision of this title, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may establish any rate for transportation or other service provided by the carrier.

"(b)(1) If the Commission determines, under section 10709 of this title that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

"(2) In any proceeding to determine the reasonableness of a rate described in paragraph (1) of this subsection—

"(A) the shipper challenging such rate shall have the burden of proving that such rate is not reasonable if—

"(i) such rate (I) is authorized under section 10707a of this title, and (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; or

"(ii) such rate does not meet the description set forth in clause (i) of this subparagraph, but the Commission does not begin an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable; and

"(B) the rail carrier establishing the challenged rate shall have the burden of proving that such rate is reasonable if—

"(i) such rate (I) is greater than that authorized under section 10707a of this title, or (II) results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable under section 10709(d) of this title; and

"(ii) the Commission begins an investigation proceeding under section 10707 of this title to determine whether such rate is reasonable.

"(3) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Commission shall recognize the policy of this title that rail carriers shall earn adequate revenues, as established by the Commission under section 10704(a)(2) of this title.

"(c)(1) Any rate established after the effective date of the Harley O. Staggers Rail Act of 1980 for transportation by a rail carrier subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title that does not contribute to the going concern value of such rail carrier is not reasonable.

"(2) A rate for transportation by a rail carrier that equals or exceeds the variable cost of providing the transportation is conclusively presumed to contribute to the going concern value of such rail carrier.

"(3)(A) Upon the filing of a complaint alleging that a rate is in violation of this subsection, the Commission shall take final action thereon by the 90th day after the date such complaint is filed.

"(B) If the Commission determines, based on the record after opportunity for a hearing, that a rate is in violation of this subsection, the Commission shall order such rate to be raised, but only to the minimum level required by this subsection. The complainant shall have the burden of proving that such rate is in violation of this subsection.".

(b)(1) The first sentence of section 10701(a) of title 49, United States Code, is amended by inserting "(other than a rail rate)" immediately after "A rate".

(2) Section 10701(b) of title 49, United States Code, is repealed.

(3) The section analysis of chapter 107 of title 49, United States Code, is amended by inserting immediately below the item relating to section 10701 the following new item:

"10701a. Standards for rates for rail carriers.".

DETERMINATION OF MARKET DOMINANCE

SEC. 204. Section 10709 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d)(1) In this subsection—

"(A) 'fixed and variable cost' means all cost incurred by rail carriers in the transportation of freight, but limiting the return on equity capital to a rate equal to the embedded cost of debt.

"(B) 'cost recovery percentage' means the lowest revenue-variable cost percentage which, if all movements that produced revenues resulting in revenue-variable cost percentages in excess of the cost recovery percentage are deemed to have produced only revenues resulting in the cost recovery percentage, would produce revenues which would be equal, when combined with total revenues produced by all other traffic transported by rail carrier, to the total fixed and variable cost of the transportation of all traffic by rail carrier.

"(C) 'revenue-variable cost percentage' means the quotient, expressed as a percentage figure, obtained by dividing the total revenues produced by the transportation of all traffic received by rail carriers for rail transportation by the total variable cost of such transportation.

"(2) In any proceeding under this section, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than—

"(A) 160 percent during the period beginning on the effective date of the Harley O. Staggers Rail Act of 1980 and ending September 30, 1981;

"(B) 165 percent during the period beginning October 1, 1981, and ending September 30, 1982;

"(C) 170 percent during the period beginning October 1, 1982, and ending September 30, 1983;

"(D) 175 percent or the cost recovery percentage, whichever is less, during the period beginning October 1, 1983, and ending September 30, 1984; and

"(E) the cost recovery percentage, during each 12-month period beginning on or after October 1, 1984.

For purposes of subparagraphs (D) and (E) of this paragraph, the cost recovery percentage shall in no event be less than a revenue-variable cost percentage of 170 percent or more than a revenue-variable cost percentage of 180 percent.

"(3) A finding by the Commission that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than the applicable percentage under paragraph (2) of this subsection does not establish a presumption that (A) such rail carrier has market dominance over such transportation, or (B) the proposed rate exceeds a reasonable maximum.

"(4)(A) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980 and on an annual basis thereafter, the Commission shall determine the cost recovery percentage for transportation of all traffic received by rail carrier. The Commission shall make such determination after considering each individual revenue-variable cost percentage resulting from the revenues and costs of a valid and reliable statistical sample of all movements of commodities transported by class I rail carriers during the most recent calendar year for which such information is available.

"(B) If, on the basis of calculations under subparagraph (A) of this paragraph, the Commission determines that revenues earned by all class I rail carriers during the previous calendar year do not exceed the fixed and variable costs of such carriers, then the cost recovery percentage for purposes of this section shall be deemed to be equal to the cost recovery percentage last determined by the Commission.

"(C) The Commission shall, in its annual report submitted to the Congress under section 10311 of this title, set forth the cost recovery percentage determined for that year under subparagraph (A) of this paragraph.".

ZONE OF RATE FLEXIBILITY

SEC. 205. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by inserting after section 10707 the following new section:

"§ 10707a. Zone of rail carrier rate flexibility.

"(a) In this section—

"(1) 'base rate' means the rate in effect on the effective date of the Harley O. Staggers Rail Act of 1980 for the transportation of a particular commodity. If no rate exists for the transportation of a particular commodity on such effective date, the base rate for the transportation of such commodity shall be the rate established by the rail carrier, unless such rate is found to be unreasonable by the Commission, in which case the base rate shall be the rate authorized by the Commission.

"(2) 'adjusted base rate' means the base rate, as adjusted on a quarterly basis to reflect inflation.

"(b)(1) Except as provided in paragraph (2) of this subsection, a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may, in addition to rate increases authorized under subsection (b) or (c) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title in order to cover cost increases due to inflation, so long as the increased rate is not greater than the adjusted base rate for the transportation involved.

"(2) A rail carrier may not increase a rate under this subsection to the extent that the cost increases to such carrier due to inflation are recovered through (A) general rate increases pursuant to section 10706 of this title, or (B) inflation-based rate increases under section 10712 of this title.

"(c)(1) During the 12-month period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 6 percent of the base rate. During each of the 3 succeeding 12-month periods, a rail carrier may, in addition to rate increases authorized under subsection (a) of this section, increase any such rate by an annual amount of not more than 6 percent of the adjusted base rate, except that in no event shall the total increase under this subsection result in a rate which is more than 118 percent of the base rate.

"(2) If any portion of a rate increase under this subsection is not implemented in the year in which it is authorized, such portion may be implemented only in the next succeeding year.

"(d)(1) Except as provided in paragraph (3) of this subsection, during the 12-month period beginning on October 1, 1984, and during each succeeding 12-month period, a rail carrier may, in addition to rate increases under subsection (a) of this section, increase any rate over which the Commission has jurisdiction under section 10709 of this title by an annual amount of not more than 4 percent of the adjusted base rate.

"(2) No portion of any rate increase under this subsection which is not implemented in the year in which it is authorized may be implemented in any other year.

(3) The provisions of this subsection shall not apply to (A) a rail carrier proposing to increase a single line rate if such carrier earns adequate revenues, as established by the Commission under section 10704(a)(2) of this title, or (B) rail carriers proposing to increase a joint rate if all carriers participating in the route to which the joint rate applies earn adequate revenues, as established under such section.

"(e)(1) Notwithstanding the provisions of section 10707 of this title, in the case of any rate increase by a rail carrier that is authorized under this section—

"(A)(i) the Commission may not suspend such rate increase pending final Commission action; and

"(ii) except as provided in paragraph (2) of this subsection, the Commission may not begin an investigation proceeding under section 10707 of this title with respect to the reasonableness of such rate increase; but

"(B) an interested party may file a complaint under section 11701(b) of this title alleging that such rate increase violates the provisions of this subtitle;

"(2)(A) If a rate increase authorized under this section in any year results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 20 percentage points above the revenue-variable cost percentage applicable in that year under section 10709(d) of this title, the Commission may, on its own initiative or on complaint of an interested party, begin an investigation proceeding to determine whether the proposed rate increase violates this subtitle.

"(f) In any proceeding under this section, evidence of the underlying rail carrier rate is admissible.

"(g) A finding by the Commission that a rate increase exceeds the increase authorized under this section does not establish a presumption that the proposed rate exceeds a reasonable maximum.

"(h) The authority of the Commission to determine and prescribe reasonable rules, classifications, and practices may not be used, directly or indirectly, to limit the rates which rail carriers are otherwise authorized to establish under this section.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10707 the following new item:

"10707a. Zone of rail carrier rate flexibility.".

(c)(1) Any rail carrier rate which increased over 70 percent between 1976 and 1979 inclusive for the transportation, in shipper owned equipment over a distance exceeding 1,550 miles between points within the United States, of coal pursuant to a tariff calling for an annual volume of more than 2,000,000 tons per year purchased by a municipally owned utility for the generation of electric power under a 20-year purchase agreement entered into by such utility in the year 1974 shall not be increased so long as coal is purchased under such original agreement, except that—

(A) during the period beginning October 1, 1980, and ending September 30, 1987, the Interstate Commerce Commission may permit increases in such rate which result in a revenue-variable cost percentage of not more than 162 percent; and

(B) after October 1, 1987, such rate shall be subject to section 10101a of title 49, United States Code, and related provisions of such title governing regulation of rail carrier rates, except that until such rate results in a revenue-variable cost percentage that equals or exceeds the revenue-variable percentage applicable under section 10709(d) of such title, such rate may not be increased more than 5 percent, in addition to inflation, in any year.

(2) Neither the provisions of this subsection nor any rate subject to this subsection shall be admissible as evidence or considered in any way in any proceeding involving any other rail carrier rate that is commenced to determine market dominance under section 10709 of title 49, United States Code, or to determine reasonableness under section 10701a of such title.

RATE REGULATION PROCEEDINGS AND STUDY

SEC. 206. (a)(1) The Interstate Commerce Commission shall commence a proceeding for purposes of determining whether, and to what extent, product competition should be considered in proceedings under subtitle IV of title 49, United States Code, to determine the reasonableness of rail carrier rates. The Commission shall complete its proceeding under this subsection within 230 days after the effective date of this Act.

(2) On the basis of the proceeding conducted under this subsection, the Commission may find that, in determining the reasonableness of rail carrier rates—

(A) proof of product competition should be considered as a factor to the same extent as it is considered under existing law on the effective date of this Act;

(B) proof of product competition should be given greater weight than that described in subparagraph (A) of this paragraph; or

(C) proof of product competition should be conclusive.

(3)(A) For purposes of this subsection, the term "product competition" means the availability to a consignee, at a competitive delivered cost and in sufficient quantities, of products or commodities which are of the same type as the commodity or product to which the rate in question applies, without regard to whether such products or commodities are available from the same or a different origin as those to which the rate applies.

(B) In determining the availability of alternative sources of a particular commodity for purposes of this subsection, such commodity must be capable of being effectively utilized by the consignee.

(C) In determining the availability of alternative sources of coal for purposes of this subsection, such coal must be capable, by reason of similar specifications such as Btu's, sulfur content, and ash content, of being effectively utilized by the consignee.

(D) For purposes of this subsection, any coal imported in the United States for the generation of electricity by utilities shall not be taken into account in the determination of whether coal is available to a consignee from another source.

(4)(A) Nothing in this subsection shall be construed as requiring the Commission to modify its determination of the reasonableness of rail carrier rates under existing law and procedures.

(B) Nothing in this subsection shall be construed as altering the meaning, use, or interpretation by the Commission, the courts, or any party of the term "market dominance", as defined in section 10709(a) of title 49, United States Code. No determination under this subsection shall in any way alter the meaning of such term, even if such meaning denies the Commission jurisdiction over the transportation of commodities where product competition exists.

(b)(1) The Interstate Commerce Commission shall, within 3 years after the effective date of this Act, submit a report to the Congress setting forth its recommendations with respect to the appropriate jurisdictional threshold to be used for purposes of determining those cases in which the Commission will have jurisdiction to determine whether a proposed rail carrier rate is reasonable.

(2) The report submitted under this subsection shall include a consideration of feasibility of utilizing, as the criteria for establishing the jurisdictional threshold described in paragraph (1) of this subsection—

(A) the cost recovery percentage, as defined in section 10709(d) of title 49, United States Code;

(B) a specific revenue-variable cost percentage;

(C) a reasonable transportation alternative test;

(D) a revised statutory or administrative market dominance test;

(E) a test based on rail carrier return on investment; or

(F) such other criteria as the Commission considers appropriate.

(c)(1) The Interstate Commerce Commission shall, within 180 days after the effective date of this Act and thereafter as necessary, establish standards for determining what constitutes adequate revenues for rail carriers under section 10704 of title 49, United States Code.

(2) On the basis of the standards established under paragraph (1) of this subsection, the Commission shall, within 180 days after the effective date of this Act and on an annual basis thereafter, determine which rail carriers are earning adequate revenues.

(d) The rail carrier rate level resulting from any case pending in any Federal court on July 22, 1980 (including any case on remand), shall be considered to be the rate for purposes of determining permissible rate increases under chapter 107 of title 49, United States Code.

INFLATION-BASED RATE INCREASES

SEC. 207. (a) Subchapter I of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10712. Inflation-based rate increases

"(a) After the elimination of general rate increases under section 10706 of this title, the Commission may, on a quarterly basis and consistent with the rail transportation policy set forth in section 10101a of this title, prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases. Such percentage rate increase or rate index may be applicable on an industrywide or on a carrier-by-basis.

"(b) Within 60 days after the date the Commission prescribes a percentage rate increase or rate index under subsection (a) of this section, each rail carrier or group of rail carriers shall notify the Commission of any rate or group of rates which such carrier or carriers intend to be excluded from the application of such percentage rate increase or rate index.

"(c) For purposes of this section, a percentage rate index may permit rate increases within a specified range to allow carriers to recover a total revenue increase specified by the Commission as necessary to compensate for inflationary cost increases.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10711 the following new item:

"10712. Inflation-based rate increases.".

INVESTIGATION AND SUSPENSION OF RATES

SEC. 208. (a) Section 10707(b)(1) of title 49, United States Code, is amended to read as follows:

"(b)(1) The Commission must complete a proceeding under this section and make its final decision by the end of the 5th month after the rate, classification, rule, or practice was to become effective, except that if the Commission reports to the Congress by the end of such 5th month that it cannot make a final decision by that time and explains the reason for the delay, it may take an additional 3 months to complete the proceeding and make its final decision.".

(b) Section 10707(c) of title 49, United States Code, is amended to read as follows:

"(c)(1) The Commission may not suspend a proposed rate, classification, rule, or practice during the course of a Commission proceeding under this section unless it appears from the specific facts shown by the verified statement of a person that—

"(A) it is substantially likely that the protestant will prevail on the merits;

"(B) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; and

"(C) because of the peculiar economic circumstances of the protestant, the provisions of subsection (d) of this section do not protect the protestant.

"(2) The burden shall be on the protestant to prove the matters described in paragraph (1)(A), (B), and (C) of this subsection.".

(c) Section 10707(d) of title 49, United States Code, is amended to read as follows:

"(d)(1) If the Commission does not suspend a proposed rate increase under subsection (c) of this section, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under subsection (b) of this section. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

"(2) If a rate is suspended under subsection (c) of this section and any portion of such rate is later found to be reasonable under this title, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days, except that this paragraph shall not apply to general rate increases under section 10706 of this title.

"(3) If any portion of a proposed rate decrease is suspended under subsection (c) of this section and later found to be reasonable under this title, the rail carrier may refund any part of the portion of the decrease found to comply with this title if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.".

(d) Section 10707(e) of title 49, United States Code, is repealed.

CONTRACTS

SEC. 209. (a) Subchapter I of chapter 107 of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new section:

"§ 10713. Contracts

"(a) One or more rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

"(b) Each contract entered into under this section shall be filed with the Commission, together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall immediately make a summary of each such contract available to interested persons.

"(c) A contract filed under this section shall be approved by the Commission, as provided in subsection (e) of this section, unless the Commission determines in a proceeding under subsection (d) of this section that such contract is in violation of this section.

"(d) (1) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

"(2) (A) In the case of a contract other than a contract for the transportation of agricultural commodities, a complaint may be filed—

"(i) by a shipper only on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

"(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

For purposes of this paragraph, the term 'unreasonable discrimination' has the same meaning as such term has under section 10741 of this title.

"(B) In the case of a contract for the transportation of agricultural commodities, in addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper on the grounds that such shipper individually will be harmed because—

"(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

"(ii) the proposed contract constitutes a destructive competitive practice.

"(3) (A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Commission may establish, the Commission shall determine whether the contract that is the subject of such proceeding is in violation of this section.

"(B) If the Commission determines, on the basis of a complaint filed under paragraph (2) (B) (i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a carrier, the Commission shall order such carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

"(e) Approval of a contract filed under this section shall be effective—

"(1) on the date the Commission expressly approves such contract, but in no event before the end of the 30-day period beginning on the date such contract is filed or after the end of the 60-day period beginning on such date; or

"(2) if the Commission has not disapproved such contract by the end of the 60-day period beginning on the date such contract is filed, at the end of such 60-day period.

"(f) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under this section, except to the extent necessary to comply with section 11128 of this title.

"(g) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

"(h) (1) A contract that is approved by the Commission under this section may not be subsequently challenged before the Commission or in any court on the grounds that such contract violates a provision of this subtitle.

"(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

"(i) The provisions of this section shall not affect the status of any lawful contract between a rail carrier and one or more purchasers of rail service that is in effect on the effective date of the Harley O. Staggers Rail Act of 1980. Any such contract shall hereafter have the same force and effect as if it had been entered into in accordance with the provisions of this section. Nothing in this section shall affect the rights of the parties to challenge the existence of such a contract.

"(j) (1) During the 3-year period beginning on the effective date of the Harley O. Staggers Rail Act of 1980, any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC), except that in the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment utilized on the average during the prior 3-year period may be used for such contract without prior authorization by the Commission.

"(2) Any rail carrier or other party may seek relief from the limitations of paragraph (1) of this subsection, and the Commission may grant such relief as it considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10712, as added by this Act, the following new item:

"10713. Contracts.".

DEMAND SENSITIVE RATES

SEC. 210. Section 10727 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 107 of such title, are repealed.

PHASEOUT OF CAPITAL INCENTIVE RATES

SEC. 211. (a) Section 10729 of title 49, United States Code, and the item relating to such section in the section analysis of chapter 107 of such title, are repealed.

(b) Notwithstanding any other provision of law, any rate established by a rail carrier under section 10729 of title 49, United States Code, prior to the effective date of this Act shall remain in effect in accordance with its terms, but for no longer than 5 years after the date it became effective, unless the parites otherwise agree. However, the Interstate Commerce Commission may, during the period such a rate is in effect, order such rate revised to a level equal to the incremental cost of providing the transportation if the Commission finds that the level then in effect reduces the going concern value of the rail carrier.

PERMISSIVE LIMITED LIABILITY RATES

SEC. 212. (a) Section 10730 of title 49, United States Code, is amended—

(1) by inserting "(a)" immediately before "The";

(2) by inserting "(other than a rail carrier)" immediately after "carrier" the first place it appears; and

(3) by adding at the end thereof the following new subsection:

"(b) A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.".

(b) (1) Section 11707(c) of title 49, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(5) The liability of a rail carrier under subsection (a) of this section shall not exceed the value of the physical loss of or damage to the property transported, or the cost of repair to such property, to the extent that the loss or damage thereto is caused by the rail carrier. Any other or special damages shall not be recoverable.

"(6) If property transported by a rail carrier is lost, damaged, or delayed by reason of the act or negligence of both the carirer and the shipper, owner, or consignee, such carrier shall not be liable for the portion of loss, damage, or delay caused by the act or negligence of such shipper, owner, or consignee.".

(2) Section 11707(d) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(d)";

(B) by inserting "(other than a rail carrier)" immediately after "delivering carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2) A civil action under this section may be brought either against the originating rail carrier in a court having jurisdiction over the point of origin or against the delivering rail carrier in a court having jurisdiction over the point of destination. Such action may be brought in a district court of the United States or in a State court, and in any such action Federal law and Federal court decisions shall be applied. No other cause of action shall exist to recover for loss, damage, or delay to property.".

(3) Section 11707(e) of title 49, United States Code, is amended—

(A) by inserting "(1)" immediately after "(e)";

(B) by inserting "(other than a rail carrier)" immediately after "A carrier"; and

(C) by adding at the end thereof the following new paragraph:

"(2) (A) Except as provided in subparagraph (B) of this paragraph, a rail carrier may not provide by rule, contract, or otherwise a period of less than six months for filing a claim against such carrier under this section or a period of less than one year from the date such carrier declines such claim for bringing a civil action against it under this section. The period for filing claims shall be computed from the date of the loss of or damage to the property transported, and the period for bringing a civil action shall be computed from the date the person filing the claim receives notice that such claim is declined.

"(B) The limitations set forth in this paragraph shall not apply whenever a rail carrier

has entered into a contract for the provision of transportation or service and such contract is filed with the Commission as a tariff under section 10762 of this title.".

RATE DISCRIMINATION

SEC. 213. Section 10741 of title 48, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Differences between rates, classifications, rules, and practices of rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title do not constitute a violation of this section if such differences result from different services provided by rail carriers.

"(f) This section shall not apply to—

"(1) rates and conditions set forth in contracts approved under section 10713 of this title;

"(2) surcharges or cancellations under section 10705a of this title;

"(3) separate rates for distinct rail services under section 10728 of this title;

"(4) rail rates applicable to different routes; or

"(5) expenses authorized under section 10751 of this title,

except that with repect to rates described in paragraphs (2), (3), and (4), nothing in this subsection shall affect the authority of the Commission under this section with respect to rate relationships between ports or within the same port.

EXEMPTION

SEC. 214. Section 10505 of title 49, United States Code, is amended to read as follows:

"§ 10505. Authority to exempt carrier transportation

"(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service when the Commission finds that the application of a provision of this subtitle—

"(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

"(2) either (A) the transportation or service is of limited scope, (B) the application of a provision of this subtitle is not needed to protect shippers and receivers where there is an absence of effective competition, or (C) there is effective competition.

"(b) The Commission may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party.

"(c) The Commission may specify the period of time during which an exemption granted under this section is effective.

"(d) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of section 10101a of this title.

"(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11707 of this title. Nothing in this subsection or section 11707 of this title shall prevent rail carrier from offering alternative terms nor give the Commission the authority to require any specific level of rates or services based upon the provisions of section 11707 of this title.

"(f) The Commission may exercise its authority under this section to exempt transportation that is provided by a rail carrier as a part of a continuous intermodal movement.

"(g) The Commission may not exercise its authority under this section (1) to authorize intermodal ownership that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle.".

INTRASTATE RATES

SEC. 215. (a) Section 11501(a) of title 49, United States Code, is amended—

(1) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(2) by striking out "subchapter I or subchapter IV" and inserting in lieu thereof "subchapter IV";

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(4) by striking out paragraph (2).

(b) Section 11501 of title 49, United States Code, is amended by redesignating subsections (b) and (c) as subsections (d) and (e), respectively, and by inserting immediately after subsection (a) the following new subsections:

"(b)(1) A State authority may only exercise jurisdiction over intrastate transportation provided by a rail carrier providing tarnsportaton subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle.

"(2) Within 120 days after the effective date of the Harley O. Staggers Rail Act of 1980, each State authority exercising jurisdiction over intrastate rates, classifications, rules, and practices for intrastate transportation described in paragraph (1) of this subsection shall submit to the Commission the standards and procedure (including timing requirements) used by such State authority in exercising such jurisdiction.

"(3)(A) Within 90 days after receipt of the intrastate regulatory rate standards and procedures of a State authority under paragraph (2) of this subsection, the Commission shall certify such State authority for purposes of this subsection if the Commission determines that such standards and procedures are consistent with the procedures applicable to regulation of rail carriers by the Commission under this title. If the Commission determines that such standards and procedures are not consistent, it shall deny certification to such State authority, and such State authority may resubmit new standards and procedures to the Commission for review in accordance with this subsection.

"(B) The standards and procedures existing in each State on the effective date of the Harley O. Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

"(4)(A) Any State authority which is certified by the Commission under this subsection may use its standards and procedures in exercising jurisdiction over intrastate rail rates, classifications, rules, and practices during the 5-year period commencing on the date of such certification. Any State authority which is denied certification may not exercise any jurisdiction over intrastate rates, classifications, rules, and practices until it receives certification under this subsection.

"(B) Any intrastate transportation provided by a rail carrier in a State which may not exercise jurisdiction over an intrastate rate, classification, rule, or practice of that carrier due to a denial of certification under this subsection shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter I of chapter **105 of this title.**

"(5)(A) Certification of a State authority under this subsection is valid for the 5-year period beginning on the date of such certification. Prior to the expiration of such 5-year period, the State authority shall resubmit its intrastate regulatory standards procedures to the Commission for subsequent certification in accordance with this subsection.

"(B) During any 5-year certification period, a State may not change its certified standards and procedures without notifying and receiving express approval from the Commission.

"(6) Notwithstanding any other provision of this section, a State authority may not exercise any jurisdiction over general rate increases under section 10706 of this title or inflation-based rate increases under section 10712 of this title.

"(c) Any rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may petition the Commission to review the decision of any State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined on the grounds that the standards and procedures applied by the State were not consistent with the provisions of this subtitle. The Commission shall dispose of any such petition within 30 days after the date it is received. If the Commission determines that the standards and procedures were not in accordance with the provisions of this subtitle, its order shall determine and authorize the carrier to establish the appropriate rate, classification, rule, or practice.".

(c)(1) Section 11501(d)(2) of title 49, United States Code, as redesignated by subsection (b) of this section, **is amended by inserting "and chapter 107 of this title" immediately before the period at the end of the first sentence.**

(2) Section 10103(a) of title 49, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in this subtitle, the".

(3) Section 10501(a)(2) of title 49, United States Code, is amended by inserting "such **jurisdiction is not limited by subsection (b) of this section or the extent" immediately after "to the extent".**

(4) Section 10501(b)(1) of title 49, United States Code, is amended by inserting "other than transportation which is deemed to be subject to the jurisdiction of the Commis**sion pursuant to section 11501(b)(4)(B) of this title" immediately after "(other than the District of Columbia)".**

(5) Section 10501(c) of title 49, United States Code, is amended by striking out "transportation by carriers" and inserting in lieu thereof "transportation (other than **transportation which is deemed to be subject to the jurisdiction of the Commission pursuant to section 11501(b)(4)(B) of this title) by carriers".**

(6) Section 10501 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) The jurisdiction of the Commission and of State authorities (to the extent such authorities are authorized to administer the standards and procedures of this title pursuant to this section and section 11501(b) of this title) over transportation by rail carriers, and the remedies provided in this title with respect to the rates, classifications, rules, and practices of such carriers, is exclusive.".

CUSTOMER SOLICITATION EXPENSES

SEC. 216. (a) Subchapter III of chapter 107 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10751. Customer solicitation expenses

"(a) Any business solicitation or entertainment expense incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not constitute a violation of section 10741 or 10761 of this title if such expense would not be unlawful if incurred by a person or corporation not subject to the jurisdiction of the Commission.

"(b) Any business entertainment expense authorized under this section that is paid or incurred by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall not be taken into account in determining the cost of service or the rate base for purposes of this title.

"(c) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Commission shall institute a rulemaking proceeding pursuant to which it shall issue rules establishing appropriate standards and guidelines for authorized business solicitation and entertainment expenses under this section. Such standards and guidelines shall be consistent with standards and guidelines applicable under existing law to persons not subject to this title, including competing unregulated surface transportation carriers.".

(b) The section analysis for chapter 107 of title 49, United States Code, is amended by inserting immediately after the item relating to section 10750 the following new item:

"10751. Customer solicitation expenses.".

(c) Section 10761 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to expenses authorized under section 10751 of this title.".

EFFICIENT MARKETING

SEC. 217. (a) Section 10762(c)(3) of title 49, United States Code, is amended by striking out the second sentence and inserting in lieu thereof the following: "In the case of a carrier other than a rail carrier, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 10 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 5 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section.".

(b) Section 10762(d)(1) of title 49, United States Code, is amended by striking out "30-day" and inserting in lieu thereof "notice".

RATE BUREAUS

SEC. 218. (a) Section 10706(a)(1) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(C) 'practicably participates in that movement' shall have such meaning as the Commission shall by regulation prescribe".

(b) Section 10706(a)(2)(A) of title 49, United States Code, is amended—

(1) by inserting "publication," after "initiation," in the first sentence; and

(2) by striking out "section 10101" in the second sentence and inserting in lieu thereof "section 10101a".

(c)(1) Section 10706(a)(3)(A) of title 49, United States Code, is amended to read as follows:

"(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

"(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single line rates proposed by another rail carrier except that for purposes of general rate increases only, if the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;

"(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in that movement; or

"(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. This clause shall take effect on January 1, 1984, or on such earlier date as the Commission determines. If the Commission finds, at any time, that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

(2) Section 10706(a)(3)(B) of title 49, United States Code, is amended to read as follows:

"(B) Until January 1, 1983, subparagraph (A)(ii) and (iii) of this paragraph does not apply to (i) general rate increases or decreases for joint rates if the agreement gives shippers, under specified procedures, at least 15 days notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission, or (ii) board tariff changes that are of at least substantially general application throughout the area when the changes will apply, except single line rate where subparagraph (A)(i) of this paragraph prohibits the participation of carriers with single line rules. If the Commission finds that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.".

(3) Section 10706(a)(3)(C) of title 49, United States Code, is amended—

(A) by inserting "(i)" immediately after "(C)"; and

(B) by adding at the end thereof the following new clause:

"(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, the party making the allegation shall have the burden of showing by clear and convincing evidence that the agreement, conspiracy, or combination occurred. Proof of the violation may not rest on or be inferred from evidence that two or more carriers acted together with respect to a rate, division, rule, classification, or practice applicable to an interline movement and that a party to such action took similar action with respect to a rate, division, rule, classification, or practice applicable to a competitive route or traffic.".

(4) Section 10706(a)(3) of title 49, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(D) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcript or recordings and voting records be submitted to the Commission and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5.".

(d) Section 10706(a) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Commission approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Commission may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Commission may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.".

(e) Section 10706(h)(1)(B) of title 49, United States Code, is amended by striking out "section 10101" and inserting in lieu thereof "section 10101a".

(f) The Interstate Commerce Commission shall require rail carrier members of a rate bureau to provide the employees of such rate bureau who are affected by the amendments made by this section with fair arrangements no less protective of the interests of such employees than those established pursuant to section 11347 of title 49, United States Code. For purposes of this subsection, the term "employees" does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

LONG AND SHORT HAUL TRANSPORTATION

SEC. 219. (a) Section 10726(a)(1) of title 49, United States Code, is amended—

(1) by striking out "I or"; and

(2) by adding at the end thereof the following new sentence: "The provisions of this paragraph shall apply to a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title when such carrier is transporting grains, soybeans, rice or cotton or when the Commission determines that there is competition between a rail and water service or route and the application of this paragraph is necessary to prohibit anticompetitive behavior.".

(b) Section 10726(c) of title 49, United States Code, is repealed.

RAILROAD ENTRY

SEC. 220. (a) Section 10901(a) of title 49, United States Code, is amended by striking "will be enhanced by" and inserting in lieu thereof "permit".

(b) Section 10901 of title 49, United States Code, is further amended by adding at the end thereof the following new subsections:

"(d)(1) Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, no other rail carrier may block such construction or extension by refusing to permit the carrier to cross its property if (A) the construction does not unreasonably interfere with the operation of the crossed line, (B) the operation does not materially interfere with the operation of the crossed line, and (C) the owner of the crossing line compensates the owner of the crossed line.

"(2) If the carriers are unable to agree on the terms of operation or the amount of payment for purposes of paragraph (1) of this subsection, either party may submit the matters in dispute to the Commission for determination.

"(e) The Commission shall require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby no less protective of or beneficial to the interests of such employees than those established pursuant to section 11347 of this title.

"(f) If, after construction of a railroad line pursuant to this section, a rail carrier rearranges or adjusts its work force in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this title, the provisions of this title will apply to such employee.".

SERVICE DURING PERIODS OF PEAK DEMAND

SEC. 221. Section 11101(a) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "A rail carrier shall not be found to have violated this section because it fulfills its commitments under agreements approved under section 10712 of this title before responding to reasonable requests for service.".

RECIPROCAL SWITCHING

SEC. 222. Section 11103 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) (1) The Commission may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Commission shall establish such conditions and compensation.

"(2) The Commission may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.".

CAR SERVICE COMPENSATION

SEC. 223. (a) (1) Section 11122(b) (2) of title 49, United States Code, is repealed.

(2) Section 11122(b) (1) of title 49, United States Code, is amended by striking out "(1)" immediately before "The rate".

(b) Section 10706(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(5) (A) Whenever two or more shippers enter into an agreement that relates to the amount of compensation such shippers propose to charge rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Commission for approval of that agreement under this paragraph. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101a of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the terms required by the Commission, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement.

"(B) If the Commission approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance are unable to agree upon the amount of compensation to be charged for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Commission. The Commission shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Commission.".

CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

SEC. 224. Section 11123(a) of title 49, United States Code, is amended to read as follows:

"(a) (1) When the Interstate Commerce Commission finds that a shortage of equipment, congestion of traffic, or other failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States, the Commission may, for a period not to exceed thirty days—

"(A) suspend any car service rule or practice;

"(B) take action during the emergency to promote service in the interest of the public and of commerce regardless of the ownership (as between carriers) of a locomotive, car, or other vehicle on terms of compensation the carriers establish between themselves, subject to subsection (b) (2) of this section;

"(C) require joint or common use of facilities, on terms of compensation the carriers establish between themselves, subject to subsection (b) (2) of this section, when that action will best meet the emergency and serve the public interest; and

"(D) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.

"(2) The Commission may extend any action taken under paragraph (1) of this subsection beyond the thirty-day period provided in such paragraph only if the Secretary of Transportation certifies that a transportation emergency exists.

"(3) In carrying out the provisions of this subsection, the Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.".

EMPLOYEE PROTECTION

SEC. 225. (a) Section 11347 of title 49, United States Code, is amended by inserting "or pursuant to section 1172(b) of title 11" immediately after "this title".

(b) In authorizing any abandonment of a railroad line under section 1170 of title 11, United States Code, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of title 49, United States Code.

(c) Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this Act.

SAFE RAILROAD REINVESTMENT REQUIREMENTS

SEC. 226. (a) The Secretary of Transportation shall, on the basis of inspections of the track, physical facilities, and operations of a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, notify the Commission that such carrier (1) does not meet the safety requirements of applicable Federal statutes, and (2) is not maintained and operated in a manner which protects the public health and safety and the health and safety of railroad employees. The Secretary may include in his notification to the Commission that, for purposes of reviewing rate increases over which the Commission has jurisdiction, a rail carrier has excessively deferred its maintenance without good cause. For the purposes of this subsection, inspection of track shall be conducted at least once each year.

(b) (1) Upon receipt of the Secretary's notification under subsection (b) of this section with respect to a rail carrier, the Interstate Commerce Commission may, to the extent of its authority under chapter 113 of title 49, United States Code, review the financial arrangements of such carrier and prohibit any financial transactions which would unreasonably impair the ability of such carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

(2) The Commission may exercise its authority under this subsection with respect to a rail carrier until such time as the Commission determines that the safety deficiencies of such carrier which were the basis of the Secretary's notification have been remedied. In exercising such authority, the Commission shall take all steps necessary to avoid impairing the ability of such carrier to obtain financing.

(c) The Interstate Commerce Commission shall submit an annual report to the Congress setting forth its findings with respect to whether rail carriers that are subsidiaries of other companies are involved in financial transactions with the parent company which (1) result in the transfer of funds or assets, directly or indirectly, from the rail carrier to its parent company, and (2) impair the ability of the rail carrier to (A) meet the safety requirements of applicable Federal statutes, and (B) operate in a manner which protects the public health and safety and the health and safety of railroad employees.

ROCK ISLAND AND MILWAUKEE RAILROADS AMENDMENTS

SEC. 227. (a) (1) The Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001 et seq.) is amended by redesignating section 124 as section 125 and by inserting immediately after section 123 the following new section:

"JUDICIAL REVIEW

"SEC. 124. (a) Notwithstanding any other provision of law, any appeal from—

"(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this Act; and

"(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

"(b) If appeals are taken from decisions described in subsection (a) of this section involving section 106 or 110 of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act, the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc, and shall render a final decision no later than 60 days after the date the last such appeal is filed.

"(c) Nothing in this Act or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims under section 1491 of title 28, United States Code (commonly referred to as the Tucker Act).".

(2) Section 110(e) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1008(e)) is amended by inserting "to employees" immediately after "liability".

(3) Section 15(e) of the Milwaukee Rail-

road Restructuring Act (45 U.S.C. 914(e)) is amended by inserting "to employees" immediately after "liability".

(b)(1) Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1005) is amended to read as follows:

"EMPLOYEE PROTECTION AGREEMENTS

"SEC. 106. (a) No later than 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, in order to avoid disruption of rail service and undue displacement of employees, the Rock Island Railroad and labor organizations representing the employees of such railroad with the assistance of the National Mediation Board, may enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad. Such employee protection may include, but need not be limited to, employee relocation incentive compensation, moving expenses, and separation allowances.

"(b) If the Rock Island Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 5 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, the matter shall be immediately submitted to the Commission. The Commission shall impose upon the parties by appropriate order a fair and equitable arrangement with respect to employee protection no later than 15 days after the date of enactment of the Harley O. Staggers Rail Act of 1980, unless the Rock Island Railroad and the authorized representatives of its employees have by then entered into a labor protection agreement. For purposes of this subsection, the term 'fair and equitable' means no less protective of the interests of employees than protection established by and pursuant to section 9 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 908), subject to the limitations set forth in section 110 of this title.

"(c) If an employee protection arrangement is imposed by the Commission under subsection (b) of this section, the bankruptcy court shall immediately authorize and direct the Rock Island Railroad trustee to, and the Rock Island Railroad trustee and the labor organizations representing the employees of the railroad shall, immediately implement such arrangement.

"(d) Any order of the Commission under subsection (b) of this section and any order of the bankruptcy court under subsection (c) of this section may be appealed only to the United States Court of Appeals for the Seventh Circuit. Any such appeal to such court of appeals shall be filed within 5 days after the date of entry of the order of the Commission or the bankruptcy court, as the case may be, and such court of appeals shall finally determine such appeal within 60 days after the date such appeal is filed.

"(e)(1) Any claim of an employee for benefits and allowances under an employee protection agreement or arrangement entered into under this section shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement or arrangement and shall certify such amount to the Rock Island Railroad for payment.

"(2) Benefits and allowances under such agreement or arrangement entered into under this section shall be paid by the Rock Island Railroad from its own assets or in accordance with section 110 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Rock Island Railroad.

"(f) The first sentence of section 7(b)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(7)) is amended by striking out 'and the Milwaukee Railroad Restructuring Act' and inserting in lieu thereof ", the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act".

(2) Section 108(a) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1007(a)) is amended by inserting immediately before the period at the end thereof the following: "(other than as provided in the agreement entered into in Washington, D.C., on March 4, 1980, entitled 'Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association')."

(3) Section 103(5) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1002(5)) is amended by inserting immediately before the period at the end thereof the following: ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding".

(c) Section 102 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1001) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 102. The Congress finds that—

"(1) the Railroad Revitalization and Regulatory Reform Act of 1976 was not intended to imply that there would be no labor protection in the event of a total abandonment by a major rail carrier and the Milwaukee Railroad Restructuring Act requires the imposition of employee protection in all abandonments when the rail carrier is in bankruptcy whether such carrier is being reorganized or has been ordered to be liquidated:

"(2) the statutory imposition of employee protection has and continues to serve the public interest by stabilizing employment in the railroad industry and promoting improved labor-management relations and sound employment practices;

"(3) imposing employee protection in abandonments as part of a reorganization while not imposing employee protection in an abandonment proceeding pursuant to an order of liquidation would violate the clear and unequivocal congressional policy encouraging continued rail service through railroad reorganizations rather than liquidations;

"(4) Congress has given the Rock Island Railroad, its creditors, and its shareholders extraordinary benefits under this Act and the Milwaukee Railroad Restructuring Act by, among other benefits—

"(A) giving preference to all proceedings at the Commission involving the Rock Island Railroad, authorizing the bankruptcy court to approve abandonments and sales of lines and facilities of such railroad without procedural delays at the Commission, and expediting appeals from this Act;

"(B) establishing conditions which will have the effect of limiting the Rock Island Railroad employee protection liability that would otherwise be imposed by law, both directly and indirectly; and

"(C) providing the Rock Island Railroad revenues from the lease of its facilities by other rail carriers by permitting the use of such facilities thereby maintaining their value as a going concern, and by providing Federal financial assistance to purchasers of Rock Island facilities, thereby promoting purchases, to the enrichment of Rock Island Railroad, its creditors, and its shareholders; and

"(5) the employees of the Rock Island Railroad relied in good faith upon the representation by the Federal Government that employee protection for employees who would not be provided protection through a private agreement with acquiring rail carriers would be protected by the provisions of this Act and cooperated with all parties to insure continued rail service in the Midwest, thereby enhancing the value of the Rock Island Railroad by maintaining its value as a going concern.".

(d)(1) Section 7 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 906) is amended by adding at the end thereof the following new subsection:

"(h)(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and cancelled when—

"(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

"(B) substantially all of the Milwaukee Railroad is purchased.

"(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on the date of enactment of the Harley O. Staggers Rail Act of 1980 has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on such date of enactment have obtained employment with other rail carriers.".

(2) Section 14 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 913) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 505(h)(1)(A) and (B) of the Railroad Revitalization and Regulatory Reform Act of 1976.".

(e) Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended—

(1) in paragraph (1)(A), by striking out "$25,000,000" and inserting in lieu thereof "$38,000,000";

(2) in paragraph (1)(B), by striking out "$18,000,000" and inserting in lieu thereof "$27,000,000"; and

(3) in paragraph (4), by inserting "or such other time as the Secretary considers appropriate," immediately after "September 15, 1980,".

(f) The amendments made by this section shall take effect on the date of enactment of this Act.

LOAN GUARANTEES

SEC. 228. (a) To promote competition in the transportation of coal, the Secretary of Transportation shall, no later than 45 days after the date of enactment of this Act, take final action of any application for loan guarantees, under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, to be used in connection with joint ownership, construction, or rehabilitation of any facilities (including support facilities) for a second rail carrier to serve the Powder River Coal Region in Montana and Wyoming.

(b) The Secretary of Transportation may waive the provisions of section 511(g) of the Railroad Revitalization and Regulatory Reform Act of 1976 in making the loan guarantees described in subsection (a) of this section.

(c) The provisions of section 4(f) of the Department of Transportation Act shall not apply to any loan guarantee described in subsection (a) of this section.

(d)(1) The Secretary of Transportation shall review the proposed Chicago & North Western connector line route and shall not approve any route which requires the use of any agricultural land unless (A) there is no feasible and prudent alternative to the use of such land and, (B) the proposed route construction plan requires all possible planning to minimize harm to such agricultural land resulting from such use; provided, however, that the Secretary of Transportation may not otherwise disapprove a proposed route for the Chicago & North Western line on the authority of this subsection. This review of a proposed route shall be conducted within ninety days after the "final action" specified in subsection (a);

(2) (A) The Secretary shall review the use of any agricultural land used in any route for newly constructed line and shall require, to the maximum extent prudent and feasible, that such railroad provide a private grade crossing for the convenience of each land owner whose agricultural holdings are "divided by such newly constructed line when the Secretary finds that such division of property will cause a substantial disruption to the agricultural use of such land. The owners of such property shall file a request for such grade crossing with the Secretary within 180 days of "final action" as described in subsection (a) of this section. The finding of the Secretary under this subsection shall be final.

(B) The Secretary shall render a decision on each request for grade crossing under this paragraph within 180 days of its receipt. Such review shall not require the delay of construction of new line under subsection (a) of this section.

(C) When the Secretary requires the construction of a grade crossing under this paragraph, he shall require that the land holder and the railroad enter into an agreement which shall limit the liability of such railroad for accidents at such crossing to $25,000, provided that such railroad has constructed such grade crossing in a manner calculated to avoid reasonably foreseeable accidents to persons and livestock. Maintenance of safety features such as fences for such crossings shall be the responsibility of the land holder.

AMENDMENT TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 229. (a) The second sentence of section 211(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)) is amended by inserting "is not required to make the findings with respect to subsections (e)(3) and (f) and" immediately after "the association" the first place it appears.

(b) Section 211(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(d)(2)) is amended by striking out "$4,000,000" and inserting in lieu thereof "$7,500,000".

(c) The last sentence of section 211(d) of the Regional Rail Reorganizational Act of 1973 (45 U.S.C. 721(d)) is amended by striking out "1980" and inserting in lieu thereof "1981".

SAVINGS PROVISIONS

SEC. 230. (a) Any rate that is in effect on the effective date of this Act for transportation by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of title 49, United States Code, may, during the 180 day period beginning on such effective date, be challenged in a complaint filed with the Interstate Commerce Commission by any interested party alleging that the rail carrier has market dominance over the transportation to which the rate applies, as determined under section 10709 of such title, and that the rate is not reasonable under section 10701a of such title.

(b) Any rate described in subsection (a) of this section—

(1) which is not challenged in a complaint filed within the 180-day period provided in such subsection; or

(2) which is challenged in such a complaint, but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be reasonable,

shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court.

(c) The provisions of this section shall not apply to any rate under which the volume of traffic moved during the 12-month period immediately preceding the effective date of this Act did not exceed 500 net tons and has increased ten-fold in the 3-year period immediately preceding the bringing of a challenge to the increase of such rate.

(d) The burden of proof in any proceeding under this section shall be on the complainant.

ASSISTANCE

SEC. 23D. (a)(1) There is hereby established a Rail Technology and Shipper Needs Board (hereinafter in this section referred to as the "Board"), which shall be composed of the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Labor, the Chairman of the Interstate Commerce Commission, and two shipper representatives from national agricultural organizations appointed by the President. The Secretary of Transportation shall serve as Chairman of the Board and shall have the responsibility for expediting the proceedings of the Board.

(2) (A) The Board shall select personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees, task forces, and advisory panels. Such individuals shall be selected on the basis of their proven expertise in transportation related fields.

(B) Individuals selected under this section may be compensated for their services at the discretion of the Board, but in no event shall any such individual receive compensation in excess of 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including travel time) in which he is engaged in the actual performance of duties vested in the Board.

(b) (1) The Board may conduct studies of technological means to improve rail productivity and of the continuing transportation needs of urban and rural rail shippers, and shall submit reports to the Congress, in accordance with paragraph (2) of this subsection, on the results of such studies. Such reports shall include—

(A) an assessment of current rail technology limitations, with recommendations for rail technological innovations and improvements designed to—

(i) reduce rail operating and future investment costs;

(ii) reduce consumer prices, including food prices;

(iii) reduce energy consumption;

(iv) promote inter-modal and intra-modal coordination;

(v) provide financially self-sustaining and continuing rail service to light traffic density agricultural areas; and

(vi) enhance the competitive position of United States exports (including agricultural products) in world markets;

(B) estimates of future labor and capital investment requirements to rehabilitate the essential rail system of the United States.

(C) a recommendation with respect to the need to develop and disseminate, on a continuing basis, information, and analysis on projected transportation needs of urban and rural shippers for the purpose of improving private and public investment decisionmaking;

(D) an analysis of the effect of the provisions of this Act on urban and rural shippers, including so-called "captive" shippers;

(E) recommendations with respect to improving economic, regulatory, and legislative conditions to enhance the acquisition and financially self-sustaining operation of rail feeder lines by cooperative organizations; and

(F) an analysis of potential and existing urban and rural Federal rail programs which need to be coordinated in order to insure the maximum utilization of Federal funds.

(2) The Board shall submit an interim report to the Congress under this subsection no later than January 1, 1982, and shall submit a final report to the Congress no later than January 1, 1984.

(c) (1) The Board shall cooperate with existing Federal departments and agencies to assure that sufficient resources and facilities exist to assist agriculture shippers in forming cooperative shipper associations and in taking advantage of expanded opportunities for contracting.

(2) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

(d) The Board shall cease to exist 5 years after the effective date of this Act.

(e) In evaluating restructuring plans submitted under section 518(h) of the Railroad Revitalization and Regulatory Reform Act of 1976, the Secretary of Transportation shall consult with the Secretary of Agriculture with respect to any aspect of such a plan that impacts upon the provision of transportation services to agricultural and rural areas.

(f) The Secretary of Agriculture, in cooperation with the Secretary of Transportation, may establish regional agricultural transportation representatives to assist shippers in securing railroad or alternative transportation services on the most favorable possible terms.

(g) (1) The Secretary of Transportation and the Secretary of the Treasury shall jointly submit to the Congress, within 9 months of the effective date of this Act, a comprehensive report on the anticipated effect (including the loss of revenue to the Federal Treasury) of amending section 103 of the Internal Revenue Code of 1954 to provide an exemption from taxation for obligations incurred in connection with the rehabilitation of railroad feeder lines. Such report shall also include such criteria as may be necessary to prevent the abuse of such special tax status.

(2) For purposes of this section, railroad feeder line rehabilitation includes the acquisition, construction, reconstruction, or erection of any feeder line roadbed, track, trestle, depot, switching, and signalling equipment, or any other rail equipment (other than rolling stock).

(h) There are authorized to be appropriated for purposes of carrying out the provisions of this section not to exceed $2,000,000.

TITLE III—RAILROAD COST DETERMINATIONS

UNIFORM ACCOUNTING SYSTEM

SEC. 301. Section 11142 of title 49, United States Code, is amended to read as follows:

"§ 11142. Uniform accounting system

"The Interstate Commerce Commission may prescribe a uniform accounting system for classes of carriers providing, and brokers for, transportation subject to the jurisdiction of the Commission under subchapters II, III, and IV of chapter 105 of this title.".

RAILROAD COST ACCOUNTING

SEC. 302. (a) Chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"§ 11161. Railroad Accounting Standards Board

"(a)(1) There is established a Railroad Accounting Standards Board which shall be within and responsible to the legislative branch of the Federal Government.

"(2) The Board shall be composed of the Comptroller General of the United States, who shall serve as chairman, and six members to be appointed by the Comptroller General.

"(3) The Comptroller General shall appoint members of the Board from among persons who are well qualified for such position by virtue of experience in or knowledge of rate regulation, accounting, or cost determinations. Of the members of the Board so appointed—

"(A) one shall be from the accounting profession;

"(B) one shall be from the railroad industry;

"(C) one shall be a representative of major rail shippers;

"(D) one shall be from the Interstate Commerce Commission;

"(E) one shall be a representative of small rail shippers; and

"(F) one shall be from the economics profession.

"(4) The term of office of each appointed member of the Board shall be three years, except that any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.

"(5) The Board shall not act in the absence of a quorum, which shall consist of three members.

"(b) Each appointed member of the Board shall receive compensation at a rate equal to 1/260 of the rate prescribed for level IV of the Executive Schedule, under section 5315 of title 5, for each day (including traveltime) in which he is engaged in the actual performance of duties vested in the Board.

"(c)(1) The Board may utilize personnel from the Federal Government, with the consent of the head of the appropriate Federal department or agency, or appoint individuals from private life, to serve on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities under this subchapter.

"(2) Individuals appointed by the Board under this subsection may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(d) All Federal departments and agencies are authorized to cooperate with the Board and to furnish information, appropriate personnel (with or without reimbursement), and such financial and other assistance as may be agreed upon by the Board and the Federal department or agency involved.

"(e) Members and employees of the Board and all other individuals appointed under this subsection having or having had access to information in the possession of the Board shall be subject to the provisions of section 1905 of title 18.

"(f) The Board shall cease to exist three years after the effective date of the Harley O. Staggers Rail Act of 1980.

"§11162. Cost accounting standards

"(a) Within two years after the effective date of the Harley O. Staggers Rail Act of 1980, the Railroad Accounting Standards Board shall establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title, principles for obtaining economically accurate railroad costs directly and indirectly associated with particular movements of goods, identifying the variable costs associated with particular movements of goods or such other costs as the Board believes most accurately represent the economic costs of such movements, including principles to govern the compilation of actual cost data, and to what degree of reliability indirect costs can be attributed to particular movements of goods. Such principles shall govern the determination of all railroad costs for specific regulatory proceedings under this title.

"(b) In developing cost accounting standards under this section, the Board shall take into account the following considerations:

"(1) The specific regulatory purposes for which railroad costs are required.

"(2) The degree of accuracy of the cost information which is needed to meet regulatory purposes.

"(3) The existing capability and the probable future capability of rail carriers to provide such information and the relative benefits and costs of requiring development of additional capability.

"(4) The means by which the degree of economic accuracy required can be obtained at the least possible expense and with the least possible information reporting.

"(5) The means by which the confidentiality of such costs can best be maintained while meeting the need for such information in regulatory proceedings.

"(c) The cost accounting standards established by the Board shall require that cost information be reported or disclosed only for the essential regulatory purposes defined by the Board.

"§ 11163. Implementation of cost accounting standards

"Upon the establishment of cost accounting standards by the Railroad Accounting Standards Board under section 11162 of this title, the Interstate Commerce Commission shall immediately promulgate rules to implement and enforce such standards. Not less than once every five years after the promulgation of the original rules, the Commission shall review the standards of the Board and shall, by rule, make such changes in such standards as are required to achieve the regulatory purposes of this title and the goals of this subchapter. The Commission shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes.

"§ 11164. Certification of rail carrier cost accounting systems

"(a) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, each rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall file with the Commission a request for preliminary certification of its cost accounting system. The Commission shall grant such preliminary certification if it determines that the cost accounting system of such rail carrier is in compliance with the accounting standards of the Commission in effect on the day prior to the effective date of the Harley O. Staggers Rail Act of 1980.

"(b)(1) As soon as practicable, but not later than 9 months, after the promulgation of rules by the Commission under section 11163 of this title, each rail carrier described in subsection (a) of this section shall file with the Commission a request for final certification of its cost accounting system.

"(2) Within 90 days, or such additional time as the Commission finds necessary, after a rail carrier files its request for final certification under paragraph (1) of this subsection, the Commission shall grant such final certification to such carrier if the Commission determines that the cost accounting system of such carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title. If the Commission denies such final certification, the rail carrier shall revise its cost accounting system and file a new request for certification within 90 days after the date of such denial. The Commission shall thereupon grant final certification if it determines that such cost accounting system, as revised, is in compliance with such rules. If the Commission again denies final certification to the rail carrier, the Commission shall prescribe a cost accounting system which such carrier shall adopt within a reasonable time and which shall be considered a finally certified cost accounting system for purposes of this section.

"(c) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Commission under section 11163 of this title.

"(d)(1) Certification under this section that the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission under section 11163 of this title shall be valid until the promulgation of new rules by the Commission.

"(2) After the cost accounting system of a rail carrier is certified under this section, such rail carrier may, after notifying the Commission, make modifications in such system unless, within 60 days after the date of notification, the Commission finds such modifications to be inconsistent with the rules promulgated by the Commission under section 11163 of this title.

"(e) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Commission, the Commission shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

"§ 11165. Cost availability

"Consistent with the rules of the Interstate Commerce Commission governing discovery in Commission proceedings, rail carriers shall make relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Commission proceeding in which such data is required.

"§ 11166. Accounting and cost reporting

"(a) To obtain expense and revenue information for regulatory purposes, the Interstate Commerce Commission may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, prescribing expenses and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers. To the extent such rules are required solely to provide expense and revenue information necessary for determining railroad costs in regulatory proceedings pursuant to this title, such rules shall be promulgated in accordance with the cost accounting standards established by the Railroad Accounting Standards Board under section 11162 of this title.

"(b) Any reports required by the rules established by the Commission under this section shall include only information considered necessary for disclosure under the cost accounting standards established by the Board or under generally accepted accounting principles or the requirements of the Securities and Exchange Commission.

"§ 11167. Reports

"The Railroad Accounting Standards Board shall, within 2 years after the effective date of the Harley O. Staggers Rail Act of 1980, submit the following reports to the Congress:

"(1) A report comparing the probable costs of the implementation of cost accounting standards established under section 11162 of this title, including any inflationary effects, to the possible benefits of the implementation of such standards, including the availability of more precise data for use by rail carriers and shippers in proceedings before the Commission.

"(2) A report setting forth any recommendations of the Board for appropriate legislative or administrative action in order to integrate the cost accounting standards and the cost accounting system certification process under this subchapter into existing rail carrier rate regulation under this title, including determinations of the absence of effective competition under section 10709 of this title."

(b) The analysis of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—RAILROAD COST ACCOUNTING

"11161. Railroad Accounting Standards Board.
"11162. Cost accounting standards.
"11163. Implementation of cost accounting standards.
"11164. Certification of rail carrier cost accounting systems.
"11165. Cost availability.
"11166. Accounting and cost reporting.
"11167. Reports.".

CIVIL PENALTIES FOR VIOLATION OF ACCOUNTING STANDARDS PROVISIONS

SEC. 303. (a) (1) Chapter 119 of title 49, United States Code, is amended by inserting immediately after section 11913 the following new section:

"§ 11913a. Accounting standards violations

"Any rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title that fails to obtain final certification of its cost accounting system under section 11164(b) of this title shall be fined not less than $50,000.".

(2) The section analysis of chapter 119 of title 49, United States Code, is amended by inserting immediately after the item relating to section 11913 the following new item:

"11913a. Accounting standards violations.".

(b) Section 11910 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

(d) A person that knowingly discloses confidential data made available to such person under section 11165 of this title by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title shall be fined not more than $50,000.".

TITLE IV—RAILROAD MODERNIZATION AND RESTRUCTURING ASSISTANCE

COORDINATION OF FEDERAL ASSISTANCE

SEC. 401. (a) The Secretary of Transportation, in administering the provisions of this title, shall be guided by the goal of achieving a safe and efficient transportation system by providing transitional financial assistance which facilitates—

(1) restructuring of railroad facilities and related projects that emphasize higher density operations and the elimination of uneconomical plant;

(2) improved asset and manpower utilization; and

(3) the encouragement of a strong system of self-supporting shipper-operated or State-operated rail lines.

(b) Within 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress listing the specific Federal assistance provided the railroad industry during such fiscal year. Each such report shall set forth the reasons for each Federal loan or grant and explain the way in which such loan or grant contributed to the overall goal or providing a safe and efficient transportation system.

FEEDER RAILROAD DEVELOPMENT PROGRAM

SEC. 402. (a) Subchapter I of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new sections:

"§ 10910. Railroad development

"(a) (1) Whenever the Interstate Commerce Commission finds—

"(A) (i) under section 10903 of this title, that the present or future public convenience or necessity require or permit the abandonment or discontinuance of a railroad line, or (ii) under subsection (b) of this section, that transportation provided over a particular line of railroad by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title is inadequate; and

"(B) that an application to purchase such line has been filed, in accordance with section 10911 of this title, by a financially responsible person (including a governmental authority) other than a class I or class II rail carrier, and that such person will continue to provide railroad transportation over such line,

the Commission shall require the rail carrier owning the line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

"(2) For purposes of this subsection—

"(A) the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater; and

"(B) a financially responsible person is a person who (i) is capable of paying the constitutional minimum value of the line proposed to be acquired, and (ii) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

"(b) (1) For the purposes of this section, transportation over a particular railroad line shall be deemed to be inadequate if the Commission determines, after a hearing, that—

"(A) the transportation over such line is unacceptable to and for the majority of shippers who can transport traffic over such line;

"(B) the rail carrier operating such line is not making reasonable efforts, as judged on the basis of the performance of an efficient rail carrier providing quality transportation, to provide service sufficient to meet the needs of shippers who can transport traffic over such line;

"(C) the sale of such line will not impair the financial ability of the rail carrier providing transportation over such line to perform its obligations to the public;

"(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier providing transportation over such line; and

"(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

"(2) In a proceeding under this subsection, the burden of proving that rail transportation over a particular line is inadequate is on the person filing the application to acquire such line. If the Commission finds under this subsection that rail transportation over a particular line is inadequate, the Commission shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

"(c) In the case of any line subject to sale under subsection (a) of this section, the Commission may, to allow the purchasing carrier a reasonable interchange with the selling carrier, require the selling carrier to provide to the acquiring carrier trackage rights to a reasonable interchange point or points, as determined by the Commission. The Commission shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

"(d) The Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a line subject to a sale under this section.

"(e) Whenever a purchasing carrier under this section petitions the Commission for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Commission shall, within 30 days after the rate such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable compensatory joint rates and divisions over such route.

"(f) (1) Any person operating a railroad line acquired under this section shall be exempt (A) from the provisions of sections 10901 and 10903 of this title, and (B) except with respect to interstate traffic or participation in a joint rate, from the provisions of chapter 107 of this title.

"(2) This subsection applies only to a railroad line acquired pursuant to this section and section 10911 of this title.

"(3) Nothing in this subsection shall preclude a person acquiring a railroad line under this section from applying for a certificate of public convenience and necessity under section 10901 or section 10903 of this title for such line.

"(g) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

"(h) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

"(i) Nothing in this section or section 10911 of this title shall be construed as affecting any obligation imposed or remedy available under subchapter I of chapter 111 of this title.

"§ 10911. Filing and procedure for acquiring railroad lines

"(a) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall, at least 30 days prior to filing an application under this section, notify the Commission, the rail carrier owning such line, and other interested parties that such person intends to file such application.

"(b) A financially responsible person proposing to purchase or otherwise acquire a railroad line under section 10910 of this title shall file an application with the Commission in accordance with this section. Such application shall include the following information:

"(1) The name and address of the person proposing to operate the line and, unless such operator is an existing rail carrier—

"(A) its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

"(B) the names and addresses of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

"(C) sufficient information to establish its financial responsibility.

"(2) The exact dates of the period of operation which have been agreed upon by the operator and the financially responsible person that owns the line (including a copy of any written agreement between such parties).

"(3) A description of the transportation to be provided, including, where applicable, a description of—

"(A) the line over which transportation is to be provided;

"(B) all interline connections, including the names of the connecting railroads;

"(C) the nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

"(D) any preconditions which shippers must meet to receive service.

"(4) The name and address of any person subsidizing the operation of transportation over the line.

"(5) Sufficient information to establish the financial responsibility of any person proposing to subsidize such operation, and, if such person is a State, information establishing that it has authority to enter into the agreement to provide such subsidy.

"(c) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, the rail carrier owning such line shall promptly provide to such person—

"(1) the constitutional minimum purchase price for the line;

"(2) an estimate of the amount of funding necessary each year to keep the line in operation;

"(3) the rail carrier's most recent reports on the physical condition of the line; and

"(4) any other information that the Commission considers necessary to allow a potential offeror to calculate the constitutional minimum purchase price.

"(d)(1) Whenever a financially responsible person files an application to acquire a railroad line under section 10910 of this title, such person shall also file a notice of intent to acquire, which shall include—

"(A) an accurate and understandable summary of such person's application and the reasons for proposing to acquire the line;

"(B) a statement indicating that any interested party is entitled to recommend to the Commission that it approve, deny, or take other action with respect to such application; and

"(C) a statement that other interested parties may also propose to acquire the line.

"(2) A financially responsible person that files an application to acquire a railroad line under section 10910 of this title shall—

"(A) send by certified mail a copy of the notice of intent to the chief executive officer of each State that would be directly affected by the proposed acquisition;

"(B) post a copy of the notice in each terminal and station on each portion of the line proposed to be acquired;

"(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each portion of such line is located;

"(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Commission) to the line during the 12 months preceding the filing of the application; and

"(E) attach to the notice filed with the Commission an affidavit certifying the manner in which clauses (A) through (D) of this paragraph have been satisfied, and certifying that clauses (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

"(e)(1) Within 30 days after an application to acquire a line is filed under this section (other than a line described in section 10910(a)(1)(A)(i) of this title), any interested party may file with the Commission a protest of the sale of such line.

"(2) If protest is not filed within the 30-day period described in paragraph (1) of this subsection, and the Commission determines—

"(A) that, under section 10910(b) of this title, service over the line to be acquired is inadequate; and

"(B) that the application has been filed in accordance with this section and the financially responsible person filing the application will continue to provide rail transportation over such line,

the Commission shall, within 45 days after the date such application is filed, issue a certificate permitting the applicant to acquire the line.

"(2)(A) If a protest is filed within 30 days after the date an application to acquire a line is filed, the Commission shall, within 45 days after the date such application is filed, determine whether an investigation is needed to assist in determining the appropriate disposition to make of such application.

"(B) If the Commission determines that an investigation is not needed, the Commission shall, within 75 days after the date the application is filed, determine whether it is able to make the findings set forth in paragraph (1) of this subsection. If the Commission makes such findings, it shall, within 90 days after the date the application is filed, issue a certificate permitting the applicant to acquire such line within 120 days after such date.

"(C) If the Commission determines that an investigation is needed, it shall complete the investigation within 135 days after the date the application is filed, and render an initial decision within 165 days after such date.

"(D) The initial decision of the Commission under subparagraph (C) of this paragraph shall, at the end of the 30-day period beginning on the date it is rendered, become the final decision of the Commission, unless during such period the Commission decides to hear appeals. If an initial decision is appealed and considered by the Commission, the Commission shall render a final decision within 255 days after the date the application was filed.

"(C) Whenever the Commission renders a final decision making the findings set forth in paragraph (1) of this subsection, the Commission shall, within 15 days after the date of such final decision, issue a certificate permitting the applicant to acquire the line within 75 days after such date.

"(f) The Commission shall give preference to any application filed by a shipper under this section to acquire a railroad line under section 10910 of this title.

"(g) Section 10505 of this title does not apply to transportation provided over a line of railroad acquired under this section and section 10910 of this title. The Commission shall not construe the issuance of a certificate under this section as grounds for granting an exemption under such section 10505.".

(c) The section analysis of chapter 109 of title 49, United States Code, is amended by adding immediately after the item relating to section 10909 the following new items:

10910. Railroad development.
10911. Filing and procedure for acquiring railroad lines.

RESTRUCTURING ASSISTANCE

SEC. 403. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) is amended by adding at the end thereof the following new section:

"RESTRUCTURING ASSISTANCE

"SEC. 518. (a) GENERAL.—The Secretary is authorized to provide financial assistance to any railroad or subsidiary of a railroad to pay any share of the cost of restructuring its facilities, including related labor protection costs, and acquiring securities pursuant to a restructuring. Financial assistance under this section shall be through repayable credits constituting a debt or equity financing, and shall be made available by the Secretary only if the Secretary determines that—

"(1)(A) the assistance will result in significant railroad restructuring and such restructuring would not be likely to be achieved unless such assistance is provided; and

"(B)(i) the railroad has agreed to restructuring under a plan submitted in accordance with subsection (h) of this section, or (ii) the assistance will be used to fund a project approved by the Secretary under section 5(a)–(d) of the Department of Transportation Act (49 U.S.C. 1654(a)–(d)), and the railroad shows that such project will result in significant restructuring; or

"(2) the assistance will be used for purchase or rehabilitation of feeder lines.

"(b) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance under this section by purchasing a fixed debt obligation issued by a railroad, except that if the Secretary determines that an equity financing is essential to a restructuring, the Secretary may prvoide financial assistance under this section by purchasing senior preferred stock. The Secretary may purchase a fixed debt obligation issued as a trustee certificate by the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act, but only if the Secretary determines that the restructuring is necessary for the establishment of a self-sustaining railroad.

"(c) CHARACTERISTICS OF FIXED DEBT OBLIGATIONS.—(1) A fixed debt obligation purchased by the Secretary under this section shall provide that—

"(A) on the 5th anniversary of the date of original issuance, interest (at three-fourths of the rate established by the Secretary of the Treasury as of the most practicable date immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) shall begin to accrue; and

"(B) beginning on the 6th anniversary of the date of original issuance, accrued interest and principal shall be payable annually in equal aggregate installments such that on a date not later than the 20th anniversary of the date of original issuance, the principal and all accrued interest shall have been repaid.

"(2) Consistent with subsection (f) of this section, the Secretary may require a railroad or a subsidiary receiving assistance under this section to convey to the Secretary a security position which accords the Secretary a lien and priority of payment which are subordinate to those of the railroad's or subsidiary's present and prospective secured creditors (and any claims having a priority of payment senior to secured creditors) but are first in time and right to those of all present and prospective unsecured creditors.

"(d) EXCHANGES.—Where the Secretary makes a determination under subsection (b) of this section, the Secretary may, in purchasing trustee certificates or at any time thereafter, agree with the trustee of a railroad in reorganization under chapter 11 of title 11 of the United States Code or under section 77 of the Bankruptcy Act to exchange trustee certificates for senior preferred stock issued in connection with a plan of reorganization approved by the reorganization court.

"(e) CHARACTERISTICS OF SENIOR PREFERRED STOCK.—Senior preferred stock purchased by the Secretary under this section shall be an equity security issued by a railroad or its subsidiary. Each share of senior preferred stock shall—

"(1) in accordance with laws of the issuer's State of incorporated governing dividends on and redemption of preferred stock—

"(A) be subject to redemption at par commencing no later than the 6th anniversary of the date of original issuance and ending not later than the 20th anniversary of the date of original issuance in amounts which will aggregate the initial par value of the share and return the aggregate of dividends cumulated and due;

"(B) have dividends payable annually (at one-half the rate established by the Secretary of the Treasury as of the most practicable data immediately preceding execution of a financing agreement, taking into account the current average yield on outstanding marketable securities of the United States having comparable maturities) beginning on the 6th anniversary of the date of original issuance and computed on the average outstanding par amount of the share for the 12 months preceding each payment; and

"(C) have dividend and redemption declarations and payments which are cumulative and not subject to the discretion of the issuer's board of directors or shareholders;

"(2) be optionally redeemable by the issuer, and upon any optional redemption, shall return the outstanding par value plus the aggregate of dividends cumulated and due (pro rata for any part of a year after the 5th anniversary of the date of original issuance) as of the date of an optional redemption;

"(3) be nonvoting and have an initial par value of $10,000;

"(4) be senior in right with respect to dividend and redemption payments and in case of any liquidation or dissolution of the issuer only to all of the issuing corporation's equity securities whenever issued; and

"(5) be issued by the corporation (A) that owns all of the facilities to be rehabilitated or improved, or (B) that will, at the completion of an acquisition, own all of the facilities acquired in whole or in part with assistance provided under this section and that has a capitalization at the time of issuance which consists solely of equity.

"(f) TERMS AND CONDITIONS.—Before providing any financial assistance under this section, the Secretary shall require the railroad or the subsidiary receiving assistance to agree to such terms and conditions as are sufficient, in the Secretary's judgment, to assure that—

"(1) significant restructuring will occur;

"(2) all financial assistance provided under this section will be used as prescribed by the Secretary; and

"(3) that there is a reasonable likelihood that such financial assistance will be repaid.

"(g) DEFAULT.—Whenever a railroad or a subsidiary receiving assistance under this section defaults on any provision of a financing agreement or a security purchased pursuant to this section, the Secretary may (but is not required to) appoint from time to time two members to the board of directors of the railroad or the subsidiary (or both), at the Secretary's option, who shall serve until the financial assistance has been repaid in full or for a lesser period as determined by the Secretary. The Secretary may also exercise all remedies in law or equity and may request the Attorney General of the United States to commence a civil action for damages, specific performance, or any other available remedy in any appropriate court.

"(h) RESTRUCTURING PLANS.—(1) Each railroad or subsidiary which applies for assistance under subsection (a) (1) (B) (i) of this section shall submit a restructuring plan that—

"(A) has been approved by the railroad's board of directors;

"(B) demonstrates the railroad's or the subsidiary's ability to repay the financial assistance; and

"(C) identifies specific coordinations, consolidations, or other restructuring actions which the railroad or the subsidiary proposes to undertake.

"(2) The Secretary shall establish regulations governing the scope, content, and format of the restructuring plan.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this title, is further amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 519. There is authorized to be appropriated to the Secretary for purposes of providing financial assistance under section 518 for fiscal years 1980 through 1984, without fiscal year limitation, such sums as are necessary, not to exceed $1,475,000,000, of which no less than 5 percent shall be available for the purchase or rehabilitation of feeder lines, except that no such funds shall be authorized for appropriations for the purchase or rehabilitation of a line of railroad unless such purchase or rehabilitation is consistent with the rail plan (as defined under section 5 of the Department of Transportation Act) of the State in which such line is located. Sums appropriated under this section are authorized to remain available until expended."

TRANSACTION ASSISTANCE

SEC. 405. Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(h)) is amended by adding at the end thereof the following new paragraphs:

"(5) Financial assistance made available under paragraph (1) (B) of this subsection may be used to purchase for purposes of rail banking, properties of the Milwaukee Railroad located in the State of Montana with respect to which an interest in future rail common carrier operations has been evidenced.

"(6) Applications for rail banking shall be treated equally with other applications for transaction assistance."

EXTENSION OF REDEEMABLE PREFERENCE SHARE FINANCING

SEC. 406. Sections 505(e), 507(a), 507(d), and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825(e), 827(a), 827(d), and 829) are each amended by striking out "September 30, 1980" and inserting in lieu thereof "September 30, 1982".

ELECTRIFICATION LOAN GUARANTEES

SEC. 407. Section 211(i) of the Regional Reorganization Act of 1973 (45 U.S.C. 721(i)) is amended—

(1) by inserting "or any other railroad" immediately after "The Corporation" the first place it appears;

(2) by inserting "or such railroad" immediately after "the Corporation" the second and third places it appears; and

(3) by inserting immediately after the first sentence the following new sentences: "Upon application by the Corporation or any other railroad, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of such Act, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to achieve the goals of the national energy policy. In guaranteeing obligations pursuant to the preceding sentence, the Secretary may waive the requirements of section 511(g) of such Act."

GOVERNMENT INCLUSION

SEC. 408. (a) Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.), as amended by this Act, is further amended by adding at the end thereof the following new section:

GOVERNMENT INCLUSION

"SEC. 520. The Secretary of Transportation in administering the provisions of this title and the Department of Transportation Act, may allocate financial assistance provided under section 511 and section 518 of this title and section 5(f)–(p) of the Department of Transportation Act to Government entities or private entities if the Secretary finds that—

"(1) rail shippers would be denied rail transportation over a rail line but for such assistance; or

"(2) service provided by a private rail carrier on a rail line is inadequate to or for a majority of rail shippers.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 409. (a) Section 501 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821) is amended—

(1) in paragraph (6), by inserting "trustee certificate," after "note," and by inserting ", or to facilitate a restructuring" after "improvement"; and

(2) by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(9) 'subsidiary' means any corporation in an unbroken chain of corporations beginning with a class I railroad, if each corporation other than the last corporation in the chain owns voting securities possessing more than 50 percent of the total combined voting power in one of the other corporations in the chain.".

(b) Section 510 of such Act (45 U.S.C. 830) is amended—

(1) by inserting ", obligations, or senior preferred stock" after "shares"; and

(2) by inserting "to the Federal Government" after "railroads".

(c) The table of contents for title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding at the end thereof the following new items:

"Sec. 518. Restructuring assistance.
"Sec. 519. Authorization of appropriations.
"Sec. 520. Government inclusion.".

TITLE V—CONRAIL TITLE V LABOR PROTECTION

MONTHLY DISPLACEMENT ALLOWANCE

SEC. 501. Section 505(b) of the Regional Rail Reorganizataion Act of 1973 (45 U.S.C. 775(b)) is amended to read as follows:

"(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee shall be paid a monthly displacement allowance for any calendar month within the period identified in subsection (c) of this section in which the employee is deprived of employment or adversely affected with respect to such employee's compensation, in accordance with the following provisions:

"(1) (A) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980, the protected rate of pay of a protected nonoperating employee (other than a maintenance-of-way employee) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be based on the rate of pay of the position held by the employee on September 1, 1979, or if the employee held no position on that date, the rate of pay of the last position held by the employee prior to that date. A guaranteed hourly rate of pay will be computed for each protected employee, based on the rate described in the preceding sentence, and will be (i) the actual hourly rate for hourly rated employees, (ii) the daily rate divided by 8 for daily rated employees, and (iii) the monthly rate divided by the working days in the claim month, further divided by 8, in the case of monthly rated employees. For employees occupying relief positions, the guarantee shall be computed on the basis of the weighted average daily rate of the positions relieved. Extra list employees will be guaranteed the extra list rate.

"(B) In the event a protected employee's position is abolished or such employee is displaced and is thereby required to occupy a position paying an hourly rate that is less than such employee's guaranteed hourly rate, the protected employee shall be paid the difference between the hourly rate of pay of the position such employee is occupying and his guaranteed hourly rate for all hours included in the straight time work schedule of such employee's position for the month of claim, less any time lost on account of voluntary absences other than vacations. Hours worked in excess of the straight time work schedule shall be paid in addition to the guarantee at the rate applicable to the position occupied, as provided for in the applicable collective bargaining agreement.

"(C) For any month or portion thereof in which a protected employee is deprived of employment, the protected employee shall be paid such employee's guaranteed hourly rate for the number of hours such employee would have worked in the straight time work schedule of such employee's previously held position.

"(D) Notwithstanding the provision that the protected rate shall be the rate of the position held on or immediately preceding September 1, 1979, if a protected employee becomes the permanent incumbent of a higher rated position and is not disqualified therefrom, the higher rate shall become such employee's protected rate.

"(2) Notwithstanding paragraph (1) of this subsection, effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980, a protected maintenance-of-way employee shall be afforded his average monthly compensation, which is defined as the total compensation received by such employee during the 12 months immediately preceding January 1, 1975, divided by his total time paid for during that period and multiplied by 174 or by his average monthly time paid for, whichever is less, and adjusted to reflect subsequent general wage increases. If a protected employee is deprived of employment or if the employee's straight-time compensation in his current position is less in any month than the employee's average monthly compensation, the employee shall be paid the difference between his straight-time earnings, if any, and 80 percent of the average monthly compensation, less any time lost on account of voluntary absences other than vacations. If, at the close of the calendar year, the sum of the protected employee's annual straight-time compensation, monthly displacement allowance payments and offsets applicable pursuant to this title is less than the employee's average monthly compensation multiplied by 12, the employee shall receive an additional payment representing the difference. If in the previous calendar year an employee has received displacement allowance payments in excess of his annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefits afforded by this title, exclusive of benefits afforded by section 505(g) of this title.

"(3) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980 a protected operating employee (as defined in Interstate Commerce Commission classifications 107 through 128) who has been deprived of employment or adversely affected with respect to such employee's compensation shall be afforded his average monthly compensation computed in accordance with this subsection as in effect prior to such date of enactment, but subject to a maximum amount equal to one-twelfth of the average annual earnings per employee, computed by cumulating the employee earnings reported to the Commission by the Corporation on a monthly basis for calendar year 1977 for the Interstate Commerce Commission classification of operating service in which such employee performed the preponderance of such employee's work in calendar year 1974, increased by applicable general wage increases. If the employee performed no operating service in 1974, the Interstate Commerce Commission classification shall be determined by the preponderance of such employee's operating service in an immediately preceding calendar year. If the average monthly compensation of a protected operating employee exceeds the maximum amount described in the first sentence of this paragraph, the average monthly compensation of the employee will be reduced to such maximum amount for purposes of computing such employee's monthly displacement allowance, if any. If the average monthly compensation of a protected operating employee is less than such maximum amount, the average monthly compensation of the employee will be used to compute such employee's monthly displacement allowance, if any. If a protected employee is deprived of employment, or if the employee is adversely affected with respect to his compensation such that the compensation in such employee's current position is less in any month than the average monthly compensation of the employee or such maximum amount whichever is less, the employee shall be paid 75 per centum of the difference between such employee's earnings, if any, and the lesser figure, minus any time lost on account of voluntary absences other than vacations. If at the close of the calendar year the sum of the protected employee's annual earnings, monthly displacement allowance payments, and offsets applicable pursuant to this title is less than such employee's average monthly compensation subject to the maximum amount and multiplied by 12, the employee shall receive an additional payment representing the difference. In the computation of the annual payment, if during the calendar year an employee has been forced, assigned to, or has been required to exercise seniority to, a position in an Interstate Commerce Commission classification with a lesser maximum amount than the maximum amount applicable to such employee's 1974 Interstate Commerce Commission classification, such employee shall be paid the difference without credit being taken for compensation earned by virtue of actual working hours in the calendar year in excess of the number of hours paid for in such employee's average monthly compensation multiplied by 12 or such employee's annual 1977 maximum amount, whichever is less. An employee's compensation for purposes of this subsection shall not include savings sharing productivity payments received pursuant to paragraph (t) of the Crew Consist Agreement between the Corporation and the United Transportation Union dated September 8, 1978. If, in the previous calendar year, an employee has received displacement allowance payments in excess of such employee's annual entitlement, the excess payments shall be recovered from any current or future entitlement to monetary benefit afforded by this title, exclusive of benefits afforded by subsection (g) of this section.

"(4) Effective the first day of the first month commencing after the effective date of the Harley O. Staggers Rail Act of 1980 a protected noncontract employee who has been deprived of employment or adversely affected with respect to such employee's compensation shall retain his average monthly compensation and monthly displacement allowance computed in accordance with this subsection as in effect prior to such date of enactment. In the event such noncontract employee exercises or has exercised seniority in a craft or class of operating employees, such employee's entitlement to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be the same as the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised. In the event such noncontract employee exercises or has exercised seniority in a craft or class of nonoperating employees, the entitlement of such employee to a monthly displacement allowance and fringe benefits, and such employee's eligibility for transfer, shall be consistent with the entitlement and eligibility of other protected employees in the craft or class in which seniority is exercised, except that the protected rate of pay shall be based on the rate of pay of the position first obtained through the exercise of seniority, rather than the rate of any position held on or prior to September 1, 1979.

"(5) Notwithstanding the preceding provisions of this subsection, employees who, prior to September 1, 1979, accepted transfer to positions requiring a change of residence pursuant to subsection (d) of this section, shall retain their average monthly compensation and monthly displacement allowance computed in accordance with this subsection prior to the effective date of the Harley O. Staggers Rail Act of 1980.

"(6) In determining compensation in a protected employee's current employment, such employee shall be treated as occupying the position producing the highest rate of pay to which such employee's qualifications and seniority entitle the employee under the applicable collective bargaining agreement and which does not require a change in residence. A protected operating employee will be considered to be occupying the position producing the highest rate of pay if the employee occupies a position producing compensation equal to such employee's average monthly compensation, subject to the maximum amount.

"(7) With respect to a protected employee who has been deprived of employment, the monthly displacement allowance shall be reduced by (A) the full amount of any unemployment compensation benefits received by such employee, and (B) an amount equivalent to any outside earnings of such employee.

"(8) A protected employee's average monthly compensation or protected rate of pay shall be adjusted from time to time thereafter to reflect subsequent general wage increases.

"(9) The average monthly compensation or protected rate of pay provided by this section shall in no event exceed $2,500 in any month, except that such amount shall be adjusted to reflect general wage increases subsequent to April 1, 1976.

"(10) A protected employee and his representative shall be furnished with such employee's protected rate of pay, or average monthly compensation and average monthly time paid for, subject to the maximum amount, computed in accordance with the terms of this subsection. Each protected employee who has been deprived of employment or his representative and the employer shall agree upon a procedure by which the employee shall keep the employer currently informed of the unemployment compensation benefits received by such employee and the earnings of such employee in employment other than with such employer.

"(11) In the case of a supplemental transaction—

"(A) with respect to an employee described in paragraph (1) of this subsection who was not employed on September 1, 1979, the protected rate of pay of such employee shall be based on the rate of pay of the position held by such employee on the first day of the first month after September 1979 in which such employee was employed;

"(B) with respect to an employee described in paragraph (2) of this subsection who was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed; and

"(C) with respect to an employee described in paragraph (3) of this subsection—

"(i) if such employee was employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employee shall be determined on the basis of such 12-month period; and

"(ii) if such employee was not employed during the 12 months immediately preceding January 1, 1975, the average monthly compensation of such employer shall be determined on the basis of the first 12-month period after January 1, 1974, during which such employee was employed.

DURATION OF MONTHLY DISPLACEMENT ALLOWANCE

SEC. 502. Section 505(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(c)) is amended to read as follows:

"(c) DURATION OF MONTHLY DISPLACEMENT ALLOWANCE.—The monthly displacement allowance provided for in subsection (b) of this section shall, in the case of a protected employee with 5 or more years of service on the effective date of this Act, continue until the attainment of age 65 by such employee, and shall, in the case of a protected employee who has less than 5 years of service on such date, continue for a period equal to the employee's total prior years of service, except that such monthly displacement allowance—

"(1) shall terminate upon the protected employee's death, retirement, resignation, or dismissal for cause;

"(2) shall not be paid with respect to any period of disciplinary suspension for cause, failure to work due to illness or disability, voluntary furlough, or failure to retain or obtain a position available to the employee by the exercise of such employee's seniority rights in accordance with the provisions of this section;

"(3) shall not be paid to a protected employee deprived of employment with respect to any period of failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions (but the payment of monthly displacement allowances shall be resumed upon termination of the emergency); and

"(4) shall not be paid with respect to any month that commences after the effective date of the Harley O. Staggers Rail Act of 1980 for which the employee has failed to make a claim for such allowance within 3 full calendar months (unless otherwise agreed upon by the employee or his representative and the employer) after the last day of the month for which such allowance is sought, except that such 3-month limit shall not apply to any claim which is the subject of or is based upon an arbitration decision issued pursuant to section 507 of this title. Unless otherwise agreed upon by the employee or his representative and the employer, the entitlement of an employee to an allowance shall be approved or denied within 150 days after the claim therefor is made if such claim is filed during the 12-month period beginning on the effective date of the Staggers Rail Act of 1980, and within 90 days after the claim therefor is made if such claim is filed after such 12-month period. Any claim not approved or denied at the expiration of the time limits described in the preceding sentence shall be deemed approved.".

TRAINING AND TRANSFER

SEC. 503. (a) Section 505(d)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 755(d)(4)) is amended by adding at the end thereof the following new paragraph:

"(D) When no bona fide vacancies exist in a marine craft or class on the Corporation's system, or in the craft or class of an employee of Penn Truck Lines, Incorporated, the Corporation may offer such employee comparable employment for which the employee is qualified, or for which the employee can be trained, in another craft or class. The Corporation shall first attempt to locate a comparable position in a seniority district which encompasses the employee's last work location, and if successful, a transfer notice may be tendered pursuant to subparagraph (A) of this paragraph. If no such position exists, the Corporation may tender the employee a transfer notice involving a position elsewhere on the system pursuant to subparagraph (B) of this paragraph. In the event it is necessary to train an employee after such employee's acceptance of a position pursuant to this subsection, such training shall be provided by the Corporation at no cost to the employee.".

(b) Section 505(l)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775 (l)(1)) is amended by adding at the end thereof the following new sentences: "The Corporation may simultaneously offer a position to not more than 4 protected noncontract employees. The position shall be given to the protected employee accepting transfer whom the Corporation considers to be best qualified for the particular position involved. Other protected employees who have accepted the transfer shall retain their previous status. Employees who have elected a voluntary suspension of employment at their home location in lieu of protective benefits or a severance of employment shall retain the option elected.".

PAYMENT, AUDIT, AND REPORT

SEC. 504. Section 509 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 779) is amended to read as follows:

"PAYMENT, AUDIT, AND REPORT

"SEC. 509. (a) PAYMENT.—The Corporation, the Association (where applicable), replacement operators, and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title (including such amounts paid by the employer prior to the effective date of the Rail Act of 1980 and training costs incurred by the Corporation pursuant to section 505(d)(4)(D) of tihs title), other than provisions with respect to employee pension benefits, not to exceed an aggregate sum of $485,000,000, by the Railroad Retirement Board, upon certification to such Board in such detail as the Board may reasonably require, by the Corporation, the Association (where applicable), replacements operators, and acquiring railroads, of the amounts paid such employees, except that the aggregate amount of reimbursements made by the Board for the payment of monthly displacement allowances in the period after the effective date of the Harley O. Staggers Rail Act of 1980 shall not exceed $180,000,000. There is authorized to be appropriated to the Secretary annually such sums as may be required to meet the obligations payable under this title, not to exceed the aggregate sum of $485,000,000. Upon the exhaustion of such authorization, the Corporation, the Association (where applicable), replacement operators, and acquiring railroads shall retain responsibility for the payment of benefits otherwise reimbursable under this title, but they shall not be reimbursed therefor. There is further authorized to be appropriated to the Secretary such sums as may be necessary to provide for additional administrative expenses to be incurred by the Railroad Retirement Board in the performance of its functions under this section. Appropriations authorized under this section may be allocated by the Secretary to the Railroad Retirement Board.

"(b) AUDIT.—Beginning October 1, 1980, the Association shall conduct a program audit of the payment of benefits pursuant to this title and shall evaluate the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances. Such audits and evaluations shall be conducted in accordance with such rules and regulations as the Association may prescribe. The representatives of the Association shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with the Corporation, replacement operators, acquiring railroads, or the Railroad Retirement Board which pertain to the benefits provided protected employees pursuant to this title and which are necessary to facilitate such audit and evaluation.

"(c) REPORT.—The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on the payment of benefits under this title and the effectiveness of the provisions of this title in improving the Corporation's management of certain protected employees in its workforce who are entitled to receive monthly displacement allowances.".

RAILROAD HIRING

SEC. 505. Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.) is amended by adding at the end thereof the following new section:

"RAILROAD HIRING

"SEC. 510. Any protected employee of the Corporation and any employee of the Corporation who is separated or furloughed from his employment with the Corporation (other than for cause) shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.".

TECHNICAL AMENDMENTS

SEC. 506. (a)(1) The item relating to section 509 in the table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended to read as follows:

"SEC. 509. Payment, audit, and report.".

(2) The table of contents of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by inserting immediately after the item relating to section 509 the following new item:

"SEC. 510. Railroad hiring.".

(b) Section 102(16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended to read as follows:

"(16) 'Secretary' means the Secretary of Transportation or the designated representative of the Secretary;".

(c) Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended—

(1) in subsection (d), by striking out "11 individuals" and inserting in lieu thereof "12 individuals";

(2) by amending subsection (d)(2) to read as follows:

"(2) four Government members, who shall be the Secretary, the Chairman of the Commission, the Secretary of the Treasury, and the Attorney General of the United States, acting directly or at any time through their respective designated representatives and, in the case of the Chairman, through the Vice Chairman of the Commission; and";

(3) in the first sentence of subsection (i), by striking out "Deputy Secretaries" and inserting in lieu thereof "designated representatives"; and

(4) by striking out the first sentence of subsection (j)(4).

(d) Section 501 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771) is amended—

(1) in paragraph (6), by inserting immediately after "disability," the following: "failure to work due to strike, fire, flood, snowstorm, hurricane, earthquake, tornado, or other similar natural occurrence that causes a suspension of operations in whole or in part and precludes performance of the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions,"; and

(2) by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(12) 'compensation' means earnings in employment subject to the Railroad Retirement Act.".

(e) Section 507 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 777) is amended by inserting ", section 509(b), or section 509(c)" immediately after "section 504(d)".

(f) The first sentence of section 403(d)(1) of the Rail Passenger Service Act (45 U.S.C. 563(d)(1)) is amended by striking out "if such State" and all that follows through "service".

USRA AUTHORIZATION OF APPROPRIATIONS

SEC. 507. Section 214(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 724(c)) is amended to read as follows:

"(c) ASSOCIATION.—For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this Act such sums as are necessary, not to exceed $28,500,000. Sums appropriated under this subsection are authorized to remain available until expended.".

EFFECT ON OTHER LAWS

SEC. 508. Nothing in this title is intended to affect any law, regulation, court order, or obligation relating to equal employment opportunity.

TITLE VI—EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

EXPEDITED SUPPLEMENTAL TRANSACTION PROPOSALS

SEC. 601. (a) Section 305 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745) is amended by adding at the end thereof the following new subsection:

"(g) Expedited Proposals.—(1) Within 180 days after the effective date of the Harley O. Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

"(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

"(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

"(C) the proposed transfer is consistent with the goals set forth in section 206(a)(8) of this Act, the Secretary shall develop such a proposal and may, after providing the Association and the Commission an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

"(2) In complying with the requirements of subsection (d)(7) of this section with respect to the application of the provisions of title V of this Act to supplemental transactions, the parties to an expedited supplemental transaction under this subsection and the representatives of the employees affected thereby shall enter into a new agreement pursuant to section 508 of this Act and shall not be bound by the terms of any agreement executed under such section 508 and in effect on the date of enactment of the Harley O. Staggers Rail Act of 1980.".

(b) Section 102(19) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (19)) is amended by striking out ", within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation.

TITLE VII—MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as provided in subsection (b) of this section, the provisions of this Act and the amendments made by this Act shall take effect October 1, 1980.

(b) Sections 601, 602, 603, 605, and 606 of this Act shall take effect on the date of enactment of this Act.

EFFECT ON PENDING MATTERS

SEC. 702. Any application, action, or proceeding pending before the Secretary of Transportation, the Interstate Commerce Commission, or any court on the effective date of this Act shall be adjudicated or determined as if this Act had not been enacted.

CONSTRUCTION OF AMENDMENTS

SEC. 703. With respect to the relationship between water carriers and rail carriers, none of the amendments made by this Act shall be construed to modify the application of existing law with respect to competition and coordination or to make lawful a competitive practice that is unfair, destructive, predatory, or otherwise undermines competition.

SEC. 704. Notwithstanding any other provision of law, those rail corporations which receive direct federal monetary support, shall be considered a federal agency for the sole purpose of Department of the Army Regulations 735-5, Paragraph 1-16. Said Rail Corporations may enter into a contract under the authority granted by this section only when they determine that the safety of the public so requires.

EFFECT OF MERGERS ON COMPETITION

SEC. 705. (a) Section 11344(b) of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.".

STUDY OF ALASKA RAILROAD RATES

SEC. 706. Within 6 months after the effective date of this Act, the Interstate Commerce Commission shall commence and complete a study to determine whether the rates charged by the Alaska Railroad pursuant to ICC–ARR Freight Tariffs 4108 and 4109 (as supplemented by supplements 1–4) would, if such rates had been entered into after the effective date of this Act, have constituted a violation of section 10701a(c)(1) of title 49, United States Code, as amended by this Act.

CONGRESSIONAL REVIEW OF PROPOSED RULES

SEC. 707. (a) Notwithstanding any other provision of law, simultaneously with prescribing any rule under subtitle IV of title 49, United States Code, relating to rail carriers (other than a rule relating to rates), the Interstate Commerce Commission shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives, and simultaneously with prescribing any rule relating to rail carriers, the Secretary of Transportation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b), the rule shall not become effective, if—

(1) within 90 calendar days of continuous session of Congerss after the date the rule is prescribed, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule prescribed by the ——— dealing with the matter of ———, which rule was transmitted to Congress on ———.", the first blank space therein being filled with the Interstate Commerce Commission or the Secretary of Transportation, as appropriate, and the other blank spaces therein being appropriately filled; or

(2) within 60 calendar days of continuous session of Congress after the date the rule is prescribed, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within 30 calendar days of continuous sessions of Congress after such transmittal.

(b) If, at the end of 60 calendar days of continuous session of Congress after the date on which a rule described in subsection (a) is prescribed, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule, and neither House has adopted such a resolution, the rule may go into effect immediately. If, within such 60 calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule may go into effect not sooner than 90 calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a).

(c) Congressional inaction on, or rejection of, a resolution of disapproval under this section shall not be deemed an expression of approval of the rule involved.

(d) For purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 30, 60, and 90 calendar days of continuous session of Congress.

(e) For purposes of this section, the term "rule" has the same meaning such term has in section 551(4) of title 5, United States Code.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 7235) was laid on the table.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1125, TO IMPROVE AND EXPAND FEDERAL CROP INSURANCE PROGRAM

Mr. BOLLING, from the Committee on Rules, submitted a privileged report (Rept. No. 96-1308) on the resolution (H. Res. 784) waiving certain points of order against the conference report on the Senate bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION REQUESTING INFORMATION CONCERNING DISCLOSURE OF CLASSIFIED INFORMATION RELATING TO SO-CALLED STEALTH TECHNOLOGY

Mr. PRICE, from the Committee on Armed Services, submitted a privileged report (Rept. No. 96-1309) on the resolution (H. Res. 777) requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called stealth technology for military aircraft, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON S. 988, HEALTH SCIENCES PROMOTION ACT OF 1980

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 988) Health Sciences Promotion Act of 1980, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. ECKHARDT. Mr. Speaker, reserving the right to object, this is the Health Promotion Act?

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, it is the Health Sciences Promotion Act of 1980.

Mr. ECKHARDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none and, without objection, appoints the following conferees: Messrs. STAGGERS, WAXMAN, SATTERFIELD, PREYER, MAGUIRE, LUKEN, and WALGREN, Ms. MIKULSKI, Messrs. BROYHILL, CARTER, DEVINE, and STOCKMAN.

There was no objection.

PERSONAL EXPLANATION

Mr. PORTER. Mr. Speaker, I was granted official leave yesterday to attend the funeral of my wife's brother, who died at age 23. Unfortunately, I missed three rollcall votes.

Had I been present and voting on rollcalls Nos. 523, 524, and 525, I would have voted "aye" in each instance.

I ask unanimous consent that these remarks be inserted in the permanent RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

MARTIN LUTHER KING, JR., NATIONAL HISTORIC SITE

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that the Committee on the Interior and Insular Affairs be discharged from further consideration of the bill (H.R. 7218) to establish the Martin Luther King, Jr., National Historic Site in the State of Georgia, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LUJAN. Mr. Speaker, reserving the right to object, I reserve the right to object to ask the gentleman what is involved in this bill? There have been several different memorials on behalf of Martin Luther King. I wonder which one that is, the gentleman is talking about.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentleman yield?

Mr. LUJAN. I would be glad to.

Mr. PHILLIP BURTON. This bill is not, as pursued by a number of our colleagues, is not involved with all the national holiday proposals.

This bill in all particulars, without a scintilla of difference, includes exactly that which we passed on two occasions, in H.R. 3 as passed by this House and I believe, as I best recall, S. 2363 by this House.

This is an effort on behalf of the House to see that the House version, rather than the Senate titled bill be considered by the Senate; but there is absolutely no difference in any respect from this bill and that which has been passed twice by the House.

Mr. LUJAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. PHILLIP BURTON)?

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, do I understand the gentleman to respond that this has nothing to do with a national holiday, but rather the establishment of a national historic site in Atlanta?

Mr. PHILLIP BURTON. Mr. Speaker, if the gentleman will yield, the gentleman from Maryland is absolutely correct.

Mr. BAUMAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. PHILLIP BURTON)?

There was no objection.

The Clerk read the bill, as follows:

H.R. 7218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to protect and interpret for the benefit, inspiration, and education of present and future generations the places where Martin Luther King, Junior, was born, where he lived, worked, and worshipped, and where he was buried, and in recognition of the unique contribution of the Martin Luther King, Junior, Center for Social Change, in fostering such efforts, there is hereby established the Martin Luther King, Junior, National Historic Site in the State of Georgia. The national historic site shall consist of that real property in the city of Atlanta, Georgia, within the boundary generally depicted on the map entitled "Martin Luther King, Junior, National Historic Site Boundary Map," numbered NASM/SERO/20,109-A, and dated April 1980, together with the property known as 234 Sunset Avenue, Northwest: *Provided,* That the property in front of the Martin Luther King, Junior, Community Center of Atlanta shall not be deemed to be included within the site unless and until such property is donated to the United States for the purposes of the site by the city of Atlanta. The map referred to in this section shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(b) In furtherance of the purposes of the national historic site the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to establish the Martin Luther King, Junior, Preservation District, which shall consist of the properties within the Martin Luther King, Junior, Historic District.

SEC. 2. (a) The Secretary shall administer the Martin Luther King, Junior, National Historic Site and Preservation District in accordance with the provisions of this Act, the Act of August 25, 1916 (39 Stat. 538), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666), as amended. Within the national historic site the Secretary is authorized—

(1) to acquire by donation, purchase with donated or appropriated funds, transfer or exchange, lands and interests therein, except that property owned by the State of Georgia or any political subdivision thereof, property owned by the widow of Martin Luther King, Junior, and property owned by the Martin Luther King, Junior, Center for Social Change may be acquired only with the consent of such owner: *Provided,* That with respect to properties owned by the Center for Social Change, the Secretary shall have the first right of refusal to purchase such property for a purchase price not exceeding the fair market value of such property on the date it is offered for sale. Property may be acquired pursuant to this Act subject to such conditions and reservations as in the judgment of the Secretary are not inconsistent with the purposes of this Act and the administration of the national historic site, including, in the event that the burial site of Martin Luther King, Junior, is acquired, the condition that his widow may be interred therein;

(2) to convey a freehold or leasehold interest in any property, for such sums as he

deems appropriate, and subject to such terms and conditions and reservations as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purposes of this Act and the administration of the national historic site. The Secretary shall offer the last owner of record a reasonable opportunity to purchase or lease, as appropriate, the property proposed to be conveyed prior to any conveyance under this paragraph;

(3) to enter into cooperative agreements with the owners of properties of historical or cultural significance, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement. The authorities in this paragraph shall also be available to the Secretary with respect to properties within the Martin Luther King, Junior, Preservation District; and

(4) to provide security and law enforcement services as authorized by law.

(b) The Secretary may, in carrying out his authorities with respect to the interpretation of properties within the national historic site and the preservation district, accept the services and assistance, with or within reimbursement therefore, of qualified persons and entities to the extent he deems necessary and appropriate. Funds appropriated for the purposes of this Act may be expended for the improvement, restoration, and maintenance of properties in which the Secretary has acquired a leasehold interest.

(c) Notwithstanding any other provision of law, the Secretary shall give first preference to the Martin Luther King, Junior Center for Social Change with respect to any contract for a concession to sell books, postcards, tapes or similar type mementos within the historic site, provided that agreement can be reached on terms and conditions acceptable to the Secretary.

SEC. 3. (a) There is established in the Department of the Interior the Martin Luther King, Junior, Advisory Commission (herein after referred to as the "Commission"). The Commission shall consist of nine members, seven of whom shall be appointed by the Secretary for terms of three years as follows:

(1) three members appointed from recommendations submitted by the governing body of the Martin Luther King, Junior, Center for Social Change;

(2) one member appointed from recommendations submitted by the Governor of the State of Georgia;

(3) two members appointed from recommendations submitted by the mayor of the city of Atlanta, Georgia; and

(4) One member appointed by the Secretary who shall be Chairman of the Commission.

In addition to the foregoing members, Mrs. Coretta Scott King, or such other appropriate family member as may be designated by the immediate family of Martin Luther King, Junior, and the Director of the National Park Service shall be ex officio members of the Commission.

(b) Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses of Commission members reasonably incurred by them in carrying out their responsibilities under this Act upon presentation of vouchers signed by the Chairman of the Commission. Necessary administrative services and expenses shall be provided to the Commission by the Department of the Interior.

(c) The function of the Commission shall be to advise the Secretary with respect to the formulation and execution of plans for the national historic site and the preservation district, including advice with respect to the consummation of cooperative agreements, the interpretation of properties, and the use and appreciation of the national historic site and the preservation district by the public. The Secretary shall consult with the Commission from time to time with respect to the development of plans for and the administration of the national historic site and the preservation district.

(d) The Commission shall terminate ten years from the date of enactment of this Act.

SEC. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

AMENDMENT OFFERED BY MR. PHILLIP BURTON

Mr. PHILLIP BURTON. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PHILLIP BURTON: Page 1, line 3, strike all after the enacting clause, and insert in lieu thereof:

That (a) In order to protect and interpret for the benefit, inspiration, and education of present and future generations the places where Martin Luther King, Junior, was born, where he lived, worked, and worshipped, and where he is buried, there is hereby established the Martin Luther King, Junior, National Historic Site in the State of Georgia. The national historic site shall consist of that real property in the city of Atlanta, Georgia, within the boundary generally depicted on the map entitled "Martin Luther King, Junior, National Historic Site Boundary Map," numbered NASM/SERO/20, 109–C, and dated May 1980, together with the property known as 234 Sunset Avenue, Northwest. The map referred to in this subsection shall be on file and available for public inspection in the local and Washington, District of Columbia offices of the National Park Service, Department of the Interior.

(b) In furtherance of the purposes of this Act, there is hereby established the Martin Luther King, Junior, Preservation District, which shall consist of the area identified as "Preservation District" in the map referred to in subsection (a) of this section.

SEC. 2. (a) The Secretary of the Interior (hereinafter referred to as "the Secretary") shall administer the Martin Luther King, Junior National Historic Site and Preservation District in accordance with the provisions of this Act, and the provisions of law generally applicable to national historic sites, including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–7).

(b)(1) Within the national historic site the Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer, or exchange, lands and interests therein, except that property owned by the State of Georgia or any political subdivision thereof may be acquired only by donation.

(2) Notwithstanding the acquisition authority contained in paragraph (1), any lands or interests therein which are owned wholly or in part, by the widow of Martin Luther King, Junior, or by the Martin Luther King, Junior, Center for Social Change, shall be acquired only with the consent of the owner thereof, except that—

(A) the Secretary may acquire such property in accordance with the provisions of this section if he determines that the property is undergoing or is about to undergo a change in use which is inconsistent with the purposes of this Act, and

(B) with respect to properties owned by the Center for Social Change, the Secretary shall have the first right of refusal to purchase such property for a purchase price not exceeding the fair market value of such property on the date it is offered for sale.

(3) Property may be acquired pursuant to this section subject to such conditions and reservations as in the judgment of the Secretary are not inconsistent with the purposes of this Act and the administration of the national historic site, including, in the event that the bural site of Martin Luther King, Junior, is acquired, the condition that his widow may be interred therein.

(4) Any and all legal or equitable title, interests or encumbrances, if any, held by the Department of Housing and Urban Development in the property designated "parcel A" on the map referenced in section one are hereby conveyed to the Secretary to be administered in accordance with the purposes of this Act.

(5) Structural space requirements of the National Park Service to meet its administrative, operational and interpretive functions for the national historic site and preservation district shall, to the maximum extent feasible without displacing residents, be met within the district through the adaptive use of existing structures.

SEC. 3. (a) Within the national historic site, the Secretary may convey a freehold or leasehold interest in any property, for such sums as he deems appropriate, and subject to such terms and conditions and reservations as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purposes of this Act and the administration of the national historic site. The Secretary shall offer the last owner or tenant of record a reasonable opportunity to purchase or lease, as appropriate, the property proposed to be conveyed prior to any conveyance under this subsection, and in the case of a lease to such tenant of record, the initial rental charge shall not be substantially more than the last rent paid by the tenant for that property, with any future increases not to exceed the general escalation of rental rates in the surrounding area.

(b) The Secretary may enter into cooperative agreements with the owners of properties of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement. The authorities in this subsection shall also be available to be Secretary with respect to properties within the Martin Luther King, Junior Preservation District.

(c) The Secretary may, in carrying out his authorities with respect to the interpretation of properties within the national historic site and the preservation district, accept the services and assistance, with or without reimbursement therefor, of qualified persons and entities to the extent he deems necessary and appropriate. Funds appropriated for the purposes of this Act may be expended for the improvement, restoration, and maintenance of properties in which the Secretary has acquired a leasehold interest.

(d) Notwithstanding any other provision of law, the Secretary shall give first preference to the Martin Luther King, Junior, Center for Social Change with respect to any contract for a concession to sell books, postcards, tapes, or similar types of appropriate mementos related to the purposes of this Act, on facilities operated and maintained by the Secretary within the historic site:

Provided, That agreement can be reached on terms and conditions acceptable to the Secretary.

(e) The Secretary is authorized to take only such actions within and upon the grounds of the Ebenezer Baptist Church as will directly support appropriate public visitation to and within the church in accordance with the purposes of this Act, or which will assist in the maintenance or preservation of those portions of said church which are directly related to the purposes of this Act.

Sec. 4. (a) There is hereby established the Martin Luther King, Junior, National Historic Site Advisory Commission (hereinafter referred to in this section as the "Commission"). The Commission shall consist of thirteen members, eleven of whom shall be appointed by the Secretary as follows:

(1) Three members appointed for terms of three years from recommendations submitted by the governing body of the Martin Luther King, Junior, Center for Social Change;

(2) Two members appointed for terms of four years from recommendations submitted by the Governor of the State of Georgia, one of whom shall have professional expertise in historic preservation matters;

(3) Two members appointed for terms of five years from recommendations submitted by the mayor of the city of Atlanta, Georgia, one of whom shall represent the economic and cultural interests of the Sweet Auburn Historic District;

(4) One member appointed for a term of five years from recommendations submitted by the governing body of the Ebenezer Baptist Church;

(5) The Chairman of the Atlanta Urban Design Commission and one additional member from the Commission to be chosen by the Commission; and

(6) One member, appointed for a term of five years by the Secretary, who shall chair the Commission. In addition to the foregoing members, Mrs. Coretta Scott King, or such other appropriate family member as may be designated by the immediate family of Martin Luther King, Junior, and the Director of the National Park Service shall be ex officio members of the Commission.

(b) Any vacancy in the membership of the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses of Commission members reasonably incurred by them in carrying out their responsibilities under this section upon presentation of vouchers signed by the Chair of the Commission. Necessary administrative services and expenses shall be provided to the Commission by the Department of the Interior.

(c) The function of the Commission shall be to:

(1) Advise the Secretary with respect to the formulation and execution of plans for and the overall administration of the national historic site and the preservation district, including advice with respect to the consummation of cooperative agreements, the interpretation of properties, and the use and appreciation of the national historic site and the preservation district by the public.

(2) Prepare a generalized impact area plan for a one-mile radius outside the District which shall examine overall community development goals, plans, and efforts within that area, including historic preservation, transporation, parking, housing, urban revitalization, and parks and recreation functions, in order to maximize beneficial relationships between these goals, plans, and efforts and the district herein established.

(3) Prepare, on the basis of the findings and recommendations of the impact area plan required by the preceding paragraph, a detailed development plan for the neighborhoods and outlying commercial areas immediately outside the district for such development, conservation, preservation, rehabilitation activities and transportation, parking, and land use planning as would complement and enhance the District and the purposes for which the District is established.

(d) The Secretary is directed to provide the appropriate planning agency of the city of Atlanta an amount of the local planning funds authorized by section sufficient for that agency to provide such staff and technical assistance to the Advisory Commission as are required for it to develop the plans required by subsection (c) of this section. Such plans, prepared in full coordination with and opportunities for participation by, all revelant public agencies and private groups, shall be delivered to the Secretary in a timely fashion for use in preparing the general management plan for the district.

(e) The Commission shall terminate ten years from the effective date of this Act.

Sec. 5. Notwithstanding any other provision of law, no fees shall be charged for entrance or admission to the national historic site or the preservation district established by this Act.

Sec. 6. Effective October 1, 1980, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not to exceed $1,000,000 for development, $100,000 for local planning, and $3,500,000 for the acquisition of lands and interests therein. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

Sec. 7. (a) In order to better integrate the east and west portions of the Martin Luther King, Junior, Preservation District, the Federal Highway Administration, in cooperation with the Georgia Department of Transportation, is hereby directed to insure that any design and reconstruction of the North Interstate 85 and Interstate 75 Expressway over Auburn and Edgewood Avenues in the city of Atlanta, Georgia, and the interchange at Edgewood Avenue, shall minimize the adverse impacts on the preservation district.

In carrying out the provisions of this subsection, the Federal Highway Administration shall require that, where feasible, any major change required for the Auburn Avenue overpass results in a design which permits a wide distance between overpass support structures and the disposition of understructure development rights for appropriate business or recreation uses.

(b) Plans for the construction, exterior renovation, or demolition of any structure or change in land use within the preservation district by the National Park Service or any Federal agency must be submitted to the Atlanta Urban Design Commission in a timely fashion for its review and comment.

Sec. 8. Within three complete fiscal years from the effective date of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, a comprehensive general management plan for the historic site and the preservation district consistent with the provisions of this Act and pursuant to the provisions of section 12(b) of the Act of August 18, 1970 (84 Stat. 825), as amended (16 U.S.C. 1a–1 et seq.).

Mr. PHILLIP BURTON (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

☐ 2020

THE 15TH ANNUAL REPORT OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking, Finance and Urban Affairs:

(For message, see proceedings of the Senate of today, September 9, 1980.)

PROPOSED LEGISLATION TO AMEND THE INTERNAL REVENUE CODE—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 96–369)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and ordered to be printed:

(For message, see proceedings of the Senate of today, September 9, 1980.)

STUDY OF FACTORS BEARING ON COMPETITIVENESS OF U.S. PROCEDURES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the committee on Ways and Means:

(For message, see proceedings of the Senate of today, September 9, 1980.)

REVIEW OF EXECUTIVE BRANCH EXPORT PROMOTION FUNCTIONS UNDER TRADE AGREEMENT ACT OF 1979—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and the Committee on Foreign Affairs:

(For message, see proceedings of the Senate of today, September 9, 1980.)

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. BOWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOWEN. Mr. Speaker, as chairman of the House Agriculture Subcommittee on Cotton, I want to join my colleagues in expressing concern over the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act.

The Department's actions in citing farmers, ranchers, and other agricultural employers for failing to register as farm labor contractors and subjecting them to civil and criminal penalties are clearly contrary to congressional intent. The fact that Congress never intended farmers and others to register as farm labor contractors, be fingerprinted, disclose salaries, or comply with other such requirements is reflected in the legislative history of the act. Further, the act itself provides for very specific exemptions.

The Department's actions appear to be based solely on its own extremely narrow interpretations. For example, the Department defines the term "migrant worker" to mean anyone employed in agriculture. Let me quote from the Field Operations Handbook of the Department of Labor's Wage and Hour Division:

> Any employee who is performing agricultural work is a migrant worker for purposes of the FLCRA. There is no distinction between the worker who moves about the country within the stream of production and the worker who remains at his home and works in his own area year round.

The fact that there is no distinction between the worker who moves about and the worker who remains at home is even underlined in the Department's handbook.

Mr. Speaker, clearly the Department of Labor's interpretation is ridiculous. Not everyone employed in agriculture is a migrant worker. By this definition, even members of an individual farmer's family, if employed on the farm, could be considered migrant workers for purposes of FLCRA. The fact is that the overwhelming majority of the agricultural work force lives on the farm or in surrounding communities. According to USDA statistics, migrant farmworkers represent less than 5 percent of the total agricultural work force.

While migrant farmworkers represent a small percentage of the work force, they do not deserve any less protection. That is why we enacted the Farm Labor Contractor Registration Act. Its protective provisions aimed at curbing abuses by certain independent crew leaders should be maintained. At the same time, needless and unnecessary regulations should not be imposed on farmers, ranchers, and others. Consistent with this view, I have joined in supporting H.R. 7824.

This measure is strongly supported by the entire agricultural community and, I believe, it enjoys broad bipartisan support in the House. An identical measure has already passed the Senate. It is important that we act on this legislation, and I strongly urge my colleagues who have not done so to join as cosponsors of H.R. 7824.

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. WATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATKINS. Mr. Speaker, I want to join my colleagues in expressing concern with regard to the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. Because of that concern I have joined as a cosponsor of H.R. 7824, the bill introduced by the gentleman from California (Mr. PANETTA), along with the distinguished chairman of the Committee on Agriculture (Mr. FOLEY), the gentleman from California (Mr. COELHO), and the gentleman from Idaho (Mr. SYMMS). The purpose of this legislation is simply to clarify the original intent of Congress to insure that the present law is properly administered and enforced.

When the Farm Labor Contractor Registration Act was first enacted in 1963 and later amended in 1974, there was little disagreement from agriculture. For one reason, the act applied only to independent farm labor contractors, or crew leaders. Still another reason was that the act was also aimed at protecting farmers and other agricultural employers. Evidence showed that in some cases farmers suffered reduced harvests and loss of income as a result of certain practices by irresponsible crew leaders. That the act applied only to independent farm labor contractors, or crew leaders, was clearly established by both the legislative history and by adding specific exemptions for farmers and other agricultural employers, including their employees.

It appears now, that the Department of Labor has been requiring farmers and other agricultural employers to register as farm labor contractors or be subject to civil and criminal penalties. The Department's actions have left migrant farmworkers with little or no protection from those independent crew leaders who continue to engage in exploitive practices.

The Department's actions, Mr. Speaker, appear to be based solely on its own interpretations. One example, which may have been pointed out, is the fact that the Department of Labor defines the term "migrant worker" as anyone employed in agriculture. By this definition even members of the farm family, if on the payroll, could be considered migrant workers. The same definition would also apply to high school students and teachers who are often temporarily employed in many areas during the summer months. The same is true for year around and seasonal employees who reside on the farm or in nearby communities.

Another example is the situation where farmers or other agricultural employers have been forced to register as farm labor contractors on the basis that they are incorporated. The act does not make such a distinction. To do so would result in discriminatory treatment for farms of equal size and operation.

Still another example is where the Department of Labor has held that a farmer or other agricultural employer is not engaged in hiring "solely for his own operation" if he does not have title to the particular commodity. By this reasoning, a feedlot operator was cited as a farm labor contractor on the basis that since he did not have title to the cattle placed in the lot he, in effect, was furnishing migrant workers to individual ranchers. These so-called migrant workers were actually full-time employees working in and around the feedlot.

Mr. Speaker, no wonder the entire agriculture community is concerned with the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. The law needs to be clarified to end actions which place a burden on our farmers, ranchers, and other agricultural employers. The bill which I have cosponsored, H.R. 7824, addresses this issue completely. While it maintains existing regulations for independent crew leaders, it eliminates needless regulations for farmers and other agricultural employers. I strongly urge my colleagues to join with me in supporting this needed legislation.

FARM LABOR CONTRACTOR REGISTRATION ACT AMENDMENTS

(Mr. WAMPLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WAMPLER. Mr. Speaker, as the ranking minority member of the Committee on Agriculture I rise to reiterate my support of H.R. 7824, introduced by the gentleman from California (Mr. PANETTA) and over 100 Members of the House (myself included), which is the same as the bill sponsored by Senator BOREN and 39 other Members of the other body and passed by that body as an amendment to the Child Nutrition Act (H.R. 7664).

The purpose of H.R. 7824 is to restore the Farm Labor Contractor Registration Act to its original legislative intent—namely to stringently regulate irresponsible and unscrupulous contractors or crew leaders—and thus to provide protection to migrant workers. By attempting to bring most of the Nation's agricultural work force, including many who work in food processing plants, under this act, the Department of Labor seeks to legislate by regulation so as to broaden its jurisdiction. It may inevitably end up giving less protection to the true migrant workers that really need the protection.

It has been pointed out that if H.R. 7824 prevails, most agricultural employers would be exempt from the act, including the prohibition against knowingly employing illegal aliens. The answer to that argument is that when and if the Congress decides it is necessary to single out all agricultural employers and food processing employers in this country and subject them to such requirements and prohibitions, Congress should pass legislation to do so. The Department of Labor should not "legislate" by regulation beyond the authority delegated to it by the Congress.

If the time comes when the Congress decides it may be necessary or in the public interest to stop all agricultural employers from employing illegal aliens, then I am of the opinion that such a law should apply to all employers, not just agricultural employers. After all, if we have over 10 million illegal aliens in this country, we surely must realize that only a small percentage of them are employed on farms.

It is true that the language contained in H.R. 7672, the alternative bill to H.R. 7824, would totally exempt "some" so-called small family farms, but only a small fraction of agricultural employment would be exempted by the language in that bill. We have a complex situation in the ownership and operation of farms in this country. A great many farms are leased, in which the families that operate the farms are not the owners. We have situations in which a family has taken in a nonmember of the family as a partner so as to secure investment capital. And we have situations in which farms are inherited by several members of the family but operated by one member of that family. These and other complicated ownership and operational situations on farms make the so-called small family exemptions in H.R. 7672 highly restrictive and largely meaningless.

It is clear from my analysis of the two proposals that—in the interest of fairness to agricultural and food processing employers, in the interest of better protection for migrant farmworkers, and in the interest of eliminating unnecessary regulation of consumers and taxpayers—the language in title IV of H.R. 7664, the Child Nutrition Act, should be supported by the House conferees by receding to the Senate conferees.

FLCRA PROBLEM NEEDS SOLUTION

(Mr. SEBELIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SEBELIUS. Mr. Speaker, I am pleased to join in supporting and cosponsoring legislation to clarify the Farm Labor Contractor Registration Act.

Those of us from agricultural areas have already had a great deal of experience with this act.

For example, in 1975, the Department of Labor said that anyone with a custom combine, a hay-harvesting or sheep-shearing operation must register as a farm labor contractor. It was clear to us on the Agriculture Committee that those engaged in custom combining, hay harvesting, or sheep shearing were not farm labor contractors. Neither were they migrant workers.

In early 1976, the Congress adopted an amendment that specifically said the term "farm labor contractor" shall not include "any custom combine, hay harvesting, or sheep shearing operation."

Then in 1976, the Labor Department tried to say that anyone engaged in a custom poultry harvesting, breeding, debeaking, sexing, or health service operation is a farm labor contractor. Again, it was clear to us in the Agriculture Committee that those persons were neither farm labor contractors nor migrant workers, and Congress had to adopt an amendment to specifically say that they are not covered by the term "farm labor contractor."

Yet a third time, in 1978, the Labor Department said that students and other young persons engaged in detasseling and roguing hybrid seed corn or sorghum are migrant workers and that the persons involved in organizing them or transporting them are farm labor contractors. Yet again, the Agriculture Committee recognized that that was not the case, and for the third time, Congress adopted an amendment to specifically say so.

We should not have to continue clarifying the act one sector of agriculture at a time. We should adopt a comprehensive clarification.

The clarification proposed in the Panetta bill, H.R. 7824, and the identical Boren amendment should resolve the problem of what Congress intended.

I understand that the Boren amendment, which was approved by the other body, will be going to a conference committee soon. I hope the amendment will be adopted there.

FARM LABOR CONTRACTOR REGISTRATION ACT

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I want to take this opportunity to say that I share my colleagues' concern with regard to the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act. Subjecting farmers, ranchers and other good-faith agricultural employers to civil and criminal penalties for failing to register as farm labor contractors clearly was not the intent of Congress when it enacted this important legislation.

Our intent, and this is explicit in the statute itself, was to protect "producers of agricultural products, migrant agricultural laborers, and the public generally" from certain irresponsible independent farm labor contractors, or crew leaders. To make it clear that the law applied only to these independent crew leaders, specific exemptions were provided for farmers and other agricultural employers, including their employees.

Unfortunately, Mr. Speaker, the statute's provisions and the legislative history apparently are not clear to the Department of Labor. An increasing number of farmers, ranchers, feedlot operators, cotton ginners, tobacco warehousemen, and other agricultural employers are being cited by the Department of Labor for failing to register as farm labor contractors. The Department's actions have led to a growing number of complaints not only from farmers and others in Arkansas, but from all across this great Nation.

Through its own rather narrow interpretation of the act, the Department of Labor has expanded the scope and coverage of the act to all of agriculture. Not only has this resulted in needless regulations for the vast majority of farmers and other agricultural employers, but it has lessened the protections against unscrupulous independent crew leaders. To the extent that these crew leaders continue to engage in exploitive practices reflects the misplaced emphasis of the Department of Labor's enforcement policy. Instead of concentrating its limited resources on farmers and other agricultural employers, the Department should aggressively act to eliminate continued abuses by certain independent crew leaders.

Mr. Speaker, no one believes more than I do in the need to maintain the protections of the Farm Labor Contractor Registration Act. But without proper administration and enforcement, those protections just do not exist. For these reasons I have joined with over 100 of my colleagues in a broad bipartisan effort to clarify the intent and purpose of the Farm Labor Contractor Registration Act. The bill, which I have joined as a cosponsor, is H.R. 7824. Introduced by my colleague from California (Mr. PANETTA), along with the distinguished chairman of the Committee on Agriculture (Mr. FOLEY), the gentleman from California (Mr. COELHO) and the gentleman from Idaho (Mr. SYMMS), H.R. 7824 serves to target the Department of Labor's enforcement actions on those crew leaders who continue to engage in exploitive practices. At the same time, it eliminates needless regulations for the Nation's farmers and other agricultural employers. In this regard it is both reasonable and balanced.

The Senate has already acted on similar legislation. An identical bill introduced by Senator David Boren, along with 39 cosponsors, was adopted as an amendment to the Child Nutrition Act by a 57 to 37 vote. It is now pending before a House-Senate conference. I hope my colleagues will join me in encouraging the conferees on the part of the House to accept the Boren amendment by cosponsoring H.R. 7824.

STATUS OF THE 1980 BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. GIAIMO) is recognized for 10 minutes.

• Mr. GIAIMO. Mr. Speaker, the House Budget Committee today is notifying the Speaker of the House on the status of the 1980 budget. This report compares current levels of congressional action on the budget to the spending ceilings and revenue floors established by the revised second budget resolution for fiscal year 1980. In order to keep Congress advised of the effect of its spending and revenue actions compared to the overall totals set in the most recently adopted budget resolution, periodic reports are required by section 308(b) of the Budget Act. Under the Budget Act a point of order lies against any measure that would cause the spending ceilings or the revenue floor established by a concurrent resolution to be breached.

Current spending levels are based on the economic forecast and spending and revenue reestimates for fiscal year 1980, as incorporated in the revised second budget resolution that was approved by Congress on June 12, 1980. Today's report reflects changes resulting from enactment of Public Law 96-334, the Export-Import Bank supplemental program authorization bill. A revised forecast based on more recent economic assumptions and revised reestimates of spending will be submitted shortly.

The current level aggregates, as compared to the revised second budget resolution, are:

First. Budget authority: $658,573 million—$277 million below the resolution ceiling.

Second. Outlays: $572.631 million—$19 million below the resolution ceiling.

Third. Revenues: $525,790 million—$90 million over the revenue floor.

A copy of my letter to the Speaker, as well as a copy of the committee's report. are attached.

COMMITTEE ON THE BUDGET,
Washington, D.C., September 9, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: On January 30, 1976, the Committee on the Budget outlined the procedure which it had adopted in connection with its responsibilities under Section 311 of the Congressional Budget Act of 1974 to provide estimates of the current level of revenues and spending. I am herewith transmitting the status report under H. Con. Res. 307, the Revised Second Budget Resolution for Fiscal Year 1980. This report reflects the resolution of June 12, 1980, and estimates of budget authority, outlays, and revenues based on all completed action on spending and revenue measures as of the close of legislative business September 5, 1980.

Sincerely yours,
ROBERT N. GIAIMO,
Chairman.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1980 CONGRESSIONAL BUDGET ADOPTED IN H. CON. RES. 307 REFLECTING COMPLETED ACTION AS OF SEPT. 5, 1980

[In millions of dollars]

	Budget authority	Outlays	Revenues
Appropriate level	658, 850	572, 650	525, 700
Current level	658, 573	572, 631	525, 790
Amount over resolution			90
Amount under resolution	277	19	

BUDGET AUTHORITY

Any measure providing budget or entitlement authority for fiscal year 1980 of more than $277 million, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 307 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and which would result in outlays for fiscal year 1980 of more than $19 million, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 307 to be exceeded.

REVENUE

Any measure that would result in a revenue loss for fiscal year 1980 of more than $90 million, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 307.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 8, 1980.

Hon. ROBERT N. GIAIMO,
Chairman, Committee on the Budget, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311(b) of the Congressional Budget Act, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays and estimated revenues in comparison with the appropriate levels for those items contained in the revised second concurrent resolution on the budget for 1980.

Since my last report the supplemental appropriation providing additional program authority for the Export-Import Bank was signed by the President (P.L. 96-334). This report is tabulated as of close of business September 5, 1980.

Sincerely,
ALICE M. RIVLIN,
Director.

[In millions of dollars]

	Budget authority	Outlays	Revenues
1. Enacted	658, 573	572, 631	525, 790
2. Entitlement authority and other mandatory items requiring further appropriation action			
3. Continuing resolution and other authority			
4. Conference agreements ratified by both Houses			
Current level	658, 573	572, 631	525, 790
Second budget resolution as revised by H. Con. Res. 307	658, 850	572, 650	525, 700
Current level is:			
Over resolution by			90
Under resolution by	277	19	

PARLIAMENTARIAN STATUS REPORT SUPPORTING DETAIL FISCAL YEAR 1980 AS OF CLOSE OF BUSINESS SEPT. 5, 1980

[In millions of dollars]

	Budget authority	Outlays
I. Enacted:		
Permanent appropriations and trust funds	342, 177	295, 050
Previously enacted	376, 016	337, 850
Offsetting receipts	−78, 347	−78, 347
Enacted this session:		
Aviation and Noise Abatement Act (Public Law 96-193)	57	
Interest forgiveness on loan repayments from Guam (Public Law 96-205)	2	2
Increase participation in farmer held reserve program (Public Law 96-234)		−42
Federal Trade Commission financing:		
Public Law 96-219:		
Transfer from International Communications Agency	−12	−10
Transfer to FTC	12	10
Public Law 96-240:		
Transfer from State Department	−8	−6
Transfer to FTC	8	6
Public Law 96-261: Federal Trade Commission appropriation, 1980	50	42
Food stamp supplemental appropriation (Public Law 96-243)	2, 556	2, 556
Disability insurance amendments (Public Law 96-265)		−7
Adoption Assistance and Child Welfare Act (Public Law 96-272)		−10
Transfer for the Selective Service System (Public Law 96-282)		−2
1980 supplemental appropriation and rescission bill (Public Law 96-304)	15, 935	15, 520
Additional program authority for Export-Import Bank (Public Law 96-334)	128	19
Total, enacted	658, 573	572, 631
II. Entitlement authority and other mandatory items requiring further appropriation action		
III. Continuing resolution [1]		
IV. Conference agreements ratified by both Houses		
Total current level as of Sept. 5, 1980	658, 573	572, 631
2d Budget Resolution as revised by H. Con. Res. 307	658, 850	572, 650
Amount remaining:		
Over ceiling		
Under ceiling	277	19

[1] Foreign assistance appropriations and the appropriations for certain ongoing Labor-HEW programs are funded under continuing resolution authority (Public Law 96-123) for the full fiscal year and, therefore, are included in the enacted category of this report.

Note: Detail may not add due to rounding.●

TRIBLE CALLS FOR REFORM OF SEA PAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. TRIBLE) is recognized for 15 minutes.

Mr. TRIBLE. Mr. Speaker, as a recent series in the Washington Post indicated, our Navy is in crisis. This crisis most profoundly affects the heart and soul of our fleet—those who go down to the sea in ships.

The extraordinary long deployments, the lengthy separation from family and loved ones, and the domestic strains imposed on Navy families have resulted in serious problems—morale and discipline. As we ask for ever greater sacrifices from our sailors, these problems will only worsen.

There can be no denying that we demand too much from all our military personnel and pay them too little. The result is an unprecedented exodus of skilled military personnel from the Navy. All the billions of dollars we spend for new ships and planes will be to no avail if we do not have a sufficient number of good people to operate them.

To remedy this shameful situation, CHARLES BENNETT and I have introduced the National Defense Compensation Act, H.R. 7441—which would grant an across-the-board pay increase to all military personnel.

I am convinced that this is the single most important step we can take to attract and retain qualified personnel.

Nevertheless, the rigors of life at sea, the hardship, and the deprivation all require the special attention of the Congress. In no other service are personnel reportedly assigned to long tours entailing 18-hour days at inadequate salary levels.

Sea duty necessitates leaving home and

family, and working in cramped quarters, adapting to the unpredictability of ship operating schedules, the most limited recreational opportunities, and inport duties to maintain a ship's readiness.

Our Nation has long recognized the arduous and unique character of duty at sea by providing additional compensation in the form of sea pay. The awareness that service at sea is a singular form of military duty led to a specific entitlement for our sailors.

It is unfair and unrealistic to argue that the living conditions and burdens of service at sea are the normal and expected consequences of life at sea. Beyond the obvious fact that added hardship requires some reward, insufficient compensation leads to ever lower retention rates.

The harshness of life at sea is one of the most frequently cited reasons for leaving the service. The retention rate for sailors serving their second tour of duty has dropped from 71 percent in 1971 to 53 percent this year. The Navy retention rate for officers is now 40 percent as opposed to a goal of 60 percent in 1978 and 1979. There is a shortage of 16,000 persons in grades E–5 through E–9 authorized for sea duty.

As a consequence, lack of qualified seagoing personnel threatens to debilitate the fleet.

In April, the Navy was forced to tie up the U.S.S. *Cannisteo*, a vital fleet oiler because of the lack of qualified personnel.

In June, the 7th Fleet was forced to deploy an entire carrier battle group in a C–4 state of readiness—C–4 categorization by the Navy means that the ship is judged unready for combat. The U.S.S. *Kennedy, Daniels*, and *Koontz* went to sea short of boiler technicians, machinists mates, operations specialists and electricians.

This month, Atlantic Fleet commanders proposed a new triad concept. Essentially, this pools the sailors from two frigates to make a third combat ready. To continue these Goldberg personnel policies jeopardizes the security of our Nation and of our allies.

There is, of course, little that can be done to make life at sea more commodious or amenable. A deep ocean environment is necessarily inhospitable and the mobility required of our fleet means unpredictable and long hours.

Sea pay today is simply inadequate. It is inadequate both in the rates of pay and the limited number of skilled and experienced personnel eligible to receive sea pay. The present system of compensation for duty at sea is both anachronistic and unjust.

Prior to passage of Nunn-Warner an enlisted man would have to spend 3 years on sea duty to earn an additional $25 a month. With Nunn-Warner the amount will rise to only $29 per month. These sums cannot begin to compensate for life at sea.

Moreover, officers receive no sea pay at all. Not one additional cent. It is clear that officers at sea assume increased responsibilities; yet they receive no additional money.

Congress can no longer permit this condition to continue. An equitable and reasonable approach to sea pay for our sailors must be considered at the earliest possible moment. The modest increase provided in Nunn-Warner simply will not do. Our readiness will continue to decline, and our ability to project our power and presence diminish.

This week, I am visiting the Atlantic Fleet Headquarters in Norfolk with senior enlisted personnel. I hope to gain an in-depth and personal perspective of the problems as they understand them. Following this visit, I may have specific recommendations to make to the Congress restructuring our system of sea pay. The inadequacies of sea pay are obvious; what we in Congress need to know is what concrete proposals will raise retention rates and morale.

We face a growing challenge from a confident, aggressive, and modern Soviet Navy on the oceans of the world. Our capacity to respond requires not only ships, but the personnel to man them as well. If we do not act to alleviate the inequities now existing in sea pay, the personnel will be unavailable to us.●

CONTINUING APPROPRIATIONS, 1981

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi (Mr. WHITTEN) is recognized for 15 minutes.

● **Mr. WHITTEN.** Mr. Speaker, the House has now passed 11 of the 13 annual appropriation bills but as of yesterday none had been passed by the other body. While the other body is today beginning to consider the appropriation bills for the fiscal year which begins October 1, it is apparent that a continuing resolution will be required to provide interim financing authority for a very large portion of the Federal Government.

I wish to advise Members of my intention to seek a closed rule on a House joint resolution which is absolutely essential to continue the operations of Government. The committee will develop a schedule for the continuing resolution in the near future.●

A TRIBUTE TO JAMES A. BYRNE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HANLEY) is recognized for 5 minutes.

● Mr. HANLEY. Mr. Speaker, it is with great sadness that I rise to join in tribute to a dear personal friend and former colleague, the late James A. Byrne.

For two decades, Jimmy Byrne served in this House as a talented, able and effective legislator. In his home district in Philadelphia, he and his accomplishments are legendary.

Throughout his years of public service, Jim was dedicated to the cause of civil rights and the needs of the elderly. He was a friend and a champion of the working man. He diligently maintained close contact with the people back home, and became known as a man never too busy to meet with a constituent.

He was respected and admired by his colleagues on both sides of the aisle, and his delightful sense of humor knew no party line. Yet, his philosophy was that his constituents were a hard-working people, and the Democratic Party was the party to best represent their needs and interests.

Mr. Speaker, it was a joy to know Jimmy Byrne, and an honor to be his friend. We all will be the poorer for his passing.●

EXPORT-IMPORT BANK FINANCING NOTIFICATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, I am notifying the House today of a U.S. Export-Import Bank proposal to help finance the sale of 12 Boeing 767–200 jet airliners and related equipment, valued at more than $575 million, to Air Canada, Canada's Government-owned airline.

The Eximbank would provide loans and guarantees totaling $460,173,000 to make possible the sale. This transaction would carry out the first part of an agreement under which Air Canada proposes to buy 24 Boeing 767–200's and related equipment for more than $1 billion. Last year, the Eximbank made a preliminary commitment for more than $828 million of financing under this arrangement.

This notification was referred to me as chairman of the Banking Committee's Subcommittee on International Trade, Investment and Monetary Policy. Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, requires that the Eximbank notify Congress of proposed loans or financial guarantees, or combinations thereof, of $100 million or more. Unless the Congress determines otherwise, the Eximbank may give final approval to the transaction after 25 days of continuous session of the Congress following notification.

I am submitting for the RECORD at this time a copy of the Eximbank notification giving the terms and details of the Air Canada transaction. I would welcome any comments or questions my colleagues might have on this proposed financing.

The Eximbank letter follows:

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 29, 1980.

Hon STEPHEN L. NEAL,
Chairman, Subcommittee on International Trade, Investment and Monetary Policy, Committee on Banking, Finance and Urban Affairs, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, I have reported to the President of the Senate and the Speaker of the House of Representatives on an application currently pending consideration by the Bank. I am taking the liberty of providing you with a copy of this statement.

Sincerely,

H. K. ALLEN.

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 29, 1980.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
The Speaker's Room, U.S. Capitol, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of

1945, as amended, Eximbank hereby submits a statement to the United States House of Representatives with respect to the following transaction involving U.S. exports to Canada:

A. DESCRIPTION OF TRANSACTION

1. Purpose

Eximbank is prepared to make available to Air Canada financing in the form of loans and guarantees (Eximbank Financing) of $460,173,000 to facilitate the purchase in the United States by Air Canada of 12 Boeing 767–200 jet aircraft with related spare engines, spare parts and services. The total U.S. export value of these purchases is estimated to be $1,035,000,000.

This transaction is the first proposed credit under a Preliminary Commitment issued by Eximbank to Air Canada for financing of Air Canada's purchases of jet aircraft referred to in our letter of August 23, 1979. In that Preliminary Commitment, Eximbank indicated to Air Canada the terms and conditions under which it will be prepared to extend up to $828,000,000 of financing (including the Eximbank Financing proposed in this transaction) to Air Canada to assist in the purchase of up to 24 Boeing 767–200 jet aircraft (including the 12 mentioned above) to meet that airline's needs for increased traffic on its domestic and North American routes and replacement of its aging fleet. Including the transaction mentioned above, the total U.S. export value of these purchases is estimated to be $1,035,00,000.

2. Identity of the borrower

Air Canada, Canada's largest airline, was established in 1937 as a corporation owned by the Canadian National Railroad and was reorganized in 1978 under the ownership of the Government of Canada. Its routes are worldwide, the principal routes being to Europe and North America, in addition to extensive operations throughout Canada. Eximbank has previously made 6 loans to Air Canada and repayments have been made on a timely basis.

3. Nature and use of goods and services

The principal goods to be exported from the United States are 12 Boeing 767–200 commercial jet aircraft to be used by Air Canada, together with the additional commercial jet aircraft contemplated by the Preliminary Commitment, to handle increased traffic on its domestic and North American routes and to replace its aging fleet. The aircraft will be exported under various schedules during the period 1982–1986.

The airframes for the 767's will be manufactured in the Seattle-Renton-Everett area by the Boeing Company of Seattle, Washington. The engines for the 767's will be manufactured by the Pratt and Whitney Aircraft Division of United Technologies Corporation in Hartford, Connecticut. In addition, other U.S. firms will furnish spare parts. Non-U.S. components manufactured in Japan and Italy will cost about $60,901,000, or approximately 11% of the United States goods, and are not included in the financing plans set out below.

B. EXPLANATION OF EXIMBANK FINANCING

1. Reasons

The Eximbank financing support of $460,173,000 contemplated in this transaction will facilitate the export of $575,216,000 of United States goods and services. Sales, profits and employment for U.S. aircraft manufacturers and their subcontractors are heavily dependent upon exports.

During the next two to three years, several large foreign airlines will be undertaking major reequipment programs, and through 1990 aircraft purchases by foreign airlines are expected to account for approximately 40% of total U.S. aircraft sales. Eximbank's financial support for exports of U.S. aircraft has assisted U.S. aircraft manufacturers in obtaining approximately 80% of the world market for commercial jet aircraft, and Eximbank believes it must be sensitive to purchasers' needs during this period of new product selection to insure that U.S. aircraft and engine manufacturers are able to offer attractive financing which helps them to sustain their position as a leading U.S. export sector.

The export of 12 Boeing 767–200 jet aircraft will have been achieved in the face of strong competition from the A–310–200 jet aircraft manufactured by Airbus Industrie. The A–310–200 was determined by Air Canada to be technically and economically competitive with the B767–200 for Air Canada's domestic and North American routes. To be competitive and to break into the important North American market with the A–310–200 type of aircraft, Airbus arranged special financing with support by the Governments of France and Germany. Adequate, comparable financing from U.S. sources was necessary to offset the A–310–200 financing. Air Canada's selection of the 767 over the Airbus will govern a substantial portion of Air Canada's fleet acquisition plans for the period through 1990. The Eximbank financing, therefore, was a decisive factor in winning this sale for the U.S. suppliers.

Boeing estimates that the sale of 12 B767–200 jet aircraft will provide 12.2 million man/hours of work for Boeing and its subcontractors, including 1.8 million for Pratt and Whitney in Connecticut for production of the engines. Additional benefits which will flow to the United States from the transaction include follow-on sales of up to 12 additional B767–200 jet aircraft and related exports of spare parts, ground support and other auxiliary equipment.
will be financed as follows:

2. The financing plan

The cost of the 12 B767–200 jet aircraft

	Amount	Percent of U.S. costs
Cash payment	$115, 043, 000	20
Eximbank financing	460, 173, 000	80
Total	575, 216, 000	100

It is expected that the Eximbank Financing described above will consist of a blend of an Eximbank direct loan and a loan of a private financial institution guaranteed by Eximbank.

(a) Eximbank Charges

The financial charge on the Eximbank Financing to be paid by Air Canada will be 8.7 percent per annum, payable semiannually until the start of principal repayments as set forth in subparagraph (b) below. A commitment fee of 0.5 percent per annum will also be charged on the undisbursed portion of the Eximbank Financing.

(b) Repayment Terms

The Eximbank Financing, together with interest thereon, will be repaid in 2 schedules of 24 equal semiannual installments beginning (i) January 15, 1984 for aircraft to be delivered in 1982 and 1983 and (ii) January 15, 1985 for aircraft to be delivered in 1984. Repayments will be computed on the basis of an actuarial annuity method requiring level installment payments composed of decreasing amounts of interest and increasing amounts of principal in each installment, with interest accruing prior to the start of principal repayments being payable semiannually.

Attached is certain additional information on Eximbank activity in, and economic data about, Canada.

Sincerely,

H. K. Allen.

EXIMBANK EXPOSURE IN CANADA (AS OF JULY 31, 1980)

	Outstanding	Undisbursed
Direct loans	266, 265, 082. 89	139, 286, 880. 20
Financial guarantees	0	0
CFF loans	289, 555. 58	0
Bank guarantees	253, 870. 60	0
Insurance:		
Medium	1, 036, 208. 53	815, 871. 70
Short	113, 820, 916. 29	

DEFAULTS AND RESCHEDULINGS

In the past ten years there have been no defaults or reschedulings of Eximbank direct credits financing U.S. export sales to Canada.

Appendix—August 1, 1980

CANADA

Area (1000 sq. km.) = 9,976.
Population (beg. 1979): 23.5 million.
Population Density: 2/sq. km.
GNP per capita (1979): $9,464.

[In percent]

Expenditures of GNP (1979):	
Consumption	63
Government	17
Capital formation	24
Exports	24
Imports	−28
Total	100

Origin of GDP (1978):	
Agriculture	3
Industry	29
Services	61
Other	7
Total	100

	1976	1977	1978	1979	1980(P)
GNP data:					
Nominal (billions of U.S. dollars)	$194. 2	$197. 6	$203. 2	$222. 4	$249. 3
Rate of change (real GNP) (percent)	5. 4	2. 4	3. 4	2. 7	0. 3
Fiscal and monetary data:					
Government deficit (millions of U.S. dollars)	$3, 246. 5	$6, 965. 6	$9, 526. 6	$9, 906. 2	$2, 191. 8
Deficit as a percent of GNP	1. 7	3. 5	4. 8	4. 5	0. 9
Increase in money supply (M2) (percent)	12. 6	14. 0	10. 7	2	NA
Savings ratio (percent)	10. 2	10. 1	10. 4	10. 3	NA
Price data (annual changes):					
CPI (percent)	7. 5	8. 0	8. 9	9. 1	9. 7
WPI (percent)	4. 2	9. 2	9. 4	13. 9	10. 9
Labor data (annual changes):					
Wages (hourly earnings) (percent)	14. 0	10. 5	7. 1	9. 0	NA
Productivity (percent)	5. 1	0. 4	0. 4	−0. 9	0. 6
Unemployment rate (percent)	7. 1	8. 1	8. 4	7. 5	7. 8
External debt:					
Net international indebtedness (billions of U.S. dollars)	$19. 9	$25. 8	$40. 1	$42. 1	$41. 2
As percent of GNP	10. 2	13. 1	19. 7	18. 9	16. 5
Debt service ratio (total debt) (percent)	4. 1	4. 8	6. 1	7. 4	NA
Balance of payments (millions of U.S. dollars):					
Exports	$38, 534	$40, 396	$44, 276	$55, 785	$61, 012
Imports	−37, 127	−37, 896	−41, 424	−52, 374	−60, 098
Trade balance	1, 407	2, 500	2, 852	3, 411	914
Services (net)	5, 331	−6, 810	−7, 358	−8, 237	−9, 268
Transfers (net)	$488	$381	$36	$531	$513
Current account balance	−3, 435	−3, 929	−4, 470	−4, 295	−7, 846
Capital balance	4, 425	2, 630	1, 689	5, 750	NA
Overall balance	989	−1, 299	−2, 781	1, 455	NA
Reserves (millions of U.S. dollars):					
Foreign exchange (excluding gold)	4, 964	3, 672	3, 560	3, 056	
Gold (average London price)	2, 698	3, 251	4, 276	12, 278	

Sources: OECD Survey, IMF, and IFS. ●

REINDUSTRIALIZING AMERICA: TOWARD A FEDERAL POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

● Mr. VANIK. Mr. Speaker, as chairman of the Ways and Means Trade Subcommittee, it has become increasingly clear to me that the United States needs an industrial policy on a sector-by-sector basis if we are to begin to compete effectively internationally. If the present trends continue, more and more American industries will find that they are losing competitiveness internationally. The result will be the erosion of remaining support for a system of open trade; and protectionist legislation will be enacted which will push the world downward into a permanent state of depressed economic activity.

I would like to include in the RECORD at this point an excellent, brief column which appeared in the August 21 Baltimore Sun. It was written by Dr. Joel S. Hirschhorn, who recently completed a major, innovative analysis of the steel industry for the Office of Technology Assessment and the Subcommittee on Trade. Dr. Hirschhorn's article makes a well-reasoned contribution to the growing debate on industrial policy:

REINDUSTRIALIZING AMERICA: TOWARD A FEDERAL POLICY

We hear a great deal of talk about the need for a national industrial policy—about a "Marshall Plan" for American industry—about nothing less than the "reindustrialization" of America. These are, indeed, ringing phrases, and they might rouse more of us from our boredom, if, after all the ringing has stopped, we could figure out what, in fact, does "industrial policy" mean, what are its goals, and what policy choices are there?

Some might say that we already have a *de facto* "industrial policy" which consists of the mosaic of federal policies, laws and regulations that affect industry. Most would agree, however, that, whatever such an often contradictory assortment of policies may add up to, it is not a policy which seeks to achieve defined goals. For many decades federal laws and regulations have affected major industries like steel and automobiles. But when these industries became national disasters it was clear that what may be needed are coherent, comprehensive policies sometimes called "sector policies"—specifically tailored to the needs of particular industries. The recent bunch of quick fixes for the automobile industry does not amount to a sector policy. Is there a clear understanding of where we're going? Is there a national commitment?

Proposed aid for the automobile industry (like the 1977 Solomon Report recommendations for the then very troubled steel industry) represents the customary, incremental, *ad hoc* approach to crisis. It has emphasized protectionist trade policies, special loan guarantees to keep ailing companies afloat and reductions in depreciation schedules. But the recommendations do not contain the critical ingredients of industrial sector policy—goals, strategies and encouragement of technological innovation and more basic research. That's why the 1977 fixes for the steel industry did not work. The problems remain.

Ideally, policy should precede action. With U.S. industrial "policy," it's the reverse. We respond hastily to crises and adopt specific measures to deal with a single aspect of a complex problem, and these *ad hoc*, incremental and unrelated actions persist long after the crises are gone. And chronic problems remain.

The United States has enjoyed incredible industrial success. But the world changes. Our competitors grow stronger. And their growing strength cannot simply be traced to lower production costs, lower prices, better technology or higher labor productivity. Foreign industries are supported by better engineered government policies.

In several nations, notably Japan, industrial sector policies consist of a comprehensive, balanced set of short- and long-term goals and strategies with a strong emphasis on technology to make new and better products at lower cost. Japan has achieved much success with steel and automobiles and its well planned, long-range assault on electronics is frightening U.S. electronics industry leaders.

Such sector policies express and embody a national commitment to an industry, and provide offensive rather than defensive responses to foreign competition. Moreover, sector policies also provide an orderly means of phasing out a declining industry for which new technology cannot offset uncompetitive production costs, a lack of domestic resources or a shrinking market. Japan has done this for its chemicals industry. Because sector policy reduces uncertainty about the future through a series of planned actions, it allows problems of layoffs and social dislocations to be solved far more decisively—though not painlessly—than the crisis management approach does. All these benefits could happen here.

What are the disadvantages of the general approach to industrial policy?

First, with federal actions that apply to all or most of American industry, such as monetary policy, tax laws and environmental regulations, specific problems of particular industries do not necessarily, or, many would argue, usually get proper attention.

Second, the costs of general measures can be too high, such as recent proposals to give accelerated depreciation to increase capital recovery to all industries.

Third, advocates of industrial sector policy do not necessarily want more government aid for industry, but rather less conflicting policies and variable interpretation in government. They argue that government actions emanating from many bureaucracies are frequently at cross purposes with each other for particular industries. This creates massive inefficiencies, resentment toward government, attempts by industry to eradicate generally worthwhile measures and increased cost to consumers.

If the United States were to choose the sector approach, it would be necessary to create within the executive branch an office with the capability for continuing analysis of particular industries. No single solution approach such as tax, trade or technology will work. Viewpoints and information from outside government must make sector policy formulation a public, co-operative process, yet independent analyses must also exist. There should be strong liaison with Congress.

Implementation of a sector policy must be monitored and a mechanism must exist to change goals and strategies if necessary. A key issue in implementation is where in government to have sector policy managed. Existing executive agencies tend to have relatively narrow interests and viewpoints which are likely to be difficult to change. A special assistant to the president or someone attached to an existing White House group, such as the Council of Economic Advisers, offers better access to the president, better participation from the private sector and the ability to co-ordinate activities of executive agencies rather than replace them.

The president could give annual "State of the Industry" reports to keep the Congress and the nation posted on the progress of sector policies, to stimulate and maintain public interest in the problems of American industry and to make it clear to our competition that we have things under control.

The sector approach has risks, including insufficient resources to deal with all qualified industries, an inability to establish criteria for selecting particularly troubled or promising industries and a potential for neglecting local concerns such as sudden unemployment, worker health and safety and pollution. Moreover, industries not benefiting from a sector policy or smaller companies with little political influence could be put at a disadvantage. There could be government inroads into management and decision-making that rightfully belong to industry, and a poorly conceived or executed sector policy might be worse than having none at all.

The worry that government planning is a step toward government direction and ownership of industry should be tempered by the prospect that the continued decline of our industries could bring us to the brink of catastrophe, which in turn could bring on government ownership and management.

Congress, the president and other presidential candidates should discuss and debate solutions to the declining international competitiveness of the United States. A comprehensive industrial policy or selective sector policies—or both—may be required to restore our competitive position.

Time is running out on our crisis-motivated and piecemeal approach to industrial policy. We must debate and design a purposeful and coherent course of action for the nation. Let politics shape policy, not replace it. The U.S. system does not need to be redesigned; it just needs better direction and organization. It is time to stop blaming our foreign competition and to start strengthening our muscles—to make American industry strong again.●

☐ 2030

ALASKA LANDS BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. WEAVER) is recognized for 20 minutes.

Mr. WEAVER. Mr. Speaker, I would like to take this opportunity to bring to the attention of the House certain information on a matter on which the House has worked long and hard—the Alaska lands bill. As we all know, the differing versions passed by the House, and recently by the Senate, have all been scorned and opposed by every Member of the Alaska congressional delegation, the Governor of that State and everyone else who claims to speak for the interests of Alaska.

This opposition frequently has been expressed in the loudest and most extreme rhetoric. So grievous are the injustices Congress would visit upon Alaska by this legislation, some of them say, that Alaska would be denied the rights of statehood. Some in Alaska have gone so far as to suggest secession from the Union itself.

Yet meanwhile, back in Alaska, these same officials, in defending the expenditure of millions of taxpayer dollars in a lobbying campaign directed at this Congress, are very quietly and discreetly telling their people something different—"Read the Senate bill carefully. You will see that our money has been spent wisely."

Well, Mr. Speaker, in the past week or so I have done just that. I took the time to review the House and Senate Alaska lands bills to determine for myself just what all the hubbub is about. I stand before my colleagues today a truly shocked and dismayed man. Before last week, I never knew that Alaska could possibly be treated so differently than any other State. Because what I found in this 448-page bill passed by the Senate is a staggering litany of giveaways and generosity to Alaska that is virtually tantamount to a first-ever grant from the Congress of a "most favored State" status.

I cannot now understand why, instead of excoriating the Congress for even considering this legislation, Alaskans are not doing everything they possibly can to have the Senate's version passed today, before anyone figures out just what this bill does.

I wish to emphasize that I do not begrudge the State most of what it stands to get from this bill. They can have it. But I think we should lay aside this notion that the Congress is trampling all over the State's interests in order to protect the national interest on the most vast, wild and beautiful land the American people own. Allow me to enumerate just a partial list of what the State of Alaska stands to gain by passage of an Alaska lands bill:

State land selections and conveyances. Under its Statehood Act, Alaska was given the right to pick, under certain conditions, 104 million acres of Federal land, or an area bigger than California, for its own. About 35 million acres would be instantly conveyed by the Senate bill, nearly completing the State's entitlement. Fine. But the bill also grants the State millions of acres of land that it otherwise has no right whatsoever to select, including 2.5 million acres that are within the boundaries of the House's conservation system units, including the Douglas Arctic Range additions, the Yukon Flats, Selawik and Nowitna wildlife refuges, and the McKinley, Lake Clark, and Bering Land Bridge National Parks.

In addition, other provisions virtually guarantee future State in-holdings in the parks and wildlife refuges, which when combined with unprecedented acres provisions, would wreak havoc on Federal land managers.

The Senate bill also allows the State to "overselect"—in other words, to file selections of up to 25 percent more than the 104 million acres promised by the Statehood Act. The State can even "top file" on areas where it now has no selection rights. This means that if in the future the Congress changes the status of land in Alaska that the State previously had no right to, but has expressed an interest in, the State could claim title to that land. And if the Federal Government does not convey that land, it arguably could be subject to a suit claiming a "taking" of the State's interests.

Furthermore, in the Senate bill the State wins the right to simply relinquish selections if it feels like it and the Interior Department has not already tentatively approved such a selection. It could then identify other lands elsewhere in the State, a kind of State land selection shell game that would continue the very uncertainty over Alaska lands that the bill is supposed to end. And, the Senate bill is gracious enough to extend the uncertainty for an additional 10 years by extending the Statehood Act deadline for land selections to 1994.

But this is just the beginning.

As chairman of the Forestry Subcommittee, I am especially concerned about what would happen in southeast Alaska where the Tongass National Forest, the Nation's largest, is located. In order to protect the jobs of southeast's two lumber mills, which export all of their product to Japan, the Senate bill would:

Provide an unprecedented mandate for an average annual timber sale of 450 million board feet, exclusive of timber on Native lands that also will be harvested and sold to local industry. This level is much higher than the previous 10-year average.

To guarantee that the timber is made available, an annual entitlement of at least $40 million is granted in perpetuity; it is to come off the top of national oil, gas, and timber receipts, it is not subject to the Budget Act and it is not subject to the appropriations process. Furthermore, section (6K) of the National Forest Management Act, which regulates investments of funds for the marginal timber lands in national forests, is waived.

What about mineral development on the Tongass? Noranda's Greens Creek claims are given a 20,000-acre exclusion from wilderness on Admiralty Island. More importantly, it appears the Senate could hardly think of enough things to do for our familiar friend, U.S. Borax, that wholly owned subsidiary of a London-based conglomerate named Rio Tinto Zinc. In order to promote Borax' "world class" deposit of a mineral—molybdenum—that is exported by the United States in large quantities—the bill gives Borax a totally unjustified exclusion of 150,000 acres from the Misty Fjords Wilderness, it says that anything Borax wants to do that is not compatible with the surrounding wilderness it can go ahead and do anyway and, to top it off, it even apparently validates Borax' highly doubtful mineral claims by stating that the corporation is deemed to have filed for mill sites although it did not do so.

Mr. Speaker, if you think this Christmas tree is getting awfully gaudy, just wait, I am still at the top of the list.

The Senate version of the bill revokes President Carter's and Secretary Andrus' courageous national monument and other emergency land withdrawals. It forbids forever any future similar executive withdrawals of 5,000 acres or more unless Congress ratifies them within 1 year. It exempts the public lands in Alaska from the mandatory wilderness review provisions of the BLM Organic Act. It provides "release" or "sufficiency" language which, for all practical purposes, would preclude the designation of any further wilderness on the Tongass and Chugach National Forests beyond that which is designated by the bill.

It establishes a Bristol Bay Cooperative Region in southwest Alaska which would convey to the State its top-priority Federal lands interests in the Iliamna area and give the State a significant voice in the future management of other Federal lands there.

It allows the construction of fish hatcheries in national forest wilderness areas, even though they should be totally unnecessary. The Senate bill requires seismic studies of the oil and gas potential of the coastal plain of the Douglas Arctic Wildlife Range, while, unfortunately, eliminating the House's mandate for private oil and gas leasing in the National Petroleum Reserve.

It mandates a transportation corridor across the so-called boot of the Gates of the Arctic National Park to accommodate Anaconda's mining interests in the Ambler region.

It has a section granting inholders on national forest and BLM lands unprecedented access rights. This provision apparently applies not only to Alaska but also to the entire United States and was never subject to 1 minutes of public hearings.

The State of Alaska is currently contending in court that it is different from every other State where local governments have the right to 25-percent of revenues from oil and gas leasing on national wildlife refuges, while the rest goes to the refuge system and contributions to payments-in-lieu-of-taxes. No, the State contends that it should get 90 percent of these revenues and the Senate bill, by remaining silent on this issue, leaves the door wide open for the State to extend that claim.

Both House and Senate bills go to great lengths to assure continuation of the so-called Alaska lifestyle. But the Senate bill goes several extra miles. The Senate would allow anyone who built a cabin in a national park before 1974 to keep and use that cabin even though he or she had no right to do so and are, in effect, trespassers. In addition, these trespassers can pass on their unique privilege until the death of the last immediate family member residing in the cabin. The bill also gets so specific about permitting continuation of so-called traditional uses—such as snowmobiles, airplanes, and even temporary campsites, tent platforms, and shelters—no matter where they occur that the ability of Federal land managers to exercise flexibility and discretion in regulating the public lands will be severely reduced.

Mr. Speaker, as I say this is only a partial list. And I have not even raised the benefits of the trans-Alaska pipeline, the conveyance of Prudhoe Bay to the State, the Alaska Native Claims Settlement Act, and the fact that the State treasury is so awash, in oil revenues that it is predicting a surplus of at least $44 billion by 1990, probably much more, and has eliminated the State income tax.

But, Mr. Speaker, the truly amazing thing about all this is that the leaders of the House on this issue do not propose to delete or significantly amend many of these provisions. Some of them already are in the House bill some Alaskan officials say they hate so much.

All we are asking for is recognition of the House's right to discuss some of these major land management policy issues and to reach further reasonable compromises on some of these outstanding issues so that the final bill will respect the years of hard work the House has devoted to this issue and will be something of which we can be proud.

That is not much to ask for—unless you are asking an Alaskan or the leaders of the U.S. Senate. Like a wailing child that wants to eat its dessert but will not touch its peas, to date, they have not budged 1 inch from their ultimatum to this body. "Take it or leave it," they say. "We will not even discuss any changes. We will filibuster anything." Mr. Speaker, I feel, and I think the House as a body feels, insulted at this arrogance. I know that the House will stand behind our own balanced position while continuing to seek a fair and reasonable compromise on this historic measure.

FARM LABOR CONTRACTOR REGISTRATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. Foley) is recognized for 10 minutes.

● Mr. FOLEY. Mr. Speaker, as chairman of the Committee on Agriculture. I want to say that I share my colleagues concern regarding the Department of Labor's interpretation and enforcement of the Farm Labor Contractor Registration Act.

The Department's actions requiring farmers, ranchers, and other agricultural employers to register as farm labor contractors or face civil and criminal penalties are completely contrary to congressional intent. There has been a storm of protest from the entire agricultural community and with good reason. Representatives of migrant farmworkers have also criticized the Department. Their concern, which I also share, is that the Department of Labor is not concentrating its full resources on cracking down on those independent farm labor contractors, or crew leaders, who continue to exploit migrant farmworkers.

Because of these concerns. Mr. Speaker, I joined my colleague and good friend, the gentleman from California (Mr. Panetta), in introducing legislation to clarify the original intent of Congress when it enacted this important and needed legislation. I believe the bill, H.R. 7824, is carefully drafted so that it maintains existing protections for migrant farmworkers. It eliminates the Department's needless regulations of farmers, ranchers, and other agricultural employers by clarifying the existing exemptions contained in the present act. Further, it addresses the concerns expressed by many in that it targets the Department of Labor's enforcement actions on those independent crew leaders who continue to engage in exploitive practices.

Mr. Speaker, H.R. 7824 has been endorsed by every major farm organization and agricultural employer group. At the end of my remarks, I would like to insert a list of those organizations. I am also pleased to say that with over 100 cosponsors, the bill enjoys broad bipartisan support in the House. It is identical to legislation which the Senate adopted as an amendment to the Child Nutrition Act. I hope my colleagues will join with me in support of this much needed legislation.

Farm Organizations and Representatives of Agricultural Employers Who Have Endorsed H.R. 7824 and S. 2875

The American Soybean Association.
The American Farm Bureau Federation.
The American Frozen Food Institute.
The American Mushroom Institute.
The American Seed Trade Association.
The American Sod Producers Association.
The American Sugar Beet Growers Association.
The Florida Citrus Processors Association.
The International Apple Institute.
The National Broiler Council.
The National Association of Wheat Growers.
The National Cattlemen's Association.
The National Cotton Council.
The National Council of Agricultural Employers.
The National Council of Farmer Cooperatives.
The National Food Processors Association
The National Grange.
The National Meat Association.
The National Peach Council.
The Pennsylvania Food Processors Association.
The Rio Grande Valley Sugar Growers Cooperative.
The Society of American Florists.
The United Fresh Fruit and Vegetable Association.
The Western Growers Association.●

PERSONAL EXPLANATION

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

● Mr. BRADEMAS. Mr. Speaker, on Friday, September 5, I missed rollcall No. 521, a vote on a motion that the House resolve itself into the Committee of the Whole for consideration of H.R. 7235, the Rail Act of 1980. The motion was agreed to by vote of 333 to 2. Had I been present, I would have voted "yea." ●

PERSONAL EXPLANATION

(Mr. WEISS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

● Mr. WEISS. Mr. Speaker, I was unable to be present for rollcall votes Nos. 482 and 483. The following is an explanation of how I would have voted on these measures on Friday, August 22, 1980.

Rollcall No. 482. A vote on the motion offered by Representative Dannemeyer to recommit H.R. 7299, the Mental Health Systems Act. The measure failed by a vote of 223 to 75. If I had been present, I would have voted against the motion.

Rollcall No. 483. A vote on final passage of H.R. 7299, the Mental Health Systems Act. The measure passed by a vote of 277 to 15. If I had been present, I would have voted in favor of the measure.●

LEAVE OF ABSENCE

Mr. Fary (at the request of Mr. Wright), for Monday, September 8, on account of a death in the family.

Mr. Russo (at the request of Mr. Wright), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. Giaimo (at the request of Mr. Wright), for 10 minutes on today.

(The following Members (at the request of Mr. Lewis) to revise and extend their remarks and include extraneous material:)

Mr. Trible, for 15 minutes, today.
Mr. Petri, for 5 minutes, September 10.

(The following Members (at the request of Mr. Weaver) to revise and extend their remarks and include extraneous material:)

Mr. Gonzalez, for 15 minutes, today.
Mr. Annunzio, for 5 minutes, today.
Mr. Nelson, for 5 minutes, today.
Mr. Bedell, for 5 minutes, today.
Mr. Whitten, for 15 minutes, today.
Mr. Hanley, for 5 minutes, today.
Mr. Neal, for 5 minutes, today.
Mr. Vanik, for 5 minutes, today.
Mr. Weaver, for 20 minutes, today.
Mr. Foley, for 10 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Dingell, and to include extraneous material notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $884.25.

Mr. Sebelius, immediately prior to vote on Eckhardt amendment.

(The following Members (at the request of Mr. LEWIS), and to include extraneous matter:)

Mr. BEREUTER.
Mr. CONTE.
Mr. LEE.
Mr. BADHAM.
Mr. BOB WILSON.
Mr. KEMP in three instances.
Mr. BROOMFIELD.
Mr. SAWYER.
Mr. SEBELIUS.
Mr. JOHNSON of Colorado.
Mr. DORNAN.
Mr. HYDE.

(The following Members (at the request of Mr. WEAVER), and to include extraneous matter:)

Mr. WEISS.
Mr. COTTER.
Mr. IRELAND.
Mr. HAWKINS.
Mr. HEFNER.
Mr. BLANCHARD.
Mr. RODINO.
Mr. KILDEE.
Mr. MAZZOLI in two instances.
Mr. WAXMAN.
Mr. SOLARZ.
Mr. OTTINGER in three instances.
Mr. GAYDOS in two instances.
Mr. MCDONALD in two instances.
Mr. EDGAR in two instances.
Mr. ROE.
Mr. ECKHARDT in two instances.
Mr. SCHEUER in two instances.
Mr. EDWARDS of California.
Mr. STRATTON.
Mr. SKELTON.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1625. An act to amend the act of December 20, 1944, as amended.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on September 5, 1980, present to the President, for his approval, bills of the House of the following titles:

H.R. 2538. An act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes, and

H.R. 4627. An act to authorize the enlistment of citizens of the Northern Marina Islands in the Armed Forces of the United States of America.

ADJOURNMENT

Mr. WEAVER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 33 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 10, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5248. A letter from the Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice of the proposed conversion to contractor performance of the protective coating function at Chanute Air Force Base, Ill., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5249. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Korea (transmittal No. 80-96), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5250. A letter from the Assistant Secretary of the Air Force (Research, Development and Logistics), transmitting notice of the proposed conversion to contractor performance of the family housing maintenance function at Maxwell Air Force Base, Ala., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5251. A letter from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), transmitting notice that a decision has been made to convert the installation support functions at Selfridge ANGB, Mich., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5252. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee and insurance transactions supported by Eximbank during June 1980 to Communist countries; to the Committee on Banking, Finance and Urban Affairs.

5253. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to extend authorizations of appropriations for programs under the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, and for other purposes; to the Committee on Education and Labor.

5254. A communication from the President of the United States, transmitting notice of his determination that it is in the national interest to extend for 1 year the Foreign Assets Control Regulations, prohibiting certain transactions with North Korea, Vietnam and Kampuchea; the Transaction Control Regulations, restricting sales of strategic goods located abroad to most Communist countries; the Cuban Assets Control Regulations; and the Foreign Funds Control Regulations, pursuant to section 207(d) of Public Law 95-223; to the Committee on Foreign Affairs.

5255. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Canada (transmittal No. 80-97), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5256. A letter from the Secretary of Commerce, transmitting a report on restrictions on exports to Afghanistan, pursuant to section 6(e) of the Export Administration Act of 1979; to the Committee on Foreign Affairs.

5257. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Austria (transmittal No. 80-115), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5258. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Greece (transmittal No. 80-118), pursuant to section 36(b) of the Arms Export Control Act, together with certification that the sale is consistent with the principles contained in section 620C(b) of the Foreign Assistance Act of 1961, as amended, pursuant to section 620C(d) of the act; to the Committee on Foreign Affairs.

5259. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Korea (transmittal No. 80-96), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5260. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the proposed issuance of a license for the export of certain defense articles and services sold commercially to Saudi Arabia (transmittal No. MC-27-80), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5261. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Ambassador-designate Fernando E. Rondon, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5262. A letter from the Associate Director, Bureau of Land Management, Department of the Interior, transmitting notice of the proposed sale of certain public land without competition to the Intermountain Power Agency for development of a generating plant, pursuant to section 203(c) of the Federal Land Policy and Management Act of 1976; to the Committee on Interior and Insular Affairs.

5263. A letter from the Secretary of Labor, transmitting a report on the feasibility and cost of requiring that each Federal agency budget and pay for any unemployment compensation payments made to its former, furloughed, or active employees; jointly, to the Committees on Government Operations and Post Office and Civil Service.

5264. A letter from the Comptroller General of the United States, transmitting a report on Federal-State environmental programs (CED-80-106, August 22, 1980); jointly, to the Committees on Government Operations, Agriculture, Interstate and Foreign Commerce, Public Works and Transportation, and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DERRICK: Committee on Rules. House Resolution 784. Resolution waiving certain points of order against the conference report on S. 1125 to improve and expand the Federal crop insurance program, and for other purposes (Rept. No. 96-1308). Referred to the House Calendar.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 6933. A bill entitled: "To amend the patent and trademark laws"; with amendment; referred to the Committee on Government Operations for a period ending not later than September 23, 1980, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee under clause 1(i)(2), rule X (Rept. No. 96-1307, pt. I). And ordered to be printed.

ADVERSE REPORTS

Under clause 2 of rule XIII,

Mr. PRICE: Committee on Armed Services. House Resolution 777. A bill requesting the President to furnish certain information to the House of Representatives concerning the disclosure of classified information relating to the new so-called Stealth technology for military aircraft (Adverse Rept. No. 96-1309). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FISHER:

H.R. 8092. A bill to amend the Internal Revenue Code of 1954 to repeal the Family Rental Tax; to the Committee on Ways and Means.

By Mr. WHITTEN:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980; to the Committee on Appropriations.

By Mr. JOHN L. BURTON:

H. Res. 785. Resolution establishing a Select Committee on Procedures for Election of a President in the House of Representatives; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII,

526. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Federal summer job programs, which was referred to the Committee on Education and Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. JOHN L. BURTON introduced a bill (H.R. 8093) for the relief of Zenaida Porte Rebultan, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 2048: Mr. McKay.

H.R. 3442: Mr. Kindness.

H.R. 4731: Mr. Oberstar.

H.R. 6254: Mr. Stratton.

H.R. 6637: Mr. Findley.

H.R. 7046: Mr. Bedell, Mr. Benjamin, Mr. Porter, Mr. Hughes, and Mr. Maguire.

H.R. 7338: Mr. Bonker and Mr. Markey.

H.R. 7420: Mr. McCormack.

H.R. 7422: Mrs. Spellman, Mr. Bailey, Mr. Bedell, Mr. Roe, Mr. Corcoran, Mr. Erdahl, Mr. Murphy of Pennsylvania, Mr. Nolan, Mr. Mineta, Mr. Vento, Mr. Phillip Burton, Mr. Gray, Mr. Maguire, Mr. Rosenthal, Mr. Stark, Mr. Mitchell of Maryland, and Ms. Mikulski.

H.R. 7505: Mr. Sawyer.

H.R. 7811: Mr. Jenkins and Mr. Fowler.

H.R. 7813: Mr. Carter.

H.R. 7824: Mr. Derwinski, Mr. White, Mr. Wyatt, Mr. Daniel B. Crane, Mr. Bedell, Mr. Barnard, Mr. Preyer, Mr Nichols, Mr. Loeffler, Mr. Livingston, Mr. Volkmer, Mr. Mica, Mr. Stump, Mr. Dicks, Mr. Royer, Mr. McCormack, Mr. Hammerschmidt, Mr. Murphy of Pennsylvania, Mr. Jones of North Carolina, Mr. Stangeland, Mr. Pease, Mr. Broyhill, Mr. Bevill, Mr. Fountain, Mr. Charles Wilson of Texas, Mr. Shelby, Mr. Satterfield, Mr. Whittaker, Mr. Hansen, Mr. Chappell, Mr. McDonald, Mr. Evans of Delaware, Mr. Flippo, Mr. Hagedorn, Mr. Whitehurst, Mr. Huckaby, Mr. Albosta, Mr. Baldus, Mr. Pashayan, Mr. Forsythe, Mr. Erdahl, Mr. Kastenmeier, Mr. Bethune, Mr. Rudd, Mr. Gilman, Mr. Burgener, Mr. Badham, Mr. Davis of South Carolina, Mr. Breaux, Mr. Spence, Mr. Rhodes, Mr. Yatron, Mr. Carter, Mr. Beard of Tennessee, Mr. Shumway, Mr. Lott, Mr. McKay, Mr. Jenkins, Mr. Clausen, Mr. Hopkins, Mr. Leath of Texas, Mr. Goldwater, Mr. Dannemeyer, Mr. Latta, Mr. Solomon, Mr. Petri, Mr. Gudger, Mr. Dan Daniel, Mr. Fuqua, Mr. Holland, Mr. Long of Louisiana, Mr. Jones of Oklahoma, and Mr. Bereuter.

H.R. 7833: Mr. Lederer, Mr. Ottinger, Mr. Lundine, Mr. Wolff, Mr. Daschle, Mr. Minish, Mr. Nolan, Mr. Brown of California, Mr. Drinan, Mr. Vento, Mr. Stack, Mr. Maguire, Mr. Guarini, Mr. Danielson, Mr. Conte, Mr. Mitchell of New York, Mr. Wolpe, Mr. Murphy of New York, Mrs. Spellman, Mr. Solarz, Mr. LaFalce, Mr. Hughes, Mr. Simon, and Mr. Corcoran.

H.R. 7900: Mr. Hillis.

H.R. 7903: Mr. Blanchard.

H.R. 7928: Mr. Carr, Mr. Coelho, Mr. Murphy of Pennsylvania, Mr. Beilenson, Mr. Weiss, Mr. Burgener, and Mr. Stark.

H.R. 8027: Mr. Blanchard.

H.J. Res. 511: Mr. Evans of Delaware, and Mr. Howard.

H. Con. Res. 383: Mr. Cotter, Mr. Lederer, Mr. Gephardt, Mr. Guarini, Mr. Mavroules, Mr. Addabbo, and Mr. Carter.

H. Con. Res. 405: Mr. Hall of Texas, Mr. Carter, Mr. Hubbard, Mr. Badham, Mr. Philip M. Crane, Mr. Mollohan, Mr. Burgener, Mr. Robert W. Daniel, Jr., Mr. Stump, Mr. Forsythe, Mr. Hopkins, and Mr. Daniel Crane.

H. Con. Res. 409: Mr. Murphy of Illinois, Ms. Holtzman, Mrs. Schroeder, Mr. AuCoin, Mr. Maguire, Mr. Scheuer, Mr. Kildee, Mr. Frost, Mr. Glickman, Mr. Hollenbeck, Mr. de la Garza, Mr. Solarz, Mr. Lehman, Mr. Conyers, Mr. Fazio, Mr. Whitehurst, Mr. Ertel, Mr. Clinger, Mr. Derwinski, Mr. White, Mr. Hughes, Mr. Lent, Mr. Cleveland, Mr. Dougherty, Mr. Frenzel, Mr. Coelho, Mr. Levitas, Mr. Daniel B. Crane, and Mr. Pickle.

H. Con. Res. 421: Mr. Goldwater.

H. Con. Res. 422: Mr. Dickinson and Mr. Florio.

H. Res. 525: Mr. Ertel and Mr. Madigan.

H. Res. 759: Mr. McClory, Mr. Railsback, Mr. Pashayan, Mr. Gilman, and Mr. Carter.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

419. By the SPEAKER: Petition of H. G. Rickover, aboard the U.S.S. *Arkansas* (CGN-41), at sea, North Atlantic, relative to nuclear-powered surface warships; to the Committee on Armed Services.

420. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to single-family residential energy audits; to the Committee on Banking, Finance and Urban Affairs.

421. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to State energy severance taxes; to the Committee on Government Operations.

422. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to strategic petroleum reserves; to the Committee on Interstate and Foreign Commerce.

423. Also, petition of the Board of Chosen Freeholders, Essex County, N.J., relative to amendments to the Fair Housing Act of 1968; to the Committee on the Judiciary.

424. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to the census; to the Committee on Post Office and Civil Service.

425. Also, petition of the Board of Chosen Freeholders, Essex County, N.J., relative to highway routing of radioactive and hazardous materials; to the Committee on Public Works and Transportation.

426. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to the crude oil windfall profits tax; to the Committee on Ways and Means.

427. Also, petition of the Eastern Regional Conference, Council of State Governments, Bretton Woods, N.H., relative to hazardous waste; jointly, to the Committees on Interstate and Foreign Commerce, Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. WYATT:

(Amendment to the amendment to H.R. 85 offered by the Mr. Breaux.)

—Page 37, after line 14, insert the following:

IXTOC I OILSPILL

Sec. 114. (a) Claims may be asserted by any United States claimant against the Oil Pollution Trust Fund established in section 521 of this Act for any compensable damage (within the meaning of section 531 of this Act) incurred by such claimant and arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

(b) (1) Compensation shall be provided by the Secretary from amounts appropriated pursuant to this subsection to any State or political subdivision thereof for any loss of tax revenue for a period not to exceed one year due to injury to real or personal property arising out of, or directly resulting from, oil pollution caused by the discharge of oil on or after June 3, 1979, in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979. Claims for compensation under this subsection shall be submitted to the Secretary, in such manner and form as the Secretary may prescribe.

(2) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(c) The provisions of this title, other than those provisions determined by the Secretary to be inconsistent with this section, shall apply to claims under subsections (a) and (b).

(d) (1) Except as provided in paragraphs (2) and (3) of this subsection, no United States claimant shall be eligible to receive compensation under subsection (a) or (b) of this section for any damage referred to in such subsection for which such claimant has not been compensated if such claimant has presented a claim for compensation for such damage under any other Federal or State law.

(2) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is not reduced to judgment before the date of enactment of this Act may be eligible to receive compensation under such subsection. Presentation by such claimant of a claim for compensation under subsection (a) or (b) of this section shall be irrevocable, shall constitute the exclusive relief which may be granted with respect to the damage for which such claim is presented, and shall constitute a waiver by such claimant of any

right to relief to which such claimant may be entitled under such other Federal or State law with respect to such damage.

(3) Any United States claimant who presents a claim for any damage referred to in subsection (a) or (b) of this section, under any other Federal or State law, which is reduced to judgment before the date of the enactment of this Act may be eligible to receive compensation under such subsection. Such claimant may present such judgment to the Secretary. If the Secretary determines that such claimant is entitled to receive compensation under either such subsection, then the Secretary shall offer to pay such compensation, not to exceed the amount of any award made in such judgment, in satisfaction of such judgment. Acceptance of such offer by such claimant shall constitute full satisfaction of such judgment with respect to each claim for any damage which is referred to in subsection (a) or (b) of this section and which is merged in such judgment.

(e) The Secretary is authorized to make a grant in an amount not to exceed $6,000,000 to the Texas Parks and Wildlife Department of the State of Texas for the construction and operation of a saltwater fish hatchery for the purpose of restoring the red drum fishery which was damaged by oil pollution caused by the discharge of oil in connection with the blowout of Ixtoc I, Bay of Campeche, Mexico, on June 3, 1979.

H.R. 7020

By Mr. ECKHARDT:

—Page 29, after line 13, insert:

"(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from contamination associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

EXTENSIONS OF REMARKS

SUPERFUND: CRUCIAL PROTECTION FOR GROUND WATER

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. WAXMAN. Mr. Speaker, superfund legislation, H.R. 7020 and H.R. 85, will reach the floor of the House in a very few days. I am proud that part of the package, H.R. 7020 dealing with hazardous waste disposal sites, originated in our House Commerce Committee.

The need for superfund, to cope with releases from dump sites, and spills of oil and hazardous substances into the environment, speaks for itself.

However, as chairman of the Commerce Subcommittee on Health and the Environment, with special concern for ground water protection, I want to alert my colleagues to the emerging realization that this Nation's supplies of ground water, still considered by the majority of the American people as safe and pure, are in fact terribly threatened, from a variety of sources of contamination including hazardous waste sites, liquid waste impoundments, and spills, all of which would be addressed by superfund.

In many cases it is too late: Wells have already been closed, and in all probability cannot be restored. Elsewhere, the aquifer has been contaminated, but that contamination has not yet reached the wells.

In other cases, protection can still be achieved by the kind of clean up of sites and spills that superfund offers.

The Environmental Protection Agency, in recent testimony before my subcommittee, and the Subcommittee on Transportation and Commerce addressed the threats to ground water.

Because superfund, which I strongly urge my colleagues to support, is a major step forward in protecting the Nation's aquifers against future contamination, this is an opportune time to share with the House that testimony:

STATEMENT OF SWEP T. DAVIS, ASSOCIATE ASSISTANT ADMINISTRATOR FOR WATER AND WASTE MANAGEMENT, ENVIRONMENTAL PROTECTION AGENCY—AUGUST 22, 1980

My name is Swep T. Davis. I am Associate Assistant Administrator for Water and Waste Management of the Environmental Protection Agency. Mr. Chairman, I want to thank you and the members of both Committees for this opportunity to come before you with a report on ground water contamination and our plans for developing a ground water protection strategy.

THE EMERGING PROBLEM OF GROUND WATER CONTAMINATION

I come before you today with the distressing news that one of this nation's most vast and vital natural resources is in serious jeopardy. Our ground waters, long considered virtually pollution-free, are threatened by ruinous contamination. The problem is national, for the potential sources and routes of contamination may be found wherever people live and work. The problem is serious, for the intruding contaminants are often highly toxic, sometimes cancer-causing. More than one hundred million of our citizens depend in whole or in part on underground sources of drinking water. Each day more than ten billion gallons of ground water are withdrawn for use in American homes. Another seventy billion gallons are drawn for agricultural purposes. The prospect that that water may contain high concentrations of toxic chemical compounds compels our immediate attention and action. The story of hazardous wastes and vulnerable ground waters is just beginning to be written, but the opening chapter is enough to predict that this will become the environmental horror story of the eighties—with after-effects reaching into the next millenium.

GROUND WATER CONTAMINATION

The initially surprising aspect of ground water contamination is that it is happening at all. The conventional wisdom passed down through the centuries and surviving into our own day is that the ground acts as a natural filter, screening out impurities and ensuring a pristine source of fresh, pure drinking water. We know now that that natural process can be overwhelmed by the burden our industrial society imposes on it. Let me cite a few cases where that has happened.

Forty-four communities in Massachusetts have been found to have private or public water supplies severely contaminated with one or more synthetic organic compounds; 25 incidents have occurred in Connecticut, 25 in Pennsylvania, 24 in New York, over 200 wells in California have been contaminated and one or more incidents have been reported in each of 20 other States. The remaining States cannot be presumed to be untouched, of course; we simply do not have data on them.

Approximately 100 drinking water wells surrounding a municipal landfill in Jackson Township, New Jersey, have been closed because of organic chemical contamination. Analysis of water samples there showed chloroform, benzene, toluene, trichlorloethylene, ethylbenzene, and acetone—all of them toxic if not carcinogenic compounds.

As of March 1980, the Office of Drinking Water compiled and analyzed over 8,000 tests for volatile organic compounds which had been performed on well waters by State agencies. Chlorinated organic solvents were found most frequently, sometimes at high levels. Trichloroethylene, an industrial solvent and degreaser sometimes also used as a septic tank cleaner, was found in one-third of the samples tested.

Last year in Connecticut, a State survey of water plants serving a thousand people or more resulted in the detection of some quantity of volatile organic contamination in 87 percent of the wells tested. One limited example dramatizes the problem. In early 1979, benzene was discovered in eleven private drinking water wells in Brookfield, Conn. This contamination was severe enough that citizens were warned not to drink, bathe, or use the water while the Connecticut Departments of Health and Environmental Protection tried to remedy the situation. Since that time the gasoline station responsible for the underground storage tank leak has been working with the State agencies to effect a ground water recovery and flushing system for the aquifer and to provide the affected families with potable water. It has been frustrating for the citizens and for the experts that there are not "quick fix" technologies available to provide relief from this sort of contamination.

Because of synthetic organic contamination, Nassau and Suffolk Counties, in New York, closed 23 and 13 public water supply wells, respectively. Nearly two million people are served by those contaminated supplies. The New York Public Interest Research Group (NYPIRG) has recently issued a major study of Long Island's ground water problems, drawing on EPA data and other sources. That report confirms that all three of the island's principal aquifers are seriously and dangerously contaminated.

Note that the contaminants in all these cases were synthetic organic chemicals. We know that some of these compounds are cancer-causing in laboratory animals. Some are suspected carcinogens. Many are highly toxic. But there are hundreds of thousands of chemical compounds and we know very little about the health effects of most of them. There are too many of them, coming too fast, for research to keep up. And we know least of all about the impact on human health of various combinations of compounds. The possible synergistic effect of mixed contaminants is a question as elusive as it is frightening.

But we do know that the most frequently found industrial solvents are dangerous to human health. When they appear in ground water they are often in high concentrations. Aquifers do not provide the natural dilution or flushing that occurs in surface waters. A contaminant that penetrates ground water tends to form a "plume" of highly contaminated water, moving slowly through the aquifer for years, decades, and even longer. We measure river flow in feet per second, ground water movement in feet per year.

Determining that a plume exists is enormously difficult. Monitoring wells are expensive and may easily miss narrow streams of contamination in a large aquifer. And if you should happen to find a contamination plume, what are you going to do about it? In most instances, the answer is "Shut down the water supply wells." In some cases, it is possible to cleanse contaminated segments of aquifers but it involves large quantities of water, usually costly treatment techniques, and it is not always practicable, either economically or technically.

In a typical case, such as South Brunswick, New Jersey, determining the extent and severity of a plume emanating from one single source in a shallow aquifer requires dozens of monitoring wells and hundreds of samples. It also takes a great deal of time and several hundred thousand dollars. If the geology is more complex or several potential contamination sources exist, the cost will be on the order of $.5 million. In a case where the aquifer is deep or surface features cannot help in determining the hydrogeology, costs could soar to two or three million dollars. Therefore the more common alternative of closing the wells and seeking

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

water elsewhere is the inexorable solution for most communities.

I should also point out that treating contaminated ground water is not a viable option for most systems. The new equipment for treatment processes and increased operating costs would be far out of reach for the typical ground water system. The hard economic realities would lead to the same conclusion: shut down the water wells.

Ben Franklin's axiom, "An ounce of prevention is worth a pound of cure", certainly applies in this situation. The economic impact of a badly contaminated aquifer has repercussions that extend far beyond detection costs; it may include the expense of a new water supply and treatment plant, effects on property values, production losses and health expenses. The prevention of ground water pollution has a price tag attached to it, yes, but that price ought to be paid in advance by the polluter, not passed on to the citizen-victims of the year 2000 or 2100. No industry has a natural right to dispose of its hazardous wastes or operate in ways that threaten the environment today and in years to come. The people, on the other hand, and indeed the land itself, have a compelling right to reasonable protection from practices and substances that jeopardize human health and natural resources.

SOURCES OF CONTAMINATION

What, then, are the sources of ground water contamination? Ground water is vulnerable to contamination from a variety of sources. Subsurface waste disposal systems and buried storage tanks are a primary concern because of the large number of sites and the potential for bacterial and chemical contamination.

Improper disposal of municipal and industrial wastes also contaminates ground water. During the past several years, various studies have reported or confirmed aspects of the problem. One EPA report estimated that 15 percent of 378 million tons of liquid and solid industrial waste generated in 1978 was hazardous, a figure expected to grow 3.5 percent per year. There are studies estimating that 75 percent of all active and inactive disposal sites leak contaminants into the ground and ground water. A report by Fred C. Hart Associates estimates the number of active identified landfills at 75,500, abandoned landfills at 100,000, and of these active and inactive sites, 54,644 contain potentially dangerous amounts of hazardous wastes.

Other potential sources of contaminants of ground water include radioactive waste disposal sites, highway de-icing salts, contamination from abandoned wells, improper disposal of municipal waste water and injection wells of various kinds. Ground water can also be contaminated naturally with radium or radon, arsenic and other inorganic toxic chemicals. And we are concerned about the possible effects of depletion, or over-withdrawal of ground water that may lead to salt water intrusion, for example.

Worthy of special note are surface impoundments, commonly referred to—even in the Safe Drinking Water Act—as pits, ponds, and lagoons. Such facilities are used for disposal, treatment, and storage purposes; they range in size from a few hundred square feet to hundreds of acres. I understand the Committees have a particular interest in these constructions and are aware of the study the Agency conducted of them. Our study, done in cooperation with the States, was designed simply to make an initial assessment of the number of surface impoundments and their potential for contaminating ground water. We wanted to get a general idea of the dimensions of the problem that might be posed by such impoundments. The data generated to date are preliminary but sufficient to offer the following information.

Almost 181,000 active impoundments have been identified. In the industrial category 10,800 sites containing a total of 25,750 impoundments have been located.

Analyses of the data on 8,200 industrial sites which have been assessed show that 72% are unlined and only 700 are known to be monitored. At 35% of the sites one or more impoundments contain liquid wastes that may be considered hazardous according to a ratings system based on the Standard Industrial Classification Code.

Nearly 30% (2166) of the assessed sites are unlined and located in areas where thin or very permeable soils afford little protection to usable aquifers. About one third of these unlined sites (728) may be located, according to preliminary investigation, within one mile of a water well which would be in the path of contaminated ground water flowing from these sites.

We think our Surface Impoundment Assessment (SIA) was a worthwhile, if sobering, effort. When all the data have been analyzed and studied, we'll have a better insight into what needs to be done about the problem. RCRA, of course, gives us authority to deal with at least some of them. The final SIA report will be out by the end of the year. Should additional regulatory requirements be indicated, we shall, of course, inform the Congress, the States, and the public and involve all of them in the rulemaking process.

THE PROBLEM IN PERSPECTIVE

I think it is important to put all the facts and figures I have cited into perspective. Just how serious and extensive is the occurrence of ground water contamination? The fact is we don't know precisely. The actual magnitude of the problem is unknown, which leaves us with the dual problem of detection and protection. As I mentioned, monitoring is a difficult and costly undertaking. Our most conservative estimates would suggest that only a small percentage of the nation's aquifers have been irretrievably impaired by contamination. These happen to be in highly populated areas, so the impact of their ruination is disproportionately high. However, we know that the kinds of sources and practices that led to their loss can be found in many parts of the country. Some contaminants are so ubiquitous we are planning to set maximum allowable levels for them in drinking water.

The important point, I think, is that the proven instances of contamination clearly establish the potential for similar contamination elsewhere, wherever similar conditions exist. Our studies of surface impoundments, waste disposal sites and other potential pollution sources demonstrate that we are faced with a national problem. However, it is a problem that can be stopped. We can do nothing about the most seriously damaged aquifers, those known and those not yet discovered, but we can act to prevent the same loss from occurring elsewhere.

This, then, Mr. Chairman, is an argument in support of preventive action, the very approach provided by the Congress in Part C of the Safe Drinking Water Act. Our Underground Injection Control program and Sole Source Aquifer program are preventive measures to ensure that ground water contamination does not happen in the first place. Obviously, these two programs do not address every threat to ground water quality. I cite them to emphasize the importance of preventive action and to pay tribute to the Congressional foresight and leadership that has already established the need for and legitimacy of governmental action before the predictable damage is done.

Part B of the Safe Drinking Water Act provides, in the drinking water standards, the last bastion of defense against human consumption of dangerous contaminants, but as mentioned above, systems drawing on ground water typically cannot afford the treatment required to bring chemically contaminated water into conformity with national standards of public health safety.

SUPERFUND

There are gaps in existing authorities. With the proposed Superfund legislation we can fill in many of the gaps.

Let me relate how Superfund will help resolve problems caused by abandoned waste disposal sites. The program embraces four principles of action:

First, it provides the federal government with both the authority and the resources to clean-up abandoned sites.

Second, it permits speedy action, prior to long drawn-out judicial proceedings, to abate environmental and public health threats posed by spills of oil and hazardous substances and by abandoned hazardous waste sites.

Third, it imposes joint, several, and strict liability on those who caused or are causing the problem. This provision serves as both a deterrent and as a means of recovering clean up costs.

Fourth, it restricts Federal action to those instances in which the responsible party will not act or cannot be promptly identified.

We feel that enactment of Superfund is crucial to solving many major contamination problems in our entire environment.

CONCLUSION

By way of a final word, Mr. Chairman, I would only say that the ground water contamination problem is very real and quite serious. Yet we have discovered it soon enough to give us time to act, to prevent the predictable corruption of the larger part of that vital and irreplaceable resource. We hope the Committee will agree that the development of a Ground Water Protection Strategy holds promise and that the Congress's previous commitment to preventive action is a policy that should be continued. The evidence that ground water is vulnerable is abundant. The likelihood of further deterioration nationally is clear. The need for preventive action is compelling. We seek your support and your advice. If the members of the Committees have any questions about the problem or our responses to it, I shall be pleased to try to answer them.●

PERSONAL EXPLANATION

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HAWKINS. Mr. Speaker, on September 4, 1980, due to official business in the 29th District of California, I was not present for votes on the Budget Reconciliation Act. On rollcall No. 517, I was incorrectly paired as being in favor of the rule. For the record, I would like to state that I was opposed to the rule.

In addition, I would like to state for the record that I was in favor of the Bauman amendments to the Budget Reconciliation Act, which struck the provisions in the bill which provided on a one-time basis only that retirement benefits for military and civilian retirees be adjusted to match the rise in the cost of living only once a year rather than the usual twice a year—rollcall No. 518.●

A PRAYER FOR PEACE

HON. JAMES P. (JIM) JOHNSON

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. JOHNSON of Colorado. Mr. Speaker, there are strident voices today that claim righteousness and morality which in reality are using an age-old practice—cloaking political ambition and lust for power in religious and Biblical terms.

A characteristic of these charlatans is to argue that Christians must become politically involved so the country will return to a morality that includes militarism of the highest degree. God, they imply, is against the SALT II Treaty, the Panama Canal Treaty, communism, and abortion; while He favors an arms buildup, military superiority, a rapid deployment force to put American troops on foreign shores on short notice, and a generally aggressive foreign policy that supports military dictatorships all around the world.

These so-called religious leaders and groups, who operate outside organized churches, raise enormous amounts of money, espouse right-wing causes, and preach a form of intolerant self-righteousness which is devoid of Christ's teachings of peace, love, and forgiveness.

Walter F. Murphy, a Princeton University law professor, has written a best selling novel entitled "Vicar of Christ." In this book, a fictitious pope makes an appeal to mankind based upon Christ's teachings which is in direct contrast to the drivel coming from the aforementioned moralists.

I am including a portion of this book in the form of a speech given by the novel's main character which is a simple, eloquent reflection of a religious faith of the highest type. The quotation follows:

> We have all heard too many speeches against war. Every decent person appears to be appalled at the prospect of the use of modern weapons. But their use is as likely today as in any time in the past. The time is long gone for general condemnation of mass slaughter. We must be more specific. We must return to the teachings of Christ in this regard as well as in others. We must return to pacifism as the moral stance of the true Christian; we must reject violence, especially mass violence, and embrace love and trust. The injunctions to love our neighbor and to turn the other cheek are not compatible with red telephones that can trigger hydrogen-tipped missiles or germ warfare.
>
> In the past, before the horrors of modern weapons were known, some theologians differentiated between just and unjust wars. We concede that some wars may be more immoral than others. But the least immoral war fought with modern weapons remains an abomination before God and before man. We do not understand how anyone professing the Christian faith—and though we know less about them, the other great religions of the world that join us in respecting the sanctity of human life—we do not know how any moral man or woman can participate in modern war without damning his or her immortal soul. Further, we do not understand how such a person can take part in preparations for holocaust by serving in the armed forces even in time of peace.
>
> We call out for peace now just as we have called out for peace before the United Nations, before the Arabs and the Israelis, and, privately, before the diplomats of every major nation on this planet. We call out for peace again. But now we call out not only to governments; we call out directly to you, to the people, especially to the young men whose souls as well as bodies war would most searingly condemn. We call for a return to Christ's pacifism. Without armies, governments have no alternatives to peace. We can be certain that old men will not risk their own lives or property.
>
> My message to you is old: Love thy neighbor. Do not kill him; do not make ready to kill him. Love, trust in God's mercy. Let us pray as did St. Francis:
>
> Make me a channel of Your peace, O Lord.
> Where there is hatred let me sow love,
> Where there is injury, pardon,
> And where there is doubt, faith. . . .
> For it is in giving that we receive;
> It is in pardoning that we are pardoned;
> And it is in dying that we are born to eternal life.●

MORE DOUBLETALK IN ALABAMA

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. DORNAN. Mr. Speaker, when the Federal Election Commission appropriations bill comes before the House, the Members will recall that I stated there was a possible coverup within certain parts of the Justice Department and the FEC pertaining to the matter involving campaign contributions and related issues.

Besides a slipshod presentation in the Alabama coal scandals and a Federal judge sealing the record to State Prosecutor James Evans, I now discover that U.S. Attorney J. R. Brooks is denying that his original referral letter to the FEC even mentioned the possibility of a cash contribution to DONALD STEWART.

Just read what was reported in the August 29, 1980, Birmingham News article by Andrew Kilpatrick and Tom Scarritt:

> Brooks sent a letter to the FEC in April 1979, summarizing the Dennis matter for the FEC.
>
> An Associated Press story Thursday quoted an FEC report as saying that Brooks' letter noted some of the Dennis contributions may have been contributed in cash rather than check. Cash contributions are illegal.
>
> That FEC document obtained by The Birmingham News—prepared by the FEC's general counsel and dated May 2, 1979—says that Brooks' letter alleges that some $11,000 was made in cash.
>
> Brooks says that is not so. Brooks said his letter doesn't say anything about cash contributions by Dennis to Stewart.
>
> Brooks did say his letter has information on matters he cannot discuss, but he indicated that reasons for that include keeping sources confidential—not that there has been a suggestion of cash contributions.
>
> "The primary focus of the letter was the fact of the contributions—the fact of contributions by one person in excess of $1,000 rather than on the form of the contributions," Brooks said.

Another article appearing in the Birmingham Post Herald of August 29, 1980, stated:

> Brooks denied a report published yesterday by the Associated Press that the memo reported an illegal $11,000 cash contribution by Dennis to Stewarts 1978 campaign. He also denied the coverup charge made by U.S. Rep. Robert Dornan, R-Calif.
>
> "The Justice Department is just not covering up anything. The allegation that the Justice Department is covering up any information that I gave the FEC is just not true," Brooks said.
>
> "I did not say then (in the memo) and did not say to you now that the letter outlined cash contributions. The contents of the letter are confidential and I would not divulge the contents of the letter except to say that is was a report to the FEC relaying allegations about contributions made by James Dennis."

Contrast Brooks' denial, or very slippery finesse, about his original referral to the FEC with the following relevant excerpts taken from documents on the FEC public record (MUR 970):

FEDERAL ELECTION COMMISSION,
Washington, D.C., May 4, 1979.

Memorandum To: The Commission.

From: William C. Oldaker, General Counsel.

Re Pre-MUR 32.

On April 24, 1979, the Office of General Counsel received a referral from the U.S. Attorney's Office for the Northern District of Alabama regarding fifteen individuals whose names appeared on the disclosure reports for the 1978 campaign of Senator Donald Stewart. According to the referral, the individuals did not actually contribute to the campaign. Instead, it is alleged that James Dennis, a fund-raiser for the campaign, contributed $15,000, $11,000 of which may have been contributed in cash, using the names of the fifteen individuals.* * *

FIRST GENERAL COUNSEL'S REPORT

Date and time of transmittal by OGC to the Commission: May 30, 1979.

MUR No. 970. Date complaint received by OGC: May 10, 1979. Staff Member Thedford.

Source: Referral from the Department of Justice.

Respondent's Name: James H. Dennis, Sr., Friends of Donald Stewart.

Relevant Statute: 2 U.S.C. §§ 434(b)(2), 441a, 441f, 441g 11 CFR § 110.4(c) (1) and (2).

Internal Reports Checked: Donald Stewart, Friends of Donald Stewart, Carey Peck, Carey Peck for Congress.

Federal Agencies Checked:

BACKGROUND

On April 20, 1979, the U.S. Attorney's Office for the Northern District of Alabama forwarded to the General Counsel a referral regarding fifteen individuals whose names appeared on the disclosure reports for the 1978 campaign of Senator Donald Stewart (Attachment I). According to the referral, the individuals did not actually contribute to the campaign. Instead, it was alleged that James Dennis, a fundraiser for the campaign, contributed $15,000, $11,000 of which may have been contributed in cash, using the names of the fifteen individuals.

FEDERAL ELECTION COMMISSION,
Washington, D.C., June 20, 1979.

Re MUR 970.
Mr. JAMES STEWART, Jr.,
Treasurer, Friends of Donald Stewart Anniston, AL.

DEAR MR. STEWART: Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that the Friends of Donald Stewart may be in violation of 2 U.S.C. § 434(b) and 11 CFR § 110.4(c)(2).

A summary of the evidence is as follows:

(3) Mr. James H. Dennis, Sr. made contributions to the committee totalling $22,000 in the names of other individuals, of which $11,000 was alleged to be in cash. The committee would, therefore, be in violation of 11 CFR § 110.4(c)(2) for not "promptly" returning cash contributions in excess of $100.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely,

WILLIAM C. OLDAKER,
General Counsel.

In light of the above public documents, how can J. R. Brooks now insist that he said nothing about cash contributions? I find it fascinating that both convicted felon James Dennis and Justice official J. R. Brooks now publicly change their stories at the same time. Are they marching in locked step?

I think my colleagues will also find it interesting to learn what an excellent investigative reporter Rich Connell of the Daily Breeze had to say, in part, on September 8, 1980:

But Dornan has tripped Peck up.

Peck first said the cashiers checks arrived by mail. Later, he admitted his father hand-carried two back from Alabama.

Peck also said initially that he had only met Dennis once. He characterized the session as a "short sit-down over coffee."

Later, he acknowledged meeting Dennis twice at his father's Beverly Hills home, one time going to a dinner party with Dennis.

Peck admits he did not give complete, accurate details initially. Peck claims he was only trying to protect his father.

"Dornan's original charges deal with campaign mismanagement. I didn't want to involve my father," he said.

Peck also said initially that he had made an effort to contact some of the businesses of the "donors" to verify their occupations.

Now he says his campaign probably only contacted Dennis' secretary. "I had no reason to suspect the guy," he said.

A big turn in the complicated affair came in April when Dornan visited Dennis in federal prison at Taladega, Ala.

Dennis, who is now free pending an appeal, was serving a six-month jail term at the time.

Dornan claims that in this presence of his wife, Sallie, an aide, an FBI agent and a U.S. Attorney, Dennis said he gave $13,000 in cash back to Peck after cashing in Peck's check in a Los Angeles bank.

Peck strongly denies the charge, though he acknowledges Dennis came to Los Angeles to get the $13,000 back. Peck produced a canceled check, which shows Dennis cashed it in Los Angeles. But he did not meet with Dennis during the trip, Peck said, and the return of the money was handled by his attorney.

Efforts by the Daily Breeze to contact Dennis have been unsuccessful, but Dennis reportedly denies giving the cash back to Peck.

Columnist Jack Anderson reported recently that the FBI had launched a "quiet investigation" of Dennis' claims.

The FBI would neither confirm nor deny the report.●

DOD MILITARY CONSTRUCTION AUTHORIZATION

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● **Mr. EDGAR.** Mr. Speaker, as chairman of the Northeast-Midwest Congressional Coalition, I would like to enter into the RECORD the results of a recent study released by the Northeast-Midwest Coalition which is pertinent to the issue we have before us today. The results follow:

REGIONAL AND STRATEGIC IMBALANCES IN DEFENSE SPENDING PATTERNS

Concern over the impact of reductions in defense expenditures on the Northeast-Midwest economy first was raised by the members of the Northeast-Midwest Congressional Coalition in 1977. In response to this concern, Coalition members asked the Northeast-Midwest Institute to conduct a comprehensive examination of defense expenditure policy. The Institute, in conjunction with the CONEG Policy Research Center, initiated a four-part research project which examined defense expenditure patterns, military base closures, defense facilities, and the economic effects of defense spending.

The issues raised by these studies continue to be of vital interest to those concerned with the economy of the Northeast-Midwest region. The current study provides new analysis of the regional implications of defense expenditures, examining both economic and military preparedness concerns.

The long-term pattern of regional inequities in defense spending first was brought to public attention by the Northeast-Midwest Congressional Coalition over three years ago. Since that time, the disparities have continued—but their consequences have become even more alarming. The findings of three years ago remain strikingly true today. The 18 states of the Northeast-Midwest region have lost a disproprotionate share of the defense dollar since the 1950s and continue to receive a lower level of military expenditures than any other region in the nation (see summary table). This persistent pattern of defense spending further jeopardizes an already troubled regional economy, and now endangers our nation's military preparedness.

SUMMARY TABLE

[In percent]

Region	Population 1979	Tax burden 1979	Principal installations 1979	Base closures 1969-79	Personnel 1979	Wage and salary disbursements 1979	Prime contracts 1979
United States	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Northeast	24.4	25.8	17.7	26.4	11.5	11.2	30.2
New England	5.6	5.7	5.0	8.0	2.7	3.3	13.7
Mid-Atlantic	18.8	20.1	12.7	18.5	8.8	7.9	16.6
Midwest	21.9	23.5	7.4	17.2	7.0	6.3	10.9
Northeast-Midwest	46.3	49.3	25.1	43.6	18.5	17.5	41.2
South	30.4	26.5	38.6	21.6	47.5	47.3	23.8
South without District of Columbia	30.1	26.1	36.5	21.0	41.4	46.0	22.8
West	23.3	24.2	36.2	34.8	33.9	35.3	35.0

The current analysis examined the regional trends in defense spending from 1950 to 1979 over a wide spectrum of expenditures. The study revealed the following striking disparities:

The Northeast-Midwest region, which contains only one-quarter of all defense facilities, has suffered 43.6 percent of all base closings;

New York state alone has lost 36 facilities since 1965, resulting in a net loss of 44,270 jobs;

The Northeast-Midwest region consistently has received the lowest level of military construction funds; in fiscal year 1981 the Northeast will receive only 10.9 percent ($194.1 million) and the Midwest a mere 5.2 percent ($92.8 million);

In fiscal year 1981, California received more in military construction funds than the entire Northeast-Midwest region;

While the number of DOD personnel nationwide has increased by 30 percent since 1950, the Northeast region actually *lost* personnel, a reduction of 52,460 employees. The South and the West combined received an increase of 535,675 employees, while the Midwest had a modest increase of 16,685; and

Since 1955, about 20 percent of all DOD prime contract dollars have gone to one state, California.

This unbalanced pattern of expenditures has serious economic and military preparedness consequences. The continued decline of military expenditures and frequent base closures in the Northeast-Midwest region have caused increased unemployment and economic decline in a region already in economic distress. The repercussions of these economic ills are not confined to one region, but threaten the vitality of the entire national economy. In the past few years, however, there has been some progress in preventing continued base closures in the Northeast and Midwest.

The present distribution of U.S. continental forces contains a high concentration of combat personnel, facilities, and weapons systems in the South and the West. As a result, our current military resources provide only minimal protection for the Northwest and Midwest, and more importantly indicate an overall weakness in U.S. defense posture. Specifically, the study found that:

No major combat divisions are located in the Northeast or the Midwest, although the area provides the best strategic location for deployment to the NATO theatre;

Only one of the present 13 major U.S. combat divisions trains in a climate similar to its probable combat environment;

One-half of the Army National Guard (the Northeast divisions) is unable to train alongside the active Army;

Our expensive fighter-interceptor aircraft (the F-14 and the F-15) could provide a defense against Soviet bombers if they were appropriately based while in the U.S.; however, as currently positioned they are vastly underutilized;

Over 60 percent of the planned emergency producers are industrial plants in the

Northeast and the Midwest, yet the economy of these regions continues to be drained of defense dollars; and

The present pattern of expenditures is moving to concentrate defense industries and facilities in the South and the West, giving an opponent an "easy target" and rendering the U.S. more vulnerable to attack.

The military construction budget for the Department of Defense provides for all new buildings, additions, and structural improvements required outside normal facility operations and maintenance. Funds are appropriated by individual project, and thus there is considerable variability in the composition of the military construction budget from year to year. Analysis of the budget, however, provides an important indication of DOD priorities for capital investment and its commitment to key facilities.

The Trends:

Absolute Amount: Fiscal year 1980 appropriations for military construction in the U.S. totaled approximately $1.8 billion. Of this sum, projects in the Northeast will receive 10.9 percent ($194.0 million) and in the Midwest 5.2 percent ($92.8 million). Almost one-half—49.4 percent—of the military construction budget ($881.6 million) will go to projects in the West. Construction projects in the South total 34.6 percent ($618.0 million). California alone will receive $328 million (18.4 percent), which is more than the entire Northeast-Midwest region. This low level of construction investment allowed the older facilities of the Northeast and Midwest to deteriorate further, making them more likely candidates for base closings and phase-downs. While the general pattern is quite discouraging, some modest improvement has occurred in the region's share of military construction expenditures in recent years. In 1975, projects in the Northeast and Midwest were allotted only 13 percent of the total appropriations, and in 1977 only 10 percent.

These findings represent only an initial listing of the military problems resulting from the current pattern of defense spending. However, both these economic and military concerns strongly suggest the need to examine our defense expenditure policy more comprehensively. The Defense Department will spend $158.7 billion this coming year to meet U.S. military needs. Expenditures of this magnitude will have a profound and lasting impact on the economy, and on the current strength and future preparedness of U.S. military forces. Current methods of Defense Department decisionmaking must be scrutinized more thoroughly and both economic and strategic consequences more completely explored to insure that our defense dollar is spent both efficiently and effectively.●

CLARIFICATION OF REMARKS IN SUPPORT OF THE RULE FOR THE CONSIDERATION OF H.R. 3904, THE MULTIEMPLOYER PENSION PLAN AMENDMENTS OF 1980

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. GAYDOS. Mr. Speaker, during the debate on August 25, 1980, on the rule, House Resolution 764, which would have made it in order to strike all nongermane Senate amendments from H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1980, I addressed the House and in my remarks referred to the fact that two of the industry organizations that were pushing the nongermane MSHA amendment which would have excluded surface stone and sand and gravel mines from the jurisdication of the Mine Safety and Health Administration (MSHA), did not appear before the subcommittee in 1977 when the present MSHA law was under consideration, but merely submitted a statement for the record.

Recently, I received a letter from Mr. William L. Carter, president, National Crushed Stone Association, accusing me of misrepresenting to the House the position of his organization in that "you stated that the National Crushed Stone Association did not appear before your subcommittee in 1977 when the present MSHA law was under consideration."

The pertinent remarks which Mr. Carter refers to appear on page 23006 of the CONGRESSIONAL RECORD for August 25, 1980. They are as follows:

> The Subcommittee on Health and Safety has been conducting extensive oversight hearings on MSHA this Congress. To date we have held 21 days of hearings with two more scheduled. We have heard from Members of Congress as well as various industry organizations including two of the organizations which are pushing this amendment. Let me just say a word about those two organizations. They did not appear before the subcommittee in 1977 when the present MSHA law was under consideration. Instead, they submitted statements for the record and their main opposition was to the transfer of jurisdiction over sand and gravel mines from MESA in the Department of the Interior to the Department of Labor. They stated that MESA has "done an outstanding job of educating both management and employees on new developments in safety" and that "the transfer of mine safety enforcement responsibility will disrupt already successful procedures or programs which have been brought about by the effective mutual effort of MESA and the mining industry, working in harmony toward a common objective."
>
> Well, MESA was transferred to the Department of Labor, lock, stock and barrel, and has been administered as a complete separate entity from OSHA.
>
> Also in 1977 neither of these organizations questioned the fact that stone and sand and gravel operations are "mining operations." Today, however, they would have us believe that such operations are not "mining" operations. They would have us conveniently forget that for over 100 years Federal laws and Federal courts have clearly held them to be mining operations.
>
> Yet, it appears that the sand and gravel industry now wished to switch its affiliation to OSHA.
>
> But what about the other industry organizations representing stone and sand and gravel operators. While the National Crushed Stone Association supports the transfer, the National Limestone Association, which has more members than all other national aggregate associations put together, is unalterably opposed to the MSHA amendment.

Mr. Speaker, well, Mr. Carter is wrong.

If he had not been so quick to shoot from the hip and charge me with misrepresentation, he could have easily checked pages 543-556 of the subcommittee hearings on the Federal Mine Safety and Health Act of 1977 for the 95th Congress and quickly realized that I was referring to the National Sand & Gravel Association and the National Industrial Sand Association.

In my remarks I referred to the fact that these two organizations in 1977 opposed the transfer of jurisdiction over sand and gravel from the Department of the Interior to the Department of Labor. There was no reference to crushed stone.

Furthermore, if Mr. Carter had checked out the quotations included in my remarks of August 25, 1980, he would have realized that they were not from his witnesses, but rather from the statement of the National Sand & Gravel Association. From Mr. Carter's letter it appears that he did check the hearings with respect to the testimony of representatives of his organization.

Finally, when I did mention the National Crushed Stone Association, it was in conjuction with the National Limestone Association, which I referred to as, "the other industry organizations representing stone and sand and gravel operators."

But shooting from the hip without full knowledge of the true facts seems to be a habit of Mr. Carter and some of his colleagues.

For example, when the National Crushed Stone Association appeared before the Subcommittee on Health and Safety on June 25, 1979, one of their witnesses testified that the training modules that were provided by MSHA, "* * * were of little value. We had to go from scratch." Yet it is interesting to note that the National Crushed Stone Association in its November 1978 edition of Stone News announced it was making available MSHA's model training plan for crushed stone procedures for $10. It stated, "* * * while each company will have to develop its own training plan for each operation, the model plan provides valuable insight into what MSHA is expecting and, more importantly, what each company's plan will be judged against."

If the training plan was of little value, why did they sell it to their members? I will leave it up to the members of the National Crushed Stone Association to determine whether they or the U.S. Congress were getting the correct story.

Additionally, another witness for the association on June 25, 1979, testified at length regarding the extensive training which a mine operator must provide a vending machine salesman who visited a mine site to service a soft drink vending machine. This occurred notwithstanding the fact that the myth of the need for such training surfaced early in 1979 and the subcommittee as well as Assistant Secretary of Labor for MSHA, Mr. Lagather, had been on record several times in denying there was any truth to this myth. After an extensive colloquy with the association representative, a member of the subcommittee asked if the witness could cite an instance where somebody had been cited because the Coke machine man did not receive training. The witness replied that there was such an instance involving a Coke machine serviceman who did not have hard-toed shoes on when he left his truck to fill a Coke machine. For this, the operator was cited.

The witness was asked to furnish a copy of the citation to the subcommittee and he agreed to do so.

After a followup request to the association, for the citation, the association, on October 29, 1979, stated it had requested the citation from MSHA.

To date, the subcommittee has heard nothing further from the National Crushed Stone Association on this matter.

What does this all mean?

It means that after an extensive colloquy with the association's witness in an attempt to sift through the fiction and find if there was any merit to the association's criticism of MSHA's training standard, the witness attempted to support his argument with a specific case, one which he has been unable to furnish to the subcommittee over 1 year later. In simple terms, the witness' bluff was called.

Finally, during his appearance on behalf of the association on June 25, 1979, Mr. Carter was asked concerning his relationship with Assistant Secretary Lagather. He replied that, "We have had continuing contacts with all the top officials in MSHA on a regular basis".

I have been informed by Assistant Secretary Lagather that since August 1978, he has met with Mr. Carter on five occasions. This does not appear to be a "continuing contact" for an organization which has so aggressively sought to have its members excluded from MSHA jurisdiction. It would appear that, as a responsible Washington-based industry trade association, it would have been endeavoring to solve its members' problems by initiating a continuous dialog with Assistant Secretary Lagather.

With all the varied and complex legislative issues that Congress must consider on a continuous basis, it is vitally necessary that informed and responsible organizations must exist to provide input to Congress and the administration, as well as to properly keep its own membership apprised of the impact of the activities of Congress and the administration.

I shall leave it to the Members of this body as well as to the membership of the National Crushed Stone Association to determine if that organization qualifies as informed and responsible.

The text of Mr. Carter's letter follows:

> The purpose of this letter is to correct your misrepresentation of the National Crushed Stone Association's position with respect to the Mine Safety and Health Administration and our past participation in the development of the 1977 Federal Mine Safety and Health Act.
>
> In the statement you made on the House floor during the debate on the rule on the multiemployer pension plan legislation (Congressional Record, Vol. 126, No. 132, August 26, 1980, page H7886) you stated that the National Crushed Stone Association "did not appear before your subcommittee in 1977 when the present MSHA law was under consideration."
>
> This is not true.
>
> On March 22, 1977, a panel of four representatives of the National Crushed Stone Association appeared before you and the Subcommittee on Compensation and Health and Safety. We direct your attention to the hearing record on the Federal Mine Safety and Health Act of 1977 for the first session of the 95th Congress. The formal statement presented by Mr. Newell T. Crolius begins on page 132. An extensive question and answer session then followed, which is found on pages 163–186 of that hearing record. Mr. Gaydos, NCSA's primary concern set forth at that hearing, as found on page 137 of the hearing record, was "* * * we strongly protest the intended repeal of the Metal and Nonmetallic Mine Safety Act of 1966 and the proposal in H.R. 4287 to place stone quarries under the provisions of the Federal Coal Mine Health and Safety Act."
>
> In the quest for fairness, we ask you to correct the record.●

CONGRESSIONAL SALUTE TO REPRESENTATIVE CLAUDE PEPPER, DEMOCRAT OF FLORIDA, ON HIS 80TH BIRTHDAY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. ROE. Mr. Speaker, I take great pleasure today in rising to salute CLAUDE PEPPER, our beloved colleague from Florida, on the occasion of his 80th birthday.

During his 32 years of service to the public in both the Senate and the House of Representatives, CLAUDE PEPPER has rightfully earned the title "champion" of the Nation's senior citizens.

It has been through his tireless work as chairman of the House Select Committee on Aging that the elderly have won major advances in such areas as health, housing, nutrition, and economic well-being.

Though CLAUDE PEPPER may be the oldest member of the House in chronological years, his ideas to better the life of all Americans are indeed young at heart. He is an inspiration to us all as we strive to achieve our best on a daily basis.

As a member of the highly important Rules Committee, Congressman PEPPER has been a guiding force in helping to bring vital pieces of legislation dealing with pressing social issues to the House floor for quick consideration.

Mr. Speaker, CLAUDE PEPPER's concern for the common man goes back to his early years as a lawyer in his home State of Florida. That belief in the basic dignity of all men led him to a successful Senate victory in 1936 at 36 years of age.

PEPPER's devotion to civil liberties cost him his Senate seat in 1950.

But 12 years later our country was blessed with the reemergence of CLAUDE PEPPER on the political scene when he was elected to the House.

Of all CLAUDE PEPPER's achievements, none is probably more noteworthy than his successful battle to secure passage of a bill which upped the mandatory retirement age for most jobs from 65 to 70.

It is his belief, as it is mine, that persons who are healthy enough to do so, should not be put out to pasture because they have reached the unfairly predetermined retirement age of 65.

Mr. Speaker, CLAUDE PEPPER is living proof that age should not be a detriment to employment. More than half his congressional career took place after he was 65 years old.

We salute you, our good friend. And all of us in the House look forward to many more years of your guidance and inspiration as we tackle the difficult problems facing our great Nation in the years ahead.●

NERVE GAS CONTROVERSY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, I would like to express my concern over the fact that this country may be getting back into the business of producing nerve gas weapons.

In an article for today's Washington Post, Senator DAVID PRYOR, Democrat from Arkansas, urges that we continue our 10-year moratorium on the production of chemical weapons.

Senator PRYOR makes a strong case that the production of the binary chemical weapons—as advocated by the Army—would not bring us any military advantages. The Secretaries of Defense and State both oppose the production of these weapons—and with good reason. We already have an enormous supply of chemical weapons, our allies in Europe may not let us stockpile any kind of chemical weapons on their territory, and protective clothing and masks make soldiers almost invulnerable to nerve gas. Civilians, on the other hand, would be totally defenseless.

As Senator PRYOR notes, there is no evidence to support the contention that the Soviets are now producing chemical weapons. In fact, our chemical warfare experts believe that the U.S.S.R. has also been observing a moratorium on the production of these weapons of mass destruction.

Once again we are confronted with a proposal that will be immensely costly without improving our security one iota; indeed, again, as with the MX, we will end up much less secure as the Soviets are forced to resort to a chemical warfare potential too.

I commend the Senator's article to the attention of my colleagues:

LET'S STAY OUT OF THE NERVE GAS BUSINESS

Ten years ago, this country adopted a new policy when it banned the further production of chemical weapons. In addition to making a humanitarian statement with this move, the United States also made a rather sound and sensible decision from an economic and military standpoint. In the 1950s and 1960s, the Army had manufactured and stored enough nerve gas, shells, bombs and other munitions to kill or maim many times over just about every warm-blooded thing over an area of thousands of square miles.

But now the Army wants to resume production of nerve gas and reverse the decade-old policy. At this point it appears that the decision may be made without debate or the extensive scrutiny that such a reversal warrants.

The Army justifies the new entry into nerve gas production on the grounds that the new gas would be "binary," i.e., the gas would need two non-lethal chemicals combining to create a lethal gas. The two chemical agents would be stored in different places and combined during the carrier's flight to its target. If the production of binary gas comes on line, according to the Army, then the old stockpiles could be destroyed and we would have safer "gas." The whole process would cost more than $2 billion.

In effect, our new policy would take us down the road of trading in old, conventional chemical stockpiles for a new type of binary gas. There is no military advantage to binary gas—the advantages are merely those of additional safety in storage and transport.

Not even the president (as required by law) has taken a public position on getting us back into the nerve gas business. The Joint Chiefs of Staff have mumbled half-hearted support, while the secretaries of defense and state have publicly opposed such a step at this time. Yet the House of Representatives has recently appropriated funds to construct a nerve gas production facility in Pine Bluff, Ark. Thus we find ourselves today "backing into" what could be an intractable position with worldwide implications. This snipe hunt should be stopped in its tracks and a reexamination of this position initiated immediately. The facts available to us simply do not justify a direct reversal of our prior policy on nerve gas.

First, as mentioned, we now have an enormous supply of nerve gas and chemical weapons. Most of these supplies are not obsolete and have not deteriorated; they can kill just about as many people as they could before. Even though the Army maintains we need "nerve gas" for our allies in Europe, the truth is that our allies won't even let us store additional nerve gas stockpiles on their soil. The West Germans, in fact, find nerve gas usage so repugnant and unacceptable that they have gone even further and decided that none of their troops will even be trained to use these weapons. Therefore, it is highly unlikely that any newly produced nerve gas would ever leave U.S. shores.

Second, it is foolish to argue that our resumption of nerve gas production is necessary for our defense capabilities. Nerve gas doesn't kill soldiers. It kills civilians—men, women and children who do not possess masks and the protective clothing necessary to defend themselves from this colorless, odorless poison that causes violent convulsions and asphyxiates its victims.

Protective clothing and masks are standard issue in the European theater for not only Soviet troops but also our own. This special protection makes soldiers practically invulnerable to nerve gas.

Third, advocates of resuming nerve gas production point to the Soviet use of lethal gas in Afghanistan. To date, there is no way to confirm this allegation. Our own CIA has not found any evidence that is considered conclusive in answering this question. We simply do not know.

Those same proponents argue that the Soviets are manufacturing massive stockpiles of nerve gas weapons but, again, no proof exists. The abundance of evidence supplied by those who attempt to monitor this area seems to be that the greatest Soviet effort to date is defensive in nature; i.e., early detection, protective clothing, shelters and mass education. Once again, the facts elude the argument—and rumors, confusion and misinformation now set the stage for hasty and precipitous action by an election-year Congress that has not debated the issue and by an administration that sits aloof and silent.

Finally, there are those who espouse the cause of nerve gas as a means to right what they term our "second-rate" military capability as a nation. Of them I ask: just how will the resumption of nerve gas make us sleep better at night? It wouldn't. In fact, it will detract from those essential needs our military must have to keep on a par with the Soviets.

If the sad day ever comes when this country is forced to use nerve gas, let us pray that we have secured our gas masks and zipped our suits—and hope that the wind doesn't change direction.

The consequence of a nerve gas war could be so tragic as to defy imagination. We must never lose sight of the fact that our battlefields are no longer confined to the Little Big Horns or the beaches of Normandy—they are nations and continents.●

H.R. 7824

HON. W. G. (BILL) HEFNER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HEFNER. Mr. Speaker, I would like to urge my colleagues to join Congressmen FOLEY, PANETTA, and me in cosponsoring and supporting H.R. 7824, which would amend the Farm Labor Contractor Registration Act of 1963.

In these days of bureaucratic proliferation, support of this legislation will do much to relieve what I believe to be unfair and ridiculous requirements being placed on farmers everywhere.

The Labor Department has seen fit to extend its protective hand to require all farmers who hire workers, even his next door neighbor, to register as farm labor contractors. This bill, H.R. 7824, exempts farmers from this and other burdensome requirements and frees the Department of Labor to carry out the intent of Congress which is to protect real migrants.●

NEW EVIDENCE FOR INCOME TAX RATE REDUCTION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KEMP. Mr. Speaker, Peter Grace, president of W. R. Grace & Co., has produced statistical evidence of the drastic decline in real after-tax income in the past 8 years, due to the collision of high inflation with our unadjusted, steeply progressive Tax Code.

Mr. Grace's figures compare these automatic tax increases with supposed tax cuts which have been enacted. The evidence points to the need for across-the-board tax rate reduction of the sort proposed by Governor Reagan and the Republican Party.

Discretionary tax changes, Mr. Grace shows, have not even begun to make up for these automatic tax increases. Even allowing for these tax cuts, a taxpayer beginning with $10,000 in income in 1972 has lost nearly one-half of the automatic tax increases to the Government. Those taxpayers earning $50,000 in 1972, if they have kept up with inflation, have suffered a loss of after-tax income equal to more than 80 percent of the tax increase caused by inflation.

I believe Congress should adjust income tax rates to remove these growing disincentives to growth. Unfortunately, the 30-percent cut in personal income tax rates proposed by Senator BILL ROTH and myself would make up, in dollar terms, only for planned future Federal tax increases on personal income for at least the next 5 years. Therefore, as Governor Reagan said today, "In the second half of the decade ahead we are going to need, and we must have, additional tax rate reductions."

Peter Grace's new evidence was analyzed recently in the National Review. I commend this article to my colleagues.

The article follows:

[From National Review, Sept. 5, 1980]

JIMMY'S TAX FANTASY

In his nomination acceptance speech Jimmy Carter told a national TV audience that Kemp-Roth-Reagan is a "fantasy" tax cut that "offers rebates to the rich, deprivation for the poor, and fierce inflation for the rest of us." But, candidate Carter, the rest of us are already experiencing fierce inflation—the fiercest in anyone's memory—and without the benefit of a tax cut. The real problem is what will happen to us if we continue the present trend of inflation without offsetting tax cuts. Statistics developed by Peter Grace, President of W. R. Grace & Co., show that reality is even worse than Jimmy Carter's campaign rhetoric.

Inflation pushes all taxpayers into higher brackets of the progressive income tax, resulting in the same amount of purchasing power's being taxed at ever higher rates. The occasional tax cuts, Mr. Grace discovered, don't come close to offsetting the devastating effect of taxflation on the taxpayer's purchasing power. During 1972-79, the government kept 46.8 percent of the revenues that it gained by pushing people with $10,000 incomes (constant 1972 dollars) into higher tax brackets. Everyone else fared even worse. Inflation raised taxes on $15,000 incomes by $546 (of which the government kept 51.3 percent), on $30,000 incomes by $1,827 (of which the government kept 74.1 percent), and on $50,000 incomes by $3,679 (of which the government kept 81.5 percent).

Mr. Grace calculates that if the taxflation of 1972-79 continues, every taxpayer who has an income of $20,000 or higher (in constant 1972 purchasing power) will be in the 50 percent marginal tax bracket by 1986. Already since 1972 the top tax bracket on a $20,000 real income has risen from 25 percent to 32 percent. It is this sort of tax bracket "creep" that Kemp-Roth-Reagan offsets. One has difficulty understanding how a tax rate reduction that stops ordinary incomes from being taxed at the top rate is a "rebate to the rich." Candidate Carter, please explain.●

GREATER NEWARK BETTER BUSINESS BUREAU CELEBRATES 10TH ANNIVERSARY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. RODINO. Mr. Speaker, this week the Greater Newark Better Business Bureau is marking 10 years of progress in protecting consumers and enhancing the business environment in northern New Jersey.

It was exactly one decade ago when I kicked off the opening of the first better business bureau office in my home city of Newark. Today I am proud of the record it has compiled in helping people. The bureau began when about 20 companies took the initiative in Newark, with an eye toward serving Essex, Union, Hudson, and Morris Counties. Now, 1,400 companies participate in the bureau which has an annual budget of $175,000.

The Greater Newark Better Business Bureau helps consumers and businesses in a variety of ways. It has an outstanding record of settling over 70 percent of all customer complaints. When it is unable to settle a complaint, it offers free arbitration service which is honored by the courts.

The bureau also assists the U.S. Postal Service and Justice Department to spot misleading advertisements and other ripoff operations. Over the years, the bureau's cooperation with law enforcement authorities has resulted in several thousand dollars being refunded to consumers.

By disseminating consumer information through the local media, and providing speakers for schools and civic groups, the better business bureau has contributed greatly to a better informed public.

Mr. Speaker, the Greater Newark Better Business Bureau will celebrate its 10th anniversary at a luncheon on Friday, September 12, at Newark's Robert Treat Hotel. At that time the bureau will honor its founder, Robert D. Lilley, who is past president of New Jersey Bell Telephone and American Telephone & Telegraph Co. The bureau will present its founder with the first Robert D. Lilley Award for outstanding service to the Greater Newark area and support for the better business bureau.

I am so pleased that President Carter also will recognize Mr. Lilley for his efforts to start the Greater Newark Better Business Bureau and the significant work carried on by the bureau for the last 10 years.

Mr. Speaker, I am sure that all my colleagues will want to take note of this community effort by the businesses in the Newark area, and I am grateful for this opportunity to recognize their work.●

THE EXAMINER OF INDEPENDENCE, MO.

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SKELTON. Mr. Speaker, the Examiner, Independence, Mo., daily newspaper, recently moved its operation to a new and spacious building. The dedication ceremony, held at the new site, featured comments by Pete Esser, publisher of the Examiner. At that time, he made some very important remarks regarding freedom of the press and the role of newspapers in our society. I wish to share excerpts of Mr. Esser's remarks with this body:

Good morning. Thanks to all of you for joining us at the Examiner's dedication and open house.

I think it is fitting that your newspaper chose to remain in the core area of Independence. It is also fitting that we are located on the old Santa Fe Trail.

Not many cities west of the Mississippi can boast of a history such as Independence. Once a rough, tough outfitting post, it is now a city of homes, churches and really fine people. All of us who claim Independence as home can take pride that we are citizens of this great community. Now, I hope that pride also extends to your newspaper, the Examiner.

Today, when freedom of the press is being threatened, I would like to quote what two of our former presidents' had to say about newspapers. Thomas Jefferson said and I quote, "I would rather live in a country with newspapers and without government than in a country with a government and without newspapers." President John Kennedy on the occasion of National Newspaper Week in 1962 remarked, "Newspapers play a vital role in our society. They have been called the universities of the people and rightly so. With all the great advances of our educational system and the spread of its benefits to an ever greater part of the population, the free press remains the most important source of Popular political education without which a democracy cannot function."

The Examiner, which was founded in 1898 by Col. William Southern, was not started because there was a need for a newspaper in Independence. There were 3 weeklies and a daily being published here at the time.

In that period of history, the nation was still reeling from the effects of a deep recession and it was a most inopportune time to start any business venture.

Perhaps Col. Southern summed up his reason for starting the Examiner in his first issue editorial which read in part, "I want to say distinctly that in the publication of this paper, I shall have my opinions of men and measures and shall express them freely." This credo continued through the years even up to now. And when Stauffer Communications acquired the Examiner in 1951, the credo of its founder and board chairman, Oscar Stauffer was added. It states, "Count the day lost when your newspaper has not done something to benefit the community it serves."

As you know, a newspaper is thought of as a semi-public utility. You might describe a newspaper as a private business enterprise that functions as a public institution.

If you will join me and several of my Examiner associates, we will make a tour of the building. Again, may I say Thank You for joining us here today.●

CONGRESSMAN BONKER EXPRESSES CONCERN OVER CONTINUED MARTIAL LAW IN SOUTH KOREA

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SOLARZ. Mr. Speaker, recently Congressman DON BONKER, the able chairman of the Foreign Affairs Subcommittee on International Organizations called our attention to recent shifts in the South Korean Government which have effectively halted the progress of that nation toward establishing a constitutional democracy with full civil and human rights for all its citizens.

A vigilant defender of the security interests of the United States, as well as basic human rights, Congressman BONKER expressed grave concern at the South Korean Government's reimposition of martial law and the arrest of dissidents, and now its refusal to allow representatives of Amnesty International or the International Commission of Jurists to attend the show trials of Kim Dae Jung and other opposition leaders.

Mr. Speaker, I insert Congressman BONKER's statement on these troubling events in South Korea in the RECORD.

STATEMENT OF HON. DON BONKER

I asked to appear today in order to continue to add my voice to the growing number of voices who are deeply concerned and disappointed about recent events in South Korea.

I am very concerned about the role of South Korea's military, very concerned about the extreme violations of human rights in that troubled land, and very concerned about the show trials of dissidents, especially the trial of Kim Dae Jung.

Most would agree that long-term stability and security of Korea can be accomplished by a continuing process of political liberalization. I am sad to say that process has been harshly interrupted. Today, we are witnessing a constitutional and political charade as General Chun attempts to legitimize his rule. First, he takes over the government but leaves in place a figurehead civilian president. Next, he savagely represses the opposition. Then he forces the figurehead president to resign. Finally, General Chun resigns from the army and has himself selected as the new president.

Making a mockery out of the constitutional process by observing it in form but not in substance, the next thing we will be told is that the former general has come to power legitimately.

Several months ago, when I visited South Korea, I was impressed by the determination of most segments of Korean society to work together to bring about greater progress towards democracy. Every sign pointed in the direction of instituting a truly democratic system. In meeting after meeting, Koreans from all walks of life, in an out of government, expressed the hope that the provisional government would be able to manage an orderly and constitutional transition under civilian rule. They spoke of looking forward to the constitutional changes and free elections which would give them a new government broadly supported by all segments of Korean society. All of us who advocate the cause of human rights in the world were encouraged by what seemed to be a very promising situation leading to the political liberalization of South Korea.

Now these hopes lie shattered as the Korean military moved quickly to reinstate a severe martial law, which curbed the incipient political process, led to the closing of the national assembly and universities, forced the abandonment of all political activity, and led to the arrest of many major political figures.

I had the pleasure of meeting most of the civilian leaders but Kim Dae Jung is easily the most popular figure in Korea. He is being tried on charges of violating anti-sedition, national security and anti-communist laws. There is great fear about his safety. The fear is that Kim's show trial will automatically lead to his conviction. Then Kim Dae Jung will either face a certain long-term confinement or execution.

We must continue to emphatically make clear to the regime in South Korea that this would be a terrible mistake. Force should not be the answer to legitimate dissent. Discontent in South Korea will not disappear until all Koreans are assured the full protection of their basic human rights and a fair voice in their Government. Unless this takes place, it will be increasingly difficult to justify to the American people the continuation of our close relationship.

As a recent editorial in the New York Times of August 18 notes:

"Most Americans who care about South Korea are dismayed by Gen. Chun's brutality and look upon his show trial of Kim Dae Jung as morally indistinguishable from what passes for justice in Communist North Korea."

The State Department has characterized the charges against Kim Dae Jung as "far-fetched." Most observers of the sorry state of events in South Korea are very concerned that Kim Dae Jung will not receive a fair trial. The fact that international observers from Amnesty International and the International Commission of Jurists have been prohibited from attending his trial and the fact that its proceedings are being censored only help to underscore those fears.

South Korea's national security is dependent on stability and stability can be best ensured by a broad national consensus. In fact, South Korea's future growth and development are dependent on the support of the people rather than on measures which restrict their civil and political liberties. If the South Korean government is perceived by its own people as a renegade government, who will defend it if an emergency should arise? Facing a hostile enemy, how will it survive if its own population is hostile as well?

Our democratic ideals and our security interests make it essential for us to use our influence to guide South Korea back on the road to constitutional reform, elections and a new government with broad public support.

The State Department must be commended for its efforts to get that message across. But words are not enough. There is a notion prevalent that it is really General Wickham and the Export-Import Bank which speak for our Government and not the Secretary of State. I for one do not believe that. The time has come for our Administration to back up its words with forceful action. The President should instruct the Export-Import Bank to deny any further credits to South Korea. Such action will not only show the Korean regime that we mean business but this is also an action without any destabilizing security implications.

We have to continue to impress upon the regime in South Korea that the mutually productive relationship which has developed between our two countries will be irreparably harmed if it continues its repressive policies.

We must continue to emphasize to Korea's rulers that the stability of their Government, indeed, its security, as well as our own, is dependent on domestic tranquillity, which can only be achieved by a broad national consensus.

I share with my colleagues a deep commitment to the political independence and territorial integrity of South Korea. I feel compelled, however, to remind all that it has never been the lack of weapons but internal discord and insensitivity to human needs that threaten repressive governments, and often, our own security interests.●

TRIBUTE TO CLAUDE PEPPER

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SCHEUER. Mr. Speaker, no history of the Congress of the past 40 years would be complete without a lengthy description of the solid contributions made in both the House and the Senate by that grand old man of Florida politics, Claude Pepper. All of us know that Claude Pepper neither looks, acts, nor thinks anywhere near the 80 years of age which he celebrated Monday. His long years of service and his high degree of effectiveness are a goal that many of us in the House aspire to.

Claude Pepper is a great humanitarian and a personal friend whom I have always admired for the new initiatives, the new thrusts he has taken in dealing with the complex issues which we in the Congress face every day. He has always brought youthful insights and enthusiasm to the job.

We Democrats remember Claude Pepper's loyalty to the liberal principles of the party—dating back to his defense of President Roosevelt's policies when it was not always popular to do so.

I have worked with Congressman Pepper on many projects and issues, and I have found him to be a trusted colleague, a man of perceptive judgment, and the courage of his convictions when under fire. I join with my fellow Members of the House in saluting a distinguished colleague who has just attained the youthful age of 80. May he have many more years of productive, valued service to his country and to the Congress.●

A CHEMICAL ARMS RACE?

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. EDWARDS of California. Mr. Speaker, I would like to express my grave concern that this country might soon reverse its present policy of not producing chemical weapons.

I am inserting in the Record an article from the Guardian of July 24, 1980, entitled: "The Invisible Chemistry of Death" by Julian Perry Robinson, a senior fellow at the University of Sussex in England.

As Professor Robinson points out, the U.S. Army has decided that the present stockpile of chemical weapons—large enough for about 100 days of warfare—is inadequate and obsolete. Yet our nerve gas supplies are as deadly today as they were when first produced in the 1950's and 1960's.

According to the author, the Army favors binary munitions—a particular type of chemical weapon made up of two nonlethal chemical agents—over the present chemical munitions because they are supposedly safer to store, transport and, if necessary, destroy.

Opponents of binary munitions point out, however, that these new weapons have never been tested or produced and their safety is a matter of conjecture. Some concede that it is probably safer to store, others note that the present storage of chemical weapons has never resulted in a major accident. Opponents also note that the ease with which binaries are produced and stored makes them more dangerous than standard chemical munitions, as it is likely to make chemical weapons more accessible to those who do not now have them.

What the proponents of binary fail to point out is that protection against chemical weapons is presently good enough to negate their military effectiveness. Unlike other weapons of mass destruction, chemical weapons would single out civilians who do not possess masks and other protective equipment.

Professor Robinson makes a strong case that approval by the House of a binary munitions program would jeopardize the progress already made by the United States and the U.S.S.R. during their bilateral talks aimed at the prohibition of the production and stockpiling of any lethal chemical weapons.

I commend this article to the attention of my colleagues.

THE INVISIBLE CHEMISTRY OF DEATH

Chemical warfare in which the latest types of nerve gas are used could prove as destructive of human life as nuclear-fission weapons. But recent developments in the nuclear field have tended to obscure the subject, and the policy-decisions which some governments will shortly have to take, including the British Government, may well escape serious public and parliamentary scrutiny. Use of chemical weapons, like that of biological weapons (which employ germs rather than poison gas), has long been outlawed by international treaty, the 1925 Geneva Protocol. But the sanction which lends most force to this agreement is retaliation in kind, thus justifying possession of the weapons. Of the few Governments which maintain stocks, some have declared publicly that their weapons are meant solely to deter. Others have offered no public explanation, their motives remaining a subject of disquieting speculation. The United States is in the former category, the USSR in the latter.

Last month the House of Representatives wrote money for nerve-gas production into the 1981 US defence budget, even though the Administration had not formally requested it. The House had been stirred up by chemical-warfare lobbyists riding the wave of the new militarism and the general alarm about the Soviet Union. Whether the Senate will concur remains to be seen. If they do, Washington will soon be seeking locations in Europe where it can "pre-position" yet another new brand of mass-destruction weapon.

There are large quantities of chemical weapons here already. Apart from those of France, which is the only European NATO country to have manufactured them on any scale since the war, there are American stocks already in Germany, last added to during the 1960s. They comprise some hundreds of thousands of artillery projectiles, land mines and aircraft bombs charged with nerve and mustard gases. Exactly where they are is secret, as was the fact of their arrival, but it is probably Hanau, on the outskirts of Frankfurt. They are sufficient to support one to two weeks of battlefield chemical warfare. Not enough, in some people's minds, but since they represent only about five per cent of the total American stockpile there is an immense reserve for NATO to draw upon if necessary. Even so the Pentagon has decided that it must now manufacture new weapons.

The reasons for this do not lie in any shortness of shelf life of nerve gas. The supplies remain, as deadly now as they were when they were produced during the 1950s and 1960s. The munitions into which the gas is loaded have a shorter lifetime, and some designs are now deteriorating badly, but not in fact the most heavily stockpiled ones. Also relevant is the degree of compatibility between existing munitions and newly introduced delivery systems—new artillery pieces, aircraft, etc. Here there are more solid grounds for modernisation.

The chief impulse behind the United States programme is, however, only partly related to these factors. The weapon development laboratories have come up with a device for making chemical munitions safer to store, transport and, ultimately, destroy. The problems presented in each of these respects by the existing stockpile have proved a serious, political liability in American domestic affairs since the late 1960s. The solution is to load the munitions, not with actual poison gas, but with retractable canisters of relatively harmless precursors that react together only when the munition is on its way to the target. It is these "binary munitions" which the Pentagon now wishes to produce.

As weapons, the binaries that are now ready for mass-production are actually less effective than the munitions they are to succeed. The poisons which they will disseminate are the same nerve gases now in the arsenals, namely sarin and VX—immensely toxic substances that can kill rapidly in minute and imperceptible amounts whether inhaled into the lungs or absorbed through the skin. But of course only a fraction of the binary payload can end up as nerve gas, and the remainder, being highly irritant and evil-smelling, may provide clear warning of its presence. In terms of range and accuracy when fired from the latest cannons, the binary artillery rounds do not provide any of the advantages over their predecessors that were originally promised.

There are other drawbacks as well, but the binary programme now seems to have acquired so much momentum that little notice is being taken of them, still less of the dubiousness of the military-cum-political rationale for continuing to deploy any sort of poison gas in Europe.

Protection against chemical weapons, a field which Britain leads, is now good enough to negate their mass-destructiveness. Binaries are nonetheless being sold as a necessary safeguard against the Russians, and much has therefore been made by their vendors of Soviet poison-gas activities. Some months ago we were continually being told that the Russians were using nerve gas in Afghanistan. Now the CIA tell us that there is no firm evidence for this after all. We have been told time and again that the Russians have long been expanding their chemical warfare capabilities. But it turns out that what they have been expanding is their capacity for protecting their own forces against poison gas, and that in fact there is no evidence for any augmentation of the Soviet chemical-weapons stock since around 1970, a year or two after the Americans stopped production.

It thus appears that if the Americans do indeed resume production—aided and abetted, perhaps, by Mr. Pym—they will be denouncing not merely their own self-imposed moratorium but also a tacit U.S.-Soviet one of a decade's standing. The stakes may thus be considerably higher than Congressmen last month realised.

One probable consequence would be a chemical arms race, each side's moves stimulating the other's fears and appearing to confirm them. Observe that the instigating decisions behind the Soviet chemical buildup of the latter 1960s must have been taken during the highpoint of the last round of American poison-gas production. The US was not then a party to the 1925 Geneva Protocol. The Administration had, moreover, secretly abandoned its long-standing chemical-weapons policy of no first use, and to the Congress was proclaiming Soviet poison-gas superiority, notwithstanding the absence of firm intelligence on the matter which State papers of the period now reveal.

So far poison gas has not become assimilated into that process of competitive armament which has driven other forms of weapon technology to their present obscene levels of sophistication, extravagance and brutality. The key scientific discoveries which today's chemical weapons exploit were all made prior to 1955. The molecular and life sciences have advanced very rapidly since then. Should a chemical arms race now begin in earnest, it is all but certain that these advances will eventually show up in the arsenals.

Speculation on the precise forms which the new weapons might take is inappropriate here, but something of the possible range can be illustrated in general terms. Towards the more remote end we may observe that ethnicity is becoming increasingly definable in biochemical terms, thus lending plausibility to the notion of chemical-warfare agents which exploit natural differences in gene frequencies among specific population groups. The spectre here is of race-selective weapons. Much closer to realisation are weapons armed with chemicals that can interfere at the cellular level less with vital function than with behaviour, perception or motor function. They would cause casualties more by incapacitation than by death. In the form of the halucinogens phencyclidine and 3-quinuclidinyl benzilate (agents SN and BZ respectively in United States Army parlance), such substances have already been introduced into chemical arsenals, only to be abandoned later. Successor agents more amenable to military operations would hold out the attraction of possibly reducing combat fatalities. But their danger is that for precisely this reason the application of armed force could become less costly in political terms and therefore more frequently resorted to.

The alternative to a chemical arms race is chemical disarmament. Active negotiations to this end between the United States and the USSR have been continuing since 1977. But in spite of the lengthy progress report released jointly by the two sides on July 7, this effort is now in jeopardy. It is threatened both by the pressure of the binary programme and by the West's associated crisis of confidence as to Russia's real negotiating intentions, a crisis exacerbated by the so-far unproven allegations that the USSR has been violating the 1972 Biological Weapons Disarmament Convention.

It is by no means inconceivable that these allegations have been stimulated by the binary programme, as Soviet press-releases have been claiming. But one way or another Moscow has done little in public to alleviate the situation, and its counter-propaganda has been at least as mendacious and inflammatory as any to have emerged from the West.●

HEALTH STUDIES AMENDMENT TO H.R. 7020, THE HAZARDOUS WASTE CONTAINMENT ACT OF 1980

HON. BOB ECKHARDT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ECKHARDT. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I will discuss in this statement, would provide funds for health studies at hazardous waste sites.

Specifically, the amendment would permit the expenditure of up to $10 million a year from the superfund to conduct studies of the health effects resulting from contamination associated with any hazardous waste site that has not received a final permit from the Environmental Protection Agency. The amendment reads as follows:

Page 29, after line 13, insert:

(g) STUDIES.—Of the amounts available for purposes of this subpart, not more than $10,000,000 per fiscal year, such sums to remain available until expended, may be used by the Secretary of Health and Human Services (acting through the Public Health Service) to conduct studies of the health effects resulting from contamination associated with inactive hazardous waste sites and other hazardous waste sites which are not operating pursuant to a permit under section 3005(a). Such studies may be conducted at the request of the Administrator or at the initiative of the Secretary of Health and Human Services.

Mr. Speaker, the amendment is grounded in the 13 days of hearings that my Subcommittee on Oversight and Investigations has conducted on the subject of hazardous waste disposal during the 96th Congress. Many of our specific findings were incorporated into H.R. 7020, a bill I strongly support. However, 1 week after the Commerce Committee reported H.R. 7020, my subcommittee joined with the Government Operations' Subcommittee on Environment, Energy, and Natural Resources to conduct a hearing on EPA's decision to relocate 700 families from the Love Canal for health purposes. The hearing revealed a state of confusion as to what studies should have been done, when and by whom. The quality of the studies actually done over the 3-year period varied tremendously and the State of New York and the Federal Government squabbled continuously over what studies should be done and who should pay for them. While the two governments were playing Alphonse and Gaston, the residents of the Love Canal area initiated one of the most important studies. Then the Federal Government initiated a study to use in its litigation against the Hooker Chemical Co. The study, which was intended for litigation and not as a scientific study, revealed chromosomal damage to some of the area's residents and set off a panic there which resulted in the residents holding two Government officials hostage for a brief period of time. Even though this study lacked sufficient safeguards to provide definitive evidence of actual harm, the Federal Government made a political decision amidst the chaos to relocate the remaining 700 Love Canal families—although I should add that there had been more than enough evidence produced by the numerous other studies to have justified moving the residents a year earlier. The overall effort was disgraceful, causing the Love Canal residents undue anguish and probably further harm, and delaying for about 2 years the initiation of the kind of studies necessary to determine the full extent of the problem.

It was during our May 22 hearing that the subcommittee carefully examined H.R. 7020 to determine if it contained adequate funds for health studies. Much to our chagrin and surprise, the provision for health studies that had been contained in the earlier version of H.R. 7020 was not included in the bill reported by our committee. Therefore, Congressman ALBERT GORE, JR., who has been enormously forceful in pursuing this issue, and I drafted this amendment to provide a source of funds for independent health studies of possibly dangerous hazardous waste sites by competent professionals in the environmental health field. I am pleased to say that our effort is being supported actively by Congressman NORMAN LENT, the ranking minority member of the Oversight Subcommittee; Congressmen TOBY MOFFETT and PETE McCLOSKEY, the chairman and ranking minority member of the Government Operations' Subcommittee on Environment, Energy and Natural Resources, that joined us in conducting the hearing on the removal of the Love Canal residents for health reasons; Congressman ANDY MAGUIRE and Congressman GEORGE BROWN.

We believe that the amendment will further two very important provisions of the bill. First, it will help the Federal Government set priorities among possibly dangerous hazardous waste sites, as required by section 3032(b) of the bill. The setting of such priorities will then trigger the cleanup of those sites that present or may present a threat to public health or the environment. Second, the health studies will help State and Federal authorities determine when to relocate people away from such dangerous sites, as provided for in sections 3041(a)(2)(A) and 3041(e)(2)(A).

I hope all of you will join us to insure that H.R. 7020 provides State and Federal officials with the best possible information to make the important decisions as to what sites should be cleaned up and when people should be removed from the site area to assure their health.

Tomorrow, I will include a statement in the extensions that discusses my other amendment, which would provide for a comprehensive inventory of all hazardous wastes sites, both inactive and active.●

NUCLEAR INSANITY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, no game of Russian roulette is more dangerous than the one we are playing by revising our nuclear strategy. Presidential Directive 59 will result in an incredible proliferation of arms and add some chilling words to our vocabulary, such as "winnable nuclear war" and "prolonged nuclear exchange." In short, we will find ourselves in the midst of a game with mythical options but only one outcome—devastation.

Clearly the catastrophic implications of Presidential Directive 59 deserves the scrutiny of Congress, the State Department, and the Arms Control and Disarmament Agency.

Tom Wicker eloquently discussed the administration's misperceptions in promulgating Presidential Directive 59 in an article for the New York Times.

I commend this article to my colleagues' attention:

TERROR IN DISGUISE

(By Tom Wicker)

Suppose that sometime in the next few years, when they are expected to have the ability to do so, the Soviets should contrive to deliver about 2,000 nuclear warheads with a high degree of accuracy upon the 1,000 Minuteman missiles in the United States ICBM force, effectively wiping it out?

What should an American President do in response? What could he do?

At that point, he would have lost about 25 percent of his strategic nuclear forces. But with perhaps 10 percent of the megatonnage that would remain to him in airborne and underwater launchers, he could order the assured destruction of 200 Soviet cities, containing more than 60 percent of the Soviet industrial base and 30 percent of the Soviet population (about 90 million people).

The trouble with that, numerous defense analysts now insist, is that the Soviets would retain, even after such retaliation, the power to launch a second strike against American cities that would be equally devastating. Since the President would know that, these analysts ask, would he in fact order that retaliatory attack? Or, to spare American cities, would he accept the loss of his ICBM's and bow to whatever demands the Soviets might make?

Secretary of Defense Brown and President Carter insisted this week that Mr. Carter's Presidential Directive 59 was designed to cope with such an apocalyptic dilemma by giving a President more options for nuclear response and making it clear to the Soviets "that any or all of the components of Soviet power can be struck in retaliation, not only their urban industrial complex" (as Mr. Brown put it to the Naval War College).

He said the resulting "countervailing strategy" stressed "being able to employ strategic nuclear forces selectively" and put the Soviets on notice "that if they chose some intermediate level of aggression, we could, by selective, large (but still less than maximum) nuclear attacks, exact an unacceptably high price in the things the Soviet leaders appear to value most—political and military control, military force both nuclear and conventional, and the industrial capability to sustain a war."

All this may seem persuasive and as Mr. Brown noted, the United States has for years been aiming its nuclear power at a range of military targets as well as at Soviet cities. But both the basic assumptions and the practical conclusions need to be questioned outside the narrow world of defense specialists. For example:

Granted the agonizing quandary in which the cited example would place a President, would it be any greater than that of his Soviet opposite in deciding to launch the first strike? Whatever that leader's policy goal, he would be taking the calculated risk that his attack might and probably would result in the destruction, for all practical purposes, of modern Soviet society—including at least 60 percent of that industrial capacity he supposedly values so highly.

Mr. Brown said Soviet leadership "appears to contemplate at least the possibility of a relatively prolonged" nuclear exchange and that "in some circles at least they seem to take seriously the theoretical possibility of victory in such a war."

That's pretty thin stuff to go on, but assuming a Soviet leader so utterly unconscionable or mad as to chance it, might he not be even more likely to go ahead if he thought the American response would be on military targets only? If he envisioned a "relatively prolonged" but thus limited nuclear exchange might he not see more possibility of ultimate advantage than in having his cities and industrial base pulverized?

And though Mr. Brown strongly denied that the "countervailing strategy" sought a "first strike" capacity, are the Soviet leaders—particularly if they can conceive of a "winnable" nuclear war—likely to accept his assurances? If we think they might launch a first strike on military targets, why shouldn't they think we might, particularly as we "stress" our capacity for selective strikes? And if both sides think that of the other, isn't one ultimately likely to try it before the other can?

If these and other questions raise doubts about the "countervailing strategy" as a deterrent, what about its emphasis on the capacity to wage "limited" nuclear war, if necessary? Mr. Carter called that an "improvement in our nation's defense capability," but Mr. Brown conceded to the War College "the immense uncertainties involved in any use of nuclear weapons" and added, chillingly:

> "We know that what might start as a supposedly controlled, limited strike could well—in my view would very likely—escalate to a full-scale nuclear war. Further, we know that even limited nuclear exchanges would involve immense casualties and destruction."

So the "improvement" comes down to much the same old threat, the same old balance of terror, made dangerously more "thinkable" in the guise of "additional options" for "flexibility"—and requiring, of course, vast new weapons programs. More about that in another article.●

COMPROMISING OUR SPIES

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. HYDE. Mr. Speaker, by an overwhelming majority of 21 to 8, the Committee on the Judiciary, in a bipartisan effort, recently reported H.R. 5615, the Intelligence Identities Protection Act, in the form in which it was sequentially referred to us by the Permanent Select Committee on Intelligence. H.R. 5615 prohibits the unauthorized disclosure of information identifying certain intelligence agents and informants under carefully narrowed circumstances. Legislation of this nature is imperative because of intensive efforts by some to unmask our covert agents in order to destroy our intelligence-gathering network. Assassinations triggered by these disclosures have been widely publicized. The damage to our national security interests has been equally devastating and permanent.

As the ranking minority member of the Subcommittee on Civil and Constitutional Rights, I have been extensively involved in the committee's delicate effort to balance the "clear and present dangers" presented by these disclosures to our national security and our intelligence agents, against the precious first amendment guarantees of free speech and press. We firmly believe that H.R. 5615 is an efficacious and constitutional remedy to the problems created by these unconscionable revelations.

Some of the treatment that H.R. 5615 has received in the press demonstrates a singular misunderstanding of the bill. For instance, an editorial in the Washington Post incorrectly suggests that the bill affords journalists only one defense to prosecution—that they lacked an intent to impede or impair U.S. intelligence activities. On the contrary, H.R. 5615 contains so many defenses and obstacles to any undesirable application of its penalties that some of its supporters have suggested that it is not far-reaching enough. These obstacles include, but are not limited to: First, a defense that the Government publicly acknowledged the information; second, a defense that the information was transmitted to the Intelligence Committee of this body or the other body; and third, a requirement that the disclosure was made as part of an effort to identify and disclose the identities of covert agents with an intent to impair U.S. intelligence activities.

Those with an absolutist approach to the first amendment where the press is concerned have engaged in a hysterical campaign to paint this important piece of legislation as an unconstitutional and chilling infringement of the right of free speech. In marked contrast to these journalistic thrashings, an editorial which appeared in the Washington Star on September 5, 1980, recognizes the fact that "we can't have it both ways." Where a clear and present danger exists, the first amendment permits narrowly drawn restrictions on free speech. This is the essence of H.R. 5615.

I am inserting into the RECORD this commendable and responsible editorial.

THE BOUNDARIES OF FREE SPEECH

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his freelance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do not consider First Amendment rights absolute, and ask only that the legislation not "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value; and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chilling effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's Counterspy magazine. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has seen fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to Zechariah Chafee ("where words . . . give rise to unlawful facts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which might eventuate if the law were misused. That way lies not free speech and press but constitutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed, the disclosure would be unlawful only if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.'"

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate the casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.●

GOVERNMENT MUST ACT ON SMOKING PROBLEMS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SCHEUER. Mr. Speaker, cigarette smoking is America's largest preventable cause of death. Almost 350,000 Americans will die this year as a result of smoking-related illness, and smoking will cause a loss to the economy of $12 to $18 billion in lost wages, productivity, and absenteeism.

Tragically, Congress has failed to forthrightly address this major problem.

Our distinguished colleague from the State of Massachusetts, Representative DRINAN, has written a characteristically thoughtful article on this controversial area of public policy.

I commend this excellent article to my colleagues' attention.

GOVERNMENT MUST ACT ON SMOKING PROBLEMS

(BY ROBERT F. DRINAN)

What is to be the role of the government in formulating and generating the remedial action on smoking called for by the Surgeon General in 1964?

In the period from 1919 to 1933, the federal government unwisely addressed the problems involved in the consumption of alcohol by prohibiting the manufacture, sale, and transportation of intoxicating liquors in the United States. Although fourteen separate states actually banned all smoking around the turn of the century, prohibition clearly is not an appropriate method in any effort to discourage the cigarette habit. In a free society, such outright government paternalism is traditionally and rightly viewed with apprehension.

As former HEW Secretary Joseph A. Califano testified to a House committee, our efforts to reduce smoking must be "grounded in persuasion and information that appeal to the common sense of our citizens * * * not efforts based on coercion and scare tactics." Government can and must act to utilize more effectively its resources, within its carefully limited role, to address the serious problems engendered by cigarette smoking.

Perhaps the most important and effective tool is education. In 1965, the Congress required that the packages of all cigarettes sold in this country were to carry a warning label. That act and others by thirty-five state legislatures to require school systems to provide education on the health hazards of smoking contributed to the present general recognition of the unhealthfulness of the smoking habit.

But how many smokers actually read and pay attention to the warning label and how many students heed the classroom admonitions? A dim perception of long-term health effects often cannot compete with present realities of glamorous advertising, perceived sophistication, and peer pressure. Thanks to the effectiveness of the tobacco and advertising industries, one soon knows of any new cigarette introduced on the market. But very few are similarly aware that 90 percent of all lung cancer cases occur in smokers or that tobacco is more difficult to give up than heroin or alcohol.

From 1967 to 1971, these and other salient facts were effectively communicated to the American public through public service messages on television. Under a ruling of the Federal Communications Commission (FCC), television stations accepting cigarette advertisements were required under the "fairness doctrine" to provide equal time to groups with anti-smoking messages. Media experts have pointed to these "counter-advertisements" as one very important reason for the major decline in cigarette consumption during those 4 years.

Unfortunately, the prohibition by Congress of cigarette advertising on television and radio removed the legal basis for these "equal time" messages, which were thus no longer aired. During the year the ban went into effect, cigarette sales increased by 13 billion, after having declined for the previous few years. Further testimony to the popularity and effectiveness of these messages is the recommendation of the Federal Trade Commission (FTC) that Congress Consider legislation approaching funds for cigarette public information campaigns conducted via the mass media. Such a program would serve to heighten public awareness of the consequences of smoking and would counter the massive print media advertising campaigns of the tobacco industry.

The FTC has also recommended consideration of the implementation of a rotating label warning system, as utilized in Sweden. Since 1977 in that country, sixteen different warning statements—each conveying one aspect of the problems associated with smoking—have been displayed interchangeably on the cigarette package. This use of a number of specific warnings not only communicates to the smoker more facts regarding the pernicious effects of the smoking habit, but in so doing also discourages the practice of overlooking and ignoring a too-familiar standard warning.

In the 96th Congress I have reintroduced legislation I authored in 1977 that would mandate a strengthening of the present warning language now required on labels and in advertisements in the United States. In addition, this legislation, the Public Health Cigarette Smoking Act, would require that the tar and nicotine content of each brand be listed with the health warning and that these facts be printed in the native language of each country to which they are exported, and would repeal the present prohibition on state legislation regarding cigarette warning labels.

RESTRICTION OF ADVERTISING

Many have suggested that perhaps the single most important anti-smoking measure would be the restriction of cigarette advertising. One suggestion would limit print advertisements to a straightforward "tombstone" solicitation including no scenes of rugged adventurers or the like: simply the brand, the health warning, the tar nicotine contents, and any legitimate solicitations. A total ban on cigarette advertising has already been imposed in Finland, Iceland, Italy, Norway, and Sweden. (Not coincidentally, all but the first of these countries have higher life expectancies than the United States.) In addition to eliminating much of the false aura of glamour surrounding cigarette smoking, an outright ban would free newspapers and periodicals now accepting such advertising to be less hesitant to publish investigative findings regarding the tobacco habit.

One such finding is that, in addition to the tremedous health cost of cigarette smoking, the habit imposes a very real financial cost to the federal government and to the American economy. The most recent report of the U.S. Surgeon General states that health care now costs the nation approximately $205 billion per year, of which the federal government pays $59 billion.

Despite the tremendous financial burden placed on the federal treasury and the economy by the 54 million Americans who smoke, the federal cigarette excise tax has not been increased since 1951, when it was set at eight cents per package. As we struggle to reduce unnecessary government spending, the government can no longer afford to subsidize the multi-billion dollar public health cost of cigarette smoking.

This year I have introduced legislation in the House of Representatives that would increase by 10 cents a package the federal excise tax on cigarettes. The measure would increase the tax per pack from 14 percent of the average retail price to 27 percent—still well below the 37 percent level established in 1951 when retail prices were much lower. This modest proposal, which has been cosponsored by thirty-one members of Congress, would yield an additional $3 billion in revenues (assuming that consumption is not affected), bringing the total revenue from the sale of cigarettes to $5.4 billion—barely equivalent to the direct health care cost to the government of cigarette smoking.

SMOKERS SHOULD BEAR BURDEN

It is altogether fitting that those who choose to smoke should bear the full burden of their habit. Studies cited in the Surgeon General's report, moreover, indicate that some six million smokers would quit if the tax increased the price of a package by 10 cents, as I have proposed. Teenage smoking in particular would be discouraged by such a tax, as the cigarette demand of young people has been found to be more sensitive to the price.

Representative Gephardt and Senator Danforth of Missouri have also introduced legislation to increase the federal cigarette excise tax. Representative Harkin of Iowa has authored legislation that would adjust for inflation this cigarette excise tax and other federal income and excise taxes. Had such a measure been in place in 1951, the cigarette excise tax would have increased automatically to about twenty-five cents per package today.

In addition to these legislative initiatives, regulatory agencies of the federal government have contributed to the efforts to reduce smoking and improve public health. The Interstate Commerce Commission (ICC) has prohibited smoking in two-thirds of the seats on interstate buses and in all but designated cars on interstate and intercity trains. The Civil Aeronautics Board (CAB) has ruled that designated non-smoking areas must be provided in every class of service. In each case, the carrier is subject to fines for non-compliance. The Federal Trade Commission has vigorously enforced the regulations prescribed by Congress, and, as noted earlier, has called upon that body to strengthen and expand its authority regarding cigarette marketing and trade.

States and localities have also acted to protect the rights of non-smokers through the restriction of smoking. Through these initiatives, smoking is often prohibited in elevators, on public transportation, and in public places of recreation, entertainment, education, and health. These regulations range from those relying on voluntary compliance and having no enforcement mechanism to one with a maximum $500 fine and 6-month jail sentence.

In Congress at this time there are sixteen bills designated to address some of the major problems associated with cigarette smoking. In addition to those already mentioned is legislation to require that burning cigarettes extinguish themselves if left unattended, eliminate racketeering of cigarettes, allow individuals to deduct as a medical expense amounts expended on stop-smoking courses, and disallow cigarette advertising to be deducted as a business expense.

None of these worthy, common-sense measures has been acted upon by the committee or subcommittee to which it was originally referred. Congress has thus far failed in its ongoing responsibility to protect the health and promote the general welfare of the people of the United States.

Through the diligent and productive efforts of the medical and scientific communities, the ominous facts concerning cigarette smoking have been—and continue to be—revealed. To counter the tremendous financial resources and political influence of the tobacco industry and the indifference of too many of our elected officials, the public must express its deep concern for the health and well-being of this country. We must join together to take long-overdue appropriate remedial action.●

THE FOUR DISCIPLINES AND THE TWO ENCOURAGEMENTS: KARL BRUNNER ON PRESIDENT CARTER'S ECONOMICS

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KEMP. Mr. Speaker, serious economists have a hard time keeping up with President Carter's economic policy. Just when they have digested his most recent plan, he introduces another one. There is a compensating consistency, however, as economist Karl Brunner of the University of Rochester so eloquently points out:

> The central fact which needs to be recognized is that President Carter's "anti-inflation policies" exhibit the same sense of substantive irrelevance with respect to the inflation problem as all the preceding plans.

In reading Professor Brunner's analysis of President Carter's fourth "new" economic program recently, I was struck at how valid the same analysis is for the fifth "new" economic program which quickly succeeded it. Professor Brunner lays out several principles of President Carter's economics.

First, President Carter still does not understand the relation between his budget and inflation.

> The rapid expansion of the budget over the past 15 years was dominated by the explosion of social programs," Professor Brunner writes.
>
> This massive and increasing redistribution has by itself comparatively little effect on the rate of inflation. Its direct effect on inflation operates via the disincentives on supply and investment in both human and nonhuman capital * * *. The combination of incentives and disincentives associated with an arbitrary, continuous, and unpredictable revision in the society's structure of resource entitlements gradually retards productivity and productive investment.

In other words, the impact of Federal spending on inflation is not limited to the mechanical and oversimplified link between budget deficits and monetary expansion. The way the Government spends its money, especially on transfer payments, profoundly affects the society's structure of relative prices: the choice between work and leisure and the choice between saving and consumption.

Second, there is "the current administration's basic principle: in case of a problem, raise taxes." President Carter's approach is to keep marginal tax rates high and rising, and to dole out any tax relief through nonincentive rebates and spending programs.

The following statement is prophetic of the latest Carter economic program, which is mostly a repackaged and recycled melange of rebates, subsidies, loan guarantees, capital allocation and other gimmicks:

> The encouragement of productivity and savings remains, as in the fall in of 1978, at the level of pious incantations. Even an array of special tax rebates and subsidies hardly reverses the basic trend in our policies, which increasingly discourage efforts directed to the efficient use and development of productive resources * * *. The political need for an anti-inflation program is essentially exploited to sell the administration's pet projects under a false label. The proposals only enlarge the budget, expand the government sector and the government's control over our resources, and impair the growth of productivity.

Finally, as Professor Brunner points out, President Carter has not yet understood that the ultimate source of inflation is not fiscal policy, but monetary policy. The proper formula for economic policy is the exact opposite of President Carter's monetary restraint to stop inflation, and a removal of tax, budgetary and regulatory disincentives to employment, investment, production and growth.

Professor Brunner's analysis first appeared in the May-June 1980 issue of Challenge magazine. I commend this excellent article to the attention of my colleagues.

The article follows:

THE FOUR DISCIPLINES AND THE TWO ENCOURAGEMENTS: PRESIDENT CARTER'S ECONOMIC RECOVERY PLAN

(By Karl Brunner)

President Carter announced in late January the details of an "austere and responsible" budget. These plans thoroughly disavowed the promise he had made on October 24, 1978. The expansion in federal expenditures continues at a high rate with persistent deficits during full employment and potentially massive deficits in phases of mild recession. The promise of retardation in the budget's momentum was replaced by the prospect of a further increase in the real tax burden. The President's plans foresee an increase in federal real taxes to 21.7 percent of real GNP by 1981. This would be the highest level ever observed during peacetime in the history of the USA. The new plans also revised the projected total federal outlays for 1984 from $674 billion to $839 billion. This revision raised the projected budget, within one year, by $165 billion, or about 25 percent. The economic assumptions made by the administration contradict, moreover, the promise made by the Chairman of the Board of Governors of the Federal Reserve System on October 6, 1979. The budget planners' assumptions require a substantial acceleration of monetary growth and a firm commitment to a permanent inflation policy. They are not consistent with the course of monetary policy repeatedly affirmed during the winter by the Chairman of the Board.

The President's evident disavowal of previously made promises unavoidably induced some broad and far-reaching revisions in longer-run assessments of our economic course. A permanent inflation proceeding at a level of at least 10 percent per annum seemed more nearly to express relevant expectations for the next decade. Thus ensued a "bond market crash" which essentially reflected the revisions of dominant longer-run expectations, surrounded by a diffuse and volatile uncertainty produced by the erratic course of our policies with shifting inherent inconsistencies. The message in the budget, mostly conveyed to the bond market, was reinforced by the remarkable bulge of the inflation rate measured by the Consumer Price Index (CPI) during this winter. However temporary the bulge may be, its dramatic effect and political impact amplified the message from the "bond market crash." So emerged another anti-inflation program revealed by President Carter on March 14 to the American public.

THE NEW PROGRAM

The program may be described as constituted by "the four disciplines and the two encouragements." President Carter implored us to use greater discipline with regard to the budget and the deficit, credit, price or wage behavior, and energy conservation. Encouragement was given, however, to productivity and savings. We were promised once more a balanced budget and better containment of its growth. The Credit Control Act of 1969 was invoked in order to impose constraints on consumer credit, most particularly that associated with the use of credit cards. New reserve requirements affecting selected institutions and involving new procedures (based on assets) appeared under this heading. The President rejected mandatory price and wage controls. But he advocated "voluntary" measures guided by standards of "appropriate behavior." The staff of the Council of Wage and Price Stabilization (COWPS) was to be expanded threefold for this purpose. The President mentioned the prenotification of all price increases planned by large firms. The discipline in the use of energy means lower imports of oil and better conservation. Windfall profits taxes, energy mobilization boards, and synthetic fuel developments were all mentioned as important cures of an "inflation disease." But a new "gasoline conservation fee" imposed on oil imports used in the production of gasoline forms the centerpiece of the anti-inflationary contribution expected from the energy sector. The revenues from the gasoline tax would be held in reserve and would not be applied to balancing the budget. Lastly, President Carter favored "long-term structural changes" in order to overcome a threatening stagnation in productivity and reverse the erosion of private savings and capital formation.

AN ASSESSMENT OF THE PROGRAM

The central fact which needs to be recognized is that President Carter's "anti-inflation policies" exhibit the same sense of substantive irrelevance with respect to the inflation problem as all the preceding plans. It follows that we have no good reason—nor did we in the previous cases—to expect from President Carter's policies pursued over the next five years any relevant change in our inflationary reality. That reality will be obscured, however, with intermittent bouts of anti-inflationary rhetoric.

1. The budget. Let us begin with the budget. The analysis of the inflation problem requires separation of all social transfers from budget expenditures involving absorption of goods and services by the government sector. A change in the proportion of real government expenditures on goods and services relative to real GNP by one percentage point modifies the inflation rate on the average, by itself, by somewhat less than one percentage point. This is a negligible magnitude when juxtaposed to our inflation problem. We also note that this proportion fell over the past ten years from about 23 percent to slightly below 20 percent. Federal expenditures on goods and services scarcely offer, under the circumstances, a relevant handle on the inflation problem. The necessity of strengthening our military posture will most likely raise the recently stagnant level of real federal expenditures on goods and services. But even an increase in the real military budget by about 4 to 5 percent a year, combined with the trend of nonfederal real expenditures on goods and services and of federal real nonmilitary expenditures, would affect the inflation rate by a negligible amount compared to the magnitude of the problem.

The rapid expansion of the budget over the past fifteen years was dominated by the explosion of "social programs." This massive and increasing redistribution has by itself comparatively little effect on the rate of inflation. Its direct effect on inflation operates via the disincentives on supply and investment in both human and nonhuman capital. This disincentive effect is augmented by the incentives fostered in the political market to invest resources in the political game of wealth extraction, in contrast to socially productive investment in wealth creation. The combination of incentives and disincentives associated with an arbitrary, continuous, and unpredictable revision in the society's structure of resource entitlements gradually retards productivity and productive investment. Even a comparatively large decline in the trend of real growth produced by the negative sum game of political redistribution raises the inflation rate at the very most by one percentage point, in the present context. The cumulative effect of this decline in real growth on our real per capita income would, in contrast, operate with a substantial margin. There remains, however, the indirect significance of surging transfer payments. They raise the likelihood of persistent deficits and thus lower the probability that the Federal Reserve authorities will maintain an anti-inflationary monetary policy beyond a traditionally short horizon.

2. Credit controls, price-wage discipline, and the encouragements. Beyond their irrelevance as instruments of anti-inflationary policies, the measures invoked under the Credit Control Act also suffer from the inefficiencies created in our financial system. They impose arbitrary taxes on selected institutions, and on liabilities or assets of financial intermediaries in the form of various reserve requirements. The revenues collected from these taxes are eventually channeled through the Federal Reserve Banks to the U.S. Treasury. We encounter here a comparatively minor application of the current administration's basic principle: in case of a problem, raise taxes. The problem solved, of course, is not inflation but some unhappy consequences of inflation for many financial intermediaries. It is grotesque to pretend that the credit controls contribute in any way to lowering future rates of inflation. They exert no influence on monetary growth and only negligibly affect the rate of total credit expansion. They reshuffle and distort the channels of credit at a social cost, enlarge opportunities for the political manipulation of the financial system, and potentially impair even further the requirements for an effective monetary control traditionally opposed by an established Federal Reserve bureaucracy.

It is noteworthy that President Carter rejected mandatory controls over prices and wages. He appeared to recognize that they fail to tame inflation in the absence of monetary controls while they foster inefficient resource utilization and obstruct the development of our potential resources. They combine "anti-inflationary" failure with lower productivity and real growth—and a loss of freedom. But there remains his gesture expanding the Council of Wage and Price Stabilization. This would naturally induce a corresponding increase in private investment of resources designed to influence the behavior of COWPS. The magnitude may be comparatively small, but it is still a measure of the price paid for a gesture deemed necessary in the political marketplace.

The encouragement of productivity and savings remains, as in the fall of 1978, at the level of pious incantations. Even an array of special tax rebates and subsidies hardly reverses the basic trend in our policies, which increasingly discourage efforts directed to the efficient use and development of productive resources. We should not underestimate the great importance of a reversal in this trend for our future welfare. But this importance does not establish the relevance of the productivity issue with respect to the inflation problem. The same holds for President Carter's fixation on "energy policy." The political need for an anti-inflation program is essentially exploited to sell the administration's pet projects under a false label. The proposals only enlarge the budget, expand the government sector and the government's control over our resources, and impair the growth of productivity.

THE "SONG AND DANCE APPROACH"

A closer examination of the last proclamation in our (unending?) series of anti-inflation programs yields little assurance. The "eclectic array" of measures contributes, apart from the indirect effect of a small deficit, essentially nothing to the solution of the inflation problem. There is only one way to cope effective with our inflationary heritage: lower monetary growth to less than 2 percent per annum. Advocates of eclectic positions find this idea repugnant. We hear incantatory condemnations of "naive monocausality." But the evidence is quite clear. There are good reasons for some looseness in the short-run relation between monetary growth and changes in the general price level, but the longer-run pattern is remarkably persistent and pervasive. The facts about any inflation ever observed demonstrate that sufficiently lower monetary growth produces a stable price level whatever the budget, the corporate technostructure, energy prices, and aspirations may do. And when we fail to lower monetary growth, inflation persists in spite of all the anti-inflation programs and earnest invocations. Whatever intractability inflation appears to have developed does not result from "deep sociological forces." It was produced by a long series of irrelevant programs adopted and relevant policies abandoned. Ancient medicine men knew that the song and dance of a fertility ritual was hardly sufficient to obtain a crop. You needed also to plant a seed. But the song and dance of latter-day political rituals seem to have replaced the substance of the matter in our enlightened age.

Of course, more respectable objections acknowledge the potential usefulness of monetary control but deplores its social cost in the form of higher unemployment and lower output. Advocates of monetary control are accused of wishing a recession in order to lower the rate of inflation. But this characterization distorts the issue. Lower inflation does not, per se, require a recession. It requires a lower monetary growth. The occurrence of a recession, and particularly its magnitude and length, depend on the credibility of the announced anti-inflationary policy. A large social cost of anti-inflationary policy thus results from a heritage of low credibility produced by a lengthening sequence of irrelevant programs and abandoned attempts to lower monetary growth. But the same pattern raises the social cost of permanent inflation even higher.

During a panel discussion in Manchester, New Hampshire, arranged for the Republican candidates, Howard K. Smith asked what they proposed to do about inflation considering "that everything had been tried." Mr. Smith was mistaken. A sustained lowering of monetary growth to below 2 percent a year has never been tried. Will we ever do it? It seems that our chances depend on a single man, the Chairman of the Board of Governors of the Federal Reserve System.●

A TRIBUTE TO MARK STEVEN LIEBLIN

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BOB WILSON. Mr. Speaker, I wish to call my colleagues' attention to an outstanding young constituent of mine, Mark Steven Lieblin, who has been named the most outstanding high school senator in the United States by the National Forensic League. According to his coach, this is the first time that anyone from San Diego has taken first place in a National Forensic Tournament.

In the 7-day, nonstop speech tournament, 1,200 students from 49 States took part, and Mark emerged from the competition in first place. The dedication and the excellence he displayed are most deserving of our admiration and attention. I congratulate him for his outstanding record of success in the art of public speaking and extend sincere best wishes for his every success in his future endeavors.●

MAYORS O'REILLY, COOGAN, AND BOVITZ TESTIFY BEFORE THE AUTO TASK FORCE

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. DINGELL. Mr. Speaker, the hardship and full impact of the economic recession on our local communities was vividly and poignantly expressed in the testimony of three mayors from my 16th Congressional District, who appeared before the auto task force in Detroit on September 2. In no other geographic area, as in the downriver communities of Detroit, has the current plight of the auto industry been so devastating and demoralizing. In the communities of Dearborn, Melvindale, Trenton, River Rouge, Lincoln Park, Riverview, Wyandotte, Ecorse, Grosse Ile, Southgate, and Allen Park, as well as Detroit, unemployment has reached staggering proportions affecting all segments of the local economy and community life. The problems and human needs of these communities are voiced in the testimony of Mayor John B. O'Reilly of Dearborn, Mayor Thomas J. Coogan of Melvindale, and Mayor Robert L. Bovitz of Trenton, which I am pleased to include in the Record:

Statement of Mayor Thomas J. Coogan, City of Melvindale

Thank you Congressman Dingell for allowing me to address the Auto Task Force on behalf of the Mayors and Supervisors of the Downriver Community Conference Board of Directors and the 14 municipalities represented in that organization.

I think that we could probably retitle this public hearing, "Where do we go from here?" How do we put the people who put America on the move—back to work! As a nation, we have always been very proud of our ability to roll up our sleeves and get the job done. At this time, however, particularly in the Detroit Metropolitan area we have a "good news"—"bad news" situation. The bad news is obviously the nationwide reduction in the American car sales market has put thousands of our residents out of work. This is combined with the fact that since our area has been involved in the manufacturing of automobiles and trucks for some 30-40 years—a large number of our factories and plants are obsolete for the production need of the 80's. And, as could be expected, the downturn of our major industry has triggered a reduction in the productivity of industries and businesses which feed into the auto industry—ranging from suppliers to industrial waste contractors and even companies that provide packaged food to the plants. This whole situation puts us between a rock and a hard place. American-made cars aren't selling well, therefore people in various businesses and industries aren't working—so they don't have the money to buy new cars—and the cycle goes on.

As the auto industry has turned down, our unemployment rate in the Downriver has gone up. We estimate our current real unemployment rate to be 25 to 30 percent (well in excess of MESC's reported figures which lag several months in time). Our communities acting through the Downriver Community Conference have created a pilot program on our own initiative to assist a portion of our employees with job search, retraining and relocation services. The federal government has now agreed to help this effort with $1,700,000 of Department of Labor funds. Even with these funds, however, we barely make an impact on the needs of our area. We hope the federal government can support our effort further.

The Downriver area has many things to offer which can put us back in the ballpark as a major employment area for the 1980's and 1990's. As a developed, industrial area we have the roads, the sewers, the utilities and the waterways to move supplies and products. More than that—we have one of the most highly skilled labor forces in the world.

The issue then becomes—how do we use the positives to minimize the negatives. First of all, federal, state and local governments must continue to offer financial (primarily tax credit) incentives to businesses and industries to either expand their operations and locate into our area.

Secondly, public dollars must be combined with private sector investments to update obsolete facilities or prepare sites for new development. Since we have recently been made aware of the huge problems of toxic waste in our land and water—we must utilize the strongest forces of government and industry to rectify this problem—this brings me to my third recommendation—that government and business form—not a blueribbon committee—but a working team to immediately respond to this problem of toxic waste and pollution. If previous misuse of the land and water keeps us from putting people back to work—then it is the responsibility of all levels of government (with industry imput) to act on reclaiming this land for reuse.

My last suggestion is—very basic to the American spirit—that of engenuity and exploration. The world we have grown accustomed to has gone through some radical change. Unlimited energy sources is a thing of the past and, very frankly, the one person—one car—ride to work—may also be part of history. This however, can work to our advantage—Mass Transit—particularly light and heavy rail—brings us both jobs and more energy independence. Where Detroit is now the "auto capitol" of the world, why can't it become the "mass transit capitol" of the world in the next decade. Also we have just begun to explore new and effective methods of producing and saving energy. Producing efficient and independent energy also creates jobs for our people.

There's no question that the next couple of years are going to be difficult for all of us. But we must begin the groundwork for the future—NOW.

I thank you for the opportunity to speak and look to this committee to carry our concerns back to Washington and develop sound public policy for our economic growth.

Testimony of Mayor John B. O'Reilly, City of Dearborn, Mich.

Thank you, Mr. Chairman. My name is John B. O'Reilly, Mayor of the City of Dearborn, Michigan, a community of nearly 100,000 residents whose past, present and future has been, is now and will be directly linked to that of the automobile industry.

Dearborn is proud to be the Home Town of Henry Ford and the headquarters community for the Ford Motor Company. Ford's executive, engineering, design, manufacturing, credit and related operations form the backbone for our city's economy and most certainly provide a financial spillover that touches every sector of community life. While one of every six American workers are employed in an auto-related job, our estimates are that one of every two Dearborn workers collects a paycheck from a firm—large or small—that directly or indirectly relates to the automotive industry.

That means, quite simply, that when the auto industry is hurting, our community is hurting.

The human suffering that results from high unemployment and uncertain economics cannot be measured by fancy charts and graphs alone. When we are talking about people's livelihoods and their lives, we have a special obligation to do everything possible to make government work to see there is a job for every able-bodied American who wants one.

I firmly believe that the core of our current economic crisis is our inability to deal effectively with the seemingly-limitless influx of imported vehicles from Japan. So far this year, Japanese car and truck exports to the U.S. are up 32 per cent while U.S. production is down more than 35 per cent. It is abundantly clear that while these Japanese vehicles are being built on overtime in constantly-expanding Japanese facilities, two of every five American auto workers is out of his or her job.

This is not right, and the American People should not be expected to put up with it.

In my judgment, the first Congressional priority ought to be legislative action which would bring about immediate negotiations between our two governments to limit the exports of Japanese cars and trucks to their share of the market here between 1974 and

1976 before the most recent turnabout in the industry. I encourage you to work as hard as you know how to see that Senate Joint Resolution 193 and its House counterpart, HR 598, are given speedy affirmative consideration.

Once this legislation is enacted, I hope the President has enough good sense to take it to heart and to hammer out the hard terms that will keep our American auto industry in business.

I would also urge the International Trade Commission to act as quickly as possible on the petitions of the Ford Motor Company and the United Auto Workers union for immediate relief. In reading Section 201 of the Trade Act of 1974, it seems clear to me that the intent of the law is to deal with situations exactly as we now have before us.

We are not abandoning our American philosophy of "free trade" when we argue for "fair trade." We are simply sending a message to those who would take unfair advantage of a windfall sales opportunity during an abrupt shift in American automotive market demand.

American products can compete with those of any nation on earth, but there must be a fair competition based on a moral and legal commitment of firms to contribute employment and investment to the economies of countries whose markets are large enough to justify them.

Japan is not competing fairly at present. A look at domestic auto protections imposed by other nations makes it painfully obvious that our national policies have welcomed this tidal wave of Japanese cars and trucks into the American marketplace. For example, Brazil requires that automakers use 95 percent local content or pay a 185 to 205 percent duty on foreign autos; Australia has an 85 percent local content or 58 percent duty fee with the added limit of 20 percent of the market; Britain has a 11 percent duty and an agreement with Japan to restrict the car market share to 10-11 percent or less; France has a 11 percent duty and an informal Japanese limit of 3 percent of the car market; Germany has a 11 percent duty; and Canada has a 14 percent duty.

What does America have? A paltry 3 percent duty. In my view, this represents an open invitation for Japanese automakers to expand their industry—in Japan—at the expense of our workers in the domestic auto industry. And I view this as a tragic and unfortunate abandonment of the values that have kept American people working and have kept America strong.

In addition to seeking adjustments to the Japanese-American trade imbalance, I believe there are other legislative remedies which should be given swift consideration.

I strongly favor the Brodhead Tax Credit Bill which would stimulate auto purchases by offering a $500 federal tax credit to consumers of domestic fuel-efficient vehicles. This would be a one-time only tax credit aimed at bringing American consumers back into the auto market during the critical transition period we are now experiencing.

I also favor quick adoption of the President's recommended tax credits for firms that are not now showing profits but have made sizeable capital investments. The bonus tax credit system for companies in high-unemployment areas is also worthy of your support, as are accelerated depreciation schedules.

All of these remedies have the effect of stimulating industrial investment which would have the effect of putting people back to work.

The Congress of the United States should also take a more realistic look at auto emissions and safety standards so that a balanced perspective is offered. It does no good to force new standards on the auto industry if this action would kill or severely cripple the industry—and throw thousands of Americans out of work. I encourage you to employ the wisdom of Solomon in your deliberations regarding any automotive regulations, particularly during the next 18 to 24 months when this changeover in the American auto industry will be taking place.

Specifically, I encourage the members of Congress to urge the Senate to approve the establishment of a conference committee this month to consider Senate Bill 2475. The provisions of this bill of great interest to our people have already been approved by both Houses but are now awaiting a conference committee to iron out other differences.

If passed, this law would allow Ford Motor Company and other producers to carry forward and carry back fleet fuel economy mileage gains so that these earned credits would enable a smoother transition into overall higher mileage standards at a more realistic and legal timetable. The passage of this bill may mean the difference between survival and failure of auto firms.

Beyond this, I stand strongly in favor of general economic stimuli in areas most impacted by the automotive marketing transition. This includes expansion of the CETA job training program, particularly those proposals aimed at youth unemployment and those who are in need of retraining because of industrial conditions. The City of Dearborn is a CETA prime sponsor and stands ready, willing and able to administer these expanded programs.

We are also the selected contractor for the state's special federally-funded weatherization program, and I strongly urge additional funding for this activity. It not only helps senior citizens and others in need of this aid; it enhances the quality of housing stock, cuts fuel bills, conserves energy use and puts people to work.

One more piece of legislation much needed in our area is the proposed $2 billion countercyclical local public works program under the Economic Development Administration. I am hopeful that the Senate Budget Committee moves quickly to approve this standby program because I am convinced that communities such as ours are greatly in need of the catalytic effect it would have on the local economy.

All of these things would be helpful since every dollar put back in the hands of our citizens—including those through extended unemployment benefits and federal tax cuts—will be circulated into the community and will help the revitalization of all of our industrial and commercial segments.

Dearborn has worked hard at our level to bring about reindustrialization. Our Economic Development Corporation has offered inducements to 13 projects which would add 1,442 jobs, with construction costs over $30 million. Our City Council has gone out on a political limb and approved tax abatement requests that have protected 1,780 jobs, mostly in the industrial sector, and added $229.4 million in construction. We have just formed a Local Development Company which will assist small business people in processing Small Business Administration 502 loans. And we've intensified our efforts to revitalize business districts and attract new investment in our community.

We stand ready to do our share to rebuild America's economy, protect jobs and join in the effort to become energy independent. But Dearborn is not an island and obviously we are greatly dependent on your actions for long term success in these efforts.

I know that the Auto Task Force has the interests of the people of this area—including the City of Dearborn—at heart and as Mayor of the City of Dearborn I thank you for your past support and encourage your continued vigilance in addressing the problems that are now confronting the auto industry, its workers, local communities and indeed the entire American economy.

Thank you.

TESTIMONY OF MAYOR ROBERT L. BOVITZ OF TRENTON

Mr. Chairman, members of the Committee, I am Robert L. Bovitz, Mayor of Trenton, Michigan and Chairperson of the Southeast Michigan Council of Governments.

I am sure you will hear today, and in future hearings, from many speakers who will be able to address the broad impact of what has happened as a result of the decline in auto sales. So let me direct my remarks to the problems faced on the local and regional levels in Southeast Michigan.

My city, Trenton, is a city of 25,000 residents with strong commercial, industrial and residential sectors. It is located 12 miles south of Detroit, in an area rich in heritage and ethnic tradition.

The Southeast Michigan region covers seven counties and 4800 square miles of land, has a population of about 4.7 million people, and has an economy based on agriculture, recreation, and industry—most significantly the auto industry.

As both a mayor and as chairperson of a 137-member regional council of governments, I have personally witnessed the effect of auto plant closings and layoffs on local governments. Let me describe it to you.

Picture what happens to a community when an auto plant, often its main employer, closes down.

Property taxes, income taxes, sales taxes and revenue sharing all decrease. The commercial and residential area around the plant deteriorate. The reduced purchasing power of laid-off workers affects the fabric of the entire community.

A number of skilled workers and professionals will seek jobs elsewhere, leaving the community with a less skilled labor force.

Because of the declining tax base, the community finds itself unable to fund essential services at necessary levels. The quality of education is jeopardized by diminished funding. And, in many cases, police and fire protection must be reduced.

But it is the human factor which concerns me the most. In the homes of the laid-off workers you will find an atmosphere of stress that often results in increased physical illness, depression, sometimes suicide, spouse and child abuse, marital break-ups, alcoholism and drug usage.

Laid off workers and their families will need increased services at a time when this community and this state are least able to fund them.

A community in such a state of decline often finds itself unable to attract new businesses, at a time when it needs them the most.

A cycle of unemployment and of deterioration has begun in our community. Once caught on the plant closing and unemployment treadmill it is extraordinarily difficult to escape. Southeast Michigan is becoming caught on that treadmill.

There is much the Federal government could and should do for Southeast Michigan and other regions in similar straits.

A recent Congressional study has shown that Michigan ranked 50th out of the 50 states in federal tax dollars returned from state tax dollars sent. The midwestern and northeastern states, and in particular Michigan, have financed the growth of this nation. Yet, even though the unemployment rate in the Detroit Metropolitan area has gone over 18 percent and currently stands at 14.4 percent. Michigan received the smallest return in federal dollars of all 50 states from 1972-79: 66 cents return for every dollar sent to Washington.

Michigan manufacturing and retailing companies, its banks, its investment and insurance companies, as well as numerous other businesses helped build this nation. The hard working people of Michigan helped make this country strong. Now, is the time for Michigan to get back some of those dollars, it has so freely given. Michigan must begin receiving its fair share in return of federal tax dollars. I am not asking for charity from the federal government for Michigan, I am asking for equity.

I believe the federal government should be giving increased federal dollars to states with high unemployment. These federal dollars could come through increased countercyclical dollars, federal revenue sharing, funding for public works projects, CETA, and for job retraining programs.

Tax incentives should be offered to businesses which choose to locate in high unemployment areas. Low interest loans should be made available to industries which update or build new facilities in economically-distressed communities.

Trade Readjustment Assistance (TRA) should be continued, and federal unemployment compensation aid extended.

Congress could give tax breaks to consumers who purchase fuel efficient American-made autos.

Congress should mandate that a significant portion of any product sold in this country be produced in this country.

Finally, the issue of foreign imports taking a significant portion of the American car market needs to be resolved. Foreign markets should be as open to American products as American markets are to foreign products. The competitive advantage that imported cars have over American made cars must be reduced. At the same time the Federal government should encourage foreign car manufacturers to locate production plants in this country.

There are no simple answers and no one answer. I hope that when you return to Washington, that you will carefully consider the suggestions that I and other speakers have made here today.

Thank you for giving me the opportunity to speak on this most timely and critical subject.●

TRIBUTE TO JUSTICE FRANK DEL VECCHIO

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. LEE. Mr. Speaker, I rise today to bring to your attention my community's loss of a dedicated civil servant and respected jurist, the Honorable New York State Supreme Court Justice Frank Del Vecchio, who passed away in his home city of Syracuse in these recent days.

Judge Del Vecchio was the kind of community influence which every busy city would like to reproduce. He was a native of Syracuse who attented school there, began his legal career there, and throughout his life contributed significantly to the well-being of his neighbors and friends. As a tireless supreme court justice through two terms of service on the State bench, he distinguished himself admirably, while maintaining activities in many service organizations. He also served as a trustee of St. Peter's Roman Catholic Church.

My condolences are extended today to the family and friends of Judge Del Vecchio throughout New York State.●

COTTER PENSION PLAN

HON. WILLIAM R. COTTER

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. COTTER. Mr. Speaker, this morning I had the privilege of addressing the National Association of Mutual Savings Banks on the issues of taxes and the economy. I believe my remarks would be of interest to my colleagues, and I am enclosing them at this point in the RECORD:

SPEECH BY HON. WILLIAM R. COTTER TO THE NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS

Thank you for the opportunity to speak to you this morning. As you all know, strange events occur in an election year. This year is no exception. The Senate Finance Committee drafted a $39 billion tax bill in four days!

I am sure we can all agree that a tax cut should be enacted. The issues which must be resolved are the timing of the cut, and its content. Whether these issues will be resolved this year, or next spring, remains unclear. The Senate seems to have a definite opinion on this matter. I believe, on the other hand, that it would be irresponsible to write a tax bill during the last month of this session, or during a lame duck session in November.

It is my view, and one shared by many Members of the Ways and Means Committee, that a tax cut should be the first order of business of the Committee during the new 97th Congress.

At this time a reborn Carter Administration or a new Reagan Administration, and the new Congress, will be able to address the most important domestic question facing our government—where do we cut federal expenditures in order to make room for a tax cut, while at the same time reducing or eliminating the federal deficit.

Furthermore, it is not realistic for us to expect either presidential candidate to detail before November 4th their "hit list" of programs they will cut. But the message we in Congress are receiving from taxpayers is—"Cut government first, then cut my taxes." No campaign slogans or media hype will drown out this message.

This, in turn, brings up a very significant question which might be neglected in the rush for a tax cut this year—the role of our federal tax policy in achieving broad social objectives.

One clear objective of the tax cut will be to promote saving in order to build reserves of capital for investment purposes. One clear roadmark along this path was the section of the Windfall Profit Tax that gave a tax exclusion of $200 ($400 a couple) of interest and divided income in order to stimulate saving. Although I approved of this provision in the Conference Committee, I remain, quite frankly, skeptical that this will lead to a net increase in saving and investment. I hope it does, and will watch the impact of the exclusion carefully during its two-year test period.

Those debating the method to be used to increase saving and investment are using new ideas and concepts—or perhaps old ideas with new names—like "supply-side economics," "reindustrialization," and "production tax incentives."

Underlying these concepts is a broad movement to utilize the Internal Revenue Code to aid in changing our basic economic structure. While this may be a significant policy turn in the broad sense, it is important to keep a clear head about these different proposals.

Even the most expansive business tax incentive, the 10-5-3 Depreciation Proposal, will not provide all the needed capital to change our industrial and productive base. While depreciation schedules need to be revised, those industries that are most in need of change do not have enough internally generated capital to purchase the new machinery and equipment that they need to carry them through the 1980s and beyond. Industries that show little or no profit, such as auto, steel, rubber, and textiles, will find limited economic leverage in depreciation changes alone. These industries will increasingly rely, for the near term at least, on external borrowing. One can even make the case that, for the crucial near term, an overemphasis on revising depreciation schedules will hurt our basic industries.

In the same way, a government that increases deficit financing will put pressure on capital markets and drive up the cost of money for these battered industries. Therefore, rather than using all our revenue to revise depreciation schedules, I believe we should be looking with equal vigor at stimulating individual savings and investment. I do not have to remind this group that the rate of saving is presently at an all-time low—3.4 percent according to the latest figures. If this continues, the capital will not be there for "reindustrialization." And it is up to you to make this concern known on Capitol Hill.

There is a second social objective which needs to be addressed when we talk about using the tax code to implement broad government policy, but which has yet to receive the attention it deserves. This is using the tax code to encourage people to save for their retirement.

As a Member of the Social Security Subcommittee, I have been greatly concerned about the impact of the shifting composition of our Nation population on the social security trust funds.

Our population is aging, and a higher proportion of elderly in our population will be a cause for governmental and private concern for the next generation. You are, I am sure, aware of the numbers involved. Currently, there is one retiree receiving social security for every three workers paying into the system. This will change drastically. By the end of the century, there will be only two workers for every social security recipient.

The social security system will come under an increasing strain as a result, especially at the turn of the century when the children of the post-World War II baby boom retire.

The cost of social security for 1980 is expected to be $124 billion. By the middle of the 21st Century, actuaries estimate the cost of current benefits will increase to $22 trillion. By the time your children retire during the second quarter of the next century, the social security tax for working individuals may be 25 percent of their gross income. Employers will pay the same amount—25 percent of their payroll. Just think—25 percent of gross income for social security alone—without adding in other federal, state, or local taxes.

Our aging population will not only severely strain the social security system, but it will bring increasing pressure to bear on the private pension system. For example, private pension obligations that must be paid rose from 5.5 percent of total assets of companies to 14 percent between 1978 and 1979 alone. Pension liabilities of some major companies, such as Ford, General Motors, LTV, and Lockheed now represent 30 percent of all their assets. And the funding problems of multiemployer pension plans are just as serious.

Moreover, large gaps exist in covered workers. According to the President's Commission on Pensions, 70 percent of workers earning under $10,000 have no pension, while 70 percent earning over $20,000 are covered by pensions.

Therefore, in worrying about funding benefits for future retirees, and sources of capital for pumping up our economic system, I worked out a plan that would encourage working men and women to save more money over a longer period of time. My plan uses a tax incentive to stimulate long-term saving while providing tax relief for a portion of a worker's actual salary.

I believe that many of the problems I have described can be eased by my plan. The Cotter Plan, as it is becoming known, is in effect, an individual retirement account for everyone, even those with qualified pension plans.

This proposal provides benefits, and requires sacrifices, from those participating in it.

My plan requires an individual worker to commit a portion of his salary to a retirement account for a long period of time. The maximum annual amount that can be contributed is $500 for an individual and $1,000 for a couple. The worker cannot take out this money without a stiff tax penalty. In return, both the money in the account and the interest which accrues will be free from all federal taxes until it is withdrawn after age 59½.

While the annual amount may seem small, a worker putting aside $1,000 per year for thirty years at 10 percent interest will have $181,000 in his retirement account. This worker could withdraw $21,253 a year from this account for twenty years.

The federal government will also be required to sacrifice. My proposal will lose an estimated $1½ billion in federal revenue in 1985. In return, our future elderly population will be in a better financial position to meet their financial needs. This will relieve some of the pressure on the government to meet these needs.

Institutions that handled these Cotter accounts will have a long-term source of funds to lend to meet the demand for capital. However, these institutions will be expected to provide the depositor with a fair rate of return. To encourage this, I provide for a liberal rollover provision and require an annual "rate of return" reporting requirement. This will give the depositor the information and the ability to transfer funds between competing accounts to get the best deal for his retirement.

In return, institutions, such as yours, should have a stable source of funds for many years. Long-term savings in Cotter accounts could lessen the disintermediation of the past and I am informed that even during the recent disintermediation existing IRA accounts were among the most stable source of income in your institutions.

Let me make one aspect of this plan very clear. Since I believe this should be a retirement plan, I have made no provision for an early tax-free withdrawal or for catastrophic illness. However meritorious, early withdrawal will defeat the purpose of this concept—to make sure that money is available when individuals retire.

Given our population shift, government must encourage and help people to save for their retirement. I believe the Cotter Plan is a reasonable step in this direction. It also helps the capital formation problem which is of immediate concern. I believe this proposal will be part of the next major tax bill, and hope you will support this proposal.●

PERSONAL EXPLANATION

HON. BILL NELSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. NELSON. Mr. Speaker, due to official business in my district, I was not present to vote on rollcalls Nos. 523, 524, and 525. Had I been present I would have voted "yes" on rollcall No. 523, the motion to resolve the House into the Committee of the Whole to consider H.R. 6790, the Foreign Service Act of 1980; "yes" on rollcall No. 524, the amendment that modifies the provisions of the bill regarding benefits for former spouses of Foreign Service officers; and "yes" on final passage of H.R. 6790.●

U.S. HOLOCAUST MEMORIAL COUNCIL

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BLANCHARD. Mr. Speaker, as a former member of the President's Commission on the Holocaust and a current member of the U.S. Holocaust Memorial Council, I was especially pleased to join with 100 of my colleagues in introducing legislation to establish the U.S. Holocaust Memorial Council as a permanent body.

The Council is the outgrowth of the President's Commission on the Holocaust which was set up almost 2 years ago with the purpose of recommending a fitting memorial to victims of the Nazi holocaust and to others who have faced persecution. In its final report to the President, the Commission recommended establishing a National Holocaust Memorial Museum in Washington, D.C., an educational foundation, and a Committee on Conscience to alert the world to potential acts of genocide anywhere around the globe. The Commission also urged that "Days of Remembrance to Victims of the Holocaust" be permanently established as a time for national commemoration.

The legislation introduced last Thursday, H.R. 8081, is the first step toward making the Commission's recommendations a reality. A permanent Holocaust Council would be an appropriate body to oversee and implement the Commission's goals. The Holocaust Council now exists for a limited period of time under Executive order. It has already formed the Holocaust Remembrance Foundation, Inc. to raise funds for memorial projects from private contributions. Most of the funding for the projects recommended by the Commission will come from private sources.

It is important for us to insure that the valuable work done by the President's Commission on the Holocaust does not simply gather dust. We owe it not only to victims who perished, but also to current and future generations who must be given the opportunity to understand and learn the painful, but important lessons of the holocaust.

I urge all of my colleagues to join with the 100 members of the House who are sponsoring this legislation to create a permanent Holocaust Memorial Council.

In addition, Mr. Speaker, I would like to share with my colleagues a copy of the statement made at the swearing in ceremonies of the U.S. Holocaust Memorial Council by our distinguished colleague, majority whip, Congressman JOHN BRADEMAS. I am also including the remarks of the distinguished Chairman of the U.S. Holocaust Council, Mr. Elie Wiesel, which he made at the Council's first meeting this past May.

The statements follow:

REMARKS BY CONGRESSMAN JOHN BRADEMAS AT SWEARING IN CEREMONIES, U.S. HOLOCAUST MEMORIAL COUNCIL

I count it a great honor to participate in these ceremonies establishing the United States Holocaust Memorial Council.

President Carter has chosen some of America's most distinguished leaders to serve on the Council, and I am glad that among them are several dear friends of mine, including my remarkable constituent, Father Hesburgh of Notre Dame.

Indeed, only ten days ago I joined in welcoming to Notre Dame, where he was awarded an honorary degree, your distinguished Chairman, Elie Wiesel, who, I know, will give powerful, prophetic leadership to your efforts.

Chairman Wiesel, President Carter has charged you and the other members of this Council to undertake a mission of great difficulty but of equally great significance.

You are to establish a memorial to the victims of the greatest atrocity in history, a tragedy that defies comprehension but that nonetheless must be understood . . . and never forgotten—the Holocaust.

The memorial you select to 6 million Jews—and to other victims of genocide in our century—must recall for all who live hereafter not only the acts of savagery and inhumanity. The memorial must proclaim the indomitable spirit of both those who were murdered and those who survived; it must teach us lessons that will make impossible another Holocaust . . . for any people.

The memorial must commemorate not only the 6 million Jews and 3 million Poles who were destroyed but the Gypsies and Hungarians who were also barbarously killed.

The memorial must remind us not only of the victims but of the failure of the nations of the world—including the United States—to acknowledge what was happening.

Only last year, I visited Auschwitz and I felt again, but still more deeply, the anger and revulsion I experienced as a school boy in Indiana when I first learned of the Holocaust.

Chairman Wiesel, you and your Council must show us, in the face of such barbarism, how not to forget, how not to be silent.

In his letter to President Carter transmitting the report of the President's Commission on the Holocaust, of which this Council is the outgrowth, Elie Wiesel wrote, "We hope to share our conviction that when war and genocide unleash hatred against any one people or peoples, all are ultimately engulfed in the fire."

That fire must not burn again.

REMARKS OF CHAIRMAN ELIE WIESEL, U.S. HOLOCAUST MEMORIAL COUNCIL

On behalf of the United States Holocaust Memorial Council, it is my privilege to express to you, Congressman Brademas, our profound gratitude for joining us on this solemn occasion. You, Congressman Brademas, will be remembered by us, and our children, and their children.

The President's Commission on the Holocaust was sworn in some fifteen months ago by the Speaker of the House Thomas P. O'Neill. It is only fitting that its successor body be sworn in by yet another distinguished leader of the House, the Speaker Pro Tempore, our esteemed and cherished friend, The Honorable John Brademas from Indiana.

Your presence in our midst is, to us, both valuable and symbolic. You have devoted your public life to building and strengthening humanism in an era which has been preoccupied mainly with technology. Who, better than you, could understand that with the Holocaust in the background, all issues and all endeavors have moral implications? In the shadow of the burning shadows that inhabited Auschwitz, Treblinka, Babi Yar, we must affirm man's right and man's need to be measured in terms of human suffering and human compassion, and we must affirm man's right to be remembered.

Thus, for us, Congressman Brademas, no task is more urgent than the one that has been entrusted to us by the President of the United States, and now confirmed by you.

In an age tainted by violence, we must teach this generation and those who follow the origins and consequences of violence. In a society of distrust, skepticism, and moral anguish, we must tell our contemporaries that whatever the answer, it must grow out of human compassion and reflect man's basic quest for justice. The Holocaust was possible because the law had been violated by the state itself, and its principles distorted by it leaders. From the Holocaust, we have learned that we are responsible for one another. We are responsible for the past and for the future as well.

For some of us, this is the most solemn and awesome day in many, many months and, perhaps, in our lives. We are going to delve once more into the darkest recesses of our memory, only to confront a vanished universe surrounded by flames and penetrated by silence.

The living and the dead are locked together—young and old, princes and madmen, sages and wanderers, beggars and dreamers. On this day we shall close our eyes and we shall see them—an erie procession which, slowly, meditatingly, walks toward angels of death carried on wings of night into night. We see them now as you see us. We are the link between you and them. And for allowing us to be that link, we thank all those who have made this project a project of their lives. We must realize the immensity of our task.

We, here, represent a broad spectrum of the American people. There are in our midst illustrious academicians and businessmen, artists and statesmen, Christians and Jews, survivors and non-survivors. But all share a passion for truth, a commitment to memory, a dedication to justice.

Let us hope that we shall do our work in harmony; that we shall learn from one another and help one another overcome obstacles and fears that are inherent in the project itself. In spite of our various origins and vocations, let us form a cohesive group bent on bringing back to life, in words and images, in memory—in memories alone—a desperate world filled with multitudes of courageous victims, their last hopes and their despair. Our task will not be an easy one, for whatever we do, we involve burning memories. We must show the world at large that we are capable of transcending petty divergencies, that we are capable of absolute quest for justice. We must remind the world that one generation ago, six million men, women, and children—all Jews—were forsaken, betrayed, massacred. As a Jew who belongs to a tormented and traumatized generation, I do not view the memory of the Jewish victims as a forum to exclude the others. I have said it before, I shall say it again. Although all Jews were victims, not all victims were Jews. And the other way around—not all victims were Jews, but all Jews were victims.

As Jews, we therefore shall remember the others as well. Our friends who perished because they gave us shelter must be remembered. And the resistance fighters from all over occupied Europe must be remembered and will be. And we shall remember them all with gratitude. No people is, or has been, so grateful as the Jewish people. But to mix all the victims together is unfair and unjust. There was something unique—uniquely Jewish—about the Holocaust. The event was Jewish, yet the implications are universal.

To our non-Jewish colleagues here, I therefore address my humble plea: try to understand our sensitivity as we shall try to understand yours.

And to you, Congressman Brademas, we thank you sincerely, from the depths of our being, for helping us take these first steps today. And, therefore, we here pledge that we shall fulfill our mission.●

NATO ROLE OF GREECE

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BROOMFIELD. Mr. Speaker, the strategic significance of Greece to the interests of the United States and the NATO alliance cannot be underestimated. Greece's position in the eastern half of the Mediterranean makes it a vital component of NATO's southeastern flank. Greece is situated to provide essential sealane security and serves to inhibit Soviet adventurism in the Mediterranean. Moreover, Greece provides NATO with critical warning and communication facilities in addition to airbases and naval ports, including Suda Bay, which is capable of accommodating the U.S. 6th Fleet. At this time strategic installations in Greece are threatened if a new effort does not remove the obstacles blocking the reentry of Greece into NATO's military wing, which it left in protest over the Turkish invasion of Cyprus.

In this regard, I commend to my colleagues the following article which appeared in the September 5 edition of the New York Times.

GREECE SAYS NATO ROLE IS ITS PRICE FOR U.S. BASES

(By Nicholas Gage)

The long, deep harbor outside this town on the northwest coast of Crete has an anchorage almost large enough to accommodate the entire United States Sixth Fleet. The area around the harbor holds a complex of installations that forms one of the most important American military bases in the Mediterranean.

But if a new effort to bring Greece back into the military arm of the North Atlantic Treaty Organization fails, the United States is in danger of losing its Suda Bay facilities, as well as other military bases in Greece.

The Suda Bay base is a major support center for the United States Navy as well as other NATO forces. The American air station at Herakleion, also called Candia, on the north-central coast of Crete serves as the communications center for all of the Middle East, North Africa and the eastern Mediterranean, and includes an electronic listening post to monitor Soviet activities in the Mediterranean.

NEW EFFORT BY NATO CHIEF

Hellenikon, the military aircraft command base in Athens, supports installations throughout the Middle East and had a key role in the evacuation of Americans from Iran. Nea Makri, near Marathon Bay, northeast of Athens, is a major naval communications center with an electronic net that monitors all ships in the Aegean. There are also five NATO early-warning sites in northern Greece following the military activities of the Russians and the Warsaw Pact nations.

All these strategic installations will be threatened if a new effort being prepared by Gen. Bernard W. Rogers, the commander of NATO forces in Europe, does not remove the obstacles blocking the reentry of Greece into NATO's military wing, which it left in 1974 in protest over the Turkish invasion of Cyprus.

Four previous efforts, including three by General Rogers' predecessor, Gen. Alexander M. Haig Jr., failed because Greece wants to return on its original terms. But its archrival, Turkey, like every other NATO member, has veto power over Greece's reentry and insists on assuming defense responsibility over parts of the Aegean previously allocated to Greece.

The urgency of finding a solution to Greece's re-entry was increased when Athens officials said recently that they would close down the American bases if Greece was not soon allowed back into NATO's military wing on acceptable terms. The problem is especially serious because of the increasing prospect that Greece's opposition party, the Panhellenic Socialist Movement, could come to power in elections scheduled next year. A major plank of the opposition's foreign policy platform is the elimination of American bases in Greece.

The ruling New Democracy Party has concluded that if Greece is not a full member of NATO by next year the bases will be a crushing political liability. "When we face elections next year, either we have to be back in NATO's military wing or the bases must be shut down," said Foreign Minister Constantine Mitsotakis.

KEY INFORMATION CENTER

The American installations are closely tied to bases in Turkey and Italy. Herakleion is a relay station for all intelligence gathered in Turkey and a major intercept center where all coded radio communications in the area are taped and transmitted to the National Security Agency center in Maryland. It is also at Herakleion that the manifests of airline flights throughout the Middle East, the eastern Mediterranean and North Africa are intercepted as they are telexed by the airlines. Herakleion also supports air reconnaissance flights and air tanker refueling operations of American military forces, and the electronic surveillance station there monitors military activities of the Soviet Union in the eastern Mediterranean.

The Suda Bay complex would be the most difficult loss to replace, because in addition to its harbor and its role as a supply center housing fuel and ammunition for the United States Navy and NATO members, it includes an airfield that is used for staging military reconnaissance operations. Nearby, at Namfi, is the NATO missile-firing range where military training and testing exercises are conducted. From Suda Bay the movements of ships and submarines in the Mediterranean are monitored by naval aircraft. The natural strategic strength of the harbor, which frustrated capture by the Germans for weeks during World War II, is equaled nowhere else in the Mediterranean.

Nea Makri is a major link between military communication complexes in Italy and Spain for the United States defense communications system. Its intelligence center is focused northward, monitoring the Balkans, and it includes an electronic net that follows the movement of all ships in the area.

LINKED WITH THE SIXTH FLEET

The Kato Souli terminal, seven miles northeast of Nea Makri, is linked with the United States Sixth Fleet afloat and with terminals in Naples and Spain. The Mount Pateras terminal, about 20 miles west of Athens, connects Greece with a terminal near Izmir, Turkey, on the Turkish west-central coast, and with the Mount Ehedri terminal in northeast Crete and the Levkas Island terminal in the Ionian Sea, which is itself a connecting point to a terminal in southern Italy.

The Hellenikon Air Base, near the Athens airport, is used as a headquarters and support installation for other Air Force facilities in Greece. It serves as a staging point for air transport operations and as a support base for the United States military airlift command.

Mr. Mitsotakis said he had explained to Secretary of State Edmund S. Muskie that Greece had no alternative but to close the bases if it did not return to NATO. Mr. Muskie expressed understanding for Greece's views and concern about the bases.

Other State Department officials appear less worried, saying that if Greece closes the bases the United States can move them to Turkey. Other American military officials do not think that Turkey would provide a good solution. "The bases in Greece were built to complement those in Turkey," said an Air Force officer here. "Many of their functions just can't be transferred. Besides, the political instability in Turkey may soon force us to consider moving bases from there to Greece, not the other way around."●

PRIVACY PROTECTION IMPORTANT ITEM ON AGENDA FOR 96TH CONGRESS

HON. HAROLD S. SAWYER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. SAWYER. Mr. Speaker, the right to privacy in our homes and offices is the keystone of our Bill of Rights. On May 30, 1980, the House Judiciary Committee approved landmark legislation to protect those rights both for the press and individuals in passage of H.R. 3486, the Documentary Materials Privacy Protection Act of 1980. This bill was a direct response to the Supreme Court's decision in Zurcher against Stanford Daily.

The implications of the Stanford Daily decision are readily apparent in a recent incident in Boise, Idaho. I believe that protecting the rights of individuals is one of the most important pieces of legislation to be considered in the remaining days of the 96th Congress.

The following editorial clearly presents a very disturbing threat which makes passage of H.R. 3486 a priority item this year.

The editorial follows:

[From the Editorial Voice of WZZM-TV, Grand Rapids, Mich.]

THE STANFORD DAILY PRECEDENT

(By George Lyons)

An outrageous supreme court decision has had exactly the disquieting impact we predicted. In the now notorious Stanford Daily Case, the high court ruled in favor of the rights of prosecutors and police to initiate raids into newsrooms to seek out evidence.

Recently, in Boise, Idaho, a prosecutor led police into a television newsroom, and, armed with a search warrant, walked off with a year's worth of video tapes. It was a fishing expedition. No specific tapes were listed in the search warrant and the station had no right or opportunity to appeal for restraint.

The prosecutor was seeking evidence regarding a recent prison revolt since a station news crew had been brought inside the walls at the request of prisoners staging the takeover.

The prosecutor took it upon himself to determine that rather than journalists, the news crew members had become agents of the convicts. Therefore, he decided any information or video tape obtained by them was, in fact, fair game. Actually, by being forced to turn over the tapes, the free press was compromised and became, instead, an unwilling arm of law enforcement.

Other similar incidents have resulted from the Stanford Daily case and immediate legislation is warranted to protect the First Amendment from such official and court sanctioned abuse. Our lawmakers are elected to uphold the Constitution so it would seem that to stem such police raids would be a high and immediate priority.

I'm George Lyons.●

AN AMERICAN FARMER MET THE SANDINISTAS AND BARELY ESCAPED WITH HIS LIFE

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. McDONALD. Mr. Speaker, many things have been reported from Nicaragua before and after the Sandinistas took over, but one of the more chilling tales I have heard is that of an American farmer, Mike Meyer. He was in Nicaragua for 4 years to help the people there. Mike had to flee for his life with his family when the Sandinistas took over. He and his family had been helping the local natives make the land arable and were beloved by them. It was only through their help that the Meyer family survived. Mike has been telling his story in service clubs around the Atlanta area. I think what he has to say ought to lay to rest the Department of State myths concerning Cuban involvement for once and for all. Therefore, I am inserting a copy of his speech in the RECORD at this point:

Mr. President, I deeply appreciate the opportunity to address the Kiwanis Club today, and I only hope that what I'm about to relate will be taken in the spirit in which it is presented.

To begin with, I wish to state that neither I nor my family have any political ties, affiliations, or special interests in the government of the United States, Nicaragua, or any other country. We are simply United States citizens, natural born, free born, and, by the grace of God, hope to die in freedom.

In the summer of 1976, my wife, Jane, my two sons, Patrick, Robbie, and myself purchased a farm in Puerta Cabezas, Nicaragua. The land was more affordable than it was here, and this Central American country has not only proven to have a stable government, but was closely alined with the United States.

We came to know, work with, befriend, and develop a deep affection for the people in Puerta Cabezas, more especially, the Mesquito Indians who comprised the bulk of the population.

We grew vegetables and planted cacao trees during our 3½-year stay, and taught the people how to cultivate their land and make it productive. We later learned that we had accomplished the impossible; nothing is supposed to grow in that area except hemp and savannah grass.

The people were now growing their own vegetables and introduced to a healthier diet which they were quite happy with. Because of this, and our genuine love for the people, we were soon labeled as exceptional gringos. We loved them, and they loved us. We were as a part of their individual families, and, for that reason, my family and I are alive today.

In the spring of 1979, we heard of British influence in the area. The English were in Nicaragua and were in the process of training a designated member of the Mesquito Indians to be the tribe's king. Please understand that these people had long wanted a king; and they loved the British people and trusted them. We later found out that the new king designate was being taken by submarine to London where he was being taught the proper way in which to rule and guide his people. All of this sounded somewhat unbelievable to us. We later found out that these "Englishmen" were, in fact, Russians who spoke the English language, and were taking the king designate not to London, but to Havana, Cuba.

Early last summer, the news came to Puerta Cabezas. The government is changing hands * * * there is nothing to fear * * * the blacks were promised supremacy * * * the Mesquito Indians were promised land and equality * * * and, all were promised running water and electricity.

In July of 1979, the forces of the new government arrived in Puerta Cabezas. There were about 130 of them. These armed soldiers were not Nicaraguan, they were not Sandinistas, nor were they American or British * * * they were, in fact, Cuban.

On July 19, 1979, our farm was taken from us, and we were put under house arrest inside a small restaurant we owned in

Puerta Cabezas. Our crime? We were United States citizens. The Mesquito Indians gathered around our restaurant for the 5 days we were held in captivity shouting "this is our mama, this is our papa" to the Cuban soldiers so as to prevent any harm from coming to us.

On the morning of July 24, 1979, a friend of ours who cooked for the people next door came in to see us. She embraced my son, Patrick, and started crying. She said we would be shot at midnight.

About an hour later, a Church of God minister came in and explained to us that life is like a candle * * * when it is lit, the flame emits democracy and socialism. But, when the flame burns down, at its base is communism. This is the way it is, and the way it must be, for it is written in the bible. About two hours later, another friend who had crossed over from the Somoza government to the new government came by. He approached my wife and most sincerely offered her the hospitality of his home for the night explaining that it might be best if she were not with us that evening. At that point, there was no doubt * * * my sons, my wife, and myself would be shot to death at midnight.

In the heat of the day, with temperatures around 110°, a flat bed truck loaded with people pulled up between the guard house and our restaurant. We were beckoned to quickly leave through the window and board the truck. These people were our friends, the Mesquito Indians. Well outside the town, we left the truck and crossed through the jungles of Nicaragua into Honduras and to safety. Our journey was not a pleasant one. We were being hunted every step of the way. During our trek to safety, my oldest son and I did things which we did not want to do, but our family's survival depended on it * * * and we did what we had to do.

Finally, we were out of the communist hell which we had left behind. We lost everything; we had nothing except the clothes on our back. We went to work farming for a Baptist mission in order to earn enough to make our way back to the United States. During this time, we learned of 5 schools, each one containing some 2,000 children ranging in age between 8 and 16 in Nicaragua. These children are not being taught the three "R's", but how to use Russian made weapons, and to kill. They are fed on an 800 calorie per day diet while at these schools. If they do not perform, they do not eat.

Eventually, we arrived in the United States on Easter Sunday of this year. On May 23, 1980, we moved to Cobb County. Last month, in a telephone conversation with a close friend of ours in Honduras, we learned that the Russians have completed two jet air strips in Nicaragua * * * one near Bonaza and Rosita, and the other in Puerto Cabezas. He tells us there are more Cuban soldiers in Nicaragua than can be counted.

While in captivity, our captors taunted us not only by pointing their rifles at our heads and pulling triggers with the chambers empty, but by joyously proclaiming they were coming to the United States. They told us how they were coming, but not when. They obviously felt secure doing this as we were marked for death.

Not quite a month ago, in a restaurant here in Smyrna, my son, who was working busing tables and who, by the way, speaks fluent Spanish, overheard a conversation involving six people. These people were from Panama, Nicaragua, Cuba, a South American country, and a United States citizen who was a pilot. The two from Nicaragua had been flown into the United States via Costa Rica under the guise of being citizens of that country. They gave every indication of being Sandinista terrorists.

On Saturday, July 26, 1980, I was convinced that instead of keeping quiet, I must relate what has happened and what is happening now to further assure the safety of my family. At the encouragement of Mr. Yow, we met with your Congressman, Larry McDonald, and related the whole story in detail. The Congressman then made a request of us. Presently, at his request, we shall go to Washington where we are to meet with members of Congress to relate the story.

The basis for his concern is that the administration has told the Congress that Nicaragua is enjoying a democracy, with few problems, and we can expect to have a close ally in that part of the world. For that reason, we are told that the Congress has appropriated several million dollars to help that country develop.

I have capsulized our story because of the time element involved. At the same time, I hope that everything has been put in proper perspective. I am not comfortable doing this, but I have been assured that by making this information public, the chances of my family's survival will be greater than it is now. I love my country. I love my freedom more than ever, because, for a short period of time, my family experienced the horror of losing it. Thank you for your hospitality.●

ROSH HASHANAH AND YOM KIPPUR

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ANDERSON of California. Mr. Speaker, I would like to take this opportunity to remind my colleagues that this week and next mark the holiest days of the Jewish year. With sundown tomorrow begins the Jewish new year. This 2-day festivity is followed by the 10 days of repentance, culminating with the day of atonement, the most solemn day of the Jewish faith.

At the onset of a new year, one assesses past actions and decisions. As a result of careful reflection, some old directions are reaffirmed and new goals are set. As all of us here in Congress are constantly beset with having to make a myriad of decisions each day, it is gratifying to know that a period of time exists where man can reflect upon both his religious and professional ethics and his personal relationships with friends and neighbors, and with his God.

Thus, Mr. Speaker, what is written in Ecclesiastes seems particularly apt at this time of year. It says:

> To everything there is a season * * * a time to be born, and a time to die * * * a time to weep and a time to laugh * * * a time to cast away stones, and a time to gather stones together * * *

My wife, Lee, and I wish our Jewish friends and colleagues a most happy new year, with the hope that they are inscribed in the "Book of Life," and that the year 5741 is the sweetest and most fruitful for all.●

PUBLIC FINANCING OF ELECTIONS

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. EDGAR. Mr. Speaker, on August 21, the New York Times carried an Op-Ed piece on the issue of public financing of elections. I recommend it as an articulate discussion of a current and complex issue. I am especially interested in it because it was written by Charles Tidmarch, an associate professor of political science at Union College, who worked in my congressional office last year. I hope my colleagues will find the time to read the article.

Extending Public Financing of Campaigns to Third-Party and Independent Candidates

A major flaw in the Federal campaign-financing law is its lack of provision for advance funding of Presidential candidates other than the major-party nominees.

When Congress passed the law in 1974, there was virtually no support for public subsidy of third-party or independent candidates, and the memory of George Wallace's campaign in 1968 was still vivid.

Now, however, as even the few ardent champions of the two-party system must admit, the existing arrangements are inherently unfair to serious, responsible candidates such as John B. Anderson.

Although Mr. Anderson may speak optimistically about raising enough money to mount a respectable campaign, the chances are that he will be outspent by both of his opponents by a ratio of three to one. Worse, the Federal Election Commission has recently ruled that, unlike third-party candidates, independents are not eligible for partial reimbursement after the election.

What is most troublesome about all of this is the absence of concern about how to remedy the unfairness. While it is certainly too late to do anything about 1980, it is not too early to begin serious discussion of possible reforms.

Three critical issues must be addressed in the course of revising the system.

First, we must determine the proper mode of financing third-party and independent candidates; the principal options are the problematic direct subsidy, the low- or no-interest Federal loan, and the federally guaranteed private loan. Second, we must develop meaningful criteria for candidate eligibility; surely we do not want to encourage dozens of frivolous candidates. Third, we must ascertain an appropriate level of funding for a competitive campaign on a national scale.

The essentials of my plan are these: Interest-free loans may be offered by the Federal Election Commission to the candidate on a rolling basis as that candidate obtains access to the general-election ballot in the states. The size of the loan would be proportionate to the size of the estimated voting-age population of the particular state. The serious national candidate will of course be under constraint to qualify in most, if not all, states. Once having achieved that goal, he will find himself in a position of near financial parity with his major-party adversaries. Complete parity may be unattainable because of the considerable costs of the ballot-access drive, which might erode the loan base prematurely. If the candidate proceeds in the general election to obtain a prescribed percentage of the popular vote in each state (15 or 20 percent is reasonable), his loan for that state would be forgiven. Additionally, if the candidate achieved a somewhat higher share of the national vote, say 25 to 30 percent, the entire loan would be forgiven, irrespective of sub-par performances in certain states.

Cynics may ask what would be done if the candidate ran very weakly in a great many states and was ineligible for loan cancellations.

To begin with, acceptance of loans would not preclude continued efforts to solicit private contributions. These contributions, minus a predetermined maximum that is creditable to ballot access costs and fund-raising and legal-compliance costs, would be placed in escrow in anticipation of the "worst case"—nonqualification for forgiveness. If the candidate qualified for cancellation in each state, all of the voluntary contributions would be returned. If the candidate failed to qualify in certain states, the escrow fund could be drawn upon to repay loans. Computerized record-keeping would allow for meticulous financial management and could facilitate pro-rated refunds to each donor. The Federal Election Commission would exercise oversight.

The "gun behind the door" in this plan is the requirement of loan repayment. If nonqualification occurs and the candidate's escrow account is insufficient to meet obligations, the Government would, after a decent interval, sue for recovery of funds. This could become protracted and messy, as well as embarrassing for the unsuccessful candidate, but the possibility of such sanctions is integral to the success of the plan. The refusal or inability of the candidate to repay his loan could very well put an end to the individual's career—a forboding thought indeed.

An occasional "spoiler" or single-interest candidate might attempt to obtain the loans in order to conduct regional or single-state campaigns, but the vast majority of voters would recognize this ploy and deny their support to hopeless causes.

We should not be surprised to find states toughening the standards for ballot access so as to keep truly peripheral candidates ineligible for the loans and eventual subsidies. If this were to result in the exclusion of numerous minor parties that typically draw, in the aggregate, less than 2 percent of the national vote, it might be worth the sacrifice in order to provide the electorate with legitimate third-party and independent alternatives to the wheezing two-party system. This plan would cost millions of dollars. But how many of us are prepared to argue that the current system constitutes a great political bargain?●

FORMER AMBASSADOR GIVES HIS VERSION OF WHO LOST IRAN

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BADHAM. Mr. Speaker, vacillation and ineptness are terms that have been employed in an effort to describe President Carter's foreign policy, or lack thereof. The failures of the Carter administration, as they pertain to Iran, are clearly put forth in a recent article by William H. Sullivan. As the U.S. Ambassador to Iran during the fall of the Shah, Mr. Sullivan's account of what took place should not be taken lightly by this or any other body.

The Sullivan article describes how the U.S. Government undermined and subverted the Shah's regime. Mr. Sullivan's statements add to the mounting evidence that the United States, through its actions, hastened the Shah's fall from power, which in turn has thrown the entire Persian Gulf area into turmoil and the world that much closer to war.

I ask that my colleagues take a few minutes out of their day to read the Sullivan article and discover the Carter administration's lack of understanding in the foreign policy arena. After absorbing the contents of this article, can any American cry out for "4 more years?"

I insert the Sullivan article at this point in the RECORD:

ZBIGNIEW BRZEZINSKI ASKED IF I COULD ARRANGE A MILITARY COUP

(By William H. Sullivan)

In 1925, when Reza Khan founded the Pahlavi dynasty, Persia was a country in name only. The writ of the Qajar Shahs had run little beyond the limits of Tehran. Regional, local and tribal chieftains ran the rest of the country just as they had in most of the 19th Century, when they were manipulated by Russian and British agents, as the two contending empires played their "great game" across the entire sweep of Southwest Asia.

During the first 15 years of his regime, Reza Shah, often at the head of his own troops, enforced and established his authority through all the country, which he renamed Iran to stress its Aryan origins and to distinguish it from its Hittite and Semite neighbors. He acquired a number of enemies among his countrymen in the process but on the eve of World War II, he had restored his nation's integrity and independence in a form that it had not known for centuries.

Then, just as this achievement took form, it was snatched away when British and Soviet forces invaded and occupied Iran, dividing it between them for the duration of the war and replacing the deposed Reza Shah with his 21-year-old son, Mohammed Reza Pahlavi. With this history, the young man matured into a ruler who was preoccupied with restoring and maintaining the integrity of Iran, and who shared the Iranian xenophobia with respect to all foreign states.

In recent years, the United States has come to depend upon the Persian Gulf for 30% of its oil imports. Western Europe's dependency is over 60% and Japan's is over 70%. Therefore, the integrity and independence of Iran have become of significant importance to the United States and to its allies. Conversely, in strategic terms the disintegration of Iran or its economic dependence upon the Soviet bloc would represent a major gain for the Soviet Union.

Consequently, the policy of the United States in an Iranian crisis should have been guided primarily by concern for the preservation of the territorial integrity of that nation and its independence from Soviet control or manipulation. Other concerns, such as the well-being and the political as well as the human rights of the Iranian people, should also have been of importance in view of America's long-standing association with Iran.

The crisis that came in 1978 developed rapidly, but not so suddenly as to have precluded a careful assessment of U.S. options and the formulation of a policy to enhance American interests. But to decide among those options required a mature understanding of the nature of the revolution that was sweeping Iran in 1978 and the factors that contributed to its rapid success. It was far more complex than the simplistic Islamic revolution label accorded it by much of the press.

Rather, the 1978 crisis was an uprising that was joined by all the enemies of the Pahlavis. These included the old aristocrats from the Qajar regime—the feudal landholders who had lost their villages in the land-reform programs; the social democrats who had been suppressed with Prime Minister Mohammed Mossadegh in 1953; the bazaaris—the traditional merchant class—who felt left out of the shah's industrialization program; the young, rootless industrial workers who had never been able to adjust to their vagrant life in the cities; the various radical Islamic groups such as the Mujahadeen and the Fedayeen; the separatists in Kurdistan, Azerbaijan and elsewhere; the old tribal chieftains who flocked back from exile; the pro-Soviet communists of the Tudeh party; and the other communist groups who eschewed Moscow's direction.

All of these opponents of the Pahlavi dynasty, for their own individual reasons, were willing to band together for the purpose of overthrowing the shah. All were under the ostensible leadership of the Ayatollah Ruhollah Khomeini, who, fired by his own personal animosity toward the Pahlavis, was able to give the movement the coloration of a religious crusade.

The American embassy in Tehran attempted in its reporting to convey the complex and negative nature of this revolution and to express the view that the direction Iran would take in a post-shah period was far from preordained. I believe the State Department, in general, understood and accepted those reports. There were, however, those at the State Department who were so strongly opposed to the shah because of the human rights abuses of his regime that they wished to see him collapse no matter what the consequences for the United States or its allies.

Therefore, when the State Department advanced the view that the shah's regime would not survive, there were many others in the Washington bureaucracy, particularly on the National Security Council (where the revolt was simplistically believed to be an Islamic revolution), who attributed the State Department's perception, and indirectly that of the embassy, to an expression of wishful thinking on the part of those whose vision was blurred by their zeal for human rights.

This division in perceptions within the Washington bureaucracy also extended to the nature of instructions that were sent to the embassy or, more often, to the absence of any instructions whatsoever because the bureaucracy could not agree upon their terms. Most significant in these divisions was the difference in perception about the shah's willingness to use force to suppress the revolution.

Time and again the shah told me that he would not use force because a "king cannot murder his own people." With what I regarded as more convincing logic, he told me that if he used force, he could suppress the spreading revolution only as long as he himself lived. Since he reckoned his mortality in a short time frame, he felt the suppressed forces would blow up in the face of his son, and the dynasty would, in any event, be blasted away.

In Washington, these embassy reports were apparently received with divided conclusions. The State Department—and eventually the Central Intelligence Agency—accepted them objectively and believed the shah would follow a policy of concession rather than force. Other elements of the bureaucracy, led by National Security Adviser Zbigniew Brzezinski, apparently thought that I had abandoned 32 years of professional objectivity and was subjectively tailoring my telegrams to fit what they conceived to be the mood of the State Department.

In this pernicious atmosphere, U.S. policy formulation broke down. By November 1978, Brzezinski began to make his own policy and established his own "embassy" in Iran. That embassy materialized in the person of Ardeshir Zahedi, the shah's ambassador in Washington, who returned to Tehran at Brzezinski's behest with the explicit mission of pulling the shah's resolve together so that he could suppress the revolution. Zahedi arrived on the scene full of zeal and confidence. He saw the shah frequently and reported daily (on the open international telephone monitored by the Soviets) to Brzezinski. He also began to telephone reports to me, but I soon preferred to see him at his home to better evaluate what he was saying and doing.

The shah continually told me to warn Washington not to pay attention to Zahedi because he did not understand the current situation. Naturally, my reports of this warning served only to deepen the divisions and heighten the suspicions that beset Washington at that time.

The confusion also contaminated the Iranians. Brzezinski reportedly encouraged Zahedi to urge the shah to use force. These messages were doubtless embroidered in being relayed to their high destination. When the shah turned to me for confirmation of these appeals, I could point only to platitudinous cables that leaned toward concession.

Matters came to a head in mid-November. A military government, headed by Gen. Gholam Azhari, had been installed on Nov. 5, 1978, after rioting and arson had left Tehran in a shambles. On Nov. 9 I sent a message to Washington saying that this was the last chance for the shah to control the revolutionary process. If this government failed, I stated that we should anticipate the collapse of the shah and look for alternate means to protect and preserve our interests. I defined those interests in terms of the territorial integrity and independence of Iran and said that, given the nature of the revolution, the only instrument that could advance those objectives was the armed forces.

We should act, therefore, to preclude the armed forces from being chewed up in the revolution. Because of our special relationship, we should determine whether we could broker an arrangement that would permit the armed forces to remain intact. They would have to be under the direction of a government that would enjoy the support of the groups that would prevail after the success of the revolution and that would have the blessing of Khomeini. I anticipated (correctly, as it turned out) that the first government to emerge from the shock of the revolution would be headed by Medhi Bazargan, a benevolent social democrat.

I never received a reply to this fundamental message. Instead, it soon became apparent that my views were no longer welcome at the White House. Emissaries of various types began to arrive from Washington to assess the situation *de novo* and to encourage the shah to use force.

On Dec. 20 the leader of the military government suffered a heart attack, and the situation that I had anticipated on Nov. 9 came to pass. As if to underline this fact, Azhari summoned me to his sickbed to tell me that the regime was lost "due to the indecision of the king." I duly reported this to Washington and then went on to say that I intended to move along the lines I had recommended in my cable of Nov. 9. There were no instructions to the contrary, and so I began to steer the embassy through a series of actions that sought to establish the ground rules under which the Iranian armed forces, purged of some of their more controversial leaders, would be accepted by a Bazargan government.

At the same time, we sought to determine on what terms the armed forces would accept such an arrangement. Detailed understandings were reached between the armed forces and revolutionary leaders in Tehran: A number of senior officers would have been allowed to leave the country with the shah, and a transfer of allegiance of the remaining armed forces would have been made in a way that would have preserved their integrity. Because the United States controlled the logistics for all sophisticated elements of the armed forces, there were means to assure the implementation of these arrangements.

About this time, the internecine squabbling in Washington began to impinge upon my communications. I began to discover that any sensitive message I sent, no matter how highly classified, that digressed from the views of the National Security Council staff would appear, almost verbatim, in the New York Times. I therefore had to use the secure telephone exclusively to communicate with the State Department.

When plans for the peaceful transfer of military authority had sufficiently matured and when the shah had decided to leave the country and hand over a fig-leaf of authority to a government headed by a man he despised—Shahpour Bakhtiar—I felt it was important that the nature of the proposed transition be discussed with and understood by Khomeini, who was in Paris. This was especially important because Bakhtiar jauntily took the position that he, rather than Khomeini and the victorious revolution, would excerise governmental power despite the fact that he had no constituency and no popular support.

Accordingly, I proposed that an authoritative emissary be sent from Washington to consult with Khomeini. We already knew from contacts with his entourage that he was concerned about bloodshed between the revolutionaries and the armed forces when he returned to Tehran after the planned departure of the shah. We also assumed that he had given general sanction to the arrangements we had made with the revolutionary leaders in Tehran, but felt it was important that we have his first-hand acceptance of these understandings.

I discussed this suggestion on the secure telephone directly with Secretary of State Cyrus R. Vance. He approved the general idea and then sent me, by a system called secure telecon, a talking paper for use by our emissary. When I had agreed to its terms, he then instructed me to discuss the entire enterprise with the shah, whose departure was less than two weeks away. After I received the shah's acquiescence, Vance informed me that he had selected as our emissary Theodore Eliot, the inspector general of the Foreign Service, former ambassador to Afghanistan, former economic counselor in Tehran, and a fluent Farsi linguist. I applauded the choice. Here was a man who understood Khomeini and the nuances of the Iranian situation. He could convey in a forceful manner the full dignity of American purpose as well as American sincerity.

I then turned my attention toward a refinement of plans for the evacuation of American officials and civilians. I believed the revolutionary transition could occur peacefully and therefore exercised considerable selectivity in choosing those Americans who should leave because of their association with Pahlavi-controlled enterprises, and those who might stay because their presence would be needed to help the new regime in its economic and security programs.

During the first week of January, I received an urgent nighttime message from Washington informing me that the Eliot mission had been canceled and that President Carter had directed that the shah be so informed. The President, who had stayed in Guadeloupe after the economic summit meeting with West European leaders to do some deep-sea fishing, was accompanied in his retreat only by Brzezinski. I sent an impassioned reply to the secretary of state imploring reconsideration and stating that cancellation of the Eliot mission would be an "irretrievable" mistake. I received a curt rejection that cited all the cabinet officers who agreed with the President. When I told the shah, he reacted with incredulity and asked how the United States expected to influence "these people," if it would not even deal with them.

As far as I could determine, the United States, on the eve of the shah's departure, was left with no policy. I immediately thought of all the American citizens who would be caught up in the confrontation that would result if no arrangements were worked out for a peaceful transition. We had to move immediately from a situation in which we foresaw a controlled transfer of power to one in which I could perceive nothing but chaos, for the shah had already fixed the date when he would swear in Bakhtiar as prime minister and then leave the country.

However, I overlooked the Brzezinski factor. It appears that he had a plan in mind. He had already sent to Tehran Gen. Robert Huyser, deputy commander of U.S. forces in Europe and deputy to Alexander Haig, supreme allied commander in Europe. I had used Huyser frequently in the past to help us guide the Iranians in the restructuring of their armed forces' command-and-control system so that they would be able to utilize some of the sophisticated equipment we had sold them. When it was proposed that Huyser came to Iran at the time of the shah's departure, Haig telephoned me on the secure line to say that he was opposed to the mission and would resign if it were undertaken. It was undertaken, and he resigned.

Huyser, every inch a straightforward good soldier, arrived in Tehran somewhat flustered by the nature of his mission and by Haig's resignation. He moved in with me, and we shared all our message traffic and our common concerns. We did not always agree. But when we differed, we did so openly and with due respect.

Huyser's mission, as described in the brief official order he received, was to assist in maintaining the integrity of the armed forces and in transferring their loyalty from the departing shah to the Bakhtiar regime.

Parallel to this order, I received terse instructions telling me that the policy of the U.S. government was to support the Bakhtiar government without reservation and to assist its survival. I replied by pointing out that the Bakhtiar government was a chimera that the shah had created to permit a dignified departure, that Bakhtiar himself was quixotic and would be swept aside by the arrival of Khomeini and his supporters in Tehran. Moreover, I argued that it would be feckless to transfer the loyalty of the armed forces to Bakhtiar because this would cause the destructive confrontation between the armed forces and the revolutionaries that we hoped to avoid. It would result in the disintegration of the armed forces and eventually in the disintegration of Iran. It would be directly contrary to U.S. interests.

By this time, my exchanges with Washington had become increasingly acerbic. The reply I received to this message, in my judgment, contained an insulting aspersion upon my loyalty and instructed me, in no uncertain terms, to support Bakhtiar no matter what reservations I had. At this point I decided, like Haig, to resign. However, I still was responsible for protecting about 15,000 remaining Americans in the face of enveloping chaos. I therefore quenched my Irish temper, sent my wife out of the country, prepared for the worst, and delayed my resignation until after the anticipated holocaust.

As the confrontation between Bakhtiar and Khomeini quickened, Huyser received continuing instructions to prepare the armed forces for conflict in defense of the Bakhtiar regime. On the basis of his observations, he offered to Washington his opinion that in such a confrontation the armed forces would prevail. But he always tempered this observation by stating that I disagreed and that I believed the army would disintegrate when ordered to fire on revolutionaries, some of whom were relatives of the soldiers. As a result, their arms would be dispersed throughout the whole tangled and conflicting fabric of the revolutionary forces, making it impossible for the Bazargan government to assume quick and effective control when it inevitably took over.

The armed forces understood this also. When Gen. Abbas Gharabaghi, their commander-in-chief, decided to resign, Bakhtiar, who had been assured by Washington that I was under instructions to support him, called me into the actual meeting during which Gharabaghi attempted to submit his resignation. Like two characters in a Greek tragedy in which both knew the futility of their actions, I remained true to my ambassadorial oath by urging the general to withdraw his resignation, and he agreed to do so. It was a sickening performance for both of us.

Within a matter of days, the confrontation we had feared took place. It began when the junior air force officers and enlisted men at the Doshen Toppeh Air Base mutinied and overwhelmed an imperial guard armored unit. The captured tanks were turned on the headquarters building of the armed forces where many U.S. military officers, including the general in charge of the Military Assistance Advisory Group, were stationed.

Well into that night, I worked with our contacts among the revolutionaries to arrange for the extraction of these Americans from the bunker in which they were trapped. Just as I was at the point of achieving their rescue, I received a telephone call in the clear over the international circuit from Washington relaying a meassage from Brzezinski who asked whether I thought I could arrange a military coup against the revolution. I regret that the reply I made is unprintable.

Thus, chaos descended on Iran. The armed forces disintegrated, their weapons fell into the hands of all those disparate elements in the revolution who in turn fell to fighting among themselves once the shah had gone. Bazargan and his government had no means to enforce order; and Khomeini, in his desire to remain the nominal leader of the revolution, would issue no directions that would be substantially disobeyed. This situation meant that the extremists would be able to set the pace, and in most matters, that has been the pattern ever since. The disintegration of the nation is well advanced and a growing economic dependence on the Soviet Union has begun.

I have no way of stating categorically that the road not taken would have averted what has happened in Iran. But perhaps I can end this article by quoting Bazargan from an interview that he gave to Italian journalist Oriana Fallaci: "Then think of the deplorable state in which the army, police and security forces find themselves, all of them indispensable bodies for establishing law and order . . . . The revolutionary committees and the revolutionary guards cannot perform their duties because they're not trained, they quarrel among themselves and they refuse to take orders from us . . . . I say that these are things that would paralyze any government."●

CONGRESSMAN CLAUDE PEPPER—A GREAT LEADER AND AMERICAN TURNS 80

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BIAGGI. Mr. Speaker, yesterday a number of my colleagues observed the birthday of one of our most illustrious and beloved colleagues, Congressman Claude Pepper of Florida, who is now 80 years young.

Claude Pepper is a multigenerational legend in Congress. He began his service during the time of Franklin Roosevelt and four decades later continues to be one of the most active and important Members of Congress.

My association with Claude Pepper has been an especially meaningful one, encompassing 12 years. For the past 5, we have worked extremely close together as original members of the House Select Committee on Aging. Claude Pepper has been the only chairman our committee has ever had. In my congressional career rarely have I seen a Member commit himself as completely and effectively to an issue as Claude Pepper has to improving the quality of lives for America's senior citizens.

This commitment has been manifested through a number of landmark legislative accomplishments. Perhaps the most important one is the one Claude Pepper is the most proud of—the legislation ending mandatory retirement at age 65. What better proof is there than Claude Pepper at the age of 80—active, contributing on a daily basis in Congress, that mandatory retirement is wrong. It has been because of Claude Pepper's leadership that older Americans can be judged on their abilities not their age of employment.

To pay tribute to Claude Pepper is to pay tribute to a friend, and for many in this Congress, a true inspiration. His vast experiences in public life make him one of the most invaluable Members in the Congress. Yet he is also a man with a vision for the future—a future when the number of other young people like himself will increase rapidly. Claude Pepper worked closely with me in developing a special Aging Committee report on the "Future Directions for Aging Policy—A Human Service Model." The chairman was especially interested in the year 2000 and how well our Nation will treat its older citizens. I expect that Claude Pepper will be here to see the year 2000 which will also happen to be his 100th birthday.

Claude has our affections on his 80th birthday and our respect always.

I wish him continued good health and productivity.●

HOLY REDEEMER PARISH TO CELEBRATE ITS 40TH ANNIVERSARY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. KILDEE. Mr. Speaker, on September 14, Holy Redeemer Catholic Church of Burton, Mich., will celebrate its 40th anniversary. The anniversary Mass will be celebrated by the Most Reverend Kenneth J. Povish, Bishop of Lansing, and by

Holy Redeemer's pastor since 1970, the Reverend Sylvester L. Fedewa.

Holy Redeemer received diocesan approval on September 10, 1940, and its first pastor was the Reverend Louis P. Gauthier. The first two Masses were celebrated in a theater. Father Gauthier's residence and the old Bendle School also were utilized for Mass in those early days. Ground was broken on July 25, 1941, for the new church, and Mass already was being celebrated there by Christmas Day.

Father Gauthier was tirelessly dedicated to the spiritual welfare of his parishioners, and under his leadership as pastor from 1940 to 1957 he built not only the church but also the parish school and convent, both of which were completed in 1946. Like most of the rest of the parish buildings, the convent was built mostly with parish labor, with Father Gauthier recruiting parishioners laid off from the General Motors plants. The elementary school opened with teachers provided by the Sisters of the Holy Cross, with more grades being added as the school and parish grew until Holy Redeemer graduated its first high school class in 1956. The high school was discontinued in 1970 when the Luke M. Powers Educational Center was opened.

When Father Gauthier passed away in 1957 he already had begun construction of the present church building. It was completed under the pastorship of the Reverend John A. Blasko, with the first Mass being celebrated there in November 1959. Later, a new rectory and convent also were built, both being completed by 1968.

In his letter of congratulations to the parish on the occasion of its 40th anniversary, Bishop Povish noted the many years of community service provided by the parish since its founding and its confident future. Under Father Fedewa's pastorship, faith and deep social concern continue to grow in this area of Genesee County.●

ANNA RAMIREZ

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. ANDERSON of California. Mr. Speaker, as you and the rest of our colleagues know, turbulence in congressional offices is high. We accept that, as to get bright young men and women at the salaries we pay them, we cannot expect to keep them forever. But, once in a while we are blessed with a degree of retention and longevity of a key staff person that provides us with the continuity and stability necessary for an efficient office. But, at the same time, we all recognize that some day that person will leave—and that has just happened to me. The person I am speaking of is the lady who has been my strong right arm, my confidant and adviser on many matters, and my district representative, Anna Ramirez.

Anna M. Ramirez started working with me during my first campaign for Congress back in 1968. She has been with me ever since, first as a volunteer on my campaign staff, and then on my district office staff. From observing her early work in the office, her talent, dedication to her duties, and willingness to work long hours rapidly became evident. As a result, I made her my office manager in 1971 and my district representative in 1975, a position she has occupied ever since. And, I might add, occupied it in a most distinguished manner. During this period, in addition to her office duties, she attended night school and earned her undergraduate degree.

Anna has been able to establish a truly magnificent rapport with all elements of the widely divergent ethnic communities that I represent. She treated everyone who came to my office seeking assistance or advice with an even hand—be they black or white, Hispanic or Yugoslav surnamed, deckhand on a fishing vessel or president of a bank, they were all made to feel equally at home and received the same courteous treatment.

But Anna did not limit her activities to my own office. She was widely recognized, not only throughout the local South Bay area, but throughout the State for her talent and ability. I would like to share with you just a few—and I emphasize a few—of her many appointments, designations, and other activities, and some of the accolades she has received. And, before I forget, as a part of or maybe I should say as an adjunct to her public life, Anna has been mother of four. And her offspring reflect the same interest in the community as do their mother and father, her husband, Arnold.

In 1973, she was named "The Hispanic Woman of the Year." In this same year she was presented with a certificate of commendation by the Los Angeles County Board of Supervisors for "Dedicated Service to the Affairs of the Community." This award was followed in 1974 by her receiving "The Golden Tortilla Award" for outstanding services to the Spanish-speaking community. In 1975, the mayor and the city council of Los Angeles presented her with a certificate of appreciation for "Outstanding Citizenship Activities Enhancing Community Betterment." And as a logical follow-on to this award, she was appointed by the Governor a commissioner on the California Fair Employment Practices Commission, a position which she still holds.

She has been a delegate to two White House Conferences, in 1968 the White House Conference on the Needs of Spanish Speaking Persons, and in 1970 the White House Conference on Children. She has represented her country internationally as a delegate to the United States-Mexico Sister Cities International in 1974.

Always active politically, in 1973, she was elected the first chairperson of the California State Democratic Chicano Caucus. In 1979 she was elected secretary of the State Democratic Party, and that year was also appointed cochair for Delegate Selection to the Affirmative Action Committee of the California Democratic Party. She is currently the State president of the Chicano Political Caucus.

One of the most valuable services she has performed while in my office has been that of training new staff persons, not only in the normal office routine, but more particularly in how to deal with constituents and how to recognize the various problems that are bothering people when they come to the office. For her, there was no such thing as a trivial problem—if it was a problem to the constituent, then it was a real problem that we had to solve. And I think it is noteworthy that every one of the individuals she trained has left my office and moved on to a position of greater responsibility and higher remuneration.

I know that having heard of all of her accomplishments, you may wonder why I am letting her go. As a simple matter of fact, I have no choice. Anna and her husband recently invested in a new business venture, and this is proving so successful that they are having to devote more and more time to it. And Anna Ramirez is not a person who will do anything halfway. She has recognized that she cannot give my office her full support and at the same time run her business as she wants to run it. Much to my regret, the business has won out.

I know I speak for myself and for many thousands in the South Bay area whom she has helped, either directly or indirectly, when I say that she will be sorely missed from her present position. And, I am equally sure, that I can speak for those same individuals as well as for my wife Lee and myself in wishing Anna and her husband, Arnold, her son Tom, and her two daughters, Barbara and Judith, the very best in the future. While you may be gone, Anna, to use the old cliche, you certainly will not be forgotten. And in a newer vein, "Baby, you've got a long way to go."●

A TRIBUTE TO THE HARRISON LIBRARY

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. OTTINGER. Mr. Speaker, for over 75 years, the Harrison Public Library has served both Harrison and its surrounding communities. It has been a meeting place for both young and old, and its outreach programs have touched the physically and mentally handicapped.

On October 13, along with several of my esteemed colleagues from Westchester, I will have the distinct honor of joining with my friends at the library to celebrate their diamond jubilee.

The library has reason to celebrate as does its dedicated staff and a town committed to the advancement of learning.

However, the Harrison Library refuses to stand still and look back on its accomplishments. Rather, it is committed to continued growth, learning, and scholarship. And, if its past is any indication of its future, the next 75 years will be even more fruitful for the library than its first 75.

The following statement indicates that, on its diamond jubilee, the Harrison Library has achieved an extraordinary level of excellence.

HARRISON PUBLIC LIBRARY AND WEST HARRISON BRANCH 1905-1980

The Library today known as the Harrison Public Library has given proud service to Harrison for seventy-five years. Founded December 15, 1905 as the Harrison Free Reading Room, it became the Harrison Free Library by Charter granted by the Regents of the University of the State of New York on September 25, 1913, and its status changed again on September 23, 1955 when it was chartered as the Harrison Public Library. Finally, on December 15, 1967, the Absolute Charter was granted by the Regents, and in that year too, the Silver Lake Free Library was incorporated with the Harrison Public Library and together proclaimed the Harrison Public Library and West Harrison Branch.

Known for their outstanding public relations and service to the community, the Main Library and Branch were awarded the B'Nai B'rith Brotherhood Award in 1974; in 1978, the Westchester County Recreation and Park Society honored the Children's Librarians of the Harrison Public Library with a Public Service Award for outstanding programming in the community in cooperation with the Harrison Recreation Department. Although these were very visible rewards, the dedicated staffs of both libraries perform their duties day in and day out without thought of such recognition. They love their work for the people they serve and they love Harrison. It is the aim of every library employee to make their library users feel this is their library, and indeed many people in the community make it their "second home."

The Main and Branch libraries are proud of their fresh-looking clean collections, for being known for the new and timely book and for their current Italian and Japanese bookstock. They are known, too, for their programming, particularly for the children, while for the adults there are monthly art exhibits and displays, the well-known third Thursday of the month travel programs (now going into their eighth year), and for their ability to reach out into the community to serve the schools, the senior citizens and the handicapped.

In the last decade the Main Library has doubled its circulation, while in the Branch it has quadrupled. In 1976, 1977 and 1978, the Harrison Libraries were seventh in circulation in Westchester out of 38 libraries. In 1979, they were sixth, a success story of quality service and public relations.

One of the main functions of the Harrison libraries is to bring people together. There are fine opportunities for a cross-section of the community to meet on common ground (other than in the supermarket) to discover the riches of the library and to share them with each other. There is constant awareness of the many interesting and knowledgeable people who carry library cards, and whose lives are enhanced by meeting one another, for these are the opinion leaders of the community.●

CANCER—WHY DOES THE UNITED STATES BLOCK THIS NEW TREATMENT PROGRAM?

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. McDONALD. Mr. Speaker, I have placed several items—see pages 23083, August 25, 1980; 23091, August 25, 1980; 22563, August 21, 1980; and 28610, September 9, 1977—in the Congressional Record in support of my bill, H.R. 7963, to assist Dr. Lawrence P. Burton in bringing his cancer treatment back to the United States for a fair hearing. In support of what some of us are doing the editorial page editor of The Day of New London, Conn., wrote a very fine editorial on Dr. Burton and what we are trying to accomplish. It is included in the Record for the edification of my colleagues at this point:

Cancer—Why Does U.S. Block This New Treatment Program?

Cancer wears no political label. It afflicts people of all philosophies, all age and ethnic groups in every economic circumstance and heedless of geography.

Today's society has no greater medical enigma than the control of this disease. Yet, although cancer is a medical issue, it calls for far-sighted political decisions. The federal government has an obligation to encourage cancer research, both pure and applied. It also is involved because some of its own regulations actually impede research.

A number of congressmen are actively exploring the needs and attempting to find solutions, among them Rep. Christopher J. Dodd of Connecticut.

Rep. Larry McDonald, a physician who represents the district around Marietta, Ga., recently introduced a potentially valuable bill, H.R. 7936. It is direct and to the point: "That during the five-year period beginning on the date of enactment of this act the blood fractions used in the immuno-augmentation therapy by the Immunology Researching Centre, Limited, of Freeport, Grand Bahama Island, Bahamas, shall not be considered to be a drug for purposes of the Federal Food, Drug and Cosmetic Act."

Many have heard of the center's work either from those Americans who have undergone treatment there or from the CBS-TV program "60 Minutes," which described it last May.

Its director is Dr. Lawrence Burton, a researcher who works with two physicians at the center. Burton's work is conceded to be in the experimental stages but it is based on 20 years of mouse cancer studies and in the recent past has employed its findings in treating human victims.

One of Dr. Burton's few supporters in the U.S. medical community, Dr. John Thurston Beaty, an internist who practices in Cos Cob, describes the program thusly: "He (Burton) does not consider it a 'cure', but a significant help to the natural cancer defense system we all have. Therefore, if the disease is not too far advanced and if previous treatment has not too severely impaired the patient's own immune mechanism, in many cases (I would estimate about one-half), this treatment can bring the disease under control. So far, it has not been possible to predict with certainty which patients will do well, but certain types of malignancy appear to respond better than others."

The process involves, in Beaty's words, "receiving numerous small, carefully calculated injections of non-toxic extracts of human blood, in the attempt to maximize each patient's own immune defense systems." The extracts come from fractionating (breaking down) small quantities of the patient's own blood and reintroducing the appropriate ones into his system. Burton has identified three separate fractions which can be used for this purpose. Follow-up treatment, much of which can be done by the patient at his own home after discharge from the clinic, examination and treatment are essential.

Neither narcotics nor chemotherapy are involved. Yet, under the present interpretation of the Federal Food, Drug and Cosmetic Act, this treatment is not permitted in the United States. There has been strong and organized physician resistance to it here. Ironically, however, Burton began his work in animal experimentation on Long Island before being forced to go to the Bahamas to treat patients.

The treatments are not inexpensive. Generally, they are not covered by government or private health insurance. But they do represent an avenue of hope for those with diagnosed cancer.

They also represent a forward step in the understanding of how the body's cells interact. A growing number of medical researchers are looking to development of cell research to improve chances of successfully dealing with cancer.

Federal Food and Drug laws are necessary to prevent quacks and magic potions. And certainly it is inhuman and downright cruel to offer cancer patients false hope. Dr. Burton's work does not fit into these categories by any stretch of the imagination.

People who have cancer ought to have some degree of freedom of choice as to treatment. But even if the patient's physician agrees with the Burton approach, it cannot be used in the U.S. The Burton program, which is constantly being refined and improved as knowledge expands, cannot be characterized as drug-related, and this raises the question of why the Federal Food, Drug and Cosmetics Act should deny Americans its benefits.

Congressman McDonald's bill offers a way to allow Dr. Burton to return to his homeland, the better to share what he has learned in years of successful research and treatment.●

AUSTIN HIGH SCHOOL—A PROUD 100 YEARS

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. PICKLE. Mr. Speaker, the city of Austin, Tex., is a center of education. Austin, of course, is the home of the University of Texas, along with other colleges and universities. The city has a total college student enrollment of over 50,000.

But Austin is also known for its excellent public school system, which has its own distinguished history. This Friday, that history will come alive at an event kicking off the centennial year of Austin High School, the city's first institution at the secondary level.

As the capital city of Texas, Austin's school system was the first in the State which operated with public funds, back in 1876. High school classes were conducted from the outset, but the first local school board was elected in 1880, and high school classes under local control opened for business September 12, 1881, with 48 students. It is this occurrence we are celebrating to kick off the centennial year of Austin High this Friday.

For decades, Austin High School was Austin's only secondary institution. The name Austin High School identified the school until 1953, when the school board adopted the name Stephen F. Austin High School after the city's namesake and first Texas settler. By contrast, students are attending classes in nine high schools in 1980.

Austin High is prominent not only because of age, but because of its tradition of academic excellence and the caliber and prominence of its graduates. Some 28,000 people have graduated from Austin High School. The sons and daughters of Governors and other State officials have sat side by side with the children of old Austin families, along with newcomers to our city. Austin High has produced thousands of leaders who have become prominent in their own right.

But Austin High is more than just a tradition. This Friday's assembly kicking off several centennial events is more than a study in nostalgia. The continued flourishing of Austin High is a real example of democracy at its finest. One of the tenets of our democracy is our strong public school system, providing education to people of all races, backgrounds, and social strata. The public school system has given young people the opportunities to excel and find their own places in society.

Across the decades and throughout the challenges, Austin High School has stood as a bedrock of public education, upholding the concept which began as a revolutionary byproduct of our State and country, but which is now one of our most cherished institutions.

We salute the students, faculty, and parents of Austin High School, as well as the thousands of graduates whose lives were enriched by the education received at this institution, which will soon begin its second hundred years of service to Texas capital city.●

A NATIONAL MATERIALS POLICY

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. RITTER. Mr. Speaker, last December the House passed H.R. 2743, the National Materials Policy Research and Demonstration Act, by a margin of 398 to 8. This wide margin indicates, in my view, the great importance placed on this legislation by the Members of this body. And rightly so, for there are few areas of greater importance than assuring that the United States have an adequate supply of certáin vital materials such as iron, cobalt, nickel, tin, steel, tungsten, and numerous others. This legislation would help assure a future supply of imported materials vital to American industry. Currently, H.R. 2743 is pending in the Senate Energy Committee and floor action is expected later this year.

Recently, I spoke with Mr. E. F. Andrews, who is the vice president of materials and services with the Allegheny Ludlum Industries, Inc., and a recognized authority in materials policy. I would like to share with my colleagues the text of an address Mr. Andrews gave before the American Society of Metals in Washington on September 4, 1980.

Statement of Mr. E. F. Andrews follows:

A NATIONAL MATERIALS POLICY

I have devoted most of the last 30 years working in and being concerned about the materials supply problems of my company and my country. For many years I have been calling for a national materials policy and a higher profile on this general subject. I believe it is finally beginning to move to the top of the national agenda, and I am very pleased to have it do so. In the past decade, we have gone through the National Materials Policy Commission, National Commission on Supplies and Shortages, and now, the interagency study of the materials problem.

I recognize that there are some authorities who are concerned that we may be consuming basic resources of this world at a faster rate than we should. I do not wish to get into that argument; however, I am one who believes that the world is not really running out of raw materials. It has been said that the first pound of copper ever discovered in this world is probably still here somewhere. Of course, all and everything is finite. If somehow or other, we consume or destroy until there is no place to stand on this planet, then I guess we could say the raw materials are gone. But I do not believe that is within our time frame of thinking. I do not anticipate that we are likely to encounter any serious natural constraints on the existence of raw material, at least in the next 25 to 50 years and possibly 25 decades. In the case of those raw materials that may run out, if there are any, we will merely let the system work as we reach deeper into the bowels of the earth for less yielding ores. Costs will rise. As the cost to extract these materials rises, the price to the consumer will rise. As the price rises, consumers will be forced to design away; and by the time the supply is exhausted, the need for the product will be gone also. It really is a self-correcting system, if we will just let it alone and let it happen.

Let me say further here that I am fully aware that research and technological breakthroughs will also affect the future. Think of what frozen foods did to cut down the need for tin cans; what satellite communications did to cut down the need for copper wire. We could look to the ocean bed or to the moon's surface to bail us out of the long-term and mid-term needs but to count or plan on those things would be, I think, too risky. As I have said, I really do not think any lack of existence of material will constrain us in the immediate future. The problem will be the limits we choose to put on ourselves, our imagination, our will, and our incentives to succeed; the priorities we will choose in our pursuit of a better life for all the people; and our willingness to recognize, coordinate, and manage the materials problem that we will face.

From the beginning of this nation 200 years ago, we thought we were absolutely self-contained. We had all the iron, coal, water, cotton, timber, and tobacco we could use—who could ask for anything more? For the first 150 years this was pretty much true, but then, our consumption began to rise at a terrific rate, and the sophistication of that consumption began to change. Whereas we still had iron, coal, cotton, timber, and water, we began to find that to make things we required in this new, modern, sophisticated life, we needed chromium, cobalt, nickel, tin, and tungsten. While I do not believe that the world is running out of these materials, God somehow or another did not see fit to spread them around very well. The United States is virtually import dependent for a long list of those items, as shown in the attached Exhibit 1.

Within the past 25 or so years, the countries that do contain these more sophisticated minerals and metals have changed due to a process known as decolonization. Whereas heretofore we went to Belgium to get cobalt from the Belgium-Congo, we now go to Zaire and deal with a third world country that does indeed have its own nationalism and its own priorities, thus changing the rules of the game.

On those materials that are indigenous to the United States, we began placing on ourselves a set of priorities that deeply affected the availability and use of these materials, such as our environmental and safety regulations. It is because of these changing patterns, that I have been calling for a national materials policy.

Chromium presents a good example of why such a policy is needed. The United States has virtually no chromium indigenous to this country. But at the same time, we were in an accelerating, high level of consumption, we passed a group of environmental laws that virtually mandated an additional increase in the consumption of chrome to make the clean air and clean stream equipment and converters on our automobiles. After we had mandated this increase in the consumption of chrome, we then unilaterally, in another part of government, placed an embargo on the importation of chromium from what was then our largest supplier, Rhodesia. At the same time, we applied stricter environmental enforcement on the antiquated ferrochrome industry, reducing its productive capabilities. Also at the same time, we allowed unlimited export of stainless steel scrap, each ton of which contained 400 pounds of chrome. Truly, a good example of the need for a coordinated materials policy.

That policy would have to be a two-part policy, one for those things we have, and one for those things we do not have. For those things which are indigenous to the United States, we have several avenues open to us when problems develop. We can change the tax policy to stimulate exploration, control the use, free-up the land use, give temporary environmental relief, subsidize, nationalize, impose export controls—many avenues are open to us on those items over which we have control of our own supply and are self-sufficient in that supply, such as molybdenum. However, virtually none of these will work on items over which we do not have control of the supply, such as chromium, cobalt, platinum, manganese, etc. This is the area about which I am primarily concerned.

One might ask—what is important about chromium or cobalt? I can do without trim on my automobile or my refrigerator. Well, in today's technology without chromium and cobalt, we could not build a jet engine, build an automobile, run a train, build an oil refinery, or build a nuclear or conventional power station. We could not process food under present laws. We would have to repeal all of our clean air and clean stream laws. We would have to repeal our sanitary hospital codes. We could not build a computer, cutting tool, mine tool, magnet, or process crude oil, just to mention a few things. Chrome is required in order to carry on our present standard of living under the technology we have. In fact, the National Research Council, in its 18-month study, ended with a statement by Dr. Parker, of the University of California at Berkeley, that the United States is strategically far more vulnerable to a long-term chromium embargo than to an embargo of any other natural resource, including petroleum. In that report, Dr. Parker and his colleagues say that preparing the United States to overcome a chromium embargo will take a minimum of 5 and possibly up to 15 years.

Is there any threat to the supply of these very critical and strategic materials of which we have virtually no indigenous supply? I believe there is. We are beginning to see what is called resource diplomacy. We have seen cartels formed in the oil business, and I truly believe that there are several other commodities potentially "cartelable." Look at the southern Africa area and the amount of the world's reserves that are in that part of the world, from Shaba Province in Zaire down through South Africa. I like to call it the Persian Gulf of metals. I have heard others refer to it in the same way. We have already seen an invasion of the Shaba Province threatening the cobalt supply from that particular part of the world. There are those in the United Nations and in this country who would extend the economic sanctions to the country of South Africa. If that part of the world fell into the hands of unfriendly nations, either by military force or by decision on the part of the Southern Africans to join in a cartel with the Soviet Union, for example, the ability to deny us access would be devastating.

Exhibit 2 shows you the percentage of the world's reserves that would be controlled by such a cartel, if it should come about.

A recent study from Germany lists chromium, manganese, cobalt, platinum, and others as being in high risk, politically unstable parts of the world and indicates that they are beginning to be highly concerned about it. There has been a growing presence of the Soviet Union in the role of a buyer in that part of the world. The world is beginning to wonder if Russia is as self-sufficient in these metals as we have been led to believe. If so, why are they buying—to stockpile or because their own reserves are less viable than we have known them to be in the past?

I believe that ideological differences and political change will affect the availability of critical raw materials to us in the future far more than any lack of existence of such materials. For this reason, I have opposed economic sanctions as an instrumentality of political change. Embargoes have virtually a perfect record of failure in bringing that change. Fidel Castro is still in Cuba. Embargoes have hurt the people they were intended to help. They usually have hurt the imposer. They usually are violated by everyone in the world, except the United States. Probably most important, they are hypocritical. We said don't buy chrome from the Rhodesians because they violated human rights; buy it from the only two alternative sources, Russia and South Africa. It seems to me that selective morality is, per se, hypocrisy and, therefore, beneath a great nation like the United States.

We should be looking toward a coordinated, nationwide materials policy that would somehow encompass research, substitution, recycling, conservation, new methods of processing low grade ores, a review of our data base, a review of our duty and import laws, a review of our export laws, and a review of our antitrust laws. It should cover a re-study of our tax policy and our depletion policy. It should somehow examine the problems of the multinational corporation in the third world. How do we go into those countries to help them with the capital, technology and skills that we have and yet not exploit them but also not have our own assets confiscated when we get there? We have to reexamine the problem of sending an American business into a world living by a different code of ethics than our own. We should tell the world that, just because we do business with a country, it does not in any way imply that we embrace or condemn their internal policies.

Finally, for absolutely essential commodities with high import dependency from politically unstable parts of the world, the final, and probably only protection would be a minimal economic stockpile.

I believe the United States must move quickly and wisely or be shut out of critical materials resources vital to our economy, indeed to our existence. It is true that the trade-off among social, political, and economic considerations sometimes will be agonizing; but, if we are to survive as a competitive nation in the world marketplace and to remain secure, then I think government, business, consumers, and labor must join hands and realistically face this worldwide problem and aggressively seek answers to it. The rules, the policies, and the thinking that served us well when we had everything we needed will not serve us in this changing world, a world in which we must import from and depend upon other nations for our vital needs.

EXHIBIT 1.—PERCENTAGE OF UNITED STATES MINERAL REQUIREMENTS IMPORTED IN 1978

Commodity	Percent
1. Columbium	100
2. Mica (sheet)	100
3. Strontium	100
4. Tin	100
5. Rutile	100
6. Chromite	100
7. Manganese	99
8. Cobalt	98
9. Tantalum	95
10. Antimony	94
11. Bauxite	91
12. Nickel	90
13. Asbestos	86
14. Aluminium	85
15. Fluorine	82
16. Bismuth	80
17. Platinum group metals	80
18. Mercury	73
19. Zinc	64
20. Tellurium	59
21. Seienium	58
22. Tungsten	54
23. Beryllium	51
24. Cadmium	50
25. Potassium	49
26. Gold	45
27. Gypsum	39
28. Vanadium	36
29. Iron ore	35

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THE ROYAL ULSTER CONSTABULARY AND U.S. ARMS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. BIAGGI. Mr. Speaker, it was just over 1 year ago when the Department of State announced that they had invoked an indefinite suspension of all U.S. arms shipments to the Royal Ulster Constabulary (R.U.C.), the main police force in Northern Ireland. This decision grew out of an amendment which I sponsored to the Department of State fiscal year 1980 appropriations bill seeking a similar ban.

My amendment was prompted by a decision of the State Department's Office of Munitions Control to approve the sale of some 3,500 U.S. weapons to the R.U.C. This despite the fact that the R.U.C. had been cited on several occasions by leading international organizations such as Amnesty International and the European Commission and Court of Human Rights for violations of human rights against prisoners and prison suspects. Section 502(b) of the Foreign Assistance Act of 1961 is very explicit against selling U.S. arms to any nation or organization with a proven record of human rights violations.

Apparently the Department of State concurred with the sentiments of the ad hoc Congressional Committee for Irish Affairs, which supported my amendment. Since the suspension took effect there have been a number of efforts to lift it but it has been reaffirmed at the highest levels of our Government including President Carter who as recently as December of 1979 refused to lift the ban while the matter was under review.

Throughout this year, we have continued to hear reports of R.U.C. brutality and disregard for human rights. Perhaps one of the most graphic examples presented to us came in the form of a letter from Fathers Denis Faul and Raymond Murray, two highly respected Northern Ireland priests who have done extensive human rights works with the Association for Legal Justice. I have had the distinct pleasure of meeting these two fine priests while traveling in Northern Ireland. They have presented a case in the form of a letter to the ad hoc committee and the Irish National Caucus. I wish to insert the text of the letter for the consideration of my colleagues.

It is vital that all violence in Northern Ireland whether carried out by civilian or official elements be ended if there is to be any real likelihood for peace. I am somewhat discouraged by the recent sharp reduction in activity aimed at a political solution.

It is this type of political vacuum that breeds violence. Important steps were being taken earlier this year by both the British and Irish Governments. The need for this type of activity is as important today as ever and I urge both Governments and all political elements to rekindle the discussions toward a lasting peace solution.

The letter from Fathers Denis Faul and Raymond Murray follows:

IRISH NATIONAL CAUCUS, INC.,
July 7, 1980.

From: Fr. Denis Faul, Dungannon, and Fr. Raymond Murray, Armagh

DEAR FRIENDS: On Wednesday night, July 23, 1980, at about 10:15 p.m., the RUC shot dead a 16-year-old Catholic boy, Michael McCartan in the Ormeau Road district of Belfast where there is a small Catholic enclave who have suffered heavily from sectarian assassinations.

There has been almost no comment on this case outside of Belfast; in the South of Ireland it rated hardly a mention; in England a line or two. That is why we appeal to you who have been so helpful to the Catholics of N. Ireland in the exposure of torture in RUC interrogation centres, biassed Diplock courts and ill-treatment of prisoners in the H Blocks of Long Kesh and in Armagh.

The Catholics of N. Ireland have not got an effective voice to expose systematically and continuously the daily violations of their human rights contrary to law. Most of the spectators outside of the six-county area are preoccupied with placating the British and their Unionist allies and any attempt to expose the non-stop ill-treatment of the Catholics is branded as "aiding and abetting the IRA."

We appeal to you because we know that you are against violence, both the violence of the British and the IRA and that you are working for human rights and the peaceful unification of Ireland. We appreciated your help against Castlereagh and your interest in the case of The Birmingham Six. We know that you will work for the individual case. Please join with our friends in France and Germany to defend the Catholic youth from this latest peril.

Michael McCartan was alleged to have been one of a group of youths painting slogans in a district that was completely quiet on the night in question. As the local representative said: "painting slogans is not a capital crime." From the age and stature of 16-year olds it was obvious that they were not carrying guns.

Why did the RUC shoot him? It seems clear that the younger elements in the RUC are being allowed to take a paramilitary approach to the Catholic districts, inspired by the speeches of ranting Unionist leaders and encouraged by the recent release of RUC members convicted of kidnapping, bombing and shooting while off duty. No RUC man has been jailed since 1968 for killing or brutality while on duty.

Please ensure that the RUC do not obtain guns from the USA to shoot down Catholics. We know that you are opposed to illegal groups obtaining guns from the USA and Canada for activities in Ireland. Our people who have no effective voice in Ireland need the unwearying efforts of genuine Irishmen of Christian compassion in the USA who will prevent innocents being killed, tortured and deprived of jobs, houses and basic human rights in their own land.●

H.R. 7824

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. IRELAND. Mr. Speaker, during the past few weeks, I have received communications, both written and oral, from farmworkers' advocate organizations claiming that any amendment, however small, to the Farm Labor Contractor Registration Act would gut the act and leave farmworkers exposed to all manner of abuse.

I am intrigued that the usual examples of abuses suffered by farmworkers are concerned with failure to keep proper records and failure to pay at least the Federal minimum wage. In nearly every such instance such failures are correctable under the Fair Labor Standards Act. Such abuses could, and should, be corrected by the Secretary of Labor even though the FLCRA did not exist.

H.R. 7824 of which I am a cosponsor does not gut the FLCRA. It merely amends the act to make it clear that this Congress wants the Secretary to seek out and correct abuses of migrant farmworkers and agricultural day-haul workers. It amends the act to make it clear that this Congress does not want the Secretary expending his limited resources to seek out every employer of agricultural labor and to force such employers to register as farm labor contractors.

Mr. Landgrebe, one of the sponsors of the 1974 amendments to the FLCRA, stated in this Chamber that:

> The bill under consideration will now, to an extent, cover "growers" or large "farmers" that deal with a crew leader. We are not attempting to make the growers joint employers with the crew leaders, nor are we attempting to make them responsible for the crew leader's unlawful actions. What we require of these growers is only that each grower observe a certificate of registration in the possession of a crew leader at the time the grower contracts with a crew leader.

Mr. Speaker, I join others in supporting the amendments to the Farm Labor Contractor Registration Act as set forth in title III of H.R. 7664, in H.R. 7824, and in H.R. 8026. I urge my colleagues to do likewise.●

OPEN RULE URGED ON CRIMINAL CODE REVISION

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 9, 1980

● Mr. WEISS. Mr. Speaker, 34 of my colleagues have joined me in urging the Rules Committee to report an open rule on H.R. 6915, the Criminal Code Revision Act of 1980. We have taken this step because we believe that all Members of the House should have the opportunity to fully consider each of this complex bill's provisions and to offer any amendments they feel are appropriate and necessary.

I recently received a copy of a letter, signed by 50 national organizations, that was sent to the Rules Committee also urging an open rule. I bring it to the attention of my colleagues and insert it into the RECORD:

AUGUST 4, 1980.

Hon. RICHARD BOLLING,
2365 Rayburn House Office Building,
Washington, D.C.

DEAR MR. BOLLING: H.R. 6915, the Criminal Code Revision Act of 1980, was approved by the House Judiciary Committee on July 2, 1980. It is now up to the Rules Committee to determine the amount of time to allot for House floor consideration of this legislation and the scope of amendments to be offered. We urge that the Committee recommend an open rule for debate of H.R. 6915.

Reform of the federal criminal laws has been an issue for many years. Prior to the Judiciary Committee vote of July 2, however, no comprehensive reform legislation has ever progressed far enough to be considered by the full House. The issues in H.R. 6915 are neither simple nor unimportant. They represent the Judiciary Committee's judgment about a fundamental question: which actions by citizens shall be prohibited and punished by the criminal law and which shall be legal? H.R. 6915 addresses the relationship among the federal, state, and local law enforcement authorities, and it creates new, untried federal sentencing procedures.

The impact of such legislation on our criminal justice system is likely to be vast, yet unpredictable. It is crucial that all members of Congress, not only those privileged to sit on the Judiciary Committee, have the opportunity to review the complex and intricate provisions of H.R. 6915 and be allowed to offer amendments which they believe to be necessary. In particular, many substantive reforms of the federal criminal laws have been considered at earlier times in this process, but are not now incorporated in H.R. 6915. The opportunity for the House to debate and approve these reforms must be insured.

We recognize that issues addressed by the Judiciary Committee and likely to be considered on the House floor are controversial and inspire strong emotional responses on all sides. Nevertheless, we believe that only through full and informed debate will Congress arrive at a revision of our criminal laws that is most responsive to the needs of our criminal justice system and protective of our basic constitutional freedoms.

The Subcommittee on Criminal Justice and the House Judiciary Committee invested great time and care in the drafting and the markup of H.R. 6915. If this legislation is to be scheduled for floor debate, the full House should be given the same chance, without the limitations of a closed or a modified open rule. We hope that you will take our concerns into account when you consider H.R. 6915 and recommend a rule that will allow open and in-depth debate.

Thank you.

Sincerely,

American Ethical Union, Washington office; American Friends Service Committee; American Friends Committee Third World Committee; Another Mother For Peace; Center for Constitutional Rights; Central Committee for Conscientious Objectors; Church of the Brethren, Washington office; Citizen Soldier; Citizens' Commission on Human Rights; Citizens' Energy Project; Coalition to End Grand Jury Abuse; Committee to Abolish Prison Slavery; Committee to Re-Involve Ex-Offenders; Fellowship of Reconciliation; Friends of the Earth; Fund for Open Information and Accountability, Inc.; Gray Panthers; Mennonite Central Committee, Peace Section, Washington office; Mobilization for Survival; National Alliance Against Racist and Political Repression; National Association of Social Workers; National Committee Against Repressive Legislation; National Conference of Black Lawyers; National Council on Crime and Delinquency; National Emergency Civil Liberties Committee; National Interreligious Task Force on Criminal Justice; National Lawyers Guild; National Legal Aid and Defender Association; National Ministries, American Baptist Churches in the U.S.A.; National Moratorium on Prison Construction; National Organization for Reform of Marijuana Laws; New American Movement; New Democratic Coalition; Pen American Center, Freedom to Write Committee; Peoples Alliance; Presbyterian Church in the U.S., Task Force on Criminal Justice; Prison Law Monitor; Socialist Party; Unitarian Universalist Association, Washington office; Unitarian Universalist Service Committee; United Church of Christ, Office for Church in Society; United Methodist Church, Department of Law, Justice, and Community Relations of the Board of Church and Society; United States Student Association; Universal Fellowship of Metropolitan Community Churches, Office of Institutional Ministry; United Electrical, Radio, and Machine Workers of America (UE); United Presbyterian Church, Washington office; Women Against Violence Against Women, National Coordinating Committee; Women in Communications, Inc.; Women Strike for Peace; Women's International League for Peace and Freedom, U.S. Section.●

HOUSE OF REPRESENTATIVES—*Wednesday, September 10, 1980*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We pray, O God, for the welfare of all Your people, trusting that You will guide and guard this Nation in the paths of peace. Make us conscious of Your promise that You are with us always, even to the end of the age, and thus support us with Your spirit that we will be faithful in the tasks given to us. Enable us to stand for the right, to speak the truth, and to act with compassion that we may be Your instruments in doing the work of justice and mercy. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2977. An act to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes;

H.R. 6511. An act to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building"; and

H.R. 6702. An act to amend section 603 of title 18, United States Code, with respect to certain political contributions.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 2977) entitled "An act to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. CRANSTON, Mr. WILLIAMS, Mr. NELSON, Mr. RIEGLE, Mr. HUMPHREY, Mr. HATCH, and Mr. SCHWEIKER to be the conferees on the part of the Senate.

The message also announced that the Senate further insist upon its amendment to the bill (H.R. 5192) entitled "An act to amend and extend the Higher Education Act of 1965, and for other purposes," disagreed to by the House of Representatives, request a further conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. PELL, Mr. WILLIAMS, Mr. RANDOLPH, Mr. KENNEDY, Mr. EAGLETON, Mr. STAFFORD, Mr. SCHWEIKER, and Mr. JAVITS to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendments of the House with an amendment to a bill of the Senate of the following title:

S. 1123. An act to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations for title II of such Act for fiscal year 1980.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1519. An act to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944.

THE LATE HONORABLE WILLIAM M. COLMER

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, last night America lost one of the finest gentleman and dedicated statesman I have ever known, Bill Colmer of Pascagoula, Miss.

Mr. Colmer represented the Fifth District of Mississippi in this august body that he loved and revered so much for 40 years. He served as chairman of the powerful Rules Committee his last 6 years in Congress.

Bill Colmer was a man who believed deeply in principle and his conservative philosophy of government. He was truly a humble man of the highest degree of integrity. To many of us here in this House he was a wonderful friend, enjoyable companion, confidant, even father figure.

He lived a full life of 90 years and I know he enjoyed the past 8 years at home with his family in Mississippi. My last visit with him some 3 weeks ago revealed, however, an undiminished interest in and concern for his country.

Our sympathy goes out to Mrs. Ruth Colmer, and all the family and many friends of Congressman Bill Colmer. We will truly miss him, Mr. Chairman, and the credit he brought to that title and this institution.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, I would like to be associated with the gentleman's remarks about Mr. Colmer and also say that this side of the aisle is saddened to learn about the passing of this wonderful man. Mr. Colmer has been a part of American history and everyone that knew him will miss this kind, capable, and thoughtful man.

He lived a full life and enjoyed every minute of it. I also express my sympathy to Ruth Colmer and his two sons.

I know the gentleman in the well will give the House the information on the funeral arrangements when they are finalized.

GENERAL LEAVE

Mr. LOTT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the life, character, and public service of the late Honorable William M. Colmer.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

GALLUP POLL RESPONDENTS WANT TAX RELIEF NOW

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, the respondents to a recent Gallup poll favor a tax cut this year by almost 2 to 1. The American people are calling for tax relief in 1980. As usual, the Carter administration is not listening.

Instead of tax relief now, James Earl Carter is offering more economic hot air for next year. We are told to be patient, after all, Carter's last four plans have resulted in double-digit inflation, outrageously high unemployment and a negative rate of productivity.

Meanwhile, the Carter surrogates in Congress are holding more than 1,000 tax relief measures hostage in the Ways and Means Committee, despite the largest peacetime increase in tax revenues during a single administration.

Mr. Speaker, the American people are tired of your promises. They want tax relief, and they want it now.

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

COST OF BUYING A HOME

(Mr. MARTIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTIN. Mr. Speaker, the cost of buying a home in the United States has more than doubled since Jimmy Carter has been President. We all know how nearly three decades of deficit spending following Keynesian theories of demand stimulation has devalued our currency like this shrunken toy money in my hand. But let us look at what it has done to housing.

When Jimmy Carter took office in January 1977 the FHA interest rate was at 8 percent and the average sales price of a new single family home was $51,300. The monthly payment to amortize the loan on the average new home based on a $50,000 mortgage for 30 years at 8 percent was $367.

Today, the FHA interest rate is 12 percent, down from 14 percent in April and up from 11½ percent in early August, and the latest average sales price of a new single family home, June, is $77,900. The monthly payment necessary to amortize the loan on the average new home based on a $75,000 mortgage for 30 years at 12 percent is $771.

While these figures are generous toward the record of the Carter administration, in that today's FHA interest rate is widely regarded as being too low and the September average sales price is undoubtedly higher than June's, the figures show an increase of at least 110 percent in the monthly payment necessary to purchase the average price new home in the approximately 3½ years since Jimmy Carter became President. These figures do not take into account the points charged to buyers and sellers in order to bring the FHA rate up to a market yield, except insofar as those requirements have further escalated the prevailing selling price.

A RESOLUTION OF INQUIRY INVOLVING BILLY CARTER

(Mr. McCLORY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, in a few moments we are going to discuss a resolution of inquiry involving perhaps one of the most bizarre incidents in our Nation's entire history, the incident involving Billy Carter. I hope that the Members, while not overplaying this subject will at the same time consider the debate on this resolution of inquiry responsibly.

Mr. Speaker, I feel confident the discussions here this morning will indicate that while we have received a great deal of material, there are notable omissions. Likewise, I think there may be some discussion as to the manner in which information which is of a classified nature is handled in the executive branch of Government.

Mr. Speaker, I do not want to predict what the House will do at this time, but I think we should understand that this investigation should not stop here. It will be pursued both by the Senate subcommittee, especially established for that purpose, and by the Department of Justice, or possibly by other further action initiated by the House, or by the Judiciary Committee.

A $1 TRILLION TAX BURDEN BY 1985

(Mrs. HOLT asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. HOLT. Mr. Speaker, the Carter administration is using slick and even fraudulent devices to portray the Reagan tax-cut proposals as irresponsible and causing a $285 billion revenue loss in 1985.

First, the number bears no resemblance to the actual program of tax reductions that will be phased in. Second, the number fails to include the revenues that would be recovered from the economic growth stimulated by the tax cuts. Administration witnesses before the House Budget Committee have been admitted this failure.

So, the administration is using a bogus estimate as a scare tactic, but I will tell you what is even scarier.

In the July report of OMB, you will find that the Carter administration plans to have the tax burden double to more than $1 trillion by 1985. They want to add $500 billion to the tax burden in just 5 years.

Well, we Republicans are saying a loud "no" to that trillion-dollar tax burden that Mr. Carter wants. Our first priority is to provide tax relief for the people and their businesses, which means more jobs and better living for American families.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

Mr. RODINO. Mr. Speaker, I call up a privileged resolution (H. Res. 745) of inquiry in the matter of Billy Carter, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 745

Resolved, That the President, to the extent possible, is directed to furnish to the House of Representatives, not later than seven days following the adoption of this resolution, full and complete information on the following:

(1) any record and date of all conversations and actions of the President with Billy Carter relating to the latter's role as an official or unofficial agent of the Government of Libya;

(2) whether the President and/or White House officials intervened in the investigation conducted by the Justice Department in regard to Billy Carter's role as an agent of the Government of Libya;

(3) any record or memorandum containing the President's instructions to Zbigniew Brzezinski, Lloyd N. Cutler, Philip J. Wise, Junior, and Susan Clough in regard to the policy to be followed in dealing with Billy Carter's activities for and relationship to the Government of Libya;

(4) whether the President and/or White House officials knew or assisted Billy Carter in his relationship with Charter Oil Company including any commissions and monetary advantages which he would receive therefrom;

(5) the exact date on which the President learned of the Justice Department's proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya;

(6) any record or memorandum containing the President's or White House official's instructions to State Department officers and employees in regard to Billy Carter's involvement with and relationship to the Government of Libya;

(7) any documents containing the State Department's findings and recommendations in regard to the foreign policy implications of Billy Carter's two visits to Libya, contained in the files of said Department or transferred to the White House;

(8) any documents relating to the Justice Department's findings and recommendations in regard to the investigations conducted by the Department into Billy Carter's activities as an unregistered agent of the Government of Libya, contained in the files of said Department;

(9) the authority under which the Justice Department accepted a "consent order" as opposed to pursuing civil or criminal proceedings against Billy Carter resulting from his role as an unregistered agent of the Government of Libya.

The information requested in this resolution shall be made available to each Member of the House of Representatives in accordance with the applicable rules of the House.

□ 1010

COMMITTEE AMENDMENTS

The SPEAKER. The Clerk will report the committee amendments.

The Clerk read as follows:

Committee amendments: Page 3, line 10, after the word "Department's" insert "investigation and".

Page 3, line 19, strike the word "containing" and insert "relating to".

Page 3, line 25, strike the words "findings and recommendations in regard to the investigations conducted by the Department" and insert "investigation, including findings and recommendations,".

Page 4, line 6, strike the words "the authority under which the Justice Department accepted a 'consent order' " and insert: "any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief, which resulted in a consent decree,".

Page 4, line 10, strike "civil or."

Page 4, line 13, strike "Libya." and insert "Libya;" at the end of the line.

Page 4, line 14, insert: (10) any record and the date of all conversations in the Billy Carter matter between the President and the Attorney General;

Page 4, line 17, insert: (11) any record and the date of all conversations regarding Billy Carter between the Department of Justice and White House officials between January 1979 and the date of adoption of this resolution;

(12) any record and the date of all meetings that took place between President Carter or members of the White House staff and representatives of the Libyan Govern-

ment arising out of Billy Carter's relationship with the Libyan Government; and

(13) any State Department cables and other communications or memorandums which were furnished to Billy Carter, and the name of the person or persons who furnished such cables, communications, or memorandums.

Page 5, line 6, strike:

The information requested in this resolution shall be made available to each Member of the House of Representatives in accordance with the applicable rules of the House.

And insert:

The information requested in this resolution shall be submitted to the House and disposed of in accordance with the Rules of the House.

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the committee amendments be considered en bloc, considered as read, and printed in the Record.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

Mr. McCLORY. Mr. Speaker, reserving the right to object, I merely make this reservation so that I may inquire as to the division of time with respect to the resolution itself. It was my understanding that there would be 15 minutes accorded to me and 15 minutes accorded to the ranking minority member of the House Foreign Affairs Committee with the other half hour to be controlled by the respective committee chairmen.

Mr. RODINO. Mr. Speaker, if the gentleman would yield, if the gentleman is interested in using 15 minutes, then I would yield to the gentleman for purposes of debate only, even as I will yield to the ranking minority member of the Foreign Affairs Committee such time as has been established, but only for purposes of debate. There are some other Members who are interested.

Mr. McCLORY. Other Members have asked me yield to them, so I would be consuming only a small part of the 15 minutes myself. I thank the gentleman.

It is my understanding that the time will be divided so that I will have 15 minutes for debate only, and the ranking minority member of the Foreign Affairs Committee will have 15 minutes.

Mr. RODINO. That is correct.

Mr. McCLORY. I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The committee amendments were agreed to.

CALL OF THE HOUSE

Mr. BAUMAN. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 535]

Abdnor
Addabbo
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashbrook
Atkinson
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Burgener
Burlison
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Gingrich
Ginn
Gonzalez
Goodling
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kostmayer
Lagomarsino
Latta
Leath, Tex.
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCormack
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Oakar
Oberstar
Obey
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Pickle
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
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Regula
Reuss
Rhodes
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Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Van Deerlin
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolff
Wolpe
Wyatt
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

☐ 1030

The SPEAKER pro tempore (Mr. Bolling). On this rollcall, 330 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

The SPEAKER pro tempore. The Chair recognizes the gentleman from New Jersey (Mr. Rodino), the chairman of the Committee on the Judiciary.

Mr. RODINO. Mr. Speaker, it is my intention to yield to Members whom I have already designated, the gentleman from Illinois (Mr. McClory), the ranking minority member on the Committee on the Judiciary, for 15 minutes, for purposes of debate only; the gentleman from Michigan (Mr. Broomfield), the ranking minority member on the Committee on Foreign Affairs, for 10 minutes, for purposes of debate only; the gentleman from Wisconsin (Mr. Zablocki), the chairman of the Committee on Foreign Affairs, for 2 minutes; and the gentleman from Massachusetts (Mr. Boland), chairman of the Permanent Select Committee on Intelligence, for 2 minutes.

Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in calling up House Resolution 745, we are discharging our responsibilities on the resolution of inquiry dealing with the matter of Billy Carter. It is important that the Members recognize the specific and limited legislative function which action on the resolution of inquiry entails. The resolution itself provides that—

> The President, to the extent possible, is directed to furnish to the House of Representatives * * * full and complete information * * * regarding the Billy Carter matter.

The resolution was introduced on July 22 and it included language directing the President to furnish to the House of Representatives, not later than 7 days following the adoption of the resolution, full and complete information on the following:

First. Presidential conversations with Billy Carter concerning his becoming an agent for the Government of Libya;

Second. The degree of White House involvement with Billy Carter in his activities as an agent of the Government of Libya;

Third. Any memorandums or instructions from the President to Mr. Cutler or Mr. Bzezinski or Ms. Clough concerning

Billy Carter's activity involving the Government of Libya;

Fourth. Whether the President or White House officials knew or assisted Billy Carter in his relationship with Charter Oil Co.;

Fifth. The date on which the President learned of the Justice Department's proposed prosecution of Billy Carter, and the date on which the President learned of the payment to Billy Carter by the Government of Libya;

Sixth. Any record or memorandum containing the President's or White House officials' instructions to State Department officers in regard to Billy Carter's involvement with the Government of Libya;

Seventh. Any documents concerning the State Department's findings and recommendations about Billy Carter's visits to Libya;

Eighth. Any documents relating to the Justice Department's findings and recommendations concerning Billy Carter's activities as an unregistered agent for the Government of Libya;

Ninth. The authority under which the Justice Department accepted a consent order concerning Billy Carter's role as an unregistered agent.

Prior to the Judiciary Committee's markup on the resolution, I wrote to the President, as did Chairman ZABLOCKI, requesting that he provide the committee, to the extent possible, with the information sought in the resolution of inquiry. We requested the information be provided prior to our markup date.

On July 25, I received a letter from Frank Moore, Assistant to the President for Congressional Liaison, acknowledging receipt of my letter concerning the resolution and indicating that we could expect a detailed response from the President shortly.

On July 28, 1980, the committee received a letter from Alan Parker, Assistant Attorney General, responding to points eight and nine of the resolution (matters within the purview of the Department of Justice) as they concerned the Department's investigation and handling of the case. In that letter, Mr. Parker indicated that the Department would make accessible for review by the Committee on Foreign Affairs and the Committee on the Judiciary, on July 29, three copies of all unclassified, classified and "third agency" materials that the Department had available concerning points eight and nine of the resolution, except for certain intelligence materials which were to be handled separately. Point nine of the resolution requested information about "the authority under which the Department accepted a consent order as opposed to pursuing a civil or criminal proceeding against Billy Carter." Mr. Parker's letter cites the Foreign Agent Registration Act, 22 U.S.C. 611, et seq., and specifically 22 U.S.C. 618(f) which provides for injunctive relief.

On July 29, the Justice Department made materials, in response to items eight and nine in the resolution of inquiry, available to members of the committee for their review under secure conditions in the rooms of the Judiciary Committee. The materials were submitted in four volumes and were reviewed by a number of members on July 29.

On July 29, the President wrote to the committee indicating—

> It is my desire that all relevant information be made available to the Congress and to the public in a timely and complete manner, and I assure you that the information requested will be produced as soon as it can be reasonably assembled and after appropriate arrangements can be made for the handling of classified materials . . . I shall, however, respond specifically to all the enumerated questions in my formal response to the committee.

The Foreign Affairs Committee met on July 29 to receive testimony from Congressmen BAUMAN, WALKER, and GREEN concerning the resolution of inquiry and marked up the resolution with two amendments. The Foreign Affairs amendments (which were also subsequently adopted by the Committee on the Judiciary) directed the President to provide information concerning any record of conversations of the Billy Carter matter between the President and the Attorney General and any record and date of conversations regarding the Billy Carter matter between the Department of Justice and White House officials between January 1979 and the present.

Prior to the markup in the Committee on the Judiciary, we received documents from the Justice Department concerning the Billy Carter matter. These materials were circulated to all members of the Committee on the Judiciary. On July 23, 1980, the committee received a letter from Assistant Attorney General Alan Parker, the Office of Legislative Affairs, which enclosed the following documents:

A copy of a cover letter from Alan Parker to Senator KENNEDY, chairman of the Senate Judiciary Committee, dated July 23, 1980, which forwarded copies of the following documents:

First. A complaint for injunctive relief in the case of the Attorney General of the United States against William A. (Billy) Carter III;

Second. A copy of the final judgment of mandatory and permanent injunction as to William A. (Billy) Carter III in the same caption matter;

Third. A stipulation and consent on the same caption matter; and

Fourth. A registration statement filed by William A. Carter with attachments and exhibits.

The committee also received a letter on July 29, 1980, from Eric L. Hirschhorn, Deputy Assistant Secretary for Export Administration, Department of Commerce, concerning material being submitted to the committee regarding the sale of Boeing 727 aircraft to Libya in 1978. That information was being provided subject to the confidentiality provisions of section 12c of the Export Administration Act.

The Department of Justice also supplied a chronology of events in the entire Billy Carter affair for review of the members prior to the markup, as well as the previously mentioned records.

The Judiciary Committee met to mark up the resolution on July 30, 1980, and after considerable discussion proceeded to mark up the resolution. The committee then amended the resolution in several respects. The committee amendments to the resolution are as follows:

First. Any record and the date of all conversations in the Billy Carter matter between the President and the Attorney General;

Second. Any record and the date of all conversations regarding Billy Carter between the Department of Justice and White House officials between January 1979 and the date of adoption of this resolution;

Third. The information requested in this resolution shall be submitted to the House and disposed of in accordance with the rules of the House;

Fourth. Any record and the date of all meetings that took place between President Carter or members of the White House staff and representatives of the Libyan Government arising out of Billy Carter's relationship with the Libyan Government;

Fifth. Any State Department cables and other communications or memorandums which were furnished to Billy Carter, and the name of the person or persons who furnished such cables, communications, or memorandums;

Sixth. Any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief, which resulted in a consent decree, as opposed to pursuing criminal proceedings against Billy Carter resulting from his role as an unregistered agent of the Government of Libya;

Seventh. Any documents relating to the Justice Department's investigation into Billy Carter's activities as an unregistered agent of the Government of Libya, contained in the files of said Department;

Eighth. The exact date on which the President learned of the Justice Department's investigation and proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya;

Ninth. Any documents relating to the State Department's findings and recommendations in regard to the foreign policy implications of Billy Carter's two visits to Libya, contained in the files of said Department or transferred to the White House.

During the committee's markup of the resolution on July 30, certain Members requested that the documents relating to items eight and nine, which had been made available on July 29 in rooms of the committee, be again provided for the review of any Members who wished to see them. The materials were again made available by the Justice Department on July 31, 1980, and all Members who requested to review these documents were permitted to do so.

On July 31, 1980, both the Committee on the Judiciary and the Committee on Foreign Affairs filed their reports with the House of Representatives on House Resolution 745. Supplemental views with further questions were added to the Judiciary Committee's report by Messrs. McCLORY and BUTLER.

Additionally, on July 31, 1980, I wrote to the President to inform him that "certain questions were raised, subsequent to the introduction of the resolution and prior to our markup, concerning matters not covered by the resolution. Those questions prompted members of the committee to amend the resolution to call for certain additional information." I enclosed a copy of the resolution, as amended, and a copy of the Judiciary Committee's report, so that he might be fully apprised of what information was being requested.

During the period between the filing of the report on the resolution and the submission of the documents by the President, I instructed my staff, in conjunction with the minority staff, to coordinate with the White House staff and the Justice Department and State Department. This was to facilitate matters in order to insure that the materials being provided would be as fully responsive as possible and that they would be in a format that could be easily utilized by the Members. In conjunction with Foreign Affairs Committee staff, the Judiciary Committee staff worked out arrangements whereby sensitive and classified material could be forwarded to the Committee on Intelligence for their safekeeping and so that the Intelligence Committee might, under its normal procedures, provide for secure access to the materials by members.

The Judiciary Committee staff met with members of the President's counsel staff in order to finalize the procedures by which the materials would be forthcoming to the committees. The White House staff provided us with the report of the President to the subcommittee of the Committee on the Judiciary of the U.S. Senate concerning the matter of Billy Carter's relationship with the Libyan Government as soon as it was available on August 4, 1980.

Pursuant to the discussions between the committee staff and the White House provided an entire volume of material specifically indexed to be responsive to the individual items in the resolution of inquiry. That volume is entitled "Statement of the President and Report of Counsel on H. Res. 745 to the Committee on Foreign Affairs and the Committee on the Judiciary, United States House of Representatives," dated August 18, 1980. The volume includes a transmittal letter, a statement by the President, certain documents and a tabbed index volume keyed to the sections of the resolution of inquiry. Additionally, the President also responded to Mr. McCLORY's supplemental views to the Judiciary Committee's report on the resolution.

It was agreed that the White House would provide 500 copies of the "Statement of the President and Report of Counsel" so that each Member would be assured of having his or her own complete copy. The statement was submitted on August 18, 1980. Chairman ZABLOCKI and I immediately circulated a dear colleague letter with the statement attached to all Members.

In order to insure that the Members received access to all of the material responsive to the resolution of inquiry, Chairman Zablocki, and myself, and the ranking minority members of the two committees, sent a dear colleague letter on August 20, informing the Members of the availability of other portions of the President's response which were made available under separate cover by the White House, the Justice Department and the State Department. Due to the sensitive nature of some of the documents, these materials were made available to all Members for their review under secure conditions in rooms 2170 and 2226 of the Rayburn House Office Building from 8 a.m., to 6 p.m., Thursday, August 21 through Wednesday, August 27.

Certain materials which were highly sensitive in nature were supplied to the House Intelligence Committee by the Executive. The Intelligence Committee prepared a summary of those materials, which is unclassified and which was made available on August 28.

Let me now turn my attention to the nature of the legislative vehicle involved here—the resolution of inquiry. Since 1932, the resolution of inquiry has been used 33 times. Motions to table resolutions of inquiry have carried in 25 of those instances. With the exception of two resolutions concerning school busing, and one concerning energy, no resolution of inquiry has been adopted by the House since December 1947. Our review of the precedents concerning resolutions of inquiry, going back to 1932, indicates that the standard procedure of the House has been that when there has been substantial compliance to the committee of jurisdiction of the terms of the resolution of inquiry, a motion to table will be agreed to.

The question now before the House is whether or not the President is in substantial compliance with the terms of House Resolution 745. The specific language of the resolution of inquiry is that "the President, to the extent possible, is directed to furnish to the House of Representatives, not later than 7 days following the adoption of the resolution," the information requested in the resolution. If, in the judgment of the Members, the totality of the President's response, which I have detailed, is in substantial compliance with the resolution of inquiry, then passing the resolution would be a fruitless gesture because the issue is moot.

I have reviewed the voluminous material supplied by the President, including that which was submitted by the Department of Justice, the Department of State and the statement of the President and report of counsel and it is my judgment that the President has substantially complied with the parameters of the resolution of inquiry by any reasonable interpretation of the word "substantial." After a review of the entirety of the materials made available to each Member of Congress by the executive branch concerning the resolution of inquiry, House Resolution 745, it is my judgment that the resolution is moot. Therefore, I shall, at the end of debate today, make a motion to table the resolution. I urge my colleagues to support that motion.

Mr. Speaker, I include in the RECORD a copy of all the correspondence to which I have referred in my statement:

COMMITTEE ON THE JUDICIARY,
Washington, D.C., July 23, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am writing to advise you that H. Res. 745, a copy of which I enclose, was introduced in the House of Representatives on July 23, 1980. This Resolution of Inquiry has been jointly referred to the Committee on the Judiciary and the Committee on Foreign Affairs.

In order to discharge its responsibilities, the Committee on the Judiciary must act on this Resolution of Inquiry within seven legislative days, beginning July 23, 1980. Accordingly, we request that you provide the Committee, to the extent possible, with the information sought in the accompanying Resolution of Inquiry, in addition to any relevant comments you may wish to make. The Committee must file its report on this resolution by Thursday, July 31 in accordance with the Rules of the House of Representatives and, therefore, we would appreciate your supplying this information by the aforementioned date.

Respectfully,

PETER W. RODINO, Jr.,
Chairman.

COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C., July 23, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am writing to request your comments on H. Res. 745, a resolution of inquiry which was introduced in the House on July 2, 1980 and referred jointly to the Committee on Foreign Affairs and the Committee on the Judiciary.

Enclosed are two copies of the resolution. H. Res. 745 directs the President to furnish the House of Representatives full and complete information regarding the role of Billy Carter with respect to the Government of Libya and certain related matters.

As you know, the committee must act on this resolution within 7 legislative days, beginning July 23, 1980. Therefore, I would appreciate receiving your comments no later than Monday, July 28.

With highest regards, I am

Respectfully,

CLEMENT J. ZABLOCKI,
Chairman.

THE WHITE HOUSE,
Washington, D.C., July 25, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The President asked me to acknowledge his receipt of your letter of July 23 forwarding a copy of House Resolution 745, a resolution of inquiry requesting information on the relationship between Billy Carter and the government of Libya and on any involvement by White House officials. The President has been apprised of the requirement that your Committee must act by Thursday, July 31.

The President appreciates your courtesy in bringing this Resolution to his attention. He has asked me to share your correspondence with his counselors for further consideration. You can expect a more detailed response shortly.

Sincerely,

FRANK MOORE,
Assistant to the President for Congressional Liaison.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 28, 1980.

Hon. PETER RODINO, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has asked me to respond to your letter of July 24 concerning H. Res. 745, the resolution of inquiry in the matter of Billy Carter. I will address points eight and nine of the resolution as they concern the Department's investigation and handling of the case.

Point eight of the resolution of inquiry requests any documents in the Justice Department's files relating to findings or recommendations in the Billy Carter investigation. As discussed today with the leadership of the Judiciary and Foreign Affairs Committees, we shall make accessible for your review at the House of Representatives on Tuesday morning, July 29, three copies of all copies of all unclassified, classified and "third agency" materials that we have been able to assemble, except for certain intelligence materials which the leadership of the Committees has agreed should be handled separately.

It is our intention to make available to the House Judiciary and Foreign Affairs Committees all documents and records called for by points eight and nine of the resolution. However, in hurrying to assemble and deliver the Department's records by the July 28 deadline set by the Committees, it is not inconceivable that some material may have been overlooked. If so, any such material will be made available as soon as it is located.

Point nine of the resolution asks about "the authority under which the Justice Department accepted a 'consent order' as opposed to pursuing civil or criminal proceedings" against Billy Carter. The Foreign Agent Registration Act, 22 U.S.C. 611 et seq., authorizes enforcement action by criminal prosecution or by civil injunction. 22 U.S.C. 618. In this case, the Department determined that a criminal prosecution was inappropriate on the basis of available facts, a decision which was made as part of the exercise of the Department's prosecutorial discretion. The Department determined it would instead seek the full civil remedy available under the Foreign Agents Registration Act, which is simply injunctive relief. 22 U.S.C. 618(f).

When a civil suit is filed, a defendant can of course agree to accept the full relief and judgment sought by the plaintiff. In this case, Mr. Carter consented to a judgment that provided the full measure of injunctive relief that the government sought under the Registration Act. If he had not so consented, the Department would have litigated the suit to a conclusion, seeking the same injunctive relief.

If the Committee desires any further information before acting on H. Res. 745, kindly let me know.

Yours truly,

ALAN A. PARKER,
Assistant Attorney General,
Office of Legislative Affairs.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., July 29, 1980.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Department of Commerce, the Department of Justice is today furnishing you with certain documents relating to the licensing of the sale of two Boeing 727 aircraft to Libya in 1978.

This information is being provided subject to the confidentiality provisions of Section 12(c) of the Export Administration Act of 1979. This section is designed to facilitate the export licensing process and protect commercial interests by permitting exporters to submit information in connection with license applications on a confidential basis.

Section 12(c) provides, with respect to the protected material furnished to a committee of Congress:

"No such committee or subcommittee shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest."

I shall accept your receipt of this letter as an acknowledgment of these restrictions and as assurance that custody and access will be controlled so as to avoid disclosure of information protected by Section 12(c).

Sincerely,

ERIC L. HIRSCHHORN,
Deputy Assistant Secretary,
for Export Administration.

THE WHITE HOUSE,
Washington, D.C., July 29, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: I am responding to your letter of July 23, 1980, requesting that I provide the Committee, to the extent possible, information sought in House Resolution 745 together with relevant comments in time for the Committee to file its report on this resolution by Thursday, July 31, 1980.

It is my desire that all relevant information be made available to the Congress and to the public in a timely and complete manner, and I assure you that the information requested will be produced as soon as it can be reasonably assembled and after appropriate arrangements can be made for the handling of classified materials. The information sought in categories 8 and 9 are readily at hand and I understand the Department of Justice has informed the Committee these materials will be made available for review today.

The balance of the materials will be delivered to the Committee not later than August 18. As I am sure you can appreciate, compiling the information requested in many of the categories will require counsel to interview a substantial number of White House personnel and to review a large number of documents. This process is presently underway.

In previous public statements and releases most of the questions in the resolution directed specifically to me have been answered. I shall, however, respond specifically to all the enumerated questions in my formal response to the Committee.

Sincerely,

JIMMY CARTER.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 23, 1980.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: At your request and for your information I am enclosing a copy of my most recent letter to Senator Kennedy and its enclosures.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

Enclosure.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., July 23, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Senator Dole's request and my letter to you of July 22, 1980, I am pleased to enclose copies of:

(1) Complaint for Injunctive Relief in *Attorney General of the United States* v. *William A. (Billy) Carter, III.*

(2) Final Judgment of Mandatory and Permanent Injunction as to William A. (Billy) Carter, III, in the same captioned matter.

(3) Stipulation and Consent on same captioned matter.

(4) Registration Statement filed by William A. Carter with attachments and exhibits.

Mr. Carter has not reported the dissemination of any political propaganda through the mails or by any means or instrumentality of interstate or foreign commerce, therefore no such propaganda has been filed with the Department of Justice as provided by 22 U.S.C. 614 and 28 C.F.R. 5400 and 5401.

Similarly, Section 615 requires the agent to maintain certain books and records relating to his activities. This is to afford the oportunity for the Department to inspect the books and records should it desire to do so. It does not require their submission and no books or records are in the possession of this Department provided pursuant to provisions of Section 615.

I believe this answers Senator Dole's and the Committee's request. If there is anything else desired or we can be helpful in any other way, please let me know.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General,
Office of Legislative Affairs.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 31, 1980.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The Committee on the Judiciary held a mark-up session yesterday on H. Res. 745, the resolution of inquiry dealing with the matter of Billy Carter. Certain questions were raised, subsequent to the introduction of the resolution and prior to our mark-up, concerning matters not covered by the resolution. Those questions prompted Members of the Committee to amend the resolution to call for certain additional information.

In order that you may be fully apprised of what information is being requested, I am enclosing a copy of the amended resolution as reported favorably by the Committee.

With best personal regards, I am,

Sincerely yours,

PETER W. RODINO, Jr.,
Chairman.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 18, 1980.

DEAR COLLEAGUE: We are attaching for your perusal the materials submitted by the President in response to our letters to him concerning the information requested in the Resolution of Inquiry, H. Res. 745, regarding Billy Carter.

Floor action on this resolution will be scheduled consistent with the desire of Members to have sufficient time to review the materials.

Sincerely,

CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs.
PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 20, 1980.

DEAR COLLEAGUE: The President, in response to our letters, has submitted his report and report of counsel concerning H. Res. 745. Certain materials which are called for in specific items in the resolution, as amended, have been submitted under separate cover by the White House, the Justice Department and the State Department. These additional materials will be made available to Members under special procedures.

Classified material from all three sources will be available to all Members through the auspices of the House Intelligence Committee. The material from the State Department and the Justice Department will be made available for Members' review in rooms 2170 and 2226 Rayburn House Office Building from 8:00 a.m. to 6:00 p.m., Thursday, August 21 through Wednesday, August 27, excluding Saturday and Sunday.

We are thereby making all of the materials available to the Members that have been made available to us.

Sincerely,

CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs.
WILLIAM S. BROOMFIELD,
Ranking Minority Member, Committee on Foreign Affairs.
PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary.
ROBERT MCCLORY,
Ranking Minority Member, Committee on the Judiciary.

□ 1050

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois.

The SPEAKER pro tempore. The gentleman from New Jersey has consumed 15 minutes.

The gentleman from Illinois (Mr. McCLORY) is recognized for 15 minutes.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

First of all, Mr. Speaker, I want to commend the members of the Committee on the Judiciary and of the Committee on Foreign Affairs, particularly those who took occasion to examine the documents that were delivered in response to the resolution of inquiry.

As I said earlier during the 1-minute period, this is one of the most bizarre incidents in our entire history and involves some of the most bizarre, if not improper and illegal, conduct on the part of persons in the executive branch or related to those in the executive branch.

Mr. Speaker, this resolution of inquiry symbolizes a very legitimate exercise of a basic congressional prerogative, that is, the seeking of facts and information with respect to possible conflicts of interest, illegal activities and unethical behavior on the part of executive branch officials. Since the Judiciary Committee reported this resolution on July 31, the White House and State Department have submitted documentary materials responding to the relevant paragraphs listed in the resolution of inquiry.

Prior to our committee's action, the Justice Department had already submitted voluminous materials to both our committee and the Foreign Affairs Committee.

I took the opportunity to scrutinize those documents and memorandums very carefully and to interrogate those who came over and delivered the documents. In my view there has been something less than substantial compliance with the terms of the resolution. There are several crucial questions to be answered. Our review of this matter should not be concluded.

For example, there was one very egregious omission from the materials that were presented to the respective committees when they considered the resolution—namely, the President's conversation on June 17, 1980, with the Attorney General concerning the Billy Carter investigation.

In his August 4 news conference, President Carter appears to have temporarily defused public opinion with respect to his unusual activities. However, it is also apparent that the President has not answered many of the questions that have been generated by this controversy.

The House and the other body have a responsibility to complete this investigation with respect to the role of the President, the White House, the White House staff, and the Justice Department in this case. Possible illegalities, while obviously important, are not the sole issue. In recent years Congress has passed numerous laws underlining our concern about the possible appearance of impropriety on the part of high government officials. These would include the Ethics In Government Act, the Privacy Act, the Government in the Sunshine Act.

On this point, a serious question of ethical judgment and appearance of impropriety surrounds the President's meeting with Attorney General Benjamin Civiletti in the Oval Office of the White House. The President's June 17 conversation with the Attorney General regarding the investigation of the President's brother by the Department of Justice was, at least in my view, inappropriate.

Subsequent to this conversation, the President discussed the ongoing investigation with his brother twice. The subcommittee in the other body now investigating this case should actively pursue this matter during their deliberations.

Americans need to be assured that no illegalities were involved.

Another example of bad judgment is the President's decision to use his brother as an intermediary to try to secure release of our hostages in Iran, another abortive attempt. To say the least, this is an unusual manner in which to conduct foreign policy. The President himself has admitted that this action may have legitimatized Billy Carter in the eyes of the Libyan Government.

Did it encourage their favorable response to Billy Carter's demands for money? This also needs to be further explored.

The so-called loan has been the source of a series of inconsistent statements on the part of Billy Carter. I guess the press has put that to rest today by stating that it was, indeed, a gift of money and not a loan.

Billy Carter, first of all, said that he merely wanted to be reimbursed for a reception he hosted for a Libyan delegation in Atlanta, Ga. His original estimate of the cost of the reception was $6,000 or $7,000. Then it "escalated" to $40,000, during his June 11 interview with Justice Department investigators.

Questions remain as to who paid for this reception and how much it actually cost. Material furnished to the House Select Committee on Intelligence suggests the need for diligent inquiries directed to Billy Carter, President Jimmy Carter, and others to identify the financial interests surrounding the entertainment of Libyan officials in this country and who specifically was benefited.

The President has stated that at no time did his brother influence the decisions of Government policy regarding Libya. In the report submitted to our committee, the President says:

> I can also state that Billy has never asked me to take any step that would affect any of these actions or policies.

Yet the files submitted by the Department of Justice to our committee and the Foreign Affairs Committee revealed an equivocal and evasive Billy Carter on this very same point.

An even more important matter is how White House officials have acted in this matter. First, the President's National Security Adviser, Mr. Brzezinski, received "highly sensitive" intelligence information about Billy Carter's business dealings with Libya in March and April 1980. Mr. Brzezinski admits that he subsequently spoke to Billy Carter about the information he had received, even though Billy Carter had no security clearances justifying such a discussion with him. This matter bears our careful study and investigation.

Second, a key question which repeatedly arises is whether or not Billy Carter was "tipped off" by certain White House officials, or other executive department personnel, concerning the fact that the money payments to him were known to the FBI and the Department of Justice. It appears that Justice Department investigators first learned of the Libyan payments on May 30, 1980. It was a little more than a week later that Billy Carter, on his own initiative, sought a meeting with the Justice Department in order to come down and register as a foreign agent after having resisted registering for a year and a half.

The question as to whether or not intelligence or law enforcement sources may have been compromised by the use of inside information must be completely resolved. Are we to leave these unanswered questions to the media's investigative reporters? Are we to relinquish that responsibility? I hope not.

Mr. Speaker, I certainly want to commend the Intelligence Committee having received highly classified information and not being the source of compromising any of it, notwithstanding that I cannot say that about those in the executive branch.

Mr. Speaker, a motion to table is a final, adverse disposition of a measure. I cannot support such a motion, for there are too many unanswered questions. Before we vote on this resolution we should give the executive branch a second chance to comply fully. Thus, it is my intention to offer a motion to postpone further consideration until October 1 if and when the motion to table is defeated. I urge a "no" vote on the motion to table.

Mr. Speaker, at this time I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the House of Representatives, and in particular the House Judiciary Committee, earned the respect of most Americans in the dreary Watergate era by its relentless and measured investigation of Executive wrongdoing. This House has had only limited involvement in the many matters concerning the President's brother, and I wonder why?

The crusading zeal of the House for executive purity is hardly a whisper in this present investigation. To assume that the matters under investigation are insignificant belies the headlines that are emanating almost daily from the other body. Serious questions remain unanswered, such as:

First. Was Billy Carter tipped off by someone in the White House?

Second. Can we seriously be expected to believe that he was given $220,000 by the Libyians for nothing? Was it a loan or for services rendered? Or to be rendered?

Third. In January 1979, Billy Carter hosted an elaborate reception for a visiting Libyian delegation. He has provided several versions about who picked up the check. Did the Libyians reimburse him for out-of-pocket expenses, or did they pay the entire cost of the reception? If not, who did? Intelligence files show that a private company might have been involved. If so, what company and why?

Fourth. Questions remain about Billy Carter's efforts, if any to pressure the United States into releasing the C-130 airplanes to Libya—a government that advocates and engages in terrorism.

I had hoped for leadership on the part of the House. We are a coequal branch of Government, coequal with the executive branch, and coequal with the other body. This means we have coequal responsibilities which ought to be fulfilled. Have we neglected that equal responsibility in deference to the other body? This is curious and certainly regrettable.

In the days of Watergate, this committee was a raging tiger in its relentless zeal to get at the truth—our tiger is now caged and tranquilized—I suggest tabling this resolution is premature.

□ 1100

Mr. McCLORY. Mr. Speaker, I thank the gentleman for those very important statements.

I yield to the gentleman from New York (Mr. FISH).

Mr. FISH. Mr. Speaker, I know that many Members on both sides of the aisle feel that too much may have already been said and written about the "Billy Carter affair." However, we should not lose sight of the basic principles involved here.

We are talking about the brother of the President of the United States, who has established a financially intimate relationship with a foreign government. A foreign government with which we are far from being in complete accord. Libya's leaders have advocated international terrorism in the past and have often frustrated our peace efforts in the Middle East.

This episode—this relationship—has raised some serious questions. The Department of Justice and the White House have been cooperative with the Judiciary Committee, the Foreign Affairs Committee and the Select Committee on Intelligence. I have no reason to believe that anything but an honest effort has been made to supply materials and documents responding to the various items listed in the resolution of inquiry. However, in my view, questions have been raised which remain unresolved. Hopefully, the investigation currently being conducted in the other body will elicit all the necessary facts and answers.

Even if House Resolution 745 is tabled here today, this House should continue to monitor developments in this case. The inquiry is not over. I would like to share with my colleagues what I consider to be the principle remaining questions in this case.

Billy Carter has received a total of $220,000 from the Libyan Government. This transaction has been described by him as a loan, yet, there is no written document attesting to such an arrangement. No collateral has been designated or tendered. The Libyans have characterized it as a "gift." The obvious question is whether or not this was a bona fide loan or gift. Is it reasonable to believe that the Libyans expected to receive nothing in return?

Billy Carter now admits that his first payment—$20,000—from the Libyans was received in December 1979. Yet when he was interviewed by officials from Justice and the FBI in January 1980 just 3 weeks after the first installment was received, he made no mention of it. This was on January 18, 1980, and, at that point, Justice officials had not learned of the payments. During the course of the interview Carter adamantly denied that he had any formal relationship with the Libyans and stated that he had not received anything of value from them.

The files clearly reveal a Billy Carter repeatedly reluctant and resisting to registration as a foreign agent. The Justice Department first contacted Carter concerning his possible status as a "foreign agent" in January 1979. Nevertheless, he continuously avoided registering—even after the payments had been received in December 1979 and April 1980. Then, in early June, Carter strangely took the initiative to make contact with the Justice Department and request a meeting in Washington. This meeting occurred on June 11 and it was during the course of this meeting that he finally admitted having received the money, as well as his having a commission arrangement with the Charter Oil Co. Why did his pattern of resistance to registering suddenly change?

From my review of the files it appears that the FBI first found out about the payments to Billy Carter on May 30. It further appears that this information came through a foreign intelligence source. One must wonder if it is just mere coincidence that within a week after this information became known to the investigators at the Department of Justice, Billy Carter became more cooperative with those officials responsible for the enforcement of the Foreign Agents Registration Act. The President and National Security Adviser Brzezinski have denied that anyone in the White House may have "tipped off" Billy Carter, concerning the fact that the payments to him were known to the FBI and Department of Justice. Yet, last week, in testimony before the special Senate subcommittee the Justice Department officials in charge of this investigation confirmed the possibility of a White House "tip." If the timing of Billy Carter's sudden cooperation is concidence, we should be convinced that is the case. Further delving into this key question is necessary.

Congress should not be looking for another Watergate. Nevertheless we should not prematurely dismiss this controversy simply because it may not be a scandal of Watergate dimensions. This is not a Republican issue. What we are talking about here is the behavior and judgment of Government officials at the highest level. We are talking about possible conflicts of interest and even possible criminal behavior. Every Member of this House should be concerned that a thorough and complete investigation of this matter will result.

Mr. McCLORY. I thank the gentleman for his very important statement.

Mr. Speaker, I reserve the balance of my time.

Mr. RODINO. Mr. Speaker, I yield 10 minutes to the gentleman from Michigan (Mr. BROOMFIELD) for purposes of debate only.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WALKER).

The SPEAKER pro tempore. Without objection, the gentleman from Pennsylvania is recognized for 2 minutes.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I hope we are not going to table the resolution of inquiry today. I think we need to take a look at specifically what the resolution of inquiry asks for.

The resolution of inquiry asks the Justice Department to "provide any documents relating to the recommendations in regard to the investigation conducted by the Department into Billy Carter's activities as an unregistered agent of the Government of Libya contained in the files of said Department."

Just this morning, just this morning, Mr. Speaker, I received word from the Justice Department in a letter from Alan Parker, Assistant Attorney General, saying "We did not, in fact, receive all of the materials voluntarily." In this letter he says that "we have received the materials that were in the Criminal Division of the Justice Department but not other materials."

One of those materials to which I refer is a memorandum that was in the FBI which indicated that the Attorney General of the United States delayed this case for 10 days. He delayed it for 10 days during which time he went to the President of the United States and discussed the case of Billy Carter with the President. That is a key memorandum. I cannot imagine a more key memorandum than that one.

The test we are asked to accept here on the floor is did the Justice Department substantially comply. Fine. Does that mean that they just send us a lot of material but none of the key material and they have substantially complied? I do not think so, Mr. Speaker. I think we ought to have the key material. I think to abandon the resolution on the day that the Justice Department admits it did not fully comply with the resolution voluntarily would be a travesty. It would be an affront to justice.

I think, Mr. Speaker, this House should keep the resolution alive until we are sure we have gotten everything we have asked for.

Mr. BROOMFIELD. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. GREEN).

The SPEAKER pro tempore. Without objection, the gentleman from New York (Mr. GREEN) is recognized for 3 minutes.

Mr. GREEN. Mr. Speaker, I thank the gentleman for yielding. I think the question is: Did we, in fact, get substantial compliance from the administration?

I submit that there is much that we did not get. I have reviewed the record that was provided to the Judiciary Committee. I have not reviewed the files that were provided to the Committee on Intelligence, so I am making my remarks strictly on the basis of what has appeared in public print, plus what was available to the Judiciary Committee, material which the chairman of the Judiciary Committee, the gentleman from New Jersey (Mr. RODINO), very graciously permitted me to examine as one of the principal sponsors of the resolution of inquiry.

First, as the gentleman from Pennsylvania (Mr. WALKER) has pointed out, we did not get the material within the Justice Department relating to the 10-day postponement of the investigation at a time when the Attorney General then went to the President and discussed the investigation with him. Certainly that is crucial material.

Second, it is clear that we did not get any material relating to the grand jury investigation now going on in the southern district of New York where it is now a matter of public record that Billy Carter did appear and testify. I hasten to add that the press accounts say he was not a target of that investigation. But what its relevance is to this inquiry we really do not know.

We know also that, at least in the material supplied to the Judiciary Committee, we did not get any material relating to the fact that at a time when the Attorney General was withholding from his own subordinates, who were fully cleared for access to classified information, the information that he had received with respect to the payments by the Libyan Government to Billy Carter, Dr. Brzezinski was giving that same information to Billy Carter. Why were people cleared for classified information denied this information when someone with no such clearance and so totally unreliable as Billy Carter was given it? Surely the material in the Justice Department with respect to that, and they are conducting an investigation of it, is relevant. If that is material that the Judiciary Committee has to look at behind closed doors, so be it. But that matter certainly should be pursued.

Finally, one has to look no further than today's newspaper to see that a target of another investigation by the Justice Department relating to narcotics and currency matters was one who helped arrange the alleged loan to Billy Carter by the Libyan Government. Again, there was no material with respect to that investigation in the materials that I was able to see at the Judiciary Committee.

In short, I would say to my colleagues that there is a great deal of information that was not made available to the Judiciary Committee. I would suggest along with the distinguished ranking minority member (Mr. MCCLORY) that that ought to be pursued and the motion to table should be defeated.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Idaho (Mr. HANSEN).

The SPEAKER pro tempore. Without objection, the gentleman from Idaho (Mr. HANSEN) is recognized for 2 minutes.

Mr. HANSEN. Mr. Speaker, This resolution of inquiry, of which I am also a sponsor, is vital to a clear picture of the involvement of the administration in the Libyan adventures of Billy Carter. The resolution sets out the concerns of this body that all the facts surrounding the involvement of Billy in Libya and the involvement of the administration in giving him credibility be brought forth.

In addition to the clarification of whether this administration used the public trust for the private gain of relatives and friends, my personal concern goes to whether opportunities to free our hostages were ignored or supressed as part of such misuse of trust. Billy's fruitless involvement in the Iranian crisis at a time when others, closer to the events and more competent to aid in their resolution, were available deserves a more complete investigation. The disasterous consequences of the use of this notorious man for less than evident purposes are only now becoming clear.

American foreign policy and the frustrating situation involving our hostages in Iran were thrown into a new state of controversy when it was revealed that President Carter's brother Billy was involved in a multimillion-dollar business deal with the Libyan Government and he had already accepted $220,000 of an expected $500,000 loan.

Two regular committees of the House and two in the Senate, including one specially formed committee, are investigating what connection Billy's actions might have with Carter administration activities and if there has been improper effect on White House policies.

This is not the first embarrassment to the President by Billy's activities, but each time the administration claims Billy to be a maverick who cannot be controlled or effectively dealt with and that there is no connection.

Now it has been shown by long ongoing investigation by the U.S. Department of Justice and other Government agencies that there has been considerable connection between Billy and high Government officials. And in the situation where he was receiving large sums of money under very questionable circumstances, Billy was being invited into, not out of, the White House and foreign policy involvement.

Certainly Billy's image of having clout in the White House did not suffer in the eyes of Libyan officials when Rosalyn Carter encouraged her husband to utilize his brother's Libyan connections on behalf of the hostages in Iran. President Carter's own national security advisor Zbigniew Brzezinski arranged the November 27 meeting with Billy and the Libyan representative in Washington, Ali El Houdari.

Mr. Speaker, to summarize my remarks which deal with Billy Carter's impact on Americans held hostage in Iran, I must point out that the President's self defense for involving Billy, with all the risks of dignifying and encouraging a brother with whom he seems unable to reason, is that freeing the hostages was an "absolute, total obsession." He told the press, "my major preoccupation was the release of the hostages, and I was ready to try any channel that could help us reach this goal." This however, is not consistent with the truth. The Senate special committee investigators have noted the glaring fact that I was in Tehran on November 27, at the very time of the Billy Carter Libyan meeting in the White House, trying to get an unresponsive Carter administration to respond to obvious conciliatory gestures by the Iranian Government which could get the hostages released.

I had been in Tehran for several days meeting with top Iranian officials and visiting groups of hostages with the express approval of Bani Sadr, the Revolutionary Council, the militant students and the Ayatollah Khomeini himself.

Also in Tehran at the time were other channels available to the President for securing release of the hostages far more reliable than Billy Carter. Included were former Democratic Senator James Abourezk and Nobel Peace Prize winner Sean McBride of Amnesty International, not to mention congressional and United Nations possibilities proposed.

Why would the President close the door to Congress, to the U.N. and to the many legitimate opportunities available to reduce or resolve the Iran crisis while seeking avenues through less reputable groups under bizarre circumstances, is what these committees of Congress are attempting to discover and why this resolution of inquiry is necessary.

In addition to the clarification of whether this administration used the public trust for the private gain of relatives and friends, my personal concern goes to whether opportunities to free our hostages were ignored or suppressed as part of such misuse of trust. Billy's fruitless involvement in the Iranian crisis at a time when others, closer to the events and more competent to aid in their resolution, were available deserves a more complete investigation. The disasterous consequences of the use of this notorious man for less than evident purposes are now only becoming clear. I strongly urge that this resolution of inquiry be adopted.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from Maryland (Mr. BAUMAN).

The SPEAKER pro tempore. Without objection, the gentleman from Maryland (Mr. BAUMAN) is recognized for 3 minutes.

Mr. BAUMAN. Mr. Speaker, I strongly urge a vote against the motion to table the resolution of inquiry now pending before the House. I think that would be one of the worst possible things that we could do in this body today.

If the motion to table is defeated, a motion to postpone further consideration of the resolution will be offered that will postpone consideration until October 1, 1980. Let me address myself to that alternative choice. If the vote to table this resolution today, you say you do not want to know, you have made the judgment that all of the information is in, all of the facts are known, and that you care to know no more about the matter of Billy Carter and his dealings with Libya.

□ 1110

A resolution of inquiry by the House of Representatives is one of the most serious forms of inquiry that can come from the legislative branch directed to the executive branch. Our history shows few instances where the seriousness of events have dictated that Congress take such a course.

The gentleman from New Jersey (Mr. RODINO) referred to the fact that it has been several decades since the House actually adopted such a resolution directed to the President. But can we meet here today on this floor and say, as the morning newspapers tell us, that Billy Carter is about to receive another quarter of a million dollars from the Government of Libya on top of the $220,000 already given him, that no questions remain?

Mr. Speaker, why is a gas station operator from Plains, Ga., getting half a million dollars from Libya? For what? Can we say that the investigation of the other body has been concluded, that all questions have been answered?

Mr. Speaker, this morning the gentleman from Pennsylvania (Mr. WALKER) received a letter—I have the letter here and Members are welcome to read it—from Mr. Allan Parker of the Department of Justice in which he admitted that one of the documents requested by this resolution was not sent. How many more were not sent?

Let me read what the resolution of inquiry of which I am the principal sponsor says. I read from page 3, paragraph (8).

> 8. any documents relating to the Justice Department's investigation, including findings and recommendations, into Billy Carter's activities as an unregistered agent . . .
>
> 9. any record or memorandum relating to the decision of the Justice Department to file a complaint for injunctive relief . . .

So, what has the Justice Department written to the gentleman from Pennsylvania (Mr. WALKER)? They say, "We did not know it was in the FBI's files."

Mr. Speaker, I thought the FBI was a part of the Justice Department. The last time I looked it was still there. Why did they not, if they were so concerned about giving us full information, look at all the files at their command? They apparently did not.

Mr. Speaker, what I am saying is, let us take this issue out of the political arena. Let us not table this because the orders have come from the White House to do so. Let us postpone this matter until at least October 1 and let the other body's investigative committee have a chance to address the questions. Let Bert Lance not thumb his nose at the Congress of the United States but testify and give us information that the other body thinks is appropriate. Let us find out why another quarter of a million dollars is already possibly on the way to Billy Carter. Let us answer the questions that are not answered today. Let us not table this resolution. That would be the political way out. Let us get the answers to the questions and hope that the President and all of the officials of the Justice Department have done the right thing in these circumstances.

Mr. Speaker, to vote to table this resolution today is to vote in ignorance of the full facts, of the full case and to say to your constituents as you face reelection that you do not want to know the truth.

Mr. Speaker, I urge a vote against the motion to table.

Mr. McCLORY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to indicate my support for a motion to postpone consideration to which the gentleman from Maryland made reference. I say that because just today we learned about some significant material that was omitted from the documents delivered by the Department of Justice to the Committee on the Judiciary and to the Committee on Foreign Affairs.

Likewise I might say as a member of the Intelligence Committee, the materials that were delivered there came in dribs and drabs. In fact, at our last meeting we received material which had just been delivered to the committee the previous day. So, it is uncertain at this time as to whether or not all of the materials that we have requested have or have not been received. It seems to me it would be very cautious on our part to postpone action on this resolution to a date certain, such as October 1, to determine whether there has been full compliance with the resolution of inquiry.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. McCLORY. I do yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, it must have been a Freudian slip which resulted in the listing of this resolution on one of the tentative schedules opposite the Hazardous Waste Disposal Act, a slip which seems to have been corrected in due course by the leadership. It is apparent that the objective of the leadership in seeking to table this resolution today is to bury the Billy Carter matter, in an effort to insure that there will be no further embarrassment to the Carter administration. What this House will be saying if this resolution is tabled is that we are satisfied with the President's response and that if there is anything more we should know about the Billy Carter matter, we would rather not find out about it, and in any case we will not inquire about it.

I will resist the temptation to speculate today as to the ultimate implications of what is now known about the Billy Carter matter. It is evident that the President has used his personal and official family extensively in the conduct of foreign policy, that he has cloaked them with the indicia of Presidential power, and that a number of strange business transactions have occurred, coincidentally or otherwise, between some members and friends of the Carter family and certain foreign interests.

The only way that the vast array of unresolved questions concerning the Billy Carter matter can be resolved is for an authority which is totally independent of the administration to conduct an inquiry whose scope would not be limited in any manner which would prevent the authority from pursuing all significant leads. Perhaps the investigation now being conducted by a special subcommittee of the Senate can serve this purpose. Perhaps an independent special prosecutor will be required, for experience has shown that this administration can not be trusted to investigate itself.

If this House cannot make a constructive contribution to the investigation of the Billy Carter case and related cases, then the least it should do is to refrain from taking any action which may impede the investigation process or which may encourage the White House to be less than forthcoming in responding to requests of the investigating authority for information. I am concerned that the action which the leadership is about to take will send an unfortunate signal to the White House. I am afraid the

White House may have reason to believe that this House is saying, "Jimmy, we're proud of you." If there is any significant likelihood that our action will be interpreted in this manner, then I am afraid we will regret it.

We never know what new disclosures this afternoon's or tomorrow's newspapers will bring. A startling example occurred today, when a highly respected military authority, and a Democrat, Adm. Elmo Zumwalt (retired), was reported to have accused the President himself of having ordered the leaking of information pertaining to the Stealth bomber. Admiral Zumwalt has offered to present testimony and evidence to congressional committees in support of his charges. There is no telling when someone in a position to know the answers to the myriad of unanswered questions in the Billy Carter case may decide to come forward and cooperate. This House should not take any action which might have the effect of discouraging potential witnesses from providing such information. We should not table this resolution today.

One final word. Congress and the American people owe a debt of gratitude to the talented ladies and gentlemen of the press who have demonstrated the diligence to unearth the vital leads in this case and the courage to ask the crucial questions.

Even though this resolution may be tabled today, we can rest assured or rest uneasy, as the case may be, that the resolve and dedication of the members of the fourth estate will not be tabled.

Let me review some additional questions that need a response:

Among the innumerable questions which remain to be answered are the following:

First. What was the true relationship of Billy Carter to the Libyan Government and what did Billy Carter undertake to do for Libya in return for the $220,000 in payments and for whatever future considerations Billy Carter received from the Libyans?

Second. Why did the Justice Department delay for more than a year before taking any serious action with regard to Billy Carter's failure to register as a foreign agent? What was the role of Attorney General Civiletti in determining to delay action and to refrain from prosecution of Billy Carter? Was an improper warning given to Billy Carter, his associates, or attorneys that the Department had learned of the payments to Billy Carter by the Libyans? Was justice obstructed in this case and, if so, by whom?

Third. Did the President's national security advisor, Dr. Brzezinski, or anyone else in the administration provide sensitive information to Billy Carter or his associates to which they would not have been entitled had it not been for Billy Carter's relationship with the President?

Fourth. Did the Libyans receive any undue consideration from the administration, such as a promise to change administration policy with respect to the Palestine Liberation Organization or the release of aircraft which the Libyans have attempted to purchase?

Fifth. Was there any relationship between the Billy Carter matter and any other case in which influential members of the administration have had substantial financial dealings with foreign interests, such as the Bert Lance case?

Sixth. What was the full extent of the knowledge and involvement of the President of the United States in the Billy Carter case and related matters?

With regard to this last question, it is admittedly possible for the President's brother and several high level officials to be involved in a matter while the President himself may know little or nothing about it. Still, there comes a point where the evidence suggests that it is more reasonable to conclude that the President has a greater knowledge or involvement than has been revealed so far, than to conclude that full disclosure has been made. The President has offered to testify personally concerning the Billy Carter matter and to provide additional information which may be required. It is my hope that the Senate subcommittee or other investigating authority will insist that all pertinent information concerning White House involvement in this and related cases be disclosed.

The House should not table House Resolution 745, but should indeed bring it up and vote now.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the chairman of the Committee on Foreign Affairs, the distinguished gentleman from Wisconsin (Mr. ZABLOCKI), for purposes of debate only.

Mr. ZABLOCKI. Mr. Speaker, I thank the chairman of the Committee on the Judiciary, the gentleman from New Jersey (Mr. RODINO) for yielding.

Mr. Speaker, I rise in support of the motion to table House Resolution 745 which will be offered at the end of the debate on this matter.

The distinguished gentleman from New Jersey, the chairman of the Committee on the Judiciary, has thoroughly explained the resolution of inquiry. The executive branch's response to the requests for information that were contained therein to the Committee on Foreign Affairs and to the Committee on the Judiciary, to which the resolution was referred have been made available. I shall, therefore, not repeat the statements and arguments that the gentleman from New Jersey has presented to the House.

Mr. Speaker, I fully concur with the judgment of the gentleman from New Jersey that the material supplied by the President and the Department of State and the Department of Justice to the committees and indeed to all the Members of the House is in substantial compliance with the resolution of inquiry as amended.

Mr. Speaker, I would like to add an observation that over the course of my membership as a member of the Committee on Foreign Affairs, and in my tenure as chairman, that committee has been involved in the consideration of the bulk of the resolutions of inquiry that have been introduced in the House during that period of time. In my view, the President's response to the pending resolution is the most thorough, straightforward and cooperative that I have seen.

Mr. RODINO. Mr. Speaker, I yield 1 additional minute to the gentleman from Wisconsin.

Mr. ZABLOCKI. To repeat, this is the most cooperative executive branch response to a resolution of this nature that we have received.

Therefore I say, Mr. Speaker, the arguments that some of the information was not received are not entirely valid. In fact the data alluded to in debate were not covered in the resolution of inquiry.

Mr. Speaker, I urge my colleagues to support the motion to table the resolution because I firmly believe that the executive branch has been in substantial compliance with the resolution of inquiry.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. BOLAND), the distinguished chairman of the Permanent Select Committee on Intelligence, for purposes of debate only.

Mr. BOLAND. Mr. Speaker, the Permanent Select Committee on Intelligence issued a report concerning the classified material requested in House Resolution 745. The committee acted in this fashion pursuant to the request of the Committees on the Judiciary and Foreign Affairs.

The arrangement was that the Permanent Select Committee on Intelligence would review all the classified material responding to the requests of the resolution of inquiry and issue a public, unclassified report based on its review of that material.

The committee issued its report on August 28. The report was printed in the RECORD that day and was printed by GPO and made available to all the Members of the House and to the public.

The committee was unanimous in the adoption of its report. The committee believes—and the report so states—that the information provided to it substantially complies with the requests of House Resolution 745.

The report states further, that should any additional material turn up, the committee will examine it carefully.

The body of the committee's report portrays the substance of the classified material submitted to it, described in a way that protects the sources or methods employed to collect the information.

I will conclude my remarks by noting that it was the unanimous judgment of the committee that classified material submitted to it, the substance of which is reflected in its report, constitutes some of the country's most sensitive and valuable national security secrets.

The committee's efforts in this matter—receipt and examination of the classified material and issuance of a report—were undertaken to protect these secrets and ongoing investigations.

The committee report indicates that the committee's review pointed to several unresolved issues in the Billy Carter case.

These are all matters now being explored by the Senate subcommittee.

The committee will shortly send a classified letter to the Senate subcommittee and to the Department of Justice laying out these issues and urging their resolution within the parameters of these investigations.

□ 1120

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. ROBINSON), the ranking minority member of the House Intelligence.

Mr. ROBINSON. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as ranking minority member of the House Permanent Select Committee on Intelligence I support and endorse the remarks of the chairman of that committee, the gentleman from Massachusetts.

Our committee carefully examined all the classified materials provided to it concerning Billy Carter's relationship, directly and indirectly, with the Government of Libya. The classified information used in preparing its report came from the White House, the Department of State, the Department of Justice, the Federal Bureau of Investigation, and the intelligence community.

It is important to note, however, that the committee report reflects an analysis of only the classified material that was received as of the report date.

Any additional material that may be received by the committee will be examined on the same basis as that received earlier.

The committee found that the classified material reached many of the items of inquiry reflected in House Resolution 745.

The major concern of the committee is the enormous sensitivity of the information it received and its greater interest in protection of the sources and methods used to obtain it.

Finally, a number of unresolved issues have arisen from the committee effort that warrant further attention within executive and legislative branches. The committee will make every effort to seek the resolution of these issues in the most expeditious manner, but until they are this member will certainly not vote to table this resolution.

Mr. RODINO. Mr. Speaker, I yield 1 minute for purposes of debate only to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Mr. Speaker, since the Foreign Affairs Committee reported out this resolution of inquiry at the end of July, the investigation of Billy Carter has proceeded with full cooperation of the White House.

I would just like to reiterate my views on this issue, views which I expressed during the full committee consideration. What we are dealing with here is not "Billygate," but "Billygoat." Billy Carter has often filled the role of the "clown," and in this instance, the question of Libyan influence on the U.S. Government, as measured by Billy Carter, is akin to missing the whole circus to watch the jester in the stands.

The Congress must broaden this inquiry, and take a hard look at the extent of Libyan penetration into the foreign policy decisionmaking in the United States. Since the advent of the Billy Carter affair, there have been several articles in the newspaper discussing this very point. I am convinced about the whole question of oil blackmail, and I am concerned that our national interests, or a moral basis for foreign policy formation does not fall by the wayside. A case study of Libyan influence could not be more illuminating on this question.

Libya's subversion of our foreign policy, and the extent of her involvement in international terrorism, and just plain international mischief are matters of public record. A discussion of the range of this involvement was lucidly outlined in a July 27 article in the Washington Post, entitled "Beyond Billy: The Importance of Investigating Libya's Treacheries." Some examples of Libya's role in international mischief include:

The Munich massacre of the Israeli Olympic Team;

Support for Idi Amin of Uganda (to the present);

Funding assassination or coup attempts against virtually every nation in northern Africa, notably against President Sadat of Egypt in an attempt to undermine the Camp David accords;

Support for international terrorism, including the PLO and Black September;

Allegations of bankrolling Pakistan's nuclear development program with an eye to acquiring an "Islamic bomb"; and

Bankrolling and encouraging the Moro insurgency in the southern Philippines

The list of Libyan treachery could go on and on. I do not think that this country should have any dealings with a government like that, and I think that any involvement by Government officials with Libyan agents should be thoroughly investigated.

Mr. RODINO. Mr. Speaker, I yield 1 minute for purposes of debate only to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I appreciate the time the gentleman has yielded to me. It has been brought up that there is certain information that was not available to the two committees, and was not available to some Members of the House regarding these investigations. I think it ought to be pointed out that this resolution of inquiry deals with a certain point in time. Information that was available and known to the parties against whom this resolution was sent before that date did respond.

There is always going to be new information that comes up because of the extensiveness of these probes and the breadths of the investigations.

I would like to address a question to the chairman of our committee. Certainly, it is our intention, Mr. Chairman, is it not, on the committee to make available information that we receive, that comes after the ending of this resolution of inquiry?

Mr. RODINO. Whatever information which is made available would certainly be then made available to Members of the House, just as this chairman and this committee and the Committee on Foreign Affairs, and the Committee on Intelligence, have been making available to all the Members material that has been requested.

The SPEAKER pro tempore. The time of the gentleman from Kentucky has expired.

Mr. RODINO. Mr. Speaker, I yield myself 1 minute.

We might also say, in response to the gentleman from Kentucky, that any fair-minded evaluation of the resolution of inquiry which is before this House, and the questions that have been directed to the President, can only result in a conclusion that the material requested was provided when it was available. One must also recall with emphasis that the resolution directs the President to respond "to the extent possible." I believe, that there has been more than substantial compliance, and I think that any fair-minded individual, aside from any partisan politics, is going to consider that this matter that we are debating now, this resolution of inquiry—has been substantially complied with.

I would urge the Members to act with that kind of responsibility that I think this House should have.

The SPEAKER pro tempore. The time of the gentleman from New Jersey has expired. The gentleman from New Jersey has 12 minutes remaining.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. GONZALEZ) for purposes of debate only.

Mr. GONZALEZ. Mr. Speaker, I thank the distinguished chairman for yielding to me. I rise in support of tabling this, but I had intended to ask a question of the gentlemen on the other side and take their time.

The reason that I am intrigued by the positions taken here, I recall that the gentleman from Pennsylvania a few days ago, on a personal privilege plea, demanded to know why there was no access to certain information. I notice that the gentleman from New York made that the burden of his plea today. I notice this is a justification given by the speakers on the other side for continuing the Carter family saga as a political, exploitable deal at this time, but I am intrigued by the fact that in neither case—because I was the only one who voted no—did the gentlemen say anything about——

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. RODINO. Mr. Speaker, I yield 30 additional seconds to the gentleman from Texas.

Mr. GONZALEZ. They said nothing when they voted for the resolution pertaining to the Committee on Standards of Official Conduct, or the Ethics Committee, wherein for the first time in the history, that I know of, we provided that a Member could be denied—even a member of that committee—could be denied information obtained by that committee. Now, who is going to make that determination was never clarified. That was the reason I voted no. Why now are you all complaining about inaccessibility of information? You sanctioned that.

Mr. RODINO. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. Danielson) for purposes of debate only.

Mr. DANIELSON. Mr. Speaker, I thank the chairman for yielding.

Mr. Speaker, this matter has been pending before us now, before the Congress, for many weeks, and I respectfully submit that the President, the White House, has supplied us with all of the information we asked for. It has been available for inspection by the Members of the House. Very few have taken advantage of the opportunity to inspect it, which is in itself eloquent proof that Members of the House did not consider it to be terribly important.

I respectfully submit that the inquiry which has been made, has been complied with fully and reasonably. There is nothing that has been turned down that has been asked for. The very fact that the Members show no interest in examining it is a pretty good measure of the value of this inquiry in the minds of most of us.

I urge that we close off this chapter and go on with the important business of the House of Representatives. We and the Nation have many grave problems which are crying for attention.

● Mr. BIAGGI. Mr. Speaker, I rise in support of House Resolution 745, a resolution directing President Carter to furnish the House with full and complete information regarding his brother's role as a Libyan agent.

This resolution seeks to demonstrate the resolve of this body to complete the investigation of the Billy Carter affair in a prompt and expeditious manner. The President and his administration have already provided this Congress with the overwhelming majority of information requested in the resolution. In addition, the President has pledged the full cooperation of his administration with the congressional investigation into Billy Carter's activities on behalf of Libya. To date, the President has carried out his pledge to the fullest.

House Resolution 745 is not intended to cast aspersions on the President's willingness to act in good faith. On the contrary, it is consistent with his desire for a prompt and full disclosure of the Billy Carter affair. Under the provisions of this legislation, the President must furnish the House with all information pertinent to the investigation within 7 days of the resolution's adoption. Based on the President's longstanding policy of fairness and openness, I am confident he will be more than willing to comply.

Certainly, Billy Carter's role as a Libyan agent is a very serious matter that warrants close scrutiny. President Carter has clearly indicated his support for such an investigation and has done everything possible to insure that it could be conducted in the prompt and thorough manner that it deserves. Passage of House Resolution 745 would further help to achieve this crucial goal. I urge my colleagues to join me in supporting this important resolution.●

□ 1130

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. Rodino) has 9½ minutes remaining, and the gentleman from Illinois (Mr. McClory) has 2 minutes remaining.

The Chair recognizes the gentleman from New Jersey (Mr. Rodino).

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before we conclude this debate I am going to move a call of the House. I believe this matter is of sufficient importance that the membership be here in order to know what we are voting on.

But before I make that motion, Mr. Speaker, I would like to say again—and this is said at the risk of being repetitive—that I think it is important that we do know what we are about here, and that is to make a determination, based on our best and fair judgment, as to whether or not the materials supplied by the President, by the State Department acting under the direction of the President, by the Justice Department, and by the intelligence areas of the Government, were materials that responded in substantial compliance to the questions which were included in the resolution of inquiry.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentlewoman from New Jersey for the purpose of asking a question.

Mrs. FENWICK. Mr. Speaker, I thank my colleague for yielding.

I just want to say that I regret very much that into this very difficult and interesting debate has been injected the question of motive. I intend to vote against the motion to table, but it is not because of partisan politics, any more than I would attribute the motive of partisan politics to those on the other side of the aisle in desiring to table.

Mr. Speaker, I think we have got to rise above imputing motives to other Members as to why they are voting in certain ways.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois for the purpose of asking a question.

Mr. RAILSBACK. Mr. Speaker, I want to thank the chairman of the committee for yielding.

I believe that many of us, Mr. Speaker, who did review the materials—and I am one of them; I spent as much time on it as did the gentleman from California (Mr. Danielson) or any other Member—are very much troubled by the fact that we just learned that there was a rather important memorandum that apparently was produced and still has not been produced, one which in my opinion is required to be produced under the terms of the resolution of inquiry.

Let me just say that here is the answer that was given by the Department of Justice. They say this in the letter of September 10:

> The memorandum you refer to was apparently prepared by an employee of the Federal Bureau of Investigation and was unknown to us and not included in any files or material of the Criminal Division pertaining to Billy Carter.

The questions that raises in my mind are: How many other memorandums are there, how many other documents are there, and what is wrong anyway with a postponement?

Mr. Speaker, I strongly urge that we at least postpone this to October 1 to make sure that the Department of Justice does get any relevant information and provide it to us. They still have not provided it to the House of Representatives.

Mr. RODINO. Mr. Speaker, some Members may have concluded that certain material may not have been provided. Each will have to make a judgment based on whether or not they have concluded that the questions that were put to the President have been responded to. I stated that in my original presentation.

I believe that the House should also be alerted to the fact that while a letter from the U.S. Department of Justice was referred to making mention of a certain memorandum which was not included and which may have been requested—and I do not know that there was any such specific request in the resolution of inquiry—on a careful study of mine I find that same letter from the Assistant Attorney General addressed to the Honorable Robert S. Walker, there is a concluding paragraph which states:

> The matter you referred to was covered completely by the testimony of the Attorney General before the Senate Special Subcommittee to Investigate Individuals Representing the Interests of Foreign Governments on Friday, September 5, 1980.

And I believe all of that material was also reported in the newspapers.

But even beyond that, Mr. Speaker, I think one must ask this question: After the initial introduction of this resolution of inquiry and the submission of all this material and having made all this material available to all the Members of this House, I must state once again—and I think this is an important matter and an important item to consider—there were not more than a dozen or two dozen Members, and we have a record of all the Members, who sought to review, to consider, or to judge whether or not there had been a substantial response.

Mr. Speaker, I leave that issue before the House.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Pennsylvania for the purpose of asking a question.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. Rodino) has 4 minutes remaining.

Mr. WALKER. Mr. Speaker, I think the gentleman for yielding .

My question goes to the fact that the resolution of inquiry specifically demanded all materials in the Department, not just in the Criminal Division. This letter to which the gentleman referred says they did not provide all materials within the Department; they only provided what was in the Criminal Division.

I wonder how the gentleman can say the resolution of inquiry did not demand the memorandum which referred to the 10-day delay the Attorney General ordered in the Bill Carter case. How could that not be a part of the resolution of inquiry?

Mr. RODINO. Mr. Speaker, how I would like to respond to the gentleman in making reference to that is to say that with regard to the Special Subcommittee to Investigate Individuals which heard all of this matter, all of that testimony was reported in the newspapers and is public knowledge at this time. So the question has to be whether or not the failure to act, if there was a failure indeed, was in response directly to that. If there was that, then the question is whether or not that was a material failure so as to not be in substantial compliance.

The SPEAKER pro tempore. The gentleman from New Jersey has 3 minutes remaining.

CALL OF THE HOUSE

Mr. RODINO. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 536]

Abdnor
Addabbo
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashbrook
Ashley
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Bauman
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brodhead
Brooks
Broomfield
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Ill.
Collins, Tex.
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Johnson, Calif.
Jones, N.C.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kogovsek
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCormack
McDade
McHugh
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mavroules
Mazzoli
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Rudd
Sabo
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Winn
Wirth
Wolff
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

☐ 1150

The SPEAKER pro tempore. On this rollcall, 349 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

RESOLUTION OF INQUIRY IN THE MATTER OF BILLY CARTER

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, during committee consideration my original inclination was to support a motion to table this resolution of inquiry. But I changed my mind and then urged the adoption of the resolution when the story broke and the press reported that the President had a private conversation with the Attorney General of the United States about the Billy Carter case.

The reason why I am going to offer a motion to postpone, if the motion to table is defeated, is that I just learned today that there has been another omission from the materials that were delivered by the Department of Justice: A memorandum of June 13 from the Attorney General suggesting that the FBI postpone its investigation for 10 days. It was during that 10-day period that the Attorney General conferred with the President with regard to the Billy Carter case.

In addition, we learned from the press that National Security Adviser Brzezinski communicated intelligence information to Billy Carter. This is a very serious matter. The question arises whether or not the espionage laws were breached by the National Security Adviser or the President. There are unanswered questions. These relate to materials and documents and information which I believe this body should have.

I urge a "no" vote on the motion to table. I will then offer a motion to postpone until October 1.

Mr. RODINO. Mr. Speaker, again, I want to point out to the House that the matter before us is a resolution inquiry which directs the President to reply to the extent possible to certain questions which had been presented through the resolution of inquiry as introduced and those questions which had been added to the resolution by both the Committee on the Judiciary and the Committee on Foreign Affairs.

The precedents indicate that resolutions of inquiry will, if substantially complied with, then be laid at rest by a motion to table, because any further action would be fruitless and moot.

I believe that the gentleman has inquired into a matter which requires evaluation of certain items. It does not go to whether or not the President has responded to the questions included in the resolution of inquiry.

☐ 1200

The other body is examining the question as to whether or not Billy Carter may have violated the law. This question is not before the House.

As a result, Mr. Speaker, I am going to urge and I now move that we table the resolution of inquiry before this House.

MOTION TO TABLE OFFERED BY MR. RODINO

Mr. RODINO. Mr. Speaker, I offer a motion to table House Resolution 745.

The Clerk read as follows:

Mr. RODINO moves to table House Resolution 745.

PARLIAMENTARY INQUIRY

Mr. McCLORY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The Chair will entertain the parliamentary inquiry.

Mr. McCLORY. Mr. Speaker, is it not true that a favorable vote on the motion to table would be a final adverse resolution or disposition of the resolution of inquiry?

The SPEAKER pro tempore. It would dispose of the resolution by laying it on the table.

The question is on the motion to table offered by the gentleman from New Jersey (Mr. RODINO).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 124, nays 260, not voting 48, as follows:

[Roll No. 537]

YEAS—124

Addabbo
Akaka
Alexander
Annunzio
Anthony
Applegate
Ashley
Aspin
Bailey
Baldus
Beilenson
Benjamin
Biaggi
Bingham
Boland
Bolling
Bonior
Bowen
Brademas
Brinkley
Brodhead
Brooks
Brown, Calif.
Burton, Phillip
Cavanaugh
Coelho
Collins, Ill.
Conyers
Corman
Danielson
Davis, S.C.
Derrick
Dixon
Donnelly
Drinan
Early
Eckhardt
Edwards, Calif.
Evans, Ga.
Fary
Fascell
Fazio
Ferraro
Flippo
Ford, Mich.
Garcia
Gaydos
Gephardt
Gibbons
Ginn
Gonzalez
Gray
Guarini
Hall, Ohio
Hanley
Hawkins
Heftel
Holland
Huckaby
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Kastenmeier
Long, La.
Lundine
Mathis
Matsui
Mikulski
Mineta
Moakley
Mollohan
Montgomery
Murphy, Ill.
Murphy, Pa.
Musto
Nedzi
Nichols
Nowak
Oakar
Oberstar
Obey
Patten
Pease
Pepper
Perkins
Preyer
Price
Rahall
Rangel
Ratchford
Reuss
Roberts
Rodino
Rose
Rosenthal
Rostenkowski
Roybal
Sabo
Scheuer
Seiberling
Simon
Solarz
Stack
Staggers
Stewart
Stokes
Stratton
Swift
Synar
Van Deerlin
Vanik
Vento
Volkmer
Watkins
Waxman
Whitley
Wolff
Wright
Wyatt
Yates
Young, Mo.
Zablocki
Zeferetti

NAYS—260

Abdnor
Albosta
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Archer
Ashbrook
Atkinson
AuCoin
Badham
Bafalis
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Blanchard
Boner
Bonker
Bouquard
Broomfield
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Butler
Byron
Campbell
Carr
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dodd
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ind.
Fenwick
Findley
Fish
Fisher
Fithian
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Gingrich
Glickman
Goldwater
Goodling
Gore
Gramm
Green
Grisham
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Harkin
Harris
Harsha
Heckler
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jones, Tenn.
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Mavroules
Mazzoli
Mica
Michel
Miller, Calif.
Miller, Ohio
Minish
Mitchell, N.Y.
Moffett
Moore
Moorhead, Calif.
Mottl
Myers, Ind.
Natcher
Neal
Nelson
O'Brien
Ottinger
Panetta
Pashayan
Patterson
Paul
Petri
Peyser
Pickle
Porter
Pritchard
Pursell
Quayle
Quillen
Railsback
Regula
Rhodes
Rinaldo
Robinson
Roe
Roth
Rousselot
Rudd
Santini
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stangeland
Stanton
Stark
Stenholm
Stockman
Studds
Stump
Symms
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Vander Jagt
Walgren
Walker
Wampler
Weaver
Weiss
White
Whitehurst
Whittaker
Whitten
Williams, Mont
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolpe
Wydler
Wylie
Yatron
Young, Fla.

NOT VOTING—48

Ambro
Anderson, Ill.
Bevill
Boggs
Breaux
Buchanan
Carney
Chisholm
Clay
Cotter
Dingell
Giaimo
Gilman
Gradison
Grassley
Hefner
Hinson
Holtzman
Howard
Jenrette
Johnson, Colo.
Kelly
Kramer
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
McDonald
McKay
Marriott
Mattox
Mitchell, Md.
Moorhead, Pa.
Murphy, N.Y.
Murtha
Myers, Pa.
Nolan
Richmond
Ritter
Royer
Russo
St Germain
Steed
Tauzin
Wilson, C. H.
Wilson, Tex.
Young, Alaska

□ 1210

Messrs. TRAXLER, DELLUMS, PICKLE, and THOMPSON changed their votes from "yea" to "nay."

So the motion to table was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. RODINO. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER. Without objection, the previous question will be considered as ordered.

There was no objection.

The SPEAKER. The question is on the resolution.

Mr. BAUMAN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The Chair is in the middle of a vote.

The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

POINT OF ORDER

Mr. RODINO. Mr. Speaker, I was on my feet requesting a rollcall vote.

The SPEAKER. In the opinion of the Chair, the gentleman had not requested the rollcall vote in a timely manner.

APPOINTMENT OF CONFEREES ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 5192, the Education Amendments thereto, of 1980, with a Senate amendment thereto, insist on disagreement to the Senate amendment, and agree to a further conference with the Senate thereon.

□ 1220

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair has been informed that the gentleman from New Jersey (Mr. RODINO) rose to his feet and asked for the yeas and nays on adoption of the resolution of inquiry.

The House will be in order.

The Chair will expect the Members to please act with dignity.

The Chair did not hear the gentleman seek recognition. The time having elapsed the only way the Member can ask for the yeas and nays is by unanimous consent. Is there an objection?

Mr. BAUMAN. Mr. Speaker, I object.

The SPEAKER. The Chair hears an objection.

The Chair regrets the Chair did not hear the gentleman, the gentleman from New Jersey.

Is there objection to the request of the gentleman from Kentucky (Mr. PERKINS)?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I do so to allow my chairman to state why it is necessary to go back to conference.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, let me state to my distinguished colleague from Ohio that the Senate rejected the conference report by one vote. They later reconsidered and on yesterday afternoon agreed to go to conference and appointed their conferees yesterday.

The subcommittee met this morning, and it was the decision of our committee that we should go back to conference with the Senate.

Mr. ASHBROOK. Mr. Speaker, further reserving the right to object, I fully agree with this position. I took this reservation for the purpose of letting the Members know why this was necessary.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there further objection to the request of the gentleman from Kentucky (Mr. PERKINS)? The Chair hears none, and appoints the following conferees: Messrs. PERKINS, THOMPSON, BRADEMAS, FORD of Michigan, GAYDOS, BIAGGI, SIMON, MURPHY of Pennsylvania, WEISS, PEYSER, RATCHFORD, MILLER of California, ASHBROOK, BUCHANAN, JEFFORDS, EDWARDS of Oklahoma, TAUKE, and PETRI.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO HAVE UNTIL MIDNIGHT TOMORROW TO FILE PRIVILEGED REPORT ON DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tomorrow night to file a privileged report on the bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

Mr. EDWARDS of Alabama reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 2977, DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

Mr. PERKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees:

For consideration of titles I, II, III, and IV of the Senate amendment, and modifications thereof committed to conference: Messrs. PERKINS, BRADEMAS, HAWKINS, BIAGGI, SIMON, BEARD of Rhode Island, MILLER of California, STACK, ASHBROOK, COLEMAN, KRAMER, and ERDAHL.

And for the consideration of sections 501, 502, 503, and 505 only of title V of the Senate amendment to H.R. 2977 and modifications thereof committed to conference: Messrs. BROOKS, EDWARDS of California, CONYERS, HYDE, and SENSENBRENNER.

And the consideration of section 504 only of title V of the Senate amendment to H.R. 2977 and modifications thereof committed to conference: Messrs. ULLMAN, CORMAN, and CONABLE.

IN TRIBUTE TO THE LATE ALDO BECKMAN

(Mr. ROSTENKOWSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROSTENKOWSKI. Mr. Speaker, it is with a sense of great loss and sorrow that I announce to this Chamber the passing of a distinguished journalist, Aldo Beckman. Late last night, Aldo lost his private struggle with cancer.

Every profession has its small minority of individuals who combine both intellect and class. Aldo Beckman clearly demonstrated these two qualities and in so doing brought distinction to his profession and himself.

While he was only 45 at his death, Aldo's achievements are, to say the least, quite substantial. His career seemed to move at an ever-quickening pace. After graduating from Western Illinois University, Aldo worked for United Press International, then in 1959 moved to the Chicago Tribune. In 1965 he was promoted to the Washington bureau of the Tribune. Once in Washington, Aldo wasted no time in establishing himself and in 1966 was awarded the Tribune's Beck Journalism Award for distinguished national journalism. In 1970 he was assigned to cover the White House and in 1972 was awarded his second Beck Journalism Award for his coverage of President Nixon's trip to China. In 1976 Aldo was named the Tribune's Washington bureau chief and from that time to his death, served in that capacity covering various Washington issues in all branches of the Government.

He was hard working and conscientious to the very end. He could not be bothered by his own physical infirmities, but rather he tried to work to his last days.

Aldo Beckman—a dedicated journalist, a man of unquestioned integrity, my dear friend—will long be missed by this Member of Congress.

● Mr. ANNUNZIO. Mr. Speaker, I am honored to join my good friend and colleague, the Honorable DAN ROSTENKOWSKI, in paying tribute to Aldo Bruce Beckman, the Washington bureau chief of the Chicago Tribune, who died this morning of cancer.

Aldo Beckman's passing is especially tragic because he was only 45 years of age, was married and had five beautiful children, and still had some of the best years of his life ahead of him. His loss is a tremendous one for the citizens of Chicago who were acquainted with his work, and his distinguished career of service will long be remembered by all of us who had the good fortune of knowing him.

Aldo Beckman began his career in journalism in 1958 as a writer and reporter with United Press International in Chicago, after graduation from Western Illinois University in 1956, and service with the U.S. Army from 1956–58. He joined the Chicago Tribune in 1959 and was a correspondent in the newspaper's Washington office through the decade of the sixties. In 1970, he became the Tribune's White House correspondent, and became its Washington bureau chief in 1977.

Mr. Beckman received the Chicago Tribune's Edward Scott Beck award in 1966 and 1972; Western Illinois University's Alumni Achievement Award in 1973, the Merriman Smith Award in 1976, and in 1978 was the president of the White House Correspondents Association.

Mrs. Annunzio and I extend our deepest sympathy to his wife, Marijo, and his children, Theresa, Patricia, Jennifer, Mary Kay, and Eugene, of the Washington area.●

● Mr. PORTER. Mr. Speaker, we in Illinois feel an especially keen loss in the death this morning of Aldo Beckman, chief of the Washington bureau of the Chicago Tribune.

Although Mr. Beckman is known to all of official Washington for the reputation of aggressive and impartial reporting he developed in the 15 years since his transfer from Chicago to the Tribune's Washington bureau, many of us in Illinois recall with affection and respect his coverage of the Criminal Courts Building in Chicago, and his work on many other major Chicago-area stories, during the 6 years he served the Tribune in its home city.

Mr. Beckman had been a reporter for the Tribune for 2 years when he wed Mari Jo Walsh of Wilmette in 1961. They reared four daughters and a son, to whom the death of a father at the comparatively young age of 45 comes as an unwelcome reminder of the fragility of all human life.

Mr. Beckman's colleagues knew of his poor health these past months, and their already high respect for him grew even greater as they watched him covering what he knew would be his last major stories—the 1980 national conventions of the Republican and Democratic parties.

Mr. Beckman has won many awards, the most recent in 1976, when he was given the Merriman Smith Memorial Award for his spot reporting of the attempt to assassinate President Ford by Sarah Jane Moore. He won the Tribune's prestigious Beck Journalism Award twice, the more recent in 1972 for his coverage of President Nixon's trip to China.

Many in this Congress grew to know Mr. Beckman in his capacity as president of the White House Correspondents Association last year. Others knew him as the writer of a brilliant weekend commentary on the Washington scene.

But in Illinois, there are many today who grieve another, a younger, Aldo Beckman. They remember the eager student at Bradley University and Western Illinois University in the mid-1950s. I am sure there are even some veterans on the Quincy (Illinois) Herald-Whig who remember the enthusiastic student who worked college summers for their newspaper.

Mr. Beckman was a product of Illinois farmland, a native of Lima. His friends say he was proud of this heritage and never tried to lose his rural Midwest twang. Illinois has every right to be proud of the achievements of this great journalist. His family, his colleagues on the Tribune, and his associates in government share in the emptiness left by his death.●

PERMISSION FOR COMMITTEE ON FOREIGN AFFAIRS TO HAVE UNTIL MIDNIGHT, FRIDAY, SEPTEMBER 12, 1980, TO FILE REPORTS ON HOUSE CONCURRENT RESOLUTION 367 AND HOUSE CONCURRENT RESOLUTION 368, AND TO FILE ADDITIONAL SUPPLEMENTARY AND MINORITY VIEWS ON MONDAY, SEPTEMBER 15, 1980

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the Committee on Foreign Affairs have until midnight on Friday, September 12, 1980, to file its reports on House Concurrent Resolution 367 and House Concurrent Resolution 368, and that additional, supplemental, and minority views on such resolutions may be filed on Monday, September 15, 1980, and printed in the reports as if filed with them.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

EDWARD DeBARTOLO AND THE CHICAGO WHITE SOX

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, the Chicago White Sox baseball club is an illustrious part of the city of Chicago and the tradition of baseball. The team's future, therefore, is of much interest to the people of our city and baseball fans everywhere.

We in Chicago want to be certain that the White Sox will remain in our city and we would like to see the ball club acquired by a management which could lead it to an American League pennant.

On August 22, 1980, the board of directors of the White Sox voted unanimously to recommend the sale of its franchise to Mr. Edward J. DeBartolo, Sr., of Youngstown, Ohio. Meeting again on September 7, 1980, the board unanimously reaffirmed this recommendation.

Mr. DeBartolo, chairman of the board and chief executive officer of Edward J. DeBartolo Corp., is an outstanding citizen and business leader. He has publicly pledged that the White Sox will remain in Chicago and that he will provide the necessary leadership abilities and financial resources to bring a pennant to Chicago.

I, therefore, urge the American League baseball owners and the commissioner of baseball, in the interest of baseball and the city of Chicago, to approve the sale of the White Sox to Mr. DeBartolo. I know that many thousands of baseball fans look forward with me to welcoming him to Chicago where he will lead the White Sox to a pennant and a World Series championship.

IS CHICAGO FOR SALE?

(Mr. DEVINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DEVINE. Mr. Speaker, a story in the Washington Post this morning was shocking, and immediately suggests President Carter is trying to buy the election with taxpayer funds.

Chicago Mayor Jane Bvrne was widely reported in bitter opposition to Carter, but a sudden change of heart followed a number of announcements of Federal aid.

Carter's Commerce Secretary Phil Klutznick just last week announced a million dollar grant for a new program from the Commerce Department.

Then last Friday, a $13.2 million Federal loan to the financially troubled Chicago Housing Authority was awarded.

Federal approval of a land grant transfer, that had been dormant since last fall, suddenly was approved to allow construction of a new O'Hare Airport international terminal.

Carter's Transportation Secretary Goldschmidt, originally suggesting Chicago might suffer in terms of Federal aid when Mayor Byrne switched her allegiance to Ted Kennedy, last Monday denied Federal funds are withheld for political reasons. Nevertheless, yesterday a $91.8 million transportation grant was suddenly announced for Chicago.

Mr. Speaker, this smells to high heaven. Can a President, with immunity, bestow largesse from the people's Treasury to curry favor for his candidacy?

Nobody is suggesting bribery, but when there is an apparent switching of allegiance to a person in a position to bestow over one hundred million dollars of taxpayer money, the public has a right to know, and have a complete explanation.

Carter's image as a "nice guy," et cetera, is seriously tarnished by this type of election year generosity. Moreover, a biography entitled, "In Search of the Great White House," by Betty Glad, professor of political science at the University of Illinois, should be must reading for all persons seeking an insight on the character of the real Jimmy Carter.

Following is the Washington Post story this morning as reported by Edward Walsh, Washington Post staff writer:

As Federal Funds Flow to Chicago, Mayor Byrne Returns to Carter Fold

(By Edward Walsh)

Chicago, September 9.—Mayor Jane Byrne, who flirted with an endorsement of President Carter last fall only to end up jilting him in favor of Sen. Edward M. Kennedy (D-Mass.), was coaxed back into the Carter fold today with the help of more than $100 million in federal largesse.

Byrne, one of Kennedy's strongest supporters during his primary challenge to Carter, showed up at Chicago's Midway Airport this afternoon to welcome Vice President Mondale for a series of campaign appearances in the Chicago area.

The mayor followed up that initial signal of a new change of heart by introducing Mondale tonight at the Illinois Democratic Convention.

However, it appeared that is was more than the chance to offer Mondale the city's hospitality that moved Byrne away from her bitter opposition to Carter. Specifically, the vice president was preceded here by a number of announcements of federal aid clearly meant to smooth his way.

Last week, for example, Commerce Secretary Philip Klutznick was in town and on the same day city officials announced that they had received a $1 million grant from Klutznick's department for a new program.

Last Friday, the day Byrne returned to Chicago from a trip to Europe, officials here learned of a $13.2 million federal loan to the financially troubled Chicago Housing Authority. The city learned the same day of the final approval of the transfer of a parcel of federal land to Chicago that will allow construction of a new international terminal at O'Hare Airport.

The president last fall had all but committed the administration to approving the land transfer at a political dinner at which Byrne all but endorsed him for renomination. But shortly thereafter, Byrne changed her mind and endorsed Kennedy, and until last week nothing more was heard of the land transfer.

Transportation Secretary Neil E. Goldschmidt was among those most outraged by Byrne's abrupt change of allegiance. He publicly suggested at the time that the city might suffer in terms of federal aid because of the mayor's switch.

Goldschmidt was here on Monday denying that what the federal government withholds for political purposes it might also provide for the same reasons. "I will not fly over Chicago dropping money for this election," he told the editors of the Chicago Sun-Times.

Today, however, the Sun-Times reported word from Rep. Dan Rostenkowski (D-Ill.) of $91.8 million in federal transportation grants to the city.

The Carter strategy here is to gain the benefit of the local Democratic organization by courting Byrne without alienating the anti-Byrne forces that joined with the president to defeat Kennedy in Chicago and throughout Illinois in the primary.

The strategy sometimes calls for a delicate balancing act. For example, Byrne is still feuding with state Sen. Richard M. Daley, son of the city's late mayor Richard M. Daley. Young Daley, the Democratic candidate for Cook County state's attorney, backed Carter in the Illinois primary, and to show that the Carter campaign does not forget its friends Mondale's first stop here was at a Daley rally in suburban Blue Island.

The mayor was left at the airport.

Carter campaign operatives here clearly also do not want to be associated too closely with Byrne. Many of them believe Byrne, then embroiled in a series of local controversies, ended up hurting Kennedy during the primary and they are not anxious for a repetition of that in November.

"We don't want her with her arm around Jimmy Carter," said the president's Illinois campaign coordinator, Michael Casey. "What we want is her people and for her to tell her people to work for Jimmy Carter."

DEMOCRATIC CAMPAIGN FILM CLIP

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, I want to note something that happened last night on television, one of those rare occasions when I watch it. I saw President Carter's reelection ad. It was a very well done ad. It only had one mistake. It showed the President in a town meeting. It gave the impression he was listening to the people and that everything they wanted was exactly what he subscribed to. They made one glaring mistake. It showed the President receiving a question from a woman in Steubenville, Ohio, regarding coal and coal mines. The President's response was, "Well, you have your Congressman"—he mentioned our good friend the gentleman from Ohio (Mr. Applegate)—"bring you to the White House and we'll talk this over."

Mr. Speaker, that left a very good impression. Only one thing was wrong. When that woman came to the White House, she left in tears. That is what the ad does not show. She left in tears because the President flatly turned down everything she wanted for eastern Ohio coal.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I will yield to the gentleman from Texas.

Mr. KAZEN. I happened to see that ad this morning on the Today Show. The President did not say, "Bring her to the White House." He said, "Bring her to Washington with you," and he did not promise to do anything personally but for her to sit with his advisers. I saw the thing this morning.

Mr. ASHBROOK. I am sure the gentleman knows the impression left was that the President listens to the people as they speak and then acts. It was a totally erroneous impression.

The SPEAKER. The time of the gentleman has expired. The Chair will only allow the Republican and Democratic politicals 1-minute speeches for the first half hour of the session and the House will continue on with the legislative business.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

Mr. NEDZI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Michigan (Mr. NEDZI).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 346, nays 1, answered "present" 2, not voting 83, as follows:

[Roll No. 538]

YEAS—346

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carr
Carter
Cavanaugh
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
de la Garza
Deckard
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCormack
McDade
McDonald
McEwen
Madigan
Maguire
Markey
Marks
Marlenee
Martin
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
O'Brien
Oakar
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Perkins
Petri
Pickle
Porter
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Sabo
Santini
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Stark
Stenholm
Stokes
Studds
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Bob
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—1

Lloyd

ANSWERED "PRESENT"—2

Emery
Ottinger

NOT VOTING—83

Addabbo
Anderson, Ill.
Applegate
Beard, Tenn.
Bevill
Biaggi
Bingham
Boggs
Buchanan
Carney
Chisholm
Clay
Cotter
Daschle
Davis, S.C.
Dellums
Derrick
Dingell
Downey
Duncan, Oreg.
Ferraro
Fountain
Garcia
Gilman
Gingrich
Gradison
Grassley
Hanley
Hefner
Hinson
Holtzman
Howard
Jenrette
Johnson, Colo.
Kelly
Kramer
LaFalce
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Lundine
McCloskey
McHugh
McKay
McKinney
Marriott
Mathis
Mattox
Mavroules
Mitchell, Md.
Moorhead, Pa.
Murphy, N.Y.
Murtha
Myers, Pa.
Nolan
Nowak
Pashayan
Pepper
Peyser
Pritchard
Rangel
Richmond
Ritter
Rosenthal
Royer
Russo
Satterfield
Shannon
Solarz
St Germain
Steed
Stewart
Stockman
Stratton
Tauzin
Vander Jagt
Weiss
Wilson, C. H.
Wilson, Tex.
Young, Alaska
Zeferetti

So the motion was agreed to.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will state that in view of the fact that we have made an earlier commitment, the Committee will rise at 2:45 and the House will adjourn by 3 o'clock in order that we may keep the commitment that has been made.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7301, with Mr. PICKLE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Michigan (Mr. NEDZI) will be recognized for 1 hour, and the gentleman from Virginia (Mr. WHITEHURST) will be recognized for 1 hour.

The Chair recognizes the gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the Committee on Armed Services presents H.R. 7301, the military construction authorization bill for fiscal year 1981.

The purpose of the bill is to provide new military construction authorization and related authority in support of the military departments and defense agencies.

At this point, Mr. Chairman, I want to thank the ranking member of the Subcommittee on Military Installations and Facilities, the distinguished gentleman from Virginia (Mr. WHITEHURST) and all the members of the subcommittee, for their tireless efforts during the hearings and markup sessions on the bill.

Overall, we believe that H.R. 7301 is a good bill. It is a balanced measure that meets the most pressing requirements. It is a bill that reflects the efforts and judgment of the Armed Services Committee.

The Defense Department requested new authorization in the amount of $5,294,073,000 for fiscal year 1981. In addition, the Department of Defense submitted a fiscal year 1980 supplemental authorization request which contained a total request of $23,500,000. Also, the Department submitted a fiscal year 1981 budget amendment which included $221,137,000 in additional authorization for Indian Ocean region basing initiatives, fleet support activities and increased operation and maintenance costs in the family housing program. Combined, the requests provided new authorization in the amount of $5,538,710,000.

Instead of reporting out a separate supplemental bill, the committee decided to make adjustments in the fiscal year 1981 bill. Therefore, H.R. 7301 is a combination of the requests. The bill as approved by the committee totals $5,538,003,000 in new authorization. This total is $707,000 below the requested authorizations.

After extensive hearings in 10 separate sessions and close review of each requested project, the committee was able to determine those proposals that in its view could be deferred without impairing the operational effectiveness of the armed services.

Our committee did not cut projects just for the sake of cutting, but deleted projects that it felt could be deferred without impairing our national security. In certain instances, we added projects where it was determined either by testimony or supporting documentation that the priority was great enough to warrant inclusion in the bill. As such, the construction proposals for the Active Forces cover approximately 715 projects at approximately 394 major military installations within the United States and overseas.

Major items included in the bill are: $270,377,000 for Indian Ocean region basing initiatives; $656,395,000 for major NATO related construction, including $317,500,000 for the NATO infrastructure program; $248,870,000 for energy conservation, air and water pollution abatement; $816,504,000 for health care, housing and community facilities; $409,174,000 for operational and training facilities; $158,891,000 for construction of 2,651 new units of military family housing; and $3,150,000 to start construction of a binary munitions production facility at Pine Bluff Arsenal, Ark.

For the individual services, the committee reduced the Army request of $843,331,000 to $773,310,000, increased the Navy request from $989,510,000 to $1,070,640,000, and increased the Air Force request from $737,690,000 to $794,082,000.

Turning to the individual titles, the Army in title I requested $843,331,000. The committee is recommending $773,310,000. Under this title, the committee approved $63,550,000 for operational and training facilities, $116,830,000 for housing and community facilities, $172,350,000 for maintenance and production facilities, and $123,300,000 for air and water pollution control and energy conservation.

In title II, the Navy portion of the bill, there was a total request of $989,510,000. The committee approved $1,070,640,000. Major items included $110,910,000 for housing and community facilities, $108,160,000 for maintenance and production projects, $74,240,000 for air and water pollution control and energy conservation efforts, $316,000,000 for medical care facilities, and $148,167,000 for operational and training facilities.

In title III, the Air Force portion of the bill, $737,690,000 was requested. The committee approved $794,082,000. Major items included $180,167,000 for operational facilities, $172,850,000 for supply facilities, $127,750,000 for research, development and test facilities, including $97.2 million for the Space Shuttle program, $75,304,000 for housing and community support projects, and $55,520,000 for pollution control and energy conservation efforts.

□ 1250

Mr. YATES. Mr. Chairman, will the gentleman yield for a question?

Mr. NEDZI. I yield to the gentleman from Illinois.

Mr. YATES. There are provisions made in here for the construction of sites for the MX missile system, are there not?

Mr. NEDZI. They are not sites for the deployment of the MX missile system. These are test facilities.

Mr. YATES. Test facilities.

As chairman of the Appropriations Committee for the Department of the Interior, I received a visit last week by representatives of the Duckwater Shoshone Tribe of Nevada, who are protesting the installation of MX missile clusters, as they describe them, on their lands. The Air Force agreed to move the missiles off the reservation itself but to move it to the land adjoining the reservation, to which the Duckwater Shoshone Tribe claims water rights.

The subject of those water rights is in a court case which is being very seriously contested, and the installation of these sites on that land, if they actually take place, will add possibly millions of dollars to the Federal Government's budget.

I am wondering if the gentleman is aware of this situation or can tell us what is proposed here.

Mr. NEDZI. I can say to the gentleman that I am not aware of the problem to which the gentleman has alluded. However, the money which is included in this particular bill has nothing to do with the deployment of those missiles. The money here is for construction of test facilities and, to my knowledge, they are not going to be anyplace near the land in dispute.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. NEDZI. I yield to the gentleman from Nevada.

Mr. SANTINI. In response to the very well-taken inquiry of my friend, the gentleman from Illinois, I am advised that we have now an ongoing environmental impact statement. That statement will be concluded sometime in the month of December of this year. Presumably that statement would take into consideration the water impact issue as it relates to our friends on the Shoshone Reservation in Duckwater and be able to provide at least some response on whether or not there will or will not be a conflict of water use there.

Mr. YATES. I thank the gentleman, and I thank the chairman of the committee.

Mr. NEDZI. To continue, Mr. Chairman, in title IV, for defense agencies, the total request was $593,860,000. The committee approved $546,110,000. The largest authorization in this title is $317,500,000 for the NATO infrastructure program. Also included is $106.2 million for a new Defense Intelligence Agency facility and $47 million for the overseas dependents school program.

In title V, military family housing, there was a total request of $2,195,982,000. The committee recommends approval of $2,156,860,000. Of this amount, $1,880,760,000 is for operation and maintenance, leasing, and debt payment. Authorization in the amount of $158,891,000 is for construction of 2,651 new units of military family housing, $108,840,000 for improvements of existing units, and $8,369,000 for planning and design.

In title VI, administrative provisions, the committee extended the cost variation authorities and increased the per square foot cost of barracks and unaccompanied officer quarters to $52 and $56, respectively. The present cost limitations are $48 and $52, respectively.

In title VIII, general provisions, the committee approved the following major items:

Five land conveyances;

Amendment of the existing community impact assistance program to include the East Coast Trident Base area and MX weapons system areas;

The reversion of the land held by the United States for the San Diego Naval Regional Medical Center to the city of San Diego in the event the United States ceases to use the land for such purposes; and

Authority for the Secretary of the Navy to arrange for transportation on a temporary basis for military personnel assigned to the Naval Submarine Base, Kings Bay, Ga., between their residence and places of work until adequate on-base family housing is available. This authority will expire on January 1, 1982.

Mr. Chairman, this conludes my statement on H.R. 7301.

I strongly urge my colleagues to support the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. WHITEHURST. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, before I proceed with my statement, I just want to call the attention of my colleagues to the fact that this is the last military construction authorization bill that our colleague, the gentleman from Michigan (Mr. NEDZI), will be offering to this body.

I have had the privilege of serving with LU NEDZI since he became the chairman of this subcommittee, and I can say with enthusiasm that no colleague of mine in the House has served with greater distinction, with more evenhandedness, than he has in chairing this subcommittee. It requires great patience sometimes, I think, to proceed with the business that is brought before this subcommittee. Yet he has always been temperate, logical, a reasonable man. I take this occasion this afternoon to salute LU NEDZI on the occasion of his chairing this, his last military construction authorization bill.

Mr. FINDLEY. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Illinois.

Mr. FINDLEY. I thank the gentleman for yielding.

Mr. Chairman, I welcome this opportunity to join in this salute to our friend, the gentleman from Michigan (Mr. NEDZI). I have seen him not from the vantage point of the Armed Services Committee but from others. Over the years the gentleman from Michigan and I have joined together in many a cause, and I regret very much his departure from this Chamber and I wish him well.

☐ 1300

Mr. WHITEHURST. Mr. Chairman, I rise in support of H.R. 7301, the Military Construction Authorization Act for fiscal year 1981.

This legislation has evolved through a series of careful, detailed reviews of each of the 715 projects proposed by the military services during 2 weeks of intensive hearings. The Armed Services Committee's primary concern during those hearings was to assure that the project as requested by the Department of Defense was not only essential to meet a valid and urgent military need, but represented the most cost effective and feasible method for achieving the objective.

As a result, the committee has brought to you a military construction program for fiscal year 1981 that provides a balanced level of new facilities to support deployment of weapons systems, to continue emphasis on European readiness, to improve the quality of life for military personnel and their families, and to meet defense commitments to high priority national requirements such as energy conservation and pollution abatement. At the same time, we have made a measured advance toward the goal of modernizing or replacing many of the older structures.

Since our distinguished chairman, the gentleman from Michigan, has so adequately explained the major items in the bill, I will not go into detail on individual projects. However, I would like to comment briefly on several areas of interest.

Events in the past year have intensified the country's concern for protecting U.S. interests in the Persian Gulf/Indian Ocean area. Our committee supports the policy of developing capabilities in this area to assure the continuation of the flow of oil from the region and to demonstrate our concern for the independence of foreign states. Included in this bill is $270,377,000 for the development of logistical bases to support personnel, aircraft, and ships associated with rapid deployment in the Persian Gulf and to expand the naval support facility at Diego Garcia in the Indian Ocean.

The committee is aware that this action represents a new and expanding commitment for the United States in another part of the world. As such, the committee has directed that the Department of Defense provide the Committees on Armed Services with a semiannual report on the construction projects undertaken in the Indian Ocean region, the costs involved, the status of execution of the construction, the operation and maintenance costs of the facilities, the U.S. share of such costs, the frequency and type of use of the facilities by the United States, the frequency and type of use of the facilities by the host nation or other nations, and the names and location of the contractors performing the construction.

The committee was further concerned that U.S. contractors should receive as much of the construction work as possible and stated its intent through report language to insure that U.S.-owned contracting firms have an opportunity to compete for the construction and dredging at Diego Garcia and construction in Indian Ocean littoral countries on an equitable basis, subject to and in accordance with negotiated agreements.

The committee continues to be concerned about the estimated $1.5 billion backlog in the modernization program for the eight naval shipyards, some of which are operating with 40-year-old powerplants and utility systems that must be replaced. At the current rate of funding, total modernization will not be realized before the mid-1990's.

The committee added $27.3 million to the fiscal year 1981 military construction program for seven projects at four of the naval shipyards in an attempt to speed up these vitally needed improvements. This action by no means addresses the critical shortfall, but it is a step in that direction.

As my colleague from Michigan has pointed out, $649,501,000 is included in this bill for health care, housing and community facilities which are critically needed to improve the quality of life of our men and women in uniform and, hopefully to improve recruitment and retention.

Mr. Chairman, we feel this is a good bill which represents a carefully balanced approach to the twin problems of providing new facilities required by changes in weapons, advancing technologies, and national security policy, and the continuing effort to upgrade or replace much of the substantial inventory of aging and obsolescent facilities. I urge my colleagues to support this legislation.

We are prepared to answer any questions the Members may have.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I address these remarks to the chairman of the subcommittee and the ranking member on the subcommittee, because I am concerned about one aspect of this bill that concerns the construction of a binary munitions plant in Pine Bluff, Ark., which is about 30 to 35 miles as the crow flies from my district in central Arkansas.

This proposal concerns me for a number of reasons. As the commitee knows, I have been a staunch supporter of every military spending project which has come to the floor. I would match my record with anybody's in the House. I believe in the division of labor and that all of us cannot be experts on all subjects that come here to the floor. I put a lot of weight in committee reports.

In looking over this report I see some references to the binary munitions project. I believe that the committee report is entitled to great weight until such time as we discover that perhaps the deliberations in the committee were not as extensive as one would presume that they would be in this body.

In looking into this matter a little bit further, I have discovered that this is the first step in a project that one day will likely cost a billion dollars. I have also discovered that there were no extensive hearings in this Congress in the House. I have discovered that in the other body the Secretary of Defense actually opposed funding of this project for this particular year.

So, it seems to me, that the committee report has lost some of its credibility in the face of those findings.

I would ask the committee, why should I, as a Member who does not serve on the committee, rely on this report? Why should this Member place great weight on this report? Can the committee assure this gentleman that it knows what it is doing?

Mr. WHITEHURST. In 1975, the committee did have extensive hearings on this subject. Indeed, at that time it included a provision in the bill for preparation of the manufacture of binary gas. By amendment it was taken out.

On the basis of conditions as they now exist in Europe and given the keen Soviet threat, the committee is of the opinion now that the environment has changed sufficiently, the threat is sufficiently severe to warrant going forward with this project at this time.

I would remind the gentleman that we are not going into the production of binary gas. We are simply trying to get into the position of going into production if that is deemed necessary by the President. And indeed, it will take 3 years, as the project is so outlined in the bill, before the production time would even be upon us.

I would just read to the gentleman:

> Under curent law funds may not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national interest. Insofar as the committee is concerned, the prohibition does not apply to the development of a production facility.

Mr. BETHUNE. If the gentleman will continue to yield, I understand the law as it is now constituted would require the President to certify before any production of the munitions do begin.

Mr. WHITEHURST. That is correct.

Mr. BETHUNE. And this is for the construction of a facility wherein the munitions could be produced at a later date. I understand that.

My concern here is, is this Congress foregoing its opportunity to make a certification to the people that it has studied the proposition and that it is convinced that this is the policy decision upon which we should embark for the next decade?

Mr. WHITEHURST. I will yield to the gentleman from Missouri (Mr. ICHORD), who has been a very outspoken member of our committee in this body with regard to this threat.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. May I say, in reply to the distinguished gentleman from Arkansas, this certainly is not a matter to which the Committee on Armed Services, both the Subcommittee on Research and Development and the subcommittee chaired by the distinguished gentleman from Michigan, have given very little time. This has been debated extensively in the Congress and studied intensely by the Armed Services Committee long before the distinguished gentleman from Arkansas came to this body.

I do apologize to the gentleman from Arkansas for not conferring previously with the gentleman. I would state that I have conferred with the gentleman from Arkansas (Mr. ANTHONY), the gentleman in whose district this facility will be located. He is fully familiar with the problem, and he supports it, I might state very strongly.

The gentleman has had briefing after briefiing on the subject and is extremely well informed.

I would state further that the gentleman from Virginia has answered the gentleman from Arkansas correctly. We are not making a decision to go into binary production at this particular time. All we are doing at this time is authorizing approximately $3.15 million for facilitation at Pine Bluff, Ark.

Also, if I may continue, if the gentleman will yield further, three subcommittees, I would state to the gentleman from Arkansas, have already examined this matter very closely. We are also appropriating $19 million for equipment to go into that plant.

Now, there has been a lot of false information, misinformation and utter nonsense circulated in the newspapers and on the Hill and off the Hill, about this particular issue.

I would state to the gentleman from Arkansas further that the $3.15 million appropriation has already been passed and approved by this body. It is something that the Subcommittee on Military Construction has looked into very deeply. In fact, I appeared before the Subcommittee on Military Construction and laid this matter out. This essentially is what has happened, I would state to the gentleman from Arkansas. The Research and Development Subcommittee and the full Armed Services Committee have also studied the issue in detail.

I would observe that I have seen accusations that the three committees of the House are proceeding too rapidly and without adequate reflection but I assure you that definitely is not the case.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

□ 1310

Mr. BETHUNE. Mr. Chairman, I thank the gentleman for yielding.

Just a couple points. First of all, I do not think that I am proceeding out of hysteria. I read the gentleman's "Dear Colleague" letter today imploring Members of this body not to knee jerk on the issue, and I am not doing that.

Mr. ICHORD. I did not mean to infer that the gentleman was doing that.

Mr. BETHUNE. The point that I am trying to make here today with respect to the production of this binary munition, the nerve gas, is that I think the burden of bringing this matter forward is on the committee. The burden is on the committee to convince me as a Member who does not sit on that committee that the committee has studied every aspect of it and has heard the pro and the con of the issue.

Now, the record that I read indicates that the committee has not done that this year. The gentleman says three committees have examined it closely. As a matter of fact, that is not the case.

Mr. ICHORD. Mr. Chairman, if the gentleman will yield further, I can assure the gentleman that is not the case.

Mr. BETHUNE. Let me finish my point, and then I will yield.

As a matter of fact, three committees have not examined this closely this year.

As a matter of fact, no committee has examined this closely this year. The gentleman's committee took it up, but the only testimony was about four or five pages long and was from the gentleman from Missouri who then attached a copy of his own statement and who attached a Reader's Digest article and from that the committee voted it out.

Let me finish this point also; that is, that I think the gentleman from Missouri is the resident expert on this issue. I have read the gentleman's writings and I think the gentleman knows more about it than the rest of us in the House put together; but I do not serve on the committee. I serve on the Banking Committee. I serve on the Small Business Committee. I am trying to get up to speed on the issue.

I do not choose to rely on the expertise of the gentleman from Missouri on an issue of this complication. I choose to rely on credible committee reports that have been studied.

The Department of the Army did not testify in this Congress on this. Secretary Brown opposed funding this year in the Senate. There is an interagency study underway on this.

Mr. ICHORD. The gentleman is laboring under a misapprehension.

The CHAIRMAN. The gentleman from Virginia has the time.

Mr. WHITEHURST. Mr. Chairman, I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I would like one final point and then I would be delighted if the gentleman from Missouri would answer.

The gentleman suggests this is just a first step and it will not lead necessarily to the completion of the entire project. I think that was the impression that was conveyed here; but in the brief hearing that was held, the committee chairman, the gentleman from Michigan (Mr. NEDZI) after some discussion about the fact that this would eventually cost a billion dollars said that there is no point in going ahead with it unless we go ahead with the whole program.

And then the gentleman from Missouri (Mr. ICHORD), responded that that is true; so I sense that there was a rather veiled commitment that the committee was deciding to go for the whole program at that time. That is what concerns me. I think the burden is on the committee to tell me that this is a credible position.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. I must tell the gentleman from Arkansas what the committee has done. He has looked only at the hearing record of the House Committee on Military Construction.

We have several committees on the House Armed Services Committee. Another committee that has responsibility in this field is the committee on R. & D. which I happen to chair. We have heard from many witnesses in this regard and I can provide the gentleman with the record that has been made in that regard.

I apologize again to the gentleman, since he represents a district in the State of Arkansas, for not getting with him and giving him this information.

I would state to the gentleman from Arkansas, and I will yield in just a minute, that all three of the Joint Chiefs of Staff have said that the lack of a sufficient offensive retaliatory capability in chemical warfare is one of the greatest military deficiencies we suffer.

General Rogers has also appeared before the committee, and this was the full committee if my memory serves me correctly, saying that we should proceed as rapidly as we possibly can with getting ready to produce, if we have to produce.

I would state that Secretary Brown has also stated before the committee that this is one of the greatest deficiencies we have.

Now, it is true, as the gentleman stated, Secretary Brown did appear before the Senate committee recently, but he was stating the position of the White House staff whatever that position is and I must frankly state that the position to me is incomprehensible if not reprehensible. He was not stating the Defense Department position as he related in a conversation with me yesterday and again early this morning.

Secretary Brown has stated before the committee that this is one of the greatest shortcomings we have in defense. Those in the Defense Department who have studied the problem are literally scared to death and justifiably so.

I would state to the gentleman from Arkansas that if we proceed without any interruption whatsoever, we could not produce any binary chemicals until late in 1983 and probably not until 1984.

Mr. Chairman, I do not have the time, but I think the gentleman from Arkansas in whose district this facility is located should be recognized.

Mr. WHITEHURST. I yield to the gentleman from Arkansas (Mr. ANTHONY).

Mr. ANTHONY. Mr. Chairman, I thank the gentleman for yielding.

I would like to reaffirm personally that I am in strong support of this particular piece of legislation. I have examined the issue very closely. Upon being elected last year, I did go to the arsenal and I did receive a very detailed briefing on two different occasions from the personnel, one from the Commandant and then after they had a change of Commandants there, it turns out that the first person that I received the briefing from has now been transferred to the Pentagon and happens to be in this particular area of expertise within the Pentagon.

My colleague, the gentleman from Arkansas, and I have had conversations within the last day or two concerning this very issue. I know of the gentleman's concern procedurally as to how it has developed; but I would like to put on the record the fact that I have closely examined this issue, both from a safety and a military standpoint.

I have also examined it very closely with my constituents within the Pine Bluff area. The constituents within the Pine Bluff area are solidly behind this project and I can detect no opposition within the community at this time.

I have worked with my colleague, the gentleman from Missouri, in trying to educate myself and I have also worked with other members of the Arkansas delegation concerning this matter. With the exception of my colleague, the gentleman from Little Rock, I think that we are probably solidly behind it on the House side.

As I understand, the gentleman has not made a decision on the merits, but has some concern about the procedural matters in which it came before this body. Since it is within my district, I would just like for the gentleman to know that I have studied the issue very closely. I have no personal concern about it. I would be more than happy to engage in any type of colloquy and/or debate on the merits in addition to our colloquy with the gentleman from Missouri.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Maryland.

Mr. BAUMAN. I just want to say to the gentleman from Arkansas (Mr. BETHUNE) that he is doing the House a service in raising this issue, particularly as a new Member.

I want to indicate to him that I faced the same concern that he has expressed today several years ago when I was elected to the House. At that time the Aberdeen Proving Ground, including the Edgewood Arsenal in Harford County, Md., included what was then part of the operations of the Defense Department dealing with chemical warfare.

I availed myself of a more than 2-hour classified briefing and learned the extent of the massive development of the Soviet Union in this area and the total lack of our defensive capability, as well as offensive capability in the area of chemical warfare. As a result of that, I have tried to study the issue thoroughly. I have read many of the writings of the gentleman from Missouri.

I think we are moving too slowly. I think that we are totally undefended today against Soviet chemical warfare capability. I know that Soviet chemical warfare is being used apparently on a tests basis in Cambodia and in Afghanistan and thousands are suffering and dying. That is why we should move much more quickly.

I understand the emotional nature of this issue with the Dugway accident some years ago, sheep being killed by the accident that occurred and so on; but I also believe chemical munitions are an important part of our defense capability.

The gentleman is to be commended for raising the issue, but I hope he resolves it as I did in favor of this facility and further expansion of our defense capabilities in the field of chemical warfare.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman rom Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, first, I, too, want to congratulate my colleague, the gentleman from Arkansas (Mr. BETHUNE) for having concerns about the procedural aspects of this subject matter; however, I have had the opportunity to be familiar with this subject matter over a period of time and have had some rather high-level briefings. I discussed it more specifically with the distinguished gentleman from Missouri (Mr. ICHORD).

I want to join with my colleague, the gentleman from Arkansas (Mr. ANTHONY) in strongly supporting this.

As the gentleman from Maryland said, as a result of his briefings and as the result of briefings that I have had from discussions with the gentleman from Missouri (Mr. ICHORD), I am concerned about the great disparity between our capability and that of the Soviet Union; so I want to strongly support the idea that the gentleman from Missouri (Mr. ICHORD) has proposed.

Mr. Chairman, the subject of establishing a facility in the State of Arkansas for the production of binary nerve gas has become somewhat controversial within our own delegation, with the highest respect for the motives and ability of those who differ with my view I wish to express my own understanding of why there are varying opinions and to examine both sides of the question. I have again taken advantage of the Army's expert knowledge and have asked them for a recent high-level briefing which I received yesterday.

This statement worried me:

> This country adopted a new policy when it banned further production of chemical weapons. . . . Army wants to resume production . . . and reverse the decade-old policy.

I discovered that the facts are:

Presidential decision in November 1969 renounced biological warfare; reaffirmed long-lasting U.S. policy not to be first to use lethal chemical weapons; and extended the policy to include incapasitating chemicals.

Did not ban further production of chemical weapons.

Another policy objective, in the same statement, was to provide a chemical retaliatory capability if deterrence fails.

Subsequent congressional actions require the President to certify that chemical munitions production is essential to the national interest.

The Army completed production of the current stockpile in the same year (1969) the policy declaration was made.

I examined this statement:

> The whole process would cost more than $2 billion.

I discovered the facts to be:

True, when spread over a 15-year time frame. Cost estimates for weapons modernization with binary munitions and disposal (when a reasonable assurance level stockpile is attained) range from $2.6 billion to $3.6 billion.

Modernization costs account for over half of the above amount. Would provide a flexible range of retaliatory options with artillery projectiles, medium range rockets, and air-delivered munitions.

Construction of the facilities for production and storage would span at least 5 years (fiscal year 1982–85). This is the planned production facility that would be located in Pine Bluff, Ark.

Production of binary munitions would span an 11-year period beginning no sooner than fiscal year 1984 and extending to the middle of the decade ahead (1990's) to modernize the stockpile.

Disposal and demilitarization of the current stockpile will also extend well into the 1990's. Continuing obsolescence and deterioration of munitions filled in the 1960's will require this program to be funded regardless of whether or not a decision is made to modernize with binary munitions.

With no binary modernization, the cost of maintaining an aging stockpile to provide a facade of a retaliatory capability will continue to grow.

I read this statement:

> The Joint Chiefs of Staff have mumbled half-hearted support, while the Secretaries of Defense and State have publicly opposed such a step at this time.

In looking closer at the record, I found that:

The Chairman of the JCS military posture statement for fiscal year 1981 stated:

> The United States has only a marginal capability to retaliate in-kind to enemy first use of lethal chemical weapons. The serviceable munitions stockpile is decreasing through aging and obsolescence and will be unusable by the late 1930s unless improvements are made. An option for improving the chemical retaliatory force stockpile is the binary munition system, which would provide the proper carrier container and chemical agent mix to counter the threat.

Subsequent JCS actions have affirmed the need for binary munition in order to maintain a credible chemical warfare retaliatory capability.

The Secretary of Defense, in public statements, has indicated that the inclusion of MILCON funds in the fiscal year 1981 appropriation bill would be "premature" because the issue of binary modernization was under study; and the results would be used in the fiscal year 1982 budget formulation process.

I looked into this concern:

> We now have an enormous supply of nerve gas and chemical munitions. Most of these supplies are not obsolete and have not deteriorated.

From my briefing I learned that:

There are currently over 730,000 rounds of chemical munitions that cannot be utilized. These munitions have either through obsolescence (M55 rockets and 155mm gun ammo) or deterioration, become unusable. These munitions cannot be repaired and are currently in storage awaiting destruction. The quantity of munitions which are considered serviceable, and those which can be returned to serviceable condition through the ongoing maintenance program, would not be considered enormous. World War II type mustard agent composes a large portion of the current stockpile. Mustard freezes at a temperature which makes it operationally less desirable in Europe during much of the year.

The current stocks were designed to have a shelf life of 20 years. Much of the stockpile has either reached or exceeded that figure. Mustard stocks were manufactured between 1952 and 1959. Nerve agent GB was produced between 1955 and 1967. The artillery—105 millimeter, 155 millimeter, and 8 inch—are now an average of 19 years old. The GB aerial munitions were produced in 1962 to 1964 and are now approaching their original shelf life. The Weteye GB bombs are the newest in the inventory, being produced in 1969. Nerve agent VX munitions, the most modern in the stockpile, with exception of the Weteye, were produced between 1961 and 1968; on the average, they are 17 years old.

There were statements made about our NATO arrangement such as:

> Our Allies won't even let us store additional nerve gas stockpiles on their soil! The West Germans, in fact, find nerve gas usage so repugnant and unacceptable that they have gone even further and decided that none of their troops will ever be trained to use these weapons. . . . highly unlikely that any newly produced nerve gas would ever leave U.S. shores.

In further study of this claim, I believe a more valid observation would be:

The West German policy in regards to NBC weapons is based in part on the October 23, 1954, protocol to the 1948 Treaty of Brussels which prohibits Germany from manufacturing chemical, atomic, and biological weapons. However, if the defense of Europe requires the use of these weapons, the Western European Council can, by a majority vote, cancel this prohibition.

The issue of forward deployment of the binary weapons system has not really been addressed as yet with our allies. It would appear, however, that some of the fears associated with the storage and transport of current types of chemical munitions, for example, contamination of the environment or harm to citizens as a result of leakage would not be a stumbling block when discussing binary weapons.

The following statement to me indicates a lack of understanding of why we need to maintain a CW capability:

> It is foolish to argue that our resumption of nerve gas production is necessary for our defense capabilities. Nerve gas doesn't kill soldiers. It kills civilians—men, women and children who do not possess masks and the protective clothing necessary to defend themselves from this colorless, odorless poison that causes violent convulsions and asphyxiates its victims. Protective clothing and masks are standard issue for not only Russian troops but also our own. This special protection makes soldiers practically invulnerable to nerve gas.

I believe the following reasoning more nearly presents the facts:

Chemical agents are employed in war as force multipliers. They cause casualties and they degrade the operational effectiveness of military forces.

Casualty effects are most pronounced against unprotected personnel, but we expect casualty rates as high as 10 percent against fully protected soldiers due to equipment failures, improper fitting and individual errors in the use of protective devices.

Perhaps more importantly, when military units assume a CW protected posture, they reduce their operational effectiveness by 25 percent or more. Communication becomes more difficult, physical movement becomes more difficult due to the encumbrance of protective clothing, and weapons are harder to sight and aline on target because of the interference of the protective mask. In warm climates, heat casualties are a secondary bonus effect of the employment of chemicals.

The contamination of materiel—trucks, tanks, rations, ammunition—further degrades military operations. Resources must be diverted to decontamination efforts. Delivery of supplies to fighting units is delayed. Some supplies must be destroyed. Maintenance operations become slower and more difficult.

The ultimate impact of a chemical attack on military operations must be viewed as a composite of some or all of the above factors. In no case will the result be negligible, regardless of the level of protection provided.

A military force that can impose such penalties without fear of retaliation in-kind has a substantial advantage in battle. By developing a credible chemical warfare capability of our own, we negate that advantage, introduce a degree of uncertainty, and make the use of the enemy's chemicals less likely. It is this aspect—reducing the likelihood of use of chemicals—that will save the lives of the civilian men, women and children for whom concern is expressed.

Again an apparent misunderstanding or oversimplification of the possible Soviet intention:

> The greatest Russian effort to date is defensive in nature.

I believe a better explanation would be that:

A sound chemical defense posture is fundamental to an effective chemical warfighting capability. Given the United States and other nations reservations to the Geneva Protocol, the Soviets would be foolish to establish an offensive capability without first developing a sound defense.

A more appropriate question might be, "Why are the Soviet defensive preparations so extensive? Whose chemical capability do they fear?" Their efforts go far beyond what would be expected in response to the U.S. retaliatory capability, an assessment of which we must assume they are capable of developing.

The intelligence indicators which point to the Soviet CW capability are abundant. The day we must scour the scene of the first attack will be too late to solve the problem. I would oppose eliminating the establishment of the Arkansas binary production facility.

Mr. Chairman, I thank the gentleman from Virginia (Mr. WHITEHURST) for his courtesy and for his time.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Missouri.

Mr. ICHORD. I would also state to the gentleman from Arkansas (Mr. HAMMERSCHMIDT) and the gentleman from Arkansas (Mr. BETHUNE) that I think that the production of binaries could be justified solely on the grounds of safety.

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The gentlewoman from Colorado in that respect is facing a real danger, in my opinion, in Colorado. She has been following this problem for a long period of time. The amount of chemical agents we have in that State is classified and I cannot mention it, but many of the munitions have been there as long as 25 years. All of the chemical agents are slowly deteriorating. The production of binaries could well solve her problem, I would observe. I know the gentleman from Arkansas is aware what a binary is. It will be safe both in the State of Arkansas and in the State of Colorado, Johnson Island, and any other place where we may have chemical agents stored.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

Lest I be misunderstood as to my own awareness of the particulars of the binary munition project, I have had the Pentagon briefing and I have read the gentleman from Missouri's article on the subject and the Readers Digest article and I have read and have with me all of the committee report language from the House as well as the other body.

Obviously there are differences of opinion between the House and the other body. I would like to rely on the soothing assurances of the committee members that they know everything about this subject and that it has been debated as extensively as it should have been in the committee. But in all honesty, when I look at the facts and discover that the President of the United States, or at least the White House, has come down against funding this year, and that the Secretary has, for whatever reason, and that the other body has, and that these committees here have had no witnesses to argue against the proposition, it occurs to me that it is not a credible committee proceeding. For that reason I think that we have reduced ourselves to the proposition that each Member must then satisfy himself because the committee report is not credible, in my judgment.

That being the case, each of us should have the opportunity to express ourselves as to whether we are satisfied that this is the policy of the country. It occurs to me that an amendment to delete this would be in order for that reason, so each Member can express himself and let this body know whether, in fact, he is satisfied with the committee report or because of his own findings.

I really do not think Members know that much about it and, as I have said, with all due respect, I think the committee gave this short shrift this year in its examination.

Therefore, at the appropriate time, I will tender an amendment to that effect.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding. I hesitate to speak because I have missed so much of this debate, being involved with some of my Foreign Affairs Committee responsibilities. But I have talked to, although I have not seen, those who have lived under the bombardment of Russian poison gas, in Laos, specifically in the village of Prabia. Anyone who has heard what happens to human beings in this inhuman form, more terrible it seems to me than any other, must hesitate before encouraging his country to move in this direction. It is so terrible on those helpless people in the highlands of Cambodia and Laos, particularly Laos where this man came from. These three kinds of poison gas are loosed out of the Mig airplanes, yellow and red, and red the most terrible of them all, a hemorrhagic gas causing death in a very few minutes.

I hate to see our country moving to follow this hideous path. I think we should bend every effort at research and intelligence to find out how to counter the use of gas, what kinds of chemicals should be put in bathwater perhaps for those who have been subjected to it, what kind of things we can give as sprays to help in the pulmonary invasion of the gas, anything in the way of protection or nullification to make ineffective these horrible, this horrible weapon.

I hope we will have a chance to vote against any use of chemical warfare or development in this country. Defense against it, yes. Research into it, yes. But to develop our capacity for it, I think it is beneath what this country ought to be.

Mr. ANTHONY. Mr. Chairman, will the gentleman yield?

Mr. WHITEHURST. I yield to the gentleman.

Mr. ANTHONY. I would just like to make the following comment, that this is a weapon that would be in our arsenal as a defensive weapon and not as an aggressive weapon. It would not be a first strike weapon, but it would be available in the United States in the event U.S. troops were attacked. It seems to me that everyone can agree that war is horrible and that all elements of war cause grievous damage and injury. But the truth of the matter is if we are engaged in a war then we must be able to defend ourselves with all capabilities, and that is the reason I have decided to support this particular piece of legislation, because it does fulfill our entire military capabilities. Without it we are not a well-rounded country for total military capabilities to defend our troops if we engage in war.

Mr. WHITEHURST. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. DICKINSON).

Mr. DICKINSON. Mr. Chairman, let me say first that I would like to join in the comments of my distinguished colleague from Virginia, and a fond adieu to the distinguished chairman of the Military Construction Subcommittee, the gentleman from Michigan (Mr. NEDZI). When I first came to the Congress 16 years ago it was my lot and my pleasure to be put on the House Administration Committee and, 2 years later, the House Armed Services Committee. Sitting across the table from me in both of these committees, by happenstance, has been the very distinguished gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI and I have served together now for lo these many years and I have come to know, to respect, to admire, and to be very genuinely fond of the gentleman for his wit, his capabilities, his knowledge, his dedication and hard work. We have sat across the table now for these many years, voting together sometimes, against each other sometimes. But I cannot think of anyone in the House whom I have higher regard for and have enjoyed working with more than the chairman of my Military Construction Subcommittee, on which I serve, and the House Administration Committee, on which I am the ranking member.

He has always been very courteous and considerate of me as a minority member and I join with all of his friends and everyone in the House in saying that his retirement is going to be a loss to the Congress and, in my opinion, a loss of the defense of this country, because he has been a stalwart person and an advocate for a strong defense in this country. His departure will leave a vacancy that will be a long time in filling.

Getting to the bill at hand, the military construction bill, I support this legislation. I think it is ridicuous that, for the second or third time, we have had to come in after the fact when the Appropriations Committee has already decided what level of funding will be available and we come in then with the authorization. I hope that some remedy will be forthcoming in the following Congress to see this does not occur again since this is contrary to the House rules.

Just recently the NATO Subcommittee of the Armed Services Committee made a tour of the northern flank of NATO where we visited England, Denmark, Norway, and then I as the senior minority member of the Research and Development Committee, went on to visit installations in Germany.

□ 1330

The point that I want to make is that we have trouble in this country, first in recruitment, but secondly and more importantly is in the retention of our military personnel. We bring them aboard, we spend thousands upon thousands of dollars to train them, particularly enlisted personnel and, when they get midcareer and when they develop an expertise and a capability to deal with the sophisticated weapons systems we have now they leave the service. These people in whom we have invested so much are getting out in droves.

We find in talking with our NATO allies particularly in England, they had the same problem which they feel they have now remedied and they are very pleased with the results. By recognizing that they have not been dealing fairly with those in uniform, they have increased pay and allowances and increased their standard of living within the service.

Mr. Chairman, I think we have been shortsighted in this country in not doing so. I think the Nunn-Warner amendment, which was passed over the objection of the President but what he now tries to take credit for, was a step in the right direction. I think if more attention were to be paid to our military construction bill—which we are doing here today—that is certainly another major step in the right direction toward retaining the people that we need in the service.

Mr. Chairman, I have three military installations in my district. I have the U.S. Army Aviation Center at Fort Rucker and Maxwell and Gunter Air Force Bases. Mr. Chairman, in my 16 years in the Congress, I have been to many, many other bases. When you go on the bases in my district and see the conditions under which enlisted men have to live—World War II barracks, buildings where you can slam a metal locker in one end and completely disrupt the thoughts of students studying at the other end.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WHITEHURST. Mr. Chairman, I yield the gentleman from Alabama 5 additional minutes.

Mr. DICKINSON. Mr. Chairman, our buildings are cold in the wintertime, hot in the summertime. They are supposed to be in an academic atmosphere, but the surroundings are not conducive at all to studying.

I think we are being pennywise and pound-foolish to do other than provide adequate living conditions for those who are in uniform.

Mr. Chairman, on the Military Construction Subcommittee we have tried to address this subject. I think we have done so in this bill. We cannot do it all at one time but I think we are making meaningful progress toward this end and I would certainly commend the chairman and our committee for the long hours of work that have gone into this and the comprehensive studies that were made toward achieving the end that we desire. I rise in very strong support of the military construction bill.

Mr. Chairman, I might add, after massaging, refining and scrubbing the bill, we wound up $707,000 under the budget request—not over—which indicates to me the committee has done its work. It has studied the problem well and has come up with a very meaningful and responsible bill.

As to the binary chemical aspect, I would just like to say to my friend and colleague, the gentlewoman from New Jersey (Mrs. Fenwick) who just favored us with a few observations, that the gentlewoman is entirely correct in half of what she says. When the gentlewoman points out how horrendous chemical warfare is, that it has been used in Cambodia and in Laos and in Afghanistan and how terrible it is, she is right. But to say to close your eyes to it or to stick your head in the sand and believe it will all go away if we do not produce a similar capability, is the most ludicrous thing. We are told in our briefings in the Intelligence Subcommittee and the Research and Development Subcommittee that Adolph Hitler had an adequate supply of chemical munitions in World War II and only the threat—only the fact that he was convinced that we had a similar capability—deterred him from using this in World War II. If he thought he could have done it with impugnity—that he would not have to worry about retaliation from us—he would have done so. He was a crazy man.

Mr. Chairman, indeed we are crazy if we do not at least develop a capability to have a deterrent if the Soviets decide they want to use chemical warfare. The Soviets train with it, they have organic CBW units within each division that daily train with chemical warfare. They are equipped for it. They are equipped mechanically, in their dress, their gasmasks, everything that is necessary for an offensive capability, the Soviets have. To think they will not use it in the event of an all out war is asinine. The only thing that is going to keep the Soviets from using a chemical capability is the threat of a similar capability to be used against them.

Mr. Chairman, we are attempting to go forward and provide a facility to enable us to produce a binary round if the President makes a determination that it is in the interests of this country.

We are not going forward with production. We are simply saying we are going to be in a position to go forward if the President ever wakes up and makes such a decision.

I would say, Mr. Chairman, this is a good bill. We would be extremely shortsighted if we did anything to take away this first step toward building a retaliatory capability. This is a deterrent. The only reason we have an ICBM system is as a deterrent. To consciously deny us this ability is asinine, it is shortsighted, it is stupid.

Mr. Chairman, if the Soviets should decide to start rolling across the NATO countries, going into Europe, using chemical capability—which ability they have and which they have demonstrated—what then would be the response of NATO? We have no credible deterrent with the possible exception of the nuclear. Not to have this capability lowers the threshold of nuclear war. It is just that simple.

Mr. Chairman, I rise in strong support of the bill and I would hope the House would do the same.

Mr. WHITEHURST. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. Walker).

NEW DISCLOSURE ON BILLY CARTER

(By unanimous consent, Mr. Walker was allowed to speak out of order.)

Mr. WALKER. Mr. Chairman, I do not intend to take a lot of time here, but I did want to respond to an incident that took place just before this debate began. I thank the gentleman from Virginia for yielding to me.

Mr. Chairman, let me say at the outset that I am fully supportive of the bill that the gentleman from Virginia (Mr. Whitehurst) and the gentleman from Michigan (Mr. Nedzi) have brought to the floor. I think it is a good piece of legislation.

Mr. Chairman, I was disappointed by the Speaker's refusal to allow me to address the House in the period of 1-minute speeches.

I am sure the Speaker was upset by the vote that had taken place previously on the floor and perhaps even was upset by my small part in seeing to it that the resolution of inquiry was passed.

My reason for rising during the period of 1-minute speeches was to simply point out that the House had gone on record in favor of gathering more material with regard to the Billy Carter investigation. There had been a story, over the wire service just after that vote which indicated that we were perfectly right in voting the way we did. The story indicates the President's General Counsel today has told the Senate that he had not provided them with all the material that he previously said was provided. That, in fact, he had failed to mention a conversation with Billy Carter's lawyers in which the negotiations which led to the consent decree were evidently discussed. In light of that disclosure, I think the House was perfectly proper in going ahead with the resolution of inquiry and once again I thank the gentleman for yielding.

Mr. WHITEHURST. Mr. Chairman, I have no further requests for time and I will reserve the balance of my time.

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Mr. NEDZI. Mr. Chairman, I yield myself such time as I may consume.

I take this time to endeavor to allay some fears that the gentleman from Arkansas may have, or others in the body may have, with respect to having to do something on this bill concerning binary production facilities. I would like to point out to the membership that we are in an unfortunate position with respect to the timing on this legislation of really engaging in kind of a futile exercise on many of these issues.

The appropriation for this particular project has been enacted by the House, and the place where this issue is really going to come down as to whether it is a go-ahead or not is going to be in the conference. Whether we authorize or deauthorize here today is of no moment. The authorization is already gone, so that if we are interested in concluding the bill today, we might take that into consideration.

I am not suggesting that this is not a subject that is serious and worthy of debate. However, as a practical matter, there is nothing we can do here today to alter a course of events which are already in place.

Mr. Chairman, at this time I would like to yield such time as he may consume to the distinguished gentleman from Wisconsin (Mr. Zablocki), the chairman of the Foreign Affairs Committee.

Mr. ZABLOCKI. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, at the very outset let me state that I wholeheartedly support the many construction projects in the military construction authorization for fiscal year 1981, H.R. 7301, because they improve the military defense capability of our Nation. I want also to join my colleagues who have commended our dear friend and esteemed colleague from Michigan, the chairman of the subcommittee, Mr. Nedzi. Although I have never served on a committee with him, I do know of his very conscientious and very sincere efforts on whatever committee he has served—and he has served on some very important and difficult committees. I have rarely been in differences of opinion with him, and I am not really in any difference with him regarding the legislation before us today, Mr. Chairman.

But, I think I would be remiss if I would not point out some of the foreign policy implications of going ahead with the authorization of $3.15 million for a binary chemical plant in Pine Bluff, Ark. In this respect, I join with many of our colleagues, Mr. Chairman, in congratulating and extending our appreciation to our colleague from Arkansas (Mr. Bethune) who has brought the attention of the House to this particular plant.

As was stated, the President must make a certification and finding before a binary chemical can be produced—something which the President has not done. But I submit, Mr. Chairman, that no one has said that this plant is a multipurpose plant. It is not. It is being constructed for the explicit purpose of a binary chemical production. So, what does that tell not only the people of this country and our allies in NATO, but the world at large? It says that we are departing from our policy of a ban on use of chemical weapons in war.

I must be the first to admit that a binary chemical is safer, at least in the transportation or in storage, but it is just as deadly, and more. I think our priority should be to ban the use of chemicals in warfare. Therefore, I must point out that the position of the administration, the President, Secretary Brown, and Secretary Muskie, is that we should not authorize this program this year until we have an opportunity to fully study it, to have an opportunity to discuss it with our allies in Europe and achieve their concurrence which is currently lacking on this very issue. Otherwise, we will stir up another neutron bomb type of controversy between the United States and NATO. This would not only weaken our position in Europe but would only give comfort to the Warsaw Pact countries at the expense of NATO.

We should pursue such a course only after full and careful consideration by the administration and the Congress—something which neither the administration nor Congress has done to date.

In addition, a decision now to start production of a new generation of lethal chemical munitions would meet with strong opposition from our closest European allies and thereby severely complicate our present efforts to maintain the united front within NATO to accept the deployment of needed tactical nuclear weapons in Western Europe. Emphasizing this very point last week in testimony before the Armed Services Committee in the other body, Secretary of Defense Brown, in opposition to starting this construction project in fiscal year 1981, said:

> Any decision would have to allow our prior consultations with our allies. European sensitivities will be a major factor at any time, but—in light of our ongoing discussions on TNF basing—this is a particularly inopportune time to undertake such consultations.

In response to my request for the justification of the State Department's position on this matter Secretary Edmund Muskie replied September 8, 1980, with the following letter:

THE SECRETARY OF STATE,
Washington, D.C., September 8, 1980.

Hon. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs, House of Representatives

DEAR CLEM: In response to your request, I am writing to apprise you of the Administration's position on whether Congress should authorize funds in the FY 81 budget to begin construction of a binary chemical munitions production facility at Pine Bluff Arsenal.

As Harold Brown emphasized in his testimony before the Senate Armed Services Committee on September 4, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 budget process. In the meantime, any such funding at this juncture would be premature.

I hope this information will be helpful to you in your evaluations of the issue.

With best wishes, I am,
Sincerely,
EDMUND S. MUSKIE.

Further, the administration is actively pursuing efforts to obtain an international investigation of Soviet chemical warfare practices. Based on hearings conducted this past spring by my Subcommittee on International Security and Scientific Affairs and the Asian and Pacific Subcommittee, chaired by my colleague Representative LESTER WOLFF, we encouraged the administration to actively pursue such an effort. Currently, the State Department is working with our allies and friends to obtain the necessary support for a U.N. resolution this fall calling for such an international fact-finding mission. A decision now to start construction of a new generation of lethal chemical munitions in fiscal year 1981 would be in contradiction to these efforts and jeopardize the credibility of our foreign policy.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield on that one point?

Mr. ZABLOCKI. I did not mention the gentleman's name, but I did refer to a statement he made, so I will be happy to yield to him.

Mr. DICKINSON. It was not on that point, but just let me say to the gentleman in regard to the point he just made as to NATO and other participation. I have served on the Disarmament Conference. I have attended the hearings at Geneva. I was there when they signed the papers to banish biological warfare, and if we do not at least give our Soviet neighbors and potential adversaries the perception that we are capable, that we are serious, then when we get down to the negotiating table and want to negotiate a treaty to ban it, since they have it and we do not have it, what do we have to negotiate?

Mr. ZABLOCKI. I might advise the gentleman, Mr. Chairman, that we will be negotiating and we are negotiating with the Soviets and any other adversary from a position of adequate supply of the very chemical weapons that we want to some day ban. To the best of our knowledge, the Soviets do not have a binary chemical weapon in their inventory at the present time. So, it is not a matter of negotiation.

But, I must point out another point of foreign policy. The administration, Mr. Chairman, is actively pursuing efforts to obtain an international investigation of Soviet chemical warfare practices. We heard references to Afghanistan. Our intelligence sources do not really confirm, cannot confirm that lethal chemicals were indeed used in Afghanistan or in Cambodia; a nonlethal chemical, yes, but as far as lethal chemicals, that is not confirmed or substantiated by anyone.

What we are trying to do in the upcoming months, later this year when the United Nations reconvenes, is to have our allies and our friends in the United Nations join with us on a resolution of investigation of the use of chemicals by the Soviet Union. If we take this step today of authorizing $3.15 million for a binary chemical plant, our decision now to start construction of a new generation of lethal chemical munitions in fiscal year 1981 would be in contradiction to these efforts that we are trying to bring about in the United Nations, thereby jeopardizing the credibility of our foreign policy.

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Another area of concern is the adverse impact such a decision would have on the foreign policy objective of the last three administrations to pursue the achievement of a verifiable agreement with the Soviets to ban the production and use of lethal chemical munitions in warfare. A decision now to start the construction of a binary chemical production facility in fiscal year 1981 would substantially mitigate the progress achieved to date in the negotiations as well as minimize, if not eliminate, the prospects of reaching a final meaningful agreement. To date, neither the administration nor the Congress has assessed the arms control impact of this military construction program. This must be done before any final decision is rendered by Congress.

Finally, Mr. Chairman, and perhaps most ominous, is the globally destabilizing effect the inclusion of this $3.15 million program will have for the short term as well as the future. It would be interpreted by the American people and the rest of the world as an abandonment of America's deeply held commitment and efforts to a complete and effective ban on the use in war of lethal chemical weapons. It would encourage other nations, currently opposed to lethal chemical weapons, to consider producing them. It would remove another deterrent to the usage of lethal chemical weapons by terrorists groups worldwide. At best, it would make our longstanding foreign policy efforts to ban lethal chemical warfare a sham and at worst a potential human tragedy.

In sum, Mr. Chairman, adoption of this military construction project in fiscal year 1981:

Unnecessarily complicates our present efforts to maintain positive relations with our NATO allies to preserve an effective deterrent to the Soviet threat in Europe;

Undermines our longstanding commitment to the ban on production and use of lethal chemical warfare through negotiations; and

Undermines our efforts to reduce the proliferation of arms worldwide, especially those most susceptible to use by terrorists.

These major foreign policy issues, along with others, have not been adequately reviewed or considered by the administration or the Congress. Accordingly, I support Secretary Brown's and Secretary Muskie's calls to defer the commencement of the construction of a new binary lethal chemical facility in fiscal year 1981. In addition, I endorse the administration's decision earlier this year to conduct a comprehensive interagency review of our entire lethal chemical warfare program which should be completed later this year. Only based on such an effort can the administration then make any recommendations on chemical warfare for fiscal year 1982 which must then of course receive the full and careful consideraiton of the Congress.

Mr. Chairman, I believe my colleagues in the House know my consistent record in support of an adequate defense of our country. I have opposed and continue to oppose unilateral disarmament. In this instance I say, let us not invite an additional problem. The United States has an adequate stockpile of chemical weapons.

As to concerns about the adequacy, safety, and viability of our present chemical weapons stockpiles, I would only mention the following unclassified facts:

In terms of higher lethality, our current stockpiles of nerve gas agents have been calculated as providing a total battlefield target area capability four times greater than those available in World War II;

The present U.S. stockpile is already large enough for 50 divisions to wage chemical warfare for over 100 days; and

Our chemical stockpiles are already being upgraded with new parts and current needs could be significantly addressed by repainting and insertion of new fuses. Such steps would significantly raise our chemical warfare capability since none of the chemical payload of the so-called obsolete weapons has been affected.

Mr. ICHORD. Mr. Chairman, will the gentleman yield on that point?

Mr. ZABLOCKI. Mr. Chairman, what is currently inadequate is not the status of our chemical stockpile, which is adequate, but, rather, the status of our chemical warfare defensive capability, which is inadequate in both the United States and in Europe. We do not have an adequate defensive capability against chemical warfare.

I would prefer to see us double that amount spent for purposes of preparing ourselves defensively against the use of chemical warfare and preparing our allies against the use of chemical warfare. That would really be a deterrent, and to repeat one statement that was made, it is true that in this area the Soviets are making a more effective defensive effort than we are.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. Mr. Chairman, I submit that we do not need a new plant for the production of binary chemicals for use in war. What we need desperately is an improved defense against chemical warfare, and that is where our focus should now be.

It is my understanding that the other body will not include authority for the binary chemical plant, and the subcommittee chairman, the gentleman from Michigan (Mr. NEDZI), has, I think, succinctly pointed out what the situation is in that body. I hope we will not have an amendment to strike the amount because the outcome is dubious. I would support such an amendment nevertheless, but I believe that since the other body will strike the authority, as well as the appropriation, I accordingly offer the hope that the beginning of the construction of a binary lethal chemical facility would be taken out in conference and not be mandated for fiscal year 1981.

Mr. Chairman, I will now yield to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, let me state to the members of the committee that I have known and respected the chairman of the Committee on Foreign Affairs for the 20 years that I have served in the House, and as he stated, he has been a strong proponent of a strong national defense.

I do, however, feel—in fact, I would state this—that the logic of the rationale of the gentleman in not making this decision at this time completely escapes me. I just do not understand why we should negotiate with the Soviet Union from a position of weakness, and that is what the result would be.

Mr. Chairman, if the gentleman will yield further, what was the source of his statement that we do have a sufficient retaliatory capability? Where did the gentleman get that information?

Mr. ZABLOCKI. Mr. Chairman, if I may reclaim my time, I got the information from the same source from which the gentleman has received his information, and the gentleman cannot reveal the source any more than can the gentleman from Wisconsin, because of its high sensitivity.

Mr. ICHORD. Mr. Chairman, if the gentleman will yield further, I would state that I can give the Members of this House the information they need without violating security. We now only have 25 percent of the Joint Chiefs of Staff stated requirement to have a sufficient retaliatory capability. There is nothing classified about that at all.

I did ask the gentleman from Wisconsin to place a call to General Rogers, the Commander of NATO, to see how bad the situation is. Has the gentleman been able to make that call yet?

Mr. ZABLOCKI. Mr. Chairman, if I may reclaim my time, it is true that the gentleman has made a call to the general, and I understand that he is in Brussels. But I have learned from a person who should be in a position to reflect General Roger's views that he has never come out in support of the binary chemical plant.

Mr. Chairman, I yield back the balance of my time.

Mr. NEDZI. Mr. Chairman, I yield 6 minutes to the gentlewomen from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Michigan (Mr. NEDZI) for yielding this time to me, and I want to join with my other colleagues in saying how very sincere I am in conveying how much we are going to miss him next year. He really has been a gentleman and a good person to work with during my many years on the committee.

Mr. Chairman, I rise to talk about an issue that is very near and dear to my heart, one that is in the Senate bill and not in the House bill. I was going to offer an amendment, but after talking to the staff and to the chairman, I do not think it is really needed at this point.

In the Senate bill, in section 808(a), there is discussion of a sensitive problem that we have in Denver, Colo., and that is that we have a chemical munitions arsenal at the end of our runway at Stapleton International Airport, one of the major international airports in the country. I understand that at the time this arsenal was put there, there obviously was not the traffic there is today. Denver had not grown then the way it has today.

But we now have a very dangerous situation there. I understand that "20/20", the ABC television news show, will soon do a whole revelation on this.

We started talking about this in 1972 as soon as I came to Congress, and the Army agreed it was a terrible situation and agreed to detoxify everything there. They did do that to everything that belonged to the Army, and these were obsolete munitions. The only trouble was that they ran into some Navy munitions and did not think they should do that to those munitions because they belonged to the Navy. So we still have these weapons sitting at the end of the runway.

They are leaking. They are weteyes, they are old gravity fall bombs from the Korean war era. They are really unusable, and we are faced with several very difficult situations.

One answer to the problem is that we can move to another State. The only problem with that is that in any State that is asked to consider the suggestion we are confronted with strong objections, and that is that. Perhaps we may have to create a 51st State and agree to let them in the Union only on condition they accept these materials. That would be the only way we could find one that is willing to take the materials.

The other thing we can do is spend a slight fortune, which has already been recommended by the Pentagon, to build all kinds of storage units underground, because they are above ground and they do heat up. The metallurgical reports show this is forcing them to leak more and more. So we may be faced with having to commit a tremendous amount of money to keep them safe. And then what have we got? Something that is, in fact, obsolete. We have spent a lot of money to store.

The third possibility is to detoxify them. I think that is what may have to be done, because they are obsolete.

In the Senate bill section 808(a) deals with that issue. I talked with the subcommittee chairman about this, and I wanted to have a colloquy with him at this point and ask him about this.

I know the gentleman has looked at this, and I will ask him and the staff to please continue to look at that when we go into conference and try to get the very best perusal possible.

Mr. NEDZI. Mr. Chairman, if the gentlewoman will yield, I am well aware of the fact that the gentlewoman has been diligently pursuing this problem for a long period of time. She has brought it to my attention, and as I indicated to her, we have put the staff to work on it in an effort to be of as much assistance as possible.

This does happen to be a problem that deserves our attention, and we will do all we can to be cooperative.

Mrs. SCHROEDER. Mr. Chairman, I

thank the gentleman very much for that assurance.

Mr. Chairman, I also want to engage in a colloquy with that gentleman from Missouri (Mr. ICHORD), because he is the expert in this area and he probably knows more about the Weteye bombs than anyone else around here.

Mr. ICHORD. Mr. Chairman, if the gentlewoman will yield, I would state to the gentlewoman from Colorado that the Weteye bombs are so dangerous that the Navy will not even haul them around in their airplanes.

□ 1400

Mrs. SCHROEDER. If I may ask the gentleman another question, then: If the gentleman were a Russian planner and understood that the Americans had some Weteye bombs at the end of the runway in Denver, Colo., would the gentleman consider that any kind of a deterrent for European use?

Mr. ICHORD. I certainly would not. Let me say to the gentlewoman from Colorado that I cannot state how many tons of chemical agents we have in munitions, I cannot state how many tons we have in storage. And some of these are stored in the State of the gentlewoman from Colorado. As the gentlewoman from Colorado knows, many of those weapons, many of the storage containers, are now 25 to 30 years of age. They are rapidly deteriorating and, as the gentlewoman says, they do become dangerous. What we should be doing is replacing the capability that we have with something that is safe.

I fully sympathize with the gentlewoman from Colorado. I think she has a legitimate complaint, and this is one of the many reasons why I think we should proceed with binaries as quickly as possible. It will enable us to destroy all of those dangerous weapons in Colorado and other places and still have a retaliatory capability. Otherwise, I would suggest to the gentleman from Arkansas, we are slowly but surely indulging in unilateral disarmament, and I know that the gentleman from Arkansas is not in favor of unilateral disarmament. I will address myself further to that point later on.

Mrs. SCHROEDER. I thank the gentleman.

Mr. NEDZI. Mr. Chairman, I yield 7 minutes to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, I do agree with the gentleman from Arkansas. This is a matter which should be debated. Unfortunately, I only see about 20 or 25 Members of the 435 Members of the House, 434 I believe now, who are present. I do not know how many are listening to the debate over TV, but it is an issue of vital importance not only to our own Nation, I would say, but the whole free world. It is one of the most important defense issues we have faced since I have been in Congress. Even the survival of Western civilization could well depend upon the decision that this body makes in this regard.

The point is, I would say to the gentleman from Wisconsin and the gentleman from Arkansas, we have only a miniscule retaliatory capability. Our stocks are in fact only 25 percent of the stated needs by the Joint Chiefs of Staff. I would state to the gentleman from Wisconsin that the argument he has just made has been made repeatedly since 1975. 'Let us not do it, we might rock the boat." I heard that in 1975, I heard that in 1976, I heard it in 1977, I heard it in 1978, I heard it in 1979, and now we are again hearing it in 1980. This is what I refer to as the Carthagenian mentality of defense. Do you really think we can negotiate a successful treaty from our present position? I am in favor of negotiating a treaty just as strong as the gentleman from Wisconsin, just as strong as the gentlewoman from New Jersey. God knows that I wish we lived in a society where we did not have to spend a single dime for defense. But unfortunately God has not afforded us that luxury.

I would say to the gentleman from Wisconsin that we can not delay any longer. Even if we take this action and the gentleman from Wisconsin joins the committee in pushing the construction of this facility, we will still not have binaries until 1984. If we take no action, those chemical agents scattered around the country will have to be destroyed. Can the gentleman tell me how we can negotiate an effective treaty with the Soviet Union from such a position of weakness?

The gentlewoman from New Jersey I think was in error when she stated, as I understood her, that the Russians have conclusively used lethal chemicals in Afghanistan. However, there is good evidence, I would say to the gentleman from Wisconsin, that they have. The gentleman from Maine (Mr. EMERY) visited Afghanistan refugees on the spot. He came to the conclusion that they had used either Soman or something similar to Soman. There is some evidence that they did use it. We do have intelligence that they moved lethal chemical agents into Afghanistan. Whether or not they used them has not been conclusively proved. I would say to the gentleman from Wisconsin there is almost conclusive evidence that they have used an incapacitating agent, something like a knock-out gas, something much stronger than tear gas.

But this is the situation. Chemical warfare is an integral part of the doctrine of the Soviet Army. They have 100,000 troops devoted to chemical warfare. They train in it daily, in a real toxic environment. It is absolutely ridiculous, in view of the facts, to think that the Soviets would not use it.

Let me say to the gentleman from Arkansas what happened to me back in 1977 in a close-air-support investigation. I asked this question of 35 officers from colonel on down to lieutenant. My question was: If the balloon went up tomorrow in NATO, do you think that the Warsaw Pact nations would use chemical warfare? Thirty-three answered in the affirmative, that they felt the Soviets would use chemical warfare. Two stated no. One was a full colonel, and he stated, "I do not think the Russians will use it because they do not have to use it. They have the conventional capability to reach the English Channel in a matter of days." The other one stated, "I do not think they will use it, Mr. Chairman, because they know the only response which we have is a nuclear response."

This is the exact reason why we must proceed as quickly as possible in retaining a retaliatory capability. We have lowered the threshold of nuclear war if we do not maintain a retaliatory capability.

Let me now proceed with a detailed analysis of the issue which faces us.

> Whether or not gas will be employed in future wars is a matter of conjecture, but the effect is so deadly to the unprepared that we can never neglect the question.

Those words were delivered by General Pershing, as Chief of Staff, in his annual report to the Congress in 1919. Regrettably, I believe that we have, in fact, neglected the question and it is my intent today to try to correct that omission.

While there may be a question in the minds of some people whether chemical warfare will be employed, there exists little doubt in the minds of the military.

In a March 17 interview on BBC, General Rogers stated, and I quote:

> It is expected, in my opinion at least, that they (the Soviet Union) will resort to the use of chemical weapons.

On January 20, 1977, the then Chairman of the Joint Chiefs of Staff, General Brown, testified:

> The Soviets have the capability to use CW weapons in a war with NATO forces, even on a first strike surprise basis.

Later that year, Army Deputy Chief of Staff for Research and Development, Lt. Gen. Howard Cooksey stated:

> Chemical warfare to the Soviet leadership is just another means of winning.

Any lingering doubts on whether or not chemicals will be employed in future wars certainly must have been removed by events reported in Yemen and Egypt as well as more recently in Laos, Cambodia, and Afghanistan.

Historically, chemicals have been employed against nations having no retaliatory capability.

By the Germans against allied forces in World War I.

By the Italians in Ethiopia in 1935.

By the Japanese in China in 1937.

By the United Arab Republic in Yemen in 1967.

By the Vietnamese against Meo tribesmen in Laos and against Cambodian forces in Kampuchea, and most recently by the Soviets against Afghan freedom fighters.

The effect of chemical warfare is, as General Pershing pointed out, extremely deadly. The Soviets suffered 475,000 chemical casualties in World War I. Our losses to chemical warfare were 70,552, 27 percent of our total. The Soviet Union has not forgotten this hard-learned lesson and has amassed the most devastating chemical warfare capability in history.

The Soviet Union today outnumbers

the United States 35 to 1 in chemical units, 11 to 1 in personnel, 10 to 1 in decontamination equipment, better than 8 to 1 in chemical munitions, 5 to 1 in CW capable ground delivery systems, and 14 to 0 in production facilities. In terms of capability, the Soviets could sustain a high level of chemical warfare in excess of 30 days delivering munitions from the forward edge of the battle area to a depth of 500 kilometers. Soviet troops receive extensive training in operating in a toxic environment. Soviet doctrine makes employment of chemicals a part of normal fire planning and authority for usage has been delegated down to their division commanders.

On our side, U.S. policy is to retain a chemical warfare capability designed to deter the use of these weapons against us or our allies, and should deterrence fail, to permit us a reasonable degree of retaliation with chemical weapons. This policy of deterrence/retaliation has been enunciated by eight Presidents since World War II.

The components of such a deterrent/retaliatory capability are achievement of a credible chemical weapons stockpile and an effective defensive posture. Defensive or protective measures, while essential, are not and will not be sufficient to deter the use of chemicals. So where are we with respect to the achievement of a credible stockpile? We have not produced a chemical munition in over a decade, we have no active production capability, and our meager stockpile is diminishing through deterioration and obsolesence to the point that by 1990 we will no longer possess any militarily usable weapons. This situation has been described by General Jones on January 29 when he stated before the Armed Services Committee:

> The potential (offensive chemical) is there but it is very limited and quite antiquated.

Secretary Brown added:

> The existing chemical offensive stocks are, indeed, obsolete but they are better than nothing. To destroy them would leave us with nothing.

And finally it was General Rogers who stated:

> The weakness on our side is that we do not have an adequate retaliatory capability to deter the use of chemical weapons, and, therefore, the Soviets can exploit that weakness. The stockpile we have is running into a wall of obsolesence.

Our response to this deplorable state of preparedness has been one of moralistic hand wringing and neglect. The Army has for the past 5 years attempted to obtain the necessary preproduction and facilitization money to establish a binary chemical production facility at Pine Bluff Arsenal. In 1975 the Congress denied their request in a highly emotional response against "bugs and gas." Subsequent Army efforts have been thwarted in the executive branch. This year the Army again asked for funding in its fiscal year 1981 budget request and even with the backing of DOD was ultimately directed to delete binary preproduction funding from its program.

Mr. Chairman, the Defense Department's inability to obtain approval for establishment of binary production capability is a result of the misplaced logic of the State Department and the arms control community that to forego plans for production will provide us some ill defined but perceived to be significant psychological advantage over the Soviets. It is this type of logic which has taken us from strategic superiority to parity to today, and I quote General Jones, "the edge of strategic inferiority." Applied to chemical warfare this logic will lead us to unilateral disarmament.

Secretary Brown has testified that he believes chemical warfare is a real threat warranting a real response. General Haig, General Rogers and the last three Army Chiefs of Staff have all supported binary production. As far back as 1977 Gen. George Brown testified:

> The Joint Chiefs of Staff strongly support the improvement of our chemical munitions stockpile as an essential element in the necessary overall improvement of our ability to deter and, if necessary, fight in a toxic environment.

General Rogers on March 17 this year, publicly called for the production of chemical weapons to deter Soviet use.

Mr. Chairman, let me for a moment describe the dilemma that confronts us. If we were to start today it will be some 7 years before we have a full binary production capability. Even the first phase, the production of 155 millimeter GB rounds will not start until 1983 or 1984. Can we afford not to have any chemical production capability in the face of the massive Soviet threat? Can we afford to allow our stockpile to continue to deteriorate? Unless we are advoacting further unilateral disarmament, I would submit that we can no longer defer a decision on this vital issue.

The alternatives of hoping for an arms control agreement banning the production, stockpiling or acquisition of chemical weapons or relying on the deterrence of nuclear retaliation are just not viable. We have been negotiating now for a period of 4 years with little progress on the substantive issues such as verification and the prospect of achieving any near term agreement is doubtful. However, even with an agreement, stockpiles could not possibly be eliminated prior to 1990. The second alternative, that of relying on nuclear retaliation as a deterrent is in the words of General Rogers "just not an appropriate response." And I think we all would agree that it is not desirable to lower the nuclear threshold.

Mr. Chairman, binary munitions are operationally safe, free of complex and costly production, handling, transportation, maintenance, and disposal problems. They are also potentially more politically acceptable for storage in areas now denied to current chemical munitions.

Mr. Chairman, this bill contains $3.15 million for construction and modification of facilities at Pine Bluff Arsenal, Ark., to establish a binary chemical munitions production capability. The Appropriations Committee added a similar amount to H.R. 7592, the fiscal 1981 military construction appropriations bill, reported on June 17. That bill has already passed the House. I would hope that the gentleman from Arkansas would see fit to withdraw his amendment in view of the debate that has now transpired.

The CHAIRMAN. The Chair would observe that the gentleman from Michigan (Mr. NEDZI) has 20 minutes remaining and the gentleman from Virginia (Mr. WHITEHURST) has 20 minutes remaining.

☐ 1410

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from Nevada (Mr. SANTINI).

Mr. SANTINI. Mr. Chairman, I wish to express my appreciation to the chairman of the principal committee for yielding me time to comment for the record and engage in colloquy with the distinguished chairman.

As the lone representative from the State which is being considered for 65 percent of the MX missile system, I would like to direct a few comments and questions about section 801 of title VIII of this bill.

It is no secret to any Member of this body that Nevada is targeted as the principal host to the "largest project in the history of mankind."

I do feel, however, that whichever area receives the blessing of the MX missile program, adequate economic assistance will be absolutely mandatory. This is no ordinary military project with numerous States clamoring to get on board. To draw comparisons with other projects is to recognize that we are indeed talking about a new world in terms of military development.

Just in terms of the land encompassed by the proposed MX missile layout, you could place over 1,000 State of Washington Trident submarine bases in the deployment area of the MX. You could locate about 300 Fort Dixes or 100 Fort Sills in this same geographical area.

The MX and all its consequences is unlike anything this Congress or this Nation has ever considered or deliberated on implementing.

I wish to join with my colleague from Utah (Mr. MCKAY) and my colleague from Michigan (Mr. NEDZI) in reaffirming this body's commitment in providing economic assistance for MX imports by including MX in section 608 legislation.

This is indeed a very positive first step.

I have met and spoken with Air Force officials about this issue just last week. I am convinced that those representatives have a sincere desire to promote impact aid in the most expeditious manner.

The Air Force readily agrees to the so-called 608 system of impact aid such as that used in Kitsap County, Wash., needs improvement.

Along with my colleagues, I, therefore, call upon the Department of Defense to study and make recommendations to Congress next year about the legislative changes needed to streamline the economic assistance process for MX.

The State and local officials who represent those areas which will be seriously affected by MX would like very much to work with the Department of Defense in formulating these legislative recommendations to improve on the "608" process.

In particular, they are concerned, and I am concerned about cutting down on the time lag between appropriating the funds and actually delivering them to the communities who need them.

The CHAIRMAN. The time of the gentleman from Nevada (Mr. SANTINI) has expired.

Mr. NEDZI. Mr. Chairman, I yield 1 additional minute to the gentleman from Nevada (Mr. SANTINI).

Mr. SANTINI. Mr. Chairman, on behalf of myself and the gentleman from Utah (Mr. MCKAY), who is not present due to prior commitments in his district, I would like to ask the distinguished gentleman from Michigan if he would be willing to secure in conference an agreement that these kinds of changes are necessary and would the chairman be further willing to secure conference language directing the Department of Defense to recommend legislative, procedural, and other changes that would allow them more adequately and expeditiously to address the needs of the community that will be impacted by MX and the east coast Trident programs?

Mr. NEDZI. Mr. Chairman, I yield myself 1 minute in order to assure the gentleman from Nevada (Mr. SANTINI) and incidentally, the gentleman from Utah (Mr. MCKAY) has also expressed similar concerns, that during the conference we will be mindful of the concerns expressed about the need for an effective and responsive community impact assistance program and to the extent possible will try to have the statement of managers' language in the conference report include the requested study that the gentleman is interested in.

Mr. SANTINI. I thank the distinguished chairman very much.

● Mr. McKAY. Mr. Chairman, I rise for purposes of a colloquy with the gentleman from Michigan.

As you know, Mr. Chairman, construction of the MX project is scheduled to begin next year in my State and the State of Nevada. I am determined to see that this Congress does all it can to assist those States in meeting construction and long-term impacts of that system.

Earlier this year I asked your committee to authorize impact assistance for areas of the country affected by MX. I am pleased and grateful that you have honored that request. By amending section 608 of Public Law 93-552 to include the MX weapon system, you have made communities in Utah and Nevada eligible for impact assistance from the Department of Defense.

In all likelihood, especially with the recent slippages on the MX deployment schedule, this authority will not be needed this year. Nevertheless, it will be somewhat reassuring to citizens in Utah that the Congress is committed to their welfare as well as the MX.

I believe the chairman recognizes that as the construction schedules comes closer we will have to adopt certain changes in the law governing impact assistance.

Late last year, delegations from Utah and Nevada met with officials in Kitsap County, Wash., where a large Trident submarine base was recently constructed. The experiences of the Kitsap County communities indicates that there are two major problems when it comes to dealing with rapid defense-related growth under the authorities of section 608.

First, funds were not available to meet the costs of operating expenses except in some minor instances involving law enforcement personnel. Second, the established procedures for funding capital facilities—in other words, the existing Federal channels—were far too time consuming. If the Trident base construction schedule had not slipped significantly, the demands for community services and facilities would have far outstripped local capacity and the results would have been catastrophic.

Procedures under section 608 must be streamlined, and changes must be introduced to help communities meet new capital and operating costs until local resources develop sufficiently to take over.

Would the chairman be willing to indicate in the report accompanying this bill that these and perhaps other changes in existing laws and procedures are necessary?

Would the chairman be further willing to direct the Department of Defense to recommend legislative, procedural, and other changes which would allow them to more adequately and expeditiously address the needs of MX-impacted communities as well as those impacted by the east coast Trident program?

To assist the chairman I have provided his staff with a report and additional details on this problem as I see them from my perspective as chairman of the Military Construction Appropriations Subcommittee.●

Mr. NEDZI. Mr. Chairman, would the gentleman from Virginia care to yield some time?

Mr. WHITEHURST. I will be happy to yield 10 minutes to the chairman.

Mr. NEDZI. I do not mean to me. Does the gentleman have any further speakers?

Mr. WHITEHURST. Just one last brief statement on this time, Mr. Chairman, if I may.

Mr. NEDZI. I thank the gentleman.

Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. VAN DEERLIN).

Mr. VAN DEERLIN. Mr. Chairman, I rise to mention a matter which has not received national attention, but which is of the utmost importance to my constituents in San Diego.

It concerns the location of a new naval medical facility in San Diego which, when constructed, will be the largest in the world. While there is general agreement that the hospital is urgently needed, a storm of controversy has arisen over whether that facility should be in Balboa Park, the site referred to in this legislation, or at an alternative site known as Helix Heights. Both locations are within my congressional district, the 42d of California.

Mr. Chairman, I shall not go into the relative merits and demerits of the two locations, except to mention that a ballot proposition which was decided in the June primary election suggests that a substantial majority of San Diego residents favors Helix Heights.

The Senate companion bill to H.R. 7301 contains some highly commendable provisions aimed at ensuring that San Diego community interests are given the attention they deserve by the Navy before a final decision is made on location of the facility. The Senate bill would require that the Navy submit a report on the two locations to the Armed Services and Appropriations Committees in each House. That report would contain an evaluation of the proposed sites, a statement of the Navy's preference, and a justification for that preference. I am happy to say that the Navy is already well along on this study.

My purpose in speaking today is to call attention to provisions in the Senate bill which follow those I have just mentioned. After the report has been submitted to the four committees, construction on the preferred site could not begin until each of the four committees has approved that site. Mr. Chairman, some such provision is crucial to insure that the Navy study is thoroughly reviewed and is, in fact, an adequate justification for the selected site. If such approval is not required, the whole concept of the report would seem innocuous.

Certainty that its decision—as well as its justification therefor—will bear close scrutiny, surely means the Navy will ignore no detail in assembling the pertinent information.

I have no intention of offering an amendment to conform the House bill to the Senate bill. If the conferees can come up with a more adequate method for meeting these needs than that contained in the Senate bill, I certainly would not want to tie their hands.

However, I do wish to emphasize that this matter is of the utmost concern to my constituents. The decision concerning location of this hospital will have far-reaching implications for the San Diego community and for the Navy, reaching well into the next century. San Diego, which has served the Navy well, deserves the strongest provisions possible for insuring that its interests are respected.

The CHAIRMAN. The Chair would observe to the gentleman from Michigan (Mr. NEDZI) and the gentleman from Virginia (Mr. WHITEHURST) that the Speaker has indicated that the Committee would rise at 2:45 or 3.

The Chair would inquire if there are other requests for time, because I know it would be the intention of the gentleman to complete consideration of the bill, if possible.

Mr. NEDZI. There are additional requests for time, Mr. Chairman, and any admonition should be directed to the Members who have requested the time. Perhaps they can speed up the amount of time that they are going to consume.

Mr. Chairman, I yield such time as he may consume to the gentleman from Connecticut (Mr. DODD).

Mr. DODD. Mr. Chairman, I rise in strong support of H.R. 7301, the military construction authorization for fiscal year 1981. I am particularly supportive of this legislation because it contains funding for a U.S.S. *Nautilus* memorial in Groton, Conn.

The U.S.S. *Nautilus*, the world's first nuclear-powered submarine, was built in Groton, Conn., and homeported there for her entire 25-year career. Returning the *Nautilus* to Groton is consistent with the naval tradition of retiring historic ships to areas of the country with strong historical associations with those ships. Moreover, Connecticut has, in fact, committed itself to helping the Federal Government pay for the costs of siting the *Nautilus* in Groton and designing a proper memorial. I might add that while other localities have sought to have the *Nautilus* retired elsewhere, no other area has offered to help pay for any of the siting costs.

I am pleased that both the House Armed Services Committee and the House Appropriations Committee have recognized Connecticut's significant historical association with the *Nautilus* and Connecticut's substantial offer to help pay for the siting costs in deciding that the *Nautilus* deserves to be retired in Groton.

President Carter has also recognized these facts and supports returning the *Nautilus* to Groton. I am confident that when this bill comes before a conference committee the House position on siting the *Nautilus* will prevail.

□ 1420

Mr. NEDZI. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Chairman, I rise in opposition to any amendment to H.R. 7301 which would limit this Nation's ability to meet the growing Soviet threat in chemical warfare.

Two years ago, I traveled to Europe as part of a congressional delegation observing NATO defense installations. What I saw and heard there casts serious doubt on the arguments I am hearing in favor of curtailing plans for development of binary chemical weapons by this country.

Two years ago, our intelligence had good evidence that every Soviet division in the European theater possessed a well-trained chemical warfare battalion equipped with the most modern offensive and defensive equipment.

Today, 2 years later, our current intelligence reports reflect the same information.

Two years ago, our own troops were equipped only with passive chemical warfare defense equipment like gas masks and protective clothing. At our vital forward air bases like the one at Ramstein, Germany, only a few, specially designated disaster control personnel, were equipped with protective clothing. Maintenance crews, weapons loaders, and other people vital to our ability to launch our fighters were issued only gas masks.

Today, 2 years later, the situation is virtually the same—even though Soviet chemical warfare methods have reportedly improved.

Mr. Chairman, I have heard all the arguments in favor of curtailing the construction of our own binary chemical warfare facility.

Those who support the amendment say that if we develop our own modern chemical warfare capability, that it will damage our negotiations with the Soviet Union for limiting or banning lethal chemicals.

As a designated adviser by the House of Representatives for the Conference of the Committee on Disarmament in Geneva and for the United Nations Special Session on Disarmament in New York, I would remind my colleagues that unilateral disarmament actions by the United States have never served as an incentive for Soviet restraint.

The reports from Afghanistan of Soviet use of lethal chemicals have done little to shore up my confidence in the good faith of Soviet negotiators. Supposedly, the use of deadly chemicals was denounced during the Vladivostok meetings with President Ford in 1976. Yet their observed tactics in Afghanistan reveal that chemicals remain an important part of their battlefield doctrine.

Supporters of this amendment also say that development and deployment of our own offensive chemical weapons is tantamount to an intention to use them.

No one in this Chamber is more concerned than I am over the necessity for finding ways to abolish these deadly gases, but I am convinced that unless we are prepared to use them offensively, we may be doomed to have to deal with them defensively.

We should also remember that even if we are able to develop an effective defense against lethal chemicals—and there is some evidence we cannot—we will be relieving the Soviet Union of the burden of providing its own defenses if we neglect our offense.

In that regard, it is reliably estimated that in order to mount a defense against chemicals, the Soviets would have to be prepared to burden each of their combat divisions with an additional 30 tons of defensive equipment and supplies for each day of combat in a chemical warfare environment. Without that additional burden the mobility of their troops would be increased while our mobility would be decreased.

But most important, Kremlin military planners would have little incentive to pursue chemical warfare if we possessed comparable strength.

The best defense to chemical warfare, Mr. Chairman, is a strong chemical offense. In view of the fact that we are at least 5 years from developing that offense, it would be shortsighted to fail to take this first, preparatory step toward building an effective deterrent.

If negotiations should prove successful—as they are more likely to if we do not unilaterally tie our own hands—there is no reason why the construction authorized in H.R. 7301 could not be curtailed or diverted to some other essential use.

Mr. Chairman, all too often in recent years we have let our defenses drift into a condition of neglect. I suggest it is not too soon to reverse this policy of neglect by acting on the side of prudence instead of cockeyed optimism about Soviet intentions.

I urge my colleagues to defeat this amendment and help serve notice on the Soviet Union that what they cannot win through negotiation, they will not gain through our neglect.

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from Washington (Mr. DICKS).

Mr. DICKS. Mr. Chairman, I rise in support of this very important authorization bill. On behalf of the people I represent and myself personally, I want to praise the chairman of the subcommittee for his years of devoted service.

I come from Bremerton in the State of Washington. In the home part of my district, there are three major naval bases, including the new Trident submarine base. Over the last 6 years the people in that area have witnessed the construction of the Bangor facility. I can tell you that Kitsap County appreciates what this committee has done to provide Trident community assistance money over those years. I can report to the committee that the construction of the base is nearly completed. But more importantly, I think the community has been left whole. Sometimes, we forget that when you get a military base, it presents burdens as well as opportunities. We forget about the roads, the schools, the sewers, and the libraries that are necessary when thousands of new people come into a rural area.

This is probably going to be the last year of the Trident assistance program; and this committee has been very, very supportive. The chairman, in particular, has been very, very understanding, and I again want to pay my respects to him.

I think it has proven to be one of the best programs that the Federal Government has ever put together. It has been a cooperative effort between the Federal agencies, the local government, and the State government.

I was not here when my colleague, the gentleman from Nevada (Mr. SANTINI) was on the floor. I can tell the gentleman that the problems he is going to have with the MX program are immense, truly immense.

I am delighted that this committee has seen fit to expand section 608 to take care of the MX project and the east coast Trident base, because it is not just a bed of roses when a military base is built in your area. There are problems that are caused for the community.

I think it is very important that the Federal Government play a constructive role in working with local government to solve their problems. The section 608 program is an excellent example of such a cooperative effort.

So I want to thank both the subcommittee chairman and all the members of the committee for their understanding about the difficulties caused when a base is built in an area and want to reiterate my support for this bill.

Mr. NEDZI. Mr. Chairman, I want to thank the gentleman for his kind and generous comments.

Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. Jones).

Mr. JONES of North Carolina. Mr. Chairman, I thank the chairman for allotting me this time.

First of all, I want to commend the members of the Committee on Armed Services for a job well done in bringing out H.R. 7301.

I rise to support H.R. 7301, the military construction authorizations for fiscal 1981. The legislation will make a significant contribution to our national defense. I commend the members of the Armed Services Committee for a job well done.

I would like to discuss a much-needed construction project in my congressional district at the Cherry Point Naval Air Rework Facility. It is a $4,150,000 project known as the Cryogenics Generating Plant and Support Equipment Repair Facility, MILCON project P-515 (revised). It calls for the construction of a desperately needed building to house repair and laboratory facilities essential to the maintenance of our naval and Marine Corps aircraft.

The present bill does not contain an authorization for this project, I considered offering an amendment, but because of the committee's understandable desire to hold its bill within budgetary limits and because design on the project has not reached the threshold for authorization. I will not offer same, but, I hope that this discussion will lay the groundwork to enable me to appear before the Subcommittee on Military Installations and Facilities next spring to seek authorization in fiscal 1982.

The Cherry Point NARF is responsible for maintenance and repair of cryogenics generating plants, that is, equipment which produces liquid oxygen and nitrogen for military aircraft. These generating plants can be deployed at bases, in the field, or at sea to produce breathing oxygen for air crews. They also generate liquid oxygen and nitrogen required for servicing aircraft and meeting various medical needs.

Another function of this facility is to overhaul, examine, disassemble, and make ready various equipment used to maintain military planes. This equipment includes air compressors, hydraulic jacks, aero stands, and other items vital for the proper care and operation of the Navy and Marine aircraft.

Finally, the Materials Engineering Laboratory provides research and analysis of materials associated with aircraft operations. It is involved in the fields of metallurgy, chemistry, high polymer repairs, and analysis of gasses, oils, and fuels.

The Cherry Point NARF sorely needs a new building designed to accommodate these functions. Presently these activities are housed in two small "temporary" buildings constructed in 1964 for storage purposes. Because of the large size of the generating units, only a few can be worked on simultaneously in the cramped quarters. Work on some of the equipment must be done outdoors in uncovered areas, weather permitting. Tools and materials have to be stored away from the shop because of lack of space. The utilities are inadequate; heating and ventilation systems are poor. Some jobs, such as welding, painting, and steam cleaning have to be done away from the shop because of safety and pollution requirements.

Despite these trying conditions, the personnel at Cherry Point do a remarkable job. Nevertheless, the deficient physical facilities take their toll in productivity and efficiency. Authorization of this project will be a modest investment in maintaining the quality of our military air defense. I commend the attention of the Armed Services Committee to this project and look forward to working with you to include it in next year's military construction authorization.

Mr. WHITEHURST. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. Bob Wilson).

Mr. BOB WILSON. Mr. Chairman, I thank the gentleman for yielding.

I have two reasons for taking a short time here.

First of all, I want to join those who have praised the leadership of the chairman of the subcommittee. I have had the privilege of working with him during his entire stay on the committee. I was his ranking minority member when he was chairman of the Intelligence Committee and I must say I have always been impressed with his judicious temperament and his kindness, but his attention to detail as well.

Not many people realize that the Intelligence Committee during the time of Watergate held the same kinds of hearings that were held by other committees that got a lot of publicity, but we purposely did not seek publicity. We called all the same witnesses. We had Haldeman and Erlichman, Dean and very many others appearing before our committee, chaired by the chairman of this subcommittee. I must say he did an exceptional job. I am going to recommend to the next President of the United States, whoever he may be, that he consider our chairman of this subcommittee for the Supreme Court because of his judicious capability.

Now, second, Mr. Chairman, I am rising to engage in somewhat of a rebuttal or at least a colloquy with my good friend and colleague, my next door neighbor in California, regarding a new medical center planned for the community which is in his district and in our great city of San Diego. Although the gentleman from California (Mr. Van Deerlin) and I have been political adversaries through the years, we have also worked hard together on many projects to benefit our community and we have been working particularly hard together on this project, the naval regional medical center.

Today, however, I am compelled to disagree with him on two important points about the location of the new hospital.

First, the June ballot proposition to which my colleague refers did not specifically ask San Diego voters if they favored Helix Heights as the preferred hospital site. Rather, the proposition asked if the city should release its reservation of Helix Heights for a cemetery so that it could be used for other potential uses. The new hospital was only one of the possible purposes. Another possible use was for minority housing. So I believe it is an overstatement to say that San Diego voters prefer Helix Heights over the proposed Florida Canyon site in Balboa Park.

In fact, in an earlier ballot proposition, a majority of San Diego voters did indeed indicate their support for the city to lease the Florida Canyon site to the Navy for the specific purpose of siting the hospital there; but, like my good friend and colleague, I do not rise to debate the relative merits or demerits of the two locations. This will be done in the evaluation of the two sites now under way by the Navy and due to be concluded in late November.

This brings me to the second point. The House is already on record as supporting a thorough review of the two sites before the Navy settles on a final site selection. That review was ordered by the House when it recently passed the military construction appropriations bill.

The Senate companion bill to the measure we are considering today orders a similar Navy review and submission of the findings to the Armed Services and Appropriations Committees of both the House and the Senate. I believe that makes good sense, if it stopped there, but the Senate provision referred to by my colleague also requires that each of the four committees has to formally approve the site selection before the Navy can begin construction. There is no deadline as to when they must act. In effect, any one of the committees could veto the project for whatever reason it chooses to quarrel with the Navy's choice of location for the hospital.

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This is a dangerous precedent; for a hassle among committees over the siting would be very costly to the taxpayer. With inflation alone it would boost the project's cost by $2 mililon for every month it is delayed. The American taxpayer is already overburdened. He deserves better legislating procedures than that offered in the Senate provision.

Mr. WHITEHURST. Mr. Chairman, I yield 3 minutes to the gentleman from Maine (Mr. Emery).

Mr. EMERY. Mr. Chairman, I want very much to commend my colleague from Missouri (Mr. Ichord) who unfortunately has chosen not to return with us next year for the work that he has done in pointing out the necessity for improving our capabilities in the area of chemical warfare, both offensive and defensive.

He also referred a few moments ago to a visit that I made, along with some of our colleagues, to Pakistan and the Afghanistan border earlier this year. He was quite correct when he pointed out that I and others of us here in the House had an opportunity to talk with some Afghanistan refugees who described in horrifying detail the results and the procedures of what appeared to be a chemical attack from Soviet aircraft on this pathetic band of poorly armed, poorly prepared and poorly trained refugees fighting for their homeland.

I know that there have been some disagreements in the intelligence community as to the nature of Soviet chemical warfare technology, but I frankly think it would be naive in a dangerous way for us to ignore that evidence that I have seen and others have seen in this area. Even assuming that we could not prove that this, in fact, was a gas attack, using sophisticated chemical agents and others, I think we would be well advised to consider the potential for use of a massive chemical attack in a NATO-Warsaw Pact confrontation or some other confrontation.

I do not think there is any thinking person in this Chamber or on the Armed Services Committee or in any part of the Federal Government that does not recognize the horror of such an effort, the horror of a chemical attack that could result in the devastation of our forces and maybe the tipping of the balance in such a confrontation. So I feel that we need to develop our chemical warfare technology, at least in a defensive capability, so that we will be able to construct our combat vehicles and equip our troops in the field with lightweight, effective equipment that will allow them to operate in a chemical environment. It is absolutely essential and I commend the gentleman from Missouri for his efforts in this regard.

Mr. WHITEHURST. Mr. Chairman, I had a ringing peroration to conclude the debate on this side but, for the purposes of expediting this bill, I yield back the balance of my time.

Mr. NEDZI. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. MILLER).

Mr. MILLER of California. Mr. Chairman, I rise to bring to the attention of the committee a problem which has occurred in my district which is a question which the community has expressed about the adequacy of safety and evacuation procedures in those communities near which nuclear weapons are being stored. I understand that this question is not unique to the community of Concord, Calif., but also has arisen in Hawaii, Michigan, and other areas.

It is not my intent to question whether or not nuclear weapons are present or not present at the Concord Naval Weapons Station, because there are legitimate national security questions involved. But local government officials are understandably concerned about their ability to prepare for the potential of a radiological disaster or accident in the absence of adequate advice and cooperation. As I understand it, the procedures, according to the GAO and the NRC, by which the local communities are prepared to respond to a potential problem are almost nonexistent. This situation has been brought to the attention of this subcommittee that better communication should take place so that local communities would know what would be expected of them in the event that weapons are stored and that an accidental leak takes place.

It is not my intent in any way to disturb the existing law which simply does not allow for the public disclosure as to the existence or nonexistence of weapons at any given facility in this country. I know that this committee, under the leadership of the distinguished chairman, held hearings in May of 1979. The hearings had great relevance to the situation at Concord Naval Weapons Station. Several witnesses strongly stated that people in surrounding communities could be at risk, and that current preparedness programs (especially coordination with State and local governments) are insufficient.

Dexter Peach (General Accounting Office):

> We certainly feel that they (military installations where nuclear weapons are stored) fit into the category of having a potential for a nuclear accident to happen . . . From the standpoint of the work we did . . . we found just the lack of communication that existed between these types of facilities and the surrounding community.

Joseph Hendrie (Nuclear Regulatory Commission):

> With respect to existing facilities, it is fair to say that the level of preparedness in county governments for coping with radiological emergencies should be substantially improved.

Captain Basolo (Deputy Director, Emergency Services, Michigan State Police):

> Local government must be able to mobilize and coordinate its own resources to meet specific threats that they may find in their communities. If you have communities with air bases or a nuclear plant or large railroad lines or gas lines running through, we would advise them in their planning process to provide for this eventuality.

Dr. James P. Wade, Jr. (Assistant Secretary of Defense for Atomic Energy):

> At present, there are no formal requirements for agreements between local Department of Defense facilities and States or localities concerning joint response to a radio-logical accident. . . . However, most installations do have formal agreements for general disaster situations.

Based on these hearings, I would like to ask the chairman whether his committee did recognize that this is a problem in coordination between the military and local government? I would like to know whether or not the chairman believes that this serious situation is worthy of further consideration by this subcommittee so that we are sure that adequate information, consistent with the national security, is provided local and State preparedness and safety personnel?

Mr. NEDZI. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the chairman.

Mr. NEDZI. As the gentleman has indicated, this has been a matter of continuing concern on the part of the committee, the question of safety in areas where nuclear material may be present. I can assure the gentleman at least for the balance of my tenure, and I am certain any successor of mine will respond in similar fashion, that these matters will be thoroughly reviewed to assure that local officials do have some opportunity to present their concern to Federal officials that have control over these matters.

Mr. MILLER of California. I thank the chairman very much for his consideration of this matter.

● Mr. KOSTMAYER. Mr. Chairman, I rise in support of the bill and particularly in support of an increase in funding for the Willow Grove Naval Air Station which is located in my district in southeastern Pennsylvania.

This important Defense Department aviation facility serves the Army, Navy, Marine Corps, Air Force, and Pennsylvania National Guard. One of the primary missions of NAS Willow Grove is the training of aviation reserve forces. In the event of the need for NATO reinforcement or some other contingency action, military forces at NAS Willow Grove are identified as essential elements of our national defense posture.

In 1977, the Navy conducted an air installations compatibility use zones or AICUZ study at NAS, Willow Grove. As you know, an AICUZ is a comprehensive study of the installation's air operations and its impact on the community. The goal of the AICUZ program is to obtain compatible land use in the area adjacent to the Naval Air Station. The Navy recognizes the need to limit encroachment upon its air station so that its mission is not impaired, and a compatible land use pattern is develcped to protect the well-being of those people who live and work nearby. The plan provides a means to protect both the air station and its neighbors.

The AICUZ outlined a number of land use zones around the Naval Air Station and detailed the type of development, if any, which should be permitted in these zones. The zone with the highest accident potential is the area directly beyond the runways.

This area is called the clear zone. This zone has traditionally been acquired by the Navy either through easement or outright purchase in order to be kept clear or obstructions to flight.

The Horsham Elementary School, which was built before the Naval Air Station, lies in the clear zone, 200 yards south of the main runway. The school was closed in June 1979 due in large part to community concern about its hazardous location as identified in the AICUZ study. The Navy supported the closing of the school and made a commitment to seek funds to acquire the site. The Navy recognizes that it bears a large measure of the responsibility for the closing of the school and therefore has an obligation to purchase it. If this acquisition does not take place soon, the school district will have to consider sale of the site to commercial interests for uses which are not compatible with the AICUZ study.

The Navy has requested $1.1 million in the fiscal year 1981 military construction authorization bill to begin critical clear zone property acquisition. Unfortunately, those funds are not sufficient to permit acquisition of the Horsham School.

Three properties were indentified by the AICUZ for acquisition. The Horsham Elementary School is one of those properties, but it is the third priority within that package. It is estimated that it will take $2.1 million to acquire the first two priority properties alone. The cost projections of these acquisitions have risen dramatically in recent years due to inflation, and to imminent development at one of the priority sites. It is estimated that an additional $600,000 would be required to purchase the elementary school.

I would respectfully request that the House support this increase in the military construction funds for the Naval Air Station at Willow Grove to $2.7 million in fiscal year 1981 in order that the acquisition of the Horsham Elementary School can go forward. These funds will enable the Navy to acquire the two properties it has identified as the most critical in the clear zone, and enable it to keep faith with the people of Horsham and Hatboro by acquiring the third site, the school.

This naval air station is a vital part of our Reserve component and if the Navy is to carry out its mission there, we must do all we can to aid in that effort. The continued success of this facility which is important to all of us, depends upon limiting incompatible land use in the area, and minimizing public exposure to aircraft hazard. This policy is in the best interests of the Navy and the community.

I want to thank the distinguished gentleman from Michigan (Mr. NEDZI), the chairman of the Subcommittee on Military Installations, and his colleagues on the subcommittee for their consideration and support of this amendment. I know the hard work and dedication of the gentleman, who is retiring at the end of this session, will be greatly missed by all House Members.●

Mr. NEDZI. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. There being no further requests for time, pursuant to the rule the Clerk will now read the bill by titles.

Mr. NEDZI. Mr. Chairman, I ask unanimous consent that titles I through VII be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Titles I through VII read as follows:

H.R. 7301

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Military Construction Authorization Act, 1981".

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION PROJECTS

SEC. 101. The Secretary of the Army may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction.

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $16,350,000.

Fort Campbell, Kentucky, $14,200,000.

Fort Carson, Colorado, $42,600,000.

Fort Devens, Massachusetts, $1,000,000.

Fort Douglas, Utah, $2,200,000.

Fort Drum, New York, $5,900,000.

Fort Gillem, Georgia, $2,600,000.

Fort Hood, Texas, $21,170,000.

Fort Hunter-Liggett, California, $5,100,000.

Fort Lewis, Washington, $16,000,000.

Fort Ord, California, $4,700,000.

Fort Polk, Louisiana, $14,800,000.

Fort Riley, Kansas, $890,000.

Fort Sam Houston, Texas, $3,750,000.

Fort Stewart/Hunter Army Air Field, Georgia, $26,500,000.

UNITED STATES ARMY WESTERN COMMAND

Schofield Barracks, Hawaii, $3,820,000.

Tripler Army Medical Center, Hawaii, $84,500,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort A. P. Hill, Virginia, $930,000.

Fort Belvoir, Virginia, $510,000.

Fort Benning, Georgia, $10,460,000.

Fort Bliss, Texas, $2,400,000.

Fort Dix, New Jersey, $4,510,000.

Fort Eustis, Virginia, $1,100,000.

Fort Gordon, Georgia, $2,500,000.

Fort Jackson, South Carolina, $2,690,000.

Fort Knox, Kentucky, $5,400,000.

Fort Leavenworth, Kansas, $7,750,000.

Fort Leonard Wood, Missouri, $7,900,000.

Fort Rucker, Alabama, $30,560,000.

Fort Sill, Oklahoma, $4,100,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Anniston Army Depot, Alabama, $3,550,000.

Badger Army Ammunition Plant, Wisconsin, $2,100,000.

Corpus Christi Army Depot, Texas, $1,600,000.

Fort Monmouth, New Jersey, $2,000,000.

Holston Army Ammunition Plant, Tennessee, $4,690,000.

Indiana Army Ammunition Plant, Indiana, $2,800,000.

Iowa Army Ammunition Plant, Iowa, $1,650,000.

Jefferson Proving Ground, Indiana, $960,000.

Letterkenny Army Depot, Pennsylvania, $9,250,000.

Lone Star Army Ammunition Plant, Texas, $4,350,000.

Louisiana Army Ammunition Plant, Louisiana, $1,050,000.

McAlester Army Ammunition Plant, Oklahoma, $620,000.

Picatinny Arsenal, New Jersey, $1,400,000.

Pine Bluff Arsenal, Arkansas, $3,150,000.

Red River Army Depot, Texas, $3,800,000.

Redstone Arsenal, Alabama, $12,190,000.

Rock Island Arsenal, Illinois, $10,620,000.

Rocky Mountain Arsenal, Colorado, $10,400,000.

Sacramento Army Depot, California, $1,930,000.

Sierra Army Depot, California, $550,000.

St. Louis Support Activity, Illinois, $3,050,000.

Tobyhanna Army Depot, Pennsylvania, $680,000.

Tooele Army Depot, Utah, $2,050,000.

Twin City Army Ammunition Plant, Minnesota, $820,000.

Umatilla Army Depot, Oregon, $620,000.

Volunteer Army Ammunition Plant, Tennessee, $2,150,000.

White Sands Missile Range, New Mexico, $1,000,000.

Yuma Proving Ground, Arizona, $2,650,000.

AMMUNITION FACILITIES

Holston Army Ammunition Plant, Tennessee, $300,000.

Indiana Army Ammunition Plant, Indiana, $3,570,000.

Iowa Army Ammunition Plant, Iowa, $2,300,000.

Lake City Army Ammunition Plant, Missouri, $220,000.

Lone Star Ammunition Plant, Texas, $540,000.

Longhorn Army Ammunition Plant, Texas, $260,000.

Louisiana Army Ammunition Plant, Louisiana, $380,000.

Milan Army Ammunition Plant, Tennessee, $210,000.

Radford Army Ammunition Plant, Virginia, $5,890,000.

UNITED STATES ARMY CORPS OF ENGINEERS

Cold Regions Laboratory, New Hampshire, $6,100,000.

MILITARY DISTRICT OF WASHINGTON

Cameron Station, Virginia, $930,000.

Fort McNair, Washington, District of Columbia, $690,000.

Fort Myer, Virginia, $1,150,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $4,650,000.

Fort Ritchie, Maryland, $1,750,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fort Detrick, Maryland, $1,350,000.

Fitzsimmons Army Medical Center, Colorado, $790,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Bayonne Terminal, New Jersey, $660,000.

Sunny Point Terminal, North Carolina, $1,800,000.

OUTSIDE THE UNITED STATES

EIGHTH UNITED STATES ARMY, KOREA

Various Locations, $62,074,000.

KWAJALEIN MISSILE RANGE

National Missile Range, $5,440,000.

UNITED STATES ARMY FORCES COMMAND

Panama Area, Canal Zone, $8,100,000.

UNITED STATES ARMY, JAPAN

Kawakami, Japan, $3,000,000.

UNITED STATES ARMY, EUROPE

Various Locations, $176,840,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND

Korea, $1,186,000.

EMERGENCY CONSTRUCTION

SEC. 102. The Secretary of the Army may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Army, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 103. The Secretary of the Army is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $44,560,000.

DEFICIENCY AUTHORIZATION FOR FISCAL YEAR 1979 PROJECTS

SEC. 104. Section 602(1) of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 580), is amended to read as follows:

"(1) for title I: inside the United States $503,794,000; outside the United States $232,510,000; minor construction $35,365,000; for a total of $771,669,000.".

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION PROJECTS

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

Inside the United States

MARINE CORPS

Marine Corps Air Station, Beaufort, South Carolina, $930,000.

Marine Corps Base, Camp Lejuene, North Carolina, $24,700,000.

Marine Corps Base, Camp Pendleton, California, $6,950,000.

Marine Corps Air Station, Cherry Point, North Carolina, $16,700,000.

Marine Corps Air Station, El Toro, California, $11,500,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $620,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $6,800,000.

Marine Corps Development and Education Command, Quantico, Virginia, $5,800,000.

Marine Corps Air Ground Combat Center, Twentynine Palms, California, $9,400,000.

Marine Corps Air Station, Yuma, Arizona, $2,200,000.

OFFICE OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $7,300,000.

CHIEF OF NAVAL OPERATIONS

Naval Submarine Base, Bangor, Bremerton, Washington, $11,160,000.

Naval Submarine Support Base, Kings Bay, Kingsland, Georgia, $18,000,000.

Commandant Naval District, Washington, District of Columbia, $790,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $4,100,000.

Naval Station, Charleston, South Carolina, $13,200,000.

Naval Air Station, Jacksonville, Florida, $3,830,000.

Naval Amphibious Base, Little Creek, Virginia, $8,100,000.

Naval Station, Mayport, Florida, $37,620,000.

Naval Submarine Base, New London, Groton, Connecticut, $8,030,000.

Headquarters Support Activity, Atlantic Fleet, Norfolk, Virginia, $3,400,000.

Naval Air Station, Norfolk, Virginia, $1,550,000.

Naval Station, Norfolk, Virginia, $15,500,000.

Naval Air Station, Oceana, Virginia, $19,350,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Station, Barbers Point, Hawaii, $2,500,000.

Naval Air Station, Fallon, Nevada, $330,000.

Naval Air Station, Lemoore, California, $5,810,000.

Naval Magazine, Lualualei, Hawaii, $6,600,000.

Naval Air Station, Miramar, California, $1,200,000.

Naval Air Station, North Island, California, $850,000.

Naval Submarine Base, Pearl Harbor, Hawaii, $1,900,000.

Naval Station, San Diego, California, $4,950,000.

Navy Submarine Support Facility, San Diego, California, $4,150,000.

Naval Air Station, Whidbey Island, Washington, $2,390,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Fleet Ballistic Missile Submarine Training Center, Charleston, South Carolina, $1,100,000.

Fleet Combat Training Center, Atlantic, Dam Neck, Virginia, $4,700,000.

Naval Submarine School, Groton, Connecticut, $1,150,000.

Naval Education and Training Center, Newport, Rhode Island, $620,000.

Naval Training Center, Orlando, Florida, $7,050,000.

Fleet Combat Training Center, Pacific, San Diego, California, $540,000.

Naval Submarine Training Center, San Diego, California, $4,450,000.

Naval Air Station, Whiting Field, Florida, $3,680,000.

BUREAU OF MEDICINE AND SURGERY

National Naval Medical Center, Bethesda, Maryland, $23,000,000.

Naval Regional Medical Center, San Diego, California, $293,000,000.

NAVAL MATERIAL COMMAND

Puget Sound Naval Shipyard, Bremerton, Washington, $32,000,000.

Naval Supply Center, Puget Sound, Bremerton, Washington, $2.200,000.

Naval Fuel Annex, Casco Bay, Maine, $3,900,000.

Charleston Naval Shipyard, Charleston, South Carolina, $6,600,000.

Naval Weapons Station, Charleston, South Carolina, $3,410,000.

Polaris Missile Facility, Atlantic, Charleston, South Carolina, $8,400,000.

Naval Weapons Center, China Lake, California, $11,900,000.

Naval Construction Battalion Center, Davisville, Rhode Island, $550,000.

Navy Public Works Center, Great Lakes, Illinois, $8,400,000.

Naval Undersea Warfare Engineering Station, Keyport, Washington, $860,000.

Portsmouth Naval Shipyard, Kittery, Maine, $13,880,000.

Long Beach Naval Shipyard, Long Beach, California, $4,400,000.

Naval Ordnance Station, Louisville, Kentucky, $2,050,000.

Naval Supply Center, Norfolk, Virginia, $13,150,000.

Navy Public Works Center, Norfolk, Virginia, $1,560,000.

Naval Supply Center, Oakland, California, $4,600,000.

Navy Public Works Center, Pearl Harbor, Hawaii, $5,783,000.

Naval Air Rework Facility, Pensacola, Florida, $1,550,000.

Philadelphia Naval Shipyard, Philadelphia, Pennsylvania, $10,710,000.

Pacific Missile Test Center, Point Mugu, California, $8,750,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $11,500,000.

Naval Supply Center, San Diego, California, $2,900,000.

Navy Public Works Center, San Diego, California, $670,000.

Mare Island Naval Shipyard, Vallejo, California, $9,500,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Winter Harbor, Maine, $1,150,000.

Outside the United States

CHIEF OF NAVAL OPERATIONS

Defense Installations, Mariana Islands, $28,200,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Facility, Brawdy, Wales, United Kingdom, $3,600,000.

Naval Station, Keflavik, Iceland, $49,200,000.

Naval Station, Roosevelt Roads, Puerto Rico, $10,500,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $1,000,000.

Navy Support Facility, Diego Garcia, Indian Ocean, $125,977,000.

Naval Station, Subic Bay, Republic of the Philippines, $780,000.

Various locations, $35,000,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station Western Pacific, Guam, Mariana Islands, $1,900,000.

Naval Communication Station, Keflavik, Iceland, $3,600,000.

EMERGENCY CONSTRUCTION

SEC. 202. The Secretary of the Navy may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Navy, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 203. The Secretary of the Navy is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $33,010,000.

DUAL PURPOSE AIR TERMINAL, KEFLAVIK, ICELAND

SEC. 204. (a) The Secretary of the Navy may contract for the construction of the Air Passenger Terminal in Keflavik, Iceland, in accordance with this section and any agreement which may be made between the Government of Iceland and the Government of the United States. Of the amount authorized in section 201 for the Naval Station, Keflavik, Iceland, no more than $20,000,000 may be contributed by the United States as the United States share of the cost of such construction.

(b) A contract for construction may not be entered into until the Government of Iceland agrees (1) to provide to the Government of the United States funds equal to the difference between the amount required to complete the construction and the amount of the United States share authorized in subsection (a), and (2) to make those funds available, in advance of the time when payments are due, in such amounts and at such times as may be required by the Government of the United States.

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION PROJECTS

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $9,650,000.

Kelly Air Force Base, Texas, $650,000.

McClellan Air Force Base, California, $12,350,000.

Robins Air Force Base, Georgia, $4,850,000.

Tinker Air Force Base, Oklahoma, $11,870,000.

Wright-Patterson Air Force Base, Ohio, $3,700,000.

AIR FORCE SYSTEMS COMMAND

Brooks Air Force Base, Texas, $4,200,000.

Buckley Air National Guard Base, Colorado, $900,000.

Cape Canaveral Air Force Station, Florida, $22,300,000.

Edwards Air Force Base, California, $10,500,000.

Hanscom Air Force Base, Massachusetts, $7,200,000.

Port Hueneme Naval Installation, California, $16,700,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $17,738,000.

Lackland Air Force Base, Texas, $10,590,000.

Laughlin Air Force Base, Texas, $1,100,000.

Lowry Air Force Base, Colorado, $840,000.

Mather Air Force Base, California, $860,000.

Maxwell Air Force Base, Alabama, $11,184,000.

Randolph Air Force Base, Texas, $7,850,000.

Reese Air Force Base, Texas, $4,290,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $5,190,000.

Elmendorf Air Force Base, Alaska, $14,820,000.

Galen Air Force Base, Alaska, $930,000.

King Salmon Airport, $1,000,000.

Shemya Air Force Base, Alaska, $2,900,000.

MILITARY AIRLIFT COMMAND

Andrews Air Force Base, Maryland, $4,240,000.

Charleston Air Force Base, South Carolina, $1,740,000.

Dover Air Force Base, Delaware, $2,350,000.

Kirtland Air Force Base, New Mexico, $1,200,000.

McChord Air Force Base, Washington, $5,500,000.

Norton Air Force Base, California, $11,200,000.

Pope Air Force Base, North Carolina, $9,250,000.

Scott Air Force Base, Illinois, $4,000,000.

Travis Air Force Base, California, $1,080,000.

PACIFIC AIR FORCES

Hickam Air Force Base, Hawaii, $580,000,

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Louisiana, $3,200,000.

Beale Air Force Base, California, $2,670,000.

Blytheville Air Force Base, Arkansas, $6,141,000.

Carswell Air Force Base, Texas, $13,920,000.

Castle Air Force Base, California, $16,400,000.

Dyess Air Force Base, Texas, $10,300,000.

Ellsworth Air Force Base, South Dakota, $17,560,000.

Fairchild Air Force Base, Washington, $20,360,000.

Grand Forks Air Force Base, North Dakota, $22,650,000.

Griffiss Air Force Base, New York, $14,850,000.

K. I. Sawyer Air Force Base, Michigan, $3,700,000.

Loring Air Force Base, Maine, $7,450,000.

McConnell Air Force Base, Kansas, $4,040,000.

Minot Air Force Base, North Dakota, $2,570,000.

Offutt Air Force Base, Nebraska, $4,580,000.

Pease Air Force Base, New Hampshire, $4,500,000.

Rickenbacker Air Force Base, Indiana, $6,300,000.

Vandenberg Air Force Base, California, $75,300,000.

Whiteman Air Force Base, Missouri, $990,000.

Wurtsmith Air Force Base, Michigan, $34,970,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $1,910,000.

Davis Monthan Air Force Base, Arizona, $3,200,000.

George Air Force Base, California, $640,000.

Holloman Air Force Base, New Mexico, $5,800,000.

Homestead Air Force Base, Florida, $670,000.

Langley Air Force Base, Virginia, $3,892,000.

MacDill Air Force Base, Florida, $1,160,000.

Moody Air Force Base, Georgia, $1,470,000.

Myrtle Beach Air Force Base, South Carolina, $780,000.

Nellis Air Force Base, Nevada, $6,250,000.

Shaw Air Force Base, South Carolina, $3,800,000.

Tyndall Air Force Base, Florida, $2,300,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $30,100,000.

PACIFIC AIR FORCES

Camp Zama, Japan, $1,100,000.

Clark Air Base, Republic of the Philippines, $13,050,000.

Kadena Air Base, Japan, $10,280,000.

Kunsan Air Base, Korea, $4,400,000.

Kwang-Ju Air Base Korea, $5,900,000.

Misawa Air Base, Japan, $1,930,000.

Naval Support Facility, Diego Garcia, Indian Ocean, $23,700,000.

Osan Air Base, Korea, $16,800,000.

Taegu Air Base, Korea, $8,350,000.

UNITED STATES AIR FORCES IN EUROPE

Various Locations, United Kingdom, $2,200,000.

Various Locations, $102,770,000.

EMERGENCY CONSTRUCTION

SEC. 302. The Secretary of the Air Force may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Air Force, or the Secretary's designee, shall notify the Committee on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 303. The Secretary of the Air Force is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $24,870,000.

DEFICIENCY AUTHORIZATION FOR FISCAL YEAR 1979 PROJECTS

SEC. 304. Section 602(3) of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 580), is amended to read as follows:

"(3) for title III: inside the United States $490,327,000; outside the United States $78,278,000; minor construction $30,721,000; for a total of $599,326,000.".

TITLE VI—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for defense agencies for the following acquisition or construction:

INSIDE THE UNITED STATES

DEFENSE INTELLIGENCE AGENCY

Bolling Air Force Base, District of Columbia, $106,200,000.

DEFENSE LOGISTICS AGENCY

Defense Electronics Supply Center, Dayton, Ohio, $730,000.

Defense Fuel Support Point, Norwalk, California, $2,000,000.

Defense Fuel Support Point, Searsport, Maine, $3,000,000.

Defense Personnel Support Center, Philadelphia, Pennsylvania, $750,000.

Defense Storage Facility, Bayonne, New Jersey, $1,450,000.

DEFENSE MAPPING AGENCY

Hydrographic/Topographic Center, Brookmont, Maryland, $1,500,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $5,065,000.

Kunia, Oahu, Hawaii, $2,700,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Activity, Fort Belvoir, Virginia, $16,500,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Property Disposal Office, Bitburg, Germany, $1,350,000.

NATIONAL SECURITY AGENCY

Classified Location, $674,000.

OFFICE OF THE SECRETARY OF DEFENSE

CLASSIFIED LOCATION

Classified Activity, $3,500,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Aschaffenburg, Germany, $1,110,000.

Baumholder, Wetzel Housing Area, Germany, $3,065,000.

Bermuda, Naval Air Station, $2,580,000.

Clark Air Base, Republic of the Philippines, $1,650,000.

Iwakuni, Marine Corps Air Station, Japan, $6,060,000.

Osan Air Base, Korea, $1,900,000.

Pruem Air Station, Germany, $1,150,000.

Sagamihara, Japan, $3,220,000.

Seoul, Yongsan Garrison, Korea, $4,500,000.

Taegu, Korea, $4,100,000.

Wiesbaden, Germany, $10,176,000.

Yokota Air Base West, Japan, $7,500,000.

EMERGENCY CONSTRUCTION

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $30,000,000. The Secretary of Defense, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public works undertaken under this section including real estate actions pertaining thereto.

MINOR CONSTRUCTION

SEC. 403. The Secretary of Defense is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $6,180,000.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 404. The Secretary of Defense is authorized to incur obligations in amounts not to exceed $317,500,000 for the United States share of the cost of multilateral programs for the acquisition or construction of military facilities and installations (including international military headquarters) for the collective defense of the North Atlantic Treaty Area. Of such amount, $17,500,000 is designated as the United States share of the European Comand Headquarters which is to be funded by the North Atlantic Treaty Organization Infrastructure program. Within thirty days after the end of each calendar-year quarter, the Secretary of Defense shall furnish to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a description of obligations incurred by the United States for the United States share of the cost of such multilateral programs.

TITLE V—MILITARY FAMILY HOUSING

AUTHORIZATION TO CONSTRUCT OR ACQUIRE HOUSING

SEC. 501. (a) The Secretary of Defense, or the Secretary's designee, is authorized to construct or acquire sole interest in existing family housing units in the numbers and at the locations hereinafter named, but no family housing construction shall be commenced at any such location in the United States until the Secretary shall have consulted with the Secretary of Housing and Urban Development as to the availability of suitable private housing at such location. If agreement cannot be reached with respect to the availability of suitable private housing at any location, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives, in writing, of such difference of opinion, and no contract for construction at such location shall be entered into for a period of thirty days after such notification has been given. This authority shall include the authority to acquire land, and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise.

(b) With respect to the family housing units authorized to be constructed by this section, the Secretary of Defense is authorized to acquire sole interest in privately or Department of Housing and Urban Development-held family housing units in lieu of constructing all or a portion of the family housing authorized by this section, if the Secretary, or the Secretary's designee, determines such action to be in the best interests of the United States, but any family housing units acquired under authority of this subsection shall not exceed the cost limitations specified in this section for the project nor the limitations on size specified in section 2684 of title 10, United States Code. In no case may family housing units be acquired under this subsection through the exercise of eminent domain authority, and in no case may family housing units other than those authorized by this section be acquired in lieu of construction unless the acquisition of such units is hereafter specifically authorized by law.

(c) Family housing units:

Marine Corps Air Station, Yuma, Arizona, one hundred thirty-two units, $8,050,000.

Defense Housing Complex, South Bay, San Francisco, California, two hundred seventy units, $19,045,000.

Marine Corps Air Station, El Toro, California, three hundred units, $17,483,000.

Fort Ord, California, five hundred units, $30,808,000.

Naval Complex, New London, Connecticut, four hundred units, $24,608,000.

Fort Stewart, Georgia, two hundred units, $9,716,000.

Fort Polk, Louisiana, two hundred units, $11,173,000.

Naval Air Station, Brunswick, Maine, sixty-two units, $3,956,000.

Naval Complex, Norfolk, Virginia, two hundred and thirty-two units, $12,093,000.

Lajes Field, Azores, one hundred and fifty units, $9,768,000.

Incirlik Air Base, Turkey, two hundred units, $11,723,000.

Classified location overseas, five units, $168,000.

(d) The amounts specified in this section may, at the discretion of the Secretary of Defense, or the Secretary's designee, be increased by 10 per centum, if he determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress. The amounts authorized include the costs of shades, screens, ranges, refrigerators, and all other installed equipment and fixtures, the cost of the family housing unit, supervision, inspection, overhead, land acquisition, site preparation, installation of utilities, and solar energy systems.

IMPROVEMENT OF EXISTING QUARTERS

SEC. 502. (a) The Secretary of Defense, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed—

(1) for the Department of the Army, $42,436,000, of which $27,150,000 shall be available only for energy conservation projects;

(2) for the Department of the Navy, $13,562,000, of which $2,819,000 shall be available only for energy conservation projects;

(3) for the Department of the Air Force, $52,819,000, of which $17,000,000 shall be available only for energy conservation projects; and

(4) for the Defense Agencies, $23,000.

(b) The first sentence of section 610(a) of the Military Construction Authorization Act, 1968 (42 U.S.C. 1594h-2), is amended by inserting "adjusted by the area construction cost index (as developed by the Department of Defense) for the location at the time the contract is awarded," after "$20,000 per unit".

(c) The Secretary of Defense, or the Secretary's designee, within the amounts specified in subsection (a), is authorized to accomplish repairs and improvements to existing family housing in amounts in excess of the dollar limitation prescribed in section 610(a) of the Military Construction Authorization Act, 1968 (42 U.S.C. 1594h-2), as follows:

Redstone Arsenal, Alabama, forty units, $891,000.

Navy Public Works Center, Pearl Harbor, Hawaii, one hundred and forty-six units, $5,468,000.

Fort Knox, Kentucky, one hundred units, $2,592,000.

Loring Air Force Base, Maine, one hundred and sixty-five units, $3,042,600.

Kirtland Air Force Base, New Mexico, one hundred and twenty-five units, $2,458,100.

Marine Corps Development and Education Command, Quantico, Virginia, fifty-two units, $1,910,000.

Warren Air Force Base, Wyoming, one hundred and sixty-two units, $3,150,000.

Hahn Air Base, Federal Republic of Germany, twenty-eight units, $980,000.

Ramstein Air Base (Vogelweh and Landstuhl), Federal Republic of Germany, twenty units, $993,000.

Yokota Air Base, Japan, two hundred and sixty-eight units, $9,054,800.

ADVANCE PLANNING AND DESIGN

SEC. 503. The Secretary of Defense, or the Secretary's designee, may carry out advance planning and construction design and may obtain architectural and engineering services in connection with any family housing construction, including improvements, authorized or not otherwise authorized by law at a total cost of not to exceed—

(1) for the Department of the Army, $3,993,000;

(2) for the Department of the Navy, $2,994,000;

(3) for the Department of the Air Force, $1,380,000; and

(4) for the Defense agencies, $2,000.

LEASING OF FAMILY HOUSING

SEC. 504. (a) Subsection (c) of section 2686 of title 10, United States Code, relating to leases for military family housing in the United States, is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), expenditures for the rental of such housing facilities (including the cost of utilities, maintenance, and operation) may not exceed $515 per month for any unit.

"(2) The Secretary of Defense may lease not more than five hundred housing units under this section for which the expenditure for the rental of such facilities (including the cost of utilities, maintenance, and operation) exceeds $515 per month but does not exceed $600 per month.".

(b) The first sentence of section 2675(d)(1) of such title relating to leases in foreign countries, is amended to read as follows: "Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit.".

OCCUPANT LIABILITY FOR DAMAGES TO FAMILY HOUSING

SEC. 505. (a) When any family housing unit (or equipment or furnishings incidental to any family housing unit) furnished to a member of an Armed Force is damaged and it is determined that such damage was caused by the abuse or negligence of the member or a dependent of the member, the amount of the damage or the cost of repair or replacement shall be charged to the member and may be deducted from the member's pay.

(b) In the case of a member who is an officer, the final determination of any amount to be deducted from the member's pay under this section shall be deemed for the purpose of section 1007(a) of title 37, United States Code, to be a special order authorizing such a deduction.

(c) The Secretary of Defense shall prescribe regulations to carry out this section.

CONSTRUCTION OF FAMILY QUARTERS; LIMITATIONS ON SPACE

SEC. 506. Section 2684 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Subsection (a) is not applicable to family quarters obtained by the Department of State for personnel of the Department of Defense.".

INCREASED AUTHORIZATION FOR CONSTRUCTION, OAHU, HAWAII

SEC. 507. Notwithstanding the limitations on costs contained in sections 501(a) and 502 of the Military Construction Authorization Act, 1974 (Public Law 93-166; 87 Stat. 673) and sections 501(a) and 502 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1757, 1758), the Secretary of Defense is authorized to complete construction of two thousand six hundred family housing units in support of Department of Defense requirements in Oahu, Hawaii, at a total cost of not to exceed $117,150,000.

DEFICIENCY AUTHORIZATION FOR NEW CONSTRUCTION

SEC. 508. (a) Section 501(c) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 577), is amended—

(1) by striking out "$1,509,000" in the item relating to the Naval Facility, Centerville Beach, California, and inserting in lieu thereof "$2,030,000"; and

(2) by striking out "$4,307,000" in the item relating to the Marine Corps Base, Twentynine Palms, California, and inserting in lieu thereof "$6,069,000".

(b)(1) Section 505(1) of such Act is amended by striking out "$139,105,000" and inserting in lieu thereof "$140,867,000".

(2) Section 602(5) of such Act is amended by striking out "$1,701,605,000" and inserting in lieu thereof "$1,703,367,000".

AUTHORIZATION OF APPROPRIATIONS

SEC. 509. (a) There is authorized to be appropriated for fiscal years beginning after September 30, 1980, for support of military family housing, including operating expenses, leasing, maintenance of real property, payments of principal and interest on mortgage debts incurred, payment to the Commodity Credit Corporation, and mortgage insurance premiums, an amount not to exceed $1,880,760,000.

(b) The amount authorized to be appropriated in subsection (a) may be increased to the extent additional funds are necessary for increased pay costs associated with actions taken pursuant to law.

FAMILY HOUSING MANAGEMENT ACCOUNT

SEC. 510. Subsection (b) of section 501 of Public Law 87-554 (42 U.S.C. 1594a-1) is amended to read as follows:

"(b) The management account shall be administered by the Secretary of Defense as a single account. There shall be transferred into such account (1) appropriations made to the Department of Defense for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operating and maintenance, and disposal of family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c)), (2) proceeds from the rental of family housing and mobile home facilities under the control of the Department of Defense, reimbursements from occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the management account, and (3) notwithstanding any other provision of law, proceeds of the handling and the disposal of family housing of the Department of Defense, including related land and improvements, whether effected by the Department of Defense or any other Federal agency, but less those expenses payable pursuant to section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)), to remain available until expended.".

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND ADMINISTRATIVE PROVISIONS

WAIVER OF RESTRICTIONS

SEC. 601. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or lands includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government owned land, or otherwise.

AUTHORIZATION OF APPROPRIATIONS

SEC. 602. There are authorized to be appropriated for fiscal years beginning after September 30, 1980, such sums as may be necessary for the purposes of this Act, but appropriation for public works projects authorized by titles I, II, III, IV, and V shall not exceed—

(1) for title I: inside the United States $472,110,000; outside the United States $256,640,000; minor construction $44,560,000; for a total of $773,310,000.

(2) for title II: inside the United States $777,873,000; outside the United States $259,757,000; minor construction $33,010,000; for a total of $1,070,640,000.

(3) for title III: inside the United States $529,625,000; outside the United States $220,587,000; minor construction $24,870,000; for a total of $775,082,000.

(4) for title IV: a total of $546,110,000, including $6,180,000 for minor construction.

(5) for title V: a total of $276,100,000, including $5,471,000 for minor construction.

COST VARIATIONS

SEC. 603. (a) OVERALL TITLE TOTAL LIMITATION.—Notwithstanding the provisions of subsections (b), (c), (d), and (g), the total cost of all construction and acquisition in each of titles I, II, III, and IV may not exceed the total amount authorized to be appropriated in that title.

(b) VARIATIONS IN INSTALLATION TOTALS—UNUSUAL VARIATIONS IN COST.—Except as provided in subsections (c) and (d), any of the amounts specified in titles I, II, III, and IV of this Act (other than in sections 103, 203, 303, and 403) may, at the discretion of the Secretary of the military department or Director of the defense agency concerned, be increased by 5 per centum when inside the United States (other than Alaska or Hawaii), and by 10 per centum when outside the United States or in Alaska or Hawaii, if the Secretary of the military department or Director of the defense agency concerned determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress.

(c) VARIATIONS IN INSTALLATION TOTALS—ONLY ONE PROJECT AT AN INSTALLATION.—When the amount named for any construction or acquisition in title I, II, III, or IV of this Act involves only one project at any military installation and the Secretary of the military department or Director of the defense agency concerned determines that the amount authorized must be increased by more than the applicable percentage prescribed in subsection (b), the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition if the amount of the increase does not exceed by more than 25 per centum the amount named for such project by the Congress.

(d) VARIATIONS IN INSTALLATION TOTALS—REPORTS BY THE SECRETARY OF DEFENSE.—When the Secretary of Defense determines that any amount named in title I, II, III, or IV of this Act must be exceeded by more than the percentages permitted in subsections (b) and (c) to accomplish authorized construction or acquisition, the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition after a written report of the facts relating to the increase of such amount, including a statement of the reasons for such increase, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either (1) thirty days have elapsed from the date of submission of such report, or (2) both committees have indicated approval of such construction or acquisition. Notwithstanding the provisions in prior Military Construction Authorization Acts, the provisions of this subsection shall apply to such prior Acts.

(e) COST AND SCOPE VARIATIONS OF INDIVIDUAL PROJECTS; REPORTS TO CONGRESS.—No individual project authorized under title I, II, III, or IV of this Act for any specifically listed military installation for which the current working estimate is greater than the statutory upper limit for minor construction projects, may be placed under contract if—

(1) the approved scope of the project is reduced in excess of 25 per centum; or

(2) the current working estimate, based upon bids received, for the construction of such project exceeds by more than 25 per centum the amount authorized for such project by the Congress;

until a written report of the facts relating to the reduced scope or increased cost of such project, including a statement of the reasons for reduction in scope or increase in cost, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either thirty days have elapsed from the date of submission of such report, or both committees have indicated approval of such reduction in scope or increase in cost, as the case may be.

(f) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, or the Secretary's designee, shall submit an annual report to the Congress identifying each individual project (other than a project authorized under section 103, 203, 303, or 403) which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense, based upon bids received, for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced by more than 25 per centum in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

(g) COST AND FLOOR AREA VARIATIONS—SOLAR ENERGY.—The Secretary of Defense shall encourage the utilization of solar energy as a source of energy for projects authorized by this Act where utilization of solar energy would be practical and economically feasible. In order to equip any project authorized by this Act with solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, the Secretary of Defense may authorize increases in the cost limitations or floor area limitations for such project by such amounts as may be necessary for such purpose. Any increase under this section in the cost or floor area of a project authorized by this Act shall be in addition to any other increase in such cost or variation in floor area limitations authorized by this or any other Act.

CONSTRUCTION SUPERVISION

SEC. 604. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army, the Naval Facilities Engineering Command, Department of the Navy, or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded, insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder. Such reports shall also show, in the case of the ten architect-engineering firms which, in terms of total dollars, were awarded the most business; the names of such firms; the total number of separate contracts awarded each firm; and the total amount paid or to be paid in the case of each such action under all such contracts awarded such firm.

REPEAL OF PRIOR YEAR AUTHORIZATIONS: EXCEPTIONS

SEC. 605. (a) As of October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, all authorizations for military public works, including family housing, to be accomplished by the Secretary of a military department in connection with the establishment or development of installations and facilities, and all authorizations for appropriations therefor, that are contained in titles I, II, III, IV, and V of the Military Construction Authorization Act, 1980 (Public Law 96–125; 93 Stat. 928), and all such authorizations contained in Acts approved before November 26, 1979, and not superseded or otherwise modified by a later authorization are repealed except—

(1) authorizations for public works and for appropriations therefor that are set forth in those Acts in the titles that contain the general provisions; and

(2) authorizations for public works projects as to which appropriated funds have been obligated for construction contracts, land acquisition, or payments to the North Atlantic Treaty Organization, in whole or in part, before October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, and authorizations for appropriations therefor.

(b) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96–125; 93 Stat. 944), authorizations for the following items authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 565) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Control System construction in the amount of $3,300,000 at Fort Jackson, South Carolina.

(2) Regional Sewage Treatment Plant Upgrade construction in the amount of $1,209,000 at Fort Bliss, Texas.

(3) Regional Sewage Treatment Plant Upgrade construction in the amount of $550,000 at Fort Monroe, Virginia.

(4) Barracks with Dining construction in the amount of $4,603,000 at Fulda, Germany.

(5) Improvements to Heating System in the amount of $394,000 at Kansas Army Ammunition Plant, Kansas.

(6) Energy Control System in the amount of $1,372,000 at Fitzsimmons Army Medical Center, Colorado.

(7) Hospital addition, alteration, and upgrade in the amount of $30,283,000 at 2d General Hospital, Landstuhl, Germany.

(8) Facilities Modernization in the amount of $1,782,000 at Christensen Barracks, Bindlach, Germany.

(9) Facilities Modernization in the amount of $7,731,000 at Ferris Barracks, Erlangen, Germany.

(10) Barracks without dining facilities in the amount of $2,299,000 at Conn Barracks, Schweinfurt, Germany.

(11) Small Arms Maintenance and Storage Facility in the amount of $3,645,000 at Fort Benning, Georgia.

(12) Cargo Handling Training Facility in the amount of $3,666,000 at Fort Eustis, Virginia.

(13) Petroleum Storage Facilities in the amount of $2,437,000 at Fort Leonard Wood, Missouri.

(14) Tactical Equipment Shop and Facilities in the amount of $2,272,000 at Fort Polk, Louisiana.

(15) Contaminated Waste Incinerator construction in the amount of $620,000 at Kansas Army Ammunition Plant, Kansas.

(16) Contaminated Waste Incinerator Plant construction in the amount of $501,000 at Iowa Army Ammunition Plant, Iowa.

(17) Contaminated Waste Incinerator construction in the amount of $637,000 at Milan Army Ammunition Plant, Tennessee.

(18) Contaminated Waste Incinerator construction in the amount of $518,000 at Sunflower Army Ammunition Plant, Kansas.

(19) Tactical Equipment Shop and Facilities in the amount of $1,037,000 at Wildflecken Training Area, Germany.

(20) Facilities Modernization in the amount of $7,000,000 at Mannheim, Germany.

(21) Facilities Modernization in the amount of $14,000,000 at Baumholder, Germany.

(22) Flight Simulator Building in the amount of $1,739,000 at Mannheim, Germany.

(23) Explosive Waste Incinerator construction in the amount of $763,000 at Sunflower Army Ammunition Plant, Kansas.

(24) Missile Maintenance Facility in the amount of $863,000 at Fort Polk, Louisiana.

(25) Effluent Land Irrigation System construction in the amount of $6,933,000 at Fort Ord, California.

(c) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96–125; 93 Stat. 944), authorizations for the following items authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Monitoring and Control System in the amount of $765,000 at the Naval Air Station, Jacksonville, Florida.

(2) Municipal Sewer Connection construction in the amount of $2,500,000 at the Naval Education and Training Center, Newport, Rhode Island.

(d) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 944), authorizations for the following items authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572) shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Space Transportation System airfield facilities in the amount of $32,100,000 at Vandenberg Air Force Base, California.

(2) Energy—Alter Lighting System in the amount of $850,000 at Hill Air Force Base, Utah.

(3) Energy Monitoring and Control System in the amount of $3,300,000 at Kelly Air Force Base, Texas.

(4) Fire Station in the amount of $1,031,000 at Tinker Air Force Base, Oklahoma.

(5) Energy—Alter Mechanical, Electrical and Structural Systems in the amount of $1,120,000 at Wright-Patterson Air Force Base, Ohio.

(6) Energy Monitoring and Control System in the amount of $3,350,000 at Wright-Patterson Air Force Base, Ohio.

(7) Propulsion Wind Tunnel—16T High Angle Automatic Sting in the amount of $2,710,000 at Arnold Engineering Development Center, Tennessee.

(8) Energy Monitoring and Control System in the amount of $2,750,000 at Edwards Air Force Base, California.

(9) Insulate Heating and Cooling Controls and Insulate Buildings in the amount of $650,000 at Edwards Air Force Base, California.

(10) Chapel Center in the amount of $1,190,000 at Eglin Air Force Base, Florida.

(11) Energy Monitoring and Control System in the amount of $2,000,000 at Hanscom Air Force Base, Massachusetts.

(12) Aircraft Corrosion Control Facility in the amount of $7,310,000 at Dover Air Force Base, Delaware.

(13) Chapel Center in the amount of $1,240,000 at Castle Air Force Base, California.

(14) Energy Monitoring and Control System in the amount of $610,000 at Grand Forks Air Force Base, North Dakota.

(15) Air Installation Compatible Use Zone in the amount of $314,000 at Grissom Air Force Base, Indiana.

(16) Air Installation Compatible Use Zone in the amount of $357,000 at March Air Force Base, California.

(17) Sewage Main Regional Connection in the amount of $946,000 at Rickenbacker Air Force Base, Ohio.

(18) Energy Monitoring and Control System in the amount of $540,000 at Holloman Air Force Base, New Mexico.

(19) Energy Monitoring and Control System in the amount of $900,000 at Nellis Air Force Base, Nevada.

(20) Add to and Alter Cadet Library in the amount of $4,000,000 at the United States Air Force Academy, Colorado.

(21) Special Operation Facilities in the amount of $2,800,000 at Various Locations, Pacific Air Forces.

(22) Telecommunications Facility in the amount of $6,515,000 at Various Locations (Ramstein Air Base), Germany.

UNIT COST LIMITATIONS

Sec. 606. None of the authority contained in titles I, II, III, and IV of this Act shall be deemed to authorize any building construction projects inside the United States in excess of a unit cost to be determined in proportion to the appropriate area construction cost index, based on the following unit cost limitations where the area construction index is 1.0:

(1) $52 per square foot per permanent barracks; or

(2) $56 per square foot for unaccompanied officer quarters;

unless the Secretary of Defense, or the Secretary's designee, determines that, because of special circumstances, application to such project of the limitations on unit cost contained in this section is impracticable. Notwithstanding the limitations contained in prior Military Construction Authorization Acts on unit costs, the limitations on each costs contained in this section shall apply to all prior authorizations for such construction not heretofore repealed and for which construction contracts have not been awarded by the date of enactment of this Act.

EFFECTIVE DATE FOR PROJECT AUTHORIZATIONS

Sec. 607. Titles I, II, III, IV, and V (other than sections 505 and 509) shall take effect on October 1, 1980.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

Sec. 701. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Guard and Reserve Forces, including the acquisition of land therefor, but the cost of such facilities shall not exceed the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $27,505,000; and

(B) for the Army Reserve, $39,721,000.

(2) For the Department of the Navy: for the Naval and Marine Corps Reserves, $30,550,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $80,500,000; and

(B) for the Air Force Reserve, $18,725,000.

WAIVER OF CERTAIN RESTRICTIONS

Sec. 702. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 21, line 21, strike out "$102,770,000" and insert in lieu thereof "$121,777,000".

Mr. NEDZI (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments in titles III and VI be considered as read, printed in the Record, and considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 38, line 21, strike out "$220,587,000" and insert in lieu thereof "$239,587,000".

Page 38, line 22, strike out "$775,082,000" and insert in lieu thereof "$794,082,000".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

The CHAIRMAN. Are there further amendments to titles I through VII?

Mr. BETHUNE. Mr. Chairman, I move to strike the last word.

Mr. BETHUNE. Mr. Chairman, I am convinced that with respect to the binary munitions proposition that we are on the threshold of making an important policy decision which will involve over a 10-year period of time an expenditure in the neighborhood of $10 billion. Some people in this body are very sure that we need to go forward. On the other hand, some Members of the body are very sure that we should not go forward.

I happen to think from my own conversations that most Members in this Congress are unsure about what we ought to do and, in fact, they are very uncomfortable about the whole proposition.

For that reason I raise this issue today. I think it needs further study. I think it needs a detailed and extensive debate among the Members of the House as opposed to intense study by just a few Members in the House and in the other body.

As I pointed out in earlier remarks, I really do not think we have a credible committee report, one upon which we can rely, because the testimony seems to be against the proposition and, as I pointed out in earlier remarks, the Army has not testified to this Congress and the Secretary of Defense has testified against funding this year. The President has taken an equivocal position as usual. A number of other factors indicate to me that there really has not been an extensive inquiry into the matter this year.

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I listened very carefully to the remarks on the distinguished gentleman from Wisconsin (Mr. Zablocki), the distinguished chairman of our Committee on Foreign Affairs. I respect the gentleman very much. As a newcomer here, I have tried to listen carefully and there are many Members who make sense. The gentleman from Wisconsin makes a lot of sense to me.

As I listened to the remarks of the gentleman from Wisconsin, the gentleman indicated his concern that if we go to a vote on this proposition, today, that it may be untimely. It may somehow prejudice the activity of the Congress. It may somehow interfere with both Houses working their will on this issue.

I have already said I think the committee report lacks credibility. That is my opinion. The gentleman from Missouri (Mr. Ichord) observed there were only 20 or 30 Members on the floor who have listened to our debate today. For that reason, were I to offer an amendment on this subject, I would be forcing a great many Members, possibly those who are unsure about the matter, to come in and cast a vote in, indeed, a knee jerk fashion. I do not think that is the way we should be doing business here. I think by raising the subject today we have launched a public discussion into the matter. I know that the junior Senator in the other body from the State of Arkansas, Senator Pryor, intends to hold fast because he does oppose it.

Honestly, at this point I do not know whether I am for this or against this. I am just now getting into it as many Members are. I know that it will be discussed in the conference because it has been discussed here and because the gentleman from Wisconsin (Mr. Zablocki) tells me it will be discussed and because the gentleman from Michigan (Mr. Nedzi) has told me it will be discussed.

I commend, too, all those people who will participate in the conference to the deliberations and discussions here today.

With that, Mr. Chairman, I think the appropriate thing for me to do, the thoughtful thing for me to do in this particular matter is not to offer the amendment at this time, and that is my intention.

Mr. PRICE. Mr. Chairman, I move to strike the last word.

LUCIEN N. NEDZI

(By unanimous consent, Mr. PRICE was allowed to proceed out of order.)

Mr. PRICE. Mr. Chairman, it is with regret that I address the committee at this time. I say regret because this bill, H.R. 7301, marks the last major piece of legislation our colleague the Honorable LUCIEN N. NEDZI will manage before his retirement.

In my view, few Congressional retirements impact on this Chamber as does LOU NEDZI's. I know of few Members who are as dedicated and capable as the gentleman from Michigan. I am certain that I speak for the whole membership of the House when I say LOU NEDZI will be sorely missed.

Whether one agrees with him or not on all of the issues, LOU NEDZI has always brought a sense of fairness, sound judgment, and reason to the business at hand. His integrity, balanced approach and commonsense are attributes that all of us admire and respect.

As chairman of the House Armed Services Committee, I have counted on LOU NEDZI on many occasions. He has always delivered. I know that his constituents feel the same way. Earlier this year he was responsible for the passage of legislation that will put a marginal defense manufacturing plant into full production of compact automobiles. LOU NEDZI's effort will result in the successful conversion of an unneeded defense asset into peacetime productive use and jobs for Americans.

To LOU NEDZI, his lovely wife Peggy and the five Nedzi children, you have my very best wishes for the future.

Mr. NEDZI. Mr. Chairman, I want to thank our committee chairman very much for his touching comments.

Mr. Chairman, I ask unanimous consent that title VIII be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Title VIII reads as follows:

TITLE VIII—GENERAL PROVISIONS

COMMUNITY IMPACT ASSISTANCE

SEC. 801. (a) Subsection (a) of section 608 of the Military Construction Authorization Act, 1975 (Public Law 93–552; 88 Stat. 1763) is amended—

(1) by inserting "the East Coast TRIDENT Base, or the MX Weapon System," after "Bangor, Washington,"; and

(2) by inserting "or the MX Weapon System, as the case may be," after "TRIDENT Weapon System".

(b) Subsection (d) of such section is amended to read as follows:

"(d)(1) Funds appropriated to the Department of Defense for any fiscal year beginning after June 30, 1975, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the TRIDENT Support Base Bangor, Washington, to the extent that funds are unavailable under other Federal programs.

"(2) Funds appropriated to the Department of Defense for any fiscal year beginning after September 30, 1980, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the East Coast TRIDENT Base, to the extent that funds are unavailable under other Federal programs.

"(3) Funds appropriated to the Department of Defense for any fiscal year beginning after September 30, 1980, for carrying out the MX Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provisions of this section with respect to communities located near the MX Weapon System, to the extent that funds are available under other Federal programs.".

AUTHORITY TO PROVIDE TRANSPORTATION AT KINGS BAY, GEORGIA

SEC. 802. (a) Notwithstanding section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), and section 2632 of title 10, United States Code, the Secretary of the Navy may arrange for transportation for military personnel who are assigned to the Naval Submarine Support Base, Kings Bay, Georgia, to be provided between the residences and places of work of such personnel until construction of adequate onbase family housing (as determined by the Secretary of the Navy) is completed or until January 1, 1982, whichever occurs first.

(b) This section shall take effect on October 1, 1980.

AUTHORIZATION TO MAKE CONTRIBUTION TO THE INTERNATIONAL INSTITUTION OF STRATEGIC STUDIES

SEC. 803. The Secretary of Defense may authorize the expenditure of not more than $350,000 from funds authorized to be appropriated for minor construction under title I, II, III, or IV for the purpose of making a capital contribution for a new headquarters for the International Institution of Strategic Studies.

MODIFICATION OF PRIOR AUTHORITY FOR LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. 804. Section 609 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1365, is amended)—

(1) by striking out "a section of land" in the first sentence and inserting in lieu thereof "three parcels of land";

(2) by striking out "4.5 acres" in the first sentence and inserting in lieu thereof "eight acres";

(3) by striking out "eight acres" in the second sentence and inserting in lieu thereof "approximately ten acres"; and

(4) by striking out the period at the end of the last sentence and inserting in lieu thereof "or the Department of the Navy.".

MODIFICATION OF PRIOR LAND ACQUISITION, SAN DIEGO, CALIFORNIA

SEC. 805. (a)(1) Subject to paragraph (3), the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") shall amend the declaration of taking described in paragraph (2) by substituting for the interest described in such declaration of taking which is condemned for the use of the United States an interest consisting of all right, title, and interest of the City of San Diego, California, in and to the tract of land described in such declaration subject to a possibility of reverter of such tract of land (including improvements thereon) to the City of San Diego in the event that the United States ceases to use the land for hospital or medical purposes (or purposes related thereto).

(2) The declaration of taking referred to in paragraph (1) is the declaration of taking signed by the Secretary on December 26, 1979, and filed in Civil Action No. 80–0021–E in the United States District Court for the Southern District of California under the authority of section 809 of the Military Construction Authorization Act, 1980 (Public Law 96–126; 93 Stat. 950), condemning for the use of the United States all right, title, and interest of the City of San Diego, California, in and to a certain tract of land consisting of 40 acres, more or less, in Balboa Park, San Diego, California.

(3) The amendment to such declaration of taking authorized by paragraph (1) may not be made without the consent of the City of San Diego.

(b) The Secretary may convey to the City of San Diego as consideration, in whole or in part, for the acquisition under the declaration of taking described in subsection (a) all right, title, and interest of the United States, or any lesser interest, in and to all or any part of the real property (including improvements thereon) of the Naval Regional Medical Center, San Diego, California, that has been conveyed, leased, or otherwise made available to the United States by the City of San Diego other than through the acquisition under such declaration of taking.

(c) Notwithstanding any other provision of law, the Secretary may construct on the land referred to in subsection (a) or on any other land acquired by the United States from the City of San Diego which is contiguous to such land and in which the United States has less than a fee simple absolute interest any military construction project for a hospital or other medical facility which is otherwise authorized by law.

(d) The provisions of subsections (c) and (d) of section 809 of the Military Construction Authorization Act, 1980, shall apply to the acquisition under the declaration of taking described in subsection (a), as amended under such subsection.

LAND ACQUISITION, SAN DIEGO, CALIFORNIA

SEC. 806. (a) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to acquire by exchange all right, title, and interest of the San Diego Unified School District (hereinafter in this section referred to as the "District") in and to certain parcels of land in the County of San Diego, State of California, comprising approximately 5.11 acres of land (together with improvements thereon) known and identified as the Fairhaven School, San Diego, California, as shown and more particularly described on a map entitled "Naval Station San Diego, California, Acquisition of Fairhaven School", on file at the Western Division, Naval Facilities Engineering Command, San Bruno, California.

(b) In consideration for the acquisition under subsection (a), the Secretary is authorized to convey to the District all right, title, and interest of the United States in and to land and improvements having a fair market value (as determined by the Secretary) equal to or greater than the fair market value (as determined by the Secretary) of the improvements on the property to be acquired. If the fair market value of the land and improvements conveyed by the Secretary exceeds the fair market value of such improvements, the difference shall be paid by the District to the United States and shall be covered into the Treasury as miscellaneous receipts.

(c) The exact acreages and legal descriptions of the properties to be acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

LAND ACQUISITION, SACRAMENTO COUNTY, CALIFORNIA

SEC. 807. (a) The Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") is authorized to acquire by exchange all right, title, and interest in all or any part of three tracts of land contiguous to McClellan Air Force Base, Sacramento County, California, consisting of a total of approximately 443.3 acres.

(b) As consideration for any acquisition under subsection (a), the Secretary is authorized to convey to the owners of the property to be acquired all right, title, and interest of the United States in and to real property of the United States under the jurisdiction of the Secretary (including any improvements thereon) having a fair market value of not more than the fair market value of the property to be acquired.

(c) The exact acreage and legal description of any real property acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

LAND EXCHANGE, WABASHA, MINNESOTA

SEC. 808. (a) Subject to subsection (b), the Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to convey to the City of Wabasha, Minnesota (hereinafter in this section referred to as the "City") all right, title, and interest of the United States in and to the land and improvements comprising the United States Army Reserve Center, Wabasha, Minnesota.

(b) In consideration for the acquisition under subsection (a), the City shall convey to the United States all right, title, and interest of the City in and to a certain tract of land of approximately seven acres owned by the City. If the fair market value of the land conveyed by the City under this subsection is less than the fair market value of the land conveyed by the United States under subsection (a), the City shall pay to the United States the amount of the difference between such fair market values. Any amount received under the preceding sentence shall be covered into the Treasury as miscellaneous receipts.

(c) The conveyances under subsections (a) and (b) shall not be made until a new Army Reserve Center has been constructed on the land to be conveyed to the United States under subsection (b) and the existing Army Reserve Center referred to in subsection (a) has been vacated. Before such conveyances are made, the City shall make available to the Secretary without charge the lands to be conveyed under subsection (b) for the purpose of allowing the construction of the new Army Reserve Center.

(d) The exact acreages and legal descriptions of any property acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the United States under this section.

LAND CONVEYANCE, GUAM, MARIANAS ISLANDS

SEC. 809. (a) (1) Subject to subsections (b) and (c) the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey, without monetary consideration, to the Government of Guam all right, title, and interest of the United States in and to the lands (or any part of the lands) described in paragraph (2), together with the improvements thereon.

(2) The lands referred to in paragraph (1) consist of approximately 927 acres of land located on Cabras Island and within the northern portion of the Apra Harbor Naval Complex, Guam, Marianas Islands, as shown and more particularly described on a map entitled "Apra Harbor Complex, Guam, Marianas Islands, Conveyance of 927 Acres of Land to the Government of Guam" on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(b) Conveyance of the property described in subsection (a) shall be made at such times, and shall be subject to such terms and conditions, as the Secretary considers to be in the interest of national defense.

(c) The exact acreages and legal descriptions of all lands to be conveyed under this section shall be determined by surveys which are satisfactory to the Secretary. The cost of such surveys, together with all other direct and indirect costs related to any conveyance under this section, shall be borne by the Government of Guam.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the committee amendments.

Mr. NEDZI. Mr. Chairman, I ask unanimous consent that the committee amendments to title VIII be considered en bloc, considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The committee amendments are as follows:

Committee amendments: Page 56, strike out lines 16 through 23.

Page 57, line 3, strike out "804" and insert in lieu thereof "803".

Page 57, line 19, strike out "805" and insert in lieu thereof "804".

Page 59, line 17, strike out "806" and insert in lieu thereof "805".

Page 60, line 21, strike out "807" and insert in lieu thereof "806".

Page 61, line 14, strike out "808" and insert in lieu thereof "807".

Page 62, line 23, strike out "809" and insert in lieu thereof "808".

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

Mr. NEDZI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the chairman of the Committee on Government Operations had indicated to members of the committee that he had an amendment to offer. In view of the fact that he is not here, I would like to offer the amendment inasmuch as it is acceptable to both sides, in behalf of the gentleman from Texas (Mr. BROOKS).

AMENDMENT OFFERED BY MR. NEDZI

Mr. NEDZI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NEDZI: Page 63, line 14, insert "(1)" immediately after "(b)", and after line 17 insert the following:

(2) Conveyance of the property described in subsection (a) shall be subject to the condition that any disposal by sale or lease of any part or all of the property by the Government of Guam shall only be for a monetary consideration equal to or in excess of the fair market value (at the time of the disposal) of the property concerned, or of the leasehold interest therein, as determined by the Administrator of General Services, and any such monetary consideration received by the Government of Guam, minus any reasonable development costs incurred by such Government in preparing the property concerned for disposal, shall be paid to the United States.

(3) The United States shall reserve easements for all existing utilities and navigation aids in the conveyed parcels as exist on the date of conveyance of the property whether or not such utilities and facilities are specifically mentioned in the conveyance documents for the property. The Government of Guam, for as long as it owns the conveyed lands, shall agree to issue easements not interfering with their facilities and operations to the United States at no cost for the future facility installations including, but not limited to, construction, installation, reconstruction, operation, maintenance, and removal of water, oil, gas, fuel, and other pipelines, drainage and sewage systems, power and telephone transmission lines, water sewage, and other utility lines, navigation aids, and all things incident thereto, in, on, under and over the conveyed land together with all necessary rights and privileges for the full enjoyment of the foregoing, including without limitation, the right of ingress and egress. The Government of Guam shall agree that for as long as it owns the conveyed lands, it will bear all costs of relocation of existing and future utility lines and other facilities owned by the United States in the conveyed lands requisite to construction on the conveyed lands by the Government of Guam and authorized other parties.

(4) All leases, licenses, easements, and other property interests affecting the conveyed lands at the time of conveyance issued by the United States shall be honored by the Government of Guam until their final expiration dates. All rents due to be collected under such contracts shall be remitted to the United States for all periods prior to the date the property is conveyed, after which date the rents will be the property of the Government of Guam.

(5) All leases, licenses, easements, conveyances of land, and other real estate interests granted by the Government of Guam after conveyance, shall be subject to the terms, conditions, covenants, and reservations stated in this subsection and shall recite the same in the contractual documents.

Mr. NEDZI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. NEDZI. Mr. Chairman, the amendment merely provides that in the event the government of Guam sells or conveys the property to another party, attempts to sell or convey, the proceeds shall revert to the Federal Government. This is an amendment that is acceptable to all parties concerned.

● Mr. BROOKS. Mr. Chairman, I want to express my serious reservations about section 808 of H.R. 7301, the Military Construction Authorization Act for fiscal year 1981. Section 808 authorizes the Secretary of the Navy to transfer to the government of Guam, without reimbursement, 927 acres of valuable land at the Apra Harbor complex in Guam. Transfer of this property, which the Navy has estimated to be worth roughly $31 million, would be "subject to such terms and conditions as the Secretary of the

Navy considers to be in the interest of national defense."

Mr. Chairman, I have a number of serious problems with this transfer. First, this provision circumvents the procedures established in the Federal Property and Administrative Services Act of 1948 setting conditions for disposal of excess Government property. In 1974 the Congress made Guam eligible to participate in the excess and surplus property programs of the Federal Government on an equal footing with other governmental jurisdictions. Section 808 of this bill conflicts with that system and hands this land over to Guam under procedures not available to any other governmental entity.

Second, it is not at all clear that the land under discussion really is excess or surplus to the needs of the U.S. Government at this time. According to the hearing record, the Navy wants to relocate an ammunition pier that presently occupies this site to another location in Apro Harbor. However, no funds have been appropriated for this relocation, and until they are the Navy will continue to need that portion of the land to be transferred.

Finally, I oppose this transfer on a more general basis because of its effect on the American taxpayer. I understand that the government of Guam is extremely interested in obtaining this land as a means of encouraging economic development on the island. I am certain that all the Members join me in applauding efforts by Guam to become economically self-sufficient, but this goal should be achieved by means other than indirectly subsidizing the economic development of Guam in this backdoor fashion.

Despite my serious reservations about the wisdom of the transfer provision, I recognize that Guam's status, location and economic conditions constitute exceptional circumstances. Therefore, I am offering an amendment to achieve the twin goals of permitting economic development in this harbor area which the government of Guam and its distinguished delegate, Mr. Won Pat, seek, while at the same time protecting the interests of the U.S. Government and the U.S. taxpayers.

My amendment permits the government of Guam to convey the property to third parties, but in a manner that will avoid windfall profits accruing either to Guam or the third party purchasers at the expense of the U.S. taxpayer. The amendment provides that any transfer by Guam shall be at fair market value and that any proceeds shall be paid into the U.S Treasury. In addition, the United States would reserve easements on the conveyed land and the government of Guam would be required to honor all such leases, licenses, and easements until the final expiration dates.●

● Mr. WON PAT. Mr. Chairman, I rise in support of the military construction bill for fiscal year 1981. This measure incorporates my amendment to convey 927 acres of Navy land not used to the government of Guam without cost. It is a very important amendment because by its passage, this Congress will allow Guam to undertake a very significant step in the road to economic development and self-sufficiency. I want to thank the chairman and members for their support of my amendment. Also I want to commend the staff for working out the technicalities with the Navy. Guam, like other dependent territories, depends on the United States for much of its economy. Under our current political status, it is extremely difficult to become economically self-sufficient due in large part to lack of natural resources, but also due to Federal constraints imposed by the Federal Government and to our remoteness from the U.S. mainland.

Studies after studies show that the only logical and viable economic venture for Guam to undertake would be to develop the one and only resource we have and that is the ocean around us. We believe that the creation of port-related industries such as fishing, boating, canning, and water recreation would attract outside investors which would bring private financing to the island.

The 927 acres of land located at Cabras Island is an ideal area for these types of projects. The Navy who owns the land is supportive of this move and has made its position known. This transfer is also consistent with the findings and recommendations of the Presidential Task Force review of the territories which was conducted recently. According to the report, Guam should make every effort to seek to develop its economy and lessen its dependence on Federal subsidies. The fragile economy of our island coupled with the tightening of Federal assistance have indeed placed us in a very precarious position. We need jobs for our people. We want to earn our living and not continue to depend upon Federal subsidy and welfare.

Guam cannot and should not be a ward of the United States. We have to move in the direction of self-sufficiency through economic development, but we need your help in making this land available to us by the military which is not actively using it for any defense purpose. One-third of our land is controlled by the military and we do not object to any land used for national defense or security purpose. I want to emphasize that transfer of this property to the local government will be a giant step forward in our efforts to move from one of economic dependency to self-sufficiency.

Thank you.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. Nedzi).

The amendment was agreed to.

● Mr. SEIBERLING. Mr. Chairman, while I will support H.R. 7301, the Military Construction Act, I want to make clear that my vote should not be construed as support for the production of binary nerve gas. In fact, I strongly oppose that provision. The only reason I am not voting against H.R. 7301, and the reason I did not vote against the appropriations bill, is that most of the other provisions contained in the bills are worthwhile. Also, it is my understanding that neither the Senate nor the administration will go along with the resumption of nerve gas production.

There are several reasons I oppose the proposal to start production of a binary chemical weapons plant. First, at a total cost of $2 billion, it is undesirable from a budget standpoint. Second, it is against our national policy to use poison gas, and, moreover, its use would be a violation of international law. Finally, nerve gas would add very little to our military capabilities. It is the kind of weapon which troops can easily prepare against with appropriate masks and protective clothing. Therefore, the principal victims of nerve gas would be civilians, not soldiers. The best defense against nerve gas is not the production of more nerve gas by our side, but the improvement of our soldiers' protective equipment and training.●

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Pickle, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes, pursuant to House Resolution 696, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ASHBROOK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 337, nays 22, not voting 73, as follows:

[Roll No. 539]

YEAS—337

Abdnor
Addabbo
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boland
Bolling
Boner
Bonior
Bonker
Bowen
Brademas
Breaux
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Butler
Byron
Campbell
Carr
Carter
Cavanaugh

Chappell
Cheney
Clausen
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gramm
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Harkin
Harris
Harsha
Hawkins
Heckler
Heftel
Holland
Hollenbeck
Holt
Horton
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
Madigan
Marks
Marlenee
Martin
Mathis
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Pashayan
Patten
Patterson
Pease
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pursell
Quayle
Rahall
Ratchford
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Rudd
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stokes
Stratton
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Volkmer
Walgren
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Bob
Winn
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Fla.
Young, Mo.
Zablocki

NAYS—22

Beilenson
Burton, John
Burton, Phillip
Conyers
Dellums
Downey
Edwards, Calif.
Forsythe
Kastenmeier
Lundine
Markey
Mitchell, Md.
Moffett
Ottinger
Paul
Rangel
Sabo
Stark
Studds
Vento
Weaver
Weiss

NOT VOTING—73

Akaka
Anderson, Ill.
Bafalis
Bevill
Boggs
Bouquard
Brinkley
Buchanan
Carney
Chisholm
Clay
Cleveland
Collins, Ill.
Cotter
Early
Fenwick
Gaydos
Gingrich
Gradison
Grassley
Hanley
Hefner
Hightower
Hillis
Hinson
Holtzman
Hopkins
Howard
Jenrette
Johnson, Colo.
Kelly
Kramer
Leach, Iowa
Leach, La.
Lederer
Lehman
Leland
Long, La.
McKay
McKinney
Maguire
Marriott
Mattox
Mavroules
Moakley
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Pa.
Nolan
Pepper
Pritchard
Quillen
Railsback
Regula
Richmond
Ritter
Royer
Russo
Schulze
Shannon
St Germain
Tauzin
Traxler
Waxman
Williams, Ohio
Wilson, C. H.
Wilson, Tex.
Wirth
Young, Alaska
Zeferetti

☐ 1500

The Clerk announced the following pairs:

Mrs. Bouquard with Mr. Marriott.
Mr. Akaka with Mr. Railsback.
Mr. Howard with Mr. Royer.
Mr. Pepper with Mr. Cleveland.
Mr. Russo with Mr. Buchanan.
Mr. St Germain with Mr. Gradison.
Mr. Moakley with Mr. Johnson of Colorado.
Mr. Mavroules with Mr. Kramer.
Mr. Maguire with Mrs. Fenwick.
Mr. Bevill with Mr. Carney.
Mrs. Boggs with Mr. Pritchard.
Mrs. Chisholm with Mr. McKinney.
Mr. Clay with Mr. Regula.
Mr. Leland with Mr. Williams of Ohio.
Mr. Lederer with Mr. Hillis.
Mr. Jenrette with Mr. Hopkins.
Mr. Moorhead of Pennsylvania with Mr. LaFalce.
Mr. Murphy of New York with Mr. Leach of Iowa.
Mr. Murtha with Mr. Gingrich.
Mr. Richmond with Mr. Hinson.
Mr. Tauzin with Mr. Kelly.
Mr. Traxler with Mr. Ritter.
Mr. Nolan with Mr. Schulze.
Mr. Shannon with Mr. Young of Alaska.
Mr. Brinkley with Mr. Quillen.
Mrs. Collins of Illinois with Mr. Cotter.
Mr. Hefner with Ms. Holtzman.
Mr. Gaydos with Mr. Mattox.
Mr. Early with Mr. Murphy of Illinois.
Mr. Hanley with Mr. Mottl.
Mr. Zeferetti with Mr. Wirth.
Mr. Charles Wilson of Texas with Mr. McKay.
Mr. Waxman with Mr. Leach of Louisiana.
Mr. Long of Louisiana with Mr. Charles H. Wilson of California.
Mr. Myers of Pennsylvania with Mr. Lehman.
Mr. Hightower with Mr. Anderson of Illinois.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 7301, MILITARY CONSTRUCTION AUTHORIZATIONS, FISCAL YEAR 1981

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 7301, the Clerk be authorized to make necessary technical corrections, including section numbers, punctuation, and cross-references.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

GENERAL LEAVE

Mr. NEDZI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

MAKING IN ORDER ON MONDAY NEXT OR ANY DAY THEREAFTER CONSIDERATION OF HOUSE JOINT RESOLUTION 607, URGENT SUPPLEMENTAL APPROPRIATION FOR VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that it may be in order on Monday next or any day thereafter to consider in the House as in the Committee of the Whole, the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MAKING IN ORDER ON MONDAY NEXT CONSIDERATION OF DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, FISCAL YEAR 1981

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that it may be in order on Monday next to consider in the Committee of the Whole House on the State of the Union the bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, may I ask the gentleman from New York (Mr. ADDABBO) this question: A copy of the tentative program indicates that general debate only will occur if the defense appropriations bill is brought up on Monday, and any votes would be taken on Tuesday or thereafter?

Mr. ADDABBO. Mr. Speaker, if the gentleman will yield, that is correct.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

A TRIBUTE TO THE HONORABLE LUCIEN N. NEDZI OF MICHIGAN

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, I have asked that I may be permitted to address the House to commemorate the achievements of our distinguished colleague, the gentleman from Michigan (Mr. NEDZI).

Mr. Speaker, I wish to call to the attention of the House the fact that this has probably been the last formal bill handled by the distinguished chairman of the Subcommittee of the Committee on Armed Services, the gentleman from Michigan (Mr. NEDZI).

My colleague, the gentleman from Michigan, was sworn in with me for the 2d session of the 87th Congress on January 10, 1962. It is with a great deal of sadness and regret that I call the attention of the House to the fact that he has given us notice that he is retiring after this Congress.

I want to compliment the gentleman on the tremendous job that he has done. I regret that he is quitting on us. I was hoping that he would last as long as some of us intend to. I merely wish to sincerely congratulate him on the very fine job he did today on this comprehensive bill and for all the fine, outstanding legislative work he has done during the course of his career as a Member of this House.

WHEAT EXPORTS RESOLUTION

(Mr. STANGELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STANGELAND. Mr. Speaker, the American farmer needs help, and today we are taking an important step in providing that assistance. Those of us in the House and Senate who attended a meeting in Ottawa this summer with our counterparts in the Canadian Parliament have introduced a resolution whose purpose is to provide our farmers some economic return on their investment. Those who farm—and I am one of them—realize that farming is a way of living as well as a way of earning a living. However, if they are to survive and continue to supply the world with a reliable source of food, they can no longer continue to sell their products at prices below the cost of production.

Our resolution calls for the creation of a joint Canadian-United States Wheat Export Coordinating Commission which will work to export wheat at prices above the cost of production, to promote long-range market development, to increase commitments to food assistance programs, and to encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves. This Commission would be the vehicle for coordinating American efforts with our northern neighbor; this coordination is necessary since our two countries supply more than two-thirds of the world's wheat trade.

I am particularly pleased to be a sponsor of this proposal. For well over a year I have worked with the Canadians through the Canadian-United States Interparliamentary Group to foster a closer relationship which will work to the mutual advantage of our farmers. As producers, we must not accept policies which benefit everyone except those who invest their money and energy. We can and must work to obtain prices which allow our farmers to continue to produce. I urge the prompt approval of this resolution.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute.)

Mr. RHODES. Mr. Speaker, I take this time to inquire of the distinguished acting majority leader as to the program for the balance of the week and for next week.

Mr. BRADEMAS. Mr. Speaker, will the distinguished minority leader yield?

Mr. RHODES. I yield to the acting majority leader.

Mr. BRADEMAS. Mr. Speaker, the program for the House of Representatives for the week of September 15 is as follows:

On Monday, the House will meet at noon. We will consider bills on the Consent Calendar, and there will be 10 bills to be considered under suspension. All recorded votes will be postponed until Tuesday, September 16.

☐ 1510

Those bills are as follows:

H.R. 3765, walnuts and olives marketing bill;

H.R. 3580, Rural Development Policy Act;

H.R. 7626, uniformed services benefits package;

H.R. 3806, court of appeals;

H.R. 7974, judicial discipline;

H.R. 7084, United States Code amendments for pretrial services;

H.R. 6672, Coast Guard authorization, fiscal year 1981;

H.R. 6796, private sector initiative program for CETA;

H.R. 6855, West Valley nuclear waste; and

H.R. 6686, Congressional Reports Elimination Act.

Following completion of the debate on the suspension bills, the House will consider the defense appropriations bill for fiscal year 1981, but there will be general debate only on that bill.

On Tuesday, September 16, the House will meet at noon and will consider the Private Calendar. There are no bills to be considered under suspension of the rules.

Recorded votes will be held on suspensions that will have been debated on Monday, September 15, and the House will complete consideration of the defense appropriations bill for fiscal year 1981.

On Wednesday and the balance of the week, the House will meet at 10 a.m., and will take up the following bills:

The continuing appropriations bill for fiscal year 1981, subject to a rule being granted;

H.R. 7244, to increase U.S. quota in the International Monetary Fund, an open rule with 1 hour of general debate;

H.R. 85, Comprehensive Oil Pollution Liability and Compensation Act, a modified rule with 3 hours of debate;

H.R. 7020, Hazardous Waste Containment Act of 1980, a modified rule with 2 hours of debate;

H.R. 5615, Intelligence Identities Protection Act, subject to a rule being granted;

H.R. 7265, DOE authorizations of defense programs, an open rule with 1 hour of debate, the rule already having been adopted;

H.R. 4370, Coal Pipeline Act of 1980, an open rule with 2 hours of debate; and

H.R. 7668, Intelligence Oversight Act of 1980, an open rule with 2 hours of debate.

The House will adjourn by 3 p.m. on Friday. Adjournment times on all other days will be announced.

Conference reports may be brought up at any time, and any further program will be announced later.

I thank my colleague for having yielded.

Mr. RHODES. I thank the gentleman from Indiana.

Mr. Speaker, could the gentleman from Indiana dispel some of the rumors that are going around on the floor as to the probable date of the recess which we intend to take prior to the election?

Mr. BRADEMAS. No.

Mr. RHODES. The gentleman from Arizona had occasion to talk to the distinguished Speaker this morning, and I think I know what the plans are but, apparently, nobody else does. I am wondering if it would not be a good idea if we would in some official way indicate, as the Speaker told me this morning, that the plans are to recess, hopefully, on October 2, and on October 3 at the very latest, and that, further, the plan would be to come back sometime around November 12, although it is my understanding that that is not yet a firm date.

I know the gentleman from Indiana, if he disagrees with my understanding, will tell me so.

Mr. BRADEMAS. I rarely, if ever, disagree with the distinguished Speaker of the House of Representatives. I can only say to the gentleman that the date that had earlier been announced as the target date for the recess is the 4th of October which is, of course, a Saturday. If we can get out a day or two before that, of course, we would all be pleased to do that. I have been present in conversations at which the Speaker has expressed a similar hope.

Mr. RHODES. I thank the gentleman.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Georgia.

Mr. LEVITAS. I thank the gentleman for yielding.

Mr. Speaker, I would like to direct several questions, if I may, to the acting majority leader. They relate to the status of the Regulatory Reform Act which has been marked up by subcommittee, a number of days of markup in the full Committee on the Judiciary. But it has been strangely languishing there since the early part of May of this year. Can the gentleman from Indiana explain what the status of this legislation is? Is it expected to be reported out of committee? Will there be a markup in the foreseeable future?

Mr. BRADEMAS. No, the gentleman cannot. The bill, as the gentleman knows, is in the subcommittee, as the gentleman has suggested. But the probable or possible action on the bill is, of course, within the jurisdiction of the subcommittee, as is the case with the many other bills that are under consideration in the House of Representatives.

The gentleman from Georgia is very well informed on this legislation, so the gentleman from Indiana would not be able to add anything further to the knowledge that the gentleman has already articulated.

Mr. DERWINSKI. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. I thank the gentleman for yielding.

Mr. Speaker, I am wondering if, via the distinguished minority leader, we could inquire of the acting majority leader if the general revenue-sharing bill will soon reach the floor.

Mr. RHODES. I would be glad to yield to the gentleman from Indiana for the purpose of a reply to the gentleman's question.

Mr. BRADEMAS. Mr. Speaker, I think the answer to the gentleman's question is: Hopefully, soon.

Mr. DERWINSKI. Before the recess?

Mr. BRADEMAS. Again, the gentleman from Indiana would respond: Hopefully, yes.

Mr. RHODES. Of course, the gentleman from Illinois is aware, I believe, that there is a time problem as far as revenue sharing is concerned. In fact, I think that the date of expiration is September 30. So I would echo the hope of the gentleman from Indiana that the bill would be brought up just as soon as we could possibly do it.

Mr. BURGENER. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from California.

Mr. BURGENER. I thank the distinguished minority leader for yielding.

Mr. Speaker, the 1902 reclamation law, reorganization of the reclamation law, has passed the Senate, it has passed our committees. It is now in the Rules Committee. It is exceedingly important to the 17 Western States and to agriculture. Is there any prediction about when that may emerge from the Rules Committee?

Mr. BRADEMAS. If the gentleman will yield, I have no knowledge, if I may respond to the gentleman from California, about a time certain when it is expected that the Rules Committee would consider and act on that bill. There are, of course, many or several bills that are before the Committee on Rules. I, too, would hope that there can be expeditious action on that bill. But I would have no specific date to give to the gentleman.

Mr. BURGENER. I thank the gentleman from Indiana, and I thank the distinguished minority leader.

Mr. RHODES. Mr. Speaker, I yield back the balance of my time.

REQUEST TO DISPENSE WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. LEVITAS. Reserving the right to object, Mr. Speaker, I do so for the purpose of inquiring whether the acting majority leader and the leadership of the House could utilize their efforts to take this bill, the regulation reform, which is the centerpiece of the administration's regulatory reform proposal, and make certain that the one remaining day of markup needed in the full committee could be held so that this bill could be voted on rather than be held up, as I understand it, by persons not Members of this House.

Mr. BRADEMAS. If the gentleman will yield, I am not in a position to make certain that the gentleman's request is agreed to. All I can assure the gentleman, however, is—and I shall be glad to do that—I will relay his concerns and his entreaties to the appropriate persons and do so in as clear and expeditious a fashion as I can.

☐ 1520

Mr. LEVITAS. Further reserving the right to object, I hope that it will be as clear as possible. I think that we ought to do everything we can to make it very clear that this House expects to have the opportunity in the very near future to vote on this legislation.

For that reason, as part of sending that message, I do object to the unanimous-consent request.

The SPEAKER. Objection is heard.

ADJOURNMENT FROM THURSDAY, SEPTEMBER 11, 1980, TO MONDAY, SEPTEMBER 15, 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that when the House adjourns on Thursday, September 11, 1980, it adjourn to meet on Monday, September 15, 1980, at 12 o'clock.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

NUCLEAR WASTE

The SPEAKER pro tempore (Mr. FARY). Under a previous order of the House, the gentleman from Wisconsin (Mr. PETRI) is recognized for 5 minutes.

Mr. PETRI. Mr. Speaker, nuclear waste is becoming one of our most crucial national problems, for we continue to produce waste from powerplants and defense systems without an adequate disposal program.

At some point the House will consider legislation to establish Federal policy on the storage of hazardous nuclear wastes. I have cosponsored a bill to give States power to block the Federal Government from building nuclear waste sites within their borders.

I plan to offer a version of that bill as an amendment to the nuclear waste legislation.

This amendment will insure that the individual States are included as full partners with the Federal Government in the decisionmaking process regarding nuclear waste disposal sites. By including all people in this matter I feel we have the best chance of finding a workable solution.

The main argument against the State veto is that no State will want a disposal site and the veto will make it impossible to deal with the problem. I am not sure this would happen, but it could.

The disposal sites supposedly will be safe, but why should a State accept any risk, no matter how small, for nothing in return? The answer is that it may be necessary to give them something in return such as a right to tax the facility or some other compensation whose cost would be charged to the utility or other entity generating the wastes.

In this way it should be possible to locate a site at an acceptable cost, probably in some sparsely populated State where the risks are lower and the per capita benefit is higher. If this approach is tried and found unworkable we can always go back and alter the State veto provisions of the law. But at least in the meantime we will have had the best consultation and concurrence system we could devise.

Under my amendment a State could halt construction of a nuclear waste site through a vote by the legislature or a referendum within 120 days after the Energy Department has announced selection of a disposal location.

Since the Federal Government has not yet selected a site for a waste repository, now is the time to work to guarantee that all interested parties have a role.

ABUSE OF OFFICE BY ADMINISTRATION OFFICIALS TO HELP THE CARTER POLITICAL CAMPAIGN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. RUDD) is recognized for 5 minutes.

Mr. RUDD. Mr. Speaker, top administration officials have paraded before the House Budget Committee this week, in a staged dog-and-pony show, to attack Governor Reagan's proposals to cut Federal taxes and Government overspending.

Typical of this effort was the use of absolutely false figures and misrepresentations by Budget Director James McIntyre, and Treasury Secretary G.

William Miller, in an attempt to put the Reagan proposals rather than the Carter administration's sorry economic record on trial before the committee.

These Carter administration misrepresentations are also contained in a supposedly "official" but unfactual Office of Management and Budget report on the Reagan proposals which was really prepared for the Carter campaign and used as handout material during the President's campaign swing yesterday in New Jersey.

The American people will not be fooled by deceitful propaganda tactics. They will not be fooled by this abuse of governmental office, and by the Carter administration officials who are working in a purely political effort, to gloss over failures and mistakes of President Carter that have helped bring our country this economic recession.

FARM LABOR CONTRACTOR REGISTRATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COELHO) is recognized for 5 minutes.

Mr. COELHO. Mr. Speaker, farmers in California and throughout the Nation have been plagued by the U.S. Department of Labor's interpretation of the Farm Labor Contractor Registration Act. Remedial legislation, H.R. 7824 and S. 2875, will reaffirm the intent of Congress in preventing abuse of migrant farmworkers.

As a cosponsor of the House legislation I recently received a letter from Charles Kelso of the prestigious Atlanta, Ga., law firm of Fisher & Phillips, which lucidly explains the thrust of the House bill. I believe that those of my colleagues who have not yet cosponsored would be enlightened by Mr. Kelso's analysis, so I am including the letter for the RECORD following my remarks.

Already there are 120 Members on the bill, and I salute their wisdom in endorsing a proposal which will more effectively bring to account those in violation of the law. At the same time, those farmers who are in compliance will be protected from unnecessary Department of Labor requirements.

Next week the conference committee on the child nutrition bill will convene. Part of their task will be to deliberate the section of the bill dealing with the Farm Labor Contractor Registration Act. I am certain that I speak for all the cosponsors of H.R. 7824 in recommending passage of the FLCRA language. Without burdening agricultural employers, those who violate the laws which extend to migrant laborers can be sanctioned.

Thank you, Mr. Speaker. Mr. Kelso's letter follows:

FISHER & PHILLIPS,
Atlanta, Ga., September 4, 1980.

Re Farm Labor Contractor Registration Act (FLCRA) Amendments in H. 7824.

Hon. TONY COELHO,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN COELHO: As a management labor lawyer actively engaged in representing many farmer and agribusiness employers, I want to thank you for co-sponsoring H. 7824 with Congressman Panetta. The provisions of that Bill are greatly needed amendments to FLCRA, and I urge your continued active support for its final enactment as part of the Child Nutrition Bill (S. 2675 and H.R. 7664).

While my farmer and other agricultural clients acknowledge that a proper FLCRA Bill is needed to regulate and provide a mechanism for sanctions against itinerant, judgment-proof crew leaders who are in the personnel business, they strenuously object to the law placing them and their supervisory employees in the same category as these independent contractors. FLCRA as presently written is being construed by the Department of Labor to include as "farm labor contractors" these farmers and agribusinessmen and their common law supervisory employees.

FLCRA NOT INTENDED TO COVER EMPLOYEES OF FARMERS OR OTHER AGRIBUSINESSES

We are firmly convinced that FLCRA was never intended to regulate the normal employer-employee relationships between farmers and other agricultural businesses and their employee workers. They, like industrial employers, are generally solvent and are heavily committed to fixed assets. When they are sued they can be easily located for service of court process. Where individuals are employees of a farmer or other business, the entire employment relationship, including the actions of supervisors, is subject to numerous legal protections. Labor statutes imposing obligations on employers (but not those with whom workers have only independent contractor status) are the Fair Labor Standards Act, the Child Labor Act, the Equal Pay Act, the Wagner-Peyser Act, the Occupational Safety and Health Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and other federal, state and local statutes and regulations. In addition, farm employers, like industrial employers, are subject to lawsuits by employees based on breach of contract, fraud, misrepresentation and other common law actions. For example, in *Collazo v. John W. Campbell Farms, Inc.*, 213 F.2d 255, 258 (5th Cir. 1954), the Court recognized that the farmer employer could be held liable for its supervisor's false imprisonment and beating of a farm worker employee. Applying well-established law, the Court said:

"A master is liable for the torts of his servant or agent committed in the scope or range of his employment or in the pursuit of his employer's business . . . [citations omitted]. This liability also extends to acts committed by an employee or agent who has deviated slightly from his employer's business or instructions . . .; and even to willful acts or crimes committed by an employee when they are done within the scope of employment or in the interest of the business of the employer."

Similarly, in *Abraham* v. *Beatrice Foods Co.*, 418 F. Supp. 1384, 1390 (E.D. Wisc. 1976) plaintiffs sued their employer on claims of peonage, over-recruitment, inadequate housing, breach of contract and excessive deductions of pay. Where workers and employers' rights and responsibilities are governed by contracts, the parties are entitled to Court enforcement and damages for breach of contract. The *Beatrice* case illustrates the combination of statutory rights, e.g., under the Wagner-Peyser Act, and common law actions, e.g., false imprisonment, which employees have against their employers.

Advocates of broader coverage for FLCRA suggest workers need to be protected from fraudulent and deceitful employers; but it has long been recognized that such an action already lies directly against employers. See, e.g., *Gardner* v. *Celanese Corporation*, 88 Ga. App. 642, 76 S.E. 2d 817 (1953) where the Court found the plaintiff had stated a cause of action in his claim that the corporation's management employee fraudulently, falsely, willfully and with full knowledge misrepresented to him that he would be returned to work from his furlough status.

The Fair Labor Standards Act has since 1977 required that agricultural employees be paid at least the federal minimum wage applicable to industrial workers, now $3.10 per hour, and it imposes detailed record keeping obligations on employers. Farm employers, like industrial employers, may not make deductions from wages for repayment of loans that reduce free and clear wages below the statutory minimum. See, e.g., *Hodgson* v. *Clark*, 69 Lab. Cas. ¶ 32,736 (M.D. Ala. 1972). Deductions for tools of the trade, rent and other employer-provided facilities are also subject to FLSA limitations. *Walling* v. *Peavy Wilson Lumber Co.*, 497 F. Supp. 846 (W.D. La. 1943); *Shultz* v. *Hinojosa*, 432 F.2d 259 (5th Cir. 1970). Where farmers have employed children in violation of the Child Labor Act, Courts have entered judgments against them. *Goldberg* v. *Daniels*, 45 Lab. Cas. ¶ 31,314 (S.D. Ga. 1962); *Mitchell* v. *Munier*, 38 Lab. Cas. ¶ 65,781 (S.D. Cal. 1958). Under recent amendments adding 29 U.S.C. § 216(e), employers can be held liable for up to $1,000 for each such violation.

Finally, while some states continue to exclude farm workers from mandatory coverage under workers' compensation acts, employees of canneries, packinghouses and many other FLCRA covered businesses are under state industrial workers' compensation laws. Moreover, farm employees have frequently been awarded compensation under common law tort theories. See generally Annot. "Master's Liability to Agricultural Worker Injured Other Than by Farm Machinery," 9 ALR3d 1061 (1966); Annot. "Master's Liability to Servants Injured by Farm Machinery," 67 ALR2d 1120 (1959).

As discussed more fully below, FLCRA's existing provisions do not provide for substantive protections or actions against employers in addition to existing statutory and common law rights. They are chiefly aimed toward keeping up with and obtaining court jurisdiction over itinerant crew leaders who have neither fixed assets nor fixed places of business and toward assuring that workers who must travel long distances to gain employment have adequate information concerning the nature of the work promised by the contractor. Where agricultural workers are employees of the farmer, as shown above, they can and do file suits for contract breach, misrepresentation and other wrongs directly against their employers, just as in industrial employment situations. It is crew leaders as a class, not farmers and not farm supervisors as a class, which Congressional hearings have shown require special legislation in addition to the statutory and common law governing all employers.

S. 2875 FOCUSES DOL ON REAL PROBLEM

During the last two years DOL has sought greater evidence of its FLCRA enforcement efforts after being sued by various farm worker organizations. In its efforts to achieve statistics showing thousands of FLCRA cases, the agency has focused its efforts on registering and regulating farmers and their common law supervisory employees, and it is easy to understand why. Farmers and their employees are stationary, easy to locate, and when they are located and fined, they can and do try to comply with DOL demands and court orders. By contrast, crew leaders are hard to find, uncooperative, and wrongs can frequently be remedied only through legal actions. Statistics show almost all DOL activity in the last several years has been devoted to suing farmers and their field employees for lack of registration or other document deficiencies. Very few cases have been made against elusive crew leaders for substantive abuses of workers.

The campaign against farmers and other agribusinessmen has, however, diverted enforcement efforts away from the real and proper target of the Act—these elusive, nomadic, noncooperative crew leaders. Not only are farmers and agricultural processors being abused by regulations not intended to cover them, but through failure to focus on the real targets, farm workers are actually being denied the protections that Congress sought to provide for them.

Support for the S. 2875 amendments is thus not contrary to farm workers' best interests. We think the farm workers who are employed by the independent middlemen will gain when the DOL's vast resources devoted to fingerprinting and to prosecuting nonregistered farmers and to shuffling farm vehicle insurance and safety inspection papers are instead devoted to the more difficult but needed task of tracking down the real crew leaders and prosecuting their abuses of farm workers.

To the extent that the amendments encourage farmers to hire crew leaders and farm workers directly as their own employees, workers gain because of the common law and statutory obligations of employers for their own and their supervisors' actions, as described above. Farm workers are thereby taken out of the legal "no-man's land" they occupy as employees of elusive, judgment-proof crew leaders.

SENATOR JAVITS' BILL HIGHLY UNDESIRABLE

Enactment of amendments based on Senator Javits' Bill (S. 2789) would serve only to take FLCRA further from its intended path. While it removes the affirmative obligation that farmers and supervisors register, S. 2789 generally requires their compliance with the Act's obligations. As a practical matter, what this means is that farmers must tell workers they will be picking corn or working at some other task "at piece rates meeting or exceeding the Fair Labor Standards Act minimum wage." Such a disclosure provides no substantive protection to workers, and it is certainly not meaningful information when applied to the vast majority of farm employees who are employed year after year by the same farmer. The only real information provided in the required disclosures is the farmer's net profit, and that is none of the workers' business. FLCRA does not contain any record keeping obligations that employers do not already have under FLSA. It adds no health or safety requirements not already provided under OSHA and state laws. Farmers are already subject to court action for injuries caused in their work places or in their work vehicles under workers' compensation statutes or under common law tort theory. In fact, in the increasing numbers of states which require workers' compensation for farm workers (now 33 states), workers are prohibited by law from collecting on the vast coverages required by FLCRA—i.e., a ridiculous nonproductive expense.

The only real substantive requirement imposed on farmers by FLCRA and the Javits Bill that is not already imposed on them by some existing law is the prohibition against employment of illegal aliens. Presently, the Department of Labor is construing the requirement that contractors not knowingly employ illegal aliens to mean that the contractor must conduct an affirmative inquiry to obtain specified documentary proof from each individual showing that he is a citizen or a legal alien entitled to work. 29 C.F.R. § 40.51(p). It makes sense to hold a "coyote" crew leader responsible for knowingly bringing illegal aliens from Mexico or Texas to Florida; it is unjustifiable to impose such an affirmative obligation on a Florida farmer who is employing workers locally, even if some of them are illegal. If such employers should be held liable for employment of illegal aliens, there is no basis whatsoever not to require that restaurants, garment factories and other industries have the same obligation.

Congress has wrestled with this larger alien worker problem for years, but it has been reluctant to require Americans to have official identification papers as Europeans do. The Secretary of Labor should not be permitted to "legislate" an identification paper requirement by regulation as he has done under FLCRA. Furthermore, until the government shoulders its responsibility to identify alien wokers and until it imposes the same obligation on all employers, farmers alone should not have to carry this burden.

Another major objection to Senator Javits' Bill is that it adds "supervising" as one of the duties which makes an individual a "farm labor contractor." Congress was originally assured that field supervisors would not be covered by FLCRA. See colloquy between Senator Nelson and Senator Chiles at 120 Cong. Rec. 35902 (Oct. 16, 1974). This proposed expansion of the Act is totally unwarranted and was never intended by Congress as 52 Senators made clear in a letter of November 26, 1979, to Secretary Marshall (published at 126 Cong. Rec. S. 9794–95 (July 24, 1980.))

Contrary to Senator Javits' opening comments at 126 Cong. Rec. S. 6268 (June 24, 1980), his amendments are opposed by every farm and agricultural organization and employer with whom I am familiar. They are contrary to the intention of the majority of Congress and to effective regulation of the independent crew leader middlemen FLCRA was designed to control.

CONCLUSION

The proposed H. 7824 amendments:

1. Focus FLCRA on the real problem and the intended target—the some 6,000 often abusive but elusive crew leaders;

2. Assure real protection of farm workers by requiring the DOL to use its resources to tackle these itinerant crew leaders who otherwise evade the law rather than shuffling papers on farmers and other stationary employers who already are subject to effective regulation and legal sanctions under existing statutes and the common law.

We appreciate your support and urge you to continue your efforts to achieve enactment of these amendments.

Very truly yours,

CHARLES KELSO.●

HIGH HOLY DAYS 5741

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, September 11 is a significant day for those of the Jewish faith for it marks the beginning of the Jewish religious New Year 5741.

I am happy to join my colleagues in the Congress and my constituents and friends of the Jewish faith in observing the advent of the Jewish high holy days beginning with Rosh Hashana on September 11 and 12 and ending with Yom Kippur on September 20.

Rosh Hashana is a solemn day of reflection, prayer, and penitence. It is a holy day on which Jews all over the world assemble in synagogues to ask God's forgiveness for man's sins and to pray for the unification of mankind. "Unite all of us in the bond of brotherhood" is the beginning of one of the ancient and beautiful prayers associated with this holy day.

On Rosh Hashana the shofar, or ram's horn, is sounded. The blowing of the ram's horn on this day has a deep symbolism. It is considered so important that the day has been called "the day of the clarion call." Only a man of outstanding character is permitted to sound the shofar, and its shattering sound is meant to awaken man's conscience to renew his faith and to return to God.

September 20, the Day of Atonement, or Yom Kippur, is always observed with deep seriousness as the climax of 10 days of penitence. This is the most sacred day of all for it is at this time that the Lord judges each individual. Jews fast all day, confess, repent, and request forgiveness from God and their neighbors. In turn, they forgive their fellow man and look forward to new life.

The fact that for thousands of years Jews all over the world have united in prayer and repentance on the very same day is immeasurable in its significance, particularly when one realizes the impediments that have been in the way of Jewish religious observances and the oppressive religious persecution to which the Jews have been subjected for centuries.

It is for this reason that I have contacted Soviet leaders over the years on behalf of Jews who wish to leave the Soviet Union and who wish to reunite with members of their families in other parts of the world. Especially during the High Holy Days, the Jewish people look to the universal establishment of the principles of compassion and tolerance for which Judaism has so long and painfully fought, and the Soviet Union has signed many international agreements such as the Final Act of the Conference on Security and Cooperation in Europe which pledges to respect basic human rights of the individual.

Jews have not always received this same compassion and tolerance in return, but instead, under Nazi persecution, have suffered incomprehensible brutality and genocidal mass murder. I have asked that my name be added as a cosponsor of legislation to establish the U.S. Holocaust Memorial Council as a permanent entity to plan and oversee the construction and operation of a memorial museum and other actions in commemoration of the millions of victims who were massacred during that terrible time.

During the celebration of the Jewish high holidays, we recall once again the suffering endured by the Jewish people, and mankind's conscience cries out against the betrayal of human rights which they have tragically experienced.

As the Congressman for the 11th District of Illinois, where many of my friends and constituents of the Jewish faith reside, I take pleasure, with the advent of the High Holy Days 5741, in extending my greetings and best wishes to them for the new year.●

JUSTICE DEPARTMENT SUBPENA OF NEW YORK TIMES PHONE RECORDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

○ Mr. PREYER. Mr. Speaker, recent reports in the press indicate that the Department of Justice obtained the telephone toll records of an office of the New

York Times and the home telephone records of one of its reporters without the knowledge of the paper or the reporter.

Employing a grand jury subpena duces tecum, departmental investigators acquired the phone records of the Times' Atlanta bureau and of one of its reporters. Three months after the records were taken by the Department, Southern Bell notified the paper and the reporter. Neither the newspaper nor the reporter was suspected of any crime or was the target of any investigation, according to Justice Department officials. Rather, an investigation of possible wrongdoing by Department employees triggered the subpena for the telephone records. At no time did the Government notify the paper or the individual reporter that it was going to look at the records. Nor do the Justice Department officials involved, including the Assistant Attorney General for the Criminal Division, appear to have considered the policies of the Department reflected in its regulations regarding the seizure of information and records from the press. Perhaps most unsettling, the actions by the Department suggest a lack of attention to the protection of basic first amendment and privacy interests of all American citizens.

As chairman of the Government Information and Individual Rights Subcommittee which has oversight responsibilities for the Department of Justice and a key role in preserving personal privacy and the free flow of information, I find the actions of the Department in this matter particularly troubling.

Following the decision of the U.S. Supreme Court in *Zurcher* v. *Stanford Daily* [98 S. Ct.(1970)], the Department strengthened and reaffirmed its guidelines and policies regarding access to the records of news organizations and reporters. Those policies were accompanied by statements from Attorney General Civiletti and other officials of the Department indicating genuine concern for the public interest in a free press. The recent subpena by the Criminal Division call into question the effectiveness of these policies and statements of departmental intent. Granted, the issuance of these subpenas may not have technically violated the guidelines of the Department. The guidelines were written to protect materials belonging to the media from subpenas, and the telephone records in Atlanta "belonged" to the phone company. However, the subpenas certainly appear to have stretched the policy underlying the specific language of the regulations to its limits.

The actions of the Department in this matter require the fullest and most careful scrutiny. Were the officials involved in the decision to subpena the telephone records violating either departmental regulations or guidelines? Did they consider not only the question of technical compliance with the regulations, but adherence to the broader policy intent as well? Were the subpenas for press records an isolated incident or have the telephone records of news organizations, publishers, and reporters been subpenaed by the Department in the past?

A second series of questions exists, of less immediate concern but of no less importance. Are the policies and regulations which exist adequate? Is additional legislation needed to protect first amendment interests in situations of this kind—legislation beyond that which grew out of the Zurcher against Stanford Daily decision? What should the elements of any new policies, regulations, or legislation be?

In my capacity as chairman of the Government Information and Individual Rights Subcommittee, I have written the Attorney General and sought his help in answering these questions. In the letter to him, I also posed the broader question of the appropriate limits on the ability of the Government to obtain the telephone records of any citizen, regardless of any association with the press. Specifically, the letter asks if the Government should be permitted to obtain the telephone records of a citizen without some review by a court or other neutral arbiter.

This last question is a vital one. Elements of it have been debated by the Judiciary Committee in its deliberations on reform of the criminal code. It is a matter of current debate within the administration as an element of the President's privacy initiative. The Privacy Protection Study Commission also wrestled with it in its examination of the limits which ought to be placed on Government access to private records. In its final report to the Congress and the President, the Commission recommended that access to telephone records by Government agents be permitted only through the use of a subpena with notice to the customer identified in the records and with the right for that customer to challenge the Government's action. The Commission recognized that telephone toll records "provide independent documentation of communications which, before the telephone, were considered uniquely private in character. Indeed, our present legal system severely restricts access to the contents of such communications. Since the mere fact of communication is often as revealing as the content, the Commission believes that toll records should be protected as well."—"Personal Privacy in an Information Society," the report of the Privacy Protection Study Commission (Washington, 1977), page 356. While the Commission's solution to the problems of unlimited Government access to telephone records is not the only answer, it does serve as a starting point for discussion and debate.

In that vein of discussion and debate, I plan to offer a bill as an alternative to the Commission approach. It is a beginning for inquiry, by no means the final product. However, I hope it will receive the careful consideration of the Congress and the administration and serve as a focus for efforts to reestablish and preserve the privacy of American citizens.

I will keep this House informed on the progress of the subcommittee inquiry and, in particular, share with you the Attorney General's reply to the subcommittee.●

GENERAL LEAVE

Mr. HARKIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the subject of the 1-minute speech today by the gentleman from Illinois (Mr. ROSTENKOWSKI).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

CHILEAN PLEBISCITE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. HARKIN) is recognized for 15 minutes.

Mr. HARKIN. Mr. Speaker, as I stated in my September 3 "Dear Colleague" letter, the country of Chile will undergo a fraudulent plebiscite called by General Pinochet on September 11.

I would like to take this opportunity to discuss the plebiscite and the deteriorating political and human rights climate in Chile.

The New York Times published a sarcastic commentary last month about the plebiscite which sums up the fraud:

> On September 11, the people of Chile will be herded to the polls to approve a new constitution that will let them vote for anyone for President so long as he is General Augusto Pinochet. The general has assented to serving eight years, after which he may yield to popular demand and agree to a second eight-year term. So certain is he of the high regard in which he is held that he is sparing Chileans the discomfort of choice. His supporters call this tidy system "neo-democracy".
>
> Seven years ago General Pinochet had to shoot his way to power by deposing an elected government headed by the socialist Salvador Allende. As head of the ruling junta, General Pinochet has tried to deal kindly with an incorrigible people. Those who failed to appreciate his reign were sent to jail. Chile's labor movement, once the strongest in South America, was abolished, ending wasteful strikes and inflationary wage demands.
>
> Anyone familiar with modern Spanish history will find all this familiar. Francisco Franco over-threw a leftwing republican regime in the 1930's and instituted a system that assured his personal rule until his death four decades later. He eliminated free labor unions, filled prisons with dissidents, sterilized the press. But Franco did not say his system had anything to do with democracy—a term he disdained—and did not stage elections to show the world that his people loved him.
>
> General Pinochet might earn notice for candor, if not respect for his principles, if he would call his new order by the term it deserves: neo-fascism.

Pinochet's plebiscite has a hilarity of its own. But the iron will of Pinochet to remain in power, possibly until 1997, and the iron fist he and his supporters still wield in Chile, represents a continuing tragedy for Chile's people.

As if to deliberately insult Chile's 164-year democratic tradition, Pinochet and his junta have scheduled the plebiscite for September 11, the seventh anniversary of the 1973 military coup that ended Chilean democracy, abolished its constitution, and brought terror and repression to the Chilean people. This was the coup that left in its wake an estimated 20,000 to 80,000 executions, more than 100,000 political prisoners, almost a million political exiles, and over 2,500 disappeared political prisoners. This coup has caused the slow impoverishment of Chile's working people and middle sectors and the demolition of the Chilean labor movement.

And the repression continues.

Today's New York Times reports that according to an Amnesty International report:

> Arbitrary arrests and systematic torture have increased dramatically in Chile in the last two months. Spokesmen for the private human rights group said that since July 15, more than 1,000 and possibly as many as 2,000 people have been rounded up by the Chilean secret police. Detailed reports coming out of Chile confirmed a pattern of systematic torture, including severe beatings, near drownings, prolonged administration of electric shocks and burning with cigarettes, to which most detainees were subjected. Many others, Amnesty International said, have not been heard from since their arrests. The report spoke of doctors overseeing the torture.

Citing one such case, a July 10 New York Times article recalls the case of Adriana Hortensia Vargas, a 29-year-old housewife, who was taken off a bus and held in an undisclosed place of detention, where she was hooded, interrogated, stripped, and subjected to electric shocks. Her statements were made under oath to a court after she was released.

Another similar incident was reported in a more recent, September 9 New York Times article, documented by Amnesty International. A 25-year-old university student, Angelica Diaz Tapia of Santiago was seized from a cafe by no less than 12 armed men. She later testified after her release to have been stripped and tied to a metal grid and given inhuman amounts of electrical shocks. This barbarism continued between interrogation sessions until she fainted and was eventually revived by each additional shock. On top of the electrical abuse, Ms. Tapia said she was burned with cigarettes, beaten, and verbally harassed.

General Pinochet has been forced to modify his tactics of repression, eliminating some of the grosser abuses of human rights that made the early years of his regime infamous. He was forced to "moderate" by world public opinion and international repugnance at the involvement of Chile's secret police in the 1976 car-bombing assassinations of Orlando Letelier and Ronnie Moffit here in Washington, D.C. Furthermore, democratic forces around the world continue to protest the repression and there have been overwhelming condemnations by the United Nations in five successively yearly censures, and statements, resolutions, and legislative amendments by this U.S. Congress.

International censure, however, has not been enough. According to the Chilean Commission of Human Rights, repression in Chile is not over. It continues and has in the last 3 months been intensifying. Headed by Mr. Jaime Castillo Velasco, former president of the Christian Democratic Party, this private human rights monitoring group also asserts that the use of torture in Chile today is still widespread and increasing.

On July 29, in a statement for the Commission, Mr. Velasco stated:

> Electricity, rats, and dogs are the normal tools utilized by the secret police to interrogate prisoners.

In the first week of August, Chile Democratico, the Chilean exile organization headquartered in New York, condemned the new wave of repression sweeping Chile in these words:

> The climate of terror created by the Junta is aimed at the intimidation and physical annihilation of the opposition. It uses the pretext of looking for "extremists" to perpetuate new crimes and violate the rights of thousands of Chileans. The events of the last few days clearly show a growing and bloody struggle within the Junta. The dismissal of the head of the secret police, the appearance of ultra-right wing commandos, and the lack of internal support for Pinochet's so-called constitution, indicate that all is not well at the top level of the dictatorship.

The tension and the official terror make an atmosphere favorable to a democratic election in Chile impossible. But the junta has taken extra precautions to be sure that the election will go their way.

Do the people of Chile actually have a free choice on Thursday the 11th? The facts are clear:

First. After 7 years, Chile is still under a "state of emergency." All opposition political activity is forbidden.

Second. There is no genuine access of opposition groups to the pro-junta press and government-controlled electronic media.

Third. The country's voting rolls were burned in 1974. The so-called constitution, which voting for Pinochet will bring into effect, was prepared at his orders in secret by a hand-picked panel.

Fourth. The plebiscite will be held with less than 1 month's notice.

Fifth. Those who abstain by staying away from the polls face 3 months in jail, in addition to receiving heavy fines.

Sixth. Those who go to the polls and, in an act of conscience, mark neither "yes" nor "no," will have their ballots counted as a "yes" vote.

Seventh. And finally, it is Pinochet's own military commanders and appointed officials who will present the results of polling in their areas to the authority commissioned to count the votes "impartially."

Crucial to Pinochet's reelection of himself is the second issue of concern here—the reactionary constitution itself. Far from being a vehicle for a return to genuine, civilian democratic government, the new legal fiction will instead institutionalize the presence of the armed forces in the Senate, in constitutional courts, and in a National Security Council. The new constitution will also allow Pinochet, with the approval of the National Security Council made up of 66 percent armed forces members, to abrogate the constitutional rights of anyone.

The constitution's "transitory articles," key parts of which will go into effect when Pinochet wins the plebiscite, specify the following:

First. Upon the approval of this plebiscite of the new constitution, Pinochet will continue ruling Chile for 8 more years—1981 to 1989,

Second. During this 8-year period the military junta will constitute both the executive and legislative bodies. In other words, there will be no elections for even a rubber-stamp-Pinochet-dominated Congress until 1989,

Third. All political parties will be outlawed until the promulgation of a junta-established law that will govern their operations, and

Fourth. At the end of Pinochet's 8-year term, the junta will be called upon to appoint a president, undoubtedly the enduring Mr. Pinochet. At that time, a second plebiscite will be held. Only if Pinochet were repudiated, a rather unlikely probability, would an open election be held.

Pinochet and his supporters call their exercise in demagogy and fraudulence, "neo-democracy." I feel it should be termed "no-democracy." I urge my fellow Members of the House to join me in sending a message to General Pinochet, rejecting the degradation of a cherished tradition and human right. Our protest is also voiced by the Catholic Church of Chile, the Chilean Trade Unions, the democratic opposition in Chile, and the mass sentiment of our own citizenry which I believe rejects fascism as a solution to any political problem, rejects torture as an official policy, and rejects terrorist assassinations as a way to quell dissent.

THIRTY SEVEN MEMBERS OF CONGRESS DENOUNCE CHILEAN PLEBISCITE

Congressman TOM HARKIN and 36 other Members of the House of Representatives today denounced Chile's September 11 plebiscite.

Thursday's plebiscite rules out congressional elections in Chile until 1989, and guarantees President Pinochet at least 8 more years, with an additional 8-year term possible. Voting in the plebiscite is mandatory, and the balloting will be supervised by Chile's mayors, all of whom have been handpicked by Pinochet.

In a letter to General Pinochet, the Members stated that the plebiscite is "transparently fraudulent" and "an affront" to the people of Chile. The Members urged Pinochet to return freely elected government to Chile and to end the repression which characterizes the 7-year-old dictatorship.

The text of the letter is attached below:

> DEAR MR. PRESIDENT: As democratically elected representatives of the United States, we want to take this opportunity to express our regret and dismay about the planned plebiscite in Chile.
>
> The electoral procedures which your supporters refer to as "neo democracy" are an affront to the people of your country and the people of every democracy. We particularly regret the increase in arrests and detention over the past six months.
>
> In increasing repression and in implementing a transparently fraudulent plebiscite, you may solidify your own power. But you cannot convince your people or the world that there is any semblance of democracy in Chile.

We urge you and members of your junta to return to Chile a freely elected government which is truly the expression of the people's choice.

Sincerely,

Tom Harkin, Stewart McKinney, John Conyers, Andy Maguire, George Brown, Robert Drinan, Howard Wolpe, Ron Dellums, Norman Mineta, George Miller, Shirley Chisholm, James Scheuer, Pete Stark, Don Edwards, Tom Daschle, Morris Udall, Ted Weiss, John Seiberling, Bob Garcia, Walter Fauntroy, Berkley Bedell, Mickey Leland, Cappy Hollenbeck, Dave Bonior, Richard Ottinger, Jim Weaver, Tom Downey, Gus Hawkins, Dan Glickman, Pat Schroeder, Rick Nolan, Bruce Vento, Ed Markey, Bob Kastenmeier, Jim Oberstar, Doug Walgren, J. J. Pickle.

THE 22D OBSERVANCE OF CAPTIVE NATIONS WEEK

(Mr. STRATTON asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. STRATTON. Mr. Speaker, incoming reports on the 1980 Captive Nations Week suggest that this year's commemoration was, once again, a great success. In all the regions of our country, as well as abroad, the 22d observance of Captive Nations Week was marked by rallies, parades, TV and radio coverage, church prayers, and addresses on behalf of the more than two dozen captive nations in Eastern Europe, Asia, and the Caribbean. Much note was made of the Soviet invasion of Afghanistan, which has added that country to the list of captive nations.

Mr. Speaker, I ask unanimous consent that the following items be printed in the RECORD as examples of the strength and breadth of sentiment toward the captive nations that exists in our country: Proclamations by Gov. John D. Rockefeller IV of West Virginia, Gov. Bruce King of New Mexico, Gov. J. Joseph Garrahy of Rhode Island, Gov. Fob James of Alabama, and Mayor Ernest N. Morial of New Orleans.

In addition, as examples of the newspaper coverage of the 22d observance of Captive Nations Week, I ask also unanimous consent to include articles from the following publications: The Free China Weekly, the New York Daily News, the News World, the Catholic Standard, the Ukranian Catholic Daily, and the Truth. Also I ask unanimous consent to insert with my remarks, an article written by Vera A. Dowhan of the Captive Nations Committee on the meaning of this year's observance.

The articles cited follow:

A PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States, as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86–90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples.

Now, therefore, I, Dixy Lee Ray, Governor of the State of Washington, do hereby proclaim that the week commencing July 13, 1980, be observed as "Captive Nations Week" in Washington, and call upon the citizens of Washington to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION: CAPTIVE NATIONS WEEK IN RHODE ISLAND

Whereas, The imperialistic policies of Russian Communists have led, through direct and indirect aggression to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, The desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, The freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, The United States Congress, by unanimous vote, passed Public Law 86–90, establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies, and activities, expressing their sympathy with and support for the just aspirations of captive peoples.

Now, therefore, do I, J. Joseph Garrahy, Governor of the State of Rhode Island and Providence Plantations, proclaim July 13–19, 1980, as "Captive Nations Week in Rhode Island" and urge all Rhode Islanders to join with others in observing this week by dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovania, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86–90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples:

Now, therefore, I, Fob James, Governor of the State of Alabama, do hereby proclaim that the week commencing July 13 through July 19, 1980 be observed as "Captive Nations Week" in Alabama, and call upon the citizens of Alabama to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czecho-Slovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, Afghanistan, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States, as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86–90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples;

Now, therefore, I, Bruce King, Governor of the state of New Mexico, do hereby proclaim the week of July 13, 1980, as: "Captive Nations Week."

A PROCLAMATION BY THE GOVERNOR

Whereas, the imperialistic politics of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of many countries; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom loving peoples of the captive nations look to the United States as the citadel of human freedom and human rights and to the people of the United States as the leaders in bringing about their freedom and independence: and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86–90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayer, ceremonies and activities; expressing their sympathy with and support for the just aspirations of the captive nations.

Now, therefore, I, John D. Rockefeller IV, Governor of the State of West Virginia, do hereby proclaim the week of July 13 through July 20, 1980, as "Captive Nations Week" in West Virginia, and call upon our citizens to join with others in observing this week by offering prayers and dedicating their efforts for the peaceful liberation of oppressed and subjugated peoples all over the world.

PROCLAMATION

Be it known that the Mayor of New Orleans has this day proclaimed July 13–19, 1980, to be "Captive Nations Week" in New Orleans.

ERNEST N. MORIAL,
Mayor.

[From the Free China Weekly, July 20, 1980]

BIG RALLY HIGHLIGHT OF CAPTIVE NATIONS WEEK

A rally to mark the 1980 Captive Nations Week in the Republic of China was held July 17 at the Sun Yat-sen Memorial Hall in Taipei, presided over by Dr. Ku Cheng-kang, honorary chairman of the World Anti-Communist League.

Premier Sun Yun-suan delivered a speech at the meeting, which was attended by more than 3,000 government officials, members of the diplomatic corps in Taipei, foreign guests from 29 countries and areas, and civic leaders.

Premier Sun said he hoped all free nations would renounce the mistaken strategy of "uniting with Red China against Russia" and refrain from helping the Chinese Communists to perpetuate their tyranny.

U.S. Congressman Mario Biaggi; Jetro M. Mamba, speaker of the Lower House of Swaziland; Blas Celis, president of the National Assembly of Representatives of Panama, and concurrently president of the National Congress of Correction and Legislation; Jean-Pierre Grafa, Belgian parliamentarian; Khir Johari, Malaysian parliamentarian; and John Gamble, Canadian parliamentarian, all delivered speeches at the meeting.

[From the New York Daily News, July 14, 1980]

PLEA FOR CONCERN OPENS CAPTIVE NATIONS WEEK

(By Sheryl McCarthy)

Urging Americans to be "good Samaritans" to, and not merely "silent observers" of, the millions of oppressed people of the world, the Rev. Edwin O'Brien led a special memorial Mass at St. Patrick's Cathedral yesterday for the citizens of the more than 30 countries under Communist rule.

The service was among the activities here marking the start of Captive Nations Week. In a colorful Fifth Ave. parade, hundreds of persons—whose roots reach back to lands including Byelorussia, Croatia, Poland, Estonia, mainland China, North Vietnam, East Germany and the Ukraine—donned their native costumes and called for an end to political oppression in their homelands.

"How can we pretend to be good Samaritans and followers of Jesus when we choose to be blind or oblivious to the millions of enslaved human beings behind Iron Curtains of repression?" the Rev. O'Brien told more than 2,000 members of the congregation.

NEED NOT LOOK FAR

"And we need not look across the seas or up to the heavens for opportunities to remove convenient blinds of blindness," he said. "Do we choose to be involved good Samaritans or rather silent observers when governments and other powerful institutions continue brazenly to look upon as nonpersons the captive behind the Iron Curtain, the unborn on our doorstep, the minority and the poor and the elderly in our neighborhood?"

[From the News World, July 13–19, 1980]

CAPTIVE NATIONS' RANKS SWELL TO 42 WITH AFGHANISTAN

(By Lev E. Dobriansky)

At least for a while, the brutal Soviet Russian rape of Afghanistan stunned and concerned governments and peoples throughout the non-totalitarian world. The reactions varied; some were sharp, others bland. But, unquestionably, the strangest expression of rude awakening was provided by President Carter himself.

On Dec. 31, he reacted with this: "My opinion of the Russians has changed more drastically in the last week than even the previous 2½ years." By this statement one would think the long and persistent record of Soviet Russian conquest and domination over non-Russian lands were non-existent. In all of this it was strange, too, that no official reaction in the non-totalitarian world saw Afghanistan as a new, emerging captive nation.

Several weeks later, in his State of the Union address, the president spoke in somewhat unique terms about Moscow's "East European empire" and "its colonial domination of others." He declared in part, "The vast majority of the nations on Earth have condemned this latest Soviet attempt to extend its colonial domination of others . . ."

These thoughts fall, of course, in the right direction and find few presidential precedents in the post-World War II period. However, as a perfect example of conceptual confusion, in the same address the president refers to the U.S.S.R. as "a nation," thereby suggesting that the concepts of "empire" and "colonial domination" do not apply to the majority non-Russian nations within the U.S.S.R.

The basic facts which this confusion cannot becloud are that, at the very least, the U.S.S.R. is a contrived multinational state and certainly not a "nation"; that the "East European" empire of Soviet Russia extends from the Danube to the Urals and includes the largest single segment of it, Ukraine itself; and that Moscow's empire reaches into Central Asia and, with more refined meaning, into East Asia and Cuba.

THE 22ND CAPITIVE NATIONS WEEK

By way of introduction these are just some salient preliminary thoughts for the 22nd Observance of Captive Nations Week (July 13–19). The annual week is provided for in Public Law 86–90, the Captive Nations Week resolution passed by Congress and signed into law by President Eisenhower in July 1959. In the eyes of some critics, PL 83–90 is supposed to be a "cold war relic," whatever this implies. Yet it intelligibly accommodates, more than any other outlook, the fate of an Afghanistan and future Afghanistans, and rationally affords a captive nations ideology that sooner or later must ground our foreign policy. Whether we like it or not, this outcome is inevitable. The accelerated aggressiveness of Moscow will underwrite its necessity.

Fortunately, the Afghanistan episode has spurred necessary and long outstanding reassessments at the West's military posture vis-a-vis the menace and its satraps. Why the episode should have served as a catalyst for the belated step-up is another question. The dominant facts on the growing, across-the-board military disparities between the two groupings have been known for over a decade.

On this, in his 1980 assessment presented to Congress, Defense Secretary Harold Brown painted a bleak picture of the situation, indicating that Moscow might soon be able to field enough forces to fight three wars at once. In sharp contrast, the United States hasn't had the capability of fighting even a one-and-a-half war.

Put in other terms, the military component is only one important factor in the overall balance of forces. Behind guns and missiles, in planes, subs and tanks, is the ever-present and predominant human factor, in all its diversity, institutional loyalty and disloyalty, and volcanic unpredictability. Through sufficiency, nay, superiority on our side should be desired and attained, the military is essentially an instrument, relatively rigid and usable as the users may determine.

Based on PL 86–90, the captive nations ideology has always stressed the indispensable requirement of this integrative, politicoeconomic approach, interlocking the political, the economic, the military, the national, the religious, the broadly human and other essential components of the overall balance. On this totalistic scale, the real forces are in our favor, not Moscow's, but they require proportionate actualization by a strategy founded on historical experience, keen perceptions into Moscow's fundamental vulnerabilities, and the will and courage to see it through.

LISTING OF CAPTIVE NATIONS

In brief, the captive nations ideology provides this firm ground. For those who understand it, the Afghan episode is only an additional one in a long series of similar and related episodes, dating back to the teens. The National Captive Nations Committee in Washington which maintains the CNL—the Captive Nations List—was really not too hasty in declaring Afghanistan another captive nation.

The strictly documented record for the period since World War II also will show that no idea has concerned Moscow more than that of the captive nations in toto and its ideological foundation. Khrushchev, Suslov, Arbatov and others have incessantly protested against it.

Why? "Provocation" is the standard term. Yes, reality and truth are provoking, and no exercise in diplomacy or any foreign policy can be successful without the subtle underpinnings of such reality and truth.

Plainly, despite their massive military strength and accelerated aggressions, the Kremlin's imperio-totalitarians scare most when these central facts are conveyed in varying forms: (1) the nature of the U.S.S.R is that of a basic empire within itself; (2) the real force threatening nations is Soviet Russian imperialism operating behind the ideological facade of mythical communism; (3) the global threat of Soviet Russia wouldn't be possible without the gross politicoeconomic exploitation of the resources of the non-Russian nations, both within and without the U.S.S.R.; and (4) our *natural* allies, who thirst for freedom, are the more than two dozen captive nations which, directly or indirectly, have been the victims of Soviet Russian imperialism. All of this and more can be logically derived from PL 86–90.

THE AFGHANISTAN ADDITION

The Russian technique of being invited to invade a country is as old as the illegitimate Bolshevik regime. In 1918, for example, the quisling communist government in Kharkiv, Ukraine, also needed assistance from Trotsky's Red Army to destroy the Ukranian National Republic. Essentially, the fate of Afghanistan is no different from that of Ukraine and others 60 years ago.

According to President Carter, Brezhnev lied to him about Afghanistan. Not really—he was simply attesting to the operation of an old imperial Russian technique of providing "assistance" and "liberation" to others. A reading of Marx's articles on the Russian Empire should suffice on this. The "invitation" to invade Czecho-Slovakia in 1968 is just a recent example.

Historically, traditional Russian imperialism moved in the direction of the Persian Gulf, the Indian Ocean and the Mideast. The current move is scarcely new.

Strategically, as part of its campaign to isolate the Mideast from American influence, Moscow can intensify its subversive activities in Iran and Pakistan. The well-disciplined Tudeh communist party in Iran and the autonomy demands of the Kurds, Azerbaijani, Baluchis, Turkmen and Arabs are conduits for old-styled Russian operations. The Baluchi problem overlaps into Pakistan, and the goal of a separate Baluchistan carved out of both Iran and Pakistan is not unattainable. In short, the prospect for more captive nations in the region is real.

Also as in the long past—and in the case of Afghanistan—the trumped-up Brezhnev doctrinal explanation will be invoked. Read this cynical sophistry, one among many: "Loyal to its international duty, the Soviet Union has always rendered and continues to render fraternal aid and support to peoples struggling for their independence and sovereignty and for revolutionary gains." This is by Dimitri Ustinov, the U.S.S.R.'s minister of defense.

Ustinov avoids relating the atrocities of Soviet Russian barbarism in Afghanistan—the massacre of unarmed men, women, girls and boys, the use of poison gas, nightly executions, "liberating Russians" raping and looting, and napalm, high explosives and rocket grenades heaped upon resisting Afghan patriots.

For captive nations analysts, this is an old story repeated on a new stage. Tragic, too, is the lack of focus by the West on this latest of Soviet Russian savagery. In addition, what help is being given to the Afghan nationalists in their struggle for freedom?

NEW DIRECTIONS IN U.S. POLICY

Unless Moscow lulls us again, Afghanistan as a new captive nation may signify new directions in U.S. foreign policy. One of these is the sudden interest in the Moslem nations in the U.S.S.R.

Over 20 years ago captive nations ideology pointed in this direction, but few listened. A policy concentration on the non-Russian nations in the U.S.S.R. would accommodate this and more.

Radio Liberty and VOA should be strengthened in this area, with significant effect on Moslem nations from Morocco to Indonesia. Congressional measures S. Con. 9 and H. Con. 72, highlighting the Russification and genocide of the Ukrainian Orthodox and Catholic Churches, should be pressed.

There are no TV cameras for the American tube to focus on Russian savagery in Afghanistan. As NCNC long ago advocated, imagine what could be done with a Congressional committee on the captive nations, gathering information from Afghan refugees in Pakistan.

These are only a few of the many ideas that deserve attention today. If we were in direct confrontation with Moscow, the captive nations ideology would be fully invoked. Why not use it intelligently to prevent one?

[From the Washington (D.C.) Catholic Standard, July 10, 1980]

CAPTIVE NATIONS WEEK

Sunday, July 13, opens Captive Nations Week, which asks prayers for those in Communist nations who are unable to exercise their right to religious freedom. Bishop Thomas Lyons has asked that parishes in the Archdiocese offer prayers for members of what Pope John Paul II called "the silent Church" this Sunday.

[From the Ukrainian Catholic Daily, July 24, 1980]

AMERICAN DAILY IN NEW YORK FEATURES CAPTIVE NATIONS ON 21ST ANNIVERSARY OF PUBLIC LAW 86–90

NEW YORK, N.Y.—The Sunday July 13, 1980 issue of The News World contained, a 12-page center-fold supplement, dedicated to the captive nations of Europe and Asia.

Among the authors of articles is Prof. Lev E. Dobriansky, President of the Ukrainian Congress Committee of America, who has a lead editorial and stresses the growth of once-free countries, which are falling now under the domination of Moscow. There is a long register of the captive nations, compiled by Dr. Walter Dushnyck and Miss Sara Tow, and editor of the popular New York daily.

Other authors include Anthony R. Dolan, winner of a Pulitzer Prize for journalism in 1978, David Hulme, Tinley Nyandak, Zlatko Pemper and Martin Mawyer.

Dr. Dushnyck's contribution deals with the enslavement of Ukraine, Byelorussia, the three Baltic States of Estonia, Latvia and Lithuania; Georgia, Armenia and Azerbaijan, and the five Moslem republics of Turkestan. He also covers the satellite countries of Poland, East Germany, Czechoslovakia, Hungary, Romania and Bulgaria. Miss Towe analyzes the enslavement of Albania and Yugoslavia in Europe, and Cuba, Cambodia, Vietnam, Laos, Afghanistan, China, North Korea, Tibet, and Mongolia.

It is the first comprehensive list of all captive nations in the world, with brief descriptions as to the population and historical background.

[From the Ukrainian Catholic Daily, July 24, 1980]

IMPRESSIVE OBSERVANCE OF 21ST ANNIVERSARY OF CAPTIVE NATIONS WEEK IN NEW YORK CITY

NEW YORK, N.Y.—On Sunday, July 13, 1980, an impressive observance of the 21st anniversary of the Captive Nations Week Resolution, in which the Ukrainian community took an active part, was held in New York City.

Prior to the Liturgy at St. Patrick's representatives of captive nations organizations, dressed in their national costumes and carrying their national flags, marched from 59th Street down Fifth Avenue to the Cathedral. The Ukrainian group, headed by UCCA Administrative Director Ivan Bazarko, was in the lead.

During the Liturgy the Rev. Edwin O'Brien delivered a moving sermon on the plight of the captive nations, enumerating a number of them, including Ukraine.

Immediately after the Liturgy several hundreds of participants formed columns and marched to the "Bandshell" in Central Park, where a two and a half hour program was held. The Parade's Grand Marshal was Lt. Gov. Mario Cuomo of New York State, while its chairman was Al Mannari, of the Catholic War Veterans of Queens, N.Y. Again, the Ukrainian group was at the head of the marching columns. Lt. Governor Cuomo was the principal speaker at the 80th anniversary of Ukraine's independence observance last January in New York City.

Despite the heat, several hundreds of people packed the "Bandshell" open-air area. The program began with the rendition of the American national anthem by Helmi Mandsalu (Estonia), while the "Pledge of Allegiance" was executed by Jerry Bianchi, past State Commander of the Catholic War Veterans. Rev. Clint Padgitt, pastor of the German Seamen's Mission in New York, dedelivered the invocation.

In turn, Horst Uhlich, chairman of the Captive Nations Committee of New York, delivered introductory remarks, stressing the importance of the captive nations, especially now, when the USSR in a blatant invasion conquered Afghanistan and made it a new captive nation.

He also introduced Mrs. Mary Dushnyck, UNA vice president and a member of the UCCA National Council, to act as master of ceremonies, who subsequently conducted the program.

SPEECHES BY PROMINENT LEADERS

Most of the speakers assailed the Soviet Union for its brutal treatment of the captive nations, its insidious policy of Russification and genocide and its continuous direct and indirect aggression. These speakers included: Lt. Governor Mario Cuomo, Dr. Ivan Docheff, honorary chairman of the Captive Nations Committee of New York; Dr. K. C. Dunn, Republic of China (Taiwan), Al D'Amato, Supervisor of Hempstead, who is a Republican candidaite for the office of U.S. Senator from New York; Dr. Askold Lozynsky, a UCCA vice-president and its coordinator of youth and student organizations; S. Sultan Mansur, president of the Turkestani National Organization in the U.S.A., and Dr. B. A. Zikria, professor at Columbia University's College of Physicians and Surgeons, who represented Afghanistan.

Dr. Zikria in his high-pitched and powerful address assailed the Soviet Union for its outright genocide of the Afghan people. He charged that scores of thousands of Afghan men, women and children were killed at random, that the Soviet secret police arrested over 100,000 Afghan political prisoners and that at least 1,000,000 Afghans were made homeless and forced to flee abroad. He called on the free world to give unstinted support to all captive nations which fight Soviet Russian imperialism and slavery. He was interrupted with enthusiastic applause at several points.

Special Proclamations on Captive Nations Week were read.

President Carter's Proclamation—Doris Neugebaur (Germany); Governor Carey's—Silvia Bogdanovics (Latvia) and Mayor Koch's—Adriana Manta (Romania). A letter from the White House to Mr. Uhlich was read by Mrs. Dushnyck. The Resolutions were read by Dr. Edward Rubel (Estonia), and which were adopted unanimously.

ENTERTAINMENT PART

In the entertainment part of the program, coordinated by Mrs. Frederike Tanner (Estonia), the following groups took part:

The Ukrainian American Youth Association (SUMA) dance group of Yonkers, N.Y. coordinated by M. Burchak, and directed by Volodymyr Uzdeychuk and accompanied by accordionist Stefan Shcherbiy; Mrs. Peruz Janatan, Turkestani dancer, accompanied by Messrs. Kemal and Batou; the Chinese Dance Studio Association under the direction of Mrs. Bibiana Shieh; the Estonian Long Island Dance Group, directed by Rauno Joks, and the Young Romanian Vocal Group, accompanied by Mihai Ionescu.

Mr. Uhlich then presented Captive Nations gold pins to Lt. Governor Cuomo, Dr. Dunn and Dr. Docheff, and to members of the Committee in recognition of their work for the captive nations. Also, Mrs. Helga Ozolins (Latvia) presented a bouquet of roses to Mr. Cuomo.

Representatives of the Ukrainian organizations included Ivan Bazarko and Dr. Walter Dushnyck, (UCCA Executive Board); Michael Spontak, president of the United Ukrainian American Organizations of Greater New York, (UCCA), who also is a vice-chairman of the Captive Nations Committee of New York; Fornel Wasylyk, head of the SUMA Center of New York, who brought several SUMA members in uniform; Dr. Alexander Sokolyszyn, press chairman of the Captive Nations Committee of New York; Oleksa

Kalynyk from SVU (Union for the Liberation of Ukraine), and others.

At the end of the program it was announced that on Sunday, July 20, 1980 another program-observance of Captive Nations Week, sponsored by Americans to Free the Captive Nations, headed by Dr. Valentyna Kalynyk, will be held at Liberty Island in New York.

Also, on that same day, July 20, 1980, at noon a protest-demonstration against the Moscow Olympics on East 67th Street in New York City, sponsored by some 50 American and ethnic organizations.

The New York popular daily, The News World, published on Sunday July 13, 1980 a 12-page supplement dedicated to the captive nations. Among the authors of several articles is UCCA President Prof. Lev E. Dobriansky and Dr. Walter Dushnyck, editor of The Ukrainian Quarterly.

New York dailies, such as the Daily News on Monday, July 14, 1980, and The News World had a coverage of the captive nations Liturgy at St. Patrick's Cathedral and a whole page of pictures, including the Ukrainian dancers from Yonkers, N.Y., respectively. Also New York's Channel 4 TV Station covered the program in Central Park briefly on its news broadcast at 6:00 P.M. on Sunday.

Empire within Empire (Excluding Satellites): Soviet Russia Comprised of 14 Captive Nations

There are 50 nationality groups within the Soviet Union with populations of 100,000 or more, and 22 have more than a million each. The Soviet Union is called the Union of Socialist Soviet Republics (USSR). This is a "paper fiction." They are in actuality colonies. Ronald Reagan recently wrote . . . "The central authorities try, sometimes cruelly, sometimes subtly, to replace the national languages and traditions with common Soviet traditions and the Russian language."

There are 14 'republics' within the USSR. All of these are former countries which attempted to establish their independence of Russia after the revolution in 1918. The so-called Baltic states, Lithuania, Latvia, and Estonia, were immediately successful, and were able to remain independent until 1939 when they were occupied by the Russians on a pretext. The balance lost their freedom between 1918 and 1924. All these countries had established their independence and their efforts were cruelly and ruthlessly crushed by Lenin as soon as he consolidated his power.

UKRAINE

Perhaps most cruelly persecuted was Ukraine, the largest Slavic nation within the USSR, which contains 50 million people, comprised 77 percent of nationalistic, patriotic Ukrainians. The balance are Jews, Poles, Germans, Greeks, and Albanians. After some 200 years of Russian domination, Ukraine proclaimed its full independence on January 22, 1918, and for more than three years it fought for its preservation, but succumbed to the superior force of the Communists in 1920. One eye witness recounts concerning those grim days: "Twelve Ukrainian doctors were shot in the streets, even though they were wearing armbands . . . Also 400 pupils of the Ukrainian high school, aged about 14, were shot at the time merely for wearing insignia of the state school in their lapels. At least 5,000 people were executed within a period of three days."

Although Ukraine had suffered from famine after the revolution, it was nothing when compared to the famine of 1932 and 1933, which was artificially induced by the Russian government. Food products were forcibly taken away not only from those farmers who refused to participate in the collective system, but also from the collectives and their members. It was reported, "any item which could possibly be eaten or was of commercial significance was seized from the hungering peasants. Millions of Ukrainians, including tiny children, suffered and died because of this famine. For the past half century Ukraine has suffered untold oppression, famine, and religious persecution. However, the struggle goes on, as attested to by mass arrests of Ukrainian intellectuals.

UKRAINIAN LOVE AFFAIR

The Ukrainian youth have maintained a very strong national consciousness. This is reflected in the writing of young authors like the poet Vasyl Symonenko, who died in 1963 at the age of 29. He wrote of his love affair with Ukraine as follows:

When I speak with you Ukraine!
Ukraine, you are my prayer,
My eternal desperation
For your holy name, I am ready
To pour forth my last drop of blood!

Ukrainian youth have organized and serve as a rallying point for the populace; the Ukrainian people are still singing the national anthem. The workers have also made known their opposition through sabotage, strikes, and protests. They also fight for religious freedom. A flag was recently raised on the church tower of a village in the Skole district which read, "Christ is risen. Ukraine will arise. Death to Moscow and its lackeys."

BYELORUSSIA

This is the largest Slavic nation in the USSR, after Russia and Ukraine, and has a population of 12 million. Enslaved by czarist Russia, Byelorussia shook off its foreign yoke and proclaimed its independence on March 26, 1918, which was eventually destroyed by Russia in 1920. Nominally 'sovereign and independent,' the Byelorussian SSR is a colonial appendage of Moscow with rampant persecution of the people, their culture, language and religion.

ARMENIA

Armenia is one of the oldest countries in Europe, with a population of 2.5 million. After a long period of independence, the country was divided into 'Russian Armenia' and 'Turkish Armenia', where large numbers of Armenians were massacred by the Turks. Armenia declared its independence on May 28, 1918, but after three years of fighting, it was again divided between Turkey and Russia.

AZERBAIJAN

This country has 5.1 million people and occupies the eastern part of Transcaucasia. The Azerbaijans are Azeri Turks and of Islamic faith. The land was occupied by the Russians early in the 18th century. It declared its independence on May 28, 1918, together with Armenia and Georgia, but was defeated and absorbed into the USSR.

[From the Truth, July 1980]

Dr. Dobrianski Conceived Captive Nations Week Idea

WASHINGTON.—Dr. Lev. E. Dobrianski, 60, a professor of Russian economics at Georgetown University, is the man who conceived the Captive Nations Week idea that aroused the ire of Nikita Khrushchev in 1959, when it was proclaimed by President Eisenhower.

At the time the resolution was passed by Congress, Dr. Dobrianski, who was born in New York City of Americans of Ukrainian descent, said: "The impact of the Congressional Resolution lies in the fact that it includes not only the names of recognized satellites of Russia, but also countries that are now a part of the Union of Socialist Soviet Republics. The resolution marks the first time that the United States has recognized by public law that captive nations exist within the USSR."

In addition to the satellite nations were listed White Ruthenia, Armenia, Azerbaijan, Georgia, Idel-Ural, Turkestan, Ukraine, Latvia, Lithuania, and Estonia. According to Dobrianski, these nations form the basis of the Russian empire and that if they hadn't been taken by force, "Russia would be a third rate power."

When interviewed by the Chicago Tribune in 1950, Dr. Dobrianski said he got the idea for a congressional resolution recognizing the plight of captive nations at the time of Imre Nagy, premier of Hungary at the time of its unsuccessful revolt against the Kremlin.

He said his first attempt in 1958, consisted of a resolution introduced in the House by Rep. Albert Cretella (R. Conn.), which called for Presidential proclamations on independence or constitution days of 19 captive nations. The resolution died in the House judiciary committee on a tie vote. In 1959, he lumped recognition into one Captive Nations week.

[From the Truth, July 1980]

Congress Lends Ringing Support

WASHINGTON.—On the occasion of the 20th Anniversary of the proclamation of Captive Nations Week, which was signed by President Eisenhower in July, 1959, there was a general outpouring of support by members of Congress. The parade of speakers in the House of Representatives was led by Congressman Derwinski of Illinois who, as a freshman Congressman, was one of the co-sponsors of Public Law 86–90 which created Captive Nations Week.

Congressman Derwinski is recognized as the leading friend of the 'Captive Nations', and had led the fight in Congress for 20 years, seeking to make the country more aware of its responsibilities to regaining freedom for the peoples living under communist oppression. In his remarks on the floor last year, he noted, "In only 60 years, communist imperialism has swallowed up over 2 million square miles of free nations and territories with a population close to one billion, which would never have chosen to live under the communist hammer and sickle.

CAPTIVE NATIONS—"ACHILLES HEEL" OF THE SOVIET EMPIRE

"The free world continues to be threatened by Communist military activities, subversions, espionage, and diplomatic maneuvering, but we must not lose sight of the captive peoples who suffer under the harshness of Communist rule. Given the opportunity, the peoples of the captive nations will reject the Communist dogma and the Communist governments, and our annual commemoration of Captive Nations Week and our yearlong emphasis on this subject will ultimately produce the breakup of the Soviet Empire and bring about the restoration of freedom and legitimate government to those captives of communism."

July 1980 and Another Captive Nations Week

(By Vera A. Dowhan, executive secretary, National Captive Nations Committee, Inc.)

Twenty-one years ago a historic resolution was passed by the Congress of the United States and signed as a law of the land by President Dwight D. Eisenhower. Is it because Public Law 86–90, the Captive Nations Week Resolution, was passed over two decades ago in a climate when moral ethics and pride in self and country prevailed and were the zenith of the standards we set for ourselves, but no longer do or care, that twenty-one years later there are those who still ask, "What's that?", or others who dismiss it with "Ho-hum, another Captive Nations Week"? To be sure we've lived in a time of pervading acquiescence since that historic document was signed, but once again we commemorate Captive Nations Week this July 13–19.

CAPTIVE NATIONS WEEK RESOLUTION

The principles of the Captive Nations Week Resolution authorizing the annual commemoration of the Week, are as timely today as they were when first written. Briefly, the Resolution emphasizes the values and merits of our own democratic process, our love and respect for freedom, and though diverse in "racial, religious, and ethnic backgrounds," our American character spurs us on to espouse that other nations be given the opportunity to enjoy the same.

The Soviet Russian Empire through its Godless communism, has purloined the most personal liberties, including the right to worship freely. Although this was pointed out in the Resolution in 1959, Soviet Russian imperialism continues down to the present. A realistic understanding of this last remaining empire is imperative vis-a-vis our own national security.

Not only do the captive nations exist, but from the time the Resolution first listed them, their numbers have grown. Independent Statehood, the life line of a nation, is what they have lost.

The Resolution concludes with the President of the United States being "authorized and requested to issue a proclamation designating the third week in July 1959 as 'Captive Nations Week' and inviting the people of the United States to observe such week with appropriate ceremonies and activities. The President further authorized and requested to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world."

The Captive Nations Week Resolution is a public document and is available to anyone who wishes to read it.

CAPTIVE NATIONS

What constitutes a captive nation? A captive nation is a nation under Red Communist domination, including those nations within the USSR who were the first victims in the 1920 period, those in Eastern and Central Europe, in Asia, and only 90 miles from our own shores, Cuba. Once free and independent, these nations whether by political chicanery or expediency, sell-outs, outright aggression and/or invasion, were all "hugged" by the bear; certainly not an endearing hug.

For those nations within the Soviet Union things are far worse but for Ukraine, the largest non-Russian nation (50 million), even more so. Certainly no one at this stage could be totally unaware of the fact that a totalitarian government has no place in its system for basic human, civil, or religious rights. But how many are aware that in Ukraine the Catholic and Orthodox Churches have been completely genocided? The Ukrainian Catholic Church was immediately annihilated and its hierarchy and clergy incarcerated or murdered. If at this time it exists at all, it is in the catacombs. The Ukrainian Orthodox Church met the same fate, but through the years, whatever semblance of the Church remained was forceably incorporated into the present-day Russian Orthodox Church.

National identities are denied these peoples. They have been grouped into something called the "Soviets" or the "Soviet people", to imply that the Union of Soviet Socialist Republics (USSR) is a nation-state, as our United States, with one common language, Russian. Nothing could be further from the truth. They are even referred to in some circles here as Russia's "minorities", though how one can be a minority in his own country boggles the imagination; and even more ridiculous, that they are "Russia's" minorities. One need only look at a map to see that that land mass is not "Russia". The map would indicate, however, the Russian SFSR, and the captive non-Russian nations separately as either the Armenian SSR, Georgian SSR, Ukrainian SSR, Estonian SSR, Latvian SSR and so on. Common sense would dictate then, that this being so, the nations and peoples are there and could hardly be minorities. The USSR is a multinational state within whose periphery live people with neither linguistic, cultural nor racial ties with one another.

Except for the Communist governments of Albania and Yugoslavia, who for the moment still manage to stay at arm's length, the so-called satellite nations of Eastern and Central Europe—Soviet Russia's outer aggregate—though retaining their identities, were nevertheless conceived and are indirectly supported by Moscow. Red China has its own home-grown brand of communism. The captive nations of Indochina are either under the control of Soviet Russia, Red China, or are being torn apart by both. And let's not deceive ourselves, Castro's "technicians" may be in Africa, but he is totally dependent upon Moscow.

THE CAPTIVE NATIONS LIST (CNL)—WHO'S NEXT

Since 1959 the National Captive Nations Committee in Washington, D.C., has monitored the nations already captive and those vulnerable or ripe for Soviet Russia's "invitation to protect" governments of freedom-loving peoples. As a result, she has either installed herself in these lands through puppet governments, divided countries in half, or has grand designs on countries whose governments are weak and ready for plucking.

The Captive Nations list (CNL)—Who's next?

Country, People, and Year of Communist Domination

*Armenia	1920
*Azerbaijan	1920
*Byelorussia	1920
*Cossackia	1920
*Georgia	1920
*Idel-Ural	1920
*North Caucasia	1920
*Ukraine	1920
*Far Eastern Republic	1922
*Turkestan	1922
Mongolia	1924
*Estonia	1940
*Latvia	1940
*Lithuania	1940
Albania	1946
Bulgaria	1946
Yugoslavia (Serbs, Croats, Slovenians, etc.)	1946
Poland	1947
Rumania	1947
Czechoslovakia	1948
North Korea	1948
Hungary	1949
East Germany	1949
Mainland China	1949
Tibet	1951
North Vietnam	1954
Cuba	1960
Cambodia	1975
South Vietnam	1975
Laos	1975
Afghanistan	1980

(*Denotes countries absorbed into U.S.S.R.)

Who's next? Iran? Nicaragua? Pakistan? North Yemen? Angola? Ethiopia? Saudi Arabia? Mozambique? Republic of China? South Korea?

Now that we have seen the list what has changed, or what, purported to have changed, remains the same after all this time. If the captive nations list is any indication, nothing has changed and everything remains the same and in Moscow's favor as evidenced, by the inclusion this year, of Afghanistan as a captive nation.

PERPETUATED MYTHS

Our Chairman, Dr. Lev E. Dobriansky of Georgetown University, was once told that what he was trying to teach was a Herculean task. Education is always a Herculean task. A personal friend of mine, Edward C. Smith who teaches at American University and the Heights Study Center in Washington, D.C., wrote an excellent article on "How to Teach", published in the June 19 issue of the *Catholic Standard*. His theme dealt with "the rigors and rewards of the teaching profession" and he explained three methods of instruction available to teachers. He said, "they can either teach themselves, teach their subjects or teach their students."

His last two points are basic to teaching and learning whether in a classroom environment or not. Of importance is the desire to learn; the desire to increase one's collection of knowledge. Fundamentally, the subject of the captive nations is totalitarianism versus democracy, and the facts and figures collected over the years substantiate each concept's worth. Those who choose to remain arrogant and foolish would debate any teacher under any circumstances.

Preconceived, perpetuated myths on "Russia" and the captive nations abound—within our bureaucracy, academia and extremely sad, our media, which seems to derive an almost hubristic delight in either ignoring or denigrating this vital issue. Although information has been made available to them over the years, they prefer to view the situation as they perceive it. Whether they realize the disservice they are rendering our country is anybody's guess.

When Josep Broz Tito died earlier this year, the accolades showered upon him were overwhelming. Along with being hailed as a great leader, he was lauded for having saved Yugoslavia for the Yugoslavs. At what price? For those eager to beatify him, lest they have forgotten. Tito was also a totalitarian and a murderer. In our Washington newspapers at least, I followed the account carefully. I saw no mention of Cardinal Aloysius Stepinac's house arrest and confinement when religion, as always, was the first to be persecuted; or on murdered (on direct orders of Tito), General Draza Mikhailovich, the Partisan leader who fought for a non-Communist Yugoslavia; nor on the Yugoslavian masses—those fortunate enough to survive concentration camps, make it to displaced persons camps and eventually, resettlement in the diaspora—and those less fortunate who perished.

I have great respect for Aleksandr Solzhenytsin and he remains a giant among men. He is a prolific writer. Nobel prize recipient, a former prisoner of the Gulag Archipelago, a defender of dissidents' rights both Russian and non-Russian, and a man with great spiritual values. But of late he, too, has been making indiscriminate statements.

In September, 1973 Solzhenytsin wrote a letter to the Kremlin leaders and, among other things, told them to face the fact that Communism was bankrupt and advocated that they wihdraw to their own natural Russian borders. Very simply, to remove themselves from the non-Russian Republics. Suddenly, however, Solzhenytsin's aesthetic and moral values seem to have turned into almost polemic travesty. In the Spring 1980 issue of *Foreign Affairs*, he denounces the Captive Nations Week Resolution as "notorious." He seems to have re-developed the age-old "Mother Russia" complex in defending her imperialism. He even questioned why Russia is not considered a captive nation. He's obviously read the Resolution, but how he reasons that a country can invade itself is highly speculative even though, as in the case of Russia, the Russian people have been captive of their own barbaric system of government first under the Czars and now under the Commissars. In light of Afghanistan, his sudden insensitivity toward continued Soviet Russian expansionism is questionable. Ripe is the Middle East, Africa—especially the strategic sea lanes of the Indian Ocean and the Horn—and Latin America.

Castro's Cuba has failed. The recent mass exodus attests to this. From the original 10,000 on the grounds of the Peruvian Embassy, the number grew to well over 100,000 boating their way out of his Caribbean paradise. How unfortunate that our Government did not have an effective policy to cope with the situation and turn it around to our advantage. To be sure, stories could have been told that would have perked up even the ears of those who dispute (and let's face it, they offered precious little opportunity to refute) the Soviet Russian government's designs for Red lakes in the Caribbean, and South and Central America. For many of the Cuban refugees, an outdoor Mass was the first they had ever attended.

Today, many consider the above reflections as "relics" of a "Cold War" long ended, and "warmonger" has become a popular cliché against those who advocate practical reality rather than an imaginative concept. Yet Soviet Russia Imperio-Colonialism is as alive today as the captive nations whose list, since 1920, continues to swell.

In conclusion, if anyone understands totalitarianism it is Pope John Paul II, who lived with it first under the Nazis and then the Russians. His expressions of sadness and regret were reflected last year during his extraordinary visit to Poland when he prayed for the "Silent Church" within the USSR and for the peoples of the neighboring Communist countries whose governments would not permit them to travel to Poland to participate in the sacred services. Constantly, he pleads for freedom with justice for all the peoples of the world.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Russo (at the request of Mr. Wright), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Loeffler) to revise and extend their remarks and include extraneous material:)

Mr. Rudd, for 5 minutes, today.

Mr. Stangeland, for 5 minutes, today.

Mr. Dougherty, for 60 minutes, on September 16.

Mr. Derwinski, for 60 minutes, on September 16.

(The following Members (at the request of Mr. Stenholm) to revise and extend their remarks and include extraneous material:)

Mr. Coelho, for 5 minutes, today.

Mr. Gonzalez, for 15 minutes, today.

Mr. Annunzio, for 5 minutes, today.

Mr. Preyer, for 5 minutes, today.

Mr. Wolff, for 15 minutes, today.

Mr. Harkin, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Won Pat (at the request of Mr. Nedzi), immediately preceding vote on the Nedzi amendment to H.R. 7301 in the Committee of the Whole today.

Mr. Brooks, preceding vote on the Nedzi amendment to H.R. 7301 in the Committee of the Whole today.

Mr. Seiberling, immediately preceding vote on final passage of H.R. 7301 in the House today.

Mr. Stratton, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $4,695.

Mr. Biaggi, immediately prior to the vote on House Resolution 745, today.

(The following Members (at the request of Mr. Loeffler) and to include extraneous matter:)

Mr. Sebelius.

Mr. Brown of Ohio.

Mr. Dougherty.

Mr. Rousselot in two instances.

Mr. Broomfield.

Mr. Paul.

Mr. Coughlin.

Mr. Ashbrook in two instances.

Mr. Lee.

Mr. Gilman.

Mr. Marlenee.

Mr. Conte.

Mr. Dornan.

Mr. Shuster.

Mr. Ford of Michigan.

(The following Members (at the request of Mr. Stenholm) and to include extraneous matter:)

Mr. Wolff in two instances.

Mr. Addabbo.

Mr. Hamilton.

Mr. Edwards of California.

Mr. Edgar.

Mr. Fauntroy.

Mr. Pepper.

Mr. English.

Mr. Fountain.

Mr. Boland.

Mrs. Schroeder.

Mr. Stark.

Mr. Eckhardt.

Mr. McDonald in four instances.

Mr. Kogovsek.

Mr. Harris in two instances.

Mr. Ambro.

Mr. Studds.

Mr. Oberstar.

Mr. Thompson.

Mr. Corrada.

Mr. Ashley.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1519. An act to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain interest costs, and to amend section 5 of the Flood Control Act of 1944; to the Committee on Interior and Insular Affairs.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

ADJOURNMENT

Mr. HARKIN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Thursday, September 11, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5265. A letter from the Assistant Secretary of the Army (Installations, Logistics, and Financial Management), transmitting notice of the proposed conversion to contractor performance of the total installation functions at Hawthorne Army Ammunition Plant, Nev., pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5266. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Germany (transmittal No. 80-99), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5267. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment to Australia (transmittal No. 80-100), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5268. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Jack R. Binns, Ambassador-designate to Honduras, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5269. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Germany (transmittal No. 80-99), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5270. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment to Australia (transmittal No. 80-100), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5271. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Australia (transmittal No. 80-101), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5272. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Belgium (transmittal No. 80-102), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5273. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment to Canada (transmittal No. 80–104), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5274. A letter from the Vice President for Government Affairs, National Railroad Passenger Corporation, transmitting a report covering the month of June 1980, on the average number of passengers per day on board each train operated, and the ontime performance at the final destination of each train operated, by route and by railroad, pursuant to section 308(a)(2) of the Rail Passenger Service Act of 1970, as amended; to the Committee on Interstate and Foreign Commerce.

5275. A letter from the Attorney General, transmitting a report on the formulation of priorities for the investigation and prosecution of white collar crime; to the Committee on the Judiciary.

5276. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of certain aliens, pursuant to section 212(d)(6) of the Act; to the Committee on the Judiciary.

5277. A letter from the Assistant Secretary of the Army (Civil Works), transmitting a Corps of Engineers report on the Raritan River, and the Washington Canal and South River, N.J., in response to resolutions by the Committees on Rivers and Harbors adopted November 13, 1945, and the Committee on Public Works adopted August 25, 1960, of the U.S. House of Representatives; to the Committee on Public Works and Transportation.

5278. A letter from the Comptroller General of the United States, transmitting a report on the foreign tax credit and its effect on U.S. energy policy (EMD–80–86, September 10, 1980); jointly, to the Committees on Government Operations and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BENNETT: Committee on Armed Services. H.R. 7878. A bill to authorize the transfer of certain naval vessels; with amendment (Rept. No. 96–1310). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 607. Making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980. (Rept. No. 96–1311). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on the Judiciary. H.R. 7084. A bill to amend chapter 207 of title 18, United States Code, relating to pretrial services; with amendment (Rept. No. 96–1312). Referred to the Committee of the Whole House on the State of the Union.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 7974. A bill to revise the composition of the judicial councils of the Federal judicial circuits, to establish a procedure for the processing of complaints against Federal judges, and for other purposes. (Rept. No. 96–1313). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7825. A bill to establish the Ice Age National Scenic Trail, and for other purposes; with amendment (Rept. No. 1314). Referred to the Committee of the Whole House on the State of the Union.

Mr. NICHOLS: Committee on Armed Services. S. 91. A bill to amend title 10, United States Code, to remove certain inequities in the Survivor Benefit Plan provided for under chapter 73 of such title, and for other purposes; with amendment (Rept. No. 96–1315). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 7941. A bill to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act (Rept. No. 96–1316). Referred to the Committee of the Whole House on the State of the Union.

SUBSEQUENT ACTION ON A BILL SEQUENTIALLY REFERRED UNDER TIME LIMITATION

Under clause 5 of rule X, the following action was taken by the Speaker:

The Committee on Interior and Insular Affairs consideration of the bill (H.R. 6959) to provide for the conservation and enhancement of the salmon and steelhead resources of Washington State, assistance to the treaty and nontreaty harvesters of those resources, and for other purposes, extended for an additional period ending not later than September 19, 1980.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

Mr. ULLMAN:

H.R. 8094. A bill to clarify the tax treatment of the proceeds from the condemnation of certain forest lands in trust for the Klamath Indian Tribe; to the Committee on Ways and Means.

By Mr. ASHLEY:

H.R. 8095. A bill authorizing certain Great Lakes maritime programs to extend the traditional shipping season, to provide for the filing of tariffs by common carriers by water in the foreign commerce of the United States, to eliminate St. Lawrence Seaway financial inequities, and for other purposes; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. PHILLIP BURTON:

H.R. 8096. A bill to amend the Wild and Scenic Rivers Act to provide for the study of certain river segments for potential inclusion in the national wild and scenic rivers system and to designate certain river segments for inclusion in such system; and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. DAVIS of Michigan:

H.R. 8097. A bill to amend Public Law 94–565, relating to payments in lieu of taxes, to provide that the amount of the Federal payment to units of local government within a State for certain Federal property located within their jurisdiction shall not be less than the amount which such unit would be eligible to receive from the State as a State payment in lieu of taxes with respect to such property if the property were owned by the State rather than by the United States; to the Committee on Interior and Insular Affairs.

By Mr. DUNCAN of Tennessee:

H.R. 8098. A bill to require the Internal Revenue Service to follow *Frederick* v. *United States* in the administration of the Internal Revenue Code of 1954 with respect to transportation expenses; to the Committee on Ways and Means.

By Mr. HARRIS:

H.R. 8099. A bill to amend the Internal Revenue Code of 1954 to allow an individual to establish a tax-exempt trust fund for the support of a handicapped dependent; to the Committee on Ways and Means.

By Mr. PETRI (for himself, Mr. PANETTA, and Mr. DUNCAN of Tennessee):

H.R. 8100. A bill to amend the Internal Revenue Code of 1954 to encourage the production of alcohol for fuel use by repealing the occupational tax on manufacturers of stills and condensers; to the Committee on Ways and Means.

By Mr. STOCKMAN:

H.R. 8101. A bill to amend the Solid Waste Disposal Act to provide for a 5-year program of assistance to the States to address abandoned and inactive hazardous waste sites which pose a significant threat to public health and safety, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. SYNAR:

H.R. 8102. A bill to convey certain Chilocco Indian school lands at Chilocco, Okla., to the Cherokee Nation; to the Committee on Interior and Insular Affairs.

By Mr. THOMPSON (for himself, Mr. MINETA, and Mr. CONTE):

H.R. 8103. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History respectively; to the Committee on House Administration.

By Mr. WYDLER:

H.R. 8104. A bill to amend the research and development provisions X of the Resource Conservation and Recovery Act of 1976, to provide for a study of the problem of toxic chemical and hazardous waste and for research in and development of possible solutions, and for other purposes; Jointly, to the Committees on Interstate and Foreign Commerce and Science and Technology.

By Mrs. HOLT (for herself, Mr. BOWEN, Mr. EDWARDS of Oklahoma, Mr. FAZIO, Mr. HORTON, Mr. LAGOMARSINO, Mr. MCCLORY, Mr. MCDONALD, Mr. PEPPER, Mr. SPENCE, and Mr. WINN):

H.J. Res. 608. Joint resolution to authorize and request the President to issue a proclamation designating January 25, 1981, the birthday of Robert Burns, as Scottish Heritage Day; to the Committee on Post Office and Civil Service.

By Mr. ENGLISH (for himself, Mr. STANGELAND, Mr. HIGHTOWER, Mr. STENHOLM, Mr. DASCHLE, Mr. HANCE, Mr. MARLENEE, and Mr. JEFFRIES):

H. Con. Res. 431. Concurrent resolution expressing the sense of the Congress with respect to the export of wheat, and for other purposes; jointly, to the Committee on Agriculture and Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 76: Mr. BEARD of Tennessee, Mr. LEACH of Louisiana, Mr. HYDE, Mr. STANGELAND, Mr. MOTTL, Mr. EVANS of Georgia, Mr. LIVINGSTON, Mr. BROYHILL, Mr. MARKS, Mr. COLLINS of Texas, Mr. GILMAN, Mrs. BYRON, Mrs. HOLT, Mr. GINGRICH, Mr. GARCIA, Mr. WINN, and Mr. COURTER.

H.R. 1568: Mr. AKAKA.

H.R. 2342: Mr. YATRON.

H.R. 5225: Mr. LEWIS.

H.R. 7050: Mr. APPLEGATE, Mr. BAILEY, Mr. BENJAMIN, Mr. CONYERS, Mr. ROBERT W. DANIEL, JR., Mr. FITHIAN, Mr. GAYDOS, Mr. GOLDWATER, Mr. JENRETTE, Mr. KOGOVSEK, Mr. O'BRIEN, Mr. RAHALL, Mr. RUDD, and Mr. SHUMWAY.

H.R. 7505: Mr. Shumway.

H.R. 7541: Mr. Seiberling, Mr. Vento, and Mr. Stokes.

H.R. 7568: Mrs. Spellman.

H.R. 8079: Mr. Hutchinson, Mr. Rahall, and Mr. Staggers.

H.J. Res. 69: Mr. Charles Wilson of Texas and Mr. Traxler.

H.J. Res. 471: Mr. Lederer, Mr. Scheuer, Mr. Corrada, Mr. Carter, Mr. Lundine, and Mrs. Collins of Illinois.

H.J. Res. 511: Mr. Wirth.

H.J. Res. 568: Mr. Anderson of California, Mr. Fazio, Mr. Tauke, and Mr. Mitchell of New York.

H.J. Res. 579: Mrs. Snowe, Mr. Rhodes, Mr. Ullman, Mr. Conable, Mr. Boland, Mr. Ashley, Mr. Hamilton, Mr. Stark, Mr. Waxman, Mr. Weiss, Mr. Corcoran, Mr. Whitehurst, Mr. Fazio, Mr. Wolff, Mr. Wolpe, Mr. Ottinger, Mr. Bereuter, Mr. Barnes, Mr. Porter, Mr. Winn, Mr. Edgar, Mr. Maguire, Mr. Gudger, Mr. McKinney, Mr. Lehman, Mr. Studds, Mr. Hughes, Mr. Seiberling, Mr. Ertel, Mr. Lagomarsino, Mr. Swift, Mr. Moffett, Mr. Simon, Mr. Ford of Tennessee, Mr. Bedell, Mr. Duncan of Oregon, Mr. Brodhead, Mr. Panetta, Mr. Mitchell of Maryland, Mr. Kostmayer, Mr. Fithian, Mr. Kastenmeier, Mr. Coelho, Mr. Pepper, Mr. Moorhead of Pennsylvania, Mr. Conyers, Mr. Jeffords, Mr. Applegate, Mr. Carr, Mr. McCloskey, Mr. Kildee, Mr. Beilenson, Mr. Phillip Burton, Mr. Heftel, Mr. Goodling, Mr. Spence, Mr. Gore, Mr. Lott, and Mr. Synar.

H.J. Res. 590: Mr. Mattox.

H.J. Res. 605: Mr. Evans of the Virgin Islands.

H. Con. Res. 409: Mr. Broomfield, Mr. Fountain, Mr. Goodling, Mr. Pritchard, Mr. Winn, Mr. Bauman, Mr. McDonald, and Mr. Duncan of Tennessee.

H. Con. Res. 422: Mr. Erdahl and Mr. Robinson.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

428. By the SPEAKER: Petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to national defense; to the Committee on Armed Services.

429. Also, petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to the American hostages in Iran; to the Committee on Foreign Affairs.

430. Also, petition of the Board of Supervisors, Milwaukee County, Wis., relative to investigation of the incarceration of Japanese Americans during World War II; to the Committee on the Judiciary.

431. Also, petition of the national convention, Reserve Officers Association of the United States, Pittsburgh, Pa., relative to extending the earned income credit to U.S. servicemen stationed overseas; to the Committee on Ways and Means.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3580

By Mr. FOLEY:

—Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

Section 1. This Act may be cited as the "Rural Development Policy Act of 1980".

RURAL DEVELOPMENT POLICY

Sec. 2. The Rural Development Act of 1972 (Public Law 92–419; 86 Stat. 657) is amended by adding at the end thereof a new section as follows:

"Sec. 607. Rural Development Policy.—(a) The Secretary of Agriculture shall provide leadership within the executive branch for, and shall assume responsibility for coordinating, a nationwide rural development program using the services of executive branch departments and agencies, including, but not limited to, the agencies, bureaus, offices, and services of the Department of Agriculture, in coordination with rural development programs of State and local governments.

"(b) Policy Development.—(1) The Secretary shall conduct a systematic review of Federal programs affecting rural areas to (A) determine whether such areas are benefiting from such programs in an equitable proportion to the benefits received by urban areas and (B) identify any factors that may restrict accessibility to such programs in rural areas or limit participation in such programs.

"(2) Subject to the Privacy Act of 1974, the Secretary may secure directly from any Federal department or agency information necessary to carry out the Secretary's duties under this section. Upon request of the Secretary under this paragraph, the head of any such Federal department or agency shall furnish such information to the Secretary.

"(3) The Secretary shall develop a process through which multistate, State, substate, and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis. Such process may include the use of those rural development experts, advisors, and consultants that the Secretary deems appropriate, as well as the establishment of temporary advisory committees under the terms of the Federal Advisory Committee Act.

"(4) The Secretary may undertake cooperative efforts with other Federal departments and agencies to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas. The Secretary may request the heads of other Federal departments and agencies to participate in any working groups that the Secretary deems necessary to carry out the purposes of this section.

"(5) The Secretary may hold public hearings and receive comments on any matter that the Secretary determines may have a significant impact on rural development or the economic development of rural communities.

"(c) Rural Development Strategy.—(1) The Secretary shall prepare a comprehensive rural development strategy based on the needs, goals, objectives, plans, and recommendations of local communities, substate areas, States, and multistate regions, which is designed to—

"(A) maximize the effectiveness, increase the responsiveness, and improve the delivery of Federal programs to rural areas;

"(B) increase the coordination of Federal programs with the development needs, objectives, and resources of local communities, substate areas, States, and multistate regions; and

"(C) achieve the most effective combinations of Federal, State, and local resources to meet the needs of rural areas for orderly growth and development.

"(2) The rural development strategy shall take into account the need to—

"(A) improve the economic well-being of all rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

"(B) improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

"(C) improve State and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for State and local officials, particularly in small rural communities;

"(D) strengthen the family farm system; and

"(E) maintain and protect the environment and natural resources of rural areas.

"(3) The rural development strategy developed under this subsection shall be for the fiscal year ending September 30, 1982, and updated for each fiscal year thereafter.

"(4) The Secretary shall hold public hearings and receive such suggestions and recommendations as the Secretary deems appropriate during the preparation of the rural development strategy and the annual updates to the strategy.

"(5) The rural development strategy and the annual updates to the strategy shall be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry by January 31 of the calendar year immediately preceding the beginning of the appropriate fiscal year.

"(6) The rural development strategy and each annual update of the strategy shall contain an analysis of the budget recommendations of the President for the fiscal year following the transmittal of the strategy or update of the strategy and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and the rural development strategy developed under this subsection. Each annual update shall also contain a detailed statement of the findings and conclusions of the Secretary regarding the implementation during the preceding fiscal year of the rural development strategy, including any revisions of the strategy, any recommended legislation to improve the rural development effort of the Federal government, and an evaluation of and recommendations regarding the rural development information system required under section 306(a)(12) of the Consolidated Farm and Rural Development Act.

"(d) Strategy Implementation.—The Secretary shall ensure the effective implementation of the rural development strategy and maximize coordination of Federal programs affecting rural areas through a systematic effort to—

"(1) improve communication and encourage cooperation among Federal departments and agencies in the administration of rural development programs;

"(2) eliminate conflicts, duplication, and gaps in program coverage, and resolve contradictions and inconsistencies in the objectives, administration, and effects of rural development programs;

"(3) facilitate the sharing or common location of field offices of Federal agencies administering similar or complementary programs and unification of delivery systems, where feasible, to maximize convenience and accessibility of such agencies and programs to rural residents;

"(4) facilitate and expedite joint funding of rural projects through Federal programs;

"(5) correct administrative problems in Federal programs that delay or hinder the effective delivery of services, assistance, or benefits to rural areas; and

"(6) simplify, standardize, and reduce the complexity of applications, reports, and other forms required under Federal rural development programs.

UNDER SECRETARY OF AGRICULTURE FOR SMALL COMMUNITY AND RURAL DEVELOPMENT

SEC. 3. (a) There is hereby established in the Department of Agriculture the position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary of Agriculture for Small Community and Rural Development may exercise such functions and perform such duties related to small community and rural development, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

(b) Secretary 5314 of title 5, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"Under Secretary of Agriculture for Small Community and Rural Development.".

RURAL DEVELOPMENT ACT REAUTHORIZATION AND AMENDMENTS

SEC. 4. The Rural Development Act of 1972 is amended by—

(1) in section 503(a) (7 U.S.C. 2663(a)), striking out "three" and "1979" and inserting in lieu thereof "five" and "1981", respectively;

(2) in section 503(c) (7 U.S.C. 2663(c)), striking out "and September 30, 1979" and inserting in lieu thereof "September 30, 1979, September 30, 1980, and September 30, 1981";

(3) in section 503(f) (7 U.S.C. 2663(f)), inserting immediately after the first sentence a new sentence as follows: "In those States that contain more than one institution or university accepting the benefits of the Morrill Act of 1862 or 1890 (or both), including Tuskegee Institute, such annual plan and budget shall be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.";

(4) in section 507(b) (7 U.S.C. 2667(b)), inserting ", Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands of the United States," after "several States"; and

(5) in section 603(c), repealing paragraph (2); in paragraph (1), striking out "(1)" after the subsection designation; and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

REVISED STATUTES AMENDMENTS

SEC. 5. Section 526(b) of the Revised Statutes (7 U.S.C. 2204(b)) is amended by—

(1) striking out the first and second sentences thereof;

(2) in the third sentence striking out "and" before "rural industrialization" and inserting before the period at the end thereof the following: ", and technology appropriate to small and moderate-sized family farming operations, and any other problem that the Secretary may determine has an effect upon the economic development or the quality of life in rural areas".

ELIMINATION OF REPORTS

SEC. 6. Section 901 of the Agricultural Act of 1970 (Public Law 91-524, 84 Stat. 1303; 42 U.S.C. 3122) is amended by striking out the last sentence of subsection (b) and repealing subsections (c) through (f).

TECHNICAL ASSISTANCE AND INFORMATION SYSTEM

SEC. 7. Section 306(a) of the Consolidated Farm and Rural Development Act (Public Law 87-128, 75 Stat. 307; 7 U.S.C. 1926(a)) is amended by—

(1) amending paragraph (11) to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to provide rural development technical assistance, rural community leadership development, and community and areawide rural development planning.";

(2) redesignating paragraphs (12), (13), and (14) as paragraphs (13), (14), and (15), respectively; and

(3) inserting immediately after paragraph (11) a new paragraph (12) as follows:

"(12) (A) The Secretary shall, in cooperation with institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, establish a system for the dissemination of information and technical assistance on Federally sponsored or funded programs. The system shall be for the use of institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503–505, as amended; 7 U.S.C. 301–305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417–419, as amended; 7 U.S.C. 321–326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, and other persons concerned with rural development.

"(B) The informational system developed under this paragraph shall contain all pertinent information, including, but not limited to, information contained in the Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal Funds, United States Census, and Code of Federal Regulations.

"(C) The Secretary shall obtain from all other Federal departments and agencies comprehensive, relevant, and applicable information on programs under their jurisdiction that are operated in rural areas.

"(D) Of the sums authorized to be appropriated to carry out the provisions of this Act, not more than $1,000,000 per year may be expended to carry out the provisions of this paragraph.".

LIMITATIONS

SEC. 8. No funds are authorized to be appropriated pursuant to sections 4 and 7 of this Act and the amendments made by those sections for the fiscal year ending September 30, 1980, in excess of such amounts as have been appropriated on or before the date of enactment of this Act for such fiscal year.

WEB RURAL WATER DEVELOPMENT PROJECT

SEC. 9. (a) There are authorized to be appropriated to the Secretary of the Interior for the fiscal year ending September 30, 1981, $1,900,000, which shall be used to plan and construct a rural water treatment and distribution system in portions of, but not limited to, Walworth, Edmunds, Brown, Campbell, Potter, McPherson, Faulk, Hand, Spink, and Day Counties in South Dakota that will furnish water for domestic and other purposes, hereafter referred to in this section as "the WEB Rural Water Development Project", as generally proposed by the WEB Water Development Association, Incorporated, and as described in the special report by the Association of January 1980.

(b) Effective October 1, 1981, there are authorized to be appropriated to the Secretary of the Interior for the planning and construction of the WEB Rural Water Development project $68,100,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1980, as indicated by the engineering cost indices applicable to the types of construction involved herein: *Provided*, That such authorization for appropriations shall not become effective until such time as legislation has been enacted deauthorizing the Oahe Unit, initially authorized by the Act of August 3, 1968 (Public Law 90–453; 82 Stat. 624): *Provided further*, That if that Act has not been enacted by September 30, 1981, the authorization for appropriations provided for in this subsection shall terminate.

(c) Any funds appropriated under this section shall remain available until expended.

(d) Any funds appropriated under this section shall be transferred by the Secretary of the Interior to the Secretary of Agriculture when such funds are appropriated. The Secretary of the Interior may enter into cooperative memoranda of understanding with the Secretary of Agriculture as may be required to provide services to carry out the purposes of this section.

(e) The Secretary of Agriculture shall use any funds transferred under subsection (d) for necessary administrative expenses, and to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act. Such funds shall be made available in a combination of grants and loans that will provide grants for not less than 75 per centum of eligible development costs and such loans as may be necessary to plan and construct the WEB Rural Water Development Project.

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall become effective October 1, 1980.

And amend the title to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes."

H.R. 7020

By Mr. ECKHARDT:

—Page 7, line 14, after "site" insert: "or other hazardous waste site which is not operating pursuant to a permit under section 3005(a)".

Page 7, line 24, strike out "inactive".

Page 9, line 5, strike out "inactive".

Page 10, line 14, strike out "inactive".

Page 10, line 15, before the period insert: "to which this section applies".

By Mr. GORE:

—Page 47, line 17, strike out "an" and insert in lieu thereof "a negligent"

Page 47, line 17, after "party" insert: "other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant,"

Page 48, after line 4, insert the following new paragraph, renumbering as appropriate.

(2) For purposes of subparagraph (1)(C) a defendant (including a generator, transporter, shipper, or disposer) must demonstrate that he exercised due care with respect to all foreseeable acts or omissions of any third party and that he exercised due care in light of all relevant facts and circumstances, including:

(A) exercised due care in the selection and instruction of a responsible person engaged by such defendant for the transportation, storage, treatment or disposal of said hazardous waste;

(B) provided adequate information as to the identity, quality, composition, condition, characteristics and potential hazard of the waste to such person;

(C) took reasonable measures to assure and verify that such person properly carried out the activities for which he was engaged;

(D) properly labeled, loaded and packaged the waste and properly equipped and maintained the container or facility used for the transportation, storage, treatment, or disposal of the waste, and

—Page 48; line 6, after "establishes" insert "by a preponderance of the evidence".

Page 48, line 11, after "establishes" insert "by a preponderance of the evidence".

Page 48, strike out lines 16 through 20 and insert in lieu thereof:

(B) To the extent apportionment is not established under subparagraph (A), the court may apportion the remaining costs among the parties if the court deems such apportionment appropriate. In apportioning liability under this paragraph, the court may consider factors, including:

(i) the ability of the party to demonstrate that this contribution to a discharge, release, or disposal of a hazardous substance can be distinguished;

(ii) the amount of hazardous substance involved;

(iii) the degree of toxicity of the hazardous substance involved;

(iv) the degree of involvement in the manufacture, treating, transporting, disposing of the hazardous substance; and

(v) the degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment.

Page 48, line 21 strike "this paragraph" and insert "subparagraph (A)".

—Page 47, line 25, after "costs" insert ", damages, and losses".

Page 48, in lines 2, 6, 11, and 23 after "costs" insert ", damages, and losses".

Page 49, line 1, after "COSTS" insert "DAMAGES, AND LOSSES" and after "costs" insert "damages, and losses".

Page 49, line 3, after "are" insert "(1)".

Page 49, line 9, before the period insert: ", and (2) all damages for personal injury, injury to real or personal property, and economic loss, resulting from such release or threatened release".

Page 49, line 10, after "TO WHOM LIABLE.—" insert "(1)".

Page 49, line 11, after "(b)" insert "(1)".

Page 49, after line 19, insert:

(2) The liability for damages or loss described in subsection (b) (2) shall be to the person who sustained such damages or loss. In the case of any such damages or loss to natural resources owned, controlled, or managed by the United States or by a State or local government, the liability shall be to the United States, the State, or the local government, as the case may be. No action may be brought under this section for any damages or loss described in subsection (b) (2) after the date three years after the date on which the plaintiff discovers such damages or loss, or after the date three years after the date of the enactment of the Hazardous Waste Containment Act of 1980, whichever is later.

By Mr. STOCKMAN:

(Substitute offered by Mr. STOCKMAN.)

—Strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective clean-up of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE O PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of effective State programs to assure the clean-up and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing clean-up priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

(b) RECOVERY OF CLEAN-UP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State clean-up and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 305 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 180 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazrdous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing clean-up and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, States, and local governments and for interstate and nongovernmental entites, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the clean-up and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of clean-up and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based upon population and industrial production. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States (as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous waste sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024, the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrator's determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

"ASSISTANCE TO STATES ATTORNEYS GENERALS

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;

"(2) $150,000,000 for the fiscal year 1982;

"(3) $150,000,000 for the fiscal year 1983;

"(4) $75,000,000 for the fiscal year 1984; and

"(5) $50,000,000 for the fiscal year 1985.

Not less than 80 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $15,000,000 for the fiscal year 1982;

"(3) $15,000,000 for the fiscal year 1983;

"(4) $5,000,000 for the fiscal year 1984; and

"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;

"(2) $10,000,000 for the fiscal year 1982;

"(3) $10,000,000 for the fiscal year 1983;

"(4) $10,000,000 for the fiscal year 1984; and

"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

SENATE—*Wednesday, September 10, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Hear the words of the prophet Isaiah when he wrote:

Seek ye the Lord while He may be found, call ye upon Him while He is near: Let the wicked forsake his way, and the uprighteous man his thoughts: And let him return unto the Lord, and He will have mercy upon him; And to our God for He will abundantly pardon.—Isaiah 55: 6,7.

As we seek Thee, O Lord, so may we find Thee in this moment of prayer. May Thy spirit brood over us, indwell us, saturate our beings and so shape our lives that we may choose Thy will as our will, Thy way as our way, Thy peace as our peace. Instruct our minds. Control our thoughts and feelings. Make this day a day of obedience, a day of spiritual joy and peace. May our work be the work of Thy kingdom, for it is in Thy name we work and in Thy name we pray. Amen.

APPOINTMENT OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. MITCHELL). The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 10, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable GEORGE J. MITCHELL, a Senator from the State of Maine, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. MITCHELL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority and minority leaders are recognized for not to exceed 10 minutes to be equally divided and controlled.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GOVERNOR REAGAN'S ECONOMIC PROPOSALS

Mr. BAKER. Mr. President, yesterday, Governor Reagan delivered a statement on his economic position, a statement which he made in Chicago.

Mr. President, I would like to, this morning, commend for my colleagues' reading the text of an economic policy statement made by the Republican Presidential nominee, Governor Reagan, yesterday, in Chicago.

It is as thoughtful and concise an assessment of what must be done to restore growth and stability to our economy as I have ever read.

It offers the Congress and the Nation a program which will encompass the very policies and attitudes that Governor Reagan and so many of us in this Chamber have advocated for so long: Controls on the growth of Government spending; significant, permanent tax relief for all Americans; the elimination of stifling and unwarranted Government regulation of our business and industry; a sound, predictable monetary policy and a consistent economic policy from which American business and industry can regain a sense of security and confidence inducive to investment, expansion, modernization, and increased production.

And this economic recovery package, Mr. President, has as perhaps its greatest strength its clarity and stability. It is a far cry from the whimsy, uncertainty, and piecemeal tinkering which have become the hallmarks of President Carter's economic programs.

Governor Reagan understands and is the eloquent spokesman for the millions of Americans whose lives are being shattered by the President's economics: Those hundreds of thousands of Americans who have lost their jobs to Jimmy Carter's intentional recession; those millions of working Americans who have watched their standard of living decline steadily because of Jimmy Carter's high taxes and high interest rates; those millions of Americans on fixed incomes who must watch helplessly as Jimmy Carter's inflation consumes their life savings.

In the words of Governor Reagan yesterday:

> Mr. Carter's economical failures are an assault on the hopes and dreams of millions . . . We are dealing with an unprecedented crisis that takes away not only wages and savings, but hopes and dreams.

And as important as restoring wages and savings and jobs is to the future of this Nation, restoring the hopes and dreams of the American people that they and their children can have a better life is so much more important.

Governor Reagan has given us a blueprint to do all these things, Mr. President. And I urge my colleagues to carefully consider his message and his proposal.

I therefore now ask unanimous consent that the text of Governor Reagan's speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

[Address by the Honorable Ronald Reagan]

A STRATEGY FOR GROWTH: THE AMERICAN ECONOMY IN THE 1980s

Almost two months ago, in accepting the presidential nomination of my party, I spoke of the historically unique crisis facing the United States. At that time I said:

"Never before in our history have Americans been called upon to face three grave threats to our very existence, any one of which could destroy us. We face a disintegrating economy, a weakened defense and an energy policy based on the sharing of scarcity."

Since I first spoke those words, no action has been taken by President Carter to change this grave, unprecedented situation.

In fact, during the last few months the overall economic situation in the United States has deteriorated markedly. The cumulative effect of the economic policies the Carter administration has followed over the last three and one-half years has damaged our economy much more than virtually anyone could have foreseen.

Interest rates and inflation have become unconscionably high. Almost two million Americans have lost their jobs this year alone. And the tax burden continues to steadily increase.

In effect, Mr. Carter's economic failures are an assault on the hopes and dreams of millions of American families.

These are more than just economic failures. They are essentially an unprecedented failure of presidential leadership that strikes at the very heart of every American family, every factory, every farm, every community.

Make no mistake about it: what Mr. Carter has done to the American economy is not merely a matter of lines and graphs on a chart. Individuals and families are being hurt badly. Factories are empty; unemployment lines are full.

Every American family has felt what the Carter inflation means to hopes for a better life. Every visit to the supermarket reminds us of what Mr. Carter's policies have done. We pay the price of Carter's inflation every time we buy food or clothing or other essentials.

We are dealing with an unprecedented crisis that takes away not only wages and savings, but hopes and dreams.

And what is Mr. Carter's response to this tragedy?

Words. And more words.

Two weeks ago he gave us his latest in a series of economic policy shifts. This one is

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● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

the fifth "new economic program" in the last three and one-half years. It contains rhetoric that Mr. Carter apparently hopes will lead us to believe he has finally discovered free enterprise.

Hearing him and members of his administration use the language of free enterprise reminds me of one of the stories of Mark Twain. He had a habit of using foul language, which distressed his wife no end. She decided on a form of shock treatment to cure him of his habit. She came up to him one day and recited every word of the salty language she had ever heard him use. He listened patiently and when she was finished, said: "My dear, you have the words all right, you just don't have the tune."

I'd like to speak to you today about a new concept of leadership, one that has both the words and the music. One based on faith in the American people, confidence in the American economy, and a firm commitment to see to it that federal government is once more responsive to the people.

That concept is rooted in a strategy for growth, a program that sees the American economic system as it is—a huge, complex, dynamic system which demands not piecemeal federal packages, or pious hopes wrapped in soothing words, but the hard work and concerted programs necessary for real growth.

We must first recognize that the problem with the U.S. economy is swollen, inefficient government, needless regulation, too much taxation, too much printing press money. We don't need any more doses of Carter's eight- or ten-point programs to "fix" or fine tune the economy. For three and one-half years these ill-thought-out initiatives have constantly sapped the vitality of the most productive economic system the world has ever known.

Our country is in a downward cycle of progressive economic deterioration that must be broken if the economy is to recover and move into a vigorous growth cycle in the 1980s.

We must move boldly, decisively and quickly to control the runaway growth of federal spending, to remove the tax disincentives that are throttling the economy, and to reform the regulatory web that is smothering it.

We must have and I am proposing a new strategy for the 1980s.

Only a series of well-planned economic actions, taken so that they complement and reinforce one another, can move our economy forward again.

We must keep the rate of growth of government spending at reasonable and prudent levels.

We must reduce personal income tax rates and accelerate and simplify depreciation schedules in an orderly systematic way to remove disincentives to work, savings, investment, and productivity.

We must review regulations that affect the economy, and change them to encourage economic growth.

We must establish a stable, sound and predictable monetary policy.

And we must restore confidence by following a consistent national economic policy that does not change from month to month.

I am asked: Can we do it all at once? My answer is: We must.

I am asked: Can we do it immediately? My answer is: No, it took Mr. Carter three and one-half years of hard work to get us into this economic mess. It will take time to get us out.

I am asked: Is it easy? Again, my answer is: No. It is going to require the most dedicated and concerted peacetime action ever taken by the American people for their country.

But we can do it, we must do it, and I intend that we will do it.

We must balance the budget, reduce tax rates, and restore our defenses.

These are the challenges. Mr. Carter says he can't meet these challenges; that he can't do it. I believe him. He can't. But, I refuse to accept his defeatist and pessimistic view of America. I know we can do these things, and I know we will.

But don't just take my word for it. I have discussed this with any number of distinguished economists and businessmen, including George Shultz, William Simon, Alan Greenspan, Charls Walker and James Lynn. The strategy I offer is based on solid economic principles and basic experience in both government and the marketplace. It has worked before and will work again.

Let us look at how we can meet this challenge.

One of the most critical elements of my economic program is the control of government spending. Waste, extravagance, abuse and outright fraud in federal agencies and programs must be stopped. Billions of the taxpayers' dollars are wasted every year throughout hundreds of federal programs, and it will take a major, sustained effort over time to effectively counter this.

Federal spending is now projected to increase to over $900 billion a year by fiscal year 1985. But through a comprehensive assault on waste and inefficiency, I am confident that we can squeeze and trim 2 percent out of the budget in fiscal year 1981, and that we will be able to increase this gradually to 7 percent of what otherwise would have been spent in fiscal year 1985.

Actually, I believe we can do even better. My goal will be to bring about spending reductions of 10 percent by fiscal year 1984.

Crucial to my strategy of spending control will be the appointment to top government positions of men and women who share my economic philosophy. We will have an administration in which the word from the top isn't lost or hidden in the bureaucracy. That voice will be heard because it is a voice that has too long been absent from Washington—the voice of the people.

I will also establish a citizen's task force, as I did in California, to rigorously examine every department and agency. There is no better way to bring about effective government than to have its operations scrutinized by citizens dedicated to that principle.

I already have as part of my advisory staff a Spending Control Task Force, headed by my good friend and former Director of the Office of Management and Budget, Casper Weinberger, that will report on additional ways and techniques to search out and eliminate waste, extravagance, fraud and abuse in federal programs.

This strategy for growth does not require altering or taking back necessary entitlements already granted to the American people. The integrity of the Social Security system will be defended by my administration and its benefits will once again be made meaningful.

This strategy does require restraining the congressional desire to "add-on" to every old program and to create new programs funded by deficits.

This strategy does require that the way federal programs are administered will be changed so that we can benefit from the savings that will come about when, in some instances, administrative authority can be moved back to the states.

The second major element of my economic program is a tax rate reduction plan. This plan calls for an across-the-board three-year reduction in personal income tax rates—10 percent in 1981; 10 percent in 1982; and 10 percent in 1983. My goal is to implement three reductions in a systematic, planned manner.

More than any single thing, high rates of taxation destroy incentive to earn, to save, to invest. They cripple productivity, lead to deficit financing and inflation, and create unemployment.

We can go a long way toward restoring the economic health of this country by establishing reasonable, fair levels of taxation.

But even the extended tax rate cuts which I am recommending still leave too high a tax burden on the American people. In the second half of the decade ahead we are going to need, and we must have, additional tax rate reductions.

Jimmy Carter says it can't be done. In fact, he says it shouldn't be done. He favors the current crushing tax burden because it fits into his philosophy of government as the dominating force in American economic life.

Official projections of the Congressional Budget Office show that by fiscal year 1985, if the current rates of taxation are still in effect, federal tax revenues will rise to over one trillion dollars a year.

Surely Jimmy Carter isn't telling us that the American people can't find better things to do with all that money than see it spent by the federal government.

Assuming a continuation of current policies in government, congressional projections show a huge and growing potential surplus by 1985. These surpluses can be used in two basic ways: 1) to fund additional government programs, or 2) to reduce tax rates.

That choice should be up to the American people.

The most insidious tax increase is the one we must pay when inflation pushes us into higher tax brackets. As long as inflation is with us, taxes should be based on real income. Federal personal income taxes should be based on real income. Federal personal income taxes should be indexed to compensate for inflation, once tax rates have been reduced.

We also need faster, less complex depreciation schedules for business. Outdated depreciation schedules now prevent many industries, especially steel and auto, from modernizing their plants. Faster depreciation would allow these companies to generate more capital internally, permitting them to make the investment necessary to create new jobs, and to become more competitive in world markets.

Another vital part of this strategy concerns government regulation. The subject is so important and so complex that it deserves a speech in itself—and I plan to make one soon. For the moment, however, let me say this.

Government regulation, like fire, makes a good servant but a bad master. No one can argue with the intent of much of this regulation—to improve health and safety and to give us cleaner air and water—but too often regulations work against rather than for the interests of the people. When the real take-home pay of the average American worker is declining steadily, and 8 million Americans are out of work, we must carefully re-examine our regulatory structure to assess to what degree regulations have contributed to this situation. In my administration there should and will be a thorough and systematic review of the thousands of federal regulations that affect the economy.

Along with spending control, tax reform and deregulation, a sound, stable and predictable monetary policy is essential to restoring economic health. The Federal Reserve Board is, and should remain, independent of the Executive Branch of government. But the President must nominate those who serve on the Federal Reserve Board. My appointees will share my commitment to restoring the value and stability of the American dollar.

A fundamental part of my strategy for economic growth is the restoration of confidence. If our business community is going to invest and build and create new, well-paying jobs, they must have a future free from arbitrary government action. They must have confidence that the economic "rules-of-the-game" won't be changed suddenly or capriciously.

In my administration, a national economic policy will be established and we will begin to implement it, within the first 90 days.

Thus, I envision a strategy encompassing many elements—none of which can do the job alone, but all of which together can get it done. This strategy depends for its success more than anything else on the will of the people to regain control of their government.

It depends on the capacity of the American people for work, their willingness to do the job, their energy and their imagination.

This strategy of economic growth includes the growth that will come from the cooperation of business and labor based on their knowledge that government policy is directed toward jobs, toward opportunity, toward growth.

We are not talking here about some static, lifeless econometric model—we are talking about the greatest productive economy in human history, an economy that is historically revitalized not by government but by people free of government interference, needless regulations, crippling inflation, high taxes and unemployment.

Does Mr. Carter really believe that the American people are not capable of rebuilding our economy? If he does, that is even one more reason—along with his record—that he should not be President.

When such a strategy is put into practice, our national defense needs can be met because the productive capacity of the American people will provide the revenues needed to do what must be done.

All of this demands a vision. It demands looking at government and the economy as they exist, not as words on paper, but as institutions guided by our will and knowledge toward growth, restraint, and effective action.

When Mr. Carter first took office, he had sufficient budget flexibility to achieve these goals. But he threw away the opportunity to generate new economic growth and strengthen national security. Now the damage to the economy by his misguided policies will make the achievement of these crucial objectives far more difficult.

Nevertheless, this nation cannot afford to back away from any of these goals. We cannot allow tax burdens to continue to rise inordinately, inflation to take a stronger hold, or allow our defenses to deteriorate further—without severe consequences.

This task is going to be difficult but our goals are optimistic—as they should be. Success is going to take time, as well as work.

There is only one phrase to describe the last three years and eight months. It has been an American tragedy.

It isn't only that Mr. Carter has increased federal spending by 58 percent in four years, or that taxes in his 1981 budget are double what they were in 1976, the equivalent of a tax increase on an average family of four of more than $5,000.

The tragedy lies as much in what Mr. Carter has failed to do as in what he has done.

He has failed to lead.

Mr. Carter had a chance to govern effectively. He had a sound economic base with an inflation rate of 4.8 percent when he took office.

But he failed. His failure is rooted in his view of government, in his view of the American people.

Yet he wants this dismal view to prevail for four more years.

The time has come for the American people to reclaim their dream. Things don't have to be this way. We can change them. We must change them. Mr. Carter's American tragedy must and can be transcended by the spirit of the American people, working together.

Let's get America working again.

The time is now.

Mr. BAKER. Mr. President, I yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business not to extend beyond 10 minutes and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DEATH OF FORMER REPRESENTATIVE WILLIAM M. COLMER OF MISSISSIPPI

Mr. STENNIS. Mr. President, I am saddened to announce that former Representative William Colmer of Mississippi, who was Chairman of the Rules Committee in the House of Representatives for 10 years where he served a total of 40 years as a Representative from the Gulf Coast District of Mississippi, passed away last night. I know that some Members of the present Senate, knew him personally and all who knew him respected him greatly.

I valued him greatly as a lifelong friend and a highly valuable counselor. He helped me greatly when I came to the Senate and in the years that followed as a counselor and friend.

I mourn the passing of this fine man, and I extend my sympathies to his wonderful wife and all other members of his family.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. RANDOLPH. Mr. President, I add to the thoughtful tribute of our colleague as to the friendship he had with Bill Colmer. It was my privilege to serve with Representative Colmer. We came to the House of Representatives in 1933 as Members of the 73d Congress. During 14 years we labored together. Bill continued his long and excellent career but we kept in touch with each other. He was a truly remarkable legislator with a commitment to service. I thank the Senator from Mississippi for permitting me to join in remembering the passing of this good man.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there morning business? If not, morning business is closed.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 7590, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7590) making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. What is the time situation under the order?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Rhode Island (Mr. Chafee) is to be recognized to call up an amendment on which there shall be 2 hours of debate.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged against either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the Senator from Rhode Island (Mr. Chafee) is recognized to call up an amendment on which there shall be 2 hours debate.

UP AMENDMENT NO. 1568

(Purpose: To delete funds for the Tennessee-Tombigbee Waterway project)

Mr. CHAFEE. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. Chafee), for himself, Mr. Culver, Mr. Durenberger, Mr. Eagleton, Mr. Nelson, Mr. Percy, Mr. Proxmire, and Mr. Simpson proposes an unprinted amendment numbered 1568.

On page 15, line 10, delete "$1,534,703,000, to remain available until expended:" and insert in lieu thereof the following: "$1,334,703,000, to remain available until expended, provided that no funds shall be available for work on the Tennessee-Tombigbee Waterway, Alabama and Mississippi, north of Columbus Lock and Dam, Mississippi:"

Mr. CHAFEE. Mr. President, the amendment I have introduced today will eliminate $200 million from the requested funding for the Tennessee-Tombigbee Waterway project for fiscal year 1981.

When we in the Senate are trying hard to hold the line on spending and act in a fiscally responsible manner, it is unconscionable to continue funding a $3 billion project that may never fulfill its proposed benefits.

Mr. President, I think we ought to put in focus the size of this project. I do not think people understand how big it is. This Tennessee-Tombigbee Waterway project is going to move more earth than was moved in the construction of the Panama Canal. Do not let anybody think it is just a little canal we are digging here. This thing is 232 miles long. In addition, there is a further 217 miles that goes from Demopolis, Ala., south to Mobile which we will consider in the course of this discussion.

Mr. President, this project is very interesting. It reminds me of the cartoon in the New Yorker magazine at the time we were debating the Panama Canal Treaty. The cartoon shows a man leaning against the bar confiding to the bartender: "I didn't think of the Panama Canal for 40 years and now I can't live without it."

Here is this project which suddenly has assumed some importance on behalf of those who espouse it, yet it is astonishing to me that rarely has a Senator in this Chamber been down to visit the project.

I took the trouble last Sunday to go down—it can be done in a day to go down and visit it—to see what it is. Nothing beats an onsite inspection. So I went down, Mr. President, last weekend, last Sunday. I must say, it was very warm down there. I flew from New York to Atlanta, spent the night in Atlanta; went over to Birmingham; from Birmingham up to Savannah, Tenn.; and then we flew in a helicopter along the canal and terminated at Columbus. Then we got in a fixed-wing aircraft and flew the length down to Demopolis and from Demopolis down to Mobile. So I think I have a pretty good concept of what this is all about.

Mr. President, I am convinced—and so are my cosponsors—that this project simply does not make sense for the country until two critically important questions are answered. What is the ultimate price tag of it? What are its real benefits?

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. CHAFEE. I would like to, if I might, continue my presentation, unless the Senator feels there is something very important he wishes to get into at this point.

Mr. JOHNSTON. I was just going to answer the questions.

Mr. CHAFEE. Well, the Senator will have plenty of time.

I am deeply concerned, Mr. President, that the Senate is being asked to spend $208 million on only the first portion of a project which ultimately will cost $3 billion and probably more. The commitment of this money we are making today, if we make it, will lock us into yearly appropriations in excess of $200 million for each of the remaining years of the 1980's.

My conclusion that this is a $3 billion project whose scope is twice that originally authorized is based on the official documents provided this Congress by the Corps of Engineers, which is currently constructing the project.

First, let me say that I join in the highest esteem in which the Corps of Engineers is held by all in this Chamber. I read with some interest the Senate hearings before the Committee on Appropriations in which high tribute was paid to General Morris and that is deservedly so. I know General Morris' associate, General Ellis. He was good enough to come with me last Sunday. We spent an excellent day with General Ellis and Colonel Ryan. They are all top notch. They are doing their job and they are doing it in an absolutely outstanding fashion.

So whatever we say today on the floor of this Senate in criticism of this project is not criticism of the Corps of Engineers, which is one of the great prides of the U.S. military services, and justifiably so.

Budget data submitted by the corps during January this year shows quite clearly that the Tenn-Tom consists of an "initial" project with a price tag of $1.9 billion and an "ultimate" project with a price tag of over $3 billion.

According to the corps figures, about $868 million has already been spent, less than half of the cost of the initial project and less than one-third the cost of the ultimate project. We will hear bandied about on the floor of the Senate today, and I heard it last evening, that 70 percent of the funds have already been committed, do not stop now.

I do not know whoever came up with that 70 percent figure because in the testimony before the Committee on Appropriations, if one looks in that material, on page 7, General Morris testified:

> At this point in time we have actually spent on this project $805 million. We have obligated $867 million through July 31, 1980.

I do not know how you can have any more current figure than that. Then he goes on to talk about the remaining cost-benefit ratio, and so forth.

Mr. JOHNSTON. Mr. President, I hate to interrupt the Senator, but this is important. Will the Senator agree that General Morris pointed out that the dunk cost is approximately $997 million?

Mr. CHAFEE. I will agree that General Morris goes on to talk about what he believes will be the cost to terminate the contracts and he then gets into speculation as to how much the land could be sold for if the project were terminated. But I am talking about the sums that are obligated and the sums that have actually been spent.

Let us take the obligated sums. Based on the $2 billion cost of the project, 43 percent is obligated, and based on the $3 billion cost of the ultimate project, and we all know that that is what is going to come—I know that the distinguished chairman of the subcommittee talks, on page 3 of that hearing, about, "I don't expect that" the ultimate project "will be done under the present recalcitrance" of the Senate in approving water projects.

Well, I do not share his views on the present recalcitrance of the Senate on water projects. Yesterday we accepted another mammoth water project in West Virginia for, I think, a price tag of $284 million. So I have not seen any recalcitrance on the part of the U.S. Senate or the Appropriations Committee when it comes to dealing with water projects.

If you take the $3 billion open cost, the amount that has been obligated is 29 percent. Let us not have any figures bandied about about 70 percent.

With the initial waterway project totaling 232 miles and the cost of that being $1.9 billion, Tenn-Tom turns out to be $9 million a mile, or $5,000 a yard. When initially proposed in 1946, the Tenn-Tom project's estimated cost was $120 million. In 1970 it tripled to $323 million. In 1979 it became an astounding $1.9 billion. This year the cost the corps estimates, the ultimate cost—I know there will be debate over the ultimate cost—will be $3 billion.

The initial project estimated to cost $2 billion would link the Tennessee River to Demopolis via the Tombigbee River. Barge traffic using this part of the project would still face a 217 mile journey down the river to the Port of Mobile before the vast majority of project benefits could be achieved. The problem is that the portion of the river south of Demopolis, the Tombigbee, is very convoluted. It has been aptly called more crooked than a barrel of snakes. I urge everybody to go down and take a look at it, fly over it.

I have placed on everyone's desk some photographs. This is with the material I submitted dealing with the editorials from a whole series of newspapers.

Here is a critical editorial of the project by the Atlanta Constitution. There is one here from the Raleigh News Observer. It is a whole series of crucial editorials, including one from the Fort Myers, Fla., News Press.

With that material, in the back I have attached some pictures of the lower Tombigbee, that is, pictures of the Tombigbee from Demopolis south. These are from the Corps of Engineers, with their projected canal cutoffs. That is, the cutoffs across the loops of the convoluted Tombigbee. I would urge everybody to take a look at these so they get a pretty good idea of what a really twisting, winding river that is.

This brings us to the ultimate project. In order to accommodate better the traffic which the corps predicts will develop on the project north of Demopolis, the corps has indicated it will need to spend over $500 million to straighten out the river south of Demopolis, and another $500 million on the expansion of two locks which lie on that part of the river. Thus, the ultimate project, which includes this work on the Tombigbee River between Demopolis and Mobile going south, in addition to the work between Demopolis north to the Tennessee, will total in excess of $3 billion.

Not all of these costs are meant to be incurred by the Federal Government. In fact, the local share is presently $165 million for bridges and other relocations. I saw those relocations, not only of highways but of the railroad.

But as of 1979, local sponsors in Mississippi and Alabama had together committed only $23 million to the project, and the Federal Government had spent $100 million of its money on the States' local share. This is what you call winning both ways.

The astounding cost of the Tenn-Tom brings me squarely to the second essential question: Will this project produce any significant benefits? I doubt it.

Fully 90 percent of the Tenn-Tom benefits are based on savings to barge traffic predicted to use the completed project. No one is suggesting that the project will produce hydropower. No one is suggesting it is going to be used for flood control. Less than 10 percent of its benefits are based on area redevelopment. It is therefore vital that the navigation benefit projections are accurate;

in other words, that the predictions are right.

I have reviewed many of these navigation benefit claims and have been astounded by what I have learned. It would appear that a very significant part of these navigation benefits are based squarely on companies that do not exist or on movements that will not take place.

For example, fully 60 percent of the initial year navigation benefits are based upon predicted coal movements. Yet, nearly half of those movements are impossible because they are based on nonexistent companies, nonexistent coal mines, or nonexistent coal traffic.

An interview in the St. Petersburg Times with spokesmen of the companies involved reported that the corps projects that the Gulf Power Co. will ship nearly 3 million tons of coal from Harriman, Tenn., and Shawneetown, Ill., to power plants in Florida during 1987, the project's first year of operation. However, officials of Gulf Power say they will ship no coal whatsoever on the waterway.

It has also been reported that the corps estimates the Kentucky Energy Development Corp. will ship 2.4 million tons of coal via the Tenn-Tom. However, Kentucky Energy Development Corp. is out of business and the coal mine relied upon by the corps has never been in existence.

The corps also lists Hawley Fuel Co. of New York as a coal shipper to the tune of 1.5 million tons a year. However, Hawley Fuel owns no mines anywhere in Alabama. It has no plans to use the waterway. We called up Hawley Fuel yesterday to check and that was the answer they gave us.

In addition to these major economic questions about the Tenn-Tom project, grave environmental problems have been raised by this waterway. Thousands of acres of wetland have already been destroyed, and I think it is extremely sad that that has taken place.

That is where the spoil disposal from the waterway is dumped, in the wetlands, thereby ruining fertile lands that previously supported precious animal and plant life.

Mr. President, if there is one thing we have learned in Congress over the years, it is the importance of wetlands. Yet they are being destroyed at a prodigious rate for the transportation of the spoil.

All the damage has not been done and we ask, How are you going to keep the lower part of the river open, particularly when you make these cut-throughs? The Corps of Engineers will have dredges with which they will be dumping the soil out of the bottom of the river and dumping it again on the wetlands. Mr. President, let us stop it before more damage is done.

In addition, the water quality of the river has been degraded from the runoff from dredging. In the area between Demopolis and Mobile, the river's twists and turns will be cut off in 44 different places. I am talking now about the lower part of the river—44 cutoffs creating oxbow sections—that is, the part of the river that is cut off becomes stagnant, killing the river life such as fish and freshwater mussels.

There are other problems with the river as well, Mr. President. First, there is the question whether the Tenn-Tom will provide significant benefits by acting as a cheap method for transporting massive amounts of coal. Indeed, project sponsors have recently asserted that the project is essential to prevent us from suffering from "cold, darkness, and deprivation." Yet it has been reported in Coal Week magazine that if the projections are accurate, all of the recoverable coal in southern Tennessee will be exhausted within the first one-third of the project's 50-year life.

In other words, in projects like this, they take a 50-year useful life in order to work out the cost-benefit ratio. But Coal Week magazine says if they have the movements of coal that they predict on this waterway, that would exhaust all the coal supplies in southern Tennessee in about 16 years.

Although the Corps of Engineers estimates the waterway will carry 18 million tons of coal in 1986, its initial year, it has been reported that a draft study by the Department of Transportation and the Department of Energy reveals that the Tenn-Tom is expected to carry only 2 million tons by 1990.

Second, there is the question of whether the Tenn-Tom will provide dramatic economic stimulus to the States of Mississippi and Alabama, through which it will operate. One expert on the local economic impact of waterways testified at hearings before a subcommittee chaired by Senator MOYNIHAN in July that the area directly affected by the project simply lacks the economic resources necessary to support any dramatic economic growth.

In view of all these unresolved problems with the Tenn-Tom project, we should not irresponsibly commit over $200 million a year for the next decade to a project that has been so seriously questioned on so many grounds. We are talking about spending $3 billion on the biggest water project in this country's history.

Mr. President, the funds consumed by this project represent one-seventh of the amount that the Corps of Engineers is spending this year. One-seventh of all the money we are spending all over the Nation on construction by the Corps of Engineers is being dumped into this project. As I say, we are talking about $3 billion on the biggest water project in this country's history, in which the Corps of Engineers is moving more dirt than was necessary to dig the Panama Canal.

At a time when inflation and excessive Government spending are the issues most on the minds of the American people, the Tenn-Tom is a symbol of wasteful spending on a superfluous water project. The distinguished junior Senator from New York, who now chairs the Subcommittee on Water Resources of the Committee on Environment and Public Works, has termed this project, with much justification, "the cloning of the Mississippi." In it the corps attempts to improve on nature by constructing a narrow, shallow, lock-filled barge canal which parallels that mighty river on its path to the gulf.

Surely, there are better ways to improve the transportation system of this country. Suspension of project funding now would allow the Congress to commission the General Accounting Office to conduct a thorough review of the true benefits and the true costs of this project before we irrevocably commit billions of dollars to a scheme that could very well prove worthless. Equally important, such an action would signal that the Senate of the United States is finished with the excesses of projects such as this.

At oversight hearings held in July by Senator MOYNIHAN, the testimony demonstrated that many economic experts are convinced the Tenn-Tom is a loser. Two respected economists—one from Pennsylvania State University, Joseph L. Carroll, and the other from the University of Wisconsin, Robert H. Haveman—have stated that the project would be fortunate to return 20 cents on the dollar. The corps itself conceded that its benefit/cost projections for such projects as this are frequently inaccurate.

One cause for the inaccuracy of the corps benefit/cost projection is the fact that the corps uses the obsolete 3¼ percent interest rate in its justification.

Mr. President, I must say, the chairman of the Subcommittee on Appropriations must be dazzled by that figure. I wonder if anyone could go out and borrow money at 3¼ percent. That is a splendid rate. Actually, what it is costing the U.S. Government to raise that money is 7⅛ percent. So we figure, on this project, 3¼ percent. Yet the actual interest rate currently is 7⅛ and is going to be more. If either of the distinguished floor leaders of this measure knows where any money can be obtained at 3¼ percent, I do wish they would enlighten the rest of us.

It is high time that this costly project was given a thorough and accurate assessment by Congress. Some will suggest that this matter has been settled by the courts. That is not accurate. The matter that went before courts and has been decided is the question of the congressional authorization. The answer to that is that the court did not decide it on the merits, they decided that the claim had been brought too late—the old doctrine of laches.

Until Congress and the GAO answer the serious questions about the project, funding should be halted.

Let us not be diverted by those who say too much money—and we are going to hear this a lot today, Mr. President and Members of the Senate—that so much money has been spent that it would be foolish to stop. That is a shopworn shibboleth that has been used to justify many a questionable project, time after time. And it is not only on water projects. I was familiar with it in the past when we would get into shipbuilding contracts: It is too late to stop, so much money has been spent.

Mr. President, let us not be beguiled by that. Even if this project were completely halted now, less than 30 percent of the ultimate cost—and that is what we are talking about, the ultimate cost—would have been spent. So I urge my colleagues to support this amendment.

I reserve the remainder of my time, Mr. President.

Mr. JOHNSTON. Mr. President, I yield myself 5 minutes.

Mr. President, none is so blind as he who will not see; none is so deaf as he who will not hear; and none can be so ignorant as he who will not read.

Mr. President, we keep getting facts, at least paraded under the guise of facts—about Tennessee-Tombigbee which are just not true and which have been destroyed time and time again. Let me, if I may, deal with those dispassionately and clearly, because they have been established and they have been put in writing in the reports and documents which are furnished to each Senator.

We are told, Mr. President, that this is a $3 billion project. Mr. President, that is plainly wrong. That is not factual. It has no basis in fact. In fact, we were told this morning that the project has a first-phase cost of $1.9 billion. That is just not true, Mr. President. It is not true.

The facts are that this project will cost $1,760,000,000, Federal cost, which for the first time includes a $100 million estimated inflation rate—estimated inflation increment—between now and completion, which everybody, I think, concedes is a reasonable estimate. One billion seven hundred sixty million dollars. Not $1.9 billion, not $3 billion, but $1,760,000,000, Federal cost by the Corps of Engineers.

Now, that gives the complete project, 282 miles long, which connects up with the existing Black Warrior Tombigbee navigation project, which there is a capacity of handling barge tows six in number, and, in fact, is presently handling barge tows from time to time six in number.

That is what is authorized. That is what is going to be built. That is what is planned.

If this Congress wanted to build another new, different, incremental project involving improvements to the existing Demopolis-to-Mobile waterway, and if they wanted to authorize a $3 billion project, the first step would be to put in a bill and bring it up before the committee of the distinguished Senator from Rhode Island where it would have to be voted on. Then if it was voted in both Houses, voted on the floor and signed by the President, then, and only then, would the project be authorized.

Mr. President, it is like saying that because we vote for one bill, we must, therefore, necessarily, be for another bill of new and different and incrementally increased bills.

This is a $1.76 billion Federal project, and it is not larger. I hope we can establish that fact, Mr. President, because those are the facts. Anything to the contrary is wrong.

Would the Congress, under any circumstances, come in and expand this project with a new bill, a new authorization, a new vote of Congress? I, frankly, do not think so.

That was the sense in which I said that the Congress was recalcitrant in water projects. After all it has been 6 years since Congress passed a major authorization bill for construction of water projects.

However, Mr. President, if in the late 1980's or early 1990's this project is so successful, the need to export steam coal, which was not included in this cost-benefit ratio, if that need were so manifest, the traffic so crowded, then, and only then, might the Congress, in my judgment, want to take another look.

But at this point, Mr. President, it is not contemplated under this authorization. It is not authorized, and before it would be authorized it would have to go before the committee on which the distinguished Senator from Rhode Island and other critics of this project serve.

Mr. President, I will say a word about the cost because this again, is facts.

The Senator was correct in what he read. He just did not read it all.

The ACTING PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Mr. JOHNSTON. Two additional minutes.

There are some $867 million obligated. Termination costs, Mr. President, are estimated at $130 million. That is from the Corps of Engineers, based not upon some fanciful, arbitrary figures out of the air, but based on the experience of the Corps of Engineers, which transcends almost 2 centuries, and an experience which, as the distingiushed Senator from Rhode Island pointed out, the Corps of Engineers enjoys a very high reputation in engineering circles.

So, $867 million obligated, $130 million minimum termination cost, which is a total sunk cost of $997 million. Those sums exclude approximately $130 million sunk by the States in bridge relocations.

Now, the land which was purchased at $45 million, in the opinion of the Chief Engineers could be sold for about $30 million. The reason for the decreased amount of cost are about three in number. First of all, most of the digging has been done. We have huge amounts of dirt that has been moved, right-of-way dug, trees cleared, timber which has been removed, which, in itself, had great value.

More than that, the Government would have to sell it under distressed conditions.

While they bought it, going to Federal court on individual bargaining bases, they would have to sell it in lump, under distressed conditions.

In any event, in the opinion of the Corps, we could sell it for $30 million. So that gives an overall sunk cost, in the opinion of the Chief Engineer, of $967 million which, if we stop work today, would be the investment of the Federal Government, against a project which is slated to cost $1,760 million, which is about 60 percent.

The Senator from Louisiana has never said that there were 70 percent sunk costs. The 70 percent figure would represent the total amount of contracts entered into and there could be some savings on those contracts. So I would quite agree with the Senator from Rhode Island that there is not 70 percent sunk.

There is about whatever $967 million represents as a percentage of $1,760 million, and I think that is about 62 percent. That is the sunk cost in this project which we would not be able to recoup.

Indeed, the Chief Engineer said that if we walked away from this project, simply planting the grass, replanting the trees, and trying to erase as much environmental damage as an uncompleted project would require, he said that the percentage of benefits remaining would be "virtually nil."

The ACTING PRESIDENT pro tempore. The Senator's 2 minutes have expired.

Mr. JOHNSTON. One more word, Mr. President, before I yield the floor.

I want to talk about the cost-benefit ratio. Cost-benefit ratio is the most misunderstood concept on the floor of the Senate, and the competition for that award is very keen.

Mr. President, the 3¼-percent cost-benefit ratio, set by law the percent or discount rate used on the cost-benefit ratio, was not unrealistic when used. What the 3¼ percent represents is supposed to be the real cost of money, the real interest rate.

That is the incremental which a person gets over and above inflation for the use of his money. Inflation is a neutral thing and it is supposed to affect both benefits and costs.

So, in formulating, years ago, the cost-benefit ratio, the corps, on the advice of economists, came up with a real cost of money at 3¼ percent, and under their methods they keep benefits neutral with respect to inflation.

That is, those benefits, whether they be a rate on the transportation of goods or the value of a home protected from flood damage, or any other kind of benefit, that cost is fixed as of the time of the completion of the project and does not inflate, and contrarywise, the costs themselves are not inflated because they are fixed.

So, in that context, 3¼ percent is a very realistic rate of interest because it represents real interest and is neutral with respect to inflation.

When we use the 7⅛-percent rate, used for current planning, some would say that, also, is unrealistic because the cost of money, actually the cost of money to the Government, is slightly higher. But, in any event, it is unrealistically conservative because we do not use, we do not inflate, the benefits.

So that instead of inflating benefits at 7⅛ percent, we keep the costs where they are at the time that the project is completed, whereas the cost of money continues to be calculated at 7⅛ percent.

So, Mr. President, what we really ought to do is, in my judgment, get a cost-benefit ratio employing whatever percentage rates we want, it really does not matter, so long as we inflate both benefits and costs on the same basis.

As a matter of fact, on this particular project, benefits have increased greater than costs. Using the same interest rates, the corps recalculated, and using the same facts and figures the corps recalculated, the cost-benefit ratio of this project last year.

The ACTING PRESIDENT pro tempore. The Senator's 2 additional minutes have expired.

Mr. JOHNSTON. I yield myself 1 additional minute.

They found that the cost-benefit ratio had increased by 0.3 percent, simply because of the effect of escalating benefits as opposed to costs.

Mr. President, the cost-benefit ratio of this project right now, using the original assumptions, is 7.8. Using a 7⅛-percent interest rate, the remaining benefits to remaining costs give you a 4 to 1 cost-benefit ratio. Using the overall costs plus future costs, it is 1.3. So, if you use the original assumptions, there is a 7.8 to 1 cost-benefit ratio, or 4 to 1 at 7⅛ percent.

Mr. President, for this Congress, $1 billion into a project which has a remaining benefit-cost ratio of somewhere between 4 and almost 8 to 1, to terminate that project and walk away and say, "We made a mistake," would be the height of silliness.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. I yield the floor, and I reserve the remainder of my time.

Mr. COCHRAN. Mr. President, is the time equally divided between the Senator from Louisiana and the Senator from Rhode Island?

The PRESIDING OFFICER. That is correct.

Mr. COCHRAN. Will the Senator yield me 5 minutes?

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Mississippi.

Mr. COCHRAN. I thank the Senator.

Mr. President, we must not overlook the importance of this waterway to the development of the full potential of this Nation's transportation system and its capacity to handle commodities that must be moved in domestic and foreign commerce if our economy is to continue to grow.

The Tennessee-Tombigbee Waterway will be of particular benefit to American agriculture. Its completion will provide a vital link in the system of waterways and ports that now serve mid-America. This system, without question is one of the major factors contributing to American agriculture's rise to its present position of dominance in world trade in agricultural products.

American agriculture has enjoyed a phenomenal growth rate in exports over the last two decades. We have had a positive trade balance in agriculture every year since 1960. This year, food and fiber exports will total nearly $40 billion—a $20 billion net surplus.

The large trade surpluses in the agricultural sector since 1972 have helped keep our overall trade balance somewhat manageable in the face of sharp increases in automobile and petroleum imports.

I mention this in order to put into context the relationship between an efficient transportation system and our ability to meet the potential for future exports from our agricultural sector.

We had hearings last year in our Agriculture Committee. One of the witnesses, Mr. Thomas Saylor, Associate Administrator of the Foreign Agriculture Service in USDA, gave his assessment of how the United States was able to meet foreign market needs, as compared with other countries which compete with us for export dollars in the sale of agricultural commodities around the world. He had this to say:

> While world demand has grown very rapidly, the United Sttes has been in a unique position to capitalize on a major share of that growth. While production in the United States was up 45 percent, exports increased 300 percent. Other major exporters, such as Canada, Australia, and Argentina, increased production only 20 percent and exports by only 45 percent. I think one of the factors that has been very important in terms of the U.S. capability to respond to the increased demand abroad has been the fact that there has been investment in our marketing system.

In other words, Mr. President, until now, we have had the capability to move our products from the farm to the international markets, and this has set us apart and made us different from Canada, Australia, Argentina, Brazil, and others who compete with us.

It is because of ths system of inland waterways, of ports, together with our railroad and highway systems, that we have attained this unique position.

What are we going to do for the future? Are we going to stop this investment? We should not.

Every indicator points to continued growth in the demand for U.S. agricultural production. World population is expected to total 6.5 billion by the end of this century. This is an increase of over 50 percent in only 20 years. When this increase in population is combined with projected improvements in per capita income around the world, demand for food will outstrip the ability of many nations to provide it. This means that the demand for U.S. food and fiber production will continue to increase.

Chase Econometric Associates took a look at the potential demand for grain and soybean exports by the year 2000 based on expected increases in population and income in the world. They concluded that wheat exports would increase about 70 percent, corn over 50 percent and soybeans over 45 percent.

Mr. President, in light of this tremendous increase in demand for our agricultural production in world markets, we must insure that our transportation system is capable of meeting the resulting burdens. If we are to provide the farmers in America's heartland access to world markets for their corn, soybeans, wheat, cotton, and other agricultural commodities, we must continue to invest in our transportation system—particularly the waterways that will provide the most efficient movement of bulk commodities.

A recent USDA report, titled "Transportation System's Capacity To Meet Grain Export Demand," concluded that heavy movement of grains and soybeans for export has aggravated the U.S. inland transportation network and that this network may be a limiting factor in meeting current grain export demand. Let me emphasize—to meet current grain export demand—to say nothing of the future demands which we already have identified.

This means that we are in trouble even before we complete the Tennessee-Tombigbee Waterway and add its capacity to our total transportation system. With the projected increase in volumes for agricultural trade by the year 2000, there is no doubt in my mind that the additional capacity associated with the Tennessee-Tombigbee Waterway is essential to the orderly development of export markets for our agricultural products.

Mr. President, if we support continued expansion of the export of agricultural commodities and the efficiency with which they move in commerce, then it is essential that the Tennessee-Tombigbee Waterway be completed on schedule.

Therefore, Mr. President, I urge my colleagues to support this effort to help meet the needs of American agriculture and to vote in opposition to this amendment, which, in effect, would kill the waterway.

Mr. CHAFEE. Mr. President, I ask for the yeas and nays on my amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Mr. President, I have listened to the two distinguished proponents of the waterway, and I must say that they do very well with a weak case.

The important point that should be examined here is not the figures that are used to work out the cost-benefit ratio but what goes into those figures.

Testimony was presented before the Committee on Environment and Public Works, in hearings held in July of this year, by Dr. Joseph L. Carroll, of Pennsylvania. He went into the question as to whether the information as to shipments that the Army Corps of Engineers relied on to come up with the total movements on the river was accurate. I should like to read from his testimony.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. BOREN). The Senator has 35 minutes and 28 seconds.

Mr. CHAFEE. Mr. President, I yield myself 5 minutes.

This is what Dr. Carroll says on page 6 of his testimony:

> Movements of large volumes of coal are absolutely essential to the economic justification of the TTW, accounting for over one-half of the tonnage and savings claimed by the Corps. There is an abundance of evidence, however, that very little if any of the coal traffic projected by Kearney and the Corps will materialize.

Kearney was the company who did this study for the Corps of Engineers and if Senators read the testimony that was before the Senate Appropriations Committee, they will see reference to the Kearney in the hearings frequently.

> For example, two "future" movements of coal to Alabama Power's Greene County plant near Demopolis account for over $20.6 million of the $86.6 million in average annual navigation benefits claimed in 1978. Projected by Kearney to commence in 1976 and 1977, these moves have never developed and are not likely to since the company plans on continuing to barge coal a short distance down the Warrior River to the plant. Furthermore, the savings claimed were significantly bloated by Kearney's use of a hypothetical barge rate for the Mississippi

River routing rather than the actual rate the shipper was paying. Also, Kearney's projected coal tonnage being shipped to the plant exceeded by a large amount the plant's existing and planned future coal-burning capability.

Movements of coal to two plants operated by Gulf States Power were also improperly included in the benefit base and account for $3.4 million in benefits. Savings for the movement of Ohio River coal to the company's plant at Pensacola are based on a hypothetical rate via the Mississippi River. If Kearney had used the actual rate the shipper was paying as required by law and Corps regulations, there would have been no savings. In the case of the plant at Panama City, all of coal requirements since 1976 have been met with South African coal under long-term contract.

What we are saying here today is let us go behind these figures and let us get the information out. I am not questioning what the Corps of Engineers says on the assumptions that they adopt. They adopt certain assumptions based on the studies that have been referred to here by the testimony of Dr. Carroll and then based on that they work out a cost-benefit ratio which comes out favorably; that is, if we do not pay any attention to the ultimate project which the distinguished Senator from Louisiana has told us to ignore.

I know and I think he must realize also that if this project is approved, we are not going in to be back in the Chamber with the ultimate project. I think we can see that. That is from Demopolis south to Mobile.

So, Mr. President, that is what we are asking in this amendment: Hold everything. Let us go behind the figures and see what is there. Now either the coal shipments are going to be made or the plants are there or they are not there, and if, for example, as Dr. Carroll charges that the Alabama powerplant at Greene County does not have the existing capacity nor do they have any plans in the future for the coal-burning capacity as alleged by the Kearney report, then that should be very clear. It is either yes or no, and let us find it out.

Mr. FORD. Mr. President, will the Senator yield?

Mr. CHAFEE. So that is what I suggest we are attempting to do in this amendment.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. CHAFEE. I have completed. I will yield now and reserve the remainder of my time.

Mr. FORD. It is a "yes" or "no" answer.

Mr. CHAFEE. I am glad to answer a question if the distinguished Senator has one.

Mr. FORD. I wish to ask a question. Did the doctor include in his report any reference to exports? Just answer "yes" or "no."

Mr. CHAFEE. Yes. I understand he does.

Mr. FORD. Does he take into consideration the Chase Manhattan recent outlook as relates to export of coal south to Latin American countries?

Mr. CHAFEE. In this testimony I believe he does not.

Mr. FORD. These are added facts that the Senator is not bringing before us. I think they are very important to the Tennessee-Tombigbee.

Mr. CHAFEE. That is fine. I will be delighted to hear all the facts. I think that is what we are trying to do here. I hope that we will go behind the projections that are made, that is, behind the figures that are assembled to arrive at the cost-benefit ratio and see if they are there.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CHAFEE. Mr. President, I yield myself 1 additional minute.

If it turns out that there are more exports of coal projected down this waterway to South America, fine. Let us hear them. If there are these large shipments of food as the distinguished junior Senator from Mississippi indicated as a potential, that is fine. But I think we should know, and that is what we are trying to find out here.

Mr. President, I reserve the remainder of my time.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, on the Kearney report, the A. T. Kearney Co. is an international company recognized for their integrity and for their ability throughout the world.

The Corps of Engineers says that their cost-benefit ratio information is the best obtainable.

Should we go behind all of the facts and figures? The corps would be glad to discuss individual movements, but they cannot as the opponents know because of a court order. The court rendered an order in this case that none of the individual movements could be discussed by either party, because to do so would be to reveal proprietary information.

As a matter of fact, the opponents led by the railroads did leak to the press and others many of these matters by individual shippers.

Suffice it to say that there has been more changes on the plus side of the cost-benefit ratio than there has been on the minus side.

With respect to Drs. Carroll and Haverman who said that this was not a good water project——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. JOHNSTON. Mr. President, I yield myself another 30 seconds.

Mr. President, that is the same pair who have always testified for the railroads, and they are always opposed to water projects. It is the same group who said that there would never be sufficient grain shipments that would materialize at Locks and Dam 26, and I can challenge you to go up and look at Locks and Dam 26 and the backlog right now. It is hard to get through Locks and Dam 26 without long waiting times.

In any event, the A. T. Kearney Co. and the cost-benefit ratio and the studies done by them are the best obtainable worldwide. They are conservative, and I challenge anyone to look at the Corps of Engineers and their record on cost-benefit ratios through the years. They have been conservative by a ratio of about 2½ to 1.

Mr. President, I yield 5 minutes to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. FORD. Mr. President, I thank the distinguished Senator from Louisiana for allowing me 5 minutes. I am not sure that is long enough; but I shall attempt to do the best I can within that period.

Mr. President, I hope the distinguished Senator from Rhode Island will understand where I come from and where those of us who are supporting Tennessee-Tombigbee come from. There is a vital reason why the funding levels for the Tennessee-Tombigbee waterway must not be reduced and that is because of the increased ability this project will give our country to transport coal at cheaper costs than it now can be moved.

Even though the United States has displayed a certain reluctance to do so, other industrialized countries are turning toward coal as one sure means of ending their dependence on the OPEC cartel. We joined with these countries at the Venice Economic Summit with a commitment to double world production and the use of coal in the 1990's.

Already, those nations are moving in that direction and many of them are looking to the United States to supply the coal to meet the increased demand. Indeed, U.S. steam coal exports soared during the first half of 1980, doubling foreign sales during the same period a year ago.

Mr. President, I wish to have printed in the RECORD at this time the U.S. Commerce Department coal and coke export data for July, which substantiates the point I am making, and I ask unanimous consent to have that material printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF COMMERCE—COAL AND COKE EXPORT DATA, JULY 1980

Destination	Volume (short tons)	F.A.S. value (U.S. dollars)
METALLURGICAL BITUMINOUS		
Canada	606. 212	35, 917, 171
Mexico	47, 834	2, 476, 685
Brazil	342, 923	19, 538, 281
Sweden	132, 450	6, 952, 424
Norway	5, 294	464, 184
United Kingdom	170, 352	9, 318, 677
Neitherlands	28, 227	1, 578, 861
Belgium	292, 418	13, 270, 673
France	317, 622	16, 544, 816
West Germany	203, 146	10, 840, 264
Spain	300, 863	14, 930, 213
Italy	528, 348	28, 330, 860
Albania	50, 559	2, 463, 189
Turkey	89, 777	4, 354, 214
South Korea	32, 967	1, 643, 342
Japan	1, 524, 560	87, 611, 466
Algeria	66, 557	3, 687, 573
Egypt	118, 346	6, 791, 474
Total (July 1980)	4, 858, 455	266, 714, 467
Total (July 1979)	4, 473, 255	245, 868, 613
Total (June 1980)	5, 903, 255	326, 000, 857
NONMETALLURGICAL BITUMINOUS		
Canada	1, 487, 958	59, 342, 364
Mexico	2, 209	113, 439
Chile	92, 593	3, 328, 834
Brazil	1	2, 656
Denmark	263, 923	10, 596, 623
United Kingdom	186, 133	7, 817, 691

Destination	Volume (short tons)	F.A.S. value (U.S. dollars)
Ireland	26, 451	1, 416, 470
Netherlands	211, 398	8, 882, 421
Belgium	136, 282	4, 979, 668
France	296, 957	10, 863, 876
West Germany	21, 285	1, 085, 535
Spain	70, 685	3, 543, 072
Italy	53, 064	1, 895, 736
Romania	74, 565	2, 656, 651
Taiwan	63, 419	2, 197, 190
Japan	126, 641	5, 833, 419
South Africa	160	6, 388
Total (July 1980)	3, 113, 724	124, 562, 033
Total (July 1980)	1, 775, 728	71, 605, 251
Total (June 1980)	2, 808, 026	111, 913, 455
Total Bituminous (7/80)	7, 972, 179	391, 276, 500
Total Bituminous (7/79)	6, 248, 983	317, 473, 864
Total Bituminous (6/80)	8, 711, 084	437, 914, 213
COKE (SUITABLE FOR FUEL)		
Canada	83, 202	3, 272, 030
Mexico	5, 829	765, 547
Guatemala	212	21, 036
Honduras	90	17, 999
Venezuela	21, 115	1, 688, 908
Belgium	20, 414	1, 103, 407
France	28, 006	1, 309, 299
Philippines	24, 456	954, 006
Australia	19	3, 515
Egypt	11, 552	1, 624, 418
Total (July 1980)	194, 895	10, 760, 165
Total (July 1979)	154, 929	8, 243, 525
Total (June 1980)	219, 437	12, 998, 006
COKE (NOT SUITABLE FOR FUEL)		
Canada	1, 435	195, 395
Mexico	2, 397	368, 329
Total (July 1980)	3, 932	563, 724
Total (July 1979)	6, 855	967, 194
Total (June 1980)	6, 214	930, 298
Total coke (July 1980)	198, 727	11, 323, 889
Total coke (July 1979)	161, 784	9, 210, 719
Total coke (June 1980)	225, 651	13, 928, 304

Mr. FORD. Mr. President, there are several reasons behind the increased demand for American coal. European and South American countries are converting to coal at a much faster rate than the United States. Meanwhile, coal industries in Europe and South America cannot keep pace with the increase in demand and, furthermore, the cost of domestic production for them usually is greater than the delivered cost of U.S. coal.

The United States already is the largest coal exporter in the world. With nearly one-third of all the world's recoverable coal reserves, this country can continue to be expected to furnish the lion's share of the coal that is needed worldwide.

Now, that is good news as far as I am concerned because every ton of coal we sell—we have been looking at the cost/benefit ratio, we have been looking at some of these things on paper. Let us look at the expanded view of it, if we may, because every ton of coal we sell to somebody else is one less barrel of oil the OPEC countries can use as a lever over the western world's economy.

Let us look at it on the international level, if you will, for a minute. The U.S. Department of Energy conservatively estimates that the export of steam coal for electrical generation could grow from 5 million tons to between 80 and 100 million tons annually by the end of the decade. Exports at this level could generate 38,000 new mining jobs and an additional 190,000 jobs in coal-mining communities. Think about this now, exports could generate 38,000 new mining jobs. Is that in the cost/benefit ratio and an additional 190,000 jobs in coal mining communities. That is 280,000 new jobs that we can direct at this export possibility.

An early study by an international advisory board from 16 different countries recommended that the world consumption of coal be tripled by the year 2000 to 7.5 billion tons.

The United States will never realize the full potential of these increased overseas export opportunities unless we begin now to substantially improve our inland transportation system and port handling facilities to accomodate this new commerce.

Mr. President, I would like to quote the junior Senator from New York (Mr. MOYNIHAN) as he spoke here yesterday afternoon. Maybe the distinguished Senator from Rhode Island was here to listen to him.

He said, and I quote from yesterday's RECORD:

> We shall press on because the Senator from Louisiana has made the point which needs to be repeated. We are not spending enough money on water resources. We are at the edge of disinvestment.

That is the distinguished Senator from New York. He continued:

> If we are serious about producing, consuming, and exporting coal, we have an extraordinary set of projects ahead of us in inland waterways and in harbor development.
>
> It is, in its efforts, in its enterprise, not that much smaller than the construction of the interstate highway program.

So what the Senator from New York was saying was that we ought to look at the waterways like an interstate highway system and use that type of effort as it relates to the transportation by water.

He goes on to explain:

> One cannot explain the pall that has settled over the enterprise of water resources development except by the regional imbalance, that plus the advent of environmental concerns of a kind that are legitimate, too.

So, Mr. President, if you look at what the distinguished Senator from New York says, he says we are not spending enough on waterways, yet we want to stop one of the most important waterways that we have developed.

Bottlenecks already exist on many waterways and at deepdraft terminals. Inadequate rail services and high rail transportation overload rates also have a negative impact on the ability of U.S. producers to compete with foreign suppliers of coal for even use in this country.

It is a sad commentary that some electric utilities can now purchase coal cheaper from Poland and Australia than from U.S. mines.

The Tenn-Tom Waterway will offer an efficient alternative transportation route for a region that has one-third of this country's coal reserves. It is estimated that Gulf ports will need to handle about one-third of all future coal exports, if we are to accommodate all of the coal that we are capable of exporting.

By using the Tenn-Tom, coal shipments from Kentucky, Tennessee, Ohio, Indiana, Illinois and other States will be able to save from 400 to 800 miles to travel. This will result in significant transportation savings for the movement of coal to southern points of export.

Waterways have been shown to be the most energy-efficient mode for transporting bulk commodities to market. One gallon of fuel will move a ton of commerce 514 miles by barge compared to 202 miles by rail and 90 miles by truck.

I have statements presented by various companies and organizations during the Public Works Committee's recent oversight hearings on the Tenn-Tom, attesting to the importance of this waterway as a major alternative route for shipping coal and at this point I would like to enter those statements in the RECORD.

I ask unanimous consent to have printed in the RECORD a statement from the West Kentucky Coal Operators Association; from a coal company that gives the reduction of the cost per ton of coal to be shipped as it relates to Tennessee-Tombigbee; a statement from the Port Authority of Lyon County, which is a very small county that shipped nearly three-quarters of a million tons of coal, and can increase their tonnage to 3 million tons in the next 3 or 4 years as a result of Tennessee-Tombigbee, and it will cut the cost nearly 300 ton miles for export. I also have other letters which I ask unanimous consent to have printed in the RECORD.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

WEST KENTUCKY COAL
OPERATORS' ASSOCIATION, INC.,
Madisonville, Ky., July 18, 1980.

To Whom it May Concern:

On behalf of the West Kentucky Coal Operators Association and coal operators all over Western Kentucky, I would like to express our positive position on the continued development of the Tennessee-Tom Bigby Water Ways Project.

As one must be aware, the least expensive way to transport massive amounts of coal is by barge. Millions of tons of coal are moved each year by barge from West Kentucky to ports and utilities. The access to these ports and utilities and the development of other ports were made possible through the Tom Bigby Project and other similar programs.

In this age of the energy problems with oil, this country has no alternative but to develop its coal resources which also must include adequate transportation; one of the best modes we feel is the barge.

I also feel that this development must be continued because we need and are using the system now. Future coal markets are expanding now and will reach a production scale that this industry has never experienced before. Utilities that are presently burning oil are being required to change to coal, opening new markets to the Southeast. These new markets must have access to water transportation in order to serve their needs better at the least expense. There are also many new markets from over seas being developed that we in the coal fields will need again to use adequate water ways to service these markets.

In summary, we again request that this project be continued without delay. This will not only help our economy as well as the country's, but will also make us more energy independent, and help put our national security in a better position.

Yours Very Truly,

JAMES T. LUDWICZAK,
Chairman of the Board.

PORT AUTHORITY OF LYON COUNTY,
Eddyville, Ky., July 25, 1980.

To Whom It May Concern:

The Kentucky Port and River Commission authorized the construction of Port of Lyon County in 1976, based primarily on the fact that it is within a 50 mile radius of 75% of Western Kentucky coal, and only one lock must be traversed to reach the Tennessee-Tombigbee Waterway.

The port, with an investment of over two million dollars, is presently shipping nearly ¾ million tons of coal per year.

Projections show this will increase to 3 million tons per year by 1984.

Much of this tonnage will go to southern utilities and the export market, via the Ohio and Mississippi rivers.

With the opening of the Tennessee-Tombigbee Waterway, our transportation cost will be cut nearly 300 ton-miles for export, and open many other inland southern markets not now being served efficiently.

We sincerely believe the Tennessee-Tombigbee Waterway will provide a vital link in the coal transportation system of our nation and the world.

CHARLES L. BACCUS,
Chairman.

G&W NATURAL RESOURCES GROUP,
July 21, 1980.

(Statement for the Honorable DANIEL P. MOYNIHAN, Chairman of Water Resources Subcommittee of the Senate Committee on Environment and Public Works)

Mr. Chairman, I am Vice President of the Natural Resources Group of Gulf & Western Industries, Inc. My company is headquartered in Nashville, Tennessee, and is in the business of producing and shipping cement, zinc, chemicals and coal products throughout the nation and the world.

We are very supportive of the early completion of the Tennessee-Tombigbee Waterway, and plan to utilize its low cost transportation facilities when the waterway is completed.

My company presently receives about 20,000 tons per year of zinc concentrate and upgraded ilmenite ore from Gulf ports to Clarksville, Tennessee and Ashtabula, Ohio. Without the Tenn-Tom, this tonnage will be transported by rail or barge at a higher cost.

These movements were not known in 1975, and therefore, these transportation savings have not been included in the benefits now estimated for the waterway by the Corps of Engineers.

This is only one example of the transportation benefits offered by the Tenn-Tom. Our business, as well as others, is greatly dependent upon future economic and market conditions, therefore, it is somewhat difficult to precisely predict the full extent of our use of the Tenn-Tom, some six years away from its completion. Nevertheless, we do know that the Tenn-Tom will be of significant benefit to my company and others in mid-America for shipping bulk type commodities. It will, undoubtedly, become a vital link in our national transportation system.

Thank you for the opportunity of presenting this statement in support of the Tennessee-Tombigbee Waterway.

PETER E. RUMSEY,
Vice President—Distribution.

KOPPERS COMPANY, INC.,
Pittsburgh, Pa., July 22, 1980.

Subject: Tennessee-Tombigbee Waterway.
Mr. GLOVER WILKINS,
c/o the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

DEAR MR. WILKINS: Completion of the subject should open up opportunities for Koppers and others to export coal from East Tennessee through the port of Mobile. With the growing world market for coal, the limited capacity of ports on the east coast to handle coal, and high freight costs in moving it in other directions for export, we believe the completion of the waterway will be an asset toward this end.

Very truly yours,

B. OTTO WHEELEY,
Board Chairman.

ARCH MINERAL CORP.,
St. Louis, Mo., July 21, 1980.

To Whom It May Concern:

Arch Mineral Corporation strongly believes in the importance of economic development and growth for the United States. Arch also strongly believes in supporting the maintenance of high environmental standards.

One of the most important economic development projects under construction in our country is the Tennessee-Tombigbee Navigation Project. In addition to the importance of this project to the south central United States, this project is of great importance to our entire nation. We are convinced that the opening of this vital new artery will allow the economic movement of millions of tons of coal from the coal fields of Ohio, Kentucky, West Virginia, Tennessee, Illinois to the Gulf of Mexico. It is crystal clear to those in the energy business that there is a very large export market of coal developing in Europe. The completion of the Tennessee-Tombigbee Navigation Project will allow this coal to be transported from mine to ocean-going port for further shipment to Europe at a deliverable price that will be competitive with coal from Australia and South Africa.

This project must be fully funded to be completed on schedule in 1985. We need it today.

Without the economic savings afforded by this navigation project, the costs of transportation might not allow American coal to compete in the European market. We are in a position to assist European nations to attain a much greater independence of the Middle Eastern oil producers. At the same time we will be creating new jobs in our country, contributing toward a balance of trade.

Sincerely,

LEE MCKINNEY,
Assistant to the President.

HARBERT CONSTRUCTION CORP.
July 23, 1980.

To Bill Satterfield.
From Les Hudgins.
Re Tenn-Tom Waterway.

There has been a fairly recent development in the export coal market which I do not believe could have been considered in the original cost-benefit study of the Tenn-Tom Waterway.

Prior to 1979, practically 100 percent of the coal exported from US Atlantic and Gulf ports was metallurgical grade coking coal. In late 1978 and in 1979 power generating plants in Western European and some far Eastern countries began converting from petroleum fuels to coal and began planning and building new units to burn coal due to the ever increasing prices of OPEC fuels. Apparently, these conversions and new facilities are coming on stream at a rapid pace because for the most part foreign power producers are not encumbered with multitudes of environmental and other delaying rules and regulations as U.S. producers are.

The preponderence of Harbert coal reserves are of the best steam coal grades. Harbert has invested millions of dollars in new equipment which will increase production in excess of two million tons over last year's production of 6.5 million tons. Therefore, Harbert expects to gain its market share of export steam coal provided it can compete with other producers in one of the most vital cost factors—inland transportation cost and services.

Unfortunately, Harbert mines are captive to one railroad which is one of the most powerful opponents of the Waterway. Their contention is that they can handle any increase in transportation capacity required, when in fact they can barely provide the services required to fill today's soft domestic market.

Harbert is now pricing coal for the export market. Access to ocean going ships will be rail to Ghent, Kentucky on the Ohio River and barge to loading facilities below New Orleans on the Mississippi River. The distance from Ghent to the transfer facility is approximately 1349 miles, and the rate is $8.00 per ton or .0059 cents per ton mile. From Ghent to Mobile via the Tennessee River and the completed Tenn-Tom Waterway, the distance would be 1079 miles and using the same ton/mile cost the rate would be $6.47 per ton, or a savings of $1.53 per ton.

As you know, Harbert owns and operates a rail to barge transfer at Harriman, Tennessee which is close to the East Kentucky coal fields. The distance from Harriman to Mobile via the Tenn-Tom would be 847 miles and again using the ton/mile formula would produce a rate of $5.08 per ton, a savings over the New Orleans route of $2.92 per ton and $1.39 per ton from the Ghent, Kentucky loading point.

These savings in today's dollars, by using the Tenn-Tom, would not only allow us to compete with coal producers in South Africa and Australia, but would save fuel vs the longer Mississippi route and also provide additional jobs for citizens of East Kentucky.

Bill, due to the time frame, this is rather hastily written, so if you have questions please call.

Mr. FORD. The Tenn-Tom will directly link the eastern coal fields with the port of Mobile, Ala., which is the third largest point of coal exports in this country. It is estimated that loading facilities now underway or planned will enable the port to handle 20 million tons a year by 1990.

Even the strongest proponents of the Tenn-Tom recognize that this waterway will not solve our coal transportation needs entirely. A combination of new initiatives will be required, but the Tenn-Tom waterway remains a key element in this Nation's effort to improve its overall coal transportation network.

At the same time, however, we must also improve the carrying capacity of all our inland waterways as well as improve our rail services from mines to other markets and transfer points in both the East and South. We must develop and improve the entire transportation infrastructure, with better working relationships between all involved.

Only then can we expect U.S. coal production to be able to meet the future demands, both at home and abroad.

Whether the United States can now—or ever in the future—take advantage of the new international opportunities will hinge on two basic factors:

The capacity of our transportation system to move the coal to market in a timely and cost-efficient manner.

The ability of U.S. ports to handle the increased traffic.

The expansion of our international coal markets is not only critical to the future of the coal industry, but will be a major factor as to whether or not other oil importing nations can reduce their reliance on OPEC.

By all rights, the United States should gain the largest part of the increased export market.

The Tenn-Tom project will play a major role in putting this country in a position where it can realize the full benefit of these new export opportunities.

That is why I must regard any attempt to delay the progress of this project as ill-considered and ill-timed. The project is now 50 percent completed and can be in full service by 1986.

Let us not block the progress that has been made.

Let us not stifle yet another opportunity to bring stability and security to the U.S. coal industry.

Let us not pass over a golden opportunity to help this country improve its balance of trade situation. Remember, every ton of coal we export helps reduce our trade deficit abroad—and when we are sending $90 billion overseas this year for oil alone, we need all the help we can get.

I urge my colleagues to take all these factors into consideration and firmly reject any and all efforts to delay completion of this project which is so very important to the economic future of my region and our Nation.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. I yield the Senator from Wyoming (Mr. SIMPSON) such time as he may require.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I have previously entered the fray on this issue and have indicated that is a perilous place for a western Senator to be. But just let me take a few minutes—and I do not mean to be repetitive—I just want to state that I remain deeply troubled by the fact that much of the alleged benefit from the Tennessee-Tombigbee project just cannot and will not materialize.

It would appear that a very significant percentage of the project's navigation benefits are a myth. A look at the history of those benefits I think is somewhat instructive.

I am puzzled as to why in 1975 with project costs skyrocketing beyond $1 billion, the corps apparently realized that the benefits of the project were insufficient to offset the new costs. Therefore, they commissioned a new benefits study for the waterway, an action which is really quite unprecedented for an ongoing project.

The previous economic study, which was done in 1966, had estimated that the project would carry 8 million tons of traffic in its first year, and that 80 percent of the traffic would be northbound.

Less than 2 million tons of coal were projected to be shipped on the waterway.

The new economic analysis, which was completed in 1976, reached several surprising conclusions. First, it estimated the project would carry 28 million tons of traffic in the initial year of operation; second, it projected that the waterway would carry 18.5 million tons of coal in its initial year; and, third, it estimated that 90 percent of the traffic would be southbound—a complete reversal of flow from the 1966 study.

Even with those surprising findings, the benefit/cost ratio remained marginal.

A careful analysis of the 1976 study reveals it to be utterly, I think, baseless. The conclusions of the study relating to traffic volumes and flows resulted from a series of interviews with prospective shippers on the waterway, and I have heard the reference to confidentiality, and so on. But to determine who is to use it one has to talk to them. That is the best way I know of to find out.

The corps then selected 121 annual movements of commodities as the base tonnage for the project. Thus, the accuracy of those movements is absolutely critical to a favorable benefit/cost ratio for the project, and the evidence is overwhelming that many of those projected traffic movements are absolutely illusory.

Some of them have been named in the debate, and I will touch on them lightly again. The corps estimates that the Gulf Power Co. will ship nearly 8 million tons of coal from Harriman, Tenn., and Shawneetown, Ill., to powerplants in Florida during 1987, the project's first year of operation. However, officials of Gulf Power say they will ship no coal whatever on the waterway.

The corps estimates that Kentucky Energy Development Corp. will ship 2.4 million tons of coal via the Tenn-Tom. However, Kentucky Energy Development Corp. is out of business, and the coal mine relied on by the corps has never been in existence.

The corps lists Hawley Fuel Co. of New York as a coal shipper on Tenn-Tom to the tune of 1.5 million tons a year. However, Hawley Fuel owns no mines anywhere in Alabama and has no plans to use the waterway.

The corps states that Hammermill Paper Co. will abandon rail transportation and instead ship 22,000 tons of wood pulp on the waterway. However, officials at Hammermill have stated that they do not intend to use the waterway.

The corps estimates that Freeport Sulfur Co. will ship 350,000 tons of sulfur on the waterway. However, officials of the company state that such shipments are extremely unlikely.

Officials of coal companies and barge companies have stated that the corps estimated coal movements on the project will never materialize, and some of those reasons have been given, and I would just state that they are, I think, very evident. Such movements would require a 500-percent coal production increase in the Chattanooga area in a mere 7-year span. Terminal facilities in Mobile and elsewhere are insufficient to handle such an increase. Coal production—I think this is critical, coal production—in the entire State of Tennessee would be required to double or triple in order to reach the levels of movements on the project that are projected.

A study by the 3R Corp. showed Tennessee coal production actually may decline from 10.3 million tons in 1977 to 10 million tons in 1986.

I join with what my colleague, Senator FORD, is saying with regard to America's commitments on coal.

Out in my part of the country, Wyoming has 50 billion tons of coal in reserve. That will take care of this country for many years to come.

I feel no sense of competition about West Virginia coal or Kentucky coal or Tennessee coal. That is something that we must all work together to promote.

But if we take all of southeastern Tennessee's current recoverable reserves, they will be depleted in 15 years, and yet the lifespan of the Tenn-Tom project is 50 years.

All the economic basis is given about this great coal production from Tennessee, but if you got it all—and you are going to get it all in 15 years, because that is all there is, and yet you have a project that lasts 50 years.

Amax, of course, has shelved their major coal development plans in the project area for various environmental reasons.

Mr. President, based upon that type of evidence, experts have concluded that nearly three-quarters of the claimed navigation benefits for the project are spurious and fictitious. Without those benefits, the benefit-cost ratio for the project sinks well below one to one.

In addition, an unreleased report of the General Accounting Office has concluded that the corps actually "double-counted" navigation benefits on the portion of the project from Mobile to Demopolis by failing to account for traffic congestion in this reach of the river. Adjustment of that benefit-cost ratio based on correction of this error alone would, by itself, bring the benefit-cost ratio down close to unity.

I simply believe that the Congress should be exceedingly careful about increasing the level of funding for a project whose benefits are so thoroughly questionable. The whole concept strains reason to me and I, therefore, urge support for the amendment.

Mr. JOHNSTON. Mr. President, I yield myself 2 minutes.

Mr. President, again, all of these matters were totally and definitively answered in the written documents we put out—each Senator has a copy of those.

On the question of coal, for example, there are some 15.8 billion tons of coal identified by the National Coal Association with an overburden of less than 3,000 feet. Fifteen point eight billion tons, which is many times the amount in Tennessee and Alabama necessary to support the amount that has been projected here.

Mr. President, what the opponents of this thing have done is found some individual people who were interviewed as part of the Kearney study and found that some of those have changed their plans, some have perhaps gone bankrupt and others are in a different business. Mr. President, that always happens in each and every economic analysis. Some move in, some move out; some go bankrupt, some come in business. That is expected as it is part of any survey. That is the way a survey is done.

Now in the Moynihan hearings, they actually identified much more potential traffic coming into the system than that which was identified as going out.

If you will just take one figure, Mr. President, this from an opponent of this project, the L. & N. Railroad. The L. & N. Railroad testified that they would lose 30 to 50 million tons to the Tenn-Tom. That information was received from its marketing survey offices. And they backed it up by actual figures. Thirty to 50 million tons annually.

Now, the Corps of Engineers actually made their estimates based upon 25.9 million tons. So if the L. & N. Railroad, a great opponent of this project, is to be believed, and they operate in the real world, then the cost-benefit ratio by the corps was low by a ratio of somewhere between 100 percent and 20 percent. Because they used only 25.9 million tons a year and, according to the L. & N. Railroad—just one source—it will be 30 to 50 million tons.

Mr. President, for the opponents of this project to say, "Let's stop the project and go make a new cost-benefit ratio," is really silly. Mr. President, it is disingenuous. They do not want a new cost-benefit ratio. They want to stop this project.

Mr. President, can you imagine the height of silliness which this would be to stop the project, commission a new study, and in the meantime paying termination costs, termination costs of those ongoing contracts—I do not know what those termination costs would be, maybe $50 million, maybe $100 million—while we had a new study commission?

There is no better study group than A. T. Kearney Co., which is internationally recognized. And to have some new set of hearings with some new spurious information about a $3 billion project, paying all these costs and then find out that we were right to begin with—which we would find that out—then what do we do? Say, "That is too bad. We lost $100 million in inflation. We lost another $100 million in termination costs, but that is all right, we satisfied the curiosity of some of the opponents of this project."

Mr. President, that is asinine and that is silly and the Senate, I am confident, is not going to be so silly as to do so.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, newspapers and public relations people generally seek some eye-catching slogan or label to a proposal. I have been thinking about this: The Chafee-Simpson $1.1 billion Senate ditch.

To stop this mighty project when it is more than 50 percent completed, when there has already been obligated $867 million of Federal funds, when there has been obligated by State governments where bond issues have been issued another $135 million, it comes to over $1 billion that will, in effect, go down the drain if this project is terminated.

Maybe I am calculating it wrong. Maybe I ought to term it a $1.5 billion or $1.2 billion ditch, because of the fact, according to testimony, it would take approximately another $130-some million to terminate the project.

Some say, "Well, that could be. You could have some land recoupment." This question was put to Gen. John Morris in the Senate Appropriation's Committee hearings, about the idea that purchasers would come and buy the land. General Morris sort of flippantly made the remark, "Well, why would a man want to buy a ditch?" But it is more than just a flippant remark.

So I think that when we are considering this, that we ought to consider the fact that we are considering the distinct possibility of a label which the news media will be writing and talking about when they say "There lies the $1 billion Senate ditch."

I want to talk just briefly about the benefit-cost ratio associated with the Tennessee-Tombigbee Waterway. General Morris, who is highly respected, used the figures of 2 to 1. Trying to get the most favorable ratio and use the factors that would give you this, you can take his figures, use them in a manipulated manner, and it could come out to be a 10 to 1 cost-benefit ratio. And I challenge you that that formula is being used on the other side. General Morris testified the favorable benefit-to-cost ratio was calculated by the formula provided by law. But the formula provided by law does not allow for inflation in regards to benefits.

So if you would then take the inflationary factors and add them to benefits, General Morris testified that it would amount to 4 to 1 favorable cost-benefit ratio. General Morris further testified that the history of the Army Engineers in their cost-benefit ratio analysis, reveals that they had always been very, very conservative in arriving at their estimates and that history had proven that they were 2½ times wrong; that it has turned out that the benefits on water projects, historically, had proven them to be 2½ times more than the Army Engineers had estimated in regards to benefits. Taking that 2½ times, plus the 4 to 1, you have 10 to 1, if you want to go to an extreme type of formula.

Now I point this out to show that opponents of the Tennessee-Tombigbee project are using the opposite extreme in the attempt to kill the project.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. HEFLIN. Would the Senator give me 2 more minutes?

Mr. JOHNSTON. Yes.

Mr. HEFLIN. Mr. President, I want to mention inflation. General Morris testified that if you are interested in the environment and if there were an environmental problem, the environmental insult has already occurred, that they have provided for restoration. But if you do not go through the restoration, whatever environmental insult was to occur with the Tennessee-Tombigbee has already occurred.

I want to mention court cases involving the Tennessee-Tombigbee Waterway. The matter has been taken to court six times and six times the courts have decided that the Army Engineers has complied with the laws having to do with the project. I repeat, the courts have held that the Army Engineers have not violated the statutes in the planning and construction of the Tennessee-Tombigbee Waterway.

In 1971, suit was filed in the U.S. District Court of the District of Columbia seeking to enjoin the Corps of Engineers from commencing construction on the Tennessee-Tombigbee Waterway. Plaintiffs were the Environmental Defense Fund, a local environmental organization known as CLEAN (Committee for Leaving the Environment of America Natural), and several individual plaintiffs who were college professors. Discovery procedures in the present litigation have shown that the L. & N. Railroad was very much a "behind the scenes" activist in the promotion and pursuit of that original litigation. A preliminary injunction was issued by the D.C. District Court. Venue was transferred to the Northern District of Mississippi and after extensive motions, briefs, arguments and a 3-week evidentiary hearing, the injunction was dissolved and the suit dismissed. On appeal to the Fifth Circuit Court of Appeals, the District Court's dismissal was affirmed and the legal roadblocks to construction of the Waterway were removed.

This first lawsuit made three basic allegations: First, that the waterway was an environmental disaster and the corps had failed to comply with the requirements of the National Environmental Policy Act to make a detailed environmental impact statement and to protect the environmental interests in its decision to construct the waterway; second, that the benefits had been overstated, costs underestimated and an unrealistic interest rate employed to produce an inaccurate benefit/cost ratio and analysis; third, that the corps had failed to consider alternative methods of the transportation of commodities, that is, existing railroads and thus, committed a violation of the NEPA mandates.

The district court resolved these issues against the plaintiffs in the following manner:

First. It held that the environmental impact statement produced and circulated by the corps was sufficiently detailed to constitute procedural compliance with NEPA.

Second. That NEPA did not provide for court review of the substantive decision to proceed with the project but only procedural compliance review.

Third. That the costs/benefit analysis was subject to very limited judicial review and the use of the assumed benefits and costs and the discount rate set by statute was not an abuse of discretion on the part of the corps, but was within the provisions of applicable statutes; and

Fourth. That the environmental studies done by the corps sufficiently considered alternative methods of transportation.

The court of appeals in affirming held that the district court was technically incorrect in assuming that NEPA provided no judicial review of substantive decisions, but went on to hold that all of the adverse environmental impacts claimed by the plaintiffs had been pointed to the Congress in the extensive debate over construction funding for the waterway and that the Congress was, in fact, the decisionmaker on the decision to proceed with the waterway; that congressional decisions are not subject to NEPA review by the courts and that, therefore, the decision of the district court to dismiss the suit was legally correct and should be affirmed.

Opposition to the continued construction of the waterway was apparently dormant from the time of the first litigation until November 1976, when two identical suits were filed in the U.S. District Court in the District of Columbia—one by the environmental defense fund, CLEAN and individual plaintiffs alleging environmental concerns and a second suit by the Louisville & Nashville Railroad alleging economic and environmental injury from the continued construction of the waterway. These suits were consolidated and venue once again transferred to the northern district of Mississippi. After some discovery proceedings, the plaintiffs filed an amended complaint in January 1978, containing 15 separate counts in which they sought an injunction against the completion of the waterway.

In count I, plaintiffs sought an injunction to prevent the continuing "unlawful and unauthorized" construction of the waterway and to require all defendants to comply with applicable Federal laws. Plaintiffs alleged that since 1974, the corps has intentionally withheld vital information, continued to construct the waterway after receiving advice that the channel width being constructed is illegal and unauthorized, that the corps has submitted false and inaccurate information to Congress in support of its annual budgetary proposals and has violated numerous statutory and regulatory mandates to conceal its violations. In this count I, plaintiffs alleged that the corps committed the following specific illegal acts:

First. Withheld high price costs and submitted false and misleading cost data to lessen the "emotional impact";

Second. Failed to disclose its lack of authority to construct a 300-foot channel;

Third. Studied its lack of authority to dredge a 300-foot channel, studied alternative actions, but never disclosed the study or alternatives to Congress or the public;

Fourth. Illegally segmented the project into two parts—north and south Demopolis—rather than halting construction while seeking congressional authority to extend a 300-foot channel to Mobile;

Fifth. Submitted false and unsubstantiated benefit claims to justify enormous costs and manipulated data under its control in order to concoct benefits to meet the costs;

Sixth. Withheld Army Audit Agency findings and reports which showed misleading activity on the part of the corps;

Seventh. Failed to disclose economic and environmental damage caused by the project which were different from those contained in the 1971 EIS.

In count II, plaintiffs alleged that the project was illegal and unauthorized in that the corps had departed substantially from the plan of construction contained in the authorizing legislation and that the commerce clause of the U.S. Constitution forbids the delegation to or usurpation by the executive branch of the exclusive congressional legislative powers.

Counts III through XV of the amended complaint will be discussed later because the district court, in effect, bifurcated the issues and elected to try counts I and II as a separate evidentiary matter withholding consideration of counts III through XV pending disposition of counts I and II.

Two weeks of trial contained testimony from witnesses for plaintiffs, officials of the U.S. Army Corps of Engineers ranging up to the Chief of Engineers, General Morris, and testimony from witnesses for the defendant-intervenors, including the Tennessee-Tombigbee Waterway Development Authority, the Tombigbee River Water Management District, and the State of Alabama. This trial resulted in an order of the district court in March 1979, dismissing counts I and II. This dismissal was based on an opinion which contained the following holdings:

First. The modifications, except for channel width, including chain of lakes, changes to design to the canal section, changes from certain dams to locks and dams, bend easing and cutoffs were all within the discretionary authority of the Corps of Engineers and created no cause of action on the part of the plaintiffs.

Second. The increase of channel width from 170 feet to 300 feet was highly publicized by the corps when the decision was made by the Secretary of the Army in 1967, was communicated to Public Works and Appropriations Committees of the House and Senate, was discussed by the Congress, was known to the Congress in connection with both Tenn-Tom funding and with the discussion and authorization of other projects such as the highway corridor program and the Appalachian regional programs. The increased width was revealed in the 1971 environmental impact statement and was specifically referred to by the court in its decision in the earlier lawsuit.

The increased width was found to have been well-known to the L. & N. Railroad by virtue of its activities as Chairman of the Association of American Railroads, Committee on the Tennessee-Tombigbee Waterway, and testimony given by L. & N. officials to Congress in opposition to construction funds. Thus, the courts concluded that the plaintiffs were barred from pursuing the authorization issue by virtue of the doctrine of laches, having raised this issue in its amended complaint some 11 years after the width widening decision was made and publicized.

Third. The court held that the plaintiffs so-called segmentation argument was without merit. This is the argument that the Tennessee-Tombigbee Waterway is dependent upon unauthorized improvements to the Black Warrior-Tombigbee between Demopolis and Mobile. The district court held that the projects are two separate waterways and the court did not err in considering the Tennessee-Tombigbee construction dependent upon yet unauthorized improvements to the BWT below Demopolis.

An appeal was taken on these findings to the Fifth Circuit Court of Appeals and that court affirmed the district court's opinion in every detail in a decision in April 1980. The plaintiffs have now filed a petition to the U.S. Supreme Court for a writ of certiorari to review that holding and the petition is now under consideration, responsive brief having been filed by the Tennessee-Tombigbee Waterway Development Authority and responsive brief to be filed in the near future by the Justice Department on behalf of the Federal defendants.

District Judge Keady has taken under consideration motions for summary judgment and judgment on the pleadings filed by both sides as to the allegations of remaining counts III through XV. The defendants and defendant-intervenors have taken the basic position that all of the remaining issues are barred by the doctrines of res judicata, collateral estoppel and laches, have been raised or within issues that should have been raised and put to rest in the initial 1971 litigation. Judge Keady's announced schedule of disposition of these matters came at a hearing which preceded the filing of plaintiff's petition for certiorari to the U.S. Supreme Court and it is not known at the present time whether Judge Keady will feel disposed to withhold any further action on counts III through XV until the Supreme Court has acted on the petition or whether he will proceed with dispositive action on the remaining counts.

A brief summary of counts III through XV follows:

Count III of the amended complaint alleges that the corps deliberately submitted inflated and false benefit data and unrealistically low cost estimates in violation of the regulatory requirements called principles and standards. In the court hearing, corps personnel, including Lt. Gen. John Morris, denied any misleading of the Congress. General Morris testified to the same effect before Senator MOYNIHAN's Oversight Subcommittee after which Senator MOYNIHAN expressed satisfaction saying:

> General, therein we resolve this matter certainly to this Senator's satisfaction. I, for myself, put this matter behind.

In count IV, the plaintiffs allege that the court violated applicable laws by the use of the lower interest rate prescribed by statute for those projects authorized prior to January 1969, alleging that appropriate non-Federal interests must have, prior to December 21, 1969, given satisfactory assurances to pay the required non-Federal share of project costs.

These allegations have been thoroughly aired and the facts are that not only was the Tennessee-Tombigbee Waterway authorized by Congress in 1946 but the States of Mississippi and Alabama both enacted legislation founding the respective local sponsoring agencies, funded those agencies and authorized the issuance of construction bonds for bridges and highways required long prior to the deadline set by the statute.

In fact, the statute clearly mandates the continued use of the initial interest or discount rate throughout the course of construction of the project once the rate has been established by the authorization date and assumption of local sponsorship responsibilities. It would have been and would be now a clear violation of the statute (42. U.S.C. 1962) for the corps to change the discount rate being used during the on-going construction period.

Count V is closely related in that it alleges a violation of the requirements of the Rivers and Harbors Act of 1970 requiring written agreements of cooperation from participating non-Federal interests prior to commencing construction of water resources projects after January 1, 1972. Not only was this project commenced prior to January 1, 1972, but written agreements and assurances were given by the State sponsoring agencies to the corps.

Count VI alleges that 33 U.S.C. 701, et seq., requires that the project possess a positive benefit to cost ratio and requires the Corps of Engineers to report accurately to Congress the true ratio. Again, in this count, the plaintiffs allege that the Federal defendants have misrepresented the costs in order to conceal from Congress the fact that the waterway benefit-cost ratio is below parity. Again, General Morris specifically denied this allegation in testimony before Judge Keady in January 1979, and on July 28, 1980, told Senator MOYNIHAN and other members of the Oversight Subcommittee:

> I can tell you categorically, we did not. I can personally attest to the fact that our objective was to give information, not to withhold it.

He went on to detail the in-depth reanalysis of the project costs and benefits in which the corps developed three different estimates based on varying assumptions of projected cost increases. A $1.4 billion cost estimate was finally approved on the basis of this reanalysis and General Morris stated that he personally informed the Senate Appropriations Committee as soon as this estimate was adopted.

Count VII alleges a violation of NEPA and the Rivers and Harbors Act of 1970 by virtue of information concerning studies conducted in 1975 to analyze the alternatives to the continued construction of the 300-foot wide channel, including the possibility of reducing channel width to 170 feet or 200 feet and the possibility of suspension or termination of the project.

The 1972 district court decision recognized that the environmental impacts of a project of this magnitude could not be exhaustively examined prior to the beginning of construction and gave specific approval to the corps' plan of ongoing environmental studies and efforts to reduce adverse impacts. There is simply no requirement that the corps continually produce and circulate formal environmental impact statements because it is continuing to critically analyze and reevaluate the waterway, its dimensions and its features. At any rate, it was concluded that construction should proceed and be completed with a 300-foot wide channel which was the channel dimension revealed and circulated in the 1971 EIS in accordance with the 1967 decision by the Secretary of the Army. This count is, in effect, a restatement and second shot at the authorization issue which has been laid to rest by both district and appellate courts.

Count VIII alleges a violation of NEPA because of an alleged presumption that a 300-foot wide channel will be built all the way to Mobile. This is the count which plaintiffs refer to as the "segmentation issue," stating that the corps cannot legally or logically segment the portion of the waterway above Demopolis from that south of Demopolis. Judge Keady in his March 12, 1979, opinion clearly dealt with this allegation with finality:

> Much has been said about the Corps' erroneous assumption that it had general statutory authority, under 33 USC, Section 5, to make navigation improvements to the BWT, which is a historically different navigation project extending southward from Demopolis to Mobile. The BWT has been in operation for many years and antedates the 1946 authorization of the TTW. The fact is that the Corps, in the face of the 1974 *Callaway* decision, has readily acknowledged that it is without authority to eliminate the constraints presently existing in the BWT project and, after proper studies, must secure congressional approval to increase the channel width, eliminate numerous cutoffs, increase lockage capacity and remove other hindrances now existing in the BWT in order to efficiently accommodate 2-way navigation for 8-barge tows. Not only do the defendants concede the necessity for congressional approval for making these modifications to the existing BWT but they further acknowledge that, assuming the future grant of such authorization, the duty will rest upon them to comply with NEPA and all other applicable laws before such navigation improvements could be made. Suffice it to say that these developments, though of recent origin, have no bearing upon the Corps' lawful prosecution of the TTW project in accordance with the current design.

The plaintiffs made no effort to raise the correctness of Judge Keady's findings in this regard in their appeal to the Fifth Circuit. Nor have they included any complaint concerning it in their petition for certiorari. It, therefore, stands as the law of this case that the Tennessee-Tombigbee Waterway is factually and legally independent of the Black Warrior-Tombigbee Waterway.

Count IX alleges that NEPA requires separate environmental impact statements to be circulated on major component parts of this project. This argument was not only totally rejected by Judge Keady in his approval of the ongoing environmental studies, likewise approved by the Fifth Circuit in 1972, the self-same argument has been specifically rejected by the Fifth Circuit in a 1978 case styled *Save Our Sycamore* v. *MARTA*, 576 F.2d 573. In that case opponents of the Atlanta Rapid Transit System sought to require an environmental impact statement on the construction of a major MARTA station. The Fifth Circuit held that the terminal was not an independent project but one feature of the overall system and that a separate environmental impact statement would be inappropriate.

Count X alleges the discovery of adverse environmental impacts since the original EIS and argue that construction should be halted until supplemental impact statements are prepared analyzing these discovered impacts. In fact, all of the alleged impacts were raised in the first lawsuit and have been fully anticipated and considered by the corps. They include acid drainage problems, water quality problems, mitigation of the destruction of wildlife habitat and alleged economic losses to alternative transportation modes. There is absolutely nothing new in this charge.

Count XI alleges the necessity for the corps to prepare environmental impact statements to accompany each annual funding request. This argument has been specifically rejected by the U.S. Supreme Court and this count subsequently withdrawn.

Count XII alleges the necessity for the corps to prepare additional environmental impact statements in order to comply with the Clean Water Act of 1977 and the Federal Water Pollution Control Act. The completion of this project with the use of on-going supplemental environmental studies has been discussed above and approved by district and appellate courts.

Count XIII alleges a violation of the Fish and Wildlife Coordination Act, stating that the corps has not prepared or filed a wildlife mitigation report. This charge was, in effect, made in the 1971 litigation and rejected; and the corps has, in fact, contracted with the Fish and Wildlife Service to perform and submit a wildlife mitigation study.

Count XIV of the amended complaint alleges a failure on the part of the corps to publish plans and design information in the Federal Register. There is absolutely no statement in this count from which one can determine which documents are said to be required to be published in the Federal Register and which are not. The corps has published numerous regulations, circulars and other documents which they believe within the purview of the publication requirements of the Administrative Procedure Act but they have not published those design and planning memoranda which are not suitable for such publication.

Count XV is a catchall allegation that the Federal courts are required to set aside and hold unlawful any agency action which is arbitrary or capricious by virtue of the Administrative Procedure Act (5 U.S.C. 706). Obviously, the Tennessee-Tombigbee Waterway has had the benefit of judicial review under the Administrative Procedure Act since the first suit was filed in 1971 and the courts have, by seven separate holdings, determined that the project passes APA muster and is not being built in an unlawful, arbitrary or capricious manner.

Overall, the most repeated argument of waterway opponents is that the anticipated shipments are "illusory" and the benefits based upon them are consequently nonexistent. In an amazing contradiction to this argument, officials of the plaintiff Louisville and Nashville Railroad estimate, in their testimony, that the need for transportation of coal from the Kentucky, Tennessee, and West Virginia coal mines to the gulf south will increase severalfold by the time of the completion of the waterway.

They testify that their own diversion studies show that 25 percent of this increased future coal traffic, which would otherwise be transported by their railroad, will be carried instead by the waterway. This is not an anticipated loss of 25 percent of present rail volume but a loss of future increased traffic which railroad officials admit that they are not presently equipped to handle. A 1978 Department of Transportation study revealed that the costs of upgrading the railroad equipment sufficiently to handle the anticipated coal traffic would cost many times the benefits. It is perfectly obvious that if the traffic were not there in amounts as great or greater than those anticipated by the corps in its calculation of benefits and costs, the economic interests now fighting the waterway would not be spending the sums they have in court and in lobbying efforts to halt its construction.

Mr. SIMPSON. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield 2 minutes.

Mr. SIMPSON. I thank my colleague. In response to what my good friend from Louisiana and my good friend from Alabama are saying, and I see one smiling at this time, which I hope he continues to do when I conclude. The issue is, yes, and I make no apology, I am out to stop the project. I think we ought to use what we have in it and cut it off. Land sales alone will pick up a tremendous amount of the loss. Project operation will pick up the rest.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. SIMPSON. I just have 2 minutes. I agree with my colleague from Alabama, you would not want to buy a place on a ditch, but you sure would want to buy a place on a multimillion dollar silver- and concrete-lined canal. That is what people will be buying their land on, not a ditch.

It is easy to reflect flippantly on the issue, easy to inject ridicule into it, a little sarcasm, but that does not solve it at all and I do not think it is helpful in the debate. To me there is something a lot sillier than all of that, and that is putting $3 billion down a rat hole. That is the silliest result of all.

If the issue stood on itself, we would not be dragging in these extraneous things about regional development, national defense, affirmative action programs. If it stood on its own, it would make it, but it cannot.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute. I want to ask the Senator a question. We put into the record that the Corps of Engineers and the Chief of Engineers have testified that land would be calculated to produce maybe $30 million. Does the Senator have any information which disagrees with the land sale item?

Mr. SIMPSON. Mr. President, I think that anyone would concur that on the land values in that area, since the project was first studied and since the second revision was done it would be disclosed that that land has gone up in value tremendously, even from 2 years ago, even from 1 year ago. That is the issue that I would refer to in regard to that.

Mr. JOHNSTON. Does the Senator not recognize that it has been cut up, dug up, the timber cut, rendered in many instances useless?

The corps testified that it has a sale value of maybe $30 million. Is the Senator just saying that inflation has gone up, and therefore, in the Senator's opinion, it is worth more?

Mr. SIMPSON. General Morris said, "I don't know. We might get $45 million back." There is the difference between $30 million and $45 million. If we are going to use those types of figures, who is going to believe it?

That is the testimony of General Morris.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JOHNSTON. I yield myself 1 additional minute, Mr. President.

If you use $45 million, you still have a sunk cost of $950 million. If it is $950 million or $967 million, the point is that the sale of land would not bring back a major part of the cost here. You have a sunk cost of around $967 million. Are we together on that, or does the Senator have information contrary to that?

Mr. SIMPSON. Mr. President, we are presenting figures. We are presenting ours, which are not accepted by the opposition. I do not accept the Senator's figures because of a little deficiency like the General's remarks, with the $30 million the Senator is using and the General says we might get $45 million. There is a 50-percent divergence on the computations.

I have sat on the Public Works Committee, and one thing you learn is to not believe anybody's figures.

Mr. JOHNSTON. I will ask the Senator from Wyoming, what are his figures? I have given him my figures based on the testimony of the Chief of the Corps of Engineers of a sunk cost of $967 million. I challenge the Senator to give me his figures.

Mr. SIMPSON. My figures would certainly equate when you consider the actual value of land based on comparable sales and the use of the partial project that is completed when you work in the return on tariffs and fees.

Mr. JOHNSTON. What the Senator is saying is he does not have any figures. The Chief of the Corps of Engineers said that the amount of the completed work on project would not even support the cost of maintenance. It would be, to use his figures, "virtually nil" if you stopped it now. He has testified $967 million is the sunk cost. I ask the Senator from Wyoming to give me his figures, and he does not have any, Mr. President. For the Senator to say it is silly for us to cast aspersions on this and to let us get down to the real facts, the fact is the opponents of this project do not have any facts. The facts are all on our side.

It is whimsical, it is imaginary.

Mr. President, I hope the Senate is not going to be silly enough—and, yes, I do say it would be silly—to take their arguments, because their arguments are silly.

Mr. STENNIS. Will the Senator yield?

Mr. CHAFEE. I yield.

Mr. STENNIS. If the Senator from Louisiana will yield me 2 minutes, I would appreciate it.

Mr. JOHNSTON. I yield.

Mr. STENNIS. Mr. President, with all deference to everyone, and the fine good faith of our friends here about the possible value of this land, I have been through all those counties in Alabama, going north from Mobile. I have been through there dozens of times. Coming up further, I have tried suits in Livingston, Ala., and in Anniston, Ala., as a practicing lawyer. I know that country. I have been there, through Columbus, Miss., through all of those counties through all these years.

So far as the value of this land which will be left compared to what has been spent in hard money, it is just going to be a relatively very small sum. There is no way out of that.

In talking about the inflated value of land generally, this land, if it is turned back now, is in such a condition that that would highly deflate the value.

So let us not be mistaken about that.

The traffic from Columbus, Miss., south, without the through traffic cannot materialize so as to have an appreciable value compared to the $970 million investment already made. I yield back any remaining time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I yield myself 5 minutes.

How much time have I remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. CHAFEE. Mr. President, the proponents of this project are relying on two well-known methods of debate in an activity such as this, both of which they have used.

The first is we cannot stop, we have spent so much money.

The second is the ridicule argument. "This is assinine," says the distinguished Senator from Louisiana. Try to ridicule, make fun of, the others. Do not get the facts.

The facts are that the amount contracted for this project is $967 million. Then you go to General Morris' testimony and the Senator from Louisiana asked him. "What do you think it will cost to terminate?"

> GEN. MORRIS. We figure termination of the project would cost about $130 million.

On that alone, Mr. President, I should like to ask how anybody can contract on behalf of the United States of America for a greater amount than has been authorized for a project. I would be most interested if the Senator could respond to that. They have contracted for so much, $967 million, and, somehow, we are obligated for more than we have contracted for and more than we have authorized and appropriated. That is point 1.

Point 2 is that this is a $3 billion project. Let us not get away from that. I know the proponents of the project are delighted to put that aside, saying, oh, we are only talking about $2 billion; we are only talking about the Tennessee River down to Demopolis. and forget the other part. Forget the other part of the waterway that has to be built. This is all projected on eight-barge traffic and what can the river south of Demopolis accommodate? Four barges, a maximum six, in some locations.

Mr. President, take a look at it. Has anybody taken a look? No. Nobody goes down to take a look. They believe everything that is brought in.

I think that it is important that I have included these pictures. I hope the proponents will look at these pictures and see what the Corps of Engineers themselves say is going to be required—44 cutoffs on the lower part of the river, from Demopolis south.

Let us not lower this to a debate involving ridicule or "asinine," or words like that. Let us stick to the facts, Mr. President.

I reserve the remainder of my time.

Mr. FORD. Mr. President, will the Senator yield for one question?

Mr. CHAFEE. I shall yield to any question, Mr. President.

Mr. FORD. I believe that more people who support the project have been there than those who oppose the project. I doubt if the Senator from Wyoming knows where the Tennessee River is. The Senator from Rhode Island has been there, I know. But the Senator from Wyoming is opposing it and he has never been there and he does not know what he is opposing, except in dollar figures. That is all.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

The Senator has asked a question, which is a legitimate one, where does the $130 million termination costs come from? If the Senators will turn to page 13 of the green-covered hearing which we put out, there is a detailed statement of where the $130,750,000 estimated termination costs come from. Some of it involves obligations to contracts. You cannot terminate a contract where a contractor has put forth a great deal of cost, put his equipment out there, and just say, too bad. You have some obligation to him, demobilization costs. You have to restore the area—replant trees, replant grass. You cannot just leave a big scar out there.

The corps, at our request, has done a study on it and $130,750,000 is the cost. That is the basis on which we arrive at a total sunk cost of $997 million, less a $30 million estimated cost of being able to sell the land.

One final point, Mr. President, is that this is not a $3 billion project, never was a $3 billion project. There is no evidence to support that. I do not understand how my esteemed friends from Rhode Island and Wyoming can continue to call this project a $3 billion project. That is not even authorized. It is a $1,760,000,000 project in Federal cost, of which over 60 percent is sunk costs, from which we get no benefits if we stop.

Mr. LEVIN. Mr. President, will the Senator from Rhode Island yield for a question?

Mr. CHAFEE. Yes, Mr. President.

Mr. LEVIN. Then I shall ask the Senator from Louisiana if he will also yield for a question.

Mr. President, to the Senator from Rhode Island, I wonder if he has computed the benefit-cost ratio of completing the project north of Demopolis based upon the remaining costs of the project north of Demopolis. He can do that either at a 3¼ percent interest rate or a 7⅛ percent interest rate. If it has been computed, would the Senator give us that benefit-cost ratio?

Mr. CHAFEE. It will take a minute to get that information.

In answer to the question of the Senator from Michigan, I do make one point here, which has been overlooked. There is a lot of discussion on the floor that we are just leaving a great big ditch there of no value to anybody. Again, take a look and you will see that from Columbus south has been completed and that the so-called ditch can be used. The locks and dams are there. They are not only there, at Columbus, they are farther down, including in Demopolis itself, where there is a lock and dam that has been constructed. So I wish we would not have any additional talk about just and empty ditch lying there, incomplete, in the event this project is terminated.

Mr. HEFLIN. Will the Senator yield?

Mr. LEVIN. I believe I have the floor, Mr. President.

While awaiting the answer to the first question, let me ask, is the 0.8 cost-benefit ratio that the opponents of this project have used based on completion costs north of Demopolis or on the total costs north of Demopolis?

Mr. President, with the permission of the Chair, I wonder if the Senator from Louisiana would yield for a couple of questions I have of him while the Senator from Rhode Island is obtaining the answer to those questions.

Mr. JOHNSTON. Yes, Mr. President. If I may answer the question, we have the Senate hearing green-covered book, which is on the Senator's desk. If he will turn to page 10, he will find that, using the discount rate of 3¼ percent, the cost-benefit ratio, using not the full sunk cost but only the contracted cost, is 7.8 to 1. Using that same cost at 7⅛ percent, it is 4 to 1.

Using the full cost—that which is already spent and the future spending—it is 1.3 to 1.

As I stated earlier, Mr. President, the 3¼ percent is not an unrealistic percent, because that does not represent the cost of money, that represents the incremental interest cost, because when cost and benefits are both neutral to inflation, then you should use a real interest rate, which is the cost of money. That is all explained in the hearing book.

Mr. LEVIN. I thank the Senator from Louisiana and I have some questions for him if he will yield for that purpose.

Mr. JOHNSTON. Yes, Mr. President.

Mr. LEVIN. As he knows, I am troubled by the absence of a GAO report in this matter. I am wondering whether or not, whatever happens here this morning, the Senator from Louisiana will either request or support a request for the expedited completion of the GAO study in his capacity as chairman of the Subcommittee on Appropriations?

Let me add for the record that I talked to General Staats about this matter. I am satisfied that, in their termination of that report, stopping it in the middle, they followed the policy that they usually follow about not writing reports, at least on their own initiative, on matters that are in litigation. I do not think there is any problem about that, at least in my mind. However, upon the request of a committee chairman or subcommittee chairman, General Staats indicated that he believed he could work out a policy with the Justice Department so that he could complete a report in an expedited way.

My question of the floor manager, Mr. President, is, Will he support or initiate a request of GAO to finish those reports?

Mr. JOHNSTON. I will, indeed. I think that is an excellent idea.

The Senator properly referred to the fact that it is under a longstanding practice of GAO to avoid matters when in litigation. If that part can be worked out, that is GAO's problem, or the Justice Department, if they can work that out.

I will request it, anyway, because we welcome the study. The facts will support us.

Mr. LEVIN. I thank the floor manager for that.

My other question, the Senator alluded to this before in a slightly different way. If the Congress is asked to authorize a project south of Demopolis at some later date, will the Senator defend that project based on its own cost-benefit, or the cost-benefit including the value north of Demopolis?

Mr. JOHNSTON. The cost-benefit ratio is a system analysis, the method of arriving at it is stated here in the documents.

Frankly, the Tenn-Tom project does not help my region. It is in competition directly with the Port of New Orleans. I have no reason to foster it, other than the fact it is good for the country. It is not in my jurisdiction. I have studied it.

Mr. LEVIN. Do I understand, it would affect, if the Senator does support an authorization at a later date, south of Demopolis, the Senator would only seek to justify this on its own cost-benefit basis?

Mr. JOHNSTON. The Senator is correct.

Let me say, that is not even in our committee. That is over in the committee of the distinguished Senator from Rhode Island. Whether or not that would ever be authorized, maybe in the 1990's somewhere, I frankly doubt.

The only way it would be is for it to be so successful, for the export of steam coal to be so tremendous, that we need additional capacity south of Demopolis, more than the six barge tows which it can now accommodate to make the entire system more efficient.

Mr. LEVIN. I thank the Senator.

Can the Senator from Rhode Island help me?

Mr. CHAFEE. Yes. Here are the figures, on page 31 of the green pamphlet. They state that the benefit-cost ratio on the remaining costs, which essentially are north of Columbus, would be 2.5, but, remember, that is at 3¼ percent and it does not include south of Demopolis.

Now, the costs, which are an additional $1 billion, and so to include the cost-benefit ratio, to have a cost-benefit ratio, at 3¼ percent and not include $1 billion, seems to me, to use the words of the distinguished Senator from Louisiana, ridiculous, foolish, and the other adjectives he used.

But that is the answer to the Senator's question.

Mr. LEVIN. The Senator would agree, if we could limit this waterway to the area north of Demopolis, that a 3.2-percent interest figure, cost-benefit analysis, for completion, which is that the completion cost would be 2.5, and the cost-benefit for completing that area, that 7.125-percent figure, would be——

Mr. CHAFEE. That is a big assumption.

Mr. LEVIN. Yes.

Mr. CHAFEE. The assumption is, one, that the traffic is there as projected, which we have shown is not going to be there.

Second, that we do not do any of the work south.

That is the mistake being made here, because the work south is absolutely essential if we are going to get the use of this waterway. The locks are the standard locks, 600 feet by 110 feet, and those are to accommodate eight barge tows.

But the river south will not accommodate eight barge tows. It will accommodate, at the maximum, six, and that is extremely difficult.

We are working with a little sleight of hand here in suggesting we will have this mammoth traffic north, which cannot proceed south of Demopolis.

Mr. President, I reserve the remainder of my time.

Mr. LEVIN. I thank the Senator.

Mr. MOYNIHAN. Will the Senator from Rhode Island consider yielding 4 minutes to the Senator from New York on this matter?

Mr. CHAFEE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. Ten minutes, 20 seconds.

Mr. CHAFEE. I am glad to yield 4 minutes to the Senator.

Mr. MOYNIHAN. Mr. President, I asked the Senator from Louisiana if he would yield time as well, and he suggested that I was in opposition and that would not be appropriate. I am sorry he takes that view.

The Senator from Rhode Island will recall that when this matter was debated on June 28, as the newly arrived, if you will, chairman of the Subcommittee on Water Resources of the Committee on Environment and Public Works, I said that we would hold a hearing on the question of the Tennessee-Tombigbee and the related and larger question of the provision of adequate water transportation for coal in view of our 10-year plan the President had announced just previously.

Mr. President, that hearing was held July 25 and 28, a very expensive hearing. I would hope it was a useful one.

I am sorry to say that because the Army Corps of Engineers has not been able to return to us the transcript of that hearing corrected, with answers to questions and information that was requested during the hearing, that we do not have a printed copy of the transcript and a report to submit to the Senate.

I cannot but be struck by the fact that a hearing of the Appropriations Committee, at which the Corps appeared, that took place August 21, 1 month later, the Corps managed to get the Appropriations Committee transcripts back, but they could not get ours.

General Heiberg assured me this morning that this was an oversight, that there was nothing intentional about this. I accept the words of General Heiberg.

I note the fact that there are two, not one, but two, printed reports from the Corps on Senator's desks in favor of this matter. Our effort to have an impartial inquiry with pros and cons somehow has not made its way into print.

Therefore, Mr. President, I ask unanimous consent that a summary extract, Xeroxed by our staff, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TENNESSEE-TOMBIGBEE WATERWAY

(Statement by Senator DANIEL PATRICK MOYNIHAN)

Mr. Chairman, on June 28, 1980, the subject of the Tennessee-Tombigbee Waterway was discussed at some length during the debate on the Supplemental Appropriations bill for fiscal year 1980. Apart from the obvious divergence of views on such a large public undertaking as the Tenn-Tom, there was a notable lack of agreement on the basic economic facts of the project. The Army Corps of Engineers was accused of deliberately deceiving the Congress by withholding cost estimates of greater than $1 billion.

As Chairman of the Water Resources Subcommittee, which has jurisdiction over the entire civil works program of the Army Corps of Engineers, I announced during the course of debate that our Subcommittee would conduct an oversight hearing on the Tennessee-Tombigbee Waterway project and report back to the Senate when the Energy and Water Appropriations bill for fiscal year 1981 was brought to the floor.

Our hearing was held on July 25, 1980. Opponents and proponents of the project had an equal opportunity to present their case to the Subcommittee. The Corps of Engineers was represented by General E. R. Heiberg, Director of Civil Works, and General John Morris, Chief of Engineers. Unfortunately, the printed and bound transcript of the hearing is not yet available. I, therefore, submit to the Senate the following excerpts from our hearing record.

OPPONENTS OF PROJECT

1. Dr. Robert H. Haveman, Professor Economics, University of Wisconsin at Madison.
2. Dr. Joseph L. Carroll, Director, Transportation Institute, Pennsylvania State University.
3. Dr. Carol Pfrommer, Department of Economics, University of Alabama at Birmingham.
4. Dr. Thomas O. Claflin, Professor of Biology, University of Wisconsin at Lacrosse.
5. Richard E. Briggs, Executive Vice President, Association of American Railroads.

PROPONENTS OF PROJECT

1. Glover Wilkins, Administrator, Tennessee-Tombigbee Waterway Development Authority.
2. Hunter Gholson, Attorney, Tennessee-Tombigbee Waterway Development Authority.
3. Dean Gerald McLindon, School of Environmental Design, Louisiana State University.
4. James A. Skinner, President, Herbert Materials Inc., of Nashville, Tennessee.
5. Mark Smith, Vice-President, Weyerhaeuser Paper Corporation.
6. David Dyar Massey, Business Manager of a community newspaper in Knoxville, Tennessee.

THE POTENTIAL FOR COAL MOVEMENTS

BRIGGS. ". . . the railroad industry as a whole objects to this project . . . we are opposed to it because of the massive diversion that it would create from railroads. Some 50 million tons of freight is the final estimate on that, some 30 million tons of present traffic."

HEIBERG. "The support in Mississippi is every bit as strong for the Mississippi River as for the Tennessee-Tombigbee as a logical improvement. The point is . . . to save the distance and cost of the coal that would have to travel by more expensive means or more circuitous route. Much of the coal used in the United States will be used in Southern Alabama and Florida. If it has to go by the Mississippi, it has a longer route.

CARROLL. ". . . even though distances from inland points to say the Gulf will be much less via the Tennessee-Tombigbee Waterway than via the Mississippi River, shippers would have to pay more in many cases. . . . (F)ull accounting for operating constraints on the

TTWW and the Black Warrior Waterway and for economics of operating on the Mississippi River will reveal that it may actually be cheaper to ship export coal from origins above the confluence of the TTWW and the Tennessee River at Pickwick to New Orleans than to Mobile."

CALCULATION OF TRANSPORTATION BENEFITS

Carroll. "The Corps' savings to shippers calculations totally ignore the nationality of the shipper."

"Violations of the Corps regulations include claiming benefits for hypothetical and highly speculative traffic described as 'future traffic.' Two, using hypothetical rather than actual rates being charged shippers for existing traffic movements by alternative modes or routes. Three, failing to account for other non-transport costs that represent differences in the quality of service between modes of transportation. Projecting traffic that cannot materialize because of physical constraints, such as the inability of utility plants to burn the forecasted coals. Also, Kearney and the Corps failed to consider the impacts of projected Tennessee-Tombigbee traffic, such as the loss of benefits on connecting rivers which would be constrained because of Tennessee-Tombigbee traffic. . . . (A) final violation was a 10 percent allowance to account for undisclosed traffic in savings, a practice that General Morris himself had disallowed in the case of the Cross-Florida Barge Canal."

Haveman. "(The Tennessee-Tombigbee) is justified with a benefit-cost ratio of 1.09, which is based on the most shoddy, inaccurate benefit study that I have seen in my 15 years of scrutinizing and analyzing Corps of Engineers analyses . . . I did my Ph.D. thesis on this. In addition, I have written, as I recall, four books having to do with economic analysis as practiced by the Corps of Engineers, and probably something like 18 to 20 journal articles on this same topic."

Cohn: "What we do is conduct a so-called traffic survey. What that amounts to is interviewing a number of potential shippers in order to see, first, what they are shipping today and, second, whether or not there is any potential that they might ship it by the waterway were it in existence today; that is, today of the survey, Today means 1975. That is the current survey. That is when it was conducted.

"Once we have established that, in other words, what potential traffic movement there is based on interviews, we then conduct a rate study based on prevailing rates by different modes as well as by alternate routes and intermodal combinations to establish what the likely cost is today and what the cost would be were the new waterway constructed.

"And on the basis of that, we established a rate savings, a savings in shipment costs, in effect. That number, multiplied by the relevant tonnage, becomes the basic benefit in the base year. That is then projected into the future based upon standard projection techniques which involve using a larger area of projection, some indicator of general economic activity, projections of, say GNP into the future and assuming the traffic will flow at the same rate as that indicator.

"For example, most of the indicators used on the Tenn-Tom and in most of our studies are so-called OBERS, O-B-E-R-S, indicators, in capital letters. They are published through the auspices of the Water Resources Council and are produced by the Office of Business Economics, now the Bureau of Economic Affairs, which is part of the Department of Commerce, as well as the Economic Research Service, which is part of the Department of Agriculture, and these are standard projections for use in water resources published by the Water Resources Council pursuant to their statutory authority to do so.

"They were dominantly the ones that were used on the Tenn-Tom and indeed most of our studies."

CAPACITY OF THE WATERWAY

Carroll. ". . . I came across an article that appeared in the Sunday, April 8, 1979, Commercial Dispatch from Columbus, Mississippi. . . . There was a movement of soybeans out of the Aliceville Pool which is just above Demopolis. I will quote from this article. 'Voyauer and Gulf Navigation Company Fleet Captain, Bedford Slaughter, on board for this maiden voyage said, 'It is a good four barge river.' He added that 'once the cutoffs were finished, the channel may take six barges.' "

Heiberg. "Captain Slaughter was mentioned and his movement of four towboats on a portion of the waterway. Now he was, when he made that report, in the Gainesville pool. That is part of the Tennessee-Tombigbee project. Last year, when he made that projection, that pool had not been dredged to the depth it is being dredged to now as part of the project. We opened it for some experimental movements for those who wanted to try it. His company tried four barge tows."

Haveman. ". . . below Demopolis is a windy, tortuous river permitting no more than four barge tows on a regular basis. . . ."

Heiberg. "We also read the Mississippi papers, and, in fact, we did check with Captain Slaughter's firm (Voyauer and Gulf Navigation Company), and, in fact, they are now using six barge tows below Demopolis, and in this year expect to have 60 percent of their movements on six barge tows below Demopolis."

REGIONAL DEVELOPMENT BENEFITS

Pfrommer. "In 1975, the Appalachian Regional Commission . . . forecast over 200,000 new jobs would be created by the Tennessee-Tombigbee Waterway. Because the figure seemed high, the Appalachian Regional Commission the next year, in 1976, asked that a second study be done. The second study forecast 20,000 jobs would be created. . . ."

"The waterway plan does not address the traditional deterrents to growth in rural Alabama and Mississippi—a poorly educated labor force with low skills and low productivity, an underdeveloped business sector severely hampered by inadequate internal highway system and a dispersed rural population scattered thinly across a large area."

"Because the Tennessee-Tombigbee Waterway's only service is transportation, its effect is more likely to be redistribution of firms already located in the area rather than attraction of new or expanding firms into it. In fact, according to the University of Arkansas's Bureau of Business and Economic Research, this is true of the area around the McClellan-Kerr Waterway in Arkansas and Oklahoma."

SUNK COSTS

Gholson. "As of June 30th of this year, nearly $825 million has been spent on the waterway. Of that amount, about $46.5 million has been spent on land acquisition. It is estimated by the Corps of Engineers that if all the land acquired in fee were sold, it would total only about $28.8 million in recovery . . . If the project were terminated, nearly $800 million would be wasted, not including an additional $130 million which the States of Alabama and Mississippi have spent on high-level highway bridges . . . In addition, about $144 million of additional federal funds would be spent, according to Corps estimates, to terminate these contracts, to pay contractor claims, and for other costs."

Haveman. "First of all, $200 million of the $700 to $800 million has been spent to create what I have just described as a four-barge waterway up to Columbus, a waterway which is now moving some traffic. It is not legitimate to take the $200 million that has created that and claim that it has produced nothing . . . Secondly, there is from $50 to $100 million worth of land now owned by the United States Government through purchases by the Corps of Engineers, which can be resold. That land as well is not legitimately included as a nonrecoverable sunk cost.

As a result, in my view, we are looking at somewhere in the neighborhood of $450 to $500 million of truly sunk, unrecoverable costs, many of which can be viewed as income transfers to construction contractors and their workers, some of whom would have in the absence of this project been unemployed."

Heiburg. "In regard to what portions of the project are presently usable or could be made usable at negligible cost, there are currently two. One portion includes restricted navigation along 110 miles of the River Section from Demopolis to the mouth of the Luxapalila Creek at Columbus, Mississippi. The restrictions consist of width limitations at the several bridges which require relocation and along the portions of the navigation channel where the necessary widening and cutoff construction are incomplete. The restrictions at some locations limit the size of the tow to two or possibly three barges due to width limitations in the natural river bends. An additional cost of $8,343,000 after FY 1980 would increase this portion of the waterway to project dimensions.

Heiberg. The other portion of the waterway usable for navigation includes 6.5 miles of channel from the Tennessee River to Highway 25 in the Yellow Creek Embayment area of the Divide Section. An additional cost of $2,000,000 would open up an addition 5,000 feet of channel to project dimensions south of the Yellow Creek Embayment.

Lastly, in regard to the amount of property on which significant work has not begun and thus would be available for sale, if the project was halted, I would like to note that as of July 1, 1980, a total of 90,902 acreas have been acquired, consisting of 70,427 acres in fee and 20,475 acres in easements. It is estimated that 46,524 acres (32,603 fee and 13,921 easements) have been directly affected by construction activities (locks, spillways, dikes, new channels, etc.) which would render them unrecoverable for any use similar to pre-project conditions. It is also estimated that 9,866 acres (5,433 fee and 4,433 easements) of land have been altered by construction activities (deposition of dredge material, reservoir clearing, and public use facility development) but are recoverable with some loss in utility value. Therefore, of the lands acquired to date, approximately 34,512 acres (32,391 fee and 2,121 easements) have not been affected by construction activities and could be recovered and returned to prior use.

ALLEGATIONS OF DECEPTION

Haveman. Let me make one final point having to do with how the Congress is in the current fix. This point . . . has to do with the history of the deception of the Congress by the Corps of Engineers . . . . I will now tell one story that characterizes a portion of this deception. The story I am telling is verified by a report of the Army Audit Agency . . . .

In 1972, the Corps of Engineers testified that the cost of the project was $386 million. In 1974 they testified that the cost was $732 million. And then in that year a discovery was made; namely, that the real costs of this enterprise would be over $1 billion. This discovery and the basis for it was well known to high officials in the Corps of Engineers—Colonel Wilson, General Lattalia, and

> General Morris. However, from mid-1974 to January 1976, a conscious decision was made to report a cost on this project of $815 million—a withholding of $334 million of required costs from the Congress.
>
> HEIBERG. "A Federal cost estimate going back to the $815 million was presented to Congress in support of the fiscal '76 budget request. Part of this estimate was based on conceptual design and part of it based on actual bids received from contractors. Congress was informed in '75 that the fiscal '76 benefits were outdated and were being reanalyzed. We didn't have the numbers decided as an institution at that point. A cost estimate of $1.4 billion was reported to the Appropriations Committees of Congress before the '76 appropriations legislation was finalized by Congress, and included in its executive branch support of the fiscal '77 budget request . . . There is an issue of credibility in whether you believe we intended to deceive . . . I am saying we did not. I am saying what we do as an institution sometimes makes it difficult for us to make a decision. We do not like going from $815 million to $1.4 billion, and there was some time (when) we were shifting our gears inside.:
>
> MORRIS. ". . . I can state categorically we did not withhold information. "I can personally attest to the fact our objective was to give information to the Congress and not to withhold it."
>
> MORRIS. ". . . I, personally, took a $1.4 billion figure to the Appropriations Committees of this Congress before the full Congress ever saw the appropriation bill and had a chance to debate it."

Mr. MOYNIHAN. Mr. President, I would like to make just two general points about the matter. Senators can make their own judgment about the charges of bad faith and inadequate preparation. I will not at this point attempt to make any view, but simply note the Senator from Louisiana says that this is a $1.76 billion project and denies it is a $3 billion project.

Seven years ago, this was a $386 million project. It has increased fivefold in 7 years. I would have to say, before we ever make this an economical enterprise, it will be a $3 billion project.

By "economical" I mean worthwhile for the use of water transport firms.

I have only 4 minutes. I am sorry it is that brief a period. I would like to make two points, no more.

In our law, we require that benefits under the water transportation program be calculated as savings to shippers.

This is elemental, economic bad sense, because what is of savings to a shipper may be a loss to a surface transportation system, as well.

We have to ask the benefits to transportation, not to one mode.

Invariably, to subsidize one mode is to penalize another. We have learned nothing if we find that by building a waterway and bankrupting a railroad there is an advantage to people who use the waterway. That is elementary.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. May I have 1 minute more, not more?

Mr. CHAFEE. Yes.

Mr. MOYNIHAN. The second point is to say what, again, should be obvious to us, that the planning process here is in woeful disorder.

We are dealing with a waterway authorized in 1946 on the basis of a study made in 1938.

There was much dispute before our committee on whether we could use four or six barges on this waterway. The normal barge tow on the Mississippi is now 30 and upward.

We are producing a tinker toy of a canal which, nonetheless, has turned out to be the largest such enterprise in the history of the country. If you build a 1930 project in the 1980's, you must expect that.

I thank my colleague from Rhode Island for yielding me this time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. I yield the Senator from Wyoming 1 minute.

Mr. SIMPSON. Mr. President, I appreciate the careful analysis of the situation by the Senator from Michigan. We have had some good points presented on both sides.

I should like to conclude with this fact—from which we seem to stray. One-seventh of the entire Corps of Engineers' construction costs is going to be sunk into this project. Then we will pay $200 million a year for 10 years—we will go on that way for a decade; and when we are through, we will have moved more dirt than we moved when we built the Panama Canal. Let us keep those facts before us.

I cannot help but reflect lightly on the comments by my colleague from Kentucky. Knowing his propensity for that stuff he chews in that neck of the woods, I think his vision has been clouded by that particular pungent brand of tobacco when he speaks of my knowledge of the area. I served in the Armed Forces in that area, and I know the area. I guess I will have to bring him to Wyoming, and we will show him the distinction between the Tetons and Teapot Dome.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, I am prepared to vote on this matter, and I am prepared to yield back the remainder of my time, if the opponents are ready to do so.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the distinguished Senator from Alaska.

Mr. GRAVEL. Mr. President, having been chairman of the Water Resources Subcommittee for about 8 years, this is a subject with which I have some familiarity.

I believe it is very important that we look upon this type of development as an investment in the transportation system of the Nation. A lot of the opposition with respect to this legislation has come forward by the railroad interests, who feel that they will be disadvantaged competitively. That is an unfortunate error. I have found that, economically, when you have one mode of transportation that increases economic activity, other modes will benefit. They have joined forces with an interesting group of environmentalists who are essentially a part of the no-growth syndrome this Nation has been experiencing.

We have a group of people who want to see a diminution of economic activity, a diminution of growth in one part of the country which offers a great potential.

When we have the possibility of being able to link 16,000 miles of waterway to a key break-in cargo point on the Gulf of Mexico, to add to our transportation and industrial capability, with the amount of employment that will ensue, I believe that not to go forward with that decision, with all the capital and investment we have expended, will be a tragic error.

We have seen the benefits of this in the great State of New York, with the Erie Canal, the first major transportation link in that part of the country, a canal in a waterway system.

We have a waterway system that should not be diminished but should be increased, and further investments should be made in it, so that we can strengthen its sinews and the economic fibers. These are the capital areas, the veins, the arteries, of this great Nation of ours.

To try to turn back the clock in this kind of effort is most tragic. We have seen it happen in legislation affecting my State, and we are now seeing it happen in other areas.

Mr. JOHNSTON. Mr. President, I say to the Senator from New York that I am sorry he is not with me on this matter. I hope I did not hurt his feelings by not yielding time to him, but the way this works is that the proponents control one side and the opponents control the other side. I have not been around here very long and perhaps am not an astute Senator, but I know better than to yield my time to an opponent.

Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

Mr. BAKER. I thank the distinguished manager of the bill.

Mr. President, let me set something straight right quick—and I say this semiseriously and semifacetiously, but it should be said.

This thing is called the Tennessee-Tombigbee project, and it is indeed the Tennessee-Tombigbee project, and we are proud of that; but there are about 60 feet of this project in Tennessee.

I support this project because it is a good project for the mid-South, not because I have a parochial interest in it from the standpoint of the State of Tennessee. Virtually none of this project is in Tennessee. I have traditionally supported it, and I will continue to do so, because I believe it will contribute materially to the welfare of our region and of the entire United States.

Mr. President, I appreciate the opportunity to offer a brief statement in support of the Tennessee-Tombigbee Waterway. I favor inclusion of funding for this project because it will provide a new and vital link between 16,000 miles of existing waterways in the heart of coal-bearing and agriculture regions of mid-America with the deepwater ports along the Gulf of Mexico. The transportation improvements provided by the waterway will be important to the development of industries and jobs within those inland regions, and, in addition, the project will provide a vital element to the future energy security of the Nation.

One of my primary interests in the project has been the potential for enhancement of socioeconomic opportunities to the disadvantaged and minorities who live in the vicinity of the project.

Mr. President, the Senate Environment and Public Works Committee's Subcommittee on Water Resources just this week has approved a proposal that I have sponsored that will establish a Human Resources Center to monitor progress in utilization of disadvantaged and minority groups at the project. I might add that I introduced the same proposal during the 95th Congress. I am sure it would have been approved had it not been caught in the legislative logjam at the end of the Congress.

The Tennessee-Tombigbee Waterway transverses some of the most economically depressed areas of the United States. It is indeed unfortunate that most of the debate over the merits of this project has obscured its potential regional development impact. The substantial benefits which will accrue to the historically deprived population through the construction of the project and through subsequent economic growth in the project area are almost totally discounted by those who oppose the project.

At present, the percent of minority hiring at Tenn-Tom is near 27 percent. I might point out that in 1976 an affirmative action plan set Tenn-Tom's goal at 20 percent minority hiring with 2-percent increases through the 1980's. I am proud of what has been achieved thus far and look forward to improvements in those statistics as work on the waterway progresses.

I also understand that at least $42 million has been identified in Tenn-Tom plans for contracting to minority-owned businesses over the next 4 years and that such groups have already received over $15 million in similar contracts.

Mr. President, I have an attachment that gives specific details on these minority programs which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAKER. Mr. President, my colleagues should also be aware that there are numerous environmental and wildlife conservation benefits associated with this project. Many efforts have and will be made in the design and construction of the waterway to minimize environmental losses and to maximize environmental protection and enhancement. I support these efforts and have encouraged the waterway authority to make every effort to avoid deleterious impacts of this project.

Thus far the waterway has adopted a chain-of-lakes concept in the canal section to maximize the aesthetic and recreational potential of the waterway. A number of recreational amenities and facilities, including two environmental centers are included in the project design. Shifts in channel alignments and selection of specifically suitable dredge spoil disposal sites have and will continue to be made to protect valuable wildlife resources. The waterway has also adopted a policy of selected clearing to improve wildlife, waterfowl and fishing habitats, and in addition special wildlife management ponds are being constructed.

Finally, possibly most importantly, an overall wildlife mitigation study is underway in conjunction with the U.S. Fish and Wildlife Service and the participating States. This study will result in recommendation of measures that should be taken at the waterway to enhance wildlife management or mitigate for losses of wildlife habitat that have been incurred in constructing the waterway. The supporters of Tenn-Tom are looking forward to receiving these recommendations and intend to insure that they are incorporated into the efforts to finalize the project.

I support these efforts and hope they can be increased as work continues on the project. If they do the Tenn-Tom will be an example of how projects in the future should address environmental and conservation issues.

In conclusion, I would like to make use of another important point. Mr. President, a substantial commitment of Federal funds has already been committed to this project and this Congress simply cannot say, "I am sorry I made a mistake with a billion dollars of taxpayers money." Surely there is a requirement that the Congress should attempt to finish this job it has begun, to capitalize and to realize a benefit from the investment already made. I feel strongly that there is and believe that most of my colleagues, on further examination, will agree, and thus should support funding for Tenn-Tom.

Mr. President, may I also point out this project, which was conceived many years ago, which has been carefully designed and which has been redesigned to accommodate the environmental requirements of advancing social conscience in this country, has contributed much not only to the region but to the improvement and enhancement of our view of the environmental values. It has been an important project in terms of the demonstration of our ability to enhance environmental quality in Federal projects.

It is no disparagement of my region of the country to point out as well that this project goes through the most economically depressed area of the United States. It goes through the area of heaviest black population in the United States. There is a positive affirmative action requirement to employ minorities. I know because I introduced the bill.

I urged its adoption in the Public Works Committee and indeed and in fact the Tennessee-Tombigbee project has had a splendid record in championing the cause of minority employment and the cause of minority contractors.

EXHIBIT 1

TENN-TOM WATERWAY PROGRAM OF HIRING MINORITIES

Jobs are an important byproduct of the Tennessee-Tombigbee Waterway project. The provision of jobs to minority members of our population during the construction stage of the waterway is foremost in the minds of the Corps of Engineers, the Tennessee-Tombigbee Waterway Development Authority and a number of other organizations dedicated to equal job opportunities.

Some years ago the Corps set escalating hiring goals for workers in the project area, women and minorities. At least 80 percent of those hired for the construction are local. Furthermore minority goals approaching 30 percent are being met.

The Tenn-Tom project is going up in some of the most economically depressed counties in our country. The makeup of these counties is predominately rural; the population, predominately black. Counties near or adjacent to the project in West Alabama had an average per capita income of only 54 percent of the national average and only 73 percent of the Alabama average when project construction began in 1973. Since then the area's average per capita income has risen from $2,693 to $3,600. The states of Mississippi and Alabama rank 50th and 48th, respectively, in per capita income.

Through the economic stimulation of Tenn-Tom this economically distressed area has a chance to boost its living standard to a level comparable to other parts of the nation.

Already the annual payroll for about 3000 construction site workers and 1500 off site workers is $50 million. New housing starts are swinging upward. Unemployment rates are falling. Sales receipts have experienced substantial increases. New businesses have gone into operation.

Because of the heavy minority population concentration in the area, job opportunities never dreamed of before have fired the hopes of these people. Minority businesses have received over $15 million in contracts. A total of 27 percent of those employed on the project are minorities.

While the progess made on minority inclusion of minority contractors has been slowly but steadily upward, their involvement has fallen below expectations due to lack of financial capabilities and bonding. Nevertheless, significant increases are expected.

The Department of Labor, the Tennessee-Tombigbee Waterway Development Authority, the Corps of Engineers and others involved in developing the waterway are exploring every possible route to better job benefits for minorities in the area. Unprecedented for Federal projects, the sponsors are plowing new ground in the search for equal job opportunities.

MINORITY HIRING GOALS FOR WATERWAY CONSTRUCTION

An unprecedented Affirmative Action Plan (AAP) for Federal projects was established in August 1976. Hiring goals in this plan, unlike other AAP's foresee upward mobility of minorities into the higher income construction trades. The goal was set at 19–20 percent minority hiring but increased 2 percent yearly to 30 percent in 1980. Goals apply to individual crafts as well as individual contracts. Necessary changes dictated by the 1980 census will be made when census results are available.

For women a separate goal has been set, with goals of 3.1, 5 and 6.9 percent employment respectively for the first three years.

With respect to the overall goals, contractors, in many cases, have met these annual increases. Some difficulty has been encountered, meeting goals for electricians, ironworkers and other trades which traditionally have not had many minority members.

Aaron E. Henry, President, Mississippi State Conference NAACP, has made the following observations on hiring goals in a letter to the Tenn-Tom Authority dated August 14, 1980:

"The fact that we have not yet reached the minimum goal of 30 percent is still disturbing, but with the progress made during the past six months to close this gap gives me hope that the minimum goals are obtainable and will very soon be reached. . . .

"We of the Mississippi State Conference of the NAACP feel very strongly that the Tennessee-Tombigbee project is a major employment project in Mississippi. It has a large number of Blacks employed that would be without obtainable employment should the project be curtailed or halted. . . .

". . . At this time on a scale of 10 we will record you with a 7. That is a pretty good grade. . . We look forward to continually working with you and will help see this project thru. It means a lot to us also."

MANPOWER TRAINING

While the percent of minority hiring hovers at 27 percent, just 3 points short of the 1980 goal, the outlook for reaching the 30 percent goal during the next 3½ months is good. Manpower training programs have already graduated 500 skilled black workers. The Department of Labor and trade unions are training prospective Tenn-Tom workers as laborers, carpenters, ironworkers, electricians and heavy equipment operators.

However, the availability of local workers may become more critical when Tenn-Tom construction peaks. Unfortunately, the Tenn-Tom peak will coincide with rising activity at the proposed TVA nuclear plant near the northern terminus of Tenn-Tom in Tishomingo county.

Ongoing training programs are turning out workers to meet the rising demand for skilled crafts. A program to train heavy equipment operators at Mary Holmes College in West Point, Miss., has graduated 107 trainees under a program conducted by union personnel with a Federal grant. Local Vo-Tec schools are training boilermakers. Recruiting of minority youths from such places as Memphis and Nashville is in the planning stages. TVA and the Corps of Engineers are cooperating to establish a construction/training village near the proposed nuclear plant. The purpose is to train workers for Tenn-Tom and the power plant. In the general area, the Carpenters, Laborers and Ironworkers unions operate training programs.

MINORITY BUSINESS OPPORTUNITIES

While minority business involvement has been disappointing, a new bid condition now implemented in all major waterway contracts requires that a certain percentage of the work will be subcontracted by the prime contractor to minority contractors. This procedure is unprecedented for Federal construction projects. Under this new procedure minority contracting should increase by an additional $15 to $20 million shortly.

TENN-TOM AFFIRMATIVE ACTION COMMITTEE

Because attempts to increase the role of minority businesses and workers in building Tenn-Tom surpass Federal, State, local and organizational responsibilities and jurisdictions, the Southeastern Federal Regional Council in Atlanta organized a Tennessee-Tombigbee Affirmative Action Committee (TTAAC). A total of 37 Federal, State and local organizations comprise the committee. It has attacked such minority problems as (1) bonding and financial difficulties of minority contractors, (2) contractor compliance with hiring goals, (3) minority participation in waterway-related planning, (4) manpower training, (5) use of minority businesses, and (6) workforce requirements.

With the South Atlantic Division Engineer chairing the TTAAC, major issues have been identified. Task groups have been assigned to these issues to study and resolve them. The groups are:

(1) Compliance—to review compliance of contractors in meeting hiring goals.

(2) Planning—to identify and recommend ways to ensure meaningful minority participation in planning for development of Tenn-Tom.

(3) Workforce Requirements—to determine the number of trained and untrained workers in the Waterway area as well as the total workforce requirements for the project.

(4) Minority Business Enterprise Utilization—to devise ways of matching minority firms with available work.

(5) Training—to develop recommendations for a comprehensive training program.

(6) Bonding—to learn what can be done to reduce or eliminate bonding requirements for minority firms or locate additional bonding resources.

Meeting regularly the committee and its various task forces have developed promising approaches to solving minority hiring and contracting problems.

PREFERENCE FOR LOCAL HIRING

All Tenn-Tom contracts stipulate that the contractor must try to hire at least 80 percent of his workforce from the local area. This provision insures that local personnel get the jobs. Also, it insures that rural areas are not adversely impacted by sudden large influxes of workers.

Corps of Engineers efforts and those of others to promote local hiring, include minorities and stimulate local economic development have received White House attention. Mr. Jack Watson, who at the time was assistant to President Carter for intergovernmental affairs and secretary to the cabinet, personally appeared in Columbus, Miss., last March to announce that Tenn-Tom will serve as a model for all future large federally funded projects. Watson said Tenn-Tom was one of four demonstration projects designated to maximize area development around such projects with as little red tape as possible.

The major objectives of this Tenn-Tom initiative by the White House is (1) to maximize the employment of persons living in the area, especially minorities, women, and the economically disadvantaged; (2) to insure a high degree of use of project area small and minority businesses in the procurement of project-related goods and services and in longrange economic growth and activities; (3) to encourage greater economic development benefits from the stimulus and resources provided by the construction projects and other investments in the area, and to enhance future development; and (4) to alleviate the adverse impacts of project construction on community services and facilities, and to improve the living environment.

TENN-TOM AFFIRMATIVE ACTION COORDINATING COMMITTEE

In addition to the Tennessee-Tombigbee Affirmative Action Committee (TTAAC), a Federal-State-local group, a Tennessee-Tombigbee Affirmative Action Coordinating Committee, was organized during the early days of Tenn-Tom construction. This committee represents various trade unions, contractors, the Corps, minority and other organizations. Chairing the committee is the head of the Southern Area Civil Rights Department of the AFL–CIO. The driving force behind adoption of the current Affirmative Action program, this ad hoc group monitors contractor minority hiring compliance and addresses manpower training problems.

TENN-TOM CONSTRUCTION ASSISTANCE CENTER

The Tenn-Tom Construction Assistance Center promotes the use of minority contractor and business interests in the construction of the project. Meeting quarterly it tackles such problems as minority contracting and bonding and financing capabilities. The board of directors and advisory board consists of representatives from the principal Federal, State and local agencies and organizations involved in the project.

The State of Mississippi cooperates in promoting minority participation in the Tenn-Tom activities. The Office for Black Economic Development (OBED) was established in 1975. Tenn-Tom-related OBED program goals include:

1. Increasing the amount of organized effective participation by black citizens in community economic development programs.

2. Ensuring that blacks are appropriately involved in local or regional planning activities.

3. Encouraging black investors or investment groups to invest in job and income creating ventures.

4. Identifying opportunities that result in business, industry and government purchasing of goods and services from black businesses.

Mr. Leslie G. Range, Manager of Mississippi's Office for Black Economic Development, in a July 16, 1980 letter to the Tenn-Tom Authority, noted the following pertaining to black involvement in the project:

"The OBED . . . was establish toward the end of 1975 when a review of the state's economic data clearly indicated that black citizens were not sharing equally in the economic gains made by the white population. . . .

"There has been significant improvement in minority involvement in the planning process since 1977. . . .

"Blacks are active members of the Tenn-Tom Planning and Coordinating Committee. . . . A black state planner from Tennessee has served as chairman of this group.

"Minorities are actively involved in the U.S. Army Corps of Engineers Corridor Study. Two minorities serve as at-large members of the Executive Committee. . . .

". . . there is a . . . black member of the Tenn-Tom Waterway Development Authority Board from Mississippi and other of the compact states. . . .

"Organized minority participation, such as the type now emerging, can lead to blacks getting a fair share of any benefits that do occur as a result of the project."

While the emphasis of my remarks has been on the current status of Tenn-Tom in improving the plight of minorities in the project area, I do wish to dwell briefly on what lies ahead for minorities.

Of course, the future has its foundation in the facts that I have reported to you today. The factors are in place, the events of the last few years are conducive to a growing, harmonious involvement of minorities in Tenn-Tom's construction and in the economic well-being that will surely follow.

A report just placed in my hand indicates that through the efforts of all of the groups I have mentioned a total of $42 million has been identified in Tenn-Tom plans for contracting to minority businesses over the next two years. As training programs mature, more minorities will get job opportunities on this project.

Of significance is the fact that the President has designated the Tenn-Tom project as a model for maximizing the comprehensive use of area development on a coordinated basis but without a hundred miles of strings and enough red tape to wrap all of the world's Christmas presents. This means that the eyes of the nation are on Tenn-Tom.

We want the nation to like what it sees.

The **PRESIDING OFFICER.** Who yields time?

Mr. **JOHNSTON.** Mr. President, I yield 3 minutes to the distinguished Senator from Mississippi.

Mr. **STENNIS.** Mr. President, I shall not detain the Senate.

Let me just say this about the minute examination of this project or any project. We can always find certain gaps or things not fully explainable.

This is a conception to start with as is all the others that have ever been built. It took someone's planning, imagination, and engineering skill. It took a Congress with faith in those plans and in the engineering skills to stand up and appropriate the money and take chances. Why? Because they wish to build, build, grow, expand. These are sound policies. If there is ever a time we needed sound policies in transportation, in new sources of energy, and expansion of those sources, it is now. Someone has to take a chance.

As to the argument opposing the project, although all of it is made in good faith, some of it is arguing about just chickenfeed compared to the objective served by the waterway.

How many billions of dollars have we authorized since 1974 when we saw that we had to start trying to do something about energy? How many far-reaching regulations, subsidies, and everything else have we passed with reference to energy in various forms, research and development? How many more are going to have to be recognized?

I learned as a member of this subcommittee it was going to take hundreds of billions of dollars to make this transition. But we finally have gotten on our way.

Now, contrary to all the progress and steps in the right direction, it seems to me we are going to turn around and knock down a major contribution here to the national transportation system regardless of what State it goes through. Dissipate it. Abandon it. Just leave it. And not ever give it a chance to serve its purpose.

Is that the kind of leadership that is going to bring us through this energy situation?

We need growth. As I said, we need development. We need expansion. It is something that the American people are going to have to have. Otherwise we lose the strength of our economy, our high standard of living in which everyone benefits. And just as certain as night follows day we will lose our ability for a proper kind of a strong military preparedness program. There is no speculation about that. That is a certainty.

Mr. President, I shall appreciate it if the well could be cleared. I am trying to address my colleagues.

I have supported this project since its beginning and will speak straight to the facts. This waterway, which has been under construction since 1971, will link up the Ohio and Tennessee Rivers with the Gulf of Mexico, providing a shorter, more energy-efficient route to the Gulf of Mexico. The shortcut will save 829 miles from points on the Tennessee River system and 399 miles from points on the Ohio River system to the Port of Mobile. The benefits of the waterway in these times when energy is the Nation's biggest problem are compelling. The increased efficiency of transporting bulky cargo a shorter distance, using less fuel, and particularly transporting coal from the Appalachian region, one of the largest deposits of coal in the world, via this waterway is the benchmark of this project.

There are some who doubt this waterway will be fully utilized. But when one examines the facts of the tonnage currently on the Tennessee and Ohio Rivers plus the great abundance of coal which we expect to be shipping in the near future—both for export and for our own use—it becomes abundantly clear that it will be utilized to its full capacity.

There are charges that the waterway is an environmental disaster, but I have been there and have talked with the planners on this project, and I am personally convinced that a great deal of care and sensitivity to the needs for enhancing the environment and enhancing the habitat of fish and wildlife have been considered.

The economic benefits of having a shorter route to the gulf will induce new businesses, provide greater employment opportunity, and will help hold down prices borne by the consumer.

These benefits will more than offset any environmental costs. Now let me get to the bottom line, Mr. President. The bottom line is that this great benefit to our Nation is 50 percent completed, I repeat, 50 percent, physically complete, and more than 70 percent of the contracts are completed or are now working. In other words, we must spend 70 percent of the total ultimate cost of this project even if we stop it today. And now, even in the face of being this far along, there are some of our colleagues who say that we should stop construction of the waterway.

It is inconceivable to me that when this great waterway is 50 percent complete and 70 percent of the money is spent, that we would consider stopping construction of the waterway and forego the enormous benefits of completing the waterway. Now let me make myself a little clearer, Mr. President, because there has been a great deal of erroneous information put out in the newspapers and here and there by various letters to our colleagues that would make one believe that there is more to gain from stopping the project than by finishing the project. Here are the basic facts:

Through this current fiscal year of 1980, $879 million has been appropriated for construction of the project. The President's request for this coming fiscal year is $208 million. This request has been approved by the House and this request was confirmed by the Senate full Appropriations Committee and is before the Senate today. Due to the controversy surrounding this request, hearings were conducted by Senator MOYNIHAN and by Senator JOHNSTON of the Senate Energy and Water Resources Subcommittee. The full Appropriations Committee in view of these hearings recommended the project to the Senate without objection or reservation. The balance to be funded after this fiscal year is $663 million, which includes inflation during the remaining construction period. When completed, the total Federal investment with inflation taken into account will be $1,760,000,000. This total investment will yield a benefit-to-cost ratio of $1.30 for each dollar invested. The remaining investment, which includes this year's request of $208 million and totals $881 million, will yield $2.50 for each dollar invested. Now if we stop this project, the termination cost would be $130 million, and no significant benefits would be realized.

This great artery from the Appalachian coalfields of West Virginia, Tennessee, Ohio, Kentucky, Indiana, and Pennsylvania would never carry one single chunk of coal from these States. This great opportunity for linking these coalfields by a more efficient means of transportation to the ocean would be lost. It would be a crime and a shame of the first order to report to the people of the United States that we stopped this valuable capital investment with no other reason given for such actions except that the project would harm the environment and that the costs were too high.

Perhaps the greatest single concern of the world today is the availability of a ready source of energy. It is evident that the best chance we have to solve the immediate energy crisis is with the great coal deposits found in the Appalachian region. Methods of transportating this coal poses a most serious economic problem which can only be solved by all modes of transportation working together. It is impossible for all these other modes of transportation to move this coal to market and for export without the Tennessee-Tombigbee Waterway in place.

The farsighted decision by Congress and the executive branch to build this waterway was made over 13 years ago. We are now 9 years into actual construction. With the completion date very near, coal and other commodities can soon be moved over this less costly waterway route to and from the heartlands of America.

The urgency of achieving energy independence confirms the vision and foresight of the planners and the legislators who recognized the strategic and economic importance of linking the waters of the Tennessee, Ohio, and upper Mississippi Rivers in the north to the Port of Mobile and the Gulf Intracoastal Waterway in the south.

I urge my colleagues to join me in supporting the completion of this vital project.

The PRESIDING OFFICERS. Who yields time?

Mr. CHAFEE. Mr. President, I am prepared to use 2 minutes and then yield back the remainder of my time if the opponents are prepared to do something similar.

Mr. JOHNSTON. Mr. President, I think there are only 3 minutes on each side remaining. We would use our full 3 minutes.

The PRESIDING OFFICER. The Senator from Louisiana only has 2 minutes remaining. The Senator from Rhode Island has 3 minutes remaining.

Mr. CHAFEE. Mr. President, I am prepared to wind up.

Mr. President, the issue before the Senate today is do we wish to proceed with a $3 billion project? There is no getting around that. They will say that the lower part of the river does not count, but, of course, it counts, if this is going to be made a viable waterway. The additional mileage below Demopolis has to be completed at a cost of $1 billion. So we are talking about a $3 billion project.

The question is do we want to go ahead with that, a project of very questionable value, because some money has already been spent?

I think clearly the vote should be not to proceed. It is as though there are resources locked up there that there is no other way of getting at them. That is not true. Any resource that is in the Kentucky-Tennessee area can get to the sea via the existing waterways, including the Mississippi.

It is also true there are alternate methods of transportation beside that waterway, namely railroad transportation.

I think that the point that the junior Senator from New York made is a very valuable one, that we are proceeding full blast with a canal, a waterway of doubtful value, when already there exist alternate methods which with some modest investment could be even improved further.

So that is it. Are we going to strike a blow in defense of the American taxpayer or are we going to proceed full speed, spend another $2 billion merely because we spent some before? If we do we will follow that old line, "We spent so much we cannot stop."

Mr. President, I think the argument clearly is in favor of stopping this project and for approval of this amendment.

Mr. JOHNSTON. Mr. President, I have 2 minutes remaining. I yield 1 minute to the distinguished Senator from Oregon.

Mr. HATFIELD. Mr. President, I do not understand why we have to argue this every year. The same old challenges have been raised each year. They have been disproven. They have been refuted. They have been rebutted.

Yet we sit here and hear the same old arguments used year in and year out.

No. 1, this project does not cost $3 billion. There is absolutely no evidence and there is no truth to that claim whatsover. This project costs $1.7 billion. I wish we would get the record clear on that.

We hear an argument made about the interest rate of 3¼ percent.

Mr. President, the Subcommittee on Energy and Water Development which brings this bill to the floor each year does not set the interest rate. The committee upon which the distinguished Senators from Wyoming, Rhode Island, and New York sit establishes in law the procedure by which the interest rate is set. We have not struck any deal with anyone on our committee or any other colleague. This is set in law.

If there is an unhappiness about this rate, let these men who bring this issue to the floor take it up in their own committee and change the law.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. HATFIELD. Mr. President, will the Senator yield me an additional 30 seconds?

Mr. JOHNSTON. Mr. President, I yield the Senator an additional 30 seconds.

Mr. HATFIELD. Mr. President, one last thing, and that is we hear about these environmental questions, and I believe that there is no one who can stand on this floor and defend a better environmental record than the Senator from Oregon.

But let me say every one of those environmental questions has been answered in the Federal courts of this Nation and has survived the suits. The courts have determined in law that the Corps has complied with all statutes in regard to these matters, and have dismissed the opponents' charges.

These charges are refuted with evidence. Our arguments are not empty claims as the opponents have asserted on this floor.

Mr. SASSER addressed the Chair.

Mr. JOHNSTON. Mr. President, three quick points.

First, it is a cost of $1.76 billion, not $3 billion. That is a fact.

Second, there is a sunk cost of $967 million—that is a fact—for which benefits would be virtually nil, almost $1 billion sunk cost. And the cost-benefit ratio of the remaining costs to benefits is 7.8 to 1, using 3¼ percent interest or 4.0 to 1 using 7⅛ percent interest.

The figures and the facts do not lie.

I hope the Senate will support it.

Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report on the Tennessee-Tombigbee Waterway, containing Allegations, Responses, and Discussions, which was submitted by the Subcommittee on Energy and Water Development to the Committee on Appropriations.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

TENNESSEE-TOMBIGBEE WATERWAY: ALLEGATIONS, RESPONSES, AND DISCUSSIONS

INTRODUCTION

The U.S. Senate Committee on Appropriations is responsible for insuring that public funds appropriated for construction of authorized water resources development projects are expended properly and give our Nation's taxpayers good value for their investment. In recent months considerable controversy has arisen concerning the Tennessee-Tombigbee Waterway (TTW or Tenn-Tom) Project in Alabama and Mississippi: those opposed to completing the project have made numerous allegations, claiming that the Tenn-Tom should be abandoned for economic, legal, and environmental reasons. Unfortunately, the news media across the nation have often repeated these allegations as if they were proven facts, and have thereby disseminated many untruths and distortions about the project. To set the record straight on these allegations, the Subcommittee on Energy and Water Development has held hearings, which have resulted in the following report.

After examining the controversies and the litigation concerning the Tenn-Tom project the subcommittee feels obligated to make the following observations. First, the current controversies clearly have not arisen from any recent discoveries or revelations concerning the project. Instead, the same attacks and allegations have been advanced time after time by representatives of competing modes of transportation which have always opposed the Tenn-Tom: many of these allegations were presented to Congressional Committees before and during 1946, when the project was authorized, and repeatedly when Congress has held hearings on appropriations for the project, and again in two protracted lawsuits in the Federal courts. None of these allegations have ever been found to have substance, even though the Federal courts, congressional committees, the Executive Office of the President, and the Department of the Army have examined these charges in several thorough and independent reviews of the project in recent years.

Second, we are convinced that the current controversies surrounding the Tenn-Tom do not arise from any lack of merit of the project, or even from the substantial investment of public funds needed to complete the project. Instead, the ongoing controversy apparently has been generated by a well-organized and orchestrated campaign by one or more corporations with a vested interest in stopping the project to avoid the competition in freight rates the waterway would provide. The opponents' failure to convince the Federal courts that any of these allegations are valid after two protracted lawsuits has led to a new strategy, one of bombarding the Congress and the news media with these same allegations and charges to convince Congress to discontinue funding this half-completed project.

Third, we recognize disturbing similarities between the present controversy focused on Tenn-Tom and the recent battle over Locks and Dam 26 on the Mississippi River at Alton, Ill. In that instance, certain railroad companies and environmentalist groups lobbied heavily against and financed expensive litigation to stop the Locks and Dam 26 project, which was—and remains—absolutely essential to prevent nothing less than the breakdown of navigation on the Mississippi River and the Illinois Waterway.

This subcommittee has the highest regard for the American railroad industry, and commends the important role the railroads play as part of our country's total transportation network. Nevertheless, the subcommittee expresses its disappointment and regret that a few corporations persist in spending large sums of their stockholders' and customers' money in legal and lobbying campaigns to stop vital navigation projects like Locks and Dam 26 and Tenn-Tom. These navigation projects are absolutely necessary to provide a low-cost, energy-efficient water component of our overall transportation system. Moreover, the subcommittee knows of no creditable study which demonstrates that the healthy competition in freight rates which water carriers provide to railroads is anything other than beneficial to the nation as a whole and to the long-term interests of both water carriers and competing transportation modes.

With this background in mind, the subcommittee proposes to respond with facts to the principal allegations against the Tenn-Tom Waterway put forward in recent months by opponents of the project.

In its action on the subcommittee's recommendations for the Fiscal Year 1981 Energy and Water Development Appropriation Bill, H.R. 7590, the Committee on Appropriations ordered this report to be printed. Senate Report 96–927 accompanying H.R. 7590 includes the Committee views in recommending appropriations for continued construction of the Tenn-Tom project.

Allegation: That the Tenn-Tom Waterway is not being constructed in accordance with the project's legal authorization.

Response: This allegation is false, as demonstrated by a review of the law and the legislative history of the project, and by the judgments of the Federal courts on this issue.

Discussion: The Tennessee-Tombigbee Waterway was authorized in 1946 by Public Law 79–525 in accordance with the recommendations contained in House Document 486, 79th Congress. As stated in that document, the Tennessee-Tombigbee Waterway "connection between the Warrior-Tombigbee system and the canalized Tennessee River will not only make water transportation accessible to the local tributary area in Alabama, Mississippi, and Tennessee but will also provide a direct barge route for through traffic between gulf coast ports and the improved inland waterway system of the North Central States * * * to permit the transit of tows of normal size without breaking formation." The general plan provided for 110 feet by 600 feet locks and a "channel of *not less than* 9 feet in depth and a *minimum bottom width* of 170 feet in river and canal sections and 150 feet in the divide cut." (Italic added.) The authorizing document also permitted "such modifications thereof as in the discretion of the Secretary of War may be advisable." In 1951 the Tennessee-Tombigbee Waterway was placed in a deferred-for-restudy category, so project planning was discontinued. The 1957 Public Works Appropriations Act mandated a restudy of the Tenn-Tom, which led to a report designated General Design Memorandum No. 1 (GDM No. 1). This report was approved by the Department of the Army on April 12, 1962, and submitted to Congress. In the 1965 Public Works Appropriation Act, Congress mandated a reevaluation of the Tennessee-Tombigbee waterway's economics. The study, designated as the 1966 Supplement to GDM No. 1, retained the lock plan and dimensions from the previous design but considered the relative merits of both 200 and 300 foot width channels. Although both channel widths were found to be economically justified, the 300 foot channel width was recommended, since this plan increased project efficiency and safety, and produced the greater net benefits.

On March 30, 1967, Secretary of the Army Stanley Resor exercised his discretionary authority to make post-authorization changes in the project, and formally approved the 300 foot width channel. On the same day the Secretary submitted his reports on the project, which report explained his decision to authorize a 300-foot channel width, to the Public Works Committees and the Appropriations Committees of both the House and Senate. Subsequently the Congress approved allocation of available funds to resume preconstruction planning for the Tennessee-Tombigbee Waterway.

On December 31, 1969, the Secretary of the Army recommended that the Tennessee-Tombigbee Waterway be included as a new construction start in the President's fiscal year 1971 budget. This recommendation was accepted: the "new start" construction funds portion of the fiscal year 1971 Budget included $1 million for the Tennessee-Tombigbee Waterway. Under the heading of "Major Changes Since Project Authorization", the Corps Justification Sheet supporting this request noted that the plan contained "* * * a reduction in the number of navigational structures * * * and widening the navigation channel from 170 to 300 feet."

As the Corps of Engineers planned and designed the Tenn-Tom project, the Corps used the statutorily granted discretionary authority to make post-authorization changes in the project to modify many project features from those contained in the preliminary plan submitted to Congress in 1945. All these changes either reduced project costs or enhanced project efficiency or environmental quality. Some examples are: the reduction in the number of locks from 18 to 10; providing cutoffs in the river section to improve alinement and reduce excavation; increasing depths in the Aberdeen and Columbus pools to 12 feet to aid in barge maneuverability; and a change from a perched canal section to a chain-of-lakes concept.

In 1976 the Louisville & Nashville Railroad Co. and the Environmental Defense Fund initiated a lawsuit in the Federal courts alleging that many features and dimensions of the Tenn-Tom project were being constructed in a manner not authorized by Congress. Four years of litigation ensued, in which the plaintiffs conducted exhaustive discovery proceedings against the Department of the Army and the Corps of Engineers and examined literally truckloads of Corps documents concerning Tenn-Tom. Following 2 weeks of hearings, the Federal trial court ruled that all but one of the many features and dimensions of the Tenn-Tom which plaintiffs had alleged to be illegal were in fact entirely legal and proper, and that the Corps of Engineers and the Department of the Army had used their discretionary authority to alter project design responsibility and legally.

Only one of the many challenged design features of the project did not receive the court's explicit endorsement: concerning that issue—the 300 foot channel width—the court held that no decision was necessary or possible, because the plaintiff's challenge to the 300-foot width was barred by the equitable doctrine of laches. The plaintiffs appealed the trial court's decision, but it was affirmed on appeal by the U.S. Court of Appeals for the Fifth Circuit, which later denied the plaintiffs' request for a rehearing en banc. The plaintiffs have recently petitioned the U.S. Supreme Court to hear their discredited allegations on the authorization issues; the U.S. Department of Justice is opposing that petition on the grounds that the plaintiff's case is totally without merit. As of today, the Federal court's careful examination of the Tenn-Tom's authorization status has not found valid even one of the project opponents' many allegations of illegality. The Committee agrees with the views of the Department of the Army and the Department of Justice, that the project is being constructed fully in accordance with its legal authorization.

Allegation: That the Tenn-Tom is an economic disaster.

Response: Every reevaluation by the Corps since project authorization has had a favorable benefit-cost ratio.

Discussion: The 1945 Corps report used for authorization contained a benefit-cost ratio of 1.05. In every subsequent reevaluation by the Corps, the project has had a favorable benefit-cost ratio. The latest evaluation demonstrates that the project will return annually $1.30 in benefits for every $1 in cost. The Corps benefits have generally turned out to be quite conservative. The most recent example of this is the McClellan-Kerr Arkansas River Navigation Project which (a) was recommended with a favorable benefit cost ratio of 1.08, then (b) is achieving benefits significantly higher than that today. A study of that project is available from the Corps of Engineers.

The benefit cost ratios for the Tenn-Tom project since the Kearney Study in 1975 are as follows:

Fiscal year:	*Benefit-cost ratio*
1977	1.1
1978	1.15
1979	1.19
1980	1.2
1981	[1]2.5 (1.3)

[1] Remaining benefit to cost ratio. (1.3 is comparable to others in this tabulation.)

Allegation: The evidence is overwhelming that many of the projected traffic movements are illusory.

Response: Whether specific firms have gone out of business or not (since 1975)—is irrelevant; the issue is a red herring.

Discussion: The purpose of interviews is to establish base year traffic which might use the Tenn-Tom. It is not a marketing study of the future prospects for a specific, given firm. It is fully to be expected that some firms, over a period of 5 years, will go out of business, and some will come in; and that specific plans and opinions may change.

For example, the Louisville & Nashville Railroad testified, at the recent hearings of the Senate Subcommittee on Water Resources of the Committee on Environment and Public Works, that it did a survey of its marketing offices and found that 30–50 million tons will be diverted. Much of this is for movements Kearney did not count and the 30–50 million tons are more than sufficient to justify the project. Kearney did not include any tonnage originating or terminating west of New Orleans. Yet it is clear that chemicals can reach the Tennessee Valley more cheaply via Tenn-Tom than via any other route. Therefore Kearney missed some movements.

Other witnesses at these hearings revealed still more new movement not in the Kearney base traffic.

The Corps held a public meeting in Columbus in 1977 as a part of President Carter's Review of Water Projects. New shippers, not in Kearney's base Traffic, spoke or submitted letters.

The first users of the existing constructed part of the Tenn-Tom do not represent movements included in the Kearney base traffic. Opponents know the Corps cannot, because of a court order, discuss individual movements.

There is a need for bulk movement in the tributary area. The Tenn-Tom will carry its share because it is cheaper. It is cheaper because it is shorter and hence it saves time and energy.

Further, Corps tonnage estimates have almost always been less than actual experience.

Allegation: That the true benefit-cost ratio is far below unity because it is based on an unrealistically low interest rate.

Response: The Tenn-Tom interest rate is prescribed by law and exceeds the "real" rate of return in the economy.

Discussion: In 1969, the Water Resources Council, pursuant to statute, promulgated 18 CFR 704 as a legally binding regulation. It requires an interest rate of 3¼ percent for all authorized projects for which satisfactory assurances of local cooperation had been received by 31 December 1969: this includes the Tenn-Tom.

The Council's regulation was confirmed and specifically adopted as statutory law by Congress and the President in Section 80(b) of the Water Resources Development Act of 1974.

Local assurances were received from the Tombigbee River Valley Water Management District on 26 March 1964 and from the Tombigbee Valley Development Authority on 18 April 1968.

The real rate of interest has varied from 0 to 4 percent during the 20 year period 1959 to 1979, according to Dr. Paul Samuelson of MIT. In 1971, the year construction began on the Tenn-Tom, the real rate was 3 percent. In 1976, when Tenn-Tom opponents brought their second, and currently pending, lawsuit, the real rate was 1½ percent.

A long-standing practice in water resources planning is to hold benefits and costs free of inflation. Therefore, the discount rate should also be free of inflation. Inflation is built into the kinds of market interest rates mentioned earlier. As stated by Dr. Samuelson:

"Thus, once we expect to rise at 9 percent per year, my pension funds invested in bonds and mortgages will tend to pay 12 percent rather than 3 percent * * * In the 1980s, one sees something of a similar inflation premium built into American and European interest rates."

The same point can be made, if inflation is added to benefits, costs and the interest rate. Assume a 5 percent rate of inflation for benefits and costs; the current discount rate for survey studies, 7⅛ percent, the remaining BCR for the entire authorized Tenn-Tom project is 4.0 to 1. The remaining BCR using 3¼ percent and no inflation is 2.5 to 1. This result occurs because one uses a real rate of only 2⅛ percent (7⅛ percent–5 percent) to compute the 4.ORBCR, while one uses a real rate of 3¼ percent (3¼ percent to 0 percent) to compute the 2.5 BCR.

Allegation: "Remaining Costs." Without rationale or explanation the Corps uses only the "remaining" costs. The simple fact is that using the traditional and required manner would have relegated the project to the scrap heap.

Response: The remaining benefit cost ratio is the economically correct ratio. The Tenn-Tom's total benefit-cost ratio is above unity.

Discussion: The remaining BCR for the Tenn-Tom is 2.5. The total BCR is 1.3.

Sound economic analysis requires that unrealized benefits be compared to uncommitted costs in determining the economic justification of any water resources project.

Existing guidance requires the use of the remaining (incremental) BCR. It is stated at page 8 of Senate Document 97, the operative guidance for Tenn-Tom benefit analysis:

"Net benefits are maximized when the scope of development is extended to the point where the benefits added by the last increment of scale . . . are equal to the costs of adding that increment of scale."

President Carter recognized the remaining BCR during his 1977 Review of Water Resources projects. The criteria was: "Ratio of remaining direct benefits to remaining direct costs exceeds unity" at the current rate. The remaining BCR for the Tenn-Tom at 7⅛ is 1.3.

In response to a criticism from Mr. Brent Blackwelder of the Environmental Policy Center, Assistant Secretary of the Army Michael Blumenfeld reaffirmed the correctness of the remaining benefit-cost criteria, stating:

"The remaining benefit/remaining cost ratio presentation is preferred for the total project because it is the appropriate indicator of the relationship between unrealized benefits and uncommitted costs." (Letter May 3, 1980).

Computation of the RBRCR in connection with budget submissions was originally suggested several years ago by OMB Staff. The justification sheets for fiscal year 1981 display the remaining benefit remaining cost ratio (RBCR), at the applicable discount rate. This was concurred in by the Army, OMB and the Committees on Appropriations of the House and Senate.

Allegation: That the Corps told its economic consultants to make unjustified, unauthorized assumptions.

Response: Absolutely false. The Corps used a nationally recognized management consultant firm to evaluate transportation benefits. This consultant used accepted and appropriate methods.

Discussion: Corps studies are prepared with the knowledge that the process is open for review and that these studies are subject not only to their internal review but also to the review of the Office of the Secretary of the Army, OMB and Congress. Neither the Corps nor the reputable consulting firm employed for this study would ever operate in the unethical manner implied by the allegation.

Allegation: Kearney's assumptions were always made to favor the TTW analysis.

Response: Not true; the necessary assumptions were in a professional manner with the data available at the time.

Discussion: The assumptions for the analysis were made in a professional manner. It is clearly evident, however, that they are not all favorable to the justification of the TTW. For example, in the market survey, movements with origins or destination points west of New Orleans, La., were excluded. It is evident that movement between the Tennessee River and the West GIWW would move at a savings over a Mississippi River routing.

A second example which has even a larger impact is the waterway diversions rule. The basic assumption was that the traffic which was expected to be moving when capacity was reached would continue to use the waterway. An alternative assumption would be that low savings traffic would be diverted as demand increased allowing the benefits to the waterway to rise.

Similarly, the assumption regarding alternative modes was one of unlimited capacity at current prices. It is evident that congestion on any mode has the effect of raising costs.

Allegation: Inclusion of movements which are not existing traffic are prohibited by the Corps' own regulation ER 1120-2-114.

Response: Neither ER 1120-2-114 nor common sense exclude projections of future traffic.

Discussion: ER 1120-2-114, quoting Section 7a of the Department of Transportation Act of 1969 (Public Law 89-670), states that the agency will make an:

"estimate of traffic that would use the waterway will be based on such freight rates, taking into account *projections* of the economic growth of the area." (italic supplied)

Paragraph 8 of ER 1120-2-114 specifically discusses how to compute savings for movements not actually existing at the time of the traffic survey:

"The alternative modes of transportation to be used in estimating savings to shippers are those actually in use at the time of the study for moving the traffic in question, or, *where there are no existing movements*, those modes that would most likely be used for such movement." (italic supplied)

All Corps navigation (and other) studies project future tonnage, because that's the only sensible way to plan projects for future use.

The Water Resources Council publishes demographic projections (OBERS) as a framework for specific projections.

The "prohibitive" statement in Section 7a cited by the opponents is "the traffic that is estimated to move via the proposed waterway will be based on a thorough analysis of the existing traffic movements in the tributary area." The clear intent is that an analysis of existing movements is a starting point for benefit analysis, not the end point.

Kearney did find a large number of future movements for which firms had positive plans in 1975 and properly included them in the 1968 traffic base.

Allegation: That "the Corps has never analyzed impacts on competing transportation modes. Thus, the negative secondary impacts of project construction on surrounding communities have never been addressed."

Response: Analysis of alternative modes is implicit in the benefit analysis procedure.

Discussion: The very basic purpose of providing the waterway is to provide a more economical alternative transportation route for the movement of bulk commodities. The implicit assumption that the railroads have unlimited capacity at current prices is the most favorable assumption to the railroads for purposes of the benefit analysis. This assumption similarly results in identifying the maximum possible negative impacts for the railroads. Due to a generally recognized lack of data regarding specific costs for railroad movements, it is not possible at this time to definitively calculate the impacts on railroad viability or the relevance of these revenue shifts on the benefit analysis.

In the TTW lawsuit the plaintiffs have alleged that the failure to analyze the impacts on other transportation modes renders the economic analyses of the TTW invalid. This particular line of attack has been found deficient from a legal standpoint. It is axiomatic that the waterway will be a competing mode and therefore will have some effects on other modes. Congress is well aware of this fact.

In affirming the District Court decision in the previous litigation on the TTW, the Fifth Circuit Court of Appeals stated as follows in regard to the railroad being a viable alternative to the waterway: "The mere fact that rail transportation was not 'developed' and the plaintiffs can suggest the possibility that rail traffic may have been appropriate is insufficient to overcome the Court's finding. The plaintiffs made no attempt to demonstrate that the transportation function which the waterway proposed to provide—low cost, slow, bulk movement—is one which has been displaced, in whole or in part, by rail, highway, air or pipeline technology in any area wherein water carriage is available. The appropriateness of such a transportation scheme in the Tennessee-Tombigbee project area remains technically, economically, and ecologically speculative." The Fifth Circuit Court of Appeals also recognized in affirming the District Court of Appeals also recognized decision maker on whether the TTW should be constructed. Congress has authorized and funded an extensive and broadly scoped study on the TTW and its potential effects on the waterway environs including the communities along the actual waterway route as well as effects in the areas above and below the route. This study (Tennessee-Tombigbee Waterway Corridor Study) should be very helpful to local communities as they evaluate the alternative futures and prepare for the waterway and its associated impacts.

Allegation: The Corps has completely failed to recognize and account for differences in inventory, storage, handling and other logistics costs as between TTW barge and the alternative mode (rail and truck).

Response: All important logistic factors were considered in construction of rates and are explained in the Kearney study.

Discussion: Kearney explicity considered these factors (except for inventory costs) and states so on page V-4 of its final report. On page V-10, Kearney states that even inventory costs were considered in a category called "other rates and charges," which were added to the constructed rate if they were considered to be important by the firm making the shipment.

The effects of different logistics costs were also screened by the use of acceptance criteria Kearney did not accept a diversion from water to the Tenn-Tom unless the savings per ton was 15 cents or more; and from rail to the Tenn-Tom, unless the savings per ton was 50 cents or more. These criteria are considered highly conservative.

Use of inventory costs would not significantly impact upon project benefits. (Estimated to be less than 1 percent of the total annual benefits).

Allegation: Kearney used hypothetical rates for existing movements, and not actual rates.

Response: This procedure used by the A. T. Kearney Co. is a highly acceptable one, and does not violate regulations or policies.

Discussion: Corps regulations state that transportation savings will ordinarily be developed by comparing the full charges for movement from origin to destination via the waterway being studied. If the rate for the prevailing movement is not available or if the characteristics of the movement differ from those anticipated on the waterway, the rate via the present mode must also be constructed. Reliable existing rates are difficult to obtain in a traffic survey because those surveyed are reluctant to provide rates they have negotiated. Kearney used constructed rates for this and other reasons:

(1) The waterway would not come into existence until 1986 and rail rates were based on 1975 data.

(2) The waterway is entirely new and constructed rates had to be computed. It is appropriate to use comparable procedures for developing future rail rates.

(3) A large portion of the potential movements were future movements for which no rate existed.

Kearney tested the constructed rate model against available rail rates and found a high degree of correlation.

Allegation: There are numerous errors and inconsistencies in the Kearney study's benefit calculations.

Response: This is not true. Kearney followed Corps prescribed procedures and regulations.

Discussion: This allegation is made to discredit the study and is totally without any supportive evidence.

Allegation: That "A. T. Kearney Corp. was hired to overcome the rapidly escalating project costs by finding more project benefits" and that Kearney "manufactured the extra project benefits they needed" to offset project cost increases.

Response: A. T. Kearney is an internationally recognized transportation consulting firm with a flawless record of integrity.

Discussion: It is inconceivable that this firm would risk its reputation by fraudulently creating unwarranted benefits. In fact, Kearney was not told what the project costs were.

The Chief of Engineers, Lt. General J. W. Morris, ordered an economic study because he did not want to proceed with a project with a benefit-cost ratio (BCR) less than 1.0. He has testified in court and before Congress that he was prepared to recommend against further construction had the project economic viability not proved out.

A. T. Kearney used sound and appropriate procedures to predict the traffic that will use the Tennessee-Tombigbee Waterway. A. T. Kearney firm conducted its study in full compliance with the professionally accepted standards of economics and with the terms of its contract with the Corps of Engineers.

Those that make the charges have not provided supportive information. The contract and the memoranda of meetings between the Corps and the contractor do not support this allegation.

Allegation: That it is unwise to fund a project which will lead to the exporting of U.S. coal.

Response: U.S. foreign policy favors free-world coal trade.

Discussion: The U.S. pledged to increase coal exports at the Tokyo Economic Summit in 1979, and to join 19 other industrialized countries to increase coal use as a substitute for oil—May 1979 International Energy Agency meeting.

The President recently announced that Deputy Secretary Sawhill (Department of Energy) would convene and chair an Interagency Coal Exports (ICE) Task Force to determine means to: Substantially increase U.S. coal exports; identify impediments to such increases; and recommend appropriate government and private sector actions to achieve them.

Secretary Sawhill stated April 14, 1980: "There can be no argument that we must export more coal to improve the balance of trade, take pressure off the dollar and dampen inflation, as well as to lift the burden of oil from the backs of our allies, who are far more dependent upon imports than we are."

In *Coal Bridge to the Future, Report of the World Coal Study* (WOCOL), 1980, a distinguished international group of experts, under Carroll L. Wilson, Project Director, MIT, projected U.S. coal exports to increase from a 1977 base of about 50 million tons to a current expected range of 125 to 200 million tons by 2000. Potential expanded exports could increase to 350 million tons.

Allegation: A DOT and DOE estimate is said to be coming out in the next 30 days. That report allegedly will show that rather than getting 18 million tons of coal a year moving on the TIW in 1986 there may be only 2 million tons.

Response: The 30 days have gone by and a report is still not available; therefore, we cannot comment on the specific charges.

Discussion: There are innumerable sets of projections available on coal movements, because of the fluid nature of the current energy situation. Projections have been made based upon a set of alternatives which favored western coal for export. Using the assumption that western coal were to be exported, a low number might be projected for this waterway. Using an assumption that eastern coal will be exported, high projections for the Tenn-Tom would be developed.

The Report of the World Coal Study (WOCOL), 1980, indicates that U.S. exports of coal could increase from 50 million tons in 1977 to an expected range of 125 to 200 million tons by 2000. Further, the report indicated a potential export level of 350 million tons by 2000.

A coal resources study of the Tenn-Tom area conducted for the Corps in 1978 found that the supply areas included enough recoverable coal to meet the primary market areas, that export coal through Mobile Harbor is likely to increase significantly.

Clearly, all indications are extremely favorable that substantial levels of steam coal will be transported on the Tenn-Tom to Mobile Harbor for export.

Allegation: There are not sufficient coal reserves in the region to meet Kearney's projected movements.

Response: Reserves are sufficient to meet the expected demand.

Discussion: The Kearney report projected approximately 11–12 million tons of coal from the Tennessee Basin to move on the TTW annually. This is approximately 600 million tons over the economic life of the project. The National Coal Association has identified resources of 15.8 billion tons of coal in Tennessee and Alabama with overburden of 0–3,000 feet. They have also estimated total identified and hypothetical coal resources to be 45.8 billion tons for Tennessee and Alabama and the coal resources in the Appalachian Region and Ohio Basin are obviously several times greater.

The amount of coal which is economically recoverable is less than the full amount of the resource and is dependent on the characteristics of the seam, mining technology and sale price. The amount of the economically recoverable coal therefore can be expected to change over time with changes in price and technology.

The Corps contracted with the 3R Corporation for a specific study of this issue:

The study modeled generalized supply/demand relationships for the coal using both quality and quantity criteria and considered the waterway as one feature of the overall transportation network. The 3R study team delineated a primary supply region consisting of Alabama, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee and West Virginia. The primary demand for the coal was expected to encompass the foreign markets as well as markets in nearly all of Alabama, Southeast Mississippi and the Panhandle and West Central portions of Florida.

The major conclusions of the study were:

1. A large domestic demand for steam coal is projected for the 1986–2036 period, particularly in the primary market area;

2. The supply areas contain large amounts of recoverable coal, enough to meet the needs of the primary market areas;

3. All modes of transportation are likely to be strained at times in meeting future coal demands;

4. Export coal through Mobile Harbor is likely to increase significantly over current levels; and

5. Utilities will be the largest consumers of coal in the primary market areas.

Allegation: The bottom has fallen out of the metallurgical coal market and there will be no increase in exports.

Response: There was a dip in the amount of metallurgical coal exports in the 1970's. However, this was a short run situation; metallurgical coal exports are expected to significantly increase during the next 20 years.

Discussion: Metallurgical coal has been traded internationally for many years due to its limited supply sources and lack of substitutes. There was a decline in U.S. exports of metallurgical coal during the 1970's because of world-wide economic conditions. However, the same reasons for our past exporting of metallurgical coal continue to exist and they are the same reasons why metallurgical coal exports will increase in the future. The present emphasis is on the export of steam coal, however, the World Coal Study (WOCOL) has projected U.S. exports of metallurgical coal to increase from 39 million tons in 1977 to the level of 60 to 70 million tons by the year 2000.

Allegation: A coal slurry pipeline will be built from Tennessee to Mobile.

Response: Numerous routes for coal slurry pipelines have been considered, including the one mentioned. However, implementation of coal slurry pipeline does not seem possible in the near future.

Discussion: Eminent domain legislation to give developers the power to acquire rights-of-way, is required before coal slurry development will receive serious consideration. Legislation is under consideration and has been for several years. There are many other problems yet to be resolved. Dewatering of the coal slurry at the receiving terminal requires considerable storage area and introduces environmental problems. Obtaining water for the slurry, and the problems of interbasin water transfers are other major issues. A coal slurry pipeline does not appear to be a near-term alternative for moving coal in this area.

Allegation: "The cost of the Tenn-Tom project has gone up tenfold in 8 years from $323 million to $3 billion."

Response: This is false. The total estimated Federal (Corps of Engineers) cost for the Tenn-Tom as of today is $1,750 million, of which $879 million has already been appropriated. This $1,750 million figure includes $100 million representing inflation through the remaining construction period.

Discussion: The Department of the Army's first budget submittal for Tenn-Tom construction was for fiscal year 1971, and the total first cost was then $323 million—July 1969 price level. The comparable cost in the fiscal year 1981 budget submittal is $1,650 million (Note: Neither of these figures includes the $100 million allowance for future inflation). This represents about a five-fold increase over the last 10 years, and 66 percent of this increase is the result of inflation. Much of the remaining increase can be attributed to improvements in project design to increase efficiency and to enhance environmental quality.

The claim that the Tenn-Tom project will cost $3 billion, is both false and misleading. The Corps of Engineers budget justification sheet for fiscal year 1981 does present a $3,030 million figure, but that is not the cost of the Tenn-Tom project only; that fact is clearly indicated on the sheet. The $3,030 million figure represents both the total Federal and non-Federal cost of the Tenn-Tom (including $111 million added to represent inflation before construction is completed); and future (about year 1997) recreation development costs of $145 million (of which $105 million represents inflation; and $960 million for unauthoried modifications that could expand the capacity of the Black-Warrior-Tombigbee Waterway in Alabama between Demopolis and Mobile. Out of this $960 million cost, $637 million is for inflation. The Tenn-Tom project will be fully useful and will produce its expected economic benefits even if the nearly $1 billion of work on the Black-Warrior-Tombigbee is never authorized or constructed.

Allegation: The Corps deliberately misled Congress about increased costs.

Response: Totally false. The Corps did not suppress cost increases. The costs have always been prepared in accordance with current procedures and represent the best estimate based on information available at the time.

Discussion: In mid 1974 it became apparent that cost increases were greater in the 1972–74 time frame than had been anticipated on major items of work. Public documents generated by the Corps for the express purpose of informing Congress of escalating costs, are being used out of context as the basis for the criticism.

A federal cost estimate of $815 million was presented to Congress in support of the fiscal year 1976 budget request. Part of this estimate was based on conceptual designs and part based on actual bids received from contractors. Congress was informed in 1975 that the fiscal year 1976 benefits and related costs were outdated and were being reanalyzed. A cost estimate of $1.4 billion was reported in August 1975 to the Senate Appropriation Committee before the fiscal year 1976 appropriation legislation was finalized by Congress. A federal cost of $1.36 billion was included in the data supporting the fiscal year 1977 budget request. This cost was the result of the reanalysis, based upon more detailed examination of all project features.

Allegation: If the project were to be ended today, a very substantial portion of the moneys that have been expended are fully recoverable. Fifty percent of the costs that have already been expended on the waterway can be recoverable through the sale of land.

Response: This allegation is simply not true. Funds allocated to date for the waterway are approximately $879 million. Of this total, $56 million has been spent on the acquisition of land. It is estimated that the sale of these lands would return only about $29 million, because much of the real estate has no known use except as a navigation project (for example, The Divide Cut).

Discussion: Sale of the land would represent only 3½ percent of the allocations to date, rather than the 50 percent claimed by the opponents of the project. In addition to the funds already allocated, termination costs of about $130 million would be spent, and $105 million in annual navigation benefits would be lost.

The following table provides a breakdown of the termination costs:

[In millions of dollars]

Item	Section of project			
	River	Canal	Divide cut	Total project
(a) Contract termination costs and claims	17.1	25.4	31	73.5
(b) Protection of completed works[1]	14.2	5.2	30	49.4
(c) Real estate settlements and deficiency judgments	3.4	4.45		7.85
Total	34.7	35.05	61	130.75

[1] Includes environmental restoration.

Note: Estimated total termination costs, $130,750,000.

Allegation: The project is less than 25 percent complete.

Response: Through fiscal year 1980, about 50 percent of the Federal (Corps of Engineers) funds have been allocated—$879 million out of $1,750 million. Over 70 percent of the total federal cost has been expanded or is committed in ongoing contracts.

Discussion: As of July 31, 1980, the features necessary for navigation (lands, relocations, locks and dams, and channels and canals) are 46 percent physically completed. About 190 miles out of the 232 miles of the channel are either completed or under way (82 percent).

Allegation: The Tenn-Tom is an environmental disaster.

Response: Just the opposite is true. The project is in compliance with all applicable environmental laws.

Discussion: The TTW is one of the first large Civil Works water resource projects to be developed under the auspices of NEPA. The EIS for the waterway was filed with CEQ in 1971 and was debated in Congress; its adequacy was upheld by two federal courts. The environmental studies on this project have been extensive and continuous. Supplemental Environmental Reports, updating the EIS, were issued in 1975 and 1978.

In 1971 a continuing environmental study process was established by the Corps to place more emphasis on environmental considerations in the design and construction of the waterway. An Environmental Board of Consultants was established to review these activities and to recommend opportunities for minimizing environmental losses and to maximize environmental protection and enhancement. This process led to numerous changes and refinements in the construction of the waterway.

The Congress has mandated that special efforts be taken to insure that environmental resources are protected. The Corps has made every effort to fulfill these mandates. For example, all of the disposal sites for the excavated material have been selected in accordance with guidelines promulgated by EPA as directed by the Federal Water Pollution Control Act (Public Law 92–500). The U.S. Fish and Wildlife Service has participated in the selection of the disposal sites under the auspices of the Fish and Wildlife Coordination Act. In addition, state water quality certifications have been obtained for all waterway related activities under the Clean Water Act provisions.

There are no federally listed endangered or threatened species which would be adversely affected by the waterway.

Extensive measures have been taken to insure compliance with the Archeological and Historic Preservation Act and the National Historic Preservation Act. Where possible, important sites have been protected. Where sites had to be disturbed, appropriate mitigation measures were undertaken in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officers.

Requirements are included in all contracts that the contractor will comply with all applicable state and federal regulations. Thus the Corps has taken every effort to comply both with the spirit and intent of all applicable laws.

Allegation: The Corps of Engineers has proceeded with the project in the absence of a legally required mitigation plan called for in the Fish and Wildlife Coordination Act. Further, the U.S. and Wildlife Service indicates that "up to one million acres of land" would have to be acquired to compensate for the loss of fish and wildlife habitat, and the cost of this required mitigation could be as much as several hundred million dollars.

Response: The Corps is not legally required under the Fish and Wildlife Coordination Act to have such a plan before proceeding with the project. However, for the last several years, the Corps and the Fish and Wildlife Service have been involved in a three phase mitigation study for the project. This study will lead to a report that could recommend to Congress the purchase of lands for mitigation, if the study determines mitigation is appropriate.

Discussion: A preliminary analysis contained an estimate of 118,000 acres needed for mitigation. A subsequent estimate was significantly lower. The Corps and the Fish and Wildlife Service have reached agreement on the approach to use in revising the preliminary draft analysis, and the study is proceeding on schedule with a report completion date of December 1981.

Allegation: Additional spoil disposal is required in the divide section; therefore, a supplement to the EIS is required.

Response: This is not a major change and a supplement is not required.

Discussion: Spoil disposal was considered in the original EIS. The methods of spoil disposal now being utilized have proved to be environmentally sound, actually offering opportunities for wildlife mitigation and enhancement.

Allegation: Shortening of the river section with cut-offs and straightening the channel requires an EIS.

Response: This is not a major design change, and a Supplement to the EIS is not required.

Discussion: The travel distance was shortened some 21 miles with the cutoffs. This design required less excavation than would be needed for the longer route. The recent court decision found that the cut-offs did not affect the scope, purpose or plan of improvement of the Tenn-Tom in any material way.

Allegation: Various water quality problems will develop with the completed project because of sediment depositions within the reservoirs.

Response: The Tenn-Tom reservoirs are run of the river type which allow for constant flow through the impoundments: this fact, plus normal maintenance dredging, will insure that sedimentation will never impair navigation or recreation on the Tenn-Tom.

Discussion: Studies have been conducted to determine the rates of sedimentation that can be expected in the impoundments for the TTW: these studies have not revealed any significant adverse effects from sedimentation. Routine maintenance dredging will insure that the navigation channels are maintained to proper dimensions. Moreover, water quality was discussed adequately in the project's EIS, which revealed no serious water quality problems.

Allegation: The project will result in the waterlogging of 122,000 acres of land. This impact requires an EIS.

Response: The EIS on file discusses waterlogging, and demonstrates that waterlogging will not present serious problems or impact significant acreages of land.

Discussion: The claim that 122,000 acres will be impacted is not supportable. The figure was developed by opponents from a map and data contained in a U.S. Geological Survey Report. The author of this report has stated in a sworn affidavit filed in Federal Court that the map and data from which the 122,000 figure was developed are not suitable for making this determination. The Federal Courts have ruled that the Corps' Tenn-Tom EIS adequately discusses waterlogging, and shows that it will not be a significant problem.

Allegation: The 105,000 acres of land required for the project is an increase from the 70,000 acres initially planned. This constitutes destruction of additional fish and wildlife habitat, not covered in the EIS.

Response: Much of the additional land—20,000 acres in the canal section alone—will remain unaffected by construction and therefore maintain its value for wildlife. Much of the increased acreage is for the purpose of maintaining better environmental control. Moreover, any destruction of fish and wildlife habitat which can be attributed to the project will be evaluated and rectified pursuant to the terms of the Fish and Wildlife Mitigation Act. The Corps of Engineers and the U.S. Fish and Wildlife Service are working together now on a three-phase study to determine how to mitigate measures for losses to fish and wildlife caused by construction of the Tenn-Tom.

Allegation: The "Chain-of-Lakes" design is a major change, made since the original

EIS was filed; therefore, a supplement to the EIS is required.

Response: A supplement is not required. In the recent trial, the court found this modification was not a major change, in fact, it represents an effort to mitigate environmental impacts in a limited portion of the project.

Allegation: As many as 14 endangered species will be affected.

Response: Totally false. Not a single species listed by the Federal Government as endangered or threatened, or proposed to be listed as either, has been shown to be adversely affected by Tenn-Tom construction or future operation.

Allegation: A study by the Army Audit Agency (AAA) demonstrates that the Corps is guilty of deceit in withholding known cost increases from the public and the Congress.

Response: Totally false. The Corps did not suppress cost increases. The costs reported have always represented the best estimate based on information available at the time and were prepared in accordance with the then-current procedures; any inferences to the contrary drawn from the AAA report would be misleading.

Discussion: Lt. Gen. John W. Morris, Chief of Engineers, has recently testified twice on this subject. On July 28, 1980 before the Subcommittee on Water Resources of the Senate Committee on Environment and Public Works, and on August 21, 1980, before Subcommittee on Energy and Water Development of the Senate Committee on Appropriations, General Morris stated that in mid 1974 it became apparent that cost increases were greater in the 1972–74 time than had been anticipated on major items of work, not only for the TTW but for all large construction projects. For the fiscal year 1976 budget request, a cost estimate for the TTW was prepared which followed current procedures, except that for those items on which construction contracts would be awarded in fiscal year 1976, the cost estimates were increased to reflect recent bid experiences. Congress was informed during hearings on the fiscal year 1976 appropriation requests that the costs and benefits were outdated and were being reanalyzed. In August 1975, General Morris personally informed the staff of the Senate Committee on Appropriations that the estimated costs for the TTW would be $1.4 billion. This came before the Committee marked up the fiscal year 1976 appropriation bill. A Federal cost of $1.36 billion was shown in the fiscal year 1977 budget request, which cost was the result of the reanalysis. In fact, the Corps of Engineers has been highly responsible and forthcoming in informing Congress about the costs of Tenn-Tom at every stage of project planning and construction. The AAA report mentioned above does contain language which, taken out of context, can be used to imply that the Corps withheld cost information from Congress. That language reflects the fact that the AAA report was based on very incomplete data. When all relevant documents and testimony are assessed, it becomes clear that the Corps never withheld known cost data from Congress.

Allegation: A GAO report was started then stopped on this extremely controversial project. This unreleased report concluded that the Corps double-counted navigation benefits on the portion of the project from Mobile to Demopolis by failing to account for traffic congestion in this reach of the river.

Response: In response to the GAO, the Office of the Secretary of the Army stated that while growth on traffic on the Tenn-Tom Waterway may eventually inhibit growth on the Black Warrior-Tombigbee (BWT) Waterway, the Tenn-Tom project may eventually relieve congestion of other locations throughout the inland waterway system. Because a systems analysis had not been made, an assessment of the net effect on the total navigation system could not be estimated at that time. However, the GAO was advised that the TTW would be reevaluated and consideration to the impacts on the BWT would be given in on-going studies of the BWT. Nevertheless, numerous studies and affidavits of the Department of the Army and reputable independent consulting firms prove that the economic and functional aspects of the TTW are sound, both independent of and as a complement to the BWT.

Discussion: The GAO selected the Tennessee-Tombigbee Waterway as a part of a survey of Corps procedures for preparing benefit-cost analyses of inland waterway projects. They suspended this work when the lawsuit was filed against it on 30 November 1976. Their reason for the suspension was * * * "It has long been our practice to avoid reviewing matters which are in litigation." Consequently, there is no reason to believe that the GAO would have been critical of the Tenn-Tom's economic analysis if it had proceeded beyond its preliminary research stages. The Department of the Army and highly reputable independent consultants have repeatedly confirmed the facts that the economics of the TTW are sound, and that no considerations relating to the BWT require a different conclusion.

Allegation: The Corps plans the Tenn-Tom Waterway to extend southward from Demopolis to Mobile.

Response: The authorized plan now under construction contemplates no work southward of Demopolis on the Black Warrior-Tombigbee Waterway (BWT).

Discussion: Studies indicate that improvements on the lower BWT would eventually provide for a more efficient waterway system, but these improvements are not included in the TTW project. Judge Keady in his 12 March 1979 decision noted that the Corps "has readily acknowledged that it is without authority to eliminate the constraints presently existing in the BWT project and, after proper studies must secure Congressional approval to increase the channel width, eliminate numerous cutoffs, increase lockage capacity and remove other hindrances now existing in the BWT in order to efficiently accommodate 2-way navigation for 8-barge tows. Not only do the defendants concede the necessity for Congressional approval for making these modifications to the existing BWT but they further acknowledge that, assuming the future grant of such authorization, the duty will rest upon them to comply with NEPA and all other applicable laws before such navigation improvements could be made. Suffice it to say that these developments, though of recent origin, have no bearing upon the Corps' lawful prosecution of the TTW project in accordance with current design."

The authorized plan in the 1975 economic restudy included no benefits for traffic downstream of Demopolis Lock and Dam beyond its existing capacity. Tow configurations were changed from 8 barges to 6 barges at Demopolis and appropriate fleeting charges were included because of this change. Also, the study indicated that the capacity of the existing locks and dams would be reached in 1991 at Demopolis and Coffeeville; therefore, no projections of commodity movements for the project were considered after that point in time.

The Tenn-Tom project from Pickwick Pool to Demopolis will function effectively as now being designed and constructed. Economic analyses of the Tenn-Tom project included no benefits or costs for modification of the river from Demopolis to Mobile.

Allegation: Six barge tows cannot operate below Demopolis during high flows—stage 28 feet—which is 21 percent of the time.

Response: Six barge tows can and do operate with regularity. Affidavits from two barge towing firms testify they presently use six barge tows and that the use of six barge tows is increasing dramatically.

Discussion: This allegation is apparently based upon the comments of one barge operator in 1975 and cannot be taken to represent the entire industry. For a given horsepower towboat, the statement may be true. Dr. Anatoly Hochstein, an internationally known expert in the field of waterway transportation, was hired to do a study of channel dimensions and tow speeds on the TTW and BWT. His study revealed that an eight barge tow can operate on the TTW and BWT under the various flows and do so at speeds greater than Kearney estimated in the economic reanalysis. Thus the use of the Kearney two speeds and six barge tows on the BWT result in a conservative estimate of navigation benefits.

Allegation: Local sponsors in Alabama and Mississippi are not meeting the requirements of local cooperation because of inadequate funding. The Federal Aid Highway Act of 1976 provided a bailout for the States.

Response: Absolutely false. The local sponsors in Alabama and Mississippi have met all obligations for non-Federal participation on schedule and thereby have allowed the Corps to proceed with construction in orderly fashion.

Discussion: To date the sponsors have expanded or committed $133.8 million, about 80 percent of the total non-Federal relocations costs of $165 million. Of this amount, $89.5 million came from Federal Highway funds. The local funds have been, therefore $44.3 million, a sizable investment.

The intent of Section 132 of the Federal Aid Highway Act of 1976 was to correct inequities which have arisen because of the changes that came about since the project was authorized in 1946 and to reflect the cost sharing principles applicable to other navigation projects. In 1945 there were 13 highway bridges requiring alterations, and, as authorized, the costs were all non-Federal. Since 1945, the requirements for bridge, highway, and utility modifications have changed. The increase in waterway width and modern standards for Federal and state bridge construction have increased the costs for bridge modifications far beyond what was anticipated in 1945. Generally, navigation projects authorized since 1952 provide Federal participation in highway bridge modifications costs in accordance with the cost sharing principles of Section 6 of Public Law 67–647 as amended, commonly referred to as the "Truman-Hobbs Act." Section 132 of the 1976 Federal Highway Act was an effort to provide a measure of equity to the local sponsors, by treating the project similarly with those currently being authorized.

SUMMARY OF LOCAL EXPENDITURES—AS OF 30 JUNE 1980

	Expenditures	Committed	Total
Alabama	$22,377,796	$4,693,994	$27,071,490
Mississippi	61,169,924	45,563,486	106,733,410
Total	83,547,420	50,257,480	133,804,900

Allegation: Users of the waterway will not pay one dime in construction or operation and maintenance costs. In addition, the O. & M. costs will be much greater than the $6.7 million estimated by the Corps.

Response: Only completed segments of the inland and intracoastal waterway system have been designated for user charges, not projects under construction. The current estimated Federal annual O. & M. cost is $6.3 million; all foreseeable costs associated with the Federal O. & M. responsibilities are included. Once the Tenn-Tom has been completed and placed in operation, we have no reason to believe that the waterway user charge will not be extended by statute to Tenn-Tom.

Discussion: Public Law 95-502 created the Inland Waterways Trust Fund for the construction and rehabilitation expenditures for navigation on the inland and intracoastal waterways described in section 206 of the act. The funds for the trust are derived from the fuel used in commercial transportation on the designated waterways.

All of the 26 segments of the inland and intracoastal waterway system designated in section 206 were completed operational projects at the time of the act. Projects under construction, such as the Tenn-Tom, were not included. However, under the provisions of the act, projects which are not in section 206 cannot benefit from the trust fund proceeds.

The current estimated Federal annual O. & M. costs of $6.3 million include all costs associated with dredging, bank stabilization, lock operation, and Coast Guard maintenance of aids to navigation. All foreseeable costs associated with Federal O. & M. responsibilities are included.

Allegation: That the project is already obsolete.

Response: The project is sized to conform to modern-sized barge and tow configurations.

Discussion: The waterway is compatible with traffic moving on the Tennessee River and the inland waterway system, and with the Black Warrior Tombigbee River and Gulf Intracoastal Waterway.

Allegation: No one will use the Tenn-Tom when the Mississippi River, a "super-highway" is available. The Tenn-Tom is a "clone" of the Mississippi River.

Response: Shippers will tend to ship by the least costly means; the A. T. Kearney Co. claimed benefits in cost savings for such shippers.

Discussion: All the advantages and disadvantages of the Mississippi route and of the Tenn-Tom were calculated into the Kearney rate model. Advantages of Tenn-Tom are shorter distances (550 miles on average) and hence, less time and energy expended, and avoidance of congestion at Inner Harbor Lock Canal and limited tow-size capacity on GIWW.

Advantages of the Mississippi River are faster underway speed, larger tows and open channel.

All of the advantages and disadvantages were specifically computed and put into the cost of shipping via the two water routes.

Allegation: The TTW failed to meet the President's environmental and economic criteria during the 1977 review of major water resources projects. Even so, federal funding was not discontinued.

Response: The President's 1977 review of major water resources projects recommended continued funding of the TTW project.

Discussion: This review also made recommendations to develop a method so that waterway users pay a fair share, stress efforts to minimize and mitigate adverse environmental impacts, and assure proper employment opportunities for local residents and minorities. Factors in the decision were important local development features and strong local financial support.

The remaining benefit-cost ratio at the 6⅜ percent rate used in the President's Review of 1977 was 0.87. The remaining benefit-cost ratio at a 7⅛ interest rate is now 1.3.

Mr. JOHNSTON. Mr. President, I also ask unanimous consent to have printed in the RECORD a letter from Alabama Power addressed to me under date of September 8, 1980.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ALABAMA POWER,
Birmingham, Ala., September 8, 1980.

Hon. BENNETT JOHNSTON,
Chairman, Senate Public Works Appropriations Committee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR JOHNSTON: Alabama Power Company now consumes approximately eleven million tons of coal annually for the production of electric energy which it uses in serving the almost one million customers in the southern 80 percent of Alabama. It appears certain that the use of coal as an energy source will increase substantially during coming years, as it will be the mainstay of new major generating plants in our area during the next decade. Cost in transporting coal to our coal-fired steam plants is an important factor in the use of coal.

With the completion of the Tennessee-Tombigbee Waterway in five or six years, we believe that the waterway will present numerous opportunities for significant savings in the cost of shipping coal into Alabama from outside the state; and coal, which is not now competitive because of transportation cost, will be competitive on the opening of the waterway, not only for ourselves but for other coal-fired plants in the Southern Electric System located along the Gulf Coast.

Since the waterway is now only about 50 percent complete, it is premature for us to conduct detailed cost and rate analyses on moving coal via the Tennessee-Tombigbee Waterway as compared with other forms of transportation. We do believe, however, that coal shipments and other bulk commodity shipments will be able to move with substantial savings which will make Alabama coal competitive to the North, as well as make out-of-state coal competitive here.

We recognize that the project has become controversial in the eyes of some. Our company and its personnel are convinced that early completion will be an asset to our company and to the economy of Alabama and the region. Our Industrial Development (which was the first such department created by any utility in the United States) is convinced that economic and industrial development will promptly follow completion and is, in fact, even now benefiting from projected completion. The high unemployment in some parts of our service area makes us mindful of the need for such development. We hope that you and your colleagues will continue funding this important project at full measure. We believe that this waterway linkage to a substantial part of the balance of the country is a worthwhile endeavor.

I appreciate the opportunity of presenting our views on this matter.

Sincerely,

JOSEPH M. FARLEY.

Mr. CHAFEE. Mr. President, I submit for the RECORD a table entitled "Appropriation Title: Construction, General-Locks and Dams (Navigation); Project: Tennessee-Tombigbee Waterway, Alabama and Mississippi," and I refer to the final figure, total estimated project cost for ultimate development, $3,030,000,000.

Mr. President, I ask unanimous consent to have printed in the RECORD the table to which I have made reference.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

APPROPRIATION TITLE: CONSTRUCTION, GENERAL—LOCKS AND DAMS (NAVIGATION)

Project: Tennessee-Tombigbee Waterway, Alabama and Mississippi (Continuing).

Location: The project is located in west-central Alabama and northeastern Mississippi: in Marengo, Sumter, Greene, and Pickens Counties, Ala.; and Noxubee, Lowndes, Clay, Monroe, Itawamba, Prentiss, and Tishomingo Counties, Miss.

Authorization: 1946 River and Harbor Act.

Remaining benefit—Remaining cost ratio: 2.5 initial; 2.3 ultimate.[1]

SUMMARIZED FINANCIAL DATA

	Amount
Estimated total appropriation requirement	$1,750,000,000
Estimated Federal cost:	
Initial—CofE	1,750,000,000
U.S. Coast Guard	600,000
National Park Service	9,400,000
Estimated non-Federal cost	165,000,000
Cash contribution	None
Other costs	165,000,000
Total, estimated project cost (initial)	1,325,000,000
Total, estimated project cost for ultimate development	[1] 3,030,000,000
Federal cost	2,737,500,000
Non-Federal cost	292,500,000

	Amount	Accumulated percent of estimated Federal (CofE) cost
Allocations through Sept. 30, 1979	[2] $621,747,000	
Conference allowance, fiscal year 1980	165,000,000	
Allocation fiscal year 1980	[3] 246,500,000	
Allocations to date	868,274,000	50
Appropriation requested, fiscal year 1981	209,000,000	62
Balance to complete after fiscal year 1981	672,753,000	

[1] Includes $585,000,000 for channel improvements below Demopolis (not authorized), $145,000,000 for authorized future recreation development in about year 1997, and $375,000,000 for future lock construction at Demopolis and Coffeeville in about year 2002 (not authorized). These amounts include $742,000,000 for an estimated inflation allowance from Oct. 1, 1979, through the construction period.

[2] Includes $2,100,000 transferred to the National Park Service for excavation of a portion of Pool E.

[3] Reflects transfer of $23,500,000 to the project and proposed transfer and/or supplemental appropriation of $58,000,000 to the project.

Note: Division—South Atlantic. District—Mobile. Region—South Atlantic-Gulf, Tennessee-Tombigbee Waterway, Alabama and Mississippi.

Mr. SASSER. Mr. President, I oppose the amendment. Now is not the time to talk of cutting or terminating the Tennessee-Tombigbee Waterway. That time has long past. Previous Congresses decided that the project should be built, and it was initiated 13 years ago. Every Congress since then has approved funding for the Tennessee-Tombigbee.

Projects should be halted before they are ever initiated. If the Tenn-Tom is a bad project, it should never have been started. But I say to my colleagues, that this project has been started. It is physically more than 50-percent complete and over 70 percent of the Federal costs is already committed. So now is not the time to stop this project.

Halting this project will not save the American taxpayer one thin dime. To the contrary it will cost the American taxpayer untold millions. I do not think we should lose sight of the fact that over $1.2 billion has been committed to the project. And testimony before the Senate Appropriations Subcommittee on Energy and Water, of which I am a member, indicates that less than $30 million of that investment is recoverable. So to terminate the project now makes absolutely no economic sense. If this project is halted at this point, 90 percent of the full project benefits will never be realized. Most of the funds spent to date would simply be wasted.

Now, I do not want to merely repeat what has been said several times on the floor, but there are certain facts which are worth underscoring.

This is the most studied and restudied water resource project in the history of the Army Corps of Engineers.

Testimony before the committee indicates that there are no federally listed endangered species or threatened species which would be adversely affected by the project.

The project is economically sound—the benefit-to-cost ratio on the remaining cost is 2.5 to 1, a sound benefit-cost ratio.

Mr. President, often we lose sight of the fact that major water projects such as the Tennessee-Tombigbee are really national projects which enjoy national benefits.

This project will connect directly some 14 States and mid-America's 16,000 miles of inland waterways with ports along the Gulf of Mexico.

Many States will realize direct economic benefits. Water-borne transportation is a very cost efficient and energy efficient mode of transportation. And every mile which can be saved is an additional benefit.

I would like to point out some of the savings which will be accomplished by this project—310 miles will be saved from St. Louis to Mobile, Ala.; from Kansas City to Pensacola, 252 miles will be saved; from Chattanooga to Mobile, 832 miles; and from Pittsburgh to Mobile, 402 miles.

So this project directly affects many of our States.

I would like to say further that to halt this project now would be nothing short of a breech of faith by the Federal Government.

Substantial investments have been made in anticipation of this project.

It has been estimated that the Tennessee-Tombigbee will result in 135,000 new jobs being added to the American economy.

Already $1 billion in new investments, new and expanded industrial development, have been made. Industrial opportunities are opening up in some of the most depressed areas of this Nation, simply because of the Tennessee-Tombigbee Waterway.

It is estimated that a total of $2.9 billion in personal income and private investment will be generated by this project by the turn of the century. I personally think that based on the experience of other waterways, economic growth created by the Tenn-Tom will be much greater. I would point out that since 1950, over $56 billion in economic growth has taken place along the Ohio River.

Mr. President, the Tennessee-Tombigbee Waterway has withstood the test for 13 years. It has withstood the congressional tests. It has withstood the tests of the Corps of Engineers.

It has withstood the tests of the courts.

This project should now be completed. We should not look to slow it down or halt it, but accelerate it so we can get the benefits on line as soon as possible.

Former Congressman Joe L. Evins of Tennessee, who served as the chairman of the Energy and Water Subcommittee for many years in the House, calls the Tennessee-Tombigbee Waterway "an investment in America's future." I concur in that assessment.

I urge the amendment be defeated.

Mr. HUDDLESTON. Mr. President, in order to understand the economic desirability of the Tennessee-Tombigbee Waterway project, an overview of the nature of inland water transportation and its role in our national transportation system is necessary.

Many of my colleagues saw the series on transportation that began in the Washington Post on August 24, 1980. I quote briefly from that article:

> Highways are crumbling, railroads are shrinking, waterways are clogged at critical points and the last frontier of transportation freedom, the sky, is becoming so crowded that federal officials are talking seriously about "allocating airspace."

In view of the criticality of our transportation system, I really do not see how so much opposition has been generated against the Tenn-Tom Waterway. All the project proposes to do is try to relieve this ailing transportation system that shames us all when compared to the finely honed efficiency of transportation in Great Britain, Europe and Japan.

What we are talking about is a clearly established need—an addition to our 25,543-mile freight-carrying waterway system, a shorter route to the Gulf of Mexico from the heart of mid-America.

The chief advantage of barge transportation over other kinds is the low cost. Perhaps the most pointed example of the savings in barge transportation comes from the pioneer canal days when a mule on a tow path could pull 50 tons in a barge compared with 1 ton in a wagon.

Today's towboat might more aptly be described as a pushboat, because it pushes rather than pulls its barges.

While railroads move large volumes of freight economically due to the high ratio of cargo to horsepower, a single jumbo barge holds from 1,200 to 1,500 tons—the equivalent of 24 to 30 railcars. The resultant economy is obvious.

The 232-mile waterway will provide such economic transportation, connecting mid-America's 16,000 navigable waterway miles with ports along the Gulf of Mexico.

Of course Tenn-Tom will help my State of Kentucky in many ways, but especially so in transportation savings. Although I am always glad to get everything that I can for my State, the larger consideration is that this is a national project with 14 States gaining direct benefits and another nine States substantially affected by the opening of a new shorter route to the Gulf as well as to domestic ports.

What precisely will Tenn-Tom do for our national waterway system?

The key to the project is transportation. Transportation where and at what savings?

Many people do not realize it, but about 132 miles of this project, from Columbus, Miss., to Demopolis, Ala., are now open for limited transportation, with some navigation cost savings already being experienced in the shipment of soybeans. However, the larger part, that with national significance, will not open until the mid-1980 s. This part, under construction now, will link the Tennessee River from Pickwick Lake via a manmade canal southward to the existing completed link at Columbus, Miss.

When this link is made, Tenn-Tom is expected to become one of the Nation's busiest waterways. Over 28 million tons are expected to move on the waterway during its first year of operation, according to an independent study conducted by A. T. Kearney Co. of Chicago.

In Kentucky, industries and port facilities already in place will save on distance and cost in the transport of commodities along the waterway. As compared to using the present Mississippi River route, the mileage savings from Paducah to Mobile will be 389; to Panama City, Fla., 342; to Birmingham, Ala., 802; and from Pittsburgh, Penn., to Mobile, 389 miles.

Tenn-Tom-induced transportation savings for Kentucky in the first year of the project's operation will reach $3.3 million. Nationally, first-year savings will total $82,039,000, rising to an estimated $105 million annually each year after the first year of operation. First year savings for the other 13 States directly involved follow: Alabama, $37,456,000; Florida, $4,122,000; Illinois, $9,155,000; Indiana, $269,000; Iowa, $113,000; Louisiana, $3,165,000; Minnesota, $454,000; Mississippi, $5,494,000; Missouri, $282,000; Ohio, $73,000; Pennsylvania, $257,000; Tennessee, $17,670,000 and West Virginia, $276,000.

Recent studies indicate that the following transportation developments will occur in Kentucky once Tenn-Tom becomes operational:

A total of 9.4 million tons of additional traffic will occur on Kentucky Lake.

An estimated 1-percent increase each in towing activity, in barge construction and in storage handling activities by west Kentucky ports.

A $4,027,370 increase in income to river traffic firms and ports in west Kentucky by 1986.

Savings resulting from cheaper barge transportation via Tenn-Tom will result in a more competitive free enterprise system, generating greater demand for Kentucky goods and industrial expansion.

About 2.5 million tons of Kentucky coal will be shipped the first year via Tenn-Tom.

Fifty percent of our country's population lies within 500 miles of western Kentucky. The development potential for the State is significant.

Again I emphasize that while Kentucky will be richly blessed by Tenn-Tom, that blessing by no means is restricted to the Blue Grass State. Similar predictions are made for other States affected by the waterway.

Actually, the transportation benefits projected by the Corps of Engineers are conservative. The corps, in calculating transportation benefits, is restricted by Federal regulation to including only shipments from existing companies and those that have announced plans for location in the waterway area. Furthermore, consideration of future—other than those formally announced—or waterway-induced industrial development is disallowed in predicting transportation benefits.

The Gulf Intracoastal Waterway was originally predicted by the corps to have a potential of 7 million ton-miles of commercial freight annually. In 1979 the Gulf Intracoastal Waterway carried 100 million ton-miles of commercial freight. The Buttermilk Channel, New York, was expected to transport 252,000 tons yearly. Instead it transports 1,000,000 tons annually. The Dillingham Harbor, Alaska, project was expected to serve 40,000 tons annually but has actually served 118,000 tons annually. The Kahului Harbor, Hawaii, project was expected to serve 178,000 tons annually but serves 600,000 annually.

Various charges about the validity of the transportation claims have been leveled at Tenn-Tom.

CHARGE

The project should be stopped because the area is well served by existing rail service.

REBUTTAL

Railroads generally are having some problems but are in what is hoped to be the early stages of a comeback. The Washington Post has noted that 10 railroads carry 85 percent of the business and that those 10 are in pretty good physical condition. However, the Post advised, those carrying the other 15 percent for the most part are overbuilt, have immense deferred maintenance problems and, in some cases, should be abandoned, in the view of some Federal officials.

One railroad in the Tenn-Tom area has been condemned by the Federal Railroad Administration as to its operation and maintenance.

A Battelle Institute analysis and other studies indicate that the rail lines doing the best financially operate alongside navigable waterways, suggesting a profitable relationship.

CHARGE

The benefits claimed for transporting coal on Tenn-Tom are overstated.

REBUTTAL

It is likely that these benefits are underestimated. A. T. Kearney's 1975 economic restudy foresaw about 21-million tons of coal movements on Tenn-Tom resulting in significant transportation savings. The predictions were based on metallurgical coal for export. In 1975 there was no perceived demand for steam coal. More recent study of the situation sees coal having to supply between one-half and two-thirds of world energy needs in the next 20 years. Unfortunately, U.S. coal producers cannot compete with their foreign counterparts without efficient transportation—just what we are trying to offer with the Tenn-Tom waterway.

Transportation Secretary Neil Goldschmidt suggested last November that better performance and efficiency by the national transportation system is critical as the Nation expands its exports in part to offset the cost of importing oil.

Transportation, of course, goes hand in hand with population: The more people, the more transportation needed to transport them and the things they need

U.S. population, despite some contention to the contrary, is growing dramatically. Between 1790 and 1970 our population grew from 4 million to 206 million. By 1975 it had reached 213.6 million. The U.S. Census Bureau estimates that by the year 2000, U.S. population could soar as high as 322 million. Presently, U.S. population is not such a great problem from a people-per-square-mile viewpoint, density, with only 57 per square mile. However, a look at density, on a geographic basis, reveals that 67 percent of the people live on 10 percent of the land—indeed a basis for consternation.

The implications for transportation are obvious. The implications for on-schedule completion of Tenn-Tom are crystal clear.

Just 20 years from now 2 billion more people will have been added to the 4.4 billion people in the world now, according to the August 18, 1980 edition of U.S. News & World Report.

Imagine the spiraling need for what the United States has to offer, coal, food, manufactured items—especially food. Our transportation system must grow to meet the challenge of exporting to meet these needs.

America, as breadbasket of the world, can become the OPEC of food production, provided we can develop adequate transportation to world markets. Already soybeans are being shipped on Tenn-Tom. Grain shipments are projected.

Surely, with so much for Tenn-Tom to do, this body is not going to stop construction of America's last great water transportation project.

Mr. STEWART. Mr. President, 13 years ago, Congress and the President of the United States decided it was a good idea to construct a waterway connecting the Tennessee River and the Tombigbee River. Thirteen years later, it is still as good an idea as it was then. The 232-mile waterway will connect 16,000 miles of inland waterways with ports of the eastern Gulf of Mexico. Construction of the waterway began in 1972 and is now almost 50 percent complete with nearly 70 percent of the total costs of the project under contract.

TENNESSEE-TOMBIGBEE SHOULD HAVE GAO REVIEW

Mr. RIEGLE. Mr. President, I am today voting against any further advance funding on the Tennessee-Tombigbee Waterway project until new and independent economic data is developed which would show a clear economic justification for completing this project. I believe a thorough analysis must be done by the General Accounting Office, and I am disturbed that such an analysis is not presently available for review. I will be joining with other colleagues in seeking this GAO analysis.

Until such independent data is available, I do not feel I can support this project in the face of the questions that have been raised against it on both economic and environmental grounds. I did vote in June of this year for the supplemental appropriations on this project in order to pay for work already completed and for which payment by the U.S. Government was required.

Many of my good friends here in the Senate are strong proponents of this project and I respect their zeal and the arguments they advance. However, with the urgent need to limit nonessential Federal spending in the effort to fight inflation, and given the other urgent human needs currently receiving inadequate funding, I cannot, in good conscience vote the additional $208 million required by this project until a GAO analysis is completed.

If future cost/benefit analyses provide a compelling rationale for further funding, and if I think we can afford the expenditure at that time, I will reconsider my position.

● Mr. LEVIN. Mr. President, Congress is often attacked—and rightly so—for practicing "pork barrel" politics on major water projects. As a result, I believe it is necessary to carefully examine each water project on its merits in order to be certain the project serves national rather than strictly regional interests. I reject the "horse-trading."

In the past 2 days, the Senate has considered two particularly controversial projects—the Dickey-Lincoln Dam in Maine, and the Tennessee-Tombigbee Waterway project in Alabama and Mississippi. I voted against the Dickey-Lincoln project because I do not believe it serves the national interest to begin the project. Based on the information before the Senate, however, I did vote for the Tenn-Tom appropriation because I do not think it is in the national interest to discontinue it.

I am deeply troubled by the Tenn-Tom project and, accordingly, I have invested a good deal of time in studying it. The issues associated with it are not clear cut. In my discussions with both proponents and opponents, I have been concerned by major disputes about basic facts.

I regret the Senate did not have benefit of an independent study by the General Accounting Office (GAO) of these factual disputes. During the Senate floor debate on an amendment to delete $200 million for project construction, I was able to secure a commitment from Senator Bennett Johnston, as chairman of the Subcommittee on Energy and Water Development of the Senate Appropriations Committee, that he would support a request for such a study even though the matter is now in litigation. Prior to the Senate debate, I spoke with Elmer B. Staats, Comptroller General of the General Accounting Office. I was assured that, if requested by a committee or subcommittee chairman, he would begin negotiations with the Justice Department that would allow study of the disputed issues without prejudicing the various lawsuits currently before the courts. Mr. Staats also indicated that no committee or subcommittee chairman, either far or against the project has requested completion of the partially completed GAO study.

I look forward to reviewing that completed GAO report. I am making it clear again by this statement that my support for future appropriation requests are dependent upon that report being delivered to Congress. I believe the report should study the benefit cost claims of the Army Corps of Engineers to determine whether these claims are realistic.

In the absence of the independent analysis prepared by GAO, I have been forced to base my decision on the available evidence. I oppose the Chafee amendment based on several factors. Cost-benefit analysis presented by the corps indicates the authorized project has a positive benefit-cost ratio. Negative benefit-cost ratios are based upon the assumption that additional work south of Demopolis will be necessary in the future to make the project viable. However, work on the river south of Demopolis is not currently authorized by Congress. This assumption is explicitly rejected by the corps which suggests that, while additional work would be desirable in this area, it will not be necessary in order to achieve an economically viable transportation system in the authorized northern portion of the river.

In addition, the Federal Government has already invested $867 million in the 232-mile authorized project. Much of this expenditure is for construction begun on part of the project which would be unusable if terminated. This amount is about half of the estimated cost of the authorized project. Termination of the project at this point would leave a total Federal expenditure of $997 million.

Furthermore, there appears to be, on the basis of information available, sufficient demand to make Tenn-Tom a viable waterway. It is true that many companies who initially indicated they would use the waterway have changed plans or gone out of business. But other firms, not originally surveyed or who originally indicated they would not use the system, have since indicated that they probably would find Tenn-Tom more economical in terms of both time and energy than their current transportation routes.

Finally, while I am concerned about environmental damage, six court decisions affirm that environmental laws and requirements have been met.

In sum, every water project has to be considered on its own merits. Some projects—like Dickey-Lincoln—cannot be justified. Others, like Tenn-Tom, appear economically justified based on available evidence. But the central issue regarding Tenn-Tom is whether it should be completed, based upon available information, not whether it should be begun.

While I continue to be troubled regarding the many controversial issues surrounding this project, I have taken steps to obtain additional information I hope will provide some definitive answers. I hope this information will be available before the Senate is next asked to provide additional funding for the Tennessee-Tombigbee Waterway.

A great deal of time has been spent by opponents of this project on the issue of the benefit/cost ratio of the waterway. I would like to spend a moment clearing the muddy water on this issue. First, I think it is important to remember that of all the projects in the United States for which Federal funding is utilized, none goes through as stringent an analysis to assure that the cost to the taxpayer does not exceed the benefits as does a water project. Most federally funded projects go through no benefit/cost analysis whatsoever.

Detractors of Tenn-Tom claim that the benefit/cost ratio is inaccurate because it uses a low rate of interest in its calculation. The discount rate of 3¼ percent used in determining the benefit/cost ratio for Tenn-Tom is proscribed by law; first by regulation of the Water Resources Council, and then by Congress in the Water Resources Development Act of 1974. When using the 3¼ percent discount rate, the remaining cost benefit ratio for Tenn-Tom is 2.5 to 1. A benefit/cost ratio for the entire project, including that which has been completed, is still above unity at 1.3 to 1. Even when computed at a discount rate of 7⅛ percent, the remaining benefit/cost ratio is still above unity at 1.3 to 1.

When computing a benefit/cost ratio, the Corps of Engineers makes an assessment of future commerce generated by a water project. A review of projected navigation tonnages by the corps in past years shows their estimates to be very conservative. As General Morris of the corps stated in testimony before Senator JOHNSTON's subcommittee, "Every waterway we have looked at, with few exceptions, has greater tonnages than projected."

The benefit/cost ratio is a guideline for the corps, an attempt to insure that no waterway will cost more than it is worth in generated commerce. But there are many more benefits to water projects, especially the Tennessee-Tombigbee, which are not included in the benefit/cost ratio. The benefits to regional growth as a result of the waterway are not included in the benefit side of the ratio, induced regional water traffic is not included, energy saved by using the waterway as opposed to less energy efficient means of travel is not included, the effect of the waterways as opposed to less energy efficent means of travel is not included, the effect of the waterway in increasing our export trade is not included, the benefits through increased jobs to many of our Nation's rural areas is not included. It depends on how one quantifies these unincluded benefits, but clearly these are positive benefits to our Nation as a result of the Tennessee Tombigbee waterway.

In 1976, barges on our Nation's waterways moved nearly 16.9 percent of total intercity ton-miles of freight for only 2.3 percent of the total freight costs. At that same time, railroads moved 34 percent of the tonnage for 37 percent of the costs. I do not intend to indicate here that use of waterways will replace the need for rail freight transportation. We need the freight services provided by rail transportation, but I do not believe we should shy away from a more energy-efficient means of travel simply because it interjects some competition into the total picture of freight shipping. The farmers of this Nation who are playing an increasingly active role in export deserve any shipping alternatives available.

Clearly, the demand for the use of the waterway for a variety of commodities is on the rise. When the waterway was first conceived, there was little indication that the demand for agricultural exports could be as great as it is today. Agricultural exports are the one bright spot on a rather bleak export picture. The Tenn-Tom Waterway will allow for further increases in exports from vital Middle West, Midwest, and Southern agricultural States.

The benefits of this waterway to my own States of Alabama are many. The Tenn-Tom will tie the port of Mobile, the Nation's eighth busiest port, to the Great Lakes and the Ohio and Tennessee Rivers. The waterway will give 23 States direct connections to Alabama's outlet in the Gulf of Mexico. One out of every 11 jobs in Alabama in some way relate to import and export activity through the Port of Mobile. The payroll for import/export-related jobs in the State is over $1 billion. One of the benefits I mentioned earlier that is not included in the benefits-cost ratio is the number of jobs created by the Tennessee-Tombigbee.

In Alabama alone, the Tenn-Tom is expected to create 15,000 new jobs by 1986, and the projection for the year 2000 is more than 55,000 jobs. Under the impetus of the Tenn-Tom, Alabama will receive a savings in navigation that will total $37.5 million in the first year; 13 other States will save transportation costs totaling $4.5 million in the first year. The savings per year in the State of Alabama could reach a level as high as $448 million per year.

In addition to the Mobile area in Alabama, the region with the greatest potential for development is that along the route of Tenn-Tom in west Alabama. Like many areas through which the Tenn-Tom will travel, this is one of the least developed and poorest sections in my State. Development of this waterway offers the people of this economically depressed area of Alabama a chance to work and improve the quality of life in that area.

Alabama, with its more than 1,300 miles of navigable waterways, stands on the threshold of helping improve the Nation's transportation system through integration of the inland waterway system, combining railways, highways, and the airways.

But while the Tenn-Tom will surely benefit Alabama and allow Alabama to make an even greater contribution to other States, the benefits which will accrue as a result of this project are national in scope. If we stop this worthy project now, which is 50 percent complete, we will lose the $827 million already invested by the American taxpayer.

For the 2 years I have served in the Senate, much debate has centered on the need to plan ahead for America's economic future. We must not be caught in the shortsighted trap that cutting immediate dollars from the budget would also slash economic growth potential in the future. This Nation suffers the severe economic consequences of an unfavorable balance of trade and a dependency on inflationary imported oil supplies. The Tenn-Tom will directly address both these crucial issues. By providing a cost-efficient means of transporting America's vast coal reserves, the Tenn-Tom will be working to reduce our dependency on the foreign oil imports that have steadily fueled the inflation rate in this country. And, by opening vast new export opportunities for thousands of American firms and farmers, the Tenn-Tom will be working to bring back home some of those dollars currently trapped abroad by our own exporting deficiency.

And, there is a growing third concern in this country that the Tenn-Tom directly touches—the issue of jobs and unemployment. In my travels across Alabama, I have seen thousands of workers enduring the hardship and frustration of unemployment triggered by the current recession. I have no doubt that we will soon be discussing various kinds of job programs to attack this nationwide unemployment problem. Before we start talking about how much we are going to fork out to fund some expensive job creating programs, let us not first begin by abolishing the many thousands of productive jobs connected with the Tenn-Tom Waterway.

Today, I ask Senators to cast their votes for the Tenn-Tom Waterway and for the economic future of this country.

Mr. PERCY. Mr. President, I rise in support of the amendment offered by Senator CHAFEE, and of which I am a cosponsor. This amendment would strike $200 million from the energy and water development appropriation bill earmarked for the Tennessee-Tombigbee Waterway project.

I can think of few projects that has generated as much discussion and debate than this one. Numerous questions have surfaced about the project's being constructed without regard to numerous Federal and State statutes and regulations. Only last month hearings held by the Senate Subcommittee on Water Resources reaffirmed that the barge traffic necessary to justify completing the project will almost surely fail to materialize. Cost estimates have ranged from anywhere between $2 to $3 billion and the actual cost undoubtedly will be much higher.

We are debating today the costliest water project in American history. This project involves the moving of 280-million cubic yards of earth, more dirt than was moved from the divide cut for the Panama Canal. The Tennessee-Tombigbee Waterway would involve major environmental damage.

Mr. President, there are many water development projects and public works projects of value that have to be cut back because of the current spending crisis. We are proposing here to spend $200 million in fiscal year 1981 for this wasteful and unsound project; $200 million that could be spent in other areas. We cannot continue business as usual in this area. We are in a perilous budgetary situation and this is a proper place to cutback. The Tennessee-Tombigbee project is so wasteful that more money could still be saved by phasing out construction now despite the fact that several hundred million dollars have already been expended.

I call upon my colleagues to support this effort to show the American people we are serious about cutting back on wasteful and unnecessary Government spending. There is no better opportunity than this one to make that commitment.

Mr. CHAFEE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is an agreeing to the amendment of the Senator from Rhode Island. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. RIBICOFF (when his name was called). Mr. President, on this vote I have a live pair with the distinguished Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Iowa (Mr. JEPSEN), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from New Hampshire (Mr. HUMPHREY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. HUMPHREY) would vote "yea."

The PRESIDING OFFICER. Are there any Senators desiring to vote?

The result was announced—yeas 37, nays 52, as follows:

[Rollcall Vote No. 394 Leg.]

YEAS—37

Bayh
Biden
Boschwitz
Chafee
Church
Cohen
Culver
Danforth
Domenici
Durenberger
Eagleton
Heinz
Helms
Javits
Kassebaum
Kennedy
Leahy
Lugar
Mathias
Metzenbaum
Moynihan
Nelson
Packwood
Pell
Percy
Pressler
Proxmire
Riegle
Roth
Sarbanes
Simpson
Stafford
Stevenson
Tsongas
Weicker
Williams
Zorinsky

NAYS—52

Baker
Baucus
Bellmon
Bentsen
Boren
Bradley
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Cochran
Cranston
DeConcini
Dole
Exon
Ford
Garn
Glenn
Gravel
Hatch
Hatfield
Hayakawa
Heflin
Hollings
Huddleston
Inouye
Jackson
Johnston
Laxalt
Levin
Magnuson
Matsunaga
McClure
Melcher
Mitchell
Morgan
Nunn
Pryor
Randolph
Sasser
Schmitt
Stennis
Stevens
Stewart
Talmadge
Thurmond
Tower
Wallop
Warner
Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Ribicoff, for.

NOT VOTING—10

Armstrong
Durkin
Goldwater
Hart
Humphrey
Jepsen
Long
McGovern
Schweiker
Stone

So Mr. CHAFEE's amendment (UP No. 1568) was rejected.

(Later the following occurred:)

Mr. BAYH. Mr. President, I note for reasons that are not fully clear to me that on rollcall vote No. 394 the Senator from Indiana was listed as "nay," when I thought I voted, at least I intended to vote, "yea."

I ask unanimous consent that the RECORD show that the Senator from Indiana was recorded "yea" on rollcall vote No. 394.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the Senator from Indiana discussed this matter with me which I appreciate. He knows of my concern for this practice.

I am told that the change of that vote on that rollcall would not change the outcome of the rollcall. I will not object to it.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The above tally has been changed to reflect the foregoing order.)

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move the committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment on page 15, lines 9 and 10, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Under the previous order, the Senator from West Virginia, the majority leader, is recognized to move to suspend rule

XVI, paragraph 4, for the purpose of offering an amendment on which motion there shall be 20 minutes of debate.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Will Senators please take their conversations outside the Chamber?

Mr. ROBERT C. BYRD. Mr. President, some Senators have engagements, and they will be accommodated if we have this vote within 5 or 10 minutes rather than 20 minutes. I would be willing to cut my time down to 3 or 4 minutes and then have debate on the amendment in the event the motion is agreed to.

Mr. BAKER. Mr. President, if the majority leader will yield to me, I am afraid that we have Members on this side who are temporarily absent from the Chamber on the assumption that there would be 20 minutes of debate on this motion. I am afraid under those circumstances we cannot accommodate the distinguished majority leader.

While the majority leader has yielded to me, Mr. President, might I say, so I will not have to interrupt him again, that it is my intention to support the majority leader's motion to suspend the rules pursuant to the notice delivered on yesterday. I also intend, assuming that the rules are suspended, to support the amendment. I understand there is a colloquy arranged between the distinguished Senator from Alaska and the majority leader on the question of interpreting this amendment. I have taken this time to advise my colleagues of that position so I will not be interrupting the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

MOTION TO SUSPEND PARAGRAPH 4 OF RULE XVI

Mr. President, since the notice was entered on yesterday, I now move to suspend paragraph 4 of rule XVI of the Standing Rules of the Senate to permit the offering of an amendment which is both legislative in nature and which is not germane to the subject matter of this general appropriation bill.

The amendment, I think, probably is known to all Members by now, but, for the record, the amendment would freeze, during fiscal year 1981, the salaries of Members of Congress, judges, Federal executives, and high-level civil servants in the three branches of Government at the current rate. Specifically, it provides that the rate of basic pay or salary will be kept at the rate payable on September 30, 1980, which is the last day before the 1980 comparability adjustment is to take effect.

This amendment affects every individual whose rate of pay is $50,112.50 or more annually, which is equal to or greater than level V of the executive schedule.

It also covers those individuals whose rate of pay was directly affected by the 1977 quadrennial increase, such as judges, Members of the House and Senate, secretaries and assistant secretaries of the executive branch departments, as well as individuals whose rates of pay are administratively set at rates above $50,112.50, such as high-level positions in the post office.

This amendment also covers those individuals whose rates of pay are limited to a maximum rate equal to or greater than the rate for level V by reason of a statutory or other salary ceiling. For example, the maximum rate for GS–18 is limited to the rate for level V which, under existing law, is $50,112.50. The amendment maintains this provision. The amendment also maintains existing ceilings on rates of pay for committee staff, officers, and administrative assistants of the House and Senate whose maximum rate of pay is limited by congressional resolution.

This amendment affects employees paid less than the level V rate of $50,112.50 only in this way. For example, a GS–16, step 2, employee presently makes $49,485. Under this amendment, he could not receive his entire comparability increase, since his pay would be frozen at the $50,000 level. However, his salary would increase until it reaches that point.

If Congress takes no action at all, then the pay of Members of Congress, Federal judges and 30,000 high-level civil servants would rise by approximately 18 percent at a cost of $185,000,000. This amendment will freeze all those high-level salaries and save the taxpayers $185,000,000.

Mr. President, the living standard of the average American citizen is being constantly eroded by inflation, although inflation has moderated somewhat in the last few months. Nevertheless, I believe strongly that this pay cap is necessary to demonstrate that the Members of the Senate and other highly paid Federal officials are willing to share in the economic burden that all Americans are enduring.

I do not believe, Mr. President, that the time is at hand, and of course, there is no good time to increase the salaries of the top level officials, but at this particular point in time, I believe it would be a mistake to do it. Certainly, this entire subject matter should be reviewed early next year, when the report of the President's Quadrennial Pay Commission becomes available.

Mr. President, I could have offered the amendment as is usually done and, in my judgment, inappropriately done. I could have offered the amendment and, if a point of order had been raised against it, the Chair would have had to rule that the amendment was not in order, that it is both not germane to the subject matter of the bill and that it constitutes general legislation on an appropriation bill. The Senate then might well have overridden the Chair. Or a question of germaneness could have been raised and the Senate probably would have voted that it was germane when, obviously, it is not germane.

I have gone about the matter in the right way. To wit, I have filed, on yesterday, a notice in writing to suspend the rules to allow me to call up the amendment and if the Senate, by a two-thirds vote, sustains the motion that I made—and that will require a two-thirds vote, as I say—then the amendment will be in order.

No point of order can then legitimately be raised against the amendment on the basis that it is legislation on an appropriation bill or that it is not germane, because the Senate, by a two-thirds vote, will have suspended that rule, paragraph 4 of rule XVI.

That is the appropriate way that I think we should go about amending appropriations bills by adding legislation. If we would do that, we would not have so much legislation on an appropriation bill. But it takes two-thirds of the Senate to suspend that rule.

I feel that the distinguished chairman of the committee will agree. He has to face this problem all the time on appropriations bills—every time we bring up appropriations—amendments legislative in nature being offered to an appropriation bill, points of order being raised, the Chair being overridden, the Senate trampling on the rule and adding legislation to appropriation bills.

I have gone the right way by filing the notice. It takes two-thirds of the Senate to approve this, but that is what this motion is all about.

Mr. President, I have explained the amendment. I hope the Senate will support the motion to suspend the rules by a two-thirds vote.

I yield to the distinguished Senator from Washington.

(Mr. LEVIN assumed the chair.)

Mr. MAGNUSON. Mr. President, we are plagued in the Appropriations Committee with legislation on appropriations bills. The distinguished Senator from Alaska knows that. We try to keep away from it. But there is a rule, and if two-thirds of the Senate want to legislate on an appropriation bill, that is satisfactory to me. But so many of the legislative proposals do not request the two-thirds. They just come down and use it.

This is a perfectly legitimate amendment and a perfectly legitimate rulemaking way to go at the thing. If two-thirds of the Senate want to attach a legislative proposal to an appropriation bill, I guess so be it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. MAGNUSON. I am pretty sure the Senator from North Dakota agrees with me.

Mr. YOUNG. Mr. President, I agree thoroughly with the position taken by the chairman of the Appropriations Committee. We are faced with this problem quite often and it is the only practical way to handle it, as I see it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. Will the Senator from West Virginia yield?

Mr. ROBERT C. BYRD. Mr. President, the minority has 10 minutes.

Mr. STEVENS. I am happy to yield to myself on that time.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have a question that I would like to ask the distinguished majority leader regarding the intent of his amendment. As I understand it, the intent of the majority leader's amendment is to freeze all salaries which presently are equal to or exceed the executive level V salary, which is now $50,112.50. As the majority leader knows, the law prohibits any general schedule position from receiving pay that exceeds the pay for executive level V. At this time, most of the GS-16 and all the GS-17 and 18 steps are frozen at the executive level V pay.

However, there are many Federal employees who are presently receiving pay that is just under the frozen amount. For instance, a GS-15-7 currently receives $48,998. If he received the full 9.1-percent pay adjustment for this grade, his pay would be $53,457, which is above the executive level V amount of $50,112.50 and is clearly prohibited by this amendment.

My question to the majority leader is this: Under his amendment, would this individual and others in a similar situation be entitled to receive an adjustment that would raise their pay to the $50,112.50 level?

Mr. ROBERT C. BYRD. Yes. The answer is "yes". Mr. President, this amendment would entitle such individuals' pay to be raised to $50,112.50 level, at which point the cap would take effect.

Mr. STEVENS. Mr. President, I am pleased with that response. That means that the compression, if it takes place, takes place at a cap level and not a step-down level, as was the interpretation prior to 1977.

I ask my distinguished friend from West Virginia, the majority leader, another question. There is a provision in his amendment that deals with a 25-percent limitation on the senior executive service for performance awards. I have been informed that there are some agencies where there are fewer than four senior executive service or comparable personnel positions. It would be my request that he consider amending his amendment or allow me to offer a technical amendment to his amendment which would provide that, in agencies where there are fewer than four senior executive service or comparable personnel system positions, one career appointee may be paid a performance award under the bill that we previously enacted.

Mr. ROBERT C. BYRD. Mr. President, I certainly would support that amendment.

If the Senator will yield, may I ask the Chair if such a technical amendment would be in order, would it be germane, or would it require unanimous consent? Or would it require previous notice in writing?

The PRESIDING OFFICER. No previous notice in writing is necessary. Under the precedents, germane second degree amendments are in order.

Mr. ROBERT C. BYRD. May I ask, Does the Chair say committee amendments are in order?

The PRESIDING OFFICER. Germane amendments are in order.

Mr. ROBERT C. BYRD. May I ask the Chair if under the agreement of yesterday the amendment would be in order, or would it require unanimous consent?

The PRESIDING OFFICER. Germane amendment would be in order.

Mr. ROBERT C. BYRD. I believe under the agreement of yesterday it is not in order. I believe that under the agreement of yesterday, upon the expiration of the time, 10 minutes, without further—I probably am wrong. I thought I had said that without further amendment, motion, or debate, the Senate proceed to vote on my amendment. But I think I am in error.

Mr. STEVENS. Mr. President, I am prepared to ask unanimous consent, it was my understanding that was the intent of the agreement we entered into, that this or any amendment I might be offering be available only on the basis of a unanimous consent. I would be pleased to ask unanimous consent I be permitted to modify the amendment which the Senator notified the Senate he would offer today, and that on page 2, at the end of line 22, I would strike the "." and add the following: "Except that in any agency with fewer than four Senior Executive Service or comparable personnel system positions, one career appointee may be paid a performance award."

Mr. President, I send that amendment to the desk.

The PRESIDING OFFICER. The amendment will be in order without unanimous consent.

Mr. ROBERT C. BYRD. Mr. President, I support the amendment. It has been read by the distinguished Senator. I ask that further reading by the clerk be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the amendment.

Mr. STEVENS. I offer that on behalf of myself and the Senator from Virginia (Mr. Warner).

Mr. ROBERT C. BYRD. Mr. President, do we not have to dispose of my motion first?

Mr. STEVENS. Yes, we do. I think the amendment——

Mr. ROBERT C. BYRD. I think the amendment cannot even be offered at this point.

Mr. STEVENS. I think the Senator is correct.

The PRESIDING OFFICER. The amendment of the Senator from West Virginia is not yet before the Senate. When and if it is before the Senate, it will be subject to germane amendments in the second degree.

Mr. STEVENS. Mr. President, I state to my good friend that I do not oppose his motion to suspend the rules. It is the proper procedure to utilize under these circumstances, and he has been very gracious to me.

I do want him to understand I will oppose the amendment itself on the basis that I think it should have come from our committee first. But I understand the procedure he is following is the correct one.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, in order to protect those Senators to whom the distinguished minority leader referred earlier, I shall ask unanimous consent that the Senate stand in recess briefly.

In the meantime, I yield back the remainder of my time.

RECESS FOR 7 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 7 minutes, that upon reconvening, the vote immediately occur on the motion, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

There being no objection, the Senate, at 12:13 p.m., recessed until 12:20 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. Levin).

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. Durkin), the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Hart), the Senator from Louisiana (Mr. Long), the Senator from South Dakota (Mr. McGovern), and the Senator from Florida (Mr. Stone) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. Armstrong), the Senator from Arizona (Mr. Goldwater), the Senator from New Hampshire (Mr. Humphrey), the Senator from Iowa (Mr. Jepsen), and the Senator from Pennsylvania (Mr. Schweiker) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The yeas and nays resulted—yeas 84, nays 5, as follows:

[Rollcall Vote No. 395 Leg.]

YEAS—84

Baker
Baucus
Bayh
Bellmon
Bentsen
Biden
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd,
 Harry F., Jr.
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Eagleton
Exon
Ford
Garn
Glenn
Hatch
Hatfield
Heflin
Heinz
Helms
Hollings
Huddleston
Inouye
Jackson
Javits
Johnston
Kassebaum
Kennedy
Laxalt
Leahy
Levin
Lugar
Magnuson
Matsunaga
McClure
Metzenbaum
Mitchell
Morgan
Moynihan
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Randolph
Ribicoff
Riegle
Roth
Sasser
Schmitt
Simpson
Stafford
Stennis
Stevens
Stevenson
Stewart
Talmadge
Thurmond
Tower
Tsongas
Wallop
Warner
Williams
Young
Zorinsky

NAYS—5

Hayakawa
Mathias
Melcher
Sarbanes
Weicker

NOT VOTING—11

Armstrong
Durkin
Goldwater
Gravel
Hart
Humphrey
Jepsen
Long
McGovern
Schweiker
Stone

The PRESIDING OFFICER. On this vote there are 84 yeas and 5 nays. Two-thirds of the Senators present and voting having voted in the affirmative, the motion is agreed to.

AMENDMENT NO. 2302

(Purpose: To impose a ceiling on pay of certain higher paid Government employees)

Mr. ROBERT C. BYRD. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. Robert C. Byrd) proposes an amendment numbered 2302.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 38, between lines 6 and 7, insert the following new section:

Sec. 509. (a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

(c) None of the funds appropriated by this Act or any other Act shall be used to pay performance awards in fiscal year 1981 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 25 per centum of the number of Senior Executive Service or comparable personnel system positions in any such agency.

(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

Mr. THURMOND. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I support this amendment to freeze at current levels the salaries of the top Federal Government employees in all branches of the Government, including Members of Congress.

This amendment would save the taxpayers nearly $100 million in fiscal year 1981, which is extremely important at a time when the total Federal budget is projected to show a multibillion-dollar deficit. Mr. President, if we are ever to be successful in stopping this pattern of excessive spending with huge deficits every year, we must start making substantial cuts somewhere. This is a logical place to start—by refusing to endorse what otherwise would be an automatic pay increase for Congress, the judiciary, and the highest paid Federal executives.

Mr. President, I am strongly opposed to the present system which grants automatic cost-of-living increases to all Federal employees, including Congress, unless Congress acts before the beginning of a new fiscal year to vary the rate of increase recommended by the President or to stop any salary raise from going into effect. This is an irresponsible way of proceeding, which permits Congress to effectively dodge the issue of determining, in a straightforward, responsible fashion, the most desirable levels of pay increases for Federal employees, considering all the circumstances. I have introduced legislation to change this practice, and I hope that this proposal will receive the serious consideration it deserves by the Senate Governmental Affairs and Budget Committees, to which the bill (S. 2061) has been referred.

My proposal would halt the practice of automatic pay raises, requiring Congress to take affirmative action before any salary increase recommended by the President could take effect. The bill would also postpone any pay increase which Congress might vote for itself until after the next general election, and finally, it would prohibit Congress from granting its Members or the top Federal executives in policymaking positions any pay increase until the Federal budget is balanced. Mr. President, I believe this proposal offers a far more responsible method of facing up to this recurrent issue of compensation adjustments for Congress and other Federal employees.

In the meantime, Mr. President, since my comprehensive pay reform proposal has not been enacted, I believe this amendment ought to be adopted. Given the current double-digit inflation rates and the huge budget deficit, this is no time to be granting substantial salary increases to those who are already paid at levels far higher than the average American citizen, who ultimately pays for these Federal Government salaries out of his own hard-earned tax dollars.

UP AMENDMENT NO. 1569

Mr. STEVENS. Mr. President, I have an amendment at the desk, and I inquire if it is in order at this time to ask that that amendment be considered.

The PRESIDING OFFICER. The amendment will be in order after the time on the pending amendment is used or yielded back.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Alaska may call up his amendment now.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. Stevens) for himself and Mr. Warner proposes an unprinted amendment numbered 1569 to amendment numbered 2302:

On page 3 at the end of line 7 strike the "." and add the following: "Except that in any agency with fewer than four Senior Executive Service or comparable personnel system positions, one career appointee may be paid a performance award."

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. STEVENS. I am happy to do so.

Mr. ROBERT C. BYRD. Mr. President, I have to attend a meeting and I ask that the Chair be designated—I designate the Chair—to allocate the time that is under my control. Is that agreeable with everyone?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, may I ask when the time expires, we are going to leave the full time of the amendment run, is that correct?

Mr. ROBERT C. BYRD. Is that the will of the Senate?

The PRESIDING OFFICER. The Chair will point out that the Senators are now on the Stevens amendment which has a 30-minute time limitation.

Mr. ROBERT C. BYRD. I did not waive the hour, but I am perfectly happy to do so.

Mr. STEVENS. The Chair is authorized to yield back the remainder of the Senator's time on his amendment?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. What is the status of the time arrangement now, the full hour allocated to the majority leader is still intact?

The PRESIDING OFFICER. There was 1 hour allocated to the majority leader's amendment on which 1 minute has been used, and the hour was to be equally divided.

Then by unanimous consent the Senator from Alaska offered his amendment on which there is a 30-minute time limit, and that is the pending amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me so that I can yield to the distinguished minority leader? I would like to yield to the distinguished minority leader, if the Senator will yield to me so that he can make his position known.

Mr. BAKER. Mr. President, I thank both the Senator from Alaska and the majority leader, and I will take just a moment.

There are Members on this side who are under the impression that it will be at least an hour, perhaps as long as an hour and a half, before we vote on either the Stevens amendment or the Byrd amendment. The reason I rose at this point to make the inquiry was to ascertain whether or not time had been reduced. I have no objection to reducing it as long as we do not reduce it to 1 hour before the first vote.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. Stevens be included in my amendment and that the vote on my amendment, as amended, then occur at the hour of 2 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DANFORTH. Mr. President, reserving the right to object, are further amendments to this amendment in order?

The PRESIDING OFFICER. Not without unanimous consent until the hour of 2 o'clock.

Mr. DANFORTH. Pardon?

The PRESIDING OFFICER. Not without unanimous consent until the hour of 2 o'clock.

Mr. BAKER. They would be at 2 o'clock?

Mr. ROBERT C. BYRD. May I ask the Chair would any amendment be in order at 2 o'clock?

The PRESIDING OFFICER. Germane amendments would be in order at 2 o'clock but would not be debatable.

Mr. STEVENS. Mr. President, may I continue with my discussion and, perhaps, this other discussion——

The PRESIDING OFFICER. The Chair has a question of the Senator from West Virginia. Is it the intention of the Senator from West Virginia that the time be equally divided between now and 2 o'clock?

Mr. ROBERT C. BYRD. Yes, between Mr. Stevens and the Chair representing me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska.

Mr. STEVENS. Mr. President, the amendment I have offered is an amendment to deal with a situation where an agency has less than four Senior Executive Service employees or similar positions. The effect of my amendment, which the majority leader so kindly included in his amendment now, is to make certain that the bonus provisions of existing law are available to those agencies which have less than four Senior Executive Service employees or comparable positions.

Let me point out that yesterday the Senior Executive Service bonuses were announced. One of the recipients is employed with the U.S. Air Force saved, through his efforts, the Federal Government $28 million by improving Air Force logistics.

Another Federal employee, with the Department of Transportation, saved the Federal Government $100 million by restructuring the Amtrak routes.

These examples of outstanding service convince me we should not look to capping Federal pay as effecting substantial reductions in Government expenditures.

Those reductions come about by virtue of attracting to and keeping in the Federal Government qualified managers, managers who are willing to make their career out of running this democracy, following the policy decisions of people who are elected, either in the executive branch or in the Congress.

The impact of putting a pay cap on salaries is that we do, in fact, bring about a pay compression. Because of the statement that has been made by the majority leader, this amendment will not have the same type of compression that those in the past have had, because this time everyone who is below $50,112.50, will, when the pay raise comes into effect, be raised up to that level. Now we will have a situation where everyone will be at that level that is impacted by this cap.

But let me tell you what this means. This means that we are dealing with individuals at grade 15, step 5, receiving no future pay raises next year. Just think of that. In the Federal Executive Service, once you reach the level of grade 15, step 5, under this amendment you never again get another raise unless you get into the executive level, unless you go and get an appointment to executive level IV. But you can never go above executive level V.

Think of the impact on those people who are in the mid-career position when we tell them that when they are at level 15, step 5, even though they may get a promotion to take on more responsibility, a greater area of management capability, they will not get any greater remuneration. As a matter of fact, in some instances, where those people have been in Government long enough, it would be to their advantage to retire, because they would actually get the cost-of-living allowances in full after they retire. Even though those who are in active employment are limited, those in retirement are not limited. As a consequence, this is a stimulus to retirement.

I understand what the majority leader is trying to do. He is trying to send a signal to the country that we are trying to hold down the cost of Government and we are trying to combat inflation. I respectfully suggest that the imposition of arbitrary annual pay caps is a disincentive to holding down expenditures. Because the type of people we want to acquire and keep in Government are those who really are subject to upward mobility by the desire to earn more money, the desire to improve their position and the position of their families.

I think we have to look at this situation. The Consumer Price Index has risen in the past 10 years by 99 percent. The salary increases for private sector managers have risen in excess of 100 percent. The salary increases for Government managers have risen less than 50 percent. So that the people who are bearing the greatest burden of inflation are in fact those that are in the managerial level of the Federal Government. And it is because we as politicians impose upon them our decision that we do not want to go home and face our voters, having raised our own pay.

I pointed out once before, I think, that this is a difficult decision for anyone that is up for election to make. But why should we make it for those people who are in the career level of Government service? Mind you, this amendment applies to the executive branch, to the legislative branch, and to the judicial branch.

Look at the problem we are having attracting capable judges now. There is not a lawyer in the country that is worth his or her salt that cannot earn more in private practice than they can already get in the judiciary. What we are doing now is we are sending out a signal that we want to attract incompetence to the Federal judiciary, because we are going to put them even further under a pay cap. I think that pay caps are misunderstood. I think the general public may think that this is a step toward efficiency.

Let me tell you why it is not. This covers life insurance coverage and retirement benefits. If you stay in Government under a cap, a person is going to lose insurance coverage. A GS–18 who retired September 30, 1978, after 30 years of service, would lose $14,000 worth of life insurance and $6,000 a year in initial annuity if he stayed in after that cap that we put into effect.

This action will increase the rash of early retirements. And it is going to cause a rash of early retirements at a time when we are going to face a hiring freeze. That is the next thing that is going to come on top of this. And the Federal Government is going to be managed by those people who are below grade 15, step 5. They are the only people who have any incentive left in Government because they are the only people who could still get a pay raise. Everyone else is just marking time until he is eligible for retirement. And this is going to bring about early retirements.

I know of nothing that is going to be more of a disincentive. We have had all kinds of exit interviews with executives as they have decided to leave. Most of them are in fact leaving because of the fact that the incentives they thought would exist in the Senior Executive Service are not there. We created the Senior Executive Service as an incentive to keep people at a time when there was a severe exit going on from the Federal Government.

I pointed out in a statement here 2 years ago that we had an associate director of the office of OMB, the personnel management office, for compensation. That was open for 7 months. And everyone who was offered the position declined it because a comparable level in the private sector was compensated much higher. Why take such a job? That was a new job we created. We could not fill it.

The Director of the Army Materiel Systems Analysis retired. He cited the pay cap as the reason. That executive was employed in the private sector at a salary which doubled the amount that he was receiving in the Federal Government. And yet he was the one in charge of analyzing the systems to see how we could accomplish the result that both the executive and legislative branch directed the DOD to accomplish at a savings to the taxpayer. And he left because of a pay cap. Where is the savings to the Government under those circumstances?

The general counsel of the Corps of Engineers retired. He cited the pay cap as the reason for his retirement.

The person who was the expert that was sought to be in charge of the Army Development and Readiness Command in terms of treatment of burns refused the job because he went to a university, Harvard University, and got more money in the first instance than he could have gotten as being the governmental expert in terms of that readiness command.

I could go on and on. One of the most significant examples, I think, is the example of a Federal judge who left the bench, the former Attorney General, Griffin Bell. He left the court of appeals. And at the time he cited the low pay of a court of appeals judge as one of the reasons.

It does not seem to me that we are accomplishing anything by putting an arbitrary pay cap on employment. We ought to try means of giving incentives to managers to reduce the cost of Government and, if they do it, give them a bonus for doing it. That was the whole concept of the Senior Executive Service, that if you brought about a substantial savings to the Government in management, you would earn a bonus. And now we are saying, "No. Anyone that is in this level, grade 15, step 5, or above, you are frozen. And you are frozen really because of political reasons."

I will argue with those reasons directly. I argue with the concept of the Legislature restricting its own salary.

I have been a Member of the Senate just short of 12 years. In those 12 years, 71 Senators who were here ahead of me have left. I am now 29th on the seniority list in 12 years. Name me one major business in this country where 71 percent of the personnel have left in that period of time who were the senior personnel of that type of business.

I do not think the country sees the impact of what we have done. We now have 50 Senators in their first term. The Constitution provided 6 years for the Senate. It was to be the body of continuity in our Government, 6 years. It is a longer term than the House and a longer term than the President. We were to be the place where the continuity of democracy resided.

What do we see? We see a more rapid turnover now than ever in the history of the United States. I think it is time that the Senate addressed the question of why that turnover is taking place.

It is taking place because of the burdens that have been placed upon the office of a U.S. Senator in terms of all of the reforms which have taken place in these last 12 years, plus the burdens of meeting the cost of raising a family and living under the system we live under, with two homes, one here and one in our State, maintaining automobiles in both States, maintaining the whole cost of being a Senator without recognizing it, and here is an example. Because for political reasons we seek to limit ourselves, we are going to limit everybody else, judges, and so forth.

Mr. President, I know there are others who wish to discuss this matter. I voted for the waiver of the rules in order that this may be before the Senate because I believe that is the best way to approach legislation on an appropriations bill, but I intend to oppose the amendment to put on a pay cap.

I am one who realizes that when the majority leader offers such an amendment in all probability it is going to pass, but I want to be certain the Senate understands what it is doing when it votes for this. It does not just limit us, it does not just limit the elected Members of the Senate. Such action ought to be sufficient right now if we want to send a signal of our desire.

As a matter of fact, I would rather see us reduce our own pay than destroy the effectiveness of government by limiting everybody else. As much as I would hate to see the pay of Senators reduced, I would rather see that happen and send that kind of signal to the country than to have us send a signal to the country that we are prepared to accept mediocrity in management. That is what this amendment brings about. I do not believe it is what the Senator from West Virginia desires to bring about, but that is the effect of it, because it destroys the concept of increased compensation for increased responsibility.

I hope the Members of the Senate will examine it carefully.

Just to conclude my remarks, I ask unanimous consent that "The Federal Diary" column by Mike Causey, dated September 4, as it appeared in the Washington Post, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SALARY NO LONGER SEPARATING CHIEFS

(By Mike Causey)

Rank has its privileges in government, but salary isn't always one of them. It is getting harder all the time to tell chiefs from subchiefs simply by examining their pay stubs. For instance.

The number of "frozen" federal executives—people getting the same salary—will nearly double next month when the 9.1 percent pay raise goes into effect. More than 7,300 executives, most of them career types, will move up to the maximum $50,112.50 pay level already occupied by 7,908 executives in the super-grade levels. The latter get no raise this year. Many of their subordinates will get only that portion of the 9.1 percent that bring them up to the $50,112.50 level.

Government-wide there will be about 25,200 federal executives at the $50,000 per year ceiling once the pay raise is effective. That will be the first pay period beginning on or after Oct. 1.

Included in that total of 25,200 frozen souls are about 6,300 members of the Senior Executive Service. A handful make more than $50,112.50, but the vast majority of the elite corps—which promised higher than normal civil service pay in its recruiting ads—are frozen and will remain so, probably until October 1981.

There are also around 3,000 top-paid people under the Veterans Administration medical schedule, and Foreign Service pay system who are frozen in place.

In the white collar service, the same-pay situation covers all Grade 18 personnel, all Grade 17 employes, most Grade 16 personnel and extends down to long-service people in Grade 15.

If one must be frozen in pay, there are much worse places to be than in the $50,000 bracket. Many civil servants and private industry workers would agree with that. On the other hand, there often is a big, big difference in responsibility between a Grade 15 U.S. employe and a Grade 18. That includes time on the job, extra hours put in, gray hair and experience.

Nevertheless, presidents and different congresses have produced the system whereby a growing number of officials make the same salary, despite very different jobs.

If pay freezes continue, and rank-and-file workers keep getting pay raises, the day isn't too far off when the government will have more top-paid officials than it does clerks and typists.

Mr. STEVENS. The article points out that salary no longer separates the chiefs from those they supervise. This is a good example of what is happening. We have to ask ourselves why would anyone step up? Why would anyone take the burden of staying longer, supervising, hiring and firing, taking the burdens of increased management responsibilities if they get no further increase in compensation, no further increase in benefits, not even an increase in life insurance or retirement benefits, or salary, no increased compensation at all, no increased benefits at all, once they reach grade 15, step 5. This is the limit of increased benefits or compensation.

I think it is wrong. I do not know when we are going to be able to stop it but I think we better stop it because it is bad government. It is bad economics and it is bad government to have this kind of a system develop.

Does anyone seek time?

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I am a cosponsor.

Mr. STEVENS. Mr. President, I yield to the Senator from Virginia such time as he may wish. The majority leader is controlling the time of those who favor the amendment.

Mr. WARNER. Mr. President, I rise in opposition to the amendment. I wish to associate myself with the remarks of my distinguished colleague from Alaska so long as that association is limited to the Federal employees. I feel most strongly that we are not giving the Senior Executive Service a chance to work. It is for that reason that I rise in opposition to the amendment.

The technical amendment that the Senator from Alaska and I cosponsored is one which corrects inequities, for the smaller agencies of the Federal Government, should the majority leader's amendment prevail today. I once headed a very small agency and my agency would have been affected adversely without the benefit of the clarifying amendment.

I wish to express appreciation to the majority leader for accepting it.

Mr. STEVENS. Will the Senator yield?

Mr. WARNER. I yield.

Mr. STEVENS. Mr. President, I ask unanimous consent that the remaining time that has been allowed to me allotted to the Senator from Virginia. He is a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I also express my thanks to the majority leader for accepting the clarification that the

Senator from Alaska and I brought forward today, the clarification enables those career grades to at least get the benefit of the bonuses up to the imposed level of pay for level V.

Mr. President, I have been privileged in my lifetime to have been a Federal employee at the very lowest levels and then at one time as Secretary of the Navy being in pay grade 2. So I have seen the spectrum from top to bottom.

I have spent many happy years in association with Federal employees. I have found them to be among the most dedicated individuals in the United States.

The distinction that I wish to make today is that these persons who have joined the civil service ranks have done so on a career basis, quite distinct from those of us in the legislature. Every man and woman in the Congress is here as a volunteer. Likewise, the vast majority of the Presidential appointees who are in the senior grades, level V and above, are there as volunteers, most of them for short periods of time. In sharp distinction the civil service individual usually looks at a career plan of 30 years of service.

The effect of this legislation would be to discourage many of those individuals at their mid-term to go on and contribute what would be in most instances the most valuable years of their service, the most productive, the wisest years, to their government.

I am anxious for the Congress to explore more and more ways to encourage the better qualified civil service employees to remain, because they are the ones, quite often, who bring to the attention of the Members of Congress ways and means to eliminate waste in the Federal Government.

The elimination of waste should be the No. 1 priority of the Congress, and we need the assistance of those dedicated civil servants in that everlasting challenge to this body.

This amendment would assist the executive and judicial branches of government in recruiting and maintaining experienced, highly qualified public servants. It would not raise the pay of Members of the House and Senate.

Therefore, Mr. President, I object to the amendment of the distinguished majority leader.

I thank my colleague from Alaska for his efforts to clarify the amendment and also to amend it in such a way as to inflict the minimum disadvantages to certain of the smaller agencies.

Mr. DANFORTH. Mr. President, will the Senator yield a little time at this point or is this a bad point?

Mr. WARNER. No, no, I think this is a good time.

The PRESIDING OFFICER. Would it be easier for the Presiding Officer to recognize the Senator from Missouri?

Mr. DANFORTH. If I may have 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. DANFORTH. Mr. President, it is my understanding that under the unanimous-consent agreement, amendments to the pending amendment would be in order at 2 o'clock. However, that amendment would not be debatable at that time. Therefore, I want now to call the attention of the Senate to the fact that, at 2 o'clock, it is the intention of Senator MOYNIHAN and me to offer an amendment to the pending amendment which would strike out the words, "executive, or judicial branch, or in the government of the District of Columbia."

Mr. President, if I have to, I shall vote for the amendment in its present form, but I hope I shall not have to. As a matter of principle, since I have been in the Senate, I have always voted against increasing my own salary. I do not think that the people of Missouri have elected me to come here and vote myself a salary increase. I have never done it, and I do not intend to do so now. I would be eager, as a matter of fact, to vote to put a cap on my salary.

The problem, Mr. President, is that this particular amendment is so all-encompassing that it includes not only myself but an awful lot of other people as well. Particularly, it includes members of the executive branch and of the judicial branch who are very skilled people and very able people, people who are competitive in ability with those in the private sector.

If we want to place a limit on the Federal payroll, I should be all for doing that. I think that it would be very possible to reduce the Federal payroll by numerous people who are leaning on brooms. I do not think the taxpayers want, for example, in the Congress to pay the cost of people who stand outside of automatic elevators in order to push the buttons that say "up" or "down" so the Members of the Senate do not have to push the buttons that say "up" or "down."

I have made the point on the Senate floor that I am not sure we need to have two or three policemen standing around talking to each other on every corner in the Capitol complex.

Mr. President, what we are talking about in this particular amendment is not people who are leaning on brooms and not doing anything. We are talking about the most skilled, proficient, technical employees of the Federal Government. In the judiciary, we are talking about Federal judges. For better or worse, Federal judges are now making decisions for this country which previously had been made by the legislative branch of the Government, and they are affecting the way people live. The least we can do is assure ourselves that the very finest talent available is appointed to the Federal judiciary and that the Federal judiciary does not become a dumping ground for those who cannot do anything else, or become a place of employment for people who are so wealthy that the Federal bench becomes an avocation as opposed to a vocation.

Similarly, with respect to the executive branch of Government, it may be possible that we need fewer people, and I would be prepared to make that argument. But I do not think that we need lower quality people, and I do not think that is reasonable to expect that we are going to attract the kind of quality in leadership positions in the executive branch of the Federal Government if we are paying these people salaries which are substantially below what they could earn in the private sector.

Therefore, if the amendment that Senator MOYNIHAN and I offer fails, reluctantly I shall vote for the amendment offered by the majority leader, simply because I have established a precedent for myself of not voting to increase my own salary and believing in the principle of capping it. But, Mr. President, I think that is far too sweeping. I think that the effect of the approach of this amendment is going to be a reduction in the quality of people who are employed by the Federal Government. It seems to me what the taxpayers are asking for is not lower quality in the Federal Government but perhaps lower quantity and less waste.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. EXON). The Chair yields to the Senator from New York on the time of the majority leader. How much time does the Senator from New York need?

Mr. MOYNIHAN. If the Chair would be kind enough to yield me 5 minutes, I believe that will be sufficient.

The PRESIDING OFFICER. The Senator is yielded 5 minutes on the majority leader's time.

Mr. MOYNIHAN. Mr. President, I join with my friend and colleague (Mr. DANFORTH) in discussing this amendment which we shall offer at 2 o'clock. I wish to make two concise points, one about which I shall ask his judgment.

By way of preface, Mr. President, may I say that I believe it is a matter of record that I have consistently voted in the Senate to restrict the size of the executive branch of our Government and to reduce the size of the legislative branch in terms of its staff, which I feel has become much too large and is beginning to inhibit its effectiveness as an institution.

As an example, it is a fact that we ought to be discussing the second budget resolution right now and, contrary to our own statutes, are going to let it pass over until after the election.

There are two principles at stake here, Mr. President. The first is the principle of comparability in the Federal executive service. By way of personal history, I was Assistant Secretary of Labor under President Kennedy in 1962 when, under the leadership of John Macy—one of our distinguished executive servants who has returned to the private sector as head of FDMA—the principle of comparability was adopted by Congress and the executive branch as basic principle of American Government. People legitimately made decisions with the expectation of comparability. This has been maintained at the lower levels, but not at the executive level, the members of which we are now denying a 9.1 percent cost-of-living pay raise.

This, in effect, means that we are choosing to reduce executive salaries in the range of 7 to 8 percent.

Mr. President, we must know this constitutes a breach of faith with persons without whom we are not going to have an efficient executive branch. We are not going to have a social security system which mails out nearly 14 million checks a month, and rest assured they will arrive. It is an enormously complex system. Anybody doing that kind of work in the private sector would get five times that compensation. All we are asking is to maintain the value of the existing service.

Second, to the point of the judiciary, I make the argument, and I hope my friend from Missouri might comment, because he is a learned man, an attorney, and a former Attorney General, that we deal here not with a breach of faith, but, very possibly, a breach of Constitution.

Article III, section I states that:

> Judges . . . shall . . . receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Mr. President, the Constitution so holds. We are here acting to diminish their compensation in a way we understand truly to be a diminishment. Their dollar amounts will not be diminished, but the value of their compensation.

I would like to ask my friend if he does not share this feeling.

I observe that there are three cases in the courts now which argue just this point, carried by Federal judges who would not casually invoke the Constitution if they were not earnestly persuaded that the point is a just and a constitutionally accurate one.

I wonder if my friend from Missouri would advise me in this matter, as he is certainly the more able to do so.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. May I ask for 3 additional minutes?

The PRESIDING OFFICER. Three additional minutes are granted to the Senator from New York.

Mr. MOYNIHAN. I thank the Chair.

Mr. DANFORTH. One thing I learned practicing law and serving as attorney general of my State is that it is dangerous to try to predict how a court is going to decide a case in litigation.

I do not really have an opinion as to the constitutional argument. The fact is that for most of our history as a country we did not have an inflation rate at 13½ percent and, therefore, the question really did not arise.

When the inflation rate is 1 percent, 1½ percent, the question of diminishing a salary is because of actually reducing the paper amount, the dollar amount. But it is quite true if we put a cap on a person's salary now at the inflation rate of 13½ percent, maybe even a higher inflation rate as we had earlier his year, the practical effect is that the person is going to be making less money, that he will have a lower standard of living, and that a Federal judge is not going to be able to do what a member of the bar is able to do in the private practice of law, simply pass on his increased cost of living to his clients by way of increased billings.

Mr. MOYNIHAN. Or work longer hours, take less vacation, and therefore increase his income accordingly.

Mr. DANFORTH. That is exactly correct. The one thing I believe very strongly is that the Federal bench, which is so crucially important in this country, has to be made up of the finest possible personnel, and that this is not a matter to be treated lightly.

I think that it would be asking for a little too much sacrifice if we fixed a cap on Federal judges who were willing to make a sacrifice, in any event, a financial sacrifice to become Federal judges. But to say now that they are frozen in, I think would be a real deterrent to getting people on the Federal bench.

Similarly, and I think the Senator from New York could address himself to this question, when we are talking about the higher levels of the executive branch of the Federal Government we are not dealing with people who have minimal tests to perform. A great deal of responsibility is placed on the shoulders of these people. A great deal of judgment is called for.

As a former member of the executive branch, is it not true that we get what we pay for, and that if we were to take the position that we were going to freeze the salary of people in the executive branch of the Federal Government that the quality of performance might be substantially less than any of us want?

Mr. MOYNIHAN. I very much agree with my friend from Missouri.

I would like to point out that this is not just a question of what happens this year or the next. It is a question of with what confidence a capable young man or woman judge can make the decision to enter the career service of the U.S. Government? Can they expect to have an experience comparable to one in the private sector, or rather must they expect to have the rules regularly changed on them?

That is the expectation we create by such action as we take today; contrary to those of 20 years ago when we did otherwise.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MOYNIHAN. Two additional minutes?

Mr. WARNER. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Virginia has 14 minutes and 33 seconds, and the Chair yields 2 additional minutes.

Mr. WARNER. I am happy to yield some time, also, to my colleague.

Mr. President, I would like to ask to be listed as a cosponsor.

(Mr. MITCHELL assumed the chair.)

Mr. MOYNIHAN. We are honored to do so, and particularly appreciate the Senator from Virigina, whose experience in these matters was at the very top of the executive branch, where he was responsible for civilian and military personnel and made decisions involving not just millions of dollars, but the security of the United States itself. The capacity to retain and compensate such people is fundamental, and he knows it.

I make a point, if I may, Mr. President, concerning the judiciary. I wish to be indirect in this matter and yet I do not wish to be misunderstood.

I have had the honor to recommend district court judges these past 4 years. In doing so I do not believe I have recommended a person to the bench who has not reduced his income by at least half to accept the bench, and often by three-quarters. Such private salaries are not all out of order for first-rate men and women in New York, and yet they take the public appointment.

But this is an inexorable fact. If the compensation of the bench continues to be so far below that of the bar, we will either begin to diminish the quality of the bench or turn to persons of personal wealth to a degree that is not appropriate to, or promising for, a democratic society.

The bench ought to be representative of the polity with respect to property. If we, by withholding a fair compensation, distort that representativeness, how shall we be judged?

I cannot imagine that anyone in the Senate would want a bench disproportionately occupied by persons of property, of great personal wealth.

When we make the kind of decision we are making today, we pass on that question as well.

I hope my colleagues might give thought to the amendment that Senator DANFORTH and I, now joined by Senator WARNER, are offering. It would allow us to withhold from ourselves an emolument increase of any kind, such that the understandable political pressure of election year would be avoided. But we would maintain the comparability, now two decades in place, in the Federal branch, and we would address ourselves properly to the question of seeing that the Federal bench is representative of the American people and not disproportionately a position of power assessible, through certain realities, only to persons of privilege.

I wish to make a final point, Mr. President, with respect to the levels of legislative salaries and of judicial salaries. In our neighbor, Canada, members of the Supreme Court receive more than twice the compensation of Members of Parliament, it being understood that the roles are different. And the Canadian democracy pokes along, does pretty well; does, indeed, very well, such that we ought not be overly sensitive about the relationship of the salaries of Members of Congress as against salaries of the Federal judiciary.

Mr. DANFORTH. Mr. President, will the Senator from New York entertain a question?

Mr. MOYNIHAN. I am happy to do so.

Mr. DANFORTH. When I graduated from law school, I started out in my career as a lawyer in the city of New York—as a matter of fact, practicing law with the very fine firm of Davis Polk & Wardwell. When I graduated from law school in 1963 and went to that firm, my starting salary, as I recall, was $7,200.

The starting salary for young lawyers going to a firm such as Davis Polk & Wardwell or Cravath, Swayne & Moore is now what?

Mr. MOYNIHAN. I believe the starting salary for graduates high in their class, who are the ones who would be chosen for such firms—as indeed the Senator from Missouri was chosen—is approaching $30,000 for the first year. The implication of this is that in the first year out of law school, a young lawyer will make half as much as a Federal judge.

Mr. DANFORTH. That is exactly the point, because a Federal judge is now making $54,500.

Mr. MOYNIHAN. That is correct.

Mr. DANFORTH. A person who has just graduated from law school, who has not even taken the bar exam——

Mr. MOYNIHAN. Has not even taken the bar exam.

Mr. DANFORTH (continuing). And goes to New York City to practice law is making more than half the salary of a U.S. district judge or a judge on the court of appeals.

Mr. MOYNIHAN. That is likely to be the case. That would be a commonplace occurrence.

Mr. DANFORTH. Would it be fair to say that a partner in one of those firms would be making substantially more than that?

Mr. MOYNIHAN. I think it probably would be fair to say—I am not privy to this in any precise way. But I know it is so in some cases because I have had to deal with this when asking persons to join the bench. A partner typically makes four times the salary of a Federal district judge.

Mr. DANFORTH. And even a lawyer in a relatively small city—say, in New York or Missouri—would likely be making as much or more than a Federal judge is now making.

Mr. MOYNIHAN. A mature lawyer, as our judges are mature—by that I mean a person in the late forties or fifties—would almost certainly be making more.

There are compensations, but they cannot overcome a great disparity of conditions between the bench and bar.

The inexorable tendency will be that persons who go on the bench and stay on—because people do leave the bench—will be persons of property.

There was a time in this Republic when such an issue as this, which holds that the bench ought not to be disparate from the polity, set apart by wealth, would arouse the concern of the Senate on the best republican principles. That is what we ask for today. I hope we will be heard.

The Senator from Missouri has been an attorney general of his great State. I am sure he has some thoughts on that subject.

Mr. DANFORTH. Mr. President, I have no doubt in my own mind on the points that Senator MOYNIHAN has made.

Let me just make a further point, and that is not the absolute amount of salary but the effect of placing a total cap on people. One thing an employer says to an employee in setting salary each year is, "You are doing well," or "You are not doing well."

A salary is not simply a method to make it possible for somebody to buy food, clothing, and shelter. A salary and a salary increase, in fact, in our capitalist system, are a method of rewarding people and saying to people, "You are doing very well, and we want to show you that you are doing very well," or "You are not doing so well." That is the purpose of salary differentials. It is the purpose of calling somebody in the office and saying, "You are getting a raise this year."

I wonder whether the Senator from New York has any thoughts about the effect of saying to a Federal judge or a person who has the most responsible position in the executive branch of the Federal Government, "You get no raise at all."

Mr. MOYNIHAN. Exactly.

I call to the mind of the Senator from Missouri, who is a Latinist as well as many other things, that the word "salary" derives from the Roman "salarium," which was the salt payment to the Roman legionnaires.

Back in Missouri, I am sure we often will hear this phrase about someone: "Is he worth his salt?" It is deep in the imagery and memory of the race.

If we decide a person is not worth his salt, we reduce his "salarium"; we cut his salary. We are cutting the salaries of the Federal bench. We are not declining to increase them; we are reducing them.

One of the things the Senator so rightly points to is that, in any system, compensation is a measure of the value which is placed upon a task—the prestige, if you will; the honor, if you wish.

With respect to a great point about the Federal judiciary, the matter was settled when President Jackson said that John Marshall had made the decision, let him enforce it. It turned out that John Marshall did not have to enforce it, because people obeyed it; such was the prestige of the Court. The Court has no power save the respect in which it is held. When we diminish its compensation, we diminish, in a degree, that respect, and we imperil something precious, which is the authority of judicial decisions.

These are small sums with which we are dealing, required for the increased compensation to maintain the true value of the Federal bench.

Mr. DANFORTH. I add that it seems logical to me that, to the extent that salary becomes a disincentive for service on the Federal bench or service in the Federal bureaucracy, other personal wants, such as the wielding of power, the exercise of raw power, may become the incentives which draw people to the Federal bench or to the Federal bureaucracy.

It seems to me that what we want to get into the highest levels of Government service are people who have the best motives; that if we are making it terribly unattractive for people to get into positions of authority, then we likely will attract authoritarian people to positions of authority.

So it may be that those people who complain about the runaway Federal bureaucracy or the runaway Federal judiciary are leading with their chins by trying to impose this kind of artificial cap.

Mr. MOYNIHAN. I believe the Senator has made a profoundly important point about the psychology of public service, and it is the point the Founders made in the first section of article III on the judiciary. They said judges shall hold their offices during good behavior. They shall be given the security of life tenure. The idea was that persons in a secure condition will be balanced minds, restrained in their search for other satisfactions. Provision of life tenure and adequate compensation are part of the same judgment that we want persons of balance, persons who are equable in their nature and, within a degree, easy in their circumstances.

We do not want a Savonarola on our bench. We do not want persons so driven by power, as we see all around us in the world, that they will abandon and risk anything for its attainment.

Mr. DANFORTH. Savonarola would be an example of an undercompensated, overzealous public servant.

Mr. MOYNIHAN. And Florence paid dearly.

Mr. WARNER. Mr. President, will the Senator yield for a question?

Mr. MOYNIHAN. I yield.

Mr. WARNER. Mr. President, I am privileged to join with my colleagues in support of this amendment.

I, myself, a member of the bar, once a law clerk to a Federal judge, have the highest respect for the bench; therefore, I am delighted that we have taken this initiative today together.

Members of Congress often rely on associations of individuals to bring to their attention the need for a corrective meassure such as the one we are addressing today, but to the best of my knowledge judges as such either as individuals or in their associations do not come to us with such petitions or pleas for a corrective action. Therefore, it is incumbent on us sui spondeo, as we say in the court, to rise on their behalf and address this issue.

If our colleagues are wondering why they may not have heard from members of the judiciary, it is my understanding that there is no organization that actively comes here on such matters as this. Therefore, it is a double measure of responsibility that rests on our shoulders to bring it up on their behalf.

Mr. MOYNIHAN. How absolutely correct the Senator from Virginia is to point to the behavior of the Federal bench in this regard. There has not been a scintilla of suggestion from the bench that they would wish us to move one way or the other. They are persons bound to the Constitution and committed to the separation of powers. We alone can set their salaries, and we have a responsibility to see that they are done justly by us.

But I also point out to my friend from Virginia who is so knowledgeable in these matters that something truly extraordinary has happened in our time, which is that the judges have gone to court with respect to this matter. I once had the honor to serve under Justice Arthur Goldberg, and he later became an Associate Justice of the Court. He left the Court for further service, and Justice Goldberg on behalf of the Federal bench took such a case. They have done something without precedent but confining it to their own realm, not ever wishing to breach that separation.

But the Senator from Virginia speaks eloquently and well. We have a responsibility in this Chamber to the tripartite system of government for which we make the laws.

Mr. WARNER. Mr. President, I wish to bring to the attention of my colleagues——

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. WARNER. The Senator from Virginia has time still available, does he not?

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is in the Chamber, and he has approximately 16½ minutes.

Mr. WARNER. What time do I have remaining?

The ACTING PRESIDENT pro tempore. None.

Mr. ROBERT C. BYRD. Mr. President, how much time does the Senator from Nebraska desire?

Mr. EXON. Mr. President, I thank my friend from West Virginia. I wish to have 5 minutes if I could have it.

Mr. ROBERT C. BYRD. I yield 5 minutes to the distinguished Senator.

Mr. EXON. Mr. President, I have been listening with great interest to the debate on the amendment being offered by the majority leader, and I rise in support of this.

There has been very little discussion from those who are in support of the amendment being offered by the Senator from West Virginia, and undoubtedly he is going to make some remarks in the next 15 minutes.

I have listened to the fact that we do have good public servants, and I agree with my colleagues in the Senate that we have excellent public servants serving this Nation in appointive and elective positions in Washington, D.C.

I have heard a statement about a breach of faith. I have heard statements about judges being frozen in.

I recognize that those are very legitimate concerns for all of us here, and I join in the statements by my colleagues who have addressed themselves to the fact that we must have and need a high quality judiciary.

I have noticed over the years, though, that there never seems to be any dearth of people who seek appointment to judgeships at all levels. Therefore, I think that we would have to say while there probably have been some instances to the contrary, by and large, we have attracted the right type of legal scholar to serve in our judiciary at almost all levels of government.

What we are talking about here, of course, is the fact that when we talk about compensation for people who are in the public sector we are addressing ourselves basically to the situation of what is fair and what is not fair. I think by and large we in the Senate always try to be fair.

However, let us not overlook the fact that one of the reasons that people are attracted to Federal service is the fact that we have one of the best retirement programs that there is. Let us not overlook that when we talk about additional compensation.

The 9-percent increase that would go into effect if the suggestion by the Senator from West Virginia is not adopted by this body would be somewhat below the inflationary rate as it exists today. But that goes to the very heart of the problem. While I think that many of us could agree that a 9-percent increase for Federal judges might be in order, we also must realize, recognize, and ask the question, Who is going to make the first sacrifice to the ever-spiraling increases in the cost of Government?

I am not particularly proud of some of the votes in this body with regard to an attempt to control inflation and ever-escalating future costs which certainly, to a considerable extent, continue to fuel the fires of inflation.

I call to your attention, Mr. President, and that of other Members of this body, that only recently this body rejected by a fairly substantial vote the recommendation of the Budget Committee which suggested that we take a minor step to do something about controlling inflation, and that was to go to once a year rather than twice a year on the cost-of-living increase for all people who qualify for the Federal pension or retirement fund. No. That was voted down. I point out that there are few if any other pension programs that have a twice-a-year cost-of-living adjustment automatically built in. But we could not get that done.

I also point out that if we are really concerned about fighting inflation and getting control of Government costs we had better be more realistic than we have been in recent days.

The ACTING PRESIDENT pro tempore. The Senator's 5 minutes have expired.

Mr. EXON. Mr. President, will the majority leader yield me 2 additional minutes?

Mr. ROBERT C. BYRD. Mr. President, I yield 2 additional minutes to the distinguished Senator from Nebraska.

Mr. EXON. Mr. President, I point out that in this Chamber within the last few days we defeated by only one vote or succeeded by one vote, depending upon how one views it, returning a bill to conference that would have further expanded the ever-increasing obligation that we have for the overall funding of higher education, and that particular bill was very appropriately described in this Chamber as a bill that would simply transfer money from the Federal Treasury to those in this country who need it the least.

The point I want to make, Mr. President, is the fact that I am not sure where we should start to control inflation, but it might be a good signal for us to send to this country as a whole that the U.S. Senate is saying that for 1 year we are going to ask the people who make $50,000 or more to set the pace, to set the record, to make the sacrifice that is going to have to be made by others if we, who have major responsibilities in this area, are ever going to take the first tiny step toward controlling inflation.

I yield back the remainder of my time to the majority leader.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. WARNER. Mr. President, will the Senator entertain a question on the remainder of his time?

Mr. ROBERT C. BYRD. I beg the Senator's pardon.

How much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 9 minutes and 30 seconds.

Mr. ROBERT C. BYRD. I want to reserve 2 minutes for the distinguished Senator from Maine (Mr. MITCHELL), and I want to reserve a minute or so for myself.

I yield another 2 minutes to the Senator from Nebraska so that Mr. Warner may ask a question.

Mr. WARNER. My question to the Senator from Nebraska is: We he present on the floor when our distinguished colleague from Missouri, together with our distinguished colleague from New York, talked about the starting salaries for persons just out of law school? They were established at, was it, $30,000 or $32,000 in New York?

Mr. DANFORTH. It is my impression that the starting salary for people right out of law school in New York City is in the neighborhood of $30,000.

Mr. WARNER. I just made some calls here to the leading law firms in Washington, including my former firm, and it is $30,000 for persons right out of law school.

My question to my colleague from Nebraska is: Young people in their early twenties out of law school are receiving $30,000, and if that is so, how do you explain to persons who have dedicated their lives in the Federal judiciary, making less than twice that, and are here being denied by this action the opportunity to just maintain their fight against inflation?

Mr. EXON. My answer to my friend from Virginia would be very simple and very brief. The question goes to the thrust of the point that I was trying to make. Which comes first the chicken or the egg? The fact of the matter is, in my opinion, for somebody out of law school to be making $30,000 a year is too much money.

I suppose the answer to that would be, "Well, that is the going rate."

But the going rate that we have in the United States of America is one of the problems we have with inflation. So I think it is wrong to say that just because somebody out of law school makes $30,000 that is automatically what they are worth and, therefore, we should base the salaries of our Federal judges on that.

I would have to agree with the basic thrust of what you are trying to get across. If a starting wage for somebody out of law school is $30,000, then I think we could agree that it should be at least $90,000 for a Federal judge.

The problem is, and it goes to the heart of the whole situation, that we are always trying to keep up with the Joneses and until we get away from that philosophy we are never going to cut the basic issue of what we are going to do, in my opinion, about costs of Government.

Mr. WARNER. In reply to my colleague, we want the very best on the

Federal benches, and if we are going to receive the very best, the ones who decide not only issues relating to our property but our very lives and our existence, then we need to find ways to compensate these people.

Mr. ROBERT C. BYRD. Mr. President, I yield 2 minutes to the distinguished Senator from Maine (Mr. MITCHELL).

The PRESIDING OFFICER (Mr. EXON). The Chair recognizes the Senator from Maine.

Mr. MITCHELL. Mr. President, prior to my appointment to the Senate I was privileged to serve as a U.S. district judge. During that brief time I had the opportunity to meet many of the men and women who serve as district judges throughout the Nation.

They are generally persons of distinction, intelligence, and integrity, and with a high degree of public-spirited motivation. They perform an extraordinarily important role in our society, which is uniquely one of and by the law.

Recently the Washington Post carried an article by a foreign journalist commenting on American society, and the headline, interestingly enough to me, as one who left the bench to come to the Senate, was, "Judges are the ruling class in America; politicians are irrelevant." While that may have been an exaggeration it is literally true that few persons play as important a role in shaping American society as do Federal judges.

I, for one, do not believe that many persons refuse a Federal judgeship or leave a Federal judgeship solely on account of money. But I am afraid if the present trend continues, an increasing number will do so, and the people of this country will be denied the very highest quality in these very important positions.

Perhaps I can best illustrate by example. The people of Maine have for a quarter of a century been served by one of the great judges in the Nation, Chief Judge Edward Gignoux. He is a truly public-spirited man who, I am confident, will not leave the bench no matter what transpires here. But, at the same time, we should ask ourselves what Edward Gignoux will we be losing in the future without our knowledge if we do not properly compensate Federal judges for the important role that they play?

I think they are unique in our society. Indeed, the framers of the Constitution felt they were unique in our society, so they established them in lifetime positions to insure their complete integrity and independence in order to insulate them from the pressures of society. That unique circumstance has served the Nation well.

But the structure will not succeed if the persons are not of the highest quality.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. MITCHELL. Will the Senator yield 1 more minute, Mr. President?

Mr. ROBERT C. BYRD. I yield 2 more minutes.

The PRESIDING OFFICER. The Senator has 2 minutes and 45 seconds remaining.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. MITCHELL. I will take 1 minute.

I do not agree with all of this amendment because I do not support exempting members of the executive branch from the action that we propose to take with respect to the legislative branch. I really do think that the judiciary is unique and ought to be treated as such, and I merely stand to say that I think it is a serious error for this body to deny ourselves the opportunity to get the very best people in what is uniquely in this Nation and, indeed, uniquely in the world, one of the most important positions in any society, that of an independent judge serving for lifetime, and because of the structure of our society, shaping our society to an extent unparalleled in the world.

I hope that role, that unique situation, will be recognized by the Senate.

There is not a great deal of money involved. I am confident that the man to whom I referred, Judge Gignoux, who now makes $54,500, could tomorrow in the private practice of law earn five times that amount. One may say all one wants about whether that is right or wrong, but that is the reality of life today. I think we should recognize that reality and deal with Federal judges properly.

I thank the majority leader for the time and I thank the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senate would reject the amendment in the second degree which will be offered, as I understand, by Mr. MOYNIHAN, Mr. WARNER, and Mr. DANFORTH.

The saving to the taxpayers if that amendment is adopted will be $10 million or less. The savings to the taxpayers if my amendment is adopted will be at least $90 to $95 million. If Congress did not act at all it would be $180 million. So my amendment represents a much, much greater savings to the taxpayers, and I think there is a matter of equity involved here. I do not think at this particular time Congress should be the sole branch of the Government which would be eliminated from the pay increase. I think the people would expect not only the legislative branch but the executive branch and the judicial branch to bear equally the burden.

Mr. President, I have no time remaining. I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

UP AMENDMENT NO. 1570

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. MOYNIHAN, and Mr. WARNER, proposes an unprinted amendment numbered 1570 to amendment numbered 2302.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 4, after the word "legislative" insert the word "branch", and on line 4, beginning with the word "executive" strike all through the words "District of Columbia" on lines 5 and 6.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Iowa (Mr. JEPSEN), and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The PRESIDING OFFICER (Mr. HEFLIN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 34, as follows:

[Rollcall Vote No. 396 Leg.]

YEAS—55

Baucus
Bayh
Bentsen
Biden
Boren
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Church
Cochran
Cranston
Culver
DeConcini
Dole
Exon
Ford
Garn
Glenn
Hayakawa
Heflin
Helms
Hollings
Huddleston
Inouye
Jackson
Laxalt
Leahy
Magnuson
Matsunaga
McClure
Metzenbaum
Mitchell
Morgan
Nelson
Nunn
Pressler
Proxmire
Pryor
Randolph
Ribicoff
Roth
Sasser
Simpson
Stafford
Stennis
Stewart
Talmadge
Thurmond
Tower
Wallop
Young
Zorinsky

NAYS—34

Baker
Bellmon
Boschwitz
Bradley
Chafee
Cohen
Danforth
Domenici
Durenberger
Eagleton
Hatch
Hatfield
Heinz
Javits
Johnston
Kassebaum
Kennedy
Levin
Lugar
Mathias
Melcher
Moynihan
Packwood
Pell
Percy
Riegle
Sarbanes
Schmitt
Stevens
Stevenson
Tsongas
Warner
Weicker
Williams

NOT VOTING—11

Armstrong
Durkin
Goldwater
Gravel
Hart
Humphrey
Jepsen
Long
McGovern
Schweiker
Stone

So the motion to lay on the table UP amendment No. 1570 was agreed to.

The PRESIDING OFFICER. The Senator from Maine is recognized.

UP AMENDMENT NO. 1571

Mr. MITCHELL. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. MITCHELL) for himself, Mr. MOYNIHAN, Mr. DANFORTH, and Mr. WARNER, proposes an unprinted amendment numbered 1571.

On page 1, lines 4 and 5, strike "or judicial branch,".

Mr. MITCHELL. Mr. President, I ask for 1 minute to explain the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, this amendment would exempt Federal judges from the cap which is to be applied to the legislative and executive branches. It would recognize the unique position in our society of the judiciary. I have heard it said here that, since we are not going to get the raise, we ought not to give it to the judges. While that is understandable in human terms, it is not a sound basis for high public policy.

Mr. President, Federal district judges now make substantially less than Members of Congress. Acceptance of this amendment would permit a restoration of an approximate balance between the salaries of Members of Congress and U.S. district judges.

Mr. President, we are uniquely a Nation of and by the law. We ought to have the very best people serving in the Federal judiciary. I ask the Members of the Senate not to let personal disappointment at our inability to vote ourselves a raise operate to deny deserving members of the judiciary a raise that they are fully entitled to on any reasonable, rational basis.

Mr. WARNER. Mr. President.

The PRESIDING OFFICER. The Senator from Virginia is recognized. However, there is no debate on this amendment.

Mr. WARNER. I ask unanimous consent, as cosponsor of this amendment, to have 30 seconds to speak on it.

Mr. ROBERT C. BYRD. Mr. President, I ask that the Senator may have 1 minute and I have 2 minutes.

The PRESIDING OFFICER. The Chair asks: Is that a unanimous-consent request?

Mr. ROBERT C. BYRD. It is, Mr. President.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. WARNER. Mr. President, I rise as a cosponsor of the amendment sponsored by the distinguished Senator from Maine. Mr. President, our lives, our property, every day, are in the hands of the Federal judiciary. We need to encourage only the finest from among the bar to come forward and take these positions. It is for that reason that I think they should not be deprived of this pay cap or bonuses such that they can fight inflation.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, equity, I think, would require us to treat the three branches equally. The Federal judges pay not 1 penny, not 1 thin dime, into their retirement funds—not 1 thin dime. Yet, they are appointed for life. They do not have to run for reelection. They do not have to face the diatribes of the columnists or the editors or the commentators or their colleagues. And when they retire, they retire at full pay. Not 1 dime for retirement, retirement at full pay.

My friend from Maine, I am sure, represented the very finest in the judiciary, and there are many fine men and women in the judiciary. But I have no problem in West Virginia in getting nominees for the judiciary. I have no problem in getting lawyers who want to be appointed to the Federal judiciary.

Mr. President, I stood for the congressional pay increase 2 years ago, led the fight for it. So I have no compunctions about leading a fight for a congressional pay increase. But we have indicated that we would not accept this pay increase and I think it ought to be equitable across the board.

I do not think that Congress should be forced to bear the burden alone. The American people want to see the example set. We should set it. The Federal judges should set it. And those in the top levels of the executive branch should also set the example.

I hope the amendment will be voted down. I shall not move to table the amendment, but I hope it will be voted down.

The PRESIDING OFFICER. The time has expired.

Mr. PERCY. Mr. President, I ask unanimous consent that I may have 30 seconds to speak on behalf of the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so granted.

Mr. PERCY. Mr. President, I need only remind my colleagues that, in many instances, we have had extremely well qualified people turn down judicial positions because they simply cannot afford to do so. The judicial branch is the only branch of Government that cannot come in and fight for a pay increase. The executive branch has the opportunity to do it. The legislative branch can do it. But the judicial branch cannot.

Many of us have had the experience of trying to encourage outstanding lawyers from our own States to allow themselves to be considered for judicial openings, only to be told by them that the financial sacrifice would be too great. With families to support, and with inflation on the rampage, who can blame them? But losing top quality people for the bench hurts all of us, and hurts our system of justice.

This amendment is a symbolic gesture, but, nevertheless, an important one. We should, at least, let the Federal judges of this Nation keep up with the cost of living.

I ask unanimous consent that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that I may be added as cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (UP No. 1571) was rejected.

Mr. RIBICOFF. Mr. President, I regret to find myself in disagreement with our distinguished majority leader. However, I believe that the adoption of a cap on Federal executive pay will cause the retirement and departure from the Federal Government of many talented and competent employees. It was only a few years ago that Congress corrected a situation in which Federal managers were making no more salary than some of those employees under their supervision. We are facing that very same problem again and this amendment will worsen it. If enacted, this amendment will place more than 25,000 senior employees at a $50,000 ceiling. Pay compression is real and it is also demoralizing when—no matter what the additional responsibility—an individual is paid at the same rate as those for whom he is responsible.

I ask that an article from today's Washington Post be printed at this point in the RECORD.

The article follows:

SALARY NO LONGER SEPARATING CHIEFS

(By Mike Causey)

Rank has its privileges in government, but salary isn't always one of them. It is getting harder all the time to tell chiefs from subchiefs simply by examining their pay stubs For instance:

The number of "frozen" federal executives—people getting the same salary—will nearly double next month when the 9.1 percent pay raise goes into effect. More than 7,300 executives, most of them career types, will move up to the maximum $50,112.50 pay level already occupied by 7,908 executives in the supergrade levels. The latter get no raise this year. Many of their subordinates will get only that portion of the 9.1 percent that brings them up to the $50,112.50 level.

Government-wide there will be about 25,200 federal executives at the $50,000 per year ceiling once the pay raise is effective. That will be the first pay period beginning on or after Oct. 1.

Included in that total of 25,200 frozen souls are about 6,300 members of the Senior Executive Service. A handful make more than $50,112.50, but the vast majority of the elite corps—which promised higher than normal civil service pay in its recruiting ads—are frozen and will remain so, probably until October 1981.

There are also around 3,000 top-paid people under the Veterans Administration medical schedule, and Foreign Service pay system who are frozen in place.

In the white collar service, the same-pay situation covers all Grade 18 personnel, all Grade 17 employes, most Grade 16 personnel and extends down to long-service people in Grade 15.

If one must be frozen in pay, there are much worse places to be than in the $50,000 bracket. Many civil servants and private industry workers would agree with that. On the other hand, there often is a big, big difference in responsibility between a Grade 15 U.S. employe and a Grade 18. That includes time on the job, extra hours put in, gray hair and experience.

Nevertheless, presidents and different congresses have produced the system whereby a growing number of officials make the same salary, despite very different jobs.

If pay freezes continue, and rank-and-file workers keep getting pay raises, the day isn't too far off when the government will have more top-paid officials than it does clerks and typists.

● **Mr. LEVIN.** Mr. President, I am all in favor of symbolic acts designed to show the country that we take our fiscal responsibilities seriously. Last year I voluntarily returned to the Treasury the pay raise that was given to U.S. Senators and I supported the two amendments which the Senate just disposed of which would have had the effect of denying a pay increase to Senators and selected Senate staff this year. I hope, then, that my opposition to this amendment will not be interpreted as an attempt to vote myself a pay increase.

On the contrary, I am voting against this amendment not because it denies me a pay raise, but because it denies any pay increase to key members of the judicial and executive branches of Government. The plain fact is that we consistently complain because programs are not well run and not well administered. And then we say to the people we need to bring into Government that not only will we not pay them what many could get in the private sector; we will not give them any wage increase even in the face of significant double digit inflation. It makes no sense to me, Mr. President, to say that we are willing to entrust the public welfare to people and then deny them any pay increase at all. Even the proposed 9.1 percent, would have represented a loss in income from the previous year. We just are not going to get good government unless we are willing to pay for it. We can get good Senators and Representatives because we at least get "psychic pay" in the form of recognition and prestige. That psychological "pay," however, is denied to the people we call "bureaucrats" and now we deny them any monetary equity as well.

Similarly, Mr. President, if we want to attract the best legal minds to the Federal bench, we need to persuade them to leave lucrative positions in private practice. We cannot match the salaries they make there—but we cannot ask them to give up as much as we are asking them to give up in this bill. Mr. President, symbolism is fine until it begins to interfere with the effective implementation of public policy—and I fear that in denying any pay raise to the judicial and executive branches we have, in fact, let symbolic values get in the way of public needs.●

AMENDMENT NO. 2302

The **PRESIDING OFFICER.** The question recurs on the amendment of the Senator from West Virginia, as amended.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on my amendment.

The **PRESIDING OFFICER.** Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER.** The question is on agreeing to the amendment of the Senator from West Virginia. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Colorado (Mr. HART), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. DURKIN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from Iowa (Mr. JEPSEN) are necessarily absent.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 78, nays 13, as follows:

[Rollcall Vote No. 397 Leg.]

YEAS—78

Baker
Baucus
Bayh
Bentsen
Biden
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Eagleton
Exon
Ford
Garn
Glenn
Hatch
Hatfield
Hayakawa
Heflin
Heinz
Helms
Hollings
Huddleston
Inouye
Jackson
Javits
Johnston
Kassebaum
Laxalt
Leahy
Lugar
Magnuson
Matsunaga
McClure
Metzenbaum
Mitchell
Morgan
Moynihan
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Randolph
Riegle
Roth
Sasser
Schmitt
Schweiker
Simpson
Stafford
Stennis
Stewart
Talmadge
Thurmond
Tower
Tsongas
Williams
Young
Zorinsky

NAYS—13

Bellmon
Gravel
Kennedy
Levin
Mathias
Melcher
Ribicoff
Sarbanes
Stevens
Stevenson
Wallop
Warner
Weicker

NOT VOTING—9

Armstrong
Durkin
Goldwater
Hart
Humphrey
Jepsen
Long
McGovern
Stone

So the amendment of the Senator from West Virginia (No. 2302) was agreed to.

The **PRESIDING OFFICER.** Under the previous order, the Senator from Wisconsin is recognized for 5 minutes.

Mr. PROXMIRE. Mr. President, I will vote against the energy and water development appropriations bill for fiscal year 1981. I cannot support this appropriation for three principal reasons. First, it continues to fund numerous water development projects which harm the environment and cost far more than benefit. It also calls for greatly increased defense-related spending based on insufficient information and discussions. Finally, worst of all, this bill busts the budget. It exceeds the budget by more than $66 million and goes $376 million over last year's appropriation. It even surpasses the House appropriation by $99 million.

Just when the Senate was about to get its head above water on funding water projects, we have been thrown the anchor and not the life preserver. Heavy ballast like the Tennessee-Tombigbee Waterway, which has the honor of being our most expensive water project, loads down this bill. No matter which version of project costs you subscribe to, this boondoggle will cost several billion dollars and produce very little real benefits. We have a chance to extricate ourselves from this waterway morass. We can stop funding this project now, sell back condemned land, and terminate contracts. We still would come out way ahead.

The Dickey-Lincoln Dam proposed for northern Maine is another loser. The House has voted 14 times to terminate this project. It would cost $1.5 billion to build, yet it would displace only 2.3 million barrels of oil annually—not daily, but annually. Dickey-Lincoln still idles along in the planning stages. If we stop it now, we will not have to lament later about our sunken costs.

If we are serious about cutting spending and balancing the budget, what better place to start than water projects? To continue to throw money down the drain for projects that would return little financially insults the American taxpayer.

In addition to civilian energy applications, this bill contains about $3.5 billion in defense-related spending. Of this, $2.9 billion funds the atomic energy defense activities. This means that weapons research production absorbs 30 percent of this bill.

This bill calls for increased nuclear testing. It includes new nuclear weapons development and increases nuclear materials production. In most of these cases, we cannot even discuss the details of these programs due to their highly classified nature. We cannot, here, debate, in any detail the necessity or lack of necessity in increasing the nuclear materials programs above the administration's request. We cannot discuss the details of the nuclear warhead production program. How many warheads do we really need for Europe? What schedule do we need for efficient production? Do we need to store enhanced radiation components now, before the President decides to move ahead with the neutron bomb?

Why do we not secure the same detail we insist on in the defense authorization and appropriations bills? Surely this would provide a better base for evaluating the proposed budget levels of this bill.

I will vote against this bill because of specific defects in both energy and water appropriations, and I will also vote "no" to protest the total cost exceeding the budget by $66 million.

Mr. President, when are we going to get serious about balancing the budget? I suggest that time has come. That is why I will vote against this bill.

Mr. PERCY. Mr. President I urgently request that, during the conference on H.R. 7590, conferees set aside some highly necessarly funding from the general facilities fund included in this bill to initiate rehabilitation and restoration work at our Nation's first general research laboratory, the Argonne National Lab.

Mr. President, our Nation's national research laboratories are among America's most impressive and indispensable scientific assets. Far too often, unfortunately, Congress has ignored them, and allowed them to physically deteriorate. In so doing, we have threatened to rob them of the one element that makes them so valuable to us in the first place: the creative spark and inspiration for research that is held by the people who are employed within them. We can expect the quality of work in our national labs to be no better than the physical quality of the labs themselves. Sadly, in recent years this quality has been disappointing at best. Our national laboratories have succeeded in spite of themselves.

The Senate took an important step in July by recognizing that this decline could not continue, by recognizing that our national labs were in danger of losing the people who have made them so valuable. In July, we passed an authorization bill which specified important funding levels for general facility improvements at Brookhaven National Lab, at Oak Ridge National Lab, at the Argonne National Lab which is located in my home State, and at others.

I cannot speak for the present quality of facilities at many of these institutions, Mr. President. I can speak about Argonne, however, and I can report how relieved and thankful its employees were when S. 2332 was passed. That bill did not assure them of everything they would have liked to revitalize Argonne, but it made some very important starts: $15 million was allocated to revamp and improve the quality of its physical plant; $7.4 million was provided to install a new steam-driven cogenerating system, capable of producing electric power as well as chilled and hot water for the lab; $4.1 million was revamp and improve the quality of its fire safety system; and other programs were included as well. These are not especially interesting line items, I realize, but they are highly crucial ones. I looked forward to their inclusion in the pending legislation.

Unfortunately, very few rehabilitation projects have been tabbed for funding in H.R. 7590. The Appropriations Committee recommended that $35 million total be spent on construction of general purpose facilities like research labs. The committee named particular improvement projects that it wished to see provided with funds from this total, remaining funds could be distributed to labs in a manner selected by the Department of Energy.

I believe strongly that the committee chose its preferred projects wisely, Mr. President. I cannot stress, though, the importance of initiating projects that are so badly needed at our other national labs as well. No additional funds are required for appropriating to do this. There is a margin of several million dollars that the DOE will have available to begin these projects.

I urge the conferees on this legislation to direct that a minimal amount of funding be directed to guarantee that preliminary work begins at the oldest of our national laboratories, the Argonne National Lab. It is my hope that they would provide that $1 million—less than 10 percent of the amount that is needed for this project—be directed to make a small dent in that lab's drive to rehabilitate its general purpose plant. It is also my hope that they would provide that $1 million be offered to begin Argonne's drive to create a cogeneration system for itself, one that could produce electricity and hot and cold water for 10 of the lab's buildings. The energy savings for this project, by the way, has been conservatively estimated to be 33,000 barrels per year, with resultant energy savings of over $930,000 per year. The total cost of this project is about $7.4 million, meaning that the project could pay for itself in only 8 years. I am not expecting the Senate to provide enough money to complete either project this year, or even to get halfway there. I am asking only that we begin.

Again, Mr. President, this allocation adds no money to this bill. It takes no direction that the Senate has not already taken—we voted for seven major improvements at Argonne only 2 months ago. All it does is insure that two of these improvements are begun, that Argonne does not continue to deteriorate, losing perhaps its spirit and the very men and women who have made it such an important part of America's scientific community. Such assistance would help Argonne, and America, a great, great deal.

● Mr. TOWER. Mr. President, today the Senate is considering H.R. 7590, the energy and water development appropriations bill for fiscal year 1981. This legislation which contains over $12 billion primarily for energy and water projects also contains appropriations for atomic energy defense activities. This year the Senate Armed Services Committee, which has authorizing jurisdiction over Department of Energy national security programs, has recommended to the Senate S. 3074. These initiatives included authorization for fiscal year 1981 of an additional $156.9 million for nuclear materials production. This authority related to the conversion of the N-reactor at Richland, Wash., to production of weapons grade platonium along with upgrading of the L-reactor at Savannah River, S.C., and the Purex fuel processing plant also at Richland, Wash.

A total of $94 million was authorized for an enhanced nuclear weapons test program which is designed to insure that the United States will not fall behind the Soviet Union in this vital technology as a result of the limited U.S. nuclear test program in the face of large-scale Soviet testing. For nuclear waste management the committee has recommended the addition of $38 million in authority for operation and construction related to the waste isolation pilot plant for demonstration in New Mexico of long-term defense nuclear waste storage. Also the committee has authorized an additional $10 million for design of a slagging pyrolysis incinerator for the Idaho National Engineering Laboratory which could reduce the volume of transuranic defense nuclear wastes and make them easier to transport and store. Of course this legislation also contains significant general provisions not directly related to specific authorizations.

The appropriations bill before the Senate today is being considered prior to consideration of the Department of Energy national security programs authorization bill. Thus, highly important defense related appropriations are being considered by the Senate prior to Senate action on the authorizations to which they are related.

While this practice is legal, I am concerned that appropriating funds before they are authorized is a dangerous practice which not only undermines the oversight responsibilities of key Senate committees but also prevents consideration in logical order by the Senate of important issues, in this case, vital defense issues.

I understand that the Appropriations Committee has recognized that the executive branch has been reviewing requirements for special nuclear materials production and has urged that "the ongoing review be completed as quickly as possible in order that the committee can consider the executive branch recommendations during this session." Certainly a supplemental Department of Energy Appropriations request would be necessary to fund initiatives in this area under consideration by the executive branch and in many cases already recommended by the Senate Armed Services Committee.

However, our ability to address these problems in supplemental appropriations does not detract from the clear logic institutionalized in the Budget Act that appropriations should generally follow related authorization legislation.

Mr. President, at this time I would also like to address a related issue. The Senate Armed Services Committee has concluded that Department of Energy national security programs have been inadequately funded in recent years because these essential activities competed for funds, not with other defense programs, but with civilian energy programs. This has been institutionalized not only within the Department of Energy but also within the Office of Management and Budget where defense nuclear programs are reviewed for funding in competition with civilian energy programs. Frankly, the same institutionalized arrangement exists in the Senate where the Defense Appropriations Subcommittee does not consider the Department of Energy national security programs.

For my part, I along with other members of the Senate Armed Services Committee, will continue to examine the management structure within the executive branch for dealing with Department of Energy national security programs and will work closely with my colleagues in the Senate on the best way for Congress to structure authorization and appropriations of Department of Energy defense nuclear activities.●

CORPS STUDY OF CHICAGO FLOODING NEEDS SHARPER FOCUS

● Mr. PERCY. Mr. President, title II of H.R. 7590, the energy and water development appropriation bill for fiscal year 1981, includes an appropriation of $2.5 million for the Army Corps of Engineers to continue its phase I study of the Chicagoland underflow plan. I supported initiation of this study in fiscal year 1979, and I continue to support the corps' efforts. I am concerned, however, that the corps has embarked on a far-reaching survey of potential solutions to flooding and pollution in metropolitan Chicago without first defining the nature of the problems to be solved.

Based on hypothetical computer modeling, the corps estimated in 1978 that the citizens of metropolitan Chicago suffer $475 million in flood damages each year. In 1979 the General Accounting Office published a survey showing that actual flood damages in the Chicago area are less than $25 million each year. Though neither flood damage estimate can be considered definitive, it is clear that no one has adequately defined what an "alternative" to the current proposal should be expected to do.

I do not accept the assertion of those who say that an alternative to the tunnel and reservoir plan is one that provides the same degree of storage and conveyance capacity as the current design. TARP was designed without any concrete knowledge of the extent and severity of flooding in the metropolitan area. The corps has now spent 2 additional years examining "solutions" without precisely defining the problems.

Flooding and pollution in metropolitan Chicago seriously degrade the urban environment and impair the region's economic well-being. They are of first importance to the hundreds of thousands of Chicago-area homeowners who must periodically dredge millions of gallons of raw sewage out of residential basements. The corps must effectively concentrate its efforts on identifying the Chicago neighborhoods and suburbs that are most afflicted by sewer backups, and then focus its attention on innovative technology that will target relief where it is most needed.

As the GAO survey indicates, flooding and pollution do not affect each and every community in the Chicago area. A monumental, capital-intensive, multibillion dollar construction project may not be appropriate to the problem at hand. Yet, until the problem is adequately defined, it is impossible to evaluate any proposed alternative.

The corps should also evaluate what degree of relief can be expected from various approaches to flood and pollution control. The current $11 billion approach may well be the most "cost-effective" means of completely eliminating the entire problem. Yet, using smaller scale technology that focuses on the neighborhood or the community level, we may be able to alleviate a large percentage of the flooding and pollution problems at a tiny fraction of the cost for TARP.

I concur with the Appropriations Committee report that this study should be completed as expeditiously as possible. The citizens of metropolitan Chicago should not have to wait another two decades before receiving any flood relief. The corps must devise an affordable program that can be implemented quickly and effectively, and that can be actively supported by the Federal Government. Chicago area taxpayers have had to wait far too long for a realistic waste water management proposal.●

Mr. THURMOND. Mr. President, I wish to comment on H.R. 7590 which contains the Department of Energy national defense programs appropriation for fiscal year 1981.

This important bill provides for the research, operation, and production of our nuclear weapons programs. The seven programs in the Energy Department involving national defense matters include naval reactors development, inertial confinement fusion, weapons activities, verification and control technology, materials production, defense nuclear waste management, and nuclear materials safeguards and security.

Mr. President, this bill inadequately funds the necessary nuclear weapons program sufficient to meet our national security interests. The bill sent to Congress by the administration was decidedly unfunded and did not follow many key recommendations of the Secretary of Defense and the Joint Chiefs of Staff.

The Senate Budget Committee recognized these shortfalls and passed budget resolutions increasing these accounts by up to $400 million. Yet it appears the Appropriations Committee has diverted these increases to other less important programs.

Mr. President, our committee was very concerned that the administration viewed the nuclear weapons budget as just another category subject to artificial budget ceilings imposed by the Office of Management and Budget. It appears little consideration was given to our real weapons needs, to the need for plant modernizations, to the need for increased amounts of nuclear weapon materials, to the need for more nuclear weapon testing, research and so on.

Some of the concerns of the Senate Armed Services Committee are too sensitive for discussion on the Senate floor. However, a careful reading of our committee report should enable those interested to realize that the administration is taking the country along a high-risk policy by not adequately funding these nuclear weapon programs. It appears from the bill now before us that the Appropriations Committee has not significantly rejected that policy.

KEY WEAPONS NEEDED

When nuclear material production facilities lack modernization, when insufficient amounts of nuclear weapon materials are being produced, when nuclear weapons testing is cut to the bone, when new weapon development is slowed or stopped, then someone had better sound the alarm. Our committee was attempting to sound that alarm.

Mr. President, the policy of the Carter administration in the nuclear weapons program is bordering on unilateral disarmament. It is clearly necessary for the Congress to take the initiative in this vital matter as Congress has already done in increasing defense spending.

The Senate Armed Services Committee took these initiatives, but it appears from my reading of the Appropriations Committee bill that these vital national security actions have not been funded.

For instance, the Armed Services Committee increased the administration budget request by about 6 percent to accelerate nuclear materials production, to prepare current facilities for increased production and to boost needed research activities.

PENDING BILL INADEQUATE

The nuclear weapons budget request came in at $3.7 billion and our committee increased this amount to $4 billion. However, the Appropriations Committee has provided for appropriations of only $3.5 billion. Possibly some of the authorizations do not require appropriations in fiscal year 1981, but it is obvious that this bill does not provide sufficient additional money for vitally needed nuclear material production, modernization of aging production facilities, more nuclear weapons testing, or reactivation of currently inactive facilities.

The report of the Appropriations Committee has just become available and while it appears a number of these increased authorizations were not funded, I would like to hear from the bill manager if I am incorrect. Assuming I am correct, I would also like to hear from the bill manager as to why the additional funds allocated by the Budget Committee in recognition of our shortages were not applied to these programs as proposed in the authorization bill.

IMPORTANT STUDIES IGNORED

Mr. President, two important studies—one by the National Security Council and the other by Gen. Alfred Starbird—have already indicated that shortfalls in special nuclear materials can be anticipated under even the most conservative assumptions related to future weapons' requirements.

Mr. President, the projected shortages of special nuclear materials are of such potentially serious concern to our national security interests that the hesitation by the Appropriations Committee to act is not easily understood.

NUCLEAR WEAPON TESTING

Another important area neglected in the administration budget request is that of nuclear weapons testing. In recent years there has been a significant decline in the number and types of nuclear weapons tests conducted. I fear this policy is based upon budget constraints and the possibility of a comprehensive test ban treaty, neither of which can justify the necessary protection of our national security interests.

The nuclear testing program of the Soviet Union, on the other hand, has increased significantly in the last 2 years. Furthermore, it appears the Soviets are testing in excess of the 150-kiloton ceiling of the Threshold Test Ban Treaty. Many experts in this field believe that if a treaty is concluded we will not have done the testing necessary to safely enter into the treaty.

In thorough hearings on this subject, the Senate Armed Services Committee concluded that the administration has overly constrained our nuclear weapons testing program. Once again we acted, by providing authority that testing should be accomplished at a level consistent with the nuclear weapons requirements of the United States. The Appropriations Committee has wisely matched increases in the House bill for this account.

Even our military leaders admit that we have now lost strategic equivalence with the Soviets. Furthermore, we have a number of highly important new programs nearing development, including the cruise missile, the MX mobile missile, and Pershing II. We must test to provide for the safety and effectiveness of these new systems so vital to our national security.

NEEDS RECOGNIZED

Mr. President, I note from the committee's report that there is an expressed willingness to consider new requests from the administration later in the year based upon the findings of ongoing studies. This recognition of the shortfalls in our nuclear weapons programs, specifically materials production, is noteworthy. However, I believe there is more than adequate testimony on the record and already revealed through these studies for Congress to take the initiative and not await already overdue administration findings.

Certainly the modernization or upgrading of our nuclear weapons facilities needs no further study. The needs are obvious, and they have been before us for the last 10 years. We must act to restore these facilities for reasons of safety, continuity, efficiency, and the basic requirement of modernization. I regret the committee has not authorized the $84 million approved by the Senate Armed Services Committee for facility upgrading, a significant increase over the $34 million recommended for authorization in the budget. Our committee recommended appropriation of the full $84 million to meet these urgent needs.

In conclusion, Mr. President, I believe there is a need for closer collaboration between the two Senate committees on these vital nuclear weapons programs. I strongly urge that we begin that work immediately in order that our serious needs in this vital national security area can be addressed promptly.

● Mr. LEVIN. Mr. President, I want to use my "nay" note as a way of registering my opposition to several critical decisions on this bill.

First, I cannot agree with the decision of the Senate in regard to the Lincoln-Dickey project in Maine. I said earlier today that each water project has to be approached on its own merits and, on the basis of merit, I voted to continue a more expensive program along the Tennessee-Tombigbee Waterway. Even though Dickey-Lincoln will cost less, it has less justification both in terms of its merits and in terms of the fact that so little has been committed to it. It is, in the words of one of my colleagues, a "real turkey" which in its present form ought not be gobbling up public funds.

Second, I cannot agree with the decision made today regarding the pay cap as applied to members of the executive and judicial branches. As I said prior to that vote, I fear we have engaged in symbolism to the point of denying ourselves the human resources we need to effectively administer and implement public policy.

Third, I am disturbed by the way in which many of these projects were considered. Reservations were raised yesterday by my colleague from New York concerning the manner in which one such project was considered by the Senate even prior to his subcommittee completing action on it. He was correct—amending the bill on the floor the way it was done is not the way to legislate.

The economic climate which now confronts us is filled with unemployment and inflation. It is also filled with cries for a balanced budget or at least fiscal restraint. This bill does little to deal with the very real and pressing human and economic crisis which we face. In a number of instances, it does damage.

The margin of victory this bill will enjoy testifies to the many strengths it contains. But I do want the minority in this vote to be a little larger than it normally might be—because I think that this bill contains flaws which should be highlighted, and can be highlighted without damage.●

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, very briefly, this bill is under the 1980 appropriations, if we take away atomic energy defense activities nuclear weapons. We have an increase of $485 million for atomic energy defense activities, principally nuclear weapons in this bill, an increase over 1980. The reasons for this are principally classified.

The Senator from Wisconsin is a member of the Appropriations Committee, with access to those classified documents. Suffice it to say that that is not only needed in the interests of national defense; it is absolutely essential.

All I can say is this: Look at the documents, and I believe that if we would vote on that increase by itself on the floor of the Senate, it would be overwhelming.

Mr. President, if we take away that $485 million increase in the nuclear weapons program and look at the energy supply and water accounts, we come in in a dollar amount less than 1980. We have a total increase of $378 million over 1980, but a $485 million increase in nuclear weapons program, so we are actually more than $100 million less than 1980, and that excludes inflation. If we add inflation factors into that we are probably a half billion dollars under 1980 on this budget.

We have cut over $200 million from the House allowance in the water account. We are within the committee projections with the crosswalks. We are in fact below the Appropriations Committee allocation. We are less than the House on a comparable basis when we consider the budget request that was given to us.

Mr. President, if every appropriations subcommittee does as well as our subcommittee, then we will be well under the budget targets. We will be well within the allocation set by the Appropriations Committee.

I hope the Senator from Wisconsin does as well with the HUD and independent agencies budget.

I can say that in the Chamber we have added only $10 million to this bill which is really peanuts when we compare it to a $12 billion budget.

Mr. President, I am proud of the Appropriations Committee and particularly of our subcommittee and of the Senate for funding those measures which are of great importance, but principally for exercising such fiscal restraint.

One final word. Mr. President, I commend our great colleague, Senator MILTON YOUNG. This will be his last appropriations bill on energy and water development. He has been a stalwart. We are going to miss him. We are going to miss him personally. We are going to miss him for his wise counsel. We are going to miss his participation on this bill. He is faithful in his attendance at our meetings and in all his duties—we should emulate him in our work here in the Senate.

We have said it in the committee several times and I say it here in the Chamber. If there is a man who is most beloved among all Senators, I am not sure who it would be, but I know Senator MILTON YOUNG would be at the very top of the list. We will miss him greatly.

Mr. President, I yield to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I shall take less than 1 minute.

I point out to the membership the amount of work, the enormity of the work, the items, the matters, and the policies that go into this appropriations bill. It has doubled, tripled, quadrupled in the last few years. It carries most of the money, as we know, with a great deal of the energy program, for instance, and these water matters become more and more important and complicated.

We are served best here by these two men, the chairman and the ranking minority member, and the other members on the subcommittee who helped us.

I commend them and point out to the whole membership what, I will not say problem, but a burden this bill has become.

I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the appropriations measure which the Senate considered yesterday and today, H.R. 7590, making appropriations for energy and water development for fiscal year 1981, is the first of 13 appropriations bills for fiscal year 1981 to be considered by the Senate. I commend the distinguished chairman of the Appropriations Subcommittee on Energy and Water Development, Mr. JOHNSTON, and its distinguished ranking minority member, Mr. HATFIELD, for the numerous hours of hearings and hard work that have gone into preparing this bill. I thank the subcommittee and the full Appropriations Committee for the expeditious action they took in reporting this bill last week.

The guideline for developing this bill has been restraint. As reported by the Appropriations Committee, this bill is below the amount allocated by the first budget resolution. The committee sought savings where it could, and increases were selective and restrained.

The funds provided in H.R. 7590 will support certain programs conducted by the Department of Energy, such as advanced energy technology research, uranium supply and enrichment activities, and others. The Corps of Engineers, which is responsible for programs to develop and improve our waterways, is also funded in this bill. And the Water and Power Resources Service of the Department of the Interior, which oversees flood control projects, dams projects, and other water resources-related activities is funded as well.

In addition to these departmental programs, the bill also funds a number of independent agencies, such as the Nuclear Regulatory Commission, which has the vital and important responsibility of developing nuclear safety standards and regulating nuclear energy activities. The bill funds Appalachian regional development programs, which are important to my own State of West Virginia. It funds the Tennessee Valley Authority, the Water Resources Council, the Susquehanna River Basin Commission, and others.

Yesterday the Senate passed authorizing language for the Tug Fork Valley flood control project. This marks the fifth time that the Senate has passed an authorization for the vitally important series of flood control measures in the Tug Fork Valley. A total of $284 million is authorized by the amendment which I offered, along with my colleague from West Virginia, JENNINGS RANDOLPH, and the two Senators from Kentucky, WENDELL FORD and DEE HUDDLESTON.

The Tug Fork Valley is one of the largest coal-producing areas in the Eastern United States. More than 5 percent of the entire recoverable coal reserves in the entire country are in the valley. Considering the awesome size of American coal resources, this amounts to an energy supply of major proportions.

Unfortunately, the Tug Fork Valley is subject to serious and repeated flooding. In 1977 and 1978, two devastating floods caused more than $200 million in damages to property in the valley. Hundreds of families were driven from their homes. A great deal of human misery resulted from these overwhelming floods. The Senate wisely adopted my amendment yesterday in order to protect the lives and property of the families in the valley, and to protect an outstanding energy resources.

This legislation moves use closer to energy self-sufficiency by providing funding to strengthen our energy research and development programs and to develop and improve our water resources. The committee's rcommendations represent a wise and prudent approach toward the development and conservation of our energy resources. The legislation seeks to meet our present energy and transportation needs and looks ahead to our future needs. It seeks to secure for this Nation a stable, prosperous and energy-independent future.

Once again, I thank Senator JOHNSTON, Senator HATFIELD, the members of the Energy and Water Appropriations Subcommittee and the full Appropriations Committee for the considerable time and attention they have brought to his very important bill.

Mr. President, I also wish to express appreciation to Mr. MILTON YOUNG who is the ranking member of the Appropriations Committee for the time and attention that he and others have given to this very important bill. Its positive impact will be recognized during the coming fiscal year and for many years to come.

Mr. BAKER. Mr. President, will the Senator yield to me 30 seconds?

Mr. HATFIELD. I am happy to yield a minute to the Senator from Tennessee.

Mr. BAKER. Mr. President, I would like to commend several of my colleagues for the exemplary leadership they have displayed in the management and debate on the Energy and Water Development Appropriations Act of 1981, which we have just approved.

The scope and foresight of this legislation is testimony to the diligence and thoughtful consideration it received in the Appropriations Committee and I applaud the efforts in that regard to the Senator from Washington (Mr. MAGNUSON), the chairman of that committee, and the always-stellar performance of my good friend, the distinguished Senator from North Dakota (Mr. YOUNG), who serves so capably as the ranking member of the Appropriations Committee.

Senator YOUNG, of course, will be taking his leave of the Senate at the end of this year and we will miss the steady imprint of his commonsense so evident on this legislation and all that he has been involved in during his distinguished career.

Furthermore, I would commend the distinguished Senator from Louisiana (Mr. JOHNSTON) and the distinguished Senator from Oregon (Mr. HATFIELD) for their usual efficient and knowledgable management of this legislation on the floor of the Senate. I know of the countless hours Senator JOHNSTON and my good friend, Senator HATFIELD, have spent preparing for the consideration of this bill. The ease with which its consideration progressed to overwhelming passage is testimony to the effectiveness of this preparation.

This is good legislation, Mr. President. We have allocated monies judiciously and we will enjoy a healthy return on a wise investment.

And at this time, Mr. President, as we near the end of this session of the Congress and as I have been speaking of Senators YOUNG and HATFIELD, I would like to again express my appreciation and that of all the Members of this side of the aisle for not only the wise counsel they have provided the Senate on this legislation, but for their same, generous contributions of time, talent, advice, and energy which we have received throughout the 96th Congress.

They embody the best traditions of the U.S. Senate.

Mr. JOHNSTON. Mr. President I yield to the distinguished Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Senator from Louisiana.

As the Senator knows, on page 106 of the report there are two items concerning the Libby Dam in here.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

There are 5 minutes remaining to the Senator from Oregon. Perhaps he will yield some time to the Senator from Montana.

Mr. HATFIELD. Mr. President I yield 30 seconds to the Senator from Montana.

Mr. BAUCUS. I thank the Senator.

As the Senator knows there are two entries on page 106 of the committee report. Is it the Senator's understanding that the money to be spent for this bill is to be spent only on the additional generators and on the main dam and none of the funds in this bill are to be spent on the proposed reregulating dam?

Mr. JOHNSTON. The Senator is correct. There is no money for activities not permitted under the court order as the reregulating dam.

Mr. BAUCUS. I thank the Senator and I thank the Senator from Oregon.

Mr. HATFIELD. Mr. President, I am very proud of this appropriations bill. I think it is noted and distinctive for what it did not do as well as for what it did do.

I wish to point out that out of the bill that contains $12.1 billion of programs and projects there were only $10 million added in amendments on the floor. I think that is a remarkable tribute to our leader, Senator JOHNSTON, as well as to the staff.

So this does provide for funds for energy and water development, two of our most important natural resources.

Mr. President, I shall use 1 or 2 minutes to pay tribute to a gentleman who has been in Congress for 35 years and has been on this committee, I believe, for 25 years, Senator MILTON YOUNG of North Dakota.

Senator YOUNG in all that period of time has been one of the guiding lights and directors of the water resources program of this Nation.

Senator YOUNG made an observation that in all of his 35 years in Congress this was the first bill that he ever helped mark up to which he did not offer an amendment. So I guess that in itself is a rather remarkable record as well as the fact that many of the amendments that he did offer over the years had significant impact on the water and land policies of the entire Nation far beyond the constituency of North Dakota which he has served so well.

Senator YOUNG has been the ranking member of the full Appropriations Committee and a man who has given opportunity for junior members coming on that committee for the first time to take positions of responsibility.

I came to this Senate ranking number 100 out of 100. That is about as low seniority as one can have and still be in the club. From the time I arrived here, Senator YOUNG, with all the seniority that he had and had earned, was most kind, most thoughtful, and most sensitive to my needs. When I first came on the Appropriations Committee I was there again impressed by the fact that I was privileged to appoint a staff person to the committee, and I was given a choice of my ranking position on a subcommittee, all of this because of the great generosity, love, and compassion with which this man operates on that committee and throughout his political life.

So I am very grateful for the friendship, the contribution to the committee, and the great service to the Nation that Senator YOUNG has rendered these years in the Senate, and I for one am going to miss his counsel, his presence, and his great demeanor which has added so much to my life.

Mr. YOUNG. Mr. President, I am most appreciative of the very generous comments of my friend chairman JOHNSTON of the subcommittee on Energy and Public Works and too from my friend from Oregon Mr. HATFIELD.

I wish I were only half deserving of all the nice things that they had to say about me. It has been a great pleasure working with them and other members of the committee, and with the Chairman, Mr. MAGNUSON. This is a great committee. I think some of the best talent in the Senate has served on that committee in my time.

The public works projects this committee has sponsored have done so much to advance the progress of our country in many important ways—water for cities, irrigation flood control, navigation and hydroelectric power, it has done more to make this a better country than any other program I know. One of the good examples is the development of the Missouri River basin.

We have five huge dams on that river now that made possible hydroelectric power, recreation, navigation, and flood control. Those dams could not be constructed today under present environmental restrictions. Yet they have added so much to the wealth and the well-being of that whole area.

You could say the same thing for many other areas of the United States. The western part of the United States today would not have had the opportunity for these millions and millions of people if it had not been for the water projects of years past.

Some who have moved out there in recent years have forgotten about how all those projects came there. They seem to be satisfied with what they have, and so they oppose most new projects now.

But I remember not so long ago when I came here—it is quite a while ago but it does not seem so long—most Senators from those dry States knew getting water projects was then a major problem. They had to get water projects for their States, and if it was not for their efforts in securing these water projects, there would not have been much opportunity in Arizona and California and many other Western States today.

I want to commend Senators JOHNSTON and HATFIELD again for the great job they have done in handling what I believe to be the most difficult and most complicated of all the appropriation bills. Mr. President, I just can't find words to express my deep appreciation for their gracious comments about me.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time.

The PRESIDING OFFICER. The question is, shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

UNANIMOUS-CONSENT AGREEMENT—LEGISLATIVE PROGRAM FOR THE REMAINDER OF THIS WEEK AND NEXT WEEK

Mr. ROBERT C. BYRD. Mr. President, I am sorry to impose on Members who want to vote, and it will only be a minute or 2, but while the minority leader is here I would like to try to get a time agreement.

I ask unanimous consent that after the energy and water development appropriation bill is disposed of today the Senate proceed to consider the Foreign Service reform bill, with the proviso that no vote occur on the Helms substitute until Monday next, but with the understanding that in the meantime there could be votes on other amendments today.

Also with the proviso that on tomorrow there can be debate on the bill and amendments thereto, and there could be voice votes on other amendments tomorrow, but with no rollcall votes on tomorrow.

Provided, further, that if this agreement is entered into there will be no session Friday; provided, further, that on Monday the action on the Foreign Service bill will be resumed, and after 1 hour of debate the vote will occur on the Helms substitute.

If the substitute fails, Mr. HELMS may have other amendments to the bill. If the Helms substitute passes, the Senate would proceed to final passage of the bill immediately. I think we would have to accord to other Senators the same right to offer amendments to the bill in the event the substitute failed.

It is my understanding that the matter will not take, probably not take, long or not require much time on Monday, but in the event the Helms substitute failed, he and other Senators would have the right to offer other amendments.

The next proviso would be that upon the disposition of the Foreign Service bill on Monday, the Senate will proceed to the HUD appropriation bill. Mr. PROXMIRE will manage that bill on this side of the aisle and Mr. MATHIAS on the other side, of course.

Upon the disposition of the HUD appropriation bill, the Senate would proceed to the consideration of the military construction authorization bill.

Provided, however, if action is not completed on the HUD appropriation bill prior to noon on Tuesday, the Senate will temporarily lay aside the HUD appropriation bill and proceed to the military construction authorization bill, on the disposition of which the Senate would then in that event return to the consideration of the HUD appropriation bill.

Provided, further, that the Senate would then—meaning after the disposition of the military construction bill and the disposition of the HUD appropriation bill—proceed to the consideration of the military construction appropriation bill.

Provided, further, that after the military construction appropriation bill, but not before Wednesday of next week, the Senate then would proceed to the consideration of the Department of Transportation appropriation bill.

So that if the agreement as entered is agreed to, the Senate will have acted on four appropriation bills by the time this order is consummated.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object but, on the contrary—I will announce that the majority leader and I have been negotiating for the better part of today and yesterday trying to work out some arrangement for the balance of the week and next week, with special emphasis on the need to pass the appropriations bills as they become available—the request just put by the majority leader I think is a good synthesis of that effort, that responsibility, and the conveniences we were trying to serve on both sides of the aisle.

I have two or three questions I believe I can clarify with just an inquiry without any change in the agreement.

I think it is implicit in the majority leader's request, but I would ask if he would agree with me, that if we enter into this agreement for this sequence of events that this will be the calendar of business for the Senate during the time stated, and no other matter would be taken up without unanimous consent.

Mr. ROBERT C. BYRD. That is correct. The order would implicitly provide for such.

I would hope, and I am sure the distinguished Republican leader will make every effort to do so, that if we run into a problem here in which we have to juggle the bills about a bit and reverse the order, perhaps, that the leader on the other side of the aisle will do what he can to help me achieve that.

Also the last proviso, to wit, that the DOT appropriation bill would not be taken up before Wednesday, I doubt that we are going to find ourselves Tuesday without business, but in that event I would need his help in scouting about to help me, to assist me, in finding something to fill that day.

Mr. BAKER. Mr. President, I thank the majority leader. Indeed I will do that.

As he knows, and as we have discussed the reason for the Wednesday proviso, it is the complication in drawing the amendments by a Member on this side of the aisle, and I believe we can overcome that difficulty. In any event, I will cooperate with the majority leader in providing the maximum flexibility of trying to proceed in the sequence of the appropriation bills as we have described.

There is one other matter, Mr. President. On Monday there will be a political function here at the Capitol involving many Members on this side of the aisle that will run until 12 o'clock, and the majority leader may wish to address this at a later time, but I hope the hour provided for on Monday for debate on the Helms amendment might begin running at, say 12:15 on Monday.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senator will not press me at this time on that particular matter. I would like to see him smile. [Laughter.]

Mr. BAKER. I would like to, but I cannot. It really is a matter of urgent importance, Mr. President, and I expect it will deal as much with the time for the convening of the Senate on Monday as it will for this. But it is a matter that will engage the attention, I believe, of virtually every Member on this side of the aisle, including the Senator from North Carolina, and it was brought to my attention by a note handed me after the majority leader had stated his request. Otherwise I would have mentioned it earlier.

Mr. President, I think there is a good likelihood that the majority leader and I can work this out in one of two or three ways, and I think it is important that we nail down this schedule so that if the majority leader can assure me, as I am sure he will, that we will try to work this out on a mutually satisfactory basis, I will withdraw my inquiry in that respect.

Mr. ROBERT C. BYRD. Mr. President, I say to the Senator on how to work this out, I am always angling, if I can, to get something in return.

Mr. STEVENS. Mr. President, I have become the No. 1 "Byrd" watcher in Washington and I sensed that that might be the case. And now while I prepare myself to do battle, I will withdraw that inquiry and will state, on reservation, that I have no objection to the request as put and with the clarifications stated by the majority leader.

Mr. NUNN. Mr. President, reserving the right to object, and I will not object, when the Senator from West Virginia, the majority leader, was speaking about the schedule on Monday, I did not hear that portion.

Mr. ROBERT C. BYRD. On Monday, the Senate will complete action on the Foreign Service bill. It will then go to the HUD appropriations bill.

There will be, I would contemplate, some rollcall votes on Monday.

Mr. NUNN. Is there any beginning hour or ending hour for votes in the unanimous-consent request?

Mr. ROBERT C. BYRD. There is not. That is open.

Mr. NUNN. I thank the Senator.

Mr. BURDICK. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BURDICK. Does the Senator anticipate rollcall votes before noon on Monday?

Mr. ROBERT C. BYRD. The question is, Do I anticipate rollcall votes on Monday before noon? I do not.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators for their patience and cooperation.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1981

The Senate resumed consideration of the bill (H.R. 7590).

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, may I say that if Senators are leaving feeling there are no more rollcall votes tonight, there is no assurances to that effect whatsoever, because the Foreign Services bill will be coming up and there may be rollcall votes.

The legislative clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. Hart), the Senator from Louisiana (Mr. Long), the Senator from South Dakota (Mr. McGovern), and the Senator from Florida (Mr. Stone) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. Armstrong), the Senator from Arizona (Mr. Goldwater), the Senator from New Hampshire (Mr. Humphrey), and the Senator from Iowa (Mr. Jepsen) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 83, nays 9, as follows:

[Rollcall Vote No. 398 Leg.]

YEAS—83

Baker
Baucus
Bayh
Bellmon
Bentsen
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Robert C.
Cannon
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Durkin
Exon
Ford
Garn
Glenn
Gravel
Hatch
Hatfield
Hayakawa
Heflin
Heinz
Hollings
Huddleston
Inouye
Jackson
Javits
Johnston
Kassebaum
Kennedy
Laxalt
Leahy
Lugar
Magnuson
Mathias
Matsunaga
McClure
Melcher
Metzenbaum
Mitchell
Morgan
Moynihan
Nunn
Packwood
Pell
Percy
Pressler
Pryor
Randolph
Ribicoff
Riegle
Sarbanes
Sasser
Schmitt
Schweiker
Simpson
Stafford
Stennis
Stevens
Stevenson
Stewart
Talmadge
Thurmond
Tower
Tsongas
Wallop
Warner
Weicker
Williams
Young
Zorinsky

NAYS—9

Biden
Byrd, Harry F., Jr.
Chafee
Eagleton
Helms
Levin
Nelson
Proxmire
Roth

NOT VOTING—8

Armstrong
Goldwater
Hart
Humphrey
Jepsen
Long
McGovern
Stone

So the bill (H.R. 7590), as amended, was passed.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. Bradley) appointed Mr. Johnston, Mr. Stennis, Mr. Magnuson, Mr. Robert C. Byrd, Mr. Hollings, Mr. Huddleston, Mr. Burdick, Mr. Sasser, Mr. DeConcini, Mr. Hatfield, Mr. Young, Mr. Schweiker, Mr. Bellmon, Mr. McClure, Mr. Garn, and Mr. Schmitt conferees on the part of the Senate.

FOREIGN SERVICE ACT OF 1980

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 3058, which the clerk will state by title.

The legislative clerk read as follows:

> A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate proceeded to consider the bill.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the provisions of Public Law 96-296, appoints the following Senators to the Motor Carrier Ratemaking Study Commission: the Senator from Nevada (Mr. Cannon), the Senator from Massachusetts (Mr. Kennedy), and the Senator from Oregon (Mr. Packwood).

FEDERAL BOAT SAFETY ACT AMENDMENTS—CONFERENCE REPORT

Mr. CANNON. Mr. President, I submit a report of the committee of conference on H.R. 4310 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, having met, after full and free conference,

have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. CANNON. Mr. President, I know of no opposition to the conference report. I urge its immediate adoption.

Mr. PACKWOOD. I have no objection to its adoption, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEATH OF BEN STONG

Mr. MELCHER. Mr. President, last Saturday morning, Ben Stong, my administrative aide for a little over 11 years, passed away at Sibley Hospital of cardiac arrest. He had a long and distinguished career on the Hill—25 years, as a matter of fact—first as a professional staff member on the Senate Interior Committee for Senator Murray, then chairman. He also stayed on the committee when Senator Murray retired and Senator Anderson became chairman. He was with Senator MCGOVERN for a number of years before joining my staff as administrative assistant.

Ben was recognized as the dean of agricultural advisers on the Hill. He was active in the conservation movement all during his career on the Hill and prior to coming to the Hill. Many called him the father of the Wilderness Act, he having convinced Senator Murray to start hearings in the late fifties in the Senate Interior Committee on that proposal, which was eventually enacted in 1964.

We shall miss him greatly in my office, as will a great number of people throughout Government, both in the executive and legislative branches.

Mr. President, I ask unanimous consent to have printed in the RECORD a eulogy I gave at Ben's memorial service last evening.

There being no objection, the eulogy was ordered to be printed in the RECORD, as follows:

EULOGY TO BEN STONG

(By Senator JOHN MELCHER)

Family of Ben, Friends of Ben:

Last Saturday morning Ben's sojourn with us came to a close.

It was 75 years and a few months. Ben's was an active life—until only one week before, from the last Saturday in August when he entered Sibley Hospital on his own power until Saturday morning September 6 when cardiac arrest ended three-quarters of a century during which Ben was many things to many people.

Ben was wise.

Ben was experienced. He was real.

Ben was articulate.

Ben was resourceful—his memory remarkable.

Ben was helpful—always available.

Ben was strong—always compassionate.

Ben was fun.

Ben loved people.

Ben loved life.

He lived with zest.

He relished confrontation,

Engaged in debate with good humor, honor and truth.

The very essence of Ben was the combination of all these attributes. All joined and blended into his character.

Then all of it was coupled with his remarkable energy that sorted Ben out from the pack and distinguished him among men. as the—Stalwart sage of agriculture;

Leader of the conservation movement;

An expert on water development;

An effective proponent of rural electrics; and

A determined advocate of a better economy and a better life for all of rural America.

How did this man come to mean so much to so many?

What gave Ben his drive, his vigor in pursuing goals—to continually strive to help and to prod and to persuade people in government to make good, honest and progressive decisions?

Let's look back—his roots were in Iowa—born in the village of Keosauqua in 1905, the son of Ben and Ada Stong and the brother of Phil and Jo. Ben, Sr. ran the town's general store and was the Postmaster. His grandfather had tried the California Gold Rush but was known better in Iowa as the founder of Iowa's first State Fair. That may have been an inspiration to Ben's brother Phil, who wrote the novel, later a great screen play—"State Fair." Brother Jo became a banker-lawyer—two professions Ben loved to chide with puckish, populist flair.

Ben received a degree in Journalism from Drake University, Class of 1927. He reported first for the Des Moines Register. He was confident, energetic, brash. fun-loving, occasionally a hell-raiser, and he pursued with enthusiasm a highly successful journalistic career for a decade or more with Scripps-Howard papers. These included first their paper in Cleveland, Ohio, then State Capitol Bureau Chief at Nashville, Tennessee, editor of the News Sentinel at Knoxville, and later as Scripps Howard's Washington correspondent.

Ben's style of writing was direct and clear. His style was honest and pointed—depth and plenty of punch. That style came natural for Ben because that was the way his thoughts flowed from his mind. No phoniness—he did not need gimmicks—he had truth, knowledge, experience on his side.

There was for Ben during the 40's a time of striving for the basics for western agriculture. Ben was at the very grassroots, organizing for the Farmer's Union in Rocky Mountain states.

He understood the crying need for farmers to organize—a need that, till the end, he held high in his priorities and in his hopes for the future to assure agriculture producers a sufficient voice to assert and claim adequate policies for price and management for this, our best, biggest and most basic of American industries.

Ben never gave up on that. Farmers' Union and National Farmers' Organization knew his efforts firsthand, but all farm and agricultural commodity organizations benefitted from Ben's progressive influence in drafting major farm legislation covering a span of more than two decades.

His style was as refreshing as spring. When he drafted legislative language, bill or amendment, it was concise, clear, direct—a welcome relief from much of the foggy legislative language we see in what we sometimes call "Foggy Bottom."

We cannot understand Ben's strength of character and will unless we relate it to the strength and will power he demonstrated to reject the personal use of alcohol during the last half of his life. It was his strength to overcome what had been for him an abuse—his rejection of personally indulging in alcoholic beverages was complete, and he persistently was willing to assist others who needed and would accept guidance on the use of alcohol.

Ben was at home with the soil and growing plants. His dahlias were sweepstakes winners—they reflected the magnificent beauty he understood and appreciated in the harmony of earth and water—plant and animal life.

In 1955, when Ben joined Senator James Murray and the Senate Interior Committee staff, his conservation leadership blossomed and bore fruit.

He fathered the Wilderness Act, convincing Murray that the Senate Committee should hold hearings. And out of those initial hearings in the 50's the Wilderness advocacy of a few became the national will and passage of the Wilderness Act resulted in 1964.

By then, Ben was with Senator George McGovern and drafted the Voluntary Wheat Certificate Plan, successfully sponsored and brought to enactment by Senator McGovern.

Ben's honors included recognition in 1967 as a lifetime member of the Soil Conservation Service, American Motors Conservation Award in 1964, East River Co-op Service Award in 1968, George W. Norris Award of Western States Water and Power Consumers' Conference in 1966.

Ben was proud of membership in the Darrow Conference on Mathematical Probabilities—he listed it in all of his resumes. He should also have noted he was one of the founders of this illustrious group that met periodically to out-bluff or out-draw each other in the mathematical probability of poker.

He was good at poker and attempted to pass on this skill to his grandchildren when a big blizzard made him snowbound with Norma and Joe Lyon on their Iowa farm. Ben ran the poker game during those 5 days, teaching the grandkids the mathematical probabilities, using toothpicks for poker chips.

Ben was a most generous person with his time. He was patient and although many sought his help, his counsel or his judgment that kept him always busy, he gave of his time to all of his friends and fellow workers. Of an early morning or late evening sitting at his desk with his feet propped on a corner, puffing on a cigarette (he loved nicotine) and with his fancy, attractive cuff links, one could find the almost unbounded range of Ben's interests and the depths of his understanding of the need of people for government—a better government.

Ben staunchly advocated balanced growth for the U.S. with reasonable regulations that did not interfere unduly or stymie the free enterprise system. Above all, he had faith in the ability of people to come together and discern what was in the public interest and for the common good.

He was concerned for the underprivileged, for the poor and the hungry.

He related trade policies to needs of people.

He related Food Stamps as essential for the hungry poor.

Food for Peace for starving people abroad.

Compassion for refugees seeking our help—not a popular issue right now but one on which Ben spoke out.

Health needs for all who were in need.

Ben knew and practiced Charity in the broadest sense.

He had no time for grudges. While I do not believe he hated anyone, he had firm disdain for fraud or phoniness.

His time was spent in doing good for people. He did that without restriction and for so many that it can be said "if each person for whom he did some kind and loving service would bring a blossom to Ben's grave, he would sleep forever beneath a cover of flowers that he loved so much."

Often he was asked, "Ben, why don't you write a book?"

He was too busy with all of us to write that book.

But in a sense he wrote a book—a big book—

He gave of himself so much that each of us are a chapter in his book.

Ben's only book.

How good a book Ben left us depends upon us.

It depends upon whether we preserve the counsel, the love, he gave us.

It depends on how we pursue the goals he guided us toward.

It depends on us to successfully advance the principles he wrote and spoke—for which he continually fought.

We have all gained from Ben.

Did I tell you "Thanks, Ben?"

We do thank you, Ben.

Did I tell you "I love you, Ben?"

We do love you, Ben.

Thanks, God, for letting us have Ben as long as we could—

But, Oh, how we miss you, Ben.

God love you, Ben.

Mr. YOUNG. Mr. President, I wish to join in the well-deserved tribute to the late Ben Stong. When I came to the Senate more than 35 years ago, I came as one who had, not long before, gone broke in the farming business during the Depression years. I was naturally interested in farm legislation. One of the first men I became acquainted with when I came here was Ben Stong. He, and about a half-dozen other men like him, had as much as anybody to do with the writing of the farm legislation then and in all the years since. Ben Stong had a major role in writing practically all the price support legislation, during the years I have been here.

Ben Stong was a friend of farmers. He knew farm legislation and the need of it. He always contributed new ideas and ways of doing things, not only to help farmers, but to help the whole economy. Our agriculture today is the most efficient in the world. Much of that is due to the farm legislation which Ben Stong helped to write.

Mr. President, Ben Stong was a wonderful person, one of the best friends I ever had. There is so much I could say about him and so much that could and should be said, but I shall just say in closing that I shall miss Ben Stong. I know all the Members of the Senate who knew him, and especially those people in agriculture, will miss Ben Stong. He was a great American and a wonderful friend.

Mr. BAUCUS. Mr. President, a lot of us are going to miss that growl at the other end of the line.

Ben was many things to those of us fortunate enough to know him and work with him. He was an encyclopedia of knowledge about agriculture, water, conservation and a host of other issues. He was a teacher, patient, but direct.

He was the voice of experience who knew what had been tried and what had not and why. And he was the voice of reason who knew what would work and what would not and why.

But most of all, Ben was an inspiration. He inspired us to accomplish lofty goals, to help our fellow men, and savor life.

He showed us what can be accomplished by dedication, creativity, and plain hard work. The Wilderness Act, the wheat certificate program, and a host of other bills and amendments—those are just a few of his accomplishments at an age when most people are in their rocking chairs on their porches.

He showed us that there is always time for others. Nobody on Capitol Hill was busier than Ben. But he always had time to listen and counsel—whether for the Secretary of Agriculture, a striking Great Plains farmer, a U.S. Senator, or a green young legislative aide.

He helped us remember the less fortunate. He was an advocate for programs to help feed people both at home and around the world.

And, he helped us remember the land. He worked hard and effectively to make sure that soil and water are conserved. and that our children and grandchildren experience and appreciate wilderness.

He helped us remember farmers. Ben thought farmers ought to have decent incomes and conveniences like electricity and telephones that cityfolks take for granted. He worked outside Government to help farmers organize, and he worked inside to help Government help farmers.

If we could all live our lives as fully and productively and compassionately as Ben, the world would be a darn sight better place to live.

He was a giant of the Earth.

Mr. MELCHER. Mr. President, I thank my colleagues, the Senator from North Dakota (Mr. YOUNG) and the Senator from Montana (Mr. BAUCUS), for their fine tribute to Ben Stong.

FOREIGN SERVICE ACT OF 1980

The Senate continued with the consideration of S. 3058.

Mr. PELL. Mr. President, in 1978, the Congress enacted the Civil Service Reform Act (Public Law 95-454), an attempt to improve the management and efficiency of the Federal civil service. S. 3058, the Foreign Service Act, is intended to be a companion measure designed to strengthen and improve the Foreign Service of the United States by reorganizing and consolidating the components of the Service which exist in six executive departments and agencies under one law governing all Foreign Service operations and personnel administration.

The basic legislation under which the Foreign Service officer corps operates today is the Foreign Service Act of 1946. The fundamental purposes for establishing a separate Foreign Service were to provide the President and the Secretary of State with an exceptionally able corps of disciplined officers and staff who could effectively represent U.S. policies and interests overseas, and assist the Secretary and his senior advisors at home in the formulation of foreign policy. In enacting the 1946 Act, Congress expressed the belief that if the Foreign Service were to accomplish its mission, its personnel policies would have to be adjusted to that mission. Therefore, the 1946 legislation incorporated a number of unique features considered necessary to assure continued high quality staffing in the variety of U.S. missions throughout the world, and drew from the civil service and military personnel systems as appropriate. The features which distinguish the Foreign Service from the civil service are the rank-in-person system, the requirement to serve overseas, the "up or out" principle, and mandatory retirement at age 60.

The Foreign Service was patterned after the military service and is closer to the military services than it is to the Civil Service. The Foreign Service is, however, different from the military services in that it is a civilian and not a uniformed service, it has a somewhat different system of pay and allowances, and its purpose is to preserve peace instead of waging war.

S. 3058 retains the above features and adds new provisions needed to improve the effectiveness of the Foreign Service.

This bill would:

First, provide a clear distinction between Foreign Service and Civil Service employment, and to eliminate the anomalous "domestic" Foreign Service personnel category;

Second, simplify and rationalize the various categories of Foreign Service personnel and establish a single Foreign Service salary schedule;

Third, make more uniform the statutory terms and conditions of Foreign Service employment;

Fourth, establish a senior foreign service (SFS) with rigorous entry, promotion, and retention standards based on performance, and with performance pay for outstanding service;

Fifth, provide a statutory basis for labor-management relations in the Foreign Service;

Sixth, improve interagency coordination in the interest of maximum compatibility among agencies employing Foreign Service personnel, and compatibility between the Foreign Service and the Civil Service; and

Seventh, consolidate the various laws relating to Foreign Service personnel which have been enacted outside the framework of the existing Foreign Service Act.

This bill has been the subject of extensive consultations and deliberations. Its provisions reflect comments and suggestions which have been received from interested agencies within the executive branch, and from the members of the Foreign Service and the organizations which represent them. The Foreign Relations Committee has held extensive hearings, considered numerous proposals, engaged in widespread consultation with interested groups and individuals, and incorporated numerous technical drafting changes to clarify and perfect the bill.

It should be noted that this bill is similar in most respects to H.R. 6790, which passed the House on Monday, September 9, 1980. It should, also be noted that this bill does not authorize new appropriations. Any increases in Federal spending which might result from the passage of this bill would require separate authorizing and appropriating legislation. Nothing in this bill should be construed as authorizing the enactment of new budgetary authority.

Mr. President, I would like to add a further clarifying point with respect to the use of these authorities by other agencies. In particular, I wish to elaborate on the use of these authorities by the Agency for International Development (AID). It is our intent that the current level of development of personnel policy for AID and the exercise of AID's personnel management functions, including senior-level appointments, will remain the responsibility of the administrator for AID and that this will continue to be reflected in relevant delegations of authority. The continued exercise of this authority by the AID Administrator is consistent with the intent of the reorganization plan which established the U.S. International Development Cooperation Agency.

Under the reorganization plan, the IDCA Director is able to provide policy direction to and coordination of U.S. foreign assistance activities, while delegating responsibility for management and operations to the administrator of AID.

Mr. President, in conclusion, I urge my colleagues to support the passage of this bill. The future mission of the Foreign Service will be complex and difficult. This legislation will provide the organizational framework for a strong Foreign Service, staffed by people of uncommon professional ability, experience, and dedication.

Mr. JAVITS. Mr. President, I urge the Senate to support S. 3058, the Foreign Service Act of 1980, which carries out a consolidation and administrative reform of our entire Foreign Service system. This legislation is the product of several years of careful discussions between the executive branch and the Congress, as well as a long history of experience and incremental changes in the system created by the Foreign Service Act of 1946. In particular, the detailed provisions on grievance procedures, labor-management relations, retirement and disability, and a bill of rights for the Service, are based upon years of negotiations, discussions, and trial-and-error within the system.

The principal administrative reform in this legislation concerns the creation of a Senior Foreign Service, comparable in conception to the Senior Executive Service established by the Civil Service reform bill 2 years ago, including the institution of an incentive, or "performance pay," system for the Senior Foreign Service. Though I know that my colleague, Senator PELL, and some members of the Foreign Service itself have serious reservations about the application of this system to the Service, I am prepared to support it as an experiment in administrative reform which can be modified in the future if experience does not justify this approach.

The performance pay system is my only serious difference with Senator PELL, the chief sponsor of this legislation in the Senate. I would therefore like to commend him for his strong initiative and careful craftsmanship in developing the Foreign Service Act. Having served in the Foreign Service himself, Senator PELL is in a unique position within the Senate to understand the needs of the Service and we have all given the greatest weight to his views on these matters.

Mr. President, let me just mention two provisions of this legislation which I have had a hand in developing: A new system of awards for the Foreign Service and a change in the handling of the 6-month ambassadorial appointments. Section 613 directs the President to establish a system of awards to recognize in an appropriate manner the outstanding contributions of individuals in the Foreign Service. I share the views expressed by Senator PELL during our discussion of this legislation that Foreign Service officers share much in common with men and women of the armed services. In particular, appropriate commendations and public recognition of outstanding performance can be a greater incentive than monetary bonuses to patriotic Americans who take pride in service to the country. I trust the President will fully develop this opportunity to increase public awareness of the outstanding performance of Foreign Service officers.

On the issue of limited ambassadorial appointments which do not come before the Senate for confirmation, we have revised the reporting requirements in existing law to give earlier and fuller notice of the justification for such 6-month appointments. Our intention at the present time is not to deny the President the authority to make such limited appointments. However, I have become concerned lately about a possible tendency to abuse this authority and therefore want to tighten the reporting requirements to make certain that we keep better tabs on such appointments.

Mr. President, I urge my colleagues to vote for the Foreign Service Act, and once again commend Senator PELL for his leadership in its drafting and bring it to the Senate floor.

Mr. PELL. Mr. President, I ask unanimous consent to have printed in the RECORD the following material indicating endorsement of this bill: a letter from Secretary of State Edmund Muskie; a letter from Alan K. Campbell, Director of the Office of Personnel Management; a letter from former Secretary of State Cyrus Vance; a communication from former majority leader and present Ambassador to Japan, Mike Mansfield; the text of a statement adopted by the Board of the Foreign Service; a statement by Hon. George Ball, former Under Secretary of State; a statement by Richard I. Bloch, chairman, Foreign Service Grievance Board; a statement by former Secretary of State Henry A. Kissinger; and a statement of the American Foreign Service Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington.

Senator PELL: I am writing to urge your support of the Foreign Service bill (S. 3058) which will be up for Senate action shortly.

Since assuming the duties of Secretary of State four months ago, I have become keenly aware of the desirability of enactment at this session of this comprehensive and important bill to strengthen and to improve the Foreign Service. My predecessors strongly share this view as does a preponderant majority of the members of the Service. A brief description of the proposal is attached.

I want to give you my personal assurance that the Foreign Service bill is a completely non-partisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markups in 1979 and 1980. On September 8 the House passed the bill by a substantial bipartisan majority.

It is the direct result of five years of efforts begun during the last part of the Ford Administration in response to a Congressional demand in 1976 for a "comprehensive plan" for the improvement and simplification of the personnel system of the Foreign Service.

Your support will be greatly appreciated.

Sincerely,

EDMUND S. MUSKIE.

FOREIGN SERVICE BILL: MAIN FEATURES

(A bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes)

The bill provides a closer linkage between performance and all aspects of Foreign Service personnel management: recruitment, tenure, advancement, incentive pay, and retention, as judged by impartial selection boards of career and public members.

It simplifies the present overly complex personnel structure of the Foreign Service and converts to Civil Service status those who have not and will not serve abroad with full protection of pay and rights.

It establishes a Senior Foreign Service compatible with the special needs and role of the Foreign Service and yet responsive to the purposes and goals which were sought through the creation of the Senior Executive Service under the Civil Service Reform Act of 1978.

Employee-management relations are placed on a sound statutory basis.

The bill replaces the Foreign Service Act of 1946 and codifies an accumulation of 34 years of legislation on the subject in one comprehensive new charter.

It effects numerous other reforms relating to the rights and benefits of the dedicated members of the Foreign Service and their families who are called upon daily to serve this country in increasingly dangerous and difficult circumstances abroad.

UNITED STATES OF AMERICA,
OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., September 10, 1980.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR CLAIBORNE: As the Senate nears floor action on S. 3058, "The Foreign Service Act of 1978," I would like to note my continued strong support for this legislation which I believe will be highly beneficial to the Foreign Service.

Since early in 1979 when OPM became heavily involved with the Department of State in advising it during the formulation of the Administration's proposal, we have been enthusiastic about many of the features of this legislation which opens new opportunities for flexibilities in the management of the Foreign Service personnel system. Key to this forward looking legislation is the Senior Foreign Service with its opportunities for rewarding outstanding performance. We are also very happy with the bill's clear delineation of those positions which are appropriately under the Foreign Service personnel system.

The Senate report on S. 3058 carries the additional views of Senator Helms along with the substitute measure which he is sponsoring. Although Senator Helms has the good of the Foreign Service in mind, I must take issue with his proposal because of several features which I believe to be unsound from the standpoint of Federal personnel policy.

Section 3 of Senator Helms' bill, S. 2986, provides, in a revised section 413 of the Foreign Service Act of 1946, an additional lump sum payment to each member of the Foreign Service equal to 15 percent of the basic salary for such member within the limits of $2,500 and $7,500. The bill would further exempt this lump sum payment from taxation.

I strongly disagree with this concept. First, Senator Helms would offset the expense of this provision by deleting the Senior Foreign Service performance pay provisions. It is obvious to those of us who have studied and worked with compensation systems that rewards should go with performance. Senator Helms, in deleting the performance award system proposes a step backward in the progress toward pay-for-performance which is to be found under the Civil Service Reform Act, passed overwhelmingly by the Senate, and section 405 of S. 3058.

Further, there is no reason to believe that the added bonus would accomplish anything constructive in struggling with the problem of members of the Service who are reluctant to go overseas. Senator Helms explains in the committee report that "by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments . . .". There can be no such direct effect from a bonus which goes to all members, without regard to their willingness to move to "undesirable" posts. The proposal would simply raise the level of compensation without a return benefit to the Government. Members of the Foreign Service receive post differentials provided under title 5, U.S.C., which are meant to compensate for the difficulties in recruiting at hardship posts. These differentials would be increased under S. 3058 and the House passed bill.

Section 6 of Senator Helms' bill would revise the retirement formula to increase the annuity of members of the Service from the current 2 percent for each year of service to 2½ percent. The bill would apparently provide this increased computation benefit to all service so that those retiring immediately after the Act's passage would receive a windfall the bill despite the knowledge that Senator Helms apparently does not intend that the increased benefit apply to service prior to the enactment date.

I do not find Senator Helms' analogy between the Foreign Service and the FBI and Air Traffic Controllers valid. The present computation of retirement for members of the Foreign Service already exceeds the normal Civil Service computation. The special computation provided for Air Traffic Controllers and other special occupations in which early retirement has been mandated, is meant to adjust the annuity to a normal level in the face of a career which is curtailed at a point of service which would otherwise provide an inadequate annuity. The increased computation in Senator Helms' bill for members of the Foreign Service is unnecessary. They do not normally have early retirement. Also, the House passed version of the Foreign Service bill raises the mandatory retirement age to 65, which indicates a trend toward longer service, rather than early retirement.

I have not touched on all of my concerns with Senator Helms' bill, but have indicated some of my primary concerns. I urge the Senate to move ahead on its consideration of S. 3058. Thank you for the consideration of my comments.

I have provided a similar letter to Senator Percy.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

THE SECRETARY OF STATE,
Washington, D.C., June 20, 1979.

Hon. WALTER F. MONDALE,
President, U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I transmit herewith on behalf of the Administration a Bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States and for other purposes.

The Congress took a major step last year to improve the management and efficiency of the federal service by enacting the Civil Service Reform Act. This Bill is a companion measure to increase the effectiveness of the foreign policy arm of the government. It also responds to a Congressional directive (Sec. 117 of PL 94–350) to prepare a "comprehensive plan for the improvement and simplification" of the personnel systems of the Department of State and the United States International Communication Agency (previously the United States Information Agency). In addition, the Bill contemplates use of the Foreign Service personnel system by the proposed new International Development Cooperation Agency.

The last comprehensive Foreign Service personnel legislation was the Foreign Service Act of 1946. The need is clear, after more than three decades, for substantial legislative changes to strengthen and improve the Foreign Service to enable it to fulfill its essential role and mission now and in the years ahead.

I believe that this new Foreign Service Act is needed:

To provide a clear distinction between Foreign Service and Civil Service employment, and to convert to Civil Service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service salary schedule;

To establish a Senior Foreign Service (SFS) with rigorous entry, promotion and retention standards based on performance, with performance pay for outstanding service;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and with those of other departments and agencies.

I am confident the Congress will agree that it is in the national interest to maintain and strengthen a professional Foreign Service, representative of the American people, to assist the President and the Secretary of State in managing the country's foreign relations.

I believe this Bill strengthens the professional character of the Foreign Service of the United States by:

(1) limiting Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

(2) requiring that all persons seeking career status pass successfully through a strict but fair tenuring process; and

(3) establishing closer links between performance and promotion, compensation and incentive payments, and retention in Service.

The Bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the Civil Service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

The Bill has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, and from interested agencies within the Executive Branch.

The Bill is divided into two titles. Title I, made up of twelve chapters, is the Foreign Service Act of 1979, a permanent body of law concerning the Foreign Service personnel system. Title II consists of transitional and technical provisions, and amendments to and repeals of other laws.

The Office of Management and Budget has advised that enactment of this legislation would be consistent with the Administration's objectives.

Sincerely,

CYRUS VANCE.

[From Ambassador for Director General Harry Barnes]

FOREIGN SERVICE ACT

Would you be good enough to transmit the following letter from me to Senate Majority Leader Robert Byrd:

"DEAR ROBERT: Having now worked three and a half years with the Foreign Service of the United States, I have become more convinced than ever that it is a group of high caliber, dedicated men and women whose record of service to the United States Government is unexcelled. In the course of my years here in Tokyo I have become familiar with the provisions of the proposed new Foreign Service Act which I understand is now awaiting Senate action. It is my understanding also that differences within the Congress on the bill have been resolved and that, with everyone's help, a good bill has been produced.

"The concern now is whether the crowded congressional calendar will permit passage of the bill during this session of Congress. I believe that with all of the effort which has been put into the development of this new basic charter for the foreign service, it would be a tragedy to see it die when this Congress adjourns in October. I sincerely hope that you might be able to consider the possibility of working out a time agreement which could permit it to be brought to the floor during September. I know, better than most, the competing pressures you face in the month ahead, but I believe the passage of this bill would be in the best interests of our Government.

"With affection, respect and warm good wishes to you and Erma from Maureen and me.

"Sincerely,

MIKE MANSFIELD."

TEXT OF STATEMENT ADOPTED BY THE BOARD OF THE FOREIGN SERVICE, JUNE 20, 1980

The Board believes that the Bill represents a well considered effort to meet existing anomalies in the present Foreign Service personnel structure and should be supported.

STATEMENT OF HON. GEORGE BALL, FORMER UNDER SECRETARY OF STATE

The Foreign Service Act of 1979 which this committee is now considering should enhance the effectiveness of the Foreign Service while at the same time preserving the interests of the civil service employees who perform invaluable roles in the Department of State.

Although I do not profess a mastery of the details of the proposed legislation, it seems to me to achieve several essential purposes.

The first is that it would make a clear distinction between the Foreign Service and the Civil Service and provide for transferring out of the Foreign Service the purely domestic employees who are not prepared to commit themselves to overseas assignments. I think that is a useful move. It would give the Foreign Service greater homogeneity with a consequent improvement in the spirit of the Corps.

A second provision of the proposed legislation which could serve also to encourage the Foreign Service and increase its attractiveness to potential entrants is the proposed creation of a Senior Foreign Service which would provide not only greater rewards but also more vigorous performance standards for our older diplomats. Coupled with the other provisions of the proposed legislation, this would facilitate the absolutely indispensable process of selection out—the clearing out of deadwood which invariably accumulates in any career service.

I have not had either the time or occasion to study these measures in detail, but I did want to bring to this committee my sense that at least in its broad thrust this is a very useful and indeed necessary piece of legislation if we are to maintain the integrity and the spirit and the effectiveness of our Foreign Service.

STATEMENT OF RICHARD I. BLOCH, CHAIRMAN, FOREIGN SERVICE GRIEVANCE BOARD

I serve as the umpire and arbitrator for a number of Federal agencies including the Internal Revenue Service, the Labor Department, the Treasury Department, Community Services Administration, Justice Department, and a number of others. I am familiar in general with arbitration systems both in and out of the Federal sector.

My judgment and it is a unanimous one, I might add, is that this system we have now even on the basis of the old legislation is the single best Federal sector system we know. We think the act is well structured and for the most part adequately responsive to the needs of the parties.

I have been impressed with both the quality of the presentations of the parties and the responses of our Board.

STATEMENT OF FORMER SECRETARY OF STATE HENRY A. KISSINGER

I cannot be said to have been one of the greatest admirers of the Foreign Service when I was serving in the White House as a National Security Advisor. But when I had to work with the Foreign Service as Secretary of State I became convinced that it is one of the most dedicated and one of the ablest and one of the most indispensable groups of men and women in our Government.

In our system with its frequent alternation in high office, it is indispensable to have a professional corps that represents the continuity of our foreign policy, that operates professionally, that looks at foreign policy from the point of view of the general interest and while of course there are exceptions in any large organization, in my experience I have never worked with as able a group and as dedicated a group. As I read this proposal, this proposed legislation, it is an attempt to strengthen the professionalism.

It seeks to insure a recognition of measure and it attempts to open up the career ladder to the most promising men and women.

Although I do not claim familiarity with some of the detailed personnel provisions of the bill, I am satisfied that it would effect the three changes most needed to strengthen the Foreign Service and to enable it to meet more effectively the challenges ahead.

First, the bill recognizes the clear distinction between the Foreign Service and the civil service. As recognized in the interim report filed in January of 1977 by then Deputy Under Secretary Larry Eagleburger at my direction, earlier efforts to induce into the Foreign Service persons whose skills and services are needed only in domestic assignments were ineffective and unrealistic.

Second, the administration proposal would consolidate and codify the personnel system and laws of the Foreign Service—as also suggested in the 1977 interim report. The present multiple array of personnel categories and subcategories deters good management and makes individual inequities hard to avoid. The hundreds of amendments passed to the Foreign Service Act of 1946 and the many personnel laws which affect Service personnel need restatement and updating.

The pending bill provides a contemporary reaffirmation of the role of the Foreign Service, which should provide an excellent charter for many years to come.

Finally, and most importantly, the pending measure would provide needed closer linkage between granting career status, advancement, compensation, and retention in the Foreign Service and continuing high performance requirements. I am frank to say that although this was the intent of the 1946 act, it has not always been reflected in practice. The intended "up or out" principle has been breached too often. Officers at the top career ambassador and career minister ranks have been immune from performance evaluations and selection out, and sometimes stay on long past their prime periods of service.

In summary, I would urge your support for the proposed new Foreign Service Act. It will preserve and strengthen the best traditions of the Service, and make it possible for its members to better perform their essential role and missions now and in the future.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C.

(The American Foreign Service Association Representing 11,000 Foreign Service People Urges Prompt Passage of the Foreign Service Act of 1980.)

This is an Act to strengthen the foreign policy of the United States by strengthening and improving the Foreign Service of the United States. It comes at a time when the United States faces increasingly complex challenges abroad which will require the best skills we can bring to bear to meet them. It also comes at a time when our people face increasing dangers, hardship and family dislocations by following careers of service wherever their country sends them, whenever they are needed.

The new Act is important because in the thirty-three years since the existing Foreign Service Act was enacted, the personnel structure of the Foreign Service has become overly complex; it is becoming increasingly difficult to recruit and retain top candidates; promotion rates have slowed and increasing responsibilities placed on our people have not been accompanied by increasing resources to meet them.

The new Act would:

A. Reaffirm the need for a separate career Foreign Service, characterized by the highest standards, able to advise the Secretary and the President on the formulation of foreign policy, and to implement the full range of programs to advance United States interests abroad.

B. Provide a strong voice for the members of the Service in protecting their own careers from political abuse and arbitrary action through specific application of merit principles, collective employee representation, and legislated grievance procedures.

C. Provide more equitable compensation between the Foreign Service and Civil Service based on a thorough comparability study mandated by the Congress in the FY 1979 State Department authorization and provide other incentives for a lifetime of service abroad under difficult circumstances.

The House Foreign Affairs Committee and the Post Office and Civil Service Committee have spent a year examining this legislation in depth, after years of study by the Foreign Affairs Agencies and concerned employee organizations. Both Committees unanimously reported out similar bills.

While there is broad support for the Bill among the concerned House and Senate Committees, the Administration and employee organizations, there are a few areas to which particular attention should be paid.

A. Provisions guaranteeing full pay comparability to conform to the 1970 Pay Comparability Act are essential to the Bill. Denial of equity in the interest of saving a marginal amount of money would be a blow to the career service at a time when it is already under severe assault abroad.

We urge you to oppose: any attempt to dilute Section 403 providing for long overdue comparability.

B. Section 501(b) in the Post Office and Civil Service Committee markup would establish the principle that positions should be declared Civil Service unless there is a positive reason why Foreign Service designation is required, even for Foreign Affairs agencies. This establishes a presumption of guilt against the Foreign Service in Foreign Affairs agencies. We urge you to vote against Section 501(b).

C. We support proposals for a statutory Committee to review Ambassadorial candidates.

We urge you to support this amendment when offered.

The men and women of the Foreign Service will consider your support for all the essential provisions of the Foreign Service Act of 1980 as the greatest single demonstration that the sacrifices they are making around the globe are appreciated by their countrymen.

UP AMENDMENT NO. 1572

Mr. MATHIAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 1572.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 205, line 4, strike out "(a) In" and insert in lieu thereof "(a) Except as provided in subsection (b), in".

Page 206, line 1, strike out all through line 2 on page 207 and insert in lieu thereof the following:

(b) (1) Notwithstanding any other provision of law, the status, promotions, class, and tenure of individuals who, immediately before the date of enactment of this Act are in the Foreign Service in the International Communication Agency and are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals shall, continue to be governed by the Foreign Service Act of 1946 and Public Law 90-494 (as those Acts were in effect immediately before the effective date of this Act.) This Act (except sections 402, 403, 404, 405, 504) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 610, 803, 1002, 1101 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are covered by this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall not be less than those rates in effect on the effective date of this Act and shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

Mr. MATHIAS. Mr. President, I am pleased to offer an amendment to section 2104 of the proposed Foreign Service Act of 1980.

Let me say before I discuss the amendment, however, that I express my appreciation for the work which the managers of the bill, the distinguished Senator from Rhode Island and the distinguished Senator from New York, have vested in bringing this bill to the floor.

One of the sources of pride at being a Senator from Maryland is that I am privileged to probably represent more Foreign Service officers than any other Member of Congress. Many, of course, have their home of record in the State of Maryland. They may be dispersed at embassies and other diplomatic posts around the globe, but we are very proud that so many of them have chosen to make the State of Maryland their permanent home.

Mr. PELL. Mr. President, if the Senator will yield at that point, knowing the Senator's partiality for the word "anomaly," I suggest it is an anomaly that the State of Rhode Island is the only State whose constituents are represented by an ex-Foreign Service officer also.

Mr. MATHIAS. I do not know that I would consider that an anomaly on my list of anomalies. I think it is a matter for which the citizens of Rhode Island are to be congratulated.

Mr. President, this amendment affects only 15 lines in a bill that has 254 pages as reported by the Committee on Foreign Relations. But in those 15 short simple lines it will prevent a substantial injustice from being imposed.

In 1977 the International Communications Agency and the representative of its employees entered into a negotiated agreement pursuant to the Nixon Executive order on labor-management relations. This agreement has three central features.

One, the Foreign Service "domestic specialists" at ICA would at no time be forced to convert to civil service status.

Let me repeat that because I think it is important that the Senate understand it.

It was agreed that at no time would the domestic specialists at ICA be forced to convert to civil service status. This was the word of the United States of America. This was the contract.

Second, these employees were given the option until June of 1981 to voluntarily convert, with the terms and conditions of their willing conversion guaranteed by the agreement until that date.

The third feature of this agreement was that ICA would discontinue hiring new employees as Foreign Service "domestic specialists." In time, therefore, this particular category of public servant would be phased out.

If the Senate will carefully peruse section 2104 of this bill, it will be observed that the bill would violate the agreement's open-ended prohibition against forced conversions.

What the bill does very simply is to break the word of the United States of America to its own employees.

This amendment would retain the status quo, would allow the agreement to remain in force, and would thereby prohibit the mandatory conversion to the civil service of these employees.

Of course, I am sure that all of the arguments that can be raised will be raised, such as "Well, this would establish a precedent; this would create problems in the future."

But those arguments are hollow when you consider that you are dealing with a very small group of people whose extinction is guaranteed by the terms of the agreement. They are going to be gradually phased out. There will be no more Foreign Service "domestic specialists."

The amendment would not affect the application of section 2104 to employees in the Department of State or the International Development Cooperation Agency nor would this amendment affect any other provisions of this bill.

The point of the amendment is so simple that I wonder that it really has to be raised, and that is the United States of America keeps its word to its own employees as well as to everyone else, and we are not keeping our word. This is not a case of some misunderstanding. It is a contract made by the Government of the United States and the only way to honor that contract is to adopt this amendment. I hope the Senate will do just that.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, the Senator from Maryland knows the regard and respect in which he is held in this body and that I hold for him.

I have gone over his amendment. I see his purpose, and I would like to be in agreement with him. But, alas, I cannot.

In the first place, as a matter of equity if this amendment were passed it should apply not only to ICA but to the other five agencies of the Government that are also involved.

But the argument against the passage of this amendment is that there is a fundamental principle in the bill that there be a very clear division of employees into Foreign Service and civil service components.

From the viewpoint of administering the agency, it would be impossible to have employees who are neither one nor the other. Great effort has been expended to insure that individuals who move from Foreign Service to civil service, because they will not be serving overseas, are fully protected with respect to their grade, status, pay, and retirement system.

I think the International Communications Agency has estimated that it would take as long as 20 years to achieve a clean system if conversion proceeds only on a voluntary basis. So for this period of time we will have this very multihued system which is just exactly what we are trying to avoid with this legislation. This legislation, I might add, has been worked on for some years by both Republican and Democratic administrations, and it meets the needs that the Foreign Service and the American Government must have to be responsive to modern diplomatic demands.

Speaking in a more personal way, I have often thought that if the act of 1946 had been properly implemented, we would not have had to have this pending legislation. Unfortunately, it was not adequately applied. This was the reason for this proposal which was the original creation of, I think, Assistant Secretary Eagleburger. It was he who talked to me about it first, then Secretary Kissinger, and through the years it has developed as a nonpartisan effort. In my view, it is a pretty excellent bill.

The 3 years that are provided by this bill for people to convert to civil service should provide ample time for individuals to make decisions about their future careers and to move either to the worldwide Foreign Service category if there is a need for their services or into the civil service if they are to remain domestic employees.

For all these reasons I find myself compelled to oppose the amendment.

Finally, with respect to the so-called breach of word of the United States—and I am trying to get the text of the union contract now—we all know that such contracts or ruling are not immutable pledges for the life of the Government of the United States.

Mr. MATHIAS. Mr. President, if the Senator will yield, I do not believe it was a ruling. It was an agreement, it was a contract. This bill without my amendment will break that agreement.

Mr. PELL. Does the Senator have a copy of the agreement, by any chance?

Mr. MATHIAS. I will try to secure one for the Senator. Let me, while we are doing that, just explain a few other aspects of how this bill will operate for this small group within the International Communication Agency.

The bill excludes these employees from the increased pay provisions of the new act. Therefore, under the bill as reported, these employees will not be able to receive the higher level of pay which is given to the Foreign Service because of hardships attendant on service abroad.

Section 504 would require these domestic specialists to serve abroad, although the bill would prohibit them from receiving the compensation guaranteed others who fulfill this obligation.

The head of the Agency testified—and the Senator may recall his testimony—that although domestic specialists are technically available for worldwide assignment, the Agency has not and does not intend to force these employees to serve abroad, partly because there are no positions abroad. These domestic specialists serve the Agency's worldwide mission by their work as writers, broadcasters and engineers—work which is primarily performed domestically.

In line with these concerns expressed by the Agency, this amendment removes the bill's inconsistency between, on the one hand, denying the domestic specialist the pay rate that would be available to them if they served overseas, while, on the other hand, requiring them to be available for such services.

Mr. PELL. Mr. President, I believe, going back to this question of the word of the United States, I think a commitment was given in a contract between the American Federation of Government Employees, AFGE, and the U.S. Information Communications Agency.

The bill before us takes full account of this agreement. S. 3058, the bill before us, has provided that conditions of conversion are radically changed and that statutory authority to save pay, status, protection of Foreign Service retirement, and protection against downgrading are all provided to those who will convert. But here is the interesting point: None of these would have been possible under the AFGE–ICA agreement which constitutes the basis for what the Senator is talking about.

In fact, S. 3058 takes into full account the 1977 agreement, which is the so-called word of the U.S. Government, by providing that the conversion period will not begin until July 1, 1981.

Mr. MATHIAS. The Senator is exactly right. The bill does look to many provisions of the contract. That is why I am so distressed that this little group of people, this group of domestic specialists in the ICA, should be the only group whose rights under the contract are violated. I am not suggesting that the committee has ridden roughshod over the rights of the employees in general.

The Senator has suggested the word "anomaly." Perhaps this is, in fact, an anomaly that this group—which had certain specific rights guaranteed under that contract, finds that those rights are violated by this provision.

I am not suggesting that the Congress does not have the ability to break that contract. I am just saying by this amendment that we ought not to break that contract.

Mr. PELL. Mr. President, I understand the Senator's point. What really happened here was that an agreement was made that until 1983 nobody would be required to convert.

Mr. MATHIAS. Exactly.

Mr. PELL. But after that time, it was left absolutely blank. The contract was silent on it.

The Senator's interpretation is that it was an implicit commitment. That is like saying that in any union-management contract there is an implicit commitment to extend the terms indefinitely into the future enough for the term of the contract.

Mr. MATHIAS. Mr. President, I think it is clear that this group of employees was given the right until June of 1981 to convert. But I think it is equally clear that they were at no time to be forced to convert, either before or after June of 1981.

In the Congressional Record of September 8, 1980, there is an excerpt from the testimony of Mr. Reinhardt, head of the Agency, in which a Representative, Mr. Dante Fascell is asking a question. Mr. Fascell asked the question:

> And this contract runs out on July 1, 1981?
>
> Mr. Reinhardt. Only as it applies to the voluntary conversion portions of the agreement. That is, the approximately 900 employees in USICA have until June 30, 1981, to make a decision as to whether they want to convert to the civil service or remain in the Foreign Service.
>
> Mr. Fascell. You mean that is in the contract?
>
> Mr. Reinhardt. That is in our agreement with the union.

So there it is in black and white. I do not see how there could be any other interpretation than that which I have given to it.

There is another aspect to this, Mr. President. The reported bill contains a list of the provisions for which the employees who would be covered by this new subsection are to be considered members of the Foreign Service. My amendment makes two changes in the list.

First, it adds section 1102 on labor-management relations and 1101 on grievances, thereby continuing the present status of these employees under the existing grievance legislation and the Nixon Executive order on labor relations. Adding these two sections removed an unintentional ambiguity, because no one has suggested that these employees should have their existing status revoked.

I have a further excerpt from that Record of September 8, 1980, where the statement is made:

> Consistent with the later congressional testimony of both the agency and the employee representative, the circular prohibited mandatory conversion without any time limit. It stated, in underlined text: "Conversion from FS to GS will be entirely voluntary at the option of the employee."

Now, that is pretty clear, Mr. President. But let me just make this final observation. The second change made by the amendment is add section 504 of the bill to those sections of the new act, which would not apply to the employees protected under this amendment by the collective bargaining agreement. The reported bill already excludes the employees converted by this subsection from the increased pay provisions of the act.

If these people are not going to get higher pay for serving overseas, then they ought not to be subject to such service under this section. This amendment, with all deference to the authors of the bill, I think makes the bill consistent. These employees will not be paid the higher rates and they will not be forced to serve abroad.

I hope, Mr. President, that the Senate will adopt this amendment which observes commonsense, logic, and consistency but, most important of all, keeps the word of the Government of the United States to its own employees.

Mr. PELL. Mr. President, I appreciate the articulate presentation of the Senator from Maryland. I think there are many arguments that can be made back and forth. I repeat again that the contract certainly covers the period of the contract, and should not bind us in the exercise of our legislative responsibilities.

Mr. MATHIAS. Mr. President, I have no desire to prolong this debate, a debate which may involve a small group of people, who, as a class, are headed for phasing out. But this is important to them. I do not like to have this decision, which is important to 900 faithful servants of the United States, made by two Members of the Senate. I say that in deference to the Chair because he is prevented by the rules from participating in this debate.

Though I am reluctant to disturb Senators who are busy doing many other things in other places, how can we avoid a rollcall?

Mr. PELL. Does the Senator want to ask for a rollcall vote?

Mr. MATHIAS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. MATHIAS. Mr. President, I make the point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Nebraska (Mr. Exon), the Senator from Colorado (Mr. Hart), the Senator from Massachusetts (Mr. Kennedy), the Senator from Louisiana (Mr. Long), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern), the Senator from Mississippi (Mr. Stennis), and the Senator from Florida (Mr. Stone) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Colorado (Mr. Armstrong), the Senator from Oklahoma (Mr. Bellmon), the Senator from Arizona (Mr. Goldwater), the Senator from California (Mr. Hayakawa), the Senator from New Hampshire (Mr. Humphrey), and the Senator from Oregon (Mr. Packwood) are necessarily absent.

The PRESIDING OFFICER (Mr. Tsongas). Are there other Senators who wish to vote?

The result was announced—yeas 52, nays 34, as follows:

[Rollcall Vote No. 399 Leg.]

YEAS—52

Baker
Baucus
Bayh
Boren
Boschwitz
Burdick
Chafee
Cochran
Cohen
Culver
Danforth
Dole
Domenici
Durenberger
Garn
Gravel
Hatch
Hatfield
Heflin
Heinz
Helms
Inouye
Javits
Jepsen
Kassebaum
Laxalt
Leahy
Levin
Lugar
Mathias
McClure
Melcher
Metzenbaum
Moynihan
Percy
Pressler
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Simpson
Stafford
Stevens
Stewart
Thurmond
Tower
Wallop
Warner
Weicker
Young

NAYS—34

Bentsen
Biden
Bradley
Bumpers
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Church
Cranston
DeConcini
Durkin
Eagleton
Ford
Glenn
Hollings
Huddleston
Jackson
Johnston
Matsunaga
Mitchell
Morgan
Nelson
Nunn
Pell
Proxmire
Pryor
Randolph
Ribicoff
Stevenson
Talmadge
Tsongas
Williams
Zorinsky

NOT VOTING—14

Armstrong
Bellmon
Exon
Goldwater
Hart
Hayakawa
Humphrey
Kennedy
Long
Magnuson
McGovern
Packwood
Stennis
Stone

So Mr. MATHIAS' amendment (UP No. 1572) was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was adopted.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, what is the will of the Senate?

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business and that Senators may speak therein for a period not to extend beyond 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UPON COMPLETION OF BUSINESS TOMORROW UNTIL MONDAY, SEPTEMBER 15, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow it stand in recess until Monday next. I will decide a time for convening a little later.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OF WALLS, CANALS, PIPELINES, AND PYRAMIDS; AND THE MX

Mr. PROXMIRE. Mr. President, the official Department of Defense MX office has updated the cost of the MX system in constant and appropriated dollars. The figures make for interesting if not alarming reading.

The R. & D. military construction, and deployment costs of the MX, in 1980 dollars, total $33.8 billion. The cost of maintaining these missiles over a 20-year period is $8.9 billion. This makes a 1980 life cycle cost of the MX program at $42.7 billion.

Of course any calculation in 1980 dollars does not factor in inflationary changes over the years. The Congress does not get an opportunity to appropriate for any program, domestic or foreign, in constant dollars.

Think of it, Mr. President, if we could appropriate in constant dollars, we could hold the budget in balance. We could make true calculations of alternative programs. There would be no hiding large program increases in the "noise" of inflation.

But sadly, we must appropriate in the kind of dollars the taxpayers pay annually. So, we must consider the amounts the Congress will be called upon to approve for any weapons system, or water project, or education program.

The total acquisition costs of the MX in appropriated dollars will be $52.7 billion. Adding in operation and maintenance costs over 20 years in appropriated dollars gives the grand total of $78.6 billion.

As one Air Force official has been quoted, "the MX deployment will be man's largest project, larger than the Great Wall of China, larger than the pyramids, larger than the Alaska pipeline or the Panama Canal."

Will, I hope that the MX, if built, turns out more like the Panama Canal than the Great Wall of China, or the Alaska pipeline or the pyramids.

Why? Because the Panama Canal was completed in 1914 at a cost of about $352 million or some $23 million under the original estimate in 1907. Furthermore, it was open 6 months early. Now that is a story we do not hear much anymore.

The Alaska pipeline, in contrast, had an original estimate of $900 million, later amended to $3 billion, and a final cost of $8 billion. If the MX program follows the pipeline example, the MX will cost $142 billion and be years late, and that would not surprise this Senator one bit.

Or maybe the MX will fit into the mold of the Great Wall of China. The Great Wall started out, perhaps as early as the fifth century B.C., as a system of small walls protecting the northern borders. With consolidation and unification in 221 B.C. the Wall stretched to its fullest extent. The Great Yellow Emperor of the Chin dynasty reportedly diverted so much government revenue and labor service to consolidate the wall that many historians cite this as the principal reason for bringing his downfall and that of his successor son. There was rebellion in the land and control gradually fell to various generals.

It is hard to resist the temptation to draw an analogy, but I will resist.

And what of the pyramids? Herodotus claims that the Great Pyramid required 100,000 workers for 20 years, probably on 3-month a year shifts plus another 10 years for the associated minor construction. Other estimates state that for the six major pyramids, on average 74,000 people were required each year for one century—100 years of labor. No matter which estimate is assumed correct, there can be no doubt of the labor intensive requirement for pyramid building.

So what do we end up with? If the MX is the world's largest public works project, can we conjecture that it will suffer the manpower problems of the pyramids? Will it divert the national treasure as with the Great Wall so that a political system will fall? Will it have the cost overrun of the Alaskan pipeline?

Or will a miracle happen and it be built under budget and ahead of schedule like the Panama Canal?

With $78.6 billion in tax dollars at stake, it is a question with more than a little importance.

HEROINE OF THE VILNA GHETTO

Mr. PROXMIRE. Mr. President, Anna Simaite served both the physical and the spiritual needs of the Jews imprisoned in the Vilna ghetto. She knew that human life consists of more than physical survival. She knew the importance of a flower to a woman struggling against despair. And she knew the importance of guns to those planning resistance.

When the war engulfed Lithuania, Anna was working in the catalog department of the Vilna University Library. Her fame as a literary critic was well-established. She easily could have detached herself from the degradation of the Jews. Yet she would not accept her own safety while others suffered. As she said 10 years later:

> I was ashamed that I was not Jewish myself. I had to do something. . . . I realized the danger involved, but . . . a force much stronger than myself was at work.

The plan she devised temporarily escaped Nazi suspicion. Claiming that many University library books were in the possession of Jewish students then imprisoned in the ghetto, she was granted immunity to travel freely between the ghetto and the outside in order to reclaim the books. Once past the wired and guarded ghetto walls, Anna began her underground work. Each day she would smuggle in flowers and guns, letters and forged Aryan papers. Each day she would calmly pass the guards while carrying out documents, a few books, and diaries of the imprisoned Jewish martyrs. She arranged for the housing of many Jewish children, and then helped them escape the ghetto. Her free passage mocked the purpose of the ghetto wall.

But in April of 1942, the Nazis began to suspect this tireless librarian. Though warned by friends that her arrest was imminent, Anna refused to desert the Jews. Total extermination was the unquestioned fate of the ghetto-dwellers. Her own arrest seemed a small risk in comparison. For 2 years she evaded the Gestapo, but in 1944 she was arrested, beaten, and sentenced to death. A friend bribed a high Nazi official to spare Anna, and she was deported to Dachau. The allies found her, skeletal and barely alive, in a concentration camp in southern France.

Anna was not forgotten by the children she had saved. Those who knew of her survival wrote letters of thanks. One persuaded Anna to go to Israel, where in 1953 she was warmly acclaimed. The works she has written since the war and those she smuggled out of the Vilna ghetto have enlightened our understanding of the war years.

Mr. President, I have recounted the story of Anna Simaite for one reason. I believe that her example makes a strong argument for ratification of the Genocide Convention. Her actions show the highest regard for human life and a most personal opposition to genocidal policies. Her actions reveal that she could not remain inactive while suffering surrounded her. Mr. President, this body also has a high regard for human life. I ask my colleagues to remain inactive no longer. In light of Anna's example, I urge the immediate ratification of the Genocide Convention.

GRAIN EMBARGO HURTING RUSSIANS

Mr. PROXMIRE. Mr. President, on August 20 and 21 the Committee on Banking, Housing, and Urban Affairs, which I chair, held hearings on the effects on Russia of President Carter's decision to suspend partially U.S. grain sales. The purpose of the President's action was to make the Russians pay a price for their ruthless attack on the independent nation of Afghanistan. The hearing record shows clearly that the embargo is imposing significant economic and political costs on the Russians. Now we have additional information which supports that conclusion.

Prof. Gregory Grossman of the University of California at Berkeley, who is a leading academic expert on the Soviet economy has submitted a statement to the committee. Professor Grossman points out that the U.S. embargo does not have to be fully effective to be costly to the Russians. No one ever expected the Russians would be unable to replace part of the 17 million metric tons of grain the United States denied them. The shortfall, even if it is much less than 17 million tons, can still be quite expensive for the Russians. Professor Grossman states:

> I submit that the short-term effect of the embargo on the Soviet economy may be considerable, even if it is only partially effective; and, further, that the longer-term effects on the Soviet economy may be more important yet. These effects largely derive from the central position of the meat supply in the Soviet scheme of things (and, for that matter, in East Europe generally, as this summer's Polish events have once again demonstrated).

Professor Grossman goes on to say that:

> The gravity of the situation from the Soviet standpoint must be seen, of course, not only in economic terms. In the USSR—as throughout Eastern Europe—no problem has concerned the mass of consumers more than the price and availability of meat in official stores, and the price of meat in unofficial outlets. And probably no problem has been seen by the public and the rulers alike more than this one to be a leading test of the efficacy—and even political legitimacy of the regime.

Professor Grossman also argues that the grain embargo adds to the difficulties the Russians face in allocating resources to the major problem sectors of their economy: agriculture, energy and transportation. There are no easy choices for the Russians. As Professor Grossman says:

> It must be emphasized that should the embargo enhance the Soviet search for long-term grain independence, the near-term pressure on Soviet resources might be appreciably increased, the energy, transport, and other major bottlenecks may be aggravated, and the course of the Soviet economy significantly affected for some time to come.

Mr. President, just yesterday the New York Times reported that the Russians are not going to have nearly as big a grain harvest this year as they had planned. They had hoped to raise 235 million tons of grain. The latest estimate is no more than 200 to 210 million tons. As the correspondent for the New York Times concludes:

> This means that the already tight supply situation in feed grains, the controlling factor in the Government's hopes of increasing meat production, will be that much tighter, and the impact of the American embargo on grain sales to the Soviet Union will be that much sharper.

The fact is, as the New York Times article points out, that despite the Soviet leadership's public commitment to increase meat production, the increase has only kept up with population growth, and the average Soviet citizen is getting no more meat now than he did in 1976. In many areas of the country beef is not available at all in the state stores.

The New York Times article says:

> More than an improvement in diet is involved in the Government's promises to increase meat supply. The promises go to the heart of the entire economic plan.

The Defense Intelligence Agency estimates that the Soviets have had to pay $1 billion in higher prices for the grain that it purchased in the world market to make up for the loss of U.S. supplies.

The grain purchased to substitute for the U.S. grain, as the New York Times points out, is often lower quality and has caused the Soviets additional problems with feed formulas for their livestock.

The partial grain sales suspension has been effective and ought to be continued. Certainly it ought not to be rescinded by act of Congress as some of my colleagues have proposed. Professor Grossman reminds us that the strikes in Poland were partially caused by hikes in meat prices, and he makes what seems to me to be the clinching argument:

> A termination of the embargo by Congressional vote at this time would be likely to be interpreted by the peoples of Poland and the rest of Eastern Europe as essentially a discouraging signal, and to this extent would tend to relieve the economic as well as political pressure on the Kremin from that side.

The decision to impose the grain embargo was a prudent and meaningful response to the Soviet invasion of Afghanistan. The embargo is forcing the Soviets to pay a heavy price for that transgression.

The embargo is not just a symbolic action. It is a positive, forceful, and tangible action and a costly one for the Soviets. If the Soviet harvest is as bad as is now being forecast the embargo will prove to be even more costly.

Mr. President, I ask unanimous consent that the statement by Professor Grossman and the New York Times article entitled: "Soviet Grain Prospects Worsening; Embargo by U.S. May Cut Deeper" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY GREGORY GROSSMAN

My name is Gregory Grossman. I am professor of economics at the University of California, Berkeley, and a long-time student of the Soviet economy and related matters. I am very pleased to have the opportunity to submit the following remarks for inclusion in the record of these Hearings. I am doing so entirely in my private capacity.

There seems to be some misunderstanding in our media and among some of our public figures in regard to the economic effects of our grain embargo on the Soviet Union. It is sometimes said that the embargo is "ineffective", has "failed", because much of the grain denied to the Soviets by us has been seemingly replaced by other non-communist countries. (I say "seemingly" replaced, because we cannot know exactly how much the Soviets would have bought anyway from the third countries in the absence of our embargo.) This conclusion is at best hasty, as I shall try to show. It is occasionally also assumed that the Soviets can fairly easily rearrange their priorities and reallocate their resources so as to substitute from domestic production the grain that otherwise they would buy from us in future years. The assumption is of doubtful validity.

It is also argued by some in this country that the use of food as a weapon in international relations is illegitimate. That is to say, we act immorally when we deprive the citizens of another country of food, thereby jeopardizing the survival of some of them, even when the object of our embargo, the Soviet government, is killing hundreds of civilians in Afghanistan. One can certainly respect this moral stand, but, in my opinion, it is not germane in the present instance.

I

Let me address the moral argument first. Even if our embargo of 17 million tons of grain were entirely effective, the civilian (let alone military) population of the USSR would not be denied its necessary subsistence. In fact, it would still enjoy a relatively high calorie diet from the country's domestic production of grain and other foodstuffs. No one in the USSR need die of starvation because of our embargo—except through the callousness, inhumanity, or inefficiency of the Soviet authorities themselves (which all our food cannot guarantee against). The effect of our grain embargo would be almost entirely in the form of a reduction in the supply of livestock products in the Soviet Union, and primarily of meat. By dint of the embargo we are not starving people—and would not be even if it were fully effective. We are, at most, starving only Soviet livestock. In other words, the effect of the embargo is to make the Soviet diet, already heavily loaded with carbohydrates as against animal protein, even less well balanced and less palatable to the consuming public. But it would not become inadequate for human sustenance or work.

In this sense, a grain embargo against the USSR has a completely different moral meaning than might an embargo against, say, some underdeveloped country near the edge of subsistence. It may be even argued that to the extent our grain embargo indirectly diverts grain from the Soviet Union to some of the poorer countries of the world, which cannot normally outbid the USSR in the world grain market, the force of the moral argument is on the side of the embargo.

II

Yet to argue that the grain embargo even at its most effective will not cause a calorie shortage in the Soviet diet is far from asserting that it has no economic effect. I submit that the short-term effect of the embargo on the Soviet economy may be considerable, even if it is only partially effective; and, further, that the longer-term effects on the Soviet economy may be more important yet. These effects largely derive from the central position of the meat supply in the Soviet scheme of things (and, for that matter, in East Europe generally, as this summer's Polish events have once again demonstrated).

The Soviet diet has all along been drab and monotonous, and especially short of animal proteins. Soviet consumers have consistently striven to rapidly increase their purchases of meat, dairy products, and other high-value foods as their purchasing power rose. Soviet grain output took off rather quickly after the middle 1950's, and an increasing proportion of grain has been diverted to animal feed (periodically supplemented by large importation from the West). The rapid growth of effective consumer demand could be satisfied to a large extent. According to official statistics, between 1965 and 1975, consumption of meat (including fat and by-products) increased from 41 to 57 kilograms per capita per year, i.e. at a rate of 3.3 percent per annum. During the same ten years, per capita real disposable personal incomes increased, on the average, at 4.6 percent per year (estimates by M. Elizabeth Denton, OER, CIA). In other words, meat consumption increased at an annual rate about 70 percent as high as the rate of increase of real incomes (3.3:4.6=0.717).

Despite the rather fast increase in per capita meat supply, there existed a visible, and at times severe, persistent shortage of meat in the official stores. A considerable part of the meat consumed by Soviet people is purchased in unofficial outlets, farmers markets and black markets, where the price for equivalent quality is typically considerably higher and fluctuates freely in response to changing demand-supply balance. Some meat is self-supplied. The reason for the chronic shortage in official stores and the high prices in unofficial markets is, of course, that thanks to rapidly rising nominal incomes and the public's quest for a better diet, demand has tended always to run a few steps ahead of supply.

It should be noted that during this period the Soviet government pursued the policy of keeping official retail prices of meat and meat products fairly stable. Accordingly, the price mechanism (at least in the official market) was not allowed to regulate demand in response to changes in supply, thereby significantly complicating the government's problems. Official prices of meat (as well as other products), have been subsidized on a large and increasing scale to this day. In 1975, the total meat subsidy amounted to 11.2 billion rubles, equalling about 5.2 percent of the aggregate expenditures of the consolidated Soviet budget, and about 4.5 percent of aggregate household incomes. (In the same year, 1975, subsidies to official retail prices on all consumer goods, but excluding those to transport, housing, amounted to almost twice the subsidies to meat alone, namely, 20.1 billion rubles, according to the estimates of Professor V. G. Treml of Duke University.)

Inadequate though it has always been, the supply of meat reached a peak in 1975, and has been falling behind the growing demand since. Per capita consumption, which—as mentioned—had been rising 3.3 percent per year in the preceding ten years, at best remained level between 1975 and 1979 (and, even without the embargo, this year would probably also show little improvement if any). At the same time, since 1975, per capita real disposable incomes have continued to rise—slower than before but still, by our rough estimates, some 2.5–3 percent per year, for a total rise of perhaps 13–16 percent over the five years, 1975–1980.

Applying the already mentioned 70 percent factor, we would expect meat consumption in the current year to have reached a level 9–11 percent above that of 1975, per capita. In fact, as we just saw, it is practically the same as in 1975.

In other words, we may perhaps say that during 1975–1980 demand for meat seems to have outrun supply by some 10 percent. This is not a small gap. (Indeed, our estimate of the gap may be too low for two reasons: (a) it implicitly overlooks the fact that in the base year of our calculation, 1975, there probably already was a substantial excess demand for meat in the official sector, and (b) it does not take into account the rise in the public's holdings of savings deposits, which has been much faster than the rise in personal money incomes.) Understandably, therefore, in the past five years, and especially in the past year or two, official stores have been increasingly devoid of meat and meat products, the quality of meat in such has declined, prices in unofficial markets rose sharply, and public dissatisfaction with the meat situation, always smoldering, seems to have grown markedly, by all reports.

Enter the embargo. How much would it have directly affected Soviet meat supply if it had been fully effective? Assuming that all the embargoed grain was intended as livestock feed, and assuming a conversion ratio 10:1, the embargoed 17 million metric tons would have reduced meat supply 1.7 million tons. This is approximately 11 percent of the amount of meat that would have been consumed without the embargo (estimated at 15 million tons equals 57 kg./head times 265.5 millions persons). In other words, a fully effective embargo would have doubled (or more) the above-computed gap, thereby seriously aggravating an already grave supply-demand balance. If the embargo is only one-third effective, as some news reports have suggested, the reduction in meat supply might be of the order of 3–4 percent, still a serious matter under present conditions. Contrary to what some commentators have assumed, the grain embargo does not have to be fully, or even mostly, effective to have an important impact on the Soviet economy in the short run.

The gravity of the situation from the Soviet standpoint must be seen, of course, not only in economic terms. In the USSR—as throughout Eastern Europe—no problem has concerned the mass of consumers more than the price and availability of meat in official stores, and the price of meat in unofficial outlets. And probably no problem has been seen by the public and the rulers alike more than this one to be a leading test of the efficacy—and even political legitimacy—of the regime.

So much for short-term effects. The long-term effects, to which I now turn, may also be important.

III

The long-term effects relate to the possible rearrangement of development priorities and reallocation of resources in the USSR. It should be noted that in a country where resources have almost always been greatly strained, the last few years have seen an even greater pressure placed on them, and the near future bodes more of this yet. The main factors in the recent tendency are surely known: demographic trends unfavorable to the growth, composition, and spatial distribution of the labor force; a mounting energy shortage; depletion of a number of other natural resources; expensive but necessary shift of investment to Siberia; continued heavy investment in agriculture; diversion of resources to environmental protection; not the least, significant slowdown in the rate of growth of capital stock, in large part for the reasons just enumerated; and, hence, marked overall retardation in economic growth. These trends have to be seen against the background of enduring heavy commitment of resources to military ends, and within the setting of a general economic inefficiency that bodes little promise of alleviation in the foreseeable future.

Another factor may be added to this familiar list: the now apparent crisis of railroad transportation. Despite the great extension of the pipeline network and growth of trucking in recent years, Soviet railroads still account for over 60 percent of the domestic interurban ton-kilometers in the country. Their performance deteriorated markedly in the last few years: growing delays in freight shipment, frequent failures to deliver empty cars for loading, increasing loss of goods in transit (including growing pilferage to feed the black market), and so forth. Many Soviet plants have been forced to curtail production for want of transport. There have been frequent complaints in the general press and the specialized literature on this score, and some leading Soviet specialists see transport as a major limiting factor to further Soviet economic growth in the near future (cf., Academician A. Aganbegian in Economics and Organization of Industrial Production (Novosibirsk), 1979:10, p. 7). The chief reasons for the railroads' plight seem to be (a) their having reached the limits of the throughout capacities of many key nodal points in the rail net, and (b) the considerable physical deterioration of the rolling stock, notably of locomotives, with insufficient replacement of equipment and chronic shortage of spare parts. To break this bottleneck the Soviets will require much capital investment, thus adding to the pressure on resources in the foreseeable future.

Again returning to the embargo, the big

question over a longer term is whether it has tended to intensify the debate regarding the very heavy commitment of investment resources to agriculture, and, if so, whether it has shifted the balance on this score. In relative as well as absolute terms, this commitment has been rising since Mr. Khrushchev's day. By the early 1970's agriculture (broadly defined) came to claim as much as 27 percent of the total gross fixed investment in the economy, or 6–7 percent of the Soviet GNP (Western concept), this high level remaining steady to the end of the decade. (The figure does not include investment in rural housing and rural roads, which would raise the percentage appreciably.) The goal is clearly eventual self-sufficiency in foodstuffs, but with the large and growing claims of other sectors the policy has not been without strong domestic critics. So far, the pay-off from the enormous capital investment of the past decade does not seem to have been strikingly large, and with the increasing capital needs of other major sectors and industries—transport, iron and steel, and, of course, energy, to name a few—it is not unlikely that the commitment to very heavy investment in agriculture would continue to be viewed with doubts in some powerful quarters.

The American grain embargo has, naturally, thrown a new light on the whole question of Soviet self-sufficiency in food, and the presumed arguments of the critics—that it is better to count on imports of American grain and to invest elsewhere, where the pay-offs may be more promising—may have suffered a setback. The Soviet Union's luck this time around in finding non-U.S. sources for a large part of the embargoed grain may be less convincing to Moscow than it is annoying to Washington. It may be reasoned in Moscow either that on another occasion the Soviet need to import will be much greater than in even this bad-harvest year, and therefore U.S. as well as other overseas grain will be required; or that the non-U.S. sources may have less to sell in another year; or that some of them may side with a possible U.S. embargo on political grounds where this time they did not.

These arguments may well be reinforced by the darkening prospects of earning hard currency owing to the likely decline or stabilization of Soviet crude oil output in the near future and the consequent decline in Soviet exports of the commodity to the West.

It must be emphasized that should the embargo enhance the Soviet search for long-term grain independence, the near-term pressure on Soviet resources might be appreciably increased, the energy, transport, and other major bottlenecks may be aggravated, and the course of the Soviet economy significantly affected for some time to come. Exactly what solutions the present Soviet leadership—or the next one—will opt for under the circumstances of tightened resource stringency brought about by a greater allocation of resources to investment in agriculture, as posited, is more than we, or perhaps the Soviets themselves, can now foretell. But it is not unlikely that a removal of the embargo at this point by, say, a vote of Congress, which would probably lay low the likelihood of its repetition for some years to come, would signal to the Soviets that no additional major efforts to hasten the arrival of grain self-sufficiency, and therefore no additional major pressure on their resources, need be expected for this reason.

It may be added that the American farmer need not be apprehensive if the Soviets invest more in the quest of grain self-sufficiency as a result of the embargo. I believe I am correct in my understanding that most Western experts on the Soviet economy would not expect the additional investments in Soviet agriculture to be much more productive than those heretofore, and would not foresee a serious diminution in Soviet dependence on Western grain for some time to come. What is more, the very fact of intensified pressure on Soviet resources is likely to lead, on one hand, to enhanced inflationary pressure, and so to an augmentation of consumer demand for meat, and, on the other hand, to unfavorable effects on the general efficiency of the Soviet economy and so a dilution of the pay-off from the additional investment effort.

IV

As these lines are written, Poland is in the midst of a serious crisis brought about by a chain of major strikes that were triggered by the raising of official meat prices (and related measures) by the government at the beginning of July. The Polish events have certain implications for our embargo policy.

First, the latest Polish workers' revolt, the third such response by the working class to attempt to raise meat prices in ten years, once again did place the Soviet authorities on notice regarding the difficulties of solving their own meat problem. Like the Polish government, the Soviet government has been paying enormous subsidies to keep meat prices low for essentially political reasons, and, as in Poland, with a series of unfavorable economic and fiscal consequences. The Soviet government would most probably prefer to raise meat prices sharply, but so far has not dared to do so for fear of the public reaction. This fear has hardly been allayed by the strikes in Poland. The fear may reinforce the Soviet reluctance to increase meat prices, thereby keeping the demand for meat artificially high, and enhancing the long-term need for very large investment in agriculture. This would tend to make the long-term resource burden imposed by the U.S. embargo, as described above, even more significant, even if the embargo remains only partial.

Second, the Polish crisis may call forth a rescue operation for Poland on the part of the USSR, as on similar previous occasions. Indeed, more Soviet resources may have to be channeled into other Eastern European countries as well to forestall the spread of the Polish malaise. Altogether, we may expect a heightened pressure on Soviet resources—possibly including food resources as such—for this reason, too, which would tend to make the U.S. grain embargo to be felt more by the Soviets.

Third, a termination of the embargo by Congressional vote at this time would be likely to be interpreted by the people of Poland and the rest of Eastern Europe as essentially a discouraging signal, and to this extent would tend to relieve the economic as well as political pressure on the Kremlin from that side.

V

To recapitulate:

The U.S. grain embargo does not have to be fully effective to have a significant short-run impact on the Soviet economy. Under present circumstances, an embargo that is only fractionally effective may seriously reduce the supply of meat in the face of excess demand for meat by consumers, aggravating political problems for the government.

The more important effect of the grain embargo is likely to be the longer-term one, should the Soviets allocate even larger resources towards achieving eventual grain self-sufficiency, as they may well try to do. While their success in this regard is doubtful, in the process they would considerably aggravate the pressure on Soviet economic resources. For this reason, a Congressional repeal of the grain embargo would be of help to the Soviets in grappling with their economic problems.

The recent events in Poland also militate against a Congressional repeal of the embargo.

SOVIET GRAIN PROSPECTS WORSENING; EMBARGO BY U.S. MAY CUT DEEPER

(By Anthony Austin)

Moscow, September 7.—The weather has been bad for farmers over most of the Soviet Union during the last month, and prospects for the 1980 grain harvest have worsened.

This means that the already tight supply situation in feed grains, the controlling factor in the Government's hopes of increasing meat production, will be that much tighter, and the impact of the American embargo on grain sales to the Soviet Union will be that much sharper.

Western agricultural experts here still expect the country's state and collective farms to bring in an average harvest. But their July forecast of a grain yield of 210 million to 215 million metric tons has been trimmed to an estimate of between 200 million and 210 million tons.

Soviet authorities had hoped for a near-record grain harvest of 235 million tons, hoping to bounce back from the crop failure of 1979, when only 179 million tons were brought in. Indifferent winter and spring weather had dashed these hopes, but barring an exceptionally bad summer, the country seemed assured of a good enough harvest to get over the worst of the effects of the 1979 disaster.

The summer has not been a disaster, but it has not been good. There has been a lot of rain recently in European Russia and northern Kazakhstan, and it has been dry in the southern agricultural belt. The Soviet press has exhorted farmers to battle the elements and reduce losses in yield. There have been none of the preliminary harvest figures that usually come out this time of the year.

Western experts have been following the harvest prospects with special attention this year because of the important economic and political implications for meat production and grain imports.

BEEF SHORTAGE IS ACUTE

Despite the Soviet leadership's repeated promises to raise meat production, the increase has barely kept pace with population growth, and according to official statistics, the average Soviet citizen is getting no more meat now than he did in 1976. The shortage is particularly acute in beef; in many parts of the country, beef is not to be had in the state stores and is available only at much higher prices in the farmers' markets.

More than an improvement in diet is involved in the Government's promises to increase meat supply. The promises go to the heart of the entire economic plan.

The Soviet Union's economic growth rate is lagging, and there are no extra resources in manpower or energy to throw in as a way of increasing production. The only way is to increase productivity with more output per man-hour.

But productivity rates have also been slipping. There is little incentive for the Soviet citizen to work harder if, after he gets paid, there is so little available for him to buy. Improving meat supplies has been a key feature of the Government's program for increasing consumer goods and incentive in the work place.

Because of lower productivity in the livestock industry, meat production has been going down. Last July, the expectation was that in 1980 it may be 5 percent below last year's total. Now with harvest prospects just a bit worse, the meat situation will be that much tighter.

Last January and February, as a result of some distress slaughtering of livestock, meat production went up about 14 percent. Then it started slipping, and it has declined steeply in the last three months. Production tor to further Soviet economic growth in June and 15 percent in July, compared with figures for the same months of 1979. It seems inevitable that instead of going up this year, as planned, per-capita consumption of meat will go down.

A group of American farmers visting Soviet agricultural areas recently asked a Western farm expert whether the American grain embargo was working.

"Well," he replied, "the Soviet troops are still in Afghanistan, aren't they?"

If President Carter's grain embargo was designed to force a Soviet withdrawal from Afghanistan, it has not worked. But it is questionable whether Washington really thought that denying the Russians 17 million tons of American grain—while still letting them have the 8 million tons the United States is obliged to sell them annually under a five-year agreement ending in 1981—would produce that effect. It is more reasonable to regard the embargo as designed to give the Soviet Union added problems in an already difficult supply situation.

To make up for the loss of American grain, the Soviet Union has had to pay higher prices for often lower quality from other suppliers, principally Argentina. The Russians have had problems with feed-grain formulas for their livestock as a result of the change in grains, and they may have trouble buying as much this year as last.

In the 12 months that ended June 30, Moscow appears to have made up 11 million or 12 million tons of the lost American grain, bringing their total imports to an estimated 31.2 million tons. But this total included a substantial amount of American grain—in addition to the 8 million tons provided annually—in the form of carryovers from previous years' sales.

Now there is no carryover left. If the United States again sells only the 8 million ton minimum in the 12 months starting July 1, the Soviet Union may find it difficult to obtain more than a total of 25 million tons from other markets, according to Western experts here.

MSGR. GEORGE G. HIGGINS

Mr. MOYNIHAN. Mr. President, last Wednesday evening I spent several hours in the distinguished company of Msgr. George Higgins and his many friends from the labor and civil rights movements. We had come together to celebrate our good fortune, for all of us must count our friendship with Msgr. Higgins among our most prized blessings.

At sometime in his life, most certainly as a youth, Monsignor Higgins must have taken to heart the New Testament admonition against parading one's good works in hope of mere human praise. He has never sought after personal glory or recognition. His apostolate as secretary for special concerns at the U.S. Catholic Conference, which has spanned 36 years, is marked by quiet persistence and patience, not by drama or slick publicity. He knows well what the Sermon on the Mount is all about; he has lived it.

Since Monsignor Higgins is such a quiet and gentle man, not given much to self-advertisement, his friends—and there are many of them—must sometimes take it upon themselves to tell the world about him. Last Wednesday night, some of the Monsignor's fondest admirers put their sentiments in eloquent words. Their comments are worth reading, and I ask unanimous consent that the remarks be printed in the Record.

There being no objection, the comments were ordered to be printed in the Record, as follows:

Remarks by President Carter

Rarely in history does a single individual embody in his spirit and his person the highest ideas of an entire movement. Monsignor George Higgins is such an individual. For more than four decades the labor movement has been guided by his wise counsel; emboldened by his courageous example and heartened by his unrelenting commitment to the highest ideals of social justice and human rights. As we conclude a celebration of an historic Labor Day for workers throughout the world, I join all in honoring a man who has honored our nation and the entire labor movement throughout his proud life's work. America is a more just, more decent, more humane society because of Monsignor Higgins and the labor movement that he loves. May God bless him and keep him for many years to come.

Remarks by AFL–CIO President Lane Kirkland

It's good to see that the program for tonight's events reads "Labor's Salute to Monsignor George Higgins." It is hard to conceive of a man of Father Higgins' energy and spirit being described as "in retirement." And, judging by the list of his future activities, Father Higgins doesn't see himself as the retiring type either.

For George Higgins, leaving his post of 36 years with the U.S. Catholic Conference is a simple change of address, not a change of heart.

And it happens to provide the American trade union movement with an excuse for a richly deserved salute to Father Higgins' commitment and leadership.

So, we are saluting George Higgins tonight, not giving him a gold watch send-off. We are pausing for a moment along the way to thank him for walking so many miles with us.

We are taking this opportunity to honor a man who has never sought personal recognition, glory or praise. It may be, because he is a genuinely modest man, that he is even a little embarrassed by the festivities in his honor.

Knowing Father Higgins cares so little for personal rewards, we have to ask him to be patient with us tonight as we admit to our somewhat selfish motives for this occasion.

Tonight's salute is dedicated to George Higgins out of a need that many of us in the American labor movement feel to express our gratitude, our respect and our friendship.

Each of us feels a compelling need to let Father Higgins know that his devotion has never gone unnoticed or unappreciated.

In looking back through the events in the history of the labor movement for the last 40 years, it is difficult to find a time when Father Higgins was not there to stand up for the rights of working people.

I see behind me a line of expert witnesses who are prepared to testify to those occasions with great authority, and I will not steal their thunder.

Only one such witness is not here tonight and that is George Meany, who looked on Father Higgins as pastor, as friend, and as a fellow soldier in the battle for human justice. Like George Meany, George Higgins is a man whose principles and life are in harmony.

Father Higgins understands that the American trade union movement speaks and fights for human rights and human dignity. It not only celebrates the strength of collective action to achieve democratic goals, but also never loses sight of the worth of the individual.

Father Higgins has found the strength to be a defender of the labor movement and the these same principles are in total consonance with the teachings of his church and the promptings of his heart.

For a man of George Higgins' enormous talents, it would have been a simple matter to rise to prominence, even to great reputation as a reformer without ruffling the feathers of the powerful and without getting the dust of the struggle on his hands.

But it is not in the nature of the God he loves, the church he serves or the conscience he bears to ignore the calls of his fellow men and women for social and economic justice, for equality, for dignity and for the simple exercise of their most basic human rights.

And it is not in the nature of George Higgins as a man of great energy to sit, observe and comment while others act.

Early in his life, Father Higgins saw the genuine fairness and democracy inherent in the collective bargaining system. He saw beyond the basic bargaining for wages and conditions to the usefulness of this system as a means of social and individual good.

Through organization, bargaining and collective action, working men and women can have a voice in events which affect them; they can defend their interests and they can actively contribute to the good of others.

We do not suppose that the rich and the powerful ought to make the decisions and set the policies by which the rest of us are to live. The trade union movement believes that each of us has the right to participate in that process.

George Higgins has shared that opinion, marched with it and spoken for it in a voice rich with conviction and logic.

Whenever working people have needed a strong right arm, George Higgins has counseled them and championed them, struggled beside them.

He is a man who will never keep accounts of the debts of gratitude which we owe him. But the labor movement knows the extent of its debt, and tonight we hope to repay a small part of it.

Remarks by AFL–CIO Secretary-Treasurer Thomas R. Donahue

I am delighted to have the opportunity to say a few words for Monsignor Higgins and to have the opportunity to express the thanks of a grateful labor movement for his dedicated service.

George Higgins stands in a singularly important line of Catholic priests who have been the principal spokesmen within the Church and outside it, for the rights of labor. That line goes back—surely to Cardinal Gibbons, but in more recent years has been distinguished by the tradition of George Higgins and his predecessors as the voice of workers within the USCC or the National Catholic Welfare Conference. George Higgins was the logical successor to Father Ray McGowan, to Bishop Haas, to Msgr. John A. Ryan.

They, each in their turn, have been the clear, identifiable voice of the Catholic hierarchy on matters of Catholic Social Action and its application within the labor movement and related movements.

George Higgins, as much as any of his predecessors, and for an even longer period, is respected for sustaining the dozens and dozens of other priests throughout the United States who have been the defenders, supporters, advancers of this workers' movement.

There's a long honor roll of these stalwarts, running from Monsignors Rice and Monahan and Cantwell and Kern, and Monsignors Lalley and Corcoran, and Jack Egan, who are here tonight; through the hierarchy of Archbishop Lucey, and Bishops Flores, Donnelly, and Metzger, to Archbishop Hickey (who comes to us now in Washington, well recommended by our unions in Cleveland) and to our own Bishop John McCarthy now claimed by Texas.

And that line continues through the long, long line of labor priests who have served workers and built labor schools and nurtured support groups around the country—Father Mortimer Gavin in Boston, Father Vincent Fox in New York—Fathers Carey and Cronin and Toner, and so many more.

All of them—predecessors, contemporaries, or students and followers of George Higgins—all owe him the debts which flow from his inspiration and guidance and the continuing demonstrations of courage in the face of critics.

Similarly, whole generations of Catholic trade unionists and social activists owe him a great debt for the inspiration he gave to us. There are dozens in this room, and hundreds across the nation, now holding some leadership role in America's unions because George Higgins taught us, guided us, and even more importantly, provided the institutional framework within which our Church's social teachings and social policy was to be understood and implemented.

We were the young, who were trained in the Catholic labor schools and in the Association of Catholic Trade Unionists in Detroit and Boston, in New York, Los Angeles, Philadelphia, Pittsburgh and a dozen other cities, and we were the ones who were then further nurtured and confirmed through the active years of the National Catholic Social Action Conference which George Higgins guided.

And sometimes, when we were saddened or disturbed (as we were from time to time) by some action of a priest or nun or bishop, as the manager of a Catholic institution, hospital or school, acting in clear conflict with our beliefs, it was always certain that George Higgins would speak out just as clearly and forthrightly against that denial of social justice, that contradiction of Catholic social philosophy, as he would against the actions of a Farah, of a Stevens, or a DiGiorgio.

And so Monsignor, we honor you as the premier translator of the American labor movement to the Church, and of that Church to this movement. All of us who have taken inspiration from you in the past fully expect to continue to be able to do so for lots of years to come.

We thank you.

We wish you well.

We are proud to salute you tonight.

Remarks by Cesar Chavez

Monsignor Higgins, we are proud and honored to be here tonight among your many friends to honor you.

Monsignor Higgins is one of those remarkably unique, irreplaceable people. No single person in the church has done so much for working men and women and children. No other person in the church is so widely respected in the American labor movement. And his influence within the church on issues affecting labor have not come by accident.

His stature comes from decades of unswerving commitment to working people and the cause of labor. It also comes from hard work, discipline and from an uncompromising devotion to truth and to justice.

In the farmworker struggle, history will show that Monsignor Higgins was crucial to the survival of our union. He helped create the Bishop's Committee on Farm Labor which played a dominant role in the first collective bargaining agreements in agriculture in the history of our country.

He made scores of trips out to California to insure success of the grape negotiations. No sooner the grape strike was settled than the lettuce strike started, where again Monsignor Higgins repeated his performance on behalf of the farmworkers. In early 1973 the Teamster-Farmworker jurisdictional wars began. We could hope for no better friend than Monsignor Higgins. He knew the exact nature of the dispute. He walked the picket lines. He told what he knew to the public. Again, the Bishop's Committee came to our aid. Almost single-handedly he led an unprecedented outpouring of church support for our strike and boycott.

Our union survived and out of the struggle the farmworkers were blessed with the right to collective bargaining legislation in California and Monsignor Higgins is a vital part of all this progress.

Monsignor Higgins has given so much to so many working people. I tonight want to express personally ours and the farmworkers' gratitude for your commitment and dedication to the fieldworkers' struggle. To us Monsignor Higgins is the supreme example of a man who gives his life in service to others.

DEDICATION OF THE ROBERT C. BYRD ROOM AT COLSON HALL, WEST VIRGINIA UNIVERSITY

Mr. CRANSTON. Mr. President, West Virginia University paid a high tribute to our distinguished majority leader on September 6. The university dedicated the Robert C. Byrd room at Colson Hall. The room houses the West Virginia collection of books about West Virginians and their history.

The university is fortunate to receive the records and personal papers of such a distinguished public servant. Robert C. Byrd has been a vital part of his State's history and of the Nation's history. It is appropriate that the collection of his senatorial papers will eventually be at Morgantown, at West Virginia University. The record of Senator Byrd's career will certainly be an inspiration to future West Virginia students considering public careers. It will also be a national treasure of the history of an outstanding Senator and majority leader.

On September 6, Senator Byrd offered remarks at the dedication ceremonies for the Robert C. Byrd room. I ask unanimous consent that his remarks be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Statement by Senator Robert C. Byrd Upon Dedication of West Virginia Collection

For the naming of this room in my honor, and for allowing my papers to become a part of this outstanding West Virginia Collection of history and culture, I am deeply grateful.

If my papers can help bring a measure of understanding about our problems and their solutions, if they can inspire young men and women of talent and promise to put on the mantle of leadership, then one of the purposes of education will have been fulfilled.

"Young people at universities," said Winston Churchill, "come to study and to achieve knowledge, not to learn a trade. We must learn to support ourselves, but we must also learn to live . . ." Education is the greatest gift we can give to ourselves. But, the greatest gift we can give to our children and their children is to share what we have learned. For it is only by "learning to live" that our society will continue to mature, will continue to progress, and will continue to create more opportunity to learn.

In his work, "Death in the Afternoon," Ernest Hemingway says, "There are some things which cannot be learned quickly, and time which is all we have, must be paid heavily for their acquiring. They are the simplest things, and because it takes a man's life to know them, the little new that each man gets from life . . . is the only heritage he has to give."

The individual pieces of knowledge, or history, or culture, come together to make up the rich heritage of our country. These are vitally important, because we are a young nation. We are still deciding what we want to do with our lives. We are still trying to get a sense of ourselves. This collection will awaken our memories and bring us closer to a part of our history.

Even though we are a young nation, America's history is unique. If we are to continue to mature as a nation, we must have a strong sense of history and appreciate our heritage. West Virginia's history—the people's art, their music, their literature, and their architecture—all are an important part of our national treasure. This university deserves high commendation for its efforts to make a collection of West Virginia's unique history and culture a priority.

The West Virginia Collection and the papers that I will add to it, will not create a new history. But, those who will come and study here, will have the advantage of understanding and appreciating their past. With that understanding, it will be possible to better understand the present and to prepare for the future.

G. K. Chesterton, the English novelist and poet, once said this about history: "History is a hill or vantage point from which alone men can see the town in which they live or the age in which they are living."

In the same way, I hope that my papers will create the opportunity for young minds to be further enriched, whether it is for scholarship, or as a guide to solve future problems.

This is one of the fundamental principles of education: that learning from history should be never-ending. In Plato's famous Allegory of the Cave, the man who has been set free from his chains of ignorance and led into the light of truth, has a responsibility to return to the darkness of the cave and serve others who are still trapped there.

Education at its best, is education that prepares young men and women to serve, whether that service is given by adding beauty to the world, as in art; by alleviating the suffering of mankind, as in medicine; or by increasing the availability of goods necessary to sustain human life, as in agriculture or business. In this respect education will prepare the student to prepare as an elite of service, rather than an elite of privilege.

Perhaps the vision of man's potential, as embodied in the collected works of West Virginia's history and its culture, is best expressed in the words of the poet Edwin Markham, and I close with his verse:

THE PILGRIM

Man comes a pilgrim of the universe,
Out of the mystery that was before the world,
Out of the wonder of the stars.
Far roads have felt his feet, forgotten wells have glassed his beauty bending down to drink.
At altar-fires anterior to earth his soul was lighted, and it will burn on after the suns have wasted on the void.
His feet have felt the pressure of old worlds,
And are to tread on others yet unnamed—
Worlds sleeping yet in some new dream of God.

LACK OF STRONG ADMINISTRATION POLICY IN NUCLEAR WEAPONS PROGRAM

Mr. THURMOND. Mr. President, on August 26, 1980, the Senate Armed Services Committee approved a program to begin modernization of our nuclear weapons production complex in the Department of Energy nuclear weapons authorization bill for fiscal year 1981.

On taking this initiative the committee called attention to the potential shortage of critical nuclear materials and provided funding to meet these issues which go to the heart of our national security preparedness.

The administration's lack of leadership in this area was the subject of an August 27, 1980, article in the Washington Post newspaper by columnists Rowland Evans and Robert Novak entitled "The Other Face of Carter's Defense Policy."

I ask unanimous consent that this

article be printed in the Record at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the Record, as follows:

The Other Face of Carter's Defense Policy

(By Rowland Evans and Robert Novak)

While publicly taking a tough election-campaign stance on defense, President Carter has privately ordered a delay in one of the most sensitive areas of national policy: an overdue increase in the production of nuclear explosives for warheads to power America's expanding arsenal.

In response to Ronald Reagan's tough rhetoric, the president has given maximum publicity to the new "Stealth" aircraft and the new nuclear targeting policy to show progress against Soviet power. The delay over expanding nuclear fuel production suggests procrastination in hopes that the Soviet threat will somehow ease. That raises questions about how much the Carter team's view of the Kremlin really has changed.

This other face of the administration's defense policy also points to an election-year political dilemma. The delay in nuclear explosives production betrays a fear that expanded production would antagonize the anti-nuclear and environmental lobbies. But the delay itself generates fear about the reaction of defense-oriented congressmen.

That second fear was reflected in a "top secret" directive on Aug. 7 signed by Zbigniew Brzezinski, Carter's national security adviser. The tip-off was this instruction: "All responses to press inquiries about special nuclear materials should be low-key and . . . limited."

Brzezinski's memorandum went to the Secretaries of State and Defense, the CIA director and the Joint Chiefs of Staff. It informed them that "a formal . . . decision" to expand nuclear fuel production will be "deferred" until an international conference on nuclear proliferation in Geneva has ended. That will not be for weeks.

The decision to delay means the detentists have won the backstage debate between them and the defense community, a debate waged in Congress and within the administration. Their victory means in essence that there is a high probability of running out of nuclear explosives for the new weapons systems. The administration is authorizing rifles but not the bullets they can fire.

The "bullets" necessary were spelled out last spring in a classified document written by the Joint Chiefs of Staff for Secretary of Defense Harold Brown, setting production targets for new weapons-grade materials. These targets were required by Carter's recent decisions to build the MX mobile missile and the Trident II submarine-launched missile and—most important—to put warheads on new nuclear weapons for Europe to compete with existing Soviet systems.

"Carter has approved these new systems with much fanfare," one defense expert told us, "but the delay in new production of weapons-grade fuel does not give the Joint Chiefs a Chinaman's chance in hell to put warheads on them."

In its report on the authorization bill for the production of warhead fuels last May the House Armed Services Committee said that Carter was planning major new nuclear weapons for which there would be no explosives. "Is there a commitment to a nuclear weapons program?" the committee asked.

Pentagon officials have tried to argue this case in congressional testimony short of publicly breaking with the White House. On June 18, James P. Wade, Brown's assistant for atomic energy, testified cautiously that "additional resources" are needed.

Congress has been unsuccessfully pressing Carter for several years to gear nuclear plants in Hanford and Richland, Wash., for production of modern, weapons-grade nuclear fuel. But when, after months of procrastination, Carter finally took the lead in modernizing NATO nuclear weapons and ordered full-speed on the MX and Trident missiles, defense-oriented congressmen believed the impasse was broken.

Brzezinski's directive makes clear they were wrong. It revealed that a July 24 session of the Presidential Review Committee formally decided to defer new production facilities.

The directive went on to warn that "responses to press inquiries . . . should be low-key and limited to the following points": present production is "adequate for the near term"; "long-term requirements are under review but are difficult to predict"; if higher production is needed, "appropriate programs will be requested."

In yet another gesture to politics, the directive orders that all responses to congressional inquiries "should be cleared" by the Defense and Energy departments, the NSC and the Office of Management and Budget. Having put the development of "Stealth" on the network news, Jimmy Carter wants to keep his other defense face shrouded from the public view.

INTERVIEW WITH CHINESE LEADER DENG XIAOPING

Mr. THURMOND. Mr. President, one of the most important interviews with a Communist leader took place recently when Italian journalist Oriana Fallaci met with Chinese Vice Premier Deng Xiaoping.

The Chinese Communists understand the Soviets better than any government in the Western World and our leaders would be well served to heed the remarks of Premier Deng.

He predicted that a third world war was likely because of Soviet designs on Europe if the West, and particularly the United States, did not recognize the threat. He stated.

> Now America is on the defensive and, let's fact it: America fears the Soviet Union.

This impression Deng has received is the result of our weakening defense posture and the vacillating leadership of the Carter administration.

Premier Deng also stated that the Soviets are determined to take over the oilfields of the Middle East and thereby bring Europe into their orbit. He said that tying the Soviets down in Afghanistan and Cambodia was the best hope of the West to deter these aspirations.

Mr. President, I believe this Nation must assist the people of Afghanistan in their resistance to the military invasion by the Soviets. The Afghan leaders do not want American soldiers, they merely want arms with which to defend themselves. We should aid them, and in doing so I believe we would prevent the need to use American servicemen to halt Soviet expansionism in some future land.

The Soviets have become encouraged because our leaders negotiated an unequal strategic arms limitation treaty. This treaty is not only unequal, it does not even reduce arms but rather allows numbers to rise to higher levels.

Mr. President, I ask unanimous consent that an excellent summary article of the Deng interview entitled "Soviet Designs Will Trigger World War III, Deng Says," which appeared in the September 2, 1980, issue of the Washington Star newspaper, Washington, D.C., be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

Soviet Designs Will Trigger World War III, Deng Says

Chinese Vice Premier Deng Xiaoping says a third world war, possibly waged with conventional weapons and not nuclear arms, is inevitable and is likely to be touched off over Soviet desires to conquer Europe.

"The war is inevitable because the superpowers exist and because their imperialism exists," Deng in an interview with Italian journalist Oriana Fallaci.

"The inevitability of war isn't just a view of the Chinese: Many people in the world are convinced that the war will break out in the '80s," Doug said. "The next 10 years are very, very dangerous. They are frightful."

Deng said there are many hot spots in the world, including the Middle East and Indochina. "They are almost everywhere, and it isn't easy to predict where the war will break out," he said. "It is very, easy instead to say who will light up the fire."

The Chinese leader made clear in the interview, which was published in The Washington Post, that he believes the Soviets are the ones who will light a global fire.

"Only two countries in the world are capable of launching a war, the United States and the Soviet Union," he said, adding that since the Korean and Vietnam wars U.S. forces have been declining and the United States has been "retreating."

"Now America is on the defensive and, let's face it: America fears the Soviet Union," he said.

Later he added, "Precisely because both sides have so many nuclear weapons, the possibility exists that the third world war will be a conventional war, not a nuclear war."

Deng said such a war would not necessarily break out in Europe.

"I say that war will break out for Europe," he said, "because the strong political influence stays in Europe, because the military force stays in Europe, and all this is necessary to dominate the world."

The vice premier said that when he referred to Europe as the focal point of Soviet strategy, he also included the Middle East and the northern coast of Africa—"in sum, the Mediterranean."

Deng views the Soviet invasion of Afghanistan as part of a Soviet drive to the Indian Ocean to "outflank Europe."

"And when this plan is completed, Europe will face its critical moment. Because, once the Soviets control the oil sources, what will Europe do?" Deng said.

Deng suggested that if Europe doesn't join an effort to contain the Soviet Union, war is inevitable. He compared the attitude of European countries to the pre-World War II efforts to "appease" Hitler's Germany.

"This new appeasement only serves to weaken more and more the West, Europe," he said. 'The Soviets know it, and because of this they encourage it. Because of this they become more and more arrogant."

He said he was sure that the Soviets would not stop in Afghanistan.

"The next target can only be Iran or Pakistan. We cannot predict what country will be chosen first, but I think that we should pay more attention to Iran."

Deng said he thought America was "totally incapable of doing anything in Iran."

The outbreak of war could be postponed if the United States, China and their allies move to contain Soviet expansion, Deng said, but not by "chatters about peace and detente."

"These are the two places where we must try very hard to tie down the Soviet Union for several years: Afghanistan and Cambodia," Deng said. "If we do so, the war is postponed. . . . The important thing is postpone, to gain time."

Deng acknowledged that many people have predicted that China would be the first target of the Soviet Union in a major war.

"Even if the Soviets occupy Peking and the areas north of the Yellow River, for us it would only mean the beginning of the war," the vice premier said.

"When it comes to China, one should not turn the superiority of the Soviet military forces into a myth. The Afghan guerrillas are still very active, you know? And in China we have enough people, enough places, to cope with a Soviet invasion."

MAYOR RICHARD E. CARVER

Mr. PERCY. Mr. President, as many of my colleagues know, Mayor Richard E. Carver of Peoria, Ill., has recently completed his term of office as 37th president of the U.S. Conference of Mayors. I would like to take this opportunity on the floor of the Senate to commend him publicly for his outstanding leadership during a period of economic uncertainty that has not been easy for mayors and other local officials around the country.

Those of us who are fortunate enough to be from Illinois have been aware for many years of the special talents Dick Carver brings to his work. He has distinguished himself by his outstanding record of public service as mayor of Peoria, by his keen grasp of the issues and by his dedication in fighting on behalf of the people of his city.

These talents were recognized on the national level when Dick was elected president of the U.S. Conference of Mayors in 1979.

At its 48th annual conference in Seattle, Wash., earlier this year, the conference adopted a resolution commending Dick Carver and his outstanding wife Judy for their meritorious service. In appreciation for his fine work, I ask unanimous consent that the text of the resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, for the first time at an annual conference, the delegates at this annual conference toured Seattle witnessing firsthand Seattle's historic preservation, downtown and neighborhood revitalization, health facilities, and transportation efforts; and

Whereas, the delegates attended cultural events in municipal facilities, all a part of the outstanding arts and cultural efforts of Seattle,

Now, therefore, be it resolved that we, the nation's Mayors, representing our cities, express our sincere appreciation to all the citizens of the City of Seattle for their warm hospitality during our stay in Seattle; and

Be it further resolved that we commend Mayor Royer and his wife, Rosanne, the staff of the City of Seattle, Seattle business and civic leaders and citizen volunteers from all walks of life who personally contributed to making our 48th Annual Conference of Mayors pleasurable for our delegates and participants and meaningful for our cities; and

Be it further resolved that the delegates at this 48th Annual Conference of Mayors commend Mayor Royer for opening the city and providing the nation's Mayors the opportunity to witness, experience together and learn from Seattle exciting urban innovations that are moving forward here in the Queen City of the Northwest.

MAYOR RICHARD E. CARVER

Whereas, Peoria Mayor Richard E. Carver has served as the 37th President of the U.S. Conference of Mayors from June, 1979 to June, 1980; and

Whereas, at the Executive Committee meeting in Peoria Mayor Carver provided Mayors leadership in planning and activities of the Conference for the year; and

Whereas, Mayor Richard Carver has been a strong advocate in assisting thousands of refugees that have come to America for a home; and

Whereas, our President, Dick Carver, has been a leader in this nation in calling for the reenactment of General Revenue Sharing and fiscal assistance for all cities, large and small, in this nation; and

Whereas, Mayor Dick Carver led the delegation of Mayors to Israel spreading good will to our allies there; and

Whereas, Mayor Carver has helped this conference in its efforts to protect vital urban programs as the Congress moved toward a balanced budget; and

Whereas, Mayor Dick Carver has expressed on behalf of this Conference our deepest concern and offered and supported programs to cope with the inflation that seriously affects local budgets throughout the nation; and

Whereas, President Richard E. Carver along with his wife Judy has served in his position with dignity,

Now, therefore, be it resolved that the delegates of the 48th Annual Conference of Mayors officially commend Mayor Richard E. Carver for his efforts during the past year and wish him and his wife and family well; and

Be it further resolved that we commend Mayor Carver for his leadership and urge him to be active in contributing his efforts within the U.S. Conference of Mayors in the future.

DEPARTMENT OF ENERGY CONTRACTING PRACTICES

Mr. PRYOR. Mr. President, I commend the distinguished Senator from Louisiana for his recognition of the concerns I and others have expressed about the Federal Government's use of consultant services.

Several weeks ago, in his capacity as floor manager of the DOE authorization bill, the Senator from Louisiana accepted an amendment I proposed to deal with some of the Department's problems in the use of consultants. Indeed, because those amendments regarding contract information and attribution of contractor assistance in the preparation of reports were made a part of that bill on July 30, I have decided not to propose a consultant amendment to this appropriation bill. Rather I want to simply restate my concern about this problem and provide some further comments about DOE problems.

My Subcommittee on Civil Service and General Services and the General Accounting Office have found enormous waste and abuse in DOE's consulting practices. For example, the GAO found in a March 1980 report that "serious and pervasive" problems existed in DOE's use of consultants. For example, the GAO found that the majority of DOE's consulting contracts were awarded without any competition whatsoever. Furthermore, DOE frequently made little or no use of the consultant studies when they were completed. The following are just a few examples of consultant waste and abuse contained in the GAO report on DOE consultant practices:

DOE awarded a contract for $1,480,000 to continue planning and evaluation assistance to the agency. The DOE justified awarding this contract without competition because no other contractor "is familiar with and experienced in the basic planning studies and assessments needed" as a result of two previous contracts awarded to this same consultant firm. In other words, the GAO said that the contractor "has bought into a long and friendly relationship with the agency."

DOE awarded another contract for $453,581 for an assessment of industry research and development activities. The contract was awarded without competition because, according to DOE, that consultant firm was the only firm that could do the work. Subsequently, the GAO ascertains that this same consultant subcontracted out 60 percent of the work to other consultants.

Another DOE contract for $1,425,238 was modified by $48,130 in order to thwart the competitive bidding process. This modification had nothing to do with the original purpose of the contract but DOE nonetheless decided to modify it to avoid competition. The GAO stated that this practice results in the Government paying more than it should.

Another DOE contract for $343,834 was awarded for a comprehensive analysis of issues regarding resource development on Indian reservations. In the contract justification statement, DOE stated that reports generated by this study would help the agency in policy development. According to the GAO, however, DOE officials could not specifically explain or document any use made of the contract results.

Another GAO report on DOE contracting practices dated November 1979 found that DOE's reliance on consultants was so extreme that the consultants were practically running the Department. GAO's review of five DOE organizations disclosed, first, contracting practices which avoid or limit competition; and second, contractor involvement in the performance of basic management functions. The GAO stated that, "Each of the five organizations within the Department of Energy appear to be contracting with private firms to carry out some of its basic management function. Some of these contracts also appear to provide contractors wide latitude for participating in the development of energy policy and offer the potential for allowing the contractor to determine energy policy."

Not only are DOE consultants being used to influence the Department's energy policies, but also, my Subcommittee on Civil Service and General Services has found that these same DOE consultants forming energy policy also work for not only various OPEC countries but also for every oil company in the United States.

As the Civil Service Subcommittee's hearings and investigations have discovered, the Department of Energy's reliance on consultants and contractors is so extreme that it is hard to understand what, if anything, is left for "officials" to do.

Most unfortunately, we found that the

extreme and invisible reliance on contractors is further characterized by profoundly disturbing evidence of poor, even unlawful, management, and waste. For example:

We found that the Department is paying out millions of dollars under contracts for which there are no, or inadequate, records in the "official" contract files.

We found that the Department was unable to produce hundreds of items of work ostensibly prepared and paid for under recent and ongoing multimillion dollar contracts.

We found that the Department pays consultants a needless brokerage fee for work it could do itself. For example, we found that contractors have been hired to write the job descriptions for hundreds of DOE "official" positions. When the contractor told DOE that it did not have the expertise needed, DOE found experts for the contractor to hire. Typically, the experts were former Government personnel experts. Thus, DOE paid a private contractor a fee to employ former Government officials—located by DOE—to define the work of present government officials.

Mr. President, the need for my amendment was made crystal clear in a GAO report issued just last month. GAO's review of seven agencies found that consultants were used to meet over 40 percent of their congressionally mandated reporting requirements during fiscal years 1977 to 1979. Consulting services accounted for almost two-thirds of the total costs incurred. Approximately 60 percent of the reports either did not disclose or inadequately disclosed consultants involvement in their preparation.

Mr. President, Congress needs to know who prepared the hundreds of reports sent to us by DOE each year so that we know how much reliance to place in the conclusions and recommendations contained in these reports upon which the Congress must act.

REDUCTION OF COSTS FOR CONSULTANTS

Mr. PRYOR. Mr. President, I commend the distinguished Senator from Washington (Mr. MAGNUSON), the chairman of the Committee on Appropriations, for his continuing leadership in the Senate to cut the fat from the Federal consultant budget. At the Appropriations Committee markup of the bill we are considering today, Senator MAGNUSON introduced an amendment to reduce these agencies' budgets for consultants by $17 million. He has been a pioneer in the area of consultant reform. As chairman of the Appropriations Committee, he has continually brought to light the enormous consultant waste and abuses at the Department of Health, Education, and Welfare.

I am particularly pleased to have had the opportunity to assist the Senator in his recent efforts to cut the fiscal year 1981 budget for consultants at all Federal agencies. The staff of my Subcommittee on Civil Service and General Services has worked with his staff to develop accurate figures on Federal consultant expenditures upon which a much needed reduction can be made.

I completely support the consultant reduction contained in this bill. The need for cutting the Department of Energy's consultant budget was made crystal clear in a March 20, 1980 report by the General Accounting Office. In this report the GAO found "serious and pervasive" problems in six agencies' use of consultants. For example, GAO found 67 percent of all contracts reviewed were awarded without competition and that 54 percent of the consultant contracts were awarded in the last quarter of the fiscal year. Furthermore, in GAO's opinion, many of the contracts should have never been awarded because the work could have been performed by agency employees.

The consultant cut contained in this bill is not the only reduction taken at the initiative of Senator MAGNUSON. He plans to make similar reductions for consultants on all major appropriation bills for fiscal year 1981. If all of these reductions are sustained in conference, and I am confident they will be, the fiscal year 1981 budget for consultants will be reduced by over $350 million. This is the equivalent of a 15-percent reduction in the consultant budget for 1981 of nearly $2.5 billion. I think this reduction is modest in light of the enormous waste and abuse that Senator MAGNUSON and I have found in our investigations. Again, I commend the Senator for his leadership in this area and I offer him my complete cooperation and assistance in this effort to eliminate consultant waste and abuse in our Federal system.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:56 a.m. a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House insists upon its amendments to the bill (S. 988) entitled "Health Sciences Promotion Act of 1980," disagreed to by the Senate; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. WAXMAN, Mr. SATTERFIELD, Mr. PREYER, Mr. MAGUIRE, Mr. LUKEN, Mr. WALGREN, Ms. MIKULSKI, Mr. BROYHILL, Mr. CARTER, Mr. DEVINE, and Mr. STOCKMAN were appointed as managers of the conference on the part of the House.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6372. An act to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants;

H.R. 7466. An act to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status; and

H.R. 7779. An act to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the enrolled bill (S. 1625) to amend the act of December 20, 1944, as amended.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. MITCHELL).

At 2:21 p.m., a message from the House of Representatives, by Mr. Gregory, one of its reading clerks, announced that the House has disagreed to the amendments of the Senate to the bill (H.R. 2977) to provide for Federal support and encouragement of State, local, and community activities to prevent domestic violence and assist victims of domestic violence, to provide for coordination of Federal programs and activities relating to domestic violence, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; that Mr. PERKINS, Mr. BRADEMAS, Mr. HAWKINS, Mr. BIAGGI, Mr. SIMON, Mr. BEARD of Rhode Island, Mr. MILLER of California, Mr. STACK, Mr. ASHBROOK, Mr. COLEMAN, Mr. KRAMER, and Mr. ERDAHL were appointed as managers at the conference on the part of the House for the consideration of titles I, II, III, and IV of the Senate amendment, and modifications thereof committed to conference; that Mr. BROOKS, Mr. EDWARDS of California, Mr. CONYERS, Mr. HYDE, and Mr. SENSENBRENNER were appointed as managers at the conference on the part of the House for the consideration of sections 501, 502, 503, and 505 of title V of the Senate amendment and modifications thereof committed to conference; and that Mr. ULLMAN, Mr. CORMAN, and Mr. CONABLE were appointed as managers at the conference on the part of the House for the consideration of section 504 of title V of the Senate amendment and modifications thereof committed to conference.

The message also announced that the Senate further disagrees to the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes; agrees to the further conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. THOMPSON, Mr. BRADEMAS, Mr. FORD of Michigan, Mr. GAYDOS, Mr. BIAGGI, Mr. SIMON, Mr. MURPHY of Pennsylvania, Mr. WEISS, Mr. PEYSER, Mr. RATCHFORD, Mr. MILLER of California, Mr. ASHBROOK, Mr. BUCHANAN, Mr. JEFFORDS, Mr. EDWARDS of Oklahoma, Mr. TAUKE, and Mr. PETRI were appointed as managers at the conference on the part of the House.

The message further announced that

the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 7306. An act to provide for the orderly disposal of certain Federal lands in Nevada and for the acquisition of certain other lands in the Lake Tahoe Basin, and for other purposes; and

H.R. 7666. An act to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes.

At 3:49 p.m., a message from the House of Representatives delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled bill:

S. 299. An act to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 4:53 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the bill (S. 2728) to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6790. An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes;

H.R. 7218. An act to establish the Martin Luther King, Junior Historic Site in the State of Georgia, and for other purposes; and

H.R. 7956. An act to make various changes in the tax laws.

HOUSE BILLS REFERRED

The following bills were read twice by their title and referred as indicated:

H.R. 7306. An act to provide for the orderly disposal of certain Federal lands in Nevada and for the acquisition of certain other lands in the Lake Tahoe Basin, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 7779. An act to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court; to the Committee on Finance.

H.R. 7956. An act to make various changes in the tax laws; to the Committee on Finance.

HOUSE BILLS HELD AT DESK

The following bills received from the House were held at the desk, pursuant to previous order:

H.R. 6372. An act to amend title 5, United States Code to provide for voluntary withholding of State income tax for civil service annuitants.

H.R. 7218. An act to establish the Martin Luther King, Junior Historic Site in the State of Georgia, and for other purposes.

H.R. 7466. An act to amend section 3102 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

H.R. 7666. An act to amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes.

HOUSE BILL PLACED ON CALENDAR

The following bill was read twice by its title and placed on the calendar:

H.R. 6790. An act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary reported that on today he had presented to the President of the United States the following enrolled bill:

S. 299. A bill to amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4588. A communication from the Assistant Secretary of the Army, Secretary of the Army, reporting, pursuant to law, that a cost study has been conducted with respect to converting the installation support functions at Selfridge ANGB, Selfridge, Michigan, and a decision has been made that performance under contract is the most cost-effective method of accomplishing it; to the Committee on Armed Services.

EC-4589. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Korea for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4590. A communication from the President of the United States, reporting the issuance of a determination that the extension for one year of certain authorities currently exercised under Section 5(b) of the Trading With the Enemy Act, 50 U.S.C. App. 5(b), with respect to the countries of North Korea, Vietnam, Kampuchea or nationals of those countries, is in the national interest; to the Committee on Banking, Housing, and Urban Affairs.

EC-4591. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report of the activities of the Department of Commerce during calendar year 1979; to the Committee on Commerce, Science, and Transportation.

EC-4592. A communication from the General Counsel, Department of Energy, transmitting, pursuant to law, notices of meetings related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-4593. A communication from the Secretary of the Interior, reporting, pursuant to law, that Darrell E. Fleming has retired as the U.S. Government Comptroller of the Virgin Islands; to the Committee on Energy and Natural Resources.

EC-4594. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report of a new system of records; to the Committee on Energy and Natural Resources.

EC-4595. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days of the execution thereof; to the Committee on Foreign Relations.

EC-4596. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Progress in Improving Program and Budget Information for Congressional Use," August 29, 1980; to the Committee on Governmental Affairs.

EC-4597. A communication from the Director, National Institute of Corrections, transmitting, pursuant to law, the fourth annual report of the National Institute of Corrections; to the Committee on the Judiciary.

EC-4598. A communication from the Director of Central Intelligence, transmitting a draft of proposed legislation to amend title 18, United States Code to provide criminal penalties for certain acts against intelligence personnel which interfere with the performance of their duties, and for other purposes; to the Committee on the Judiciary.

EC-4599. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, 556 reports concerning visa petitions which the service has approved according the beneficiaries of such petitions third and sixth preference classification under the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

EC-4600. A communication from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered in 2,241 cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of such aliens; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation and the Committee on Energy and Natural Resources, jointly, with an amendment (in the nature of substitute) from each committee:

S. 2119. A bill to protect the fisheries resources on the Georges Bank, and for other purposes (Rept. No. 96-934).

By Mr. JAVITS, from the Committee on Governmental Affairs, with an amendment:

S. 503. A bill to amend the Privacy Act of 1974 to provide for the confidentiality of medical records, and for other purposes (together with additional views) (Rept. No. 96-935).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary:

Reuben B. Robertson, of the District of Columbia, to be Chairman of the Administrative Conference of the United States.

(The above nomination from the Committee on the Judiciary was reported with the recommendation that it be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. JACKSON. Mr. President, as in

executive session, from the Committee on Armed Services, I report favorably the following nominations: Maj. Gen. Robert Haldane, U.S. Army, to be lieutenant general, Maj. Gen. Robert Joseph Lunn, U.S. Army, to be lieutenant general, Maj. Gen. Harry Augustus Griffith, U.S. Army, to be lieutenant general; Lt. Gen. Edward J. Miller, U.S. Marine Corps (age 57), for appointment to the grade of lieutenant general on the retired list, and, Maj. Gen. Richard E. Carey, U.S. Marine Corps, to be lieutenant general. I ask that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. In addition, Mr. President, in the Regular Army, there are 2,111 promotions to the grade of colonel and below (list beginning with Larry D. Aaron), and 369 appointments to the grade of major and below (list beginning with Gary D. Burrows); in the Army of the United States, there are 1,535 promotions to the grade of lieutenant colonel (list beginning with Michael H. Abbott); in the U.S. Navy and Reserve of the Navy, there are 48 temporary/permanent appointments to the grade of captain and below (list beginning with Raymond J. Adams); in the U.S. Marine Corps, there are 284 permanent appointments to the grade of second lieutenant (list beginning with Timothy C. Abe); and, in the Regular Air Force and Reserve of the Air Force, there are 54 appointments/reappointments/promotions to the grade of colonel and below (list beginning with Albert R. Amalfitano). Since these names have already appeared in the Congressional Record and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the Record of August 1, August 18, and August 25, 1980, at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LAXALT:

S. 3104. A bill for the relief of Mercedes Navarro; to the Committee on the Judiciary.

By Mr. INOUYE:

S. 3105. A bill for the relief of Lucia Josepha Asgill; to the Committee on the Judiciary.

By Mr. NELSON:

S. 3106. A bill to amend the Internal Revenue Code of 1954 to provide for the indexation of individual income tax brackets, and for other purposes; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION 122—SUBMISSION OF A CONCURRENT RESOLUTION WITH RESPECT TO THE EXPORT OF WHEAT

Mr. ZORINSKY (for himself, Mr. Melcher, Mr. McClure, Mr. Bellmon, and Mr. Pressler) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations.

S. Con. Res. 122

Whereas current world market prices for wheat are below the cost of production;

Whereas more than one-half of all wheat produced in the United States is exported;

Whereas Canada and the United States together supply approximately two-thirds of the world wheat trade;

Whereas the four principal wheat exporters supply more than 80 percent of the world's wheat exports;

Whereas world wheat exporting countries have traditionally carried a disproportionate share of the world's wheat reserves, resulting in higher costs for United States wheat producers;

Whereas improved storage, processing, and distribution facilities in wheat importing countries would increase wheat utilization capacity and increase the total world wheat market: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that there should be established a Joint Canada-United States Wheat Export Coordinating Commission, (hereinafter referred to as the "Commission") the purpose of which shall be to develop mutual policies whereby each participating country shall—

(1) end the export of wheat at prices below the cost of production;

(2) promote long-range market development;

(3) increase commitments to food assistance programs for importing nations; and

(4) encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

Other major wheat exporting nations should be invited to participate in the activities of the Commission.

CANADA-UNITED STATES INTERPARLIAMENTARY GROUP MEETING ON INTERNATIONAL WHEAT MARKETING

• Mr. ZORINSKY. Mr. President, on July 26 I, together with Congressman Glen English of Oklahoma, had the privilege of leading a delegation of five Senators and eight Congressmen to a meeting of the U.S. Interparliamentary Group in Ottawa. Our discussions with 10 members of the Canadian Parliament centered on how to improve cooperation between Canada and the United States in the area of wheat exports.

The discussions were, in my opinion, successful. Both the Canadian and the U.S. delegations expressed their concern with the high cost of production, and the inability of wheat producers on both sides of the border to earn an adequate return for their products. At the suggestion of Senator Bellmon, the Canadian and U.S. legislators agreed to promote the establishment of a "Joint Canada-U.S. Wheat Export Coordinating Commission."

The mission of the Joint Commission would be to develop mutual policies aimed at four broad goals. First, the Commission would attempt to develop coordinated policies which would end the export of wheat at prices below the cost of production. Although several schemes for encouraging higher market prices were discussed, no specific proposal was endorsed. Rather it was envisioned that the Joint Commission would undertake an examination of various policy choices which might be possible within the framework of our current market systems.

The second and third aims of the Commission would be the development of mutual policies to promote long-range wheat market development and increased food assistance programs. Largely through the efforts of the U.S. Department of Agriculture's Foreign Agricultural Service and U.S. Wheat Associates, the United States has greatly increased both its share of the world wheat market, and the overall size of that market. Greater cooperation with our rival wheat exporters offers us the opportunity to continue to expand the overall market size, without endangering the U.S. share.

For example, many importing nations, particularly the developing countries, do not have adequate storage, processing and distributing facilities for grain. The demand for a better diet and increasing populations will encourage greater imports of wheat, but the lack of port facilities, internal storage and transportation capacity will limit severely the amount of grain which can be handled.

Historically, the United States has used its foreign assistance programs and the Public Law 480 food for peace program, to help developing countries establish the necessary facilities. One of the aims of the Joint Commission would be to better coordinate such long-term development efforts, and to encourage our fellow exporters to participate more fully in similar programs. Our own country has been remarkably successful in its educational and promotional sales efforts. The aim of the Joint Commission would be to supplement those programs with other long-term efforts designed to increase the importing capacity of new market countries.

The fourth goal of the Joint Canada-U.S. Wheat Export Coordinating Commission would be to encourage importing nations to bear a larger share of the world's food reserves. Traditionally, the United States and other wheat exporting countries accumulate stocks during years of surplus supplies and low demand. The cost of carrying these stocks is borne by the farmer both directly, in the form of storage and interest costs, and indirectly in the form of lower market prices for the grain.

Importing countries reap the benefits of sufficient supplies, even in years of short crops, without paying any of the costs involved in carrying these reserves from year to year. Canada, the United States, and other wheat exporters would mutually benefit from an increased effort on the part of importing countries to build storage facilities and to carry a larger proportion of world food reserves.

Both the Canadian and the U.S. delegations to the Ottawa meeting pledged to pursue the idea of the Joint Commission with their respective administrations and to extend an invitation to Argentina and Australia to participate in the Commission. I intend to do everything in my power to convince this administration, or a future one, that such an International Commission would be a valuable tool in achieving a better world market for American wheat.

On behalf of the five Senators who participated in this last Conference of the Interparliamentary Group, Senators McClure, Bellmon, Melcher, Pressler, and myself, I am submitting today a concurrent resolution expressing the sense of the Senate that such a Joint Wheat Commission should be established. Congressman English, on behalf of the eight Congressmen who met in Ottawa, is introducing a duplicate resolution in the House of Representatives.

I am pleased to say, Mr. President, that the four points enumerated in the joint resolution evolved not only from our discussions in Ottawa with the "Canadian Members of Parliament," but were also the product of discussions with representatives of major trade and commodity groups here in the United States. Before departing for the Canadian meeting, the 13 members of the U.S. delegation met with U.S. Wheat Associates, the National Association of Wheat Growers, the North American Export Grain Association, and the National Council of Farmer Cooperatives. Many of the ideas and concerns expressed by the American congressional Members at the Canadian meeting were prompted by those expressed to us during our briefings with the U.S. organizations.

A further meeting with the Canadians is contemplated for early next year. At that time we hope to carry the formation of the "Joint Canada-U.S. Wheat Export Coordination Commission" another step forward. The suggestions and comments of these and all other affected groups are not only welcome, but are vital to the success of any further meetings with our northern neighbors.

As a final point, Mr. President, I would add only that the sort of discussions we held in July with our Canadian counterparts are extremely helpful. Not only did each side come away with a far better understanding of the other's wheat production and marketing system, we also discovered the great similarities in our concerns. Sometimes, we tend to think of our Canadian neighbors as rivals in the world wheat market. Meetings like the one we had Saturday emphasize to us again, that as legislators—as representatives of the people—we have a lot more in common than not. We both work for wheat producers, and as such our goals really are the same—to get a more reasonable price and an improved market for their products.●

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN SERVICE ACT AMENDMENTS OF 1980—S. 3058

AMENDMENTS NOS. 2303 THROUGH 2311

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted nine amendments intended to be proposed by him to the bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

AMENDMENT NO. 2312

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, this is an item that the Foreign Relations Committee was unable to consider during its markup. It is identical to a provision in the House bill, and I believe it is of sufficient importance so that it should be included in the Senate bill as well.

The purpose of this amendment is to insure that the administration's authority to grant and withhold extensions of career appointments for members of the Senior Foreign Service cannot be utilized to politicize the Senior Foreign Service by purging officers whose views are considered to be at variance with those of the administration and to reward those whose views conform to those of the administration of the day.

The amendment accomplishes this by stipulating that actions on career extension must be "in accordance with" and not merely "in light of" the recommendations of selection boards. The amendment also deletes the criterion of "the needs of the Service" for career extension, as this criterion is so vague as to be open to abuse by a Secretary of State who wants to get rid of a senior FSO for purely political reasons.

Additionally in those cases where a full career extension is not going to be granted, the amendment would permit a temporary extension not to exceed one year to meet exceptional needs. This will be necessary, for example, when a senior officer who is to be terminated is in the middle of an important project or assignment that would be jeopardized by an immediate termination of the officer's contract.

There are significant differences between the Senior Foreign Service, as legislated in the present act, and the Senior Executive Service of the civil service.

One of these differences lies in the significant curtailment in the leeway given the top political appointees of the executive branch in so far as promotion and retention of members of the Senior Foreign Service is concerned. These are to take place in strict accordance with the findings of the selection boards, that is, on the basis of merit only and not on the basis of political criteria.

A Secretary of State must be able to surround himself with top career officers whom he finds congenial and who share his philosophy, his general approach, his enthusiasms and beliefs. There is nothing in the act as it is now formulated that deprives him of that right and that possibility.

However, the Secretary of State or, for that matter, the President or other senior officers of the Executive cannot and must not be able to force people out of the Senior Foreign Service because they are uncongenial to him. He can, if he wishes, banish them to the wilderness—although he would be wise to keep them around, inconvenient as they may be—but at least there they can be a voice in the wilderness. It is useful for the United States, for example, to have chiefs of missions in an area who might harbor some doubts about our policy in that area even while loyally implementing it.

The Congress cannot legislate that there must be uniformity of opinion at the top, or that there must not be such a uniformity of opinion, but at least the administration should not be able to retire wholesale officers of the Senior Foreign Service for political reasons. The Congress can legislate that any uniformity must not be achieved by getting rid of meritorious senior diplomats because a particular administration does not like their viewpoints.

As amended, the legislation would protect the senior ranks against the forcible creation of uniformity throughout those ranks. The senior ranks of our Foreign Service are a treasure house of experience, and no Secretary of State should have the power to deplete that treasure house, certified as such by the rankings given by the selection boards, on the ground that a particular administration finds it worthless.

AMENDMENT NO. 2313

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, I send an amendment to the desk for printing.

Mr. President, this amendment consists of a number of technical changes in S. 3058. None of these changes have a significant substantive impact. I ask unanimous consent that a short explanation of each change be printed in the RECORD at this point and ask my colleagues to vote for the passage of these changes.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF TECHNICAL AMENDMENTS

Section 402 (Bill p. 42, line 4):

This amendment permits a career member of the Senior Executive Service (SES) who is given a limited appointment in the Senior Foreign Service (SFS) to save his or her former rate of pay if the Foreign Service salary class to which he is appointed is lower than his or her former rate of pay in the SES. Because the SFS will have only three salary rates and the SES has six rates, some lateral transfers to SFS, in the absence of this amendment, would necessarily involve either an unearned increase in pay or a salary reduction. The amendment avoids this impediment to interchange between the SES and the SFS.

Section 408 (Bill p. 47, line 18):

This amendment clarifies that the authority of an agency head to establish local compensation plans for foreign national employees includes position classification.

Section 411 (Bill p. 52, line 4):

This amendment provides that payment of chargé pay to an officer who is temporarily in charge of a Foreign Service post will not be precluded by 5 U.S.C. 5535 or 5536. This will assure that section 411 of the bill will not be construed as being in conflict with these general statutory prohibitions against extra pay. The amendment is consistent with existing law and practice.

Section 705(b) (Bill p. 78, lines 10 and 12):

This amendment makes clear that the bill will not be construed as imposing a new limitation upon the efforts of the Family Liaison Office in the Department of State to facilitate the employment of Foreign Service spouses. In the absence of this amendment the current efforts of that office to identify employment opportunities in the United States for members of families returning from overseas assignments might have to be curtailed.

Section 901(14) (Bill p. 141, line 25):

This amendment permits the payment of travel and relocation costs for members of the Foreign Service who are assigned to tours of duty in U.S. territories or Puerto Rico (e.g., under the Pearson amendment program; see section 503(a)(4)). Such officers are not eligible for a foreign transfer allowance.

Section 1009 (Bill p. 158, line 25):

This amendment deletes an inappropriate standard for judicial review of decisions by the Foreign Service Labor Relations Board, which was inadvertently included in the bill. The deleted words conflicted with the correct standard as set out in section 1009(c) which is the same as in the Civil Service Reform Act of 1978.

Section 1015(b)(7)(A) (Bill p. 173, line 16):

This amendment clarifies the intent of this section not to authorize picketing at Foreign Service posts abroad.

Sections 1105(e) and 1106(3) (Bill p. 192, line 1, and p. 194, lines 1 and 2):

This amendment makes clear that travel and other administrative expenses associated with the processing of grievances may be paid by the head of any agency to which chapter 11 applies (State, USICA, IDCA, Agriculture, Commerce; see section 1101(c)), and not just by the Secretary of State.

Section 2201(a) (Bill p. 219, line 21):

This amendment deletes an extraneous word, correcting a typographical error.

Section 2202(b)(1) (Bill p. 225, line 14):

This amendment permits the Peace Corps to establish compensation rates below the lowest level in the Foreign Service Schedule, but not below the minimum wage, for personnel performing the most routine duties. All foreign affairs agencies have this authority with respect to positions abroad under section 407 of the bill. The amendment will permit the Peace Corps, which uses only the Foreign Service pay system, also to use this authority within the United States for work compensated by the other agencies under the Civil Service pay system (*e.g.*, GS–1, 2 and 3 positions).

Section 2203(d) (Bill p. 228, line 7):

This amendment clarifies the status for purposes of the civil service laws of the Chairman of the Development Assistance Committee at the OECD headquarters. This official is a U.S. citizen and is paid by the United States as authorized by the Foreign Assistance Act. The Office of Personnel Management has questioned whether the DAC chairman is a federal employee for certain purposes, including retirement coverage. The amendment puts that question to rest and will assure that the present incumbent will not be deprived of retirement credit for the two years he has served or for his future service.

Section 2305 (Bill p. 242, after line 25):

This amendment assures that an individual who is selected out of the Foreign Service and who receives benefits in the nature of severance pay under section 609(b)(1) of the bill will not also be eligible to receive duplicate benefits under title 5 of the U.S. Code. The amendment also makes necessary conforming changes in the numbering of the sections of the bill and in references to those section numbers.

Section 2308 (Formerly 2307) (Bill p. 244, lines 3 and 4):

This amendment eliminates a disparity in the permissible frequency of educational travel for high school and college students who are dependents of Government employees serving overseas. The amendment permits one round trip each year for all such students, eliminating the unused authority of some agencies to pay for two trips each year for college students only.

Section 2311 (Formerly 2310) (Bill p. 245, line 24):

This amendment makes explicit the intent that the total of danger pay allowance and supplemental (incentive) post differential not exceed 25% of basic pay.

Section 2312 (Formerly 2311) (Bill p. 246, lines 11 and 12):

This amendment corrects a technical oversight in title 5 of the U.S. Code as it relates to leave. The section in question incorrectly assumes that all members of the Foreign Service who are serving in senior positions are employed in the Department of State.

Section 2312 (Formerly 2311) (Bill p. 247, lines 3 and 4):

This amendment permits home leave to be granted to an individual whose continuous service abroad is prematurely terminated for the convenience of the Government (*e.g.*, by evacuation from a dangerous post).

Section 2403 (Bill p. 253, line 22):

This amendment modifies the bill's effective date, originally specified as October 1, 1980, and makes various technical, conforming and clarifying amendments. In order to permit adequate time for the issuance of implementing regulations the amendment establishes a general effective date 90 days after the bill's enactment. It also makes clear that thereafter personnel actions may be taken on the basis of the then current Foreign Service evaluation cycle. In addition it permits the Commerce Department, for a limited period, to employ up to ten noncareer Senior Foreign Service members without regard to the 5% limit contained in section 305(b) of the bill.

Section 2403 (Bill p. 254, line 7):

This amendment makes necessary technical amendments in the effective date of the bill's provisions regarding annuities for former spouses.

AMENDMENT NO. 2314

(Ordered to be printed and to lie on the table.)

Mr. PELL submitted an amendment intended to be proposed by him to the bill S. 3058, supra.

Mr. PELL. Mr. President, I send an amendment to the desk for printing.

PAY AND BENEFITS PENDING CONVERSION

A principal objective of this bill is to eliminate, in an orderly and fair manner, the use of the Foreign Service personnel system for the employment of individuals who are not available for overseas service. Chapter 1 of title II of the bill achieves this objective by providing for the conversion of "domestic" personnel who are now in the Foreign Service system to civil service status without loss of pay benefits.

This conversion process is a complicated one. It involves identification of those who are truly Foreign Service and those who should be civil service, notice of rights and decisions by the agencies and by the individuals concerned. The bill allows 3 years for the completion of this entire process of transition.

In the meantime, provision must be made for an appropriate rate of pay for those who ultimately will be converted to the civil service. As presently drafted the bill would initially pay these individuals at the new higher rates for the Foreign Service, and then would convert their pay status to the civil service grades corresponding to their increased salaries. As a result, the affected individuals would receive unearned pay increases without changing their duties in any way—at a cost to the Government of $5.1 million.

The proposed amendment provides a more equitable approach, and states more clearly and completely how individuals should be paid during the transition period.

The administration, in a letter to Chairman HANLEY of the Post Office and Civil Service Committee of April 16, has suggested that those who are not worldwide obligated should be paid only at their current level pending final decision to convert them either to the new Foreign Service schedule or to the Civil Service. This is unfair, since there are only two possible choices—Foreign Service and Civil Service—and each would be at least equal to or higher than current salary. In cases where some time is required to determine an individual's final status, this approach would deprive him or her of pay which they clearly should receive.

On the other hand, to convert these individuals to a pay level equivalent to the new Foreign Service schedule, as the current language mandates, would be both expensive and unwarranted, in that most individuals in the domestic service only Foreign Service group have previously receive, substantial incentives to convert to Foreign Service. To provide an additional windfall is unfair both to those who remained in the Civil Service, and to those who are truly Foreign Service. In any event, the bill provides ample protection and preservation of rights—grade, pay level, retirement system choice, protection against downgrading.

This amendment represents a desirable combination of financial responsibility and equity to all involved, and warrants support.

ENVIRONMENTAL EMERGENCY RESPONSE ACT—S. 1480

AMENDMENTS NO. 2315 THROUGH 2320

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to S. 1480, a bill to provide for liability compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites.

Mr. HELMS. Mr. President, I have carefully examined the so-called superfund legislation, S. 1480. As I have stated on the floor of the Senate previously what I have discovered disturbs me. I share the sentiments of the distinguished Senator from Wyoming (Mr. SIMPSON) as expressed in the Senate committee report's minority views:

> It does alarm me to see the tendency, with but a sweep of the drafter's pen, to simply brush off on the floor many of the rules of evidence which have been so closely crafted and observed in our procedural life as lawyers.

But sweeping change in our rules of evidence is just the "tip of the iceberg." With the creation of a "Federal toxic tort," we are preempting the common law tort system of each of our 50 States—something we should not do without long, serious consideration. With the number of alternatives for dealing with our problems of hazardous wastes, it is unwise indeed to enact such sweeping and monumental legislation.

Mr. President, I have specific concerns with this legislation. It is for that reason that I am today submitting several amendments in the hope that they will serve to begin a serious dialog on these issues.

Mr. President, I ask unanimous consent that the text of each of my amendments be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2315

Mr. HELMS. Mr. President, the purpose of my first amendment is to delete the designation as "ultrahazardous activities," the manufacture, use, transportation, treatment, storage, disposal, and release of hazardous substances. This term is not defined in the act, in fact, it is never explained or mentioned further therein. However, the term "ultrahazardous activity" is a legal term, that is, one with legal implications which have the effect of expanding the already extraordinary standard of care required for dealing in such activities relating to hazardous substances.

For example, the restatement of torts has defined an "ultrahazardous activity" as one which "necessarily involves a risk of serious harm to the person, lands, or chattels of theirs which cannot be eliminated by the exercise of utmost care" and is not a matter of common usage. To say that the use of a hazardous substance—as overbroadly defined in this bill—is ultrahazardous, certainly would constitute a dangerous extension of the law—especially when common table salt could qualify as a hazardous substance under the terms of the bill. Mr. President, my amendment would remove the designation from the act, thereby closing the "can of worms" opened by its inclusion.

The text of amendment No. 2315 follows:

On page 13, strike out lines 22 through 25.

On page 14, line 1, strike out "(2)" and insert in lieu thereof "Sec. 3. (a)(1)".

On page 14, line 21, strike out "(3)" and insert in lieu thereof "(2)".

On page 16, line 16, strike out "(4)" and insert in lieu thereof "(3)".

AMENDMENT NO. 2316

Mr. HELMS. Mr. President, this amendment would strike the words "reason to believe" from the site notification section in the bill. This section of the bill mandates that—

> Any person who owns or operates, or has reason to believe that he or she may be subject to liability for, a facility or site at which hazardous substances . . . are stored or disposal of which is not in compliance with a permit . . . shall notify the Administrator of EPA of the existence of such facility or site.

As presently written, the duty which arises applies to all persons with any connection to the disposal site—even a person who may have a future connection. A person who may "have reason to believe" he is subject to this requirement would be responsible for guessing as to potential liability prior to the filing of any claim—even in some cases prior to any event which would lead to a claim—all in order to determine whether he must comply with this notice section. And the penalties for failure to give notice under this vague and indefinite section are harsh—a fine, prison sentence, and a waiver of any other limitations of liability, not only found in this act, but in any other laws. Mr. President, to impose such a penalty for failure to act, the required action should be clearly spelled out. The inclusion of the phrase "reason to believe" in this section leads to such ambiguity that some experts have even indicated it would violate the due process requirement that a criminal statute not be so indefinite as to fail to give fair notice that a contemplated act is forbidden by statute. Under such circumstances, it appears wise to remove this offending language.

The text of amendment No. 2316 follows:

On page 16, lines 17 and 18, strike out ", or has reason to believe that he or she may be subject to liability for,".

AMENDMENT NO. 2317

Mr. HELMS. Mr. President, my amendment would add—as defenses to the liability for damages as a result of a discharge, release, or disposal—the defenses of negligence on the part of the U.S. Government, and an act or omission of a third party, or a combination of the listed defenses. Along with the already present defenses of an act of God or act of war, these additions would bring the act into conformity with section 311 of the Clean Water Act and would bring an element of fundamental fairness to it.

My able colleagues, Senators DOMENICI, BENTSEN, and BAKER, in the Senate report to S. 1480, have very clearly outlined the results of the bill's omission of these defenses:

> The only available defenses under the bill are an Act of God or an Act of War. As a consequence, what S. 1480 does is to simply throw out negligence and nuisance as legal concepts relating to the ongoing activities of America's entire industrial base.
>
> The effects of such a doctrine are clear. For example, in the case of a mining operation where certain chemicals are used in the extraction process, the owner or operator of that mine would have no defenses available to him if an unidentified third party unconnected to his operation, came onto the mine site and mishandled those chemicals. He would find himself facing a barrage of suits in which he was being held strictly liable for all of the damages regardless of whether or not he had any control over the situation.

Mr. President, adequate precedent is present both in tort and Federal statutory law for the addition of these defenses. Under the circumstances, common fairness dictates their inclusion.

The text of amendment No. 2317 follows:

On page 24, lines 19 and 20, strike out "(i) an act of God or (ii) an act of war" and insert in lieu thereof "(I) an act of God, (II) an act of war, (III) negligence on the part of the United States Government, or (IV) an act or omission of a third party without regard to whether any such Act or omission was or was not negligent, or any combination of clauses (I) through (IV)".

AMENDMENT NO. 2318

Mr. HELMS. Mr. President, this amendment would substitute apportioned liability for the joint and several liability requirement presently in the bill. This strict, joint and several liability would extend to the largest number of possible defendants for a broad category of damages. Under this plan, a person with only a peripheral connection to an incident could be held liable for this entire damage because the bill extends liability to four categories of persons: First, present owners or operators of the vessel or facility from which the release occurred; second, owners or operators at the time of the release; third, generators who arrange for offsite disposal; and fourth, transporters. It is patently unfair to require strict as well as joint and several liability on all these classes of persons. My amendment would merely allow for apportionment of the damages so as to equitably assess the party at fault for the damage and injury he has caused.

Now, I understand there is an apportionment provision in the committee-drafted bill. However, it is clearly inadequate. It would allow defendants who are not "significant" contributors to the discharge to prove apportionment. But this proof could only be made after the establishment of the liability and all payments are made. This proof likely will be impossible because of the act's failure to define the key term—"significant." At any rate, any "significant" contributor is not assisted in the bill by apportionment, but is bound by the strict, joint and several liability scheme. My amendment would clearly establish the right of all defendants to apportionment of damages—regardless of the significance of their contribution to the injury.

The text of amendment No. 2318 follows:

On page 25, lines 22 and 23, strike out "shall be jointly, severally, and strictly liable for" and insert in lieu thereof "shall be strictly liable for such person's apportioned share (as determined by the trier of fact) of".

On page 29, line 3, strike out "liable for" and insert in lieu thereof liable for such person's apportioned share (as determined by the trier of fact) of".

Beginning on page 31, line 14, strike out all through page 33, line 6.

On page 33, line 7, strike out "(g)" and insert in lieu thereof "(f)".

On page 33, line 21, strike out "(h)" and insert in lieu thereof "(g)".

On page 34, line 9, strike out "(i)" and insert in lieu thereof "(h)".

On page 34, line 24, strike out "(j)" and insert in lieu thereof "(i)".

On page 37, line 1, strike out "(k)" and insert in lieu thereof "(j)".

On page 37, line 12, strike out "(l)" and insert in lieu thereof "(k)".

On page 38, line 1, strike out "(m)" and insert in lieu thereof "(l)".

On page 38, line 13, strike out "(n)" and insert in lieu thereof "(m)".

AMENDMENT NO. 2319

Mr. HELMS. Mr. President, this amendment would establish peer review for scientific studies released or relied upon by EPA.

There is growing concern about the impact which unreviewed and unverified studies can have. A recent example of this problem is the Love Canal chromosome-damage study which produced national headlines in mid-May. Two weeks after the study was released, an EPA panel concluded that the study had virtually no value.

In situations such as the Love Canal study, it would be far better to provide for peer review before release of a study than to convene a panel after the study has been released. A prerelease review could have recognized the inadequacy of the Love Canal study. Assuring that health studies are only released or used when they conform to accepted scientific criteria is an essential component of any program dealing with the problems posed by hazardous substances.

This amendment calls upon EPA to prepare and publish draft criteria and procedures for review of studies within 6 months.

The criteria would relate to the collection of scientific data and the evaluation and use of health and safety studies. Such studies would address subjects such as accepted standards for data gathering and sampling, testing methodology, statistical analysis, appropriate controls, and the completeness of data.

The procedures would be designed to assure that studies have been reviewed and have satisfied the criteria before they are relied upon by EPA as the basis for any action or released to the public. They would include independent peer review of any study which the Administrator proposes to rely upon or release. The review may include internal EPA review or review by other Federal agencies or by persons or organizations outside the Federal Government.

The Science Advisory Board could be called upon by EPA to participate in the review process. In addition, the Board would submit annual reports to Congress assessing the operation of the criteria and procedures.

Mr. President, this amendment would establish a procedure long needed to assure the quality of the information on which EPA relies.

The text of amendment No. 2319 follows:

At the end of the bill add the following new section:

PEER REVIEW OF SCIENTIFIC STUDIES

SEC. 13. The Administrator of the Environmental Protection Agency, within 6 months after the date of the enactment of this Act, shall propose, and within 3 months after proposing shall establish—

(1) criteria for the collection of scientific data and the evaluation and use of health and safety studies generated or used by the Environmental Protection Agency, and

(2) procedures, including peer review, to assure that such studies satisfy the criteria established under paragraph (1) before they are released or relied upon by the Environmental Protection Agency.

The Science Advisory Board of the Environmental Protection Agency shall monitor the criteria and procedures established under paragraphs (1) and (2) and shall report on an annual basis to the Congress with respect to the operation of such criteria and procedures.

AMENDMENT NO. 2320

Mr. HELMS. Mr. President, the amendment I am proposing is not a new idea. In fact, it is an idea that has become so popular over the past years that in 1979 alone, almost 100 bills and amendments were introduced which incorporated similar provisions. Out of those bills, 14 acts have been signed into law.

This amendment will allow Congress to play a much-needed and far more active role than it now plays in overseeing the activities of the Environmental Protection Agency. It gives Congress the authority to disapprove, through concurrent resolution, any regulations promulgated by EPA within 45 days of their appearance in the Federal Register.

It is my hope that if this amendment is enacted, Congress will make full use of it to disapprove unnecessary and harmful regulations which our farmers and businesses are confronted with daily. And of course there are many variations on the theme of legislative veto. I believe this is a particularly moderate one, involving both Houses of Congress.

The language used in this amendment is quite similar to that included in the authorizing legislation for the Department of Education. Already, Congress has disapproved four education regulations on the basis of that legislation. I hope we can employ this amendment in the same productive fashion.

The text of amendment No. 2320 follows:

At the end of the bill add the following new section:

CONGRESSIONAL REVIEW OF PROPOSED REGULATIONS

SEC. 13. (a) (1) Concurrently with the publication in the Federal Register of any final regulation of general applicability under this Act, such regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such regulation shall become effective not less than 45 days after such transmission unless the Congress shall, by concurrent resolution, find that the regulation is inconsistent with this Act, and disapprove the regulation.

(2) The failure of the Congress to adopt a concurrent resolution under paragraph (1) with respect to any final regulation under this Act shall not represent, with respect to such regulation, an approval or finding of consistency with this Act for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(3) For purposes of this section, the term "regulation" means any rule, regulation, guidelines, interpretation, or requirement of general applicability.

(b) The 45-day period specified in subsection (a) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than 4 consecutive days. In any such period of adjournment, the 45 days shall continue to run, but if such period of adjournment is 30 calendar days or less, the 45-day period shall not be deemed to have elapsed earlier than 10 days after the end of such adjournment. In any period of adjournment which lasts more than 30 days, the 45-day period shall be deemed to have elapsed after 30 calendar days have elapsed unless, during those 30 calendar days, either the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Environment and Public Works of the Senate (or both) shall have directed its chairman, in accordance with the rules of the committee and the rules of that House, to transmit to the Administrator of the Environmental Protection Agency a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than 20 days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this section. In no event shall the final regulation go into effect until the 45-day period shall have elapsed, as provided for in this section, for both Houses of the Congress.

(c) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the Administrator of the Environmental Protection Agency may issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how he believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(d) This section shall be effective with respect to any regulation (or amendment thereto) promulgated on or after the date of the enactment of this Act.

ADDITIONAL COSPONSORS

S. 915

At the request of Mr. INOUYE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 915, a bill to direct the Secretary of the Army to determine the validity of the claims of certain Filipinos who assert that they performed military service on behalf of the United States during World War II, and for other purposes.

S. 2967

At the request of Mr. NELSON, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 2967, a bill to amend the Internal Revenue Code of 1954 to provide estate and gift tax equity for family enterprises, and for other purposes.

S. 3012

At the request of Mr. WILLIAMS, the Senator from Indiana (Mr. BAYH), the Senator from Minnesota (Mr. DURENBERGER), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 3012, a bill to amend the Internal Revenue Code of 1954 to eliminate the requirement that the States reduce the amount of unemployment compensation payable for any week by the amount of certain retirement benefits, and for other purposes.

S. 3092

At the request of Mr. TSONGAS, the Senator from Tennessee (Mr. SASSER), the Senator from West Virginia (Mr. RANDOLPH, and the Senator from Rhode Island (Mr. PELL) were added as cosponsors of S. 3092, a bill entitled: "National Hostel System Act of 1980".

SENATE JOINT RESOLUTION 176

At the request of Mr. INOUYE, the Senator from Florida (Mr. STONE), the Senator from Delaware (Mr. BIDEN), and the Senator from Kansas (Mrs. KASSEBAUM) were added as cosponsors of Senate Joint Resolution 176, a joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning October 5, 1980, as "National Port Week", and for other purposes.

SENATE CONCURRENT RESOLUTION 117

At the request of Mr. MOYNIHAN, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of Senate Concurrent Resolution 117, a concurrent resolution expressing the sense of the Congress that the President should convey to the Soviet Government the deep concern of the Congress and the American people for the fate of Raoul Wallenberg and that the U.S. delegation to the Madrid Conference on Security and Cooperation in Europe should urge consideration of the case of Raoul Wallenberg at that meeting by the signatories to the Helsinki Final Act.

SENATE RESOLUTION 401

At the request of Mr. TOWER, the Senator from California (Mr. HAYAKAWA) was added as a cosponsor of Senate Resolution 401, a resolution expressing disapproval of the Senate of certain aspects of the proposed model adoption legislation and procedures.

SENATE RESOLUTION 448

At the request of Mr. MELCHER, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of Senate Resolution 448, a resolution to make the Select Committee on Indian Affairs a permanent committee of the Senate.

AMENDMENT NO. 1690

At the request of Mr. MATHIAS, the Senator from Utah (Mr. GARN) was added as a cosponsor of amendment No. 1690 intended to be proposed to S. 1722, a bill to codify, revise, and reform title 18 of the United States Code; and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE

Mr. TALMADGE. Mr. President, I wish to announce that the Agriculture Committee will hold a hearing on the disastrous effects which this summer's drought has had on the farm sector. I have invited a group of farmers from Bulloch County, Ga., to testify on the countywide loss of their peanut crop. I believe their plight is typical of what the weather has done to farmers throughout the country.

The hearing will be held on Tuesday, September 17, beginning at 10 a.m., in room 324 Russell Building. Anyone wishing further information should contact the Agriculture Committee staff at 224-2035.

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr President, the Select Committee on Small Business and the Committee on the Environment and Public Works will hold a joint hearing on the Possible Economic Costs of Acid Rain: Economic Losses to Tourism, Sport and Commercial Fishing, Agriculture and Forestry, Damage to Public Buildings and Monuments, and Threats to Public Health.

The hearing will begin at 9 a.m., Tuesday, September 23, 1980, in room 424, Russell Senate Office Building.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Committee on Energy and Natural Resources on the nomination of Wallace O. Green to be an Assistant Secretary of the Interior for Territorial and International Affairs.

The hearing is scheduled for Tuesday, September 23, beginning at 9:30 a.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510. For further information regarding the hearing, you may wish to contact Jessie Mackenzie of the committee staff on extension 47147.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I wish to announce that the Committee on Energy and Natural Resources had scheduled oversight hearings on "the growing importance of coal in international trade". The initial hearings will be held on September 16, 18, and 19, 1980, at 10 a.m. in room 3110, Dirksen Senate Office Building.

The purpose of these hearings is to review; first, the potential demand of overseas markets for coal in the near-term—next 10 years—and in the longer term; second, international factors affecting the materialization of such demand; third, domestic economic and other factors which might, or will, constrain the capability of the United States' coal industry to meet this potential demand; fourth, other domestic economic and other factors, such as the capability of domestic railroad, river, or other transportation facilities, which might, or will, constrain the U.S. capability to export coal in the quantities envisioned; fifth, possible governmental—Federal, State or local—actions that will be, or may be, necessary to mitigate such constraints; and sixth, international cooperative arrangements that might be, or are being, undertaken regarding international trade in coal.

The following witnesses, or their representatives, are expected to testify:

On Tuesday, September 15, the Honorable John Sawhill, Deputy Secretary, Department of Energy and Chairman of the Interagency Coal Export Task Force, accompanied by representatives of the Department of Commerce—Maritime Administration—the Department of Transportation, and the Department of Armv—Corps of Engineers; and John D. Bierman, Senior Vice President-Export Credits Guarantees and Insurance, Export-Import Bank of the United States.

On Thursday, September 18, 1980, a coal export panel composed of: William W. Mason, president, Coal Exporters Association and president, Island Creek Coal Sales, Lexington, Ky. 40511; Pieter L. M. Vismans, president, 'SSM Coal Co., Inc., New York, N.Y. 10017; and Wilson Browning, president, W. J. Browning Co., Inc., coal exporter-broker, Norfolk, Va. 23510. There also will be a panel composed of representatives of east coast and gulf coast port authorities and operators from: New Orleans, La.: Edward S. Reed, port director, Port of New Orleans and Louis H. Meece, president, International Marine Terminal, New Orleans; from Virginia: Glenn Sedam, chairman, Virginia Port Authority, Norfolk, Va. 23510; and from Baltimore, Md.: Louis W. Willett, director of planning and research, Maryland Port Administration, Baltimore, Md. 21202; accompanied by Capt. Thomas W. Powers, occupational safety and health administrator.

On Friday, September 19, 1980, Carroll L. Wilson, director, World Coal Study, Cambridge, Mass. 02139; and a panel composed of transportation representatives: John T. Collinson, president, Chessie System, Cleveland, Ohio 44101; and John P. Fishwick, president, Norfolk and Western Railway, Roanoke, Va. 24042.

Individuals wishing to submit written statements for the record should transmit 10 copies to the Committee on Energy and Natural Resources, U.S. Senate, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.

Inquiries regarding these and any future hearings should be directed to Richard Grundy, professional staff member, at (202) 224-9894.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources will hold a hearing on S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases. This hearing will be held on Tuesday, September 23, 1980, in the Labor and Human Resources Committee hearing room, 4232 Dirksen Senate Office Building. The hearings will commence at 9:30 a.m. and will be chaired by Senator METZENBAUM.

Anyone desiring further information about these hearings or wishing to testify should contact Luther Washington at (202) 224-2315.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE TO INVESTIGATE INDIVIDUALS REPRESENTING INTERESTS OF FOREIGN GOVERNMENTS

Mr. MELCHER. Mr. President, I ask unanimous consent that the Subcommittee To Investigate Individuals Representing Interests of Foreign Governments of the Committee on the Judiciary be authorized to meet during the session of the Senate today to hold a public hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, September 11, 1980, to hold a hearing on S. 1480, the Environmental Emergency Response Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON RURAL DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, September 18, 1980, to hold a hearing on deficiencies in census counts in rural areas.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

RENTAL HOUSING INCENTIVES

● Mr. STEWART. Mr. President, two recent articles in the Washington Post and the Washington Star point out some vitally important incentives for rental housing construction that were included in the tax-cut legislation reported by the Senate Finance Committee. These provisions were drawn from the Real Estate Construction and Rehabilitation Incentives Act of 1980, a measure introduced by Senator Williams that represents the most thoughtful and comprehensive revision of rental property tax codes in recent memory.

Mr. President, there is no disputing the fact that a very serious crisis in our rental market has developed in recent years. A significant portion of the existing rental stock has been lost to abandonment and conversions, and the amount of private, unsubsidized new rental construction has dropped way down. All estimates indicate that the volume of new construction will not come close to meeting the Nation's needs in the upcoming decade. National vacancy rates are at historic-lows, currently around 5 percent.

A variety of factors is responsible for the decline in new rental construction, but the bottom line is that it is no longer viewed as a profitable investment by developers. Operating costs, especially due to rising energy prices, have skyrocketed. New investment costs have sharply risen due to high land, construction, and financing charges. Right now, developers simply cannot charge rents which will cover the costs they incur in building new rental units.

Ten months ago, the General Accounting Office concluded that the rental housing problem was "so severe that it required the immediate attention and action by Congress and the administration." Since that time, the situation has only become more urgent. In my view, working through the tax code to stimulate the rehabilitation and construction of rental units is the most efficient and least costly way of addressing the problems in our rental housing sector.

In its final version of the tax-cut legislation, the Finance Committee approved a major reform aimed at spurring rental construction. Specifically, the bill establishes a 20-year straight line depreciation schedule for all residential property. This is a significant improvement over the present situation for two reasons. First, it shortens the current depreciation period for rental units, which now ranges from 30 to 40 years. Second, by providing for an audit-proof schedule, the bill will mean an end to the frequent disputes which now occur between builders and the Internal Revenue Service over what constitutes the useful life of a building.

The Finance Committee's bill will also make low-income apartments eligible for depreciation over a 15-year period. This shorter life should provide an important incentive to offset other restrictions which exist on investments in low-income housing.

Mr. President, there are other important changes in real estate taxation provided for by the Real Estate Construction and Rehabilitation Incentives Act, and I hope that many of these can be incorporated in the final tax-cut legislation which is approved by this Congress. I do want to emphasize, however, my belief that the Finance Committee's action represents an important first step in relieving the crisis in our rental housing markets.

I ask that the articles from The Washington Post and the Washington Star be included in the Record.

The articles follow:

Proposed Changes in Tax Law Could Aid Real Estate Market

(By Kenneth R. Harney)

Real estate has plenty at stake—more than is widely recognized—in the current hot debate here over whether there's to be a tax cut in 1980.

The major tax cut proposals now being bandied about on Capitol Hill contain some important reforms that could assist housing and real estate significantly.

Take the bill that the Senate Finance Committee passed with strong bipartisan support, for example. It would liberalize the capital gains tax and make ownership of real estate an even more attractive hedge against inflation than it is now.

The bill would increase the tax-free "exclusion" permitted under the capital gain levy to 70 percent of the total gain, up from 60 percent at present.

That means that an owner of a piece of real estate held for a year or more could keep $700 of every $1,000 in profits at resale absolutely tax-free. The remaining $300 of every $1,000 would be included in the taxpayer's regular income and taxed at ordinary rates.

(By the way, this wouldn't change the already favorable rules on capital gains deferral on sales of principal residences. That provision allows you to "roll over" or postpone tax recognition of the gain on the sale of your house, as long as you purchase a more expensive dwelling within 18 months or construct a more expensive new one within 24 months.)

The Senate Finance Committee's bill—which is opposed by the Carter administration and hasn't yet come to the Senate floor for a final vote—would help in two other important ways. It would:

1. Increase savings deposit inflows to thrift institutions by expanding the availability of Individual Retirement Accounts (IRAs) to more U.S. workers, and by enlarging the annual amount of contributions permitted to such pension plans. Deposit flows to thrift institutions like savings and loans and mutual savings banks are crucial to housing. The thrifts provide more dollars for mortgage loans than any other source. The more IRA dollars they've got on deposit, the better off housing will be.

2. Simplify and speed up the depreciation thereby encouraging rental housing construction and investment in new commercial buildings. Most income-producing real estate could be depreciated over 20-year periods under the bill, rather than the cumbersome and audit-prone 30- to 40-year schedules required by the present tax code. Low-income rental real estate could be depreciated in just 15 years, as could owner-occupied business real estate.

Besides the Finance Committee bill, there is another major tax proposal that could help shape the Senate's final measure, via floor amendments. It is a bill, sponsored by Sen. Harrison Williams (D-N.J.), that contains several reforms of special note.

Williams' bill would encourage the owners of apartment buildings that are ripe for conversion to condominiums or cooperatives to sell units directly to tenant organization members at large price discounts. This would be achieved by allowing building owners to qualify for capital gains treatment on their profits from individual unit sales instead of facing ordinary income taxation as at present.

Rather than being forced by the tax code to sell a building to a middleman "converter" or developer—thereby inflating the eventual retail price to consumers—Williams' bill would permit rental building owners to function as retailers themselves. With mandatory heavy involvement by tenants in the timing and planning of the redevelopment project, building owners could convert an apartment complex into ownership units at deep discount prices.

Sen. Williams, a Democratic liberal with strong ties to the labor movement, is not pushing this concept because he loves fat-cat real estate investors and landlords. Williams has concluded that in a highly inflationary economy, condominium and co-op conversions are inevitable. They're a natural, understandable response to an economic system that penalizes renters as well as the people who own large-scale rental property.

Far better to create incentives for current building owners to sell apartment units at moderate prices, affordable by a large segment of tenants and prospective home buyers, than to try to ban conversions and turn back the clock.

What's the outlook for enactment of sensible tax assistance like this for housing and other real estate? For 1980, the ball is in the court of the Democratic leadership in the House and Senate. Members of their party—such as Louisiana's Sen. Russell Long, New Jersey's Williams and Texas' Sen. Bentsen—have seized back much of the initiative from the Republicans on the whole tax cut issue.

But they've still got to convince their colleague down on Pennsylvania Avenue, plus the Ways and Means Committee in the House to go along and cut some taxes before time runs out.

[From the Washington Star, Sept. 7, 1980]

Tax-Cut Bill Likely To Carry Rental Housing Incentives

(By Barry G. Jacobs)

It's still too early to tell whether Congress will pass a tax-cut bill this year, but there's a good chance that any such legislation that is passed in 1980 or 1981 will include some incentives for rental housing.

The real estate industry has been lobbying for a bill introduced by Chairman Harrison A. Williams Jr. of the Senate housing subcommittee. A portion of that bill which deals with depreciation has been incorporated in proposals already approved by the Senate Finance Committee. That legislation is expected to reach the Senate floor in mid-September.

Depreciation is a deduction which allows a property owner to recover the tax on the cost of that property over a period of years. In real estate, the cost of a building is depreciable, but not the cost of land.

Depreciation can be straight-line, with

equal deductions taken each year over the theoretical useful life of the property, or accelerated, with larger deductions in the earlier years and smaller deductions later on. The total allowable depreciation for a given property is the same under all methods.

Under the Williams bill, all real estate except low-income housing would be depreciated on a straight-line basis over 20 years. Low-income housing would get 15-year straight-line depreciation. The shorter useful life, for tax purposes, means larger annual deductions and is an additional incentive for investment in low-income housing.

The Finance Committee added a provision allowing 15-year accelerated depreciation for owner-occupied business real estate. This isn't expected to affect residential property.

There are a number of other provisions in the Williams bill which so far haven't been incorporated in the Senate's tax package.

One key provision would repeal Section 189 of the Internal Revenue Code. That section, added to the code in 1976, requires construction-period taxes and interest to be amortized over a 10-year period, instead of being deducted in the year in which they are paid. These front-end deductions have always been an important attraction for investors.

Section 189 is being phased in for most classes of real estate, and it will begin to apply to low-income housing in 1982.

ELIMINATING MIDDLE MAN

Another important section of the Williams bill deals with the tax treatment of condominium and cooperative conversions.

Under present law, if the owner of an apartment building converts the property and then sells the individual units, he is considered a real estate dealer, and any gain on the sales will be taxed as ordinary income. In order to qualify for the much lower capital-gains tax rate, the owner must sell the entire building at one time.

Usually the building is sold to a company specializing in conversions, which then turns around and sells the individual units for a higher per-unit price. In effect, the converter buys the property wholesale and sells it retail.

The Williams bill would eliminate this middle man by allowing the original owner to treat as capital gains his profits on the direct sale of units. This should result in a higher net profit to the owner and a lower price to the unit buyers.

The bill also would eliminate some restrictions on the use of tax-exempt bonds to finance housing.

In housing rehabilitation programs, the bill would authorize the use of tax-exempt bond proceeds to remove prior liens on property being rehabilitated. Generally, bondholders will insist on the security of first mortgages on bond-financed properties, so that in the event of default and foreclosure, they will get first crack at any available funds.

The Internal Revenue Service has ruled, however, that bond proceeds can't be used to clear prior liens on property being rehabilitated without a change in ownership. Such a use, the IRS says, would violate regulations prohibiting prior users of the property (in this case, the owner) from receiving a substantial benefit from the bond proceeds.

This ruling, which blocked a proposed Maryland Community Development Administration rehab program, would be overturned by the Williams bill.

The bill also would authorize advance refunding of housing bonds, a procedure in which a new issue is sold to retire outstanding bonds before maturity. This would allow housing finance agencies to take advantage of declines in interest rates.

The IRS has prohibited advance refundings because they result in having two bond issues outstanding at the same time, increasing the revenue loss to the Treasury.●

CHILE: REPRESSION, FRAUD, AND FARCE

● Mr. KENNEDY. Mr. President, in Chile, September 11 marks the seventh full year that country has endured a military dictatorship—and it has been a year in which repression increased. The Chilean regime now intends to commemorate the coup that halted Chilean democracy with a fraud and a farce—a constitutional plebiscite designed to extend General Pinochet's hold on power perhaps until 1997.

In recent months, the Pinochet regime has renewed the state of emergency, suspended again individual liberties, extended the arbitrary powers of the Chilean secret police apparatus, and engaged in mass arrests, torture, and a sweeping campaign of intimidation.

The Chilean Commission of Human Rights reports more than a thousand persons detained during the first 6 months of 1980, another 500 during the month of July alone. And amnesty international reports that "political arrests and systematic torture of suspects have increased sharply" since last May, and especially since the assassination of the director of the army intelligence school on July 15. Labor leaders, students, and human rights advocates have been sentenced without trial to "internal exile" in remote areas of the country; several hundred professors once more were sacked from the university for political views; and reports of torture, death, and disappearances have occurred with increasing frequency.

With this backdrop of rising repression, the Pinochet regime now proposes to carry out a constitutional plebiscite this Thursday which combines farce, fraud, and tragedy. It demands that voters engage in a ritual designed to create an illusion of legitimacy to obscure the reality of Chilean authoritarian rule.

The farce is the plebiscite itself. Voters will be faced with the threat of jail for failing to vote. Yet, there is no voting list, no alternative to the draft constitution put forward by the junta, no independent check on who votes or who counts the votes. Everything will be run by individuals appointed by General Pinochet. Those who count the votes will be Pinochet appointees; those who review the tallies will be Pinochet appointees; and those who protect the polling places will be Pinochet security forces. Those who can speak on television or have their statements printed without censorship are those who speak for the junta.

It is no wonder that all of the traditional opposition political leaders have spoken out against the plebiscite. Although political parties are not allowed to meet or act, courageous political leaders and legal scholars have challenged the planned plebiscite as being a perversion of democracy.

The Conference of Bishops of Chile only 2 weeks ago stated that conditions for a valid plebiscite do not exist. Among those conditions which they noted were absent are "liberty, a secret ballot, and security in casting one's vote."

The farce not only involves the procedure for the plebiscite but the procedure that produced the proposed constitution as well. In defiance of over one and a half centuries of democratic tradition prior to the 1973 military coup, General Pinochet and the junta handpicked the delegates, reviewed that draft and submitted it for ratification under their own rules.

And the document submitted to the people of Chile by the junta is a fraud—pure and simple. The proposed constitution places few restraints upon the power of the government nor does it establish a framework of law. Instead, it authorizes the abuse of power and assures the personal dictatorship of General Pinochet for at least another decade.

In 1989, it is the junta which will name the President for still another 8-year term—and only at its conclusion—in 1997—is there even a promise of a Presidential election.

All legislative power is to reside—as it has for the past 7 years—in the military junta. There will be no congressional elections through 1990 and perhaps not even then. The ban on political parties and the denial of elected representation would be ratified for another full decade.

It is no wonder that the group of 24, a distinguished committee of legal and constitutional scholars who had offered to prepare an alternative document and requested the chance to comment on the junta's draft, condemned the plebiscite as a means simply of "consolidating the regime" and termed the proposed constitution "a coarse deception." It is, as they noted, "a plebiscite that has as its object the perpetuation of the autocracy that he heads, to complete nearly a quarter century of dictatorial government."

Mr. President, the junta in Chile has been condemned for its human rights abuses by the administration, by the Inter-American Commission on Human Rights, and by the United Nations Human Rights Commission. Its violations of the rights of labor have drawn the criticism of labor unions and the ILO; its abuses have yielded a series of resolutions by international bodies documenting and condemning those actions which have violated its own international and regional human rights obligations. Nor can we forget that the Pinochet regime directed a terrorist assassination in Washington of Orlando Letelier and Ronni Moffit.

In this context, Mr. President, it continues to be essential for the United States to disassociate itself—both publicly and privately—from the Pinochet regime. I hope that the Department of State will reject the upcoming plebiscite as a farce and the draft constitution as a fraud and state our view that we will accept nothing less than an end to human rights abuses and the restoration of democracy. I commend the Department for refusing to allow Chile to participate in the annual hemisphere naval exercises, Unitas XXI, and for continuing to bar aid to the Pinochet government.

I also hope that the United States will support actions in both the Organization of American States and the United Nations to condemn the proposed constitution and the plebiscite as counter to the international obligations of the American Convention on Human Rights and the International Covenant on Civil and Political Rights. There should be no question that continuing repression and denial of democratic process will have grave repercussions on Chile's standing in the international community.●

EXPORT TRADING COMPANIES

● Mr. STEVENSON. Mr. President, American export trading companies could prove especially valuable in arranging U.S. exports to developing countries. Forty percent of U.S. trade is with developing countries and potential growth in their markets is considerably greater than that of the developed nations.

I asked the Department of Commerce and the Department of Agriculture to survey our commercial attachés and agricultural attachés overseas to determine which markets offered the best chances for U.S. export trading companies to expand U.S. exports. The responses suggest widespread opportunities, especially in the rapidly growing economies of Asia, Africa, the Middle East, and Latin America. Among the countries identified where U.S. export trading companies could be particularly effective were: Colombia, Egypt, Hong Kong, the Ivory Coast, Malaysia, Nigeria, India, the Philippines, Pakistan, Yugoslavia , Spain, Peru, Uruguay, and Belgium.

Mr. President, I ask for the responses I received from the Department of Agriculture and the Department of Commerce to be printed in the RECORD at this point.

The responses follow:

U.S. DEPARTMENT
OF AGRICULTURE,
FOREIGN AGRICULTURAL SERVICE,
Washington, D.C., August 1, 1980.

Hon. ADLAI E. STEVENSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR STEVENSON: This is in further response to your request of June 3, 1980, for examples of foreign markets in which U.S. export trading companies might prove useful in expanding markets for U.S. agricultural commodities.

The agricultural counselors, attachés, and officers covering 46 countries have given us their views on the impact that the Export Trading Company Act of 1980 (S. 2718) could have on U.S. agricultural exports. They have also supplied us with information about the presence of foreign trading companies as well as U.S. trading companies and export managers in their countries of assignment.

In seven locations (Belgium, Colombia, Egypt, Hong Kong, Ivory Coast, Malaysia, and Nigeria) our representatives reported categorically that the proposed legislation would be beneficial for U.S. agricultural exports. Reports from 29 countries indicated that a limited or minor positive impact on U.S. agricultural exports could result from passage of the Act. Reports from seven countries indicated the proposed legislation would not have a positive impact on trade. Reports from three countries were indecisive.

Concerning existing exports trading services, U.S. trading companies or export managers were reported in 6 countries, while foreign export trading companies—primarily Japanese—were reported in 20 of the countries surveyed.

We hope the above information will be useful.

Sincerely,

THOMAS R. HUGHES,
Administrator.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 30, 1980.

ROBERT RUSSELL, Esq.,
Counsel to the Subcommittee on International Finance, U.S. Senate, Washington, D.C.

DEAR MR. RUSSELL: As you requested, I am enclosing a summary we have received from our Foreign Commercial Service posts on export trading companies, as well as a post-by-post resume of replies to our circular telegram asking for post views on export trading companies.

I hope this information will be helpful to you.

Sincerely,

DAVID A. ROSS,
Special Assistant to the Director General, Foreign Commercial Service.

Enclosure.

SUMMARY

Subject: Export Trading Companies.

Reference: USDOC 09106, requesting FCS posts to comment on how ETC's could help promote U.S. exports.

Summary of the main points contained in post replies to reference telegram:

Export trading companies (ETC's) could markedly strengthen the position of U.S. exporters in certain overseas markets.

The most effective ETC would be one offering the most comprehensive service: marketing, shipping, insurance, and financing. The latter—financing—is the key element. If the ETC cannot offer clearly competitive financing terms, its other advantages will have only limited chance to come into play.

Where imports are controlled by state trading entities, the importing entities are often required to deal directly with the foreign manufacturers, to the exclusion of ETC's or other intermediaries.

In LDC's pursuing policies of "indigenization", the ETC's would have to operate through indigenous trading firms, the same as any foreign supplier seeking to enter the import market.

Often the role of the ETC will depend upon how far it is able to go in meeting importers' individual needs, such as (a) handling small orders, (b) over-or under-invoicing to minimize import surcharges, (c) offering credit on easy terms, and (d) shipping precisely on schedule. These require knowledge of local import, customs, credit and banking regulations, and readiness to conform closely to individual customers' wishes. ETC's so inclined are able to provide this kind of service, but they are not innately endowed with an exclusive capacity to do so.

In sophisticated industrialized markets, ETC's would not contribute greatly to increased U.S. exports. Local importers and distributors rely on contacts of long-standing directly with foreign suppliers or highly specialized and experienced marketing groups. In general the field is highly developed, complex, and often deals in large volume and long term.

END OF SUMMARY

Attached is a post-by-post resume of the replies received.

POST-BY-POST RESUME OF REPLIES

[Telegram number in parentheses]

BUENOS AIRES (4998)

No experience—no information to report.

PANAMA (0529)

ETC's could be effective if they could provide adequate financing. Field is now limited to a few large U.S. agricultural marketing groups and some small U.S. consulting firms with limited financial capabilities. Japanese are the most active, with ETC's that have their own bank, factory, ship, insurance company, and marketing firm.

QUITO (3984)

Most local agents deal directly with manufacturers to avoid intermediary price markups. As financing is a key consideration, ETC's with banking services would find favor.

MEXICO (10214)

New ETC incentives would not have significant effect, owing to proximity, longstanding preference for U.S. goods and already well-developed channels of supply.

LA PAZ (5139)

ETC's could play a much larger role than at present (a) by providing expertise to meet complicated public sector import procurement requirements, and (b) by finding effective local agents/distributors. Key element is export financing, which ETC's would have to be in a position to provide if they are to succeed.

MONTEVIDEO (2369)

ETC's could offer very real advantages if they could compete more effectively than U.S. exporters do now with European and Asian exporters who accept small orders, invoice at over or under list price to minimize duty, provide easy financing, ship precisely on schedule, and keep informed on intricacies of local import regulations.

LIMA (6219)

Major projects are largely public sector, with few bidders, of which the one with best financing enjoys advantage. With anticipated early expansion of private sector as new government takes over (July 1980), situation is ideal for a large ETC that could provide all engineering studies and equipment, ship, and especially finance (including equity participation of possible).

SANTO DOMINGO (4807)

No visible role for ETC's.

BERN (3649)

ETC's would not contribute greatly to expansion of imports from U.S., owing to sophisticated character of market with long-established trading patterns.

FRANKFURT (07875)

Only Japan has active ETC's in Germany. Germany has several varieties of ETC's active abroad.

DUSSELDORF (1336)

As German market has highly specialized import needs, and financing is readily available, there is only limited potential impact for ETC's.

BRUSSELS (10727)

The ETC approach is worth a try in Belgium, although there are already many small ETC's in existence, and Belgium exporters are themselves sufficiently accustomed to foreign trade as not to be as much in need of ETC's as are U.S. exporters.

BARCELONA (00692)

Legislation to promote creation of ETC's is welcome, as their advantages would have ample scope in Barcelona area, particularly if they are able to offer credit.

OSLO (4438)

ETC's play a very limited role in Norway.

BELGRADE (5613)

U.S. exports are dominated by a few large U.S. firms with the resources and experience needed to succeed in the complex Yugoslav market, ETC's as envisaged in the Stevenson Bill could take the risk and long term approach that now deters many potential U.S. exporters. As the largest U.S. banks are well tied into the Yugoslav market, a provision that would allow them to invest capital and expertise directly in ETC's would add much to ETC's prospects.

VIENNA (09818)

Establishment of ETC's with requisite know-how, international marketing contacts, and financial capacity would be instrumental in expanding U.S. sales in Austria. Services of ETC's would also be welcomed by Austrian exporters who now rely heavily on trading firms in third countries for a large part of their exports outside of Europe.

LAGOS (06792)

ETC's would significantly benefit U.S. firms in Nigerian market, to the extent that ETC's could (a) mount greater marketing efforts by creating larger groupings of firms, and (b) provide increased access to export financing. However, ETC's would have to operate locally through a Nigerian firm, owing to policy of indigenization.

ACCRA (05758)

Role of ETC's in Ghana has not been significant. However, favorable financing is often the most important factor in securing sales. If American ETC's could improve credit terms U.S. suppliers could offer, increased sales would result.

ABIDJAN (6500)

ETC's would provide significant benefit by (1) consolidating the efforts of smaller U.S. firms unable to devote required resources individually, and (2) providing the financial support needed to offer competitive export credit terms.

NAIROBI (13008)

ETC's are not very evident in Kenya; but certainly American ETC's would have useful impact if they could offer financing competitive with the very attractive terms offered by Japanese and European suppliers.

KINSHASA (8890)

Japanese trading companies are very effective in Zaire, and have been instrumental in loss of market share in recent years by U.S. suppliers. Critical factors have been availability of financing and after-sales service which ETC's are able to offer.

ALGIERS (1969)

All foreign trade is the monopoly of state trading corporations, which prefer to deal directly with manufacturer, and regard intermediaries such as ETC's as unneeded middlemen.

KUWAIT (3171)

Despite general Kuwaiti aversion to middlemen, Japanese ETC's are active locally because of their reputation, known reliability, demonstrated performance and competitive terms. No ready vacuum awaits advent of American ETC's, but they could succeed if able to perform at a level competitive with Japanese.

ABU DHABI (1488)

Japanese ETC's are very active locally, performing many services normally provided by foreign commercial attaches (in our case FCS). American ETC's could benefit U.S. exporters by providing rapid communication with U.S. suppliers, knowledge of local market, and willingness to meet buyers' specifications.

JIDDA (04221)

Role of American ETC's would be very limited, owing to legal restrictions against foreign participation in import activities, and well-entrenched Saudi preference in favor of purchasing direct from manufacturers.

KARACHI (3133)

Japanese ETC's are active and effective, and are able to offer lowest bid on most public sector imports (70 percent of total imports) because of (1) favorable financing they can provide and (2) broad range of suppliers from which they can produce a packaged bid combining a variety of equipment to suit buyer. American ETC's would enhance capability of U.S. suppliers to meet this kind of competition.

NEW DELHI (11786)

About 30 Japanese ETC's are active in India, and U.S. firms could also benefit by advantages offered by ETC's, particularly if they enabled U.S. suppliers to offer more liberal financing.

SINGAPORE (06317)

Many local importers now deal through American trading companies with beneficial results. The single most important benefit that American ETC's could offer is more liberal financing for Indian importers.

MANILA (13646)

Japanese share of Philippine market expanded in recent years, while U.S. share shrank, owing largely to marketing and financing capabilities of Japanese ETC's. Establishment of strong American ETC's would markedly improve U.S. competitive position.

WELLINGTON (03015)

ETC's play a minor role, as importers generally deal direct with overseas manufacturers.

MELBOURNE (0994)

Japanese ETC's are active and highly effective. U.S. ETC's could greatly improve the caliber of service provided by U.S. exporters to Australian importers, especially if bank participation led to more attractive credit terms.●

CLARKSVILLE LITTLE LEAGUE CHAMPS

● Mr. SASSER. Mr. President, the State of Tennessee and the citizens of Montgomery County and Clarksville are honored and proud to have been represented in the National Little League Southeastern Region Tournament at St. Petersburg, Fla., this month.

The Clarksville National Little League All-Stars—a talented group of 14 excellent athletes—almost captured the tournament. Although they were defeated in the final game by the champion Tampa, Fla. team, they gave it their best shot and we are very proud of them. These 14 young athletes represented their community well, finishing second in a tournament in which a total of 7,600 Little League players participated.

Under the able direction of team manager Carrol Poole and coach Dan Ender, these youngsters came within two runs of winning the tournament and moving on to the National Tournament at Williamsport, Pa. The team returned to Clarksville on August 24 after a grueling 15-hour bus ride, but they were in high spirits as they were greeted by a crowd of proud parents, friends and loyal fans. They represented their hometown and State with excellence and in the best tradition of sportsmanship. These accomplished players played with tenacity, coming from behind several times to win the State tournament and earn the trip to the Southeastern tournament. They represented several Little League teams in the Clarksville area, and I know all Tennesseans are proud of them. The team members are Jimmy Galbreath, Eric Mazzei, Steve Miller, Craig Cross, Bryan Alsobrooks, John Davidson, Jim Brewer, Brad Cooper, Sean Thomas, Scott McLean, Chris Ender, Timmy Rye, Frank Goodlett and Chad McKinney.

I am sure this competition has been a tremendous learning experience for the players. They have gained self-confidence and wisdom in the past several weeks. I wish them continued success in the future.●

UNITED STATES-SOVIET RELATIONS

● Mr. KENNEDY. Mr. President, it is clear that the Soviet occupation of Afghanistan has created strains in United States-Soviet relations and prompted a reappraisal of the bilateral relationship. In a thoughtful article in the August 3 edition of the St. Louis Post-Dispatch, David Linebaugh, former deputy assistant director of the U.S. Arms Control and Disarmament Agency, addresses the fundamental issues underlying our relationship with the Soviet Union and methods for resolving them.

Mr. Linebaugh states:

> The obligation of American leadership is both to protect the nation with a strong defense and to explore the possibilities for easing tension and finding common ground with the Soviet Union.

He claims that if we are to accept the fact that our relationship with the Soviet Union will be "differentiated"—that is, containing "some good elements and some bad elements"—then we must not foreclose opportunities for cooperation. In particular, we must engage in negotiations on "the issues currently most critical to United States-Soviet relations—Afghanistan, the nuclear arms race in Europe, and SALT."

Mr. Linebaugh states that the goals of negotiation cannot be readily achieved. But he claims that:

> The United States has powerful bargaining cards: normalization of relations in trade, grain sales, and exchanges; participation in guarantees against interference in Afghanistan's internal affairs; a return to evenhandedness in our relations with Russia and China and others.

Most important, negotiation remains the only means for achieving such important objectives as a near-term Soviet withdrawal from Afghanistan and a halt to the race in theater and strategic nuclear arms.

Mr. President, United States-Soviet relations are in a state of flux. But certain principles for guiding our relationship with the Soviet Union remain unchanged: We must both oppose Soviet aggression and search for ways to reduce tensions. I submit Mr. Linebaugh's article for printing in the RECORD.

The article is as follows:

RESUME THE DIALOGUE—PARALLEL TALKS WOULD ENHANCE U.S. BARGAINING POWER

(By David Linebaugh)

Dean Acheson, Edmund Muskie's model Secretary of State, advised that "the important thing in thinking about international affairs is not to make moral judgments or apportion blame but to understand the nature of the forces which are at work as the foundation for thinking about what if anything can be done." Mr. Acheson was a pragmatist.

It is not possible for an outsider to understand the forces at work within the Kremlin although it is evident that the Soviet decision to occupy Afghanistan was not an isolated event but was made within the context of a gradual deterioration in relations with the United States extending over several years. But it is possible, as Mr. Acheson suggested, to think about what can be done.

The obligation of the American leadership is both to protect the nation with a strong defense and to explore the possibilities for easing tension and finding common ground with the Soviet Union. For what if anything can be done to mitigate the deepening crisis with the Soviet Union can only be answered through the pragmatic test of negotiation.

If the United States is prepared to accept a differentiated relationship with the Soviets—some good elements and some bad elements—then negotiation might bear fruit, as it has before. There are still favorable forces at work on the world scene, as well as unfavorable ones. Europe is stable and there is little chance of a fundamental change in alignments in Europe which would upset the global balance. China inhibits Russia, providing Russia does not feel pushed to the wall by an intemperate and provacative U.S.-China military relationship.

Mutual nuclear deterrence remains effective; both sides have secure retaliatory forces. The eruptive force of nationalism in the Third World bars excessive Soviet influence even though some Third World countries—Vietnam, for example—will exploit the ambitions of the superpowers to gain support in their regional quarrels. All of these factors constrain the Soviet Union.

The crisis over Afghanistan has made the revival of intensive communication with the Soviets urgent and important. Indeed, the invasion of Afghanistan may itself have been the result of Soviet miscalculation due in part to poor communication.

The crisis over Afghanistan has also made negotiation to limit Soviet military power urgent and important. Somewhat paradoxically, it is now more rather than less important to ratify SALT II, and to make a start on SALT III and on limitations on Russian power in Europe.

An active dialogue between Moscow and Washington would help re-establish the cohesion of the Western alliance, and complement and support the initiatives of Lord Carrington of Britain, Giscard d'Estaing of France, and Helmut Schmidt of Germany. The West would again present a united front to Moscow.

Parallel negotiaitons on the issues currently most critical to U.S.-Soviet relations—Afghanistan, the nuclear arms race in Europe, and SALT—would enhance American bargaining power and offer a better chance of success than negotiations focused just on Afghanistan.

The goals of negotiation are ambitious: Soviet withdrawal from Afghanistan; a reduction in Soviet missile deployments against Western Europe; and substantial cuts in Soviet strategic forces that threaten America's land-based force.

But the United States has powerful bargaining cards: normalization of relations in trade, grain sales, and exchanges, including non-discriminatory trade and credit; participation in guarantees against interference in Afghanistan's internal affairs; a return to even-handedness in our relations with China and Russia; a deferral of American missile deployments in Western Europe, acceptance of changes in SALT II to take account of the delay in ratification; and a deferral of American deployments of strategic weapons, including M-X, which would pose a first-strike threat to the Soviet Union.

The United States has made a moral judgment about the Soviet invasion of Afghanistan. It is time we turned to the pragmatic task of seeing what can be done to relax tension and build a more constructive relationship with the Soviet Union.●

THE INFANT FORMULA ACT OF 1980

● Mr. WILLIAMS. Mr. President, yesterday the Senate passed S. 2490, the Infant Formula Act of 1980. This act was designed to assure the parents of this country that the infant formula they purchase will be safe for their children to consume. I wish to commend Senator Metzenbaum for his efforts to move this legislation in the 96th Congress. I would also like to commend all the members of the Committee on Labor and Human Resources for their work on this bill.

Little more than a year ago, it was first discovered that there were infant formulas on the market deficient in chloride, a vital nutrient. However, before that discovery and the subsequent removal of these formulas from the shelves, some 139 infants who had consumed the formulas as their sole source of nourishment became dangerously ill. They became lethargic, lost weight and developed severe blood disorders. Some doctors thought these infants might have a rare kidney disease; others diagnosed some of the cases as a "failure to thrive."

Mr. President, the omission of chloride with its grim consequences pointed out the need for standards of quality and safety for infant formulas.

The Infant Formula Act establishes these standards. The timely passage of this act was brought about through the dedication of parents of infants afflicted by the defective formula and of legislators in the House and Senate who moved rapidly to correct the problem. This legislation will safeguard infants from nutrient deficiencies through the authority given to the Secretary of the Department of Health and Human Services and through the establishment of regulations by the Food and Drug Administration.

Mr. President, it was heart warming to see industry, Government, and parents working so closely together to resolve this issue. Our mutual concern for the health of our children provided us with a catalyst for action. That same concern will make us more alert to dangers of this kind in the future.●

STATEMENT OF SENATOR PRYOR ON CONSULTANT REFORM ACT OF 1980

● Mr. SASSER. Mr. President, I wish to place in the Record the opening statement of the distinguished Senator from Arkansas (Mr. Pryor) at a Governmental Affairs Committee hearing August 19 on S. 2880, the Consultant Reform Act of 1980. I am a cosponsor of that legislation introduced by Senator Pryor and which is cosponsored by 16 other Senators, and I believe the bill and the statement of Senator Pryor should have the attention of every Member of the Senate.

The statement follows:

Statement of Senator David Pryor

I would like to welcome you all to our first hearing on the Consultant Reform Act of 1980. This bill will, for the first time, bring the consulting bureaucracy into the sunshine—as a first step toward its control in the public interest.

I began my investigation of the federal government's use of consulting contractors over a year ago, when I became aware of works that was duplicative, senseless, and overpriced. It is now apparent that what I saw was not random waste, but the by-product of a basic change in the way our government does its work. Today, the passage of each new law, the emergence of each new "crisis," the creation of each new program, is the cause for further wholesaling of the basic work of government to an evergrowing contractor workforce that, by default, is fast becoming the intelligence of government.

As the General Accounting Office has recently summarized, the consulting "problem" has been with us for at least two decades, and federal managers have done little to bring it under control. It is now apparent that the issues posed by the use of consultants are not simply management issues, but basic questions of government that command the attention of us all. At the outset, these issues include the sheer invisibility of a large and growing portion of the federal workforce, the related lack of accountability of that workforce and the failure to apply to that workforce even the minimal codes of ethics and disclosure that apply to "officials" at virtually every level of American government.

The issues we face are very important, and they have too long been neglected by Congress. It is important to state clearly what we propose to do—and what we propose not to do.

When we began to draft legislation, we thought that we could deal with "abuses" by simple and direct prohibitions—for example, by outlawing all contracts where conflicts of interest are presented, or prohibiting the use of consultants to "make policy." As our work proceeded, it became apparent that another layer of regulatory prohibitions is not, at least at this time, the answer.

First, we found that, at least in some important cases, the problem is not the absence of rules, but the failure to honor them—or, by the same token,—the creativity employed in finding new ways to evade them. Indeed, it became apparent that the "official" response to each wave of consulting scandals is the restatement of existing "rules" and "new" rules, and a promise of better management. It is now evident that the issuance of "new" rules—as opposed to the enforcement of "old" rules—has become a powerful way of avoiding confrontation with, and control of, the real problems.

Second, it became distressingly apparent that, despite decades of management concern, we know very little about federal use of consultants. It is difficult to contrive new regulatory schemes in the dark.

The bill we have proposed therefore, is a sunshine bill. It does not try to tell agencies that they must—or must not—use consultants. It says to agencies, "If you do use consultants, we in Congress and the public want to know about it. We want to know who you use, what you have them do, and how you use the work they do for you." The record we have developed shows that the need for sunshine could not be more pressing.

Quite simply, we have found that the federal government has not only contracted out virtually every type of basic government activity, but has done so on terms designed to insure the invisibility of this reliance.

Today, for example, we will talk with the GAO about their review of the use of consultants in the preparation of "official" reports to Congress. The GAO not only found the frequent use of consultants for this work, but found that agencies may often present the final product as their own—that is, without hint of "unofficial" help. Typically, as in this example, the public has no way of suspecting the presence of consultants behind such basic documents. Nor, by the same token, would it have reason to know that the hidden hands behind the report also work, as it often is the case, for industries that are regulated or subsidized by the agency.

We found that high officials were themselves unaware of, or unable to produce, basic information about the use of consultants by their agencies.

For example:

We heard high officials tell us that they could not tell us how many consulting contracts their agency has, much less how many individual employees are paid for under contract.

We have watched the Department of Energy discover, in response to our request for information, that it literally does not possess complete copies of contracts under which it is apparently paying taxpayer money.

We heard high agency officials tell us that they were unaware, until we told them, that consultants are being used to perform the basic work of their agency. Only four weeks ago, a top DOE lawyer expressed shock when told that DOE uses consultants to draft legislation—"I had rather thought," he observed, "that we lawyers in the General Counsel's office were the ones that drafted legislation."

We found that responsible agency officials do not know who their consultants are. Thus, DOE claimed until we brought it to their attention last month, DOE was unaware that consultants it has long relied on for some of its most important work also claim to do basic work for OPEC oil companies and major private oil companies.

We found that officials actively seek to withhold basic information about the use of consultants, not only from the public, but often from their peers. For example:

We found that within the bureaucracy, officials adopt as their own—without attribution—memoranda, handbooks, forms, briefing packages, and drafts of plans and proposals that were prepared, and often even typed, by contractors.

We found that agencies responded to Freedom of Information Act requests by denying the public even the most basic information about consulting contracts—including, incredibly, copies of "public" contracts themselves.

Ironically, we also found that while agencies denied such information to the public, it appeared to be available to the contractors themselves. For example, we found that contractors were placed in charge of official contract files. Moreover, we found that agencies rewarded contractors for the possession of information about their competitors. For example, we found that DOE recently awarded a ten million dollar contract to a bidder who assured DOE that it would employ "targeted" members of the incumbent contractor's workforce. While the winning bidder was rewarded for knowing the names of its competitors' employees, DOE refuses to disclose such information to the public.

Most incredibly, it appears that the people kept most in the dark on the operations of the consulting bureaucracy are those who pay for it—the public.

In proposing sunshine legislation we hope to serve three basic ends—the protection of the integrity of government; the enforcement of existing rules; the production of information on which to base future reform.

First, we will affirm the public's right to know who governs it, and how its money is spent.

Today, "official" employees are governed by strict ethics and disclosure rules. Incredibly, such rules have not been applied to the consulting workforce—even though consultants may not only perform the same work performed by high government officials, but receive higher pay than that allowed "officials."

Second, we will employ sunshine as the cheapest, and best, deterrence to the continuation of the abuses that characterize the use of consultants today. The potential embarrassment of public explanation should, in itself, deter abuse. For example:

The Department of Transportation awarded a sole source contract for "a comparison of U.S. policies concerning the maritime liner industry and international airline industry." It explained that the Department—which has about 70,000 "official" employees—"is not now currently staffed with officials who have sufficient knowledge of both industries or who have sufficient experience in the field of analysis and development of policies concerning both industries." Would the press and the public leave unexamined the incredible claim that a private contractor is uniquely qualified—to the exclusion of the U.S. Department of Transportation—to explain U.S. transportation policy?

Top HEW officials recently tried to push through a sole source award to design a logo and letterhead for the new Department of Health and Human Services. They sought to justify the award, in part, by stating that capability of the Department to do the work is "nil." What would the public say about this commentary on the capability of the Department's 160,000 employees?

The evidence available to us suggests that, upon the provision of the information required by the bill, contractors themselves will be strong forces in deterring abuses. For example, as we have examined agency contact files we have often found contractors inquiring about a piece of work only to be told that it has already been awarded on a sole source basis. The best check on the wide use of "phony" sole sources is the assurance that alternative sources have timely knowledge of work.

Third, the disclosure required by this bill should permit us to begin to develop basic information now lacking about the consulting bureaucracy—information on which further reforms can be built.

Those who could claim that the coverage of the bill is overbroad and that the topic is best dealt with by Executive branch management would both misread the bill and ignore the sad story of decades of management failure. The record before us, including GAO reports, Congressional inquiry and investigation, and press reports, makes amply clear that a management scheme which singles out a category called "consultants" for special treatment will be evaded with the greatest of ease by the shifting of those contracts into other categories. Moreover, the same record makes clear that the "regulations" of the past, and those of today, are toothless. They are not perceived by top officials as "regulations," but as "guidelines." That is, they are to be honored only in the breach, and can be, and are, ignored with impunity.

The data collected by the Federal Procurement Data System (which, it should be noted, GAO recently found to be "'inaccurate and incomplete") shows the folly of an attempt to control "consulting" by limiting controls to contracts which are deemed to fall within some definition of that term. According to FPDS, the federal government spent only 381 million dollars for consulting services in FY 1979—but over one half billion dollars for "training," over three billion for "studies," and further billions for research and development. As is obvious, many contracts that might be called "consulting" contracts may just as readily fall into the other categories. The public interest in controlling the work does not diminish if it is called "training" or "study" instead of "consulting." Yet controls can be readily evaded by the painless bureaucratic act of pigeon-holing contracts in a category other than "consulting." This, as the GAO has found, is what has been happening—as evidenced by the figures just cited. As one responsible agency official explained to my staff, given the reviews and paperwork that result from defining a contract as a "consulting" contract, the temptation to bury the contract in another category is overwhelming.

In sum an approach to consultants that, like past and present management efforts, focuses solely on that category and, moreover, does not penalize violations will merely add another layer of paperwork veneer to business as usual.

The bill that we propose covers the contracting universe only in order to provide the necessary information to ensure that the "consultant" problem is not "solved" by the illusion of defining contracts out of the "consulting" category into other categories. It does this not by broad regulation of the universe, but by the requirement of the minimal disclosure that, it would seem, the public has a right to already—and moreover, that a prudent management should already have at its fingertips. In sum, we are willing to limit and have limited the scope of key provisions of the bill. To limit the entire bill to a narrow category of contracts, however, would not prevent, and might encourage, the disappearance of the work we seek to control into a vast and in many respects unknown universe.

In conclusion, I must emphasize that the bill we have proposed is, in view of the magnitude of its subject, a very modest one. It does not impose new layers of regulation, but rather, the disclosure of ongoing activities. As the Congressional Budget Office has found, "With the exception of Section 207 relating to contract evaluation [which CBO says may have a small cost, depending upon its implementation], this bill is not expected to result in any significant cost to the government." It must be emphasized that even in emphasizing disclosure, the bill provides requirements that are quite modest. For example, the conflict of interest disclosure required of contractors is essentially identical to that already required of contractors by the Department of Energy, and perhaps other agencies.

To state that the bill is modest, of course, is not to suggest that it will not be effective. Rather, it is to state that those who would propose to limit the sunshine in the bill bear a very strong burden. They must explain to the American public why it is that the public cannot know the most basic information about a hidden workforce to whom it not only pays billions of dollars, but to whom we are increasingly entrusting by default the basic work of government.●

HUMAN RIGHTS ON TAIWAN

● Mr. KENNEDY. Mr. President, Dr. Trong R. Chai, professor of political science at Medgar Evers College of the City University of New York and representative of the Formosan Association for Human Rights, addressed a congressional luncheon seminar on August 7 on the continued lack of human rights and the widespread urge for political liberalization on Taiwan. In order to prevent disruption and instability in Taiwan and to help strengthen the ties between the United States and Taiwan, Professor Chai urged the Senate and the House of Representatives to take actions leading to governmental reforms and a more open society.

I ask that Professor Chai's speech be reprinted in the Record.

The remarks follow:

Human Rights in Taiwan: Congressional Actions Urged

(By Dr. Trong R. Chai)

Mr. Chairman, Hon. Clark, ladies and gentlemen, I am delighted to be here today to discuss human rights violations and political unrest in Taiwan resulting from the failure of the Kuomintang (KMT) to heed the people's demands for a change in outmoded structures and policies.

Since the Chiangs fled to Taiwan in 1949, the KMT has claimed itself the sole legitimate government of China, with the recovery of the Chinese mainland its fundamental policy. Consequently, political institutions established in China in 1947 are still kept in Taiwan, and the full participation of Taiwanese in these institutions is virtually denied.

This deprivation is evidenced by the fact that native Taiwanese, who constitute 85 percent of Taiwan's total population, occupy only 7 percent of representation in national legislative bodies. Even the Governor of Taiwan is appointed by Chiang, never elected by the people of Taiwan. Moreover, because of the KMT's insistence that it represents all China, Taiwan has been almost completely isolated from the international community. It was expelled from the United Nations in 1971, from the Olympics in 1979, and from many other international organizations at various times. Today, there are fewer than 20 nations which maintain diplomatic relations with Taiwan's Nationalist regime, and none of these countries is a big power.

The KMT has imposed martial law on the Taiwanese people for more than three decades—the longest period of martial law in history. As a result, the people of Taiwan have been deprived of such basic rights as freedom of speech and assembly. In addition, strikes are outlawed and civilians can be court-martialed.

To effectively counter Chinese Nationalist rule, opposition politicians formed a corporation last summer to publish a magazine called Formosa. Soon, this journal, the voice and hope of Taiwan's democratic movement, became the bane of Chiang's existence, and the KMT's hostilities toward Formosa culminated in its handling of the commemoration of Human Rights Day by the people of Kaohsiung, the second largest city in Taiwan, on December 10, 1979.

On that day, riot police first blocked streets in an attempt to prevent the populace from attending the rally and, after failing to do so, spread tear gas into the crowd of tens of thousands. The riot police then refused to give the demonstrators a way out of their rally site—a violation of the first rule of peaceable crowd control—and touched off club fights with the people. "No more than five or six people on both sides were hurt," according to the New York Times of March 23, 1980.

The KMT immediately used this incident as a pretext to launch a crackdown on its political opponents. Nearly one hundred prominent political and church leaders, human rights workers, and intellectuals were subsequently arrested, whether or not they had attended the meeting. Almost all those arrested asserted in court during subsequent trials that they had been subjected to various forms of mental and physical torture. Some of them were convicted by a military court for sedition, with their sentences ranging from 12 years to life imprisonment. The penalty was severe enough to draw outcries not only from church and human rights organizations but also from the State Department.

A terrible incident occurred to one of the prisoners, Lin Yi-hsiung. On February 28, 1980, three hours after his mother had spoken over the phone with a human rights worker in Japan about the torture he had undergone in prison, Mr. Lin's mother and twin 7-year old daughters were stabbed to death in his home and another daughter was severely wounded.

These harsh measures will no doubt make the Taiwanese people feel that Chiang's regime is no less oppressive than the Communist Party of China and that it makes little difference if the KMT or the CPC governs them. The spirit and determination of Taiwanese to resist Chinese aggression will, therefore, be greatly weakened. If their will to freedom is lost, the lesson learned from the war in South Vietnam shows, Taiwan will perish, even though the United States provides the KMT with a large quantity of sophisticated weapons.

Current educational and economic development in Taiwan simply do not allow dictatorship. Only when differences between the KMT and the Taiwanese people are resolved in a peaceful, democratic manner, will political stability in Taiwan be realized. High-handed suppression by the KMT will only escalate popular resistance, and an unstable Taiwan will give China an excuse to "liberate" Taiwanese from the KMT's oppression.

Events in Iran and Afghanistan demonstrate that the best way to deal with a crisis is to prevent it from occurring, not wait until it occurs. The United States can prevent a crisis in Taiwan—even strengthen Taiwan's defense—if Congress decides to take the following actions:

1. intensify its investigation of violations of human rights by the Taipei authorities by sending delegations to Taiwan and holding Congressional hearings at home;
2. pass a resolution to express its concern over the current human rights situation in Taiwan, as the Canadian Parliament has done recently, and to urge the KMT to lift its martial law;
3. ban the sale to Taiwan of any kind of military goods and services until martial law has been lifted and violations of human rights have been corrected—in particular, until all people recently arrested for the Kaohsiung incident have been freed.

In fact, such actions by Congress are required by the Taiwan Relations Act of April 10, 1979, which clearly states: "Nothing contained in this act shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States."●

REPORT ON EXPENDITURES BY DOD FOR I.R. & D. AND B. & P.

● **Mr. CULVER.** Mr. President, section 203 of Public Law 91–441 requires the submission to the Congress each year of a report on funds spent by the Department of Defense for independent research and development and for bids and proposals, commonly referred to as I.R. & D. and B. & P.

This aspect of the Department of Defense research and development program receives little attention and is not well understood. These costs are surcharges added to the cost of DOD procurements and are designed to cover the cost of preparing bids and proposals as well as to perform independent research and development of projects chosen by the companies. In simple terms, these are the funds that allow companies to remain competitive in fields of their choosing. These are the funds that insure the availability of qualified competitive bidders when DOD needs new weapons and equipment.

As the report shows, the I.R. & D. costs for 1979 were $643 million for DOD and $65 million for items procured by DOD for foreign military sales. The bid and proposal costs for 1979 were $479 million for DOD and $38 million for foreign military sales. The total I.R. & D. and B. & P. costs were $1.2 billion, an increase of 10 percent over 1978.

Mr. President, I ask to place in the Record a summary report of independent research and development and bid and proposal costs for the years 1978 and 1979. I would also advise my colleagues that a more detailed report is on file with the Armed Services Committee. The detailed report shows the I.R. & D. and B. & P. costs by company. Because of the sensitivity of private company data it will not be made public.

The material follows:

The Undersecretary of Defense,
Committee on Armed Services,
Washington, D.C., March 14, 1980.

Hon. Walter F. Mondale,
President of the Senate,
Washington, D.C.

Dear Mr. President: The Secretary of Defense has required that I prepare and submit to you the report of Independent Research and Development and Bid and Proposal costs required under Section 203, paragraph (c) of the 1971 Department of Defense Appropriation Authorization Act (PL 91–441). This section requires the submittal of an annual report to the Congress on or before March 15th each year setting forth—

"(1) those companies with which negotiations were held pursuant to subsection (a)(1) of this Section prior to or during the preceding fiscal year of the Federal Government, together with the result of those negotiations;

(2) the latest available Defense Contract Audit Agency statistics, estimated to the extent necesary, on the independent research and development or bid and proposal payments made to major defense contractors, whether or not covered by subsection (a)(1) of this section during the preceding calendar year; and

(3) the manner of his compliance with the provisions of this Section, and any major policy changes proposed to be made by the Department of Defense in the administration of its contractors' independent research and development and bid and proposal programs."

The report is in three parts corresponding to the three items quoted above. Parts I and II were compiled from detailed data pertaining to individual companies. This detailed company information is very sensitive and is not included in the report, however, it will be made available for review.

Sincerely,

William J. Rey.

Independent Research and Development Costs and Bid and Proposal Costs

PART I

Those companies with which negotiations were held pursuant to subsection (a)(1) of this section [203] prior to or during the preceding fiscal year of the Federal Government, together with the results of those negotiations.

In accordance with the above requirement, the attached Schedule A provides data pertaining to the negotiations conducted in the Government's fiscal year 1979.

SCHEDULE A

I.R. & D./B. & P. REPORT—PART 1: NEGOTIATIONS COMPLETED IN FISCAL YEAR 1979 AND RESULTS OF THOSE NEGOTIATIONS

[Dollar amounts in thousands]

Contractors' fiscal year	Number of companies	Total program dollars proposed by contractors			Total advance agreement ceiling dollars negotiated by DOD			Estimated DOD share of ceiling dollars negotiated		
		I.R. & D.	B. & P.	Total	I.R. & D.	B. & P.	Total	I.R. & D.	B. & P.	Total
1978	1		$1, 325	$1, 325		$1, 325	$1, 325		$847	$847
1979	77	$2, 107, 930	849, 635	2, 957, 565	$1, 508, 174	724, 247	2, 232, 421	$667, 001	489, 619	1, 156, 620
1980	19	897, 642	151, 534	1, 049, 176	534, 561	131, 659	666, 220	134, 869	86, 068	220, 937
1981	2	21, 150	10, 550	31, 650	19, 050	9, 700	28, 750	7, 521	3, 617	11, 138

PART II

Latest available Defense Contract Audit Agency statistics, estimated to the extent necessary, on the Independent Research and Development (IR&D) or Bid and Proposal (B&P) payments made to major defense contractors whether or not covered by Subsection (i) (1) of this Section [203, PL 91-441] during the preceding calendar years.

The statistics required are provided in the attached DCAA report. The report shows total IR&D and total B&P costs incurred by the contractors reviewed, the amount accepted or recognized by the Department of Defense and the DoD share. In addition, total sales of the contractors are shown along with the portion representing DoD sales.

The amount listed on Page 1 under the column heading "Accepted by Government" represents the sum of the ceilings negotiated with individual contractors as well as the sum of amounts recognized for certain other contractors who had no advance agreements. These accepted amounts are not the costs reimbursed by the DoD but are the amounts that the DoD recognizes for allocation to all the contractors' business. The DoD portion is shown under the column headed "DoD share." Please note that the Foreign Military Sales (FMS) portion has been broken out separately, because these costs are not costs to the DoD. Thus, the IR&D costs to the DoD for 1978 and 1979 are as follows:

[In millions]

	1978	1979
I. R. & D.	**$578**	**$643**
B. & P.	**430**	**479**
Total	**1, 008**	**1, 122**

On pages 2 and 3 of the report the totals shown on page 1 are broken down to show, respectively, the portions applicable to contractors for which advance agreements were required and the portion applicable to contractors for which advance agreements were not required. The foreword appearing in the DCAA report explains the basis for the cost data reported.

It will be noted that data for both 1978 and 1979 are furnished. It has been the practice to update data previously furnished because latest year figures include significant amounts of estimated information. The 1978 figures presented here have had most of the estimated data replaced with actual data. The report furnished next year will similarly update the 1979 figures.

PART III

The manner of his compliance with the provisions of this section, and any major policy changes proposed to be made by the Department of Defense in the administration of its contractors' Independent Research and Development and Bid and Proposal Programs.

During the past year, we believe our implementation of Section 203, PL 91-441, has been in full compliance with that section. We have not revised any of our major policies for administration of contractors' Independent Research and Development and Bid and Proposal programs.

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED BY MAJOR DEFENSE CONTRACTORS IN THE YEARS 1978 AND 1979

FOREWORD

This summary report presents the latest available Defense Contract Audit Agency (DCAA) statistics on the independent research and development (IR&D) and bid and proposal (B&P) payments to defense contractors. The statistical data are to be included in the Secretary of Defense's annual report to the Congress on or before 15 March 1980, in accordance with paragraph (c), Section 203, Public Law 91-441. The constraints of the IR&D and B&P ceilings mandated by Public Law 91-441 are not applicable to DoD contracts for Foreign Military Sales (FMS). The data in this summary report are similar to that previously furnished to the Office of the Under Secretary of Defense, Research and Engineering (Contracts and System Acquisition), for contractor fiscal years 1977 and 1978.

Page 1 shows the overall IR&D and B&P costs incurred by 93 defense contractors during their fiscal years 1978 and 1979, amounts accepted by the Government, and the Department of Defense (DoD) share of amounts accepted. The amounts accepted by the Government are allowable and allocable to all contractor work performed—Government and commercial. The DoD share of the costs accepted each year is the contractors' allocation of such costs to DoD work. In addition, this summary shows related sales achieved by the 93 contractors, comprising 239 reporting divisions and/or operating groups.

The major defense contractors in this summary are those which had an annual volume of costs incurred of $30 million or required 5,000 or more man-hours of DCAA's direct audit work a year. This summary also includes other contractors which, although not meeting the above criteria, negotiated IR&D/B&P advance agreements so that the summary on page 2 will be compatible with the advance agreement reports prepared by Army, Navy, Air Force, and the Defense Logistics Agency. Contractors specifically excluded from this summary are construction companies, educational institutions, foreign contractors and overseas operations of U.S. contractors, insurance companies, marine transport contractors, and military medicare contractors. These contracting activities incurred nominal or no IR&D/B&P costs.

DCAA obtained the IR&D/B&P cost and sales data from contractors' records, but such data do not necessarily represent audited amounts. Included in the costs shown are amounts accepted by the Government in overhead negotiations and through advance agreements. Where actual cost and sales data were not available, as in the case of contractors which had not closed their books for 1979, DCAA auditors obtained reasonable estimates. Where costs not charged to IR&D were determined to be more properly classified as IR&D, these costs were reclassified by the auditors and included in IR&D costs incurred. The amounts of such reclassifications are $.7 million per year for 1978 and 1979. Reclassified costs are accepted to the extent that the adjusted IR&D costs accepted do not exceed negotiated advance agreement ceilings.

Page 2 shows the extent of advance agreements in effect during 1978 and 1979. Page 3 shows costs not subject to advance agreements.

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED AND SALES ACHIEVED BY MAJOR DEFENSE CONTRACTOR

[For contractor fiscal years 1978 and 1979]

	1978 (In millions)			1979 (In millions)		
	Costs incurred	Accepted by government	DOD share	Costs incurred	Accepted by government	DOD share
Independent research and development (I.R. & D.)	$1, 788	$1, 365		$2, 104	$1, 517	
DOD excluding foreign military sales (FMS)			$578			$643
DOD FMS			65			65
Bid and proposal (B. & P.)	780	662		839	723	
DOD excluding FMS			430			479
DOD FMS			40			38
Total, I.R. & D. and B. & P. costs	2, 568	2, 207	1, 113	2, 943	2, 240	1, 225
Sales—Total, government and commercial		$62, 079			$72, 669	
Sales—DOD excluding FMS		28, 299			32, 584	
Sales—DOD FMS		3, 594			2, 799	
Sales—Total DOD		31, 893			35, 383	

SUMMARY OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS INCURRED AND SALES ACHIEVED BY MAJOR DEFENSE CONTRACTORS—Continued

[For contractor fiscal years 1978 and 1979]

	With advance agreements							
	1978 (in millions)				1979 (in millions)			
	Incurred	Amount by government	Share	Number of divisions	Incurred	Amount by government	Share	Number of divisions
Independent research and development (I.R. & D.)	$1,777	$1,356	$637	206	$2,095	$1,510	$705	216
Bid and proposal (B. & P.)	767	650	462	206	822	707	506	216
Total, I.R. & D. and B. & P.	2,544	2,006	1,099		2,917	2,217	1,211	
	Without advance agreements							
Independent research and development (I.R. & D.)	$11	$9	$6	33	$9	$6	$4	23
Bid and proposal (B. & P.)	13	12	7	33	17	16	10	23
Total, I.R. & D. and B. & P.	24	21	13		26	22	14	

INVESTIGATION OF THE COMPROMISE OF TRIGON

● Mr. McCLURE. Mr. President, I fully support the request by Senators DANIEL PATRICK MOYNIHAN and MALCOLM WALLOP for the Senate Select Committee on Intelligence to investigate the circumstances surrounding the loss of the best intelligence source we had in the Soviet Union in the 1970's, an agent code named Trigon, who was arrested, tried for treason, and executed by the Soviets in 1977. The compromise of Trigon, who had been maintained for many years as an important agent within the Soviet Government, in the very early days of the Carter administration has never been thoroughly investigated. There have been reports, such as that by Robert Moss in June of 1979, that a "senior official of the National Security Council" was responsible for the compromise of Trigon when he leaked the existence of a "Blue-Line" document to an agent of the Soviet bloc.

Now it is difficult to imagine that even a senior official of the Carter administration would be incompetent enough to do such a thing, but in the aftermath of the revelation of the leak of the "stealth" information by the White House and Defense Department and the recent damaging leak attributed to a staff member of the NSC revealing cooperation on intelligence matters between the United States and Red China, charges of this type must be given more credence.

Senator HUMPHREY has written to the Director of Central Intelligence, Adm. Stansfield Turner, concerning the accuracy of the Moss story. I would hope that this would be one of the issues that the Senate Intelligence Committee would look into.●

MEXICAN INDEPENDENCE DAY

● Mr. RIEGLE. Mr. President, September 16, 1980, marks the anniversary of Mexico's Independence Day. The people of Mexico have endured the tribulations that face every nation with courage and strength and through the years have established a strong and honorable self-government which I believe is worthy of the highest international respect. The people of Mexico have consistently worked for the betterment of their nation and through this experience Mexico has become a society enriched by its most essential asset—a strong and proud people.

All people in the United States can appreciate the struggle for freedom and democracy in Mexico, since the independence of this Nation was also achieved through great commitment and sacrifice.

Independence day for any nation is a time of celebration, but also a time to look both to the past and to the future. The people of Mexico should take great pride in their heritage and the contributions they have made to not only their own nation but also to the world. The United States has especially benefited from its friendship with its neighbors in Mexico.

The millions of Mexican Americans now living in the United States have made great contributions to every facet of American society: the arts, music, literature, religion, philosophy, economics, public service and in many other fields. For the many outstanding contributions made by Mexican Americans, the United States should be deeply grateful and hopeful that the role of Hispanic Americans will continue to expand in all aspects of American endeavor.●

WILL THE UTILITY SERVICE OBLIGATION BECOME THE VICTIM OF ECONOMIC THEORY?

● Mr. TALMADGE. Mr. President, I would like to call the attention of my Senate colleagues to an interesting article entitled "Will the Utility Service Obligation Become the Victim of Economic Theory," which appeared in the March 27 edition of Public Utilities Fortnightly and is based on a presentation by Mr. Louis Flax before the 1980 Rate Symposium on Problems of Regulated Industries at Kansas City, Missouri on February 11. Public Utilities Fortnightly has been well known in public utility circles over the years as the source of a great many authoritative articles on a variety of problems facing that industry.

The Kansas City rate symposium is jointly sponsored by the American University; the Missouri Public Service Commission; the University of Missouri-Columbia; and Foster Associates, Inc.; under the auspices of the Institute for Study of Regulation. It has rapidly reached the status of one of the most prestigious of forums on utility rate matters. Mr. Flax has had long experience in public utility regulations as both an engineer and an attorney, extending back to 1948. That experience includes employment by the Federal Power Commission and the Atomic Energy Commission as well as some 24 years in the private practice of law. He is presently a partner in the firm of Sutherland, Asbill, and Brennan.

In this article, Mr. Flax responds to the increasing pressure to minimize the service obligation of regulated industries in favor of what is termed conservation or economic efficiency. Those favoring this approach claim that conservation and economic efficiency will be achieved by predicating rates on marginal costs which will simulate competitive pricing. Mr. Flax points out that regulated industries deal in products or services that are vital to the well-being of the Nation, and they are an amalgam of public service and private enterprises. As a part of their public service function, they are, unlike nonregulated businesses, obligated by statute to disseminate their products or services broadly and to do so in a manner which neither discriminates against nor prefers customers. In return for undertaking this service obligation they are provided a monopoly or sheltered position in the market and the opportunity to recover the cost of the service they render.

Mr. Flax expresses further his grave concerns as follows. He notes that in the electric industry, marginal cost pricing, such as urged by the Department of Energy under the Public Utility Regulatory Policy Act (PURPA), ignores the basic utility service obligations. Instead, under the guise of achieving the PURPA objectives of economic efficiency, conservation and equity, present customers will be priced out of the market and utilities will be inhibited in serving the expanding needs of areas where they are located. The problem is not confined to the electric industry, however, but extends across the whole spectrum of regulated industries where the statutory obligation to serve the public is being traded off for what purports to be economic efficiency. It has not been demonstrated, however, that the results will ultimately benefit the public, since claims to this effect are based only on economic theory rather than credible evidence of the impact.

Mr. President, I ask that this article be printed in the RECORD.

The article follows:

WILL THE UTILITY SERVICE OBLIGATION BECOME A VICTIM OF ECONOMIC THEORY?

(By Louis Flax)

In his two-volume treatise on the economics of regulation, Dr. Alfred Kahn says that the job of public utility regulation formerly was done almost exclusively by lawyers and politicians, with accountants and engineers as assistants. However, because of great and increasing dissatisfaction in their performance, he continues, economists have been drawn more and more into the process so that lawyers who fail to seek the economist's direct cooperation find they cannot understand what their opponents' witnesses are saying.[1] As a member of two of the downgraded professions, my first reaction was to recall the rapidly aging story of the economist who upon finding himself on a desert island with a case of canned food and no way to open it decided to solve his dilemma by assuming a can opener.

Much more to the point, however, and somewhat less of an ad hominem nature, is a 1939 holding of the Wisconsin supreme court[2] in which the court concluded that the Wisconsin commission had upon general principles proposed to deprive the Wisconsin Telephone Company of necessary revenues in order to aid its patrons and to level off the inequality resulting from the economic depression. As to this approach the court held:

> If the commission were empowered to review the whole internal economy of the state, its postulates and arguments might sustain the conclusion that it reached. Within the limits of its statutory authority, however, it had no right to give dominant weight to economic theory in the face of statutory command. Recent years seem to have pretty thoroughly demonstrated that economic theory is vague, uncertain, and undependable and the predictions based upon it are not reliable. It seems to be in constant need of repair and readjustment.

The point of this quotation, which I believe is highly pertinent to circumstances today, is that public utilities are creatures of statute and notwithstanding broad discretion that has been vested in regulatory commissions, the commissions are nevertheless limited by the terms and intent of their statutory commands. With that the case it is well to reflect on the fundamentals of public utilities and their regulation in order to understand why economic theory cannot and must not control despite its promises of multiple benefits such as conservation, equity, economic efficiency, and optimal resource allocation.

THE STATUS OF A UTILITY

Basically, regulated public utilities are an amalgam of a public service entity and a private enterprise. They deal in products and services that are extremely important if not vital to the economic and social welfare of the public, and the broad dissemination of those products and services is highly desirable. Consider, for example, the nature of the products and services in which utilities deal—energy, water, transportation, and communications. Consider, also, the historical background of utilities whereby they were given important privileges such as (1) the right to open and use public streets or to cross public lands and (2) a monopoly or sheltered position in the market. In return, the utility agreed to serve the public broadly and without undue discrimination or preference. In other words, it would offer service to all those in a particular class or area rather than to pick and choose customers it found most advantageous to serve. Additionally, the utility agreed to accept the constraint of rates that would recover not more than the cost of the service it rendered, made up as a minimum of its operating expenses and capital charges.[3] This assumes, however, that the utility is able to sell its wares at rates which can recover its cost of service.

These various privileges and obligations upon which utilities were founded were subsequently incorporated into state statutes and are found today in a number of provisions of those statutes. For example, they are embodied in the direct obligation to provide adequate service and in provisions for determining service areas or granting certificates of public convenience and necessity for areas where the utility has the obligation and often the exclusive right to serve. They are also in restrictions against abandonment of service and in the requirement that service be nondiscriminatory and nonpreferential. Ratewise, they are statutory provisions that rates shall be just and reasonable, meaning that the utility should be given the opportunity to recover its cost of service. Also rates must not be unduly discriminatory or preferential, which has been largely interpreted as meaning that they shall reflect the cost of serving individual customer classes.

THE NEW FEDERAL "STANDARDS"

Notwithstanding the impression that is sometimes sought to be given that there has been a federal takeover of electric rate regulation and the so-called standards of the Public Utility Regulatory Policies Act are to control, the state statutes and the provisions are still viable. In fact they are dominant. Thus § 111(a) of PURPA provides that nothing prohibits any state regulatory authority from determining that it is not appropriate to implement PURPA standards pursuant to its authority under otherwise applicable state law.

Also the statement of the managers of PURPA makes it clear that the three purposes of § 101—that is, conservation of energy supplied by electric utilities, the optimization of the efficiency of use of facilities and resources by electric utilities, and equitable rates to electric consumers—do not override state law. With this being the case, the emphasis given to economic theory as the predicate for various of rate design proposals under PURPA sorely neglects important statutory provisions as well as a number of fundamentals of regulation. Although I have already touched on some of these, I believe that some degree of repetition is needed in order to provide a complete list.

SOME FUNDAMENTAL CONSIDERATIONS

First, utility service is "vital to the economic well-being and the domestic life of the people of a large territory." These are the words of a 1972 decision of the supreme court of North Carolina.[4] Our extreme reliance on adequate utility service is often taken for granted, however, and is lost in generalized and self-deprecating comments on our wasteful and inefficient use of resources. Nevertheless, is air conditioning wasteful when it has made many of our cities livable in the summer? Furthermore, can new rate designs that inhibit use be adopted with impunity when we have for reasons of more efficient land use and more economic construction built buildings over the past thirty years without air shafts and set backs, with eight-foot ceilings, and entirely reliant on forced ventilation?

Additionally, plants have been built and processes developed with the expectation of adequate electric service at reasonable rates. Moreover, power-assisted devices have permitted the employment of women and the handicapped. Can we now say this was all a mistake because those rates do not comport with our present concepts of economic theory and hence those users did not deserve service in the first place?

Consider also, an article in the December 3, 1978, edition of *The Washington Post* on the Latins in Miami, which mentions in passing that Miami's suburb of Coral Gables has been chosen as the home for the Latin offices of 76 multinational firms—a principal reason, communications. The article quotes an official of one large company as stating, it is simply faster to telephone, fly, and mail to South America from Miami than from any South American country. Thus it is evident that basic utility services are as important to our future development as they are to our continued well-being.

Second, utilities combine public service and private enterprise features and are charged with a broad obligation to serve the public. Indeed the U. S. Supreme Court has held: "The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders . . ."[5]

Third, the utility is simply not an economic entity in the sense contemplated by free market economic theory. The comprehensive duty to serve, restraints on its leaving the market, revenue constraints, the need for authorization to enter a market, and the various positive requirements that rates and services be just and reasonable, nondiscriminatory, and nonpreferential all depart from usual free market concepts. Briefly stated, you do not order a private entity to extend service to all who want service in a broad area and then expect its economic performance to compare with that of a free market enterprise without such obligation.

Fourth, notwithstanding the fundamental differences between utilities and free market enterprises, we have for a number of years heard as "conventional wisdom" that utility rates should simulate what would result from competition. Furthermore, it is now claimed that since the product of perfect competition is a price that is equivalent to marginal costs, utility prices should be fixed on that basis in the first instance. This has prompted me to seek out whether there is a source in statute or case law for the proposition that utility rates should stimulate competition. Thus far the closest I have come to a competitive standard as a legal principle has been the holdings of the Bluefield and Hope cases that return on equity should reflect the competition for equity funding by other enterprises of corresponding risk.[6] This, however, is certainly not the same as fixing rates in their entirety as if they were determined by competition.

Fifth, no matter what rationale is attributed to marginal cost pricing as a measure to achieve economic efficiency and conservation, it essentially operates by discouraging use. Although increasing costs, even as mitigated by use of embedded costs, are likely to discourage use in the normal course, deliberate changes in rate design which further discourage use should be carefully examined to ascertain if they are consistent with the utility obligation to serve the public adequately. On the other hand it must be recognized that embedded costs that average old and new costs mitigate the inflationary impact of new construction on the prices for some of our most basic commodities and services.

Sixth, and among the most important of the considerations which I am raising, is the need for evidence of the impact of the pro-

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Footnotes at end of article.

posals in considering whether rate designs that reduce use are consistent with the utility obligation to serve the public. This would include a showing that the measures will in fact achieve the objectives of the proposals. Instead, economic theory alone seems to be relied upon as support for the claim that economic efficiency, optimal resource allocation, conservation, and equity will result from marginal cost pricing. This ignores, however, that there are substantial departures from marginal cost theory in determining the marginal costs to be used in fixing rates. Principal of these are the revenue constraint and the fact that all other goods and services are not priced at the margin.

Reliance solely on economic theory also avoids a showing by credible evidence of the extent to which reduced use or inhibited growth will result, the consequent impact on rates and service, and the further impact on consumers and the economy as a whole. As to rates, there is the possibility that reduced use will mean less coverage of fixed charges and the need for still higher rates. Thus the consumer gets increased rates and less service plus the prospect of still higher rates and still poorer service. This is sometimes described as the domino effect.

As to service, there is the impact on consumers who have arranged their lives and economic activities on the expectation of adequate service when they need it. Parenthetically, it should be noted that peaks are created because that is when customers want service and forcing customers to adjust to the utility's benefit is something akin to cutting the customer to fit the suit rather than the suit to fit the customer. Nevertheless, customers would be forced by the changed rate designs to reduce or terminate usage, to change their pattern of usage to a less satisfactory one, or to pay a premium to maintain their past service. The added costs to these consumers are certainly trade-offs for the benefits which economic theory tells us will result from the rate design changes. Yet, I know of no instance where these trade-offs have been evaluated. This of course is understandable since those who claim the benefits are seldom if ever precise in quantifying those benefits, much less the trade-offs.

The need for a showing of impact is clearly set forth in the 1978 holding of the U.S. court of appeals for the D.C. circuit in North Carolina v. Federal Energy Regulatory Commission[7] where the court remanded the Federal Energy Regulatory Commission's approval of a gas curtailment plan for Transcontinental Gas Pipe Line Corporation because the FERC had failed adequately to consider the impact on the end user. In so doing, the D.C. circuit cited the U.S. Supreme Court's holding in the renowned Hope case[8] that it is not the theory of a rate order but its impact that determines its legality.

In addition to the significance of these holdings in themselves, there is an interesting parallel in that the theory in dispute in the Hope case was whether the rate base should be predicated on original costs which analogize to embedded costs or on fair value which includes reproduction costs that analogize the marginal costs. Evidently, the court had tired of this argument, which had been before it many times, and decided to cut through economic theory by looking to the impact.

Seventh, efficiency, conservation, and equity are not the exclusive province of marginal cost pricing. There are a number of measures that are basic to regulation which are directed to these objectives. For example, regulatory commissions often have the power to preclude the construction of unneeded facilities through their certificate jurisdiction or jurisdiction over financing. Incidentally, I should mention that the usual method for analyzing certificate applications for new or expanded service, when such applications were being filed regularly at the Federal Power Commission, was to determine the revenue requirements of the project itself on an incremental basis. If the revenue requirements exceeded revenues available from customers to be served at current rates, the benefits from the new project were then balanced against the impact on all customers, including existing customers who might have their rates increased to suport the new project. This is a reasonable approach to an incremental cost analysis in which incremental costs are considered in the context of how much should the general overall public participate in meeting the utility's service obligation before a specific project is constructed. This contrasts with fixing rates at the marginal cost level without any analysis of the impact on service provided or to be provided either new or existing customers.

In addition to denying authorizations for new projects that do not meet its economic tests, a regulatory commission may exclude from the rate base facilities that are not used or useful, and from the cost of service imprudent expenditures. Commissions may also lower the rate of return for a particularly inefficient operation. Other measures available to regulatory commissions are restrictions on attachments for uses that are considered wasteful or not in the public interest or curtailment of those uses if there is a shortage of capacity. Moreover, there are various programs such as those pursuant to the National Energy Conservation Policy Act, most of which directly encourage conservation efforts by the user. Some of these programs are administered by utilities and involve supervision by regulatory commissions.

The advantage of proceeding by such measures is that this impact can be estimated directly by the utility, the regulatory commission, or the consumer, and the trade-offs can be evaluated. This contrasts with the pricing approach where vague and unquantified benefits from economic theory are predicted, but the trade-offs of reduced service are sublimated or subordinated. In fact, they are likely to be unknown until they are experienced.

Eighth, I have been advised from some quarters that my concern for the impact of rates and their effect on meeting the utility's service obligation could be viewed as a departure from objective rate making and an argument for lifeline rates. This certainly is not my intent. Rates should be designed to recover operating expenses and capital charges expended in providing service. Rates should also attribute to each distinct class of service the costs that have been incurred in serving that class. Just as rates should not be advisedly designed to discourage services, so also they should not be designed to encourage service. This includes lifeline rates which encourage service by creating a separate customer class predicated not on its incurrence of costs, but rather on an alleged inability to pay. At the same time the costs required to serve the "lifeline class" are assigned to other customer classes based on an unsupported perception of their ability to pay.

While it would be insensitive to oppose lifeline rates without the caveat that those who are indeed unable to pay should be aided through welfare channels, it is also callous to adopt rates which impose the deficiency in revenues resulting from lifeline rates on other customers without considering the impact on those other customers. Thus they may be induced to reduce their purchases, leaving fixed charges to be concentrated progressively on the remaining sales until at least some of the customers that were originally intended to bear the lifeline burden find themselves to be economically marginal and must also go the welfare route.

Ninth, the utilities themselves are not immune to domino effect and what the U.S. Supreme Court in Market Street R. Co. v California R. Commissioner[9] described as the law of diminishing returns. In that case the court held that it was not confiscation to refuse a trolley fare increase from five cents to seven cents because rates cannot be increased continuously to recover costs when each increase inhibits ridership and net revenues. Today, what street railways there still are, like almost all other intracity transit operations, are no longer private enterprises. This is to say nothing of the railroads, the telegraph companies, and the railway express agency, all of which saw better days before being forced to think the unthinkable. Although no doubt in each of these instances there are distinguishing factors, I perceive a distinct absence of realism in the attitude of some electric utilities today which act as if they are disinterested stakeholders while the marginal cost battle is fought out between the Department of Energy and their industrial customers. The issue for the utilities is not such abstract considerations as economic efficiency, fairness, or optimal resource allocation. Rather it is a matter of the continued viability of present markets and the impact that the sought after changes in those markets will actually have on the utilities themselves and on the economy as a whole.

SUMMING UP

As a final matter, the concern I have expressed for service from utilities faced with proposals to simulate the competitive market in pricing does not end with electric and gas industries. There is a movement extending across the entire spectrum of industries subject to utility-type economic regulation which proposes that rates should either be fixed to simulate competitive market economics or deregulated entirely. Such proposals, however, give little or no concern for the impact on the service those industries have been rendering. Thus deregulated airlines tumble over each other in a rush for the high-density routes while smaller, less populated communities are left to complain of reduced service and their reduced attraction for commerce and industry. Also with the deregulation of brokerage fees, many small investors, whose fees escalated, have curtailed their investing or left the market entirely. Still deregulation proposals are introduced as to the communications, trucking, and rail industries, supported only by platitudes that it is not the intent of these measures to diminish service by the affected industries.

It may well be that our economic problems from inflation, plus the pressures from escalating petroleum prices and efforts to develop alternative energy supplies, will make it extremely difficult, if not impossible, to maintain the level of utility service to which we have become accustomed. If that is the case, however, we should recognize the problem and face it directly rather than to delude ourselves that the solution will come from an application of economic theory which promises great benefits, but shows minimal concern for the service obligation traditional to utilities and clearly stated in utility statutes.

FOOTNOTES

[1] *"The Economics of Regulation, Principles and Institutions,"* by Alfred E. Kahn, John Wiley & Sons, Vols. I and II, 1970, 1971.

[2] Wisconsin Teleph. Co. v Wisconsin Pub. Service Commission (Wis Sup Ct 1939) 31 PUR NS 351, 287 NW 122, 147.

[3] Federal Power Commission v Natural Gas Pipeline Co. of America (1942) 315 US 575, 607, 42 PUR NS 129; Federal Power Commission v Hope Nat. Gas Co. (1944) 320 US 591, 603, 51 PUR NS 193; Colorado Interstate Gas Co. v Federal Power Commission (1945) 324 US 581, 605, 58 PUR NS 65.

[4] State of North Carolina ex rel. Utilities

Commission v. General Teleph. Co. of the Southeast (1972) 189 SE2d 705, 717.

[5] United Fuel Gas Co. v. Kentucky R. Commission, 278 US 300, 309, PUR1929A 433.

[6] Bluefield Waterworks & Improv. Co. v. West Virginia Pub. Service Commission (1923) 262 US 679, 692, 693, PUR1923D 11; Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 603, 51 PUR NS 193.

[7] North Carolina v. Federal Energy Regulatory Commission (1978) 26 PUR4th 312, 584 F2d 1003, 1014.

[8] See footnote 6.

[9] (1945) 324 US 548, 565, 52 PUR NS 18.●

ORDER FOR CONSIDERATION OF CERTAIN TREATIES ON WEDNESDAY, SEPTEMBER 17, 1980

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with Mr. CHURCH on this side of the aisle, and has now been cleared with the Republican leadership and with Senators on that side of the aisle, and also with other Senators on this side of the aisle.

Mr. President, I ask unanimous consent, as in executive session, that the following conventions and treaties be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification:

Executive G, 96–2, The Food Aid Convention of 1980; Executive FF, 96–1, Protocols for the Fifth Extension of the International Wheat Agreement, 1971; Executive B, 96–2, 1978 Partial Revision of the Radio Regulations; Executive C, 96–2, Amendment to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora; Executive I, 96–1, Proposed amendments to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter; Executive HH, 96–1, Convention on the Inter-American Institute for Cooperation on Agriculture; Executive F, 96–1, Treaty on Maritime Boundaries with the United Mexican States; Executive G, 96–1, Maritime Boundary Treaty with the Republic of Venezuela; and Executive H, 96–1, Maritime Boundary Agreement with the Republic of Cuba.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FOOD AID CONVENTION, 1980

The PRESIDING OFFICER. Without objection, the first treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Food Aid Convention, 1980, signed on behalf of the Government of the United States of America at Washington on April 29, 1980 (Executive G, Ninety-sixth Congress, second session).

PROTOCOLS FOR THE FIFTH EXTENSION OF THE INTERNATIONAL WHEAT AGREEMENT, 1971

The PRESIDING OFFICER. Without objection, the next treaty for the Fifth Extension of the International Wheat Agreement, 1971, will be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 1979 Protocol for the Fifth Extension of the Wheat Trade Convention, 1971, and the 1979 Protocol for the Fifth Extension of the Food Aid Convention, 1971, both signed on behalf of the Government of the United States of America at Washington on May 16, 1979 (Executive FF, Ninety-sixth Congress, first session).

THE 1978 PARTIAL REVISION OF THE RADIO REGULATIONS

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the Resolution of Ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Partial Revision of the Radio Regulations (Geneva 1959) signed on behalf of the United States at Geneva, March 5, 1978 (Executive B, Ninety-sixth Congress, second session).

AMENDMENT TO THE CONVENTION ON THE INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, adopted at Bonn on June 22, 1979 (Executive C, Ninety-sixth Congress, second session).

PROPOSED AMENDMENTS TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the Resolution of Ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, adopted at London on October 12, 1978 (Executive I, Ninety-sixth Congress, first session).

CONVENTION ON THE INTERAMERICAN INSTITUTE FOR COOPERATION ON AGRICULTURE

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Inter-American Institute for Cooperation on Agriculture, signed at Washington on March 6, 1979 (Executive HH, Ninety-sixth Congress, first session).

TREATY ON MARITIME BOUNDARIES WITH THE UNITED MEXICAN STATES

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty on Maritime Boundaries between the United States of America and the United Mexican States, signed at Mexico City, May 4, 1978 (Executive F, Ninety-sixth Congress, first session).

MARITIME BOUNDARY TREATY WITH THE REPUBLIC OF VENEZUELA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Treaty between the United States of America and the Republic of Venezuela, signed at Caracas on March 28, 1978 (Executive G, Ninety-sixth Congress, first session).

MARITIME BOUNDARY AGREEMENT WITH THE REPUBLIC OF CUBA

The PRESIDING OFFICER. Without objection, the next treaty will be considered as having passed through its various parliamentary stages up to and including-ing the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Maritime Boundary Agreement between the United States of America and the Republic of Cuba, signed at Washington, December 16, 1977 (Executive H, Ninety-sixth Congress, first session).

ORDER FOR VOTES ON TREATIES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 12:40 p.m. on next Wednesday, September 17, 1980, the Senate go into executive session; that the Senate immediately proceed under a time limitation of 20 minutes to be equally divided between Mr. Church, and Mr. Javits, the debate to be on the aforementioned treaties and conventions, that immediately upon the expiration of the time, or at 1 p.m., to be precise, there be one vote to count for eight votes, the eight Executive treaties being those that I have mentioned, Calendar Orders Nos. 14, 15, 16, 17, 18, 19, 20, and 21; that immediately upon the consummation of that vote, and back to back thereto, a vote occur on Executive H, the Maritime Boundary Agreement with the Republic of Cuba; that immediately upon the disposition of those treaties and notification to the President, if such is ordered by the Senate, and the motion to reconsider and the motion to table, it being understood that there will be no time for debate on such motion to reconsider—and I ask unanimous consent that the motions may be made en bloc—the Senate will then return to legislative session.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. This means, Mr. President, that beginning at 1 o'clock on next Wednesday afternoon, September 17, 1980, there will be two votes, and they will be back to back, the first of which will account for eight, the second of which will account for one, making a total of nine.

Mr. President, I ask unanimous consent that it may be in order at any time to order the yeas and nays on the aforementioned treaties with one show of seconds.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the aforementioned treaties.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. I thank the distinguished acting Republican leader.

TIME LIMITATION AGREEMENT—S. 3059

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the military construction authorization bill, S. 3059, Calendar Order No. 998, is before the Senate, the following time agreement obtain: 1 hour equally divided on the bill, to be controlled by Mr. Hart and Mr. Tower; one-half hour equally divided on any amendment; 2 hours equally divided on a committee amendment offered by Mr. Jackson on the subject of binaries for chemical bombs; one-half hour equally divided on an amendment by Mr. Pryor on general alarm system; 2 hours equally divided on an amendment by Mr. Hart on binaries; 20 minutes on any debatable motion, appeal, or point of order if such a point of order is submitted by the Senate, and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, again, I thank Mr. Stevens and all other Senators.

PRINTING ADDITIONAL COPIES OF CERTAIN BOOKLETS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate concurrent resolution and ask that it be stated by the clerk.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

A Senate concurrent resolution (S. Con. Res. 123) authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810–1859" and "The Supreme Court Chamber, 1810–1860".

Resolved by the Senate (the House of Representatives concurring), That there be printed for use of the Commission on Art and Antiquities of the United States Senate fifty thousand additional copies of the booklet entitled "The Senate Chamber, 1810–1859", and thirty thousand additional copies of the booklet entitled "The Supreme Court Chamber, 1810–1860".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

Mr. STEVENS. There is no objection.

There being no objection, the Senate proceeded to consider the resolution.

The concurrent resolution was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT FOR FISCAL YEAR 1981

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator Kennedy I ask that the Chair lay before the Senate a message from the House of Representatives on S. 568.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 568) entitled "An Act to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "National Science Foundation Authorization Act for Fiscal Year 1981".

Sec. 2. (a) There are authorized to be appropriated to the National Science Foundation, for the fiscal year 1981, the sums indicated for the following categories:

(1) Mathematical and Physical Sciences, $259,800,000.

(2) Astronomical, Atmospheric, Earth, and Ocean Sciences, $237,100,000.

(3) United States Antarctic Program, $64,200,000.

(4) Ocean Drilling Programs, $17,500,000.

(5) Biological, Behavioral, and Social Sciences, $183,410,000.

(6) Science Education Programs, $92,200,000.

(7) Engineering and Applied Science, $142,560,000.

(8) Scientific, Technological, and International Affairs, $30,450,000.

(9) Cross-Directorate Programs, $33,200,000.

(10) Program Development and Management, $59,800,000.

(b) Of the total amount authorized under subsection (a) (7)—

(1) not less than $19,400,000 shall be available for Earthquake Hazards Mitigation;

(2) not less than $1,000,000 shall be available for the Small Business Innovation Program, for projects to aid the handicapped;

(3) not less than $3,000,000 shall be available for Research and Development in Appropriate Technology;

(4) not less than $5,000,000 shall be available for a Center for Innovation Development to be located in an area which experienced an unemployment rate in excess of 10 per centum in 1979, and which is centrally located to serve several major metropolitan centers; and

(5) not less than $1,800,000 shall be available for the establishment and operation of three university-based Innovation Centers.

(c) Of the total amount authorized under subsection (a) (6)—

(1) not less than $2,400,000 shall be available for Science Faculty Improvement Programs, for year-long awards to experienced, full-time, two- and four-year college and university science teachers who are involved primarily in undergraduate science instruction to increase their competence in science; and

(2) not less than $1,500,000 shall be available for Science Education Programs relating to Appropriate Technology.

(d) Of the total amount authorized under subsections (a) (1), (a) (2), (a) (5), and (a) (7), not less than $2,000,000 shall be available for the salaries of faculty members of two-year and four-year colleges that have only small or no doctoral programs in science and engineering or of universities that have very limited science and engineering programs, for the purpose of enabling them to participate in research projects at institutions other than the faculty members' home institutions.

(e) Of the total amount authorized under subsection (a)(4), not more than $500,000 is authorized for the Ocean Margin Drilling Project, including such sums as may be necessary for the National Academy of Sciences study specified in section 3(c).

(f) Of the total amount authorized under subsection (a)(9), not more than $1,600,000 is authorized for United States/Union of Soviet Socialist Republics cooperative research, no portion of which shall be expended until the President has certified in writing to the Congress that such expenditures shall be of direct and very substantial benefit to the United States.

(g) Of the total amount authorized under subsection (a)(8), $14,500,000 is authorized for International Cooperative Science Activities.

Sec. 3. (a) The Foundation shall prepare a report on the Ocean Margin Drilling Project and shall transmit the report to Congress not later than December 31, 1980. The report shall include—

(1) plans for conversion of the Glomar Explorer or other drilling platform;

(2) plans for drilling;

(3) detailed cost estimates;

(4) a discussion of the feasibility and cost of alternative drilling platforms;

(5) plans for funding; and

(6) other plans.

(b) No funds shall be obligated for the Ocean Margin Drilling Project after December 31, 1980, until the report specified in subsection (a) is transmitted to Congress.

(c) The National Academy of Sciences shall study marine earth sciences research and report to the Congress.

(d) To the extent permitted by law, all Federal funding of the Ocean Margin Drilling Project shall be provided from the Windfall Profit Tax Account.

Sec. 4. Appropriations made under the authority provided in sections 2 and 6 shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making the appropriations.

Sec. 5. From appropriations made under the authority provided in this Act, not more than $5,000 may be used for official consultation, representation, or other extraordinary expenses at the discretion of the Director of the National Science Foundation. His determination will be final and conclusive upon the accounting officers of the Government.

Sec. 6. Besides the sums authorized by section 2, not more than $5,500,000 is authorized to be appropriated for the fiscal year 1981 for expenses of the National Science Foundation incurred outside the United States, to be drawn from foreign currencies that the Treasury Department determines to be excess to the normal requirements of the United States.

Sec. 7. Funds may be transferred among the categories listed in section 2(a), but neither the total funds transferred from any category nor the total funds transferred to any category may exceed 10 per centum of the amount authorized for that category in section 2(a) or available for that category after the application of section 10, unless—

(1) thirty calendar days on each of which at least one House of Congress is in session have passed after the Director of the National Science Foundation or his designee has transmitted to the Speaker of the House of Representatives, to the President of the Senate, to the Committee on Science and Technology of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate a written report containing a full and complete explanation of the transfer involved and the reason for it, or

(2) before the expiration of the thirty days both the Committee on Science and Technology of the House and the Committee on Labor and Human Resources of the Senate have written to the Director to the effect that they have no objection to the proposed transfer.

Sec. 8. The National Science Foundation is directed to consolidate all Directorates, including the Science Education Directorate, under one roof, in the present location of the central administrative offices, on or before August 1, 1982.

Sec. 9. The Director of the National Science Foundation, jointly with the Secretary of Education, shall develop and transmit to Congress a proposed joint Science Education Program plan.

Sec. 10. If the total amount of appropriations made by any Act for program activities included in section 2 for the fiscal year 1981 is less than the total amount authorized to be appropriated for those activities by section 2, the amount available from such appropriations for any particular program activity shall bear the same ratio to the amount authorized to be appropriated for that activity by section 2 as the total amount of the appropriations made by such appropriation Act for all included program activities bears to the total amount authorized to be appropriated for those activities by section 2 (with each ceiling and floor set forth in section 2 being reduced in the same ratio for purposes of determining the amounts so available), except to the extent specifically otherwise provided in the text of the Act making the appropriations for the program activities involved.

Sec. 11. (a) Section 15 of the National Science Foundation Act of 1950 is amended by striking out subsection (c), and by redesignating subsection (d) as subsection (c).

(b) The text of section 16 of such Act is amended to read as follows:

"Sec. 16. To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.".

Sec. 12. (a) Section 2(a) of the Act entitled "An Act to establish a National Medal of Science to provide recognition for individuals who make outstanding contributions in the physical, biological, mathematical, and engineering sciences", approved August 25, 1959 (42 U.S.C. 1881(a)), is amended by striking out "or engineering" and inserting in lieu thereof "engineering, behavioral, or social".

(b) The title of such Act is amended by striking out "and" engineering" and inserting in lieu thereof "engineering, behavioral, and social".

Sec. 13. The President, with the assistance of the Director of the Office of Science and Technology Policy and members of the Cabinet, shall develop a comprehensive national policy with regard to women, minorities, science and technology. Further, the President is directed to report to the Congress a comprehensive legislative and administrative program to implement this policy before January 1, 1981.

Sec. 14. The Director of the National Science Foundation shall henceforth require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.

Amend the title so as to read: "An Act to authorize appropriations for activities of the National Science Foundation for fiscal year 1981 and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. Kennedy, I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. Kennedy, Mr. Williams, Mr. Pell, Mr. Nelson, Mr. Cranston, Mr. Metzenbaum, Mr. Schweiker, Mr. Javits, Mr. Hatch, and Mr. Humphrey conferees on the part of the Senate.

BILL HELD AT DESK—H.R. 7218

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 7218 be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROTC SCHOLARSHIPS

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator Stennis, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5766.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 5766) entitled "An Act to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes", with the following amendments:

Page 8, line 3 of the Senate engrossed amendments, strike out "of an armed force", and insert "concerned".

Page 10, line 6, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 7, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 10, strike out "an armed force", and insert "the Secretary concerned".

Page 10, line 12, strike out "entity", and insert "entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.".

Page 12, line 4, strike out "(13)", and insert "(14)".

In lieu of the matter proposed by the amendment of the Senate to the title of the said bill, insert: "An Act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. Stennis, I ask unanimous consent that the Senate concur in these amendments of the House to the amendments of the Senate, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the action by which the Senate concurred in the House amendments to H.R. 5766.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDIAN HEALTH CARE IMPROVEMENT ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator MELCHER I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2728.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2728) entitled "An Act to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That (a) section 102 of the Indian Health Care Improvement Act (90 Stat. 1400), hereinafter referred to as the "Act", is amended by striking the last sentence in subsection (c) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,300,000, $2,600,000, $3,000,000, and $3,500,000, respectively.".

(b) Section 103 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,600,000, $1,800,000, $2,100,000, and $2,400,000, respectively.".

(c) The first sentence of section 757(a) of the Public Health Service Act is amended by striking the phrase "and for each of the succeeding fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting, in lieu thereof, the following: "$9,000,000 for the fiscal year ending September 30, 1981, $10,300,000 for the fiscal year ending September 30, 1982, $11,800,000 for the fiscal year ending September 30, 1983, and $13,600,000 for the fiscal year ending September 30, 1984.".

(d) Section 105 of the Act is amended by striking the last sentence in subsection (d) and inserting in lieu thereof the following: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $990,000, $1,140,000, $1,310,000, and $1,510,000, respectively.".

SEC. 2. (a) Section 201(c) of the Act is amended by adding the following sentence to paragraph (1) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $20,250,000, $23,000,000, $26,500,000, and $30,500,000, respectively, and such further additional positions are authorized as may be necessary.".

(b) Section 201(c) of the Act is amended by adding the following sentence to paragraph (2) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $6,400,000, $7,350,000, $8,450,000, and $9,700,000, respectively, and such further additional positions are authorized as may be necessary.".

(c) Section 201(c) of the Act is amended by adding the following sentence to paragraph (3) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $1,875,000, $2,150,000, $2,500,000, and $2,875,000, respectively, and such further additional positions are authorized as may be necessary.".

(d) Section 201(c)(4) of the Act is amended by—

(A) adding the following sentence to subparagraph (A) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,500,000, $2,875,000, $3,300,000, and $3,800,000, respectively, and such further additional positions are authorized as may be necessary.";

(B) adding the following sentence to subparagraph (B) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $750,000, $870.000, $1,000,000, and $1,150,000, respectively, and such further additional positions are authorized as may be necessary.";

(C) by adding the following sentence to subparagraph (C) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $2,350,000, $2,700,000, $3,100,000, and $3,600,000, respectively, and such further additional positions are authorized as may be necessary.";

(D) by adding the following sentence to subparagraph (D) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $460,000, $525,000, $600,000, and $690,000, respectively, and such further additional positions are authorized as may be necessary."; and

(E) by adding the following sentence to subparagraph (E) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $250,000, $285,000, $325,000, and $375,000, respectively.".

(e) Section 201(c) of the Act is amended by adding the following sentence to paragraph (5) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $15,000,000, $17,250,000, $19,840,000, and $22,800,000, respectively.".

(f) Section 201(c) of the Act is amended by adding the following sentence to paragraph (6) thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $5,000,000, $5,750,000, $6,600,000, and $7,600,000, respectively, and such further additional positions are authorized as may be necessary.".

(g) 201(c) is amended by striking all of paragraph (7) thereof.

SEC. 3. Title III of the Act is amended by inserting a new section 305 as follows:

"SEC. 305. For fiscal years 1981, 1982, 1983, and 1984, funds necessary to carry out the purposes of section 301 and 302 of this Act may be appropriated pursuant to authority contained in the Act of November 2, 1921 (42 Stat. 208), as amended by the Act of October 12, 1976 (90 Stat. 2233); and the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

SEC. 4. Section 506 of the Act is amended by adding the following sentence at the end thereof: "For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated $18,750,000, $21,500,000, $24,725,000, and $28,500,000, respectively.".

SEC. 5. Section 4(c) of the Act is amended by adding at the end the following: "For purposes of titles II and III of this Act, such terms include Indians in the State of California who are members or descendants of members of former federally recognized Indian tribes in the State of California.".

Amend the title so as to read: "An Act to amend the Indian Health Care Improvement Act (90 Stat. 1400) to reauthorize appropriations for the various programs therein.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate disagree to the amendment of the House and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. MELCHER, Mr. INOUYE, Mr. DECONCINI, Mr. COHEN, and Mr. HATFIELD conferees on the part of the Senate.

ORDER FOR RECOGNITION OF CERTAIN SENATORS AND FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order, Mr. WILLIAMS be recognized for not to exceed 15 minutes, Mr. STEVENS be recognized for not to exceed 15 minutes, and Mr. ROBERT C. BYRD be recognized for not to exceed 15 minutes, after which there be a period for the transaction of routine morning business for not to exceed 15 minutes, and that Senators may speak during that period of the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR SENATE TO CONVENE ON MONDAY, SEPTEMBER 15, 1980, AT 1 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Monday next, it convene at the hour of 1 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I believe the order has been entered for the Senate to recess over today until tomorrow at 9 a.m., and from tomorrow, Thursday, over until Monday at 1 p.m.; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning

The motion was agreed to; and at 5:59 p.m., the Senate recessed until tomorrow, Thursday, September 11, 1980, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 10, 1980:

DEPARTMENT OF STATE

Arthur H. Woodruff, of Florida, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

David E. Simcox, of Kentucky, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the

United States of America to the People's Republic of Mozambique.

Francis J. Meehan, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Poland.

THE JUDICIARY

Nicholas J. Bua, of Illinois, to be U.S. circuit judge for the seventh circuit, vice Philip W. Tone, resigned.

Raymond L. Finch, of the Virgin Islands, to be a judge of the district court of the Virgin Islands for a term of 8 years, vice Warren H. Young, deceased.

DEPARTMENT OF JUSTICE

Atlee W. Wampler, III, of Florida, to be U.S. attorney for the southern district of Florida for the term of 4 years, vice Jacob V. Eskenazi, deceased.

Mack A. Backhaus, of Nebraska, to be U.S. marshal for the district of Nebraska for the term of 4 years, vice Ronald C. Romans, term expired.

IN THE ARMY

The following-named Army Medical Department officers for temporary appointment in the Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447.

MEDICAL CORPS

To be major general

Brig. Gen. Edward James Huycke, [redacted], Medical Corps, Army of the United States (colonel, U.S. Army).

To be brigadier general

Col. William Presley Winkler, Jr., [redacted] Medical Corps, U.S. Army.

Col. Frank Finley Ledford, Jr., [redacted] Medical Corps, U.S. Army.

Col. Frank Allen Ramsey, [redacted], Medical Corps, U.S. Army.

EXTENSIONS OF REMARKS

NERVE GAS STORED IN DENVER

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mrs. SCHROEDER. Mr. Speaker, the following articles shed a lot of light on the nerve gas being stored in Denver that was discussed in the military construction bill debate today. I hope Members will read them.

WETEYE DETOXIFICATION BILL IS OK'D

(By Al Gordon)

The Senate Armed Services unanimously approved legislation Wednesday that would force the Defense Department to remove or detoxify, within a year, the 900 Weteye nerve gas bombs stored at Denver's Rocky Mountain Arsenal.

The measure, sponsored by Sen. Gary Hart, D-Colo., would require the department to report to Congress its plans for detoxification or transfer within 90 days after the bill is passed. Congress would have the power to veto the proposed plans.

The committee will ask the Defense Department to study the feasibility of converting the arsenal to other uses, notably as a site for expansion of Stapleton International Airport. The study is to review the scope and price of decontamination efforts which must be made at the arsenal before it could be turned over to civilian use.

The Weteye provisions are part of the $5.4 billion 1980-81 Defense Department construction bill. Hart, who chairs the subcommittee that oversees the legislation, attached his amendment last week.

The bill includes $10.4 million toward efforts to clean up ground and water chemical contamination at the arsenal, $1.6 million for construction work at Fitzsimons Army Medical Center, Lowry Air Force Base and Buckley Air National Guard Base and $54 million for other facilities in Colorado.

Committee staff members said one more meeting will be needed to finish work on the construction bill, but no date has been set.

The House Armed Services Committee has cleared its version for floor action, but the House hasn't voted on it.

The House bill doesn't include a Weteye provision. It does include $3.15 million to begin production of a new generation of nerve gas weapons which might eventually replace the Weteyes.

That provision isn't in the Senate bill. Hart opposes it, citing the lack of equipment and training for U.S. forces to enable them to defend themselves against chemical weapons. Without such a defensive capability, the U.S. can't credibly deter the Soviets from using nerve gas, Hart argues.

Other members of the Senate panel are concerned that the U.S. chemical warfare arsenal has fallen far behind the Soviet's and they want to close the gap by producing the new "binary" weapons. These contain two components that aren't lethal until mixed in combat and thus are safer to store than the Weteyes.

Defense Secretary Harold Brown is expected to be asked for his views on producing the binaries when he testifies before the Senate committee Thursday. It's possible the armed services may decide to add the binary production money to the construction bill before it finished action on the measure.

Hart warned that his Weteye proposal, which so far he has managed to steer clear of the binary-bomb controversy, still must be approved on the Senate floor and be reconciled with the House version.

But Hart termed Wednesday's committee's action an important step toward getting the bombs out of the Denver area.

The arsenal is next to a main runway at Stapleton. Hart and other Colorado leaders repeatedly have warned that a plane crash could unleash a cloud of deadly GB nerve gas on 1.5 million people.

The Defense Department had planned to move the bombs to Tooele Army Depot in Utah. Those plans were canceled earlier this year in the face of opposition from Utah Gov. Scott Matteson and from Hart and other Colorado lawmakers who urged that the bombs be detoxified instead.

Hart said he continues to prefer detoxification. But he will no longer oppose the transfer of the weapons to another site if that's the only way to get them out of Denver.

INVITING THE UNTHINKABLE

The U.S. Army's decision to continue storing 888 deadly "weteye" nerve gas bombs at the Rocky Mountain Arsenal near Denver unnecessarily exposes 1.5 million people to the danger of accident or sabotage.

To say the bombs should not be stored near a major metropolitan area is not necessarily to join the ranks of those who insist the United States shouldn't stock such weapons at all. Given the present state of world affairs, the Army's recent reversal of its 1978 decision to destroy the bombs may well make sense. Until the day when an effective and enforceable international treaty outlaws such barbaric weapons, the United States may need them as a deterrent.

History certainly provides recent evidence that mutual deterrence sometimes works. In World War II, Nazi Germany manufactured huge stocks of deadly nerve gases—and certainly Adolph Hitler never shrank from mass destruction for humanitarian considerations. But, by a quirk, Germany was far more vulnerable to such weapons than the allies.

Short of petroleum, the Germans used horse-drawn transport to move many of their military supplies throughout the war. As it happens, you can put a gas mask on a man but you can't keep one on a horse. In a battlefield exchange of chemical weapons, therefore, German horses would die while allied trucks rolled on—and so, the bombs were never unleashed. Thus, the "balance of terror" did place some limits on slaughter even amidst all-out war.

So, until they can be mutually forsworn, keep the bombs if need be. But get them the heck out of Denver and put them far away from a major population center. Anyone breathing our "brown cloud" can guess what would happen if these bombs leaked during an atmospheric inversion in Denver. The Arsenal is right next to Stapleton International Airport. What happens if a plane crashes where they're stored? Or a fire breaks out? Or any of a number of unlikely but potentially catastrophic accidents occurred, not to mention deliberate sabotage?

The Army isn't insensitive to this problem. It's seeking a $3 million program to improve security at the Arsenal, including an underground storage facility for the bombs "complete with automatic environmental and decontamination-control devices." Certainly, that would be safer than the present storage of the bombs in metal sheds above ground. But to begin with, it would take two years to complete such a program. Even then, the Arsenal's record doesn't exactly inspire confidence. Soil at the facility is so contaminated from storage of hazardous materials that the Army is expected to continue working for at least another decade to restore the land.

In fact, the Arsenal's history even includes what may well be the unique distinction of triggering earthquakes in a metropolitan region. A series of tremors in the '60s was ultimately found to have been caused by deep well disposal at the Arsenal that lubricated stress lines within the earth and triggered the quakes. A record like that can hardly reassure the public that the Arsenal can foresee absolutely all possible dangers.

There was logic in keeping the bombs at the Arsenal as long as a 1978 decision to destroy the weapons was in effect. The Arsenal has the know-how to detoxify them and it may have been safer to leave them there in the interim than to move them. But even the most gracious host sometimes has to tell a weekend guest that he's not welcome as a permanent boarder.

If they must stay in the national inventory, the Army should take extraordinary safety precautions in moving them, but it should move them—soon and far away. Such weapons exist only because in an uncertain world it is necessary to "think about the unthinkable" and create them in hopes of deterring their use by a hostile nation. But storing them where they needlessly endanger 1.5 million people isn't thinking the unthinkable—it's inviting the unthinkable.

INTOLERABLE ABUSE OF AMERICAN TRUST

(By Leonard Larsen)

It is time to consider serious abuses by the U.S. government against its own people, abuses extending back at least a decade and involving several presidential administrations.

Specifically, the Department of Defense and the various top-level bureaucrats who have occupied chairs there should be called on to answer the charge of blackmail and White House occupants—from Jimmy Carter to Gerald Ford and back to Richard Nixon—should explain the shoddy business of knuckling under to the defense establishment and lying about it.

This is about the Rocky Mountain Arsenal, the Army installation on Denver's shoulder which has long since outlived its usefulness, which has proved repeatedly to be a threatening and dangerous neighbor and which beyond any reasonable doubt should be shut down, cleaned up and vacated by its Army tenant.

The latest outrage, a decision apparently endorsed by a pliant President Carter with the customary lack of insight and understanding which typifies his work, will keep nearly 900 Weteye nerve gas bombs stored indefinitely at the arsenal.

The bombs, designed as weapons for Navy aircraft and manufactured in the 1950s, are

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

in fragile condition—some of them are already leaking—and the Carter decision to keep them at the arsenal instead of transferring them as planned to a more remote arsenal at Tooele, Utah, was justified in part by the obvious risks inherent in an airlift from Denver to Utah.

The Weteye nerve gas bombs could—and should—be destroyed at the arsenal. The equipment and the personnel are there.

But in the explanation of why not, the Carter administration, as the previous administrations, serves as the mouthpiece for the lies and blackmail of the Defense Department.

We are told these bombs, these bombs in such unsafe condition, they cannot even be flown to Utah, must remain in storage at the arsenal as a "deterrent" against potential nerve gas use by the Soviet Union.

Since the bombs can't be flown away from Denver in their present condition, that line of reasoning seems to argue that the Russians would have to be airlifted to Denver and herded onto the arsenal grounds, there to be dosed with our nerve gas.

An accompanying piece of blackmail asserts that since Congress and succeeding administrations have not approved a new "binary" system of nerve gas weapons—less risky in handling—then the defense establishment cannot unilaterally dispose of even these rickety Weteyes.

Successfully, at least since 1970, various Defense Department officials and the old boys of the defense establishment have employed the blackmail which demands that approval of the "binary" nerve gas weapons is their price for destruction of the old ones.

Presidents, the latest one Carter, have endorsed the blackmail and the lies and in the process abused the concerns and the safety, not just of the people of Denver but of all Americans.

SOME HISTORY

In 1970 the then Rep. Don Brotzman, R-Colo., whose district included the arsenal, was assured in writing by the Defense Department that all nerve gas weapons and stocks at the arsenal—including the Weteyes—would either be destroyed at the arsenal or moved away.

The defense establishment lied to Brotzman and to Colorado. The full actions he was promised didn't occur.

In 1973, testifying before a House inquiry into chemical weapons stockpiles, the then secretary of the Army, Howard (Bo) Callaway, said all "deterrent" stockpiles of nerve gas weapons at the arsenal—again, including the Weteyes—would be destroyed there.

Callaway, now a Colorado resident who is seeking nomination as the Republican candidate for the U.S. Senate, said the nerve gas weapons at the arsenal were not necessary to the nation's defense, that they were only a "small portion" of the nation's total storage.

He said the decision for "detoxification" had been made by James Schlesinger, then the secretary of defense, "with the concurrence of the National Security Council," the panel which included President Nixon.

What Callaway said would happen didn't happen, not during the nearly three more years he served as secretary of the Army, not during the Ford administration which followed Nixon's and not during this administration of Jimmy Carter.

Instead, the defense establishment veered back to its "deterrent" argument, threatening the Soviet Union with weapons that can't even be reliably delivered against them and blackmailing the highest levels of our government.

This is shabby and intolerable abuse of the trust most Americans hold in their national government and its leaders.●

PERSONAL EXPLANATION

HON. LARRY J. HOPKINS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HOPKINS. Mr. Speaker, yesterday I had the opportunity to be the keynote speaker at a preliminary conference to the 1981 White House Conference on Aging, which was held in my home State of Kentucky. As you know, I am a member of the Select Committee on Aging as well as the House Agriculture Committee, and I have been active in both of these areas. My speech dealt with the challenges in the next decade for the rural elderly.

Because I was obliged to make travel arrangements while the House was still in session, I did not have the opportunity to vote on several key issues discussed during debate on the Rail Act of 1980, H.R. 7235. If I had been present, I would have voted "no" on the amendment offered by the gentleman from Texas (Mr. ECKHARDT), "yes" on the amendment offered by the gentleman from West Virginia (Mr. STAGGERS), "no" on the amendment offered by the gentleman from Michigan (Mr. ALBOSTA), and "yes" on final passage of H.R. 7235.●

NATIONAL DEVELOPMENT BANK

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PAUL. Mr. Speaker, this morning the Subcommittee on General Oversight of the House Banking Committee held a hearing on H.R. 7902, a bill to create a national development bank. Two witnesses appeared at the hearing, one of whom was Mr. Sheldon Richman of the Council for a Competitive Economy. I would like to call my colleagues' attention to Mr. Richman's testimony, for it is an excellent analysis of why this bill, and development banks in general, are a bad idea. They create no new jobs, no new wealth, and no new capital. They merely redistribute jobs, wealth, and capital, and destroy all three in so doing.

The statement follows:

STATEMENT OF SHELDON RICHMAN, DIRECTOR OF RESEARCH, COUNCIL FOR A COMPETITIVE ECONOMY

Mr. Chairman, members of the subcommittee: Thank you for this opportunity to testify on this important matter. I am Sheldon Richman, director of research for the Washington-based Council for a Competitive Economy. The Council is an organization of over 1,100 companies and individuals dedicated to a free, competitive economy, unhampered by regulation, subsidy and any form of special privilege. I want to stress that we are not a pro-business organization, but rather an organization of business people who are pro-free-market. To provide a context for my remarks on H.R. 7902, I should note that we are dedicated to the free market, first, because it is the only arrangement that respects individual rights, and, second, it is the only one that enables individuals to maximize their well-being as they see it.

The purpose of the proposed National Development Bank is to lend or pledge the taxpayers money for the achievement of certain political objectives. These include creating public-works projects and establishing or expanding commercial enterprises to create jobs for the unemployed and so-called underemployed.

I submit to you that the creation of a healthy economy in which everyone who wants a job can find one will not be achieved by this method. Historical precedent and economic theory demonstrate that it is doomed to failure.

Let's look at history briefly first. The National Development Bank is similar to the famous Reconstruction Finance Corporation of the 1930's, a Depression-era agency that lent money to banks, railroads, state and local governments and agriculture. In 1932, the RFC provided nearly $4 billion in cash and credits. Note that I said 1932—the last year of Herbert Hoover's administration. We've heard a lot about the need for an FDR-type economic revival in the United States. But few people seem to recall that government activism in the economy during the Depression began with Herbert Hoover, not Franklin Delano Roosevelt. In fact, every major program installed by Roosevelt had a precursor in the Hoover years, including wage supports, public works and business loans.

I leave it to you to decide if the attribution of these ideas to Herbert Hoover takes some of the gloss off H.R. 7902. The fact is that the RFC, despite its $10 billion in credits from 1931 to 1938, did not revitalize the economy and end the Depression. In 1938, unemployment was nearly as bad as it was when FDR took office. Only the transformation to a war economy did what Hoover's and Roosevelt's New Deals could not.

We have to turn to economic theory for an explanation of why the RFC could not and the proposed National Development Bank will not revitalize the economy.

The purpose of an economic system is to satisfy consumers. It exists to serve them. When it is unobstructed by government intervention, entrepreneurs, guided by the signals of the price system, channel land, labor and raw materials to the most highly valued purposes of consumers. One thing that is inconceivable in the unregulated market economy is mass, permanent unemployment. Human wants are insatiable; so the demand for labor services is unlimited. As long as wage rates are allowed to seek the market-clearing level, jobs will exist for all who want them. To be more precise, jobs will go begging for workers, and the consequent bidding up of wage rates will assure that workers earn the market value of their contribution.

Given what I've just said, there's obviously no need for a National Development Bank whose purpose is to create jobs. Rather, what we need to do is remove the impediments to a free labor market: the minimum-wage law, which prices unskilled labor out of the market; labor legislation, which drives wages above market level and causes unemployment, and all other obstacles to the free movement of labor.

But Congress and the Administration are unwilling to take these necessary steps. So they choose rather to pile new regulations on old to treat the problems the old regulations created in the first place. The National Development Bank is such a measure. And like all such measures, it won't work. Not only that: It will make matters worse and undermine our liberty in the process.

The National Development Bank will have 5 billion dollars to lend or to guarantee loans with. It is charged with the task of finding public-works and commerical projects to assist through this awesome power. How will it decide what to fund? We can be certain it will not use the same methods that private investors use. They look for actual or potential profitability, which is always a sign that the enterprise in question is responding to a consumer need. The Bank by law will be required to assist only enterprises that DO NOT serve consumers well. The bill says that borrowers must present evidence "they are unable to obtain funds on reasonable terms from any other source . . ." If no voluntary investor is willing to lend a borrower money, there are only two explanations: Under current conditions, the borrower is not credit-worthy or he is not planning to use the loan to satisfy consumers' most urgent wants.

This federal agency will "revitalize" the economy by forcibly diverting scarce capital to wasteful uses. There is no other conclusion to be drawn. Present laws and inflationary monetary policies make capital precious enough. We hardly need a new agency dedicated to wasting valuable assets.

Moreover, the National Development Bank would be built on a foundation of injustice. Where will it get its money? From unwilling taxpayers, who, I suspect, would have other plans for their money. How will the Bank guarantee loans made by private sources? By pledging the money of those same hapless taxpayers. Who will be assisted by the Bank? Well-connected people who have been rejected in the marketplace by consumers. Ponder this for a moment: Just as in the Chrysler bailout, consumers who turn down a firm in the marketplace will be forced to support it through taxation. Does that strike you as just?

I cannot stress enough how fundamentally this bill would change our economic system from a demand economy to a command economy.

In the free market, voluntary exchange between consumers and producers determines the structure of the economy, the composition and quantities of products and services. This Bank, blind to consumers preferences, will substitute what it believes is in the "national interest." This may sound noble, even idealistic. But it is not. The nation's interest lies in the liberty and prosperity of the individuals who comprise it. This process cannot work backwards. The Bank cannot try to achieve the national interest, hoping to achieve individual well-being as a result. So instead, the Bank will become an engine of special privilege, accessible only to those with political clout. Notice that only Chrysler got bailed out despite the fact that as many people as Chrysler employs lose jobs because of small-business failures each year. Could it be that the UAW has influence the others don't have?

This bank will not only infringe on the freedom of American citizens, it will help impoverish them through its immense costs. These costs go far beyond the $5 billion the bill would appropriate. Every time the Bank guarantees a loan to someone who couldn't get it on its own in the market, it will be depriving consumers of whatever goods would have been produced by the entrepreneur who would have borrowed that capital. In other words, the Bank, in fulfulling its mandate, will be snatching capital from potential winners and giving it to known losers. Is that a prescription for prosperity?

This not only deprives consumers of untold products and services, it deprives workers of new and lucrative job opportunities, and it deprives entrepreneurs who don't have connections or opportunities to borrow capital to start or expand profitable projects.

On all counts, this National Development Bank is a bad idea. It diminishes liberty—which is enough to shelve it—and it promises to make us all poorer as a result. It has no place in a country that prides itself on freedom of enterprise. It will steal from us all for the benefit of privileged interests. It will centralize and politicize economic affairs in a manner reminiscent of Mussolini's fascist programs in the 1920's and 1930's.

I implore you to reject this bill and begin deregulating and decontrolling the economy so that we have both freedom and prosperity. Thank you.●

PERSONAL EXPLANATION

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, earlier today I was detained and unable to reach the House floor in time to vote on the motion to table House Resolution 745, the resolution of inquiry in the matter of Billy Carter. As a cosponsor of this resolution, I would have voted "no" on the motion to table if I had been present.●

HAZARDOUS WASTE SITE INVENTORY AMENDMENT TO H.R. 7020

HON. BOB ECKHARDT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ECKHARDT. Mr. Speaker, when the House of Representatives considers H.R. 7020, the Hazardous Waste Containment Act of 1980, I intend to offer two amendments. The first, which I discussed in yesterday's Extensions of Remarks at page E4295, would provide funds for health studies at hazardous waste sites. The second, which is the subject of this statement, would provide for a comprehensive inventory of all hazardous waste sites in the country.

In September 1979, the Commerce Committee's Oversight and Investigations Subcommittee, which I chair, issued a report, entitled "Hazardous Waste Disposal," which concluded that, "Hazardous waste disposal is one of the most serious environmental problems faced by this country today." Obviously, this is a problem of enormous dimensions. For example, in its first year of operation, EPA's Hazardous Waste Enforcement Task Force has helped the Justice Department file suits seeking about $230 million just for the cost of remedial work on Hooker Chemical Corp.'s four sites in Niagara Falls, N.Y. Overall, in just this first year, the Justice Department has filed a total of 40 suits for remedial work with an estimated cost of between $330 million and $590 million. While these statistics hint at the size of the problem, they are merely the tip of the iceberg. We really have no idea what the full dimensions could be. Therefore, one of the main recommendations of our report was for, "An inventory of all hazardous waste disposal sites, so that proper regulatory and enforcement priorities can be established."

I provided for the creation of such an inventory in my hazardous waste bill, H.R. 6931, and a similar provision was incorporated in the introduced version of H.R. 7020, the bill we are considering today. Unfortunately, in our haste to move H.R. 7020 through the full Interstate and Foreign Commerce Committee, the provision was narrowed so that now it would provide for an inventory of inactive hazardous waste sites only. My amendment would restore the original concept of H.R. 7020 so that we would have an inventory of all hazardous waste sites, inactive and active.

The effect of my amendment would be to apply the provisions of H.R. 7020 to the owners and operators of both active and inactive hazardous waste sites. As amended, H.R. 7020 then would require all owners or operators of such sites to provide the following information to State and local officials within 3 months after EPA issues the necessary forms:

(A) A description of the location of the hazardous waste site;

(B) The name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

(C) The current status of the site, including (i) whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased), (ii) whether there have been any releases of hazardous waste from the site which have caused damage to public health or the environment, and (iii) the nature of any other activity being carrried out at such site;

(D) Such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site, and relating to the hydrogeological and geophysical properties of the site, as may be necessary to determine the extent of any environmental or health hazard which may be associated with such site; and

(E) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site.

Mr. Speaker, we must have this information if we are to set rational priorities for cleaning up dangerous sites. Absent adoption of this amendment, we will not have the necessary information about active sites under EPA's proposed regulations until all such sites have received permits from EPA, a process EPA admits will take some 7 to 10 years. Moreover, I believe that the basic mechanism contained in H.R. 7020 for collecting this information—from site owners in the first instance and then from generators or transporters where the owner fails to comply or where the information is inadequate—is the most efficient, least expensive and least burdensome way of securing this vital information.

I hope all my colleagues will support this amendment that I believe is essential to the workability of H.R. 7020.●

HAPPY 80TH BIRTHDAY, CONGRESSMAN CLAUDE PEPPER

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. STOKES. Mr. Speaker, I would like to thank the gentleman from Florida, Congressman Fascell for taking out this special order so that we can salute one of our most outstanding Members on his 80th birthday—the Honorable Claude Pepper.

Mr. Speaker, instead of saying Claude Pepper is 80 years old, I think it is more appropriate to say 80 years young. The word "old" brings to mind someone slowing down and retiring. We all know that Congressman Pepper is not about to slow down.

In fact, it seems that as he has progressed chronologically, he has increased his commitment to the causes for the poor, the disadvantaged and the elderly. By recounting his public career, it is evident that he has displayed the resilience, foresight and flexibility we often associate with youth.

Mr. Speaker, Congressman Pepper is not a man who has taken the easy role in terms of positions or causes he has championed. For example, he became involved in the struggle for racial justice long before the civil rights movement gained momentum in this country. He has taken similar stances in terms of the problems of the elderly and American immigrants and refugees.

He is probably most noted and revered around the country for his role as chairman of the House Select Committee on Aging. Under his leadership, the committee has addressed the problems of the aged in our country. He has even gone so far as to act as our conscience for older citizens in each and every piece of legislation that comes before the House of Representatives. His legislative achievements in this area include the extending of the popular meals on wheels program; establishing a program to combat crime in public housing; and obtaining Amtrak discounts for older citizens.

He is probably most noted for his work with the Age Discrimination Act Amendments of 1978 which eradicated the age-based retirement of Federal employees and increased the retirement age in private sector employment from 65 to 70. Without his unfaltering work on this legislation, many productive elderly persons would be forced to retire prematurely.

Mr. Speaker, time and time again, Congressman Pepper has become the spokesperson for seemingly hopeless causes and brought hope and success to many people. His energies and vigor in the pursuit of these causes have been untiring. I salute him on his 80th birthday and I wish him well in the future.●

A TRIBUTE TO HON. BILL NATCHER ON HIS BIRTHDAY

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BROOMFIELD. Mr. Speaker, tomorrow is a very special day in the life of our distinguished colleague Bill Natcher, and I want to join in congratulating him on his birthday.

No Member of this body is better liked than Bill Natcher and none has a finer reputation for decency, honesty, and integrity.

During the 26 years he has conscientiously represented the people of Kentucky, he has never missed a quorum or a rollcall—and there have been 11,954 of them.

That is a record that is unmatched in the history of the House of Representatives.

As the Washington Post noted in an article earlier this year, Bill runs the smallest, most frugal office in Congress demonstrating his belief that service in the House is a privilege and the highest honor of citizenship.

The respect he commands is never more evident than when he assumes the Speaker's chair. Under his firm but gentlemanly stewardship, the House functions efficiently and fairly and with a welcome air of dignity and decorum.

Mr. Speaker, Bill Natcher embodies all of the good qualities that bring great credit to this body.

He is a special person and we all look better in his reflection.

I want to join with Bill's family and his many friends in the House in wishing him many, many more years of health and happiness.●

HON. JOHN H. BUCHANAN, JR., MERITS EDITORIAL TRIBUTE

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. COUGHLIN. Mr. Speaker, I am honored to insert in the Congressional Record an editorial tribute to Hon. John Hall Buchanan, Jr., who represents Alabama's Sixth Congressional District.

In the editorial published Sunday, September 7, 1980, by the Washington Post, the newspaper takes note of John Buchanan's courageous actions in battling for voting rights in the District of Columbia. His honesty and concern were an open affirmation of his Christian beliefs.

I am disappointed and saddened that John will not be returning to these Chambers next year. But to those of us who know and respect him, John always will symbolize the practicing Christian who is unafraid to lay his beliefs on the line.

The House and, yes, Alabama's Sixth District are the losers. I know, however, that John will take this election defeat in stride and, in fact, will turn it into strength and faith. He will be successful in whatever venture he chooses.

The editorial follows:

[From the Washington Post, Sept. 7, 1980]

MR. BUCHANAN'S "DOGGONE TRUTH"

"When voting rights came to Alabama, it was the best thing that happened to my state * * * I will not any longer compromise on civil rights * * * I'm at the point in my political career where I'd rather lose it than fail to do what's right."

The "Point" mentioned above was four years ago, when Rep. John Hall Buchanan Jr. was explaining why an Alabama Republican-Baptist preacher-congressman-moderate/conservative would battle in Congress for the cause of voting rights for the District of Columbia. And this week Mr. Buchanan did "lose it"—falling victim in the GOP primary to supporters of the Rev. Jerry Falwell's Moral Majority. Though the defeat may not mark the end of Mr. Buchanan's political career, he will be leaving Congress, where his stands on civil rights, foreign affairs, separation of church and state and other matters had won wide respect.

Mr. Buchanan's positions, though they did not fit any predictable political mold, have never seemed part of any calculated "maverick" role. Long before his efforts for the D.C. voting rights amendment, he was taking on the Ku Klux Klan, calling it "a tiny unrepresentative group of misguided people who have brought so much shame upon themselves and those associated with them."

During the House debate on the D.C. amendment, Mr. Buchanan socked it to certain colleagues in an emotional speech pointing to a "scandalous hostility between many members of the House and the District." He noted later that "nobody will say it, but it's the doggone truth." He attributed his "emancipation," on civil rights in general and on D.C. voting in particular, to his experience with a biracial Baptist church in Southwest Washington, where he and his wife have served in various capacities. "When you're deeply involved in a biracial entity, you think of people as brothers and sisters. Then the denial of rights of my brothers and sisters becomes an infringement of my rights as well."

That is why, with good reason, so many "brothers and sisters" and others well beyond the borders of his home state appreciate the many efforts John Buchanan extended on their behalf, in Congress as well as throughout the city.●

SMALL BUSINESS REGULATORY FLEXIBILITY ACT—S. 299

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HARRIS. Mr. Speaker, it is with great satisfaction that I had the opportunity to manage the Regulatory Flexibility Act on behalf of the Judiciary Committee during floor consideration on Monday, September 8. The Regulatory Flexibility Act represents the culmination of a great deal of work and persistence by both the Senate and House. The House Judiciary Committee has been working on a comprehensive regulatory reform bill which includes provisions for small business regulatory flexibility similar to the legislation we have just passed. In addition, the House Small Business Committee has conducted extensive hearings and investigations on this issue and reported similar legislation to S. 299 last October.

As a member of the House Task Force on Small Business, I am pleased that the Congress has taken another step toward reducing the burden of excessive and cumbersome regulations on the small business community through its overwhelming support and approval of this measure. The passage of this landmark small business legislation is consistent with our efforts over the last 3 years to eliminate unnecessary regulations to enhance and encourage competition in our economy. We have passed deregulation bills for the airline and trucking industries and on Tuesday, September 9, moved to deregulate the ailing railroad industry as well.

Redtape, excessive paperwork, and burdensome regulations which drain resources and add to business costs must be eliminated. The application of regulations across the board regardless of the size of business involved has given an unfair competitive advantage to larger businesses at the expense of many small businesses throughout the country. It is difficult enough under the best of circumstances for a small business to be successful. But when small businesses are already feeling the effects of double digit inflation and interest rates it is difficult to keep up with larger companies that maintain full-time staffs of lawyers and accountants to interpret the maze of Federal regulations promulgated each year.

The Small Business Regulatory Flexibility Act will go far toward setting up a more equitable and reasonable approach to the development and implementation of regulations by Federal agencies. Under this bill, Federal agencies are required to assess the impact of existing and future regulations on small businesses and make appropriate adjustments to reduce the burden and impact on the small business community. The legislation would provide notice of proposed rulemaking to assure that small businesses have adequate notice and opportunity to participate in the rulemaking proceeding. The Small Business Administration's Chief Counsel for Advocacy is responsible for monitoring agency compliance with the legislation's requirements.

Overregulation of small businesses is one of the most longstanding and strongest complaints by the small business community. Regulatory flexibility was included by the delegates to the White House Conference on Small Business as a top priority in its recommendations for actions to assist small business.

The small business sector of the economy accounts for fully two-thirds of all new jobs created in the economy and currently employs 58 percent of America's total business employment. The small business sector is critical to current efforts to increase productivity and innovation, which has been lagging in our economy in recent years. Every positive step must be taken to provide small businesses the means and opportunity to create new jobs and generate the technological innovation necessary to insure a productive and efficient economy in the future.

Clearly, small business makes a tremendous contribution to our Nation's economy. We have an obligation to preserve and encourage a competitive marketplace in which small businesses can thrive. The Regulatory Flexibility Act will allow small business men and women to do what they do best—compete and serve the needs of consumers in an unfettered environment. I am extremely pleased to have played a part in the enactment of this important legislation.●

THE BOREN AMENDMENT

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FORD of Michigan. Mr. Speaker, on Tuesday, September 16, the House-Senate conference on the Child Nutrition Amendments of 1980 will consider a nongermane rider to the nutrition bill dealing with the Farm Labor Contractor Registration Act (FLCRA). The rider, known as the Boren amendment, was adopted by the Senate without hearings or testimony in either body of Congress.

I strongly oppose the Boren amendment because I object to the Senate's increasing abuse of the nongermane rider, a technique that subverts the orderly, thoughtful consideration of legislation. But more importantly, I object to the Boren amendment because it would effectively repeal the FLCRA, the only Federal legislation that protects migrant farmworkers against the most common abuses they endure in their hiring, transportation, housing, and employment in agricultural labor.

The administration, through Secretary of Labor Ray Marshall, has announced that it shares my concern about and opposition to the Boren amendment. I would like at this point in the RECORD to insert a letter to me from Secretary Marshall in which he details his objections to the Boren amendment, as well as his support for compromise legislation which I have introduced, H.R. 7868.

The letter follows:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C.

Hon. WILLIAM D. FORD,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is to express my deep concern and strong opposition to the amendment introduced by Senator Boren to the Farm Labor Contractor Registration Act (FLCRA). This amendment was passed by the Senate and attached as title III of H.R. 7664, the Child Nutrition Amendments of 1980.

The Senate amendment to FLCRA would effectively repeal the Act's protections for most agricultural workers brought within the Act by the 1974 amendments and for most farmworkers who were protected by the original passage of the 1964 Act.

These amendments could be read as providing that a traditional farm labor contractor—the person who recruits, solicits, hires, furnishes or transports workers for agricultural employment—would be exempted by the simple expedient of being hired as an "employee" by every user of his services. Even if the farm labor contractor should serve several users simultaneously, he could be exempt under the amendment's definition of a "regular employee" which includes all part-time employees. Since the amendment exempts any "employee" of a farmer, canner, processor, ginner, packing shed operator, or nurseryman, the traditional farm labor contractor could escape coverage.

Under present law, the only responsibility of the user of farm labor contractor services is to assure that the contractor has complied with the registration provisions of the Act.

The amendment does not transfer any obligations for the protection of agricultural workers to the user from the traditional farm labor contractor. Since the amendment virtually eliminates the prior obligations of the farm labor contractor, the amendment results in the agricultural workers being left with no protections under the law.

The amendment would further exclude from coverage agricultural cooperatives and associations and their employees, even when performing traditional farm labor contractor activities, such as supplying migrant workers not only for their member growers but also for other growers as well.

The Act presently exempts any processor, ginner, canner, packing shed operator, or nurseryman who supplies migrant workers solely for his own operation. The amendments would define the term "for his own operation" so broadly however, that it is strongly arguable that virtually every entity, regardless of whether it acts as a traditional farm labor contractor or not, would qualify for the exemption.

Although the amendment would relieve fixed situs operations from the burden of registration—an aim which this Department supports—it does so by unnecessarily eliminating essential protections for their farmworkers. Furthermore, the amendment would reduce the general class of protected farmworkers. This Department cannot support legislation which would lessen farmworker protections. Because farmworkers are least able to protect themselves, their current labor standards protections under the Act must continue.

This Department is not unmindful of the legitimate concerns of many members of Congress concerning the interpretations placed on the Act's provisions by the Department and the Federal courts. On July 30, 1980, you introduced H.R. 7868, the Farm Labor Contractor Act of 1980, which the Department of Labor supports.

H.R. 7868 would maintain the protections provided for agricultural workers under FLCRA while eliminating unnecessary paperwork—registration and documentation—requirements for fixed situs agricultural employers who hire agricultural workers only for their own operations.

This, we believe, is a sensible approach. FLCRA registration and documentation provisions were initially established to deal with crew leaders who provide workers to others and who regularly move from one place to another in carrying out those activities. Some means of registration and documentation of traditional farm labor contractors must be maintained in order to protect both workers and employers. It has become clear, however, that the need for registration and documentation of fixed situs employers who obtained agricultural workers only for their own operations is less important than assuring substantive labor protections for those agricultural workers.

While we agree that fixed situs employers should be relieved of the registration and documentation requirements, it remains abundantly clear that agricultural workers employed by fixed situs employers still need substantive FLCRA protections. We believe that H.R. 7868 appropriately addresses these issues.

That bill would further remove the possibility which presently exists that corporate employers may be eligible for certain exemptions from coverage while their managerial employees would not be exempted. Such a situation could result in employees being held responsible for corporate policy over which they have no control.

H.R. 7868 addresses other issues, and we are enclosing for your use a more detailed comparison of title III and H.R. 7868.

In summary, we believe that the provisions of H.R. 7868 should be substituted for the provisions of title III of the Child Nutrition Amendments of 1980. The provisions of H.R. 7868 would both maintain the substantive protections currently available to agricultural workers and eliminate unnecessary employer burdens.

These changes would also assist the Department of Labor in targeting its compliance activities in the most effective manner possible. By contrast Senator Boren's amendment to FLCRA would needlessly reduce protections farmworkers currently have and at the very least should be removed from the Child Nutrition Amendments of 1980.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAY MARSHALL,
Secretary of Labor.●

RESOLUTION ON BILLY CARTER

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, regarding the debate on the House floor on the resolution of inquiry in the matter of Billy Carter, it is apparent that many questions still remain to be answered. Unfortunately, I was unavoidably absent and unable to vote on the motion to table the resolution. However, as stated in the RECORD earlier today I would have voted in opposition to the motion since I am a cosponsor and supporter of the resolution.

In connection with the entire matter, I would like to bring to the attention of my colleagues the presentation made at the council of the John Birch Society on September 6, 1980, by the noted author and investigative reporter, John Rees.

BILLY CARTER

(By John Rees)

In discussing the activities of Billy Carter one fact should be paramount in our minds—If Mr. Welch or any of us in this room had acted in a similar manner, the doors of a federal prison already would have slammed shut behind us.

But we are talking about a privileged person, the "First Brother," and an Administration that has gained notable expertise—on the job training, as it were—in covering up criminal and ethically dubious, but financially rewarding problems concerning the President's immediate family and entourage.

During Jimmy Carter's brief reign in the White House we have read about repeated less-than-vigorous prosecutions of investigations concerning the Carter family peanut warehouse and the financing of the 1976 Carter presidential campaign; about Bert Lance and his curious loans to the Carter family businesses; Robert Vesco; about Speaker of the House Tip O'Neill and the fraud-riddled General Services Administration; about Dr. Peter Bourne and Hamilton Jordan and other reports of abuse of illegal drugs in White House circles.

The real accounts of the wheeling and dealing that snatched both Jack and Chip Carter from investigations by the Drug Enforcement Administration into the major marijuana smuggling cesspools of south Georgia and northern Florida have yet to surface.

So with expertise gathered in at least a dozen cases potentially disastrous to the Carter White House, it is not surprising that the murky affairs of Billy Carter and the government of Libya is being moved to a decidedly inconclusive conclusion.

Many of the facts about Billy Carter's courtship by Libyan diplomats and their agents were presented in The Review of the News on August 20th.

We detailed Billy Carter's finances and showed that the year before he first traveled to Tripoli he had borrowed at least $336,000. We can't prove what he did with that money, but our sources claim Billy used it to pay back Jimmy Carter's campaign debts. That raises more questions. Why couldn't President Carter or the Democratic National Committee hold some public fundraising luncheon at $100-a-plate and pay off legitimate debts? Was Jimmy Carter's initial primary campaigns late in 1975 and early 1976 financed by those funny loans from Bert Lance's banks to the Carter warehouse and farm? That would have been a grave violation of the Federal Election Financing laws. Did brother Billy then have to borrow all that money in 1977 to pay back Bert Lance's bank and head off the investigations?

When Bert Lance was forced to resign from the White House, he sold out his bankholdings to a group of Arab businessmen at a very high price. Did Bert Lance steer Billy Carter toward how to make deals with the Libyans?

Billy has admitted receiving $220,000 from the Libyan government. Even so, in his testimony he indicated he expected to get a total of $500,000 from Colonel Qaddafi's officials. Now that would have been enough to pay off all of Billy's strange loans, his own personal debts on real estate and his back taxes. Does this mean that it would have ended up with Colonel Qaddafi picking up the tab for President Carter's initial presidential campaign expenses?

The documents Billy Carter had to submit to the Senate included Xerox copies of the two bank drafts made out to Billy Carter on the account in a Washington, D.C. bank maintained by the People's Bureau, as the Libyans now term their Embassy, of the Socialist People's Libyan Arab Jamahiriya. The first for $20,000 was dated December 27, 1979. The second for $200,000 was dated April 7, 1980 and was deposited by Billy a week later in a brand new account.

It is interesting to note that Billy Carter listed 12 bank accounts over which he positively had signature authority and another 9 bank accounts, including the various Carter family businesses, he thinks he "may have had" signature authority. You know, people can get a little tired of the "I'm just a dumb country boy and every time I need to write a check I just go open another checking account" line.

In any case, once Billy deposited the $200,000 Libyan check, he listed disbursements through at least four separate accounts for $50,000 in bank loans; $20,000 to IRS for unpaid back taxes; $17,000 for vehicle purchases; over $7,000 on his American Express card; over $10,000 in mortgage payments; over $8,000 in lawyers and accountants' fees; he gave $8,000 to his buddy Randy Coleman who has also registered as a Libyan agent; there was a couple of thousand dollars more to pay off some bills. Then you get this item: "Miscellaneous checks drawn on various accounts" from April to the date of his Senate testimony in mid August a total of $32,800.

For a gas station owner in a small town, Billy Carter seems to have remarkable expenses. He had gone through all but $11,000 of the Libyan money in four months. Even though some of Billy's disbursements were for old debts, it would seem he requires close to $200,000 a year just to maintain his style of living—even with inflation pretty good for a small town in south Georgia!!!

The important question to ask is why did the Libyan government think Billy Carter was worth such a big investment? They gave him $220,000 in unsecured "loans" which by registering as a Libyan agent Billy in effect admitted were really not loans but payments. From Billy's testimony, it seems he expected to receive as much as half-a-million dollars more.

There can be little doubt that Billy Carter indeed performed some services for the Libyan Government. He helped them to get a fleet of 400 giant trucks. These were sold to the Libyan Ministry of Agriculture, but in fact they are sitting right now on a military base outside Tripoli being serviced and made ready for desert warfare as tank transporters by Soviet technicians.

Billy Carter also helped the Libyan Government get export permits for some aircraft, the sort of jumbo jets that are easily converted to troop transports. Billy has also served as a major distraction—a decoy, if you will—in a federal investigation of a Libyan effort to bribe John White, the National Chairman of the Democratic Party.

Right now there is a federal grand jury sitting in New York City on that bribery matter. I understand that despite evidence gathered by an FBI agent who was undercover in the staff of the Democratic Party National Committee, there is every indication that the Carter-appointed U.S. Attorney and the Justice Department will decide to not prosecute and claim "lack of evidence."

In passing let me share with you the methods by which the guilty may be protected.

From 1977, Chairman John White was in contact with officials of the Libyan Government over getting export permits for the C-130 transports Libya had bought from Lockheed and which were sitting on a storage runway in Marietta, Georgia. It is known that certain promises were made both by and to White. Did the FBI wait to see if a "constructive act" took place as would any prudent investigative organization? Not at all. We have been told by reliable sources that FBI investigators were instructed to visit John White and ask him, "Do you expect to receive a bribe next time you meet the Libyans?" Naturally he said "No" and naturally, now being warned that his meetings with the Libyans were under surveillance, he broke off the meetings. That's rather different in method from the "ABSCAM" operation. No one sent other FBI agents to the offices of the Congressmen who have been indicted to ask them whether they were negotiating to get a bribe from an Arab sheik!

But getting back to Billy Carter, I have here a rather bulky document from the House Judiciary Committee. Chairman Peter Rodino, prodded by Congressmen such as John Ashbrook, Henry Hyde, Robert McClory and Jim Sensenbrenner, produced some questions for the President that would have provided us with considerably more information on his brother's activities—had they been fully answered.

It is very interesting to examine how these questions were handled. For example, the question asking for "the exact date on which the President learned of the Justice Department's investigation and proposed prosecution of Billy Carter, and the exact date on which the President learned of the $220,000 payment to Billy Carter by the Government of Libya," received this response:

"No documents are responsive to this paragraph."

The House Judiciary Committee was not asking for documents. They wanted a plain answer from the President of the United States, James Earl Carter, Jr. And since we know that the President keeps a detailed personal diary and since his meetings and telephone calls are chronicled, I find it impossible to believe the White House response.

Obviously there are more areas that should concern us. For example, why did Billy Carter consistently use payphones to make his calls? Did he think his calls were being monitored? If so, why? What was he hiding?

Why was Billy Carter being investigated by FBI agents assigned to the Foreign Counter-Intelligence squad? Why was this highly specialized division of the FBI involved and with what breaches of U.S. security was Billy involved?

Why was the President so poorly informed about his brother's activities? Or was he informed?

The Carter White House and reelection strategists are making every attempt to play down the story of the "buying of Billy." Half-truths have been heaped upon evasions and misstatements and the White House public-relations flacks are looking for scapegoats to divert attention. Assorted Administration officials are being readied for sacrifice, with Attorney General Benjamin Civiletti at the head of the list. Congress has the opportunity to force the truth into the light and make it known to the American people.

But with the future of the President's own party at stake in November, and with that party's control of the House and Senate in question, the likelihood that we will get answers to hard questions before November 4 diminishes daily. The only way we may get the truth is if the Republicans start behaving like a real opposition party and get to the bottom of this affair.●

PROTECTION FOR OUR COASTLINES

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. STUDDS. Mr. Speaker, once again the Federal Government has been caught seriously lagging behind the efforts of our States to protect our valuable coastal resources. In this instance, I am proud to say that in our own State of Massachusetts a gubernatorial executive order, designed to discourage further housing and commercial development on barrier beaches, has put the State well ahead of efforts by the Federal Government to halt subsidizing unwise development in areas far too fragile to accept such development. This measure is critically important in Massachusetts because over half of all new development is occuring on our coast.

Specifically, the executive order forbids the use of State money and State-administered Federal grants for construction projects in hazard-prone barrier beach areas; allows State antierosion projects only to keep open navigation channels, but not to save beach property; commits the State to disapproving development projects in flood-prone areas; and makes barrier beaches the State's top priority when buying land for public use. Already $1 million has been appropriated by the State to assist in this land acquisition. State officials have wisely decided that it is wrong to encourage or subsidize the building of structures where nature has clearly shown us they do not belong—and continues to remind us by periodically washing them away.

Unfortunately, what the State cannot do is direct the Federal Government's role in the Federal flood insurance program, U.S. Army Corps of Engineer projects, and the many other Federal programs and activities which often attract or encourage coastal and barrier island development. Clearly, we need a coherent and consistent Federal coastal policy which coordinates Federal programs with State initiatives and assures us that our many Federal and State programs are not working at cross-purposes.

Mr. Speaker, very shortly we will be considering H.R. 6979, the Coastal Zone Management Improvement Act of 1980. One of the key provisions of this bill is a call for a comprehensive review of all Federal programs which affect our coastal resources. This review is intended to help Congress, as well as the executive branch, take action to eliminate any conflicts between existing programs and to develop a consistent and rational policy toward the development of our coastline. I would urge my colleagues to join with me in support of this vital piece of legislation so that the Federal Government may make a significant effort toward assisting our coastal and Great Lakes States in the wise management of our coastal resources.●

ACHIEVEMENT SCHOLARSHIP PROGRAM

HON. RAY KOGOVSEK

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. KOGOVSEK. Mr. Speaker, for many years, there have been considerable efforts to fight crime and to prevent offenders from committing second offenses and returning to jail. One successful effort was launched in 1973 by one of my constituents, Helene C. Monberg. The achievement scholarship program has helped ex-offenders move back into the community as skilled, taxpaying citizens. In fact, the program is now directed by Ronald Malcolm, one of the program's recipients. ASP, a nonprofit organization, is moving into a new phase. It has been merged with Inner Voices, another Washington, D.C. based nonprofit organization for ex-offenders. IV operates as a restitution program which provides alternatives to prison for those having committed less serious crimes and are able to pay back their victims. ASP will serve as the educational arm of Inner Voices. Together, I believe the two programs will work as one in a continuing effort to help ex-offenders become productive citizens and not recidivists. Mr. Speaker, I enter an explanation of the Inner Voices-ASP merger into the Congressional Record so that the programs can receive much deserved recognition.

The material follows:

ASP Reaches First Goals, Moves On to New Phase

(By IV-ASP Coordinator Ronald D. Malcolm)

Washington, September 1980.—Today I am a pioneer, one of a handful of black men managing a non-proft, privately funded, tax-exempt organization in this area.

A year ago I was a resident of a halfway house.

What accounted for this miracle? The Achievement Scholarship Program (ASP). ASP is living proof that miracles still happen.

Some 7½ years ago, in February 1973, Helene C. Monberg, a veteran Washington news correspondent with long experience in working with youth as a volunteer, started ASP as an experimental "seed-money" scholarship program for ex-offenders to help move them back into the community as skilled tax-paying citizens. Now, as one of ASP's own awardees, I am running ASP. This fulfills a goal set for ASP by Chairman Bill Butler of the Achievement Scholarship Committee back in 1974 to have our ASP awardees run the program. I took over as full-time manager of ASP on Aug. 1.

ASP is being merged into Inner Voices (IV), another Washington, D.C.-based non-profit organization serving ex-offenders, headed by IV's Rhozier T. (Roach) Brown, Jr. Brown founded IV while he was at the Lorton complex in 1969. IV now operates a restitution program which provides an alternative to prison for those having committed less serious crimes who are able to pay back their victims, work and become productive citizens. The merger agreement was signed on July 24, and it will go into effect on Jan. 1, 1981, if both parties agree. At that time ASP will become the educational arm of IV. The merger agreement was approved unanimously by the 10-member Achievement Scholarship Committee on July 14 and by the three-member executive committee of IV on July 17. It was drafted by ASP Legal Counsel Edward Weinberg, a Washington attorney.

Under the merger agreement, ASP is a self-contained unit within IV. I am full-time manager of IV-ASP, a member of the staff of IV and of its executive committee, and IV agrees to train me in all phases of management. I started to work for ASP in March 1979 while I was a resident of Lorton complex and a student at the University of the District of Columbia under the Lorton Program. My responsibilities have gradually increased in the past year and a half as I have been groomed as Miss Monberg's successor in running ASP. As a full-time ASP manager, I am able to support my family on my ASP salary. Miss Monberg has always served ASP as a volunteer.

WHAT ASP IS

ASP is a Washington, D.C.-based non-profit tax-exempt privately funded organization with two tax exemptions, one from the U.S. Internal Revenue Service and the other from the District of Columbia. It provides "second-chance" scholarships to ex-offenders from the Washington area to help them move back into the mainstream of their community as productive and responsible citizens. The scholarships are "seed-money" aid toward college, trade school and special education. ASP also tries to provide other back-up support for its awardees, including on-the-job training, a how-to-study course, and counselling. All ASP paid work goes to its awardees, and four awardees have served on the ASP staff since 1975. ASP has also obtained a few jobs elsewhere for its awardees.

ASP's rehabilitation work is done in the Washington area with ex-offenders on parole and probation from area correctional institutions. Parole and probation officers nominate to ASP candidates, who, in their considered judgment, can be successfully rehabilitated thru education. Applicants are screened twice, first by the correctional agencies and then by the Achievement Scholarship Committee and staff.

GOALS ACCOMPLISHED

ASP was able to accomplish two of its goals in the 1973-1980 time frame: to have one of its own student awardees run its program and to help assure its future by merging with another non-profit organization working with ex-offenders.

In the same time frame, ASP awarded 113 scholarships toward college, trade school or special school to 112 awardees, of whom 23 to date have graduated or have completed special school. Seven more are on the way, making ASP's ultimate completion rate about 25 percent, equal to that of the general population, even tho all ASP awardees are ex-offenders.

ASP increased its "seed-money" scholarship awards from two in 1973 at $520 each to 30 in 1978 at $800 each and to 28 in 1979 at $900 each. ASP's scholarship award now is worth $900.

ASP has never employed outside help. All of its paid help has come from its awardees. ASP concentrated on using young black male inner-city ex-offenders as paid staffers because 90% of our awardees are black males and the unemployment rate among this group in the inner city is exceedingly high. Three ASP staffers have done well. One went on to a government job on which he performed satisfactorily. One is a counsellor on the staff of the University of the District of Columbia and a stringer for the Washington Post. And I am now running IV-ASP. ASP failed with one staffer.

Very few ASP awardees have been recidivists, although we do not know the exact count. This is due to ASP's insisting on two screenings of applicants, one by their parole/probation officers and one by the Achievement Scholarship Committee and staff. All ASP awardees were interviewed personally by ASP before receiving their scholarship awards.

For its work, ASP has received two citations in recent years. It received a citation in 1978 from the Committee for Economic Development, a blue-ribbon business research organization based in New York, for being one of 60 programs nation-wide effectively working on training and employing the hard-to-employ, the ex-offender. It was cited by the Probation Office of the U.S. District Court for the District of Columbia on April 17, 1980, for its seven-year program of providing "seed-money" scholarships to ex-offenders to give them a second chance to become productive citizens.

MOVING TO NEW PHASE

We feel that IV is a perfect partner for ASP. We see the merger as growth for both programs. Before the merger, ASP never had had a full-time manager. And IV did not have an educational department. The merger strengthens both. We hope to continue to prove in IV-ASP that ex-offenders, if given the opportunity, can become better citizens through education.

As a volunteer I coordinate a prison service program through my religion. I feel that my affiliation with ASP and the religious prison service program has been a total growth process for me. It gives me direction and allows me to serve the community in several beneficial ways. Being one of the very few blacks managing a privately funded non-profit organization in the area adds a tremendous incentive to my efforts. Being an ASP student awardee gives me a first-hand knowledge of ASP from the perspective of a student. I feel this background will enable me to make clearer and more precise decisions on the direction of IV-ASP in the future. Our target is a $30,000 program for the next year to allow IV-ASP to take on more awardees and to offer them more services.

ASP has been a highly successful experiment in training and employing the ex-offender and using the program to train young black leaders. Now ASP is moving into a new phase, with its awardees running the program. We hope to make the second phase as successful as the first.

The ultimate goal of ASP is to explode the myth that those who go through the criminal court system are losers. In ASP we hope to prove that many, even most, ex-offenders can become productive, useful citizens. ASP is designed to keep the ex-offender from going through the revolving door by providing him with an alternative through education.

ASP has reached the foothills; yonder are the mountains. I say, let us climb the mountains! ●

CLAUDE PEPPER—80 YEARS YOUNG

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. CHAPPELL. Mr. Speaker, our esteemed and distinguished colleague, CLAUDE PEPPER, celebrated his 80th birthday on Monday, September 8. He has served in the Congress for nearly a half century, left his mark on many pieces of legislation, and earned warm friendships on both sides of the aisle.

It has been my privilege to serve with CLAUDE and to have his sage counsel and good friendship over these many years. He is a man who is a good listener, an effective speaker, and a hard-working legislator which has earned him nine terms in the House and 14 years in the U.S. Senate.

Adding to CLAUDE's personal appeal is his sympathy for the underprivileged whom he has gone out of his way to assist both personally and professionally. He has steadfastly and tirelessly advanced the cause of improving conditions for our senior citizens. He has been instrumental in authoring legislation for the aged such as his bill which raised the mandatory retirement age for most jobs in the United States from 65 to 70.

CLAUDE PEPPER is in every sense an outstanding Congressman, with a great understanding of the legislative process and a love for his district that he so ably serves. Senator, my most helpful and loyal friend, you are 80 years young and I am delighted to have this opportunity to wish you a very happy birthday; and may God bless you with many, many more exceptionally successful and productive years. ●

LAME DUCKS AND LAWS

HON. GARY A. LEE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. LEE. Mr. Speaker, I will be the first to admit that a lot of things just do not make sense to me, but then the application of logic is often our first error in Government. The thought that the 96th Congress will be called back into a lame duck session late this year takes the prize for nonsense.

Speaker of the House THOMAS P. ("TIP") O'NEILL has made the announcement that Members of this Congress will most likely be called back into session after the elections because of the "press of important legislation."

Historically, employers have been in one of two schools of thought about workers they find still at their desk at quitting time, or the ones who take work home from the office on a regular basis. The first is that these are very dedicated employees who deserve to be credited for their diligence.

The second, however, is that the employee working late must not be doing his or her job well enough to keep up with the others. If the overtime employee needs 10 hours to do the work which has been allocated to an 8-hour day, it may be time for the boss to take a closer look.

The Speaker would have the American taxpayer, in this case the employer, believe the former description: that Congress wants to work overtime because of its dedication. I tend to believe the opposite.

I have joined with a handful of my colleagues in the House to formally oppose the convening of a lameduck session this year not only because it should be unnecessary, but because it can be downright dangerous to the taxpayers' health.

In the first place, this Congress was convened on January 4, 1979. The work that needed to be done should have been done by this time, plain and simple.

Out of fairness, one term of Congress will never solve all of the problems of America. This Nation is a growing, living, dynamic unit that needs constant attention. That is why there will be a 97th Congress, 98th, 99th, and Congresses beyond.

Yet even in view of that, the record of this Congress has been poor. The accomplishments list could be inscribed on the inside of your grandmother's favorite locket, and no amount of late-year legislating will change that.

Productivity during a lameduck session is another matter, and I do not give much hope for anything getting done this year. Maybe more importantly, however, is the danger it presents to the Nation from many directions. To list a few of those:

Legislation which is now before the Congress may well be deferred until later following the old adage that "work expands to fill the time allotted to it." Much of it should not be delayed.

Members of Congress who no longer rely on the approval of their constituents—nearly 40 have already announced their retirements and an undetermined number will be defeated in elections—can afford to be a great deal more callous about what they are doing here. In some matters, an "I don't care" attitude makes no difference, but now we are talking about making laws for the Nation.

The perceived "crush of business" often makes for very hasty decisions, particularly with a couple hundred people who do not want to be where they are and have other plans waiting, anyway.

Should the winds of politics shift in the November elections, many of those who are now "in" will be "out" by January. Yet a lameduck session of this Congress allows the "outs" to make law in December that will bind the next Congress.

If nothing else, politicians can be schemers. It is entirely possible for laws to be made in December that have no other purpose than to make the next Congress look bad, to encourage changes 2 years down the road. All America loves a practical joke, but not with their tax money.

Of vital concern must be the question of denying the will of the voter. If the voter in November decides that it is time to "throw the rascals out," then he does not want the rascals to go back for one last stab.

This final point, sending the "outs" back for a final shot at lawmaking, places this Congress under a highly suspect view by its voters. Government, specifically Congress, is already mistrusted enough; to compound that would be a travesty of the American system.

Lame ducks belong in a veterinary hospital, not in the U.S. Congress.●

THE SPIRIT OF HELSINKI, VIGIL 1980

HON. BALTASAR CORRADA

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. CORRADA. Mr. Speaker, it is an honor for me to again participate in "The Spirit of Helsinki, Vigil 1980" with many of my colleagues here in the House. The commitment we all share to honor the provisions of the Helsinki accords is shown by our continuing to speak out for those who cannot speak for themselves. Today I would like to bring to your attention the plight of Evgenia Lutskaya: Mrs. Lutskaya is a 53-year-old engineer from Leningrad who wants to emigrate to Israel to be reunited with her daughter. So far, her appeals to Soviet President Leonid Brezhnev have been unsuccessful. I would like to share with you her poignant and moving message:

> On the 4th of January, 1974, I was informed that my departure from the U.S.S.R. to my daughter is not permitted. This refusal received from OVIR has been explained that it was due to my previous work in NPO "Mars." The answer to my question about how long this refusal would be effective was as follows: "It may be one week, may be in one month, may be five years—10 years—15 years, and may be forever—when our laser beam will fall upon you.
>
> From the conversation in OVIR it became quite clear to me that the idea of my work has been absolutely wrong and has nothing to do with my actual work.
>
> I was sent from one organization to another where instead of giving a definite answer I was told: "We are not obligated to inform you."
>
> I left my work three years ago, and during the period of the last two years prior to my leaving, all the drawings issued by myself had no stamp of confidential because of continuous progress in science and technology and due to the fact that already a considerable time has lapsed since I worked in that organization, everything I have designed lost its actuality.
>
> I kindly ask you to reconsider my natural and rightful desire of a mother, suffering from a serious illness, to live with my daughter. I express my hope that your interference will restore legality and justice, and I will be given permission to be reunited with my daughter and this will be in full compliance with the recent decision adopted by the Congress on Security and Mutual Cooperation in Europe.

I urge the authorities in the Soviet Union to grant Mrs. Lutskaya's request. Our prayers are with her and we fervently hope that she will be reunited soon in Israel with her daughter.●

HIGHER EDUCATION CONFERENCE: METZENBAUM AMENDMENT SLEEPER

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ASHBROOK. Mr. Speaker, last Thursday the conference report on H.R. 5192, amending and extending the Higher Education Act of 1965, was rejected in the other body by a margin of one vote. This really was a defeat—which we must not allow to stand—for our Nation's hard-pressed middle-income parents who are trying to help their children obtain a college education.

The issue in the vote by the other body was the rejection by the conference committee of an amendment sponsored by the junior Senator from my State, and accordingly known as the Metzenbaum amendment. The amendment allegedly would save money in the guaranteed student loan program by requiring student borrowers—with three exceptions—upon graduation to repay the interest subsidy granted while they were still in school. This proved to be very enticing to the Senate Budget Committee, but it was strongly opposed by every single House conferee because of its disastrous effect on the guaranteed student loan program.

In Thursday's debate in the other body the junior Senator from Ohio appeared to single me out among the House conferees for criticism. He described me as being one who takes pride in being "one of the great conservatives of America" and in being concerned "about balancing the budget and cutting out excessive spending." In that the gentleman is absolutely correct. But he went on to suggest that my criticism of his amendment "was maybe stronger than some of the others on that committee," and in that he was quite wrong.

My colleague JOHN BRADEMAS, the distinguished majority whip of the House and one of the leading authorities in this body on student financial assistance, described the claims for the amendment as a "proposition based upon plain inaccuracies" and questioned why the House "should be hostage" to it. Chairman PERKINS described it as one which would have the effect of destroying the foundation of the student loan program. A Senate conferee was not as charitable. He flat out said they were misled in the oratory when the Metzenbaum amendment was offered.

I could not and did not state the case against the Metzenbaum amendment more strongly, or more accurately for that matter. The Congressional Budget Office estimates that 75 percent of the amendment's supposed savings could result from a reduction in loan volume due to decreased student borrowing, which is not what we were seeking to achieve in this program. The Student Loan Marketing Association, the corporation set up by Congress to act as a secondary market for the guaranteed loans, stated that the amendment will necessarily cause severe administrative difficulties and will not result in the tremendous cost savings predicted, and concluded that this additional administrative burden will predictably result in lender withdrawal from the program.

The Carter administration opposed the House-passed bill, but supported the conference report which did not include the Metzenbaum amendment. The administration contends that the exemptions in the amendment would be far too complex for the Department (of Education) and lenders to administer effectively. It states that two of the exemptions would impose hopelessly complex accounting requirements on private lender institutions and the third exemption would result in a haphazard distribution of subsidy benefits among students, with no regard to their real needs. The Metzenbaum amendment is, in short, a bureaucratic monstrosity.

In addition to this kind of expert analysis, we have virtually unanimous opposition to the amendment of those State agencies which must administer the guaranteed loan program. Many of them contend that administrative costs under the amendment would run as high as the cost of subsidies at present, thus leaving reduced utilization and reduced loan availability as the only savings from it. Obviously, we could get that kind of savings by repealing the program altogether which we might as well do if the Metzenbaum proposal should ever be foolishly adopted.

Mr. Speaker, I do indeed take pride in being a conservative and in seeking to reduce Federal expenditures and to balance the budget. But I would take no pride in reneging on the commitment made by Congress in 1978 in adopting the Middle Income Student Assistance Act. That was a commitment to help our fellow citizens who bear the heaviest burden of high taxation and high inflation to provide for their children's education—and to do so without submitting to an income test or a poverty oath. We must not restrict opportunity for a college education to either the poor or the middle or upper income student. I think that is a responsible position and in my experience the conservative position has always been the responsible one.

It ill behooves those whose actions over the years have contributed to the heavy burdens of taxation and inflation which are wiping out middle income families in America—and who have not struggled with the complex details of student assistance programs for their children—to pose as the saviors of the budget with ill-considered schemes which would injure programs to help those families.

I certainly sympathize with our colleagues in the other body who want to seize upon every genuine opportunity for saving money, but I urge them to look very closely at the objective analysis of the responsible legislators opposing the Metzenbaum amendment. This is not one of those genuine opportunities. I think such an examination will convince them of the wisdom of the compromises struck by the conferees on H.R. 5192. The conference report was very carefully worked out after prolonged consideration, and I urge my colleagues in the House to stand firm for a good and much-needed piece of legislation.●

CANADIAN WHEAT COOPERATION

HON. RON MARLENEE

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. MARLENEE. Mr. Speaker, today several of my colleagues and I are introducing a joint resolution, the objective of which is to establish a Joint Canadian-United States Wheat Cooperating Commission. In a recent visit to Ottawa, Ontario, Members of the U.S. House and Senate sat down with Members of the Canadian Parliament to discuss common economic problems that face agricultural producers, and wheat growers in particular. Evolving from our meeting of July 26 was the idea to establish a cooperating commission that would examine ways in which the two countries could cooperate for the betterment of wheat growers in both nations.

The Commission would serve four basic functions. First, curtail the export of wheat at prices below the cost of production; second, promote long-range market development; third, increase commitments to food assistance programs for importing nations; and fourth, encourage importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

I envision a commission composed of farmers who can work in conjunction with their Canadian counterparts to coordinate international marketings.

Let us discontinue Government policies which promote the continued exportation of agricultural products at less than the cost of production. Let us abandon the policy of having farmers and ranchers mortgage their productive assets and our Nation's land to feed countries which have the ability to pay for food at prices that will keep our farmers in business. Recent actions due to the grain embargo have shown that other countries are willing to pay increased prices for the agricultural goods; especially when those increased prices are the result of increased costs of producing those products.

What I am arguing for is not a reversal of our role as the bread basket for the world. We must help and assist those nations who have domestic crop shortfalls or are not presently capable of supporting their population with their current agricultural production. But does it make sense to export wheat at a price of $3.50/bu. while Japan sells the same wheat to their millers at about $9/bu.? Does it make sense to stop the flow of goods to Russia when we could have extracted a higher price for the products we could supply? A boon, rather than a drain, could have been presented to the American taxpayer and farmer if such a policy was followed.

The coordination of wheat growers in the United States and Canada is crucial for the future survival of the farmer in both countries. When two countries supply approximately two-thirds of the world wheat trade, they should set the market price. Instead of working at cross purposes which harm growers on both sides of the border, it is imperative that cooperation takes place for the benefit of all wheat growers and the two nations.●

CHRISTIAN VOTE IN 1980

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DRINAN. Mr. Speaker, America magazine, the national Catholic weekly edited by American Jesuits, analyzed very perceptively in its issue of September 13, 1980, the phenomenon of conservative evangelical Christians taking positions on political issues and claiming that their positions are dictated by the Gospel.

America magazine is very categorical in stating that "citizens who come to different conclusions than the evangelicals are not necessarily immoral or un-Christian." The Jesuit weekly goes on to state that "on most issues before the electorate, it is possible for informed Christians, equally sensitive to the moral imperatives, to come to different conclusions about the practical merits of a particular program, the relative merits of different constellations of programs, and the overall records of individual candidates."

The text of this thoughtful editorial follows:

THE CHRISTIAN VOTE IN 1980

Some evidence of religious piety, however bland and generalized, has always been considered a political asset by candidates for office. In this Presidential campaign year, however, the accent on personal religion has become much more sharp and specific. All three of the Presidential candidates lay claim to the experience of being "born again in Jesus Christ." The political significance of this new fashion does not lie primarily in the success of Jimmy Carter's 1976 campaign when his proclivity for religious confession seemed so unusual. Four years later, all candidates recognize that there is a special constituency, with growing numbers of registered voters, for whom such identification is of crucial importance. These are the evangelical Christians, recently organized into political coalitions that intend to check what they see as the serious moral decline of American society. They aim to do this by making what evangelist James Robison calls "the Christian vote" a decisive force in the nation's political life.

This campaign of conservative evangelical Christians to affect election results marks a reversal of their conventional attitude toward politics. In the past, Southern Baptists and other evangelical groups remained aloof from politics, at least on the national scale, partly because of an emphasis on individual morality and partly because of a perception that organized political lobbying threatened the separation of church and state. At least two factors have been responsible for the present shift: First, many evangelicals are deeply disturbed by changes in American mores that appear to threaten traditional values and institutions, the family in particular. Conflicts over abortion, homosexuality and the Equal Rights Amendment demonstrate how this concern for family values has political implications. Second, the extraordinary popular success certain evangelical preachers have achieved through their television broadcasts has resulted in national networks that can promote voter registration and fund raising. The Rev. Jerry Falwell, for example, founder of a political lobby called the Moral Majority, reports that his group has registered 3 million new voters in just 14 months. His weekly television hour with its regular appeals for contributions brought in $56 million last year.

The sudden emergence of this new political force is disturbing to some observers, but for a variety of reasons. Among secularized elites in the United States, if religious faith itself is not considered a lapse in taste, public profession of faith is. This can lead to dark mutterings about the separation of church and state. But there is nothing unconstitutional about religious convictions influencing political decisions. Nor is there anything sinister about citizens with similar convictions organizing into groups in order to exercise a collective influence on political life. There are more serious issues, however, connected with the recent political activism of the evangelicals.

The very first misgiving arises over the expression, "the Christian vote." This seems to suggest that on political issues there is only one way a believing Christian should vote. But on most issues before the electorate it is possible for informed Christians, equally sensitive to the moral imperatives of the Gospel, to come to different conclusions about the practical merits of a particular program, the relative merits of different constellations of programs and the overall records of individual candidates. The tendency of the new evangelical activists to lump a series of distinct political issues together indiscriminately is a major failing that encourages thinking in stereotypes and caricatures that corrupt both politics and religion. Permissive abortion, recognition of Taiwan, prayer in public schools, homosexual rights, the Equal Rights Amendment and a balanced budget are issues that should be argued on their own merits. Yet one organization of evangelical Christians has issued a "moral rating" of Congressmen according to their conformity to an officially approved "Christian" way to vote on all of these issues.

Furthermore, in a pluralistic society a fundamental assumption of public policy is the recognition that everything immoral need not be declared illegal. This important distinction between law and morality is largely ignored by the evangelicals. The public morality that is expressed in law reflects a consensus derived from the public debate. Like all other citizens, the evangelical activists have the right to participate in that debate and urge their point of view. But social realities as well as religious principles must be taken into account in judging the wisdom of any legislation. Citizens who come to different conclusions than the evangelicals are not necessarily immoral or un-Christian. The tendency to so brand one's political opponents suggests a kind of moral fascism.

The moral crisis in American society is real, and it challenges citizens of all religious faiths. But the mass market techniques of the television evangelists and their identification with one political ideology do not make for either good politics or good religion.●

PERSONAL EXPLANATION

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GILMAN. Mr. Speaker, on Tuesday, September 9, it was necessary for me to miss a number of rollcalls in the House in order to fulfill obligations in my congressional district.

The votes I missed concerned H.R. 7235, the Rail Act of 1980, and I take this opportunity to announce how I would have voted had I been able to be present:

On roll No. 530, the Eckhardt substitute to the Staggers-Lee-Rahall compromise amendment which would have defeated the main purpose of rail deregulation, I would have voted "no."

On roll No. 531, the Staggers-Lee-Rahall amendment, I would have voted "yes." This amendment deregulates the rail industry over a period of 4 years and was accepted by the railroads and by most shippers.

On roll No. 533, the Albosta amendment to create a Federal rail land bank, I would have voted "no."

On roll No. 534, final passage of the Rail Act, I would have voted "yes."●

SUPPORT FOR SEAWAY DEBT LEGISLATION

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. OBERSTAR. Mr. Speaker, I have spoken before in this House on the need for Congress to restructure the St. Lawrence Seaway Development Corporation. I have introduced H.R. 3258, which would convert the outstanding seaway debt to a capital equity ownership by the Federal Government. More recently, I introduced H.R. 8027, which would extend the debt repayment period by 30 years.

Both bills have the strong support of Great Lakes and farm State interests. Roy Hoffmann, chairman of the Western Great Lakes Ports Association, has written Members of this House from the Great Lakes region urging them to support H.R. 3258 and H.R. 8027.

Admiral Hoffmann's letter states clearly the need for the enactment of legislation to relieve the discriminatory burden imposed on seaway users.

I share with my colleagues a copy of Admiral Hoffmann's letter. I urge my colleagues to join me in sponsoring either or both bills.

WESTERN GREAT LAKES
PORT ASSOCIATION.

GENTLEMEN: Your attention respectfully is invited to H.R. 8027, introduced on August 26, 1980 by the Honorable James L. Oberstar of Minnesota. This bill would extend the repayment of the St. Lawrence Seaway outstanding capital construction debt from 50 to 80 years. It would preclude a government programmed escalation of the debt service from a current $2.5 million to $5 million annually in 1982, which the Western Great Lakes Ports Association believes would result most assuredly in the total demise of Great Lakes international shipping.

Seaway uses, through tolls charged on the Seaway, pay for all operation and maintenance costs plus the annual $2.5 million on the construction cost debt service. Quoting Mr. Oberstar from the August 26, 1980 Congressional Record: "* * * users of the St. Lawrence Seaway bear a burden borne by the users of no other federally constructed waterway." For example, a typical overseas general cargo ship (13,800 GRT) currently will pay about $47,000 total Great Lakes/Seaway tolls on ship and cargo round trip to Milwaukee. Similarly, a grain dry bulker (21,400 GRT) will pay about $32,000 total tolls. If the grain dry bulker came into the Lakes in ballast and carried an 18,000 ton grain cargo outbound the round trip toll would be about $19,000.

The appended Great Lakes ship and cargo statistics emphatically demonstrate the marginal ability of an international cargo liner service to remain competitive on the Lakes with current Seaway tolls, much less absorb the scheduled doubling of debt payments in 1982.

Actually, Congressman Oberstar's H.R. 8027 to extend the Seaway debt obligation is a compromise to H.R. 3258, also legislation he introduced that would restructure the St. Lawrence Seaway Development Corporation to convert the outstanding debt into equity ownership by the U.S. Government. H.R. 3258 would require that tolls be sufficient to meet all operating and maintenance costs and assurance of an annual return on the equity, but differs from H.R. 8027 in that it substantially modifies the debt retirement vice a mere straight line extension. The former would allow a moratorium on Seaway toll increases and more management flexibility in negotiating toll charges with the Government of Canada, resulting in ultimate recapture of favorable Seaway shipping rates and maximization of inherent marine transportation efficiencies. Simple extension of the debt as proposed in H.R. 8027 would eliminate the necessity for doubling tolls in 1982 but more or less maintain a status quo with respect to our current marginal competitive edge with tidewater ports.

The unanimous position of the Western Great Lakes Ports Association continues to strongly favor the original bill (H.R. 3258), but we agree with Congressman Oberstar's assessment that it may not be possible to enact H.R. 3258 at this late date in the 96th Congress and therefore support H.R. 8027 as an interim solution. In any event we need legislative relief now.

One final point: numerous delegates from the northeast seaboard states will probably oppose these bills for obvious reasons—others for perceived reduction in federal revenue. However, a fact probably unknown by many, or at least avoided because of international political sensitivity, is that the majority of our Middlewest cargo to the United Kingdom and Europe is being diverted through intermodal Canadian routes. The Maritime Administration is unofficially projecting a diversion of over $900 million of high value container cargo through the Detroit Customs District alone this calendar year—a direct transportation loss to all U.S. ports, Merchant Marine, railroad and associated transportation industries.

Very respectfully,

Roy F. Hoffmann,
Rear Admiral, USN (Ret.),
Chairman.●

THE FOURTH SEACOAST

HON. THOMAS L. ASHLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ASHLEY. Mr. Speaker, I introduce today a bill which will go a long way to providing an essential fourth seacoast on the Great Lakes to serve the rich industrial heartland of this country with economic, efficient, and energy-conserving water transportation. This bill, when enacted, will allow shippers in the Great Lakes region to distribute their export throughout the full year rather than over the limited 8-month period now dictated by winter's abbreviation of the navigation season on that essential waterway.

The "fourth seacoast" contains a commercial water surface area of over 95,000 square miles, of which 61,000 are within U.S. boundaries. The full U.S. basin area comprises over 300,000 square miles and provides for the movement of over 100 billion ton-miles of waterborne freight each year. About two dozen commercial harbors serve the region, including some of the largest ports in the Nation. Two of the five largest cities in the United States, Chicago and Detroit, are in the heart of this region. Although the Great Lakes region comprises only about 4 percent of the Nation's total population, it produces over one-sixth of the Nation's gross product.

Due to the severity of the cold winters, navigation on the Great Lakes is limited to an 8-month season. The closing of these waterways is a crippling and unnecessary curtailment of one of the Nation's most energy efficient and low-cost water transportation systems. The most persistent need cited at last year's House Merchant Marine and Fisheries Committee oversight hearing on the Great Lakes was to extend navigation on the upper lakes to encompass the winter season.

On December 31, 1979, the U.S. Corps of Engineers released a report detailing its findings on winter navigation for the upper lakes. This bill incorporates those findings which were based on demonstration programs conducted during the winters of 1971–79. This 7-year program, funded by Congress and conducted by a multiagency winter navigation board concluded that an extended season on the Great Lakes is engineeringly feasible, economically beneficial, and environmentally safe. The Department of Commerce reported that a year-round navigation season on the Great Lakes would add more than one billion 1967 dollars to labor earnings in 11 States in the Midwest.

The bill I offer today takes cognizance of the legitimate concerns we have for the ecology of the region. Shoreline erosion and other environmental effects could be exacerbated by unregulated and inconsiderate use of the Great Lakes during the period of the year when the environmental balance is most delicate. In addition to the assurances provided in the study which gave rise to this legislation, the bill calls for a further monitoring of the environment and an assessment of the need for an indemnification scheme to protect the shoreline.

In order to stimulate commerce on a competitive basis with other seacoasts, a provision has been included in the bill providing for alternate routing through the United States while the St. Lawrence Seaway is closed in winter. This provision will eliminate the costly procedure of stockpiling goods and commodities at Great Lakes ports and enable lake carriers and ports with the necessary traffic to operate on a year-round competitive basis with ocean carriers and ports.

Of 1,400 U.S.-flag sailings per year only 10 or 12, less than 1 percent, originate or terminate at Great Lakes ports. The Midwest area ships and receives over 25 percent of the country's imports and exports, yet only a fraction moves through Great Lakes ports. One of the reasons for the steep decline in shipping has been the series of increases in the tolls for the St. Lawrence Seaway. Since 1978, tolls have effectively doubled the cost of shipping commodities through the seaway. The St. Lawrence Seaway Development Corporation, a unit of the Department of Transportation, derives its revenue entirely from seaway tolls. In 1979, it had revenues of $11 million, but $2 million of that was given to the Treasury Department in partial compensation by the Federal Government for the building of the seaway, along with the Canadian Government, back in the 1950's. This year the Seaway Corporation will have to pay $3 million to the Treasury, and in 1982, the repayment schedules increases to $5 million per year. In addition to paying off this debt service, the tolls are used to pay for all operating and maintenance costs. So in order for the Corporation to pay off this outstanding debt, it is estimated that tolls will have to be increased by another 50 percent within the next 18 months.

In order to maintain tolls at current levels this bill provides for an extended repayment period of 30 years for the outstanding debt. This will have the effect of guaranteeing present toll levels to users, while other modes of transportation are likely to rise. The net result will make the seaway more attractive to users, thereby increasing present traffic levels over today's present low volumes.

Another provision that I am introducing in this bill will cure what the courts have described as a loophole in the filing requirements for tariffs under the Shipping Act of 1916. In 1977, the Federal Maritime Commission held that sections 1 and 18(b) of the 1916 Shipping Act, extended jurisdiction to include nonvessel operating common carriers. As such, this decision granted the Commission the power to mandate that those parties arranging the movement of export cargo from the United States through the Canadian ports file tariffs with the Commission. This decision, however, was reversed on appeal in 1978. *Anstasia Container Express* v. *F.M.C.*, 580 F.2d 642, 188 U.S. App. D.C. 379 (1978). In its decision, the court of appeals specifically addressed the definition of "common carrier by water in foreign commerce" as contained in section 1 of the Shipping Act of 1916, saying that the court, the explicit language of section 1 combined with its legislative history shows that transportation services touching only foreign ports do not fall within the purview of the Shipping Act. The court went on to say that foreign carriers which operate within the United States should be required to file tariffs for transportation rates they charge. Thus, the only authority to extend the Commission's jurisdiction is by legislative remedy. This bill will provide a remedy by extending the authority of the Commission over companies which arrange to transport cargo from the United States through the ports in a contiguous nation, without actually using American ports. This will reduce the practice of rate cutting by foreign companies which are presently not required to file with the Commission.

In conclusion, Mr. Speaker, this bill is a comprehensive measure intended to address the problems of waterborne commerce and development that have hindered this region since the opening of the seaway over 20 years ago. These problems have resulted in the high levels of unemployment that bedeviled us for so many years. This bill addresses problems in the Great Lakes region, and will serve the national interest as well.●

THANK YOU, BILL SLONECKER

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DORNAN. Mr. Speaker, on Friday, September 12, 1980, I will be among the many grateful friends of Chief Bill Slonecker, who will attend a dinner honoring him as he retires from the Torrance Fire Department after over 30 years of faithful service. When we gather at the beautiful Los Verdes Country Club on the breathtaking Palos Verdes Peninsula, we will be paying tribute to a man who has worked his way up in the department from a member of the crew to the respected position from which he now steps down.

Bill Slonecker's record of achievement is an admirable one of service to his community and Nation. Bill served his country admirably in World War II, in the then Army Air Corps, where he was awarded the Air Medal with five oak leaf clusters. He also received the Purple Heart.

After completing his studies at Compton College, he began a 30½ year career in the Torrance Fire Department in 1950. On June 14, 1973, his long years of service were capped as he was promoted to fire chief for the city of Torrance. Since that time, Bill has been the primary figure responsible for protecting the lives and property of the people of the city of Torrance from the uncontrolled destruction which can occur as a result of a major blaze.

While he was performing these duties with distinction, Bill was also lending a helping hand in the community, having been an active member of the South Torrance Lions Club, and serving for 11 years as a supporter of the Torrance Little League effort.

In his spare time, Bill is a dedicated fisherman, accomplished both in freshwater and ocean fishing. An avid outdoorsman, Bill is a proficient camper along with his family, and he enjoys collecting Indian arrowheads. Bill is also known to be one of the most dedicated fans of the Torrance High School football and baseball teams.

As you can see, Bill had led a life that is full and well rounded. I am glad that I will be afforded the opportunity this Friday night to tell him "thanks". for his outstanding service with the fire department, and to wish him well as he opens yet another chapter of a rich and varied life.●

POLICY COMMITTEE SUPPORTS HOUSE RESOLUTION 777

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. SHUSTER. Mr. Speaker, yesterday afternoon, the House Republican Policy Committee unanimously adopted a policy statement in support of House Resolution 777, a resolution of inquiry directing President Carter to provide Congress with all pertinent information concerning the disclosure of classified information relating to the Stealth technology for military aircraft.

It is shocking that the House Armed Services Committee voted along party lines to close debate and adversely report this resolution. At a time when the evidence suggests that our Commander in Chief is using secret military information to advance his own political cause, it is imperative that Congress act in a responsible and bipartisan spirit to uncover the details surrounding the leak of this critical information.

Following is a copy of the Republican Policy Committee statement expressing the concerns of the committee and suggesting immediate action on House Resolution 777.

JIMMY CARTER: BUILDER OF POTEMKIN VILLAGES

In 1787, Grigory Potemkin hurled up an array of impressive false front villages along the route traveled by Catherine the Great in her famous expedition to the Russian south over which Potemkin, as Governor General, claimed to have firm and prospering control of all matters, both civil and military. Fooled by his cynical concealment of all of the many weak points in his poor administration, the Empress rewarded Potemkin with continued power.

In 1980, Jimmy Carter has deployed, as no President before him, the weight, power and influence of the Executive Branch of our government to hurl up Potemkin villages in an effort to hide from the voters the incomparable blunderings, shortcomings and abuses of his administration.

President Carter's latest act of political legerdemain is the most harmful—a "leak" to the public relating to the Stealth technology for military aircraft, in an attempt to conceal his administration's record in the defense area. By pointing to a futuristic bomber, he hopes to obscure the fact that he has delivered the world's once-strongest, proudest, defense establishment into a frightening condition of unilateral disarmament, general disarray, unmatched demoralization and unprecedented politicization. By erecting a facade of an invincible aircraft, President Carter hoped to obscure the fact that, during his 3½ year tenure as Commander in Chief, he has:

Ended the B-1 bomber program.

Vetoed construction of a nuclear aircraft carrier.

Curtailed Navy shipbuilding and Air Force fighter production.

Closed down Minuteman III production lines.

In order to expose the blatant ruse surrounding the Stealth "leak," the House Republican Policy Committee strongly endorses H. Res. 777, introduced by Congressman James Courter (R-N.J.), a resolution of inquiry directing President Carter to provide the Congress with all pertinent information concerning the disclosure of classified information relating to the Stealth technology for military aircraft. The House Republican Policy Committee is shocked that the Democrat majority on the Armed Services Committee politicized the issue by prohibiting Members of the Committee sincerely concerned about this release of sensitive information from even discussing the issue. The Democrat majority then voted to effectively block the inquiry of this urgent issue by reporting out the resolution with an unfavorable recommendation.

President Carter has apparently turned a jaundiced eye on the dangers inherent in the use of classified information for political purposes. But then, this is the same President whose entire record of campaign performance, from first race for Governor of Georgia to first race for President, is replete with a firm and well-recorded technique of personal attack, innuendo and outright smear. It is, therefore, of utmost importance that the American people be made fully aware of this record, in order that they may be in the best possible condition to consider—long and well—what they see and hear between now and election day in November. For example:

He boasts of a domestic policy which has doubled from 12 to 24 the "misery index"—a combination of inflation and unemployment.

He boasts of a lowering of an inflation rate from the record high of near 20 percent to which his own fiscal and economic policies drove it to the point of quadruple the rate he inherited.

He promises a tax cut in 1981 after having become the President who, in concert with his Democrat Congressional majority, saddled the people with the greatest tax burden in American peacetime history—increasing taxes by 69 percent over 4 years to a total of $604 billion.

He boasts of a sound and prospering economy and of lesser governmental burden after having increased federal spending by more than $230 billion, and the national debt by $300.9 billion.

This is the same President whose most notable success has been his unique ability to plan a recession and force it to come to pass. His policies of tax, spend, regulate, and control have brought the American automotive, steel, and other major industries to the brink of disaster, resulting in massive unemployment. Yet Carter seeks to convince the unemployed workers that—if they can only survive today—he may do better tomorrow, hoping they will forget what he did yesterday—and is not doing today.

The House Republican Policy Committee is confident, that unlike Catherine the Great, the American people will not be fooled by the Carter Administration's attempt to hide its record.

This is the 253rd day of the 26th consecutive year of Democrat control of the House of Representatives.●

IN PRAISE OF A FRIEND OF THE CITY: MARVIN HIMELFARB

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FAUNTROY. Mr. Speaker, I wish to take this moment to praise a deep and loyal personal friend who has done much to improve the fortune of this city and the fate of every person whom he has had occasion to touch directly and many whom he has touched only through his work, which all of us have seen and heard.

This person is Marvin Himelfarb, who is one of the founders of Abramson/Himelfarb, Inc., an advertising firm which has had an association with this city that is deeper than any of us here can measure. Marvin is now leaving this city to express his creativity in an excitingly new and different way. As he leaves us, I wanted to share with you something of that person and what he is to this city.

It is important to understand that Marvin Himelfarb did more than create advertising. In the 15 years he has been with the firm, he created a human spirit and an energy that transcended the mere selling of a product or a service. That unique ability not only sold products but it also brought out the best of those who sought his services because he created a sense of value that one felt an obligation to reach. I know this in my own personal experience from work he did in my very first political campaign and I know it from those others whose campaigns he also helped to create. As Marvin now goes on to Hollywood to write and perform there, I can only hope that his efforts there will have upon others the same profound effect it has had upon so many of us here.

Marvin has written and produced thousands of commercials for the largest and smallest business of this community. Just as often, he has produced them free especially for those events which mean so much to a city and its people. Always, each commercial was filled with a passion and creative talent that electrified those who came into contact with the message and with him.

Marvin never says it cannot be done. He is a positive and idea person who always tried and, I must say, always succeeded. He has given of himself to organizations like the Washington Theatre Club, The Washington Cultural Alliance, and the United Negro College Fund. I salute him for having done so well, and for taking his talents to the whole of our country in a way which will make each Washingtonian proud to have been associated with him.●

THE HANDICAPPED FINANCIAL SECURITY TAX ACT OF 1980

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HARRIS. Mr. Speaker, I am pleased to be introducing legislation which will allow tax exempt trusts to be established for the handicapped. The purpose of this legislation is to help alleviate unnecessary anxiety for parents and supporters of dependent handicapped persons. I became acutely aware of this need when on May 19, 1980, I held a forum for the handicapped in my district. As we talked about the present legislative efforts to aid the handicapped, many felt that although Congress and the country have just begun to be sensitized to some of the issues facing the handicapped, more needs to be done. One of the concerns expressed, particularly for parents of severely handicapped, was the fear of providing for their children's future. In addition to the ever-present medical expenses, these parents and supporters of handicapped persons experience both the fear of rising costs and anxiety associated with the unknown aspects of the future; they ask, for example: Who will support their handicapped child if they die early or when they retire? Mr. Speaker, this legislation will relieve that unnecessary anxiety.

Furthermore, Mr. Speaker, Congress, in its wisdom, has recognized the importance of allowing people to provide for their own need, by allowing Keoghs and IRA's to be established. These programs allow the self-employed and those not covered by sufficient retirement programs to provide for that need, thereby keeping their names off the welfare rolls. We must do the same for the handicapped by allowing tax-exempt trusts to be established for their future care.

This particular legislation allows a contribution of $3,000 per year, adjusted to reflect changes in the cost-of-living index, to be placed in trust. Generally, the funds contributed to the trust and the interest accrued would be tax exempt. For purposes of estate taxation, the accounts are considered to be a part of the estate of the designated beneficiary, not of the person contributing to the account. As funds are expended from the trust, they are considered taxable income of the beneficiary, not of the person contributing to the account. Payments from the trust to the beneficiary can begin at the time of the retirement of the supporting individual or could be deferred until a later date, at the discretion of the supporting individual.

Handicapped persons and their families face many incredible physical and emotional trials. One of those difficulties must not be the fear of the future. Congress must do everything it can do to relieve suffering and needless worry. Passing legislation to enable the establishment of trusts for the future care of the handicapped would be a big step in that direction.●

TRIBUTE TO NATE HORWITT

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. CONTE. Mr. Speaker, on this first day of Rosh Hashanah, I wish to pay special tribute to a special person and long-time friend, whom I have admired for years, Nate Horwitt. Nate is a man who has never been accused of not speaking out on an issue which may interest him.

Nate Horwitt is the youngest, most vibrant octogenarian with whom I have ever had the pleasure of associating. His interests run the gamut from hunting the elusive morel mushroom to designing the functional, yet beautiful work of art, the Movado watch.

He is no average person of 82 years. He continues to nurture carefully two gardens and many apple trees on his 371-acre farm in Stockbridge, Mass. He knows the importance of our precious resources and has always been a staunch supporter and protector of our environment. This gentleman's frequent astute letters to the editors of the local newspapers on subjects such as "white elephants and jackasses" at the Republican and Democratic Conventions have gained him a reputation of never being wishy-washy on any issue. His straightforward style is one of his finest traits.

In addition to his numerous design accomplishments for such items as furniture, clocks, watches, and his "frameless picture frame," this man is as interested in improving the state of people as he is with inanimate objects.

As a Russian Jew whose parents left Russia when he was 3½ years old to travel to the United States, Nate is an outspoken proponent of a Jewish state. On this subject, he is quoted as saying:

> A place not only for political statement, but at the least, a hold out, where if the people die, at least they not die like sheep.

During the cold war between the East and West, this great humanitarian came to the aid of starving India which chose to remain neutral during the turmoil. However, Nate Horwitt could not remain neutral and he donated 1,200 pounds of wheat to India, which spurred a nationwide program at a time when 29,000 people were dying each day of starvation.

Nate Horwitt has accomplished more in his 82 years than most people ever dreamed of doing. He is a man whom the youth of today would do well by emulating and I commend your attention to the following profile which recently appeared in the Berkshire Eagle:

A LIFETIME OF LITTLE ACCIDENTS

(By Jennifer T. Davies)

Nathan George Horwitt is an admitted procrastinator. Like Scarlett O'Hara in "Gone with the Wind," to him, tomorrow is another day.

"I've done that with my age too," he states. "And I'm glad I've put it off."

After some coaxing, Horwitt finally met with a reporter at his home on Bean Hill Road. He was caught mowing some hay aboard a John Deere tractor, an activity one does not normally expect from an 82-year-old.

But Nate Horwitt is no average octogenarian. He tends two gardens and many apple trees on his 371-acre property. Inside his neat and tidy wood-paneled house, with its cherry floors and functional furniture, he also tends to his guests quite nicely. Though no cook by his own declaration, he manages to serve a good cup of coffee and some fine Stella d'Oro cookies. Interspersed between mouthfuls of the two is a whirlwind recollection of his 82 years.

Horwitt has a lifetime of accomplishments to his credit, and a mountain of newspaper clippings to prove it. Because of his notoriety in Berkshire County, supplemented by his provocative Letters to the Editor, Nate Horwitt has been called "no shrinking violet."

"I wasn't afraid of publicity," he says matter-of-factly. "With other journals, I have had little difficulty getting letters in," he explains, including in his statement The Bershire Eagle.

Horwitt's outspoken public opinions on everything from rock concerts at Music Inn to "white elephants and jackasses" at the Republican and Democratic national conventions, have gained him mostly friends, but some foes in Berkshire County. People either love Nate Horwitt or hate him. There's not much in between.

Yet something is quite admirable about his straightforward style. Whatever he might be called, it's not wishy-washy.

In 1930, as advertising director at E.R. Squibb in New York City, Horwitt decided to get out of a business that to him, openly used deception.

"I decided I hadn't disliked advertising all along for nothing," he recalls. "I didn't believe in advertising . . . it sells the consumer with creative phrases and creates virtues that products sometimes don't always have."

Horwitt decided instead to try to create better products for the consumer, which could make the job of advertising far easier. "Then you wouldn't have to invent virtues," he explains.

The company he founded after leaving Squibb was Design Engineers. There he and his staff, among them Frederick Kiesler, Alexi Brodovitch and Kem Weber, created products from a sense of need, rather than a desire to further ornament or style.

Horwitt devised functional designs, among them chairs using the then new chrome and foam rubber. But they didn't catch on. "We had no sales agents, and what we were doing was new," he explains.

He turned his attention to a different way of telling time. Horwitt had in mind a clock or watch that could be read instantly. He came up with two designs; one was the "jump clock," forerunner of our modern day digital clock—a mechanism where numbers revolve on a rotating drum as the minutes progress. The other, the cyclometer, featured a large circular window on the front of the globe-like clock through which the hour could be seen, and a smaller such window, rotating on a drum like a moon in orbit, through which the minutes could be read.

It was the concept of the latter invention which proved most practical to Horwitt. But the $3,000 working model and its blueprints were stolen from his car in 1954. Nevertheless, he used the circular idea in his design for a new type of watch. Employing the principle that the average person has an indelible memory of a watch face, Horwitt designed his new timepiece with no numbers at all—just a gold dot at the 12 mark and gold hands for the hour and minute. Set against a black background, the watch is not only a functional instrument, but a beautiful work of art. Along with another of his inventions, the Braquette called the frameless picture frame, it was selected to be in the permanent collection of New York City's Museum of Modern Art.

Though commonly referred to as the Movado watch, because of the company it was leased to, it is still a Horwitt design. He has the patents to prove it, but even they could not prevent other watchmaking firms from assimilating his designs.

Improving the state of people as well as things is of interest to Horwitt, especially the fate of Israel as a nation.

Born in the Russian state of Minsk to Jewish parents, Horwitt was 3½ when he came to the United States with his family and settled in a Jewish ghetto in the Bronx. When his father died, the Horwitts moved to Lawrence, L.I., and young Nate graduated from Morris High School and attended the City College of New York, New York University, and the Art Students League. He also joined the Army during World War I. Though an expatriate, Horwitt recalls his heritage as a Russian Jew.

He does not like to discuss Soviet Jewry. But he says, "It is one of the little pimples in the great ailment," referring to the plight of Jews as a whole.

"It is a right of a people to have a home of its own," he says. What Horwitt can't explain is what he calls the "peculiar antipathy" which in the 11th century accounted for the 1½ million Jews killed by Crusaders on their way to the Holy Land, and later was carried through to the Spanish Inquisition, the pogroms of Poland and Russia, and the Holocaust of Germany.

Horwitt is an outspoken proponent of a Jewish state—"A place not only for political statement, but at the least, a hold out, where if the people die, at least they not die like sheep."

In the late 1940s, Horwitt put his words into motion when he invited members of a world movement of young people like the Boy Scouts to train on his property in the Berkshires in preparation for the Palestinian conflict in 1948. Horwitt was vice chairman of an organization in the United States which supported the Irgun, a revolutionary group headed by Menachem Begin. On his Berkshire farmland, once populated by dairy cows, Horwitt even stashed arms to aid the cause.

Years later, he became involved in another world crisis, this time turning his focus on India. It was a nation of starving people, but because of India's decision to remain neutral in the Cold War between East and West, Horwitt explains, the United States would not aid the country.

Prompted by an article by author Norman Cousins, Horwitt donated 1,200 pounds of wheat to India, which spurred a nationwide program. "I believe it saved a quarter of a million lives," he says. "People were dying at the rate of 29,000 a day."

Of all his endeavors, Horwitt says this gave him the greatest satisfaction. "I feel very pleased with that. It was not for gain, not for motive, it was an accident—an unimportant, isolated individual moving in a responsible sense," he says, seconds later adding, "That sounds pompous as hell."

But Nate Horwitt is not too worried about his public image. At 82, he's happy dining out with a few friends or puttering around his farm, which he bought in 1945. He used to live with his former wife and two sons in a larger house on the property, but now lives in a small cottage nearby. He has given up his photography and even his hunts for the elusive morel mushroom. "It means walking, and the ardor has given out," he explains. "I don't actually eat as many as people think. Word went out that I was an expert in mushrooms. 'See here, I'm no expert,' I said, so word went out I was not only an expert, but modest as well."

Horwitt used to swim varsity in college and he played baseball years ago, but it is tennis which he is most reluctant to abandon. An accident three years ago has made it difficult for him to play, but every three weeks, after one of his shots of cortisone for arthritis, the urge is greatest.

A lifetime of little accidents is how Horwitt summarizes his varied career. When asked if there was any interest or activity among the collage which he pursued all along, he could only think of one: "breathing."

At 82, Nate Horwitt is still going strong. He's not about to shut down the machinery and float peacefully away. National politics and local issues keep his pencil sharp, and he hopes to get his new watch, based on his cyclometer, into production.

"I have dreams and they evaporate before morning, but I have thought of a thousand things," says Horwitt who explains characteristically, "They're in the wings."●

BILLY CARTER MOTION

HON. JEROME A. AMBRO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. AMBRO. Mr. Speaker, this morning the House debated House

Resolution 745, the "Resolution of Inquiry Concerning Billy Carter."

Subsequent to the debate, a motion was offered to table the resolution on the grounds that the President and the administration have already substantially complied with its directions. The motion lost by a vote of 124 in favor to 260 against tabling. I was unavoidably delayed on Long Island this morning and was thus unable to vote on this motion. Had I been present and voting, I would have voted "no," that is, against tabling House Resolution 745. I would then have voted in favor of the resolution, as I believe that the House inquiry on Billy Carter must proceed.

House rules, of course, do not allow for pairs on procedural matters, but I did want to go on record as opposing the motion to table House Resolution 745.●

H.R. 8092, REPEAL OF THE FAMILY RENTAL TAX

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FISHER. Mr. Speaker, I would like to take this opportunity to discuss H.R. 8092, which I introduced yesterday and which is designed to repeal what is becoming known as the family rental tax.

Under current law, if an individual rents a house he owns to a nonrelative and charges a fair market rent, then that individual is entitled to take deductions normally associated with homeownership, such as mortgage interest and property taxes, as well as business expense deductions such as depreciation and the cost of insurance. If, however, this same house is rented to a relative of the owner and a fair market rent is charged, then the business expenses are not deductible. Clearly, this creates a disincentive to rent a house or apartment to a relative. It is the family rental tax.

This tax provision was part of the Tax Reform Act of 1976. The 1976 Act was a wide-ranging law that on the whole represented an improvement in the fairness of the Tax Code, which is why I supported it. However, as in any massive bill, there were sections which should have been thought through more carefully, perhaps pointing out the danger of trying to pass comprehensive tax legislation under the gun.

The section which has given rise to the family rental tax was designed to defeat sham transactions which might take place between family members who are seeking to use a house for personal purposes, while at the same time receiving business deductions. However, on reflection, I believe that in an effort to prevent this potential abuse, we are running a much greater risk of increasing the tax burden on family members involved in legitimate rental transactions. It seems that this section of the Tax Code takes too much of a scattershot approach to attacking tax fraud. I am concerned that in attempting to make it more difficult for some individuals to subvert the Tax Code, the current law will increase taxes on many more honest individuals who rent homes to relatives at a fair market rate. Underlying this section of the Code, there seems to be an unjustified presumption of guilt imposed upon rental transactions among relatives which is inconsistent with our Nation's notion of fairplay.

Furthermore, as a matter of social policy the current law could have a negative impact on the family structure. Although there are certainly other factors which enter into an individual's decision on whether to rent a house to an elderly relative, for example, the economic and tax considerations are relevant, and I believe that they should foster family cohesion instead of discourage it.

H.R. 8092 would change the current law so that the Tax Code will treat equally transactions in which a fair market rent is charged, regardless if the parties concerned are relatives. The Internal Revenue Service has recently issued proposed regulations to provide the public with needed guidance in complying with this section of the 1976 act. In addition to questioning the unique concept of retroactive guidance, I believe that this portends a greater activism on the part of the IRS in enforcing this part of the Tax Code. It, therefore, is important that we act on this legislation soon. I urge my colleagues to give it their full support.●

GRIGORY GOLDSHTEIN

HON. JOSEPH P. ADDABBO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ADDABBO. Mr. Speaker, I would like to take this opportunity to call to the attention of my colleagues the plight of Grigory Goldshtein, a former Soviet prisoner of conscience who is still being denied the right to emigrate to Israel by the Soviet Union. This week, as Jewish people all over the world commemorate Rosh Hashanah, the Jewish New Year, we must remember there are Jewish men and women in the Soviet Union who are unable to freely express their feelings as Jews. Grigory Goldshtein is one such person, though his story is not a unique one.

Grigory was sentenced in the spring of 1978 by Soviet authorities to 1 year of hard labor in Siberia. He had been tried and convicted on the charge of parasitism which stemmed from his application for an exit visa in December of 1971. After his brutal sentence was served, the Soviet Union denied him the right to emigrate to Israel, along with his brother Isai and sister-in-law. This was in complete reversal of the Soviet Union's policy of granting an exit visa to a prisoner of conscience upon completion of the prison term. What this means is that Grigory is still unable to find a job because of his application for a visa, and could conceivably be found a parasite again, still a prisoner in a nation which does not want him, yet refuses to let him free.

Of course, there is no greater tragedy than to be denied freedom of choice, whether it be to practice one's religion, to read a choice of books and literature, or to live in a nation that treats you with dignity. One of the reasons I bring this case to the attention of the House is because it is one of countless hundreds in Russia. At this very moment there are men and women in Soviet jails who are there because they had the audacity in the eyes of the Soviets to express their desire for freedom. We, as the greatest free nation on the face of the Earth, must continue to pressure the Soviet Union to live up to the Helsinki Accords. We must continue to do all we can to prevent any more tragedies, such as the one I have briefly related today, to continue. We must not rest until Jewish people in the Soviet Union are once and for all treated with the dignity and respect that all human beings are entitled to.●

RENAMING THE NATIONAL COLLECTION OF FINE ARTS AND THE NATIONAL MUSEUM OF HISTORY AND TECHNOLOGY

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. THOMPSON. Mr. Speaker, today I have introduced legislation to change the names of two of the Smithsonian Institution's museums. I would like to bring to my colleagues' attention the following explanatory statement on those proposed changes:

> It is proposed that the name of the National Collection of Fine Arts be changed to the National Museum of American Art and that the name of the National Museum of History and Technology be changed to the National Museum of American History. The proposed changes do not in either case involve any major redirection of museum activities, but, rather, are designated to reflect more accurately the character and purpose of each museum.
>
> For more than ten years the National Collection of Fine Arts has concentrated exclusively on American art, an area heretofore neglected, especially in its nineteenth—and early twentieth—century aspects. Building on its important basic collections, especially those contributed early in the century by William Evans and John Gellatly, it has amassed a large and notable collection of American painting, sculpture, and graphic arts from the eighteenth century to the present. Its extensive publications and active programs in education and scholarship, together with its assembly of material

for the ready use of scholars, have been instrumental in reshaping the study of art in American culture. Its exhibitions, many of which circulate through the country and abroad, have introduced a wide public to the rewarding, yet often ignored, range of character of American creativity. Hilton Kramer, in the New York Times in 1976, wrote, "In the National Collection of Fine Arts, especially, we now have an institution—again, for the first time in our history—that takes all of American art as its scholarly province, and that acts in the most responsible and clear-minded way to enhance our understanding and appreciation of its many-sided accomplishments."

This fruitful concentration on American art has been obscured by a title bestowed on the museum in 1937 when the name, National Gallery of Art, was transferred from this collection to the present National Gallery. In choosing the title, little thought was given to the possible future direction of the collection which is, in fact, the oldest national collection of art. Although specialists are well aware of the nature of the present National Collection and its activity, members of the public find the name confusing and little descriptive of what they find there of special appeal. Foreign visitors and embassy guests, who find the museum a particular pleasure because it effectively exhibits so much material with which they are not familiar, have repeatedly complained that the museum's name fails to indicate what to them is its major attraction and thus escapes the attention of many who come here. the name suggests simply one more general museum of art—if, indeed, the word "collection" suggests even a museum.

To make clear, then, what the National Collection of Fine Arts has indeed become—a center for the collecting, study, and presentation of American art—and to make the title of the museum accord with those of other Smithsonian museums, it has been recommended that its name be changed to the National Museum of American Art.

With respect to the National Museum of History and Technology, it has suffered from its beginning from an identity problem that has affected in varying degrees all of its constituences. Most importantly, the current name either confuses or misleads the visiting public. Informal questioning and eavesdropping reveal that a substantial number of visitors to the Mall (and to the museum itself) do not know or cannot remember the name of the museum: commonly it is thought of as the Museum of Science and Technology, the Museum of Industry and Technology, and the like. This leads a number of visitors whose interests are neither scientific nor technological to avoid the museum altogether, while others who do visit are disappointed when they do not find there the kind of demonstrations of physical sciences or presentations of the latest gadgets that are characteristic of science museums.

The same sort of confusion has existed in the minds of potential donors and even of the museum's own staff. In both cases the results are unfortunate. The museum's collections in American cultural, social and political history have been impoverished because many owners of important objects, thinking of it as primarily concerned with technology, have chosen to give their collections to institutions that are more clearly concerned with these areas. Even the museum's staff has been affected by the ambiguity of the museum's mission and as a result has attempted to achieve incompatible, or at least unrelated, objectives.

The only legislation specifying the name of the museum is the authorization for appropriations to construct the building. The history of this legislation makes abundantly clear—as the present name does not—the intention of the Congress that the museum should concentrate upon the history and technology of America. In the judgment of the museum's staff (including those specializing in the history of science and technology), of its director, of the distinguished scholars who comprise the Smithsonian Council, and of the Smithsonian administration, a new name is needed to clarify rather than to change what has always been the basic mission of the museum: to illuminate through collections, exhibitions, research, publications and educational programs the entire history of the United States. Since technology is inextricably involved in our history, it will continue to receive due attention, but the name of the museum would no longer suggest an emphasis upon the history of technology at the expense of social, cultural, and political history.

After careful consideration, the name National Museum of American History has been chosen as best reflecting the true purpose and content of the museum.●

POLISH AUGUST

HON. EDWARD P. BOLAND

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BOLAND. Mr. Speaker, for the last few weeks the attention of the world has been focused on Poland. A strike by shipyard workers in the Baltic port city of Gdansk spread to over 600 factories and mines throughout Poland, and more than 500,000 workers left their jobs.

Few events in recent years have furnished more convincing evidence of the shortcomings of the Communist system. While the actions of the workers in Gdansk were triggered by economic concerns, their demands escalated to a call for a number of major political reforms. Among the reforms sought were freely elected labor unions, the guarantee of a right to strike, freedom for political prisoners, and the abolition of press censorship. Over the Labor Day weekend, an historic agreement was reached providing for nonparty, self-governing trade unions. In addition, the incarceration of a number of political prisoners was ended, and a relaxation of censorship was promised. While it is not as yet clear how the gains of the workers will operate in practice, it is clear that 30 years of Communist rule has not dampened the desire of the Polish people for freedom.

Mr. Speaker, I believe that is useful for those people living in democratic nations to pause and reflect on the demands of the Polish workers. All too often we take for granted those characteristics which distinguish a free society from one which is not free. The right to organize and bargain with our employers, the right to express our opposition to the policies of our Government, and the right to read, see, and hear news accounts unrestricted by anything except the truth, are liberties with which we have become all to comfortable. We sometimes forget how dearly they are prized and how desperately they are sought by those to whom they are denied. The actions of the Polish people provide fresh proof of the value which should be placed on the ability to exercise these freedoms.

No one should underestimate the risks taken by the workers of Gdansk. On two occasions in the past decade, protests prompted by economic conditions in Poland were suppressed by the government. Given the nature of the current demands, their implicit criticism of the Communist system, and the proximity of Poland to the Soviet Union, the temptation for outside intervention in the dispute was, and in fact remains, great. Much is at stake for people throughout Eastern Europe in the choices to be made by the Soviets. It is my hope that they will see the wisdom in allowing the internal affairs of Poland to be managed by the Polish people.

Mr. Speaker, I applaud the indomitable courage and determination of the Polish people. Theirs is a history rich with examples of individual and collective actions taken in pursuit of liberty. The events of the "Polish August" will command a prominent place in that history. The actions of the workers of Gdansk have served to remind us once again that the desire for the basic decencies of life cannot be satiated by ideology.●

FATHER FRANCIS J. KIMBLE, ON HIS RETIREMENT

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. DOUGHERTY. Mr. Speaker, on October 19, 1980, St. William's Parish in my district will honor Father Francis J. Kimble, who retired earlier this year after 12 years of faithful service as pastor of St. William. Father Kimble has made an invaluable contribution to the religious and educational life of Philadelphia and has endeared himself to all who have known him throughout his long and fruitful ministry.

Born in Oxford, Pa., October 31, 1905, Father Kimble studied for the priesthood at Mt. St. Mary's College, Emmitsburg, Md. He was ordained by Dennis Cardinal Dougherty at the Cathedral of St. Peter and St. Paul on May 21, 1932, and celebrated his first Mass in the Church of the Sacred Heart, Oxford, Pa., on May 22, 1932. He served as assistant pastor of St. Canicius Church, Mahanoy City; Our Lady of Consolation, Tacony; and St. Joseph's, Collingdale, Pa.

For more than 20 years Father Kimble taught at Roman Catholic High School in Philadelphia. During this period he resided for a year at Holy Child Church and for many years at St. Edward's Church where he directed an outstanding choir. Father Kimble also found time during this time to obtain his master's degree in education from the University of Pennsylvania.

In 1956, Father Kimble was named the first priest principal of St. Pius X High School in Pottstown, Pa. During his term at St. Pius X, he resided at and served the people of St. Gabriel Church, Stowe, Pa.; Holy Trinity Church, Pottstown; St. Ann's Church, Phoenixville; and St. Aloysius Church, Pottstown. Father Kimble marked his silver jubilee as a priest at St. Gabriel Church, Stowe, in May 1957.

Appointed pastor of St. William's Church, Philadelphia, in January 1968, Father Kimble retired on June 16, 1980. Although officially retired, he intends to continue residing at St. William where he will be free to serve the people he has served so well over the years without the administrative responsibilities of a pastor.

Mr. Speaker, we offer our congratulations and our deep gratitude to Father Francis J. Kimble for his long life of distinguished and unselfish service to God and to his fellow man.●

MOBILIZING MATURE MANPOWER TO SOLVE PROBLEMS

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PEPPER. Mr. Speaker, Members of this body are aware of my views and those of the Select Committee on Aging, which I have the privilege to chair, regarding mandatory retirement. They know of our concern over policies which force older workers from productive jobs into idleness with the result, often, of diminished physical or mental health. We believe that mandatory retirement is a scourge that must be eradicated.

Policies which allow us to put people out to pasture after they reach an arbitrary age reinforce discrimination and rob the Nation of the skills, talents, and experience of those who have demonstrated abilities in various professions. I believe it was John Stuart Mill who said, "Give a man nothing to do for his country, and he will have no love for it."

We will continue to press for legislation which will wipe out mandatory retirement because of age in this country. But there are hundreds of thousands of retired persons in the United States today who are willing to contribute their efforts, on a voluntary basis, to the progress of our society. A number of programs to tap this national resource have been put forward. Recently, the work of Morton D. Weiss has been brought to my attention. Mr. Weiss, a retired management analyst, has developed a program he calls mobilizing mature manpower.

Mr. Weiss envisions groups of retired persons with skills in various areas coming together to solve community problems. Under his plan, these groups would be provided office space, a place to meet regularly and put their minds to solving local problems. He believes such groups could replace many consulting groups and save the public a great deal of money.

A number of newspaper articles about Mr. Weiss and his plan have been published, the most recent in the Washington Post of August 4, 1980. I believe my colleagues would benefit by these articles, and I insert them in the RECORD at this point.

[From the Washington Post, Aug. 4, 1980]

GRAY POWER: NETWORKING

(By James T. Yenckel)

Morton D. Weiss has an idea for a "brain trust" of retired workers to help communities across the nation at a cost "of peanuts."

It's his way of easing two of America's big problems: the spiraling cost of government and the sense among many retirees that "like Old Dobbin, they've been put out to pasture."

Weiss, who is 75, retired 15 years ago as a management analyst in the federal government. A few years ago—after watching what was happening to other retirees—he established a "human resources" organization he calls Mobilizing Mature Manpower, aimed, in part, at keeping retired workers "in the mainstream."

Many retirees, he says, "who have been active all their lives," after leaving their jobs "withdraw from life." All too soon "they end up in Gawler's" (a funeral home).

"Too many of my contemporaries just fall apart. They say, 'My memory is going.' We've got to work at life."

Weiss operates out of a cluttered office he shares in the National Press Building. On the wall is a pay telephone. It makes it easier, he explains, to let others use his office when he's away.

So far, his organization is only in the talking stages. He has briefed a number of officials and gotten some press publicity in his vacation travels around the country. In 1977, Sen. Charles Percy (R-Ill.) inserted a favorable mention in the Congressional Record.

What he envisions is "informal" groupings of perhaps 12 retired men and women—lawyers, accountants, economists, doctors, managers, business executives, bureaucrats, scientists—who would donate their talents to help solve municipal problems.

It would be, he says, "a research arm for any administration wanting to take advantage of its talents. There are enough problems in this city every day that could keep dozens of groups in the metropolitan area busy."

It's the kind of consulting help, he says, that otherwise might cost a city "a couple of hundred thousand."

Such problems could include "street conditions, the need for better fire protection, the need for security on streets and buildings."

These groups, provided with inexpensive office space, could meet regularly to discuss projects they might want to tackle. "The interchange of ideas," he says, could lead to solutions.

Weiss spends about 30 hours a week promoting his idea. "It's kept me agile, alive and interested.

"I'm pushing just as hard as I can. My contemporaries and I must leave a better legacy than we appear to be leaving—a hellova mess."

[From the Daytona Beach (Fla.) Morning Journal, Mar. 13, 1980]

HE HAS IDEAS FOR USING RETIREES' TALENTS

(By John Wisniewski)

Morton D. Weiss may be described in many ways—as a planner, as economist, statistician, analyst or management engineer, for instance—but at 75 he definitely is not a senior citizen, especially in light of his interpretation of "senior."

"I don't like the word 'senior' at all," he said with a smile in an interview, "because 'senior' and 'senile' have the same Latin root."

He doesn't look 75, for one thing, and the manner in which he strides across a room, effortlessly picks up a padded chair and carriers it back for a visitor is evidence enough of his physical condition.

Weiss and his wife, Dena, left their Washington, D.C., home several weeks ago to enjoy the warm weather of the Sunshine State and after stops elsewhere, are spending 10 days in Daytona Beach.

As he does in almost every new city he visits, Weiss already has made an appearance at City Hall, during which he spoke to Gordon Tiffany, assistant city manager, about a program he initiated some years ago called "Mobilizing Mature Manpower."

The program is Weiss' solution to a problem a lot of people talk about, but few do anything about—utilizing the knowledge and talents of retired persons.

"There is so much talent going to waste, it's criminal," Weiss says. "My theory is you can't get along without another job after you retire, not a job you work at for money, but one through which society benefits because of your expertise." The idea for "Mobilizing Mature Manpower" first came to him when he retired 15 years ago, but became reality only in the past three years. "To conserve and utilize human resources" is the organization's motto.

From its office in Washington, D.C. (Room 1228, National Press Building, 20045) the organization offers counseling to institutions, public bodies, and industrial, civil and commercial agencies.

"The average person withdraws instead of retires," according to Weiss, "and boredom sets in. Getting involved in community affairs helps to prevent mental and physical deterioration."

Every community, he believes, "needs the assistance of my contemporaries," and the best way to begin is for a group of about a dozen persons to get together to exchange ideas.

Local governments would be wise to make meeting and, if possible, office space available to such a group at a nominal cost, Weiss contends.

Once organized, ideas to benefit the community could be developed by the group. Depending on the expertise available, communities could save money in such areas as consultants' fees if needed information can be provided by mature manpower members.

"I'm pushing 'Mobilizing Mature Manpower' just as hard as I can," Weiss said in describing his efforts, "because my contemporaries and I must leave a better legacy than we appear to be leaving."

[From the Washington Star, Dec. 26, 1979]

MOBILIZING MATURE MANPOWER

(By Donald Saltz)

One occasion about 15 years ago, it occurred to Morton D. Weiss that people who retired seemed to quickly slow up and lose their acumen. It just didn't seem proper to him.

Even then, an idea which was to materialize years later was jelling in Weiss's mind.

Weiss, a long-time government financial researcher and planner and management analyst, considers himself an extrovert which has proven fortunate for fruition of his idea.

It got a big boost 2½ years ago when former House Speaker John McCormack heartily endorsed it.

"I've seen too many people a year or two after retirement who begin slowing up and acting foolish," Weiss said. "At the prime of their life, they decide to just mow the lawn and walk the dog.

"The same man used to have one meal at home then stops working and his wife starts," Weiss said.

He says it isn't age but the change in a man's status that causes him to slow down and lose his memory.

The idea simmered in Weiss's mind for years but in the mid-1970s he went public with it. It was a plan to "stop letting talent go down the drain," as he puts it.

He realizes that people who retire want time to think, to reorganize their lives and do things they haven't had enough time for before, but then they want to get back on the productive track.

"They need time to reflect and retirement gives them that time, but then they also need to come together and when that happens the results could be plans, projects and ideas in the national interest," he said.

He believes that when a dozen or so people get together, they get ideas useful to society. He also thinks they should be provided inexpensive office space where they can develop their ideas for the benefit of their community.

"A sharp mayor or county government would make space cheaply available—not free because it's better that the people involved each pay maybe $25 a month—to conserve and utilize human resources," Weiss said.

He notes that a dozen people occupying a downtown office space would incur personal total costs of $3,000 a year, an acceptable sum to them. And from these people who spent working lifetimes as scientists, accountants, lawyers and in other professions might come numerous ideas to improve business and society.

They would be free to develop and work on their own projects without stress of corporate pressures.

Weiss says the people who would participate in his plan—which he calls Mobilizing Mature Manpower—are individuals who don't like to be tied down, which for many of them was the principal reason they didn't continue working.

Weiss said he had been given less than enthusiastic reception by senior citizens organizations such as American Association of Retired Persons. "They're interested in selling tours and insurance," he said. "Too many young people are concerned with telling oldsters what to do."

Weiss says governments—city, county, state or national—will spend money on outside consultants when the work could be done capably by members of the mature manpower group.

"I'm too familiar with large amounts of money spent on outside consultants when the work could be done as well in-house.

"This is an opportunity for public officials and private officials and private administrators to draw on a pool of talent and experience without spending money," he said.

As Weiss' slogan explains, "Mobilizing mature manpower conserves and utilizes human resources."

[From the Enquirer, July 10, 1976]

THE CREATIVE USE OF RETIREMENT

Just because a man hits 65 and leaves a payroll is no sign his brain or imagination ceases to function. Yet society's principal message to him, all to often, is simply, "go fishin'."

For some men (and their wives), enforced idleness is too much. Psychologists compare what sometimes to a business executive in retirement, for example, with the deep-sea diver for whom the pressure lifts too suddenly and the "bends" result.

Such groups as the American Association of Retired Persons have given the problem a lot of attention in recent years, of course. But a lot more, we believe, needs to be given.

So we were pleased to learn of an idea put forward in Washington by Morton D. Weiss, 71, retired government research and finance expert, for the creative use of retirees with lively minds and proven ability. Mr. Weiss' plan is simply this: Permit retirees from the scientific community and such agencies as the Commerce Department to rent office space, at a nominal fee, in a private building downtown, then let them use it as they see fit.

Mr. Weiss' thesis is that able, creative minds, spent in many years on the job, need time to reflect, and retirement gives them that time. But then they also need to come together, and when that happens, the results could be plans, projects and ideas in the national interest.

Maybe such an approach would prove impractical, though on its face it seems to have a lot of logic. In any case, Mr. Weiss, married to the former Dena G. Morgenstern of Cincinnati, is actively pursuing it with private interests in the nation's capital. The federal establishment has surely spawned many a "pilot project" with what seemed a lot less potential than this idea. Moreover, Mr. Weiss' experiment would cast a pittance of even the most humble federal undertaking.

We wish him well, then, in his proposed venture. Certainly not all good ideas from Washington have to flow from the public sector (and treasury).●

ELIMINATE TAX BRACKET CREEP AND END MARRIAGE TAX INEQUITY

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PICKLE. Mr. Speaker, in all this talk about increasing productivity through Tax Code changes, there are two areas of individual taxation that we must not overlook—these two areas cry out for correction by the U.S. Congress.

They are the so-called tax bracket creep, and the marriage tax penalty.

From calender year 1980 to 1981, Americans will be paying $15.1 billion more in taxes because inflation has pushed them into the higher and higher tax brackets. This is not fair—the taxpayer is getting a double whammy—his standard of living is going down because inflation makes his take home pay less, and his taxes are higher.

No matter when Congress passes a tax bill effective for 1981, I will support strongly indexing our code so that the brackets are adjusted for inflation. If the benefit is too heavy on the upper ends, I am not adverse to weighting the adjustments to the middle brackets in the $25,000 to $40,000 range, which is no longer the level of the super rich, but of the two wage earner middle class family.

And since the two wage earner family is becoming the rule instead of the exception, we must end the quirk in our present tax laws that taxes two workers more if married than if they lived together unmarried. The amount can be as high as $1,000 for a family earning $30,000 per year with no dependents taking the no itemized deductions.

Various credits and solutions have been proposed, and this is a vexing problem as we do not want to punish the one wage earner married family. But the law must be changed.

The change should be major and meaningful, and be a major part of the 1981 tax restructuring bill.

With these two steps, along with major provisions on restructing taxes holding back our productivity, I think that a substantial amount of faith can be restored in our tax system.●

IRAN'S ATTEMPTS AT TERROR AND INTERFERENCE IN AMERICAN AFFAIRS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, on July 23, 1980, a number of us sent a letter to the Attorney General, Mr. Civiletti, raising certain questions in the wake of the assassination that occurred in the Washington, D.C., area of a former Iranian Government official who supported the Shah and opposed the present Khomeini regime. These were legitimate questions. The letter, together with the names of signers is shown below:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 23, 1980.

Hon. BENJAMIN CIVILETTI,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: With the murder of former Iranian diplomat Ali Akbar Tabatabai on July 22, by a group evidencing terrorist training and support by their modus operandi we must urge the Department of Justice and the Federal Bureau of Investigation to provide us with reports on the activities of pro-Khomeini terrorist and terrorist-support groups presently active in the United States.

The activities and potential of these groups to use terrorist tactics in the U.S. obviously poses a threat to the maintenance of law. It also creates a threat to the national security of the United States. Responsibility for preventing terrorist attacks rests with you, as Attorney General, and with your department.

Specifically we wish to be informed on:

(1) The activities on behalf of the Government of Iran and/or Ayatollah Ruhaolah Khomeini or any other Iranian principals of Bahram Nahidian of 2046 Kirby Road, McClean, and whether any action has been taken against him under the Foreign Agents Registration Act or any other federal law.

(2) The activities of Bahram Nahidian in relation to the Islamic Center in Washington, D.C.; his attempts to coerce the leadership of that Center by force and his use of that religious institution to cloak political activities of a nature inimical to the interests of the United States.

(3) The activities of Bahram Nahidian and his associates to recruit support from among Muslim and other prisoners in Lorton Reformatory, and in other local, state and federal prisons in various parts of America.

(4) Information related to contacts and meetings between Bahram Nahidian and members and former members of revolutionary groups, active in the District of Columbia; together with known reports of weapons owned or stored by Bahram Nahidian.

(5) The activities of the Iranian Student Association (ISA) and its fronts and splinter groups, including the organization known as the Islamic Guerrilla Association, possibly based in Moscow, Idaho.

(6) The activities of revolutionary groups in the U.S. supporting the activities of the ISA, including but not confined to the support provided by the Workers World Party (WWP), the Socialist Workers Party (SWP), the Communist Party, U.S.A. (CPUSA), the Communist Party, Marxist-Leninist (CPML), and the Revolutionary Communist Party.

(7) The activities of persons serving as diplomats in Washington, D.C. for the governments of Libya and Afghanistan in support of groups listed in paragraphs 4 and 5 above.

(8) The activities of diplomats, accredited to the United Nations in New York City, representing the government of Libya, Iraq and Afghanistan, and representatives of the Organization of Arab States and the Palestinian Liberation Organization (PLO) in supporting financially and logistically and activities of groups listed in paragraphs 4 and 5 above.

It would be appreciated if you would provide us with an initial response to this letter on or before July 31, 1980.

Sincerely,

Larry P. McDonald, J. Kenneth Robinson, John Rousselot, Tom Kindness, Benjamin Gilman, John Ashbrook, Mendel Davis, Eldon Rudd, G. V. Montgomery, Tennyson Guyer, Daniel B. Crane, James M. Collins, Carroll Hubbard, Don Young, Ron Paul, William Dannemeyer, Lester Wolff, Richard Shelby, Philip M. Crane, and Sam Devine.

Mr. Speaker, in response to our concern, the Assistant Attorney General sent an almost insulting reply, which is reproduced below:

DEPARTMENT OF JUSTICE
Washington, D.C.

Hon. LARRY P. MCDONALD,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN MCDONALD: The Attorney General has asked me to respond to your letter of July 23, 1980 requesting information on the several organizations and persons mentioned. Your request is on your behalf and that of 19 of your colleagues in the Congress. It is not one submitted by a committee having jurisdiction over terrorist or related matters.

I am sure you can appreciate that it would be a considerable undertaking to develop this information, which to the extent that it exists, would be contained in the investigative files of this Department. It is not our policy to comment on matters of current investigative interest, since the comments could lessen our chances of success or prejudice the rights of innocent persons. Moreover, without additional specific details regarding each of your requests I am unable to determine what, if any, substantive response can be provided.

Pursuant to longstanding Justice Department policy, I must ask that your request be signed by the chairman of the appropriate committee and addressed to me or the Deputy Attorney General. The request should state both the information desired and the legislative purpose for which it is sought.

Very truly yours,

PHILIP B. HEYMANN,
Assistant Attorney General,
Criminal Division.

Mr. Speaker, in order to underline just how serious a matter of internal security we are dealing with, those of us who sent the first letter have now sent Mr. Civiletti the further response that follows. We call upon him to meet his responsibilities for the internal security of this Nation.

SEPTEMBER 10, 1980.

Hon. BENJAMIN CIVILETTI,
Department of Justice,
Washington, D.C.
(Attention: Philip B. Heymann, Assistant Attorney General, Criminal Division).

DEAR MR. ATTORNEY GENERAL: Reference is made to my letter of July 23, which nineteen of my colleagues joined me in signing, and your non-responsive reply of August 6.

Prompted by your non-response to the matters of grave concern outlined in my letter, additional research has obtained further information on the activities of Bahram Nahidian, and the organization known as the Islamic Guerilla in America (IGA).

We are now aware of specific illegal activities of Nahidian and the IGA, which are also known to the FBI. We have also become aware of the visit to Washington, Los Angeles and Boston of an Iranian General Fardoust. General Fardoust was identified in the New York Times of August 15 as a former head of the Ayatollah Khomeini's intelligence organization with a possible role in the killing of Ali Akbar Tabatabai.

Our investigations have developed information on the movement of large sums of money by Iranians in the United States for purposes probably inimical to the interests of the United States, and in this matter the activities of a Cyrus Hashemi and the Souri International Forwarding Company of New York City have been brought to our attention.

We have also developed information pertaining to the IGA using firearms in an attempt to kill federal officials resident in the Washington area.

As Members of Congress, having responsibility for the allocation of funds to the Executive Branch, we are concerned that these actions are taking place, with the knowledge of the FBI and the law enforcement community without prosecution of those responsible.

I have, personally, shared my concerns in these matters with responsible officials of the FBI, and must now insist on a response to my letter before putting the full details of the information that I have gathered, together with the appropriate documentation, publicly before my colleagues.

Sincerely,

Larry P. McDonald, John H. Rousselot, G. V. Montgomery, Samuel L. Devine, Eldon Rudd, Tennyson Guyer, Ron Paul, Richard C. Shelby, Thomas N. Kindness, J. K. Robinson, Benjamin A. Gilman, William E. Dannemeyer, Philip M. Crane, Carroll Hubbard, Jr., Mendel J. Davis, Lester L. Wolff, John M. Ashbrook, James M. Collins, Daniel B. Crane, and Don Young.●

THE BURDEN OF FEDERAL PAPERWORK

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for Wednesday, September 10, 1980, into the CONGRESSIONAL RECORD:

THE BURDEN OF FEDERAL PAPERWORK

Although weighty issues of economics, national defense, and foreign affairs are dominating discussions of politics and government in this election season, there is a simpler issue that will not go away. Whether or not it receives the attention of the media, the burden of federal paperwork continues to concern Hoosiers in all walks of life. Complex tax returns overwhelm the ordinary citizen; forms of all sizes and descriptions frustrate the educator; reams of paper threaten to smother the small businessman. Some Hoosiers, harassed to no end by duplicative, frivolous paperwork, have concluded that shuffling paper is the main activity of the federal government. Why else, they ask, would Washington want so many forms?

Paperwork has been a product of the federal government ever since the founding of the nation so the burden it imposes on Americans is not new. Relatively new, however, is the rapid growth of paperwork during the past three decades. Neither the Federal Reports Act of 1942 (the basic law which coordinates the way Washington gathers data) nor any ad hoc effort undertaken since then has been sufficient to control the paperwork generated by an expanding government. In 1979 alone, 5,000 federal reports required by law demanded an estimated 786 million hours of the public's time, enough to keep 390,000 full-time workers busy. The forms completed in one year may fill almost seven million cubic feet of space, and the cost of preparing and processing them may be more than $40 billion. Small businesses are especially hard-pressed. They file more than 305 million federal forms a year, about 850 million pages containing 7.3 billion questions. The average annual cost to each small business in the country is thought to be more than $1,000. Experts claim that three-quarters of this burden is due to the assessment and collection of taxes.

Of course, not all paperwork is bad. Forms that convey information are necessary for the management of all federal initiatives. Without paperwork, we could not raise revenue for the defense of the nation or combat drug abuse in our communities. Forms are needed to show who is eligible for federal benefits and who is cheating the government. But far too much paperwork is not useful. Useless paperwork arises when federal programs are poorly managed or staffed, when agencies are out of touch with one another, when regulations are complex, or when Congress acts too quickly or inexpertly in trying to solve a problem. The effects of useless paperwork are serious; they can be devastating in some instances. Time can be wasted, resources drained away, and creativity stifled. This kind of paperwork can dull the government's sensitivity to the needs of the people and prevent the government from meeting those needs.

The most recent drive against paperwork began in 1974 with the work of the Commission on Federal Paperwork. During the three years of its existence, the 14-member panel made 520 recommendations aimed at eliminating or cutting down red tape in the executive branch. Some 269 of these recommendations have been accepted at last count, and many of the commission's functions are now being carried out by the Office of Management and Budget. President Carter continued the drive against paperwork with two major executive orders. The first, issued in March of 1978, required federal agencies both to write regulations in plain English and to analyze the impact of the paperwork their regulations might cause. The second, issued in November of 1979, went even further. It set up "paperwork budgets" which agencies could not exceed, created a "locator system" to eliminate duplication of data, ordered agencies to consider the effects of paperwork on small businesses, and established a "sunset" mechanism to terminate paperwork automatically.

Congress has not lagged behind in the drive against paperwork. In February of 1977, the Senate adopted a "housekeeping" rule which requires that each bill reported by a committee be accompanied by an estimate of the amount of paperwork the bill would cause if it passed. Many Congressmen, myself included, have worked for a similar rule in the House of Representatives. Rules like these serve to cut off paperwork at one of its sources. Another congressional milestone in the drive against paperwork was House passage of the Paperwork Reduction Act in March of this year. If approved by the Senate, the bill would reduce paperwork by giving overall direction to the government's information policies. Any proposal by an agency to collect data from the public would have to be sanctioned by a special office and would not be renewed after three years unless still shown to be necessary. The office would not sanction proposals if the data to be collected were already in government files. Other measures have received congressional attention as well. On several occasions, Congress has moved to trim paperwork in specific programs. It is also considering new ways to attack paperwork government-wide.

Although federal officials claim that we are making gains against paperwork, I have asked Hoosiers themselves whether they see any improvement. Some notice slight progress; others say the burden is as heavy as ever; still others complain that things are getting worse. Such responses indicate to me that the drive against paperwork is an ongoing one. We can expect paperwork to abate when we simplify tax returns, ease up on surveys, and revise the way states and localities apply for federal grants. We can expect paperwork to increase if we are not alert to the potential consequences of new legislation in the areas of energy, environmental protection, and health. Given the complexity of government today, it is not realistic to believe that final victory over paperwork can be quickly achieved. What we in government must do is recognize the extent to which paperwork is a burden to citizens, committing ourselves to every reasonable step that might reduce the burden and keep it manageable.●

LEAKS OF THE "STEALTH" AIRCRAFT TECHNOLOGY

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ROUSSELOT. Mr. Speaker, the House Armed Services Committee is now attempting to discern which, if any, guidelines and procedures for the prevention of unauthorized disclosures of information have been broken, with respect to the "Stealth" aircraft technology. The full House of Representatives must also consider the propriety of any further voluntary disclosures made by the administration even if those disclosures do not break security regulations. The responsibility for breeches of confidentiality in our national security program rests upon those who are charged with keeping the integrity of such programs.

The ramifications of such poor judgment and handling of high technology are plain to see. We do not require the services of our most sophisticated defense planners to tell us that the earlier a potential enemy learns of a new weapon technology, the sooner they will begin to develop countermeasures. Expenditures for defense programs have been gutted, in real terms, to dangerous levels in the 1970's. To compound the problems of a strained defense program, we now have disclosures of a developmental project before the weapon is operational.

Obviously, some very serious questions need to be addressed:

First. Are our current guidelines concerning classified material sufficient to protect our national defense?

Second. If these guidelines are judged inadequate—which appears plausible since at least one journalist has known about the existence of "Stealth" for as long as 2 years—what have the Pentagon and the administration done to prevent similar leaks of future projects?

Third. If our guidelines are judged reasonable to insure our national security, the possibility is than raised that they were circumvented intentionally. If so, we must ask: By whom? For what purpose? To harm our Armed Forces capabilities? For political gain? To defuse criticism of the lack of military initiative?

The Investigations Subcommittee of the House Armed Services Committee has been conducting hearings on this matter. The committee members must have all the support and assistance the full House can give them. I have cosponsored Representative JIM COURTER's House Resolution 777, calling on the President to provide all information pertaining to authorization by him, or any official of the executive branch, relating to the disclosure of "Stealth" technology. This resolution also requests information concerning any ongoing investigation by the executive branch into this issue, and also on the current guidelines for classified data.

As the legislative days in the 96th Congress dwindle, it is imperative that this resolution reach the floor of the House. The Armed Services Committee must not be hindered in any way in their investigation. I believe this resolution will help them in their task, and I heartily encourage all of my colleagues to join in cosponsoring this measure.●

SMALL GROWER DOES BIG THINGS FOR COTTON

HON. L. H. FOUNTAIN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. FOUNTAIN. Mr. Speaker, I would like to call the attention of my colleagues to the outstanding leadership and accomplishments of one of my constituents—Mr. C. Hoke Leggett of Hobgood, N.C.

Not only is Hoke Leggett, who farms 350 acres of cotton, one of the leaders in the U.S. cotton industry but he is also active in numerous State, regional, and national organizations.

He is currently in the forefront of the cotton industry's effort to obtain funding for a crash cotton dust research program. In the past, Hoke has served as president of the National Cotton Council and was instrumental in developing a united cotton industry position on the Agricultural Act of 1977.

In an interview in the August 1980 Progressive Farmer, Hoke Leggett discusses his role within the cotton industry and gives some pointers for other farmers interested in becoming involved in the leadership of their industry.

The article is as follows:

SMALL GROWER DOES BIG THINGS FOR COTTON

Edith Longest Leggett was telling a group of ladies at the National Cotton Council (NCC) annual meeting how tricky it was to get in the 1979 peanut crop. "Where was Hoke?" one of them asked.

"Oh, doing what he's doing now," Mrs. Leggett replied. "Only I think it was in Washington at that time."

What C. Hoke Leggett was doing was convincing a group of skeptical cotton farmers of the dangers they faced from cotton dust. The Hobgood, N.C., producer of cotton, tobacco, peanuts, corn, soybeans, and hogs, who is outgoing NCC president and the man who could convince the Du Ponts that they ought to wear cotton underwear, was succeeding better than he knew.

At the January 1980 council meeting, delegates finally resolved that a $9 million crash program to keep cotton dust out of the textile mill was the only way to keep the cotton industry out of disaster.

"If cotton producers assume that dust and brown lung disease are a problem for the textile mills to solve, then we're going to be in big trouble" is the way Leggett's arguments run. "The problem belongs to the whole industry, to producers as well as to spinners and weavers. If we don't solve it, we won't have a cotton industry left to worry about."

The odds against scratching up $9 million in new research money for cotton dust in 1980 were pretty long in January. An Assistant Secretary of Agriculture was on hand to say that the President has passed the word to pare USDA research budgets to the core.

Cotton Incorporated spokesmen protested that they were already spending a big hunk of money on cotton dust research.

Millmen simply pointed to the billions already spent in their efforts to meet worksite standards laid down by the Occupational Safety and Health Administration (OSHA).

Still, NCC had its resolution; and to the surprise of no one who knew how he could work on a problem, it appointed Leggett chairman of the newly established Industrywide Cotton Dust Committee.

If Edith Leggett thought she was going to see more of Hoke around the farm because he was no longer NCC president, she was due for a disappointment.

Backed by the technical staff and like-minded officers of the council, Hoke began a campaign of begging, threatening, lobbying, arguing, speaking, arm twisting, and convincing. By lay-by, most of the funds for a $9 million, two-year, crash research program were promised or in sight.

"The price tag is high, but we've got to pay it," Leggett says. "If we don't, the mills will simply shift to synthetics." Leggett concedes that the price of problem solving is always high; if not in money, always in time and effort. His neighbors sometimes ask him how he can spend so much time serving in state, regional, and national organizations.

"How can I not take the time to look after our business?" he'll reply, holding you with his expressive eyes while snapping out his words in a way that sometimes belies his North Carolina rural background. To Leggett, good marketing and consumer acceptance are as much the business of farming as is careful crop production.

His national activities haven't made him forget his community responsibilities. He has served two terms as mayor of Hobgood, been instrumental in starting a local peanut marketing association, and helped bring a branch of the Peoples Bank and Trust Co. to his town.

With 350 acres, Leggett is a small cotton grower as cotton growers go these days. "But everybody has got to help, large or small," he says.

"Maybe I could grow more and better cotton if I stayed home all the time and paid closer attention to my production practices. But somebody has got to sell it if we're going to raise it. If we all stay home griping about our poor market conditions, nobody is going to make any profit."

Leggett thinks that cotton's future looks good. "Cotton can stay competitive with synthetics if we can solve the dust problem," he says.

Cotton marketing has made a lot of progress, and Leggett credits Cotton Incorporated with making a big share of that progress possible. Personalities need not get in the way of an effective marketing program, he believes, adding, "We all must continue to support CI's program."

Leggett started growing cotton in 1954 and has seen many problems come and go. His farm is located in the area covered by the experimental boll weevil eradication program.

"We've shown here that a communitywide effort can deal with the pesky weevil," he says.

"Just a few years ago, I sprayed my cotton 19 times in a single season, mostly to control boll weevils. Last year, we sprayed only once, and that was to take care of a worm infestation. We didn't spray at all for boll weevils."

The boll weevil eradication effort has been so successful that cotton acreage has increased dramatically this year.

Leggett makes no bones about the fact that too few farmers are willing to pitch in and help solve farm problems.

"No one else will do it for us," he says.

For cotton farmers willing to take his advice and get involved in the leadership of their industry, Leggett gives the following pointers:

Start attending as many meetings as possible of organizations that are working to solve your problems. Get active in committee work. Speak up at meetings. Hold an office when it's offered.

Ask for opportunities to serve as a contact with Congressmen and other people in positions of leadership.

Go visit Cotton Incorporated in Raleigh and see what the staff is doing to solve marketing problems.

Get to know people in the textile industry. Find out what they want.

Get involved in the democratic process. Speak up on political issues that concern you.

Learn everything you can about producing quality cotton. Then produce it.

Encourage people of the news media to cover the positive efforts of the cotton industry. Help them see that the industry is working to solve the brown lung disease problem.

Basically, Leggett's attitude toward the cotton business is "get off your seat and onto your feet." He has always believed that the way to deal with your problems is to roll up your "britches legs" and wade right in.

Maybe that's why Mrs. Leggett is willing to get in the peanuts. And maybe she's pretty proud of the respect and admiration that Hoke has won wherever he has waded into farmers' problems.●

REPUBLICANS TAKE A RISK

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GINGRICH. Mr. Speaker, David Broder has put the Republican gathering on the Capitol steps September 15 in its historical context in a Washington Post article this morning.

He has described what a change this event represents—that a political party for the first time is gathering its Federal candidates to make a pledge to the American people on what they would accomplish as a unified Government.

Such an event, and a pledge, is a risk. Most politicians have avoided their party label for the last two decades. Most have avoided taking any responsibility for the actions of their parties as a whole.

And, sadly, many politicians have even separated themselves from the Government they are an integral part of. They seem to claim that what Government does just happens—that the politicians' actions have no effect on people's lives or on what Government does.

So Republicans are taking a risk by trying to change "the current wisdom."

Republicans are taking a risk because now if they do win a majority in both Houses, people will be able to measure them against a joint statement of intentions.

And Republicans are taking a risk by trying to explain that Government should consist of teamwork—that one individual has to work with others to accomplish change.

But we think that risk is well worth taking.

Here's David Broder's description of that risk—and the change this event brings to the 1980 campaign:

CAPITOL STEPS THEATRICAL

(By David S. Broder)

The process of presidential campaigning has been so corrupted by "media events"—posing the candidates in settings that convey a message on a TV tube without verbal content—that there is a tendency to view all visual spectacles as essentially phony.

At a Common Cause forum the other day, Linda Wertheimer of National Public Radio was ridiculing the "Italian market syndrome" that seems to send every candidate who comes to Philadelphia out shopping for sausage and eggplant as a shortcut to the ethnic vote.

Next Monday, Ronald Reagan and George Bush will take part in what looks like an equally phony "media event." They are scheduled to meet on the steps of the Capitol with the Republican congressional leaders, members of Congress and a sizable number of GOP candidates from the House and Senate.

There, according to plans, they will announce a list of specific actions that they jointly pledge to take in 1981, if Reagan is elected with a Republican Congress.

Since the odds are against the Republicans' overturning the 26-year-old Democratic majorities in both the House and Senate this November, the "contract" Reagan and the Republicans are offering can be seen as a cheap promise to make—just another "media event" on the candidate's schedule.

But the ceremony has substantive significance, at least in the minds of the junior House Republicans who concocted the notion and sold it to a somewhat reluctant Reagan campaign. It represents a serious and healthy departure from the norms of contemporary presidential campaigning.

For the last quarter-century, most of the presidential nominees of both parties have run for office as if the presidency were the only job on the ballot and they were the only candidates.

Losers like Barry Goldwater and Hubert Humphrey might proclaim their party labels. But for the most part, the successful candidates of both parties from Eisenhower through Carter have told the American people that a change of governmental direction could be achieved by changing the occupant of the White House.

That proposition has been proved false. The inertial forces in the government of the United States—the network of relationships linking the bureaucracy, the interest groups and the congressional subcommittees and their staffs—are demonstrably too powerful to be turned around by any one man.

What the Republicans are attempting to say with their Capitol steps theatrical is that Americans who want to change directions have to change control of the whole government. They have to reverse the majorities in Congress as well as turn out the incumbent from the White House.

It is a proposition that offers great potential dividends for the congressional Republicans. Too often their candidates have found themselves competing with Democratic incumbents who are as vociferous as the challengers in denouncing the "mess in Washington."

The Republicans hope, by the Monday spectacular, to drive home the point that the Democratic Congress is as much responsible for the record of the last four years as is the Democratic president—and that individual Democratic senators and representatives must be held to account for their party's record.

But it is a strategy with obvious risks for Reagan. It will be fascinating to see how far he really goes in expounding the message the sponsors hope to communicate.

From Eisenhower on, Republican presidential candidates have known that they have to run well ahead of their party to have a chance of winning. Most often, that has meant running far away from their party. Ever since the Democrats took over Congress in Eisenhower's second year, Republican presidents and presidential candidates have been content to seek accommodation, not revolution, on Capital Hill.

In Reagan's case, there is a special risk in the Monday event. His own strategists say that most voters believe that Reagan is a stronger executive than Carter, a man more likely to get things done. But, these strategists concede, there are still grave reservations about the direction in which Reagan would move the country.

Many voters—women in particular—are nervous about Reagan's talk about a bigger, more bristling defense, a tougher line toward foreign governments and a greater reliance on private industry to furnish the jobs and energy the country needs.

Many of those voters who are fed up with Carter but nervous about Reagan would like to hedge their bets by keeping the Democrats in control of Congress—a sort of check-and-balance strategy—as they did when they elected Eisenhower and Nixon three times with Democratic Congresses.

The implicit message of Monday's ceremony is that there can be only one government in Washington at a time and that if voters want Reagan to lead it effectively, they have to go all the way with the GOP.

That is an honest statement, and it is as commendable for the Republicans to dramatize it as it is risky.●

TRINITY LUTHERAN CHURCH, LONG ISLAND CITY, N.Y.—90 YEARS OF CONTINUOUS BLESSINGS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BIAGGI. Mr. Speaker, there will be great joy in the hearts of the parishioners and friends of Trinity Lutheran Church in the Astoria and Long Island City area of the Borough of Queens, New York, this coming Sunday, September 14, as they lift up their hearts in thanksgiving and praise to celebrate the parish completion of 90 years of service to God and community.

A special liturgy and dinner will highlight this occasion as the wonderful and extraordinary event that it is. It is a celebration of God's inspiration and His work. It is a celebration of people who have taken that inspiration and who have united with each other in bonds of love and commitment to live and work for their common spiritual and temporal welfare, and, in doing so, perform God's work.

The history of the efforts and achievements of the extraordinary people who have created the legacy and established the traditions of Trinity Lutheran Church merit our special attention on this truly wonderful and significant occasion, so that we can also derive from their example, take from their inspiration, and live and work to achieve in God's service.

The first services were held at Trinity Lutheran Church on February 23, 1890. The church was originally founded by German immigrants, and German-speaking farmers and craftsmen. The German language was used in the services until English began to be introduced in some services during the early 1900's.

The present church building was dedicated on November 13, 1927. Outstanding pastorships have marked the church's history. The congregation presently consists of about 600 members, and the church is presently connected to a school as well.

Among its many contributions to the ongoing welfare of the community, Trinity Lutheran Church holds senior citizen meetings, scouting group meetings, and Alcoholics Anonymous groups.

The present pastor is the Reverend Leonard R. Klein. The church is located at 31-18 37th Street. I offer the following listing of the milestones in the history of Trinity Lutheran Church in special salute to all the parishioners, under the guidance and leadership of Reverend Klein, who continue to sow and reap the harvests of their ancestors.

The Ladies' Aid Society was founded in July 1890, which was several months after the initial church services were held. The following month, on August 24, 1890, Pastor William Schoenfeld was installed as the first pastor of Trinity, and on September 7, 1890, the first church building was dedicated.

January 11, 1891, saw Mr. John Wambsgans installed as the first teacher of the parochial school, which had been opened on October 27, 1890, with the pastor teaching.

The succeeding pastorships of Adolph T. Sieker and Christian Markel occurred in 1896 and 1897, respectively. The parsonage was constructed in 1900. And it was in September 1906 that Trinity began to conduct services in the English language.

September 12, 1915, marked the 25th anniversary celebration of Trinity Lutheran Church, and, in observance of that milestone, the mortgage on the church was burned.

The next decade witnessed expansion, and there were a number of changes in the physical structure of the parish. The corner lot on which the present church stands was purchased during the same year as the installation of Pastor Fred Lindemann, 1922. The following year, a daughter congregation, Grace Lutheran Church, was started. It was on February 2, 1925, that the congregation voted to build the present church building, and the cornerstone was laid October 17, 1926. After morning services in the old church building on November 13, 1927, dedication services for the new church building were held. The total cost of the structure was $231,000.

The altar and appointments from the old church were installed in the baptistry in 1932. And it was in September 1937 that Trinity began the celebration of the Lord's Supper in at least one service every week. Trinity's fifth pastor, H. J. Rippe, was installed in September 1939.

Trinity's 50th year anniversary celebration was begun at special services on January 7, 1940. In March 1948, the men and women of Trinity dedicated the fine stained-glass windows in the nave and narthex of the church to the memory of their fellow parishioners who lost their lives in World War II.

The special events of the next decade highlight the growth of Trinity's school. The first Christian Day School had ceased operation in the first years of the century, and so it was on September 14, 1953, that Trinity reopened its Christian Day School with Miss Matilda Siegal as teacher for the 2 grades with 26 pupils. The ground was broken for the present school building on December 8, 1957. The cornerstone was laid on May 18, 1958, and the dedication followed on November 16.

Another monumental anniversary celebration banquet to record Trinity's 75th birthday was held on November 11, 1965, with Dr. Oswald Hoffmann as the speaker. During the latter portion of that decade in 1967, Pastor George H. Sommermeyer was installed as the sixth pastor, while Victor R. Kaesmeyer was installed as principal, during the same services. Very significantly, in 1968, Trinity School entered into cooperation with other Lutheran parishes in the area. Queens Lutheran School is the result of this move.

The 1970's brought new office space and a renewed parsonage, both changes and the dedication occurring in 1972.

The Reverend Leonard R. Klein was installed as the seventh pastor of Trinity on December 19, 1976.

Pastor Kazimierz A. Kowalski, the present assistant pastor of Trinity, was ordained there on November 26, 1978.

And this month, September 1980, we herald the 90th anniversary of Trinity Lutheran Church.

I know that you, Mr. Speaker, and my colleagues in this great national body will join with me in extending our sincerest best wishes for continued good blessings and even more bountiful successes now and in the years ahead to Pastor Klein, Pastor Kowalski, and all the wonderful parishioners and friends of Trinity Lutheran Church. May God bless and continue to keep you all.●

CAMBODIA IN THE U.N.

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. PORTER. Mr. Speaker, a year ago September our U.S. Representative to the United Nations Credentials Committee voted for the Committee's recommendation to seat Pol Pot's "Democratic Kampuchea."

In just a matter of days, another General Assembly Credentials Committee vote will be taken. We will then have the opportunity to reevaluate our position of last year in which we left behind our values and interests as an influential world power and any apparent regard for the welfare of the Cambodian people who over the past decade have experienced more devastation, brutality, and chaos than any society in modern times.

Although the United States never directly recognized Pol Pot's regime, inherent to our U.N. vote was a strong protest against the Vietnamese occupation of Kampuchea. But our vote, far from pressuring the Vietnamese to rethink their presence in Cambodia, seems to have made them even more unwilling to compromise and make concessions. Moreover, generous international relief efforts have proved to be of little effect in providing the ravaged population with food due to Heng Samrin's regime's suspicions that the international community was attempting to rekindle Pol Pot's efforts by channeling food and supplies to his forces.

In my mind, both governments have been a disaster for the Cambodian People. Pol Pot waged a 4-year reign of terror against his own people and now the Heng Samrin regime continues along the same line of atrocity. Our vote of last year has not in any way contributed to the resolution of the conflict in Cambodia, and if anything, seems to have added to the difficulties.

If our country has any pretentions to the observance of human rights in our international affairs, we cannot in good conscience lend further support to Pol Pot or to any government that barbarizes innocent Cambodian citizens in its struggle for power. We cannot do so even in continued protest against the Hen Samrin puppet Vietnamese regime.

We would be far better advised to observe the values we espouse and use our influence to see that the Cambodian seat in the United Nations General Assembly is left vacant until the time that the Cambodian people can decide free from outside pressure what government should rightfully represent their nation. The vacancy of the seat would be a reminder to us that Cambodia continues to be brutalized beyond all immagination and that the continuation of this genocide is a burden of this entire civilization.●

FURTHER CLARIFICATION OF REMARKS IN SUPPORT OF THE RULE FOR THE CONSIDERATION OF H.R. 3904—THE MULTIEMPLOYER PENSION PLAN AMENDMENTS OF 1980

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. GAYDOS. Mr. Speaker, following my remarks on August 25, 1980, in support of the rule to strike from H.R. 3904—the Multiemployer Pension Plan Amendments Act of 1980—the nongermane Senate amendments and return the bill to the Senate, Mr. Kenneth E. Tobin, president of the National Sand and Gravel Association, has written to me and stated that I "seriously misled the Members of the House with respect to the sand and gravel industry and the situation surrounding our effort to be transferred from MSHA to OSHA jurisdiction."

This is a very serious charge and I want to point out to the Members that this is a scurrilous attack on both myself as well as this body and it is without any basis whatever.

Accordingly, I would like to respond to the various issues raised by Mr. Tobin.

First, he disagrees with my statement that "MESA was transferred to the Department of Labor lock, stock, and barrel * * *," and goes on to state: "As chairman of the subcommittee that wrote the legislation, you know very well that there is no factual resemblance between the old MESA and the much more severe and restrictive Mine Safety and Health Act * * *."

I am at a loss to understand why Mr. Tobin compares MESA and the Federal Mine Safety and Health Act of 1977, since MESA is not a law, but rather an acronym for Mining Enforcement and Safety Administration, an organization which until 1978 existed in the Department of the Interior. It was responsible for implementing both the Federal Metal and Nonmetallic Mine Safety Act as well as the Federal Coal Mine Health and Safety Act of 1969.

Pursuant to title III, section 301, of the Federal Mine Safety and Health Amendments Act of 1977—Public Law 95-164—MESA was transferred to the Department of Labor.

Mr. Tobin should be aware that this transfer occurred with a minimum of fanfare, for it merely meant that the sign referring to MESA and the Department of the Interior at 4015 Wilson Boulevard, Arlington, Va., was replaced by one reading the "Mine Safety and Health Administration, Department of Labor." The facilities today are the same as those occupied by MESA, the records kept by MESA are now under the control of MSHA. MESA employees were transferred to the Department of Labor. The standards issued by MESA pursuant to the 1966 Federal Metal and Nonmetallic Act are now implemented by MSHA. Furthermore, the same situation applies with respect to the MESA field offices.

Second, Mr. Tobin objects to my assertion that, "Today, however, they would have us believe that such operations are not mining operations," and states, "We have never made such contention."

Well, Mr. William E. Hole, president, American Aggregates Corp., and chairman, Safety Committee, National Sand & Gravel Association, in his appearance before the Subcommittee on Health and Safety on July 9, 1979, stated:

> The extraction of our product is similar to excavation work performed by industries now covered by OSHA. Equipment used includes scrapers, front-end loaders, pumps, compressors, conveyor systems, dump trucks, and dredges.
>
> These are vastly different from highly specialized equipment used by deep underground mines such as man hoists, low profile mobile equipment, and continuous mining machines.

From this it would appear that Mr. Tobin believes that, first, sand and gravel operations do not belong under a mine safety and health law; second, his members do not use equipment used in deep underground mines; and third, the extraction of sand and gravel is similar to excavation work performed by industries now covered by OSHA.

If all this is so, then is not the extraction of sand and gravel akin to excavation work and accordingly not a mining operation?

Third, I stated that, "yet, it appears that the sand and gravel industry now wishes to switch its affiliation to OSHA." To which Mr. Tobin replies this is "totally inaccurate." He goes on to state that his organization in September 1973 expressed an interest in having sand and gravel operations under OSHA jurisdiction, and such position was reaffirmed in September 1975 and submitted to the Subcommittee on Manpower, Compensation, and Health and Safety in October 1975.

Well, let us look at the record on this.

On September 3, 1975, in the 94th Congress, Congressman Dominick V. Daniels introduced H.R. 9318, a bill which would have amended the Federal Metal and Nonmetallic Mine Safety Act, in certain respects. But most significantly, this bill would have excluded sand and gravel from the provisions of the act, and accordingly they would then be subject to OSHA.

A statement filed with the subcommittee by the National Sand and Gravel Association contains the following:

> H.R. 9318 transfers the responsibility for enforcement of safety regulations affecting the processing of sand and gravel from the Mining Enforcement and Safety Administration in the Department of the Interior to the Occupational Safety and Health Administration in the Department of Labor. This transfer is unnecessary and not called for at this time.
>
> Legislation such as H.R. 9318 is not necessary at this time. If, however, the committee decides to recommend legislation which would transfer our industry to the Department of Labor, we support the recommendation in the bill that our industry be placed under the jurisdiction of OSHA.

I guess what this all meant was that the sand and gravel industry was happy with the provisions of the Federal Metal and Nonmetallic Mine Safety Act, but if it was to be amended, the sand and gravel industry wanted to be under OSHA. Hardly a clear and unambiguous statement that they preferred OSHA jurisdiction; instead, a very waffling position.

But let us look at the position of the National Sand & Gravel Association in the 95th Congress when the current mine safety and health law was under consideration. H.R. 4287 was the bill before the Subcommittee on Compensation, Health, and Safety. It provided for:

First, upgrading the provisions of the Federal Coal Mine Safety and Health Act of 1969.

Second, transfer of administration from MESA in the Department of Interior to the Mine Safety and Health Administration in the Department of Labor.

Third, repeal of the Federal Metal and Nonmetallic Mine Safety Act.

Fourth, all mines to be subject to one act, with separate standards for coal mines and for metal and nonmetallic mines.

And what was the response of the National Sand & Gravel Association to the subcommittee hearings on the bill? Not an appearance before the subcommittee, but instead the submission of a statement for the record. What was the association's position with respect to OSHA? The only reference was to a memorandum of understanding between MESA and OSHA with respect to certain possible duplication of the respective agencies.

But where was the interest in OSHA jurisdiction previously expressed in the 94th Congress? Interestingly enough, the association in setting forth its opposition to H.R. 4287, objected to the general duty provision, a provision which is included in OSHA but was not enacted into law in the Federal Mine Safety and Health Amendments Act of 1977.

The record is clear. The legislative history of the Federal Mine Safety and Health Amendments Act of 1977 contains absolutely no evidence that the National Sand & Gravel Association indicated a wish to have its members subject to the jurisdiction of OSHA.

I do not question the right of Mr. Tobin to change his preference from MESA to OSHA, to MSHA and now to OSHA, but to state that his organization has, "on record before both the House and Senate," a consistent policy favoring OSHA jurisdiction for the sand and gravel industry since 1975 is totally at variance with the evidence contained in the subcommittee hearings.

Fourth, Mr. Tobin states that he assumes that I know from, "personal knowledge of the Pittsburgh area, that a substantial portion of the sand and gravel industry consists of marine operations, operations which are on the face of it therefore incompatible with regulations for underground mining." He makes the proper assumption, but I have yet to hear of MSHA issuing citations against such marine operations for those standards applicable to underground mining. If Mr. Tobin has such examples, why has he kept it from the subcommittee?

Additionally, he contends that, "to apply an underground mine act to marine dredging operations on waterways is simply not feasible or workable." In so doing, he has conveniently substituted "act" for "regulations." But the 1977 Act is a mining act, covering both surface and underground mines. It is the standards that are specifically applicable to surface or underground mining operations, with a further distinction between coal and metal and nonmetal mines.

Fifth, in my remarks before the House on August 25, 1980, I cited statistics which showed that a disproportionate number of the fatalities in metal and nonmetal mining occurred in surface stone and sand and gravel mines. Mr. Tobin contends I left an improper implication for the Members of the House. But what is Mr. Tobin's complaint? He states that while 64 percent of total man-hours worked in surface metal and nonmetal mining were worked in surface stone and sand and gravel, 68 percent of the fatalities in the surface metal and nonmetal mines occurred in surface stone and sand and gravel operations.

Further, he contends that in considering all metal and nonmetal mining—which I assume to mean both surface as well as underground—that the stone and sand and gravel industry, which accounted for 48 percent of the man-hours worked, accounts for 53 percent of the total fatalities.

I am really at a loss to determine what Mr. Tobin is complaining about. His statistics just confirm and buttress my position that stone and sand and gravel operations are not safe operations in that they account for a disproportionately higher number of fatalities compared to other types of metal and nonmetal mining.

Sixth, I informed the Members of the House on August 25, 1980, of those 17 organizations which had written to me supporting deletion of the nongermane MSHA amendment.

Mr. Tobin contends that four of the organizations, "actually endorse the merits of our amendment." What would Mr. Tobin have Members of Congress do when we receive correspondence clearly urging our support for a particular position?

Obviously, we have to take such organizations at their word. Furthermore, whether or not four of the organizations did endorse the merits of the amendment, at the time I was urging the deletion of the MSHA nongermane amendment from H.R. 3908 and that is exactly what those four organizations recommended, no more or no less.

Mr. Tobin states I am totally in error in listing the Flintkote Co. as being opposed to the MSHA amendment. Well, I did not list the Flintkote Co. I did list the Flintkote Cement Co., based on their telegram to me. Was this an oversight on Mr. Tobin's part?

Mr. Tobin also questions my listing Atlantic Cement Co. as opposing the MSHA amendment and states that the president of this company has assured him that he does not oppose the MSHA amendment. He further states that he is attempting to check with the other three cement companies which I listed to "ascertain their exact position." My files contain either a letter or telegram from every organization that I listed, supporting the statement I made.

Further, Mr. Tobin objects to my naming several unions who opposed the MSHA amendment. He contends that the three unions; namely, the Teamsters, the Operating Engineers, and Laborers, which are the principal unions representing employees of sand and gravel operators, have not appeared in either House or Senate in opposition to the MSHA amendment. Well, the Laborers and the Operating Engineers are AFL-CIO affiliates and are members of the Industrial Union Department, AFL-CIO, and the Building and Construction Trades Department, AFL-CIO. Both of these organizations testified before the Subcommittee on Health and Safety during the MSHA oversight hearings, and in no way supported Mr. Tobin's position.

As far as the Teamsters are concerned, the subcommittee received no request from them to either appear or even to submit a statement for the record. If they were so eager to support the exclusion of surface stone and sand and gravel mines from the jurisdiction of MSHA, I am sure they would have acceded to a request from Mr. Tobin to appear before the subcommittee and so testify.

CONCLUSION

I have taken this time to respond seriatim to the reprehensible and totally unfounded accusation by Mr. Tobin that I have seriously misled the Members of the House.

I do not desire to engage in a poison pen campaign with Mr. Tobin of the National Sand & Gravel Association. I do, however, wish to place in the RECORD evidence of the way a particular organization endeavors to deal with the U.S. Congress. I leave it to the Members of this House to draw their own conclusions; unreliable, shoddy quibbling, waffling, misrepresentative, or some other more apt term.

Organizations such as the National Sand & Gravel Association can perform a vital service to the U.S. Congress, to the appropriate administrative agency, as well as to their own membership. But this assumes a position of trust and fair dealing on the part of all participants. If an industry association loses its reputation for honesty and truthfulness, unfortunately everyone loses. But most significantly, the members of the organization who have chosen that organization to act on their behalf, bear the heaviest burden since they lose the services of what otherwise could be an effective spokesman for their interests.

In my remarks to the House, both today as well as on August 25, 1980, I made a factual recitation based on the evidence before the subcommittee. Mr. Tobin may not like the evidence, but it ill behooves him to initiate a personal and totally unwarranted attack on me and the subcommittee.

Mr. Tobin's letter follows.

NATIONAL SAND & GRAVEL ASSOCIATION,
Silver Spring, Md., September 3, 1980.
Hon. JOSEPH GAYDOS,
Chairman, Subcommittee on Health and Safety, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is exceedingly unfortunate that in the heat of the debate on the House floor on August 26, you seriously misled the Members of the House with respect to the sand and gravel industry and the situation surrounding our effort to be transferred from MSHA to OSHA jurisdiction.

You told the House "MESA was transferred to the Department of Labor lock stock and barrel * * *". As Chairman of the Subcommittee that wrote the legislation, you know very well that there is no factual resemblance between the old MESA and the much more severe and restrictive Mine Safety and Health Act which is simply an extension of the Coal Mine Safety Act. Referring to our position, you said: "Today, however, they would have us believe that such operations are not mining operations." We have never made any such contention. We do firmly believe that there is a very great difference between the surface mining of sand and gravel and traditional coal mining operations. You then implied that we have only recently decided that we wanted to be under OSHA jurisdiction when you said: "Yet, it appears that the sand and gravel industry now wishes to switch its affiliation to OSHA." The implication of this remark is totally inaccurate as your own Subcommittee's records show.

When the Congress first began serious consideration of what were then predecessor bills that would ultimately become the Mine Safety and Health Act, the Board of Directors of the National Sand and Gravel Association unanimously adopted in September 1973, and then subsequently unanimously reaffirmed in September 1975, that: "First and fundamentally, the Association opposes any change in the present Federal safety enforcement system which places the sand and gravel industry under the Federal Metal and Non-metallic Safety Act of 1966 with responsibility and enforcement under the jurisdiction of MESA within the Department of the Interior; second, if the Congress, despite all efforts to the contrary might insist on transferring Federal safety enforcement to the Department of Labor, the sand and gravel industry should be transferred to OSHA jurisdiction." That position was first urged upon the Subcommittee on Manpower, Compensation and Health and Safety of the Committee on Education and Labor in a statement submitted by Marion W. Bevard, Chairman of the Safety Committee of the National Sand and Gravel Association on October 9, 1975. To further emphasize our desire to be transferred to OSHA if safety jurisdiction over our industry was transferred to the Department of Labor, I filed, as President of the Association, a supplementary statement with that same Subcommittee on October 14, 1975. This position of the Association was reaffirmed in a statement submitted to the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare in May 1976 by John L. Curtis, then Chairman of the Safety Committee of the National Sand and Gravel Association.

This Association has clearly, therefore, been on record before both the House and Senate in favor of OSHA jurisdiction for the sand and gravel industry since 1975-76. The policy of the Board adopted in 1973 has not changed and we have never taken any other position in any statement before the Congress. I told your Committee in my 1975 statement that "a high percentage of the sand and gravel operations in the United States have related manufacturing operations on their premises which are already subject to OSHA's jurisdiction, including ready mixed concrete plants, asphalt plants, concrete block plants, prestressed and precast concrete plants and concrete pipe plants, all of which are presently subject to OSHA jurisdiction." That statement remains true today.

I should also point out, although I assume you know from your personal knowledge of the Pittsburgh area, that a substantial portion of the sand and gravel industry consists of marine operations, operations which are on the face of it therefore incompatible with regulations for underground mining. The U.S. Bureau of Mines, in its latest Minerals Yearbook, indicates that 17 percent of all sand and gravel operations in the United States are marine dredging operations. However, this 17 percent produces almost 30 percent of the total sand and gravel production in the United States. To apply an underground mine act to marine dredging operations on the waterways is simply not feasible or workable.

You also gave the House on August 26 certain statistics concerning the safety record of the sand and gravel industry. The implication left by your recitation of those statistics was that the sand and gravel and surface stone industries are exceptionally hazardous. The difficulty in discussing safety statistics is that even one accident is too many. Nevertheless, based on data published by the Bureau of Labor Statistics from information supplied by MSHA and OSHA, the safety record of the surface stone and sand and gravel industries compares favorably with that of American industry as a whole.

Based on MSHA statistics, the sand and gravel and surface stone industries were responsible for 68 percent of the fatalities in the surface metal and nonmetal mining industries. What you neglected to say was that 64 percent of the total man-hours in the surface metal and nonmetal mining category were worked in the surface stone and sand and gravel industries. In the broader category of all metal and nonmetal mining, the stone and sand and gravel industries were responsible for 53 percent of the total fatalities in the total metal and nonmetal mining industries, but accounted for 48 percent of the man-hours worked. These MSHA statistics make it clear that our accident record is very close to the average for the metal and nonmetal mining category.

If our accident record is representative of the metal and nonmetal mining category as a whole, then the next question is—how do these industries compare with industry accident rates in general? The Bureau of Labor Statistics, using data furnished by MSHA and OSHA, has published statistics on lost work days due to injuries and illness per 100 full-time workers. In 1978, that rate for nonmetallic minerals, which included stone, sand and gravel, was 6.8 work days per 100 full-time workers. This compares favorably to the rate for the entire private sector of 9.2 lost work days per 100 full-time workers. It compares even more favorably with the 11.3 lost work day rate for mining in general, the 19.3 lost work day rate for anthracite mining and even the 7.4 percent rate for the retail trade industry. In short, contrary to the impression you left with the House on August 26, the sand and gravel industry's accident record compares very favorably with general industry experience.

You told the House that 17 organizations oppose the amendment transferring our industry from MSHA to OSHA. You named those 17 organizations, but you failed to give the House any further explanation. This was manifestly unfair since four of those organizations, the National Association of Home Builders, the Sheet Metal and Air Conditioning Contractors, the National Construction Employers Council and the Flintkote Cement Company all actually endorse the merits of our amendment and were only opposed to its being included as a part of the ERISA legislation. As a matter of fact, you were totally in error in connection with the Flintkote Company which supported the amendment even as a part of the ERISA legislation. Executives of that company have written numerous Members of the Congress urging their support for the amendment. The correct Flintkote position on this amendment can be readily documented by Members of the Congress who have received such correspondence, or by checking with the management of the Flintkote Company.

Of the remaining 13 organizations on your list, four are manufacturers of portland cement. I am assured by the President of Atlantic Cement Company that his company does not oppose the amendment. We are attempting to check with the remaining three cement companies to ascertain their exact position.

Seven of the remaining nine organizations you named are union organizations. It is curious that none of these seven union organizations represent a significant percentage of the union employees in the sand and gravel industry. Among employees of the sand and gravel industry, the union with far and away the largest representation is the Teamsters Union, followed by the Operating Engineers, and then by the Laborers. These latter three international unions represent an overwhelming majority of our union employees. The combined membership of the seven unions you named does not amount to even three percent of the employees in the sand and gravel industry.

I am sure you are aware that the three principal unions representing our employees have not appeared in opposition to our amendment in any of the oversight hearings in either the House or Senate. The principal union opposition has come from the Steelworkers and the Mine Workers. The only logical explanation for the motives of these two unions in offering opposition, since they do not represent any significant percentage of our employees, has to be either that they mistakenly fear that somehow the amendment will destroy MSHA, or they have ambition to extend their representation at the expense of unions which have historically represented our employees.

I note that the Maritime Department of the AFL-CIO is one of the unions you named. Lest there be confusion concerning the maritime sand and gravel operations to which I referred earlier, please be advised that the overwhelming majority of our union employees on our dredges are represented by the Operating Engineers. The employees on our towboats are not presently covered by MSHA. The Coast Guard has jurisdiction over our towboats.

Of the remaining two organizations on your list, I am at a loss to understand the supposed opposition of the National Coal Association unless that organization, like certain of the unions, mistakenly fears that the simple transfer of our industry to OSHA somehow poses a dire threat to the continuation of MSHA. In any event, the National Coal Association has absolutely no relationship of any kind with the sand and gravel industry and their opposition is therefore totally irrelevant to the merits of the proposal.

The final organization on your list was the National Limestone Institute. I do not question the fact that that organization opposes the amendment, but in their case you also said: "The National Limestone Association (Institute), which has more members than all other national aggregate associations put together . . .". I am familiar with the membership roster claimed by the National Limestone Institute. I assume you relied in good faith on claims made by the National Limestone Institute. Nevertheless, this claim is not only an outright falsehood, but is at variance with the true facts by such a wide margin that one can only feel shocked disbelief that anyone would have the outrageous gall to make such a claim to the Congress of the United States. It is so far from the truth that we cannot accept any explanation of honest mistake or inadvertent error.

Much more relevant, however, than simple size of organizations in matters of safety legislation is the question of which organization represents the largest number of workers who will be affected by such legislation. The membership of the National Sand and Gravel Association alone employs a substantially larger number of workers than the members of the National Limestone Institute. It is, therefore, most misleading to attribute to the National Limestone Institute a significance it simply does not have in the aggregates industries.

In conclusion, I recognize that from the outset you have been honestly opposed to the transfer of the sand and gravel industry from MSHA to OSHA jurisdiction. Through your position in the House, you have succeeded for almost two years in preventing consideration of our exemption legislation despite the fact that the proposal has 218 cosponsors, an absolute majority of the House of Representatives. It was particularly unfortunate and unfair, however, that your remarks will tend to mislead the House on the matters discussed above.

Sincerely yours,

KENNETH E. TOBIN,
President.●

ENGLISH INTRODUCES LEGISLATION TO ENCOURAGE INCREASED UNITED STATES-CANADIAN COOPERATION ON GRAIN EXPORT POLICIES

HON. GLENN ENGLISH

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. ENGLISH. Mr. Speaker, on July 26, 1980, a meeting was held in Ottawa, Canada, between Members of the U.S. Congress and the Canadian Parliament. The meeting was held under the auspices of the Canada-United States Interparliamentary Group to discuss cooperation in developing policies to end the export of wheat at prices below farmers' costs of production.

Members from the House of Representatives besides myself who attended the meeting were Representatives STANGELAND, HIGHTOWER, STENHOLM, DASCHLE, HANCE, MARLENEE, and JEFFRIES. Members of the Senate attending were Senators ZORINSKY, BELLMON, MELCHER, MCCLURE, and PRESSLER.

The focus of the discussions was not to propose drastic alterations in the wheat marketing system of the United States or Canada. Quite differently, the discussion focused on gaining a better understanding of each country's marketing system in order to provide better cooperation through existing market structures.

The United States and Canada continue to account for about two-thirds of all wheat traded in international commerce. Wheat exports from the United States alone have doubled in the past decade, in large part due to efforts by farmers themselves through organizations such as U.S. Wheat Associates. It is clear that these exports have contributed significantly to the United States balance of payments, and have been a major means of offsetting large U.S. trade deficits.

However, as wheat exports have continued to increase, so has farm debt, and more and more farmers have been forced out of business by producing large amounts of grain at a loss.

The efficiency and productivity of American grain farmers are being exploited to enhance our balance of payments while at the same time providing wealthy industrial nations such as Japan and the Soviet Union with a cheap source of food. An increase in the world price for wheat would not significantly decrease our exports to developed countries since Japan and the European Economic Community impose substantial import levies.

These are some of the considerations that have prompted the continuation of discussions between Canada and the United States concerning wheat export policy.

As a result of our discussions in Ottawa, the legislators from both countries agreed that there is a definite need to improve cooperation between the major wheat exporters, and to end the export of wheat at prices below the cost of production.

To reach this specific goal, both groups agreed to recommend to their respective legislative bodies that a joint Canada-United States commission be established. For that purpose I am today, along with my colleagues who attended the meeting in Ottawa, introducing a resolution for the establishment of such a commission.

Mr. Speaker, I ask unanimous consent that the text of this resolution be printed in the RECORD at the conclusion of my remarks.

H. CON. RES. —

A bill expressing the sense of the Congress with respect to the export of wheat, and for other purposes

Whereas current world market prices for wheat are below the cost of production;

Whereas more than one-half of all wheat produced in the United States is exported;

Whereas Canada and the United States together supply approximately two-thirds of the world wheat trade;

Whereas the four principal wheat exporters supply more than 80 percent of the world's wheat exports;

Whereas wheat exporting countries have traditionally carried a disproportionate share of the world's wheat reserves, resulting in higher costs for United States wheat producers;

Whereas expanded and improved storage, processing, and distribution facilities in wheat importing countries would increase wheat utilization capacity, and thereby increase the total world wheat market: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that there should be established a Joint Canada-United States Wheat Export Coordinating Commission (hereinafter referred to as the "Commission"), the purpose of which shall be to develop mutual policies whereby each participating country shall—

(1) end the export of wheat at prices below the cost of production;

(2) promote long-range market development;

(3) increase commitments to food assistance programs; and

(4) encourage wheat importing nations to increase their storage facilities in order to share in the responsibility of holding wheat stocks and reserves.

Other major wheat exporting nations should be invited to participate in the activities of the Commission.●

AMERICA'S ABUSED COASTLINE

HON. BOB EDGAR

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. EDGAR. Mr. Speaker, Time magazine recently carried an article on the problem of coastline erosion and overdevelopment. The article speaks for itself on this important land management and water policy issue.

The article follows:

AMERICA'S ABUSED COASTLINE

Sweeping south from the chilly waters off Maine and Washington to the warm undergirth along the Gulf of Mexico, the shoreline of the U.S. runs for 53,677 miles—and that figure does not include the lengthy coasts of Alaska and Hawaii. But not all is sandy beaches, sun-tanned bodies, squawking gulls and imposing cliffs. Increasingly, the American coast is becoming a victim of its own magnetism: it attracts heedless development that is fouling its beauty, undermining its ecological importance, and crippling its ability to stand up to nature's winds and waves.

That is the message of the Coast Alliance, an amalgam of environmental organizations and fishing interests that aims to spare the shores from further abuse by man. The Alliance helped persuade President Carter to endorse 1980 as the Year of the Coast, as part of a program to increase awareness of the problems of the nation's abused shoreline.

During a so-called Coast Week last month, would-be saviors of the shores staged several events, among them a "surf festival" in Orange County, Calif., 4-H in Michigan and Wisconsin, and a sand castle-building contest between Alliance activists and the U.S. Army Corps of Engineers at Bethany Beach, Del. The engineers' castle lasted longest, but all the entries, naturally, crumbled eventually—symbolic evidence of the folly of building on dunes and beaches. It was good fun, but it also helped draw attention to the overdevelopment, worsening pollution and mismanagement of resources, which are combining to foul the coasts.

All these perils are apparent to any shorebound summer tourist. On Massachusetts' Cape Cod, four-wheel-drive vehicles have deeply rutted broad stretches of beach. On New York's Long Island and the New Jersey shore, vacation cottages overcrowd once pristine dunescapes. From those states southward, the Atlantic shore, with scattered exceptions, seems destined to become a stretch of boardwalk and pizza-parlor tackiness.

Near Fort Myers, Fla., a relatively new barrier island heaped up by the sea has attracted developers who want to link it to the mainland with a causeway; that, says Florida Environmental Consultant Dinesh Sharma, "would ruin the entire key." To the west in Louisiana, near Baton Rouge, landowners eyeing big profits from rich agricultural holdings support a plan that would fill in backwater swamps. Conservationists are fighting the idea, saying it would dry up an ecologically valuable resource.

Along the 7,863-mile Pacific littoral, where "coast line consciousness" is probably higher than anywhere else in the U.S., the Interior Department is planning to open 1.3 million acres on the Outer Continental Shelf to oil exploration. This is sure to set the stage for another classic confrontation between the conflicting needs of safeguarding the environment and extracting vital natural resources. As with most environmental issues, the battle over the coast pits those who would exploit it further against those who would stop fiddling altogether with the littoral and its complex system of wetlands and estuaries. The need for growth, which brings jobs, profits and tax revenues, often argues powerfully for development.

For many of the save-the-coast people, a slender volume titled The Thin Edge, published in 1978 by Environmentalist Anne W. Simon, 66, is something of a bible. The book is an expansion of Simon's earlier No Island Is an Island, which dealt with the environmental ordeal of Martha's Vineyard, the island off Massachusetts on which she summers. In Edge, she writes: "In the last ten years, the coast's magnetic pull has become stronger than ever—more industry, more oil, more people, hotels, motels, boatels, more sewage, more waste. The coast is informing us that there is a saturation point beyond which its natural functions no longer flourish, often diminish, or simply cease."

The book adds little to what a well-informed conservationist may already know. But for the layman, it paints a disturbing picture. The issues, as Simon and the Coast alliance see them:

WETLANDS

Those low, swampy areas along the East and Gulf coasts are better preserved than drained and built on. They absorb floodwaters and provide food for millions of minnows and shrimp, which in turn feed larger creatures. An acre of salt marsh in Georgia produces ten tons of dry organic matter every year, *vs.* just four tons for the most fertile hayfield. Nonetheless, 40 percent of the nation's wetlands have been destroyed by public and private development. Yet this attrition is slowing: as the natural benefits of wetlands become better understood, laws are being passed to protect them. Even the dam-building Corps of Engineers, which environmentalists blame for much reckless destruction of wetlands, now concedes that in some instances swamps control floods better than it can.

POLLUTION

Oil is the biggest offender, and not just in obvious ways like fouling beaches. Lobsters, for example, have a sweet tooth for the rich hydrocarbons they find in glops of oil off the New England coast. As oil spills and exploratory oil digs increase, some environmentalists fear that lobsters' migratory and mating patterns may be affected. Says Coast Alliance Executive Director Bill Painter: "There are thousands of little spills every year that experts think are a great danger to the environment. Those spills add up."

ACCESS

More than 90 percent of the U.S. coast (excluding Alaska) is privately owned, and some of the remainder is controlled by the military and is strictly off limits. Only about 5 percent is open to public recreational use, meaning that Americans have available to them just one acre of beach for every 1,450 citizens—roughly the population density of parts of Long Island's jam-packed Jones Beach on a hot summer Sunday. In some parts of the country, the squeeze is even tighter: in the South, there is only one acre of swimming beach for every 3,080 people. The need for open beaches is sure to rise: more than 50 percent of the population now lives in the counties clustered along the coasts, and some demographers expect that figure to reach 75 percent by the end of the decade.

SHIFTING SANDS

The environmentalists' ultimate antidevelopment argument, which even Corps of Engineers officials privately salute, is that nothing built by man can stand up permanently against the natural forces at work on the coasts. Beaches are always on the move, which is how they parry the mighty pounding of the ocean. Some barrier islands shift position entirely over the course of a century, while still protecting the mainland beyond by absorbing the force of the waves. Builders ignore this when they erect towns on the edge of the sea. So do those who construct groins intended to stop the movement of the shores. After Hurricane Allen ravaged barrier islands off Texas in August, developers pushed ahead with plans to construct 15 new condominiums and hotels on the southern end of Padre Island.

Making matters worse is the fact that when disaster strikes in the form of storms or floods, Government agencies and the National Flood Insurance Program help rebuild what will almost surely be destroyed again some day. There is some movement, though, to end such nonsense. Well along in Congress is a bill that would cut off Government subsidies for developing barrier islands off the coast. In addition, the 1972 Coastal Zone Management Act supplies money to states to help them set up programs for their shorelines. So far, though, only 19 of the 35 coastal states and territories have drawn up federally approved plans, which specify what land and water uses will be permitted. Some states are taking stiffer action.

None of these belated governmental efforts really satisfies Environmentalist Simon. Says she: "The original initiative to rescue the shorelines has gotten all wound up in bureaucracy. Unless we quickly find a way to remove the coast as a source of profit, we're not going to have a functioning coast." Simon would like to see the U.S. emulate Sweden, which has protected thousands of miles of shoreline for free public use. With so many vested interests, that may not be possible in the U.S. now. It may take the relentless pounding of the sea itself, which knows no constituency, to bring about reform.—By John S. DeMott. Reported by Peter Stoler and Philip Faflick/New York.●

ECONOMY ON TURBULENT FLIGHT

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McDONALD. Mr. Speaker, one of the reasons that many so-called experts in recent years have wanted to further regulate the American economy is to prevent us from having booms and busts in the economy. This regulation, we are told, is necessary to protect the "little man." It is true, under the free enterprise system, that ups and downs in the economy can and do occur. However, as Prof. Hans Sennholz, of Grove City College, Pa., so aptly wrote in Private Practice magazine for August 1980, Government meddling and over-regulation of the economy creates an even bigger rollercoaster effect with dire consequences for everyone. The symptoms of the disease become even more exaggerated when government is the cause. Therefore, I commend this article to the attention of my colleagues who really wonder how inflation might best be solved:

ECONOMY ON TURBULENT FLIGHT

(By Hans Sennholz, Ph. D.)

The American economy is like a plane piloted by a student pilot on his first instruction flight. When he discovers that the plane is climbing gently he pushes the stick forward, which causes the plane to enter a dive. With his heart in his mouth he quickly pulls the stick back, which causes the plane to climb sharply. Once again, he pushes the stick forward and causes a dive. The movements become more violent, the dives steeper and the climbs sharper, until the instructor can suffer no longer and orders him to release the controls. The plane then straightens out by itself and assumes a level flight.

With the Carter administration at the controls of the American economy it would appear we are on just such a novice flight. Until February of this year we were climbing briskly with feverish economic activity and rapidly rising prices. In March, we went into a steep dive with violent crashes in bonds and stocks, commodities and even precious metals. In April, we turned upward again and have been climbing ever since toward a new inflationary peak. In September or October, at the latest, we must brace ourselves for a fall that may take us to new lows in economic activity.

The erratic behavior of the American economy verifies the old maxim about the private property economy—free and unhampered, it is calm and stable, but when mangaged by central planners and politicians, spasmodic and erratic. Planners like to spend and stimulate in order to generate an economic book, for which they are eager to take full credit. Massive deficit spending financed by easy money and credit generates a boom euphoria. Plans are made and costly projects are undertaken because of easy money and low interest costs. But the stimulation does not come from genuine savings and investments: it is induced artificially, benefitting some people at the expense of others. It causes illusions and hallucinations, called economic maladjustments. In turn, these cause painful withdrawal symptoms when the stimulant is withdrawn or when it loses its effectiveness. In economic life, the withdrawal pains come in the form of recession pains signaling a readjustment and return to normalcy.

A recession is painful but inevitable once inflation has caused a disorder. It led to the credit crunch in March, which prompted the leading economic indicators to suffer their biggest drops since the 1974-75 recession. Unemployment rose faster than at any time since World War II. But lo and behold, with the downturn barely a month old, the federal authorities pulled up again in utter panic about the coming depression. The Federal Reserve System supplied new credits, interest rates tumbled and the dollar turned weaker again in international money markets. After a brief respite, primarily as a result of the commodity market crash in March, the inflation is soaring again.

The erratic behavior of the American economy is further aggravated by the crushing load of new taxes imposed on the people by the Carter administration. Through further capital consumption and lower production, the taxes are destined to lift all prices. Total budget receipts are expected to rise from $502 billion in 1980 to $628 billion in 1981 by far the biggest tax boost ever in any one fiscal year. The increased revenues are flowing from the soaring inflation, which pushes everyone into higher income tax brackets, and from the windfall profit tax on oil production—the crowning folly of the Carter administration.

When taxes are rising and goods prices are soaring, purchasing power income is falling. In 1979, the average American suffered a loss of some 7 percent in his level of living. In 1980, he must expect to suffer a similar decline. Investors clinging to their monetary savings lost even more to double-digit inflation.

Some knowledgeable investors seek to escape the ravages of taxation and inflation through personal adjustments. Shunning all forms of money, and claims to money, they seek refuge in real assets, such as real estate, gold and silver, art objects and antiques, diamonds, jewelry, etc. They seek to escape through tax "loop-holes" by converting income to tax deductions. No matter how successful they are, they, too, may get hurt in the end. The economic ride will become ever more violent and the taxes more confiscatory, making escape ever more difficult. Moreover, economic upheavals breed social unrest and political radicalism, which ultimately may block all routes of escape even to the most clever investor.

Most Americans are suffering in silence. They feel helpless and defenseless from the inflation and bewildered and dazed from the stall-and-dive flight of the economy. While it's easy to be sympathetic with the millions of innocent victims, the fact cannot be dismissed that the majority of the American electorate chose this economic pilot. Our duly elected representatives make the laws, raise the taxes, conduct inflation and generate the booms and busts. In a democratic society, like ours, there is no one to blame but the people themselves.

Economic policies conducted according to majority vote reflect the hopes and aspirations of the majority. They are the transcript of economic and social ideas in the hearts and minds of most people. Ideas control the world. Therefore, we must finally place the blame for inflation and taxation, booms and busts, on certain thought leaders, on professors and preachers, authors and editors, speakers and commentators, who are disparaging economic freedom and extolling control and regulation by political force. They blithely ignore discussion of inexorable economic principles and what has been said by economists in the last 200 years. They exhort businessmen and professionals to limit their profits and reduce their fees, to lower prices and raise wages, as if such behavior would resolve our problems. In the end, they always urge politicians to take command and use the police to enforce their orders.

Under the influence of these leaders our government has become a universal transfer agency that utilizes the political process for distributing vast measures of economic income and wealth. Through inflation and taxation government preys on millions of people in order to allocate valuable goods and services to its favorite voters and beneficiaries. With the latter, transfer programs are so popular few public officials and politicians dare oppose them.

A free society that is not utterly corrupted by the promises of transfer may yet avert the ultimate disaster—economic chaos and civil strife. It may break its fetters of welfare by political force and cure itself of the political evils now endangering economic prosperity and social peace. It may leave the road to political omnipotence and return to individual freedom.●

Rx

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. BROWN of Ohio. Mr. Speaker, my very good friend, Dr. Ray W. Gifford of the Cleveland Clinic in Cleveland, Ohio, has sent me a poem which perfectly expresses a sentiment I have felt often as I have participated in many of the great debates we have had in this Chamber. It was written by Dr. Russell Roth, former president of the American Medical Association, and I commend it to the attention of my colleagues.

Rx

Our congressmen need a strong blast
To remind them that in the years past
Their ancestors fled
From their homelands in dread
Of the same kind of laws they've just passed.●

THE CIA AGAINST THE CONSTITUTION

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. EDWARDS of California. Mr. Speaker, last week the House Judiciary Committee reported favorably, over my opposition and that of a number of the committee's senior Democrats, including chairman PETER RODINO, H.R. 5615, the Intelligence Identities Protection Act. The Intelligence Committee reported the identical bill in July.

Since the Judiciary Committee's action, there has been an outpouring of opposition among the Nation's newspapers, editors' and publishers' associations, and other groups who will be affected by this legislation. The heart of their opposition—and mine—is 501(c) of the bill which makes it a crime for anyone to disclose any information which identifies a covert employee, informant or source, even if that information is based on unclassified sources. I believe this section presents a serious threat to our constitutional guarantees of free speech and free press. But, rather than speak for those most affected, I will let them speak for themselves in the following articles, editorials, and letters.

[From the Washington Post, Sept. 7, 1980]

CIA Security Problem Is Focus of Bad U.S. Bill

(By Richard Cohen)

A colleague of mine once wrote a story about a planned meeting of the Ku Klux Klan. Being a good reporter, he drove past the meeting place himself, noted the address and then wrote a story, giving the location and the proposed time of the meeting. Someone then blasted the place with a shotgun.

That is not much different from what has happened on a couple of occasions to the CIA. A fellow named Louis Wolf, editor of the Covert Action Information Bulletin, has printed the names and addresses of CIA agents in Jamaica and almost before the ink was dry, the home of one agent was shot up there.

The parallel between what my colleague and what Wolf did has nothing to do with any comparison of the CIA to the Klan or even, God forbid, vice versa. It has to do, instead, with how neither one of them intended violence to be the result of what they were doing. Instead, both of them wanted, for reasons of their own, to compile and print information—one for a story, the other for political purposes.

Journalists run into these situations from time to time. It's tragic when this happens, but it's also unpredictable and sometimes unavoidable, and Congress has not yet seen fit to frame a law that would forbid journalists from writing a story that might endanger someone's life. Such a law would be, among other things, unconstitutional.

But Congress has no such compunction when it comes to the CIA. It is now, for instance, considering a law that would make it illegal for anyone to disclose the names of CIA operatives even if the information comes from public documents. The same restrictions would apply to FBI counter-intelligence and counter-terrorist informers.

The bill has two purposes. It is designed to stop former intelligence agents like Philip Agee from leaving the service and then ratting on their erstwhile colleagues. Nothing wrong with that.

But it is also designed to stop people like Wolf, or any journalist for that matter, from disclosing the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of the United States."

It's hard for me, for one, to defend what Wolf is doing. He says his problem with the CIA is not its intelligence-gathering, operation, but its covert operations. He did what he did in Jamaica, he said, when it became apparent to him that the CIA was trying to destabilize the government of Prime Minister Michael Manley and he named names because the only way you can stop the CIA is by stopping its agents—holding them personally accountable for what they do.

So his objection is essentially political. It is therefore a form of dissent and while to many people it might be objectionable or silly, he has a right to say what he wants to say as long as he breaks no law in the process.

On that score, he seems to be clean. No one, not even his most vehement critics, has accused Wolf of getting his information illegally or even unethically. He gets no CIA agent drunk, sleeps with no secretaries, and breaks into no safes. All he does is read the public record. It could be done by others, too—foreign governments, for instance.

The thing for the CIA to do is clamp down, make sure that the information that now finds its way into the public record and, from there, to Wolf, stays within the agency. Instead, it has run to Congress and it, in turn, has given the agency the sort of bill that gives you, if you have even a passing admiration for the First Amendment, the willies. Think for a moment of the kind of mind reading it takes to figure out if a journalist intended to "impair or impede" the CIA.

Still, you might think that when it comes to the CIA and the wonderful work it does, that a little loss of freedom would be worth it. The problem is that this is the same CIA that went off half-cocked a little while back, got itself confused with the FBI, had an identity crisis in which it saw its aims as synonymous with God and Country, bugged Americans, spied on them, opened their mail, trafficked in character assassination and was used by Richard Nixon as a substitute for truth when he got into trouble on Watergate. To "impair or impede" *that* CIA is a patriotic obligation.

Now, if I may, I would like to return to my colleague and the story he wrote about the Klan. It turned out that the shots were fired at the meeting place some 15 minutes before the paper hit the streets. The story could not possibly have caused what happened.

Wolf makes somewhat the same claim for himself. He doesn't think he is responsible for the Jamaica shooting.

Maybe, maybe not. It's hard to tell. But what's not hard to tell is that if this law is passed, it will stay on the books long after Louis Wolf is gone and the reason for its enactment is a bad law and yet another example of the CIA botching matters. It shot at Louis Wolf and hit the First Amendment instead.

[From the Los Angeles Times, Sept. 5, 1980]

UNWISE, UNCONSTITUTIONAL—AND UNFAIR

Despite the opposition of its chairman, Peter W. Rodino Jr. (D-N.J.), and other ranking members, the House Judiciary Committee approved a bill Wednesday that would make it a crime to disclose any information, even if obtained from unclassified sources, serving to identify Central Intelligence Agency officials working abroad.

We believe that the bill, as applied to private persons with no access to classified information, is, first, unwise and, second, unconstitutional. If the legislation, approved in slightly different versions by the House and Senate Intelligence committees, is enacted, we have no doubt that it will be challenged in court as a violation of the First Amendment.

The bill has two provisions. One would make it a crime for a government offical or a former government official who had access to classified material to disclose the identities of CIA agents. Stiff penalties would be provided—10 years in prison and a $50,000 fine.

But the statute also would permit the prosecution of any journalist or other "outsider" who disclosed the name of a secret operative "with the intent to impair or impede the foreign intelligence activities of the United States." The bill provides maximum penalties for this offense of three years in prison and a $15,000 fine.

The language of this section lends itself to broad interpretation. Rodino and his supporters argued that, had the proposed law been in effect at the time of the Watergate break-in, it would have prevented the investigation and disclosure of the CIA connections of some of the Watergate burglars. A zealous prosecutor could apply the provision to a journalist who disclosed an agent's identity in revealing intelligence agency abuses.

The Justice Department, testifying on the legislation earlier this year, raised doubts about the constitutionality of punishing private citizens for obtaining and publishing information in the public domain. This provision, the Justice Department suggested, could "chill speech" by those critical of CIA operations.

The impetus behind the measure stemmed from the angry reaction against a Washington newsletter than has disclosed the names of officials identified by it as CIA agents. The newsletter's staff asserts that all its information comes from unclassified public information, and that, furthermore, not one CIA agent has been harmed as a result of such disclosures. But exposure of the agents for the sake of exposure is not a tactic that earns our admiration, and such disclosure could, of course, put the lives of intelligence agents in danger.

Yet the law could be used, as the Justice Department noted, to impair free speech and intimidate CIA critics. We believe that no law that punishes the communication of publicly available information will stand up in the courts.

NATIONAL NEWSPAPER ASSOCIATION,
September 5, 1980.

Hon. PETER RODINO,
Chairman, Judiciary Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to you as representatives of several media organizations which are seriously concerned with section 501(c) of H.R. 5615, the Intelligence Identities Protection Act. In our opinion, section 501(c) is fatally flawed from a constitutional standpoint, impinging upon First Amendment rights in a manner which may be unprecedented. Although a majority of your Committee agreed on September 3 to report out H.R. 5615, including this section, we must respectfully urge that the potentially grave implications for the First Amendment call for much additional deliberation.

We have today written to the Speaker of the House, with copies to all Members, outlining our major difficulties with this section. Enclosed, for your convenience, is your copy. But we wish to take this opportunity to elaborate somewhat on those views for you. Our organizations are committed to the proposition that the media have an obligation, flowing from their privileged position under the First Amendment, to provide complete and accurate reports on the performance of all branches of government—reports upon which citizens may base reasoned and informed decisions on public affairs. We believe history makes clear that reporting on activities of intelligence agencies has in many cases been essential to important public policy decisions.

As we emphasize to the Speaker, the members of the media have no quarrel with the aims of securing American intelligence gathering and protecting the lives of American intelligence agents and their families, but we believe that the constitutional principles upon which our commitment is founded cannot be sacrificed to their achievement.

The overriding deficiencies of substantial concern to our organizations are that section 501(c) may well reach the dissemination of news and other constitutionally protected forms of speech, and that it fails to distinguish between classified and unclassified information as a source for exposing agents' identities.

Potential foreseeable consequences stemming from the wording of this section include the prosecution and punishment of members of the media and others who identify an intelligence agent—including Federal Bureau of Investigation agents involved in foreign counterintelligence and counterterrorism—who, in the course of official duties, has committed an unconstitutional or unlawful act, or has clandestinely violated a presidential foreign policy. Moreover, it may be that an intelligence agent could not even identify him—or herself when discussing any matter, classified or not, with members of the media, historians or anyone else without authorization.

One specific troubling aspect of section 501(c)'s wording is the adoption of an intent standard. Intent, as you well know, is a most subjective standard. Although sometimes difficult to prove, by the same token, it also on occasion can be inferred rather easily from circumstantial evidence of questionable sufficiency. Such inferences could be drawn against journalists and others who have rendered what they believe to be objectively warranted stern criticism of intelligence agencies and projects. To conjunctively or subsequently identify an agent could more than reasonably foreseeably create intense pressures on a jury with respect to intent.

Further, there is no standard included in section 501(c) requiring a showing of "direct, immediate and irreparable harm" to national security or a "clear and present danger" thereto, or a similar test. Absent some such standard, it is difficult to see any consistency with prior limitations on First Amendment rights found to be constitutional.

With these thoughts in mind, we must ask what would have been the impact on the public's right to know had this section been enacted at the time of the release of the Pentagon Papers, or inquiries into the Watergate burglary? Certainly, it would have raised a formidable barrier to the type of effective reporting which was the hallmark of both cases and the conduit of necessary information to the public.

We strongly believe that rushing to judgment on this bill in the emotional aftermath of the recent Jamaica incident will only obscure the implications for the equally compelling constitutional interest. Therefore, we respectfully urge you to lend your wise counsel to the floor debate on this bill on behalf of preserving full First Amendment rights.

Thank you.

Sincerely,

William C. Rogers, Sr., President, National Newspaper Association; Richard P. Kleeman, Vice President—Washington, Association of American Publishers; Jerry W. Friedheim, Executive Vice President, American Newspaper Publishers Association; Charles W. Bailey, Chairman, Freedom of Information Committee, American Society of Newspaper Editors; Curtis J. Beckmann, President, Radio Television News Directors Association; Jack C. Landau, Director, The Reporters Committee for Freedom of the Press; Robert D. G. Lewis, Chairman, Freedom of Information Committee, Society of Professional Journalists—Sigma Delta Chi.

NATIONAL NEWSPAPER ASSOCIATION,
September 5, 1980.

Hon. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives,
2231 Rayburn House Office Building,
Washington, D.C.

DEAR MR. SPEAKER: The members of our respective organizations are fundamentally concerned with section 501(c) of H.R. 5615, the Intelligence Identities Protection Act, as reported out by the House Judiciary Committee on September 3. In our view, this provision raises serious constitutional questions, representing an unprecedentedly sharp limit upon First Amendment rights. We believe this provision calls for a great deal of additional careful deliberation by the House, and should be opposed as it stands.

Mr. Speaker, the members of the media neither support nor condone the practice of methodically exposing the names of American intelligence agents. But we believe that constitutional principles cannot be sacrificed along the way toward legislatively dealing with the situation. Americans believe in a higher standard, however much they may recoil at a seeming abuse of a right.

Our specific problem remains the one that has plagued this particular legislative effort since its outset: section 501(c)'s current wording does not solve First Amendment difficulties. Regardless of intent, this language could well reach distribution of news and other constitutionally protected forms of speech, including books. And, ominously, it does not distinguish between classified and unclassified information as a source for exposing identities. This would establish an extremely grave precedent by criminalizing the dissemination of information which is already in the public domain. In our view, the proper approach is to improve the security of information bearing on agents' identities from within the government, by better regulating classification and access.

We recognize that there has been a continuing effort by many Members and staff to safeguard American intelligence and intelligence agents while not intruding, in any way, upon First Amendment rights. While section 501(c) represents an improvement over earlier versions, it still appears to be fatally flawed from a First Amendment standpoint. Perhaps reconciling these two imperatives legislatively cannot be done, but certainly it is worthy of further consideration.

Therefore, we respectfully, but strongly, urge that there be no rush to judgment on this section of H.R. 5615. Preserving the First Amendment in the face of the need to protect our intelligence agents is a truly difficult task, but one which can only be done by trying further.

Sincerely,

William C. Rogers, Sr., Richard P. Kleeman, Jerry W. Friedheim, Charles W. Bailey, Curtis J. Beckmann, Jack C. Landau, and Robert D. G. Lewis.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September 11, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 12

9:30 a.m.

Commerce, Science, and Transportation

To continue hearings on the substance of S. 1480, authorizing funds for fiscal years 1981 through 1986, to provide for the safe and adequate treatment of hazardous substances released into the environment (pending on Senate Calendar).

235 Russell Building

SEPTEMBER 15

9:30 a.m.

Judiciary

To hold hearings on pending nominations.

2228 Dirksen Building

10:30 a.m.

Judiciary

Antitrust, Monopoly, and Business Rights Subcommittee

Business meeting, to mark up S. 2798, to provide financial assistance for small business concerns for the acquisition of motor fuel service stations, and to regulate motor fuels sales.

457 Russell Building

2:30 p.m.

Appropriations

Business meeting, to mark up H.R. 7584, appropriating funds for fiscal year 1981 for the Departments of State, Justice, Commerce, and the Judiciary; and H.R. 7583, appropriating funds for fiscal year 1981 for the Department of the Treasury, the Postal Service, and general government programs.

S-128, Capitol

SEPTEMBER 16

9:30 a.m.

Agriculture, Nutrition, and Forestry

Environment, Soil Conservation, and Forestry Subcommittee

To resume hearings to review the progress and assessment of the Resources Planning Act (Public Law 93-378), providing for the orderly development of the renewable resources of forest, range, and associated lands.

1202 Dirksen Building

Labor and Human Resources

To hold oversight hearings on the implementation of longshoremen's compensation programs administered by the Department of Labor.

4232 Dirksen Building

10:00 a.m.

Conferees

On H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.

S-145, Capitol

Energy and Natural Resources

To hold oversight hearings on the growing importance of coal in international trade.

3110 Dirksen Building

Select on Small Business

Business meeting, to mark up H.R. 5612, to extend through September 30, 1982, certain programs administered by the Small Business Administration to develop small business concerns owned by socially and economically disadvantaged persons, and to clarify and expand the scope of agency reporting requirements, and other pending legislation.

424 Russell Building

*Special on Aging

To hold hearing to examine proposals for possible changes to the social security system.

5110 Dirksen Building

1:30 p.m.

Labor and Human Resources

To continue oversight hearings on the implementation of longshoremen's compensation programs administered by the Department of Labor.

4232 Dirksen Building

5:00 p.m.

Conferees

To resume on H.R. 3904, providing changes in the Employee Retirement Income Security Act (ERISA) regarding insurance provided by the Pension Benefit Guaranty Corporation for pension benefits of employees covered by miltiemployer plans which terminate.

S-206, Capitol

SEPTEMBER 17

9:30 a.m.

Labor and Human Resources

Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to repondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

Business meeting, to consider pending calendar business.

3110 Dirksen Building

*Labor and Human Resources

To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

Rules and Administration

Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.

301 Russell Building

3:00 p.m.

Conferees

On H.R. 2977, authorizing funds through fiscal year 1983 to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.

H-137, Capitol

SEPTEMBER 18

9:30 a.m.

Agriculture, Nutrition, and Forestry

Foreign Agricultural Policy Subcommittee

To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.

324 Russell Building

Labor and Human Resources

Business meeting, to consider pending nominations.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

To resume oversight hearings on the growing importance of coal in international trade.

3110 Dirksen Building

* Labor and Human Resources

To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

Labor and Human Resources

Education, Arts, and Humanities Subcommittee

Business meeting, to mark up title II, providing financial assistance to meet basic, and employment skills needs of secondary school youth of S. 2385, proposed Youth Act, and H.R. 7859, to provide assistance to State and local agencies for the education of Cuban and Haitian refugees.

1318 Dirksen Building

4:30 p.m.

Conferees

To resume on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.

S-145, Capitol

SEPTEMBER 19

9:30 a.m.

Commerce, Science, and Transportation

Science, Technology, and Space Subcommittee

To hold oversight hearings on the scope of science and technology policy.

235 Russell Building

Judiciary

To hold hearings to review in detail the President's proposal to admit refugees to the United States in 1981, and to receive the President's annual report to Congress on U.S. refugee programs.

2228 Dirksen Building

2:00 p.m.

Conferees

To continue on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.

S-145, Capitol

SEPTEMBER 23

10:00 a.m.

Labor and Human Resources

To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.

4232 Dirksen Building

11:00 a.m.

Veterans' Affairs

To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.

318 Russell Building

2:00 p.m.

Office of Technology Assessment

The Board to meet and discuss pending business items.

EF-100, Capitol

SEPTEMBER 24

10:00 a.m.

*Labor and Human Resources

To hold oversight hearings on the implementation of the home energy assistance program.

4232 Dirksen Building

10:30 a.m.

Commerce, Science, and Transportation

To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.

235 Russell Building

SEPTEMBER 25

10:00 a.m.

Commerce, Science, and Transportation

To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.

235 Russell Building

HOUSE OF REPRESENTATIVES—*Thursday, September 11, 1980*

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. NATCHER).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 10, 1980.

I hereby designate the Honorable WILLIAM H. NATCHER to act as Speaker pro tempore on Thursday, September 11, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O Lord, bless we pray all who turn to You for hope and deliverance. Specially do we remember those people who know bondage and do not experience the freedom that we celebrate each day. Guard and keep our hostages and support and strengthen their families until they again share in the liberty that is their birthright. Keep us all in Your love this day and every day. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) entitled "An act to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes."

The message also announced that the Senate agree to the amendments of the House to the amendments of the Senate to the bill (H.R. 5766) entitled "An act to amend title 10, United States Code, to authorize additional Reserve Officers' Training Corps scholarships for the Army, to provide a certain number of such scholarships for cadets at military junior colleges, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, and for other purposes."

The message also announced the Vice President, pursuant to the provisions of Public Law 96–296, appointed Mr. CANNON, Mr. KENNEDY, and Mr. PACKWOOD, on the part of the Senate, to the Motor Carrier Ratemaking Study Commission.

The message also announced that the Senate disagree to the amendments of the House of Representatives to the bill (S. 2728) entitled "An act to amend the Indian Health Care Improvement Act and the Public Health Service Act with respect to Indian health care, and for other purposes," and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon.

Ordered, that Mr. MELCHER, Mr. INOUYE, Mr. DECONCINI, Mr. COHEN, and Mr. HATFIELD be the conferees on the part of the Senate.

The message also announced that the Senate disagree to the amendments of the House to the bill (S. 568) entitled "An act to promote the full use of human resources in science and technology through a comprehensive program to maximize the potential contribution and advancement of women in scientific, professional, and technical careers and to authorize appropriations for activities for the National Science Foundation for fiscal years 1981 and 1982, and for other purposes," and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon.

Ordered, that Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, and Mr. HUMPHREY be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1188. An act to amend title 38, United States Code, to improve and modernize the rehabilitation programs for service-connected disabled veterans under chapter 31 of title 38, United States Code, to increase the rates of rehabilitation, educational assistance, and special training allowances paid to eligible veterans and persons, to enhance employment opportunities for eligible veterans, to establish a veterans' employment and training outreach program, to modify the Post-Vietnam Era Veterans' Educational Assistance Program, to modify the termination date of the current GI bill, to facilitate Veterans' Administration debt-collection efforts, and to clarify the Veterans' Administration's authority to recover certain health-care costs; to authorize expansion of the scope of an epidemiological study regarding veterans exposed to Agent Orange to include additional health factors and require the issuance of guidelines for resolving claims based on exposure to agent orange; and for other purposes.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COELHO) to revise and extend their remarks and to include extraneous matter:)

Mr. GONZALEZ, for 15 minutes, today.
Mr. ANNUNZIO, for 5 minutes, today.
Mr. PEPPER, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LOEFFLER) and to include extraneous matter:)

Mr. BROYHILL.
Mr. FINDLEY.

(The following Members (at the request of Mr. COELHO) and to include extraneous matter:)

Mr. VAN DEERLIN.
Mr. LUNDINE.

ADJOURNMENT

Mr. COELHO. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 4 minutes a.m.), under its previous order, the House adjourned until Monday, September 15, 1980, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ADDABBO: Committee on Appropriations. H.R. 8105. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes. (Rept. No. 96–317). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII,

Mr. ADDABBO introduced a bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.
● This "bullet" symbol identifies statements or inserti ons which are not spoken by the Member on the floor.

SENATE—*Thursday, September 11, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. DENNIS DECONCINI, a Senator from the State of Arizona.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, in whom our fathers trusted, we beseech Thee to bestow upon us a measure of the vision, the strength, and the courage which was theirs. Give us grace and wisdom for the turbulent and stressful days in which we live and work. In the contests of public life and in the transactions of this Chamber help us to learn from both opponents and proponents of the issues. Lead the Nation through tension and out of contention, into the clear light of Thy will, to the dawning of a new age of peace and justice.

May the New Year celebration of some become the harbinger of new life for the many.

We pray in the name of the Master whose ceaseless toil and sacrificial service brought a new radiance to the life of man. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 11, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DENNIS DECONCINI, a Senator from the State of Arizona, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. DECONCINI thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator from New Jersey need more time than the 15 minutes accorded under the order?

Mr. WILLIAMS. No.

Mr. ROBERT C. BYRD. Does the distinguished minority whip need any more time?

Mr. STEVENS. Mr. President, if the majority leader will consent and the Senator from New Jersey will not object, I ask that we defer the leadership time until after the Senator from New Jersey has taken his time.

Mr. ROBERT C. BYRD. Very well. I make that request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR WILLIAMS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Jersey (Mr. WILLIAMS) is recognized for not to exceed 15 minutes.

TRIBUTE TO LEON SCHACHTER, LABOR LEADER

Mr. WILLIAMS. Mr. President, Leon Schachter will be honored at a gala dinner in Cherry Hill, N.J., on September 28, 1980. Hundreds of the greats and near greats in the labor movement, the business community, civic organizations, and politics will sing his praises.

That is not unusual. That has happened to Leon Schachter before.

What is unusual, Mr. President, is that the Cherry Hill dinner will mark the retirement of Mr. Schachter as an international vice president of the 1.3-million-member United Food & Commercial Workers International Union, as the president of the nearly 10,000-member local 56 in New Jersey and Delaware, as the director of the UFCW region 4 and as one of the distinguished leaders of the labor movement in the East.

Leon Schachter has been my friend for several decades. He is an unusually dedicated, wise, imaginative, and hard-working person. His devotion to the labor movement, his pioneering spirit, his organizing abilities, his negotiating skills, his dedication to the underdog have made him into a model for young labor leaders.

Leon Schachter rose from being a worker in a poultry store in Philadelphia to becoming one of the most influential labor leaders in the Eastern United States. He began organizing workers in the midthirties in New Jersey and in the Philadelphia area. He was one of the founders of local 56 and served as its President from its inception until now.

Under his leadership, local 56 not only grew but it became a model for other local unions. It is forward looking and progressive in its policies and its services for its members.

Always the organizer, Mr. Schachter led the unionization of cannery and food processing workers in New Jersey and nearby States. Until then, these workers had been bypassed in the organizing drives of the 1930's.

In 1940, he organized and negotiated a contract with the owners of Seabrook Farm, one of the early corporate farms. He had succeeded where no one else had previously. In fact, his organizing victory was not duplicated until Cesar Chavez' drives in the 1960's. Mr. Schachter built a lasting union among hundreds of farmworkers and won decent wages and working conditions in a series of union contracts.

Always the pioneer, Mr. Schachter helped to solve the manpower shortage which existed in New Jersey fields and canneries during World War II by organizing the recruitment of thousands of unemployed black and white workers in the South and brought them in unsegregated railroad cars to the Garden State.

In 1952, the U.S. Government sent Mr. Schachter to Turkey as the U.S. Labor and Economic Attaché to help organize labor unions. He demonstrated the same skill and imagination he had in the United States. He built unions. He helped to negotiate contracts. He brought peace and conciliation out of hatred in Turkey.

In 1948, Mr. Schachter was elected to the international executive board of the Amalgamated Meat Cutters and Butcher Workmen. His keen intelligence and his strength as a leader soon made him an influential member of the board.

He founded the Amalgamated's Washington office in 1955. Under his leadership, the Amalgamated strongly lobbied for farm labor reform, consumer protection, minimum wage improvement, civil rights legislation, food stamps, and many other pieces of progressive legislation. The union became a leading liberal force in Washington.

He added still another important union responsibility to his already many jobs in 1956. He was appointed the district director of the Amalgamated local unions in the Middle Atlantic area. He soon made this district into the largest in the union.

He headed and supervised numerous organizing campaigns of workers in previously nonunion shops and plants. He

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● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

led the contract negotiations for thousands of workers at a time. He solved problems between unions and management and between unions and unions. And he sometimes led very difficult strikes.

Most recently, he was one of the leaders who brought about the largest merger of unions in the Nation. He was a member of the Amalgamated Meat Cutters and Butcher Workmen Negotiating Committee, which together with its counterpart committee in the Retail Clerks International Union, created the 1.3 million member United Food and Commercial Workers International Union. Today, the UFCW is the largest union in the AFL–CIO.

Leon Schachter is now retired, but he is hardly resting. His advice is still eagerly sought by his and other unions. He is currently serving on the Presidential Commission for a National Agenda for the eighties. And he is hard at work at a new interest—seeking with labor and management to improve the quality of life for workers in the workplace.

Mr. President, I must say to you that my friend, Leon Schachter, is a restless man. His mind is always working. He always has to do something. His need for accomplishment is endless. He is always on the go.

This great energy, imagination, ability, dedication, and work is aimed at helping other human beings. He has a particularly well-developed devotion to the underdog. He stands at the side of the needy.

Leon Schachter has done many great things for workers and for so many other Americans. Even though he is now officially retired. I know he will create many more new achievements. I do not believe that the Leon Schachter I have known so long can really retire.

I wish him and his wife, Bernice, all the best in the coming years. I join the hundreds who will gather in Cherry Hill on September 28 in saluting him and her.

Mr. President, I am very proud to claim Leon Schachter, this able, dedicated, and imaginative labor leader, as my good friend.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator needs more time than his order allows, I ask unanimous consent that such time as I have under the standing order be transferred to his control.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WILLIAMS. I am grateful to the distinguished majority leader.

APPROPRIATION BILLS

Mr. WILLIAMS. Mr. President, it is the time of the year again when Congress turns its attention to appropriation bills. Unfortunately, it is already clear that in our consideration of these appropriation bills, we will once again be compelled to deal with amendments which purport to restrict the ways in which the agencies can spend their funds. In fact these amendments, if enacted, will constitute significant alterations in statutory programs.

I am talking about the so-called appropriation riders, an annual rite of autumn around here.

The Senator from Washington (Mr. MAGNUSON) will have his extraordinary patience pushed to the absolute limit. He will have to sit here, day after day, as the special interest groups line up and try to accomplish, through the medium of the appropriation rider, what they could not accomplish through the traditional legislative process.

Mr. President, I have stood here in this Chamber before, and I have said that this is not the way a great, deliberative legislative body should function. This is no way to make effective law.

There are a number of reasons why the Senate should reject, out of hand, these appropriation riders when they are offered.

First. They are an insult to the legislative process. We have a system here, we have procedures, and we have rules. And if these rules and procedures have any purpose at all, if they have any purpose other than to amuse and bemuse the public, then that purpose is to encourage the orderly, reasoned consideration of legislative proposals, when we routinely consider and adopt appropriations riders, then we are admitting that we have no confidence in the Senate and in ourselves, no confidence in our ability to develop rational legislative programs.

Second. These things proliferate. They grow like a cancer. Their very number, the readiness with which some Members have resorted to this tool to attack substantive provisions of law, cheapens it and renders the funding limitation impotent as a means by which the Congress can express its displeasure with agency operation.

The appropriation bill for the Departments of Labor, Health and Human Services, and Education for fiscal year 1981, as it passed the House of Representatives on August 27, 1980, had dozens and dozens of such limitations on the use of the appropriation. Limitations in such numbers become little more than a challenge to the agencies in evasion. When we complain about our inability to make the agencies responsive to our wishes and directions, we need only look at ourselves, and our abuse of the legislative and the appropriations processes for the explanation.

Third. We are rapidly losing sight of the forest for the trees. Last year, in the end, we did not even enact an appropriation bill for the Departments of Labor and Health, Education, and Welfare. It was not because the Senator from Washington, the most distinguished chairman of the Committee on Appropriations, did not present the Senate with a bill for its consideration. Certainly nothing could be farther from the truth. The Senator from Washington held hearings well in advance. He carefully studied the testimony of the witnesses. With his usual care, he brought to the Senate a bill which provided sufficient funds for those Departments.

But it was not the amount of funding which prevented enactment of that appropriation bill. There was no Labor-HEW appropriation bill last year because, after months of consideration, there could be no agreement on the rider dealing with abortions. So we lost the appropriation bill not because we could not come to an agreement on the amount of funds to be appropriated, but because we got locked into a battle of wills over the rider dealing with abortion policy.

Fourth. And in my mind, Mr. President, probably the most important—appropriation riders are often offered with no advance warning and with little explanation. They are taken up in circumstances where they cannot be carefully considered and are unlikely to be fully understood. For these reasons, appropriation riders make bad law. We adopt appropriation riders without understanding their full impact and effect, and we make bad law.

Mr. President, when we sidestep the rules that we ourselves have established to insure careful consideration of legislation, to prevent mistakes, we inevitably make mistakes.

Mr. President, just 2 weeks ago the House of Representatives, in considering the bill appropriating funds to the Labor Department, adopted yet another appropriation rider. And it made another such mistake.

The route toward that error is well traveled. We have traveled it ourselves. The amendment was offered in the closing minutes of debate. It was unprinted. It had not been circulated in advance. There was insufficient time to study it, and to understand its effect. It was passed without the benefit of a rollcall vote.

Following this route, the House of Representatives adopted an amendment to the appropriation for the Labor Department's Mine Safety and Health Administration (MSHA). The amendment, quite simply, says that none of the funds appropriated to MSHA shall be used to "prescribe, issue, administer, or enforce any standard, rule, regulation or order with respect to any person engaged in the surface mining of stone, clay, colloidal phosphate, sand, and gravel."

Who, one might ask, will protect the miners in those very hazardous mines? The sponsors of this amendment in the House of Representatives state their views that those miners would be protected by the Occupational Safety and Health Administration (OSHA).

I am certain that that was their intention, and I am sure that the sponsors were sincere in expressing their belief that that was the effect of the provision.

But, Mr. President, that underscores the error of trying to make such major policy decisions in such an offhand fashion. There is no time to study the proposal—no time to understand it—no time to closely examine the claims of the sponsors as to its effect. The House of Representatives, in the limited time available to it, accepted the assertion of the sponsors—that the amendment would do what they intended it to do, and that these miners would come under the protection of OSHA by operation of section 4(b)(1) of the Occupational Safety and Health Act.

But I am not so confident, Mr. President. Section 4(b)(1) states that nothing in the OSHA Act shall apply to a workplace over which other Federal agencies exercise statutory authority to prescribe or enforce standards. MSHA now has the statutory authority to prescribe and enforce standards at those mines. The appropriation rider does not take away MSHA's statutory authority; it merely denies MSHA the funds to do these things. And it only denies MSHA these funds for a limited period of time. Section 4(b)(1) would give OSHA this authority only if a funding restriction of a single year's duration is equivalent to an absolute inability to exercise statutory authority. No court has made that finding. No court has determined that such a limitation on funding would provide OSHA with jurisdiction pursuant to section 4(b)(1).

Certainly, then, unlike the House of Representatives, we do not have to accept the assertions of the House sponsors of this amendment. Indeed, in view of the total lack of judicial authority, it would be irresponsible for us to accept these bald and unsupported assertions.

Should this amendment be enacted, Mr. President, these questions will certainly be litigated. Only the most naive among us will believe that no one, not a single stone mine operator, not a single sand and gravel mine operator, not a single clay mine operator, will challenge OSHA's authority to engage in this altogether new regulatory field, or try to obtain an injunction, and eliminate any safety and health protection for these miners for the balance of fiscal year 1981.

And while those questions are pending, which agency will protect these miners? Anyone who has even a glimmer of an understanding of how our agencies function, how our courts work, can answer that question. While those questions are pending, I fear, neither agency will be able to protect the safety and health of these miners.

Only someone with the most naive view of our Government would believe that, despite this uncertainty, despite the vagueness, despite the confusing statutory cross references, on October 1, 1980, MSHA will cease protecting these miners and that OSHA, which has never exercised any statutory authority over those mines, which has no mine safety standards in place and no inspectorate experienced in mining hazards, will magically be able to inspect 12,000 mines and will effectively protect almost 165,000 miners.

There was not time enough in the House of Representatives to consider these questions, Mr. President. But there is time enough for the Senate to understand what could very well be the real, not just the theoretical, impact of this amendment.

So, as a result, the question for the Senate this time will not be the same question that was before us only a few weeks ago. Then, the question was, "should stone, sand and gravel, clay and colloidal phosphate miners be protected by MSHA or by OSHA?"

Now, because we have had time to understand the issue, we now know that the question is no longer whether these 165,000 miners should be protected by MSHA or OSHA. The question before us, in practical terms, will be whether they should be protected by MSHA, or by no agency at all.

The answer, I believe, is obvious. These mines are hazardous places to work. So far this year, 36 of 64 fatalities which occurred in noncoal mines occurred at stone, sand and gravel, and clay mines. This is an astounding record for mines which we have been told, repeatedly, are benign, harmless little places that are just not deserving of the kind of highly specialized regulation that they are subjected to under the Mine Safety and Health Act.

Mr. President, the safety record at these mines, never a good one, has, in the present years, deteriorated:

In 1978, these mines were responsible for 54.4 percent of all noncoal mining fatalities;

In 1979, it was 53.7 percent;

And so far this year, Mr. President, these mines, which the House of Representatives would have us excuse from all mine safety regulation and enforcement, have been responsible for 56.25 percent of all noncoal mining fatalities.

Mr. President, I just cannot understand how we can even consider taking the risk that these very hazardous mines will be exempt from all safety regulations whatsoever. And remember, Mr. President, in practical terms, that will be the question before us when we consider this issue: Should the stone, clay, phosphate, sand and gravel mines be subject to no safety regulation and enforcement whatsoever?

Mr. President, last year the Senate added a rider to the MSHA appropriation which freed these mines from the mandatory safety training requirement of the Mine Safety and Health Act. We were told these were safe mines and that the training requirement was egregiously burdensome and unnecessary Federal regulatory overreach. So we freed them from the training requirements, and they rewarded our confidence in them by substantially increasing their share of the noncoal mining fatalities. Last year, these industries were responsible for 53.7 percent of all noncoal mining fatalities. This year, freed from the safety training requirement, these industries are now responsible for more than 56 percent of all noncoal mining fatalities.

Now we are being asked to consider an amendment which has the risk of freeing these mines not just from the training requirement, but from all Federal safety regulations and enforcement. I shudder to think what the measure of that confidence will be a year from now.

Mr. President, I certainly hope that the Committee on Appropriations will strip this dangerous provision from the House-passed bill. But I cannot ignore the possibility that, one way or another, the issue will be before the Senate on this appropriation bill.

And so, we shall have to confront the issue, Mr. President. And, for all the high-sounding language about the sincere intentions of the proponents of this amendment, we must remember that the question before us will not be whether these highly hazardous mining operations should be regulated by MSHA or OSHA. Our votes, Mr. President, as a practical matter, will determine whether these hazardous mining operations will be regulated by MSHA, or not at all.

The answer, for me, is simple. These hazardous mines cannot be freed from all Federal safety regulations. There is no case made, and none can be made, for freeing these dangerous mines from all worksite safety supervision whatsoever.

Mr. President, I care deeply about the safety and health of our miners. And I care deeply about the integrity of our workplace safety and health laws.

But, Mr. President, those are not the only issues that will be before us when we consider the Labor, Health and Human Services, Education Departments' Appropriations bills. We will also have before us the matter of the integrity of the legislative process. We will have before us the question of our responsibilities as lawmakers and I feel deeply about that certainly as well as my concern for these miners.

Mr. President, I thank the majority leader for the extension of time for this message on something that obviously is of great importance to me, and I hope its importance will be shared by Members of the Senate and we will do the proper thing, what I consider the proper thing, in connection with that House rider.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I share the viewpoint that has been expressed by the distinguished Senator from New Jersey (Mr. WILLIAMS) with respect to appropriations riders. There are times when such riders fullfill a purpose, a necessary purpose, so I would not say that all riders under all circumstances are inappropriate or are bad. But, as a general rule, the appropriate way to go about getting a rider on an appropriation bill is, if it is not germane or if it constitutes legislation, to waive paragraph 4 of rule XVI, as we did yesterday, and as we did the day before yesterday, when that rule was waived in order to call up the amendment on Tug Fork.

On yesterday it was waived to allow the legislative and nongermane amendment on the pay cap to come in.

This requires either a unanimous consent, as in the case of the day before, or a two-thirds vote if there is a rollcall vote or a vote by division on the motion to suspend the rules.

If the Senate by a two-thirds vote wants to add a legislative rider or a nongermane rider, then let it say so by a two-thirds vote or by unanimous consent. That is the front-door approach right through the rules, and that is the way we ought to approach this business of adding riders to appropriations bills.

Normally, Senators call up amendments that are legislative in nature and not germane simply because the amendments themselves in substance have considerable appeal, and raising the question of germaneness requires an immediate vote when Senators come into the Chamber, and they vote based on the substantive content of the amendment not on the procedural issue on which the vote is being held.

When the question of germaneness is raised, if I am not already in the Chamber and not fully aware of what the debate is about, I say to the Parliamentarian, I ask him, "Is this amendment germane?" And if the Parliamentarian says, "No," I do not vote to make it germane because I think that is a prostitution of the legislative process.

Often the Parliamentarian will tell me that an amendment is not germane, it cannot be germane, there is nothing in the bill for it to be germane to. The House has not put any language into the bill to which the amendment can possibly be germane, so obviously the amendment is not germane. It is not 1 percent germane, 2 percent, 10 percent. It is zero percent germane. Why should the Senate then walk up there and say that black is white, that which is not germane is germane? It is a prostitution of the legislative process.

The Senate does it time after time. Senators are either not paying attention to what they are voting on or they are not weighing the equities involved, the equities being—perhaps "equities" is the wrong word—they are simply not facing up to the issue before the Senate.

The real issue at the moment may not be busing or OSHA or gun control. The real issue is whether that amendment to that bill is germane, and that is the issue, and if the Parliamentarian tells me it is not germane I am going to believe him because he has no reason to take any sides in the matter.

If that amendment is not germane, he says clearly it is not germane because there is no House language, no language in the bill for it to be germane to, I am not going to vote it to be germane. I am not going to prostitute my own sense of what constitutes good legislative procedure for the temporary gain of the moment, to wit, to get an "aye" vote on an amendment which I may otherwise favor.

The right way to go about it is to waive paragraph 4 of rule XVI by giving 1 day's notice in writing to suspend the rules, and then let the Senate decide whether or not it wants to suspend that rule.

So I congratulate the Senator on expressing opposition in general to appropriations riders. I will not express opposition in general to appropriations riders because some of them are of necessity, but there is a right way and a wrong way to go about getting those riders attached.

INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. BAKER. Mr. President, in recent months there has been a growing interest in legislation which would prevent the unauthorized disclosure of the names of U.S. intelligence officers serving abroad. This legislation, introduced by the Senator from Rhode Island (Mr. Chafee) and entitled Intelligence Identities Protection Act, is now under consideration in both the Senate and the House. I am pleased to be a cosponsor, along with a number of my colleagues from both sides of the aisle.

The need for this legislation grows out of the fact that a small group of Americans have made a profession of ferreting out the identities and publishing the names of these officers, with the result that their lives, and the lives of their families, have been, and are, in jeopardy. Richard S. Welch was murdered as a result of this "naming names." The lives of others have been threatened.

The most recent demonstration of the danger occurred on July 4, when Louis Wolf publicized the names of 15 alleged CIA officers in Kingston, Jamaica. Within 48 hours of the announcement, the home of one of the men, Richard Kinsman of the U.S. Embassy, was fired on with submachine guns and an explosive device. Four days later, another assassination attempt was made—this time on Jesse Jones of the U.S. Agency for International Development, who was also named by Wolf. Incredible as it may seem, Mr. President, there is no law on the books today under which this activity of "naming names" can be prevented.

The principal difficulty in drafting legislation to deal with this situation is that the first amendment declares:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . .

The opponents of identities legislation have taken this to mean that no legislation may be enacted which might, in any way, restrict freedom of speech or of the press. Clearly this absolute interpretation of the first amendment cannot be upheld, especially when the speech involved jeopardizes the lives and the duly authorized missions of U.S. officials serving this country overseas.

The issue is nonetheless difficult because the conflicting values at stake are important ones. I have seen no better summary of the relevant arguments than in an editorial titled "The Boundaries of Free Speech" printed in the Washington Star last Friday. This editorial explores the issue in a balanced, impartial and accurate fashion, and I ask unanimous consent that it be printed in its entirety at this point in the Record. I commend it most heartily to my colleagues.

I also ask that the remarks of my good friend and colleague, Senator John Chafee of Rhode Island, delivered last Friday before the Senate Judiciary Committee on this subject, be printed in the Record. Senator Chafee has played an important role in drafting legislation which would prevent these outrageous disclosures while, at the same time, protecting legitimate first amendment rights of the journalist or critic. His careful examination of the constitutional issues relating to this legislation is worth our attention.

There being no objection, the material was ordered to be printed in the Record, as follows:

The Boundaries of Free Speech

Those who are resisting the current effort in Congress to protect U.S. intelligence agents against the marauding of Philip Agee and Louis Wolf offer two disclaimers. They are, they claim, as outraged as the rest of us by the disclosures of Mr. Agee and his freelance protege, Mr. Wolf, who make it their business to identify covert agents and expose them to injury or death. They also protest that they do consider First Amendment rights absolute, and ask only that the legislation no "chill" legitimate reportorial inquiry.

These disclaimers must be taken at face value; and Congress would indeed waste its time if it passed a bill that would be easy prey for the first court to take formal notice of it.

Nonetheless, we may be sure that if the cavils of the ultra-libertarians are heeded, Congress will leave itself small leeway for effective legislation. If the handiwork of the Wolfs of this world is to be curbed, we must face the risk that legislation strong enough to curb it could tempt adventurous prosecutors to interfere with legitimate reporting.

But while the danger to be dealt with is real and present, the worries about a "chilling effect" on the press are, as we shall suggest below, dim and hypothetical. Moreover, the libertarians may have met their forensic match this time. There is no more zealous advocate of strong protective legislation for U.S. covert intelligence agents than Sen. John Chafee of Rhode Island, whose uncle, the late Zechariah Chafee of Harvard Law School, was in his day a pre-eminent authority on free speech. With those credentials, Senator Chafee is not easily depicted as an enemy of the First Amendment. In defense of the Senate bill he is co-sponsoring, he cites his uncle's dictum that "the boundary line of free speech . . . is fixed close to the point where words will give rise to unlawful acts."

If that is the proper boundary line, as we in fact believe, there is no doubt that the Agee and Wolf disclosures have crossed it. The 1975 assassination of Richard Welch, then the CIA's station chief in Athens, followed within a month the disclosure of his covert function in the Greek press; and that information came directly from Agee's *Counterspy* magazine. "Public identification of Richard Welch," as was said at the time, "was tantamount to an open invitation to kill him."

More recently, Wolf's bizarre public identification of 15 CIA agents serving in Jamaica (complete with details) was immediately followed by a nocturnal attack on the residence of one with submachine guns and explosives. No life was lost, but several U.S. agents and their families had to be evacuated.

Those who make it their ghoulish business to furnish the enemies of the U.S. with information that invites and facilitates violence against its public servants obviously do not approve of what those servants are doing. It is their right to disapprove; it is their right to agitate against the authority and policy that authorizes their activities.

But the issue before Congress is more basic; it has nothing at all to do with the free play of opinion or dissent and everything to do, rather, with outrageous disclosures that place the authorized intelligence operatives of the U.S. in physical peril and thereby tend to confound and thwart a function that Congress has set fit to sanction. In the present state of the law, the Agees and Wolfs are apparently free to make these disclosures under cover of the First Amendment.

The absolutism of the First Amendment, so interpreted, lies in the impractical refusal of its interpreters to recognize the boundary line that commended itself years ago to

Zechariah Chafee ("where words . . . give rise to unlawful acts") and still commends itself to most of us. Or indeed any other boundary line, for that matter.

The debating trick by which this absolutism is argued by critics of remedial legislation is familiar. It consists in raising endless hypothetical possibilities, all objectionable, which *might* eventuate *if* the law were misused. That way lies not free speech and press but constitutional paralysis.

The ultra-libertarians, dwelling upon their unsavory side-effects, in effect mount the disabling argument that we are powerless to defend the cover of U.S. intelligence agents abroad for fear of "chilling" legitimate inquiry and publication. Yet, interestingly, their objections, hypothetical as they are, have been heeded and reasonably answered, by Senator Chafee and others.

Consider one example. In a memorandum of August 4, the American Civil Liberties Union cites, among the conceivable "situations" that might arise from passage of the pending bills, the following: "An investigative reporter seeks to determine if the Watergate burglars have CIA connections. She discovers that several of them do and that one is a CIA agent. She prints that fact, naming the person."

Obviously, no such reporting should be thwarted. Would the bills now before Congress do so? The Senate bill supported by Senator Chafee and others—and more carefully drawn, as we see it, than the bill approved this week by the House Judiciary Committee—lays down a number of conditions designed to distinguish between malicious disclosure and mere reporting.

If the name of an agent, not previously acknowledged, were disclosed the disclosure would be unlawful *only* if it were within "a pattern of activities intended to identify and expose covert agents . . . with reason to believe that such activities would impair or impede the foreign intelligence activities of the U.S." In view of these provisos, the Senate intelligence committee's report of August 13 specifically rejects the ACLU's contention. "A journalist," it declares, "writing stories about the CIA would not be engaged in the requisite 'pattern of activities' even if the stories . . . included the names of one or more agents, unless the government proved that there was intent to identify and expose agents . . . with reason to believe it would impair or impede foreign intelligence activities." To meet the bill's standard of prosecution, the Senate report says, "a discloser must be engaged in . . . the business of 'naming names.' "

Probably no legislation can be both effective and foolproof; and there are fools about. But effective government is often a matter of choices, sometimes distressing and imperfect choices. The present no-holds-barred license for disclosure that covers everyone, while permitting the Agees and Wolfs to pursue their seditious business, is of debatable usefulness to free speech and press legitimately understood. But its perils and costs are not debatable. It tends to disarm and cripple U.S. intelligence capacity and to jeopardize the lives and limbs of U.S. agents serving in dangerous and sensitive missions.

No other free government on earth—to say nothing of others unfree—remotely begins to tolerate and casual (and sometimes malicious) interference with its intelligence services that Americans have come to countenance in the name of protective "exposure," by those who may or may not have the nation's interest at heart. We think Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples, to protect our covert intelligence and counterintelligence agents. Otherwise, it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service.

We can't have it both ways.

STATEMENT BY JOHN H. CHAFEE

Mr. Chairman, I am pleased to appear here today to comment on the Intelligence Identities Protection Act (S. 2216) which was recently reported from the Senate Intelligence Committee by a vote of 13/1, and which has now been referred to your Committee for consideration.

From the time George Washington dispatched Benjamin Franklin to France in 1776, the government of the United States has sent American citizens abroad on difficult and dangerous missions in pursuit of the goals of our nation. In 1947, this activity was institutionalized by President Truman with the formation of the Central Intelligence Agency, and a permanent cadre of covert agents was created. Covert action and the assignment of Americans—our fellow citizens—to carry out such action has had and now has the support of all administrations since President Truman and every Congress, including this one to which each of us belongs.

In the last five years, certain other Americans have made a profession of ferreting out the identities and publishing the names of these agents, with the result that their lives, and the lives of their families and friends, are placed in jeopardy. Richard S. Welch of Rhode Island was murdered as a result of this "naming names". The lives of others have been threatened. Yet, there is no law on the books today under which this activity of "naming names" can be prevented.

This is an intolerable situation. As legislators, I believe that we have a responsibility to draft a bill which places criminal penalties on those who are in the business of exposing our agents, and, which, at the same time, does not threaten the critic of intelligence policy or the journalist who might reveal the name of an agent in the course of a news report.

In my judgment, and in the judgment of the majority of my colleagues on the Senate Intelligence Committee, the Intelligence Identities Protection Act of 1980 meets this dual standard. However, because the question has been raised as to whether this bill chills First Amendment rights, I would like to focus specifically on this issue as I address your Committee here today.

The section of the First Amendment to the Constitution that pertains to our discussion states that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . "The first point that I wish to make with regard to this amendment is that the provisions of the Bill of Rights cannot be applied with absolute literalness, but are subject to exceptions. It has long been recognized that the free speech clause of the Constitution cannot wipe out common law regarding obscenity, profanity and the defamation of individuals, for example. This point was reiterated by Justice Oliver Wendell Holmes in the classic Espionage Act decisions in 1919 when he stated that:

"The First Amendment . . . obviously was not intended to give immunity for every possible use of language . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

A second, and equally important point, is that if unlimited speech interferes with the legitimate purpose of government, there must be some point at which the government can step in. My uncle, Zechariah Chafee, who was the leading defender of free speech during his thirty-seven years at the Harvard Law School, wrote in his book titled Free Speech in the United States that:

"The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected. In war time, therefore, speech should be unrestricted by the censorship or by punishment, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war. Thus, our problem of locating the boundary line of free speech is solved. It is fixed close to the point where words will give rise to unlawful acts." (Chafee, Free Speech in the United States p.35).

It is clear, that the activity of "naming names" has given rise to unlawful acts, and that it has endangered the safety of American citizens serving abroad. I have already mentioned the murder of Richard S. Welch in Greece. I am sure all of you also remember the recent series of assassinations attempts in Kingston, Jamaica, following Louis Wolf's publication of the names of 15 alleged CIA officers there last month. The Director and Deputy Director of the CIA have testified publicly and in closed session before the Senate Intelligence Committee on a number of occasions regarding this activity. It is clear that the safety and the missions of those named have been placed in jeopardy "naming names".

What is not so clear, is where "naming names" contributes to why my uncle has characterized as the important social interest of "the search for truth". For example, it is difficult to see how the knowledge that a particular individual serving in an Embassy Abroad is paid by CIA rather than the State Department materially contributes to our search for the truth.

In this regard, I think that it is essential to point out that this bill would not prevent Mr. Agee from publishing the articles contained in his publications, obnoxious though they be. This bill would only restrain his publication of the names of persons he claims are covert agents. By the same token, there is nothing in this bill which would prevent Louis Wolf from continuing to publish the Covert Action Information Bulletin which does contain articles purported to be based on "research" into U.S. intelligence operations at home and abroad. The only impact of this legislation would be on the section of the Bulletin titled "Naming Names". In fact, there is nothing in this law that would prevent Wolf from giving anti-CIA or anti-American speeches in Jamaica as long as the speeches do not contain the names of alleged CIA agents.

I hope that this brief review of Constitutional history will show that the First Amendment does not provide absolute protection for all speech, and that the government can, in certain circumstances, intervene in the exercise of free speech in the interest of public safety, without jeopardizing the search for truth. As Attorney General Civiletti stated earlier this year on this subject, "our proper concern for individual liberties must be balanced with a concern for the safety of those who serve the nation in difficult times and under dangerous conditions". It goes without saying that these important constitutional considerations were very much in our mind when my colleagues and I worked up the final draft of the Intelligence Identities Protection Act. We are not challenging the Constitution. We are working with it. In my judgment, we have worked well within its limits. We have successfully followed what my uncle called the "boundary line of free speech".

In turning now to the specific provisions of our bill, I would like to make several observations which I hope will show that, from a practical as well as a Constitution standpoint, this bill is the best solution to the legislative problem which we face.

The Senate Intelligence Committee has held a number of hearings on intelligence identities protection legislation. In particular, we have focused on the provisions of S. 2216 which was originally introduced last January. While most witnesses expressed support for what are now Sections 501(a) and 501(b) of our current bill, many witnesses, including the Justice Department, raised questions on the section of the bill which made criminal the disclosure of intelligence identities by anyone who acted "with the intent to impair or impede the foreign intelligence or counter-intelligence activities of the United States . . ."

The Justice Department and others felt that this "intent standard" was objectionable because it might lead to a prosecution which would turn on the political motivations of the accused. For example, the writer might defend his disclosures on the grounds that his intent was to improve, not impede, the foreign intelligence activities of the United States. In order to avoid this problem, I offered an amendment to the original version of S. 2216 which, in Paragraph 501(c), adopts a standard of prosecution based on the "pattern of activities" rather than the "intent" of the discloser. This amendment, which was supported by the Justice Department and adopted by the Senate Intelligence Committee, provides that:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking, affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

This section is very carefully drawn because a person must disclose information identifying a covert agent in the course of a pattern of activities which are intended to identify and expose covert agents. We have carefully differentiated between the journalist who may reveal the name of an agent in a news article and the person who has made it his purpose and business to reveal the names of agents, and has engaged in a pattern of activities intended to do so. Clearly, the legitimate journalist would not be engaged in such a pattern of activities. I should note that the "intent" in this case is what is known as an "objective" intent—that is, intent in which the person intends the logical consequences of his act. It is not dependent on his political beliefs, motivations or opinion. Thus, the vehemence of his criticism of the CIA or the United States is not an issue.

There are other standards and protections here as well. First, in order to be liable for prosecution, a person must act with reason to believe that his disclosure would impair or impede the foreign intelligence activities of the United States. Someone who revealed the names of all CIA agents operating in the Soviet Union would certainly have reason to believe that such disclosure would impair or impede U.S. intelligence activities. On the other hand, a journalist who revealed in a news story about the U-2 incident that Francis Gary Powers was an American agent would have little reason to believe his disclosure would or could further impair or impede U.S. intelligence operations. Nor, for that matter, would he be engaged in the requisite "pattern of activities."

Second, in order to be liable, a person must know that the information disclosed so identifies the covert agent. A journalist who reported, for example, a general statement that CIA officers serve undercover in U.S. embassies would not be liable because that information would not by itself identify a covert agent. However, a person who identified a particular officer by position, personal description and gave his home address would clearly know that he was identifying such an agent.

Finally, to be convicted of this crime, a person must know that the United States is taking affirmative measures to conceal an individual agent's classified intelligence relationship to the United States.

In summary, we have drafted a bill designed to stop those engaged in the business of "naming names" and we have carefully drafted it to protect the legitimate rights of free speech of the journalist, however critical he may be of the CIA, its activities or its policies. The Justice Department has not only withdrawn its objection, but has actively supported this legislation because, in the words of Deputy Attorney General Renfrew, "the formulation substantially alleviates the Constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill. . . ."

There is one additional issue which I believe must be addressed before I conclude my remarks because there has been so much confusion surrounding it. During the long public debate on this issue, and in the hearings before the Senate Intelligence Committee, I have heard it suggested or implied that it should be acceptable for people to disclose the names of covert agents if this information derives from unclassified sources. The implication of this view is that there exists somewhere in this government an official but unclassified list of covert agents, and that those who have found this list should be free to publish the names thereon.

I have studied the matter of cover for covert agents within the Senate Intelligence Committee, and have even held a series of detailed hearings on this subject. Without going into specifics in open session, I can assure you that there is no such list. What we have found are unclassified official or semi-official documents which contain the names of covert agents in among the names of other officials of the U.S. government. The covert agents are not identified. The very purpose of these documents is to cover or to hide the true identity of the covert agents named thereon, and in no case is an identification explicitly made.

However, to say that the government has never published an unclassified list of covert agents as such does not mean that certain persons, employing basic principles of counter-espionage, and after considerable effort, cannot determine identities of covert agents with some degree of accuracy.

It is the purpose of S. 2216 to punish the publication of names acquired through these techniques regardless of whether the identification was made with reference to classified or unclassified information, After all, it is not the mechanism of identification which places people's lives in jeopardy and threatens our intelligence capabilities. It is the actual publication of people's names as covert agents that does so. It is the pattern of "naming names" that we want primarily to prevent.

In closing, I would like to clarify several misunderstandings or misstatements that have crept into the debate with regard to this legislation.

The purpose of this legislation is not to "get any group of individuals, but to criminalize a particular activity which jeopardizes the lives and missions of American intelligence officers serving abroad;

The current version of the Intelligence Identities Protection Act of 1980 does not criminalize the "intent" of those who are "naming names", but the pattern of activities in which they are engaged;

This bill is not a hasty response to recent events in Jamaica, but the product of legislative efforts dating back to the 94th Congress;

This Act has not been drafted over the objections of the Justice Department and the press, but actually reflects the concerns and incorporates the recommendations of these entities in its current form.

Over the past five years more than 2,000 names of alleged CIA officers have been identified and published by a small group of individuals whose stated intention is to "expose" U.S. intelligence operations. I think it is time we legislated an end to this pernicious vendetta against the American intelligence community, and I urge you and your colleagues on the Judiciary Committee to move expeditiously in reporting this bill out of Committee before more lives are jeopardized and more damage is done.

The easiest role we might assume is to do nothing; to brush aside the problem because the solution is too difficult. We send fellow Americans abroad on dangerous missions which are supported by us as Senators. We owe it to them to do our utmost to protect their lives as they go about our business.

Thank you.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there may be a period for the transaction of routine morning business and that the period may extend not beyond 1 hour and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 9:39 a.m., recessed until 10:09 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HUDDLESTON).

LEAVE OF ABSENCE

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate grant me a leave of absence from attending meetings of the Senate during the week of September 15 to 20, inclusive, of this year for the reason that I will be attending the full meeting of the International Parliamentary Union, as a member of the United States delegation, representing the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I compliment the Senator on asking for a leave of absence. This is the way it should be done. He could take leave without getting the leave of the Senate. This is done all too much. The Senator has asked the leave of the Senate under the rule, and I compliment him.

Mr. STAFFORD. I thank the majority leader for his kind remarks.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DEVELOPMENT OF MULTIPLE TALENT TEACHING

Mr. HATCH. Mr. President, one of the most dramatic discoveries which is revolutionizing educational curriculum development is the talents unlimited program developed by Dr. Cal Taylor, professor of psychology at the University of Utah. He is one of several intellectual pioneers who suggested years before it became fashionable to believe that the acquisition of knowledge is less important to the educational development of a young mind, than the cultivation of talent; that "how" we learn, is more important in the long run than "what" we learn. While school grades are an important measure of scholastic achievement, they ought not to be the only way we evaluate a student's rate of or capacity for learning.

For a long time, the academy and industry have been preoccupied with grades. However, partly a result of studies conducted by Dr. Taylor, it has more recently been concluded that high grades only occasionally produce complementary high values in such areas as creativity and leadership potential. And business recruiters no longer consider grades alone, realizing that there are other and often more effective measures gaging the worth and potential of a future employee.

In fact, the Salt Lake City based, Institute for Behavioral Research in Creativity with which Dr. Taylor is affiliated, contends that most successful persons do not necessarily have good grades in high school or college. What they often have is a high creativity potential, artistic potential, leadership or career interest—none of which are acknowledged in the traditional grading system. Were students eternally measured by their school marks alone, according to Dr. Taylor's findings, they probably would have never succeeded.

Much of Dr. Taylor's principle work consisted of the preparation and distribution of biographical inventory questionnaires which were funded and supported by various educational agencies and private foundations within my home State. Some Salt Lake City high schools such as South East, Highland, Layton, Viewmont, and Bingham high schools played the major role in the successful completion of this important work.

As we consider proposals for educational curriculum development, the work of Dr. Taylor should be prominently weighed and his recommendations included in the Department of Education's developmental guidelines. For the benefit of my colleagues, I ask unanimous consent that his "Multiple Talent Teaching Results" essay be printed in the RECORD. We will be hearing much more about Dr. Taylor's work in the months and years to come.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

MULTIPLE TALENT TEACHING RESULTS

(By Calvin W. Taylor)

The multiple potentialities in people and in their remarkably complex total brainpower provide great opportunities for all types of educators—and certainly for those working in Gifted and Talented Programs. As Sam Proctor(16) recently stated, the mind is a terrible thing to waste. Nonetheless, of all our national resources the greatest waste may well be the numerous brainpower processes, namely, the many hidden inner talent processes in our students that are not yet being recognized and developed in our schools.

One reason for this dilemma is that we have too frequently conceived of students as merely knowledge learners, not as thinkers and producers and doers. For those who see a goal of expanding the minds of students, the Multiple Talent Approach to Teaching is a most relevant way to stretch their minds.[1] The youth are our ultimate strength and hope for the future, so they should be developed toward becoming effectively functioning, multi-talented, productive persons, not just knowledge learners-and-returners (i.e., knowledge reproducers).

The Multiple Talent Approach and Totem Poles:

A broad Multiple Talent Approach to Teaching was conceived in our Theory of Education report to Roy Hall, the Assistant Commissioner for Research in the U.S. Office of Education.(19) In setting this approach for implementation into classrooms, five new talents studied in basic research were added to the Academic Talent to create a first set of six talents for initial training of teachers to use with their students. These first six were: (1) academic; (2) creativity; (3) planning; (4) communication; (5) forecasting; and (6) decision making.

Darrel Allington first sketched the Multiple Talent Approach in the form of theoretical multiple talent totem poles (also dubbed as Taylor's Talent Totem Trees), later illustrated in big smiling and frowning faces by Vern Bullough. Beverly Lloyd in Project Implode of the Jordan School District in Utah was the first to put all of her 28 students (7 at a time) on six totem poles, after getting all six talents to function at one time or another in each of her students. Almost daily she was seeing her students function in six different talent ways—which is better than seeing only one talent function six times in each student each day.

In the totem poles(22) each student has a unique pattern of strengths and weaknesses across the talents. Ann does not stay at the top across all talents, but Randy and Kathy each rise to the top as the most talented on two of the new talents. Diane and Steve drop sharply downward on creativity. Also the bottom three on the first talent (Kathy, Todd, and Linda) tend to rise as a subgroup, and are never again so low, generally being around the average, as a subgroup, on the other five talents. The other five talents call for them to produce something of their own rather than working almost entirely under close supervision with full directions by "doing exactly what the teacher tells them in exactly the way the teacher tells them how to do it."

The Talents Unlimited Project developed and functioning in the Mobile, Alabama, school district uses the broader talent of productive thinking (in place of creativity) as the second totem pole. "Talents Unlimited" has been evaluated and approved for backup funding to be adopted throughout the nation on the USOE National Diffusion Network. While it is applicable to all students, it is also the only project on that network that is approved for G/T programs and is the exemplary project on the National Diffusion Network for G/T programs.

Probably the greatest single gain for students is to unearth these new talents from "six feet underground" and get each talent actively functioning at some initial level on each totem pole. The second gain is to have students grow in their ability and effectiveness in using each talent.

An analogy concerns mining for multiple metals. The largest mine in our region pours a mountain-side of boulders through the mills to produce a precious silt stream. Initially only low grade copper ore was extracted and the rest was then dumped on the valley floor as waste products. Later someone discovered how gold could be readily, though crudely, recovered from the silt stream. Next the mining company worked hard to learn how to process the heretofore waste products for every other element yet known to man. They now process for at least seven metals, not just for the copper initially sought. And it doesn't cost much more with the silt stream already flowing.

Similarly, we can process not only for the copper-like academic talent, but also for the uranimum-like creative talent, the gold-like decision-making talent, and so forth in our schools. Like the mining specialists, we may realize that the waste products we have been dumping out in the streets for so long contain many precious talents—perhaps even of a much larger total value than the one (or ones) we initially had solely extracted.

Talent-Focused Teaching Yields an Almost Unbroken String of Positive Results.

In comparison studies in two dissertations (8, 11) all students in a first type of classroom were considered and treated by the teacher as learners, i.e., as learner-returners using a learner type of learning of a particular unit or segment of subject matter. All students in the second type of classroom were considered and treated by the teacher as thinkers, i.e., as thinkers and producers, using a thinker type of learning in the same unit of subject matter. In each case the thinker students surpassed the learner students in practically all the measures used. These pioneering ventures were certainly boundary stretchers or even boundary breakers, because to us there are many more "thinker" types of learning than there are "learner" types of learning. On all talent measures used at that time the thinking classes won over the learning classes, as was also true on the knowledge testing of both classes. While there were some "ties", the thinking classes performed either better or equal to the learner classes on all the knowledge testing.

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[1] Some are currently excited about one hemisphere of the brain being used less than the other hemisphere. The more important evidence, however, is that only a small percent of either side of the brain is typically being used in school—i.e., the large majority of each side of the brain is not being used and developed in school.

A next study in the same Granite District with Title I funds(12) again demonstrated greater gains for the experimental over the control group for post-tests over pre-tests on multiple test measures. There were 14 test measures used and all but one of the results favored the productive thinking groups over the learning groups, with most of the results (for 8 tests out of the 14) being statistically significant. That is, 13 out of 14 results leaned in favor of the productive thinkers with most of these positive results being statistically significant at the .05 level. (In this project the teacher's manual entitled "Opportunities for Creativity and Communications" was developed and has proved to be a most effective initial manual for in-service training of teachers.)

The next and possibly the most potent results occurred in Project Implode at Jordan District's Bella Vista School, under the project leadership of Gilbert Stevenson.(18) These involved the full multiple talent approach in that school versus the academic (or learning) way of acquiring knowledge in two comparison schools.

The Bella Vista students from an average socio-economic level were up at the top in their school district on the traditional standardized achievement tests. In addition, new talent tests and classroom opportunity measures were tailor-made and used to display the classroom phenomena. For example the Student Activities Questionnaire (SAQ)[2] was built at that time to yield the following eight measures, as viewed by the students: Individualized Instruction; Enjoyment of School; Classroom Participation; Career Development; Self Concept; Independent Development (Self Management); Democratic Classroom Control; and Multiple Talent Experiences.

All 4th and 6th grade students in the Bella Vista School, when evaluated on all these measures in 1972 by an independent research agency (IBRIC), surpassed the combined data from two control schools from another district in all 58 comparisons, 42 of which were major (statistically significant) differences. This is again in sharp contrast to the usual results of little or no educational differences. The biggest differences, as expected, were found on Multiple Talent Experiences, and large differences were also found for Career Development.

On Multiple Talent Experiences involving opportunities to develop numerous talents, an average Bella Vista student (at the 50th percentile rank) would be comparable to the 93rd percentile rank student from the control schools. Stated alternately, over 55 percent of the Bella Vista students would be in the top 10 percent of the control students. Conversely, an average student in the control schools was only at the 12th percentile rank in comparisons with Bella Vista students. These potent results are for teachers in the "first wave of the multiple talent teaching change" at Bella Vista.

According to follow-up unpublished results from BYU Professor Wesley Craig's research group, Bella Vista-trained students performed better in junior high than a comparable group of junior high students from a different, but neighboring, elementary school, winning in about 95 percent and tieing in about 3 percent of the comparisons. Again a sizeable number of the positive differences were statistically significant. Yet former Bella Vista students, remembering the earlier and better elementary school climate from which they came, liked the junior high school less than did control group students who like junior high better than their elementary school.

In Beverly Lloyd's masters project(13) she evaluated all 26 of her elementary school students on all six talents as they were being displayed in her own classroom. She used four levels of evaluation, namely: double plus (++), single plus (+), zero (0), and minus (−). These four "learner" levels of functioning on the academic talent divided her students into four groups. On the other five "thinker" talents, the top academic group had the least number of double pluses and single pluses of all groups. The three lower academic level groups, however, had quite a splattering of pluses and double pluses across the five other talents involving thinking and producing something of their own on their own.

This suggests that whenever we select students for graduate or professional schools largely on IQ-like tests and on standard achievement tests and grades, we may be selecting those who have most successfully fit the pattern of being grade-getters and teacher-pleasers. Perhaps after such reinforcement, these students have become less practiced and may therefore be even more handicapped in producing something of their own, with minimal or almost no directions from teachers or supervisors, than are the remaining students.[3]

She also found that all but one of the 26 students received a double plus on at least one of the six talents. Perhaps she deliberately worked hard in trying to find promise in every student in later talents who had not shown promise in earlier talents. In any event, she had run her talent classes somehow to bring out such high promise in almost everyone.

The beginnings of a talent project in Iowa occurred when the Superintendent of Polk County Schools, Dr. Ralph Norris, heard speeches on creativity by Elizabeth Drews and the present writer at the 2nd National Education Association-National Magazine Editor's annual meeting in New York City. He then laid the groundwork carefully and solidly for about three years before he and Joe Shea, then of Iowa State University, initiated a proposal a decade ago for Title III support for Project Impact. The U.S. Office of Education rated it as one of the best Title III projects supported to that date. The project directed in succession by Elwin Nielson, Bill Clark, and Helen Coe, focused primarily on training teachers to teach for multiple kinds of thinking, called productive thinking, in their students. After such teacher training, they found that divergent and convergent production and evaluation types of thinking increased in students. They also found that self-concept scores increased in both teachers and students and later found that the more divergent and evaluative thinking that occurred in classrooms, the higher the self-concept a teacher had. They also obtained many testimonials from teachers as to the impact this had on their abilities to teach more effectively than anything else had taught them in their whole teaching careers.

An outgrowth of this Iowa project was another Project Advance in West Des Moines, a part of the large Polk County School District. On that project, the positive results were that teachers gained significantly more knowledge in how to teach for individual differences, how to develop multiple talents, and how to teach for thinking. Reproductive thinking was significantly reduced in students in classrooms and productive thinking was increased. Student abilities in each of the totem pole areas were increased significantly.

Project Implode in Utah and the Talents Unlimited project in Mobile, Alabama, have had the greatest nation-wide impacts. The present writer and key people from Project Implode and Project Impact helped to spark the Mobile project which then obtained Title III funding. Under Carol Schlichter's direction, the project team developed all their own materials for training teachers and for teachers to use in training students, plus a large volume of test materials to evaluate the classroom outcomes.

The major findings were from grades one through six regarding student development in the five talents. Twenty-five significant values were found and seventeen other results leaned in the direction of the experimental schools over the control schools. In each of the five new talents the experimental students performed at a significantly high level, compared with the control group in the development of their talents. This reflects a highly significant performance by talent students and is evidence of the overwhelming success of this project in its efforts to construct an appropriate criterion set of talent tests.

Having found very positive results, the project then chose to ask the National Diffusion Network of the U.S. Office of Education to give them the severe evaluation required to become approved for being on the National Network and for the backing of the fundings for that network. They succeeded in being approved and were later rated as being one of the six best projects on the Network. In fact, the U.S. Office of Education recently assigned one of their public affairs staff to write an article on the project entitled "The Care and Feeding of Talents."(7) In it the U.S. Office of Education proudly announces the effectiveness of that project in enlivening students and accomplishing multiple results better than the traditional system accomplishes with its students. That project has been spreading, under Sara Waldrop's leadership, with adopters in the large majority of the states and hopes soon to have at least one adopter in all states.

Several adopters across the nation have also checked on how the Talents Unlimited Project has worked in their setting. Their replication results have nearly always been very similar to those found in the initial Mobile project (see the attached appendix).

With help from Beverly Lloyd and JoAnn Seghini of Project Implode, Project Reach came into existence in the New Brighton School District in Minnesota, with Harry Branes and Joyce Juntune as the initial directors. In contrast to usual experimental designs in education which are largely focused on in-service training of teachers with an evaluation of the impact on the teachers, Project Reach trained teachers, but their evaluations were second-link evaluations on the impact that these trained teachers then have on their students. Their results are some of the most impressive with very positive accountable results across practically all measures used. They provide another strong example of multiple talent teaching paying off. A total of 161 of 186 comparisons were significantly in favor (mostly at the .001 level) of the experimental talent school (with practically all of the remaining comparisons leaning in favor of the talent school).

A combination of growth both from the project's effects and from maturation effects occurred in these talent-trained students in 12 of the 15 comparisons. Summarizing Project Reach's findings, talent-focused teaching yields new phenomena consisting of expanded growth experiences and other improvements over the phenomena in typical classrooms. It therein provides a superior education for students.

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[2] Available from the Institute for Behavioral Research in Creativity (IBRIC), 1570 South 1100 East, Salt Lake City, Utah 84105.

[3] This is one reason why I am much more in favor of "lifelong thinking" types of "learning" programs. Also I favor "Thinking Centers" or "Talent Centers" or "Function Junctions" over "Learning Centers."

All the above results on ten projects plus several replications have almost uniformly been in favor of Multiple Talent Teaching over traditional academic-only-type of teaching (i.e., knowledge-focused teaching). Practically all results were leaning positively with the large majority being statistically significant differences.

In a set of significance tests of no difference (null hypothesis), it would be expected that about one-half would be positive and the other one-half negative, with the signs being randomly distributed across the two types of teaching. The probability would be essentially infinitesimal (about .0000 . . .) that these strings of differences, practically all in one direction and across ten or more projects, could ever occur by chance. It is suspected that no new educational approach has ever attained such powerfully significant results on measured student performances across such a wide range of relevant classroom activities.

In practicing what the basic research preaches about talent complexity, I have asked each of my college students to nominate the two students (per talent) who were tops in the class in each one of the six or seven talents that functioned in class throughout the quarter. Across 10 such classes of about 25 students per class, nearly 99 percent of the students have been nominated as tops in at least one of the talents. This suggests that nearly all students are highly talented in at least one type of talent when given enough opportunities in enough different types of talents. It also demonstrates the viewpoint of having crude measures of how all these new talents are functioning rather than solely having more precise measures of only one (academic) talent in action.

Multiple Talent Teaching has been used on a group of mentally retarded and on another group of emotionally disturbed students by Clayton Nielson. (14) Both of these groups flourished more than before because of the multiple talent teaching situations. This result emerged even against the old yardsticks of standardized achievement tests.[4]

The talent approach has caught and held the interest of representatives of the U.S. General Accounting Office, who report to Congress how Federal money has been spent and who seek diligently for real educational change. They are not satisfied with projects which spent money that merely yielded new alternatives that are no better in education and thus do not improve education. But in contrast they were well pleased when they took a thorough, first-hand look at Project Implode during its initial development period at the Bella Vista School.

Accountability-wise, these remarkable results across all the projects are even more startling upon considering the financial input costs. A multiple talent school is an economical one to operate because it does not require lots of expensive equipment and extra materials—and it functions with a typical teacher/student ratio. Yet it is full of valuable resources, especially the well-functioning, resourceful students.

The Bella Vista School, its Jordan District, and its state of Utah are clearly below the national average in expenditures per student, which is also true for Mobile, Alabama. This approach, therefore, yields excellent results per dollar spent, so that the parents and other taxpayer constituents are certainly getting their money's worth from this multiple talent approach.

In correspondence, Carol Schlichter, the initial director of Talents Unlimited, commented recently that "the fit of Multiple Talents in almost any area of educational programming is phenomenal!" Rachel Morton has similarly written us that "the deeper I get into the multiple talent approach, the more it seems that it fits just about anywhere when people are looking for meaningful innovation in education."

In science the soundness of an approach or theory depends upon the total amount of data that support that approach or theory and how well the data fit. The most convincing support is to have different investigators, in different geographical locations and in different laboratory situations to use their own somewhat individual approaches and methodology and still to come out with essentially the same results. This has certainly proved to be true in the Multiple Talent Teaching Approach. All the accumulated evidence collectively suggests that the Multiple Talent Teaching Approach can be applied with success to yield improved results in almost any area of education.

This long string of positive results argues that the talent-focused approach could retain a portion of the traditional academic approach and add the additional talent processes to classroom and homework activities for widespread use in Gifted/Talented as well as many other programs. This would be analogous to the way in which jet airplanes have retained some of the features of earlier propellor airplanes but have added enough additional features to make the newer plane definitely superior, to practically replace and obsolete most propellor airplanes.

With most successful efforts to date being in elementary schools, a need is to spread more to so-called higher levels of education including high schools, colleges, and graduate and professional schools.

Students have expressed some exciting quotable insights when they have had experiences, in using their multiple talents. For example, Sara Waldrop reports that when a child was asked what it meant to him to be in the talent program in Mobile, he responded, without hesitation, "Talents burn a candle in my mind." Likewise, after Dr. Shirley Warner taught a talent class in Putnam, Oklahoma, one child wrote, "I liked your class a lot because it gave me fluency and it made my brain feel refreshing."(12)

APPENDIX

Evidence of the success of the talents unlimited program: Technical report summarizing research findings[5]

(By Brad S. Chissom and James E. McLean, University of Alabama)

Introduction and Background

Talents Unlimited (TU) is an innovative educational program developed under an Elementary and Secondary Education Act (ESEA) of 1965, Title III Grant, and is located in Mobile, Alabama. The program was developed and experimentally tested over a three year funding period from June, 1971 through June, 1974.

As a result of the success of the program the project was "validated" nationally and is now a part of the National Diffusion Network. This and other innovative programs are described in *Education in Action, 50 Ideas that Work,* (15) and *Educational Programs that Work,* both published by the United States Office of Education.

Funds for the dissemination of the TU message continued for two years, and were not renewed for the 1976–77 school year. However, funding was secured in 1977–78 and is continuing at the present time.

The theoretical and research background for TU grew out of the work of Dr. Calvin W. Taylor of the University of Utah who has explored the development of creativity and researched the creative process for over 20 years. His Multiple Talent Approach (MTA) to education has been described extensively in his writings, and is summarized, prior to the beginning of the TU project, in an article (21) for a special "creativity" issue of the *Journal of Research and Development in Education* published in 1971. A companion article in the same issue described Project IMPLODE, (18) a program using the Multiple Talent Approach to education which was a forerunner of Talents Unlimited.

The final theoretical model developed by the TU staff is a combination of Taylor's "Totem Pole Model"(20) picturing the Multiple Talent Approach and Guilford's Structure of the Intellect (SOI) Model, (10) a comprehensive description of intellectual abilities which has enabled researchers to gain insight into the nature of creativity and the creative process. The TU staff was directed by Dr. Carol L. Schlichter for the first three years and is currently headed by Ms. Sara Waldrop.

The TU Model identifies six talent areas, in much the way Taylor did with the Multiple Talent Approach to education and they are: (1) Productive Thinking, (2) Forecasting, (3) Decision Making, (4) Planning, (5) Communication, and (6) Academic. The traditional academic talent is incorporated in the model as a means for helping students gain knowledge in a variety of disciplines, while the other five talents are used as vehicles for assisting students in processing or using the knowledge to create new solutions to problems, Taylor (20) has said that 90 percent of the children in school will be above average in at least one of the six talent areas, provided those talents have an opportunity to develop. Talents Unlimited developed a process by which each of these talents can be taught by a classroom teacher in order to provide an area of success for all students. The program is not a specialty program to be used once a year, but is a program that permeates all phases of instruction.

As a part of the development for TU, procedures for assessing the changes that children exhibit in each of the six talent areas were developed. These measures, entitled collectively *The Criterion Referenced Tests* (CRT), were used to establish the success or failure of the TU Project after its third year. The tests were reviewed and revised during the second year of the project (1972–73), and in their present form have been used by many adopters of the TU Program to evaluate their projects. At the present time there are ten (10) tests, one (1) each for the decision-making forecasting, and planning talents; three (3) for the communication talent; and four (4) for the talent of productive thinking.

These tests form the primary basis for comparing students who participated in the TU Program (experimentals) with students who did not participate (controls). In many of the adoptions of TU other tests have been used on a limited basis, but the *Criterion Referenced Tests* serve as the common thread running throughout the research. The rest of this paper will describe the results obtained from evaluations of the TU Program.

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[4] The reader is referred to a realistic, heartwarming article on the distinctive contributions of a retarded child to a family by Dr. S. I. Hayakawa, U.S. Senator from California, entitled "Our Son Mark—General Semantics in Rearing a Retarded Child," *ETC—A Review of General Semantics,* Vol. XXCII, No. 1, March 1970, 45–54. Also see "My Most Influential Teacher" in the Church News section of the Deseret News, Salt Lake City, Utah, December 23, 1978, p. 2; by Christine Durham. She describes her four young children as her most influential teachers, including her last, but certainly not least, child who is mentally retarded. A similar emphasis occurs in religious scriptures (see 1st Corinthians 12:4–21). Also, "For all have not every gift given unto them; for there are many gifts, and to every man is given a gift . . . To some is given one, and to some is given another, that all may be profited thereby . . ." (Doctrine & Covenants, Sec. 46–11–12 multiple talent teaching on teachers as well as on students, one can read the dissertation by Reynolds (10, 8) and the volume entitled *Teaching for Talents and gifts: 1978 Status—Developing and Implementing Multiple Talent Teaching.* (23)

[5] Reproduction of March 1979 Technical Report with approval of the Talents Unlimited Project, Mobile County Public Schools, Mobile, Alabama.

Evidence of Success

I. *End of Second Year Report, 1973:*(2)

The first source of information documenting the success of the project is from the project report after the second year. The experimental design used enabled the project to be validated after the third year and was sound. Four experimental and four control schools, matched for socioeconomic level and racial composition, were used. Thirty-seven teachers in grades 1–6 participated as "Talents" teachers for the entire three-year period, definitely a positive aspect of the evaluation. Students in the experimental and control schools were pre- and post-tested on the *Torrance Tests of Creative Thinking*; achievement tests (*Clymer Barrett* for the first half of grade one and the *Stanford Achievement Test* for the rest); and the previously described *Criterion Reference Tests*. At this stage of the project there were only eight CRTs that had been developed of the final ten.

Analyses comparing the experimental and control groups over the four *Torrance* subtests show significant differences favoring the experimental group for all subtests. These results are contained in Table 1.

TABLE 1.—MEANS, STANDARD DEVIATIONS, AND T-VALUES ON THE TORRANCE TESTS OF CREATIVITY COMPARING EXPERIMENTAL AND CONTROL GROUPS OVER GRADES 1 TO 6.

	Mean	Standard deviation	t-value
Experimental control:			
Fluency	32.53	7.50	
	27.64	7.15	[1]6.19
Flex	24.40	4.00	
	19.37	5.20	[1]10.27
Orig	53.57	15.88	
	34.15	12.98	[1]12.21
Elab	48.55	23.83	
	37.55	22.62	[1]4.34

[1] p<0.05.

Results of the comparison between experimental and control groups on the *Criterion Referenced Tests* for all five talents are contained in Table 2 and summarized in Table 3. A further summary of these data follow: Grade 1: Significant differences favoring the experimental group on Productive Thinking I & II, Forecasting, and Communication III.

TABLE 2.—EXPERIMENTAL VERSUS CONTROL T-VALUES [1] FOR CHANGE SCORES BY GRADE LEVELS FOR ALL TALENTS

	Planning	Decision-making	Productive thinking I	Productive thinking II
Grade:				
1	1.11	0.95	[2]2.79	[2]2.57
2	1.86	1.87	[2]4.14	[2]3.86
3	[2]3.43	1.47	1.29	1.58
4	[2]5.13	[2]1.90	[2]4.00	[2]5.96
5	[2]2.59	.70	[2]3.56	[2]3.54
6	3.07	1.39	1.48	[2]3.42

	Forecasting	Communication I	Communication II	Communication III
Grade:				
1	[2]2.73	0.58	[2]2.15	−0.17
2	[2]3.42	[2]3.67	1.70	[2]2.24
3	[2]2.82	1.85	.27	[2]−1.97
4	[2]2.00	[2]4.18	[2]3.76	[2]1.98
5	1.40	.73	−.28	.61
6	1.14	[2]−2.19	[2]3.71	−1.51

[1] A negative t-value indicates control group outperformed experimental group.

[2] p<0.05.

Grade 2: Significant differences favoring the experimental group on Productive Thinking I & II, Forecasting and Communication I & II. Grade 3: Significant differences favoring the experimental on Planning and Forecasting. The control group was as significantly better on Communication III.

Grade 4: Experimentals were significantly better than the controls on eight talent tests. Grade 5: Planning and Productive Thinking I & II were the significant talent areas for the experimental group. Grade 6: Significant experimental results were obtained on the Planning and Productive Thinking subtests, while the control group was significantly better on Communication I.

TABLE 3.—SUMMARY OF T-VALUES ON THE CRITERION REFERENCED TESTS COMPARING THE EXPERIMENTAL AND CONTROL GROUPS

	Experimental			Control	
	N	Number sig.[1]	Number non-sig.	N	Number sig.[1]
Grade:					
1	30	4	4	26	0
2	33	5	3	35	0
3	34	2	5	31	1
4	62	8	0	63	0
5	31	3	5	28	0
6	29	3	4	34	1
Total	249	25	21	217	2

[1] p<0.05.

One of Taylor's hypotheses that 90 percent of the students in a school are above average in at least one talent was tested and the results are presented in Table 4. The findings who that, although Taylor's hypothesized criterion of 90 percent was not achieved, a percentage of approximately 85 percent at each grade level is remarkably close. Results of the achievement test comparisons are summarized and compared to the third year achievement test outcomes in Table 7.

TABLE 4.—PERCENTAGE OF STUDENTS RANKING ABOVE AVERAGE IN AT LEAST 1 OF THE 5 TALENTS BY GRADE LEVEL ACROSS 4 PROJECT SCHOOLS

	Classes	Percent
Grade:		
1	8	84.7
2	7	86.6
3	7	86.8
4	7	86.1
5	7	83.6
6	1	85.2

II. *End of Third Year Report, 1974:*(4)

Only a single source of comparative information on the talents between experimental and control groups was gathered at the end of year three since the Torrance Tests were not given. The Criterion Referenced Tests were revised and now constituted ten subtests with the productive thinking tests undergoing most of the revision. The productive thinking tasks were enlarged from two subtests to four which were entitled flexibility/imagination, flexibility/problem solving, originality/imagination, and originality/problem solving. Results of the comparisons between experimental and controls in grades 2–5 at the end of year three are summarized in Table 5. A summary of these data indicates that talent students continued to improve their performance over the control group, and the major differences are: Grades two and three showed a significant difference on all ten talent tests; Grade four showed a significant difference on seven of the ten talent tests; Grade five showed a significant difference on five of the ten talent tests with the other five being non-significant.

TABLE 5.—SUMMARY OF T-VALUES ON THE CRITERION REFERENCED TESTS COMPARING THE EXPERIMENTAL AND CONTROL GROUPS

	Experimental number sig.[1]	Number nonsig.	Control number sig.[1]
Grade:			
2	10	0	0
3	10	0	0
4	7	3	0
5	5	5	0
Total	32	8	0

[1] p<0.05.

No differences favored the control group at any grade level. Compared to 1973, the results are:

TABLE 6.—COMPARISON OF CRT RESULTS FOR ALL TALENTS AT ALL GRADE LEVELS, END OF 2D AND 3D YEARS

	1973	1974
Significant experimental [1]	25	32
Nonsignificant	21	8
Significant control [1]	2	0

[1] p<0.05.

Table 7 reveals that the experimental group (talent-trained students) performed significantly better than the control group on 14 subtests of the Stanford Achievement Test; 18 were not significant, and the control group performed significantly better on 3 tests. This reveals a highly significant achievement trend in the direction of the talent group. A comparison with the achievement results at the end of the second year, in 1973 are as follows:

TABLE 7.—COMPARISON OF ACHIEVEMENT TEST RESULTS FOR ALL TESTS AT ALL GRADE LEVELS, END OF 2 AND 3 YEARS

	1973	1974
Significant experimental [1]	6	14
Nonsignificant	11	18
Significant control [1]	18	3

[1] p<0.05.

III. *Replication Study, 1977–78:*

Only one talent, productive thinking, was used as a criterion measure with its two subtests of flexibility and originality. A comparison was made, by grade, between subjects in the 1977–78 Talent Students with roughly comparable schools from the 1972–73 testing on flexibility and originality scores. Table 8 is a summary of the results.

Some trends may be noted in the data shown in Table 8. In general, there is fairly clear evidence of consistent superior performance of the 1977–78 experimental group over the 1972–73 control group on the flexibility score. The comparison is not so clearcut for the originality scores. In part, there is a noticeable tendency for the control group to outperform the experimental group even though in most cases the differences were not statistically significant. During the 1977–78 year there was less emphasis placed on originality in the talent program which may have accounted for these results.

TABLE 8.—REPLICATION STUDY: SUMMARY OF EXPERIMENTAL AND CONTROL DATA FOR PRODUCTIVE THINKING TALENT, GRADES 1 TO 6

	Flexibility			Originality		
	Experimental	Control	t-value	Experimental	Control	t-value
Grade 1:						
Mean	16.8	7.8		30.4	26.9	
SD	5.2	4.1	[1] +7.59	14.0	14.7	+1.15
N	46	26		46	26	
Grade 2:						
Mean	19.3	10.4		34.1	37.3	
SD	5.9	6.7	[1] +4.34	12.1	24.9	−.46
N	14	35		14	35	
Grade 3:						
Mean	14.7	12.6		26.0	44.9	
SD	3.3	4.7	+1.31	8.7	16.7	−1.61
N	10	31		10	31	
Grade 4:						
Mean	16.5	10.9		29.7	36.5	
SD	3.9	8.6	[1] +2.01	9.9	18.7	−1.11
N	10	50		10	50	
Grade 5:						
Mean	[1]5.9	10.6		34.3	38.6	
SD	5.8	5.3	+2.65	9.6	19.6	−.66
N	10	28		10	28	
Grade 6:						
Mean	12.8	12.2		24.8	36.9	
SD	4.4	11.5	+.29	11.7	19.2	[1] −3.21
N	37	32		37	32	

[1] Experimental and control groups significantly different at or below the 0.05 level. A negative t-value indicates control group outperformed the experimental group.

IV. *Arkadelphia, Arkansas Study, 1977–78:(1)*

An ESEA Title IV–C Project was implemented by the Arkadelphia School District No. 1 which adopted the Talents Unlimited procedures for a group of gifted and talented secondary students. There were 56 students in grades 8–12, and they were pre- and post-tested using the *Criterion Referenced Tests* developed by Talents Unlimited.

Their objective of achieving significant changes (at the .01 level) from pre- to post-test on the five talents was achieved. The results were summarized as follows, according to the final report: "The objective was achieved, as statistically significant gains were found on all six tests."

V. *Milaca, Minnesota, 1976:(17)*

A Talents Unlimited Program was introduced in the school system in the 1974–75 school year. After two years, results showed that "over 90 percent of the students in grades K–8 that participated in the project found that they were above average in at least one multiple talent" as measured by the *Criterion Referenced Tests* created by Talents Unlimited.

VI. *Livonia, Michigan, 1976:(17)*

Two talent areas, productive thinking and decision making, were selected for fourth- and fifth-grade students to participate in the Talents Unlimited Program. Experimental and control groups were selected for each grade level with 40 students in each group, making a total of 160 subjects. Pre- to post-test differences on the *Criterion Referenced Test* subtests of productive thinking and decision making were tested. Gains for the experimental students were significantly greater than those for the controls at the .01 level on both talents.

VII. *Mason, Michigan, 1976:(17)*

One class at each of the second, third, and fourth-grade levels was targeted for TU teaching, with a control class selected for each grade. Pre- and post-tests with the *Criterion Referenced Tests* were given in September, 1975, and May, 1976, respectively. "The experimental classes outperformed the control classes and the experimental groups in Alaiedon Elementary School outperformed experimental groups in Mobile."

Summary of Results and Projections for the Future

The overall results of the studies reported in this paper favor the Talents Unlimited Program. All of the studies cited show significant differences between the experimental groups that used the TU Program and control groups who did not.

At the present time several sites that have adopted the TU Program are gathering data and more results will be forthcoming. The *Criterion Referenced Tests* developed by TU make an excellent measure for comparison and add continuity to research efforts directed at evaluating the TU Program. Some uniformity of the experimental designs and tests used in the research studies should soon result in a body of information that will provide definite answers to the questions: Does the Talents Unlimited Program work? and for what groups does it work?

Currently (March 1979) there are approximately 70 adopters of the TU Program throughout the United States. Requests for information, on-site visits, and consultant services continue to pour in to the Mobile office. Subjects include ages from pre-school through adulthood providing an ever expanding audience for the program. Projections of the possibilities for Talents Unlimited seem to be, indeed, "unlimited."

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ANTITRUST DIVESTITURE AND ANCILLARY RESTRAINTS IN THE PETROLEUM INDUSTRY

Mr. HATCH. Mr. President, big oil is under ever-increasing attack and scrutiny from all corners, especially in light of the escalating prices at the gas pumps. Many believe that the only remedy capable of containing the so-called monolith, hereby insuring market competition in the oil industry, is antitrust divestiture of the major oil companies.

Recently, Robert S. Campbell, Jr., one of this Nation's outstanding lawyers—from Salt Lake City—received a diploma in law from the University of Oxford for his thesis concerning antitrust divestiture of the oil industries in the United States and Great Britain. The thesis not only represents a tremendous scholarly effort on the part of Mr. Campbell, but also is a comprehensive examination of the proposition that the major oil companies are monopolistic and engaged in an anticompetitive conspiracy.

Mr. Campbell's thesis also addresses the assault on the marketing and refining tiers of the oil industry. I could not agree more fully with Mr. Campbell's statement that:

> The goal of antitrust . . . is that competition is to be conducted for its own sake and on its own merits at all marketing tiers. While harsh and seemingly inequitable at times, it is plainly the best stimulant to economic activity for it guarantees the widest possible freedom of action for traders.

Mr. Campbell thus is not advocating the demise of divestiture as a remedial tool but he does conclude that:

> There is no evidential showing of monopoly or shared monopoly at either the refining or retail markets under the Sherman Act and a fortiori, monopolization under section 2 is not even reached.

Mr. Campbell then observes:

> The massive profits realized from the escalating price of crude and OPEC cartelizing, are relevant topics for taxing authorities and new exploration initiatives; but they have been demonstrated in this thesis to be unassociated with monopolization.

It is because of these vital insights and my belief that this study might be one of the most definitive in this area, that I ask unanimous consent that Mr. Campbell's thesis be printed in the RECORD.

There being no objection, the thesis was ordered to be printed in the RECORD, as follows:

ANTITRUST DIVESTITURE AND ANCILLARY RESTRANTS IN THE PETROLEUM INDUSTRY—A COMPARATIVE ANALYSIS OF UNITED STATES AND UNITED KINGDOM ANTITRUST LAW

(By Robert S. Campbell, Jr.)

CHAPTER I: INTRODUCTION, OBJECTIVE AND SUMMARY CONCLUSIONS OF THESIS

This Thesis will subject to legal analysis the contemporary economic structure and market behavior of the major petroleum companies at the refining and marketing tiers in the United States and United Kingdom, viewed in the critical context of relevant and applicable antitrust laws and policy.

The analysis is timely. For several years past, the call has gone out in America from principal origins in the academia and government, for competitive and structural reformation through antitrust divestiture of large oil companies in the petroleum industry to achieve a lesser degree of market concentration and dominance, and correspondingly to provide a more atomized complexion of competition.[1] The focus of most of the attention has been, particularly, at the refining and marketing levels of the vertically integrated major companies. Also under assault have been various refining and retail marketing practices alleged to be in restraint of trade. On the east side of the Atlantic, the competitive behavior of large oil companies has been the subject of a monopoly reference to and report by the Monopolies and Mergers Commission in the United Kingdom twice in 14 years.[2]

The drumbeat for antitrust reform of Big Oil has paralleled if not been occasioned by a petroleum and energy shortfall of crisis dimension. As society's most fundamental producer of energy, the petroleum industry has become the *sine qua non* of the national economies of both the United States and the United Kingdom. Faced with dwindling domestic production and increasing dependence upon imported crude from foreign and politically sensitive nationals, the United States has been required to assess its present and future energy needs and its propensity for high levels of oil consumption, such that can only be characterized as gluttonous. On the other hand, the U.K. has in recent years become a significant producing country of domestic crude with the development of the North Sea and it is presently undergoing self-analysis to determine its petroleum requirements. While antitrust considerations affecting the oil industry are unquestionably severable from the exigencies of the world petroleum shortages, the visceral pains brought on by the latter have plainly highlighted the given new emphasis to structural and trade restraints of the petroleum companies.

The gravamen of the case against the major oil companies may be summarily stated[5]—massive size and wealth, control of output, monopoly profits, price uniformity, joint collaboration at critical stages of exploration, development, transportation, and refining, intense vertical integration, market dominance, and exclusionary practices designed to maintain high entry barriers and reduce competition. In short, the complaint is that Big Oil is so ubiquitous and omnipotent that meaningful competition as the refining and retail markets is significantly foreclosed. Divestiture of those down-stream assets is claimed as the remedial device.

The Thesis will address the factual predicates for the charges against Big Oil and the remedies proposed within the juridical texture of the national antitrust laws of the United States and the United Kingdom. To the antitrust purist, the work may be somewhat of a disappointment, for one postulate of this Thesis is that competition policy does not exist in an antiseptic, water-tight compartment unaffected by other national ambitions and goals. Conservation of finite energy resources, stimulation of new exploration, and the establishment of a comprehensive energy plan for each Country are ambitious that may opt for differing goals than those of antitrust. To the extent that the objectives are at variance, they must be rationalized and a balanced concensus struck that preserves the policies of both antitrust and energy without rendering either impotent.

The relevant parts of the Sherman Act, Clayton Act and the Federal Trade Commission Act of the U.S. will be studied as to their impact upon structural and behavioral aspects of the large oil companies. Competition law of the U.K. consists of two parts, *viz.*, the internal national law of Britain and secondly, the antitrust law of the European Economic Community (Common Market) under Articles 85 and 86 of the Treaty of Rome. Both will be examined and comparisons made with United States antitrust law and enforcement.

Within the larger dynamics of fundamental antitrust policy as adumbrated in Chapter VI, it is the premise *quinta essentia* of the Thesis that vertical divestiture at either the refinery or retail marketing tiers of the major oil companies is unsupported under the respective antitrust laws of either the United States or the United Kingdom. The failures of the arguments for divestiture of Big Oil, along with the bases and rationale for the conclusions, are set forth in 'Chapters VI, VII, VIII and IX.

The penultimate axiom of the Thesis is that the practices of tying arrangements, information exchanges, exclusivity contracts and exclusionary and discriminatory pricing of major companies with company-leased or independent-owned retail operators are extant in differing but measurable degrees in the two Countries. That conduct may or does transgress the antitrust laws of both the U.S. and the U.K. Vigorous enforcement and heavy penalties, criminal and civil, are compelled to insure effective competition in the vertically-oriented petrol products at the retail market.

CHAPTER II: THE UNITED STATES PETROLEUM MARKET—STRUCTURAL ECONOMICS AND BEHAVIOR

1. The International OPEC Market:

In the norm of things, any complete dissertation on the vertical integration and concentration of power at the refinery level of the oil industry would encompass the sources of production and supply. Access to a reasonably ensured source of crude oil is pivotal to the viability of refinery operations and the absence of that dependable source constitutes a plainly identifiable barrier to new market entry.[4] Because of the pronounced reliance of the U.S. domestic petroleum market upon production and supply from the Persian Gulf, Africa, and from the Organization of Petroleum Exporting Countries (OPEC) specifically, it deserves some attention in this work.

That is not to say that production and supply from the mid-East or Africa is entitled to separate billing, or extended examination. The reasons are several. To begin with, the larger topic of arrangements between OPEC or particular oil producing countries and major oil companies is a vast and complex subject which inherently reaches quite beyond the reasonable perimeters and endurance of this Thesis. Second, much has been already written and more said regarding OPEC structure, its objectives and its relationship with the multi-national oil companies.[5]

Having said that, however OPEC still offers a contribution to this analysis not only for the initially stated reason, but because its behavior provides a vivid bench-mark from which relevant antitrust analysis may proceed. Organized in 1959 by the five charter members,[6] OPEC from the beginning was intent upon controlling output and establishing fixed pricing policies for Persian Gulf and Venezuela crude. By the early 1970's and with eight new middle-East and African members added, it accomplished its ordained objectives. The emphatic oil embargo of 1973 followed.

It does not require a divining rod to reach the conclusion that OPEC is a textbook cartel, engaged in open horizontal price-fixing and restriction of production. The cartel practices are intended to impact and have impacted upon the petroleum market in the United States and Great Britain. All of the pernicious effects of anticompetitive and collusive behavior, *viz.*, shortage of supply, spiraling price increases and prodigious profit-taking, were the outgrowth of the post–1972 cartel behavior.

Moreover, most empirical evidence demonstrates that while there was episodic and mixed competition between the major oil companies,[7] *inter se*, as well as with other independent, producer companies[8] for the rights and concessions to lift and distribute crude petroleum in the various Countries within OPEC, the producing companies also combined and arranged to stabilize crude production, maintain crude oil prices, and divide territorial markets.[9]

We need not pause very long in this Chapter to consider whether the OPEC cartel or, for that matter, the oil producer arrangements within OPEC violate the antitrust laws of the U.S. and the U.K.[18] The paragmatic fact of life is that the prolonged contrivances and manipulations of the OPEC cartel and the accompanying oil production and play in which both major and independent petroleum companies in the U.S. and the U.K. are inextricably involved, are so fraught with and wedded to interal politics of foreign governments and international diplomacy on

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the largest scale that the antitrust laws of the United States or the United Kingdom have muted relevance.[11]

For purposes of this Thesis, it is sufficient to say that under historical practices of the industry, OPEC crude has been supplied by the major and independent oil companies having operations in OPEC to major and independent refineries in the U.S. Such production has coincided with contemporaneous supplies of domestic crude to major and independent refiners.[12] The proportional level of supply should not be altered, except by contractually established terms. It is within that framework that plenary consideration is given to the structure and character of the refinery tier of the oil industry.

2. Characteristics of the U.S. Petroleum Market:

The United States oil industry, in providing refined petroleum products for all use by all sectors of the economy, is functionally divided along four basic levels—exploration and production, refining, transportation and marketing. The vertically integrated companies conduct significant operations in all tiers, while smaller oil companies or organizations are in only one or more phases.

The development of the national economy in nearly all facets, has been geared to petroleum products, particularly refined petrol. The automotive industry, for example, claims that it serves as the base for employment, directly or indirectly, for one of every 5.5 civilian workers. U.S. dependence on oil in almost every social and economic division has created the greatest demand for one specific energy source in the history of the world. It has also spelled immense wealth and power for the petroleum industry, the major integrated companies in particular.

(a) Production—At the exploration and production level, there were in 1978 better than 12,000 oil operators in the U.S. Many of them were thinly capitalized, were engaged in wildcat speculation and consisted of individual entrepreneurs, closely-held limited partnerships and corporations, publicly-traded diversified conglomerates, moderately sized but established oil producers and, of course, the giant vertically integrated companies. While only a small fraction of the total number of operators in the field brought in commercial production in 1978, the sheer magnitude produced significant competition in leasehold bidding, in the acquisition of well rig equipment, and in capital funding. 1978 was representative of the domestic oil market throughout the 1970's with federal legislation of 1975, deregulating the controlled price of U.S. crude on a graduated bases, having provided further incentive for new exploration.[13] During 1978, 132 companies produced 70 percent of the domestic crude.[14]

TABLE I.—MAJOR OIL CORPORATION LIQUID HYDROCARBON PRODUCTION AND ESTIMATED OIL RESERVES, 1978

Company	U.S. production, B/D [1]	Percent of total U.S. production	Total world production by U.S. companies, B/D [1]	Percent of world production by U.S. companies	World oil reserves (million barrels)	Company	U.S. production, B/D [1]	Percent of total U.S. production	Total world production by U.S. companies, B/D [1]	Percent of world production by U.S. companies	World oil reserves (million barrels)
Exxon	715,000	8.2	4,242,000	20.5	15,359	Socal	373,200	4.3	3,226,900	15.6	15,840
Atlantic/Richfield	526,900	6.1	642,600	3.1	3,145	Gulf	331,100	3.8	1,512,300	7.3	2,020
Sohio	528,402	6.1	524,882	2.6	4,106	Mobil	260,000	3.0	1,918,000	9.3	7,682
Texaco	511,000	5.9	3,410,000	16.4	15,941	Getty Oil	249,400	2.9	419,200	2.0	2,283
Amoco	444,000	5.1	941,000	4.5	3,539	Continental	151,000	1.7	436,000	2.1	1,979
Shell—U.S.	409,000	4.7	427,000	2.1	1,796						

[1] B/D=Average barrels per day (42 U.S. gallons=1 bbl).

Source: U.S. National Energy Management Report (1979), pp. 10, 11.

As in the past but in differing degrees, the primary production came from eleven major companies. Table I on the facing page reflects the production and relative market shares of the eleven highest corporations. Exxon led in domestic production with 715,000 barrels average daily operations and 8.2 percent of total U.S. petroleum market. It was followed by Atlantic Richfield, Standard of Ohio (Sohio) [15], Texaco, Standard of Indiana (Amoco), Shell-U.S., Standard of California (Socal), Mobil, Gulf and others.[16] The top four and top eight companies accounted respectively for 26.3 percent and 44.2 percent of average daily production. Table I also indicates the total crude produced by the ten major companies (non-U.S. operations included), the representative percentage of each corporation to total crude operations by U.S. nationals, and world oil reserves (estimated) of each entity.

Table II on the facing page demonstrates the historical market share of the ten largest companies in U.S. production at three time frames between 1960 and 1978. It is clear the market share has not been a static condition. Where a move of one percent market share would, on the scale of the top 10 companies, exceed $265 million in revenues, Exxon has steadily increased its market position against the other majors. Amoco and Shell-U.S. have done likewise. Texaco has lost market share and Gulf's share has been erratic. It is quite apparent that the aggregated market share for the top ten has decreased significantly *vis-a-vis* other U.S. petroleum producers over the eighteen-year period.

It may be generally concluded that even though the number of competitors is sizable at the production level, the accumulated market shares of the major companies has the configuration of an industrial oligopoly. When foreign production of the U.S. majors imported into the U.S. is tabulated along with the domestic crude market, a structural oligopoly within the industry at the production tier is even more pronounced.

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b. Refining.—The petroleum refinery is the central port in the petroleum industry. It is, for practical purposes, the sole buyer of crude oil and through its processes, the raw product is transformed into petrol, aviation fuel, industrial and residential fuel oil, lubricants and other lighter hydrocarbon liquids.

TABLE II.—18 YR OF DOMESTIC CRUDE PRODUCTION IN UNITED STATES

Company	1978 ranking	Company Market Share of U.S. Production 1978	1969	1960
Exxon	1	8.2	9.8	6.5
Sohio	[1] 2	6.1		
Atlantic/Richfield	3	6.1	5.1	5.9
Texaco	4	5.9	8.5	8.9
Amoco	5	5.1	5.1	4.3
Shell—U.S.	6	4.7	6.1	4.8
Socal	7	4.3	5.3	4.7
Gulf	8	3.8	6.8	5.1
Mobil	9	3.0	3.9	3.4
Getty Oil	10	2.9	3.4	2.9
Continental	11	1.7	2.2	2.5

[1] Standard of Ohio was the 2d largest producer in 1978 because of a 1970 BP takeover and merger with Signal Oil Co.

Source: U.S. National Energy Management Report (1979), p. 10. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 13.

Entry into the refining market faces several barriers. One is capital requirements. Another is environmental regulations. But the most important element of market entry is access to crude oil supply. The refining operation is not under patent and is well understood in the petroleum field, thus posing no technological barrier to entry.

In 1978, U.S. domestic refining exceeded 16 million barrels per day by major and dependent oil companies.[17] Of that, Exxon, Sohio, Social (Chevron), Texaco and Shell-U.S. accounted for approximately 40 percent and the top eight major companies totalled 57 percent of refinery runs.[18] The industry, consisting of almost 60 major and independent refiners, operated at slightly less than 88 percent capacity. Table III on the opposite page sets forth the relative share of refining capaicty (as contrasted to product) for the eight major companies extant in 1978 as well as their respective capacity shares in 1970. While no single company had as much as 10 percent available capacity, Exxon and Social increased their individual positions in the industry by approximately 1 percent in eight years, while Shell-U.S. Amoco, Texaco, Mobil and Atlantic Richfield have each experienced distinguished reductions in relative capacity shares. Since the early 1950's at least eighteen non-integrated refiners have built new facilities each having a capacity of over 50,000 barrels a day with eleven of such plants having better than 100,000 barrels a day capacity.[19] Between 1951 and 1974, the proportionate domestic refining capacity of the twenty largest firms (most of which are significantly integrated at all levels) decreased from 80.68 percent of total U.S. refining capacity to 73.9 percent.[20]

TABLE III.—REFINING CAPACITY SHARE FOR MAJOR OIL COMPANIES IN UNITED STATES, 1979–78

Company	Refining capacity (percent) 1978	1970
Exxon	9.5	8.6
Socal	8.8	7.7
Amoco	7.4	8.2
Shell—U.S.	6.8	8.0
Texaco	6.6	8.1
Gulf	5.5	5.8
Mobil	5.4	6.3
Atlantic Richfield	4.8	5.4
Top 4	32.5	32.6
Top 8	54.8	58.1

Source: U.S. National Energy Management Report, (1979) p. 12. U.S. Senate Report of Investigation of Petroleum Industry, (1973), table II-3.

The integrated nexus between crude oil production and refining capacity of the major oil companies for two separate years, 1978 and 1970, are set forth on Table IV on the facing page. Exxon is No. 1 in the parade in all departments. Beyond that, while correlation is not precise, it is apparent that several companies, namely Sohio, Atlantic Richfield and Getty, hold measurably higher market shares as producers than they do as refiners. The resulting inference is that each has excess crude beyond their respective refinery needs which would be sold to independent refiners who have no integrated production. Of course, the parallel argument cuts in the opposite direction in the case of Socal.

The fact is that each of the major petroleum companies, Exxon and Socal included, have sold and do sell crude oil to independent refineries on a regular basis.[21] Location or origin of production *vis-a-vis* the location, size and type of integrated refinery will invariably dictate contractually established sales from the majors to the independent refiners. Indeed, non-integrated refining companies locate with pinpoint accuracy their plants so as to have proximity and access to an oil field that is in play, to a pipeline, or to a receiving port.

That is not to say that independent refining companies have a good-housekeeping guarantee that uninterrupted access to crude oil is assured for domestic refining in the United States. There have been shortages of crude experienced by independent refiners, and the claim has been made that the integrated majors have given preference to their own refinery operations at times of tight supply.[22] But in the ordinary course, the independent refiners buy crude from the major companies, from independent field and foreign producers, and on the spot market from both. Nothing in the published literature, including the litany of hearings and reports before the U.S. Congress, indicates that any of the some forty identified independent refiners have been forced or "squeezed" out of business by the twenty plus integrated companies prior to or since the 1973 OPEC embargo.

TABLE IV.—COMPANY RANKING IN CRUDE PRODUCTION AND REFINING CAPACITY IN UNITED STATES

Company	1978 Rank in crude production	1978 Rank in capacity refining	1970 Rank in crude production	1970 Rank in capacity refining
Exxon	1	1	1	1
Sohio	2	14		
Atlantic/Richfield	3	8	6	8
Texaco	4	5	2	3
Amoco	5	3	7	2
Shell—U.S	6	4	4	4
Socal	7	2	5	5
Gulf	8	6	3	7
Mobil	9	7	8	6
Getty Oil	10	20	9	16

Source: U.S. National Energy Management Report, (1979), pp. 10–12. U.S. Senate Report on Investigation of Petroleum Industry, (1973), table 4.

TABLE V.—MAJOR COMPANY GASOLINE MARKET SHARES FOR 1978–1970

Company	Percent 1978 market share	Percent 1970 market share
Exxon	7.3	7.4
Texaco	6.7	8.1
Socal	4.8	5.0
Amoco	7.7	7.3
Shell—U.S	7.7	7.9
Mobil	5.5	6.6
Gulf	5.8	7.1
Atlantic/Richfield	3.8	5.6
Top 4	29.4	30.7
Top 8	49.3	55.0

Source: National Petroleum News (June 1979), p. 118. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 22, table II–7.

Footnotes at end of article.

While much of the critique on the purported lack of competition and dominance of the major companies at the refinery level has stemmed from government agencies and hearings, the irony is that the Federal Government, through its own policies, has created the most difficult barriers to new entry. First, the Government placed quota restrictions on the importation of foreign crude; such cut supply and availability of crude to independent refiners. Second, Government tax policy has created tax incentives for the vertically integrated majors to take a substantial part of their profits at the production stage, leaving a smaller competitive margin at the refining tier. Third, regulations of the Department of Energy require Government approval prior to developing further retail marketing outlets, thus restricting new markets for independent refiners. Fourth, tedious Governmental regulations on environmental considerations of new refining location have resulted in critical lag-time and increased capital costs. Elimination of these invented, non-economic barriers would enhance the possibility of market entry by new refiners.

The refined product within the industry, whether petrol, aviation fuel, industrial feed or residential heating oil, is generally homogeneous and interchangeable. Such is notwithstanding what is read in newsprint or seen on the television screen through oil company advertisements.

c. Retail Petrol Market—The most visibly competitive marketing tier in the industry is the retail level. Entry into and exit from the petrol or filling station is more frequent and with less capital requirement than at any other phase. For decades, there was a clear line between independent and company retail outlets. The former sold petrol on a no-frills basis, offering little adjunct service. The latter provided service and repair along with petrol and did business under the banner of a major and recognized company. Independents generally sold underneath the major retailers, and the ultimate purchaser was, therefore given a choice between a low-budget operation or the more elaborate marketer with full service and credit cards.

The demarcation between the two types of retailers is now much more subtle. For one thing, most major outlets (company operated or leased) have turned to the self-service pump. For another, many majors have seemingly backed out of the retail market only to return under a new brand name. Price distinction has also been blurred.

In 1978, there were over 172,300 petrol stations in the United States. Texaco owned 27,324 of them outright, Exxon owned 23,807, and the top four and top eight majors owned 92,174 and 151,826 stations respectively.[23] Table V on the facing page reflects the market share of the major oil companies in the U.S. retail petrol market for 1978 as well as for the comparative period of 1970. Shell-U.S. maintained its lofty position of 7.7% share of the market equalled by Amoco. Exxon followed in third position with 7.3% of petrol sales. While none of the market shares of the majors, standing alone, is particularly prominent, the accumulative market share of the top four and eight bear some resemblance to the aggregate market share of the corresponding four and eight largest corporations in refining. See Table III. Such comparison underscores the empirical finding that majors sell principally to their own retail stations with noted exceptions and independent retailers buy primarily from independent refiners.[24] Dependent upon the refined product, market share in refinery operations may exceed significantly the correlative position in petrol retailing, as in the case of Socal. The fact remains constant that unless the distribution system from refinery to retailer undergoes a radical alteration, the integrity of the independent retailer is fastened to the identity of the independent refiner. The collective market shares of the eight major companies in retail operations has declined between 1970–1978, and several economists maintain that the drop-off has been consistent.[25]

The petrol product which the retail market offers for sale in the U.S. is both reasonably homogeneous and interchangeable. While there are real and qualitative differences between "leaded" and "non-leaded" petrol,[26] the octane rating and performance ratios of refined petrol are substantially uniform.[27] Conditioned upon the location of refineries and the length of haul to retail sites, it is not uncommon for a Socal station to be selling Amoco refined product or Shell to retail Exxon refined petrol. Such inter-company exchanges are accomplished with reverse spin in another geographic area or sub-market. Exchanges of refined petrol (or crude for that matter) take place primarily between major oil companies with little switch-overs occurring between majors and independents or independents, *inter se*. The practice is claimed to be justified on cost savings.

The retail petrol market in the U.S. is the most atomized and unconcentrated economic tier of the petroleum industry. Independent outlets have the capacity to and do compete with the majors on a reasonable parity, particularly, to a large degree since than before 1972. Price cutting by independents is still found in selected areas periodically, especially if an excess wagonload is purchased on the spotmarket, but to a far lesser degree than the pre-OPEC embargo. The reason is apparent—scarcity of supply has placed pressure on the retail market which permits the independent to sell his inventory at the maximum ceiling price without profound fear of market penetration from competitors.

d. Restrictive Practices at the Retail Market.—Major oil companies conduct retailing operations under two general headings, owner-operated outlets and leased stations. The former category is reserved for those situations in which the operator is the employee-servant of the corporation. In the latter, the operator is an independent agent who accounts for his own operating profit, but flies under the flag and brand of the major. It is the second type which is of significance to antitrust considerations herein.[28] It is not atypical for the major to place the operator on a short-term lease subject to a thirty-day cancellation notice. If the capital improvements have been built in whole or part by the operator, the company may bankroll the improvements subject to low interest pay-back provisions. The major may also provide racks, hoses, and other ancillary equipment. Many of such arrangements have ostensible and pro-competitive bias. It is ensuing dealings between company and operator that are of antitrust concern.

Requirement contracts between the refiner and retailer are common in the industry, particularly with the major companies,[29] such "exclusive dealing" arrangements force the retailer-operator to buy all petrol from the major. The operator is unable to buy from an independent jobber or refiner at a lower price and conversely, that segment of the retail market is foreclosed to the independent jobber or refiner.

In addition, the practice has been widespread throughout the industry in the U.S. during the past twenty years wherein the retailer was obligated or "encouraged" by the major company to purchase tires, batteries and other automotive accessories (T B A) either from the petrol supplier or from an identified third-party supplier (i.e., Firestone, Goodyear, etc.). In many instances, the oil company receives a commission from the third-party supplier in return for requiring or "suggesting" that the retailer purchase that supplier's T B A. Such arrangements, known as "tying contracts" or "full-line forcing" are not presently as commonplace as they were ten to fifteen years ago, but they still exist in the industry.

e. Vertical Integration of Oil Majors—The extent of business activity conducted by one entity at the various marketing tiers of an industry has been a consistent barometer in measuring market power and concentration under the U.S. antitrust laws. In the oil industry, the relative levels of economic synthesis by the major oil corporations are remarkable.

TABLE VI.—COMPARISON OF U.S. COMPANY RANKINGS IN PRODUCTION, REFINING, AND RETAIL SALES, 1978—1970

Company	Rank in crude production		Rank in refining capacity		Rank in retail sales	
	1978	1970	1978	1970	1978	1970
Exxon	1	1	1	1	3	3
Texaco	4	2	5	3	4	1
Gulf	8	3	6	7	5	5
Shell—U.S.	6	4	4	4	1	2
Socal	7	5	2	5	7	8
Atlantic/Richfield	3	6	8	8	8	7
Amoco	5	7	3	2	2	4
Mobil	9	8	7	6	6	6
Sohio	2	------	14	------	16	-----
Getty Oil	10	9	19	16	18	(1)

[1] Not in top 20.

Source: U.S. National Energy Management Report, (1979), pp. 10, 11, 12. U.S. Senate Report on Investigation of Petroleum Industry, (1973), p. 22.

At all strata of competition, the same companies finish win, place or show, and in all events are in the first eight. Table VI on the facing page demonstrates the highest and comparative rankings of the major companies in the primary brackets of production, refining and marketing for the years 1970 and 1978.[30] While the Table speaks fairly for itself, it is noteworthy that there has been considerable movement between the ten companies during the eight-year period. Besides vertical dispersion of economic strength, the Table provides a source for two important propositions; (a) no two companies conduct their activities in the same manner and (b) market shares have not been pegged or slotted vertically or at any horizontal level.

f. Financial Size and Income of Major Companies—U.S. antitrust law has given size and earnings prominence in vertically integrated monopoly cases.[31] Exxon is the world's largest corporation with assets exceeding $35 billion as of 1978. Its revenues in 1978 were slightly under $65 billion representing 20.5% of total U.S. petroleum industry revenues. Exxon achieved a return on both equity and debt capital of 11.5% for 1978. Assets, revenues, relative financial position in the industry, return on capital and earnings available to stockholders for Exxon and other major U.S. oil companies for 1978 are set out in Tables VII and VIII. Texaco is the third largest corporation in the U.S., Gulf is the sixth largest, Mobil is seventh, Social is ninth, Amoco is twelfth, Shell is fourteenth and Atlantic Richfield is the nation's sixteenth largest corporation.[32] In all, five of the companies are among the ten largest corporations in the United States. It is claimed that if Exxon were stripped of all refining, marketing and transportation properties and left only with production and reserves, it would still be the world's largest corporation.[33]

TABLE VII.—ASSETS AND RELATIVE SIZE OF 8 LARGEST U.S. OIL CORPORATIONS, 1978

[Dollar amounts in millions]

Company	Gross assets	Net assets	Return on total capital (percent)	Rank in oil industry
Exxon	$35, 554	$22, 805	11. 5	1
Texaco	17, 872	10, 706	6. 6	2
Mobil	16, 972	10, 161	9. 4	3
Gulf	15, 781	9, 063	8. 6	4
Amoco	15, 001	8, 848	11. 0	5
Socal	12, 985	7, 153	11. 6	6
Atlantic/Richfield	12, 565	8, 592	9. 9	7
Shell—U.S.[1]	12, 373	7, 450	9. 0	8

[1] Only Shell—U.S. Royal Dutch/Shell not included.

Source: U.S. National Energy Management Report, (1979), p. 5. F.T.C. v. Exxon Corp. et al., F.T.C. docket.

Footnotes at end of article.

TABLE VIII.—GROSS REVENUES AND NET INCOME AVAILABLE TO COMMON STOCK, 1978

[Dollar amounts in millions]

Company	Revenues	Percent of total industry revenues	Earnings available to common stock
Exxon	$64, 886	20. 4	$2, 763
Mobil	37, 331	11. 7	1, 125
Texaco	29, 124	9. 2	852
Socal	24, 597	7. 7	1, 105
Gulf	20, 097	6. 3	791
Amoco	16, 349	5. 1	1, 076
Atlantic/Richfield	12, 984	4. 1	804
Shell—U.S	11, 123	3. 5	813

Source: U.S. National Energy Management Report, (1979), pp. 4–6.

CHAPTER III: THE UNITED KINGDOM PETROLEUM MARKET—STRUCTURAL ECONOMICS AND BEHAVIOR

Much of what has been stated in Chapter II with regard to the OPEC cartel and its proximate impact upon the U.S. petroleum market has general relevance in the U.K. and thus, need not be recounted. There are cogent distinctions to be drawn, however, that make the neuroses of OPEC cartelizing of lesser consequence to the United Kingdom petroleum market. For one, the addiction to petroleum use is significantly smaller per capita, in the U.K. than in the U.S. For another, the discovery and development of crude oil in the North Sea during the decade last past has cast the U.K. in the posture of probable self-sufficiency. While Mid-East oil supplies are still of national and international concern to the British Government, OPEC crude production has come and will continue to play a diminished role as the essential source of oil supply for the U.K.

1. Characteristics of U.K. Production: Oil production in the United Kingdom has a vastly different genealogy than that of the U.S. Where oil was an American invention in the late 19th Century with prodigious oil discoveries in Pennsylvania and Texas, the U.K. was without any quantifiable, domestic oil fields. Thus it was that prior to the North Sea strike in the 1960's the U.K. was dependent upon imported petroleum, some from the U.S., but most prominently from the Persian Gulf. That in turn inexorably linked U.K. production to the world's largest petroleum companies, Royal Dutch/Shell, British Petroleum, Exxon, and Texaco. Prior to 1976, Shell and B.P. did business at several vertical tiers of the industry under a joint venture, Shell-Mex B.P. Ltd.[34]

Through the early 1960's crude oil production imports to the U.K. were highly concentrated with Shell-Mex and B. P. (50 percent of the market), Exxon doing business as Esso (29 percent of the market), and Texaco doing business as Regent (13 percent of the market) having an aggregated 87 percent slice of the market.[35] Other producers in the form of Mobil, Petrofina, Jet (later acquired by Continental Oil Co.) and VIP made market penetrations and by 1970, the initial and pervasive market shares of Shell-Mex B.P. and Texaco had declined. Such new entries were the result of wildcat discoveries and fresh production by smaller companies from emerging OPEC countries, who had not established refinery or retail outlets. While precise market shares of imported production are not available for the year 1970, it is estimated that the primary participants in the market were:

[In percent]

Company:	*Production market share*
Shell-Mex & B. P	40
Regent	22
Esso	9
Mobil	7
Jet, Petrofina, VIP, CFP (collective)	20

2. North Sea Production And BNOC;

Beginning with methane hydrocarbon discovery in the southern fields and then eclipsed by major oil strikes in the Montrose and Forties Fields, the complexion of U.K. oil production took a dramatic turn. Not only did the United Kingdom find itself as a domestic source of crude oil, but the Government was faced with the question of what proprietary and regulatory role it should pursue.

With respect to production, some persuasion was required to induce the major companies to commit extensive capital to the North Sea at a time when almost all U. K. producers were already heavily committed in the Middle-East.[37] The startling 1973 OPEC embargo and contemporaneous nationalization of producer assets in several OPEC countries solved that problem. Major corporations turned to the North Sea as a more dependable and politically less volatile area for exploration and production.

As to the Government position, it had long been an equity owner in B. P. Although it had not attempted to exercise any control over the conduct of B. P. foreign or domestic operations at the production or any other level, the relationship between the Company and the Government Foreign Office was inordinately close.[38] Such ownership and association could have had antitrust implications in the development of the North Sea, but it was determined early-on, incident to the first round of leases (licenses), B. P. was to have no special standing.[39] It stands with the other companies, and as in the past, the Government has not pressured or blocked privately motivated management decisions of the Corporation.

(a). North Sea Licensing and Antitrust—The United Nations Convention on the Continental Shelf of 1964 settled the boundaries and resource rights of coastal states in the North Sea. Such was followed by the 1964 Continental Shelf Act of the U. K. Parliament which amplified and supplanted the Petroleum and Producion Act of 1934 (the latter having no application to off-shore exploration and development). The 1964 Legislation defined the regulatory powers of the Government to grant off-shore leases to oil companies and statutorily delineated the character and extent of lease-hold interests.

There are essentially two types of lease (or license) arrangements that have been traditionally utilized in oil exploration by national sovereigns that have antitrust relevance: (1) competitive bidding and (2) discretionary allocation. The former, as the phrase implies, calls for bid on public lands to be put out to the public at large and the exploratory acreage is awarded under lease to the highest qualifying bidder. It has been historically utilized with success by the United States for wildcat acreage, both on- and off-shore. The latter methodology permits a government to predicate allocation of exploratory acreage under a licensing agreement to selected oil companies in its discretionary judgement. The Netherlands and all countries in the Middle East (OPEC) have adopted such approach.

The Continental Shelf Act authorized the Government, for the first time, to employ the discretionary method of allocated licensing on North Sea acreage as well as the U.S. procedure of competitive bidding for acreage sections. The U.K. Government has opted to follow the discretionary scheme in all but one round of acreage allocations.[40] The theory behind the discretionary ploy was that Whitehall could maintain much closer supervision of exploration and rate of production under the license together with a greater security of royalty payments. In effect, the companies were the agents *vis-a-vis* independent contractors of and worked for the Government. While the license did not require an elaborate capital cost at the outset, close cooperation was expected of the oil company in wildcat drilling and aggressive production in the event of an oil find. Elsewise, the producer might not be considered as a viable candidate for the next round of licenses.

Whether the method selected for development of the North sea acreage was provident and in the public interest is a policy question left for others. But for fundamental precepts of free enterprise and antitrust, it was fortunate. In the initial rounds of licensing large tracts on the Continental Shelf, licenses were handed out to specific major oil companies without threat of competition from others in Big Oil or lesser known independents. Such license *eo instanti* conferred upon the licensee the right to drill and in the event of production, immediate market position at the production level was insured in the U.K. The big could become bigger under the system; the smaller operator was not given a chance, unless it were able to find its way into a suitable consortium.[41] Upon discovery, the licensee, assuming it had United Kingdom refining capacity, could increase its market share in vertical tiers as against others who had not been preferentially chosen in the licensing rounds. If the licensee did not have refining capabilities of excess capacity, it could sell the crude to a company in exchange for other possible advantages in the North Sea operations, but the latter would have increased market position at the refining level. And all of this transpired without the benefit of competition.

It is not as though the discriminatory license theory transformed the entire petroleum industry in the U. K. into a polite game of "monopoly" between the Government and a few well-celebrated companies. It did not. Licenses were parcelled out to a reasonable spectrum of companies and consortiums who had some legitamacy of interest in Britain. But the flaw lay in the fact that at the vortex of development and production of the enormous resources of the North Sea, market power and share in production were dictated by Government favor rather than the competition of the market place. One could hardly stand charged by the Monopoly and Mergers Commission of the U. K. or the European Economic Commission of occupying a monopoly or dominant position at the production level of the industry contrary to the antitrust laws, when the Government, itself, was *particeps civicus* in established market dominance.

2(b). British National Oil Corporation (BNOC)—In the mid-1970's, Whitehall became concerned that North Sea licenses and statutory licensing provisions did not enable H M Government to exercise sufficient control over rate and distination of production and moreover, to recoup the larger and "full" financial benefits of crude production.[42] In addition, there was a view in Parliament that a nationally owned oil company should become directly involved in the petroleum industry. While the National Coal Board (NCB) had some stake in the North Sea and maintained a small but intuitive staff, the powers and authority of the NCB were not sufficient to deal with the expanding importance and hand of the Government in the North Sea. To resolve these claimed inadequacies, the Petroleum and Submarine Pipelines Act of 1975 was enacted by Parliament. The Act not only increased the Government's position in existing North Sea licenses and gave H M G the jurisdiction over submarine pipeline development, it created BNOC as the public entity who was to have direct ownership, technological and operational interest in North Sea development.

The Legislation endowed the Corporation with measurable powers, subject to Ministerial acquiescence, to engage in exploration and development (as well as down-stream activities of refining and marketing) in the North Sea alone or in combination with others. BNOC has the authority under the Act of 1975 to raise debt capital for oil operations, to receive a larger representative interest in existing leases, to take the Government royalty oil "in kind" rather than the traditional payment and to assume the previous interest of the NCB in North Sea development. Finally, the Act authorized the Department of Energy to issue production leases to BNOC at any time, and not just at regular licensing rounds in which private oil companies are selected.

The consolidation and restatement of Government objectives under the P & SPA may have been well and good for more efficient administrative policy as well as reflecting new fiscal concepts as the development of the North Sea unfolded. But the establishment of BNOC as a national corporation to engage in petroleum development, refining and marketing cuts against traditional competition policy recognized by the U.K. for more than sixty years in the petroleum industry. The intrusion of the Government into the petroleum industry as a competitor against private oil companies cannot be justified by the lack of regulatory authority, or the inability to supervise development of the North Sea reserves or the inefficiency of petroleum companies. North Sea licenses should provide the Government with plenary authority to review all phases of exploration and production and to regulate the latter. Significant monetary compensation is also payable to HMG under the licensing arrangements for extraction of crude oil and other hydrocarbons without the necessity of Government interdiction as a producer. As to inefficiency, whatever indictments that have been laid up against oil companies in the past, the lack of proficiency or success in exploration and development have not been among them.

A competitive environment consistent with antitrust principles cannot long endure when one of the chief competitors is subsidized and bankrolled by the Exchequer and purported to act for the general welfare. Indeed, if the concept of Government operation and conduct of oil operations carry the day, then the ultimate rationale requires that it nationalize and take-over the entire industry. It is to say that if a little activity in the oil industry provides a little good, expropriation of the entire field should be all that much better.

The establishment of the BNOC, with its generous powers to invade the sphere of private business, is one of the jaded passions of British competition policy. Such is mirrored, as will be later seen, in a myopic ambivalence toward antitrust enforcement in the U.K. in the larger sense. It is difficult to read the intentions of the Government and BNOC toward active intervention in North Sea development in the future. Because of the acquisition of the license interests of Burmah Oil Company in the Thistle Field, BNOC is presently acting as field operator. Whatever be the present state of the art, the oil industry in the North Sea should do what it knows best, *viz.*, that of using private capital for the extraction of crude petroleum under difficult and speculative circumstances, and HM Government, with the assistance of BNOC, should be left to doing what it knows best, that of supervision and regulation, accompanied by consistent antitrust enforcement.

As to extant licenses in effect at the time of the P&SP Act, negotiations with oil companies resulted in a variety of arrangements,[43] the basic provisions of which either give BNOC a fixed equity position in certain fields, an unrestricted option to purchase 51 percent of oil developed in certain major fields (Piper, Thistle, Statfjord (U.K.) *et al.*) or a more confined option to purchase 51 percent of crude production from the major producers in the U.K. at market price subject to a buy-back provision at the same price.[44]

2(c). Current North Sea Production—Because of the relative new production on the Continental Shelf, market position and shares are neither precise nor conclusive. The major companies engaged in production are Shell, B.P., Texaco, Esso, Amoco, Mobil, Phillips Petroleum Company, Conoco, Gulf, Tenneco and Getty, along with independent operators *inter alia* Tricentrol, Murphy, Ocean Exploration, Santa Fe and Thompson. It has been estimated[45] that in 1980, 2.439 million average barrels per day will be lifted from the North Sea, the leading market shares of which will be:

Company	Production [1]	Market share (percent)
BP	400,000	16.4
Shell/Esso	350,000	14.3
Burmah Oil (or its predecessor BNOC)	530,000	21.7
Total/Elf	100,000	4.1
Occidental	220,000	9.0

[1] Barrels per day.

Entry barriers to the production market are high. Off-shore platform drilling in the rough waters of the North Sea requires high risk capital and advanced, technical assistance. The cost of drilling a single well may exceed $7 million, only to find a dry hole, or pipe breakage or a blow-out. If capital requirements do not narrow the market, the Government's selective allocation process of awarding drilling licenses removes production from all but the major companies or consortiums of majors and smaller independents. Because of licensing arrangements and Government imposition in exploration and development, conclusions on oligopoly structure at the production level are not subject to ready definition.

3. U.K. Refining Market:

The vertically integrated major oil companies, traditional suppliers of crude petroleum to the United Kingdom, have captured the leading market shares in refined petrol. For 1977, 4.83 billion gallons of petrol were refined in the U.K., an increase of 355 million gallons (+7 percent) and 1.11 billion gallons (+29.8 percent) over 1975 and 1970 refinery output, respectively. In 1964, the total industry refined 2.644 billion gallons of petrol, less by 2.192 billion gallons or 54 percent of 1977 production. In 1977, the three largest refiners, Shell, Esso and B.P., had a combined market share of 53.4 percent. With Texaco and Mobil market positions added, the top five achieved an aggregated market share of 69.7 percent in 1977.

In 1975, the last year before the Shell Mex-B.P. split of their marketing divisions, the joint venture market share was 35 percent of refined petrol as against the 1977 individualized, aggregated shares of 34.1 percent. The joint venture market position had been in a constant decline since 1964 when it had a 45 percent market share, which, alone, constituted a statutory monopoly as defined by the Monopolies and Mergers Act of 1965.[46] Esso has also slipped in refined market position from a high of 27.6 percent in 1964 to 19.3 percent in 1977. Texaco and Mobil have maintained relatively static market shares during the thirteen years.

The top five integrated majors have lost

Footnotes at end of article.

significant market share since 1964 of more than 20 percent in the aggregate (8.4 percent aggregated loss since 1970) in refined petrol. The entry of smaller majors and low cost independent refiners into the market in the early to mid-60's was, perhaps, the signal reason for the retrenchment of the top five. Such refiners as Conoco, Total, Elf, Murco Petroleum, Amoco, and Gulf all made significant strides in the post-1964 and 1970 refining market. Total and Elf increased their respective positions by 420 percent and 360 percent between 1964 and 1977.

Market penetration in recent years at the petrol refinery level may be traced to several factors. In 1974, the star grading, with clearly defined categories, made an almost instant homogeneous product. The retail market reacted by generally disregarding brand distinctions which had been previously a significant element in refining and retail markets. In addition, the rapid rise of petrol costs in the 1970's caused the retail market to move more readily to the smaller refiners and independent jobbers. Moreover, several of the new majors gained market entry through price rebates while other jobbers (such as the conglomerate ICI with no refinery capacity) simply reduced wholesale prices to independent retailers.[47]

While some price cutting by independent refiners and selective retaliation by the large majors took place in 1975–1977, the refinery price during 1977 through April of 1978 was astonishingly similar. For example, the refinery price of B.P., Texaco, Total, Conoco, Burmah, and Fina were an identical 74.9 pence per gallon for four consecutive months. In May of 1977, nine of eleven refineries had precisely the equivalent price of 80.4 pence per gallon.[48] Such horizontal cohesion coming on the heels of a fierce price war is cause for antitrust concern of price-fixing.[49]

In all, there were twelve separate refiners in the U.K. in 1977, eight of whom were conducting refinery operations in 1964. Entry barriers to refinery operations in the U.K. are not unlike that of the United States. Capital requirements are high and environmental standards are rigid. In addition, there has been excess capacity availability in the market. In 1977, capacity utilization was 73.1 percent of total industry availability in the U.K. as contrasted to capacity utilization of 90.1 percent for the same year in the U.S.[50] Under-utilization of plant could impede new entry.

Lastly, as North Sea production increases in the early 1980's, crude supplies will present an almost ominous barrier to further entry for those refineries that do not have a secured off-shore source. The reasons are two. First, the North Sea crude is a sweet, low gravity oil that reduces refining costs *vis-a-vis* the heavier and sour crude from the Persian Gulf. Second, transportation costs and maintenance of capital in crude tankers will make imported crude economically prohibitive, except for specialized industry.

4. United Kingdom Retail Market:

This down-stream but vitally important market has been the subject of increased concentration, discriminatory pricing and spasmodic competition during the past fifteen years. The independent retailer has experienced difficulty of operation against the major oil company stations (managed and leased). In 1964, there were almost 39,000 petrol sites in the U.K. Although the horizontal retail market has increased by 82.9 percent over 1964 levels, the number of stations in 1977 had shrunk by one-fourth to little over 29,000.[51] Whereas in 1964, 14.2 percent of all retail outlets were owned by large oil companies and accounted for 25 percent of total retail sales, in 1977, 30.2 percent of total outlets were company-owned and they captured 50.1 percent of the market. Thus, in little more than a decade, while petrol sites have decreased 25 percent in number, the majors have increased their vertically-integrated holdings downstream by some 215 percent and proportionate vertical sales by over 100 percent.

The independent outlets rely upon major and independent refiners and wholesalers for supply. Their share of the market has constantly dwindled. Thus, in 1970, when 84.4 percent of all petrol outlets (the large part being independents) pumped less than 200,000 gallons a year and had 52.7 percent of the market, in 1977, 200,000 or less gallonage stations comprised only 72 percent of total outlets and had an aggregated market share of 32.7 percent, or a proportional loss of one-fifth of a rapidly expanding horizontal market. The large chain-independents, with their super/hypermarkets fared better. In 1977, four of the largest independents with only 1.2 percent of total petrol stations sold over 200 million gallons for an accumulative 4.2 percent market share.[52]

The major companies, Shell, Esso, B.P., Mobil and Texaco, supply two basic retail outlets—company-owned and company-leased stations. The former is operated by an employee-servant and the latter is under lease to an independent retailer. Major oil companies in the U.K. increased their ownership of retail outlets from 5,435 to 8,881 between 1964–1977 (at a time when the same companies, through other subsidiaries were disposed of sites in the United States.[53]) In 1977, major oil companies owned 60 percent of the U.K. petrol stations with a 200,000+ gallon through-put and 81.1 percent of stations with annual gallonage exceeding 500,000. While said stations constitute only 28 percent of total outlets in the U.K., they pumped 66.62 percent of all petrol in 1977.[54] The gallonage pumped by petrol stations of 200,000 gallons and above, increased their collective through-put by 82 percent since 1970.

Thus, the major companies were more concentrated and vertically integrated in the U.K. than at anytime since early 1960. Independent retailers have lost both absolute numbers and market share. Two reasons may explain this evolving fashion. The first is profit. The other may rest in the fact that in 1965 the Monopolies and Mergers Commission (MMC) issued a Report[55] in which it condemned, as anti-competitive, solus agreements wherein an oil company required a retailer to buy all petrol (and in many cases petroleum and service products) from the company. Those retailers who failed to abide by the restrictive terms were refused further petrol by the solus suppliers. The M M C recommended that the term of the solus be limited to five years, and that any refiner or jobber whose sales exceeded 10 million gallons annually[56] was not to build or acquire other retail sites in any year in which the company-owned stations received more than 15 percent of total annual sales. The ban on new petrol sites was lifted in the late 1960's by the Secretary of State. Upon that event, major oil acquisitions and development of new sites commenced, rose in 1976 to over 9,000 stations and declined in 1977 to 8,600.

4(a). Solus Agreements and Price Discrimination.—In the 1977 Report, the MMC recognized that exclusive dealing arrangements were still wide-spread. It also found that during indicated periods, (particularly 1975) when price competition was sharp, subsidy support was given by the majors (Esso, Shell, Mobil, and B.P.) to large as against small retailers and company-owned as against independent outlets. The first was acknowledged by the oil Companies, but the second denied.

The basis for price reduction was said to be that smaller stations were less likely to maintain economically viable operations in the long-haul and that selective price support was given to those that would show a "better long-term return."[57] No claim for selective discrimination was apparently based upon specific local conditions to meet the price of a competitor or upon lower costs. Surely it can be said if a major company had predetermined that a particular retail site or even a more general level of retail operation was destined for economic failure regardless of enterprise and efficiency, selective price supports was a way to hurry the smaller operator to the grave.

4(b). Pricing Behavior.—During the last several years, retail pricing by most major companies tended to follow similar contours and trends in the U.K. The pump price often is the same from one retailer to another and seldom does it vary over 2 percent. The price leaders in the market are Shell, Esso and/or B.P. Not infrequently, price rises between the leaders or other majors will be simultaneous. If one company leads out and the other price leaders do not follow, the first may be forced to reconsider the price or risk losing market share. Such pricing policies clearly suggest oligopolistic conduct.

As in the U.S., major companies will, to achieve cost savings, interchange refined petrol. Thus, Shell owned stations may retail petrol refined by Esso and B.P. will sell Shell products. Independent retailers regularly deal in a mix of differing product and may take delivery from a third-party jobber without knowing the identity of the refiner.

CHAPTER IV: ENERGY POLICIES OF THE UNITED STATES AND THE UNITED KINGDOM

The oil paralysis of 1973 in the Persian Gulf laid out for all to see an axiom that some in the petroleum industry had known and given warning for years—that the Western world, particularly the U. S., was consuming petroleum at a breathtaking if not rapacious speed, that most of the "cheap" oil had been exhausted, that crude oil was a finite source and that the national economies faced an unprecedented shortage of supply. The day of prolific economic growth, bottomed on low-cost oil and gas, was over. All the Queen's horses and the Washington bureaucracy could not restore Humpty-Dumpty again.

1. United States Energy Policy:

America was required to inventory all of its energy resources. Some of it had been mismanaged by unconscionable government regulation,[58] other forms of energy such as coal lay dormant due to environmental standards, and much had been simply squandered. It became increasingly clear by 1975 that the country could not afford the luxury of undefined hydrocarbon and fossil fuel use. A new phrase, "energy conservation", was invented in the dialect. National priorities had to be reordered and the proliferation of petroleum consumption checked.

Under the Emergency Petroleum Allocation Act of 1973,[59] maximum ceiling prices on domestic crude and refined product were established. The price of natural gas and oil escalated swiftly. The individual states imposed maximum speed laws of 55 miles per hour to reduce petrol consumption. By 1977, the writing was on the wall—all forms of energy use including oil, natural gas, coal, nuclear, along with the more exotic or experimental kind, must be rationalized into a cohesive national policy. The penultimate targets were spelled out as higher cost energy and conservation, producer price incentives to stimulate new hydrocarbon discovery and gradual deregulation of the well head price of domestic crude and natural gas. The conclusive ambitions were realistic autonomy over an otherwise slavish dependence upon international crude imports together with a more tempered domestic consumption.

In 1978, a comprehensive energy portfolio was enacted into law.[60] A leading edge of the legislation was to bring about pragmatic price uniformity in order to provoke inter-fuel competition in selected energy markets. Thus, under the Natural Gas Policy Act of 1978,[61] the price of natural gas to full-line

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Footnotes at end of article.

and interruptible industrial users is to rise incrementally until it matches the price of No. 2 fuel oil at the New York Harbor. For years natural gas has been federally regulated in interstate commerce at a price below the equivalent BTU therms for heavier industrial oil. Additionally, the congressional intent calls for deregulation over the next several years of both oil and gas so that the price will float to market demand as against other fuels rather than be artificially manipulated through government regulation. The energy Acts also recognize the need for and incentives to further the development of the nation's vast coal deposits as part of the larger policy synthesis.

The entire 1978 energy package is detailed, complex and conceptually original. It is unnecessary to unfurl its entire scenario here. What is important to this Thesis is that since 1973, the petroleum industry has undergone metamorphosis. Prior to that period, oil and its pricing machinations had never been subject to government price controls. The industry is no longer to be gauged in a sterilized vacuum, for it is part and parcel of the national energy fabric. Even so is it in the context of antitrust. If a break-up of the major oil companies into separate operating tiers or functions were to transpire, the proximate impact upon the national conscience of implementing the energy blueprint would have to be given just weight in the judicial equation. More will be said on the subject under Chapter IX.

2. United Kingdom Energy Policy:

The need in Britain to develop an omnibus energy policy begins and leaves at much different points along the path than in the United States. The Parliament has had authority, since at least the 1920 Emergency Powers Act, to deal with interruptions in the nation's fuel supply. The Energy Act of 1976 embellished the powers of H M Government to allocate and ration petroleum and other energy sources as well as to better define the control of building heat, prices of paraffin and speed limits. Conservation measures are presently aimed at cutting oil consumption by some 5 percent through voluntary measures.[62] Britain also has specified EEC obligations in the event of inordinate Community shortages to allocate petroleum supply between Member States and engage in switchoff to other fuels.[63] Lowered speed limits on U.K. highways proved thoroughly distasteful to the public as a conservation move; the motorist claimed that he had paid for his petrol and was entitled to use it. He would conserve in other ways, but not in his auto. The Government relaxed speed limits in 1974.

Whereas the U.S. was running out of domestic crude production in the early 1970's, the U.K. was just gearing up for the dramatic discoveries of the North Sea. North Sea oil has much to do with the short and long-term energy schemes and indeed, the prospects of self-sufficiency in petroleum during the 1980's has given a rather flaccid bent to a well-defined larger energy plan. BNOC weighs-in prominently relative to the Government position in North Sea development and a comprehensive energy plan.

In the event of an energy emergency, Whitehall believes that in order for rationing and allocation of crude and refined petroleum to be affected, collaboration of the major oil companies will be mandated. Section 5 of the 1976 Energy Act provides an exemption for the registration of any oil company co-operative agreements that would otherwise be caught by Section 6(1) of the 1976 Restrictive Practices Act. Allocation and redistribution in crises times would be subject to the jurisdiction of the National Emergency Sharing Organization (NESO), an overview Government agency.

While the United Kingdom has not yet determined the outer limits of its energy program and has not undertaken to define any position on inter-fuel competition comparable to America, it is enough to say that in the antitrust analysis of oil company divestiture, the impact on energy policy under the 1976 Act and EEC commitments is relevant.

CHAPTER V: THE AFFIRMATIVE CASE FOR VERTICAL DIVESTITURE OF MAJOR OIL COMPANIES

Idaho's Senator Frank Church mirrored the view of many in antitrust by his 1973 statement:

"It is time we began the process of demystifying the inner sanctum of this most secret of industries."

As mentioned earlier, dismemberment of the oil industry has found a soft spot in almost every recognizable element of the competition community in the United States and to a lesser degree, in the United Kingdom. While the arguments vary as to the bases for the break-up of Big Oil, there is virtual unanimity in the claim that the major companies are so monolithic in proportion and omnipotent in deciding the fate of economic systems, the politics of nations and the whole mode of social behavior in the 20th Century, their continuance as integrated organisms is contrary to antitrust policy and the larger public interest.

The question of size has always dominated dialogue in Sherman Act enforcement, but its nesting place in the major oil companies has become almost ritualistic. They are, it is said, the largest companies in the world; the sun never sets on their feifdoms. Exxon, Shell, Texaco, Gulf, Mobil, B.P., Socal, Atlantic Richfield and Amoco are the principal targets of the indictment.[64] Of the world's twelve largest corporations, Exxon, Shell, Texaco, Gulf, Mobil, B.P., and Socal rank 1, 2, 4, 7, 8, 11, and 12, respectively. The combined assets of General Motors and ITT do not equal either Shell or Exxon.

It is argued that any resemblance of competition between these barons of capitalism is accidental and episodic. From the outset of the petroleum process, there is prolonged scheming and interstitial collaboration in joint bidding for on- and off-shore leases and licenses.[65] Exploration is conducted jointly and production follows suit. Ownership in major pipelines is in common between the majors to the exclusion and discrimination of independents and smaller operators.[66] Even in the production field, it is contended that one company, say Shell, will "post" a buying price for crude; the price is artificial and a fix, for Shell is not only the posted buyer, it is the seller in the field.[67]

At the refining level, the charge is that the majors exchange crude with each other, to the exclusion of smaller competitors, which gives an unfair but measurable competitive advantage. Moreover, it is claimed that the large companies, due to tax dodges and credits which the companies have lobbied from Congress and Parliament, shift their profit up-stream to the production tier and reflect only a break-even position at the refining level and, because of the consequent high cost of crude, such is * * * to put a down stream "squeeze" on competing refiners who * * * turn a reasonable profit on the sale of refined product.[68]

Continued * * * is practiced at the refinery and retail tiers, so the argument goes. While the homogeneity of the petrol product has, by definition, reduced quality and price competition in varying degrees, information sharing is claimed to be even more destructive of competitive market forces. Each oil company is said to know the other's pricing policies and * * * data because of up-stream collusion; price uniformity is the result, it is claimed. Even if there is not horizontal price-fixing, it is argued that "conscious parallelism" is tantamount to oligopolistic price-fixing.[69]

The only * * * competition is said to be in the form of advertising. The public is either treated to a Shell advertisement on its "platformate" petrol (when the Shell dealer is actually selling product from a Gulf refinery), or Exxon's "tiger in the tank" promises you improved engine performance, or the comedian, Bob Hope, is pictured driving a golf ball off an ocean oil rig yelling "you can trust your car to the man who wears the star . . . Texaco." Because of the homogeneity of petrol, it is argued that the only beneficiaries of that commercial * * * are the advertising agencies on Madison Avenue and Fleet Street.

At the retail level, the majors are alleged to require anti-competitive * * * dealing agreements with dealers and operators, full-line forcing, and illegal tying arrangements. Such are both written and tacit, but backed by the vertical power and leverage to boycott a reluctant dealer. Due to the extent of vertical involvement, it is argued that the major corporations engage in vertical price-fixing with lessee-dealers and independents by a system of "suggested retail prices". Such results in virtual price uniformity in the retail market to the detriment of the buying public.

In consequence of the foregoing, the contention is that the entry barriers are massive and unforgiving. Development of market share at either the refining or marketing tiers is not dependent upon aggressive competition, but rather upon the beneficence of the cozy 7, 8, or 10 in the club. The companies are said to have interlocking banking connections, directors and financial advisers which cross-fertilize the industry with common knowledge.[70] So extensive is vertical integration and interdependent behavior among the majors, it is claimed, that there is extant a shared monopoly—a *de facto* and indivisible union of interests and behavior, with layer upon layer of subsidiary corporations and divisions, that makes identification and public responsiveness impossible.

It is claimed that this sweetheart marriage of Big Oil has yielded monopoly profits. In 1979, B. P. reported after tax profits of £1.62 billion or some $3.64 billion, up almost 400 percent from 1978. Shell exceeded that return in 1979 by earning £3.05 billion or an after tax profit of $6.86 billion, up practically 300 percent from the previous year.[71] Texaco reported earnings of $1.75 billion for 1979, up $907 million from 1978. Last but not least, Exxon reported after tax profits in 1979 of $4.36 billion, an increase of almost 60 percent over 1978 net earnings of $2.8 billion.

The argument continues that the omnipresence of the majors is contrary to the whole thread of antitrust enforcement in the U.S. and U.K and must be terminated by a vertical divestiture at the refining and marketing levels. The divestiture proposal in the pending *F.T.C.* v. *Exxon et al.* litigation is that as many as a dozen smaller companies be created or reorganized to purchase most of the refinery assets of the majors and a separate number of organizations acquire substantially the retail outlets. Thus, the majors would be left essentially as production companies and would be forced to compete at the best price for crude buyers. The refiners in turn would have stepped-up rivalry for the sale of product to competing retailers. Vertical divestiture would also have the adjunct benefits of doing away with illegal exclusive dealing arrangements, tying and full-line forcing.

In advancing these arguments, it is acknowledged that the oil industry is relatively unconcentrated in the United States. The largest four or eight companies have individual market shares at both the refining and retail marketing levels that are less than other industrial segments of the economy, namely, automotive, steel, electric appliances and aerospace.

Footnotes at end of article.

TABLE IX.—COMPARISON OF PETROLEUM AND OTHER MAJOR U.S. INDUSTRIES: RATE OF RETURN ON CAPITAL

Industry groups	10-yr average, 1963–72
Office equipment and computers	15.8
Autos and trucks	15.6
Aerospace	11.0
Rubber and allied products	10.9
Total mining	11.7
Iron and steel	7.3
Household appliances	13.8
Electronic equipment	12.7
Chemical products	12.0
Lumber and wood products	11.9
Crude production and refining	11.8

Source: New York City Bank Statistical Report on U.S. Industries (1975). U.S. National Energy Management Report, (1979), p. 5.

In addition, the rate of return realized on capital investment for the oil industry was, as demonstrated by Table IX on the facing page, mid-stream among other industrial groupings for a ten year period through 1972. Oil companies compete with those other industries for the same equity and debt capital in the financial markets. Moreover, it is reasonably clear that the very high profits racked up by the oil industry and the multi-nationals, in particular, during specific years since 1972, have been as a consequence of the cartel decisions of OPEC and not the individual or collective determinations of major oil companies.

It must be also acknowledged in the U.K. that the refinery market is comprised of more than a dozen corporations, the market share of each being significantly lower than in other sectors of British industry. Until the last several years with the soaring prices for crude on the world market, return on investment has been ordinary in the U.K. Nonetheless, the record of oil is said to be preoccupied with self-indulgency. As the Monopolies and Mergers Commission put it in the 1965 Report on Petrol:

"The history of the petrol industry from the beginning in the United Kingdom has been to minimize competition so that output could be controlled." [72]

Vertical divestiture of all or most of the refining and retail assets of the integrated majors should be mandated, it is contended.

CHAPTER VI: GENERAL PRECEPTS OF COMPETITION

1. The Goal Of Competition: The starting point in any thoughtful analysis of antitrust enforcement in the petroleum industry is the indentification and statement of the focal objective. To some, this observation may sound robustly and overly fundamental, even satirical, for in the words of Al Capp's Little Abner, "as any fool can plainly see", the goal is obvious. The trouble is that the goal of antitrust is not obvious either in the case law or the literature. It has waffled and lurched in different azimuths, at times instantaneously. Although the ambivalence has been all in the namesake of antitrust, the vascillating policy objectives have yielded enormous disparities in competition jurisprudence and result. The propositus of this Chapter is, therefore, to examine briefly the fashionable theories of antitrust and to lay down what I believe to be the controlling and mature goal. If not in a larger legal sense, such is foundational to the questions of antitrust in this Thesis.

The conceptual dogmas of antitrust enforcement are several. First, competition is seen as the tool to meet the demand for products and services by their supply at reasonable prices, to promote technical and managerial efficiency, progress and invention, to allocate resources functionally and economically, and to yield a reasonable return on capital to the investor. Such factors are generally the matriarch of antitrust under the neoclassic definition of Adam Smith and each is to have measured weight in the balancing test of conduct which may or may not be condemned as anticompetitive.

Secondly, it is said that real competition is only found in a large number of structurally small atomized units working within a relative prototype of "perfect competition." Sometimes carrying the label of the "populist" theory, it holds that while all the characteristics of the first concept have relevancy, the most significant goal of antitrust is as a social weapon against corporate bigness and size. Autonomous size and strength of corporate enterprise are diseased without further evidence and are the antithesis of pristine competition. The Sherman Act, it is claimed, was trained on this theorem, the statutory objective being to break-up the mammoth oil, tobacco, railroad, and manufacturing trusts. While, in fact, the Sherman Act was guided by other disciplines,[73] the argument against size has attracted such celebrated jurists as Louis Brandeis, Learned Hand and Charles Wysanski,[74] as well as *obiter dicta* of the U.S. Supreme Court.[75] Brandeis in his book *The Curse of Bigness* wrote:

"It will be found that wherever competition has been suppressed, it has been due either to ruthless processes or by improper use of inordinate wealth and power." [76]

In its proper role and implementation, antitrust will have an unquestioned check on corporate size and success. Monolithic organizations which engage in cut-throat pricing with the specific predatory intent of eliminating smaller businesses or which try to herd with others in the comfort of fixed prices and/or divided markets, will have no peace with antitrust laws. But any curb on size, *per se*, from competition enforcement is a side product and not the end objective. A system which condemns bigness out of hand penalizes the person who competed according to the rules and was successful. Notwithstanding, the argument on size has played a senior part in the development of modern antitrust dogma. In its most vivid colours, the populist theory views antitrust as a governmentally sanctioned method for redistribution of wealth and promotion of the egalitarian state.

Yet a third theorem is that the quintessential role of antitrust is the protection and benefit of the consumer.[77] Competition exists as the method by which consumer demands are met. If a line of conduct is aimed at or will result in more plentiful goods and lesser prices at the tail-end of the distribution process, ancillary anticompetitive behavior to fulfill the original intent and result may be condoned. The proposition, with noted exceptions, reposes an almost infinite confiidence in the free market. *Laissez faire* will work through productive and allocative efficiency, it is said, if antitrust and welfare reformists will but give it a chance. The argument admits to unlimited vertical integration, vertical price maintenance, exclusive dealing and other intermediate restrictions in distribution.

Within these three doctrines one can fit almost every concept, whim and anomoly of antitrust. By-passing the first for the moment, the second theory as the *raison d'etre* of antitrust is palpably unacceptable. Antitrust does not preclude business associations from becoming large. If that were the case, the solution of competition policy would be simply to set a ceiling of assets or revenues beyond which no organization could legally exist. When the roof is reached, there would be axiomatic divestiture, vertical and horizontal. The whole trouble with the argument against size is that it is fundamentally at war with the essence of competition—to be successful, more so than all other competitors. The cloth of the populist tends to reward inefficiency and indolence and penalize progress and invention. If through a rational antitrust policy, structural balance and size is contained, then that will be a concomitant consequences along with other societal benefits. But as a self-contained or even part of a collective goal, it is fatally flawed and should be rejected.

The third theory, while polarized from the supposition of bigness and size, is overly restrictive and sees antitrust with tunnel vision. Manifestly more defensible than the idiosyncratics of populism, it suffers to a degree from the same affliction, viz., the notion that the end justifies the means. Under that notion, ancillary but nonetheless measured restraints or trade or other anti-competitive behavior at one or more economic tiers are justified if the ultimate goal of low consumer prices is achieved. Were low consumer prices the finish line, other methods besides market competition could be arranged that would be more effective. In the process, however, the free choice in business enterprise, free movement of goods and society itself would suffer

The initial theorem comes the closest of the three to a workable definition of antitrust. It adopts the pragmatic principles of economics inherent in the market and it inculcates the original message of competition which brought about the passage of the Sherman Act of 1890. It pulls up short in its arrangement of consumer prices or bigness as a casual element of competition. They are not causes, they are effects. If all the facets of the competitive market function as anticipated, the result at day's end will be reasonable consumer prices, quality goods, and structural moderation of industry.

Thus drawing on the theorems analyzed, the goal of antitrust which underpins this Thesis is that competition is to be conducted for its own sake and on its own merits at all marketing tiers. While harsh and seemingly inequitable at times, it is plainly the best stimulant to economic activity for it guarantees the widest possible freedom of action for traders. Competition provides an incentive to improve efficiency and encourage progressiveness, it will allocate resources effectively and it will yield a return or reward on risk capital to the investor. Through the inter-action of the competitive process in its entirety, the ultimate customer will, by definition, pay no more than a fair price for the retail product of his choice. Competition and, to that extent, antitrust enforcement provide the balancing rod between the individual enterprise and the general needs of society.[78]

2. Competition And Market Power:

Before turning to substantive antitrust law and the oil industry, the generic grades of competition and market power should be briefly examined, since they are rooted in any treatment of competition jurisprudence.

(a) Perfect Competition.—Most economists would urge this as the model to which all markets should aspire. Implicit in its definition are (i) that sellers and buyers in a market are so numerous that individual restriction on production has no impact upon market behavior, (ii) that each seller will make a decision to raise or reduce production or prices independently, (iii) that raw materials are freely available and mobile among markets, (iv) that all sellers are knowledgeable as to manufacturing or trading techniques, cost functions and market prices, (v) that there are no individual or collective entry barriers such as patents, or capital requirements and (vi) decisions are made to maximize return on capital (that point where price on the last unit produced is covered by marginal costs). This

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state of millennial competition is rarely, if ever, witnessed. The doctrine is nonetheless germane to antitrust, for any market should have the ambition of approximating the concept as closely as possible.

(b) Monopoly Power.—Monopoly has general reference to that market in which the position of one enterprise is so pervasive that market price and demand can be controlled by restricting output without regard to competition. Market entry is typically difficult if not impossible because of barriers such as control of raw materials, patents, high capital costs, or customer acceptance. None of the factors attendant "perfect competition" are present except the inducement to maximize profits. However, in the latter, monopoly profits are accomplished by production at lower than competitive output where marginal revenues equate but price exceeds marginal costs.[79] The classic monopoly has little incentive to be efficient or progressive, for he controls his economic destiny. Thus, there may be misallocation of resources, higher costs, and little invention associated with monopoly activity.

While the absence of efficiency and progress is the more prosaic sketch of the monopolist, it could well be that unless the pervasiveness was of natural or statutory origin, efficiency and progress, coupled with reasonable prices, were required to achieve a monopoly position in the first instance. One of the better examplars of such was the monopoly of the aluminum ingot market by Aluminum Company of America (Alcoa) during the first part of this Century. Alcoa kept its costs low through efficiency, improved product quality by patents and intuition and attracted high demand with low prices.

(c) Oligopoly Market.—An oligopoly is existent when there are few sellers of a homogeneous or interchangeable product and the contraction of output or price by one will impact significantly upon the market and also upon the individual oligopolist's market share. A competitor in such a market will tend to maintain his prices at a level that does not produce wide swings or radical changes in market share. If manufacturer A makes a price move and manufacturer B, C and D do not follow, A is faced with two choices . . . either maintain his price level and lose market share in which case he will have to also cut output, or return to the former price. However, B, C, and D each have choices to make. They can join A at the higher price (in which case the profits of each oligopolist increase) or each can stay where they are and increase output (assuming *ex hypothesi*) that available capacity is extant. Whether B, C and D follow will depend upon the relationship of marginal revenues to marginal costs.

On the other hand, A may decide to reduce his price to increase market share. He should be aware that if he does and B, C and D follow, that his market share will remain constant and profits, along with those of B, C and D, will diminish. While the operation of oligopolistic markets is likely to be blemished and depends upon the number of competitors, complexity of product, and the ease of identifying any price leader, it is generally characterized by price rigidity.

Oligopoly markets rarely behave as a monopoly market, short of express collusion. Where the monopolist may restrict production and increase prices without an appreciable effect upon market position, a member of an oligopoly can do neither without adversely impacting market performance. An oligopolist may intentionally transmit a signal to the market by price announcements, annual shareholder reports or other devices. On the other hand, an oligopoly may increase prices higher than competitively justified, creating excess capacity and simultaneously insulating inefficient firms in the oligopoly. A monopoly would not ordinarily do either of the latter. Coordination in an oligopoly is very likely to be imperfect in contraction of output or pricing movements and accordingly, it will approximate monopoly power only fortuitously and then episodically.

Further, there is a dramatic distinction between an oligopoly and a cartel. The latter is characterized by explicit collusion restricting individual and collective production and conspiratorial price-fixing. A cartel should move parallel with a monopoly. An oligopoly will not behave as a thoroughbred cartel either externally or internally.

(d) *Shared Monopoly.*—In skeletal theory, shared monopoly is made out when two or more entities, although structurally and equitably independent *de jure*, behave and react to market conditions as a *de facto* unit, the collective conduct being sufficiently influential to restrict production and raise prices. In many respects, shared monopoly resembles an oligopoly in pricing policies and output. Static market shares on a relative scale, even during horizontal expansion, would symbolize shared monopoly structure. In practice, the differentiation between a classic oligopoly and share monopoly is razor thin. Although often difficult to detect, the variation between the two would hinge upon two criteria. One, the conduct of those in the monopoly must be largely indistinguishable and behaviorally tantamount to synonymous conduct. Two, there must be a lack of realistic competition between the participants.[80] The conceptual mold of shared monopoly is of recent improvisation in antitrust.[81]

CHAPTER VII: THE APPLICATION OF UNITED STATES ANTITRUST LAW TO DIVESTITURE AND TRADE RESTRAINTS IN THE OIL INDUSTRY

We turn to the national antitrust law of the U.S. with specific relation to the questions of monopoly and market concentration in the petroleum industry under the studied factual setting of Chapter II. The issues of law of relevant product and geographic markets that are oft-times critical to monopoly litigation,[82] will be given only tertiary consideration. The reason is that neither factor ought to be the subject of reasonable debate. The relevant product market is crude oil at the refinery level and refined petrol at the retail tier. The geographic market is the territorial United States. Any attempt to draw a tighter noose around a more particularized gravity of crude oil or to confine the inquiry to a smaller territory, such as the State of Wisconsin,[83] (so as to increase the proportionate market shares of individual companies) would be a march into sheer fantasy. Product and geography are plainly national in scope. It is as simple as that.

The fundamental issue of law may be quickly stated. Do the antitrust laws require that the major oil companies vertically divest themselves of part or all of their respective refinery and/or retail assets? The answer rests in the vortex of 90 years of statute and case law, chiefly the latter. This Chapter will also address the behavior within the industry at the refinery and retail levels regarding exclusive dealing arrangements, tying contracts and information exchange agreements within the fundamental precepts of U.S. antitrust. Such are ancillary but nonetheless important facets of the Thesis.

1. American Antitrust Law:

The Book of Genesis in competition law is housed in three Statutes, the Sherman Act of 1890,[84] the Clayton Act of 1914,[85] and the Federal Trade Commission Act (FTC Act) of 1914.[86] The Sherman Act strikes at restraints of trade and monopolies, the Clayton Act is directed principally at mergers of monopoly concentration (although it also treats price discrimination, exclusive dealing and tying of substantial or monopoly proportions), and the FTC Act speaks against "unfair" methods of competition and deceptive business practices. Together, they form the American economic Magna Carta.[87]

The substantive sections of Sherman deserve attention at the outset. They are fashioned in broad and sweeping terms. Thus, Section 1 stamps "every contract, combination * * * trust or conspiracy in restraint of trade * * * to be illegal." The Statute was interpreted in its early growth to outlaw only "unreasonable restraints."[88]

Not only is the restraint unenforceable at law or equity, it is a felony punishable by a fine of not more than $1 million and imprisonment. Section 1 foresees at least two-party involvement in the trade restraint.

Section 2 of Sherman provides that any person who unilaterally or in combination or conspiracy with another "shall monopolize or attempt to monopolize" trade or commerce shall be guilty of a felony. The Sherman Act was enacted in response to public reaction against the predatory and exclusionary practices of the great tobacco, sugar, oil, and railroad trusts of the late 19th Century as well as their massive accumulation of monopoly power. The oil and tobacco trusts were broken-up in landmark decisions in 1914.[89]

When the prohibitions of Section 7 of the Clayton Act (no corporation shall acquire the capital stock or assets of another corporation where such substantially lessens competition or tends to create a monopoly) and Section 5 of the FTC Act[90] are added to Sherman 1 and 2, the full complement of legislation on the issue of divestiture is at hand. In light of the litany of statutory minutiae that grace the United States Code in less provocative areas, it is remarkable that a field of law as dramatic as antitrust is bound-up in four Congressional sentences. "Unfortunate" might be the way some would describe the matter, for the whole of U.S. antitrust policy has essentially been quitclaimed to the judiciary. The basic responsibility of the latter is to decide specific *ad hoc* cases and controversies. *Judicis est jus dicere, non dare.*

The Courts are neither adapted nor equipped to decree broad public policy questions. Too many cases turn on the precise facts before the court at the time, but the language that is utilized to arrive at judgment is lifted out of text and given instantaneous recognition as national antitrust scripture. Notwithstanding, a common-law of sorts in antitrust has developed over the years that is central to the U.S. competition policy. It is that body of case law which must be examined on the questions of divestiture.

2. The Applicability of the Per Se Doctrine:

While Section 1 of Sherman prohibits arrangements in restraint of trade, it does not speak directly to or condemn monopoly or monopoly abuse. That is left to the auspices of Sherman 2. Authorities make it plain that divestiture may be a proper antitrust remedy where the latter Section is violated.[91] It is that Statute, therefore, that is germane.

From almost the outset of federal antitrust, the Supreme Court has engaged in certain evidential presumptions to deal with anti-competitive behavior and to guide case precedent and enforcement. In the early case of *U.S.* v. *American Tobacco Co.*,[92] Chief Justice White declared that certain agreements "because of their inherent nature" restrained trade and no inquiry was needed to determine the intent of the parties or the degree of harm upon competition. The arrangement was presumed to be against the mandate of competition under the Sherman Act and no explanatory defense would justify or save it. In other words, the judicial assumption was irrebuttable.

American Tobacco and other contemporaneous rulings by the Supreme Court[93] were the embryo of what has since been developed as the *per se* rule in American antitrust. It has been applied over the years to

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a number of categories of offensive conduct, namely pure cartel arrangements, horizontal and vertical price-fixing,[94] territorial market divisions,[95] group boycotts and concerted refusals to deal.[96]

The policy underpinning the evidentiary presumption of illegality is that certain behavior or arrangements are so diseased in their inception and utterly void of redeeming virtue that an elaborate study of the market is unnecessary to forbid the same. The central rationale of *per se* is expanded by the precept that axiomatic certainty as to particular forbidden conduct promotes the efficiency of judicial administration, offers understanding and predictability of conduct specifically foreclosed, and aids in antitrust enforcement.

The evolution of the *per se* rule in U.S. jurisprudence has not been without misgivings. It has been characterized as an arbitrary tool that is blindly invoked against large segments of activity without analysis, and that it has the chilling effect of denying a party the constitutional due process right to a judicial hearing. Further, it is claimed that *per se*, even if properly used in particular classes of antitrust restraints, has been applied with a back-handed sweep that has vitiated whole areas of conduct that are procompetitive in tone and promote rather than impair antitrust goals.[97] Lastly, it has been said that antitrust courts should not have as their principal engagement the procreation of black-lettered rules that cut wide swaths through entire categories of economic activity. That responsibility, it is argued, is essentially legislative, not judicial.

The extent of the chastisement is not without footing. The complexities of modern business intercourse and practices are not given, in many instances, to dogmatic and peremptory results. To take an exemplar, vertical price maintenance agreements dependent upon the extant exigencies, may have pronounced competitive implications for the market at both upstream and downstream tiers. The arrangement may stimulate competition at the distributor level, for instance, and it could enlarge market position of the dealer at the retail level. While vertical price-fixing arrangements are in the main unprincipled and have an anti-competitive bias that cuts against the demands of the Sherman Act, it is submitted that the entire inventory of such arrangements are not so malignant as to scale the heights of *per se* invalidity. Yet Chief Justice Hughes in *Dr. Miles*[98] determined that a vertical arrangement for resale price maintenance was in no better straits than if horizontal competitors had agreed to uniform prices. Since the latter was a condemned *per se* offense under the Sherman Act, equally so was the former. The judicial blunder in *Dr. Miles* was in looking past the pivotal fact that vertical arrangements on prices do not ordinarily involve opposing market contestants whereas horizontal price fixing agreements always do.

The decision of the Supreme Court in *G. T. E. Sylvania Inc.* v. *Continental T.V. Inc.*[99] overturned a ten year old *per se* rule in *Schwinn Bicycle*[100] with regard to vertical territorial and customer restrictions. *Schwinn*, in an opinion authored by Mr. Justice Fortas, had declared that restrictions on the territory in which and customers to whom bicycles could be sold by an independent retailer was *per se* forbidden under the ancient rule against restraints on alienation. *G. T. E. Sylvania* held that a territorial location restraint imposed by the manufacturer-distributor in a retail contract was not banned on its face and that a rule of reason trial was required to determine whether, on balance, the arrangement was a restraint of trade under Sherman. The *Schwinn* doctrine had provoked enormous reaction at the Bar and probably was the most severely chastized *per se* determination in the history of U.S. antitrust.[101]

In view of the result in *G. T. E. Sylvania*, there is some hope that *per se* adjudications are still open to review and that the Court is aware of the potential irritations which the doctrine portends. That is not at all to say that the *per se* analysis of antitrust enforcement is to be shredded in the discard pile and that all causes, regardless of their character, shall be adjudicated only after a plenary economic analysis of behavior and market impact. Such a result would be not only to forsake a primary function of the judiciary intended by the Congress, viz., to administer the substantive competition laws of the United States,[102] but it would quickly embroil antitrust courts in malingering, unnecessary and time-consuming litigation. Rather, it is to say that broad general axioms of antitrust illegality having instantaneous results on entire fields of conduct, should be reserved to those infected arrangements and exclusionary acts that by their congenital nature are bold and naked restraints of trade in the merits.

Contractual restrictions and unilateral behavior which do not fall within proscribed *per se* conduct are subject to examination under the principle of reasonable analysis. That is to say, taking all relevant factors into account and weighing them in the purview of the competition mandate under Sherman, can it be said by reasonable men that the challenged conduct is against the Act? This *rule of reason* approach to antitrust, although probably implicit in the ordinary judicial function, was given formal introduction in *Chicago Board of Trade v. U.S.*[103] where it was held:

"The true test of legality (under the Sherman Act) is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable."

The rule of reason principle is utilized as an antitrust gauge of general relevancy to assess the evidentiary factors surrounding the implicated conduct and to evaluate its meaning in the specific factual context as well as in the larger forum of economic behavior. The explicable elements that would be germane if not indigenous to the competition analysis by the antitrust court would be the specified conduct or behavior, the *malus animus* or absence thereof, the competitive economic advantage sought, the effect on sources of supply, the establishment of barriers to further competition, the objective impact that such arrangement or conduct (if approved in general model) would have upon the structural market and/or behavioral competition, the ability of the participants and others in the market to expand market share and to reach other markets (horizontal and vertical) and the likely result in market concentration, control or dominance that may foreseeably flow from the questioned activity.

In its best understood role, *per se* analysis in antitrust has been applied to incorrigible conduct under Sherman 1 which restrains trade and commerce. Although language in some Sherman 2 and Clayton 7 controversies would indicate that the court has viewed a corporation as having offended the Acts by mere market share and size,[104] that is neither the authoritative nor better position. The basis of the latter statement is Section 2 of Sherman, itself. The Statute does not forbid, outright, a monopoly. Rather, it enjoins conduct which "monopolizes" or "attempts to monopolize" a market. It is submitted that such entails overt or passive (but nonetheless) conduct, exclusionary activity or predation by the charged party. So even if one were assumed by reason of an invented market share formula, for example, to be a *per se* monopoly, the monopolist would still have to "monopolize" or "attempt to monopolize to contravene Sherman 2.[105] In order to determine whether the party has engaged in monopolizing conduct, a significant examination in a rule of reason trial is ordinarily required. There simply is not the confined quarters in which the *per se* rule may operate in the setting of Sherman 2. The same rationale is applicable to a market analysis of Clayton 7.

Accordingly, this Thesis proceeds to the question of Sherman 2 application against the major oil companies in the United States on the premise that the *per se* doctrine is not an acceptable device to measure the monopoly provisions of antitrust enforcement. It does and will, however, have general relevancy to ancillary considerations in this work regarding exclusivity contract and tying provisions.

3. The Relationship Of Market Shares To Oil Company Monopoly:

American antitrust enforcement in monopoly litigation has been absorbed in market share examination, devoting an abundance of attention to structural analysis of corporations charged with Sherman 2 or Clayton 7 violations. In *U.S.* v. *Aluminum Co. of America* (Alcoa),[106] the distinguished jurist, Learned Hand, analyzed the market dominance and control that was said to flow from Alcoa's market share of 90 percent of U.S. aluminum ingot. Other market share horizons were reviewed as well in the abstract under *Alcoa* apart from specific behavioral character of the subjective market. In *American Tobacco Co.* v. *U.S.*,[107] the market share of the Defendant (between 68 percent and 91 percent of cigarette sales) was given particular prominence in determining that a Sherman 2 count of monopolization was made out. *Brown Shoe Co.* v. *U.S.*,[108] a landmark decision in vertical mergers under Clayton 7, was witness to miroscopic examination of structural market shares of the merging companies, although minor in relative proportion. Moreover, the Justice Department in 1968 fashioned Merger Guidelines that were wedded, vertically and horizontally, to finite market position.[109]

This seeming fascination of American antitrust with market share and structural organization is viewed by lawyers and economists in the United Kingdom as a study in absolutes that is both overly mechanical and in some ways irrelevant. The British consensus seems to be that more attention should be devoted to actual study of market behavior and competition and less time spent on exercises in higher mathematics. While we shall take a look at the general approach to and theory of monopoly cases in the United Kingdom in Chapter VIII, there is some merit to the suggestion. Market share analyses and no more makes for superficiality and arbitrary adjudications that may lose sight of the principal question . . . is there a monopoly extant, have monopolistic practices been present or does the monopoly and behavior tend to substantially lessen competition.

Yet, there is much to commend market share evaluation as a viable tool in antitrust. First, it is a convenient method to obtain a reasonable grasp on an otherwise complex matter, rather than grousing for months on end in a sub'ective pilgrimage of massive fact and detail. Second, market share assessment tends to give uniformity and predictability to monopoly questions that would otherwise flounder in a sea of subjective doubt. Thirdly, empirical studies have consistently indicated that there is a high correlation between market share and market control, between proportionality and the

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ability to control price by restricting output.[110] Such disciplines have further demonstrated that there is significant affinity between market position and profits and that as a general synthesis, high market share will yield higher than average profits.

Moreover, it is a reasonably accepted postulate that as market share rises, so do the entry barriers of risk capital, economies of scale, absence of patent and a greater degree of customer awareness and acceptance of the principle market position. The trick is to utilize market share analysis in combination with subjective assessment of the particular factual scenario. Each is the better with the other.

It is accepted in this Thesis for the foregoing reasons that market share is a reasonably reliable yardstick with which to measure monopoly considerations in the oil industry. The debate does not come at the upper echelons of market position, for few would contest that a corporation with absolute dominion or with 90% of the market would have little effective competition and that the structure of monopoly as discussed in Chapter VI would be present. The only question with a market share of that dimension is whether it was acquired through or is held by exclusionary, predatory or other than meritorious means. If the latter behavior were not present, divestiture would not be in order. If, however, exclusionary or restrictive practices were undertaken to procure the monopoly, divestiture could be remedially sound.

The issue, to put it bluntly, is where to draw the line on market share. Any percentile within a given framework may come under attack as unjustly categorical, but those that insist on perpetuating that attack have nothing in the end. For the purpose of this Thesis, the starting point of monopoly power is a market share in the range of 65 percent. Until that level is approached, competition may take place in a meaningful fashion and new market penetration against the leader is entirely feasible. Studies at the national level in the United States [111] and prior case precedent [112] suggest that the range of market share adopted is defensible. As earlier noted in another context, a business entity with a market share of less propotionality may be deemed, after a full "rule of reason" exposition, to fall within the monopoly definition of Sherman 2. But in the confines of market share structure, it is only when market position approaches the level of 65 percent should serious consideration be given to the implication that market share is demonstrative of monopoly market power.

It is crystal clear that under the factual presentation set out in Chapter II, no major oil company comes within striking distance of the proposed minimum or threshold level. Exxon had the largest market share at the refining tier in 1978 and that was less than 10 percent of available capacity. For that matter the aggregated market share of the top four major companies was 32.5 percent of total available refining capacity, or slightly less than 50 percent of that considered marginal for any single company.

The market shares of the retail sector of the industry for 1978 are of less significance than at the refining tier. Shell-U.S. and Amoco each achieved 7.7 percent of the market in front of Exxon at 7.3 percent. The top four majors had an aggregated 29.4 percent of the retail market and the entire top eight had an accumulated market share of less than 50 percent.

Thus, no major company has sufficient market share in any market tier to support, without more, that a monopoly is present and should be arrested by divestiture. But the analysis does not end there. The rule of reason silhouette still requires that other factors incident to the subjective composition and individual or collective behavior of the corporations be weighed.

4. The Elements of Size, Efficiency & Exclusionary Behavior:

Almost every argument brought forward, vertical divesture of the major oil companies, whether it is the revenues earned, asset holdings or their ranking as the biggest corporations in the world, all have a common origin . . . the vast accumulation of wealth at every marketing tier. The contention is that the antitrust laws were designed to put an end to the massive assemblage of economic opulence, for such wealth breeds market power, inefficiency and absence of genuine competition without regard to market share and exclusionary or predatory conduct.

In the 1955 Report of the U.S. Attorney General Committee on Antitrust, the following statement is made:

"Effective competition may be affected not only by the total number of sellers; their relative size and strength must also be considered. This does not mean that close equality of size among the various firms is essential for workable competition to exist, but only that the rivalry should not depend entirely upon sellers who are so weak or inefficient as to exist by sufferance. For such firms are not independent, and are not properly counted among the number of effectively competitive sellers. And as the number of independent sellers reaches unity, the market obviously reaches monopoly." [113]

As applied to the oil industry, the statement argues that the oil majors have a greater power to control the refinery and retail markets than market shares indicate. The argument continues that where there is great disparity in economic size and wealth, smaller companies exist virtually by the grace or "sufferance" of the majors and thus should not be counted among the "effective" competitors in the market. Under that line of reasoning, the fifty to sixty smaller integrated and independent refineries should be disregarded in the determination of "effective market share" at the industry refinery level. Such methodology would increase the market share of Exxon to an "effective" level exceeding 17 percent of the refinery market, Socal to 16 percent and the top four majors including Amoco and Shell-U.S. to 58.9 percent of refinery capacity. At the retail market level, if all other marketers were excised from the calculations apart from the top eight oil companies as being "ineffective", the respective market shares in 1978 of Shell-U.S. would rise from 7.7 percent to 15.6 percent, Exxon from 7.3 percent to 14.8 percent and the aggregated "effective" market share of the top four would increase from 29.4 to 59.6 percent.[114]

An ancillary and not unimportant element of the argument of size in American antitrust is that the Sherman Act bans massive accumulations of aggrandized wealth as monopolistic without the requirement of a showing that exclusionary or predatory conduct contributed to the monopoly. The thread of the argument has been that since the Sherman Act forbids monopoly, the issue of how a company arrived in that position is irrelevant. Graphic demonstrations of that juridical philosophy are found in two cases out of the Federal bench in Massachusetts, both of which received Supreme Court review.

In *U.S.* v. *Griffith*,[115] the Defendant utilized a monopoly position in the theatre business in one town to obtain concessions from a distributor for movies to be shown in another town in which defendant faced exhibitor competition. The United States Supreme Court affirmed the holding of the trial court, Wyzanski, J., that such conduct was an attempt to utilize market power of a monopoly in one market to increase market strength in a different market. In finding a violation of Sherman 2 the Court wrote:

"Section 2 is not restricted to conspiracies. . . . but also makes it a crime for any person to monopolize or to attempt to monopolize. . . . So it is that monopoly power, *whether lawfully or unlawfully* acquired, *may* itself constitute an evil and stand condemned under Section 2 *even though it remains unexercised*." (Emphasis added).

In *United Shoe*,[116] the chargeable Sherman 2 offense consisted of United's practice of leasing shoe machines which it manufactured and refused to sell the same to competitors. The leases had partnership features which the trial Court found went beyond the mere assurance of prompt rental payments. Judge Wyzanski determined that the Sherman monopolization provisions had been transgressed by United. In so doing, he declared that illegal market power is unlawful when accompanied by actual or planned use of any "exclusionary practice" including activity which, though "honestly industrial", was "not economically inevitable." [117] The Supreme Court affirmed the Wyzanski opinion in *United Shoe* summarily without written opinion. The height of the Wyzanski Sherman 2 rationale was reached ten years after in *U.S.* v. *Grinnell Corp.*,[118] where, in a moment of judicial *dictum*, the trial court wrote that regardless of the specific facts and behavior of the defendant, a finding of monopoly power carried with it the signal "but rebuttable presumption *that such power had been criminally acquired*." A defendant shown to have monopoly control would have the *burden of proof* of showing that the company was the "highly exceptional case" where "monopoly power was *thrust* upon an enterprise by the economic character of the industry." On appeal, the Supreme Court, as we shall see, did not adopt this astonishing exercise of judicial wizardry.

The *ratio decidendi* in *Griffith, United Shoe* and *Grinnell* stemmed from one of the truly seminal cases in U.S. antitrust law, the *Alcoa* opinion [119] by Learned Hand. It is considered so because at the time of decision, the Second Circuit Court of Appeals was regarded as perhaps the premier judicial body in the United States (if not the Western world), and because the case has been cited with distinction and authority by the Supreme Court itself. But *Alcoa* is also landmark because it has led American antitrust into deep waters from which it has yet to fully emerge. The facts bear repeating as they lay open the base for the entire judicial debate on size and absence of any monopoly misconduct under Sherman 2.

Alcoa began manufacturing aluminum in 1885 and obtained through acquisition of successive patents a monopoly of the manufacture or manufacturing process of aluminum by 1910. Aluminum was a new lightweight alloy that could be utilized in a number of industries that made it compete directly with steel. Alcoa aggressively promoted aluminum in the U. S. and Canada, developed new uses for the alloy, continued to compete against other types of metal products and kept its prices down. Competition from imported ingot was proportionately minor. By the 1940's, through strong competition, continuous expansion of capacity and maintenance of low prices, Alcoa had at least 90 percent of domestic aluminum ingot sales. Alcoa's profits for over a 50 year period averaged less than 10 percent per annum on invested capital.

In 1940, the Justice Department charged Alcoa with monopolization under the Sherman Act. On appeal, Judge Hand first determined that the 90 percent market share of Alcoa constituted a monopoly "lawful or unlawful". Next, he laid aside as irrelevant

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the fact that Alcoa had not abused its monopoly power by charging high prices and earning excessive profits, stating:

"It is no excuse for 'monopolizing' a market that the monopoly has not been used to extract from the consumer more than a 'fair' profit. The Act has wider purposes."

Hand then turned to the issue of size and economic concentration, declaring that—

"Many people believe that possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy; that immunity from competition is a narcotic, and rivalry is a stimulant to industrial progress. . . . True it might have been thought adequate to condemn only those monopolies which could not show that they had exercised the highest possible ingenuity. . . . No doubt, that would be one way of dealing with the matter. . . . Be that as it may, that was not the way Congress chose; it did not condone 'good trusts' and condemn 'bad' ones; it forbad all."

Judge Hand then demonstrated his comprehension of the Sherman Act by comparing conspiratorial price-fixing, a *per se* violation of Section 1, with a Section 2 finding of unilateral monopoly:

"Starting, however, with the authoritative premise that all contracts fixing prices are unconditionally prohibited, the only possible difference between them and a monopoly is that while a monopoly necessarily involves an equal, or even greater power to fix prices, its mere existence might be thought not to constitute an exercise of that power. That distinction is purely formal; it would be valid only so long as the monopoly remained inert; it would disappear as soon as the monopoly began to operate. . . . There can be no doubt that the vice of restrictive contracts and of monopoly is really one, it is the denial to commerce of the supposed protection of competition."

Before turning to the question of intuition, invention, efficiency, progressiveness, and low prices which had characterized Aloca's operation, Hand turned back to the question of size alone being sufficient to indict under Sherman 2:

"We have been speaking only of the economic reasons which forbid monopoly; but, as we have already implied, there are others, based upon the belief that great industrial consolidations are *inherently undesirable* regardless of their economic results. . . . Throughout the history of these statutes it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other. We hold that Alcoa's monopoly of ingot was of the kind covered by Section 2." (Emphasis added)

Learned Hand recognized the pivotal contrast between a "monopoly" and "monopolizing", but to the *Alcoa* Court it may have been a distinction without a difference:

"It does not follow because Alcoa had such a monopoly, that it *monopolized* the ingot market; it may not have achieved a monopoly; monopoly may have been *thrust* upon it." (Emphasis added)

We now see where Judge Wyzanski borrowed the word "thrust" in *Grinnell.* Hand then proceeded to address the issue of whether one can be convicted of a felony for violation of Sherman 2 when there was no wrongful intent and Alcoa did not engage in any exclusionary conduct of "monopolization":

". . . persons may unwittingly find themselves in possession of a monopoly, automatically so to say: that is, without having intended either to put an end to existing competition, or to prevent competition from arising when none had existed; they may become monopolists by force of accident. Since the Act makes "monopolizing" a crime, as well as a civil wrong, it would be not only unfair, but presumably contrary to the intent of Congress, to include such instances . . . A single producer may be the survivor out of a group of active competitors, *merely by virtue of his superior skill, foresight and industry.* In such cases a strong argument can be made out that . . . the Act does not mean to condemn the resultant of those very forces which it is its prime object to foster: *finis opus coronat.*"

Then Judge Hand made a statement which resulted in a full reversal of his field:

"The successful competitor, having been urged to compete, must not be turned upon when he wins."

The opinion closed on the illusory and astonishing note that an "exclusionary" act contrary to Sherman 2 consisted of Alcoa increasing its production capacity as demand for its product grew:

It (Alcoa) insists that it never excluded competitors; but *we can think of no more effective exclusion* than *progressively* to embrace each new opportunity as it opened, and to *face every newcomer with new capacity* already geared into a great organization, having the advantage of experience . . ." (Emphasis added)

The time has been taken to set out several sections of the opinion in *Alcoa,* for one needs to see for himself the enormous difficulty in which the Hand Court placed itself and, for that matter, the whole field of monopoly law under the Sherman Act. If the decisions in *Griffith, United Shoe, Grinnell* and *Alcoa* are synthesized, it can be said in a Sherman 2 case (i) that corporate size is significant legal relevancy, (ii) that monopoly power is actionable even though lawfully acquired unless it were thrown or "thrust" on an unwilling and unknowing competitor, (iii) that normal competitive activity by a monopoly will be exclusionary unless it was "economically inevitable", (iv) that Sherman 2 did not just forbid "bad monopolies", it forbade all monopolies, (v) that monopoly power was criminally acquired and that the burden of proof is on the monopoly to show that it fits within a "highly exceptional case", but (vi) that a competitor who acquired a monopoly through superior skill, foresight and industry must not be turned on when he wins.

If the law were actually as suggested by this compendium of cases, a substantial segment of American corporations would be under perpetual indictment for monopoly violation of the Sherman Act. It should be noted that the market in which Alcoa was said to have "monopolized" was aluminum. Apparently to the Second Circuit, aluminum has no competitive interchangeable substitute such as steel or other synthetics. By drawing the product market with an arrow, a corporation can turn from competitor to monopolist very swiftly.[120]

The rationale of *Alcoa* and the trial court opinion in *Grinnell* are categorically inconsistent with the bold letter precedent of the Supreme Court and with the better rationale that size is no offense under Sherman 2. First, in *U.S.* v. *U.S. Steel Corp.,*[121] better than 180 firms were brought under unified control of defendant. The Steel Company then attempted to induce others to fix prices; the Supreme Court found that such conduct was itself evidence that the defendant lacked market power. The Court found that although U.S. Steel had attempted to become a monopoly, it had not succeeded and that its size as the largest steel company in the U.S. did not make it so.[122]

Secondly, the statements in the opinion of Judge Hand cannot stand analysis. In one breath, it is said that only a monopoly that is thrown in one's lap or was otherwise economically inevitable, can be sustained under the Act. In the next breath, Hand writes that one who has gained a monopoly by competitive skill, foresight and industry, cannot be condemned. The two statements cannot stand together; they result in an immaculate *non-sequitur.*

In point of law, the larger approach to the Sherman Act in *Alcoa* is flawed. To compare a horizontal price-fixing conspiracy with a unilaterally and properly acquired monopoly is convoluted logic of the worst type. *Alcoa* abuses the central theme and is the antithesis of competition, for in claiming that it was violative of the Sherman Act to expand capacity in order to match new demands which Alcoa's production had created, the opinion does just what Learned Hand feared most . . . it penalizes a competitor for being efficient and legitimately expanding capacity, for keeping his costs down, for developing new techniques and for selling at a low price for the benefit of the consumer. If the opinions of Judges Hand and Wyzanski are, indeed the law, the following antitrust aberrations result:

(a) Keep your prices sufficiently high above marginal costs so that entry barriers will not be intolerable and the market can be shared;

(b) Inefficiency should be encouraged for that will reduce barriers to market entry;

(c) Do not be so progressive with new product development and capacity expansion because others may not be able to compete; and

(d) By all means, don't be such a strong competitor that you win.

Third, the most recent pronouncement of the U.S. Supreme Court on the issue of Sherman 2 monopolization was the 1966 appeal in *Grinnell.*[122a] In a repudiation of the language of the trial judge, Wyzanski, J., the Supreme Court expressly declared that a Sherman 2 violation is made out only by the existence of monopoly power and the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

Thus, *Grinnell* recognizes and permits a monopoly that was obtained through diligence, efficiency and progressiveness. The very stuff of the antitrust laws is to put out a better product than competitors, to sell at a lower price, to expand capacity, and to be more efficient and progressive. What antitrust condemns is competition that is not on the merits. The latter is the "exclusionary conduct" which constitutes monopolization under Sherman 2. *Grinnell* has left American antitrust law with a workable definition. Competition on the merits in a highly concentrated market is not an offense under the Act and a monopoly acquired by such conduct is not subject to attack. A monopoly need not be "thrust" upon a company to sustain it *vis-a-vis* the Sherman Act, if the company acquired it through good faith competition and superior skill.

Fourth, the great bulk of Section 2 litigation wherein a violation has been found, involved express, exclusionary conduct. In the watershed case of *Standard Oil Co.* v. *U.S.,*[123] the Supreme Court found that preferences and discriminatory pricing, contracts with competitors to restrain trade, price cutting to ruin competition and creation of bogus companies were violations of Sherman 1 which in turn resulted in monopolization under Sherman 2. The Court also stated that if traditional methods of competition were not utilized and behavior was accompanied by intent to exclude, the conduct was condemned under Section 2. In the companion case of *U.S.* v. *American Tobacco Co.*[124] predatory ruthless practices were made out as the bases for finding a Sherman Act violation. Speaking through White, C. J., the Court observed that a legitimately acquired monopoly was not forbidden by the Statute.

Thus it is that U.S. antitrust does not condemn size, *ipso facto,* or monopoly power.

Footnotes at end of article.

The Sherman Act does not forbid all monopolies as claimed in *Alcoa*. It bans only monopolization. Monopoly power does not carry with it any presumption of criminal acquisition. The trial court statement in *Grinnell* to that effect is lonely for any support.

The anomalies of *Alcoa* are prodigious and undercut any weight that might otherwise be accorded to the decision. *Alcoa* is a celebrated case only because of the general reputation of its author and not because of the respectability of its rationale in the field of antitrust. While *Alcoa* and *Grinnell* have long provided intellectual sport in academic circles, they do not represent the controlling monopoly law of the U.S.

The oil majors are not subject to the wrath of Section 2 of Sherman by virtue of dominance or size. None of the companies approach a level of market share in either refining or retailing which under American jurisprudence constitutes a monopoly.

5. Considerations of Vertical Integration:

The assimilation of separate operating levels, each of which competes in a distinct market, has long been of concern in antitrust. In the more general reference, the argument is generally made that vertical combination of separate markets in the distribution system allows market power at one level to be unfairly employed in increasing market power at a second level to the detriment of competition at the latter. In most instances, the integration that is claimed as ani-competitive is the use of up-stream strength to unnaturally inseminate a down-stream operation. Since the upper level of a company is likely to deal with its forward level to the exclusion of other possible purchasers and because the forward level is just as likely to acquire its up-stream product from the upper level rather than from outside sellers, it is argued that competition is strangled in both directions.

The argument against vertical assimilation of different operating tiers within one enterprise, both in its general context and that of the major oil companies, is bankrupt and misconceives the purpose of antitrust. To begin with, there is no jurisprudential or economic theory that forecloses an entity from engaging in business at more than one level of the manufacturing process. Indeed, if the matter is to turn on fundamental competition philosophy, the presumption must be that an individual has the range of freedom to engage in different levels of economic activity at the same time. If efficiency of operation is enhanced at either level or at both upper and lower tiers by the reduction of marginal costs, vertical integration of the two levels is not only an acceptable method of competition, it is a clear social gain and is a desired objective of antitrust. Moreover, if the combination of different operating levels contributes to a progressively better product or promotes new research and technology at either or both functioning tiers, such are also social competition gains and are to be encouraged.

As for the argument in the oil industry that vertical integration permits a downstream "squeeze" on independent refiners, the claim is flawed. Even if the argument were accurate, the refining level of the major oil company is foregoing a profit on its operations which it otherwise would be entitled to recover. The result is neither unfair nor contrary to competition policy. The true cost of the product to the integrated company is the price on the open market at any given stage or at the tail end. Competition at the production level in the United States will place emphatic pressure on the major company to sell crude to others or transmit the crude to its own refinery at a price which meets that of the independent producer. Those that augur for an infinite number of atomized economic units could hardly ask for more.

In addition, there is a strong practical argument that supports vertical combination of the production and refining levels and for that matter, the refining and retail tiers. A operator who has heavy capital investment in production plant and crude is desirous of securing an outlet for his petroleum. Otherwise, he will be dependent upon the vagaries and accidents of a down-stream refiner wherein a sale could be interrupted because of the latter's internal financial conditions, industrial action, and the like. The reliability of petroleum refinining capacity is of particular import at the production stage, for quantity and storage requirements (even apart from financial risk) are vast. A producer can neither logistically nor economically store crude oil for extended time periods. This principle is indigenous to the independent producer as well as to the major oil company.

If it were shown that the specific *animus* on the part of the integrated major was to intentionally drive another refiner out of business by a "squeeze," such would in all probability constitute exclusionary conduct under Sherman 2.[125] On the other hand, if the conduct were prompted either by tax or business incentives (as acknowledged by commentators) or by the incentive to compete and hold down price, that is nothing more than is expected of a strong competitive market. The trouble with much of the argument against vertical integration, not unlike that of other populist proposals, is that it does not fit comfortably in juxtaposition with competition. At times a harsh reality, competition neither makes allowances for nor guarantees equal economic shares of the market. Businesses fail because of inefficiency, ineptness, lack of acumen, absence of aggressiveness, or simply overpopulation in the market. Nothing in the law of antitrust, except perhaps for the machinations of *Grinnell* and *Aloca*, requires a business operator to treat a competitor not only with good faith competition, but with tender-loving care as well.

Because of the nexus of vertical integration under Sherman 2 to vertical mergers of corporate entities generally, the case law under Section 7 of the Clayton Act should be considered. The leading case in point is *U.S. v. Columbia Steel Co.*[126] wherein the Government challenged a vertical acquisition by a steel manufacturer (a subsidiary of U.S. Steel) of a steel fabricator (Consolidated). Undisputed testimony established that the purpose of the merger was to assure an outlet for the manufacturer's production. The Justice Department claimed that such would exclude competitors from supplying Consolidated and therefore would substantially lessen competition or "tend to create a monopoly". The purchases of Consolidated comprised about 3 percent of the rolled steel market, and there was no predatory intent to monopolize the downstream market. The Supreme Court approved of the merger, as accomplishing "a normal business purpose", and further declared that a vertical merger is not *per se* illegal, but must be examined under the rule of reason.

There are, however, numerous examples of mergers ruled anticompetitive. In *Reading*[127] and *Lehigh Valley*,[128] both railroads acquired coal bearing properties so that coal production from the fields would pass over their lines and not the roads of competitors. The Supreme Court found the vertical acquisitions to be tained with an intent to eliminate competition and rejected both mergers. The railroads had statutory monopoly power as common carriers. In the more recent case of *U.S. v. Yellow Cab Co.*[129] decided under Sherman 2, the Court disapproved of vertical acqusitions of taxi companies where there appeared to be a "calculated purchase for control" of taxi cabs by an auto wholesaler. That type of acquisition was not in furtherance of a normal business practice, but rather was viewed as an attempt to gain a monopoly control in relevant product and territorial markets in order to block any access by competitive wholesalers. And in *U.S. v. Paramount Pictures Inc.*,[130] a Sherman 2 complaint was sustained where major film distributors, having 75 percent of the market, were found to have monopolized first run exhibitions by preferentially cross-licensing each other's theatres. The Court, stating that vertical integration under the Act turns on the purpose or intent (a calculated scheme to gain control over an appreciable segment of the market and to restrain competition) and the power to effectuate it, ordered divestiture of the down-stream assets.

The law under both Clayton 7 and Sherman 2 with respect to vertical integration thus hinges on monopoly power. *Unless there is power of monopoly proportions at either the upper or lower operational tiers, vertical integration lacks antitrust significance.* If there be monopoly power at the upper tier, vertical integration will have antitrust consequences where there is manifested express exclusionary conduct at the lower level to significantly restrain trade, to attempt monopolization at the lower tier, or to increase the monopoly power at the upper level.

The individual market shares of the major oil companies at production and refining levels will not allow an argument of monopoly power, for reasons already advanced in this Chapter. The respective market positions resemble more that of Consolidated in *Columbia Steel* than that of *Paramount Pictures*. The basis for the vertical integration of crude production and refining tiers is consistent with "a normal business purpose" *viz.*, securing a dependable outlet in the manufacturing process. Further, there is no express showing of exclusionary conduct or a scheme calculated to create a monopoly at either the production or refinery tiers.

The vertical integration of retail stations by the major oil companies presents a closer question than the refinery level. To begin with, the business justification argument of having a secured outlet for the refined product is of less weight—independent retailers provide a significant and dependable base for the sale of petrol. Moreover, some of the restraints which major oil companies place on lessee-dealers as well as independent retailers may constitute exclusionary practices at the retail level.

6. Joint Bidding And Exchange Agreements:

The claim that joint bidding procedures of the major oil corporations violate the antitrust laws is without merit. In fact, the argument demonstrated a considerable lack of understanding regarding necessary and typical business activity in the petroleum industry, including independent operators. The search for and development of oil is much different than manufacturing automoblies, or making bubble gum. In the latter, the raw materials are identified and quantifiable. The fundamental risk is thus one of efficiency of production, quality of product and the ability to sell at a profitable and competitive price.

On the other hand oil involves high risk to locate the raw material. The risk is not only how much oil will be hit, but whether any at all will be discovered. Moreover, the capital required to engage in a comprehensive oil exploration program is massive, even by major oil company standards. In 1979, for example, Amoco budgeted $1.2 billion, Social budgeted $2.3 billion and the independent, Louisiana Land & Exploration, set

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aside $220 million for exploration and development.[131]

The areas in which wildcat drilling is required are deep and difficult horizons, both on and off-shore. The only way that private capital can be raised to undertake these high-risk operations is through joint venture bidding and exploration between majors and independents where the risk in any one field or hole is shared. Joint venture operations at the exploration and development tier are common throughout the industry in every country. If such arrangements are considered illegal combinations or conspiratorial practices under the Sherman Act, then the charge must be levied against the entire industry and not just the major chieftains. Of course, the ultimate consequence of that antitrust eccentricity would be that exploratory drilling would be seriously prejudiced with the most difficult areas abandoned. Joint ventures, however, between the top eight or any large oil corporations at points forward of production other than pipeline transportation, should be closely examined and challenged where any costing methodology or pricing techniques are even tacitly involved.[132]

Arrangements for exchange of crude or refined product between major companies, to the exclusion of independent refineries, have superficial overtones of discrimination and predation. Yet under the *Colgate* doctrine,[133] a party may unilaterally choose with whom he will deal and, in the absence of any purpose or intent to create or maintain a monopoly, the conduct is not contrary to the Sherman Act. As we have noted, refined gasoline is a constant product and, dependent upon gravity base, so is crude. There is cross-elasticity of demand. If a company is able to obtain increased efficiency and thus lower costs by exchange of the homogeneous product, the conduct is pro-competitive and does not violate the antitrust laws.

However, it would not take much for this practice to constitute a trade restraint under Sherman 1. If there were any significant showing that an interchange arrangement was made to intentionally discriminate against an independent or another major company, or to drive them from the market, a Sherman 1 complaint would be made out. In addition, such combined practices would provide a leg up toward the theory of shared monopoly under Sherman 2.

7. Information Sharing Agreements:

Agreements of competitors to exchange information as to technology, marketing practices, employment procedures, inventory, customer lists, and costing and pricing mechanisms should be viewed with skepticism and suspicion under the antitrust laws. There are few inventions, techniques and production processes in refining or in the operation of retail outlets that are not of common understanding. There are those exceptional circumstances in which the contractual exchange of technical or operative data is justified on the basis that productive and allocative efficiency of the general industry is bettered. For example, agreement for information sharing within the Common Market has been sanctioned by the Commission of European Communities as a method to dissolve national markets and promote trade within the Community. Moreover, general financial and technical data furnished to trade associations or journals is not injurious to antitrust principles, for such is no more than what may be found in annual reports to shareholders. In fact, non-contractual dissemination of technical and functional material by individuals and companies is encouraged if not required in order that there be free exchange of ideas and dialogue on contemporary problems facing the industry.

But that is as far as the argument on contractual informational agreements can be taken. Inter-company arrangements to share price data, customer lists, costing analyses, and projected future plans are pernicious in spirit and cancerous in effect, for they lead inevitably to specific knowledge of a competitor's operations, inter-dependency and ultimately to price-fixing. In *Container Corp.*,[134] the United States Supreme Court found that the contractual exchange of price lists, inventory counts and customer invoice summaries is the *de jure* equivalent of price-fixing and that this type of cross-fertilization of financial data and materials was categorically forbidden as a *per se* violation of Sherman 1. Antitrust was born to sweep away the barriers of economic interdependency and reciprocity and to sustain efficiency and progressiveness upon individualistic conduct in the market. Competition does not begin or hang on just the price of the end product.

Nor is there any inconsistency between the position now advocated and joint venture arrangements for exploration and development in oil. The latter have long been essential if the high-risk hunt for new discoveries is to continue. The only information that is shared in those ventures relates to the specific field. But that is where it stops. Information sharing or "pooling" beyond that is insidious.

8. The Theorems Of Shared Monopoly & Conscious Parallelism:

Although no antitrust court in the United States has yet held that a shared monopoly is reached by Section 2 of Sherman, the Act and its purpose do not rule out this view as a matter of law. Section 2 condemns "every person who shall monopolize or attempt to monopolize." Nothing in that language suggests that several, although acting individually, might not "combine" to monopolize albeit there is no overt conspiratorial conduct.

From all that has been said, it is a postulate of this Thesis that the eight major oil companies (and perhaps the top ten) fit the profile of an oligopoly in the U.S. Even though individual corporate market shares are of low proportionality, if Exxon or Texaco were to restrict output or increase prices, the effect on the other majors and possibly the entire U.S. industry would likely be substantial. But oligopoly status does not violate Sherman 2 *per se;* it is not even a finding of a *per se* monopoly. The concern of the Act is the promotion of competition through efficiency and progressiveness and the condemnation of a structural market that ignores those characteristics. The market positions of major companies, while relatively stationary, yet have been fluid, both *inter se* and within the industry. The erosion of their historic position has been marked in the past decade with non-integrated independents and other large majors increasing their market shares.

There are four fundamental factors which cut against the finding of shared monopoly by U.S. companies under Sherman 2. First, the individual shares of the top eight majors, aggregated, do not reach the marginal level of what this writer has determined to be monopoly power in either the refinery or retail markets. In 1978, the top eight companies had 54.8 percent of U.S. refining capacity and 49.3 percent of retail petrol sales. In order for an aggregated market share to reach even the doormat of what Learned Hand would catalogue as a monopoly, there would need to be added to the list of inductees three to five additional oil refineries and as many as six to eight corporations with integrated retail divisions. Is it then to be said that these newest reinforcements are part of this shared monopoly when the basis of the monopoly, i.e., uniformity, joint agreements and conscious parallelism, are lacking as to them? That sort of arbitrary pigeon-holing would be fraught with due process questions of constitutional dimensions.

While it is urged that the barriers to new entry at both the refinery and retail markets are intolerable, the uncontested fact is that the only barriers are capital costs and governmental restrictions. Antitrust can hardly do anything about the latter. As to capital requirement, it always has been an inexorable concomitant to the oil industry.

The second reason is that the Supreme Court has refused to find that conscious parallelism, standing by itself, is a violation of Sherman 2.[135] In *Paramount Films,* the aggregated distributors (eight in number) possessed 63 percent of the first-run film market to supply retail exhibitors. The Warren Court[136] explicitly found that the accumulated market share was inapposite and of no consequence under Sherman 2 standards, since the individual conduct of each distributor, although in general parallel to others, was consistent with sound business practices and judgment and that the most profitable mode of distribution was followed. The Court has refused to be drawn away from a showing of some collusion that was persistent and substantial.[137]

The third reason is that even assuming for the sheer sake of argument that a shared monopoly is proven, it must still be evidenced that the monopoly "monopolized" by exclusionary behavior so as to invoke the sanctions of the Sherman Act. There has been no expression that a common unit of a dozen or more companies discriminated against or excluded competition at the refinery or retail markets. To say that the companies engaged in exclusionary behavior individually takes the reader back to conscious parallelism. Unde *Paramount Films,* it may not be used, by itself, as the basis for a Sherman 2 violation. Nor will it do to say that the same conduct that brought about the "monopoly" may be served up again to prove "monopolization." That would be an impermissible "double-dip".

The fourth reason is that there has been, after all has been said, meaningful competition among the magnates of the industry at the refinery and retail levels. Gross revenues have varied; Exxon lost its position in 1978 as having the highest retail market share; some have lost and others have gained market position, and even those in the top eight have changed. The oil oligopoly could hardly be charged with market share rigidity, which typically accompanies the classic arrangement. To the contrary it is elastic.

Lastly, the profits which the industry has typically earned are not what one expects of a monopolist. They could only be recorded as moderate in light of the high-risk industry as well as in relation to other major industry categories. The exorbitant profits captured by the majors in the immediate years past must be fundamentally laid at the feet of OPEC and not to the structural dominance or behavior of the companies. The social problem raised by that phenomenon may be treated in a number of legislative ways, but antitrust should not become the whipping boy of the Internal Revenue Service.

The jurisprudential philosophy of "shared monopoly" is novel and constructive. However, it must be approached and used with caution. Otherwise, most major industry groups, such as automobile, steel, and appliances, with higher individual market shares and structural concentration than oil, will be caught in the whirlwind. Shared monopoly in U.S. oil is inevitable in this Thesis under the rule of reason.

9. Vertical Restraints Of Trade At The Retail Level:

There are two particular areas of antitrust enforcement that merit special attention in the oil industry, to-wit, vertical tying agree-

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Footnotes at end of article.

ments and exclusive dealing arrangements. Their use has been frequent by major oil companies in the U.S. as a means to control the business functions of independent marketers at the retail level. Company-owned and operated outlets are unaffected by the competitive significance of tying, full-line forcing and exclusive dealing clauses. But they are of cosmic importance to the lessee of a company-owned station and the simon-pure independent retailer, both of whom operate their own business.

a. Tying Contracts:

American antitrust law has consistently eyed with suspicion tying agreements as anticompetitive and unreasonable vertical constraints upon commerce. Even apart from the interdiction of Section 1 of the Sherman Act barring contracts in restraint of trade, Section 3 of Clayton renders illegitimate in law sale agreements between seller and buyer in which the buyer is precluded from purchasing similar goods from the seller's competitor (where such agreement "substantially lessens competition or tends to create a monopoly").[138] In addition to exclusive and full-line forcing contracts, Clayton 3 has been specifically applied to tying arrangements.[139] Moreover, Section 5 of the FTC Act, debarring unfair methods of competition, has been utilized to strike down, under a broader standard, tying arrangements.[140]

One of the principal objections to a tie-in is the utilization of market power in the tying product to force a sale and extirpate competition in a separate product market. The classic illustration is *United States* v. *Loew's Inc.*,[141] wherein the defendant, having a dominant position in the film distribution market, conditioned the licensing to exhibitors of first-run or high quality films upon the licensee taking inferior films as well. The Supreme Court found that the agreement constituted a *per se* violation of Sherman 1. However, a tie-in is not only condemned when the buyer is forced to take a tied product that he does not want. A tying arrangement is subject to attack even where the buyer may desire to purchase the secondary product,[142] for the depreciating effect upon structural competition is the same.

Most tying complaints are brought under the Sherman Act as a restraint of trade. A *per se* violation will be made out if (1) the seller has a dominant position in the tying product [143] or it is otherwise uniquely desirable and (2) a substantial volume of commerce is restrained in the tied product.[144] In determining the latter, the test of "quantitative substantiality" is utilized to measure the dollar volume of tied product that is foreclosed to the market.[145] If a case does not come within the *per se* doctrine, a Sherman 1 offense may still be shown under the rule of reason.[146]

While the tied item may be a service under the Sherman Act, both the tying and tied articles must be commodities under the Clayton Act. If there is a reasonable probability that the tie-in has lessened competition under the "quantitative substantiality" test, a Clayton 3 action will be made out even though the seller lacks market power in the typing product. A Sherman 1 count, on the other hand, requires both dominance (or uniqueness) and competitive restraint.[147]

The leverage which the seller uses to require that the buyer take the tied commodity may rest inherently in the relationship between seller and buyer without a specific explication in writing. In *F.T.C. v. Texaco, Inc.*[148] The Supreme Court introduced the doctrine of "inherent coercion" in a case under Section 5 of the FTC Act wherein Texaco had only "suggested" to its retail dealers that the TBA of Goodrich be purchased.

Footnotes at end of article.

There are defenses to a non-*per se* Sherman or Clayton tie-in, such as the single product, legitimate business purpose, and protection of goodwill. The latter defense is bottomed on the premise that without the tied product being sold, the customer is less likely to have confidence in the tying product.

Tie in case precedent in U.S. antitrust law has been chastized because its policy appears to rest upon the inequality in bargaining power between the largest seller and the smaller purchaser rather than upon a fundamental goal of competition. While there is language in the case law that would lend credence to a protectionistic complex in the judicial assessment,[149] the contention misses the mark. The pivotal factor is that through the market power or product uniqueness of the seller in the tying commodity, competition in the tied product at the retail level is emasculated not because the party imposing the tying requirement has a better product or a lower price, but because of economic leverage in another market. Thus, in the oil industry, the retail dealer is foreclosed by his tie-in with the major from seeking out TBA and purchasing it at a more competitive price from another supplier. The other side of the coin is that the market, represented by the retailer, has been artificially shut off to any other TBA competitor by the tying arrangement. Therein lies the dual injury to competition and antitrust policy.

In determining whether a major oil company has the requisite economic power or authenticity to satisfy Sherman 1 standards, the relevant geographic market should be defined by the retail market of the buyer not by the refining market of the seller. It is the retail market that has been obstructed. It could be as small as a borough or city and as large as a county or state, dependent upon the specific trading area.

Although there may be exceptional cases, the rule of law, upon which this Thesis rests, is that tying agreements or tacit "understandings" between major oil companies and lessee or independent retailers for TBA are invidious constraints on trade an dependent upon the substantiality of commerce foreclosed, offend the antitrust laws of the United States. Tying cannot be excused on the notion that the oil company is desirous of maintaining quality products at retail outlets where its petrol is sold. That is just another way of saying that the company wants to oversee and control the independent business operations of the retailer. The preservation of a competitive market for the retailer to buy TBA at the best quality and price will not condone such behavior.[150]

b. Exclusive Dealing Contracts.—An exclusive dealing (or requirements) contract in the oil industry is as the phrase implies. . . . as a condition of selling petrol to the retail outlet, the integrated oil company obligates the retailer (1) to purchase all petrol needs from the company and (2) to refrain from dealing in the petrol of any competitor of the company. In consequence, the retail dealer is blocked from access to a better petrol price from the competitive market and in reverse, the retail market represented by the dealer is closed to the competitors of the supplying company. To that end, it might be urged that an exclusive dealing agreement is only a truncated version of a tying arrangement.

But there are conspicuous differences between tie-ins and exclusivity. For one thing, under an exclusive dealing contract the retailer purchases and obtains precisely the commodity he desires. For another, the oil company does not employ in exclusive dealings the degree of abrasive economic power in one market (petrol) to penetrate a separate market (TBA) under a tie-in. In addition, there may be sound business reasons for both the major and the retailer to respectively secure a known outlet and source of supply, whereas a tying agreement can be seldom justified. The utilization of exclusive requirement contracts has been, at times, diffuse in the retail market by the major oil companies.

There is little doubt that exclusivity at the retail level constitutes a restraint of trade. To that end, requirement agreements could ostensibly invoke the Clayton Act, Section 1 of Sherman and the incipiency objectives of the FTC Act.[151] Indeed, the language of Clayton 3 seems plain enough in its declaration that "it shall be unlawful for any person . . . to make a sale . . .[152] on the condition . . . that the . . . purchaser shall not use or deal in the goods . . . of a competitor of the seller . . . where the effect of such condition may substantially lessen competition or tend to create a monopoly." But construction of Section 3 is not axiomatic. The issue of illegality turns on the interpretation of that radiant level of conduct that constitutes a "substantial" lessening of competition. Does 1 exclusive agreement meet the test, or 5 or 50 or 500? Or is proportionality of the entire retail market the litmus test? Still further, is the "quantitative substantiality" doctrine of tie-ins under International Salt the applicable measure? The answers to these questions are not found in the Clayton Act.

Several conclusions of law can be drawn at the outset. Requirement contracts have definite, pro-competitive elements that may stimulate competition. Such redeeming value precludes the application of a *per se* analysis under Sherman 1 or Clayton 3. Secondly, 1, 5, or even 25 exclusive agreements out of 500 retailers purchasing from one major company in the relevant product and geographic market would be, as a matter of law, insubstantial. The antitrust laws protect competition, not individual competitors.[153] Thirdly, a barrage of exclusivity contracts by one major company followed by overt refusals to deal with recalcitrant retailers could be well construed as an attempt to monopolize or monopolization contrary to Section 2 of the Sherman Act as well as being a violation of Sherman 1 and Clayton 3.[154] Beyond that, the guideposts are less than translucent.

The hallmark case on exclusive dealing in U.S. antitrust [155] could hardly provide a better setting for the subject of this Thesis. In *Standard Oil*, Socal had achieved a market share of 23 percent of retail petrol sales in a seven-state area of the Western U.S. Socal supplied some 6,000 independent stations, which accounted for 16 percent of all outlets in the geographic market; the 6,000 independents were responsible for selling about 11.5 percent of Socal's 23 percent of the market. While the agreements between Socal and the independents differed in terms, there was a common theme—an exclusive dealing clause as to petrol requirements. The six leading competitors of Socal, with an aggregated share of 42 percent of the retail market, also maintained exclusivity arrangements with independent retailers. The Justice Department brought action for injunctive relief under Sherman 1 and Clayton 3 for restraint of trade.

Justice Frankfurter, writing for the Court, began by distinguishing exclusive dealing from tie-in arrangments, finding that the latter "serve hardly any purpose beyond the suppression of competition." Because that Court had spoken plainly on the mischief of tie-ins just two years before in *International Salt*, Frankfurter declared that the "quantitative substantiality" formula adopted therein was inapplicable in exclusive dealing agreements. However, the Court recognized the need for a standard under which "effect" on "substantial competition" could be gauged; otherwise, Frankfurter noted, the juridical process would become as *ad hoc* and unrefined as the recently enacted Monopolies Act of Great Britain.[156] After considerable vacillation if not gnawing frustration, the *Standard Oil* Court declared that the doctrine of "comparative substantiality" should be applied to determine the proportionality of trade restrained. Since some of 23 percent of the retail market (65 percent of the market including Socal's competitors) was subject to exclusivity, tht effect of the competition inhibited was adjudicated substantial and in violation of Clayton 3. The Court did not reach the issue of whether Socal had transgressed the Sherman Act.

In dissent, Justice Douglas argued for a populist result, claiming that an atomized retail market was the object of anti-trust and that the judgment reached by the *Standard Oil* majority would indefeasibly bring about the destruction of the independent retailer and the creation of major company empires at the retail market. Aside from an otherwise vacuous opinion on competition law, Douglas had a practical point.

A decade later in *Tampa Electric*,[157] the Court found that an exclusive contract to purchase coal requirements (the agreement was for $128 million) was comparatively insubstantial, it covering only .77 percent of the relevant market.

Thus, after decades of antitrust precedent in the U.S., the law relative to exclusive requirement contracts is not altogether settled. Particularly is that so with respect to the petroleum industry, for the sheer, absolute number of outlets and the homogeneity of petrol supply make definition difficult. If the exclusive agreement were between a woolen mill and retailers, forbidding the retailer to buy sweaters from a competing mill, or between a manufacturer of shoes and the retail shop, the comparative substantiality test under the "effects" clause of Clayton 3 would be much the easier to satisfy.

It is submitted that American antitrust courts should apply, as the judicial index in exclusivity contracts, whether competition would have been stimulated and strengthened with lower costs, higher retail profits and added consumer benefits if the requirement agreements were not in effect. This "but for" test is more than a rule of reason analysis, for its focus is on competition *vis-a-vis* individual competitors in the market.

It is not known what proportion of the lessee and independent retailers served by the major oil companies in the U.S. is under exclusive agreements and accordingly, no position can be taken in this Thesis as to probable antitrust violations of any one or more of them. Moreover, the vulnerability of each company must be weighed by the specific geographic market in which it sells refined petrol. Conceptually, however, unless the exclusive agreements of a given company were in the range of 10 percent of the relevant retail market, it is the position of this Thesis that exclusivity should be adjudged insubstantial in its effect upon competition. Long-term exclusivity is much the more offensive due to its time length in which supply competition is shut down. In all events, exclusive arrangements, where permitted, should not exceed a year in duration with the retail operator having the right to select another supplier upon expiration of the term without trepidation of the oil company refusing to supply.

10. Considerations of Divestiture of the Major Companies:

To those within the industry who contend that the consequences of divestiture should be considered in arriving at the conclusion of whether the antitrust laws have been violated,[158] they are wrong. Remedial cures in antitrust are irrelevant to the cornerstone issues on the application of substantive competition law.

Section 4 of the Sherman Act authorizes the several district courts of the United States "to prevent and restrain violations" of the antitrust laws. Criminal fines and incarceration, prohibitory injunction, actual damage recovery by the Government and treble damage liability are explicitly set forth in either the Sherman or Clayton Acts as remedial devices of the judiciary. The word "divestiture" does not appear in print throughout the antitrust laws. Yet it took little time before divestiture was employed in the courtroom. Under the 1915 decision of *Standard Oil*,[159] the Supreme Court entered a decree aimed at both conduct and vertical structure—an injunction against further predatory pricing practices and an order of divestiture as to assets which had been utilized or acquired by the predatory behavior. Without exceptional comment, divestiture was regarded as an inherent attribute of the Court's equity power (judex equitatem semper spectare debet) and seen as the only pragmatic means in which the egregious monopolization by the Oil Trust could be arrested.

American antitrust courts have continued to depend upon divestiture procedure as the ultimate instrument with which to restore competitive balance in the market pursuant to the Sherman 4 statutory mandate. That mandate is the basis of the economic order of the United States. Those that play fast and loose with the competitive system in the U.S. damage the core of free enterprise and individual initiative. Anemic and insipid enforcement consequences are the soft underbelly of the antitrust laws, jeopardizing if not blunting their effectiveness.

In some instances, a criminal fine and the possibility of a treble damage action may be only a wristslap to a monopolist. In other instances, there may be no juridical option other than divestiture, for an injuncture against an entrenched monopolist is barren if he is unable to avoid further antitrust violations by continued operations. Moreover, if the monopoly was achieved through illegal merger or predatory and exclusionary behavior, there is something to be said for the equitable principle that the monopolist should not be entitled to retain the "fruit" of its unlawful conduct.[160] Divestiture has been ordered solely in cases under Section 2 of Sherman and then principally implemented only when anticompetitive acquisitions were the staple of the violations.

Nonetheless, divestiture is radical surgery, easily the most dramatic reparation in antitrust. Dismemberment of a company can have a devastating impact upon corporate personnel, stockholder, and operations in the largest sense and not just to the assets that are subject to divestiture. Time to accomplish the disunion may result in inordinate delay resulting in the loss of capital and inordinate inefficiency. On top of that, the judicial machinery is not very well equipped or designed to fashion or preside over complex economic decrees breaking up a company, as acknowledged by the trust-busting jurist, Charles Wyzanski, in *United Shoe*.[161]

In considering divestiture of the major oil firms, the first issue that must be squarely faced is the profile of the decree. If dismemberment is to fall at the refining and retail levels as to Exxon, for example, is the decree to declare that Exxon is enjoined from thereafter acquiring other assets at those marketing levels in the future? An even larger question is whether the court is prepared to forbid Exxon from developing assets in those markets through the normal process of internal vertical integration? If so, the antitrust court has relegated Exxon to operate perpetually or even for a finite period on one or, perhaps, two levels of economic activity in the industry, i.e., exploration-production and transmission. The company would be required thereafter to compete against other oil companies, including foreign corporations such as B. P., who remained vertically integrated. No one could duck the fact that the restriction of economic freedom and ability of Exxon to acquire properties could raise the most serious substantive due process and equal protection issues of constitutional dimensions.

If that dismemberment process were, as proposed by the advocates of major oil divestiture, repeated seven times against Texaco, Mobil, Shell, Socal, Amoco and the others, the proximate economic upheaval and chaos would be in all likelihood, massive and unprecedented in the U.S. economy. Antitrust enforcement would have to reflect long on the commonsense destiny of such a bold and hazardous divestiture decree.

The second question to be faced in a breakup of Big Oil is what assets are going to be carved up and who is going to buy at liquidation? As to the former, if a clean sweep is to be made of all refinery and retail assets of each major company under divestiture, the problem will be complex, at best, but not nearly to the degree that a less-than-all approach would have. A partial dismemberment at the refining and/or retail level would surround the antitrust court in having to decide which properties go and which stay. Unless some mystical economic formula were devised, the judiciary could become engaged in a game of tweedle-dum and tweedle-dee or some other equally sophisticated adjudication.

The question of what entities would purchase and assume the divested assets, while of lesser dynamics, would be yet of significance. The requirements of capitalization, debt capacity, and the omnibus financial viability of prospective companies would, of necessity, have to weigh-in with the Court. The current proposal of the F.T.C. for divestiture of Big Oil is that a number of companies, perhaps a dozen or more, would be involved at each marketing level. The court would be obligated to see that structural balance was accomplished in the take-over entities, a task that would entail continuing judicial supervision.

A further consideration of divestiture of the major companies is the impact upon equity stock and debenture holder, each class of whom may well have purchased or lent their credit in reliance on an undivested corporation. Enormous losses in the paper value of the stock of retirement trusts and other investors would be a likely concommitant of dismemberment, particularly in the vortex of uncertainity created by protracted and costly litigation and by their future equity in the break-up.

The fate of long-term debt holders is a different story. Their monies and credit were pegged to the capital structure of the company before divestiture. Dismemberment surgery would not only increase their risk through forces other than the market place, but it would also possibly impair their obligation of contract. Assuming, *arguendo*, that debt reapportionment could be legally achieved, the entire debt structure of each company would be the subject of metamorphic change and the debenture holders would be justified in exacting a premium payable for the alteration of their risk.

But after all of that, after being under the seige of the penumbra shadings of the most difficult structural and financial foot-shuffling after years of painstaking effort and monumental litigation costs, the threshold question would still be present—would divestiture only result in the creation of a new set of oligopolies and oligopolists, of oligopsonies and oligopsonists at the refining and retail marketing tiers of the petroleum industry? The prospects of such irony and despicable consequence would have to be given mandatory consideration by the anti-

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trust court to determine whether divestiture should be ordered in the first instance.

This is not to suggest in this Thesis that divestiture should be ruled out (assuming that Sheman 2 has been violated) because the remedial cure is simply too difficult and foreboding for the industry, and therefore that the bigness of Big Oil has, by its own monolithic proportions and strength, been immunized from U.S. antitrust enforcement.[162] The oil majors are not in any animated sanctuary and if an intolerable case under Sherman 2 were laid up against the oil majors, divestiture would be required as the only meaningful way to restore competition at the refinery and retail market levels. But it is to argue that the near draconian off-shoots of divestiture of the petroleum majors must be heavily assessed before the antitrust court embarks upon such a remedial cure. The cure, in this case, could turn out to be far worse than the disease.

The ultimate position in this Thesis of divestiture in the United States is reserved for the concluding Chapter IX.

CHAPTER VIII: UNITED KINGDOM ANTITRUST LAW—DIVESTITURE AND TRADE RESTRAINTS IN THE OIL INDUSTRY

The analysis of U.K. competition law presents a vastly different and relatively new jurisprudence in substance, methodology and effect from that of the United States. Substantively, the rules of antitrust are inculcated within statutory and treaty pronouncement that, unlike the broad and sweeping dialect of the Sherman and Clayton Acts of the U.S., are minute in detail not only as to the specific conduct proscribed, but as well to affirmative defenses that forgive or at the least tolerate otherwise unlawful behavior. Particularly does this strain appear in the Acts of Parliament. Such microscopic delineation of antitrust law is, however, a reflection of the procedural methodology utilized to resolve competition questions.

Whereas United States antitrust interpretation and enforcement has been in paramount parts left to the judiciary (with exception of the FTC Act), the U.K. judiciary has a very confined role to play in the competition process,[163] save the appellate review by the European Court of Justice. From beginning to end, the essential method of evolvement, hearing and fact determination is administrative in character.[164] Indeed, in the more precise area of monopoly (and mergers), under U.K. national law, the procedural filament is somewhere between the ordinary conceptual mold of administrative decision-making and a general board of civic inquiry. Effectually, antitrust theory in the U.K. is largely intent upon terminating if possible, anticompetitive behavior in the future rather than upon punishment for past conduct (subject again to European Community law). Criminal penalties or sanctions are non-existent, civil fines are unheard of in U.K. national competition law, and punitive damage (especially treble damage) recovery for antitrust violations is not only roundly rejected, but is viewed conceptually as an esoteric enigma.

Thus, in style and content, the difference in U.K. and U.S. antitrust law is large. But the fact does not modify the supposition of this Thesis as enunciated in Chapter VI. The genuine goals of antitrust are not chameleon, they do not hinge upon which side of the Atlantic they are articulated, and they can not be shoved aside as applicable to some and inapplicable to others. The precepts of competition are or should be as fundamental to the mold of economic efficiency, individual freedom of choice and social progress in Britain as in America. Thus, much of what has been written regarding the jurisprudence of antitrust, its temperament and eccentricities as identified with U.S. law in the previous Chapter will not be examined again here. To do so would be both tedious and repetitive. Rather, Chapters VII and VIII are in juxtaposition in substance as well as sequence and should be so read.

1. The Duality of United Kingdom Antitrust Law:

There are two prime bodies of competition law extant in the U.K. that have nexus to structural and behavioral analysis of the petroleum industry. The First is the internal antitrust laws of the U.K. as enacted by Parliament, which are in turn constituted of two parts, viz., monopolies and mergers on the one hand and restrictive practices on the other. Internal monopoly and merger questions fall within the jurisdiction of the Monopolies and Mergers Commission (MMC) of HM Government under the Fair Trade Act (FTA) of 1973. Restraints of trade are carved out for specific internal consideration by the Restrictive Practices Court under the Restrictive Practices Act of 1976.

The second corpus of antitrust law in the U.K. of relevance is found in the competition Articles 85 and 86 of the Treaty of Rome (and incident regulations) which became the substantive law of Britain upon its joining the common-market of European Economic Communities (EEC) in 1973. The Treaty provisos charge the Commission of European Communities (CEC) with the enforcement of common-market antitrust policy with right of appellate review before the European Court of Justice (ECJ). The Commission sits in Brussels, Belgium and the Court is housed at Luxembourg. Although this Thesis is trained on the competitive markets of the U.K., the structural dominance and conduct of major oil companies in the Country would unquestionably affect trade between member states of the Community and thus invoke application of the Rome Treaty.[165]

The Treaty is not regarded as a separate code of international jurisprudence, but rather as an integral part of U.K. domestic law.[166] While the accession of Community law as the substantive law of Great Britain reflects a departure from the traditional dualist doctrine of international law,[167] the legal amalgamation is complete.[168] The objectives of the Treaty are announced in Articles 2 and 3 to establish a free and open market for trade between member States. In order to preclude private parties from erecting barriers to trade by way of agreement or exclusionary behavior, and isolating national markets or restricting competition through market dominance, Articles 85 and 86 were included within the original Treaty of 1957. They are self-executing without regulatory authority of the EEC Council of Ministers.[169]

The U.K. Restrictive Practices Court (RPC) may undertake to enforce Community antitrust laws, provided that the CEC has not taken similar action. Any judgment rendered by the national court shall coincide with the rationale of Community objectives.[170] If there be a conflict between the antitrust goals of the RPC and the Community and the matter is one which impacts trade in the broad sense within the common market, the law of the Community prevails.[171] Collisions of that character have been rare. In the ordinary case where a national court is squarely faced with a question that places at issue the application or interpretation of EEC antitrust law, the specific question of law will be referred by the national tribunal to the ECJ at Luxembourg pursuant to Article 177 of the Treaty for adjudication.

2. National Law Of U.K. On Monopolies And Trade Restraints In The Oil Industry:

At the outset, it should be said that British antitrust faces a congenital difficulty that spills-over into all facets of enforcement. The function of competition jurisdiction is essentially bifurcated between two agencies, the MMC and the RPC. The former has the responsibility for monopoly and merger matters and the RPC presides over restrictive practices litigation. Enforcement is mutually exclusive. If the Commission, in the course of an investigation, determines at it often does that contractual trade restraints have taken place by a monopolist, it is precluded by Section 54(5) of the 1973 Act from undertaking any remedial action as to the offensive conduct. The reverse is also true of the RPC regarding serious monopoly dominance or unilateral behavior stemming from market power or concentration. While the Director General of Fair Trading is to correlate the workings of the bifurcated tribunals, the empirical fact is that antitrust mischief uncovered or developed by one will not necessarily be pursued by the other. Principal exemplars of that fact are the 1965 and 1979 Petrol Reports of the Commission which disclosed a variety of significant restrictive practices within the oil industry. Both the U.S. and the EEC pursue antitrust investigations and enforcement under one governmental agency. Much of the shortfall in British antitrust, including more efficient use of staff personnel would be corrected by consolidating the functions of monopolies, mergers and trade restraints. The goal of antitrust is not segregated and neither should it be with enforcement.

2(a). Doctrine Of Statutory Monopoly As Applied To Major Oil Companies:

It is said a touchstone of monopoly proceedings of the MMC is that, unlike American antitrust law, the Commission is not addicted to or obsessed with structural analysis and market share concentration of large corporations within an industry. An examination of various monopoly reports manifests that Commission investigations of market power and level of competition are, indeed, left to each individual setting for *ad hoc* analysis. While it is clear enough that blind adherence to categorical standards of market share leans toward rigidity and arbitrary classification of true market position, market share, for reasons earlier enunciated, occupies a material place in monopoly litigation.

Yet for a system that prides itself on subjective assessment of each case on its merits, the MMC is presented from the outset with an unequivocal classification of monopoly power as a matter of statutory edict. Under Sections 6 and 7 of the 1973 Act, a monopoly in goods or services is said to exist as to any party who supplies 25% or more of the product or service market.[172] If two or more corporations, albeit independently owned and operated, behave in a parallel or common manner so as to be part of one group to "prevent, restrict or distort" competition and said companies have an aggregated market share of 25% or more of the product or service market, a "complex monopoly" is said to exist as to each company.[173]

Of course the query is upon what basis does Parliament declare that in every instance, without deviation, where a company has one-fourth of a market in goods or services, it is a monopoly? Economic studies and empirical evidence will not demonstrate such a fact. Indeed, the probabilities are the other way. It would be such an extraordinary event for a 25 percent market share to yield monopoly power in a product or service market that an evidentiary presumption should exist against such a finding. Notwithstanding, the FTA of 1973 creates an irrebuttable presumption that a company holding a 25 percent market share is a monopoly. Arbitrary in its minimum threshold classification,[174] but drafted at such level so that the Director General of Fair Trading or the Minister would have a wide field from which to make a monopoly reference, the Statute places an inordinate burden upon a business which, although far from exercising monopoly dominance, finds itself suddenly caught in an expensive and manifold Commission investigation. On the other hand, the arbitrary threshold standard may explain, in part, the

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hesitance of the M M C to give much emphasis to market share in past reports.

Petrol Refining Market.—As of 1977, no major company conducting refining operations in the U.K. had a market share of 25 percent in wholesale petrol. Shell was nearest the threshold with 19.5 percent, Esso was next with 19.3 percent and B.P. was third with 14.6 percent of petrol refining. However, only two years prior to the 1977 MMC investigation of the petroleum industry, Shell and B.P. had a long-standing joint venture for refining and marketing; in 1975, the joint venture share of the refining market was 35 percent. That market share would have qualified Shell and B.P. as a "complex monopoly" assuming that the combination prevented, restricted or distorted competition. Surely, the termination of the joint venture between these perennial oil magnates did not erase or emasculate all of the information acquired regarding the operations of the other. They knew and still know each other's marketing patterns, customers and market behavior.

The top five refiners of petrol, namely, Shell, Esso, B.P., Texaco and Mobil had an aggregated market share in 1977 of 69.7 percent. The prices charged by each of them were remarkably similar. They buy, sell and exchange refined petrol between them. In all probability, each engaged in discriminatory price subsidization with selected large retailers to the detriment of small independents. They have maintained their separate buying arrangements and solus agreements over the years.

On the face of it, there is sufficient justification to determine that the top five corporations, *viz.*, Shell, Esso, B.P., Texaco and Mobil constitute a complex monopoly within the framework of Section 11 and 6(2) of the 1973 F T Act in the petrol refining market.[175]

Retail Petrol Market.—As to the retail petrol market in the United Kingdom, there is no market share information available for the years 1975–1978. Requests for gallonage sales by company and for relative retail market shares were made; the requests were refused. It is know that the major oil companies increased their share of the retail market from earlier years because the independents lost significant gallonage at all levels of petrol outlets. Beyond that, thousands of independent retailers went out of business, either voluntarily or involuntarily in the last decade. At the same time, the majors increased their retail holdings in 1977 by over 215% of that in 1964. It is also known that the large companies own a sizable share of high volume supermarket outlets. Those outlets, while only 28% of the total number of stations in the U.K. in 1977, sold 66.6% of all gallonage that year.

Moreover, price movements at the retail market had an outstanding degree of uniformity and moved in tandem. Shell, Esso, and B.P. were clear price leaders, each at a different time. Several price rises at the retail tier were undertaken by the majors simultaneously the same day. The largest corporations which lead at the refinery level also are price leaders at the retail market. By vertical integration, each company unquestionably sells through company-owned and operated as well as leased petrol stations. While a retail market share in the magnitude range of that held in petrol refining might be reasonably assumed or constructed, such a judgment cannot be made for the purpose of this Thesis without market data. Ergo, no hypothesis is advanced as to the shared monopoly by major oil at the retail market.

2(b) Public Interest Criteria In Monopoly Proceedings:

As with U.S. antitrust, the determination that a corporation is a monopoly is the beginning, not the end, of the U.K. administrative review. Monopoly, per se, does not violate the act. It is reprehensible only if found to counteract the public interest. While the relevant factors on the question of "monopolization" are left to the judiciary in U.S. antitrust, they are statutorily defined in the U.K. under Section 84 of the FT Act. The criteria are unremarkable in competition law—efficiency, cost reduction, technical development, market entry, maintaining effective competition and quality, reasonably priced goods at the retail market. However, there should be added to the roll call of factors the failure of a market to achieve effective competition and the existence of anticompetitive or unfair trade practices.

2(c) MMC Reports—Precedent Value and Effect:

To say little about the value of precedent from the MMC reports is to say a lot. With exceptions, the reports of the Commission tend to resemble a social documentary on a particular industry rather than a critical antitrust analysis. The factual section is prepared by staff, ordinarily with the help of the company or industry under investigation; the latter generally assures a model of temperance and objectivity. No omnibus rules of law or economic fact are ordinarily set out to establish monopoly policy or to guide the hand of future Commissions.

In fact, not one report was found involving different industries where a legal or economic rule or policy in a previous case was even cited much the less relied upon. No conclusions of law are announced and little time is spent in market share analysis or its effect. It is apparent that such is all quite intentional and consistent with the theory of judging every case on its merits, one by one. Unfortunately, that one-by-one process requires the Commission to wade into every statutory monopoly, whereas objective precedent would conserve time and, because of the possibility of preventive action taken by potential target companies, may eliminate the necessity for a reference at all.

Nonetheless, having said that, some generalization of antitrust principles may be made from an examination of the reports. As in U.S. law, merger cases have relevance in evaluating the elements of market power and vertical integration.

Size and Market Share.—The Commission to its credit, has not been nearly as concerned about utilizing antitrust as a prophylactic against bigness and corporate size, as have some U.S. Courts. The MMC has been ordinarily concerned with bigness only in horizontal mergers where structural market concentration was evident.

On the other hand, an unseemly tolerance has been shown to high market share so long as prices were held down (at the time of the investigation). In *Colour Film*,[176] Kodak, the giant of amateur film industry with a 70% slice of the U.K. retail market, used its power to leverage the sale of color film under a "tie" wherein the buyer was required to purchase prepaid processing to get the film. Although the MMC was clearly distressed about the illegal tie-in and set forth its view on the matter in the Report, it was incapable of ordering termination. The reason—Commission reports are only recommendatory.[177] As to the tying arrangement, while it was essentially a restrictive practice subject to the jurisdiction of the RPC, the Commission was entitled to consider it in the context of monopoly abuse. Albeit, the principal effort in *Kodak* was to obtain a reduction of monopoly profits and film prices. No action was ever taken under the Restrictive Practices Act for the unlawful tie.

Under *Detergents*,[178] the MMC was confronted with a virtual duopoly in washing power. It found that not only was there no price competition between the two massive entities, Unilever and Procter & Gamble, but the two were exchanging price information. The only competition was said to be in advertising costs. The question on exchange of price information was without MMC jurisdiction; it never reached the RPC. As to advertising, the Commission recommended that the Companies reduce the expense by 40% which would lower barriers to possible new entry. The Companies refused to comply. The Minister declined to enter an order under statutory instrument (possibly because expense reduction was a primary management decision outside of statutory reach). No attack was made against the duopoly power.

The failure of the Commission to focus on the consequences of market share in the 1967 horizontal merger of *Guest, K. & Nettlefolds Ltd. and Birfield Ltd.*[179] resulted in the creation of an almost absolute monopoly in a major auto part industry. Approval was given on the questionable basis that the pressure from the motor car manufacturers would assure low prices from the merging monopolist. Little attention was given in the Report to the creation of the monopoly or the significant entry barriers resulting.

British Match [180] and *British Oxygen* [181] further demonstrate the attention bias of the MMC for product price rather than the inherent question of monopoly. Match had close to a complete monopoly and Oxygen had a 90 percent market share. Both companies engaged in the similar conduct of price-cutting in localized markets against new competitive entry. The MMC recommended that each Company publish and maintain uniform price lists, so that any price reduction would have to be made nationally. The wisdom of the Reports is debatable. First, it could be strongly argued that Match and Oxygen were engaged in procompetitive conduct in meeting competition, unless it were expressly shown that intentional *animus* existed to prevent new entry to the market. Second, even if localized price-reduction were diseased, the recommendation that a firm hold to a national price regardless of local conditions is combating anticompetitive conduct with further anticompetitive conduct.

Other cases, however, suggest that in the fundamental area of mergers, horizontal dominance has played a role in MMC deliberations. Thus in *Barclays, Lloyds and Martin Bank Merger*,[182] the Commission rejected the merger because of the resulting market dominance. The same result was reached in *United Drapery* [183] and *Ross Group & Associated Fisheries*.[184] All three cases resulted in a merged market share obviously lower than in *Nettlefolds and Birfield*, and measureably lower than the monopoly cases of *Colour Film, Detergents, British Match* and *British Oxygen*. The major oil companies with market shares at the refining level at less than 20 percent would likely not be subjected to direct attack unless the complex monopoly and monopolization were unequivocally made out.

Fair Price Determination.—In several cases, the MMC has become enmeshed in determining what a fair price should be for a monopolist to charge. Thus in *Tranquillizers*,[184a] the Commission determined that the prices of Roche Products in the sale of valium and librium were 40 percent and 25 percent too high; it recommended reduction. U.S. antitrust courts have long learned the lesson from the early case of *Trans-Missouri* [185] that it should not enter the arena of price regulation. Nor should the MMC. The vagaries of determining a "proper" or "fair" price are only a step away from public utility control. The antitrust laws were not meant for the government to interfere with management prerogatives in private industry. If the monopoly is permitted to stand, monopoly profits are entitled to be earned. At least it is not a concern of antitrust.

Presumption in Merger Cases.—While the Commission has not readily accepted efficiency or economies of scale as a basis for

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forward integration by merger,[186] vertical mergers have been approved even where a monopoly market was created at the next marketing tier.[187] In *British Motor Corp. and Pressed Steel,* the MMC approved a downstream acquisition by BMC that resulted in virtually a total monopoly for vehicle bodies. The Commission was assured that the merged firm would maintain the same supply relationship with other competitors of the acquiring company (at least until the investigation had become history). *Pressed Steel* and *Pyrotenex* mirror a larger bias in British antitrust favoring mergers that, while having its initial footings in the Statute, is more fundamentally a product of Commission procedure Section 69 of the FT Act requires the MMC to investigate and report on mergers which may or do operate "against the public interest." Such has been construed as a polite but statutory presumption that mergers are in the public interest unless expressly declared. Conglomerate mergers representative of large industrial concentrations have been apparently approved on such premise.[188]

The more basic reason for the pro-merger bias in U.K. competition law, however, is the nature of the Commission proceeding, itself. Informal and non-adversarial, the typical hearing is witness to only factual evidence fully supportive of the merger. At the close of the proceeding, the MMC is likely to be left with a record requiring merger approval, regardless of any statutory presumption. When other competitors or management of the acquired company have presented evidence opposing a merger, the application has been rejected.[189]

During the past fifteen years, there has been major industrial and commercial concentration in the U.K. Only 3 percent of the more than 1500 corporate marriages that were subject to reference under Section 64 of the Act were, in fact, referred and of those, approximately 30 percent were denied. A Green Paper issued by HMG in 1978 recognized the pro-merger presumption extant and has recommended that it be altered so that the policy of the MMC neither favor nor disfavor mergers.[190] However, unless and until there are the most significant changes made in the procedural methodology and burden of proof before the Commission, a new presumptive declaration, even reduced to statute, is unlikely to affect the practical result. The Commission must become more of a deliberative body in both merger and monopoly proceedings. The staff of MMC should be charged with developing its own position in favor of or in opposition to a merger or monopoly reference, and to prosecute and argue the same before the Commission. The legal and factual questions should be framed and narrowed by expert testimony and cross-examination. The Commission should formulate its own report without the back stage penmanship of the parties. Until these primary modifications are made in MMC procedure and attitude, it is submitted that any change in the merger presumption will be one of form and not substance.

2(d) Shared Monopoly and Conscious Parallelism:

The doctrinal rudiment of shared monopoly has been already explored under Chapter VII incident to U.S. antitrust. The essential denominators of commonality, i.e., organization, vertical integration and function, are found in the conceptual operative of a "complex monopoly" under Sections 6(2) and 11 of the FT Act. Although the MMC determined in the 1979 Report on Petrol that the entire wholesale petroleum industry was a complex monopoly, the shallow findings and almost complete absence of antitrust rationale to hit upon the conclusion abused rather than advanced the practical realization of shared monopoly. It could well be the case that all oil companies and wholesale distributors, regardless of structural position or individual behavior, were thrown in a catch-all basin by the MMC without structural or behavioral analysis, in order that a Report could issue at the conclusion of the investigation. If that be so, such is hardly the use intended under the Act.

There is a stronger case for complex monopoly at the petrol refining market in the U.K. than in the United States. Industry concentration of fundamental monopoly proportions are more evident, for one thing. In 1977, the five leading oil majors in the U.K. had an accumulated share of 68.7 percent of the market, whereas in 1978, the top five corporations in the U.S. had only 38.8 percent of refinery capacity market. In fact, the top eight U.S. companies had an aggregated market share of 54.8 percent at the refinery level versus an aggregated share of 81.8 percent in the United Kingdom.

The MMC Reports On The Major Oil Companies.—The exclusionary conduct of the major companies in the U.K. has been as frequent but in a wider spectrum than in the U.S. Under the 1965 *Petrol Retail* [191] reference to the Commission, it was determined that solus agreements were spread throughout the major companies, that full-line forcing required retail operators to purchase inventory that was unwanted and resulted in excess capacity, and that exclusivity arrangements were used for extensive tie-ins. The MMC found refusals to deal by the majors with those retailers that did not fully comply with solus contracts, particularly where the major company unilaterally concluded that the marketing area was adequately served by another dealer. The latter finding should have been alarming for it was tantamount to a territorial location clause that eliminated intra-brand competition.

The MMC went on to make the interesting observation in the 1965 Report that although solus agreements were restraints of trade in the retail market, they should nonetheless "be honored" by local retailers. But the Commission recommended (a) that solus be for no more than five years in length and (b) that no oil company of more than 10 million gallons should acquire any petrol sites in any year in which more than 15 percent of total retail through-put was supplied to company-owned outlets. The intent of such recommendation was to protect the independent retail market from up-stream dominance and extended vertical integration of the majors. The immediate result in the industry was that which was feared in the *Standard Oil* [192] dissent—to skirt the antitrust concern over solus agreements, the major companies in Britain proceeded to acquire old and built new petrol sites.[193]

The 1979 investigation of the industry converged on the refinery or wholesale market, but tangentially reviewed the omnibus aspects of the retail level. Apart from its questionable classification of complex monopoly, the MMC found that solus agreements were still existent and that proprietary acquisition of petrol sites by majors continued to mount with solus a facet of the lessee-operator's contract. The price discrimination which was uncovered in the form of selective subsidies granted to certain favored dealers by Shell, Esso, Mobil, Texaco and B. P., was premised on the long-term potential of the specific retail outlet in the market. Some retail price maintenance was also noted in the Report.

Yet in spite of the finding of complex monopoly and in the face of the restrictive practices at the refinery and retail levels, the MMC made the bewildering finding that neither the industry structure nor exclusionary behavior "operates or may be expected to operate against the public interest." The 1979 Petrol Report of the Commission is an astonishing document, replete with a conglomeration of statistics and statements regarding the industry that have virtually no antitrust relevancy. It must be regarded as a setback to complex monopoly enforcement in Britain and as an injustice to other positive holdings of the Commission.

The inter-company exchange of operating and technical information in the industry is largely undefined in the U. K. The Restrictive Practices Act exempts certain information contracts and "know-how" arrangements between two persons from registration. The position of this Thesis on information-sharing agreements has been set forth earlier and need not be repeated. It is sufficient to say that the concept is basically anticompetitive and if it takes place beyond the exploration and development tier of the industry, it ought to be condemned. Arrangements on information exchanges of actual operating costs, efficiency studies, marginal costs and price methodology are trademarks of co-operative conduct that proximately points to a narcosis in competition and then to the mutually-held objectives of a shared monopoly. A modicum of competition does exist in the U.K. at the refinery and retail markets. The market shares of the largest companies have been in general decline for more than a decade and the smaller majors and non-integrated refiners have accomplished new penetration. The horizontal expansion of the petrol market has seen a slight loss of proportional market share between the top five companies, *inter se,* Esso moving from 29.9 percent to 27.6 percent between 1970–1977. However, Mobil achieved a slight increase between the first five from 9.1 percent to 10.1 percent during the same period. Whether competition among the five largest corporations is merely a curious and unintentional function of business rather than a genuine intention to offer better service and product at a lower price could not be ascertained without a full economic study.

Yet, there still remains the noble fact in the U.K. that the market shares of the five major companies are significant and that there is far more common behavior between them than in the United States. Whereas the top eight companies in the U.S. have a market share of 54.8 percent of refining capacity and 49.3 percent of the retail petrol market, the first five majors in the U.K. have almost 70 percent of refining output. The Shell-Mex B.P. Joint Venture of many years is evidence of inordinate communal interest and common goals. The level of exclusive agreements, tying, and full-line forcing, not to mention information-sharing activities are more pronounced than in the U.S. While the monopoly provisions of Section 6 of the Act will not apply to any single oil company, the "complex monopoly" provisions of Sections 11 and 6(2) will catch the first five companies at the refinery level, i.e., Shell U.K., B.P., Texaco, Esso, and Mobil. The doctrine of conscious parallelism, while not found in the anti-trust decisions of the MMC, should be applicable in support of the finding of complex monopoly. Commonality of behavior, coupled with conduct at the retail market which "in any way" prevents, restricts or distorts trade is sufficient.

The effect of a complex monopoly classification under the FT Act may not be, in reality, profound, as witnessed by the 1979 Petrol Report. It means that the five companies are the subject of an MMC investigation. Findings and enforcement are quite another matter. Because of the limited impact and remedy under U.K. national antitrust law, a more extended treatment of the complex monopoly finding is set out under Section 3(c) of this Chapter relating to shared market dominance under Article 86 of the Rome Treaty.

2(e) Impediments In Commission Procedure & Authority.

If Commission decisions on structural monopoly and vertical mergers are subject to

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challenge both in philosophy and effect, a lion's share of the inadequacy can be traced to the inherent nature of commission procedure and jurisdiction. Several of those issues are treated at this juncture corollary to the considerations of divestiture and restraint in the oil industry, *res accessoria sequitur rem principalem*.

(1) The Commission is not its own personage. It cannot initiate an investigation *sua sponte*, but must await the signal and reference of a Minister or the DGFT. The former is likely to have little contact with current problems of antitrust.

(2) Once a monopoly or merger reference is made, the MMC is bound within the tight constraints of the questions presented in the reference.[194] If it is concluded during the ensuing proceedings that other issues should be joined or that the entire reference should be amplified or changed, the Statute requires the original reference be reported out or the DGFT or Minister will need to be convinced that an amended reference be issued. The time delay could be critical to antitrust analysis.

(3) While there is merit to an open exchange of relevant information, the Commission hearings should not be simply a general colloquy and dialogue between several Commission members and company representatives. A defined procedural path should be established to frame antitrust issues, to present and receive evidence of expert witnesses, to subject the same to cross-examination and to development by staff of a position. The proceeding need not be adversarial; but it would be better to employ the formal socratic method.

(4) The MMC should sit in panels of not more than three members, so that the case load may be better administered. Factual findings and conclusions could be referred to the entire Commission for review *en banc*.

(5) The Commission cannot order any corporation to do or cease doing anything. Its report, however meritorious, is recommendatory only and may be discarded or altered by the Minister. One commentator has suggested that the MMC include several alternative proposals and remedies for review of the Minister.[195] That is not the answer. The alteration required is statutory wherein an order of the MMC has the equivalent force of law.

(6) The matter of presumption and burden of proof has already been examined.

(7) The Commission should be empowered to levy fines in aid of enforcement.

In short, the activities of the Commission, both procedurally and substantively, must take on a more significant and affirmative stature. Competent legal and economic advisers should staff the Commission functions or such should be provided on a permanent basis from the Director General. Staff should be capable of undertaking an adversarial role or definitive position in monopoly and merger investigations as well as it does presently, to provide the MMC with professional assistance. *Strong antitrust enforcement rests on the unquestioned ability of the Commission to act decisively, to implement its findings, and to enforce remedial orders.* While the Competition Bill of 1979 presently before Parliament authorizes the MMC to conduct investigations with respect to anticompetitive practices under a "competition reference" from the DGFT, it does not satisfy the exigent problems noted in this Chapter.

2(f) Restrictive Practice In The U.K.: There are three principal classes of vertical and horizontal arrangements which have been followed by major oil companies for use at the refinery and retail levels in the U K. Each of them draw into question the application of the U.K. Restrictive Practices Act of 1976 and the decisional precedent under it and preceding legislation.[196] They are tying agreements, solus contracts and information exchanges. The competitive arguments in favor of or against each type of conduct have been delineated in the previous Chapter.

Under Section 6 and 11 of the RPA, contracts between two or more persons under which specific restrictions are accepted with respect to goods or services are void and unlawful unless registered with the Director General of Fair Trading.[197] Rather than rely on the more generic dialect of the Sherman Act which simply bars agreements in "restraint of trade", the British Act spells out the prohibitions specifically, to-wit, horizontal or vertical price fixing (whether charged, quoted or paid), resale price maintenance, restrictive terms or conditions of purchase, horizontal quantity and product manufacturing restrictions, territorial market divisions and individual or group boycotts.

In order for the restriction to be subject to Section 35 sanctions, it must be one that transcends general contract law and imposes a restraint upon ordinary freedom of trade to which a party was not previously obligated.[198] Under the landmark case of *British Slag*,[199] a restriction encompasses any negative obligation, express or implied. But the Statute, itself, is the sounding board for trade restraints that are foreclosed, and pursuant to the familiar maxim *expressio unius est exclusio alterius*, conduct that is not described is outside the Act. Nothing is left to judicial invention or uncertainty in that regard. Failure to register the agreement is not a criminal offense or the subject of government penalty, but it does give rise to civil liability for breach of a statutory duty.[200] The DGFT is statutorily obligated to refer all registerable contracts to the Restrictive Practices Court.

Thus, at least at the start, the RPA hits at the basic bilateral arrangements, agreements and conspiracies that offend classic antitrust policy And it does so in rational terms. But the Act is soon plagued with mechanistic requirements and exceptions that make its enforcement, in many instances, dependent upon pedantic style of the agreement rather than upon substance of the restraint. At the head of the line is the rule that unless the restraint is accepted by both parties, it is not caught by Section 6 of the Act. As an exemplar, corporation A extracts, as part of a contract of sale with B for specifically identified goods, a covenant that B will not resell the goods to anyone residing in Coventry and A undertakes no other covenant than one of supply.

Although B's covenant not to sell the goods to buyers from Coventry is a territorial customer restraint that effectively results in a market division at the retail level contrary to the express mandate of Section 6(1)(f) of the RP Act, there is no antitrust violation because the restraint falls under 9(3) of the Act. The latter provides that a trade restraint which relates "exclusively to the goods supplied" in a contract is to be disregarded. The restraint on B not to sell to Coventry residents is related "exclusively to the goods supplied" by A.[201] A series of such vertical distribution agreements between A and other retailers barring sales in specific geographic areas will consequentially divide the entire horizontal market with the blessings of the antitrust laws.

Another rule of technique is lodged in Schedule 3 Para. 2 under Sections 28 and 9(7) of the Act which absolutely exempts, *ipso facto*, certain restrictive agreements from registration. If an agreement between only two parties for the supply of goods contains a trade restraint assumed by either buyer or seller that relates to the "supply of other goods of the same description" and no other restraint otherwise prohibited by Section 6 is set forth, the agreement is entirely exempt from the Act. For instance, if an exclusive dealing contract between major oil company A and retailer B provides that B will purchase his petrol requirements only from A during a particular period of time, the agreement would be said to relate to other "goods of the same description" and would be exempted. But if the agreement were so worded as to require B to purchase from A all 2, 3, and 4 star petrol "along with other petroleum supplies", then the contract would not relate to other "goods of the same description" and the blanket exemptions of 28 and 9(7) would not apply. That is so because the quoted phrase does not identify goods of the same description. Of if the exclusive dealing contract involves more than two persons, the agreement is presumptively violative of Section 6 and must be registered, even though the arrangement calls for the supply of identifiable products within Sections 28 and 9(7).

This intense information of the RPA for technical formalism leads not only to arbitrary and illogical antitrust aberrations, but it is also the undoing, in good measure, of what started out as a meaningful and comprehensive competition statute. If a restrictive practice constitutes an unreasonable and illegal restraint on commerce, it should be condemned because of the merits and spirit of the restraint. Escape hatches should not depend upon clever penmanship of the agreement or because the arrangement involves only two persons. The addition of one party to the contract should not transpose statutorily exempt conduct into statutorily banned conduct.

Yet succeeding provisions of the Act continue to permit the illegality of what would be otherwise naked restraints of trade to pivot upon *ad hoc* factual justification or form of the agreement. If an agreement, such as horizontal price fixing is caught by Section 6 of the Act, the contract is not void or illegal *per se* as it would be under Sherman 1; it is only *presumptively* so. Upon being registered, the agreement is referred to the Court by the DGFT who thereupon determines, after trial, whether the presumption of illegality can be overcome by a vindication that is specifically adumbrated under Section 10 of the Act.

There are eight separate bases in which a trade restraint, regardless of its severity, may be excused. Commonly labeled "gateways", they recognize that a restraint may be salvaged from illegality by, *inter alia*, a showing that the proviso will result in "specific and substantial" benefits to the consuming public, that the restraint counteracts anticompetitive conduct of a third party, and that removal of the restraint is "likely to have a serious and persistent adverse effect" on the general level of local employment.

If the trade restraint passes any one of the eight gateways, it must still satisfy the balancing test of Section 10 known as the "tailpiece". The latter requires that the trade restraint be not "unreasonable" having regard to the interest of the public *vis-a-vis* that of the contracting parties. While in general, the R P C has narrowly construed the gateways and tailpiece against restrictive clauses, Section 10 has encouraged attempts to justify raw and blatant restraints of trade. Several such restrictive combinations, including horizontal price fixing schemes, have been permitted to stand.[202]

Thus, in the case of *Cement Makers*,[203] the Court had before it an industry-wide price fixing agreement of more than 30 cement manufacturers, founded upon a basing-point system. The excuse for the master price fix was claimed under 10(1)(b) that uniform prices would make the industry and each company safer and more dependable and, ergo, would reduce capital borrowing costs. In an Opinion authorized by Diplock, J., the Court decided although the prices of individual procedures would be

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lower without price fixing, that industry-wide return on investment had only been around 10 percent under the conspiracy and that since fixed prices should result in lower cost of capital, the master price fixing agreement passed 10(1) (b) as well as the tailpiece

The decision in *Cement Makers* must go down as a leading candidate for the worst decision in all of antitrust. It manifests an inherent and lasting distrust for the competitive market. Under the *ratio decidendi* of *Cement*, efficiency and progressiveness are penalized and higher prices at the wholesale and retail marketing tiers will ultimately result. Every price fixing agreement could be excused on the basis that it will result in less risk, thus lowering capital borrowing and equity costs. *Cement Makers* allows the inefficient operator to stay in the pack comforted by a price fixing conspiracy that enables him to cover his marginal costs.[204]

Tying Agreements. No case has been before the RPC expressly involving the legality of tie-ins, although in law, it has statutory jurisdiction to adjudicate the same by declaratory judgment.[205] Tying has nexus to "the terms and conditions or subject to which goods are to be supplied" (petrol), and therefore falls within the provisions of Section 6(1) (c) unless it is exculpated by Schedule 3 and Sections 28 and 9(7). The argument could well be advanced that 9(3) condones tying contracts because the restraint to take the tied product is not accepted by both parties, only the retailer. But the fact that opposes such argument is that the goods which are "exclusively supplied" and which supposedly trigger 9(3) under the tying contract is the primary product, petrol. TBA is not the central target of the tie; it is only ancillary to the main sale of petrol. The secondary product should not become the tail that wags the dog under Section 6. Tying contracts have but few business justifications to keep out of the *per se* category. There is no legitimate reason which would exonerate the typing of TBA to petrol in a major oil company supply contract. Rather, tie-ins result from the market power in the tying market to leverage in another independent market. The British Court should concentrate on the substantive policy to be reached in antitrust under Section 6, rather than engaging in a myopic, legalistic exercise where result hinges on format and hypertechnical language construction.

Sections 28 and 9(7) are not of relevant consideration in a tying agreement, for they have nexus to exclusive dealing arrangements. Although a tie-in might be manipulated in a contract so as to turn into an exclusive requirements clause, for antitrust purposes the two are separate species.

Exclusive Dealing Agreements Of Major Oil Companies.—The Statutory scheme of 28 and 9(7), and Schedule 3, Para. 2 would seem to be tailor-made to exempt exclusive dealing. In a larger sense, said Paragraph appears to be aimed at a block exemption of all vertical restraints with the exception of vertical price fixing and price maintenance.[206] Exclusive agreements are utilized extensively in the U.K. by all major oil corporations to the irremediable concern of the MMC.

There is one material hitch to the block exemption of Schedule 3. Exclusive dealing with respect to the supply of goods of the same description is applicable in contracts between two persons only. If the exclusivity involves three or more, the contract is caught by Section 6. While the oil companies might produce separate solus contracts for each lessee or retail dealer, the fact is that each contract is part of a larger orchestration involving several hundred, if not thousands of retail dealers all of whom are under the same contract. Antitrust enforcement does not rest on social etiquette, but upon the genuine merits of the restraint.

It is submitted in this Thesis that exclusive dealing agreements of the integrated majors are part of a grand scheme that permeates the retail market and may substantially impair or constrict competition. Schedule 3 was plainly intended to reach the isolated transaction in the market. Otherwise, Parliament would not have limited the block exemption to contracts involving only two persons. The R P C should find that, pursuant to jurisdiction vested under 26(2) of the Act, Schedule 3 is not applicable and solus agreements are caught by Section 6. While the oil majors may have business justification for exclusivity arrangements such as a secured outlet for petrol, such argument can be placed before the Court under one or more of the gateways and tailpiece of Section 10.

It is said that even if an exclusive dealing agreement is exempted from the Act the contract is unenforceable as a common law restraint of trade under the decision of the Lords in *Harpers Garage*.[207] The Case does not stand for the proposition that an exclusive requirement contract is *per se* unentitled to judicial cognizance. *Harpers Garage* viewed the exclusivity contract as a restraint of trade but balanced the constraints against the possible advantages under a rule of reason analysis. It was determined that under the facts of the case, an exclusive arrangement of 4½ years was not unreasonable while one of 21 years was unreasonable. The decision does not stand as precedent for the RPC in weighing exclusive agreements under the gateways of Section 10. That requires statutory interpretation of antitrust law which was not before the Lords in *Harpers Garage*.

Selective Price Subsidization By The Oil Majors.—During the years following the OPEC embargo, the major companies subsidized selected dealers during periods of retail price cutting so that refinery output could be maintained. The subsidy effectively provided the chosen, retailer with a below wholesale price. At the same time, other dealers were sold the same quality petrol by the company for the regular wholesale price. Such conduct is open and rapacious price discrimination. The reprehensible conduct was not in carrying out a subsidy program, but rather in selectively discriminating against the dealer who effectively paid more for petrol than the favored retailer.

Whereas in the United States price discrimination between different purchasers of a commodity of like grade and quality is specifically barred by law,[208] no parallel legislation exists in the U.K. However, price discrimination (subsidy) is the legal equivalent of an unauthorized quantity discount and as such, it should be caught by Section 6(1) (c) of the Act.

Information Sharing Agreements.—The position of this Thesis on competitors exchanging technological or financial data has been treated briefly heretofore in this Chapter and *in extenso* in Chapter VII. The practice has, however, proven popular in the U.K. and it has been raised as a gateway justification under 10(1) (b) to a horizontal price fixing contract.[209] Indeed, it is not an anachronism that information sharing within industry should lead to the ultimate corrosion of a fix on prices. The only irony is that competitors should appear before the RPC arm-in-arm to argue that price fixing is exonerated because it has led to inter-mural cooperation between companies.

That the whole question of information sharing is of antitrust consequence in the U.K. is signalled by the 1968 Restrictive Practices Act where for the first time, Parliament authorized the Secretary of State, under Section 7 to prohibit by an order under statutory instrument classes of information agreements regarding commodities. Like some other competition questions, the draft of a proposed order must be preliminarily laid before and approved by both Houses of Parliament. While such procedure is a rather clumsy and ineffective method of antitrust enforcement, it is submitted that the Minister of State should issue an order forbidding information agreements in the oil industry, particularly between the vertically integrated majors, forward of exploration and production.

3. EEC Law Of U.K. On Monopoly And Trade Restraints In The Oil Industry:

As was set forth earlier in this Chapter, antitrust law of the Common Market is governed by two fundamental sections of the Rome Treaty, Articles 85 and 86. 85 deals with and prohibits agreements or arrangements [210] which affect trade between member States and which have as their object or effect the prevention, distortion or restriction of commerce. Among the restrictive combinations which 85 is intended to catch are price-fixing, production quotas, agreements limiting technology or investment, market allocation, price discrimination as to goods of equivalent character and tie-ins.

Article 86 is directed at structural market power and unilateral behavior that stem from or have nexus to market dominancy.[211] In general, 86 forbids the abuse by a party (undertaking) holding a dominant position in a substantial part of the Common Market that affects trade between the States. Conduct that is foreclosed as "abusive" is, *inter alia*, unfair prices and trading conditions, controlled production or commodity development that prejudices consumers, discriminatory marketing conditions and tying arrangements.[212]

Unlike the bifurcated system in the U.K., responsibility for all antitrust enforcement under 85 and 86 rests with the Commission (CEC). The Commission has jurisdictional authority to issue regulations on both procedural and substantive facets of antitrust enforcement, to grant discretionary exemptions and negative clearances under 85,[213] and to impose fines for Article violations from one thousand to one million units of account or not more than 10 percent of the undertaking's turnover for the preceding year.[214]

Antitrust enforcement in the Common Market is of relatively recent vintage, the Treaty of Rome having been signed in 1957. While case law is still developmental in the EEC, the Commission has already established a solid base of competition policy for the Common Market that entities it to prominent recognition.

Many of the substantive elements of Articles 85 and 86 were fashioned around the conceptual text of U.S. antitrust jurisprudence. They are, on the whole, more deliberate and definitive than the Sherman or Clayton Acts, thus accomplishing the more desired result of broad competition policy being a product of legislative enactment rather than a case-by-case invention of the judiciary.

EEC antitrust law, in the sensitive area of monopoly enforcement, is given to reliance upon case precedent and the doctrine of *stare decisis*. In that regard, it follows the lead of the U.S. and pulls away from the subjective ways of United Kingdom monopoly analysis. As to trade restraints, the holdings of the Commission and the ECJ, unlike some decisions of the British Court, appear to depend on the substantive merits of the antitrust policy sought to be achieved and not on subtle and mechanical nuances. In addition, the seriousness of antitrust policy of the EEC is reflected in its capacity and willingness to impose heavy fines for violative conduct as well as provide a civil remedy for breach of statutory duty. Although the EEC method of fines may be, in a pragmatic context, the equivalent of the treble damage remedy under the Sherman and Clayton Acts, it does not have the flavor of triple recovery of actual injury that

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is so distasteful to many of the U.K. bench and bar. In all, EEC antitrust law has the basic stuff of a strong and temperate approach to competition policy.

3(a) Relevance of Article 86 To The Petroleum Market Of U.K.:

There can be little debate that even though structural composition and behavior of the oil majors under this Thesis occur solely within the U.K. or its jurisdictional waters under the Convention on the Continental Shelf, the Treaty reaches such conduct. Particularly is that so under 86. The test is whether the questioned conduct is such as "may affect" trade within a substantial part of the Common Market. In *Benzine en Petroleum BV et al* v. *CEC*,[215] the ECJ found that refined motor spirit sales from B.P. to ABG Association solely in the Netherlands was subject to Article 86 review. The earlier case of *Sugar Cartel*[216] determined that Holland, itself, and Belgium and Luxembourg combined, constituted substantial parts of the Common Market for antitrust purposes. And the Court in the watershed case of *Continental Can*,[217] found that a portion of Germany was considered a relevant geographic market for tin cans under 86. Lastly, the Commission, in its 1975 competition "Report On The Behavior Of Oil Companies In The Community,"[218] wrote that the control of oil in the several Member States by a small number of vertically integrated major companies was of consequence to the entire Community. It is, therefore, a premise of this Thesis that trade by oil majors at the refining and marketing levels of the U.K. is justiciable under the antitrust provisions of the Treaty.

3(b) Market Dominance Under Article 86

The maintenance of a dominant position within the Common Market under 86 is not necessarily that of a monopoly under Sherman 2. The scope of the Sherman Act is wider than 86 in one respect, for it condemns "*attempts* or conspiracies to monopolize" whereas 86 is conditioned on the finding of an *already extant* dominant position and abuse.[219] Yet, as will be seen, the general vortex of Sherman 2 is narrower than Article 86.

Dominancy was first defined by the C E C in *Continental Can*[220] as "the power to behave independently * * * without taking into account competitors, purchases or suppliers". That terminology was substantially repeated five years later in the 1976 Commission holding in *United Brands*.[221] The European Court, however, opted for a more simplistic and pliable definition in *Commercial Solvents*[222] where a monopoly supplier of raw materials was able to determine whether competition at a downstream level would continue and at what degree. The Court stated that dominance under 86 was made out as Commercial Solvents had "the ability to impede effective competition." And in the appeal of the CEC determination in *Continental Can*, the ECJ declared that dominancy is present when it "substantially fetters competition", meaning that only undertakings remain in the market "whose behavior depends upon the dominant one." *Continental Can*, it should be noted, was a merger litigation, the first to reach the Court. Whether its more narrowed definition would control non-merger structural or behavioral dominance is not clear. The last definitional word of the Court of Justice was in *United Brands*[223] wherein it was stated that 86 dominance has reference "to a position of economic strength" which enables an undertaking to "prevent effective competition" in the relevant market, having the power to behave "independently without regard to competitors or customers."

The factors which the Court has utilized to determine dominancy have been generally the same as that in U.S. interpretations under Sherman 2. Market share has played a significant role under the case precedent. In *United Brands*, the Company defended against the application of Article 86 with respect to its distribution of bananas claiming that it had only 45 percent of the banana market, that the relevant market was the larger market of fresh fruit and that there was a meaningful level of competition that opposed any finding of dominancy. The Court disagreed, strictly construing the relevant product market as bananas, and found dominance based on 45 percent share and the premium position of its "Chiquita" name. Other elements to be considered on the issue of dominance are industrial property rights, technology, financial resources, and possibly monopoly prices. But market share would appear to be the leading barometer. In *Hoffman-La Roche* v. *CEC*[224] the vitamin manufacturer had a market position in different vitamins ranging from 95 percent to 47 percent. Contrary to the Roche position, the ECJ determined that each vitamin constituted a "separate" product market in the Community and found dominance and abuse in all.

While the test of monopoly in U.S. antitrust enforcement would not under this Thesis be met with less than the 60 percent-65 percent market share as indicated in Chapter VII, a share in the magnitude of 45 percent and possibly lower, when accompanied by other factors of strength, would fall within the shadow zones of dominancy in the EEC. Do the major oil companies in the U.K. constitute dominant undertakings under 86? Shell has the highest position at the refinery level with a market share of less than 20 percent. Esso, B.P., Texaco and Mobil are below that. It is plain that the Commission believes that each of the oil majors are not only dominant within the scope of 86, but that each is a monopoly. In its informal Oil Company Report of 1975,[225] the CEC bluntly but unequivocably stated that a shared dominancy and *individual monopoly* existed as to the major companies:

"The market in oil products is controlled by a small number of large international companies distributing a limited number of homogeneous products. * * * (After the oil embargo) refiners in general, including large and small integrated companies, saw their position strengthened * * * that collectively they acquired a dominant position * * *. In view of the scarcity of oil * * * each refiner *in a given country* became the sole and imposed supplier of all dealers * * *. In the context of their collective dominant position, *each* of the refining companies was therefore in a *monopolistic position* towards its customers." (Emphasis added).

In other words, the Commission position is that in times of tight supply, a concentrated oligopoly distributing an interchangeable commodity (oil) is a monopoly as to each dependent customer. The remarkable theory was pursued by the CEC in its decision of *ABC* v. *Esso Nederland BV*[226] wherein B.P. was found to have abused its dominant (monopoly) position by refusing to supply ABG during the 1973 OPEC embargo. While reference was made to the major companies in the Netherlands (the same as in the U.K., Esso, Shell, B.P., Mobil, Chevron, Texaco and Gulf), it did not set forth the respective market shares or the aggregated total. In light of the 1975 Report, it might be argued that such was unnecessary.

On appeal, the ECJ reversed the Commission decision in *Benzine en Petroleum* (*B.P.*),[227] determining as a matter of fact that ABG had not been a "regular purchaser" of B.P. prior to the shortage and ergo, B.P. did not owe a duty of proportionality during the embargo. The question of monopoly or even dominancy was not raised at any point in the opinion, although it might be argued that the Court of Justice assumed both. If the European Court has adopted the Commission position regarding the creation of an absolute monopoly from a shared dominancy, and there is reason to believe that it may have,[228] it has reached the wrong answer for the wrong reason. Antitrust is continually plagued by artificial markets being invented, both geographic and product, to reach a result.[229] If the product being sold is truly homogeneous, the seller position, even in times of scarcity, must by definition relate to the larger homogeneous market and not to his slice of the total sales. *Otherwise, every company in the homogeneous market, even though his market share is 1 percent, would be an absolute monopolist as to his customers.* Such ignores and mocks reality. The target of antitrust is competition in the product market of petrol, not competition in the Esso *product market* or the B.P. *product market*. The theory of the CEC would have to face the harsh fact that each absolute monopolist would yet continue as it has in the past to compete with every other absolute monopolist in the sale of petrol at both the refining and retail markets. It is an illogical contradiction.

American antitrust courts have expressly rejected the proposition of "*ad hoc* absolute monopoly" under the Sherman Act. In a case squarely in point, the Seventh Circuit, in *Mullis* v. *ARCO Petroleum Corp.*,[230] declared that where ARCO had only 3 percent of the relevant petrol market in Ohio, it was not a monopoly as to its own market share. Mullis, a former distributor who was dependent upon ARCO for refined petrol because of Government allocation regulations, charged that ARCO's termination of the Mullis distributorship was an act of monopolization under Sherman 2. The Court declared that a monopoly must be gauged in full view of all brands of the entire product market under the cross-elasticity or "interchangeable doctrine" of *E. I. du Pont de Nemours*.[231] Citing other U.S. antitrust precedent, the ARCO Court found there to be no monopoly and no violation of Sherman 2.[232] Because the argument of the Commission in *Benzine en Petroleum B.P.* and its 1975 report is flawed and because the ECJ has not definitely bought the CEC position, the proposal of each major oil company having an absolute monopoly share in its own product is renounced in this Thesis.

The Sherman Act is a fair point of reference, however, in the analysis. There is, it is submitted, a pronounced difference between a monopoly market under the Sherman Act and market dominance under Article 86. Certainly there is coincidence of the two in the aim against exclusionary or predatory conduct by a competitor with extraordinary market power. As well, each anticipates good faith competition on the merits and does not condemn, *ipso facto*, a high market share which is legitimately achieved. Where the two concepts part company is the degree of market power exacted to condemn unilateral behavior. Dominance must necessarily stop short of monopoly, if not by literal linguistics then by intent. If the signatories to the Rome Treaty had intended that 86 only reach monopoly power, the word "monopoly" would have been, in all probability, used since it was part of the antitrust dialect in 1957. The fact that neither the word nor a conceptual "monopoly" makes its way into any point of 86, when taken with "unfair" trading conditions being denominated as one of the first abuses of dominancy, leads to the conclusion that the Article, in part, is fashioned more nearly after Section 5 of the Federal Trade Commission Act than it is Sherman 2.[233]

In sum, whether the dominance of 86 was intended to and does reach a market share of 19.5 percent (for Shell) or as small as **7**

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percent (in the case of Mobil) is a difficult query. While the answer lies in a determinative opinion of the ECJ, for this Thesis, all structural and behavioral factors being considered, none of the oil majors, standing alone, meet the dominancy test of 86 at the refining level in the U.K. There is insufficient data on the retail market to form any judgment on dominancy.

3(c) Shared Dominance Under Article 86:

The Judicial philosophy of shared monopoly in antitrust has already been examined relative to U.S. and U.K. national law. In the context of Article 86, the theory was clearly foreseen, for the opening stanza provides that an abuse "by one or more undertakings of a dominant position" within the common market is proscribed. The lead question is, of course, whether the oil majors in all or a portion of the aggregate, from a dominant position at the refinery or retail market of the U.K.? There are no reported decisions from the European Court. The question is of the largest scale for if a shared dominancy is made out in the oil oligopoly of the U.K., the flood gates may be open for major sectors of the economy, with higher structural concentration than oil, to be caught by 86. A respected Community text on antitrust law notes that the area of shared monopoly is quite "unclear" and that great caution should be taken before whole oligopolies are swept into the arms of the Article.[234] On the other hand, the position of the CEC is quite "clear" that at the inside minimum, there is shared dominance of the major oil companies under 86.[235]

If the CEC is correct in its assertion, how many vertically integrated oil corporations in the U.K. share the dominant position? In 1977, the top three corporations (Shell, Esso and B.P.) had an accumulated share of 53.4 percent of the refining market, and the first five companies (Texaco and Mobil added) had an aggregated 69.7 percent. Conoco had a market share of 4.6 percent, Gulf was at 2.6 percent and Socal (although one of the largest integrated oil companies in the world), had only 1.1 percent of the 1977 U.K. refining market. Is Socal and Gulf to be thrown in with all others?

Part of the answer lies not in just arithmetic numbers, but upon the character and degree of common conduct, together with conscious parallelism of the Companies. In the U.K. market, there has been an inordinate amount of friendly co-operation and co-ordination. Shell and B.P. were *de jure* and *de facto* joint venturers at the refining and marketing levels for many years through 1975. The divorce has not changed their refining and marketing habits. Esso, Shell and B.P. exchange petrol product and deal on a common and continued basis at the refinery level. While they keep refinery share capacity to themselves, each knows the capability of the other and area of operation. Pricing policies at the refinery level are remarkably similar between the top five. In April of 1978, Amoco, B.P. and Texaco had identical prices for wholesale petrol while Mobil and Shell were only 4 percent below; the latter is quite remarkable considering the individuality of refining, transportation, storage and sources of production. In May of 1977, all of the first five sold refined petrol at exactly the same price, namely, 16.08 pence per litre. Pricing techniques and vertical arrangements with independent retailers and lessee operators are generally of uniform nature with Esso, Shell, B.P., Texaco and Mobil. Moreover, market shares between the top five, while experiencing a reduction as against other competitors, have remained proportionally relative.

There is an element of the doctrine of "conscious parallelism" that is of relevancy to the question of shared dominancy under 86. In theory, it holds that similar conduct of competitors, although independent from any express or tacit understanding, is corroborative of collusion to fix prices, divide markets, etc. It ordinarily has application to two-party trade restraints under Article 85. While conscious parallelism, standing alone, is not a violation of 85(1)(a),[236] it may well be evidence of dominancy under 86, particularly where the nature of the market renders it unlikely that such parallelism would result solely from market structure or ordinary behavior. The uniformity of prices over extended periods of time at the refinery level gives the doctrine efficacy in this instance.

It seems clear enough from all that has been said that if the supposition of shared dominance is to be anything more than a vacuous notion, its application is warranted in the case of the top five vertically integrated companies in the U.K., i.e., Shell, Esso, B.P., Texaco and Mobil. Together, they comprise a rather tight club which dominates almost 70 percent of the petrol refining market. While there is competition between each of them, there is, on balance, a larger and more imminent degree of common interests and co-operation. They are for this Thesis considered a shared dominancy under Article 86 in the petrol refining market.

There is reason to draw a distinction between the first five refining companies and the rest of the field. Conoco and Total have less than 5% of the market or approximately 20 percent of the positions of Shell and Esso. Elf and Petrofina, with less than 3 percent of the market, have much less commonality as independent operators than the vertically integrated majors in the U.K. B.P. has 450 percent larger market position than each of them. Gulf, Amoco and Chevron have no place in a shared dominance. Amoco and Chevron have barely 1 percent of the market and Gulf maintains a little over 2 percent. The aggregated shares of the trio are approximately 50 percent of Texaco. While the three companies may hold significant proportions of market power in other geographic areas, they do not in the United Kingdom. It would be without purpose or reason to catalogue such companies as Conoco, Total, Elf and Petrofina with the five leaders. The line must be drawn not just somewhere, but with as much balanced precision as possible. The latter companies are not inculcated within the shared dominancy.

A subsidiary question to shared dominancy is whether all undertakings within the dominant group must engage equally or proportionately in "abusive" conduct in order that it be caught by Article 86. The short answer is no . . . 86 declares that *any* abuse by *one or more* of a dominant position is banned. The doctrine of shared dominancy is employed solely to determine the applicability of 86 to an undertaking, not to measure the intensity of antitrust behavior.

3(d) Abusive Conduct Under Article 86.

(1) General.—Significantly, Article 86 does not condemn dominancy out of hand. Like the Sherman Act, it strikes at conduct that has nexus to or arises out of suffusive economic power. Both the ECJ and the Commission have thus far avoided the pitfall of censuring size and efficiency as was done by U.S. antitrust courts in *Alcoa*[237] and *United Shoe*.[238] There are several endemic characteristics underpinning the general deployment of 86 that distinguish abusive conduct in the Common Market from exclusionary and/or predatory behavior under Section 2 of the Sherman Act. First, the goal of the Treaty in eliminating commercial barriers and achieving a single market within the Community has been a consistent theme in antitrust enforcement under 86. Both the CEC and the Court of Justice have been quick to flag conduct as abusive which tended to discriminate between nationals or to establish separate markets within the Common Market.[239] While the Sherman Act has its footings in the Commerce Clause of the U.S. Constitution,[240] it does not have the Common Market hurdles of nationalism to overcome.

Second, Article 86 was initially thought to be directed only at unilateral behavior by an undertaking having market dominancy while 85 focused upon two-party trade restraints. Antitrust questions bearing upon structural position in the market were viewed as residing outside of the influence of 86. The specific enumeration of forbidden unilateral conduct under 86(a) through (d) reinforced the belief that behavior and not market structure was targeted under the Article. But that theory all changed with the issuance by the Court of Justice in 1972 of its seminal decision in *Continental Can*[241] and the subsequent 1974 opinion in *Commercial Solvents*.[242] In Continental Can, the Court, in rejecting a horizontal merger that would have eliminated any competition in part of the Common Market, spelled out its position that a firm could be caught by 86 as a result of its structural market position if Community trade were deleteriously affected. While the ECJ placed unnecessary reliance upon Articles 2 and 3 of the Treaty, it declared that the general "spirit and scheme" of Article 86 precluded a corporate combination if competition were thereby distorted or eliminated, even though no specific subsection of 86 was in issue. The Court, finding that the later were only illustrative in any event, concluded that Articles 85 and 86 read together, were aimed at conduct, collective or individual, that restrained competition within the Community.

In *Commercial Solvents*, a vertically integrated firm, having a virtual monopoly over raw materials, refused to supply such to a manufacturer with whom it competed. The Court found that because of the structural position of Commercial Solvents in raw materials, a refusal to supply under that circumstance constituted an abuse of a dominant position under Article 86. The pivotal factor under the Court's opinion was structural dominance, but for which the exclusionary conduct would not have been deemed abusive or even relevant to antitrust enforcement.

Thus, it is increasingly apparent that if structural dominance impacts upon Common Market competition, it may well be subject to the requisites of 86.

Third, Article 86 contains several values, the subversion of which by a dominant firm will constitute abusive conduct, that are not in the Sherman Act. 86(1) converges upon prices or trading conditions that are "unfair", and 86(2) relates to restrictions in production or progress "to the prejudice of consumers". Neither unfair conditions or consumer prejudice necessarily have any bearing upon actual or even potential competition, whereas the Sherman Act is inextricably bonded to competition policy. The question of what standard is applicable in measuring prejudice to consumers is, itself, subject to kaleidoscopic variation. For example, a dominant firm may flood the market with a product or lower its prices to either meet new competition or to intentionally force a competitor out of the market. In the short-term view, product availability and prices will be both fair and to the benefit of the consumer. But the long-term position is another matter, for after the competitor has left the market, the structural dominancy of the firm will enable it to moderate production and raise prices to the prejudice of the consumer. Even then, the prices may not be "unfair". The Commission is thus faced with the changing equation of whether the short-term or long-term policy, brought about by structural dominancy, is unfair and prejudices the consumer. The resulting ambivalence augurs for *ad hoc* consequences and indecision.

Fairness, itself, has such ominous over-

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tones of subjectivity that unless the concept is applied sparingly and with almost surgical care, the bottom-line result may be to impose Community supervision and control over market operatives contrary to antitrust principles, rather than permitting the competitive market to work. In *United Brands*,[243] the Court of Justice, in a case of first impression, found that "excessive and unfair prices" charged distributors in several states within the Common Market was an abuse of 86. The Company, the largest producer of bananas in the Community with 45 percent of the market, sold bananas to wholesale distributors in Rotterdam at a higher price than that charged in Ireland. Upon investigation by the CEC, United defended its pricing policies upon differential costs in the Netherlands *vis-a-vis* Ireland, upon the Company's "yellow color" marketing approach and upon the competitive structure of the Rotterdam market. The Commission found that unfair prices were charged on the artless bases of utilizing Ireland as the market price from which to judge sales in other Common Market States and because the Netherlands price was excessive in relation to the "economic value" of the product. While the Commission suggested that it was a primary-line injury case, the facts seem clear that any genuine mischief was secondary-line injury.

On appeal, the Court of Justice affirmed the CEC determination of unfairness and abuse but disagreed with the factual methodology. The ECJ declared that while a banana price may be excessive if it has no ostensible bearing to "economic value", it must be considered whether the imposed price is "either unfair in itself or when compared to competing products". The latter phrase was a curious anomaly, for the Court had preliminarily found that in determining dominancy under 86, the relevant product market was not fresh fruit generally, but only bananas. Notwithstanding, the Court found itself in considerable difficulty in arriving at a formula for "fairness". It finally concluded that the "fair" way to ascertain fairness was to enter upon a full economic cost analysis of United's pricing practices.

To send the case back to the CEC for a debate among economists as to proper structural costing is not only factually unproductive, it ignores the great danger of the entire scheme to sound antitrust policy. To begin with, "economic value" and "fairness" must be measured in the market place, not in a Brussels hearing room. If United prices are execessive, the market will turn to other interchangeable fruit which, in turn, would cause United's prices to drop. Secondly, were the CEC to subsequently determine that the prices of United were excessive and thus unfair, the result would be a draconian conflict with and obstruction of a cardinal principle of competition law, viz., that a monopoly is entitled to charge monopoly prices for its product,[244] so long as it does not engage in exclusionary or predatory practices. *United Brands* was not, in point of fact, a case of exclusionary or predatory pricing.

Thirdly, if the CEC and the Court are going to conduct full cost analyses of a company's spring policies, that is the judicial equivalent of public utility regulation and is the antithesis of antitrust enforcement. Lastly, the whole concept of looking over the shoulder and second-guessing the prices to be charged by a market competitor reflects a manifest skepticism for the entire competitive system. That system must be permitted to operate to achieve the central antitrust goal without the patronizing approval of price regulation disguised as competition enforcement. Significantly, neither the ECJ or the Commission found primary line injury to the competitors of United as the predicate for discriminatory pricing under 86(c).

United Brands takes Community antitrust law and the Court into quicksand from which there is little hope of return other than supervisory overview of entire areas of market pricing. Such a result would be a disaster of the first order in light of the solid foundation of Common Market antitrust law.

A third general concept of Article 86 is its interrelationship with 85 under the Treaty. The omnibus principle suggests that collaborative conduct caught by 85(1), unless exempted by 85(3), would also constitute a violation of 86 if one of the undertakings held a dominant position in the relevant market.[245] If the spirit of 86 and 85 drive at the same objective, the legal conclusion should follow. That philosophy would track the position of U.S. antitrust that concerted action violative of Sherman 1 may constitute monopolization under Sherman 2.[246] The difference between Common Market and U.S. enforcement in that regard would turn upon the broader standard of market dominance under 86 as against the Sherman 2 requisite of monopoly position.

(2) Selective Pricing By The Dominant Oil Majors in the U.K.:

No one need grope or search for the answer to the question of whether selective price supports to favorite retailers violates 86. It does. 86(c) forbids applying "dissimilar conditions to equivalent transactions" at forward marketing tiers which cause competitive disadvantage. The retailer who was given a subsidy by the major company could slash his price to meet other competition, knowing that the price reduction was being bank-rolled by the refiner. On the other hand, the smaller retail independent or lessee (who, parenthetically, likely needed the support subsidy more than his larger intra-brand competitor) was forced either to maintain his price and lose market share or lower the retail price to his direct loss. The competitive disadvantage of the disfavored retailers was enoromus. The larger rationale of *Benzine en Petroleum B. P.*[247] supported the finding of treating all like purchasers in a substantially equal manner. Although a rule of reason test might not be available under 86,[248] the attempt to justify a business distinction between retailers of long- and short-term potential is insipid. The discriminatory practice would, in fact, bring on the very result which the oil company, not the market, forecasted.

As to oil companies that are not within the shared dominancy who were nonetheless engaged in subsidy support with selective retail operators, their conduct is caught by 85(1) for the principal reasons as the dominant companies are reached under 86 (c). In this instance, there should not be any business justification that would recognize an *ad hoc* exemption under 85(3).

The OEC should enter upon an investigation of this pervasive discriminatory practice in the United Kingdom.

(3) Tying Agreements In The U. K. Under Article 86:

Tie-ins of collateral products are specifically designated as an abuse of 86(d) of the Treaty. There are no known cases of the European Court addressing the question. The case of *Sugar Cartel*[249] involved an arrangement whereby sugar producers offered a rebate to loyal purchasers. While the fidelity rebate system had the anticompetitive consequence of linking the purchaser to the product and producer to the exclusion of other supplier-competitors, there was no "tying arrangement" within the legal definition of 86(d) *for there was only one product*, viz., sugar. The same maybe said of the companion decision of the ECJ in *Hoffman-La Roche*.[250] Both cases are exclusive dealing or discrimination litigation and will be considered in that conjunction.

A TBA typing agreement between a dominant major oil company and a retailer is, in all probability, a violation of 86(d). While Article 85(3) provides an escape mechanism wherein the CEC may discretionarily exempt certain restraints of trade, there is no such safety valve under 86. If the TBA were an isolated transaction and a negligible amount of competition were affected, the contract would possibly come within the rule of *de minimis non curat lex*. But the thrust of 86 presumes that the conduct will prejudicially impact upon the Common Market. Ergo, unless the isolated TBA transaction is of minimal quantifiable significance in the market, it should be condemned under 86. The CEC should follow the U.S. antitrust doctrine of quantitative substantiality as earlier discussed.

4. Exclusivity Agreements Under Article 86:

In point of law, exclusive agreements may be caught under either 85 or 86. The latter is applicable to exclusive dealing either as an element of "unfair trading conditions" under 86(a) or as discriminatory or unequivalent trading conditions under 86(c).

The doctrine is well established in the Community that a firm having 86 dominancy may not utilize a fidelity rebate arrangement with a retailer to insure market retention. Such was viewed by the Court of Justice as a *de facto* exclusive agreement in *Hoffman-La Roche*[251] and was condemned under 86(c). Hoffman, the world's largest vitamin producer, had entered into contracts with bulk wholesalers agreeing to return part of the purchase price of bulk orders if the wholesaler dealt only with the manufacturer. The Court found that such agreements, exclusive or preferential, interfered with the normal competitive choice of the wholesaler and gave him an unfair competitive advantage *vis-a-vis* a wholesaler who did not receive the rebate. The latter finding unnecessarily stretches the doctrine of equivalent transactions, for in case of *Hoffman*, the exclusivity practice could have been branded an unfair trading practice under 86(a). The opinion in *Sugar Cartel* involved a fidelity rebate of parallel consequence and was also caught under 86(c).

There is good cause for the Commission and the ECJ to proceed with delicacy before applying the axiomatic Article 86 treatment to exclusivity agreements. Solus agreements, even with dominant firms, are often subject to genuine business justification. The need for a dependable marketing outlet, the isolation of the transaction, the duration of exclusivity, and the product sub-market that may be involved, all argue for ad hoc analysis under the aegis of Article 85. Few exclusive agreements involving major oil companies and retailers should be subjected to *per se* treatment of 86. They will not be in this Thesis.

3(e) Article 85 In The Context Of The Oil Industry.

Article 85 of the Treaty is germane to this work in two specific regards—the enforceability of exclusive dealing agreements and the validity of horizontal information exchange arrangements.

(1) General Provisions of the Article.—85 is shaped in substance to roughly correspond to Section 1 of the Sherman Act. Agreements and concerted practices which may affect trade within the Common Market and have as their object the prevention, restriction or distortion of competition, are precluded. Particular types of contracts are outlined in the Article as tainted, namely, price fixing, arrangements curbing production, development or investment, understandings allocating product or territorial markets, boycotts, tying agreements and discriminatory trade combinations. As with 86, the delineation of categories of arrangements that are caught under 85(1) is illustrative and not exhaustive.[252]

It is urged by some that the principal word

Footnotes at end of article.

in the prohibitory language of 85(1) is "distort" and that the language "restrict and prevent" is corollary.[253] The fact is that neither the Commission nor the Court of Justice has been married to any singular word or collection of phrases to describe antitrust behavior. All three words, in combination, are adapted to foreclose conduct that restrains or may restrain trade within the Community or that creates isolated markets (particularly national).

Contracts which are caught by 85(1) are "absolutely void" pursuant to 85(2) unless they have been exempted in accordance with 85(3) procedure. If the banned restriction is capable of being severed from the contract and the balance is otherwise an enforceable agreement, the contract may not be void *in toto*. The latter will depend upon an adjudication by a national court applying the relevant conflicts of law rule.[254]

Article 85(3) provides that as to an agreement or arrangement otherwise within 85(1), it may be nonetheless saved if the Commission, in its discretion and upon request, determines that the contract (i) contributes to production or distribution of goods or promotion of technical or economic progress, (ii) allows consumers a fair share of resulting benefits, (iii) while not imposing restrictions on the undertakings which are not indispensable to the contractual objectives and (iv) not allowing the undertakings to emasculate competition in any substantial part of the relevant market. The four conditions are not alternate "gateways" having any kinship with Section 10 of the U. K. Restrictive Practices Act. All conditions must be satisfied to invoke 85(3). It is, in U. S. dialect, a Treaty defined "rule of reason" to judge bilateral trade restraints.

In addition to the exclusive jurisdiction of the CEC to grant discretionary exemptions under the singular facts of each case, the CEC has authority to issue block exemptions to classific categories of agreements in order to facilitate the goal of Common Market trade and development, as well as to cut through the tedium of *ad hoc* review and approval or denial of a plethora of individual contracts. Pursuant to Regulation 19/65 of the Community Council of Ministers of 1965, the CEC, in 1967, promulgated and adopted Regulation 67/67. The latter declares that Article 85(1) of the Treaty shall not have application to a contract involving only two undertakings from different States within the Common Market where one party agrees to purchase exclusively from the other for resale.

(2) The Per Se Rule of Illegality.—One further point is deserving of mention in the general vernacular of antitrust enforcement under 85. There is no Treaty provision declarative of an axiomatic ban or bar upon certain restraints of trade such as horizontal price fixing agreements or vertical group boycotts. 85(1) merely states that arrangements which have as their "object or effect" the restriction of competition within the Community are prohibited. In one of the most important decisions in Common Market antitrust, the Court of Justice, in *Counsten and Grundig*,[255] held that if the "object" of the contract was to restrict trade in the Community, the actual "effect" upon the market was of no relevancy. The judicial inquiry as to the violation was at an end.

The Case has been interpreted as establishing a *per se* rule of illegality with a market analysis being required under rule of reason only when the "effect" of the conduct was at issue. The distinction, in practice, between "object" and "effect" is nebulous and not easily made. If what was meant in *Counsten and Grundig* is that a specified category of contract has no redeeming virtue and is squarely aimed at the restraint of trade, the "object" test would parallel the "naked restraint" *per se* rule in American antitrust under *Addyston Pipe*.[256] In that case, a secondary or ancillary restraint which only implements an otherwise worthy object of the contract would be examined for its "effect" on the market. The fact is that the *Counsten and Grundig* Court was looking for a shorter path under 85 to catch bald behavioral restraints besides a full scale inquiry into market impact and business justification.

The *per se* rule of *Counsten and Grundig* has been tempered by the subsequent decision of the ECJ in *Volk* [257] holding that notwithstanding the plain "object" of a contract is to restrain or distort trade in the Common Market, the amount of trade effected must be *appreciable* to activate Article 85. *Volk* is nothing more than a *de minimis* exception tacked-on to the *per se* concept. *Volk* was reduced to codification by the CEC in 1970 under a quantifiable *Notice of Agreements of Minor Importance*.[258] In other respects, the *per se* rule of presumption in *Counsten and Grundig* is substantively analogous to the U.S. principle.

(3) Solus Agreements Under Article 86.—Common Market antitrust does not have the sequel to *Standard Oil (Socal)*[259] in American case law. As noted earlier, exclusively contracts of supply may have pro-competitive objects and effects on the development of trade within the Community. It should, therefore, not be subject of a *per se* embargo, but adjudged under the rule of reason. To those contending that *Counsten and Grundig* has brightened the path to determine the legality of pure solus contracts in Community antitrust,[260] they are wrong. *Counsten and Grundig* involved an exclusive territorial distributorship in France and non-exclusive but territorial agreements in Germany. While the case is a milestone in the troublesome area of territorial and customer restraints that block distribution across national boundaries, it was not an exclusive dealing case either in the classic sense or in the context of the oil industry.

The question under this Thesis narrows itself to this—does the block exemption of regulation 67/67, Article 1, extend to a requirements contract between a major oil company and a retail marketer in the U.K.? The answer is in the negative. First, solus arrangements between the oil majors and independent or lessee retailers are so prolific throughout the vertical systems of each company that to argue that the exclusivity contracts are only between two individuals is to blindly prefer the letter over the spirit of the exemption. It is unmistakably clear that like Sections 28 and 9(7) of the R.T.P.A. 67/67 was intended to reach the insular transaction or, perhaps, several individual agreements. But it was not intended as an exculpatory balloon where single contracts were merely part of a subliminal arrangement of exclusivity to blanket a significant part of the Common Market.

Second, it might be argued that Article 1 (2) of 67/67 renders inapplicable the *en bloc* exemption because the solus agreement is between nationals of the same State. While the plain language of Article 1(2) would dictate that result, the ECJ held in *Fonderies Roubaix* [261] that Article 1(2) was not intended to eliminate from the block exemption those intra-State exclusivity agreements which otherwise affected trade and competition within the Common Market. Article 1(b) of Regulation 67/67 would be relevant to exclusive dealing agreements between the oil majors and retailers, were it not for the grand design in which exclusivity is carried out by each company. Accordingly, solus agreements do not fit within the *en bloc* exemption category of 67/67 and should be subject to rule of reason analysis under Article 85(3) of the Treaty.

In addition to review under 85(3), exclusive dealing contracts may be notified and negative clearance sought under the procedure of Article 2 of Regulation 17/62 and Article 85 (2) of the Treaty. The factors to be considered in the rule of reason evaluation have been earlier set out under Chapter VII and the national U.K. antitrust law of this Chapter. In all events, the duration of petrol exclusivity should not exceed one year with the retailer having the option to seek other competitive sources without penalty or a subsequent refusal to deal by the oil major.

(4) Informational Exchange Agreements Under Article 85.—The Common Market faces an antitrust dilemma if not paradox in horizontal co-operation and information arrangements. On the one hand, trade between nations of different States is to be encouraged in order to dissolve territorial markets. Cooperative and informational exchanges aid that cause. On the other hand, exchange of information that leads to price fixing or other non-competitive practices distort and restrain trade and are subject to 85(1) sanctions.

The Community competition policy to resolve the quandary has been principally kept at the CEC level. While the European Court did speak out strongly in *Sugar Cartel* [262] against the exchange of cost information in a highly concentrated industry, the primary target of the Case was cartel price manipulations and rebates. In *Glass Manufacturers*,[263] the CEC specifically condemned, under 85, four agreements relating to exchange of prices and invoices (including customer identity) between undertakings in different States. Among the factors considered by the Commission were industry concentration, homogeneity of the product and lack of competition other than price.

The general policy of the C E C on information sharing is set out in its 1978 Competition Report.[264] The key to Commission approval under 85(3) of an information agreement should be and probably is that the undertaking maintain its competitive individuality. But although a company should keep informed on market conditions, industry technology, and product development, contractual informational exchanges on pricing or costing policies, customer identification and inventory in an oligopoly market should be forbidden as a *per se* violation. Such is the U.S. antitrust experience in *Container Corp.*[265] and the earlier case of *American Column & Lumber*.[266]

The need for informational agreements in the oil industry, beyond the exploration and development market, is undemonstrable in the U.S. Such should be closely examined by antitrust enforcement of the CEC.

3(f) Merger Enforcement In The EEC.

The relationship of market criteria in the review of horizontal and vertical mergers to the larger aspects of dominancy under Article 86 is pronounced. To that end, the decision of the Court of Justice in *Continental Can* [267] must rank as a turning point in Common Market antitrust enforcement. First of all, it established by judicial decree that in order to maintain a balanced and competitive Common Market, mergers could be prohibited. Unlike the Clayton Act, the Treaty does not make formal reference to accumulations by merger. Secondly, the Court laid down fundamental tests by which dominance through merger should be adjudged, viz., combined market share of the marriage, relative proportionality to the market size of competitors, economic power of the merged undertakings *vis-a-vis* downstream purchasers, and potential competition in other product and territorial markets. The first three tests are soundly reasoned; the last is open to some question because of the American experience in the manipulation of geographic markets.

Yet even with *Continental Can*, there are still glaring defects in Common Market merger enforcement:

Footnotes at end of article.

(a) A merger can not be prohibited under B6 unless one undertaking is already dominant;

(b) There are no pre-notification provisions extant which enable the CEC to review or prevent a merger before it takes place.

The EEC Ministers should consider the promulgation of a Council Regulation that would provide the CEC with advance warning of a merger of specific proportions, such as was set forth in U.S. competition law under the *Scott-Hart-Rodino Antitrust Improvements Act of 1976.*[268] While a proposal has been before the European Council of Ministers since 1973,[269] no action has been taken.

4. Considerations Of Divestiture Of Major Oil Companies In The United Kingdom:

The policies favoring and opposing vertical divestiture in the oil industry have already been examined under Paragraph 10 of Chapter VII. The question at this point is whether U.K. antitrust law recognizes divestiture and realistically authorizes its use.

1. U.K. National Law.—Vertical divestiture is a legislatively authorized remedy under the 1973 F T Act.[270] Indeed, of the three antitrust systems of jurisprudence under study in this Thesis, U.K. national law is the only one in which divestiture is expressly sanctioned. By order under statutory instrument (first approved by both Houses of Parliament), the Secretary of State may provide for the division of a business, for the reorganization and transfer of assets as well as equity and debt positions, and the continuation of legal proceedings. The Act does not spell out the body that would preside over the divestiture. Neither the MMC, from whom the divestiture recommendation would stem, nor the High Court is invested with jurisdiction.

In practical fact, however, the procedural mechanics of vertical divestiture are irrelevant, for in the larger view of U.K. antitrust law, the divestiture remedy may be no more than an academic curiosity. British national antitrust instructs that the ramifications of divestiture may be too dramatic to implement within the economic system of the U.K. The remedy lies dormant in the Statute, its use never once having been attempted in 32 years of competition law. Accordingly, as long as the law deals in even the shadow zones of possibility, much less probability, divestiture is not a feasible remedy, under U.K. national policy, even if the monopoly position of the major oil companies warranted it.

2. Common Market Law.—There is no Treaty provision that authorizes vertical divestiture. Article 3 of Regulation 17 authorizes the Commission to terminate infringements of Articles 85 or 86, and "to require undertakings to bring * * * infringement to an end." The Commission in *Continental Can* ordered the American-based company to divest itself of the Holland firm.[271] On appeal, because of Court of Justice ruled directly on the antitrust validity of the merger, itself, the question of divestiture was never reached.

The CEC has been granted broad authority to deal with competition issues. While still a system that is undergoing experimentation, Common Market antitrust has reflected a responsible and balanced attitude toward competitive structure and behavior. If a specific case presented facts of such market dominance and egregious behavior that reasonable competition could not be restored unless dismemberment of the undertaking were required, it is a premise of this Thesis that the Commission has the inherent authority under the Treaty and Regulation 17 to order divestiture. What is more, the CEC, on the record of *Continental Can* and otherwise, is likely to request it with respect to a U. K. firm. The ultimate decision on the subject of course, rests with the European Court of Justice.

CHAPTER IX: SECTION 2 OF THE SHERMAN ACT AS APPLIED TO MAJOR U. S. OIL COMPANIES AND FINAL CONCLUSIONS REGARDING VERTICAL DIVESTITURE IN THE U.S. AND U.K. PETROLEUM INDUSTRIES

Vertical divestiture of the major oil companies of most or all assets forward of production and transportation is, without serious rivalry, one of the epic questions in antitrust enforcement today. It is not just of consequence to the industry participants or substantive competition law. The outfall consequences reach the largest markets, indeed, the entire economies of both the United States and the United Kingdom.

Those that advocate vertical divestiture of Big Oil in either Country are unquestionably correct in one aspect. If divestiture occurred, there would be a new suffusion and round of competitors in the refining and retail markets of petroleum. But that argument is capable of being made about divestiture in any industry regardless of the degree of structural concentration. Of course there would be new companies created and others reorganized to purchase the dismembered assets. But whether those new entities would provide a new and improved thermostat of competition is an entirely different matter. Heavy capital investment is a hypostasis and an entry barrier to refining and, in lesser degree, retailing. It can not be avoided. That being the case, it is within the realm of probability that a proximate result of vertical divestiture would be the establishment of another dozen or so major companies at each marketing tier operating within a new oligopoly pricing system that would require a full return on capital for each new company at each level. More than that, the newly invented tiers of companies at the refining and retail markets would only take effect after years of litigation, after the most complex economic evaluations to achieve parity of corporate structures and asset divestiture, and after the constancy of judicial or administrative supervision of the dismemberment process.

This is not to urge that divestiture is an ill-conceived tool of antitrust that should be pitched aside because of the intransigent difficulties of implementation. On the contrary, divestiture is a remedial mechanism which should be an appurtenance of any comprehensive method of competition enforcement. *But never in the history of antistantial parts of an entire industry* either at one sitting or over a period of time. Divestiture should be, therefore, approached with the most deliberate care not only for its merits, but with regard to an industry that is vital to society as is petroleum.

1. Monopolization By American Companies Under The Sherman Act:

The dialogue regarding vertical divestiture of the refinery and retail levels of the major oil companies rests on the assumption that divestiture is justified and required by the antitrust laws of the United States. It is not. This Thesis has demonstrated that under every recognizable gauge of competition policy, a case of monopoly, shared monopoly, or monopolization is not made out under Section 2 of the Sherman Act against the oil majors. Exchange of crude or refined petroleum between major companies is not an offense under the Sherman Act, unless there is specific premeditation to force an independent or other major from the market. The homogeneity of the product allows for inter-company exchanges as an element of increasing efficiency and to that extent is pro-competitive. No antitrust court has yet found that inter-corporate exchange of raw product is an act of monopolization or a restraint of trade, with the exception of predatory *animus*. If there be a primary-line or down-stream "squeeze" on other oil refiners, that squeeze is an operative of competition and not of an antitrust violation.

Common ownership of interstate pipelines, considering the capital investment, efficiency and environmental problems associated with individual lines should not be of significant concern. Such lines are common carriers and their non-preferential use subject to the jurisdiction and review of the Interstate Commerce Commission.

As to the contention that the only competition among the oil barons is commercial advertising, it is incorrect. Considering the similarity of product and the national energy laws requiring governmentally induced conservation, there exists distinctive evidence of competition in the industry including that of a reasonable scale between the majors, themselves. As importantly, new market entry has been accomplished in recent years at both the refinery and retail tiers. The major corporations have lost aggregated and individual market shares as a result of new penetration. The petroleum industry is less concentrated presently than it was 10 to 20 years ago, and admittedly less concentrated than most other manufacturing. Even the forensic antitrust warriors of Thurman Arnold's day would concede that the minimum market shares and level of competition between Big Oil and within the industry, generally, are not reached by the monopoly provisions of the Sherman Act.

Tying arrangements, information agreements forward of production, and exclusivity contracts do exist, but they can and should be treated and subjected to stringent enforcement under Section 1 of Sherman. Such behavior and conduct, individual or cumulative, does not suggest that Sherman 2 be brought into play as exclusionary acts of substantiality and monopolization. The commonality of directors on the Boards of major companies in the form of bankers and investment houses, is troublesome, but it should be resolved under the federal securities laws or Section 5 of the FTC Act. It hardly signals or is deserving of the disciplines of Sherman 2, viewed either in its own cubicle or in tandem with other trade restraints.

The argument that the major oil compaines are so intensely interested and on common course that they constitute a *de facto* indivisible business unit is largely rhetorical diatribe. This Thesis has manifested that there is competition between the eight, ten or twenty majors in the United States. Even in appeasement of the rhetoric, were the sixty or so smaller or independent refiners *completely excised* from the market equation, there is still competition between the largest twenty companies that forecloses the claim of an "indivisible business unit" and insufficient market share to be subject to Sherman 2 sanctions.

The stubborn fact remains that there is simply not the type of abusive, cut-throat, exclusionary and predatory behavior of major oil companies afoot that caused the antitrust courts to find massive Sherman 2 violations and to order divestiture in *Standard Oil* and *American Tobacco*. There is no evidential showing of monopoly or shared monopoly at either the refinery or retail markets under the Sherman Act and *a fortiori*, monopolization under Section 2 is not even reached.[272]

2. Divestiture of United Kingdom Corporations Under Applicable Antitrust Laws:

In the United Kingdom, it is concluded that the market dominance of the top five oil majors is of such magnitude that they comprise a complex monopoly at the refinery level under U.K. internal antitrust laws and a shared dominancy under EEC competition law. The latter is of particular significance.

Footnotes at end of article.

But that conclusion does not close the door on inter-company competition of the five other integrated refining and retailing corporations. On a different scale and degree than in the U.S., competition nonetheless is plainly extant in the U.K. Market shares of the leading majors (Shell, Esso and B.P.) have fallen against new entry at the refining level at the same time that the horizontal market was expanding. Entry barriers of integration, capital requirements and market identity have not precluded increased penetration against the five majors by independents and smaller integrated companies. Thus, competition has not been stultified under either the complex monopoly or shared dominancy.

On the other hand, exclusionary activities in the U.K. are more pronounced than in the U.S. Information exchange arrangements are or have been significant, tying and exclusive dealing are widespread and selective discriminatory pricing at the down-stream retail level has taken place in recent years in Britain. The latter has placed an unreasonable anticompetitive "squeeze" on small lessee and independent retailers. All of such behavior should be the targets of investigation or hearing by the DGFT, by the Monopolies and Mergers Commission, by the Restrictive Practices Court and, not the least, by the CEC. Discriminatory pricing by the majors against the smaller retailers is both a primary-line and secondary-line injury that should be caught under Article 86 of the Treaty of Rome and the faulting companies should be subjected to the type of fines that will leave no doubt about the gravity of the offense.

On the central question of vertical divestiture, this Thesis stands on the proposition that the indicated conduct by one or all of the top five vertically integrated companies does not rise to the level where the remedy should be seriously entertained at the refinery market. The anticompetitive conduct can be corrected by measures that do not require the radical surgery of dismemberment.

3. Energy Policies vis-a-vis Antitrust Policy:

The design of the United States to homogenize petrol and require conservation of petroleum products is one of the principal ambitions of the national conscience. Without measured cadence in consumptive use of oil at all sectors of the economy, competition policy in oil will no longer be of social relevance. It is a superficial paradox, at times urged by industry personnel, that major oil corporations are expected to engage in fierce competition with respect to a resource whose demand is governmentally regulated. The argument is infirm. The complexion of antitrust and the commitment to competition are unchanged by the energy schemes of either the U.S. or the U.K. But antitrust may be required to recognize the exigencies and demands of conservation and regulatory policy in rule of reason cases and at the enforcement stage. National energy goals should have no bearing on *per se* violations of the antitrust laws.

4. Conclusions:

So the matter comes down to this—the essential case against Big Oil is, as the name implies, bigness, existence at all marketing levels and large profits. It is, in most respects, a repeat performance of the anti-bigness prejudice that was the undoing of the Learned Hand Court in *Alcoa* and the Supreme Court in *United Shoe*. That bias continues to be the unfortunate incantation of legitimate competition enforcement. This thesis has studied the theory of size and has found it wanting as a goal of antitrust policy. Conceptually, bigness has nexus to antitrust as a possibly desired side-effect, but it is not the casual predicate or goal. Competition policy of the United States or the United Kingdom is not a pawn of the reformists to accomplish social welfare ideology. The massive profits realized from the escalating price of crude and OPEC cartelizing, are relevant topics for taxing authorities and new exploration initiatives, but they have been demonstrated in this Thesis to be unassociated with monopolization in the U.S. or abusive dominance in the U.K.

If the day dawns when the oil majors have been found to have monopolized under the Sherman Act in the U.S. and there is no other way to restore competitive balance to the market other than by vertical divestiture of the refinery and/or retail tiers, American antitrust is fully capable to and should be used to order dismemberment.

The same cannot be said about U.K. internal competition law. Whether the statutory authorization for divestiture in Britain has more than ceremonial value remains to be seen. The United Kingdom is yet to decide whether it genuinely wants decisive antitrust enforcement. Monopoly law will begin to reach its potential and maturity if and when amendments to procedural methodology and enforcement authority of the MMC are made.

Antitrust law of the European Community, however, has a pragmatic conceptual balance that, in some parts, is missing in U.S. law. Enforcement has been strong and effective. This Thesis argues that should it be necessary in the future to remedy a grievous imbalance of the competitive structure in the oil industry of the United Kingdom, vertical divestiture is a remedial antitrust device in the Common Market.

Lastly, the Thesis holds that antitrust policy has as its function the creation of the widest number of economic opportunities and freedoms at all levels of the market place. Its operation gives some assurance that competition will take place on its merits, that goods of quality and reasonable price will be made available to the intermediate and ultimate purchasers and that a stable economic balance between the individual and society will be rationally achieved. No economic system is perfect, but it is the best that the human condition has yet devised.

FOOTNOTES

[1] Besides writings in the published literature, *several* Bills were introduced in the U. S. Senate in 1976 on the subject. Under the generic heading of the Petroleum Industry Competition Bill, the proposed legislation, if enacted, would have worked an axiomatic and statutory divestiture of some 20 oil companies. Support for the measure came from Senators Church, Hart, Kennedy, Muskie and Bayh, *inter alia*. Wall Street Journal Publication, February 9, 11, 12, 1976.

On July 18, 1973, the Federal Trade Commission of the U. S. filed an administrative complaint against the eight largest petroleum companies seeking vertical divestiture under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. *FTC* v. *Exxon Corporation, et al.*, FTC Docket No. 8934. The case is yet pending.

[2] *A Report on the Supply of Petrol to Retailers in the United Kingdom*, HC264 (1965); *A Report on the Supply of Petrol in the United Kingdom by Wholesale*, Cmnd. 7433 (1979).

[3] A more detailed inventory and study of the allegations are set out in Chapters II, III, and V.

[4] B. Jones, W. Mead, P. Sorenson, *Free Entry Into Crude Oil & Gas . . . Productions And Competition In The U.S. Oil Industry*, Natural Resources Journal, Vol. 18 No. 4 p. 861 (1978); *Investigation Of The Petroleum Industry*, Report of Permanent Subcommittee on Investigations of the U. S. Senate (July 1973) p. 25.

[5] M. Ajomo, *An Appraisal Of The Organization Of The Petroleum Exporting Countries (OPEC)*, Texas International Law Journal, Vol. 13 p. 11 (1977); E. Penrose *OPEC's Importance In The World Oil Industry*, International Affairs, Vol. 55 No. 1 (Jan. 1979). And see A. Sampson, *The Seven Sisters*, Hodder & Stoughton, London (1975). While the weight of Sampson's *The Seven Sisters* must be discounted because of the melodramatic sensationalism which accompanies investigative-style writing, the Book nonetheless lays out the geneological beginnings and reasons for the emergence of OPEC as a dominant influence in world politics and macro-economics.

[6] Saudi Arabia, Kuwait, Iraq, Venezuela and Iran formed the initial combination and were thereafter joined, under formal statutory convention by the African states of Libya, Nigeria, and others. Together, OPEC countries had under thumb over 65% of world oil production and in excess of 85% of global crude exports. *Report of OPEC Statistics Unit* (Jan. 1976).

[7] Big Oil participants in OPEC production over the years were Exxon Corp., Texaco Inc., Gulf Oil Corp., Mobil Oil Company, Standard of California (Socal), Royal Dutch/Shell, and British Petroleum.

[8] From 1954 through 1970, a number of smaller companies played an active role in OPEC oil, including Getty Oil, Signal, Amerada-Hess, Continental Oil, Marathon, and Occidental.

[9] *The International Petroleum Cartel*, Report of Subcommittee on Multinational Corporations of the U.S. Senate (February 21, 1974) pp. 142–147, 153–156; *Oil Corporations and U.S. Foreign Policy*, Report of Subcommittee on Multinational Corporations of the U.S. Senate (1975) pp. 47–48, Part 7, p. 257, 285. On the other hand, it must be said that while the producing companies behaved in many regards as a cartel for over 20 years through 1973, crude oil was in plentiful supply and at low cost to the retail market. Moreover, much of the cartel activity of the major companies had the express blessing of the U.S. Government.

[10] Section 1 of the Sherman Antitrust Act provides that agreements or combinations in restraint of trade or commerce "among the several States or *with foreign nations*" are proscribed. 15 U.S.C. § 1. In the early case of *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347 (1909) authored by Holmes, J., it was declared that conduct occurring without the U.S. was governed by the *lex loci contractus* and not by domestic antitrust law. More recent authority holds that activity in restraint of trade, although extraterritorial in performance, falls within the Sherman Act if it impacted or was intended to and did impact domestic commerce. *Continental Ore Co.* v. *Union Carbide and Carbon Co.*, 370 U.S. 690, 705 (1962). The current interpretation is, in many instances, pretentiously broad and portends global significance to U.S. antitrust enforcement.

[11] Antitrust courts have been very hestitant to apply the Sherman Act to conduct involving, directly or indirectly, foreign governments. *Hunt* v. *Mobil Oil Corp.*, 410 F. Supp. 10 (S.D.N.Y. 1975). The defenses of sovereign immunity and "ace of state" are well recognized. *American Banana Co.* v. *United Fruit Co.*, supra. Even were the cartel activity of a foreign national found in violation of the Sherman Act, enforcement of a judgment or decree would present enormous difficulties and invite retaliatory action by the sovereign defendant.

[12] Idem. f.n. 4 *ante*.

[13] Under congressional enactment, Pub. L. 93–159, 87 Stat. 627, the wellhead price of domestic crude was regulated under a maximum ceiling, significantly below that of the world market. While such a program was intended to maintain low consumer petrol prices, the disadvantages were plain. Conservation was discouraged rather than the reverse; there was a disincentive to search for new domestic crude. Accordingly, the Presi-

dent was given authority to deregulate domestic crude in order that the price may float toward the World market. Full deregulation is expected in 1981.

[14] *U.S. National Energy Management Report*, Harcourt Brace Jovanovich Inc., Dallas (1979) p. 6,8. Each of the 132 companies reflected in excess of $1,000,000 in revenues, were publicly owned, with at least 51 percent of operations in oil and/or associated natural gas.

[15] Sohio has been since 1970 controlled through stock ownership by B. P. Corp., a wholly owned subsidiary of B. P. Ltd. of the United Kingdom.

[16] With Shell-U.S. being one of the subsidiary entities of the Shell Group and ultimate parent Royal Dutch/Shell, all of the Seven Sisters are represented in the top eight producers of U.S. domestic crude.

[17] *U.S. National Energy Management Report* Harcourt Brace Jovanovich Inc., Dallas (1959), p. 11.

[18] Ibid, p. 12 *ante*.

[19] *National Refiners Association Statistical Report*, Washington, D.C. (1974).

[20] Ibid. Such new refiners as Amerada-Hess, Union Pacific R.R., Coastal States Oil and Gas Co., and Kerr McGee are not know to have any retail marketing outlets in the United States.

[21] B. Jones, W. Mead, P. Sorensen, *Free Entry Into Crude Oil & Gas Production and Competition In The U.S. Oil Industry*, Natural Resources Journal, Vol. 18 No. 4, p. 864 (1978).

[22] *Investigation Of The Petroleum Industry*, Report of Permanent Subcommittee on Investigations of the U.S. Senate, (July 1973), pp. 25, 29. Hearings and testimony on *Competition and Public Policy In The Petroleum Refining Industry*, Subcommittee on Antitrust and Monopoly of the U.S. Senate (1978), pp. 22–35.

[23] National Petroleum News Annual Report (June 1979); Some indication of the size of the U.S. market and the position of Exxon and Texaco can be gained from the fact that the retail outlets of the two companies, above, are 150% more than all petrol sites in the U.K. s of 1978.

[24] *Investigation of the Petroleum Industry*, see f.n. 22, p. 23. *ante*.

[25] Ibid, f.n. 21, p. 863.

[26] Unleaded gasoline is utilized in the U.S. for automotive engines which, by reason of the questioned wisdom of the Federal Government (E.P.A.), requires leaded components to be stripped in the refining process. Unleaded refining is not only more costly, it results in lower gas mileage thus increasing U.S. consumptive requirements.

[27] Major oil company advertisements continue to indicate, however, that particular ingredients or chemical agents in particular petrol will give improved gas mileage, engine performance and lower cost repairs.

[28] Owner-operated stations are an exception to the rule, except for some small, independent refiners.

[29] Report on *Marketing Practices In The Gasoline Industry*, Subcommittee on Antitrust and Monopoly of U.S. Senate, Part 1 (July 1970) pp. 6–13.

[30] In the critical area of petroleum reserves, the same companies on Table VI are the strongest both in U.S. and the world (by U.S. corporations) holdings. *U.S. National Energy Management Report*, p. 10, *ante*.

[31] *U.S.* v. *Paramount Pictures Inc.*, 334 U.S. 131 (1948); ***U.S.*** v. ***Griffith***, 334 U.S. 100 (1948).

[32] Complaint of *FTC v. Exxon Corporation et al .*, Fed. Trade Comm. Docket 8934.

[33] P. Barnes, *How To Play Monopoly—Oil Everywhere*, New Republic, Vol. 165, p. 21.

[34] The representative interests in the joint venture assets were 60% Shell Group to 40% B.P. The economic rationale for this curious admixture is not clear, even after an interview by the author with senior legal personnel of one company. It is presumed that the joint venture grew out of mutual positions of B.P. and Shell in crude production in the Persian Gulf, most specifically from Kuwait, Iraq, and Iran, and had its beginnings prior to the passage of the Monopolies and Restrictive Practices Act of 1948. After the 1976 divorce, the two Companies no longer have any conjugal properties or interest.

[35] R. W. Shaw, *Price Leadership And The Effect Of New Entry On The U.K. Petrol Supply Market*, Journal of Industrial Economics, Vol. 23 (Sept. 1974), p. 65.

[36] Ibid, p. 65.

[37] *First Report from the Committee of Public Accounts: North Sea Oil and Gas* (Session 1972–73). Department of Trade and Industry, p. 24.

[38] P. Frankel, *Mattel: Oil and Power Politics*, London (Faber & Faber 1966), p. 34.

[39] E. N. Krapels, *Controlling Oil: British Oil Policy And The British National Oil Corporation*, U.S. Government Printing Office, Washington, D.C. (1977), p. 4.

[40] The method has been reviewed and employed by both the Tories and Labor. Ibid. f.n. 37 *ante* p. 32.

[41] Several combinations and arrangements of smaller independents along with major producers were licensed. The major discoveries at Thistle and Montrose were by mixed consortiums. *Development Of The Oil And Gas Resources Of The United Kingdom*, Department of Energy, London (1977).

[42] *Report on United Kingdom Offshore Oil and Gas Policy*, Cmnd. 5696, London.

[43] The negotiations were conducted in what must be said were less than arms-length conditions. The Minister for Energy plainly stated in connection with the Fifth Licensing Round of 1977, that the acceptability of a potential licensee would substantially hinge upon the "reasonableness" of the company to amend *ex post faco* existent leases to provide the Government with a majority revenue position. *U.K. Offshore Petroleum Production Licensing:* Fifth Round, Department of Energy Report, London (May 1976).

[44] Personal interview with oil company officials, February, 1980.

[45] *Make or Break? A Survey Of North Sea Oil*, Economist, Vol. 256, supplement London (July 1975).

[46] The United Kingdom Monopolies and Mergers Act was amended by the Fair Trading Act of 1973 to lower the threshold test for a statutory monopoly from one-third to one-quarter of the market for like kind goods. On February 1, 1976, the Monopolies Commission received a reference from the Director General of Fair Trading with respect to the petrol industry. It is possibly more than economic coincidence that the Shell-B.P. joint venture was terminated the same year. Neither Company, standing alone, had sufficient market share to qualify at the refining level or the retail market as a statutory monopoly. Together, they both were caught by the Act.

[47] *A Report On The Supply Of Petrol In The U.K. By Wholesale*, Monopolies and Mergers Commission, Cmnd. 7433 (Jan. 1979) p. 21.

[48] Ibid, pp. 23, 24, 27.

[49] The question of horizontal price-fixing by refining companies was not within the monopoly reference to the Commission in 1976 and in all events, such restrictive practice would have been without the Commission's jurisdiction. Fair Trading Act of 1973, 54(5).

[50] Ibid f.n. 47 *ante* p. 9–10; Ibid f.n. 18 *ante* p. 12.

[51] Ibid f.n. 47 *ante*, p. 11.

[52] Ibid f.n. 47, p. 18, Table I, p. 5.

[53] Esso, Amoco, B.P., Gulf, Phillips and other major companies have voluntarily sold off significant segments of their U.S. retail stations in the 1970's.

[54] Ibid. f.n. 51, Table 8, p. 17, Table 1, p. 5.

[55] Ibid f.n. 21.

[56] The Secretary of State unilaterally raised the threshold barrier to 50 million gallons as part of his post-Report negotiations with the oil companies. Unfortunately the Monopolies Act confers such authority. FTA of 1973 56 (2), (3).

[57] Ibid f.n. 47 *ante*, p. 32.

[58] From 1951 through 1970, the Federal Power Commission regulated the price of natural gas at the wellhead so low that exploration and production incentives were all but strangled. When discovered, gas was normally "flared" to get at the associated oil, and vast quantities were wasted. In BTU output, the regulators saw to it that natural gas had no competition for any use. Coal production consequently suffered.

[59] Pub. L. 93–159, 87 Stat. 627.

[60] Ibid.; Energy Policy and Conservation Act, Pub. L. 94–173, 89 Stat. 871; Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432, 42 U.S.C. § 7255 (Supp. 1979); Public Utility Regulatory Policy Act of 1978, Pub. L. 95–617, 92 Stat. 3117; Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174; National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206.

[61] Sec. 203(a)(7)(A) of the Act.

[62] *Emergency Allocations of Crude and Products—National Arrangements In the United Kingdom*, P. G. Ashcroft, D.E.R. Scarr, A Government Position Paper, London (1979).

[63] It could be that the French might even slightly repent of their unlawful if not irresponsible position on British lamb imports in the Common Market in exchange for crude oil from the North Sea.

[64] *Fortune Magazine*, May and September (1973).

[65] C. A. Fraas, *Structural Shared Monopoly Under FTC 5. The Implications Of The Exxon Complaint*, Western Reserve L. Rev. Vol. 26 (1976) p. 615 at 644.

[66] Ibid 627, 639; Ibid f.n. 25 *ante* pp. 24–28.

[67] *FTC Report On Investigation Of The Petroleum Industry*, Antitrust Trade & Regulation Report No. 622 (1973) pp. E–9–11.

[68] Ibid. f.n. * * *, 16–20.

[69] R. A. * * * *The Antitrust Laws*, 21 Stanford L. Rec. 1562 (—).

[70] *The Structure Of The U.S. Petroleum Industry*, Committee on Interior and Insular Affairs, U.S. Senate, Washington (1976), pp. 7–12.

[71] Daily Telegraph, London March 4, 17, 1980.

[72] Ibid. f.n. 2 *ante*.

[73] The incipient thrust of American antitrust legislation was to stop vicious and predatory pricing activities driving others out of business, acquiring competitive businesses only to close them down, cartel price-fixing and other parallel behavior. It was also aimed at trust which held absoluate monopoly market power.

[74] The views of Judges Hand and Wyzanski on the role of size in antitrust are incongruous. The cases bearing their signature will be examined in this Chapter VII.

[75] *U.S.* v. *Paramount Pictures Inc.*, 334 U.S. 131 (1948).

[76] L.D. Brandeis, *The Curse of Bigness*, Kennikat Press Inc., Post Washington, N.Y. (1934) p. 115.

[77] Robert H. Bork, *The Antitrust Paradox*, Basic Books, Inc. New York, N.Y. (1978) p. 405. The Alexander M. Bickel Professor of Law at Yale University, Bork was former Solicitor General of the United States and acting Attorney General.

[78] For a parallel view, see the First Competition Report of the CEC, April 1972, p. 11.

[79] In this context, marginal costs inculcate a factor for return of capital C.F.R. Posner, The Social Cost of Monopoly And Regulation, 83 Jour. Political Economics 807 (1975).

[80] Competition within the proclaimed *de facto* monopoly suggests that a monopoly can compete against itself, an irreconcilable *non-sequitur*.

[81] The U.S. antitrust statutes do not address

the theory. The author is aware of no cases from the U.S. Supreme Court in which the concept has been treated or even discussed.

[82] See *Brown Shoe Co. v. U.S.* 370 U.S. 294 (1962) on product definition and *U.S. v. Philadelphia National Bank*, 374 U.S. 321 (1963) on geographic issue.

[83] *U.S. v. Pabst Brewing Co.*, 384 U.S. 546 (1966).

[84] 26 Stat. 209, 15 U.S.C. § 1–7.

[85] 38 Stat. 730, 15 U.S.C. § 12–27.

[86] 38 Stat. 717, 15 U.S.C. §41–51.

[87] *Appalachian Coal Co. v. U.S.*, 288 U.S. 344; 359 (1953).

[88] *Standard Oil Co. of New Jersey v. U.S.*, 221 U.S. 1 (1911).

[89] Ibid. f.a. 88 *ante; U.S. v. American Tobacco Co.*, 221 U.S. 106 (1911).

[90] While Section 5 (authorizing the FTC to arrest unfair trade practices) forms the basis for the presently pending suit against Exxon and others in FTC Docket No. 8934, it is believed that the standards of the Sherman and Clayton Acts must be observed under the factual setting of this Thesis.

[91] *American Tobacco Co v. U.S.* 328 U.S. 781 (1946).

[92] Ibid. f.n. 90 *ante*.

[93] *U.S. v. Trans. Missouri Freight Assn.*, 166 U.S. 290, 327 (1897).

[94] *U.S. v. Socony-Vacuum (Mobil) Oil Co.*, 310 U.S. 150 (1940); *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. (1911).

[95] *U.S. v. Topco Associated, Inc.* 405 U.S. 596 (1972).

[96] *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

[97] *U.S. v. Arnold, Schwin & Co.*, 388 U.S. 365 (1967).

[98] Ibid. f.n., 94 *ante*.

[99] 433 U.S. 36 (1977).

[100] Ibid. f.n. 97 *ante*.

[101] See Bork, f.n. 77 *ante* p. 284. Professor Milton Handler of the Columbia School of Law labeled *Schwinn* as "the most egregious error in all of antitrust." M. Handler, *Twenty-Five Years of Antitrust*, 73 Col. L. Rev. 415, 458 (1973).

[102] Senator Sherman left no doubt in his words that the Sherman Act was broad and judicial interpretation and innovation was expected.

[103] 246 U.S. 231 (1918).

[104] *U.S.* v. *Aluminum Co. of America*, 148 F. 2d 416 (2d Cir. 1945); *U.S.* v. *Philadelphia National Bank*, f.n. 82 *ante*.

[105] This point is one of heated contest in American antitrust dialogue. It will be treated in this Chapter under size and efficiency.

[106] Ibid. f.n. 104 *ante*.

[107] 328 U.S. 781 (1946).

[108] Ibid. f.n. 82 *ante*.

[109] Merger Guidelines of the U.S. Department of Justice (May 30, 1968).

[110] J. Bain, *Industrial Organization* (2d Ed 1968); F. M. Scherer and L. Weiss, *The Concentration-Profits Relationship and Antitrust in Industrial Concentration: The New Learning* (Goldschmid, Mann and Weston Eds. 1974).

[111] 1968 White House Task Force On Antitrust Policy.

[112] Ibid. f.n. 104 *ante*.

[113] Report of The Attorney General's National Committee On The Antitrust Laws (1955) p. 326.

[114] See also discussion of monopoly power and consequent illegality based on size and concentration in J. Flynn, *Antitrust and Regulated Industries*, 5th Ed. The Foundation Press, Inc. Mineola, New York (1977), pp. 71–86.

[115] 334 U.S. 100, 106 (1948).

[116] *United States* v. *United Shoe Mach. Corp.*, 110 F. Supp. 295 (D. Mass. 1953), aff'd per curiam, 347 U.S. 521 (1954).

[117] Ibid at p. 341.

[118] 236 F. Supp. 244 (D.R.I. 1964).

[119] Ibid. f.n. 104 *ante*.

[120] In *U.S.* v. *Du Pont*, 351 U.S. 377 (1956) the product market was defined as "flexible packing material" rather than cellophane which Du Pont manufactured. Du Pont was found to have insufficient market share to fall within Sherman 2.

[121] 251 U.S. 417 (1920).

[122] *U.S.* v. *International Harvester Corp.*, 274 U.S. 693 (1927) and *U.S.* v. *Swift & Co.*, 286 U.S. 106 (1932) are to the same effect.

[122a] *U.S. Grinnell Corp.*, 384 U.S., 570 (1966).

[123] Ibid. f.n. 88 *ante*.

[124] Ibid. f.n. 91 *ante*.

[125] *Otter Tail Power Co.* v. *U.S.*, 410 U.S. 366 (1973); see also *U.S.* v. *Corn Products Ref. Co.*, 234 Fed. 964 (S.D.N.Y. 1916).

[126] 334 U.S. 495 (1948).

[127] *U.S. v. Reading R.R. Co.*, 253 U.S. 26 (1920).

[128] *U.S. v. Lehigh Valley R.R. Co.*, 254 U.S. 255 (1920).

[129] 332 U.S. 218 (1947).

[130] 334 U.S. 131 (1948).

[131] Ibid., f.n. 17 *ante*.

[132] *American Column & Lumber Co. v. U.S.*, 257 U.S. 377 (1921); Cf., *Maple Flooring Mfrs. Ass'n v. U.S.*, 268 U.S. 563 (1925).

[133] *U.S. v. Colgate & Co.*, 250 U.S. 300 (1919).

[134] *U.S. v. Container Corp.*, 393 U.S. 333 (1969).

[135] *Theatre Enterprises, Inc. v. Paramount Film Distribution Corp.*, 346 U.S. 537 (1954).

[136] In the "Warren era," the Supreme Court gave an expansive and broad interpretation to all aspects of antitrust enforcement rejecting many vertical mergers of marginal market strength.

[137] L. A. Sullivan, *Antitrust*, West Publishing Co., St. Paul, Minn. (1977), p. 107.

[138] 15 U.S.C. § 15.

[139] *Northern Pacific Ry.* v. *U.S.*, 356 U.S. 1 (1958).

[140] *Atlantic Refining Co.* v. *F. T. C.*, 381 U.S. 357, 369 (1965).

[141] 371 U.S. 38 (1962).

[142] *International Salt Co.* v. *U.S.*, 322 U.S. 392 (1974).

[143] *Times-Picayune Publishing Co.* v. *U.S.*, 345 U.S. 394 (1953).

[144] *U.S. Steel Corp.* v. *Fortner Enterprises, Inc.* (*Fortner II*), 51 L. Ed. 2d 80 (1977); ibid., f.n. 141 *ante*, p. 45.

[145] Ibid. f.n. 142 *ante*.

[146] *Fortner Enterprises Inc.* v. *U.S. Steel Corp.*, (Fortner I), 394 U.S. 495, 500 (1969).

[147] Ibid. f.n. 143 *ante*.

[148] 393 U.S. 223 (1968).

[149] *Goodyear Tire & Rubber Co. v. F.T.C.*, 331 F.2d 394 (7 Cir. 1964).

[150] Quite obviously, if the retailer opts to buy TBA from the major, he is free to do so. It is the tie-in to petrol sales, direct or indirect, that is barred.

[151] In *F.T.C. v. Brown Shoe Co.*, 384 U.S. 316 (1966), it was held that where Brown had offered incentive discounts to retailers that sold only the supplier's shoes, the F.T.C. could check in its incipiency, an exclusive dealing even though no violation of Clayton 3 had been shown.

[152] The Clayton Act makes unlawful a lease of commodity.

[153] *U.S. v. Columbia Steel Co.*, 334 U.S. 495 (1948).

[154] *Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1956).

[155] *Standard Oil Co. v. Cal. v. U.S.* 337 U.S. 293 (1949).

[156] Frankfurter footnoted the U.K. The Monopolies and Restrictive Practices Act of 1948.

[157] *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961).

[158] S. Richie, *Petroleum Dismemberment*, 29 Vanderbilt L. Rev. 1131 (1976).

[159] Ibid. f.n. 88 *ante*.

[160] *Schine Chain Theaters* v. *U.S.*, 334 U.S. 110 (1948).

[161] In the legendary case of *California* v. *F.P.C.*, 369 U.S. 482 (1962), the Supreme Court ordered divestiture by the world's largest natural gas company, El Paso Natural Gas, of certain properties acquired through horizontal merger. The Clayton 7 litigation before the U.S. District Court went to the Supreme Court at least 8 separate occasions and stretched over 17 years. However, it should be noted that during the 17 year period, El Paso *was entitled to retain the revenues and profits of some $12 million a year from the illegally acquired assets during the prolonged litigation.*

[162] In *California*, supra, the divestiture was accomplished, competitive balance was restored to the Western United States in the gas industry, and the structural integrity of El Paso (as well as the emerging Northwest Pipeline Corp.) was maintained. *California* is graphic evidence that devestiture is a viable antitrust remedy.

[163] J. Lever and C. Bellamy, British Municipal Competition Law, *Chitty on Contracts* (24th Ed.) Vol. 2 p. 739.

[164] While judges of the High Court sit on the Restrictive Practices Court they are joined by lay members appointed by the Queen. On pure questions of law, the High Court judge will decide the matter and such ruling may be reviewed by the Court of Appeals. Issues of fact decided by the Court are final and no appellate review is available even as to the arbitrary or capricious nature of the findings. *Restrictive Practices Court Act of 1976*, Sec. 10.

[165] *Benzine en Petroleum Handelsmaatsch BV (B P) v. C. E. C.*, Case 77/77 (1978) E. C. J. 151P.

[166] European Communities Act of the U. K. 1972 § 2(1), effective January 1, 1973. Similarly all decisions and rules after that date are axiomatically a part of U. K. law.

[167] D. Lasok and J. Bridge, *Law and Institutions Of The European Communities*, Butterworths, London (1976).

[168] Statement of Lord Diplock, *Competition Law Of Britain And The Common Market*, Matthew Bender, New York (1975) p. xv.

[169] *De Geus v. Bosch*, (1962) C.M.L.R. 1. Before promulgation of Regulation 17/62 of the E E C, only national courts could enforce the Treaty sanctions of 85 and 86. See also Article 1. Regulation 17 of the Treaty.

[170] C. Bellamy and G. Child (edited by J. Lever, Fellow at All Souls College, Oxford) *Common Market Law of Competition*, Sweet & Maxwell, London (1978) p. 18.

[171] *Whihelm v. Bundeskartellant*, Case 14/68 (1969) CMM. L. R. 100, 119.

[172] The original Monopolies and Restrictive Practices Act of 1948 set the monopoly entry-way at one-third of the market. Even though conspicuous horizontal concentration took place in all sectors of British industry between 1948 and 1970, the monopoly threshold was flattened to a quarter of the relevant geographic and product market in the 1973 Act.

[173] This is the U. K. equivalent to the conceptual theory of shared monopoly in U. S. antitrust. Section 11 F. T. Act of 1973.

[174] The 25 percent monopoly category is disingenuous. It should be excised from the Act and in its place, the Director General should have the discretion to initiate a reference as the public interest requires. Better yet, the MMC should have the capacity to initiate a proceeding, *sua sponte*.

[175] In the 1979 Petrol Report, ibid. f.n. 47 *ante*, p. 27, the Commission found a complex monopoly to exist as to some 15 oil companies "and all other wholesalers" in the U. K. The Report simply throws a tent over all companies regardless of market share or the extent of parallelism.

[176] (1966) H.C.P.

[177] Section 56 of the FT Act 1973.

[178] (1966) H.C.P.

[179] (1967) Cmnd. 3186.

[180] (1953) H.C.P.

[181] (1956) H.C.P.

[182] (1968) London H.M.S.

[183] *United Drapery Stores & Montague Burton*, 1967 Cmnd. 3397.

[184] (1966) Cmnd. 42.

[184a] *Report on the Supply of Valium and Librium (Tranquillizers)*, (1973) H.C.P. 197.

[185] *U.S.* v. *Trans-Missouri Freight Ass'n.*, 166 U.S. 290 (1897).

[186] Ibid. f.n. 182, 183 *ante; Beecham and Galoxo Ltd., The Boots Co. and Galoxo Ltd.* (1972) H.C.P. 341.

[187] *British Motor Corporation and Pressed Steel* (1965) Cmnd. 46; *B.I.C.C. Corp. and Pyrotenex*, (1967) H.C.P. 490.

[188] *British Match Corp. and Wilkinson Sword Ltd.*, (1973) Cmnd. 5442; *Unilever Ltd. and Allied Breweries* (1974) H.C.P. 297.

[189] *The Rank Organisation Ltd. and The De La Rue Co.*, 1969, H.C.P. 298.

[190] *A Review of Monopolies and Mergers Policy, A Consultative Document* (1978) Cmnd. 7198.

[191] *Report On Supply Of Petrol To Dealers in United Kingdom* (1965) H.C.P. 264.

[192] Ibid. f.n. 155 *ante*.

[193] *Report On Supply Of Petrol In U. K. By Wholesale*, (1979) Cmnd. 7433.

[194] Section 54(2) of F T Act of 1973.

[195] A. Sutherland, *The Monopolies & Mergers Commission In Action*, Cambridge University Press (1969).

[196] The primary legislation was the Restrictive Trade Practices Act of 1956 which established R P C. The Statute was subsequently amended in 1968 to include additional sanctions for restraint of trade. The Director General's Office took the place of the Registrar under the F T A of 1973 and the 1976 Restrictive Practices Act made further refinements in substance.

[197] Section 11 et seq. dealing with services tracks Section 6 et seq. on goods. Since this Thesis involves only the latter, all references will be those sections on goods.

[198] Re: *British Waste Paper Assoc.'s Agreements* (1963) 1 W.L.R. 540.

[199] Re: *British Basic Slag's Application* (1962) 1 W.L.R. 986.

[200] Section 35(2) R T P Act of 1976.

[201] See excellent discussion by J. Lever, *Restrictive Trading Agreements*, Chitty on Contracts, 24th Edit., Sweet & Maxwell, London (1977) Chapter 10.

[202] Re: *Black Bold and Nut Assoc's. Agreement* (1960) 1 W.L.R. 884 (R. P. C.) Re: *Glazed Tile Home Trade Assoc's. Agreement* (1964) 4 R.P. 239.

[203] Re: *Cement Makers' Federation Agreement* (1961) 2 R.P. 241.

[204] Price fixing arrangements, predicated upon the reduction of industry or business risk, have been uniformly rejected by the C E C. *Nederlandse Cement Handelmaatschacappid (NCH)*, (1973) C.M.L.R. D. 257.

[205] R. T. P. Act of 1976, Sec. 26(2).

[206] Lecture of P. Craig (Oxon) of Oxford Univ. Faculty of Law, Mich. Term (1979).

[207] *Esso Petroleum Co. Ltd.* v. *Harpers Garage Ltd.*, (1967) 1 All E.R. 699. v. Korah argues erroneously that under *Harpers*, requirement contracts in the petroleum industry may be fair game for oil majors, since the retailer made "a bargain at arm's length" and "deserves little sympathy". As with much of Korah's book, the argument misses the basic antitrust significance at large. V. Korah, *Competition Law of Britain & The Common Market*, Matthew Bender, New York (1975) p. 105.

[208] Robinson-Patman Act incorporated as Section 2 of Clayton Act, amended (1963).

[209] *Black Bolts*, ibid. f.n. 206 *ante*; Re: *Permanent Magnet Assoc. Agreement*, (1962) 3 R.P. 119.

[210] 85 will catch informal understandings on price levels that would only be loosely characterized as combinations. *ICI and Dyestuffs* v. *C.E.C.* (1972) E.C.R. 619.

[211] F. Honig, *Cartel Law of the European Economic Community*, Butterworths, London (1963).

[212] While specifically enumerated in 86, the abusive practices are illustrative and not inclusive. *Europemballage Corp. and Continental Can Company, Inc.* v. *C.E.C.* (1973) E.C.R. 215.

[213] Article 85(3) of the Treaty; Regulation 17/62, Article 2 and 4.

[214] Regulation 17/62, Article 15.

[215] Ibid f.n. 165 *ante*.

[216] (1975) E.C.R. 1663.

[217] Ibid. f.n. 212 *ante*.

[218] COM (75) 675, December 10, 1975.

[219] One author suggests that the mere "possibility" of an abuse of dominance is sufficient under 86. Smit & Herzig, *The Law Of The EEC.*, Vol II, Columbia Law Sch. Project on European Legal Institutions, Matthew Bender (1976).

[220] Re: *Continental Can Co. Inc.* (1972) C.M.L.R. D11.

[221] (1976) 1 C.M.L.R. D28.

[222] *Commercial Solvents Corp. v. C E C* (1974) E.C.R. 223.

[223] *United Brands Co. (Chiquita) v. C E C* (1978) E.C.J. 207.

[224] (1976) 18 C.M.L.R. D25.

[225] Ibid. f.n. 218 *ante*.

[226] (1977) 2 C.M.L.R. D1.

[227] Ibid. f.n. 165 *ante*.

[228] See *Hugin Kassaregister v. E. C. Commission* (1979) E.C.J. 1869.

[229] The manipulations of sub-markets, both geographic and product, by the U.S. Supreme Court, has produced bizarre if not disasterous results, particularly in Clayton 7 merger litigation. *U.S. v. Von's Grocery Co.*, 384 U.S. 270 (1966); *U. S. v. Pabst Brewing Co.*, ibid. f.n. 87 *ante*; and see *Alcoa*, ibid, f.n. 108 *ante*.

[230] 502 F. 2d 290 (7 Cir. 1974).

[231] *U.S.* v. *E I du Pont de Nemours & Co.*, 351 U. S. 377 (1956).

[232] *Bernard Foods Indus. Inc.* v. *Dietene*, 415 F. 2d 1279 (7 Cir. 1969).

[233] The F.T.C. Act makes unlawful "unfair methods of competition" and "unfair or deceptive practices". A coterie of behavior which does not rise to the level of the Sherman Act will be subject to administrative sanctions of the F.T.C.

[234] Ibid. f.n. 170 *ante*, p. 181.

[235] Ibid, f.n. 218 *ante*.

[236] *I.C.I. et al* v. *C E C*, (1972) C.M.L.R. 557.

[237] Ibid, f.n. 104 *ante*.

[238] Ibid, f.n. 116 *ante*.

[239] *In re GEMA*, (1971) 10 C.M.L.R. D35; *Counsten S.A. and Grundig GmbH* v. *CEC* (1966) C.M.L.R. 418.

[240] Article 1, Section 8, U.S. Constitution.

[241] Ibid f.n. 212 *ante*.

[242] Ibid. f.n. 222 *ante*.

[243] Ibid. f.n. 226 *ante*.

[244] *U.S.* v. *International Harvester Co.*, ibid, f.n. 126 *ante; U.S.* v. *American Can Co.*, 230 Fed. 859 (D. Md. 1916).

[245] Ibid. f.n. 212 *ante;* Cf. the possible basis of Article 85 violation of *Hoffman-La Roche, supra* f.n. 224 *ante*.

[246] Most Sherman 2 litigation has depended upon Sherman 1 conduct for "monopolization." Ibid. f.n. 88, 90, 91, *ante*.

[247] Ibid. f.n. 165 *ante*.

[248] Unlike Article 85, there is no exit for restraint of trade misconduct of a dominant undertaking within 86. K. Lipstein, *The Law Of The European Community*, Butterworths, London (1974); ibid. f.n. 212 *ante*.

[249] *Cooperative Vereniging UA et al. v. CEC* (1975) E C.R. 1663.

[250] (1976) 18 C.M.L.R. d25.

[251] Ibid f.n. 224 *ante*.

[252] *Continental Can*, ibid. f.n. 212 *ante*.

[253] D. Lasok, *Law And Institutions Of The European Communities*, Butterworths, London (1976).

[254] *Societe Technique Miniere v. Maschinenbau Ulm* (1966) E.C.R. 235.

[255] *Counsten and Grundig-Verkaufs GmbH* v. *CEC*, (1966) C.M.R.L. 418.

[256] *Addyston Pipe & Steel Co.* v. *U.S.*, 85 Fed. 271 (8th Cir. 1898).

[257] *Volk* v. *Vervaecke*, (1969) E.C.R. 295.

[258] J. O. Comm. Eur. Co. C64 (1970).

[259] Ibid. f.n. 155 *ante*.

[260] See Korah, ibid, f.n. 220, p. 233.

[261] *S.A. Fonderies Roubaix-Wattrelos* v. *Societe Nouvelle Roux et al.*, (1976) 17 C.M.L.R. 538.

[262] Ibid. f.n. 250 *ante*.

[263] Re *European Glass Manufacturers Agreement* (1974) 14 C.M.L.R. D50.

[264] CEC Seventh Annual Competition Report (1978), p. 19.

[265] Ibid. f.n. 134 *ante*.

[266] *American Column & Lumber Co. v. U.S.*, 257 U.S. 377 (1921).

[267] Ibid. f.n. 212 *ante*.

[268] 15 U.S.C.A § 18A, PL. 95–435.

[269] (1973) C.M.L.R. D205.

[270] Schedule 8, Part II, Para. 14 F T Act of 1973.

[271] (1972) C.M.L.R. D11.

[272] By virtue of the antitrust mischief at the retail level, a potentially stronger case exists for Sherman 2 prosecution than it does at the refinery level.

TABLE OF CONSTITUTIONAL AND TREATY CITATIONS, STATUTES AND CASES OF UNITED STATES, UNITED KINGDOM AND EEC

I. UNITED STATES

Constitution

Article I, Section 8, U.S. Constitution.

Statutes

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Section 2 of Sherman Act, 15 U.S.C. X2.

Sherman Antitrust Act, 15 U.S.C. 18A, P.L. 94–435

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EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed, for not to exceed 2 minutes, to consider the following nominations:

Lindsay D. Norman, Jr., Director of the Bureau of Mines, Calendar Order No. 265; Francis R. Dugan, and Dennis R. Smith under the U.S. Metric Board; Howard A. White, Corporation for Public Broadcasting; Stephen R. Reinhardt, of the Judiciary; nominations listed under U.S. Army and U.S. Marine Corps on page 8; and nominations placed on the Secretary's desk on page 9.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the reservation is for the purpose of advising the majority leader that the executive calendar items just identified by him are cleared on our calendar, and I might say after rather extensive negotiations, and that we have no objection to their consideration and confirmation.

Mr. ROBERT C. BYRD. Mr. President, I thank the minority leader.

I do thank him for getting clearance on those nominations.

Mr. President, I ask unanimous consent that these nominees be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF THE INTERIOR

Lindsay D. Norman, Jr., of Maryland, to be Director of the Bureau of Mines.

U.S. METRIC BOARD

Francis R. Dugan, of Ohio, and Dennis R. Smith, of Massachusetts, to be members of the U.S. Metric Board.

CORPORATION FOR PUBLIC BROADCASTING

Howard A. White, of New York, to be a member of the Board of Directors of the Corporation for Public Broadcasting.

THE JUDICIARY

Stephen R. Reinhardt, of California, to be U.S. circuit judge for the 9th circuit.

IN THE ARMY

Maj. Gen. Robert Haldane [redacted], U.S. Army, to be lieutenant general.

Maj. Gen. Robert Joseph Lunn, [redacted] U.S. Army, to be lieutenant general.

Maj. Gen. Harry Augustus Griffith, [redacted] U.S. Army, to be lieutenant general.

IN THE MARINE CORPS

Lt. Gen. Edward J. Miller, U.S. Marine Corps, age 57, for appointment to the grade indicated on the retired list pursuant to the provisions of title 10, United States Code, section 5233, to be lieutenant general.

Maj. Gen. Richard E. Carey, [redacted], U.S. Marine Corps, to be lieutenant general.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY, AND MARINE CORPS

Air Force nominations beginning Albert R. Amalfitano, to be lieutenant colonel, and ending William E. Dussetschleger, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 25, 1980.

Army nominations beginning Larry D. Aaron, to be major, and ending Joseph Saint Clair, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Army nominations beginning Michael H. Abbott, to be lieutenant colonel, and ending John J. Zegarski, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Army nominations beginning Gary D. Burrows, to be major, and ending Larry Smith, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Navy nominations beginning Raymond J. Adams, to be ensign, and ending Sheldon Brotman, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Marine Corps nominations beginning Timothy C. Abe, to be second lieutenant, and ending Larry R. Shannon, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominations were confirmed en bloc.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN SERVICE ACT OF 1980

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

> A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate resumed consideration of the bill.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will State it.

Mr. HELMS. What is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

> S. 3058, a bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

Mr. HELMS. I thank the Chair and I thank the clerk.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, the pending legislation, which has been agreed to by the majority of the Committee on Foreign Relations, fails to resolve the more serious weaknesses of the present Foreign Service. Indeed, several provisions will make the Foreign Service even less efficient in some respects and will deepen the crisis of morale which is presently endemic in the Service.

The Foreign Service of the United States and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline for at least a decade, perhaps a generation. Their decline has accompanied, and contributed to, the decline of the United States as a world power. Thus the solution of the fundamental diplomatic functions of the Foreign Service should be seen in terms of the fundamental foreign policy goals of the United States.

Neither the committee bill, nor the administration bill, H.R. 6790, addresses the problems of the Foreign Service in terms of these larger issues.

Neither the committee bill nor the administration bill recognizes that the crisis in the Foreign Service does not arise mainly from such administrative issues as the number of classes of Foreign Service officers, the categories of its personnel, or even the promotion and selection out procedures it employs. It arises instead from confusions as to the proper role of the traditional Foreign Service in foreign policy; its status among the Federal departments and agencies, including the Central Intelligence Agency; its specific functional role within the Department of State with its separate civil career and excepted service personnel; and its ability to recruit quotas of women and minority personnel without a reduction in the professional quality of its members.

These fundamental problems, Mr. President, are not solved but, indeed, they are exacerbated by the committee bill, which is at best an effort to reconcile special interests rather than the creation of the best professional diplomatic and consular service which the United States could provide. At a time when there is an increasing use of private citizens and personnel from the White House and other departments to perform diplomatic missions of the most delicate nature, the Congress should not permit public attention to be deflected from the serious problems which the Foreign Service faces.

Foreign Service reform should recognize that the Corps is essentially the elite service, that differs fundamentally from the civil service. Although many of the cosmic problems relating to foreign policy must await a major reorganization of the foreign affairs agencies, including even certain functions of the Departments of Agriculture, Commerce, Treasury, and the military departments, Congress should focus on the immediate issues that trouble the Foreign Service today.

These issues are: selection and recruitment standards; classification and recruitment standards; classification of positions; pay and retirement benefits; labor-management relations; and supplemental compensation for the burdens and dangers with which foreign service personnel must contend.

The basic philosophy behind legislation specifically distinguishing the foreign service from the civil service should relate to the additional rigorous duties, greater sacrifices, more dedication to hazardous and onerous service. Consequently, Congress should begin with the policy that foreign service personnel must have all the rights and prerequisites of civil service personnel, plus such additional safeguards and rewards and protections which take cognizance of the greater demands on professional qualification and personal character and dedication.

The committee bill addresses the problems of the Foreign Service from the standpoint of improving administration of the Department, without regard to the function of the Foreign Service. Proper reform should, and must, heighten the character of the Foreign Service as an elite institution, while at the same time demanding a higher calibre of performance. It should recognize the increased hazard of service abroad, as well as the increased inconveniences and liabilities which accrue to family and professional life in times of uncertainty and rapid shifts in the international economic order. Finally, Mr. President, it should provide for a humane and sensible system for the elimination of redundant personnel, so that the taxpayers' money will not be continued to be wasted as is now the case.

In my opinion, the committee bill has failed to do this. It has not even taken note of such risks as the risk of being taken hostage—a situation which is certainly familiar to all Senators, indeed, to all Americans today.

Last month, on July 29, to be exact, I introduced S. 2986, which consists of only 11 pages of text, in contrast to the committee bill which is now pending. The committee bill, I would mention, has 250 pages. It covers the essential points in simple and understandable form—and I am referring to S. 2986 when I say this. These 11 pages of S. 2986 achieve more directly and more simply the essential urgent reforms which are now long overdue.

My bill, S. 2986, is like S. 3058, in that it provides a unified salary schedule for all Foreign Service personnel linked directly to Civil Service general schedule 4 through 18, and enacts into statute present worldwide agency bargaining units now established by Executive order.

The principal difference, Mr. President, the difference between my bill, S. 2986, and the pending bill, S. 3058, the committee bill, is that my bill does not create a Senior Foreign Service. The top three salary classes, corresponding to GS 16, 17, and 18, are continuations of the same promotion process used throughout the Foreign Service ranks. The Senior Foreign Service, as constituted in S. 3058, the committee bill, is the seedbed of future frustration and discontent among our Foreign Service officers.

And I would say parenthetically, Mr. President, that if the Senate fails to take note of this and fails to adopt the amendment in the nature of a substitute, which I shall shortly call up, then future Senates will have to deal with many problems, not to mention the State Department and our entire Government, as well, in its international relations.

The Senior Foreign Service will be open to charges of arbitrary personnel management, political favoritism, cronyism, and manipulation of the system for reasons of bureaucratic power. And now, Mr. President, is the time to prevent that.

I hope Senators who may be reading the RECORD of what is being said here this morning by the Senator from North Carolina will bear in mind that the pending legislation is not pro forma. It is decidedly and vitally important if we are to make meaningful reforms in our Foreign Service.

I think that we should take a look at exactly what has been happening in the promotion system at the present time. Secretary after Secretary has refused to use the tools which have been provided to him to manage the personnel system effectively. The old theory of promotion is "up of out," that is, if an officer does not get promoted within a reasonable time-in-class, based on the needs of the Service, then that officer is selected out by a selection panel of his peers.

But the plain truth, Mr. President, is that system has not been working. I suggest that every member of the Foreign Relations Committee knows this or should know it. According to the House hearings on this legislation, there have been 3,345 Foreign Service officers selected out between 1969 to 1978. During that period, 71 percent of the selection outs were under the time-in-class provision, while 29 percent were selected out for substandard performance.

But the real problem, Mr. President, is that in the upper two classes, FS–1 and FS–2, there have been no officers selected out since 1974. There have been retirements for age and voluntary resignations, but none have been selected out. In other words, the system has stopped working at the top, and it is not working very well any where along the line.

I say again, now is the time to correct that. I say again that neither the pending bill nor the administration bill does the job.

What is the result?

The result is that there has been an impactment of officers at the top. Some estimates place the number of redundant officers at the top between 100 and 150, making it more and more difficult to justify promotions all along the line. It should be noted that this problem is particularly acute at State, but is not a problem at all at ICA. Yet the officers at ICA will be subjected to the same drastic remedy under S. 2058.

What happens under this bill is that present FS–1's and FS–2's will be offered the choice of converting to the Senior Foreign Service within 120 days after this bill is enacted, or remaining where they are. Those are the two choices. If they remain where they are, they face mandatory retirement in 3 years. If they choose to go in the Senior Foreign Service, they have a 3 year tenure—or possibly as long as 5. Then they can be promoted, or they can be reappointed for a limited tenure of 5 years, after which they are out.

Thus, in order to cure an administrative problem, S. 3058 proposes a system which—and I want to be as charitable as I can be in assessing S. 3058—is arbitrary, capricious, and subject to subjective administration. Objectivity is out the window. Moreover, it proposes a drastic change for many officers all at once. What it does is to push the bulge at the top into an arbitrary system.

Mr. President, I will say to Senators, that is inviting deep trouble.

It is my understanding that upward of 1,500 new salary slots will be created under this legislation by the Secretary. The legislation itself does not address how this will be done, nor how will Congress have any control over the rate at which this is done. There is the danger that the rapid conversions envisioned in the transition sections of S. 3058 will result in the senior slots being filled very rapidly, thus freezing promotions at the top level for a considerable length of time.

In my view, the Senior Foreign Service is unnecessary and will create many, many problems up and down the line. The present selection board system should be retained, but it should be put under pressure to work more effectively, and to make sure that the needs of the service are taken into consideration constantly all down the line. We should not continue to promot too many people all along, and then cut them off in the end. There should be a natural, constant attrition.

There should be more emphasis, therefore, on the idea of the Foreign Service as an elite service, with rigorous standards, and more efficient practices.

Mr. President, I have tried to do my homework on this matter, and I believe I am correct in what I am about to say.

My bill would emphasize both the elite caliber of the Service, and the efficiency of its operation. My bill would require that all jobs filled by Foreign Service personnel be classified by the Office of Personnel Management according to civil service standards. This would give an objective benchmark for efficiency. The Secretary would have to place personnel in jobs corresponding to their salary level, and report to Congress on how well this is being done. Thus Congress would have some criteria to form the basis of appropriations of the taxpayers' money for the operation of the Service.

My bill would provide greater rewards for Foreign Service personnel, including a tax-free bonus at all levels and increased pensions in recognition of the disruptions caused by the worldwide availability and by increased hazards.

But it would also encourage more selection out of redundant personnel, and Congress would be aware if this were not happening. It would provide increased prestige for the service, but it would also require written examinations for promotions for the first five grades, thus insuring objective not subjective standards for appointment and promotion.

It would also, in recognition of the special debt owed to Foreign Service personnel who do become hostages, grant increases in pensions depending upon the number of days held, with options for immediate retirement.

And, I might add, in spite of the increased rewards for employees, my bill will not cost the taxpayers anything more because of the savings resulting from increased efficiency, better utilization of personnel, and a smaller staff.

My bill, I believe, is far more equitable both to employees and to the taxpayer. I might add, Mr. President, that it has received high praise from labor leaders who are involved in this area. The Foreign Affairs Employees Council, AFL-CIO, has expressed its enthusiastic endorsement of my bill, in a letter which will be on every Senator's desk prior to the vote on my proposal on Monday. I hope that Senators will read it.

Mr. Abe Harris, who is president of the American Federation of Government Employees Local 1812, which represents some 2,000 Foreign Service employees at the U.S. International Communication Agency as their exclusive bargaining agent has also written a similar letter of endorsement. The AFGE, of course, represents some 700,000 Federal employees in 50 States. Mr. Harris states that my legislation is "a clear and straightforward bill which focuses on issues basic to the Foreign Service."

Mr. President, I ask unanimous consent that both these letters may be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AFGE,
Washington, D.C., September 9, 1980.
Hon. JESSE A. HELMS,
Senate of the United States,
Washington, D.C.

DEAR SENATOR HELMS: The American Federation of Government Employees Local 1812 represents some 2,000 Foreign Service employees at the United States International Communication Agency. Our International organization represents some 700,000 Federal employees in 50 states. We have represented USICA Foreign Service Officers since 1976, when they determined that the American Foreign Service Association, was not properly protecting their interests, and elected AFGE 1812 to be their exclusive representative in all employee-management matters.

Since the introduction by request of the proposed Foreign Service Act, we have noted and suggested improvements in the bill. Always our concern was that the bill did not address the recruitment and retention issues of the Service in the 70's and 80's and their effect on our foreign relations, but would in fact aggravate the problems that already exist.

AFGE was thus gratified when you offered as a substitute for the proposed two hundred and seventy (270) page Act, a clear and straightforward bill which focused on the issues basic to the Foreign Service.

I have consulted with career members of the Foreign Service, Staff Counsel, and reviewed your alternative remarks in Senate Report No. 96-913 on the proposed Act. (S. 3058). These remarks suggest that (1) you do not intend to replace the Reserve Corps; (2) you are willing to accept a five percent limit on any officers appointed to Classes 1, 2, and 3 without having gone through the examination process. Your remarks also indicate that you are willing to preserve the current bargaining unit, which in recognition of the rank-in person system and the frequent rotation of people in and out of supervisory positions, includes these personnel in the unit. We understand a new draft of your bill includes these provisions.

We also urge that you include within your bill a grievance procedure which would reject the composition of the Board as proposed in the Pell bill. This provision, as explained in the attached Thomas Legal Defense Fund Report, would destroy the integrity of a third party process by allowing management officials of the agencies to appoint unilaterally all Grievance Board members.

Since the Helms bill does not presently address the process for resolving grievances, we would like to suggest that you adopt a grievance section which tracks the lines of S. 2712. The Senate has passed this bill previously on two separate occasions. We are attaching a proposal for a statutory grievance chapter to that purpose.

Again, let me say that we appreciate your efforts on behalf of the Foreign Service and with the inclusion of the above stated provisions in your bill, we can enthusiastically endorse S. 2986.

Sincerely,

ABE HARRIS,
President,
AFGE, Local 1812.

FOREIGN AFFAIRS EMPLOYEES COUNCIL,
Washington, D.C., September 10, 1980.
Hon. JESSE A. HELMS,
Senate of the United States,
Washington, D.C.

DEAR SENATOR HELMS: Thank you for letting me see the final text of the Bill you have prepared to amend the Foreign Service Act of 1946.

We find your Bill would tremendously strengthen the Foreign Service. Your constructive proposals are far preferable to the voluminous text submitted by Senator Pell for the Committee on Foreign Relations.

I wholeheartedly endorse your Bill.

On behalf of the several thousand career employees of the foreign affairs agencies represented by the Foreign Affairs Employees Council of the American Federation of Government Employees, AFL-CIO, I urge its adoption by your colleagues in the Senate.

Sincerely,

BERNARD WIESMAN,
President.

Mr. HELMS. Mr. President, my amendment in the nature of a substitute is identical to S. 2986, except for a few changes which have been suggested in discussions with many individuals concerned with the matter.

I have added, for example, sections 2314 and 2207 of S. 3058, dealing with retirement credits for "Radio" service, and "Retirement for Binational Center Employees," both of which were offered in committee by the distinguished floor manager of this bill. I am also in accord with the grievance procedure which would allow employees to have a representative of their own choosing at grievance hearings. That would have been overturned by S. 3058 if the distinguished Senator from Rhode Island (Mr. PELL) had not offered an appropriate amendment. Such an amendment is not necessary to my proposal, since my proposal retains the present system.

I have also accepted the State Department's criticism that the appointment of Foreign Service officers in the upper ranks without examination should be limited to 5 percent, as well as the Department's observation that an ambassador in a post abroad should be able to delegate labor-management issues to the DCM, or to an administrative or personnel officer. I have also accepted the Department's suggestion that "supervisors" should be included as employees rather than as management.

With these changes, I believe that my proposal, to be offered in the form of an amendment in the nature of a substitute, is a superior substitute for the pending bill, S. 3058.

Mr. President, I urge Senators to study this matter carefully and to bear in mind that what we do on this piece of legislation, which I am sure very few Senators have considered to any great extent, will very well have a bearing on the implementation of our foreign policy and the success of it in the future.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PRYOR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, there is a fundamental question which must be addressed in consideration of S. 3058 and the proposed substitute: What differences should there be between the way the Foreign Service is operated and the laws governing the civil service? The proposed substitute if adopted would represent far-reaching departures from well-established and successful practices used by the Foreign Service since 1946 and refined and improved under S. 3058. Although the sponsor of the substitute agrees with me that the Foreign Service is an elite service which is fundamentally different from the civil service, the thrust of many of the new departures in his substitute are in the direction of making the Foreign Service much more like the civil service.

I have always believed that the Foreign Service is more similar to the military services than to the civil service, and that similarity would be greatly undermined by the proposed substitute.

During the 15 months the new Foreign Service Act has been before the Congress, this issue of how separate should the Foreign Service be has been prominent. In their deliberations, the concerned committees and subcommittees of the Senate and House reached quite different conclusions from those reflected in the substitute. For example:

All, including the House Post Office and Civil Service Committee, accepted the proposition that the Secretary of State should continue to have classification authority separate from Office of Personnel Management (OPM) because of the continuing different circumstances which have caused the Foreign Service to be outside the civil service laws since the very first Civil Service Act in 1883. Chairman CAMPBELL of OPM supports S. 3058 which continues this provision. The heads of the Foreign Affairs agencies are explicitly directed by S. 3058 to give "appropriate weight to job factors relating to service abroad." This would not be possible under the civil service classification system that would be required by the substitute bill.

All agreed that the Foreign Service should continue to be operated, as it has by Executive order since 1971, under a somewhat different system of labor management relations than applies to the civil service. Chapter 10 of the proposed new act represents a careful incorporation of many of the pertinent features on this subject of title VII of the Civil Service Reform Act of 1978. Again, the Post Office and Civil Service Committee, whose orientation is toward maximum use of the civil service system, was in full agreement with the carefully negotiated approach finally adopted which takes into account the special conditions of Foreign Service employment.

All agreed that the 10 step pay schedule applicable to the civil service, and mandated by the substitute bill, did not suit the needs of the Foreign Service.

In spite of strong sympathy for the difficulties of Foreign Service life, all the committees concluded that it would be inappropriate at this time to change the Foreign Service retirement system, in view of the current examination of all Federal retirement systems which is now underway.

The several committees also addressed a number of current problems with the Foreign Service which are not taken up in the substitute bill. The latter—

Does not provide for clear separation of the Foreign Service and civil service, according to the type of career an individual will have;

Leaves some 1,500 "domestic Foreign Service" employees eligible for all Foreign Service benefits and subject to conditions of employment designed for those who serve rotational careers;

Fails to consolidate and codify all legislation pertaining to the Foreign Service in one place, as has not been done in 34 years;

Does not create a Senior Foreign Service comparable to flag ranks in the military and to the Senior Executive Service, with retention based strongly on performance; and

Does not simplify and consolidate the Foreign Service personnel system in the same degree as does S. 3058.

As a final point, the special plight of the hostages is being dealt with by other legislation which is already moving through the Senate and the House: I am cosponsor, along with the chairman of the Foreign Relations Committee of two measures in the Senate, S. 2581, which is pending before the Finance Committee, and S. 2582, which has been reported by the Judiciary Committee and is on the Senate Calendar. Companion legislation has been reported by the House Foreign Affairs and Post Office and Civil Service Committees. These bills are more comprehensive in meeting the needs of the hostages than are the provisions in the substitute, and are preferable to them.

I ask unanimous consent that a section-by-section rebuttal of the Helms substitute be printed in the RECORD at this point.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ANALYSIS OF AMENDMENT NO. 2290 TO S. 3058, THE HELMS SUBSTITUTE FOR THE FOREIGN SERVICE ACT OF 1980

Section 1—Short Title:

Section 1 identifies this Act as consisting of amendments to the Foreign Service Act of 1946 rather than providing a new charter for the Foreign Service as proposed in S. 3058. This illustrates the substitute's retention of a number of out-of-date features of the 1946 Act, its omission of a number of necessary provisions contained in S. 3058 and its abandonment of the objective of consolidating in an orderly coherent way the various laws relating to the several agencies which use the Foreign Service personnel system, but which are not contained in the basic legislation applicable to the Foreign Service.

Section 2.—Objectives:

This section would add two new objectives to Section 111 of the 1946 Act. The first would ensure Foreign Service personnel all rights accorded to personnel in the Civil Service. This is apparently in lieu of the detailed provisions of S. 3058 which specify the rights to be accorded to members of the Foreign Service. (See, *e.g.*, section 105 on Merit Principles, Protections for members of the Service and Minority Recruitment; sections 607 and 608 regarding Selection Out Procedures; section 610 regarding Separation for Cause Procedures; Chapter 11 regarding Grievance Procedures.) The vague statement in the substitute is likely to lead to misunderstandings and confusion. For example, is it intended to guarantee to members of the Foreign Service who are separated for cause a right to a hearing before the Merit Systems Protection Board? This right is accorded to employees in the competitive service. Section 610 of S. 3058 provides instead for a hearing before the Foreign Service Grievance Board. The substitute would leave on the books section 637 of the 1946 Act which provides for a hearing before the Board of the Foreign Service in such cases. The bill before the Senate has been carefully drafted and scrutinized by three committees of the Congress who have assured themselves that it contains equitable treatment of Foreign Service personnel, but not an identity of procedures with the Civil Service.

This section would also add to the 1946 Act's statement of objectives the provision of further protections, procedures and emoluments to Foreign Service personnel, above and beyond those accorded to Civil Service personnel. However, the particular proposals of the substitute, as described below, are an inadequate substitute for the detailed protections, procedures and emoluments specified in S. 3058 which have been fashioned in the course of extensive Congressional deliberations and consultations with the members of the Foreign Service and organizations which represent them.

Section 3—Foreign Service Schedule:

This section would establish a single Foreign Service schedule in lieu of the separate schedules for Foreign Service Officers and Reserve Officers on the one hand and for Foreign Service Staff Officers and employees on the other, now contained in the 1946 Act. This schedule, unlike S. 3058, would include the three senior ranks of the Foreign Service which S. 3058 deals with separately as a Senior Foreign Service into which officers could advance only on the basis of stringent requirements through a competitive process administered by Selection Boards operating under precepts negotiated between Department management and the exclusive representative of Foreign Service personnel. The substitute would link the 13 classes in this proposed Foreign Service schedule to specific grades in the general schedule established for Civil Service personnel. The specific linkages appear to bear little relaitonship to the intensive studies of Foreign Service compensation that have been conducted in recent years. Moreover, by establishing these linkages in legislation the substitute would depart from the procedures established for setting pay in the Executive branch under existing legislation. This combination of factors would be likely to cause this measure to be vetoed even if it were passed by the Congress.

This section would provide a salary supplement to each member of the Foreign Service equal to 15 percent of basic salary, but not less than $2,500 or more than $7,500 each year. This supplement would be exempt from federal income tax. Apart from the enormous cost of this proposal, it should be noted that since the substitute does not provide legislative authority for elimination of the anomalous domestic categories of Foreign Service personnel who have not and will not serve abroad, these tax-free windfalls would be paid to employees who are nominally members of the Foreign Service but who occupy positions in which many of these same individuals previously served as Civil Service employees. While the Foreign Service certainly deserves adequate compensation and benefits, this provision is not the answer. The answer is to be found in the comprehensive provisions of S. 3058 which cover not only pay but also travel, medical expenses, leave, allowances and other benefits. These provisions have been formulated, again, in close consultation with the members of the Foreign Service and their organizations and after careful study by three committees of the Congress. Finally, this proposal for tax exempt salary supplements would fall within the jurisdiction of the Committee on Finance. If it were necessary to refer this bill to yet another committee it is clear that the 96th Congress will adjourn without enacting meaningful and desirable Foreign Service legislative reforms.

This section would require the Secretary of State to classify the Foreign Service positions not only in the Department of State, but also in two other agencies—The Agency for International Development and the International Communication Agency. Yet, he is to do so in accordance with the provisions of chapter 51 of title 5, United States Code, which would not allow him to classify positions in other agencies. It is unclear how this conflict in the direction given by this section would be resolved. The mandatory application of the Classification Act to the Foreign Service would represent abrupt departure from existing law. The Classification Act is geared to a Civil Service based on the concept of rank in position with a fairly static work force. Jobs are classified by rank and people who move into those jobs acquire the rank to which the positions have been assigned.

Because the Foreign Service operates on

a rank in person basis comparable to the military services and because its members are frequently rotated from post to post and from position to position, the Congress has wisely exempted Foreign Service positions from the inappropriate Classification Act. The existing authority of the Secretary of State to classify positions in the Foreign Service, which would be preserved by S. 3058, provides the Secretary with the ability to maintain an appropriate, flexible system for identifying the levels of responsibility of the various jobs within the Foreign Service to facilitate the assignment of appropriate personnel at the appropriate rank. The abrupt departure proposed in the substitute would be cumbersome and chaotic.

Section 4—Admission to Foreign Service salary classes:

This section would require written and oral examinations for entry into the lower ranks of the Foreign Service, including tests on geography, history, U.S. political structure, and major international events. This would create an unreasonable and unnecessary burden and would impede the recruitment of qualified technical, clerical and other support personnel and would impair affirmative action programs.

This section would also provide for admission to the senior ranks of the Foreign Service on the basis of oral examination alone, with no limit on outside hiring. In addition, this section would permit the appointment of senior officers with no examination at all upon notice to the Senate, so long as the number did not exceed 5 percent of the total number of employees (Foreign Service and Civil Service) in the Department of State. By contrast, S. 3058 provides for entry into the Senior Foreign Service by promotion of career Foreign Service personnel, and permits not more than 5 percent of the members of the Senior Foreign Service to be appointed from the outside. The substitute bill thus appears to provide a legislative basis for serious erosion of the professional character of the career Foreign Service. This provision would also appear to conflict with the objective stated at the outset of the substitute that Foreign Service and Civil Service personnel should have the same protections. Senior Executive Service personnel in the Civil Service are protected against noncareer appointments at the Senior levels by the Civil Service Reform Act.

This section would direct the Secretary of State to conform assignments of Foreign Service personnel with position classifications and to report to Congress on assignments which vary by more than one grade from the classification of the positions to which those assignments are made. It is unclear how this provision would relate to the existing authorities for assignment contained in a later chapter of the 1946 Act. The amendment appears to assume that the common sense approach of matching rank of the individual with the level of the position to which he is assigned is widely disregarded in the Foreign Service and that assignments are seriously out of kilter. This is simply not the case, and yet another reporting requirement is not needed. Moreover, the classification of a Foreign Service position is only one of a number of factors which must be considered, along with language ability, functional skills, familiarity with a particular country or experience in dealing with its leaders, the urgency of filling a vacancy, and the availability of qualified personnel. An effective Foreign Service should be responsive and its members should be available to fill any assignment where they are needed. The 1946 Act recognizes this in sections which are considered in section 501 of S. 3058.

Finally, this section would require that all persons in the Foreign Service be named in OPM registers, presumably with a view to helping them find Civil Service employment if they leave the Foreign Service. The section also directs the OPM Director to assist any separated Foreign Service employee to find employment in the Civil Service. There are several things wrong with this provision. First, there is a greater rate of retention in the Foreign Service than in the Civil Service. The administrative burden imposed by this section is totally unwarranted with respect to the vast bulk of Foreign Service officers who enter in their youth and serve until retirement, and who have no interest in a Civil Service job. Second, the provision assumes that anyone who leaves the Foreign Service, for whatever reason, is suitable for Civil Service employment. This would appear to require that the Executive Branch find a Civil Service job for the Foreign Service information officer who was convicted of espionage in 1978 or any such case which may arise in the future. This assumes extraordinary law standards for employment in the Civil Service.

Section 5—Labor-management relations:

This section would scrap the labor relations system which has functioned smoothly and efficiently for the Foreign Service since 1971 and would substitute in its entirety the Civil Service system in which the Foreign Service has no experience or history of bargaining and which the three committees of Congress that have studied the matter has found inappropriate. The amendment does not address several anomalies that would be created because of basic differences between the Foreign Service and Civil Service systems. In addition it contains a number of novel and unworkable proposals, such as combining Civil Service and Foreign Service personnel in a single bargaining unit despite the absence of a community of interests that would promote efficient and effective dealings.

In addition the measure would permit only one senior official each from ICA or from AID to be treated as a management official at any Foreign Service post, thus creating the peculiar situation that an AID mission director would have to bargain with his own deputy, who would be represented by the union. Clearly, this section is no substitute at all for the carefully developed chapter 10 of S. 3058 which has been scrutinized in the House by the committee which had primary jurisdiction over the Civil Service Reform Act, and which is supported not only by the Administration but also by the American Foreign Service Association which is the exclusive representative of the vast majority of members of the Foreign Service.

Section 6—Computation and payment of annuities:

This section would alter the formula for computing Foreign Service annuities in a way that would increase the unfunded liability of the Foreign Service Retirement and Disability fund by $400,000,000 according to the Treasury Department actuary.

This section would also provide increased annuity for hostages by giving them one year of retirement credit for each month of captivity, or two years of credit for each month of captivity exceeding six months. This is both too much and too little: it is too much because it would give a recent appointee held hostage for one year 24 years of retirement credit; it is too little because it would not permit that individual to retire, utilizing that 24 years of credit until he or she had reached a normal retirement age, at which time any years of credit in excess of 35 years would be disregarded in computing the annuity. The question of relief for hostages is being given separate and more appropriate consideration in other legislation before the Senate.

Sections 7 and 8.—Retirement credit:

These sections would provide retirement credit for employees of certain broadcasting facilities and for employees of binational centers.

Mr. PELL. I also ask unanimous consent to have printed in the RECORD a letter to the Members of the Senate from Dr. Henry Kissinger and Mr. Cyrus Vance, and a letter from Secretary of State Muskie urging the adoption of the Foreign Service bill.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 10, 1980.

To the Members of the Senate:

We join in urging your support for the Foreign Service bill (S. 3058) now up for final action by the Senate.

Both of us have testified in favor of this measure and believe its passage at this session is of vital importance to maintain and strengthen the Foreign Service of the United States.

In response to a 1976 Congressional mandate for a "comprehensive plan" for reform of the personnel system of the Foreign Service, work on this measure began in the last year of the Ford Administration and continued during the Carter Administration. As reported to the Congress before the change of Administration in January 1977, a key element in any proposed reform is the clear division between the Foreign Service and the Civil Service in the Department of State. The pending bill accomplishes this long overdue objective in a fair and equitable manner. In addition it codifies diverse laws affecting the Service in an effective new charter and accomplishes many other needed reforms.

This country has a diplomatic service second to none. The dedicated and able men and women of the Foreign Service serve this Nation in increasingly difficult and dangerous conditions abroad.

The proposed Foreign Service Act of 1980 is well designed to meet the needs of the Service and the needs of our Presidents and Secretaries and State in the years ahead.

HENRY A. KISSINGER.
CYRUS R. VANCE.

THE SECRETARY OF STATE,
Washington, D.C.

I am writing to urge your support of the Foreign Service bill (S. 3058) which will be up for Senate action shortly.

Since assuming the duties of Secretary of State four months ago, I have become keenly aware of the desirability of enactment at this session of this comprehensive and important bill to strengthen and to improve the Foreign Service. My predecessors strongly share this view as does a preponderant majority of the members of the Service. A brief description of the proposal is attached.

I want to give you my personal assurance that the Foreign Service bill is a completely non-partisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markups in 1979 and 1980. On September 8 the House passed the bill by a substantial bipartisan majority.

It is the direct result of five years of efforts begun during the last part of the Ford Administration in response to a Congressional demand in 1976 for a "comprehensive plan" for the improvement and simplification of the personnel system of the Foreign Service.

Your support will be greatly appreciated.

Sincerely,

EDMUND S. MUSKIE.

FOREIGN SERVICE BILL: MAIN FEATURES

(A Bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.)

The bill provides a closer linkage between performance and all aspects of Foreign Service personnel management: recruitment, tenure, advancement, incentive pay, and retention, as judged by impartial selection boards of career and public members.

It simplifies the present overly complex personnel structure of the Foreign Service and converts to Civil Service status those who have not and will not serve abroad with full protection of pay and rights.

It establishes a Senior Foreign Service compatible with the special needs and role of the Foreign Service and yet responsive to the purposes and goals which were sought through the creation of the Senior Executive Service under the Civil Service Reform Act of 1978.

Employee-management relations are placed on a sound statutory basis.

The bill replaces the Foreign Service Act of 1946 and codifies an accumulation of 34 years of legislation on the subject in one comprehensive new charter.

It effects numerous other reforms relating to the rights and benefits of the dedicated members of the Foreign Service and their families who are called upon daily to serve this country in increasingly dangerous and difficult circumstances abroad.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FORD). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. INOUYE. Mr. President, my colleague from Rhode Island has brought before us an important and comprehensive bill which will strengthen the Foreign Service.

With respect to the impact of this legislation on AID, I take it that my colleagues' understanding is the same as mine—that the Administrator of AID will continue independently to exercise all authorities available under this legislation with respect to AID personnel.

When the International Development Cooperation Agency was established last year, we were told that it would have policy and budget responsibilities, but that it would not interfere in the day-to-day operation of AID. My subcommittee has been troubled by reports that IDCA has from time to time sought to intervene in the personnel management of AID, which is clearly beyond its intended scope.

I am taking this opportunity to clarify for all concerned any ambiguity as to whether AID continues to exercise its authorities as a separate Agency and to emphasize our view that all authorities, personnel and otherwise, necessary for the effective operation of the U.S. bilateral assistance program by AID are to be unambiguously vested in AID.

Mr. President, my subcommittee has worked for years to make AID as efficient an operation as we can. I think we have made substantial progress, and do not wish any ambiguities about the responsibilities of the Administrator of AID to interrupt this progress.

As far as I am concerned, a key test of IRCA's effectiveness and utility will be its ability to provide useful policy and budget guidance without in any way hampering—indeed by positively reinforcing—the independent operation of its component agencies.●

(The following proceedings occurred during the statement of the program by Mr. ROBERT C. BYRD later in the day and are printed at this point in the RECORD by unanimous consent:)

AMENDMENT NO. 2290

(Purpose: To amend the Foreign Service Act of 1946 to strengthen and improve the Foreign Service, and for other purposes)

Mr. BAKER. Mr. President, the distinguished Senator from North Carolina, who will offer the substitute amendment on Monday, or who would offer it today and make it the pending business, is necessarily absent from the floor temporarily.

In order to make sure that the Helms amendment is the pending business when we return, and after the recognition of the two leaders, as the majority leader has provided for, I now ask the Chair to lay before the Senate on behalf of Senator HELMS the amendment I just referred to.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. HELMS, proposes an amendment numbered 2290.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel.".

FOREIGN SERVICE SCHEDULE

SEC. 3 (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"SEC. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS–1 through FS–13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

"Salary class:	Shall correspond to grade:
FS–1	GS–18
FS–2	GS–17
FS–3	GS–16
FS–4	GS–15
FS–5	GS–14
FS–6	GS–13
FS–7	GS–12
FS–8	GS–11
FS–9	GS–9
FS–10	GS–7
FS–11	GS–6
FS–12	GS–5
FS–13	GS–4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS–1, FS–2, and FS–3 shall have 1, 5, and 9 steps, respectively.

"ADDITIONAL COMPENSATION

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve worldwide at any post assigned without regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than $2,500 or more than $7,500. Such amount shall be exempt from taxation under chapter 1 of the Internal Revenue Code of 1954.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual.".

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"SEC. 516. No person may be eligible for initial appointment as a member of the Foreign

Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major internal events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SALARY CLASSES 1 THROUGH 6

"Sec. 517. No person may be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if—

"(1) not later than 30 days after such appointment, the President notifies the Senate of such appointment; and

"(2) not more than 5 percent of the employees of the Department of State at one time are appointed pursuant to this sentence.

"OFFICE OF PERSONNEL MANAGEMENT

"Sec. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service.".

LABOR-MANAGEMENT RELATIONS

Sec. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"PART F—LABOR-MANAGEMENT RELATIONS

"Sec. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5, United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, wherever serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d)(1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) For purposes of labor-management relations with respect to a particular Foreign Service post, of the individuals assigned to such post from the Department, the International Communication Agency, and the United States International Development Cooperation Agency, not more than six senior officials shall be considered to be management officials for purposes of this section, including—

"(A) not more than one senior official each from the International Communication Agency and the United States International Development Cooperation Agency; and

"(B) not more than the following four senior officials from the Department: the chief of mission or principal officer, the deputy chief of mission, the principal administrative officer, and the principal personnel officer.".

"(e)(1) For purposes of involvement in any labor organization, the employees, other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Development Cooperation Agency and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, all members of the Foreign Service, other than management officials, who are employees (including supervisors) of the Department of Agriculture and the Department of Commerce may constitute, with respect to each such Department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger.".

COMPUTATION AND PAYMENT OF ANNUITIES

Sec. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out "2 per centum" in the first sentence and inserting in lieu thereof "2.5 per centum"; and

(2) by adding at the end thereof the following:

"(j)(1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

"(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than thirty days; or

"(B) two-tenths per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of thirty days.

"(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

"(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.".

RETIREMENT CREDIT FOR "RADIO" SERVICE

Sec. 7. (a) Subsection 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (9) the following:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the (A) National Committee for a Free Europe; (B) Free Europe Committee, Inc.; (C) Free Europe, Inc.; (D) Radio Liberation Committee; (E) Radio Liberty Committee; (F) subdivisions of the entities referred to in clauses (A) through (E); (G) Radio Free Europe/Radio Liberty, Inc.; (H) Radio Free Asia; (I) the Asia Foundation; or (J) the American Forces Network, Europe (AFN–E).".

(b) Section 8332(b) of such title is amended by adding at the end thereof the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee referred to in paragraph (10).".

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

Sec. 8. Section 803(a) of the Foreign Service Act of 1946 is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(2) by adding at the end thereof the following:

"(5) Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under this Act and who makes an appropriate contribution to the Fund in accordance with the provisions of this Act.".

EFFECTIVE DATE

Sec. 9. The amendments made by this Act shall take effect on October 1, 1980.

AGRICULTURAL SUBTERMINAL FACILITIES ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. Talmadge, I ask that the Chair lay before the Senate a message

from the House of Representatives on S. 261.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 261) entitled "An Act to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities, to provide for the development of State plans to improve such facilities within the States or within a group of States acting together on a regional basis, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Agricultural Subterminal Facilities Act of 1980".

FINDINGS

SEC. 2. Congress finds and declares that—

(1) an adequate system for the efficient transient storage and movement of bulk agricultural commodities is essential to the overall success of the agricultural industry of the Nation, the development of rural areas of the Nation, and the economic stability of the Nation;

(2) the movement and storage of bulk agricultural commodities has been seriously and repeatedly impeded by shortages of transient storage facilities, adequate rail rolling stock, and the deterioration of many railroad track beds and rural highways throughout the United States;

(3) the efficient movement and storage of bulk agricultural commodities may be achieved and facilitated by the joint location at strategic points throughout the United States of transient storage facilities and multimodal terminal facilities constructed especially for the efficient shipment and receipt of agricultural commodities; and

(4) the location of such facilities must be carefully planned to assure maximum benefits to producers of agricultural commodities and unprocessed agricultural products and utilization of the most efficient means of transporting bulk agricultural commodities for domestic and export markets.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "bulk agricultural commodity" means any agricultural commodity that can be transported in bulk and can be temporarily stored in bulk quantities without undergoing processing or packaging. Such term also includes any commodity or product that is used by producers in the production of agricultural commodities and that can be stored or shipped in bulk, such as fertilizer and fuel;

(2) "unprocessed agricultural products" means food, fiber, and other agricultural products that have not been packaged or otherwise prepared for retail sale, including animal products and unfinished cotton, wool, leather, or any other unfinished natural material;

(3) "Secretary" means Secretary of Agriculture;

(4) "subterminal facility" means any facility that is located in the area of production or consumption of agricultural commodities or any major storage or major export point for such commodities and is located at a place that conveniently serves the needs of producers, purchasers, and consumers of bulk agricultural commodities, and is—

(A) used for the transient storage of bulk agricultural commodities and may include equipment or structures necessary for the transportation, upgrading, receiving, drying, or loading out of such commodities; or

(B) any rail siding, loading, or unloading facility that can accommodate unit railroad trains or multiple car trains and other appropriate transportation modes designed for the transport of bulk agricultural commodities and production materials; and

(5) "region" means two or more States acting together to develop a coordinated regional subterminal facilities plan.

STATE AND REGIONAL PLANS; PLANNING GRANTS

SEC. 4. (a) (1) The Secretary shall, beginning not more than one hundred and eighty days after the effective date of this Act, make financial assistance available to any State that makes application therefor, and that otherwise meets the requirements of this section, for the purpose of assisting such State in the development of a subterminal facilities plan (hereinafter in this Act referred to as the "State plan") for such State. Assistance under this section shall be made available in the form of a grant. No grant may be made to any State unless the Governor of such State or the appropriate agency of such State makes an application therefor as provided in this section. To the maximum extent practicable, the personnel and resources of the colleges or universities in the State which are eligible to receive funds under the Act of July 2, 1862 (7 U.S.C. 301–305, 307, and 308), or the Act of August 30, 1890 (7 U.S.C. 321–326 and 328), including Tuskegee Institute, shall be utilized in developing the subterminal facilities plan for that State pursuant to this section.

(2) The Secretary may also make grants under this section available to two or more States acting together to develop a coordinated regional subterminal facilities plan (hereinafter in this Act referred to as the "regional plan") for such region.

(3) Grants made under this section to any State or region may not exceed 80 per centum of the cost of preparing the State or regional plan.

(4) The State or regional plan shall prescribe in detail the actions such State or region proposes to take in order to (A) facilitate the efficient and competitive movement of bulk agricultural commodities from the points of production within such State or region to major market or export points, (B) provide adequate storage facilities for such commodities between points of production and market, (C) provide adequate receiving, storage, and loading facilities for any bulk agricultural commodity, and (D) assure that such facilities will be located at sites that will result in maximum benefits to local producers.

(5) Each State or regional plan shall include the following:

(A) an analysis of the marketing, shipping, storage, and production of bulk agricultural commodities produced in that State or region and the short- and long-range projections with respect to the marketing, shipping, storage, and production of such commodities in that State or region;

(B) a determination, on the basis of the analysis and projections required under clause (A) of this paragraph, of the needs of the State or region for subterminal facilities;

(C) an assessment of the use of existing on-farm storage facilities located within the State or region and an assessment of the ways in which subterminal facilities can benefit the continued use of on-farm storage facilities;

(D) an evaluation of the effect of the development of new subterminal facilities on small capacity rural shipping and storage facilities within the State or region;

(E) an evaluation of ways to ensure adequate rail service for subterminal facilities described in clause (D) of this paragraph, including an evaluation of the use and feasibility of contract rates;

(F) an assessment of the ways that subterminal facilities can enhance the operation of small capacity shipping and storage facilities within the State or region;

(G) an assessment of other actions being taken or considered in such State or region for the improvement of agricultural transportation, including an evaluation of the use being made of shuttle or collector trains and combinations of rail and barge service;

(H) an evaluation of the potential benefits of subterminal ownership and leasing arrangements for rail rolling stock (including locomotive power), motor trucks, barge equipment, and other bulk agricultural commodity transport equipment that may help achieve maximum benefits from the operation of subterminal facilities within the State or region;

(I) an assessment of the overall transportation system in the State or region and future plans for that overall system, including the adequacy of highways and bridges; and

(J) consideration of the feasibility and advisability of the ownership and operation of rail branch lines by farmer-owned cooperatives, and the role that such cooperatives might play in any overall planning for the restructuring and rehabilitation of rail service and marketing facilities within the State or region.

(b) Funds made available to a State or region under this Act for the purposes of assisting such State or region to develop a plan shall be subject to the condition that the State or region establish a plan review commission composed of local producers, local elevator operators, representatives of affected motor and rail carriers, other interested individuals, and, when appropriate in the judgment of the Secretary, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products. A majority of the members of any plan review commission must be local producers or, when appropriate in the judgment of the Secretary, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products. The plan review commission shall consider the information and analyses developed by the State or region in the development of a State or regional plan and make appropriate recommendations regarding the State or regional plan. The plan review commission shall also make recommendations, based on information developed in the plan, for the most beneficial location of subterminal facilities.

(c) No application for planning assistance authorized pursuant to this section may be submitted by a State or region until the appropriate plan review commission established in accordance with this Act has had the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a State or regional plan, and a majority of the members of such plan review commission concur that such application should be submitted.

(d) No State or region may receive a grant under this section unless—

(1) an application therefor has been submitted that complies with the provisions of this Act;

(2) the average annual production of bulk agricultural commodities produced within such State or region, or shipments of such commodities transported into such State or region, meets minimum levels established by the Secretary for a period the Secretary considers appropriate preceding the year in which application for such grant is made;

(3) the Governor of such State or the Governors of the States in such region certify to the Secretary that producers of agricultural commodities have experienced serious storage and transportation problems within such State or region during the three years preceding the year in which application for such grant is made; and

(4) such State or each State within such region has established an adequate plan, as described in section 5(j) of the Department of Transportation Act (49 U.S.C. 1654(j)), for rail service in such State or States, or such State or each State in such region is actively developing such a plan.

(e) Whenever any State or region has submitted a State or regional plan under this section, the Secretary shall approve such plan only if it has been approved by a majority of the members of the appropriate plan review commission established pursuant to this Act, and it meets the other conditions specified in this Act and those prescribed in regulations issued by the Secretary to carry out this Act. When a plan is approved by the Secretary, such plan shall be known as an "approved State plan" or an "approved regional plan," as appropriate.

(f) To carry out the purposes of this section, there are authorized to be appropriated not to exceed $3,300,000 for each of the fiscal years ending September 30, 1981, September 30, 1982, and September 30, 1983.

LOANS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

SEC. 5. Section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) is amended by adding at the end thereof a new subsection (e) as follows:

"(e) (1) The Secretary may also insure and guarantee loans under this section to public, private, or cooperative organizations organized for profit or nonprofit, or to individuals for the purpose of constructing or improving subterminal facilities if—

"(A) the construction or improvement of such facilities is consistent with the appropriate approved State or regional plans and the recommendations of the local plan review commission established pursuant to the Agricultural Subterminal Facilities Act of 1980;

"(B) the Secretary determines that the ownership and operation of such subterminal facilities will result in the efficient and competitive movement of bulk agricultural commodities and will return increased benefits to the local producers served by such facilities; and

"(C) the Secretary determines that the rail carrier designated to provide service to any such facility will be able to provide adequate service.

Such loans may be made available for purchase of rail rolling stock (including locomotives, motor trucks, barges, and other bulk agricultural commodities transport equipment to be used in conjunction with the operation of subterminal facilities.

"(2) The Secretary may only insure or guarantee loans under this subsection if the Secretary finds that applicants are unable to obtain credit from commercial lending institutions (including specialized lending institutions established to provide credit to agricultural producers) on reasonable terms and conditions.

"(3) In order to preserve local ownership and control of agricultural transportation facilities, the Secretary shall give preference under this subsection to existing agricultural elevator operators and local producers in areas in which subterminal facilities are proposed to be located.

"(4) (A) The total amount of loan authority made available for use for the purpose of this subsection for any fiscal year shall be allocated by the Secretary on the basis of need among those States that have approved State or regional plans as defined in the Agricultural Subterminal Facilities Act of 1980. Such allocation shall be based on such formula as the Secretary shall prescribe by regulation.

"(B) Any loan authority available for use in any State in any fiscal year that is not used by such State shall be reallocated, to the extent practicable, among other States eligible for the assistance provided under this section, in accordance with the same formula developed by the Secretary for the initial allocation of loan authority under this subsection.

"(5) As used in this subsection, the term 'subterminal facility' has the same meaning as provided in the Agricultural Subterminal Facilities Act of 1980.

"(6) Within one hundred and eighty days after the effective date of the Agricultural Subterminal Facilities Act of 1980, the Secretary shall establish such rules and regulations as may be necessary to implement the provisions of this subsection.".

EFFECTIVE DATE

SEC. 6. The provisions of this Act shall become effective October 1, 1980.

Amend the title so as to read: "An Act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes.".

Mr. TALMADGE. Mr. President, S. 261—the Agricultural Subterminal Facilities Act—would promote the construction and improvement of subterminal storage and shipping facilities for, first, any agricultural commodity that can be transported in bulk from the farm and temporarily stored in bulk quantities without undergoing processing or packaging, and, second, any commodity or product that can be stored or shipped in bulk and used by producers in the production of agricultural commodities.

The House amendments, some of which are technical in nature, improve the bill. Under the amendments, States or groups of States receiving cost-sharing grants for the development of State or regional subterminal facilities plans are to use, to the maximum extent possible, the resources and facilities of the land grant colleges and universities, including Tuskegee Institute.

Also, under the House amendments, no application for planning assistance may be submitted by a State or region until the appropriate Plan Review Commission established under the bill has the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a State or regional plan, and a majority of the members of the Plan Review Commission concur that the application should be submitted.

Whereas the bill passed by the Senate authorized annual appropriations of $3.3 million for planning grants for fiscal years 1980 through 1982, the House amendments authorize annual appropriations of $3.3 million for fiscal years 1981, 1982, and 1983.

I ask unanimous consent that a statement of the differences between S. 261, as passed by the Senate, and the House amendments thereto be printed in the RECORD.

There being no objection, the statement of differences was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Major Differences Between S. 261 As Passed By The Senate and The House Amendments Thereto:

(1) State and regional planning grants:

A. The House amendments provide that, to the maximum extent practicable, the personnel and resources of the land grant colleges and universities, including Tuskegee Institute, are to be used in developing subterminal facilities plans.

The Senate bill contains no comparable provision.

B. Both the Senate bill and the House amendments require that the State or regional plan include a variety of items.

In addition to the items specified in the Senate bill, the House amendments require (1) an assessment of the overall transportation system in the State or region, including the adequacy of highways and bridges, and (2) consideration of the feasibility and advisability of the ownership of rail branch lines by farmer-owned cooperatives, and the role the cooperatives might play in restructuring rail service and marketing facilities.

C. Both the Senate bill and the House amendments provide for the establishment of plan review commissions.

Under the Senate bill, each State or regional plan review commission is to be composed of local producers, local elevator operators, representatives of affected motor and rail carriers, and other interested individuals.

The House amendments require that the plan review commission be composed of the same persons as specified in the Senate bill and, when considered appropriate by the Secretary of Agriculture, consumers of bulk agricultural commodities used in the production of unprocessed agricultural products.

D. The House amendments provide that no application for planning assistance may be submitted by a State or region until the appropriate plan review commission established under the bill has the opportunity to make recommendations to the Governor or Governors that a need exists for the development of a plan, and a majority of the plan review commission concurs that such application should be submitted.

The Senate bill contains no comparable provision.

E. The House amendments provide that the Secretary of Agriculture may approve a State or regional plan only if it has been approved by a majority of the members of the appropriate plan review commission.

The Senate bill contains no comparable provision.

(2) Appropriations:

The Senate bill authorizes annual appropriations of $3⅓ million for fiscal years 1980, 1981, and 1982 to fund Federal planning grants for the development of State and regional subterminal facilities plans.

The House amendments authorize annual appropriations for the same purpose in the amount of $3.3 million for fiscal years 1981, 1982, and 1983.

(3) Loans for subterminal facilities:

Both the Senate bill and the House amendments authorize the Secretary of Agriculture to insure and guarantee loans for the construction of subterminal facilities to applicants in States or regions that have approved subterminal facilities plans.

The Senate bill provides that in no event may the amount of loan authority allocated to any State or States in any fiscal year be less than an amount equal to one percent of the total loan available for such loan authority in each fiscal year.

The House amendments delete the Senate provision.

● Mr. ZORINSKY. Mr. President, S. 261, the Agricultural Subterminal Facilities Act, was passed by the Senate on May 23, 1979. More recently, on June 3, 1980, the House approved S. 261, with amendments.

The need for the Subterminal Facilities Act is as obvious today as when the legislation was first introduced last year.

It has become apparent that the rail industry cannot efficiently move farm products when rail equipment must be simultaneously distributed across a vast trackage system to thousands of small collection points. Of course, this dilemma worsens as the health of the rail industry declines and the track system continues to deteriorate.

S. 261 is one attempt to help alleviate the adverse economic impact on rural America of the trend in the railroad industry to consolidate and abandon trackage. The trend in rail service, especially as it affects agriculture shippers, is to move away from service on light density branch lines and the small country elevator. Of course, this loss of service is, and will continue to be, devastating to agricultural producers and others who make their living in rural America.

S. 261, as passed by both the House and the Senate, establishes a mechanism whereby local producers and existing elevator operators may enhance and improve their commodity storage and marketing delivery system. This legislation can go a long way toward assuring us that our rural transportation system, now in a state of transition, has at least one additional tool to enable our producers and shippers to adapt to inevitable changes in our traditional transportation system.

The House of Representatives made several changes in the bill. However, the changes, some of which are technical in nature, do not alter the basic structure of the bill and are, in fact, constructive. I, therefore, urge my colleagues to concur in the House amendments.●

● Mr. McGOVERN. Mr. President, I am pleased that Congress is taking final action on S. 261, the Agricultural Subterminal Facilities Act, a bill I introduced.

S. 261 would—

First, promote the construction and improvement of subterminal storage and shipping facilities for agricultural commodities that can be transported in bulk from the farm and temporarily stored in bulk quantities without undergoing processing or packaging, and commodities or products that can be stored or shipped in bulk and used by producers in the production of agricultural commodities;

Second, authorize appropriations of $3.3 million for each of fiscal years 1981, 1982, and 1983 to provide cost-sharing planning grants to States and groups of States for the development of State and regional subterminal facilities plans;

Third, provide that no State or region can apply for a planning grant unless a plan review commission consisting of local producers, local elevator operators, representatives of the affected motor and rail carriers, and other interested parties concurs in the need for such plan, and

Fourth, authorize the Secretary of Agriculture to insure and guarantee loans for the construction and improvement of subterminal facilities to applicants within States or regions that have developed subterminal facilities plans which have been approved by the local plan review commission and which otherwise comply with the provisions of the act. Loan preference would be given to existing agricultural elevator operators and local producers in the area to be served by the subterminal facility.

The Subterminal Facilities Act of 1980 is patterned after the successful, but limited experience of grain producers in Iowa and other States. Subterminal facilities are located on carefully chosen main lines and viable branch line points and have the capacity to receive grain by truck and to load multiple-car and unit trains for nonstop delivery to domestic processors or to export terminals. On-farm storage and unimproved country elevator facilities serve as satellite feeders to the subterminal. With these facilities, producers and shippers are able to deal directly with processors and export purchasers. The result is adequate, reliable rail service, greater competitive ability, reduction of transportation costs through economies of scale and improved car utilization, and increased income for both grain producers and railroads.

The affected State or region must develop a comprehensive plan which assures that the development of such facilities are coordinated with State rail plans that identify lines essential to the State economy. The plan should also provide for the full utilization of not only rail but also barge and truck transportation options and the capacity to receive and temporarily store bulk commodities used in agriculture production, such as fertilizer and fuel. The State or regional subterminal planning effort must also include a participatory role for local producers, shippers, representatives of transportation modes serving the area, and local residents who have a direct interest in the program. Finally, there must be authority to provide Federal loan assistance to local producers and shippers who wish to construct subterminals on sites identified in the State or regional plan but who are unable to obtain adequate funds on reasonable terms and conditions.

The Agricultural Subterminal Facilities Act of 1980 responds to these requirements by providing Federal matching grants for State or regional planning programs that involve the participation of local plan review commissions, and by providing insured and guaranteed loans under the Farmers Home Administration business and industrial loan program. S. 261 provides that planning grants can only be provided if the State or regional planning review commission affirms the need for developing a plan and the plan can only be considered an "approved plan", and thus capable of serving as the basis for loan assistance, if the plan is approved by the review commission.

S. 261 will provide greatly needed assistance to States anxious to resolve their serious agricultural transportation problems. The planning and funding initiatives originate and are completely controlled at the State and local levels. Local producers and shippers are given priority status under the legislation for loan assistance thereby assuring that those directly impacted by the lack of subterminal facilities will have ample opportunity to own and operate such facilities.

Throughout the entire process these efforts will be carried out at the State and local level thereby insuring that the producers most affected by this problem will be instrumental in developing and implementing the solution.

The amendments made by the House of Representatives, some of which are technical in nature, improve the bill, and I urge my colleagues to concur in the House amendments.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AQUACULTURE ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1650.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1650) entitled "An Act to provide for the development of aquaculture in the United States, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential

for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementating a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association, or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture. The members of the advisory committee (other than officers or employees of the Federal Government), while away from their homes or regular places of business in the performance of services for the advisory committee, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(b) CONTENTS OF PLAN.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, after taking into acount the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds, including natural food sources,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are injurious to humans),

(F) processing and market development,

(G) production management and quality control, and

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act.

In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) ACTIONS AND IMPLEMENTATION.—The Plan shall specify—

(1) with respect to those actions that the Secretaries determine should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned.

(d) REVISION OF PLAN.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquaculture assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) CONTINUING AQUACULTURE ASSESSMENT.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States.

FUNCTIONS AND POWERS OF SECRETARIES

SEC. 5. (a) MANDATORY FUNCTIONS.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprise), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) DISCRETIONARY FUNCTIONS.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the

biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system, and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop methods to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) Information Services.—(1) In addition to performing such other required functions under this Act, the Secretaries shall—

(A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical legal, and economic information relating to aquaculture;

(B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters;

(C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service;

(D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study—

(i) an assessment of any adverse effect, by species and by geographical region on such fisheries, and

(ii) recommended measures to ameliorate any such effect; and

(E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d).

(2) Any production information submitted to the Secretaries under paragraph (1)(B) shall be confidential and may only be disclosed if required under court order. The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) Biennial Report.—The Secretaries, through the coordinating group, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Each such report contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretaries deem appropriate. The first report required under this subsection shall be submitted to Congress by September 30, 1981.

COORDINATION OF NATIONAL ACTIVITIES REGARDING AQUACULTURE

Sec. 6. (a) Establishment.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Services.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) Purpose and Functions.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) Chairman.—Each of the Secretaries or their designees, on such rotating basis as shall be determined by the Director, shall serve as the chairman of the coordinating group. The term of office of the chairman is two years.

(d) Reports.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(e) Federal Consistency.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(f) Functions If Federal Council Terminated.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director.

CONTRACTS AND GRANTS

Sec. 7. (a) In General.—The Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) Terms and Conditions.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) Limitation.—The amount of any grant made under subsection (a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) Audit.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract.

CAPITAL REQUIREMENTS FOR AQUACULTURE

Sec. 8. (a) Capital Requirements Study.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture.

The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) Capital Requirements Plan.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include: (1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and (2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress.

REGULATORY CONSTRAINTS ON AQUACULTURE

Sec. 9. (a) Regulatory Constraints Study.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States.

Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) REGULATORY CONSTRAINTS PLAN.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion, the Secretaries shall submit the plan to Congress.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983;
(2) to the Department of Commerce—
(A) $7,000,000 for fiscal year 1981,
(B) $10,000,000 for fiscal year 1982, and
(C) $12,000,000 for fiscal year 1983; and
(3) to the Department of the Interior—
(A) $3,000,000 for fiscal year 1981,
(B) $4,000,000 for fiscal year 1982, and
(C) $5,000,000 for fiscal year 1983.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

DISCLAIMER

SEC. 11. Nothing in this Act shall be construed to amend, repeal, or otherwise modify the authority of any Federal officer, department, or agency to perform any function, responsibility, or activity authorized under any other provision of law.

Mr. TALMADGE. Mr. President, S. 1650 would promote the development of aquaculture in the United States. The bill requires the Secretaries of Agriculture, Commerce, and the Interior to establish a national aquaculture development plan. In addition, the bill provides for studies to investigate the need for further financial programs and examine methods to reduce undue regulatory restraints that may face the aquaculture industry.

Aquaculture, the cultivation of aquatic plants and animals in marine, brackish and fresh water, has been an important means of food production in Asia for several thousand years. It is a relatively recent practice in the United States. Today, aquaculture in the United States produces salmon, catfish, trout, oysters, mussels, shrimp, clams, and other species. Despite the great potential of aquaculture as an energy-efficient means of food production, its growth has been much slower, and levels of production are much lower, than elsewhere in the world.

The National Oceanic and Atmospheric Administration has estimated that the domestic demand for seafood products will increase by 80 percent by the year 2000. However, most traditional fisheries in the United States are already being harvested at or near optimum sustainable levels. In addition, NOAA has estimated a worldwide shortage of fisheries products within 3 to 10 years on the basis of projected rates of harvesting and consumption. Aquaculture can respond to this projected shortfall of supply.

The United States currently imports over 50 percent of its fisheries products, creating a balance-of-payments deficit of approximately $2 billion per year. Aquaculture can make a substantial contribution to reducing this deficit by reducing the import need and by producing products for export.

I am pleased to note that the House amendment retains the text of the Senate-passed bill and incorporates technical changes that serve to strengthen the bill. The time has come for the enactment of a national aquaculture act. The great potential of aquaculture should be fully explored and developed. S. 1650 will serve to facilitate that exploration and development. I ask unanimous consent that a statement of the differences between S. 1650, as passed by the Senate, and the House amendment thereto, be printed in the RECORD.

There being no objection, the statement of differences was ordered to be printed in the RECORD, as follows:

STATEMENT OF MAJOR DIFFERENCES BETWEEN S. 1650, AS PASSED BY THE SENATE, AND THE HOUSE AMENDMENT THERETO

(1) Definiton of "State".

The House amendment includes the Trust Territory of the Pacific Islands in the definition of State for purposes of the bill.

The Senate bill contains no comparable provision.

(2) Discretionary functions:

The Senate bill authorizes the Secretaries of Agriculture, Commerce, and the Interior to conduct tests of any aquacultural system and, if necessary, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results.

The House amendment authorizes the Secretaries to conduct tests of any aquacultural system and, if necessary to determine the feasibility, of any such system, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results.

(3) Coordination:

The Senate bill establishes a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs.

The House amendment establishes an interagency aquaculture coordinating group within the Office of Science and Technology Policy that will operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology. If the functions of the Federal Coordinating Council are, by executive action, terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group will carry out its functions under the direction of the Director of the Office of Science and Technology Policy.

Mr. TALMADGE. Mr. President, I would like to note the splendid cooperation between the Committee on Commerce, Science, and Transportation and the Committee on Agriculture, Nutrition, and Forestry in handling S. 1650 in the Senate. Senator INOUYE of the Committee on Commerce, Science, and Transportation, and Senator STONE of our committee are to be especially commended for their leadership and work in developing the legislation.

● Mr. INOUYE. Mr. President, I strongly support passage of S. 1650, the National Aquaculture Act of 1980, as passed by the House. This bill is the culmination of 4 years of effort to develop legislation to provide for the development of aquaculture in the United States. At last, we have a bill before us which is strongly supported by the House, which the White House has indicated it supports, and which the Senate can also strongly endorse.

Aquaculture is the rearing of aquatic species in controlled or selected environments, which is also commonly known as fish farming. Aquaculture is a highly energy efficient and environmentally sound means of food production which has made significant contributions to the world's food supplies for centuries—roughly 10 percent of the world's fisheries supplies come from aquaculture.

Unfortunately, aquaculture has never been as significant in the United States, where only 3 percent of our fisheries supplies come from aquaculture. This lack of emphasis in the United States is attributable at least in part to the Federal Government's failure to have a strong policy in support of aquacultural development. The result has been that those programs designed to assist new businesses have never been available to aquaculture, and regulatory programs which were never intended to apply to aquaculture inadvertently place severe restrictions on it.

S. 1650 would encourage the development of aquaculture by establishing a strong national policy in favor of such development, by requiring the development of a plan to coordinate all Federal activities relating to aquaculture, by formally establishing an interagency coordinating group to implement this plan on an on-going basis, and by requiring the agencies involved to provide various forms of assistance to the aquaculture industry. Some of us would like to have seen provisions for financial assistance as well as technical assistance, but financial assistance has been deferred in an effort to exercise budgetary restraint and to satisfy the objections of the President.

Nonetheless, this bill takes a large first step toward establishing aquaculture in the United States as a major food producing industry. S. 1650, as passed by the House, is almost identical to the bill that I introduced on August 2, 1979, that the Commerce and Agriculture Committees reported unanimously, and that the Senate passed unanimously. The few changes made by the House are minor or technical, and raise no new substantive issues. I therefore strongly urge my colleagues' support of this important piece of legislation.●

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. TALMADGE, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair on behalf of the Vice President in accordance with Public Law 90-206, appoints the following individuals to the Commission on Executive Legislative and Judicial Salaries: Edward P. Morgan and Robert P. Griffin.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President and upon the recommendation of the majority and minority leader, pursuant to the provisions of 22 U.S.C. 276, as amended by Public Law 95-45, appoints the Senator from Vermont (Mr. STAFFORD) as chairman to the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16-24, 1980, in lieu of the Senator from New Jersey (Mr. WILLIAMS), resigned.

CABINET POLITICKING AT TAXPAYERS' EXPENSE

Mr. SCHMITT. Mr. President, since the 1976 election campaign, there supposedly have been restraints on the amount of politicking that may be done by Cabinet officials. As the Presiding Officer will recall, the Ford administration was required to reimburse the Government based on a "reasonable" estimate of what portion of each trip was devoted to politics and did so. The beneficiary of that policy in 1976 was none other than Jimmy Carter, who is now President of the United States. The Federal Election Commission (FEC) now has levied the same basic requirement on the Carter campaign and its use of Cabinet members as candidate-surrogates at taxpayers' expense.

Lately, the Carter campaign has been violating this stricture. For instance, last month, Secretary of State Edmund Muskie addressed the Steelworkers Convention, at which time he attacked the Republican platform. Secretary Harris, at the Department of Health and Human Services, has traveled to Dallas and Los Angeles to make speeches attacking the Reagan candidacy. Campaign Chairman Robert Strauss is on record as favoring this blatant, unfair waste of the taxpayers' money which did not occur when Jimmy Carter was a candidate, as President Ford abided by these restraints imposed by the Federal Election Commission.

The Carter administration has used the incumbency in a more political manner than has any other candidate in recent memory. Secretary Goldschmidt even stated that he awarded "discretionary" grants only to political friends; the Carter-Mondale campaign had the FEC sue various independent committees, attempting to abridge their first amendment rights of association and free speech; and when losing in that case, they filed a petition with the Federal Communications Commission, attempting to do what the court said they could not do.

As my distinguished colleague Senator DURENBERGER said the other day, having failed to kill the messenger, they are trying to kill the message.

Furthermore, the White House has been conducting a sophisticated targeted mailing program—with the mailing expenses paid by the Government—extolling the benefits of the Carter Presidency, while Cabinet officers have been traveling at taxpayers' expense to give political speeches; and perhaps worst of all, military secrets appear to have been selectively leaked to help the administration politically.

Last week, I inserted in the CONGRESSIONAL RECORD a series of articles by Lewis Helms, written for the Federal Times, detailing abuses at the Department of Health and Human Services, with respect to political activities, including an informative piece on the Secretary's campaign appearance in Dallas and Los Angeles paid for by the taxpayer.

On Tuesday the New York Times printed a story by Steven Weisman entitled "Guidelines Restrict Cabinet Politicking." According to this article, the reinstitution of this rule against such politicking is required by the FEC and was also drafted due to public criticism of this misuse of taxpayers' money.

I hope the public will continue to watch the Carter-Mondale campaign very carefully and, along with this Senator and others, call on Chairman Robert Strauss to now reimburse the taxpayers of this country for the political trips that have occurred up until this time.

I will presume that such reimbursement will now occur for any subsequent trip based on the Federal Election Commission's ruling.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the article to which I referred earlier from the New York Times.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GUIDELINES RESTRICT CABINET POLITICKING—WHITE HOUSE ISSUES NEW POLICY ON GOVERNMENT-PAID ACTIVITIES

(By Steven R. Weisman)

WASHINGTON, September 8.—The White House, responding to a new rule from the Federal Election Commission, circulated a new set of guidelines today restricting partisan political activities that may be engaged in by Cabinet members and other officials at Government expense.

As originally drafted, the guidelines would have placed even greater restrictions on activities by Cabinet members. But they were softened after protests by Robert S. Strauss, chairman of the Carter-Mondale Re-election Committee, and several Cabinet members.

The original draft of the guidelines suggested, for example, that any defense of President Carter's record by a Cabinet member making a Government-paid trip would mean that that trip would have to be paid for by the Carter-Mondale committee. The new guidelines issued today give the Cabinet members more latitude to defend the Carter record, but the officials still may not overtly advocate Mr. Carter's re-election in a speech, if the speech is during a trip paid for by the Government.

Administration officials said that the new guidelines would have the effect of seriously hampering the sorts of speeches that Cabinet secretaries and others will be able to make this fall on behalf of Mr. Carter.

"We will now have to pick up the tab for a lot more political trips by Cabinet members than we did during the primary campaign," said a spokesman for the Carter-Mondale committee. "Because our budget is tight, that means we won't have as many campaign trips by Cabinet members as we would like."

The use of Cabinet members in the primary campaign was strongly criticized by Mr. Carter's opponent, Senator Edward M. Kennedy. In response, the Federal Election Commission ruled this summer that if any portion of a Carter aide's trip were political, the entire trip had to be paid by the campaign committee. The rule officially took effect last Friday.

CRITICISMS FROM REPUBLICANS

There also had been rising accusations recently from Republicans that Mr. Carter had been abusing the role of his Cabinet members and other "surrogate" campaigners, in sharp attacks on Ronald Reagan, the Republican nominee, and on the Republican platform.

Last month, for example, Secretary of State Edmund S. Muskie addressed a steelworkers convention and attacked the Republican platform. And Patricia R. Harris, Secretary of Health and Human Services, gave speeches in Dallas and Los Angeles saying that the Republican platform had been endorsed by the Ku Klux Klan.

White House officials said today that the new guidelines would restrict some Government-paid activities, but would not prohibit Cabinet members from speaking out on issues in their areas of expertise, as Defense Secretary Harold Brown has done in recent weeks on weapons and armaments.

"We are not going to break the law, but we cannot hide our light under a bushel basket," said Eugene Eidenberg, assistant to the President and secretary to the Cabinet. "If the Government's senior people are constrained from laying the record out, the country is not going to benefit from this campaign."

Before 1976, there were no Federal restrictions on what Cabinet members could say on Government-paid trips. In the 1976 campaign, the Administration of former President Gerald R. Ford was required to reimburse the Government based on a "reasonble" estimate of what portion of each trip was devoted to politics.

In the primary campaign this year, the Federal Election Commission required the Carter campaign to pay for those portions of Government trips by Cabinet members that were devoted to politics. If 25 percent of an official Government trip was taken up by a political speech, the Carter campaign then had to pay for 25 percent of the cost of the trip, including accommodations and transportation.

After Mr. Kennedy's criticisms and the ruling by the Federal Election Commission, the White House counsel's office drew up a memorandum in August warning Cabinet members and others to be careful, lest any partisan comments force the entire trip to be paid by the campaign.

THE IMMIGRANTS

Mr. SCHMITT. Mr. President, today's Wall Street Journal contains a useful article by Robert E. Taylor entitled "The Immigrants," and deals with the general issue of undocumented workers, illegal aliens, Mexican migrants, whichever term you wish to use.

It is unfortunate that Mr. Taylor's article neglects to discuss the various legislative proposals before both House and Senate to deal with this problem and that, for the most part, the major proposals show that the trends in Congress are quite different in major respects from those that are being apparently favored by the Select Commission on

Immigration and Naturalization headed by Father Hesburgh of Notre Dame.

In the Senate, a bill introduced by this Senator and cosponsored by eight other Senators, favors, and with good justification, the establishment of a legal worker program involving the Mexican migrants. A companion bill, H.R. 5128, introduced in the House, advocates a similar approach.

Mr. President, the summary of the comments by the staff director of the select commission, Mr. Lawrence Fuchs, seems to indicate that the commission, in searching for a compromise between various competing proposals to deal with this very serious problem of illegal aliens, is potentially going to settle on exactly the wrong set of solutions.

It is indicated that Mr. Fuchs has said that the commission leans toward a firm ceiling of about 750,000 migrants a year, which will not do anything to solve the basic problem. It appears that we are dealing with from 2 to 4 million undocumented workers entering this country each year, most of them temporary, most of them returning to their homeland, insofar as Mexico is concerned, at least.

To set an arbitrary ceiling that is lower than the number of jobs that are available to the migrant worker, jobs that are not competitive with American workers, means that you are still going to have an illegal alien problem. They will still cross the 2,000-mile border between the United States and Mexico in order to escape the economic deprivation that they face in Mexico at the present time to temporarily work in jobs that are available to them in this country.

So whatever we do, the ceiling, if there is to be a ceiling, must reflect the realities, not only of the job market, but of the impossibility of enforcing a law against migration along a 2,000-mile border.

Mr. Fuchs also suggests that there should be a law against hiring illegal aliens and sanctions against employers who do. Most Hispanic organizations, most people who realize the implications of such a law, will not favor that approach because it clearly would result in increased discrimination against U.S. citizens of Hispanic descent or of descent the same as those nationals who enter this country illegally seeking work.

Mr. Fuchs suggests that a counterfeit-proof identity card identifying all citizens and legal alien residents should be considered. Again, there are major implications of such a proposal. This country has done very well without identity cards. There is some real question of whether it should now take a step contrary to our traditions in establishing such identity cards.

Mr. Fuchs also suggests that the Commission is leaning toward some form of amnesty for illegal aliens who live and work here permanently. If it is the amnesty proposed by the President some years ago, clearly that does not solve the problem, it merely postpones it. For those persons who are in this country with well-defined roots, based on dependents, length of stay and other factors that are clearly definable, we should make the decision more than likely that they are permanent residents, but make no discrimination other than that that already exists in favor of their becoming citizens.

The problem, Mr. President, that we have in dealing with the problem of economic migrants crossing our borders is that nobody or few people in high levels of policy, including the White House, understands the realities of the real world, a reality of a job market that requires semiskilled and unskilled labor that U.S. workers are no longer required to perform because of the economic net that we have placed under our population. It ignores the reality of a 2,000-mile border which cannot be enclosed except by the use of extraordinary force and extraordinary costs. It ignores the reality of the temporary nature of most of the migration that we are dealing with.

I strongly recommend that my colleagues consider the approach or modifications of the approach recommended in S. 1427 by myself and my colleagues as the only realistic way in which we begin to gain control of the immediate problem of illegal aliens, undocumented workers from Mexico.

It is important also that we remember that a long-term solution involves close economic cooperation between the United States and Mexico, and other countries that are sources of undocumented workers, to assist them to move into the economic 20th century and provide meaningful employment for their citizens, assist them in realistic ways, not in most of the ways that we have attempted to assist them in the past.

Mr. President, I ask unanimous consent that the article by Mr. Taylor published in this morning's Wall Street Journal be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

U.S. POLICY ON WHOM TO ADMIT DRAWS FIRE AS OUTDATED AND FUTILE

(By Robert E. Taylor)

CHULA VISTA, CALIF.—By late afternoon, hundreds of them sit silently on an open slope at the Mexican border watching. On the American side, U.S. Border Patrol agents watch back from a hill a quarter mile off. "They'll come after dark," one says.

And they do. Two hours after sunset on this strip of border called the War Zone, the dark hills are alive with fleeting shapes as the unequal combat waged here nightly is replayed again.

The agents have vehicles and horses, infrared telescopes that see in the dark, helicopters, searchlights and electronic sensor alarms battle proved in Vietnam. The Mexicans have persistence, numbers and the night. It is enough.

Agent Robert Hines, tipped off by a sensor alarm, collars 19 people sprinting through the zone for the U.S. border town of San Ysidro. But there are too many running shapes, too many alarms; as he hustles to respond to another alarm, three figures flit past behind him.

He never knows how many escape him, but he does know that many of those caught and dumped back across the border will try again and again until they succeed. "It's frustrating as hell," Mr. Hines says. A colleague adds: "It's like standing with your finger in a dike that has a million holes in it."

What happens nightly here is also a live demonstration of what now is widely viewed as the futility and failure of U.S. immigration policy. A Greek chorus of critics, including many in the immigration bureaucracy itself, denounces the laws governing it as cumbersome, arbitrary and hopelessly outdated; refugee policy in particular is viewed as a mess, with the administration wildly tacking this way and that.

TROUBLED AGENCY

The agency charged with enforcing the laws clearly is failing. The Immigration and Naturalization Service (which includes the Border Patrol) is undermanned, mismanaged and plagued by low morale and charges of brutality. While hundreds of thousands of aliens seeking legal entry here are stuck for years in its bureaucratic machinery, it can't stop hundreds of thousands more who just sneak in or overstay visas and melt into the resident population.

The agency, called INS, "is absolutely overwhelmed by the sheer number of people it has to deal with," says Peter Schey, executive director of the National Center for Immigrants' Rights. And a Congress practically paralyzed by conflicting pressures from special-interest groups has been unable to do much about either reforming the laws or their enforcement. Instead, it appointed a select commission to recommend an overhaul of the system, but a protracted struggle is likely over the measures that it is expected to suggest.

Meanwhile, even those with sharply divergent views on the benefits of immigration are alarmed at the failure to control it. Roger Connor, head of the Federation for American Immigration Reform, a group that wants to curb the flow sharply, says, "If you don't have control of your immigration, you don't have control of your future." Federal Refugee Coordinator Victor Palmieri, who worries that a backlash against immigrants may lead to harsh and repressive legislation, says of the pell-mell Cuban influx: "The U.S. was denied the fundamental basis for refugee and immigration policy—the ability to screen and process people to see if they met your criteria."

THE MAIN PROBLEM

Though highly publicized, the Cuban inflow is insignificant compared with the huge steady northward flood of illegal Mexican nationals. To stop them, an undernourished Border Patrol fields only 350 agents at a time along a 1,945-mile span from the Gulf to the Pacific—an impossible job made even more so by spot shortages of vehicles and gasoline.

So the immigrants pour through to the farms of the Southwest, to the garment-industry sweatshops and small plants of Los Angeles, to barrios in a dozen cities where they simply disappear from official view. If the INS raids an employer's plant and scoops them up for deportation, they come back—and often bring friends.

No one knows how many are here. Estimates of foreigners living illegally in the U.S.—mostly Mexicans—range up to 12 million or more; Census Bureau officials say about 3.5 million, but this may be too low. Thin as it is, the Border Patrol catches hundreds of thousands a year and estimates that two slip in for each one apprehended. Some agents think that the ratio is closer to five to one.

The effect of this secret population is a puzzle: Studies disagree on whether the migrants are a drain on the domestic economy or whether they contribute more to it than they take away.

The social effect is equally hard to gauge, but there is mounting concern that the migrants are creating what ambassador-at-large Robert Krueger calls "a permanent underclass." Labor Secretary Ray Marshall adds: "I am convinced that we are sowing the seed of future civil-rights struggles, and we would be better off if we were to confront the issue now."

While the army of illegals slips through the back door to the U.S., many others trying to enter lawfully are stalled outside the front door. This year, more than 700,000 aliens will take up legal residence here, compared with an annual average of about 400,000 during the mid-1970s—while the waiting list has grown to nearly one million from 600,000 or so. Some people have been waiting 10 years. They are victims of a patchwork of laws that immigration attorney Dan Danilov calls "an abysmal mess."

The history of these laws reflects a national schizophrenia about immigration in a country forged by immigrants. For years, the U.S. didn't put any numerical limit at all on inflow; in 1819, it even passed a "steerage law" that improved shipboard conditions for newcomers headed here.

But in 1882, alarmed by an influx of Chinese laborers, it banned Chinese and didn't let them in again for more than 60 years. It opened the golden door to nearly nine million immigrants from 1900 to 1910—and then in the 1920s slammed it on a lot of fingers by imposing national-origin quotas that, in effect, greatly favored Western Europe at the expense of other areas, including nations with predominantly black or Asian populations. By 1965, national-origin quotas were viewed as racist and scrapped.

LEGAL TANGLE

Though current law is a tangle of exemptions, exceptions and special cases, it basically encourages family reunification; spouses, young children and parents of any U.S. citizen, for example, can enter in unlimited numbers.

Other close relatives of citizens, and all close relatives of aliens legally living here, must wait in line under a "preference category" system that provides a fixed number of available slots for each category. The system also provides some protection for the American labor force. There are slots for professionals, people of exceptional ability in the arts and sciences, and workers with skills in short supply here—but foreigners with no close relatives in the U.S. and no needed skill or background generally can't get in unless they qualify as refugees.

In all, 280,000 slots are currently available each year, and Uncle Sam treats each nation the same in doling them out—no more than 20,000 preference visas a year for any one country. The law thus treats Iceland as if it were as populous as India. It also is blind to the vast differences in desire to emigrate among people of different nations.

The result has been an enormous disparity in the time people must wait to join relatives here. The Mexican wife of an alien legally living in the U.S., for example, now must wait about five years to join him. In most other places, the wait isn't more than six months. In teeming Hong Kong, allowed only a few hundred slots as a dependency of the British Crown, some have waited 10 years.

REFUGEE PROBLEMS

U.S. handling of refugees, a separate and growing class of immigrants, also has been "haphazard, incoherent and often inadequate," according to the House Judiciary Committee. The law governing refugees hasn't been any better, according to other critics.

Until recently, it restricted refugee admission almost exclusively to people fleeing from Communist governments or from the Middle East. Legal roadblocks barred all but a trickle of those trying to escape from oppressive rightist regimes, some with U.S. ties, such as Haiti's, and the small number of refugee preference slots available were totally inadequate to handle waves of escapees from Hungary in the '50s, Cuba in the '60s and Vietnam in the '70s. Congress and various Attorneys General had to whip up solutions on the spot.

The 1979 Refugee Act, which took effect in March, stripped away the anti-Communist bias and increased refugee preference slots to some 50,000. Then 120,000 Cubans and 15,000 Haitians descended on Florida. Publicly torn between welcoming them and trying to stop them, the administration finally decided it couldn't send them back to sea—but it also declined to admit them under the Refugee Act, on the ground that that law was intended only to aid immigrants who had been screened and granted visas abroad.

Instead, it waffled; it called the newcomers "entrants," a label that entitled them to fewer federal dollars for resettlement than refugees. This maneuver, private resettlement experts say, has unfairly complicated the Cubans' and Haitians' adjustment here. Government officials explain that the administration was torn between compassion—along with a desire to embarrass the Castro regime—and fear that granting formal refugee status might lure new flotillas of refugees fleeing from Caribbean poverty.

The select commission appointed by Congress now is the principal forum for debate over what should be done about refugees, illegal aliens and other immigrants. Staff director Lawrence Fuchs says the group seems headed toward agreement on some measures, including:

A firm ceiling of about 750,000 people a year or a flexible goal for all immigration.

A revamped, more flexible preference system.

Amnesty for most illegal aliens who already live and work here, allowing them to stay and become citizens.

A law against hiring other illegal aliens and sanctions against employers who do. Neither exists now.

A counterfeit-proof identity card or databank system identifying all citizens and legal alien residents permitted to work here.

A beefed-up INS.

Even if commission members agree on these steps, and there isn't any certainty they will, some of the proposals may never make it through Congress. The administration and labor unions, for example, strongly back sanctions against employers of illegals, and most immigration experts agree that without such penalties the flow northward from the Mexican border can't be checked effectively. But potent Sun Belt agricultural and business interests have defeated in the Senate two sanctions bills that passed the House.

FARMERS' POSITION

Southwestern farmers say they need aliens. "California agriculture can't survive without Mexican laborers," says a grower who has 100 acres of olives at Corning Calif. He says he and his neighbors lost $1 million or more last year when the Border Patrol scooped up his work force at the height of picking season, and he insists he can't get enough American workers at prevailing piecework rates.

The select commission is considering a temporary program that would phase out Mexican labor over five years—giving farmers time to adjust. But Mr. Fuchs concedes that even that idea faces heavy fire from organized-labor, which prefers an immediate ban.

Almost everybody loathes the identity-card proposal. Hispanic groups fear that it would increase police and other official harassment of Hispanics. Civil-liberties groups oppose it as Big Brotherism and unwarranted invasion of privacy. Secretary of Health and Human Services Patricia Harris says the Social Security system would blow a gasket if charged with producing and keeping track of it.

But commission staffers don't see any alternative. "People look at it and say, 'I hate it, I hate it, we need it,' " says one. The Rev. Theodore Hesburgh, president of the University of Notre Dame and commission chairman, pleads: "Give me a better solution, and I'll be for it."

Observers agree, however, that any overhaul of immigration policy requires an overhaul of the INS. Its manual record-keeping system is so overtaxed that it recently lost 50,000 files in New York alone. It has drifted without a permanent head for almost a year, and the Justice Department has left unfilled INS jobs authorized by Congress.

When it tries to act, it is often immobilized by red tape and long legal battles; a deportation can take five years, and one celebrated case has lasted almost 20. Some of its Border Patrol agents have been charged in brutal beatings of immigrants, and morale among others who feel they are carrying water in a sieve is low. "It's a disaster," a congressional staffer says.

If it is and if political leaders are paralyzed and confused, that may be because bureaucrats and lawmakers alike are so divided in their own minds. In them, the historical American schizophrenia about the immigration issue lives on.

Refugee Coordinator Palmieri, for one, expects economic and political turmoil to push ever more people out of Southeast Asia, Latin America and the Caribbean toward the U.S., but he admits he doesn't know what to do about it. He says the U.S. can't accept many more immigrants than it is currently taking in but also can't afford to be seen as "a nation that builds walls around its own affluence." He adds:

"I'm trying to manage what is, in many ways, an unmanageable problem."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corporation, which was referred to the Committee on Energy and Natural Resources.

PRESIDENTIAL APPROVALS

A message from the President of the United States, reported that he had approved and signed the following acts and joint resolution:

On August 28, 1980:

S. 1863. An act to authorize the Secretary of Commerce to charter the nuclear ship Savannah to Patriots Point Development Authority, an agency of the State of South Carolina.

On August 29, 1980:

S. 659. An act for the relief of the Black Hills Area Council of the Boy Scouts of America.

S. 1140. An act to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1980 and 1981, and for other purposes.

S. 1626. An act for the relief of H. F. Mulholland and the estate of John Oakason.

S. 1730. An act to declare that title to certain lands in the State of New Mexico are held in trust by the United States for the Ramah Band of the Navajo Tribe.

On September 4, 1980:

S. 496. An act to increase the appropriations ceiling for title I of the Colorado River Basin Salinity Control Act (the Act of June 24, 1974); 88 Stat. 266), to increase the appropriations authorization for the Small Reclamation Projects Act of 1956 (70 Stat. 1044), and for other purposes.

S. 1998. An act to provide for the United States to hold in trust for the Tule River Indian Tribe certain public domain lands formerly removed from the Tule River Indian Reservation.

S. 2549. An act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes.

S.J. Res. 83. Joint resolution to authorize the Camp Fire Girls of Cundys Harbor, Maine, to erect a memorial in the District of Columbia.

S. 2055. An act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon.

On September 8, 1980:

S. 2680. An act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666).

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-854. A petition from James J. Milligan, a citizen of St. Louis, Missouri, calling for certain actions to be taken to strengthen America's security; to the Committee on Armed Services.

POM-855. A resolution adopted by the Municipal Council of Jersey City, New Jersey, favoring the adoption of legislation to relieve municipalities from the financial burden of new sewerage treatment and water plants; to the Committee on Environment and Public Works.

POM-856. A resolution adopted by the State Council of North Carolina Junior Order United American Mechanics of the United States of America (Resolution No. 3) favoring legislation regulating the admission of aliens to the United States in such a manner as will protect and promote the interests of Americans and shield them from the depressing effects of unrestricted immigration and thereby promote the general welfare and happiness of our Nation's people; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JACKSON (for himself, Mr. MORGAN, and Mr. GOLDWATER) (by request):

S. 3107. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History respectively; to the Committee on Rules and Administration.

By Mr. DOLE (for himself and Mr. PACKWOOD):

S. 3108. A bill to amend section 72 of the Internal Revenue Code of 1954 relating to the taxation of annuity contracts; to the Committee on Finance.

By Mr. RIEGLE (for himself and Mr. LEVIN):

S. 3109. A bill for the relief of Dante Soriano Loo and Rhodora Guerrero Loo, his wife; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JACKSON (for himself, Mr. MORGAN, and Mr. GOLDWATER) (by request):

S. 3107. A bill to provide for the designation of the Smithsonian Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History, respectively; to the Committee on Rules and Administration.

NATIONAL MUSEUM OF AMERICAN ART AND NATIONAL MUSEUM OF AMERICAN HISTORY

● Mr. JACKSON. Mr. President, at the request of the Board of Regents of the Smithsonian Institution, Senator MORGAN, Senator GOLDWATER, and I have introduced legislation to rename the Institution's National Collection of Fine Arts and the National Museum of History and Technology as the National Museum of American Art and the National Museum of American History, respectively. I ask unanimous consent that a statement prepared by the Smithsonian staff explaining the reasons for the proposed changes be made part of the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

RENAMING THE NATIONAL COLLECTION OF FINE ARTS AND THE NATIONAL MUSEUM OF HISTORY AND TECHNOLOGY

It is proposed that the name of the National Collection of Fine Arts be changed to the National Museum of American Art and that the name of the National Museum of History and Technology be changed to the National Museum of American History. The proposed changes do not in either case involve any major redirection of museum activities, but, rather, are designed to reflect more accurately the character and purpose of each museum.

For more than ten years the National Collection of Fine Arts has concentrated exclusively on American art, an area heretofore neglected, especially in its nineteenth—and early twentieth—century aspects. Building on its important basic collections, especially those contributed early in the century by William Evans and John Gellatly, it has amassed a large and notable collection of American painting, sculpture, and graphic arts from the eighteenth century to the present. Its extensive publications and active programs in education and scholarship, together with its assembly of material for the ready use of scholars, have been instrumental in reshaping the study of art in American culture. Its exhibitions, many of which circulate through the country and abroad, have introduced a wide public to the rewarding, yet often ignored, range of character of American creativity. Hilton Kramer, in the New York Times in 1976, wrote, "In the National Collection of Fine Arts, especially, we now have an institution—again, for the first time in our history—that takes all of American art as its scholarly province, and that acts in the most responsible and clear-minded way to enhance our understanding and appreciation of its many-sided accomplishments."

This fruitful concentration on American art has been obscured by a title bestowed on the museum in 1937 when the name, National Gallery of Art, was transferred from this collection to the present National Gallery. In choosing the title, little thought was given to the possible future direction of the collection which is, in fact, the oldest national collection of art. Although specialists are well aware of the nature of the present National Collection and its activity, members of the public find the name confusing and little descriptive of what they find there of special appeal. Foreign visitors and embasy quests, who find the museum a particular pleasure because it effectively exhibits so much material with which they are not familiar, have repeatedly complained that the museum's name fails to indcate what to them is its major attraction and thus escapes the attention of many who come here. The name suggests simply one more general museum of art—if, indeed, the word "collection" suggests even a museum.

To make clear, then, what the National Collection of Fine Arts has indeed become—a center for the collecting, study, and presentation of American art—and to make the title of the museum accord with those of other Smithsonian museums, it has been recommended that its name be changed to the National Museum of American Art.

With respect to the National Museum of History and Technology, it has suffered from its beginning from an indenity problem that has affected in varying degrees all of its constituencies. Most importantly, the current name either confuses or misleads the visiting public. Informal questioning and eavesdropping reveal that a substantial number of visitors to the Mall (and to the museum itself) do not know or cannot remember the name of the museum: commonly it is thought of as the Museum of Science and Technology, the Museum of Industry and Technology, and the like. This leads a number of visitors whose interests are neither scientific nor technological to avoid the museum altogether, while other who do visit are disappointed when they do not find there the kind of demonstrations of physical sciences or presentations of the latest gadgets that are characteristic of science museums.

The same sort of confusion has existed in the minds of potential donors and even of the museum's own staff. In both cases the results are unfortunate. The museum's collections in American cultural, social and political history have been improverished because many owners of important objects, thinking of it as primarily concerned with technology, have chosen to give their collections to institutions that are more clearly concerned with these areas. Even the museum's staff has been affected by the ambiguity of the museum's mission and as a result has attempted to achieve incompatible, or at least unrelated, objectives.

The only legislation specifying the name of the museum is the authorization for appropriations to construct the building. The history of this legislation makes abundantly clear—as the present name does not—the intention of the Congress that the museum should concentrate upon the history and technology of America. In the judgment of the museum's staff (including those specializing in the history of science and technology), of its director, of the distinguished scholars who comprise the Smithsonian Council, and of the Smithsonian administration, a new name is needed to clarify rather than to change what has always been the basic mission of the museum; to illuminate through collections, exhibitions, research, publications and educational programs the entire history of the United States. Since technology is inextricably involved in our history, it will continue to receive due attention, but the name of the museum would no longer suggest an emphasis upon the history of technology at the expense of social, cultural, and political history.

After careful consideration, the name National Museum of American History has been chosen as best reflecting the true purpose and content of the museum.●

By Mr. DOLE (for himself and Mr. PACKWOOD):

S. 3108. A bill to amend section 72 of the Internal Revenue Code of 1954 relating to the taxation of annuity contracts; to the Committee on Finance.

TAXATION OF ANNUITY CONTRACTS

● Mr. DOLE. Mr. President, for some time now, many of us have argued that inflation, and the current administration's misguided efforts to control it, are having a devastating effect on our economy. Today, Senator PACKWOOD and I are introducing legislation to correct an unintended loophole created by the instability of the present economic situation.

The investment gain on amounts used to purchase nonqualified deferred annuities is not taxed until payments are made. This is a good and reasonable result since it encourages people to make long-term savings for their retirement years or other worthwhile objectives. These long-term savings benefit the economy by providing the funds for capital improvement and economic growth.

In recent years nonqualified deferred annuities, both fixed and variable, have provided rates of investment buildup that are competitive with yields under many forms of investments that are subject to current taxation. Because it is possible to "cash out" of many nonqualified annuities in a single year, by surrender or otherwise, or to transfer the value of one such contract to another without triggering tax, such contracts have been used by many purchasers for short-term investment purposes. This use of annuity contracts by individual investors for other than annuity purposes threatens the Treasury with substantial revenue losses. The disintermediation caused when investors "cash out" of these contracts threatens the stability of the insurance company reserves that support fixed annuities and jeopardizes the contract values of holders of both fixed and variable annuities. Stable insurance company reserves constitute vast capital sources for American industry.

We, therefore, are introducing legislation to limit the traditional deferral of taxation on investment build-up under both fixed and variable nonqualified annuities to those that permit a distribution of value, other than in the event of death, only under annuity payment options containing life contingencies or in substantially equal installments over 60 months or longer. By eliminating all possibility of "cashing out," this change will remove from the nonqualified annuity market taxpayers who are interested only in such contracts as an alternative means of short-term investment. This change will not affect the legitimate use of nonqualified annuities to provide supplemental retirement income or to fund certain periodic payments, such as alimony, child support, and college tuition.

This change will have no effect upon the use of annuity contracts in connection with any employee benefit plans. Thus, this change will not affect annuity contracts purchased, distributed, or exchanged in connection with any qualified pension, profit-sharing, stock bonus, or annuity purchase plan, any individual retirement annuity (IRA), or any annuity purchase arrangement meeting the requirements of section 403 (b). In addition, this change will have no effect upon the use of annuity contracts under any nonqualified employee benefit plan, except to the extent that annuity contracts are distributed to participants. Such plans include unfunded deferred compensation plans (regardless of the tax status of the employer and including plans that cover independent contractors), retired lives reserves plans, and other recognized employee benefit plans.

The proposed change would apply only on a prospective basis to new money and new contracts.

We recognize that this legislation would constitute a substantial change in the tax treatment of annuities. This change in the tax laws is warranted, we believe, by the impact the unstable economy has had on the marketing and use of nonqualified annuities. We are also confident that the public will have sufficient input to assure that only the present abuse will be affected.●

ADDITIONAL COSPONSORS

S. 2375

At the request of Mr. KENNEDY, the Senator from Hawaii (Mr. INOUYE), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of S. 2375, a bill to amend the Public Health Service Act to revise and extend the programs of assistance under title VII and VIII for training health professionals and to extend the National Health Service Corps program.

S. 2890

At the request of Mr. LEVIN, the Senator from Massachusetts (Mr. TSONGAS), the Senator from Texas (Mr. TOWER), and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2890, a bill for the relief of Maria and Timofei Chmykhalov, and for Lilia, Peter, Liubov, Lidia, and Augustina Vashchenko.

AMENDMENTS SUBMITTED FOR PRINTING

MILITARY CONSTRUCTION AUTHORIZATION—S. 3059

AMENDMENT NO. 2321

(Ordered to be printed and to lie on the table.)

Mr. JACKSON (on behalf of the Committee on Armed Services) submitted an amendment intended to be proposed by him to S. 3059, a bill to authorize certain construction and military installations, and for other purposes.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS—H.R. 7631

AMENDMENT NO. 2322

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN submitted an amendment intended to be proposed by him to H.R. 7631, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Committee on Energy and Natural Resources on the nomination of Mr. John C. Sawhill to be chairman of the Board of Directors of the U.S. Synthetic Fuels Corp.

A hearing is scheduled for Thursday, September 18, beginning at 8:30 a.m. in room 1202 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510. For further information regarding the hearing, you may wish to contact Jessie Mackenzie of the committee staff on extension 7147.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, September 16, 1980 to hold a hearing on the disaster harvest in Bulloch County, Ga.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS AND RECREATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Parks and Recreation Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to hold a hearing on S. 2630, legislation to establish the Martin Luther King National Historic site in the State of Georgia and S. 3091, legislation which authorizes revisions to the boundary of the Chaco Canyon National Monument.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CURRENT EXPORT POLICY HAS FAILED

● Mr. CHAFEE. Mr. President, yesterday, President Carter released the administration's long awaited study on export disincentives. In view of this document, I direct the attention of my colleagues to a column which appeared in this past Sunday's New York Times written by Mr. Stanley Marcuss, former Deputy Assistant Secretary at the Commerce Department. The piece, entitled "Exports: From 'Born Again' to 'Still Born' " is particularly appropriate today given what the President's report says and what it does not say.

Mr. Marcuss begins by reminding us that 2 years ago this week, the White House announced a "new" export policy. It was called "a beginning, a first step."

Mr. Marcuss writes:

> Two years later our export policy has proven stillborn.

Export-Import Bank funds have dried up. More and more Americans are coming home dailv because of unfair tax policies. And Government agencies continue to pile on the obstacles. Marcuss writes:

> We seem willing to spend billions on aircraft carriers and planes to fight for oil, yet hardly one red cent to generate the economic strength to buy that oil—and produce useful goods and services for the rest of the world in the bargain.

And the trade deficits continue to grow.

Like the "no action" policy we have experienced for 2 years, the President's report on export disincentives released yesterday ducks the fundamental issues.

No one wants to tackle the sensitive political problems like the Foreign Corrupt Practices Act, the U.S. antiboycott law, or adequate funding for Export-Import Bank.

Lack of courage to put an end to export disincentives and to create adequate incentives for exporters means that we will no doubt reach the record deficit of $30 billion that has been projected for this year.

In the President's report to Congress there are no recommendations made concerning problems with the antiboycott law regulations.

There are no recommendations made concerning environmental and safety regulations.

There are no recommendations made concerning a whole series of other potential export disincentives.

What does the President recommend?

The only major proposals are in the areas of taxation of Americans overseas, and the creation of export trading companies—both of which originated in Congress and were literally forced upon the administration. Had it not been for action taken by the Senate Finance Committee on the tax issue or for the efforts of Senators STEVENSON, DANFORTH, HEINZ, and others on the trading companies bill, I question whether these topics would have ever been included in the President's report.

Even with such pressure, the White House has managed to misrepresent the problems created by our tax policies on overseas workers. The President proposes targeting a tax exemption on earned income for U.S. citizens working in developing countries or hardship areas.

The President has obviously not read the report issued by his own "blue ribbon" Export Council. The goal of granting an exemption on earned income is to encourage U.S. exports, not to encourage more Americans to work in specified hardship areas.

What the President's export disincentives report really says is that the status quo should continue while these disincentives are studed for another year or two. Such an endorsement for "no action" is an insult to the business community who gave of its time and offered recommendations. It is an insult to all U.S. exporters who are spending millions of dollars trying to comply with regulations which keep them one step behind their foreign competitors.

I recommend that my colleagues study the President's report carefully after reading Mr. Marcuss' article.

As an example, I direct attention to what each one says about a most significant export impediment: The Foreign Corrupt Practices Act of 1977.

Mr. Marcuss writes:

> United States anti-bribery law embodies the unassailable proposition that business obtained by bribery corrodes our fundamental precepts of free competition.
>
> But does it make any sense to have a law that intimidates even the most honest and scrupulous because government agencies refuse to clarify it?

The President's report states:

> Some in the business community have expressed their uncertainty about what conduct is prohibited and what conduct is not prohibited by the FCPA.

The President goes on to point to the Justice Department's review procedure through which business people can present an actual business situation and ask the Justice Department to furnish an option as to the legality of such an action.

Unfortunately, the Justice Department is not required to provide an opinion to every case.

It is not required to provide an opinion within a specific time period.

And, it has stated that no general policies may be extrapolated from any opinion. Everytime an American business person operating overseas has a question about the FCPA, he must go back to Justice.

Worst of all, no other agency is bound by the Justice Department's opinion. This means that the Securities and Exchange Commission, which also has enforcement jurisdiction over the bribery provisions of the FCPA, is not required to abide by Justice's rulings.

Can such a procedure really be called "protection" or "guidance." Business people inform me that they do not think of it as such.

The President's report says that the FCPA needs at least another year of study before we can even begin to consider ways of clarifying the ambiguities.

As the sponsor of S. 2763, a bill to clarify the FCPA cosponsored by 13 Senators, I am appalled at the fact that the President has refused to address this problem. Even the relatively simple problem of dual enforcement jurisdiction between the Justice Department and the SEC is ignored.

U.S. Trade Representative Reubin Askew and Commerce Secretary Phillip Klutznich both recommended to the President in July that the Justice Department be given sole enforcement jurisdiction over the bribery provisions of the FCPA.

The Justice Department had no objection to this.

The SEC, apparently, had no objection.

Yet, again the President did not act.

Until the administration assumes responsibility for a unified, consistent export policy—until export expansion is recognized as a necessary goal—then our failure to achieve that goal will impair our ability to achieve others.

As Mr. Marcuss states:

> It is not a question of abandoning the quest for human rights, tax equity, a balanced budget, free competition, or trade that is free from bribery and the distorting effects of boycotts. . . . It is a question of realizing that the pursuit of these goals without regard for the consequences is the pursuit of abstractions at the expense of reality.

Mr. President, I ask that the article entitled "Exports: From 'Born Again' to 'Stillborn' ", by Mr. Stanley Marcuss which appeared in the New York Times on Sunday, September 7, 1980, be printed in the RECORD.

The article follows:

[From the New York Times, Sept. 7, 1980]

EXPORTS: FROM "BORN AGAIN" TO "STILLBORN"

(By Stanley J. Marcuss)

Two years ago, the White House announced a new national export policy. This was to be the dawn of a new awareness and a new attitude toward trade, born again in the cauldron of a declining dollar and deepening trade deficits. "A beginning, a first step," it was called.

Two years later, our export policy has proven stillborn. Export-Import Bank funds have dried up. Trade with the Soviet Union has been virtually shut down.

Daily more and more United States executives abroad pick up stakes and come home because the effort is no longer worthwhile. Stung by embargoes and flip-flops in policy, customers abroad no longer believe they can rely on the United States to fulfill its commitments and thus look elsewhere for trading partners. And government agencies pile on the obstacles, almost gleefully it seems, dangling the sword of fine or imprisonment over those whose most grevious sin may be little more than an inability to understand the bewildering array of conflicting government regulations churned out daily.

Meanwhile, the trade deficit continues to grow—a record $30 billion in red ink is forecast for this year—and once-mighty industries like steel, autos and shipbuilding continue their decline.

Why hasn't the promise of our national export policy been fulfilled? Because it is a policy in little more than name.

To be sure, when announced it contained a recommendation that Congress provide a little more money for export finance. It also contained the familiar mandate to Cabinet Secretaries to take export consequences into account in making their day-to-day decisions—a little like telling someone to look right and left when going through an intersection. And it contained the all to familiar announcement of yet another blue ribbon committee, the President's Export Council, to restudy a problem that has been studied to death by countless committees, commissions, and government agencies over the last 10 years.

But beyond that there was little to offer. The fundamental issues were ducked. Indeed, they were never even presented to the President for his consideration. No one wanted to tackle the sensitive political issues involved, and many believed that eventually the problem would disappear anyway.

Perhaps those who argue that there is no need to do anything special to increase United States exports are right. Maybe—just maybe—the trade deficit will be so bad and the dollar will fall so low that American goods will eventually become an irresistible bargain, and the situation will correct itself.

But before that happens, the United States will have paid dearly in inflation, loss of jobs, industrial decay, political and social unrest, and in the process will have mortgaged its increasingly hollow claim to world leadership to those who turn on the oil tap each morning. It is ironic in the extreme that we seem willing to spend billions on aircraft carriers and planes to fight for oil yet hardly one red cent to generate the economic strength to buy that oil—and produce useful goods and services for the rest of the world in the bargain.

We find ourselves in this predicament because export policy is not an issue whose time has come. Despite the rhetoric, despite the searing experience of the 1970's when America found itself unable to pay for the goods it has come to depend upon for its prosperity, most Americans still regard exports as a distinctly secondary aspect of our economic life.

Changes in this basic attitude are likely to be slow in coming. The major obstacles to exporting erected over the years continue to enjoy a constituency and a priority that make any effort to remove them politically hazardous.

It is difficult to be in favor of trade with the Soviet Union when it persists in heavy-handed behavior even though, to paraphrase Adlai Stevenson, one might just as well attempt to square the circle as to expect the Soviets to abandon their misguided cause in Afghanistan under threat of losing American help to build a blue-jean factory.

No one wants to appear against human rights even though trade sanctions taken in the name of human rights have probably done as much to retard as to advance the cause of individual liberty around the world. No one wants to appear tolerant of foreign bribery even though the United States is virtually powerless to stamp out corruption in parts of the world that do not share our values.

And many are hesitant about supporting financial incentives for big corporations to increase their exports even though such corporations may be the pillar upon which most of the United States export effort rests.

As a result, the obstacles persist, and we refuse to face up to their haphazard and contradictory application.

United States antiboycott law, for example, embodies a noble ideal: no United States company should buckle under to a foreign country's demands that it systematically exclude other United States companies from participating in international trade.

But does it make any sense to have three separate and conflicting statutes on the subject and three separate government agencies with different regulations and perspectives to enforce them?

United States antibribery law embodies the unassailable proposition that business obtained by bribery corrodes our fundamental precepts of free competition. But does it make any sense to have a law that intimidates even the most honest and scrupulous because it cannot be understood and because government agencies refuse to clarify it?

Most Americans do not understand the intimate link between United States export performance and such vital issues as the fight against inflation and the effort to preserve American influence throughout the globe.

When the dollar goes down, the cost of what we import goes up. When we consistently buy more from abroad than we sell, American jobs are jeopardized. Still, organized labor remains one of the most implacable foes of the Export-Import Bank, an agency designed to help increase United States exports.

Those who do understand the stakes show a frightful tendency to be coopted when it comes to pushing for the right decisions where hard choices are involved.

The President's Export Council is an example, despite its vigorous efforts over the last year. At the time the Council was created, no one in government believed that yet another committee would add a jot or a title to our understanding of the issues. Months of work exploring all conceivable options for dealing with our dismal export performance had preceded the export policy pronouncement. A new committee would add nothing—except a cover for the fact that the months of work had produced very little. For those who were unwilling to come to grips with the real issues—tax, antitrust, financial, regulatory, and foreign economic policy—a high level committee would help buy time.

The pattern persists. Speeches about the importance of exports ring with patriotic fervor. Government reports on export disincentives tumble out almost daily. Congressmen introduce bills and hold hearings on trade policy.

Meanwhile, the door to the Export-Import Bank remains barely open for lack of funds, and United States companies spend millions trying to comply with regulations which keep them one step behind their competitors abroad.

This is the way it will continue to be until policy-makers come out of the closet and face up to the fact that export growth is also a worthy goal and that the failure to achieve that goal will impair our ability to achieve others.

It is not a question of abandoning the quest for human rights, tax equity, a balanced budget, free competition, or trade that is free from bribery and the distorting effects of boycotts. Far from it. It is a question of realizing that the pursuit of these goals without regard for the consequences is the pursuit of abstractions at the expense of reality.

It may be that refusing to sell frying pans to those who don't behave in accordance with our wishes provides a degree of emotional gratification. But we are probably cooking our own goose by doing so.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the Record in accordance with previous practice.

I wish to inform Members of the Senate that such a notification was received on September 8, 1980.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

The notification follows:

Defense Security Assistance Agency,
Washington, D.C., September 8, 1980.

Dr. Hans Binnendijk,
Deputy Staff Director, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

Dear Dr. Binnendijk: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country tentatively estimated to cost in excess of $25 million.

Sincerely,

Ernest Graves,
Lieutenant General, USA, Director,
Defense Security Assistance Agency.●

NOTICE OF DETERMINATION BY SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the Congressional Record this notice of Senators, or Senate officers and employees who propose to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization. The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Senator Orrin Hatch, two Senate employees under his supervision (Mr. John Haddow of his personal staff and Mr. Michael Pillsbury of the Senate Republican Steering Committee) and two Senate employees under the supervision of Senator Tower (Mr. Robert Wolthuis, Deputy Staff Director of the Republican Policy Committee and Mr. Sven Kraemer of the Republican Policy Committee staff) to visit Japan from August 29-31, 1980, the expenses of this trip to be paid for by the several domestic American organizations and the Japan Center for the Study of Security Issues, which are sponsors of the conference. It has been determined that the principal purpose of the trip is educational and that the trip is in the interests of the Senate and the United States.●

BETTER HEALTH

● Mr. KENNEDY. Mr. President, America is undergoing a revolution that I know all of my colleagues support and one in which many are active participants—a fitness revolution. Today more than 100 million Americans are exercising. Millions are dieting and taking care to improve their own health.

Mr. President, last week a well-researched and thorough series by Victor Cohn appeared in the Washington Post dealing with the value of exercise, a balanced diet and appropriate self care. I congratulate the Post and Mr. Cohn for their important contribution, and ask that these articles be printed in the RECORD.

The articles follow:

[From the Washington Post, Aug. 31, 1980]

A PASSION TO KEEP FIT—PART I

(By Victor Cohn)

Every noon, they pour out of the federal office buildings, the men and women in shorts, the joggers.

Why do they do it? A 32-year-old secretary says, "I know this sounds funny, but my boyfriend wants me to. And I like it." A paunchy man, 36, a health policy analyst, says, "To get rid of this paunch." A paunchy woman, 45: "I started it to lose weight, and I'm losing some. But I also feel more alive, more awake."

One hundred million sweating Americans are currently exercising in some way.

Like no people before us, we are running, swimming, doing sit-ups and push-ups and hitting or tossing a ball as part of a new lifelong passion to keep fit.

This exercise surge is only part of a new fitness revolution, one that has millions of us concerned not just with exercise but with everything else that affects our health.

Most of us are smoking less, fretting about weight and eating strikingly less sugar and fat in an attempt to slim down and protect our hearts. Our patronage has built an estimated $15 billion a year exercise and weight-loss industry, with thousands of fitness, "figure control" and diet centers, and new chains of sports stores selling mountains of exercise shoes, exercise suits, backpacks and headbands.

All the people who are exercising, looking for healthy foods and eating fiber instead of sugar would have been derided as "health nuts" only a decade ago. In the last 10 years, however, our doctors and our government have been telling us: "Your health is up to you. You can do far more for yourself than any doctors or expensive medical technology."

We, the people, have been getting the message. What we are seeing, say professors, is one of the late 20th century's major sociological events.

It is an event born of many elements. A concern with "self" and "controlling our own lives." A concern with body image and "keeping young"—and sexually active—into our late years. A concern over persisting environmental pollution that tells us we have to try harder to stay individually healthy. And the hard-headed, practical realization that health is indeed largely up to us.

"Exercise has certainly helped me," said one unusual Washington exerciser one recent day.

Milton Kronheim had just finished punching a bag at the George Washington University gym. At 6 p.m. every day, five or six days a week, this wiry man spends 45 minutes bending, stretching, riding an exercise cycle and punching the bag.

Not so unusual? No, except for the fact that Kronheim—the District's leading liquor distributor though he doesn't touch the stuff—is 91. He started punching the bag when he was 10. Until he was 86 and hurt his shoulder, he regularly pitched nine innings of Sunday baseball. A few years ago, he gave up handball. But he keeps punching the bag.

"It's hard work," he tells you, "It gets monotonous. But all this keeps me going. I feel good."

Dr. Ronald Crystal, 38, heads the pulmonary (lung) disease branch at the National Heart, Lung and Blood Institute. He is also a muscular runner, part of the half-naked army in Nikes and shorts who morning, noon and night plot along the nation's sidewalks and paths.

"Four years ago, I could only run around the block," he says. "Now I go out and run 15 miles, and it's absolutely nothing."

But is he healthier? Are the exercising millions truly any healthier, living longer, having fewer heart attacks for all the sweat?

Many medical enthusiasts say yes. "But as a doctor and scientist," says Crystal, "I have to say we honestly aren't sure yet."

The evidence, in strict scientific terms, is "highly suggestive" that exercisers feel better, sleep better, have more energy and tend to lead lifestyles that help prevent disease and lengthen life. And the evidence is impressive. Exercise has profound physical effects on the heart and blood vessels. It strengthens muscles. The heart, a muscle, pumps more blood. The ability of all tissues to use the increased blood flow and oxygen is increased.

Hard exercisers, even those who work strenuously just three times a week for 20 to 40 minutes, have higher levels of HDL—high density lipoprotein, or "good cholesterol"—in their blood. (High total cholesterol means more chance of heart disease; a high ratio of high to low-density cholesterol seems to mean less.)

Diligent exercisers tend to lose weight. Even more important for long life, they lower their blood pressure. Conditioning also seems to help the blood dissolve clots; clots in the blood cause strokes and heart attacks.

Despite today's stress and a thousand new pollutions, health officials report marked declines in heart and stroke deaths in the last decade. It has been a decade, they point out, of more attention to controlling blood pressure, less smoking, a lower-fat diet and also more exercise.

Students of disease have looked at sedentary vs. active D.C. postal workers, San Francisco dockers. London busmen and British business and professional men. In every case, sedentary workers were the most likely to die of heart disease. In Framingham, Mass., where a federal team watched 1,909 men for five years, those with the most active jobs and lives cut their heart attack risk by 30 percent after age 45.

And they did so because they also followed other good habits. They lowered their blood pressure and blood cholesterol and cut out cigarettes as well as staying active.

Dr. Ralph Paffenbarger questioned 16,936 Harvard male graduates aged 35 to 74 over six to 19 years. He too found that "vigorous" exercisers—those who ran for an hour three or four times a week or bicycled, played handball or walked with equal intensity—had fewer heart attacks then their fellows. Those with less strenuous activity got moderate benefit if they did enough, but those with only "light" play (golf, bowling, baseball, dancing, yard work) showed little or no benefit unless they added more strenuous work.

Does this mean exercise has to be hard to do much good? Paffenbarger indeed says "an ideal prescription" for lower heart risk must include "robust exertion" that makes the lungs fill and expand and the heart beat faster. Dr. Kenneth Cooper named this activity "aerobic."

But Dr. Lester Breslow, dean of public health at the University of California at Los Angeles, found exercising even moderately improves life expectancy. He found that those who live longest are those who follow seven health rules: daily breakfast; three meals a day at regular times with no between-meal indulging; seven or eight hours of sleep; no smoking; moderate weight; no or moderate alcohol use, and even moderate regular exercise.

Kronheim, the 91-year-old George Washington University bag puncher, pretty much follows such rules. In his gym shorts and shirt, he looks plainly old. He wouldn't deny it. His legs are spare, his skin dry and wrinkled. But his eyes sparkle, and if he told you he was only 71, you'd believe it.

When Kronheim arrives at the gym daily, and when other men, young and old, arrive for their late afternoon stints, they are at the end of their workdays. Most look tired. When they leave, you notice, almost all look fresh and sparkling. You might say they'd had some kind of fix.

Is it possible that exercise indeed may provide a natural fix, an extra dose of brain chemicals that makes exercisers feel so good they themselves often speak of their "addiction"?

The chemical evidence for this is still new and sometimes puzzling. The brain during a moderate run seems to pour out extra endorphins, "the brain's own opiates," or pain-relievers. This doesn't seem to happen to marathoners.

"Perhaps these chemicals come into play under stress, but at a certain point in training, the body no longer needs them," Dr. David Picker of the National Institute of Mental Health conjectures. "We do know that if you bicycle very hard on a machine, pedaling as hard as you can for 15 or 20 minutes, you double this opiate activity. It's certainly attractive to think this accounts for the 'high,' the euphoria so many runners report."

The same mental chemistry may explain the fact that exercise seems to help depressed mental patients, and in some cases does more good than drugs. At the University of Wisconsin, starting with long walks linked by short runs, therapists gradually encouraged 28 depressed patients to run several times weekly. This helped many of them as much as conventional psychotherapy, at less cost.

This wouldn't have surprised Dr. Paul Dudley White, the late, famous heart doctor to President Eisenhower. He bicycled, preached fitness aad helped start the exercise boom. He was certain intellectual health depends on healthy, fit circulation of blood to the brain.

"I think my running is quite addicting," Dr. Crystal of the heart and lung institute. "I think it's a positive addiction, one that gives you psychological and emotional benefit. I don't know whether or not this is a chemical effect, but I do know I feel much better."

San Francisco's Dr. Joan Lamb Ullyot, author of "Women's Running," was "the least athletic person" in her Harvard medical class by her admission. But "at age 30," she says I had a growing problem with middle-age spread . . . Now at 38, I'm a marathoner. I'm also slimner and fitter than at any other time in my life."

What does exercise do for women? The Framingham study detected no protection from heart attacks among more active women. A Dutch study of merely mild exercisers and gardners did. But most studies have not included women at all.

The "problem," researchers explain, is that women get few early heart attacks, so it's harder to establish an exercise effect. The scientists also say, "Men get more heart attacks, so it's more important to study them." The scientists, of course, are almost all men.

Women as well as men do have elevated "good cholesterol" if they are active. More men than women exercise, but in the last few years more women than men have been taking up exercise.

"I started running in 1971 for the same reasons that motivate most beginning joggers—health and appearance," Ullyot says. But now, "I have a positive addiction. If I don't run, I miss the health and good feelings."

In October 1978, Maryland representative and marathoner Goodloe Byron, a mere 49, died of a heart attack after running 12 miles. "He had a strong family history of coronary disease," Medical World News reported. "Two exercise tolerance tests, the latest in January, indicated coronary atherosclerosis. But Byron ran on, spurning warnings."

Exercise may be great medicine, but it is no cure-all. The fittest persons can and do have heart attacks and die, even at early ages.

Some doctors think heedless running can spur a heart attack. Others think running has nothing to do with the occasional disaster. No one knows for sure. But a Stanford study found that of 18 persons who died during or just after running, six had ignored warning signs like pain and difficult breathing.

All authorities agree that sporadic bursts of exercise may do more harm than good. Even regular exercise, overdone, may be harmful.

If running has become a positive addiction for some, it has become a dangerous "negative addiction" for others, the University of Wisconsin's William Morgan warns. These are persons who run almost endlessly while their other relationships deteriorate, who become anxious and irritable when they can't run and, the most telling symptom, ignore pain and injuries that can do lasting harm.

Many doctors, many of them runners, think running has been oversold as the ultimate activity. They think many unknowledgeable runners will end up with bad, arthritic knees and, almost as bad, disillusionment that ends all activity.

It is probably true that only 20 to 60 minutes of continuous hard activity like jogging or swimming can give the heart, lungs and body the most thorough workout. But "for the general public," Dr. Arthur Leon of the University of Minnesota says, "brisk walking five days a week for at least an hour will give you the same metabolic benefits, without as much risk."

Bicycling or rope-jumping or almost anything done without slowing or stopping can achieve about the same goal, and are probable better conditioners than games like handball or doubles tennis that demand only brief bursts.

Dr. Irving Wright, New York cardiologist, quarrels with the claim that golfers can't get real exercise. "A lot of old people won't go for a walk. But a golf game can get them to walk five miles."

"Vigorous dancing is an activity we often overlook," Dr. Samuel Fox at Georgetown University contributes. Dr. Joseph Fetto, New York orthopedist, says, "A lot of good exercises, like running in place and situps, don't require any special equipment."

The bottom line, it seems, is that there is no "right" exercise for everyone. The "best" exercise is the one that you'll do.

Not everyone exercises. Whites exercise more than minorities, the well-off more than the poor, the educated more than the less educated, the young more than the old. Fifty percent of those who buy jogging suits or sign up at the "Y" soon drop out.

Unlike our forebearers, most of us don't walk, pull, lift and labor as a necessary part of life. We ride and we sit, and the number of basically sedentary persons is still "growing with each passing decade" because of the "sloth" created by technology, Dr. William Kannel, co-chief of the government's Framingham study, reports.

"I think becoming sedentary is the most profound change, metabolically, that has happened to man in civilized history," says Dr. Henry Blackburn of the noted Laboratory of Physiological Hygiene at the University of Minnesota. "I think this is responsible for many of our metabolic maladaptations"—the mechanisms by which we develop many diseases.

Where do we go next, then, in the exercise movement?

Dr. Kannel urges us to consider how to start a second stage: "one to engineer physical activity" into our daily living once more.

*How to spend 2,000 calories a week exercising**

For your weekly total, add up the calories you burn in each type of exercise:

Walking: Walk 3 miles (36 city blocks) everyday (give yourself 8 calories credit for each city block walked.)

Stair climbing: Climb 710 steps every day (4 calories credit for each flight of 10 steps walked.)

Light sports: Spend 6½ hours a week (5 calories a minute credit.) Light sports include Bowling, Baseball, Biking, Dancing, Golf, Yard Work etc.

Strenuous sports: Spend 3½ hours a week (10 calories a minute credit.) Strenuous sports include Running, Basketball, Swimming, Skiing, Tennis etc.

Combined light and strenuous sports: Spend 4⅓ hours a week (7½ calories a minute credit.)

[From the Washington Post, Sept. 1, 1980]

Our Obesity Neurosis—Part II

(By Victor Cohn)

"I'd been overweight all my life," said Phil Burke age 45, client of a Georgetown University diet control program. "In the past 25 years," he said, "I lost 1,000 pounds. Then I gained back 1,000."

Americans—a generation of Phil Burkes—are too fat and getting fatter. Despite a new nationwide passion for exercise, which should eventually take off some pounds, only one group, white middle- and upper-class women past their 20s, have so far been getting thinner.

And the surgeon general is warning us: excess pounds are dangerous to our health.

Obesity "has reached epidemic proportions," say the medical experts, and too much weight remains "one of the most important medical and public health problems of our time."

The nation, it is obvious, is caught between its new passion for health, exercise and thinness and its still affluent, indulgent ways.

Who's fat in America?

One person in five is 20 percent above "desirable weight."

Women are fatter than men. Twenty-four percent of women and only 14 percent of men are obese.

Black women are heavier than white women. Poor women are heavier than affluent women, but affluent men are a bit heavier than poor.

Probably thanks to "better lives" and "better eating"—actually meaning less physical labor and richer food—men in their 20s are heavier, on the average, by 2 to 17 pounds (depending on specific age) than their 1959 counterparts. Men in their 30s and women in their 20s are 1 to 8 pounds heavier.

But women in their 30s have dropped a few pounds; women in their 40s and over, up to 9 pounds.

"This trend has been going on for 40 years," Edward Lew, former vice president of Metropolitan Life Insurance Co., reports. "Men have put on weight at all heights and ages. Women over 30 are taking weight off because of fashion."

Charlotte Williams, 34, M.A. in public administration, American University, is black, overweight and ambitious. In all these ways, she says, she is pressured by the new national passion for thinness.

"There is the pressure on every woman now to be a super-person," she said. "The whole American mentality is that you must be thin. You must be on a diet or you're not American.

"And there is special pressure now on a black woman to do well and look good."

Weight, plus or minus, is in part a class phenomenon. at the Fort Lincoln Family Medical Center in far Northeast Washington, nurse-practitioners and diet counselors Holly Markham and Joyce Smith see a legion of obese black women.

These largely middle-aged and elderly mothers and grandmothers grew up admiring the "fat, prosperous look" and the "fat, healthy baby." Only today are they suddenly being told, "Take it off."

"I think 90 percent of our patients are obese," nurse Markham said. "It's sweets—I love food!" explained one of her patients, a retired federal payroll clerk, recently. This Mrs. A—none of three women interviewed wanted their names printed—had just lost 20 pounds in a six-week diet course.

Mrs. B, who lives on her Army widow's pension, had lost four pounds. Mrs. C had lost none. All three said their "problem" is just "eating wrong," eating starches, ice cream, cakes, pie.

True enough, but far from the whole story. Part of the problem is cultural. In several cultures, eating well means eating to be large. And the habits of the country persist in the city. "One woman told us of raising her family in North Carolina," nurse Markham said. "They were all up at 5:30 a.m. to work in the fields. Now they're here, but they eat the same way."

These patients also live on low incomes—Social Security, pensions, welfare or wages. "We have them keep food diaries," nurse Smith said. "These high-price days, sometimes it's all bread.

"But when there's a holiday or family dinner, they eat. Not just a few things on the table, but turkey, chicken, pork, ham, potatoes, macaroni and cheese and three vegetables and desserts. That's what they're used to."

Dieter Charlotte Williams, a policy analyst for federal agencies, remembers that for a black girl there were few athletic outlets. "We didn't play tennis, we didn't swim. The boys could play basketball, but that wasn't encouraged for us. What was encouraged was cooking."

The result? Twenty-four to 40 percent of black women above the poverty line and 28 to 49 percent below it are overweight compared with 19 to 28 percent of whites above poverty and 21 to 26 percent below. In each group, women above age 45 are the heaviest.

"The black woman fighting to feed a family," says actuary Edward Lew, "is too busy surviving to worry about weight. She has more important things to worry about."

Yet poor black men tend to be thin. This too may be a class matter. Black men typically work at demanding, even damaging jobs, and their sickness and death rates are high. Perhaps only the lean and healthy survive.

Still, not all poor men are slim. In New York City, in a survey by economic class, a third of low-income men were overweight compared with 16 percent of upper-income males. But the heaviest New Yorkers of all were the middle-class.

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*Dr. Ralph Paffenbarger of Stanford has found a sharp reduction in heart attack rates among those whose weekly energy output equals 2000 to 3000 calories.

In New York, this included many Jews, who are the most overweight Americans of all by religious group.

Sociologists say the reason is fairly obvious: "Here is a people who ate too little in Europe, and for them, just as for blacks, prosperity meant eating all you wanted." And the typical Jewish diet has run heavily to fat: meat, butter, cream cheese and chicken soup with lots of chicken fat "to make it taste good."

"The Georgetown University diet program makes you ask yourself, 'Why am I eating so much?'" said Charlotte Williams. "I had to face the fact that I sometimes used eating to compensate for other things. Sometimes it was easier to eat than vent one's frustrations."

Why do we get fat in the first place?

The surgeon general has a ponderous answer. "Large gaps remain in our understanding . . . (But) it is clear that obesity results either from ingestion of more food energy than the body needs or utilizes, or the expenditure of less energy than normal."

Translation: We eat too much. We move too little.

For thousands of years men and women had to scratch for their food. The norm was too little to eat, not too much. "Only in the first few decades of this century did obesity become common," says Dr. Jerome Stamler of Northwestern University. "Until then the rich were the fat."

Today, most authorities agree, overeating and underactivity cause 95 percent of obesity, and only 5 percent is caused by some hereditary, hormonal or other disorder.

Probably by training, not heredity, obese parents tend to have obese children. By most studies, obese children are three times likelier than slim children to become obese adults.

Though overeating is obesity's main cause, it is also becoming scientifically clear that losing weight is not equally easy for everyone. Women, for example, are fatter than men not just by habit or gluttony but because they have fatty breasts, thighs and buttocks for child-bearing.

Some scientists think overstuffed infants or adolescents develop too many "fat cells"—adipocytes—and the number of these cells stays constant for life, making it harder for those "hypercellular" persons to lose.

Also, it seems, humans and other mammals ages ago developed small stores of brownish fat cells to be burned off for warmth in hard weather. Some people may be more adept physiologically at burning this energy. Everyone knows the slim types who eat and never gain.

Many people plainly overeat because of emotional problems. Or frustration. Or boredom.

"For many, fat is a protective mechanism." Georgetown diet counselor Mary Ellen Fediuk says. "It can be a mechanism for dealing, or not dealing, with disturbing people or social or sexual situations."

Then there is food as a symbol. Today almost every human activity offers food as the centerpiece. The wonder, say some scientists, is that only a fifth of the populace is obese.

What is "desirable" weight? There are complex formulas based on height, build and amount of body fat vs. lean. But if you look in the mirror and seem neither fat nor skinny, that's about it. If you tighten a belt around your lower rib cage, then can't lower it around your belly, you're fat.

Is being just 10 or 20 pounds above average weight unhealthy? Probably not, though experts disagree.

There is little doubt that overweight is associated with diabetes, gallstones, degenerative joint disease—ankles and knees worn out by sheer weight—and high blood cholesterol and high blood pressure, which heighten the risk of heart disease and stroke. For women there is added risk of endometrial (womb) cancer.

Figures from the government's continuing survey of Framingham, Mass., indicate that "if everyone were at optimal weight," there would be 25 percent less coronary heart disease and 35 percent fewer blockages of brain vessels, causing strokes.

Georgetown University dieter Grazia Cramer, 43-year-old mother and part-time government researcher, said, "Have you ever been in a fat ladies' group? It's embarrassing. The majority are just mortified to be seen in a bathing suit. Some will go out only when it's dark."

"I needed to lose and I'm doing it," Charlotte Williams said. "But I'm big-boned, I'll never be thin. And all you see in ads and on TV are these super-thin folks."

Despite its dangers, do we over-emphasize obesity?

Do we make it too much a stigma for the millions whose only crime is eating the dishes life puts out before them? Or too much a burden for those who try to diet and fail: the 75 to 95 percent of those in weight control programs who gain some or all of it back?

Some nutritionists, and some newly militant heavyweights, are asking these questions.

Obesity, it seems clear, has become not just a health problem but a national neurosis. This is especially true for women, said Mary Ellen Fediuk, who administers the Georgetown diet center.

"Men come in for health," she said. "Women come in for appearance. And today a lot of them fear that if they're fat, they won't get ahead on the job."

Indeed, say many persons, fat women are discriminated against; fat men less often.

Many young women are even becoming mentally ill anorexics, who waste away because they won't eat enough. Some alternate between binges of gorging and starving; when they do eat, they often lose food in helpless spasms.

Their revulsion, it seems clear, is born of perplexity over our worship of thinness, on the one hand, and our piles of hamburgers, pizzas and sugar-loaded drinks, on the other. "It shouldn't be a crime to be fat," counselor Fediuk said.

What can we do to improve this nation's health by improving its waistlines, without adding to the guilt the fat already feel?

INCREASED MORTALITY WITH RISE IN WEIGHT

[By cause of death for insured men and women]

	If you are above average weight—							
	20 percent		30 percent		40 percent		50 percent	
	Your chance of death compared to normal is—							
	Men	Women	Men	Women	Men	Women	Men	Women
Cerebral hemorrhage	8 percent higher	13 percent higher	37 percent higher	(1)	56 percent higher	(1)	(1)	(1).
Coronary disease	19 percent higher	28 percent higher	44 percent higher	34 percent higher	58 percent higher	63 percent higher	75 percent higher	(1).
Diabetes	150 percent higher.	75 percent higher	400 percent higher.	(1)	(1)	(1)	(1)	(1).
Digestive diseases	23 percent higher	30 percent higher	50 percent higher	(1)	120 percent higher.	(1)	(1)	(1).

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[1] Too few cases for analysis.

Source: Ad Hoc Committee of the New Build Blood Pressure Study, Association of Life Insurance Medical Directors of America and Society of Actuaries

Nutrition authorities have no easy answers. They say they can only tell us the facts, and hope for more tolerance. At the same time, they add, dieters and, counselor Fediuk believes, "more people are beginning to make it."

The so-called 75 to 95 percent "failure rate" ignores the pounds that remain off, even though they may not be "enough." And many dieters, like many chronic patients, may have to work at the problem all their lives.

"In some ways we're overconcerned, yes," Dr. William Ayers, the Georgetown program's medical director, said. "But I think the medical profession is underconcerned."

Many doctors, he said, are understandably discouraged because they "tell their patients to lose and they're ignored." Yet "you can't just hand out a diet sheet and drop the subject. It takes more sophisticated counseling over time, perhaps a long time. It often takes psychological help. If doctors abandon that role, others will fill it. That's why there's such a proliferation of fad diets and weight loss clinics. There's a big buck to be made."

Diet pills? Most doctors are unimpressed with them. The "best" diets—those most effective in the long run, authorities say—include almost all foods and nutrients, though special diets may be needed for a time for some persons, who should then be under close medical watch.

In short, the best and most scientific diet advice for most people turns out to be the old, sensible advice: "Moderation."

"Three years ago, after years and years of high blood pressure and emotional suffering, I entered the Georgetown program," dieter Phil Burke said. "I started exercising. I'm deputy executive secretary of the Bicycle Manufacturers Association, so I cycled. In six months I got down from 264 to 184, then 173.

"I couldn't maintain that low a weight. But now I cycle, I run. Now and then, when I'm tense, I go the dessert route. But I have abolished butter, salt and soft drinks. Now I fluctuate around 200 or 205. I'm not skinny, but I feel wonderful."

[From the Washington Post, Sept. 2, 1980]

WELLNESS: A CHALLENGE TO MEDICINE—PART III

(By Victor Cohn)

Fourteen patients and a doctor sat in the circle.

They sat easily and talked and laughed and exchanged ideas about how to keep well.

Keeping well. They repeated this almost magic word several times. They talked of attitudes, exercise, relaxation and the right food. Of taking control of your life, taking responsibility for your own health, feeling less tense. Feeling well.

This was the Wellness Group, which meets one night a week at the Kaiser-Georgetown Health Plan's Reston Center, 30 miles from the heart of Washington.

A new and growing wellness movement is challenging medicine.

The movement goes by several names—"wellness," "holistic medicine," "wholistic medicine"—but all speak of considering and caring for the whole person, not just treating Disease A with Pill X.

All embrace or overlap several other growing movements in and outside traditional medicine: self-care (learning to be your own doctor sometimes), patient education, prevention, fitness and exercise.

All are part of what could be called a new life-style medicine, which teaches us that what we do and don't eat, smoke, drink and do has more to do with our health than all the things doctors can do. All these forces seek to go beyond today's jogging and exercise to offer a whole way of life, one that includes exercise but also declares a large degree of independence from doctors, disease and helpless depression.

The movement, like hot tubs and group sex, has found its fastest—and some of its strangest—growth in California.

But today, Dr. James Gordon, a Washington psychiatrist who headed a study of "alternate" services for President Carter's Commission on Mental Health, reports: "Holistic medicine and wellness centers are happening all over the country. About 100 places" from Maine to Texas and in almost every state and the District of Columbia "are practicing all or part of these new ideas."

Holistic medicine and wellness, proponents say in lofty words, treat patients "humanistically" as "mental and emotional beings," and seek "optimal attunement of body, mind, emotions and spirit" in "a health-oriented ecology and life style." One observer sensibly sums this up at "concern for the whole person, not just the part that hurts."

The new movements often use alternative treatments ranging from meditation to acupuncture to ayurvedism (India's herbal medicine). The doctors and others who do and teach these things range from the skilled and responsible to kooks, quacks and money-chasers.

But all these trends represent a revolt against the prevalent medical model, the usual "disease model" of treatment: I get sick, I go to the doctor, he gives me a cure.

Wellness, all its advocates say, is far more than an absence of illness. It is a sense of health and control even in the face of illness and adversity.

Dr. Elliot Dacher (pronounced "Dosher") is medical director of the Kaiser-Georgetown Reston center. He is 36, well-trained and well-certified, and he fully uses orthodox medicine.

"But as a doctor," he said, "I was doing a lot of things to a lot of patients, but they kept coming back. I slowly became convinced I wasn't doing them any favor. I was just making them dependent on drugs and on me, rather than helping them really get better.

"So I began to explore their lives with them. And my own life. And my family's. What were we doing to keep well? To relax? To eat right?"

He began telling his patients: "I can't get you well. Everything it takes to get well is already inside each person. It's all there for free, and it can't be purchased. It can only be found in ourselves."

He also began to explain: "You can be well if you're ill. All of us have known people who had serious illnesses, but maximized their potential. Within whatever limits they had, they went on.

"There are also people who are not ill at all who are not very well. You can see it on people's faces at a bus stop."

"The most important factor pushing us in new directions," said Dr. James Gordon, "may be the incredible cost of health care today. And the consumer movement, the civil rights movement, the women's movement, the old people—Gray Power.

"And the fact that so many people are dissatisfied with the present approach."

The new movement was probably born out of the alternative health services of the 1960s, the free clinics, drop-in centers and crisis centers that gave care, shelter and counseling to the disaffected young of that decade.

These young found conventional services "threatening, damaging or unresponsive," Gordon said, and they found common ground with many activist health workers who also "believed that, given time, space and encouragement, ordinary people could help themselves."

Too, many health professionals and their patients "were becoming dissatisfied with 'best care,'" especially that given people who complain of feeling poorly, yet have no physical pathology. A social innovator named Sidney Garfield sympathetically named them "the worried well." Many doctors use the term derisively.

By the early 1970s, however, many health workers were moving beyond the often inadequate free clinics to create the physically and emotionally oriented services that would become Wholistic-centers.

"There was, and is, no single model," Gordon reports. A Lutheran minister, Granger Westberg, started a Wholistic Health Center in a Springfield, Ohio, church basement. It has led to a network of clinics in the East and Midwest, combining traditional medicine with mental and spiritual counseling.

The Wholistic Health and Nutrition Institute in Mill Valley, Calif., tries to substitute stress reduction, often via biofeedback, relaxation and exercise, for reliance on drugs.

At the Pain and Health Rehabilitation Center in LaCrosse, Wis., Dr. Norman Shealy, a neurosurgeon who largely abandoned drugs and surgery, tries to substitute diet, fitness, biofeedback, electrical pain relief and other techniques.

The Helping Hand Clinic of St. Paul, Minn., teaches its patients selfcare. The Swedish Wellness Center of Englewood, Colo., was founded by two hospitals whose boards were considering expansion. Instead, they founded this joint clinic to try to keep patients out of the hospital.

Most of these centers meld orthodox medicine with biofeedback, family therapy, stress control, meditation, nutritional therapy and, in Gordon's phrase, "other healing traditions."

"I'd say holistic medicine at its best includes everything useful conventional medicine offers, plus other things," Gordon sums up. "If somebody gets hit by a truck, you're not going to tell him to sit there and meditate."

"I still work with many patients one to one," said Dacher in Reston. "Two years ago we also started our wellness group.

"We started with learning sessions in three areas: Stress and how to relieve it. Nutrition. And body fitness. Later, the group sort of took itself over."

It is 7:30 p.m. on a Tuesday. Dacher wears his usual garb, unpressed pants and an open sport shirt.

The wellness group trickles in. Eight women, six men, suburbanites, fresh or unfresh from their jobs and their car pools. Worn jeans, open shirts, only a few smart outfits or crisp button-downs. These are the citizens of Tense City, trying to make sense of their health and their lives, rather than succumbing to neuroses and coronaries.

A slim, wiry woman, 35ish, in jeans and a checked shirt, opens the weekly forum. Her youngest child "has been waking me up again. He woke up 10 times the other night. I was a zombie.

"I really needed to relax, so I tried the self-hypnosis. I counted backwards to 10, and I was just saying, 'This isn't working.' That's the last I remember. For 20 minutes 'cause I'd set the alarm. Then I got up and went to work.

"It was really very relaxing. I've also used the meditation." In addition to teaching self-hypnosis—in reality, deep relaxation—Dacher urges his patients, to meditate in a simple way, no semi-religious hocus-pocus, for 20 minutes twice daily. "I've been meditating at least once a day," this woman said.

A government official with thick glasses tells of doing his meditation "to calm down—just closing my eyes seems to help."

The four, far from mysterious, components in such meditation, said Dr. Herbert Benson of Harvard, are sitting quietly, closing one's eyes, repeating a simple word or phrase and closing out other thoughts.

A cheerful, mildly stout woman in a flowery shirt tells how "our diet has completely changed." Dacher and the group put great store in abandoning junk and factory food and too many sweets, in favor of fresh, unprocessed fruits, vegetables, nuts, seeds, yogurt, whole-grain bread and chemical-free poultry and meats.

The woman also speaks of the group's "caring and sharing." This night's 14 men and women—some nights there are 20—are obviously a kind of surrogate family for these American wanderers.

The best physicians have always been holistic practitioners, considering and treating the whole of their patients' lives.

A Mayo Clinic doctor wrote 40 years ago: "Four out of five times I'd find out what was wrong sooner if I started by examining the patient's home life, his job and his bank account instead of his heart, his digestive system and his kidneys."

Today many physicians—as many testify—no longer take the time to pay attention to their patients' whole lives. Their complex scientific training, Gordon says, has "de-emphasized the importance of things we knew 100 years ago, like the physician sometimes touching the patient."

Dr. William R. Barclay, editor of the Journal of the American Medical Association, has written that "medical care is first of all caring, and this component of medicine seems to be missing from much of what we do today."

Many doctors are consciously adding some of the "new" yet old methods in simple but practical ways.

Dr. Michael Newman, a young specialist in internal medicine on Washington's 19th Street NW "medical row," says many "caring doctors" are doing a far better job than innovators who ignore tradition to try unproved fads.

In a pamphlet of their own writing, he and his associate, Dr. Devra Marcus, tell their patients, "Your health is our concern but your responsibility . . . Our job is to help you be aware of how your life style affects your health." And: "Not every symptom requires medication."

"We find patients are just as happy if you really give them information," Newman said. "They don't really say, 'Dr. Soandso would give me a pill.'"

Dr. Samuel Bessman of the University of Southern California is a more severe critic of the new movements. He attacks the moneymaking "high priests" of new, unscientific "cults" who discourage patients from seeing doctors when sick.

All the new movements, all experts agree, badly need study to separate the useful among them from the merely silly or commercial. Prevention, now an official new policy of federal health agencies, needs to be developed and tested not out of sentiment but as rigorously as vaccination.

No one, say the doctors who still must care for the sick, should begin to act as though the sick are sinners who are to blame for their illnesses.

Still, Gordon says: "We're overdue for some change."

As the months go by, some drop out of the Reston Medical Center's Wellness Group and some enter.

A man of 60 is about to have surgery. Dacher suggests that he begin trying another new technique: "visualization" or "suggestive imagery," that is, intensely imagining desired bodily responses or mental attitudes or even inter-personal situations.

"You can do a lot about your own recovery," Dacher said. "By resting beforehand. By eating right. And by visualizing the kind of recovery you want."

Another man said, "I'm taking fewer pills for my blood pressure, and I'm still on my low-fat diet. I'm under 200 pounds—I haven't been there in years. But the really great thing, what I've gotten out of this is awareness—of food, of my feelings, of myself. I feel more in control."

When other patients too, tell of being "better able to cope," Dacher tells the group:

"Clearly, all of you are feeling better in one way or another. Some of you have forgotten your abdominal complaints. Some have fewer pains. And you've taken responsibility for who and what you are.

"It's a long process. It'll go on for a lifetime. But these are incredible changes in two or three or six months. Doctors don't usually see that in their practices."

The wellness movement may have been born in part out of the self-fascination of the "me" generation. But, given true expertise and a reasonable use of traditional medicine, it can become a more mature road to health.

LifeScore for your health

Find Your LifeScore

Your lifestyle today has more to do with your tomorrows than anything else does.

LifeScore is a self-checkup.*

Score yourself on each item. The larger the positive score, the more that factor contributes to a healthy life. The larger the negative score, the more the factor is damaging your good health. The LifeScore computed at the end measures the total effect.

Warning: LifeScore is designed for adults who do not presently have chronic diseases such as emphysema, cancer, diabetes, heart disease, uncontrolled high blood pressure, or major disability; and have never had a heart attack or stroke.

Exercise

Count the minutes per week you engage in conditioning exercise in which the heart rate (pulse) is raised to 120 beats per minute or more. Exercise sessions should last at least 15 minutes at the 120-beat level. Exercise that usually does not produce conditioning includes baseball, bowling, golf, volleyball and slow tennis. Conditioning exercise usually does come from brisk walking, basketball, fast tennis, squash, jogging, racquetball, aerobic dancing, and other continuous, vigorous activities.

If your minutes of conditioning per week total:

Less than 15	Score	0	—
15–29		+2	—
30–44		+6	—
45–74		+12	—
75–119		+16	—
120–179		+20	—
180 or more		+24	—

Weight

Check your weight against the weight table. Pick your body frame size—small, medium or large—by comparing yourself to other people of your height with differing builds.

If you are overweight by:

0–5 pounds	Score	0	—
6–15		−2	—
16–25		−6	—
26–35		−10	—
36–45		−12	—
46 or more		−15	—

Diet

If you eat a balanced diet—one which includes vegetables, fruits, breads and cereals, protein foods, and dairy products:

Score +4 —

If you stay away from saturated fats and cholesterol, which are mostly found in animal fats:

Score +2 —

Smoking

If you smoke only a pipe:

Score −4 —

One cigar is equivalent to one cigarette. If the number of cigarettes you smoke each day is:

1–9	Score	−13	—
10–19		−15	—
20–29		−17	—
30–39		−20	—
40–49		−24	—
50 or more		−28	—

Extra points for women: If you smoke at all and take birth control pills:

Score −7 —

Alcohol

Figure the amount of alcoholic beverages you drink each day. One drink equals 1½ ounces of liquor or 8 ounces of beer or 6 ounces of wine. If your drinks are larger, multiply accordingly.

If your average daily number of drinks totals:

0	Score	0	—
1–2		+1	—
3–4		−4	—
5–6		−12	—
7–9		−20	—
10 or more		−30	—

Car Accidents

If the time you wear a seat belt is:

Less that 25%	Score	0	—
About 25%		+2	—
About 50%		+4	—
About 75%		+6	—
About 100%		+8	—

Stress

One way of measuring the stress in your life is to look at the changes in your life. The Holmes Scale is designed to do this. Add up the points for all the events on the scale that have happened to you in the past year, plus the points for all events you expect in the next year.

If your Holmes score is:

Less than 150	**Score**	**0**	—
150–250		**−4**	—
250–300		**−7**	—
More than 300		**−10**	—

Personal History

If you have been in close contact for a year or more with someone with tuberculosis:

Score −4 —

If you have had radiation (x-ray) treatment of tonsils, adenoids, acne or ringworm of the scalp:

Score −6 —

If you work with asbestos regularly and do not smoke:

Score −2

If you work with asbestos regularly and do smoke:

Score −10

If you work regularly with vinyl chloride:

Score −10

If you live or work in a city:

Score −6

If sexual activity has been frequent and with many different partners (for potential of venereal disease):

Score −1 —

For Women Only (Risk of uterine cancer): If you began regular sexual activity before age 18:

Score −1 —

Family History

For each parent, brother, or sister who had a heart attack before age 40:

Score −4 —

For each grandparent, uncle, or aunt who had a heart attack before age 40:

Score −1 —

For each parent, brother, or sister with high blood pressure requiring treatment:

Score −2 —

For each grandparent, uncle, or aunt with high blood pressure requiring treatment:

Score −1 —

For each parent, brother, or sister who got diabetes before age 25:

Score −6 —

For each grandparent, uncle, or aunt who got diabetes before age 25.

Score −2 —

For each parent, brother, or sister who got diabetes after age 25:

Score −2 —

For each grandparent, uncle, or aunt who got diabetes after age 25:

Score −1 —

If you have a parent, grandparent, brother, sister, uncle, or aunt with glaucoma:

Score −2 —

If you have a parent, grandparent, brother, sister, uncle, or aunt with gout:

Score −1 —

For women, if your mother or a sister has had cancer of the breast:

Score −4 —

Medical Care

If you have had the following procedures regularly, score the points indicated:

Blood pressure check every year:

Score +4 —

Self-examination of breasts monthly plus examination by physician every year or two:

Score +2 —

Pap smear every year or two:

Score +2 —

Tuberculosis skin test every 5 to 10 years:

Score +1 —

Glaucoma test every 4 years after age 40:

Score +1 —

Test for hidden blood in stool every two years after age 40, every year after 50:

Score +1 —

Proctosigmoidoscopy once after age 50:

Score +1 —

Your LifeScore

Add or subtract all the points you scored.

Total points	———
Now Add	+200
Your LifeScore	———

A LifeScore of 200 is about "average." If your score was above 215 you have an excellent chance of enjoying better than average health. A score of 230 or more means the odds of a healthy, long life are overwhelmingly in your favor. A score below 185 means your probability of a healthy life is decreased. Below 170 consider that you are heading for serious illness.

HOLMES SCALE

(Check all times that happened to you in the last year or you expect in the next year.)

1. Death of spouse	100
2. Divorce	73
3. Marital separation	65

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*Courtesy of Dr. Donald M. Vickery and the Center for Consumer Health Education.

4. Jail term	63
5. Death of close family member	63
6. Personal injury or illness	53
7. Marriage	50
8. Fired at work	47
9. Marital reconciliation	45
10. Retirement	45
11. Change in health of family member	44
12. Pregnancy	40
13. Sex difficulties	39
14. Gain of new family member	39
15. Business readjustment	39
16. Change in financial state	38
17. Death of close friend	37
18. Change to different line of work	36
19. Change in number of arguments with spouse	35
20. Large mortgage	31
21. Foreclosure of mortgage or loan	30
22. Change in responsibilities at work	29
23. Son or daughter leaving home	29
24. Trouble with in-laws	29
25. Outstanding personal achievement	28
26. Spouse begin or stop work	26
27. Begin or end school	25
28. Change in living conditions	25
29. Change in personal habits	24
30. Trouble with boss	23
31. Change in work hours or conditions	20
32. Change in residence	20
33. Change in schools	20
34. Change in recreation	19
35. Change in church activities	19
36. Change in social activities	18
37. Small mortgage or loan	17
38. Change in sleeping habits	16
39. Change in number of family get-togethers	15
40. Change in eating habits	13
41. Vacation*	13
42. Christmas**	12
43. Minor violations of the law	11

* If any.

** Everyone should count this.

Source: Thomas H. Holmes, M.D. Social Readjustment.

Rating Scale reprinted with permission.

Another way of showing how decisions affect your health is to make a rough estimate of your life expectancy. The table below translates Life Score to estimated life expectancy.

Your health	Life score	Estimated life expectancy	
		Men	Women
Excellent	230+	81+	86+.
Good	211–229	74–80	79–85.
Average	191–210	67–73	72–78.
Below average	171–190	60–66	65–71.
Poor	170 or less	Less than 60	Less than 65.

DESIRABLE WEIGHTS

WOMEN OF AGES 25 AND OVER

Height		Small frame	Medium frame	Large frame
Feet	Inches			
4	8	92–98	96–107	104–119
4	9	94–101	98–101	106–122
4	10	96–104	101–113	109–125
4	11	99–107	104–116	112–128
5	0	102–110	107–119	115–131
5	1	105–113	110–122	118–134
5	2	108–116	113–126	121–138
5	3	111–119	116–130	125–142
5	4	114–123	120–135	129–146
5	5	118–127	124–139	133–150
5	6	122–131	128–143	137–154
5	7	126–135	132–147	141–158
5	8	130–140	136–151	145–163
5	9	134–144	140–155	149–168
5	10	138–148	144–159	153–173

MEN OF AGES 25 AND OVER

Height		Small frame	Medium frame	Large frame
Feet	Inches			
5	1	112–120	118–129	126–141
5	2	115–123	121–133	129–144
5	3	118–126	124–136	132–148
5	4	121–129	127–139	135–152
5	5	124–133	130–143	138–156
5	6	128–137	134–147	142–161
5	7	132–141	138–152	147–166
5	8	136, 145	142–156	151–170
5	9	140–150	146–160	155–174
5	10	144–154	150–165	153–179
5	11	148–158	154–170	164–184
6	0	152–162	158–175	168–189
6	1	156–167	162–180	173–194
6	2	160–171	167–185	178–199
6	3	164–175	172–190	182–204

Note: For women between 18 and 25, subtract 1 lb for each year under 25.

Source: Prepared by the Metropolitan Life Insurance Co. ●

TEACHER CENTERS BECOME A NEW FORCE DESERVING OF FULL FUNDING

● Mr. CHAFEE. Mr. President, declining enrollments at every level of education are causing more emphasis to be placed on retraining veteran teachers, instead of training new ones. This change in emphasis is affecting not only teachers, but the institutions preparing them, the children in their classrooms, and the way we think about teacher education.

With the number of bachelor's degrees from teachers' colleges shrinking from 194,210 to 129,130 in the past 7 years, it is reasonable to assume that the teachers in today's classrooms will be the same teachers we rely on to educate our young people in 10, 20, or even 30 years from now.

From this emerging demographic model of our school for the future, arise questions of how to update teacher skills, how to infuse new ideas into the classroom, how to keep teachers from "burning out" as a result of the mounting social pressures with which they must deal daily.

In addition, our institutions designed for teacher training also face important questions about change. Dwindling enrollments in elementary and secondary schools have resulted in declining registrations in bachelor's degree programs for potential teachers and, in turn, fewer jobs for professors in colleges of education.

In what form will teachers' colleges survive in the future, and what will be their relationship to veteran teachers?

Some of the answers to these questions are being found in teacher centers.

Teacher centers have their roots in Great Britain. Teachers realized a need to share and exchange ideas and discuss problems relevant to their situations. As a result, teacher centers were born. American educators were quick to recognize the possibilities of such an idea working here and soon teacher centers were a reality in the United States.

In 1978, Federal moneys were made available for the first time for teacher centers implementation and today there are centers in 44 States and territories. As a result of the Higher Education Act Amendments of 1980, soon there will be at least one teacher center in every State in the Nation.

A teacher center is as unique as the population that it serves. Centers feature a varied program and are often changing their offerings as the needs of students and teachers change. Most centers offer formal and informal course work, either through a university or a State department. Workshops, demonstrations, curriculum development, collections of teacher resources, libraries of professional materials, recycle areas, and production space are frequent components of a teacher center.

In fact, some centers are strictly outreach, moving into classrooms in an advisory capacity. This allows training to be tailored to the needs of one school or even one classroom.

Mr. President, I direct the attention of my colleagues to an article in Sunday's New York Times special section on Continuing Education entitled "Teacher Centers Are Becoming A New Force."

The article by Ms. Sally Reed explains the success that teacher centers are experiencing throughout the Nation.

One teacher is reported to comment:

> I found myself trying things in the class I had never attempted before and when my students said "I never knew learning could be so much fun," you can imagine how high that made me feel. So the real beneficiaries are the children.

Another public school teacher, who after 20 years was reassigned from her kindergarten position to teach third grade as a result of declining enrollment, explains that she was "panicky" because she had never taught third grade reading or math. To update her skills, she turned to a federally financed teacher center where she received not only the training she needed, but also moral support.

These examples of how the centers can improve teaching skills, help make school more interesting to students, and provide psychological support to teachers are typical of important roles this program serves.

Yet, another interesting benefit to teacher centers is that they are changing teacher education. Teacher centers, the New York Times article explains, are providing schools of education new models for teacher education. Teachers, who have been on the firing line in the classroom, are calling for practical day-to-day advice, and coping skills that can complement their theoretical knowledge.

Mr. President, during Senate consideration of the Higher Education Amendments Act this past June, I made a statement supporting the teacher center program. At that time, I called for full funding of this unique educational tool.

Today, I reiterate that statement and urge my colleagues to join me in calling for full financing of teacher centers.

At a time when there persists a growing belief that our Nation's schools are in trouble, the teacher center program offers some common sense answers to some very difficult problems.

Teachers are the single most important factor in the quality of education.

And, teachers need and deserve assistance.

The cost of the teacher center programs is moderately small, especially when one considers the importance of these centers. It is this program, which helps teachers to become better teachers in order to meet the needs of their students, that holds some of the greatest promise for improving the quality of American education.

Mr. President, I ask that the article by Ms. Sally Reed entitled "Teacher Centers Are Becoming A New Force" from the New York Times Continuing Education Supplement of Sunday, September 7, 1980, be printed in the RECORD.

The article follows:

TEACHER CENTERS ARE BECOMING A NEW FORCE

(By Sally Reed)

"Like most teachers, I was very skeptical about the teacher centers," said Marion Donovan, a sixth-grade teacher at Public School 261 in the Bronx. "But I found out that the teacher center was the greatest thing that happened to me. It was the first time in my teaching experience that I had a person I could go talk to, who could give me feedback on my ideas, to whom I could explain my problems."

Another public school teacher who after 20 years was reassigned from her kindergarten position to teach third grade in Brooklyn became panicky because she had never taught third-grade reading or math. To update her skills she turned not to her local college of education but to one of two federally financed sites in her area where she received not only the training she needed but also moral support.

Like these New York City teachers, thousands around the country are turning to teacher centers and other nontraditional forms of training that are helping to transform teacher education in the United States. In so doing they are forcing schools of education to change their programs and shifting money, power and resources away from the traditional institutions of higher education to the teachers themselves.

The Federal Government began financing teacher centers two years ago. There are now 89, serving 1,327 school districts, and 17 more are to be created next year. New York City has one federally financed center, with eight sites, and New York state has six other centers. Some states, such as Florida, and some local school districts, like Bay Shore, L.I., have organized their own teacher centers. And there are about 200 independent and private teacher centers around the country.

And corporations and even education magazines such as The Learning Institute, a division of Learning Magazine, provide courses throughout the country. But the teacher center is making the greatest impact.

Miss Donovan said: "I found myself trying things in the class I had never attempted before and when my students said, 'I never knew learning could be so much fun,' you can imagine how high that made me feel. So the real beneficiaries are the children."

Kathleen Devaney, director of the Teachers' Centers Exchange at the Far West Laboratory in San Francisco, said: "A teacher center is a place or program where teachers come to work on curriculum for their classes, to participate in inservice education which is designed to meet the needs they themselves have defined, which provides a context for sharing their successes and their problems and which stimulates and encourages professional growth over a long period of time."

What makes the Federal programs different from those offered at schools of education is that generally they are for experienced classroom teachers and, by Federal mandate governed by teachers and the affiliates of the National Education Association and American Federation of Teachers. They are in or near schools and open at times convenient for teachers.

Many courses are without credits, lasting one day or four months, depending on the need. The courses de-emphasize theory and methodology and concentrate on more practical concerns. The centers are frequently places where teachers can relax, find resources for their classes, construct materials, share ideas and discuss common problems.

In a typical federally financed center, the Government grants money to a local education agency, such as the local school district, or an intermediate agency, such as the Board of Cooperative Education Services. More than half the policy board governing a center must be made up of teachers. The remainder includes administrators, community representatives and institutions of higher education.

The New York City Teacher Center Consortium is made up of the teachers' union local, the United Federation of Teachers, the New York City Board of Education and cooperating colleges of education. A teacher specialist at each site directs activities, acts as an adviser to teachers in the classroom and conducts workshops on such topics as "Chisanbop" or finger calculations, and "How to Use the Newspaper."

Other courses might cover the New York City Writing Project, which trains teachers to improve their own writing to better understand the process students go through; teacher effectiveness and classroom handling, and Project Teacher, a course on classroom management and communications skills.

The courses are conducted by teachers, university professors and experts in the field who plan the courses with teachers to insure that they are practical and applicable to a classroom.

"The teacher centers are giving schools of education new models for teacher education," said Myrna Cooper, director of the consortium.

"Teacher centers represent a shift of authority and place or locus and manner of delivery away from the schools of education down to the local schools," said Bruce Gaarder, special assistant in the Teacher Center Program at the Federal Department of Education.

At the Pittsford, N.Y., Teacher Center, which is supported by the local school district, the director, Wanda Ward, said, "Schools of education have not provided enough hands-on practical experience in preparing teachers to keep up. Many offer the same courses they did 40 years ago."

"If one of the 400 teachers served at the Pittsford Center has a need we find 10 others who share that same need and offer a course. Teacher centers are pertinent to what teachers are doing now."

Michael Franzblau, managing director and president of Pinebrook Educational Inc., who has conducted seminars for teachers for five years, believes that teachers are learning to take their future in their own hands and said: "The teacher-center movement is potentially dynamite. It would not be surprising to see entire master's degree programs spring up at a teacher center in the future."

But others believe that these new programs put too much stress on the practical and sometimes lack quality and substance and emphasis on skills that will improve teaching. And there are others who do not believe the 30,000 schools of education are affected at all by the new teacher centers.

Colleges have responded to pressure from centers in a number of ways. Some universities had their own centers, such as the Teacher Center for the Gifted and Talented at Hunter College and the Learning Resource Center at Fordham University, long before the Federal teacher centers. Others have ignored the new programs.

Some places, such as Nazareth College in Rochester, plan to supplement teacher preservice training by making attendance at teacher-center programs part of degree requirements. Fairfield University in Connecticut initiated its own teacher center to offer alternative courses but kept it under the university's control. Indiana University sponsors "Weekenders," courses on a host of practical subjects such as how to use your local zoo as a resource. But the courses are conducted in various sections of the state, which takes the classes to where teachers are.

"Much of what is in a school of education has no practical application to teachers," said Madeline Hunter, nationally recognized teacher educator at the University of California at Los Angeles. "The schools of education say, 'That's OK. Our role is to provide a higher plane, ideas, theory and research.' On the other hand, teachers need a wedding of theory and practice. I wish the teacher centers and schools of education will be joined together so that teacher centers have their heads in the clouds more and schools of education their feet on the ground." ●

PROPOSED ARMS SALES

● Mr. CHURCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD the two notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room S-116 in the Capitol.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 8, 1980.
Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-96, concerning the Department of the Air Force's proposed Letter of Offer to Korea for defense articles and services estimated to cost $88.0 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERNEST GRAVES,
Director.

[Transmittal No. 80-96]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser, Korea.
(ii) Total estimated value.

[In millions]

Major defense equipment*	$81.6
Other	6.4
Total	88.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Cooperative Logistics Supply Support Arrangement, requisition case (FMSO II) for follow-on spares and supplies for support of ROKAF aircraft of U.S. origin and other items of U.S. manufacture (e.g., F-4, F-5, A-37, T-33, T-37, and C-123 aircraft).

(iv) Military Department, Air Force (KBJ).

(v) Sales commission, fee, etc. paid, offered or agreed to be paid, none.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold, none.

(vii) Section 28 report, case not included in section 28 report.

(viii) Date report delivered to Congress, September 8, 1980.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 8, 1980.
Hon. FRANK CHURCH,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 80-97, and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter to Canada for defense articles and services estimated to cost $15.3 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

ERNEST CRAVES,
Director.

[Transmittal No. 80-97]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Canada.

(ii) Total Estimated Value:

[In millions]

Major defense equipment*	$14.0
Other	1.3
Total	15.3

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered, eighty-six AIM-7 series missiles with spares and support.

(iv) Military Department, Navy (AGY).

(v) Sales commission, fee, etc. Paid, offered or agreed to be paid, none.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold, see annex under separate cover.

(vii) Section 28 report, included in report for quarter ending 30 June 1980.

(viii) Date report delivered to Congress: September 8, 1980.●

PROMULGATION OF DRAFT REGULATIONS GOVERNING LEGAL EXPENSE FUNDS

● Mr. HEFLIN. Mr. President, on August 25, 1980, as chairman of the Select Committee on Ethics, I introduced, for myself, Vice Chairman WALLOP, the members of the committee, and the majority and minority leaders, Senate Resolution 508. That resolution, agreed to by the Senate on September 5, created a new standing rule of the Senate authorizing Members, officers, and employees of the Senate to receive contributions to defray legal expenses incurred in relation to their service in or to the Senate, subject to regulations to be promulgated by the select committee.

Pursuant thereto, the committee publishes the following draft regulations, on which we invite public comment. Comments will be received for a period of 10 days. All comments must be received by 5 p.m., on September 22, 1980. We ask that comments be in writing, and that they be directed to the staff director, Select Committee on Ethics, U.S. Senate, 113 Carroll Arms, Washington, D.C. 20510.

A brief explanation by the committee of the need for the rule change accompanies these regulations.

The material follows:

COMMITTEE EXPLANATION TO ACCOMPANY REGULATIONS PROMULGATED PURSUANT TO SENATE RESOLUTION 508

In response to several inquiries, and in general recognition of the need to clarify an area of uncertainty in the provisions of the Senate Code of Official Conduct, the Select Committee on Ethics proposed a change in the Standing Rules of the Senate to expressly permit the establishment by Members, officers, or employees of the United States Senate of funds to defray legal expenses which arise in relation to their service in or to the Senate.

We did so in recognition that Members, officers, and employees of the Senate may find it necessary to defend themselves against charges (or, in a rare case, to initiate a civil lawsuit) in proceedings which would not have arisen but for their positions, or by virtue of their service in or to the United States Senate. The expenses of such investigative civil, criminal, or other legal proceedings could be substantial, thereby necessitating that Members, officers, and employees avail themselves of contributions from friends, supporters, constituents, and others in order to defray their legal expenses. In analyzing pertinent provisions of the Standing Rules of the Senate, the Committee reached the conclusion that certain provisions of the Rules may place Members, officers, and employees at a disadvantage in this regard relative to their fellow citizens, should the latter choose to raise funds to defray legal expenses which they incur. Rule 35, for example, places dollar limitations on gifts which may be received by Members, officers, and employees, and on the circumstances under which such gifts may be received. In addition, Rule 38 prohibits, under certain circumstances, the establishment by Members of "unofficial office accounts" for the purpose of defraying allowable but otherwise unreimbursed expenses incurred in connection with official duties.

The Committee wanted Members, officers, and employees of the Senate to be on equal footing with the public generally regarding the raising of funds to defray legal expenses. To eliminate any doubt as to the permissibility under Senate Rules of Members, officers, and employees of the Senate (or their spouses or dependents) accepting funds to defray investigative, civil, criminal, or other legal expenses, the Senate, on September 4, 1980, agreed to S. Res. 508 as Rule 43 of the Standing Rules of the Senate. Rule 43 provides:

"Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray investigative, civil, criminal, or other legal expenses of Members, officers, or employees of the Senate relating to their service in the United States Senate, subject to limitations, regulations, procedures and reporting requirements as shall be promulgated by the Select Committee on Ethics. Nothing in the provisions of the Standing Rules of the Senate shall be construed to limit contributions to defray the legal expenses of the spouses or dependents of Members, officers, or employees of the Senate."

The following draft regulations are promulgated by the Select Committee on Ethics pursuant to S. Res. 508. Upon their adoption, they would be applicable to Members, officers, and employees of the United States Senate during the time of their service in or to the Senate. These regulations governing legal expense funds would not apply to the spouse or dependents of any Member, officer, or employee of the Senate; i.e., there are no limitations on, or regulations prohibiting, the solicitation, receipt, or disbursement of contributions by spouses or dependents from funds established to defray legal expenses incurred on their own behalf and for their own benefit.

REGULATIONS GOVERNING FUNDS TO DEFRAY LEGAL EXPENSES INCURRED BY MEMBERS, OFFICERS, AND EMPLOYEES OF THE U.S. SENATE

CHAPTER ONE—PURPOSES, USES, AND ESTABLISHMENT OF LEGAL EXPENSE FUNDS

A Member, officer, or employee of the Senate may establish a fund which shall be used to defray legal expenses incurred by the Member, officer, or employee in investigative, civil, criminal, or other legal proceedings relating to or by virtue of his or her service in or to the United States Senate.

A. Who may establish a legal expense fund?

Any Member, officer, or employee of the Senate may establish such a fund.

B. Circumstances under which a legal expense fund may be established

A legal expense fund may be established in circumstances in which a Member, officer, or employee incurs or reasonably expects to incur legal expenses in the course of any investigative, civil, criminal, or other legal proceedings relating to or by virtue of his or her service in or to the Senate.

Funds may be raised to defray the costs of legal proceedings of any nature—including, but not limited to, a Congressional inquiry or investigation; a criminal investigation or proceeding; a civil lawsuit; civil or criminal appeals; and post-appeal proceedings—provided that such proceedings relate to or arise by virtue of the service of a Member, officer, or employee in or to the Senate.

Funds to defray legal expenses may not be established in cases in which the legal expenses are for purely personal matters, to include—but not be limited to—such matters as tax planning, personal injury litigation, protection of property rights, divorces, or the probate of an estate. A fund may be established, however, for a Member, officer, or employee to defray legal expenses incurred, either as plaintiff or defendant, in a defamation suit, if it meets the criteria set forth above.

It should be noted that there may be institutional issues of interest to the Senate involved in certain of these proceedings. Nothing in these regulations, however, is intended to alter existing provisions of statutes, case law, or the Standing Rules and Orders of the Senate, which govern the standing of Members or the Senate itself to become involved in legal proceedings, included but not limited to, their standing to file suit, assert defenses, or raise issues involving institutional interests of the Senate which may require a Senate Resolution, or in which the office of Senate Legal Counsel may have an interest.

C. Expenses which may be defrayed by a legal expense fund

The proceeds of a legal expense fund may be used to defray all expenses reasonably related to the purposes for which the fund was established, including but not limited to, all expenses reasonably related to legal proceedings as contemplated in subparagraph (B) above; all reasonably incurred costs of administering the fund, including but not limited to, costs incident to the solicitation of funds; and for the discharge of federal and state tax liabilities, should any be deemed to exist, which are incurred as a result of the creation, operation, or administration of the fund.

D. How a legal expense fund is established

A legal expense fund is established, and contributions may be solicited and received and disbursements made, upon the filing with the Committee by the Member, officer, or employee desiring to establish such a fund, of a written statement and two sworn affidavits. The written statement shall contain the following:

(1) a factual statement of the nature of the legal proceeding (or proceedings) which necessitate the establishment of such a fund; and

(2) a designation by the Member, officer, or employee, as required by Chapter Two hereof, of an administrator of the fund as his or her agent.

Sworn affidavits must be filed by the Member, officer, or employee seeking to establish the fund, and by the administrator thereof.

The first affidavit must contain a sworn statement that the Member, officer, or employee understands he or she will be bound by the provisions of these regulations and the Rule pursuant to which they are promulgated, and that although an administrator of the fund has been designated, the Member, officer, or employee seeking to establish the fund bears ultimate responsibility, as principal, for the proper administration of the fund.

The affidavit of the administrator must contain a sworn statement that he or she has read and understands the provisions of the regulations governing establishment, administration, and termination of legal expense funds, and that he or she consents hereunder to administer such a fund in conformity with the Standing Rules of the Senate.

In the event a legal instrument has been executed incident to the creation of such a fund (for example, an instrument setting up a fund in the form of a trust), a copy of the instrument must accompany the affidavit. If a legal instrument is executed subsequent to the filing establishing a fund, a copy thereof shall be forwarded to the Committee.

Upon the filing of a statement and sworn affidavits by the party seeking to establish a legal expense fund, the Committee shall review the statement, affidavits, and any supporting documents or instruments filed therewith to determine whether the proposal conforms with the requirements established by these regulations. If defects are ascertained, the Committee will bring them to the attention of the Member, officer, or employee who has established the fund and his or her administrator, which parties will then have thirty days within which to take necessary corrective action.

The Committee shall review the quarterly reports required under Chapter Four hereof, and shall monitor the activities of the fund to insure continued compliance with the provisions contained herein. The Committee may, for cause, direct that the fund be terminated involuntarily, subject to the provisions of Chapters Five and Six hereof.

CHAPTER TWO—ADMINISTRATION OF A LEGAL EXPENSE FUND

Each Member, officer, or employee seeking to establish a legal expense fund shall designate by name an administrator of the fund.

A. Who may serve as administrator

It is preferable, though not a condition precedent to the establishment of a legal expense fund, that the administrator be an attorney, an accountant, or a financial institution. The administrator may not be a Member, officer, or employee of the Senate; a member of the immediate family of the individual on whose behalf the fund is established; counsel for the beneficiary in the legal proceeding or proceedings necessitating creation of the fund; or a member, partner, associate, or employee of the firm employing counsel for the beneficiary in the proceeding or proceedings necessitating creation of the fund.

In addition, no officer or employee of the Senate may solicit, receive, or handle any contributions to a legal expense fund established pursuant to these regulations. This prohibition does not apply, however, to two assistants to a Senator who have been designated as "Political Fund Designees" pursuant to the provisions of Rule 41 of the Standing Rules of the Senate.

B. Duties of the administrator

The administrator of the fund shall serve as agent for the beneficiary Member, officer, or employee of the Senate, although the beneficiary, being subject to the Rules and regulations of the Senate, bears ultimate responsibility for administration of the fund.

The administrator shall be responsible for the receipt of contributions to the fund; authorization of expenditures and disbursements from the fund; filing reports as required by Chapter Four hereof; and the performance of other tasks incident to the administration of the fund.

As required by paragraph D(4) of Chapter One hereof, each administrator shall consent in writing to administer the fund in conformity with the Standing Rules of the Senate.

CHAPTER THREE—CONTRIBUTIONS

A. Who may contribute

Any individual, corporation, association, partnership, or other legal entity may contribute to a legal expense fund established pursuant to these regulations, except for the following:

1. any officer or employee of the United States Senate, or the spouse or dependent thereof, other than the officer or employee establishing the fund (or his or her spouse or dependent);

2. any Member's principal campaign committee;

3. any foreign national (as defined in the Federal Election Campaign Act, 2 U.S.C. Section 441(e)).

B. How much may be contributed

Contributions from any one source to a legal expense fund, when aggregated, shall not exceed $2,500 per fiscal year of the fund.

C. Definition of first fiscal year of the fund

For the purposes of these regulations, the first fiscal year of the fund shall be deemed to have started on the first day of the calendar quarter following the establishment of the fund. Any contributions received prior to that date shall be deemed to have been received in the first fiscal year of the fund.

D. Segregation of funds

All contributions to a legal expense fund must be kept in a separate bank account established therefor. They shall be segregated from, and may not be commingled with, the personal, political, or official funds of the Member, officers, or employee establishing the fund, or the funds of any other individual or legal entity.

CHAPTER FOUR—DISCLOSURE AND REPORTING REQUIREMENTS

A. When reports must be filed

A report of contributions received and expenditures made during each quarter, as described in paragraph (B) below, must be submitted to the Office of Public Records of the Secretary of the Senate and the Senate Select Committee on Ethics no later than 15 days following the last day of every calendar year (March 31, June 30, September 30, December 31) for the duration of the legal expense fund.

A final report upon termination of the fund shall be submitted as provided by Chapter Six hereof.

B. What must be reported

All reports filed pursuant to this Chapter shall include the name and address of each contributor whose contributions aggregate $100 or more, and the amount of each contribution made by such contributor during the relevant fiscal year.

All reports shall also include the name and address of each individual or other entity to which an expenditure from the fund has been made, along with a brief description of the nature and the amount of each expenditure.

C. Public availability of reports

All reports filed pursuant to this Chapter shall be available for public inspection upon filing with the Office of Public Records of the Secretary of the Senate.

CHAPTER FIVE—TERMINATION

A. When shall a legal expense fund be terminated

A legal expense fund established pursuant to these regulations may be terminated by any one of three means:

1. Voluntary termination.—the Member, officer, or employee who established the fund may direct, for whatever reason, that the fund be terminated;

2. Automatic termination.—by its terms, no later than six months following the completion of the legal proceedings for which the fund was created, unless, upon application and for good cause shown, the Committee extends the life of the fund, in which event the fund would terminate upon the expiration of all extensions; or

3. Involuntary termination.—the Committee may direct the involuntary termination of the fund pursuant to the provisions of Chapter Six hereof.

For purposes of granting extensions, the Committee would consider as "good cause" the existence of deficits in the fund, i.e., outstanding legal expenses which exceed the balance remaining in the fund. In such a case, the Committee may grant an extension (or extensions) for a reasonable time thereafter, during which time funds to make up the deficit may be solicited and received.

Upon termination of the fund, no further contributions may be accepted, nor may additional expenditures be made.

B. Disposition of unexpended funds upon termination

Funds remaining upon the termination of the fund, within thirty days thereafter, shall be either donated and distributed to one or more organizations described in Section 501 (c)(3) of the Internal Revenue Code of 1954 and made exempt from taxation under section 501(a) thereof, or returned to contributors to the fund on a pro-rata basis.

C. Final report

Within sixty days of the termination of the fund, a final report, disclosing the totals of all contributions and expenditures as described in Chapter Four hereof, and of all distributions as described in paragraph (B) of this Chapter, must be rendered and filed with the Committee and the Office of Public Records of the Secretary of the Senate. Upon filing, the report shall be available for public inspection at the Office of Public Records.

CHAPTER SIX—ENFORCEMENT

A. Audits

The Committee shall monitor the activities of any legal expense fund established pursuant to these regulations, and may direct that an audit be made of such fund when, in the judgment of the Committee, there is reason to believe that the fund is being improperly administered, or for other good cause.

B. Who performs the audit

Upon a determination by the Committee that an audit of a fund should be made, the Committee shall select a qualified auditor to examine the records of such fund. The expense of an audit performed at the direction of the Committee shall be borne by the Committee.

C. Involuntary termination

Upon a finding by the Committee that the fund is being improperly administered, or for other good cause, the Committee may direct that the fund be terminated and that the funds be distributed in accordance with provisions of Chapter Five hereof.

CHAPTER SEVEN—RETROACTIVITY

Nothing in these regulations shall preclude a Member, officer, or employee of the Senate who remains liable for expenses incurred *prior* to the enactment of Senate Resolution 508 (96th Congress, 2nd Session) from establishing a legal expense fund if otherwise consistent with these regulations.

CHAPTER EIGHT—INTERPRETIVE RULINGS

Senate Resolution 338, as amended, authorizes the Committee, in its discretion, to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee may issue such rulings in the interpretation and clarification of Senate Resolution 508, and these regulations pursuant thereto, in accordance with the procedures set forth in Rule 12 of the Rules of Procedure of the Committee.●

REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

● Mr. STEVENSON. Mr. President, on September 8, Senator PERCY inserted into the RECORD the Anderson platform: "The Program of the Anderson/Lucey National Unity Campaign." A second document released by the Anderson campaign—Rebuilding A Society That Works: An Agenda for America—highlights many of the campaign's major themes and proposals.

Mr. President, party platforms are little noted, nor long remembered. The Anderson agenda reflects his beliefs. The ideas have been carefully developed, and reflect a conscientious effort to elevate the political debate and focus our attention on the complex choices facing the Nation. It deserves the most respectful attention and so, Mr. President, I ask that the statement entiled "Rebuilding A Society That Works: An Agenda for America" be printed in the RECORD.

The statement follows:

REBUILDING A SOCIETY THAT WORKS: AN AGENDA FOR AMERICA

WASHINGTON, D.C.,
August 30, 1980.

To the American people:

In the past few weeks, the traditional political parties have released their traditional platforms. Now we are releasing ours—an untraditional program for America that responds to new challenges in new ways.

Our program is presented in two related documents. The first, "Rebuilding a Society that Works; An Agenda for America" highlights many of the major themes and proposals that our National Unity Campaign will offer to the nation. It is relatively short and deliberately selective. It states our goals and sketches in general terms how we intend to promote them. It is intended as a synthesis and an introduction to our program.

The second document, "The Program of the Anderson/Lucey National Unity Campaign," presents the details of our legislative and executive program in every major area of concern to this nation. It is divided into three sections. First, the Introduction sets forth the public philosophy that guides and unifies our program. The second, the body of the document, details our program in the general areas of economic policy, foreign and defense policy, social policy, and civil and human rights. The final section deals with the practical problems of governance. It substantiates our conviction that an Independent administration can effectively govern this nation.

It should be clear that we do not desire to implement every proposal in this program in the first year of an Anderson Administration. The full fiscal impacts of these initiatives are to be spread over the next four years. It would be fiscally irresponsible to do otherwise.

The program does not contain any massive new expenditures on the scale of a $60 billion land-based missile or a $25 billion-a-year comprehensive national health insurance scheme. Nor does the program call for large personal income tax cuts in advance of a balanced budget.

Moreover, we anticipate that the initiatives outlined in this program are small enough in their revenue impacts to be accommodated by the normal real dollar growth in revenues associated with an expanding economy. We will, within the next three weeks, issue a budgetary impact statement for our program.

How does our program differ from traditional party platforms?

First, it is specific. We have not been satisfied to express a vague commitment to abstract goals. We have spelled out our intentions; in many instances we have proposed specific legislation.

Second, it is directed toward problem-solving. We believe that government must be bold and active, but that it should not act for the sake of acting. We firmly believe in the old maxim, "If it isn't broken, don't fix it." In each section of our program, therefore, we begin by stating the real, pressing, unavoidable problems we face. And everything we propose is intended to advance this nation towards solving these problems.

Third, our program is coherent. We believe that government fails when it loses its sense of overall purpose and direction. We believe that the public interest is neglected when government disintegrates into a grab-bag of uncoordinated, contradictory efforts to serve special interests.

Our proposals are consistent with the public philosophy which guides our unity campaign. Its principles are both simple and profound. We believe America is in peril because our tradition of self-government has been eroded. We believe we must prepare for the future; that we must be cognizant of its limits, and aggressively pursue its opportunities. We believe we must rebuild America, and that the government must act as a catalyst to encourage every American to participate in the task of rebuilding. We believe that the rebuilding of America will not have succeeded unless we have persevered in our efforts to establish justice for all Americans.

Fourth, our program is realistic. We know that our resources are limited and that they must be applied to our most basic and pressing needs. We have not promised more than our federal budget and our national economy can bear. And we have not avoided the hard choices. As we constructed this program, we thought in terms of what our responsibilities would be if we were governing this nation. It is a strategy of governance, not a game plan for winning the election.

Fifth, our program is a personal commitment. Harry Truman was right when he said that a platform ought to be a contract with the American people. But too often party platforms are ignored by the candidates, after the election and even during the campaign. This year, for example, the Democratic National Convention repudiated much of the economic program of its own party's nominee, and he, in turn, rejected their decisions. Alternatively, the Republican Vice Presidential candidate ran virtually his whole primary campaign against proposals appearing in the platform upon which he is now running. There is no ambiguity about our commitment to our platform. It's ours, we mean every word of it, and we'll stand by it, during and after the national campaign.

Although our program is a personal commitment, it is not the work of our hands alone. We have consulted with business executives and assembly-line workers and farmers and with citizens concerned about our nation's future. We have analyzed and debated every proposal, and we have drafted and redrafted them until we were fully satisfied. We are proud of this program and we will fight hard for it.

We urge you to read and consider the program, and to compare it with those of the traditional parties. At this time of national testing, we must move beyond the politics of empty tactics and superficial images. We must face and debate the real issues. You may disagree with what we say, but we want you to know what we believe and what we will do if elected. You have a right to know what we stand for and what we will try to get enacted into legislation. The program will also help you identify the main issues we must debate and the problems we must solve. Our country needs the energy, the involvement, the concern of each one of you.

As the nineteen eighties begin, where does America stand?

The United States finds itself knee-deep in paradox. Its economy is the most powerful productive system on earth. Its natural resources are still relatively abundant. Its citizens are the most educated and capable work force in history. Its open and mobile society is a magnet for oppressed people throughout the world. Its constitution is a proven design for the governance of a pluralistic community. Yet we are stumbling—uncertain of our purpose, unsure of our strengths, preoccupied with our differences.

Our weaknesses, some real, some imagined, have begun to sap our confidence in ourselves and our capacities. A lack of foresight and an excess of evasion have compounded problems we should long since have addressed. Things have gotten out of control.

Over a period of years our economy has not kept pace with the rising demands upon it or with mounting competition from abroad.

Our dependence on foreign oil has become a crippling vulnerability, shifting hundreds of billions of dollars abroad, stimulating inflation at home, and hamstringing our foreign policy.

Our national security has eroded in the face of a relentless military buildup by the Soviet Union and the emergence of threats to American interests less susceptible to traditional military responses.

Our standing in the world has declined, among allies whose cooperation we need for an effective international policy, as well as among other nations whose good will and trade we value and whose development we wish to assist.

Our society has suffered shocks to its public and private institutions, to its quality of life, and to that sense of community which can flow only from the pursuit of common purposes.

Our federal system is buffeted by conflicting claims and swelling responsibilities of national, state and local authorities, and relations between the legislative and executive branches careen periodically toward calamity.

If America is to cope with these challenges, we must marshal our human and material resources far better than we have in recent years. In 1980 the over-riding issues are how we can do so and who is best prepared to lead the effort. No President can solve all the nation's problems, but the nation cannot manage them successfully without effective presidential leadership. Throughout the land there are grave doubts that either President Carter or Governor Reagan can devise a suitable program and provide the leadership to implement it.

Our National Unity Campaign speaks both to Mr. Carter and to Mr. Reagan.

To Mr. Carter, it says that a President must not only declare worthy goals; he must recognize the conflicts among competing goals and set a consistent course to prevent contradictions from rendering us impotent. The sad verdict is that Mr. Carter has:

Failed to rally the nation, the Congress, and our allies to a common standard;

Failed to fulfill his campaign commitments of 1976;

Failed to provide coherent and credible leadership.

His own book of promises now stands as an indictment of his tenure. On the record no fair observer can conclude that Mr. Carter deserves another term—or that the nation should have to endure one.

To Mr. Reagan, our campaign says that America will not trade inept management of complexity for doctrinaire assertions of simplicity. However, frustrated Americans may be, they are too sensible to believe that relief from present difficulties can come without sacrifice. They recognize the implausibility of Mr. Reagan's claim that we can

Cut taxes massively,

And increase defense spending enormously,

And balance the budget quickly,

And cure inflation permanently.

They question whether the necessity to strengthen our defenses justifies abandoning diplomatic efforts to reduce the threats to our security. On the record, no one can be confident that Mr. Reagan offers the balanced judgment and vision which America has a right to expect of its president.

Our National Unity Campaign responds to these concerns. We espouse a patriotism that is larger than partisanship. We seek to energize the political process by rejecting the Hobson's choice presented by the two major parties in 1980. We plan to tap the best ideas and talents of both parties, and to advance initiatives of our own to deal with the novel problems America faces in the late twentieth century.

Above all, we hope to define the national interest in ways that enlist broad support among Americans. As a nation, we need to rise above the chronic political combat among special interests whose claims, though often worthy, must be subordinated to the common good. To strike such balances is the prime responsibility of the Presidency. To suggest the priorities that should govern is the central objective of our campaign.

The Anderson-Lucey campaign is based on a public philosophy that neither repeats nor repeals the past, but builds upon it. Its principles are clear and simple. America is in peril because her foundations have been neglected in the past generation. We must plan for the future, we must save for the future, and we must invest in it. We must rebuild America. For the most part, government cannot do this directly. Rather, it must act boldly to create a climate and a framework of incentives that encourage individuals and businessses to get to work at the task of rebuilding.

Each of us must share these burdens, lest they become unbearable for all. And we must apportion the sacrifices necesary for national recovery with fair regard for the ability of individuals and groups to bear them. The rebuilding of America cannot succeed unless we are united; but we cannot remain united unless we persevere in establishing justice for all Americans.

More than ever before in peacetime, America must identify the esential tasks before it and focus its energies on them. What are these tasks? We perceive three of them, around which many important objectives revolve:

(1) To restore economic vitality

(2) To meet human needs and secure social justice

(3) To maintain national security and international cooperation.

I. Economic vitality:

To restore the vitality of the American economy will be neither simple nor easy; we deceive ourselves to think otherwise.

In launching the effort, the last thing America needs is a political campaign which exaggerates the differences among us. Republican and Democratic rhetoric leads in that direction. We should reject it and build upon the common ground that unites our citizens.

We perceive a latent consensus among the American people.

Americans agree that inflation must be curbed or the United States will be permanently weakened. In recent years, even when the overall inflation rate (as measured by the Consumer Price Index) has declined, the underlying inflation built into the costs of goods and services has remained high. For example, when the CPI rate fell below 6 percent in 1975–76, the underlying rate remained at nearly 8 percent. This almost guarantees that each recovery will spawn a new surge in prices, as producers try to meet demand while recovering their increased costs of labor and capital. All Americans are fatigued by a tail-chasing game that has gone on too long.

Americans agree that, to overcome this chronic threat to economic stability, we must improve productivity through investment in new plant, equipment and infrastructure. The massive investment required dictates a high priority to increasing the rate of capital formation through reversing the drastic drop in savings, increasing the capacity and incentives for business to invest, and restraining the claims of the public sector.

Americans agree that the principal avenue to solving the grim problem of unemployment is investment to create and sustain jobs, either by launching new industries or by revitalizing old ones. Rising competition from other countries makes this objective at once more difficult and more urgent. The only real protection against such foreign competition lies in strengthening our own ability to compete effectively. Yet there is a proper demand that government use its influence to promote fair international competition and that, when necessary, transitional arrangements permit American firms and workers to adjust to changing markets.

Americans agree that expanding jobs in the private sector is preferable to a bloated government payroll. The virtues of free enterprise still prevail and most Americans do not wish government to collect and allocate an ever-growing share of the nation's wealth. Yet, while restraining the growth of government spending, there is a clear public obligation to cushion the burdens a turbulent economy imposes on those least able to bear them—the jobless, the elderly, the poor. In steering the nation onto a path of noninflationary growth, government must improve its performance in helping to train and place the unemployed.

Americans agree that the global energy crisis threatens to undermine our best efforts to restore a sound economy. Our country's dependence on foreign oil, though less than that of our allies, compounds inflationary pressures and poses an obvious peril to our security. Yet other nations have shown the way to prosperous and less inflationary economies with much lower levels of per capita energy consumption. To achieve such growth will require us to wring energy waste out of the economy and to bring new energy sources into service.

In order to meet these objectives, we need three kinds of measures.

A. First, the Anderson-Lucey Administration will take immediate action on inflation and unemployment to counteract the economic dislocation and human distress produced by the Carter economic policies of the past four years.

INFLATION

Although inflation, as measured by the consumer price index, has receded from the 18 percent rate recorded in the first quarter of 1980, the underlying inflation rate remains at historically high levels. A central focus of national economic policy must be a progressive, year-by-year reduction in the inflation rate until reasonable price stability is achieved.

While fiscal and monetary restraint is essential to the achievement of price stability, we must also endeavor to reach a broader national accord on appropriate wage and price increases. We will construct a Wage-Price Incentives Program. Our administration will invite labor and management leaders to agree upon fair and realistic guidelines and to determine appropriate tax-based incentives to encourage compliance with those standards. By discouraging inflationary expectations, this wage-price incentives policy will be a key weapon in the campaign for stable economic growth.

In the absence of sharp and prolonged increases in the rate of inflation, we will oppose mandatory wage and price standards. Experience has demonstrated that such controls are difficult to administer and result in misallocation of economic resources.

FULL EMPLOYMENT

A sound economic policy must incorporate a commitment to full employment. We reaffirm the goals of the Humphrey-Hawkins Act, and regret the President's failure to consult with Congress before altering the timetables set forth in that Act. The establishment and attainment of national economic objectives are the joint responsibility of the President and Congress.

While America's full employment policy must focus on the creation and preservation of productive, private-sector jobs, there will be a continuing role for complementary federal programs to deal with chronic employment problems.

(1) We propose pilot projects to integrate state unemployment benefits with retraining benefits for those with long records of unemployment.

(2) To increase the effectiveness of the employment tax credit for small businesses, we will study the advisability of making the tax credit refundable.

(3) To deal with the critical problem of youth unemployment, particularly among minorities, we propose:

Enactment of the proposed Youth Act of 1980 to provide over $2 billion a year for job-training and state and local educational programs designed to improve the employability of disadvantaged and out-of-school youth;

Increased funding for youth career intern programs;

A youth opportunity wage incentive that would exempt eligible youths and employers from social security taxes during the first months of employment; and

A Youth Energy Projects Act that would provide up to $1 billion a year for multi-year energy and conservation projects, including mass transit, offering career opportunities for economically disadvantaged youth.

We will work with educators and employers to smooth the transition from school to job.

B. Second, the Anderson-Lucey Administration will undertake basic structural initiatives to create conditions for long-term economic growth with lower inflation and higher purchasing power.

(1) We will set a new balance between fiscal and monetary policy to dampen inflation, lower interest rates, and foster a predictable environment for long-range planning by investors and government alike.

While declining tax revenues and increasing transfer payments can be expected to unbalance the budget during times of economic difficulty, the budget should move toward balance or surplus during expansionary periods.

Once balance in the federal budget has been achieved, the Anderson-Lucey Administration will propose to index personal income tax brackets to prevent inflation from pushing taxpayers into higher tax brackets. As further economies are made in federal spending, we will propose tax cuts that go beyond the tax relief afforded by indexing.

We will oppose any new Constitutional limitation on the spending and taxing powers of Congress. Reforms limiting government spending to an appropriate percentage of GNP should be enacted as amendments to the Congressional Budget Act.

In the interest of more effective fiscal management, we will propose administrative procedures, subject to legislative veto, to meet changing economic conditions by (a) adjusting tax rates upward or downward by 10 percent or less and (b) accelerating or slowing certain federal expenditures. Timely and orderly action on these fronts can diminish the wasteful scramble of federal agencies to spend remaining funds in the closing days of each fiscal year. Such flexibility can also relieve the strain on monetary policy by permitting prompt fiscal intervention to counter adverse trends.

(2) We will use the tax code to encourage greater personal savings and capital formation.

We must make it both possible and desirable for the average American to save again. Lowering the inflation rate will be a powerful stimulus to savings. Phasing out interest rate restrictions on savings accounts, recently approved by Congress, will also be an important stimulant. We should remove other disincentives to savings and investment from the tax code. We propose:

Expanding gradually the interest and dividend income exclusion to $750 for individuals, $1,500 for married couples filing jointly;

Liberalizing eligibility requirements and income limitations for Individual Retirement Accounts, particularly for homemakers; and

Instituting a further review of capital gains taxes.

The current state of the economy and of our most basic industries, including automobiles and steel, requires adoption of added capital cost recovery measures to ensure that troubled companies and industries will not suffer a competitive tax disadvantage in undertaking capital expansion and improvements.

To enable less profitable companies to modernize their plants and equipment, we will propose to make the investment tax credit refundable. To ensure adequate congressional review of this measure, we propose a three-year limit on the refundability provisions, subject to extension.

(3) We will use tax incentives and direct federal assistance to stimulate research and development and to spur productivity.

To revive our flagging R & D effort, we propose a number of initiatives and improvements. An Anderson-Lucey Administration will seek to:

Reverse the decline in the real level of federal funding for research and development;

Provide a 10 percent investment tax credit for qualifying research and development expenditures;

Establish a federal program to re-equip the laboratories of universities, non-profit research centers, and government facilities;

Redefine the working relationship between government and universities so as to avoid substituting paperwork for creativity;

Provide fixed objectives and more predictable project funding for scientists and engineers on the cutting edge of technology;

Establish regional technology centers under the aegis of the National Science Foundation and NASA to lower the costs of selling and licensing new technologies to private business;

Establish a more uniform patent policy for all federal agencies;

Require federal agencies to determine expeditiously whether they will retain patents on inventions developed by private contractors with federal monies;

Reorganize and increase the funding of the Patent and Trademark Office to improve its operations;

Explore the possibility of a separate patent court to reduce the time needed to establish a valid patent.

(4) We will prune regulations that waste capital and do not serve valid regulatory objectives.

We will seek legislation that would:

Set an eight-year timetable for thorough congressional review of regulatory agencies;

Require the President to submit in the first session of each new Congress a regulatory reform plan for each of the regulatory agencies scheduled for review;

Require Congress to act on the regulatory reform plan by August 1st of the second session;

Assure congressional action by denying the affected agency power to promulgate new rules and regulations until Congress has acted.

An Anderson-Lucey Administration will be firmly committed to the growth and maintenance of competition in our modern economy. We support recent efforts toward deregulation of the transportation industry, and we will support thorough review of antitrust and other federal laws affecting competition.

(5) We will use a tough, conservation-oriented energy program to curtail the rapid outflow of American capital to pay for imported oil.

We will expand production of energy and induce conservation of energy through policies that are equitable, economical, environmentally and technologically sound. We would couple decontrol of oil and gas prices with an excise tax of 50 cents per gallon on gasoline, the full revenues of that tax being returned to individuals through reductions in payroll taxes and increased Social Security benefits. Gasoline prices will still remain well below those of other industrial nations. We will employ tax credits and other incentives to promote substitution of non-petroleum energy for oil, adoption of energy-efficient systems in industry and elsewhere, improvements in transportation and energy production technologies, and development of less wasteful structures for home and commerce.

We will explore a wide range of energy supply options—from mini-hydropower to renewable resources to fusion—to determine which are appropriate medium-term investments and which should be deferred or abandoned. We will emphasize environmental and safety controls as we explore wider use of coal through such techniques as liquefaction, gasification and fluidized bed combustion. We will propose financial concessions to construct rail, port and slurry pipeline facilities for expanded domestic and foreign trade in coal.

In considering policy for nuclear power, we will act on the recommendations of the Rogovin and Kemeny Commissions to make certain that installation of any future plants is preceded by demonstration of satisfactory standards and action on the nuclear waste question. We will assess nuclear power in light of its dependence on public subsidy and of the possibility that slower growth in demand may enable us to phase in other energy supplies in preference to nuclear systems.

We will accelerate the use of solar energy, particularly by using federal procurement to encourage uniform performance standards and economies of scale. We will devise suitable loan and credit mechanisms to stimulate residential and other applications. We will actively investigate the potential for renewable energy sources.

C. Third, the Anderson-Lucey Administration will adopt a new industrial policy, specifically targeted to encourage the reindustrialization of the U.S. economy.

(1) We propose an industrial policy sensitive to the special needs of our basic industries:

An Industrial Development Administration authorized to speed development of new technologies and cost-saving techniques by providing loan guarantees to industry;

An Industrial Development Council, chaired by the President, will engage government, labor and management in a continuing review of government policies affecting industrial matters, in fostering closer relations between management and labor, and in encouraging American industry to adapt to the rapid changes in international economics, technology, and consumer preferences;

Liberalized depreciation allowances, refundable investment tax credit, and 10 percent R & D tax credits for the auto and steel industries.

(2) We propose policies designed to restore small business to its traditional role as a generator of new ideas and new jobs:

Allow small businesses to elect to write-off the first $50,000 in investments in equipment and machinery each year;

Provide simplified and liberalized depreciation allowances for capital equipment and structures;

Provide an investment tax credit for qualifying research and development expenditures;

Defer capital gains tax on the sale of a small business if the proceeds are reinvested in another qualified small business within six months; and

Reduce corporate tax rates by two percentage points across-the-board by 1986.

Small businesses are often less suited or equipped to deal with federal regulatory requirements. Legislation should require federal agencies to consider the feasibility of less burdensome regulations for small businesses, providing they satisfy important safety and health standards.

(3) We propose policies designed to ensure that our transportation system can meet the demands of a changing economy. We must repair our nation's railroads, maintain our highways, upgrade our port facilities, and update our air traffic control systems.

(4) We propose to revitalize our space program, an important source of technological innovation and economic progress.

(5) We propose measures to remove barriers to exports and to work aggressively to increase them:

Expanded, competitive U.S. Export-Import Bank financing of a broader range of exports;

Reduced taxation of American nationals living abroad and engaging in export activities;

Duty-free entry of machinery and materials for use in export manufacture in foreign trade zones;

Anti-trust immunity for certified export activities by business associations;

Measures to encourage formation of export trading companies to assist small and medium-sized firms;

An Agricultural Export Credit Revolving Fund;

Renewed efforts to obtain international agreement on foreign business practices.

(6) We will strengthen our trade and our currency through increased international economic cooperation. To this end, we pledge:

Continued cooperation with our allies to achieve energy conservation and production targets set forth in the recent Venice Summit Agreement;

Closer cooperation among our trading partners to reduce frictions which, left unattended, could lead to arbitrary trade restrictions;

More effective coordination of economic and financial policy among the leading industrialized nations through the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD);

Continued efforts to enhance the effectiveness of IMF exchange rate surveillance;

Expanded financial and technical assistance to non-OPEC developing countries in their efforts to explore and market new energy sources; and

Support for a stable monetary order through refinement and extension of the Special Drawing Rights.

We will not pursue the fantasy of a return to the gold standard, as contemplated by the Reagan platform.

(7) Finally, we must preserve and extend the gains working men and women have achieved in nearly a century of organization and struggle.

We support a fair and equitable minimum wage that bears a consistent relation to the average manufacturing wage.

We support the full and effective enforcement of the Occupational Safety and Health Act of 1970, and we oppose legislation now before the Congress that would drastically weaken OSHA.

We support worker participation in determining the structure of the workplace.

We support extension of job-retraining and relocation assistance for displaced workers, Economic Development Administration assistance to distressed communities, and adoption of work-sharing programs on a pilot-project basis.

We oppose repeal of the Davis-Bacon Act of 1931.

We support selective improvements in the National Labor Relations Act to guard further against unfair labor practices.

II. Human needs and social justice:

A dynamic and growing economy is the necessary condition of social progress, of domestic harmony, and of national security. And only such an economy can allow all its citizens the basic freedom to choose and to pursue their own occupations. But economic health is not an end in itself. The worth of every society is determined by what its members do—as individuals and as citizens—with the wealth they create.

We believe that a modern society must accept its responsibility to provide for basic human needs by furnishing those public goods citizens cannot attain through individual effort.

To care for its cities, its transportation, and its environment;

To assist those who cannot support themselves;

To create a climate within which human beings can strive to fulfill their own needs.

To fulfill this responsibility, we will shape an adaptable government, responsive to its citizens and effective in its functions. The potential for institutional deadlock has grown acute and with it a dispiriting sense that little can be done to achive our public goals. This we must overcome.

A. We will launch an evolutionary effort to energize our political institutions and to adapt them to contemporary responsibilities. We will seek to establish a new and healthier equilibrium in the federal system. To examine the current condition of federal-state relations, we will assemble the constitutional partners in a Convocation on Federalism. This will not be a convention to act on constitutional amendments, as proposed by some state governments, but the Convocation will present recommendations to the President and Congress for statutory or constitutional change through normal legislative procedures.

Among issues to be addressed will be ways to reverse the incessant trend toward centalization of government, to establish balance between public sector and private sector claims on national wealth, and to improve the conduct of programs which must be handled on an intergovernmental basis. In short, without running the risks associated with a plenary convention, the Convocation will permit a thorough assessment of the federal system and of the Constitution, as it completes its second century. Our goal will be an allocation of responsibility among federal, state and local government that is clear and efficient.

Respecting the dual needs of executive initiative and legislative prerogative, the National Unity Administration will work closely with legislative leaders. To avoid the recurrent paralysis of legislative-executive relations, we will be prepared to consider far-reaching innovations, compatible with the separation of powers, to coordinate decision-making between the branches more effectively. We will discuss with the majority and minority leaders of both Houses whether they wish to take part in specified deliberations of the Cabinet and National Security Council, particularly those relating to international crises. Without abridging the President's right to privileged counsel, we will facilitate access of designated legislators to studies and analyses prepared for executive policy-making.

B. Together with state and local authorities, we will mount a systematic campaign to rebuild America's cities.

(1) Urban foundations.

The deterioration of our massive investment in urban capital stock—housing, roads, bridges, public transportation, sewers, water systems—is the most serious problem now confronting the cities. Squeezed between declining tax bases and escalating costs, many cities have been forced to defer essential maintenance to meet immediate operating needs.

To address this problem, an Anderson-Lucey Administration will propose an Urban Reinvestment Trust Fund (URTF). Funded through dedicated revenues from the federal alcohol and tobacco excise taxes and phased in over three years, it will disburse approximately $3.9 billion annually, It will be used for upgrading, repair and replacement of capital plant and equipment.

Because the revenues from the federal excise taxes on alcohol and tobacco have been rising more slowly than the rate of inflation, at the end of the phase-in period we will consider raising current excise tax rates to meet the urgent national needs to which our Trust Fund is addressed.

(2) Housing.

We face a looming crisis in housing. Construction has dropped below the level at which new families are being formed and economic and regulatory constraints have virtually shut down the multifamily housing industry. We propose:

To reduce interest rates by stabilizing the economy

To dampen the erratic housing cycle through a countercyclical mortgage subsidy program

To work for simplification and standardization of federal, state, and local building regulations

To stimulate private construction of multifamily housing, through increased interest rate subsidies and tax incentives, including accelerated depreciation

To accelerate renovation of existing housing stock

To encourage conversion of abandoned buildings from other uses to housing

To encourage low-income families to buy their own dwellings through federal mortgage guarantees

To increase the supply of mortgage funds by policies to expand personal savings.

(3) Neighborhoods.

A healthy city requires vigorous and thriving neighborhoods, secure in their differences, linked by common interests and purposes. For too long, federal policy has damaged neighborhood interests while neglecting programs that directly benefit neighborhoods.

We will review and, where appropriate, implement the recommendations of the largely ignored report of the National Commission on Neighborhoods. We will support neighborhood associations through tax credits, federal matching money, and increased funding for federal programs that work directly with local groups. We will use the Small Business Administration and the Urban Development Action Grants to promote economic development in neighborhoods. We will make federal policy more responsive to the plight of displaced urban dwellers.

(4) Enterprise zones.

Within our distressed older cities, there are zones of devastation, blighted by crime, arson, and population flight. The traditional tools of federal policy do not work, and cannot be expected to work, in these areas.

We favor legislation that would create "enterprise zones" in these areas, by lowering corporate, capital gains, payroll, and property taxes and by furnishing new tax incentives to small businesses.

C. We will work to transform America's surface transportation network.

Through years of neglect, profligate energy consumption, and lack of federal leadership, the United States has slid into a dependence on imported oil that threatens our economic viability and our national security. Transportation consumes half the petroleum used in this country. It is in this sector that we must effect the greatest economies.

To promote a balanced, cost-effective, energy-efficient transportation system:

We should establish a new Community Transportation Trust Fund to finance capital and maintenance costs of metropolitan and local transit systems, while general revenues would finance operating costs. Funded with dedicated revenues from the federal alcohol and tobacco excise taxes, it would disburse $15 billion over the next five years, $2.5 billion in the first year.

After suitable consultation with states and communities, the federal government should establish a twenty-year community transportation plan that lays out goals and funding priorities.

We should use tax incentives and selective subsidies to encourage the participation of the private sector in public transportation and to encourage the development of transportation alternatives for rural Americans.

We will implement a national railroad policy to catalyse the development of versatile, competitive and attractive freight and passenger services. This policy will give due weight to related policies on energy, agriculture and industry. While affording reasonable protection to shippers captive to rail transportation, we will move to end ananchronistic regulations and place increased reliance on market forces to determine railroad pricing and operating practices. Our administration will participate actively in efforts to upgrade the nation's dilapidated roadbeds and antiquated transfer facilities. We will consider equitable user charges for transportation modes benefiting from public subsidies in order to assure a less distorted and more competitive market for freight services.

D. We will construct an environmental policy that seasons idealism with realism and mobilizes Americans to combine restrained development with constant vigilance for the preservation of our natural assets—land, air and water. The fragility of our environment must evoke frugality in our stewardship of America.

We embrace the spirit of idealism and farsightedness that has enabled the environmental movement to flourish over several decades. We will guard and consolidate the achievements in every field of environmental protection and preservation. While mindful of the need to assess the economic impact of proposed environmental safeguards, we reaffirm our long-standing commitment to protecting our resources against pollution and depletion.

In addition to aggressive implementation of existing programs to protect air and water resources, we will launch new efforts to deal with safe disposal of toxic substances, with problems of acid rain and air-borne carbon dioxide, and with the detection and control of likely cancer-causing substances. We will undertake a broad range of policies to protect our wildlife, our public lands, our coastal zones and international environments like the ocean. We will ensure that federal water projects respect environmental concerns.

The complex and delicate relationship between energy and environmental policy necessitates constant surveillance. Conservation is the essential link between them. While all energy options require environmental safeguards, the distinctive aspects of nuclear power give urgency to the establishment of a Nuclear Regulatory Authority under a single administrator to assure the operational and environmental safety of reactors, fuel handling and waste disposal.

E. We will strive to improve the health of Americans by closing the gaps in our health care system and by promoting more effective delivery of services without inducing exorbitant inflation in their cost. These are familiar goals and the nation's failures to achieve them are equally well-known. We must prevent public policy from impeding a more competitive and cost-conscious market for health services. We would phase out retroactive cost-plus reimbursement under federal programs and replace it with prospective rate or fixed-premium financing, in order to give incentives to contain costs. Such a change should reduce the expensive cost-accounting and reporting practices now borne by hospitals, nursing homes and other agencies. We will take steps to allow Health Maintenance Organizations and other prepaid insurance options to compete for the federal health care dollar. We will analyze cost-sharing procedures to deter over-utilization and wasteful treatment under Medicare and Medicaid. To spur competition in the private sector we will recommend making health insurance payments by employers tax deductible only if they offer multiple options (including catastrophic coverage) which permit employees to choose the most cost-efficient plan for their individual circumstances.

We will ground health policy in the existing private structure, gradually augmenting present coverage to reach the twenty-two million Americans who are now unprotected. An important mechanism to bring professional care to areas which are inadequately served is the National Health Service Corps, which we will enlarge.

We will act to correct the under-emphasis on preventive medicine and health research—which now accounts for only 2 percent of total health care expenditures. We will give close attention to disseminating the results of research on the health implications of lifestyle, diet and environmental factors. Programs to prevent and treat problems of drug abuse, alcoholism and mental health are increasingly important in contemporary society; we will sustain them.

F. We propose to rationalize the welfare system and to meet the changing requirements of families and individuals in need. We will improve administration of the principal welfare programs—Aid for Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and Food Stamps—and will consider the possibility of uniform application for them. We support a national minimum benefit standard and uniform eligibility requirements for AFDC. To avoid further weakening of families in dire need, we advocate mandatory AFDC coverage of two-parent families in the 24 states now lacking it. There should be standard procedures for periodic determination of income and eligibility, as well as expansion of the National Recipient System (NRS) to eliminate erroneous payments.

Even with administrative improvements, the income transfers made by these programs are near their practical limits. We must place greater stress on earned income for the disadvantaged by reducing the marginal tax on entry of poor workers into the labor force. We propose a standardized benefit reduction formula to assure higher real income for welfare recipients who obtain work.

We would expand the Earned Income Tax Credit to increase incentives for the working poor and to increase their ability to accumulate savings. We favor expansion of day care facilities for the children of these families.

The welfare of our people depends on far more than the welfare system. It also requires sturdy families able to cope with the stress of modern life. We would bolster the family's economic base by ending the so-called "marriage tax" on two-earner families and inheritance or gift taxes on transfers between spouses. We support authority for homemakers to establish Individual Retirement Accounts and programs to assist displaced homemakers. We favor added tax relief for families providing home care for relatives who would otherwise be institutionalized.

With a growing population of older Americans—of whom nine million live in poverty—we must also focus policy on their needs. While working to reduce inflation as the key to durable economic relief for all citizens, we will retain adequate indexation for Social Security benefits and resist their taxation. We will also encourage the ablebodied elderly to enjoy the financial and emotional benefits of work by phasing out limits on earnings for Social Security recipients and strengthening the Age Discrimination in Employment Act.

A major objective will be to curtail unnecessary institutionalization by supporting arrangements which enable the elderly to remain in the community. Among other measures, we recommend—

Broader health care coverage to aid persons or families who incur huge medical expenses while caring for the elderly at home or outside hospitals

Adult day care centers to aid those for whom overnight and weekend care is available at home

"Respite services" to assure families that elderly members will be cared for competently during vacations and other absences.

Making it possible for the elderly to remain in the home and neighborhood can produce substantial savings to provide increased funding for those truly in need of long-term institutional care.

Another group of Americans, young and old, deserves more help from government. They are the 30 million veterans of our armed forces. The shortcomings of the Veterans Administration demand correction. The physical and psychological traumas inflicted by the war in Southeast Asia require the succor of a caring nation. Our programs will focus on the disproportionate unemployment and readjustment problems suffered by Vietnam veterans. We would extend educational benefits for these veterans, and permit such entitlements to be used as reimbursements to employers for wages and other training expenses related to jobs for eligible veterans. We will step up personal counselling services for Vietnam veterans and will conduct a major outreach program to contact and assist victims of Agent Orange or other contaminants used in the war.

G. We will dedicate ample resources to the manifold missions of education.

To break down communications barriers among federal, state and local educational officials, and to provide supplemental aid to hard pressed local school districts, we will provide subtsantial funding to the Department of Education—a worthwhile innovation which will require active and sensitive direction. The virtues of diversity in education warrant federal deference for wide latitude in local school policies, and we will press the Department to cut back the thicket of regulations, subject only to monitoring federally mandated programs and accountability for federal funding. We will frame executive orders to govern future regulations.

We will defer to self-regulation by states or school districts except when it proves demonstrably unsuccessful or incompatible with overriding federal interests. At the same time we will uphold by all means at the government's disposal the right of every child to an equal educational opportunity.

A continuing goal will be to advance the education of handicapped children, including opportunities to learn vocations conducive to productive and self-directed lives. We will place emphasis on linking special education programs for the handicapped to affirmative action efforts by private employers.

The Department of Education will intensify its activities in behalf of disabled children in poorer districts, and work to overcome the present shortage of special education teachers generally.

Taking account of the changing demography of education at all levels, we will encourage diversification of schools and colleges into adult and continuing education programs for people of all ages who are eager to enlarge their knowledge and skills. We will strive to bring coherence and adequate resources to the varied programs of federal financial aid to students in higher education.

"Learn awhile to serve" reads an English school motto. That is but one worthy goal of learning. Knowledge and skill are economic tools but they are also instruments for personal fulfillment. We will strive to make them accessible to all with the capacity and determination to learn.

H. We will marshal increased support for the arts and humanities.

A difficult mission for government lies in the support of the arts and humanities—creative endeavors whose justification rests on artistic and scholarly grounds rather than on the pragmatic reasons associated with science and technology. Fostering an environment in which are and the humanities can flourish with significant public funding but without unwarranted public control is a challenge we have begun to meet. We will support the principal federal institutions for these purposes, the National Endowments for the Arts and the Humanities, and will try to protect these valuable programs against the ravages of inflation and budget cuts. We favor the creation of a National Arts Bank to purchase and lease for exhibition works of American art. We will encourage wider use of tax credits available to individuals and corporations contributing to the arts. We will investigate additional improvements in copyright and patent laws to guarantee fair compensation to artists. We will also lend our endorsement to the proposed Artists Tax Equity Act to facilitate donations of works of art to public institutions and to eliminate unfair taxation of artists and their heirs. These material measures can help the artistic spirit thrive in communities throughout America.

I. We will erect a government devoted to ending discrimination and advancing justice for every person in our society.

An important goal on the social agenda will be to bring women into full partnership in all our institutions. We are committed to ratification of the Equal Rights Amendment. We oppose government intrusion in the most intimate of family decisions—the right to bear or not to bear children—and will fight against any constitutional amendment prohibiting abortion. We support public funding of family planning services and other efforts to enable women to find acceptable alternatives to abortion. Women will hold responsible position in every department of our administration.

We will be diligent in enforcement of affirmative action programs and other measures to assure equal protection of the laws for minorities and other victims of discrimination. Vigorous administration and stronger enforcement provisions for federal Fair Housing legislation will be crucial as the nation strives to surmount its serious housing shortage. The ability to read is indispensable to meaningful opportunity in America; we will direct the Department of Education to attack the massive problem of functional illiteracy, from which an estimated 20 million adults suffer. We will strengthen our commitment to bilingual education and provide appropriate assistance to local authorities for development of responsive and effective bilingual education programs. We advocate reaffirmation of the nation's democratic principles by fair and equal representation in Congress for the citizens of the District of Columbia.

Fundamental questions of justice hinge on the reform of the U.S. Criminal Code. Our first objective will be to prevent crime and to protect its victims. We also favor a cautious and deliberate approach to the sensitive issue of civil liberty involved in such reform. Intricate issues arise, for example, in attempting to frame systematic principles for sentencing convicted offenders and for plea bargaining. Out of respect both for the constitutional ban on double jeopardy and for the need to avoid coercion in plea bargaining, we oppose giving prosecutors the right to appeal a sentence. Reform should correct disparities in sentencing and promote guidelines for the use of fines, community service orders and restitution in preference to incarceration in appropriate cases.

Law enforcement is principally a state and local function, but we will act firmly to fulfill federal responsibilities, including protection of individuals against policy brutality. We will reinforce the capacity of the Community Relations Service to deal with local tensions. Prison reform looms large among the challenges of the coming decade and we will take steps to relieve overcrowding and abuses in the prisons, as well as to increase the range of opportunities for inmate work release programs, and other rehabilitative efforts.

Concern over the treatment and status of immigrants joins our domestic and international policy. We will seek humane solutions to the dilemmas arising in this field, by extending civil rights protection to aliens and by negotiating actively with Mexico and other nations to devise satisfactory international arrangements regarding illegal aliens.

In appointments to executive and judicial offices, we will steadfastly oppose the application of ideological "litmus tests" and adhere strictly to standards of qualification, competence, and equal opportunity for women and minorities. To diminish the recurrent conflicts of loyalty to which recent Attorneys General have been subject, we will underscore the Attorney General's obligations to the courts by consulting with the Judicial Conference of the United States prior to submitting any nomination for that office.

III. National security and international cooperation:

On issues of foreign policy and national security, as on the economy, we must find areas of consensus on which the United States can build sound policy.

The first priority for American foreign policy must be to rebuild our domestic strength—the bedrock of our international posture.

The next priority for American foreign policy is to restore and nurture our historic alliances.

Most Americans agree that the continuing growth of both Soviet strategic and conventional forces requires the United States to strengthen its defenses.

We agree that it is essential to recruit and retain capable men and women to serve in our armed forces—and that to do so without resorting to conscription will demand substantially greater pay and benefits for volunteers.

We agree that beyond the Soviet-American rivalry lie new threats to our vital interests—threats arising from technological change and the possible spread of nuclear weapons, from the potentially explosive competition for resources in an age of global interdependence, from unchecked racism and overzealous nationalism, from famine and widespread disease.

And we agree that mutual, verifiable and realistic arms limitations can contribute to our security.

Meeting these challenges successfully will tax America's wisdom even more than its material wealth. What do we propose?

Defense and National Security:

A. In strategic forces, we will maintain a stable balance by preserving essential equivalence with the Soviet Union. To meet an evolving threat to our deterrent we will modernize and diversify our strategic arsenal.

Specifically, we will take the following steps:

Our military command, control and communcation systems should be made as survivable as our strategic weapons systems.

Our warning systems must be improved, as well as our ability to analyze data and make decisions under war-time conditions.

We will improve the basing systems for our aircraft and fleet ballistic missiles.

We will move ahead with the current Trident submarine program.

We should continue research into other missile-carrying submarines, as additional means for enhancing our deterrent capabilities in the face of changing Soviet anti-submarine warfare capabilities.

We will continue modernization of the B–52 with air-launched cruise missiles, short range attack missiles, and with improved navigational and other electronic systems.

We will continue research on new bomber forces, including those capable of launching cruise missiles.

The growing concern over the threat to fixed, land-based missiles poses an urgent problem to both the United States and the Soviet Union. Economically, environmentally, and strategically, the specific cure proposed by the Carter administration—the MX system—is unsound.

The fundamental question posed by the growing vulnerability of our land-based missiles is what comprises the most desirable mix of forces as the American arsenal is modernized in the 1980's. Should we preserve the three main components of our strategic forces, land-based missiles, bombers, and submarines? Or, as we move into the future, should we place greater reliance on bomber and submarine forces?

A possible solution would be negotiations with the Soviet Union that verifiably reduced the capacity of each party to threaten the other's land-based missiles. Unfortunately, the Soviets have so far rejected such negotiations. We must make clear to them that their intransigence is forcing us to consider options which may severely impair strategic stability.

The Anderson-Lucey Administration will give this matter the fresh and sober consideration it deserves through a comprehensive assessment of strategic doctrines, capabilities, and choices, free from either ideology or illusion.

American ingenuity can devise a more flexible and more cost-effective solution to the threat posed to our land-based missiles.

For the past five administrations, Democrat and Republican, our nuclear strategy has been based on the principle of deterrence. Our principal objective is not to wage nuclear war, but to prevent it.

The Anderson-Lucey Administration will unambiguously reaffirm this traditional strategy. We hold fast to the conviction that control of nuclear war is improbable, and that victory in nuclear war is meaningless. For, as Douglas MacArthur said, "If you lose, you are annihilated. If you win, you stand only to lose."

B. The National Unity Administration will emphasize versatile and usable forces to counter any conventional attack on our vital interests. Our first priority here will be to redress the grave personnel problems of the armed forces. We oppose peacetime conscription, but to make the volunteer army work will require additional funds for military pay and benefits. We will support both performance and reenlistment bonuses, as well as other measures to ensure retention of those with critical skills. We will take steps to rectify the serious shortcomings in military housing and social services. We will offer new educational incentives to aid recruitment.

To attract more qualified personnel, we will encourage lateral entry in selected categories for both enlisted and officer ranks; to retain them we will eliminate the "up or out" policy on promotions and permit skilled individuals to remain on active duty outside the normal promotion path. Improved retention should make possible substantial savings in training budgets to help offset the costs of these personnel policies.

Beyond strengthening our military manpower base, we will stress improved force readiness through increased operations and maintenance funding. We will press for further improvements in the "tooth-to-tail" ratio. To facilitate more rapid action in Europe and other critical areas we will expand programs to pre-position equipment overseas and to increase U.S. air and sealift capabilities.

In guiding weapons design and procurement, our policy will be to demand a better balance between advancing technology and producing in quantity; we need more weapons with adequate capability and high reliability, rather than fewer weapons with excess capability and low reliability. To guarantee our ability to operate on a global scale, we will allocate more resources to naval forces, including those needed for operations in the Persian Gulf and Indian Ocean.

C. We will invigorate the international quest for arms control. Our policy will be based on the fundamental principles:

Arms control agreements must enhance our basic security and must not compromise our ability to protect our national interests.

Agreements must preserve and reinforce the stability of the strategic balance.

Arms control agreements, particularly with the Soviet Union, are not agreements between friends. We cannot rely on the good intentions or paper promises of our adversaries. Arms control must be based on adequate, effective verification.

The Anderson-Lucey Administration will take steps to complete the SALT II process, and thereby lay the groundwork for SALT III.

The Western Alliance should proceed with its plans to modernize its theater nuclear arsenal; at the same time, we should keep open the possibility of negotiations with the Soviet Union to limit theater nuclear forces.

Our administration will support efforts to negotiate a ban on the development, testing, and deployment of anti-satellite warfare systems. Until, however, the Soviet Union shows a willingness to enter serious negotiations in this area, we should continue research on an anti-satellite capability.

We favor conclusion of a short-term comprehensive Nuclear Test Ban Treaty between the United States, the Soviet Union, and the United Kingdom, with frequent review pending inclusion of all nuclear weapons states. This will be a valuable element in the firm policy we will conduct to discourage proliferation of nuclear weapons.

Our anti-proliferation policy will devote particular attention to limiting the number of facilities which use or produce plutonium or weapons-grade uranium.

The United States must maintain a basic program of nuclear energy research and development if we are to retain our command of the broad range of nuclear activities relevant to the problems of nuclear weapons proliferation.

We will use every technological and managerial tool at our disposal to increase still further the distance between the military and peaceful uses of nuclear energy. In addition, we believe that exports of nuclear technology should only be approved by the United States in instances where the proposed transfer comports with non-proliferation goals.

D. For a more effective defense, we will rely heavily on collective security arrangements with our principal allies in NATO and Japan. Unlike the Soviet Union, the United States enjoys the support of willing allies, not reluctant satellites. To strengthen deterrence of war in Europe, we will consider ways to reinforce NATO against potential Warsaw Pact attacks, including the organization of reserve forces for combat use in the early stages of conflict. We will work to upgrade the quality, standardization and interoperability of alliance weapons and equipment, and to provide ample war reserve stocks in Europe. We will refine joint arrangements to expand airlift capacity by suitable alterations and command arrangements for wide-bodied aircraft in allied civil fleets.

We will also look to our allies to share the burden of defending Western interests in such regions as the Persian Gulf, either directly or through flexible arrangements for employment of American forces assigned to NATO and the Far East. We believe Japan should assume a security role appropriate to its situation and commensurate with its capacity. Given Japan's substantial shipbuilding assets, this role could well include contributions to sealift and anti-submarine warfare capabilities. An alliance of equal partners, proceeding with mutual concern and genuine consultation, can make "division of labor" more than just a slogan.

Foreign Policy and International Cooperation:

We are dedicated to a reinvigorated partnership with our democratic allies. With it, Western civilization can confront the dangers and the challenges of the world from a position of calm but unquestioned strength and courage. Our diplomacy is a key to our security. We must be prepared to confront challenges to our basic interests around the globe with an active and forward diplomatic effort.

A. We will work to reinforce and enhance our historic partnership with our Western European allies. To many, the ills of the Alliance are beyond cure. But we have a unique opportunity to extend the fundamental partnership which has been such a source of strength for the free world for the past thirty years. If the Alliance was important to our world position in 1949, when America's power was at its zenith, it is even more so today as we face even greater challenges around the world.

To bolster our Atlantic partnership in the next decade, we need a clear sense of the basic principles which should guide our efforts.

First among these broad principles is the recognition that apart from deterring a physical attack upon the United States itself, there is no more important national interest than the maintenance of our Alliance with Western Europe.

Second, we must recognize that the Alliance must be a union of equal partners.

Third, we must be prepared to acknowledge that there will be times when European interests are not those embraced by the United States. A mature and balanced partnership can accommodate differences of opinion or approach.

Fourth, the United States must cease talking about consultation and actually consult with its allies before embarking on ventures in which it expects them to participate. Reciprocally, our allies must acknowledge a similar responsibility.

B. The National Unity Administration will give priority to stabilizing the critical relationship with the Soviet Union. We will maintain and reinforce the military balance. We will support international efforts to end Soviet aggression in Afghanistan. We will adopt measures to deter or counter Soviet intervention, whether direct or through proxies, in areas vital to our interests, including specifically the Persian Gulf.

The superpower relationship is central to world peace and neither side can allow it to degenerate further. Recent developments—the SALT deadlock, Afghanistan, rising military competition—have rendered the limited working relationship between Washington and Moscow more limited than working. Particularly when tensions are high, it is incumbent on the United States and the Soviet Union to maintain active communications. That will be our policy.

A realistic relationship will demand that both sides act on their vested interest in mutual restraint. The Strategic Arms Limitations process is a valuable means of testing and defining mutual acceptance of that fact and we will take steps to revive that process. Specifically, we will propose to Moscow supplementary measures that could make possible the ratification of the SALT II Treaty and the start of SALT III negotiations. These proposals will respond to concerns expressed in the U.S. Senate regarding such issues as verification and future force reduction. They could take the form of joint declarations and treaty interpretations not requiring renegotiation of the existing treaty language.

We strongly support the Helsinki process. The broadening of trade, as well as the expansion of scientific, technological, and cultural exchanges, is dependent upon practices by the Soviet and East European governments which are consistent with basic human rights standards.

C. The establishment and maintenance of peace in the Middle East will be an urgent objective.

A lasting settlement must encompass the principles affirmed in the Camp David accords.

Our administration will support the recognition of Palestinian rights as embodied in the Camp David accords, but will oppose the creation of a Palestinian state between Israel and Jordan.

The United States will not recognize or negotiate with the Palestine Liberation Organization unless that organization repudiates terrorism, explicitly recognizes Israel's right to exist in peace, and accepts UN Security Council Resolutions 242 and 338 unchanged.

The questions of Israeli settlements on the West Bank and the final status of East Jerusalem must be decided by negotiations. The United States will support free and unimpeded access to Jerusalem's holy places by people of all faiths. Jerusalem should remain an open and undivided city. At the conclusion of the peace-making process and as a final act of settlement, we will recognize Jerusalem as the capital of Israel and to move the U.S. Embassy there.

D. In strengthening our diplomatic alliances, we will continue to build on our strong ties to Japan to enhance our security in the Pacific region. We will carefully nurture our new relationship with China.

We believe that two basic principles should guide our policy toward Japan: a genuine American-Japanese partnership is fundamental to all else in the Pacific, and economic and security elements in the partnership cannot be separated.

Japan is at once our military ally and our economic competitor. American-Japanese trade relations have been troubled by the large current trade imbalance, the impact of Japanese exports on the American automobile industry, and American difficulty in gaining access to Japan's domestic market.

In resolving these issues, the Anderson-

Lucey Administration would be guided by three propositions. First, decisions reached without full consultation and indifferent to Japanese concerns will be worse than no decision at all. Second, our bilateral economic relations are related to basic and far-reaching movements in the global economy. Third, both the United States and Japan must ensure that trade problems do not impair our security relations.

Concerning China, we believe that those who blithely talk of playing the fabled "China card" do not understand the nature of the relationship. It is not in our interest to give China an "American card" for use in her relations with other East Asian countries or with the Soviet Union.

From a renewed position of domestic and international strength, the Anderson-Lucey Administration would work to discourage antagonism between Russia and China. We should not become an arms supplier to China. We should work for better understanding by China's leaders of the consequences of nuclear war, of measures that should be taken to guard against accidental war, and of ways to make the nuclear balance more stable.

Finally, our administration would abide by both the letter and spirit of the Taiwan Relations Act. We would maintain our contacts with Taiwan but would not establish official relations with its government.

Elsewhere in the region, we would continue to support the security of Thailand. We would not normalize relations with Vietnam without real progress on outstanding issues. We reaffirm our commitment to defend South Korea against attack.

E. In Latin America our diplomacy would promote U.S. ideals and interests, while respecting the sovereignty and independence of every nation in the hemisphere.

There is no more important partner than Mexico.

One of the most complex and difficult issues is the immigration of undocumented Mexican workers to the United States. We recognize that there is no easy solution to this problem. We would work with Mexico to improve the economic conditions of that country in order to diminish the basic causes of the migration. We will also propose a joint American/Mexican Commission to promote cooperative social development in the border region. An on-going dialogue on issues such as trade, agriculture, energy, migration, finance, and industry is essential to forging the kind of partnership that should characterize our relations with Mexico in the 1980's and beyond.

We will make clear that the United States will not tolerate direct military intervention by Cuba in Central America. There must be no Angolas in the Western Hemisphere. We will also oppose any attempt by the Cubans to lead the nonaligned movement into the Soviet camp.

However, we must not allow our concerns about Cuba to distort our policy toward other parts of the hemisphere. No amount of military aid can make a repressive government popular, and an unpopular government is never secure for long. The best antidote to Cuba's promotion of revolution is a region of sound, popular, democratic governments—not an armed camp of military dictators.

Providing economic aid to Nicaragua serves that goal. It will ease the suffering of Nicaragua's poor and should promote an atmosphere of moderation within that country.

F. In South Asia, the Anderson-Lucey Administration will make a major effort to open a wider window to India. We will support India's independent role in world affairs. We will maintain our commitments to other countries in the area. We will encourage both India and China to continue efforts to settle their boundary controversies. We will press for Soviet withdrawal from Afghanistan, where the gravest threat to regional stability now lies.

G. We will promote stability in Africa by helping the nations of that continent achieve their social, political, and economic goals. We will:

Work toward majority rule in South Africa through negotiations in bilateral and multilateral forums.

Continue restrictions on Export-Import Bank restrictions on credit for investments in South Africa.

Encourage compliance with the United Nations embargo on the export of military equipment to South Africa.

As circumstances warrant, and in cooperation with our allies, discourage investments in South Africa.

Our administration will aggressively pursue a final agreement in Namibia based on UN Security Resolution 435 which has been accepted by both SWAPO and the South African government.

H. We will cooperate with the developing nations in ways which respect their individuality and independence and which serve our mutual interests in trade and development. We will follow a carefully differentiated policy toward these countries working through both multilateral and bilateral arrangements. The fact that the North-South dialogue has deteriorated into a harangue by the so-called Group of 77 should not blind us to the necessity to work toward a more equitable international economic order.

Our objective will be not one global bargain, but a workable global structure in which individuals, firms and nations can strike the countless bargains necessary to a productive international economy. And we will urge oil-exporting nations to take the lead in relieving the hardship drastic oil price increases inflict on less-developed countries.

CONCLUSION: HOW AN INDEPENDENT CAN GOVERN

We have set forth a program for America. But that is not enough. Those who would form an Independent Administration should also explain how they could accomplish these tasks.

We believe that, at this critical juncture, an Independent Administration with ties to both parties can work successfully with a two-party Congress to govern the United States.

The two parties have not yet formulated a realistic post-New Deal public philosophy.

They have found it exceedingly difficult to make the hard choices needed when government is obliged not to distribute the dividends of economic growth, but to allocate burdens and orchestrate sacrifices.

And many of the key issues confronting this country now cross traditional party divisions.

We believe that an Independent President can be effective. We acknowledge that the context within which Presidents must act has become more complicated and restrictive during the past two decades. Sober observers have pointed to the decentralization of Congress, the fragmentation of political parties, the rise of single-issue constituencies, and the atomization of the electorate as major elements of this new situation. But we contend that in 1980 an Anderson-Lucey Administration can deal with it more effective than a party administration can.

Victory by our ticket—in the teeth of enormous institutional biases against independents—would be a dramatic signal that the nation wants and expects action based on the consensus the campaign has articulated. Our campaign represents a coalition of the center—the traditional basis for governing the country.

We are confident that Congress—which includes men and women of high civic dedication—will work productively with any President who enjoys the trust of the American people. We hope to earn and hold that trust.

The essence of presidential responsibility is to assert the general interest over narrow interests, to make difficult choices among worthy, but conflicting, objectives, to strike policy balances that are wise and fair enough to gain the support of Congress and the nation.

No President can forecast in all respects the precise course he will follow on all issues. But it is incumbent on candidates who seek your vote to state their view of the country's needs and to identify those intiatives they expect to undertake—to point a direction even when they cannot provide a full map.

That we have attempted to do. Many distinguished Americans have contributed to the studies and position papers on which this program is based, but it is our own sketch of the priorities we believe should guide our country—not a mosaic of bargains among special interests or trade-offs among experts.

We seek a workable synthesis of policy and program, for the next administration must blend new ideas with old, innovative concepts with traditional values, proven approaches with tentative ones. In responding to the challenges we face, government must be frankly experimental in some fields, conventional in others. It must also be utterly ruthless in judging its performance and pruning its failures. These convictions will animate our administration.

We speak for a patriotism greater than party. And we invite patriots of all persuasions to join with us in shaping a government that can shape the future.

It won't be easy—but it will be worth it.

Sincerely,

JOHN B. ANDERSON.
PATRICK J. LUCEY.

INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

● Mr. HEFLIN. Mr. President, on behalf of the Select Committee on Ethics, I submit a number of the committee's interpretative rulings on the Senate Code of Official Conduct made pursuant to section 206 of Senate Resolution 110, 95th Congress. These 62 rulings answer questions raised by Members, officers and employees of the Senate and the public regarding Senate rules 34–42 the franked mail statute and regulations, and other matters. They are presented chonologically by ruling number (beginning with No. 273) with reference to subject and reflect committee action between July 9, 1979, and September 3, 1980. The first 103 rulings were published in the CONGRESSIONAL RECORD on October 7, 1978. Rulings 104–150 were published November 9, 1978. Rulings 151–242 were published September 5, 1979. Rulings 243–272 were published February 27, 1980.

The committee also responded by letter to 239 inquiries not submitted here for publication. These inquiries were either too specilized to be of general assistance or responses to inquiries duplicated interpretations presented here or previously published.

Interpretative rulings by the committee may be relied upon by an individual involved in a specific transaction or activity which is indistinguishable in all its material aspects from the facts on which a ruling has been made. The committee encourages written requests for rulings on specific situations not clearly covered by the Code of Conduct.

The committee will continue to respond to written requests for interpretations, treat such requests confidentially, and publish its rulings with appropriate deletions to protect the privacy of individuals who seek committee guidance.

The rulings of the select committee are as follows:

INTERPRETATIVE RULING NO. 273

Date issued: July 9, 1979.
Applicable Rules: 37, 41.[1]

Question considered

May a Senator hire an employee who also serves as a member of a state legislature of the State which the Senator represents? The employee would carry out normal staff functions but would not be one of the two staff members authorized by Rule 49 to engage in campaign fund-raising activities. The state legislature meets for several months per year and its members are compensated at a rate of $200 a biennium, plus mileage.

Ruling

Rule 37, paragraph 2, prohibits Senate employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties. Paragraph 3 of Rule 37 places the responsibility upon the employees' supervisor, which in this instance would be the Senator, to take such action considered necessary to avoid a conflict of interest or interference with Senate duties.

While the Committee cannot predict whether in fact this outside activity will conflict with Senate duties, or will result in conflict of interest in connection with a particular issue, the Committee suggests that, if hired, the employee be advised that the Senator will monitor the situation and consider whether a salary adjustment or restriction in Senate duties would be appropriate during those periods when the state legislature is in session. The Committee believes this approach to the matter would be in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING NO. 274

Date issued: July 16, 1979.
Applicable Rules: 34, 35.[2]

Question considered

What are the gift and reporting consequences where a Member accepts the offer of a personal friend to fly on an airplane owned by the friend's corporation from Washington to his home State and back? The corporation employs no lobbyist, nor does it maintain a political action committee. The commercial rate for the round-trip air travel is $198.00.

Discussion

Rule 35 of the Senate Code of Official Conduct prohibits accepting gifts that have an aggregate value of $100 or more from, among others, persons or organizations which have a "direct interest in legislation before the Congress," which is defined in subparagraph 1(b) as persons, organizations or corporations which are registered under the Federal Regulation of Lobbying Act of 1946 or which maintain a separate segregated fund for political purposes as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 441 (b)).

Accepting the airplane flight is not prohibited by Senate Rules because the corporation is not registered as a lobbyist and does not maintain a political action committee.

Paragraph 2(b) of Rule 42[3] and Section 102(a)(2)(A) of the Ethics in Government Act of 1978 requires an annual public disclosure of any gifts of transportation, food, lodging, or entertainment aggregating $250 or more from any source (except relatives) during a calendar year. The Committee has determined that for purposes of determining the value of a gift of air transportation, a reporting individual may use the amount charged for coach class service by a scheduled commercial airline over the same route.

The Member states that the round-trip air fare for the trip is $198. In that case, the $250 reporting threshold has not yet been met. However, if the total value of all gifts of transportation, food, lodging, or entertainment from the same source should equal or exceed $250 during the year, then a report of the gifts must be made on or before the following May 15 as part of the Member's annual public financial disclosure report.

INTERPRETATIVE RULING NO. 275

Date issued: July 17, 1979.
Applicable Rules: 34, 37, 41.[4]

Question Considered

What is the applicability of the Senate Code of Official Conduct to a proposed employment arrangement whereby a Senator would hire a partner from a law firm located in his home state for a nine-month period, during which time the lawyer would be on leave from the firm but would receive a lump sum sabbatical payment? The law firm represents many leading corporations in the state and has clients which employ registered lobbyists or are themselves registered lobbyists. The staff member would be compensated by the Senate at a rate less than $25,000 per year.

Ruling

The ruling request poses four questions for consideration. First, does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(2)? Second, would the prohibition against affiliation with a firm in Rule 37(5) be applicable in this situation? Third, would the individual be required to file a financial disclosure statement under Rule 34? Lastly, would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

1. Does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(2)?

Rule 37(2) of the Senate Code of Official Conduct provides that:

"No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties."

The Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977). As the law firm represents many leading corporations in the Senator's state and in addition has clients who maintain registered lobbyists or are registered lobbyists themselves, the Committee is of the opinion that the proposed employment of a partner in the firm could result in an actual or apparent conflict of interest between the client's interests and the responsibility of the partner as a Senate employee.

The Committee notes that under paragraph 3 of Rule 37, it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a possible conflict. The supervisor is further responsible for monitoring the situation in order to determine what action, if any, may be "necessary for the avoidance of conflict of interest or interference with duties to the Senate."

2. Would the prohibition against affiliation with a firm provided in Rule 37(5) be applicable to this situation?

Rule 37(5) states in pertinent part that:

"No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm . . . for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm . . . or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed."

The question is whether the sabbatical pay should be deemed to be compensation for the performance of Senate services requiring, via Rule 41(4)(c), that the payment be considered "compensation disbursed by the Secretary of the Senate", and therefore be aggregated with regular Senate salary for the purposes of the $25,000 threshold amount. The Committee is of the opinion that if the law firm grants a paid leave of absence for work in a Senator's office, the pay would be deemed to be for services rendered to the Senate, and therefore, the sabbatical pay should be aggregated with regular Senate salary for purposes of determining whether the $25,000 threshold amount is met. If the amount is met, as it is apparent it would, then the partner would be required to terminate his association with the firm. If, however, the payment is earned or accrued pay, incident to an established sabbatical leave plan available to other members of the firm, the sabbatical payment without more, should not be regarded as compensation for Senate services and therefore would not be aggregated with regular Senate pay for purposes of meeting the $25,000 threshold amount and triggering the provisions of the Rule.

3. Would the individual be required to file a financial disclosure statement per the provisions of Rule 34?

Under Rule 34 (Title I of the Ethics in Government Act), Senate employees who are compensated at a rate equal to or in excess of basic pay in effect for GS-16 (currently $47,889) are required to file a financial disclosure report. The issue to be resolved here is identical to the one addressed under question 2. Consistent with the preceding discussion, the Committee is of the opinion that if the sabbatical pay accrues incident to an established leave plan participated in by other members of the firm, sabbatical pay need not be aggregated with regular Senate salary to determine if the total compensation for Senate services meets or exceeds the threshold amount, thereby triggering Rule 37(5) and possibly, the reporting requirement.

4. Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

Rule 37(9) provides in pertinent part that:

"If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position."

The Committee is of the opinion that while the above provision would prevent the partner on sabbatical leave from lobbying for a period of one year after termination of Senate services, this provision would not restrict the lobbying activities[5] of any other members, associates, or employees of the law firm.

INTERPRETATIVE RULING NO. 276

Date issued: July 23, 1979.
Applicable Area: Senate Code of Official Conduct.[6]

Question considered

May a Senator accept a honorarium from an organization with a direct interest in the action of a Senate committee on which the Senator sits?

Footnotes at end of article.

Ruling

While the receipt by a Senator of a speaking fee from an organization with a direct interest in the actions of a Senate committee the Senator sits on is not in violation of any specific provision of the Code of Official Conduct, it is possible that the receipt of many such fees may create the appearance of a conflict of interest. The Committee believes the Senator must use his or her best judgment as to whether he or she should accept the honorarium under these circumstances.

INTERPRETATIVE RULING NO. 277

Date issued: July 23, 1979.
Applicable Rule: 40.

Question considered

Do trade journals and other periodicals published by the private business sector fall within the purview of the term "communications media" referred to in paragraph 4(c) of Rule 40?

Ruling

Rule 40 of the Standing Rules of the Senate places certain restrictions on mass mailings sent out under the frank. As to such mailings:

1. they are not frankable within 60 days of an election in which the Member is a candidate.

2. funds, other than official Senate funds, cannot be used to prepare such a mailing.

3. they must be registered annually with the Secretary of the Senate. The term "mass mailing" is defined in 39 U.S.C. 3210(a)(5)(D) as:

"Newsletters and similar mailings of more than 500 pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

"(i) which are in direct response to inquiries or requests from the persons to whom the matter is mailed;

"(ii) to colleagues in Congress or to Government officials (whether Federal, State, or local); or

"(iii) of news releases to the communications media."

In conformity with 39 U.S.C. 3210(a)(5)(D), paragraph 4(c) of Rule 40 excludes from the strictures of Rule 40 mass mailings which consist entirely of news releases to the communications media.

The Committee believes that the term "communications media" does include publishers of periodicals such as trade journals and other periodicals published by the private business sector, and therefor the Rule 40 restrictions on mass mailings do not apply to news releases, to trade journals and other periodicals which are published by the private business sector.

INTERPRETATIVE RULING NO. 278

Date issued: July 23, 1979.
Applicable Area: Franking.

Question considered

Is it permissible under the franking statute, 39 U.S.C. 3210 *et seq.*, for a Senator to use, in a fanked mailing, the designations "D" or "R" representing Democrat or Republican, after the name of a United States Senator? In addition, is it permissible in a franked mailing to state that a legislative proposal was defeated "in a straight party-line vote"

Ruling

While the Committee believes that the designations "R" and "D", when used for purposes of party identification, and the phrase "in a straight party-line vote" may be used in a franked mailing, Section 3210(a)(5)(C) of Title 39 of the United States Code, prohibits the use of the frank for mail matter which specifically solicits political support for the sender or for any political party. An updated edition of the *Regulations Governing the Use of the Mailing Frank*, dated June 26, 1979, interprets this provision to preclude the inclusion of "material of a partisan nature" in newsletters or news releases mailed under the frank (Chapter Two, paragraph 4 of the revised Regulations). In this regard, the Committee believes that while the contemplated use of the phrase "in a straight party-line vote" is permissible, it might be prohibited as "material of a partisan nature" in different circumstances.

INTERPRETATIVE RULING NO. 279

Date issued: August 8, 1979.
Applicable Rule: 35.[7]

Question considered

May a Senator accept an offer of a year's paid membership in an association which is a tax-exempt, non-profit institution which does not patricipte in lobbying or have other direct legislative interests under the meaning of Rule 35? The dues of $13.00 would be paid by a constituent.

Ruling

Senate Rule 35 contains no prohibition on the acceptance of gifts from any source, if they are of an aggregate value of $100 or less in any calendar year. Moreover, gifts of a value less than $35 need not be aggregated. It is not necessary in these circumstances to consider the nature of the source, inasmuch as the gift ($13.00) is of an insufficient value to invoke the prohibitions.

INTERPRETATIVE RULING NO. 280

Date issued: September 10, 1979.
Applicable Rule and Area: 40,[8] Franking.

Question considered

May a Senator purchase a mailing list with funds from his or her official "ten percent" allowance? The purchase would be for full market value from a private group. After using the mailing list for official mass mailings, the Senator intends to inform the private group of any address changes or deletions from the list which became apparent as a result of returned mail. The Committee also understands that the private group might then offer the mailing list to the Senator's Campaign Committee as an "in-kind" contribution which would be reported as such.

Ruling

The Senate Rules Committee, by letter of December 31, 1977, adopted an opinion by the Comptroller General of the U.S. that the role of the Rules Committee in approving vouchers for expenditures from the ten percent category is to insure only that the vouchers are regular in form, have been certified by the Senator as being for official expenses not otherwise provided for in 2 U.S.C. 58(a), and are not for meals or entertainment. However, by letter of June 22, 1978, in resolving the question of whether non-Senate employee transportation expenses could be reimbursed from the ten percent allowance, the Rules Committee distinguished specific restrictive statutory provisions from the general application of the Comptroller General's advisory opinion. The Rules Committee is the proper authority to be consulted concerning the propriety of use of the ten percent allowance in the absence of a Code of Conduct question.

The Ethics Committee has undertaken to rule on the permissibility of expenditures from the ten percent category when expressly requested to do so with regard to the Senate's Code of Conduct. As a consequence, in Interpretative Ruling No. 134, May 18, 1978, the Ethics Committee held that the ten percent discretionary fund could be used to purchase a mailing list of registered voters from a state election board when the list is uncoded as to political affiliation. The Ruling also noted that Senate Rule 40(5) imposed no restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

The Committee's Interpretative Ruling No. 135 of May 22, 1978, held that "a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list." Reference was made to the franking statute, 39 U.S.C. 3215, wherein it is said a person entitled to use of the frank may not permit its use "for the benefit or use of any committee, organization or association."

Although in this specific situation the full market value would be paid initially for the list, the value of the list as corrected would be enhanced as a result of the use of federal funds (the cost of the frank) and this value would be donated to a private entity, whether the private group or the Senator's campaign committee. This proposed arrangement would be improper as a misuse of the frank and a misuse of federal funds for political purposes. The authorization of the purchase of the list from the ten percent fund, absent the arrangement intended thereafter with the private group and the Senator's campaign committee, would be a matter for decision by the Rules Committee.

INTERPRETATIVE RULING NO. 281

Date issued: September 19, 1979.
Applicable: 34, 35.[9]

Question considered

May a group which has an interest in legislation pending before the Congress sponsor and defray the total cost of a dinner or other function at which a Senator is the guest of honor and will address those present? Furthermore, is the Senator required to report the cost of the function in his Senate Financial Disclosure Report?

Ruling

Senate Rule 35 on Gifts prohibits Members, staff, and their spouses from accepting gifts having an aggregate value exceeding $100 in a calendar year from individuals or entities having a direct interest in legislation before the Congress, as defined in Paragraph 1(b) of the Rule. However, Rule 35 expressly exempts from the definition of gifts subject to the prohibitions "a reception at which the Member, officer, or employee [of the Senate] is to be honored, provided such individual receives no other gifts that exceed the restrictions in the rule, other than a suitable memento," and "meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging". As a result of these exceptions, a Member is not prohibited from accepting the food, beverages, or entertainment incident to a dinner or other function at which he or she is the guest of honor, regardless of whether the event is sponsored or paid for by a prohibited source of gifts under Rule 35.

As to disclosure, title I of the Ethics in Government Act of 1978 specifically exempts from the definition of reportable gifts any "food and beverages consumed at banquets, receptions, or similar events." As a consequence, neither the food or beverages provided to all those who attend the dinner or similar event constitute a reportable gift. However, if there is payment of or provision for travel-related expenses of the Member by the sponsor of the event at which the Member is to appear, the cost of the travel-related expenses may be disclosed as a "reimbursement" on the Member's public financial disclosure report.

INTERPRETATIVE RULING NO. 282

Date issued: September 19, 1979.
Applicable Area: Franking.

Question considered

May a Senator frank a card to top officials of federal agencies providing services within the geographic area the Senator represents, in order to obtain information needed to enable his or her office to respond to emergency or constituent requests for assistance on the

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Footnotes at end of article.

weekend? In addition, may the frank be used for the return of this information to the Senator's office?

Ruling

Paragraph 4 of Chapter 1 of the Regulations Governing the Use of the Mailing Frank provides that;

"The sending back to a Senator, or officer of the Senate, of a return-addressed and franked piece of mail by an addressee does not constitute a loan of the frank if the mail matter was frankable and if the return use of the frank remains under the Senator's or officer's control."

The use of the frank for this purpose, in the conduct of official Senate business, thus would be permissible under the above provision so long as the mail matter to be returned to the Senate office is preaddressed.

INTERPRETATIVE RULING NO. 283

Date issued: September 25, 1979.
Applicable Rule: 37.[10]

Question considered

May a Senator hire two lawyers to work part-time on matters arising out of the Senator's work on two committees? Both lawyers are in general practice and one of them is both a partner in a law firm and a member of a State legislature. Neither represents trade associations or clients in such a way as to be involved in lobbying efforts before the State legislature or the Congress of the United States.

Ruling

Paragraph 5 of Rule 37[11] provides that no employee of the Senate compensated at a rate in excess of $25,000 may "affiliate with a firm . . . for the purpose of providing professional services for compensation." Since the lawyer, who is a partner in a law firm is to be paid less than the threshold rate, the prohibition does not apply.

Senate Rule 37 on conflicts of interest, in paragraph 2, prohibits a Member, officer, or employee of the Senate from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. In the report to accompany S. Res. 110 (which established the new Senate Code of Conduct), it was noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." (S. Rept. 49, 95th Cong., 1st Sess. p. 41 (1977)). The Committee has interpreted this paragraph to prohibit the type of situation where, for example, an individual's Senate duties involve work with a Committee that has jurisdiction over authorization, oversight, or legislation in connection with the proposed non-Senate activities.

In addition, paragraph 3 of Rule 37 states that no Senate employee may engage in any outside professional activity or employment for compensation unless he or she has reported in writing the nature of such activity to his or her Senate supervisor when such activity commences, and on each May 15th thereafter, so long as the activity continues. The supervisor is then required to make the initial determination as to whether a proposed situation creates a possible conflict of interest. The supervisor is further required to monitor the situation in order to determine whether action is "necessary for avoidance of conflict of interest or interference with duties to the Senate."

The Committee is of the opinion that no real or potential conflict of interest problems are apparent from the facts of this situation but the Committee cannot predict what will occur in the future. It will be the continuing responsibility of both of these individuals and the Senate supervisor, to take whatever steps may be necessary to avoid a conflict between their Senate duties and their non-Senate work.

INTERPRETATIVE RULING NO. 282

Date isued: October 2, 1979.
Applicable Rule and Area: 34,[12] Foreign Gifts and Decorations Act.

Question considered

What are the reporting requirements for a Senate staff member who intends to accept an invitation from an international studies center of an American university to participate in an educational study mission abroad?

Ruling

A Senate staff member must file the annual public financial disclosure report required by Senate Rule 34 if he or she is a Senate employee for more than 60 days in a calendar year, is compensated for at least 60 days at an annual rate of pay equal to or in excess of the basic rate of pay in effect for grade GS–16 of the General Schedule, and is a Senate employee on May 15 of the succeeding calendar year. In addition, a staff person must file the financial disclosure report if he or she is designated by a Senator as a "principal assistant" for purposes of filing a report, or if he or she is designated to handle political funds pursuant to Senate Rule 41.

An individual who must file a public financial disclosure statement must disclose the source, a brief description, and the value of (1) any gifts of transportation, lodging, food and entertainment received from one source aggregating $250 or more in value, except that food, lodging or entertainment received as personal hospitality need not be reported, and any gift with a fair market value of $35 or less need not be aggregated; and, (2) any other gifts received from one source aggregating $100 or more in value, except that any gift with a fair market value of $35 or less need not be aggregated.

In addition to the disclosure of gifts, a reporting individual must disclose the source and value of all "reimbursements" made to him or her by the center at the university, if they aggregate $250 or more in value during the course of the calendar year. " 'Reimbursement' means any payment *or other thing of value* received by the reporting individual, other than gifts, to cover travel-related expenses of such individual . . ." (2 U.S.C. 707(8)—emphasis added). In order to distinguish a travel-related gift from a reimbursement, the following example is provided: If the center at the American university is sponsoring a trip to Taiwan and the transportation is provided by the center, the transportation is considered to be a "reimbursement." However, if the center is sponsoring a trip to Taiwan and the transportation is provided by "X" organization, an entity separate from the center, then the transportation is considered to be a "gift", unless either the employee or the American university reimburses "X" for the travel.

Furthermore, the Foreign Gifts and Decorations Act (5 U.S.C. 7342) limits the acceptance by any Member, officer, employee of the Senate, and the spouse or dependent thereof, of certain tangible gifts and gifts of travel, or expenses for travel, from a foreign government. In addition, certain reporting requirements are imposed upon Members, officers and employees who accept gifts from a foreign government pursuant to the provisions of the Act.

INTERPRETATIVE RULING NO. 285

Date issued: October 2, 1979.
Applicable Area: Franking.

Question considered

A Senator proposes to include in his annual questionnaire mailed under the frank, a statement soliciting additions to the Senator's mailing list, as well as address corrections. What is the applicability of the franking statute to this proposal?

Ruling

The regulations published by the Select Committee on Ethics (approved June 26, 1979) governing the use of the mailing frank state that mailing lists may be corrected under Postal Service Regulation 122.5 by Postmasters on request from a Member of Congress. Postal Regulation 122.5 includes a provision that "the frank shall not be used for any other means of correcting the mailing list of a Senator."

The Committee has previously ruled, in Interpretative Ruling No. 26, June 3, 1977, that it is not improper to use the phase "address correction requested" on a franked envelope provided that this correction request is incidental to the mailing of other frankable matter. The Committee believes that the inclusion of the proposed statement in the Senator's questionnaire would be consistent with both the *Regulations Governing the Use of the Mailing Frank* and Interpretative Ruling No. 26.

Additionally, the inclusion of a request that recipients of the questionnaire notify the Senator's office of individuals who do not receive mailings from the Senator and who would like to be included on his mailing list is not prohibited by the statute authorizing the use of the mailing frank, 39 U.S.C. 3210 *et seq.*

INTERPRETATIVE RULING NO. 286

Date issued: October 2, 1979.
Applicable Rule: 37.[13]

Question considered

May a committee legislative counsel accept a position on the editorial board of a state university publication which receives funds from an agency over which that committee has jurisdiction? The Senate employee would receive no compensation, except for reimbursement of travel and related expenses in connection with attendance at board meetings.

Ruling

Rule 37(3) of the Senate Code of Official Conduct, Conflict of Interest notes that it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a conflict of interest. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor strictly speaking applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside business activities and positions contemplated by their staff.

The Committee, while recognizing the difficulty of substituting its judgment for that of the supervising Senator, believes that if the position were accepted on the editorial board an appearance of a conflict of interest might result due to the jurisdiction of the particular committee over legislation and appropriations affecting the publisher.

INTERPRETATIVE RULING NO. 287

Date issued: October 2, 1979.
Applicable Area: Franking.

Question considered

May a Senator send, as franked mail, a reprint of a part of the *Congressional Record* containing an article complimentary to the Senator excerpted from a magazine?

Ruling

Section 3212 of Title 39, United States Code, states that "Members of Congress may send, as franked mail, any part of, or a reprint of any part of, the *Congressional Record*, including speeches or reports contained therein, if such matter is mailable as franked mail under Section 3210 . . ."

Section 3210(a)(4) of that statute prohibits the use of the frank for "the transmission through the mails . . . of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials [who are authorized to use the frank]." In addition, Section 3210(a)(5(A) prohibits the use of the frank for "mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a member-elect."

Although the *Regulations Governing the Use of the Mailing Frank* state on page 10 that "the use, in a newsletter or other mass mailing, of matter which is laudatory or complimentary to the Senator, no matter how deserving the basis or how accurate a factual account, may give the impression that the Senator is advertising himself for political purposes contrary to section 3210(a)(5)(C) . . .," they further state that "matter complimenting a Senator is frankable only if it relates to achievements related to the performance of Senate duties."

In this factual situation the excerpt appears to be complimentary on the basis of the performance of official duties as a Member of the Senate, and the Committee believes the *Congressional Record* excerpt could be mailed under the frank.

INTERPRETATIVE RULING NO. 288

Date issued: October 16, 1979.

Applicable Rules: 37, 41[14].

Question considered

May a member of a Senator's staff take two days of "personal leave" from the Senate in order that he might consult with a state political party in the development of on-going programs for the state political party? The consulting work will not pertain to any official business or any past, present or future work assignment in the office, nor will the work be carried out on the Senator's behalf, on behalf of any other elected official, or any candidate for public office. The consulting will not exceed two days in duration and payment will not exceed $200 plus expenses.

Ruling

Paragraph 3 of Rule 37 on Conflict of Interest provides, with respect to outside employment for compensation, that the supervisor, upon learning of the proposed outside activities, is to take such action as may be necessary to avoid any apparent or actual conflict of interest with Senate duties. In addition, Senate Report 95-241 of the Committee on Rules and Administration states that it is not a violation of law or any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave.

Senate Rule 41 prohibits Senate employees generally from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for nomination or election to the Senate or for any other federal office, unless such an individual has been designated by the Senator, pursuant to that Rule, to engage in political activity on behalf of the Senator. The Select Committee has previously ruled that the Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

The Committee believes that on the basis of the facts given this employment is not prohibited by the Code of Official Conduct.

INTERPRETATIVE RULING NO. 289

Date issued: October 16, 1979.

Applicable Rule and Area: 38,[15] and Federal Election Campaign Act.

Question considered

May excess campaign funds from a principal campaign committee be used to defray the cost of entertaining individuals or small groups of constituents at lunch or dinner, or to purchase furniture or other fixtures (such such as desks, chairs, and curtains) for office use?

Ruling

The use of excess campaign funds is governed by both the Federal Election Campaign Act and Senate Rule. 2 U.S.C. 439a permits such funds to be used for any lawful purpose, including the ordinary and necessary expenses incurred in connection with one's duties as a holder of federal office. In addition, Senate Rule 38 allows Senators to defray office expenses from "funds derived from a political committee"; however, no campaign contributions may be converted to the personal use of any Member. "Personal use", as that term is used in Rule 38, does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee considers that for the purposes of Rule 38, both the cost of entertaining constituents at lunch or dinner, and the cost of furniture or other fixtures for use in a Senate office, are the kind of expenses which are incurred by a Member in connection with officials duties. Consequently, excess campaign funds from a Senator's principal campaign committee may be used to pay these expenses, either directly or as reimbursements should the Senator pay the expenses from personal funds. However, in view of the Rule 38 prohibition on converting contributions to the personal use of any Member or former Member, furniture or other office fixtures should be returned to the Member's principal campaign committee after its use in the Member's office.

The Committee notes that this interpretation of paragraph 2 of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be defined by the Senate Rules Committee or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds.

INTERPRETATIVE RULING NO. 290

Date issued: October 26, 1979.

Applicable Rule and Area: 40[16] and Franking.

Question considered

May a Senator on a regular basis send to constituents questionnaires, news briefs, notices on upcoming legislation, and other items of a nonpartisan civic-oriented nature? The recipients are to be referred to as "precinct advisory liaisons" in the mailings in order to utilize the abbreviation "PAL." The purpose of the mailings is to establish a vehicle to obtain constituent response and recommendations from neighborhoods of the home State.

Ruling

Section 3210(a)(1) of Title 39, U.S. Code, states: "It is the policy of the Congress that the privilege of sending mail as franked mail shall be established . . . in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States."

Section 3210(a)(3) of Title 2 states: "It is the intent of the Congress that such official business, activities, and duties . . . shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public . . ."

Newsletters and questionnaires are specifically authorized for franking (Section 3210 (a)(3) (B) and (C)) but both must be restricted to official business, duties, and activities. Material which is of a personal or partisan nature may not be mailed under the frank.

The Committee sees nothing inherently wrong with the proposal; however, it may be very difficult for many to see the separation drawn between those who will receive the franked mailings and political workers. It is the responsibility of the Member to see that the distinction is clearly maintained.

As to using the words "precinct advisory liaisons" to describe the recipients of matter mailed under the frank, the Committee believes that the term "precinct" is so closely associated with the electoral process that its use in a franked mailing could be construed as constituting prohibited political or partisan matter and recommends caution in using the word "precinct" in matter mailed under the frank.

Finally, if the names and addresses are used in the Senate computer facilities, there is the question of whether such use is permissible under Senate Rules. Rule 40.5 prohibits using Senate computer facilities "to store, maintain, or otherwise process any lists or categories of lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation." If the mailing list is not used for partisan political purposes to any extent whatsoever, and the list or lists is not derived or acquired from lists selected on the basis of a high incidence of partisan behavior,[17] then the use of the list would not violate Rule 40.

INTERPRETATIVE RULING NO. 291

Date issued: November 26, 1979.

Applicable Rule: 41.[18]

Question considered

May a person on a Senator's staff, consistent with the Senate Code of Official Conduct, act as the chief executive officer of a State political committee of a national political party? The individual would not receive compensation and would perform his or her responsibilities during off-duty hours.

While the State political committee's principal purpose is not the raising of campaign funds, the committee is ultimately responsible under its by-laws for all the affairs of the party in the State, including the support of Federal candidates, and does raise funds to support its own activities.

Ruling

No provision in the Senate Code of Official Conduct completely bars Senate employees from engaging in general campaign activities, but Rule 41 strictly limits political fund activity. The Rule prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any Federal office. The Rule further provides that the prohibition does not apply to either one or two individuals specifically designated by a supervising Senator to perform any of these functions on behalf of the supervising Senator alone and not on behalf of any other Federal candidate or officeholder.[19]

The Committee has previously determined[20] that Rule 41's restrictions on staff political fund activities apply to participation in Federal elections and not to State and local elections, but that the State and local political fund activity must be clearly separate and distinct from any activities in

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Footnotes at end of article.

connection with a Federal election in order to be permitted under the Rule.[21]

While the principal purpose of the State party committee is not raising campaign funds for Federal candidates, the Committee believes that an individual who acts as chief executive officer of a State party committee would necessarily be responsible, as part of the party committee's normal course of business, for the acceptance, solicitation, retention, or expenditure of funds in connection with campaigns for Federal office by individuals other than the supervising Senator, and that this would not be permitted by Rule 41.

INTERPRETATIVE RULING NO. 292

Date issued: November 27, 1979.
Applicable Rules: 34, 41.[22]

Question considered

May the requirement to file a Public Financial Disclosure statement be waived for a political fund designee whose appointment period will cover a period of only six weeks?

Ruling

Rule 41, paragraph one, states, in relevant part, that an assistant may be designated to handle political funds only "if such assistant files a financial disclosure statement in the form provided under Rule 34 for each year during which he is designated under this rule." There is no period of time which one must be so designated before the obligation to file a disclosure statement, pursuant to Rule 41, arises. Further, the Committee has no authority to waive the disclosure requirement.

INTERPRETATIVE RULING NO. 293

Date issued: November 28, 1979.
Applicable Rules: 34, 35.[23]

Question considered

May a staff member accept room and board from a foreign foundation while attending a conference in the United States sponsored by that same foundation?

Ruling

Paragraph 1(a) of Rule 35, Gifts, prohibits employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from foreign nationals. However, the necessary expenses of travel, including transportation, food, lodging, and entertainment are specifically excepted from the definition of "gift" in paragraph 2(a) of the Rule when such "necessary expenses" are provided by a sponsor on whose behalf the employee is making an appearance. The description of the event indicates that the benefits to be furnished to the staff member will be necessary expenses of travel. Inasmuch as such expenses are exempted from the scope of Rule 35 (1), it is not necessary to determine whether the source of the expenses is a prohibited one, and acceptance of the invitation is therefore permissible.

Senate Rule 34 on Financial Disclosure requires a reporting individual to report the identity of the source and a brief description of any reimbursements aggregating $250 or more in value in a calendar year received from any source.

INTERPRETATIVE RULING NO. 294

Date issued: December 10, 1979.
Applicable Area: Foreign Gifts and Decoration Act.

Question considered

May a staff member accept an invitation to travel within a foreign country under the auspices of that foreign government, to represent a Senator at a dedication ceremony? The staff member will provide travel expenses to and from the country and the foreign government will provide transportation and related expenses within the foreign country.

Ruling

The U.S. Constitution prohibits employees and officers of the United States from accepting gifts from foreign governments unless Congressional consent has been given. Such consent has been given in the Foreign Gifts and Decorations Act (5 U.S.C. 7342) for gifts of travel or expenses of travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and permitted by the employing agency. The Committee finds that acceptance of travel benefits from the government under the circumstances described is appropriate and consistent with the interests of the United States, and is therefore permissible.

Within thirty days after any Member, officer or employee of the Senate has accepted travel or expenses for travel taking place entirely outside the United States, where costs have been borne by a foreign government, such Member, officer or employee must file a statement of information with the Select Committee. The Committee's "Dear Colleague" letter of December 12, 1978 sets forth the items to be included in filing that statement.

Tangible gifts from a foreign government of more than minimal value (more than $100) are deemed to have been accepted on behalf of the United States and become the property of the United States. Within 60 days after acceptance of any such gift, it must be deposited with the Secretary of the Senate with a statement of details.

INTERPRETATIVE RULING NO. 295

Date issued: December 11, 1979.
Applicable Rule: 34.[24]

Question considered

Are certain expenses incurred in connection with the GAO audit[25] of a Senator's Public Financial Disclosure Statement "official" expenses and reimbursable from the 10 percent official office account?

Ruling

On a previous occasion, the Committee ruled that "[c]ompliance with the rules regarding financial disclosure . . . is a Senate duty . . ."[26] Insofar as Public Financial Disclosure is a rule of the Senate, expenses incurred in carrying out this duty are "official" expenses.

Whether official expenses of this nature are properly payable from the 10 percent account is a question which falls within the jurisdiction of the Committee on Rules and Administration. The Committe, therefore, recommends that the Rules Committee be advised of this determination and asked to decide whether reimbursement can be made from the 10 percent account.[27] The Committee also notes that under Senate Rule 38 it would be permissible for a Senator's political committee to provide such reimbursement.

INTERPRETATIVE RULING NO. 296

Date issued: December 18, 1979.
Applicable Area: Franking.

Question considered

May the frank be used by a Senator to send letters of congratulations to soldiers from his or her home State who enlist or re-enlist in the U.S. Army? The Army would provide the names and addresses of soldiers and the Senator's staff would prepare the letters and would use official stationery and franked envelopes for the mailings.

Ruling

Section 3210(a) (3) (F) of Title 2 of the United States Code authorizes franking of "mail matter expressing . . . congratulations to a person who has achieved some . . . public distinction."

The Committee has concluded that enlisting or re-enlisting in the Armed Forces of the United States is an act which constitutes a "public distinction" contemplated by the authorization for franked mail matter in section 3210(a) (3) (F) of Title 2. The Committee, therefore, concludes that letters expressing congratulations to individuals who enlist or re-enlist in the Armed Forces are frankable.

INTERPRETATIVE RULING NO. 297

Date issued: December 18, 1979.
Applicable Rule: 37.[28]

Question considered

May a member of a Senator's personal staff be permitted to serve as an officer or board member of a 501(c) (4) educational foundation, and in addition, be paid a fee by the foundation for consultant services? No work for the foundation would be performed by the employee during working hours of the Senate. Expertise involved in consulting would be unrelated to the employee's professional responsibilities to the Senate, and any consulting time devoted to the foundation would not conflict with the performance of Senate duties.

Ruling

Rule 37(6) prohibits service by a Senator or employee as an officer or member on the board of a publicly held or regulated organization, excluding, however, organizations exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. A prior ruling of the Committee[29] held that service of this nature for a 501(c) organization is permissible unless it conflicts or interferes with the conscientious performance of Senate duties.

The 501(c) exclusion in Rule 37(6) extends to employees on the personal staff of a Senator as well as those on a Committee staff. Inasmuch as the exclusion applies only if one receives no compensation for service as an officer or director of a 501(c) organization, a determination of whether it would be permissible for an uncompensated officer or director to serve at the same time as a paid consultant for the same 501(c) organization would turn on whether the consulting duties are related to the responsibilities of the position of officer or director. Since neither the rule nor its legislative history give any indication that service as a paid consultant for a 501(c) organization is impermissible, the Committee is of the opinion that if the duties as a consultant are unrelated to the responsibilities of officer or director, and if the consulting duties are not violative of paragraphs 1, 2, 3, and 6 of Rule 37, service as a paid consultant while also serving as an officer or director is not prohibited. If the consulting duties are not clearly distinguishable from the responsibilities of the position of officer or director, approval of dual service in two such capacities could encourage by indirection the accomplishment of that which is directly prohibited.

The Committee recognizes that where consulting duties have an uncertain relationship to responsibilities as an officer or director, it would be more difficult to determine whether the arrangement violates the spirit of the Rule 37 paragraph 6(a) exclusion in the case of an officer charged with day to day responsibility for conducting the business of the organization than in the case of a director whose responsibilities are necessarily confined to policy matters.

The Committee cannot monitor the manifold aspects of the relationships which might arise in the future in a consulting role, and can only offer guidance. Under paragraph 3 of Rule 37, it is the continuing responsibility of an employee's supervisor to monitor

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situations such as this to avoid any conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING NO. 298

Date issued: December 18, 1979.
Applicable Area: Franking.

Question considered

May a Senator send a newspaper column under his frank in response to letters he has received from constituents concerning the Department of Education?

Ruling

It is the Committee's opinion that the proposed mailing constitutes frankable mail matter within the meaning of Section 3210 of Title 39 of the United States Code, and the regulations promulgated thereunder, for the reason that the column concerned the approval by the Congress of legislation creating the Department of Education and the Committee noted that section 3210(a) (3) (A) of the franked mail statute specifically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress".

INTERPRETATIVE RULING NO. 299

Date issued: December 20, 1979.
Applicable Rules: 34, 35.[30]

Question considered

May a Senator accept travel expenses to a foreign country from private educational and cultural organizations which use grant funds derived from a "Friendship Commission" to pay for the travel expenses? The "Friendship Commission" was established by a United States Public Law, which provides that the Commission shall use funds derived from payments by the foreign country to the United States Government to support educational and cultural activities that will enhance friendship, understanding and mutuality of interests between the two nations. The Commission provides grant funds to private, non-profit organizations in both countries which conduct exchanges between the two countries for educational purposes. The Commission itself does not directly operate any programs.

Ruling

The Committee has previously ruled [31] that a Member, officer, or employee of the Senate may accept the necessary expenses of foreign travel in connection with an appearance incidental to official duties where the travel expenses are furnished or paid for by the domestic sponsor of the program. From the facts outlined a Member may accept the necessary expenses of a trip to the foreign nation from a private domestic organization which derives its funds from the Commission. A Member who accepts these necessary expenses of travel will be obligated by Title I of the Ethics in Government Act of 1978, which has been adopted by the Senate as Standing Rule 34, to disclose the receipt and source of these travel-related expenses on his or her annual public financial disclosure report, where total expenses equal or exceed $250. Since the Commission itself does not directly operate any programs, the sources of the expenses should be identified as the domestic organization which received Commission funds and which in turn provided the Member's expenses.

Where the organization which proposes to provide travel expenses is a foreign organization, Rule 35 of the Standing Rules of the Senate prohibits a Member of the Senate from accepting payment for travel expenses from a foreign national unless the provisions of paragraph 4 of the Rule are met. Paragraph 4 provides that travel expenses may be accepted from a foreign organization where the purpose of the trip is educational, participation is not in violation of any law, the Select Committee on Ethics determines that participation in the program is in the interests of the Senate and the United States and proper notice is published in the CONGRESSIONAL RECORD. Where these travel expenses are received they must also be disclosed on a Member's annual public financial disclosure report when the expenses equal or exceed $250.

INTERPRETATIVE RULING NO. 300

Date issued: February 6, 1980.
Applicable Rules and Areas: 35, 38,[32] Federal Regulation Lobbying Act of 1946, and Federal Election Campaign Act of 1971.

Question considered

A Senator who was then in his home state was asked to testify in Washington before a Commission in support of a request for relief by thirteen domestic companies. Round-trip commercial air transportation between the home state and Washington was not obtainable at that particular time. Is it permissible to accept round-trip transportation on a plane owned by one of the companies involved in the matter before the Commission? The company maintains a political committee and a registered lobbyist.

Ruling

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Senators from entities with a "direct interest in legislation before the Congress", defined as organizations which have a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended.

Based on the information provided, the Committee believes that the providing of transportation by the company, in the circumstanecs described, would constitute a "gift" worth more than $100, from a company with a "direct interest in legislation before the Congress," and would thus be prohibited under Rule 35; it would not fall within the exception to the definition of "gift" for the necessary expenses of travel because the Senator is not making an appearance before the company providing the transportation, and would not fall within the "consideration" exception because testifying before the Commission does not constitute performing services for the company. Accordingly, reimbursement, based on commercial airfare rates, should be made to the company for the value of the transportation exceeding $100.

The Committee notes that if the appearance before the Commission was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper. Alternatively, under Senate Rule 38, it would be permissible for a Senator's political committee to provide reimbursement for expenses in connection with the appearance.

INTERPRETATIVE RULING NO. 301

Date issued: February 21, 1980.
Applicable Rule and Area: 41,[33] Federal Election Campaign Act Amendments of 1979.

Question considered

May a Senate employee who is not designated under Senate Rule 41, contribute money to incumbent and non-incumbent presidential and congressional candidates, to national, state and local political party committees, or to state and local candidates or their campaign committees? In addition, which of the above actions would not be permissible for the political fund designee under Rule 41?

Ruling

These questions involve application of a Federal statute, recently amended by the Federal Election Campaign Act Amendments of 1979, which prohibits the making of certain political contributions by Federal employees. The amended provision, now found in Section 603 of Title 18 of the United States Code, reads as follows:

"Section 603. Making Political Contributions.

"(a) It shall be unlawful for an officer or employee of the United States or any department of agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e) (1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

The interpretation of the new provision, and the enforcement of its prohibition, are within the jurisdiction of the United States Department of Justice. The Committee notes, however, that during Senate consideration of H.R. 5010, a bill to amend the Federal Election Campaign Act of 1971 (which became Pub. L. 96–187), Senator Hatfield, ranking minority member of the Senate Rules Committee, referred to the proposed changes in the criminal code, stating: "Current provisions of the Criminal Code reflect a longstanding concern that no Federal employee be subject to any form of 'political assessment.' Consistent with this underlying concern, the revised language permits a Federal employee to make a voluntary contribution to another Federal employee who is not his or her employer or employing authority." 125 Cong. Rec. S19099 (December 18, 1979).[34]

The Senate has previously recognized that questions might be raised under existing statutory prohibitions in the Federal criminal code on the solicitation, receipt, and making of political contributions (formerly found in 18 U.S.C. sections 602, 603, and 607). When the Senate adopted its new Code of Official Conduct for Members and employees of the Senate on April 1, 1977, it instructed the Senate Rules and Administration Committee to "study laws relating to contributions solicited from or made by officers or employees of the Senate and report the results of their review, together with their recommendations, to the Senate within one hundred and eighty days . . ." Section 307, S. Res. 110, 95th Cong., 1st Ses. (1977). Pursuant to this mandate, the Rules Committee issued a report on October 17, 1977 (S. Rept. No. 95–500, 95th Cong., 1st Sess.), which contained the first phase of their study, a compilation of existing laws relating to this issue.

In addition to the statutory provision discussed above, Rule 41 of the Senate Code of Official Conduct contains restrictions on one aspect of campaign activity—the handling of campaign funds by Senate staff. The Rule states that no employee of the Senate may solicit, be the custodian of, or distribute" funds in connection with any campaign for Federal office, unless the employee is one of two individuals specifically designated by his or her Senator to engage in limited political fund activity on the Senator's behalf.[35]

Footnotes at end of article.

INTERPRETATIVE RULING NO. 302

Date issued: February 21, 1980.
Applicable Rule: 41.[36]

Question considered

May an employee on the personal staff of a Senator, with the approval and monitoring of the Senator, engage in substantial political activity for a limited period of time on behalf of a presidential candidate? The staff member will devote at least 15 percent of his time to his Senate duties; however, he will receive a proportional salary reduction and will not engage in political activity from either the Senator's Washington or state office.

Ruling

It is a Member's prerogative in staffing his or her office to prescribe an employee's duties and hours, and to consent to certain outside activities. Pending completion of the study by the Committee on Rules and Administration of permissible political activity for Senate employees while on the Senate payroll (Section 308 of S. Res. 110) the Committee offers the following guidance to Members.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.[37]

With respect to the proportional salary reduction, the Committee concluded that the proposal is reasonable. In addition, the Committee noted that the employing Member will monitor operation of the plan to ensure that it is carried out as represented. Finally, the Committee noted that the staff member will continue to be subject to the Senate Code of Official Conduct during this period of outside employment for compensation.

INTERPRETATIVE RULING NO. 303

Date issued: February 21, 1980.
Applicable Area: Franking.

Question considered

Is it permissible under the franking statute for a Senator to distribute return-addressed, franked envelopes to selected individuals in his State, who would use the envelopes to mail copies of local newspapers to his Washington Office in an effort to keep the Senator informed of the local news as it relates to the Federal Government?

Ruling

The Committee does not believe that this proposed use of franked envelopes is proper under the franked mail statute, 39 U.S.C. 3210 *et seq.* The statute, at section 3215, prohibits a person who is entitled to use the frank from lending it or permitting its use by any individual or group who is not authorized to use the frank. In addition, *The Regulations Governing the Use of the Mailing Frank* state: "Under this section, a Member or official authorized to frank mail matter may not allow his or her frank to be used in any way that would inure to the benefit of persons, firms, or organizations themselves not authorized to send mail matter under the frank."

The Committee has consistently taken the position (see *e.g.*, Interpretative Ruling No. 127, dated May 12, 1978) that because of the opportunity for alteration of the matter mailed or misuse of the frank, franked envelopes may not be processed, mailed, or distributed by any outside individual or organization. The Committee has recognized a narrow exception, in the instance where, on an interim basis, franked envelopes are labeled or stuffed by outside groups under the personal supervision of an employee from the Senator's office. This exception is based on the Committee's recognition that, pursuant to the statute, the use of the mailing frank is the personal responsibility of the Senator entitled to its use and that prior to delivery to the Postal Service, franked envelopes must not leave his custody or control.

INTERPRETATIVE RULING NO. 304

Date issued: February 21, 1980.
Applicable Rule: 37.[38]

Question considered

May an attorney employed by a Senate Committee at a salary rate in excess of $25,000 argue a case before the appellate court while on leave from the Committee? The attorney tried the case, which is a suit for money damages, before the United States District Court prior to his employment with the Senate. Any subsequent work has been performed in his spare time.

Ruling

Rule 37 of the Senate Code of Official Conduct places the initial responsibility upon a Senate employee and his or her supervising Senator to determine whether any proposed outside activity would create a conflict of interest, or the appearance thereof. See Rule 37, paragraph 2. Under paragraph 3 of Rule 37, an employee must, before commencing any outside business or professional activity for compensation, report in writing the nature of such activity to his supervisor who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." The employee must continue to file such reports on May 15th of each year thereafter so long as the outside employment continues.

In addition, paragraph 5 of Rule 37 prohibits a Senate employee who is compensated at a rate in excess of $25,000 per year and employed for more than 90 days in a calendar year from (a) affiliating with a firm or partnership, (b) permitting his name to be used by such firm or partnership, or (c) practicing a profession "to any extent during regular office hours of the Senate office in which employed." This Committee has previously ruled that this last provision restricts, but also contemplates, some limited practice outside office hours or on annual leave time, as a sole practitioner.[39]

Thus, it would appear that the proposed handling of the matter, if approved by the supervisor, would be permissible.

INTERPRETATIVE RULING NO. 305

Date issued: February 21, 1980.
Applicable Rules: 34, 35, 37.[40]

Question considered

A commerce and industry association has invited a Senate staff member to participate in a six-day program in order to acquaint him with the business operations of the association's members. The program would take place during a Senate recess period. May a staff member accept necessary travel, food, and lodging expenses in connection with participation in the program?

Ruling

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of gifts, including gifts of travel, from certain sources. However, the definition of "gift" under Rule 35 does not include the payment by a sponsoring organization of travel, food, and lodging expenses incurred by a Senator or a member of his staff in connection with the performance of a service by the Senator or his aide on behalf of the sponsoring organization.

The Committee has previously ruled that "fact finding" in connection with matters of direct interest to a Senator, his constituents, and the sponsoring organization is a service of public office, and that the payment by the sponsoring organization of the necessary expenses of a Senator or his aide incident to such a trip is permitted by Rule 35.[41]

Therefore, payment by the association of the necessary travel, food and lodging expenses incurred in connection with participation in such a program is permissible under Rule 35.

Under Senate Rule 34, the acceptance of necessary travel and related expenses would be reportable as "reimbursements" if the staff member is required to file a disclosure statement under the rule.

While the form of the proposed arrangement does not violate any specific prohibition of Rule 37, on conflict of interest, paragraph three of that rule directs that a supervisor, when an employee's outside business or professional activity or employment is brought to his attention, shall take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

INTERPRETATIVE RULING NO. 306

Date issued: March 3, 1980.
Applicable Area: Franking.

Question considered

May a Senator's office use the frank to respond to a constituent's request for information concerning campaigns for the presidential nominations? The proposed response would inform the constituent that the request has been forwarded to the appropriate campaign committee for a reply.

Ruling

While it is the prerogative of a Senator to respond or not to respond to the inquiries of his or her constituents, the franked mail statute, 39 U.S.C. 3210(a)(5)(c), prohibits the use of the frank for "mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office". We do not believe that the proposed response would be prohibited by this section of the statute because there is no solicitation of political support and because the proposed letter merely informs the constituent that the request has been forwarded for a reply from a particular campaign committee.

INTERPRETATIVE RULING NO. 307

Date issued: March 3, 1980.

Applicable Rule and Area: 38,[42] Franking, Federal Election Campaign Act of 1971.

Question considered

In view of the fact that the inclusion of greetings from a spouse in letters written by a Senator in response to constituents' letters is expressly forbidden by the franking statute,[43] and reimbursement for postage costs for these letters from the "ten percent portion" of the Official Office Expense Account is not allowed by the Committee on Rules and Administration because the mail matter is not frankable, what are the alternatives for reimbursement?

Ruling

In recognition of an issue such as this, Senate Rule 38 provides certain limited alternative sources from which a Member may defray otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. The Rule provides, in part:

"[E]xpenses incurred by a Member in connection with his official duties shall be defrayed only from:

"(a) personal funds of the Member;

"(b) official funds specifically appropriated for the purpose;

"(c) funds derived from a political com-

Footnotes at end of article.

mittee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)); and

"(d) funds received as reasonable reimbursement for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement."

In light of these provisions, the Committee believes that postage for a letter to a constituent which would be frankable but for the inclusion of greetings from a spouse is an expense incurred in connection with a Member's official duties, and that the expense may be defrayed from personal funds of a Member or funds derived from a Member's principal campaign committee.

INTERPRETATIVE RULING NO. 308

Date issued: March 3, 1980.
Applicable Rule: 37.[44]

Question considered

May a Senator's Field Representative serve on the Boards of two non-profit organizations? The Senator is a member of two Committees which have oversight of Federal agencies providing funds to these organizations. The staffer will not participate in deliberations during Board meetings regarding these funds and has no financial interest in their disposition, but the organizations' applications for such funds are handled through the Sentor's office which he supervises.

Ruling

Rule 37 of the Senate Code of Official Conduct, Conflict of Interest, places upon Senate employees and their supervising Senators the initial, and continuing, responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest."[45]

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor literally applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside activities and positions contemplated by their staff.

In this specific case, since the organizations' applications for federal funds from agencies subject to oversight jurisdiction by two Senate Committees on which the Senator serves are handled through the office which the Field Representative supervises, there may be an appearance of a conflict of interest between the Field Representative's official responsibilities and his fiduciary duties to the Boards of the two organizations. Further, if the Field Representative were involved directly or indirectly in assisting or handling any application for funds, an actual conflict of interest might be presented.

The Committee has recognized, in prior rulings involving a conflict of interest question, the difficulty of substituting its judgement for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee believes that the supervising Senator must be the primary monitor of the propriety of outside activities of his staff.

INTERPRETATIVE RULING NO. 309

Date issued: March 5, 1980.
Applicable Area: Franking.

Question considered

The Congressional delegations of a State often work together on various State problems. These joint efforts are handled by a special State team which plans to mail correspondence using a common letterhead approved by the Committee on Rules and Administration. Does the franking statute permit the use of the frank to mail correspondence to constituents and government agencies on the common letterhead from each of the originating State Congressional offices?

Ruling

Assuming that the content of the correspondence is frankable, as is set forth in the franked mail statute, 39 U.S.C. 3210 *et seq.*, and assuming that each of the delegation's offices maintains custody and control over the envelopes which bear its Senator's frank, per section 3215 of the statute, and provided that each office assumes the responsibility for the proper use of its own franked envelopes, we believe that the use of the mailing frank to mail correspondence on the "Team" letterhead would be proper.

INTERPRETATIVE RULING NO. 310

Date issued: March 5, 1980.
Applicable Rule: 40.[46]

Question considered

For purposes of Rule 40(1) and (6)(a), is a Member considered a candidate when he is the only individual in his party to file for election, his home State Board of Elections has declared him to be his party's candidate for U.S. Senator, and his name will not appear on the primary ballot?

Ruling

Rule 40 declares that the frank may not be used for any mass mailings, and the Senate and House radio and television studios may not be used, within the 60-day period immediately preceding the date of any primary or general election in which the Senator is a candidate for public office.

The Committee has interpreted Rule 40 (1) and (b)(2) to be inapplicable to a Senator for the 60 days preceding a State primary in which the Senator's name does not appear on the primary ballot because of his nomination as the party's candidate at a party convention prior to the date of the primary, and has also held that Rule 40 is inapplicable to a Senator for the 60 days preceding a primary in which the Senator's name appears unopposed on the ballot and write-in votes are impermissible under State law.[47] Since the intention of the Rule is to reduce an incumbent's advantage over challengers, the Committee has found no basis for the constraint where the incumbent cannot be opposed by virtue of State law.

For these reasons, the Committee ruled that the 60 day limitations in Rule 40(1) and (6)(a) do not apply to the circumstances presented.

INTERPRETATIVE RULING NO. 311

Date issued: March 17, 1980.
Applicable Rule and Area: 34[48] and Ethics in Government Act of 1978.

Question considered

What are the public disclosure obligations of a reporting individual concerning an estate of which his spouse is a beneficiary? The executor has informed the spouse that a substantial and unspecified amount of the estate's non-cash assets will have to be sold prior to distribution of the estate in order to pay specific bequests, taxes, and other expenses, and that the executor expects that the estate will remain under administration for some months before distribution.

Ruling

The Committee does not believe that a reporting individual is obligated under Title I of the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) to itemize and value property held by an estate or its liabilities, or transactions by the administration and prior to a distribution of estate assets. The Committee believes, however, that where a reporting individual is aware that he or she, or a spouse or dependent child, is the beneficiary of an estate, from which reportable property may be received in the future, that a very brief and general statement of interest should be provided. From the facts provided, a notation such as the following would be sufficient on the disclosure report: "Residuary legatee of the estate of (name) -------------; deceased (month and year) --------------; in period of administration; details of assets to be disclosed upon distribution (or when available, if there is a residuary trust)."

The Committee notes, however, that if reportable property is distributed or if a residuary trust is created, that the holding of such property would have to be disclosed in the public financial disclosure report for the year in which the trust is created.

INTERPRETATIVE RULING NO. 312

Date issued: March 20, 1980.
Applicable Rule: 37.[49]

Question considered

May a staff member accept an uncompensated position on a State Commission? His supervising Senator is a member of a Subcommittee whose jurisdiction includes providing funding for an Agency related to the work of the particular Commission. The staff member, however, has no duties or responsibilities with respect to the Subcommittee and he will not discuss or vote on any Commission proposal which might involve action by the Subcommittee.

Ruling

The Committee is not unmindful that questions may arise whenever an employee of the Senate is invited to accept an appointment to a State Commission or is approached to serve on the board of a private group and the commission or the private group receives some or all of its funding from the federal government. While there is no specific prohibition in Senate rules which would preclude the acceptance of such an appointment, paragraph 3 of Rule 37, Conflict of Interest, does direct that a Senate employee notify his or her supervisor at such time as he or she engages in an outside professional activity, on each May 15 thereafter and that upon notification it becomes the responsibility of the supervisor to make the initial judgment that an outside activity presents no actual or apparent conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. In addition, the supervisor has an ongoing responsibility to monitor the outside activity and to take such action as he may consider necessary to avoid an actual or apparent conflict in the future. Based upon the facts presented, the Committee does not believe the proposed activity represents a conflict of interest.

INTERPRETATIVE RULING NO. 313

Date issued: March 20, 1980.
Applicable Rule: 40.[50]

Question considered

Is Rule 40, paragraph 1, which provides a 60 day moratorium upon the use of the frank for any mass mailings prior to any primary or general election (whether regular, special or runoff), triggered by a Senator's participation in presidential primaries

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Footnotes at end of article.

in States other than the Senator's home State?

Ruling

The Committee believes it is clear that Rule 40 was intended to be applicable to primary and general elections for the Senate in a Member's home State, as well as to a presidential primary or general election, in a Senator's home State where the Senator is a candidate in such a presidential primary or general election, but does not believe the moratorium upon mass mailings to home State constituents was intended to be triggered by participation in a presidential primary or the equivalent in another State. However, the Committee believes that the 60 day moratorium would also apply to any "mass mailing" mailed under a Senator's franking privilege to a State in which the Senator participated in a presidential primary or general election.

INTERPRETATIVE RULING NO. 314

Date issued: March 25, 1980.

Applicable Rules: 35, 37, 41.

Question considered

May a Senator hire an individual to work part-time on his personal staff while the individual remains a full-time employee of a registered lobbying group? The individual, who does not himself lobby Members of Congress, would work 15 hours per week at a salary rate exceeding $25,000 per year, on legislative matters. The purpose of the part-time arrangement is to afford the Senator an opportunity to decide whether to hire the individual on a permanent full-time basis.

Ruling

Senate Rule 41, paragraph 2, states that "[f]or purposes of the Senate Code of Official Conduct . . . an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate." As a result, individuals who are compensated for part-time work are treated as Senate employees for purposes of the Code.

Senate Rule 37, on Conflict of Interest, places upon Senate employees and their supervising Senators the initial and continuing responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which would represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

In addition, paragraph 3 of Rule 37 requires a Senate employee to report in writing to his Senate supervisor the nature of any outside business or professional activity or employment for compensation. The supervising Senator is then required "to take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

No Senate Rule explicitly prohibits hiring, for part-time work, an individual who is a full-time employee of a registered lobbying group but who himself does not lobby Members of Congress. The Senate Code of Official Conduct contains some specific provisions which deal with lobbyists and lobbying activities. Rule 35 prohibits the acceptance by Senators and Senate employees of gifts worth over $100 per year from lobbyists. Paragraphs 8 and 9 of Rule 37 prohibit post-term and post-employment lobbying by former Senators and former Senate employees for a one-year period after they leave the Senate. The gift and lobbying restrictions reflect a policy of separating certain specific activities from current Members and employees of the Senate, but these restrictions are not clearly and specifically applicable to the facts in this specific situation.

The Committee has recognized, in many prior rulings concerning conflict of interest questions, that it is difficult to substitute its judgment for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee believes that the supervising Senator must be the primary monitor of outside activities of his staff.

Finally, paragraph 5 of Rule 37 prohibits Senate employees who are compensated at a rate in excess of $25,000 per year and who are employed in excess of 90 days in a calendar year from affiliating with a firm, partnership, association, or corporation for the purposes of providing professional services for compensation. As the Committee is not certain that the individual will be a Senate employee in excess of 90 days while maintaining his present, outside employment, it is not possible to determine whether this outside employment constitutes an affiliation for the purposes of providing professional services.

INTERPRETATIVE RULING NO. 315

Date issued: April 3, 1980.

Applicable Rule and Area: 34, Ethics in Government Act of 1978.

Question considered

A Member has been asked to participate in a golf tournament to benefit a memorial medical research fund. Corporations are contributing cash and aircraft in order to provide transportation and lodging expenses for the participants. May a Member accept these travel and lodging expenses? In addition, would the donations by corporations of cash and aircraft to the fund constitute campaign contributions by such corporations?

Ruling

The Select Committee has previously ruled that participation by a Member of the Senate is a contribution by the Senator to the sponsor of the event. Transportation and lodging furnished by the sponsor is provided in consideration for the Member's participation and is not a gift for purposes of the Senate Code of Official Conduct.[51] In addition, Senate Rule 34 requires a Member of the Senate to make an annual public disclosure of the receipt of reimbursements received to cover travel-related expenses aggregating $250 or more from any one source during a calendar year.

Whether the donation by corporations of cash and aircraft to a memorial medical fund, to be used to provide transportation and lodging to celebrity participants in a golf tournament, would constitute campaign contributions by such corporations, is a matter within the jurisdiction of the Federal Election Commission.

INTERPRETATIVE RULING NO. 316

Date issued: April 3, 1980.

Applicable Rule and Area: 35, Federal Regulation of Lobbying Act of 1946; Federal Election Campaign Act of 1971.

Question considered

May a Senate staff member accept reimbursement for travel expenses in connection with an appearance before the regional office of a federal agency in an effort to help resolve official difficulties attending the implementation of a particular statute in that State? A member of a local association with interest in the statute has offered to provide the Senate staff members' travel expenses.

Ruling

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Members, officers, and employees from entities with a "direct interest in legislation before the Congress", defined as organizations which have a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended, Rule 35, paragraph 1(b). It would appear, based on the information provided, that the providing of transportation by the local member of the association, in the circumstances described, would constitute a "gift". The Committee does not believe that the "necessary expense" exception to the definition of "gift" in Rule 35 is applicable in this instance since the Committee has previously ruled that the receipt of such "necessary expenses" must be in connection with either an appearance made before a group or organization which is to provide the expenses or an appearance made at an event sponsored by such group or organization.

It is the Committee's understanding that the prospective donor maintains a political committee and also a registered lobbyist. Accordingly, the company would be an entity with a "direct interest in legislation" under Rule 35 from which a Senate employee may receive gifts totalling not more than $100 in value in a calendar year. Thus the reimbursement of travel expenses in this instance is subject to such limitation.

We note that if the staff member's appearance before the agency was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper.

INTERPRETATIVE RULING NO. 317

Date issued: May 1, 1980.

Applicable Area: Franking.

Question considered

May a Senator use the frank to express congratulations to individuals for attaining a 90th birthday or condolences upon a death?

Ruling

Section 3210(a)(3)(F) of Title 39 authorizes franking of "mail matter expressing condolences to a person who has suffered a loss or congratulations to a person who has achieved some personal or public distinction." The *Regulations Governing the Use of the Mailing Frank* state, "birthday greetings which are not incidental to an otherwise frankable mailing are not considered frankable mail."

The Committee believes that congratulations for attaining a 90th birthday constitute birthday greetings and are not frankable unless they are incidental to an otherwise frankable mailing. The Committee also believes that a death constitutes suffering a loss within the meaning of section 3210(a)(3)(F), and that frankable mail matter includes an expression of condolences upon a death.

INTERPRETATIVE RULING NO. 318

Date issued: May 9, 1980.

Applicable Rule: 40.

Question considered

May a Senator provide a national political committee with a copy of his mailing list of senior citizens in order for the Committee to add the names and addresses to a list of individuals to whom the Committee already sends a newsletter?

Ruling

Senate Rule 40 states, at paragraph 5(c) that "the Senate computer facilities shall not be used . . . to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate . . ." The Report of the Special Committee on Official Conduct, Senate Report 95–49, in explaining Rule 40.5(c) states that "under this paragraph, mailing labels and computer tapes cannot be produced by the Senate facilities for use in any other facility, such as for campaign mailings." The author of this provision stated on March 23, 1977, at p. 8843 of the Congressional Record, it was his intention that the provision ". . . just restates that in no case are Members of the Senate or Senate committees authorized to use Senate computer facilities for political or personal purposes.

We believe that the furnishing by a Member of a list of names and addresses, currently stored in the Senate Computer Facility, to a political committee for use by them in a mailing would be prohibited by paragraph 5(c) of Senate Rule 40, since the labels or tapes to be furnished would be used by the political Committee at a facility which is not maintained or operated by the Senate.

INTERPRETATIVE RULING NO. 319

Date issued: May 9, 1980.
Applicable Rules: 34, 37.

Question considered

May a staff member of a Senate committee provide economic analysis for a consulting firm? The outside employment would involve approximately 10 hours of work per week for about 8 weeks, and the work would be done exclusively at night or on weekends. As proposed, the Senate employee would provide analysis for a private consulting firm and the firm would advise its clients about prospects for federal grants. The employee has indicated that the analysis would not concern or be connected with any legislative matter pending before the Senate Committee which employed him. He also states that should his analysis lead to an application for a federal grant, the grant application would not be considered by any agency of the federal government over which the employee's Senate Committee has jurisdiction.

Ruling

Senate Rule 37.2, Conflict of Interest, prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. From the information available, the Committee does not believe that proposed outside activity is prohibited by Rule 37.

However, paragraph 3 of Rule 37 requires the supervisor of a Senate employee to make the initial judgment as to whether a proposed activity would present a conflict of interest, because of either the time required by the activity or the nature of the activity itself. This paragraph imposes upon the supervisor the responsibility for continuing to monitor the activity and for taking such steps as necessary for the avoidance of a conflict or interference with Senate duties.

If the staff member is a reporting individual under Senate Rule 34, he will be obligated publicly to disclose outside employment and earnings.

INTERPRETATIVE RULING NO. 320

Date issued: May 13, 1980.
Applicable Area: Franking.

Question considered

May the frank be used to mail the *Consumer Information Catalog* in direct response to a request for it from a person to whom it is mailed, after the availability of the catalog has been mentioned in a regular franked newsletter? The *Consumer Information Catalog* is printed by the Government Printing Office and offered to Members of Congress in quantity by the General Services Administration.

Ruling

The Ethics Committee's Interpretative Ruling No. 52 of August 23, 1977 concluded the frank could not be used to mass mail the catalog. However, inasmuch as the newsletter notice of availability of the catalog would come within the scope of a Senator's representative functions, and because the Senate's franking regulations[52] except from the definition of a mass mailing that which is sent in direct response to requests from the persons to whom the matter is mailed, the catalog may be franked to constituents who have specifically requested it.

INTERPRETATIVE RULING NO. 321

Date issued: May 13, 1980.
Applicable Rule: 37.

Question considered

May a subcommittee special counsel, who intends to be a full-time Senate employee for six months but who may then rejoin the law firm where he has been a partner, retain during his Senate employment a limited relationship with the law firm?

For the period of his Senate employment, the counsel plans not to be affiliated with the law firm for the purpose of providing professional services for compensation, and the firm shall not use his name. The counsel will withdraw from litigation in which he was involved at the firm, will have no interest in fees for services rendered by the firm during the period in which he is not affiliated with it, and the firm will remove his name from its letterhead. The counsel has the option to resume affiliation with the firm after termination of his employment with the Senate, but during his Senate employment will retain at his expense pre-existing group insurance and his interest in the firm's pension plan.

Ruling

Paragraph 5 of Senate Rule 37 provides that:

"No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, "professional services" shall include but not be limited to those which involve a fiduciary relationship."

Based upon the facts presented, it appears that special counsel and the law firm took all reasonable steps to comply with paragraph 5 of Rule 37. Accordingly, the Committee holds that retention of the firm's group insurance benefits and pension benefits, at his expense, do not constitute a prohibited affiliation within the meaning of paragraph 5(a) of Rule 37.

The Committee reminded the supervising Senator that paragraph 3 of Rule 37 prohibits a Senate Employee from engaging in any outside business or professional activity or employment for compensation unless he had described such activity in writing to his supervisor and the Rule places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, the Senator should review any change in the counsel's relationship with the firm during the time that he is employed by the subcommittee.

The Committee noted also that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires that any individual who becomes an officer or employee of the Senate on or after January 1 of the calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 of the General Schedule must file a Public Financial Disclosure Report within thirty days of becoming such an employee. The Select Committee has previously interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year.

INTERPRETATIVE RULING NO. 322

Date issued: May 13, 1980.
Applicable Area: Franking.

Question considered

May a Member use the frank to mail certain official government publications (the publications of the Department of Health and Human Services, *Infant Care* and *One to Six*) to constituents to assist them in the care of babies and children?

Ruling

The Committee has previously ruled[53] that it is not a proper use of a Member's franking privilege to mass mail to his constituents a selected list of pamphlets, which were prepared by executive agencies and which are available upon order from the Consumer Information Center in Colorado, for the reason that the publications were not printed by order of Congress nor do they bear more than an indirect relationship to the legislative process.

The Committee has also ruled, however, that a Member may use the frank to express congratulations (for having achieved a "personal distinction") to parents on the birth of a child and to include along with the congratulations a notification that the pamphlet *Infant Care* is available from the Member's Washington and home State offices.

The Committee believes that a Member may, consistent with these rulings, use the frank to express congratulations to parents upon the birth of a child. These frankable expressions of congratulations may include at notice that the pamphlets *Infant Care* and *One to Six* are available upon request from the Member's Washington or home State offices. Upon request for these pamphlets, we believe that a Member may use the frank to send the pamphlets to those who request them.

INTERPRETATIVE RULING NO. 323

Date issued: June 6, 1980.
Applicable Area: Franking.

Question considered

A Senator has authored a scholorly article for the journal of his State University's Graduate School of Business Administration. The article, which has been published, deals with the Senator's own views concerning the impact of certain regional economic theories affecting his State, especially as these theories are used in the formation of national economic policy. The Senator asks whether reprints of the article may be mailed under the frank to interested persons in his State?

Ruling

In its response, the Select Committee noted that the franked mail statute, 39 U.S.C. 3210 *et seq.*, states the policy of Congress that the franking privilege was enacted in order to assist and expedite the official business, activities, and duties of the Congress and these include all matters which directly or indirectly pertain to the legislative process or to any congressional representative function generally. In addition, Section 3210(a) (3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress."

The Select Committee observed that the article dealt not only with regional economic theories but also with the impact of several specific pieces of tax, environmental and employment legislation recently passed by the Congress. Thus, the Committee ruled that reprints of the article would be frankable pursuant to Section 3210(a)(3)(A) of the franked mail statute, because the article concerned itself with the impact of legislative actions of the Congress, and informed his constituents as to his views thereof

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Footnotes at end of article.

and why he voted for or against the legislation in question.

While it appeared that the article has been copyrighted by the state university, the Select Committee expresed no opinion as to the effect of copyright law on a reprint of the article.

INTERPRETATIVE RULING NO. 324

Date issued: June 25, 1980.
Applicable Rule: 40.

Question considered

What is the applicability of the 60-day moratorium on the use of the Senate Recording Studio in Senate Rule 40, paragraph 6 to a Member recording an opening statement for a business conference to be held in a foreign country? The Member was asked to address the conference in his capacity as chairman of a Senate subcommittee; he proposed to do so by means of a video recording; and stated to this Committee that the proposed recording of the four-minute opening statement would not ever be shown in the United States. In addition, the proposed use of the Senate Recording Studio would take place within the 60 days prior to the day the Member was a candidate in his home State primary.

Ruling

Paragraph 6 of Senate Rule 40 provides as follows:

"(a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator.

"(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954."

The Committee has previously ruled,[54] in connection with the 60-day moratorium on the use of the frank provided in the same Rule at paragraph 1, that Rule 40 does not apply to the mass mailings of a Senate committee which are mailed under the frank of a committee's chairman, but that such mailings must relate only to the committee's business and may not focus on a Member in a manner that could reasonably be deemed to be personal or political.

This ruling was based on a conclusion that there was no evidence in the Rule's legislative history that the Senate intended to include committees and subcommittees within the moratorium on franked mass mailings where the frank being used was that of a chairman who was covered by the Rule's 60-day moratorium.

INTERPRETATIVE RULING NO. 325

Date issued: June 27, 1980.
Applicable Area: Franking.

Question considered

May a member of the Senate frank a letter of congratulations to recently naturalized citizens in his home state, and enclose with that letter an enclosure which provides information as to the Member's state offices and who to contact if a problem arises in a particular area of citizen concern?

Ruling

The franking statute at 39 U.S.C. 3210(a)(1) states:

"It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of official business, activities, and duties of the Congress of the United States."

The intent of the Congress in furnishing the franking privilege to Members is provided at 39 U.S.C. 3210(a)(2) which states:

"It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions."

Of particular note is 39 U.S.C. 3210(a)(3)(F) which specifically sets forth statutory authorization for the franking of "mail matter expressing . . . congratulations to a person who has achieved some personal or public distinction."

It was the considered opinion of the Committee that becoming a citizen of the United States is a "public distinction" within the meaning of the statute, and that letters expressing congratulations for achieving citizenship are frankable as such. Further, the Committee believed that the enclosure of information regarding services available at the Member's state offices was frankable as it conveyed information to the public as a means of assistance in the performance of the legislative and representative functions consistent with the Congressional intent provision of the franking statute.

INTERPRETATIVE RULING NO. 326

Date issued: July 1, 1980.
Applicable Rule: 41.[55]

Question considered

May an employee on the personal staff of a Senator, in his home state office, also serve during off-duty hours and without compensation as the National Committee Chairwoman of a political party from that state?

Ruling

There is no provision of the Code of Official Conduct which prohibits such service by a member of the personal staff of a Senator. As S. Rep. 95-241 (95th Cong.) indicated, except for prohibitions of Rule 41 with respect to the handling of campaign funds, "it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ."[56]

The prohibitions on political activity within the Code of Official Conduct are found in Rule 41. The legislative history of Rule 41 makes it clear that the Code was not intended to proscribe or restrict legitimate, voluntary political activity such as that in question.

In furtherance of legislative intent, this Committee has approved a Senate employee holding a position as a political party's precinct chairman as long as the state and local campaign activities were clearly separate and distinct from any fund-raising activities performed in connection with a Federal election, and the activities did not interfere with the employee's Senate duties. Interpretative Ruling No. 204 (Dec. 5, 1978).

Hence an employee on the personal staff of a Senator could, during off-hours and without compensation, serve as a political party's National Committee Chairwoman from her state. Such an employee, however, unless one of the Senator's two political fund designees, could not "receive, solicit, be the custodian of, or distribute any campaign funds," Interpretative Ruling No. 5 (May 11, 1977), nor could said employee solicit others to solicit funds or "otherwise becom[e] involved to any substantial degree in political fund activity." Interpretative Ruling No. 25 (June 2, 1977).

If the employee were a political fund designee, then she could handle political funds as set forth in Rule 41. The prohibitions on political fund activity found in Rule 41 *do not*, however, apply to state or local campaigns. Interpretative Ruling No. 153 (June 22, 1978); Interpretative Ruling No. 182 (September 29, 1978). If involvement in *any* campaign activity becomes extensive, however, the supervising Member may find it wise to remove the employee from the payroll for the period of extensive campaign involvement. *See*, for example, Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 309 (February 21, 1980). This is important for the supervising Senator to recognize, because the position of National Committeeman or Committeewoman for a political party is an important position which could conceivably require a great deal of time on the part of the Senate employee.

It should be clear from the foregoing that even if not a political fund designee, an employee would not be prohibited from handling funds for a *state* party organization for the purpose of paying off campaign debts incurred by a party's candidates for state and local office. But those activities must be clearly divisible from any of the organization's activities performed in connection with any *federal* election. That is to say if the proposed activities would involve the raising of a common fund to, for example, discharge the party's political debts on behalf of *all* of its candidates, whether federal, state or local, the employee's participation in the common fund activities would be prohibited under Rule 41, even if the proceeds of the activities could be clearly apportioned between federal candidates and state or local candidates. Interpretative Ruling No. 182 (September 29, 1978).

Because the language of Rule 41 prohibits an employee from receiving, soliciting, being the custodian of, or distributing funds in connection with any federal election campaign, it would be necessary for the employee, as National Committee Chairwoman, to abstain from voting on any issue before the party's National Committee which would involve fund-raising activities for federal elections, or for any common-fund activities which funds would be used for, among others, federal elections, unless, of course, the employee is a political fund designee. The same interpretation would apply to the employee's appointment to a Committee, Subcommittee, Task Force, or other unit of the party's National Committee which would be involved in fund-raising activities for federal election campaigns, or the disbursement or distribution of political campaign funds in federal elections.

We distinguish the case of a party National Committee Chairman or Chairwoman, in this case, from that of the chief executive officer of a state political committee, in Interpretative Ruling No. 296. There we ruled that the party's duties necessarily entailed, in the formal course of business, the acceptance, solicitation, retention or expenditures of funds in connection with federal election campaigns, the effective discharge of which duties would run afoul of the prohibitions of paragraph 1 of Rule 41. Such would not appear to be the case regarding the duties of a party National Committee Chairman or Chairwoman.

Finally, the Committee notes that in addition to restrictions on campaign activity imposed by Senate rules, there are also statutory prohibitions against certain types of political activity by Senate employees. *See* 18 U.S.C. sections 602, 603 (solicitation of political contributions), 606 (intimidation to secure political contributions), and 607 (making political contributions).

In sum, an employee on the personal staff of a Senator, in his home state office, may serve as a political party's National Committee Chairwoman from that state, if done voluntarily during off-hours, and without compensation; if it does not interfere with the performance of her Senate staff duties; and if it does not entail the handling of political campaign funds in *federal* elections, unless said employee is one of the Senator's political fund designees, in which case the employee may handle federal election campaign funds within the limits of Rule 41.

INTERPRETATIVE RULING NO. 327

Date issued: July 1, 1980.
Applicable Rule: 34.

Question considered

For reporting purposes, how is a gift of a season pass to a theatre or sporting events or a membership in a club to be valued?

Ruling

Section 107(3) of the Ethics in Government Act of 1978 (2 U.S.C. 707(3)), which has been adopted as Rule 34 of the Standing Rules of the Senate (Public Financial Disclosure) defines gift as "a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

"(A) bequest and other forms of inheritance;

"(B) suitable mementos of a function honoring the reporting individual;

"(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;

"(D) food and beverages consumed at banquets, receptions, or similar events;

"(E) consumable products provided by home State businesses to a Member's office for distribution; or

"(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;"

As to the value assigned for reporting purposes to the gift of a season's pass to the theatre or sporting events, or a gift of membership in a club, the Committee believes that the value for reporting purposes is the cost paid by the donor, regardless of the extent, if any, of the use of the pass or membership by the donee.

The Committee has also concluded that the value of a gift of a season pass is the value at the time of acceptance.

INTERPRETATIVE RULING NO. 328

Dated issued: July 11, 1980.
Applicable Area: Franking.

Question considered

May a Member of the Senate frank a letter to constituents encouraging them to recommend that their children attending colleges enroll in ROTC programs?

Ruling

Title 39 USC 3210(a)(2) indicates that the use of the frank by Members of Congress is intended to assist them in the performance of their official duties. This is meant to encompass all matters which relate directly or indirectly to the legislative and/or representative function of the Member. 39 USC (a)(3)(A) specifically authorizes the use of the Member's frank with regard to "programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress."

It was the considered opinion of the Committee that in a time when the all-volunteer enlistment program for the United States Armed Services is not filling the manpower requirements necessary to maintain full military preparedness, a letter written by a Member encouraging participation in available college military programs specifically authorized by Congress was related to a matter of public concern or public service as contemplated by 39 USC 3210(a)(3)(A). It was therefore the conclusion of the Committee that the letter encouraging enrollment in ROTC programs was frankable under the frank mail statute.

INTERPRETATIVE RULING NO. 329

Date issued: August 26, 1980.
Applicable Area: Franking.

Question considered

May a Senator use his franked mail privilege to enclose, in an otherwise frankable mailing, a "wallet card" which lists information for senior citizens, including phone numbers of local governmental agencies which serve senior citizens?

Ruling

The Senator proposes to mail a letter of response to each letter he receives from a senior citizen. In that response, he proposes to include a "wallet card" which lists the phone numbers of selected state and local agencies which offer assistance to senior citizens. While some of the listed agencies are public and some are private, all appear to have only a state or local focus and none of the listed organizations is an agency of the Federal government, nor are any of the organizations listed related to the Congress.

The franked mail statute, at 39 U.S.C. 3210(a)(3), states the intent of Congress that the franking privilege of a Member of Congress shall include "the conveying of information to the public . . ." While Section 3210(a)(3)(A) specifically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service . . .", the Select Committee has previously taken the position that "these matters must relate principally to the Federal Government. "Matters of purely State or local concern are not frankable", (See Chapter 2, paragraph 3 of the *Regulations Governing the Use Of the Mailing Frank*).

The "wallet card" which was proposed to be enclosed in franked mailings to senior citizens appears to deal exclusively with phone numbers of various state, county, and private agencies and organizations which assist senior citizens. For this reason, the Committee ruled that the "wallet card" would not be frankable for the reason that it does not relate to matters of public concern involving the Federal Government, nor does it relate to "the functioning, working, or operating of the Congress . . ." per section 3210(a)(3) of the franked mail statute.

INTERPRETATIVE RULING NO. 330

Date issued: August 26, 1980.
Applicable Rule and Area: 38 and the Federal Election Campaign Act.

Question considered

May a Member use excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff?

Ruling

The use of excess campaign funds is governed by the Federal Election Campaign Act and Senate Rules. The Act, as amended by Pub. L. No. 96-187, provides at section 439a of Title 2, United States Code, that excess campaign funds may be used by a holder of Federal office "to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office." Senate Rule 38 allows a Member to defray "expenses incurred by a Member in connection with his official duties" from, either personal funds or, "funds derived from a political committee."

The Committee does not believe that a Member's use of excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff violates the requirement of Rule 38 that "expenses incurred by a Member in connection with his official duties shall be defrayed only from . . . (c) funds derived from a political committee . . ." In addition, the Committee does not believe that such a use of funds from a Member's principal campaign committee violates the prohibition in paragraph 2 of Rule 38 on the conversion of contributions to the personal use of a Member.

The Committee notes that this interpretation of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be interpreted by the Committee on Rules and Administration or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds. In addition, the Committee expresses no view on the tax consequences to a Member or to his principal campaign committee of the use of campaign funds to defray the cost of entertainment of staff. Further information on these issues can be found in a report of the Committee on Finance, "Tax Status of Funds Expended by a Political Committee", S. Rept. 95-779 (1978), and in Revenue Ruling 78-373 on Deductibility of Expenses paid by Members of Congress.

INTERPRETATIVE RULING NO. 331

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

A Senator has introduced legislation concerning an environmental issue. A national environmental group is interested in the bill and has asked the Senator to supply it with a quantity of reprints of the legislation and the Senator's remarks in the *Congressional Record* upon introducing the bill. The Senator, who is a candidate for reelection to the Senate and is within the 60-day moratorium established by Senate Rule 40, asks whether it would be proper for him to request that the Senate Service Department reprint a large quantity of his introductory remarks from the *Congressional Record* and whether he can use his franked mail privilege to mail reprints of the bill and the *Congressional Record* remarks to the environmental group, who will then enclose the reprints in a newsletter mailing which they regularly send to their membership?

Ruling

Concerning the use of the Service Department to reprint copies of a Senator's remarks from the *Congressional Record*, the Select Committee stated that it knew of no provision of the Code of Official Conduct which would preclude such a request. As the Select Committee has previously stated, the fact that the material would ultimately be disseminated by a private group rather than directly by the Senator would not preclude such reprinting by the Service Department, cf. IR No. 127, dated May 12, 1978. In this as in all other instances in which a Senator requests that the Service Department prepare printed material, the Senator must make the judgment that such a request is made in connection with his official duties.

Concerning the use of the mailing frank to forward such reprints to the environmental group, the Select Committee stated that section 3212 of Title 2, U.S. Code, the franked mail statute, provides that Senators may send the *Congressional Record* "any part of, or a reprint of any part of, the Congressional Record, including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210." Section 3210(a)(3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." The Select Committee ruled that taken together, sections 3210(a)(3)(A) and 3212 provide authority for the Senator to mail as prescribed mail reprints of his remarks from the *Congressional Record* concerning the introduction of the environmental legislation.

In response to the Senator's question as to whether the fact that he is a candidate for reelection to the Senate would impact upon his use of the frank to forward the reprints, the Select Committee stated, that based upon the assumption that the reprinted matter being forwarded in response to the environmental group's request was to be mailed in one mailing, the restrictions imposed upon Senators who are candidates for reelection and who seek to use their mailing frank for "mass mailings" (cf. Senate Rule 40) would not preclude this specific use of the frank. In this factual setting, although the Senator was within a 60-day moratorium established by Rule 40, the mailing to the environmental group would not be a "mass mailing" for the reason that the term "mass mailing" is defined as "any mailing within a 30-day period of more than 500 pieces of substantially identical content." Here there was to be a one-time mailing, in bulk, under a single use of the frank and thus the 500 piece threshold of Rule 40 would not be met.

INTERPRETATIVE RULING NO. 332

Date issued: September 3, 1980.
Applicable Rule: 38.

Question considered

A Senator holds periodic town meetings throughout his state and in the past has notified residents of future town meetings in their area by franked post cards. In the alternative, the Senator proposes to prepare meeting notices and distribute the notices to grocery stores in his state for dissemination to the public. Would such a proposal be consistent with the Code of Official Conduct?

Ruling

While Senate Rule 38 prohibits the defrayal of expenses incurred in connection with a Senator's official duties from other than one of the four sources specifically identified in the Rule, the Senator states that the costs of preparing the town meeting notice will be defrayed from one of the sources of funding listed in Rule 38. In addition, while the Select Committee has previously ruled that in-kind donations of goods and services for official purposes fall under the prohibitions of Rule 38 (see IR 16, dated May 23, 1977, IR 43, dated July 13, 1977, and IR 72, dated September 29, 1977), it is the Committee's view that such "in-kind contribution" rulings do not preclude a Senator's distribution of town meeting notices to grocery stores where such notices will be made available to the general public, for the reason that the services are of a de minimus nature, and are available to other responsible organizations.

INTERPRETATIVE RULING NO. 333

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

May letters of congratulations be sent under the frank to senior citizens who have attained their high school diploma through an adult education program?

Ruling

Section 3210(a)(3)(F) of Title 39 of the United States Code authorizes the franking of "mail matter expressing . . . congratulations to a person who has achieved some personal or public distinction."

A franking regulation promulgated by the Committee declares that "[c]ongratulations to graduating students or to newly-weds, or birthday greetings which are not incidental to an otherwise frankable mailing are not considered frankable mail."

The Committee concluded that the attainment of a high school diploma by a senior citizen is sufficiently distinguishable from the usual circumstances surrounding a high school graduation as to constitute a "public distinction" within the meaning of the Act. Therefore a letter congratulating the senior citizen for that accomplishment may be franked.

INTERPRETATIVE RULING NO. 334

Date issued: September 3, 1980.
Applicable Rule: 35.

Question considered

Is it permissible under the Code of Conduct for a Senate employee to accept from a public research foundation travel, food, and lodging expenses for a three-week visit to the foundation to edit certain papers which the employee's supervising Senator asked the Foundation to publish?

Ruling

The Senate employee edited certain papers that were prepared for and presented to Members of Congress and congressional staff members during a Congressional Roundtable co-sponsored by the employee's supervising Senator. During the trip the foundation paid the employee's travel, food, and lodging expenses, and he remained on the Senate payroll, engaging in the activity as a work assignment for the Senator and not on leave time. The Senator indicated that he "regard[ed] this activity on the employee's part as being consistent with his official duties."

Paragraph 1(a) of Rule 35 on Gifts prohibits Senators, officers, and employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from a prohibited source, as that term is defined by the Rule. Paragraph 2(a) of the Rule, however, excepts from the definition of "gift" any payment where "consideration of equal or greater value is received" by the party making the payment.

The Committee determined that the employee's editing work was a substantial service to the foundation in connection with its publication of the papers, and therefore "consideration of equal or greater value [was] received" by the foundation such that its payment of travel, food, and lodging expenses was not a gift within the meaning of Rule 35. Accordingly, since the expenses furnished to the employee were therefore exempted from the Rule 35(1) prohibition, it was not necessary to determine whether the source furnishing the expenses was a prohibited one, and the trip and the employee's acceptance of expenses was therefore permissible.

The Committee noted that if the employee was required to file a financial disclosure statement under the Ethics in Government Act of 1978, i.e., if he was an employee of the legislative branch for more than sixty days and was compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 during the calendar year, he would be required to report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

INTERPRETATIVE RULING NO. 335

Date issued: September 3, 1980.
Applicable Area: Franking.

Question considered

A Committee Chairman proposes to use his frank to mail a survey to 3,000 research and development firms asking for their comments on the Federal government's research and development efforts. The results of the survey will be used by the Committee to support a bill which the Committee has reported to the Senate. In addition, the Chairman proposes to enclose, with the survey, a pre-addressed, franked, return envelope which would enable the recipient to return the survey results to the Committee. The Chairman asks whether these specific uses of the frank are authorized by the franked mail statute?

Ruling

Section 3210(a)(3)(c) of Title 39, U.S. Code, the franked mail statute, authorizes the franking of questionnaires "seeking public opinion on any law, pending or proposed legislation, public issue, or subject." The Select Committee ruled that a survey seeking comments about the research and development programs of the federal government from business engaged in research and development work would be within the definition of a "questionnaire" as that term is used in section 3210(a)(3)(c) of the statute, with the result that the frank of a Senator could be used to mail the proposed survey.

Chapter Two, paragraph 5 of the *Regulations Governing the Use of the Mailing Frank* states that "a Senator may provide a franked, pre-addressed mailer or envelope for the return of responses to a franked questionnaire as intended by section 3210(a)(2) of Title 39, U.S. Code, which specifically authorizes the use of the frank in 'requesting the views of the public'." The Select Committee held, given the facts presented, that a Committee Chairman would be authorized to enclose, with the survey, a self-addressed, franked envelope for use by the recipient of the survey in responding to the Committee's request for information and views on the federal research and development process.

FOOTNOTES

[1] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is not Rules 34 through 42.

[2] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[3] Subsequent to this ruling the Senate passed (August 3, 1979) S. Res. 220 striking Rule 42 and putting in its place a new Rule 42 consisting of the provisions of Title I of the Ethics in Government Act of 1978. Rule 42, as noted above is now Rule 34.

[4] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[5] Prior interpretations of the lobbying prohibition in the Code can be found in Interpretative Ruling Nos. 92 and 218.

[6] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[7] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[8] After this ruling was issued, the Senate agreed on March 25, 1980 to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[9] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[10] After this Ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[11] Subsequent to this ruling, the Senate

agreed (on November 14, 1979) to S. Res. 274 which removed paragraph 5 of Rule 37, necessitating a renumbering of Rule 37, paragraphs 6–12.

[12] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[13] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[14] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[15] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[16] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[17] See Interpretative Ruling No. 44.

[18] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[19] See Interpretative Ruling No. 223, dated January 30, 1979.

[20] See Interpretative Ruling No. 182, dated September 5, 1978.

[21] See Interpretative Ruling No. 204, dated December 5, 1978.

[22] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[23] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Re. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[24] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[25] On August 3, 1979 the Senate agreed to S. Res. 220 striking Rule 42 and replacing it with Title I of the Ethics in Government Act of 1978. Prior to its amendment, Rules 42(5)(e)(2) provided for the Comptroller General to audit at least one report filed by each Member of the Senate during each six-year period beginning December 31, 1977. Rule 42, as amended, now Rule 34, has no such provision.

[26] See Interpretative Ruling No. 60, dated September 13, 1977.

[27] After this ruling was issued, the Rules Committee decided that such reimbursement can be made from the 10 percent account.

[28] After this ruling was issued, the Senate, on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[29] See Interpretative Ruling No. 103.

[30] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[31] See Interpretative Ruling No. 105, dated March 9, 1978.

[32] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[33] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[34] The Committee also notes that the prohibition in the criminal code on receipt of contributions in a Federal building (formerly 18 U.S.C. section 603) was also amended by the Federal Election Campaign Act Amendments of 1979 to allow unsolicited contributions to be received in a Federal building, provided they are not directed to be sent there, and further provided that they are transferred to a political Committee within 7 days of receipt. 18 U.S.C. section 607, as amended.

[35] See Interpretative Rulings No. 3, No. 5, No. 22, No. 49, No. 153, No. 182.

[36] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[37] See Interpretative Rulings No. 6 and No. 59.

[38] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[39] See Interpretative Rulings No. 70 and No. 233.

[40] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[41] See Interpretative Rulings No. 69 and No. 133.

[42] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[43] Section 3210(a)(5) of Title 39 states that mail is not frankable if it "includes greetings from the spouse or other members of the family" of a Senator.

[44] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[45] S. Rept. 49, 95th Cong., 1st Sess. 41 (1977).

[46] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[47] See Interpretative Rulings Nos. 137 and 152.

[48] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[49] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[50] After this ruling was issued, the Senate on March 25, 1980 agreed to S. Res. 389, which consolidated certain Standing Rules of the Senate. As a result, the Senate Code of Official Conduct, formerly Rules 42 through 50, is now Rules 34 through 42.

[51] See Interpretative Ruling No. 29.

[52] *Regulations Governing the Use of the Mail Mailing Frank by Members and Officers of the United States Senate*, June 26, 1979, Chapter Three, paragraph 2(b).

[53] See I.R. 52, dated August 23, 1977. See also Rule 40.2 of the Standing Rules of the Senate, effective January 1, 1978, which requires the use of official Senate funds for the printing or preparation of any mass mailing material to be sent out under the frank.

[54] See I.R. 141, dated June 7, 1978.

[55] Rule 41, Standing Rules of the Senate, was previously Rule 49. It was renumbered by S. Res. 389 (consolidation of the Senate Rules), which passed the Senate on March 25, 1980.

[56] S. Rep. 95–241 (95th Cong.), *quoted in* Interpretative Ruling No. 154, June 22, 1978, p. 2. S. Rept. 95–241 accompanied S. Res. 188, which amended then Rule 44 (now Rule 41) relative to political fund activity by Senate officers or employees.●

PERMISSION FOR COMMITTEES TO FILE BILLS, REPORTS, AND CONFERENCE REPORTS ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committees may have permission to file bills and reports from 9 o'clock tomorrow morning until 3 o'clock tomorrow afternoon, and that conference reports may be filed during that period.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECORD OPEN UNTIL 5 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 5 p.m. today to introduce statements, bills, resolutions, petitions, and memorials.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY FOR CERTAIN ACTION DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess until 1 p.m. on Monday next, the Secretary of the Senate may be authorized to receive messages from the President of the United States and/or the House of Representatives, and that they may be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until 1 p.m. on Monday next, the Vice President of the United States, the President of the Senate pro tempore, and the Acting President pro tempore of the Senate may be authorized to sign all duly enrolled bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on Monday next, the Senate will convene at 1 p.m. There being no orders for the recognition of Senators, the two leaders or their designees will be recognized under the standing order for up to 10 minutes each, after which the Senate will resume its consideration of the Foreign Service bill, at which time the 1 hour for debate on the substitute amendment by Mr. HELMS will begin running.

One hour of debate on the substitute amendment by Mr. HELMS will begin running at that time, after which the vote will occur on the substitute amendment by Mr. HELMS. That will be a rollcall vote, undoubtedly.

Upon the disposition of that amendment, if it carries, the Senate will immediately proceed to the consideration of the bill, as amended, and without further amendment. However, if the amendment by Mr. HELMS does not carry, then he or any other Senator may call up additional amendments.

Upon the disposition of the Foreign Service bill, the Senate will proceed to the consideration of the HUD appropriations bill. This should come at a fairly early time on Monday afternoon. There will be rollcall votes in connection with amendments to the HUD appropriations bill.

Upon the disposition of the HUD appropriations bill, or not later than 12 noon on Tuesday, the Senate will proceed to the consideration of the military construction authorization bill.

In the event the HUD appropriations bill has to be laid aside temporarily on Tuesday at noon for that purpose, upon the disposition of the military construction authorization bill the Senate will return to the consideration of the HUD appropriations bill.

Following the disposition of both of these measures—the HUD appropriations bill and the military construction authorization bill—the Senate will proceed to the consideration of the military construction appropriations bill.

Upon the disposition of the military construction appropriations bill, the Senate will proceed to the consideration of the transportation appropriations bill.

Mr. President, at some point next week, I anticipate calling up the disapproval resolution on Tarapur, regardless of what my position may be on the resolution. I want to ascertain a time that will be mutually agreeable to the chairman of the committee and those who support the disapproval resolution, and, if possible, alert all Senators to that time so that Senators will be prepared. But at some point next week, I anticipate calling that up.

As I said, that will be after consultation with the chairman, the ranking member, the minority leader, and Senators who support the disapproval resolution.

I merely make that statement now so that Senators will be alert to the action on that bill. That measure will be under a built-in time agreement and, of course, will result in a rollcall vote.

Mr. President, I anticipate the likelihood of long sessions next week—early and late sessions—as we near the end of the session prior to the election. The anticipated adjournment date is still October 4. It may be possible to beat that by a day or two. It is my understanding that the other body may go out on October 2, but I anticipate the Senate being in until October 4 at the latest and until October 3 or the second at the very earliest, before it recesses over until after the election.

The Senate will return following the election. It will return on November 12, the day after Armistice Day. The business that will make it a necessity to return will be the continuing resolution, for one thing. There will be a continuing resolution over from the other body within the next few days, but the date in that continuing resolution probably will be December 15 or thereabouts, which will necessitate another continuing resolution following the election.

Additionally, there is the second concurrent budget resolution which, if not disposed of before the election, will remain to be disposed of following the election.

Any other business which has not been disposed of before the election and which is considered to be "must" legislation will be taken up following the election.

So the post-election session is assured, and the October 4 adjournment is assured with the possible adjournment over until November 12 occurring maybe on the third or the second, depending on how well the work goes in the Senate, in the meantime.

I would not rule out a Saturday session or so between now and October 4.

RECESS TO 1 P.M. ON MONDAY, SEPTEMBER 15, 1980

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 1 p.m. on Monday next.

The motion was agreed to; and at 12:20 p.m. the Senate recessed until Monday, September 15, 1980, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate September 11, 1980:

U.S. SYNTHETIC FUELS CORP.

John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corp. for a term of 7 years (new position).

CONFIRMATIONS

Executive nominations confirmed by the Senate September 11, 1980:

DEPARTMENT OF THE INTERIOR

Lindsay D. Norman, Jr., of Maryland, to be Director of the Bureau of Mines.

U.S. METRIC BOARD

Francis R. Dugan, of Ohio, to be a Member of the U.S. Metric Board for a term expiring March 23, 1986.

Dennis R. Smith, of Massachusetts, to be a Member of the U.S. Metric Board for a term expiring June 14, 1986.

CORPORATION FOR PUBLIC BROADCASTING

Howard A. White, of New York, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1986.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Stephen R. Reinhardt, of California, to be U.S. circuit judge for the ninth circuit.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Haldane, [redacted], U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert Joseph Lunn, [redacted], U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Major General Harry Augustus Griffith, [redacted], U.S. Army.

IN THE MARINE CORPS

Lt. Gen. Edward J. Miller, U.S. Marine Corps, age 57, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

The following-named officer under the provisions of title 10, United States Code, section 5232, to be assigned to a position of importance and responsibility designated by the President, in grade as follows:

To be lieutenant general

Maj. Gen. Richard E. Carey, [redacted], U.S. Marine Corps.

IN THE AIR FORCE

Air Force nominations beginning Albert R. Amalfitano, to be lieutenant colonel, and ending William E. Dussetschleger, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 25, 1980.

IN THE ARMY

Army nominations beginning Larry D. Aaron, to be major, and ending Joseph Saint Clair, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

Army nominations beginning Michael H. Abbott, to be lieutenant colonel, and ending John J. Zegarski, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

Army nominations beginning Gary D. Burrows, to be major, and ending Larry Smith, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

IN THE NAVY

Navy nominations beginning Raymond J. Adams, to be ensign, and ending Sheldon Brotman, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 1, 1980.

IN THE MARINE CORPS

Marine Corps nominations beginning Timothy C. Abe, to be second lieutenant, and ending Larry R. Shannon, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on August 18, 1980.

EXTENSIONS OF REMARKS

FOR GRAIN ELEVATOR IN ISRAEL

HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 11, 1980

● Mr. FINDLEY. Mr. Speaker, I am urging swift action on a proposed foreign market development facilities program to clear the way for a much needed grain elevator in Israel.

I made the recommendation in a mailgram to Kelly Harrison, the U.S. Department of Agriculture's General Sales Manager.

I strongly urge immediate approval of the proposed Commodity Credit Corporation intermediate credit export sales program for foreign market development facilities.

Because of the pending project for a large, modern grain elevator at the port of Ashdod, Israel, time is of the essence for putting this program in place using funds available in the current fiscal year which, of course, ends September 30.

As a principal sponsor of the Agricultural Trade Act of 1978, under which this foreign market development facilities program should be carried out, I believe it is most important to implement fully this act. The proposed program is an important part of the objectives sought by this act, one which would help develop and expand the importing capabilities of foreign customers for U.S. farm commodities.

Regarding the proposed Ashdod facility, it should be noted that Israel's grain requirements are increasing about 10 percent annually. These needs are being served by a single elevator at the shallow water port of Haifa, now operating at full capacity. Ashdod can handle ocean vessels twice the size of those unloading at Haifa because it is a deeper draft port. An adequate facility at Ashdod would result in significant ocean freight and demurrage savings to Israel.

Ashdod also is more strategically located. The grain and oilseed consuming industry is centered around Ashdod and grain imported there could be more efficiently stored for shipment to the ultimate customer.

Of particular significance to Middle East relations is the fact that a modern grain unloading facility at Ashdod could become a regional depot serving Egypt.

The Agriculture Department has indicated that the advantages of Ashdod as a supply point for Egypt, Gaza, and Sinai are quite significant, since it is only 40 kilometers by direct coastal road to the 400,000 people in Gaza, compared with the present closest Egyptian elevator at Alexandria, 1,000 kilometers away.

Therefore, the implementation of the intermediate credit export sales program for foreign market development facilities is important to improving the Israeli economy, furthering peaceful cooperation among Middle East nations, and expanding the potential markets for American farm products not only in the Middle East but in other customer countries which may find this program vital to expanding import opportunities. The program should be implemented without delay.

The proposed Ashdod elevator facility will have a storage capacity of 90,000 metric tons, can unload 1,000 metric tons of bulk grain an hour, and handle ocean vessels up to 60,000 metric tons capacity. The elevator will be a joint venture of the Minneapolis exporting firm of I. S. Joseph Co., and the Haifa, Israel, firm of "Dagon" Batey-Mamguroth Le-Israel, Ltd., which will operate the elevator under the corporate name of Ashdod Silos, Ltd.

According to the proposal, the Israeli Supply Mission, the importing arm of the Government of Israel, will guarantee 60,000 metric tons or two-thirds of the capacity of the new elevator. The other 30,000 metric tons of storage capacity will be used for Israel's surplus storage plus possible grain handling and storage for shipments to Egypt.

The project agreement is to authorize the purchase by Ashdod Silos, Ltd., of 20 million dollars' worth of American corn and grain sorghum, 85 percent of the cost of which will be borne by the Commodity Credit Corporation through intermediate credit. Upon sale of the commodities by Ashdod Silos, the funds will be put in a financial facility approved by the CCC to be used for the construction of the port elevator. The proposed intermediate credit agreement calls for repayment in dollars to CCC over a 10-year period.●

HAPPY BIRTHDAY, CLAUDE PEPPER

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. BINGHAM. Mr. Speaker, today, September 8, 1980, our distinguished and beloved colleague, CLAUDE PEPPER, of Florida, celebrates his 80th birthday. I am grateful to our colleague, Mr. FASCELL, for arranging for this special order so that we properly celebrate such a happy event.

What great service Senator PEPPER has rendered to his State, his country, and the world over the four and one-half decades of his public service. And what great service he is rendering today and will render in the years to come.

As a senior citizen, he stands as a shining example of the principle he has so often and so effectively espoused: That our senior citizens have much to contribute. Indeed, his imagination, drive, energy, and stamina are enough to put to shame our colleagues in their twenties and thirties, let alone those of us young fry who are in our sixties.

It has been a privilege and a delight for me to serve with CLAUDE PEPPER in the House since January 1965.

My wife and I join most enthusiastically in wishing him a happy birthday and many happy returns of the day.●

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

SENATE—*Monday, September 15, 1980*

(Legislative day of Thursday, June 12, 1980)

The Senate met at 1 p.m., on the expiration of the recess, and was called to order by Hon. WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

"God of our life, through all the circling years,
We trust in Thee,
In all the past, through all our hopes and fears
Thy hand we see."

—H. T. KERR.

Breathe upon us now a sense of Thy continued presence. Fill us with life anew, that we may love what Thou dost love, and do what Thou wouldst do.

Help us, Lord, in our daily work to stay close to Thee that we may serve the Nation as we would serve Thy kingdom. May the call to public service and the duties already imposed upon us here keep us steadfast, alert, and strong amid all change.

Under the shelter of Thy wing,
Still may we dwell secure.
Sufficient is Thine arm alone,
And our defense is sure.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CREDIT GUARANTEES FOR POLAND

Mr. ROBERT C. BYRD. Mr. President, on Friday afternoon, President Carter announced his decision to extend $670 million in agricultural credit guarantees to Poland for fiscal year 1981. This action will allow Poland to buy an estimated 4 million tons of grain and other agricultural commodities from American farmers.

I applaud this effort to support the Polish economy in the wake of the historic agreements settling the recent strikes in Poland. The Polish Government has stated that the agreements will be implemented fully. Mr. Stanislaw Kania, the new Communist Party chief, has pledged to see that the reforms are carried out. Initial steps taken in accordance with the agreements seem to validate Mr. Kania's pledge. New independent unions are springing up all over Poland, and workers are lining up to join.

The strikes were debilitating to the already weak Polish economy. But I hope that the agreements made between the workers and their Government, without outside interference, will allow work to recommence and will provide a foundation for future prosperity. It is appropriate for the people of the United States to affirm their friendship with the Polish people by extending to them the largest amount of U.S. credit guarantees ever offered to a single country. The President stated that this aid was in response to an urgent request from Poland.

No one believes that this financial assistance will relieve Poland of all future hardships. But it is important that the Polish people know that they have the support of the people of the world's greatest democracy, the United States of America. It is important that the Polish people share in the bounty of the world's most efficient agricultural producer, the American farmer.

These credit guarantees are an indication that the American people care about Poland and follow its development and its news with special interest. We are witnesses to the events and promises of the last month, and we will watch carefully as the promises of September come to life in the months and years ahead.

RECOGNITION OF THE ASSISTANT MINORITY LEADER

Mr. ROBERT C. BYRD. Mr. President, if the distinguished minority whip would like any of my time, I will be glad to yield it.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. I thank the distinguished majority leader.

THE POSTELECTION SESSION

Mr. STEVENS. Mr. President, I was just reading the CONGRESSIONAL RECORD for Thursday, September 11, and I noticed that my good friend the majority leader had indicated once again that it is the intention to return to session on November 12.

It had been my hope that perhaps the leadership might work toward a continuing authorizing resolution which would negate the necessity to return.

I realize that there is "must" legislation to be completed, but it was my hope that we might avoid the potential discord that is involved in a postelection session in a Presidential election year.

I do not have any speech to make about this. I should just like the RECORD to show that I again seriously question the concept of being in session after an election in a Presidential election year. My memory of the times I have been here in 1972 and 1976 have convinced me that they are not productive sessions.

I say again to the majority leader that if there is anything we can do or that I can do personally to assist in working out the calendar so that we might avoid a postelection session, it is my hope that he will try to see if it is possible. I note that the majority leader has stated categorically—and I know that when my good friend says something categorically, he believes it and means it—that a postelection session is assured.

It seems to me that with the potential for the change of leadership in the executive branch, and even without it, in a Presidential election year, there is too much for the country to risk to have Congress in session after an election. I cannot believe that there is not some way we can avoid that.

It is my hope that we might discuss this matter with the leadership of the majority party in both Houses, to see if it would be possible to work out an arrangement whereby we would have a continuing resolution which, in fact, would continue the "must" legislation through in the next year, on an authorizing continuing resolution basis, and see if it would be possible to arrive at that type of solution to the problem that confronts us.

Mr. ROBERT C. BYRD. Mr. President, I appreciate the opportunity to respond to the distinguished Senator. I also am grateful for his offer to assist in expediting the work of the Senate.

I doubt that a postelection session can be avoided unless the second concurrent budget resolution and appropriation bills and the continuing resolution can be acted upon in such a way as to avoid the necessity of such a postelection meeting.

The House will send over a continuing resolution soon. It is my understanding that it will provide a date of something like December 15. This, in itself, would necessitate our return following the election.

We still have several appropriation bills. The second concurrent budget resolution has not been marked up in the other body as yet.

My only suggestion would be that we get as much business done as possible, so that when we do return after the election, our workload will be narrowed to that extent.

Further, if we could get agreements on appropriations bills which would preclude legislative amendments which are not in order under the rules anyhow and which would preclude the calling up of nongermane amendments which are not in order under the rules anyhow, this would help us to expedite action on appropriations bills. If we could get other time agreements and agreements on the nominations that remain to be confirmed, these things would greatly expedite the work of the Senate.

I know that the distinguished minority whip will be interested in expediting these matters and he will be effective in aiding in the expedition of them. I know, also, that he will try to do whatever he can do from his side of the aisle to meet the suggestions I have made, particularly with respect to the amendments on appropriations bills.

Calling up an appropriations bill here, of course, sets the stage for a lot of amendments that are not germane and a lot of amendments that are legislative in nature. If we could reach agreements on these, that would avoid having to take time to deal with such amendments that are not in order under the rules anyhow. This would greatly aid us in the utilization of the remaining time.

I thank the distinguished Senator.

Mr. STEVENS. Mr. President, I do thank the majority leader for his comments.

I think it would be possible to work out an understanding between the majority and minority that is based upon firm assurance that if the understandings were agreed to there would be no postelection session.

Whether it is with regard to nominations or the must legislation, or the appropriations bills, with the knowledge that there is going to be a postelection session, I think it is very difficult to get agreement on almost anything right now, although, as my good friend knows, I will continue to work to try and help him with those agreements in order to accelerate the work of the Senate.

It just seems to me that we should have, by virtue of our experience in the past, learned that postelection sessions in Presidential election years are really detrimental, I think, to the legislative process and to the best interests of the country.

So again I renew my offer on the record to assist in any way I can.

We have no request for time on this side, I might say to my good friend.

On that basis I shall be happy to yield back my time or let it run, whichever the majority leader wishes to do.

Mr. ROBERT C. BYRD. Mr. President, I yield back my time.

Mr. STEVENS. Mr. President, I yield back my time.

The ACTING PRESIDENT pro tempore. The time has all been yielded back.

FOREIGN SERVICE ACT OF 1980

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, S. 3058, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 3058) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, will the Chair state the agreement?

AMENDMENT NO. 2290

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the pending amendment in the nature of a substitute, amendment No. 2290, by the Senator from North Carolina (Mr. HELMS) on which there shall be 1 hour.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side on the amendment awaiting the managers of the amendment and the opponents of the amendment to reach the Chamber.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, the Foreign Service Act of 1980 (S. 3058) represents a 5-year nonpartisan effort to strengthen and improve the Foreign Service of the United States.

In 1978, the Congress took a major step to upgrade the management and efficiency of the Federal service by enacting the Civil Service Reform Act. This bill, S. 3058, is a companion measure designed to increase the effectiveness of the foreign policy arm of Government. It also responds to a congressional directive—section 117 of Public Law 94-350—to prepare a comprehensive plan for the improvement and simplification of the personnel systems of our various foreign affairs departments and agencies.

The last comprehensive attempt to revise the Foreign Service was the Foreign Service Act of 1946. There is a clear need, after more than three decades, for substantial legislative changes to strengthen and improve the Foreign Service to enable it to fulfill its essential role and mission now and in the years ahead.

This new Foreign Service Act is needed:

To provide a clear distinction between Foreign Service and civil service employment, and to convert to civil service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service salary schedule;

To establish a Senior Foreign Service (SFS) with rigorous entry, promotion, and retention standards based on performance, with performance pay for outstanding service;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and with those of other departments and agencies.

There is no doubt that it is in the national interest to maintain and strengthen a professional Foreign Service, representative of the American people, to assist the President and the Secretary of State in managing the country's foreign relations.

This bill strengthens the professional character of the Foreign Service of the United States by:

First, limiting Foreign Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

Second, requiring that all persons seeking career status pass successfully through a strict but fair tenuring process; and

Third, establishing closer links between performance and promotion, compensation and incentive payments, and retention in service.

This bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the civil service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

The bill has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, and from interested agencies within the executive branch.

Its support is broad based, extensive, and nonpartisan. It is appropriate that in this year, while U.S. diplomats are still being held hostage in Iran, we move to pass this legislation in support of our representatives abroad.

I urge my colleagues to support S. 3058.

Mr. President, I think special credit is due to the distinguished Senator from Rhode Island (Mr. PELL) for the interest he has shown in the legislation through the years, and for the leadership he has given in helping to draft the legislation and bring it to the floor.

I am certain that he himself will look upon the passage of this bill as one of the signal accomplishments of his career in the Senate, and I extend to him my congratulations.

Mr. PELL. I thank the Senator.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. CHURCH. On the time of neither side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that the time be charged as previously provided under the order entered pursuant to the majority leader's request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

UP AMENDMENT NO. 1573 IN THE NATURE OF A SUBSTITUTE FOR AMENDMENT NO. 2290

(Purpose: To amend the Foreign Service Act of 1946 to strengthen and improve the Foreign Service, and for other purposes)

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to send to the desk a substitute for my amendment No. 2290 which makes a number of corrections of a technical nature. I have cleared this with the distinguished manager of the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1573 in the nature of a substitute for amendment numbered 2290.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel.".

FOREIGN SERVICE SCHEDULE

SEC. 3. (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"SEC. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS-1 through FS-13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

"Salary class:	*Shall correspond to grade:*
FS-1	GS-18
FS-2	GS-17
FS-3	GS-16
FS-4	GS-15
FS-5	GS-14
FS-6	GS-13
FS-7	GS-12
FS-8	GS-11
FC-9	GS-9
FS-10	GS-7
FS-11	GS-6
FS-12	GS-5
FS-13	GS-4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS-1, FS-2, and FS-3 shall have one, five, and nine steps, respectively.

"ADDITIONAL COMPENSATION

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve world-wide at any post assigned without regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law and only to such extent or in such amounts as are provided in advance by appropriation Acts, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than $2,500 or more than $7,500.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual.".

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"SEC. 516. No person may be eligible for initial appointment as a member of the Foreign Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 1 THROUGH 6

"SEC. 517. No person may be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service Reserve of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if—

"(1) not later than 30 days after such appointment, the President notifies the Senate of such appointment; and

"(2) the appointment of such individual would not cause the number of individuals appointed as members of the Foreign Service Reserve of classes 1, 2, and 3 without examination by the Board of Examiners to exceed 5 percent of the number of individuals appointed as members of the Foreign Service of classes 1, 2, and 3.

"OFFICE OF PERSONNEL MANAGEMENT

"SEC. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service.".

LABOR-MANAGEMENT RELATIONS

SEC. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"Part F—LABOR-MANAGEMENT RELATIONS

"SEC. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5, United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, wherever serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d)(1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies of position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) For purposes of labor-management relations with respect to a particular Foreign Service post, of the individuals assigned to such post from the Department, the International Communication Agency, and the United States International Development Cooperation Agency, not more than six senior officials shall be considered to be management officials for purposes of this section, including—

"(A) not more than one senior official each from the International Communication Agency and the United States International Development Cooperation Agency; and

"(B) not more than the following four senior officials from the Department: the chief of mission or principal officer, the deputy chief of mission, the principal administrative officer, and the principal personnel officer.".

"(e)(1) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, the employees, including supervisors and all persons other than management officials, of the Department of Agriculture and the Department of Commerce may constitute, with respect to each such department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger.

"(g) For purposes of this section, the term 'conditions of employment' means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 414.

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system.

"(h) The provisions of sections 7114(c), 7117(a), 7117(b), 7121, and 7122, of title 5, United States Code, shall not apply to labor-management relations in the Foreign Service.".

COMPUTATION AND PAYMENT OF ANNUITIES

SEC. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out "2 per centum" in the first sentence and inserting in lieu thereof "2.5 per centum"; and

(2) by adding at the end thereof the following:

"(j)(1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

"(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

"(B) two-tenths per centum of the average basic salary of the annuitant, as computed under section (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

"(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under section 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

"(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.".

RETIREMENT CREDIT FOR "RADIO" SERVICE

SEC. 7. (a) Subsection 8332(b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after paragraph (9) the following:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the (A) National Committee for a Free Europe; (B) Free Europe Committee, Inc.; (C) Free Europe Inc.; (D) Radio Liberation Committee; (E) Radio Liberty Committee; (F) subdivisions of the entities referred to in clauses (A) through (E); (G) Radio Free Europe/Radio Liberty Inc.; (H) Radio Free Asia; (I) the Asia Foundation; or (J) the American Forces Network, Europe (AFN–E).".

(b) Section 8332(b) of such title is amended by adding at the end thereof the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee referred to in paragraph (10).".

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

SEC. 8. Section 803(a) of the Foreign Service Act of 1946 is amended—

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(2) by adding at the end thereof the following:

(5) Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under this Act and who makes an appropriate contribution to the Fund in accordance with the provisions of this Act.".

EFFECTIVE DATE

SEC. 9. The amendments made by this Act shall take effect on October 1, 1980.

Mr. HELMS. Mr. President, at the outset, let me pay my genuine respects to the distinguished manager of the bill (Mr. PELL) and to others who have worked so diligently on it. Basically, there is no disagreement as to the need for some legislation. There is some disagreement on how far we should go in determining some aspects of it.

As to the substitute which is now pending, let me reassure my colleagues that there are no major changes from what was previously proposed. I will enumerate the corrections at this time.

First. On page 4 of amendment 2290, lines 1 and 2, strike everything after "$7,500". This deletes the tax exemption of the additional compensation. While the Senator from North Carolina would prefer that this special recognition be tax exempt, it has been suggested that there would be complications with the Tax Code which the Finance Committee might need to examine. So, rather than place another obstacle on the legislation at this late date, I am simply deleting that provision.

Second. Page 6, lines 10 to 17 have been redrafted to make it clear that appointments under this section would be restricted to 5 percent of Foreign Service classes I, II, and III, and not to 5 percent of the entire personnel of the State Department.

Mr. President, this restriction was originally put in at the suggestion of the State Department, and it was always the intent to restrict such appointments to 5 percent of classes I, II, and III, as my statement of last Thursday shows.

However, the gremlins got into it in the drafting stage. It should be pointed out that the reference is to salary classes, not to commissioned ranks, said it is obvious that the Secretary, under law, can appoint only reserve officers and not career officers.

To clarify that point, the word "reserve" is inserted at the appropriate places.

Third. In labor-management relations page 10, after line 11, insert a new subsection (g). Mr. President, this is identical to section 1002(5) of S. 3058. Although this subsection protects the Secretary from being forced to bargain over certain regulations, this insures that the scope of bargaining is not extended beyond what is in S. 3058. At the same time, it does not decrease the scope of bargaining. It merely preserves the status quo.

Fourth. A new subsection (h) is further added to exclude those provisions of the CSRA labor-management program that are inconsistent with the provisions of this section. With one world-wide unit per agency, there is no need to have a two-step process of agency head approval for agreements. In the civil service, agreements are often at local activity level, so a period for review and approval by the Department head in Washington makes sense. With one world-wide unit, however, such a requirement would merely encourage delay in bargaining. The agency head should make sure he is represented competently at the table in negotiating for his world-wide unit.

Sections 7117 (a) and (b), are omitted from the committee bill because their discussion of how bargaining relates to regulations is subsumed in the definition of "conditions of employment" contained in subsection (b). The committee bill omits sections 7117 (a) and (b) because its provisions are inconsistent with current practice under the Executive order and with its definition of "conditions of employment." With continuation of the legislated grievance procedure, sections 7121 and 7122 are unnecessary.

As I said at the outset, Mr. President, these are all technical and conforming amendments to improve the bill.

Mr. President, as a preface to my comments on my bill, S. 2986, and the committee bill, S. 3058, I want, for a few moments, to discuss the constitutional context to which both relate. These bills, Mr. President, touch directly on the rights and privileges and duties of the Senate itself. Consequently, unlike many other reorganization and reform bills, they are of unusual importance to the Senate. Unlike the House of Representatives, which has rights and duties relating largely only to legislative matters under the separation of powers, the Senate shares in some of the powers and functions of the President of the United States. This is particularly true in the Senate's constitutional rights to participate in the making of treaties and in the appointment of ambassadors and Foreign Service officers.

Mr. President, I want to read, with the indulgence of Senators, the pertinent text of paragraph II of section II or article II of the Constitution. It reads:

He—

Meaning the President—

> shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors,

And so on.

Thus, unlike the House of Representatives, the Senate has a collegial role in the powers of the Presidency, particularly in foreign affairs.

These bills, S. 2986 and S. 3508, deal with the conditions under which personnel for the Foreign Service will be selected, personnel who will participate in the drafting of treaties, their implementation and their nonimplementation. Consequently, the character of these personnel and their qualifications, their esprit de corps, their protection against arbitrary action by foreign powers and by their own superiors, all are matters of great concern to the Senate. We have all heard repeatedly in the last several years that the Foreign Service and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline. That decline has accompanied and contributed to the decline of the United States as a world power.

So, now, we get to the meat of the coconut, Mr. President. My bill, which is in the parliamentary sequence of a substitute to my substitute, is intended to provide the administrative and the fiscal means to reverse this decline and to eliminate the endemic crises which afflict the Foreign Service today.

As the distinguished occupant of the Chair may know, the American Federation of Government Employees, AFL–CIO, has endorsed my bill. As the distinguished Senators may also know, there are many differences between the Senator from North Carolina and the AFL–CIO on various matters of domestic legislation. However, on foreign policy matters, I believe I can say without challenge that George Meany and I were in complete agreement on many issues more than almost any other Senator. I could relate many conversations that I had with George Meany over the years. He and I did agree on domestic matters, frequently, but we agreed on foreign policy, national defense, and that sort of thing. His interest and mine in bringing Alexander Solzhenitsyn to this country were parallel, and we worked together on that issue.

I mention all of this, Mr. President, to state my appreciation to the AFL–CIO's American Federation of Government Employees for studying my proposal and having endorsed it. I believe that general agreement on foreign policy probably exists with the present President of the AFL–CIO, Lane Kirkland. However, I must confess that I have not talked with him about this measure.

The reasons for our agreement on foreign policy are clear: Our agreement about the extreme dangers which we confront abroad and the need to provide maximum resources to meet those challenges.

Mr. President, even the American Foreign Service Association, which is not supporting the pending substitute, has had to concede that the problems which I have just described do, in fact, exist. For example, just last Monday, the senior officers of that association confirmed to my staff that over 120 to 150 Foreign Service officers classes 1 and 2 are performing work lower than their grades. They alleged that at least that number of FSO–1 and FSO–2 officers are doing the work of FSO–3 officers, though assigned to nominal positions of FSO–1 and FSO–2. They asserted, and the Department of State has confirmed, that since 1974, not a single FSO–1 and FSO–2 officer has been selected out. For this reason, FSO–3 and FSO–4 officers are actually doing the work of FSO–1 and FSO–2 officers, according to the statements of the current leaders of the American Foreign Service Association.

The pending substitute would put a speedy end to that unhappy and undesirable situation.

By requiring all positions to be classified according to the universal standards of levels of difficulty of work, developed over 50 years by Federal classification experts, and by requiring periodic desk audits of these positions by the Office of Personnel Management, these abuses would end. Further, by requiring the Secretary of State to report to the Congress periodically the numbers of officers assigned more than one position higher or lower than their own grades, the Congress could exercise its proper oversight over the personnel selected primarily to implement our foreign policies.

A great deal has been made about the additional costs of my bill. In fact, my bill would provide savings by raising the quality and reducing the quantity of Foreign Service personnel. Under the conditions set by my bill, at least 15 percent and perhaps 20-percent Foreign Service would prove to be redundant within years.

I should like to remind the Senators of the judgment of that eminent career Foreign Service officer and seven times Ambassador, the Honorable Ellis Briggs. In his book, "Farewell to Foggy Bottom", Ambassador Briggs assails the overloading of posts with nonessential personnel.

As one of many examples of superfluous personnel who in fact are obstacles to efficient performance, Ambassador Ellis Briggs narrated his experiences at the American Embassy in Prague, Czechoslovakia.

When he arrived there, he found a staff of 80. The Department asked his advice as to how much he should cut the staff, in light of the Communist seizure of power in Prague. He recommended the staff be cut by 50 percent, for a total of 40 persons.

Let me use Ambassador Briggs' words:

> I recommended to Washington that my inherited complement of eighty Americans (although microscopic by today's embassy standards) be reduced as a start, by one half. That is to say, that the roster be cut from eighty to forty . . .
>
> After six months, and an expenditure of effort on my part sufficient to have built, singlehanded, a bridge across the Vitava River, I had managed to reduce my overblown staff by two persons—from eighty to seventy-eight.
>
> At which point, the Communists, ignorant of my hassle with Washington over personnel, and believing that they were doing the American government in general and the American ambassador in particular the greatest possible disservice, suddenly declared five-sixths of the embassy personnel persona non grata.

What do you think was the result, after the departure of 66 of the 80 embassy personnel at Prague?

Ambassador Briggs wrote as follows:

> It was an efficient embassy. It was probably the most efficient embassy I ever headed. Our operation was compact. Our personnel was alert. We kept Washington accurately informed of what was going on. Our work was accomplished with a minimum of friction and delay.

Mr. President, that is the testimony of Ambassador Briggs. He recommended a cut of 1 in 2. He suffered a cut of 5 out of 6. Yet, he welcomed the latter cut as better for U.S. policy.

The point is that my bill would result in a reduction of 15 percent to 20 percent in quantity, but would result in higher pay for better qualified, better educated, more dedicated personnel. working at jobs for which they are qualified.

Its results would be eminently beneficial to the foreign policy position and the international standing of the United States.

Ambassador Briggs later went into more detail on this topic in his book "Anatomy of Diplomacy." There the Ambassador says:

> The Foreign Service entered the decade of the 1960s with far too many people. The notion that it takes scores of officials to man a single Embassy, and thousands and thousands to operate a successful Washington foreign affairs establishment, has proved in post after post and country after country to be nonsense—as the practitioners of diplomacy (in contrast to the planners and administrators) have repeatedly testified. Nor is this view of the efficacy of small staffs an American heresy. A British diplomatist recently declared that "forty years' foreign service has taught me that in diplomacy there is an inverse relationship between numbers and performance. . . . The envoy's a one-man task; double the team and the results are halved."
>
> What the optimum number of Foreign Service Officers would be, given United States responsibilities in a fast-changing world, is, of course, not easy to say with precision. At the moment, the figure probably falls around twenty-five hundred, as against three thousand seven hundred officers now on the roster.
>
> Certainly with one thousand fewer officers there still should be plenty of administrative elbowroom to take care of vacations and home leave, and to assign occasional officers with special aptitudes or interests to the study of esoteric languages, or to a university for an advanced degree in a science relevant to "emerging nations." The State Department should still be able to fill its quota at the postgraduate Government institutions, which are more numerous than the public is aware.
>
> With one thousand fewer officers, the requirements for substantive work could still be met (two or three officers each, in the political and economic sections will usually suffice), and there would be ample talent remaining for Deputy Chief of Mission, for assistants to the Ambassador, for juniors being rotated through Embassy sections for experience, and for officers on loan to the propagandists, the intelligence community, the military establishment, the aid operations, and even the Peace Corps.
>
> With one thousand fewer officers there would still be an ample quota of Foreign Service Officers to fill the "opposite number" positions in the State Department (minus those three hundred jobs "de-designated" as *not* suitable for the Foreign Service).
>
> With one thousand fewer officers, a brisker and more alert corps could be maintained, without the sloppiness that inevitably penetrates an organization that has to invent make-work projects—like the Comprehensive Country Programming System of 1964—in order to convince the Congress, or the public, or itself, how quickly the ship of state would founder without extra hands to polish the brasswork.
>
> In a world where international developments seem to multiply themselves at an ever-increasing pace, it is fashionable to declare that the personnel who suffice today may be inadequate for tomorrow. That is debatable, or at the least a matter for continuing study, which should start from the premise that the roster of the Foreign Service should be kept at the lowest possible figure consistent with getting the job done. That should be coupled with a recruitment policy that will provide a more even flow than heretofore of candidates entering the Foreign Service and a tough but humane "selection out" program that will permit the promotion system to operate.

Mr. President, I reserve the remainder of my time and I yield the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Rhode Island.

Mr. PELL. Mr. President, I have listened with interest to the proposals and suggestions of my colleagues from North Carolina. I know his interest in the bill, and I have had an opportunity over the weekend to go over his substitute.

But, after a careful examination of both his substitute amendment and our own proposal, I continue to urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058.

This bill is an absolutely nonpartisan measure. Remember, we started working on it with Assistant Secretary Eagleburger under the Ford administration. It has gained overwhelming support of Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980.

Mr. President, I urge my colleagues to support the proposed Foreign Service Act of 1980, S. 3058. This bill is a completely nonpartisan measure which has gained the overwhelming support of the Senators and Representatives who conducted extensive hearings and markup sessions during 1979 and 1980. S. 3058 is, with some minor differences, identical to the legislation which recently passed the House of Representatives by a vote of 239 to 78. It should be noted that a substantial majority of each party voted in favor of that legislation.

S. 3058 is the direct result of 5 years of efforts initiated under the Ford administration. It is a response to a 1975 congressional mandate calling for a comprehensive plan for the improvement and simplification of the Foreign Service.

I believe this Senator played a role in the development of that comprehensive plan and that congressional mandate. My colleagues should take note of the fact that three Secretaries of State—Henry Kissinger, Cyrus Vance, and Edmund Muskie—have all written in support of this legislation.

In contrast, the Helms substitute has never been vetted at any of the previous stages of consideration including the Senate Foreign Relations Committee hearings—a committee upon which the senior Senator from North Carolina so ably serves.

This substitute confuses the essential differences between the Foreign Service and the Civil Service to the detriment of both systems. For example, the substitute, also, inappropriately applies a civil service approach to the Foreign Service promotion, assignment and classification systems.

The proposed application of civil service classification standards to the Foreign Service in the substitute would drastically limit the flexibility needed by the Secretary of State to meet worldwide staffing needs.

Mr. President, the Helms substitute, also, lacks a number of provisions contained in S. 3058 which are necessary to keep our Foreign Service strong and vital. It fails to deal with important issues concerning family members. It contains no affirmative action or equal employment opportunity provisions. It has none of the advanced provisions of S. 3058 which deal with employee protections, labor management relations and allowances—all of which have been so laboriously developed, and were not in the 1946 act.

Finally, Mr. President, the substitute's 15-percent tax-exempt salary supplement and the increase in the retirement multiplier from 2 percent to 2.5 percent for each year of service would be enormously costly. The other way to keep these costs down would be to dramatically reduce the size of the Foreign Service. On that point, it should be noted that the size of the Foreign Service has remained constant since the early 1960's despite an incredible increase in its responsibilities. To reduce the Service would seriously damage U.S. interests abroad.

In conclusion, Mr. President, I would like to indicate that S. 3058 has the strong support of the American Foreign Service Association, which is the exclusive elected employee representative for all 11,000 members of the Foreign Service in the Department of State and the Agency for International Development. If we are to continue to have the kind of Foreign Service this Nation must have to protect its interests abroad, the operating charter, personnel system, employee protections and rewards which S. 3058 provides are essential. The Helms substitute contains a number of harmful features, fails to emphasize the special nature of the Foreign Service, and has not had the benefit of either the full consideration or the broad consensus which S. 3058 enjoys.

Therefore, I urge my colleagues to reject the proposed substitute.

Mr. President, I should like to read into the RECORD a letter from Katherine Keough, acting for the Family Liaison Action Group (FLAG):

DEAR SENATOR PELL: With the regard to the hostage benefit amendment that Senator Helms is proposing to attach to the Foreign Service Act:

"While FLAG is deeply grateful to Senator Helms for addressing himself to a specific benefit for the American hostages in Iran, we feel that his proposal might better be included as part of a separate compensatory bill.

"We anticipate that such legislation would address annuities, retirement and other financial considerations. We, FLAG, would be more than happy at an appropriate time in the future to assist Senator Helms in the drafting of such a bill which will be meaningful to these hostages and their families.

"For the present FLAG would strongly prefer to have Senator Helms' support for a swift enactment of the Hostage Relief Act (S. 2852 and S. 2581) now rather than an attachment to the Foreign Service Act. In the future we will seek his creative personal support and ideas as we begin to turn our attention towards comprehensive, compensatory legislation."

We thank you for making our remarks known to Senator Helms and others on the Committee.

Mr. President, I yield the floor at this point.

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Ten minutes and fifty-eight seconds.

Mr. HELMS. I thank the Chair.

First of all, Mr. President, I want to share with Senators a telegram I have received from Mr. John Hemenway, former president of the American Foreign Service Association, who says:

As past president of American Foreign Service Association I urge support of Helms' substitute (S–3058) and Bayh amendment correcting injustices of grievance system legislated in 1975.

Present AFSA leadership has acted ultra vires—violating AFSA bylaws—pretending consultation with membership when in fact it merely has rubber-stamped provisions promoted by cliques trying to manipulate foreign policy through personnel practices.

It is signed "John Hemenway, 4816 Rodman Street, N.W., Washington, D.C. 20016."

Mr. PELL. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. PELL. Is the Senator aware of the fact that Mr. Hemenway was fired as president, by the process of recall, and does not stand in well with that organization? Because of that, I do not believe he speaks for the Foreign Service now.

Mr. HELMS. I understand what the Senator is saying, but I point out that there were an extraordinary number of irregularities in that recall and that matter is now in the courts. The ultimate judgment will be made there.

In any case, Mr. President, I accept fully the concept that the Foreign Service has many similarities to the military service.

It is precisely for that reason that I oppose the creation of a Senior Foreign Service not based at all on the military services but on the purely civilian model introduced into the Civil Service Reform Act of 1978. Thus, the claim that these new Senior Foreign Service positions are modeled on the flag positions of the military is literally untrue. The present system, which I should like to retain, was in fact modeled on the pattern of the Navy, as the legislative history of the 1946 act clearly and repeatedly shows. The proposed Senior Foreign Service is a direct assault on the military flag officer model.

As to the confirmation system, the Secretary of State has repeatedly asserted that positions abroad in fact are now classified according to the objective standards of the Office of Personnel Management. If that is the case, why should this not be mandated by statute? Certainly, those standards already provide for higher classifications for such factors as service abroad. The main difference between my bill and present alleged policy is that congressional oversight would be improved because the Office of Personnel Management would have a role in confirming the accuracy of the classification, and the Secretary of State would have a further assurance that congressional intent is being honored.

But classification is an abstract function unless related to the actual assignment of qualified personnel in the proper grade and proper pay category. Foreign Service personnel, as well as the taxpayer, need to know that proper service is given for salaries paid. My proposal, incorporated in the pending substitute, assures that, by providing the congressional oversight which is now lacking.

Correct classification is important for Foreign Service officers, who hold rank-in-person commissions and compete for promotion against each other. They need to be assured that their performances are rated objectively against the same standard. For example, a class 3 officer serving in a position normally classified as class 2 but actually requiring services at a class 4 level would have unfair advantage over all other colleagues of class 3. My proposal would eliminate the possibility of this danger by having the outside classification experts of the Office of Personnel Management review the classifications of all positions. Thus, the promotion selection panels would be able to judge personnel records with greater uniformity.

The charge that my proposal, by including these provisions, does not provide for a clear separation of the Foreign Service and Civil Service is groundless. These provisions are the universal provisions of due process and equity. My proposal does not in any way diminish any of the real distinctions between Foreign Service and Civil Service by providing those elements which every fair career system must have—in fact, it clarifies and reinforces these real distinctions by many other specific provisions which are not in the other bill.

Frankly, I am astounded that the State Department now claims that my proposal erodes the difference between the Foreign and Civil Services by linking Foreign Service grades to Civil Service grades. But these linkages already exist by agreement of the Secretary of State and OPM. In fact, the pay increases of Foreign Service personnel, as well as military personnel, are even now directly linked by the Federal Pay Comparability Act of 1970 and the specific points of linkage agreed to by the Secretary of State and OPM. The difference is that, taking account of the pay study ordered by the State Department and the complaints by the American Foreign Service Association and the American Federation of Government Employees, I have incorporated into my bill a linkage system which better correlates the actual pay of Foreign Service personnel to Civil Service grades.

In fact, my proposal does the same in principle for Foreign Service personnel which Congress has just enacted for military personnel, who this year will receive a higher pay adjustment than civil service personnel. The only difference is that I am doing this systematically by permanent legislation rather than ad hoc.

Here, too, I believe my proposal further shows an acute awareness of the similarities between the Foreign Service and the military service, important similarities to which the administration and the committee bills are in fact inattentive.

As to costs, my rebuttals to the State Department computations already exist in the Report No. 96-913, pages 247-269. These pages show that my bill would not cost more than the committee or administration bills. In fact, it would cost less. The State Department has sought further to confuse and obfuscate the purposes of my proposal by pretending that conflicts could arise because I have sought to assure that Foreign Service personnel have all the procedural protections and employee rights which civil service personnel have.

I ask, Mr. President, how can this lead to confusion? These Foreign Service personnel are Federal employees. Certainly they should not have lesser rights, especially since they have assumed more onerous and dangerous duties and obligations, duties even analogous to military personnel.

As to the alleged protections afforded Foreign Service employees in the committee bill, which is supported by the administration, I feel obliged to emphasize that these protections in fact are less than currently provided in the Foreign Service Act of 1946 as amended. The repeated detailed analysis of the harmful report on members of the Foreign Service Staff Officer Corps is but one example of a major deprivation of existing protection and rights, in this case of clerical, administrative and technical personnel.

The claim that my proposal gives the Secretary of State the right to classify positions in AID and ICA is a total misreading. The present Foreign Service Act of 1946 as amended, makes it clear that the term Secretary of State means Administrator of AID and Director of ICA whenever any actions are to be carried out in those agencies. Since my proposal amends the Foreign Service Act of 1946 as amended, that distinction applies. Only the Administrator of AID would classify positions in AID; only the Director of ICA would classify positions in ICA.

In fact, as the testimony before the Foreign Relations Committee shows, the great concern is that the committee bill erodes the integrity and independence of AID and ICA and vests too much power over them in the Secretary of State. My proposal does not do that, but maintains the existing status quo.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I oppose the substitute offered by our distinguished colleague from North Carolina. I do so for a number of reasons.

But, first, I point out that the Senate once again is indebted to our distinguished colleague, and the members of his staff, who I think is one of the most dedicated, hardworking, and devoted Members of the Senate and who many times provokes us into forcing us to think about what we are doing even though we end up concluding that we oppose it. They have rendered a very valuable service because otherwise we would not have had this debate; otherwise, we would not have been forced to go back and take a good hard look at this act that has been hammered out and either reaffirmed our support for it or cause us to open our minds and see whether or not there are fallacies in it that should be corrected.

But to offer now at this stage a full substitute as a bill I think, after the 15 months that we have spent exhaustively studying this legislation, would be wrong.

I think that the distinguished Senator from North Carolina, who believes deeply in the presence of the Senate and the process of the Senate and knows it about as well as any of whom I know, would fully take into account the fact that his own colleagues who could not have spent and have not spent as much time as he has on this particular measure could now be expected to really fully comprehend the nature of this sweeping substitute and then override and overlook the work that has been done by committees in the House of Representatives and in the Senate over a period of many months.

If I had known that he intended to make such an offer of a substitute, it would have been my wish that it would have been offered at the time that the Committee on Foreign Relations, of which he serves as a distinguished member, was marking up the bill so we could have given it the kind of considered judgment that we in the Senate have come to expect committees to do, not that we turn to the committees and have them do all our work for us, but on the other hand it does give us the benefit of having some Members concentrate on this particular activity.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield for a comment.

Mr. HELMS. I thank my friend.

Mr. President, what he says is true. I did not offer it formally, as the Senator from Illinois has said, but I did make it available to every member of the committee and staff at that time. It so happened I was in a markup of a bill in the Agriculture Committee, of which I am ranking minority member, so I could not be there to do it formally, but I did in good faith make it available to every member of the committee and all staff members. I thank the Senator.

Mr. PERCY. I appreciate the explanation.

Mr. President, I wish to speak in support of the Foreign Service legislation as reported by the Foreign Relations Committee and against the substitute proposed by my colleague from North Carolina.

On the one hand, the Senator says that the Foreign Service "is essentially an elite service that differs fundamentally from the civil service," while actually his substitute would adopt many significant features of the civil service system. He prefers aspects of the civil service relating to promotions and assignments, which are generally believed to be unsuited to the Foreign Service, while rejecting features of the civil service—such as a senior service and performance pay—which make good sense for the Foreign Service as well.

The substitute addresses some longstanding problems of the Foreign Service, such as pay comparability, but says nothing about a range of other issues which ought to be addressed, and which are addressed in the bill reported by the committee. The effect of his legislation would seem to be to consolidate the Foreign Service as a branch of the civil service without regard to the unique requirements, as well as the special identity and spirit, of the Foreign Service. As one who has respect for the civil service and who spent many, many hours on the civil service reform bill which is now law, I simply do not see the rationale for such an approach to the Foreign Service.

Furthermore, Mr. President, it seems to me that a bill which would affect the Foreign Service in such a profound way should be the subject of extensive review. Members of the administration, the Congress and the Foreign Service itself should have a chance to debate such a course of action thoroughly and to assess the impact of its provisions on the basis of careful study. It is not clear, therefore, why the substitute is proposed at this late hour. The bill reported by the Foreign Relations Committee has been before us for over a year and was the subject of a number of hearings and markup sessions in committee. It was discussed extensively within the administration and within the Foreign Service itself and has the strong support of both. A similar bill was carefully formulated by two committees of the House and passed that body a week ago by a vote of 239 to 78.

Mr. President, all of the issues raised by Senator HELMS were before the committee, of which he is an able and active member, yet he did not propose his substitute during the markup. The effect of accepting it now would be to end all prospect of Foreign Service legislation this year, since it would certainly have to be referred to other committees. We would therefore have to begin all over again in the next Congress and delay still further many changes in the Foreign Service system which are already long overdue.

Mr. President, some of my colleagues of the minority may feel that they would like to defer the resolution of some issues to the next administration and the next Congress, but Foreign Service reform is not a partisan issue. We all—regardless of party—want to see an effective, superior-quality Foreign Service capable of executing a coherent, consistent foreign policy, and the differences between the substitute and the committee bill are not political.

I see nothing to be gained from postponing action on a carefully developed bill such as the one reported out by the Foreign Relations Committee. Almost all of its provisions have been exhaustively reviewed—and in some cases painfully negotiated—over a period of years, with results which are likely to be very similar under any administration. It will always be open to us to make further adjustments in the Foreign Service system as time goes on. But the overwhelming consensus seems to favor building upon the separate, specially designed Foreign Service which has been developed over so many years.

Whatever problems of recruitment, administration and morale the Service may now have, they are not likely to be improved by a proposal to make the Foreign Service so similar to the civil service. And in failing to address a number of other features of the committee bill, this substitute is simply not adequate to its own professed objective of streamlining and reforming the Foreign Service.

I urge my colleagues to vote against the substitute and to retain S. 3058 as reported by the Foreign Relations Committee.

The American Foreign Service Association which is the elected exclusive representative of all 11,000 AID and State foreign service persons that has endorsed the Foreign Service Act of 1980 indicated that about 15 months scrutiny by concerned congressional committees has been given to the pending bill, including many people who have cared to testify worked to fine tune the legislation, to preclude political abuse, to protect the rights of individual employees, and to strengthen the professional service.

They furthermore pointed out that 60 hours of hearings by the House Foreign Affairs and Post Office and Civil Service Committee which considered every one of 400 suggested changes cannot be disregarded.

The House of Representatives approved the bill by an overwhelming vote of 239 to 78, including the majorities of both parties.

To at this stage then feel that it would be profitable to make a sweeping substitute and have any chance of this legislation being enacted in this Congress I think would be to ignore the fact that the clock is running, time is running out, and really in a sense the adoption of this substitute would kill the bipartisan support that has been working mightily toward civil service and Foreign Service reform and improvement which would provide, and the present bill before us does provide, a comprehensive review of the Foreign Service and assures excellence in our first lines of defense.

In addition to this, members of the administration, State Department, Members of Congress, and the Foreign Service itself, have given a tremendous amount of thought and time to the pending legislation and have contributed immeasurably to the bill before us.

It is, therefore, I think, extraordinarily difficult to give the full kind and careful consideration that should be given to the proposal by the distinguished Senator from North Carolna, and I for one could not support in any way a substitute for the present bill.

All of the issues raised by Senator HELMS were actually issues that were before the committees of both the House of Representatives and the Senate.

Though he did have a conflict in scheduling at that time and there was important legislation affecting all of us before the Agriculture Committee, this is a matter that I think would have required a good deal of careful thought before we could certainly adopt the substitute.

Mr. President, I wish to take just one aspect of the substitute bill before us which would, I think, vitally affect the performance and service and indicate that I could, as the distinguished Senator from Rhode Island knows, certainly not support the substitution of a pay increase automatically across the board for performance bonuses.

I do feel that the performance bonus system that has been worked out in civil service and in civil service reform is an extraordinarily good feature of this legislation.

At this time, however, I wish to refer to a letter that I have received from Mr. Alan K. Campbell, Director of the Office of Personnel Management with whom we worked over a period of many months, in fact over a year, on civil service reform itself. The letter reads as follows:

> As the Senate nears floor action on S. 3058, "The Foreign Service Act of 1978," I would like to note my continued strong support for this legislation which I believe will be highly beneficial to the Foreign Service.
>
> Since early in 1979 when OPM became heavily involved with the Department of State in advising it during the formulation of the Administration's proposal, we have been enthusiastic about many of the features of this legislation which opens new opportunities for flexibilities in the management of the Foreign Service personnel system. Key to this forward looking legislation is the Senior Foreign Service with its opportunities for rewarding outstanding performance. We are also very happy with the bill's clear delineation of those positions which are appropriately under the Foreign Service personnel system.
>
> The Senate report on S. 3058 carries the additional views of Senator Helms along with the substitute measure which he is sponsoring. Although Senator Helms has the good of the Foreign Service in mind, I must take issue with his proposal because of several features which I believe to be unsound from the standpoint of Federal personnel policy.
>
> Section 3 of Senator Helms' bill, S. 2986, provides, in a revised section 413 of the Foreign Service Act of 1946, an additional lump sum payment to each member of the Foreign Service equal to 15 percent of the basic salary for such member within the limits of $2,500 and $7,500. The bill would further exempt this lump sum payment from taxation.
>
> I strongly disagree with this concept. First, Senator Helms would offset the expense of this provision by deleting the Senior Foreign Service performance pay provisions. It is obvious to those of us who have studied and worked with compensation systems that rewards should go with performance. Senator Helms, in deleting the performance award system proposes a step backward in the progress toward pay-for-performance which is to be found under the Civil Service Reform Act, passed overwhelmingly by the Senate, and section 405 of S. 3058.
>
> Further, there is no reason to believe that the added bonus would accomplish anything constructive in struggling with the problem of members of the Service who are reluctant to go overseas. Senator Helms explains in the committee report that "by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments . . .". There can be no such direct effect from a bonus which goes to all members, without regard to their willingness to move to "undesirable" posts. The proposal would simply raise the level of compensation without a return benefit to the Government. Members of the Foreign Service receive post differentials provided under title 5, U.S.C., which are meant to compensate for the difficulties in recruiting at hardship posts. These differentials would be increased under S. 3058 and the House passed bill.
>
> Section 6 of Senator Helms' bill would revise the retirement formula to increase the annuity of members of the Service from the current 2 percent for each year of service to 2½ percent. The bill would apparently provide this increased computation benefit to all service so that those retiring immediately after the Act's passage would receive a windfall from the bill despite the knowledge that Senator Helms apparently does not intend that the increased benefit apply to service prior to the enactment date.
>
> I do not find Senator Helms' analogy between the Foreign Service and the FBI and Air Traffic Controllers valid. The present computation of retirement for members of the Foreign Service already exceeds the normal Civil Service computation. The special computation provided for Air Traffic Controllers and other special occupations in which early retirement has been mandated, is meant to adjust the annuity to a normal level in the face of a career which is curtailed at a point of service which would otherwise provide an inadequate annuity. The increased computation in Senator Helms' bill for members of the Foreign Service is unnecessary. They do not normally have early retirement. Also, the House passed version of the Foreign Service bill raises the mandatory retirement age to 65, which indicates a trend toward longer service, rather than early retirement.
>
> I have not touched on all of my concerns with Senator Helms' bill, but have indicated some of my primary concerns. I urge the Senate to move ahead on its consideration of S. 3058. Thank you for the consideration of my comments.
>
> I have provided a similar letter to Senator Pell.
>
> Sincerely yours,
>
> ALAN K. CAMPBELL,
> *Director.*

That ends the quotation I would like to read at this time. I certainly concur with Mr. Campbell.

At this time I would like to mention to my distinguished colleague from North Carolina that the Governmental Affairs Committee worked for well over a year on civil service reform. We held hearings in Washington for many, many days.

The Senator from Illinois, knowing the deep effect this had upon millions of the Federal employees, recognized that one of the most important things we could do in the Senate to restore the faith of the American people in their Government was to find a way to organize the personnel system so that there was a responsiveness somewhat closer to the private sector, because the performance and productivity in Government have been dismal in many, many respects.

The Senator from Illinois held three separate hearings in different parts of Illinois. Director Campbell came to Illinois, other members of the Civil Service Commission came and testified.

We had as witnesses many past regional directors of many different services who testified as to their utter frustration, their disappointment, their disillusionment, their inability to get anything done. They could not fire people; many times they could not hire people. They could not reward.

There was a uniformity of pay regardless of performance that just, in a sense, as one of them said, "drove me right up the wall. I finally just had to get out. I could not perform the function that was expected of me under the personnel practices of the Federal Government."

So the months and months we put into the Civil Service Reform Act were the culmination of those frustrations.

There was bitter opposition many times, and there were several services that wished exemption from them. The Foreign Service said, "We are different. We should not really come, of course, under the same type of regulations and modifications and changes."

The Intelligence services said they wanted to be exempt. The Export-Import Bank was exempt.

Yet now it is a strange thing but all of them are coming back petitioning Congress to include many of those reforms in the personnel practices that govern them.

For instance, the subject of bonuses is one we all well understand. We would all like to believe that every person will always give as much to his job as he is capable of giving, that he has always had the support of his family for an outstanding job, and that money was not what motivated them. That is what we used to talk about respecting teachers years ago, until I finally went to President Eisenhower in exasperation and said, "There is no way, in my judgment, to get enough teachers in this country unless we compensate them as much as we do bricklayers—maybe not as much, but get up there somewhere."

We began a program in the fifties of elevating teachers' salaries and giving them a sense of dignity and giving them a job that people would really seek, that parents would recommend their children take.

The same thing is true in Government service, and this is where the bonus system, which has worked so well in the private sector, comes into play. It works well in Ford Motor Co., it has worked well over the past in duPont; it has worked well in General Electric; and it has worked well in the company I knew something about, Bell & Howell Co., for years, 18 years, when I had the duty to administer our executive compensation program.

I had an opportunity to see the effect on families and individuals of being able to say at the end of the year, "We will now evaluate all of our key personnel and executives based on performance to see whether or not their salary fully compensated them or whether they went beyond the call of duty and should be fully rewarded."

It was that selection process. It was sitting down with that individual, it was having that individual have to go home and say, "I didn't make it this year, I am outside the bonus system," and then explain it to his family because last year he might have been given $3,000, $4,000, $5,000, $6,000, at the end of the year or a person going home and saying, "I know, dear, I have been gone many nights, I have traveled weekends, I worked hard, but here is the $6,000," or $8,000 or whatever it may be, "to help our children get an education, and that extra work has been worthwhile."

The difference in approach that a family takes when they see that the company cares about them is what I am speaking about. The same thing is now true in the Federal Government. For the first time in the history of our Federal service we are able to evaluate and have given the power to supervisors to render judgment as to whether compensation has been adequate for the performance of an individual.

When two individuals sit side by side and one exerts 150 percent of his energy and one exerts 35 percent of his energy, at the end of the year they both may be getting the same compensation, at the end of the year to be able to take that 150-percent performer and really reward him, that makes a difference.

That is why this last month not only has the Foreign Service said they would like to come under this reward system, but also the intelligence services have petitioned, and the Export-Import Bank has come in and said, "We cannot hold our people. They are now going to the senior service that rewards them adequately."

The word is getting around that an outstanding performer really even in the Federal Government can now be rewarded and compensated, and it is not just the money. It is the fact that it has become a symbol in our society of outstanding performance.

So again I say in that one area, and this is why I think Dr. Campbell feels so strongly, we ought to be able to offer to the Foreign Service now that extra incentive for outstanding work because we all know people do not perform uniformly. They are all a composite of inner drives, and one of those drives that is ours is the fact that we may be rewarded, we may be recognized for what we have done, in addition to our good will in wanting to do the best job possible.

For that and a number of other reasons, I will regretfully oppose the substitute and ask our colleagues to support the committee bill.

Again I wish to also commend our distinguished colleague for the thoughtful way he has approached this problem. It is one of the big problems we have faced, he has provoked us into thinking there may be better ways of doing it. Certainly if there are better ways, the Senator from Illinois will always, just as we have this year now begun the reform of the civil service reforms passed a year ago, be looking at it not as set in concrete but as a moving, going thing, an entity that is so important that we must constantly find ways to improve it.

I do not overlook the fact that there is a body of support now among some personnel who would support the substitute, but I think overwhelmingly, as has been pointed out in the American Foreign Service Association release to us, is the fact that they do represent exclusively 11,000 AID and State Department Foreign Service personnel, and they have endorsed the Foreign Service Act of 1980.

They do point out that a worldwide survey of 283 posts in 114 countries shows that the people of the Foreign Service in that survey overwhelmingly supported the bill, and if we have any chance of passage of this reform, we would have to enact the committee bill and not the substitute.

The PRESIDING OFFICER. The Senator from Rhode Island has 2 minutes remaining.

Mr. PELL. I know the Senator from North Carolina would like an opportunity to rebut, so I will yield my 2 minutes to him.

Mr. HELMS. I thank the distinguished Senator for his courtesy, and I will not require the entire 2 minutes.

Mr. President, the distinguished Senator from Rhode Island mentioned as a disadvantage to my substitute the fact that it does not address the grievance procedure.

I am perfectly willing to modify my amendment along the lines of the Bayh bill (S. 2712) on grievance procedures which has already passed the Senate twice.

I ask, with the Senator's indulgence, that the Bayh bill be added at the conclusion of my pending substitute, and I have been informed by Senator BAYH's staff that the Senator from Indiana is agreeable to this procedure.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Will he please send the modification to the desk?

Mr. HELMS. I so do.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

At the end of the HELMS amendment, UP 1573, add the following modification:

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with, and I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification is as follows:

At the end of the pending amendment, add the following:

SEC. 10. Delete sections 691 through 695 of the Foreign Service Act of 1946 and insert in lieu thereof the following:

Chapter 11.—GRIEVANCES

SEC. 691. DEFINITIONS; APPLICABILITY.—(a)(1) Except as provided in paragraph (2), for purposes of this chapter, the term "grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the Service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105 (b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreements; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(D), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(B) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(i) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 692. GRIEVANCES CONCERNING FORMER MEMBER.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 693. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(B)(1) Any grievant has the right at every stage of the proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 694. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any, within sixty days after it is filed with the Department), a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 695. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b)(1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS–18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United State Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 696. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclustive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chair, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 697. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d)(1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service,

it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within the 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State rejects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 698. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody or available to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may make such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

SEC. 699. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standard Act o 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

SEC. 700. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 9, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. HELMS. Mr. President, in addition, I am pleased to tell this body that my substitute amendment for S. 3058, would not affect the contractual agreement of the U.S. Government to the 900 or so workers at USICA and the Voice of America. Last week, my esteemed colleague from Maryland (Mr. MATHIAS), offered an amendment to the Foreign Relations Committee bill, which I, along with my other colleagues, adopted.

Certainly in the context of S. 3058, Mr. MATHIAS' amendment was necessary and appropriate.

My substitute, would not violate the agreement between AFGE Local 1812 and the U.S. International Communication Agency. Foreign Service domestics would continue to be in the same bargaining unit to which they now belong under Executive order 11636, a Republican Executive order. Their relations with their agency would be covered under section 5, the labor-management relations of my substitute. These "domestic" employees would have continued access to the grievance provisions for the Foreign Service.

My substitute amendment would maintain the status quo of the collective bargaining agreement. Those USICA employees who have or do decide to remain within the Foreign Service system could do so. Others could, under the terms of their representative's contract with USICA, voluntarily convert to civil service status.

Mr. President, I thank the distinguished Senator from Rhode Island for yielding.

The PRESIDING OFFICER. The Senator from Rhode Island now has 15 seconds remaining.

Mr. PELL. I yield back the 15 seconds and suggest we come to a vote.

Mr. HELMS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute as modified by the Senator from North Carolina for his substitute for the bill.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Louisiana Mr. LONG), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay".

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS) and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BOREN). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 18, nays 66, as follows:

[Rollcall Vote No. 400 Leg.]

YEAS—18

Armstrong
Bayh
Bellmon
Boschwitz
Byrd,
  Harry F., Jr.
Domenici
Garn
Hatch
Helms
Humphrey
Jepsen
Laxalt
McClure
Schweiker
Simpson
Stevens
Thurmond
Wallop

NAYS—66

Baucus
Bentsen
Biden
Boren
Bradley
Bumpers
Burdick
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
Cochran
Cohen
Danforth
DeConcini
Dole
Durenberger
Exon
Ford
Gravel
Hatfield
Hayakawa
Heflin
Heinz
Hollings
Huddleston
Inouye
Jackson
Johnston
Kassebaum
Kennedy
Leahy
Levin
Lugar
Magnuson
Mathias
Matsunaga
McGovern
Melcher
Metzenbaum
Mitchell
Morgan
Moynihan
Nelson
Nunn
Packwood
Pell
Percy
Proxmire
Pryor
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Stennis
Stevenson
Tower
Tsongas
Warner
Weicker
Williams
Young
Zorinsky

NOT VOTING—16

Baker
Cranston
Culver
Durkin
Eagleton
Glenn
Goldwater
Hart
Javits
Long
Pressler
Randolph
Stafford
Stewart
Stone
Talmadge

So Mr. HELMS' amendment (UP No. 1573), as modified, was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, obviously, a great many Senators did not understand the excellence of the substitute offered by the Senator from North Carolina. In view of the vote, I ask unanimous consent that the now-pending substitute be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 2290) was withdrawn.

The PRESIDING OFFICER. Is there further amendment? If there be no further amendment, the question is on the engrossment and third reading of the bill.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask for order, because this is extremely important legislation.

The PRESIDING OFFICER. The Senate will be in order.

AMENDMENT NO. 2312

(Purpose: To restrict the use of the authority for career extensions)

Mr. PELL. Mr. President, I call up amendment No. 2312, now at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. Pell) proposes an amendment numbered 2312.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 67, line 2, immediately before the period insert ", subject to any career extension under subsection (d) of this section", and immediately after line 2, insert the following new subsection:

"(d) Notwithstanding any other provision of this section—

"(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

"(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.".

On page 66, line 14 and 15, strike "in light of the recommendations of selection boards established under section 602 and the needs of the service." and insert in lieu thereof "in accordance with the recommendations of selection boards established under section 602.".

Mr. PELL. Mr. President, what this amendment does is prevent the removal of senior officers for political reasons—a change in administration or something of that sort. It came up as a result of the testimony of a number of the witnesses who came before the Foreign Relations Committee. It is generally acceptable and I hope it can be accepted by my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2312) was agreed to.

AMENDMENT NO. 2314

(Purpose: To prevent windfall pay increases through the Civil Service to Foreign Service conversion process)

Mr. PELL. Mr. President, I call up now amendment No. 2314.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. Pell) proposes an amendment numbered 2314.

Mr. PELL. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 200, strike out lines 20 through line 3 on page 201 and insert in lieu thereof the following:

Sec. 2101. Pay and Benefits Pending Conversion.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day of such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b)(1) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4)(A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a)(1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual would have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were Foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Mr. PELL. Mr. President, in simplest terms, this amendment prevents a windfall salary increase for those individuals who convert from the Foreign Service to the civil service. Without this amendment, there would be a number of windfall increases, which would be both expensive and inadvisable. I hope my colleagues can accept this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2314) was agreed to.

AMENDMENT NO. 2313

(Purpose: To make technical changes)

Mr. PELL. Mr. President, I call up amendment No. 2313.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. Pell) proposes an amendment numbered 2313:

On page 42, line 4, immediately before "The" insert "(a)"; and between lines 12 and 13, insert the following new subsection:

"(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

"(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.".

On page 47, line 18, immediately after "compensation" insert "(including position classification)".

On page 52, line 4, immediately after "member" insert "and notwithstanding sections 5535 and 5536 of title 5, United States Code".

On page 78, line 10, strike out "abroad"; and in line 12, strike out "abroad".

On page 141, line 25, immediately after "United States" insert "(or any territory or possession of the United States or the Commonwealth of Puerto Rico)".

On page 158, beginning in line 25, strike out the comma and all that follows through and including line 2 on page 159 and insert in lieu thereof a period.

On page 173, beginning in line 16, strike out "the operations of" and all that follows through and including line 19 and insert in lieu thereof "the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice);".

On page 192, line 1, strike out "of State"; and on page 194 lines 1 and 2, strike out "of State".

On page 219, line 21, strike out "the".

On page 225, line 14, strike out "and" and insert in lieu thereof a period; and in line 18, immediately after "prescribe" insert the following: "and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6 (a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1)).".

On page 228, line 7, immediately after the first period insert the following: "Such person is to be considered an employee of the United States Government for the purposes of any benefit under any law administered by the Office of Personnel Management.".

On page 242, immediately after line 25, insert the following new section:

"SEC. 2305. SEVERANCE PAY.—Section 5595 (a) (2) (vi) of title 5, United States Code, is amended by inserting after 'to receive' the following: 'benefits under section 609(b) (1) of the Foreign Service Act of 1980 or any'.".

Redesignate former sections 2305 through 2314 as sections 2306 through 2315 respectively; and on page 245, line 16, strike out "2309(a)" and insert in lieu thereof "2310 (a)"; and on page 246, line 2, strike out "2309(b)" and insert in lieu thereof "2310 (b)".

On page 244, strike out lines 3 and 4 and insert in lieu thereof the following: "striking out '(1)' and all that follows through and including 'each type of education' and inserting in lieu thereof 'one annual trip each way for each dependent'.".

On page 245, line 24, immediately before the first period insert a comma and the followering: "except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee".

On page 246, lines 11 and 12, strike out "in the Department of State".

On page 247, between lines 3 and 4, insert the following new subsection:

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after 'States' in the first sentence '(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)'.".

Beginning on page 243, strike out line 22 and all that follows through and including line 6 on page 254 and insert in lieu thereof the following:

"SEC. 2403. EFFECTIVE DATE.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

"(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

"(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).".

On page 254, line 7, strike out "(2) The provisions of such chapter" and insert in lieu thereof "(d) (1) The provisions of chapter 8 of title I"; and beginning in line 9, strike out "such effective date" and insert in lieu thereof "the effective date of this Act"; and in line 12 strike out "(3)" and insert in lieu thereof "(2)".

Mr. PELL. Mr. President, this amendment consists of a number of technical changes in S. 3058. None of these changes has any significant or substantive impact. They have been gone over on all sides and I hope they can be approved.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 2313) was agreed to.

AMENDMENT NO. 2308

(Purpose: To make the effective date April 1, 1981)

Mr. HELMS. Mr. President, I call up amendment No. 2308 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2308:

On page 253, line 23, delete "October 1, 1980" and insert in lieu thereof, "April 1, 1981".

Mr. HELMS. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HELMS. Mr. President, I was thinking just now of our former distinguished colleague from Wyoming, the delightful, inimitable Cliff Hansen. I came in this Chamber one time and, voting on one of his amendments, I said, "Is this your amendment, Cliff?" He said, "It is. It is an excellent amendment. It is good. It is beneficial to the country. It is fair and equitable and, naturally, it is being defeated."

That is how I felt when I saw the substitute go down because, in fact, Senators have not had time to study this issue, and I can understand that.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, this bill is 250 pages long. It makes sweeping changes in the personnel practices affecting thousands of Government employees. It requires perhaps hundreds of pages of new regulations to be written by the Secretary of State, all of them regulations which very well could have a dramatic effect on the way this bill is administered.

As Senators will note, the effective date of this bill was October 1, which is less than 3 weeks away. I simply do not think it is sound practice to write regulations and get the sweeping personnel changes underway with only 20 days.

It has been 34 years since the fundamental law was changed. Therefore, I think it is important the effective date of the bill be pushed forward by 6 months to give employees a better understanding of their new situations.

This amendment, therefore, would make the effective date of this bill April 1, 1981, and I move its adoption.

Mr. PELL. Mr. President, I think the motion of the Senator from North Carolina has merit. I have discussed it with the minority side. I advise my colleagues to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 2308) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HAYAKAWA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2309

(Purpose: To increase the rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories)

Mr. HELMS. Mr. President, I call up amendment No. 2309 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an amendment numbered 2309.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 97, after line 2, insert a new subsection as follows:

(m) (1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

(A) one-tenth of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

(B) two-tenths of 1 percent of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 816 and 817 shall be increased by 1 year for each month or fraction thereof a participant is so held hostage or detained less than 6 months and shall be increased by 2 years for each month or fraction thereof a participant is so held hostage or detained in excess of 6 months.

(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.

Mr. HELMS. Mr. President, it is an unfortunate fact of life that respect for international law is standing more and more in the abeyance. We have seen more than one U.S. diplomat kidnapped, murdered, or held hostage. This problem is particularly egregious where a foreign state itself is the culprit in violating the concepts of diplomatic immunity.

I do not have to mention the hostages in Iran, nor the fact that they have been held captive for nearly 1 year. What counts is that the danger is always there, in these perilous days, and that any diplomat who serves abroad is subject to official terrorism even by foreign governments themselves.

I think that we should recognize this danger by providing increased retirement benefits, benefits which might be chosen immediattly if need be. There are not only physical hazards, but mental and psychological hazards to which a hostage is uniquely subject. Sometimes, these effects create a permanent disability, as we saw in the recent case of Richard I. Queen.

My amendment would provide that the rate of annuity of any participant in the Foreign Service would be increased by one-tenth of 1 percent of the average basic salary, for each day detained for the first 30 days, and two-tenths of 1 percent for every day detained in excess of 30 days. This annuity would be available to him immediately as soon as he leaves Government service.

Mr. President, I urge the adoption of the amendment.

Mr. PELL. Mr. President, I realize the emotion, the compelling need, and the situation that gives rise to this amendment. But my own view, and I think the view, more importantly, of the families of the hostages, is that they would prefer this be done in separate legislation.

I have earlier referred to a letter from Katherine Keough for the Family Lessor Action Group (FLAG) which says—it has already been printed in the Record—that while they are deeply grateful that Senator Helms has addressed himself to this issue, that for the present, FLAG strongly prefers his support for swift enactment of the Hostage Relief Act rather than this amendment to the Foreign Service Act.

In this regard, the chairman of our committee (Mr. Church) and I, and others, have cosponsored comprehensive legislation that we believe addresses the problem in a more thorough manner.

I hope in the light of this more comprehensive legislation which is pending before the Finance Committee, and in view of the wishes of the Family Liaison Action Group, that the Senator from North Carolina might be inclined not to press this issue to a vote.

Mr. HELMS. Mr. President, ordinarily, I would want to accommodate my friend in any way possible because he is a gentleman and he is, in fact, a dear friend of mine, and I respect what he has said.

However, I think it is time for the Senate to speak in terms of encouragement to those hostages and to others in the Foreign Service.

Whether this amendment is retained in conference would be up to the conferees. But I think the Senate ought to speak to this question.

Therefore, I ask for the yeas and nays on the amendment, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. Cranston), the Senator from Iowa (Mr. Culver), the Senator from New Hampshire (Mr. Durkin), the Senator from Missouri (Mr. Eagleton), the Senator from Ohio (Mr. Glenn), the Senator from Colorado (Mr. Hart), the Senator from Massachusetts (Mr. Kennedy), the Senator from Wisconsin (Mr. Nelson), the Senator from Alabama (Mr. Stewart), the Senator from Florida (Mr. Stone), and the Senator from Georgia (Mr. Talmadge), are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Arizona (Mr. Goldwater), the Senator from New York (Mr. Javits), and the Senator from South Dakota (Mr. Pressler) are necessarily absent.

I also announce that the Senator from Vermont (Mr. Stafford) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators present who desire to vote?

The result was announced—yeas 41, nays 43, as follows:

[Rollcall Vote No. 401 Leg.]

YEAS—41

Armstrong
Bayh
Bellmon
Biden
Boren
Boschwitz
Bradley
Byrd,
Harry F., Jr.
Cochran
Cohen
Danforth
Dole
Domenici
Durenberger
Garn
Hatch
Hatfield
Hayakawa
Heinz
Helms
Humphrey
Jepsen
Kassebaum
Laxalt
Long
Lugar
Mathias
McClure
Packwood
Roth
Sasser
Schmitt
Schweiker
Simpson
Stevens
Thurmond
Tower
Wallop
Warner
Weicker
Young

NAYS—43

Baucus
Bentsen
Bumpers
Burdick
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
DeConcini
Exon
Ford
Gravel
Heflin
Hollings
Huddleston
Inouye
Jackson
Johnston
Leahy
Levin
Magnuson
Matsunaga
McGovern
Melcher
Metzenbaum
Mitchell
Morgan
Moynihan
Nunn
Pell
Percy
Proxmire
Pryor
Randolph
Ribicoff
Riegle
Sarbanes
Stennis
Stevenson
Tsongas
Williams
Zorinsky

NOT VOTING—16

Baker
Cranston
Culver
Durkin
Eagleton
Glenn
Goldwater
Hart
Javits
Kennedy
Nelson
Pressler
Stafford
Stewart
Stone
Talmadge

So Mr. Helms' amendment (No. 2309) was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 2310

(Purpose: To provide for appropriate examinations for certain salary classes of the Foreign Service and the Senior Foreign Service)

Mr. HELMS. I call up amendment 2310 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an amendment numbered 2310.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

The amendment is as follows:

On page 31, line 23, change the period to a dash, and insert between lines 23 and 24 the following paragraphs:

"(1) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 5 through 9 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determines fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpert the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"(2) Notwithstanding any other provision of law, no person shall be eligible for initial appointment as a member of the Foreign Service of classes 1 through 4 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant.".

Mr. HELMS. Mr. President, one of the most important elements in the morale of the Foreign Service is that of insuring that candidates for a service represent the highest quality personnel. Senators know the work of the Foreign Service is demanding, that it requires extensive knowledge of world affairs, geography, language, and sensitivity to other cultures, and it is important that not only the senior personnel have the assurance that the same high standards to which they were subjected for entry are maintained, but that new personnel have the self-confidence that they are ready to handle any assignment on worldwide availability.

Mr. President, the only way to do this, the only way to achieve this, is by written examination in the great tradition of the Foreign Service.

Unfortunately, this tradition has been watered down. There have been results of test scores set aside or reinterpreted. Worst still is the problem of lateral entry at higher levels by people who have never, never been examined, not even on languages.

I submit, Mr. President, that this is an abuse of the Service and it is an abuse that should be stopped.

Therefore, this amendment proposes that all candidates for appointment in classes 5 through 9 be given written examinations, but that the upper four classes should be examined also as to their professional competence. I doubt that a written examination is necessary in the latter case, but there should be at least the formality of an oral examination.

No examinations are proposed for the senior Foreign Service. Those in the senior Foreign Service will no doubt be under rigorous standards of selection promotion.

I think the amendment speaks for itself and, at a very minimum, Senators ought to agree to this. Therefore, I urge its adoption. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. Mr. President, I have examined this amendment of the Senator from North Carolina. Referring to paragraph (2) where he speaks about oral examinations for senior officers 1 through 4, that is the present practice, so I do not think it is really necessary. There is no change between what is presently in the law and that of the amendment of the Senator from North Carolina. I believe the Senator will agree with me that paragraph (2) is a repetition of present procedure, present law.

Mr. HELMS. That is correct as to practice, but there is no requirement for a formal oral examination in law.

Mr. PELL. When it comes to paragraph (1) there is a change here where it requires that the examinations, written examinations, for junior officers cannot be waived by the Secretary of State as he is permitted to do in order to effectuate the affirmative action program.

This is a somewhat contentious provision, but it is one that is necessary at this time in order to provide for proper diversification and representation of all Americans in the Foreign Service, and I would recommend that this amendment not be agreed to.

Mr. PERCY. Mr. President, I would just ask the distinguished Sentor from North Carolina if we required this kind of procedure with respect to hiring Senate employees, and we have to have a lot of Senate employees who have some knowledge of the world we live in, geography and history and so forth, that if we required every single one of them to submit to oral and written examinations, would this not unnecessarily burden the U.S. Senate?

Would it not place a tremendous amount of restrictions on the way we select people and in our discretion? Do we not feel that we as supervisors and our own department heads have enough discretion to select and pick people without overburdening formalities of written and oral examinations, to require them to go through tests on geography, history, U.S. political structure, major international events, and so forth?

It seems to the Senator from Illinois that we are trying to get away from as much regulation, as much rigidity in our system as possible and provide a little bit more flexibility. If we impose those same requirements on ourselves here in the Senate that we are now talking about in this amendment, imposing upon the entire Foreign Service these restrictions for lower ranks, is not this unnecessarily costly, and will it not remove the kind of flexibility we need to select people who can do these jobs, and really give discretion to a person who is a skilled interviewer?

I have known many people who can sit down and cram for an examination and get by with that and do reasonably well, but you would not think of hiring him. On paper he would look awfully good.

I wonder if the distinguished Senator could respond to that inquiry of the Senator from Illinois?

Mr. HELMS. I am delighted to respond to my friend from Illinois, and I will respond to his question with a question. Would the Senator advocate elimination of examinations for candidates for West Point and the other service academies?

What we are talking about is competence. I do not know about the Senator from Illinois, the Senator from Idaho, or the Senator from Rhode Island, but I have talked to Ambassadors and other representatives in the Foreign Service, and they are appalled by some of the personnel they are required to take.

Is it not reasonable to expect a candidate for such a sensitive, perilously responsible, position that is tied so closely to our foreign policy and the implementation thereof to pass a written examination? If we say here that, "Oh, no, we are not going to allow them to take a test; we are going to waive that. We will just bring them in so that we can fill this and fill that," and the rest of it as is now being done—according to Ambassadors I have been talking with, then what are we saying? I say, yes, we ought to have some way of knowing that there is competence and some way of measuring that competence. I think the American people, the taxpayers, are entitled to that. Certainly our foreign policy needs it. That is my response to the Senator.

Mr. PERCY. As I see the substitute requiring an examination for admission of lower staff officers in the specialist categories of the Foreign Service in all cases, I look upon the intent as that of maintaining high quality in the Service, and I think that is a laudable intent. But I do think we have to take into account that there would be two rather unfortunate results of the program. It will eliminate the minority and women's recruitment program for the Foreign Service, which has helped materially to enhance representativeness without reducing quality.

I submit for the RECORD several summaries of the progress which has been made in the Department of State, which will be endangered by the amendment. It would require specialists entering in the grades named, secretary, security officers, communicators, nurses, to take the general background examination now required of Foreign Service officer candidates.

Since recruitment is already difficult for some categories of specialists, this would place the service at a real disadvantage. Just as with the civil service, recruitment of Foreign Service specialists seems best handled by examination of professional credentials through a competitive process, as would be done under S. 3058. The Senator from Illinois feels that the provisions of S. 3058 are satisfactory. They have been looked at very carefully, indeed.

For that reason, I would oppose the pending amendment.

The summaries previously referred to follow:

DEPARTMENT OF STATE,
Washington, D.C., April 4, 1980.

MEMORANDUM

To The Secretary.
Through M. Ben H. Read.
From M/DGP.—Harry G. Barnes, Jr.
Subject Trends in FSO minority representation.

You asked me to send you the figures I had used in our Affirmative Action meeting April 2, with regards to trends in minority representation in the Foreign Service Officer Corps.

I mentioned that at the beginning of 1977 5.9% of our FSOs and FSO candidates were minorities. At the beginning of 1980 that figure stands at 8.3%. By way of illustrating the results of the emphasis we have put on affirmative action, I also gave the following figures for the Junior Officer ranks (as of the end of 1979):

	Percent
*0-6	13.6
*0-7	20.7
*0-8	36.0

With regard to the proportion of women, the corresponding figures are:

	Percent
0-6	20.0
0-7	23.0
0-8	30.0

*FSO and FSR Career Candidates.

DEPARTMENT OF STATE—MINORITY FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976, TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total minorities	Percent	Total population	Total minorities	Percent
CA	1					
CM	40	1	2.5	31	1	3.2
FSO-1	311	6	1.9	320	12	3.8
FSO-2	305	10	3.3	302	7	2.3
Subtotal, senior level	657	17	2.6	653	20	3.1
FSO-3	615	17	2.8	704	21	3.0
FSO-4	854	27	3.2	774	49	6.3
FSO-5	627	68	10.8	579	60	10.4
Subtotal, middle level	2,096	112	5.3	2,057	130	6.3
FSO-6	340	20	5.9	474	14	3.0
FSO-7	283	1	.4	11		
FSO-8	85					
Subtotal, junior level	708	21	3.0	485	14	2.9
Total, FSO	3,461	150	4.3	3,195	164	5.1
FSO/FSR-6, FSSO-4				575	78	13.6
FSO/FSR-7				246	51	20.7
FSO/FSR-8				50	18	36.0
Total, junior officers (including career candidates)[1]				871	147	16.9
Total, FSO and career candidates				3,581	287	8.3

[1] Starting January 1978, junior officers are appointed as career candidates—FSR.

Note: With an intake of 59 minority officers during fiscal year 1980 we expect that minority FSO's and career candidates will comprise approximately 10 percent of the FSO Corps.

DEPARTMENT OF STATE—WOMEN FOREIGN SERVICE OFFICERS AND CAREER CANDIDATES, DEC. 31, 1976 TO DEC. 31, 1979

	Dec. 31, 1976			Dec. 31, 1979		
	Total population	Total women	Percent	Total population	Total women	Percent
CA	1					
CM	40	1	2.5	31		
FSO-1	311	10	3.2	320	7	2.2
FSO-2	305	8	2.6	302	10	3.3
Subtotal, senior level	657	19	2.9	653	17	2.6
FSO-3	615	34	5.5	704	36	5.1
FSO-4	854	56	6.6	774	66	8.5
FSO-5	627	85	13.6	579	107	18.5
Subtotal, middle level	2,096	175	8.3	2,057	209	10.2
FSO-6	340	56	16.5	474	86	18.1
FSO-7	283	54	19.1	11	3	27.3
FSO-8	85	18	21.2			
Subtotal, junior level	708	128	18.1	485	89	18.4
Total, FSO	3,461	322	9.3	3,195	315	9.9
Junior officers, including career candidates:						
FSO/FSR-6, FSSO-4				575	115	20.0
FSO/FSR-7				246	57	23.2
FSO/FSR-8				50	15	30.0
Total, junior officers (including career candidates)[1]				871	187	21.5
Total, FSO and career candidates				3,581	[2] 413	11.5

[1] Starting January 1978, junior officers are appointed as career candidates—FSR.

[2] An additional 73 women mid- and junior-level FSO career candidates have been taken in since Jan. 1, 1980, for a total FSO and career candidate population of 486 women (less attrition) by Oct. 1, 1980. This represents 2.7 percent of a total 3,830.

DEPARTMENT OF STATE—WORK FORCE CHANGE, BY SEX, 1969–79

	Total		Men		Women	
	Number	Percent	Number	Percent	Number	Percent
Total work force (CS and FS):						
Dec. 31, 1969	12,899		8,279	64.2	4,620	35.8
Dec. 31, 1979	12,830		8,046	62.7	4,784	37.3
Change	−69	−0.5	−233	−2.8	+164	+3.5
All civil service (GS and GG):						
Dec. 31, 1969	3,329		1,238	37.2	2,091	62.8
Dec. 31, 1979	3,710		1,178	31.8	2,532	68.2
Change	+381	+11.4	−60	−4.8	+441	+21.1
All Foreign Service:						
Dec. 31, 1969	9,570		7,041	73.6	2,529	26.4
Dec. 31, 1979	9,120		6,868	75.3	2,252	24.7
Change	−450	−4.7	−173	−2.5	−277	−11.0
Foreign Service officer and career candidate:						
Dec. 31, 1969	3,304		3,130	94.7	174	5.3
Foreign Service officer and career candidate—Continued						
Dec. 31, 1979	3,581		3,168	88.5	413	11.5
Change	+277	+8.4	+38	+1.2	+239	+137.4
Foreign Service Reserve and Foreign Service Reserve Unlimited:						
Dec. 31, 1969	1,404		1,289	91.8	115	8.2
Dec. 31, 1979	3,020		2,588	85.7	432	14.3
Change	+1,616	+115.1	+1,299	+100.8	+317	+275.7
Foreign Service staff and Foreign Service staff officers:						
Dec. 31, 1969	4,862		2,622	53.9	2,240	46.1
Dec. 31, 1979	2,519		1,112	44.1	1,407	55.9
Change	−2,343	−48.2	−1,510	−57.6	−833	−37.2

Source: PER/MGT/OS quarterly summary of employment (excluding noncareer chiefs of mission, FS/GS unclassified, consular agents, resident staff, wage board, WAE, and contract).

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I must confess, with all due respect to my friend from Illinois, that I do not quite understand what he is saying. He mentioned that this would eliminate recruitment programs for minorities and women, if I understood him.

Is he saying that minorities and women are not qualified to pass the test? I do not understand the argument that he is making.

My argument is that everybody, regardless of race, creed, or sex, who is going to be employed by the Foreign Service, ought to be qualified and ought to be demonstrably so. I think that is a reasonable request. It seems to me to be demeaning to suggest that minorities and women are not qualified to pass a written exam.

I realize that certain people in the State Department, in their zeal to get a bill passed, have been calling around to all the Senators, saying: "Don't take any of HELMS' amendments. You will mess up the whole deal. We have got this deal cut over in the House, so don't take any Helms amendment."

I received a call Thursday from my good friend, the former Secretary of State, Cy Vance. He said, "Jesse, I hope that after your substitute is defeated"—and he certainly made a brilliant forecast on that—"that you won't offer any amendments."

I said, "Well, Mr. Secretary, let me go down the list on these amendments and see which one of them you find disfavor with." I went down the list, Mr. President, one by one. He said, "Well, I agree with that." "I agree with that." "I don't know about that one, but it sounds all right to me." At the conclusion of the conversation, he said that they are good amendments, but he still did not want any vote on them. This is my friend Cy Vance. And, of course, Ed Muskie has been making the same calls to Senators. They do not want any amendment, no matter how much it improves this bill.

I say to you, Mr. President, that that is a very poor way to legislate. I have not advanced an amendment to any bill since I have been in the Senate that, as a Senator, I did not consider would be helpful to the intent of that amendment.

There is nothing frivolous about this. This is simply saying that you are going to take an examination and demonstrate that you are competent. And, under the American system that I love, what is wrong with that?

The State Department complains about the range of grades requiring written examinations. Well, let me point out, Mr. President, that these candidates are being appointed to positions which are ranking a person as high as a GS-12. What is a GS-12? By military standards, I say to my friend from Illinois, that is a position as high as captain in the Army.

Does my friend, or do any of my friends, suggest that there should be no examination, no demonstration of competence? It would be absurd for them to say that with respect to the Army. I say it is absurd to make that suggestion as to this bill.

I simply cannot comprehend why the State Department would not be eager to require a written examination for persons of the relatively senior position of captains and so forth.

I note with special interest the complaints about the difficulty in obtaining clerical personnel, notably secretaries, yet I am informed that the Office of Personnel Management regularly, itself, tests typists and secretaries for employment as civil service employees in Washington, D.C., for the State Department. So why the double standard? That office could easily provide the same testing service for Foreign Service personnel. So the question is: Why not?

Earlier this afternoon, Mr. President, I noted that recruiting better qualified personnel was one of the justifications for the 15-percent tax-exempt additional compensation. I am pleased to note that the Department concedes that it now has severe difficulty in recruiting secretaries. Certainly the 15-percent differential might be an inducement; it might save recruitment and personnel turnover costs.

The Senate can vote its will on this amendment, but I just do not understand how any Senator can step up here and say "nay" to an amendment that is simply calling for demonstrably ascertained competence.

I yield the floor.

Mr. PERCY. Mr. President, I will ask my distinguished colleague, because he made comments about this bill going without any amendment, can he ever recall, in his experience, when the Senator from Illinois was helping to floor manage a bill when the Senator from Illinois was not willing to consider amendments? I have no pledge of any kind to carry a bill clean into conference.

Mr. HELMS. Mr. President, if the Senator will yield, I did not imply, nor should he infer, that I was talking about him. He knows that he is my friend. I am simply saying that the lobbying from the Department was not to take an amendment from HELMS or anybody else. "Let's let this thing, greased as it is, go through." I am not talking about the Senator from Illinois.

Mr. PERCY. I can assure my colleague that the Senator from Illinois has not talked to a single person in the State Department.

I just happened to be in my office with Ambassador Helman having a meeting. He is here from Geneva. I had an appointment with him here at 3 o'clock. I asked him about the last amendment, how he would view it as a Foreign Service officer and I got his judgment.

But I have not talked to the State Department officially about any aspects of this bill. I am simply going on my own experience as an employer. And I asked the question: Would we want to submit, for many of these ranks, a requirement that everyone hired by the U.S. Senate be submitted to that kind of oral and written examination, which would add a tremendous amount of cost and duplicity and effort for the kind of jobs that I feel we have adequate experience among ourselves to determine whether or not a person is qualified?

When we are trying to deregulate this Government and when we just stood out on the steps out here and heard the pledges that we made as Republicans for getting the heavy hand of Government out of a lot of things and directing and telling us what commonsense ought to tell us and forcing us to do things which we, in our judgment, do not feel at all cost effective, why would we turn around and come right back on a floor and then force the State Department to force persons in the lower categories to submit to oral and written examinations that we just do not feel require that kind of questioning?

That is why I raised the question and why I do not feel, in good judgment, that this is essential and certainly is not in accord with the desire to have our operations as flexible and as cost effective as possible.

If the Senator from North Carolina could convince me that this was absolutely essential, that we were hiring totally unqualified people and that would be corrected by this, but I have not really heard that argument or seen that measure of proof. For that reason, I cannot really see the need for it.

It is not the intention of the Senator from Illinois to just take a bill without amendments. The Senator from Illinois always has accepted amendments as a floor manager when he feels that they have improved the bill.

In fact, we welcome such amendments.

In this particular case, I just happen to disagree with my colleague.

Mr. HELMS. I know my good friend disagrees. We have always agreed to disagree agreeably. I love him for all that. But I would say to him that in hiring personnel for his office, he is not under any affirmative action gun. He is not under any political pressure to hire this person or that person. And he does not hire all that many people.

But I go back to my original statement, what we are talking about in terms of taking this examination are people who have as high as the equivalent military rank of captain in the Army. I do not think the Senator would suggest that there be no testing of someone being considered for a captaincy in the Army.

I do not know how much duplication, redtape, and so forth, is involved in a simple test. To tell you the truth, Mr. President, before I got into my study of this bill, I just assumed that that sort of thing was policy. Here I find that, "No, we have written examinations, but we waive them whenever we want" which means that political appointments can be made of people who do not understand the languages or the cultures, or anything else. They even can make lateral entry at higher grades, without examination. Just plug them in because somebody wants to be in the Foreign Service.

I do not know, I cannot testify of my own knowledge, of course, as to how often that happens, but I think we ought to be in the position of having said on the floor of the U.S. Senate that it is not going to happen at all. All this amendment says is, "You will have a demonstrably competent candidate." That is all the amendment says; nothing more, nothing less.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I think the record should show that we have already accepted one amendment to this bill. This changed the effective date of the bill at the suggestion of the Senator from North Carolina, an excellent suggestion. So this bill is not without amendment already.

Another point to bear in mind is that if the pending amendment of the Senator from North Carolina is accepted, it would then mean that a new procedure would have to be brought into effect for secretaries and specialists whereby they would have to take examinations of the type that are given now only to Foreign Service officers. I think that we would find that would not be necessary. In any case, I am ready to vote on this matter.

Mr. HELMS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the amendment of the Senator from North Carolina. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. BAUcus). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 19, nays 62, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—19

Armstrong
Boren
Boschwitz
Exon
Garn
Hatch
Helms
Humphrey
Jepsen
Laxalt
Lugar
McClure
Morgan
Simpson
Thurmond
Tower
Wallop
Warner
Zorinsky

NAYS—62

Baucus
Bayh
Bellmon
Bentsen
Biden
Bradley
Bumpers
Burdick
Byrd,
Harry F., Jr.
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
Cochran
Cohen
Danforth
DeConcini
Dole
Durenberger
Ford
Gravel
Hatfield
Hayakawa
Heflin
Heinz
Hollings
Huddleston
Inouye
Jackson
Johnston
Kassebaum
Leahy
Levin
Long
Magnuson
Mathias
Matsunaga
McGovern
Melcher
Metzenbaum
Mitchell
Moynihan
Packwood
Pell
Percy
Proxmire
Pryor
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Stevens
Stevenson
Tsongas
Weicker
Williams
Young

NOT VOTING—19

Baker
Cranston
Culver
Domenici
Durkin
Eagleton
Glenn
Goldwater
Hart
Javits
Kennedy
Nelson
Nunn
Pressler
Stafford
Stennis
Stewart
Stone
Talmadge

So Mr. HELMS' amendment (No. 2310) was rejected.

UP AMENDMENT NO. 1574

Mr. HELMS. Mr. President, I send an unprinted amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 1574.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 185, strike out chapter 11 (beginning on line 4 and ending on line 16 of page 200) and insert in lieu thereof the following:

Chapter 11—GRIEVANCES

SEC. 1101. DEFINITIONS; APPLICABILITY.—(a)(1) Except as provided in paragraph (2), for purposes of this chapter, the term "grievance" means any act, omission, document, or condition which is a source of concern or dissatisfaction to a member of the service who is a citizen of the United States or to an exclusive representative and which is subject to the control of the Secretary or the Secretary of State (or both) and relates to terms and conditions of employment, including, but not limited to—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member;

(B) other alleged violation, misinterpretation, or misapplication of any applicable law, regulation, or published policy adversely affecting the career, reputation, financial condition, or terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action taken or likely to be taken against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in any agency record concerning the member which is or could be prejudicial to the member;

(F) any action which is alleged to be in the nature of reprisal, or interference with freedom of action in connection with participation by the member in procedures under this chapter or in connection with the making of any disclosure or submission described in section 105(b)(2), (b)(3), or (c);

(G) any alleged denial of basic due process;

(H) any claim involving the effect, interpretation, or breach, of any collective bargaining agreement; and

(I) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "grievance" does not include, for purposes of this chapter, the judgment of a selection board established pursuant to section 602, a tenure board established pursuant to section 306(b), or any other equivalent body established pursuant to law or regulation which similarly evaluates the performance of members of the Service on a comparative basis.

(b) Notwithstanding subparagraph (A), the term "grievance" shall include a claim that a judgment described in subparagraph (A)—

(i) was based on any prohibited personnel practice described in section 2302(b) of title 5, United States Code;

(ii) was based on or constitutes falsely prejudicial information; or

(iii) was not made in accordance with law, rule, or regulation.

(b) For purposes of this chapter, the term "exclusive representative" means a labor organization which is accorded exclusive recognition under chapter 10.

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce. When used in this chapter, the term "Secretary" shall refer to the head of a department or agency listed in this subsection.

SEC. 1102. GRIEVANCE CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse, former spouse, or another member of the family of a deceased member or former member of the Service may file a grievance under this chapter.

SEC. 1103. FREEDOM OF ACTION.—(a) Any person filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b)(1) Any grievant has the right at every stage of proceedings to a reasonable number of representatives of his or her own choosing. An exclusive representative shall have the right to appear and present its views during any grievance proceeding.

(2) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this chapter.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards which are necessary to ensure confidentiality, in accordance with section 1108(d).

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department shall expedite security clearance procedures whenever necessary to assure a fair and prompt investigation and resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance, except that in the case of any grievance arising before the date of the enactment of this Act, the grievance shall be so barred, and not so considered and resolved, unless it is filed within 2 years after such date of enactment. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within sixty days after it is filed with the Department, a grievant shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 12 members, who shall be appointed under subsection (b).

(b)(1) The Members of the Board shall be appointed by the Secretary of State from individuals nominated under paragraph (2) and approved in writing by the exclusive representative for each agency to which this chapter applies and each such agency which has such an exclusive representative. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section.

(2) Each appointment made by the Secretary of State under paragraph (1) shall be made from a written list of candidates submitted to the Secretary of State by any organization which is composed primarily of individuals who are experienced in the adjudication or arbitration of personnel matters.

(3) An individual shall be eligible for appointment as a member of the Board only if such individual—

(A) is not a current or former employee of the Department or a current or former member of the Service, or is not performing and has not previously performed services for the Department or Service (other than as a member of the Board);

(B) has the demonstrated ability, background, training, and experience necessary to be especially qualified to serve as a member of the Board; and

(C) demonstrates a capacity and willingness to devote sufficient time to service as a member of the Board in order to enable the Board to dispose of cases under this chapter in a timely manner.

(c)(1) A member of the Board may be removed from the Board—

(A) by majority vote of the members of the Board (other than the member who is the subject of the proposed action of removal); and

(B) only for inefficiency, neglect of duty, or malfeasance in office.

(2) Any member of the Board who is the subject of any proposed action of removal under this subsection shall be given notice and opportunity for a hearing before the Board prior to any vote of the members of the Board under paragraph (1)(A). Each agency and each exclusive representative shall be given the right to appear at the hearing and present its views. The Board may dispense with the opportunity for a hearing only upon the submission of a written waiver of the hearing to the Chair by the member subject to the proposed action.

(d) Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate payable for GS–18 under the General Schedule under section 5332 of title 5, United States Code, including traveltime, for each day such member is engaged in the actual performance of duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be entitled to travel expenses and per diem allowances in accordance with section 5703 of title 5, United States Code.

(e) The members of the Board shall select from among the members of the Board a Chair who shall be the chief executive and administrative officer of the Board.

(f) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards necessary to ensure confidentiality, in accordance with section 1108(d).

SEC. 1106. BOARD PROCEDURES.—(a) Procedures for the resolution of grievances in accordance with the purposes of this chapter shall be established by an agreement between the exclusive representative for each agency to which this chapter applies and each such agency which has an exclusive representative.

(b) Subject to any terms of an agreement under subsection (a), the Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. Unless the grievant requests otherwise, such hearings shall be open to public observation, except that the Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be closed to public observation because the public interest so requires. Testimony at a hearing shall be given under oath or affirmation, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing any witness under its control, supervision, or responsibility, except that if the Board determines that the absence of such witness from the hearing would not impair the presentation of the grievance or lessen the Board's assessment of credibility, the witness may be made available by deposition. If the witness is not made available in person or by deposition within a reasonable time as determined by the Board, the facts at issue shall be construed in favor of the grievant. Necessary costs and travel expenses shall be paid by the agency.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board may exclude any irrelevant, immaterial, or unduly repetitious evidence.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) The Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designed by the Chair, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise.

The Board shall act through panels of at least 3 members in any grievance regarding any agency which has an exclusive representative. Members of any such panel shall be designated by the Chair for a fixed period of time and shall be approved in writing by the agency and the exclusive representative. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate.

(8) If the Board determines that the Department is considering any action which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Nothwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions if such exclusion is determined in writing to be esssential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence or if the Board otherwise considers it warranted.

(c) The provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is, in the interest of national defense or the conduct of foreign affairs, specifically prohibited from disclosure by any other provision of law or specifically required by Executive order to be kept secret.

SEC. 1107. BOARD DECISIONS.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board may order the Department—

(1) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(2) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(3) to take any other remedial action that the Board deems appropriate.

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d)(1) If the Board finds that—

(A) the grievance is meritorious and orders that remedial action be taken that relates directly to promotion or assignment of the grievant, or

(B) the evidence before it warrants disciplinary action against any employee of the Department or member of the Service,

it shall make an appropriate recommendation to the Secretary of State.

(2) The Secretary of State shall make a written decision on the recommendation of the Board within thirty days after receiving the recommendation. The Secretary of State shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary of State rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would adversely affect the foreign policy or national security of the United States. If the Secretary of State rejects the recommendation in whole or in part, the rejection shall fully state the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative.

(3) Pending the decision of the Secretary of State under paragraph (2), there shall be no ex parte communication concerning the grievance between the Secretary of State and any person involved in the proceedings of the Board. The Secretary of State shall, however, have access to the entire record of the proceedings of the Board.

SEC. 1108. ACCESS TO RECORDS.—(a) If a grievant is denied access to any written information in the custody of or available to the agency (hereinafter in this section referred to as "agency record") prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1) (A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the Secretary of State personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States. Any such certification shall be fully documented with the reasons therefor and shall be signed personally upon oath or affirmation by the Secretary of State, with a copy thereof furnished the grievant or the grievant's representative. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) Any material furnished to the Board shall be furnished to the grievant or the grievant's representative at the same time. Whenever the furnishing of a personnel record or any other material may conflict with a regulatory or statutory provision protecting privacy or confidentiality the record shall be furnished promptly to the grievant or the grievant's representative only upon a certification, signed personally upon oath or affirmation, that the information contained therein will not be disclosed outside of the grievance proceedings. No employee of the Department participating in a proceeding on behalf of the Department shall disclose any information concerning a grievance to anyone not involved in the grievance proceedings. Violations of this section may be brought to the attention of the Board for appropriate action.

(e) If the Department fails to furnish to the Board any agency record promptly upon request, the Board shall construe the facts at issue in favor of the grievant if the Board determines the agency record may be relevant or material to the grievance. Consistent with the objective of expediting the resolution of grievances, the Board may take such a construction even if the agency record is submitted, if it was not submitted promptly after it was originally requested.

(f) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board. The Board shall furnish the grievant or the grievant's representative with a copy of the record of the proceedings and the decision in any case considered by it.

SEC. 1109. RELATIONSHIP TO OTHER REMEDIES.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. Except as provided in subsection (c), such an election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

(c) An election to raise a matter under grievance procedures in no way prejudices the right of an aggrieved party to request the Merit Systems Protection Board to review the final decision of the Grievance Board or to request the Equal Employment Opportunity Commission to review a final decision in any matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(d) Nothing in this act shall extinguish or lessen any right or remedy, including the right to trial de novo, of an employee or applicant for employment under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

SEC. 1110. JUDICIAL REVIEW.—Any aggrieved party may obtain judicial review of a final action on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

CONFORMING AMENDMENTS

Page 5, in the item relating to section 1101, strike out "Definition of grievance" and insert in lieu thereof "Definitions; applicability".

Page 17, line 3, strike out "section" and insert "Act".

Page 17, line 6, strike out "in the civil service".

Page 167, beginning on line 8, strike out "in any separation" and all that follows down through line 10 and insert in lieu thereof "in any grievance proceeding under chapter 11; or".

Page 69, line 22, insert a period after the word "grievances" and strike all that follows down through line 24.

Mr. ROBERT C. BYRD. Would the distinguished Senator yield?

Mr. HELMS. Certainly, I will yield to my good friend.

Mr. ROBERT C. BYRD. It is for an announcement.

Mr. President, it is the plan to finish this bill this evening, I am told by the distinguished Senator from North Carolina that he may have one more amendment, or he may not.

Mr. HELMS. Yes.

Mr. ROBERT C. BYRD. Then the Senate should be finished its work on this bill by 5 o'clock, or 15 minutes after, something like that.

After that, there would be no more rollcall votes. After acting on this bill, there will be no more rollcall votes today. The Senate would go to the HUD appropriation bill for opening statements only, and then the Senate would go over until tomorrow.

ORDER FOR RECESS TO 10:30 A.M. TOMORROW

If the Senator will allow me to ask unanimous consent, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered, the HUD bill would be laid down today, opening statements would be made, and that would be the business before the Senate tomorrow, after the recognition of Senators for whom any orders have been entered.

ORDER FOR RECOGNITION OF MR. M'GOVERN ON TOMORROW

Mr. ROBERT C. BYRD. I now ask unanimous consent to enter an order for Mr. McGOVERN, for not to exceed 15 minutes, after the two leaders, under the standing order on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Are there any other orders for the recognition of Senators tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. Then, Mr. President, following the laying down of the HUD appropriation bill tomorrow, at no later than 12 noon, under the order previously entered, the Senate would lay aside temporarily the HUD appropriation bill and proceed to the military construction authorization bill; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. All right. I thank the distinguished Senator from North Carolina for his courtesy.

Mr. HELMS. Mr. President, this amendment would delete the grievance section of S. 3058 and replace it with what the Senator from North Carolina considers an improved version of the bill introduced by the distinguished Senator from Indiana (Mr. BAYH), which is S. 2712.

Now, the Chair will recall that this is the same amendment which I added by unanimous consent to my comprehensive substitute earlier this afternoon, which was defeated.

I might add that it has the strong support of the national office of the AFGE, AFL-CIO, and Local 1812.

For the benefit of Senators, perhaps I should summarize the effects of the pending amendment, which is a substitute for the grievance section of S. 3058.

Unlike the bill as originally drafted, this amendment guarantees an individual grievant the right to representation of his or her own choice.

The committee has adopted a similar amendment and, in view of the statutory base for the grievance procedure, the pending amendment simply continues this right.

Mr. President, the reported bill raises serious doubt about whether a grievant in a separation case is entitled to have this decision reviewed by the Equal Employment Opportunity Commission, and, where necessary, to obtain a trial de novo for the discrimination claim in the U.S. District Court.

I am confident it was not the intention of my distinguished colleagues on the Foreign Relations Committee to immunize the Department of State from enforcing the same obligation to provide equal opportunity currently applicable to both it and the other Federal agencies.

So, Mr. President, the pending amendment removes this ambiguity and, similar to an employee's status under the Civil Service Reform Act of 1978, preserves the rights of the Foreign Service officer's under the Nation's civil rights laws.

In what may have been a drafting oversight, the reported bill allows the agencies to appoint all the members of the Grievance Board. A marked departure from current practice where each agency and each employee representative has an absolute veto over each nomination to the board. Under the reported bill, whenever a disagreement arose, five agencies and two representatives would each nominate two candidates. Thus, there would be 10 agency nominees and 4 representative nominees. On the first round of the striking procedure, the five agencies would be able to eliminate the four candidates nominated by the employee representatives. The unfairness of this procedure is obvious and has been highlighted by a report from the officers of the Thomas Fund.

The Thomas Legal Defense Fund was established in 1971 to secure the constitutional protection for the rights of Foreign Service officers. The officers of the fund have distributed a report sharply critical of the changes made by the reported bill. In addition, the fund shares the alarm of the Thursday luncheon group, composed of minority members of the service, at the prospect that the grievance chapter will be crippled.

Mr. President, in earlier Congresses, the Senate has thoroughly considered the issue of an appropriate mechanism for resolving grievances in the Foreign Service. On several occasions, the Committee on Foreign Relations has recommended and the Senate has adopted the grievance legislation offered by my distinguished colleague from Indiana (Mr. Bayh). Unfortunately, we were never able to convince the House to go along wholeheartedly. In H.R. 6790 the House once again falls short of the Senate's consistent position on grievance legislation.

I believe that no thorough review of the legislation charter for the Foreign Service can be complete without an effort to achieve some of the gains found in the earlier legislation so favorably approved by the Senate. I must confess, however, that my substitute does not reach the full measure of protection afforded by S. 2712, the Bayh bill passed by this body in earlier years. I would like to explain some of the departures from the Bayh bill.

First, I have added a limiting phrase to the general definition of grievance so that the dispute must "relate to terms and conditions of employment." I do not intend by the addition of this phrase to preclude any matter currently grievable from being resolved through the procedure in my substitute. In fact, my substitute enlarges the definition of grievances beyond that found in current law. I wish to inform my colleagues, however, that by use of this limiting phrase, I specifically intend to make it clear that the policy content of foreign affairs decisions is not subject to the grievance procedure. I believe that the claim that the content of policy decisions would be grievable was an inaccurate criticism of the Bayh bill. This limiting phrase eliminates any basis for such a charge against my substitute.

In a second departure from the bill, approved earlier by the Senate, I specifically exclude the subjective judgments of selection boards from the definition of grievance. Where, however, a selection board has engaged in a prohibited personnel practice or otherwise violated law, rule, or regulation, its decision would be grievable.

Perhaps the most criticized facet of the Bayh legislation is its requirement that the members of the Grievance Board be selected on a tripartite basis, with one selected by agency management, one by the employee representative, and one by the other two members. My substitute eliminates this tripartite composition of the Grievance Board, while building on the Board's current practice of acting through panels.

My substitute allows the Secretary of State to refuse to provide information, and even to implement certain decisions of the Grievance Board, if he finds that it would adversely affect the foreign policy or national security of the United States. These provisions are a profound departure from the normal procedure for resolving disputes where the third-party decision is final and binding on all parties. Although I am hesitant about allowing one side to a dispute to have the power to ignore the decisions of the Grievance Board, I believe that my substitute contains adequate safeguards as that the Secretary's power will not be used arbitrarily or otherwise abused.

My amendment also contains guarantees for the protection of confidential information and allows the grievant the right to close a grievance hearing. Where, however, the grievant desires an open hearing, the Board would be required to honor the request unless it found good cause to do otherwise.

In conclusion, I urge my colleagues to vote for this substitute. It avoids the unfortunate provisions of the reported bill which have come under increasing criticism. The substitute also avoids those features of the grievance legislation approved by the Senate but which have raised the greatest objection. Most importantly, the substitute places the Senate on record—once again—in favor of expanding the guarantees of basic fairness in the Foreign Service.

Mr. PELL. Mr. President, I appreciate the motives and the reasons for the submission of this amendment. I ask one question of the Senator from North Carolina: Is this basically the Bayh bill that the Senator from North Carolina has submitted?

Mr. HELMS. It is, I say to my friend.

Mr. PELL. This is a bill we have considered before, and I wanted to identify it, to know exactly what we are talking about.

We thought there were many parts of the Bayh proposals that were excellent. In fact, the grievance provisions in the bill before the Senate, S. 3058, move in the direction of Senator Bayh's proposal in several key respects. For example, the grounds on which management can overturn Grievance Board decisions have been sharply narrowed, so that only true national security grounds provide justification for doing so.

Then, as the Senator from North Carolina has mentioned, our Foreign Relations Committee added a provision which confirms that "the grievant has a right to a representative of his or her own choosing at every step of the proceeding."

Richard I. Bloch, the Chairman of the Foreign Service Grievance Board and an arbitrator for a number of Federal agencies—IRS, Labor, Treasury, Justice, and others—says that the present Foreign Service grievance system "is the single best Federal sector system we know * * * well structured and for the most part adequately responsive to the needs of the parties."

The Grievance Board is working well and meets in a fair and constructive fashion the needs of management and the employees.

In this regard, the composition of the Board is exactly as the Senator from North Carolina has said. But we also should bear in mind that the list from which the members are drawn is a negotiated list, agreed upon by the organizations representing the employees.

When it comes to support, while the AFGE supports this measure, it is representative of only 2,000 employees; but the American Foreign Service Association, which supports the bill before the Senate, represents some 11,000 people, or almost six times as many in the Foreign Service.

Also, we have to keep in mind the rights of the individual, fairness to the individual, as well as flexibility of assignment and the national interests of the United States. Those really are paramount.

One of the problems with the Bayh approach is that a man or woman assigned to an unattractive post could bring a grievance.

The whole idea of the Foreign Service is that you go where you are assigned. It is a disciplined service. There may be an occasional unpleasantness in it, as there may be in the military service; but, in general, I believe the system works well and fairly. Here, I speak with some experience, because I served in it for a half-dozen years.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement from the Thomas Legal Defense Fund.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

CRIPPLING THE FOREIGN SERVICE GRIEVANCE PROCEDURE: THE PROPOSED FOREIGN SERVICE ACT OF 1980 (H.R. 6790/S. 3058)

INTRODUCTION

The United States Senate and the House of Representatives are currently considering a bill which, in part, would amend the existing grievance legislation for the Foreign Service passed by the Congress in 1975. Written by the Department of State as a new "Foreign Service Act," H.R. 6790/S. 3058 has already received committee action in each House.

The "Foreign Service Grievance Act" (H.R. 7446/S. 2712), has also been introduced in both Houses and contains grievance provisions taken from the bill which was reported favorably by the Committee on Foreign Relations and passed by the Senate during the Ninety-Second and Ninety-Fourth Congresses. The Department has opposed changing its bill to incorporate the grievance provisions of H.R. 7546/S. 2712.

The Thomas Legal Defense Fund was established in 1970 when it became obvious that judicial protection would be necessary to secure the constitutional rights of officers employed in the foreign affairs community.

Through *Lindsay* v. *Kissinger*, 367 F. Supp. 949 (D.D.C. 1973), the Fund won the landmark affirmation that fair hearing and due process must be provided within the Foreign Service. This decision eventually led to the Department of State's acceptance of grievance legislation in 1975.

The Thomas Fund has consulted with attorneys familiar with current operations under the Foreign Service grievance system and has concluded that the provisions of the proposed Foreign Service Act would substantially reduce the protections already granted Foreign Service members under current law. The Department's communications to Congress and the foreign affairs community avoid discussing these "take-away" provisions. Since it has been the experience of the Fund that Department officials are inclined to take advantage of any opportunity presented by an ambiguous regulation or statute, the officers of the Fund determined that it is crucial to alert the foreign affairs community to the changes made in existing law by the proposed Foreign Service Act. Because the Bayh-Derrick bill has been adopted in earlier Congresses by the Senate and is being offered as an alternative to Chapter 10 of the proposed Foreign Service Act, it is also discussed.

The Thomas Legal Defense Fund has had this report prepared as part of its continuing efforts to ensure that the Foreign Service is treated in accordance with principles of fairness and due process.

(Note: Other interpretations exist to this report's "worst case" analysis. If the grievance changes survive Congressional scrutiny and achieve passage, the Thomas Fund will continue to press for the most favorable construction of the new law.)

ANALYSIS

1. Confidence in the integrity of the grievance board.

The heart of any effective mechanism for resolving disputes is confidence in the integrity of the entity deciding those disputes. Under current law, all members of the Foreign Service Grievance Board are appointed with the approval of all of the foreign affairs agencies and employee bargaining representatives. Each employee representative now has an absolute veto over the appointment of each member to the Grievance Board.

H.R. 6790/S. 3058 would eliminate this veto by the employee representative. The bill provides instead a striking procedure whenever an agency fails to agree with a representative on Board members. The striking procedure would in effect, allow the agencies to appoint the members of the Board, thereby undermining confidence in the integrity of the Board and in the impartiality of its decisions.

Unlike most of the act, the grievance procedure would apply to the Departments of Agriculture and Commerce.

Under the proposed striking procedure, each agency(State, IDCA, USICA, Agriculture, Commerce) and each employee bargaining representative (AFSA, AFGE) would nominate two people. The five agencies and the two representatives would then alternate in striking names from the list of nominations. It thus appears that agencies would first be allowed to "stack the deck" by nominating ten of the fourteen candidates and then would get a second advantage by being able to strike more names from the stacked list than the representatives could. In fact, the five agencies would be able to eliminate all four candidates proposed by the representatives on the first round of the striking procedure. No justification for this departure from a neutral Grievance Board appears to have been presented by the bill's proponents.

The bill would also allow the Secretary to remove unilaterally any member of the Grievance Board for certain specified cause. Under current law, neither the agencies nor the representatives may remove a Board member unilaterally.

H.R. 7546/S. 2712 would establish a "tripartite panel" with one member of the Grievance Board appointed by agency management, one by the bargaining representative, and one by each of the other two members from a roster agreed upon by the Secretary and the bargaining representative. Tri-partite panels are a common feature of dispute resolution mechanisms for professional public servants.

2. Definition of grievance.

The proposed Foreign Service Act (H.R. 6790/S. 3058) appears to exclude from the grievance procedure low-ranking decisions by the selection boards. With the limitation on time-in-class found in the Foreign Service personnel system, improper low-ranking can quickly result in an officer's being selected out improperly. Thus, the legality and validity of an initial low-ranking decision is crucial to an officer's career.

Under current law, a low-ranking decision must be accompanied by a statement of reasons documented by the performance file. Failure to comply with this and other requirements can now be successfully challenged before the Grievance Board. The process by which low-ranking decisions are made is sufficiently imperfect that some officers have even persuaded management officials at the Department level to overturn low-ranking decisions. The bill's proponents do not appear to have offered any justification for narrowing the scope of grievances from current law and have neither identified nor explained their proposed immunity for improper and invalid low-ranking decisions.

The proposed act would also expressly allow the Department and a bargaining representative to further restrict by agreement an officer's statutory right to resolve a grievance.

As passed by the Senate in two earlier Congresses, the proposed grievance bill (H.R. 7546/S. 2712) would expand the definition of grievance to include promotion decisions. This bill also contains express coverage for all violations of due process. All actions grievable under current law would continue to be grievable under the expanded scope of grievances in this bill. Although the Senate Committee on Foreign Relations added general language to the prefatory section of S. 3058 urging that the Foreign Service be governed by due process principles, the Committee did not expand the bill's definition of grievance to include due process violations specifically.

3. Freedom of action.

Under current law, a grievant is entitled to have the grievance processed by a reasonable number of representatives chosen by the grievant. Some grievants have preferred to avoid using lawyers and instead rely on a couple of colleagues to be their representatives. This practice has facilitated the thorough and expeditious processing of grievances. The Fund knows of no general assertion by the Department that excessive representation has been sought under current law.

The House bill (H.R. 6790) would require that a grievant be represented by the exclusive bargaining agent for the bargaining unit to which the employee belongs (AFSA for State and IDCA, AFGE or USICA). No longer would the Foreign Service member be able to choose his or her own representatives and use the grievance procedure without the bargaining agent. The Department's explanation for this change included an erroneous conclusion that such practice is common elsewhere and omits the obvious reference to 5 U.S.C. 7114(a)(5) which grants to civil servants using a statutory procedure the right to select their own representative.

The Senate bill (S. 3058) would allow an employee to choose a representative other than the exclusive bargaining agent, but its language omits any reference to the "reasonable number of representatives" found in several sections of the current law. This omission could allow the Department to claim that the existing right to a reasonable number of representatives has been repealed.

4. Decisions of the board.

Under current law, certain decisions of the Board are not binding on the Department. These decisions include those on reinstatement, promotion, assignment, or disciplinary action, and those providing remedial action which is not stated specifically in the statute. The Department may ignore the Board decision on these subjects if it claims that the "needs of the Service" or that the "efficiency of the Service" justifies such action. Experience indicates that the Department is quite willing to exercise this discretionary right to reject third-party decisions.

The proposed act (H.R. 6790/S. 3058) would eliminate both efficiency and the needs of the service as grounds for rejecting a Board decision. The bill would still allow the Department to ignore a Board decision if, in the opinion of the Department, the decision was contrary to law or would adversely affect foreign policy or national security. As with access to written records (below), the bill appears to leave the determination that a decision is contrary to law solely with that side in the dispute which had already been found by the Grievance Board to have engaged in illegal or improper conduct.

The grievance bill (H.R. 7546/S. 2712) specifies that only the Secretary himself may reject a recommendation of the Grievance Board, and then only for national security or foreign policy reasons with full documentation required.

5. Access to written records.

Current law requires that the Department supply a grievant with records which the grievant requests and the Board believes are relevant and material. If the head of the Department or his deputy determines that disclosure would adversely affect foreign policy or national security, access to the record is barred. The agency determination is final, subject to judicial review.

The proposed act (H.R. 6790/S. 3058) seems to provide the Department with additional rationales, and thus opportunities, for refusing to disclose information even when that information is relevant to the grievance. In allowing the Department to refuse to decide whether disclosing particular information is prohibited by law, the bill could be interpreted to give the Department unilateral and final authority to determine whether a grievant is entitled to access to agency documents.

The grievance bill (H.R. 7546/S. 2712) would require the Department to furnish the grievant with any document he requests that the Board determines is relevant and material. Where bona fide security concerns exist, the bill directs the Department to expedite necessary security clearances.

Currently, the Department too often refuses to provide information in a timely fashion even when such information could forestall a grievance. No bill addresses this practice of delay and waste and expense it causes.

CONCLUSION

The proposed Foreign Service Act would radically alter the existing structure for resolving grievance in the Foreign Service. The legislation would deprive Service members of the right to challenge instances of agency misconduct that are currently grievable. It would allow the agencies to appoint the Grievance Board unilaterally. It would then allow this agency-appointed entity to further restrict the grievance procedure over the objections of employee representatives. All these changes depart from the well-established principles governing the resolution of disputes.

State Department Officials drafted many of these changes in oblique language. Since the changes almost uniformly favor the Department at the expense of the members of the Foreign Service, and the Department has not publicized their impact within the foreign affairs community, the proposed legislation must be seen as a covert attempt to disrupt and dismantle the Foreign Service grievance procedure.

Mr. HELMS. Mr. President, I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Ohio (Mr. GLENN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. McGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Georgia (Mr. NUNN), the Senator from Mississippi (Mr. STENNIS), the Senator from Alabama (Mr. STEWART), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 36, nays 45, as follows:

[Rollcall Vote No. 403 Leg.]

YEAS—36

Armstrong
Baucus
Bayh
Bellmon
Boschwitz
Chafee
Cochran
Cohen
DeConcini
Dole
Domenici
Ford
Garn
Hatch
Hatfield
Heinz
Helms
Humphrey
Jepsen
Johnston
Kassebaum
Laxalt
Levin
Lugar
Mathias
McClure
Melcher
Roth
Sarbanes
Sasser
Schweiker
Simpson
Stevens
Thurmond
Wallop
Zorinsky

NAYS—45

Bentsen
Biden
Boren
Bradley
Bumpers
Burdick
Byrd,
  Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Church
Danforth
Durenberger
Exon
Gravel
Hart
Hayakawa
Heflin
Hollings
Huddleston
Inouye
Jackson
Leahy
Long
Magnuson
Matsunaga
Metzenbaum
Mitchell
Morgan
Moynihan
Packwood
Pell
Percy
Proxmire
Pryor
Randolph
Ribicoff
Riegle
Schmitt
Stevenson
Tsongas
Warner
Weicker
Williams
Young

NOT VOTING—19

Baker
Cranston
Culver
Durkin
Eagleton
Glenn
Goldwater
Javits
Kennedy
McGovern
Nelson
Nunn
Pressler
Stafford
Stennis
Stewart
Stone
Talmadge
Tower

So Mr. HELMS' amendment (UP No. 1574) was rejected.

AMENDMENT NO. 2304

(Purpose: To require the Secretary to notify Congress of the number of Foreign Service personnel assigned to positions higher or lower than their personal rank)

Mr. HELMS. Mr. President, I call up amendment No. 2304 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2304.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 54, at the end of line 24, add the following sentence: "The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.".

Mr. HELMS. Mr. President, official State Department figures furnished to me by the Congressional Budget Office show that at the present time the Foreign Service has a total of 1,550 officers in classes 1 and 2, but according to State's own classification system, there is a need for only 1,236. That means that there is an overcomplement of 314.

This information is more than double the totals which I had been told before. That is a 25 percent overstaffing in the upper ranks—counting by the Department's own measurement. This clearly shows that the selection-out process is not working.

Moreover, this is based on a job-classification system of State's own devising. I would suggest that an objective job-classification system, such as has been used throughout the government for 50 years, might come up with a different measure.

Mr. President, this legislation (S. 3058) requires that all jobs in the Foreign Service be classified as to skill and other job factors required. My amendment would require the Secretary to inform Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names of such personnel would be transmitted on a confidential basis to assure privacy and national security.

This is just an amendment which would enable Congress to keep better check on the efficiency of the administration of the Foreign Service. At the moment we do not know whether a large number or a small number of officers are assigned to positions which are above or below their grades and salary levels. I think this information should be available to Congress on a regular basis, and that is the purpose of this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TSONGAS). Without objection, it is so ordered.

Mr. PELL. Mr. President, as I understand this amendment, all it does, and I am reading the text, it requires:

The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

What this amendment does is require an annual report. I have discussed this with my colleagues and the administration and believe it is an acceptable amendment. I ask that it be supported.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, it is true that most Foreign Service personnel are assigned to positions identical to their own personal rank, but somewhat more members are serving above their personal grade than below. I think that the amendment, therefore, would be perfectly in order. There is no opposition at all to submitting such a report. From this side of the aisle, I know of no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina (Mr. HELMS).

The amendment (No. 2304) was agreed to.

● Mr. BAUCUS. Mr. President, I rise in support of S. 3058, the Foreign Service Act of 1980, which is the bipartisan product of several years of study and experience, and which is well-designed to strengthen the Foreign Service of the United States and the conduct of foreign policy.

Events of recent years have vividly demonstrated the need for a strong, professional Foreign Service. The men and women of our Foreign Service are called upon to serve all over the world, often under difficult or hostile conditions. Their task is of vital importance to the security of the United States and to the cause of peace. The legislative basis for the present-day Foreign Service goes back to 1946; the world has changed enormously since then, and so have the demands on our Foreign Service people operating on the front lines in carrying out America's relations with other nations—both friends and adversaries, rich and poor.

I have examined the major provisions of the bill under consideration, and I am satisfied that it brings the mandate and structure of the Foreign Service abreast of the times we now live in; it is an excellent basis for the future development of our professional Foreign Service. This act delineates clearly the criteria characterizing the Foreign Service and setting it apart from the Civil Service, emphasizing the principle of availability for assignment worldwide.

It provides for the highest standards for initial hiring and for promotions and assignments throughout the career, establishing a framework for thorough training in foreign languages and the many other skills of particular importance in the conduct of international relations. At the same time, the present legislation establishes a structure parallel to that of the Civil Service in areas where the two personnel systems are compatible, such as in the establishment of a Senior Foreign Service essentially similar to the Senior Executive Service, and in the commitment to Equal Employment Opportunity.

The Foreign Service Act of 1980 will set our Foreign Service on a sound footing for many years to come, while resolving areas of confusion and inequities that have crept in over the years since passage of the 1946 act. It is appropriate that in this year when members of the Foreign Service have been subjected to extreme risks, even of life and liberty, that this body should manifest by passage of this act its concern and high regard for the men and women of the Foreign Service and for the key role they play in the conduct of foreign relations.

I congratulate the managers of the legislation, of both parties and in both houses of Congress, for the excellent work they have done in preparing this act for our favorable consideration, and I urge my colleagues to join me in voting for its passage.●

● Mr. DOLE. Mr. President, the Senator from Kansas rises to speak today in favor of S. 3058, the Foreign Service Act of 1980. This is a piece of legislation long overdue, and many years in the making. Before addressing the merits of the bill, however, I would like to add to the comments of my colleagues in expressing appreciation to the Senator from North Carolina (Mr. HELMS) for his efforts on this subject. The provisions of this bill, which reform and consolidate the Foreign Service legislation enacted since the last comprehensive Foreign Service Act of 1946, have been worked out carefully over a period of years. Many compromises were required before the legislation could reach this point of final passage. The bill is complex, arcane in many areas, and the result of numerous hearings and studies, both by the Congress and the State Department.

In my opinion of the Senator from Kansas, Senator HELMS has done the Senate a signal service by subjecting the committee bill to a final scrutiny. It is necessary in a bill such as this to make sure that the bill as a whole carries out the spirit and intent of its many parts. By offering the substitute for the committee bill and several amendments, the Senator from North Carolina has caused many of his colleagues to review the pending legislation with a sharper focus than otherwise might be the case, and I thank the distinguished Senator from North Carolina.

EQUITY IN PAY

One of the major revisions in this bill is an attempt to make Foreign Service officer (FSO) salary levels relate more closely to other Government pay structures, while reflecting the extra hazards, dangers, and material inconveniences that being in the Foreign Service or our Nation entails. As I have expressed before, the Foreign Service Reform Act is the product of years of discussion and a great deal of lobbying and compromise this year. The House version passed 239 to 78. It has a very good and equitable pay structure which addresses the inadequacies of the present situation, which have occurred over the past several years. The Senate version is very similar; the major difference appears to be the administration attempt to lower the proposed adjustments in pay by using nonspecific language in the Senate bill, in the hope that a lower figure can be reached as a compromise with the House level in a conference.

The Foreign Service, like the military, has been losing people particularly at the midlevels, and suffers from low morale. The FSO organization essentially claims that the administration's pay structure would equate Foreign Service salaries with comparable Civil Service positions, but not adequately take into account the hazards of FSO careers and the expenses and inconveniences of constant moving overseas. It is estimated, for instance, that for every year served in subequatorial Africa a Foreign Service officer can expect a statistical decrease of several years in life span due to chronic disease or debilitating illness. It is the opinion of the Senator from Kansas that a revision in pay scale, particularly at the midlevels, is long overdue.

SPOUSE RIGHTS

A major amendment, incorporated in the Senate bill, is a provision to allow former wives of FSO's who were unable to pursue careers while accompanying their spouses around the world, to collect part of the pensions after a divorce. The amount would be determined in court during the divorce proceeding. There are some who would delete this provision, prefering to leave to the courts any decision involving alimony and claiming that the courts already have the power to adjudicate the issue. This is not the case in some States and leaves in many cases the divorcee unprotected in the event the FSO dies.

The Senator from Kansas feels the wife of any American diplomat often plays a vital role in representing the United States in international relationships. Frequently in the past she has been expected to be knowledgeable of the affairs of state, culture, language, and social customs acceptable in the country in which her spouse serves. Countless hours have been devoted to the community, all without payment of any kind.

The time and talent diplomatic wives have contributed to our Nation should not be pushed aside, deminished, nor forgotten due to the termination of marriage. As our present laws now stand she has little security against financial disaster. Nor does she have protection under present social security laws since most often the Foreign Service wife is not permitted to pursue her own career while overseas. The passage of this bill will update and strengthen our laws as well as assure and provide the former wives with adequate financial protection upon dissolution of the marriage.

In summary, Mr. President, I believe this bill represents progress in modernizing the Foreign Service while building on the foundations of our postwar tradition of bipartisan foreign policy, administered by a nonpartisan Foreign Service officer corps. The widespread consensus among U.S. diplomats—and I might add that the last three Secretaries of State, at least, support this bill, covering both Republican and Democratic administrations—seems to favor the preservation of the Foreign Service as a separate, special designed corps. This legislation recognizes this long-term development and through its changes on pay and other matters, will hopefully add to its future stability and excellence.●

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Third reading.

Mr. PELL. Mr. President, I suggest third reading.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6790.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

The Senate proceeded to consider the bill.

Mr. PELL. Mr. President, I move to strike out all after the enacting clause of H.R. 6790 and substitute therefor the text of S. 3058, as amended.

The PRESIDING OFFICER. Is there objection to the motion? If not, the motion is agreed to.

The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

The bill (H.R. 6790) was passed, as follows:

H.R. 6790

Resolved, That the bill from the House of Representatives (H.R. 6790) entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Foreign Service Act of 1980".

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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Sec. 2. Table of contents

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TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

CHAPTER 1—GENERAL PROVISIONS

SEC. 101. FINDINGS AND OBJECTIVES.—(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this Act is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances that will insure the fullest measure of due process for the members of the Foreign Service;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service personnel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

SEC. 102. DEFINITIONS.—(a) As used in this Act, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5, United States Code;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 1002(8)) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5, United States Code;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of State, except that (subject to section 201(b)) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(b) References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers.

SEC. 103. MEMBERS OF THE SERVICE.—The following are the members of the Service:

(1) Chiefs of mission, appointed under section 302(a)(1) or assigned under section 502(c).

(2) Ambassadors at large, appointed under section 302(a)(1).

(3) Members of the Senior Foreign Service, appointed under section 302(a)(1) or 303, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 302(a)(1), who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 303, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 303, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 303 by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

SEC. 104. FUNCTIONS OF THE SERVICE.—Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States

is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

SEC. 105. MERIT PRINCIPLES; PROTECTIONS FOR MEMBERS OF THE SERVICE; AND MINORITY RECRUITMENT.—(a) (1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit principles.

(2) For purposes of paragraph (1), the term "personnel action" means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this Act which relates to any action referred to in subparagraph (A).

(b) The Secretary shall administer the provisions of this Act and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited under section 2302(b)(1) of title 5, United States Code;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Department of State and the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5, United States Code.

(c) This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d) (1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5, United States Code.

(2) Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report, signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.

(e) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

CHAPTER 2—MANAGEMENT OF THE SERVICE

SEC. 201. THE SECRETARY OF STATE.—(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this Act.

SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) (1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Number 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

(b) Subject to section 201(b)—

(1) the agency heads referred to in subsection (a), and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other act).

shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act.

SEC. 203. COMPATIBILITY AMONG AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this chapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

SEC. 204. CONSOLIDATED AND UNIFORM ADMINISTRATION OF THE SERVICE.—The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695)) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

SEC. 205. COMPATIBILITY BETWEEN THE FOREIGN SERVICE AND OTHER GOVERNMENT PERSONNEL SYSTEMS.—The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

SEC. 206. REGULATIONS; DELEGATION OF FUNCTIONS.—(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this Act.

(b) The Secretary may delegate functions under this Act which are vested in the Secretary to any employee of the Department or any member of the Service.

SEC. 207. CHIEF OF MISSION.—(a) Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(3) shall submit a report describing the foreign language competence of the chief of mission and the mission staff in the principal language or other dialect of the country to the chairmen of the Senate Foreign Relations and House Foreign Affairs Committees within six months of assuming the post.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transitions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operation meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those communities, the Secretary of State shall make copies of them available to the public request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

SEC. 210 BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State and shall include one or more representatives of the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

SEC. 211. BOARD OF EXAMINERS FOR THE FOREIGN SERVICE.—(a) The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 301(b) to be given to candidates for appoinment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agenices utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) The Board of Examiners shall periodically review the examinations prescribed under section 301(b) in order to determine—

(1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;

(2) methods of minimizing any such adverse impact;

(3) alternatives to any examinations which have such an adverse impact; and

(4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 301(b).

(c) Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

CHAPTER 3—APPOINTMENTS

SEC. 301. GENERAL PROVISIONS RELATING TO APPOINTMENTS.—(a) Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

(b) The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

(c) The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term "veteran or disabled veteran" means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5, United States Code.

(d)(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment.

SEC. 302. APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B) No person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister with the advice and consent of the Senate or in accordance with clause 3, section 2, of article II of the Constitution relating to recess appointments, except in accordance with this subparagraph. The personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding 6 months: *Provided*, That the President, 30 days prior to conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank, the necessity for conferring it, the dates during which the rank shall be held, and the justification for not submitting the nomination for Senate advice and consent prior to such appointment, and transmits therewith all materials relating to any potential conflict of interest relevant to such person.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

SEC. 303. APPOINTMENTS BY THE SECRETARY.—The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 302(a)) in accordance with this Act and such regulations as the Secretary may prescribe.

SEC. 304. APPOINTMENT OF CHIEFS OF MISSION.—(a)(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(4) The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve.

(b)(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

SEC. 305. APPOINTMENT TO THE SENIOR FOREIGN SERVICE.—(a) Appointment to the Senior Foreign Service shall be to a salary class established under section 402, and not to a position.

(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

SEC. 306. CAREER APPOINTMENTS.—(a) Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 303, or

(2) to recommend to the President that the candidate be given a career appointment under section 302.

(b) Decisions by the Secretary under subsection (a) shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

SEC. 307. ENTRY LEVELS FOR FOREIGN SERVICE OFFICER CANDIDATES.—A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 404 to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications and experience of the candidate, foreign language competence and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

SEC. 309. LIMITED APPOINTMENTS.—A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in section 311(a), may not be extended or removed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

SEC. 310. REEMPLOYMENT RIGHTS FOLLOWING LIMITED APPOINTMENT.—Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5, United States Code.

SEC. 311. EMPLOYMENT OF FAMILY MEMBERS OF GOVERNMENT EMPLOYEES.—(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 408.

(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.

(c) The Secretary of State shall prescribe regulations governing the employment at Foreign Service posts abroad of family members of Government employees by all agencies and other Government establishments (including establishments in the legislative or judicial branch).

SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) The Secretary of State shall define the limits of consular districts.

CHAPTER 4—COMPENSATION

SEC. 401. SALARIES OF CHIEFS OF MISSION.—(a) Except as provided in section 302(b), each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, United States Code.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

SEC. 402. SALARIES OF THE SENIOR FOREIGN SERVICE.—(a) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

(b)(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5, United States Code, and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5, United States Code, immediately prior to such appointment.

SEC. 403. FOREIGN SERVICE SCHEDULE.—The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this chapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay payable for GS-15 of the General Schedule under section 5332 of title 5, United States Code. Salary rates established under this section shall be adjusted in accordance with subchapter 1 of chapter 53 of title 5, United States Code.

SEC. 404. ASSIGNMENT TO A SALARY CLASS.—(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 407 or who are family members of Government employees paid in accordance with a local compensation plan established under section 408) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under chapter 5.

(2) Except as authorized by subchapter I of chapter 35 of title 5, United States Code, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with chapter 6. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5, United States Code, and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

SEC. 405. PERFORMANCE PAY.—(a) Members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 310 as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 402 and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

(b) Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5, United States Code, and rank awards under section 4507 of title 5, United States Code. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed $10,000 in any fiscal year, except that payments of up to $20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5, United States Code, as in effect at the end of that fiscal year.

(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by boards established under section 602.

(d) The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

SEC. 406 WITHIN-CLASS SALARY INCREASES.—(a) Any member of the Service receiving a salary under the Foreign Service Schedule shall receive an increase in salary at periodic intervals to the next higher rate for the salary class in which such member is serving unless the performance of the member during any such interval is found in a review by a selection board established under section 602 to fall below the standards of performance for his or her salary class.

(b) The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

SEC. 407. SALARIES FOR FOREIGN SERVICE PERSONNEL ABROAD WHO PERFORM ROUTINE DUTIES.—(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule by section 403 for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 6(a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1)).

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to the lowest class in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

SEC. 408. LOCAL COMPENSATION PLANS.—(a) (1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 6 (a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1)). Any compensation plan established under this section may include provision for leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, United States Code.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(b) For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this Act.

(c) The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

SEC. 409. SALARIES OF CONSULAR AGENTS.—The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 6 (a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a) (1)).

SEC. 410. COMPENSATION FOR IMPRISONED FOREIGN NATIONAL EMPLOYEES.—(a) The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this section.

(b) Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, United States Code, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

SEC. 411. TEMPORARY SERVICE AS PRINCIPAL OFFICER.—For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5535 and 5536 of title 5, United States Code, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

SEC. 412. SPECIAL DIFFERENTIALS AND PREMIUM PAY.—(a) The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

SEC. 413. DEATH GRATUITY.—(a) The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) A death gratuity payment under this section shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) As used in this section—

(1) the term "Foreign Service employee" means any member of the Service or United States representative to an international organization or commission; and

(2) each of the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term by section 8101 of title 5, United States Code.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SEC. 501. CLASSIFICATION OF POSITIONS.—The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, United States Code, in relation to the salaries established under chapter 4. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

SEC. 502. ASSIGNMENTS TO FOREIGN SERVICE POSITIONS.—(a) (1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 501 in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require. The Secretary shall notify Congress annually of the numbers of Foreign Service personnel who are assigned to positions classified more than one grade higher or lower than the personal rank of the Foreign Service member. The names and grades of such personnel shall be transmitted in a confidential manner to assure privacy and to safeguard national security.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

(1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and

(2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 102(a)(3) by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

SEC. 503. ASSIGNMENTS TO AGENCIES, INTERNATIONAL ORGANIZATIONS, AND OTHER BODIES.—(a) The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b)(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

SEC. 504. SERVICE IN THE UNITED STATES AND ABROAD.—(a) Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon asignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, United States Code, which apply to sabbaticals granted to members of the Senior Executive Service.

SEC. 505. TEMPORARY DETAILS.—A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this chapter.

CHAPTER 6—PROMOTION AND RETENTION

SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 303 to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are asigned to a class in the Foreign Service Schedule, are promoted by appointment under section 302(a) as career members of the Senior Foreign Service or by assignment under section 404 to a higher salary class in the Foreign Service Schedule.

(b) Except as provided in section 606(a), promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 602, except that the Secretary may by regulation specify categories of career members, and categories of career candidates, assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c)(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class FS–1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 607(a)) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of indiivduals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5, United States Code, shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

SEC. 602. SELECTION BOARDS.—(a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 601;

(2) awards of performance pay under section 405(c);

(3) denials of within class step increases under section 406(a);

(4) offer or renewal of limited career extensions under section 607(b); and

(5) such other actions as the Secretary may prescribe by regulation.

(b) All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

SEC. 603. BASIS FOR SELECTION BOARD REVIEW.—(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of current language test scores from the Foreign Service Institute, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

SEC. 604. CONFIDENTIALITY OF RECORDS.—The records described in section 603(a) shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

SEC. 605. IMPLEMENTATION OF SELECTION BOARD RECOMMENDATIONS.—(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a), in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

SEC. 606. OTHER BASES FOR INCREASING PAY.—(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 302(a);

(2) promote a member of the Service under section 303;

(3) grant performance pay to a member of the Senior Foreign Service under section 405(c); or

(4) grant a within-class salary increase under section 406 to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 605(b), the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

SEC. 607.—RETIREMENT FOR EXPIRATION OF TIME IN CLASS.—(a) (1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Members of the Service whose maximum time in class under subsection (a) expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, which they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 602. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Any member of the Service—

(1) whose maximum time in class under subsection (a) expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 609, subject to any career extension under subsection (d) of this section.

(d) Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) expires, or whose limited career extension under subsection (b) expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

SEC. 608. RETIREMENT BASED ON RELATIVE PERFORMANCE.—(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 609.

SEC. 609. RETIREMENT BENEFITS.—(a) A member of the Service—

(1) who is retired under section 607(c) (2); or

(2) who is retired under section 607(c) (1) or 608(b)—

(A) after becoming eligible for voluntary retirement under section 811, or

(B) from the Senior Foreign Service or while assigned to class FS-1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.

(b) Any member of the Service (other than a member to whom subsection (a) applies) who is retired under section 607 (c)(1) or 608(b) shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund is provided in section 815 of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 806, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 809.

SEC. 610. SEPARATION FOR CAUSE.—(a) (1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106 and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

(b) Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) shall be entitled to receive a refund as provided in section 815 of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 806, commencing at age 60.

SEC. 611. TERMINATION OF LIMITED APPOINTMENTS.—Except as provided in section 610(a) (2), the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule, or who is a family member of a Government employee serving under a local compensation plan established under section 408.

SEC. 612. TERMINATION OF APPOINTMENTS OF CONSULAR AGENTS AND FOREIGN NATIONAL EMPLOYEES.—(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

SEC. 613. FOREIGN SERVICE AWARDS.—The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involve distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SEC. 701. FOREIGN SERVICE INSTITUTE.—(a) The Secretary of State shall maintain and operate the Foreign Service Institue (hereinafter in this chapter referred to as the "Institute"), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The Institute shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) To the extent practicable, the Secretary of State shall provide training under this chapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the Institute and otherwise.

SEC. 702. FOREIGN LANGUAGE REQUIREMENTS.—(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the Institute or otherwise in order to assist in meeting the requirements established under subsection (a).

SEC. 703. TRAINING AUTHORITIES.—(a) In the exercise of functions under this chapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the Institute, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the Institute with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the Institute, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this chapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be necessary to carry out the provisions of this chapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipemnt as may be necessary for the establishment, maintenance, and operation of the facilities necessary to carry out the provisions of this chapter without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) and section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252).

(b)(1) The Secretary shall establish a professional development program to assure that members of the Foreign Service obtain the skills and knowledge required at the various stages of their careers. With regard to Foreign Service Officers (including Foreign Service Information Officers) primary attention shall be given to training for career candidate officers and for midcareer officers, both after achieving tenure and as they approach eligibility for entry to the Senior Foreign Service, to enhance and broaden their qualifications for more senior levels of responsibility in the Foreign Service. Training for other members of the Service shall emphasize programs designed to enhance their particular skills and expert knowledge.

(2) Junior Foreign Service Officer training shall be directed primarily toward providing expert knowledge in the basic functions of analysis and reporting as well as in consular, administrative and linguistic skills relevant to the full range of future job assignments. Midcareer training shall be directed toward develpoment and perfection of management, functional, negotiating and policy development skills to prepare the officers progressively for more senior levels of responsibility.

(3) Training for other members of the Service shall be directed toward maintaining and improving their professional expert knowledge, including development of the management skills appropriate to their occupational categories.

(4) In each case the program of professional development should be designed to provide members of the Service with the opportunity to acquire skills and knowledge relevant to clearly established professional standards of expected performance. Career candidates should satisfactorily complete such training prior to attainment of career status. All members of the Service should satisfactorily complete mid-career training before appointment to the Senior Foreign Service.

(5) In formulating programs under this subsection, the Secretary should establish a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate-level, university courses.

(6) Training provided under this subsection shall be conducted by the Department and by other governmental and nongovernmental institutions as may be considered appropriate by the Secretary.

(7) The Secretary shall report annually to the Congress and the President on the status of the professional development program and the resources needed and made available to achieve it. The first such report, to be submitted 90 days after the effective date of this Act, shall set out the resources required to initiate the program established by this subsection successfully.

(c) In furtherance of the objectives of this Act, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 411) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(d) The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 311.

SEC. 704. TRAINING GRANTS.—(a) To facilitate training provided to members of families of Government employees under this chapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) If a member of the Service who is assigned abroad, or a member or his or her family, is unable to participate in language training furnished by the Government through the Institute or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

SEC. 705. CAREER COUNSELING.—(a) In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b)(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and non-governmental employment opportunities available to them; and

(C) otherwise assisting them in obtaining employment.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 801. ADMINISTRATION OF THE SYSTEM.—In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this chapter referred to as the "System"), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

SEC. 802 MAINTENANCE OF THE FUND.—The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this chapter referred to as the "Fund"), originally created by section 18 of the Act of May 24, 1924, (43 Stat. 144).

SEC. 803. PARTICIPANTS.—(a) The following members of the Service (hereinafter in this chapter referred to as "participants") shall be entitled to the benefits of the System:

(1) Every member serving under a career appointment or as a career candidate under section 306—

(A) in the Senior Foreign Service, or

(B) who is assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 805.

(b) Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

SEC. 804. DEFINITIONS.—As used in this chapter, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State or of the District of Columbia;

(4) "court order" means any court decree of divorce or annulment, or any court order or court-approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 816;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a participant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service of that participant is of (B) the total number of years of such creditable service;

(11) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bonda fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(12) "surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding his or her death or is a parent of a child born of the marriage; and

(13) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c)(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d).

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund equal to the following percentages of basic salary received for such service:

Time of service:	*Percent of basic salary*
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, United States Code, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 816.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(e) Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 816 for periods of internment during World War II.

(f) A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 816 and 817, except that the highest 3 years of service shall be used in computing the annuity of any participant who serves an assignment under section 302(b) in a position to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 805(d) which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(b)(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 814(b), or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 814(b) if the spouse later qualifies as a former spouse under section 804(6)), or to reduce such survivor annuity by designating a portion of the annuity of the participant as the base for the survivor benefit.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect in writing to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 814(b)), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 814(a)(5).

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a), or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 814(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 814(b)(4)(B).

(C) An annuity payable from the Fund to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before (a) the surviving spouse's death or (b) if the surviving spouse remarries before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c)(1) If an annuitant who was a participant dies and is survived by a spouse and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

(A) $900, or

(B) $2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

(A) $1,080, or

(B) $3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

(A) cost-of-living adjustments as specified under section 826(c)(3), and

(B) the minimum specified in subsection (l)(2) of this section.

(d) If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) The annuity payable to a child under subsection (c) or (d) shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 804(12)). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b)(2) and (3). The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i)(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 823 shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least one year at the time of death or who is a parent of a child born of the marriage.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 of this Act in any case in which an annuitant has a former spouse who was married to the participant during a period of recall service and who qualifies for an annuity under section 814(b).

(j) An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 814(b)(5)), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b).

(k) The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsection (g) and (j); and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 814.

(l)(1) The monthly rate of an annuity payable under this chapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) The monthly rate of an annuity payable under this chapter to a surviving child shall not be less than the smallest primary

insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

SEC. 807. PAYMENT OF ANNUITY.—(a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this Act shall become effective on the day he or she attains age 60.

(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayments under this chapter may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 810 as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 815, except that he or she may elect voluntary retirement if eligible under section 811.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, United States Code, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this subsection nor any provision of such subchapter shall be construed to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other individual.

(e) Notwithstanding any other law, the right of any individual entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this Act, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, which is earlier.

SEC. 809. DEATH IN SERVICE.—(a) If a participant dies and no claim for annuity is payable under this Act, the lump-sum credit shall be paid in accordance with section 815.

(b) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 814 (b), such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 806(a) and any surviving former spouse shall be entitled to an annuity under section 814 (b) as if the participant died after being entitled to an annuity under this chapter. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 308 and is survived by a spouse or former spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 823. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 806 (i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this chapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) on the basis of the total service of the annuitant.

(g) Notwithstanding subsection (b), if the participant or former participant had a former spouse qualifying for an annuity under section 814(b), the annuity of the spouse under this section shall be subject to the limitation of section 806(b)(3)(B).

(h) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 806, as appropriate.

SEC. 810. DISCONTINUED SERVICE RETIREMENT.—Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 815, or to leave his or her contributions in the Fund and receive an annuity, computed under section 806, commencing at age 60.

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 812. MANDATORY RETIREMENT.—(a) Except as provided in susbection (b), any participant shall be retired from the Service at the end of the month in which the participant reaches age 60 if the participant has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and shall receive retirement benefits in accordance with section 806.

(b) Any participant who reaches age 60 while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated. In addition, whenever the Secretary determines it to be in the public interest, any participant who has reached age 60 may be retained on active service for a period not to exceed 5 years. Any participant who completes a period of service after reaching age 60 as authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

SEC. 813. RETIREMENT OF FORMER PRESIDENTIAL APPOINTEES.—If a participant completes an assignment under section 302(b) in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 806.

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant through such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this title or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant or former participant shall be reduced by the amount of an annuity under this subsection of any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this chapter, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 806 (b)(3).

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 308, or reinstated or reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 824, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the later of the date the participant would qualify on the basis of his or her creditable service for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 806(h) or any comparable provision of law.

(b)(1) Subject to any election under section 806(b)(1)(C) and unless otherwise expressly provided by any court order under section 820(b)(1), if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entiled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 806(a); or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years af age.

(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 806(b)(3) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 806(a).

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 806(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 820(b)(1) may not adjust the amount of the annuity of any former spouse under this section.

(5) For each full month after a former spouse of a participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced unless the participant is then married and elects in writing within one year after the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 806(b)(3) for any spouse of the participant.

(c)(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) for a former spouse—

(A) such participant may elect, or

(B) a court order under section 820(b)(1) may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities elected or ordered under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 806(b)(3), shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 806(a).

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved shall provide for any annuity under this subsection—

(i) by a reduction in the annuity or salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination of such reduction and payments.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity or salary reduction under subparagraph (A) is in effect for that spouse or former spouse, the annuity or salary shall be recomputed and paid as if it had not been reduced, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 826 shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(d) Section 806(1) shall not apply—

(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a court order under section 820(b)(1) from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such court order; and

(2) to any annuity payable under subsection (c).

SEC. 815. LUMP-SUM PAYMENTS.—(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this chapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)).

(b) Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 823 the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i)).

(c) If all annuity rights under this chapter based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (f).

(d) If a participant or former participant dies and is not survived by an individual eligible for an annuity under this chapter or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (f).

(e) If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f).

(f) Payments under subsection (c) through (e) shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the patricipant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 804(2)) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointment executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amounts deducted and withheld from basic salary of a participant under section 805 from the beginning of the first pay period after the participant has completed 35 years of service computed under section 816 (excluding service credit for unused sick leave under section 816(b)), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 805 (d), and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection (f).

(i) Unless otherwise expressly provided by any court order under section 820(b)(1), the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

SEC. 816. CREDITABLE SERVICE.—(a) Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5, United States Code), shall be creditable for purposes of this chapter. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this chapter under the same conditions.

(b) In computing any annuity under this chapter, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 806 (a)) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this chapter. A contribution to the Fund shall not be required from a participant for this service credit.

(c)(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods or leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 805. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 805. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 805 covering such service.

(f) A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this chapter, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 815. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g)(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(1) of title 5, United States Code, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credit or annuity recomputed under this subsection of their entitlement to such credit of recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332 (1) of title 5, United States Code, of any participant.

(h) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this chapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i)(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this chapter relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) but for the fact an election was not made under subsection (c)(1) or a special contribution was not made under subsection (c)(2), and

(B) under subsection (d) but for the fact that a refund of contributions has not been repaid unless the former spouse received under this chapter a portion of the lump sum (or a court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant—

(A) for periods assumed to be creditable service under section 808(a) or section 809 (e), or

(B) for any extra period of creditable service provided under section 817 for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.

SEC. 817. EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS.—The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.

SEC. 818. ESTIMATE OF APPROPRIATIONS NEEDED.—The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding $5,000 per year for the incidental expenses necessary in administering the provisions of this chapter, including actuarial advice.

SEC. 819. INVESTMENT OF THE FUND.—The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

SEC. 820. ASSIGNMENT AND ATTACHMENT OF MONEYS.—(a)(1) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3477 of the Revised Statutes of the United States (31 U.S.C. 203) or any other law, a member of the Service who is entitled to receive benefits under section 609(b)(1) may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b)(1)(A) In the case of any participant or annuitant who has a former spouse with respect to whom there is a court order—

(i) any right of any former spouse to any annuity under section 814(a) in connection with any retirement or disability annuity of the participant, and the amount of any annuity under such section 814(a);

(ii) any right of a former spouse to a survivor annuity under section 814 (b) or (c), and the amount of any such annuity under section 814 (b) or (c) for any surviving former spouse of the participant or annuitant; and

(iii) any right of any former spouse to any payment of a lump-sum credit under section 815 (a) or (b); shall be determined in accordance with a court order, if and to the extent expressly provided for in the terms of that court order.

(B) This subsection shall not apply in the case of any court order which is inconsistent with the requirements of this chapter, as determined by the Secretary of State.

(2) Except with respect to obligations between participants and former spouses, payments under this chapter which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(f) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 804(b)(6), or any other provision of this chapter, shall not be construed to affect the rights of any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this chapter.

(c) None of the moneys mentioned in this chapter shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

SEC. 821. PAYMENTS FOR FUTURE BENEFITS.—(a) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 825;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 805(a).

SEC. 822. UNFUNDED LIABILITY OBLIGATIONS.—(a) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service.

(b) Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Requests for appropriations to the Fund under section 821(b) shall include reports to the Congress on the sums credited to the Fund under this section.

SEC. 823. ANNUITY ADJUSTMENT FOR RECALL SERVICE.—(a) Any annuitant recalled to duty in the Service under section 308(a) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 805. On the day following termination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 825 that became effective during the recall period.

(b) If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 815. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 806 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 806 in lieu of any other benefits under this section. Any annuitant who is recalled under section 308 may upon written application count as recall service any prior service that is creditable under section 816 that was performed after the separation upon which his or her annuity is based.

SEC. 824. REEMPLOYMENT.—(a) Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this chapter, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary the member would be entitled to receive under this Act if currently employed in the Foreign Service class which the Secretary determines most comparable to the class the member held on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits under this chapter.

(b) When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this chapter.

SEC. 825. VOLUNTARY CONTRIBUTIONS.—(a) The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to the effective date of this Act by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

(1) returned in a lump sum;

(2) used to purchase an additional life annuity;

(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or

(4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) The benefits provided by subsection (a) (2), (3), or (4) shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 815(f).

SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

(b) Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340 (b) of title 5, United States Code.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

(1) An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 609(b)(2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effecitve date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

(2) Effective from its commencing date, an annuity payable from the Fund to the survivor of an annuitant, except a child entitled to an annuity under section 806(c) or 809 (c) or (d), shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 806 (c) or (d) or 809 (c) or (d), the items $900, $1,080, $2,700, and $3,240 appearing in section 806(c) shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the annuity of the child becomes effective.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least $1.

(f) Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

SEC. 827. COMPATIBILITY BETWEEN CIVIL SERVICE AND FOREIGN SERVICE SYSTEMS.—(a) In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) to the Foreign Service Retirement and Disability System so that it applies in like maner with respect to participants, former participants, annuitants, or survivors under that System.

(b) The President shall be Executive order prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

SEC. 901. TRAVEL AND RELATED EXPENSES.—The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

(1) proceeding to and returning from assigned posts of duty;

(2) authorized or required home leave;

(3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

(4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from accompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed 2 round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5, United States Code (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5, United States Code; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

SEC. 902. LOAN OF HOUSEHOLD EFFECTS.—The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

SEC. 903. REQUIRED LEAVE IN THE UNITED STATES.—(a) The Secretary may order a member of the Service who is a citizen of the United States to take a leave of absence under section 6305 of title 5, United States Code (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

SEC. 904. HEALTH CARE.—(a) The Secretary of State may establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or to provide survivor benefits under chapter 8.

(c) The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.

(e) Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

SEC. 905. REPRESENTATION EXPENSES.—Notwithstanding section 5536 of title 5, United States Code, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out the provisions of the preceding sentence, the Secretary shall, to the maximum extent practicable, provide for the use of American products, including American wines.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilities and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Serv-

ice employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term—

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code;

(B) relating to the designation or classification of any position under section 501;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an oranization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b);

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstration incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

(c) In order to carry out its functions under this chapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5, United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapetr 71 of such title.

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary retraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election

shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

Sec. 1012. Employees Represented.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

Sec. 1013. Representation Rights and Duties.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any separation described in section 1101(a)(1)(A) or any proceeding relating to such a separation; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multi-agency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

Sec. 1014. Resolution of Implementation Disputes.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

Sec. 1015. Unfair Labor Practices.—(a) It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); and

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Any complaint under subsection (a) shall contain a notice—

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

(f) If the Board finds that any labor organizations has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 11—GRIEVANCES

SEC. 1101. DEFINITION OF GRIEVANCE.—(a)(1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this chapter; and

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations.

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under chapter 10 (hereinafter in this chapter referred to as the "exclusive representative").

(b) For purposes of this chapter, the term "grievance" does not include—

(1) an individual assignment of a member under chapter 5, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 602, a tenure board established under section 306(b), or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 611, or the denial of a limited career extension or of a renewal of a limited career extension under section 607(b); or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 1109(b).

(c) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

SEC. 1102. GRIEVANCES CONCERNING FORMER MEMBERS.—Within the time limitations of section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in section 1101(a)(1)(G).

SEC. 1103. FREEDOM OF ACTION.—(a) Any individual filing a grievance under this chapter (hereinafter in this chapter referred to as the "grievant"), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) Any grievant filing a grievance, and any witness or other person involved in a proceeding before the board, shall be free from any restraint, interference, coercion, discrimination, or reprisal. The grievant has the right to a representative of his or her own choosing at every stage of the proceeding. The grievant and his or her representatives who are under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance of such grievant. Any witness under the control, supervision, or responsibility of the Department shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

(c) Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this chapter.

(d)(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentialty.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

SEC. 1104. TIME LIMITATIONS.—(a) A grievance is forever barred unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) or a grievant who is not a member of such bargaining unit or whose grievance is described in section 1101(a)(1)(A) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

SEC. 1105. FOREIGN SERVICE GRIEVANCE BOARD.—(a) There is established the Foreign Service Grievance Board (hereinafter in this chapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this chapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

Sec. 1106. Board Procedures.—The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 607 or 608, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5, United States Code.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this chapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the Board has ruled upon the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

Sec. 1107. Board Decisions.—(a) Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5, United States Code;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5, United States Code; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Except as provided in subsection (d), decisions of the Board under this chapter shall be final, subject only to judicial review as provided in section 1110.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

Sec. 1108. Access to Records.—(a) If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

Sec. 1109. Relationship to Other Remedies.—(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1206 of title 5, United States Code, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(b) If a grievant is not prohibited from filing a grievance under subsection (a), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5, United States Code, or a regulation or Executive order other than under this chapter. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

Sec. 1110. Judicial Review.—Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, United States Code. Section 706 of title 5, United States Code, shall apply without limitation or exception.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, AND MISCELLANEOUS PROVISIONS

Chapter 1—Transition

Sec. 2101. Pay and Benefits Pending Conversion.—(a) Until converted under the provisions of this chapter, individuals who were Foreign Service officers immediately before the effective date of this Act shall be treated for purposes of salary as follows:

(1) Individuals who were serving under appointments at class 2 or a higher class of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2103 of this Act on the first day in such pay period to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402 of this Act.

(2) Individuals who were serving under appointments at or below class 3 of the schedule established under section 412 of the Foreign Service Act of 1946 shall be treated as if they had been converted under section 2102 of this Act on the date specified in subsection (e) to the appropriate class and step (as determined under section 2106(a) of this Act) in the Foreign Service Schedule established under section 403 of this Act.

(b)(1) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who were Foreign Service Reserve officers or Foreign Service staff officers or employees immediately before the effective date of this Act shall be treated for purposes of salary in accordance with paragraphs (3) and (4) of this subsection.

(2) Not later than 30 days after the effective date of this Act, the Secretary—

(A) shall make an initial determination of the availability for worldwide assignment of each individual who was a Foreign Service Reserve officer or a Foreign Service staff officer or employee immediately before the effective date of this Act, and

(B) shall notify any such individual who is not initially determined to be available for worldwide assignment of that initial determination.

(3) Individuals who are initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as follows:

(A) Individuals who could be converted under section 2103 shall be paid as if they had been converted under section 2103, on the date specified in subsection (e) which begins on or after the effective date of this Act, to the Senior Foreign Service in the appropriate class (as determined by the Secretary) established under section 402.

(B) Individuals who could be converted under section 2102 shall be paid as if they had been converted under section 2102, on such date, to the appropriate class and step (as determined under section 2106(a)) of the Foreign Service Schedule established under section 403.

(4)(A) Individuals who are not initially determined under paragraph (2) of this subsection to be available for worldwide assignment shall be treated for purposes of salary as if they had been converted under section 2104(a), on the date specified in subsection (e), to the grade and step in the General Schedule which most closely corresponds to the class and step at which the individual was serving immediately before the effective date of this Act, subject to the prohibition on reductions in basic rate of salary which is contained in the second sentence of section 2106(a)(1).

(B) If an individual who is not initially determined under paragraph (2) of this subsection to be available for worldwide assignment is subsequently converted under section 2102(a), 2103(b), or 2103(c) on the basis of a decision that the initial determination with respect to the availability of that individual for worldwide assignment was erroneous, the salary of that individual shall be adjusted, retroactively to the date specified in subsection (e), to the rate at which that individual could have been paid under paragraph (3) of this subsection if he or she had been initially determined to be available for worldwide assignment under paragraph (2) of this subsection.

(c) For the period beginning on the effective date of this Act and ending on the day before the date specified in subsection (e) (if such date occurs after the effective date of this Act), the individuals to whom this section applies shall continue to receive a salary at the rate at which they were being paid immediately before the effective date of this Act.

(d) Except as provided in section 2104(b), until converted under the provisions of this chapter, individuals who, immediately before the effective date of this Act, were foreign Service officers, Foreign Service Reserve officers, or Foreign Service staff officers or employees, shall be treated for purposes of allowances and all other matters (except salary) as if they had been converted on the effective date of this Act under section 2102 or section 2103 (as appropriate for the class in which they were serving immediately before the effective date of this Act).

(e) Except as otherwise provided, any adjustment of salary under this section shall take effect on the first day of the first pay period which begins on or after—

(1) such date (on or after the date of enactment of this Act and before the effective date of this Act) as the President may specify by Executive order for purposes of this paragraph, or

(2) if the President does not specify a date under paragraph (1), the effective date of this Act.

Sec. 2102. Conversion to the Foreign Service Schedule.—(a) Not later than 120 days after the effective date of this Act, the Secretary shall, in accordance with section 2106, convert to the appropriate class in the Foreign Service Schedule established under section 403 of this Act those individuals in the Foreign Service who are serving immediately before the effective date of this Act under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

(1) Foreign Service officers, or

(2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after the effective date of this Act, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) are not available for worldwide assignment shall also be converted, in accordance with section 2106, to the appropriate class in the Foreign Service Schedule established under section 403 if—

(1) the Secretary certifies that there is a need for their services in the Foreign Service; and

(2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

Sec. 2103. Conversion to the Senior Foreign Service.—(a) Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before the effective date of this Act, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appoint to the Senior Foreign Service.

(b) Except as provided in subsection (d), if a request is submitted under subsection (a) by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(c) If a request is submitted under subsection (a) by a Foreign Service officer or, except as provided in subsection (d), a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 402 of this Act.

(d) If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) is not available for worldwide assignment, an appointment under subsection (b) or a recommendation for appointment under subsection (c) shall be made only if—

(1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and

(2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after the effective date of this Act and before the end of the 3-year period beginning on such effective date, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 402 of this Act, subject to the conditions specified in subsection (d) and such other conditions as the Secretary may prescribe consistent with the provisions of chapter 6 of title I of this Act relating to promotion into the Senior Foreign Service.

(f) Any officer of the Foreign Service who is eligible to submit a request under subsection (a) and—

(1) who does not submit a request under subsection (a), or

(2) who submits such a request more than 120 days after the effective date of this Act and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d),

may not remain in the Foreign Service for more than 3 years after the effective date of this Act. During such period, the officer shall be subject to the provisions of title I of this Act applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 405, and shall not be eligible for a limited career extension as described in section 607(b). Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits determined in accordance with chapter 8 of title I of this Act.

Sec. 2104. Conversion From the Foreign Service.—(a) Except as provided in subsection (b), in the case of any individual in the Foreign Service who, immediately before the effective date of this Act, is serving under an appointment described in section 2102(a) or 2103(a) and who is not converted under section 2102 or section 2103 because such individual does not meet the conditions specified in section 2102(b) or 2103(d), the Secretary shall, not later than 3 years after the effective date of this Act, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5, United States Code.

(b)(1) Notwithstanding any other provision of law, the status, promotion, class, and tenure of individuals who, immediately before the date of enactment of this Act are in the Foreign Service in the International Communication Agency and are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals shall, continue to be governed by the Foreign Service Act of 1946 and Public Law 90–494 (as those Acts were in effect immediately before the effective date of this Act). This Act (except sections 402, 403, 404, 405, 504) shall also apply to such individuals, and such individuals shall be considered members of the Foreign Service for purposes of sections 103, 406, 501, 502, 503, 610, 803, 1002, 1101 of this Act.

(2) The President shall prescribe salary rates for the individuals in the Foreign Service who are covered by this subsection in accordance with the salary classes established under sections 414 and 415 of the Foreign Service Act of 1946. Salary rates for such individuals shall not be less than those rates in effect on the effective date of this Act and shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

Sec. 2105. Conversion of Certain Positions in the Department of Agriculture.—(a) Not later than 15 days after the effective date of this Act, the Secretary of Agriculture shall—

(1) designate and classify under section 501 of this Act those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5, United States Code, which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 103 which will apply to such individual.

(b) Each employee serving in a position at the time it is designated under subsection (a) shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c); or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) apply.

(c)(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a)(1).

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Any employee who declines conversion under subsection (b)(2) shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

Sec. 2106. Preservation of Status and Benefits.—(a)(1) Every individual who is converted under this chapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this chapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 2104 to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b)(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this chapter shall remain a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 2104 may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Individuals who are converted under this chapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this chapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Any individual who on the effective date of this Act is serving—

(1) under an appointment in the Foreign Service, or

(2) in any other office or position continued by this Act.

may continue to serve under such appointment, subject to the provisions of this Act, and need not be reappointed by virtue of the enactment of this Act.

(e) Any individual in the Foreign Service—

(1) who is serving under a career appointment on the date of enactment of this Act, and

(2) who was not subject to section 633(a)(2) of the Foreign Service Act of 1946 immediately before effective date of this Act,

may not be retired under section 608 of this Act until 10 years after the effective date of this Act or when such individual first becomes eligible for an immediate annuity under chapter 8 of title I of this Act, whichever occurs first.

Sec. 2107. Regulations.—Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this chapter.

Sec. 2108. Authority of Other Agencies.—The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this chapter in accordance with regulations prescribed by the Secretary of State under section 2107. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

Chapter 2—Amendments Relating to Foreigns Affairs Agencies

Sec. 2201. Basic Authorities of the Department of State.—(a) The Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956, is amended by adding at the end thereof the following new sections:

"Sec. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.

"(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d)(2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.

"(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.

"(d)(1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).

"(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.

"(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.

"(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"Sec. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry out the member's work efficiently.

"(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.

"Sec. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.

"(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—

"(1) would violate any law of such country or of the United States; or

"(2) could, as certified in writing by the United States chief of mission to such country, damage the interests of the United States.

"Sec. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.

"Sec. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.

"Sec. 30. (a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

"(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

"(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

"(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect.

"(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

"(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsections (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

"(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

"Sec. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.

"(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

"(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

"Sec. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.

"Sec. 33. This Act may be cited as the 'State Department Basic Authorities Act of 1956'.".

(b) Section 13(a) of such Act (22 U.S.C. 2684(a)) is amended by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980".

Sec. 2202. Peace Corps Act.—(a) Section 5 of the Peace Corps Act (22 U.S.C. 2504) is amended—

(1) in subsection (f)(1)—

(A) in subparagraph (A) by striking out "section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1))," and inserting in lieu thereof "section 816(a) of the Foreign Service Act of 1980", and

(B) in subparagraph (B) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980"; and (2) in subsection (a)—

(A) by striking out "section 1091 of the Foreign Service Act of 1946" and inserting in lieu thereof "section 30 of the State Department Basic Authorities Act of 1956", and

(B) by striking out "Director of ACTION" and inserting in lieu thereof "President".

(b)(1) Section 7(a) of the Peace Corps Act (22 U.S.C. 2506(a)) is amended—

(A) in paragraph (1)—

(i) by striking out ", who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980";

(ii) by striking out "section 528" and inserting in lieu thereof "section 310"; and

(iii) by striking out "Reserve" the last place it appears and all that follows and inserting in lieu thereof a period; and

(B) by amending paragraph (2) to read as follows:

"(2) In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—

"(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and

"(B) no individual whose Foreign Service appointment or assignment under his paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.

Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe, and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to the lowest class of the Foreign Service Schedule may be appointed to an unenumerated class ranking below the lowest class of the Foreign Service Schedule and be paid basic compensation at rates lower than those of the lowest class, except that such rates may be no less than the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(2) Section 7(a)(4) of the Peace Corps Act (22 U.S.C. 2506(a)(4)) is amended—

(A) by striking out "Until" and all that follows through "paragraph or" and inserting in lieu thereof "An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years";

(B) by striking out "such person" and inserting in lieu thereof "such individual"; and

(C) by striking out "substantially continuous basis" and inserting in lieu thereof "continuous basis without a break in service of more than three days".

(c) Section 13(b) of the Peace Corps Act (22 U.S.C. 2512(b)) is amended by striking out "section 872 of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 824 of the Foreign Service Act of 1980,".

(d) Section 14(b) of the Peace Corps Act (22 U.S.C. 2513(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(e) Section 15(a) of the Peace Corps Act (22 U.S.C. 2514) is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

Sec. 2203. Foreign Assistance Act.—(a) Section 625(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(d)) is amended to read as follows:

"(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignments exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.".

(b) Section 629(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2389(b)) is amended by striking out "section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(c) Section 631(b) of such Act (22 U.S.C. 2391(b)) is amended by amending the second sentence to read as follows: "Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.".

(d) Section 631(c) of such Act (22 U.S.C. 2391(c)) is amended by amending the second sentence to read as follows: "Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate. Such person is to be considered an employee of the United States Government for the purpose of any benefit under any law administered by the Office of Personnel Management.".

Sec. 2204. Arms Control and Disarmament Act.—(a) Section 42 of the Arms Control and Disarmament Act (22 U.S.C. 2582) is amended to read as follows:

"FOREIGN SERVICE PERSONNEL

"Sec. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—

"(1) the authority available to the Secretary under the Foreign Service Act of 1980, and

"(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.

"(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.".

(b) Section 48 of the Arms Control and Disarmament Act (22 U.S.C. 2588) is amended by striking out "Foreign Service Act of 1946, as amended" and inserting in lieu thereof "Foreign Service Act of 1980".

Sec. 2205. Repealed Provisions.—The following are repealed:

(1) The Act entitled "An Act to improve,

strengthen and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration", approved August 13, 1946, titles I through X of such Act being the Foreign Service Act of 1946 (22 U.S.C. 801–810, 816, 817, 821, 826, 827, 841–843, 846, 861, 866–873, 876, 877, 881, 882, 886, 889, 890, 896, 900, 901, 902, 906–915, 921–924, 926–928, 936–939, 946, 947, 951, 961–966, 968, 981, 986, 987, 991–996, 1001–1009, 1016, 1017, 1021, 1022, 1026–1028, 1031, 1036, 1037–1037c, 1041–1048, 1061–1065, 1071, 1076, 1076a, 1081, 1082, 1084, 1086, 1091, 1093, 1095, 1101, 1103–1106, 1111, 1112, 1116, 1121, 1131, 1136–1138a, 1139, 1148–1151, and 1156–1160).

(2) Sections 401 and 413 of the Foreign Relations Authorization Act, Fiscal Year 1979 (92 Stat 981, 986).

(3) Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (91 Stat. 857).

(4) Sections 117, 120, and 522 of the Foreign Relations Authorization Act, Fiscal Year 1977 (90 Stat. 827, 829, 846).

(5) Section 6 of the Department of State Appropriations Authorization Act of 1973 (87 Stat. 452).

(6) The Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968 (22 U.S.C. 929–932, 1221–1234).

(7) Section 104(c) of the Mutual Education and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)).

(8) Subsections (e), (g), (j), and (k) of section 625 of the Foreign Assistance Act of 1961 (22 U.S.C. 2385 (e), (g), (j), and (k)), except that the repeal of subsection (k) shall not become effective until January 1, 1982.

(9) Section 7(b) of the Peace Corps Act (22 U.S.C. 2506(b)).

(10) Sections 14 and 16 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2679a, 2680a).

(11) Section 124(a)(2) of the International Development and Food Assistance Act of 1977 (91 Stat. 542).

(12) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 21, 1952 (22 U.S.C. 1077, 1078).

(13) The Act entitled "An Act to make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system", approved May 1, 1956 (22 U.S.C. 1079–1079f).

(14) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved September 2, 1958 (22 U.S.C. 1079g–1079j).

(15) The Act entitled "An Act to provide for adjustments in the annuities under the Foreign Service retirement and disability system", approved July 12, 1960 (22 U.S.C. 10791).

(16) The Foreign Service Annuity Adjustment Act of 1965 (22 U.S.C. 1079m–1079s).

Sec. 2206. Other Conforming Amendments.—(a)(1) Section 3(b) of the Asian Development Bank Act (22 U.S.C. 285a(b)) is amended by striking out the "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(2) The United Nations Participation Act of 1945 is amended—

(A) in section 2(g) (22 U.S.C. 287(g)) by striking out "sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 8 (22 U.S.C. 287e) by striking out section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)" and inserting in lieu thereof "section 905 of the Foreign Service Act of 1980".

(3) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor", approved July 30, 1946 (22 U.S.C. 287n), is amended by striking out "Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or provided for Foreign Service officers under section 403 of that Act,".

(4) Section 2 of the joint resolution entitled "Joint Resolution providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor", approved June 14, 1948 (22 U.S.C. 290a), is amended by striking out "provided by section 412 of the Foreign Service Act of 1946, as amended," and inserting in lieu thereof "established under section 402 or 403 of the Foreign Service Act of 1980".

(5) Section 203(b) of the African Development Fund Act (22 U.S.C. 290g-1(b)) is amended by striking out "a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "a chief of mission under the Foreign Service Act of 1980".

(6) Section 408 of the Mutual Security Act of 1954 (22 U.S.C. 1928) is amended—

(A) in subsection (a) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801)," and inserting in lieu thereof "Foreign Service Act of 1980";

(B) in subsection (b) by striking out "chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)" and inserting in lieu thereof "chief of mission under the Foreign Service Act of 1980"; and

(C) in subsection (c) by striking out "section 529 of this Act who are appointed as Foreign Service Reserve officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)" and inserting in lieu thereof "section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980".

(7) The International Atomic Energy Agency Participation Act of 1957 is amended—

(A) in section 2(d) (22 U.S.C. 2021(d))—

(i) in the first sentence by striking out "sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 866, 867), for Chiefs of Mission" and inserting in lieu thereof "sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service,", and

(ii) in the second sentence by striking out "by Chiefs of Mission" and inserting in lieu thereof "under the Foreign Service Act of 1980 by chiefs of mission, members of the Senior Foreign Service,"; and

(B) in section 5 (22 U.S.C. 2024)—

(i) by striking out "Foreign Service Act of 1946, as amended," and inserting in lieu thereof "Foreign Service Act of 1980", and

(ii) by striking "Foreign Service Act of 1946, as amended;" and inserting in lieu thereof "Foreign Service Act of 1980;".

(8) Section 704(b) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056(b)) is amended by striking out "title X, part C of the Foreign Service Act of 1946, as amended" and inserting in lieu thereof "section 25 of the State Department Basic Authorities Act of 1956".

(9) Section 104(d) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2454(d)) is amended by striking out "section 528" and all that follows through "such persons" and inserting in lieu thereof "section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service".

(10) Section 5(a) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2605(a)) is amended—

(A) in paragraph (1) by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service";

(B) in paragraph (2) by striking out "Foreign Service Reserve officers" and inserting in lieu thereof "members of the Foreign Service serving under limited appointments"; and

(C) in paragraph (4) by striking out "Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.)" and inserting in lieu thereof "Foreign Service Act of 1980".

(11) Section 403(c) of the International Development Cooperation Act of 1979 (22 U.S.C. 3503(c)) is amended by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

(b)(1) Section 605A(h) of the Act entitled "An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes", approved August 28, 1954 (7 U.S.C. 1765a(h)), is amended by striking out "Foreign Service personnel" and inserting in lieu thereof "members of the Foreign Service".

(2) Section 606D of such Act (7 U.S.C. 1766c) is amended by striking out "title IX of the Foreign Service Act of 1946" and inserting in lieu thereof "chapter 9 of title I of the Foreign Service Act of 1980".

(c)(1) Section 2002(a) of title 10, United States Code, is amended—

(A) in the text preceding paragraph (1) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(b) of the Foreign Service Act of 1980"; and

(B) in paragraph (2) by striking out "section 1041 of title 22" and inserting in lieu thereof "section 701(a) of the Foreign Service Act of 1980".

(d) Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 906(a)(1)) is amended by striking out "section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))" and inserting in lieu thereof "section 5924 of title 5, United States Code".

(e)(1) Section 104(a)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) is amended by striking out "section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)" and inserting in lieu thereof "section 808 of the Foreign Service Act of 1980".

(2) Section 170(i) of the Internal Revenue Code of 1954 (26 U.S.C. 170(i)) is amended by amending paragraph (6) to read as follows:

"(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(3) Section 912(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 912(1)(A)) is amended to read as follows:

"(A) chapter 9 of title I of the Foreign Service Act of 1980,".

(4) Section 2055(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 2055(f)(5)) is amended to read as follows:

"(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.".

(f) Section 235 of title 38, United States Code, is amended—

(1) in paragraph (1) by striking out "Section 1131 of title 22" and inserting in lieu thereof "Section 905 of the Foreign Service Act of 1980";

(2) in paragraph (2) by striking out "Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22" and inserting in lieu thereof "Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980";

(3) in paragraph (3) by striking out "Section 1138 of title 22" and inserting in lieu thereof "Section 901(13) of the Foreign Service Act of 1980";

(4) in paragraph (4) by striking out "Section 1148 of title 22" and inserting in lieu thereof "Section 903 of the Foreign Service Act of 1980"; and

(5) in paragraph (5) by striking out "Section 1156 of title 22" and inserting in lieu thereof "Section 904(d) of the Foreign Service Act of 1980".

(g) Section 415(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5055 (c)) is amended—

(1) in paragraph (1) by striking out "Section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other" and inserting in lieu thereof "any"; and

(2) in paragraph (2) by striking out "Foreign Service Act of 1946" and inserting in lieu thereof "Foreign Service Act of 1980".

SEC. 2207. RETIREMENT FOR BINATIONAL CENTER EMPLOYEES.—Any person who was appointed as a Binational Center Grantee and who has completed at least five years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the Foreign Service retirement and disability system and may make an appropriate contribution to the Foreign Service retirement and disability fund in accordance with the provisions of this Act.

CHAPTER 3—AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 2301. REEMPLOYMENT RIGHTS.—(a) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"§ 3597. Reemployment following limited appointment in the Foreign Service

"An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.".

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

"3597. Reemployment following limited appointment in the Foreign Service.".

SEC. 2302. SALARY FOR AMBASSADORS AT LARGE.—Section 5313 of title 5, United States Code, is amended by adding the following at the end thereof:

"Ambassadors at Large.".

SEC. 2303. ADVANCES OF PAY INCIDENT TO DEPARTURES FROM POSTS ABROAD.—(a) Section 5522(a) of title 5, United States Code, is amended—

(1) by striking out "evacuation" and inserting in lieu thereof "departure"; and

(2) by striking out "is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family" and inserting in lieu thereof "is officially authorized or ordered—

"(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

"(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee.".

(b) Section 5522(b) of title 5, United States Code, is amended by striking out "evacuation" and inserting in lieu thereof "departure".

(c) Section 5523(a)(1) of title 5, United States Code, is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) whose departure is authorized or ordered under section 5522(a) of this title; and"; and

(2) in subparagraph (B) by striking out "evacuation" and inserting in lieu thereof "departure".

(d) Section 5523(b) of title 5, United States Code, is amended by striking out "evacuation" both places it appears and inserting in lieu thereof "departure".

(e) Section 405a(a) of title 37, United States Code, is amended by striking out "evacuated" and "evacuation" wherever they appear and inserting in lieu thereof "to depart" and "departure", respectively.

SEC. 2304. PREMIUM PAY.—(a) Paragraph (2) of section 5541 of title 5, United States Code, is amended—

After clause (xv), add "(xvi) a member of the Senior Foreign Service; or"

(b) Nothing in this Act shall be construed as precluding compensatory time for Foreign Service officers.

SEC. 2305. SEVERANCE PAY.—Section 5595(a)(2)(vi) of title 5, United States Code, is amended by inserting after "to receive" the following: "benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any".

SEC. 2306. ATTORNEYS FEES IN BACKPAY CASES.—Section 5596(b) of title 5, United States Code, is amended—

(1) in paragraph (1)(A)(ii) by inserting "or under chapter 11 of title I of the Foreign Service Act of 1980," immediately after "chapter 71 of this title,"; and

(2) in paragraph (3)—

(A) by inserting "and (with respect to members of the Foreign Service) in sections 1001 and 1002 of the Foreign Service Act of 1980" immediately after "section 7103 of this title"; and

(B) by inserting "and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980" immediately after "section 7116 of this title".

SEC. 2307. SEPARATE MAINTENANCE ALLOWANCE.—Section 5924(3) of title 5, United States Code, is amended—

(1) by inserting "or authorized" immediately after "compelled"; and

(2) by inserting "or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents," immediately after "for the convenience of the Government,".

SEC. 2308. EDUCATION ALLOWANCE.—Section 5924(4)(B) of title 5, United States Code, is amended by striking out "(1)" and all that follows through and including "each type of education" and inserting in lieu thereof "one annual trip each way for each dependent".

SEC. 2309. POSTS REQUIRING SPECIAL INCENTIVES.—Section 5925 of title 5, United States Code, is amended—

(1) by striking out "A post" in the first sentence and inserting in lieu thereof "(a) A post";

(2) by inserting "under this subsection" immediately after "differential" in the last sentence; and

(3) by adding at the end thereof the following new subsection:

"(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

"(1) may be paid for each assignment to a post determined to have such conditions;

"(2) may be paid periodically or in a lump sum; and

"(3) may not exceed 15 percent of the rate of basic pay for that employee for the period served under that assignment.".

SEC. 2310. ADVANCES OF PAY.—(a) Subchapter III of chapter 59 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 5927. Advances of pay

"Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.".

(b) The analysis of chapter 59 of title 5, United States Code, is amended by inserting after the item relating to section 5926 the following:

"5927. Advances of pay.".

SEC. 2811. DANGER PAY ALLOWANCE.—(a) Subchapter III of chapter 59 of title 5, United States Code, as amended by section 2310(a), is further amended by adding at the end thereof the following new section:

"§ 5928. Danger pay allowance

"An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee.".

(b) The analysis for chapter 59 of title 5, United States Code, as amended by section 23(b), is further amended by inserting after the item relating to section 5927 the following:

"5928. Danger pay allowance.".

Sec. 2312. Leave.—(a) Section 6301 of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"Notwithstanding clauses (x)-(xii) of paragraph (2), the term 'employee' includes any member of the Senior Foreign Service or any Foreign Service Officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.".

(b) Section 6304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) by adding at the end thereof the following new subsection:

"(g) Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.".

"(c) Section 6305(a) of title 5, United States Code, is amended by inserting immediately after "States" in the first sentence "(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government".

Sec. 2313. Retirement Credit for Imprisoned Foreign Nationals.—Section 8332(b) of title 5, United States Code, is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by inserting after paragraph (9) the following new paragraph:

"(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.".

Sec. 2314. Conforming Amendments to Title 5.—(a) Section 3323(c) of title 5, United States Code, is amended by striking out "Foreign Service officer retired under section 1001 or 1002 of title 22 of a Foreign Service staff officer or employee retired under section 1063 of title 22" and inserting in lieu thereof "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980".

(b) Section 5102(c)(2) of title 5, United States Code, is amended by striking out "employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22" and insert in lieu thereof "members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980".

(c)(1) Section 5301(c) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(2) Section 5303(a) of title 5, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1);

(B) by redesignating paragraph (3) as paragraph (2);

(C) by striking out "; or" at the end of such redesignated paragraph and inserting in lieu thereof a period; and

(D) by striking out paragraph (4).

(23) Section 5304 of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(d) Section 5724(g) of title 5, United States Code, is amended by striking out "chapter 14 of title 22" and inserting in lieu thereof "the Foreign Service Act of 1980".

(e) Section 5727(e)(2) of title 5, United States Code, is amended to read as follows:

"(2) This section, except subsection (a), does not affect section 403e(4) of title 50.".

(f)(1) Section 6301(2)(xii) of title 5, United States Code, is amended by striking out an officer who receives pay under section 866 of title 22" and inserting in lieu thereof "a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)".

(2) Section 6305(b) of title 5, United States Code, is amended by striking out "an officer" and inserting in lieu thereof "a chief of mission".

(g) Section 7103(a)(2)(iv) of title 5, United States Code, is amended by striking out "the Agency for International Development, or" and inserting before the semicolon ", the United States International Development Cooperative Agency, the Department of Agriculture, or the Department of Commerce".

(h) Section 8501(1)(C) of title 5, United States Code, is amended by striking out "Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22" and inserting in lieu thereof "members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980".

Sec. 231. Retirement Credit for "Radio" Service.—(a) Subsection 8332(b) of title 5, United States Code, is amended by adding the following new paragraph (10) immediately following paragraph (9) thereof to read as follows:

"(10) Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; or their subdivisions; Radio Free Europe/Radio Liberty, Inc.; Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E).".

(b) Such subsection 8332(b) is further amended by adding at the very end the following:

"The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee named by paragraph (10) of this subsection.".

Chapter 4—Saving Provisions, Congressional Oversight, and Effective Date

Sec. 2401. Saving Provisions.—(a) All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

(b) This Act shall not affect any increase in annuity or other rights to benefits, which was provided by any provision amended or repealed by this Act, with respect to any individual who became entitled to such benefit prior to the effective date of this Act.

(c) References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this Act shall be deemed to include reference to the corresponding provisions of this Act.

Sec. 2402. Congressional Oversight of Implementation.—(a) Within fifteen months after the effective date of this Act, the Secretary of State shall submit to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a report describing the implementation of this Act during the fiscal year 1981 by the agencies utilizing the Foreign Service personnel system. Such report shall—

(1) describe the steps taken and planned in furtherance of (A) maximum compatibility among such agencies, as provided for in section 203, and (B) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 204;

(2) indicate the progress made by each such agency in the conversion of personnel and position classifications in accordance with chapter 1 of this title; and

(3) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in section 601(c)(2), including with respect to each of the relevant promotion competition groups the projected ranges of rates of appointment, promotion, and attrition over each of the five fiscal years 1981 through 1985.

(b) Beginning in 1982, the Secretary of State shall submit each year to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate a supplemental report describing any relevant developments with respect to the matters reported on under paragraphs (1) and (2) of subsection (a) and, with respect to paragraph (3) of such subsection, a revised projection of the ranges of rates of appointment, promotion, and attrition over each of the next five years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, attrition. The report shall explain fully any deviations from projections reported in the preceding year.

(c) The Secretary shall consult, in accordance with the procedures set out in section 1013(g), with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 1003(a) with respect to steps to be taken in implementing this Act and reported under this section. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

Sec. 2403. Effective Date.—(a) Except as otherwise provided, this Act shall take effect at the end of the 90-day period beginning on the date of enactment of this Act.

(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.

(c) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in section 305(b) until October 1, 1985. Prior to that date, the number of members serving in the Senior Foreign Service under limited appointments by the Secretary of Commerce may not exceed 10 at any one time (excluding individuals with reemployment rights under section 310 as career appointees in the Senior Executive Service).

(d) The provisions of chapter 8 of title I regarding the rights of former spouses to any annuity under section 814(a) shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

(2) The provisions of such chapter regarding the rights of former spouses to re-

ceive survivor annuities under section 814 (b) shall apply in the case of participants or former participants in the Foreign Service Retirement and Disability System who die after such effective date.

Mr. PELL. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PERCY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask that S. 3058 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, I would like the record to reflect that if the yeas and nays had been ordered on the previous vote, I would have been recorded in the affirmative as voting on that.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT — INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 7631, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today. Rollcall votes are expected tomorrow on the military construction authorization bill and on the HUD appropriations bill. There will be no session this coming Saturday. I expect rollcall votes daily, however, through Friday of this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business and that Senators may speak therein for a period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENFORCEMENT OF SUBPENA OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 981.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 502) directing the Senate Legal Counsel to bring civil action to enforce subpena of the Permanent Subcommittee on Investigations.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 502) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 502

Whereas the Senate Permanent Subcommittee on Investigations subpenaed William Cammisano to testify at a subcommittee hearing on May 1, 1980, and was immunized under court order against self-incrimination by his testimony but refused to answer the subcommittee's questions, and

Whereas under section 703(b) of the Ethics in Government Act of 1978 (2 U.S.C. 288(b)), the Senate Legal Counsel shall bring a civil action to enforce a subpena of a Senate subcommittee only when directed to do so by the adoption of a resolution by the Senate: Therefore be it

Resolved, That the Senate Legal Counsel shall bring a civil action in the name of the Senate Permanent Subcommittee on Investigations to enforce the subcommittee's subpena to William Cammisano, and that the Senate Legal Counsel shall conduct all appeals, contempt proceedings, and other ancillary legal proceedings, relating to testimony of William Cammisano before the subcommittee; and be it further

Resolved, That the Senate Permanent Subcommittee on Investigations has certified a continuing interest in and need for the proposed testimony of William Cammisano concerning organized crime in Kansas City and related matters for the remainder of the Ninety-sixth Congress and throughout the Ninety-seventh Congress.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WITHDRAWAL AND RELEASE OF CERTAIN RECORDS AND DOCUMENTS

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a Senate resolution on behalf of Mr. Chiles and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 519) to authorize the withdrawal and release of certain records and documents created or obtained by and in the possession of the Special Committee on Aging to the Office of Disciplinary Counsel, Supreme Court State of Hawaii.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 519) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. Res. 519

Whereas the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, has requested certain materials and information created or obtained by and in the possession of the Special Committee on Aging as a result of its official activities; and

Whereas, by the privileges of the Senate of the United States and by Rule XI of the Standing Rules of the Senate, no Member, officer, or employee of the Senate is authorized to produce documents, papers, or records of the Senate but by order of the Senate and information secured by Members, officers, and employees of the Senate pursuant to their official duties may not be revealed without the consent of the Senate: Now, therefore, be it

Resolved, that the Chairman of the Special Committee on Aging is authorized, at his discretition and subject to such conditions as he may deem appropriate, to provide the Office of Disciplinary Counsel, Supreme Court, State of Hawaii, with certain records, documents, papers, and other information, or copies thereof, created or obtained by and in the possession of the Committee as requested by the Office of Disciplinary Counsel, Supreme Court, State of Hawaii.

ORDER TO HOLD MESSAGE ON HOUSE JOINT RESOLUTION 607 AT THE DESK UNTIL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House on House Joint Resolution 607 be held at the desk until tomorrow.

Mr. STEVENS. Mr. President, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD H.R. 2170 AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 2170 arrives in the Senate from the other body, that the measure be held at the desk pending further disposition.

Mr. STEVENS. Mr. President, we do concur in the procedure.

The PRESIDING OFFICER. Without objection, it is so ordered.

RIDICULOUS SUBSIDY POLICIES BY THE EXPORT-IMPORT BANK

Mr. PROXMIRE. Mr. President, the Export-Import Bank has done, or is doing, it again.

At a time of rampant inflation they are lending out more money.

At a time when the Federal Reserve Board, in the interest of fighting inflation, has put the credit screws on farmers, small businesses, big businesses, consumers, and almost everybody in the economy, another arm of the Government, the Export-Import Bank is not only shoveling out new loans and guarantees of loans, but they are doing so at absurdly low interest rates. Further, in order to get the funds they are going into the private market to borrow them. They will pay more for the funds than they loan them out at.

While on the one hand the Government is cutting back on spending and tightening the money supply to fight inflation—policies which are both tough and correct—another agency of the Government is shoveling the money out the back door at cut-rate interest rates while at the same time having to go into the private market to borrow the money which further bids up the interest rates on the limited supply of money available to them and everybody else.

RIDICULOUS POLICY

Now, Mr. President, how ridiculous can we get? This policy is being promoted by the administration, the Treasury Department, and the Export-Import Bank and is being gleefully supported by many of the same business interests of the country who at the same time are denouncing wild spending, high inflation, and big Government.

They are doing this in the name of promoting exports. But exports have never done better.

So far in 1980 they are running at an annual rate of about $216 billion. Last year they were $182 billion. In 1973 merchandise exports were $142 billion. That is a 50-percent increase in 2 years.

A LITANY OF WRONGS

Listen to this sad litany of wrongs.

The Export-Import Bank is grossly subsidizing American exports at a time when exports are doing very well.

They are subsidizing them at interest rates of 9 percent at a time the Government is paying over 11 percent for its long term money and the prime rate is at 12¼ percent.

They are shoveling out the money while other arms of the Government are trying to limit the increase in the supply of money.

They are thus helping to bid up the price of money and raise interest rates when other equally or more needy borrowers are having a very difficult time in getting money because of the high interest rates.

Finally, they are doing this through devices which put the transactions off the budget in contradiction of every budget principle both the President and Congress have advocated under the Budget Act.

WASHINGTON POST ARTICLE

John F. Berry, writing in the Washington Post on Sunday September 14, has given the details of this ironic and wasteful Government policy.

The Ex-Im Bank is now eating into its capital to subsidize export loans.

There is a mysticism about the value of exports which goes back at least as far as the French Mercantilists. There is abroad in the land among politicians and businessmen alike the myth that all exports are good and promoting them should rank above all other priorities.

The President, the business world, and the Commerce Department are now promoting that myth as never before. They are doing it in spite of the costs and subsidies and in spite of both sound economic principles and correct financial fiscal policies which they otherwise say they support.

John Berry has detailed this latest example of wrong-headed, self defeating, upside-down policies in a clear and readable article.

I ask unanimous consent that his article appear at this point in the RECORD and I urge both my colleagues and opinionmakers in the country to take note of it.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EX-IM FINANCING BECOMING CLASSIC OFF-BUDGET CASE

(By John F. Berry)

The Carter administration has devised an end-run around the current budget crunch to finance some $1.1 billion in lending commitments made by the Export-Import Bank.

The makeshift policy, worked out this summer by high administration officials at the Treasury Department, Office of Management and Budget and the Ex-Im Bank, will force the bank to go to the costly private money market to fulfill the $1.1 billion in commitments instead of relying on less expensive direct federal lending.

This move by the bank, a federally funded institution that lends money to foreign borrowers to buy American goods, could cost U.S. taxpayers $200 million.

The idea is to permit the bank, which already has gone through its fiscal 1980 budgetary allotment, to finance some of the billions of dollars in loan commitments it has outstanding before the fiscal year runs out at the end of this month—without reflecting the outlay on the current budget.

It's a classic case of off-budget financing by the administration, a practice that President Carter has deplored and his administration publicly has sought to stop. The administration's push for off-budget lending authority from Congress came last summer after major U.S. exporters, which directly benefit from the bank's loose-lending policies launched a high pressure lobbying campaign to get Ex-Im Bank additional funds.

The off-budget scheme has caused consternation among career staffers at the bank. Privately, they worry that this is just another example of the Carter administration's policy of using the bank's valuable capital to subsidize unrealistically low interest rates. They say that as a result, the bank has about $12 billion in direct loan commitments, but an annual budget of only about $4 billion in lendable funds.

As internal dissent has heightened at the bank, the politically appointed top management met with the career professionals. The careerists have been challenged on their figures, and have been advised that stories about the threat to the bank's capital are much exaggerated.

Under John L. Moore Jr., the Carter-appointed chairman, the Ex-Im Bank has aggressively financed billions of dollars in U.S. exports by lending to foreign buyers. Even as the prime rate has soared to as high as 20 percent this past spring, Moore and his fellow Ex-Im Bank board members have sought to spur exports by lending money at rates ranging between 7¾ and 8¾ percent.

The U.S. industry benefiting most from this liberal lending policy is aircraft manufacturing. During the Carter administration, foreign buyers of U.S. planes have found financing easy to come by, especially with the threat of sales competition from the wide-bodied A300 planes manufactured by Airbus Industrie, a European combine.

But according to many Ex-Im Bank staffers—a group that historically has been expansionist on bank-lending policy—the board finally has gone too far.

"The board doesn't know how to say 'no,'" observes one official. "They've forgotten they're public servants. They're too concerned with making corporations happy."

Moore gets most of the criticism for what some see as the bank's current rocky condition. An Atlanta lawyer and long-time Carter supporter who had little experience in the complexities of international finance before joining the bank, Moore has spent much of his time since his appointment in 1977 on the road visiting potential customers.

Last spring, Moore was under attack on Capitol Hill when he pushed through a $201 million loan at 8 percent of an airline half-owned by Australian financier Rupert Murdoch. What caused the controversy then was not the low interest rate but rather the scent of politics that surrounded the deal.

On Feb. 19, the day Murdoch was negoitating the loan, he dropped by the White House for lunch with President Carter. And two days later, Murdoch's New York Post endorsed Carter in the upcoming New York primary.

At subsequent hearings on the Murdoch affair before the Senate Banking Committee, the senators were unable to show any direct political influence involved in the loan. But the lasting impression from the hearings was that Murdoch had stampeded the bank board into granting him the low-interest loan.

Critics say that these same easy-lending ways have forced the administration to devise the $1.1 billion off-budget item. These critics say that the administration, facing unprecedented billions of dollars in commitments by Ex-Im Bank in fiscal 1981 and beyond, got Congress to agree to an additional appropriation amounting to about one-quarter of the bank's normal appropriations in the last few weeks of the 1980 fiscal year. Congress agreed after it was clear the $1.1 billion would not show up in the budget.

Among the administration officials who came up with the plan and sold it to Congress were Ex-Im Bank's Moore and Fred C. Bergsten, assistant Treasury secretary for international affairs, with officials of the budget office in agreement.

Most of the Ex-Im Bank's financial support to foreign borrowers is in the form of direct credits. These loans are financed by the Treasury, which sells federal securities to raise funds. The Treasury securities currently have a rate of about 11½ percent, while the Ex-Im Bank is lending at under 9 percent.

What allows Ex-Im Bank to continue to lend at apparently money-losing interest rates is the bank's capital.

Back in 1945, when Ex-Im Bank was founded, the Treasury put in seed funds of $1 billion. Over the years, those funds have been carefully nurtured so that the bank's capital, or equity, has grown to over $3 billion. In addition, the bank also has about $9 billion in funds that were borrowed from the Treasury at interest rates significantly below today's level.

By blending the low-interest capital with freshly borrowed funds, the bank year after year has been able to lend funds at higher rates than its current borrowing. It also allows the bank to state that it is "self-sustaining."

Along with direct credits, the Ex-Im Bank also puts the name of the U.S. government behind guarantees to enable foreigners to borrow from private financial institutions. Ex-Im Bank usually collects about half of one percent for this service, and the foreign borrower uses the funds to buy U.S. exports.

But guarantees, unlike credits, are not reflected on the federal budget So this summer, the administration went to Congress to get $1.1 billion in guarantees to finance some of its commitments, off-budget.

Once Congress voted through the additional funding in the form of guarantees in late August, Ex-Im Bank by law then had to send Congress descriptions of any commitment of $100 million or more it planned to fund with the guarantees.

On Aug. 27 and 29, the bank sent up five separate commitments, and Congress has 25 days from then to raise questions about them.

What upsets Ex-Im Bank staffers is that the five commitments to foreign borrowers were almost all for direct credits, at a weighted average interest rate of 9 percent. The direct credits could have been funded through the Treasury, but now that they have been converted to guarantees to avoid the budget, the bank must go into the private market to raise money.

Not only does this mean higher interest rates, it also means that the bank must absorb the difference between the weighted average rate of just under 9 percent and whatever the private-market rate is at the time the $1.1 billion is raised.

According to several sources, this $1.1 billion in guarantees will cost the bank at least $200 million in interest payments over the 10-year life of the loans. And to finance the $200 million, the bank must dip into its valuable capital.

This is what most troubles critics of this off-budget, eleventh-hour effort by the administration to fund $1.1 billion of Ex-Im Bank's multibillions in commitments, along with the bank's unrealistically low lending rates.

Says one bank official: "What has happened over the past 35 years could be undone in one whack if this goddamned foolishness doesn't stop."

THE DANGER OF FALSE HOPE

Mr. PROXMIRE. Mr. President, the world knows the tragic fate of 6 million Jews at Nazi hands. This staggering number often prompts doubt about Jewish resistance to the Nazis. It may seem that so many could have been killed only if they surrendered themselves freely. Actually, the facts are to the contrary, and I have spoken many times of those individuals and groups who resisted bravely. Certainly no one aware of these efforts could discount their importance. Yet at times resignation could replace resistance, as revealed in some accounts of holocaust survivors.

Mel Mermelstein in "By Bread Alone" recounts how hope led him to acquiescence. He tells how a Nazi guard separated the members of his family. Yet no one cried out in fear or dismay. Everyone held to the belief that this separation could be only temporary. Everyone tried to forget those terrible rumors about the fate of transported Jews. Even when Mel, his father, and his brother arrived at the Polish death camp of Birkenau, they told themselves that they had merely been relocated to another worksite.

A vicious Nazi guard quickly dispelled their illusions. He explained the perplexing smoke which poured forth from the tall chimneys around the camp. His angry and senseless words prompted many of the Jews to question his sanity. Mel would recall that they did not question their own sanity in permitting themselves to be transported there.

Mel screamed at the thought that the smelly, furling smoke might be testimony to the fate of his mother and sisters. He later would write these words:

> I still did not believe . . . nor did I understand, but I could see the chimneys, and they were smoking fiercely. A month before we might have exploded, run, fought, killed, and died in the process. But now we had suffered the brickyard and the sealed train; we had no strength left, no will to fight. . . . Hope was on the side of submission.

This account reveals how human it is to cling to hope when danger is near. Only when Mel was inside the gate of Birkenau, looking at the peculiar smoke and listening to the Nazi guard, could he comprehend the danger he faced. Over and over the survivors of the Holocaust tell us that many Jews clung to the hope that mass extermination was a false rumor. Over and over we hear that when hope had dissipated, many were too weak to resist.

Mr. President, it is once again tempting to believe that genocide could never recur, that the danger somehow has passed. But I remind this body how easily hope can become self-deception, and how suddenly self-deception can become surrender. Do we, like Mel, need to find ourselves face to face with genocidal policies before we can acknowledge any danger? If so, Mr. President, this body has only a weak claim to foresight. I urge my colleagues not to give up the hope that men can become more humane. I urge them merely to found that hope on the Genocide Convention, a treaty which deserves our immediate ratification.

IOWA SOIL CONSERVATION WEEK

Mr. JEPSEN. Mr. President, on October 4, 1979, in a cornfield near Des Moines, Iowa, Pope John Paul II urged Iowans to "conserve the land well, so that your children's children and generations after them will inherit an even richer land than was entrusted to you."

Pope John Paul knew Iowa is the most appropriate place in all of the United States to utter those words. The "black gold" soil from Iowa's rich farmlands generates the basic health and welfare of the State and is extremely important to the entire Nation. Yet, Iowa soils are eroding on an average of 10 tons per acre per year, twice the acceptable rate.

Iowans realize this and have undertaken a number of soil conservation initiatives to help insure that their "children's children" will inherit the land's rich "black gold" because of the preventive actions this generation takes. To encourage support for conservation measures, planning and awareness, the Iowa State Legislature declared the first week of harvest season, September 14–20, as "Iowa Soil Conservation Week."

When Iowans were polled a few years ago to determine what they thought was Iowa's greatest resource, their resounding response was "the land." And when they were asked what resource problem required priority attention, they answered "soil erosion." Recently I held a series of soil conservation hearings in Iowa for the Senate Agriculture Soil Conservation Subcommittee. Iowa's dedication to the soil was summed up by Iowa Secretary of Agriculture Bob Lounsberry when he said:

> Our soil must come first; all else builds from it.

Iowans believe in this and they are doing something about.

Since fiscal year 1979 Iowa has contributed more funds and services to soil and water conservation districts than any other State. Also, Iowa is the only State in the Nation to announce a commitment to reduce soil losses to nondepleting levels by the year 2000. This goal, along with the methods of reducing soil losses is delineated in the Iowa soil 2000 laws passed by the Iowa State Legislature this year. Mr. President, I ask unanimous consent that excerpts from a summary of the Iowa soil conservation laws be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPTS

GENERAL STATEMENT OF POLICY

Agriculture is the foundation of Iowa's economy. That foundation is currently being undermined by critical excessive erosion of the topsoil in the state. Thus it is in the best interest of both the present and future generations to promptly control soil erosion in Iowa. Moreover, control of nonpoint source pollution (i.e., pollution attributable to runoff from large areas rather than to specific points, such as sewage treatment plants) of the state's rivers and lakes can be largely achieved by proper soil conservation techniques. It should therefore be the policy of the state of Iowa to:

A. Provide education at all levels. Education is a vital tool in building awareness of the importance and understanding of the methods of conserving soil.

B. Provide incentives for good soil management. These incentives may include, but are not limited to, public cost-sharing, low-interest loan funds, and tax credits or tax exemptions to encourage the installation of effective soil conservation practices.

C. Provide technical assistance. Technical assistance should be provided, within budgetary limits, to develop conservation folders (i.e. compilations of information needed to draw up conservation plans) and to prepare plans for the installation of conservation measures for each farm unit in Iowa.

D. Control soil erosion by the year 2000. Erosion of topsoil from all land within the borders of the state of Iowa should be controlled by the year 2000 to the extent necessary to meet applicable soil loss limits which have been established by the respective soil conservation districts under existing law.

GOALS BASED ON THE STATEMENT OF POLICY

A. Five-year objectives:

1. To accelerate the availability of soil survey mapping data.

2. To provide each farm unit with a conservation folder by 1985.

3. To control erosion of the most fragile soils, which under present agricultural use and management will be depleted in 20 years.

4. To reduce excessive soil erosion on all agricultural lands by 40%.

5. To control nonpoint source pollution in at least twelve high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

B. Ten-year objectives:

1. To require each landowner or operator to keep his or her conservation folder current with computed soil loss rates provided by the local soil conservation district.

2. To control erosion on soil which under present agricultural use and management will be depleted in 40 years.

3. To reduce excessive soil erosion on all agricultural lands by an additional 40%.

4. To control nonpoint source pollution in at least an additional twenty-four high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

C. Fifteen-year objectives:

1. To control erosion on all agricultural land at a nondepleting level.

2. To control nonpoint source pollution in at least an additional fifty high priority watersheds, based on the Iowa agricultural nonpoint source pollution plan.

D. Twenty-year objectives:

1. To maintain a nondepleting level of soil loss on agricultural land and control sediment production on all Iowa land.

2. To continue to develop and install cost effective soil conservation practices so that soil erosion is held at a nondepleting level.

3. To control nonpoint source pollution in all watersheds, based on the agricultural nonpoint pollution plan.

LEGISLATIVE RECOMMENDATIONS

1. An interagency committee should be established by the Department of Soil Conservation to prepare plans for coordinated approaches to water management problems that are within the common jurisdiction of two or more state or local agencies, particularly the control of water flowing into, across and from roadside ditches. The committee should consist of one representative each from the Department of Soil Conservation, the Department of Environmental Quality, the Department of Transportation, the state Department of Agriculture, the Iowa Natural Resources Council, county supervisors, county engineers and soil conservation district commissioners.

2. At present, a landowner who receives public cost-sharing money for establishment of permanent soil conservation practices must agree to return that money if the practices are removed or downgraded within ten years from their establishment, without the consent of the State Soil Conservation Committee. The Subcommittee recommends that:

a. The ten-year limit on the obligation to maintain permanent soil conservation practices that are partially publicly funded be removed, and the obligation made one of indefinite duration.

b. The authority to consent to removal or alteration of a publicly-funded permanent practice be vested in the local soil conservation district commissioners, following State Soil Conservation Committee guidelines.

c. Recording of the agreement to maintain publicly-funded permanent practices be required, so that the obligation to maintain the practices—and the monetary penalty for failure to do so—will transfer to a new owner when title to the land involved changes.

3. The Department of Soil Conservation, acting through local soil conservation district commissioners, should be authorized to enter into long-term agreements with landowners, for periods of up to five years, in order to encourage and facilitate completion of permanent soil conservation practices on entire farms or on adjoining groups of farms.

4. It should be a duty of soil conservation districts to encourage and assist local school districts to provide instruction in the importance of and some of the basic methods of soil conservation, pursuant to the requirements of Code section 257.25(3) and (4) that elementary and secondary schools in Iowa teach science courses "including conservation of natural resources and environmental awareness".

5. The soil conservation legislation enacted in 1971 should be amended to remove any possible doubt that state agencies, political subdivisions of the state, and agencies of such political subdivisions which have control of publicly-owned lands have the same responsibility as private landowners to control soil erosion so as to comply with the applicable local soil loss limits.

6. Soil conservation district commissioners should be authorized to initiate an inspection of land when they have reasonable grounds to believe that excessive soil erosion is occurring on that land, without the necessity of receiving a complaint from a person whose property is being damaged by sediment due to the erosion. Also, such a person should be permitted the option of making a complaint verbally rather than in writing, provided the commissioners know and make a record of the complainants identity.

7. Chapter 467A of the Code should be amended to provide that:

a. Each farm in the state shall be furnished a "conservation folder" (a compilation of topographic, agronomic, soil loss rate and other information pertinent to soil conservation efforts) by the Department of Soil Conservation not later than January 1, 1985, or as soon thereafter as adequate funds are available.

b. It is the obligation of the owner or operator of each farm in this state to work out with the local soil conservation district commissioners a farm unit soil conservation plan for that farm, not later than January 1, 1990 or five years after the conservation folder for that farm is completed, whichever date is later.

c. It is the obligation of the owner or operator of each farm in this state to enter into a conservation agreement with the soil conservation district commissioners, binding the owner or operator to comply with the applicable soil loss limits on condition of receiving from the soil conservation district appropriate technical and financial assistance, within a reasonable time after completion of the farm unit conservation plan for that farm.

8. Chapter 467A of the Code should be amended to provide that beginning January 1, 1990 (or five years after the conservation folder contemplated by paragraph a of recommendation 7 is completed for the farm in question, whichever date is later) an owner or operator of agricultural land who has received notice from local soil conservation district commissioners for three or more consecutive years that soil is eroding from that land at a rate at least twice the nondepleting level, shall be subject to an order to follow a conservation plan developed for that land. If the owner or operator has previously reached agreement with the local soil conservation district commissioners on a farm unit conservation plan, as contemplated by paragraph b of recommendation 7, the order would direct that that plan be followed; otherwise the plan would be developed by the soil conservation district commissioners on the basis of Department of Soil Conservation guidelines. This recommended provision differs from the administrative order procedure prescribed in law at present, in that it will not be necessary under the recommended provision for the soil conservation district commissioners to show that the excessive erosion from the owner or operator's land is resulting in damage to another person's property, in order to obtain an order requiring that the erosion be controlled.

9. Chapter 467A of the Code should be amended to require that a seller of agricultural land furnish to a prospective buyer:

a. A copy of the conservation folder for that land, if one has been completed as contemplated by paragraph a of recommendation 7.

b. Documents fully and accurately describing both:

(1) All existing permanent soil conservation practices which the owner of that land is obligated to maintain, as contemplated by recommendation 2; and

(2) Any additional practices likely to be required in order to comply with applicable soil loss limits, and any changes in current or recent cropping methods used on that land which will be necessary in order to establish the additional soil conservation practices.

10. Legislation should be enacted under which each of the 100 soil conservation districts in Iowa (each county constitutes a district except Pottawattamie County, which is divided into two districts) is designated a state agency, for the limited purpose of possible tort claim actions against the district, its officers or any employees. The Attorney General has advised the Department of Soil Conservation that local soil conservation districts are legally "municipalities" (i.e., political subdivisions of the state, broadly comparable to counties, cities or school districts), and that therefore officers and employees of such a district are subject to tort claim actions but are theoretically entitled to be indemnified by the district if held liable. However there are in fact no funds available to a soil conservation district to indemnify a commissioner or employee in such a case, and soil conservation district commissioners—who are unpaid officers—are therefore at some risk of having a judgment placed against their personal assets should they be held liable in a tort claim action.

The Subcommittee concluded, after hearing a presentation by members of the Attorney General's staff, that the best way of resolving this situation is to make the soil conservation districts state agencies for this one limited purpose. This step appears quite appropriate since these districts are already unique among municipalities in Iowa in that they are entitled by section 467A.6 of the Code to call upon the Attorney General for legal services.

12. A special 60 percent cost-sharing rate should be authorized for establishment of permanent soil conservation practices on agricultural land located in watersheds assigned high priority, on the basis of soil fragility, by conservancy district boards. However, this special participation rate should be available only in a priority watershed where owners of at least 65 percent of the land in that watershed have signed agreements to establish and maintain such practices. The special participation rate should be available in the context of long-term agreements, as contemplated by recommendation 3.

13. The Department of Soil Conservation

should be authorized if adequate funding is provided, to increase the number of qualified technical personnel available to help implement the "Iowa Soil 2000" goal, described in this report, by not more than 15 full-time equivalent positions per year for each of the next five fiscal years.

14. The Department of Soil Conservation should be authorized to initiate a program under which limited set-aside payments can be made to farmers on a per-acre basis, for the purposes of holding land out of production for one season or delaying planting so as to allow construction of terraces and establishment of other permanent soil conservation practices during the spring and summer months.

15. Iowa State University's Cooperative Extension Service should begin immediately to collect, assemble, publish and diseminate data available from Iowa farm operators who are currently using conservation tillage methods.

Mr. JEPSEN. Iowa was the first State to appropriate funds for a statewide soil conservation cost-sharing program. Presently it contributes $5 to 6 million. Iowa initiated a wind erosion control incentive program in seven counties and a conservation tillage demonstration project in eight. These programs began in 1971 with an appropriation of a half-million dollars each. In addition, a number of Iowa counties provide cost-share funds to help finance the construction of conservation practices or make funds available for additional technical assistance.

While every State needs to assess its own soil conservation needs, Iowa's example shows how we can set goals to limit soil losses and establish procedures to meet that goal. Most importantly, it must be the State and local governments which set those goals for farmers and residents. Above all, the Iowa 2000 soil laws stress the absolute need for local grassroots control in soil conservation decisions—decisions that affect the fertile source of our food and fiber as well as the role of stewards of the land.

The idea of conserving our soil is not new. Teddy Roosevelt summed it up in 1908. "When the soil is gone," he reminded us, "man must go." Iowa is setting a soil-saving example in both its commitment and its programs. Let us commend the State for its efforts as they celebrate this year's harvest in Iowa Soil Conservation Week.

THE DOMESTIC VIOLENCE ACT

Mr. JEPSEN. Mr. President, on Thursday, September 4, 1980, the Senate passed H.R. 2977, the Domestic Violence Act. I voted against its passage and today want to express the reasons why.

Like many others in this Nation, I am concerned about this tragic problem. The fact that Congress has to address the issue is sad testimony to the appalling existence of violence in American family life and an unfortunate comment on our culture and society.

On the surface, the arguments supporting this bill seem rational, reasonable, and ultimately convincing. But they are not. In most issues, but particularly in the domestic violence bill before the Senate, I believe we fail to recognize a fundamental principle: Government governs best when it governs close to home.

In considering the problem, the question arises concerning how we should approach the issue. Proponents of H.R. 2977 argue that the problem of domestic violence in America, despite its existence as a private family matter, is so pervasive and deeply rooted that it "touches community and human life to such an extent that it cannot conscionably be ignored by any level of government."

Instead of designing a program for State and local agencies to administer, proponents want to establish a new Federal program and bureaucracy to centralize decisionmaking in Washington. Instead of utilizing the expertise and coordinated talents of public officials, private organizations, community groups and churches at the local level, proponents want to stifle local decisionmaking and community participation by implementing Federal guidelines, redtape, and Washington efficiency to solve family disputes.

Mr. President, we are told that H.R. 2977 does not provide a "Federal solution," but merely a "supportive and stimulating" role for the Federal Government to play. I disagree.

Certainly Government has the responsibility and duty to protect public safety and welfare. When carefully designed and constructed, Government participation indeed can serve the public interest as an effective stimulus in solving national problems. But this is not the case. Instead, we have an ill-designed, poorly constructed approach to Federal involvement.

It is ill-designed because it places Federal Government in the position of solving primary decisions and problems at the expense of local agencies and individuals. It is poorly constructed because the bill ignores the fact that Federal programs and local initiatives already exist to address the problem of domestic violence. To place yet another Federal layer of bureaucracy on top of existing Federal programs and local initiatives duplicates efforts and, in fact, complicates solutions.

My main objection to H.R. 2977 is that the Federal Government would engage itself in domestic disputes which are purely private and centered at the local level of government. Federal efforts to protect public safety and welfare in regard to this problem may be premature.

No one denies the existence of domestic violence. The real issue in this bill is not whether we fail to recognize the problem, but create greater problems by drafting an ill-constructed approach.

I believe that Government should only do for people what they cannot do for themselves. Since taking my seat in the Senate, there is a new awareness in Congress opposing the extension of additional power in Washington under the guise of solving people's problems and protecting the public interest. Unfortunately, the adoption of H.R. 2977 as reported by the Human Resources Committee would diminish this new sense of awareness.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of September 11, 1980, the Secretary of the Senate, on September 12, 1980, received a message from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received during the recess are printed at the end of the Senate proceedings.)

REPORT ON THE STATUS OF HEALTH INFORMATION AND HEALTH PROMOTION—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 242

Under authority of the order of September 11, 1980, the Secretary of the Senate, on September 12, 1980, received the following message from the President of the United States, together with an accompanying report, which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I transmit herewith the Third Annual Report to the Congress on the Status of Health Information and Health Promotion, as required by P.L. 94–317, the "National Consumer Health Information and Health Promotion Act of 1976."

JIMMY CARTER.

THE WHITE HOUSE, *September 12, 1980.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings).

PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 12, 1980 he had approved and signed the following act:

S. 390. An act to expedite and reduce the cost of antitrust litigation, and for other purposes.

MESSAGES FROM THE HOUSE

At 3:42 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 1250. An act to promote United States technological innovation for the achievement of national economic, environmental, and social goals, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 7301. An act to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

At 4:26 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

HOUSE BILL PLACED ON THE CALENDAR

The following bill was read by title and placed on the calendar:

H.R. 7301. An act to authorize certain construction at military installations for fiscal year 1981, and for ther purposes.

HOUSE JOINT RESOLUTION HELD AT THE DESK

The following joint resolution was ordered held at the desk until September 16, 1980, by unanimous consent:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4601. A communication from the Principal Deputy Assistant Secretary of Defense (Comptroller), reporting, pursuant to law, on the intent to obligate $1.1 million in the Army Stock Fund for war reserve stocks; to the Committee on Appropriations)

EC-4602. A communication from the President of the United States, transmitting proposed fiscal year 1981 appropriation language changes that would increase budget authority in the amount of $2,600,000 for the Department of Justice; to the Committee on Appropriations.

EC-4603. A Communication from the Assistant Secretary of the Army (Installations, Logistics and Financial Management), reporting, pursuant to law, that a study has been conducted with respect to converting to contract the total installation functions at Hawthorne Army Ammunition Plant, Hawthorne, Nevada, and a decision has been made that performance under contract is the most cost effective method of accomplishing it; to the Committee on Armed Services.

EC-4604. A communication from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting, pursuant to law, that a study has been conducted with respect to converting the T-4/T-26A instrument flight trainer operator function at Sheppard Air Force Base, Texas, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4605. A communciation from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), reporting pursuant to law, that a study has been conducted with respect to coverting the commissary shelf-stocking and custodial services function at Lowry Air Force Base, Colorado, and a decision has been made that performance under contract is the most cost-effective method of accomplishment; to the Committee on Armed Services.

EC-4606. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to the Federal Republic of Germany for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

ES-4607. A communication from the Director, Defense Security Assistance Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to Australia for Defense Articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4608. A confidential communication from the Director, Defense Security Agency, reporting, pursuant to law, concerning the Department of the Air Force's proposed Letter of Offer to a NATO country for defense articles estimated to cost in excess of $25 million; to the Committee on Armed Services.

EC-4609. A communication from the President, Export-Import Bank of the United States, reporting, pursuant to law, on loan, guarantee and insurance transactions supported by Eximbank during June 1980 to communist countries (as defined in section 620(f) of the Foreign Assistance Act of 1961, as amended); to the Committee on Banking, Housing, and Urban Affairs.

EC-4610. A communication from the Vice President for Government Affairs, National Railroad Passenger Corporation, transmitting, pursuant to law, a report for the month 1980 concerning (1) the average number of passengers per day on board each train operated, and (2) the on-time performance at the final destination of each train operated, by route and by railroad; to the Committee on Commerce, Science, and Transportation.

EC-4611. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Oil and Natural Gas From Alaska, Canada, and Mexico—Only Limited Help For U.S.," September 11, 1980; to the Committee on Energy and Natural Resources.

EC-4612. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes construction of a Federal Building in Redding, California; to the Committee on Environment and Public Works.

EC-4613. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease for space located at 1310 L Street, N.W., Washington, D.C.; to the Committee on Environment and Public Works.

EC-4614. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes the acquisition of space by lease in Denver, Colorado; to the Committee on Environment and Public Works.

EC-4615. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes continued occupancy under a succeeding lease for space located in the Park Place Building, 1200 Sixth Avenue, Seattle, Washington; to the Committee on Environment and Public Works.

EC-4616. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus which proposes a lease for the Railroad Retirement Board in Chicago, Illinois; to the Committee on Environment and Public Works.

EC-4617. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Three Mile Island: The Most Studied Nuclear Accident in History," September 9, 1980; to the Committee on Environment and Public Works.

EC-4618. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Ground Water Overdrafting Must Be Controlled," September 12, 1980; to the Committee on Environment and Public Works.

EC-4619. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Foreign Tax Credit And U.S. Energy Policy," September 10, 1980; to the Committee on Finance.

EC-4620. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC-4621. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report and recommendation concerning the claim of the Brooklyn Times against the United States; to the Committee on Governmental Affairs.

EC-4622. A communication from the Director of the Federal Emergency Management Agency, transmitting a draft of proposed legislation authorizing the Agency to provide transportation for certain persons engaged in activities at the Agencies' special facility; to the Committee on Governmental Affairs.

EC-4623. A communication from the Acting Commissioner of the U.S. Immigration and Naturalization Service, transmitting, pursuant to law, orders in the cases of certain aliens found admissible to the United States under section 212(a)(28)(I)(ii) of the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-4624. A communication from the Chief Justice of the United States Supreme Court, informing the Senate of the opening of the October 1980 Term of the Court on October 6, 1980; to the Committee on the Judiciary.

EC-4625. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to Department of Justice aid to help improve conditions at State and local correctional facilities; to the Committee on the Judiciary.

EC-4626. A communication from the Chairman of the United States Commission on Civil Rights, transmitting, pursuant to law, a report relative to civil rights issues in immigration; to the Committee on the Judiciary.

EC-4627. A communication from the Chairman of the National Arthritis Advisory Board, transmitting, pursuant to law, a monograph entitled "Thru the Arthritis Maze"; to the Committee on Labor and Human Resources.

EC-4628. A communication from the Chairman of the U.S. Railroad Retirement Board, transmitting, pursuant to law, the Board's annual report for fiscal year 1979; to the Committee on Labor and Human Resources.

EC-4629. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the third annual report under the National Diabetes Mellitus Research and Education Act of 1974; to the Committee on Labor and Human Resources.

EC-4630. A communication from the Administrator of the Veterans Administration, transmitting, pursuant to law, the Administration's annual report for fiscal year 1979; to the Committee on Veterans Affairs.

EC-4631. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report of rescissions and deferrals, September 1, 1980; to the Select Committee on Small Business, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Appropriations, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on Labor and Human Resources, the Select Committee on Indian Affairs, the Committee on Veterans' Affairs, the Committee on the Judiciary, and the Committee on Rules and Administration, jointly, pursuant to order of January 30, 1975.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and referred as indicated:

POM-857. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"ASSEMBLING JOINT RESOLUTION NO. 89

"Whereas, Congress has under consideration legislation to correct a longstanding inequity in our treatment of the survivors of the Phillippine Scouts who fought alongside American soldiers during World War II and who, although they were a part of the United States Army and fought and died along with their American counterparts, never received same pay or benefits; and

"Whereas, This kind of flagrant discrimination was sad reward indeed for their heroic sacrifices, and the enactment of this legislation would be a clear message to Filipino-Americans and people throughout the world that our commitment to justice and equality is not parochial and is basic to our conception of universal human rights; and

"Whereas, In the late 1930's, the Philippine Scouts were made a part of the United States Army to help defend the South Pacific against totalitarian domination and General Douglas MacArthur described the Scouts as "excellent troops, completely professional, loyal and devoted," since they were an elite organization with a high esprit de corps in which membership was considered an honor by Filipinos and the strictest standards were followed in selection; and

"Whereas, General Wainwright, who took command of forces on Bataan and Corregidor after General MarArthur moved Army headquarters to Australia, reported that by the beginning of December 1941, the 'Philippine Scouts were fit, trained in combat principles, and ready to take the field in any emergency"; and

"Whereas, At the onslaught of the war in the Pacific when the enemy attacked Pearl Harbor and invaded the Philippine Islands, these soldiers became a key to the success of our entire South Pacific strategy, for it was the continued resistance on Bataan that denied the Japanese an essential base for the projected thrust to the South Pacific, and they were forced to retain large Army and Navy Forces in the Philippines, which otherwise could have been employed against allied shipping of men and materials to Australia and New Caledonia from the United States and the Middle East, so that the protracted defense of these islands by the Philippine Scouts against incredible odds allowed the United States time to recover from the first blows of the war and begin to send in supplies and reinforcements; and

"Whereas, The defenders of Bataan were hopelessly outnumbered and undersupplied, endured severe hardships during their entrenchment, and were already in need of new issues of clothing and shoes when they entered Bataan in January, and, as General Wainwright reported, most of the soldiers "walked into Bataan barefooted," with disease and starvation problems dealt with daily, since at least 30 percent of the troops had dysentery, and the rest some variety of worm infestation of the bowel, so that by mid-March at least 75 percent of the command was incapacitated to some extent, but for four months they held out, fighting the enemy guerrilla fashion, buying time for an allied force build-up in Australia; and

"Whereas, With all the hardships endured by these soldiers, they never received the comparable benefits they were due, and as Brigadier General W. E. Brougher, Commander of the 11th Division on Bataan, pointed out in his prison diary, the moral factor that most disturbed him was 'discrimination against Philippine Scouts officers by the United States Army Forces in the Far East in matters of promotion, pay and allowances,' since despite their gallant service and tremendous suffering, the Philippine Scouts received only a fraction of the pay and benefits received by their American counterparts, and that discrimination continues today; and

"Whereas, It is time to rectify this longstanding wrong by the enactment of pending legislation which would authorize pay and benefits for members of the Philippine Scouts or their survivors at the same rates of basic pay as other members of the United States Army of corresponding grades and lengths of service received at that time; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress to support and enact legislation which would authorize pay and benefits for members and survivors of members of the Philippine Scouts on the same basis as such pay and benefits are authorized for other members of the United States Army and their survivors; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-858. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION NO. 93

"Whereas, Federal guidelines under the Comprehensive Employment and Training Act have been construed to require, in the determination of which areas of the City of Los Angeles will receive federal funds for summer jobs, that the city use last year's unemployment rate and apply it to 1970 census data; and

"Whereas, Population information gathered in 1977 for the city's Public Employment and Housing Survey, which has been used in the past for other federal programs, provides a better basis for allocating programs and services to the needy; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California requests the federal government to permit the City of Los Angeles to use population information gathered in 1977 for the Public Employment and Housing Survey, or its equivalent, to determine summer job programs; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the United States Department of Labor and to the California Economic Development Administration."

POM-859. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, opposing the Department of Transportation rules governing the Highway routing of radioactive and hazardous materials as presently drafted and proposed; to the Committee on Commerce, Science, and Transportation.

POM-860. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting certain amendments to the Fair Housing Act of 1968 (H.R. 5200 and S. 506); to the Committee on the Judiciary.

POM-861. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting Law Enforcement Assistance Administration appropriations; to the Committee on the Judiciary.

POM-862. A resolution adopted by the Essex County Board of Chosen Freeholders, County of Essex, New Jersey, supporting the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974; to the Committee on the Judiciary.

POM-863. A resolution adopted by Miss Wheelchair America, Inc., Birmingham, Alabama, to afford Miss Wheelchair America the privilege of addressing the United States Senate; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES SUBMITTED DURING RECESS

Under the authority of the order of Thursday, September 11, 1980, the following reports of committees were submitted on Friday, September 12, 1980:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment and an amendment to the title:

S. 2375. A bill to amend the Public Health Service Act to revise and extend the programs of assistance under titles VII and VIII for trainig health professionals and to extend the National Health Service Corps programs (Rept. No. 96-936).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 2743. An act to provide for a national policy for materials research and development and to strengthen the materials research and development capability and performance of the United States (Rept. No. 96-937).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

H.R. 3210. An act to terminate the authority to make grants to the Las Vegas Valley Water District under the Act of August 27, 1954;

H.R. 6137. An act to convey certain interests in public lands to the city of Angels, California; and

H.R. 7434. An act to provide for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and for other purposes.

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. 3017. A bill to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments (Rept. No. 96-938).

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Res. 518. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 333. Referred to the Committee on the Budget.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHURCH, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 109. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license applications XSNM-1379 and XSNM-1569 (together with minority views) Rept. No. 96-939).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 5829. An act for the relief of the the Foundry Methodist Church (Rept. No. 96-940).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment (in the nature of a substitute):

S. 2884. A bill to provide for an accelerated program of light water nuclear reactor safety research and development, to be carried out by the Department of Energy (Rept. No. 96-941).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

S. 2926. A bill to provide for an accelerated research, development, and demonstration program to achieve confirmation of the engineering feasibility of magnetic confinement fusion, and for other purposes (Rept. No. 96-942).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI:

S. 3110. A bill to extend the boundaries of White Sands Missile Range, White Sands, New Mexico, and provide an exchange of Federal lands for State lands; to the Committee on Energy and Natural Resources.

By Mr. McGOVERN (for himself and Mr. NELSON):

S. 3111. A bill to amend certain provisions of the Federal Power Act, 16 U.S.C. 791a et seq., relating to preferences in issuance of preliminary permits or licenses; to the Committee on Energy and Natural Resources.

By Mr. McGOVERN:

S. 3112. A bill to provide a two-year suspension of payment of principal and interest on certain loans made to farmers and ranchers; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOLE:

S. 3113. A bill to amend the Tariff Schedules of the United States to increase the quantity of cigarettes that may be accorded duty-free treatment if acquired in the insular possessions and entered by returning United States residents; to the Committee on Finance.

By Mr. HATCH:

S. 3114. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights; to the Committee on the Judiciary.

S. 3115. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI:

S. 3110. A bill to extend the boundaries of White Sands Missile Range, White Sands, N. Mex., and provide an exchange of Federal lands for State lands; to the Committee on Energy and Natural Resources.

WHITE SANDS MISSILE RANGE

• Mr. DOMENICI. Mr. President, as our Federal land ownership of lands expands to meet increased demands, pressure correspondingly increases in those States with a large ratio of Federal/State lands.

The purpose of this legislation is to establish principle that while a State may not be opposed to increasing Federal boundaries, be they for parks or military use, that States should still have the option of compensation in Federal lands of equal value rather than simple economic remuneration.

This legislation would have two effects. First there would be State participation in the decision as to whether the ratio of State to Federal land ownership should change. Second, the Federal agencies would have to consider whether an increase of a certain land holding was significant enough to justify a decrease or relinquishment of some other parcel.

In New Mexico, there is a need to expand Federal ownership within the boundaries of the White Sands Missile Range. The State would rather make a like for like exchange.

Federal ownership in the West is an onerous burden already. Unless some type of mechanism such as that suggested by this legislation is soon adopted, cooperation between the State and Federal government will end.

We in New Mexico would like the opportunity to show the Nation how such a give and take could work and how it would result in additional booty—namely goodwill.•

By Mr. McGOVERN:

S. 3112. A bill to provide a 2-year suspension of payment of principal and interest on certain loans made to farmers and ranchers; to the Committee on Agriculture, Nutrition, and Forestry.

FARMERS IN DISTRESS NEED MORE HELP FROM ALREADY OVERBURDENED FMHA

• Mr. McGOVERN. Mr. President, I rise to introduce S. 3112, a bill to provide a 2-year suspension of payment of principal and interest on certain loans made to farmers and ranchers by the Farmers Home Administration.

In 1976, my State of South Dakota was hit with the worst drought in many years. Farmers and ranchers were forced to borrow heavily to keep from going broke.

Ordinarly, after such a disaster it is a rule of thumb that it takes a producer 5 years to get back on his feet. But it has only been 4 years since that terrible year that brought farmers to their knees, and once again the weather has crippled South Dakota's farmers and ranchers, who contribute so much to the productivity of the United States. Again this year, because of the lack of rain, 52 out of 67 counties in South Dakota have been declared disaster areas. And it is probable that more counties will fall into this category.

Remember, Mr. President, I said that ordinarily farmers can come back from a disater in about 5 years. But this has been an extradordinary year.

I do not think there is any doubt that the embargo of grain to the Soviet Union depressed the prices that farmers receive for their grain. Meanwhile the inputs needed to farm have been inflating at a rate of between 20 and 30 percent. I know of no other segment of our economy that has been so severely hit by high oil prices and inflation as agriculture has been.

This crisis situation is reflected in the amount of farm debt. Total farm debt on January 1 of this year stood at $157.8 billion nationwide, an increase of $20.3 billion over the same time in 1979.

On the one hand, our farmers are up to their ears in debt, and on the other, the weather has conspired to keep them from being able to pay off their loans. Net farm income this year is expected to drop by as much as 30 percent—and that is not even taking the drought into consideration.

Further, farmers and ranchers in the Midwest and Great Plains, whose operations are a long distance from terminal markets, are having to pay for increasingly high-priced transportation of their goods—transportation that is not always there when it is needed.

It seems to me that the stage is set for an economic depression in agriculture that will mean ruin to farmers and ranchers, and sharply higher food prices to consumers.

The bill I am introducing today will not solve all of the problems that I have cited here. It is merely designed to give some producers a breather, so that they can get their act back together and recover some of their losses.

The bill provides that the Secretary of Agriculture shall suspend the payment of principal and interest for 2 years on any Farmers Home Administration operating or emergency loan at the request of the borrower.

I think the bill will provide vital relief to farmers who were forced by the 1976 drought to go deeply into debt, and others who were forced to borrow under the economic emergency loan program.

I think this bill will provide a badly needed respite for the Farmers Home

Administration, an agency that is in the middle of a severe management crisis.

The Farmers Home Administration has been in business for about 50 years, providing essential credit of last resort to farmers and others in rural America.

Yet in recent years we have been piling program after new program upon the agency, without appreciably increasing its staff. As a result, half of the money the agency has ever loaned out in the past 50 years has been loaned in the past 3 years.

The Farmers Home Administration was built upon the principle of supervised credit. Since the agency largely deals with borrowers who would be considered marginal by commercial lenders, Farmers Home employees are expected to sit down with borrowers to develop farm operating plans so that there can be reasonable assurance that farmers can pay back their loans.

As a result of the growth of FmHA lending, loan supervision has all but gone out the window.

This has resulted in two problems, it seems to me:

First of all, marginal borrowers have not had the benefit of professional advice that they need so badly; and

Second, I believe loans have been made to large operations that should not be a part of Farmers Home's ordinary clientele.

I am convinced that the Farmers Home Administration needs a major overhaul. The regular loan programs and the disaster loans are in too many cases going to less deserving and less needy farmers.

I think we need to begin planning now for a joint review and reconstruction of the programs of FmHA by both the Congress and the administration.

Just 12 years ago, the Farmers Home Administration was carrying $6 billion in outstanding debt of all kinds. Now the agency is holding more than $50 billion in debt, and in the past 3 years, most of its money has gone to farmers in trouble.

Because of limitations in personnel and other problems imposed on the agency by various administrations, it seems to me that Farmers Home is going to be in trouble, just as our producers are, if we don't sit down and map out a new course for it.

Mr. President, I ask unanimous consent that S. 3112 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), during the two-year period beginning on the date of the enactment of this Act, the Secretary of Agriculture shall suspend, at the request of the borrower, the payment of principal and interest on the balance of any operating or emergency loan made to a farmer or rancher under the Consolidated Farm and Rural Development Act and held by the Secretary, or on the balance of any emergency loan made to a farmer or rancher under the Emergency Agricultural Credit Adjustment Act of 1978 and held by the Secretary, and shall forego pursuit to final collection of any such loan for nonpayment of principal or interest during such period.

(b) No interest shall accrue on any loan described in subsection (a) during any period that the payment of principal and interest has been suspended under such subsection.

(c) Payment of principal and interest on the balance of any loan described in subsection (a) shall recommence after the suspension period has expired, and the repayment period on such loan shall be extended to provide for payments that would have been due and payable during the suspension period.●

By Mr. HATCH:

S. 3114. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights; to the Committee on the Judiciary.

S. 3115. A bill to provide a special defense to the liability of political subdivisions of States under section 1979 of the Revised Statutes (42 U.S.C. 1983) relating to civil actions for the deprivation of rights; to the Committee on the Judiciary.

MUNICIPAL CIVIL LIABILITY

● Mr. HATCH. Mr. President, I note that yet another drain on public funds and a stumbling block to efficient performance of public services has been created by the Supreme Court. As a result of two recent rulings, State and local officials will find themselves forced to perform their duties with the constant fear of costly damage suits which will cut into their ability to spend their time and efforts in the performance of important services to the public at large.

Municipalities will not be able to function without the threat of an action against them for the bad-faith conduct of some misguided public servant. Cities and towns are now saddled with the almost impossible task of second-guessing the Supreme Court's future interpretations of constitutional law. If they should happen to guess incorrectly in enacting ordinances, local governments may be held strictly liable to anyone who cares to bring suit against them. Civil actions may now be brought against State and local officials under 42 U.S.C. 1983 based on violations of laws which have no relevance whatsoever to deprivations of constitutional or statutory equal rights. Any statute may now be the basis for such an action. Our crowded courts will no doubt be burdened even further. Our tax dollars will be spent in costly defenses against damage suits involving local governments and officials.

Mr. President, because the court's recent rulings in the cases Maine against Thiboutot and Owen against the City of Independence involve areas of the law which are better left to Congress than to judicial activism, I wish to introduce some relatively simple, yet very important amendments to 42 U.S.C. 1983.

Section 1983 provides that persons responsible for the deprivation of another's constitutional rights shall be liable to that person for redress in a civil action. The exact language of the section as it currently reads, protects those rights "secured by the Constituion and laws" of the United States. In the case of *Maine* v. *Thiboutot*, — U.S. —, 100 S.Ct. 727 (1980), the Court expressly ruled, for the first time ever, that the phrase "and laws" was intended by Congress to provide a section 1983 remedy for deprivations of rights secured by any law of the United States. This is a broad interpretation of an act enacted for the express purpose of providing a Federal remedy for impingements, made under color of State law, upon 14th amendment rights. The Court's broad reading of the law now greatly expands the liability of State and local officials charged with the task of administering the laws of the land.

Providing for a "cause of action for the infringement, under color of State law, of any Federal right" means that "virtually every * * * program, together with the State officials who administer [them] becomes subject to judicial oversight at the behest of a single citizen, even if such a dramatic expansion of Federal court jurisdiction never would have been countenanced when these programs were adopted." See *Chapman* v. *Houston Welfare Rights Org.*, 441 U.S. 600 (1978), (concurring opinion, Powell J.). Such a judicially created statutory liability is "at war with the intent of Congress" in its enacting of section 1983 and with the historical purpose and application of the section. Together with the holding of the Court in *Owen* v. *City of Independence*, — U.S. —, 100 S.Ct. 1398 (1980), the Thiboutot holding imposes a formidable burden upon State and local governments and officials.

In Owen, the Court held that local governmental entities may not assert the good faith of their agents as a defense to liability under section 1983 suits. The Court has stepped into an area best reserved to Congress in creating this new realm of liability which can have only adverse consequences for States and localities.

MAINE AGAINST THIBOUTOT

The Thiboutots were recipients of AFDC benefits administered by the Maine Department of Human Services. The amount paid to the family was calculated on the number of dependents of Mr. Thiboutot—three children from a previous marriage—rather than on the number of dependents he and his present wife claimed. Their petition for a reassessment of the benefits was based on amounts due them as parents of eight children. The Superior Court of Maine, in an order affirmed by the Supreme Judicial Court of Maine, required the agency to make the requested changes and adopt new policies for similar cases. The Supreme Judicial Court also awarded attorney's fees, 405 A.2d 230 (Me. 1979) on appeal the Supreme Court of the United States affirmed.

Justice Brennan, writing for the majority of the Court, interpreted the "plain language" of section 1983 as providing a broad base for claims arising not only out of violations of Constitutional rights, but also out of statutory rights unrelated to equal rights. Such claims are not limited to constitutional rights or equal rights created by statute, reasons Justice Brennan, because the section merely states "and laws" and "Congress attached no modifiers" to explain what type of laws were intended to be covered by the section.

The result is that a cause of action under section 1983 may now rest on the violation or deprivation of any rights secured by any statute. In other words, a disgruntled citizen, feeling that an official deprived him or her of some benefit under a program provided for by Federal law, may sue that official for damages under section 1983. Prior to this decision, section 1983 cases only involved rights secured by the Constitution and statutes which provided for equal rights. Now the Court has transformed this remedy into a catchall cause of action for the redress of any infringement of statutory rights.

OWEN AGAINST CITY OF INDEPENDENCE

In this case, a dismissed city police chief sued the city, city manager, and city council for violating his due process rights. The Supreme Court, reversing the Court of Appeals, held that the city was liable to the police chief because its ordinance allowing his summary dismissal was unconstitutional and went against the Court's holdings in *Roth* v. *Board of Regents*, 408 U.S. 564 (1972) and *Perry* v. *Sindermann*, 408 U.S. 593 (1972). These decisions had been handed down after the actions taken by the city. The district court had therefore, allowed a good faith defense because the city and its officials could not have anticipated the Supreme Court's future interpretations of constitutional law. The Supreme Court, however, disallowed the good faith defense and held the city liable even though it had no way of predicting the Court's actions.

Until the Owen case, the Court had avoided defining the exact limit of municipal liability in section 1983 actions. It had established some limitations, though. In 1921, for example, in the case of *Harris* v. *District of Columbia*, 256 U.S. 650 (1921), the Court noted that a municipal corporation, when acting in good faith, is not liable for the manner in which it exercises discretionary powers of a public or legisltaive character.

Later, in a section 1983 case, the Court held that cities were not persons within the ambit of section 1983 and were therefor immune from liability in such actions. See *Monroe* v. *Pape*, 356 U.S. 167 (1961). This immunity was affirmed in later cases, such as city of *Kenosha* v. *Bruno*, 412 U.S. 507 (1973) and *Moore* v. *County of Alameda*, 411 U.S. 693 (1973). The Court reversed the absolute immunity rule of its Monroe holding in 1978 and began the erosion of municipal immunity with its holding in *Monell* v. *City of New York Department of Social Services*, 436 U.S. 658 (1978).

In this Monell case, the Court expressly reserved the question of a qualified immunity for municipalities. It did note that municipalities cannot be held liable on a respondent superior theory and further that it must "reverse the judgment below."

> In so doing, we have no occasion to address, and do not address, what the full contours of municipal liability under section 1983 may be. We have attempted only to sketch so much of the section 1983 cause of action against a local government as is apparent from the history of the 1871 act and our prior cases.—Monell, at 695.

With the Owen decision, however, the Court milks the legislative history of section 1983 again and this time comes up with the decision that municipalities shall be strictly liable in 1983 actions.

Add to this holding the broad doctrine of Thiboutot, another stretching of section 1983's history, and the result is that the Court now allows a local government to be held strictly liable under a section 1983 action based on a violation of any statute.

Justice Powell authored dissenting opinions for the justices in the minority in both the Owen and Thiboutot decisions. The major flaws in each of those holdings are, as Justice Powell sees them, the Court's inconsistent and incorrect interpretation of the history of section 1983 as well as the Court's inconsistent treatment of section 1983 claims. Most important, he feels, these decisions depart from the established law in this area. He notes in his Owen dissent:

> This strict liability approach inexplicably departs from this court's prior decisions under section 1983 and runs counter to the concerns of the 42d Congress when it enacted the statute. The court's ruling also ignores the vast weight of commonlaw precedent as well as the current state of municipal immunity.

Again, in Thiboutot, Justice Powell voices concern:

> Until today this court never had held that section 1983 encompasses all purely statutory claims. Past treatment of the subject has been incidental and far from consistent. . . .

In Owen and Thiboutot the Court felt, and the law now reads, that a broader interpretation of the "and laws" language of section 1983 is mandated by the section's legislative history and the Court's prior treatment of section 1983 claims. Cities should not enjoy any form of immunity from liability, in its opinion, because Congress had not expressly provided for any. The dissenting justices, including the Chief Justice and Justices Powell and Rehnquist—Justice Stewart joined in Justice Powell's dissent in the Owen case—noted that the legislative history does not mandate the Court's rulings in these two cases and that the holdings in Owen and Thiboutot actually fly in the face of the established law and the public policy associated with section 1983.

Though much has been said about these decisions and their departure from prior decisions, I must mention one other important aspect. Justice Powell points out, in his dissent in Owen, that the court's decision in that case is completely out of step with the prevailing situation of the law of municipal immunity in the States. Most States have some form of immunity, the most common being a qualified immunity. Only five States practice the form of blanket immunity introduced by the court in Owen.

In addition, the States and the Supreme Court have allowed most State executive officials some kind of good faith defense in 1983 actions. Now, however, when an official is sued under section 1983, Owen and Thiboutot seem to say that the government of the locality is strictly liable even though the official may have acted in good faith. It does not matter under such as doctrine. whether the official has acted in good faith or bad faith. Either way, the municipality inevitably bears the burden of judgment. Also, though the States have granted municipalities immunity, the Federal Government does not. With such a rule, a Federal forum becomes even more desirable. That age-old spectre that such a decision will cause a race to the courthouse and open floodgates of litigation to overload an already burdened Federal judiciary raises its ugly head again. It cannot be ignored.

CONSEQUENCES

Any time the scope of liability is extended—here it is extended to include State officials and local governments—it is likely to cause an increase in litigation. Justice Powell notes in his Thiboutot dissent that—

> No one can predict the extent to which litigation from today's decision will harass state and local officials; nor can one foresee the number of new filings in our already over-burdened courts. But no one can doubt that these consequences will be substantial.

In addition, Justice Powell illustrates the new areas likely to be affected by the Court's extension of liability. I include the appendix to his opinion at this point because of the importance of understanding the extent to which this holding will intrude into the performance of State and local government officials.

The statutes Justice Powell lists fall into three general categories which he entitles (a) joint regulatory endeavors; (b) resource management; (c) grant programs. The Court's holding will allow cases under section 1983 based on any deprivation by a State official administering such programs.

Note the wide range of programs included in the list:

(A) Joint regulatory endeavors;

1. Federal Insecticide, Fungicide, and Rodenticide Act, 86 Stat. 973 (1972), as amended, 7 U.S.C. 136 et seq.; see, E.G., 7 U.S.C. 136u, 136v.

2. Federal Noxious Weed Act of 1974, 88 Stat. 2148 (1975), 7 U.S.C. 2801–2813; see 7 U.S.C. 2808.

3. Historic Sites, Buildings, and Antiquities Act, 49 U.S.C. 666 (1935), as amended, 16 U.S.C. 461–467; see 16 U.S.C. 462(E).

4. Fish and Wildlife Coordination Act, 48 Stat. 401 (1934), as amended, 16 U.S.C. 661–666c; see 16 U.S.C. 661.

5. Anadromous Fish Conservation Act, 79 Stat. 1125 (1965), as amended, 16 U.S.C. 757a-757d; see 16 U.S.C. 757a(a).

6. Wild Free-Roaming Horses and Burros Act, 85 Stat. 649 (1971), as amended, 16 U.S.C. 1331–1340; see 16 U.S.C. 1336.

7. Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, 16 U.S.C. 1361–1407; see 16 U.S.C. 1379.

8. Wagner-Peyser National Employment System Act, 48 Stat. 113 (1935), 29 U.S.C. 49 et seq.; see 29 U.S.C. 49g (Employment of Farm Laborers).

9. Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U.S.C. 1201–1328; see 30 U.S.C. 1253.

10. Interstate Commerce Act Amendments of 1935, 49 Stat. 549, as amended, 49 U.S.C. 11502(a)(2) (Enforcement of Highway Transportation Law).

(B) Resource management;

1. Laws involving the administration and management of national parks and scenic areas: E.G., act of May 15, 1965, section 6, 79 Stat. 111, 16 U.S.C. 281e (Nez Perce National Historical Park); act of Sept. 21, 1959, section 3, 73 stat. 591, 16 U.S.C. 410u (Minute Man National Historical Park); act of Oct. 20, 1972, section 4, 86 Stat. 1302; 16 U.S.C. 460bb-3(b) (Muir Woods National Monument).

2. Laws involving the administration of forest lands: e.g., Act of March 1, 1911, section 2, 36 stat. 961, 16 U.S.C. 563; act of Aug. 29, 1935, ch. 808, 49 stat. 936, 16 U.S.C. 567a-567b.

3. Laws involving the Construction and Management of Water Projects: e.g., Water Supply Act of 1958, 301, 72 stat. 319, 43 U.S.C. 390b; Boulder Canyon Project Act, sections 4, 8, 45 stat. 1058, 1062 (1928), as amended, 43 U.S.C. 617c, 617g; Rivers and Harbors Act of 1899, section 9, 30 stat. 1151, 33 U.S.C. 401.

4. National Trails System Act, 82 stat. 919 (1968), as amended, 16 U.S.C. 1241–1249; see 16 U.S.C. 1246(h).

5. Outer Continental Shelf Lands Act Amendment of 1978, section 208, 92 stat. 652, 43 U.S.C. 1345 (oil leasing).

(C) Grant programs:

In addition to the familiar welfare, unemployment, and medical assistance programs established by the Social Security Act, these may include:

1. Food Stamp Act of 1964, 78 Stat. 703, as amended, 7 U.S.C. 2011–1025; see e.g., 7 U.S.C. 2020e–2020(g).

2. Small Business Investment Act of 1958, section 602(d)(1), 72 Stat. 698, as amended, 15 U.S.C. 636(d).

3. Education Amendments of 1978, 92 U.S.C. 2153, as amended, 20 U.S.C. 2701 et seq.; see, e.g., 20 U.S.C. 2734, 2902.

4. Federal-Aid Highway Legislation, e.g., 21 U.S.C. 128, 131.

5. Comprehensive Employment and Training Act Amendments of 1978, 92 Stat. 1909, 29 U.S.C. 801 et seq.; see, e.g., 29 U.S.C. 823, 824.

6. United States Housing Act of 1937, as added, 88 Stat. 653 (1974), as amended, 42 U.S.C. 1437 et seq.; see, e.g., 42 U.S.C. 1437d (c), 1437j.

7. National School Lunch Act, 60 Stat. 230 (1946), as amended, 42 U.S.C. 1751 et seq.; see, e.g., 42 U.S.C. 1758.

8. Public Works and Economic Development Act of 1965, 79 Stat. 552, as amended, 42 U.S.C. 3121 et seq.; see, e.g., 42 U.S.C. 3132, 3151a, 3243.

9. Justice System Improvement Act of 1979, 93 Stat. 1167, 42 U.S.C. 3701–3797; see, e.g., 42 U.S.C. 3742, 3744(c).

10. Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109, as amended, 42 U.S.C. 5601 et. seq.; see, e.g., 42 U.S.C. 5633.

11. Energy Conservation and Production Act of 1976, 90 Stat. 1125, as amended, 42 U.S.C. 6801 et seq.; see, e.g., 42 U.S.C. 6805, 6836.

12. Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486 (1975), as amended, 42 U.S.C. 6001 et seq.; see, e.g., sections 6011, 6063.

13. Urban Mass Transportation Act of 1964, 78 Stat. 302, as amended, 49 U.S.C. 1601 et seq.; see, e.g., sections 1602, 1604(g)–(m).

Also of concern is the added burden in time and public funds which inevitably accompanies such litigation. Many cities already face heavy fiscal problems, high taxes and rising inflation in providing necessary community services. Now the Court will add to these problems the costs of defending against section 1983 actions based purely upon some statutory claim and paying judgments as a result of the Owen strict liability doctrine. These judgments become even more onerous when the Court decides that attorney's fees may also be awarded under section 1988, the Civil Rights Attorney's Fees Awards Act of 1976, as it did in Thiboutot.

Such an unjust rule does not allow municipalities to act with the degree of latitude needed to meet their obligations to the public. Writing of immunity for government officials, Justice Harlan listed some important reasons for granting immunity which I feel apply just as strongly to municipalities as well.

> It has been thought important, he wrote: that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to government service . . . . *Barr* v. *Matteo,* 360 U.S. 564.

The municipality's actions are essentially those of its chief officials. Its immunity should be at least as extensive as that of those who act in its behalf and who enforce and make its laws. The same concerns mentioned above by Justice Harlan apply to both the municipalities and the officials. The importance of freedom to pursue official duties without threat of suit, the savings in time, energies, and dollars which would allow better service to the public at large. Judge Learned Hand once wrote:

> To submit all officials, the innocent as well as the guilty to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be a means of punishing public officers who have been truant to their duties: but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. *Gregoire* v. *Biddle,* 177 F. 2d 579, 581. Quoted in *Barr* v. *Matteo.*

In the case of municipalities, charged by law with protecting the welfare of the public and providing necessary services, it is certainly unfair to expose to suit such as have been honestly mistaken. This is precisely what the Court has done in the Owen case, by holding the city of Independence strictly liable for an honest mistake, a good faith reliance on the validity of a law which was not made unconstitutional until after the incident giving rise to Mr. Owen's suit had taken place.

PROPOSED AMENDMENTS

The erosion of municipal immunity begun with the Court's Monell decision and taken to its maximum extent in Owen is an indication of the need for action on the part of Congress. The court had declared in Monell that it had come as far as possible from the "apparent" history of the act in declaring that cities were not entitled to an absolute immunity from liability under section 1983. The Court left undecided the question of qualified immunity. The Court has blamed the difficulty of construing section 1983, in part, on the "scanty" legislative history of the act of 1871, section 1983's predecessor.

The Court has also been careful to point out in many of its section 1983 cases, including Owen and Thiboutot, that Congress could, if it chose to do so, modify the statute or limit its application to certain types of statutes. The Court has evidently grown tired of waiting for Congress to act on the matter, and has gone ahead and forged its own limits—or, rather, abolished any limits—of liability under section 1983.

The intrusion of the judiciary into an area best reserved for the legislative branch of Government is unfortunate. Nor is it wise for Congress to leave the language of section 1983 in such a state of ambiguity as to result in further confusion like that involved in the Owen and Thiboutot cases. The pitfalls associated with finding "legislative intent" in the history of an act, or in the "plain language" of an act, are widely recognized. That the Court had nothing better to work with in the case of section 1983 is not entirely its fault. But one cannot saddle Congress with the responsibility for the Court's "evolving" interpretation of section 1983's "scanty" history. It is the Court that has taken silence on a phrase to mean one thing at one point in time and another thing years later—as it did in Monroe (1961) and Monell (1978).

The fact that Congress had not expressly mentioned municipal liability under section 1983, or that Congress never defined them as "persons" under that section, gave the Court reason enough to hold in Monroe that cities are not persons for purposes of the act. That interpretation lasted until the Court read congressional silence again in Monell and held that Congress had not set out the exact limitations of liability or immunity for municipalities under section 1983 and, therefor, Congress did not intend for municipalities to be absolutely immune from liability.

The Supreme Court has been far from unimaginative in its interpretation of legislative history touching section 1983. It has managed to pin a couple of very different rules of law on the same legislative history of section 1983 in a period of less than 20 years.

It is time that Congress step in and correct the Court's statutory interpretation. The Thiboutot decision does not involve a departure from the treatment of constitutional claims. My amendments would not affect constitutional claims. Instead, the first of the proposed amendments is limited to the decision of the Court in Thiboutot. It makes literal the intended meaning of the language of section 1983 by adding the missing modifiers which permitted Justice Brennan and the Court to make the holding they did. The section would then provide that section 1983 actions be based on deprivations of those rights secured by the Constitution and by those laws which provide for equal rights. The text of the section would be changed by adding the words "and by any law providing for equal rights" in the place of the ambiguous and broad "and laws" language to read:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Civil Rights Act of 1871 had been enacted by the 42d Congress to provide a Federal remedy for persons seeking redress for violations of 14th amendment rights and related rights secured by statute. The Court has now stretched the statute beyond those bounds to cover any statutory claim, not just those claims relating to equal rights or 14th amendment rights, because Congress has included no modifiers in the phrase "and laws." That problem is solved with the adoption of this amendment.

My amendment will give effect to Justice Powell's suggested solution to the problem. Anticipating the statutory-based claim of the type contested in Thiboutot, Justice Powell suggested the problem would be "avoided if section 1983 is read, as it should be, as encompassing only rights secured by the Constitution and laws providing for equal rights." Chapman, supra at 645, 646. This language included in the act by the proposed amendment will give a more clear and definitive indication of the scope of section 1983 claims.

In its Owen decision, the Court provides for municipal liability because Congress had not provided for municipal immunity. This decision comes now even though the Court had decided almost 20 years ago that Congress had intended, by its silence on the question of immunities under section 1983, not to provide liability to municipalities. The second amendment which I propose today will remedy this confusion by providing that municipalities and other political subdivisions of the States shall have a good faith defense in 1983 actions. This new section on liability of political subdivisions will read:

> No civil action may be brought against a political subdivision of a state under this section if the political subdivision acted in good faith with a reasonable belief that the actions of the political subdivision were not in violation of any rights, privileges, or immunities secured by the Constitution or by laws providing for equal rights of citizens or persons.

Thus section 1983 will continue to allow recovery when there has been an intentional or bad faith violation by the municipality, but will provide protection for the municipality that has acted in good faith.

CONCLUSION

As the city of Independence learned, attempting to second-guess the future interpretation of constitutional law by the Supreme Court is difficult if not impossible. The law has always provided that where the acts of an individual cause injury, such individual should be responsible. It is difficult, however, to find a logical reason to hold a city responsible for violating a right which first came into existence after the city had acted.

It is in the best interests of the States and the public as a whole to provide meaningful guidelines in the area of municipal and official liability. Cities and other political subdivisions must be able to enact ordinances and laws without the constant threat of a subsequent change in the law which could subject them to costly damage suits and judicial intrusion into their decisionmaking. State and local officials should be able to carry out programs and policies, even in a Federal-State cooperative situation, without the fear that a section 1983 action based on something other than a deprivation of equal rights may be brought against them.

This threat of judicial intrusion into the policymaking, practices, and decisionmaking of governments defeats the purpose and thwarts the theory of the doctrine of separation of powers.

It is important, in order to maintain balance in our Government and stability in the law, that some officials and local governments be allowed to exercise their discretionary duties with a degree of protection from unwarranted judicial review and costly and time-consuming litigation. Causes of action are provided for by many statutes, when necessary. Such remedies for deprivations of specific statutory rights should be created by Congress, not the Court. As Justice Powell noted in Owen:

> The allocation of public resources and the operational policies of the government itself are activities that lie peculiarly within the competence of the executive and legislative bodies. When charting those policies, a local official should not have to gauge his employer's possible liability under section 1983 if he incorrectly—though reasonably and in good faith—forecasts the course of constitutional law. Excessive judicial intrusion into such decisions can only distort municipal decision-making and discredit the courts. Qualified immunity would provide presumptive protection for discretionary acts, while still leaving the municipality liable for bad faith or unreasonable constitutional deprivations.

I therefore urge immediate action to avoid the onerous consequences of the Court's decisions in Maine against Thiboutot and Owen against city of Independence by the adoption of these two amendments. It is the responsibility of this body to prevent the unnecessary and costly litigation involving local governmental officials and entities that will follow in the wake of these decisions and reach every member of the public. Adoption of the proposed amendments is the proper way to solve such controversy. Justice Rehnquist foresaw such a need in his dissenting opinion in Monell against city of New York Department of Social Services:

> Only Congress, which has the benefit of the advice of every segment of this diverse nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision.

To keep this problem on the back burner may result in another 17-year wait for the Court to decide to correct its own mistakes of statutory construction. It is our prerogative to make such corrections in statutory law whenever we see fit. Now is the time, if the consequences are to be effectively avoided.●

ADDITIONAL COSPONSORS

S. 1411

At the request of Mr. Chiles, the Senator from Tennessee (Mr. Sasser) was added as a cosponsor of S. 1411, a bill to improve the economy and efficiency of the Government and the private sector by improving Federal information management, and for other purposes.

S. 1530

At the request of Mr. Ribicoff, the Senator from Wisconsin (Mr. Nelson) was added as a cosponsor of S. 1530, a bill to change the method of medicare reimbursement for health maintenance organizations.

S. 1942

At the request of Mr. McGovern, the Senator from North Carolina (Mr. Morgan), and the Senator from West Virginia (Mr. Randolph) were added as cosponsors of S. 1942, a bill to provide for a resource conservation and development program in the Department of Agriculture, and for other purposes.

S. 2639

At the request of Mr. McGovern, the Senator from Texas (Mr. Bentsen) was added as a cosponsor of S. 2639, a bill to mitigate the adverse effects of the suspension of trade with the Union of Soviet Socialist Republics on U.S. agricultural producers, and for other purposes.

S. 2906

At the request of Mr. Danforth, the Senator from Massachusetts (Mr. Tsongas), and the Senator from Pennsylvania (Mr. Heinz) were added as cosponsors of S. 2906, a bill to amend the Internal Revenue Code of 1954 to provide a credit against tax for certain research and experimental expenditures, and for other purposes.

S. 2979

At the request of Mr. Metzenbaum, the Senator from New Hampshire (Mr. Durkin), and the Senator from New York (Mr. Moynihan) were added as cosponsors of S. 2979, a bill to amend the Railroad Retirement Act of 1974 and the Internal Revenue Code of 1954 to assure sufficient resources to pay current and future benefits and to extend certain cost-of-living increases.

SENATE JOINT RESOLUTION 202

At the request of Mr. Domenici, the Senator from Arizona (Mr. DeConcini), and the Senator from West Virginia (Mr. Randolph) were added as cosponsors of Senate Joint Resolution 202, a joint resolution to authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week."

SENATE RESOLUTION 482

At the request of Mr. Exon, the Senator from Kansas (Mr. Dole), the Senator from South Dakota (Mr. McGovern), the Senator from Alaska (Mr. Stevens), the Senator from Montana (Mr. Melcher), the Senator from Alaska (Mr. Gravel), the Senator from South Dakota (Mr. Pressler), the Senator from Alabama (Mr. Heflin), the Senator from Nevada (Mr. Cannon), the Senator from Montana (Mr. Baucus), the Senator from New Mexico (Mr. Schmitt), the Senator from Texas (Mr. Tower), the Senator from North Dakota (Mr. Young), the Senator from Virginia (Mr. Harry F. Byrd, Jr.), the Senator from Oregon (Mr. Hatfield), the Senator from Arkansas (Mr. Pryor), the Senator from Arkansas (Mr. Bumpers), the Senator from South Carolina (Mr. Hollings), the Senator from South Carolina (Mr. Thurmond), the Senator from New Jersey (Mr. Bradley), the Senator from California (Mr. Cranston), the Senator from Utah (Mr. Garn), the Senator from Wyoming (Mr. Wallop), the Senator from North Carolina (Mr. Helms), the Senator from Maine (Mr. Cohen), and the Senator from Michigan (Mr. Levin) were added as cosponsors of Senate Resolution 482, a resolution to designate the third week of September of each year as "American Buffalo Week."

SENATE CONCURRENT RESOLUTION 124—SUBMISSION OF A CONCURRENT RESOLUTION DISAPPROVING THE SALE OF URANIUM TO INDIA

Mr. HARRY F. BYRD, JR. (for himself, Mr. Glenn, Mr. Ribicoff, Mr. Cranston, Mr. Boschwitz, Mr. Cohen, Mr. Cannon, Mr. Dole, Mr. Goldwater, Mr. Heflin, Mr. Leahy, Mr. Proxmire, Mr. Thurmond, Mr. Laxalt, and Mr. Hatfield) submitted the following concurrent resolution, which was placed on the calendar, pursuant to Public Law 95–242:

S. Con. Res. 124

Resolved by the Senate (the House of Representatives concurring), That the Congress does not favor the proposed export of low-enriched uranium to India pursuant to export license applications XSNM–1379 and XSNM–1569 which would be authorized by the Executive Order transmitted to the Congress by the President on June 19, 1980.

Mr. HARRY F. BYRD, JR. Mr. President, I am today submitting a concurrent resolution, relating to the proposed sale of nuclear fuel to India.

I take this action on behalf of myself, Mr. Glenn, Mr. Ribicoff, Mr. Cranston, Mr. Boschwitz, Mr. Cohen, Mr. Cannon, Mr. Dole, Mr. Goldwater, Mr. Heflin, Mr. Leahy, Mr. Proxmire, Mr. Thurmond, Mr. Laxalt, and Mr. Hatfield.

This resolution is being submitted for technical parliamentary reasons.

SENATE RESOLUTION 518—ORIGINAL RESOLUTION REPORTED DURING THE RECESS TO WAIVE THE CONGRESSIONAL BUDGET ACT

Under authority of the order of September 11, 1980, Mr. Church, from the Committee on Foreign Relations, on September 12, 1980, reported the following original resolution, which was referred to the Committee on the Budget:

S. Res. 518

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 333, a bill to strengthen federal capabilities to combat acts of international terrorism and to enlist the cooperation of all other nations in countering acts of international terrorism. Such a waiver is necessary to allow the authorization of $200,000 in additional budget authority for fiscal year 1981 for aviation security assistance, assessments of security measures maintained in foreign airports, and Department of State reporting requirements.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by the May 15, 1980 deadline because the additional cost of such legislation did not come to the attention of the Committee with primary jurisdiction until after the May 15, 1980 deadline.

The effect of defeating consideration of this authorization will be a disruption in the aviation security assistance and assessment programs as called for by S. 333. These programs are considered vital in upgrading foreign airport security to help prevent acts of hijacking and other forms of airport terrorism.

AMENDMENTS SUBMITTED FOR PRINTING

BANK HOLDING COMPANY ACT AMENDMENTS OF 1980—H.R. 2255

AMENDMENT NO. 2323

(Ordered to be printed and to lie on the table.)

Mrs. KASSEBAUM submitted an amendment intended to be proposed by her to H.R. 2255, an act to amend the Bank Holding Company Act of 1956 to limit the property and casualty and life insurance activities of bank holding companies and their subsidiaries.

● Mrs. KASSEBAUM. Mr. President, I am today submitting an amendment to H.R. 2255, the 1980 amendments to the Bank Holding Company Act of 1956. My amendment would strike section 402 from the bill as reported by the Senate Banking Committee. That section would amend current law to provide 100 percent insurance of public funds in federally insured lending institutions.

Public deposits are now secured by Federal and State insurance and, in 34 States, by the pledging of State and local financing bonds. Full Federal insurance would put an end to pledging practices which provided a reliable market for municipal bonds. The result of such action is a predictable increase in the cost of public borrowing for small towns and cities.

The text of section 402 was derived by incorporating S. 2800 into H.R. 2255. S. 2800 was introduced on June 9, 1980. No public hearings were held on the proposal, and there was no public announcement of the committee's intention to consider S. 2800 for inclusion during markup of H.R. 2255. The result was that there was little or no deliberation or opportunity for consideration of the merits of such action. In 1974 an identical proposal was rejected by the committee on the basis of adverse views expressed by affected Federal agencies, depository institutions, securities and municipal finance industries, and State and local governments. In August and July of this year, the FDIC, the Federal Reserve Board and the Comptroller of the Currency expressed opposition to provision of 100 percent Federal insurance of public deposits.

Mr. President, I ask unanimous consent that comments from these agencies and from the National Association of Credit Unions appear at this point in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

Federal Deposit Insurance
Corporation,
Washington, D.C., July 22, 1980.

Hon. William Proxmire,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Office Building, Washington, D.C.

Dear Mr. Chairman: This will respond to your request for our comments on S. 2800 which would provide for full insurance for deposits of public funds in insured banks, thrift institutions and credit unions. For the reasons that follow we do not favor enactment of S. 2800.

A major shortcoming of S. 2800 is that there is no apparent or demonstrated need to provide full insurance for deposits of public funds. The current amount of deposit insurance coverage plus pledging requirements under various State laws provide a satisfactory level of protection for the public depositor. Furthermore, our experience with bank failures fortifies our conclusion that there is little evidence of any compelling need in support of 100 percent insurance coverage for public deposits. For example, in two of the largest bank failures, the evidence is that, largely because of pledging requirements, there was no public deposit runoff even after it was general public knowledge that the banks were experiencing severe difficulties.

The increase in deposit insurance coverage contemplated by S. 2800 would also increase the exposure risk of the insurance fund and probably would increase the insurance assessment costs of banks. We estimate that, if S. 2800 were enacted into law, the exposure risk to the deposit insurance fund for public funds would increase from approximately $19 billion to in excess of $65 billion. Our estimates also indicate the assessment costs to banks would increase in order to maintain the 1.10 percent ratio of deposit insurance fund to insured deposits mandated by the Depository Institutions Deregulation and Monetary Control Act of 1980. These consequences argue against full insurance coverage for public funds, especially in the absence of an apparent or demonstrated need for such additional coverage.

Particularly in States with high pledging requirements, full deposit insurance coverage for public funds will to some extent impact on the municipal bond market. Arguably, the impact could adversely affect the stability of that market, particularly in small cities and towns which generally do not have ready access to wide markets. Furthermore, as the Advisory Commission on Intergovernmental Affairs concluded in its Study, public borrowing costs for States and municipalities could increase, especially those with high pledging requirements.

Some argue that full insurance coverage for public fund deposits would benefit housing by attracting additional public funds for thrift institutions, thereby increasing the size of their mortgage lending base. Public deposits are relatively volatile because they tend to fluctuate according to tax receipt and disbursement schedules. From the standpoint of prudence, they are, therefore, generally regarded as ill-suited for long-term lending. Admittedly to the extent that full insurance coverage for public fund deposits causes shifts of public funds from commercial banks to thrift institutions, there may be some increase in the flow of funds devoted to housing finance. On balance, however, any benefit to the housing market resulting from the flow of such funds probably would be marginal at best.

We are especially concerned that passage of S. 2800 will open the door to the increased likelihood of 100 percent deposit insurance coverage for all deposits. As the insurer of over 14,000 banks, a major supervisory concern of the FDIC is that full insurance coverage for deposits would remove any incentive to the imposition of market discipline and may prompt banks, especially smaller banks to compete aggressively and beyond the bounds of prudence for deposits. Presumably with the advent of full coverage proposed in S. 2800, pledging requirements for public deposits will be removed. Among the virtues of pledging requirements are that they tend to impose a market-determined limit on the amount of public funds a bank is willing to acquire and to diminish the potential adverse effects of sizable public deposit withdrawals. Full insurance coverage for deposits of public funds coupled with the removal of these market constraining factors could lead individual institutions to acquire an inordinate amount of public funds at excessive rates. The Corporation currently has authority to limit the aggregate amount of funds deposited in a bank by individual public units. Nevertheless, we believe that the combination of pledging requirements and profitability considerations implicit in the current structure is a superior and less costly regulatory device than the imposition of artificial limits by the FDIC.

In the event S. 2800 is enacted into law, we strongly recommend that banks be included in the legislation. We also strongly recommend if S. 2800 is passed that full coverage of public deposits should be accompanied by a provision which would require the FDIC, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration to prescribe uniform restrictions with respect to the aggregate amount of public funds that could be deposited in a bank, savings and loan association or credit union. We appreciate the opportunity given us to comment in this legislation.

Sincerely,

Quinton Thompson,
Director.

Federal Reserve System,
Washington, D.C., August 20, 1980.

Hon. John Tower,
U.S. Senate,
Washington, D.C.

Dear Senator Tower: Thank you for your letter of August 12 requesting the views of the Board of Governors on S. 2800, a bill to provide for full insurance for deposits of public funds in insured banks, thrift institutions, and credit unions, which was reported as part of H.R. 2255 on July 31, 1980, by the Senate Committee on Banking, Housing and Urban Affairs.

Federal deposit insurance was established nearly 50 years ago for the purpose of protecting the small saver and to maintain the confidence of individuals in financial institutions. A guiding principle in establishing this protection was that the Federal government should do no more than is necessary so as to avoid undue Federal intervention in our financial markets. The Board has opposed in the past and continues to oppose full Federal deposit insurance of public funds primarily because, in the view of a majority of the Board, there is a potential of increased involvement of government in banking that could result from full insurance and because of the potential adverse effect of the proposal on the market for government obligations.

A majority of the Board believes that fully insuring public deposits has potential danger for weakening the banking system. Granting such coverage could lead at a later time to extension of full insurance coverage to other groups of depositors on grounds of equity. If there are compelling reasons for providing full Federal deposit insurance to governmental entities, then weaker or more vulnerable depositors would argue with equal or greater force that their deposits should be similarly covered. The pressure to widen this coverage could be irresistible. That course of action could weaken incentives for good management in our financial institutions. As these institutions are weakened, the case for more government surveillance and direction becomes stronger. The Board believes that any such extension of deposit insurance consequently could lead to an increase in government involvement in banking and substantially reduce the efficiency of banking markets in allocating credit. In this regard, the discipline imposed on financial institutions by their large customers, including governmental depositors, is an important factor in maintaining the soundness of the financial system.

We note that governmental bodies typically protect their deposits by requiring pledges of governmental securities, and all have the option to do so. As of year-end 1979, domestic offices of insured commercial banks held total governmental (Federal, State, and local) deposits of $86 billion. A substantial portion of these funds are secured by pledges of U.S. government and agency securities. Full insurance of deposits of public entities would free a correspondingly large amount of pledged government securities. As a result, demand for government securities would weaken and borrowing costs of governmental units, both State and Federal, would rise.

We are not aware of any commensurate benefits to be derived vis-a-vis these costs of fully insuring these deposits. Consequently, the Board is of the opinion that, on balance, the public interest would not be well served by affording full Federal deposit insurance to governmental funds.

Sincerely,

Paul A. Volcker,
Chairman.

Administrator of National Banks,
Washington, D.C., August 21, 1980.

Hon. John Tower,
U.S. Senate,
Washington, D.C.

Dear John: Your letter of August 12, 1980, requests our comments on proposed S. 2800 which would provide full federal insurance for deposits of public funds in time and savings accounts at insured institutions. We have recently responded to a request from Chairman Proxmire for our comments on that proposal. As stated in our letter to Chairman Proxmire, we are opposed to the enactment of such legislation. However, in light of the range of opinion which exists, we respectfully recommend that Congressional hearings be held regarding the merits of this legislation before proceeding any further. A copy of our letter to Senator Proxmire is enclosed for your reference.

Sincerely,

John C. Heimann,
Comptroller of the Currency.

Administrator of National Banks,
Washington, D.C., August 20, 1980.

Chairman William Proxmire,
Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Building, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for this Office's comments on S. 2800. This proposed legislation has been recently incorporated by the Senate Committee on Banking, Housing and Urban Affairs as a provision of H.R. 2255 which was ordered reported out favorably on July 31, 1980. The proposal would provide full federal insurance for deposits of public funds in time and savings accounts at insured institutions. In the absence of demonstrated significant benefits to be derived from the extended insurance for public funds, we oppose the enactment of this legislation.

We are concerned that adoption of this measure may have adverse consequences which would outweigh any benefits it may have. One adverse consequence concerns increasing the instability of the asset/liability mix of depository institutions. Public deposits, which comprise operating funds and temporary cash surpluses, are generally subject to fluctuations in tax receipts and disbursements. Moreover, state and local government treasurers are increasingly following the practice of competitive bidding in the placement of funds under this control, which has the effect of increasing the volatility of these funds at the depository institutions involved. This suggests that volatile public funds are a relatively poor source of deposits to support such long-term assets as mortgages especially at smaller banks and thrift institutions. It suggests also that, to the extent deposit insurance replaces the pledge of securities to secure public deposits, certain banks and thrift institutions may replace marketable government and municipal securities with relativly illiquid loans supported by highly volatile public funds.

Full deposit insurance protection of public funds also might have significant adverse consequences on the market for U.S. Treasury securities. The market for these securities has historically been supported by the pledging requirements of public funds, and full deposit insurance protection might well substitute for such pledging requirements, depending upon provisions of state and local law. In addition, municipal finance officers have expressed concern about the possible adverse consequences of full deposit insurance on the market for narrowly traded local government obligations and longer maturity municipal securities which have also received support historically from pledging requirements.

We are also concerned that the proposed bill would treat public and private deposits differently. If public funds were fully insured, an argument might then be made that private funds receive the same treatment. However, full insurance would result in the loss of market discipline on depository institutions' risk taking. By eliminating any risk exposure to large depositors, full insurance would eliminate the need for larger depositors to evaluate the condition of the institution into which their funds were deposited. In addition, full insurance of deposits could increase the exposure of the Federal deposit insurance funds for banks and thrifts and could result in an increased insurance assessment cost to the institutions.

In light of the range of opinion which exists, we respectfully recommend that you consider holding hearings about the merits of this proposal before proceeding any further.

Sincerely,

JOHN G. HEIMANN,
Comptroller of the Currency.

NATIONAL CREDIT UNION ADMINISTRATION,
Washington, D.C., August 19, 1980.

Hon. JOHN TOWER,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR TOWER: This is in response to your letter of August 12, 1980 requesting my views on S. 2800, a bill to provide for full insurance for deposits of public funds in insured banks, thrift institutions, and credit unions.

At the present time, I have reservations about the increase in insurance of public unit accounts beyond the present $100,000. This agency would require time to examine the potential effects of S. 2800; first, as it might impact the National Credit Union Share Insurance Fund and second, as it might affect the traditional operations of Federally insured credit unions.

I hope these comments are of assistance.

Sincerely,

LAWRENCE CONNELL,
Chairman.●

MILITARY CONSTRUCTION AUTHORIZATIONS—S. 3059

AMENDMENT NO. 2324

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to S. 3059, a bill to authorize certain construction at military installations, and for other purposes.

MILITARY CONSTRUCTION AUTHORIZATIONS—H.R. 7592

AMENDMENT NO. 2325

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to H.R. 7592, an act making appropriations for military construction for the Department of Defense, and for other purposes.

FAIR HOUSING AMENDMENTS OF 1980—S. 506

AMENDMENTS NOS. 2326 THROUGH 2329

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted four amendments intended to be proposed by him to S. 506, a bill to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

FAIR HOUSING AMENDMENTS OF 1980—H.R. 5200

AMENDMENTS NOS. 2330 THROUGH 2334

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to H.R. 5200, an act to amend title VIII of the act commonly called the Civil Rights Act of 1968 to revise the procedures for the enforcement of fair housing, and for other purposes.

HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1981—H.R. 7631

AMENDMENT NO. 2335

(Ordered to be printed and to lie on the table.)

Mr. TSONGAS (for himself, Mr. WILLIAMS, Mr. SASSER, Mr. JAVITS, Mr. RIEGLE, Mr. LEVIN, Mr. SARBANES, Mr. CRANSTON, Mr. STEWART, and Mr. MOYNIHAN) submitted an amendment intended to be proposed by them, jointly, to H.R. 7631, an act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

(The remarks of Mr. TSONGAS when he submitted the amendment appear elsewhere in today's proceedings.)

NOTICES OF HEARINGS

SUBCOMMITTEE ON RURAL DEVELOPMENT

Mr. LEAHY. Mr. President, on September 18, at 1 p.m., in room 357 of the Russell Senate Office Building, the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry will hold an oversight hearing on undercounting of nonmetropolitan populations in the 1980 census. The subcommittee will hear testimony from Vincent P. Barabba, Director of the Bureau of the Census.

Mr. President, the allocation of over $50 billion in annual Federal aid is contingent upon the decennial census of the Nation's population. The final population count affects where Federal funds go for a wide variety of Federal programs including those to improve housing, health, transportation, and employment opportunities. In recent weeks public attention has focused on efforts by several major urban areas to have their estimated census undercounts included in their area's total population figures for use in the funding distribution formulas of Federal programs. Several large cities have brought their arguments to the courts, and a policy decision on this issue is expected from the Bureau of the Census within the next 2 months.

The Rural Development Subcommittee is not holding a hearing on undercounting in nonmetropolitan areas in the 1980 census to force a decision on whether undercount estimates should be included in Federal funding formulas. Our concern is more parochial.

Mr. President, the hearing is being called to find out what steps are being taken by the Bureau of the Census to insure that an accurate assessment of rural populations is in the 1980 census, and to guarantee that any policy decisions regarding the inclusion of undercount estimates in the final census tally apply equitably to all cities and towns, regardless of their size or location.

Mr. President, our major urban areas have the necessary resources to bring their arguments on the undercount issue to the attention of the Federal Government. The 38,000 cities in this country under 50,000 population are less likely to have this capacity, especially those 27,130 towns under 2,500 population. The Rural Development Subcommittee will bring the issue of rural equity to the attention of the Bureau of the Census through the hearing on September 18. We will also review steps the Bureau of the Census has been directed to take to improve data collection and information accessibility in rural areas and small communities.

Mr. President, persons interested in the hearing should contact Ken Pierce of my staff at 224-4242.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 16, 1980 to hold an executive session in order to hear Secretary of State Edmund Muskie and Secretary of Defense Harold Brown on PD-59, the recently signed directive on nuclear war strategy.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENVIRONMENT, SOIL CONSERVATION, AND FORESTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the environment, Soil Conservation, and Forestry Subcommittee of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, September 16, 1980, to hold an overnight hearing on the Resources Planning Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT INVESTIGATIONS SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Permnent Investigations Subcommittee of the Committee on Governmental Affairs be authorized to meet during the sessions of the Senate today, Tuesday, September 16, and Wednesday, September 17, 1980, to hold executive sessions for the purpose of hearing testimony in connection with the oversight inquiry into the Labor Department's investigation of the Teamsters Union central States pension fund.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CONSERVING OIL

● Mr. McGOVERN. Mr. President, a consensus has been mounting among energy experts that the most important new source of energy for the 1980's will be conservation. Synthetic fuels and, even more promising, solar energy, will be available to the Nation in the 1990s; conservation is available now. With the Nation heading for an oil import bill of perhaps $80 billion this year, it has become essential to stem the flow of funds going out of the country to pay for imported oil, funds that, if kept at home, could be used to create jobs, fund energy research for the future, and otherwise help revitalize our economy.

In basic economic terms it is the supply side of the oil equation that is largely beyond our control. We can, however, control demand through our own decisions and policies, with results that cannot fail to be beneficial to the Nation.

There appeared in the Washington Post on August 4 a thoughtful letter from Mr. Maurice Apstein outlining briefly the varied benefits—political and military as well as economic—to be derived from an energy conservation effort designed to reduce our dependency on the oil resources of the Persian Gulf. Mr. President, I ask that Mr. Apstein's letter be printed in the Record.

The letter follows:

> CUTTING BACK ON MIDEAST OIL
>
> A recent government report indicates that conservation can save as much as 30 percent of our imported oil. To put this into proper perspective, we should remember that 30 percent is almost exactly equal to the amount of oil that we import from the Persian Gulf. Then we have to consider the magnitude of effort we have expended and are still expending to protect our "interests" in that area. To put it bluntly, wouldn't it make more sense to institute conservation measures at home that would eliminate entirely the need for Persian Gulf oil and at the same time reduce our military budget and the need for some of our military commitments thousands of miles from home? This would keep billion of oil dollars at home, help the balance of payments deficit, create millions of domestic jobs and help revitalize our own economy. To put it even more bluntly, doesn't it make more sense to redirect our technology toward conservation and a little temporary inconvenience if by that course of action we can avoid having to send our youth to the Middle East to protect a source of fuel that we can learn to do without in the first place?
>
> Answers to these questions seem so obvious that one wonders why it is even necessary to ask them. Perhaps the reason is that the issues have not been clearly enough enunciated so that the public realizes it has a choice. Now that an official government report indicates that a choice is there and that it is within our own control to decide in which way our resources are to be expended, let us hope that public opinion will make itself known in favor of conservation, self-restraint and a peaceful solution to the Middle East oil problem.●

DEATH OF WILLIAM LLOYD VINSON

● Mr. HATFIELD. Mr. President, the State of Oregon and the organized labor movement lost a true friend on August 24 of this year, when William Lloyd Vinson passed away in Salem, Oreg. Throughout the course of his career, W. Lloyd Vinson provided tremendous support and leadership for organized labor, particularly on the west coast.

Born in Grand View, Idaho, Lloyd Vinson grew up in the State of Washington. When I first had the honor of meeting Lloyd Vinson in 1959, he was the business manager for the Portland, Oreg., local of the International Brotherhood of Electrical Workers (IBEW). In my capacity as Governor of Oregon, I was in a unique position to observe his work and the influence of his personality on the people and situations with which he had contact.

He was a reconciler and an individual who enhanced the quality of life for those around him. From the Portland local, Lloyd Vinson was promoted to west coast vice president of the IBEW in 1965, operating out of California. He retained this post until his retirement in 1979.

During the course of his career, Mr. Vinson built up a distinguished record of leadership in the labor union movement. Under his guidance, the IBEW became a leader in the organized labor movement on the west coast.

In addition to this commendable record on behalf of working men and women, W. Lloyd Vinson was an uncompromising Christian. Along with my colleagues, I wish to extend my greatest sympathy to Verna Vinson, his wife, as well as the surviving Vinson children and grandchildren.●

DROUGHT CAUSES DISASTER SITUATION IN ALABAMA

● Mr. HEFLIN. Mr. President, a few days ago my distinguished colleague from Arkansas, Senator Bumpers, informed the Senate of the severe economic crisis facing his State as a result of the drought. Senator Bumpers stated that his State of Arkansas is experiencing the most dramatic crisis the State has ever faced.

Today I wish to advise the Senate that my State of Alabama is faced with a similar crisis. Mr. President, I want to put this body on notice with regard to assistance that will be needed to help my State's farmers through this time of crisis.

Dr. Louie Chapman, chief crop specialist for the Alabama Extension Service in Auburn, said 1980 could be the worst drought year on record for soybean, cotton, corn, and peanut farmers.

Last year those crops sold for a combined total of nearly $500 million. But Dr. Chapman said field inspections show corn, peanuts, and cotton, could be off as much as 50 percent in some areas, and soybeans, which accounted for $340 million in sales last year, are a question mark at this time.

Dr. Chapman said this probably will go down as one of the worst drought disasters we have had in Alabama.

Projections based on crop conditions as of September 1, compiled by the Alabama Office of the U.S. Agriculture Department Crop Reporting Board, indicate soybean production was down 25 percent from last year, cotton and peanuts 26 percent, and corn 55 percent.

This loss from the drought comes on the heels of the hurricane damage to pecan orchards last September in Baldwin County, Ala. The State's pecan farmers suffered about $8 million in losses and knocked the State out of its ranking as the Nation's second largest pecan producer. It is estimated that it will be 15 years or more before the trees return to full production.

About 50 percent of Baldwin County's pecan trees were destroyed. The amount of pecans produced in my State dropped from 32 million pounds in 1977 to 4 million pounds in 1979. State income from pecan sales dropped from $16 million in 1977 to $2 million last year.

The State's corn crop which brought in $37 million last year was hardest hit by the drought. Total crop production is expected to decrease by 55 percent.

Projections for cotton crops are not much better.

Total projected losses are: Soybeans $85 million; cotton $28.6 million; peanuts $31.4 million; and corn $20.5 million.

Just as Senator Bumpers stated before me, I call these severe crop losses to the attention of my Senate colleagues to put them on notice that this is a natural disaster just as certain as were the eruptions of Mount St. Helens for which we have already appropriated almost $1 billion.

Without question, Congress must deal with this problem because it is a problem that affects not only my State but many others throughout the Southeastern part of the Nation. It must be dealt with in a timely fashion, so that disaster funds can be made available before planting time next year.●

HELMS ASSURES FARMERS FUEL PRIORITY

● Mr. LUGAR. Mr. President, much of the important work done in the Senate seldom makes headlines. Yet, it is this regular day-by-day work—work that is hard but not glamorous—that makes possible the implementation of sound ideas and concepts into law.

As an example of this, I bring to the attention of my colleagues the efforts of the distinguished senior Senator from North Carolina, and ranking Republican on the Senate Committee on Agriculture, Nutrition, and Forestry, (Mr. Helms) who devoted countless hours to a very important part of the standby gasoline ration plan concerning agriculture. The plan now sits on the shelf, ready to be used in the event of a severe gasoline shortage. And thanks to the efforts of Senator HELMS, if this plan is ever used, the farmers and ranchers of this Nation will be assured adequate supplies of gasoline to produce the food and life everyone enjoys today.

Neither the Senator from North Carolina nor the Senator from Indiana supported the adoption of a standby rationing plan. But even though Senator HELMS was in the minority on that issue, the Senator from North Carolina worked to make sure that our Nation's gasoline rationing plan, if and when implemented, would treat the agriculture sector with priority as it should be. For his leadership in the development of that plan, especially as it concerns adequate supplies of gasoline for agriculture production and distribution, the Senator from North Carolina deserves our gratitude and praise.

In March 1979, acting under a mandate of the Energy Policy and Conservation Act, President Carter submitted to Congress a proposed gasoline rationing plan. As the ranking Republican on the Senate Committee on Agriculture, Nutrition, and Forestry, Senator HELMS studied the plan with a careful eye concerning its treatment of our vital agriculture sector. Because of apparent shortcomings in the plan, Senator HELMS—along with others, such as myself—requested hearings by the Agriculture Committee to examine the plan's provisions for adequate supplies of gasoline for agricultural production and use by rural residents.

At the hearing, it was evident that the needs of our sensitive and complex food chain had not been considered. While the plan provided for some special fuel rights for off-highway vehicles used in farming, it fell woefully short of assuring that enough gasoline would be allocated throughout the food chain—from the farm gate to the retail grocery store. The Senator from North Carolina succinctly described its fatal flaws:

> Clearly, there is no agriculture priority in this plan, despite Administration claims to the contrary. There is only a limited special allotment for farm tractors. Apparently, the bureaucrats at the Department of Energy think food magically appears on the supermarket shelves as the exclusive result of farmers driving around their fields on tractors. That is the only agricultural function provided for in this plan. This plan ignores the need of farmers heavy reliance upon customs service operators, who harvest 35 percent of the wheat in the Great Plains and apply over a quarter of all agricultural pesticides; and, it ignores the fact that food must be transported to retail outlets. Mr. President, with one exception, this plan ignores every link of the long and complex food chain.

In light of these serious shortcomings, Senator HELMS, along with every other member of the Senate Committee on Agriculture, Nutrition, and Forestry, joined in a letter to President Carter expressing grave concerns about the proposed plan. During consideration of the plan on the Senate floor, the Senator from Washington (Mr. JACKSON) brought from the White House a response from the President seeking to allay the concerns raised by the committee.

Following that letter's receipt on the Senate floor, the Senate narrowly passed a resolution approving the rationing plan. Its passage came, however, over the strong objections of the Senator from North Carolina who warned that the plans' provisions for agriculture were inadequate. If ever implemented, that plan would have left the U.S. food production and distribution system—and thus our economy—crippled.

The House had more time to analyze President Carter's response and wisely rejected the proposed gasoline rationing plan—largely because of its treatment of agriculture as had been earlier raised during the Committee hearings.

Then, in October of 1979, Congress passed the Emergency Conservation Act. Once again the Senator from North Carolina was on guard. When the conference report on that bill was considered on the Senate floor, Senator HELMS engaged the floor managers of that conference report in a colloquy to establish the legislative intent and history of that act. His colloquy left no doubt that the gasoline rationing plan the President was to submit under the act should include a fuel priority for the entire food chain, including the distribution and processing of agricultural products.

Nevertheless, when the Department of Energy published its draft of the new gasoline rationing plan for comment, the provisions for the fuel needs of agricultural production and distribution were essentially unchanged from the plan proposed by the President almost a year before. In a joint letter to the Secretary of Energy, along with the distinguished chairman of the Agriculture Committee (Mr. TALMADGE), Senator HELMS outlined that Congress intended that a meaningful gasoline priority for the production and distribution of agricultural products be included in any plan sent to Congress for its approval. Only after extensive follow-up did the Senator from North Carolina put the issue to rest before the President submitted the proposed gasoline rationing plan to Congress in June of this year. Recently the Senate approved the plan.

The agricultural priority ultimately included in the plan did not come easily; but, in the event gasoline rationing should ever be implemented, we all will be glad that it was achieved, thanks in large measure to Senator HELMS.

The production and distribution of perishable agricultural products simply cannot be left to chance. The food supply of America is too important for such treatment.

Mr. President, the Senator from North Carolina dedicated considerable time and resources to assure that, in the event of gasoline rationing, our Nation's food supply would not be interrupted due to a shortage of fuel.

The rationing priority given to agriculture was not simply a farmer's issue. Instead, it was an issue of importance to everyone—including the 230 million Americans who sit down at their dinner table every night. It was not an issue, however, that received much publicity or was appreciated by all of those who may benefit from his actions—it was merely the right thing to do, and Senator HELMS did it.

The Senator from North Carolina has served the Nation well and deserves the gratitude of the Senate and the entire Nation.●

RATTLESNAKE NATIONAL RECREATION AREA AND WILDERNESS

● Mr. BAUCUS. Mr. President, on Tuesday, September 9, I submitted testimony before the Subcommittee on Parks, Recreation and Renewable Resources of the Senate Committee on Energy and Natural Resources. The hearing concerned the Rattlesnake National Recreation Area and Wilderness near Missoula, Mont.

Passage of this legislation is important to me, to the people of the Missoula area, and to the State of Montana. Because of the importance of the bill and its imminent consideration by the Senate, I ask that my statement appear in the RECORD.

The statement follows:

STATEMENT BY SENATOR MAX BAUCUS

Mr. Chairman, from my home in Missoula, Montana, the boundary of the land included in S. 3072 is within a reasonable walking distance. By bicycle or automobile, the gateway to this area is only minutes away. For that reason, critics might complain that I have a vested interest in this legislation.

In a sense, perhaps I do. However, my vested interest in the area, which we simply refer to as "The Rattlesnake," is shared by thousands of Missoulians and other Montanans.

On a sunny September day, looking from the heart of downtown Missoula, one can easily see the peaks that form the heartland of the Rattlesnake: Mt. Stuart, Murphy Peak, Mosquito Peak, and others. Indeed, this proximity to one of Montana's larger urban areas is one reason why there is such widespread local popularity for protection of these unique wildlands.

Over the decades, the Rattlesnake has offered local residents and visitors alike an opportunity for reflection, revitalization, and recreation—important functions for Americans in the 1980s. Thus, I am particularly pleased to offer my suppport to the passage of S. 3072 with one suggested change which I will outline later.

Special management of this 60,000 acre area is a goal of most people who are familiar with it. Yet, the path toward reaching that objective has not been entirely smooth. One of the most thorny issues has been the presence of private inholdings, principally those of Montana Power Company and Burlington Northern.

Beginning in 1929, Montana Power Company acquired private lands within the Rattlesnake to ensure protection of the area as a municipal watershed for the City of Missoula. Today, Montana Power Company owns more than 21,000 acres within the area encompassed by this bill. Similarly, Burlington Northern holds title to some 4800 acres of land in the Rattlesnake.

Obviously, private inholdings are inconsistent with designation of this area as a national wilderness and recreation area. However, funds for the purchases of such land are carefully husbanded by Congress in these days of restricted budgets. Indeed, many question the wisdom of adding any additional acres to federal ownership. Thus, a land exchange or some similar arrangement holds the most promise for successfully completing the Rattlesnake proposal.

Anyone who has been involved in a land exchange knows that this is a tall order. Competing interests and values often doom such projects. The bill we are considering today, however, is testimony to the dedicated efforts of my distinguished colleague, Senator Melcher, to see the Rattlesnake land exchange brought to a successful conclusion.

By serving as the intermediary between inholders and government agencies, Senator Melcher was able to bring accord to the parties. The unique "land for coal leases" proposal described in Section 4 of the bill serves the Rattlesnake well and is a tribute to Senator Melcher innovative approach.

With the decks cleared for designation of the Rattlesnake for specialized management, the next issue of concern for us must be the determination of proper boundaries. I am pleased to note that the boundaries of the area covered by S. 3072 are generally consistent with those of H.R. 5898, the companion measure introduced in the House by Congressman Pat Williams.

In fact, only one boundary remains the subject of much disagreement. This is the demarcation between the wilderness area of the upper Rattlesnake and the national recreation area in the lower part of the drainage. S. 3072, as I understand it, places the end point for the national recreation area at the confluence of Wrangle Creek and Rattlesnake Creek. H.R. 5878, by contrast, would extend the national recreation area only to Franklin Bridge, more than five miles downstream from Wrangle Creek.

This decision has not been an easy one for me. Citizens from the Missoula area who favor broad access into this mountainous region have presented their case well. On the other hand, many Missoula area residents favor the closure of the entire Rattlesnake to motorized vehicles. After careful consideration of these arguments and after hiking through the Rattlesnake myself, I have concluded that a boundary at Franklin Bridge presents the best alternative. Accordingly, I urge that the national recreation boundary designated by S. 3072 be set at Franklin Bridge. I base my recommendation on three factors. They are:

1. A desire for balanced use of our national forest resources;

2. An interest in maintaining the quality of visitor experiences in wilderness areas;

3. A need for protection of wildlife values.

My first concern is the need for the balanced use of our national forests, the Lolo Forest in this case. Fortunately, timber and mineral wealth are not major concerns in the Rattlesnake and that makes our job easier. Because the Rattlesnake is a designated watershed, the cutting of timber has historically been considered inappropriate. Mineral values as well are believed to be relatively insignificant. Thus, recreation uses are our primary concern.

Throughout the Lolo National Forest, over 90 percent of the trails and roads are available for use by motorized vehicle. In short, a few areas are restricted to foot traffic only. As a result, I believe that limitations on the use of motor vehicles in the lower Rattlesnake does provide a necessary balance.

I wish to stress that I have no quarrels with the use of motorized vehicles on Forest Service lands. Properly operated, motor bikes and snow machines can provide an enjoyable recreational opportunity. However, I also believe that hikers, skiers, and snowshoers deserve an area which is available for their use.

By placing the boundary at Franklin Bridge, the Rattlesnake will roughly be divided evenly between wilderness and national recreation areas. Motorized vehicle users will be allowed to ride over eight miles past the main entrance to the area. Only the upper, more Alpine reaches of the Rattlesnake will be excluded.

My second reason for urging that the wilderness boundary be shifted to Franklin Bridge is my interest in maintaining the quality of visitor experiences. By this, I refer to the search for solitude which takes many users of the Rattlesnake high into its upper lakes and mountains. I am struck by the words of Bob Marshall, one of the pioneers of American forestry, for whom Montana's premier wilderness area is named. He remarked that "Enjoyment of solitude, complete independence, and the beauty of undefiled panoramas is absolutely essential to happiness."

Whether reasonable or not, the fact of the matter is that people travelling into the high country to seek this kind of wilderness experience do not react well to the presence of motorized vehicles. The noise and the appearance of such vehicles is simply not well received by those who walk forest trails in search of a temporal retreat from the hubbub of day-to-day life.

Finally, I am concerned for the impact on the wildlife of the upper Rattlesnake if motorized traffic is allowed to continue. In a series of correspondence which I have recently received from wildlife biologists in Montana, the need for relative isolation for a number of species was addressed. Bears, wolves and wolverines are among those animals who make their home in the Rattlesnake. These species apparently require relatively undisturbed habitat for successful propogation. In addition, plans are afoot to reintroduce mountain goats to the area. Adverse effects of motorized vehicles on this reintroduction are feared.

The designation of wilderness and national recreation areas within our national forest system has, over the years, been a highly controversial matter. This is, in fact, proper since such designations in essence restrict the use to which these lands may be put by laying a mantle of protection over their natural and recreational values. While the Rattlesnake has been controversial, the controversy has been generally of a pleasant nature. By and large, the question has not been whether to protect the 60,000 acres of the Rattlesnake, but rather how best to protect it. Missoula's City Council, County Commissioners, the Governor, the State Department of Fish, Wildlife and Parks, a variety of private organizations spearheaded by Friends of the Rattlesnake and hundreds of citizens have all added their voices to the chorus urging special management of the Rattlesnake. The legislation which is today being considered by the Committee will, with the modification which I have suggested, provide a reasonable and a responsible answer to this demand. Wilderness, recreation, wildlife, and watershed values will be preserved and hopefully enhanced. In short, this legislation will create a legacy in which Montana and the nation in general can take great pride.

Thank you.●

IN MEMORY OF BEN STONG

● Mr. McGOVERN. Mr. President, in the early morning hours of September 6, Ben Stong, an institution in the Senate and a dear personal friend of mine, died in Sibley Hospital.

A congressional staff member for over 25 years, Ben Stong was the kind of man Senators and Congressmen spend their careers in the Congress looking for but seldom find. The breadth of his knowledge and vision made him the recognized congressional expert on such issues as agricultural policy, soil conservation, wilderness legislation, forest and national park issues, and rural electrification.

In a manner of speaking, the recognition of his abilities can be measured by the stature of those who sought his advice. On this side of the Capitol that range was from every chairman of the Interior and Agriculture Committees in the modern Congress through the members of those committees to those Senators who were not committee members but who had concerns in these broad areas. Outside the Congress, he was known, respected, and sought out by agricultural and natural resource organizations throughout the land.

From 1964 to 1969 I was privileged to have the "pleasure of his company" when he served as my legislative assistant. I never knew Ben Stong to be a "young man"—he was always an "older man" to me but "older" only in the sense of being older than I. His mind was young, his ideas new and refreshing, his legislative sense was incisive and shrewd—and Ben never lost an important legislative battle though he spent 12 years on the Wilderness Act and endless hours on the voluntary wheat certificate plan of 1964 which I sponsored successfully.

Ben Stong did all the legislative backgrounding for the creation of the Senate Select Committee on Nutrition and Human Needs which I chaired. The depth of his knowledge with respect to the traditions of the Senate earned him my everlasting gratitude during that period of time.

Beyond his ability as a legislative craftsman was that all-too-uncommon quality these days of genuine friendship. He was the quintessence of a very gentle man—kind, compassionate, witty, erudite, proper without being stuffy. He was economical with words but still generous with details. His vocation was hard work and his avocation was harder work. His language both spoken and written was structured and stylish, yet clear and accurate. A journalist by training and profession, he carried to the legislative process all the qualities of an experienced reporter and the quickness of a legislative tactician.

Perhaps the great joy of knowing Ben Stong were those days after the close of business when he would recall the early period of the Populist Farm Movement and the Non-Partisan League in the upper Great Plains, or those little known anecdotes about people and places and things, his charter membership in the Wayne Darrow Society on Mathematical Probabilities, or the early days of the Henry Wallace and the Gorsts in exploring hybrid seeds and fertilizers, the developing eras of the National Farmers Union and the NFO, his gardening secrets for growing the largest flowering dahlias in the area.

His widow, Laverne, and his family have my condolences. I will remember him with tenderness and affection, for he possessed all those human qualities that are worth remembering in great abundance.●

LIMITING THE JURISDICTION OF THE COURTS

● Mr. HATCH. Mr. President, in April of this year, the Senate approved S. 450, a measure eliminating much of the obligatory jurisdiction of the Supreme Court. An amendment was adopted to that bill that would have, further, removed the jurisdiction of the Supreme Court and lower Federal courts with respect to State laws dealing with voluntary prayer in public schools.

A great deal of controversy has surrounded the legislative notion of limiting the appellate jurisdiction of the Supreme Court. Much of this controversy stems from the recent dormancy of that provision of the Constitution on which proponents of such limitations rely. Article III, section 2, clause 2 of the Constitution states:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

I would like to call to the attention of my colleagues two recent commentaries on this provision. The first is an article by Mr. Anthony Tortora from the September 19, 1980 issue of National Review. The second is an excerpt from a June 25, 1980 report prepared for the Heritage Foundation by Mr. Thomas Ascik. I would also refer back to a legal analysis by Prof. Basile J. Uddo of the Loyola University School of Law which I inserted in the CONGRESSIONAL RECORD of December 15, 1979 (36330) on the occasion of the introduction of my Human Life Anti-Injunction Act (S. 2138).

The material follows:

Government by Judiciary: Ex Parte McCardle

(By Anthony Tortora)

As the election draws near, it is useful to be reminded not only of what is desirable in politics, but also of what is possible. Too much of what is desirable has not even been seriously attempted, because of the belief that it is impossible of achievement. The recent adoption by the Republican Platform Committee of a resolution to prohibit busing for purposes of school integration is a good example: it is a pure velleity if, simultaneously, one does not address how this policy is to be implemented against the Supreme Court's (sometimes) adamantine insistence that such busing is constitutionally obligatory.

Similarly, the gathering support for tuition tax credits may, in due course, founder on the shoals of a Court decision that they violate the "separation of church and state." That such a ruling would be a preposterous misreading of the First Amendment's reference to "establishment of religion" doesn't give us any less reason to predict it. It would just represent (to paraphrase Raoul Berger's indictment in Government by Judiciary) "another of the usurpations that bestrew the path of the Court."

These matters have been almost entirely undiscussed during the campaign, along with, as the *Fullilove* decision perhaps reminded us, "affirmative action" in all its varied manifestations. But they must be mentioned, soon or late, for they will not go away, and it is intolerable that present policies should continue unremedied, because they make manifest what is now unequivocally true: namely, that the United States Government—notwithstanding its sanctimony toward South Africa and pre-Mugabe Rhodesia—is the largest purveyor of racial discrimination in the world today. And this obsession with race, and sex, is so pervasive that we've become accustomed to hearing matters on which race and sex only incidentally impinge aggregated with those to which these matters are central. Thus, for example, the tendentious treatment of the tuition tax credit issue as if it were a question which naturally divides black from white.

In any event these issues certainly are categorically distinct for the purpose of this article. The *Weber* and *Fullilove* cases, and affirmative action generally, are (legally) comparatively simple matters. The Court has never held that it is constitutionally required to discriminate against white people on the basis of race. The very statement of the proposition makes this evident, even though we continue to be afflicted by a Court some of whose members' grasp of the Constitution is so fragile one wonders if someday they might not reach that conclusion.

IF CONGRESS WANTS

Weber was specifically decided on the basis of the 1964 Civil Rights Act, and the Court held, in effect, that Congress could permissibly legislate racial preferences. That this decision perversely stood on its head the manifest intent of the 1964 Act has elsewhere been well documented, and I doubt one could improve on Justice Rehnquist's devastating dissent to this effect. The point, however—of which even the *Washington Post* took note in its morning-after editorial—is that if Congress did not like the holding in the case it could reverse it.* That Congress has not done so, or otherwise seen fit to reverse the volumes of regulations and edicts imposing racial and/or sexual quotas, by which the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) have reordered our lives, reflects congressional pusillanimity, and certainly not any insuperable legal obstacles. *Fullilove*, in this context, merely provides a gloss on *Weber* by iterating Congress's authority to legislate racial preferences.

With respect to busing, the situation is rather different, both legally and socially. The social question is, in my view, immeasurably more serious. What other society has ever offered up its children as point-men in a radical, and radically dangerous, social experiment? Has any sociologist or historian had the courage to break the mold of fashion and attempt to count the casualties—physical, emotional, educational—which have resulted from this experimentation?

But on the legal point, which is the purpost of this article, there has been general despair. It has generally been believed that because *Brown* v. *Board of Education* was decided on constitutional rather than statutory grounds, and because decisions requiring busing were largely derivative (from *Brown*), therefore no remedial approach save that of a constitutional amendment is possible. The defeat of Representative Ronald Mottl's effort to get the busing amendment through Congress has seemed to sound the death knell for these attempts at revision. Since most people believe that there is no redress short of an (apparently unpassable) constitutional amendment, the feeling is quite general that there is nothing legally to be done.

It is important to disabuse ourselves of this notion which paralyzes our will to act. Amendments are unnecessary and are, moreover, subject to objections which are not raised with regard to statutory legislation. Further, they are unwieldy tools which are too slow and cumbrous to deal with a situation which is in urgent need of reform. Much simpler would be federal legislation prohibiting busing in order to achieve "racial balance," *combined with* legislation which would remove the issue from the jurisdiction of the courts.

The constitutional authority for this procedure is manifest, and I am undecided whether its disuse stems from congressional timidity or from ignorance. Forced to guess, I personally would be inclined to believe the latter. Let's start with the basics: the Constitution itself, which is, strictly speaking, both the beginning and the end of the argument.

AT CONGRESS'S SUFFERANCE

Article III deals with the judicial power of the United States and divides the jurisdiction of the Supreme Court (the only court specifically mentioned, the establishment of the inferior federal courts being left to the discretion of Congress) into "original Jurisdiction" and "appellate Jurisdiction." The Court has original jurisdiction "in all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party." Article III, Section 2 goes on to say that "In all other cases . . . the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

To put it another way, the Supreme Court addresses issues at the sufferance of Congress, except in those cases in which it has constitutionally conferred "original Jurisdiction." It is too clear to require elaboration that the quota and busing questions, and also the proposed tax credit legislation, fall outside the class of cases enumerated under the Court's original jurisdiction.

This provision of the Constitution has not been invoked for some time, and its disuse has a way of making it appear novel. But it is not, and among the *cognoscenti* its existence is acknowledged as a commonplace. Richard Morris, for example, in the 1961 edition of his *Encyclopedia of American History*, remarks matter-of-factly that "In February 1868 the Court agreed to consider *ex parte McCardle*. Fearing that a review of this case might invalidate Reconstruction measures, Congress deprived the Court of jurisdiction." Morris evidently felt no need to elaborate on that which he took as a given, but the very general unawareness of the provision nowadays virtually compels a fuller restatement of its implications. This undesirable necessity calls to mind Orwell's observation that we have sunk so low that "the first duty of intelligent men is to state the obvious."

William Archibald Dunning, writing to the same effect as Morris, comments, in his text *Reconstruction: Political and Economic:* "From this trying predicament [i.e., the anticipated Supreme Court reversal of a Reconstruction statute] the radicals in Congress extricated the Court by a hasty repeal of the legislation which gave jurisdiction over the case; and the Chief Justice, whose dislike of military judicature was well-known, relinquished with some regret so perfect an opportunity to damn it, but saved as he could the dignity of the Court by the resounding platitude: 'Judicial duty is not less fully performed by declining ungranted jurisdiction than by exercising firmly that which the Constitution and the laws confer.' "

Also, Professors Alpheus Mason and William Beaney state, in their monographic

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*The ability of Congress to overturn a Court decision made on statutory grounds is a legal commonplace which no competent lawyer would attempt to deny. It occurs in other, less politically volatile contexts without comment; consider, for example, Senator Kennedy's pending legislation (S-300) to overturn the Court's holding in the *Illinois Brick* antitrust case.

American Constitutional Law: "The Supreme Court has appellate jurisdiction in respect to both law and fact in all other cases, but subject to such exceptions and regulations as Congress shall make (Article III, Sec. 2, Cl. 2). By virtue of this clause and of its power over the jurisdiction of inferior federal courts. Congress has plenary power over the appellate jurisdiction of the Supreme Court. It could thus deprive that Court of all such jurisdiction and make final the decisions of the inferior courts. An extreme example occurred in 1868 when Congress, fearing that the Court would invalidate the Reconstruction Acts, hastily withdrew the Court's jurisdiction under the Habeas Corpus Act of 1867. The Court thus became powerless to pass on a case in which argument had been heard."

Numerous citations to the same effect could easily be made. But for those who have become accustomed to an acquiescent legislature, the detail of this case is especially instructive in displaying the ease and assurance with which Congress formerly asserted its supremacy over the Court. There are of course other instances where Congress limited the scope of the Court's authority, but none I think with such didactic effect as in *McCardle*, where Congress reached out to interpose its will not only on a case which was *sub judice*, but on a matter (writs of habeas corpus, the so-called "Great Writ") which has constitutional protection (*vide* Article I, Section 9). Surely it is clear beyond cavil that a Congress which can be the final arbiter on a matter which is an integral and explicit part of the Constitution has more than sufficient authority to mandate the handling of issues which have been given constitutional import by a kind of judicial forced march of the Fourteenth Amendment.

The *McCardle* story properly begins with an act to amend the Judiciary Act of 1789, by which amendment, on February 5, 1867, Congress expanded the authority of the courts by providing that the courts of the United States "shall have the power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violence of the Constitution, or of any treaty or law of the United States" (14 Statutes at Large 385). The same Act further provided that it should "not apply to any person who is or may be held in the custody of the military authorities of the United States, charged with any military offense."

WHAT HAMILTON THOUGHT

The problem which eventually gave us the *McCardle* case arose as a result of action by the governor of the military region in which McCardle resided. The governor imprisoned McCardle, a Confederate journalist given to invective against the military administration of the South under the Reconstruction statutes. Suit was brought on McCardle's behalf that a writ of habeas corpus be issued. Under the 1867 amendment to the Judiciary Act, the case was enabled to work its way to the Supreme Court, where argument was heard. This was entirely proper, absent a congressional prohibition of judicial review; and it was clear that the Act's exemption of persons incarcerated by the military would be the focus of the legal assault on the Act. First, however, the Court heard arguments as to its jurisdiction, and it ruled that indeed it might hear and rule on McCardle's appeal.

Congress, understandably, anticipated that the Court would rule in McCardle's favor; as has been noted, the Court's lack of sympathy for the military administration of the South was widely known. Accordingly, Congress passed the repealing act which removed the case from the Court's jurisdiction. Chief Justice Chase's opinion in the case displayed a laudable deference to both the spirit and the letter of the Constitution; he showed reluctance even to speak to an issue on which jurisdiction had been removed, saying, "The first question necessarily is that of jurisdiction; for, if the Act of March 1868 takes away the jurisdiction defined by the Act of February 1867, it is useless, *if not improper*, to enter into any discussion of other questions." And further, "Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause."

So admirable a fidelity to the Constitution has not been consistently shown by recent courts, and it would be idle not to come to grips with the question which logically springs to mind: What if the Court decided otherwise and asserted its right to rule even where jurisdiction had not been granted? The question is not entirely speculative. In his *History of the Supreme Court of the United States*, Charles Fairman reminds us that when Justice Harlan in 1962 mentioned the *McCardle* case, "there was a nervous reaction within the Court. Justice Douglas saw 'great mischief'—'There is a serious question whether the *McCardle* case would command a majority view today.'"

Precisely. It is this very lack of obedience to the Constitution which has given rise to this article. But, again, how would it be resolved? A constitutional crisis would have been precipitated, and, ultimately, it would be a political question which would be settled by the relative strengths of the contending forces. This and this alone will determine who prevails, and not any arcane argument about legalities. But for those who seek guidance as to how it should be dealt with if the Court ever so defied Congress, there is no better guidance than that provided by Alexander Hamilton in the 81st Federalist:

"It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority which was been upon many occasions reiterated is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to an inconvenience, or in any sensible degree to affect the order of the political system. This may be inferred with certainty from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force. And the inference is greatly fortified by the consideration of the important constitutional check which the power of instituting impeachments in one part of the legislative body, and of determining upon them in the other, would give to that body upon the members of the judicial department. This is alone a complete security. There never can be any danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would haazrd the united resentment of the body entrusted with it, while this body was possessed of the means of punishing their presumption by degrading them from their stations. While this ought to remove all apprehensions on the subject it affords, at the same time, a cogent argument for considering the Senate a court for the trial of impeachments."

THE JURISDICTION OF THE SUPREME COURT

The jurisdiction of a court refers to its authority to hear and decide a case. In *Ex parte McCardle* (1868), Chief Justice Salmon P. Chase said, "Without jurisdiction the Court cannot proceed at all in any case. Jurisdiction is power to declare the law. . . ." Article III of the Constitution grants Congress complete discretionary authority over not only the jurisdiction, but also the very existence of the federal district courts and circuit courts of appeals. The same article provides that the Supreme Court shall have two jurisdictions: an "original" jurisdiction over cases "affecting ambassadors, other public ministers and consuls, and those in which a state shall be party." Thus the original jurisdiction of the Supreme Court comes directly from the Constitution and cannot be expanded or contracted by any acts of Congress. In cases under its original jurisdiction, the Court has the right (but it is not required) to hear all the initial arguments directly. Today, the Court decides very few cases brought under its original jurisdiction. Additionally, from the date of the Judiciary Act of 1789, Congress has given itself the authority—and the Supreme Court has acquiesced—to decide whether the Court's original jurisdiction in certain kinds of cases is exclusive (belonging to the highest court alone) or concurrent (shared with other state or federal courts).

Article III also grants the Supreme Court an "appellate" jurisdiction, that is, the authority to review—and affirm or overturn—the decisions of state or lower federal courts that had heard the initial arguments. This appellate jurisdiction extends "both as to law and fact . . . to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made . . . to all cases of admiralty and maritime jurisdictions; to controversies to which the United States shall be a party . . . to controversies . . . between citizens of different states, between citizens of the same state claiming lands." But the entire group of cases is subject to "such exceptions, and under such regulations as the Congress shall make." Thus, the appellate jurisdiction of the Supreme Court comes from the Constitution by way of congressional legislation.

CONGRESS' AUTHORITY OVER THE SUPREME COURT

Section Two, Paragraph Two, of Article III of the Constitution reads:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned (i.e., cases in law and equity under the Constitution, the laws, and treaties of the U.S. along with cases of admiralty and maritime jurisdiction), the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Little evidence is available concerning the ideas and debates surrounding the origin of the "exceptions and regulations" clause of Article III. The Constitutional Convention of 1787 opened on May 17. Two plans for a new constitution were proposed, the New Jersey plan (drafted by William Patterson) and the Virginia plan (masterminded by James Madison). Concerning the role of the judiciary, both plans were inchoate. After the opening debates on the two plans, a Committee of Detail was formed to draft a proposed constitution incorporating parts of both plans and other ideas that had already been debated.

When the Committee on Detail reported back to the full convention on August 6, it had given shape to a complete document that eventually served as the substantial basis for the final Constitution. And this was true for its provisions on the judiciary also which, for the first time at the Convention, brought up the issue of the proposed Supreme Court. Concerning both the original and appellate jurisdiction of the Supreme Court, the Committee came up with almost the precise language that was to become part of Article III of the Constitution. The Court was to have original jurisdiction in "cases affecting ambassadors, other public ministers and consuls and those in which a state shall be a party" and appellate jurisdiction "in all other cases beforementioned (refer to first paragraph of this section) with such exceptions and under such regulations as the Legislature shall make."

Thus, this was the first appearance of this language for consideration by the Convention delegates. Another clause (later deleted and, therefore, not included in the Constitution) emphasized again the legislative control over the judiciary's jurisdiction by declaring that "The Legislature may assign any part of the jurisdiction abovementioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such Inferior Courts. . . ."

Debate on the "exceptions and regulations" clause was limited and non-controversial, and so it might be presumed that it was an issue about which no one disagreed. The authority of the legislature to "assign" the jurisdiction of the Court was eliminated by a unanimous vote. Although no debate on this vote has survived, it might be safe to assume that it was considered a redundancy with the "exceptions and regulations" clause.

However, two short exchanges about the jurisdiction of the judiciary were revealing. Madison wanted the Constitution to state that the jurisdiction of the Supreme Court was limited to "cases of a Judiciary nature" rather than to "all cases arising under this constitution." He thought that the highest court should not have a general "right of expounding the Constitution."

All agreed with Madison's idea but thought that the wording "all cases arising under the constitution" already clearly limited the authority of the Court to cases "of a judiciary nature." Another motion was offered that would have made the resolution of all cases under the appellate jurisdiction to be resolved "in such manner as the Legislature shall direct." This was likewise defeated unanimously.

Thus, overall, the writers of Article III of the Constitution accepted without controversy that the Congress should have the authority to except and regulate the appellate jurisdiction of the Supreme Court, concluded that the Supreme Court had no general right to expand the Constitution, but was limited to cases "of a Judiciary nature," and decided that the Congress could not direct the "manner" of the exercise of the appellate jurisdiction of the Court.*

And these conclusion seem re-enforced by Alexander Hamilton in Federalist 80:

"From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all comformable to the principals which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such *exceptions*, and to prescribe such regulations as will be calculated to obviate or remove these inconveniences." (Emphasis in original.)

And by Hamilton in Federalist 81:

"The amount of the observations hitherto made on the authority of the judicial department is this: that it has been carefully restricted to those causes which are manifestly proper for the cognizance of the national judicature; that in the partition of this authority a very small portion of original jurisdiction has been preserved to the Supreme Court, and the rest consigned to the subordinate tribunals; that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all cases referred to them, both subject to any *exceptions* and *regulations* which may be thought advisable; that this appellate jurisdiction does, in no case, *abolish* the trial by jury; and that an ordinary degree of prudence and integrity in the national councils will insure us solid advantages from the establishment of the proposed judiciary, without exposing us to any of the inconveniences which have been predicted from that source." (Emphasis in original.)

From the beginning of the new government, the Congress has exercised its authority over the jurisdiction of the Supreme Court and the lower federal courts. Probably the most important statute passed by the First Congress was the landmark Judiciary Act of 1789 which actually created the federal judicial system, left largely inchoate by the Constitution. As anticipated by Article III, which left the establishment of any lower federal courts to Congress, the Act provided for a system of district courts and circuit courts (consisting of two Supreme Court justices and one district court judge). Both of these kinds of courts were given limited and carefully circumscribed jurisdictions, and the Supreme Court's appellate jurisdiction was created and also equally limited. Acting under the "exceptions and regulations" clause, the Congress provided that the Supreme Court could accept appeals in civil cases from the circuit courts only if more than $2,000 was involved and also decreed that the highest court could not hear appeals in criminal cases—which Congress did not change until 1889. Additionally, the Congress decided to qualify even the constitutionally-mandated original jurisdiction of the Supreme Court by providing that, in certain cases, the Court would share its original jurisdiction with the newly-established lower federal courts. The overall intention of the Judiciary Act of 1789 was that most cases and controversies would be decided in the state courts.

Early decisions of the Supreme Court show a complete understanding of the constitutionally-granted authority of Congress over the appellate jurisdiction of the federal judiciary. In the 1796 case of *Wiscart* v. *D'Auchy*, Chief Justice Oliver Ellsworth, who had been a member of the Committee on Detail at the Constitutional Convention and later one of the authors of the Judiciary Act of 1789, wrote:

"The constitution, distributing the judicial power of the U.S., vests in the Supreme Court, an original as well as appellate jurisdiction. . . . Here, then, is the ground, and the only ground, on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise our appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of appellate jurisdiction, is simply, whether Congress has established any rules for regulating its exercise." (3 Dall. 321 at 326)

In the 1799 decision of *Turner* v. *Bank of North America*, Ellsworth said that a "circuit court . . . is of limited jurisdiction and has cognizance, not of cases generally, but only of a few specifically circumscribed . . ." (4 Dall. 8 at 10). In a footnote to the same decision, Justice Ellsworth added:

"The notion has frequently been entertained that the federal courts derive their judicial power immediately from the constitution; but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise; and if Congress has not given the power to us or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound . . . to enlarge the jurisdiction of the federal courts, to every subject, to every form, which the constitution might warrant." (at 11)

In the 1810 case of *Durousseau* v. *U.S.*, Chief Justice Marshall emphasized the same point:

"The appellate powers of this Court are not given by the judicial act. They are given by the constitution. But they are limited and regulated by the judicial act, and by such acts as have been passed on the subject. When the first legislature of the Union proceeded to carry the third article of the constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court." (6 Cranch 307 at 313)

In 1845, in the case of *Cary* v. *Curtis*, the Supreme Court declared that the "judicial power of the United States [is] dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress . . . " (3 How. 236 at 245). In the 1868 case of *Nashville* v. *Cooper*, the Court emphasized the point again by saying that "two things are necessary to create jurisdiction. . . . The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it" (6 Wall. 247 at 252).

By way of comparison, the Court has ruled, in what was probably its most famous case, *Marbury* v. *Madison*, that its original jurisdiction has been given directly from the Constitution and is not dependent on any acts of Congress In *Marbury* the Court ruled that a clause of the Judiciary Act of 1789 was unconstitutional because it acted to expand the original jurisdiction of the Supreme Court—something that could be accomplished only by constitutional amendment.

In the 1820s and 1830s, there was a major constitutional confrontation between the Supreme Court and the highest courts of the states. Under Section 25 of the Judiciary Act of 1789, Congress had authorized the Supreme Court to review decisions of the states' courts under the federal constitution. States began to appeal to Congress to remove this jurisdiction from the Supreme Court. A bill was introduced in the House to that effect but even though a significant percentage of the House supported it, the bill never made it to a floor vote, and eventually the confrontation passed.

In 1867, Congress for the first and only time in the nation's history, acted to prevent a decision of the Supreme Court by repealing its jurisdiction over the subject matter of the case. William McCardle, a Mississippi editor who was violently opposed to the post-Civil War Reconstruction Acts, was arrested and held for military trial by Major General Edward Ord, the commander of the Northern Occupation forces in Mississippi and Arkansas. McCardle, having been denied a writ of habeas corpus in the federal circuit court, appealed to the Supreme Court which had only six months before been granted jurisdiction by Congress to review denials of writs of habeas corpus.

The Supreme Court accepted the petition and the Congress, dominated by the radical Republicans of the Reconstruction era who were unsympathetic to challenges to the military rule of the South, moved immediately to repeal the jurisdictional statute that it had only recently passed.

The Court had no choice but to dismiss the case for lack of jurisdiction. Writing for the Court, Chief Justice Salmon P. Chase said:

"We are not at liberty to inquire into the motive of the legislature. We can only examine into its power under the Constitution, and the power to make exceptions to the appellate jurisdiction of this Court is given by express words. What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause. . . ." (*Ex parte McCardle* 7 Wall. 506 at 1514-515)

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* *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, Norton Library, 1969, pages 393, 510, 536–541.

Nevertheless, four years later in *U.S. v. Klein*, the Court declared unconstitutional another statute that Congress had passed under its power to make exceptions and regulations to the appellate jurisdiction of the Court. President Lincoln had offered full presidential pardons to all Confederates who swore allegience to the Constitution and the Union. Persons pardoned were then able to recover any of their property confiiscated by the Union During the war. Klein, a pardonee, sued in the federal Court of Claims because his property had not only been confiscated, but sold to another. The Court of Claims ruled in his favor, but the case was appealed to the Supreme Court. Before the Court could act, the Reconstruction Congress passed a statute removing the Court's jurisdiction over appeals from the Court of Claims based on presidential pardons without some additional proof of loyalty.

In a 7-2 decision, with Chief Justice Chase again writing the opinion, the Court ruled that Congress, in this instance, had acted unconstitutionally under the exceptions and regulations clause. Nevertheless, the Court emphasized that Congress does have the power to remove jurisdiction "in a particular class of cases":

"Undoubtedly the legislature has complete control over the organization and existence of that court and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient. . . . But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the Preisdent the effect which this court has adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal.

"We have already decided that it was our duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty. . . . It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power. . . . To the Executive alone is intrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons that no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath. . . . Now, it is clear that the Legislature cannot change the effect of such a pardon any more than the Executive can change a law." (13 Wall. 128 at 142, 145, 146, 147, 148)

It can be seen that the *Klein* Court based its decision not only on the exceptions and regulations clause of Article III, but also on the pardoning power granted exclusively to the President by Article II, Section 2, Clause 1. Also, and in contrast to *McCardle*, the *Klein* Court found that it was unconstitutional for Congress to prescribe the decision in a case by eliminating some of the *evidence*, that is, a pardon—matters of evidence in a particular pending case being pre-eminently a judicial concern. In *McCardle*, the Congress had restricted the Court's authority over a judicial procedure, that is, a writ of habeas corpus, and, further, a certain statutory *class* (i.e., under the Reconstruction Acts only) of the writs—the Court's jurisdiction over other habeas corpus writs being left untouched. Since the *Klein* case of 1872, there have been no significant controversies in the Supreme Court about the exceptions and regulations clause. And no judge, save for Justice Douglas, has ever seriously questioned the authority of the Congress over the Supreme Court's appellate jurisdiction. In a footnote to his opinion in the 1962 case of *Glidden* v. *Zdanok* (370 U.S. 530), Douglas wondered (at 605) "whether the *McCardle* case could command a majority view today." But, six years later in *Fleet* v. *Cohen* (392 U.S. 83), Douglas, in a concurring opinion, cited *McCardle* when he said, "As respects our appellate jurisdiction, Congress may largely fashion it as Congress desires by reason of the express provisions of Section 2, Article III" (at 109).

In 1932, Congress culminated more than two decades of disputes between legislatures and the federal courts over labor issues by passing the Norris-LaGuardia Act, removing the authority of the lower federal courts to issue injunction in such cases. In the 1938 case of *Lauf* v. *E. G. Skinner & Co.*, the Supreme Court upheld the constitutionality of the Norris-LaGuardia Act. Associate Justice Roberts, writing for the Court, said that there "can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States." (303 U.S. 323 at 330)

Over the past 30 years, as the Supreme Court accrued more powers to itself, Congress has periodically considered legislation to repeal specific areas of jurisdiction of the highest court. At the beginning of this modern era, the American Bar Association joined by Justice Roberts sought to head off the whole controversy by recommending the adoption of a constitutional amendment giving the Court, instead of Congress, authority to determine its appellate jurisdiction. But the idea received little congressional support. Throughout the post-World War II era and up to the present time, Congress has considered legislation to limit the jurisdiction of the Supreme Court and the lower federal courts in a wide variety of areas: desegregation, certain criminal procedures, internal security, school prayer, apportionment, and abortion. In 1964, the House passed a bill eliminating the jurisdiction of the Supreme Court to hear cases dealing with the apportionment of any state legislature, but the bill failed in the Senate.

CONCLUSION

Over the past twenty-five years, the Supreme Court has been racing ahead of other governmental institutions in effecting changes in national social policy and in society itself. Indeed, the Court has been fashioning a national social policy for the first time, for through the succession of controversial Supreme Court decisions on desegregation, reapportionment, school prayer, capital punishment, criminal procedure, school busing, pornography, abortion and reverse discrimination a common theme has been apparent: all these areas had been longstanding matters of individual state policy before the Court acted. By its decisions in the cases, the Court not only suddenly made them all matters of national policy, but it also defined what the new national policy would be in each case.

Such a role for "the judicial power" is not provided for in the Constitution nor was it ever contemplated by the Constitutional Convention of 1787. As mentioned above, the judiciary power was not intended to extend to all cases arising under the Constitution but to cases of a "judiciary nature" only. Nevertheless, the opportunity for the Court to assume policy-making powers might be provided by the Constitution itself.

The delegates to the Constitutional Convention were much more concerned with the executive and legislative powers than with the judicial power. The amount of time and debate spent on Article III was minor by comparison. Consequently, it took a subsequent act by the First Congress, the Judiciary Act of 1789, to give a complete expression to the role, authority, and jurisdiction of the judicial power. The last substantial change in the federal judicial system was the creation of the circuit courts of appeals in 1891. Since, then, the judiciary has largely functioned according to its own discretion.

In Madison's view, the so-called "system of checks and balances" was the fundamental pillar holding up the entire constitutional structure. In Federalist No. 51, he explained this principle:

"In the compound republic of America, the power surrendered by the people is first divided between the two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."

It can be asked whether the system of checks and balances can function with respect to a Supreme Court that has assumed unplanned powers of fashioning and promulgating policy.

Compared to the executive and the legislative branches, the Supreme Court is able to act in a relatively easy manner. The justices are appointed for life and are answerable to no one after their initial confirmations by the Senate. Five justices in agreement constitute a summary authority to eliminate longstanding social customs (prayers in public schools, local prohibitions on the sale of pornography), establish new constitutional rights (the right of privacy, the rights to welfare and education), re-order the structure of government (re-apportionment), or assume executive and/or legislative powers (overseeing prisons, hospitals and schools).

The other departments of the "compound republic" are shackled by checks and restraints. The executive and the members of Congress must stand for re-election, thus making their actions reviewable periodically. The legislative is divided into two: the House holds an effective vote over the actions of the Senate and vice versa. With each house, it takes the agreement of a multitudinous majority in order to pass legislation. The presidential veto, seemingly a powerful weapon, must be separately sustained by one-third of each house.

Amending the Constitution, deliberately planned as a rare and arduous undertaking, must be accomplished by the agreement of two-thirds of each house and three-fourths of the states. The states, who substantially weakened themselves by ratifying the Sixteenth (national income tax) and Seventeenth (direct election of senators) Amendments can effect a major change in the structure of government only if two-thirds of them agree to call a constitutional convention, something that has never happened.

Against the judiciary, the executive has no power. The Constitution gives the "check" on the judiciary to the Congress. "In republican government, the legislative authority necessarily predominates." (Madison in Federalist No. 51) In recent years, the relative powers of the Congress and the Supreme Court have been skewed in favor of the latter: passage of a constitutional amendment being an enormously difficult task compared to the agreement of a majority of the Court. Removing the jurisdiction of the Court over a class of cases requires only a simple majority of each house. The Senate has decided to use this means regarding school prayer and awaits the decision of the House.●

PRINCE SIHANOUK URGES VOTE AGAINST SEATING POL POT REGIME IN UNITED NATIONS

● **Mr. McGOVERN.** Mr. President, when the United Nations General Assembly convenes in New York this week, one of the first items on its agenda will be the decision whether to seat the Pol Pot regime as the representative of Cambodia in the United Nations. It would be a humanitarian and a diplomatic tragedy for the United States to repeat its mistake of last year and vote in favor of Pol Pot.

It would be a humanitarian tragedy because the Pol Pot regime stands condemned as one of the most cruel governments in all of human history. Over the years we have come to learn of the unbearable cruelties imposed by this band of murderers on the gentle people of Cambodia—starvation, executions, torture, mass forced exodus. The United States simply should not be associated in any way with this group of despots and killers. Doesn't it weaken our support for human rights to vote in favor of the regime which President Carter once labeled—accurately, in my view—as the world's worst violator of human rights?

A vote to seat Pol Pot would be a diplomatic tragedy as well because it would deny the United States the diplomatic independence and leverage it needs to help bring a political solution to the Cambodian problem. I am opposed to the presence of Vietnamese troops in Cambodia. American policy should be designed to encourage a diplomatic solution which will lead to a quick withdrawal of Vietnamese troops and the installation of a Cambodian Government chosen freely by Cambodians. Continued support for Pol Pot works directly against these goals for two reasons. First numerous observers have concluded that although Cambodians resent the Vietnamese military presence, they regard it as the lesser of two evils if the alternative is a return of the Pol Pot regime. Therefore, any continued support for Pol Pot has the effect of lengthening the stay of Vietnam in Cambodia.

Second, American ties to Pol Pot are widely regarded as American deference to China's regional power politics in Asia. By deferring to China's interests, the United States has cut itself off from an independent relationship with one of the principal protagonists, Vietnam. The United States possesses great potential leverage against Vietnam to reduce Soviet influence in Asia and to bring about a Vietnamese withdrawal from Cambodia, but this leverage cannot be brought into play as long as we support China's endorsement of Pol Pot.

For these reasons, the United States should not vote to seat Pol Pot's regime in the United Nations. The United States should abstain during the credentials vote or else support the "empty seat" option. In this way, the United States could announce its abhorrence of the Pol Pot group while at the same time making clear that we do not endorse the Vietnamese-installed government of Heng Samrin in Phnom Penh. There is a direct link between the humanitarian relief efforts of the United States and the upcoming vote at the U.N. The connection is that we cannot realistically expect to solve the humanitarian needs of the Cambodian people until we alter the mistaken diplomatic position of supporting a bloody regime which the people of Cambodia have rejected.

The United States should not condone either the Pol Pot executioners or the Vietnamese invaders, but we should, as the American Friends Service Committee has urged, "champion a suffering and disenfranchised people by seeking the swiftest route to peace and stability."

Mr. President, one of the most authoritative voices representing the disenfranchised Cambodian people is Prince Sihanouk, the former head of free and independent Cambodia. The State Department should take his views into account as a leading Cambodian nationalist who will play a central role in a future diplomatic solution. In an article last week in the English daily newspaper, The Guardian, Prince Sihanouk pleads that Cambodia's seat at the U.N. be left vacant "until an authentic Cambodian Government drawn from the Cambodian people, and elected by the people by secret vote and universal suffrage, can come to occupy it in complete legitimacy and legality."

Prince Sihanouk's proposal deserves support. The United States should vote against Pol Pot at the United Nations as its contribution to a sound diplomatic solution to one of the world's most tragic situations.

Mr. President, I ask to insert into the RECORD the text of Prince Sihanouk's article and the text of a short legal memorandum prepared by the Lawyers Committee for International Human Rights on "Legal Aspects of Rival Claims to Representation at the United Nations."

The texts of these documents follow:

LOADING THE DICE TO FAVOUR THE KHMER ROUGE

The Cambodian problem has two principal aspects: first, the invasion (in 1979) and military occupation of Cambodia by the Socialist Republic of Vietnam; second, the survival of the Khmer Rouge, called "Democratic Kampuchea," which continues to be considered—by the United Nations and by a great number of governments in the Free World and in the Third World—the legitimate and legal government of Cambodia.

At the moment, many non-communist countries and governments (the United States, Canada, Australia, New Zealand, the countries of Western Europe—except for Britain and France—the countries of ASEAN—Thailand, Singapore, Malaysia, Indonesia and the Philippines—and Japan) accord the highest importance to the first aspect and deliberately neglect the second. Yet in the eyes of the Cambodian people still living in Cambodia, the second aspect has supreme importance. It concerns a question of life and death, particularly death, for the future of these unfortunate people, victims since 1975 of the savage and bloody regime of "Democratic Kampuchea."

In the course of the past year, a large number of Western journalists (non-communist) and Western personalities (including Jacques Couture, a minister of the Quebec Government) have gone to Cambodia. They have visited Phnom Penh and many provinces of my country. They have been able to question Cambodians of various trades and social backgrounds, as much in the towns as in the country, as they chanced to meet them. All the Khmer (young and old, men and women, bourgeois and peasant, intellectual and illiterate) have in substance told them this:

"We do not like the Vietnamese and we feel humiliated by the fact that our country, Cambodia, has lost its independence, and become a protectorate of Vietnam. But what we fear, and what we dread more, is the eventual return to power of the Khmer Rouge—with Pol Pot and Ieng Sary at its head. Certainly we hope that one day the Vietnamese will leave our home and give us back our sovereignty. But if the Vietnamese should leave now, who is going to come to Cambodia to look after our safety and prevent the hellish Khmer Rouge from starting again against us their ignoble and horrible practices of genocide. . . .?"

Of course, if Western "investigators" ask the opinions of those Khmer politicians and intellectuals who have taken refuge in foreign countries, the great majority will say that the first problem is "to chase the Vietnamese out of Cambodia and free the country completely from the Vietnam-Soviet grip"—a problem which must have absolute priority in working out a solution. They will also say that the problem presented by the bloody Khmer Rouge is altogether secondary and can be resolved "amicably" between the Cambodians once the Vietamese have left.

But when the West wants to know the deep feelings of the Cambodian people, should it not give greater importance and weight to the opinions of Cambodian men and women still living in Cambodia (who, in consequence, are in everyday touch with the realities of the country), rather than to the "more sophisticated" views of the politicians and intellectuals who are refugees abroad, remote from the realities of the country and dreading that much less the horror and terror of the Khmer Rouge which, after the departure of Vietnamese troops from Cambodia, would have no chance of affecting them personally? When one knows oneself to be out of danger, one can easily play the super-patriot and place greater value on indulging in anti-Vietnamese demagogy.

The situation of the Cambodian peasants, threatened in their villages in the heart of Cambodia with the prospect of being slaughtered at any moment by the satanic Khmer Rouge, is altogether different. . . .

I am infinitely sad to have to state that countries calling themselves "democratic", "liberal" and "defenders of the rights of man," should show themselves so insensible to the misfortune of Khmer people in Cambodia that they can vote imperturbably at every session of the United Nations General Assembly to retain a seat for the Khmer Rouge—under the pretext that it is necessary to penalize the Heng Samrin regime which Vietnam has imposed on Cambodia.

If this must be so, why do the countries who vote at the UN for the Pol Pot regime refuse to continue to recognize Idi Amin and Jean-Bedel Bokassa as the heads of state in Uganda and Central Africa?

The team of Pol Pot, Khieu Samphan and Ieng Sary is a hundred times more sanguinary and tyrannical than theirs. As to the present governments of Uganda and Central Africa, they have been, as Heng Samrin was in Phnom Penh, installed at Kampala and at Bangui by foreign armies—the Tanzanian Army and the French Army.

In writing this I do not wish to say that one should recognize de jure the government of Heng Samrin which represents Vietnamese colonisation and in no way symbolises the sovereignty of Cambodia.

I have always pleaded to the United Nations, and to all the other international organizations, that Cambodia's UN seat should be left vacant until an authentic Cambodian government drawn from the Cambodian people, and elected by the people by secret vote and universal suffrage, can come to occupy it in complete legitimacy and legality.

But the United States and others have found my demand unrealistic. They consider that what I want for my country and my people (that is to say, an international conference on the lines of the 1954 conference on Cambodia, putting Cambodia under the trusteeship of the United Nations for a certain number of years, neutralizing Cambodia on the Austrian pattern: with a solid international guarantee, sending in UN troops to relieve the Vietnamese troops, having the UN troops disarm the elements of the Cambodian armies whoever they may be, organising general elections under international control with authorisation given to both communist parties to complete, normalization of the real government of Cambodia by the new Cambodian parliament brought into being by the general election) is unrealistic.

The United States and others consider that, in spite of their "repugnance" for the Khmer Rouge, there is only one way for them to "defend the higher interests of Cambodia"—by voting at the United Nations and in other international instances for . . . the Khmer Rouge. They do this, they say, in order not to recognize the colonisation of my country by Vietnam and, happily for the Cambodian people, they imply, there is very little chance in practice that the Khmer Rouge regime could be reinstalled in power in Cambodia.

However, if by some veritable "miracle" the Vietnamese army were to be vanquished in Cambodia and obliged to flee from my country, the Khmer Rouge government, members in full standing of the United Nations, would be reinstated ipso facto in complete legality, and this as easily as its army could make a mouthful of the lamentable armies of the former prime minister Son Sann and the other Khmer Serei (Free Cambodians).

The United States and the other democracies who will have voted to the bitter end for the regime of "Democratic Kampuchea" will have assumed in history the heaviest and the least honourable of responsibilities: that of changing Cambodia back into an immense Auschwitz.

More to appease their own consciences than to reassure the unfortunate Cambodian people in Cambodia, certain governments of the Free World have allowed themselves to believe that, with a new direction (a direction assured by that so-called liberal Khieu Samphan), the Khmer Rouge regime is in the process of humanising itself. According to certain Westerners, the Khmer Rouge wolves are perfectly capable of transforming themselves into lambs.

Such wishful thinking is dangerous, above all for the Cambodian people still in Cambodia. These people are hoping that the Free World can find some means of saving them other than by supporting the so-called legitimacy and legality of the infernal regime of Pol Pot, Ieng Sary and Khieu Samphan.

Legal Aspects of Rival Claims to Representation at the United Nations

INTRODUCTION

The Lawyers Committee for International Human Rights has prepared this memorandum to analyze the legal questions raised by rival claims to representation at the United Nations. We have done so at the request of the American Friends Service Committee, in light of the current controversy around Kampuchea's United Nations seat. We have also endeavored to evaluate the extent to which human rights criteria may influence the decision to seat representatives in the General Assembly.

While the General Assembly is clearly not a judicial organ, decisions to accept or deny a representative's credentials must be made in compliance with the provisions of the United Nations Charter and the General Assembly's own Rules of Procedure

The first requirement is that no state may be represented in the General Assembly until it has first been accepted as a Member State in compliance with Article 4 of the United Nations Charter. The second requirement is that the General Assembly and its Credentials Committee shall determine, in compliance with the Assembly's Rules of Procedure, who may represent that Member State.

The primary difficulty in the development of a consistent legal policy toward Member State representation at the United Nations is that neither the Charter nor the Rules of Procedure provide sufficient guidance for deciding cases of contested representation.

In addition, the Credentials Committee and the General Assembly both tend to function in response to the circumstances of the case before them rather than in response to precedent. The absence, since 1950, of any substantial clarification of the problem has, therefore, created a legal tapestry with few consistent patterns.

In view of the inconsistent precedents, the General Assembly and its Credentials Committee need not be bound by prior decisions. Instead, in resolving new disputes, the Assembly should attempt to establish a framework for decisionmaking in this area that is consistent, rational and equitable.

This paper is intended to analyze the following points:

I. Legal Aspects of Representation:
A. Available Procedural Forums.
B. Resolution 396(v).
C. "Effective Authority" Concept.
D. Substantive Distinctions.
E. Other Criteria.
1. Internality factor.
2. Unresolved military situations.
F. Permissibility of a vacant seat.
G. Human Rights Considerations.
II. Historical Foundations: Case Histories.
A. China.
B. Hungary.
C. Congo.
D. Yemen
E. South Africa.
F. Cambodia.
G. Kampuchea.
III. Conclusions.

I. Legal Aspects of Representation:

A. Available Procedural Forums:

The current controversy surrounding the disposition of Kampuchea's United Nations seat is one of several cases since 1950 to require a determination as to which of two rival claimants is the legitimate representative of a Member State. From a procedural point of view there are two possible means the Assembly can utilize in arriving at this choice. Disputes over representation may properly be addressed in either the General Assembly as a separate agenda item, as in the case of the People's Republic of China, or in the Credentials Committee of the General Assembly, as in the Congo and Yemen controversies.

While the designation of a representation question as a separate agenda item generally leads to a much more direct examination of which government is entitled to represent a Member State, it generally also leads to a more volatile session. Additionally, as a separate agenda item, a representation question may be subject to extensive and complicated political maneuvering which will delay its resolution.

Use of the Credentials Committee enables the General Assembly to avoid the appearance of discussing either claimants' "legitimacy" as a government while focusing on the technical question of which government is the effective representative of the State. The Credentials Committee's initial formulation of all questions of contested representation normally rests on the basis of the propriety of a representative's credentials, for example, the timeliness of submission with proper signature, in accordance with Rule 27 of the General Assembly's Rules of Procedure.[1]

As the Legal Counsel of the United Nations informed the General Assembly on November 11, 1970:

"(N)ormally the examination of credentials, both in the Credential Committee and in the General Assembly, is a procedural matter limited to ascertaining that the requirements of Rule 27 have been satisfied, there have, nevertheless been a few instances involving rival claimants, where the question of which claimant represents the true government of a Member State has arisen as a substantive issue."[2]

The Yemen and Congo controversies are examples of cases in which the Credentials Committee's examination of a representative's credentials has been of a substantive nature. The Cambodian and Kampuchean cases demonstrate how the Credentials Committee is procedurally able to effectuate a substantive conclusion, with respect to the validity of a claimant's credentials, without necessarily examine all of the controversial merits of the situation.

The Credentials Committee has evolved from a body concerned purely with documentary formalities to one able to consider the broader question raised in a representation dispute. Perhaps the real significance of the Credentials Committee lies in the fact that it bestows official recognition and approval upon those who claim to represent a Member State.

While from time to time some Member States, to avoid a substantive examination of credentials, will deny the power of the General Assembly and its Credentials Committee to inquire into the matter of representation, virtually all Member States have in one case or another, approved such a practice.

Indeed, there have been several occasions when, in the course of one meeting of the Credentials Committee or the General Assembly, Representatives have advocated the power to inquire into the matter of representation in one case and denied it in another. One example of this occurred in the Credentials Committee at the 15th Session of the General Assembly, when one representative, while explicitly denying such a power in the Hungarian case, ardently invoked its existence in the Chinese and Congo cases.[3]

B. Resolution 396(v):

Since neither the Charter nor the Rules of Procedure provided determinative guidance for examining or deciding cases of contested representation, the General Assembly expressly declared itself competent to decide such issues. This declaration was formulated in resolution 396(v), which was passed in December 1950, at the 5th Session of the General Assembly.[4]

However, Resolution 396(v), which provides that representation controversies "should be considered in light of the purposes and principles of the Charter and the circumstances of each case," has proved to be a hopelessly vague standard for resolving such disputes.

C. Effective Authority:

To supplement the language of this governing resolution, the General Assembly has, on occasion, applied a test of effective authority to determine which of two rival claimants is entitled to recognition as a Member State Representative.

This informal test attempts to gauge governmental power by focusing on a claimant's control over the population and territory of

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the State. It is intended to be an objective test.

This effective authority test originates from a legal memorandum submitted to the General Assembly by Secretary General Trygve Lie in 1950, several months before the Assembly first considered the question of representation.[5]

The memorandum asserted that the proper principle for choosing between rivals should be derived by analogy from Article 4 of the U.N. Charter. This article requires that an applicant for membership must be able and willing to carry out the obligations of membership. The memorandum continued, "the obligations of membership can be carried out only by governments which, in fact, possess the power to do so."[6]

The memorandum then stated that where a revolutionary government presented itself as representing a state, in opposition to an existing government, "the question at issue should be which of these two governments, in fact, is in a position to employ the resources and direct the people of the state in the fulfillment of the obligations of membership."[7] In essence, this would necessitate an inquiry into whether the new government exercised "effective authority" within the territory of the state and was "habitually obeyed by the bulk of the population." "If so," the memorandum concluded, "it would seem to be appropriate for the United Nations organs, through their collective action, to accord the new government the right to represent the state in the Organization, even though individual members of the Organization refuse, and may continue to refuse, to accord it recognition as the lawful government for reasons which are valid under their national policies."[8]

D. Substantive Distinctions:

This 1950 legal memorandum also made important distinctions between representation of a state at the United Nations and recognition of that state by other states. This distinction is essential to a consistent application of the effective authority concept.

Simply stated, recognition by a state and representation of a state in an international organization were described as legally separable issues.

On the basis of an individual government's act, "the recognition of either a new state, or of a new government of an existing state, is a unilateral act which the recognizing government can grant or withhold. . . . While states may regard it as desirable to follow certain legal principles in according or withholding recognition, the practice of most states shows that the act of recognition is regarded as essentially a political decision, which each state decides in accordance with its own free appreciation of the situation."[9]

From the standpoint of the 1950 memorandum, the problem with contested representation was that Member States tended to confuse it with issues relating to the recognition of either a new state or a new government of an existing state.

Before 1950, universal membership in the United Nations was seen not only as legally correct, but, also, as conforming to the basic character of the organization. Under such a view, membership of a state in the United Nations and representation of a state in the various organs was to be determined by a legally and not politically motivated collective act. In the case of representation, the act was the vote of the Credentials Committee on the credentials of the purported representatives.[10] This perception of the relationship between representation and recognition, is, however, no longer reflective of the prevailing conduct at the United Nations.

The United Nations does not possess the power, either to recognize a new government or to bind individual Member States to such an act of recognition. Therefore, Member States tend to vote on matters of credentials and representatives not based on the concept of universality but according to their individual national policies of recognition. Member States may also choose, for political reasons, to accept the credentials of delegations from Member States which they do not recognize.

The question of a Representatives credentials is, therefore, frequently a political one. Consequently, the effective authority test has not been consistently applied in the General Assembly or in its Credentials Committee.

E. Other Criteria:

1. The internality factor:

One element which will occasionally influence the General Assembly in its application of the effective authority test is the internality factor. The internality factor is expressed by United Nations Charter Article 2(7) which states in part:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ."[11]

Of central concern to the internality factor is whether the Assembly's exercise of its competence to resolve issues of representation, pursuant to Resolution 396(v), would constitute a transgression of this article.

Article 2(7) and its provisions may be read as protecting the sovereign discretion and national identity of Member States from intrusion by the international community. It is intended to prevent the General Assembly from becoming involved in political matters of esssentially domestic concern that have somehow been forced into the international arena.

2. Unresolved military situations:

A second element to be considered is whether the Assembly should act before the military struggle between the two factions has been concluded.

The hasty endorsement of a rebel government over its domestic rival might violate the principle of internality. Waiting for the resolution of the conflict would, however, tend to lead to the continued representation of the incumbent delegation. (See discussion of Rule 29, below.)

Therefore, either expressly or by default, it appears difficult to avoid making some kind of substantive choice between the claimants in a representation dispute.

F. The Permissibility of a Vacant Seat:

One approach which has been suggested to diffuse the volatility of contested representation cases when the military situation remains unresolved is to leave the seat of the Member State vacant.

The closest that the General Assembly's Rules of Procedure come to authorizing such an approach is Rule 29.[12] This rule enables the General Assembly and its Credentials Committee to refrain from taking any action on the credentials presented by objectionable representatives. Instead of leaving the seat vacant, however, the challenged representative is ". . . seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision."

While Rule 29 has not been used in cases of contested representation, it has been utilized in disputes of uncontested representation (Hungary).

The General Assembly has also on one occasion (South Africa), rejected uncontested credentials even though it resulted in leaving a Member State's seat vacant.

Although there is no precedent for leaving a contested seat vacant, the General Assembly reserves the right, pursuant to Resolution 396(v), to rule on each case with respect to its individual merits. Thus, it has the option, should it choose, to reject one set of credentials in a contested case, without approving the rival claimant. (*See* generally Appendix G, regarding the decision on the representation of the Republic of the Congo in 1960).[13]

G. Human Rights Considerations:

Human rights considerations at the United Nations are covered by the Preamble, Article 2 and Article 55 of the United Nations Charter.[14]

The South African case is a distinct example of three essential points: First, that the Credentials Committee can apply substantive principles such as human rights in determining the validity of a representatives credentials; second, that both the Credentials Committee and the General Assembly can reject even uncontested credentials on the basis of human rights violations; third, that such action can result in leaving a Member State's seat vacant in a manner unforeseen by the U.N. Charter.

There are no other precedents which utilize human rights criteria as a basis for deciding whether to seat representatives in the General Assembly. One explanation for this is that inquiries into a Member State's alleged domestic violations of human rights were often considered to be contrary to Article 2(7) of the Charter.

In recent years, however, nations have come to recognize that human rights violations are a matter of international concern. In this context, Article 2(7) of the Charter may not be the only operative or relevant provision. Article 6 of the Charter, which has never been fully implemented, provides for the expulsion of a Member of the U.N. which has "persistently violated" the principles contained in the Charter.[15]

The inter-relationship between these two provisions, which is yet to be clearly developed or defined, may be a significant factor in future decision-making in this area.

II. Historical Foundations: Case Histories:

A. China:

The question of Chinese representation occupied the United Nations off and on from 1949, when the People's Republic of China was established on the mainland until October 1971. The Chinese case is unique in the history of the United Nations in that it was the first instance in which two rival governments vied to represent a Member State.

This may be considered remarkable in view of the fairly large number of revolutionary changes of government and the even larger number of instances of breach of diplomatic relations among members which occurred before 1950. Nevertheless, as previously indicated, until this question arose the issue of Member State representation in the United Nations was considered distinctly separate from that of recognition of a new government.

In each year from 1950 to 1960, an attempt was made to include in the General Assembly agenda an item calling for the seating of representatives of the People's Republic of China in place of those from the Republic of China. Each year the General Assembly instead adopted a resolution postponing consideration of the matter.

In 1961 the issue of representation for the People's Republic was classified as an "important question" in accordance with Article 18 of the United Nations Charter. Article 18 (2) provides that: "Decision of the General Assembly in important questions shall be made by a two-thirds majority of the members present and voting."[16]

Underlying this characterization was a combination of complex political and legal considerations stemming from both the twenty-year old stalemate in the Chinese Civil War and the discrete nature of the territories occupied by the rival claimants.

From the minority view, the conflict bore far greater resemblance to a dispute over membership for a new state than to one of contested representation. However, in the

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view of the growing majority, the claimants were seen, not as representatives of two distinct countries, but as rival delegations from one country. Since only one China was recognized as a Member State, it was argued that only one claimant could be seated in the General Assembly. These considerations constituted such unique problems that the General Assembly deemed them most appropriately handled in plenary session.

Continued attempts to change the representation of China in the General Assembly were unsuccessful until 1971. Finally in October 1971, the General Assembly, by a narrow margin, refused to characterize the matter as an important question. Nevertheless, even when the issue was eventually reclassified as a non-important question requiring only a majority vote, the dispute was retained in plenary session as a separate agenda item.

On October 25, 1971, the General Assembly accepted the People's Republic of China as the legitimate representative of China. The Nationalist Government of the Republic of China was not permitted to remain in the General Assembly as a new Member State. The People's Republic thus took over "China's" seat, as a permanent member of the Security Council, in the General Assembly and in the organization's various other organs.

The General Assembly's action was categorized by the majority of the delegations of the Member States, not as a matter of expelling a Member State or of admitting a new Member State to the United Nations, but rather as a matter of "restoring to the People's Republic of China its lawful rights." It was argued, therefore, that recognition of the Nationalist Government in the United Nations under any pretext "would create a dangerous precedent for the legalization of interference in the internal affairs of other States, in violation of Article 2(7) of the Charter."

The minority of the delegations, however maintained that the expulsion of the Nationalist Government from the United Nations was itself a violation of Article 6 of the Charter.

There were two reasons for this position: first, that the General Assembly had "expelled" the Nationalist government without obtaining "the recommendation of the Security Council" as required by Article 6; and second, that the only ground for recourse to an Article 6 expulsion procedure was for persistent violations of the principles contained in the Charter. In this context it is important to note that from the point of view of the majority, the question of the expulsion of a Member State did not even arise.

B. Hungary:

Following the Soviet response to the Hungarian revolt of 1956, the General Assembly, relying on the ambiguity of Rule 29 of the Assembly's Rules of Procedure, decided to take no action on the credentials submitted on behalf of the new Hungarian delegation. These representatives had been sent by the Kadar Government which, with the support of Soviet tanks and troops, had toppled the coalition government of Imre Nagy.

Although only one delegation was claiming to represent Hungary, both the Credentials Committee and the General Assembly refrained from taking any action on the credentials it presented until 1963. During that period, however, Hungary functioned for all intents and purposes as if it were a full member.

C. Congo:

Following the General Assembly's September, 1960 decision to admit the Republic of the Congo (Leopoldville) to membership in the United Nations, pursuant to Article 4 of the U.N. Charter,[17] the question of representation was referred to the Credentials Committee. The issue to be resolved was whether to approve the credentials of the delegation led by Prime Minister Patrice Lumumba or the one led by Chief of State Joseph Kasa-Vubu. From September to November when the Credentials Committee finally reported, the Congo was not represented in the General Assembly.

Several weeks before the General Assembly's action, a grave constitutional crisis had occurred in the Congo. Chief of State Kasa-Vubu had issued an ordinance dissolving the government headed by Prime Minister Lumumba and had called upon the President of the Senate, Joseph Ilea to form a new government. Mr. Lumumba had, in turn, announced that President Kasa-Vubu was no longer Chief of State and had called upon the people, the workers and the army to rise.

After a joint session of the Congolese Parliament had conferred full powers on Prime Minister Lumumba, Chief of State Kasa-Vubu issued an ordinance suspending Parliament. At this point, the Chief of Staff of the Army seized power.

The prevailing arguments in the Credentials Committee's decision to accept the credentials of the delegation appointed by the Chief of State of the Congo stressed the procedural side of the question rather than its substantive merits. It was argued that the duty of the Credentials Committee was to pass only on the legal questions concerning the validity of credentials before it, and that political or other considerations should be left to the General Assembly. It was noted that Rule 27 of the Rules of Procedure provided that credentials "shall be issued either by the Head of State of government or by the Minister for Foreign Affairs." It was also the consideration of the majority, that to question the validity of a document issued by the Chief of State would be an intervention in the domestic affairs of the Republic of the Congo in violation of Article 2(7) of the United Nations Charter.

Although the decision to accept the credentials presented by the Chief of State was challenged by Prime Minister Lumumba on the basis of Kasa-Vubu's alleged noncompliance with the Congolese Constitution, the Committee refused to look beyond the fulfillment of the technical requirements of Rule 27.[18]

D. Yemen:

In the 1961 Yemen case the revolutionary government of Brigadier El Sallal had, with the direct assistance of as many as 50,000 Egyptian troops on Yemeni soil, displaced the previously established government of the Iman. In so doing, the rebels succeeded in seizing and controlling the capital, most of the nation's territory and the support of the majority of the population.

The Iman, however, was able to resist with military aid provided by Saudi Arabia in small areas of the country which his troops continued to occupy. When the question of Yemeni representation was finally decided by the General Assembly, the military contest was a mere eleven weeks old and not totally concluded. These facts are fairly parallel to those in the current Kampuchea representation dispute and in the Cambodian dispute of 1974.

The Yemen representation dispute was initially dealt with in the Credentials Committee. The credentials of the rebel El Sallal government were accepted there without discussion. The report of the Credentials Committee was accepted by the General Assembly the next day. A suggestion by the representatives of Saudi Arabia and the Kingdom of Yemen that the General Assembly should delay a decision on the credentials question pending an inquiry in the United Nations was not adopted.

It is a supportable proposition that the General Assembly rendered its decision on the basis of effective authority criteria, since at the time of the Assembly's debate and vote, the El Sallal government exercised effective control over most of Yemen.

Two further elements are discernable from the Yemen case, however, which could also have had a bearing upon the General Assembly's use of the effective authority test. The first element is the Assembly's acceptance of the internality criterion despite evidence that foreign troops had assisted the revolutionary government on the soil of the Member State. The second element to be considered is that the Assembly had acted against the previously established government, as noted above, before the military struggle had been concluded.

The fact that neither of these two elements played a significant role in the choice between the rival Yemeni claimants probably should not be considered determinative as to future cases of contested representation. By adopting Resolution 396(v), the General Assembly has indicated that it will consider representation controversies according to the circumstances of each case. Such a policy tends to subject legal standards to the fluctuations of the prevailing political winds.

E. South Africa:

On September 27, 1974, the Credentials Committee of the Twenty-ninth Session of the General Assembly voted to accept the credentials of all delegations "with the exception of the representatives of the Republic of South Africa." The General Assembly adopted the Credentials Committee's report without change.

At the same meeting, the Assembly adopted Resolution 3207 (XXIX) calling upon the Security Council to review the relationship between the United Nations and South Africa in light of the constant violations by South Africa of the principle of the Charter (Articles 22 and 55) and the Universal Declaration of Human Rights."

These violations were alleged to stem from the South African Government's apartheid policy which institutionally denied basic rights and freedoms to the non-white majority.

When the Security Council failed to take action recommending the expulsion of South Africa, several Members of the Assembly sought a ruling from the Chair on the status of the South African Delegation in the General Assembly. The President of the Assembly gave a ruling which had the effect of suspending South Africa from its participation in the work of the Assembly, thus circumventing the expulsion requirements of Article 6 of the United Nations Charter.

Although human rights violations were used in this case as a basis for unseating the South African delegation it was a suspension of a Member State ". . . from the exercise or rights and privileges of membership in a manner not foreseen by the Charter." (Scope of "credentials" in Rule 27 of the Rules of Procedure of the General Assembly on November 11, 1970.) [19]

According to Article 6 of the Charter, such an expulsion action would have required the recommendation of the Security Council and a two-thirds majority vote in the General Assembly. The above-cited 1970 report by the Legal Counsel concluded that "the participation in meetings of the General Assembly is quite clearly one of the important rights and privileges of membership . . . Suspension of this right through the rejection of credentials would not satisfy the foregoing requirements (Article 6) and would therefore be contrary to the Charter." [20] Nevertheless, statements by the Legal Counsel, rather than having a binding effect on the General Assembly, have only a hortatory effect. This demonstrates the essentially political nature of that august body.

In terms of precedent, therefore, the exclusion of the South African delegation from

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participation in the business of the General Assembly points to two additional conclusions: first, that the General Assembly does not consider itself bound by the legal recommendations of its Legal Counsel and second, that when a sufficient number of delegations wish to punish a Member State for violations of human rights, they can suspend that State from the General Assembly even though such an action is not specifically authorized by the Charter.

Although the suspension of the South African delegation applied only to representation at the Twenty-ninth Session of the General Assembly, the Republic of South Africa no longer sends a delegation to represent it in the General Assembly.

F. Cambodia:

On March 18, 1970, General Lon Nol unseated Prince Norodom Sihanouk as the Cambodian Head of State. The new government adopted the name "The Khmer Republic." The Khmer leadership encountered little difficulty in receiving diplomatic recognition. The representatives that were sent to the United Nations were seated without objection.

On May 5, 1970, Sihanouk announced the formation of a rival government, the Royal Government of National Union of Cambodia, and claimed the support of the forces battling Lon Nol. At the time, both sides controlled significant areas of the country, but neither could claim to control the whole population or the territory. In addition, the military struggle had yet to be definitely resolved.

In September 1973, at the Twenty-eighth Session of the General Assembly, 32 Member States requested the inclusion in the Assembly's agenda of an item entitled the "Restoration of the Lawful Rights of the Royal Government of National Union of Cambodia in the United Nations." On October 17, the Assembly decided to include the item in its plenary meetings.

The question was considered by the General Assembly at four plenary meetings held on December 4 and 5, and was then deferred on a procedural motion until the 1974 session of the Assembly. Following this deferment, the question of Cambodia's representation was discussed in the Credentials Committee. On December 11, 1973 the Credentials Committee voted to accept the credentials of the representatives of the Khmer Republic. This decision was approved by the General Assembly.

At its Twenty-ninth Session, in 1974, the General Assembly adopted resolution 3238 (XXIX),[21] by a preamble to this resolution, the Assembly noted that, while the RGNUC, presided over by Prince Norodom Sihanouk, exercised authority over part of Cambodia, the Government of the Khmer Republic still controlled a majority of the Cambodian people. In the operative paragraphs of this resolution, the Assembly requested the Secretary-General, ". . . after due consultation, to lend appropriate assistance to the two contending parties claiming lawful rights in Cambodia and to report on the results to the General Assembly at its Thirtieth Session."[22]

Following the adoption of resolution 3238 (XXIX), the Credentials Committee, on December 12, voted to approve the credentials of representatives of the Khmer Republic. This recommendation was adopted by the General Assembly on December 16, 1974. Resolution 3238 (XXIX) was subsequently dropped from the agenda in 1975.

G. Kampuchea Case:

On September 19, 1979, in its report to the Thirty-fourth Session of the General Assembly, and again on July 28, 1980 in its report to the Seventh Emergency Special Session, the Credentials Committee voted to accept the credentials of the Government of Democratic Kampuchea and not those of the People's Republic of Kampuchea. In both of these sessions, the General Assembly voted to accept the report of the Credentials Committee. In the debate on Kampuchea that preceded these votes, it was apparent that the effective authority test was not being applied by the majority of Representatives on the Credentials Committee.

There are several explanations for this development. The first reason offered was that since the People's Republic of Kampuchea assumed power as a direct result of Viet Nam's military invasion and occupation, it lacked the necessary independence to advance its claim to representation. While under international law, the government which exercises effective authority over a territory is generally the one which is recognized, it was argued that an exception to this should be made: A foreign power which conquers a territory by force should not be recognized even when it is able to demonstrate effective authority. In terms of the history of contested representation cases, this was a rather novel argument. No similar argument was raised in either the Yemen controversy or in any of the uncontested situations involving the use of foreign forces to place a new government in power.

The second reason for the result which occurred was the previously described view that under Rule 27 of the Rules of Procedure the Credentials Committee was limited to the "technical task" of examining the credentials of the government of Democratic Kampuchea. The proposal that the Kampuchea seat be kept vacant was rejected as "inconsistent with the Rules of Procedure and contrary to previous practice."[23]

Regarding the first claim, the minority emphasized that since the People's Republic of Kampuchea was in "full and firm control of the whole territory," the acceptance of the credentials of the Government of Democratic Kampuchea amounted to gross interference in the country's internal affairs. Regarding the majority's procedural claim, the Credentials Committee was also reminded of the 1974 precedent in which the credentials of the South African delegation underwent a substantive rather than a procedural examination. Nevertheless, these arguments did not prevail.

When the Thirty-fifth Session of the General Assembly opens on September 16, 1980, this dispute will undoubtedly require a new determination as to which claimant is the legitimate representative of Kampuchea.

III. Conclusions:

An examination of Member State representation conflicts at the United Nations demonstrates that such conflicts are commonly dealt with politically rather than legally.

While there are standards, such as the effective authority concept, which could be used to resolve incidents of contested representation, they have not been consistently applied.

Human rights criteria have been used as the basis for unseating a Member State delegation (South Africa), but this precedent was established contrary to the legal position submitted to the General Assembly by the Legal Counsel.

While there is no precedent for leaving a seat vacant in the General Assembly in cases of contested representation, this does not foreclose the possibility of such an occurrence. In a case of uncontested representation, South Africa's seat was left vacant through a procedural ruling from the Chair which effectively suspended the South African delegation from its participation in the work of the General Assembly.

The determination regarding which of two rival delegations to seat as representatives of a Member State has developed into a situation where nearly any decision may be permissable. This is a consequence of the General Assembly's failure to apply firm or consistent legal standards in resolving cases of contested representation.

The history of contested representation cases at the United Nations is, at best, ambiguous. The General Assembly now has the opportunity to develop an objective framework for decision making that considers peace, stability and human rights in addition to the other relevant issues. Under this kind of approach, representation disputes would be resolved in a consistent, rational and equitable manner.

FOOTNOTES

[1] See Appendix A: Rules of Procedure of the General Assembly up to 31 December 1978.

[2] See Appendix B: United Nations General Assembly A/8160 11 November 1970.

[3] See Appendix C: United Nations General Assembly A/4743 20 April 1961.

[4] See Appendix D: Resolution 396(v). 325th plenary meeting 14 December 1950.

[5] See Appendix E: United Nations Security Council S/1466 9 March 1950.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] See Appendix F: Charter of the United Nations.

[12] See Appendix A: Rules of Procedure of the General Assembly up to 31 December 1978.

[13] See Appendix G: United Nations General Assembly A/4578 17 November 1960.

[14] See Appendix F: Charter of the United Nations.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] See Appendix G: United Nations General Assembly A/4578 17 November 1960.

[19] See Appendix B: United Nations General Assembly A/8160 11 November 1970.

[20] Ibid.

[21] See Appendix H: Resolution 3238 (XXIX).

[22] Ibid.

[23] See Appendix I: United Nations General Assembly A/34/500 20 September 1979.

THE INSULATION OF THE DEPARTMENT OF JUSTICE FROM POLITICAL INTERFERENCE OR IMPROPER INTRUSIONS

● Mr. **MATHIAS**. Mr. President, notorious cases. such as the current investigations of Billy Carter's relationship with the Government of Libya, should do more than merely titillate public curiosity. They should be utilized as opportunities to view the operations of political institutions that are usually veiled from view and to assess their efficiency and effectiveness.

An important aspect of the unfolding Billy Carter affair is the practice instituted at the Department of Justice in 1977 to insulate the Department from political interference or improper intrusions. That procedure, which is certainly well motivated, may be inhibiting necessary communication between the President and the Attorney General.

An interesting discussion of the subject recently appeared on the OpEd page of the Washington Post. The author, James Rowe, is a distinguished and experienced Washington attorney who has served in both the White House and the

Department of Justice. He speaks with the authority of one who has been there.

I ask that the article be printed in the Record.

The article follows:

Political Justice

Louis Brownlow was a famous public administrator who in the 1930s reorganized the federal government and, in effect, created the Modern Presidency of Franklin Roosevelt.

One of his favorite sayings was that the president's Cabinet consisted of "10 SOBs trying to cut the president's throat."

He believed democratic government would not work unless there was "political control" from the top. Presidents controlled Cabinet members and they, in turn, controlled their departments.

Today the Department of Justice does not seem to follow this ancient rule of public administration. Not only does the president not appear to be in control of his attorney general—or even want to be—but his attorney general too often does not appear to be in control of the Department of Justice.

The Department of Justice is the "Power of Darkness," as all lawyers know. Further, as all prosecutors learn, there is a tremendous amount of discretion lodged in the Justice lawyers as to whom they will or will not prosecute. There has to be; otherwise the judicial system would be swamped and sink under the waves.

The department was badly scarred during the Nixon-Watergate days, with one attorney general going to prison and another just barely missing going there.

Since then, the result has been an "unpolitical" Department of Justice. Not only, it seems, is the president afraid to speak to the attorney general but the latter can hardly speak to his subordinates without the media trying to make a "federal case" out of it. This is absurd.

Break-ins and "enemy lists" are not really very good things, and no one actually wishes a return. But the pendulum has swung so far the other way that this business of being "unpolitical" is, practically speaking, cockeyed.

Item. Is it really conceivable that the attorney general should not tell his boss, the president of the United States, that a member of the president's family might be indicted if he does not register under the Foreign Agents Act?

Item. During the 1976 presidential campaign, President Ford had a completely "unpolitical" attorney general in Edward Levi, who, as a former Justice Department lawyer, dean of the Chicago Law School and president of the University of Chicago, was more than competent to hold the highest law office in the land. Still, during the 1976 campaign he authorized, and allowed to go on, an elaborate, long-drawn-out investigation of his own president, involving some political contributions from labor unions in Michigan in earlier years. The matter had already been investigated in past years and Ford had been cleared. During the hard-fought presidential campaign, the result of the second investigation was eventually the same, but clearance of the president did not come until late October. There are today Republican politicians who believe that investigation cost Ford another term. They thought that at most it should have been disposed of quickly and gotten out of the way early. But the "unpolitical" attorney general did not help.

Item. In what was perhaps the flimsiest federal investigation in recent years, the attorney general appointed a "special prosecutor" to look into the cocaine habits of Hamilton Jordan, the White House chief of staff. Even an outside newspaper reader could tell from the beginning that this one was "a dog" and should never have been started. The eventual result was that Jordan was completely cleared, after having run up a $100,000 legal fee defending himself against a miasma. To date, no principal congressman has introduced a private bill in Congress to reimburse Jordan for his legal fees.

Item—or perhaps several items, ABSCAM. Whatever the legal niceties, this is perhaps the most virulent entrapment in legal history. Here were a number of elected congressional public servants who were going along minding their own and the public's business. Most of them had good reputations, and one or two excellent reputations. The motivation for ABSCAM, with its incredible leaks to the national press, has never been made clear. Certainly it was not a reasoned, responsible decision by the leaders of the Department of Justice to bring a series of cases. Rather, they, like the rest of us, were faced with a number of front-page newspaper stories by a not altogether responsible press. Who the leakers were—or are—and what their motivations were and are is not clear. Are they Savonarolas or witch-hunters of the present era? Are they self-appointed "moralists," ungirdled by any respect for their superior officers? Or do they envision future political careers for themselves?

No one seems to know. Once again, it is inconceivable that the leaders of the Department of Justice do not know who they are. They may not be able to prove who they are, but they have more than a good idea; and one wonders what action, if any, they plan to take against them.

In all such items as these, and there are many, the decisions should, in a democracy, be made by our responsible political leaders. In the American democracy, these leaders are the president and the attorney general.

In a simpler day, in the early 1940s, for an example, the Department of Justice was seriously considering bringing an antitrust suit against the Associated Press. In those days, before television, this meant taking on the presslords of the United States, who owned and controlled the AP. Some of those presslords and their lawyers went to the White House. FDR sent one of his top political emissaries to the attorney general and to Thurman Arnold, the antitrust attorney general, to ask what was going on. FDR did not relish taking on the country's newspaper publishers any more than he had to and unless he had to. The case was carefully reviewed by the Justice lawyers with the political emissary, who in turn reported back to the president. The Department of Justice soon thereafter brought the suit and eventually won it.

Given the present atmosphere, perhaps that president and that attorney general would be on their way to jail. At least they could console themselves that the responsible political leaders in this democracy had made the decision, and not some faceless FBI or Justice minion in the outer reaches of New York or New Jersey.●

SENATOR McGOVERN ON U.S. FOREIGN POLICY

● Mr. KENNEDY. Mr. President, the Soviet occupation of Afghanistan and the articulation of the Carter doctrine have prompted many long and detailed analyses of current American foreign policy. It is rare, though, to find as thoughtful an article as the one that our respected colleague, Senator George McGovern of South Dakota, wrote for the June edition of the Atlantic. Entitled "How To Avert a New Cold War," his piece discusses the Carter doctrine and its implications for our foreign and national security policies.

In his article Senator McGovern reminds us of the fact—too often overlooked in the heated rhetoric of recent months—that avoiding nuclear war "is, in the most literal sense, a vital national interest." Hence, cooperation with the Soviet Union must "rank with the defense of the Persian Gulf as an essential national interest. The task of policy is to reconcile the two and, if possible, make them mutually reinforcing."

Mr. President, Senator McGovern's perceptive analysis points to the clear need for a reexamination of U.S. national security policy. We need to take effective action both to insure the protection of our interests in the Middle East and Persian Gulf and to oppose the Soviet occupation of Afghanistan. But deterring aggression, protecting the Persian Gulf, and pursuing cooperation between the two nations with the power to destroy the world itself are not, and cannot become, mutually exclusive goals. We must continue to seek a world safe for freedom—and for human survival. With Senator McGovern, I believe that we must devise a sound national security policy based "on the defense of the oil lifeline and at the same time cooperation in all possible areas with the other nuclear superpower."

I request that Senator McGovern's article be inserted in the Record.

The article follows:

How To Avert A New "Cold War"

(By George McGovern)

In the years since World War II, Presidents have often been accused of "lacking a policy," but we have seen a proliferation of presidential doctrines. The Truman Doctrine of 1947, which grew out of the necessity to resist Stalinist incursions upon Greece and Turkey, was elevated to a declaration of global ideological warfare against communism. The Eisenhower Doctrine of 1957 declared the United States prepared to use armed force to assist Middle Eastern nations threatened by "international communism." The Nixon Doctrine of 1969 called for the use of regional surrogates to bar the gates to communism and protect American interests. Now in 1980, we have the Carter Doctrine, stating that "an attempt by an outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States," to repel which the United States would employ "any means necessary, including military force."

There is an important difference between a policy and a doctrine. A policy is good for as long as it works or is needed, whereupon, without undue difficulty, it can be altered or discarded. When a policy is finished it is not the end of an "era"; it is merely the end of an approach that has outlived its usefulness. A doctrine, by contrast, is for the ages, and is neither easily nor safely trifled with even when it has outlived its usefulness or acquired unintended meanings. With their bias toward the ideological and the broadly geopolitical, doctrines tend to generalize beyond the warrant of ascertainable facts, tempting us to discount local conditions and special circumstances. The trouble is, as Vietnam and Iran have shown, that purely local circumstances often determine the success or failure of grand geopolitical or ideological doctrines.

The hazard of the Carter Doctrine, as spelled out in the State of the Union address of January 23, 1980, is not in the President's pledge to protect our vital interests in the Persian Gulf, but in the assumption, without clear or convincing evidence, that our interests are now threatened by a Soviet grand strategy "to consolidate a strategic position . . . that poses a grave threat to the free movement of Middle East oil." Four highly plausible possibilities are thus ignored: that the Soviets may have no such grand strategy; that threats to our interests may arise from other, local sources; that détente with the Soviets and securing our interests in the Gulf can be mutually reinforcing; and that the countries of the Persian Gulf region, as well as our historic allies, must be consulted before the United States develops a doctrine or embarks on military intervention related to their interests.

The Carter Administration cannot be held primarily responsible for the explosion of anti-Americanism that accompanied the Islamic revolution in Iran. That was the result of a policy, going back to World War II, of treating Iran as an object in the geopolitics of the Middle East, without regard to its own preferences. The shah and his lieutenants played a crucial role in the high-stakes game of strategy and oil, but the Iranian people were shut out of the game. Cut loose from their traditional religious and social moorings, their expectations aroused by the sudden, glittering affluence of a privileged segment of their society, and alienated by the pretensions and oppressiveness of the imperial regime, the Iranian people became a receptive audience not only to the agitations of thousands of young people the shah had sent abroad for their education, primarily in America, but also to the smuggled-in teachings of a charismatic, exiled cleric.

Although the Carter Administration cannot be blamed for the consequences of past misjudgments, it can quite properly be asked to account for its general unprofessionalism surrounding the admission of the shah to the United States and the consequent seizure of the American hostages in Tehran. The shah was admitted to the United States despite warnings from various sources, including the American chargé in Tehran, Bruce Laingen, that it would be dangerous to do so without special measures to protect the embassy or remove American personnel. No convincing case has ever been made that the shah could have been treated only in New York, or that American doctors and equipment could not have been flown to Mexico City. Professor James Bill, an expert on Iran at the University of Texas, commented in November 1979, after the hostages had been seized, that although the Iranians had warned us repeatedly about the shah, "we did nothing to assuage their desperate fear of a linkage between the shah and the Administration to plot his return. They cannot forget the CIA plot that ousted Mohammed Mossadegh in 1953 and returned the shah to his throne." The Administration's patience after the embassy was seized won support from the public and Congress, but there remains the question of whether the hostage crisis need have occurred.

By invading Afghanistan in the last week of December 1979, the Russians rescued the Administration, at least temporarily, from pressure to account for its handling of Iran. The two events merged into a full-fledged Cold War crisis, in which the Russians at least temporarily displaced the Ayatollah Khomeini as the principal author of mischief in southwest Asia. The President called the Soviet action "the most serious threat to the peace since the second World War," and the Administration for the time being lost interest in retaliatory acts against Iran, urged the Iranians to recognize that the real danger to them came from the Soviet Union and said that the Iranians might receive American military and economic support against the Soviet threat if they released the hostages. All but forgotten was the President's statement to congressional leaders on November 27, 1979, that even the freeing of the hostages "will not wipe the slate clean" with Iran. "We have no basic quarrel with the nation, the revolution, or the people of Iran," the President said on January 21, 1980. "The threat to them comes not from American policy but from Soviet actions in the region. We are prepared to work with the government of Iran to develop a new and mutually beneficial relationship." The hostage crisis was thus reduced, in the Administration's rhetoric, from a supreme challenge to American honor and interests to distraction from the real issue of Soviet aggression and expansion. Only when the Ayatollah Khomeini, in the wake of repeated efforts at propitiation by the President, came down strongly on the side of the militants and against President Baini-Sadr's efforts to arrange a transfer of the American hostages to government control did President Carter announce a formal breach of diplomatic relations and order a ban on exports to Iran, pressure our allies to employ sanctions, and finally launch the abortive rescue attempt.

Until that time the Administration seemed ready to associate itself with Khomeini's regime, as it had with the shah's, solely on the basis of its presumed anti-Sovietism, without bothering to look closely at the new Iranian government's ambitions and viability. Nor did the Administration consider it worthwhile to examine a variety of plausible reasons behind the Soviet move into Afghanistan, or even to acknowledge that we could never really be sure what the motives of the men in the Kremlin were. Instead, the Carter Administration perceived, and forthwith proclaimed, a Soviet grand design to envelop the Persian Gulf region and threaten the free world's oil lifeline.

There is one possible virtue but several probable dangers in the drastic warning to the Russians in the Carter Doctrine. The possible virtue is that it could destroy any illusions the Russians may have about the importance the United States attaches to the Persian Gulf region and the seriousness with which we regard military intervention in violation of international law. The dangers are in making threats we may not be prepared to back up, in the possibility that the Administration will believe the untested assumptions contained in its overheated rhetoric, and in the extreme difficulty of reversing course once the tough talk has served its immediate purpose. Under the best of conditions, détente has been a fragile edifice, painstakingly constructed. Protracted educational efforts have been required to develop public attitudes congenial to arms control, trade, and cultural exchange. In a crisis these are all too easily dispelled and replaced by attitudes of mistrust and belligerency. Then, when the national interest requires a renewal of cooperation with the Soviet Union, the entire process has to begin anew, painfully, from scratch.

Therein lies the mischief of the Carter Doctrine. It implies a comparison between the Soviet behavior in Afghanistan and the Hitler model of aggression in the 1930s. The lesson of such a comparison is obviously that it is better to stop an insatiable, reckless aggressor sooner rather than later. The trouble with this or any other "lesson of history" is that it is instructive only when you are dealing with a closely similar situation. In the case of the Russians in Afghanistan, the differences far outweigh any similarities to, say, the German seizure of Czechoslovakia in 1938. We are dealing with an aggressor whose record is more calculating than reckless and whose insatiability is more a tenet of ideology than a guideline of practical policy. Not the least important difference between Nazi Germany in the thirties and the Soviet Union in the eighties is that until the late thirties it was feasible to stop Germany relatively easily; after that it was feasible to eliminate the Hitler regime at a high price, but one well short of the destruction of much of the world's civilization. The Soviet Union, by contrast, deploys conventional forces in Afghanistan that no responsible military analyst believes we can challenge, and is also a nuclear superpower that cannot be eliminated, as Hitler's Reich was, and with whom we therefore have no choice but to coexist as best we can.

This end is best served by trying to analyze Soviet behavior as objectively as possible, on the basis of ascertainable facts rather than ideological tenets. The facts of Afghanistan are that the Soviets intervened in a country that had come under their domination, without notable protest from the United States, in a Communist coup in April 1978, and that by late 1979, following a second coup in September in which one Marxist leader overthrew another, the country seemed to be slipping out of Marxist and Soviet control and into the hands of Moslem insurgents. The regime the Russians toppled, was hardly one to be mourned: President Ammin's brief reign in Kabul was characterized by a brutality equaled only by its incompetence.

Moreover, there are indications that the Russians, fearing the spread of Islamic militancy across the southern tier next to their borders, have been no more happy than we with the militancy and anarchy in Iran, especially when the Ayatollah Khomeini culminated against both superpowers as "Satan's" agents.

The Russians undoubtedly underestimated the difficulties in Afghanistan and the world reaction. The new president they installed, Babrak Karmal, has been ineffective; reorganizing the Afghan army has proven difficult if not impossible; resistance by Islamic guerrillas has been stiff, forcing the Russians to scrap any plans they may have had for an early withdrawal. Nor had they expected so vehement a reaction from the United States and the Islamic countries. The United Nations General Assembly's denunciation of the Soviet move into Afghanistan by a vote of 104 to 18 with 18 abstentions must have come as a shock and as a major setback to Soviet aspirations for expanding their influence in the Third World.

Another significant factor was the bitter and emotional attitude toward the United States prevailing in Moscow in the fall of 1979. President Brezhnev, who had invested heavily in détente and whose health and faculties were impaired, had to confront his harder-line colleagues with a catalogue of failure and frustration: the SALT II treaty seemed lost beyond retrieval in the Senate; the United States was preparing to increase its military spending; NATO had agreed to deploy a new generation of American nuclear armed missiles in Western Europe; the United States was moving closer to a working relationship with the Chinese. In addition, an irritating and wholly unnecessary fuss had been stirred up by the American President, for patently political reasons, over a Soviet brigade known to have been in Cuba for many years. Under these circumstances the Soviets may have felt they had little to lose by using military force to retrieve a disintegrating situation in a bordering satellite state.

To all these possible factors—local, regional, and internal to the Soviet Union—the Carter Administration was indifferent, caught up as it was in the excitement of unveiling its new doctrine. It was almost as if, when the Soviets moved into Afghanistan, we were relieved to find ourselves freed from the complexities of Third World nationalism and the Islamic revival and back on the comfortably familiar turf of a bipolar Cold War world. Once they heard the call of the Carter Doctrine, the Iranians would naturally forget about the shah, the Arabs would forget their differences with Israel, our allies in Western Europe and Japan would gratefully follow our lead, and all would join with us in a grand alliance against Soviet aggression. Now the unwelcome "lesson of Vietnam"—as Daniel Yergin put it, "that 'fundamental designs' may be illusory and that global implications may be secondary to local issues"—could also be cast aside. Americans could be patriots again, without bothering to make the troublesome distinction between patriotism and jingoism.

In this altered environment our "hawks" joyfully trumpet the coming of the "second Cold War." They are also proclaiming their own vindication: have they not warned us all along that détente would fail? They have indeed, but the question remains whether they merely foresaw the breakdown, or helped to contrive it.

When the President warned of "the most serious threat to world peace since the Second World War," he inevitably created a war atmosphere in which public discussion, to a greater degree than in many years, has been dominated by war talk. To express dismay at this development is not to preach pacifism: we must be prepared to fight either a nuclear or a conventional war, and we cannot rule out the possibility of either occurring. The issue is not whether we will fight if our vital interests are attacked, but how most effectively to use our policy and diplomacy without resort to war. Preventing nuclear war has become a national interest second to no other, as well as an interest we share with the Soviet Union and with all other nations. It cannot be too often emphasized that a third world war would in no sense be comparable with the first and second world wars, which, destructive though they were, left the world physically intact. Although projections differ as to which side might emerge from a nuclear war with the larger fraction of its industry intact and of its people still alive, no one contests that the losses would be in the hundreds of millions and that our society and economy, even were we to emerge as the "winner" of the conflict, would be grievously crippled.

Avoiding so great a calamity is, in the most literal sense, a vital national interest. That is what détente is about. It is not a policy "opinon" in the conventional sense, since the only other "option" available is unending cold war, recurrent crisis, an arms race forever escalating in cost and risk, and "at the end, looming ever clearer," as Albert Einstein warned, "general annihilation." With implications of such great consequence, détente with the Soviet Union must surely rank with the defense of the Persian Gulf as an essential national interest. The task of policy is to reconcile the two and, if possible, make them mutually reinforcing.

It comes, therefore, as a shock to have détente declared at an end in our sudden alarm for the security of the Persian Gulf. That, however, is the thrust of the Carter Doctrine: in the name of one vital interest, another is to be cast over the side. It would have made a great deal more sense, in the wake of Iran and Afghanistan, if the President, instead of hastily compiling a shopping list of sanctions against the Soviet Union, had put to his advisers the question "By what means are we to protect the two vital interests we have at stake? By what means can we defend the oil lifeline and at the same time maintain necessary measures of cooperation with the other superpower?"

One probable reason for the Administration's preference for the tough line—in addition to the still tenacious hold of the postwar "doctrines" on many minds—is the tendency to treat international relations as a kind of morality play. The Russians, in this perception, are either good people like ourselves, as we briefly deemed them to be when they were our allies in World War II, or they are bad people through and through—voracious and deceitful, determined to do us in. The basic Cold War assumption, that you cannot do business with the Russians, was codified in 1950 in a joint State and Defense Department document, known as "NCC-68," which was to become highly influential. "The Soviet Union, unlike previous aspirants to hegemony," NSC-68 said, "is animated by a new fanatic faith, antithetical to our own, and seeks to impose its absolute authority over the rest of the world." This basic view of Soviet intentions has strongly influenced American policy for three decades: it had much to do with our involvement in the Vietnam War and it largely underlies the current opposition to SALT.

Since coming to office in 1977, the Carter Administration has blown an inconstant trumpet. Its human rights policy and direct contacts with Soviet dissidents affronted and alarmed the leaders in the Kremlin. At the same time, without explanation or advance notice, President Carter momentarily abandoned the Vladivostok formula and told the Russians he wanted much deeper cuts in strategic arms levels—a highly commendable idea, but one which the Russians took as a breach of the Valdivostok agreement and angrily rejected. For three years the Carter Administration seemed to address the Soviets with two voices—the conciliatory voice associated with Secretary of State Cyrus Vance, who at one point spoke of the "similar dreams and aspirations" held by Brezhnev and Carter, and the more provocative voice of National Security Adviser Zbigniew Brzezinski, who has devoted considerable energy to forging a Sino-American anti-Soviet alliance.

The Soviets, for their part, appear to have been genuinely confused by the Carter Administration's approach. A Pravda article in June 1978, for example, complained of the "constant zigzags and inconsistency" in American policy. The Soviets welcomed the President's diligent efforts to conclude the SALT II treaty but resented the lectures on human rights and the refusal to accord the Soviets equal trade treatment despite greatly increased Jewish emigration, exceeding 50,000 a year by 1979. The Russians were also alarmed by the Carter Administration's readiness to introduce a new generation of strategic weapons, such as the MX missile, as the price of winning support for SALT in the Senate, and by the plan to increase NATO's nuclear forces by stationing Pershing and cruise missiles in Europe. They took further offense when Brezhnev's offer of October 6, 1979, to negotiate mutual force reductions in Europe in return for withholding the new NATO missiles, was dismissed by President Carter as a trick. When the President, in the wake of Afghanistan, asked the Senate to defer its consideration of the SALT II treaty, Brezhnev issued a statement denouncing the United States as "an absolutely unreliable partner in interstate ties." Instead of viewing us as weak, as we often fear, the Soviets may well view us as powerful, unpredictable, and dangerous.

Détente has also become, during the Carter Administration, a partisan issue. Republicans have accused the President of being naive about the Russians and of having cut arms spending to dangerously low levels. President Carter, for his part, set out to prove, through his new doctrine, that he was the equal of any Republican in his mistrust of the Soviet Union, while promising too that he would step up defense spending by at least 5 percent above the inflation rate as demanded by former Secretary of State Kissinger and critics of the SALT treaty in both parties.

But is this promised arms buildup really necessary? The proponents of increased strategic defense spending argue that some time in the 1980s the Soviets will acquire the capacity to launch a nuclear first strike capable of taking out our land-based missiles. This prospect, they say, represents an intolerable threat to our security, even though the other components of the strategic "'triad"—manned bombers and especially submarine-launched missiles—would be largely unaffected by such a strike. It is difficult to believe that the Soviets would be so insane as to launch the first strike, knowing the other components of our retaliatory capacity would survive.

Another question in need of dispassionate examination is that of Soviet political strategy, or more exactly, whether there is any strategy beyond the imprecise guidelines of Marxist ideology. Is there a pattern in recent Soviet activities in Angola, Ethiopia, South Yemen, and Afghanistan? Do these add up to "an unprecedented Soviet assault on the international equilibrium," as Henry Kissinger said in his testimony on SALT II, or were they a series of accidents and opportunities brought about by internal disruptions in these countries with which, at the outset, the Soviets had little if anything to do? The evidence points to the latter, but even if these involvements do add up to an overall strategy, it would seem an ill-conceived one, not very clearly directed toward gaining control of the power centers of the world. Nor has this Soviet "strategy" been notably effective: for the dubious privilege of financing the Ethiopian military government's armed conflicts with Somalia and the Eritrean rebels, to take one example, the Soviets paid the price of expulsion from Somalia, where the naval base they built at Berbera may soon be used by the United States.

By now we should know enough about the Russians to be able to break the cycle of excessive trust followed by bitter disillusionment. The experience of three decades has shown us that the Soviets do indeed believe in their ideology of conflict between social systems; that they take whatever opportunities come their way to implant their ideology and influence in other countries; that they are preoccupied with having friendly, which is to say compliant, governments in the countries around their borders; that they are tough and, when necessary, brutal in suppressing rebellion within these satellite states. We also know from experience that the Soviet leaders seldom let ideology obscure their view of reality; that they have a healthy respect for the power of the United States and NATO; that for good reasons of their own they strongly desire cooperation with the United States in arms control, trade, and other areas; that they are disinclined to take high risks; and that they share with the Soviet people a horror of major war, rooted in the experience of World War II in which the Soviet Union lost over 20 million people. It would seem time for an end to the demonology that has distorted our perceptions of the Soviet Union and made for such wild gyrations in our policies.

There is a limit to our ability to discern Soviet objectives in trying to do so we tread, as George Kennan wrote in his diary in 1950, "in the unfirm substance of the imponderables. A sound policy must be rooted in the firmer terrain of our own clearly defined national interests—the defense of the oil lifeline and, at the same time, cooperation in all possible areas with the other nuclear superpower. In formulating a policy for the Persian Gulf we do not need to know for certain what Soviet objectives are. The region is vital to us whatever the Soviet aims may be; with 25 percent of the world's known oil reserves (and almost 30 percent of the known oil reserves in the noncommunist world), Saudi Arabia would be crucial to the United States even if the Soviet Union did not exist. We can get by without Iranian oil, as we have since President Carter ended imports from Iran last winter, but we could not for the foreseeable future get by without the oil of the Arabian peninsula, from which we now obtain 20 percent of our imports, or 9 percent of our total consumption. Perhaps we should not have allowed ourselves to fall into so dangerous a dependency; we should reduce that dependency as quickly as possible through conservation and the development of new energy sources. But that will take time, even if, as is far from certain, we adopt an effective national energy policy. In the meantime, we and our allies retain a vital interest in the Persian Gulf, and more particularly in the Arabian peninsula.

A direct Soviet threat to the Arabian peninsula and the flow of oil to the outside world, as envisioned in the President's State of the Union address, is possible but unlikely. The Soviet leadership appears to have been well aware, even before President Carter's stern warning, that a threat to our oil supply would carry the risk of war. The director of the Soviet Institute for American and Canadian Studies, George A. Arbatov, was quoted in the Washington Star in July 1979: "The Soviet Government would certainly not interfere with Western oil supplies from the Middle East, whether this were done by intimidating the oil producing countries not to export oil to the West or by strangling the sea routes. These would be very hostile acts, close to a declaration of hostilities." Arbatov said too: "I could not conceive of a scheme the Soviet Union might apply to deprive the West of oil from the Middle East without realizing what this would mean to the whole world situation." There is surely no harm in reminding the Soviets—and other, possibly greater sources of potential disruption in the region—of our vital interest in the Persian Gulf, but as George Kennan wrote in the New York Times, "Is it really wise—is it not in fact a practice pregnant with possibilities for resentment and for misreading of signals—to go warning people publicly not to do things they have never evinced any intention of doing?"

The more likely threat to the Arab Gulf states is internal, although it is unclear how great this threat is. The seizure of the Grand Mosque in Mecca by religious extremists in November 1979 was a more serious occurrence than the Saudi authorities would have us believe, but it does not necessarily indicate that the House of Saud is about to be overturned. There are destabilizing possibilities, however, in the social disruptions caused by rapid, uneven, and, in many instances, prodigally wasteful economic modernization in the traditional Islamic societies of the Arabian peninsula. We must counsel the oil-producing states against these programs, even at the cost of some profit to American, European, and Asian businessmen and corporations. The profits from huge development projects reduce our heavy payments deficits with the oil producers, but, as with arms sales to the shah, the benefits will be short-lived if the projects contribute to destabilization and take-overs by left-wing or, more probably, Islamic extremists.

In the last resort we must be prepared to use military force to assist friendly governments in the region against external or internal threats. Strengthening American sea and air power in the Indian Ocean and the Arabian Sea would in itself have a useful deterrent and stabilizing effect in the region. Nor is there good reason to excuse our allies, most of whom are more dependent on Persian Gulf oil than we are, from sharing the responsibility of securing the oil lifeline. They have tended in the past to disclaim security responsibilities outside Europe, leaving these to the United States. In fact, both France and Great Britain have sizable navies able to help protect the sea-lanes; the French have a highly trained anti-terrorist commando force, from which a team was reportedly flown into Saudi Arabia during the siege of the Great Mosque in Mecca to help the Saudi national guard flush out the rebels. In his State of the Union address President Carter spoke of the need for "collective efforts" to maintain the security of the Persian Gulf, but efforts to secure allied participation in implementing the Carter Doctrine appear to have focused on boycotting the Moscow Olympics rather than on sharing the military burden. Our allies, for their part, speak of a "division of labor," the specifics of which would add up to their providing bases and access routes while the fighting was left to the United States. A readjustment of this "division of labor" would seem a more important objective of our diplomacy than our allies' participation in symbolic sanctions against the Soviet Union. For example, the persistent reluctance of the French to cooperate in joint military undertakings could perhaps be overcome by the designation of a French admiral to command an allied Indian Ocean fleet.

We, as well as our allies, would do well to distinguish between symbol and substance in dealing with the Russians in the wake of Afghanistan. Strengthening our capacity to defend the Arabian peninsula, coupled with effective and convincing energy program at home, is the real "message" we need to send to the Soviets, and for that matter to OPEC and the rest of the world. In addition, the United Nations General Assembly resolution of January 14 and the planned American boycott of the Moscow Olympics will serve to remind the Soviet Union that the United States takes seriously by the commitment of off members of the United Nations under the charter to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . . . Beyond that tough talk and marginal, symbolic, and even petty sanctions can do little but further damage our relations with the other superpower while raising doubts in the minds of both friends and adversaries about the dependability and sound judgment of the American leadership.

Among the more ill-considered of the sanctions against the Soviet Union adopted in the wake of Afghanistan is the grain embargo, which will almost certainly damage us more than the Russians. Although other grain-exporting nations have promised not to replace the American grain that is withheld, the Soviets have long been adept at obtaining embargoed goods through second-and third-party purchasers. Thus, the Soviets have an excellent chance of replacing the embargoed grain, but the United States will have little chance of replacing the hard currency that would have been earned by the sales. The purchase of the grain by the Commodity Credit Corporation, as promised by the Administration, will partially compensate American farmers for the loss of income, but at the risk of permanent loss of a lucrative market and at a cost to American taxpayers of at least $2.25 billion. Industries such as railroads and barges that derive earnings from the transport of grain will go uncompensated. The embargo will inconvenience the Soviets and injure American farmers and others, but it is hardly likely to persuade the Soviet Union to withdraw its forces from Afghanistan.

Even if economic boycotts were as injurious as their advocates hope, there would remain the question of whether it is in our national interest to injure the Russians in this particular way. It undoubtedly would be if the enmity between the superpowers were total. In the two world wars, which were total wars based on total mobilization of the populations and resources of the belligerents, anything effectively injured the enemy—the defeat of his armies on the field, the destruction of his industry and the shattering of his population's morale by large-scale bombing raids—was an appropriate war measure, toward the objective of "unconditional surrender." But before the two world wars, relationships of partial enmity were common and considered normal. During the Crimean War, for example, Russia successfully floated a loan on the London private money market, even though it was at war with England. We would perhaps not wish to carry tolerance that far, but the attitudes of that period seem both more appropriate and less dangerous in our current dealings with the Soviet Union than the attitudes engendered by the era of total war.

In the field of cultural relations the sanctions taken against the Soviet Union since Afghanistan seem spiteful and capricious. The cancellation of a long-planned tour in America of art from Leningrad's Hermitage Museum will insult but not otherwise injure the Soviet Union; the injury and cost are to ourselves. Equally petty was the suspension of preparations for the planned opening of a Soviet consulate in New York and an American consulate in Kiev, the principal effect of which will be to inconvenience a sizable number of American tourists.

In the big leagues of political conflict the potentially most dangerous "sanctions" against the Soviet Union are suspending SALT II and playing the "China card." Although President Carter asked the Senate in early January to defer further consideration of the SALT treaty "because of the Soviet aggression," the more compelling consideration was the lack of a two-thirds majority for ratification in the wake of Afghanistan. Whether this in turn reflected a conviction on the part of senators that withholding SALT was a suitable punishment for the invasion of Afghanistan seems doubtful; more likely Afghanistan provided an added political argument for those who mistrusted or disliked the SALT II treaty to begin with. Whatever the motives of all concerned, the treaty is now on the shelf. President Carter, in his State of the Union address, said that efforts to control nuclear weapons "will not be abandoned," but little has been said about SALT since that time and its revival in this election year seems unlikely.

Therefore, the way is now open for a full-scale revival of the nuclear arms race. A new national intelligence estimate, reported in the press in late January, projected that, in the absence of a strategic arms agreement, the Soviets by 1989 will have almost two and a half times the number of warheads—about 14,000—mounted on highly accurate land-based missiles directed against the United States than they would have if SALT II were implemented and followed by successor agreements. Should this occur, the elaborate system of 200 mobile MX missiles to be concealed at random in 4600 concrete silos, now being planned at a cost of from $30 to $100 billion, would be effectively neutralized, unless we were prepared to double or triple our MX force at double or triple the cost. The result would be astronomical increases in the defense budget with commensurate effects on the rate of inflation. For the present, both sides are complying with the limits of the expired SALT I treaty and the unratified SALT II treaty, but the time is approaching when both sides will have to retire designated older missile systems—systems that, though "obsolete," are still lethal—or allow the laboriously constructed agreements to start unraveling. It will be no easy task to reconstruct an agreement once the weapons retirement timetable, reflecting a fragile balance of interests, is disrupted.

Moreover, the protocol to the SALT II treaty, of major importance to the Soviet Union because it places limits on the range of American cruise missiles, is scheduled to expire at the end of 1981. Neither side is likely to find it easy to renegotiate the protocol, the Russians because they had not anticipated when they signed it in June 1979 that NATO would subsequently agree to the deployment of cruise missiles in Europe, the United States because many members of Congress never wanted to accept limits on the cruise missile.

Because of the crisis atmosphere in Soviet-American relations, the Carter Administration has judged it prudent to await a more favorable time to press for ratification of the SALT II treaty. But a case can be made for the Administration to call on the Senate to take up the treaty, debate it, and vote it up or down without undue delay. What could not be accomplished through cloakroom maneuvering and dubious tradeoffs on future arms spending can perhaps be accomplished by a strong, commonsense appeal on behalf of the treaty's merits and the essentiality of nuclear arms control. The President could explain, simply but accurately, that abandoning SALT will free the Russians from critically important restraints, that compliance can be monitored by proven procedures, and that without SALT we will face a protracted, budget-busting, inflationary, and exceedingly dangerous arms race.

The conventional political wisdom is to avoid highly controversial national decisions in an election year. So great are the stakes in strategic arms control, however, and in the policy of détente of which SALT is the key symbol, that we should bring the issue to the center of our national political debate and, if necessary, make the election at least partially a referendum on the basic choice between détente and renewed cold war. Such a debate might even establish the case for arms control measures more far-reaching than those of the meticulously circumscribed SALT II treaty.

Second only to an uncontrolled arms race in dangers posed for the future is the possible overplaying of the "China card." For a year following the normalization of relations with the People's Republic of China, the Carter Administration maintained a kind of evenhandedness toward China and the Soviet Union. That ended abruptly with the Soviet invasion of Afghanistan. Shortly thereafter, Secretary of Defense Harold Brown, on a visit to China that had been previously scheduled, discussed plans for military support and cooperation. On January 24, after Brown's return, it was announced that the United States was prepared to sell military support equipment but not weapons to China. On the same day Congress approved nondiscriminatory trade treatment for China—a favor still withheld from the Soviet Union. There has also been speculation on Sino-American cooperation in support of insurgent forces in Afghanistan.

The steps known to have been taken thus far are disturbing less in themselves than for the policy direction they suggest—toward a Chinese-American, anti-Soviet military alliance. Because nothing alarms the Soviets more than the prospect of a China armed with modern weapons and allied to the United States, the advantages of such an alliance are, from the latter-day Cold War perspective, geopolitically self-evident. From the perspective of those who still see merit in detente, there would seem need to inquire whether it really is to our advantage to threaten the Soviets in this way and whether Chinese objectives, other than the containment of Soviet power, are consonant with our own.

There is substantial evidence that they are not. For more than two decades the rulers in Peking regarded American "imperialism" as their foremost enemy; only as our involvement in Indochina neared its end in the early seventies did the Chinese judge that the greater threat came from the "social imperialism" of the Soviet Union, whereupon the United States was demoted to enemy number two. Under Mao Tse-tung's "three worlds doctrine," sanctified in the preamble to China's 1978 constitution, China is bound in solidarity to the oppressed peoples of the Third World against the "first world" of the two superpowers and the "second world" of Europe and Japan. Under the Maoist doctrine, China's aim is the overthrow of the superpowers' "hegemony" as the essential precursor to world revolution. It is mistaken to assume that the Chinese, any more than the Soviets, are guided solely by ideology in their foreign policy, but it is no less a mistake to dismiss ideology as an important factor. Indeed, Maoist doctrine explicity endorses tactical alliances toward the destruction of enemies one by one. It is hardly likely that the Chinese will be in a position, or will have the desire, to destroy us in the foreseeable future, but neither is it certain that a China supplied with American arms will confine their use to threatening the Soviet Union. The Chinese, who used armed force to "teach Vietnam a lesson" in early 1979, might someday perceive advantage in using American arms to pressure India or Thailand or South Korea or even Japan. In playing our "China card" in the geopolitical arena against the Soviet Union, we would do well to remember that the Chinese leaders, who share no common vision of the future with us, are playing their "American card," toward objectives inimical to our own.

From the standpoint of vital American interests, China is necessarily secondary to the Soviet Union, for the simple, compelling reason that the Soviet Union is a nuclear superpower and China is not. As long as our primary objective is the achievement of a measure of cooperation with the other nuclear superpower, and as long as the Russians know this to be the case, useful leverage can be derived from giving the Russians some concern over our relations with China. Normal political and economic relations between the United States and China can give the Soviets incentive to compete for similar favors and to strengthen détente, while also encouraging moderate and pragmatic tendencies within China. Arming China, on the other hand, although it may be presented as simply an additional measure of cooperation, is in fact a policy radically different from the normalization begun by President Nixon and gradually expanded through 1979. Instead of encouraging Soviet-American détente, American military assistance to China bids fair to convince the Soviet leaders that the United States has no further interest in détente. The highly probable result will be a continuing Soviet arms buildup and further aggressive efforts, such as those now being carried out in Afghanistan, to strengthen the Soviet strategic position. In the long term, a Sino-American military alliance could be expected to endure until the Soviets should become sufficiently alarmed to mount a pre-emptive strike, nuclear or otherwise, against China, or until the Chinese should judge their "American card" to be of no further use.

China is by no means the only country to seek advantage in the rivalry of the superpowers. The Carter Administration's palpable interest, after Afghanistan, in drawing revolutionary Iran into an anti-Soviet alliance, as well as domestic American political pressure to secure the release of the hostages, may have convinced the Iranian authorities that they could without risk further delay or raise the price for release of the hostages. In agreeing to the formation of a UN commission on Iran without an explicit understanding on release of the hostages, the Administration may have assumed prematurely not only that the government of President Bani-Sadar had the power and desire to liquidate the hostage problem so as to get on with the task of governing but also that the Iranians, although they did not say so, now shared American preoccupation with the Soviet threat. The State Department's spokesman, in a press briefing on January 18, urged the Iranians to release the hostages so that the United States and Iran "would be better able to coordinate our concerns about Soviet aggression." Not for the first time, American policy-makers projected their own concerns onto others.

The Iranian authorities denounced the Soviet invasion of Afghanistan and expressed common cause with the Islamic insurgents in that country, and this encouraged our policy-makers to believe that an arrangement could then quickly be made. Less attention was paid to the fact that, in denouncing the Soviet Union, the Iranians did not cease to denounce the United States; Iranian officials have even gone so far as to express public confidence that they need not fear either superpower because each could be counted on to defend Iran against the other.

Caught up as we have been in the belief that anybody who is against the Russians has got to be for us, we did not find it easy, until Khomeini forced it upon us, to accept the evidence that the Iranian revolutionaries are hostile to both superpowers. Like China and other countries of the Third World, they lump the superpowers together, "imperialists" and "social imperialists," while seeking profit from playing them against each other.

Instead of fighting the perception widely held in the Third World, the superpowers might find it rewarding to consider whether they do not indeed have common attributes and common responsibiliites, as well as a common interest in avoiding nuclear war. As the only powers with global military and political reach, they are the only nations with the capacity to maintain a semblance of order in a turbulent world. To do this they would have to set aside the doctrines that pitted them against one another—the Truman, Nixon, Brezhnev, and Carter doctrines—in favor of a common endeavor for world order. The advantages would be considerable: neither has profited greatly or for very long from various client relationships in the Third World. These have been expensive, troublesome, and often dangerous. Superpower collaboration in areas of the Third World would deprive a number of countries of leverage for their particular national purposes, but it could also serve to protect national independence, reduce regional conflict, strengthen détente, and save a great deal of money which now goes to arm unpredictable surrogates.

Whether President Brezhnev was serious or engaging in propaganda when he suggested in late February a form of neutralization for Afghanistan was not clear. The idea, however, which is strongly advocated by our European allies, is worth exploring and perhaps expanding to include the neutralization and protection of the entire Persian Gulf oil-producing region.

In matters affecting small countries caught between the interests of larger powers, the most reliable, historically tested means of protecting the small countries and avoiding conflict between the big ones is neutralization. It has worked well for European countries such as Belgium, Switzerland, and Austria. If, as seems likely, the Soviets invaded Afghanistan primarily out of concern for the stability of their border region, it might be feasible to work out an agreement under which the Soviet forces would be withdrawn from Afghanistan, a government "friendly" to the Soviet Union but otherwise unaligned would be installed in Kabul, and the Western countries would undertake, so far as possible, to prevent the use of arms provided by them to surrounding countries such as Pakistan in support of the Afghan rebels. A more ambitious approach would be an effort to negotiate a multilateral treaty for the neutralization of the entire Persian Gulf region as well as Afghanistan. Under such a general agreement the regional and nonregional powers, including the superpowers and the principal consumers of Persian Gulf oil, might pledge to respect the sovereignty and neutrality of the countries of the region and the inviolability of the sea-lanes through which the oil flows, with the single reservation, cautiously stated but clearly understood, that a "clear and present danger" to the oil supply would necessitate measures for its protection if requested by a producing country. Itself a prospective consumer of Persian Gulf oil, the Soviet Union could be expected to appreciate this necessity on the part of the United States and its allies.

The alternative to this approach, or something like it, is renewed and intensified cold war, with all that it implies in the way of mounting military expenditures, galloping inflation, and other strains on our domestic life. It would be a misfortune of no small dimensions if the pressures of the election year were to continue to push us in that direction.●

THE NATIONAL EMERGENCIES ACT

● Mr. MATHIAS. Mr. President, September 14 marked the fourth anniversary of the enactment of the National Emergencies Act. On this occasion, I would like to review briefly the history of this act and discuss its most recent application.

In 1974, when I first introduced legislation to regulate the conduct of the Government in future national emergencies, we were actually living under four concurrent states of national emergency—the earliest going back to 1933. On March 6, 1933, Franklin D. Roosevelt declared a state of national emergency to cope with the economic crisis of the Depression. The second declaration, made by Harry S Truman on December 16, 1950, facilitated our response to the invasion of South Korea by the North Korean Army. The last two declarations were made in the last decade by Richard M. Nixon—the first on March 23, 1970, to deal with the Postal Service employees' strike; the second on August 15, 1971, in response to the serious international monetary crisis.

As a result of these declarations, 470 statutes already on the books were triggered. These gave the President a broad range of discretionary powers, including the power to: Declare martial law; call up the reserves; take over property, communications, and transportation; and regulate industry and otherwise control the life of every citizen without regard to ordinary constitutional constraints.

The National Emergencies Act evolved out of the investigation of these past national emergencies by the Senate Select Commission on National Emergencies and Delegated Emergency Powers, cochaired by Senator FRANK CHURCH and myself.

This legislation, which was signed into law in 1976 by President Gerald Ford, repealed many of the powers and authorities accumulated by the President during states of national emergency. It also established procedural guidelines to regulate Presidential actions in future emergencies and provided for periodic congressional review at 6- and 12-month intervals.

The National Emergencies Act has been invoked twice since its enactment, both times to enable the President to respond to the situation in Iran created by the illegal seizure of the U.S. Embassy in Tehran and the taking of U.S. diplomatic personnel as hostages. The President's November 14, 1979 and April 17, 1980 declarations had a twofold purpose. They were intended to signal to the Iranian authorities in a meaningful yet nonbelligerent way the seriousness with which we regarded their lawless behavior. They were also intended to block the withdrawal of official Iranian funds from U.S. banks and their foreign branches in order to protect claims on Iran by the United States and its citizens.

On May 14, 1980 I made a statement in which I noted that although the President's initiatives enjoyed widespread backing in the Congress and the Nation, the Congress had carried out its responsibilities under the act to undertake the 6-month review. The Senate Foreign Relations Committee and the House Foreign Affairs Committee fully examined the question and concluded that no cause existed for consideration of a resolution terminating the current state of emergency. The decision was formally relayed to the President and the Congress.

As we observe the fourth anniversary of the enactment of this legislation, I would like to restate my commitment to insuring that the law be strictly observed. I believe that it is very important for the Congress to exercise its supervisory role and continue to provide its opinion on the question of continuing or terminating the state of emergency.●

SOLAR CELL RESEARCH AT THE UNIVERSITY OF DELAWARE'S INSTITUTE OF ENERGY CONVERSION

● Mr. ROTH. Mr. President, I was pleased to learn recently, of a significant advancement made in solar cell technology at the University of Delaware's Institute of Energy Conversion. This achievement is especially significant because it comes at a time when we are striving to produce independent energy resources to extinguish our dependency on foreign imports. A research team from the university has produced for the first time a thin-filmed solar cell increasing the possibilities for widespread harnessing of the Sun's light to produce low-cost electricity.

This thin-film cadmium-zinc sulfide/copper sulfide solar cell has the conversion efficiency of 10.2 percent in actual sunlight testing. The sunlight testing at the institute utilizes radiation monitors traceable to the international pyrheliometric scale.

According to Dr. T. W. Fraser Russell, director of the institute, the recently achieved efficiency level meets a key goal of the national Federal photovoltaic program of the Department of Energy—the goal to achieve a 10-percent efficiency level for thin-film cells by 1980. The institute's cells are being prepared for independent testing at other facilities such as the NASA/Lewis Research Center.

Solar cells are solid state devices that convert sunlight directly into electricity. The efficiency rating refers to a solar cell's capability to make this conversion. A 10-percent efficient cell converts 10 percent of the sunlight striking its surface into electricity.

A pioneer in the basic solar research needed to help solve our Nation's energy problems, the University of Delaware began its program to develop efficient and inexpensive thin-film solar cells in 1972.

Adapting for use on Earth the technology developed by NASA, the institute first fabricated its cells with cadmium sulfide and copper sulfide. These early cells, which were difficult to make consistently, had conversion efficiencies ranging from 3 to 5 percent.

Just 2 years ago, institute researchers produced a cadmium sulfide/copper sulfide cell with an efficiency of 9.2 percent, exceeding the previous high efficiency of 7.8 percent, first announced by the institute in 1978. Laboratory procedures for consistently producing cells of over 9-percent efficiency were firmly enough established by 1979 at the institute to begin engineering research efforts on commercial-scale production techniques.

In 1975, the institute also began developing a cell utilizing cadmium-zinc sulfide instead of cadmium sulfide, because of its higher potential efficiency. Future work will concentrate on the cadmium-zinc sulfide/copper sulfide solar cell, according to Dr. John D. Meakin, director of the institute's solar cell development division, "as we anticipate significantly higher efficiencies in the future."

The practical limit of efficiency for the cadmium-zinc sulfide/copper sulfide cell is believed to be between 14 to 16 percent, he said, while the limit for a cadmium sulfide solar cell is about 12 percent.

Earlier this year, the university dedicated a unique photovoltaic unit operations laboratory that permits for the first time study of concerns related to commercial-scale solar technology. The results of ongoing research there will be vital to industries interested in producing photovoltaic cells.

Therefore, the institute has formed an industrial associates program for select organizations, which as members, would receive consulting services from specialists at the institute and which would be permitted access to research results, in return for organizational and financial support of institute research and development programs.

Under the leadership of Dr. Russell, university researchers already are developing and testing process designs for industrial facilities that will manufacture thin-film solar cells on a large scale at a very low cost.

Current research in the photovoltaic unit operations lab involves a reel-to-reel vacuum coater, which was specially designed by a team headed by Dr. Russell. This equipment which deposits active semiconductor layers, such as cadmium sulfide, cadmium-zinc sulfide and copper sulfide, on a continuously moving metal substrate, makes possible the first of several experimental programs in unit operations crucial to the development of com-

• mercial-scale manufacturing processes for thin-film solar cells.

Previously solar cells could be produced in a laboratory at the rate of a few square centimeters per day, but the vacuum coater can continuously deposit semiconductors layers on a moving metal substrate at a rate of about 100 square centimeters per minutes, he said.

In the future, Dr. Russell added, procedures for depositing a transparent electrical grid, an antireflective coating and a protective encapsulant or cover on the cell need to be developed at the unit operations or pilot-plant scale.

When all the commercial-scale design procedures are perfected, photovoltaic technology will be ready for transfer from the university to industrial concerns, Dr. Russell noted.

The university's solar cell research that resulted in the 10-percent efficiency involved a team of more than 30 engineers, scientists, and technicians, with support from the Department of Energy administered by the Solar Energy Research Institute (SERI) in Golden, Colo.

Programs also are being conducted at the Institute of Energy Conversion on amorphous silicon and zinc phosphide in attempts to achieve potentially higher efficiency, lower cost solar cells.

Achievement of the 10-percent efficiency was discussed September 4 at an indepth review meeting on the cadmium sulfide solar cell, organized by SERI and held in Alexandria, Va.

Mr. President, I am pleased to announce this advancement and I am proud of the University of Delaware for their nationally significant accomplishments.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, it is my understanding that, under the unanimous-consent agreement the majority leader achieved last Wednesday, the Senate proceeds to the consideration of H.R. 7631. Is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senate is currently considering H.R. 7631.

Mr. PROXMIRE. Mr. President, the HUD-independent agencies appropriation bill for fiscal year 1981, as reported by the Senate Appropriations Committee on September 4, 1980, provides total new budget authority of $69,155,568,000, which is $4,335,237,000 below the budget estimate and $29,868,104,000 more than the level of funding contained in the House-passed bill. It should be noted at the outset that the House deferred consideration of $33,196,631,000 requested for HUD's assisted housing programs as well as a $4,364,500,000 budget estimate for NASA's research and development activities, whereas we considered both items during our deliberations. On the other hand, the House considered and approved the full $4,569,949,000 requested for general revenue sharing, while the committee deferred consideration of revenue sharing funding for 1981, pending passage of authorizing legislation. Both the House and Senate committee deferred consideration of the $500,000,000 budget estimate for the proposed, new local government transitional assistance program due to the lack of an authorization.

The bill as reported provides funding for the Department of Housing and Urban Development, the Veterans' Administration, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, the Federal Emergency Management Agency, and a number of smaller agencies, offices, commissions, and councils.

Before I turn to a discussion of the bill as reported, I want to say that I believe that the HUD-Independent Agencies Subcommittee and the Full Senate Appropriations Committee have worked hard and made some painful, difficult choices in their efforts to hold the line on the 1981 budgets of the various agencies and programs funded in this bill. Appropriations for many popular programs were reduced or held at current year levels and I hope that my colleagues will resist efforts to substantially increase the funding levels recommended by the committee.

It is also important to note that the budget authority recommended in H.R. 7631 as reported is $6,444,000,000 under the amount allocated to the HUD-Independent Agencies Subcommittee following passage of the first concurrent resolution on the budget. However, according to the assumptions of the Senate Budget Committee regarding future requirements for pay raises, public housing fuel cost increases, veterans' benefits, disaster assistance, the revenue sharing program and other anticipated supplemental budget items, the level of funding recommended by the committee is right at the budget ceiling. Therefore, any efforts to go above the committee's recommendations, without offsets in other areas in the bill, could create future problems if the HUD-Independent Agencies Subcommittee does not receive an additional allocation under a second budget resolution. It is important to keep this in mind as we act on the legislation before us today.

REVENUE SHARING

Mr. President, I would normally begin my discussion of the bill with an explanation of the committee's actions with regard to the Department of Housing and Urban Development, but before I go into the details of the bill, I would like to point out that the committee has deferred consideration of one of the largest budget items in this bill—that is, the $4,569,949,000 requested by the administration for the general revenue sharing program. The House has provided the full amount requested for general revenue sharing with the understanding that only local governments would receive payments in 1981. However, legislation reauthorizing general revenue sharing beyond the current fiscal year has not been taken up on the floor of either House. The committee felt that a decision to fund general revenue sharing beyond fiscal year 1980 should be postponed until an authorization has been approved and the issue of whether or not the State share of revenue sharing shall be authorized in whole or in part next year has been decided. As my colleagues know, the first resolution assumes that only the local government portion of revenue sharing will be funded in fiscal year 1981. Consequently, I hope that the Senate will go along with the committee's decision to defer consideration of appropriations for general revenue sharing at this time.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The committee has recommended a total appropriation of $36,760,330,000 for the programs of the Department of Housing and Urban Development—$30,877,500,000 of which represents budget authority to enter into long-term contracts for assisted housing for periods of up to 40 years. The House deferred consideration of the administration's budget request for assisted housing programs, pending passage of housing authorization legislation that is currently awaiting conference action. The level of funding approved by the committee for the assisted housing program is $2,319,131,000 less than the budget request and roughly the same as the amount contained in the Senate-passed authorization.

Within the total amount appropriated by the committee for assisted housing, the committee has directed that the Department provide no fewer than 6,000 units of Indian housing, as opposed to the 4,000 recommended by the administration. The committee has also included language in the bill directing that $75,000,000 of the total be provided for public housing modernization, and that $1,327,600,000 in budget authority that the administration proposed to commit to finance the sale of public housing bonds to the Federal Financing Bank be used instead for the subsidization of new and existing assisted housing units. The level of funding proposed by the committee for annual contributions for assisted housing would support an estimated 280,018 section 8 and public housing units if the program is tailored in accordance with the authorization bill passed by the Senate earlier in the summer.

The most significant change we have recommended in HUD's budget is a decrease of $200,000,000 below the budget estimate and $60,000,000 below the House-approved amount for community development block grants. A General Accounting Office report, published just last month, indicated that many communities are unable to spend funding which has already been allocated and that the Department is putting a special emphasis on spending block grant funds, thus creating the potential for the ineffective and inappropriate use of such funds. The committee also noted in its report that a reduction of approximately $200,000,000 in the amount requested for function 450, which includes the bloc grant and urban development action grant programs, was contemplated in the first budget resolution for 1981 as passed by the Senate.

Other significant changes in the House-passed bill include: An increase of $50,000,000 in the section 202 housing for the elderly or handicapped program, providing a total of $880,000,000 in 1981 as opposed to the $830,000,000 requested and recommended by the House; a reduction of $6,100,000 in the troubled projects operating subsidy program, for a total of $15,000,000; a reduction of $38,640,000 in the Federal Housing Administration fund, providing a total of $230,000,000; an increase of $35,000,000 in transfer funds for the Solar Energy and Energy Conservation Bank, for a total of $125,000,000; an increase of $17,500,000 in the section 701 comprehensive planning grant program, providing the budget request of $40,000,000; a decrease of $20,000,000 below the House in the rehabilitation loan program for a total of $124,000,000 as requested by the administration; a decrease of $5,350,000 in research and technology providing a total of $44,650,000; and an increase of $2,000,000 in fair housing assistance to the budget estimate of $5,700,000.

INDEPENDENT AGENCIES

Turning now to the other agencies supported through this legislation, the most significant changes the committee has recommended are in appropriations for the National Aeronautics and Space Administration (NASA); the Environment Protection Agency and the Veterans' Administration. The committee has recommended an increase above the House-approved totals for both EPA and NASA, while recommending a reduction in funding for the Veterans' Administration below the House-passed bill.

EPA

The total EPA budget recommended in the bill as reported is $4,743,376,000, which is $12,811,000 more than the House approved amount and $340,491,000 below the budget estimate.

Within this total, the committee has recommended $543,388,000 for EPA abatement, control, and compliance activities, an increase of $12,000,000 above the House-approved amount. Among the specific actions taken by the committee were a $5,000,000 reduction below the budget in the pesticide program, which was suggested by the House; a $5,000,000 appropriation for the resource recovery grant program providing $5,000,000 more than the House-approved amount and $5,000,000 less than the budget request; concurrence with a House-passed $2,000,000 reduction below the budget estimate for underground injection control grants; $5,000,000 increase over the House providing the full budget request of $13,500,000 for the clean lakes program; the elimination of $5,000,000 added by the House to the budget request for State water control agency grants; concurrence in the House add-on of $1,500,000 for a project to begin a cleanup of PCB's in Waukegan Harbor on Lake Michigan; and a total of $709,000 for continuation of an environmental impact study of natural resource development in the Flathead River basin of Montana.

Although the committee recommended a reduction of $1,004,000 in the House-approved amount for EPA's research and development activities, the committee did propose increased funding for several important programs within the total EPA R. & D. appropriation. These include: $900,000 for cold climate research; $2,500,000 for continuation of the renewable resources program; and restoration of the $2,500,000 cut by the House in the innovative research portion of the anticipatory research budget.

Within the EPA salaries and expenses account, the committee restored $4,500,000 of the $10,345,000 cut by the House for automated data processing technical support; reduced funding for consultants by $4,500,000 below the House and the budget estimate; reduced EPA travel by $850,000 below the budget and $600,000 below the House; and cut $750,000 in the amount originally set aside for Senior Executive Service bonuses, an action not taken by the House. The committee recommended a total salaries and expenses budget of $541,647,000, an increase of $700,000 above the House approved amount.

The committee has concurred with the House in providing $3,400,000,000 for the waste treatment construction grant program, $300,000,000 below the budget estimate, in concurrence with the assumptions implicit in the first concurrent resolution on the budget.

The committee also provided $1,115,000 above the House for buildings and facilities and $1,000,000 more than the House for the activities of the U.S. Regulatory Council.

NASA

The committee has recommended $4,430,000,000 for NASA's research and development program, or $65,500,000 more than the budget estimate. The House deferred consideration of this account pending passage of the 1981 NASA authorization bill, which was passed and signed into law following House appropriations action. Within this total appropriation for NASA research and development, the committee has recommended funding for a number of projects and activities that were not provided for by the President's amended budget request. They include: Initiation of development work on a solar electric propulsion system; definition studies of an operational land observing system and advanced technology development of the multilinear array; and additional support for various aeronautics and space technology projects, including the exploration of future fuels, variable cycle engine work, and high-speed aircraft structures technology. The committee also provided $120,000,000, $10,000,000 more than the House, for construction of facilities and $1,032,404,000, $9,250,000 more than the House, for NASA's salaries and expenses.

VA

The committee recommended a number of changes in the Veterans' Administration's budget as approved by the House. The total of $20,549,437,000 recommended by the committee is $199,133,000 below the House level due to the following committee actions:

A cut of $123,241,000 below the House in readjustment benefits, largely because of a reduction of $155,000,000 to be recouped by the VA through more aggressive and efficient debt collection activities. This reduction was offset in part by the committee's decision to restore correspondence training funds cut by the House and provide sufficient flight training money to allow veterans currently in training to complete their work in 1981.

A reduction of $90,745,000 in medical care, due in large part to the committee's decision not to endorse a House-approved increase in the administration's budget request as well as a shift of $5,314,000 from medical care to medical and prosthetic research that was requested by the VA.

A reduction of $4,894,000 in medical administration and miscellaneous operating expenses, due to the deletion of funding targeted for the agency's health care information systems in fiscal year 1981. The committee felt that further funding for this controversial computer system should be postponed until the VA can effectively demonstrate to the committee that its planning for data processing resources is cohesive and focused.

Offsetting these reductions on the House-approved totals were the following increases:

An increase of $15,961,000 for general operating expenses, including an increase of $10,880,000 and 396 positions for enhanced debt collection activities at the VA in fiscal year 1981, but also providing an $8,800,000 increase for State approving agencies that are a part of the education benefits program.

An add-on of $16,492,000 in construction, major projects, largely due to the committee's decision to change the dollar limitation for major construction from the current $1,000,000 cutoff point, to a new figure of $2,000,000. The House and the administration had recommended a $3,000,000 demarcation point for major projects.

RELATED AGENCIES

The committee has provided $1,078,600,000 for the National Science Foundation, which is $4,600,000 more than both the budget estimate and the House-passed bill. Within this total appropriation, the committee has recommended an add-on of $5,100,000 for the escalating costs of fuel used in conjunction with the Antarctic and ocean drilling programs. The committee has also recommended a total of $80,700,000 within the total NSF appropriation for NSF's Science Education activities, which is $5,000,000 above the budget estimate but $5,000,000 below the House.

The bill provides $1,218,937,000 for the

Federal Emergency Management Agency (FEMA), including the full $119,100,000 requested by the administration for civil defense activities and $43,000,000 for the Consumer Product Safety Commission, or $489,000 below both the House and the budget request.

Finally, the bill, as reported, contains a number of general provisions affecting the agencies covered by this legislation. For example, the committee has amended section 410 of the House-passed bill, which prohibits the use of Federal funds for public intervention in regulatory or adjudicatory proceedings, to permit such funding for travel, per diem, and the preparation of materials for the public record. The committee has concurred with the House in approving section 412 of the bill which mandates an across-the-board cut of 2 percent in obligations made under each appropriation account with the exception of funds provided the VA and payments required by law, resulting in a total reduction of $992,200,000.

Finally, the committee has recommended the addition of four new sections which essentially require the agencies under this bill to take various steps to curb fraud, abuse, waste, and error in their respective programs, including limits on end-of-year spending; resolution of unresolved audits; improvements in collection of debts owed the Government; and a reduction of $28,297,000 in funding for consulting services supported by HUD, EPA, and NASA.

Mr. President, that summarizes the major actions the committee has recommended. Obviously, there are numerous other accounts, programs, and minor changes in funding that could be mentioned.

Before I relinquish the floor, I want to thank my distinguished colleague (Mr. MATHIAS), who is not only a most capable ranking minority member, but is always a pleasure and a joy to deal with. He and I disagree pretty sharply on some issues, but he is most accommodating, cooperative, and helpful whenever he can be. He has, once again, done a superb job in helping us to bring this complex bill through 20 days of hearings, subcommittee and full committee markup, and onto the floor. Without his cooperation and assistance on this legislation, we might still be back at square 1 with time running out on our effort to enact this bill before the start of fiscal year 1981. I would also like to thank the minority counsel of the subcommittee, Dr. Wallace Berger, who has been most helpful in working with the majority staff of the subcommittee this year.

And of course, Mr. President, the majority staff head on the subcommittee, Tom van der Voort, has done his usual outstanding job. There is no better staff man, in my judgment, in the Senate, on this committee or any other committee, and Bob Mills has very ably assisted Tom van der Voort.

Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc, and that the bill, as thus amended, be regarded, for purposes of amendment, as an original text; provided, that no point of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The committee amendments agreed to en bloc are as follows:

On page 2, beginning with line 8, insert the following:

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in annual appropriations acts, is increased by $1,417,400,000 of which not less than nor more than $75,000,000 shall be for the modernization of existing low-income housing projects: *Provided*, That budget authority obligated under such contracts shall be increased above amounts heretofore provided in annual appropriations acts by $30,877,500,000: *Provided further*, That any balances of authorities remaining at the end of fiscal year 1980 shall be added to and merged with the authority provided herein and made subject only to terms and conditions of law applicable to authorizations becoming available in fiscal year 1981.

On page 3, line 22, strike "$830,000,000" and insert "$880,000,000";

On page 5, line 7, strike "$21,100,000" and insert "$15,000,000";

On page 5, line 21, strike "$268,640,000" and insert "$230,000,000";

On page 5, line 21, after "expended" insert a colon and the following:

Provided, That none of the funds shall be available to cover losses incurred as the result of any employment program not specifically justified at the time the budget was submitted without the prior approval of the Committee on Appropriations

On page 8, line 17, strike "$90,000,000" and insert "$125,000,000";

On page 9, line 1, strike "$3,810,000,000" and insert "$3,750,000,000";

On page 10, line 3, strike "$22,500,000" and insert "$40,000,000";

On page 10, line 8, strike "$144,000,000" and insert "$124,000,000";

On page 10, line 15, strike "$196,000,000" and insert "$176,000,000";

On page 12, line 22, strike "$50,000,000" and insert "$44,650,000";

On page 13, line 13, strike "$3,700,000" and insert "$5,700,000";

On page 13, line 14, strike "$575,946,000" and insert "$571,956,000";

On page 13, line 17, strike "Provisions" and insert "Provision";

On page 13, beginning with line 21, strike through and including line 23;

On page 14, line 14, strike "$8,967,000" and insert "$8,897,000";

On page 15, line 12, strike "$43,489,000" and insert "$43,000,000";

On page 16, line 15, strike "$540,947,000" and insert "$541,647,000";

On page 16, line 21, strike "$252,280,000" and insert "$251,276,000";

On page 16, line 25, strike "$531,338,000" and insert "$543,338,000";

On page 17, line 4, after "(42 U.S.C. 6913)" insert a colon and the following:

Provided, That the funds herein appropriated may not be expended for testing or certifying any automobile made in whole or in part in the Soviet Union, nor shall any funds be expended to provide technical assistance in connection with the importation of such vehicles into the United States.

On page 17, line 13, strike "$3,000,000" and insert "$4,115,000";

On page 17, beginning with line 22, strike through and including page 18, line 7;

On page 18, line 11, strike "$2,000,000" and insert "$3,000,000";

On page 18, line 12, strike "Provision" and insert "Provisions";

On page 18, beginning with line 17, insert the following:

Not to exceed 2 per centum of any appropriation made available to the Environmental Protection Agency by this Act (except may be transferred to any other such ap- appropriations for "Construction grants") may be transferred to any other such appropriation prior to March 31, 1981.

On page 19, line 11, strike "$3,200,000" and insert "$3,300,000";

On page 20, line 3, beginning with the colon, strike through and including the word "projects" in line 10;

On page 21, line 18, strike "a note dated" and insert "notes dated April 17, 1979, and";

On page 22, line 17, strike "$2,308,000" and insert "$2,100,000";

On page 22, beginning with line 19, insert the following:

RESEARCH AND DEVELOPMENT

For necessary expenses, not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property; tracking and data relay satellite services as authorized by law; and purchase, hire, maintenance, and operation of other than administrative aircraft, necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration, $4,430,000,000 to remain available until September 30, 1982.

On page 23, line 11, strike "$110,000,000" and insert "$120,000,000";

On page 24, line 14, strike "$1,023,154,000" and insert "$1,032,404,000";

On page 25, line 10, strike "$8,700,000" and insert "$9,800,000";

On page 25, line 12, beginning with the colon, strike through and including the word "nature" in line 16;

On page 25, line 21, strike "$29,000,000" and insert "$27,000,000";

On page 25, line 25, strike "$37,108,000" and insert "$41,108,000";

On page 26, strike line 2, through and including line 4, and insert in lieu thereof the following:

"During 1981, within the resources available, the principal amount of direct loans outstanding shall not exceed $169,050,000";

On page 27, line 24, strike "$982,800,000" and insert in lieu thereof "$992,900,000";

On page 28, line 1, strike "$114,600,000", and insert in lieu thereof "$119,600,000";

On page 29, line 9, strike "$85,700,000", and insert in lieu thereof "$80,700,000";

On page 29, line 21, strike "$5,500,000", and insert in lieu thereof "$5,000,000";

On page 30, line 6, strike "$12,000,000", and insert in lieu thereof "$13,426,000";

On page 30, line 14, after "$27,137,000, strike the following ", which shall be reduced by $16,155,000 if registration of males is not conducted in fiscal year 1980";

On page 31, strike line 2 through and including line 7";

On page 31, line 15, after "$922,000", insert the following ", *Provided*, That none of these funds may be used to administer programs to issue loan guarantees to New York City for the purpose of permitting the Municipal Assistance Corporation to use the proceeds of its borrowings in fiscal years 1981 and 1982 to meet the City's financing needs after fiscal year 1982."

On page 32, line 23, strike "$1,822,308,000", and insert in lieu thereof "$1,642,806,000";

On page 32, line 25, strike "$56,261,000", and insert in lieu thereof "$24,502,000";

On page 33, line 1, strike "and correspondence";

On page 33, line 1, after "benefits", insert the following:

"for veterans who were not enrolled in an approved course as of October 1, 1980";

On page 34, line 5, strike "$6,044,013,000", and insert in lieu thereof "$5,953,268,000";

On page 34, line 11, strike "$129,496,000", and insert in lieu thereof "$134,810,000";

On page 34, line 19, strike "$55,312,000", and insert in lieu thereof "$50,418,000";

On page 35, line 6, strike "$611,631,000" and insert "$627,592,000";

On page 35, line 14, strike "$3,000,000" and insert "$2,000,000";

On page 35, line 17, strike "$390,583,000" and insert "$407,075,000";

On page 35, line 17, strike "$376,343,000" and insert "$392,835,000";

On page 36, line 8, strike "$3,000,000" and insert "$2,000,000";

On page 36, line 9, strike "$126,928,000" and insert "$108,908,000";

On page 38, line 6, after "and" insert the following: "obligations for such loans";

On page 45, line 10, strike all after "travel" through and including the semicolon on line 12, and insert in lieu thereof the following: "for which reimbursement is made pursuant to section 111 of title 38, United States Code; to travel performed in connection with major disasters or emergencies declared or determined by the President under the provisions of the Disaster Relief Act of 1974;"

On page 48, line 14, after "proceedings", insert the following: "other than travel, per diem and the costs of preparing materials for the public record";

On page 49, line 13, after the comma, insert the following: "except as otherwise provided by law";

On page 49, beginning with line 15, insert the following:

SEC. 414. (a) No appropriations made available in this Act shall be obligated in a manner that would cause obligations from the total budget authority available to any department or establishment, as defined in section 2 of the Budget and Accounting Act 1921, or any major administrative subdivision thereof, during the fiscal year ending September 30, 1981, to exceed 30 per centum for the last quarter of such fiscal year or 15 per centum for any month in the last quarter of such fiscal year. The Director of the Office of Management and Budget may waive the requirements of the preceding sentence with respect to any program or activity if the Director determines in writing that the waiver is necessary to avoid a serious disruption in carrying out such program or activity.

(b) Not later than forty-five days after the end of each quarter of the fiscal year, the head of each department and establishment shall submit a report to the Committees on Appropriations and to the Director of the Office of Management and Budget, specifying the amount of obligations incurred during the quarter and the percentage of total available budget authority for the fiscal year which the obligations constitute.

(c) The Director of the Office of Management and Budget shall keep the Committees on Appropriations fully informed of actions taken to carry out the requirements of this section, including any waivers granted, and shall promptly report in writing any situation in which the obligations of any department and establishment exceed such requirements other than pursuant to a waiver. Not later than December 31, 1981, the Director shall submit a report to the Committees on Appropriations on the results of the requirements of this section and actions taken under this section, including the effects upon procurement and apportionment processes, together with any recommendations the Director considers appropriate. Concurrent with the submittal of the report to the Committees on Appropriations under the preceding sentence, the Director shall submit a copy of such report to the Comptroller General, who shall promptly review that report and submit to the Committees on Appropriations an analysis of the report and any recommendations which the Comptroller General considers appropriate.

SEC. 415. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving questioned expenditures, arising after the enactment of this Act shall be resolved within six months of completing the initial audit report.

SEC. 416. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

SEC. 417. (a) Notwithstanding any other provision of this Act, the amounts otherwise available to agencies under this Act for the procurement of consultant services shall be reduced by the following amounts: HUD, $2,387,000; EPA, $11,868,000; and NASA, $14,042,000.

(b) For fiscal year 1982 and thereafter, a department or establishment—as defined in section 2 of the Budget and Accounting Act, 1921—shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which such funds are located; and a brief description of the need for consulting services, including a list of major programs that require consulting services.

(c) For fiscal year 1982 and thereafter, the Inspector General of such department or establishment, or comparable official, or if there is no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

Mr. MATHIAS. Mr. President, before going into the specifics of this bill, I would like to do what I have done on many previous occasions, compliment our subcommittee chairman, the distinguished Senator from Wisconsin. His dedication, diligence and, I might add, his dexterity in handling the hundreds of issues touched on by this complicated bill are well recognized. As usual, from my personal point of view, it has been a pleasure to work with him.

Mr. President, as an illustration of what I have called the complex nature of this bill, let me point out that it contains 90 accounts. I think it is a tribute to the members of the subcommittee that 42 of these 90 accounts are below the budget, while only 7 are above it.

Some of the major reductions below the budget are HUD in assisted housing; HUD in low-income housing payments; HUD in community development grants; EPA construction grants; the Veterans' Administration readjustment benefits; Veterans' Administration major construction; and section 412, the 2 percent cut. So this is a bill which comes to the Senate in the posture of having been brought here after a process of very careful scrutiny, with the concept of the maximum economy being achieved.

Mr. President, the bill recommends $69,155,568,000 in new budget authority; this is $4,335,237,000 below the request for fiscal year 1981. We must also consider the fact that the committee did not include the administration's request of $500,000,000 for local government transitional assistance and the $4,569,949,000 for general revenue sharing. With these items considered, the bill is $9,405,186,000 below the President's budget request. Our subcommittee's allocation under the first budget resolution is $75.6 billion in budget authority and $50.2 billion in outlays. The bill as it now stands, is $6.5 billion below in budget authority and $5.1 billion below in outlays.

Mr. President, I may wish to address these overall totals and the assumption made by the Budget Committee at a later time but for now, I would like to highlight some of the major changes made by the committee in this bill.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The House declined to include contract authority and budget authority for annual contributions for assisted housing programs in the 1981 appropriation bill. The House committee recommended deferral of action on the Department's request, pending enactment of new authorizing legislation. The Senate committee has recommended $30,877,500,000 which is consistent with the amount provided in the first concurrent budget resolution and the Senate authorization bill. The committee decided to include funding for the assisted housing program since any delay in providing funding would have serious implication on program planning and management at all jurisdictional levels—Federal, State, and local. This would add to the problems of workload leveling and increasing the pressure on September commitments—a practice that this committee has opposed. A lack of prompt approval of the request would also delay the Department's ability to provide amendment authority to projects otherwise ready to start and thus cause a decline in starts in 1981. A serious delay in funding would also delay the entire production pipeline and cause a decline in 1982 starts as well. It goes without saying that in construction, delays also increase costs. In the housing industry, time is money and every delay, in an era of rising costs, adds to the cost of housing. Severe delay, therefore, will increase the cost of every project and reduce the number of units which can be subsidized with available funds. A 3-month delay in acting on this request could result in the loss of 26,000 section 8 units through inflation.

Included in the administration's request for assisted housing was $1,327-600,000 for the conversion of tax-exempt bonds to a taxable status. The committee denied the use of these funds for bond conversion for several reasons. The $30,877,500,000 appropriation is already $2,319,131,000 below the request and will no longer support the 300,000 unit reservations that the administration feels is essential. If, on the other hand, we make the $1,327,600,000 available for unit reservations, it would create about 16,000 additional housing reservations. Thus putting these funds to work. The committee did not take exception to the concept of having taxable bonds, but based on the current tight situation in the housing market, the cut we are recommending in this account and the fact that we do not know the market for these taxable bonds concluded that the timing was bad.

For the payments for operation of low-income housing projects, the committee approved $862,000,000 which is $113,000,000 less than the revised request. The additional $113,800,000 was formally transmitted only 2 weeks ago and was, therefore, not considered by the House. This budget amendment is to provide funds for the increased cost of utilities for low-income housing programs during 1980. This request would enable retroactive payments to be made to the 1,400 affected public housing authorities (PHA). During recent months, it became apparent that utility costs were increasing at a rate well in excess of the 12-percent rate for which provisions were made in the 1980 budget. Fuel oil costs, for example, were 67 percent higher during the past winter than they were at the time the 1980 budget was submitted. The inadequacy of the budgetary allowance for utilities has now been confirmed by the fact that payments attributable to utility costs to PHA's with fiscal years that began January 1, 1980, and April 1, 1980, will be about 25 percent in excess of last year. If these funds are not provided, PHA's will experience a 16-percent shortfall in their fiscal year 1980 allocation. This could jeopardize the already precarious situation of some of these projects. This would impact 600,000 housing units throughout the country; 1,400 PHA's in 50 States. I intend to introduce an amendment on this matter at a later time and, therefore, will have more to say on this topic then.

The committee has recommended $15,000,000 for the troubled projects operating subsidy. This is $16,100,000 below the estimate and $6,100,000 less than provided by the House. This program is designed to provide funding for financially troubled multifamily subsidized projects to insure the financial stability of existing rental housing projects and thus protect tenants from higher rents caused by escalating operating costs; preserve and improve existing projects while recognizing the impact on the neighborhoods where such projects are located; insure that HUD-owned projects when sold will continue to serve the income groups that they originally were intended to house; and prevent potential losses to the insurance funds resulting from project insolvency. I understand that there may be an amendment to restore the $16,100,000 cut by the committee and I will have more to say about flexible subsidies at that time.

Within the Federal Housing Administration funds, the committee approved the concept of assisting homeowners faced with temporary financial problems under HUD's new temporary mortgage payments assistance (TMPA). It is the Department's intention to assist all homeowners who, through no fault of their own, were subjected to financial burdens which precluded their ability to meet contractual mortgage obligations. The House report indicates, however, that the costs of such a program should be limited to $6,000,000 for the first year. When initially proposed, the Department estimated that there would be 2,500 families which would require such payments during 1981, at a cost to the fund of $6,000,000 in payments. The current estimate is that the number of mortgagors which could be recipients of TMPA payments is as many as 3,700. This limitation would have the effect of not only returning homeowners to their troubled financial status, but also would increase the Department's inventory of single family homes and mortgages—resulting in higher outlays to the fund. Therefore, the Senate committee has recommended a program level of $9,000,000 which would cover the expected demand for this program.

The committee has provided $125,000,000 for the solar energy and energy conservation bank. This amount is $22,500,000 less than the request and $35,000,000 more than the House. These funds, to be transferred from DOE, are to provide lump sum subsidy payments to financial institutions which will pass on these subsidies to borrowers for energy conservation modifications and solar energy technology. The President's initial budget proposal was for $450 million, and the recent conference agreement on the Energy Security Act authorized $300 million for fiscal year 1981. Subsidies for solar—mostly passive—systems will be provided through regular mortgage procedures while conservation subsidies will be granted by banks to individuals who are at or below 80 percent of the medium income and own a home. The committee has also included report language earmarking $2,153,000 for salaries and expenses so that the Department can staff the program with a personnel ceiling of 25. Funding for staff was not included in the House report.

The committee has included $3,750,000,000 for the community development bloc grant program. This is $200,000,000 below the request and $60,000,000 below the House. HUD maintains that the funds proposed in the administration budget are needed by formula entitlement grantees in order to help offset the very substantial reduction they will otherwise have to make in their community development programs due to inflation. The implicit price deflator for State and local government purchases of goods and services is estimated at 10 percent for 1981. The amount requested by the administration would yield about a 4-percent increase, and thus would still result in some decrease in purchasing power at the local level. Furthermore, the problem for formula grantees is made worse by a number of cities and counties expected to qualify for entitlement in 1981 for the first time. It is already known that eight cities will qualify for the first time resulting in a total of approximately $5 million. In addition, from three to four urban counties are expected to qualify, but this will not be known for certain until late in October. The total funding expected to be required for new formula cities and counties is estimated to be about $15 million. The addition of these new formula grantees will serve to reduce the share of existing grantees if the overall appropriation is not increased. I know that our subcommittee chairman (Mr. PROXMIRE) has raised some serious objections to the way this program is being administered and I am also aware that an amendment to restore the $200,000,000 will be offered. I am prepared to discuss the bloc grant program further when that amendment is offered.

The committee has earmarked $104,000,000 for the Secretary's discretionary fund. The House reduced the amount available for the discretionary fund from the $109,950,000 request to $90,000,000, in keeping with their authorization bill. The Senate authorization bill provides "such sums as specified in appropriations acts." In keeping with prior appropriations acts, the Senate committee has recommended that the discretionary fund be set at 3 percent of the bloc grant funds. The House action reducing the discretionary fund would reduce the amount of moneys available for disaster assistance by about 20 percent. The Secretary's discretionary fund moneys for the Indian bloc grant program would be reduced by 19 percent—and have a significant effect on that program.

In fiscal year 1981, HUD expects to receive even larger requests for Indian funds, but if the level of funds available are reduced, fewer tribes will be funded. In addition, the annual appropriation proposed by the House introduces an uncertainty into funding so that essential planning of community development activities becomes difficult. This is particularly harmful to those population groups that have minimal tax base, that are largely dependent on their governments for employment, and that have nearly half of their population under 17 years of age.

The committee provided the full $40,000,000 requested for HUD's comprehensive planning grants. The House had proposed a reduction of $17,500,000. The House reduction would have eliminated the amount available to States ($10,000,000) and thus precluded approximately 20 States from receiving funds. The elimination of funding for State agencies would also cut funding for nonmetropolitan areawide planning organizations because State agencies would no longer be able to administer the areawide grants. The House proposal also eliminates funding localities ($5,750,000). This cut would adversely impact on the vast majority of the thousands of small local governments. These governments depend upon these funds—either in the form of direct grants or technical assistance provided by the State.

For HUD's fair housing and equal opportunity program, the committee has recommended $5,700,000. This is $2,000,000 more than the House and the same as the budget request. The House deferred consideration of the $2,000,000 requested for community housing resource boards pending enactment of the Fair Housing Amendments Act of 1980. The local Boards help HUD monitor and evaluate its agreements with realtors and identify builders who are committed to voluntary efforts to further fair housing. Membership consists of representation from community organizations having a broad interest in fair housing. These organizations include Urban League, NAACP, League of Women Voters, private fair housing groups, chamber of commerce, universities, office of the mayor, et cetera. The $2,000,000 would fund approximately 133 boards. It is the opinion of HUD's general counsel that this activity is authorized under existing legislation (section 808(e)(3) of title VIII of the Civil Rights Act of 1968.

ENVIRONMENTAL PROTECTION AGENCY

Appropriation language for fiscal year 1973 through fiscal year 1979 provided EPA with a 7-percent appropriation transfer authority from one account such as salaries and expenses to abatement, control, and compliance. In fiscal year 1980, the Congress directed a new appropriation structure and because of this new structure, reduced the transfer authority to 2 percent. This year the House has proposed entirely eliminating the transfer authority. The Senate committee has reinstated the 2 percent transfer provision. The authority was initially given to EPA in recognition of the sudden changing priorities as well as the need to shift funds where the "most for the dollar" could be achieved in carrying out EPA's goals. The Congress recognized that the many statutes and volatile programs essentially dictated this flexibility. The Senate provision recognizes the immediate need for a continuation of the 2-percent transfer authority and at the same time also recognizes that this authority should be phased out so that EPA is treated as all other agencies in this bill—which would requires a reshuffling of EPA's accounts and more precise estimates of expected costs. The provision grants a 6-month extension of the transfer authority so that EPA could make the necessary adjustments in its account structure.

On another item, the committee took exception to the direction contained in the House report concerning EPA's review of advanced wastewater treatment projects. The committee concurs with the House that the Administrator should be responsible for approving these treatment projects but believes that he should be given the leeway necessary to determine how these reviews can best be conducted.

The committee has made some rather significant cuts in EPA's salaries and expenses; abatement, control, and compliance; research and development; and construction grants accounts. In most of these cases, I believe that these cuts were ill advised. However, the mood of the committee was such that some extremely valuable programs have been eliminated or sharply curtailed. I understand that there may be an amendment to provide additional funding for the implementation of the super fund. In the event that such an amendment is offered, I will address the need for these funds at that time.

Within EPA's salaries and expenses account, the committee recommended a cut of $4,500,000 for consulting services. However, I think it is important not to cut too deeply or in the wrong areas. For instance, I do not believe the subcommittee intended to cut economic, statistical, or energy analysis in the planning and evaluation program area.

The committee has provided $3,000,000 for the U.S. Regulatory Council. This is $1,000,000 more than the House and $338,000 less than the request. The $1,000,000 over the House will permit the Council to restore full distribution of the calendar, continue efforts on innovative regulatory techniques, continue efforts to improve regulatory analysis techniques, conduct special projects in specific industries—for example, coal, non-ferrous metals, hospital—expand indixes and appendixes of the calendar to make it easier to use and to start an adjudications calendar of important regulatory cases. The committee recognizes the unique contribution this agency can make to the streamlining of the Federal regulatory process and has directed the Council to focus its efforts on the more central regulatory issues.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The committee has provided $4,430,000,000 for NASA's research and development account. This funds all of the programs authorized in the NASA fiscal year 1981 Authorization Act. The recommended funding levels total $6,750,000 million below the authorized level and $65,500,000 above the revised budget request. The House deferred action on this entire account and thus included no funds.

The committee has recommended this level of funding for NASA in recognition of its unique contribution to this country. NASA has been and continues to lead the world in the exploration of space and the development of space technology. Money in this bill, we are now considering, will help us maintain this position of leadership in space exploration and science—by providing funds for ongoing projects such as the space telescope and for new projects; like the gamma ray observatory. These missions will fly later in the decade and contribute significantly to the Nation's prestige and scientific knowledge.

NASA contributes directly to national security; by pushing technology in areas like rocket propulsion, electronics, and composite materials. In the future, national security requirements will dictate that we operate routinely in space. NASA's space shuttle will enable us to do so. The Air Force is planning to use the shuttle extensively. About one-fourth of the shuttle missions planned through 1985 will be for the Department of Defense. Funds provided in this bill will allow NASA to continue the essential work in aeronautic such as alternative fuels technology, the variable cycle engine, and rotocraft technology.

NASA's aeronautics R. & D. has helped make the United States the acknowledged world leader in the production and export of civil and military aircraft. This means jobs at home and sales abroad; aeronautics is one field where American products dominate. An investment in NASA also pays off as a direct stimulus to increased national productivity. The spinoff of NASA's technology is well known. New products are created and new markets established. The space agency is a national resource of scientific and engineering talent that is unmatched elsewhere in the world. We need to maintain it, and keep it directed to the future.

Within this account, the committee has approved $19,100,000 for a new start—the gamma ray observatory (GRO). The observational objectives of GRO include a search for direct evidence of the synthesis of the chemical elements and measurement of direct high energy astrophysical processes. Gamma rays provide unique information on the most astronomically intriguing objects yet discovered, including quasars, neutron stars, and black holes. Astronomy is now to the point where our understanding of these objects is being seriously impaired by lack of data in the gamma ray region of the spectrum.

Another new start funded in this account is the National Oceanic Satellite System (NOSS). The committee has included $5,800,000 for NOSS in fiscal year 1981. The objective of NOSS is the development and limited operational demonstration of a remote sensing system which will supply specific global oceanographic data under all weather conditions on a routine and repetitive basis in support of NOAA, DOD and scientific needs. Although operationally oriented, NOSS provides an observational capability which has significant potential for research, specifically, understanding the interaction between the oceans, atmosphere, and ice-covered regions. Without NOSS, U.S. Navy operations will continue to be severely hampered by insufficient and inadequate weather and sea-state information. Civilian operations involving fishing, ship routing, ocean mining, oil and gas exploration, et cetera, would continue to be severely hampered by inadequate weather/sea state predictive information.

A final new NASA start, funded at $12,000,000 in fiscal year 1981, is the solar electric propulsion system (SEPS). SEPS is primarily designed to increase our capability to explore the solar system, and either dramatically improves performance or provide a capability that otherwise does not exist including the ability to maneuver and rendezvous after reaching a celestial body—that is comets, asteroids, outer planets, et cetera. SEPS will alleviate launch window constraints by markedly lengthening the windows—that is, months versus weeks—and increasing their frequency of occurrence.

NATIONAL CONSUMER COOPERATIVE BANK

The Senate has provided $9,800,000 for salaries and expenses of the National Consumer Cooperative Bank. This is $1,100,00 above the House level and $441,000 less than the budget request.

The committee increased the House allowance in recognition of the fact that this is perhaps the most critical year in the bank's development since it is the first year of full staffing, including a regional office staff. Thus, an increase in the bank's salary and expense account from the fiscal year 1980 level should be expected since fiscal year 1980 was the bank's initial year of operation and a full staff was not in place. It is expected that the bank's fiscal year 1982 request will show a significant reduction in salaries and expenses and there will be no request for funds in this area in fiscal year 1983 and beyond.

NATIONAL SCIENCE FOUNDATION

For the National Science Foundation, the committee has recommended $1,078,600,000 or $4,600,000 above the House and the budget request.

The National Science Foundation (NSF) is the primary agency in the Federal Government with responsibility for promoting the health of this Nation's science and its scientific resources. NSF's role with regard to basic research support accounts for almost 20 percent of the total Federal effort (over $900,000,000 out of slightly over $5,000,000,000 from the U.S. Government). Research, particularly basic research, was singled out by the fiscal year 1981 budget submission as an area that would contribute to our Nation's productivity and economic growth. The January budget proposed for NSF was up nearly 15 percent above the fiscal year 1980 appropriation.

However, the budget revisions in March fell heavily on NSF. Almost one-half of the increase was lost in the revision. The percentage increase for NSF was down to less than 8 percent; with the impact of double-digit inflation and skyrocketing fuel cost—for the ocean and Antarctic program—the NSF revised budget request is austere. This Nation must retain its strong position in scientific research internationally, and basic scientific research undergirds future technological development and scientific advancements. The NSF's fiscal year 1981 budget retained some increases in important areas like: The mathematical and computing sciences; quality science education for our citizens and for our children; and the highly acclaimed programs to bring university and industrial scientists together. The Foundation is the major agency of the Federal Government supporting research on economic and industrial productivity.

Our committee recommended $1,073,400,000 out of the $1,074,000,000 requested by the President in his revised budget request. The President has requested $1,074,000,000 in his budget revision. The subcommittee also added $5,100,000 to the Foundation's request in an effort to partially offset a $10,200,000 fuel increase for the Antarctic research program and the oceanographic research fleet. The fuel cost increases had more than doubled since the fiscal year 1981 budget was sent to the Congress.

The committee increased the amount available for NSF's small business innovation and industrial technology program by $5,000,000. The National Science Foundation initiated the small business innovation research program in 1977 as a new approach to Federal funding of research conducted by small science or technology-based firms. The goal of the program is to draw upon the research base of the Nation's small businesses and direct that research toward technological innovation and commercial applications. To date, some 182 awards have been made or are in the process of being made. The additional funds provided through this amendment will result in 100 to 200 new starts.

The committee also shifted $5,000,000 from NSF's lower priority applied research program to science education. The additional $5,000,000 over the request for science education will be used for NSF programs aimed at improving the Nation's pool of scientific personnel, developing improved materials and techniques for science education. The funds for scientific personnel will allow a small new program aimed at women and minorities, and will restore the NSF graduate fellowships to the fiscal year 1980 number. In addition, the funds will be applied to the continuation of NSF's local course improvement program (LOCI).

DEPARTMENT OF TREASURY—REVENUE SHARING

The Senate bill does not contain any funding for general revenue sharing. The House included $4,569,949,000 for local governments. We deferred consideration of this item since the Senate Finance Committee has not yet marked up the authorization bill. It is my understanding that they intend to do so within the week and an amendment will be offered to include these funds, contingent on the enactment of the authorizing legislation.

VETERANS' ADMINISTRATION

The House has recommended an increase of $85,431,000 for the VA's medical care program. The Senate version contains the revised amount recommended by the administration of $5,953,268,000. I understand that there may be an amendment to include some of the House increases in the Senate bill. When that amendment is called up, I shall have more to say on the very real need for increased funding.

The House bill eliminates flight and correspondence school benefits for veterans. The Senate version reinstated correspondence benefits. The committee felt that correspondence schools represented a cost-effective method of providing knowledge and skills to our ex-servicemen. For several years now, correspondence schools, under VA regulations, must be able to demonstrate that a minimum of 50 percent of graduates are employed in the field, or a closely-related field, for which trained. Some correspondence schools can demonstrate up to 85.3 percent employability of VA-funded graduates. This is an enviable record for any type of educational institution. I also understand that an amendment will be offered to restore flight training.

GENERAL PROVISIONS

Finally, we have recommended some changes in the General Provisions of the bill. Section 410 of the House bill eliminates the payment of any expenses or compensation for non-Federal parties for participation in regulatory or adjudicatory proceedings. While we sympathize with the concerns of the House, we felt that the elimination of the entire public participation program was too severe. The three affected agencies (EPA, Consumer Product Safety Commission, and the Office of Consumer Affairs) have the need to obtain the views and assistance of outside experts in writing standards, invite individuals who might make a unique contribution to take part in a proceeding, and to support the travel and per diem of consumers, local officials, small businessmen, who can make a contribution to the agencies' deliberations, and who other wise could not afford to participate. The committee has, therefore, modified the House provision and included report language on pages 118 and 119 to reduce the possibility of abuse in this program.

Section 412 of the bill provides that 2 percent of the total budget authority in the bill shall be withheld from obligation and that up to 5 percent may be withheld from any account, activity or project. The provision excludes the funds provided for the programs administered by the Veterans' Administration. The savings from this provision is estimated to be $992,200,000. This provision, as now drafted, contains some serious problems for the agencies and the Congress. In addition, the provision is technically ambiguous. For these reasons, I intend to offer a substitute amendment.

Section 417 of the Senate version requires a reduction in consultant contracts for HUD, EPA, and NASA. Although I shall not question the wisdom of a general reduction in such contracts, I shall be proposing an amendment that will better define the amount of money being spent on consultants and the size of the reductions that will be made.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TSONGAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PROXMIRE). Without objection, it is so ordered.

AMENDMENT NO. 2335

Mr. TSONGAS. Mr. President, I appreciate the Senator from Wisconsin taking the chair so I may introduce an amendment which he will be opposing tomorrow. I appreciate his indulgence in this regard.

Mr. President, I would like to place in the record today, and will discuss it tomorrow, an amendment relative to CDBG funding, the community development block grant funds.

It is an amendment sponsored by myself and Senators WILLIAMS, SASSER, JAVITS, RIEGLE, LEVIN, SARBANES, CRANSTON, STEWART, and MOYNIHAN, which adds $200 million to the CDBG appropriations.

I thank the Senator from Wisconsin for his assistance.

(Mr. TSONGAS assumed the chair.)

Mr. PROXMIRE. Mr. President, earlier when I concluded my remarks, I asked unanimous consent that the committee amendments be adoped en bloc and that they be treated as original text for purposes of amendment. Included in that was one amendment that affects the New York City loan guarantee program. I understand the distinguished senior Senator from New York is going to offer an amendment to knock that committee amendment out.

Of course, he is free to do that, as I understand it, under the rules, because I got unanimous consent for that to be treated as original text subject to amendment.

On the other hand, the Senator from New York may prefer to have that treated separately and the committee amendment not adopted, and have the Senate have before it the committee amendment for an up or down vote.

Whichever way the Senator from New York prefers it, I will be very happy to have him do it that way.

So I ask unanimous consent that in the event the distinguished Senator from New York desires to have that part of the committee amendment, that particular committee amendment, taken out of the bill, that he will be free to do so.

Mr. MATHIAS. Mr. President, reserving the right to object, I said a few minutes ago that it was a pleasure to work with the distinguished Senator from Wisconsin. I cannot help but observe that his thoughtful action in this regard is an example of why it is a pleasure to work with him.

I certainly have no objection to the unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will come in at 10:30 tomorrow morning. After the two leaders or their designees have been recognized under the standing order, Mr. McGOVERN will be recognized for not to exceed 15 minutes, after which the Senate will resume consideration of the HUD appropriation bill.

At no later than 12 o'clock noon, the HUD appropriation bill will be temporarily set aside until such time as action on the military construction authorization bill has been completed.

Am I correct, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And a call for the regular order will not dislodge the military construction authorization bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Upon the disposition of the military construction authorization bill, the Senate will resume consideration of the HUD appropriations bill. Rollcall votes will occur on tomorrow, contrary to some rumors that have sprouted up like the prophet's gourd overnight. There will be rollcall votes on amendments and motions in relation to the military construction authorization bill or passage thereof, in all likelihood, and with respect to amendments and motions in connection with the HUD appropriation bill.

So there will be rollcall votes tomorrow. There will be rollcall votes daily through Friday. There will be no session of the Senate on this coming Saturday.

Mr. STEVENS. Will the majority leader repeat that last statement?

Mr. ROBERT C. BYRD. In response to the distinguished Senator's question, there will be no session of the Senate on this coming Saturday.

Mr. STEVENS. I thank the majority leader.

RECESS TO 10:30 A.M. TOMORROW

Mr. PROXMIRE. Mr. President, if there by no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 10:30 a.m. tomorrow.

The motion was agreed to; and at 5:35 p.m., the Senate recessed until tomorrow, Tuesday, September 16, 1980, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 12, 1980:

DEPARTMENT OF STATE

Harry W. Shlaudeman, of California, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Thomas D. Boyatt, of Ohio, a Foreign Service officer of class one, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Columbia.

Edwin Gharst Corr, of Oklahoma, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Peru.

THE JUDICIARY

Nickolas P. Geeker, of Florida, to be U.S. attorney for the northern district of Florida for the term of 4 years (reappointment).

James Leslie Blackburn, of North Carolina, to be U.S. attorney for the eastern district of North Carolina for the term of 4 years, vice George M. Anderson, resigned.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Dennis D. Clark, of Maryland, to be a Member of the Federal Mine Safety and Health Review Commission for the term of 6 years expiring August 30, 1986, vice Jerome R. Waldie.

DEPARTMENT OF STATE

The following-named Foreign Service Officers for promotion in the Foreign Service to the classes indicated:

Foreign Service officers of class 1:
Melville E. Blake, Jr., of California.
John P. Blane, of Alabama.
J. Donald Blevins, of Florida.
Michael P. Boerner, of New Jersey.
John Condayan, of Virginia.
Goodwin Cooke, of New York.
Allen C. Davis, of Tennessee.
Robert W. Drexler, of Wisconsin.
Raymond C. Ewing, of California.
James P. Farber, of Florida.
James Ferrer, Jr., of California.
Robert K. German, of Texas.
Kenneth O. Harris, of West Virginia.
Roy T. Haverkamp, of Missouri.
Lucian Heichler, of Virginia.
George Borman High, of Illinois.
John W. Holmes, of Massachusetts.
Betty-Jane Jones, of Wisconsin.
Lewis D. Junior, of Maryland.
Herbert Kaiser, of Maryland.
George R. Kenney, of Illinois.
Lowell C. Kilday, of Virginia.
P. Wesley Kriebel, of Maryland.
Sheldon Jack Krys, of Maryland.
George M. Lane, of Massachusetts.
Burton Levin, of New York.
Stephen R. Lyne, of the District of Columbia.
Harry R. Melone, of New York.
James C. Nelson, of Illinois.
Robert P. Paganelli, of New York.
Edward L. Peck, of California.
Raymond L. Perkins, Jr., of Colorado.
J. William Piez, of Colorado.
Larry G. Piper, of Texas.
James A. Placke, of Nebraska.
Nicholas Platt, of the District of Columbia.
Henry Precht, of Georgia.
Gerald A. Rosen, of New York.
James D. Rosenthal, of California.
Paul Sadler, of Tennessee.
Howard B. Schaffer, of New York.
Kenneth N. Skoug, Jr., of Virginia.
Richard J. Smith, of Connecticut.
Walter Burges Smith II, of Rhode Island.
Frank M. Tucker, Jr., of Pennsylvania.
James L. Tull, of Iowa.
Marten H. A. van Heuven, of Connecticut.
E. Allan Wendt, of California.

Foreign Service officers of class 2:
Donald M. Anderson, of the District of Columbia.
Merle E. Arp, of Iowa.
Richard C. Barkley, of Michigan.
Norman E. Barth, of Florida.
Adrian Anthony Basora, of Puerto Rico.
Jack R. Binns, of Washington.
Robert D. Blackwill, of Nevada.
Felix S. Bloch, of North Carolina.
William Bodde, Jr., of Maryland.
Donald J. Bouchard, of Maine.
Charles R. Bowers, of California.
A. Donald Bramante, of New York.
Thomas Stanley Brooks, of Wyoming.
Pierce K. Bullen, of Florida.
James R. Bullington, of Tennessee.
Paul F. Canney, of Massachusetts.
Thomas J. Carolan, Jr., of Maryland.
Paul M. Cleveland, of Massachusetts.
Harry L. Coburn, of New York.
Robert D. Collins, of Virginia.
Elinor G. Constable, of New York.
Carl C. Cundiff, of Nevada.
Jerrold Mark Dion, of Washington.
David J. Dunford, of Virginia.
Robert E. Ezelle, of California.
Donald C. Ferguson, of California.
Robert A. Flaten, of Minnesota.
Bruce A. Flatin, of Minnesota.
Ludlow Flower III, of the District of Columbia.
Francis Anthony Forgione, of Massachusetts.
Jay P. Freres, of Florida.
Herbert Donald Gelber, of New Jersey.
Stephen R. Gibson, of California.
Myles L. Greene, of Florida.
Herbert G. Hagerty, of New Jersey.
Paul J. Hare, of the District of Columbia.
Donald F. Hart, of Maryland.
John H. Hawes, of New Jersey.
John J. Helble, of Illinois.
Peter T. Higgins, of California.
Francis S. M. Hodsoll, of New York.
Harriet W. Isom, of Virginia.
George W. Jaeger, of Vermont.
Harmon E. Kirby, of Ohio.
Edward Kreuser, of Pennsylvania.
Paul L. Laase, of Virginia.
David F. Lambertson, of Kansas.
William H. Mansfield III, of Connecticut.
Edward Marks, of California.
Richard R. Martin, of the District of Columbia.
Gary L. Matthews, of Missouri.
John T. McCarthy, of New York.
Richard L. McCormack, of Florida.
James M. Montgomery, of New Jersey.

Richard H. Morefield, of California.
John A. Murtha, of Washington.
Jerrold M. North, of Illinois.
Richard M. Ogden, of Connecticut.
George W. Ogg, of Florida.
Edmund M. Parsons, of Texas.
Edward Joseph Perkins, of California.
James D. Phillips, of Kansas.
William E. Rau, of Virginia.
Leo J. Reddy, of South Carolina.
J. Brayton Redecker, of Connecticut.
Alan D. Romberg, of Maryland.
William Frederick Rope, of New York.
Irving L. Sanders, of Washington.
Teresita C. Schaffer, of New York.
Arthur P. Shankle, Jr., of Texas.
Pierre Shostal, of the District of Columbia.
John P. Shumate, Jr., of California.
Franklyn E. Stevens, of California.
Ulrich A. Straus, of Maryland.
Gordon L. Streeb, of Minnesota.
John J. Taylor, of Tennessee.
Paul Daniel Taylor, of New York.
Thomas T. Turqman, of the District of Columbia.
Alexander F. Watson, of Massachusetts.
Martin A. Wenick, of Florida.
William B. Whitman, of Florida.
Richard H. Williams, of Utah.
Richard L. Williams, of Pennsylvania.
Larry C. Williamson, of California.
John J. Youle, of Virginia.
David E. Zweifel, of Colorado.

Foreign Service officers of class 3:

Charles S. Ahlgren, of West Virginia.
Charles A. Anderson, of Virginia.
Anthony J. Babin, Jr., of Texas.
Charles G. Billo, of Maryland.
Dorothy Jean Black, of California.
H. Clay Black, of Illinois.
Kenneth W. Bleakley, of New York.
Robert O. Blucker, of Arkansas.
Jere Broh-Kahn, of Ohio.
David G. Brown, of Florida.
Timothy C. Brown, of Nevada.
Stephen W. Buck, of New York.
James N. Bumpus, of California.
W. Scott Butcher, of Ohio.
James L. Clunan, of Maine.
Herbert A. Cochran, of North Carolina.
Donald I. Colin, of Nevada.
James K. Connell, of Connecticut.
James F. Creagan, of Ohio.
Jeffrey Davidow, of Minnesota.
John S. Davison, of Maine.
Wilfred F. Declercq, of Virginia.
James F. Dobbins, Jr., of New York.
Felix Dorough, of Texas.
Stephen M. Ecton, of Connecticut.
Richard C. Faulk, of New Jersey.
Patrick J. Flood, of Ohio.
John David Forbes, of Pennsylvania.
Sidney Friedland, of Wisconsin.
Brian R. Furness, of Connecticut.
Thomas Howard Gewecke, of Massachusetts.
Jon D. Glassman, of California.
Edward W. Gnehm, Jr., of Georgia.
James J. Gormley, of New York.
John A. Graham, of Washington.
Terrence G. Grant, of Illinois.
Theodore S. Green, of Pennsylvania.
John M. Gregory, Jr., of Virginia.
Michael J. Habib, of Virginia.
Hugh G. Hamilton, Jr., of Missouri.
Alan M. Hardy, of Ohio.
Douglas G. Hartley, of Tennessee.
Genta A. Hawkins, of California.
Francis P. G. Hearne, of New Jersey.
George W. Heatley, of California.
Richard J. Higgins, of Maryland.
David L. Hobbs, of California.
Michael M. Hornblow, of New York
James S. Huffman, of California.
Martin Jacobs, of Florida.
Darryl N. Johnson, of Washington.
Ralph R. Johnson, of Washington.
John M. Joyce, of Colorado.
David T. Kenney, of the District of Columbia.
James E. Kerr, of the District of Columbia.
T. Patrick Killough, of Texas.
Marguerite Cooper King, of California.
Philip A. King, of Florida.
Robert H. Knickmeyer, of Missouri.
Gilbert D. Kulick, of California.
David C. Lacey, Jr., of Ohio.
Charles E. Lahiguera, of Puerto Rico.
Edward Gibson Lanpher, of Virginia.
Richard R. La Roche, of Rhode Island.
Joseph E. Lee, of Nevada.
Ira H. Levy, of Missouri.
Bonnie M. Lincoln, of Minnesota.
Philip Thomas Lincoln, Jr., of Michigan.
Warren E. Littrel, Jr., of Illinois.
Walter B. Lockwood, Jr., of Connecticut.
Peter J. Lydon, of Massachusetts.
Robert A. MacCallum, of Oregon.
James H. Madden, of California.
John F. Maisto, of Pennsylvania.
Jim D. Mark, of Georgia.
Thomas G. Martin, of Alabama.
Stephanie Mayfield, of California.
Alfred J. McGinness, of Florida.
Brunson McKinley, of New Jersey.
Marilyn Ann Meyers, of Minnesota.
Ned E. Morris, of Tennessee.
Sarah Louise Nathness, of Ohio.
Francis J. Nelson, of New York.
Warren P. Nixon, of Iowa.
Joseph P. O'Neill, of New York.
Shirley E. Panizza, of Connecticut.
Alan Parker, of California.
Thomas Parker, Jr., of Maryland.
F. Coleman Parrott, of Alabama.
Robert Stephen Pastorino, of California.
Edward T. Paukert, of Nevada.
Robert M. Perito, of Massachusetts.
John G. Peters, of California.
Paul P. Pilkauskas, of New York.
Edward B. Pohl, of Louisiana.
Kenneth M. Quinn, of Iowa.
Robert Rackmales, of Maryland.
David M. Ransom, of the District of Columbia.
John E. Reinertson, of Wisconsin.
L. Benjamin Sargent, Jr., of Washington.
Arnold P. Schifferdecker, of Missouri.
Norman T. Shaft, of Minnesota.
Gilbert H. Sheinbaum, of California.
Harrison B. Sherwood, of Minnesota.
Daniel H. Simpson, of Ohio.
Robert S. Simpson, of California.
Norman A. Singer, of Illinois.
Richard J. Slott, of Indiana.
Donnell D. Smith, of Illinois.
Keith C. Smith, of Virginia.
Seton Stapleton, of New Jersey.
John P. Steinmetz, of California.
John D. Stempel, of Indiana.
Linda C. Stillman, of Arizona.
Elizabeth A. Swift, of the District of Columbia.
William S. Tilney, of California.
Edmund van Gilder, of Pennsylvania.
Thomas J. Wajda, of Ohio.
Edward S. Walker, Jr., of Pennsylvania.
Anthony H. Wallace, of New York.
Donald B. Westmore, of Washington.
Thomas Gary Weston, of Michigan.
James C. Whitlock, Jr., of Connecticut.
Peter D. Whitney, of New York.
Edward H. Wilkinson, of Indiana.
Howard F. Williams, of Georgia.
James Alan Williams, of Virginia.
David S. Wilson, of California.
Ralph Winstanley II, of Indiana.
Bernard J. Woerz, of New Jersey.
John M. Yates, of Washington.
Murray David Zinoman, of New York.

Foreign Service officers of class 4:

Edward Gordon Abington, Jr., of Florida.
David Michael Adamson, of New York.
Leslie M. Alexander, of New York.
Douglas B. Archard, of the District of Columbia.
Michael R. Arietti, of Connecticut.
Joseph F. Aronhime, of Florida.
Anthony Arredondo, of Colorado.
Robert D. Austin, Jr., of Washington.
Alfred R. Barr, of California.
Michael T. Barry, of Texas.
Jane Ellen Becker, of Wisconsin.
Ann R. Berry, of Kentucky.
Peggy Blackford, of New Jersey.
John S. Boardman, of Ohio.
Elizabeth B. Bollmann, of Missouri.
Michael A. Boorstein, of Colorado.
Robert A. Bradtke, of Pennsylvania.
Edward Brynn, of California.
Roger E. Burgess, Jr., Nevada.
Bruce G. Burton, of New York.
Suzanne S. Butcher, of Pennsylvania.
Robert J. Carroll, of Connecticut.
Virginia S. Carson, of Oregon.
Mary Ann Casey, of Colorado.
Mary Reed Cencetti, of the District of Columbia.
George A. Chester, Jr., of California.
Geraldeen G. Chester, of California.
Gene Burl Christy, of Texas.
Patricia R. Clark, of California.
Donald R. Cleveland, of Oregon.
Lee O. Coldren, of California.
Michael Congdon, of California.
Frederick R. Cook, of Illinois.
Kathleen J. Croom, of Missouri.
Brian Dean Curran, of Maine.
Roger L. Dankert, of California.
Jan de Wilde, of New Jersey.
Thomas P. Doubleday, Jr., of New York.
Richard C. Dunbar, of Washington.
Craig G. Dunkerley, of Massachusetts.
John M. Evans, of Virginia.
Gary Lee Everett, of Texas.
Patrick M. Folan, of California.
Mary Lee K. Garrison, of New Jersey.
Thomas Humphrey Gerth, of New York.
David N. Greenlee, of California.
Andrew Grossman, of New York.
James Henry Hall, of Virginia.
Thomas R. Hanson, of Virginia.
David C. Harr, of Illinois.
Patrick R. Hayes, of Virginia.
Donald S. Hays, of Virginia.
Judith M. Heimann, of Connecticut.
Dale Roy Herspring, of California.
Donald Vance Hester, of Illinois.
Rex L. Himes, of Washington.
Richard A. Holmes, of Michigan.
James R. Hooper, of Michigan.
John E. Hope, of California.
William J. Hudson, of Virginia.
James G. Huff, of the District of Columbia.
Marie T. Huhtala, of California.
Edmund James Hull, of Illinois.
Sandra Nelson Humphrey, of New Jersey.
Douglas Randall Hunter, of Illinois.
Robert Leonard Jacobs, of Illinois.
Dennis Coleman Jett, of New Mexico.
Donald C. Johnson, of Oregon.
Robert D. Johnson, of Missouri.
David H. Kaeuper, of Michigan.
Theodore H. Kattouf, of Florida.
Herbert Klee, Jr., of Illinois.
Jacques Paul Klein, of Illinois.
Therese Ann Kleinkauf, of New York.
Robert J. Kott, of New York.
Sheldon I. Krebs, of New York.
William J. Kushlis, of California.
James A. Larocco, of Illinois.
James V. Ledesma, of California.
Gary E. Lee, of Ohio.
Harlan Y. M. Lee, of Hawaii.
Anthony Leggio, of New York.
Alexander T. Liebowitz, of New York.
John W. Limbert, of Vermont.
Thomas E. Macklin, Jr., of California.
Frederic William Maerkle III, of California.
Peter S. Maher, of Illinois.
Ronald L. Main, of Oklahoma.
Luciano Mangiafico, of Connecticut.
Dana M. Marshall, of New York.
G. Eugene Martin, of Maryland.
Pedro Martinez, of Texas.
W. Lee Mattingly, of Massachusetts.
Drew Stephen May, of New Jersey.
Joseph Neal McBride, of Wyoming.
Donald James McNally, of New Jersey.
Harold Edward Meinheit, of Illinois.

Michael J. Metrinko, of Pennsylvania.
William A. Moffitt, of Texas.
Mark E. Mohr, of New Jersey.
Peter B. Morrissey, of Hawaii.
Russell E. Morrow, of Texas.
Joseph W. Moyle, of Maryland.
John G. H. Muehlke, Jr., of New Hampshire.
Paul T. Murphy, of Connecticut.
Thomas F. Murphy, of Illinois.
Ronald J. Neitzke, of Minnesota.
Ronald E. Neumann, of California.
Terrell R. Otis, of Maryland.
Robert S. Pace, of Pennsylvania.
Alec M. Peltier, of Virginia.
Peter S. Perényi, of Connecticut.
Robert C. Perry, of Virginia.
Robert D. Persiko, of Virginia.
John A. Polansky, Jr., of Texas.
Bruce F. Porter, of Colorado.
John A. Purnell, of Arkansas.
John R. Ratigan, of Virginia.
David P. Rawson, of Ohio.
Peter Robert Reams, of Nevada.
Arlene Render, of Ohio.
David E. Reuther, of Washington.
Max Newton Robinson, of Washington.
Wayne Alan Roy, of Illinois.
Richard W. Ruble, Jr., of California.
Judith Ann Schmidt, of Texas.
Joseph B. Schreiber, of Michigan.
Louis D. Sell, of Kentucky.
Amelia Ellen Shippy, of New Mexico.
LeRoy C. Simpkins, of California.
Charles H. Sisk, of Florida.
James R. Smith, of West Virginia.
Joan Veronica Smith, of the District of Columbia.
Richard A. Smith, Jr., of Connecticut.
Karl H. Sprick, of California.
Daniel Anton Strasser, of California.
Bruce D. Strathearn, of Wisconsin.
Russell J. Surber, of California.
Eric E. Svendsen, of Connecticut.
Mary Elizabeth Swope, of Virginia.
John F. Tefft, of Wisconsin.
Albert A. Thibault, Jr., of Pennsylvania.
J. Richard Thurman, of Kentucky.
Donald R. Tremblay, of California.
Robert A. Tsukayama, of Hawaii.
Benjamin Tua, of Virginia.
Domonic Vallese, of Pennsylvania.
Ralph Claiborne Walsh, of Texas.
Thomas M. Widenhouse, of Illinois.
Sharon P. Wilkinson, of New York.
Ruth L. Willow, of the District of Columbia.
Dan A. Wilson, of Texas.
James Howard Yellin, of Pennsylvania.
Eugene C. Zajac, of Illinois.
John Joseph Ziolkowski, of the District of Columbia.
Richard H. Zorn II, of Illinois.

Foreign Service officers of class 5:

Harold C. M. Baum, of New York.
William M. Bellamy, of California.
Robert A. Benzinger, of Arizona.
David L. Bleyle, of New York.
Robert J. Blohm, of California.
John W. Bowen IV, of Florida.
Ralph L. Boyce, Jr., of Florida.
Jo Ann Hardee Collinge, of Florida.
Gary Couey, of California.
Joni L. Davidson, of California.
Margaret M. Dean, of Illinois.
James A. Derrick, of Iowa.
Robert Sidney Deutsch, of Virginia.
Joseph R. Donovan, Jr., of New York.
Timothy John Dunn, of California.
Linda Mathews Eckhardt, of California.
Robert Bruce Ehrnman, of New Jersey.
Allan Vincent Ellsbury, of Wyoming.
Daniel Ted Fantozzi, of Virginia.
John P. Felt, of Virginia.
Reed J. Fendrick, of New York.
Thomas C. Ferguson, of Michigan.
Robert W. Fitts, of New Hampshire.
Sally M. Gober, of Ohio.
James K. Gordon, of California.
C. Lawrence Greenwood, Jr., of Florida.
Reno Leon Harnish III, of the District of Columbia.
John J. Hartley II, of South Carolina.
Joseph A. Hilts, of Wisconsin.
Joel Gerard Imp, of Pennsylvania.
Michael Allen Jacobs, of California.
Hartford T. Jennings, of Ohio.
David E. T. Jensen, of Virginia.
Margaret Carnwath Jones, of Pennsylvania.
Laura-Elizabeth Kennedy, of Virginia.
Esther Klein, of Connecticut.
Louis J. Kochanek, of New Hampshire.
Mary J. Kosheleff, of Ohio.
Daniel Charles Kurtzer, of New Jersey.
James B. Lane, Jr., of Ohio.
Randall R. LeCocq, of New Mexico.
Steven R. Mann, of Pennsylvania.
Dianne E. Markowitz, of Pennsylvania.
Alphonso George Marquis, of Maryland.
Joseph R. McGhee, of Pennsylvania.
Thomas J. McMahon, of New York.
Thomas W. Mears, Jr., of Maryland.
Clifford W. Mecklenburg, of Ohio.
Barbara R. Miller, of New York.
William Howard Moore, of Virginia.
Bruce F. Morrison, of New York.
Leigh A. Morse, of Minnesota.
John Jacob Norris, Jr., of Virginia.
Joseph Bernard Nowell, of Michigan.
Jon Lane Noyes, of Wyoming.
W. Andrew Osterman, of Pennsylvania.
James E. Overly, of Colorado.
Donald Edward Parker, of Wisconsin.
Mary C. Pendleton, of Kentucky.
Robert Chamberlain Porter, Jr., of Maine.
Gary V. Price, of Hawaii.
Michael E. Ranneberger, of Maryland.
Robin Lynn Raphel, of New Jersey.
Sheldon J. Rapoport, of Connecticut.
R. Ross Rodgers, of Washington.
Carol Lynn Rose, of Tennessee.
Clayton F. Ruebensaal, Jr., of Maryland.
Christopher W. Runckel, of Washington.
Kenneth F. Sackett, of Florida.
Robert A. Sarofeen, of Florida.
Katherine H. Smith, of California.
Robert J. Smolik, of California.
Don Kenneth Sowers, of Virginia.
Melvin T. Spence, of the District of Columbia.
Patsy G. Stephens, of California.
Curtis M. Stewart, of Colorado.
George Louis Summers, of California.
Steven Wagenseil, of Rhode Island.
Leon Weintraub, of Maryland.
Joseph Charles Wilson IV, of Washington.
Henry C. Zimerowski, of Massachusetts.

DEPARTMENT OF STATE

The following-named person for appointment as a Foreign Service Information officer of class 4, a consular officer, and a Secretary in the Diplomatic Service of the United States of America:

Anthony William Sariti, of Florida.

For appointment as Foreign Service officers of class 6, consular officers, and Secretaries in the Diplomatic Service of the United States of America:

Hector Pablo Barreyro, of Texas.
Earl Don Mannoia, of Virginia.
Mary Cynthia Smoot, of the District of Columbia.

Foreign Service reserve officers to be consular officers and Secretaries in the Diplomatic Service of the United States of America:

James M. Achterhof, of Virginia.
Luis Enrique Acosta, of Virginia.
Manuel F. Acosta, of Arizona.
James Beach Allen, of Massachusetts.
Earl R. Allison, of Virginia.
Assad Amine, of Michigan.
Gerald Christopher Anderson, of Illinois.
Walter E. Andrusyszyn, of New York.
Blaine David Benedict, of New York.
Jon D. Berlin, of Virginia.
John C. Bishop, of Florida.
Steven Lee Blake, of Texas.
Avis T. Bohlen, of the District of Columbia.
Barbara A. Bonamy, of Washington.
Sherman Gayloid Boone, of the District of Columbia.
Jacquelyn J. Borgel, of Virginia.
Randolph E. Boswell, of Virginia.
Mark M. Boulware, of Texas.
Barbara Jean Bowie, of New York.
Richard E. Bradshaw, of North Carolina.
Roberto Gonzales Brady, of California.
Jacquelyn Owens Briggs, of Michigan.
William E. Brooks, of Virginia.
Karen S. Brown, of Indiana.
Edward S. Browne, of California.
Judith F. Buncher, of New Jersey.
John Angelo Butler, of California.
Michael A. Butler, of Virginia.
Keith Christian Buxton, of Pennsylvania.
Thomas W. Callow, of Michigan.
James E. Campbell, of California.
Joseph D. Cardosi, of Virginia.
Laraine Newhouse Carter, of Florida.
Dana T. Cartozian, of California.
Samuel J. Cerrato, of the District of Columbia.
Deborah A. Coates, of California.
Carol A. Colloton, of the District of Columbia.
Stephen L. Conn, of Massachusetts.
Bruce Edward Connuck, of New York.
John Owen Cook, of California.
José E. V. Cunningham, of California.
Andrew Czirjak, of Virginia.
Glyn T. Davies, of Maryland.
Kathleen Rebecca Davis, of Maryland.
James J. Dolge, of Virginia.
Frederick H. Donner, of Texas.
Raymond W. Eiselt, of Virginia.
Lawrence McNicoll Giisuke Enomoto, of Hawaii.
Charles William Evans, of Virginia.
Brian P. Fairchild, of Virginia.
Jonathan D. Farrar, of California.
Mitchell H. Feigenberg, of California.
Alan C. Ferguson, Jr., of Virginia.
John E. Ferguson, of Virginia.
John Daniel Fernandez, of California.
Kenwood S. Foster, of Virginia.
Stephen R. Fox, of Washington.
Henry Danton Gaddis, of Texas.
Priscilla Harter Galassi, of Massachusetts.
Jenaro A. Garcia, of New Hampshire.
John L. Gartin, of Virginia.
Norman D. Glick, of Maryland.
Raymond J. Gonzales, of California.
Douglas C. Greene, of the District of Columbia.
Robert B. Greene, of Virginia.
Walter Greenfield, of the District of Columbia.
Gabriel Guerra-Mondragón, of the District of Columbia.
John R. Haberstroh, of Virginia.
Mary Allyn Haines, of Missouri.
Bobby Harris, of the District of Columbia.
William James Haugh, of Virginia.
John Arthur Hedges, of Virginia.
John W. Hendrix, of the District of Columbia.
John W. Hennessy, of Virginia.
Kenneth MacLean Hillas, Jr., of New Jersey.
John Hitchcock, of Washington.
James Robert Holbein, of Texas.
Mark W. Huffman, of Virginia.
Barbara Fitzsimmons Hughes, of Nebraska.
Miriam Irene Hughes, of Florida.
Stephanie F. Johnson, of the District of Columbia.
John B. Jones, of Virginia.
Peter Graham Kaestner, of Maryland.
Timothy B. Kane, of Virginia.
Jerrold I. Keilson, of Massachusetts.
Angela Maria Kelsey, of Pennsylvania.
George W. Kenning, Jr., of Virginia.
Leonard J. Lange, of Maryland.
Brent E. Lawson, of Virginia.
Linda K. Lawson, of Virginia.

Richard L. Layne, of the District of Columbia.

George Lee, of California.

Anna Maria Anderson Lehel, of the District of Columbia.

Margery Lemb, of Pennsylvania.

Susan Pierce Lively, of Kentucky.

Kenneth Lizzio, of Virginia.

Josephine Ann Stelzig Lockley, of Maryland.

John D. Long, of the District of Columbia.

Nicholas C. H. MacNeil, of Virginia.

Janet Robins Malkemes, of Pennsylvania.

Charles M. Martin, of Virginia.

David C. Martin, of Virginia.

Mary Jeanne Reid Martz, of Florida.

John P. Marx, of Virginia.

Herbert H. Matsubayashi, of California.

Sue Ellen McCoy, of Virginia.

William McPherson, of California.

Helen Meagher, of Virginia.

Kevin C. Milas, of California.

Jeffrey S. Miller, of Virginia.

James A. Minyard, of Virginia.

Francis X. Monachino, of Virginia.

Roberta Newell Mounaimné, of Washington.

Susan Margaret Mowle, of the District of Columbia.

Jesse Leroy Myers, of California.

David Napierkowski, of Virginia.

Kevin Glenn Nealer, of Ohio.

Edwin Richard Nolan, Jr., of Massachusetts.

Robert Lloyd Norman, of Ohio.

David Alan Ochmanek, of New Jersey.

Maria Luisa Otero, of Puerto Rico.

E. Alan Platt, of Florida.

Richard E. Plues, of California.

Frank J. Rafalko, Jr., of Virginia.

Edith A. Reidy, of Virginia.

Phillip H. Ringdahl, of Virginia.

Hazel L. Robinson, of Pennsylvania.

Stanley Herman Robinson, of New Jersey.

Harold R. Rooks, Jr., of Virginia.

David Henry Rundell, of Delaware.

Frederick W. Rustmann, Jr., of Florida.

Royal Lawrence Rutter, Jr., of Virginia.

Elida F. Sánchez, of Virginia.

Robin Renee Sanders, of New York.

Brenda Brown Schoonover, of California.

Thomas E. Shealy, of Virginia.

Dona Phelps Sherman, of Maryland.

Rosemary J. Silvia, of Virginia.

Douglas R. Smith, of Texas.

Edward Thomas Smith, of the District of Columbia.

Gabrielle Margaret Solleder, of New York.

G. Jean Soso, of California.

Madelyn Elizabeth Spirnak, of the District of Columbia.

William N. Stevens, of Maryland.

Gordon John Stirling, of Utah.

David S. Stott, Jr., of Virginia.

Raymond W. Suarez, of Massachusetts.

Shaun D. Sullivan, of Florida.

Maria Alexandra G. Sundquist, of New York.

Lisa M. Tender, of Massachusetts.

Scott Norris Thayer, of California.

Linda Carol Turner, of Virginia.

Margaret E. Vaeth, of the District of Columbia.

Juan F. Valadez, of Maryland.

Richard C. Vandiver, of Virginia.

Kurt A. Wagner, of Illinois.

Ruth A. Whiteside, of Texas.

Charlotte M. Williams, of California.

Robert M. Witajewski, of California.

Karl Edwin Wycoff, of Georgia.

Stephen Markley Young, of New Hampshire.

Peter Jay Zabriskie, of the District of Columbia.

Foreign Service reserve officers to be consular officers of the United States of America:

Gary Lee Caldwell, of Virginia.

Clifton W. Flowers, of Virginia.

Ronald J. Kelly, of New York.

John E. Kwiatkowski, of Ohio.

Charles V. North, of New Mexico.

Paul L. Smith, of California.

Foreign Service Reserve Officers to be Secretaries in the Diplomatic Service of the United States of America:

Stephen R. Bond, of the District of Columbia.

Robert G. Pelikan, of Maryland.

Theodore Riccardi, Jr., of New Jersey.

Foreign Service Staff Officer to be a Consular Officer of the United States of America:

Stephen R. Cromwell, of Wisconsin.

For promotion from a Foreign Service Officer of class 6 to class 5, effective May 23, 1980:

Louis A. McCall, of Ohio.

U.S. NAVY

The following-named Navy Enlisted Scientific Education Program candidates to be appointed permanent ensign in the line or staff corps of the U.S. Navy, subject to qualification therefor as provided by law:

Brunner, Glenn M.
Falkner, David E
Swerczek, Anthony G.
Duff, John M.
Piper, Glenn A., III

Theodore M. Hohl, Jr., civilian college graduate, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Randall A. Langston, ex-U.S. Navy officer, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

James L. Laubach, ex-U.S. Naval Reserve officer, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

The following-named U.S. Navy officers to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Mandel, Lloyd B.
Petit, William F.

The following-named civilian college graduates to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Espinosa, Alvaro J.
Miller, Edwin B.

The following-named U.S. Navy officers to be appointed temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Freeland, George R.
McKay, Hunter A.

Gregory J. Firman, ex-Naval Reserve officer, to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

Executive nominations received by the Senate September 15, 1980:

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

The following-named persons to be Representatives of the United States of America to the 21st session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Robin Duke, of New York.

Barbara W. Newell, of Massachusetts.

Elie Abel, of California.

John E. Fobes, of North Carolina.

John Hope Franklin, of Illinois.

The following-named persons to be Alternate Representatives of the United States of America to the 21st session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Sandra Lopez Bird, of New York.

Joseph D. Duffey, of the District of Columbia.

Kathleen Nolan, of California.

Beatrice Ranis, of Hawaii.

Roger Revelle, of California.

IN THE AIR FORCE

The following-named officers for promotion in the U.S. Air Force, under the appropriate provisions of chapter 839, title 10, United States Code, as amended.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Aarni, John C., Jr., [redacted].
Abbott, Frank D., Jr., [redacted].
Abela, Alexander A., [redacted].
Abrams, Fredric L., [redacted].
Abrams, Kenneth H., Jr., [redacted].
Adams, Robert G. S., [redacted].
Adams, Thomas R., [redacted].
Addison, John M., [redacted].
Adkins, John B., [redacted].
Adler, John W., [redacted].
Ahearn, Francis W., [redacted].
Ahern, Donald E., [redacted].
Aitken, Douglas B., [redacted].
Aldrian, Frederic L., [redacted].
Alexander, Jon R., [redacted].
Alexander, Roger S., [redacted].
Alexander, Thomas W., [redacted].
Alison, Thomas M., [redacted].
Allen, Lewis H., III, [redacted].
Allen, Mervin B., [redacted].
Almquist, Tommy B., [redacted].
Alverson, Don L., [redacted].
Ambrosia, Andy L., [redacted].
Amdor, Stephen L., [redacted].
Amodeo, James M., [redacted].
Andersen, Richard D., [redacted].
Anderson, David S. J., [redacted].
Anderson, Frederic M., [redacted].
Anderson, Glen M., [redacted].
Anderson, James A., [redacted].
Anderson, James C., [redacted].
Anderson, Reed M., [redacted].
Anderson, Richard D., [redacted].
Anderson, Robert M., [redacted].
Anderson, Ruth M., [redacted].
Andre, Jerome P., [redacted].
Andrlik, Jerry E., [redacted].
Angell, John E., Jr., [redacted].
Angstadt, Howard J., Jr., [redacted].
Ankeney, Lawrence A., [redacted].
Archibald, Harold A., [redacted].
Arnold, John E., [redacted].
Arrison, John R., [redacted].
Aschenbrenner, Gerald A., [redacted].
Ash, Robert K., Jr., [redacted].
Ashbaugh, Dennis M., [redacted].
Astor, Wally G., [redacted].
Atkins, William D., Jr., [redacted].
Atkinson, Lynn A., [redacted].
Atwood, Argyle P., Jr., [redacted].
Averill, Thomas D., [redacted].
Ayoub, Fred M., [redacted].
Bailey, Edward L., Jr., [redacted].
Baker, Vincent T., [redacted].
Baldwin, David L., [redacted].
Baldwin, Ronald L., [redacted].
Ball, David C., [redacted].
Ball, James A., [redacted].
Bandy, John W., [redacted].
Banks, William M., Jr., [redacted].
Barbeau, Jack W., [redacted].
Bardal, Eugene A., [redacted].
Barger, Edward L., [redacted].
Barker, John K., [redacted].
Barnes, Albert M., [redacted].
Barnes, Peter A., [redacted].
Barnes, William J., Jr., [redacted].
Barnett, Francis V., Jr., [redacted].
Bartanowicz, Robert S., [redacted].
Bartels, Richard L., [redacted].
Bartholomew, Raymond J., [redacted].
Barton, Charles D., [redacted].
Barton, James B., [redacted].
Bash, Donald C., [redacted].
Bash, James C., [redacted].
Bashant, Ronald W., [redacted].
Bass, David, [redacted].
Bateman, John P., [redacted].
Batt, William P., [redacted].
Battle, Thomas S., [redacted].

Bean, John E., [redacted].
Beard, Donaldson E., [redacted].
Beard, Preston S., [redacted].
Beasley, John T., [redacted].
Beavers, James L., III, [redacted].
Beavers, William W., [redacted].
Beckom, Edwin A., III, [redacted].
Becker, Leo E., [redacted].
Bednarz, Michael H., [redacted].
Beggs, Paul L., [redacted].
Bell, Harvey B., [redacted].
Bell, Jack D., [redacted].
Bell, Larry A., [redacted].
Bender, William C., [redacted].
Benham, Clarence, Jr., [redacted].
Benson, David E., [redacted].
Benson, John D., [redacted].
Berberek, Edward, Jr., [redacted].
Bergeman, Gerald M., [redacted].
Berger, Charlie T., [redacted].
Bergeson, Michael B., [redacted].
Bernardi, Richard A., [redacted].
Berning, William V., [redacted].
Best, Donald L., [redacted].
Bettis, Jerry R., [redacted].
Beu, Norman J., [redacted].
Bexfield, James N., [redacted].
Billones, Louis R., [redacted].
Binford, Eugene E., [redacted].
Bishop, Donald W., [redacted].
Bivens, George W., [redacted].
Black, William S., Jr., [redacted].
Blackman, Barry A., [redacted].
Blankenship, James E., [redacted].
Bliemel, Jeffrey J., [redacted].
Block, William H., [redacted].
Bloom, Leonard O., [redacted].
Bluford, Guion S., Jr., [redacted].
Boles, James D., [redacted].
Bolz, Larry F., [redacted].
Bondaruk, Henry A., Jr., [redacted].
Bonham, Frank A., [redacted].
Boniface, George B., Jr., [redacted].
Bonner, Barry D., [redacted].
Boots, Robert J., [redacted].
Borah, Steve B., [redacted].
Bormann, Charles F., [redacted].
Boston, William E., III, [redacted].
Bottomley, James A., [redacted].
Bouma, Eugene F., [redacted].
Bounds, Michael S., [redacted].
Bousek, Ronald R., [redacted].
Bowen, James A., Jr., [redacted].
Bowen, Ronald S., [redacted].
Bower, Robert C., [redacted].
Bowers, John V., Jr., [redacted].
Bowse, John R., [redacted].
Boyce, Joseph B., Jr., [redacted].
Boyd, Sterling W., [redacted].
Boyer, Winfred R., [redacted].
Bracci, Peter G., [redacted].
Bradford, Gregory H., [redacted].
Bradley, Roger C., [redacted].
Bragg, James J., [redacted].
Branch, Robert C., III, [redacted].
Brantner, John A., [redacted].
Braswell, Nancy S., [redacted].
Brauer, Richard F., Jr., [redacted].
Bream, Joseph R., [redacted].
Breedlove, Phillip G., [redacted].
Brekke, Ronald H., [redacted].
Bremer, John R., [redacted].
Brenneman, Richard C., [redacted].
Bristow, Vincent L., [redacted].
Britan, Joseph K., [redacted].
Brittingham, James H., [redacted].
Brook, Gary W., [redacted].
Brooks, David H., [redacted].
Brothers, Alfred S., Jr., [redacted].
Browder, Thomas M., Jr. [redacted].
Brower, Stephen A., [redacted].
Brown, Durward D., [redacted].
Brown, Edward F., [redacted].
Brown, James S., [redacted].
Brown, John O., [redacted].
Brown, Nelson C., [redacted].
Brown, Raymond G., [redacted].
Brown, Richard C., [redacted].
Brown, Robert H., [redacted].
Brown, Wayne D., [redacted].
Brown, William J., [redacted].
Brunson, Roy E., [redacted].
Buck, Donald L., [redacted].
Bukauskas, Louis J., Jr., [redacted].
Bump, David G., [redacted].
Bunce, Charles N., [redacted].
Burchfield, Edward L., [redacted].
Burger, Norman A., [redacted].
Burns, Nicholas J., [redacted].
Burrow, Jerry G., [redacted].
Burrows, William E., [redacted].
Busek, Joseph R., Jr., [redacted].
Buttross, David A., [redacted].
Buzzell, Robert L., [redacted].
Byers, Norman P., [redacted].
Caffo, John A., [redacted].
Cagle, Donald R., [redacted].
Cahill, Lawrence J., Jr., [redacted].
Calabrese, Louis, [redacted].
Callanan, Anthony P., [redacted].
Callens, Pierre A., [redacted].
Calligan, Patrick J., [redacted].
Camburn, Gilbert L., [redacted].
Cantrell, Ronald L., [redacted].
Cantrell, Zell O., [redacted].
Cantwell, John L., [redacted].
Capps, Thomas E., [redacted].
Cardea, George C., [redacted].
Carl, Joseph W., [redacted].
Carney, James F., Jr., [redacted].
Carpenter, Newton I., Jr., [redacted].
Carpenter, Thomas E., [redacted].
Carr, Michael L., [redacted].
Carr, Virgil J., Jr., [redacted].
Carriger, Henry N., [redacted].
Carson, Phillip L., [redacted].
Casciano, John P., [redacted].
Case, Robert E., [redacted].
Case, Roger S., Jr., [redacted].
Casey, Francis J., [redacted].
Casey, Jerome C., [redacted].
Cashel, William F., [redacted].
Caskey, Billie R., [redacted].
Casper, John H., [redacted].
Castell, Harold L., [redacted].
Castro, Benjamin H., [redacted].
Cates, Robert L., [redacted].
Catherwood, Michael I., [redacted].
Cathey, William H., [redacted].
Cauley, Robert F., [redacted].
Caviness, Jesse C., Jr., [redacted].
Cecchini, Maurice J., [redacted].
Cermele, Michael J., [redacted].
Cesarotti, William L., [redacted].
Chambers, John F., Jr. [redacted].
Charlton, Hugh. J., [redacted].
Chepolis, William M., [redacted].
Cherney, Thomas J. [redacted].
Cherry, Charles E., [redacted].
Chojnacki, Raymond, [redacted].
Christman, Noel J. [redacted].
Christopher, Robert L., [redacted].
Chumbley, George W., [redacted].
Cirino, Alan B., [redacted].
Clamon, James A., [redacted].
Clark, Howard A., [redacted].
Clark, James C., [redacted].
Clark John D., [redacted].
Clark, Kenneth H., II [redacted].
Clark, Richard D., [redacted].
Clark, Walter F., [redacted].
Clark, William E., Jr., [redacted].
Clarke, Sidney H., [redacted].
Claxon, Lynn R., [redacted].
Cleland, Thomas E., Jr., [redacted].
Clippinger, William C., Jr., [redacted].
Cliver, Jeffrey G., [redacted].
Clouse, Gary K., [redacted].
Coberly, Camden A., II, [redacted].
Cochoy, Robert E., [redacted].
Cochran, James E., [redacted].
Cockerham, Warren E. [redacted].
Codling, James G., [redacted].
Codron, Barry J., [redacted].
Cogburn, Thomas M., [redacted].
Coglitore, Sebastian F., [redacted].
Cole, Alvin J., III, [redacted].
Cole, Richard T., [redacted].
Cole, Robert A., [redacted].
Coleman, Charles B., III, [redacted].
Colley, William M., [redacted].
Cone, Wallis D., Jr., [redacted].
Conklin, David A., [redacted].
Conlan, George I., [redacted].
Conn, John C., Jr., [redacted].
Conn, Richard D., [redacted].
Connor, Michael A., [redacted].
Conques, Duane L., [redacted].
Contreras, Raymond T., [redacted].
Cook, Gordon L., [redacted].
Cook, Peter A., [redacted].
Cook, Robert O., [redacted].
Cookson, Gerard D., [redacted].
Cooper, Wallace E., Jr., [redacted],
Cope, Robert S., [redacted].
Corbett, James D., [redacted].
Corbin, Wayne W., [redacted].
Cords, Robert D., [redacted].
Corley, William D., Jr., [redacted].
Cosnowski, Walter J., Jr., [redacted].
Cossa, Anthony J., Jr., [redacted].
Coullahan, Richard, [redacted].
Courington, Felix N., [redacted].
Courter, Robert J., Jr. [redacted].
Covey, Richard O., [redacted].
Cowan, George M., [redacted].
Cowell, Myron D., [redacted].
Cox, Edward L., Jr., [redacted].
Cox, George W., [redacted].
Craig, William E., [redacted].
Crimmins, Francis T., [redacted].
Crisler, Robert C., [redacted].
Crosby, Paul S., [redacted].
Cross, Jack P., [redacted].
Crowell, Lorenzo M., Jr., [redacted].
Crowther, Gary E., [redacted].
Crump, Ronald S., [redacted].
Crumpler, Walter M., [redacted].
Cummings, Allan V., [redacted].
Cummings, James A., [redacted].
Cusano, Jack D., [redacted].
Daday, John E., [redacted].
Damiano, Michael R., [redacted].
Dampman, William A., [redacted].
Daniel, Terry A., [redacted].
Daschbach, Thomas M., [redacted].
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Davids, John H., [redacted].
Davies, John O., [redacted].
Davies, Robert R., [redacted].
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Davison, Geoffrey R., [redacted].
Day, David A., [redacted].
Dayton, Douglas K., [redacted].
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Debellevue, Charles B., [redacted].
Deberg, Oak H., [redacted].
Decker, Ronald C., [redacted].
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Deen, William K., [redacted].
Degrande, Joe, Jr., [redacted].
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Demuth, Stephen H., [redacted].
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Desantis, Dom A., Jr., [redacted].
Desbrisay, Thomas D. [redacted].
Deyoung, Lance G., [redacted].
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Dielman, Terry L., [redacted].
Dilley, Harvey L., [redacted].
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Dimity, Charles F., [redacted].
Divingnzzo, Sam M., [redacted].
Dix, Louis O., [redacted].
Dixon, John K., Jr., [redacted].
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Dose, Daniel C., [redacted].
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Drew, Ernest R., III, [redacted].

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Dryden, Joseph W., Jr., [redacted].
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Holoviak, Daniel R. J., [redacted].
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Holt, Joseph H., Jr., [redacted].
Holycross, Thomas W., Jr., [redacted].
Homoki, Stephen W., [redacted].
Hooghkirk, William G., [redacted].
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Jefferies Chris L., [redacted].
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Justice, John A., [redacted].
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Moelmann, John B., [redacted].
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Mokuau, Norma L. K., [redacted].
Monroe, Earle S., [redacted].
Moody, Donald J., [redacted].
Mooney, Robert W., [redacted].
Moore, Evans W., Jr., [redacted].
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Morrow, Ronnie K., [redacted].
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O'Hara, Joseph, III, [redacted].
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Pence, Gary W., [redacted].
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Perry, Wilbert D., [redacted].
Peschier, John, Jr., [redacted].
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Phillips, James M., [redacted].
Phillips, Leon D., [redacted].
Phillips, Michael A., [redacted].
Phillips, Richard F., [redacted].
Pichon, Allen A., Jr., [redacted].
Pickard, Donald S., [redacted].
Pickering, Herbert T., Jr., [redacted].
Pilonetti, Dennis M., [redacted].
Pinkerton, James, Jr., [redacted].
Plank, Thomas H., [redacted].
Platt, James H., [redacted].
Poast, John E., II, [redacted].
Poch, Keith F., [redacted].
Podzimek, Robert G., [redacted].
Poier, James A., [redacted].
Poli, David R., [redacted].
Poling, Richard L., [redacted].
Pollack, Melvin, [redacted].
Poole, Luther A., [redacted].
Pope, Larry E., [redacted].
Poppe, Paul A., [redacted].
Posey, James N., [redacted].
Post, Richard E., [redacted].
Pothier, John L., [redacted].
Prahler, David C., [redacted].
Prenez, Jon E., [redacted].
Press, Michael C., [redacted].

Price, Don R., [redacted].
Price, Robert H., Jr., [redacted].
Price Simon G., [redacted].
Prose, Larry N., [redacted].
Puffer, Joseph M., Jr., [redacted].
Pulis, Derrell R., [redacted].
Purcell, David E., [redacted].
Putz, Victor B., [redacted].
Pyrz, Anthony P., [redacted].
Quarles, Charles E., Jr., [redacted].
Quine, Dennis H., [redacted].
Quinn, Patrick M., [redacted].
Raby, John M., [redacted].
Rademacher, John T., [redacted].
Ralston, Lynn B., [redacted].
Ramage, Richard H., [redacted].
Randle, John A., Jr., [redacted].
Rankin, Thomas S., [redacted].
Rasinski, John E., [redacted].
Ratcliffe, Stephen J., [redacted].
Ratledge, John R., [redacted].
Raub, Eugene L., [redacted].
Ray, Hubert L., [redacted].
Ray, Lawrence L., [redacted].
Reavey, Michael F., [redacted].
Redifer, Eric L., [redacted].
Reed, Charles K., [redacted].
Reed, Perry A., Jr., [redacted].
Reid, John J., [redacted].
Reiner, Errol G., [redacted].
Reinholt, Jerome J., [redacted].
Reisinger, Robert P., [redacted].
Reitinger, John P., [redacted].
Reynolds, Charles L., [redacted].
Reynolds, Duane B., [redacted].
Reynolds, Kenneth R., [redacted].
Rhode, Storm C., III, [redacted].
Rice, David C., [redacted].
Richards, Hugh J., [redacted].
Richards, James M., III, [redacted].
Richardson, Phillip A., [redacted].
Richey, David M., [redacted].
Richmond, George M., II, [redacted].
Riddell, Matthew A., [redacted].
Rider, Edwin W., [redacted].
Ridnouer, Dennis M., [redacted].
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Rigel, Raymond L., [redacted].
Riggar, Larry E., [redacted].
Riggs, John W., [redacted].
Rigoli, Daniel, [redacted].
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Robbins, Robert R., [redacted].
Robertson, Clinton B., [redacted].
Robson, David K., Jr., [redacted].
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Rockett, Richard L., [redacted].
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Rust, Harold L., [redacted].
Rutter, John S., [redacted].
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Sabin, Marc L., [redacted].
Saboski, Arthur, [redacted].
Sabraw, John C., [redacted].
Sackett, James W., [redacted].
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Salcido, Henry A., Jr., [redacted].
Salmon, Roy F., [redacted].
Sammon, Bobby G., [redacted].
Sams, John B., Jr., [redacted].
Sanborn, Larry K., [redacted].
Sanders, Emmett W., Jr., [redacted].
Sanders, Van C., Jr., [redacted].
Saulsberry, Thomas L., [redacted].
Sauter, Albert H., II, [redacted].
Savage, William C. G., Jr., [redacted].
Saxer, Charles P., [redacted].
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Schaab, Richard W., [redacted].
Scharf, Richard L., [redacted].
Schaumburg, Glenn R., [redacted].
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Schor, Frederick D., [redacted].
Schroeder, Leroy B., [redacted].
Schroeder, Ted, [redacted].
Schwarz, Frederick W., [redacted].
Schweizer, Alvin C., II, [redacted].
Schwenke, Richard T., [redacted].
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Scott, Rolland A., [redacted].
Seares, David F., [redacted].
Segars, Robert J., [redacted].
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Shehi, Phillip C., [redacted].
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Sherman, Frank V., [redacted].
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Showell, Charles H., Jr., [redacted].
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Strunk, Richard R., [redacted].
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Sublett, Kenny W., [redacted].
Suchy, Russell J., [redacted].
Sugg, Joseph P., [redacted].
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Suo, James S., [redacted].
Supp, Peter L., [redacted].
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Vernlund, Robert N., [redacted].
Villarreal, Lorenzo, II, [redacted].
Vining, Gordon G., [redacted].
Viscasillas, Philip A., [redacted].
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Vise, Carrell D., [redacted].
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Whitman, Philip E., [redacted].
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Williams, Tereld T., [redacted].
Willis, Albert H., [redacted].
Willoughby, David J., [redacted].
Willoughby, James S., [redacted].
Wilson, Bennie J., III, [redacted].
Wilson, Calvin J., [redacted].
Wilson, Joseph C., Jr., [redacted].
Wilson, Robert S., [redacted].
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Winchester, Robert O., [redacted].
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Woelz, Karl J., [redacted].
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Woodworth, Donald A., Jr., [redacted].
Woody, John W., [redacted].
Worden, Douglas L., [redacted].
Wortham, George E., [redacted].
Wright, Garth A., [redacted].
Wright, James R., [redacted].
Wright, Karen S., [redacted].
Wright, Michael J., [redacted].
Wyman, William A., [redacted].
Wyraz, Edward M., Jr., [redacted].
Yabui, Alan E., [redacted].
Yaunches, George J., [redacted].
Yeager, Rodney A., [redacted].
Yonker, Dale B., [redacted].
Young, George O., III, [redacted].
Zadareky, Joseph T., II, [redacted].
Zaleski, Andrew A., II, [redacted].
Zalocusky, Michael N., [redacted].
Zartman, James L., [redacted].
Zielinski, Stanley J., Jr., [redacted].
Zisch, Waldemar C., [redacted].
Zody, James G., [redacted].
Zucchetti, Robert, [redacted].
Zucker, Richard A., [redacted].

CHAPLAIN CORPS

Ashley, Michael D., [redacted].
Bagge, Carl J., [redacted].
Bauer, Jack A., [redacted].
Beckstrom, Edward A., [redacted].
Beeson, Gilbert W., Jr., [redacted].
Bilderback, Carl E., [redacted].
Carter, Wilton C., [redacted].
Chumley, Theodore R., Jr., [redacted].
Colohan, Edward A., [redacted].
Costagliola, Salvatore M., [redacted].
Gallagher, Ronald E., [redacted].
Hockaday, Albert A. L., [redacted].
Horton, Carl E., [redacted].
Jensen, Harold M., [redacted].
Koch, Glenn A., [redacted].
Lenihan, John P., [redacted].
Nielsen, Ralph R., [redacted].
O'Rourke, Thomas J., [redacted].
Quandt, Walter H., [redacted].
Ramsey, Kenneth C., [redacted].
Reynolds, Marion S., Jr., [redacted].
Rockenstein, James E., Jr., [redacted].
Sumpter, Ronald K., [redacted].
Thomas, Arthur S., [redacted].
Wawrzynski, Edward A., [redacted].
Weiss, Everett L., [redacted].

JUDGE ADVOCATE

Anderson, Tim G., [redacted].
Brasel, Jerry M., [redacted].
Callinan, Michael C., [redacted].
Carnahan, Burrus M., [redacted].
Christie, William J., II, [redacted].
Concannon, Milourn K., Jr., [redacted].
Corbin, Norman L., [redacted].
Davidson, John P., [redacted].
Debey, A. B., [redacted].
Donat, James L., [redacted].
Dumerer, James E., [redacted].
Durham, Bryant L., [redacted].
Edwards, Carl E., Jr., [redacted].
Egeland, Andrew M., Jr., [redacted].
Elliott, William R., Jr., [redacted].
Emerson, Michael R., [redacted].
Finley, Gordon B., Jr., [redacted].
Fowler, Henry P., Jr., [redacted].
Hoppe, Allen B., [redacted].
Hornbrook, Edwin F., [redacted].
Humphreys, Warren P., [redacted].
Johnson, Phillip A., [redacted].
Laedlein, Charles E., III, [redacted].
Lahendro, Albert L., [redacted].
Leonard, Robert H., [redacted].
Miller, James E., [redacted].
Moran, Francis S., Jr., [redacted].
Novak, Richard A., [redacted].
Puett, Jimmy D., [redacted].
Purdon, Richard L., [redacted].
Ranciglio, Alessandro J., [redacted].
Rasher, Donald C., [redacted].
Rothenburg, Richard F., [redacted].
Russell, Robert H., II, [redacted].
Schilling, Edwin C., III, [redacted].
Schlechter, Alvin E., [redacted].
Shockley, Larry G., [redacted].
Silliman, Scott L., [redacted].
Smallridge, Gary C., [redacted].
Smith, Wendell K., [redacted].
Sweeney, Howard P., [redacted].
Sweeney, Patrick C., [redacted].
Warren, Stephen A., [redacted].
Wheeler, Jon S., [redacted].
Wickham, Richard J., [redacted].
Willis, William T., [redacted].
Wolfe, Norman K., [redacted].
Worley, William H., Jr., [redacted].

NURSE CORPS

Allen, Ann M., [redacted].
Anderson, Dorothy A., [redacted].
Anderson, Robert J., [redacted].
Barrow, Joyce M., [redacted].
Bowar, David R., [redacted].
Burke, Margaret M. C., [redacted].
Christiansen, Shirley A., [redacted].
Davis, Barbara M., [redacted].
Davis Bettye H., [redacted].
Davis, Dian J., [redacted].
Geiselman, Vivian J., [redacted].
Gruber, Edward P., [redacted].
Hoskin, Diane J., [redacted].
Hotop, Marcella C., [redacted].
Hull, Kathleen V., [redacted].
Hyre, Elva M., [redacted].
Jason, Marie E., [redacted].
Jones, Charles E., [redacted].
Kucinkas, Chris M., [redacted].
Leffel, Mary S., [redacted].
Lyons, Geraldine E., [redacted].
Maroon, Hana J., [redacted].
Matas, Irene M., [redacted].
Payne, Margaret L., [redacted].
Piccolella, Joseph A., [redacted].
Porter, Patricia A., [redacted].
Powers, Helen A., [redacted].
Reichenbach, Georgianna, [redacted].
Reilly, Joanna D., [redacted].
Rogers, Bonnie P., [redacted].
Schafer, Leah L., [redacted].
Smith, Elaine R., [redacted].
Taylor, Carol A., [redacted].
Wilder, Barbara E., [redacted].

MEDICAL SERVICE CORPS

Armstrong, George M., III, [redacted].
Avants, Mervin T., Jr., [redacted].
Bateman, Val Jr., [redacted].
Bates, Thomas G., [redacted].
Beaty, John R., [redacted].
Blansett, Randy S., [redacted].
Bristow, Charles L., [redacted].

Burke, Roger L., [redacted].
Ciminelli, Lawrence W., [redacted].
Degroot, Edward B., III, [redacted].
Dick, William W., [redacted].
Drummond, Robert D., [redacted].
Emigh, John L., [redacted].
Fincher, James C., Jr., [redacted].
Forister, Thomas C., [redacted].
Heuckendorf, Richard P., [redacted].
Jacobson, Philip E., Jr., [redacted].
Lake, Jerome P., [redacted].
Langenberg, Stephen L., [redacted].
Meyer, Alvin F., III, [redacted].
Moran, Frank E., [redacted].
Nelson, Steven P., [redacted].
Nordquist, Frederick J., [redacted].
Oatley, Theodore W., [redacted].
Ortmann, Fred W., III, [redacted].
Poston, Thomas D., [redacted].
Powers, William J., [redacted].
Renn, Benjamin C., [redacted].
Renn, Michael G., [redacted].
Schumann, Thomas R., [redacted].
Solesbee, Billy R., [redacted].
Squires, Darrell R., [redacted].
Vorpahl, Thomas E., [redacted].

BIOMEDICAL SCIENCES CORPS

Anderson, Gary D., [redacted].
Banner, Edwin C., III, [redacted].
Brown, Mary L., [redacted].
Carter, Malcolm J., [redacted].
Chambers, Mildred J., [redacted].
Hammond, John M., [redacted].
Harropschumacher, Patricia, [redacted].
Kaylin, Bernice M., [redacted].
Krieg, Richard E., Jr., [redacted].
Leftwich, Marion W., Jr., [redacted].
Mammeli, Bruce H., [redacted].
McLean, Jerry A., [redacted].
Murray, Joseph D., [redacted].
Myers, Milo G., [redacted].
Nuss, David A., [redacted].
Patterson, William E., [redacted].
Pettit, Robert A., [redacted].
Rock, James C., [redacted].
Schwarz, James G., [redacted].
Shafer, Richard L., [redacted].
Smith, William B., [redacted].
Thelen, Terry J., [redacted].
Turner, Ronald W., [redacted].
Valder, Stephen M., [redacted].
Wansky, Michael A., [redacted].

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be major

Adams, Robert G. S., [redacted].
Ambrosia, Andy L., [redacted].
Anderson, James A., [redacted].
Anderson, Ruth M., [redacted].
Averill, Thomas D., [redacted].
Battle, Thomas S., [redacted].
Benham, Clarence, Jr., [redacted].
Bormann, Charles F., [redacted].
Bowen, James A., Jr., [redacted].
Boyer, Winfred R., [redacted].
Bradford, Gregory H., [redacted].
Brown, Richard C., [redacted].
Calligan, Patrick J., [redacted].
Carr, Virgil J., Jr., [redacted].
Cords, Robert D., [redacted].
Crisler, Robert C., [redacted].
Davis, Rodney G., [redacted].
Ellis, Charles W., [redacted].
Evans, Ellis R., [redacted].
Ford, John T., [redacted].
Frantz, James R., [redacted].
Fry, Kent G., [redacted].
Fuller, Robert A., [redacted].
Gillaspy, Edward D., [redacted].
Grover, Melvin G., Jr., [redacted].
Harrington, Gary L., [redacted].
Hohn, Theodore A., [redacted].
Holley, Thurston C., [redacted].
Huber, Terrence J., [redacted].
Janson, Gotthard, III, [redacted].
Johnson, Robert W., [redacted].
Kelly, John H., [redacted].
Knox, Michael R., [redacted].
Ledbetter, David P., [redacted].
Lee, Jack W., [redacted].
Leo, Alfred F., [redacted].
Lewis, Roger W., [redacted].
Lewis, Roosevelt J., Jr., [redacted].
Lloyd, Theodore A., Jr., [redacted].
Lubin, Herbert, [redacted].
MacGregory, James R., [redacted].
Malvaso, Patrick J., [redacted].
McAtee, Philip M., [redacted].
McGowan, Robert W., [redacted].
McLeod, Raymond W., [redacted].
Mohre, John L., II, [redacted].
Mokuau, Norma L. K., [redacted].
Nagy, Stephen J., [redacted].
Pearson, Donald J., [redacted].
Pothier, John L., [redacted].
Reid, John J., [redacted].
Ritenour, John J., Jr., [redacted].
Sabraw, John C., [redacted].
Shaughnessy, Dale J., [redacted].
Shealy, Phillip T., [redacted].
Showell, Charles H., Jr., [redacted].
St. John, James B., [redacted].
Strasser, Robert R., [redacted].
Strickland, Daniel Z., Jr., [redacted].
Strider, Samuel F., [redacted].
Sullivan, John J., [redacted].
Suo, James S., [redacted].
Thompson, William S., [redacted].
Tucker, Victor L., Jr., [redacted].
Veranes, Ernest R., [redacted].
Wilkin, Stephen W., [redacted].
Wilson, Robert S., [redacted].
Wright, Garth A., [redacted].
Wyman, William A., [redacted].

To be captain

Brantner, John A., [redacted].
Gordon, Harold, [redacted].

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

CHAPLAIN

To be major

Neilsen, Ralph R., [redacted].

JUDGE ADVOCATE CORPS

To be major

Smith, Wendell K., [redacted].

NURSE CORPS

To be captain

Hyre, Elva M., [redacted].
Payne, Margaret L., [redacted].
Reilly, Joanna D., [redacted].

MEDICAL SERVICES CORPS

To be major

Lake, Jerome P., [redacted].
Moran, Frank E., [redacted].
Nordquist, Frederick J., [redacted].
Renn, Michael G., [redacted].
Vorpahl, Thomas E., [redacted].

BIOMEDICAL SCIENCE CORPS

To be major

Nuss, David A., [redacted].
Schwarz, James G., [redacted].

IN THE NAVY

The following-named commander of the U.S. Navy for temporary promotion to the grade of captain in the Chaplain Corps, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualifications therefor as provided by law:

Holwager, Philip J.

The following-named lieutenant of the U.S. Navy for temporary promotion to the grade of lieutenant commander in the Medical Corps, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualifications therefor as provided by law:

Long, Kenneth W.

The following-named lieutenants (junior grade) of the U.S. Navy for temporary promotion to the grade of lieutenant in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5769 (line officers), 5773 (staff corps officers), and 5791, subject to qualifications therefor as provided by law:

LINE

Allison, David S.
Balsley, Jon B.
Bauer, David A.
Cathey, Ronald D.
Coe, Dennis L.
Collins, Patrick S.
Crandall, Robert A.
Dantonio, Robert
Gorrell, Walter H., Jr.
Gunderson, Scott A.
Hess, Bernard R.
Kanewske, Robert H.
Labella, John P.
Lage, Thomas D.
Lapating, Edward C.
Luginbuhl, Michael W.
Oberst, David R.
Paskulovich, Robert S.
Prior, George M.
Reeves, Jeffrey L.
Shinn, David M.
Taylor, Edward J.
Wilstrup, Steven L.

SUPPLY CORPS

Alderman, Robert B.
Pasqualucci, Joseph A.
Hagarty, James N.
Boyter, Henry G., III.
Perry, Will H., III.
Porter, David L.
Rieck, Dale C., Jr.
Robie, Craig M.

NURSE CORPS

Powers, Betty A.

The following-named commanders of the U.S. Navy for permanent promotion to the grade of commander in the line, pursuant to title 10, United States Code, sections 5780 and 5791, subject to qualification therefor as provided by law:

Nesbitt, Donald L.
Shaffer, Leslie V., II.

The following-named lieutenant commanders of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the line and staff corps, as indicated, pursuant to title 10, United States Code, sections 5780 (line officer), 5782 (staff corps officer), and 5791, subject to qualifications therefor as provided by law:

LINE

Pohle, James H.

CHAPLAIN CORPS

Cardon, Earl L.

The following-named woman lieutenant of the Chaplain Corps of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the Chaplain Corps of the U.S. Navy, pursuant to title 10, United States Code, sections 5771 and 5791, subject to qualification therefor as provided by law:

McFadden, Vivian P.

The following-named woman lieutenant (junior grade) of the Supply Corps of the U.S. Navy for permanent promotion to the grade of lieutenant in the Supply Corps of the U.S. Navy, pursuant to title 10, United States Code, sections 5771 and 5791, subject to qualification therefor as provided by law:

Hoch, Rita A.

HOUSE OF REPRESENTATIVES—*Monday, September 15, 1980*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. NATCHER).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
September 10, 1980.

I hereby designate the Honorable WILLIAM H. NATCHER to act as Speaker pro tempore on Monday, September 15, 1980.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Reverend Edward G. Latch, D.D., former Chaplain of the House of Representatives, offered the following prayer:

Depart from evil and do good: seek peace and pursue it.—Psalms 34:14.

O God, our Father, our help in ages past, our hope for years to come, and our strength for this present hour, enlighten our minds and lift our spirits that we may serve Thee and our Nation well this day. Bless our President, our Speaker, and these Representatives of our people that with wisdom and understanding they may continue to labor for peace in our world, unity in our Nation, and good will in the hearts of all. May those held captive in other lands be set free to return home to their loved ones, thus may ill will and injustice increasingly come to an end and good will and justice rise to new life in our world: to the glory of Thy holy name and the good of all mankind. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate agree to the amendments of the House to bills of the Senate of the following titles:

S. 261. An act to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities, to provide for the development of State plans to improve such facilities within the States or within a group of States acting together on a regional basis, and for other purposes; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3292. An act to assist the States in developing fish and wildlife conservation plans, and for other purposes; and

H.R. 7590. An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

The message also announced that the Senate insist upon its amendments to the bill (H.R. 7590) entitled "An act making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes," request a conference with the House on the disagreeing votes of the two Houses thereon, and appoint Mr. JOHNSTON, Mr. STENNIS, Mr. MAGNUSON, Mr. ROBERT C. BYRD, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. BURDICK, Mr. SASSER, Mr. DECONCINI, Mr. HATFIELD, Mr. YOUNG, Mr. SCHWEIKER, Mr. BELLMON, Mr. MCCLURE, Mr. GARN, and Mr. SCHMITT to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 123. Concurrent resolution authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810–1859" and "The Supreme Court Chamber, 1810–1860."

The message also announced that the Vice President, pursuant to Public Law 90–206, appointed from private life Edward P. Morgan and Robert P. Griffin to be members of the Commission on Executive, Legislative, and Judicial Salaries.

The message also announced that the Vice President and upon the recommendation of the majority and minority leaders, pursuant to the provisions of section 276 of title 22, United States Code, as amended by Public Law 95–45, appointed Mr. STAFFORD as chairman to the Interparliamentary Union Conference, to be held in Berlin, East Germany, September 16–24, 1980, vice Mr. WILLIAMS, resigned.

THIRD ANNUAL REPORT TO CONGRESS ON STATUS OF HEALTH INFORMATION AND HEALTH PROMOTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Interstate and Foreign Commerce:

To the Congress of the United States:

I transmit herewith the Third Annual Report to the Congress on the Status of Health Information and Health Promotion, as required by P.L. 94–317, the "National Consumer Health Information and Health Promotion Act of 1976."

JIMMY CARTER.

THE WHITE HOUSE, *September 12, 1980.*

CONSENT CALENDAR

The SPEAKER pro tempore. This is the day for the call of the Consent Calendar.

The Clerk will call the first bill on the Consent Calendar.

FEDERAL RECOGNITION OF MEMBERS OF NATIONAL GUARD OF THE VIRGIN ISLANDS IN GRADES ABOVE COLONEL

The Clerk called the bill (H.R. 5856) to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel.

There being no objection, the Clerk read the bill, as follows:

H.R. 5856

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (g) of section 307 of title 32, United States Code, is repealed.

● Mr. EVANS of the Virgin Islands. Mr. Speaker, I rise in support of H.R. 5856, legislation which I have introduced to allow Federal recognition of officers in the National Guard of the Virgin Islands, in grades above the rank of colonel.

This bill has been given the full support of the House Armed Services Committee, the Department of Defense, and the National Guard Association of the United States. Additionally, this bill would cause no increase in National Guard strength authorizations or budgetary requirements of the Department of Defense.

Mr. Speaker, of the 53 American jurisdictions to which a National Guard has been authorized, only the U.S. Virgin Islands is subject to a statutory restriction on the maximum grade in which its officers may be federally recognized. This restriction, as so stated in title 32, United States Code, section 307(g), prevents the adjutant general of the National Guard in the U.S. Virgin Islands from being federally recognized in general officer grade.

The U.S. Congress imposed this grade limitation initially because of the small size of the National Guard of the Virgin Islands, initially approximately 200 persons. Since that time, however, the Virgin Islands National Guard has grown to be a force of almost 1,000 persons, which is not that much smaller than the States of Nevada (1,121) and Wyoming (1,391).

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Moreover, the Virgin Islands is one of fewer than 10 jurisdictions which enlist 100 percent of their manpower allotment. At one time, we were one of only three jurisdictions to be fully subscribed.

Since the adjutant generals of the several States and territories collectively form the top leadership of the National Guard, I feel strongly that they should stand among themselves as equals.

As I mentioned earlier, this change does not involve any increased cost, and the original reason for this restriction no longer exists. It should, therefore, be removed, and I urge my colleagues to support this important piece of legislation.

Thank you.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CITY OF FAIRFAX

The Clerk called the bill (H.R. 2170) to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government.

There being no objection, the Clerk read the bill, as follows:

H.R. 2170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective October 1, 1980, there are authorized to be appropriated $41,958.78 to the Secretary of the Treasury who shall pay sums so appropriated to the city of Fairfax, Virginia, as reimbursement to the city for the legal expenses it incurred with respect to legal actions arising out of a 1971 entry into and search of a private building in the city by employees of the Federal Government.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EL DORADO NATIONAL FOREST

The Clerk called the bill (H.R. 6175) to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

There being no objection, the Clerk read the bill, as follows:

H.R. 6175

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to section 2 of this Act, the Secretary of Agriculture shall convey, without consideration, to any person, all right, title, and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be part of the El Dorado National Forest.

Such Forest Service surveys revealed that the boundaries of certain lots in the Kyburz Mountain Resort Unit Numbered 1 Subdivision, as depicted in the 1957 recorded surveyor's map of such subdivision, had been erroneously represented as extending approximately fifty-three to sixty-one feet inside property which was actually part of the El Dorado National Forest. Further, the area of land involved in this everlap consists of 1.684 acres, more or less.

SEC. 2. A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. For purposes of this Act, the term "1957 recorded surveyor's map", as used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

SEC. 4. The Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

With the following committee amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. (a) Subject to section 2 of this Act, the Secretary of Agriculture shall convey to any person, all right, title and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be a part of the El Dorado National Forest.

(b) Each person to whom property is conveyed pursuant to this Act shall reimburse the Secretary of Agriculture for all administrative expenses incident to such conveyance, and in addition shall pay to the United States the following:

(1) an amount equal to the acreage or fraction thereof of the property conveyed to such person, multiplied by the per-acre price for the remainder of the lot (exclusive of any improvements) referred to in paragraph (1) of subsection (a) of this section paid by such person or his predecessor in interest at the time of the original purchase of such lot after formation of the subdivision; and (2) if such person elects to receive title to the mineral interests in the property conveyed, the fair market value thereof; but if such person does not so elect, all such mineral interests shall be reserved to the United States.

SEC. 2. (a) A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. (a) For purposes of this Act, the term "1957 recorded surveyor's map," used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

(b) For purposes of this Act, the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

SEC. 4. Subject to valid existing rights, all mineral interests retained by the United States pursuant to section 1(b)(2) of this Act are hereby withdrawn from all forms of entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING INDIAN CLAIMS COMMISSION ACT

The Clerk called the bill (H.R. 7519) to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended.

There being no objection, the Clerk read the bill, as follows:

H.R. 7519

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049, 1050; 25 U.S.C. 70a), as amended, is further amended by striking the period at the end thereof, and inserting, in lieu thereof, a colon and the following: "*Provided,* That no money or property given to or funds expended gratuitously for the benefit of the claimant after June 30, 1951, shall be set off against any award to the claimant.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

DETERMINING INDIAN WILL TRANSFERS AND HEIRS

The Clerk called the Senate bill (S. 2223) to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons.

There being no objection, the Clerk read the Senate bill as follows:

S. 2223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that—

(1) as a result of the enactment by certain States of amendments to their intestate succession laws, members of Indian tribes within such States are restricted in their right to devise restricted Indian lands to their own children who are not classified as heirs at law under such amended intestate succession laws; and

(2) it is the policy of Congress to allow any Indian to devise restricted Indian lands and shares in the assets of any Indian tribe or corporation to his or her heirs or lineal descendants and other Indian persons eligible to hold land in trust.

SEC. 2. Section 4 of the Act of June 18, 1934, as amended (25 U.S.C. 464), is amended (1) by inserting in the first proviso clause immediately after the words "corporation or any heirs" the following: "or any lineal descendants", (2) after the words "of such member" insert "or to any Indian person who is recognized by the Secretary of the Interior as eligible to hold land in trust.".

With the following committee amendment:

Strike all after the enacting clause and insert the following:

That the first proviso of section 4 of the Act of June 18, 1934 (48 Stat. 984, 985; 25 U.S.C. 464), is amended by striking the phrase "or any heirs of such members" and inserting, in lieu thereof, the phrase "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust".

SEC. 2. (a) The second and third provisos contained in the paragraph entitled "Determining Heirs" in the Act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, and section 2 of the Act of December 24, 1942 (56 Stat. 1080, 1081; 25 U.S.C. 375b), are hereby repealed.

(b) The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section.

The committee amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

The SPEAKER pro tempore. This concludes the call of the eligible bills on the Consent Calendar.

GENERAL LEAVE

Mr. WHITE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 5856.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANOTHER LOSS OF CREDIBILITY

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, President Carter's decision certifying, as he was required to do under the Young amendment, that the Sandinista regime in Nicaragua is not supporting terrorism in Central America provides one more example where and why this administration is losing credibility with the American people.

For months there have been reports of military arms and other supplies going to terrorists in El Salvador and Guatemala by way of Nicaragua. Recent newspaper reports have described arguments within the administration over the assessment of Nicaragua's support for Central American terrorist groups.

I would have expected that on the basis of those conflicting reports the administration would have withheld a decision until there was proof positive that there was no Sandinista interference in neighboring countries. As it is now, the American people are left to believe that, congressional mandates aside, the Carter administration can manipulate intelligence analyses to suit its own political purposes.

And President Carter charges his opponent is inept in handling foreign policy issues.

☐ 1210

REAGAN AND CARTER TAX PROPOSALS ARE VERY DIFFERENT

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, as one reads the newspapers these days for commentary on the economic policies of the two major Presidential candidates, one is struck by an interpretation that seems rather strange; that is, the assertion that both proposals are virtually the same.

It seems that sometimes our memories are very short. But just a few months ago, President Carter was telling us that tax cuts could not possibly be achieved, that tax cuts were inflationary, and suggesting perhaps they might even be immoral. Suddenly, he has discovered the morality of it. But now we have the press telling us that Ronald Reagan is similar to Jimmy Carter in this respect.

I would invite the attention of my colleagues and the members in the media to a detailed review of these proposals to see that they are very different. I might also comment that one newspaper in my area, the LA Times, stated in an editorial yesterday that Governor Reagan's proposals are close to what Congress had in mind all along.

Mr. Speaker, as a Member of this body for 2 years, it comes as news to me that Congress had anything in mind in terms of tax cuts, because we have had scores of tax cut proposals before the Ways and Means Committee, which is controlled by the leadership of this House, and we have not even moved on them in 2 years. Now, as we approach the election, we in Congress somehow see the right in this.

GOVERNOR REAGAN IN EXCELLENT PHYSICAL CONDITION

(Mr. SOLOMON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I read over the weekend some unkind remarks—flippant remarks—by the Democratic Senate majority leader concerning the physical fitness of the Republican nominee for President, Gov. Ronald Reagan. I would just like to tell everybody here that I just saw the Governor run up 67 stair steps to address all of the Republican Members of this House on a unity meeting that we just held on the west front steps, which I think ought to dispel any of those irresponsible remarks.

Second, Mr. Speaker, I would like to challenge the Democratic majority to meet on the west steps with the President to defend his record over the last 3½ years. I doubt if anyone would show up.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 3(b) of rule XXVII, and clause 5(b) of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules and each question of passing bills or joint resolutions on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, September 16, 1980.

MARKETING ORDERS FOR WALNUTS AND OLIVES

Mr. COELHO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3765) to provide that orders issued by the Secretary of Agriculture under the Agricultural Adjustment Act respecting development projects designed to assist, improve, or promote the marketing, distribution, and consumption or production of walnuts may provide for any form of marketing promotion, including paid advertising, and for crediting certain direct expenditures of handlers for such promotion, as amended.

The Clerk read as follows:

H.R. 3765

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I), as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "walnuts," before "or tomatoes"; and

(2) by inserting "walnuts, olives," before "and Florida Indian River grapefruit".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. COELHO) will be recognized for 20 minutes, and the gentleman from Virginia (Mr. WAMPLER) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from California (Mr. COELHO).

GENERAL LEAVE

Mr. COELHO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous matter on the bill, H.R. 3765.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

● Mr. FOLEY. Mr. Speaker, I rise in support of H.R. 3765, a bill to provide that walnut marketing orders issued by the Secretary of Agriculture may provide for any form of marketing promotion, including paid advertising. In addition, the bill will permit walnut and olive marketing orders to provide for crediting the assessment obligation of each handler with all or any portion of such handlers direct expenditures for marketing promotion.

The United States is the world's leading walnut producer, and California is the Nation's leading producing State, accounting for over 97 percent of domestic commercial production. Thirty-five years ago the United States supplied 50 percent of the world walnut supply. Today the U.S. market share has reached 72 percent and projections for the 1980's indicate that domestic production will exceed 80 percent of the world supply. The California walnut industry, consisting of approximately 6,000 growers and 32 handlers, accounts for 97 percent of the U.S. production with a farm value of the crop approximating $170 million.

Orderly marketing has made it possible for growers to increase the supply available to the domestic market faster than the increase in U.S. population and also produce an exportable quantity that is currently providing over $60 million in annual export revenue. The California walnut industry currently exports over 83 million pounds of in-shell walnuts and 7 or 8 million pounds of shelled walnuts. Domestic consumption of shelled walnuts is over 80 million pounds annually.

The California walnut industry soon may be faced with record high crops far in excess of current domestic and export needs. Based on the current bearing acreage figures, and barring bad weather, California's 1979 crop could be a record in excess of 200,000 tons. Furthermore, in the years ahead, crops over 260,000 tons are possible due to the fact that 20 percent of the walnut acreage in California is currently nonbearing.

Enactment of H.R. 3765 would alleviate the projected supply-demand imbalance by encouraging increased promotional activities. The bill would authorize the marketing order to provide for the expenditure of assessment funds obtained from handlers for promotional activity such as generic advertising, public relations and the preparation and distribution of educational and recipe materials. The bill would also permit the marketing order to allow handlers to offset all or part of their direct marketing promotion expenditures against their asessments thereby encouraging handlers to maintain or develop their own marketing promotion activities.

A similar oversupply situation exists in the olive industry. Virtually all olive production in the United States is located in California. Although crop sizes have ranged widely, there has been an overall upward trend—1978 production at 126,000 tons, exceeded the previous record of 1976 by 46,000 tons or 58 percent.

This increased production has created serious problems for producers due to the relatively unique characteristics of olive production. Olive trees require between 8 and 10 years to reach bearing stage and some 20 years to reach maximum yield. Thereafter, if properly cared for, the trees have a production life of 100 years or more. Attempts to pick only a percentage of the crop are impractical because fruit which is left on the trees will adversely affect the following year's crop. These factors make it very difficult for producers to make short-term production adjustments. Therefore the olive industry must increase its promotional activities.

H.R. 3765 will greatly assist the olive industry by: First, providing incentives for handlers to advertise their product; second, encouraging coordination between generic and private label advertising; and third, creating a more stable marketing situation that is geared toward expansion. In addition, the bill will benefit consumers by assuring stable supplies and orderly marketing.

I ask all Members to join with me in supporting enactment of H.R. 3765.●

Mr. COELHO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, thank you for placing on the Suspension Calendar for consideration by the House today, H.R. 3765, the bill which I introduced to amend the Agricultural Adjustment Act to provide for inclusion of olives and walnuts in the Agricultural Marketing Agreement Act. Your bringing this to the House floor is appreciated by agricultural and consumer interests throughout the United States. A special word of thanks is in order for the House leadership on both sides of the aisle, and to my chairman, Mr. FOLEY, as well as our colleague Mr. RICHMOND who chairs the Subcommittee on Domestic Marketing, where the bill first received attention: and the gentleman from Virginia (Mr. WAMPLER), the ranking minority member.

This legislation has received the formal endorsement of the U.S. Department of Agriculture, inasmuch as it extends to handlers of these two commodities the same treatment for marketing promotion, including paid advertising, that is extended under present law to other crops such as almonds. By providing for crediting of certain direct expenditures, markets for olives and walnuts can be expanded. With the record high production of these crops, the surplus inventories of growers and processors will be reduced adding some semblance of order to the market for these goods.

Already Federal marketing programs are in effect for 21 fruit, vegetable, and tree nut commodities. Promotional activities such as generic advertising, public relations, or the preparation and distribution of educational and recipe materials to home economists, schools, food editors, or the general public are not only a part of Federal agricultural policy, but practiced in many States with identical programs. In some States research and promotion acts are passed for a single commodity and special commissions are established to administer marketing orders and promotional activities.

The United States is the world's largest walnut producer and California is the Nation's leading producing State, accounting for over 97 percent of the domestic commercial production. California also produces 100,000 tons of olives annually for a domestic consumption of 60,000 tons. With increasing competition from several of the Mediterranean countries and escalating costs in wages and technology, the U.S. industry is struggling to survive against the subsidized production of Spain and Greece. I am proceeding on our trade fronts to protect the U.S. industry with administrative action from the ITC and USTR. Taking into account competition from other domestic specialty crops—not to mention complicated trade barriers with foreign producers—H.R. 3765 is a most appropriate public policy.

Mr. WAMPLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3765 which was reported without a dissenting vote by the Committee on Agriculture. This bill is of substantial interest to my colleague, the gentleman from California (Mr. THOMAS), and but for a prior commitment he would be on the floor managing this matter for this side of the aisle.

This bill would amend the Agricultural Marketing Agreement Act of 1937 to authorize the addition of marketing promotion, including paid advertising, to the Federal marketing order for California walnuts. In addition, it would permit the marketing orders for both olives and walnuts to provide for crediting the assessment obligation of each handler with all or a portion of that handler's direct expenditures for marketing promotion, including paid advertising. Paid advertising authority for the marketing order covering olives was added in 1965.

Virtually all olive production in the United States is located in California. Over the last few years there has been an upward trend in the size of the olive crops. The larger crops are the result of both good yields and increased bearing acreage from heavy plantings that began in the early 1970's. The increased production, due to the unique characteristics of olive production which make it difficult for producers to make short-term production adjustments, has created serious problems for producers.

It is necessary for the olive industry to tap potential markets and thus eliminate oversupply and depressed market conditions. This can be done through education of consumers. This bill will benefit consumers by assuring stable supplies and orderly marketing. It will also greatly assist the olive industry by: First, providing incentives for handlers to advertise their product; second, encouraging coordination between generic and private label advertising; and third, creating a more stable marketing situation that is geared toward expansion.

California is also the Nation's leading producer of walnuts, accounting for over 97 percent of domestic commercial production. The United States is the world's leading walnut producer, with 72 percent of the world supply.

The California walnut industry may soon be faced with record high crops, far in excess of current domestic and export needs. Enactment of H.R. 3765 could alleviate the projected supply-demand imbalance by encouraging increased promotional activities.

I urge my colleagues to support this measure.

□ 1220

Mr. Speaker, I reserve the balance of my time.

Mr. COELHO. Mr. Speaker, I yield back the balance of my time.

Mr. WAMPLER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. COELHO) that the House suspend the rules and pass the bill, H.R. 3765, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities.".

A motion to reconsider was laid on the table.

RURAL DEVELOPMENT POLICY ACT OF 1980

Mr. DASCHLE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3580) to provide for establishment and coordination of rural development policy and to extend for 2 years the authorization of appropriations for carrying out title V of the Rural Development Act of 1972, as amended.

The Clerk read as follows:

H.R. 3580

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Rural Development Policy Act of 1980".

RURAL DEVELOPMENT POLICY

SEC. 2. The Rural Development Act of 1972 (Public Law 92–419; 86 Stat. 657) is amended by adding at the end thereof a new section as follows:

"SEC. 607. RURAL DEVELOPMENT POLICY.—(a) The Secretary of Agriculture shall provide leadership within the executive branch for, and shall assume responsibility for coordinating, a nationwide rural development program using the services of executive branch departments and agencies, including, but not limited to, the agencies, bureaus, offices, and services of the Department of Agriculture, in coordination with rural development programs of State and local governments.

"(b) POLICY DEVELOPMENT.—(1) The Secretary shall conduct a systematic review of Federal programs affecting rural areas to (A) determine whether such areas are benefiting from such programs in an equitable proportion to the benefits received by urban areas and (B) identify any factors that may restrict accessibility to such programs in rural areas or limit participation in such programs.

"(2) Subject to the Privacy Act of 1974, the Secretary may secure directly from any Federal department or agency information necessary to carry out the Secretary's duties under this section. Upon request of the Secretary under this paragraph, the head of any such Federal department or agency shall furnish such information to the Secretary.

"(3) The Secretary shall develop a process through which multistate, State, substate, and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis. Such process may include the use of those rural development experts, advisors, and consultants that the Secretary deems appropriate, as well as the establishment of temporary advisory committees under the terms of the Federal Advisory Committee Act.

"(4) The Secretary may undertake cooperative efforts with other Federal departments and agencies to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas. The Secretary may request the heads of other Federal departments and agencies to participate in any working groups that the Secretary deems necessary to carry out the purposes of this section.

"(5) The Secretary may hold public hearings and receive comments on any matter that the Secretary determines may have a significant impact on rural development or the economic development of rural communities.

"(c) RURAL DEVELOPMENT STRATEGY.—(1) The Secretary shall prepare a comprehensive rural development strategy based on the needs, goals, objectives, plans, and recommendations of local communities, substate areas, States, and multistate regions, which is designed to—

"(A) maximize the effectiveness, increase the responsiveness, and improve the delivery of Federal programs to rural areas;

"(B) increase the coordination of Federal programs with the development needs, objectives, and resources of local communities, substate areas, States, and multistate regions; and

"(C) achieve the most effective combinations of Federal, State, and local resources to meet the needs of rural areas for orderly growth and development.

"(2) The rural development strategy shall take into account the need to—

"(A) improve the economic well-being of all rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

"(B) improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

"(C) improve State and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for State and local officials, particularly in small rural communities;

"(D) strengthen the family farm system; and

"(E) maintain and protect the environment and natural resources of rural areas.

"(3) The rural development strategy developed under this subsection shall be for the fiscal year ending September 30, 1982, and updated for each fiscal year thereafter.

"(4) The Secretary shall hold public hearings and receive such suggestions and recommendations as the Secretary deems appropriate during the preparation of the rural development strategy and the annual updates to the strategy.

"(5) The rural development strategy and the annual updates to the strategy shall be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry by January 31 of the calendar year immediately preceding the beginning of the appropriate fiscal year.

"(6) The rural development strategy and each annual update of the strategy shall contain an analysis of the budget recommendations of the President for the fiscal year following the transmittal of the strategy or update of the strategy and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and the rural development strategy developed under this subsection. Each annual update shall also contain a detailed statement of the findings and conclusions of the Secretary regarding the implementation during the preceding fiscal year of the rural development strategy, including any revisions of the strategy, any recommended legislation to improve the rural development effort of the Federal government, and an evaluation of and recommendations regarding the rural development information system required under section 306(a)(12) of the Consolidated Farm and Rural Development Act.

"(d) Strategy implementation.—The Secretary shall ensure the effective implementation of the rural development strategy and maximize coordination of Federal programs affecting rural areas through a systematic effort to—

"(1) improve communication and encourage cooperation among Federal departments and agencies in the administration of rural development programs;

"(2) eliminate conflicts, duplication, and gaps in program coverage, and resolve contradictions and inconsistencies in the objectives, administration, and effects of rural development programs;

"(3) facilitate the sharing or common location of field offices of Federal agencies administering similar or complementary programs and unification of delivery systems, where feasible, to maximize convenience and accessibility of such agencies and programs to rural residents;

"(4) facilitate and expedite joint funding of rural projects through Federal programs;

"(5) correct administrative problems in Federal programs that delay or hinder the effective delivery of services, assistance, or benefits to rural areas; and

"(6) simplify, standardize, and reduce the complexity of applications, reports, and other forms required under Federal rural development programs.

UNDER SECRETARY OF AGRICULTURE FOR SMALL COMMUNITY AND RURAL DEVELOPMENT

SEC. 3. (a) There is hereby established in the Department of Agriculture the position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary of Agriculture for Small Community and Rural Development may exercise such functions and perform such duties related to small community and rural development, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

(b) Section 5314 of title 5, United States Code, is amended by adding at the end thereof a new paragraph as follows:

"Under Secretary of Agriculture for Small Community and Rural Development.".

RURAL DEVELOPMENT ACT REAUTHORIZATION AND AMENDMENTS

SEC. 4. The Rural Development Act of 1972 is amended by—

(1) in section 503(a), (7 U.S.C. 3663(a)), striking out "three" and "1979" and inserting in lieu thereof "five" and "1981", respectively;

(2) in section 503(c) (7 U.S.C. 2663(c)), striking out "and September 30, 1979" and inserting in lieu thereof "September 30, 1979, September 30, 1980, and September 30, 1981";

(3) in section 503(f) (7 U.S.C. 2063(f)), inserting immediately after the first sentence a new sentence as follows: "In those States that contain more than one institution or university accepting the benefits of the Morrill Act of 1862 or 1890 (or both), including Tuskegee Institute, such annual plan and budget shall be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.";

(4) in section 507(b) (7 U.S.C. 2667(b)), inserting ", Guam, the Commonwealth of

the Northern Mariana Islands, American Samoa, the Virgin Islands of the United States," after "several States"; and

(5) in section 603(c), repealing paragraph (2); in paragraph (1), striking out "(1)" after the subsection designation; and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

REVISED STATUTES AMENDMENTS

SEC. 5. Section 526(b) of the Revised Statutes (7 U.S.C. 2204(b)) is amended by—

(1) striking out the first and second sentences thereof;

(2) in the third sentence striking out "and" before "rural industrialization" and inserting before the period at the end thereof the following: ", and technology appropriate to small and moderate-sized family farming operations, and any other problem that the Secretary may determine has an effect upon the economic development or the quality of life in rural areas".

ELIMINATION OF REPORTS

SEC. 6. Section 901 of the Agricultural Act of 1970 (Public Law 91-524, 84 Stat. 1303; 42 U.S.C. 3122) is amended by striking out the last sentence of subsection (b) and repealing subsections (c) through (f).

TECHNICAL ASSISTANCE AND INFORMATION SYSTEM

SEC. 7. Section 306(a) of the Consolidated Farm and Rural Development Act (Public Law 87-128, 75 Stat. 307; 7 U.S.C. 1926(a)) is amended by—

(1) amending paragraph (11) to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to provide rural development technical assistance, rural community leadership development, and community and areawide rural development planning.";

(2) redesignating paragraphs (12), 13), and (14) as paragraphs (13), (14), and (15), respectively; and

(3) inserting immediately after paragraph (11) a new paragraph (12) as follows:

"(12)(A) The Secretary shall, in cooperation with institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, establish a system for the dissemination of information and technical assistance on Federally sponsored or funded programs. The system shall be for the use of institutions eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute and State, substate, and regional planning bodies, and other persons concerned with rural development.

"(B) The informational system developed under this paragraph shall contain all pertinent information, including, but not limited to, information contained in the Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal funds, United States Census, and Code of Federal Regulations.

"(C) The Secretary shall obtain from all other Federal departments and agencies comprehensive, relevant, and applicable information on programs under their jurisdiction that are operated in rural areas.

"(D) Of the sums authorized to be appropriated to carry out the provisions of this Act, not more than $1,000,000 per year may be expended to carry out the provisions of this paragraph.".

LIMITATIONS

SEC. 8. No funds are authorized to be appropriated pursuant to sections 4 and 7 of this Act and the amendments made by those sections for the fiscal year ending September 30, 1980, in excess of such amounts as have been appropriated on or before the date of enactment of this Act for such fiscal year.

WEB RURAL WATER DEVELOPMENT PROJECT

SEC. 9. (a) There are authorized to be appropriated to the Secretary of the Interior for the fiscal year ending September 30, 1981, $1,900,000, which shall be used for initial planning and construction of a rural water treatment and distribution system in portions of, but not limited to, Walworth, Edmunds, Brown, Campbell, Potter, McPherson, Faulk, Hand, Spink, and Day Counties in South Dakota that will furnish water for domestic and other purposes, hereafter referred to in this section as "the WEB Rural Water Development Project", as generally proposed by the WEB Water Development Association, Incorporated, and as described in the special report by the Association of January 1980.

(b) Effective October 1, 1981, there are authorized to be appropriated to the Secretary of the Interior for the further planning and construction of the WEB Rural Water Development project $68,100,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1980, as indicated by the engineering cost indices applicable to the types of construction involved herein: *Provided*, That such authorization for appropriations shall not become effective until such time as legislation has been enacted deauthorizing the Oahe Unit, initially authorized by the Act of August 3, 1968 (Public Law 90-453; 82 Stat. 624): *Provided further*, That if such legislation has not been enacted by September 30, 1981, the authorization for appropriations provided for in this subsection shall terminate.

(c) Any funds appropriated under this section shall remain available until expended.

(d) Any funds appropriated under this section shall be transferred by the Secretary of the Interior to the Secretary of Agriculture when such funds are appropriated. The Secretary of the Interior may enter into cooperative memoranda of understanding with the Secretary of Agriculture as may be required to provide services to carry out the purposes of this section.

(e) The Secretary of Agriculture shall use any funds transferred under subsection (d) for necessary administrative expenses, and to provide financial assistance to plan and develop the WEB Rural Water Development Project under the terms and conditions of the Consolidated Farm and Rural Development Act and the rules and regulations promulgated by the Department of Agriculture under that Act, except to the extent such Act or rules or regulations promulgated thereunder are inconsistent with the provisions of this section. Such funds shall be made available in a combination of grants and loans that will provide grants for not less than 75 per centum of eligible development costs and such loans as may be necessary to plan and construct the WEB Rural Water Development Project.

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall become effective October 1, 1980.

The SPEAKER pro tempore. Is a second demanded?

Mr. GRASSLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from South Dakota (Mr. DASCHLE) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. GRASSLEY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from South Dakota (Mr. DASCHLE).

Mr. DASCHLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3580, as amended by the substitute offered today which was printed in the RECORD on September 10, by Chairman FOLEY. This is an important piece of legislation for rural America and deserves the support of all Members.

H.R. 3580, as amended by the substitute directs the Secretary of Agriculture to assume a leadership role in coordinating a nationwide rural development program through: First, the development of a rural development policy; second, the preparation of a rural development strategy and annual updates including an analysis of how the budget requests will effectuate the strategy; and third, by requiring the Secretary to implement the rural development strategy and maximize the coordination of Federal programs affecting rural areas. By assigning the Secretary of Agriculture the leadership role in coordinating Federal programs affecting rural areas these programs can be targeted more effectively to meet the needs of rural residents and communities.

The substitute establishes a new position of Under Secretary of Agriculture for Small Community and Rural Development to be appointed by the President with the advice and consent of the Senate. The administration strongly recommended inclusion of this provision in the substitute believing that establishment of this position is essential to the President's rural policy initiatives.

H.R. 3580, as amended by the substitute, extends until October 1, 1981, the authorization for the rural development and small farm research and extension programs of title V of the Rural Development Act of 1972. The bill also requires the Secretary to expand research and development efforts related to technologies which are appropriate for small and moderate size family farm applications. These programs were created by title V of the Rural Development Act of 1972. The title V research and extension programs are administered through the land grant college system but also provide for involvement by other institutions of higher education. As of November 1977, 1,300 projects had been initiated under this program, which have involved participation by schools in the land grant system and over 100 nonland grant public and private colleges and universities.

The substitute eliminates a total of five annual reports to Congress which the Secretary of Agriculture currently has to file relating to various aspects of rural development. These reports are no longer deemed necessary since the substitute provides for the submission of a comprehensive rural development strategy and annual updates to that strategy.

H.R. 3580, as amended, increases from $10 to $15 million the annual authorization for section 111 rural development planning grants and expands the purposes for which the grants may be used to include rural development technical assistance, rural community leadership training, and community and areawide comprehensive planning. This provision will allow grant funds to be used to pay specialists who would assist rural communities to apply for needed Federal funds. In addition the bill would authorize the use of up to $1 million per year of funds appropriated to the Farmers Home Administration to establish a system for the dissemination of information and technical assistance on federally sponsored or funded programs.

I want also to address myself briefly to the WEB rural water development project portion of this bill. The WEB project is of critical importance to my State. It would provide badly needed domestic and municipal water to a 10 county region now served by unreliable, notoriously low quality water sources.

The WEB section of this legislation is the result of a year long effort between the South Dakota delegation, the administration, the appropriate committees of Congress and numerous parties in South Dakota to arrive at an acceptable compromise on WEB and the thorny matter of South Dakota's Oahe Irrigation System. The compromise embodied in this legislation is fully supported by every member of our South Dakota delegation, by the administration, and by our committee. It would authorize a minimum amount of start up funding for WEB in 1981 to be worked out over the next year to deauthorize the Oahe Irrigation System on terms acceptable to South Dakota, to the administration, and, of course, to the Congress.

This agreement on the WEB project is the first consensus action on a major water development project in the Oahe area of our State since disagreement over the Oahe system fractured water planning in South Dakota amost a decade ago. It is of fundamental, long-term importance to us not just because it authorizes an extremely important rural water system, but because it commences the process of compromise we must have to get water planning in our State back on track for the 1980's.

I am proud to have played a role in the creation of this compromise and want to add words of special thanks to Chairman FOLEY, Congressman RICK NOLAN, to Assistant Secretary Guy Martin, to Deputy Assistant Secretary Dan Beard, and to the other members of our South Dakota delegation for their efforts and their great patience in sticking with this effort through the many delays and roadblocks that were bound to occur as we sought together to bring an end to a decade of hostility over water development in the Oahe region.

As one who was raised in the region to be served by the WEB project, and who vividly remembers stocking up on Aberdeen city water before going to spend a weekend with relatives whose water came from the abysmal wells WEB will replace, I can assure this Chamber the WEB project is badly needed. And as one who has been through the decade of division over the Oahe project, I can assure this Chamber that the agreement which led to this WEB legislation is just as badly needed as the WEB project itself.

I am pleased to come before the House with this substitute amendment to H.R. 3580. The substitute is the result of over a year of negotiations between the committee and the administration and enjoys the administration's support as well as bipartisan support among members of the Agriculture Committee. The committee has also worked closely with the Senate Committee on Agriculture, Nutrition, and Forestry in developing the substitute and we believe that H.R. 3580, as amended, will be accepted by the Senate, thereby avoiding the need for a conference.

I urge all Members to support enactment of H.R. 3580, as amended by the substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it has been more than 15 months since this bill was reported by the House Agriculture Committee, and almost a year since it was granted a rule. It has been languishing all this time because the administration opposed it. It comes to the floor now in a modified form which has received the administration's blessing. It is not as good as the original bill, but even in this "compromise" form it has merit. There is much of the Nolan-Grassley bill left in it, with some additions and some deletions. I support it and recommend that my colleagues in the House give it their support.

The origins of this bill go back to 1977 when the distinguished chairman of the Family Farms Subcommittee, the gentleman from Minnesota (Mr. NOLAN) and I began discussing the need for strengthening the Rural Development Act of 1972. Those discussions resulted in a bill that was introduced on February 9, 1978—H.R. 10885 in the last Congress. That legislation was developed through a process that involved much input from the rural community, including many rural and agricultural interest groups, members of the Rural Caucus and others concerned about the need for better coordination of rural programs at the Federal level, for improvement of Federal programs and services for rural areas, and for increased responsiveness of the Federal bureaucracy to the needs of and objectives of rural communities.

The bill was modified and improved through hearings and committee action, and was reintroduced in this Congress as H.R. 3580. It was approved by the Agriculture Committee by a vote of 33 to 3 in May of last year.

From the beginning this legislation was opposed by the administration despite its broad support by others. The principal basis for this opposition was that the bill would have required the administration by statute to carry out some new, specific responsibilities with respect to the administration and management of programs affecting rural areas. Their complaint was that it would reduce their "flexibility." And, besides, they said, they were already doing the things the bill required.

In December 1979, the Carter administration—3 years after taking office—finally announced a small community and rural development policy. It was extremely interesting to Chairman NOLAN and myself, and to those who had helped develop H.R. 3580, to see that many of the specifics in our bill had been adopted as Carter administration policy. This was both good news and bad news for us. It is good that they picked up so much of what was recommended, but without the requirement of law there is no guarantee that this administration or any following it will do anything about implementing those needed improvements.

Now, after months of negotiation, the administration has agreed to a modified Rural Development Policy Act. To their credit, they have given ground on some points such as the strategy development and the budget process, but the price has been high. This watered-down bill now includes creation of a new position in the U.S. Department of Agriculture—that of Under Secretary of Agriculture for Small Community and Rural Development. I have real concern about creating another new high-level Federal position. At the same time, the fact that the administration is pushing for this post is an indication of the complete about-face they have done on the issue of rural development programs in the Department of Agriculture. Only a short while ago we were fighting the Carter administration's attempt to chop up the Department of Agriculture by moving the rural programs out. Now they are proposing a new position that will strengthen the focus on rural programs within the Department.

I am concerned also about the authorization of up to $1 million annually for establishment of a system for the dissemination of information and technical assistance on federally sponsored or funded programs. I am not aware of any clearly demonstrated need for a program of this type.

Even with these and other weaknesses, however, the bill is still worthy of support. It spells out new rural policy responsibilities for the Secretary of Agriculture. It extends the authorization for the rural development and small farm research and extension programs of title V of the Rural Development Act of 1972. It expands small farm research and development authority. It eliminates five unnecessary reports to the Congress, and it increases the authorization and broadens the scope of the rural development planning grant program.

There is one other provision in the amendment offered by the gentleman from Washington, Chairman FOLEY. This has to do with the WEB water project in South Dakota. It is an unusual procedure to bring such an authorization to the floor in this way. The project does, however, have administration support conditioned on deauthorization of the Oahe project, and the language in the bill stipulates that condition.

On balance, Mr. Speaker, I believe this bill has merit, and I would urge my colleagues to support it.

☐ 1230

Mr. Speaker, I reserve the balance of my time.

Mr. DASCHLE. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. Bedell).

Mr. BEDELL. Mr. Speaker, I rise in support of this legislation.

I am pleased that after many months of hard work by the members of the Committee on Agriculture and officials from the administration, we finally are taking the first steps toward development of a coordinated and comprehensive rural development policy. I believe that the several provisions of this act will assure that our Federal Government will give the formulation and implementation of our rural development policy the kind of high level visibility and focus which it deserves.

In addition, I am particularly pleased by language in the act which would inject a higher degree of common sense and fiscal responsibility into the method for determining Federal water policy in the State of South Dakota. Specifically, I welcome the language which initiates development of the so-called WEB water system. This section is important not only because it will bring the WEB water system to the planning stage, but also because it conditions completion of the WEB water system on the deauthorization of the Oahe unit.

As my good friends from the State of South Dakota are well aware, Mr. Speaker, my strong interest in assuring that Federal funds are spent only on those water projects that make sense economically—no matter where they are located—has led me to be a determined opponent of the Oahe unit.

Briefly, my long standing opposition to completion of the Oahe unit is based on the following facts: under the Oahe unit proposal, the Government intended to acquire 110,000 acres of land on which to build the maze of canals and storage pools designed to irrigate some 190,000 acres. The land to be irrigated was estimated a few years ago to be worth about $300 an acre and after irrigation that land would have been worth about $1,100 an acre. The $800 an acre increase in the value of the land would have cost the Government $2,323 an acre. Approximately 600 farms would have benefited at an estimated cost of $735.655 per farm.

Recognition of the advisibility of deauthorizing the Oahe unit, as contained in the Rural Development Policy Act, assures that taxpayers in South Dakota and throughout the United States will not be called upon to foot the bill for yet another economically unsound water project. However, the initial authorization in the act for the WEB water system should be an indication to the people of South Dakota that the Federal Government stands ready to support those sensible water development projects that the State needs and deserves.

Mr. Speaker, I strongly support this responsible measure, and urge its prompt adoption.

Mr. GRASSLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. Wampler).

Mr. WAMPLER. I rise in support of this legislation. It is a compromise, as are most products of the legislative process. As such it is not entirely satisfactory to anyone, but is somewhat satisfactory to most.

Without question there is need for improvement in rural policies and programs at the Federal level.

I thought when the committee reported H.R. 3580, we put in place a responsible piece of legislation. I was hopeful at that time that the administration could see its way to support H.R. 3580. Certainly, the ranking minority member of the Subcommittee on Family Farms, Rural Development, and Special Studies, Mr. Grassley, supported that measure.

However, in the intervening months, it became apparent that the administration was going to insist on some changes or there would be no bill. I supported Mr. Grassley in insisting that whatever changes were made would have to be acceptable to those groups that were concerned about rural development policy.

The committee staff, working together with USDA and other interest groups, have worked out this compromise. It is my understanding that this compromise is acceptable to Mr. Grassley and, therefore, I have lent my support to this measure.

The fact that this bill adds an assistant secretaryship to the Department's organization does give me some pause about its merits. However, it is part of the compromise that I have indicated I will support.

There is one additional matter which has been considered for inclusion in H.R. 3580. On January 29, 1980, Mr. Abdnor and Mr. Daschle introduced H.R. 6320 which would authorize appropriations for the WEB water project. The bill was referred to the Agriculture Committee; however, no committee action was taken. The administration agreed to support the bill if the authorization for WEB would be conditioned on subsequent congressional action deauthorizing another unrelated water project, the Oahe unit.

The effect of the bill with the administration amendment would be to authorize $1.8 million for WEB for fiscal year 1981 (to be used primarily for planning) and provide that if the Oahe unit is deauthorized prior to September 30, 1981, an additional $73.2 million would be authorized for WEB.

I understand that all members of the South Dakota delegation support enactment of H.R. 6320 with the administration-suggested amendments, and have expressed their desire that H.R. 6320, as amended, be included as part of H.R. 3580. In view of the broad bipartisan support for H.R. 6320, it is included in H.R. 3580.

Mr. GRASSLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from South Dakota (Mr. Abdnor).

Mr. ABDNOR. Mr. Speaker, I rise in strong support of the committee substitute for H.R. 3580, the Rural Development Policy Act. The substitute has been presented on behalf of the committee by my colleague from South Dakota (Mr. Daschle).

This compromise measure, which was formulated by Chairman Foley and is supported by the minority members of the committee, will go a long way toward establishment and coordination of Federal policies needed to place proper emphasis and priority upon the developmental needs of rural America.

In addition, at the urging of the South Dakota congressional delegation, the committee has included language to authorize development of the WEB rural water system. I am the sponsor of a bill, H.R. 6320, which was referred to the Agriculture Committee in this regard; and I am pleased the committee has seen fit to support enactment of its intent through language in the measure before the House today.

Mr. Speaker, the substitute offered by the committee has the support of the administration, and that is true particularly with respect to the language authorizing the WEB project.

The June 18, 1980, letter I received from Interior Secretary Andrus documents the support of the administration for WEB, as well as for the identification and acceleration of other South Dakota water projects to be developed in lieu of the Oahe irrigation project.

The Oahe unit was originally authorized in the Flood Control Act of 1944, and the 190,000 acre initial stage was reauthorized in 1968. The initial stage of the Oahe unit was intended as partial compensation to the people of South Dakota for the loss of over 500,000 acres inundated in our State through construction of four huge dams on the Missouri River. These dams were constructed to provide flood control and navigation benefits to downstream States, and over three-quarters of the hydropower is marketed outside of South Dakota as well.

Mr. Speaker, I am providing this background for the record to make absolutely clear that in supporting authorization of the WEB project it is not the intent of the South Dakota congressional delegation that it is to serve as the sum total "economic mitigation" our State is to receive under the Pick-Sloan Missouri Basin program. Secretary Andrus himself has acknowledged our right to seek additional considerations, and the South Dakota Legislature has set forth in Senate Concurrent Resolution No. 8 the terms of deauthorization of the Oahe unit, initial stage, which would be acceptable to the State.

Mr. Speaker, for further clarification of this exceedingly complex issue, I would like to have included in the Record the text of the Secretary's June 18 letter, along with the text of my June 30 letter to Governor Janklow, who had voiced concern that the best interests of the State were not being served.

Finally, I would also like to include in the Record the text of legislation which I have had drafted to carry out the policy of the State. It is my intent to introduce this legislation in the near future, and I am pursuing an early hearing before the House Interior Committee's Subcommittee on Water and Power Resources.

Authorization and funding of WEB will be hopeful steps toward the realization of the full value of "economic mitigation" which is due the people of South Dakota, but it is not in any sense intended to offset or deny the need for development of other water projects in our State.

The letters and the draft bill follow:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 18, 1980.
Hon. JAMES ABDNOR,
House of Representatives,
Washington, D.C.

DEAR MR. ABDNOR: I am writing in response to your letter of May 12, 1980, and pursuant to the consultations which have occurred between us since that time.

I want to begin by thanking you for the constructive nature of your letter, and the extraordinary effort and care you have given to resolving the difficult questions regarding the future water resource needs of South Dakota. In spite of differences which may exist regarding some specific issues, I am convinced we share a commitment to meeting South Dakota's needs through sound water management and development, and seeing that the Federal role is a major and cooperative one.

The Administration has made clear its view that it cannot support the permanent authorization of the WEB project in the absence of a deauthorization of the Oahe Unit, and I believe the reasons for this are well understood. You have made clear, in return, two central points. First, that if Oahe is to be deauthorized, you must consider and address other water development needs in the state in addition to the WEB project. Second, that additional time is needed to identify and analyze other proposals and to permit adequate public consideration of them.

Our reaction to these points is favorable, and with some variation, we are able to accept the basic premise of your May 12 letter. What we propose is a process which would create the time and opportunity for development of other responses to state needs, yet leave you in a position in mid-1981 similar to that which exists today—a choice between the continued authorization of Oahe (but without an authorization for WEB) or a deauthorization of Oahe, predicated an authorization and funding for WEB plus other proposals which might be agreed upon in the interim.

Specifically, we would not object to the authorization of the WEB project immediately, as well as first-year funding of approximately $1.9 million if provided within the Administration's overall budget request for the Department. By mutual agreement with you, a provision would be included in the WEB authorization which would establish a "trigger date" of September 30, 1981 (the end of FY 1981), at which time the future of the WEB and Oahe projects would be firmly decided. Should Oahe be deauthorized by this date, WEB automatically would be authorized for completion, including adequate authority for all necessary funds. (A copy of the proposed language to achieve these purposes is enclosed as amendments to H.R. 6320.)

As you suggest, a "clean" deauthorization bill for the Oahe project will be introduced immediately with the joint sponsorship of the delegation (a draft of such legislation is enclosed). We would have no objection to the introduction of such a bill on request. While the Administration favors passage of such a bill, it would be understood that actual passage is not anticipated until mid-1981, after consideration of other South Dakota water needs. Accordingly, the "clean" bill for Oahe deauthorization would be agreed to be introduced again at the beginning of the next Congress.

During the period between now and mid-1981, when a definitive choice on Oahe deauthorization will be required, a concerted and cooperative effort will be made to better assess South Dakota water resource needs, and to develop agreement on other possibilities for development in addition to the WEB pipeline. We realize that, within the state and even within the delegation, views may differ on various alternatives and priorities, and the Administration has strong views as well. We should use the next 12 to 14 months as a period of working together toward agreement on issues important to the water resource needs of South Dakota and the appropriate contribution of the Federal Government to those needs.

We would approach this effort with great but realistic expectations, and expect all others to do the same. A common initial understanding of the conditions which will determine ultimate agreement will vastly improve our capability to work together. Obviously, there must be a mutual understanding that the package put together in the coming months will require Administration agreement. From the Administration's viewpoint, you should understand that support for any additional future projects or programs will be based on established planning and evaluation procedures, consistency with existing Federal programs, standards set forth in the President's water policy message of June 6, 1978, and consistency with existing budgetary constraints. Such standards are indeed more demanding, in some cases, than those being applied to the WEB proposal itself.

It should also be understood that, the prior decision to authorize and fund the Oahe unit, or any speculative evaluation of that authorization, cannot serve as a measure of what might be agreed upon in coming months. While no reasonable alternative can be ruled out at the beginning of this process, it is equally important to understand that agreement is unlikely if it is predicated on unresolvable budgetary, legal or political bases.

We have previously indicated our feeling that the formulation advanced by the South Dakota legislature cannot be the basis of agreement, and although you may initially wish to use it for discussion, we believe it is important for our views to be known at the outset.

The greatest opportunity for success rests in an effort to focus on water resource needs and sound planning to address them, rather than on settlement of legal or political differences. We are willing to take a number of steps to facilitate this effort, and ensure that it is as constructive as possible. For instance, we will support a decade-long reservation of Missouri River water for the state, as proposed by Senator McGovern, in an amount of water equal to that anticipated for the Oahe unit. In addition, we will take several specific steps related to the role of the Water and Power Resources Service in South Dakota. We will retain adequate staff in the Huron office to assist in this effort, and will review all presently authorized planning in South Dakota, and where possible, accelerate work on individual projects.

Most importantly, we want to contribute to the establishment of a new atmosphere of cooperation among state, Federal and local interests to address common problems. We will gladly enter into such an effort at the field and policy levels with the possibility of identifying new appraisal and feasibility level studies which can be supported for authorization by all the parties concerned.

Overall, we believe this approach meets the basic objectives set out in your May 12 letter, and does so in the manner most likely to yield subsequent agreement based on cooperative efforts over the coming months. We would appreciate an early response from the delegation, as time is drawing short to address the various legislative matters which are essential.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS,
Secretary.

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 30, 1980.
Hon. WILLIAM JANKLOW,
State Capitol,
Pierre, S. Dak.

DEAR BILL: Thanks for your excellent letter, dated June 13th, concerning WEB and the Oahe authorization. Although the public chronology of events may appear otherwise, your letter did not arrive until after the Congressional delegation had signed our letter of June 18th to Secretary Andrus, confirming our agreement with the Administration. We were, of course, aware of your concern, however; and we share it. That is why we insisted that there could be no agreement to advance WEB which would tie our hands with respect to the Oahe authorization. We have striven to achieve Administration support for WEB without "boxing ourselves in" on deauthorization, and it appears we have succeeded in doing so.

A copy of the June 18th reply we received from Secretary Andrus has been forwarded previously for your information, but another is attached for your convenience. Please note in particular the underlined portions of his letter. It is evident that the Secretary understands quite clearly that from our perspective WEB alone does not constitute adequate compensation for deauthorization of Oahe. He not only acknowledges our right to seek additional considerations, he offers assistance in identifying them. I, for one, intend to place great emphasis upon the Secretary's offer to "accelerate work on individual projects" and am already endeavoring to apply his offer to the benefit of the Grass Rope and Belle Fourche projects, the Hanson, B.D.M., and B-Y rural water systems, as well as the Lower James-Ft. Randall and Oahe Riverside irrigation studies. I believe there are other projects which deserve accelerated consideration, too; and the degree to which the Secretary makes good on his offer will help me, the entire Congressional delegation, and the people of South Dakota determine whether following through with deauthorization is to our advantage.

Let me make absolutely clear that I am not bound to support deauthorization of the Oahe Unit next year or anytime. Whether, in fact, I do support deauthorization will be determined by whether doing so will, in my judgment, contribute to the maximum degree possible to the good of the people of South Dakota—not just those in the WEB service area. If, for example, it appears that additional considerations can be garnered by holding onto the authorization beyond the "trigger date" of September 31, 1981, I shall not hesitate to oppose deauthorization until such time as those additional considerations can be realized. Of course, that may mean a delay in WEB (assuming WEB advances on the most optimistic schedule otherwise), but it is my view that the longterm good of all South Dakotans must prevail over the short-term wishes of WEB's constituency.

If additional time is needed to study other projects, I shall fight to see that ample time is given; and that would not necessarily mean that WEB would have to be delayed. The express language supported by this Administration to authorize WEB as an amendment to the Rural Development Policy Act (H.R. 3580) would automatically deauthorize WEB if Oahe is not deauthorized by the end of Fiscal Year 1981, but you and I both hope and expect a new Administration will assume office in January. With the support of the new Administration, it may be an easy matter to amend the law to provide either an extension of the "trigger date" or even a straightforward authorization of WEB which is not contingent upon deauthorization of Oahe. Even if WEB is deauthorized after the expenditure of $1.9 million in FY81, though, the fact of that investment will enhance chances of resurrecting the project based upon its own merits. Thus, as I see it, we are truly in a no loss position.

Let me address specifically a number of the points of your letter: First, the Administration and the South Dakota Congressional delegation do *not* have to agree on the terms of deauthorization. We have simply agreed to terms of the WEB authorization this year, which would require deauthorization of the Oahe Unit next year, if the WEB authorization is to remain in effect. We are not bound to any terms of deauthorization of Oahe. We have acknowledged our understanding that the Administration's position on any projects in addition to WEB will be based upon the President's water policies, but we are not constrained by those policies in our efforts to convince the Congress that South Dakotans deserve additional considerations. As I've already indicated, it is my intent to be ruthless, relentless, and untiring in the pursuit of such additional considerations; and, depending upon the outlook of such efforts, I do not view the "trigger date" of September 31, 1981, as an apocalyptic deadline.

Second, it is possible that nearly half of the construction funding for WEB will be virtually guaranteed before the "trigger date." That is because Congress should complete action on the FY82 appropriations prior to the end of FY81. This is a critical issue, the importance of which has escaped many of WEB's supporters and virtually all of those who are in a rush to deauthorize Oahe. If Oahe were prematurely deauthorized, it is very likely, as you suggest, that WEB would never be constructed. The delegation's agreement with the Administration addresses this issue in spades, however.

Not only must the Administration support authorization and first year funding of WEB in the amount of $1.9 million, but the President must include in his January Budget request to Congress at least $33 million in FY82 construction funding for WEB. (That is the FY82 construction cost estimate calculated by WEB's engineer.) Otherwise any shortfall of construction funding in the President's Budget will be a showing of bad faith upon the part of the Administration, and I mean to tell you here and now there is absolutely no agreement on my part to pursue deauthorization of the Oahe Unit if the Administration fudges on its agreement—quite the contrary, any showing of bad faith on the part of the Administration will stiffen still more my resolve to fight to uphold the interests of the people of our state. Even setting other considerations aside, it would be completely foolhardy and totally unforgiveable if the delegation stood by and watched Oahe deauthorization without guaranteeing construction funding for WEB.

Third, I share your dismay and am disgusted as well that Secretary Andrus continues to refuse to acknowledge the commitment of the Federal Government to our state. In pledging the Administration's support for WEB, though, the Secretary has unwittingly acknowledged by his action what he refuses to acknowledge by his word. That is, Department officials frankly state that WEB could not meet the Administration's water policy criteria based on its own merits; and yet the Administration, by the Secretary's letter of June 18th, does in fact support WEB in trade for the Oahe authorization. If that authorization has no value as argued by Departmental officials and if there is no special obligation to South Dakota, how is it that we are blessed with the Administration's endorsement of a $70 million project it would not "normally" support? As I see it, the Administration has by its actions conceded the point; and the issue is no longer whether there is a commitment but, rather, to what degree will the Federal Government live up to its commitment.

It may be possible to achieve a near consensus among South Dakotans as to the extent of the Federal commitment, along the lines of Senate Concurrent Resolution No. 8. Enactment of legislation, such as that I've drafted, to implement action to carry out the Federal Government's obligation will not be easy. Obviously, though, the greater the consensus within South Dakota, the better our chances of achieving action which as closely as possible reflects our wishes. Insofar as I am aware, Senate Concurrent Resolution No. 8 and my draft bill are the only efforts to achieve such a consensus; and both are broad enough (and subject to alteration) to accommodate the needs of the local sponsors of virtually any specific project. To be sure, we will not achieve development of every project sought by a local group, nor will it be easy to achieve development of any single project.

In my view, however, those who downplay the chances of success and discourage the effort are doing a disservice to the people of the state. As much as anyone, WEB's supporters have heard naysayers, and yet they have forged ahead. I believe their determination is a lesson for other local project sponsors, as well as for the Congressional delegation in attempting to serve the overall interest of the state.

That brings me to the final point I'd like to make—yes, it is true as you say, ". . . WEB is . . . being used as a political pawn in an effort to deny the rest of South Dakota its expected and deserved compensation under the Pick-Sloan Plan." There is no question of that fact, and it is fair neither to WEB's supporters nor to the other citizens of our state. As the President has pointed out, however, "Life is not fair;" and, under the circumstances, I believe the position taken by the Congressional delegation is the correct one at this time.

At this point we have everything to gain and nothing to lose in accepting the Administration's support for WEB and the Secretary's offer to accelerate other projects. Obviously, next year there will be something considerable to lose; i.e., the Oahe authorization. As I pointed out earlier, though, my actions at that point will be governed by the same test which I applied to the present agreement; namely, will it serve the overall best interests of the people of South Dakota?

It should be abundantly clear that I have reserved the right to apply that test, and it should be well understood as well that I share your belief our water development interests will fare better under a new Administration. There will be those who will say we are being "political" in expressing that belief, but in my view we would be shirking our duty if we failed to do so. Regardless of who sits in the White House next year, the election campaign affords an important opportunity to make him more aware of the commitment to our state. It's an opportunity not to be missed, and I commend the contribution your letter makes toward clarifying this vital issue for the Congressional delegation and for the people of our state.

With best personal wishes,

Sincerely,

JAMES ABDNOR,
Member of Congress.

H.R. —

A bill to authorize the Secretary of the Interior to provide to the State of South Dakota funds for the development and implementation of plans for the mitigation of economic losses to the State which have occurred as a result of the taking of land within South Dakota for the Missouri River Basin project, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PLANNING GRANTS

SECTION 1. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make grants to the State of South Dakota (hereinafter referred to as the "State") to develop plans for the mitigation of economic losses incurred within the State as a result of the taking of land by the United States for the Missouri River Basin project initially authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891).

(b) The grants shall cover the cost to the State of the development of economic development plans for the State or any sector thereof.

(c) The plans should, among other things, provide for the establishment or improvement of commercial, industrial, or agricultural facilities that increase, expand, or protect the economic base of the State and job opportunities in the State, including energy utilization and availability, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, and irrigation.

PROJECT GRANTS

SEC. 2. The Secretary is authorized to make grants to the State to carry out the economic development plans referred to in section 1. A grant may be approved by the Secretary to carry out the plan only after the Secretary reviews the plan and determines that it is economically feasible under the terms of this Act.

APPLICATIONS

SEC. 3. A grant authorized by section 1 or 2 may be made only upon application by the State to the Secretary at such time or times and containing such information as the Secretary may prescribe. No such application shall be approved unless it—

(1) in the case of a grant to carry out a plan, sets forth, in detail, the economic development plan;

(2) provides such fiscal control and accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State pursuant to the grant; and

(3) provides for making such reports, in such form and containing such information, as the Secretary may require, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

MAXIMUM DEVELOPMENT GRANTS

SEC. 4. (a) Federal grants under section 2 shall not exceed 95 per centum of the cost to carry out an economic development plan developed by the State under section 1 and shall not exceed 90 per centum of the cost of any economic development plan for which the State requires repayment under subsection (b), except that the Secretary may make available to the State and local sponsoring agencies 100 per centum of the cost to carry out any economic development plan for which the State or local sponsoring agencies agree to repay 10 per centum of the cost.

(b) The Secretary may, if requested to do so by the State, enter into contracts, with the State and local sponsoring agencies designated by the State, for repayment of that portion, as determined by the State, of the total cost of carrying out the plan which is not covered by the grant made by the Secretary. The terms of repayment shall be determined by the State and approved by the Secretary, except that the State may require repayment by local sponsoring agents of an amount in addition to that required to recover 10 per centum of the cost and such additional amount shall accrue to the State.

AVAILABILITY OF HYDROPOWER

SEC. 5. Notwithstanding any other provision of law, as soon as practicable and during each calendar year thereafter, the Western Area Power Administration shall make available according to the direction of the State not less than 170,200 kilowatts of electric power and shall sell according to the direction of the State not less than

310,800,000 kilowatt hours of electric energy at a price not to exceed the cost of production and transmission of such energy, except that the State may establish a higher price, and any revenues collected in excess of the cost to the Western Area Power Administration shall accrue to the State. To qualify for the receipt of electric power or revenues under this section, the State shall submit to the Secretary a plan for the sharing of any such power or revenues with Indian tribes within the State and, after consulting with such Indian tribes, the Secretary shall determine that such plan provides for the equitable sharing of such power or revenues.

DEAUTHORIZATION OF CONSTRUCTION OF THE INITIAL STAGE OAHE UNIT, JAMES DIVISION, MISSOURI RIVER BASIN PROJECT

Sec. 6. (a) The construction, operation, and maintenance by the Secretary of the initial stage Oahe Unit, James Division, Missouri River Basin project, South Dakota, authorized by the Acts of August 3, 1968 (82 Stat. 624), and October 27, 1972 (86 Stat. 1265), for the purpose of furnishing a surface irrigation water supply and for other purposes, is hereby deauthorized and is no longer an integral physical or financial part of the comprehensive Pick-Sloan Missouri Basin program that was approved by section 9 of the Act of December 22, 1944 (58 Stat. 891), as amended and supplemented.

(b) Those Oahe Unit works, facilities, and related properties that have been acquired or constructed shall be disposed of by the Secretary according to a plan developed by the State and approved by the Secretary under the authority of this Act.

(c) Those funds previously expended pursuant to authorities contained in the Acts of August 3, 1968 (Public Law 90–453; 82 Stat. 624), and October 27, 1972 (Public Law 92–577, 86 Stat. 1265), shall be charged against the general fund of the Treasury of the United States and shall not be charged against the Pick-Sloan Missouri Basin program, except that all costs assigned to the initial stage Oahe unit which are deferred without interest shall be retained as interest free costs of the Pick-Sloan Missouri River Basin program.

AUTHORIZATION

Sec. 7. There are authorized to be appropriated to the Secretary to carry out sections 1 and 2 of this Act for fiscal years beginning after September 30, 1981, an amount equal to the cost, in current dollars and as calculated by the Secretary, of completing the initial stage Oahe Unit, indexed by the Secretary for inflation.

GRANTS FOR INDIAN TRIBES

Sec. 8. (a) The Secretary may make grants to any Indian tribe within the State for the same purposes and on the same terms as grants may be made to the State under this Act, except that the chairman of any such tribe shall submit to the Secretary an application for such grant. Any grant made to an Indian tribe under this section shall be in accordance with the Leavitt Act (25 U.S.C. 386a).

(b) There are authorized to be appropriated to the Secretary to carry out subsection (a) of this section for fiscal years beginning after September 30, 1981, an amount which does not exceed 60 per centum of the amount appropriated to the Secretary pursuant to section 7.

Mr. Speaker, I strongly urge enactment of the compromise version of the Rural Development Policy Act, which has been offered today as a substitute for H.R. 3580.

● Mr. ALBOSTA. Mr. Speaker, I strongly support H.R. 3850, the Rural Development Policy Act as proposed by the House Agriculture Committee today. This legislation which directs the Secretary of Agriculture to assume the leadership on rural development policy within the executive branch and to coordinate a nationwide rural development program, is needed now.

For too long rural areas, often lacking the resources to compete with large cities for grants and economic development assistance, have not received their fair share from the Federal Government. This country must have a strong rural and urban economy. H.R. 3850 provides the tools for reaching this goal in rural areas. Better coordination of Federal programs in rural areas, protecting our natural resources and, most of all, strengthening the family farm will help us reach this goal. The Department of Agriculture is the right agency to take the lead in working for better conditions in rural areas, and I believe this policy emphasis at USDA is long overdue.

Having lived in a rural area all of my life, I know that our needs are different from Detroit, Chicago, and New York. The Rural Development Policy Act is one important step the Federal Government can take in helping to meet these needs of rural areas so our country will be stronger and our Government operate more efficiently for everyone.●

● Mr. BROYHILL. Mr. Speaker, I rise in support of H.R. 3580, the Rural Development Policy Act of 1980.

As vice chairman of the Congressional Rural Caucus, I have studied this legislation with some interest. The caucus has worked diligently with the administration to craft a bill which responsibly addresses what we have determined to be a problem of great magnitude. I am referring to the growing tendency of Government policies and regulations to neglect the needs of small cities, towns, and rural areas. This is evident, not only on a programmtic level, but also on a structural level as well.

It is evident that we need to insure a more comprehensive, coordinated and responsible effort to aid rural America.

The Rural Development Policy Act aims to do just that. The bill calls for a nationwide rural policy, to be developed and administered at all levels—local, State, and Federal. The Secretary of Agriculture is charged with development and implementation of a rural development strategy. In addition, a position of Under Secretary of Agriculture for Small Community and Rural Development would be established, so that we can make sure certain rural interests are being served.

The bill provides funding to the Farmers Home Administration for the dissemination of technical and information assistance on Government programs. It is also important to note that H.R. 3580 calls for a review of Federal programs to insure the needs of rural areas are being met. It contains a provision calling for administrative reforms and an elimination of excessive reporting requirements.

The review provision and the simplification of the administrative process provision are two important concepts within H.R. 3580 which I feel could be extended to the Government as a whole. That is why I have been advocating passage of comprehensive regulatory reform legislation for the entire Government. I would urge my colleagues to take this opportunity to reflect upon the need for such reform as soon as possible.

In closing, I reiterate my support for the Rural Development Policy Act, and indeed, for Government recognition of rural America and its needs.●

Mr. DASCHLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GRASSLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time, as well.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Dakota (Mr. Daschle) that the House suspended the rules and pass the bill, H.R. 3580, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes."

A motion to reconsider was laid on the table.

Mr. DASCHLE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 670) to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 670

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural Development Policy and Coordination Act of 1979".

Sec. 2. Congress finds that the efforts conducted under title IX of the Agriculture Act of 1970 and the Rural Development Act of 1972 have been insufficient to achieve the planning and coordination needed for the development of a national rural development policy that will ensure a sound balance between rural and urban America. Persons living in rural areas of the United States do not have convenient, useful, and unbureaucratic access to programs sponsored or funded by the Federal Government and the Federal Government has failed to adequately address the problem through an active coordination. The diverse Federal, State, and local programs that affect rural America must be coordinated and systematically reviewed and analyzed. Without this coordination and review, Federal rural development efforts result in wasteful duplication of effort and excessive confusion that burdens the effective delivery of services and assistance to rural areas. It is hereby declared to be the policy of Congress to provide for the effective implementation of the congressional mandate for coordination and planning of rural development efforts contained in the Rural Development Act of 1972 and title IX of the Agricultural Act of 1970.

Sec. 3. Section 526 of the Revised Statutes as amended (7 U.S.C. 2204), is amended by striking out the last two sentences of subsection (b) and inserting in lieu thereof the following: "In carrying out this responsibility the Secretary of Agriculture shall establish and maintain a rural development policy management process in partnership with local and State governments and involving all executive branch departments and agencies and major private institutions having policies and programs affecting the quality of life in rural areas. This policy management process shall include, but not be limited to—

"(1) the development, collection, dissemination, and assessment of data and information necessary to determine and compare rural and metropolitan conditions, problems, needs, and opportunities for development at the national, multi-State, State, and sub-State levels, and the effect of governmental policies and program thereupon;

"(2) the formulation of broad, long-range rural development goals, policies, and strategies, at the national, multi-State, State, and sub-State levels that are consistent with the balanced growth and development of the Nation;

"(3) the establishment of short-range rural development strategies, plans, and program objectives by Federal, State, and local agencies that are consistent with the long-range strategies and support long-range goals; and

"(4) the periodic reporting of progress made toward meeting the board, long-range national goals and specific short-range program objectives and the identification of needed changes in the rural development program.

Sec. 4. (a) Section 901 of the Agricultural Act of 1970, is amended by—

(1) striking out the last sentence of subsection (b); and

(2) repealing subsections (c), (d), (e), and (f).

(b) Section 603(c) of the Rural Development Act of 1972, is amended by—

(1) amending paragraph (2) to read as follows:

"(2) The Secretary shall make an appraisal every five years of rural conditions, needs, problems, and the opportunities for development in rural areas of the United States. The Secretary's report of this appraisal shall be delivered to the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Committee on Agriculture, and the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry on the first day after Congress convenes in 1983 and on that day every five years thereafter. Each appraisal shall include, but not be limited to—

"(A) the establishment of broad, long-range national rural development goals that reflect national policy with respect to the quality of life in rural areas and are consistent with the balanced growth and development of the Nation;

"(B) an inventory and description of specific problems, needs, and opportunities for development as they relate to national rural development goals;

"(C) recommended long- and short-range strategies needed to address the problems, needs, and opportunities for development identified in the inventory; and

"(D) recommended policy, program, and budget changes needed in the national rural development policy to implement the proposed development strategies."; and

(2) adding new paragraphs (3) and (4) as follows:

"(3) The Secretary shall make a biennial report on the progress made toward attaining the national rural development goals. This report shall be submitted to the Speaker of the House of Representatives, the President of the Senate, the chairman of the House Committee on Agriculture, and the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry on the first day after Congress convenes in 1981 and on that day every two years thereafter, except that no report is required in those years in which the five-year rural development progress appraisal is submitted. Each biennial report shall include but not be limited to—

"(A) a comparison of rural and metropolitan employment, income, and population conditions and trends;

"(B) an identification and discussion of the problems, needs, and opportunities of those rural areas that differ significantly in terms of employment, income, and population experience from metropolitan standards;

"(C) an appraisal of housing in rural areas that (i) analyzes conditions affecting rural housing and Federal rural housing programs, (ii) provides information on the Federal program strategies to be employed over the next succeeding two years to deal with rural housing problems, (iii) identifies specific rural areas and population groups having the greatest housing needs, and (iv) provides information on the short-range strategies to be employed by the Federal Government to meet those needs;

"(D) data on the needs of rural Americans for selected community facilities and services and a statement of the Federal strategy to be employed to meet those needs. The specific community facilities and services to be assessed in each biennial report shall be selected after consultation with the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry;

"(E) an analysis of the needs of disadvantaged rural people (including, but not limited to, migrant farmworkers) that reviews the needs and problems of selected population groups and describes the Federal strategy for meeting their problems; and

"(F) an analysis of Federal outlays in rural areas as contrasted with those in metropolitan areas.

"(4) The Secretary may initiate new and expand on-going research and development efforts related to the solution of rural development, economic, technological, and social problems.".

Sec. 5. There are hereby authorized to be appropriated annually not to exceed $1,500,000 for the development of a rural development policy management process that shall include both an appraisal every five years of rural conditions, needs, problems, and opportunities for development, and a biennial report on progress toward attaining national rural development goals.

Sec. 6. Section 306(a)(11) of the Consolidated Farm and Rural Development Act is amended to read as follows:

"(11) The Secretary may make grants, not to exceed $15,000,000 annually, to public bodies or such other agencies as the Secretary may select to assist in establishing and maintaining the rural development policy management process provided for under section 526(b) of the Revised Statutes, as amended (7 U.S.C. 2204), at the State and sub-State levels. Such grants are to be used to establish and maintain a process to—

"(A) collect data and information needed to assess area and State rural conditions, needs, problems, and opportunities;

"(B) establish local and State government rural development policies, strategies and program objectives to address these conditions, needs, problems, and opportunities;

"(C) enable participation by the grantees in the Federal, State, and local rural development policy management process;

"(D) design, in conjunction with other levels of government, programs needed to implement rural development goals, objectives, and strategies; and

"(E) provide for a flow of rural development information among the citizens, local governments, designated sub-State planning bodies, State governments, and the Federal Government.".

Sec. 7. Section 306(a) of the Consolidated Farm and Rural Development Act is amended by—

(1) redesignating paragraphs (12), (13), and (14) as paragraphs (13), (14), and (15), respectively; and

(2) inserting immediately following paragraph (11) a new paragraph (12) to read as follows:

"(12) The Secretary shall provide for the establishment and operation in no less than five rural states rural information and assistance centers (hereinafter referred to as 'centers'.) The centers shall be established and operated as demonstration projects—

"(A) The centers shall be established in geographically dispersed areas of the United States, taking into consideration the geography of the areas in which the centers are to be located, the rural population of the areas in which they are to be located, and accessibility and convenience to the rural population.

"(B) The Secretary, through grants, contracts, or cooperative agreements with any public or private nonprofit organization, college or university, State or local agency, governmental planning body shall assure the operation of such centers. Contracts, grants, or cooperative agreements entered into for the operation of the centers shall be for a period of at least two but not more than three years. The Secretary shall provide such technical assistance and training as may be necessary to provide the most accurate, timely, systematic, and comprehensive exchange of information on federally sponsored or funded programs. The Secretary may contract with commercial time-sharing firms in order to carry out these purposes.

"(C)(1) It shall be the function of each center to provide to persons living in rural areas, to officers and employees of government at all levels, elected officials, and to regional, district, and local planning bodies current, accurate, and comprehensive information with respect to all federally sponsored or funded programs. It shall also be the function of each center to provide its users with such technical assistance and training as may be necessary. It shall also be the function of each center to provide for the widest possible dissemination of all information available to the center.

"(2) The Secretary shall provide the centers with as much information as possible regarding new Federal programs at the earliest practicable time after the establishment of such programs, particularly those programs not yet listed in the Catalogue of Federal Domestic Assistance or on the Federal Assistance Program Retrieval System, and the centers shall make through the best available state-of-the-art information to the persons it serves at the earliest practicable time after receiving it from the Secretary.

"(D) The Secretary shall give the centers the widest possible discretion in their operations and shall encourage the centers to conduct for the users of such centers, under contractual arrangements with such users, analytical type studies using the information available to the centers.

"(E)(1) In order to carry out the demonstration projects the Secretary shall obtain from all departments and agencies of the Federal Government the most comprehensive, current, and applicable information that can be made available with respect to programs operated or funded by such departments and agencies and provide such information to the centers. This is to include but not be limited to elements of the following data bases: Federal Procurement Data System, Federal Assistance Program Retrieval System, Catalogue of Federal Domestic Assistance, Geographic Distribution of Federal Funds, United States Census Information, Code of Federal Regulations, Federal Assistance Award Information, and other such data bases.

"(2) Coordinating Federal interagency bodies and the heads of all departments and agencies of the Federal Government shall cooperate and assist the Secretary in providing such information as may be needed for the purposes of this Act.

"(F) The Secretary shall submit a written report to Congress one year after the date of enactment of this Act, and annually thereafter, reviewing the actions taken under this Act and the operations of the centers during the past year. The Secretary shall include in each such report his evaluation of the program being carried out under this Act together with such recommendations for new legislation as he deems necessary or appropriate to improve such program

"(G) Funds authorized to be appropriated in section 306(a)(11) shall be used to carry out the demonstrations.".

SEC. 8. The provisions of this Act shall become effective October 1, 1979.

MOTION OFFERED BY MR. DASCHLE

Mr. DASCHLE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. DASCHLE moves to strike out all after the enacting clause of the Senate bill, S. 670, and to insert in lieu thereof the provisions of the bill, H.R. 3580, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to provide for the establishment and coordination of rural development policy, to extend until September 30, 1981, the authorizations for appropriations for title V of the Rural Development Act of 1972, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3580) was laid on the table.

House Resolution 438 was laid on the table.

GENERAL LEAVE

Mr. DASCHLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Dakota?

There was no objection.

WEST VALLEY DEMONSTRATION ACT

Mr. McCORMACK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6865) to authorize the Department of Energy to carry out a high level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y., as amended.

The Clerk read as follows:

H.R. 6865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "West Valley Demonstration Project Act".

SEC. 2. (a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities.

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solification.

(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal respository for permanent disposal.

(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission—

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

(3) The Secretary shall—

(A) undertake detailed engineering and cost estimates for the project,

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques.

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

(c) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project. The agreement shall provide for the following:

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

SEC. 4. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

SEC. 5. (a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shal be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of

1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

Sec. 6. For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

The SPEAKER pro tempore. Is a second demanded?

Mr. CORCORAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

Mr. BAUMAN. Mr. Speaker, reserving a right to object to the ordering of a second, would the Chair entertain a call of the House at this point?

The SPEAKER pro tempore. The Chair would like to say to the gentleman from Maryland that the Chair would like to finish, unless the gentleman insists.

Mr. BAUMAN. Mr. Speaker, I move a call of the House.

The SPEAKER pro tempore. At this time the Chair declines to recognize the gentleman for that purpose.

Mr. BAUMAN. Mr. Speaker, I object to the ordering of the second, and on that I demand tellers.

Tellers were ordered, and the Speaker pro tempore appointed as tellers Mr. McCormack and Mr. Bauman.

PARLIAMENTARY INQUIRY

Mr. McCORMACK. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. McCORMACK. Mr. Speaker, will the Chair please explain for all Members present exactly what the present parliamentary situation is and on what the Members will be voting by tellers?

The SPEAKER pro tempore. The question is on the ordering of the second and a motion to suspend the rules.

The House divided, and the tellers reported that there were—yeas 14, nays 1.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 244, nays 0, answered "present" 1, not voting 187, as follows:

[Roll No. 540]

YEAS—244

Abdnor
Addabbo
Akaka
Alexander
Annunzio
Archer
Ashley
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bevill
Bingham
Blanchard
Boggs
Bolling
Bonior
Brinkley
Brodhead
Brooks
Broomfield
Broyhill
Buchanan
Burgener
Burlison
Burton, Phillip
Carter
Cavanaugh
Clausen
Clay
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Danielson
Dannemeyer
Daschle
Davis, Mich.
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dingell
Downey
Duncan, Tenn.
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Erdahl
Ertel
Evans, Del.
Fascell
Fazio
Fenwick
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Frenzel
Frost
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hamilton
Hammer-schmidt
Hance
Hansen
Harris
Hawkins
Hillis
Hinson
Hopkins
Howard
Hubbard
Hutchinson
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lee
Lehman
Leland
Lewis
Livingston
Lloyd
Loeffler
Lott
Lowry
Luken
Lundine
Lungren
McCormack
McDonald
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Madigan
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Miller, Calif.
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Mitchell, Md.
Mitchell, N.Y.
Moffett
Mollohan
Montgomery
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Moorhead, Calif.
Moorhead, Pa.
Murphy, Pa.
Murtha
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Nolan
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Royer
Rudd
Sabo
Satterfield
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shumway
Skelton
Smith, Nebr.
Snowe
Solomon
Spellman
Spence
St Germain
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Stenholm
Stewart
Stockman
Stokes
Stratton
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Symms
Synar
Taylor
Thompson
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Udall
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Van Deerlin
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Volkmer
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White
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Tex.
Winn
Wylie
Yates
Young, Alaska
Young, Fla.
Zablocki

ANSWERED "PRESENT"—1

Horton

NOT VOTING—187

Albosta
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N.Dak.
Anthony
Applegate
Ashbrook
Aspin
Atkinson
AuCoin
Baldus
Barnes
Bereuter
Bethune
Biaggi
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brown, Calif.
Brown, Ohio
Burton, John
Butler
Byron
Campbell
Carney
Carr
Chappell
Cheney
Chisholm
Cleveland
Collins, Ill.
Corman
Cotter
Daniel, R. W.
Davis, S.C.
de la Garza
Dellums
Dixon
Dodd
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Early
Eckhardt
Emery
English
Erlenborn
Evans, Ga.
Evans, Ind.
Fary
Ferraro
Findley
Fish
Ford, Mich.
Fountain
Fowler
Fuqua
Garcia
Gaydos
Gephardt
Giaimo
Gibbons
Ginn
Goldwater
Gray
Green
Hall, Ohio
Hall, Tex.
Hanley
Harkin
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Heckler
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Huckaby
Hughes
Ireland
Jenkins
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Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kostmayer
LaFalce
Leach, La.
Lederer
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Levitas
Long, La.
Long, Md.
Lujan
McClory
McCloskey
McDade
McEwen
McKay
McKinney
Maguire
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Mathis
Mattox
Mavroules
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Mottl
Murphy, Ill.
Murphy, N.Y.
Musto
Myers, Ind.
Myers, Pa.
Neal
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Nowak
O'Brien
Oberstar
Obey
Panetta
Patten
Patterson
Paul
Pease
Peyser
Pritchard
Pursell
Quayle
Rangel
Richmond
Rinaldo
Roberts
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Santini
Sawyer
Scheuer
Shannon
Shelby
Shuster
Simon
Smith, Iowa
Snyder
Solarz
Staggers
Stark
Tauke
Tauzin
Thomas
Traxler
Vander Jagt
Vanik
Walgren
Watkins
Waxman
Weiss
Williams, Mont.
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Yatron
Young, Mo.
Zeferetti

☐ 1250

So a second was ordered.

The result of the vote was announced as above recorded.

☐ 1300

The SPEAKER pro tempore. The gentleman from Washington (Mr. McCormack) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. Corcoran) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington (Mr. McCormack).

Mr. McCORMACK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6865 authorizes the Department of Energy to conduct a research, development, and demonstration program on the process for glassification, vitrification, or solidification of high level radioactive wastes, a step that is necessary prior to the ultimate disposal of these materials.

Under the program, the Department will take the liquid waste presently stored in tanks at the Western New York

Nuclear Service Center in West Valley, N.Y., and convert it into a solid, insoluble substance to make it totally safe for transportation and final disposal. In conducting this program, the DOE will develop essential data, experience, and materials for the later demonstration of techniques for permanently disposing of nuclear wastes. In this regard, it is my hope that further legislation dealing with all of the steps in the high level waste disposal process will be brought before this body before the end of this session.

Before describing this bill further, I congratulate and commend the gentleman from New York (Mr. LUNDINE), a member of the Committee on Science and Technology, for his tireless efforts in drafting this legislation, in working with the committees and subcommittees of jurisdiction and providing a vital link between his constituents and the State of New York and the Congress. He has done an outstanding job in addressing this complex issue surrounding this subject.

I also congratulate the chairman of the Committee on Science and Technology (Mr. FUQUA), the other members of the Committee on Science and Technology, and especially the Subcommittee on Energy Research and Production, the ranking minority member, the gentleman from New York (Mr. WYDLER), who worked hard to bring this legislation before the House, and of course, the chairman of the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce which had joint jurisdiction on this bill, the gentleman from Michigan (Mr. DINGELL), who also worked diligently in adding his perspective and that of his subcommittee to this bill.

Although the major benefit from the project authorized in this bill will accrue to the Federal Government and the people of this country through the advancement of the understanding of the technology for disposing of high level wastes, the bill recognizes that the State of New York also benefits from the conduct of this project and that the State of New York will assume total liability for the plant and for the entire facility as of January 1981. For this reason, the bill also requires that the cost of the project shall be shared by the Federal Government and the State of New York. I believe this is an equitable arrangement.

Among other things, the bill directs the Secretary of Energy to file reports with the Nuclear Regulatory Commission and keep it informed regarding the project. Since the demonstration facilities will be constructed on the site currently licensed by the Nuclear Regulatory Commission, the bill also provides that the NRC may prescribe requirements for decontamination and decommissioning of the demonstration facilities and may require certain safety reports from the Department of Energy. These requirements were specified so the project does not compromise further licensing related decisions by the Nuclear Regulatory Commission.

H.R. 6865, however, does not change the fundamental nonregulatory relationship that would otherwise obtain between these two Government agencies and the conduct of research, development, and demonstration in nuclear energy. The bill directs the DOE to proceed with this project and DOE is not subject to NRC control or licensing, except for the two very limited instances noted above, that is, that the NRC may prescribe requirements for decontamination and decommissioning and may require certain safety reports. Other than these two instances, the NRC is in purely an advisory situation. It is anticipated that NRC might need to amend its license on West Valley to take cognizance of the DOE involvement at the site, but that this would be purely an administrative technicality that would not affect the project. These very limited regulatory provisions should not be interpreted as a precedent for direct NRC responsibility of research, development, and demonstration activities by the Secretary. I understand the gentleman from Michigan, whose subcommittee suggested this careful cooperative approach, concurs with this interpretation.

The bill also provides for public hearings or meetings to advise the communities surrounding the project of the Department's plans for carrying out the project. I believe the local communities should be kept well informed of the Government's activities in West Valley.

The total project cost is estimated to be about $300 million, of which the Federal Government would be paying 90 percent. The total cost may be much less, however, depending upon the choice of technologies. This will be decided in the future.

This bill authorizes an appropriation of $5 million for the fiscal year 1981, and this is the amount requested by the administration and approved by the Committee on Science and Technology in its fiscal year 1981 Department of Energy authorization bill. The appropriation of this amount has already passed the House.

I believe this legislation is a necessary step in the Government's program of research, development, and demonstration of the technology for disposing of high-level radioactive wastes, and I urge all of the Members to support it.

Before I yield time I want to show the Members a sample of what radioactive wastes will look like when they are converted to glass. I have in my hand here a small cube. It is four cubic inches and it is a cube of obsidian rock. This obsidian rock was naturally formed by volcanic action in the State of Oregon. As it happens, the nuclear wastes, when they are glassified, will have virtually the identical chemical composition. We have already glassified wastes, of course, in this and many other countries, and this particular piece of obsidian is between 15 and 20 million years old. This is what the liquid wastes will look like when they solidify in the canister a few hours after they are poured, and that is what they will look like 15 million years later in deep geological storage. Of course, the radioactivity will long since have died out. The glassified wastes will decay to a level of toxicity equal to the uranium ore from which it came, in about 500 years.

This is the program we are undertaking, then, to convert the liquid wastes to solids for permanent geologic disposal.

Mr. Speaker, I now yield such time as he may consume to the gentleman from New York (Mr. LUNDINE) who is the key person in writing this bill and bringing it to us at this time.

Mr. LUNDINE. Mr. Speaker, first I would like to thank the chairman of the Committee on Science and Technology, the gentleman from Florida (Mr. FUQUA), for his outstanding cooperation. Likewise, I would like to thank the subcommittee chairman, the gentleman from Washington (Mr. MCCORMACK) as well as the gentleman from Michigan (Mr. DINGELL), in addition to the chairman of the Interstate and Foreign Commerce Committee, the gentleman from West Virginia (Mr. STAGGERS), and the chairman of the Interior and Insular Affairs Committee also having jurisdiction over this matter, the gentleman from Arizona (Mr. UDALL). I would like to express my thanks for their outstanding cooperation and I especially want to thank my colleague from New York (Mr. WYDLER) who could not be here today, and the gentleman from Ohio (Mr. BROWN), ranking member on the Energy and Power Subcommittee, for their worthwhile work on this project.

Other colleagues of mine from New York, including Mr. OTTINGER, who serves on both committees, have been very important in moving this legislation to where the House can now consider it.

Mr. Speaker, I rise in support of H.R. 6865, legislation authorizing the Department of Energy to undertake a high level nuclear waste solidification demonstration project at the Western New York Nuclear Service Center in West Valley, N.Y. This legislation is important, not only for the tiny West Valley community which I represent in Congress, but also for this country as a whole as we try to move forward to coordinate and implement an effective national program to safely manage and dispose of our nuclear wastes.

This technological demonstration project has received careful and extensive consideration over the past 2 years and today benefits from broad-based support. This project has already been approved by the House once as part of the fiscal year 1980 Department of Energy authorization bill. Unfortunately, the Senate chose not to act on this bill, making necessary the further legislative action we are taking today by considering H.R. 6865. A similar bill, S. 2443, was approved by the Senate in June. The House has also approved a $5 million appropriation to accompany this authorization as part of the energy and water appropriations bill.

I appreciate the cooperation and support of members of the Science and Technology, Interior, and Commerce Committees, particularly their ranking majority and minority members, in steering this bill to the floor for your consideration today. The bill has benefited from the dialog and contributions from all of these committees with shared jurisdiction over this matter. In addition, I am pleased we have arrived at mutually acceptable provisions to the administration and nuclear and environmental communities.

West Valley is the site of the only commercial nuclear reprocessing operation ever in the history of the United States. The reprocessing center was encouraged by the Atomic Energy Commission as an important step to help close the back end of the nuclear fuel cycle. The center began operations in 1966 and was closed in 1972 when upgraded seismic requirements from the Nuclear Regulatory Commission made it uneconomic to continue operations. The operation would not have been possible had not the Federal Government concluded a "baseload agreement" to provide the major portion, nearly 70 percent, of the fuel for reprocessing.

The West Valley site is licensed by the Nuclear Regulatory Commission with New York State and Nuclear Fuel Services, Inc. acting as colicensees of the site. The site is owned by New York State but Nuclear Fuel Services operates the site under a contractual arrangement which permits them to transfer ultimate responsibility for the disposition of the nuclear waste on the site to the State of New York. Nuclear Fuel Services, Inc. has indicated they intend to take action to do so on December 31, 1980.

Located on the site from reprocessing operations are about 580,000 gallons of high-level liquid nuclear waste stored in two carbon tanks, a nuclear fuel reprocessing plant being maintained in a shutdown condition, a spent fuel pool with a capacity of 250 metric tons which is approximately two-thirds full at the present time, and two shut-down solid nuclear waste burial grounds; one licensed by the NRC and the other by the State of New York.

The project authorized by the bill would solidify the 580,000 gallons of high-level liquid waste at the site. This undertaking has important value as a cost-effective demonstration of our ability to safely and successfully implement a program to manage high-level liquid nuclear wastes. Solidification of high-level liquid nuclear waste of the type at West Valley has never been demonstrated anywhere in the United States on a significant scale. The project authorized by this bill would require the first integrated production scale operation for high-level liquid nuclear waste solidification. The facilities and hardware already at the center, which will be contributed as part of the New York State share of this project and utilized by the Federal Government, will make this a cost-effective undertaking that otherwise would require a large infusion of taxpayer dollars to provide similar facilities and hardware at any other site elsewhere around the country.

As I previously described, there are also two solid waste burial grounds and a partially filled spent fuel pool at the West Valley site. The provisions of H.R. 6865 do not extend to these aspects of the West Valley site, but rather permit the future disposition of these facilities to be determined separately. In other words, H.R. 6865 does not authorize or otherwise provide for the establishment of an "away from reactor" interim storage facility for spent nuclear fuel or reopening of the low-level waste nuclear burial ground at the site.

H.R. 6865 limits the Federal liability in regard to the entire site to the conduct of the project specifically defined in the bill. The bill prohibits the transfer of ownership of the site to the Federal Government, thereby leaving long-term responsibility for the entire site with the State of New York. H.R. 6865 furthermore does not authorize the transfer of title to the high-level liquid nuclear waste to be used in the project, but would not prohibit taking of title to these wastes under some other or future provision of law.

Furthermore, the bill provides for a cost-sharing arrangement between the Federal Government and State of New York whereby the Federal Government would contribute 90 percent of the costs of the solidification project and the State of New York 10 percent. This provision was included in recognition of the fact that as owner of the West Valley site and wastes, the State of New York will benefit from the elimination of a potential public health and safety hazard that may develop if these wastes are not solidified and disposed of in a proper and timely fashion.

H.R. 6865 also protects the rights and authority of the State of New York and Nuclear Fuel Services for pursuing any action to recover any costs from each other or any other appropriate person for past actions at the site. In summary, the cost-sharing arrangement, benefits, responsibilities, and liabilities are fairly proportioned under the provisions of H.R. 6865.

As the representative in this legislative body of the people of West Valley, I am naturally concerned that this project go forward with the utmost regard for the health and safety of those living in the vicinity of the project and those who will be employed during the course of the project. I am convinced, and there is consensus surrounding this matter, that the provisions of H.R. 6865 will provide the necessary safeguards to protect public health and safety.

Although H.R. 6865 clearly does not intend this project to be licensed by the Nuclear Regulatory Commission, it addresses in detail a meaningful consultive role for the NRC which will insure public involvement in decisions surrounding implementation of the project. The Department of Energy is required to hold public hearings to inform the public of activities to be undertaken under the project and to solicit their comments. The plan for solidification of the high level wastes at the West Valley site must be submitted to the NRC for review and comment. If there are any objections to the DOE plan, the NRC must publish them in the Federal Register for public comment. The DOE is then required to address the Commission's concerns and explain in the Federal Register the actions they intend to take as a result. The Department of Energy is further required to make available to the NRC all safety analyses and other information relating to matters of public health and safety. Finally, the bill provides that once the project is complete, the facilities and hardware used in connection with the project will be decontaminated to a level prescribed by the NRC.

In summary, H.R. 6865 is a carefully drawn bill which has the support of the administration, three congressional committees who have carefully considered its benefits to this country, the colicensees of the West Valley site—New York State and Nuclear Fuel Services, and the West Valley community. This demonstration project will move this country an important step forward toward the evolution of an acceptable way to handle and dispose of our high-level nuclear wastes. The problem of what to do with our nuclear wastes has been ignored by the Congress too long. We cannot afford to procrastinate any longer. I urge your support for this bill before you today as a meaningful step in the right direction.

□ 1310

Mr. Speaker, at this point I would like to yield to my colleague from New York (Mr. KEMP). West Valley is just about in between the district of Mr. KEMP and myself.

Mr. KEMP. Mr. Speaker, I would like to thank my colleague from Washington (Mr. McCORMACK) and my colleague from western New York (Mr. LUNDINE) for their work in helping bring the West Valley Demonstration Act before the Congress today. The West Valley nuclear fuel reprocessing site, which is in Mr. LUNDINE's district contiguous to my own, poses serious health and safety problems to the residents of western New York and Erie County. I have been working for many years to help achieve a cleanup of this inactive waste depository, and the bill before us today is the result of this long-term effort.

The history of the problems at West Valley is a classic example of shortsighted planning by the Federal Government. In 1957 the Federal Government encouraged New York State to establish a commercial nuclear waste reprocessing site within its borders, which New York eventually did. In 1961, New York State purchased the land where the West Valley site stands; and in 1963 a lease and waste storage agreement was negotiated between Nuclear Fuel Services and the State of New York. Base-load supplies were worked out, so that the plant would be economically viable, and the State and Federal regulations and environmental requirements were spelled out.

In 1970, after the plant had been constructed and had already processed 600 tons of fuel, 75 percent of which was from a Federal Government source, the Federal Atomic Energy Commission changed the rules of the game. New rules required wastes to be solidified and shipped to a Federal waste disposal area, rather than retaining the wastes in a liquid form, as had been contemplated in the construction of the NFS Center. That change in policy—which would have cost Nuclear Fuel Services over $600 million—made further commercial reprocessing uneconomical, and the plant closed.

But the people of western New York were left with a plant site holding 600,000 gallons of liquid waste—with no way of removing it, since the parent company had folded. This was a frightening situation.

The bill now before us establishes a Federal demonstration project to solidify the high-level nuclear wastes at the West Valley center and move the wastes to a Federal repository for long-term burial. The site is then to be decommissioned and decontaminated, and a plan for the safe removal of the wastes must be prepared. The bill authorizes $5 million for fiscal year 1980 for the project. I have long opposed letting this site be a permanent one and I'm glad to see this reflected in the bill.

Mr. McCORMACK. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. Dingell), chairman of the Subcommittee on Energy and Power.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 6865, as amended. I particularly commend the author of the bill, Mr. Lundine; the chairman of the Science Committee, Mr. Fuqua; my distinguished friend and colleague from Washington (Mr. McCormack); my colleagues on both sides of the aisle and on both committees which have considered this matter—the Committee on Interstate and Foreign Commerce, and also the Committee on Science and Technology. I do also commend my good friend, Mr. Udall, chairman of the Committee on Interior and Insular Affairs, for the very helpful fashion in which he has cooperated on this matter; and also my good friend from New York, (Mr. Ottinger), who has worked very hard to bring this matter about.

Mr. Speaker, I rise in support of the amendment to H.R. 6865.

This amendment represents the results of the effort by all parties involved to resolve differences in the bill as reported by the Committee on Science and Technology and the Committee on Interior and Insular Affairs. As the amendment is merely a modification of the bill as reported by the Commerce Committee, and as it respects the interest of all the parties involved, I urge my colleagues to support.

H.R. 6865 was jointly referred to the Committees on Science and Technology, Interior and Insular Affairs, and Interstate and Foreign Commerce. What is before the House today is not simply the results of a combined effort of these committees, but also another demonstration of the fact that these committees can work together on matters which affect the interests of each committee. It should be noted that this legislation was introduced last March, and despite the heavy schedule of each committee, we have been able to consider it and reach a compromise in a relatively short period of time, demonstrating that the committees can not only work together, but can do so expeditiously.

The amendment before the House today is the result of combined efforts of many, and some are deserving of particular note. Much of the credit belongs to the distinguished gentleman from Florida (Mr. Fuqua), who, as chairman of the Committee on Science and Technology, was most instrumental in negotiating this compromise as was his colleague on that committee, the gentleman from Washington (Mr. McCormack), who chairs the Subcommittee on Energy Research and Production, which first reported this bill. Additionally, the distinguished chairman of the Committee on Interstate and Foreign Commerce (Mr. Staggers) deserves recognition for his leadership in shepherding this bill through that committee, as does the gentleman from Arizona (Mr. Udall), for his efforts in regard to this legislation in the Committee on Interior and Insular Affairs.

There are three others who deserve special recognition. First, the sponsor of this legislation, the gentleman from New York (Mr. Lundine), was untiring in his efforts on behalf of this bill. Additionally, another gentleman from New York (Mr. Ottinger), with whom I have the privilege of serving on the Committee on Interstate and Foreign Commerce, worked diligently on behalf of the bill in that committee and was most instrumental in negotiating the compromise which is before the House today. Finally, my colleague from Ohio (Mr. Brown), who serves as the ranking minority member on the Subcommittee on Energy and Power, was an active and helpful participant in developing the Commerce bill and without whose help we would not be at the point we are today.

Mr. Speaker, the amendment before the House today is essentially the version of the bill which was reported by the Committee on Interstate and Foreign Commerce, with just some slight modifications, and therefore reflects the actions taken by the committee and the assumption upon which such actions were based. Although the sponsor of this legislation was initially concerned about the virtual total revision of the bill which occurred during the course of our committee's considerations, I believe he will agree that the result represents a substantial improvement from the bill as introduced, and that, as a consequence, the program is more defined and that the interest of not only the Federal Government but also the State of New York are better served by the Commerce bill. A full explanation of the revised bill can be found in the Commerce Committee's report on H.R. 6865. Moreover, I pledge to work actively in resolving any differences which may exist with the Senate regarding this bill so that it may soon be signed into law.

There are certain points which should be emphasized in regard to the amendment which is presently under consideration. The legislation directs the Secretary of Energy to establish a program to solidify the high-level liquid radioactive waste which exists at the Western New York Nuclear Fuels Service Center near West Valley, N.Y. Only the wastes presently at the site are to be solidified, and nothing in this bill authorizes the Secretary to accept title to either the high-level radioactive waste in a solid or liquid form or to the center or any portion thereof.

Under the bill, the Secretary is directed to enter into a cooperative agreement with the State of New York regarding certain aspects of the program. However, this is essentially a Federal program, and nothing in this cooperative agreement is to in any way limit the Secretary's authority to make the final decision regarding the establishment or implementation of the program, and the fact that the State is contributing a small portion of the cost is not to be interpreted as giving the State any role in the management of the program.

The Western New York Nuclear Service Center is a licensed facility which is under the jurisdiction of the Nuclear Regulatory Commission, and the existing license presently does not authorize the establishment of a high-level liquid waste solidification project. Consequently, before the project can begin, it will be necessary to obtain a license amendment from the Commission. The Commission will then have to determine the appropriate procedures for considering this application, and nothing in this act affects the statutory authority to regulate the activities on a license site or to consider the issuance of such an amendment subject to such terms or conditions which the Commission deems consistent with its existing statutory authorities.

The bill also directs the Secretary to negotiate an agreement with the Nuclear Regulatory Commission to establish a mechanism, independent of any existing statutory authority, for cooperation between the Department of Energy and the Nuclear Regulatory Commission in regard to all aspects of the project. Such an amendment should be designed to facilitate the relationship between these two Government units and diminish the potential for any subsequent disputes.

The project authorized by this legislation will afford the Department of Energy the opportunity to undertake a full-scale waste solidification program. As a result, the project has substantial demonstration value, which is the basis for joint referral of this bill to the Committee on Science and Technology. However, there is a substantial remedial action aspect to the program in that the continued storage of high-level radioactive waste in a liquid form is an unacceptable situation which poses a long-term danger to the public health and safety. The remedial action aspects of this program constitute the basis for the referral of this legislation to the Committees on Interior and Insular Affairs and Interstate and Foreign Commerce. The Committee on Interstate and Foreign Commerce's action was the result of its concern about the public health and safety issues, and it is for that reason it believes action is required now.

Although viewed as a remedial action program, the situation at West Valley is unique because of the demonstration aspects of the program. Furthermore, the past extensive Federal involvement in the development and operation of the reprocessing activities at the site distinguish this program from a typical remedial action program. Over 70 percent of the spent fuel reprocessed on the site was under contract with the Atomic Energy Commission, and most of these were for the military as opposed to the commercial programs. The remainder of the spent fuel was supplied by the utilities, but the Atomic Energy Commission was committed to reprocessing it and utilize the West Valley facility for discharging its commitment to these utilities. Because of the past Federal involvement and because of the demonstration aspects of this project, the Federal contribution is greater than it would normally be under a typical remedial action program, and thus, West Valley should not be a precedent for determining Federal contribution to future remedial action programs regarding the disposal of radioactive waste or any other toxic or hazardous waste.

Finally, nothing in this legislation requires any reciprocal action on the part of the State of New York regarding the use of any other portion of the site. This program represents the totality of the Federal commitment to the site, and it is expected that in the future the State of New York will look to its own resources regarding any action required at the site needed to protect the public health and safety. However, it must be noted that the West Valley site has the potential for use as a low-level waste burial ground and as a spent-fuel storage facility. There is presently a critical shortage of low-level waste disposal sites, and the lack of such a facility in the Northeast, which is the largest generator of such waste, cannot be ignored. The enactment of this legislation should, therefore, provide a substantial incentive to the State of New York to consider the potential use of this site for meeting regional needs. We can furthermore expect that all the low-level and transuranic contaminated waste generated in the course of this project will be disposed of at the site.

I note that in his floor statement on this bill, the floor manager from the Committee on Science and Technology noted that my understanding was that this would not be licensed activity. While I agree that this program would not set a precedent for future programs, it must be recognized that this is a licensed facility and an amendment to license is necessary, and nothing in this bill affects the regulatory authority of the NRC.

Mr. Speaker, in conclusion, I believe this is a good bill and one which should pass. At this time, Mr. Speaker, I yield to my good friend and colleague, the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I would like to ask the chairman of the Subcommittee on Energy and Power a question concerning the fact that the compromise does not contain the provision which was included in the bill reported by the Interstate and Foreign Commerce Committee relating to the authority of the Nuclear Regulatory Commission to terminate any action of the Secretary in regard to this program. It is my understanding that because the Western New York Nuclear Service Center is a licensed facility and because the activities would require an amendment to the existing license the amendment was unnecessary. Is that the gentleman's understanding?

Mr. DINGELL. That is my understanding and a license amendment would be required and that this makes the West Valley situation unique from any generic legislation dealing with nuclear waste issues.

Mr. OTTINGER. I further understand that an amendment was adopted by the Interstate and Foreign Commerce Committee that would authorize the Nuclear Regulatory Commission to terminate any action of the Secretary regarding the management of nuclear waste which poses a danger to the public health and safety. I assume this provision is appropriate and consistent with the action we are taking.

Mr. DINGELL. Such an amendment would be appropriate in the context of subsequent legislation and is not included in the pending legislation only because the West Valley facility is already licensed by the NRC.

Mr. OTTINGER. Mr. Speaker, if the gentleman will yield further, I want to thank the gentleman very warmly for that clarification. My main concern in this legislation is to assure that the NRC retain its prime responsibility for protecting the public health and safety in nuclear matters. I think that this has been resolved satisfactorily in this situation for the reasons that the chairman has stated. I thank him.

Mr. DINGELL. I thank the gentleman, and I thank the distinguished gentleman from Washington State (Mr. McCORMACK) for his kindness.

Mr. CORCORAN. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, at this point I would like to yield to my friend and colleague, the gentleman from California (Mr. CLAUSEN), the ranking minority member of the Interior Committee.

Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 6865. Our committee held hearings on West Valley last year.

I congratulate the chairmen of the Science and Technology, Interior and Commerce Committees for having arrived at such a constructive and beneficial bill.

There is little question that a solution to the problem of high-level nuclear wastes must be found before we can move to greater utilization of the nuclear option. It was determined almost 10 years ago by the Atomic Energy Commission that commercial high-level radioactive wastes should be solidified as the first step in controlling the potential hazardous effects of high-level wastes.

Nevertheless, commercial high-level wastes have not yet been solidified in the United States on other than a laboratory scale. Solidification of the high-level wastes at West Valley can provide valuable technical information on large-scale solidification, as well as provide the public with the assurance that this country can effectively solve problems that were created before the decision to solidify all high-level wastes.

In addition, the Federal Government has the responsibility to resolve the high-level liquid waste problems at West Valley. It endorsed and encouraged commercial reprocessing of nuclear fuel and then decided that reprocessing was not in the national interest. I believe reprocessing of nuclear fuel is in the national interest and the enactment of this bill can serve notice that this Nation can solve any problem relating to the generation of high-level wastes during reprocessing.

□ 1320

Mr. CORCORAN. Mr. Speaker, the legislation before us, I think, has been adequately and accurately discussed by the Members who have preceded me this afternoon. I am not going to take the time of the House in order to run over the same ground that we have already discussed, but I would like to touch on two aspects of the problem that gave rise to our legislation that is pending in the House this afternoon.

First of all, I think there is a growing concern on the part of not only the people who live in the West Valley area but around the country, about the public health and safety aspects of the high level liquid waste which is in the tanks at the West Valley Center today. I believe that the committees that have been involved in this legislation have determined, correctly, that we have a Federal responsibility to be of some assistance in providing for a solution to that present exposure that exists at the site.

Second, I think there is also a Federal responsibility here with respect to the value the Federal Government and the country as a whole can derive from having a demonstration project like this, because what we intend to do, as my colleagues have already described in detail, is to provide for a demonstration program to solidify the high-level radioactive waste which obtains at the moment at the West Valley site.

One of the other aspects of the legislation in which I was particularly interested in the committee consideration of the measure was the degree to which there would be consultations between the Department of Energy and the Nuclear Regulatory Commission.

It seems to me one of the benefits we can derive from this is knowledge as to whether or not this solidification process, whether it is a vitrification process, whether it is a vitrification form or whatever form it might take, is of some use in our long-term disposal and management of the high level of radioactive waste which has been developed throughout comercial nuclear powerplants. I think that particular concern has been met because time and time again in the legislation before us, there is requirement for consultation and review between the Nuclear Regulatory Commission and the Department of Energy, so on that basis I am happy to support this legislation.

I want to congratulate, as others have done, the original sponsor, our friend from New York (Mr. LUNDINE) and I would urge my colleagues to support this measure.

Mr. Speaker, at this time I would like to yield 3 minutes to the gentleman from California (Mr. ROYER).

Mr. ROYER. Mr. Speaker, I should point out from our Science and Technology Committee view the role of the NRC in this project does not prejudice this role in nuclear waste R. & D. recovery in this matter. There are two aspects of this important nuclear legislation which I would like to stress.

First, this bill authorizes a technology demonstration project for the solidification of high-level nuclear waste. Such a project is necessary to instill public confidence in the fact that the technology for nuclear waste disposal is indeed at hand simply waiting for demonstration. The waste at West Valley is a result of both military activities and civilian reprocessing.

The sad thing is that the present administration has indefinitely deferred such reprocessing on the basis of its fear about weapons proliferation. Our committee has taken a strong position that spent nuclear fuel cannot be considered as "waste" because of the precious uranium and plutonium contained in it.

I hope that within a decade this country will be reprocessing such spent fuel and using the recycled plutonium and uranium in burner and breeder reactors.

The second important point I want to make about this bill is the fact that it delineates State responsibility for the nuclear fuel cycle. The State of New York is not sharing as much of the cost of this project as some of us might wish, but at the same time it must make a significant contribution to carrying out the demonstration project.

This is consistent with the fact that there is State responsibility for handling nuclear waste just as there are State benefits in electrical generation from the use of nuclear fuel. The State sought this facility and has operated and will build more nuclear powerplants and as a result no matter what the Governor's protestations may be, it will continue to receive the benefits of nuclear power. I urge my colleagues to support the legislation, which although not an ideal solution, represents a consensus among three major standing committees of the Congress.

Mr. CORCORAN. Mr. Speaker, I would like to add just one comment to what the gentleman from California mentioned with respect to the unique character of the involvement of the Nuclear Regulatory Commission with respect to decommissioning and decontamination.

We do have a unique circumstance here and that is that this is a licensed facility. With respect to other research and development projects, I do not think we have established any precedent whatsoever.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I rise in support of H.R. 6865. I am pleased to see this action toward the goal that the high-level liquid waste problems at West Valley be resolved.

In the last Congress the Government Operations Committee's Subcommittee on Enviromental Energy and Natural Resources held hearings in 1977 concerning the status of the West Valley site. It was apparent to me at that time that the Federal Government had the major share of responsibility for dealing with the high-level wastes at that site. The Federal Government encouraged the commencement of reprocessing at West Valley in order to commercialize the nuclear industry and then chose to abandon reprocessing as part of the nuclear fuel cycle.

It is now 3 years later, and I am happy to see that this bill not only solves an important local problem by recognizing the Federal Government's responsibility but, more importantly, provides for constructive action which will benefit this Nation's nuclear program. Nuclear wastes are a national problem and this bill will launch an important element of DOE's overall program to solidify high-level wastes.

I think it is desirable and appropriate that we enact this bill now and urge a "yes" vote.

Mr. CORCORAN. Mr. Speaker, I yield 4 minutes to the gentleman from Utah (Mr. MARRIOTT).

Mr. MARRIOTT. Mr. Speaker, I rise in support of H.R. 6865. Our committee held hearings on West Valley last year.

I congratulate the chairmen of the Science and Technology, Interior and Commerce Committees for having arrived at such a constructive and beneficial bill.

There is little question that a solution to the problem of high-level nuclear wastes must be found before we can move to greater utilization of the nuclear option. It was determined almost 10 years ago by the Atomic Energy Commission that commercial high-level radioactive wastes should be solidified as the first step in controlling the potential hazardous effects of high-level wastes. Nevertheless, commercial high-level wastes have not yet been solidified in the United States on other than a laboratory scale. Solidification of the high-level wastes at West Valley can provide valuable technical information on large scale solidification, as well as provide the public with the assurance that this country can effectively solve problems that were created before the decision to solidify all high-level wastes. In addition, the Federal Government has the responsibility to resolve the high-level liquid waste problems at West Valley. It endorsed and encouraged commercial reprocessing of nuclear fuel and then decided that reprocessing was not in the national interest. I believe reprocessing of nuclear fuel is in the national interest and the enactment of this bill can serve notice that this Nation can solve any problem relating to the generation of high-level wastes during reprocessing.

□ 1330

Mr. CORCORAN. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. RITTER).

Mr. RITTER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 6865, to authorize the demonstration of the solidification of high level nuclear waste at West Valley.

I think this is a landmark demonstration program because it will show to the people of this country that we can effectively deal with the problem of nuclear waste. As the gentleman from Utah (Mr. MARRIOTT) said, it also indirectly endorses the fact that reprocessing can and perhaps should be part and parcel of the nuclear fuel-to-waste cycle. The American people have waited a long time for the political leadership to begin to deal effectively with the nuclear waste problem, and this is a very good step in that direction.

Mr. Speaker, I yield back the balance of my time.

Mr. CORCORAN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I want to express my thanks to the gentleman from Illinois (Mr. CORCORAN) for yielding to me; time on my side has virtually run out.

Mr. Speaker, I want to make it clear that I have consistently supported this legislation and support it strongly, reports in some of the Buffalo papers notwithstanding. I supported the bill in the Energy Research and Production Subcommittee chaired by the gentleman from Washington (Mr. MCCORMACK). I supported it in the Science and Technology Committee. I helped to get it out of our Subcommittee on Energy and Power and the full Committee on Interstate and Foreign Commerce. I was pleased to have that acknowledgment from the principal author of the legislation, the gentleman from New York (Mr. LUNDINE), who has done yeomanlike work in getting this legislation through. I wish to commend the chairman of the Subcommittee on Energy and Power, the gentleman from Michigan (Mr. DINGELL), who made substantial improvements to the bill.

I think this legislation represents a good compromise. I would like to emphasize that I think it is essential that this problem be disposed of because the waste at West Valley at the present time does present a substantial danger to the public. It is high-level toxic waste, most of it defense waste from our nuclear weapons program. The waste presently exists in tanks, and the security of those tanks is in doubt since some evidence of leakage has already occurred.

It is important that we have this dispostal project, and I think it is important to demonstrate to the country that the solidification process we are authorizing can present an answer to the nuclear waste problem for the Nation.

I would like to congratulate also the chairman of the Energy Research and Production Subcommittee, the gentleman from Washington (Mr. MCCORMACK), for his work in providing for this demonstration through this legislation.

My principal concern with the legislation has been that the Nuclear Regulatory Commission maintain the jurisdiction we have given it over public health and safety. It is for that reason that I offered an amendment making the NRC's health and safety responsibilities clear in the legislation as it passed the Committee on Interstate and Foreign Commerce. I was persuaded to withdraw that amendment in the compromise that we have reached here because this is a licensed facility and under the license the NRC has the power to assert its authority over health and safety issues.

But the question will rise again with respect to the generic nuclear waste disposal legislation. We fought a tremendous battle here to dismantle the old Atomic Energy Commission which had responsibility for both nuclear promotion and safety and finally resolved it. Congress overwhelmingly, and with the support of most of those who advocate nuclear energy expansion, acted out of a sense that it was important that we separate the functions of promoters of nuclear energy, now residing in the Department of Energy, and protectors of the public health and safety, now residing in the Nuclear Regulatory Commission. To eliminate NRC's responsibility for health and safety as affects demonstrations of waste disposal would be a great mistake, and I am glad to see it satisfactorily resolved in this legislation.

Mr. Speaker, I think the protections we need are adequately preserved in this legislation, and I want to thank all those concerned, including the gentleman from Illinois (Mr. CORCORAN), for their cooperation in promoting this legislation.

Mr. CORCORAN. Mr. Speaker, I reserve the balance of my time.

Mr. McCORMACK. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I am not a scientist, I am not a member of the committee, and I guess I can only be described as a lay person.

The subcommittee chairman, the gentleman from Washington (Mr. McCORMACK), has shown me and shown all of us a cube of material which I believe is about an inch and a quarter on edge, and it feels like and has the heft of a piece of glass of about the same size.

I would ask the chairman of the subcommittee, what is this?

Mr. McCORMACK. Mr. Speaker, this is a piece of obsidian rock. It can be found in the ground, and it is volcanic in origin. It is identical chemically to the chemical makeup of solidified waste as it will be made.

The liquid waste from the tank will be mixed with glasseous ingredients, sand and limestone, in a melting furance and poured as a liquid glass into steel canisters, thick-walled steel canisters about the size of a domestic water heater, and will solidify and be chemically identical to this sample. Then it will be welded shut for a 500-year period.

Mr. DANIELSON. Mr. Speaker, what I would like to know is this: Is there or will there be any liquid development after the solidification has taken place?

Mr. McCORMACK. No. This is a piece of glass. It is identical to rock. It is a piece of solid glass. It will be solidified. It will be solid after it is poured and will remain solid for all time.

Mr. DANIELSON. Is there any danger of its desolving and decomposing and regaining its liquid form?

Mr. McCORMACK. No, there is not. Of course, it is possible to leach glass with some chemicals, but we do not put the glass in the ground where chemicals could reach it. This is engineered by placing a barrier around it, like a thin sheet of titanium around it, so it will remain for at least a thousand years. So it could not be leached even if chemicals did reach it.

Mr. DANIELSON. What is the danger of its leaking and percolating through the ground?

Mr. McCORMACK. It is nonexistent.

Mr. Speaker, this is being done every day in France and in other countries. The French in particular are making waste every day from their nuclear fuel program.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. DANIELSON) has expired.

Mr. McCORMACK. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I will conclude my remarks by simply saying that this is an important vehicle to carry out our high-level liquid nuclear waste management program. The technology does exist. It is developed, and is utilized in other parts of the world. There is no question that we can do it.

When we get to the point of converting our nuclear waste to glass, as we certainly will do, we will be totally removing those materials from the biosphere forever, and this bill is taking us down the first step in that direction.

● Mr. WYDLER. Mr. Speaker, I support this bill, the West Valley demonstration project, H.R. 6865. However, I wish to make clear its implications for the energy future for the State of New York and for the Nuclear Regulatory Commission's relation to research, development, and demonstration activity.

Nuclear energy has been important to the economy and well-being of the State of New York. Nuclear energy supplies 18 percent of the electricity for the State, and this will increase in the future. Nuclear is as necessary an energy source as coal, the only other realistic alternative for this century. In brief, New York has a significant stake in nuclear energy, with nuclear-electric use that is significantly greater than the national average. With any reasonable energy policy this use will increase, notwithstanding some current aberrations in energy planning by the State of New York.

The benefits of nuclear energy go hand in hand with responsibilities. Handling nuclear wastes is one of these responsibilities. New York has assumed this responsibility in the past when it sponsored the Western Nuclear Service Center to reprocess nuclear fuel. Although the plan no longer is in operation, the wastes remain. New York not only has a contractural responsibility for handling these wastes, but also a symbolic responsibility to do its part in continuing to fulfill the State's responsibilities flowing from the benefits of nuclear power. On the other hand, it is appropriate that the Federal Government shoulder most of the cost, since it will be the principal beneficiary from the demonstration.

As I have mentioned, the Department of Energy is turning the problem of existing wastes at West Valley into the advantage of generally demonstrating the removal and solidification of liquid high-level wastes on a meaningful scale. This is an appropriate intermediate state in the program evolution toward building expensive, full-scale facilities. Thus, this project at West Valley is truly research, development, and demonstration. It will provide the information needed as a licensing basis for full-size facilities. As such, under existing law, these demonstration facilities are not to be licensed. It is important to make this clear for this West Valley situation, because this location happens to include previously licensed facilities storage and operations. Therefore, this bill is intended to authorize an unlicensed demonstration project, even though the site has been licensed.

The gentleman from New York (Mr. OTTINGER) has claimed that this bill does not prejudice any future legislation about the role of the Nuclear Regulatory Commission in nuclear waste undertakings. It is equally important to note that neither does this bill expand any potential Nuclear Regulatory Commission role in any type of nuclear research, development, and demonstration activities. We have a well established and reliably operating DOE tradition of development work such that is done in a way that provides full information to the Nuclear Regulatory Commission and fully considers Commission advice. I see no reason that these advantages of collaboration, short of licensing and approval, will not be followed for this project at West Valley. I emphasize that this bill does not diminish nor does it expand the carefully limited role of the Nuclear Regulatory Commission in the research, development, and demonstration carried out by the Department of Energy.

It is also important in this discussion of H.R. 6865 that we accurately identify who is responsible for health and safety in research, development, and demonstration. There is no question about who is responsible: It is the Department of Energy. The Nuclear Regulatory Commission clearly does not have that responsibility, despite the statements of the gentleman from New York (Mr. OTTINGER). The gentleman apparently engaged in a colloquy of wishful thinking, but the facts are otherwise. Moreover, the bill H.R. 6865 does not give the Nuclear Regulatory Commission that responsibility for the specific case of West Valley nor does the DOE contemplate any such role in generic waste management legislation. The original Atomic Energy Act assigned health and safety responsibilities to the Atomic Energy Commission, and the Energy Reorganization Act carried over this health and safety responsibility for research, development, and demonstration to the successor agency, the Department of Energy, although some other health and safety responsibilities were indeed assigned to the NRC. There is no need to change these responsibilities, and this bill causes no change.

Mr. Speaker, I support H.R. 6865, on the basis that the State of New York has a continuing responsibility for nuclear matters and the Nuclear Regulatory Commission has no final say in research, development and technology demonstration activity.●

● Mr. WEISS. Mr. Speaker, I am in strong support of H.R. 6865, the West Valley Demonstration Project Act, which authorizes the Department of Energy to solidify and dispose of highly radioactive wastes buried, and submerged in a cooling pool, at West Valley, N.Y. The project is an important step in improving disposal of nuclear wastes, and would provide valuable new research in the area. If successful, it would also remove what has become a concentration of lethal materials only 35 miles south of the Buffalo metropolis and Lake Erie, drinking supply for 11 million people.

Part of a problem that is national in scope and import, the West Valley site requires that a Federal responsibility for its disposal be established. The only commercial plant for reprocessing nuclear fuel ever opened in the United States, West Valley received just 5 percent of the radioactive fuel it reprocessed from within New York State. Sixty percent came from the nuclear production reactor in Hanford, Wash., which produced material for American nuclear weapons. The remainder came from elsewhere in the Nation.

Begun with strong Federal encouragement in 1966, the West Valley plant operated for just 6 years before its owner, Nuclear Fuel Services, Inc., closed it in 1972. Equipment failures, frequent fires, and radiation leakage contributed to the decision.

The site's burial ground has begun eroding, and has leaked radiation in water that periodically accumulates in its trenches and has overflowed. Repeated draining of the trenches is necessary.

Other radioactive waste is buried in steel drums that are expected to remain intact for only 26 years. Yet the cesium-137 isotope within the drums will remain radioactive for thousands of years.

Cooling pools inside the reprocessing building contain 160 tons of spent fuel, and the building itself is dangerously contaminated. During its years of operation, the plant released radiation in quantities 1,000 times greater than originally projected, exposing workers to the highest average doses of any nuclear installation in the world.

The original contract with Nuclear Fuel Services allowed the company's owner, Getty Oil Co., to return the facility and land to New York State at the end of 1980. Under H.R. 6865, the State will pay for 10 percent of the demonstration project, and the Federal Government will pay 90 percent. The commercial operator has escaped financial liability, as the contract insured.

The Federal Government should be entrusted with ultimate disposal of nuclear wastes. But the nuclear industry must bear a meaningful share of these costs in future cases. This industry has failed to plan for disposal of wastes it generates, and has a clear obligation to help pay for a long-term solution. For example, the industry could pay a fee for storage of spent fuel at any Federal facility which may be established. I hope that many of my colleagues will agree.

H.R. 6865 is only part of many-faceted Federal nuclear waste disposal package that will be considered in this House in coming days. It is past time when we should have been facing this issue, and I am pleased to see it being addressed.

But these efforts must incorporate several important principles. First, provisions for significant State and local participation in decisions about location and operation of Federal storage sites must be included. Second, Nuclear Regulatory Commission licensing requirements and the National Environmental Protection Act must apply to any such facilities.

Finally, West Valley and other obsolete storage sites that have been closed must not be reopened to more wastes. New, truly safe storage sites must be found. Outmoded, leaking facilities that may be fractured by a major earthquake, such as West Valley, are no place for renewed deposits of these very dangerous substances.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington (Mr. McCormack) that the House suspend the rules and pass the bill, H.R. 6865, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2443) to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y., and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "West Valley Demonstration Project Act".

Sec. 2. (a) The Secretary of Energy (hereinafter in this Act referred to as the "Secretary") shall carry out, in accordance with the provisions of this Act, a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York (hereinafter referred to as "the project"). The Secretary shall carry out the project by vitrifying the high-level liquid nuclear wastes located at such Center or by employing the most effective technology for solidification available. The Secretary shall, as part of the project, also (1) as soon as feasible transport such solidified wastes, in accordance with applicable provisions of law, to an appropriate Federal repository for long term burial, and (2) decontaminate and decommission facilities, materials, and hardware used in connection with the project.

(b) During the fiscal year ending September 30, 1980, the Secretary shall—

(1) prepare a plan for safe removal of such wastes from tank numbered 8D-2 and any other storage tank at the Center containing such wastes including safely breaching the tanks, operating waste removal equipment, and sluicing techniques,

(2) determine the feasibility of immobilization and waste handling techniques required by the unique situation of such wastes at the Center, including initiation of detailed engineering and cost estimates as well as safety analyses and environmental impact analyses, and

(3) enter into a cooperative agreement with the State of New York pursuant to the "Federal Grant and Cooperative Agreement Act of 1977", Public Law 95-224, to provide for the conduct of the demonstration project, without transfer to the United States of title to the high level liquid wastes or to the project site, and for the following activities:

(A) demonstration of vitrification technology or technologies which can be replicated for other applications in the United States;

(B) submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration;

(C) application of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, to all aspects of the demonstration project; and

(D) conduct of other activities at the project, as determined to be appropriate by the Secretary, to protect public health and safety and to be in the national interest regarding the safe management of nuclear wastes in the United States.

Sec. 3. There is authorized to be appropriated to the Secretary not more than $5,000,000 for the fiscal year ending September 30, 1981, for the project. Funds authorized and appropriated in subsequent fiscal years for the project shall not be used by the Secretary for such purpose until the Secretary, the State of New York, and other appropriate persons enter into such contracts and agreements as may be required—

(a) to enable the Secretary to utilize property and facilities at the Center for the project,

(b) to share the costs of the project, except that the non-Federal share of such costs shall be limited to no more than 10 per centum thereof and in determining such share the Secretary shall consider the utilization of such Center by the Secretary for the project, the amount of money in the existing perpetual care fund originally designated to provide, for ultimate disposition of the high-level liquid nuclear waste at the Center, and such other factors as the Secretary deems appropriate,

(c) to otherwise provide for the conduct of the project in a timely manner, and

(d) authority to enter into contracts shall be only to such extent or in such amounts as may be provided in advance in appropriations Acts.

Sec. 4. In carrying out the project, the Secretary shall consult with the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, the State of New York, and the commercial operator of the Center.

Sec. 5. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Committee on Science and Technology, the Committee on Interior and Insular Affairs, and the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including the costs incurred, and the activities to be taken in the next fiscal year and the costs thereof. Any contract or agreement executed under sections 2 and 3 of this Act, together with summaries thereof, shall be promptly transmitted to such committees for their information and review.

Sec. 6. Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State of New York, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facilities or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirements of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. The provisions of this Act shall not apply or be extended to any facilities or property at the Center which is not used in conducting the project.

MOTION OFFERED BY MR. M'CORMACK

Mr. McCORMACK. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. McCORMACK moves to strike out all after the enacting clause of the Senate bill, S. 2443, and to insert in lieu thereof the provisions of H.R. 6865, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 6865) was laid on the table.

□ 1340

MILITARY PAY AND ALLOWANCES BENEFITS ACT OF 1980

Mr. NICHOLS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7626) to amend title 37, United States Code, to improve certain special pay and allowance benefits for members of the uniformed services, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7626

Be it enacted by the Senate and House of Representatives of the United States of America assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Military Pay and Allowances Benefits Act of 1980".

SPECIAL PAY FOR SUBMARINE OR NUCLEAR DUTY

SEC. 2. (a) (1) Subsection (a) of section 312 of title 37, United States Code, is amended by striking out "$5,000' and "$4,000' and inserting in lieu thereof "$6,250' and "$5,000", respectively.

(2) Subsection (e) of such section is amended by striking out "September 30, 1981' and inserting in lieu thereof "September 30, 1983".

(b) (1) Subsection (a) of section 312b of such title is amended by striking out "$3,000" and inserting in lieu thereof "$5,000".

(2) Subsection (c) of such section is amended by striking out "September 30, 1981" and inserting in lieu thereof "September 30, 1983".

(c) (1) Subsection (a) of section 312c of such title is amended by striking out "$4,000 for each nuclear service year beginning after September 30, 1975, and ending before October 1, 1981" and inserting in lieu thereof "$5,000 for each nuclear service year ending before October 1, 1983"

(2) Subsection (b) of such section is amended by striking out "$2,400 for each nuclear service year beginning after September 30, 1978, and ending before October 1, 1981" and inserting in lieu thereof "$3,000 for each nuclear service year ending before October 1, 1983".

(3) Subsection (e) of such section is amended to read as follows:

"(e) For the purpose of this section, a 'nuclear service year' is any fiscal year beginning before October 1, 1983.".

(d) (1) Paragraph (1) of section 302(b) of such title is amended—

(A) by inserting "or (2)" after "clause (1)";

(B) by striking out "a member" and inserting in lieu thereof "an enlisted member"; and

(C) by striking out the center heading "ENLISTED MEMBERS" before the table in such paragraph.

(2) Paragraph (2) of such section is amended—

(A) by inserting "as an officer" after "For the performance";

(B) by striking out "or (3)"; and

(C) by striking out "section," and inserting in lieu thereof "section or for the performance of the hazardous duty described in clause (3) of such subsection,".

(e) (1) The amendments made by subsection (a) (1) shall apply only with respect to active-duty agreements under section 312 of title 37, United States Code, executed after September 30, 1980.

(2) The amendment made by subsection (b) (1) shall apply only with respect to training completed after September 30, 1980.

(3) The amendments made by subsections (a) (2), (b) (2), and (c) shall take effect on October 1, 1980.

(4) The amendments made by subsection (d) shall apply only to payment of monthly incentive pay for months after September 1980.

INCENTIVES FOR ENLISTED MEMBERS TO EXTEND TOURS OF DUTY OVERSEAS

SEC. 3. (a) (1) Chapter 5 of title 37, United States Code, is amended by adding at the end thereof the following new section:

"§ 314. Special pay: qualified enlisted members extending duty at designated locations overseas

"(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

"(1) is entitled to basic pay;

"(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

"(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

"(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

is entitled, upon acceptance of the agreement providing for such extension by the Secretary concerned, to special pay for duty performed during the period of the extension at a rate of not more than $50 per month, as prescribed by the Secretary concerned.

"(b) A member who elects to receive rest and recuperative absence or transportation at Government expense, or any combination thereof, under section 705 of title 10 is not entitled to the special pay authorized by this section for the period of extension of duty for which the rest and recuperative absence or transportation is authorized.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"314. Special pay: qualified enlisted members extending duty at designated locations overseas.".

(b) (1) Chapter 40 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas

"(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

"(1) is entitled to basic pay;

"(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

"(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

"(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

"(b) The benefits authorized by subsection (a) are—

"(1) a period of rest and recuperative absence for not more than 30 days;

"(2) a period of rest and recuperative absence for not more than 15 days and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return; or

"(3) round-trip transportation at Government expense of the member and the member's dependents from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return.".

(2) The tables of section at the beginning of such chapter is amended by adding at the end thereof the following new item:

"705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas.".

(c) Section 314 of title 37, United States Code, as added by subsection (a), shall take effect on October 1, 1980, and shall apply to periods of extended duty overseas beginning before, on, or after such date, but no payment may be made under such section for any month before October 1980. Section 705 of title 10, United States Code, as added by subsection (b), shall take effect on October 1, 1980, and shall apply only with respect to periods of extended duty overseas beginning after September 30, 1980.

BASIC ALLOWANCE FOR QUARTERS IN LIEU OF ASSIGNED QUARTERS FOR CERTAIN MEMBERS WITHOUT DEPENDENTS

SEC. 4. (a) The second sentence of subsection (b) of section 403 of title 37, United States Code, is amended by striking out "commissioned officer" and "O–3" and inserting in lieu thereof "member" and "E–6", respectively.

(b) Subsection (c) of such section is amended to read as follows:

"(c) (1) A member of a uniformed service without dependents is not entitled to a basic allowance for quarters while he is on field duty unless his commanding officer certifies that the member was necessarily required to procure quarters at his expense.

"(2) A member of a uniformed service without dependents who is in a pay grade below pay grade E–7 is not entitled to a basic allowance for quarters while he is on sea duty. A member of a uniformed service without dependents who is in a pay grade above E–6 and who is on sea duty is not entitled to a basic allowance for quarters while the unit to which he is assigned is deployed for a period in excess of 90 days.

"(3) For the purposes of this subsection, duty for a period of less than three months is not considered to be field duty or sea duty.".

(c) The amendments made by this section shall only apply to payment of basic allowance for quarters for months after September 1980.

CHARGES FOR PARKING FACILITIES FOR HOUSE TRAILERS AND MOBILE HOMES

SEC. 5. Section 403 of title 37, United States Code, is amended by adding at the end the following new subsection:

"(k) Parking facilities (including utility connections) provided members of the uniformed services for house trailers and mobile homes not owned by the Government shall not be considered to be quarters for the purposes of this section or any other provision of law. Any fee established by the Government for the use of such a facility shall be established in an amount sufficient to cover the cost of maintenance, services, and utilities and to amortize the cost of construction of the facility over the 15-year period beginning with the completion of such construction.".

PERMANENT AUTHORITY FOR SUBSISTENCE ALLOWANCES FOR MEMBERS OF MARINE CORPS OFFICER CANDIDATE PROGRAMS

SEC. 6. Section 209(d) of title 37, United States Code, relating to members of precommissioning programs, is amended—

(1) by striking out "(1)" before "Except when"; and

(2) by striking out paragraph (2).

The SPEAKER pro tempore. Is a second demanded?

Mr. MITCHELL of New York. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. NICHOLS) will be recognized for 20 minutes, and the gentleman from New York (Mr. MITCHELL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Alabama (Mr. NICHOLS).

Mr. NICHOLS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, a great deal has been accomplished by this Congress in an attempt to resolve the military manpower problems that we face today. Because this activity has been distributed among a variety of legislative vehicles, I would like to summarize exactly what has been done—and what remains to be done—in order to put what we are doing today in contest.

The overall active duty All-Volunteer Force, today, is within 2 percent of meeting authorized strength levels. Viewing the situation from this broad perspective has led to the suggestion that modifications to the overall pay scales are needed to achieve full manning. This aggregate viewpoint, though insightful, is, however, extremely misleading in that it obscures very significant year-of-service maldistributions, skill shortages, and recruiting shortfalls—in terms of quantity and, possibly, quality—in the active force and fails to recognize the significant and pervasive shortfalls in the reserves.

Within this more detailed framework, I would have to argue that the most efficient means of solving existing problems lies not in across-the-board pay raises which marginally affect the 98 percent of the force on active duty today. But rather, in more focused attempts: First, to modify compensation for those specific categories of personnel in which identifiable problems exist; and second, to remove financial irritants associated with military service that adversely affect the individual member's decision to continue on active duty.

The so-called Nunn-Warner amendment to H.R 5169—a bill extending certain expiring personnel management authorities—for example, followed this latter approach.

As the Members know, significant problems exist in retention of pilots; the Nunn-Warner amendment increased flight pay by 25 percent. The Navy exhibits critical shortfalls in its mid-career petty officer force—probably the most significant problem in manpower today—many of these shortages occur in the seagoing ratings. The amendment addressed these problems by providing significant, immediate increases in sea pay and by extending eligibility for selective reenlistment bonuses to those enlisted members in critical skills who possess 10 to 14 years of service. On the other hand, not all services are experiencing the same problems or the same degree of problems nor are these problems extant in every career field.

The Nunn-Warner amendment also addressed irritants suffered by career military personnel. For example, the current ceiling on reimbursement for mileage in conjunction with a permanent change of station move is removed. In addition, a variable housing allowance is authorized which will permit an additional payment to military personnel stationed in high-cost areas. These two provisions will assist the service member in meeting personal expenses incurred as a result of the military's way of doing business.

The House agreed to H.R. 5168—including the Nunn-Warner amendment—on August 26, 1980. The President signed that bill on September 8, 1980, and it has become Public Law 96-343.

H.R. 7626, as reported by the committee, addresses a number of modifications similar and complementary to those in the Nunn-Warner amendment focusing on identified problem areas and financial irritants.

H.R. 7626 contains the following components recommended by the President:

Authorization of a family separation allowance for junior enlisted personnel;

Increases in the reimbursement for moving a mobile home;

Authorization of basic allowance for quarters for naval personnel deprived of shipboard quarters while in port;

Increases in the maximum enlistment and reenlistment bonuses;

Authorization of optional basic allowance for quarters for single members in pay grade E-7 and above;

Authorization of a continuation bonus for aviators; and

Increases in per diem allowances while on temporary duty.

In addition, the committee proposed two additional initiatives:

Authorization of a special pay for enlisted personnel who extend overseas; and

Increases in pay for enlisted submariners and nuclear qualified personnel.

Not included in H.R. 7626, as reported by the committee, are two other proposals recommended by the President: Authorization of a dental CHAMPUS program for dependents of active duty personnel and authorization of a bonus for participation in the Individual Ready Reserve. Dental CHAMPUS continues to be studied by the committee, while the IRR bonus—together with a bonus for affiliation with the Selected Reserve—was agreed to by the conferees on H.R. 6974, the Defense authorization bill for fiscal year 1981. H.R. 6974 also included a number of provisions similar to those in H.R. 7626 which were agreed to by the conferees.

H.R. 6974 was signed by the President on September 8, 1980, and has become Public Law 96-342.

Fire provisions remain in H.R. 7626, as amended:

Increases in enlisted submariner pay and bonuses for nuclear qualified officers;

A new special pay for enlisted members in certain skills who agree to extend beyond their normal overseas tour;

Optional basic allowance for quarters for pay grades E-7 and above who elect to live on the economy;

Specification that trailer pads for mobile homes are not to be considered quarters for the purpose of establishing a rental fee; and

Permanent extension of authority to pay a subsistence allowance to members of the platoon leaders class officer candidate program.

Of particular significance is the increase in the special pay and bonuses for submariners.

During its deliberations on this bill, the committee found preliminary indications of some significant and worsening problems within the submarine and nuclear qualified community.

For example, career retention rates among enlisted submariners are declining (70 percent in 1976 to 53 percent in 1979 for members in the 11 to 14 years of service group). Shortages of up to 50 percent exist in some enlisted ratings for members with 10 to 20 years of service.

For officers, substantial shortages exist in key sea-going positions. This results in officers spending 15 of their first 19 years in shipboard billets.

H.R. 7626 would make several modifications to existing special pays for nuclear qualified officers and enlisted personnel assigned to submarine duty.

For the enlisted community, the committee recommended a 25-percent increase in submarine pay. This is the same increase provided enlisted flight crew members under the Nunn-Warner amendment. This would also be in addition to other initiatives recommended by the committee that would affect this community. The Nunn-Warner amendment, for example, would extend eligibility for the selective reenlistment bonus from 10 to 14 years of service and would increase the rates of sea pay. Another provision of H.R. 7626, as reported, would increase the maximum selective reenlistment bonus from $15,000 to $20,000. This modification would affect nuclear qualified petty officers in particular.

For nuclear qualified officers, the nuclear accession bonus would be increased from $3,000 to $5,000; the nuclear continuation bonus payable for a 4-year extension following initial obligation would be increased from $20,000 to $25,000 (a 25-percent increase); and the annual nuclear career incentive pay provided after 10 years of service would be increased from $4,000 to $5,000 per year (a 25-percent increase). In addition, the authority for these bonuses which expires on September 30, 1981, would be extended to September 30, 1983.

The Committee on Armed Services has also taken the initiative in the development of a major restructuring of the special pays for military physicians. This legislation, recently signed into law, was designed to apply financial incentives at the critical retention points and should significantly increase the number of physicians on active duty.

Recruiting shortfalls, one of the more invidious problems not addressed at all by the Nunn-Warner amendment or the other actions outlined above, has, however, been addressed by the Congress. An educational assistance plan designed to attract more college-bound youth into the combat arms was included in H.R. 6974 as passed by the House and was adopted by the conferees together with additional education incentives included in the Senate version of H.R. 6974.

H.R. 6974 also contains a provision for an 11.7 percent pay increase this October. In addition, the President is directed, in the bill, to provide recommendations by April 1981, on the appropriate mechanism to be used to adjust military pay in the future.

These are significant initiatives and will have a substantial, positive impact on the manning of the force. All of these increases, with the exception of the October pay increase, result in an expenditure from which we will receive a direct return on the investment in terms of ameliorating an identified problem or removing an irritant. The pay increase, of course, is needed to maintain levels of military pay at a generally comparable position with the private sector.

This package of initiatives will cost over $2 billion in fiscal year 1981—above the Administration's request—and well over $10 billion in the next 5 years.

The Congressional Budget Office estimates that by the end of fiscal year 1981 these changes will lead to a significant reversal of current trends, stabilizing the career force and leading to increases—above the level that existed in fiscal year 1979—by fiscal year 1982. The services should be able to maintain the desired percentage of those holding high school diplomas while also attracting enough enlisted recruits in fiscal year 1981. In fact, the services should begin to recover from the fiscal year 1980 shortfall in high school graduates; the entire shortfall should be eliminated by fiscal year 1982. The projections of the Congressional Budget Office are based on conservative estimates of the economic situation and also assumed immediate implementaion of a high-three average for military retired pay. The economic situation will undoubtedly fall short of the CBO projections, and although H.R. 6974 provides for a high-three average, it restricted its application only to individuals who enter active duty in the future. Consequently, these Congressional Budget Office estimates are on the pessimistic side, and the manpower situation should stabilize and improve even more rapidly than the Congressional Budget Office initially projected.

Although some additional action remains to be completed, I think, it is time to stand back and observe the effects of these changes. More may be needed, but we do not know that yet. Some problem areas remain to be addressed; for example, I believe more needs to be accomplished in the submarine community, and there may be a problem developing with regard to scientific and engineering officers. Additional information is needed with regard to these areas, however, before meaningful changes can be recommended.

As the Members know, much remains to be accomplished before the end of the 96th Congress. The Committee on Armed Services has reported changes to the survivor benefit plan for military retirees, expects to complete action on dental CHAMPUS, and will attempt to resolve the substantial differences in the House and Senate versions of the Defense Officer Personnel Management Act (DOPMA) yet this session. All of these will have substantial effects on retention of career personnel.

Mr. Speaker, H.R. 7626 further enhances the overall compensation initiatives taken by this Congress. I urge the Members to strongly support this bill, as amended.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, I certainly rise in support of this legislation. The gentleman has pointed out some of the problems we are having in regard to service personnel, especially enlisted, and particularly officer personnel who have between 10 and 14 years in the service. We are having problems keeping them in the service. They are getting out of the service. Certainly this will correct this situation.

Speaking of these programs and bonuses, does that go toward the National Guard and Reserve? Does this cover the Reserve?

Mr. NICHOLS. I must tell the gentleman that this does not apply to the Reserve Forces. We are speaking of active duty services.

Mr. MONTGOMERY. It is strictly active duty?

Mr. NICHOLS. Yes.

Mr. MONTGOMERY. I certainly still support the legislation.

Mr. NICHOLS. I thank the gentleman from Mississippi for his remarks.

Mr. MITCHELL of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the bill, H.R. 7626, as amended. As the chairman of the Military Compensation Subcommittee has pointed out, we have acted on a considerable range of initiatives in the field of military compensation during this Congress. The provisions of H.R. 7626 not yet enacted will fill in some of the remaining gaps in the overall compensation initiatives taken by this Congress.

One of the major provisions of the bill authorizes for the first time a special pay for enlisted members in certain specialties who extend their overseas tour for at least a year.

The purpose of the proposed special pay is to assist in alleviating a problem of manning skills in which the majority of the skill requirements are in overseas areas. In many instances, this imbalance results in members being required to be reassigned overseas after less than 24 months in the United States. The situation is cited by many NCO's as their reason for leaving the service.

The bill would provide a payment of up to $50 per month for each month of an extension.

As an alternative to the $50 monthly special pay, a service member who agreed to extend overseas for 12 months could elect to receive one of the following:

First. A 30-day rest and recuperation absence from duties not chargeable to leave;

Second. A 15-day rest and recuperation absence from duties not chargeable to leave and transportation at Government expense to and from the United States for the member; or

Third. Round trip transportation at Government expense for the member and his family to the United States.

Surveys indicate that this proposal would assist in alleviating the overseas skill imbalance problem.

Another major provision would extend flexibility to senior enlisted personnel and junior officers without dependents by permitting them to elect to live off base and draw their basic allowance quarters.

At the present time an officer in the grade of major or lieutenant commander—or above—without dependents for whom Government quarters are available may elect not to occupy those quarters and instead elect to receive the basic allowance for quarters appropriate to his grade.

H.R. 7626 would extend this privilege to all personnel without dependents—both officers and enlisted personnel who are in pay grade E–7 or above. This privilege would be extended to naval personnel on sea duty if in port for extended periods. For those naval personnel, eligibility for optional basic allowance for quarters would end if the unit to which they are assigned is deployed for a period of more than 90 days.

This provision would remove an irritant for our more senior enlisted members without dependents who would prefer to reside in quarters of their own choosing.

Many military personnel, faced with the high cost of housing, have chosen to purchase a mobile home. Trailer pads have been established on many Government installations to accommodate these personnel.

At present, military personnel with mobile homes who occupy trailer pads on Government installations pay a rental fee that covers utilities, maintenance, and an amortized share of the cost of construction.

The Department of Justice has ruled that those trailer pads are technically within a statutory definition of Government "quarters" and as such must be rented to the occupants at the "reasonable value." The effect of this interpretation would be to require an increase in the current fees paid by military personnel and would result in the Government earning a profit on those pads. About 96 percent of those trailer pads are occupied by enlisted personnel.

The bill would authorize continuation of the present practice that, in effect, covers the cost to the Government of building and maintaining those facilities.

Finally, one of the principal sources of new officers for the Marine Corps is the platoon leaders class officer candidate program. This program is the counterpart of the ROTC programs of the other services. Those Marine Corps officer candidates have, by a series of temporary laws, been authorized the same $100-per-month subsistence allowance that is provided for ROTC participants. The current authority will expire on September 30, 1982.

The bill would provide permanent authority for that subsistence allowance and eliminate the need for periodically renewing that authority.

These provisions in H.R. 7626 focus in on specific elements of compensation, addressing identified problem areas or enhancing the quality of life for service members. Both are worthy objectives, and the Military Compensation Subcommittee has consistently attempted to support legislation that assists in attaining those objectives.

Mr. Speaker, this year has become a banner year for military compensation. If all the measures presently under active consideration—including H.R. 7626—are added to those already enacted, the dollar impact will be greater than in any year since the early 1970's. It is time we provide in a more realistic manner for the economic desires and needs of those who elect to devote themselves to a career in the Armed Forces.

Mr. Speaker, I urge strong support for this legislation.

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Mr. EDWARDS of Alabama. Mr. Speaker, will the gentleman yield?

Mr. MITCHELL of New York. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I want to commend the gentleman from Alabama (Mr. Nichols), and the gentleman from New York (Mr. Mitchell) and the subcommittee for bringing this bill to the floor. If we are going to have a good defense, they key problem that has got to be resolved is the problem of retention.

I am convinced that the type of legislation that the subcommittee has brought here today, along with the other bills that the gentleman has been working on, will go a long way toward resolving the problem of retention.

We cannot make planes fly. We cannot make ships go, and we cannot make trucks go up hills, and we cannot do a lot of things if we do not have the skilled people in the service dedicated to the task to make all this happen.

If it happens, then I think this committee can claim a larger share of the credit for it, because it is the essential ingredient in my opinion in bringing to this Nation a good strong defense system.

Mr. MITCHELL of New York. I thank the gentleman for his comments. It is certainly a very sound observation about what we need to do to attract and retain our military people.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NICHOLS. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. Bennett), the chairman of the subcommittee on Seapower and Strategic and Critical Materials.

Mr. BENNETT. Mr. Speaker, I want to congratulate the chairman, the gentleman from Alabama, and others who so actively and thoughtfully pursued this legislation to see to it that it fitted the precise needs, and did what was needed to be done. They did not waste any money but wisely spent it.

I think the thoughtful approach they gave this legislation is manifested particularly in the provisions they brought forth, in the field of submarine pay. I think that is something that has not been looked at as carefully as it should have been in the past. This and the other provisions in the bill, I think, will go a long way toward giving us the stability in our Armed Forces we should have.

I just came back from a little trip largely among military personnel. I want to say their morale is really very high. They appreciate very much this fine work the gentleman from Alabama has done and the committee. They are really looking forward to future tours of duty. This committee's work has a lot to do with this new optimism and improved morale.

Mr. NICHOLS. I thank the gentleman from Florida. We know of his longtime interest in military personnel, particularly those of the U.S. Navy, where we have been having so many problems. I do appreciate the comments.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Alabama (Mr. Nichols) that the House suspend the rules and pass the bill (H.R. 7626), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that all Members may have five legislative days in which to revise and extend their remarks on the bill, H.R. 7626, just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3806) to establish a U.S. Court of Appeals for the Federal Circuit, to establish a U.S. Claims Court, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3806

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court of Appeals for the Federal Circuit Act of 1980".

TITLE I—UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT AND UNITED STATES CLAIMS COURT

NUMBER AND COMPOSITION OF CIRCUITS

Sec. 101. Section 41 of title 28, United States Code, is amended by striking out "eleven" and inserting in lieu thereof "twelve" and by adding at the end thereof the following:

"Federal ---- All Federal judical districts.".

NUMBER OF CIRCUIT JUDGES

Sec. 102. Section 44(a) of title 28, United States Code, is amended by adding at the end thereof the following:

"Federal -------------------------- 12".

PANELS OF JUDGES

Sec. 103. (a) Section 46(a) of title 28, United States Code, is amended by striking out "divisions" and inserting in lieu thereof "panels".

(b) Section 46(b) of title 28, United States Code, is amended—

(1) by striking out "divisions" each place it appears and inserting in lieu thereof "panels"; and

(2) by inserting immediately before the period at the end of the first sentence thereof the following: ", except that the United States Court of Appeals for the Federal Circuit may determine by rule the number of judges, not less than three, who constitute a panel".

NUMBER OF JUDGES FOR HEARINGS

Sec. 104. (a) The first sentence of section 46(c) of title 28, United States Code, is amended by inserting immediately after "three judges" the following: "(except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide)".

(b) Section 46(d) of title 28, United States Code, is amended by striking out "division" and inserting in lieu thereof "panel".

PLACES FOR HOLDING COURT

Sec. 105. Section 48 of title 28, United States Code, is amended by adding at the end of the list of circuits and places the following:

"Federal ------------------------District of Columbia, and in any other place listed above as the court by rule directs.".

ORGANIZATION OF UNITED STATES CLAIMS COURT

Sec. 106. (a) Chapter 7 of title 28, United States Code, is amended to read as follows:

"Chapter 7—UNITED STATES CLAIMS COURT

"Sec.
"171. Appointment and number of judges; character of court; designation of chief judge.
"172. Tenure and salaries of judges.
"173. Times and places of holding court.
"174. Assignment of judges; decisions.
"175. Expenses for travel and subsistence.
"176. Removal from office.
"177. Disbarment of removed judges.

"§ 171. Appointment and number of judges; character of court; designation of chief judge

"(a) The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States Claims Court. The court is declared to be a court established under article I of the Constitution of the United States.

"(b) The Claims Court shall at least biennially designate a judge to act as chief judge.

"§ 172. Tenure and salaries of judges

"(a) Each judge of the United States Claims Court shall be appointed for a term of fifteen years.

"(b) Each judge shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), and section 461 of this title.

"§ 173. Times and places of holding court

"The principal office of the United States Claims Court shall be in the District of Columbia, but the Claims Court may hold court at such times and in such places as it may fix by rule of court. The times and places of the sessions of the Claims Court shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Claims Court with as little inconvenience and expense to citizens as is practicable.

"§ 174. Assignment of judges; decisions

"(a) The judicial power of the United States Claims Court with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

"(b) All decisions of the Claims Court shall be preserved and open to inspection.

"§ 175. Expenses for travel and subsistence

"Judges of the United States Claims Court shall receive necessary traveling expenses, and a per diem allowance as provided in the Travel Expense Act of 1949, while traveling on duty and away from the District of Columbia, subject to the same limitations in amount as may from time to time be in effect with respect to the United States Customs Court.

"§ 176. Removal from office

"Judges of the United States Claims Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

"§ 177. Disbarment of removed judges

"A judge of the United States Claims Court removed from office in accordance with section 176 of this title shall not be permitted at any time to practice before the Claims Court.".

(b) The item relating to chapter 7 in the chapter analysis of part I of title 28, United States Code, is amended to read as follows:

"7. United States Claims Court______ 171".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 107. Chapter 9 of title 28, United States Code, and the item relating to chapter 9 in the chapter analysis of part 1 of such title, are repealed.

INTERLOCUTORY APPEALS FROM CERTAIN ORDERS

SEC. 108. Section 256(b) of title 28, United States Code, is amended by striking out "section 1541(b)" and all that follows through "in that section." and inserting in lieu thereof the following: "section 1292(c)(3) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

REPEAL; ASSIGNMENT OF CIRCUIT JUDGES

SEC. 109. Subsection (b) of section 291 of title 28, United States Code, is repealed.

ASSIGNMENT OF DISTRICT JUDGES

SEC. 110. Section 292(e) of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals or" and by striking out "in which the need arises".

REPEAL; ASSIGNMENT OF OTHER JUDGES

SEC. 111. Subsections (a), (c), and (d) of section 293 of title 28, United States Code, are repealed.

JUDICIAL CONFERENCE

SEC. 112. Section 331 of title 28, United State Code, is amended—

(1) in the first paragraph, by striking out ", the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals,"; and

(2) in the third paragraph, by striking out the second sentence.

RETIREMENT

SEC. 113. (a) Section 372(a) of title 28, United States Code, is amended—

(1) in the third paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals, or"; and

(2) in the fifth paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals, or".

(b) Section 372(b) of title 28, United States Code, is amended by striking out "Court of Claims, Court of Customs and Patent Appeals, or" each place it appears.

REPEAL; DISTRIBUTION OF COURT OF CLAIMS DECISIONS

SEC. 114. Section 415 of title 28, United States Code, and the item relating to section 415 in the section analysis of chapter 19 of such title, are repealed.

DEFINITIONS

SEC. 115. Section 451 of title 28, United States Code, is amended—

(1) in the first paragraph, by striking out "the Court of Claims, the Court of Customs and Patent Appeals,"; and

(2) in the third paragraph, by striking out "Court of Claims, Court of Customs and Patent Appeals,".

TRAVELING EXPENSES

SEC. 116. The second paragraph of section 456 of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals" and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit".

APPLICATION OF CERTAIN PROVISIONS TO THE UNITED STATES CLAIMS COURT

SEC. 117. (a) Chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 462. Application to the United States Claims Court

"Section 452 through 455 and sections 457 through 459 of this title apply to the United States Claims Court.".

(b) The section analysis of chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"462. Application to the United States Claims Court.".

INTERESTS OF THE UNITED STATES IN CERTAIN ACTIONS

SEC. 118. Section 518(a) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or in the United States Court of Appeals for the Federal Circuit".

TRANSMISSION OF PETITIONS IN SUITS AGAINST THE UNITED STATES

SEC. 119. (a) Section 520 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or in the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Court of Claims" in the section heading and inserting in lieu thereof "United States Claims Court or in United States Court of Appeals for the Federal Circuit".

(b) The item relating to section 520 in the section analysis of chapter 31 of title 28, United States Code, is amended to read as follows:

"520. Transmission of petitions in United States Claims Court or in United States Court of Appeals for the Federal Circuit; statement furnished by departments.".

BUDGET ESTIMATES

SEC. 120. Section 605 of title 28, United States Code, is amended by inserting immediately before the period at the end of the second undesignated paragraph the following: "and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court".

DEFINITION OF COURTS

SEC. 121. Section 610 of title 28, United States Code, is amended by striking out "the Court of Claims, the Court of Customs and Patent Appeals" and inserting in lieu thereof "the United States Claims Court".

STAFF ATTORNEYS AND TECHNICAL ASSISTANTS

SEC. 122. Section 713 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Each court of appeals may appoint such central staff attorneys and technical assistants as may be necessary, each of whom shall be subject to removal by the court.".

OFFICERS AND EMPLOYEES OF THE UNITED STATES CLAIMS COURT

SEC. 123. (a) Section 791(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Claims Court may appoint a clerk, a chief deputy clerk, and such other employees as may be necessary, each of whom shall be subject to removal by the court.".

(b) Section 792 of title 28, United States Code, and the item relating to section 792 in the section analysis of chapter 51 of such title, are repealed.

(c)(1) Section 794 of title 28, United States Code, is amended to read as follows:

"§ 794. Law clerks and secretaries

"The judges of the United States Claims Court may appoint necessary law clerks and secretaries, subject to any limitation of the aggregate salaries of such employees which may be imposed by law.".

(2) The item relating to section 794 in the section analysis of chapter 51 of title 28, United States Code, is amended to read as follows:

"794. Law clerks and secretaries.".

(d)(1) Section 795 of title 28, United States Code, is amended to read as follows:

"794. Law clerks and secretaries.".

"The United States Claims Court may appoint necessary bailiffs and messengers, each of whom shall be subject to removal by the court.".

(2) The item relating to section 795 in the section analysis of chapter 51 of title 28, United States Code, is amended to read as follows:

"795. Bailiffs and messengers.".

(e) Section 796 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(f) Section 797 of title 28, United States Code, and the item relating to section 797 in the section analysis of chapter 51 of such title, are repealed.

(g)(1) The item relating to chapter 51 in the chapter analysis of part III of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The chapter heading of chapter 51 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 124. Chapter 53 of title 28, United States Code, and the item relating to chapter 53 in the chapter analysis of part III of such title, are repealed.

REPEAL; CLERKS OF COURT OF CUSTOMS AND PATENT APPEALS

SEC. 125. Subsection (b) of section 957 of title 28, United States Code, is repealed, and subsection (a) of such section is amended by striking out "(a)".

REPEAL; SUPREME COURT REVIEW OF CERTAIN CASES

SEC. 126. Sections 1255 and 1256 of title 28, United States Code, and the items relating to sections 1255 and 1256 in the section analysis of chapter 81 of such title, are repealed.

COURTS OF APPEALS JURISDICTION

SEC. 127. Section 1291 of title 28, United States Code, is amended—

(1) by inserting "(other than the United States Court of Appeals for the Federal Circuit)" after "courts of appeals"; and

(2) by adding at the end thereof the following new sentence: "The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and 1295 of this title.".

INTERLOCUTORY DECISIONS

SEC. 128. (a) Section 1292(a) of title 28, United States Code, is amended—

(1) by striking out "The courts" and inserting in lieu thereof "Except as provided in subsection(c) of this section, the courts";

(2) by striking out the semicolon at the end of paragraph (3) and inserting in lieu thereof a period; and

(3) by striking out paragraph (4).

(b) Section 1292 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

"(1) of an appeal from an interlocutory order or decree described in subsection (a) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title;

"(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting; and

"(3) when the chief judge of the Customs Court issues an order under the provisions of section 256(b) of this title; or when any judge of the Customs Court, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from its order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order. Neither the application for nor the granting of an appeal under this paragraph shall stay proceedings in the Customs Court unless a stay is ordered by a judge of the Customs Court or by the United States Court of Appeals for the Federal Circuit or a judge of that court.".

CIRCUITS IN WHICH DECISIONS ARE REVIEWABLE

SEC. 129. Section 1294 of title 28, United States Code, is amended by striking out "Appeals" and inserting in lieu thereof "Except as provided in section 1295 of this title, appeals".

JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SEC. 130. (a) Chapter 83 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

"(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

"(1) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1338 of this title, except that a case involving a copyright and no other claim under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title;

"(2) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 39 of the Trademark Act of 1946 (15 U.S.C. 1121);

"(3) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), or 1346(e) of this title shall be governed by sections 1291, 1292, and 1294 of this title;

"(4) of an appeal from a final decision of the United States Claims Court;

"(5) of an appeal from a decision of—

"(A) the Board of Appeals or the Board of Patent Interferences of the Patent and Trademark Office with respect to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and any such appeal shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

"(B) the Commissioner of Patents and Trademarks or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071); or

"(C) a district court to which a case was directed pursuant to section 145 to 146 of title 35;

"(6) of an appeal from a final decision or order of the United States Customs Court;

"(7) to review, by appeal on questions of law only, the findings of the United States International Trade Commission as to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337);

"(8) to review, by appeal on questions of law only, findings of the Secretary of Commerce under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (relating to importation of instruments or apparatus);

"(9) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);

"(10) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5; and

"(11) of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978.

"(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)). The head of each executive department or agency shall make any referral under this section within one hundred and twenty days of the receipt of a copy of the final appeal decision.

"(c) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 10(b) of the Contract Disputes Act of 1978. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.".

(b) The section analysis of chapter 83 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit.".

INTERSTATE COMMERCE COMMISSION ORDERS; JURISDICTION

SEC. 131. Section 1336(b) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

UNITED STATES AS DEFENDANT; JURISDICTION

SEC. 132. Section 1346(a) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

INTERSTATE COMMERCE COMMISSION ORDERS; VENUE

SEC. 133. Section 1398(b) of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

UNITED STATES AS DEFENDANT; VENUE

SEC. 134. Section 1402(a) of title 28, United States Code, is amended by inserting "in a district court" after "civil action".

CURE OR WAIVER OF DEFECTS

SEC. 135. Section 1406(c) of title 28, United States Code, is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

UNITED STATES CLAIMS COURT JURISDICTION AND VENUE

SEC. 136. (a) Section 1491 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" each other place it appears and inserting in lieu thereof "Claims Court".

(b) Section 1492 of title 28, United States Code, is amended by striking out "chief commissioner of the Court of Claims" and inserting in lieu thereof "chief judge of the United States Claims Court".

(c)(1) Sections 1494, 1495, 1496, and 1497 of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The section heading of section 1497 of title 28, United States Code, is amended by striking out "growers," and inserting in lieu thereof "growers' ".

(d) Section 1498 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court";

(2) in subsections (b) and (d), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(e) Sections 1499, 1500, 1501, 1502, and 1503 of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(f) Section 1504 of title 28, United States Code, and the item relating to section 1504 in the section analysis of chapter 91 of such title, are repealed.

(g) Section 1505 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" the second place it appears and inserting in lieu thereof "Claims Court".

(h) Section 1506 of title 28, United States Code, is amended by striking out "Court of Claims" the first place it appears and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims" the second place it appears and inserting in lieu thereof "Claims Court".

(i) Section 1507 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(j)(1) The item relating to chapter 91 in the chapter analysis of part IV of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(2) The chapter heading of chapter 91 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

(3) The item relating to section 1499 in the section analysis of chapter 91, United States Code, is amended to read as follows:

"1449. Liquidated damages withheld from contractors under Contract Work Hours Standards Act.".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 137. Chapter 93 of title 28, United States Code, and the item relating to chapter 93 in the chapter analysis of part IV of such title, are repealed.

REPEAL; FEES AND COSTS

SEC. 138. Section 1926 of title 28, United States Code, and the item relating to section 1926 in the section analysis of chapter 123 of such title, are repealed.

REPEAL; TIME FOR APPEAL

SEC. 139. Section 2110 of title 28, United States Code, and the item relating to section 2110 in the section analysis of chapter 133 of such title, are repealed.

COURT OF APPEALS JURISDICTION

SEC. 140. Section 2342 of title 28, United States Code, is amended—

(1) by inserting "(other than the United States Court of Appeals for the Federal Circuit)" after "court of appeals";

(2) in paragraph (4), by inserting "and" after the semicolon;

(3) in paragraph (5), by striking out "; and" and inserting in lieu thereof a period; and

(4) by striking out paragraph (6).

PLANT VARIETY PROTECTION OFFICE DECISIONS

SEC. 141. Section 2353 of title 28, United States Code, and the item relating to section 2353 in the section analysis of chapter 158 of such title, are repealed.

UNITED STATES CLAIMS COURT PROCEDURE

SEC. 142. (a) Sections 2501 and 2502(a) of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(b)(1) Section 2503 of title 28, United States Code, is amended to read as follows:

"§ 2503. Proceedings generally

"Parties to any suit in the United States Claims Court may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses. The proceedings of the Claims Court shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Claims Court may prescribe and in accordance with the rules of evidence applicable to trials without a jury in a district court of the United States. The judges shall fix times for trials, administer oaths or affirmations, examine witnesses, receive evidence, and enter dispositive judgments. Hearings shall, if convenient, be held in the counties where the witnesses reside.".

(2) The item relating to section 2503 in the section analysis of chapter 165 of title 28, United States Code, is amended by striking out "before commissioners".

(c) Section 2504 of title 28, United States Code, and the item relating to section 2504 in the section analysis of chapter 165 of such title, are repealed.

(d) Section 2505 of title 28, United States Code, is amended—

(1) by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) by striking out "report findings" and inserting in lieu thereof "enter judgment".

(e) Section 2506 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(f) Section 2507 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) In subsection (c), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

(g) Section 2508 of title 28, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(h)(1) Section 2509(a) of title 28, United States Code, is amended to read as follows:

"(a) Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States Claims Court pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.".

(2) Section 2509 of title 28, United States Code, is amended—

(A) in subsection (b), (c), (d), and (f), by striking out "trial commissioner" and inserting in lieu thereof "hearing officer";

(B) in subsections (b), (c), and (e), by striking out "chief commissioner" and inserting in lieu thereof "chief judge";

(C) in subsections (b), (f), and (g), by striking out "Court of Claims" and inserting in lieu thereof "Claims Court";

(D) in subsection (d), by striking out "of commissioners";

(E) in subsection (g), by striking out "commissioners" the first place it appears and inserting in lieu thereof "judges"; and

(F) in subsection (g), by striking out "trial commissioners" and inserting in lieu thereof "hearing officers".

(i)(1) Section 2510 of title 28, United States Code, is amended to read as follows:

"§ 2510. Referral of cases by Comptroller General

"(a) The Comptroller General may transmit to the United States Claims Court for trial and adjudication any claim or matter of which the Claims Court might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

"(b) The Claims Court shall proceed with the claims or matters so referred as in other cases pending in such Court and shall render judgment thereon.".

(2) The item relating to section 2510 in the section analysis of chapter 165 of title 28, United States Code, is amended to read as follows:

"2510. Referral of cases by Comptroller General.".

(j) Sections 2511, 2512, 2513(c), 2514, and 2515(a) are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court.".

(k) Section 2516 of title 28, United States Code, is amended to read as follows:

"§ 2516. Interest on claims and judgments

"(a) Interest on a claim against the United States shall be allowed in a judgment of the United States Claims Court or of the United States Court of Appeals for the Federal Circuit only under a contract or Act of Congress expressly providing for payment thereof.

"(b) Interest on judgments against the United States affirmed by the Supreme Court after review on petition of the United States shall be paid at the rate established in section 1961 of this title from the date of the filing in the General Accounting Office of the transcript of the judgment of the United States Claims Court to the date of the mandate of affirmance. Such interest shall not be allowed for any period after the term of the Supreme Court at which the judgment was affirmed.".

(l) Section 2517 of title 28, United States Code, is amended—

(1) in subsection (a), by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) in subsection (b), by striking out the comma at the end thereof and inserting in lieu thereof a period.

(m) Section 2518 of title 28, United States Code, is amended—

(1) by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court"; and

(2) by inserting immediately before the period at the end thereof the following: "or of the United States Court of Appeals for the Federal Circuit".

(n) Sections 2519 and 2520(a) of title 28, United States Code, are amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court".

(o)(1) The item relating to chapter 165 in the chapter analysis of part VI of title 28, United States Code, is amended to read as follows:

"165. United States Claims Court procedure........................ 2501."

(2) The chapter heading of chapter 165 of title 28, United States Code, is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

REPEAL OF PROVISIONS RELATING TO THE COURT OF CUSTOMS AND PATENT APPEALS

SEC. 143. Chapter 167 of title 28, United States Code, and the item relating to chapter 167 in the chapter analysis of part VI of such title, are repealed.

FINALITY OF DECISIONS

SEC. 144. Section 2638(b) of title 28, United States Code, is amended to read as follows:

"(b) The decision of the judge is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2639 of this title or an appeal is made to the United States

Court of Appeals for the Federal Circuit within sixty days after entry of the judgment or order.".

FEDERAL RULES OF EVIDENCE

SEC. 145. Rule 1101(a) of the Federal Rules of Evidence is amended by striking out "Court of Claims" and inserting in lieu thereof "Claims Court".

TITLE II—CONFORMING AMENDMENTS OUTSIDE TITLE 28

SEC. 201. Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356(C)), is amended by inserting "and the judges of the United States Claims Court" immediately before the semicolon at the end thereof.

SEC. 202. Section 7703 of title 5, United States Code, is amended—

(1) in subsection (b)(1), by striking out "Court of Claims or a United States court of appeals as provided in Chapter 91 and 158, respectively, of title 28" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit";

(2) in subsection (c), by striking out "Court of Claims or a United States court of appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit"; and

(3) in subsection (d), by striking out "District of Columbia" and inserting in lieu thereof "Federal Circuit".

SEC. 203. The second sentence of section 71 of the Plant Variety Protection Act (7 U.S.C. 2461) is amended to read as follows: "The United States Court of Appeals for the Federal Circuit shall have jurisdiction.".

SEC. 204. Section 39 of the Trademark Act of 1946 (15 U.S.C. 1121) is amended by striking out "circuit courts of appeal of the United States" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit".

SEC. 205. Section 11(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210(d)) is amended by striking out "Court of Claims of the United States" and inserting in lieu thereof "United States Claims Court".

SEC. 206. Section 204 of title 18, United States Code, is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court or the United States Court of Appeals for the Federal Circuit".

SEC. 207. (a) Section 29 of the Act entitled "An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (25 U.S.C. 70v–3), is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

(b) Subsection (c) of section 29 of such Act is repealed.

SEC. 208. Section 2 of the Act of May 18, 1928 (25 U.S.C. 652) is amended by striking out "Court of Claims" and inserting in lieu thereof "United States Claims Court" and by striking out "Court of Claims of the United States" and inserting in lieu thereof "United States Claims Court".

SEC. 209. Section 7422(e) of the Internal Revenue Code of 1954 is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "United States Claims Court".

SEC. 210. Section 7428 of the Internal Revenue Code of 1954 is amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court".

SEC. 211. Section 7447 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following subsection:

"(j) APPLICATION TO CLAIMS COURT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of this section also apply to the United States Claims Court, and for such purposes, any reference in this section to the 'Tax Court' shall be deemed to be a reference to the 'Claims Court'.

"(2) EXCEPTIONS.—In the case of a judge of the United States Claims Court who elects to receive retired pay under subsection (d)—

"(A) notwithstanding subsection (g)(2)(C), such judge shall not be paid the lump-sum credit computed under section 8331(8) of title 5, United States Code;

"(B) if such judge was serving on October 1, 1981, the time period required by paragraph (3)(A) of subsection (b) shall be 3 years instead of 15 years;

"(C) if such judge was serving on October 1, 1981, the provisions of subsections (c) and (f) shall not apply where such judge of the United States Claims Court serves by virtue of section 304 of the Court of Appeals for the Federal Circuit Act of 1980 unless such judge indicates, upon retirement, a willingness to be subject to recall.

"(3) TRIAL COMMISSIONER SERVICE.—A judge of the United States Claims Court who has service as a trial commissioner of the United States Court of Claims and who elects to receive retired pay under subsection (d) may also elect to treat such services as a trial commissioner as service as a judge of the United States Claims Court. If such judge makes such election with respect to service as a trial commissioner—

"(A) in the determination of the length of service as a judge under paragraph (1) of subsection (d), one year of service as a trial commissioner of the Court of Claims shall be treated as one-fourth of a year of service as a judge of the Claims Court, and service as a trial commissioner for any portion of a year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more; and

"(B) the rate of retired pay received by such judge during any period under paragraph (1) of subsection (d) shall not exceed 80 percent of the rate of the salary payable to such judge for such period.".

SEC. 212. Section 7448 of the Internal Revenue Code of 1954 is amended by adding the following new subsection at the end thereof:

"(t) APPLICATION TO CLAIMS COURT.—The provisions of this section also apply to the United States Claims Court, and for such purposes any reference in this section to the 'Tax Court' shall be deemed to be a reference to the 'Claims Court'.".

SEC. 213. The second sentence of section 7456(c) of the Internal Revenue Code of 1954 is amended to read as follows: "Each commissioner shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowance, as provided in the Travel Expense Act of 1949, while traveling on official business and away from Washington, District of Columbia.".

SEC. 214. Section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1)) is amended—

(1) in subparagraph (A), by striking out "Court of Claims" and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit"; and

(2) in subparagraph (B), by striking out "United States Court of Claims for judicial review, under section 2510 of title 28, United States Code, as amended herein," and inserting in lieu thereof "Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, United States Code,"

SEC. 215. Section 10(c) of the Contract Disputes Act of 1978 (41 U.S.C. 609(c)) is amended by striking out ", or, in its discretion" and all that follows through "of the case".

SEC. 216. Section 713 of title 44, United States Code, is amended—

(1) by striking out "eight hundred and twenty-two" and inserting in lieu thereof "eight hundred and twenty"; and

(2) by inserting "and" after "Superintendent of Documents;"; and

(3) by striking out "to the Court of Claims, two copies; and".

SEC. 217. Section 1103 of title 44, United States Code, is amended by striking out ", the Court of Claims," and by striking out ", chief judge of the Court of Claims.".

SEC. 218. (a) The following provisions of law are amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "United States Claims Court":

(1) Sections 1 and 2 of the Act of October 19, 1973 (87 Stat. 466).

(2) Section 8715 of title 5, United States Code.

(3) Section 8912 of title 5, United States Code.

(4) Section 2273(b) of title 10, United States Code.

(5) Section 337(i) of the Tariff Act of 1930 (19 U.S.C. 1337(i)).

(6) Section 606(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2356(a)).

(7) Section 1 of the Act entitled "An Act providing for the allotment and distribution of Indian tribal funds", approved March 2, 1907 (25 U.S.C. 119).

(8) Section 2 of the Act of August 12, 1935 (25 U.S.C. 475a).

(9) Section 6110(i)(1) of the Internal Revenue Code of 1954.

(10) Section 2 of the Act of May 28, 1908 (30 U.S.C. 193a).

(11) Section 7 of the Act of July 31, 1894 (31 U.S.C. 72).

(12) Section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a).

(13) Section 183 of title 35, United States Code.

(14) Section 104(c) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 330(c)).

(15) Sections 13(b) (2) and 14 of the Contract Settlement Act of 1944 (41 U.S.C. 113 (b) and 114).

(16) Sections 8(d), 10(a)(1), and 10(d) of the Contract Disputes Act of 1978.

(17) Sections 171 and 173 of the Atomic Energy Act of 1954 (42 U.S.C. 2221 and 2223).

(18) Section 10(i) of the Trading with the Enemy Act (50 U.S.C. App. 10(i)).

(19) Sections 103(f), 103(i), 105, 106(a)(6), 108, 108A, and 114(5) of the Renegotiation Act of 1951 (50 U.S.C. App. 1213(f), 1213(i), 1215, 1216(a)(6), 1218, 1218a, and 1224(5)).

(20) Section 4 of the Act of July 2, 1948 (50 U.S.C. App. 1984).

(b) The section heading of section 108A of the Renegotiation Act of 1951 (50 U.S.C. App. 1218a) is amended by striking out "COURT OF CLAIMS" and inserting in lieu thereof "UNITED STATES CLAIMS COURT".

SEC. 219. The following provisions of law are amended by striking out "Court of Claims" each place it appears and inserting in lieu thereof "Claims Court":

(1) Section 4(c) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(c)).

(2) Section 20 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831s).

(3) Section 403 of the International Claims Settlement Act of 1949 (22 U.S.C. 1642b).

(4) Section 2(a) of the Act of May 15, 1978 (92 Stat. 244).

(5) Section 311(i) of the Federal Water Pollution Control Act (33 U.S.C. 1321(i)).

(6) Section 10(b) of the Intervention on the High Seas Act (33 U.S.C. 1479(b)).

(7) Section 282 of title 35, United States Code.

(8) Section 5261 of the Revised Statutes (45 U.S.C. 87).

(9) Section 41(a) of the Trading with the Enemy Act (50 U.S.C. App. 42(a)).

SEC. 220. The following provisions of law are amended by striking out "United States Court of Customs and Patent Appeals" any place they appear and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit":

(1) Section 21 of the Trademark Act of 1946 (15 U.S.C. 1071).

(2) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

(3) Section 305(d) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(d)).

SEC. 221. (a) The following provisions of law are amended by striking out "Court of Customs and Patent Appeals" each place it appears and inserting in lieu thereof "Court of Appeals for the Federal Circuit":

(1) Subsections (e) and (g) of section 516 of the Tariff Act of 1930 (19 U.S.C. 1516 (e) and (g)).

(2) Section 528 of the Triff Act of 1930 (19 U.S.C. 1528).

(3) Section 337(c) of the Tariff Act of 1930 (19 U.C.S. 1337(c)).

(4) Sections 141 through 146 of title 35, United States Code.

(b) (1) The item relating to section 141 in the section analysis of chapter 13 of title 35, United States Code, is amended by striking out "Court of Customs and Patent Appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit".

(2) The section heading for section 141 of title 35, United States Code, is amended by striking out "Court of Customs and Patent Appeals" and inserting in lieu thereof "Court of Appeals for the Federal Circuit".

SEC. 222. The following provisions of law are amended by striking out "the United States Court of Claims, the United States Court of Customs and Patent Appeals" each place it appears and inserting in lieu thereof "the United States Claims Court":

(1) Section 6001(4) of title 18, United States Code.

(2) Section 906 of title 44, United States Code.

TITLE III—MISCELLANEOUS PROVISIONS

EFFECTIVE DATE

SEC. 301. The provisions of this Act shall take effect on October 1, 1981.

CONTINUED SERVICE OF CURRENT JUDGES

SEC. 302. The judges of the United States Court of Claims and of the United States Court of Customs and Patent Appeals in regular active service on the effective date of this Act shall continue in office as judges of the United States Court of Appeals for the Federal Circuit. Senior judges of the United States Court of Claims and of the United States Court of Customs and Patent Appeals on the effective date of this Act shall continue in office as senior judges of the United States Court of Appeals for the Federal Circuit.

APPOINTMENT OF CHIEF JUDGE OF COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SEC. 303. Notwithstanding the provisions of section 45(a) of title 28, United States Code, the first chief judge of the United States Court of Appeals for the Federal Circuit shall be the Chief Judge of the United States Court of Claims or the Chief Judge of the United States Court of Customs and Patent Appeals, whoever has served longer as chief judge of his court. When the person who first serves as chief judge of the United States Court of Appeals for the Federal Circuit vacates that position, the position shall be filled in accordance with the provisions of such section 45(a).

COURT OF CLAIMS COMMISSIONERS

SEC. 304. (a) Notwithstanding the provisions of section 171(a) of title 28, United States Code, as amended by section 106 of this Act, a commissioner of the United States Court of Claims serving immediately prior to the effective date of this Act shall become a judge of the United States Claims Court on the effective date of this Act.

(b) Notwithstanding the provisions of section 172(a) of title 28, United States Code, as amended by section 106 of this Act, the initial term of office of a person who becomes a judge of the United States Claims Court under subsection (a) of this section shall expire on September 30, 1984, except that no such individual shall serve as a judge after reaching the age of seventy years.

(c) At the time a commissioner becomes a judge of the United States Claims Court, he may elect between the retirement program described in section 7447 of the Internal Revenue Code of 1954, as made applicable to judges of the United States Claims Court by subsection (j) of such section 7447, and the pension plan in which he was previously enrolled.

(d) If any position of commissioner on the United States Court of Claims becomes vacant during the period beginning on the date of enactment of this Act and ending October 1, 1981, such position shall remain vacant during the remainder of such period and shall be filled, after October 1, 1981, by appointment in accordance with section 171 of title 28, United States Code, as amended by this Act.

EFFECT ON PENDING CASES

SEC. 305. Any matter pending before a commissioner of the United States Court of Claims on the effective date of this Act shall be transferred to the United States Claims Court. Any appeal which has been taken from a district court of the United States prior to the effective date shall be decided by the court of appeals in which it has been filed. Any matter pending before the United States Court of Customs and Patent Appeals or awaiting disposition by the United States Court of Claims on the effective date shall be transferred to the United States Court of Appeals for the Federal Circuit.

TVA LEGAL REPRESENTATION

SEC. 306. Nothing in this Act affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 to represent itself by attorneys of its choosing.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is a pleasure to bring H.R. 3806 before the full House. The proposed legislation establishes a new intermediate appellate court to be called the U.S. Court of Appeals for the Federal Circuit. Creation of this court is accomplished through a merger of the existing Court of Claims and the existing Court of Customs and Patent Appeals into a single appellate court with expanded jurisdiction. The creation of this new court substantially improves the administration of the law in the areas of patents, Government contracts, trademarks and international trade; provides a tribunal capable of exercising appellate jurisdiction nationwide; and results in improved functioning of the Federal appellate system.

There are those who would argue that we have created a specialized court. To the contrary, what we have done is take two specialized courts and combine them into a larger, more generalized court. In addition, the court has enlarged jurisdiction over all Federal contract appeals in which the United States is a defendant, over patent and trademark appeals from all Federal district courts, and over appeals from the Merit Systems Protection Board. All of this firmly respects present-day conceptions of judicial administration: That we ought not create overly specialized courts.

H.R. 3806 also creates a new article I trial forum known as the U.S. Claims Court, which would inherit the trial jurisdiction of the Court of Claims. The creation of this court provides an upgraded and better organized trial forum for Government claims cases.

There are several very important reasons for this legislation. First, the caseload of the Federal appellate system has reached crisis proportions. Between 1962 and 1977, appellate court judges more than quadrupled—from approximately 5,000 to 20,000. During this same period, Federal circuit judges only increased from 78 to 97. In spite of the fact that the omnibus judgeship bill created an additional 35 circuit judgships, it created many more at the base of the judicial pyramid: The district court level. These new lower court judges have kept their new circuit court brethren more than occupied with constantly increasing numbers of appeals. In addition, legislation passed by the 95th and 96th Congresses has drastically increased the burdens on the appellate courts. For example, both the bankruptcy and magistrate reform bills gave relief to the district courts while funneling larger numbers of appeals directly to the circuit courts of appeals.

This bill is not a panacea for these festering problems. It does, however, provide partial relief.

A second specific goal of the legislation is to provide increased uniformity in the patent law.

The establishment of a single court to hear patent appeals was repeatedly singled out by the witnesses who appeared before my subcommittee as one of the most far-reaching reforms that could be made to strengthen the U.S. patent system in such a way as to foster technological growth and industrial innovation. The new Court of Appeals for the Federal circuit will provide nationwide uniformity in patent law, will make litigation results more predictable and will eliminate the expensive and time-consuming forum-shopping that characterizes litigation in the field.

Patent litigation long has been identified as a problem area, characterized by undue forum-shopping and unsettling inconsistency in adjudications. Based on the evidence it compiled during the course of thorough hearings on the subject, the Commission on Revision of the Federal Court Appellate System—created, I might add, by act of Congress—concluded that patent law is an area in which the application of the law to the facts of a case often produces different outcomes in different courtrooms in substantially similar cases.

Secretary of Commerce Philip M. Klutznick testified in support of the proposal:

> Decisions to file patent applications and to invest in commercializing inventions would be improved meaningfully as a result of the greater uniformity and reliability made possible . . .

For these reasons the establishment of a single court to hear patent appeals was a major recommendation of the domestic policy review initiated by President Carter and is an indispensable part of the President's industrial innovation program. The proposal was expressly endorsed by President Carter in a message to the Congress on February 17, 1979.

The uniformity in the law that would result from the centralization of patent appeals in a single court will be a significant improvement from the standpoint of the industrial and businesses that rely on the patent system. Business planning becomes easier as more stable and predictable patent law is introduced. Patents thus serve as a stimulus to the innovative process. This can have important positive ramifications for the Nation's economy.

The proposal contains additional positive features. From a practical standpoint, a merger of the Court of Claims and the CCPA could be accomplished with minimal disruption. Since the courts presently occupy but do not quite fill the courts building on Lafayette Square in Washington, D.C., and already share the library and dining facilities, a new building does not have to be built. From a budgetary perspective, the merger would be extremely cost effective—and over the long run, would result in cost savings. The CBO cost estimate states that the proposed legislation will only require new expenditures of $60,000 in 1982, $70,000 in 1973, $70,000 in 1984 and $80,000 in 1985.

CONCLUSION

In summary, consolidation of the Court of Claims and the Court of Customs and Patent Appeals is constitutionally permissible and logistically and technically uncomplicated. Furthermore, it will make maximum use of available facilities and personnel and make only a modest change in Federal appellate court structure. It will reduce the incentive to forum-shop and bring desirable uniformity to an important area of the law. The number of appeals resulting from attempts to obtain different rulings on disputed legal points can be expected to decrease. Business planning will be made easier as the law becomes more stable.

At the same time, the merger of the courts will relieve docket pressures both on the regional appellate courts and on the Supreme Court. Although the number of appeals to be redirected is not great in proportion to the total caseload of these courts, the cases that would be rerouted contain some of the most complex and time-consuming issues the courts consider. The impact of the new court on the dockets of these courts therefore will be far greater than the raw numbers might indicate. Thus, the proposed court will increase the capacity of the Federal judicial system for definitive adjudication of patent and other issues falling within its jurisdiction.

Mr. Speaker, in closing, I remind my colleagues that similar legislation has passed the U.S. Senate. With an "aye" vote, we hopefully can achieve enactment of a public law during this Congress. I urge your support for this legislation.

□ 1400

Mr. RAILSBACK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3806, a bill to help improve our patent system by creating a single court to hear appeals from the Court of Claims and from the Court of Customs and Patent Appeals. However, one of the major purposes of the new court will be its expanded and exclusive jurisdiction of patent appeals from district courts throughout the Nation.

Our subcommittee held several days of hearings where we heard a great deal of testimony concerning the problem of forum-shopping which presently exists. For example, if you wanted to bring a lawsuit which would have the effect of attacking the validity of an existing patent, you would most likely file such a lawsuit in the eighth circuit. On the other hand, if you were trying to have a patent held valid, you would try and have the suit filed in the fifth circuit.

Only a small percentage of the patents granted are challenged in court. However, of those patents challenged, over 50 percent are held to be invalid. Some of this instability is attributable to forum shopping. Although we are not talking about a lot of cases, the chilling effect is substantial on everyone who holds a patent. It is especially discouraging for the single inventor and the small businessman who do not have the resources for prolonged litigation.

H.R. 3806 has the support of the Departments of Justice and Commerce, the American Patent Law Association, the Judicial Conference and the judges and commissioners of the two courts involved. It is also supported by numerous corporate lawyers and the Industrial Research Institute, which is a private, nonprofit corporation with a membership of approximately 250 industrial companies that account for a major portion of the industrial research and development conducted in the United States. The Senate has also passed a bill very similar to H.R. 3806; S. 1477.

As a practical matter, the merger of the Court of Claims and the Court of Customs and Patent Appeals can be accomplished with virtually no disruption to the people involved. This legislation would not involve the building of any new courtroom facilities. The existing courts already jointly occupy almost all of the courts building at Lafayette Square in Washington, D.C. They presently share the same library, and court personnel share the same dining facilities.

I urge my colleagues to vote favorably for the passage of this legislation.

Some of the persons and organizations who support the legislation are the following:

ORGANIZATIONS SUPPORTING H.R. 3806

1. American Patent Law Association.
2. National Bar Association.
3. National Patent Law Association.
4. Committee for Economic Development.
5. Industrial Research Institute.
6. Wisconsin Alumni Research Foundation.
7. National Small Business Association.
8. Small Business Legislative Council.
9. American Society of Inventors.
10. National Patent Council.
11. American Chemical Society.
12. Saginaw Valley Patent Law Association.
13. Chemical Manufacturers Association.
14. Menominee Indian Tribe of Wisconsin.
15. Klamath Indians of Oregon.

GOVERNMENT AGENCIES SUPPORTING H.R. 3806

1. United States Department of Justice.
2. United States Department of Commerce.
3. Judicial Conference of the United States.

BUSINESSES SUPPORTING H.R. 3806

1. Itek Corporation.
2. Sperry Univac.
3. Reynolds Metals Company.
4. The Continental Group Inc.
5. Combustion Engineering Inc.
6. Colt Industries.
7. St. Regis Paper Co.
8. Allied Chemical Corporation.
9. FMC Corporation.
10. Bethlehem Steel Corporation.
11. Borg-Warner Corporation.
12. E.I. dupont de Nemours & Company.
13. American Can Company.
14. Monsanto Company.
15. Perkin-Elmer Corporation.
16. Deere & Company.
17. Foster Wheeler Energy Corporation.
18. Phillips Petroleum Company.
19. Allis-Chalmers Corporation.
20. Dow Chemical Company.
21. Bell Telephone Laboratories.
22. General Electric Company.
23. Rex Nord.
24. The Procter & Gamble Company.
25. Continental Oil Company.
26. International Business Machines Corporation.
27. Lilly Corporation.
28. Airco Inc.
29. Burroughs Corp.
30. Merck Sharp & Dohme Research Laboratories.
31. Xerox Corporation.
32. United Technologies Corporation.
33. Stauffer Chemical Company.
34. 3M Corporation.
35. J.I. Case Corporation.
36. Allen-Bradley Company.

SELECTED INDIVIDUALS WHO SUPPORTED H.R. 3806

1. Prof. Daniel J. Meador, School of Law, University of Virginia.
2. Dean Paul Carrington, School of Law, Duke University.
3. Larry Cassett, Esq., Director of Patent, Trademark & Licensing Activities.
4. Nicholas deB. Katzenbach, Esq., IBM Corporation.
5. Dale L. Carlson, Esq., Patent Counsel, Union Carbide.
6. Paul S. Quinn, Esq., Wilkinson, Cragun & Barker, Washington, D.C.
7. Chief Judge Daniel M. Friedman, U.S. Court of Claims.
8. Chief Judge Howard T. Markey, U.S. Court of Patent and Customs Appeals.
9. Hon. Henry J. Friendly, U.S. Court of Appeals for the 2d Circuit.
10. Erwin N. Griswold, Esq., Former Solicitor General of the United States.
11. Harry F. Manbeck, Jr., Esq., General Patent Counsel, General Electric Co.
12. Homer O. Blair, Esq., Past President, Licensing Executives Society (U.S.A.).
13. Donald R. Dunner, Esq., Member—Patent Subcommittee, Advisory Committee on the Domestic Policy Review for Industrial Innovation.

Mr. KASTENMEIER. Mr. Speaker, I will only conclude by saying that I agree with what the gentleman from Illinois (Mr. RAILSBACK) has just stated. This is an essential cornerstone in the attempt to revise our patent policy and patent procedures to make this Nation competitive in terms of its innovation and technology.

I appreciate also the fact that the gentleman from Illinois read, in part, the long list of supporting organizations for this legislation.

Mr. RAILSBACK. Mr. Speaker, I yield such time as he may consume to my distinguished friend and colleague, the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of H.R. 3806. Because of the nature of infringements, patent attorneys have an almost open shot at any forum in the United States that they wish to pick. Consequently, most of the patent law firms, as we know, have virtually a national practice, because of the forum-shopping aspects. For example, lawyers wishing to protect a patent will virtually boycott the eighth circuit because they have a very poor record of sustaining patents. The philosophy of the eighth circuit seems to be more antipatent than most of the other circuits, while the second and seventh circuits are more neutral and the fifth is considered propatent.

I would like to point out to the Members that this new court is not a specialized court. Its jurisdiction is not limited to one type of case, but rather it will have a varied docket spanning a broad range of legal issues. By combining the jurisdiction of the two existing courts—Court of Claims and the Court of Customs and Patent Appeals—along with certain limited grants of new jurisdiction, the bill creates a new intermediate appellate court markedly less specialized than either of its predecessors.

We have heard from many patent lawyers from around the country, and they strongly feel that there should be a uniformity of appellate jurisdiction and are very strongly in favor of this legislation.

I urge the Members to vote favorably for the enactment of H.R. 3806.

● Mr. McCLORY. Mr. Speaker, I rise in support of H.R. 3806, which establishes a new intermediate appellate court by merging two existing article III courts, the Court of Claims and the Court of Customs and Patent Appeals.

I would like to emphasize for the membership two important aspects of this legislation. First, H.R. 3806 is an important court reform measure in that it will expedite and unify the present jurisdiction of the two merged courts and further expand its jurisdiction to include all patent appeals from the district courts around the country.

The second aspect is the effect this legislation is going to have on industrial innovation, which I believe is a key to increase productivity in our country. As has been pointed out by other Members, the validity of a patent is dependent, to a certain degree, upon geography. It is particularly difficult for small businesses to make useful and knowledgeable investment decisions where patents are involved when they fear a patent may be attacked and tied up for years in expensive litigation. The standard of patentability should not vary from circuit to circuit.

A good friend of mine, Secretary of Commerce, Phil Klutznick, testified in support of this legislation, and his testimony before the subcommittee he said the following:

> Decisions to file patent applications and to invest in commercializing inventions would be improved meaningfully as a result of the greater uniformity and reliability made possible by a National Appeals Court.

Mr. Speaker, this legislation was favorably reported, on voice vote, both in the subcommittee and the full Judiciary Committee, and I urge the Members to vote favorably for its passage.●

● Mr. GUDGER. Mr. Speaker, I commend the chairman of the subcommittee for his explanation of H.R. 3806 and associate myself with his remarks.

During the 96th Congress one of the major goals of the Subcommittee on Courts, Civil Liberties and the Administration of Justice has been the improvement of the patent system created by Congress pursuant to our powers enumerated in article I, section 8. Toward that end we offer this bill which will establish a single court of appeals inferior to the U.S. Supreme Court which will provide the sole forum for patent appeals from U.S. District Courts.

Currently, patent cases are appealed from district court to the Circuit Courts of Appeal. This has resulted in inconsistant case law in the patent area and quite a bit of forum shopping. We believe that this bill will facilitate uniformity in the area of patent law and since judges from the existing Court of Patent Appeals and the Court of Claims will sit on the new court, they should bring considerable expertise to this court.

We urge adoption of this bill.●

● Mr. RODINO. Mr. Speaker, on April 30, 1979, I introduced H.R. 3806, the Court of Appeals for the Federal Circuit Act, one of several comprehensive court reforms proposed by President Carter in his message to Congress on February 27, 1979. It is my pleasure to speak today in support of the bill as it has been reported by the Committee on the Judiciary.

Under the able leadership of Mr. KASTENMEIER, the Subcommittee on Courts, Civil Liberties and the Administration of Justice conducted extensive hearings on the proposal. The bill in its present form has been refined through the committee process and enjoys not only the support of the administration and of the Department of Justice but also bipartisan support within the House and the approval of the patent bar, the judges of the affected courts and the representatives of the businesses, large and small, interested in the proposal.

The essence of the proposal is the creation of a new intermediate appellate court, to be called the "U.S. Court of Appeals for the Federal Circuit," by merging the Court of Claims and the Court of Customs and Patent Appeals. The new court would consist of 12 article III judgeships to be appointed by the President with the advice and consent of the Senate. Initially the 12 judges of the two existing courts would staff the new court.

This new court would be, in effect, a 12th circuit court. It would not be interposed between the existing circuits and the Supreme Court, but rather would occupy a place in our appellate structure similar to that of the existing circuits. Review of its decisions would be in the Supreme Court upon a writ of certiorari.

Like the existing circuit courts, the new court would hear appeals from certain final decisions of the district courts. Unlike the existing circuits, however, the jurisdiction of the new court would be nationwide and would be limited and exclusive.

A major object of the proposal is to reduce the widespread lack of uniformity and uncertainty of legal doctrine that now exists in the administration of the patent law and that has resulted in costly and unseemly forum-shopping in that area. This objective would be realized by giving the new court exclusive jurisdiction over all appeals from cases in the district courts in which a patent issue was raised in the complaint, as well as overall appeals in patent cases currently reviewed by the Court of Customs and Patent Appeals.

In the past decade various groups such as the study group on the caseload of the Supreme Court and the Commission on Revision of the Federal Court Appellate System have sought to resolve the problems presented by the multiplicity of Federal appellate courts. In the course of their analysis, both groups observed that there was considerable diversity among the appellate courts in patent law. Patent issues may appear in any of the 11 regional circuits or in the Court of Customs and Patent Appeals. Patent law is an area in which the application of the law to the facts of an individual case often produces different outcomes in different courtrooms. Since Supreme Court review of patent cases is rare, the courts have conflicts on important legal questions which go unresolved. The existence of such disparity in the law promotes litigation and forum shopping in patent law which both unnecessarily taxes judicial resources and destroys respect for the law.

This proposal seeks to resolve that problem by combining the Court of Claims with the Court of Customs and Patent Appeals. It transfers all appeals in patent, trademark, plant variety protection, and pendent matters to the new court which would be known as the U.S. Court of Appeals for the Federal Circuit.

This court would have all the features of the regional courts of appeals. It would not be above those courts since it would hear no appeals from them, nor would it be below them since its cases would be reviewed only by the Supreme Court. It could sit in panels of three, five, seven or more according to rules it would establish. The size of the panel would reflect the importance of the case to be decided.

In addition, the new court would inherit all other jurisdiction of the Court of Claims and of the Court of Customs and Patent Appeals except for, first, cases brought under the Federal Torts Claims Act—all of which historically have been heard by the district courts and the regional circuits—and second, the trial function now being performed by the Commissioners of the Court of Claims.

A new article I Court, patterned after the U.S. Tax Court, and to be called the "U.S. Claims Court," would be created consisting of 16 judgeships—initially staffed by the current Court of Claims Commissioner. The claims court would inherit the existing jurisdiction and function of the Court of Claims Commissioners, again, with the exception of Tort Claims Act cases.

H.R. 3806 recognizes the fact that the Court of Claims, with its trial functions delegated to a group of court-appointed commissioners, has really become an appellate court. With the transfer of the Court of Claims into the new appellate court, the role of the commissioners requires formal recognition. The bill establishes the U.S. Claims Court as an article I court which would assume the trial jurisdiction of the present U.S. Court of Claims. Such a change should promote efficiency since the current commissioners are not able to make dispositive decisions, and thus practically every case before them is appealed to the Court of Claims. Under the new structure they would issue dispositive orders which should have the effect of reducing the time and energy needed to get a final decision in a claim against the United States.

H.R. 3806 is a much-needed structural reform in our Federal civil justice system. It will markedly reduce the specialization of two existing courts, reduce the total number of Federal courts, and add to the capacity of our system by making optimum use of existing resources. No new courts or judgeships are created; no additional personnel are required.

Moreover, by stabilizing the patent law so vital to industrial innovation in this country, H.R. 3806 will achieve major economies for prospective litigants and foster investment in research and development. New investment means new technology. New technology means new jobs and increased productivity essential to the revitalization of our Nation's economy. It is no wonder then that H.R. 3806 has the support of American business, large and small.

H.R. 3806 also has the support of President Carter, of the Department of Justice and the Department of Commerce. It has the support of the lawyers who will practice before the new courts and of the judge who will serve on them.

Mr. Speaker, I urge all my colleagues to vote with me in adopting H.R. 3806.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 3806, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 3806, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

JUDICIAL COUNCILS REFORM AND JUDICIAL CONDUCT AND DISABILITY ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7974) to revise the composition of the judicial councils of the Federal judicial circuits, to establish a procedure for the processing of complaints against Federal judges, and for other purposes.

The Clerk read as follows:

H.R. 7974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Judicial Councils Reform and Judicial Conduct and Disability Act of 1980".

JUDICIAL COUNCILS OF THE CIRCUITS

SEC. 2. (a) Section 332(a) of title 28, United States Code, is amended to read as follows:

"(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he may designate, a meeting of the judicial council of the circuit, consisting of—

"(A) the chief judge of the circuit, who shall preside;

"(B) that number of circuit judges fixed by majority vote of all such judges in regular active service; and

"(C) that number of district judges of the circuit fixed by majority vote of all circuit judges in regular active service, except that—

"(i) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is less than six, the number of district judges fixed in accordance with this subparagraph shall be no less than two; and

"(ii) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is six or more, the number of district judges fixed in accordance with this subparagraph shall be no less than three.

"(2) Members of the council shall serve for terms established by a majority vote of all judges of the circuit in regular active service.

"(3) The number of circuit and district judges fixed in accordance with paragraphs (1)(B) and (1)(C) of this subsection shall be set by order of the court of appeals for the circuit no less than six months prior to a scheduled meeting of the council so constituted.

"(4) Only circuit and district judges in regular active service shall serve as members of the council.

"(5) No more than one district judge from any one district shall serve simultaneously on the council, unless at least one district judge from each district within the circuit is already serving as a member of the council.

"(6) In the event of the death, resignation, retirement, or disability of a member of the council, a replacement member shall be designated to serve the remainder of the unexpired term by the chief judge of the circuit.

"(7) Each member of the council shall attend each council meeting unless excused by the chief judge of the circuit.".

(b) Section 332(c) of title 28. United States Code, is amended by striking out "quarterly" and inserting in lieu thereof "semiannually".

(c) Section 332(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas issued on behalf of the United States or an officer or agency thereof.

"(2) All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council.

"(3) Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.".

(d)(1) The section heading for section 332 of title 28, United States Code, is amended to read as follows:

"§ 332. Judicial councils of circuits".

(2) The item relating to section 332 in the section analysis for chapter 15 of title 28, United States Code, is amended to read as follows:

"332. Judicial councils of circuits.".

PROCEDURES WITHIN JUDICIAL COUNCILS

SEC. 3. (a) Section 372 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

"(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term 'chief judge'). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

"(3) After reviewing a complaint, the chief judge, by written order stating his reasons, may—

"(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) related to the merits of a decision or procedural ruling, or (iii) frivolous; or

"(B) conclude the proceeding if he finds that appropriate corrective action has been taken.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

"(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

"(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

"(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

"(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

"(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

"(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council——

"(A) may conduct any additional investigation which it considers to be necessary;

"(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

"(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

"(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this subsection;

"(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

"(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

"(v) censuring or reprimanding such judge or magistrate by means of private communication;

"(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

"(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 153 of this title; and

"(C) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

"(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

"(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior has engaged in conduct—

"(i) which might constitute one or more grounds for impeachment under article I of the Constitution; or

"(ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

"(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

"(8) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary.

"(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

"(B) In conducting any investigation under this subsection, the Judicial Conference, or a special committee appointed by the Presiding Officer of the Judicial Conference, shall have full subpoena powers as provided in section 331 of this title.

"(10) A complainant aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A judge or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. Except as expressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be reviewable on appeal or otherwise.

"(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

"(A) adequate prior notice of any investigation be given in writing to the judge or magistrate whose conduct is the subject of the complaint; and

"(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.

Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference.

"(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, or upon the Judicial Conference until all related proceedings under this subsection have been finally terminated.

"(13) No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this subsection.

"(14) All papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and privileged against disclosure by any person in any proceeding, except that the judicial council of the circuit, the Judicial Conference of the United States, or the Congress may release any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution.

"(15) Except as expressly provided in this subsection nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

"(16) The Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.".

(b) The section heading for section 372 of title 28, United States Code, is amended to read as follows:

"§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline.".

(c) The item relating to section 372 in the section analysis for chapter 17 of title 28, United States Code, is amended to read as follows:

"372. Retirement for disability; substitute judge on failure to retire; judicial discipline.".

AUTHORITY OF THE JUDICIAL CONFERENCE

SEC. 4. The fourth undesignated paragraph of section 331 of title 28, United States Code, is amended to read as follows:

"The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. In its discretion, the Conference may make necessary and appropriate orders in the exercise of its authority under section 372 of this title, and in the performance of its authority under such section may, as a Conference or through a special committee appointed by the Presiding Officer, hold hearings, take sworn testimony, and issue subpoenas and subpoenas duces tecum. Subpoenas shall be issued by the clerk of the Supreme Court of the United States or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the Court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedures for subpoenas issued on behalf of the United States or an officer or agency thereof. All judicial officers and employees of the United States shall promptly carry into effect all such orders of the Judicial Conference. The Conference may also prescribe and modify rules for the exercise of authority conferred by section 372 of this title in accordance with subsection (c) of such section.".

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

SEC. 5. Section 604 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under section 372 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under section 372 of this title.

"(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under section 372(c) of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 7. This Act shall become effective on October 1, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. RAILSBACK) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is with great pleasure that I bring to the House floor a bill to substantially improve the functioning and accountability of the Federal judiciary. I would like, at the outset, to thank the members of my subcommittee, who participated in the drafting and formulating of this important piece of legislation. They all have cosponsored the bill before us, and without them the legislation would not be on the House floor today.

In brief, the proposed legislation creates procedures and in mechanism within the Federal judicial branch of Government to handle complaints against Federal judges and magistrates. It also revises the composition of the judicial councils of the 11 Federal circuit courts of appeals, and in addition clarifies the authority of both the circuit councils and the Judicial Conference of the United States in the area of judicial discipline and disability.

The bill has received broad-based and virtually unanimous support. It has been endorsed by the Judicial Conference of the United States, the U.S. Department of Justice, the American College of Trial Lawyers, the Conference of Federal Trial Judges, the American Bar Association (in principle), the National Association of Attorneys General (in principle), and the American Judicature Society (in principle). The American Civil Liberties Union, on record as opposing all previously drafted legislative proposals, has withdrawn its opposition and takes no position on H.R. 7974.

The proposed legislation was reported unanimously from the subcommittee that I chair—the Subcommittee on Courts, Civil Liberties and the Administration of Justice. Indeed, as I stated above, all nine subcommittee members have cosponsored the legislation. Further, by voice vote the bill was unanimously reported from the full committee. Not a single amendment was offered in subcommittee or full committee. I believe that this is due to the fact that we have successfully drafted a consensus piece of legislation, agreed to by all three branches of Government.

Let me now turn to some of the issues involved.

Under article III, section 1, of the Constitution of the United States, Federal judges hold office "during good Behaviour, and shall * * * receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." This clause was designed to give judges maximum freedom from possible coercion or influence by the other two branches of Government.

In the Constitution, there is only one provision dealing with sanctions that may be imposed on Federal judges. Alexander Hamilton observed that article III, section 1, "is the only provision on the point which is consistent with the necessary independence of the judicial character." James Madison said:

> The judges are to be removed only on impeachment, and conviction before Congress.

The reason I present this constitutional analysis at the outset is that I would like the ensuing debate to keep it in mind. We, as elected Members of Congress, have an affirmative obligation to maintain and insure respect for the Constitution.

In this regard, it is my opinion that in recent years the U.S. Senate has passed legislation on this topic of very questionable constitutionality. There even appears to be an admission or concession of this point in S. 1873, the companion Senate bill, which contains a separability section stating that if any section of the act is held invalid then the application of the remainder of the act shall not be affected. Further evidence of this can be gleaned from the heated debate in the Senate. In conference—if one is necessary—I pledge to be very firm on compromising away the contents of the Constitution. In short, I will not do so.

A second issue that I would like to raise is that of the need for the legislation. Again, in my opinion, there has been no showing of a compelling necessity to create elaborate judicial discipline machinery, such as a new court of commission. We live in a period of mistrust of new Government programs. We also are experiencing great distrust of generous spending programs to solve societal problems. In short, in drafting the proposal before the full committee today, it was necessary first of all to measure the need for the legislation and then to craft a logical, economical and fair solution to the problem.

With respect to policy, I would argue that the proposed legislation meets the test of good legislation. It solves the problem of there being no mechanism within the Federal judiciary to resolve complaints about the conduct and disability of judges. It does not result in overkill, it is cost effective, and it will not dilute the independence of the Federal judicial branch.

With respect to constitutionality, I believe that the bill reported by the Committee on the Judiciary—and formulated by my subcommittee, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice—passes constitutional muster. It specifically does not allow removal and it does not create a new court of tenure commission.

With respect to costs, it is economical. It utilizes existing judicial machinery. It also dovetails with efforts by the Judicial Conference of the United States to stimulate and create grievance procedures within the Federal judiciary.

Let me now give a brief summary of how the proposed legislation accomplishes its policy and constitutional goals. In brief, it uses the existing circuit councils as the primary mechanism for the resolution of complaints against Federal judicial officers. A complaint can be filed with the circuit's clerk of court; it then is referred to the chief judge of the circuit who is granted broad discretion to solve the perceived problem or to dismiss the complaint if it is frivious. The chief judge's decision is rendered in writing. If the chief judge is unable to solve the complaint or dismiss it, he must create a special committee to investigate the facts and allegations in the complaint. The special committee conducts an investigation as extensive as it considers necessary and then files a comprehensive written report with the full judicial council of the circuit. The latter then may conduct an additional investigation, and shall take such action "as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" including actions specifically delineated in the legislation. In addition, the circuit council may refer any complaint to the Judicial Conference of the United States. The council is required to do so if a judge has engaged in impeachable activity or activity which, in the interest of Justice, is not amenable to resolution by the judicial council.

Any complainant who is not satisfied with a decision of a chief judge may petition the judicial council for review thereof. Nothing in the legislation precludes a complainant from bringing any matter to the attention of the House of Representatives for an impeachment inquiry or to the U.S. Department of Justice for a criminal investigation.

The proposed legislation also provides for consistency in circuit rules. It additionally improves the functioning of the judicial councils by providing for district judge representation. And, last, it calls for the Director of the Administrative Office of the U.S. Courts to annually report to Congress on the number of complaints filed, the nature thereof, and the disposition.

Unquestionably, the issue of the best means by which to deal with allegations of unfitness against Federal judges is one that concerns all three branches of the Federal Government. The Congress has a role in the appointment process and can, as we know, remove a judge from the bench through the impeachment process. The executive branch, through the Department of Justice, also has a role in the appointment process, investigates allegations of criminal misconduct against judicial officers and prosecutes such judicial misbehavior; the judiciary itself has a responsibility to maintain its own integrity. Because of the separation of powers principle that guides us, these roles—and any legislation affecting them—must remain separate. I believe that the legislation before us today satisfies that mandate. And I am pleased that the highest ranking representatives of the other two branches agree with this. As observed by Attorney General Benjamin Civiletti in his recent speech to the ABA convention:

> I firmly believe that the establishment through legislation of formal procedures by which the judiciary itself can consider and act upon complaints against judges will pro-

> vide a shield for the many, many unwarranted complaints that are raised against judges and will increase public confidence in the quality of the judiciary. . . . We essentially support the draft bill in the House." In a letter to me, Judge Elmo J. Hunter (as representative of the Judicial Conference of the United States) stated that "no proposal which I have seen in the past can in any way be deemed to be the equivalent to H.R. 7974.

I particularly appreciate this support from the other two branches because it symbolizes recognition that we are engaged in a cooperative endeavor to achieve an effective and constitutional process within one of the branches, that is, requiring the judiciary to establish judicial discipline procedures. In short, it is a clear message that we have satisfied the difficult legislative mandate given to us.

I ask your support for this legislation, and I urge an "aye" vote.

□ 1410

Mr. Speaker, I reserve the balance of my time.

Mr. RAILSBACK. Mr. Speaker, I yield myself so much time as I may consume.

Mr. Speaker, I rise in support of H.R. 7974, a bill which would establish a procedure for investigating and resolving allegations against members of the Federal judiciary. I would like to commend Mr. Kastenmeier and the members of the subcommittee for their work on the legislation.

I think we all agree that legislation in this senitive area is long overdue. Until only recently, there was no procedure or mechanism, short of impeachment, available for handling cases of judicial misconduct or disability involving a Federal judge. In the last year and a half, all 11 judicial councils have implemented rules for the processing of complaints against Federal judges in response to a resolution issued by the Judicial Conference on March 9, 1979. However, an examination of the various sets of rules adopted by the respective judicial councils indicates that they lack uniformity and, in many instances, are silent on important issues.

H.R. 7974 would, I believe, go a long way toward remedying the existing deficiencies in the various sets of rules now in use by the 11 judicial councils by strengthening and clarifying their power to handle complaints against members of the Federal judiciary.

I recognize that there are those Members who may favor stronger measures and, I am one of them. However, I respect the argument that stronger measures than those embodied in H.R. 7974, may be more controversial. Therefore, I am willing to support H.R. 7974 as a reasonable first step in this extremely sensitive area.

H.R. 7974 is virtually without opposition and enjoys the active support of the Judicial Conference of the United States, the U.S. Department of Justice, the ABA, the American College of Trial Lawyers, the Association of Federal Trial Judges, the National Association of Attorneys General (in principle), and the American Judicative Society (in principle). Moreover, H.R. 7974 was reported by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice and the full Judiciary Committee without opposition or amendment. Accordingly, I urge my colleagues to support H.R. 7974 as a significant improvement in the functioning and accountability of the Federal judiciary.

□ 1420

Mr. Speaker, I would like to yield such time as he may consume to the gentleman from California (Mr. Moorhead).

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of H.R. 7974, which would establish a new, workable procedure for the handling of complaints against Federal judges and magistrates.

I think it is important for my colleagues to recognize the fact that the need for H.R. 7974 is not based on any evidence that there is a serious problem with Federal judgs failing to conform to the "good behavior" standard of the U.S. Constitution. Rather, H.R. 7974 is based on the recognition that there are isolated cases that involve judicial misconduct or disability, which do not rise to the level of an impeachable offense, yet need redress. H.R. 7974 would provide an equitable and clear procedure for the handling of such cases.

In the introduction to the "Standards Relating to Judicial Discipline and Disability Retirement," adopted by the American Bar Association's house of delegates in 1978, it is stated that:

> The major purpose of judicial discipline is not to punish judges, but to protect the public, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior on the part of judges themselves.

I believe that H.R. 7974 will further these stated purposes of judicial discipline while preserving judicial independence. Accordingly, I urge my colleagues to support H.R. 7974, which has been cosponsored by all nine members of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Mr. KASTENMEIER. Mr. Speaker, I yield such time as he may consumer to the gentleman from North Carolina (Mr. Gudger), a distinguished member of the subcommittee.

Mr. GUDGER. Mr. Speaker, I thank the gentleman for yielding. I wish to commend the chairman of the subcommittee and the ranking minority member for their clear and forthright explanation of this highly important bill.

Mr. Speaker, I urge passage of H.R. 7974, a bill to revise the composition of the Federal circuit counsels and to establish a procedure for the processing of complaints against Federal judges.

The Courts Subcommittee and the full Judiciary Committee both unanimously reported this bill in response to a perceived need to establish an effective procedure whereby citizens may have their complaints about Federal judges addressed. Personally, I believe that this bill strikes a balance between the twin goals of judicial discipline and the maintenance of an independent Federal judiciary. We accomplish this by giving the Federal judiciary both the authority and responsibility for policing themselves.

We must always preserve the independence of our Federal judiciary. This era of our national history is no different than those that precede it and that may be expected to follow, it is an era that demands hard judicial decisionmaking and inevitably, unpopular decisions. While the impeachment process has proven so cumbersome as to be useless in dealing with judicial impropriety that does not amount to criminal behavior, it has made life tenure and insulation from political pressure a reality. Our bill will not replace impeachment as the sole method for removal, but would give the chief circuit judge several options in dealing with complaints against judges in the circuit including referral to a judicial council composed of district and circuit judges.

Sanctions such as censure, the withholding of cases, requests for retirement or the certification of a judge's disability, which have proven effective in my own fourth circuit, are codified in the bill. There is also an appellate procedure which culminates in the Judicial Conference of the United States. That body has the option of referring a case to the Congress with a recommendation for impeachment. However, the constitutional prerogative of Congress to impeach is in no way jeopardized by the bill.

In sum, the bill preserves judicial independence while establishing a procedure whereby the Federal bench may resolve public grievances against it. I strongly urge its adoption.

Mr. RAILSBACK. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Mississippi (Mr. Lott).

Mr. LOTT. I thank the gentleman for yielding.

I am very pleased to rise in support of this legislation. I want to commend the Committee on the Judiciary, both the subcommittee leadership and that of the full committee for reporting out H.R. 7974, the Judicial Council Reform and Judicial Concept and Disability Act of 1980.

Mr. Speaker, this is legislation that has been talked about and considered as I understand it since the forties and a number of States have passed legislation to deal with this. Mississippi, I think, was one of the last States that actually set up a judicial discipline agency.

There are certain constitutional considerations that had to be weighed very carefully and I think that this bill has done that. I think it sets up a system where, when there may have been some misconduct there will be a way that it can be looked into and appropriate action can be taken without removing them from office.

I think we have a good bill here. I am pleased to see the Senate has already acted on legislation that is, I understand, very similar, I think it is needed, I think it will help to restore the confidence of the American people to a large extent in our judicial system, if there is some way in which these charges that are sometimes made can be investigated.

I appreciate the job that has been done and I am very pleased to support this legislation.

Mr. KASTENMEIER. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. Pease).

Mr. PEASE. Mr. Speaker, I rise in

strong support of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (H.R. 7974). Certainly Chairman **Kastenmeier** and all the members of the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice are to be commended for bringing this bill before us today.

Soon after the 96th Congress convened in January 1979, I introduced a bill (H.R. 622) which would create a system for filing complaints about Federal judges with a responsible, judicial body that would have both the means and the ability to investigate and take appropriate action. I did this because of my belief there exists a compelling need to reinforce public confidence in the character, professional conduct, and accountability of our Federal judges. I urge support for H.R. 7974 because it helps meet this need. At the same time, it represents a significant step toward giving life and meaning to a system for the Federal judiciary policing itself.

In No. 51 of the Federalist Papers, James Madison underscores the importance of preserving our liberties by obliging our Government to control itself as well as the governed. Specifically, he wrote:

> In framing a government which is to be administered by men over men the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

What this bill is about is providing a needed "auxiliary precaution" to insure that the Federal judiciary effectively controls itself. The value of such a precaution should be self-evident as the Federal judiciary pursues its policymaking functions.

Mr. RAILSBACK. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

• Mr. McCLORY. Mr. Speaker, I rise in support of H.R. 7974, which would revise the composition of the Judicial Councils of the Federal Judicial Circuit and establish a procedure for the processing of complaints against Federal judges.

I think we all recognize that impeachment is a cumbersome and unwieldly process, as evidenced by the fact that in nearly 200 years only 54 judges have been investigated and of these, only 8 judges and 1 justice have been impeached. Furthermore, only four judges have been removed, with the last impeachment of a Federal judge occurring over 40 years ago. However, the structuring of impeachment as a difficult process was, I believe, not unintentional, for by so doing the Founding Fathers provided protection for the independence of Federal judges who in many cases must render unpopular decisions. Something fairly egregious has to occur before impeachment is restorted to, yet there are cases involving Federal judges that need redress, short of impeachment.

H.R. 7974 would expand and clarify the power of the judicial councils to handle complaints against members of the Federal judiciary. I am optimistic that the judicial councils will now be capable of handling cases that involve conduct which does not rise to the level of an impeachable offense. By the same token, I feel quite confident that the circuit councils can effectively handle cases of alcoholism and senility involving a Federal judge. Experience with these problems in the past has established that the best forum for the handling of such cases is provided by ones own colleagues.

Strengthening the disciplinary powers of the circuit councils, as provided for in H.R. 7974 will, I believe, minimize the constitutional problems involved in this sensitive area, while providing the least intrusion into the independence of the Federal judiciary. I urge my colleagues to support H.R. 7974.•

• Mr. RODINO. Mr. Speaker, I want to raise a strong voice in favor of passing H.R. 7974, the Judicial Councils Reform and Judical Conduct and Disability Act of 1980. As reported from the Committee on the Judiciary, this bill offers a wise and prudent solution to one of the most serious problems facing our system of justice in America—that of judicial accountability.

It is my belief that the real security and strength of our Nation lies in the integrity of its institutions and the informed confidence of its people. American citizens are concerned about the quality of justice provided by our judicial system and they are demanding greater accountability by their judges. The very distinguished Federal district court judge, Frank M. Johnson has stated "judicial independence must incorporate some notion of accountability."

The bill before the House today embodies this advice, and I believe it strikes true balance between the twin goals of a judicial branch that is independent from political pressures and one that is accountable to the finest standards of integrity.

Mr. Speaker, this is a subject that goes to the heart of our Constitution and one to which I have given a great deal of thought. As chairman of the House Committee on the Judiciary, I presented my ideas to the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice at the start of this Congress on how to improve procedures to deal more effectively with complaints of misconduct or misbehavior by Federal judges.

I told the subcommittee that the expertise which Congress showed in the 1974 impeachment inquiry and the scholarship we now have available to us indicate strongly that the authority to remove a Federal judge from office must rest solely with the Congress. The Constitution makes it very clear in articles I, II and III that removal authority rests solely with Congress. This is where it should stay.

I recommended that improved judicial branch procedures be established which would discipline or reprimand judges, short of the removal power. I also believe that the House Judiciary Committee should consider improvements in the way in which we handle complaints against judges. The committee rules can be reviewed and modified if the need is there. Also, I recommend that the three branches of Government improve their lines of communication and cooperation to insure that Congress is aware of any inquiries which either the judiciary or Justice Department are making regarding complaints against Federal judges.

Mr. Speaker, in considering this legislation, much has been said about the impeachment process being very cumbersome. I believe that is as it should be. The Constitution grants the House of Representatives sole impeachment power over judges; it also recognizes that this authority is the ultimate and last resort, and should not be an easy mechanism for removing an official. In fact, the Constitution provides that impeachment itself is not a substitute for the ordinary application of the criminal laws.

I do not doubt that there may have been judges that may have committed impeachable offenses during the last 50 years, judges who were not found guilty by the Congress. However, if we consider the cases, we will find that a good many of them were solved by the other institutions that serve us. Several judges resigned from office when threatened with prosecution. At least one was prosecuted and then resigned after conviction. Other problems—usually relating to alcoholism and senility—were solved by the Federal judiciary. In many of these instances, we find that the system can really work—that certain actions within the system can cure the problem instead of rushing to impeachment.

Mr. Speaker, H.R. 7974 will improve the system's mechanisms for solving its problems of misconduct while maintaining a strong, independent court system. The bill is a product of much study by the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. Chairman **Robert Kastenmeier** obtained the advice of numerous professionals in the Federal judiciary as well as the other branches of Government. His own commitment to crafting the best possible balance between judicial independence and accountability has produced a commendable bill.

H.R. 7974 provides the judicial councils in each Federal circuit with the statutory responsibility for preserving the integrity of the court by creating a disciplinary machinery for circuit, district, and bankruptcy judges, and magistrates.

These councils could take action to discipline a judge, short of removal. They also could refer complaints to the U.S. Judicial Conference which, if it concluded that impeachment was warranted, could inform the House of Representatives. Of course, the House could take whatever action it considered necessary. Nothing in the bill precludes a person from taking a complaint directly to the House of Representatives.

Mr. Speaker, this is a fair bill that will significantly improve the handling of misconduct cases in our Federal courts, and thus strengthen the public's confidence in our judicial branch of Government. The bill is one of the most important court reform measures to come from the House Judiciary Committee and the Congress in several years. I enthusiastically support it and urge its adoption by the House.●

● Mr. BUTLER. Mr. Speaker, I support this legislation which would establish a procedure, short of removal, for handling complaints against members of the Federal judiciary. Legislation in this area is long overdue. However, while H.R. 7974 represents an important first step, the question that concerns me and that only time will answer is whether or not H.R. 7974 goes far enough in its attempt to establish a procedure short of removal, for disciplining Federal judges.

On March 9, 1979, the Judicial Conference adopted a resolution calling for the promulgation by the 11 judicial councils of procedural rules to process complaints alleging judicial misconduct inconsistent with the effective administration of the business of the courts. To date, all 11 judicial councils have adopted widely varying sets of rules to implement the conference recommendation. H.R. 7974 represents a legislative proposal that would increase and clarify the authority of the judicial councils to handle complaints against Federal judges.

A key provision of H.R. 7974 requires the Director of the Administrative Office of the U.S. Courts to report annually to the Congress on the number of complaints filed with each judicial council their general nature and disposition. This information will make it easier for us, as Members of Congress, to properly assess whether the subject of judicial misconduct is a serious one or not, and accordingly whether stronger measures are necessary.

In supporting H.R. 7974, I would like to impress on my colleagues the importance of conducting congressional oversight in this most sensitive area. At the first sign that the judiciary is incapable of disciplining itself, Congress should reevaluate the provisions of H.R. 7974 with a view toward stronger measures.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 7974.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1873) to establish a procedure for the processing of complaints directed against Federal judges, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Judicial Conduct and Disability Act of 1979".

PROCEDURES WITHIN JUDICIAL COUNCILS; COURT ON JUDICIAL CONDUCT AND DISABILITY

SEC. 2. (a) Section 372 of title 28, United States Code, is amended by adding the following at the end of the section:

"(c)(1) Any person may file a written complaint against a judge, as defined in paragraph (2), with the judicial council of the circuit in which the judge serves, alleging that—

"(A) the judge is, or has been, unable to discharge efficiently all the duties of his or her office by reason of mental or physical disability; or

"(B) the judge is engaging, or has engaged, in conduct inconsistent with the effective and expeditious administration of the business of the courts.

"(2) For the purposes of this subsection through subsection (o), other than subsections (g) and (j), 'judge' means a judge of a court of appeals or a district court.

"(3) Complaints which are outside the jurisdiction of the judicial council include, but are not limited to, complaints relating to the merits of any decisional or procedural ruling of a judge, or any matter reviewable under any other provision of law on the record. The judicial council shall dismiss any complaint which is outside its jurisdiction.

"(4) The judicial council shall, with respect to judges within its circuit, process and investigate each complaint not dismissed under paragraph (3), and may investigate on its own motion any other allegation which meets the standards provided in subparagraph (A) or (B) of paragraph (1). After investigation on its own motion, the judicial council may, if appropriate, file a complaint under paragraph (1). The judicial council shall notify the complainant when it receives the complaint, and shall forward a copy to the judge who is the subject of the complaint. The judicial council shall take action on each complaint in an expeditious manner.

"(5) After review of the allegations, the judicial council shall dismiss any complaint, the allegations of which are frivolous or which do not meet the standards provided in subparagraph (A) or (B) of paragraph (1), or proceed in accordance with subsection (d). If the judicial council dismisses a complaint under this paragraph or under paragraph (3), it shall notify in writing the complainant and the judge who is the subject of the complaint of the action taken and the reasons for the order of dismissal.

"(6) The complainant may, within ten days of receipt of the notice under paragraph (5), petition the Court on Judicial Conduct and Disability (hereinafter in this section referred to as the 'Court') for review of any order of dismissal under paragraph (3) or (5).

"(d)(1) If the complaint is not dismissed under subsection (c)(3) or (c)(5), the judicial council shall notify the complainant and shall give the judge who is the subject of the complaint an opportunity to appear before the judicial council, if desired.

"(2) If the judicial council finds that the allegations meet the standards provided in subsection (c)(1)(A) or (B), it shall—

"(A) certify disability pursuant to the procedures and standard provided under subsection (b);

"(B) request that the judge voluntarily retire with the provision that the length of service requirements under section 371 of this title shall not apply;

"(C) order that, on a temporary basis for a time certain, no further cases be assigned to the judge;

"(D) censure or reprimand the judge by means of private communication;

"(E) censure or reprimand the judge by means of public announcement; or

"(F) order such other action as it considers appropriate under the circumstances, but in no circumstances may the council order removal from office.

"(3) The judicial council shall maintain a record of any proceedings conducted under paragraph (2), and each action taken shall be accompanied by written findings, including a statement of the basis upon which such action was taken.

"(4)(A) The judicial council shall notify in writing the complainant and the judge who is the subject of the complaint of the action taken under paragraph (2). A complainant or the judge who is the subject of the complaint may, within ten days of receipt of such notice, petition the Court for review of any such action.

"(B) Upon the timely filing of a petition for review under this paragraph or under subsection (c)(6), the judicial council shall certify and transmit to the Court its action and findings with respect to that action, and a record of the proceedings. For purposes of a petition under subsection (c)(6), the record shall, at a minimum, consist of a copy of the complaint and the written notification to the complainant and the judge who is the subject of the complaint of the action taken and the reasons for the order of dismissal.

"(C) Except as provided in this section, there shall be no judicial review of any action taken by the judicial council under this subsection or subsection (c).

"(e)(1) The Judicial Conference of the United States shall promulgate rules of procedure for the judicial councils for discharging the duties under subsections (c) and (d), or authorize the judicial council of each circuit to promulgate rules of procedure for its respective circuit.

"(2) The Judicial Conference of the United States shall also promulgate rules of procedure for the Judicial Council of the District of Columbia Circuit and the chief judges of the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court, for discharging the duties under subsection (j).

"(3) Any rule promulgated under this subsection may be modified by the Judicial Conference of the United States and shall be a matter of public record.

"(f)(1) Administrative, professional, and financial assistance from the Administrative Office of the United States Courts and from the Federal Judicial Center may be requested by—

"(A) each judicial council for discharging the duties under subsections (c) and (d); and

"(B) the Judicial Council of the District of Columbia Circuit and the chief judges of the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court, for discharging the duties under subsection (j).

"(2) The Administrative Office of the United States Courts and the Federal Judicial Center are authorized to provide assistance requested under paragraph (1) and to expend funds to insure such assistance, within the limits of its available resources.

"(g)(1) There is established a court of record to be known as the Court on Judicial Conduct and Disability. The Court may exercise all appropriate judicial powers incident or necessary to the jurisdiction conferred upon it. The Court may prescribe such rules for the conduct of its proceedings as it considers appropriate. Attendance of witnesses and the production of relevant material may be required from any place in the United States and its territories at any place designated for holding court. Whenever possible, the Court shall sit in the district or circuit in which the judge who is the subject of the complaint serves. If the judge who is the subject of the complaint serves on the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court, the Court shall sit, whenever possible, in the location in which that court is usually held.

"(2) The Court shall consist of five Federal judges, including at least one district court judge, to be appointed by the Chief Justice of the United States. Each member shall be a judge of the United States in regular active service. The Chief Justice shall designate the chief judge of the Court.

"(3) A judge of any court created by an Act of Congress in a territory which is vested with the jurisdiction of a district court of the United States may not be a member of the Court.

"(4) The term of each member shall be three years, except that when the Court is initially appointed, three of the members shall serve three-year terms and two of the members shall serve two-year terms. The term of any member shall automatically be extended until his or her successor has been appointed. A member selected to fill a vacancy shall commence a full three-year term. A judge may serve on the court any number of times, but may not serve consecutive terms.

"(h) (1) The Court shall grant a petition filed by a complainant under subsection (c) (6) or (d) (4), or a petition filed by a judge who is the subject of the complaint under subsection (d) (4), upon the concurrence of two of its members.

"(2) Upon the grant of a petition under paragraph (1), the Court shall—

"(A) dismiss any complaint, the allegations of which do not meet the standards provided in subsection (c) (1) (A) or (B), and any complaint relating to the merits of any decisional or procedural ruling of a judge or any matter reviewable under any other provision of law on the record;

"(B) affirm any action taken by the judicial council if the action is supported by clear and convincing evidence on the record;

"(C) modify any action taken by the judicial council if such modification is supported by clear and convincing evidence on the record, but no such modification may include an order of removal from office;

"(D) reverse and remand to the judicial council for further proceedings any action which is unsupported by clear and convincing evidence on the record; or

"(E) when required in the interests of justice, conduct a hearing under subsection (i) (1) to determine the matter de novo, and any action taken under subsection (i) (2) shall be supported by clear and convincing evidence.

"(i) (1) If the Court decides to hear the matter de novo, the judge who is the subject of the complaint shall be given adequate notice of the hearing, shall be admitted to the hearing, may be represented by counsel, may testify and present testimony at the hearing in his or her own behalf, and may confront and cross-examine any witness.

"(2) After a hearing de novo under paragraph (1), the Court shall—

"(A) upon a determination that the allegations do not meet the standards provided in subsection (c) (1) (A) or (B), order dismissal of the action;

"(B) upon a determination that the judge is unable to discharge efficiently all the duties of his or her office by reason of permanent mental or physical disability and that the appointment of an additional judge, in the manner provided in subsection (b), is necessary for the efficient dispatch of business, certify disability; or

"(C) upon a determination that the allegations meet the standards provided in subsection (c) (1) (A) or (B)—

"(i) order that, on a temporary basis for a time certain, no further cases be assigned to the judge;

"(ii) censure or reprimand the judge by means of public announcement; or

"(iii) order such other action as it considers appropriate under the circumstances, but in no circumstances may the Court order removal from office.

"(3) Each action taken under subsection (h) (2) and under paragraph (2) of this subsection shall be made by a majority of the members of the Court. Each order or action of the Court shall be in writing, and the complainant and the judge who is the subject of the complaint shall receive a copy. There shall be no judicial review of any order or action of the Court taken under this subsection or subsection (h).

"(j) (1) Any person may file a written complaint—

"(A) with the Judicial Council of the District of Columbia Circuit, with respect to the chief judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court; or

"(B) with the chief judge of the applicable court, with respect to any judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court;

alleging that the conduct of the judge meets the standards in subsection (c) (1) (A) or (B).

"(2) The Judicial Council of the District of Columbia Circuit or the chief judge, as the case may be, shall proceed in accordance with the provisions of paragraphs (3) through (6) of subsection (c) and the provisions of subsection (d). If a complainant or judge who is the subject of the complaint petitions the Court for review, the provisions of subsections (g), (h), and (i) shall apply. For purposes of this paragraph, all references to 'judicial council' in paragraphs (3) through (6) of subsection (c), subsections (d), (h), and (i), shall be treated as referring to 'the Judicial Council of the District of Columbia Circuit or the chief judge, as the case may be,'.

"(k) (1) The Court shall submit to the House of Representatives a record of all proceedings by the council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court, revealing conduct which, in its view, would constitute an impeachable offense as defined in Article II, section 4, of the Constitution of the United States. The record shall be accompanied by the complaint made against the judge and any order or findings made by a judicial council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court.

"(2) The Committee on the Judiciary of the House of Representatives shall give timely consideration to such record and accompanying materials, and shall make its best efforts to take action within 90 days of receipt of such record.

"(l) A judge shall not sit in any proceeding as a member of a judicial council or of the Court, or under the provisions of subsection (j), when it inquires into his or her own conduct, or when it inquires into a complaint filed by him or her against another judge.

"(m) No person shall be granted the right to intervene or appear as amicus curiae in any proceeding before a judicial council, the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court.

"(n) (1) All matters filed with, all testimony or evidence given before, and all deliberations of, a judicial council under subsections (c) and (d), the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), or the Court under subsection (h), shall be confidential—

"(A) unless authorized in writing by the judge who is the subject of a complaint;

"(B) unless the judge is censured or reprimanded by means of public announcement under subsection (d) (2) (E); or

"(C) unless final adverse action is taken against a judge, not including an order of dismissal.

"(2) For the purposes of subparagraph (C) of paragraph (1), an action is final—

"(A) if no petition for review is filed, the date of expiration of the time period during which a petition for review may be filed; or

"(B) if a petition for review is filed, the date on which—

"(i) the Court denies a petition for review; or

"(ii) the Court grants the petition for review and takes action under subsection (h) (2) (B), (C), or (D).

"(3) If the Court determines under subsection (h) (2) (E) to hear the matter de novo, all proceedings conducted by the Court pursuant to subsection (i) shall be open and shall be a matter of public record.

"(o) The Director of the Administrative Office of the United States Courts shall include in its annual report filed with the Congress under section 604 of this title a summary of the number of complaints filed with each judicial council under subsection (c), and with the Judicial Council of the District of Columbia Circuit or a chief judge under subsection (j), indicating the general nature of such complaints and the disposition of those complaints in which action has been taken, including any action taken by the Court.".

(b) (1) The section heading for section 372 of title 28, United States Code, is amended to read as follows:

"§ 372. Retirement for disability; substitute
judge on failure to retire; judicial
discipline"

(2) The table of sections for chapter 17 of title 28, United States Code, is amended by amending the item relating to section 372 to read as follows:

"372. Retirement for disability; substitute
judge on failure to retire; judicial
discipline.".

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Sec. 3. Section 604 of title 28, United States Code, is amended by adding at the end the following:

"(1) The Director shall provide facilities and pay necessary expenses incurred by the Court on Judicial Conduct and Disability under chapter 17 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title.".

SEPARABILITY

Sec. 4. If any provision of this Act or any amendment made by this Act, or the application of such provision or amendment to any person or circumstances, shall be held invalid, the remainder of this Act or such amendment or the application of such provision or amendment to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION

Sec. 5. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATE

Sec. 6. This Act shall become effective October 1, 1980.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Kastenmeier moves to strike out all after the enacting clause of the Senate bill, S. 1873, and to insert in lieu thereof the provisions of H.R. 7974, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to revise the composition of the judicial councils of the Federal judicial circuits, to establish a procedure for the processing of complaints against Federal judges, and for other purposes.".

A similar House bill (H.R. 7974) was laid on the table.

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GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed, H.R. 7974.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PRETRIAL SERVICES ACT OF 1980

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7084) to amend chapter 207 of title 18, United States Code, relating to pretrial services, as amended.

The Clerk read the bill, as follows:

H.R. 7084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pretrial Services Act of 1980".

Sec. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services agencies

"The Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to as the 'Director') shall, under the supervision and direction of the Judicial Conference of the United States, provide directly, or by contract or otherwise, for the establishment of a pretrial services agency in each judicial district (other than the District of Columbia) with respect to which the appropriate United States district court and circuit judicial council have recommended such establishment.".

Sec. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services agencies

"(a) The pretrial services agencies established under section 3152 of this title shall be under the general authority and direction of the Director.

"(b) Each pretrial services agency shall be headed by a chief pretrial services officer selected by the chief judge of the district court. An individual who is a probation officer appointed under section 3654 of this title may perform functions and duties of an officer or employee of a pretrial services agency including a function or duty of the chief pretrial services officer.

"(c) (1) With the approval of the district court, the chief pretrial services officer shall appoint such other personnel as may be required to staff the agency. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

"(2) The chief pretrial services officer is authorized subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code.

"(d) (1) Except as provided in paragraph (2) of this subsection, information contained in the files of any pretrial services agency, presented in an agency report, or divulged by the agency during the course of any hearing, shall be used only for the purposes of a bail determination and shall otherwise be confidential. The agency report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information contained in the files of each pretrial services agency. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the administration of criminal justice;

"(B) by persons under contract under section 3154(a) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information contained in the files of any pretrial services agency is not admissible on the issue of guilt in any criminal judicial proceeding, except that such information, if otherwise admissible, may be admitted on the issue of guilt for a crime committed in the course of obtaining pretrial release.".

Sec. 4. Section 3154 of title 18, United States Code, is amended—

(1) so that paragraph (1) read as follows:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, and recommend appropriate release conditions for such individual.";

(2) by adding at the end of paragraph (3) the following: "The Director shall, not later than ninety days after the enactment of the Pretrial Services Act of 1980, issue guidelines for such supervision which shall (A) avoid unnecessary supervision; and (B) specify the factors to be considered in determining which persons need not be supervised and the appropriate degree and conditions of supervision.".

(3) in paragraph (4), by striking out "With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of" and inserting "Provide for" in lieu thereof;

(4) in paragraph (5), by inserting "and the United States attorney" after "court";

(5) so that paragraph (9) reads as follows:

"(9) Perform other functions under this chapter."; and

(6) by adding at the end the following:

"(10) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions and prepare periodic reports to assist in the improvement of the bail process.

"(11) To the extent provided for in an agreement between the pretrial services agency and the United States attorney, collect, verify, and prepare reports for the United States attorneys office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(12) Make contracts for the carrying out of any of the functions of such pretrial services agency.".

Sec. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of the agency. The Director shall be required to include the Director's annual report to the Judicial Conference under section 604 of title 28, United States Code, a report on the administration and operation of the pretrial services agencies for the previous year.".

Sec. 6. The table of sections for chapter 207 of title 18, United States Code, is amended—

(1) in the item relating to section 3153, by inserting "and administration" after "Organization"; and

(2) so that the item relating to section 3155 reads as follows:

"3155. Annual reports.".

Sec. 7. For the purposes of carrying out sections 3152 through 3155 of title 18 of the United States Code, there is authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981, and $8,000,000 for the fiscal year ending September 30, 1982.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan (Mr. Conyers) will be recognized for 20 minutes, and the gentleman from Wisconsin (Mr. Sensenbrenner) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Michigan (Mr. Conyers).

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of this bill is to provide for the expansion of pretrial service agencies presently operating on a demonstration basis throughout the Federal judicial system. Title 2 of the Speedy Trial Act of 1974, you may recall, authorizes the Director of the Administrative Office of the U.S. Courts to establish demonstration programs of pretrial services agencies in 10 Federal judicial systems. Five of these agencies are administered by the Probation Division of the Administrative Division, and five are administered by boards of trustees appointed by the chief judges of the district courts involved.

The pretrial services agencies perform two basic functions: First, the compilation and verification of background information on persons charged with violation of Federal criminal law for the use of the district court in setting bail; second, for the supervision of persons released from pretrial custody, including the provision of counseling and other pretrial services. These objectives in the title are, first, to reduce the volume and cost of unnecessary pretrial detention; and second, to reduce the commission of new crimes by those released on bail, and finally, to improve the operation of the Bail Reform Act itself.

Included among the services rendered by pretrial services agencies is assistance in securing necessary employment, medical and legal or social services. The record of the programs in meeting the objectives of the statute is set out in our committee report on the bill, and we think that it is an excellent one. It shows that, comparing the operation of the program as it went from the first year through the last, improvements were made in three key objectives.

Improvement rates in most categories are better under the separate board districts. For example, the board districts completed interviews and submitted recommendations for use at bail hearings in a considerably higher percentage of cases. They also show more improvement in the use of nonfinancial conditions of release.

But, the probation districts showed greater improvement in two areas that are important; the rearrest rate—that is, the commission of new crimes on bail—and the failure to appear for trial.

The program has reduced detention and costs of detention, and that was one of the key objectives of the bill. The most recent figures show that there has been, generally speaking, a 40 percent reduction in the average number of days of detention in the districts where it operates since the program began. The costs of detention in these districts have also gone down, even when one uses 1973 costs for comparisons, which discount inflation at the present time.

Detention costs before the program was over $3 million a year in the 10 districts. The detention costs now are under $2 million. Bear in mind, however, that these savings have not been at the expense of community security. Both crime on bail and failure to appear for trial have also gone down in the demonstration districts, as the chart on page 4 in the report clearly reflects. A comparison of the rates and costs of detention in demonstration districts before and after the act also show a substantial reduction in detention and costs of detention under the act.

The figures for 2 years immediately before the act and for the first 3 years under the act show that the average number of days per defendant of detention has gone down almost 40 percent. We are very proud of this program which started off, of course, on an experimental basis, and now we are, under rather limited conditions, asking that it be expanded.

Further, Mr. Speaker, the study shows a comparable reduction of almost 40 percent in the cost of pretrial detention in the 10 districts under study—$3,285,000 a year to $1,900,000 a year. No attempt has been made to quantify the savings, which are important, that were brought about by the 50-percent reduction in crime on bail, thereby reducing losses to victims, or the similar reduction in failure to appear for trial, which saves the time and expense for court personnel in addition to costs that would have occurred for initiating prosecution for crimes that could have or may have been committed had they not been reduced.

We are proud of this program. The subcommittee which I chair has reported it favorably to the full committee, which now brings it to the floor today under these circumstances that we hope will meet with the approval of the overwhelming majority of my colleagues. We are proud to say that here is a program that was begun carefully and under experimental circumstances, that has proved the test of time. It has succeeded in literally every respect, and we now urge that it be modestly extended very carefully, with a fiscal appropriation of $6 million for 1981 and for $8 million for 1982, which will then allow it to grow considerably. We have followed the recommendations of the full committee and, in effect, put a sunset provision and a cap on the legislation. I urge its favorable consideration to my colleagues in this body.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to H.R. 7084, the Pretrial Services Act of 1980. Apparently infused with divine inspiration and at long last, the 2d session of the 96th Congress has recently embarked on a course of fiscal responsibility by attempting to balance the budget. Essential to this endeavor are drastically cutting, or completely exorcising, and restricting the urge to initiate unnecessary programs and bureaucracies.

Flying in the face of this long overdue trend, the Committee on the Judiciary has reported H.R. 7084, the Pretrial Services Act of 1980. If enacted, H.R. 7084 would extend an existing demonstration program operating in 10 Federal judicial districts into a nationwide network of pretrial services and a new bureaucracy. The proponents of this bill argue that the alleged success of the demonstration program illustrates a need for these services; that the mechanism for providing them under the bill are appropriate and effective, and the bill encourages cost effectiveness. I strongly disagree on all counts.

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Mr. Speaker, the goal of providing our Federal judges and magistrates with information relating to the alleged "bail-worthiness" of arrestees is, of course, a commendable one. Situations where unscrupulous persons have been released on their own recognizance because the magistrate has not had access to information about their criminal past are far too numerous. Nevertheless, Mr. Speaker, there is serious question as to whether the Pretrial Services Act, which perpetuates an existing experimental program, effectively accomplishes the goal that we all support.

Mr. Speaker, I have been advised by Federal district court judges that they have not found these services worthwhile. They have found that the probation offices which operate in their districts provide them with the information that they need with respect to bond hearings. These services are provided at no additional expense to the taxpayers of this country. The supporters of H.R. 7084 cannot make the same claim about the arrangement which they propose.

As a member of the Subcommittee on Crime of the Committee on the Judiciary, I believe that the success of the demonstration program has been vastly overrated. Some of the achievements which have been praised, such as declines in pretrial detention, were also experienced in districts where these services were not provided. One judge testified that in his district "there are a number of judges who have serious doubts as to the efficacy of and need for any pretrial services in the Federal System."

Even if we all agreed that this approach to information-gathering were the correct one, the mechanics which H.R. 7084 employs are questionable. If, as Federal district court judges advise, the probation offices can adequately perform these services, why is there not at least a presumption in the bill that they will be used? Merely removing the prohibition against a probation officer's serving as chief pretrial services officer is not enough.

The probation officers, according to reports that have been issued, have performed in a superior manner with respect to reductions in failures by arrestees to appear at trial and reductions in crime committed while on bail. Irrespective of cost considerations, these achievements alone should encourage us to place these services within the probation offices. But once cost is also factored into the equation, there is no question that the probation approach is preferable. While the Administrative Office of the U.S. Courts estimates that these services will cost $12 million per year, frugal probation officers working in the field advise me that the same work can be done by them for only $4 million.

The amendments adopted by the Judiciary Committee improve this bill somewhat, but I am concerned about what lies over the horizon when we come to conference. The Pretrial Services Act report by the Judiciary Committee of the other body does not contain these improvements. If the urge to establish new agencies has proven too irresistible to them in the midst of our effort to balance the budget, what assurances do we have that the same urge will not strike those who will be making the decisions under the so-called flexible approach contained in this bill?

Mr. Speaker, perhaps with more study we can devise an approach which will benefit the hard-working taxpayers as well as the bureaucrats. Until that time, however, I must urge my colleagues to vote against the motion to suspend the rules, to vote against H.R. 7084, and to defeat this bill.

In summary, Mr. Speaker, this bill imposes a new Federal program with a new bureaucracy at increased cost, and it is bills like this that make up the Federal budget deficits which Congress has enacted since 1969 and the inflation that is running so rampant and destroying the fabric of our society.

I say to the Members, please vote "no."

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, may I just point out for the record that notwithstanding my colleague's participation and his concession that the bill has been improved. I would just like to make several points briefly and attempt to spread before the Congress the record of pretrial service agencies.

This is not a new program. It is 4 years old. It started experimentally, and it has moved along the path of a most cautious and considered examination all the way through these 4 years. So, we are not asked to start a new program. We have a successful experimental project, and we have to ask ourselves whether we want to kill it or whether we want to continue it.

In view of the members of the Committee on the Judiciary is that we should cautiously extend this program. We extend it in a way that very carefully considers the matters of cost and efficiency.

First of all, we are extending the program for only 2 years, and we are using a very modest amount of money, $6 million and $8 million for fiscal 1981 and for fiscal 1982.

It has been proven that these procedures will save money. So, the point that is very baffling to me is that my colleague, the gentleman from Wisconsin, who has been very, very fiscally prudent from his beginning days of service here in the Congress, is now willing to recommend that we do not bring forth a program that has proven to be cost-effective in every respect in which it was examined, one which has met with the unparalled support of all the members of the judiciary and the magistrates who have testified before our subcommittee.

So, Mr. Speaker, it seemed to me that I was going to have the privilege of bringing forth a piece of legislation that, on the issue of cost factors, would win points and approval on both sides of the aisle.

I am really surprised that my colleague would object to a bill which, by operating in this manner in determining who can be released and by our own examination and by the oversight of the gentleman's own committee, has proven that we will clearly save hundreds of thousands of dollars by being able to give the Federal courts in this land the information that they so desperately deserve and need to determine who should be released pending trial, and the best conditions of that release.

Mr. Speaker, I will suspend at this point, and I yield 5 minutes to my colleague, the gentleman from North Carolina (Mr. GUDGER), a member of the subcommittee.

Mr. GUDGER. Mr. Speaker, I thank the gentleman for yielding me this time, and I congratulate him for his effective explanation of this bill.

Mr. Speaker, I am proud to rise in support of this bill. It will enhance the rights of all Americans to be free of unreasonable bail in Federal criminal proceedings. This civil liberty, guaranteed by the eighth amendment, was championed by one of North Carolina's great patriots, her former Senator Sam Ervin.

This bill merely builds on the foundation of the Speedy Trial Act of 1974, which established pretrial services projects in our 10 largest Federal district courts. Of these 10, 5 projects were operated by the probation offices and 5 were operated by independent boards. Using first year data as a benchmark, there is statistical evidence that both the probation and the independent offices contributed substantially to the reduction of pretrial crime, the rate of failure to appear by persons on release, unnecessary pretrial detention, and undue reliance on money bail. Clearly, this successful program should be continued.

Early on in my consideration of this proposal, I was deeply troubled that a provision which effectively excluded these services from the administrative purview of the chief probation officers would not only result in the creation of independent agencies in every district, but would prevent the district court from choosing the most effective method of providing these services in the district. My particular concern was that in districts having few criminal filings and large geographical areas it would be wasteful to create a totally new agency when our information indicated that probation offices in these areas could more efficiently handle the pretrial services function.

I developed an amendment which allows the district court to decide whether pretrial services should be handled by probation, an independent office, or by some other method. This amendment was adopted by the Judiciary Committee, and should assure the efficiency that these austere times demand. My amendment, together with the amendment of Mr. HYDE as amended by Mr. VOLKMER which authorizes an austere funding for the next 2 years, will insure that our tax dollars are not squandered. I commend these gentlemen for their efforts.

We urge that you support this bill which will allow the good work of pretrial services to be continued and expanded in the most efficient, economic, and effective manner possible.

□ 1450

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I am pleased to support H.R. 7084, the Pretrial Services Act of 1980, as reported by the Committee on the Judiciary.

The pretrial services demonstration program currently in existence was initiated under the Speedy Trial Act of 1974. As a member of the Subcommittee on Crime, I heard testimony from many witnesses, including a Federal magistrate from my own State of Illinois, to the effect that these services have been a valuable addition to our Federal judicial system. As that magistrate pointed out in her statement to the subcommittee, the benefits of these agencies include reducing unnecessary pretrial detention of arrestees, early commencement of rehabilitation, insuring that all personnel needed at the bond hearing (including public defenders and interpreters) are present, and providing information to the magistrate about compliance with bail conditions.

In the absence of adequate information, a judge's decision on bail can be disastrous. For instance, when a computer failure last February deprived a District of Columbia judge of information relating to an arrestee's criminal background, the judge released him on his own recognizance. Following his release the arrestee murdered a District of Columbia policeman. This demonstrates the necessity for judges and magistrates to have as much relevant information about a defendant as possible. Pretrial services agencies provide this crucial information.

Mr. Speaker, I share the concern expressed by some of my colleagues with respect to the cost issue. To that end, I offered two amendments to H.R. 7084, which were adopted by the Committee on the Judiciary. The first included in the bill a specific dollar authorization for appropriations. For fiscal year 1981, $6 million is authorized to be appropriated. For fiscal year 1982, $8 million is authorized to be appropriated. Although the figure for fiscal year 1982 is slightly more than I originally proposed, I believe that it nevertheless places an appropriate cap on expenditures. Irrespective of the precise dollar figures contained in the amendment, the authorization provision which it inserted into the bill acts as a "sunset" provision which will enable us to give this expanded program additional close scrutiny in 2 years to insure that it is performing in a cost-efficient manner and is achieving the goals that we have set for it.

The second amendment which I offered in the Judiciary Committee further reduces expenditures. Under present law, the range of services offered by the agency is left to the decision of the district court. As reported by the Subcommittee on Crime, the agency would have been required to perform a wide variety of social services, in addition to its informational services. The amendment which I offered allows for the type of flexibility which will militate against unnecessary expenses.

Mr. Speaker, let me make just a few comments about the pretrial services bill reported by the Judiciary Committee of the other body. As I understand it, their bill deletes the word "agency" throughout the bill so that there will be not even a hint of a presumption that an agency separate from the probation office must be established. I applaud that change, Mr. Speaker, as a further incentive to savings and I hope that that is the approach that we will adopt when this bill goes to conference.

On the other hand, Mr. Speaker, I am disturbed by the fact that the amendment offered by the gentleman from North Carolina, which was adopted by the Judiciary Committee of this body, is not part of the bill reported by its counterpart in the other body. That amendment removed the provision in the bill which effectively required the establishment of an agency separate from the probation office. I will admit to you frankly, Mr. Speaker, that if this bill comes back to us from conference with the provision that an employee of the probation office cannot serve as the chief pretrial services officer, I will have to reevaluate my support for H.R. 7084. I commend the gentleman from North Carolina for offering his cost-effective amendment.

Finally, I understand that their bill takes our subcommittee's approach of requiring the agency to perform multitudinous social services. Again, I would have difficulty supporting a bill which includes this provision for the cost reasons I have previously stated.

In sum, Mr. Speaker, I believe that the Judiciary Committee has taken great pains to fashion a bill which will will provide Federal judges and magistrates with the informational resources they need, while minimizing cost. I therefore urge my colleagues to vote in favor of the motion to suspend the rules and pass H.R. 7084.

Mr. Speaker, I would like to say that the money can be saved in many ways.

and one of the most vulnerable areas of neglect, one of the most glaring areas of neglect in the entire country is that of the administration of justice, prison reform, and the way our courts operate. It seems to me almost primitive not to have pretrial services available to provide information to a judge concerning a prisoner who may need some help at that point like no other point in his life or her life. And to deny people this sort of service and this information to the court is indeed primitive. As far as I am concerned, this is a modest program in terms of the billions of dollars that are spent on other, I might say, less efficacious programs.

I want to commend the chairman of this subcommittee for his innovation and for his persistence in pursuing this program and for his flexibility in accepting amendments that make it palatable to other members, and the gentleman from North Carolina (Mr. GUDGER); and, of course, while I commend my colleague, the gentleman from Wisconsin (Mr. SENSENBRENNER), who indeed works very hard on issues like this, and his point of view is a respectable one, I just do not happen to agree with it here. I think we are being pennywise and pound foolish not to provide services like this to our court system. We are helping the prisoners, we are helping the community, we are helping the administration for justice for a small amount of money, and that is no small achievement indeed.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. VOLKMER), a member of the subcommittee.

Mr. VOLKMER. Mr. Speaker, I rise in support of H.R. 7084 and lend my support to those who have spoken today also on this much needed legislation for pretrial services.

Mr. Speaker, I feel that these amendments to the act and the extension of the act will provide much needed services for persons who have been charged with crime and will provide services to those people so that, in the end, they may very well never have to spend years in penal institutions unjustifiably, and it is a way in which we can save a lot of taxpayers' money.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in listening to the arguments advanced by the supporters of this bill, one can easily get the impression that this bill represents the epitome of pinch-penny attitudes in the Congress.

I would respectfully disagree with those contentions.

What is being proposed in this piece of legislation is that an existing experimental program in 10 Federal judicial districts be expanded nationwide. Furthermore, what the probation officers around the country estimate can be done for $4 million per year will cost $6 million in fiscal year 1981 and $8 million in fiscal year 1982. As a matter of fact, the cost constraints originally proposed by my colleague, the gentleman from Illinois (Mr. HYDE), in the Committee on the Judiciary for $6 million in fiscal year 1982 were amended upward by $2 million before this bill was reported out.

So it is obvious that the foot in the door that was created when the pretrial services program was established in the 10 judicial districts 4 years ago is now opening the door a little wider with a nationwide program in this authorization, and I am certain that it will be opened still wider in 1982 when this present authorization expires.

If the 2d session of the 96th Congress is to go down in history as the Congress that turned the corner on Federal spending and unnecessary Federal programs, it is legislation like this that must be defeated so that we can demonstrate to the country our sincere desire for fiscal constraint and for balancing the budget. While I laud my colleagues, the gentleman from Michigan (Mr. CONYERS), the gentleman from North Carolina (Mr. GUDGER), and the gentleman from Illinois (Mr. HYDE), I do not think that a doubling of the total expenditures for pretrial services in a 2-year period of time is the kind of cost effectiveness that this Congress should set and which the American public would appreciate.

So for that reason, I hope that this bill is voted down.

● Mr. McCLORY. Mr. Speaker, I speak in support of H.R. 7084, the Pretrial Services Act of 1980, as that bill was reported by the Committee on the Judiciary.

As reported, H.R. 7084 expands an existing demonstration program operating in 10 Federal judicial districts so that all judicial districts will have the benefit of these services. The demonstration program was established under title II of the Speedy Trial Act of 1974 for the purpose of facilitating and implementing the objectives of the Bail Reform Act of 1966. The services provided by these agencies are primarily geared toward providing Federal judges and magistrates the information that they sorely need in determining which persons should be released on bail and what conditions should be imposed on their release.

In addition, these agencies provide invaluable assistance to the bench and the public alike by supervising persons released on bail in order to insure that they comply with the conditions placed on their release. Incidentally, they also provide counseling and employment services where requested by the judge, and, pursuant to arrangements entered into with the U.S. attorney's office, they may provide assistance in connection with pretrial diversion. I believe that the track record of the demonstration program, which has operated in Illinois, is such that it merits expansion of these services across the country.

The Committee on the Judiciary vastly improved this bill by adopting several amendments aimed at insuring that these services will be provided in the most efficient manner possible. Employees of the Federal Probation Office in the district may be used to man the agencies in order to avoid staff duplication. Furthermore, the district court is granted the option of choosing which services the agency in that district will perform so that no unnecessary expenditures are incurred. This permits the needed flexibility from district to district.

The most important improvement in the bill made by the committee is the addition of a specific dollar authorization for appropriations for fiscal years 1981 and 1982. The figures included in the bill are ample to fund the services, but encourage cost effectiveness. Furthermore, the authorization acts as a "sunset" provision which will give us a chance to reexamine this new program in 2 years to insure that it fulfills the goals which we envisioned in enacting it.

In sum, Mr. Speaker, I urge my colleagues to vote in favor of the motion to suspend the rules and pass H.R. 7084, the Pretrial Services Act of 1980.●

☐ 1500

Mr. CONYERS. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS), that the House suspend the rules and pass the bill, H.R. 7084, as amended.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 7084, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

COAST GUARD AUTHORIZATION, FISCAL YEAR 1981

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 6672, to authorize appropriations for the Coast Guard for fiscal year 1981, and for other purposes, as amended.

The Clerk read as follows:

H.R. 6672

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1981, as follows:

(1) for the operation and maintenance of the Coast Guard, including expenses related to the Capehart housing debt reduction: $1,248,367,000;

(2) for the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto: $469,320,000;

(3) for the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation: $16,200,000; and

(4) for research, development, test, and evaluation: $30,000,000.

SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,600: *Provided*, That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loans for the Coast Guard are authorized as follows:

(1) recuit and special training: 4,175 student-years;

(2) flight training: 117 student-years;

(3) professional training in military and civilian institutions: 595 student-years; and

(4) officer acquisition: 925 student-years.

SEC. 4. The second sentence of subsection 475(a) of title 14, United States Code, is amended to read as follows: "When any such lease involves housing facilities in a foreign country, the lease may be made on a multiyear basis for a period not to exceed five years, and, in accordance with local custom and practice, advance payment may be made for the lease.".

SEC. 5. The third sentence of subsection 650(a) of title 14, United States Code, is amended to read as follows: "In these regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts.".

SEC. 6. The last sentence of subsection 214(d) of title 14, United States Code, is amended to read as follows: "A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.".

SEC. 7. (a) Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"§ 512. Monetary allowance for transportation of household effects

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a monetary allowance in place of such transportation to a member who, under regulations prescribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by a privately owned or rental vehicle. This allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of the baggage and household effects. The allowance shall, however, be in an amount that will result in savings to the Government when the total cost of the movement of baggage and household effects is compared with the cost that otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code.".

(b) The analysis of chapter 13 of title 14, United States Code, is amended by adding the following item at the end thereof:

"512. Monetary allowance for transportation of household effects.".

SEC. 8. When an inspection or examination of a vessel documented or to be documented as a vessel of the United States is conducted at a foreign port or place at the request of the owner or operator of the vessel, that owner or operator shall reimburse the Secretary of the department in which the Coast Guard is operating for the travel and subsistence expenses incurred by the personnel assigned to perform the inspection or examination. Amounts received as reimbursement for these expenses shall be credited to the appropriation for operating expenses of the Coast Guard.

SEC. 9. The joint resolution of June 4, 1958 (72 Stat. 179; 36 U.S.C. 161) is amended by striking the words "week which includes July 4" and inserting in lieu thereof the words "week commencing on the first Sunday in June".

SEC. 10. (a) Chapter 17 of title 14, United States Code, is amended by adding a new section 660 as follows:

"§ 660. Transportation to and from certain places of employment

"(a) Whenever the Secretary determines that it is necessary for the effective conduct of the affairs of the Coast Guard, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed by, the Coast Guard; and during a war or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for the Coast Guard.

"(b) Transportation may not be provided under subsection (a) unless the Secretary or an officer designated by the Secretary, determines that—

"(1) other transportation facilities are inadequate and cannot be made adequate;

"(2) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

"(3) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

"(c) To provide transportation under subsection (a), the Secretary may—

"(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

"(2) maintain and operate that equipment by enlisted members or employees of the Coast Guard, or by private persons under contract; and

"(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer designated by the Secretary, and that may provide for the pooling of government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

"(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.".

(b) The analysis of chapter 17 of title 14, United States Code, is amended by adding the following item at the end thereof:

"660. Transportation to and from certain places of employment.".

SEC. 11. Paragraph (1) of the first section of Public Law 96-23 (93 Stat. 68) is amended by striking "$1,058,357,000;" and substituting "$1,091,357,000;".

SEC. 12. The President shall submit to the Congress, with the fiscal year 1982 budget request for the Coast Guard and each subsequent budget request, the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan.

SEC. 13. Section 3(c) of Public Law 96-324 is amended by striking the words "the Canal Zone,".

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. STUDDS) will be recognized for 20 minutes, and the gentleman from Alaska (Mr. YOUNG) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. STUDDS).

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6672 and urge its passage by the House.

The bill as reported authorizes appropriations totaling $1,743,887,000. This amount is an increase of $196,183,000 or 12.5 percent over the amount requested in the President's budget. A large portion of this increase is to authorize appropriations for a dual-draft icebreaker for the Great Lakes. That item will not, of course, result in any significant outlays during fiscal year 1981. When this is taken into consideration, the effective increase over the President's budget is about 5 percent.

This modest increase is, in my opinion, the minimum amount needed by the Coast Guard to be able to effectively perform its missions. It is clear from the testimony we received at the hearings on this bill, and from the recent Comptroller General's report on the Coast Guard, that the Coast Guard's budget has not grown to meet the increased demands that are being placed on it. We recognize that in this year's budget climate we cannot provide that growth. We must, however, insure that we provide sufficient funds to enable the Coast Guard to safely maintain its facilities and equipment—train and house its personnel—and fulfill its assigned missions to the greatest extent possible.

The Coast Guard's recent experiences in coping with the flood of refugees from Cuba to Florida graphically illustrate the nature of the agency we are providing funds for. The exodus of refugees started only a few days after the Coast Guard had prepared plans to limit routine operations in order to save fuel. The Cuban exodus has, of course, resulted in greatly increased fuel usage as the Coast Guard has had to call in ships and aircraft from all along the east and gulf coasts to cope with the drastic increases in search and rescue and law enforcement duties. Fuel costs will undoubtedly go up dramatically.

I mention this as illustrative of the type of unforeseeable contingency that often happens in the case of the Coast Guard. I also mention it because one of the major items the committee added to the operating expenses authorization was $37,700,000 to cover increased fuel costs. Though this is a significant sum, it will do little other than cover already known and predicted fuel price increases. If we did not authorize this additional amount, we would be failing to recognize reality.

The committee also added a $2,000,000 cost-of-living adjustment, and a $2,300,000 travel and training increase. These increases are not expansions of Coast Guard programs, but are the minimum amounts necessary to compensate for inflationary increases. In fact, almost two-thirds of the increases the committee adopted merely reflect the increased cost of doing business, attributable to inflation. The remainder are directed at improving the quality of life of Coast Guard personnel in an attempt to counter the continuing servicewide loss of trained personnel—and at undertaking significant improvements in the maintenance of Coast Guard vessels, aircraft, and shore facilities.

In the latter category, the committee added:

$1 million for additional personnel costs needed to operate the first of the new 270-foot cutters;

$500,000 for alleviation of the asbestos problems on Coast Guard ships;

$300,000 for loran-C receivers for small search and rescue vessels;

$200,000 for additional personnel for safety afloat training;

$850,000 for increasing the level of maintenance on four of the older icebreakers; and,

$910,000 for required inspections under the Outer Continental Shelf Lands Act.

Under the acquisition, construction, and improvement appropriation, the committee recommends adding an additional $144,928,000. Of this increase, $107 million is for the Great Lakes icebreaker. The committee continues to believe that construction of this vessel is essential for the economic well-being of the Great Lakes area.

The remaining increases are for:

Necessary improvements to aids to navigation;

Safety improvements on the training vessel *Eagle*;

Improved aircraft surveillance equipment;

Oil spill response equipment;

Major repairs to the icebreaker fleet; and

The establishment of a Marine Inspection Office to deal with the growing offshore supply fleet in the Gulf of Mexico.

The committee recommends an increase of $5,000,000 to the research and development authorization. This increase would allow the Coast Guard to operationally evaluate advanced marine vehicles for possible service use. It would also provide funds for further research into improvements in radionavigation and surveillance and communication technology—and into improvements in response to oil and hazardous substances spills. The committee identified these areas as being the most potentially productive of the projects not included in the President's request.

The committee made no change to the requested authorization of $16,200,000 for removal of obstructive bridges, and recommends that the full amount requested be authorized.

In addition to the appropriation authorizations, the bill contains several minor changes to existing laws concerning the Coast Guard. Four of these changes—sections 4, 6, 7, and 10—provide either protection or benefits to Coast Guard personnel. The committee believes these changes will have a positive effect on the retention problem in the Coast Guard. These are admittedly small steps to aid the service in retaining experienced personnel. But, when combined with the increased authorizations recommended by the committee for safety improvements, training, reduction of transfers, and better maintenance of facilities, the bill should have a significant impact on this serious problem.

Other amendments made by the bill:

Authorize a change in the date of Safe Boating Week to place it closer to the beginning of the summer boating season; and

Authorize the Coast Guard to be reimbursed for travel expenses when a U.S. vessel requests to be inspected at an overseas location where Coast Guard inspectors are not available in the area. This latter provision will facilitate the inspection of U.S. vessels overseas.

After the bill was reported by committee, the Senate passed a companion bill, S. 2489, which differs in several particulars from the bill we reported. The motion I am offering today includes several amendments that would adopt provisions of the Senate bill. These are amendments I would have offered had the bill come up under a rule. These amendments would add $20 million to the amount authorized for operating expenses of the Coast Guard for fiscal year 1981 and $33 million to last year's authorization. These amounts are to cover increased fuel costs that will impact the Coast Guard as a result of fuel oil price increases and expanded operations as a result of the Cuban refugee sealift. These amendments also narrow the increased authority being granted to the Coast Guard in the use of the supply fund—a revolving fund that finances the procurement and maintenance of inventories of uniform clothing, provisions, and fuel to support Coast Guard operating units. The amendment is in accordance with the administration's request and will conform this section of the bill to the Senate-passed version. The motion to suspend also includes one technical amendment to the recently enacted lines of demarcation bill, Public Law 96-324. These amendments have been cleared with majority and minority committee members and are included in the bill under consideration.

I urge enactment of H.R. 6672.

□ 1510

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we consider H.R. 6672, the Coast Guard authorization bill, which I wholeheartedly support.

The primary purpose of this bill is to authorize appropriations for fiscal year 1981 and also authorize supplementary appropriations for fiscal year 1980. The bill before us today would incorporate the provisions of the bill enacted by the Senate. The effect of this is to increase the operating expenses by $20 million and to add an additional $33 million to fiscal year 1980 funds. I am pleased to support these amounts which are necessary due to the effect of inflation on the price of fuel and the recent Cuban operations. For some time, I have been particularly concerned regarding the ability of the Coast Guard to purchase fuel—the lifeblood of its essential lifesaving, safety, and environmental missions.

All of us were very concerned during this past year when the Coast Guard was faced with serious cutbacks in its operational missions including pollution surveillance, port safety and security, enforcement of laws and treaties including fisheries enforcement, aids to navigation, drug enforcement, and personnel training.

Potentially, only search and rescue operations would have been continued on a minimum basis. I am well aware of, and very sympathetic to, the needs of this Congress to exercise budgetary restraints and the Coast Guard's authorization is no exception. However, the detrimental consequences of not adequately funding the Coast Guard cannot be taken lightly. Inflation, administration budget cuts and the artificiality of setting fuel prices for the Coast Guard have taken their toll on the effectiveness of this agency to perform its valuable missions.

I want to emphasize that budgetary restraint was exercised in the consideration of this bill in committee. The hearings we conducted revealed that there is an ever recurring need for increased Coast Guard coverage off the vast coastline of this country. In my own State of Alaska, I was very concerned with search and rescue coverage in the area of Prince William Sound. This area is heavily trafficked by fishing vessels and is in dire need of Coast Guard protection. My hope is that critical needs such as this, and similar requirements for additional Coast Guard support in the Gulf of Maine, the Delaware Coast, the Virgin Islands, and other areas, will be addressed in future Coast Guard authorizations.

In addition to the authorization of appropriations for the Coast Guard, H.R. 6672 contains several other important provisions essential to the operation and administration of the Coast Guard and certain other programs. These provisions address a variety of essential personnel matters, including foreign leases for housing, monetary allowances for Coast Guard personnel to transport household effects, and transportation of Coast Guard personnel. Other provisions concern the Coast Guard supply fund, intermittent overseas vessel inspections, the date for National Safe Boating Week, and a technical change to Public Law 96-324. These items directly affect the multiple missions performed by the Coast Guard and will go a long way towards improving the quality of life and retention of career Coast Guard personnel.

Mr. Speaker, I strongly urge enactment of H.R. 6672 as it is being considered today.

● Mr. MURPHY of New York. Mr. Speaker, H.R. 6672 is a bill to authorize appropriations for the Coast Guard for fiscal year 1981. The circumstances under which this year's Coast Guard authorization has been considered have been most difficult. On one hand, the current economic and budgetary conditions and the consensus within the Congress have indicated a desire and need to balance the Federal budget for fiscal year 1981 in an effort to reduce the overall inflation rate. On the other hand, however, it has become increasingly evident that the Coast Guard has been underfunded over the past decade.

The Coast Guard is faced with yet another austere budget year while it struggles to correct existing deficiencies in capital plant, personnel retention, and operational programs—deficiencies that in large part result from budget restraints in previous years. The effect of this consistent underfunding has been the increased difficulty of the Coast Guard to fulfill its missions. The situation is severe, not susceptible to easy remedies.

I would ask the Congress, in considering the Coast Guard authorization bill for fiscal year 1981, also to bear in mind that the Coast Guard is one of the armed forces of the United States at all times and, as such, should have the special treatment accorded the other military services. Further, the Coast Guard is the principal maritime law enforcement agency of our Nation, charged not only with implementing safety and environmental protection requirements on the sea and in our ports but also with effectively fulfilling the mandates of Congress with regard to fisheries conservation and drug interdiction.

With regard to the proposed budget estimates, I am greatly concerned about the number and character of Coast Guard requests for funding that have been eliminated or sharply reduced during the review process in the executive branch. Notwithstanding statutory mandates, many cuts have been made that make it impossible for the Coast Guard satisfactorily to carry out assigned tasks. These cuts go well beyond deferral of improvements. Curtailment of expansion, and avoidance of redundancy. These cuts affect procurement, innovation, augmentation, and support in ways that can only require major catch-up expenditures in the future. The operating forces of the Coast Guard make the service fuel intensive by nature. If ships, boats, and aircraft cannot train, patrol, and respond to incidents because of fuel limitation, the Coast Guard simply cannot do its job. The fleet of vessels and aircraft must keep pace with contemporary demands and developing missions. The review of requests for funding should be made with an eye to the future, not with a blind fixation on the status quo. This is a time for building and augmenting a fleet, not deferring acquisitions and neglecting maintenance.

Presented with a serious servicewide retention problem, a growing shortfall in its ability to meet operational requirements, and the failure of the research and development base to keep pace with inflation and expanding mission requirements, the Coast Guard's capacity to carry out its programs is severely limited.

This year, as in past years, in reviewing the Coast Guard authorization, the Merchant Marine and Fisheries Committee examined closely the capabilities of the Coast Guard to meet its legislative mandates, the policy directions set by the Congress, and the resource demands implicit in congressional actions. In so doing, we have identified ways to help the Coast Guard to meet mission requirements, and at the same time, to establish policies to guide the Coast Guard in setting priorities and defining objectives. While significant increases in the overall budget have not been approved this year, we have recognized the need for higher funding levels beginning in fiscal year 1982.

In the interim, for fiscal year 1981, the committee approved a total Coast Guard budget of approximately $1.7 billion, reflecting an increase of 12 percent above the President's revised fiscal year 1981 budget request. Of this total, more than half of this net increase is reflected in the acquisition, construction, and improvement category through the reauthorization of a dual-draft icebreaker a badly needed replacement to facilitate extended winter navigation on the Great Lakes. Some two-thirds of the remaining increases provided by the committee are earmarked for the operation and maintenance of the Coast Guard, and are directly attributable to inflationary impacts reflected in the increased cost of doing business today. The remaining budget categories of research and development and bridge alteration reflect proportionately similar increases.

Aside from the central issue of sufficient funding to perform assigned missions, I have some specific concerns about policy direction the Coast Guard is taking. These concerns, which deal with various programs and services that the Coast Guard must fulfill, have been addressed in testimony before both the full committee and the Subcommittee on Coast Guard and Navigation and have been covered in oversight hearings. Attention to these concerns will help the Coast Guard to perform effective service in light of such a budget crunch.

While the committee actions have been modest, they will avoid drastic cutbacks in Coast Guard operations and prevent further deterioration of its programs and personnel. It is now up to the Congress to do for the "can-do" service what it cannot do for itself. I urge strong endorsement of the committee's actions by the Members of the House through the unanimous passage of this legislation today. I commend my colleague, the Honorable MARIO BIAGGI, chairman of the subcommittee on Coast Guard and Navigation, and the members of his subcommittee for their significant contributions toward this effort.●

● Mr. ASHLEY. Mr. Speaker, H.R. 6672 authorizes appropriations for the Coast Guard for fiscal year 1981.

The Committee on Merchant Marine and Fisheries labored under most difficult circumstances in its review and consideration of this year's annual Coast Guard authorization. The committee's actions were strongly influenced by prevailing economic and budgetary conditions and by the desire to balance the fiscal year 1981 Federal budget.

However, the committee could not ignore mounting evidence that the Coast Guard has been consistently underfunded over the years. The cumulative impact of a decade of inadequate budgets is now assuming crisis proportions.

This is manifested in a severe servicewide retention problem, caused by chronic understaffing; low pay; long hours; arduous, hazardous and, in some instances, unhealthy working and living conditions for Coast Guard personnel—all compounded by raging inflation. The result is that by this time next year half of the Coast Guard's enlisted personnel will have less than 2 years of service. This can only contribute to a decline in experience, performance, and professionalism in the service.

Even more alarming is a growing shortfall in the Coast Guard's ability to meet its operational requirements. This was dictated a decade ago by the wholesale decommissioning of older vessels without adequate replacements being provided, and by the continued operation of overaged vessels for long periods beyond their design life, with inadequate maintenance and support provided. This shortfall is measured in an annual operating deficit of 2,000 ship days today—expected to increase to 3,000 ship days by 1985. It represents a need for 27 additional medium-endurance cutters in addition to the 13 vessels now presently planned or authorized—as well as 8,200 additional personnel this year above the authorized strength of 45,000—and another 28,000 new personnel over the next decade.

Of longer term significance is the failure of the Coast Guard's research and development base to keep pace with inflation and expanding mission requirements as a result of constant funding levels in real dollars at approximately 1.4 percent of the Coast Guard's total budget, in comparison to a government-wide average of 5 percent for operating technical agencies and 10 percent for the Defense Department. The inevitable consequence is a severe limitation upon the Coast Guard's ability to seek out and implement cost-effective alternative platforms, equipment, and techniques to improve its operational performance.

In response to this growing crisis, the Committee on Merchant Marine and Fisheries—while not approving significant increases to the overall Coast Guard budget this year—did recognize the unavoidable necessity for the Congress to take the initiative in approving consistently higher funding levels for the Coast Guard in future years—beginning in fiscal year 1982.

In the interim, for fiscal year 1981, the committee approved a total of approximately $1.7 billion, reflecting an increase of 12 percent above the President's revised fiscal year 1981 request. More than half of this increase is reflected in the acquisition, construction, and improvement category through the reauthorization of a dual-draft icebreaker, a badly needed replacement to facilitate extended winter navigation on the Great Lakes. Some two-thirds of the remaining increases provided by the committee are earmarked for the operation and maintenance of the Coast Guard, and are directly attributable to inflationary impacts reflected in the increased cost of doing business today. The remaining budget categories of research and development and bridge alteration reflect proportionately similar increases.

Mr. Speaker, viewed in their entirety, the committee's actions were exceedingly modest in scope and nature. They will not significantly enhance the Coast Guard's overall mission performance and effectiveness. They will—by offsetting skyrocketing fuel cost increases and by providing necessary adjustments to base, including cost-of-living adjustments and additional badly needed maintenance and training support—avoid drastic cutbacks in Coast Guard operations, and prevent further deterioration of the Coast Guard's physical plant, personnel competency, and professionalism. They reflect a consensus in the committee to hold the line against further budgetary erosion that can only impair the service's continuing ability to perform its many missions.●

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time.

Mr. STUDDS. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. STUDDS) that the House suspend the rules and pass the bill, H.R. 6672, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.".

A motion to reconsider was laid on the table.

Mr. STUDDS. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 2489) to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2489

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated for necessary expenses of the Coast Guard for the fiscal year 1981 as follows:

(1) For the operation and maintenance of the Coast Guard including expenses related to the Capehart housing debt reduction, $1,248,367,000 and such additional sums as may be necessary to meet unforeseen circumstances;

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto, $469,320,000, to remain available until expended.

(3) For the alteration or removal of bridges over navigable waters of the United States, constituting obstructions to navigation, $16,200,000, to remain available until expended;

(4) For research, development, testing, and evaluation, $30,000,000, to remain available until expended.

SEC. 2. For fiscal year 1981, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,600: *Provided*, That the ceiling shall not include members of the Ready Reserve called to active duty under the authority of section 764 of title 14, United States Code.

SEC. 3. For fiscal year 1981, average military training student loans for the Coast Guard are authorized as follows:

(1) Recruit and special training: 4,175 student-years;

(2) Flight training: 117 student-years;

(3) Professional training in military and civilian institutions: 595 student-years; and

(4) Officer acquisition: 925 student-years.

SEC. 4. Subsection 475(a) of title 14, United States Code, is amended so that the second sentence reads as follows: "When any such lease involves housing facilities in a foreign country, the lease may be made on a multi-year basis for a period not to exceed 5 years, and, in accordance with local custom and practice, advance payment may be made for the lease.".

SEC. 5. Subsection 650(a) of title 14, United States Code, is amended so that the third sentence reads as follows: "In such regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts.".

SEC. 6. Subsection 214(d) of title 14, United States Code, is amended by amending the last sentence to read as follows: "A person who is appointed under this section may not suffer any reduction in the rate of pay and allowances to which he would have been entitled had he remained in his former grade and continued to receive the increases in pay and allowances authorized for that grade.".

SEC. 7. (a) Chapter 13 of title 14, United States Code, is amended by adding a new section 512 as follows:

"§ 512. Monetary allowance for transportation of household effects

"The transportation and reimbursement authorized by subsection (b) of section 406 of title 37, United States Code, shall be available hereafter to pay a member who, under regulations perscribed by the Secretary, participates in a program designated by the Secretary in which his baggage and household effects are moved by privately owned or rental vehicle. Such allowance shall not be limited to reimbursement for actual expenses and may be paid in advance of the transportation of said baggage and household effects. However, the monetary allowance shall be in an amount which will provide savings to the Government when the total cost of such movement is compared with the cost which otherwise would have been incurred under subsection (b) of section 406 of title 37, United States Code.".

(b) The analysis of chapter 13 of title 14, United States Code, is amended by adding the following item at the end thereof:

"512. Monetary allowance for transportation of household effects.".

SEC. 8. Public Law 85–445 (72 Stat. 179) is amended by striking "week which includes July 4" and inserting in lieu thereof "seven-day period beginning June 1.".

SEC. 9. The Coast Guard shall submit to the Congress with its fiscal year 1982 budget request and each subsequent budget request the current copy of the Coast Guard's Capital Investment Plan, Cutter Plan, Aviation Plan, and Shore Facilities Plan. Whenever the Coast Guard transmits one of these plans to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No Officer or agency of the United States shall have any authority to require the Coast Guard to submit any of these plans to any officer or agency of the United States for approval, comments, or review, prior to the submission of such plans to the Congress.

SEC. 10. Paragraph (1) of the first section of Public Law 96–23 (93 Stat. 68) is amended by striking "$1,058,357,000;" and substituting "$1,091,357,000;".

MOTION OFFERED BY MR. STUDDS

Mr. STUDDS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STUDDS moves to strike out all after the enacting clause of the Senate bill, S. 2489, and to insert in lieu thereof the provisions of the bill, H.R. 6672, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 6672) was laid on the table.

House Resolution 657 was laid on the table.

GENERAL LEAVE

Mr. STUDDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PRIVATE SECTOR INITIATIVE PROGRAM FOR CETA

Mr. HAWKINS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6796) to amend and extend title VII of the Comprehensive Employment and Training Act, as amended.

The Clerk read as follows:

H.R. 6796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Comprehensive Employment and Training Act is amended—

(1) by inserting ", in cooperation with other Federal programs that generate employment." immediately after "under this Act, and" in the first sentence of section 701;

(2) by striking out subsection (b) of section 702 and inserting in lieu thereof the following:

"(b)(1) Eighty-five per centum of the funds made available for carrying out this title shall be allocated by the Secretary on an equitable basis among such prime sponsors, taking into account the factors set forth in section 202(a). Fifteen per centum of the funds so allocated to each prime sponsor may be used by prime sponsors to support programs conducted under part C of title II for individuals eligible to participate in such programs.

"(2) Ten per centum of the funds made available for carrying out this title shall be used by the Secretary to provide incentive bonuses to prime sponsors who engage in efforts to promote coordination with economic development actvities supported by Federal, State, or local funds. Funds used for such coordinated activities shall not be taken into account in the computation of cost per participant or cost per placement for purposes of program evaluation.

"(3) The remainder of the funds made available for carrying out this title shall be used by the Secretary to provide financial assistance to prime sponsors who jointly establish a single private industry council and to Native American entities described in section 302(c)(1)(A) and (B) for carrying out the purposes of this title.

"(c) There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal years 1981, 1982, 1983, and 1984.";

(3) by inserting ", local economic development councils established under the Public Works and Economic Development Act of 1965," immediately after "community-based organizations" in section 703(b)(5);

(4) by inserting "local economic development councils (such as those established under the Public Works and Economic Development Act of 1965)," immediately after "community-based organizations" in section 704(a)(1);

(5) by inserting "(particularly persons with expertise in on-site, industry specific vocational education)" immediately after "educational agencies and institutions" in the second sentence of section 704(a)(1);

(6) by striking "and" at the end of paragraph (14) of section 705(a);

(7) by striking the period at the end of paragraph (15) of section 705(a) and inserting in lieu thereof "; and"; and

(8) by adding after such paragraph the following new paragraph:

"(16) developing on-site, industry specific training program supportive of industrial and economic development in cooperation with State vocational education boards, provided that, where feasible, funds made available under this Act for such programs are supplemented by Federal, State, or local vocational education funds or by non-governmental funds made specifically available for such programs, or both.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. HAWKINS) will be recognized for 20 minutes, and the gentleman from Vermont (Mr. JEFFORDS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. HAWKINS).

Mr. HAWKINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering H.R. 6796 which amends and extends the private sector initiative program under title VII of CETA.

In 1978, Congress established this demonstration program to encourage the direct involvement of the business community in the planning and delivery of employment services to the unemployed.

Although the program has only recently entered into the phase of full operation, it has already made great strides in unifying the business community with public sector employment and training efforts. Recent testimony by the chamber of commerce before the Subcommittee on Employment Opportunities supports this position. The chamber testified that "in spite of uncertain funding * * * those who took up the challenge of making CETA work have had remarkable initial successes. Stories of these successes are the clearest proof that PSIP should be reauthorized."

The establishment of private industry councils at the local levels to advise and operate the program has also met with success. According to recent Department of Labor statistics, 469 of the 470 prime sponsors have established PIC's with the last one in its final planning stage. In addition, program participation levels are also encouraging. To date, 46,000 persons have participated in the program and Department of Labor estimates that more than 70,000 will participate in title VII activities this year and approximately 120,000 individuals will be served in 1981 when the program will be operating at full capacity.

H.R. 6796 extends the private sector initiative program for 4 years through fiscal 1984 to assure stability in the system. The bill also amends title VII to encourage coordinated efforts between private industry and economic development activities. Such coordination should provide more effective utilization of limited public funds and should assure placement of CETA eligible individuals in publicly assisted private sector employment. The legislation further amends title VII to allow funds to be used for retraining and upgrading activities such as those authorized under title II–C of CETA. Finally, the bill provides that onsite industry specific vocational training be available to the PIC and that these programs have representation to the extent possible on the PIC board.

H.R. 6796 authorizes such sums as may be necessary for fiscal years 1981 through 1984. The President's budget requested $150 million for fiscal year 1981. However, CBO estimates that $400 million would be sufficient to fund the program in fiscal year 1981. This estimate includes the President's budget request of $150 million for fiscal year 1981 as well as a carryover of approximately $250 million from fiscal year 1980.

The legislation was reported unanimously by the Committee on Education and Labor. The reauthorization of the title VII program is supported by the administration, the business community, labor organizations, and public interest groups.

Mr. Speaker, I urge my colleagues to support the reauthorization of the private sector initiative program.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I want to commend the chairman of the subcommittee, the gentleman from California (Mr. HAWKINS), and the chairman of the full Committee on Labor and Education, the gentleman from Kentucky (Mr. PERKINS), and the ranking member (Mr. ASHBROOK), for the work that went into this fine bill. H.R. 6796 is a bipartisan effort of the Education and Labor Committee to extend a program that has exhibited its potential and holds the promise of bringing together Government and the private sector to help people who need job training and employers who need employees.

H.R. 6796 is much needed legislation. During consolidation of the 1978 CETA amendments, the need to encourage and promote private sector involvement in all CETA programs was recognized. The intent of these 1978 amendments was to increase employment and training opportunities for the Nation's economically disadvantaged through private and public sector cooperation.

In spite of very unstable financial support and a shaky beginning, nearly 500 private industry councils have been established. Approximately 95 percent of the prime sponsors have established PIC's. By the end of the second quarter of 1980, over 14,000 trainees have been enrolled and it is estimated that by the end of fiscal 1980 at least 200,000 jobs and training opportunities will have been created.

Four out of every five jobs in the American economy are in the private sector. Employer involvement can assure that new workers are trained to meet requirements of available entry-level jobs and that current workers can upgrade their skills to fill expanding opportunities for higher skilled and supervisory workers. Private employers can supply managerial and supervisory talent not available in the public sector, assuring that these training programs produce graduates with the type of training and discipline necessary for regular employment. Access to employer facilities and equipment can improve the quality of training programs and provide work experience in a realistic setting. Most importantly, individual employers can play an essential intermediary role between Government and the private sector.

Title VII of CETA, which H.R. 6796 reauthorizes, has become recognized by the private sector and has generated great interest in linkages between the private and public sectors. Without stable funding and a long-term commitment on the part of Congress, the private sector will not view this as a credible program.

This bill reauthorizes title VII for 4 years, which will provide the assurance the private sector needs to permanently establish the links called for with the public sector. Provisions of the bill refine previous authorization to encourage activities and coordination with community economic development policies and manpower training; promote coordination with State and local economic development activities; and foster coordination among the various job creation systems. With the employment situation worsening, title VII funds will now be used for upgrading and retraining activities to allow workers to become more productive and to provide incentive to employers to hire disadvantaged workers into entry-level positions. Language in the bill also encourages the development of "onsite, industry-specific training programs" to support and tie into local industry and economic development.

The private sector has increasingly indicated its willingness to cooperate in the development and implementation of these joint efforts. The administration has encouraged CETA contractors to work more closely with private business. Every person who testified on this bill overwhelmingly supported its continuation without reservation.

The urgency of passage of this bill is clear because we need to assure the private sector that we are sincere about bringing them into this area of public policy. Without a direct line of communication with industry, any Federal jobs training program is likely to be insufficient because we will not know what jobs to train for. This bill will make our programs much more efficient and effective. I urge passage of this bill as reported out of the Education and Labor Committee to meet this critical need.

● Mr. PERKINS. Mr. Speaker, today the House is considering, under suspension of the rules, the bill H.R. 6796, which amends and extends title VII of CETA, the private sector initiative program. I rise in support of the passage of this important bill.

The private sector initiative program was established during the 1978 reauthorization of the Comprehensive Employment and Training Act to demonstrate ways of encouraging businesses to become more involved in the hiring and training of economically disadvantaged workers. The title provides funds to prime sponsors for the establishment of private industry councils to participate with the prime sponsors in developing employment opportunities for the unemployed in the private sector. These private industry councils include members from the local business communities, community based organizations, local education agencies and where possible, 50 percent membership for small businesses.

At this point, virtually all prime sponsors in the CETA system have established private industry councils. Even though its history has been brief, the private sector initiative program has produced many encouraging examples of successful cooperation between CETA and the business community. These joint efforts have provided thousands of disadvantaged and jobless workers with meaningful employment and training opportunities. Also, the program has demonstrated to businesses that they can cooperate efficiently with the CETA system to improve their communities.

Primarily, H.R. 6796 does four things:

First. It extends the private sector initiative program for 4 years through fiscal year 1984 to assure stability in the system;

Second. It allocates 10 percent of title VII funds to the Secretary of Labor for incentive bonuses to encourage coordinated efforts between private industry programs and economic development activities, so that these two complementary programs can be efficiently and successfully linked;

Third. It allows up to 15 percent of title VII funds to be used for training and upgrading activities to improve the long-term employability of program participants; and

Fourth. It provides that on-site, industry specific vocational training programs are to be available to private industry councils and that such programs be represented to the extent possible on council boards.

Mr. Speaker, in addition to enthusiastic bipartisan support, this bill has the strong support of the business community, organized labor, and public interest groups. I join in this unanimous support by urging my colleagues to adopt this important legislation in order to save one of the most innovative programs in CETA from extinction at the end of this month.●

● Mr. BRADEMAS. Mr. Speaker, I take this time to express my own support for the bill under consideration, H.R. 6796, the private sector initiative program for CETA.

In indicating my support for this legislation, Mr. Speaker, I should like to note that I have just had a letter indicating support for H.R. 6796 from several chambers of commerce in the congressional district I represent.

In a letter to me from Mr. Eli D. Miller, general manager of the South Bend-Mishawaka Area Chamber of Commerce, Mr. Miller writes that—

> The Private Sector Initiative Program (PSIP) is receiving the plaudits of the private sector because it has established a new and valuable relationship between business and government.

Mr. Miller goes on to say:

> As you know, PSIP has been initiated to better design, administer and/or implement, actual training programs in the private sector. PSIP has been successful in accomplishing its objectives without spending the entire funds which Congress appropriated . . .

Mr. Miller concludes:

> Because of the effectiveness of PSIP, and the extent of PSIP involvement by the private sector in concert with government, the South Bend-Mishawaka Area Chamber of Commerce urges PSIP re-authorization by the Congress. Also, on August 28, the Third Indiana District Congressional Alliance of Chambers, including seven in the District (South Bend-Mishawaka, Elkhart, Goshen, LaPorte, Michigan City, Nappanee, Walkerton), adopted unanimously a resolution urging Congressional re-authorization and passage of H.R. 6796.

Mr. Speaker, I hope that Members of the House on both sides of the aisle will give this important legislation their support.●

● Mr. WEISS. Mr. Speaker, I strongly support H.R. 6796, an extension of title VII of CETA, the private sector Initiative program.

As a member of the Subcommittee on Employment Opportunities of the Education and Labor Committee, I participated in the reauthorization of CETA in 1978 and the creation of the original private sector initiative program.

And today, passage of this 4-year reauthorization will demonstrate to both the business sector and the local community that the Congress is willing to make a long-term commitment in order to meet the goals of the private sector initiative program. The objection of this legislation, strengthening the linkages between the business community and the local labor market, is just getting underway. According to testimony by Mr. William H. Kolber, the president of the National Alliance of Business, before the subcommittee, there are now 435 private industry councils representing 460 of the 470 prime sponsor areas.

Funds for existing public service employment programs are insufficient to train all the unskilled and provide jobs for all the structurally unemployed and economically disadvantaged. The involvement of the business community, where four out of every five new jobs are found, is critical. Jobs are available in the private sector, and the resources and expertise for training and placement could, if made available and fully utilized, meet the demand.

But the commitment to serve and employ the economically disadvantaged has not yet been made by the business community. This legislation is designed to encourage the business world to make that commitment.

Under the private sector initiative program each prime sponsor may establish a private industry council, or PIC, consisting of representatives of large and small businesses, community based organizations, unions and other members of the community. The council helps to locate jobs for the disadvantaged and insure that the private sector is involved in all employment and training activities at the local level. As the CETA regulations state, PIC's provide "direction to the local employment and training system on ways to increase private sector job placement," and "represent the private sector's view and recommendations for making programs more responsive to local employment needs."

In meeting these objectives, the council performs a wide variety of activities. These may include the development of apprenticeship programs, the distributing of information about the availability of potential employees, coordinating public employment programs with actual local labor market needs, and forecasting future needs of the market.

I am particularly proud of the private industry council in New York City, whose record of success has been unmatched. The council was established as a nonprofit corporation so that it can receive funds not only from CETA, but foundations and businesses as well. One of their most successful programs has been the development of a multimillion dollar training program for airline reservation clerks, with Pan Am doing the training. Because of the business community's recognition of the commitment and expertise of Pan Am, a number of airlines have agreed to hire graduates of these programs.

The private sector initiative program is just getting underway. Business involvement in the area of job creation and development of public service employment is crucial if the number of unemployed and underemployed is ever to decline. We must encourage the business sector to make a commitment. And the only way to insure this is for Congress to demonstrate its own commitment by passing this legislation.

I urge my colleagues to join me in supporting this legislation.●

Mr. HAWKINS. Mr. Speaker, I have no further requests for time. I reserve the balance of my time.

Mr. JEFFORDS. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HAWKINS) that the House suspend the rules and pass the bill, H.R. 6796, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ELIMINATION AND MODIFICATION OF CERTAIN REPORTS TO CONGRESS

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6686) to discontinue or amend certain requirements for agency reports to Congress, as amended.

The Clerk read as follows:

H.R. 6686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Congressional Reports Elimination Act of 1980".

TITLE I—ELIMINATIONS

REPORTS BY MORE THAN ONE AGENCY

Sec. 101. (a) Section 404 of Federal Property and Administrative Services Act of 1949 (40 U.S.C. 514(d); 63 Stat. 398), is amended by striking out subsection (d) and redesignating subsection (e) as subsection (d).

(b) Section 304 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4224; 82 Stat. 1102) is repealed.

(c) The second undesignated paragraph under the paragraph designated "STEAMVESSELS, FOOD-FISHES" under the center heading "MISCELLANEOUS OBJECTS UNDER THE TREASURY DEPARTMENT" in the first section of the Act of March 3, 1887 (16 U.S.C. 744; 24 Stat. 523) is repealed.

REPORTS BY THE DEPARTMENT OF AGRICULTURE

Sec. 102. (a) Section 2(b) of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 602(b); 76 Stat. 588), is repealed.

(b) Section 3 of the Act of September 18, 1972, entitled "An Act to provide for the acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes" (16 U.S.C. 576e; 86 Stat. 678), is repealed.

(c) Section 302 of the Rural Development Act of 1972 (7 U.S.C. 1010a; 86 Stat. 670) is amended by striking out the last sentence.

(d) Section 201(b) of the Agricultural Act of 1956 (7 U.S.C. 1851(b); 70 Stat. 198) is repealed.

(e) Section 11 of the Emergency Livestock Credit Act of 1974 (7 U.S.C. prec. 1961 note; 89 Stat. 214) is repealed.

(f) Section 609 of the Agricultural Act of 1970 (7 U.S.C. 1350a; 84 Stat. 1378) is repealed.

(g) Section 602(f) of the Act of August 28, 1954, entitled "An Act for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes" (7 U.S.C. 1762(f); 90 Stat. 1500) is amended by striking out the last sentence.

(h) Section 13 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714k; 62 Stat. 1073) is amended by inserting a period after the word "account" and by striking out the remainder of such section.

REPORTS BY THE DEPARTMENT OF COMMERCE

Sec. 103. (a) Section 213 of the Merchant Marine Act, 1936 (46 U.S.C. 1123; 49 Stat. 1991) is amended by striking subsection (c).

(b) Section 13 of the Merchant Ship Sales Act of 1946 (50 U.S.C. app. 1746; 60 Stat. 50) is repealed.

(c) Section 9(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742h(a); 70 Stat. 1123) is repealed.

(d) Section 5(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742d(a); 70 Stat. 1121) is amended by striking out ", prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress," and inserting in lieu thereof "and prepare and disseminate information".

(e) The first section of the Act of June 16, 1948, entitled "An Act to provide safety in aviation and to direct a study of the causes and characteristics of thunderstorms and other atmospheric disturbances" (15 U.S.C. 313, note; 62 Stat. 470), is amended by striking the last sentence.

REPORTS BY THE DEPARTMENT OF DEFENSE

Sec. 104. (a) Section 2390(b) of title 10, United States Code, is repealed.

(b) Section 2110(b) of title 10, United States Code, is amended by striking out "The Secretary of each military department shall report to Congress in April of each year on the projection of the flight instruction program.".

(c) Section 5(c) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (20 U.S.C. 903(e); 73 Stat. 214) is repealed.

(d) Section 7 of the Act of March 3, 1899, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes" (33 U.S.C. 549; 30 Stat. 1150), is repealed.

REPORTS BY THE DEPARTMENT OF ENERGY

Sec. 105. (a) Section 14 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2513; 90 Stat. 1270) is repealed.

(b) Section 365(c) of the Energy Policy and Conservation Act (42 U.S.C. 6325(c); 89 Stat. 935) is repealed.

(c) Section 7(c)(4) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2506 (c)(4); 90 Stat. 1264) is repealed.

(d) Section 19(1) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5919(1); 92 Stat. 69) is repealed.

(e) Section 20(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5920(d); 92 Stat. 85) is amended by striking out paragraphs (2) and (3).

(f) Section 310(a) of the Department of Energy Act of 1978—Civilian Applications (15 U.S.C. 2709(a); 92 Stat. 83) is repealed.

(g) Section 12(d) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(d); 88 Stat. 1076) is repealed.

REPORTS BY THE DEPARTMENTS OF EDUCATION AND HEALTH AND HUMAN SERVICES

Sec. 106. (a) Section 418 of the General Education Provisions Act (20 U.S.C. 1226d; 88 Stat. 564) is repealed.

(b) Section 971 of the Higher Education Act of 1965 (20 U.S.C. 1134r–2; 90 Stat. 2164) is repealed.

(c) Subsection 981(f) of the Higher Education Act of 1965 (20 U.S.C. 1134s(f); 86 Stat. 380) is repealed.

(d) Section 182(a) of the Vocational Education Act of 1963 (20 U.S.C. 2412(a)(3); 90 Stat. 2206) is amended by inserting "and" at the end of paragraph (1), by striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period, and by striking out paragraph (3).

(e) Section 423 of the General Education Provisions Act (20 U.S.C. 1231b; 84 Stat. 167) is repealed.

(f) Subsection 403(c)(3) General Education Provisions Act (20 U.S.C. 1221c(c)(3); 88 Stat. 560) is repealed.

(g) Section 653 of the Education of the Handicapped Act (20 U.S.C. 1453; 84 Stat. 187) is amended by striking out subsection (c).

(h) Section 134 of the Higher Education Act of 1965 (20 U.S.C. 1015c; 90 Stat. 2089) is repealed.

(i) Section 308 of the Age Discrimination Act of 1975 (42 U.S.C. 6106a; 92 Stat. 1556) is repealed.

(j) Section 330(e)(5) of the Public Health Service Act (42 U.S.C. 254c(e)(5); 92 Stat. 3559) is amended by striking out the last sentence.

(k) Section 231(b)(1)(B) of Community Mental Health Centers Act (42 U.S.C. 2689q (b)(1)(B); 89 Stat. 328) is amended by striking out the second sentence.

(l) Section 511(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 958 (b); 83 Stat. 803) is repealed.

(m) Section 27 of the Toxic Substances Control Act (15 U.S.C. 2626; 90 Stat. 2049) is amended by striking out subsection (c)(1) and redesignating subsection (c)(2) as subsection (c).

(n) Section 1881(c)(6) of the Social Security Act (42 U.S.C. 1395rr(c)(6); 92 Stat. 312) is amended by striking out the last sentence.

(o) Section 1114(f) of the Social Security Act (42 U.S.C. 1314(f); 76 Stat. 190) is amended by striking out the last sentence.

(p) Section 502 of the Marihuana and Health Reporting Act (42 U.S.C. 242, note; 84 Stat. 352) is repealed.

(q) Section 723(a)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3233(a)(2); 92 Stat. 2276) is amended by striking out the last sentence.

REPORTS BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 107. (a) Section 244 of the National Housing Act (12 U.S.C. 1715z–9; 88 Stat. 679) is amended by striking subsection (f) and redesignating subsection (g) as subsection (f).

(b) Section 505 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–4; 84 Stat. 1787) is amended by striking subsection (f).

(c) Section 803(b)(2) of the National Housing Act (12 U.S.C. 1748b(b)(2); 63 Stat. 571) is amended by striking "The Secretary shall report to the Committees on Banking and Currency of the Senate and the House of Representatives each instance in which he has required the Secretary of Defense to guarantee the General Insurance Fund, with reasons therefor.".

(d) Section 704(c) of the Housing and Urban Development Act of 1965 (42 U.S.C. 3104(c); 82 Stat. 533) is amended by striking "unless the Secretary (1) determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and (2) reports such determination promptly to the Committees on Banking and Currency of the Senate and House of Representatives.", and inserting in lieu thereof "unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest.".

REPORTS BY THE DEPARTMENT OF THE INTERIOR

Sec. 108. (a) Section 1(d) of the Act of October 15, 1966 (42 U.S.C. 1900(d); 80 Stat. 951) is repealed.

(b) The second paragraph under the heading "SURVEYING THE PUBLIC LANDS" of the first section of the Act of March 2, 1895, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes" (43 U.S.C. 886; 28 Stat. 937) is amended by striking out ", and the Secretary of the Interior shall report to each regular session of Congress what has been done under the foregoing provisions" in the last sentence thereof.

(c) Section 1 of the Colorado River Storage Project Act (43 U.S.C. 620; 82 Stat. 897), is amended by striking out "*Provided*, That construction of the Uintah of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress, along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:".

(d) Section 4(c) of the Act of September 7, 1964, entitled "An Act to provide for the construction of the Lower Teton division of the Teton Basin Federal reclamation project, Idaho, and for other purposes" (43 U.S.C. 616qq(c); 78 Stat. 926), is repealed.

REPORT BY THE DEPARTMENT OF JUSTICE

SEC. 109. Section 19(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5919; 92 Stat. 64) is repealed.

REPORT BY THE DEPARTMENT OF LABOR

SEC. 110. Section 76 of the Act of April 30, 1900, entitled "An Act to provide a government for the Territory of Hawaii" (31 Stat. 155), is repealed.

REPORTS BY THE DEPARTMENT OF STATE

SEC. 111. (a) Section 302(b) of the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1613a(b); 65 Stat. 647) is amended by striking out "from time to time but not less than once every six months recommending action".

(b) Section 204(b)(8) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824; 90 Stat. 344), is amended by inserting "and" at the end of subparagraph (B), by striking out "; and" at the end of subparagraph (C) and inserting in lieu thereof a period, and by striking out subparagraph (D).

REPORTS BY THE DEPARTMENT OF TRANSPORTATION

SEC. 112. (a) Section 3(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1702(b); 84 Stat. 219) is repealed.

(b)(1) Section 112(b) of title 23, United States Code, is amended by striking the second sentence.

(2) Section 307(b) of title 23, United States Code, is amended by striking out "and he shall report from time to time to the Committees on Public Works of the Senate and of the House of Representatives on the progress and findings with respect to such studies".

(c) Section 1124(g) of title 10, United States Code, is amended by striking out the second sentence thereof.

(d) Section 475(e) of title 14, United States Code, is amended by striking out "(c),".

(e) Section 303(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1344(e); 84 Stat. 234) is amended by striking out the last sentence.

(f) Section 1309 of the Federal Aviation Act of 1958 (49 U.S.C. 1539; 72 Stat. 805) is repealed.

(g) Subsections (a) and (b) of section 10 of the Act of September 30, 1965, entitled "An Act to authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation, and for other purposes" (49 U.S.C. 1640(a), (b); 79 Stat. 895), are repealed.

(h) Section 10 of the Emergency Rail Services Act of 1970 (45 U.S.C. 669; 84 Stat. 1978) is amended—

(1) by striking out the first sentence;

(2) by striking out "also" in the second sentence; and

(3) by inserting "except the Central Railroad Company of New Jersey and the Penn Central Transportation Company," immediately after "railroad" in the second sentence.

REPORT BY THE DEPARTMENT OF THE TREASURY

SEC. 113. Section 3(c)(1) of the Black Lung Benefits Revenue Act of 1977 (30 U.S.C. 934a(c)(1); 92 Stat. 13), is amended to read as follows:

"(1) It shall be the duty of the Secretary of the Treasury to hold the fund.".

REPORT BY ACTION

SEC. 114. Section 405 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5045; 87 Stat. 409) is amended by striking out subsection (c).

REPORT BY THE CONSUMER PRODUCT SAFETY COMMISSION

SEC. 115. Section 14(b) of the Flammable Fabrics Act (15 U.S.C. 1201(b); 81 Stat. 573) is amended by striking out the last sentence.

REPORT BY THE EXPORT-IMPORT BANK

SEC. 116. Section 1(c) of the Act of July 7, 1968, entitled "An Act to enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States" (12 U.S.C. 635j(c); 82 Stat. 297), is repealed.

REPORT BY THE FEDERAL COMMUNICATIONS COMMISSION

SEC. 117. Section 5(e) of the Communications Act of 1934 (47 U.S.C. 155(e); 66 Stat. 714), is amended by striking out, "; and the Commission shall promptly report to the Congress each such case which has been pending before it more than such three- or six-month period, respectively, stating the reasons therefor".

REPORT BY THE INTERNATIONAL COMMUNICATIONS AGENCY

SEC. 118. Section 1008 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1439; 62 Stat. 14) is repealed.

REPORTS BY THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 119. (a) Section 6(d) of the National Aeronautics and Space Administration Authorization Act, 1970 (42 U.S.C. 2462(d); 83 Stat. 199), is repealed.

(b) Section 206(b) of the Act of October 4, 1961, entitled "An Act to increase the limitation on the number of positions which may be placed in the top grades of the Classification Act of 1949, as amended, to provide certain additional research and development positions, and for other purposes" (42 U.S.C. 2473a; 75 Stat. 791) is repealed.

REPORT BY THE NATIONAL SCIENCE FOUNDATION

SEC. 120. Section 10 of the National Science Foundation Authorization Act, Fiscal Year 1978 (42 U.S.C. 1873a; 91 Stat. 834), is amended by striking out subsection (c).

REPORT BY THE VETERANS' ADMINISTRATION

SEC. 121. The Act of October 22, 1975, entitled "An Act to amend title 38, United States Code, to provide special pay and incentive pay for certain physicians and dentists employed by the Department of Medicine and Surgery of the Veterans' Administration in order to enhance the recruitment and retention of such personnel, and for other purposes" (38 U.S.C. 4118 note; 89 Stat. 669), is amended by striking out subsection (h) of section 4.

REPORT BY THE OFFICE OF PERSONNEL MANAGEMENT

SEC. 122. Section 1308 of title 5, United States Code, is amended by striking out subsections (a) and (b) and redesignating subsections (c), (d), and (e) as subsections (a), (b), and (c), respectively.

REPORT BY THE NATIONAL MEDIATION BOARD

SEC. 123. Section 4 of the Railway Labor Act (45 U.S.C. 154, 48 Stat. 1193) is amended by striking out the last sentence of the paragraph designated "Second".

TITLE II—MODIFICATIONS

REPORT BY THE EXECUTIVE OFFICE OF THE PRESIDENT

SEC. 201. Section 305 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1165; 90 Stat. 244) is amended by striking out "of each year" and inserting ", 1979 and every other year thereafter" in lieu thereof.

REPORTS BY THE DEPARTMENT OF COMMERCE

SEC. 202. (a) Section 12 of the Shipping Act, 1916 (46 U.S.C. 811; 39 Stat. 732), is amended by striking out "It shall, on or before the first day of December in each year, make a report to the Congress, which shall include" and inserting in lieu thereof "The Secretary of Commerce shall include in the annual report pursuant to section 208 of the Merchant Marine Act, 1936,".

(b) Section 809(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1213(a); 89 Stat. 680), is amended by striking out "Not later than March 1, 1976, and annually thereafter, the Secretary shall submit to Congress" and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 208 of this Act".

(c) Section 804(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1222(e); 84 Stat. 1034), is amended by striking out "shall, at the beginning of each regular session, make a report to the Congress" and inserting in lieu thereof "shall include in the annual report pursuant to section 208 of this Act, a report".

(d) Section 904(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3244(b); 88 Stat. 1165) is amended—

(1) by striking out "The Secretary shall provide an annual consolidated report to the Congress," and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report"; and

(2) by striking out the second sentence thereof.

(e) Section 204(b)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)(2); 90 Stat. 2333) is amended—

(1) by striking out "The Secretary shall provide an annual consolidated report to the Congress," and inserting in lieu thereof "The Secretary shall include in the annual report pursuant to section 707 of this Act a consolidated report"; and

(2) by striking out the second sentence thereof.

(f) Section 112(d) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1382(d); 86 Stat. 1042), is amended by striking out "forthwith submit to Congress" and inserting in lieu thereof "include in the annual report to the public and the Congress required under section 103(f) of this Act".

(g)(1) Section 201 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441; 86 Stat. 1060) is amended by striking out "report from time to time, not less frequently than annually," and inserting in lieu thereof "include," and by striking out "to the Congress" and inserting in lieu thereof "as a separate section of the annual report to the Congress required by section 202(c)".

(2) Section 202(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(c); 86 Stat. 1061) is amended to read as follows:

"(c) On or before February 1 of each year, the Secretary of Commerce shall report to the Congress on the administration of this title and title III of this Act during the preceding fiscal year. The Secretary shall include in each annual report a description of the results of the activities undertaken pursuant to this section during the preceding fiscal year, and the matters required to be included in the report by sections 201 and 302(d) of this Act. The Secretary shall also include as a separate section in each annual report the report to the Congress of activities of the Department of Commerce under section 5 of the Act of March 10, 1934 (16 U.S.C. 665; 48 Stat. 402), which is required by that section.".

(3) Section 302(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(d); 86 Stat. 1062) is amended to read as follows:

"(d) The Secretary shall include, as a separate section, in the annual report to the Congress required by section 202(c) of this Act a comprehensive review of actions taken during the preceding fiscal year in the administration of this title, including recommendations for additional legislation if deemed necessary.".

REPORTS BY THE DEPARTMENT OF DEFENSE

SEC. 203. (a)(1) Section 1812 of the Revised Statutes (40 U.S.C. 50), is amended by striking out "in time to accompany the annual message of the President to Congress, namely:

"First. A report of his operations for the preceding year" and inserting in lieu thereof "within nine months after the end of a fiscal year:

"First. A report of the Chief of Engineers' operations for that year".

(2) Such section is further amended by striking out "his charge" and inserting in lieu thereof "the Chief of Engineers' charge".

(b) Section 306(f) of title 37, United States Code, is amended by striking out the first sentence and inserting in lieu thereof "The Secretary of Defense shall report to Congress by March 1 of each year following a calendar year in which special pay is disbursed under this section. Negative reports need not be submitted.".

(c) Section 43(b) of the Act of August 10, 1956, entitled "An Act to revise, codify, and enact into law, title 10 of the United States Code, entitled 'Armed Forces', and title 32 of the United States Code, entitled 'National Guard'" (50 U.S.C. App. 2285; 70A Stat. 636) is amended by striking out "quarterly" and inserting in lieu thereof "annually".

REPORTS BY THE DEPARTMENT OF ENERGY

SEC. 204. (a) Section 400I(b) of the Energy Policy and Conservation Act (92 Stat. 3253) is amended by striking out "within one year after the date of enactment of this part" and all that follows thereafter to the end of such subsection and inserting in lieu thereof "include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.".

(b) Section 399(b) of the Energy Policy and Conservation Act (92 Stat. 3247) is amended by striking out ", within one year after the date of enactment of this part" and all that follows thereafter to the end of such subsection and inserting in lieu thereof "include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.".

(c) Section 254 of the National Energy Conservation Policy Act (42 U.S.C. 8233; 92 Stat. 3237) is amended by striking out "President" wherever it appears and inserting "Secretary" in lieu thereof.

(d) Section 11(c)(3) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796; 89 Stat. 960) is amended by striking out "file quarterly reports with the President and the Congress" and substituting in lieu thereof "include a separate section in reports filed pursuant to section 57(a) of the Federal Energy Administration Act of 1974 containing information", and by striking out the last sentence of the subsection.

(e) Section 13 of the Solar Energy Research Development and Demonstration Act of 1974 (42 U.S.C. 5562; 88 Stat. 1437) is amended to read as follows:

"ANNUAL REPORTS

"SEC. 13. A summary of all actions taken under the provisions of this Act and action planned for the ensuing year shall be included in the annual report required by section 657 of the Department of Energy Organization Act (42 U.S.C. 7267).".

(f) Section 308 of the Act of June 3, 1977, entitled "An Act to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes" (42 U.S.C. 5816a; 91 Stat. 189), is amended by striking out "Energy Research and Development Administration", "Administration", and "Administrator" wherever they appear therein, and inserting respectively, "Department of Energy", "Department", and "Secretary of Energy" in lieu thereof, and by amending subsection (b)(2) to read—

"(2) report annually to the Congress with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year".

(g) Section 308 of the Act of December 31, 1975, entitled "An Act to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nuclear Energy Research and Development Act of 1974, and for other purposes" (42 U.S.C. 5801, note; 89 Stat. 1074), is amended by striking out "by June 30, 1976, and by the end of each fiscal year thereafter, submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate," and inserting in lieu thereof "include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information"; and by striking out "Administrator" wherever it appears therein and by inserting in lieu thereof "Secretary of Energy".

(h) Subsection (b) of section 204 of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), is amended to read as follows:

"(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).".

(i) Section 421 of the Energy Conservation and Production Act, (42 U.S.C. 6871; 90 Stat. 1158), is amended to read as follows:

"ANNUAL REPORT

"SEC. 421. The Secretary of Energy shall include in his annual report a separate section containing information describing the weatherization assistance program carried out under this part or any other provision of law including the results of the periodic evaluations and monitoring activities required by section 416.".

(j) Section 206 of the Energy Conservation and Production Act, (42 U.S.C. 6806; 92 Stat. 3134) is amended by striking out "Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report" and inserting in lieu thereof "The Secretary shall include in each annual report submitted under section 657 of the Department of Energy Organization Act a statement".

(k) Section 21(c) of the Federal Energy Administration Act of 1974 (15 U.S.C. 780(c); 88 Stat. 112) is amended by striking out "report quarterly to the Congress" and insert in lieu thereof "submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement".

(l) Section 18(d) of the Federal Energy Administration Act of 1974 (15 U.S.C. 777; 90 Stat. 1130) is amended by striking out "shall provide the Congress with an annual report" and inserting in lieu thereof "shall submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement" and by striking out "Such report" and inserting in lieu thereof "Such statement".

REPORTS BY THE DEPARTMENTS OF EDUCATION AND HEALTH AND HUMAN SERVICES

SEC. 205. (a) Section 112(c) of the Vocational Education Act (20 U.S.C. 2312(c); 90 Stat. 2187) is amended by striking out "The Commissioner shall prepare and submit annually to the Congress, within nine months of the termination of each fiscal year, a report on the status of vocational education in the country during that fiscal year." and inserting in lieu thereof, "The Commissioner shall include in the Commissioner's annual report a report on the status of vocational education in the country."

(b) Section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c; 92 Stat. 2983) is amended by striking out "each" and inserting in lieu thereof "every other".

(c) Section 183(g) Elementary and Secondary Education Act of 1965 (20 U.S.C. 2833 (g); 92 Stat. 2189) is amended by striking the words "no later than February 1, 1980, 1982, and 1984".

REPORTS BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 206. (a) Section 1234 of the National Housing Act (12 U.S.C. 1749bbb–10d; 84 Stat. 1790) is amended by inserting immediately after "shall include" the phrase "at least biennially".

(b) Section 1320 of the National Flood Insurance Act of 1968 (42 U.S.C. 4027; 82 Stat. 581) is amended—

(1) by striking out "include" and inserting in lieu thereof "biennially submit";

(2) by striking out "in the annual report"; and

(3) by striking out "required by section 8 of the Housing and Urban Development Act".

REPORTS BY THE DEPARTMENT OF THE INTERIOR

SEC. 207. (a) Section 1(1) of the Act of March 3, 1885, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes" (16 U.S.C. 743a; 88 Stat. 124), is amended by striking the first sentence of subsection (c) thereof, and inserting in lieu thereof the following sentence: "The Director of the United States Fish and Wildlife Service shall make a report to Congress at the end of any fiscal year that the provisions of this section are utilized, which describes the use of the provisions of this section, and the additional cost, if any, to the Federal Government resulting therefrom."; and striking out "annual" in the second sentence.

(b) Section 6 of the Act of June 22, 1936, entitled "An Act to authorize the Secretary of the Interior to investigate and adjust irrigation charges on irrigation lands within projects on Indian Reservations, and for other purposes" (25 U.S.C. 389e; 49 Stat. 1804), is amended by striking the first sentence thereof, and inserting in lieu thereof the following sentence: "The Secretary shall include in the report to Congress required pursuant to section 2 of this Act, a description of actions taken under the provisions of sections 1 to 6 of this Act during the preceding fiscal year.".

(c) The text of section 6 of the Guam Development Fund Act of 1968 (48 U.S.C. 1428d; 82 Stat. 1173) is amended to read as follows: "The Governor of Guam shall include in the annual report to Congress required pursuant to section 6 of the Guam Organic Act (48 U.S.C. 1422; 82 Stat. 844) a report on the administration of this Act.".

(d) Section 9(g) of the Act of July 22, 1954, entitled "An Act to revise the Organic Act of the Virgin Islands of the United States" (48 U.S.C. 1575(g); 68 Stat. 501), is amended to read as follows:

"(g) A listing of all laws enacted by the legislature each year shall be transmitted with the annual report to Congress required pursuant to section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591; 68 Stat. 503).".

REPORT BY THE DEPARTMENT OF JUSTICE

SEC. 208. Section 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d); 79 Stat. 915) is amended by striking out the first sentence and inserting in lieu thereof the following: "The Attorney General shall forward to the Congress a statistical summary of petitions for immigrant status approved by him under sections 203(a)(3) or 203(a)(6).".

REPORTS BY THE DEPARTMENT OF STATE

SEC. 209. (a) Section 204(b)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824(b)(4)(C); 90 Stat. 343) is amended by striking out "a copy of such material" and inserting in lieu thereof "a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7)".

(b) Section 23(d) of the International Secretary Assistance Act of 1978 (22 U.S.C. 2428b(d); 92 Stat. 744) is amended by striking out ", 120 days prior to each phase of troops withdrawal, a report on the viability of the withdrawal", and inserting in lieu thereof "a review of the viability of each phase of troop withdrawal as part of the annual report on Korea as required by section 668 of the Foreign Assistance Act of 1961 (22 U.S.C. 2428; 90 Stat. 760)".

(c) Section 23(e)(2) of the International Security Assistance Act of 1978 (22 U.S.C. 2428(e)(2); 92 Stat. 745) is amended by striking out "Prior to any further withdrawal," and inserting in lieu thereof "In the annual report on Korea required by section 668 of the Foreign Assistance Act of 1961 (22 U.S.C. 2428; 90 Stat. 760),".

REPORTS BY THE DEPARTMENT OF TRANSPORTATION

SEC. 210. (a) Section 211(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440(a); 84 Stat. 976) is amended by striking "May 1" and inserting "July 1" in lieu thereof.

(b) Section 163(o) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130, note; 87 Stat. 280) is amended by striking out "annual" and inserting in lieu thereof "biennial".

(c) Section 151(g) of title 23, United States Code, is amended by striking out "not later than September 30 of each year" and inserting in lieu thereof "not later than December 30 of each year" and by striking out "not later than January 1 of each year" and inserting in lieu thereof "not later than April 1 of each year.".

(d) Section 203(e) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130, note; 87 Stat. 283) is amended by striking out "not later than September 30 of each year" and inserting in lieu thereof "not later than December 30 of each year" and by striking out "not later than January 1, of each year" and inserting in lieu thereof "not later than April 1 of each year.".

(e) Section 311(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1861(a); 90 Stat. 358) is amended by striking out "semiannually," and inserting "annually on June 30," in lieu thereof; and adding at the end of the subsection, before the period, "during the preceding calendar year".

(f) Section 9(d)(2) of the Department of Transportation Act (49 U.S.C. 1657(d)(2); 80 Stat. 944) is amended by striking out "report annually in writing to the appropriate committees of the Congress on" and inserting in lieu thereof "include in the annual report required by section 11 a statement on".

(g) Section 112 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1421; 90 Stat. 725) is amended to read as follows:

"SEC. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.".

REPORT BY THE EXPORT-IMPORT BANK OF THE UNITED STATES

SEC. 211. The fourth, seventh, and eighth sentences of section 2(b)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635 (b)(1)(A); 80 Stat. 2333) are amended by striking out "semiannual" and inserting "annual" in lieu thereof.

REPORT BY THE GENERAL SERVICES ADMINISTRATION

SEC. 212. Section 11(a) of the Public Buildings Act of 1959 (40 U.S.C. 610; 73 Stat. 481) is amended—

(1) by striking out "The Administrator shall submit to Congress each January, promptly after the convening of Congress," and inserting in lieu thereof "Upon the request of either House of Congress, or any committee thereof, and within a reasonable time, the Administrator shall submit"; and

(2) by striking out "last preceding report made under this Act" and inserting in lieu thereof "request, or as of such other date as the request may designate".

REPORTS BY THE INTERNATIONAL COMMUNICATION AGENCY

SEC. 213. (a) Section 108(b) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2458; 75 Stat. 534) is amended to read as follows:

"(b) The President shall submit periodic reports to the Congress of activities carried on and expenditures made in furtherance of the purposes of this Act and of the United States Information and Educational Exchange Act of 1948, as amended.".

(b) Section 704(c) of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2056 (c); 74 Stat. 142) is amended to read as follows:

"(c) The Director of the International Communication Agency shall make periodic reports, as he deems necessary, to the Congress with respect to his activities under the provisions of this chapter, and such reports shall include any recommendations for needed revisions in this chapter."

REPORT BY THE LABOR MANAGEMENT RELATIONS BOARD

SEC. 214. Section 3(c) of the National Labor Relations Act (29 U.S.C. 153(c); 88 Stat. 1972) is amended by striking out "stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed" and inserting in lieu thereof "summarizing significant case activities and operations for that fiscal year".

REPORT BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 215. Section 408(b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736b(b); 80 Stat. 1537) is amended by striking out "March 31," in the second sentence thereof.

□ 1520

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is the result of a survey of reports to the Congress statutorily required from the executive agencies. The survey was conducted by the General Accounting Office under a mandate contained in the Legislative Reorganization Act of 1970, as amended in 1974. Simultaneously the Office of Management and Budget conducted a similar survey.

The Government Operations Committee reviewed the GAO and OMB recommendations and then contacted all House committees for their opinions as to whether the subject reports should be eliminated or modified. The bill, as reported by the committee on August 28, 1980, incorporates all of the suggestions of the affected committees.

H.R. 6686, as amended, eliminates 79 reports and modifies 52 reports presently required by law to be submitted to the Congress. Mr. Speaker, as you know, statutory requirements for reports have been steadily multiplying. Almost 800 new requirements for reports were added in the 1970's. Therefore, a review of these reports and elimination of those which are outdated or obsolete is an absolute necessity.

The adoption of this legislation will increase Government efficiency and the savings to the taxpayers will be in excess of a million dollars.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as one who is always looking for ways to reduce unnecessary Federal paperwork, I am delighted to voice my support for H.R. 6686, the Congressional Reports Elimination Act of 1980. Chairman Brooks, the General Accounting Office, the Office of Management and Budget, and the staff at the Government Operations Committee are to be commended for pursuing the elimination or modification of those congressionally mandated recurring reports that serve little or no useful purpose.

It should be noted that Congress generates new, recurring reports at the rate of several hundred per Congress. While this bill may not eliminate or modify as many reports as this 96th Congress generates, it at least represents a serious effort to neutralize the trend. I do not mean to suggest that all—or even most—reports generated by Congress are unnecessary. I am suggesting that we should always be monitoring the reporting process so that we can recognize when a report is no longer useful.

It should also be noted that GAO, OMB, and the Government Operations Committee staff went to great lengths to verify that the reports to be eliminated or modified by this bill are, indeed, no longer useful. Contact was made, not once but several times, with every committee of jurisdiction and with every affected agency. As far as we have been able to determine, there is no objection by anyone to any modification or elimination in this bill.

Mr. Speaker, I support H.R. 6686 and I urge its prompt approval here today.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding. I want to thank the distinguished gentleman from Texas (Mr. Brooks) for his leadership as chairman of the Committee on Government Operations, and the distinguished ranking member from New York (Mr. Horton) for bringing this measure to the floor to help us cut Government costs by eliminating some reports that are no longer necessary and by eliminating the frequent filing of other reports.

To my knowledge, however, the House Select Committee on Narcotics, of which I am a member, was not contacted regarding its views with reference to two provisions of H.R. 6686 that are of major concern to the chairman of the Narcotics Select Committee (Mr. Wolfe) and to some of us on the committee * * * reports that are important and that should be filed timely.

First, section 106(p) of H.R. 6686 would repeal the requirement for filing a report on the health consequences of marihuana; and, second, section 201 would require that the Federal drug strategy be revised, reviewed, and promulgated biannually rather than annually. The distinguished chairman of the Government Operations Committee and the ranking member may not be aware that these two documents are of major importance to those concerned with narcotics trafficking and drug abuse. Both of these reports are extremely helpful in raising the consciousness of the public regarding the dangers of drug abuse. Both reports are widely circulated within the Federal Government, among State health and law enforcement agencies and interest groups and internationally.

The proposal to repeal the report on the health consequences of marihuana comes at a time when more and more of our citizenry are abusing this substance without fully understanding its dangers and when more and more of our youngsters are smoking marihuana at a tender age.

With reference to the Government Operations Committee's proposal that the Federal Drug Strategy Council prepare its report biannually rather than annually, we should note that our Nation still lacks an effective strategy for preventing and controlling drug abuse. The Drug Strategy Council has not yet prepared its 1980 strategy which should have been published back in June of this present year pursuant to Public Law 94-237—that amends the Drug Abuse Office and Treatment Act of 1972. H.R. 6686's proposal to change the Drug Strategy Council's reporting requirements comes at a time when our Narcotics Select Committee is about to hold oversight hearings on the Federal drug strategy.

What is needed with regard to our administration's drug strategy is not any delay in reporting but a requirement for more timely annual reporting in order to encourage a continual effective national effort in our war on drugs.

Mr. BROOKS. If the gentleman will yield, I am happy to answer the gentleman.

Mr. HORTON. I am happy to yield to the chairman.

Mr. BROOKS. Let me say that I am familiar with both of these proposals. We do know about them and we were informed just about 2 days ago of the interest of the gentleman's committee in these two reports.

The other body has already put one of them in. The other one, if the gentleman can get it put in by the other body, or put in in conference, it suits me fine.

The truth of the matter is that we will get very little out of either of these reports in the way of hard facts since we have gotten so little out of them in the past. Notwithstanding the need for this information, these two reports are very likely to produce that which anybody can use, but if the gentleman wants to keep them we will keep these two, but it is just like the gentleman from New York (Mr. Horton) says, I would say to my friend, we have been very kind, and if anybody in any committee thought that they might possibly someday read one of these reports we have kept it in.

I hope that next year we can have a little harder standard and these reports that do not, in fact, represent something that is going to produce money or information that is useful, that we can cut them out regardless of one individual or a couple of people saying they kind of would like to have those reports people down there. It is going to take more than that from now on. But for this year I am for the gentleman's program and he can go on and have it. I will work on it in conference for the gentleman.

Mr. GILMAN. Will the gentleman yield further?

Mr. HORTON. I would like to yield but first I would like to say something also.

When I was chairman of the Paperwork Commission we found that a great amount of paperwork was involved in preparing these reports and many of them are mandated by the Congress. We just willy-nilly mandate reports.

I am not too familiar with the reports the gentleman is talking about but, as the chairman (Mr. Brooks) has said, we have leaned over backward to be lenient and to permit the reports to remain if any committee wanted to keep them.

I certainly would agree with Chairman Brooks that in the other body perhaps they might want to put those back in. I would also urge the gentleman from New York (Mr. Gilman) and those serving on those committees to scrutinize these reports so that in the next Congress perhaps where the gentleman is asking for two reports in a year they could put it on a yearly basis, because this in turn will also save paperwork and save people having to prepare all of these reports.

So that is what we are trying to do, eliminate the unnecessary paperwork, the people that are involved and the bureaucracy involved in preparing these reports, many of which are not even looked at. They are just filed someplace and it costs a lot of money to print them.

But I have no objection to the two reports the gentleman is referring to.

Mr. GILMAN. Will the gentleman yield further?

Mr. HORTON. I am happy to yield.

☐ 1530

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding and I commend the chairman and the ranking minority member for their salutary objectives in seeking to eliminate unnecessary paperwork and I certainly advocate what they are seeking to do. But both of these narcotic reports which I have referred to are significant to the entire health and law enforcement community that is concerned with drug abuse. One report pertains to the utilization of marihuana—there is a growing need to keep apprised annually of these problems—and the other pertains to the Federal strategy on drug abuse and control. The 1979 Federal drug strategy report became virtually a bible for law enforcement people across our Nation and throughout the world. I am hopeful that we can help to continue to focus on these important problems. I appreciate the distinguished chairman and the ranking member's assurances that they would make certain the present requirement for filing these reports would be continued.

I hope that in any conference committee deliberation on this measure that the chairman and the ranking member would make certain that the present filing requirements for these vital drug reports will be maintained.

I thank both gentlemen for their support.

Mr. HORTON. I would indicate that this report the gentleman has here, the 1979 report entitled "Federal Strategy for Drug Abuse and Drug Traffic Prevention," prepared by the Strategy Council on Drug Abuse, is not a very large report. Certainly if we can continue it, I think it would be a good report to continue.

Mr. Speaker, I urge the adoption of H.R. 6686.

● Mr. ALBOSTA. Mr. Speaker, I rise in support of this bill.

On December 11, 1979, I introduced H.R. 6083, the Congressional Reports Elimination Act. This bill was the draft proposed by the Office of Management and Budget, after they had compiled a list of 278 reports mandated by Congress that can be modified or eliminated.

I introduced this bill because of the testimony received from my constituency at field hearings in my district on the burden of Federal paperwork. The message from my constituents was clear on this subject—they have had enough paperwork requirements from the Federal Government. Congress and the bureaucracy must work to reduce or eliminate that burden.

I am pleased the chairman of the committee took on the leadership role that he did in moving this legislation through his committee. He has shown a clear commitment to not only reduce Government, but also improve the operation of essential Government services. For that I thank him.

Congress through the years has been guilty of placing a paperwork burden on the American public. All too often people feel it is only the bureaucracy that can commit such sins, but when public laws require a Federal agency to continually make a report to Congress, these reports translate into additional information requirements from our already exhausted public. The real problem is that many of these reports are either not needed because of changes in the law, or represent duplication of information already compiled by other sources.

H.R. 6686 represents a strong movement toward a reduction, and in some cases an elimination of reports that have been mandated by the Congress, but are simply no longer needed in their present form. This bill leaves intact those reports that are still of essential value in their present form.

While there are over one hundred fewer reports affected by H.R. 6686, than in the bill I introduced, I feel it is vital that we take this first step that will show the bureaucracy that the Congress is willing to cut down on its reporting requirements on them so that they can spend more time fulfilling the goals of the agency. I am hopeful that this action will be translated by the agencies into a reduction of the reporting requirements on the American public. It is then, and only then, that we will be able to solve the problems expressed in the hearings conducted in my congressional district that unnecessary paperwork requirements are inflationary and counterproductive. Particularly in small businesses, this redtape can serve to discourage hiring people who desperately need jobs. Unfortunately, to the employers, additional employees represent reams and hours of Federal, State, and local paperwork.

We must take this important step toward solving our Nation's paperwork problems by passing H.R. 6686.●

Mr. HORTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion of the gentleman from Texas (Mr. Brooks) that the House suspend the rules and pass the bill, H.R. 6686, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

TREASURY DEPARTMENT INTERNATIONAL AFFAIRS FUNCTIONS AUTHORIZATION, 1981

Mr. CAVANAUGH. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2514) to authorize appropriations for the international affairs functions of the Department of the Treasury for fiscal year 1981, and for other purposes.

The Clerk read as follows:

S. 2514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10(d) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(d)) is amended—

(1) by inserting after the world "provided" the words "to employees of the Department of State"; and

(2) by inserting before the period at the end thereof the following: ", and by section 5924(4)(B) of title 5, United States Code".

Sec. 2. (a) Section 5(a) of the Act of November 8, 1978 (92 Stat. 3092) is amended—

(1) by striking out "and" after "1979" and inserting in lieu thereof a comma;

(2) by inserting "and $23,671,000 for fiscal year 1981," after "1980,"; and

(3) by inserting before the comma after "representation expenses" the following: "and for payments under an agreement with the Asian Development Bank for a salary equalization program for United States nationals employed by the Bank who are subject to United States income taxes".

(b) Subsection (b) of such section is amended by inserting "and for fiscal year 1981 not to exceed $1,100,000," after "$800,000".

Sec. 3. (a) The Congress finds that—

(1) there is an accelerating trend among nations to construct new, government-owned or sponsored steelmaking capacity;

(2) such trend leads to economically unjustifiable excess capacity which will inevitably force those governments to dump their surplus production on world markets;

(3) the principal industrialized nations of the world are contributing to this problem through their government-subsidized financing of the construction of this excessive steel producing capacity;

(4) such financing is provided on far more generous terms than are available to domestic industry for its own capital investment needs;

(5) neither the Multilateral Trade Negotiations nor the International Arrangement on Export Credit provide any meaningful restraints on predatory financing practices; and

(6) to continue such financing without adequate restraints is self-defeating to the interests of the United States and other industrialized nations.

(b) Therefore, the United States shall promptly initiate, through its representative to the Organization for Economic Cooperation and Development Steel Committee, discussions leading to a multilateral agreement halting predatory government-subsidized export credits for steel plants and equipment.

(c) The Secretary of the Treasury shall report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs on the progress of this initiative six months after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The gentleman from Nebraska (Mr. Cavanaugh) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. Leach) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. Cavanaugh).

Mr. CAVANAUGH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, S. 2514, is a routine authorization of administrative expenses for the carrying out of the international affairs functions of the Department of the Treasury. Those expenses encompass staff salaries, office and equipment supplies, travel, communications, research, and representation in international organizations and foreign countries. With the exception of one amendment added by the Senate, it is identical to H.R. 7051, which has been favorably reported by the House Banking Committee, by voice vote.

The Treasury had originally requested an authorization of $24,271,000, plus $1,100,000 for mandated cost-of-living expenses. The House and Senate Banking Committees reduced the request for administrative expenses to $23,671,000, and left the cost-of-living category unchanged. With this change, this authorization calls for an increase of about 7 percent over the authorization for fiscal

1980. Over half of the funds will be spent on salaries and personnel compensation. The increase in funds for the salaries of Treasury staff working on international affairs is minuscule. The Treasury has kept the size of its international affairs staff virtually constant.

The bill contains two minor provisions for new types of payments. It authorizes the Treasury to provide its overseas employees allowances for educational travel for dependents equal to those provided State Department employees. And it authorizes the Treasury to enter into a "salary equalization program" with the Asian Development Bank so that Americans employed at the ADB will receive roughly the same real salaries as other nationals. ADB salaries are calculated on the assumption that the employees' salaries will not be taxed by their national governments.

But Americans employed at the ADB must pay U.S. income tax on their salaries, so they suffer a real after-tax discrimination in their pay levels. For that reason, many have quit the ADB. A program of compensatory payments is necessary to remove that discrimination, and enable the ADB to attract and retain Americans.

I would like to emphasize that these payments are not additional to the basic authorization, but are included within the $23,671,000 for administrative expenses. The Treasury estimates the payments for dependents' travel allowances will not exceed $10,000. It requests $700,000 for the "salary equalization program" with the ADB.

I would also like to point out that this is only the second annual authorization we have given the Treasury for these expenditures. Prior to fiscal year 1980, all these expenses were paid out of the resources of the Exchange Stabilization Fund (ESF), which is not in the budget. In 1978 we passed legislation prohibiting that off-budget practice, and putting all these expenditures in the budget, subject to our annual scrutiny. These are normal administrative expenditures. They are not in any way what I would call "policy expenditures." That is, these funds are not used for foreign loans, or U.S. contributions to international organizations. They have nothing to do with foreign aid. They basically just pay the salaries of the staff who work on Treasury's international policies, as well as other routine administrative expenses. These expenses would be more or less the same, no matter what kind of international policies the Treasury Department pursued, no matter what kind of administration were in office.

The Senate added one amendment to this bill, sponsored by Senator HEINZ. It directs the U.S. Representative in the OECD Steel Committee to initiate discussions leading to a multilateral agreement to halt predatory Government-subsidized export credits for the construction of steel plants. The problems of our steel industry clearly indicate that there is excessive steel-producing capacity around the world, so I think it is wholly appropriate that we try to get other governments to stop subsidizing the construction of even more steel capacity.

With this welcome amendment, I urge the House to adopt S. 2514.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield for a question?

Mr. CAVANAUGH. I yield to the gentleman from Maryland.

Mr. BAUMAN. If I am not mistaken, Mr. Speaker, this is the same bill, except for the Senate amendment dealing with the steel matter, that was defeated by the House on suspension some months ago. Is that correct?

Mr. CAVANAUGH. That is correct.

Mr. BAUMAN. Has there been any consideration given by your committee to bringing this matter up under a normal rule so that amendments could be considered? It seems to me the House rejecting it once might have dictated we would have used a different procedure this time.

Mr. CAVANAUGH. There has been no consideration to my knowledge to changing the procedure. I believe it was the feeling of the committee that with the Heinz amendment the original legislation was greatly enhanced and, therefore, probably would meet with favor in the House.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for his explanation.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill represents a lean budget for a very busy and effective arm of our Government. Treasury's International Affairs Department plays an important role in assuring that U.S. international economic policies support the needs of our domestic economy. Treasury has major international responsibilities: The Secretary is Governor of the International Monetary Fund, the World Bank, and other multilateral development banks. Cochairman of the Saudi Arabian-United States Joint Commission on Economic Cooperation; Cochairman of the U.S.-U.S.S.R. Commercial Commission; and Cochairman of the United States-China Joint Economic Commission. The Secretary oversees U.S. international monetary policy and operations, represents the United States in discussions and negotiations on financial issues with other countries, and closely assists the President at economic summit meetings.

Our fight against inflation, in particular, includes international as well as domestic initiatives. A stable dollar, and a fair and open system of international trade and investment, are essential aspects of our efforts to avoid additional inflationary pressures here at home. Smoothly functioning international monetary arrangements are equally important. Such activities as these, on the part of the Secretary and other senior Treasury officials, obviously require highly professional staff support.

The authorization for fiscal year 1981 for the international affairs function is $24.8 million—comprised of $23.7 million for the basic expenses and $1.1 million which would be available only for the payment of authorized cost-of-living increases in pay and overseas allowances and benefits. This represents a 7-percent increase over last year for Treasury's 460-person office, and is $600,000 less than originally sought by Treasury.

The Senate version of the bill which we are now considering has a very interesting amendment which speaks to the problem of predatory export financing.

In the last few years a number of our foreign competitors have resorted to giving highly subsidized credit terms to their exporters who are selling steel plants and steelmaking equipment abroad. This is a serious development for two reasons:

First, subsidizing the credit lowers the cost of building new steelmaking capacity to the point where it easily leads to excess steel production. The net results, of course, is unfair pressure on U.S. producers from subsidized or desperate foreign steel producers.

Second, where the new capacity is needed, subsidizing credit takes export sales away from U.S. exporters who do not have access to highly subsidized credit. The net result is that both U.S. steel producers and U.S. equipment producers are injured by the foreign subsidy.

This problem is not limited to the steel community. Foreign predatory export financing has cost U.S. exporters billions in lost exports in recent years, although the problem is particularly acute with regard to steel. The Heinz amendment attempts to solve the problem—not by matching foreign subsidies with expensive U.S. subsidies, but by calling upon Treasury to negotiate an end to such practices within the OECD Steel Committee. This is a sound approach, and similar to that embodied in H.R. 6596—a bill I introduced to end foreign predatory financing practices.

In this regard, I should like to stress that predatory financing is a two-edged sword. When the Carter administration agreed to undercut the financing terms offered by foreign competitors on the sale of aircraft to the Australian publisher Rupert Murdoch, it increased the chances that European governments would subsidize the sale of other products such as steel in this country. Mr. Carter errored in offering taxpayer subsidies to Mr. Murdoch and the subsequent endorsement of Mr. Carter by Murdoch's newspaper, the New York Post, raises ethical questions of the most serious nature.

While I fully support this legislation and feel it should pass, I feel it is important to reiterate a point I have made throughout its consideration.

There is a great myth that this administration "gave-in" to congressional pressure to bring the functions of this office "on-budget." My colleagues will remember that until last year these authorizations were funded out of profits from the "off-budget" Exchange Stabilization Fund. The ESF is Treasury's $4 billion slush-fund with which they defend the value of the dollar in international exchange markets.

Now you do not have to be a speculator like Bunker Hunt to know that when you speculate in the dollar and the dollar's value goes up—you make a profit. But if the dollar declines, you meet the same fate the Hunt Brothers met in the silver market—big losses. This is exactly what happened with the administration's feeble attempts to support the dollar—big losses.

We could debate the causes of the dollar's decline in recent years. Certainly part of the blame must rest on this administration's shoulders. They tried to arrest the dollar's slide too late in the game after much of the damage was done. In addition, they have failed to inspire confidence in U.S. economic leadership around the world that is central to a stable dollar.

The net result of this has been significant (paper) losses to the Exchange Stabilization Fund over recent years—losses which would have made it impossible to fund Treasury's operations out of the ESF. Treasury had little choice but to seek open authorizations for their operating expenses.

Whatever their motivations, Treasury's international operations are crucial to the smooth functioning of the international monetary system and our continued prosperity. These authorizations have been cut back by the committee to what we feel is a bare-bones budget in line with overall budget stringency. The bill deserves our support.

Thank you.

□ 1540

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. LEACH of Iowa. I will be delighted to yield to the gentleman from Arizona.

Mr. RUDD. This is the Senate version of H.R. 7051, I believe?

Mr. LEACH of Iowa. Yes; that is correct.

Mr. RUDD. Which failed to pass on suspension by a vote of 251 to 143 last June 4?

Mr. LEACH of Iowa. That is correct.

Mr. RUDD. The only difference is the amendment the gentleman is talking about?

Mr. LEACH of Iowa. The only difference is the amendment from the distinguished minority Senator from Pennsylvania, Mr. HEINZ.

Mr. RUDD. Was there a good reason why it was not brought up under regular order rather than under suspension again?

Mr. LEACH of Iowa. I am afraid the gentleman will have to direct that question to the majority.

Mr. RUDD. Since the bill failed to pass under suspension before, is there a good reason why it was brought up again under suspension?

Mr. CAVANAUGH. Mr. Speaker, I think the basic reason was time and the fact that the Senate had acted and that the House was in agreement and willing to accept the Senate action, and in order to expedite the legislation, which is of a purely technical nature and has not in the past encountered partisan or engendered partisan conflict; it was felt that it could again proceed under suspension as enhanced by the minority amendment attached in the Senate and accepted now by the House.

Mr. RUDD. Well, It seems to me, Mr. Speaker, that even though the one slight technical change may be, if it failed to pass under suspension once, it would deserve to at least get a vote on it.

Mr. LEACH of Iowa. The change that has been made is very substantial in terms of policy, although it may be considered technical in terms of no considered technical since there is no alteration of the budget items involved. However, in this regard it should be stressed that what we are talking about is a 7-percent increase in funding over the previous year which is less than the inflation rate and $600,000 below what the administration originally sought.

It should also be stressed that those individuals affected by this legislation have as their responsibility the vital role of this Government in the overall international financial system. This is a very important governmental function and the minimal funds involved are of small consequence compared to a mistake in policy that might occur if we were to constrain this particular division too greatly.

Mr. RUDD. I think the question before that was these funds provide funds for staff for the directors of the various banks?

Mr. LEACH of Iowa. In large measure.

Mr. RUDD. Yes; and nothing to my knowledge was presented on the floor under suspension indicating the justification for the staff involved, other than the fact that people need staff.

Mr. LEACH of Iowa. I would be happy to outline the exact breakdown on how the funds were expended if that would be of consequence.

Mr. RUDD. I think that would be of consequence.

Mr. LEACH of Iowa. Basically speaking, we are talking about an authorization of $23.6 million, of which salaries are $13.7 million; personal benefits, $1.5 million; travel, $1.05 million; transportation of things, $.104 million; standard level user charges, $.256 million; other rents, $1.52 million; printing and reproduction costs, $.387 million; supplies and materials, $.192 million; equipment, $.162 million; other services. which I can also break down for the gentleman, about $5.2 million. So, the sum total is about $23.67 million plus $1.1 million for cost-of-living adjustments for the people involved.

Mr. RUDD. I certainly thank the gentleman for the enumerations. I think I have a printout of that here also. I thank the gentleman.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Nebraska (Mr. CAVANAUGH).

Mr. CAVANAUGH. Mr. Speaker, first I would like to simply acknowledge and commend the gentleman from Iowa (Mr. LEACH), and to assure the gentleman that for his participation in this legislation, in which he has truly been a leader of the subcommittee, and assure him that if there was ever any doubt in the mind of the Secretary of the Treasury and the Department of the Treasury that predatory trade practices were indeed a two-edged sword, that his participation over the last several months has sharpened their awareness of both sides of that sword, as he has wielded it along their backsides on several occasions. I want to commend the gentleman for his participation in this legislation, and further state that the Heinz amendment is more than a technical amendment. It is a substantive amendment, and probably has become the most substantive part of the bill. The rest of the bill is primarily a technical authorization piece of legislation which the appropriation has preceded, but the Heinz amendment is important and substantive and does commend itself to the House.

● Mr. REUSS. Mr. Speaker, we are again considering this legislation under the suspension of the rules procedure. Though the earlier vote on June 4, 1980, was overwhelmingly in favor of the House bill, 251 to 143, it did not obtain the necessary two-thirds. I am confident that we can build on the earlier vote and secure passage of this Senate-passed bill.

I note that the bill we are considering today contains an amendment added by the Senate to require the administration to begin negotiating with other countries to end predatory export financing for steel-producing plants and equipment. This is a modest provision which those who favor free and fair trade can easily support.

The basic legislation, authorizing appropriations for the Treasury Department's international affairs responsibilities, should be noncontroversial. There is no foreign aid involved. The funds will go to pay for normal administrative expenses for U.S. economic representation in foreign countries and international organizations. As long as this country remains committed to strong involvement in the international economy, our Treasury Department will have important responsibilities in making that involvement effective. I urge you to support this vital legislation.●

Mr. LEACH of Iowa. Mr. Speaker, I yield back the balance of my time.

Mr. CAVANAUGH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. CAVANAUGH) that the House suspend the rules and pass the Senate bill, S. 2514.

The question was taken.

Mr. RUDD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. CAVANAUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on the Senate bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

OIL SHALE LEASING AMENDMENTS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7941) to amend section 21 of the act of February 25, 1920, commonly known as the Mineral Leasing Act.

The Clerk read as follows:

H.R. 7941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 21 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain," approved February 25, 1920 (41 Stat. 437; 30 U.S.C. 241) (hereinafter referred to in this Act as the Mineral Leasing Act of 1920) is amended as follows:

Add the following new section:

"(d) The Secretary is authorized to issue, to the holder of any oil shale lease issued under subsection (a) of this section prior to 1985 an additional lease or leases for the use of other Federal lands for purposes, other than the removal of any mineral deposits contained therein, connected with the development of an oil shale operation under an oil shale lease, that the oil shale lessee demonstrates are necessary and appropriate for such operations. These uses may include, among other things, the disposal of oil shale waste and other materials removed from the lands covered by an oil shale lease and the building of plants, reduction works, and other facilities needed for operations under an oil shale lease. The Secretary may issue such additional leases after consideration of the environmental and other resource values and other possible uses of the lands to be covered by the leases and upon a determination that the public interest would be served thereby. Any lands under the jurisdiction of a Federal agency other than the Department of the Interior shall be included in such a lease only with the consent of that agency and shall be subject to such terms and conditions it may prescribe.

"A lease issued under this subsection shall be for such periods of time and shall include such lands as the Secretary determines to be necessary to achieve the purposes for which the lease is issued, and shall contain such provisions as he determines are needed for proper protection of environmental and other resource values. The lessee shall pay an annual rental which shall reflect the fair market value for the use of the lands covered by the lease. Such payment shall be subject to adjustment so that it continues to reflect fair market value. Lands subject to a lease under this subsection shall remain subject to leasing under the other provisions of this Act where such leasing would not be incompatible with the purposes for which a lease is issued under this subsection. A lease issued under this subsection shall not be transferable except in conjunction with the transfer of the associated oil shale leases issued pursuant to subsection (a) of this section.".

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes, and the gentleman from Utah (Mr. MARRIOTT) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I rise in support of H.R. 7941.

Very briefly, this bill would amend the Mineral Leasing Act of 1920 to authorize the Secretary of the Interior to lease the holder of an oil shale lease, issued prior to 1985, certain additional lands outside the existing oil shale lease. The additional land would be used for the disposal of waste, construction of plants, facilities or for any other purpose necessary for the production of shale oil, other than the mining of oil shale itself.

The Department of the Interior has issued four prototype oil shale leases covering approximately 5,000 acres each in Utah and Colorado. This program was designed to obtain on the ground knowledge and experience in the techniques of mining, extracting and retorting oil shale. Various methods are under development from open pit mining to underground room and piller mining to in-situ and modified in-situ extraction of the oil from shale. However, in all of these methods one of the most serious impediments has been the lack of authority by the Secretary to allow the use of the surface of land outside an existing lease for waste disposal, construction of plants and other facilities necessary for the proper development of these oil shale deposits. If the existing oil shale leases are used for these purposes, it would in many cases significantly reduce the amount of oil that could be produced from any given tract of land.

H.R. 7941 is a much simplified version of the administration's proposal, H.R. 7857. That proposal not only included the same provisions for the use of offsite disposal as is in H.R. 7941, but it also contained additional language which was much more encompassing and potentially controversial. Briefly, it would have granted the Secretary authority to issue oil shale leases for more than 5,120 acres when such a larger acreage was necessary for commercial development; it would have clarified the Department's authority to issue multiple mineral leases, that is, leases for dawsonite, nacholite, and halite intermingled with oil shale; and finally, it would have authorized the issuance of two leases per State per person, or four nationwide rather than the present one lease limitation.

Due to the complexity of some of these proposals, and the additional fact that they were not submitted timely by the Department, the committee's decision was to go forward with a simplified version represented by H.R. 7941, and to defer action on the more comprehensive, but complicated and controversial, departmental proposal until another time. The off-site disposal problem is the most immediate and pressing one, and H.R. 7941 takes care of that immediate problem. Major reform of oil shale leasing can be postponed until a more appropriate time.

Let me touch quickly on the potential energy resource tied up in oil shale. In the lands of Colorado, Utah, and Wyoming there are approximately 1.8 trillion barrels of shale oil. Of this, approximately 600 billion barrels is estimated to be recoverable with known technology. The economics of this recovery are not quite so clear. However, that is improving and hopefully in the next few years this resource can be developed.

I said previously there are 600 billion barrels of recoverable oil in these shale deposits. By comparison, the known oil reserves of Saudi Arabia are placed at 165.7 billion barrels, or about one-third the size of the potential of oil shale. Now, I am not advocating any all out or crash development of this resource, notwithstanding its size. I do not want any open pit covering half of Colorado, nor the canyons of Utah filled level with waste. H.R. 7941 does not authorize that. It is a very modest start and any lease for additional land can be issued under H.R. 7941 by the Secretary only after consideration of the environmental and other resource values, as well as other possible uses of the land, and after careful consideration of the overall public need and interest.

Mr. Speaker, I support H.R. 7941 and urge its adoption.

☐ 1550

Mr. Speaker, I reserve the balance of my time.

Mr. MARRIOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 7941, which is the final result of legislation I introduced in May of this year.

This bill is the first priority of companies interested in oil shale development to expedite oil shale to help meet this Nation's energy problems.

This bill enjoys broad bipartisan support, support of the western Members of Congress, as well as the White House.

The United States contains some of the richest oil shale reserves in the world. According to the Department of the Interior, there are approximately 1.8 trillion barrels of oil shale underlying some 17,000 square miles of Colorado, Utah, and Wyoming. About one-third or 600 billion barrels are now recoverable.

That 600 billion barrels equals 90 percent of the known world reserves of conventional oil, and at current rates of consumption would fulfill U.S. needs for 100 years.

Testimony before the Mines and Mining Subcommittee revealed, however, that a necessary element of oil shale development is the ability of the lessee to utilize offsite lands for the disposal of spent shale or for the location of retorting facilities.

Not to utilize the leased lands for those purposes is to permit unnecessary waste, which is counter to our national policy of energy development. On those tracts where open-pit extraction is the most economical manner of mining, offsite leasing is crucial.

The bill before the House today would permit the Secretary of the Interior to issue such leases to the holder of an oil shale lease issued prior to 1985.

By adoption of this legislation, we will insure that the development program now ongoing will not be frustrated but will in fact be expedited.

There is additional legislative work that remains to be done. As oil shale becomes a major plank in our energy platform, the Mines and Mining Subcommittee of the House will be working on this in the years to come. This legislation today is the first step to successful oil shale development and U.S. energy independence.

Mr. Speaker, I would like to thank the chairman of the full committee for assisting us in expediting this legislation. I hope that we can encourage the Senate to move quickly on this legislation before we adjourn.

Mr. WHITTAKER. Mr. Speaker, will the gentleman yield?

Mr. MARRIOTT. I am happy to yield to the gentleman from Kansas.

Mr. WHITTAKER. Mr. Speaker, I rise today in support of H.R. 7941.

I rise to make two points: First, that this legislation is necessary and timely if America is going to become energy independent.

The second point is to congratulate Congressman MARRIOTT for taking the lead in this legislation, for pursuing it over the past year, and for seeing it brought to fruition.

His efforts and the efforts of many of his colleagues will make it possible for oil shale to play a key role in energy independence.

● Mr. SANTINI. Mr. Speaker, I urge my colleagues to support H.R. 7941. The legislation authorizes the Secretary of Interior to lease to anyone holding an oil shale lease prior to 1985 additional lands outside the existing lease for surface use purposes.

In 1974, the Department of Interior implemented the Federal prototype oil shale leasing program which was designed to test the environmental and socioeconomic feasibility of oil shale development by various methods of mining and processing. However, development under the program has been minimal, providing supervisory experience and limited technical and environmental information. One of the major impediments has been the lack of secretarial authority to allow surface use of additional lands not located within the oil shale lease.

In some of the richest shale areas, the most efficient mining operations cannot be accomplished if the processing plant and spent shale disposal are located on the lease site. The additional area authorized by this proposal would be used for disposal of oil shale waste, disposal of overburden removed from the leased lands, for construction of plants, processing facilities, storage facilities, or other surface uses for development of oil shale. The mining of oil shale would not be authorized on the additional tract.

Although there are many impediments to development of oil shale which will require legislative action, the off-site lease provision appears to be the most imminently needed change. Representatives of the Rio Blanco Oil Shale Co., the leaseholder of the C-a Federal tract in the Piceance Basin, Colo., testified during hearings in the Senate, as well as the House, of the loss of oil recovery by various mining and processing methods. An open pit surface mine operation would yield 5 billion barrels of shale oil; a modified in situ method would yield 2 billion barrels; and an underground room and pillar operation would yield 1 billion barrels of shale oil. Thus, the most efficient type of operation developed to date—open pit surface mine—is dependent on an off-lease siting for processing plants and a disposal of spent shale. Production by the Rio Blanco could begin in 1987 from the open pit method.

If we intend to meet the President's production goal of 400,000 barrels of oil per day by 1990, we must actively encourage development of the oil shale industry today. At the present time, there are only two operations near to a development stage, with an initial combined production of 60,000 barrels of shale oil per day. The resource base is much greater than even the President's goal, but the success of second and third generation shale plants depends on the technologic, economic, and social factors derived from the initial development.

The Congress has implemented many laws over the past few years which all add impediments to energy development. Among those new laws are the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Federal Land Policy Management Act, the Endangered Species Act, the Antiquities Act, the Wilderness Act, the Safe Drinking Water Act, the National Environmental Policy Act, and the Surface Mining Control and Reclamation Act.

The oil shale industry will be one of the first major new industries to be developed under those strict controls. In light of all the constraints, it is imperative that Congress legislatively encourage development of the initial plants to gain the knowledge and experience needed to obtain oil from shale.

One of the primary questions asked concerning oil shale development is the availability of water. Although studies have been made indicating that an industry of 500,000 barrels per day will not require water tradeoffs, the knowledge derived from initial projects will provide actual water requirements as well as technology to reduce the water requirements.

Unless Congress acts to reduce many of the legislative and regulatory constraints, the success of the Department's prototype oil shale program will be drastically thwarted. We need to test the environmental and socioeconomic factors of oil shale development by various mining and processing methods. There is no question of America's oil needs—the only question is the most effective means of obtaining domestic oil from shale.

I urge my colleagues to support passage of H.R. 7941.●

Mr. MARRIOTT. Mr. Speaker, I thank the gentleman from Kansas (Mr. WHITTAKER), and I reserve the balance of my time.

Mr. UDALL. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 7941.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, pursuant to the order of the House on Wednesday, September 10, 1980, I call up the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980, and ask for its consideration in the House as in the Committee of the Whole.

The Clerk read the joint resolution, as follows:

H.J. RES. 607

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sum is appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1980, namely:

VETERANS ADMINISTRATION

READJUSTMENT BENEFITS

For an additional amount for "Readjustment benefits", $40,000,000, to remain available until expended.

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in connection with the consideration of House Joint Resolution 607.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. WHITTEN. Mr. Speaker. I move to strike the last word.

Mr. Speaker, expeditious handling of this joint resolution is essential to insure that veterans receive their educational benefits checks—benefits to which they are entitled by law—as soon as possible.

The Veterans' Administration originally requested and Congress approved $2.3 billion for education payments in the current fiscal year, which ends September 30. The additional $40 million provided in this joint resolution is needed because of higher than anticipated enrollments of Vietnam-era veterans under the GI bill.

On September 4, the administration requested a $40 million supplemental appropriation for readjustment benefits. On Tuesday, September 9, I introduced a resolution (H.J. Res. 607) to provide the additional $40 million for readjustment benefits. The full Committee on Appropriations met on Wednesday, September 10, and approved the supplemental request. Time did not permit the House considering this measure on Wednesday, September 10.

Without the supplemental appropriation, the Veterans' Administration estimates that 128,000 veterans will face delays up to 4 weeks in receiving their checks.

Mr. Speaker, the Congress has long supported our veterans and I urge quick passage of this joint resolution.

● Mr. BOLAND. Mr. Speaker, the Veterans' Administration estimated that 1,173,100 trainees would apply for readjustment benefits in fiscal year 1980. To cover those costs, Congress appropriated $2,278,535,000 in the 1980 HUD-Independent Agencies Appropriation Act. The VA now estimates an additional 18,300 post-Korean war veterans will apply for readjustment benefits in fiscal year 1980. This increase in the number of trainees is primarily attributed to the economic situation. Cost of the additional trainees, and a net increase of $24 million in overpayments, is estimated to be $115 million.

The VA plans to transfer $75 million to help cover this cost—$55 million from the compensation and pensions appropriation and $20 million from the education loan fund. That leaves a balance of $40 million needed to cover payment of readjustment benefits for the rest of fiscal year 1980.

On September 4, the administration requested a $40 million supplemental appropriation for readjustment benefits. On September 5, the HUD-Independent Agencies Subcommittee approved the request. On September 9, Chairman WHITTEN introduced a resolution (H.J. Res. 607) to provide the additional $40 million for readjustment benefits. The full Committee on Appropriations approved the supplemental request on September 10.

An eligible veteran is entitled to educational benefits. The VA is holding up payment cycles for new applicants and those veterans seeking adjustments to their present payment until this appropriation is received. If Congress does not pass this urgent supplemental appropriation, approximately 128,000 veterans will face delays of up to 4 weeks in receiving their educational benefit checks.

Mr. Speaker, I urge speedy passage of this resolution.●

Mr. CONTE. Mr. Speaker, I move to strike the last word, and I rise in support of the joint resolution.

Mr. Speaker, in yet another example of bureaucratic bungling, the administration has allowed the Veterans' Administration to fall $40 million short in funds needed to meet VA educational benefit payments through the end of fiscal year 1980.

We have been informed that although VA officials knew as early as last July that there would probably be a shortfall, OMB officials ignored VA recommendations for a supplemental appropriation request.

Finally on Thursday, September 4, only after the VA regional offices had already been informed that not all veterans would be receiving their checks, did OMB finally send to the committee a $40 million supplemental request.

Mr. Speaker, I am amazed at the insensitivity of the administration to the needs of our veterans. At a time when the unemployment rate for all veterans is over 7 percent and for those veterans between the ages of 20 and 24 it is an astounding 17.3 percent, the need has never been greater to encourage our veterans to go to school to get the education necessary to get a good job.

Mr. Speaker, I am one of the thousands of World War II veterans who went to school on the GI bill. I know from my personal experience how important these educational assistance checks are. Many of these veterans have families. They cannot wait a month or two for their checks. They have to have this money to continue their education.

Mr. Speaker, the Appropriations Committee has attempted to act on this matter as quickly and responsibly as possible. We received this supplemental request from OMB on September 4. Last Wednesday, less than 1 week later, we met in full committee and reported favorably on it. That very afternoon we asked and received unanimous consent to make it in order to bring this matter to the floor today.

Mr. Speaker, I urge immediate approval of this urgent supplemental request. It is very important to our veterans.

Mr. BAUMAN. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I do so only to ask a few questions of the gentleman from Mississippi (Mr. WHITTEN).

□ 1600

I certainly support the resolution, and I understand full well the necessity for passing it. But I did want to try and clear up an inconsistency that appears to me.

On September 9, in the CONGRESSIONAL RECORD, the Congressional Budget Office indicated that there was only $19 million remaining in outlays for the current fiscal year 1980. The urgent supplemental appropriation we have before us today appropriates $40 million. In reading the resolution, it says "* * * for the fiscal year ending September 30, 1980 * * *." In other words, it would appear that a point of order would lie. I do not intend to make one. But it would appear that a point of order might lie against this bill since the bill is drafted in the form for current year spending and the Budget Office has told us that we no longer have that amount of money available.

Mr. WHITTEN. May I say to my colleague, the gentleman from Maryland, that we checked this matter and I was advised that House Joint Resolution 607, in its present form, would leave an estimated $237 million in budget authority and $19 million in outlays under the current budget ceiling.

This resolution would have no outlay impact in fiscal year 1980 and I pass that information on, for the record.

Mr. BAUMAN. I think the gentleman's reading of the situation is the same as mine, but I just wonder, if we are going to bring up any other supplementals before the new fiscal year date of October 1, what exactly the situation will be with the Budget Act. It seems to me that you might have written this to say that it would take effect on October 1, as we have done with several other appropriations.

Mr. WHITTEN. All I can say to the gentleman is that I am reluctant to act personally on any further requests. I could not say that additional requests will not come up. But if any emergency request should come up and there is convincing evidence that it does exceed the budget, the only thing we could do is ask for a rule waiving the budget ceiling. It would take a very serious matter to bring that about, but I know of no other way to deal with it.

Mr. BAUMAN. I thank the gentleman from Mississippi, the distinguished chairman, for his response, and I would only say, Mr. Speaker, that today is the 15th of September, the day by which Federal law requires the Congress to have passed the 1981 budget. We have not passed the budget. We have not passed in the other body, particularly, appropriations bills, and we are proceeding with this bill today in a time-honored tradition of meeting the Government's needs because of the Appropriations Committee, despite the Budget Committee, despite the budget system, despite the Budget Act, all of which seems to have been thrown out the window.

Mr. WHITTEN. As the gentleman knows, I was senior cochairman of the committee that studied the budget process. I have become convinced since that time that the current budget process is going to have to recognize that on proper occasions and when necessity dictates, that some means is needed to waive that ceiling if the situation is sufficiently serious.

Mr. BAUMAN. Perhaps the answer is to combine the Budget Committee with the gentleman's committee and allow the gentleman to run it. I think it might be a bit more orderly.

Mr. WHITTEN. I am proud of the fact that our Committee on Appropriations for 36 out of the last 37 years has been below the budget recommendations. But as the gentleman knows, we have other means to commit the Government to obligations which the Congress has used from time to time. Our committee can only do that which comes within its jurisdiction, and we try to do a good job along that line.

Mr. BAUMAN. I thank the gentleman.

Mr. CONTE. Mr. Speaker, will the gentleman yield.

Mr. BAUMAN. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I might point out, also, that the House Committee on Appropriations has done an excellent job. We have reported all of our bills out. We will have defense today, and, as I understand, tomorrow we go before the Rules Committee for the last, final bill, for the foreign operations bill. And, unfortunately, the other body has only reported one bill out of committee which passed the floor of the House, and that is the public works bill. So they are really dragging their feet. The gentleman is absolutely right. All of those appropriations bills, had we gotten cooperation, would have been passed by now except those two.

Mr. BAUMAN. These are matters, I am sure, that will be taken care of when the lame ducks come home to roost.

Mr. CONTE. There will be a lot of ducks around here, and the season opens up around that time, too; it ought to be good shooting.

● Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of the urgent supplemental appropriations for the Veterans' Administration. I would like to commend the members of the Committee on Appropriations for their swift actions to aid our veterans attending educational institutions under the GI bill. As you know, Mr. Speaker, there were concrete indications as early as July that the funds available for veterans education would be short. I am informed that the VA submitted a request to OMB for $75 million more than a month ago. Unfortunately, however, it was not until last week that OMB allowed the Appropriations Committee to act, by submitting this request.

This supplemental, in the amount of $40 million is clearly needed. Without it, approximately 128,000 veterans will face delays of up to 4 weeks in receipt of their educational benefits. Conseqently, Mr. Speaker, I wholeheartedly endorse the supplemental, and urge that it be acted upon by both houses immediately.●

Mr. WHITTEN. Mr. Speaker, I move the previous question on the joint resolution to final passage.

The previous question was ordered.

The joint resolution was ordered to be engrossed and read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ADDABBO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 8105, making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, and that I may be permitted to include tables and extraneous material in connection with the bill, H.R. 8105.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, pursuant to the unanimous-consent request granted on September 10, 1980, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 2 hours, the time to be equally divided and controlled by the gentleman from Alabama (Mr. Edwards) and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York.

The motion was agreed to.

The SPEAKER pro tempore. The Chair designates the gentleman from Illinois (Mr. Rostenkowski) as Chairman of the Committee of the Whole and requests the gentleman from Alabama (Mr. Bevill) to assume the chair temporarily.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 8105, with Mr. Bevill, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN pro tempore. Under the unanimous consent agreement, the gentleman from New York (Mr. Addabbo) will be recognized for 1 hour, and the gentleman from Alabama (Mr. Edwards) will be recognized for 1 hour.

The Chair recognizes the gentleman from New York (Mr. Addabbo).

Mr. ADDABBO. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, none of us can really fully comprehend the immensity of the funds in this appropriation bill. The committee has heard testimony for over 6 months. At this time I wish to pay a special word of tribute to my ranking minority member, the gentleman from Alabama (Mr. Edwards), and all of the members of the committee, for their diligence and time spent with me in listening to the many witnesses who appeared before our committee.

I wish to commend our staff, headed by Mr. Ralph Preston, for their diligence and their work and their expertise.

Mr. Chairman, to really fully understand and appreciate the work of the committee and the work of the staff, one must sit in our committee room and visualize anywhere from 1 to 30 and sometimes as many as 50 expert witnesses from the Pentagon and from the various services, and that is just what they have up front and does not count the many other experts that they have back at the Pentagon.

Facing this great army from the Pentagon are our individual staff members who have great expertise and great dedication in their various fields.

The bill provides for $156.9 billion in new appropriations and $244 million in transfers from unobligated balances for a total of $157.2 billion for the Department of Defense in 1 fiscal year. The impact on the lives of all Americans by the appropriation of this amount to the Department of Defense in 1 fiscal year is tremendous. The burden on the taxpayers who must eventually take this amount out of their pockets and send it to the U.S. Treasury is tremendous. The impact on those who need housing, those who need better education facilities, those who need medical care, or better transportation, or flood control projects, or any other of the countless needs of the American people is very real. The requirement to take this much money out of the Treasury of the United States in 1 fiscal year for one purpose touches every American. To the extent that we do not raise sufficient revenues to cover the proposed defense spending and to the extent that such expenditures further heat an already overheated economy, the resultant inflation will diminish the buying power of the salaries of American workers and to an even greater extent diminish the buying power of those who are retired or on fixed incomes. It will be especially burdensome to those who have limited means.

It is easy to wave the flag and say, "More for defense, more for defense," but there is a price tag and that price tag is paid by all of the constituents of all of the Members of the House.

Once again, the annual defense appropriation bill is the largest appropriation bill ever enacted in peacetime by any legislative body on the face of the Earth. The trend in defense spending is up, sharply up. In 1977, the defense budget request was for $109.5 billion. Only 4 years later, the request is for $154.5 billion. This is almost a 50-percent increase in the past 4 years, and the committee felt it was not enough and raised it. The trend projected for the future by the Department of Defense is to continue this sharp rise, perhaps even more sharply.

Why is this? Why do we spend so much money that we need for other things on a peacetime military establishment? The first reason is that all of our intelligence reports tell us that the Soviet Union is engaged in a massive defense buildup in all areas: Strategic and tactical, nuclear, and nonnuclear. We do not want the Soviets to overwhelm us in military so we are spending to their increases with increases of our own.

Another reason is that the impact of inflation on the Defense Department is at least equal to and in many cases greater than the impact on inflation on some of the other areas of our economy. The Defense Department consumes huge quantities of scarce strategic materials, huge quantities of ever more costly petroleum products, and pays millions of personnel (military, civilian and contractors) whose salaries have risen sharply in recent years.

Still another reason is the ever-increasing demands of the admirals and generals. It is their nature to feel that they never have sufficient forces to accomplish their given assignments with certainty. Congress and Americans generally tend to follow their guidance in military matters to be on the safe side and the price tag continues to increase.

Another factor is the role which defense spending plays in our overall economy. Millions of people outside of the Department of Defense owe their livelihood to the funds provided in the defense appropriation bill. Some of our country's largest and strongest corporations are included in this list. The aerospace industry, the electronics industry, the construction industry, the transportation industry, the communications industry, agriculture, the clothing industry, and many, many others are suppliers to the Department of Defense.

Mr. Chairman, I will be offering an amendment at the proper time to amend the so-called Maybank language which would then permit some defense contracts especially those pertaining to small contracts and service contracts, to be earmarked for high unemployment areas.

First. No other agency of the Federal Government is subject to restrictive language such as the Maybank amendment;

Second. At the time the Maybank amendment was adopted in 1953, the national unemployment rate was 3 percent. It is almost triple that today.

Thus since unemployment is much more important today, it would seem prudent to take that fact into consideration when the DOD expends its funds.

Third. It should be noted that in addition to the "big ticket" items such as planes and ships, the DOD spends untold billions in "operation and maintenance" for items ranging from uniforms to soap.

Channeling a small percentage of contracts, for this type of procurement, into areas hit particularly hard by unemployment would be in the national interest.

Fouth. Two trends presently underway are: A recession which is becoming quite severe in certain areas of the country; and a fairly rapid increase in expenditure for defense.

Looking at these trends from a national perspective, it would be a prudent policy to have a reasonable amount of defense spending going to areas which are particularly hard hit by the recession. Defense business is an important part of overall business. It is not surprising that demands for more and more defense spending come from all parts of the country, and, as the overall size of the defense establishment grows, are more and more difficult to resist.

I would be remiss if I did not remind my colleagues that some of what we buy in the name of defense does not in any way provide for the defense of the country. It may help the economy in a certain area of the country. It may help a certain company, it may help a certain group of employees, but it does not add to our military strength. The word "defense" as it is used today is a big; broad umbrella under which countless numbers of activities are carried out. Some of them are absolutely essential to national defense. Some are nice to have even though they may not be essential, and some are absolutely worthless insofar as the defense or our country is concerned.

It is with this in mind that the subcommittee has spent months in hearings, has had a large number of studies and investigations made by the staff of the committee and others made by the General Accounting Office, and has studied the audit reports of the military services themselves, in order to ferret out those programs and activities which need not be funded, and we have had a great deal of success.

The bill that is before you calls for an increase above the President's budget of $2½ billion. This is a net amount. We made reductions totaling some $5 billion and increases totaling approximately $7.5 billion and $2.5 billion is a net increase. If the committee had not searched out waste in the way we did, the bill before you, if it included all the items which were added above the budgeted amounts, would total $7.5 billion more than the budget rather than $2.5 billion.

I do not believe that enough attention is given to the unexpended and unobligated balances of the Department of Defense. We have placed tables in the report showing the unobligated and unexpended balances of the Department of Defense from the end of fiscal year 1961 to the sums estimated at the end of fiscal year 1981. One of the very obvious results of our increased spending for defense are increases in both unobligated and unexpended balances. While I feel very strongly that there have been significant improvements in our defense establishment as a result of the appropriations made for defense in recent years, I must point out especially to those who may feel that we are not providing enough money for the Department of Defense, that the unobligated balances and unexpended balances have grown significantly.

The table in the report shows that unobligated balances—that is, those funds which were appropriated but at the end of the fiscal year had not been legally obligated—at the end of fiscal year 1961 totaled $6.4 billion and at the end of fiscal year 1979 (the last fiscal year for which we had actual figures) the unobligated balance for the fiscal year had grown to $16.2 billion. It is estimated that at the end of fiscal year 1981, and this is based on the budget estimate and not the additional funds added by the committee, unobligated balances will have grown to $19 billion, these are the estimates of the Defense Department, these are not my estimates.

In unexpended balances—that is, those funds for which there is some legal obligation but the funds have not actually been withdrawn from the Treasury, together with those funds which are unobligated—the total at the end of fiscal year 1961 was $25.2 billion. In the last fiscal year for which we have actual figures, that is fiscal year 1979, the unexpended balances had grown to $72.6 billion. The Defense Department's estimate for the unexpended balances at the end of fiscal year 1980 is $82.7 billion and at the end of fiscal year 1981—and this does not include the additional funds which the committee has added, the unexpended balances estimated by the Department of Defense are $95.4 billion.

So the unexpended balance will have grown by $23 billion in only 2 fiscal years and yet there are those who say we are not providing enough funds for the Department of Defense. The facts are that we are providing more funds for the Department of Defense than the Department can usefully spend during a given fiscal year.

The Defense Subcommittee started its hearings on January 23 of this year and concluded on July 2. The 10 volumes of testimony before you are a result of those hearings. In addition, there were some 1,500 transcript pages of hearing proceedings which could not be printed because of their security classification. There is no question but that preparation of the Defense appropriation bill is a long, arduous task. The hearings go into a great number of subject areas and into a great number of very complex and difficult programs. A great deal of just plain digging is required to obtain the facts.

I would like to take the time to mention just a few of the many specific reductions and increases which the committee recommends. The report is quite complete and some 400 pages in length. It discusses each and every action. On pages 5 and 6 of the report, there is a summary listing of the principal additions and principal reductions which I recommend that all Members read. It quickly gives an indication of the subcommittee's efforts in preparing this bill and the position which the subcommittee has taken.

Among the reductions, we found in the military personnel accounts certain budgetary irregularities in that funds were being requested which, while they might be eventually required, are not required in this fiscal year or at this time. We deleted almost $200 million from the military personnel appropriations than was budgeted for advance inflation which has not yet occurred. We deleted almost $400 million for funds which are requested and which would be obligated but would not be expended in the forthcoming fiscal year.

We made some reductions in the procurement area, such as a $200 million reduction in funds requested for the TAK–X, a supply ship, to be used by the rapid deployment force. We feel that there are a number of commercial ships which might be adapted to this purpose more rapidly and at less cost. I might mention at this point that we added some $300 million to the bill for procurement of such commercial ships.

In the area of research and development, we deleted $750 million in advance inflation funding deleted $159 million from the estimates for the technology base. While advanced technology is essential to modern weaponry, funds in this area have been rising too fast and we felt that a reduction in the request was in order.

We deleted $120 million from the development of the MX missile. The MX is a new ICBM which would be located in the States of Utah and Nevada and would run from launchpoint to launchpoint on a track in a covert way so as to confuse an enemy as to the precise location of the missile. The program has been changed a number of times this year and we felt that this lack of firmness in program planning should result in the obligation of fewer funds than originally planned in this fiscal year.

We have found a very rapid rise in recent years in personal services contracts let by the military services. We have found that a number of the contracts let have been unnecessary and others have not given the Defense Department its money's worth. We feel that a $125 million reduction will force a better screening of such contracts and feel that if this is not the case, further and more drastic actions by the Congress, both in appropriations and in legislation may well be in order.

The various supply activities of the Department of Defense are always somewhat chaotic. Some improvements have been made and many more must be made. We recommend an $80 million reduction in supply activities.

As to increases, all of us have been concerned about the retention of needed skilled personnel in the military services. It has been frequently testified that a better pay level and more benefits, particularly for middle-grade enlisted personnel, would aid in their retention. Congress has responded with the so-called Nunn-Warner personnel package. We have added $713 million to the bill to implement the Nunn-Warner package.

The Department of Defense is a huge consumer of petroleum products. The flying hours and steaming hours of the services have remained relatively stable and price of fuel has risen for the Department. as it has for everyone. We added $800 million above the estimated budget for fuel increases which have already taken place since the budget was formulated.

One of the areas in which I think all members will join with us is in improving our National Guard and the reserves. We added $110 million for strength improvements and $50 million for readiness.

All of us were shocked to find that the budget for the Department of the Navy did not request enough new aircraft to replace the aircraft which statistics indicate will be lost through accidents or otherwise during the coming year.

We have found that the Navy and the Department of Defense have engaged in a bit of budgetary trickery for a number of years in that the aircraft which everyone agrees are needed are not budgeted. The budget allocation is taken up with other items in the hope and belief that the Congress will provide the funds for the needed aircraft over and above the budgeted amount. We have done this several times and have done so again this year. We have added $119 million for additional F–14 aircraft, $271 million for F–18 aircraft, $68 million for P–3C aircraft, $37 million for C–9 aircraft, $186 million for A–6E aircraft, $71 million for EA–6B aircraft, $90 million for AV–8B aircraft procurement, and $32 million for T–34C aircraft—all for the Navy. In addition, we have added $157 million for additional aircraft spare parts for the Navy so that the readiness rate on these aircraft can be more near to levels which they should be.

In Navy ships, we have added $508 million for an additional SSN–688 class submarine and $477 million for FFG–7 frigates. This is in addition to the prepositioning ships which I mentioned earlier.

One of the most controversial defense programs during the enactment of the annual authorization bill was the question of the development of a new strategic bomber. There are those who believe we do not need a new manned, strategic bomber. They feel that intercontinental ballistic missiles and cruise missiles give us the necessary land-based strategic force. There are others who believe that the B–1 bomber which was canceled should be reinstated and should be placed in the operational inventory. There are others who believe that a less costly, fixed-wing version of the B–1 would be appropriate. Others believe that we could modify our FB–111 aircraft and make an appropriate strategic penetrator using that aircraft. Others look to a new technology bomber perhaps using the recently divulged Stealth technology to penetrate Soviet air defenses. This matter is very much unsettled. The committee does not have a solution but recommends that $175 million be provided to the Air Force to study all the possibilities I have mentioned and any others which they may find feasible and report back to Congress. This seems to be the best solution at the present time to this question. It would be unfortunate for the Congress to make a precipitous move which would lock us into a position which we would find in a year or two we should not be in.

I call on the Members to read my separate views in the report in which I discuss our defense record in recent years. I think that we have done a good job of providing the funds and providing the stimulus otherwise for strong military forces. Those of us, both Democrats and Republicans, who have been in office and have been a part of the decisionmaking process which has established our defense program should know that we have many positive accomplishments. Those who would have our people believe that we have been doing nothing while the Russians have been running very fast are wrong. While we agree the Russians have been running very fast so have we, and we have a very substantial and credible military force today which if called upon, could carry out our national will.

I fully understand that this is a Presidential election year. It is a time when everyone expects charges and countercharges of all kinds. It is unfortunate, however, that some feel a need to overstate our defense problems. To state again and again that the United States is weak militarily when we are not is a great disservice. It encourages our enemies to underestimate our strength and to act in a less restrained way. It discourages our friends and causes them to wonder whether or not they should leave the side which appears to be losing. Constructive criticism and honest debate over specific issues is healthy and helpful. A part of our strength is our system which permits challenges and criticism, but broad and inaccurate statements which make us appear virtually helpless when we are not are destructive, not constructive. We do not need to "cry wolf" to the American people in order to persuade them to support the defense programs we need.

We have worked hard to provide properly for our Nation's defenses. I believe Members need to have the details available to them in order to show their constituents that their work has not been in vain, that we have had notable successes. It is with this in mind that I have included this material in the report and hope that it will be of assistance to all Members.

I hope that the House will agree with our recommendations and that the bill can be passed expeditiously. There is nothing more important at the present time to the Defense Department than to obtain the funds required for the new fiscal year. If we fail to enact appropriations in a timely way, the Department could be under a continuing resolution for a long period of time with the attendant uncertainty as to the funding of various programs. I think that the early passage of the bill is far more important than any of the programs included in the bill.

We have made a great effort to stay with the budget allocation for the bill under section 302 of the Budget Act. The budget resolution target for this bill is $160.2 billion. This includes $3.7 billion which was included by the Budget Committee for the 1981 pay supplemental which will be before the House next spring. The sum required for the pay supplemental will probably exceed the $3.7 billion.

In committee, we used some $600 million of the $3.7 billion in the present bill. Further, substantial increases would use up the money allocated for the 11.7-percent military pay raise which we strongly favor and could, if the total allocation is exceeded, kill the bill in that, under the law, it would not be enrolled. Those who would like to add funds had better be alert to this situation. In trying to do a little good, they could do a great wrong.

I think we have brought you a bill which all Members can support. We have cut waste, we have added money for a great number of programs, we have tried to present a bill which is balanced, and which is in the best interest of the United States today and in the future.

Under leave to extend, I include a summary tabulation from the committee report:

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1980 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1981

Agency and item	New budget (obligational) authority, fiscal year 1980 [1]	Revised budget estimates of new (obligational) authority, fiscal year 1981 [2]	New budget (obligational) authority recommended in bill	Bill compared with—	
				New budget (obligational) authority, fiscal year 1980	Budget estimates of new (obligational) authority, fiscal year 1981
(1)	(2)	(3)	(4)	(5)	(6)
RECAPITULATION					
Title I—Military personnel	$30, 650, 522, 000	$32, 129, 120, 000	$32, 179, 220, 000	+1, 528, 698, 000	+50, 100, 000
Transfer from other accounts	(103, 141, 000)			(−103, 141, 000)	
Title II—Retired military personnel	11, 964, 700, 000	13, 987, 800, 000	13, 887, 800, 000	+1, 923, 100, 000	−100, 000, 000
Title III—Operation and maintenance	45, 694, 895, 000	51, 188, 023, 000	51, 812, 001, 000	+6, 117, 106, 000	+623, 978, 000
Transfer from other accounts	(403, 001, 000)	(253, 400, 000)	(186, 200, 000)	(−216, 801, 000)	(−67, 200, 000)
Title IV—Procurement	35, 528, 139, 000	40, 639, 342, 000	44, 240, 005, 000	+8, 711, 866, 000	+3, 600, 663, 000
Proceeds from foreign sales	(106, 000, 000)			(−106, 000, 000)	
Transfer from other accounts	(322, 620, 000)		(56, 700, 000)	(−265, 920, 000)	(+56, 700, 000)
Title V—Research, development, test, and evaluation	13, 449, 459, 000	16, 475, 555, 000	14, 843, 919, 000	+1, 394, 460, 000	−1, 631, 636, 000
Transfer from other accounts	(63, 086, 000)		(1, 966, 000)	(−61, 120, 000)	(+1, 966, 000)
Title VI—Special foreign currency program	6, 667, 000	2, 760, 000	2, 760, 000	−3, 907, 000	
Title VII—General provisions (additional transfer authority, sec. 733)	(1, 000, 000, 000)	(750, 000, 000)	(750, 000, 000)	(−250, 000, 000)	
Title VIII—Related agencies	63, 523, 000	73, 824, 000	73, 124, 000	+9, 601, 000	−700, 000
Total, Department of Defense (NOA)	137, 357, 905, 000	154, 496, 424, 000	157, 038, 829, 000	+19, 680, 924, 000	+2, 542, 405, 000
Proceeds from foreign sales	(106, 000, 000)			(−106, 000, 000)	
Transfer from other accounts	(897, 848, 000)	(253, 400, 000)	(244, 866, 000)	(−652, 982, 000)	(−8, 534, 000)
Total funding available	138, 361, 753, 000	154, 749, 824, 000	157, 283, 695, 000	+18, 921, 942, 000	+2, 533, 871, 000
Transfer authority	(1, 000, 000, 000)	(750, 000, 000)	(750, 000, 000)	(−250, 000, 000)	
Distribution by organizational component:					
Army	33, 198, 837, 000	38, 243, 341, 000	37, 978, 747, 000	+4, 779, 910, 000	−264, 594, 000
Transfer from other accounts	(198, 375, 000)	(4, 700, 000)		(−198, 375, 000)	(−4, 700, 000)
Navy	46, 187, 493, 000	50, 111, 077, 000	52, 660, 370, 000	+6, 472, 877, 000	+2, 549, 293, 000
Transfer from other accounts	(456, 982, 000)	(137, 200, 000)	(195, 866, 000)	(−261, 116, 000)	(+58, 666, 000)
Air Force	40, 323, 765, 000	46, 195, 379, 000	46, 749, 693, 000	+6, 425, 928, 000	+554, 314, 000
Proceeds from foreign sales	(106, 000, 000)			(−106, 000, 000)	
Transfer from other accounts	(224, 491, 000)	(111, 500, 000)	(49, 000, 000)	(−193, 491, 000)	(−62, 500, 000)
Defense agencies/OSD	5, 619, 587, 000	5, 885, 003, 000	5, 689, 095, 000	+69, 508, 000	−195, 908, 000
Retired military personnel	11, 964, 700, 000	13, 987, 800, 000	13, 887, 800, 000	+1, 923, 100, 000	−100, 000, 000
Related agencies	63, 523, 000	73, 824, 000	73, 124, 000	+9, 601, 000	−700, 000
Total, Department of Defense (NOA)	137, 357, 905, 000	154, 496, 424, 000	157, 038, 829, 000	+19, 680, 924, 000	+2, 542, 405, 000
Proceeds from foreign sales	(106, 000, 000)			(−106, 000, 000)	
Transfer from other accounts	(897, 848, 000)	(253, 400, 000)	(244, 866, 000)	(−652, 982, 000)	(−8, 534, 000)
Total funding available	138, 361, 753, 000	154, 749, 824, 000	157, 283, 695, 000	+18, 921, 942, 000	+2, 533, 871, 000
Transfer authority	(1, 000, 000, 000)	(750, 000, 000)	(750, 000, 000)	(−250, 000, 000)	

[1] Includes amounts in Supplemental Appropriations and Rescission Act, 1980.

[2] Includes changes proposed in H. Docs. 96-294 and 96-316.

□ 1620

Mr. EDWARDS of Alabama. Mr. Chairman, I yield myself 27 minutes.

Mr. Chairman, first, I would like to compliment the chairman of the subcommittee. He is a man I hold in high respect. He has been a good leader in leading us through our work product this year. We obviously differ in our views from time to time, but we are good friends and we differ, I think, in a way that does not bring discredit to our subcommittee.

I should also like to pay my respects to the rest of the committee and especially that little band of minority Members that have to try to hold up our side of the table against this overwhelming majority that we deal with.

I would also pay my respects to the staff for the hard work they have done. Once again, we do not always agree, but I think we have got as fine a staff as any committee in this Congress.

For the first time in 13 years, the committee has gone over a President's budget for defense. For fiscal year 1981, the committee is proposing a net increase of $2.5 billion or 1.6 percent over and above the budget request. Since the mid-1950's this has happened on only three other occasions—once in 1959 when $212.6 million was added, and again in 1961 when $2.9 million was added, and again in 1967 when $952.1 million was added.

The total amount recommended in the bill is $157.3 billion. That is $18.9 billion over the amount appropriated last year. If allowance is made for the effects of inflation, the bill, as reported out by the committee, would provide for 3.1 percent real growth. That estimate excludes the $4.0 billion pay supplemental that the committee will be considering sometime next year.

Most would have to agree that $157 billion is a very substantial sum of money. It should and will buy a lot of defense, but those of you who have studied our military requirements as I have done would also agree that much more will be needed if we are ever to whip the armed forces into shape. I believe that we could have added $10 to $15 billion just to meet some very pressing needs, but the additional budget authority was simply not available to do it. Unfortunately, defense planning is being driven by dollars and not actual needs.

I cannot report to you that the Armed Forces are in good shape. They are not.

I am sure some of you read the recent newspaper report on the "hollow Army" and how 6 of the Army's 10 combat divisions stationed in the United States were rated "not combat ready" last December. You have probably also heard how only about 50 percent of our first-line fighter aircraft are ready to go at any given time.

War reserve stocks (spare parts, munitions, and so forth) are almost nonexistent. Current military plans call for having about 90 to 120 days of supplies to carry our forces through the initial stages of warfare or the point where industry is supposed to pick up the slack and begin deliveries. The truth is that we have stocks for key systems like our tactical fighter forces that would be adequate to suport perhaps 10 to 20 days of intense warfare, and it would take industry at least 2 years to get geared up to meet most wartime demands. More on this later.

This country is simply not prepared to go to war today. Our military forces are not ready to go into action on short notice. Based on my own preliminary studies, I am concerned over our capacity to fight a conventional war.

With tensions on the increase around the world, we must be better prepared militarily. The lack of readiness today concerns me, and it concerns the committee.

Much needs to be done, but it involves nuts and bolts and not the sexy hardware items—the gold plated items—that are so often and so easily added to the budget here in the House. What the military needs most of all are the readiness-related items, like spare parts, equipment maintenance, training, flying hours, steaming hours and all the necessary pay and benefits needed to increase manpower retention. We cannot operate and maintain sophisticated equipment and weapons without skilled technicians.

I think we are beginning to turn the corner on this issue. In the past, we were bent on pouring money into modernization at the expense of readiness. I think the danger associated with this policy is better understood now; and in the future I believe we will certainly do a better job in striking a balance between modernization and readiness. I believe that the action of our committee this year reflects those needs. By their actions, the Armed Services Committee this year have also recognized the need to improve readiness. And I am told that the Department will put greater emphasis on readiness in the fiscal year 1982 budget that we will be looking at next year. More must be done, but we are headed in the right direction. The trend is good.

I can support this bill. It is a good bill, but disagreement will certainly arise as to where and how we have proposed to spend the money provided in the bill.

The net increase proposed in the bill—$2.5 billion—is the product of a number of reductions totaling $5.0 billion and increases adding up to $7.5 billion. To a large extent, we have reallocated funding within the bill, in effect, establishing a new set of priorities. We should not have to be doing this. If there were a clearer defense policy, much of this would be taken care of in the budget, and we would not have to be doing all of this rearranging of dollars. With only so much money available, we put the money where we thought it was needed most and curtailed programs that were questionable in our view.

In proposing the $2.5 billion net increase in the bill, we took $1.6 billion from research and development (R. & D.) funds, while adding $3.5 billion to procurement and $613.1 million to the operation and maintenance account.

The bulk of the addons in the procurement account—$3 billion—are proposed for the purchase of tactical aircraft for the Navy and Air Force—$2 billion—and for ships $1 billion—and about $600 million for spare parts to increase aircraft readiness rates. The largest, single increase in the operation and maintenance account totaled $800 million to cover fuel price increases to support the flying and steaming hour programs, training and readiness. That is based on inflationary needs and does not produce any real growth.

The committee is recommending that the Department curtail long-term modernization, and thus the cut in research and development programs. We are saying that near-term modernization should be accelerated. We strongly believe in R. & D., but we also believe very strongly that there comes a time when we have to finish researching and proceed with procurement. We think that tactical aircraft and shipbuilding programs and related readiness efforts need to proceed at a much faster pace.

President Carter's 1981 budget, as presented to the Congress, does not address the question of retention—supposedly the military's No. 1 concern. I will discuss this later.

The committee's proposal to add $2.5 billion in budget authority signals a very dramatic change in the mood of the House on defense spending. It is the continuation of a trend that began emerging several years ago. In the mid-1970's, this committee was making cuts of 6 to 7 percent in the defense bill, but these cuts have become progressively smaller with last year's cut amounting to no more than 1.6 percent of the request.

In a nutshell, the House is beginning to come to the realization that there are some very interesting deficiencies in our Defense Establishment. Our military preparedness is not what it must be.

The Soviet Union has continued to expand and modernize its conventional and strategic forces across the board. According to some recent DOD estimates in 1979 alone, Soviet military investment exceeded our own by 85 percent. The consequences of this disparity in defense expenditures is becoming readily apparent to the whole world.

The capability of the Soviet Union to challenge the United States militarily around the world continues to improve. In this context we have serious potential problems in the Middle East and Persian Gulf. Because of our dependence and the dependence of our allies on the supply of oil in that region, a threat to that oil supply would place in jeopardy our own economic well-being and the economic well-being of our allies.

Thus, the stakes in the Middle East are high, and the potential danger of conflict there is great.

Herein lies a major policy issue that we must address. It is a key issue, central to all national security policy. Its resolution will determine the future direction and shape of our Armed Forces for many years to come.

These are the questions yet to be answered. What kind of forces do we need to protect our interests in the Middle East and Indian Ocean? How do we meet these new responsibilities? Do we draw forces from existing commitments, or do we create new forces and expand overall capabilities? Exactly how do we cope with the Soviet threat in the region?

In the past, national security policy focused on meeting our longstanding commitments in NATO and the Pacific.

The President and the Defense Department are saying that we can continue to fulfill these and take on a new commitment in the Middle East without much expansion of the force structure beyond existing levels. In my opinion, this is an impossibility and constitutes a fundamental problem in the fiscal year 1981 budget and programs.

If we are to increase our involvement in the Indian Ocean, then we must build up a Navy equal to the task. Of that, I am sure. There is just no other way to operate effectively in the Indian Ocean.

We must start building more ships. We must start buying more naval aircraft. We must put more money into ship maintenance and ship overhaul. We must also do whatever is necessary to retain skilled manpower to operate and maintain the ships we have today. The situation we find ourselves in today where first-line ships cannot put to sea for lack of qualified personnel is unacceptable. I will speak on this in more detail in a moment.

MAJOR ISSUES

(1) MIDDLE EAST CONTINGENCY

As Secretary of Defense Brown pointed out in testimony before our committee this year:

> With the possible exceptions of Western Europe and East Asia, no area of the world retains greater interest and importance for the United States than the Middle East.

He went on to explain that—

> We and our allies will continue to depend on Middle East oil for the foreseeable future.

About half of our oil comes from the Middle East, while our European and Japanese allies import a much greater proportion of their oil. Europe is almost totally dependent on Middle East oil.

Many of the countries in the region are ripe for political upheaval and internal strife. And even before the invasion of Afghanistan, the Soviet Union was busy establishing footholds throughout the region—in Yemen, Iraq, and Syria coupled with a growing naval presence in the Red Sea and Indian Ocean.

This is a potentially explosive situation and may indeed be the most probable area for a United States-Soviet military confrontation. Secretary of Defense Brown alluded to this possibility in a statement before our committee earlier this year. He said that:

> It is conceivable that control of the oil itself might become an issue in the future as the Soviets encounter shortfalls in domestic production and begin to cast about for new and assured supplies.

I believe this country has a responsibility to guarantee access to the oil supplies in the Middle East. We must be prepared to use military force, if necessary, to protect our vital interest in that region. I do not know how this should be done, but it must be done. In my opinion, this may be the single most important national security issue under consideration today.

The Defense Department appears to recognize the need to take on new military commitments in the Middle East and Persian Gulf. These new commitments are just beginning to take shape. We have already deployed naval forces in the area, and a search for land bases is in progress, but this takes time.

In my opinion, the question of how to fulfill the emerging military commitment in the Middle East has been one of the main issues underlying the debate concerning the fiscal year 1981 defense budget in Congress.

As the executive branch has failed to come forward with a concrete plan as to how to build the Middle East contingency force, the Congress has moved into the vacuum and is attempting, in its usual haphazard way, to fashion policy and create a force by adding vast amounts of hardware to the defense budget. The Congress, as an institution, is not equipped to do this. In the absence of direction or a clear sense of purpose from DOD, we are doing the best we can, but it is not good enough.

The only Defense Department idea that even resembles a plan for meeting the Middle East contingency is the Rapid Deployment Force (RDF). Existing units are now being designated as components of the RDF. If we do not expand our forces for this purpose, then of necessity we will have to begin bleeding off prime assets from our NATO and our Asian commitments to meet Middle East requirements. This process may already be underway, as the Army recently announced plans to withdraw 7,000 troops from Europe and Korea to beefup understrength units in the United States.

While I support the RDF concept, I think we need to be very careful to see that it is developed in a way that is meaningful. We need to build great mobility into our force. That means buying more amphibious ships, including maritime prepositioning ships. It means buying more long-range transport aircraft. It means buying more naval capability for sea control and power projection. Those are the kinds of assets we would need in a Middle East contingency force. And, finally, it means a superior training program for the troops so that we, in fact, have the ability to deal with this contingency.

(2) RETENTION

The retention of technically skilled manpower is one of the most serious problems confronting the military services today. This is the "Hemorrhage of talent" you have all heard about.

According to the best available estimates, the services are short about 100,000 E-4 through E-9 personnel. In many cases, these are highly trained supervisory personnel, and their absence is having a direct, adverse impact on readiness. It is literally impossible to maintain the sophisticated equipment and weapons in the field today without the services of these technicians.

The fiscal year 1981 budget, as presented to Congress, does very little in my opinion to improve retention of key personnel. It contains a request of $295.9 million for selective reenlistment bonuses—the main tool for retaining skilled manpower. When measured against the magnitude of the retention problem—supposedly the No. 1 problem, this is a pittance.

During the hearings this year, for example, we found that there were some critical skills/ratings that were experiencing serious personnel shortages coupled with very low first- and second-term reenlistment rates—like 10 to 30 percent—but where only minimal or no bonus payments were being made. We also found that current DOD regulations may in fact hinder the payment of bonuses.

The committee has seized the initiative in the manpower field. We are fully funding the Nunn-Warner compensation package at a cost of $700 million. We have added about $80 million for additional bonus payments. We have pledged our support for the 11.7 percent pay raise.

All of these manpower-related proposals will cost roughly $2 billion in fiscal year 1981. Hopefully, this action will send the right signal to the men and women in uniform. Hopefully it will improve morale and retention. Though it is by no means a solution, it is a first step in the right direction. But there must be a comprehensive plan for military compensation at the earliest possible time.

(3) FORCE READINESS AND COMBAT SUSTAINABILITY

Since the beginning of the year, I have been evaluating the combat readiness of the Armed Forces. This, in turn, led me into a study of our capability to fight a conventional war with the Soviet Union. I am concerned about our ability to win such a war.

Admittedly, we have some first-rate weapons and equipment, but they are spread too thin, and to a large extent, I find that they are poorly maintained. I believe that there has been excessive emphasis on quality at the expense of quantity—in other words we do not seem to be able to strike the right balance—and that military technicians are not adequately trained to maintain this equipment. Furthermore, the most highly trained technicians are leaving the services at an alarming rate.

I find that the Armed Forces lack depth. They lack the necessary attrition assets needed to fight a conventional war. A wartime logistical base exists for perhaps 10 to 20 days of intense combat for key systems like tactical fighter forces.

In short, we seem to be forced into a short-war scenario. The Soviets, by comparison, appear to be preparing for a conventional war of attrition.

Consider these facts, which seem to point up a real lack of combat sustainability on our part:

First. Stockage of spare parts and other war reserve materials needed to support wartime operations are almost nonexistent in many critical areas.

Second. For fiscal year 1981, the Air Force spare parts program is underfunded by $2.1 billion. The Navy's spare parts program is underfunded by over $1 billion.

Third. Plans call for stockage of war reserve materials spare parts—and so forth—to support Air Force operations during the first 90 to 120 days of warfare. Actual stockage today would be adequate to support only 10 to 20 days of combat operations.

Fourth. Tactical fighter forces of the Air Force could meet wartime sortie rates for a matter of days and in a short time those forces would rapidly decrease in size for lack of spare parts and would probably be completely grounded in a few weeks.

Fifth. C-5 aircraft, which would provide essential logistical support for any overseas combat operations, are supposed to fly a specified number of sorties per day in wartime. Because the spare parts needed to support C-5 wartime sorties rates were never procured, the C-5 aircraft could probably fly less than half their required number of sorties during the first 120 days of warfare. The C-5 spares account is underfunded by more than $500 million in fiscal year 1981. If we cannot afford to support the primary transport we have in the inventory, then should we plan to buy another one?

Sixth. Six of the Army's ten combat divisions stationed in the United States were rated "not combat ready" last December. Low readiness ratings have been applied to two of the three divisions that have been designated as part of the new Rapid Deployment Force.

Seventh. There is a widespread shortage of skilled manpower to operate and maintain all the sophisticated weapons and equipment we have in the field. Our committee believes the shortage involves in excess of 100,000 personnel holding rank of E-4 to E-9. We simply cannot keep advanced weapons operational without the services of these technicians.

Eighth. A first-line naval vessel could not put to sea for lack of qualified personnel. If the Navy had to move suddenly to a wartime footing, there would not be enough qualified personnel to fully man all the ships.

Ninth. Only about 50 percent of our first-line fighters are classified as mission capable at any given time.

Tenth. Inventories of advanced munitions are woefully inadequate. Current inventories of air-to-air missiles, for example, would be consumed in only a few days of intense aerial combat.

Eleventh. Because of a shortage of spare parts and supplies, it would be impossible to maintain more than four or five of our carriers on a wartime footing at any given time.

Twelfth. Recent reports indicate that we could rapidly deploy a small Marine amphibious brigade into the Persian Gulf, but such an operation could be sustained for only a few weeks without causing a severe strain on our military resources.

Thirteenth. We have no attrition assets that would be needed to replace wartime losses of aircraft, tanks, ships, and so forth.

Fourteenth. Industry, in many cases, would take 2 or more years to expand production in order to begin delivering replacements and parts to cover wartime attrition. Current DOD planning assumes that industry could begin deliveries within 90 to 120 days.

The above-mentioned points raise some very serious questions in my mind as to our ability to fight a conventional war.

How could we fight a conventional war of attrition and win without attrition assets and with a wartime logistical base for key items that could support combat operations for no more than 10 to 20 days? The Soviet Union, by comparison, has superior quantities of weapons and equipment; a constant production base; fewer manpower problems, and a greater conventional force in being. This leads me to the tentative conclusion that they could "out-attrit" us in a conventional war. I intend to look into this matter in further detail next year.

It would appear to me that the only way we could defeat the Soviets in a conventional war would be to resort to the use of tactical nuclear weapons—not as an option but as the sole means of waging war successfully. Is this where we are headed? For me, it is a compelling reason why we should build up our conventional force structure and why we should enhance combat sustainability. We must improve our capability to wage a conventional war without delay.

(4) NAVAL FORCE MODERNIZATION

If we are truly planning to take on serious military commitments in the Indian Ocean, then I am convinced that the overall size of the Navy must be increased.

As it stands today, the existing 540-ship Navy is too small to fulfill our longstanding commitments in Europe and Asia as well as a new commitment in the Indian Ocean. The Chief of Naval Operations underscores this point when he says that "we have a one and a half ocean Navy trying to meet a three ocean commitment."

The Indian Ocean is immense, involving vast distances. For example, the distance from Diego Garcia to the mouth of the Persian Gulf is 2,200 nautical miles. Aside from Diego Garcia, we have no major military bases in the region. There is simply no way to establish a significant military presence in the Indian Ocean without the existence of a powerful naval force in place. That is essential.

But we cannot do that with the Navy we have today—unless we draw down on existing commitments in Europe and the Pacific.

If we do indeed establish a large naval force in the Indian Ocean then we must buy more ships and naval aircraft. We must expand the Navy beyond the current 540-ship level. Navy experts say we would need at least 200 more ships to do the job.

At this point, I do not know what kind of force is needed to support an Indian Ocean commitment or how many additional ships would be involved. I do know that we need a sense of direction from the Pentagon.

If we want to maintain the existing naval force structure, we need to buy about 20 ships and 200 fighter/attack aircraft per year. In recent years, we have not done that. We have been buying far fewer than the required number. If current naval procurement policies prevail in the future, we will end up with a 300-ship Navy and not enough aircraft to put on the decks of our 12 carriers or to fully provide for three Marine Corps airwings.

The future does not look good.

The current 5-year shipbuilding program—fiscal year 1981–85—presented to the Congress in January called for the funding of 97 new ships, including 19 in fiscal year 1982. Recent press reports suggest, however, that the new 5-year plan, which is being prepared in connection with the fiscal year 1982 budget, would fund 84 instead of 97 ships in the 1981–85 timeframe and only 12 in fiscal year 1982 as compared to the 19 planned today.

This is merely the continuation of a trend that we have seen for the past several years. Somehow we must reverse that trend.

The Navy is being given the responsibility to protect our vital interests in three oceans. We in the Congress have a responsibility to see to it that the Navy has the assets needed to fulfill those commitments. In recent years, the Congress has the assets needed to fulfill those commitments. In recent years, the Congress has added substantial sums of money to the Navy budget. This year, we are recommending a new $2.5 billion increase for the Navy and Marine Corps. We will keep doing this until the Navy has a true, three-ocean Navy that it needs.

SUMMARY

We could argue forever about how much money is needed for national defense or where that money should be spent. But I do not believe there is anyone in this Chamber who could provide the right answer to those questions.

I feel as though we did the best we could under the circumstances. The product of our work is far from being perfect, because much more remains to be done, but the bill is supportable.

We are definitely on the right track so far as manpower retention and combat readiness are concerned. Congress has taken the lead on these issues, and thus far, I think we have done a good job in addressing them.

It will take time to solve these thorny problems. It will take at least 2 years before the additional spare parts provided in the bill begin to reach the operational units and longer than that before we begin seeing some real improvement in readiness in the broad sense. While the impact of our pay and benefits package will be felt sooner than that, it will be several years before reenlistment rates reach desired levels.

We will certainly have to pursue these issues again next year to be sure that our initiatives remain on track. We will probably follow up next year with some additional proposals, but I feel like the funding allowed in the bill constitutes a good start toward solving the readiness and retention problem. More comprehensive solutions will be needed over the long run.

What lacks most of all is some policy guidance from the Defense Department as to how it plans to protect our vital interests in the Middle East and Indian Ocean. The lack of direction on this issue is, in turn, causing considerable indecision on the overall mission of the Navy and thus the numbers and types of ships and aircraft the Navy needs to carry out its mission. Until the administration resolves this basic national security policy issue, it will be impossible for the Congress to act in an intelligent way on the Department's request for annual appropriations.

I must reiterate that Congress does not set policy very well. I am convinced that the greatest waste in defense comes when the Congress attempts to fill a policy void in the White House or the Pentagon. We tend to appropriate out of frustration and all too often that is wasteful.

I plead with the administration for a sense of direction—It is Congress that seems to decide the types of ships we need—It is Congress that takes the lead in pay and allowances and benefits to try to solve the retention problem—It is Congress that will ultimately decide on a manned penetrating bomber if there is no proposal coming from the executive branch—It is Congress that tries to make something reasonable out of 5-year defense plans that go up and down like a rollercoaster.

Give us a sense of direction—a clear long-range defense policy and I guarantee that we will be better prepared to defend this Nation.

Mr. Chairman, I urge support of this bill.

□ 1650

Mr. ADDABBO. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the gentleman from Alabama has stated several concerns that I feel also, but I do not feel that we should expect that the Russians will be landing on our shores tomorrow. The committee, working as a bipartisan committee, has in the last 4 years instituted many new weapons systems, and I will include in the RECORD at this point the various new weapons systems for which we have provided production funding in the last 4 years.

They are as follows:

ARMY

UH 60 Blackhawk utility helicopter.

XM–1 main battle tank.

Fighting Vehicle Systems.

Multiple Launch Rocket System.

Patriot air defense missile system.

M–198 155mm towed howitzer.

Roland air defense missile system.

Advanced Attack Helicopter.

VIPER shoulder-fired anti-tank weapon.

Stinger shoulder-fired air defense weapon.

Division Air Defense system.

Copperhead laser guided artillery projectile.

Hellfire laser guided, air launched, antiarmor missile.

Tri Service Tactical Communications Program.

TPQ–36 and TPQ–37 mortar and artillery locating radars.

Lightweight Company Mortar system.

NAVY

LAMPS MK–111 Multipurpose helicopter system.

F–18 fighter/attack aircraft.

MK–46 Neartip torpedo.

Captor mine.

Phalanx shipboard closein weapons system.

High Speed Anti-Radiation Missile (HARM).

AIR FORCE

Air launched cruise missile.

Ground launched cruise missile.

F–16 aircraft.

In addition to that, when we look at our forces vis-a-vis the Russian forces, we have to take a look at the entire picture. We have to compare Warsaw Pact forces with NATO forces. When we take our forces and the NATO forces and compare them with the Russian forces and the Warsaw Pact forces, we find that we have about 5 million men versus their 5.6 million.

We also find that the Russians must take at least one-quarter of their defense efforts and direct them against their Chinese borders. We find, as a whole, the Western Alliance has outspent the Eastern bloc in defense. The Soviets have 12,000 marines; we have 184,000. Their amphibious fleet has one-third the carrying capacity of ours. The Soviet air lift force can lift one-half that of our force, measured in millions of ton-miles per day.

The Soviets have five aircraft carriers, all smaller and less capable than ours.

The gentleman from Alabama has pointed out that 6 of our Army's 10 combat divisions in the United States were rated unfit to fight.

Well, this has always been the case in peacetime military forces. A unit may be temporarily unfit to fight one day because men may be on leave or men may have been discharged, but the next day it may be up to strength. Also, the same article that pointed out the deficiencies within our military indicated that the Russians have only about one-third of their units which are fully manned and combat capable.

So, Mr. Chairman, I would point out that, yes, there are deficiencies, and the committee has addressed many of those deficiencies, especially areas such as spare parts and readiness. Yes, the Administration has sent up several budget requests as far as defense spending is concerned—both budget amendments and supplementals. But these only reflect actions needed in response to the most recent intelligence reports.

I do not think it is peculiar or particular to this administration. I think we have found this in every administration but together, working with the administration, whatever party it may be, the committee will continue, along with the support of the Congress, to provide that which is absolutely necessary and which can be spent without waste for our national defense.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman.

Mr. EDWARDS of Alabama. Mr. Chairman, I am not going to get into any big argument with my friend from New York. My argument is not so much with the dollar figure; my argument is where those dollars are spent. I still believe that it does us no good, for example, to have this great new tank if it goes to the field and does not work. I still believe it does us no good to go out with brandnew airplanes if they get out there and break down.

My concern is that we misdirect too often where our defense dollars are spent. I know there is a botton in the well. The gentleman knows there is a bottom in the well. We agree that we have to defend this Nation, and my concern goes more to the question of how we defend it, where we spend those dollars, how much we waste in the process, because we know there is waste there, and how can we find ways to cut out waste.

Mr. ADDABBO. Back to being nonpartisan I fully agree with the gentleman.

Mr. EDWARDS of Alabama. I thank the gentleman.

Mr. ADDABBO. Mr. Chairman, I yield 8 minutes to the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON. Mr. Chairman, let me commend my distinguished chairman and his counterpart on the minority side, the gentleman from Alabama, for the extraordinary leadership that they have given our subcommittee throughout the hearings process and through the markup; and, as is already obvious from the first 45 minutes or so of the debate on this bill, an extraordinary knowledge of the problems, the defense problems, that confront this country.

Mr. Chairman, I rise in support of the committee bill on Department of Defense appropriations for fiscal year 1981. I support the intent proposed by the Committee on Appropriations on the F/A-18 aircraft. However, Mr. Chairman, upon reflection of how the committee has expressed its intent in supporting the increases made by the authorization conference, I believe it would be useful to explore further what the real intent of the committee was in taking the actions reflected by its report.

The committee worked diligently in both increasing the funding and the requested quantities for those programs where such increases would add to the national security and lead to more efficient production and lower ultimate costs to the taxpayer. In doing so, the committee endeavored to assure that, in fact, the items involved were ready for production and that the taxpayers funds would not be wasted. In some cases, these actions, taken together for the same program, may appear to be inconsistent to those who were not familiar with the committee's intent. Such a program is the F/A-18 fighter attack aircraft.

After much testimony and deliberation, the committee concurred in the actions of the authorization conference action which authorized 60 aircraft and advance procurement for 108 aircraft in the following year, a substantial increase over the request, but one which will pay enormous dividends both in increasing the cost efficiency of this program and in easing tactical aircraft shortfalls in naval aviation. During our deliberations, there was discussion of potential deficiencies in the aircraft which the Navy attempted to address in full upon questioning by the committee. Also, the committee became aware, very late in its deliberations, of an accident which occurred on the 8th of September 1980. Concern over both potential deficiencies in the aircraft and the cause of the accident led the committee to require certification from the Secretary of Defense that the F/A-18 deficiencies encountered in testing as well as any revealed in the ongoing accident investigation, have been corrected and tested and that the system meets contract specifications for performance and reliability.

In expressing these concerns and requiring the certification, the committee, of course, employed the broad language generally used in discussing these matters in a committee report. However, someone not involved in the discussions and not privy to the committee's intent could be puzzled by the committee language which, on the one hand, increased aircraft quantity while, on the other, created impediments to timely and cost effective program execution. Since timely and cost effective program execution were at the very heart of the committee action in providing amounts greater than requested, any confusion should be dispelled in this floor debate.

I would like to provide my impression of the intent of the committee, if I am right, perhaps the chairman of the committee would agree with my interpretation, thereby providing for all the Members of this body a clear presentation of what our intent was. It is my belief that the committee was not intent upon placing delays in F/A-18 program execution. What we wanted was firm assurance by the Secretary of Defense that, in fact, the program was ready to go before a full production release takes place.

Clearly, for example, delaying obligation of production funds until development testing III has been completed, and all deficiencies encountered are corrected and tested, could easily cause a 2-year delay in this program; that would needlessly drive up costs and further exacerbate the severe shortfall in tactical aircraft that I addressed earlier and that was earlier alluded to by the gentleman from New York and the gentleman from Alabama. Instead, we are interested in the significant deficiencies and potential problem areas discussed with the Navy during our review of their budget request and the problems that the recent accident could portend. The certification that is really required from the Secretary of Defense before he makes all of the funds in this bill available for obligation, is one that be given following initial operational test and evaluation (I.O.T. & E.), and would address these matters, particularly significant deficiencies and those identified in the accident investigation of the loss of aircraft TF-2. We feel that such deficiencies have to be corrected and successfully tested prior to the full DSARC III decision milestone. I believe that the committee understood full well that, in order to maintain program schedule as desired by the committee, obligation of funds will occur prior to both the certification and the full DSARC III decision point. In addition, of course, this certification following I.O.T. & E. would provide a statement that this new weapon system is expected to meet the Navy's requirement for operational performance and reliability.

Mr. Chairman, this is what I believe the committee intended. In inserting the requirement for a certification from the Secretary of Defense, the committee nevertheless, supported fully the authorization conference action in increasing the number of aircraft being procured in order to effect all possible efficiencies and economies. I would ask that the distinguished chairman of the subcommittee correct me if my perception of committee intent is not accurate and if he does not agree with that viewpoint.

□ 1700

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. BURLISON. I am delighted to yield to the subcommittee chairman.

Mr. ADDABBO. Mr. Chairman, in the main I agree with the gentleman from Missouri (Mr. BURLISON). It is not our intent to unnecessarily delay the F-18 program. We do understand that some of the funds would have to be obligated and expended for production, but again the committee wished to be assured, because of the problems we have seen in the F/A-18, that there be a certification by the Secretary. But this would not apply to all the deficiencies because we know there will be some minor deficiencies which cannot be fully corrected prior to proceeding with production.

So, Mr. Chairman, in the main, I agree with the gentleman from Missouri.

Mr. BURLISON. Mr. Chairman, I thank my subcommittee chairman.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 12 minutes to the very able gentleman from Virginia (Mr. Robinson).

Mr. ROBINSON. Mr. Chairman, I join with my colleague, the ranking minority Member, in his comments regarding our chairman, the gentleman from New York (Mr. Addabbo), and our fine staff. It is certainly true that we can disagree, but it is in a friendly climate and one where courtesy always exists and where real acrimony is very infrequent.

But as I look back on the subcommittee's proceedings and the process this year, I wish that we could have set aside more time to mark up the bill in a truly thorough fashion and more time to draft and digest a truly representative committee report.

We would have been better advised, in my view, to put somewhat less time into subcommittee hearings. Many were poorly attended. They filled 9,000 printed pages, many of which did not contribute to the decisionmaking process of markup, a process, as it evolved, which resulted in most points of significance that were considered being staff-selected.

Mr. Chairman, I will vote for this bill, but I am not at all content with it. I agree fully with the concerns expressed by the gentleman from Alabama (Mr. Edwards).

Some of the reasons why I am not satisfied with the bill are set forth in the additional views appearing in the report which I signed in company with the distinguished gentleman from Alabama (Mr. Edwards) and 10 other members of the committee.

If additional time had been available between the release of the committee print of the report and the printing deadline for the report as finally approved, I am confident that we would have been able to enlist more committee members—from both sides of the aisle—as signatories of the additional views.

What concerns us is that this House may gain the impression that it has done the best that can be done at this time toward providing the Nation with a fully adequate national defense.

As a member of the subcommittee which developed this bill, I sat through months of hearings.

I heard the top officials of the Department of Defense defend the budget for that Department as submitted, and modified, by the President, the Commander in Chief.

In addition, I heard high operational, logistical and research and development officers of the several services acknowledge, in response to questioning by members of the subcommittee, that the real and pressing needs of their commands could not be met in adequate and timely fashion with the levels of funding proposed in the budget.

In a number of instances, the subcommittee responded to the concerns of these officers who would be responsible for fighting a war, should one be thrust upon us.

As the report notes, the bill carries approximately $2.5 billion more than requested by the President.

Pages 5 and 6 of the report set forth, however, the manner in which that net increase was achieved—by the addition of some $7.4 billion in funding for defense programs and activities not requested by the President, and by almost $5 billion in reductions from figures recommended by the President.

I urge my colleagues to study, in particular, the list of reductions.

A question we should ask ourselves is this:

"How many of these cuts will lose us precious time in the effort to shore up our defenses, and deny our forces delivery, until some uncertain and distant date, of weapons they truly need today?"

And here is another question we might ask:

"How many of these reductions have the color of phony cuts, in that they amount to underestimation of accounts we know we will have to pay in full, whatever the amounts, when they come due?"

An example is the reduction of three quarters of a billion dollars in the inflation factor estimate for research, development, tests and evaluation—R.D.T. & E.

I have stated repeatedly, during my service on the subcommittee, that I have no disposition to give the Pentagon a blank check, and that I do not pretent that defense programs are immune to waste and mismanagement.

And I do not pretend, either, that a subcommittee charged with responsibility for providing for the operational readiness costs of the Defense Establishment gains, through experience, either infallibility or clairvoyance.

But I do insist that it is not our reputations as members of a subcommittee, or of a full committee or this House, that we risk if we err on the side of not enough in funding the Armed Forces this year, or in any year in the foreseeable future.

It is the very survivability of this country that we risk.

I am not standing here in the well expressing concern as to the adequacy of the bill before us because I have accepted the inevitability of war.

It is precisely because I cannot accept that inevitability that I ask you not to be content with what is proposed to be provided by this huge amount of taxpayer money—more than $157 billion in new obligational authority and transfers.

Comprehension winces at such a figure.

It represents a dreadful taxpayer burden.

Even so, I say that we need to ponder more what has been left out of this bill than what has been put into it.

Yes, there is enough money in the bill to improve the pay and allowances of military personnel and, thereby, it is to be hoped, to attract and retain personnel of the quality essential to operate and maintain the high-technology weapons systems of a modern defense force.

There is enough to buy more of the best weapons now in production and to move forward on the development of still more effective ones.

There is even enough to provide for a modest amount of growth, in real terms, in our overall defense investment—but this only if current projections of the inflation rate in the next fiscal year are reasonably accurate—not among the safest of bets.

As we consider this bill, let us keep in mind the magnitude of the great and growing threat.

Let us keep in mind that the Soviet Union is something more than a large and powerful nation.

It continues to be the principal protagonist of worldwide Marxist revolution. And, even though the assertiveness of the Polish workers and the refusal of many of the Afghan people to resign themselves to subjugation constitute minor Soviet irritatives currently the momentum of this sinister revolutionary force remains essentially unchecked. In our own hemisphere, the Kremlin's methodical minion, Fidel Castro, counsels and assists the Sandinista regime in Nicaragua toward complete conversion to a Marxist state; provides leadership and supplies to like-minded Marxist revolutionaries elsewhere in Central America and on Caribbean Islands, and at home in Cuba conducts, under Soviet guidance, a major, sophisticated training program for revolutionary cadres to be dispatched, at Soviet direction, for violent mischief-making in Central and South America, Africa, and wherever else circumstances seem opportune for a Marxist transformation of rule.

And, while some become preoccupied with the niceties of nuclear balance—undeniably a critically important matter—the Soviet Union builds its conventional forces apace—not only conducting impressive research and development programs, but also actually delivering its forces—land, sea, and air—the products of this research and development at a more intensive rate, in many categories, than we.

We may have the very best tank, but few of them have come off the production line as yet.

The Soviet Union has a great many very good tanks.

We may have the very best fighter aircraft, but relatively few of them are fully ready to fly and fight at any given time. The Soviet Union has a great many flyable planes of respectable capabilities.

We may have the very best submarine in the Trident, now in initial production, but the Soviet Union has a great many very formidable submarines.

And yet, in recent years, the United States has slowed deployment of the Trident II missile and submarine system; canceled procurement of a new-generation manned bomber; vacillated on the MX missile program; stretched out the cruise missile and Navy shipbuilding programs; budgeted for woefully low levels of munitions, maintenance, and spare parts; and even provided insufficient fuel for adequate training operations of military aircraft and the fleet.

I do not denigrate our capacities in technology and production.

I continue to have full confidence that the United States can provide itself with a defense force second to none.

But, I regret that, in recent years, we have not demonstrated a sufficient commitment in this regard.

The Soviet Union, meanwhile, presses to achieve not deterrent, but intimidating power to back its undiluted dedication to the achievement of a Marxist world order.

This bill suggests some disposition to get about the job of taking up the challenge thrust at us by the Kremlin, but the resolve to make the hard, essential sacrifices has not yet asserted itself, and time has become precariously short. It is on the record—the adversary is not lenient with weakness.

The adversary grows stronger and stronger, and bolder and bolder. He shows a continued willingness to devote an ever-increasing proportion of his GNP to build military might far beyond the necessities of his own defense. A real growth of 3 percent in our own military parity, and the use of that as a goal, only sets forth for the world to see, that we are unable or unwilling to try to achieve military parity, for in the minds of experts around the world we have lost it.

□ 1710

Mr. ADDABBO. Mr. Chairman, I yield 7 minutes to the gentleman from Washington (Mr. DICKS), an able and diligent member of the subcommittee.

Mr. DICKS. Mr. Chairman, I rise in support of this Defense Appropriations Act for fiscal year 1981, but I too am concerned about meeting our real needs. I want to extend my thanks to the chairman, ranking minority member, and my other colleagues who serve on the Defense Appropriations Subcommittee. I also want to thank our hardworking staff. It has been a pleasure and an honor to work with these dedicated individuals to produce recommendations to the House on national security investment for the coming year. While the bill certainly is not perfect, it represents in my judgment a sincere effort to address many of the inadequacies we face in the defense area.

The 1980's are a decade of challenge for the United States, more than any decade since the 1940's and the Second World War. We must meet our pressing energy problems and reduce our costly dependence on foreign petroleum. But even more important we must maintain our ability to preserve the American way of life and exercise our legitimate role as a major world power. This requires a recommitment to funding national security forces. It requires sacrifices. If we shy away from these sacrifices now, the price we will pay in the future will be infinitely greater.

Over the last 15 years, we were restrained in our defense spending levels. We hoped that as we negotiated with our major rival to control arms levels, they would show similar restraint. The evidence clearly shows they have not. Our effort at unilateral restraint has largely been a failure. Over the last decade the Soviets have invested over $150 billion more than the United States, no matter how you calculate the comparison. The steady growth of the Soviet military machine has continued despite domestic economic pressures. It shows no signs of slowing down.

The invasion of Afghanistan last December represents a new chapter in Soviet foreign policy. They are now willing to commit naked aggression on a neutral state in order to preserve their own interests. All reports indicate that they are displaying a callous brutality in that effort unmatched since the heyday of the Nazi regime.

Our task is to demonstrate beyond a shadow of a doubt that this type of aggression entails far greater costs than rewards. The actions to limit technological exports, embargo grain shipments, and gain international condemnation are important steps. But they are empty steps if we do not have ultimate capability to deter aggression through military capabilities. As the Soviet Union faces increasingly difficult situations along their borders, the temptation to act militarily will be strong. If those of us in the Western Alliance are not able to present a strong and united front, they will no doubt yield to that temptation.

This bill represents an important step in meeting that challenge. It provides $157.3 billion in budget authority, the largest defense budget in history. It is nearly $20 billion over the level provided in fiscal year 1980 and represents a continuation of the real growth begun in the last few years. Most importantly, this bill demonstrates the recognition of Congress that our defense investment must have priority. For the first time in memory, the House Appropriations Committee has not recommended an overall reduction in the President's budget. It has instead provided $2.4 billion above the administration request. The Defense Subcommittee strove through hundreds of hours of hearings and markup to allocate those resources in a manner that will produce the most effective results possible.

The bill does not provide all many of us on the subcommittee had hoped. I am convinced that before the fiscal year is ended, additional funds will have to be allocated to defense. The 11.7 percent pay increase for the military and the 9.1 percent provided to defense civilians will require additional funds above those originally budgeted. Fuel costs will add another $2 to $3 billion if we are to maintain programed flying and steaming hours. The committee was constrained in meeting these contingencies by the section 302 allocations called for under the Budget Act. The budget process requires all segments of the Federal program to bear some burden. But the allocation to the Defense Subcommittee does not in my judgment reflect the will of the Congress in adopting the first concurrent budget resolution. There is no doubt a second resolution is required during this fiscal year if we are to meet the objectives we originally set for our increased defense spending.

The bill does take important steps in two areas that have been too long neglected in shaping our defense budget. The first of these is a beginning recognition that military personnel represent our most critical asset. And if we are to attract and retain the quality people needed to run our armed services we must adequately compensate them. Over the last several years that compensation has eroded to intolerable levels. Real income, including benefits for military personnel has declined as much as 20 percent since 1972. Thousands are forced to depend on food stamps or second jobs. A plane handler on the *Nimitz* is asked to be separated from his family for many months, work long hours, and all for less than a cashier at McDonald's.

The results of pay caps and other artificial restraints on military compensation are predictable. Career reenlistments rates have declined 14 percent and we face shortages of 46,000 Army NCO's and 20,000 Naval petty officers. Readiness is adversely affected. Recent reports indicate that 6 of the 10 Army divisions stationed in the United States are unfit for combat primarily due to lack of NCO's. A reduction in manning levels in our forward deployed divisions is required to bring these divisions up to a minimum operational level. The Navy has begun a system for sharing crews to maintain necessary manning levels on ships that can be deployed.

The $713 million provided for implementation of the Nunn-Warner amendment is an important start in correcting some of the most pressing compensation shortfalls that are driving quality veterans out of the service. The additional $83 million for reenlistment bonuses and tuition reimbursement increases for middle enlisted personnel are also welcome actions. But these actions are just a start. More needs to be done in the educational area. We must continue to provide pay increases which keep pace with the private sector. The ultimate cost will be high, and could well require a basic restructuring of the military pay system. But the cost cannot be avoided. If we try to, the ultimate costs will be far greater.

A second important area addressed in this bill is readiness, particularly as it relates to maintenance of our sophisticated equipment. Each year we find the budget request woefully inadequate in its provision of spare parts. While true for all systems, the most graphic illustration of the consequences comes in aircraft. We now find ourselves in a situation where we spend over $20 million per combat aircraft only to have half of them unusable at any point due to lack of maintenance and spares. The bill provides an additional $540 million in aircraft spares above the budget. This will not solve the problem, but it will be an important force multiplier for our tactical aircraft.

Spending increases, for their own sake, do not yield better national security. Where they feed on existing inefficiencies or outdated concepts our position can even be weakened. While real increases in defense spending are required, we will always have limited resources in comparison to the countless competing demands. Much still needs to be done to reduce duplication of effort. The bill's provisions relating to consulting studies are one attempt to address this particular problem. The question of high cost sophistication at the expense of greater numbers must also be addressed, particularly in the areas of aircraft and naval shipbuilding. The American public will not tolerate waste of their hard earned tax dollars, no matter what the avowed purpose. I take pride in the important role the Defense Appropriations Subcommittee plays in this effort.

We are beginning a journey into a risky, unknown future. Our best companion on that journey will be a strong and adequate national defense. The rebuilding cannot take place overnight any more than a strong new ship can be built up overnight. It must have a firm foundation in manpower and day-to-day operations, and must be planned to meet the needs of the Nation without undue expense. I am dedicated to this effort and support this bill as an important part of it.

□ 1720

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 1 minute to the gentleman from Arizona (Mr. RUDD).

Mr. RUDD. Mr. Chairman, I will vote for this Defense appropriation bill, but not without some serious misgivings.

The funds appropriated by this bill are not sufficient to improve our military forces to the degree required in light of the current Soviet threat to American security.

As noted in additional views in the report accompanying this bill, the Soviet Union has quintupled the number of its strategic nuclear delivery vehicles and expanded the number of weapons those vehicles can carry by a factor of 11 in recent years.

The Soviets have deployed five new intercontinental ballistic missiles and three new submarine-launched ballistic missiles, while improving the accuracy of their ICBM's by a factor of five.

Additionally, the Soviets have provided their substantially expanded army of 170 divisions with new tanks, armored fighting vehicles, and artillery in large numbers.

The United States, on the other hand, has only 16 active and 8 reserve divisions, plus assorted regiments and brigades.

A recent U.S. Army report showed that 6 of the 10 Army divisions in the continental United States are not "combat ready."

Moreover, while the Soviet Union has been outspending the United States by about $75 billion to $80 billion a year on its overall military effort, our President has taken a series of actions designed to slow down or reduce U.S. defense efforts.

The Carter administration has slowed deployment of the Trident-II missile and submarine.

Canceled procurement of a new-generation manned bomber;

Repeatedly shifted direction on the MX missile program;

Reduced combat aircraft procurement to such an extent that the Navy, for example, has been losing more planes each year through operational attrition than requested for it in the Carter budgets;

Dragged out the cruise missile program;

Permitted appallingly low levels in stocks of munitions, with some aircraft deployed overseas supplied for only a day of combat operations.

In addition, the Carter administration reduced the 5-year shipbuilding program of the Ford administration from 157 ships to only 83 ships, so that now the United States only has 462 ships in its active fleet, compared to an active Soviet fleet of 1,764 ships around the world.

Mr. Chairman, there are some who would have us believe that Congress has been providing sufficient funds for our defense forces since 1977, despite the refusal of the Carter administration to provide adequately for the defense budget.

Nothing could be further from the truth.

This bill is far from adequate in light of the substantial shortfalls in the President's budget for defense production, operations, and maintenance programs, research and development, and other needs.

Furthermore, this bill is $3.1 billion below the $160.2 billion budget resolution target, as allocated by the Appropriations Committee earlier this year under section 302 of the Budget Act—meaning that defense appropriations have suffered again this year so that more budget dollars could be shifted into ever-expanding social welfare programs deemed politically important by the Carter administration and its supporters in Congress.

As I say, Mr. Chairman, I will vote for this bill with some misgivings, because it appropriates far less funds than we really need to provide adequately for U.S. defense needs in 1981 and beyond.

Mr. ADDABBO. Mr. Chairman, I yield 5 minutes to the gentleman from Arkansas (Mr. ALEXANDER).

Mr. ALEXANDER. Mr. Chairman, 3 years ago the debate raged in the Congress and in the national media over the advisability of pursuing the development and deployment of a manned bomber.

Today, the popular press is full of expression of concern over the state of our national defense. If the press accounts are true, we have a Navy that will not sail, an Army that is unfit to fight, and a strategic force that is approaching obsolescence.

Although press treatment of defense matters is usually less than comprehensive, there seems little question that our military and strategic strength relative to that of the Soviet Union has declined in recent years.

By the midpoint of this decade, our first-line ICBM's will become vulnerable to a Soviet first strike using their heavy SS-18 missiles.

U.S. defenses have endured more than a decade of neglect from Congress, but fortunately there seems to be a general sense among most Americans that it is time to rebuild American military strength. But defense costs a lot of money. And the question facing the American people is not whether we should have a stronger national defense, but whether we, a nation, have the capacity and willingness to pay the price for a strong national defense.

The first test of our willingness and capacity may be the question of whether we will develop and deploy a new manned bomber.

When we debated the issue 3 years ago, the debate soon became centered on whether we even needed a manned penetrating bomber in the age of the air-launched cruise missile. The distillation of the complex relationship between those two strategic systems down to a question of which system was better, obscured the more relevant question of what our total defense needs really were.

It was true then, and it is true today that the strategic balance demands both types of penetrating systems.

Our military planners have said all along that we need a manned penetrator to complement the ALCM. The Secretary of Defense, the Chairman of the Joint Chiefs and the Commander of the Strategic Air Command have all testified to the necessity for having complementary systems during this period of extreme vulnerability of our land based ICBM force.

If we need both, and I happen to believe we do, then it is not too early to take a hard look at our options. The hardware alternatives that our defense experts have put before us are these:

First. Modifications of the B-52 to become a cruise missile carrier.

Second. Modifications to the FB-111 to improve its range and payload.

Third. Development of a B-1 variant or some other advanced technology penetrating bomber to perform both roles.

Let us look at each option in light of what the two principal missions require.

We have 161 B-52's. Each aircraft can carry 20 ALCM's. The B-52 has the range and payload to be an effective cruise missile launcher. But if you modify it for cruise missile carriage, you degrade its ability as a penetrator. Frankly, if its ability to penetrate is degraded any further—and its present capability is reliably estimated at about 75 percent—you will have a weapon on your hands that is virtually obsolete.

Thus, the situation with the B-52 is that today, it can realistically perform cross section and because it has a relatively slow base escape reaction time, its days as an ALCM carrier are also numbered as Soviet defenses improve.

The FB-111 can be "stretched" by adding the B-1 engine and making some structural changes to increase its carriage volume. As a penetrator, the modified FB-111 would have good performance characteristics, but it would remain range-limited. There would have to be a trade-off between range and warhead delivery capacity. The cost of putting together an adequate force of 155 FB-111's would be about $5 billion, but there would be add-on costs including additional tanker aircraft for in-flight refueling.

That brings us to an advanced technology bomber which can perform both strategic missions. We could build a variant of the B-1 to accommodate both vital missions.

As a penetrator it would have the speed, performance, range and payload needed to do the job. As a cruise missile carrier, it would be superior to the B-52 in carrying capacity—it could carry between 16 and 30 ALCM's—it would present a smaller radar cross section to Soviet defenders, and it would have a very rapid base escape reaction time which would allow it to avoid getting caught on the ground. A B-1 variant force of 100 aircraft could be built for about $12.5 billion.

Mr. Chairman, when the B-1 was scrapped 2 years ago there was a lot of talk about cost effectiveness. Since that time our strategic posture has deteriorated and inflation has raged along at double-digit rates. As a result, we are today confronted with defense choices that are harder and economic choices which are more expensive than ever.

I believe we must decide now whether we are willing to foot the bill for the kind of defense we must have to meet the challenge of Soviet weaponry and intentions. There is not much time to engage in a continuation of the national agonizing that has degraded our strategic forces over the past decade. Its time to recognize that the quality of our hardware has a pronounced affect upon political decisions in the Kremlin.

If we persist in jerry-rigging our strategic forces instead of displaying the national resolve to keep our deterrent credible, we are inviting the Soviet Union to engage in increasingly risky political and military adventures.

In my view, we ought to decide now to move forward with an advanced technology bomber that can do all the things our national defense requires.

Mr. ADDABBO. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. WRIGHT), the majority leader.

Mr. WRIGHT. Mr. Chairman, I think this is a red-letter day. I want to congratulate the committee on having recognized the need to begin in earnest to rebuild the military strength of the United States and to recapture the position of unquestioned leadership throughout the world.

Surely in the 30-year interval since World War II, American military primacy more than any other single factor has kept the strategic peace. The knowledge of our strength has kept any would-be-aggressor from making us the victim of its aggression. I recall the words of John F. Kennedy when he said:

> Only when our arms are sufficient beyond doubt can we be certain beyond doubt that they will never be employed.

So I congratulate the committee on having demonstrated here in this bill the largest annual increase in military readiness funding that we have enjoyed in any single year since World War II.

Specifically, I want to commend the committee upon its recognition of the need to build a modern, penetrating bomber as a replacement for our aging fleet of B-52's.

Members of the House will recall the colloquies we engaged in during the time when the authorization bill was before the House. I congratulate the committee for including $175 million for the evaluation of alternatives for a new strategic bomber.

Reading from the committee report on page 321, I discern that the committee feels the Department of Defense and the President, as directed incidentally in the authorization bill, should come forward expeditiously with a report in which they would recommend one of several alternatives, either a B-1, some derivative of a B-1, some derivative of an FB-111, or some new technology aircraft embodying new design.

Now I want to ask one question of the distinguished chairman of the committee. While so heartily approving the boldness of the committee in adding $175 million for research and development into determining which of these alternate methods would be best suited for the needs that lie immediately ahead of us, I note that the authorizing conference report included a total of $300 million for full-scale engineering development of a multirole bomber aircraft and $75 million for long lead items to be associated with the procurement of new multirole strategic aircraft.

□ 1730

Now, I think I understand the rationale in the minds of the committee, including funds fully adequate for research and development, yet not including funds at this juncture for actual procurement.

Do I understand rightly that the committee felt it would be premature and actually impossible properly to commit funds for procurement until such time as the President and the Department of Defense have recommended to us and Congress has made a choice from among those recommendations which route to follow.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. Of course, I yield.

Mr. ADDABBO. The gentleman from Texas is absolutely correct. At this time it would be untimely to appropriate the funds referred to by the gentleman. All it would do is become a part of a statistic. It would be in unobligated, unexpended funds. If and when a decision is made as to which is the proper strategic bomber for the future, then it would be proper at that time to appropriate money for procurement for long lead items.

Mr. WRIGHT. I thank the gentleman for that response.

Noting that the authorizing legislation in the form of the conference committee report directs the President of the United States to come forward with a specific recommendation next March, let us assume the case in which he might come forward with a recommendation urging us to move rapidly in the actual development and procurement of one or another of these alternatives. If that were to develop next March, there is nothing to prevent our coming forth speedily with a supplemental appropriation to accommodate that request, is there?

The CHAIRMAN pro tempore. The time of the gentleman from Texas has expired.

Mr. ADDABBO. Mr. Chairman, I yield the gentleman 1 additional minute.

If the gentleman will yield further, in view of the fact that the authorizing committees have approved the $300 million in R. & D. and $75,000,000 in procurement, then the Appropriation Committee, if a budget supplemental was sent to the Congress by the administration, could easily and would probably act with regard to this matter.

Mr. WRIGHT. I thank the gentleman. It would certainly be my firm intention as majority leader to schedule any such action expeditiously. Our need for a modern penetrating bomber is, in my opinion, urgent and already too long delayed.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. Yes, of course, I yield to my friend.

Mr. EDWARDS of Alabama. The gentleman has touched on something that has concerned me greatly. I spoke on it briefly in my earlier comments, and that is what I perceive to be a lack of direction on this particular issue. We have been floundering around now for the last almost 4 years over the manned penetrating bomber, to have or not to have, if so, what to have, with no recommendation whatsoever coming from the Pentagon in this vital area.

So I would hope that in March, I believe March 15 is the day that is set in pending legislation, I would hope that the administration, whichever administration it may be, whoever may be the President or the Secretary of Defense, that we will see a real honest-to-goodness sense of direction as far as manned penetrating bombers are concerned, so that we can as a Congress go forward with something that most of us believe is necessary.

Mr. WRIGHT. I earnestly join the gentleman in that fervent hope.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, much has been said, and I am sure, will be said tomorrow about whether this bill is adequate. As I said in my opening remarks, I could have found somewhere to spend another $10 or $15 billion with great ease. I am sure that others could have found other places to put money; but I think the work product of this committee, the end product of what we have done, has certainly been on the plus side. We probably will come up finally with a real growth figure of somewhere around 3 percent. I do not think we are going to make the 5 percent that the President beguiled us with a few months ago; but I do think that we probably will make about a 3-percent real growth this year.

Now, you say, well, that is not too much, and it is not what I would like to see; but when compared with earlier years, it is real progress.

Now, I went back and had the Defense Department prepare for me figures all the way back to 1970 on real growth in defense appropriations. It is interesting to note that out of the last 10 years, the only 2 years that we had real growth in the defense budget, and in the final work product of the Congress, were in the 2 Gerald Ford years as President. From 1970 through 1980, the only real growth was in the budgets for fiscal years 1976 and 1977; so I think that the American people are speaking now. I think this Congress is speaking now through its committee.

We are coming to the floor with a budget, with a bill that contains real growth in it. It seems to me that we are on the right track.

I am not satisfied with where we are, but I can bring you this bill with some degree of pride, because I think we have accomplished much in it.

I would hope that we will build on this work over the next few years, the next 10 years, perhaps. If we can continue to do this, then those concerns that some of us have that we spoke about today will start to fall by the wayside, because we will be doing the things that we need to be doing in preparation for what we all hope will never come, and that is a war with the Soviet Union or some other major power.

So let us hope that what we are doing here today is a new beginning, is a start in the right direction on building a defense second to none, going back to the days where we had great strength. I think it is something we can accomplish if we will stay in this vein.

Mr. Chairman, under leave granted to the chairman earlier, I would ask permission to include the chart prepared by the Department of Defense at this point in the RECORD:

DOD APPROPRIATION ACTS

[Millions of constant fiscal year 1981 dollars]

	DOD request	HAC recommendation	House passed bill	Conference committee recommendation	Real growth in percent
Fiscal year:					
1970	78,389	72,972	72,972	72,770	
1971	71,583	69,306	69,456	69,248	−11.2
1972	76,183	73,444	73,444	72,384	−3.0
1973	80,839	75,591	75,591	75,457	−3.3
1974	83,451	79,062	79,119	78,461	−3.9
1975	88,814	84,828	84,517	83,633	−1.4
Fiscal year—Con.					
1976	99,186	92,166	92,166	92,400	+2.9
1977	109,503	107,344	106,793	105,724	+6.4
1978	117,225	113,219	113,203	112,830	−1.2
1979	123,561	122,081	121,904	120,890	−.6
1980	132,256	129,450	129,460	130,918	−2.9

Note: Data does not include Military Construction Appropriation Acts and supplemental appropriations for military construction and family housing. Included are amounts for Defense Manpower Commission, CIA retirement and disability fund, intelligence community oversight, and the Office of Federal Procurement Policy.

● Mr. KEMP. Mr. Chairman, in providing appropriations for our national defense, the Congress fulfills its most crucial constitutional mandate; namely to provide for an "Army and Navy." It is a source of considerable disappointment to me that the Committee on Appropriations has not provided this Nation with a bill more adequate to our needs. To be sure, the bill is considerably improved from the wholly inadequate version proposed by the administration which failed to provide for sufficient funds to simply execute the program it had requested. Nevertheless, the fiscal year 1981 Defense appropriation bill once again fails to meet our defense needs, and in doing so places the Nation in much greater danger during the coming decade than would be the case had sufficient funds been provided.

There was no shortage of informative testimony before the Defense Subcommitte this year on the state of our defense posture. Perhaps the most dramatic and telling testimony came from the Commander in Chief of the Strategic Air Command, Gen. Richard Ellis. General Ellis testified in considerable detail to the effect that even when the Carter administration's own definition of "essential equivalence" in strategic nucelar forces between the United States and the Soviet Union, this objective cannot be met with either current forces or any forces scheduled to be deployed during the coming decade. This is a startling and compelling fact that is virtually ignored in the bill presented to the Congress today. The cancellation of the B–1 bomber has served to deprive our strategic forces of the margin of safety which would have assured that our forces would not be inferior to those of the Soviet Union during the 1980's. Despite the manifest evidence that the strategic nuclear balance will shift dangerously in favor of the Soviet Union during the next 2 years, it is useful to review some of the actions the committee took this year that will undermine our security for a generation.

First, despite evidence to the effect that no time should be lost in deploying a survivable intercontinental ballistic missile, the committee cut the MX program by $120 million, assuring a delay in the system's initial operating capability.

Second, despite the urgency of finding a replacement for the B–52—an aircraft designed in 1948—the committee cut the authorization for a new bomber by $125 million (from $300 to $175 million), and eliminated all funding for the long-lead procurement of equipment which would be common to any new bomber choice as a means of reducing the leadtime to when such a system could be deployed.

Third, in the face of requirements that our command-control-communication-intelligence systems had to be improved if we are to be able to strike Soviet targets which affect the credibility of deterrence, serious reductions have been made in this crucial area.

Perhaps the only reassuring dimension of the committee's deliberations arose when the full Appropriation's Committee refused to accept 10 pages of introductory text in the subcommittee's report which displayed a degree of insensitivity to the great danger our Nation faces that is unparalleled since the "America-first" isolationism of the 1930's. I am hopeful that this "revolt" of the full Appropriations Committee against the complacency of the Defense Subcommittee majority will affect subsequent defense appropriations efforts.

The committee report you now have before you is the revised version of an original staff draft. The original version is one of the most remarkable examples of complacency I have encountered in nearly 10 years in the Congress. A few examples are worthy of note as a means of illustrating the case.

First. "There is no cause * * * to be alarmed * * * the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong."

The Defense Subcommittee has taken reams of testimony from expert witnesses from the Carter administration acknowledging the relative decline in American military power. The Commander in Chief of the Strategic Air Command—General Ellis has acknowledged the loss of "essential equivalence with Soviet forces" since 1977.

In his statement before the Naval War College last month, Secretary of Defense Harold Brown acknowledged that the U.S. Minuteman ICBM force would become vulnerable during the early 1980's.

Because the United States has disinvested in Defense when the effect of inflation is removed for more than a decade, the United States has indeed grown weak in relation to the Soviets, and because the Soviets have increased their defense effort by 4–5 percent per year, they have grown stronger. Not to acknowledge this as the chairman's original draft did, is to be oblivious to the most dangerous trends facing our defense posture.

Second. The original draft of the report applauds the "Stealth" aircraft, but fails to note that the subcommittee cut the authorization to develop a new bomber—possibly incorporating "Stealth" technology by $125 million; from $300 million to $175 million.

Third. The original draft notes that "there is no more reason at this time to fear an imminent Soviet military attack than there has been most of the time in the past two decades."

This is an astounding statement. Lest we be under any illusion, it is helpful to examine the Soviet-American military balance two decades ago compared to the balance today. The United States had a virtual monopoly on effective strategic nuclear weapons delivery capability with more than 1,000 strategic nuclear aircraft, the Polaris and Minuteman ballistic missiles being deployed, and an overwhelming advantage in naval forces and tactical nuclear forces.

To say that there is no reason to fear an imminent Soviet attack when the balance of forces has tipped so dangerously in the Soviet Union's favor indicates that the author is part of our defense problem rather than part of the solution.

Fourth. The original draft takes note of the unrest in Eastern Europe by stating that Eastern Europe "grows ever more restive under the yoke of foreign domination."

This statement has been true for more than three decades; the operational question is its implications for U.S. policy. As the Soviets have massively increased their military power in Eastern Europe in the past 10 years, and the United States adopted a deliberate of not encouraging a clash between Poland and their Soviet overlords. Hence as the United States has acquiesced in Soviet domination of Eastern Europe, the restiveness of Eastern Europe contributes nothing at all to American security. We are left with a far greater Soviet presence in Eastern Europe which does jeopardize our security.

The committee's disinclination to take the threat to U.S. strategic forces seriously is paralleled by its unwillingness to cope with the central problem of deterring conventional conflict—the lack of preparedness of U.S. general purpose forces. In his 1980 state of the Union message, President Carter declared the Persian Gulf region to be a "vital" interest of the United States. I regret that the President did not see fit to request any additional funds to support his extension of protection to the Persian Gulf. Indeed, the committee was informed that there have been no budgetary consequences in the form of new program initiative of any consequences stemming from the Soviet deployment of four motorized rifle and one airborne division(s) in Afghanistan only 300 miles from the Straits of Hormuz. To deploy two aircraft carrier battle groups to the Persian Gulf, we have been obliged to renege on our commitment to the North Atlantic, the Mediterranean, and the Western Pacific by drawing down ships, fuel, spare parts, and experienced crew members. In the words of the Chief of Naval Operations, we have a "one-and-one-half ocean Navy for a three-ocean commitment."

The ability of the Navy could have been swiftly and cheaply improved had the committee not rejected the recommissioning of the aircraft carrier *Oriskany*, and recommissioning the battleship *New Jersey* in modified form. The latter, when modified with a complement of 320 cruise missiles and two 16-inch gun batteries, could increase the striking power of a carrier battle group 60 times at a price less than one-fifth that of an aircraft carrier. The recommissioning of the *Essex*-class carrier, *Oriskany* could have mitigated the severely stretched assets we have to deploy today.

Had not the Carter administration cut the fiscal year 1978 Ford naval shipbuilding program from 157 to 83 ships over a 5-year period, we would not be so sorely in need of naval vessels. Indeed, of the 52 ships added to the Navy's active net inventory since 1977, virtually all of them resulted from construction authorization initiated prior to President Carter's assumption of office.

The readiness of U.S. Forces has become widely discussed in the press, but it is scarcely evident in either administration budget requests or—despite valiant efforts by the ranking minority member, Mr. EDWARDS—in this bill. On an average day, 50 percent of our tactial aircraft are not fully mission capable because of the administration's unwillingness to fund any significant part of the $6 billion deficiency in spare parts for tactical aircraft which has been allowed to accumulate during the past 4 years.

Similarly, devastating shortages in ammunition have been exposed during the course of the committee's deliberations. These shortages exist in the most crucial arena—the very realm of our technological advantage. Precision guided munitions, advanced air-to-air missiles, and advanced artillery ammunition are among the most conspicuous shortages. The fig leaf that constitutes the administration's commitment to procuring an adequate defense posture has never been better emphasized than its decision to procure only 130,000 rockets for the Army's new multiple-launch rocket system. This is a sufficient quantity to support 4 days of combat operations. Throughout our defense posture, the administration's budget requests are oriented toward obtaining the appearance of doing something about defense by purchasing additional tanks, aircraft, and ships, while denying them the ammunition and spare parts they must have to be effective.

Similarly, to support the special-interest constituencies so crucial to the President's reelection, defense expenditure has been held down to the point where insufficient funds have been made available for fuel to provide a minimum acceptable amount of training, or to pay our military personnel sufficiently well to induce them to stay in the Armed Forces. The most important land-based tactical aircraft in our inventory—the F–15—has been so starved for funds to purchase fuel, that its pilots will not be fully trained in its use until the mid-1980's.

It is hardly surprising that middle-level officers and noncommissioned officers are leaving the armed services when their real level of compensation since 1977 has dropped as much as 30 percent. To make matters worse, the administration uses this as de facto evidence that the All-Volunteer Force has failed as an excuse to initiate a program of draft registration. Suffice to say that the administration's military personnel policies have done more to undermine our military strength than any other single decision. It is my hope that the Congress will go considerably beyond the Nunn-Warner amendment which it funded in this bill to restore military compensation to a level which will attract and hold highly qualified personnel who chose military service as their career. Owing to the administration's persistent underestimate of inflation, the Congress will almost certainly have another opportunity to do so when the administration submits its next supplemental appropriation request.

It is possible to dwell at length on the shortcomings of both the current bill, and the failure of the administration to take an active interest in an adequate defense program. A suggestion of some of the concerns of committee members is contained in a joint statement of additional views in the committee report; a more detailed characterization is provided in the ten volumes of testimony provided—but largely ignored—to the Defense Subcommittee. It is my hope that exposure of the Congress to the manifest failings of this bill to meet our minimum defense needs will lay the basis for a more vigorous expression of congressional support for an adequate defense program in the next fiscal year.●

● Mr. FITHIAN. Mr. Chairman, I wish to express my general satisfaction with H.R. 8105, as reported by the Appropriations and Armed Services Committees. I am pleased that Congress has taken the necessary initiative to meet the challenges and threats the United States has faced with increasing frequency in recent years.

It is an unfortunate fact of international relations that respect is often accorded to a nation in terms of its perceived military strength. And by nearly any measure, our Armed Forces have experienced a decline in the past decade and a half. The aftermath of Vietnam caused many decisionmakers to shy away from the commitment to keeping our military at a high level of training and preparedness.

The United States has been compelled to resort to arms on a number of occasions in the 35 years since the end of World War II. Yet every time we have done so, we have sent in conventional military forces. And despite the continual advances in sophisticated weapons systems technology, we have always relied most heavily on infantry with support from sea and air.

With each year since the advent of the All-Volunteer Forces in 1973, it has become increasingly apparent that the United States has been seriously falling behind the U.S.S.R. in terms of what is still, demonstrably, our most critical military resource: manpower. Not only are fewer men and women volunteering—all four branches of the service failed to meet their fiscal year 1979 recruiting goals—but an increasing number of skilled officers and NCO's are leaving the service for a more financially attractive civilian life.

We must do more to encourage qualified men and women to join our Armed Forces, and we must do more to keep those who now serve. The service man and woman are the backbone of our military strength. They are essential for driving our tanks, flying our planes, piloting our ships, and bearing arms to defend America. Without sufficient qualified servicemen to run them, even the most sophisticated weapons systems are useless.

I freely admit that my strong support

for increasing America's conventional forces stems a great deal from my 20 years' service in the Navy. I have been a serviceman, and I have lived and worked with servicemen. And I know exactly the kinds of problems that are caused when they don't have the type of training and equipment they need to do their jobs. Any one of us who has ever served America in the Armed Forces knows that this is true. Our problem is to convince the big bureaucrats in the Pentagon of this.

The appropriations bill now before us is one way we can send this kind of signal. I am especially pleased by the inclusion of the Senate-passed "Nunn-Warner Amendment" which provides for increases in selected areas of military compensation. The urgent need for such action was graphically illustrated not too long ago by former Defense Secretary Melvin Laird who told a congressional committee that a 3d class petty officer handling $25 million warplanes on the deck of an aircraft carrier earns less than a cashier at McDonald's. The Nunn-Warner amendment will rectify this inequity with seven separate compensation adjustments which will add $713 million in annual compensation to members of the Armed Forces.

Among other things, this provision increases housing allowances for personnel living in high cost housing areas, increases change of station mileage payment ceilings to a realistic level, increases sea pay and flight pay by 15 percent and 25 percent, respectively, and increases selected reenlistment bonuses. Altogether, this package should do much to increase enlistment and retention rates. This is a prospect which I, for one, regard with great relief.

Finally, I applaud the fact that the committees realize that this extra attention being paid to manpower this fiscal year is not nearly sufficient to respond to the need. It will take several years of continuous work to build up our standing army and, perhaps more importantly, our Ready Reserve. America must never allow itself to be compromised and humiliated by being unprepared to respond to Soviet aggression, direct or indirect.●

Mr. ADDABBO. Mr. Chairman, I yield back the balance of my time.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. HOWARD). The Clerk will read.

The Clerk read as follows:

TITLE II

RETIRED MILITARY PERSONNEL

RETIRED PAY DEFENSE

For retired pay and retirement pay, as authorized by law, of military personnel on the retired lists of the Army, Navy, Marine Corps, and Air Force, including the reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve, and payments under section 4 of Public Law 92-425 and chapter 73 of title 10, United States Code; $13,887,800,000.

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. NATCHER) having assumed the chair, Mr. HOWARD, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had come to no resolution thereon.

SEPTEMBER 15—NOT JUST ANOTHER PRETTY DAY

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, today is September 15, the deadline provided in the Budget Act for completing action on the second concurrent budget resolution. Yet, today will go without any action on that important matter. The other body has a reported budget resolution, but it has not considered it on the Senate floor. The House Budget Committee has not even held one markup session, so the House has nothing to consider. Trying and not succeeding is one thing but not trying at all is unpardonable.

The reason for inaction by September 15 is another day—November 4. Just as the administration would have the American people believe that OPEC is the cause of our inflation and the current recession, so, too, would the majority party have us believe that unforeseen changes in the economy and the economic outlook have so confused the budget picture that more time is needed to "study" the matter. I do not buy the OPEC scapegoat and I do not accept the other argument either.

Last June, we adopted the first budget resolution for 1981. For a fleeting moment, we stood here and told the Nation we would have a balanced budget in 1981. Now, the best estimates call for a minimum deficit of $50 billion. I was 1 of only 10 Republicans to vote for that balanced resolution. At the time, I expressed my doubts as to the validity of the numbers and the assumptions behind them, but I supported the resolution because it contained important policies and principles that I have been advocating for a long time—reconciliation, a much slower rate of growth for nondefense Government programs, a responsible rate of growth for national defense, and a provision for holding up budget-busting bills and not sending them to the President for his signature.

Mr. Speaker, the budget process is at a critical crossroads. Reconciliation is in doubt, even as the conference on that important, precedent-setting legislation is set to begin this week. We have again failed to meet the legal requirement of the Budget Act that the second budget resolution be adopted no later than today. This flagrant disregard of the law is a scar on the Congress. Equally disturbing is the politization of the budget process.

We observed the President withhold his mid-session budget review past the legally mandated date in order to avoid giving out the bad news during the Republican Convention. The Congress has been equally political by failing to move forward with consideration of the second budget resolution. I recall the response of the former chairman of the Senate Budget Committee when asked about not meeting the deadlines required by statute; Chairman Muskie replied:

> What are they going to do, come and take us off to jail?

Mr. Speaker, that attitude aptly exemplifies the problem as once again today Congress chooses to ignore the law for political purposes.

SUPPORT FOR HAZARDOUS WASTE CONTAINMENT ACT

(Mr. GORE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. GORE. Mr. Speaker, this week the House of Representatives will take up H.R. 7020, the Hazardous Waste Containment Act of 1980. I would like to urge my colleagues to support it and I would like to urge them to support the tougher version of it which has been reported out of the Committee on Ways and Means.

Up until recently, the representatives of the chemical industry have been fighting this legislation vigorously but early last Friday, the spokesman for the Chemical Manufacturers Association expressed support for a $1.2 billion fund with 75 percent of that sum coming from the industry and 25 percent from general revenues.

Mr. Speaker, I trust this was not a slip of the tongue and I would like to insert the transcript of this industry spokesman's commitment of support into the RECORD at this point:

> Robert Roland (President, Chemical Manufacturers Association): "The chemical industry, specifically manufacturers of chemicals have been trying for over a year to get sensible legislation enacted. And today, in testimony before the Senate Finance Committee on S-1480, we indicated once more that we support 7020—HR 7020, the Florio Bill, on the House side. We believe. . . ."
>
> Ted Koppel (ABC News): "What does that bill do?"
>
> Roland: "That is a superfund-type bill that deals with abandoned waste sites and provides for a fund contributed by industry and government."
>
> Koppel: "Now what would the breakdown be?"
>
> Roland: "The breakdown would be 75% industry and 25% government. It would be $1.2 billion."
>
> Congressman Gore: "Ted, if I may comment. I think we've seen something new here on your program tonight. If Mr. Roland is indeed speaking for the industry and can communicate to the United States Senate that the industry will accept a 75% burden with 25% coming out of general revenues, and a fund of $1.2 billion, then I think the United States Senate would pass that legislation expeditiously if the opponents of the legislation got that message from the chemical industry and the lobbyists that they've hired to work it."
>
> Koppel: "All right. Now Mr. Roland, you're the president of the Chemical Manufacturers Association, so you clearly speak for the industry. Is that what you're saying?"
>
> Roland: "What we're saying is we will con-

tribute to a reasonable fund in a reasonable fashion."

Congressman Gore: "A moment—a moment ago. . . ."

Roland: "Now wait a second, let me finish, please."

Congressman Gore: "A moment ago you said 75/25 and $1.2 billion."

Roland: "You're talking over $4 billion on the Senate side and you're talking more than 80% on the Senate side."

Koppel: "I mean, I think we have the workings of a compromise here, Mr. Roland."

Roland: "That's precisely so."

Koppel: "If in fact you are talking about the chemical industry of coming up with 75% of the $1.2 billion. Is that what you're saying?"

Roland: "That's right. And we think that the $1.2 billion figure is important because the amount that is specified in the Senate bill is excessive for the job that needs to be done. And that's only the beginning, Ted."

☐ 1630

TRIBUTE TO HAROLD B. SAY

The SPEAKER pro tempore (Mr. NATCHER). Under a previous order of the House, the gentleman from Arkansas (Mr. HAMMERSCHMIDT) is recognized for 5 minutes.

● Mr. HAMMERSCHMIDT. Mr. Speaker, I stand with a large and distinguished company as I mourn the passing on September 3 of Capt. Harold B. Say, the gentleman whose life was dedicated to America and the veterans of military service who fought to preserve her.

Harold Say served as legislative director of the Veterans of World War I for many years and, as ranking member of the House Committee on Veterans' Affairs, I found his analysis and testimony on veterans' legislation unfailingly reasonable and informed. While his organization emphasized the concerns of that particular group of veterans, Harold Say was unstinting in support of all American veterans.

Harold Say was a member of the American Legion and the Veterans of Foreign Wars. His military combat career was launched during World War I, in the midst of the battle of St. Mihiel. During World War II his assignments included missions of the greatest subtlety and trust. American lives and the fortunes of war frequently hung in the balance of his judgment.

Recognized as one of the Navy's top security experts, he served on the staff of three different NATO fleet commanders after the war. And, although he was identified with his high official positions, Harold Say remained an objective and respected journalist. Editor of the Torch, the official publication of the Veterans of World War I and former editor of Stars and Stripes, his articles on veterans and military affairs appeared in numerous nationally circulated magazines. Regarding military matters as well as veterans' affairs, Harold Say called them as he saw them.

We contemplate the death of this fine man with deep regret, Mr. Speaker. I hope and trust his influence will abide with us and his example inspire us to remain unrelenting in our own dedication to the veterans for whom he consecrated his life.●

EMBARGO ON GRAIN SHIPMENTS TO U.S.S.R. IS WORKING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 5 minutes.

● Mr. ALEXANDER. Mr. Speaker, the decision by President Carter in January of this year to impose a partial embargo on grain shipments to the Soviet Union in response to their invasion of Afghanistan has acted to focus great attention on U.S. agriculture and the critical role played by our farmers in world affairs. It also provided certain critics of the President, particularly from the opposition party, with what they may have believed to be an opportunity to use that decision to attack and weaken the President. I suspect they are beginning to doubt the believability of their own rhetoric.

In fact, Mr. Speaker, those critics are being dumbfounded by the evolution of events this year. The embargo on grain shipments to the U.S.S.R. is working. The Soviets are increasingly feeling the pinch as their unproductive food and agriculture system continues to fail to deliver on promises made to the Soviet population by its leaders.

Here at home, keen observers are taking a closer look at the issue and are seeing something that the President's political critics may have missed. The public, including a majority of American farmers, still supports the President's actions and will continue to do so. American farmers believe in patriotism and are not fainthearted summer soldiers who indulge in cheap, carping criticism of decisions that are difficult and may require sacrifice.

Now, as the Soviet Union is in fact feeling the sanctions that the President has imposed, it may be time for us to acknowledge that his decision was both correctly measured and has been effective in punishing Soviet aggression.

It is also time to ask ourselves whether the burden of a policy of using food as a foreign policy tool should be borne exclusively by the American farmer.

It is not too soon to examine what effect embargoes of U.S. food have had and will have on the agricultural sector. Clearly, one of the foundations of our economy is the productivity of the farmer. We have practiced a national policy of encouragement for U.S. agriculture to grow more and more to insure moderate consumer prices and help feed the world while enhancing our export trade balances. The farmer has met every demand placed upon him. But to do so, he has had to make investments in land and equipment that have created a delicate balance between credit requirements and commodity prices which is tremendously sensitive to dislocations in supply and demand such as those brought about by the embargo of grain to the Soviet Union.

I recently called upon the Department of Agriculture to conduct a comprehensive study of the effects of embargoes and to formulate recommendations for programs designed to ameliorate the damage to American agriculture worked by a policy of using food sales as a foreign policy tool. During the days ahead, I shall be conferring with individual farmers and farm groups to arrive at means of dealing with the effects of embargoes.

For the benefit of my colleagues, I am submitting the following article for publication in the RECORD which has recently appeared in the press on this subject:

[From the Journal of Commerce, Sept. 15, 1980]

SOVIET MEAT PRODUCTION SEEN DECLINING STEADILY SINCE MARCH—CONTRARY TO CLAIMS THAT EMBARGO IS INEFFECTIVE

MOSCOW.—A dramatic decline in Soviet meat production since the spring contradicts Kremlin claims that this country has not been hurt by the United States embargo on grain sales.

What's more, Western experts expect that a no-better-than-average grain harvest this Fall will make the embargo an even bigger burden in 1981, provided it survives the presidential election.

Ronald Reagan has said that if he wins, he will rescind the restrictions on grain sales to the Soviet Union that President Carter imposed at the beginning of 1980 to protest the Soviet military intervention in Afghanistan.

Compared with 1979, Soviet meat production has been declining since March, with output for the first seven months of this year only 97 percent of what it was at the same time last year.

The falloff has been particularly steep since May, Soviet statistics show. In May, meat production declined 5 percent compared with May, 1979. In June the dropoff was 10 percent, and in July in reached 15 percent.

Figures for August have not yet been released, but Western agronomists watching the situation expect the downward trend to continue, perhaps less sharply, for the rest of the year.

The agronomists say the principal problem plaguing meat production is a shortage of high-quality feed. The bulk of the grain the Soviets buy abroad is used to feed animals raised for meat.

The U.S. Department of Agriculture says that, largely as a result of Mr. Carter's embargo, Soviet imports of foreign-grown grain in the 1979–80 fiscal year fell about five million tons short of what was wanted, despite President Leonid Brezhnev's recent claim in Kazakhstan that the Soviet imports of foreign-grown grain the 1979–80 fiscal year fell about five million tons short of what was wanted, the Soviets were able to "find substitutes for all grain lost because of the embargo."

In addition, if the embargo is extended in 1981, the shortage could be twice as big, Western agronomists agree, because this year's figures include U.S. grain that was purchased by the Soviets before the embargo but not delivered until later.

The embargo limits Soviet grain purchases from the United States to a maximum of eight million metric tons. The Agriculture Department says 18 million tons of U.S. grain actually reached the Soviet Union in fiscal 1979–80.

Until Mr. Carter imposed the freeze, the Soviets were expected to buy about 25 million tons of American grain, mostly corn, to offset the effects of last year's grim harvest of 179 million tons, more than 50 million tons below what had been planned.

The Soviets were expected to import a total of about 37 million tons of grain. The Agriculture Department estimates that they actually bought about 31.5 million tons.

NEXT YEAR'S IMPORTS?

"If the United States holds them to an eight million ton total again next year, they'll be able to buy somewhere between 25 and 30 million tons," one source said. "I think the lower estimate is more likely."

Observers say the shortage will be sorely felt, since this year's grain harvest is not expected to be a very good one. The grain crop in Kazakhstan, which set a record last year, is thought to be about average, one source said.

"If the embargo continues, it's going to hurt them more next year than it did this year," the source said. "They won't have enough to replenish reduced stocks. Also, with the lousy weather in the western areas at harvest, you really have to wonder about the quality of the crop."

Experts say the damage done by the embargo cannot be measured simply in terms of import totals.

"True, the Soviets were able to buy a lot of grain elsewhere to make up for most of what the embargo cost them in terms of U.S. grain," one agronomist said, "but what they got was often inferior to what they would have bought, or not the kind of grain that they really wanted."

The Soviets are thought to have bought considerably less corn than they had hoped to. Corn is an important ingredient in feed for hogs and chickens, and the Soviet Union grows very little of it.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky (Mr. Mazzoli) is recognized for 5 minutes.

● Mr. MAZZOLI. Mr. Speaker, I was unavoidably absent for one recorded vote on Monday, September 8, 1980. Had I been present, I would have voted:

"Aye" on roll call No. 525, passage of H.R. 6790, Foreign Service Act of 1980.●

HAPPY BIRTHDAY, CLAUDE PEPPER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'Neill) is recognized for 5 minutes.

Mr. O'NEILL. Mr. Speaker, I am privileged to take this opportunity to extend belated birthday greetings to the Honorable Claude Pepper on the occasion of his 80th birthday.

"Senator" Pepper, who celebrated his 80th birthday on September 8, 1980, has served with distinction as chairman of the House Select Committee on aging since its inception. Claude Pepper is indeed Mr. "Golden Ager" of the House of Representatives. An active, determined, and dedicated public servant, Claude Pepper takes pride in his ability to help older Americans cope with the problems of loneliness, isolation, health care, nutrition, and limited financial resources. For these reasons, it is a great honor to pay tribute to such a talented and devoted and hard working Member of the House of Representatives.

Happy 80th birthday, Claude, and best wishes for continued health, happiness, and success in the years ahead.●

AMENDING SUBPART F PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. Rostenkowski) is recognized for 5 minutes.

● Mr. ROSTENKOWSKI. Mr. Speaker, I am today introducing legislation designed to make necessary and useful changes in Internal Revenue Code provisions concerning controlled foreign corporations (subpart F). The introduction of this legislation is a worthwhile first step in a process which I hope will yield constructive and effective modifications to the code. I urge my colleagues to note carefully the content of this bill, and to suggest improvements where necessary.

Section I of the bill would redefine subpart F income so as not to include dividends from controlled foreign corporations that derive substantially all (80 percent) of their income from transactions in commodities which would otherwise generate nonsubpart F income. This provision would have the salutary effect of recognizing that the substance of a transaction, as well as its form, should be taken into account when determining when income is subpart F income.

Section II of the bill would further redefine the definition of subpart F income to include all U.S. source income which is not effectively connected to the operation of a trade or business in the United States. The purpose of this provision is to create a disincentive to firms considering moving current U.S.-based plants overseas. It would do this primarily by taxing the income of "runaway" plants which sell in the United States.

Section III of this legislation would exclude from subpart F income amounts invested in U.S. plants and equipment by a controlled foreign corporation if the U.S. parent does not have significant operations in the United States of the type conducted by the controlled foreign corporation in the United States. The effect of this provision would be to allow some influx of capital for new investment—much needed at this time—which is currently discouraged by subpart F rules. At the same time, the provision does not in any way hinder the original thrust of subpart F.

Finally, section IV of the bill would address a device which has been increasingly employed to avoid the restrictions of subpart F and antiboycott measures. Currently, U.S. corporations may attempt to avoid these rules by simply splitting off their foreign operations and conducting them through separate foreign corporations. By stapling the stock of the original U.S. company to that of the new foreign entity—or pairing the stocks on printed certificate—the management of the U.S. company will contend that the new foreign corporation is not subject to the subpart F or antiboycott rules. The bill would treat any foreign corporation which is paired with a U.S. corporation as owned directly by the U.S. corporation, thus nullifying the use of this device to escape taxation of subpart F income.

A technical explanation of this legislation and the statutory language follows:

CONTROLLED FOREIGN CORPORATIONS

PRESENT LAW

Deferral.—The foreign source earnings of a foreign corporation owned or controlled by U.S. persons generally are subject to U.S. income taxes only when they are actually remitted to the U.S. shareholders as dividends. The fact that no U.S. tax is imposed until, and unless, the income is distributed to the U.S. shareholders is generally referred to as "deferral".

Subpart F.—An exception to the general rule of tax deferral is provided for "tax heaven" activities of corporations controlled by U.S. shareholders under the subpart F provisions of the Code. Under these provisions, this tax haven income, or subpart F income, is deemed to be distributed to the U.S. shareholders, and it is taxed to them currently whether or not they actually receive the income in the form of a dividend.

There are five categories of tax haven (subpart F) income taxed currently to U.S. shareholders of controlled foreign corporations ("CFCs"): (1) income from the insurance of U.S. risks; (2) passive investment income such as dividends, interest, royalties, and rents (refererd to as foreign personal holding company income); (3) sales income earned by the foreign subsidiary on the sale of property purchased from, or sold to, a related company if the property was neither manufactured in nor sold for use in the country in which the subsidiary is incorporated (referred to as foreign base company sales income); (4) income from services performed by the foreign subsidiary outside of the country in which it is incorporated (referred to as foreign base company services income); and (5) shipping income earned by a foreign subsidiary outside of the country in which it is incorporated, if that income is not reinvested in shipping assets (referred to as foreign base company shipping income).

In addition to the tax haven types of income currently taxable to U.S. shareholders under the subpart F provisions, U.S. shareholders are also currently taxable under the subpart F provisions on (1) an amount equal to any illegal bribes or similar payments made by a foreign subsidiary to a foreign governmental official and (2) any income of a foreign subsidiary attributable to the participation in or cooperation with an international boycott.

Exclusion for certain agricultural products.—The Tax Reduction Act of 1975 amended the subpart F provisions to exclude income from the sale between related parties of agricultural commodities which are not grown in the United States in commercially marketable quantities. (Prior to the amendment, such income would have been included in the category of foreign base company sales income.) Consequently, a base company established in a tax haven can trade in such non-U.S. type commodities, buying them from or selling them to related parties, without the trading income being currently subject to U.S. tax under subpart F.

Investments in U.S. property (sec. 956).—Deferral is also ended under present law when (with certain exceptions) the earnings of a controlled foreign corporation are invested in U.S. property (sec. 956). Such indirect repatriations of foreign earnings are treated as constructive dividends. In general terms, U.S. property is defined as all tangible and intangible property located in the United States other than certain specified categories of properties such as portfolio investments in U.S. stocks and securities.

EXPLANATION OF PROPOSAL

Dividends attributable to certain agricultural commodities.—this provision would expand the exclusion from subpart F income presently applicable to income from trading agricultural products which are not grown in marketable quantities in the United States. Under the proposal, where a foreign subsidiary engaged in such commodity trading activities is not owned directly by a U.S. company, but rather indirectly through an intermediate foreign holding company, dividends received by the holding company which are attributable to the commodity trading activities of the foreign trading subsidiary would not be treated as subpart F income and thus would not be currently taxable to the U.S. company. (Under present law, the dividends would constitute foreign personal holding company income currently taxable to the U.S. parent company under subpart F.)

Stapled stock.—The subpart F and anti-boycott rules only apply to foreign corporations if more than 50 percent of the stock of the foreign corporation is owned (directly or indirectly) by U.S. shareholders owning at least 10 percent of the stock each.

Thus, for example, these rules do not apply to a foreign corporation which is 100-percent owned by U.S. persons if more than 50 percent of the stock is owned by shareholders owning less than 10 percent each. In several recent cases, U.S. corporations have attempted to avoid the subpart F rules and the anti-boycott rules by splitting off their foreign operations and conducting them through separate foreign corporations.

The stock of the foreign corporation is "stapled to" or "paired with" the stock of the original U.S. company so that a shareholder cannot buy or sell the stock of one corporation without buying or selling the stock of the other. The management of the U.S. company and its foreign clone are the same. Assuming the U.S. corporation, and thus the new foreign corporation, are widely enough held, this device arguably reaches the result that the new foreign corporation is not subject to the subpart F and anti-boycott rules because the 10-percent shareholder test is not met.

This proposal would treat any foreign corporation which is paired to a U.S. corporation as owned directly by the U.S. corporation with the result that any subpart F income or boycott income of the foreign corporation would be taxed to the U.S. corporation.

Runaway plants.—This provision would treat as subpart F income currently taxable to U.S. shareholders any income derived by a foreign subsidiary from the manufacture of property abroad for sale or consumption in the United States.

Investments by foreign subsidiaries in new U.S. plants.—As indicated above, with certain limited exceptions, a direct investment in U.S. property by a foreign subsidiary is treated as a constructive dividend, and is thus currently taxable to, the U.S. parent of the foreign subsidiary. This proposal would allow a foreign subsidiary to invest deferred income in U.S. property without the U.S. investment being treated as a constructive dividend if the investment is a new manufacturing facility in the United States in a separate line of business from that conducted by the U.S. parent company (or its domestic affiliates).

EFFECTIVE DATE

The provision excluding dividends derived from commodity trading activities would apply to years after 1979. The provisions dealing with stapled stock would apply as of the date of committee action. The provisions dealing with stapled stock would apply as of the date of committee action. The provisions dealing with runaway plants and investments by foreign subsidiaries in new U.S. plants would apply to years after 1980.

REVENUE EFFECT

To be supplied.

H.R. 8110

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN FOREIGN COMMODITY INCOME.

Paragraph (4) of section 954(c) of the Internal Revenue Code of 1954 (defining foreign personal holding company income) is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(D) dividends received from a related person which is a controlled foreign corporation out of the earnings and profits of such person for a taxable year in which at least 80 percent of its gross income (other than gross income taken into account in determining the amounts described in section 952 (a)) was derived from the purchase or sale of agricultural commodities which were not grown in the United States in commercially marketable quantities (within the meaning of subsection (d)(1))."

SEC. 2. CERTAIN FOREIGN BASE COMPANY SALES INCOME.

Paragraph (1) of section 954(d) of the Internal Revenue Code of 1954 (defining foreign base company sales income) is amended to read as follows:

"(1) IN GENERAL.—For purposes of subsection (a)(2), the term 'foreign base company sales income' means—

"(A) income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

"(i) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

"(ii) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country; or

"(B) income derived from the manufacture and sale of property for use, consumption, or disposition within the United States which is not effectively connected with the conduct of a trade or business in the United States and which does not otherwise constitute 'subpart F income' under this subsection.

For purposes of subparagraph (A), personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities."

SEC. 3. INVESTMENT OF EARNINGS IN CERTAIN UNITED STATES PROPERTY.

Paragraph (2) of section 956(b) of the Internal Revenue Code of 1954 (defining United States property) is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(I) property comprising a new manufacturing facility in the United States, and stock or obligations of a domestic corporation which is a related person to the extent that the proceeds therefrom are employed by such related corporation to acquire a new manufacturing facility, but only if neither a United States shareholder nor a member of the affiliated group which includes such shareholder is engaged in the United States in manufacturing or processing activity which is substantially the same as or integrally related to the activity to be conducted by the new manufacturing facility.

For purposes of subparagraph (I), the term 'new manufacturing facility' means tangible property constituting a manufacturing or processing unit, including land and building, and the machinery and equipment reasonably necessary thereto, provided that at least 80 percent of the aggregate adjusted basis of such building, machinery and equipment, is attributable to property the original use of which commenced with the controlled foreign corporation or related domestic corporation. For purposes of subparagraph (I), the term 'affiliated group' has the meaning given to such term by section 1504(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears therein."

SEC. 4. PAIRED STOCK.

Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to income from sources without the United States) is amended by adding the following new subpart after subpart D:

"SUBPART E—PAIRED STOCK

"SEC. 941. PAIRED STOCK.

"(a) OPERATIONAL RULES.—For purposes of this title—

"(1) If an interest in a foreign corporation, foreign partnership or DISC (as defined in section 992(a)) is paired with an interest in a domestic corporation or domestic partnership, the interest in the foreign corporation, foreign partnership or DISC shall be treated as owned directly by the domestic corporation or domestic partnership.

"(2) Property distributed with respect to an interest in a foreign corporation, foreign partnership or DISC that is paired with an interest in a domestic corporation shall be treated as having been first distributed to the domestic corporation and then distributed by it to the holder of such interest.

"(3) A distribution of an interest in a foreign partnership or DISC becomes paired D.SC by a domestic corporation or domestic partnership shall be disregarded if immediately after the distribution such interest is paired with an interest in such domestic corporation or domestic partnership.

"(4) If an interest in a foreign corporation, foreign partnership or DISC becomes paired with an interest in a domestic corporation or domestic partnership other than in connection with a distribution to which paragraph (3) applies, the interest in the foreign corporation, foreign partnership or DISC shall be treated as contributed to the domestic corporation or domestic partnership on the date such interests become paired or on September 15, 1980. whichever is later.

"(5) On the date an interest in a foreign corporation, foreign partnership or DISC ceases to be paired with an interest in a domestic corporation or domestic partnership will be deemed to have made a distribution with respect to such interest of the interest in the foreign corporation, foreign partnership or DISC. The amount of the deemed distribution shall be reduced by the amount which was included in the gross income of the distributee (or its predecessor) pursuant to any actual distribution prior to September 15, 1980, of such interest in the foreign corporation, foreign partnership, or DISC.

"(b) DEFINITIONS.—For purposes of this section—

"(1) PAIRED INTERESTS.—An interest in a corporation or partnership is paired with an interest in another corporation or partnership if, by reason of form of ownership, restrictions on transfer, or any other terms or conditions, upon the transfer of one such interest the other such interest is also transferred or required to be transferred to the same person. The requirement of the preceding sentence shall be considered to be satisfied if both interests must be offered for redemption prior to sale of either such interest.

"(2) INTEREST.—The term 'interest' means—

"(A) with respect to a corporation, legal or beneficial ownership of stock in such corporation, or

"(B) with respect to a partnership, legal or beneficial ownership of an interest in the income or capital of such partnership.

"(c) Applicability of Section.—Subsection (a) shall apply only if—

"(1) the aggregate of interests in the domestic corporation or domestic partnership which are paired with interests in the foreign corporation, foreign partnership or DISC constitutes at least 50 percent of the total combined voting power, or 50 percent of the total value, of all interests in such domestic corporation or domestic partnership, and

"(2) any person, which held an interest in the foreign corporation, foreign partnership or DISC immediately after such interest became paired with an interest in the domestic corporation or domestic partnership, held the interest in the domestic corporation or domestic partnership (or its domestic predecessor) immediately before such interests became paired.

"(d) Regulations.—The Secretary shall prescribe such regulations as he may deem appropriate to provide the extent to which—

"(1) subsection (a) shall not apply for purposes of any provision of this title other than subpart F of part III, part IV, and part V of subchapter N,

"(2) basis or earnings and profits shall be adjusted at the time that an interest in a foreign corporation, foreign partnership or DISC ceases to be paired with an interest in a domestic corporation or domestic partnership.

"(3) paragraph (5) of subsection (a) shall apply upon the liquidation or redemption of one or both of the paired interests described in paragraph (1) of subsection (a).".

Sec. 5. Effective Dates.

(a) Section 1.—The amendments made by section 1 shall apply to taxable years of foreign corporations beginning on or after January 1, 1980, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(b) Sections 2 and 3.—The amendments made by sections 2 and 3 shall apply to taxable years of foreign corporations beginning on or after January 1, 1981, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(c) Section 4.—The amendments made by section 4 shall apply after September 15, 1980, with respect to any interest in a foreign corporation, foreign partnership or DISC which is paired (within the meaning of section 941(b)) with an interest in a domestic corporation or domestic partnership regardless of when such interests became paired, except that section 941(a)(5) shall not apply before 1 year after date of enactment of this Act with respect to any such interest which became paired before September 15, 1980.●

MICHAEL J. KOGUTEK ELECTED NATIONAL COMMANDER OF THE AMERICAN LEGION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. Roberts) is recognized for 5 minutes.

Mr. ROBERTS. Mr. Speaker, Mr. Michael J. Kogutek, of Lackawanna, N.Y., was elected national commander of the American Legion at the closing session of the 62d Annual National Convention, in Boston, Mass., on August 21, 1980. Commander Kogutek will lead an organization approaching 2.7 million veterans. Commander Kogutek is the fourth New York Legionnaire to attain the post of national commander.

A veteran of the U.S. Navy with service in the South Pacific during World War II, he is a charter member of Lackawanna's Matthew Glab Post No. 1477 and was honored with life member status in 1965.

During his 34 years as a Legionnaire, Kogutek has steadily climbed the ranks of responsibility at all levels of the American Legion. In 1961–62 he was commander of post No. 1477, after having served in a variety of post positions. He was Erie County, N.Y., adjutant prior to becoming county commander in 1964–65 and was elected eighth district commander for 1966–67.

Mr. Kogutek was commander of the department of New York during the American Legion's golden anniversary in 1968–69. At the State level, he has served as chairman of special activities, resolutions, membership, convention arrangements, and as a member of the national executive committee.

He is a past alternate national executive committeeman and currently is a member of the national finance commission and the board of directors of the National American Legion Child Welfare Foundation, Inc. His previous national appointments include the national economic commission, national veterans' preference committee, and the national economic subcommittee for which he served as liaison with the Small Business Administration of the Federal Government.

Mr. Kogutek was born in Lackawanna, N.Y., September 30, 1925, and was educated in Lackawanna's public and parochial schools. He studied industrial and labor relations at Cornell University and holds an associate degree in science from Empire State College. He is plant manager for Buffalo Brake Beam Co. and a former police commissioner and commissioner of public works for the city of Lackawanna.

He is past president of both the Lackawanna Chamber of Commerce and the Central Railway Club of Buffalo, and holds membership in the Professional & Businessmen's Association, the Associated Industry Association of New York, the Knights of Columbus, and the Buffalo Chamber of Commerce.

Commander Kogutek and his wife, the former Dorothy Druzbik, are the parents of two children, Michael and Sharon.

Mr. Speaker, I wanted all Members of the House to know something about the outstanding background of Commander Kogutek.

Commander Kogutek will appear before the Committee on Veterans' Affairs on September 23 to present the legislative recommendations of his great organization. We look forward to his appearance at that time. I have a very high regard, as do all Members of this body, for the American Legion. We work very closely with them.

Although I will not chair the Committee on Veterans' Affairs next Congress, since I plan to retire from the House at the close of this session, I feel certain that the American Legion will prosper under the leadership of National Commander Michael J. Kogutek.●

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. Lungren) to revise and extend his remarks and include extraneous material:)

Mr. Hammerschmidt, for 5 minutes, today.

(The following Members (at the request of Mr. Dicks) to revise and extend their remarks and include extraneous material:)

Mr. Alexander, for 5 minutes, today.

Mr. Bingham, for 5 minutes, today.

Mr. Gonzalez, for 15 minutes, today.

Mr. Annunzio, for 5 minutes, today.

Mr. Mazzoli, for 5 minutes, today.

Mr. O'Neill, for 5 minutes, today.

Mr. Rostenkowski, for 5 minutes, today.

Mr. Roberts, for 5 minutes, today.

Mr. Gaydos, for 60 minutes, September 16.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Lungren) and to include extraneous matter:)

Mr. Rhodes.

Mr. Green.

Mr. Michel in two instances.

Mr. Hollenbeck in three instances.

Mr. Sensenbrenner.

Mr. Brown of Ohio.

Mr. Leach of Iowa.

Mr. Conable.

Mr. Moorhead of California.

Mr. Hyde.

Mr. Winn.

Mr. Wydler.

Mr. Lagomarsino in two instances.

Mr. Broyhill in two instances.

Mrs. Fenwick.

Mr. Kemp in three instances.

Mr. Whitehurst.

(The following Members (at the request of Mr. Dicks) and to include extraneous matter:)

Mr. Ottinger.

Mr. Bingham in 10 instances.

Mr. Edwards of California in two instances.

Mr. Bedell.

Mr. Brodhead.

Mr. Mazzoli in three instances.

Mr. Jones of Oklahoma.

Mr. Brademas.

Mr. Stokes.

Mr. Stark.

Mr. Zablocki.

Mr. Studds.

Mr. Fauntroy.

Mr. Phillip Burton.

Mr. Traxler.

Mr. Blanchard in two instances.

Mr. Hubbard.

Mr. McDonald in five instances.

Mr. Anderson of California in 10 instances.

Mr. Gonzalez in five instances.

Mr. Annunzio in six instances.

Mr. Rosenthal in 10 instances.

Mr. Brown of California in 10 instances.

Ms. Holtzman in 10 instances.

Mr. Jones of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. HOWARD.

SENATE CONCURRENT RESOLUTION REFERRED

A concurrent resolution of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. Con. Res. 123. Concurrent resolution authorizing the printing of additional copies of the booklets entitled "The Senate Chamber, 1810–1859" and "The Supreme Court Chamber, 1810–1860"; to the Committee on House Administration.

ADJOURNMENT

Mr. DICKS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 43 minutes p.m.) the House adjourned until tomorrow, Tuesday, September 16, 1980, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5279. A letter from the Governor, Farm Credit Administration, transmitting the 46th Annual Report of the Farm Credit Administration and the cooperative farm credit system, pursuant to section 5.18(3) of Public Law 92–181, as amended; to the Committee on Agriculture.

5280. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Air Force's proposed sale of certain defense equipment and services to the Netherlands (Transmittal No. 80–105), pursuant to section 813 of Public Law 94–106; to the Committee on Armed Services.

5281. A letter from the Chairman, U.S. Commission on Proposals for the National Academy of Peace and Conflict Resolution, transmitting the interim report of the Commission; the interim report of the Commission; to the Committee on Education and Labor.

5282. A letter from the Assistant Secretary of State for Congressional Relations, transmitting Presidential Determination No. 80–26, certifying that the Government of Nicaragua has not aided or abetted international terrorism, together with notice of the President's intention to exercise his authority under section 614(a) of the Foreign Assistance Act of 1961 in order to furnish assistance to Nicaragua, pursuant to section 536(g) and 652 of the act; to the Committee on Foreign Affairs.

5283. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the State Department's intention to consent to a request by the Government of the United Kingdom for permission to lease certain U.S.-origin defense equipment to the Netherlands, pursuant to section 3(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5284. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

5285. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to India (Transmittal No. 80–88), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5286. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment and services to India (Transmittal No. 80–94), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5287. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Air Force's intention to offer to sell certain defense equipment and services to the Netherlands (Transmittal No. 80–105), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5288. A letter from the Assistant Secretary of Transportation for Administration, transmitting notice of a proposed new records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5289. A letter from the Director of ACTION, transmitting notice of proposed changes in existing records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

5290. A letter from the Secretary of Health and Human Resources, transmitting the third annual report on activities of diabetes research and training centers, pursuant to section 435(b) of the Public Health Service Act, as amended; to the Committee on Interstate and Foreign Commerce.

5291. A letter from the General Counsel, Department of Energy, transmitting notice of a meeting relating to the international energy program to be held on September 18, in Paris; to the Committee on Interstate and Foreign Commerce.

5292. A letter from the Acting Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in the cases of certain aliens found admissible to the United States, pursuant to section 212(a) (28) (I) (ii) of the Immigration and Nationality Act; to the Committee on the Judiciary.

5293. A letter from the Administrator of General Services, transmitting a prospectus proposing the construction of a Federal building in Redding, Calif.; to the Committee on Public Works and Transportation.

5294. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease in Denver, Colo.; to the Committee on Public Works and Transportation.

5295. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease for the Railroad Retirement Board in Chicago, Ill.; to the Committee on Public Works and Transportation.

5296. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease for space located at 1310 L Street NW., Washington, D.C.; to the Committee on Public Works and Transportation.

5297. A letter from the Administrator of General Services, transmitting a prospectus proposing continued occupancy under a succeeding lease of space located in the Park Place Building, 1200 Sixth Avenue, Seattle, Wash.; to the Committee on Public Works and Transportation.

5298. A letter from the Chairman, U.S. Consumer Product Safety Commission, transmitting the Commission's budget estimates for fiscal year 1982, pursuant to section 27(k) of the Consumer Product Safety Act; jointly, to the Committees on Appropriations and Interstate and Foreign Commerce.

5299. A letter from the Comptroller General of the United States, transmitting a report on the nuclear accident at Three Mile Island, Pa. (EMD–80–109, Sept. 9, 1980); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

5300. A letter from the Comptroller General of the United States, transmitting a report on the estimated potential of oil and natural gas available to the United States from Alaska, Canada, and Mexico through the year 2000 (EMD–80–72, Sept. 11, 1980); jointly, to the Committees on Government Operations, Interior and Insular Affairs, and Interstate and Foreign Commerce.

5301. A letter from the Comptroller General of the United States, transmitting a report on problems State and local prison and jail administrators have in providing safe and humane environments for inmates (GGD–80–77, Sept. 15, 1980); jointly, to the Committees on Government Operations and the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to the order of the House on September 10, 1980, the following reports were filed*·]

Mr. BINGHAM: Committee on Foreign Affairs. House Concurrent Resolution 367. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1569 (Rept. No. 96–1318). Referred to the Committee of the Whole House on the State of the Union.

Mr. BINGHAM: Committee on Foreign Affairs. House Concurrent Resolution 368. Concurrent resolution disapproving the proposed export to India of low-enriched uranium for the Tarapur Atomic Power Station pursuant to export license application XSNM–1379 (Rept. No. 96–1319). Referred to the Committee of the Whole House on the State of the Union.

Mr STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 6865. A bill to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.; with amendment (Rept. No. 96–1100, pt. 2). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ALEXANDER:

H.R. 8106. A bill to amend the Depository Institutions Deregulation and Monetary Control Act of 1980 to provide that any person may charge interest on any loan at a rate which is not more than 5 percent greater than the discount rate on 90-day commercial paper which is in effect at the Federal Reserve bank in the Federal Reserve district in which such person is located; to the Committee on Banking, Finance and Urban Affairs.

By Mr. JOHN L. BURTON:

H.R. 8107. A bill to amend the Federal Aviation Act of 1958 to require the monitoring of the radioactive materials transported by air, and for other purposes; to the Committee on Public Works and Transportation.

H.R. 8108. A bill to require the monitoring of radioactive materials transported by air, and for other purposes; jointly, to the Committees on Interstate and Foreign Commerce and Public Works and Transportation.

By Mr. CONABLE:

H.R. 8109. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the credit for expenses for household and dependent care services necessary for gainful employment; to the Committee on Ways and Means.

By Mr. ROSTENKOWSKI:

H.R. 8110. A bill to provide certain rules relating to the taxation of U.S. business operations abroad; to the Committee on Ways and Means.

By Mr. FRENZEL:

H.R. 8111. A bill to amend the Internal Revenue Code of 1954 to provide tax incentives to encourage the building and rehabilitation of rental housing; to the Committee on Ways and Means.

By Mr. KOGOVSEK (for himself and Mr. Johnson of Colorado):

H.R. 8112. A bill to require the Secretary of the Interior to convey a parcel of land located in Colorado and certain mineral interests to the Ute Mountain Ute Tribe and to pay an amount to such tribe for energy development; to the Committee on Interior and Insular Affairs.

By Mr. MATHIS:

H.R. 8113. A bill to amend the Consolidated Farm and Rural Development Act to provide the Secretary of Agriculture with emergency credit readjustment authority, and for other purposes; to the Committee on Agriculture.

By Mr. PICKLE:

H.R. 8114. A bill to amend the Internal Revenue Code of 1954 to exempt incremental tertiary oil from the windfall profit tax; to the Committee on Ways and Means.

By Mr. RODINO (by request):

H.R. 8115. A bill to amend section 274 of the Immigration and Nationality Act relating to the seizure of vessels, vehicles, and aircraft by the Immigration and Naturalization Service; to the Committee on the Judiciary.

By Mr. STUDDS:

H.R. 8116. A bill to require that State elections, within the same region of the United States, for delegates to national Presidential nominating conventions be held on the same date, and for other purposes; to the Committee on House Administration.

By Mr. WAXMAN (for himself, Mr. Carter, Mr. Gramm, Mr. Staggers, Mr. Satterfield, Mr. Preyer, Mr. Luken, Mr. Walgren, Mr. Shelby, Mr. Murphy of New York, Mr. Santini, Mr. Traxler, Mr. Bedell, Mr. Broyhill, Mr. Devine, Mr. Stockman, Mr. Lee, Mr. McClory, Mr. Pashayan and Mr. Dannemeyer):

H.R. 8117. A bill to amend the Safe Drinking Water Act, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. WHITTEN:

H.J. Res. 609. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; to the Committee on Appropriations.

MEMORIALS

Under clause 4 of rule XXII,

527. The SPEAKER presented a memorial of the Legislature of the State of California, relative to library services, which was referred to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 365: Mr. Ginn.

H.R. 4223: Mr. Lederer, Mr. Leland, and Mr. Ford of Tennessee.

H.R. 5092: Ms. Oakar, Mr. Cavanaugh, Mr. Yates, and Mr. Long of Maryland.

H.R. 5382: Mr. Garcia and Mr. Railsback.

H.R. 6066: Mr. Roth.

H.R. 6625: Mr. Roe.

H.R. 6637: Mr. Shumway.

H.R. 7286: Mr. O'Brien.

H.R. 7436: Mr. Ottinger.

H.R. 7526: Mr. Maguire, Mrs. Chisholm, Mr. Rosenthal, Mr. Stark, Mr. Bonior of Michigan, Mr. Clay, Mr. Rahall, Mr. Studds, Mr. Wolpe, Ms. Mikulski, Mr. Bedell, Mr. Fazio, Mr. Ottinger, Mr. Mitchell of Maryland, Mr. Garcia, Mr. Gray, Mrs. Spellman, and Mr. Waxman.

H.R. 7658: Mr. McKinney.

H.R. 7773: Mr. Alexander, Mr. Tauzin, and Mr. Lehman.

H.R. 7898: Mr. Wolff.

H.R. 7957: Mr. Evans of Indiana.

H.R. 8000: Mr. Fazio, Mr. Wolpe, and Mr. Blanchard.

H. Con. Res. 422: Mr. English, Mr. Ichord, Mr. Jones of North Carolina, Mr. Santini, Mr. Bethune, Mr. Fountain, Mr. Lowry, Mr. Lujan, Mr. Frenzel, and Mr. Symms.

PETITIONS, ETC.

Under clause 1 of rule XXII,

432. The SPEAKER presented a petition of the 29th Annual Conference, United Methodist Youth Fellowship of the North Carolina Conference of the United Methodist Church, Raleigh, relative to the right to die, which was referred to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. LIVINGSTON:

—Page 72, after line 16, insert the following:

Sec. 305. Notwithstanding section 311 (f)(1) of the Federal Water Pollution Control Act, this title and the amendments made by this title shall be applicable to claims for removal costs and economic loss incurred as a result of the discharge of pentachlorophenol into the Mississippi River Gulf outlet on July 22, 1980, in the same manner and to the same extent as this title and the amendments made by this title apply to claims to removal costs and claims for economic loss incurred after the effective date of this title.

By Mr. STUDDS:

—Page 9, line 15, strike out " and".

Page 9, line 21, strike out the period and insert in lieu thereof a semicolon.

Page 9, after line 21, insert the following:

(5) loss of use of real or personal property;

(6) loss of use of natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 10, line 10, strike out "item 2" and insert in lieu thereof "items 2, 5, and 6".

Page 11, line 1, strike out "4" and insert in lieu thereof "7".

Page 12, line 7, strike out "and".

Page 12, line 11, strike out the period and insert in lieu thereof "; and".

Page 12, after line 11, insert the following:

(7) under item 7, by any State or political subdivision thereof.

—Page 48, line 7, strike out "and".

Page 48, line 13, strike out the period and insert in lieu thereof a semicolon.

Page 48, after line 13, insert the following:

"(E) loss of use of real or personal property;

"(F) loss of use of natural resources; and

"(G) loss of tax revenue for a period of one year due to injury to real or personal property.

Page 49, line 3, strike out "item (B)" and insert in lieu thereof "items (B), (E), and (F)".

Page 49, line 21, strike out "(D)" and insert in lieu thereof "(G)".

Page 50, line 18, strike out "and".

Page 50, line 22, strike out the period and insert in lieu thereof "; and"

Page 50, after line 22, insert the following:

"(G) under item (G) of paragraph (1) by any State or political subdivision thereof.

H.R. 5615

By Mr. SOLOMON:

—Page 13, line 7, strike out "an" and insert in lieu thereof "a present or former".

Page 13, line 8, strike out ", or a member of the Armed Forces" and insert in lieu thereof "or a present or former member of the Armed Forces who is or was".

Page 13, line 20, after "United States" insert ", or who resided or acted outside the United States,".

Page 13, beginning on line 23, strike out "who is at the time of the disclosure acting as" and insert in lieu thereof "who is or was".

H.R. 7020

By Mr. STOCKMAN:

—Page 7, line 11, strike out "or local".

—Page 8, line 8, after "(ii) whether there have been any" insert "scientifically documented".

Page 8, line 10, strike out "or the environment".

—Page 9, line 3, after "Administrator." add the following: "The Administrator shall not make such forms available prior to submitting copies of the proposed forms to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The Administrator may not use any form that has been disapproved by a majority vote of either Committee within fifteen days of its submittal or three months after the date of enactment of this Act, whichever is later.".

—Page 9, line 18, after "paragraph (1)" insert the following: "*Provided, however*, That the Administrator may not require a generator or transporter to submit such information unless he determines that the site in connection with which the information is sought poses an imminent threat to public health or safety.".

—Beginning at page 12, line 3, strike out all that appears down through page 13, line 3.

—Page 13, line 10, after "section." add the following: "No State shall receive more than 15 percent of the total amount of such grants allocated in any one fiscal year, nor shall any State receive less than one percent of the total.".

—Page 13, line 18, strike out "$35,000,000" and insert in lieu thereof "$20,000,000".

—Beginning at page 14, line 1, after "environment.", strike all that appears down through page 14, line 24.

—Beginning at page 18, line 23, strike out all that appears down through page 20, line 8.

—Page 20, line 14, strike out "or" and insert in lieu thereof "and".

—Page 20, line 15, strike out "or the environment" and insert in lieu thereof "and safety".

H.R. 8105

By Mr. ADDABBO:

—Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:".

On page 42, line 1, and insert in lieu thereof "*Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:".

EXTENSIONS OF REMARKS

MOSCOW, POLAND, AND FINANCING OF COMMUNIST COUNTRIES BY THE WEST—PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. McDONALD. Mr. Speaker, recent events in Poland laid bare the precarious state of the Polish economy, supported on one hand by loans from the West and on the other hand by loans from the Soviet Union. Many columns were devoted to the state of the Polish economy, but most of them missed one salient point. Most of what the Polish economy builds and makes goes to the Soviet Union, in return for rubles and raw materials. Poland, for instance, pays dearly for Soviet oil to fuel her economy. One of the major reasons the Soviet Union was so intensely interested in a peaceful settlement of the strike was the fact that the striking shipyards are constantly building new merchant ships for her fleet, because her own shipyards are tied up in gigantic naval construction projects. Therefore, loans by Western banks and governments to Communist Poland are in effect loans to the Soviet Union.

The time is long past due for the free world to reexamine its suicidal policy of financing the Communist world. Therefore, at this point I am inserting part I of an article that appeared in the June 1980 Washington Monthly by James M. Whitmire for the edification of my colleagues on this subject:

Financing of Soviet Bloc by Western Banks Is a Mistake

(By James M. Whitmire)

In the wake of Afghanistan, the United States and the Soviet Union are back to strutting around each other like gun-fighters at high noon, each ready to reach for the trigger. The Pentagon talks of fearsome new weapons: MX missiles, neutron bombs, particle beams. Everyone assumes the Soviets are plotting ghastly new weapons as well. The truth is, one is already in place.

But you won't find this new secret weapon in the Red Army's arsenal, because it's not a bomb or a chemical. It's worse. It could devastate the West without a shot being fired. Incredibly, it is a weapon we are not only constructing for the Russians—but paying for as well.

The weapon? Debt. Quietly, assiduously, Western banks since the mid-1970s have allowed the Soviet bloc to pile up $60 billion to $80 billion in outstanding debt, according to the Washington Monthly's sources. The magnitude of this debt is such that a Soviet default might spark a financial panic capable of collapsing the capitalist banking system.

Most of the industrial goods "sold" to the Soviet bloc in recent years have not been paid for in hard currency, but financed by loans from the U.S. government or banks. These loans increase inflation in the West, while gifting the Soviet bloc with priceless technology and machinery in return for the unenforceable promise that someday they will pay us back.

There is growing concern within the international community that Soviet bloc countries will never be capable of generating enough hard currency to repay their debts—or, more chilling, have no intention of repaying in the first place.

The Soviets are almost certain, at some point, to use the threat of default as a lever to gain political concessions from the West. Should U.S.-U.S.S.R. relations ever decline into desperate straits, the Soviets could simply defy their benefactors and cancel the debt outright.

What's more, lending to the Soviet bloc continues at a furious pace, despite the loans' questionable merit from either a political or financial point of view. Western bankers, caught in an "undertow syndrome" of sending good money after bad, seem determined to make our position even weaker.

ON OUR ASSETS

In 1977 the Senate Foreign Relations Committee concluded that the entire international financial system could crumble beneath the weight of one or two major defaults, defaults that would send banks tumbling into each other like freeway traffic hitting a patch of ice.

The committee had in mind defaults involving far less money than is now loaned through COMECON to the Soviet bloc. COMECON is a Common-Market-like agency that coordinates economic policy for the Soviet Union and its East European client states. (Though technically loans are made to individual COMECON members like Hungary, Russian planners wield almost total control over the organization and its use of funds.)

The specter of colossal default was raised last November when Iran announced that it would not repay the $10 billion it owes American banks. A World Bank officer told The Washington Post that this action, "the largest default in financial history," put the banking system to "its most severe test in recent times." Fortunately, the shock was absorbed with minimal funk, largely because the Iranians were so careless as to have left $8 billion in assets in American banks.

This episode had the salutary effect of stimulating some thought on the consequences of large defaults. If Iran's net default of $2 billion put a severe strain on the system, what might be the impact of a Soviet-bloc default involving amounts 30 to 40 times greater? (The Soviets are not so careless as to leave much money in our hands.)

So far, the only public debate on East-West trade involves the politics of the exchange. There is contention about whether our bulging grain exports serve to shore up the inefficient Soviet system and strengthen the Kremlin elite's grip on power. There is strategic argument about whether transferring advanced technology contributes to our adversary's military power. But there's never been debate over the simple fact that the Soviet bloc, in effect, does not pay for what it gets. The West sends machines and grain, and receives nothing in return except the illusion of prosperity for the farmers and firms being paid in funny-money originating on the Federal Reserve's press.

Washington officially downplays the prospect of a COMECON default, but anxious whispering can be heard. "We should have been a lot more cautious," says an informed State Department official." "They've got us where they want us now." One source interviewed for this article referred to a conversation he had with National Security Advisor Zbigniew Brzezinski, in which Brzezinski admitted to worrying "quite a bit" about the political leverage the Soviets gain through their debt. "Indebtedness often increases the leverage of the debtor and decreases the leverage of the creditor," Brzezinski is quoted as saying. (He declined to be interviewed for this article.) Noting that the English, West Germans, and Italians have loaned especially large sums to the Soviet bloc, Brzezinski is quoted as concluding, "If a COMECON country defaulted, it could create considerable problems."

LEAVE ME A LOAN

Government officials also worry that exposing such a predicament to abrasive public response would play into Soviet hands, by increasing the West's sense of weakness and vulnerability. When pressed, officials at the departments of Commerce and State admit that the growing COMECON debt is ominous, but they invariably change the subject by pointing to the much larger—and equally uninsured—debt owed by Third World nations.

Credit outstanding to "less-developed countries" has risen from $137 billion in 1974 to more than $300 billion today. The prospect of a Third World default, officials contend, is a greater cause for alarm than possible Soviet misbehavior.

The Third World debt is, of course, troubling. But poor nations are not a rigid ideological bloc acting cohesively. Far more important, they are not our avowed political and economic competitors. They do not have large, potent armies and have not preoccupied themselves with devising new instruments of pressure and coercion, as have the Soviets.

The West's tenuous grasp of the COMECON debt problem is indicated by the fact that no one can agree on how much credit actually has been extended. The most conservative estimate is that the debt has increased from less than $10 billion in the early 1970's, to $18 billion in 1974, to $48 billion in 1977—a pace many times greater than inflation. It hovers between $60 billion and $80 billion today—an amount equal to the total assets of Exxon and General Motors combined.

Back in 1976 Henry Kissinger described the debt as "sudden" and "striking." Yet it continued to climb, unopposed. Allen Lenz of Commerce's Bureau of East-West Trade (which supports the above low-end estimates) predicts that by 1985 Soviet-bloc borrowing could hit $108 billion. Miles Costick, director of the conservative Institute on Strategic Trade, says Commerce deliberately deflates the debt figure because of its desire to "generate trade at any price." The current trends, Costick believes, point to a debt of at least $200 billion by 1990—$45 billion of which, he says, will be held by Russia itself. It seems that if only Lee Iacocca could move Chrysler headquarters to Kiev, his money problems would be solved; he could simply plug into COMECON's free-flowing line of Western credit.

AUTARKIC CHILD

COMECON debt is a recent development because, until the early 1970s, the Soviets didn't want to borrow money. The Soviet regime traditionally has been highly autarkic, exhibiting an aversion to debt that one economist described as "positively Victorian." Besides their doctrinaire position that the presence of capitalist financiers would corrupt Marxist purity, Kremlin leaders believed that if Eastern economies were based on someone else's money, they could never be self-sufficient or secure.

On the rare occasions Soviet-bloc countries borrowed, they were scrupulous about meeting interest and repayment timetables, and International Monetary Fund official says. Thus, when economic difficulties forced them into the credit market in the early 1970s, Western bankers were impressed by their impeccable borrowing records. The bankers declared COMECON countries to be good risks.

Two types of loans are extended to COMECON nations. The first is government-supplied "credits"—direct loans from the U.S. Treasury, administered by the Export-Import Bank. Ex-Im "credits" can be used only for the purchase of American goods, and are "tied" to a specific commodity or project. An Ex-Im loan to buy American computers, for instance, is essentially a payment from the Treasury to the computer firm, with money never coming to rest in COMECON accounts. Repayments are made from COMECON to the Treasury. If the debtor does not pay, the U.S. taxpayer takes the loss directly.

A State Department source estimates that about one-third of COMECON's loans are credits from the Ex-Im Bank. One drawback of the credits is that Ex-Im contracts include human rights provisions, similar to those in the Helsinki Pact, that debtor countries are supposed to observe. There are no such provisions in regular commercial loans, which make up the remaining two-thirds of the East's borrowing.

Regular commercial loans are the same as those extended to companies. "When the Soviet Union goes to Chase Manhattan," says another State Department officer, "they're treated just like Ford Motor Company, or any private customer." This means, first, that private loans are "not a matter of official government policy," the officer explained. "The banks don't have to make them, and Washington doesn't stop them from making them." It also means these arrangements enjoy the same secrecy that surrounds other private loans.

COMECON's early-1970s arrival on the credit market couldn't have come at a better time from the East's perspective, because our commercial banks were inordinately liquid. Following the 1973 quadrupling of OPEC oil prices, Arab petrodollars swelled Western banks; simultaneously, because of the 1974-1975 recession, private-sector demand for loans was low. The banks were eager to find outlets for idle capital.

Most of the banks granting COMECON loans are the same ones involved in other aspects of the international credit market. According to an informed source, Citicorp is the largest lender, followed (in rough order) by Morgan Guaranty Trust, Chase Manhattan, and Hanover Trust. Many of their loans are not for specific purposes, like the credits Ex-Im extends, but "untied" loans. In this case, the bank sends a lump sum directly to the central bank of the COMECON member nation. The COMECON nation then uses the money as it sees fit while (in theory at least) repaying the lender in regular installments.

Specific loans are often tied to a project—say, the development of a coal field—whose completion will enhance the debtor nation's ability to repay. Untied loans can be used for anything: to cover balance-of-payment deficits, to buy hard currency for new purchases, or in some cases, to meet the payments on previous loans. This makes them the most precarious of all. Because they are entirely uninsured, they are called "sovereign risk" loans against the creditworthiness of the country itself. Banks usually form syndicates (risk-sharing pools) on sovereign risk loans, so that in case of trouble, the lead bank does not suffer all the loss. "For all intents and purposes, these loans are made solely on faith, with no recourse if the Soviets refuse to pay," says a State Department analyst, "I sure hope Citicorp knows what it's doing," he adds.

Most of the initial loans were five- to seven-year agreements on terms highly favorable to COMECON. Sources have told me that the ease with which COMECON obtained its loans was a revelation to Eastern governments. So were the full implications of the arrangement. After finally tasting the forbidden fruit of Western credit, COMECON nations realized they could never be forced to repay. What once semeed like a flirtation with capitalist corruption began to look like a fine means to drain strength from the crumbling bourgeois powers.●

THEY'VE GOT A SECRET

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STARK. Mr. Speaker, I would like to bring to the attention of my colleagues the following Washington Post editorial on the administration's new system to deal with classification.

The very terminology chosen by the administration makes one wonder what has become of the President's commitment to open Government. Do the President and his top advisers really consider themselves royalty?

The editorial follows:

[From the Washington Post, Sept. 10, 1980]

THEY'VE GOT A SECRET

The administration, it seems, has been working up a new system to deal with classified information in order to see that the right stuff gets to the right people, and only to them. The juciest part of the scheme is that a new classification, above top secret, is being created: royal. It is solemnly avowed by those familiar with the system in the executive branch and on Capitol Hill, that information will not be withheld from people who ought to have access to it. But the number of people cleared for royal will be very small.

The fact that under a new category some information will be restricted to a short list does raise the possibility of abuse. It is now widely accepted, for instance, that the list of those allowed to check plans for the Iranian rescue mission was disastrously short. But it is not on its face wrong to draw up a short list—as long as there are believable assurances that insiders who need to know will know and that the procedures will be kept open to review. The government does have a responsibility to regulate the flow of classified information and plug leaks. From what is known, it seems premature to suggest, as some have, that the new system is meant not so much to protect intelligence sources as to provide President Carter with a hiding place for politically damaging information—about, say, his brother's Libyan ties.

But we would not be taking up your time today simply to tell you that. What really moves us is the new designation: royal. Hold that one up to the light. Recall that the old system was based on a set of words—secret, top secret—referring directly to the information being held. Even some of the old odd super-secret classifications, such as "cosmic" or "Q," refer to the information. You are "cleared for top secret." But, royal: it can only refer to the people cleared. Not since Richard Nixon put the White House police in double-breasted white tunics and vinyl operetta caps has there been a similar reaching out for simulated majesty.

All right—it could have been worse: Holy, Blessed, Galactic, Superhuman, Hotsy-Totsy. But royal is bad enough. Is that really how the Carter White House views the Carter presidency? The Royal We lives.●

REGIONAL PRIMARIES

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STUDDS. Mr. Speaker, by the time the results of the 37th Presidential primary were tallied on June 3 of this year, Americans were weary of politics and disenchanted with the candidates who had survived—there is no more accurate term—the ordeal of a marathon primary season. Preprimary campaigning now begins years before the polls open in New Hampshire. Thereafter, candidates trudge through State after State, week after week, for dozens of Presidential primaries and caucuses scattered across the country, with campaign organizations and media in tow and with the public straining to keep from yawning.

The State primary was originally designed as a progressive alternative to nominating the personal favorites of political power brokers. The primary season has, however, become so cluttered and unwieldy—there were more than twice as many primaries in 1980 as in 1968—that party nominations are virtually reserved for the least employed and most athletic of candidates.

State primaries are still the best way to gauge the popular preferences for Presidential candidates. But the kaleidoscope of primaries now operates with less attention to coherent, coordinated scheduling than to political expediency, or—in many cases—with virtually no reason at all. Some States jockey to be among the first to hold primaries; others want to have the last say of the primary season. In between, it is not unusual for several States located in disparate parts of the country to hold primaries on the same date. A candidate is obliged to bounce from coast to coast among the primary sites just to keep pace with the other marathoners, despite the fact that the demands of the current primary system have little relevance to the demands of the Presidency. The primary campaign serves, though, to drain the candidates' physical stamina and consume their financial resources, which in many cases are underwritten by the taxpayers through public campaign financing.

As a result, I have introduced legislation in the House of Representatives to establish a system of four regional Presidential primaries to be held on the first Tuesdays in March, April, May, and June. I believe this system would provide for a reasonable number of primary dates and for a sensible interval of time between them. Under the bill, the United States would be divided into four geographic regions. States in each region would be permitted to hold a primary on one of the four dates. The order of the regional primary dates would be determined by lottery drawing about 60 days before each successive primary.

I believe this system could minimize the freneticism of the primary campaign. Candidates could campaign more calmly for 1 month in each section of our large Nation, addressing themselves more than superficially to both regional and national issues. This might inspire and assist the electorate to base its decisions on more than a television advertisement or an airport news conference. Candidates could concentrate their personal energies and campaign chests while also saving some of the voters' patience for the actual Presidential race which follows.

This could all be done without stretching out the primary season. Determining the primary sequence by lot might also cut down on the drone of preprimary campaigning by mitigating the supposed importance of political momentum based on success in the first primary contest. A candidate who does not know where the campaign will begin may not spend 2 years banging on doors in the first primary site. The demands of the current primary setup limit dangerously the field of prospective Presidential candidates. A system of regional primaries, on the other hand, would again make it possible for a responsible public official to run for the Presidency. Perhaps we might even return to the point, as suggested recently by Washington Post reporter David Broder, when astute politicians believed that the best way to win the Presidency was to gain respect in their present jobs.

In conjunction with other reforms which I am proposing, a system of regional Presidential primaries could go a long way toward restoring respect for our electoral system and the officials we elect by means of that system.●

RETIREMENT OF DANIEL SCHULTZ, SOCIAL SECURITY ADMINISTRATION

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. PICKLE. Mr. Speaker, I rise to honor the retirement of a distinguished Government employee. Early this month, Mr. Daniel Schultz of the Office of Hearings and Appeals, Social Security Administration, retired after 33 years of service, of which the last 15 years were in the Office of Hearings and Appeals. He was as knowledgeable as any individual in the country in the complex social security appeals systems, and happily for the Social Security Administration, he used this expertise in a very practical way as Director, Office of Policy and Procedure. Mr. Schultz had the rather unique quality, while being completely loyal to the prevailing administration position, of being able to supply relevant data and backgound information requested by our subcommittee in a completely honest and forthright manner. He was also responsive to requests in terms of time and substance, a characteristic much appreciated by Members and staff who worked in the appeals area.

The Social Security Administration can ill afford to lose Dan Schultz' integrity and competence, and the institutional knowledge he represented. The Social Security Subcommittee thanks him for the assistance he has so graciously provided in the past, and wishes him well in his retirement.●

STEALTH CASE DISMAYS EXPERTS

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I believe the administration's attempt to downplay the magnitude of the error in confirming the existence of the stealth aircraft is clearly analyzed in a recent news commentary by columnist George Wilson.

I would like to call to the attention of my colleagues the column by Wilson entitled "Stealth Case Dismays Experts" which appeared in the September 11, 1980, edition of the Washington Post.

The column follows:

STEALTH CASE DISMAYS EXPERTS

(By George C. Wilson)

The debate over who leaked what to whom, and when, about radar-invisible Stealth aircraft misses the real sore point for the nonpolitical professionals in the defense community.

They angrily believe the Carter administration handed their counterparts in Russia a gem of information far more valuable than any of the sketchy technical details about Stealth that have been printed in the press.

The gem, in their view, is confirmation by the highest defense executive in the government that Stealth is not just another technological dream but a fully realized weapon that "alters the military balance significantly."

Armed with such a statement from Defense Secretary Harold Brown, who made it at a televised Aug. 22 news conference, the Russian general in charge of air defense has a better-than-even chance of obtaining more money to counter Stealth aircraft, in the view of these specialists.

Neither the United States nor the Soviet Union has enough money to cover every bet in the defense field. The Kremlin's analysts are overwhelmed by thousands of pages of information about American weapons being pursued by military laboratories or ballyhooed by defense contractors. Trade journals, newspapers, scientific papers, speeches by generals, congressional hearings and floor debates add up to a groaning smorgasbord of information—some right, some wrong—about American weaponry.

Because the Soviet government plants stories in Russian publications, Kremlin analysts reading about Stealth in the American press must at least entertain the possibility that those stories are intended to send Russian technology down the wrong path. This further complicates the job of deciding which American military projects are the important ones to worry about.

What Brown and Pentagon research director William J. Perry did, with advance approval of the Carter White House, was assure the Kremlin that Stealth was indeed something to worry about. The Pentagon executives said test Stealth planes had already been built and flown successfully. Brown also said Stealth technology would be incorporated in any future bomber.

Not that those professionals in the defense and intelligence communities liked the articles in The Washington Post, Aviation Week, Aerospace Daily and other publications on Stealth technology dating back to 1976. They did not. But the professionals contend that the Carter administration, through the Pentagon press conference, alerted the Kremlin to where the United States stood on this radar-foiling technology which both sides have been pursuing for decades.

There were articles back in the '30s and '40s about the possibility of building an atomic bomb. But such press disclosures, the professionals argue, did not impel the government to tell the world that it had actually developed and tested an atomic bomb, that it worked and would alter the military balance.

Brown's counter to such criticism is that the Aug. 22 press conference disclosed nothing that would help the Russians develop countermeasures to Stealth aircraft. The really hot technical information has not leaked out anywhere, the defense secretary said. And because the Stealth program was taking on so many more people, requiring so much more money from Congress and entering the debate over what kind of bomber to build, Brown said, it would have leaked out in a matter of months anyway.

The active-duty professionals cannot go public with their indignation over what they consider the politicization of Stealth without risking their careers. But their complaints in one-on-one conversations do fit with what a retired member of their community, Air Force Lt. Gen. Brent Scowcroft, former national security adviser to President Ford and currently an adviser to GOP presidential candidate Ronald Reagan, told a press conference yesterday.

Said Scowcroft:

"The real damage of the revelations . . . is that the administration announced that the program was doable. The other important aspect of the revelations is that it was announced not only that it was new but that it was of the highest importance, indeed, that it changed the strategic balance. . . . This is of enormous significance in [the Soviets'] allocation of resources."●

PLEASE VOTE NO

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HUBBARD. Mr. Speaker, at times I have told some of my colleagues that I have many constituents who urge me to vote no on every bill before us. A few of my colleagues chuckle when I tell them that and assume I am saying such in jest.

Well, I would like to share with my colleagues the sentiments of one of my constituents, Mr. Richard Conrad of Conrad's IGA Foodliner in Marion, Ky. Mr. Conrad's recent one-sentence correspondence is short and simple. His comments to his Congressman are: "Please vote no on everything."●

DEPENDENT CARE AMENDMENTS OF 1981

HON. BARBER B. CONABLE, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. CONABLE. Mr. Speaker, I am introducing today a bill to expand the existing income tax credit for work-related dependent care expenses and to permit nonprofit organizations providing work-related dependent care to qualify readily for tax-exempt status.

I encourage individuals and organizations having interest and expertise in work-related dependent care to study and analyze the bill and suggest any modifications or additions which might make it more responsive to the goals of assuring an adequate supply of good quality, affordable care for dependents of working individuals and enabling parents to obtain dependent care that is well suited to their and their children's needs. I anticipate that these comments and suggestions will help build a foundation for legislative action in the next Congress.

The need for work-related dependent care has grown steadily in the last few years even though birth rates have generally declined, largely because working mothers have become the rule in the United States, rather than the exception. In March 1978, mothers in the work force included 60 percent of those whose youngest child was school aged, 50 percent of those whose youngest child was aged 3 to 5, and 40 percent of those whose youngest child was under age 3.

Child care is too often wrongly categorized as a "women's issue." It is a parent's issue. In 4.5 million two-worker families with preschoolers and almost 8 million with school age children, the fathers are increasingly sharing the responsibilities for dependent care arrangements.

Nevertheless, there are 1.1 million working mothers of preschoolers who are the sole parents in their families. The responsibilities for this group, which includes 65 percent of divorced mothers of children under age 3 and 70 percent of divorced mothers with 3 to 5 year olds, are heavy. They must have affordable child care if they are to hold jobs that prevent or reduce welfare dependency. With so many working mothers of preschool and school age children in the work force at all income levels, it is time to reexamine policies regarding work requirements for the 3 million mothers receiving welfare. Two million of them have preschool children whose dependent care needs will have to be met before the mothers can take jobs that lead to economic self-sufficiency.

I recite these statistics merely to demonstrate that work-related dependent care is a pervasive issue which at some point in their lives affects the majority of American families. It is no longer a negligible concern of an unconventional minority of unfortunate or offbeat families.

The dependent care credit, created in 1976, is a nonrefundable credit of 20 percent of dependent care expenses up to a maximum credit of $400 a year for the care of one dependent and $800 a year for two or more dependents. The credit is currently being claimed on almost 2 million tax returns and has become the largest single element of Federal assistance to dependent care.

The tax credit is a fitting vehicle for future Federal efforts to aid dependent care. First, it is the parents who decide what kind of care to purchase rather than administrators of Government agencies. Because the credit goes directly to the taxpayer, it does not encourage the development of bureaucracies or monopolistic day care systems in States and localities that might limit parental choice or inflate the cost of services unnecessarily. Similarly, the credit does not skew the dependent care system toward any particular option. It is available equally for child care in the home or out of the home, for babysitters, relatives, neighborhood group homes, summer day camps, day care centers, church-related or secular organizations. It is strictly up to the parents to explore the possibilities and make the choice. Finally, because it is a credit, it is of the same value regardless of the parent's tax bracket.

Despite these strengths, there still remain some areas where the credit could be improved. Most of the provisions of the Dependent Care Amendments of 1981 address these areas. A summary of the bill and its rationale follows:

DEPENDENT CARE AMENDMENTS OF 1981

SEC. 2—35 PERCENT CREDIT

The bill would increase the credit from the present 20 percent to 35 percent of allowable dependent care expenses.

Although better than nothing at all, the 20 percent credit does not appear to make enough of a difference in many families' budget to enable them to explore any alternatives to dependent care but the very cheapest, regardless of quality. Many relatively inexpensive babysitting and daycare arrangements may be adequate or even ideal for meeting the needs of individual children and infants, but many are not. Yet the parents have no economic alternative but to go with what they can afford or give up their jobs. It is my hope that increasing the credit to 35 percent, a little over one-third of the cost, will enable families to have at least some degree of financial choice in selecting dependent care most appropriate to their children's and dependent's needs. I hope also that this increased ability of parents to pay for dependent care will stimulate the growing care market to provide still more alternatives and services than it does today.

From time to time, I have seen it suggested that the amount of expenses on which the credit can be based ought to be increased. Under present law, the credit can be claimed on the first $2,000 of annual dependent care expenditures for one dependent, the first $4,000 for two or more dependents. These maximums were established in 1976, and despite considerable inflation since then, have not been raised. However, any increase in the maximum allowable expenditures would potentially benefit only the relatively few families, who are currently able to spend the present maximums. All families, however, would benefit from an increase in the percentage of the credit from 20% to 35%.

SEC. 3—REFUNDABLE CREDIT

The Dependent Care Amendments would make the credit refundable. This means, simply, that families would be able to receive the dependent care credit even though it exceeded their tax liability, or if they had no tax liability. This is not the case under present law. It is my hope that making the credit refundable will assist families who find themselves caught in the middle with too much income to qualify for Head Start or Title XX programs, too little to afford dependent care on the private market.

Under present law, women who are working their way off welfare are permitted to "disregard" all reasonable dependent care expenses in calculating how much welfare supplement they will receive in addition to their wages. Upon passage of a refundable dependent credit, the program of Aid to Families with Dependent Children must be amended so that the disregard of dependent care expenses for purposes of calculating welfare benefits will apply only to the portion of expenses not picked up by the refundable credit.

The Joint Committee on Taxation estimates that over 400,000 families would benefit from this refundability provision. The refundable portion of the 35 percent credit from some 200,000 families below $5,000 would average somewhat over $100, while almost 160,000 families between $5,000 and $10,000 would benefit an average of $50 from refundability.

SEC. 4—OUT-OF-HOME DAY CARE

The bill permits the dependent care credit to be claimed when dependents over age 14 are cared for outside the home. Under present law, the credit is available for either in-home or out-of-home care of dependents aged 14 and younger. However, if the dependent is an incapacitated spouse or other dependent over age 14, the credit is available only for in-home care.

This change is designed to respond to the growing interest in encouraging families to keep their elderly and handicapped dependents living at home rather than in institutions. In a family where both the husband and wife work or where there is only one adult capable of work, there is no one at home during the day to look after the adult dependent. In some communities, day care programs for older, retarded or handicapped individuals are being organized, as are programs for elderly people. These programs meet the social needs of the older dependents, are less of a financial burden on their families than in-home care which would involve hiring a person during working hours.

It is the intent of this provision to allow the credit for only non-residential out-of-home dependent care. I am not addressing nursing homes, hospitals, or other residential settings. Therefore, the bill provides that the credit would be available only where the dependent ordinarily returns to the taxpayer's household each day.

SEC. 5—COVERAGE OF PARENTS WITH LOW INCOMES

The bill would permit the credit to be claimed even when one working parent realized no or low income during the year. Under present law, the credit may not be claimed on dependent care expenses in excess of the earnings of the sole or lesser-earning parent. This prevents someone from working part-time to earn, say, $500, in order to claim the credit on $4,000 of nursery school costs which would have been incurred whether or not the parent worked.

Occasionally, this provision has an unintended effect. Both parents may be working at full-time jobs all year long. But if one of them ends up with a net loss or realizes very little income despite a year's strenuous effort, the dependent care credit is forfeited. People with small businesses, farms or who are self-employed are particularly vulnerable to this situation. One example brought to my attention concerned a woman who worked all year as a secretary in town, commuting from the family's farm where her husband put in long hours. A combination of bad weather and low crop prices left them with virtually no income from the farm that year. They had placed their daughter in day care throughout the year so that both parents could work, and if the farm had shown some income, they would have been entitled to a dependent care credit of almost two hundred dollars. As it was, they got no credit because their dependent care expenses exceeded the income from the farm.

My bill addresses this situation by imputing for each month when an individual works in a trade or business on a substantially full-time basis earnings of not less than $166 for one dependent and $333 for two or more dependents. A "substantially full-time basis" is defined as at least 35 hours per week. This provision parallels the one already in existing law which imputes income to a full-time student.

SEC. 6—TAX-EXEMPT STATUS FOR DAYCARE CENTERS

The bill makes it easier for non-profit daycare centers to qualify for tax-exempt status provided they are organized to care for children of working parents and there is general public access to their services.

In a number of communities, groups are organizing before- and after-school supervision for children of working parents. Others are organizing centers linked to networks of child care homes so that the supply of affordable, non-institutional infant care can be expanded.

Both these kinds of organizations, as well as others of a more traditional nature such as summer play-schools, have had problems in qualifying for tax-exempt status under Sec. 501(c)(3) of the tax code. Without tax-exempt status, it is difficult for these fledgling efforts to solicit the charitable contributions they often need to meet start-up and operational costs.

To qualify for tax-exempt status these innovative organizations must show they were organized and operated exclusively for educational or charitable purposes. An after-school or infant-care organization has difficulty in demonstrating its "curriculum." Children who have been in the classroom all day do not need more of the same. If an organization admits it is simply providing a safe place where the children can have a snack, do their homework, enjoy "free play" or other unstructured activities until their parents return from work, it will not qualify for tax-exempt status. If an organization caring for very young infants can convince the IRS that its curriculum consists of sensory/cognitive development, gross motor development and fine motor development instead of letting infants play with toys, crawl and learn to feed themselves, it just might qualify for tax-exempt status, as indeed an infant "school" on the West Coast succeeded in doing. But this is far-fetched, and I do not believe organizations providing the very legitimate service of dependent care for the children of working parents should have to go through such contortions to qualify for the tax-exempt status they need to get started and often to survive financially.

My bill provides that the term "educational purposes" in the sections of the code dealing with tax exempt status will be defined as including nonresidential care of individuals if substantially all of the dependent care provided by the organization is for the purpose of enabling individuals to be gainfully employed and if the services provided by the organization are available to the general public.

SEC. 7—EMPLOYER-PROVIDED SERVICES

Next, the bill specifically allows the credit to be claimed on dependent care services provided by the taxpayer's employer.

A number of types of child care assistance are being provided by employers: on-site daycare centers, purchasing places for employee's children at private daycare centers, and assisting them in other ways to locate and secure daycare. Such assistance can be deducted by an employer as an ordinary and necessary business expense.

In many of these situations, the employees pay modest amounts for the daycare services or pay on a sliding fee scale. At present, such employee benefits are not being taxed to the employees unless they are clearly part of the employee's overall compensation, such as when the employee receives a daycare allowance in addition to the regular paycheck. However, it is possible that in the future the IRS might try to levy taxes on employees for the dependent care expenses they received. An employee with a child in the company daycare center who has paid $30 a week for an annual total of $1,500 might find that the IRS thinks the daycare was worth $3,500 and that the employee owes income tax on the remaining $2,000. I do not believe such in-kind dependent care services ought to be considered taxable income when they are generally available across-the-board to all employees of the company. My bill, therefore, provides specifically that any such employer-provided dependent care, including imputed amounts as well as actual payments by the employee, will be eligible for the 35 percent dependent care credit, thereby neutralizing for most taxpayers the impact of being held liable for taxes on employer-provided services.

COST

The dependent care credit under present law will amount to $900 million in Fiscal 1981, according to the Administration's budget. The bill I am introducing will add another $765 million for the first full calendar year. $110 million of this amount is attributable to the provision which makes the credit refundable. The remaining $655 million represents the impact of increasing the existing nonrefundable credit from 20 to 35 percent. The other provisions of the bill are estimated to have a negligible revenue impact.●

GOES-D METEOROLOGICAL SATELLITE

HON. LARRY WINN, JR.

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WINN. Mr. Speaker, on Wednesday, September 9, 1980, the National Aeronautics and Space Administration successfully launched the GOES-D meteorological satellite for the National Oceanic and Atmospheric Administration. The GOES series of satellites has for some time been providing invaluable meteorological information for weather forecasters. However, the GOES-D will provide a new capability with the installation of the visible atmospheric sounder (VAS).

If the experiment with this new instrument proves successful, the capability will exist to measure the atmospheric temperature and moisture at various levels in the atmosphere. This information will prove to be very useful in increasing the understanding of such short-lived weather features as thunderstorms and tornadoes.

I wish to congratulate NOAA and NASA for the development of such an experiment. This is precisely the type of effort I feel must be expended to improve our ability to understand and forecast severe storms and other weather phenomena.●

MERGERS AND PRODUCTIVITY

HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BEDELL. Mr. Speaker, I wish to call to the attention of our colleagues an excellent article in the September issue of the Washington Monthly magazine entitled, "Pie Slicers vs. Pie Enlargers." The article was written by Robert B. Reich, the Director of Policy Planning for the Federal Trade Commission.

In recent weeks and months the media have been filled with discussions of the productivity crisis besetting American industry. Most of the discussion, unfortunately, has centered on analyzing the symptoms rather than examining the root causes of the problem. Consequently, this article should be of special interest to those Members who are seeking a deeper understanding of some of the fundamental problems in our economy and our society.

This article is of particular interest to me, because much of it is concerned with the recent wave of conglomerate mergers. Earlier this year, in the Small Business Subcommittee on Antitrust, I chaired a series of hearings on the microeconomic effects of conglomerate mergers.

Mr. Reich focuses on an issue that surfaced at our hearings, a matter which is of great concern to me. Specifically, he notes that most of the current economic activity—mergers, acquisitions, proxy fights, and so forth—seems to be directed at the goal of rearranging existing assets. To a large extent, such efforts detract from meeting our societal goals of increasing productivity and stimulating technological innovation.

In his article, Mr. Reich states:

> In the last three years some $100 billion of corporate cash resources have been used to acquire existing corporate assets through tender offers. This money otherwise could have been spent on new factories and other productive uses . . . Instead of generating future economic expansion, the money circulates among companies like the stakes in a floating dice game.

One of the chief reasons for this new trend in corporate asset management, according to Mr. Reich, is the increasing emphasis on short-term profit realization and immediate return on investment, as opposed to an emphasis on long-term investment in capital goods and research. He suggests this is a logical consequence of the increasing role of asset managers replacing entrepreneurs in the leadership of American industry, and the testimony we heard in our hearings seems to bear out this contention.

Mr. Reich, quite correctly, points out that the larger interests of society as a whole are well served by the company that invests in new technology and greater productive capacity, but that this requires a corporate management commitment to the long term and a willingness to take risks. Both of these qualities, he notes, are in short supply in the executive suites and the ranks of institutional investors in our largest companies today. This makes all the more important his observation that:

> An exception to this general rule are the stockholders of many small or closely-held enterprises. They tend to be concerned about long-term goals simply because they are closer to their company—involved in its management, familiar with its work force, committed to the product or process they are developing. And they are able to pursue those goals, at the expense of immediate gains, because they are not playing with anyone's money but their own. Not surprisingly such small or closely-held firms, particularly in high-technology industries, account for the lion's share of new ventures, inventions and innovations.

Mr. Speaker, the House Small Business Committee's Subcommittee on Antitrust and Restraint of Trade, which I chair, held a total of 7 days of hearings on conglomerate mergers and their effects on small business and local communities. All together, we have compiled over 1,000 pages of testimony and relevant materials. Much of what we found appears to have a very direct bearing on the current debate over productivity and the health of our economy. I expect our final report to be completed and published within the next few weeks.

In the meantime, I urge may colleagues to read the recent article by Robert B. Reich, "Pie Slicers vs. Pie Enlargers," in the current issue of the Washington Monthly.●

PEPPER BIRTHDAY

HON. PHILLIP BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. PHILLIP BURTON. Mr. Speaker, I rise to pay tribute to my dear friend CLAUDE PEPPER on his 80th birthday. CLAUDE has served in Congress for an extraordinarily long time, and while he has the wisdom that comes with such experience, he retains an energy and spirit of that many younger men must admire.

CLAUDE has been a major force in many progressive causes throughout his long tenure in Congress, but he will be best remembered for his many accomplishments enhancing the quality of life for older Americans. As chairman of the Select Committee on Aging, he has pushed Congress and the Nation to realize that older Americans can continue contributing richly to society. He led the fight to increase the minimum retirement age and to protect Federal employees from age discrimination.

Earlier in CLAUDE's political career, he led many fights in the South to achieve racial justice. These courageous efforts came long before civil rights became a major national issue, and demonstrated CLAUDE's conviction and courage in standing for his beliefs despite considerable risk to his political future. His colleagues in Congress can attest to CLAUDE's continued steadfastness in pursuing progressive causes.

I join my colleagues in wishing CLAUDE a happy birthday and look forward to many years of working with this fine gentleman.●

STEALTH BOMBER CONTROVERSY

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MAZZOLI. Mr. Speaker, I commend to the attention of my colleagues the following editorial from the September 7 Washington Post.

The editorial is, in my opinion, a fair and balanced assessment of the controversy over administration disclosures concerning the Stealth bomber.

I cannot but feel that the Secretary of Defense—whether on his own or at White House direction—was most imprudent in his statements. We may, as a Nation, come to regret this whole episode most bitterly.

STEALTH

> You have to be a real administration loyalist to take at face value the Pentagon's insistence that its official disclosure of top-secret information on the "Stealth" aircraft project last month was guided entirely by a desire to plug further leaks. The "major" unauthorized leak that prompted the disclosure came, in a story in this newspaper, on Aug. 14—just as Jimmy Carter was being renominated. Officials cited in that story acknowledged readily—some of them bitterly—that it was going to be used to combat Ronald Reagan's charges that Mr. Carter had lowered the nation's guard by, among other things, canceling the proposed B1 bomber. The Stealth technology, you see, is supposed to render aircraft virtually invulnerable to radar detection. It will thereby enable a future bomber to penetrate enemy defenses far better than could the late and widely lamented B1, and it will enable an administration so minded to claim that in canceling the B1 it was merely, wisely, waiting for a penetration bomber that actually could penetrate.
>
> Secretary of Defense Harold Brown and President Carter resist conceding outright that the Stealth announcement was intended at least in part to burnish the administration's controversial defense credentials. Mr. Carter has a particular problem: to be seen as an adequate (but not excessive) hawk, but not to be seen as a born-again hawk. But the administration's collective denials are lame. It evidently wants the credit for demonstrating urgent and effective concern for security, but it does not want the blame for whatever damage may have been done—political damage as well as security damage—by premature release of secret information for campaign purposes.
>
> Ronald Reagan says the Pentagon's confirmation gives the Soviet Union a tip-off of 10 years (lead time for a Stealth-equipped bomber) to prepare countermeasures. What about that? It seems fair to ask why, if the offense was so heinous, it took Mr. Reagan three weeks to say so. Is it just a coincidence that his assault coincided with an evident need to lift his campaign out of something of a self-confected slump?
>
> For all of that, we remain troubled by the possibility that the administration's confirmation that Stealth had been proven, flight-tested and validated at the highest levels did add a good deal to earlier leaks—and to earlier official acknowledgments that the United States was working on the problem. Mr. Carter, ever since he got down to actually running against Ronald Reagan, has been doing some very transparent and

occasionally reckless rearranging of his own defense record and trying to alter the public's perception of it. He has shown himself willing to involve the most intricate and secret security matters in the political campaign. The burden is on the administration to show that the Soviets, in the Stealth affair, were not handed an intelligence coup.●

FRANCIS BENNETT HONORED FOR SERVICE

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, on September 27, members of American Legion Post 46 in Union City, N.J., are honoring Mr. Francis Bennett for his outstanding record of service to the Legion and to his community. I am honored to participate in this well-deserved tribute.

Frank is a past commander and life member of post 46, who has served with distinction in many capacities since 1945. He was elected junior vice commander in 1946, and he served as senior vice commander from 1947 through 1952 and from 1955 through 1956. Frank was commander of post 46 from 1957 through 1959. He then assumed duties as adjutant until 1962.

Presently, Frank is a service officer and a trustee of the nurses scholarship fund. He has also served as chairman of the bingo committee since its inception in 1967. The committee, under Frank's direction, has grossed more than $1 million and has made possible contributions by the post to worthy charities and to our veterans hospitals.

Frank has also served with distinction at the county and State levels of the American Legion—in leadership positions of the New Jersey Department's Press Club and as chairman of the State Public Relations Committee, 1952-55, among other assignments.

Frank Bennett is one of those very rare individuals whose busy schedule can always be expanded, somehow, to accommodate yet another community service project.

In addition to his long and steady dedication to the goals of the American Legion, he has been active in Scouting, in the Hudson and New Jersey Voiture, and in the Bergen County Music Educators Association.

I am proud to offer my congratulations to this distinguished citizen of the Ninth Congressional District of New Jersey on the appropriate recognition being afforded him by his fellow Legionnaires and to express my sincere appreciation for his continued endeavors to make our communities a better place in which to live.●

TITO IN PERSPECTIVE: PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. McDONALD. Mr. Speaker, the death of Yugoslavia's Communist dictator, Josip Broz Tito, led many Western political spokesmen, including those of our own Government, to compete with Moscow and Peking in praise for the man who governed Yugoslavia from 1945 to 1980, regardless of the wishes of the Yugoslav people.

There has been an unceasing effort to portray Tito as a different sort of Communist, somehow better than the others. Yet Tito was, of course, just as ruthless in his methods as any other Communist dictator. The object of all of them is to obtain and maintain total power.

Titoism has been so persistently presented to the public as some improved brand of communism, independent, at that, that what is needed is a dissenting point of view from the victimized people.

Dr. Slobodan Draskovich is a leading Serbian emigre spokesman, a former professor of economics at the University of Belgrade, and a former member of the Yugoslav Institute of National Defense, who came to the United States in 1947. Dr. Draskovich has, on several occasions, testified before committees of Congress, trying to help us understand that Tito did not represent what American liberals would like to believe he represented.

The views of Dr. Draskovich follow:

THE MEANING OF TITO AND TITOISM

Observers from all parts of the world are in agreement that the funeral of the communist dictator of Yugoslavia, Joseph Broz Tito, attended by most of the world's (free, communist and "non-aligned") heads of state, was a most impressive gathering. What has apparently escaped the attention of those keen observers is that it was also, as far as the United States and the free world are concerned, an occasion of monumental shame, outrage and political weakness. One hypothetical comparison comes to mind: the free world honoring Hitler for his services to democracy and the cause of racial tolerance!

At Tito's funeral, the communist heads of state were at the right place, at the right time, with the proper remarks on Tito, communist Yugoslavia and their role in the communist world movement, for they knew that he had shared their Gulag concept of human dignity, social justice and peace.

But the leaders of the free world were present at the wrong place and said the wrong things, for they came to pay tribute to a communist dictator who had spent his long life destroying everything they stand for. Nevertheless the West made possible Tito's rise to power and then gave him its lavish, unconditional and suicidal assistance to consolidate his regime.

In coming to pay tribute to Tito, the leaders of the free world were honoring their unforgiveable mistake and sin. In extolling Tito's greatness and virtues, they were advertising their own lack of political vision and greatness. Worse, in praising Tito's "achievements" they were desecrating the achievements and foundations of Western civilization and humanity. No man has the right to forgive this.

The shame of the West which on May 8, 1980 went down in history, was not unexpected. It was the natural climax of a long-standing policy of helping Tito, from the days of World War II, through his rise to power and after his ouster from the Cominform, to the present day.

It has been said that the greatest blunders in history are often the least noticeable for their contemporaries, because they cannot fathom their enormity. This certainly applies to the case of Tito.

The statements of President Carter on the one side and of the Soviet leaders and Hua Guofeng on the other, on May 8, 1980, make glaringly clear the incongruity of the international situation and the inadequacy of the policy of the free world.

In March 1978, at the time of Tito's visit to the United States, President Carter had called him a "true friend of America", adding that he symbolized the strivings of the people not only in Yugoslavia and Eastern Europe, but in the whole world, for liberty and self-determination. In his comments on Tito's death, President Carter called him "a towering figure on the world stage", a man who "sought practical and lasting solutions not only to the issues confronting his country, but to those affecting countries and people far from Yugoslavia's shores".

The official Soviet tribute said that Tito was "a prominent leader . . . and . . . a worker for peace and progress throughout the world", a "leading figure in the international communist and workers movement".

And Hua Guofeng, according to Time magazine, "grandly praised Tito for great contributions to the proletarian revolution".

Evidently, both sides cannot be right. One must be catastrophically wrong. Tito could not have worked all his life for the interests of world communism and at the same time for the victory of freedom. He could not have worked for peace, national independence and self-determination, and at the same time for the goals of communist imperialism.

Where is the truth? Whom did Tito serve? Nikita Khrushchev once issued the famous warning, "We shall bury you"! Whose grave was Tito digging all his life?

There is no issue in international politics where so much ignorance, bold defiance of incontrovertible facts, pro-communist bias, neglect of essentials and political innocence have combined to present to the world a picture of a country, a regime and a political figure so contrary to the truth as in the case of Tito. The structure of Western pro-Titoism rests mostly on claims, assertions and attitudes contemptuous of the rule of evidence and the regard for common sense.

In World War II Tito allegedly fought the Nazi invader and by putting the interests of Yugoslavia above those of communism, was able to create "Yugoslav unity". He allegedly defied Moscow's hegemonistic policies and pursued a course of national independence, between East and West. In consonance with that course, he helped organize the movement of "non-aligned" nations. In domestic policies he introduced an allegedly original system of workers self-management of enterprises, which is the economic wonder of the world, envied by most nations. The present regime in Yugoslavia is communist, but allegedly different, evolving toward democracy.

The trouble with all those claims is that they are shockingly devoid of substance. The structure of Western Titoism rests on denials and distortions of incontrovertible facts.

TITO'S TRUE RECORD

The highlights of Tito's true record are:

When Hitler attacked Yugoslavia in April 1941, Tito, whom Stalin had appointed secretary of the CPY in 1937, did not fight the invader, Stalin's ally at that time, but sabotaged the short-lived Yugoslav war effort, as did the Croatian "ustashi", puppets of Mussolini.

Tito did not issue a call to arms until June 22, 1941, when "our country", as he called the Soviet Union, was attacked by Hitler.

Tito and his followers did not fight in the strategically decisive area of Yugoslavia and the Balkans, the Morava-Vardar valley. This was the main area of operations of the Chetniks of General Draza Mihailovich, who gave a significant contribution to the Allied war effort, which was recognized on New Year's eve of 1943 by the leading Allied commanders, General Eisenhower, General Auchinleck, Air Marshal Tedder, General De Gaulle, etc.

In the course of 1943, fearing the landing of contingents of American and British troops on the Dalmation coast, Tito offered his collaboration to Hitler, to prevent the common (Western capitalist) enemy from landing and throw him back into the sea. Hitler refused the offer.

In 1944, when Tito's prospects of winning the battle for power in Yugoslaiva were rapidly dwindling, he flew in a Soviet plane to Moscow and begged Stalin for direct military intervention. Stalin sent Marshal I. Tolbukhim to the rescue; in September 1944 he crossed the Rumanian-Yugoslav border and after several weeks of fighting the Germans, entered Belgrade on October 20, 1944 and installed Tito in power. In doing so, the Soviet Union used the same procedure as it applied to install in power Janos Kadar in Hungary (November 5, 1956), Gustav Husak in Czechoslovakia (August 1968) and Babrak Karmal in Afghanistan (December 28, 1979).

Tito did not leave the Cominform in June 1948 in protest against Soviet hegemonistic policies and pressures. He was expelled from the Cominform by Stalin.

As for Tito's alleged policy of *national independence*, again the facts refuse to comply with the propaganda claims. In June 1945, Edvard Kardelj, Tito's right hand man and presumptive heir, made to the Soviet ambassador Sadchikov, the unprecedented declaration of satellitism and total subservience, saying that Yugoslavia did not wish to pursue an independent policy but expected the Soviet Union to determine it and looked forward to becoming a constituent part of the USSR.

Eleven years later, in June 1956, Tito stated in Stalingrad, in the presence of Marshal Georgi Zhukov, that "Yugoslavia marches in time of peace as in time of war, shoulder to shoulder with the Soviet Union towards the same goal of the victory of socialism". This declaration of fundamental identity of outlook and aim expressed the gist of Tito's policy before the break with Stalin in June 1948 and after it. In all important issues of international politics (Budapest, Korea, Czechoslovakia, Vietnam, Angola, etc.) communist Yugoslavia sided with the Soviet Union.

And it could not be otherwise. The simple truth of the matter is that communism and national independence do not go together. They are mutually exclusive. A communist cannot stand for national independence. A believer in national independence cannot be a communist. Tito always knew this, as all communists do. And he never hesitated to take his stand as a communist.

This fully applies to the question of the role which Tito played in the movement of the non-aligned nations. Far from creating a neutral force in the world, much less leaning away from Moscow, towards Washington, Tito was using his reputation of a "different", "independent" communist, to attract the nations of the Third World into an alliance which would be formally noncommitted to either bloc, Soviet or American, but would actually always serve the goals of communist imperialism.

Tito left no doubt regarding his concept of communist Yugoslavia's role in the movement of the non-aligned. In a major policy speech of December 29, 1962, Tito glorified Soviet "achievements": "We know that they are bearing great sacrifices not only to defend themselves, but to defend socialism in general". He then spoke of Yugoslavia's role: "Yugoslavia enjoys . . . especially great prestige among the peoples of Asia and Africa . . . this is beneficial not only to us and to those countries, but also to the whole progressive movement and all peace-loving peoples. In that manner our policy contributes to the same goal towards which strives the Soviet people . . . our common goal the realization of socialism, and, ultimately, communism" (Belgrade Daily Politika, December 31, 1962).

At the Conference of European communist parties in East Berlin (1976), Tito spoke of the "indispensability of different roads in the struggle for Socialism". As for Yugoslavia, "the policy of non-alignment" was its "lasting orientation". "By taking active part . . . in the movement of the non-aligned . . . Yugoslavia (is) discharging its international debt to the world communist and humanity's progress" (N.Y. Times, July 1, 1976).

The true nature of the role which Tito played in the movement of the non-aligned was also put in sharp focus by the official comments of Moscow and Peking on Tito's death. The Soviet news agency Tass, while hailing Tito as an "active fighter for peace and solidarity of progressive forces in the struggle against imperialism and colonialism", did not forget to state that he was "one of the founders of the movement of nations calling themselves non-aligned".

The head of Red China, Hua Guofeng, expressed in an interview with the Yugoslav magazine NIN (May 11, 1980), his conviction that "hardened Yugoslavs, under the leadership of the . . . CPY, will successfully march forward on the road to socialism, self-management and non-aligned policy".

As for self-management, a policy invented by Kardelj and Djilas, which Tito sold to the West, it is a hoax of unsurpassed boldness. The very idea of giving the "factories to the workers" in an industrially undeveloped country, under a thoroughly antidemocratic regime, where the workers lack the necessary knowledge, experience and managerial ability for assuming such a role, is utterly preposterous, especially if its purpose is to promote a democracy!

The experiment was rather "a way for us Communists . . . to shift the responsibility for failures and difficulties in the economy onto the shoulders of the working class", to use a sentence of Milovan Djilas (The Unperfect Society, 1969, p. 211).

According to The Economist (August 11, 1979), a Yugoslav industrial expert called the Yugoslav self-management system "a mixture of totalitarianism and anarchy".

As for Tito "the unifier", the claim is as spurious as the rest. Tito did not unite anybody, nor did he intend to. His communist message was one of hatred, dissension and terror, directed mainly against the Serbs, the largest group in Yugoslavia and the Balkans, the backbone of that area of the world.

Tito's slogan about "brotherhood and unity" served only to better camouflage his true policy. In any event, all the problems between the nations and nationalities composing Yugoslavia, which existed in 1941, exist today, exacerbated by the communist regime's policy of fomenting rivalry and disunity, to consolidate the only unity that counts, the unity of the communists, oppressing the country and its people.●

TRIBUTE TO JEANNE WARD

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MOORHEAD of California. Mr. Speaker, on October 10, the Hear Center of Pasadena, Calif., will present its highest honor to Mrs. S. Paul Ward.

At a testimonial dinner at the Huntington-Sheraton Hotel, Jeanne Ward will receive the Glen H. Bollinger Humanitarian Award for her years of dedicated involvement with the people of Pasadena and the citizens of the State of California.

Mr. Speaker, Mrs. Ward is president of the S. Paul Ward, Inc., Ceramic Research of South Pasadena. She has been a member of the board of directors of the southern California section of the American Ceramic Society for 3 years.

For 8 years, she has been a board member of the Hear Center and for 11 years, Mrs. Ward has been a treasurer for the Santa Anita Church of Arcadia, where she participated in three successful building projects.

In 1972, Mrs. Ward received the Spirit of Life Award from the City of Hope, where she established and still supports the ceramic industry research fellowship for metabolic diseases.

In 1973, the Woman's Business and Professional Club of South Pasadena named Mrs. Ward its "Woman of the Year." She is also active in the Boy Scouts, the Red Cross, and the Foundation for the Junior Blind.

It is clear from this partial list of Mrs. Ward's endeavors, that she has committed her life voluntarily to the service of others.

There is no higher avocation than the constant giving of self to others less advantaged. Over the years, Mrs. Ward has demonstrated a willingness to share her energys, her resources, her time, and her blessings with anyone needing those special gifts.

Mrs. Ward is a worthy recipient of the Hear Center's annual Glen H. Bollinger Humanitarian Award. I thank her for her generosity to others and congratulate her on receipt of this fine honor.●

UNITED STATES MARCHING DOWN ROAD TO TROUBLE WITH UNDERSUPPLIED MILITARY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LAGOMARSINO. Mr. Speaker, after the Soviet invasion of Afghanistan, it suddenly became fashionable again in the Democrat-controlled Congress and the administration to discuss increases in defense spending. Yet, despite a lot of lip service to rebuilding our defense capability, the congressional leadership and the administration still have failed to make the commitment needed to restore our critically sagging military.

A recent commentary by the editor of the Arizona Republic, Pat Murphy, summarizes concisely the problems facing the United States with our "underfunded" and "undersupplied military."

I call to the attention of my colleagues Mr. Murphy's assessment of our defense posture.

U.S. IS MARCHING DOWN ROAD TO TROUBLE WITH UNDER-SUPPLIED MILITARY

In the months before the United States was caught napping at Pearl Harbor, some American military units had to prepare for war with toys.

Some infantrymen went into the field equipped with dummy wooden rifles, and dummy mortars made of ordinary household plumbing, and mock tanks shaped out of flatboard.

The reason was because that's all the Army had to go around.

For years, the military had been on its knees pleading with Congress for funds. But the nation scoffed at talk of war, even though Adolf Hitler was on the march in Europe and the Japanese were going full tilt on the China mainland.

When Japan finally struck, our troops in the Pacific went into battle with 1903 A-3 bolt-action, single shot rifles, wearing their fathers' World War I helmets.

Now, consider 1980.

We don't seem to have learned much in 40 years.

Items:

A Pentagon study reports that six of the 10 Army divisions stationed in the continental United States are unready for combat because of insufficient personnel, or poor training or inadequate provisions for combat.

A Navy supply ship, the USS Canistero, could not go to sea because it lacked three of the five required senior boiler technicians and two of eight needed machinists mates to operate the vessel.

The Air Force grounds all 1,700 of its F-4 Phantom fighter planes because of a faulty seat ejection system.

A congressman's spot check of 50 new F-15 Eagle jet fighters at Langley Air Force Base revealed that only 20 were "mission capable"—while 20 of the remaining grounded first-line fighters were listed as "hangar queens" because of prolonged troubles.

For the seventh straight year, the Navy this year will get fewer new planes than it loses through crashes and obsolescence.

The new 300,000-man Rapid Deployment Force, intended to be rushed to world hot spots, will lack reliable airlift capability until the mid-1980s, when the new CX transport is delivered.

Flight training time for combat pilots in all services has been sharply curtailed because of budget cuts.

Sen. Sam Nunn, D-Ga., reports the Navy has only enough torpedos for attack submarines to conduct two patrols; the Air Force has only about one-third the Sparrow missiles it needs for the F-15s; the army is short 60,000 wheeled vehicles needed to move supplies; and the Marines have only 63 amphibious landing craft, enough to carry only one of three Marine amphibious assault units.

The Navy's fleet has declined from 900 vessels 10 years ago to about 465, prompting Chief of Naval Operations Adm. Thomas Hayward to lament that the U.S. is "trying to meet a three ocean requirement with a 1½ ocean Navy."

Now, maybe there are some around who believe that (a) the Pentagon budget is nothing but rolls of fat, or that (b) all we need are brave words to protect our interests around the world.

Not me.

We're in a mess, militarily, and believing otherwise only serves as a reminder of the Army's toy wooden rifles 40 years ago.

The Soviets still post the principal peril to peace. Furthermore, they have the will and the way to carry out their policies.

They outrank the United States 5-to-1 in tanks; 8-to-1 in artillery; 2-to-1 in tactical aircraft; 3-to-1 in submarines. I haven't even included the arms lineup in Warsaw Pact countries on which the Kremlin can depend for backup.

If Congress were to write a blank check tomorrow for whatever the Pentagon wants, American assembly lines are incapable of reducing the gap with the Soviets for years to come.

But forget about catching up in numbers.

We have airplanes that can't fly, and ships that can't go to sea because of too few experienced enlisted personnel—in effect, we have a fine inventory of military hardware that is as useless as none at all.

We can blame that, principally, on witless politicians who mindlessly campaigned against the Pentagon budget, as though it were some tainted woman.

They refused to think ahead. They looked back over their shoulders at Vietnam.

Are we, dread the thought, in the same shape as those pre-World War II months, when soldiers had only toy rifles and congressmen still were pooh-poohing the idea that the military should be better prepared?●

GREEN NOTES HISPANIC WEEK

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. GREEN. Mr. Speaker, I would like to bring to your attention the fact that President Carter has proclaimed this week National Hispanic Heritage Week.

This is an important week for all of us to honor. The Hispanic heritage is the heritage of all Americans, as many of the earliest explorers and settlers of the American Continent were Hispanics. They have fought side by side with people of all ethnic origins to establish and preserve this Nation.

The Hispanic peoples have continued to add much to our country in the areas of art, music, athletics, leadership, and a host of other concerns.

Yet honoring the contribution of Hispanics is not enough; this week we must also pledge to work for the betterment of their condition in the United States. Despite all that Hispanics have contributed to American society and culture, they are still not provided with adequate opportunities in employment, housing, and education. The median income for Hispanics is only $7,000, as opposed to $10,000 for the average worker. Only 40 percent of Hispanics have had the opportunity to complete high school, as compared to 64 percent for the population as a whole.

Hispanics are our fastest growing minority, increasing in population by 1 million last year. Yet we have barely begun to address the problems of immigration, language, affirmative action, voting rights, and housing for these people.

In honoring Hispanics and their contributions to our Nation this week, we must think of what contributions we should make to them in return.●

ALDO BECKMAN

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HYDE. Mr. Speaker, the profession of journalism lost one of its most luminous members, when Aldo Beckman died last week. Chief of the Chicago Tribune's Washington office, Aldo was a friend of mine for many years. He was kind, gentle, thoughtful and a superb newspaper man.

His greatness of spirit was never more manifest than during his last illness, where we all learned more than we ever knew about bravery. All who shared the honor of his friendship feel his loss keenly, but we all take a measure of consolation in having had our lives enriched by having known and loved him.

A colleague of Aldo's, Tribune columnist Bob Wiedrich has written a moving column about this great friend, and I wish to share it with my colleagues:

Aldo Beckman was an honorable man. A devious thought never crossed his mind.

He came from the rolling farm country of west central Illinois, where the terrain slopes to the Mississippi River in a tangle of glorious color and an earthy humor born of the land sustains its inhabitants through good times and bad.

Beckman brought that humor to the big city when he joined The Tribune staff as a young reporter in 1959.

He also brought with him a perspective of humanity that served him well during the 21 years that he worked as a reporter and writer for a newspaper that also had sprung from the Illinois prairie and reflected its values.

From Criminal Courts reporter to White House correspondent traveling world capitals, Beckman accepted people he met at every level of society for exactly what they were.

In writing about them, he reported accurately. He didn't produce puff pieces. Nor did he ever demean. He took life as he found it. He faithfully told his readers what he learned. He didn't embellish. The truth was his grail.

And so, in his more than two decades as a working newspaperman, Bechman left an indelible record of highly credible observations of historic events that few are privileged to witness, much less report.

Now Aldo Beckman is dead, taken by cancer this week at the age of 45. And he faced that dread disease as courageously as he confronted the challenges met during his reportorial career.

Perhaps the greatest joy of having known Beckman as a friend and colleague was his love and respect of his fellow man. Beckman found something interesting in everyone he met. And he was capable of conveying that interest to readers with enthusiasm.

When Beckman was assigned to the Criminal Courts Building beat in the early 1960s, he encountered the peaks and valleys of human behavior. For a young man, fresh from the small farming community of Lima, Ill., the jailhouse with all its sordid sorrows and frustrations must have been a cultural shock.

Nevertheless, he treated everyone equally—from the lowliest defendant to the stateliest judge. And all became his admirers and friends. For they knew Beckman's word was good. He only lacked patience with phonies.

It was fun to watch Aldo Beckman grow professionally during those 21 years. He learned something new every day. He never became jaded. He had no time for cynicism.

During his apprenticeship at the Criminal Courts, he covered the big trials that made headlines.

But he also found time to write about the little people, the jail guards and bailiffs, court reporters and clerks, the low profile jobs that make government work.

By giving them recognition, he educated and informed his readers. He also cleverly developed a network of loyal informants who kept him abreast of events on his beat that sometimes even the big shots of the criminal justice system knew nothing about.

Beckman took that same skill to Washington when he was transferred to the Tribune bureau there in 1966.

Within a short time, Tribune readers were relishing informative feature stories about the behind-the-scenes federal employes that make congressmen on Capitol Hill look good.

And when Beckman became White House correspondent four years later, his stories about valets, butlers, chauffeurs, and secret service men, gleaned from the back corridors of the Executive Mansion, made not only for interesting reading but assured him a continuing supply of news tips.

He was a master at making friends because he genuinely cherished them.

People recognized that quality and naturally cottoned to the short statured man with the midwestern twang and unassuming manner whose integrity was as good as gold in a town that has more than its share of four flushers.

They knew that the information they entrusted to him would be reported faithfully and that neither they nor the truth would be compromised because Beckman was a fair and impartial recorder of facts. He never slanted a story. And those who dared suggest otherwise were treated with contempt.

In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

That knowledge and skill enriched his offerings to readers. It helped them better understand the world in which they lived.

Beckman's good works were not restricted solely to his own pen. He volunteered the unique access he enjoyed to great events to fellow journalists.

During his grueling trip to the Peoples Republic of China with former President Nixon in 1972, Beckman became the only person ever to call me collect from Peking.

The phone would ring. And there would be that friendly voice speaking across thousands of miles, inconveniencing himself to provide my column with perceptive sidelights of an unprecedented moment.

Aldo Beckman considered his role as a scrivener of historic events important.

And that recognition of a personal responsibility to accuracy reflected the reverence with which he held the institutions that govern this country. He viewed the Constitution with awe. And he regarded men in high office who sought to corrupt it with disdain.

Aldo Beckman was what every newspaperman should aspire to be. He represented the finest of his craft. I am proud to have had him as a friend. I am prouder still to have been his colleague.

I am grateful that the Illinois heartland gave him to my profession to share his warmth, intellect, wit, and humaneness, if only for a relatively short time.●

SPECIAL ORDER FOR HON. CLAUDE PEPPER, ON THE OCCASION OF HIS 80TH BIRTHDAY, SEPTEMBER 8, 1980

HON. JIM LLOYD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. LLOYD. Mr. Speaker, it is a pleasure to join in celebrating the 80th birthday of my friend and colleague, CLAUDE PEPPER.

His active presence during his long career in Congress has touched many people: Members, such as myself, who have benefited from his experience and leadership; the poor, the forgotten, and the elderly, whose cause he has so effectively championed for many years; and his constituents, who could ask for no better voice in this Chamber.

Senator PEPPER has not only authored major legislation to advance the legal right of older Americans, but has also set a personal example of achievement as effective as any legislation in striking down the misconceptions that foster ageism. He is a powerful example that ability is not age related, that one may be wise as well as kind, and that much can be accomplished in spite of adversity.

Senator, as we celebrate your presence and your contributions, you have my warmest wishes for much happiness and achievement to come.●

AUSTIN MAN IS NAMED POLICEMAN OF THE YEAR

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. PICKLE. Mr. Speaker, in case any of you missed reading the special Parade magazine supplement in yesterday's Post, I am pleased to present it here. Each year, Parade awards a "Police Service Award" along with the International Association of Chiefs of Police. This week, an Austin, Tex., undercover officer is receiving the award in St. Louis.

James Wolsch puts his life on the line each day in Austin to make the streets safer for everyone. His job is a dangerous one. He frequently deals with the seamy underworld of high-stakes narcotics peddling—and he does it in a humble spirit of service to the community.

I am pleased to present the article about James Wolsch and join in saluting his accomplishments and public service:

THE LONELY VIGIL OF SUPERNARC JAMES WOLSCH

(By Pam Proctor)

AUSTIN, TEX.—A lot of folks in the seamy Austin underworld of heroin and "speed" admit they're afraid of James Wolsch—an undercover cop who's been described by colleagues as a "supernarc." That's one reason he's been picked to receive the 15th annual Police Service Award given by Parade and the International Association of Chiefs of Police (IACP).

The award, which will be presented to Wolsch this week in St. Louis at the IACP's annual convention, is a symbol of the achievements of the nation's 485,000 police officers who work largely without fanfare. The diversity of their jobs—from the risky bomb squad details to the critical crimeprevention units—is exemplified by the 10 officers who have been cited for honorable mention.

One thing that sets 32-year-old Senior Patrolman Wolsch apart from other officers is that "he's so successful at what he does," says Austin Police Chief Frank Dyson. In a city which Dyson describes as "a major stockpile center" for drugs in the Southwest, Wolsch alone accounts for 50 percent of all the narcotics cases in the department, and 25 percent of the cases handled by the other seven narcotics officers.

He got his nickname, "Stoopdown," as a uniformed officer 10 years ago, when he worked the tough 11th Street section of East Austin. Wolsch would hide his car and crouch behind the window of an abandoned motel to watch the dealings of the dope pushers and prostitutes in the area.

"There wasn't a whole lot going on in his district that he didn't know about," says Lt. Bobby F. Simpson, who a few years later picked Wolsch to do undercover narcotics work as part of a newly formed Organized Crime Control Unit.

Wolsch is effective, says his commanding officer, Capt. Gilbert Miller, "because he can blend into any situation. He can go from the high to the low." One day he can be talking chemistry in a clandestine lab where methamphetamine, or "speed" is being produced; the next he can be slapping backs with junkies in the ghetto. He wears no wigs or makeup, but can change his appearance simply by changing his hairstyle, which he does three or four times a year. A measure of his talent, says Miller, is that he's been undercover six years—more than any other cop in the department—despite the fact that the drug traffic in Austin "moves in closed circles."

Much of his undercover work involves making "controlled buys" of drugs from dealers, in an effort to become familiar in the underworld and sniff out the big "fish" who run large-scale drug operations. Wolsch prepares for his role like an actor getting ready to step on stage. If it's cocaine he's buying, he'll snort antihistamine and twist the nozzle in his nose to make it red like a "coke freak." If it's heroin, he'll burn his arm with an acid stick to simulate needle tracks.

Wolsch has a reputation for honesty. "It's axiomatic in law enforcement that narcotics officers lie," says Travis County D.A. Ronald Earle. "But I've never known James to lie."

That reputation not only makes Wolsch a valuable witness in court; it also makes him credible to the informants who put their futures on the line with him in return for information. A good narcotics officer "doesn't ever promise an informant anything he can't legally deliver," says Lt. Simpson. "Wolsch has all this—he can communicate."

What's more, says Simpson, the underworld knows "he can't be bought." Typical is Wolsch's reaction to the $1 million bribe he was offered to lay off a clandestine "speed" lab. "It was an insult," says Wolsch.

Wolsch even has earned the respect of some of his criminal adversaries. "He doesn't despise the people he works with the way many cops do," says Capt. Miller. In fact, Wolsch has even helped rehabilitate some of the junkies he's arrested.

Danger is the name of the game in undercover narcotics work, perhaps more than in any other aspect of police work, says Capt. Miller, because of the high financial stakes and the use of weapons. But Wolsch seems blind to its terrors. "There are a lot of people in town who would like to buy James off—or have him killed," says Miller. Once someone almost succeeded. A ring of "pill pushers" hired an assassin to murder Wolsch during a drug buy. He was saved by an informant's call.

Wolsch, whose salary is $20,000 a year, says he was a mediocre high school student who became interested in police work at the age of 20 by riding in a squad car with a neighborhood cop. At the time, he was working as a TV repairman. "If there was a problem I couldn't solve, I'd stay on the job until 10 or 11 until I got it fixed," he recalls.

He approached narcotics work with the same dogged persistence. But on the way to becoming a top undercover cop, he has made a sacrifice. "We don't do much as a family," admits his wife, Peggy, who was his high school sweetheart.

But the bottom line, she says, is that James is happy. That's why she's willing to put up with the calls from informants at 2 a.m. and with a husband who's rarely home for her or their two adopted children, Johnny, 10, and Nicole, 7.

But he insists that the sacrifice is worth it, not because of any overriding sense of public duty, but simply because "somebody has to do it."●

MONEY MARKET MUTUAL FUNDS

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LEACH of Iowa. Mr. Speaker, from time to time over the last half century substantial asset shifts have occurred between depository institutions and this disintermediation of funds has jeopardized the capacity of one type of institution or another to fully meet its ongoing capital requirements. In the last several years problems of disintermediation have taken on a novel character as new methodologies for attracting savings have been advanced. The most important new methodology, the money market mutual fund, has enormous implications for the institutional arrangements by which savings are harnessed for economic growth. In addition, there are problems of competitive equity when one institutional arrangement operates under a set of guidelines more restrictive than those followed by another methodology. In order to insure the safety and soundness of the banking and savings and loan systems as well as the overall economy, a careful reexamination of existing policy toward money funds is in order.

In this connection, a recent exchange of letters between Federal Reserve Chairman Volcker and myself discusses some aspects of the problem and current Federal Reserve thinking:

JULY 24, 1980.

Hon. PAUL A. VOLCKER,
Chairman, Board of Governors, Federal Reserve, Washington, D.C.

DEAR MR. CHAIRMAN: During the Banking Committee hearing yesterday I briefly raised the problem of insuring equitable competition between financial institutions and money market mutual funds. The current advantages enjoyed by money funds have caused massive deposits to be shifted from banks and savings and loans into near-bank operations. The money fund development would appear to be particularly damaging to small, rural financial institutions, compared to money-center ones, and consequently to the overall rural economy.

I would be appreciative of any thoughts you might have on this problem and if you could indicate whether the Federal Reserve intends to utilize its authority and/or recommend legislation to establish competitive equality between financial institutions and money funds.

Thank you for your consideration.

Sincerely,

JIM LEACH,
Member of Congress.

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., August 22, 1980.

Hon. JIM LEACH,
House of Representatives,
Washington, D.C.

DEAR JIM: I have hesitated for too long in answering your inquiry about money market funds for one reason: I frankly am not comfortable that I have an adequate answer to the concerns you express.

As a starting point, I certainly agree with your observation that the money funds have attracted deposits from both banks and thrifts. In a period of high interest rates, investors obviously have found the yield and liquidity characteristics of the funds to be superior to deposits for many purposes—a disparity that reflects to a substantial extent the more restrictive regulations faced by banks and thrifts.

As you also suggest, the diversion of deposits to money funds probably has had its greatest impact on the availability of credit at smaller institutions, such as those often prominent in rural areas. This distortion of credit flows was especially serious when financial conditions generally where under extraordinary strain, and it led to the March 14 actions imposing a special deposit requirement on growth in money fund assets. The requirement was removed only after the pressures in financial markets had eased substantially and credit increasingly was available to a wide variety of borrowers at lower interest rates.

The relaxation of these immediate difficulties, of course, does not signal any change in the fundamental competitive positions of money funds and depository institutions. A number of factors constrain the ability of banks and thrifts to compete with money funds. Recognizing the particular problem of ceiling rates, the Depository Institutions Deregulation Committee moved to raise permissible rates a bit on certain time deposits relative to market interest rates, as a first step in the Congressionally mandated process of phasing out these ceilings. But there are obvious limitations on the extent to which that can be an answer in the near term, given the existing assets and earnings of the institutions. Even when the "deregulatory" process is completed, depository institutions still will operate under much more pervasive regulations than money funds, including reserve requirements on transactions and nonpersonal time accounts.

There is, of course, another side of the story. Partially offsetting the regulatory disadvantages are insurance on deposits and the ability of depository institutions to offer customers a wide variety of services in one location. I have been surprised recently with the rapid growth in passbook savings accounts at both banks and thrift institutions even though money fund rates are well over yields on these accounts. More broadly, from the savings and consumer standpoint, money market funds are attractive and efficient; they contribute to both consumer satisfaction and the national interest in savings.

Nevertheless, savers have become extremely sensitive to even small changes in the relative advantages of holding different assets. In the still uncertain financial environment we face, a substantial diversion of flows from depository institutions to money funds could recur, and, indeed, except for the past few weeks, the money funds have remained in a relatively strong competitive position.

Given the urgent need to encourage savings that can be channeled into investment, it would obviously be preferable to redress competitive imbalances by removing restrictions on banks and thrifts when possible rather than to impose limits on money funds. But given the restraints on progress in that direction, I am left with the nagging concern that the situation is unbalanced. Imposing an interest rate ceiling, a la Reg. Q, seems neither desirable nor feasible. One approach toward balance might be to, in effect, force a choice between reserve requirements or conducting only a "non-transaction account" business. But that would be a substantial departure from the traditions of mutual fund regulation. Moreover, we need to balance the needs of consumers and savers.

In sum, I have no legislative proposal now—but I do believe the situation bears watching. And I would be delighted to explore your own thinking further.

Sincerely,

PAUL.●

TRIBUTE TO REPRESENTATIVE BILL COLMER

HON. ROBERT McCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. McCLORY. Mr. Speaker, it was with a sense of personal loss that I learned of the passing of our long-time former colleague, Representative William M. Colmer of Mississippi.

In a very real sense, Bill Colmer was an institution who flourished during a period of great transition in this greatest of all legislative bodies. While Representative Bill Colmer was a true southerner and a lifetime Democrat, he belonged more truly to the entire Nation and to both political parties.

Representative Bill Colmer was one of the first Members of the House with whom I became acquainted when I came to this great body in 1963. At that time, my principal interest was in the budgetary prerogatives of the Congress. I conferred and cooperated with Bill Colmer in early efforts to establish a Congressional Budget Committee—with a view toward putting our Federal Government's fiscal house in order.

Mr. Speaker, if Bill Colmer's views had been adopted at that time, the U.S. budget would have been in balance and the ensuing huge deficits would never have been countenanced or been possible.

As an archconservative, Representative Bill Colmer's progressive and innovative views may never have been fully appreciated. But, those of us who knew him intimately were aware that his goals for our country were idealistic and his thoughts were truly enlightened. He was a very fair and understanding individual who embraced the highest principles of character and statesmanship.

Mr. Speaker, it is most interesting that when Representative Bill Colmer retired from the Congress in 1972, he was succeeded by his administrative assistant, TRENT LOTT, who ran as a Republican in the Fifth District of Mississippi. Bill Colmer supported TRENT LOTT's candidacy as a Republican and thereafter supported the election of Republican Presidential candidate Gerald R. Ford in 1976.

Mr. Speaker, while Representative William M. Colmer now belongs to the ages, he truly during his lifetime belonged to the Nation.

I am proud of him and grateful to have had the opportunity to know him and to have served with him.

Mr. Speaker, in expressing these few words of respect and remembrance on the occasion of Bill Colmer's passing, I also want to communicate to his widow, Ruth, and to all members of his family, my deepest sympathy.●

FORMER AMBASSADOR RECOUNTS EVENTS LEADING TO FALL OF SHAH OF IRAN

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROWN of Ohio. Mr. Speaker, over the past several months during which our American hostages have been held captive in Iran, many have wondered how the United States could have let the Iranian situation get so far out of hand.

As the following illuminating recount of the events leading up to the fall of the Shah of Iran demonstrates, the stage was set during the 1978 Iranian crisis. The article, written by William H. Sullivan, the U.S. Ambassador to Iran during the fall of the Shah, clearly illustrates the misguided foreign policy decisions of the Carter administration which resulted in the downfall of the Shah and contributed to the current volatile Iranian situation.

As we pray for our American hostages and grow increasingly concerned over the possibility of war in the Persian Gulf over oil, we should know the truth about how these events developed. I insert the Sullivan article as follows:

ENVOY'S VERSION OF THE COLLAPSE

(By William H. Sullivan)

Iran, at the head of the Persian Gulf and stretching along its northern and eastern shores, has always served as a barrier against Russian ambitions toward the Indian Ocean and the Arabian Peninsula. The integrity and independence of Iran have strengthened the effect of that barrier and, in recent years, tempered whatever plans the Soviets may have had to move into or manipulate the area.

In recent years, the United States has come to depend upon the Persian Gulf for 30 per cent of its oil imports. Western Europe's dependency is over 60 per cent and Japan's is over 70 per cent. Therefore, the integrity and independence of Iran have become of significant importance to the United States and to its allies. Conversely, in strategic terms the disintegration of Iran or its economic dependence upon the Soviet bloc would represent a major gain for the Soviet Union.

Consequently, the policy of the United States in an Iranian crisis should have been guided primarily by concern for the preservation of the territorial integrity of that nation and its independence from Soviet control or manipulation. Other concerns, such as the well-being and the political as well as human rights of the Iranian people, should also have been of importance in view of America's longstanding association with Iran.

The crisis that came in 1978 developed rapidly, but not so suddenly as to have precluded a careful assessment of U.S. options and the formulation of a policy to enhance American interests. But to decide among those options required a mature understanding of the nature of the revolution that was sweeping Iran in 1978 and the factors that contributed to its rapid success. It was far more complex than the simplistic Islamic revolution label accorded it by the press.

Rather, the 1978 crisis was an uprising that was joined by all the enemies of the Pahlavis. These included the old aristocrats from the Qajar regime; the feudal landholders who had lost their villages in the land reform programs; the social democrats who had been suppressed with Prime Minister Mohammad Mossedeq in 1953; the bazaaris—the traditional merchant class—who felt left out of the shah's industrialization program; the young, rootless industrial workers who had never been able to adjust to their vagrant life in the cities; the various radical Islamic groups such as the Mujahadeen and the Fedayeen; the separatists in Kurdistan, Azerbaijan, and elsewhere; the old tribal chieftains who flocked back from exile; the pro-Soviet communists of the Tudeh party; and the other communist groups who eschewed Moscow's direction.

All of these opponents of the Pahlavi dynasty, for their own individual reasons, were willing to band together for the negative purpose of overthrowing the shah. All were under the ostensible leadership of Ayatollah Ruhollah Khomeini, who, fired by his own personal animosity toward the Pahlavis, was able to give the movement the coloration of a religious crusade.

The American embassy in Tehran attempted in its reporting to convey the complex and negative nature of this revolution and to express the view that the direction Iran would take in a post-shah period was far from preordained. I believe the State Department, in general, understood and accepted those reports. There were, however, those at State who were so strongly opposed to the shah because of the human rights abuses of his regime that they wished to see him collapse no matter what the consequences for the United States or its allies.

Therefore, when the State Department advanced the view that the shah's regime would not survive, there were many others in the Washington bureaucracy, particularly on the National Security Council (where the revolt was simplistically believed to be an Islamic revolution), who attributed State's perception, and by indirection that of the embassy, to an expression of wishful thinking on the part of those whose vision was blurred by their zeal for human rights.

This division in perceptions within the Washington bureaucracy also extended to the nature of instructions that were sent to the embassy or, more often, to the absence of any instructions whatsoever because the bureaucracy could not agree upon their terms. Most significant in these divisions was the difference in perception about the shah's willingness to use force to suppress the revolution.

DIVISIONS IN WASHINGTON

Time and again the shah told me that he would not use force because a "king cannot murder his own people." With what I regarded as more convincing logic, he told me that if he used force, he could suppress the spreading revolution only as long as he himself lived. Since he reckoned his mortality in a short time frame, he felt the suppressed forces would blow up in the face of his son, and the dynasty would, in any event, be blasted away.

In Washington, these embassy reports were apparently received with divided conclusions. The State Department—and eventually the Central Intelligence Agency—accepted them objectively and believed the shah would follow a policy of concession rather than force. Other elements of the bureaucracy, led by National Security Adviser Zbigniew Brzezinski, apparently thought that I had abandoned 32 years of professional objectivity and was subjectively tailoring my telegrams to fit what they conceived to be the mood of the State Department.

BRZEZINSKI TURNS TO ZAHEDI

In this pernicious atmosphere, U.S. policy formulation broke down. By November 1978 Brzezinski began to make his own policy and established his own "embassy" in Iran. That embassy materialized in the person of Ardeshir Zahedi, the shah's ambassador in Washington, who returned to Tehran at Brzezinski's behest with the explicit mission of pulling the shah's resolve together so that he could suppress the revolution. Zahedi to urge the shah to use force. These confidence. He saw the shah frequently and reported daily (on the open international telephone monitored by the Soviets) to Brzezinski. He also made reports to me.

Zahedi is an engaging fellow. He is a romantic in a very Persian way and has an ebullient belief in his own actions. His father had been chief of the armed forces that restored the shah to power in 1953, and Ardeshir himself played a part in that counter-coup. In his home, I found a rather tatterdemalion remnant of the figures who had participated in that successful 1953 action. But in assaying them, I found them would-be leaders without troops. Those they had led in 1953 were, in 1978, on the other side of the barricades.

The shah seemed to feel the same way, for he continually told me to warn Washington not to pay attention to Zahedi because he did not understand the current situation. Naturally, my reports of this warning served only to deepen the divisions and heighten the suspicions that beset Washington at that time.

URGING THE SHAH TO FIGHT

The confusion also contaminated the Iranians. Brzezinski reportedly encouraged Zahedi to urge the shah to use force. These messages were doubtless embroidered in being relayed to their high destination. When the shah turned to me for confirmation of these appeals, I could point only to platitudinous cables that leaned toward condecension.

Matters came to a head in mid-November. A military government, headed by General Gholam Azhari, has been installed on November 5, 1978 after rioting and arson had left Tehran in a shambles. On November 9 I sent a message to Washington saying that this was the last chance for the shah to control the revolutionary process. If this government failed, I stated that we should anticipate the collapse of the shah and look for alternate means to protect and preserve our interests. I defined those interests in terms of the territorial integrity and independence of Iran and said that, given the nature of the revolution, the only instrument that could advance those objectives was the armed forces.

We should act, therefore, to preclude the armed forces from being chewed up in the revolution. Because of our special relationship, we should determine whether we could broker an arrangement that would permit the armed forces to remain intact. They would have to be under the direction of a government that would enjoy the support of the groups that would prevail after the success of the revolution and that would have the blessing of Khomeini. I anticipated (correctly, as it turned out) that the first government to emerge from the shock of the revolution would be headed by Medhi Barzagan, a benevolent social democrat.

KEY MESSAGE IGNORED

I never received a reply to this fundamental message. Instead, it soon became apparent that my views were no longer welcome at the White House. Emissaries of various types began to arrive from Washington to assess the situation *de novo* and to encourage the shah to use force. One of these not trapped into unreality was Senate Majority Leader Robert Byrd. I believe he left Tehran understanding the true situation.

On December 20 the leader of the military government suffered a heart attack, and the situation that I had anticipated on November 9 came to pass. As if to underline this fact, Azhari summoned me to his sickbed to tell me that the regime was lost "due to the indecision of the king." I duly reported this to Washington and then went on to say that I intended to move along the lines I had recommended in my cable of November 9. There were no instructions to the contrary, and so I began to steer the embassy through a series of actions that sought to establish the ground rules under which the Iranian armed forces, purged of some of their more controversial leaders, would be accepted by a Barzagan government.

At the same time, we sought to determine on what terms the armed forces would accept such an arrangement. Because many of those who engaged for patriotic reasons in those conversations are still in Iran, and because their patriotic motives may be suspect in the highly charged atmosphere there, I shall not go into detail about these various discussions.

MILITARY TRANSITION SET

Suffice it to say that detailed understandings were reached between the armed forces and revolutionary leaders in Tehran: A number of senior officers would have been allowed to leave the country with the shah, and a transfer of allegiance of the remaining armed forces would have been made in a way that would have preserved their integrity.

At about this time, the internecine squabbling in Washington began to impinge upon my communications. I began to discover that any sensitive message I sent, no matter how highly classified, that digressed from the views of the National Security Council staff would appear, almost verbatim, in the New York Times. I therefore had to use the secure telephone exclusively to communicate with the Department of State.

When plans for the peaceful transfer of military authority had sufficiently matured and when the shah had decided to leave the country and hand over a fig-leaf of authority to a government headed by a man he despised—Shahpour Bakhtiar—I felt it was important that the nature of the proposed transition be discussed with and understood by Khomeini, who was in Paris. This was especially important because Bakhtiar jauntily took the position that he, rather than Khomeini and the victorious revolution, would exercise governmental power despite the fact that he had no constituency and no popular support.

Accordingly, I proposed that an authoritative emissary be sent from Washington to consult with Khomeini. We already knew from contacts with his entourage that he was concerned about bloodshed between the revolutionaries and the armed forces when he returned to Tehran after the planned departure of the shah. We also assumed that he had given general sanction to the arrangements we had made with the revolutionary leaders in Tehran, but felt it was important that we have his first-hand acceptance of these understandings.

MISSION TO KHOMEINI

I discussed this suggestion on the secure telephone directly with Secretary of State Cyrus Vance. He approved the general idea and then sent me, by a system called secure telecon, a talking paper for use by our emissary. When I had agreed to its terms, he then instructed me to discuss the entire enterprise with the shah, whose departure was less than two weeks away. After I received the shah's acquiescence, Vance informed me that he had selected as our emissary Ambassador Theodore Eliot, the inspector general of the Foreign Service, former ambassador to Afghanistan, former economic counselor in Tehran, and a fluent Farsi linguist. I applauded the choice. Here was a man who understood Khomeini and the nuances of the Iranian situation. He could convey in a forceful manner the full dignity of American purpose as well as American sincerity.

I then turned my attention toward a refinement of plans for the evacuation of American officials and civilians.

During the first week of January, I received an urgent nighttime message from Washington informing me that the Eliot mission had been canceled and that the president had directed that the shah be so informed. The president, who had stayed in Guadeloupe after the economic summit meeting with Western European leaders to do some deep-sea fishing, was accompanied in his retreat only by Brzezinski. I sent an impassioned reply to the secretary of state imploring reconsideration and stating that cancellation of the Eliot mission would be an "irretrievable" mistake. I received a curt rejection that cited all the cabinet officers who agreed with the president. When I told the shah, he reacted with incredulity and asked how the United States expected to influence "these people," if it would not even deal with them.

As far as I could determine, the United States, on the eve of the shah's departure, was left with no policy. I immediately thought of all the American citizens who would be caught up in the confrontation that would result if no arrangements were worked out for a peaceful transition. We had to move immediately from a situation in which we foresaw a controlled transfer of power to one in which I could perceive nothing but chaos, for the shah had already fixed the date when he would swear in Bakhtiar as prime minister and then leave the country.

THE BRZEZINSKI FACTOR

However, I overlooked the Brezezinski factor. It appears that he had a plan in mind. He had already sent to Tehran General Robert Huyser, deputy commander of U.S. forces in Europe and deputy of Alexander Haig, supreme allied commander in Europe. I had used Huyser frequently in the past to help us guide the Iranians in the restructuring of their armed forces' command-and-control system so that they would be able to utilize some of the sophisticated equipment we had sold them. When it was proposed that Huyser come to Iran at the time of the shah's departure, Haig telephoned me on the secure line to say that he was opposed to the mission and would resign if it were undertaken. It was undertaken, and he resigned.

Huyser, every inch a straightforward good soldier, arrived in Tehran somewhat flustered by the nature of his mission and by Haig's resignation. He moved in with me, and we shared all our message traffic and our common concerns. We did not always agree. But when we differed, we did so openly and with due respect to our differences.

Huyser's mission, as described in the brief official order he received, was to assist in maintaining the integrity of the armed forces and in transferring their loyalty from the departing shah to the Bakhtiar regime.

Parallel to this order, I received terse instructions telling me that the policy of the U.S. government was to support the Bakhtiar government without reservation and to assist its survival. I replied by pointing out that the Bakhtiar government was a chimera that the shah had created to permit a dignified departure, that Bakhtiar himself was quixotic and would be swept aside by the arrival of Khomeini and his supporters in Tehran. Moreover, I argued that it would be reckless to transfer the loyalty of the armed forces to Bakhtiar because this would cause the destructive confrontation between the armed forces and the revolutionaries that we hoped to avoid. It would result in the disintegration of the armed forces and eventually in the disintegration of Iran. It would be directly contrary to U.S. interests.

ACERBIC EXCHANGES

By this time, my exchanges with Washington had become increasingly acerbic. The reply I received to this message, in my judgment, contained an insulting aspersion upon my loyalty and instructed me, in no uncertain terms, to support Bakhtiar no matter what reservations I had. At this point I decided, like Haig, to resign. However, I still was responsible for protecting about 15,000 remaining Americans in the face of enveloping chaos. I therefore quenched my Irish temper, sent my wife out of the country, prepared for the worst, and delayed my resignation until after the anticipated holocaust.

As the confrontation between Bakhtiar and Khomeini quickened, Huyser received continuing instructions to prepare the armed forces for conflict in defense of the Bakhtiar regime. On the basis of his observations, he offered to Washington his opinion that in such a confrontation the armed forces would prevail. But he always tempered this observation by stating that I disagreed and that I believed the army would disintegrate when ordered to fire on revolutionaries, some of whom were relatives of the soldiers. As a result, their arms would be dispersed throughout the whole tangled and conflicting fabric of the revolutionary forces, making it impossible for the Bazargan government to assume quick and effective control when it inevitably took power.

The armed forces understood this also. When General Abbas Gharabaghi, their commander in chief, decided to resign, Bakhtiar, who had been assured by Washington that I was under instructions to support him, called me into the actual meeting during which Gharabaghi attempted to submit his resignation. Like two characters in a Greek tragedy in which both knew the futility of their actions, I remained true to my ambassadorial oath by urging the general to withdraw his resignation, and he agreed to do so. It was a sickening performance for both of us.

THE ROAD NOT TAKEN

I have no way of stating categorically that the road not taken would have averted what has happened in Iran. But perhaps I can end this article by quoting Bazargan from an interview that he gave to Oriana Fallaci:

"Then think of the deplorable state in which the army, police and security forces find themselves, all of them indispensable bodies for establishing law and order . . . The revolutionary committees and the revolutionary guards cannot perform their duties because they're not trained, they quarrel among themselves and they refuse to take orders from us . . . I say that these are things that would paralyze any government." ●

THE REGULATION REFORM ACT OF 1980

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROYHILL. Mr. Speaker, as an active participant in the effort to enact a regulatory reform bill this Congress, I am greatly disappointed to see that the Judiciary Committee has once again decided to forestall any further action on H.R. 3263, the Regulation Reform Act of 1980.

A number of Judiciary Committee members, acting in their individual capacities and in conjunction with committee staff members, have been working continuously this past year to reach a final good faith compromise on the various provisions of H.R. 3263. These individuals recognize the overwhelming need for enactment of regulatory reform legislation at this time. I was encouraged to learn that the committee had decided to hold a mark up session on H.R. 3263 on September 9, as full committee action on the bill had ground to a halt several months ago. In fact, it was because the bill has been stalled in Committee for so long that I felt compelled to file discharge petition No. 12 to bring H.R. 3263 to the House floor for consideration.

And now, no sooner had the September 9 markup session been scheduled than the decision was suddenly reversed, and markup on H.R. 3263 indefinitely postponed. Mr. Speaker, such arbitrary actions do nothing to get legislation enacted, and in the case of the Regulation Reform Act, the sudden decision to cancel the committee's consideration of the bill is particularly regrettable. With everyone clamoring for meaningful regulatory reform before the end of this Congress, we are all the losers as a result of this short-sighted maneuver.

While I was pleased to learn that the Judiciary Committee had decided to take up H.R. 3263, the recent reversal of that decision points up the need for taking an alternative tack to get the regulatory bill to the House floor. We can no longer afford to sit by and wait while the Judiciary Committee vacillates, in response to whatever outside forces motivates it, on whether or not we will see the enactment of regulatory reform legislation this Congress. Now, more than ever, I hope my colleagues will see the need for my discharge petition on H.R. 3263, and will add their signatures to the petition.●

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. OTTINGER. Mr. Speaker, Congress will soon determine the fate of efforts to end the proliferation of nuclear arms.

To date, 116 countries have ratified the Treaty on the Non-Proliferation of Nuclear Weapons. Forty-six countries, including India, have not signed the treaty. India stands alone as the nation which has produced a nuclear bomb by flouting U.S. peaceful use guarantees. Since exploding the so-called peaceful nuclear device in 1974, using, in the process, U.S. heavy water, India has rejected all agreements regarding the manufacturing of atomic bombs.

Despite this and countless other disturbing actions, President Carter now urges, in the name of geopolitics, that we approve the sale of 38 tons of nuclear fuel to India. Both the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations have voted to override the President's misguided decision.

I urge my colleagues to support the "Resolutions of Disapproval," written by Mr. BINGHAM and reported favorably by the Foreign Affairs Committee, which would block the fuel shipments, and I urge the leadership to bring this matter to a vote quickly.

Let us scrutinize the geopolitical consideration surrounding this sale. On June 19, Mr. Carter signed an Executive order overruling the unanimous vote by the Nuclear Regulatory Commission to disallow the sale of fuel to India, citing the need for the United States to bolster our relations with nations in South Asia, particularly those that can play a role in checking Soviet expansionism. On July 8, India recognized the pro-Soviet Heng Samrin government in Kampuchea.

After President Carter reportedly promised Prime Minister Indira Gandhi the pending fuel shipments for the Tarapur facility at Bombay, India signed a $1.6 billion arms deal with the Soviets. This nation to which we are now asked to give enriched uranium also recognizes the Palestine Liberation Organization.

India is a nation whose prime minister has vowed to explode more peaceful nuclear devices if she deems it to be necessary.

India is a nation which has hindered our efforts to secure the release of our hostages in Iran by undermining the U.S. embargo. On June 14, India announced its intention to send grain and a number of industrial products to Iran to enable that country to meet shortages stemming from sanctions imposed by the United States.

India is a nation which did not support the United Nations resolution on the Soviet invasion of Afghanistan.

While the administration claims that this sale will increase stability with a key South Asian democracy, my distinguished colleagues on the foreign affairs panel who voted against the sale will tell you otherwise. In fact, to allow the sale to India could accelerate Pakistan's efforts to acquire a nuclear weapons capability.

Proponents of this sale argue that India will turn to the Soviet Union for nuclear fuel. Russia's willingness to do so is unlikely. In the mid-1960's, when the Soviet leaders were worried about the possibility of West Germany acquiring nuclear arms, Moscow joined the United States as a prime mover in negotiating the nonproliferation treaty. The U.S.S.R. is required by the treaty and the 1977 nuclear suppliers guidelines to demand safeguards on all exported nuclear material, and, under the latter, not to undercut U.S. actions in furtherance of nonproliferation objectives. Russia has repeatedly demonstrated its commitment to the goals of nonproliferation. For example, it requires the return of all Soviet nuclear spent fuel, and, with respect to India, has already extracted tough peaceful use assurances on the imported heavy water.

The administration maintains that failure to deliver the shipments would constitute a breach of the United States-Indian Nuclear Agreement for Cooperation signed in 1963 since we have promised to be a reliable supplier of nuclear fuel. We have promised, however, to be a reliable supplier only to nations which adhere to effective nonproliferation policies, and not to a nation which has consistently refused to subject its facilities to international safeguards. I might add that Canada immediately terminated its nuclear relationship with India following the 1974 explosion. The American Law Division of the Congressional Research Service agrees that the United States would not be in breach of the agreement by withholding the shipments.

Perhaps the most ludicrous argument in favor of this shipment has been made by the President himself. Mr. Carter, who once called nonproliferation one of mankind's most pressing challenges, now claims that, "These exports will help us to maintain a dialog with India in which we try to narrow our differences on these issues."

As I have said before, the President is essentially offering a potential gunman bullets and asking him not to shoot.

India has already stockpiled enough fuel to last through February 1982. It takes but 8 kilograms of plutonium to produce a bomb as powerful as that exploded over Nagasaki. If these shipments continue while India refuses to subject its facilities to international safeguards, let those responsible for the decision know that thousands of kilograms of plutonium will be stockpiled by India during this decade without safeguards. Indira Gandhi's continual transgressions against the United States in foreign policy matters gives little room for optimism that continued uranium shipments will buy anything other than worldwide disregard for U.S. efforts for nonproliferation.

This is the first test case of whether we will continue nuclear trade with nations deliberately maintaining the option of making nuclear weapons by refusing to allow inspections of nuclear activities.

At issue is not only nonproliferation, but the perception of U.S. strength and integrity abroad. In his 1977 message to Congress, Mr. Carter said "if our policy is too weak, we could find ourselves powerless to restrain a deadly worldwide expansion of nuclear explosives capability."

Approval of this sale will teach every member nation to the Nuclear Non-Proliferation Treaty that it has no reason to abide by the agreement any longer. It will signal that the United States is not serious about its nonproliferation stance and its insistence on international safeguards.

To quote from a New York Times editorial of June 22:

> If the Indians retaliate by using the spent American fuel for reprocessing, let them take responsibility for destroying the containment effort. If that effort is to succeed, the line has to be held.●

ANTONIO GAGLIOTI HONORED FOR SERVICE

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, I am proud to join district 6 of Unico National in honoring Mr. Antonio Gaglioti for his outstanding record of service to the Unico National and to our communities.

Mr. Gaglioti is the outstanding district governor of Unico National for 1979–80. He earned this recognition through his leadership efforts in civic activities including mental health and scholarship programs and for his coordination of the seven chapters of district 6 in a drive which raised $18,000 in a 2-month period for the purchase of a special IBM cell separating machine. The machine, used to combat Cooley's anemia, was donated to the Columbia Presbyterian Hospital.

In his dedication to service, Mr. Gaglioti has touched the lives of thousands of New Jersey residents. He is a proud testimony to the positive results one individual can achieve in steadfast commitment to the ideals upon which our Nation was founded.

I extend to Mr. Gaglioti my commendation and my very best wishes for every happiness and success in his future endeavors.●

THE BOTTLERS BILL: WERE ANTICOMPETITIVE CONCERNS JUSTIFIED?

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MAZZOLI. Mr. Speaker, during deliberations on the so-called bottlers bill, which was signed into law on July 9, 1980, by the President, some concerns were raised about the possible anticompetitive effects of this bill on the soft drink industry.

As the following Wall Street Journal article indicates, competition within the soft drink industry is more vigorous and resolute than ever.

The article reads as follows:

SOFT-DRINK MAKERS' DISCOUNTING HAS SOME WORRIED OVER EFFECTS

(By Bill Abrams and Susan Harrigan)

Discounting has become a way of life for soft-drink marketers. A quick tonic for slow sales, temporary price cuts are especially common during economic slowdowns, and this one is no exception. But this practice, known in the industry as "dealing," also can leave an unpleasant aftertaste—weakened brand loyalty—that worries the soda-pop industry.

Discounts "have gotten out of hand," says Sidney Mudd, chairman of Joyce Beverages, a New York area Seven-Up and Royal Crown bottler. "Price promotions are good, but when they're as constant as they are now, they cheapen the product in the mind of the consumer."

Of course, a major objection is that discounting puts pressure on profit margins. It also erodes images carefully cultivated through expensive advertising. Ultimately, discounting may even make it easier for Philip Morris' Seven-Up and Procter & Gamble's recently acquired Crush unit to increase market shares.

Despite those prospects, Coca-Cola has been waging an aggressive price-off campaign and is regaining market share lost to Pepsi. Coke's reasoning: Consumers respond enthusiasticaly to price-oriented appeals. "It's the current game," says Brina Dyson, president of Coke's domestic operations, "and you'd better learn how to play it."

Coke says 1980 "could be" a record year for discounting. Consumers in most cities can find bargains easily. In Dallas, site of acrimonious Pepsi-Coke battles, shoppers could buy a six-pack of 12-ounce Coke cans last week for $1.19 (regularly $2.05) or two-liter bottles of Pepsi or Dr Pepper for 77 cents (regularly $1.29).

The number of soft-drink deals featured in newspaper ads rose 21 percent in the first five months of this year, compared with the same period in 1979, according to a survey of 20 major markets. Specials on Coke increased even more than that, says an industry source.

Pepsi's response? "We're not about to let someone take our share of market away," says John Sculley, president of Pepsi's U.S. unit. "If someone wants to raise the ante, we don't think it's very smart, but we know how to play hardball, too."

Mr. Sculley once thought discounting was a smart idea. A decade ago, Pepsi began dealing vigorously to sway consumers to its cans and large bottles. The goal, says Mr. Sculley, was "to obsolete the equity Coke had in its hourglass-shaped bottle."

A fast rise in sugar prices in 1974 quickened the pace. Soft drink prices advanced, too. Then when sugar prices dropped, bottlers were awash in profits. Rather than lower prices directly, they poured money into price promotions. (Antitrust laws prohibit franchisers from dictating wholesale prices to independent bottlers.) Industry observers say discount sales contribute 40 percent to 80 percent of unit volume for many bottlers.

After Pepsi passed Coke in food-store market share in 1977, discounting lost some of its allure for the new leader. "What was once a strategy has become a cost of doing business," says Mr. Sculley. "Are we going to continue to use price promotions as a way to build share in the 1980s? Not if we can help it."

Coke may have other ideas, though, because its recent price push appears to be working. A. C. Nielsen market-share calculations for April and May showed Pepsi with a 22.4 percent share, down half a percentage point from a year earlier, while Coke's share rose four-tenths of a point to 21.4 percent. Executives at both concerns anxiously await June and July results, due next Wednesday. Coke is confident of regaining market leadership eventually. When? "That's a closely guarded secret," says Mr. Dyson, "except that it's inevitable."

Pepsi attributes Coke's gains to discounting. "We think it's too high a price to pay," says Mr. Sculley. "Can they hold it over time? Our experience is that it takes more than price."

"Ridiculous," replies Coke's Mr. Dyson, who calls discounting "a valid, healthy, strong practice." To those who claim it harms brand loyalty, he retorts: "That's the kind of elegant theory you can get by with on a blackboard or in some text. But in the marketplace, you try that and you'll get into trouble."

Mr. Dyson's view isn't universally shared by soft-drink marketers. Many see consumers increasingly making decisions on the basis of supermarket ad features and in-store displays, rather than on the basis of product quality or image. One study of soft-drink loyalties found that fewer than 5 percent of soda buyers are "exclusive users" of a single brand. Complains Mr. Sculley: "Pepsi and Coke have become pretty interchangeable to a large number of consumers."

Pepsi says it's trying less-costly promotions to cut down on discounts. Last Christmas, the company tied holiday sales promotions to Mickey Mouse displays, puppet premiums and a sweepstakes. Pepsi will try another game during this year's World Series. But Coke rejects claims that discounts squeeze bottlers' profits. Mr. Dyson says financial surveys show bottling to be "a very healthy, a very good industry to be in." He adds: "You have to conclude, from that, that price promotion isn't killing bottlers."

Seven-Up, although a frequent discounter, wants to depend less on cents-off discounting and more on marketing ingenuity, Seven-Up president Edward Frantel told bottlers this spring: "We propose to sell Seven-Up products as brands, not commodities." Seven-Up's likely introduction next year of new products, including a cola, will give the company a chance to test its philosophy.

The strongest pressure against discounts, however, could come indirectly. Sugar prices have doubled in the past year, and bottlers will have to decide whether to pass all the increase along to consumers or to absorb some of it through less discounting. Either way, the soft-drink bargains shoppers are enjoying mightn't be around next summer.●

THE 170TH ANNIVERSARY OF MEXICAN INDEPENDENCE

HON. DAN LUNGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. LUNGREN. Mr. Speaker, in recognition of California's strong ties with Mexico and the rich cultural impact our southern neighbors have had on all levels of our society, I would like to commemorate this day as the anniversary of their independence.

The Mexican move toward independence erupted as a reaction against deeply rooted prejudices as well as social and political inadequacies which existed in the imperial system.

Father Miguel Hidalgo led the independent move to liberate Mexico from Spain. On the morning of September 16, 1810, he summoned his followers to mass and asked, in his famous "Grito de Dolores" speech, that they take up arms against their Spanish oppressors. A formal declaration of independence from Spain and the drafting of a constitution ensued. On September 16, the democratic ideals of liberty and freedom triumphantly emerged.

The traditional Independence Day celebration begins on the eve of September 15 when the President of Mexico once again proclaims Father Hidalgo's "Grito de Dolores."

To close the ceremony, bells ring throughout Mexico in response to the independence bell, originally rung by Father Hidalgo 170 years ago.

In the United States, southwestern States join in celebrating Mexico's independence by observing similar traditions—parades, fireworks and the ceremonial "Grito de Dolores."

Today on the 170th anniversary of Father Hidalgo's cry for freedom, Mexico's remarkable heritage and vision of democracy remain an indelible mark in the history of independence.●

VIRGINIA BEACH CITY PUBLIC SCHOOLS

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WHITEHURST. Mr. Speaker, the recent regulations proposed by the Department of Education which would mandate bilingual education programs in our public schools are not in the best interest of our young people whose primary language is not English. Indeed, we will do these students a grave disservice if we fail to teach them English expeditiously, because we will deny them access to the mainstream of American life. Without a working knowledge of English, they will find it difficult, if not nearly impossible, to find meaningful employment; and by encouraging languages other than English to be widely used, we will further fragment American society.

At this point in the RECORD, I would like to share with my colleagues the position paper on this issue which was prepared by the Virginia Beach city public schools. It is a scholarly presentation, and I commend it not only to my colleagues but to those in the Department of Education who would impose this requirement on our schools indiscriminately.

The position paper follows:

A POSITION PAPER ON PROPOSED LAU REGULATIONS

The Virginia Beach City Public Schools are opposed to the adoption and enforcement of the "Lau Regulations" proposed by the Secretary of Education which mandate a bilingual education program as the prescribed means of teaching students whose primary language is not English and/or who have limited proficiency in English.

It is the position of the Virginia Beach City Public Schools that the proposed mandated bilingual program is neither reasonable nor educationally defensible; rather, it has the potential to destroy effective programs now in place and to increase the demands on already scarce resources. Our position is not intended as an attack on bilingual education as one approach to the education of non-English proficient students; we simply oppose the apparent selling of the concept as the only answer for all schools. It is perhaps useful, necessary, and a cost-effective program where there are heavy concentrations of persons with primary languages other than English; it is, at best, a highly questionable requirement for districts with relatively few, widely dispersed students with many different primary languages; it is not the only approach that should be encouraged in either situation. It is reasonable to assume that the adoption and enforcement of the proposed rules will cause a bilingual program to become the exclusive means of educating students with primary languages other than English. Exclusive because of the demands the regulations place on time, personnel, and money; exclusive because there will be no resources left for alternatives; exclusive, though evidence and theory do not support it as the only or most effective way to educate students with non-English primary languages.

It is generally agreed by linguistic scholars that one of the greatest obstacles which a learner of a second language must overcome is the already internalized dominant primary language. It is held that the greater the reliance on and use of the dominant primary language, the longer it will take to acquire proficiency in a second language.

The bilingual mandate requiring that instruction be given in the student's native language, when that is assessed to be the stronger, will impede or reduce motivation to achieve proficiency in the second language. Usually, students with limited English proficiency have many more hours of often exclusive exposure to their native language in the home than the few during which they are exposed to English in the public schools; additional exposure by instruction in the native language can be counter-productive. Under such circumstances English proficiency will always lag, while the native language continues to be or becomes increasingly dominant.

It is our position that in Virginia Beach City Public Schools the best interests of students with limited English proficiency can be and are served by a strong, intensive, and effective ESL (English as a Second Language) immersion program. Such a program, not unlike that of the Foreign Service Institute language training program of the State Department, provides the students with the English language skills necessary to function comfortably and successfully in the educational mainstream. In such a setting, students can acquire English proficiency more rapidly by participating and learning from the actual life, language, and culture in which they are immersed.

At a time when education is required to mainstream persons with physical, mental, and learning handicaps; it seems foolish and contradictory to remove and isolate a group of students who are meeting with success while in the mainstream of our educational program.

The Virginia Beach City Public Schools recognize the need to provide programs for students with limited English proficiency. We readily accept that responsibility. We neither want nor seek relief from the responsibility; we do want, however, to meet the need in a way which best serves our students and this district. The record will show that we have taken the initiative in this matter.

The Virginia Beach City Public Schools have designed, and have had in place since 1975, a program to assist administrative and instructional personnel in providing instruction in English as a Second Language to enable non-English proficient students to participate in the mainstream of the instructional program and to reach educational goals consistent with their individual capabilities and aspirations.

Using identification procedures suggested in the "Lau Remedies," individual school principals identify those students (1) whose first learned language is other than English, (2) who speak a language other than English, or (3) in whose homes a language other than English is spoken.

The degree of students' proficiency in English is assessed by several means. Standardized achievement test scores are examined by classroom and reading resource teachers. Students scoring within a year of grade level are considered to be in need of no further assistance. Students whose grade level deficiency is more than one year of grade level are individually screened by the TESOL specialist. The diagnostic process includes an interview, a test of listening comprehension, an oral syntax measure, graded reading word lists, and, with older students, an assessment of writing skills.

Prescriptive recommendations for the instruction of each student are made to the principal who has the responsibility for designating a teacher, aide, volunteer, or peer teacher to provide instructional assistance in ESL. Additionally, the TESOL specialist provides each student with appropriate ESL instructional and supplementary materials, conducts in-service training for ESL instructors, and confers with classroom teachers, counselors, and administrative personnel to meet the individual needs of the student. A summer session of more intensive English as a Second Language is provided free of charge at a magnet school; summer classes serve mutli-language and multi-cultural groups.

It is our position that the total immersion ESL program is the most economically, organizationally, and educationally feasible means of meeting the needs of Virginia Beach's diverse and widely scattered non-English speaking student population. The district has a relatively small and highly transient student population speaking approximately thirty-five different primary languages. Few are long term residents; many are dependents of temporary N.A.T.O. staff and allied military or technological training groups; some await opportunities to relocate in areas of high concentration of their ethnic groups. Enrollment and withdrawal records reveal the fluid and constantly changing nature of our non-English speaking population; the sale of six fighter planes to Iraq, for example, can change that population for a three to eighteen month period. With our population, the proposed bilingual mandate would result in a program with constantly changing form and uncertain needs and commitment of resources; we would have to be prepared and staffed to teach every language, and possibly dialect, spoken.

Because of the fluid nature of our population and the lack of information about available bilingual teachers, materials, and tutors, we have not made a definitive cost study of the impact of the proposed bilingual mandate on our district. It appears that magnet schools would be the only means of providing bilingual instruction for our dispersed non-English speaking students. For example, thirty-four Chinese speaking students are dispersed in grades K–8 in sixteen schools spread over approximately 350 square miles.

Magnet schools, obviously, mean more space for a school district already overcrowded. More space means construction, and construction means money. It is reasonable to assume that the mandated bilingual program will cost the Virginia Beach City Public Schools millions of dollars.

The Virginia Beach City Public Schools share the concerns of the Secretary of Education which are addressed by the proposed rules for bilingual programs; we do not share the belief that bilingual education is the only or the best means of educating students with primary languages other than English. It is our belief that the mandating of specific instructional methodology, technique, and delivery systems is not within the purview of the federal government.

Lau v. Nichols is a clear mandate for equal opportunity; complying with that mandate ought to be left to local districts when they have acted in good faith to accept that responsibility. A mandated bilingual program which is unsupported as exclusively effective and, apparently, organizationally and economically disastrous is not in the best interest of students with a primary language other than English, nor is it in the best interest of the Virginia Beach City Public Schools. The proposed "Lau Regulations" and the concept of a federally mandated bilingual program should be rejected.●

TRIBUTE TO ELWYN G. RAIDEN

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. RHODES. Mr. Speaker, another long-term employee of the House, Elwyn G. Raiden, has retired after serving a quarter of a century in the Sergeant at Arms office. As overseer of the bank, he has probably served individually more Members and staff than anyone else in the ranks of House personnel.

Elwyn Raiden is one of the many dedicated and unsung staff people that make the House go. He was not only an employee, but a good friend to many of us, who appreciate his unfailing cheerful services as keeper of the "money store" and provider of notary services which we all found frequently necessary to have at hand.

I have been in Congress during Mr. Raiden's tenure of service. I join my colleagues whom he has served so well in expressing our thanks for his 25 years among us. We all wish him a most happy, long, well-earned retirement, and we will all miss him at the bank.●

ATTORNEY GENERAL WITH TWO HATS

HON. F. JAMES SENSENBRENNER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. SENSENBRENNER. Mr. Speaker, the very inadequate and unsatisfactory manner in which the White House and Department of Justice have faced up to Billy Carter's financial and pseudodiplomatic relations with Libyan Government officials has placed the Carter administration in a very bad light. To what extent improprieties or possible illegalities extend may yet be disclosed by ongoing investigations.

At any rate, the White House and the Attorney General have been less than forthright in their relations with the Congress and in their disclosures to the American people.

Mr. Speaker, the distinguished columnist Mary McGrory has summarized this pattern of White House and Attorney General conduct in a most illuminating and incisive column which appeared in the Wednesday, September 10, issue of the Chicago Tribune.

Mr. Speaker, I am attaching Mary McGrory's column for the edification of my colleagues:

ATTORNEY GENERAL WITH TWO HATS

Chairman Birch Bayh (D., Ind.) of the Senate Billy Committee poured sympathy over the impassive witness. Poor Benjamin Civiletti, he has to wear two hats, one as attorney general of the United States and the other as the "President's lawyer."

Civiletti, the day before, got low marks from three Justice Department subordinates for his performance in the Billy Carter case. The President, however, gave him a pat on the back.

Civiletti has always understood his place. Right after his appointment, the President towed him over to Baltimore to show him off before the Sons of Italy as an example of the heights upwardly striving Italo-Americans can aspire to in a Carter administration.

Civiletti knew what was expected of him in the Billy matter. He tried to wall himself off from it. He was eventually caught between his tigerish Foreign Agents Registration Unit, which was hot on Billy's trail, and a White House which is not notable for noticing the conflict between protecting the Constitution and protecting the President.

The thing that most becomes Civiletti as attorney general was that he allowed the investigation of the President's younger brother to go forward. You have only to consider the likelihood of such an event in the Nixon years to see that a triumph of justice had occurred.

Having done that, Civiletti tried to forget about it. But his studied indifference was shattered last April when someone, unbidden, handed him two documents relating to Billy which, as luck would have it, would have nailed him cold.

As attorney general, his heart must have leapt up to see in a secret intelligence report the "smoking gun" his underlings had been seeking in their efforts to bridle Billy. But the President's lawyer was affronted by the gift and put it aside.

The reason he gave is one that has been heard before in the Caucus Room: national security. He considered it a higher duty to avoid compromsing "high sensible, fragile, and secret" sources.

Civiletti is a bland man with an undershot jaw and nerve ends well below the surface. His greatest aversion, it seems, is to "kicking up dust."

"I thought it would kick up dust," he said in explaining why he thought it would make better men of his investigators if they scrambled on their own for the stuff.

His exquisite concern for the national security was not matched by National Security Adviser Zbigniew Brzezinski, who on getting one of the documents straightaway called up Billy and told him to cool the oil deal with the Libyans outlined therein.

It is hard to know whether it was the attorney general or the President's lawyer who spoke out publicly on the case on May 29.

At a news conference, Civiletti said that it has "taken longer than appropriate." This could have been the attorney general prodding his underlings to find the information he was holding behind his back. Or it could have been the President's friend winding up to wind down a case that was an embarrassment to a presidential candidate.

Finally, on June 6, he coughed up to his investigators. There was nothing political about the timing, he insisted to Sen. Richard Lugar (R., Ind.), who is the most focused questioner on the committee, and who noted that the President had been, until June 3, engaged in "primary after primary."

"There is always some kind of an election or a primary," Civiletti replied loftily. "you have to disregard it."

The President's lawyer and the attorney general went arm-in-arm to the White House on June 17. The attorney general told the President he would not discuss his brother's case with him. The President's lawyer, however, told him that Billy was "a damn fool" not to register.

Purists pounced on the exchange as a howling example of impropriety, which it was not. In the real world, attorneys general tell Presidents that a member of the family might go to jail.

Where Civiletti came to grief was when he lied at his July 24 news conference, when he echoed the White House claim of "no contact."

This was later corrected by the President himself, and Civiletti had to come back the next day and concede that he had made unappreciated "lawyer-like distinctions." It's the one thing he regrets about the whole episode.

The only new thing Civiletti revealed to the committee was that he had received an accolade from the President, one which was delivered by Carter's Georgia guru, Charles Kirbo. The President, Kirbo told him, two days after the second unfortunate news conference, "asked me to tell you to keep your chin up, and he has great confidence in you."

What Lugar at length brought out was that Civiletti was merely following his leader in ambivalence. Jimmy Carter, as leader of the Western world, deplored his brother's tight friendship with a terrorist country. Nonetheless he urged him on, cabling congratulations after Billy's first trip to Libya, and asking him to bring the Libyan representative to the White House to negotiate the hostages' release.

It's no wonder Civiletti switched hats so often in the Billy affair. Everyone was doing it.●

JAMES A. BYRNE, IN MEMORIAM

HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. ZABLOCKI. Mr. Speaker, like many of my colleagues whose service in this body dates back to 1952 and even beyond, I was greatly saddened to learn of the recent death of former Congressman James A. Byrne, who represented the Third District of Pennsylvania with distinction for two decades.

Jim Byrne was not only a staunch and effective spokesman for his constituency, which was the primary focus of his concern throughout his political career, but he was also a valiant fighter in behalf of causes in which he deeply believed, involving both national and international affairs. Some of those causes, I might add, were not always supported with universal acclaim—and I include both civil rights legislation and foreign aid in that category—but he was never a man to run from or avoid a political controversy.

Jim Byrne was, in fact, an old-fashioned political leader, in the best sense of that term. He worked his way up through the ranks of his party, beginning as a Democratic committeeman of the 31st ward of Philadelphia, and ended his career as a respected member of the Armed Services Committee and senior Member of this body. Although he was a politician with a world view, until the end, a loyal, responsive and authentic representative of his people.

To his wife, Virginia, and his surviving brother and sister, I extend my deepest sympathy, as well as my personal regret for the loss of a valued colleague and a long-time friend.●

SHARP DROP IN AMERICAN AUTO SALES

HON. WILLIAM M. BRODHEAD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BRODHEAD. Mr. Speaker, Theodore S. Holtz, mayor of the city of Garfield Heights, Ohio, submitted the following material to the Auto Task Force. Mayor Holtz describes some of the extreme measures his city has been forced to take in response to the recent drop in American auto sales. I would like to share his letter with my colleagues.

The letter follows:

THE CITY OF GARFIELD HEIGHTS,
Garfield Heights, Ohio, August 28, 1980.

THE AUTOMOBILE TASK FORCE,
c/o Hon. WILLIAM BRODHEAD,
Longworth House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE BRODHEAD: Due to extremely limited funds available for the purpose of travel of officials of the City of Garfield Heights, Ohio, I am unable to appear to give testimony before the Automotive Task Force Hearings that are scheduled to begin in Detroit on Tuesday, September 2, 1980, at 10:00 A.M., nor am I able to send a representative.

In lieu of personal appearance by the undersigned, or a representative, I am forwarding this written appearance to you for your information and, hopefully, to be included in the record of the hearing.

The City of Garfield Heights is a community of approximately 40,000 people and is made up, in large part, of middle and upper middle-class persons, many of whom work as skilled and technical employees.

This week, it has been necessary for me to issue a notice of layoff to our Service Department employees, and others, effective September 15, 1980, due to a critical, financial situation. One reason for the crisis in our community stems from the fact that our income tax receipts are down approximately $110,000.00 from the anticipated collection made at the beginning of the year.

We have, already during the course of the year:

Refrained from replacing police cars this year and may suffer serious future consequences as a result.

Refrained from replacing three Service Department employees during the summer months when they were most necessary.

Refrained from replacing two Policemen.

Refrained from replacing a Fireman.

Laid off a Recreation Department employee in the height of the summer season.

My layoff notice, that will be effective September 15th, will provide as follows:

1. Effective September 15th, all overtime sewer calls will be discontinued. We will assist our residents with sewer problems but all calls will be done during the regular daytime hours.
2. We will layoff one Driver and one Laborer in the Sewer Department.
3. We will layoff one Rubbish Crew, one Driver and two Laborers.
4. Effective with the layoffs, the Task System, in the Service Department, will be abolished and all crews will return to a regular 8:00 A.M. to 4:30 P.M. day.
5. Heavy rubbish will only be picked up once a week.
6. If further layoffs are necessary, we will consider rubbish pick up once every two weeks.
7. We will layoff a Police Dispatcher.
8. Further cuts in the Police and Fire Departments are anticipated, probably resulting in layoffs of Dispatchers and perhaps some uniformed men from each Department.
9. We will layoff Sign Crew personnel.
10. As the year progresses, other cuts may be required.

Our Finance Department informs me that, for the first eight months of this year, we are down $110,000.00 from income tax collections only, as I have indicated previously in this report. We note, in this connection, that we have substantial employment of our residents in the municipalities of Brook Park, Twinsburg and Walton Hills, which, of course, are the municipalities that have large automotive employers. Based on the information of our Finance Department, I am convinced that a great portion of the declining income from income tax is as a direct result of the layoffs in the automotive industry. I am also convinced that much of our fiscal problems can be directly traced to the unsettled condition that we are all aware of in the automotive field.

I trust that the foregoing information will be of some use to you and your Committee.

Respectfully submitted,

THEODORE S. HOLTZ, *Mayor.*●

TRIBUTE TO WILLIAM M. COLMER

HON. JOHN J. RHODES

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 10, 1980

● Mr. RHODES. Mr. Speaker, we all are saddened by the passing of a former colleague, William M. Colmer, who served in the House for 40 years.

Bill Colmer was elected 20 times from Mississippi, and served the longest of any Member sent to Congress from that State. He had a distinguished career, capped by his chairmanship of the House Rules Committee.

It was my privilege to have served with Bill Colmer during much of his time in the House. I knew him as an astute Member, and as a good personal friend. He held strong opinions on many issues. On both sides of the aisle he was held in high respect for his integrity, and he had a host of friends in the Congress.

Bill Colmer was the epitome of the term "statesman." He was a firm believer in fiscal responsibility and a supporter of the free enterprise system. He served Mississippi and the Nation well for four decades, and remained active in the political process after he returned to his beloved Pascagoula. Congress was enriched by his long and dedicated service. I offer my condolences to his wife, Ruth, and his two sons.●

THE SMOKING HABIT

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. DRINAN. Mr. Speaker, Dr. William Bennett, associate editor of the Harvard Medical School Health Letter, has written an excellent article describing the last 100 years as "The Cigarette Century." Until the 1870's cigarettes were a luxury item consumed by few; today millions of Americans are addicted to the smoking habit.

This article and a supporting article entitled, "Pay the Piper" chronicle the history of the cigarette industry in the United States and also describe in very lucid terms the various physiological effects of cigarette smoking, explaining why people continue to smoke despite the known health risks.

The mounting evidence of these risks has indeed made clear, as Dr. Bennett states, that "smoking a cigarette will never again be regarded as altogether normal behavior." Let us hope that this same evidence will make this the last "cigarette century."

I commend to my colleagues these outstanding articles, published by the American Association for the Advancement of Science in Science 80:

THE CIGARETTE CENTURY

Eli Whitney, Thomas Alva Edison, Henry Ford, Alexander Graham Bell, James Bonsack, Wilbur and . . . Wait a minute. James Bonsack? Yes, James Albert Bonsack of Roanoke County, Virginia.

Although he has left but a faint trace in the history books, Bonsack belongs to that list of American tinkers and inventors who made an indelible mark on modern civilization. Just a hundred years ago—on September 4, 1880, to be precise—Bonsack filed for a patent on his design of a cigarette-rolling machine. Bonsack's complicated but clever invention made cheap cigarettes a possibility; and before long, a new type of tobacco made them a necessity for millions of people.

Until the 1870s, manufactured cigarettes were a minor item—a kind of dandified luxury—in the American tobacco trade. In 1869, fewer than two million were produced, all of them hand-rolled. But demand soon began to increase, and in 1875 the firm of Allen & Ginter offered a prize of $75,000 for a machine to do the job.

James Bonsack, a gifted teenager well acquainted with the machinery in his family's woolen mill, set out to win the award. He interrupted his efforts only briefly to attend Roanoke College, then dropped out, over his father's protests, to keep working on the invention. A month before his twenty-first birthday, James filed for his first patent. The "Bonsack," as his machine came to be known, poured a uniform flow of tobacco through a device resembling the wool feeder of a carding machine onto a thin strip of paper. The paper was rolled into a single, continuous tube. As it emerged from the machine, the tobacco-filled tube was cut into equal lengths.

The machine worked. It was improved. Father and son reconciled and set up a joint stock company to produce more machines and lease them to tobacco firms.

In retrospect, it seems surprising that there was a market for cigarettes. In the United States, per capita consumption of tobacco products had fallen for nearly a century, and it appears to have reached an all-time low of 1.8 pounds in the early 1870s. And yet, even in the decade before Bonsack filed for his patent, demand for cigarettes grew some thirtyfold. Why did a waning vice, subject to a good deal of mid-Victorian opprobrium, suddenly reestablish itself? And why did the impoverished tobacco country of Piedmont Virginia and North Carolina—now known as the "Old Bright Belt," where most cigarette tobacco is grown—rapidly become one of the most prosperous agricultural regions of the world?

Fairly abruptly, after the Civil War, methods of tobacco processing changed in the Old Bright Belt. As a result, smoke from the tobacco grown there became relatively easy to inhale, and nicotine, when delivered by inhalation, is a highly addicting substance. The cigarette happens to be the ideal means for obtaining manageable doses of inhaled nicotine. Mechanization, clever advertising and marketing techniques made their contribution, but they never would have sold much dried cabbage.

Nicotiana is an American plant that was transported around the world by the European explorers. When the Jamestown colonists arrived in the New World a century after Columbus, they brought the tobacco habit back with them. But where they settled they found an altogether harsh-tasting species of tobacco—just one more hardship in a generally tough existence. Then, about 1612, John Rolfe imported seed of a milder variety from one of Spain's Caribbean colonies. This tobacco did well in the sandy Virginia soil, and within a few years its smoking qualities were improved when a neighbor of Rolfe's began to cure his leaves by hanging them instead of stacking them on the ground. Curing is a process in which harvested tobacco is slowly dried; it removes excess starch and permits other chemical reactions, which lead to a milder smoke. The quality of the smoke is very sensitive to the rate and temperature of curing.

Tobacco grown in the Old Bright Belt became known for its mildness—mainly a result of the nitrogen-poor soil—but not until the 19th century did improvements in curing methods yield a leaf with smoke mild enough to be routinely inhaled. The first steps were made when it was discovered that heating tobacco at just the right time turns the leaf a bright yellow (hence the name "bright" tobacco), a color associated with a mild and pleasant smoke. Open flames of wood or charcoal were used for the purpose at first, but they imparted their own flavor to the curing leaves.

In the early 1800s, a few attempts were made to isolate wood smoke from the tobacco by building fires in furnaces outside the curing barns and leading the heat in through flues. That method was unsuccessful mainly because construction of the ducts was clumsy, and disastrous fires often destroyed barn and crop.

Safely designed flues, developed immediately after the Civil War, made all the difference. With flue curing, mild bright tobacco could be reliably turned out, and by 1880, as demand continually grew for the resulting product, this method became standard in the Old Bright Belt. What the tobacco growers and manufacturers could not have known was that the change in curing method had significantly altered the chemistry of their product. The smoke was not only mild, it was slightly acid instead of alkaline. Thus, the tobacco that was poured into Bonsack's new machines, and has been the chief component of cigarettes ever since, was unlike virtually any that had been available earlier, and the slight shift from alkaline to acid smoke radically changed the nature of the smoking habit.

Nicotine passes easily through living tissue only when it is in an alkaline medium. Under even slightly acid conditions, virtually every molecule of nicotine carries an electric charge that prevents it from crossing membranes. Pipe and cigar tobaccos, cured by age-old methods, yield an alkaline smoke, from which nicotine can be gradually absorbed in modest quantities through the mucous membranes of the mouth. The alkalinity itself makes the smoke irritating and deters inhalation.

By contrast, the slight acidity of cigarette smoke is not readily neutralized by saliva, so relatively little nicotine can be absorbed if the smoke is just held in the mouth. But because cigarette smoke is not highly irritating, it can be drawn into the lungs—indeed, it must be for absorption to occur. On the lungs' vast surface the acidity is neutralized; the nicotine loses its electric charge and passes rapidly into the bloodstream.

From the lungs, nicotine-loaded blood is carried back to the heart, which gives a squeeze and sends about 15 percent of the inhaled dose directly, and undiluted, to the brain. The brain, in turn, takes up on the first pass virtually all of the nicotine carried to it. The whole journey takes seven seconds. In comparison, heroin injected into the forearm takes about 14 seconds to reach the brain, and on its way, the dose becomes diluted by blood from other parts of the body.

Conventional explanations of cigarette smoking have called it a form of psychological dependence, in which the child's pacifier and security blanket are rolled into one little white tube for grown-up use. There is some reason to believe that pipe and cigar smoking reflect more a psychological need than a physiological one. But the cigarette habit is extremely potent and often very difficult either to give up or substitute with other crutches. Adolescents who smoke more than one cigarette, according to a British government study, have only a 15 percent chance of remaining nonsmokers. And when, after years of smoking, people try to kick the habit, they suffer from physical and psychological symptoms that persist for at least a couple of weeks, and some of their afflictions, including drowsiness and craving, usually get worse after ten days or so. For most, craving persists at least a month, and for about a fifth it continues five to nine years after they quit.

Only recently, with the work of British psychiatrist Michael A. H. Russell of the Maudsley Hospital in London, American psychologist Stanley Schachter of Columbia University, and other investigators, has the addictive nature of nicotine been clarified. by now there is little doubt that the drug, absorbed in the right way, creates a state of drug dependency. Confusion on the point arose and has persisted because nicotine is not like many other addicting substances: It does not interfere with "normal" behavior and thinking. Quite the contrary, cigarette smokers report that they need to smoke in order to focus their attention, to avoid drowsiness and a sense of blurred consciousness. The objective changes associated with smoking are also those of increased arousal, even though most smokers report the subjective effect as relaxation. In general, nicotine resembles stimulants, such as caffeine and amphetamine, more than the narcotics.

Russell hypothesizes that nicotine becomes highly addictive only when it is inhaled. What an inhaling cigarette smoker receives from his or her habit is a series of nicotine jolts, and the smoker seeks the jolts for two reasons. First, they give an ill-defined, but generally pleasurable sensation, and the average cigarette smoker can easily obtain 70,000 to 100,000 fixes a year—two to three hundred each day. Such frequent rewards serve as powerful reinforcers of cigarette-smoking behavior. Second, administering nicotine in brief, concentrated jolts is the best way to keep high levels in the brain—more so even than intravenous injection, which inevitably results in dilution of the dose.

Nicotine addiction requires the smoker to accept a certain compromise, however. At the same time that the addict wants to rise brain levels of nicotine, he or she must guard against elevated levels elsewhere the body, lest nauses and wooziness result from peripheral effects of the drug. Even though smokers become metabolically accustomed to nicotine, they have their limits. Indeed, most seem to be more careful to keep themselves below a maximum level of blood nicotine than above a minimum.

But as blood levels fall, so do brain levels; and withdrawal sets in. Beginning as craving and irritability, nicotine withdrawal proceeds to a panoply of physiological as well as psychological symptoms. Brain wave patterns change, levels of certain hormones diminish, heart rate and blood pressure fall. Abstinent smokers often complain of nausea, headache, constipation, or diarrhea. They gain weight. Inability to concentrate is perhaps the most common and persistent subjective complaint, and it is accompanied by objective deficits in performance of tasks that require vigilance or tracking.

Once the smoking habit is well established, preventing withdrawal becomes the major motivation for continuing it, as Schachter showed in a series of studies conducted at Columbia during the 1970s. He found that chronic smokers are not made less irritable than other people by their habit; rather, they are protected from becoming more irritable. In one of his more naturalistic experiments conducted by Deborah Perlick, subjects sat in a laboratory decorated to look like a living room in Queens and listened to recordings of airplanes passing overhead. Allowed to smoke at will, they responded just like nonsmokers to the roaring and screeching. But kept from smoking or allowed to smoke only low-nicotine cigarettes, they became much more annoyed than before, and more so than nonsmokers. Schachter concluded from this experiment, and others using such irritants as electric shocks, that chronic cigarette smokers maintain their habit not for any pleasure it adds to their lives, though they may rationalize that they do, but rather to avoid the unpleasantness that comes from not smoking.

The rate at which a person smokes seems to be largely determined by the rate at which nicotine levels fall, and a major variable affecting the rate of nicotine removal from the body is the acidity of the urine. At any given moment, about a third of the nicotine molecules in the blood do not carry an electric charge; they pass freely through membranes, and that is how they travel into the urine. If the urine is even slightly acid, the nicotine is immediately charged and thus trapped; it cannot freely return to the bloodstream as it would if the urine were alkaline.

The times when smokers are most likely to light up are quite predictably those times when urine is acid. Psychological stress, for example, acidifies the urine. So do cocktail parties. So does eating; urine is distinctly acid for half an hour or so after a meal. The one major exception to the rule appears to be morning. Although urine is acid in the morning, smokers often do not smoke until later in the day. There probably are two reasons for this paradox: Most smokers are more sensitive to side-effects of nicotine in the morning, and those who want to cut down do so by postponing the first cigarette of the day.

As many as 90 percent of cigarette smokers, by some estimates, would like to cut down, or quit, and many have. The reason for quitting is also the reason why it is so difficult to quit. Cigarette smoke is inhaled, and inhaled tobacco smoke can be lethal (see box).

But nobody knew that a hundred years ago, least of all James Buchanan Duke, the real father of the American cigarette industry. Duke began his career in the tobacco trade in 1865, at the age of nine. That year, his father, Washington Duke, a reluctant Confederate soldier who had been opposed to slavery, returned from the war to find his farm despoiled of everything except—miraculously—a barn full of bright yellow tobacco laid down before he left for duty. With his family's help, the elder Duke pulverized the tobacco, packed it in large muslin bags stenciled with his new brand name, "Pro Bono Publico," and loaded the bags on a wagon. Then he harnessed two blind mules that he bought on leaving the army and set out with his son to sell the tobacco. It was good stuff, and they came home with enough money to stay in business.

The Duke concern grew, and at the age of 18, Buck, as the boy was known, became a partner. After ten years of selling its smoking tobacco, the Duke firm was substantial but hardly in a league with its chief competitor, Bull Durham, so Duke began manufacturing cigarettes. He leased several Bonsacks, installed the machines, improved them, and began to undersell other manufacturers. In 1889, W. Duke & Sons sold a billion cigarettes, 40 percent of the country's output. And one year later, Duke, who never smoked his product, took over the United States' entire cigarette industry, His monopoly, The American Tobacco Company, survived until 1911, when the Supreme Court found it to be in violation of the Sherman Antitrust Act. Americans smoked just over ten billion cigarettes that year.

Four companies emerged from the old trust: a smaller American, Liggett & Myers, Lorillard, and R. J. Reynolds. With Philip Morris and Brown & Williamson, these companies continue to dominate an industry that last year poured out 704 billion cigarettes, of which 90 percent were smoked in the United States by some 54 million adults and five million adolescents.

The cigarette century is clearly at an end. Smoking a cigarette will never again be regarded as altogether normal behavior. But it is much too early to announce the demise of an industry that brought in $17 billion last year.

Paying the Piper

When experiments on animals turn up carcinogens in our favorite foods and everyday consumer items, some critics invariably dismiss the data as coming only from animals. The tobacco industry has, of necessity, taken the opposite tack; for years it has argued that the evidence incriminating cigarettes shows merely a "statistical association" because it comes from studies of human deaths, not animal experiments. By now, though, the evidence that cigarettes shorten life is overwhelming; the causal connection is as firmly established as any in medicine. "Indeed," writes John Cairns, a molecular biologist and expert on cancer, "in retrospect, it is almost as if Western societies had set out to conduct a vast and fairly well controlled experiment in carcinogenesis, bringing about several million deaths and using their own people as the experimental animals."

But the cancer connection, which was the most obvious and easiest to establish, is not the major cause of death in smokers. Rather, it is coronary heart disease. Second comes lung cancer. General deterioration of the lung tissue is third. After these three major causes, a variety of other diseases and cancers make a further contribution to the high death rate of smokers. Cancers of the larynx, mouth, esophagus, bladder, kidney, and pancreas are all more common in smokers than nonsmokers. So are ulcers of the stomach and intestine, which are more likely to be fatal in smokers.

Women who smoke during pregnancy run a significant risk that their babies will die before or at birth. The newborns are likely to weigh less, to arrive prematurely, and to be more susceptible to "sudden infant death."

The risk of smoking is, in general, a 70 percent increase in the probability of dying at any age—100 percent for a two-pack smoker. As a rule of thumb, each cigarette knocks about five minutes off the smoker's life. For an average habit, that adds up to six or seven years (more for some, less for others). In the meantime, smokers lose more work days to illness than nonsmokers and spend more time in the hospital.

The ill effects of smoking are mostly, but not entirely, a consequence of the amount of inhaled smoke. Virtually all cigarette smokers inhale, even those who say they do not, and they continue to do so when they switch to pipes or cigars.

Cigarette smoke is loaded with poisons and carcinogens. The "tars," particles of organic matter, are largely responsible for causing cancer, or, perhaps, for promoting the growth of tumors started by other agents. Nicotine and carbon monoxide are thought to be the main cause of heart disease; there is debate about their relative importance.

In response to public worry about the health hazards of smoking, cigarette manufacturers over the last decade have progressively lowered the tar and nicotine content. These "lighter" brands appear to be effective in reducing rates of lung cancer. There may be a similar effect for heart disease, but the evidence is not as good. Smokers of low-tar cigarettes appear to get no protection from other respiratory illnesses.

In order to elicit recommendations for his 1981 report on smoking, Surgeon General Julius B. Richmond recently called a conference to set research priorities for low-tar cigarettes. One area of concern was quickly established: The light cigarettes may pose a risk for pregnant women. Dr. Jesse Steinfeld, dean of the Medical College of Virginia in Richmond, speculates that the villain in low-tars may be carbon monoxide, since it "binds hemoglobin and may restrict the oxygen a baby needs from the mother's blood."

Carbon monoxide may turn out to be harmful to adults as well. In fact, questions abound on the safety of light cigarettes. We still do not know whether smokers who switch to low-tar cigarettes smoke more and inhale more deeply. If they do, those smokers are at least partly offsetting the presumed advantage of switching. Another questions concerns whether the availability of these "safer" cigarettes has encouraged a large number of young people who otherwise would not have smoked to begin the habit. All in all, we are still far from knowing whether the low-tar, low-nicotine cigarettes will ultimately prove to be a Good Thing.●

HEROISM OF ARTHUR S. FANTROY

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. STOKES. Mr. Speaker, I rise on this occasion to bring to the attention of my colleagues a story of courage and selfless determination.

Recently, Mr. Arthur S. Fantroy of Cleveland, Ohio, received the 14th Annual Helicopter Heroism Award from the Avco Corp. and the Aviation/Space Writers Association. This honor followed the Coast Guard's Silver Lifesaving Medal for "Courage and Unwavering Determination" in rescuing a downed airplane pilot in Lake Erie. In January 1979, a pilot crashlanded his aircraft on an ice floe in the lake. A Coast Guard helicopter failed in a rescue attempt because of adverse weather conditions.

Mr. Fantroy, owner of Cleveland Air Transport, determined to pursue his own rescue effort. His first attempt failed because of weather, but the approach of a severe storm convinced him of the desperate need to try again. Flying at minimum altitude, he conducted a thorough search, ignoring fatigue and a steadily diminishing fuel supply. Siting the downed aircraft, he demonstrated extraordinary flying skill in boarding the injured pilot while using the throttle of his helicopter to insure that the full weight of his craft did not settle on the delicate ice. Mr. Fantroy then flew his passenger to a waiting ambulance at Lost Nation Airport. He landed with less than 5 minutes of fuel left in the helicopter's tanks.

Mr. Speaker, this kind of dedication and courage are all too rare in our modern society. I ask my colleagues to join me in extending congratulations and admiration to Mr. Fantroy for his heroism.●

POSSIBLE AMENDMENT TO THE SUPERFUND LEGISLATION

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. WYDLER. Mr. Speaker, I am strongly considering offering the attached legislation as an amendment to the superfund Florio bill, which is scheduled for consideration later this week. It is designed to permit an orderly identification and cleanup of toxic chemical waste dump sites which endanger public health. It is not meant to be a replacement for the legislation on which my colleagues have labored so long and hard. Instead, I hope my attempt to establish a legal basis for EPA action in this area will complement these efforts.

My amendment, entitled the "Toxic Chemical and Hazardous Waste Research and Development Act of 1980," approaches the toxic chemical dump problem by establishing a division in the Environmental Protection Agency whose sole responsibility will be to study waste sites and to make recommendations regarding their cleanup. An advisory board, which will insure that the expertise of industry, the academic community, and the rest of the Government are readily available to the new EPA office, would also be established. Much is being said but little is actually known about these abandoned sites. This amendment would permit us to learn how big a problem we really do have and to make plans for cleanup at the earliest possible date.

Our 1976 act, the Resource Conservation and Recovery Act (RCRA), established stringent requirements for handling and disposing of hazardous wastes produced after the date of passage, but did not address the problem of Love Canal and other toxic chemical dumps which were closed before the date of passage. In spite of the lack of legal authority to act on the problem the Environmental Protection Agency has been making unsubstantiated statements about the number of love canals which are scattered around the country and about the threats they pose to human health and safety.

This amendment would for the first time give the Environmental Protection Agency the tools to learn how serious the problem really is to go with their responsibilities to propose solutions to the problems they find. The new division created under the act, the "Office of Remedial Research" will have an initial assignment to identify the major closed and abandoned chemical and hazardous waste dump sites in the country and to inventory the type and condition of waste in the site. It would also identify what known technologies can be used to clean up specific sites, and make research recommendations regarding sites with special problems. The report containing this information would be submitted to the office's advisory board. Both the EPA report and the board's critique of it would be submitted to the Congress with recommendations for further action.

This type of ordered approach is the best way to protect citizens who unknowingly live near these dumps and the best way to lay to rest the bogus claims that there are literally tens of thousand of love canal dump sites littering the countryside.

I would expect the work under the current version of the superfund legislation and the work under this amendment to go on simultaneously. In no way would I want to slow down the remedial work to be done on known dump sites. Instead, I would hope the information gained through the inventory activity be used to make the cleanup under superfund more effective and more comprehensive.

The text of the bill follows:

H.R. 8104

A bill to amend the research and development provisions of the Resource Conservation and Recovery Act of 1976 to provide for a study of the problem of toxic chemical and hazardous waste and for research in and development of possible solutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Toxic Chemical and Hazardous Waste Research and Development Act of 1980".

Sec. 2. (a) Section 1002(b) of the Resource Conservation and Recovery Act of 1976 is amended by striking out "and" at the end of paragraph (5), by redesignating paragraph (6) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

"(6) it is necessary to conduct further research in and development of possible technological solutions to toxic chemical and hazardous waste problems; and".

(b) Section 1003 of such Act is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and", and by adding after paragraph (8) the following new paragraph:

"(9) promoting a national research and development program which will study the extent of toxic chemical and hazardous waste problems, conduct a complete investigation of dumpsites which may contain significant volumes of toxic chemical and hazardous wastes, and recommend appropriate technology to be applied to clean up such dumpsites.".

(c) Section 1004 of such Act is amended by redesignating paragraphs (34) and (35) as paragraphs (35) and (36), respectively, and by inserting after paragraph (33) the following new paragraph:

"(34) The term 'toxic chemical' means a liquid which upon contact causes substantial harm to human beings, including not only substances which cause death but also those which cause disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations.".

Sec. 3. (a) Section 8001(a) of the Resource Conservation and Recovery Act of 1976 is amended by striking out "and" at the end of paragraph (12), by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and", and by adding after paragraph (13) the following new paragraph:

"(14) specifying the dumpsites in the United States which contain toxic chemical or hazardous wastes in sufficient volume to present a clear danger to public health, and identifying the most appropriate technological solutions to health and environmental problems caused by toxic chemical or hazardous waste.".

(b) Section 8001(b)(1)(A) of such Act is amended to read as follows:

"(A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste, discarded material, or toxic chemical and hazardous waste research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.".

(c) Section 8002 of such Act is amended by redesignating subsections (l) and (m) as subsections (m) and (n), respectively, and by inserting after subsection (k) the following new subsection:

"(l) Toxic Chemical and Hazardous Waste.—(1) The Administrator shall establish, within the Environmental Protection Agency, an Office of Remedial Research, to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The Office of Remedial Research shall undertake a comprehensive study and analysis of, and publish a report on, dumpsites in the United States which contain significant volumes of toxic chemical and hazardous wastes.

"(2) The report shall include—

"(A) an enumeration of all dumpsites which (i) contain toxic chemicals or hazardous waste in sufficient amounts to present a clear danger to public health, and (ii) were closed before October 30, 1976, setting forth in such enumeration a description of the location of, type of waste contained in, and specific danger presented by each dumpsite;

"(B) an assessment of the status of technology generally applied to the disposal of toxic chemical and hazardous waste;

"(C) recommendations as to what technology should be used to clean up the dumpsites enumerated under subparagraph (A);

"(D) a description of problems at specific dumpsites requiring research and development for their resolution;

"(E) a plan for research, development, and demonstration respecting the findings of the study, including recommendations regarding the appropriate government and private sector rules under the plan; and

"(F) legislative recommendations resulting from the study to appropriate committees of Congress.

"(3) The Administrator shall provide to the appropriate committees of Congress a complete statement of the known dumpsites enumerated in paragraph (2)(A) not later than April 1, 1982.

"(4) The Administrator shall complete the research, studies, and report required under this subsection not later than October 1, 1982.

"(5)(A) There shall be created an independent Toxic Chemical and Hazardous Waste Advisory Board, comprised of industry, academic, and government toxicologists, which will review the findings and recommendations in the report. The members of the Advisory Board shall be named by the Director of the Office of Science and Technology Policy.

"(B) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Advisory Board in carrying out this subsection and shall provide such information as the Advisory Board deems necessary to carry out this subsection.

"(C) All data and support research which was used in the compilation of the Administrator's report on toxic chemical and hazardous wastes shall be made available to the Advisory Board.

"(D) All members of the Advisory Board shall be entitled to reimbursement for travel and other expenses actually incurred, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code, while engaged in performing service as such members.

"(6) Both the Administrator's report on toxic chemical and hazardous wastes and the Advisory Board's review of such report shall be submitted to Congress not later than February 1, 1983.".

(d) Section 8002(n) of such Act (as redesignated by subsection (c) of this section) is amended—

(1) by striking out "other than subsection (j)" and inserting in lieu thereof "other than subsections (j) and (l)"; and

(2) by adding at the end thereof the following new sentence: "There is authorized to be appropriated not to exceed $15,000,000 for the fiscal year 1982 to carry out subsection (l).".

(e) Section 8003(a) of such Act is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a period, and by adding after paragraph (9) the following new paragraph:

"(10) research and development activities respecting toxic chemical and hazardous waste.".

(f) Section 803(e)(1) of such Act is amended to read as follows:

"(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, toxic chemical and hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of relevant research, investigations, experiments, surveys, studies or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.".●

EIGHTIETH BIRTHDAY OF HON. CLAUDE PEPPER

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1980

● Mr. CONTE. Mr. Speaker, I join my colleagues in extending to Claude Pepper warmest birthday wishes on the occasion of his 80th birthday.

This Nation, this Congress, and, in particular, the State of Florida are so much richer for having had the privilege of sharing in Claude Pepper's compassionate service to all mankind.

Claude's more than 50 years of public service have produced countless contributions to the well-being of this Nation's needy—people of every age and every walk of life have been beneficiaries of his generous efforts.

No one of our colleagues would ever argue that Claude is but a skilled and wily legislator. His most recent efforts have been geared toward the welfare of older Americans. Through his chairmanship of the Select Committee on Aging, Claude has shaped and guided through Congress vital and needed reforms. These include improvements in health and social programs, including liberalization of the mandatory retirement law and a program designed to end abuses in the sale of health insurance to the elderly. Claude is a living, vibrant example of the productive capability of all Americans regardless of age. It is from the heart that Chairman Pepper achieves such great accomplishments.

Throughout Claude's 14 years in the Senate and his 18 years in the House, he has worked as hard as any man could work for his people. He is a celebrated representative of Florida's citizens, particularly the elderly, the poor, and the disenfranchised. Throughout the South, he was known for his unrelenting efforts to achieve racial justice long before the civil rights struggles of the 1960's made it acceptable to do so. Through his efforts, the Meals on Wheels program was extended to homebound elderly. He also played key roles in obtaining

Amtrak discounts for older citizens and in building programs to combat crime in public housing.

CLAUDE believes in the integrity of all people regardless of age and family circumstance. He continues to work hard for the deinstitutionalization of elderly citizens kept in nursing homes who could, in fact, live in their own homes with a modest amount of home care. He continues to wage a fervent campaign to provide alternatives to nursing homes.

From the New Deal to the 1980's, CLAUDE PEPPER has served America with distinction. I am proud to count myself among his colleagues and wish him tremendous happiness on his 80th birthday and many wishes for many more productive years in the service of his country.●

JOSEPH HANDLEMAN HONORED

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BLANCHARD. Mr. Speaker, recently I had the opportunity to attend a dinner honoring Joseph Handleman, a prominent former Detroit industrialist, community leader, and president of the American Red Magen David for Israel (ARMDI). The dinner was given by the Michigan Chapter of the ARMDI at Adat Shalom Synagogue in Farmington Hills, Mich.

Mr. Handleman has been active in numerous Israel-related and other Jewish causes for many years. I am enclosing an article from the July 25, 1980, edition of the Detroit Jewish News which further describes the dinner for Mr. Handleman, as well as Mr. and Mrs. Handleman's many accomplishments.

The article follows:

NATIONAL HONORS FOR JOSEPH HANDLEMAN AT MAGEN DAVID ADOM DINNER ON SEPT. 7

National honors for Joseph Handleman, prominent former Detroit industrialist, in recognition of six years of services to the Israel cause, will be honored here at the annual dinner of the Michigan Chapter of American Red Magen David for Israel Sept. 7 at Adat Shalom Synagogue.

Announcing the awards dinner, in which Mrs. Handleman will share the honors, Dr. John Mames, Michigan MDA chairman, said that prominent representatives of the Israel and American counterparts of the Israel equivalent of the Red Cross will be here to express their appreciation for the nearly six years of Handleman's chairmanship of the movement.

Handleman, who was presented with the ARMDI International Humanitarian Award "for his dynamic leadership," has been active in other Jewish causes as well.

The Handlemans have established the Joseph and Sally Handleman Communications Center at the Dropsie University in Philadelphia, the Handleman Institute of Recorded Sound at the University of Miami School of Music and the Laboratory of Languages at the Hillel Day School.

Mrs. Handleman, the former Sally Kabaker, has a lifetime of family identification in scores of Zionist, pro-Israel and communal movements. She shared with her husband and her family roles in Hadassah, the Jewish National Fund and the MDA. The Handlemans contributed a fully equipped ambulance now in operation in Israel to the Magen David Adom.

Dr. Mames announced also that a committee of prominent Detroiters is being mobilized to plan the event in honor of the Handlemans.●

THE CIA VERSUS THE CONSTITUTION—PART 2

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. EDWARDS of California. Mr. Speaker, on September 3 the House Judiciary Committee reported H.R. 5615, the Intelligence Identities Protection Act, over the opposition of myself, the chairman of the committee and several other senior Democrats on the committee. We believe the section of the bill which criminalizes disclosure of unclassified information by private citizens is unconstitutional. We are not alone in that belief. Numerous constitutional law experts and members of the press agree with us. I refer my colleagues to the following material:

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, Mass., September 8, 1980.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KENNEDY: Thank you for inviting me to offer my views on § 501(c) of the Intelligence Identities Protection Act of 1980, S. 2216.[1] I believe that this provision, if made law, would violate the First Amendment.

There is no doubt, of course, that "the Executive [may] . . . promulgat[e] and enforc[e] . . . executive regulations[ ] to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense." *New York Times Co.* v. *United States*, 403 U.S. 713, 729-30 (1971) (Stewart, J., joined by White, J., concurring). Nor is there any doubt that "Congress [may] . . . enact . . . criminal laws to protect government property and preserve government secrets." Id. at 730. But the First Amendment severely circumscribes the Government's power to achieve such ends by punishing journalists and other private citizens for repeating or publishing truthful information either (1) lawfully derived or deduced from information that has already found its way into "the public domain," *Cox Broadcasting Co.* v. *Cohn*, 420 U.S. 469, 495 (1975), or (2) innocently received as a "leak" from someone with access to classified, or otherwise confidential, government materials. *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829, 837-46 (1978).

The need for secrecy in the foreign intelligence sphere is among the most pressing of governmental interests. Cf. id. at 849 n.[2] (Stewart, J., concurring in judgment). But this cannot obscure either the priority given by the First Amendment to "public scrutiny and discussion of governmental affairs," *id.* at 839 (majority opinion); *New York Times Co.* v. *Sullivan*, 376 U.S. at 254, 269-70 (1964), or the correlative prinicple that no governmental restriction on "uninhibited, robust, and wide-open" political debate, *id.* at 270, is constitutionally acceptable unless—

(a) the restriction is designed to achieve a compelling governmental objective, and is narrowly drawn to achieve neither more nor less; and

(b) the restriction's enforcement in a given case is shown to be truly essential to achieve that compelling governmental interest.

See *First National Bank* v. *Bellotti*, 435 U.S. 765, 787 (1978); In re *Primus*, 436 U.S. 412 (1978); *Buckley* v. *Valeo*, 424 U.S. 1, 25 (1976) (per curiam). Section 501(c) quite clearly fails to meet these tests.

The provision's proscriptions—which apply even when the information illegally "disclosed" was lawfully obtained, and even when the only result of its suppression would be to stifle criticism or exposure of alleged governmental ineptitude or wrongdoing—are not limited to cases in which a judge or jury finds that "disclosure" of the information in question has harmed, or is likely to harm, the safety or security of any individual or the success of any specific lawful governmental undertaking. Cf. *Bridges* v. *California*, 314 U.S. 252, 263 (1941); *Pennekamp* v. *Florida*, 328 U.S. 331, 347 (1946); *Craig* v. *Harney*, 331 U.S. 367, 376 (1947); *Wood* v. *Georgia*, 370 U.S. 375 (1962). The provision at issue would impermissibly penalize unauthorized disclosures without requiring any such showing of actual or probable harm.

It is no answer that the disclosures for which § 501(c) prescribed punishment without requiring such a showing of injury are limited to disclosures made "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States." Indeed, the vague "pattern of activities" requirement demonstrates that the proposed law would be anything but closely fitted with the restriction's ostensible purposes. For disclosures of the identities of our covert agents and operatives abroad, however harmful or threatening, would not be forbidden under § 501(c) unless made "in the course of a [specified] pattern of activities," while revelations that do not imperil any individuals or operations would be punished under § 501(c) whenever made by persons tainted by their association with the forbidden "pattern of activities"—activities that, standing alone, might otherwise be wholly lawful and, in fact, themselves entitled to First Amendment protection. Thus it is also no answer that punishment is limited to disclosures made "in the course of [such] a pattern of activities" with knowledge "that the United States is taking affirmative measures to conceal [an] individual's classified intelligence relationship to the United States." Even under such circumstances—and assuming that any matter so vaguely defined can be "known"—§ 501(c) would not require the Government to prove any causal link between the culpable disclosure and a harm that would justify punishing it.

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[1] The provision reads as follows: "(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information so disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years or both."

[2] Thus, for example, despite the undisputed importance of preserving the confidentiality of a state's judicial disciplinary proceedings, *Landmark Communications, Inc.*, supra, 435 U.S. at 834-36, not even the state's "interest in protecting the reputation of its judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify . . . punishment of [unauthorized disclosure]," id. at 841, when such disclosure is made by "third parties" and consists of "truthful information regarding [the] confidential [judicial] proceedings." Id. at 837. The Supreme Court so held "even on the assumption that criminal sanctions do in fact enhance the guarantee of confidentiality," id. at 841, and even when the information at issue has been "withheld by law from the public domain." Id. at 840.

This mismatch between the Government's chosen means and its professed ends not only dooms § 501(c) on its face but also underscores doubts, independently generated by the provision's history, about its true aims, and, indeed, about those of § 501 as a whole. Cf. *First National Bank* v. *Bellotti*, 435 U.S. 765, 793 (1978). Needless to say, protecting the image and reputation on governmental officials and agencies, or the smooth operation of governmental programs immunized from public examination and critique, is insufficient justification "for repressing speech that would otherswise be free." *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 272-73 (1964). Thus, for example, the provision's restrictions on disclousure cannot be justified by the Government's wish to preserve the CIA's "plausible deniability," or to avoid "political outcry" over American covert operations in foreign countries, or otherwise to preserve, among other things, access "to appropriate targets" of recruitment abroad. New York Times, September 6, 1980, at 22 col. 1 (quoting testimony of Frank C. Carlucci, Deputy Director, CIA, before Senate Judiciary Committee on September 5, 1980). Such justifications bespeak purely political purposes beyond the Government's power to accomplish by stifling protected speech. Moreover, such congressional action, frankly targetting for special restrictions on First Amendment activities a readily identifiable group of private citizens—in this case, apparently a group of journalists associated with the Covert Action Information Bulletin—bears a distressing resemblance to past legislation whose purpose to punish dissenters or penalize partisans of defeated enemy causes was evident from the legislation's face or history—and which was hence invalidated by the Supreme Court as a forbidden ex post facto law or bill of attainder.[3]

For the reasons I have sought to articulate above, I believe that § 501(c) would violate the First Amendment if enacted. Accordingly, I recomend that at least this provision of § 501 be deleted from S. 2216.

Sincerely,

LAURENCE H. TRIBE.

TEXT OF TELEGRAM SENT TO REP. PETER RODINO

TUESDAY, SEPTEMBER 2, 1980.

We believe that section 501(c) of H.R. 5615 (S. 2216), which would punish disclosure of the identity of covert CIA and FBI agents based solely on analysis of unclassified information violates the first amendment and urge that it be deleted as recommended by the House Judiciary Subcommittee on Civil and Constitutional Rights.

Signed,

Elizabeth Bartholet, Harvard University; Vern Countryman, Harvard University; Alan Dershowitz, Harvard University; Steven Duke, Yale University; Thomas I. Emerson, Yale University; Carol E. Goldbery-Ambrose, University of California, Los Angeles; Morton J. Horowitz, Harvard University; Lance Liebman, Harvard University; Frank Michelman, Harvard University; Charles R. Nesson, Harvard University; Richard Parker, Harvard University; Scot Powe, University of Texas; Laurence Tribe, Harvard University; and Bernard Wolfman, Harvard University.

KILLING FREEDOM TO SAVE IT

(By Tom Wicker)

On June 24, a Justice Department spokesman appeared before the Senate Intelligence Committee to oppose a bill making it a crime for anyone to publish information—whether or not classified—leading to the identification of a covert agent of the Central Intelligence Agency.

On Aug. 19, the same spokesman told a House subcommittee that the measure was all right after all. This week the House Judiciary Committee approved it by 21 to 8, with the full House expected to follow suit. The Senate, where a subcommittee will hold hearings today, apparently offers the only chance to stop this dangerous and unnecessary legislation that stabs the First Amendment to its heart.

Why did the Carter Administration change its mind? The Justice Department says its objections were removed when the bill's language was changed to require that disclosures, to be criminal, had to be part of a "pattern of activities intended to expose agents."

More likely, the Administration jumped on the bandwagon after July 4, when the home of a man alleged to be the C.I.A. station chief in Jamaica was attacked with automatic weapons fire, after disclosure of his name and address in the so-called Covert Action Information Bulletin. In an election year, the disclosure legislation immediately became a popular cause in Congress.

Finally, it's an election year for Jimmy Carter, too, and his opponents are charging that he's soft on national security and has let down the nation's guard. One way to riposte is to take the kind of hard-nosed, know-nothing stand exemplified by the bill's principal Republican backer, Representative Henry J. Hyde of Illinois, who told the Judiciary Committee that if people—just anyone—published the names of C.I.A. agents, "They should be treated like the criminal agents they are," not "permitted to hide" behind the First Amendment.

But the legislation now moving rapidly through Congress does not aim itself exclusively at the Covert Action Information Bulletin, or even at ex-C.I.A. agents who disclose agency secrets, or former Government employees who violate secrecy oaths or classification rules. It in no way limits itself to those who disclose classified information. It makes no exception for the publication of information already available in public records.

Instead, this sweeping legislation, sowing widely the seeds of an Official Secrets Act, would make a criminal of anyone who "discloses, with the intent to impair or impede the foreign intelligence activities of the United States, to any individual not authorized to receive classified information, any information that indentifies a covert agent . . ."

That the Senate version would require such disclosure to be part of a "pattern of activities intended to disclose agents" is only a faint improvement, whatever the Carter Administration might claim. A reporter publishing, say, a series of articles could be demonstrating such a pattern, as might one who had published a number of such articles over the years. Yet, those articles might disclose reprehensible C.I.A. attemps to assassinate foreign leaders, or to infiltrate domestic organizations, or overthrow legitimate governments.

Nor is the requirement of "intent to impair or impede . . . foreign intelligence activities" a saving grace. That might be precisely the intent, and legitimately so, of articles that would expose in advance and thus prevent something like the Bay of Pigs fiasco. Such intent might also be "established" if the C.I.A. had asked a reporter in advance not to publish a story, for reasons however self-serving, and he or she published it anyway.

The key phrases are "any information" if disclosed to "any individual not authorized to receive classified information." Taken together, they mean that *any* information—no matter how obtained, even from a public and unclassified record—published by anybody in virtually any form, if it could be read to disclose an agent's identity, would be a crime. Such legislation would impose a prior restraint unprecedented in American history, even on information that may already be in the public domain.

It would give the C.I.A., for example, just the weapon it wants to hide, or prosecute disclosures of, embarrassing or damaging misdeeds, failures and illegalities—spying on Americans in America, or helping a President to cover up criminal activities, or infiltrating the clergy. Reporting such stories, even if clearly in the public interest, would be virtually impossible without risking disclosure of some agent's identity—or at least risking that the C.I.A. would claim that such disclosure had resulted.

How can Stansfield Turner, the C.I.A. Director, argue that this blatant power grab is "vital to the maintenance of an effective intelligence apparatus and the successful conduct of United States foreign policy"? That is to say that only if free American institutions are undermined from within can we be successful in the world. But what is success, if not the protection and maintenance of those same free institutions?

QUESTION OF INTENT

(By Anthony Lewis)

WASHINGTON.—It is 1983, and there are new reports of abuses by United States intelligence agencies. A newspaper series says the C.I.A. is secretly using three notorious gangsters to try to overthrow the government of country X. Another paper names F.B.I. counterintelligence agents who it says have infiltrated domestic civil liberties organizations and are trying to disrupt their work.

Those imagined reports are like the ones that in the 1970's disclosed excesses committed in the name of intelligence and helped bring about reforms. But there would be one difference in 1983. If the C.I.A. has its way, the newspapers that printed the stories would be committing a crime. The reporters and editors involved could go to prison.

A bill that would very likely make it a criminal offense to publish those stories is due for a vote soon in the House. It has strong support, and for a good reason: It is intended to deal with a real problem, the unjustified naming of U.S. covert agents. But the bill is written so that it could sweep dangerously far in its effects.

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[3] See *United States* v. *Brown*, 381 U.S. 437, 453, 455-56 (1965) (invalidiating law prohibiting members or supporters of Communist Party from holding union office); *United States* v. *Lovett*, 328 U.S. 303, 315 (1946) (invalidating law barring those named as subversives in HUAC investigations from federal employment); Ex parte *Garland*, 71 U.S. (4 Wall.) 333 (1867) (invalidating law forbidding supporters of Confederate cause to practice law in federal courts); *Cummings* v. *Missouri*, 71 U.S. (4 Wall.) 277, 323 (1867) (invalidating law banning such persons from practice of any profession).

The immediate targets of the legislation are people who make a business of disclosing C.I.A. identities. The best known is Philip Agee, the turncoat former agent. And a Washington newsletter, the Covert Action Information Bulletin, carries what it says are the names of C.I.A. employees gleaned from clues in published information.

So far as it deals with the Agees of this world—people who use what they learn in office to betray their colleagues—the bill faces no serious objections. The difficulty arises in the section punishing private individuals who disclose the identity of covert agents.

That section would for the first time in American history make it a crime for journalists or ordinary citizens to publish, or even say aloud, what they know from unclassified sources. And the fact is that C.I.A. affiliations are not always tightly concealed. When I lived in London, the names of successive C.I.A. station chiefs were common knowledge among Britons and Americans. Some critics of the legislation would drop that section entirely, limiting coverage to people like Agee. I do not think that is a defensible position if one really wants to stop the wholesale naming of agents. The Covert Action newsletter is in the same dirty business as Agee, with the same resulting risk to people working for the United States.

The danger is that the bill would reach much farther than the professional publishers of lists of names. The Justice Department itself warned that an earlier draft of the legislation would apply "to disclosures even of publicly-available information by any voter, journalist, historian or dinner-table debater," and "could have the effect of chilling legitimate critique and debate on C.I.A. policy."

The House bill, in an attempt to meet the problem, requires proof that the defendant acted with "intent to impair or impede" the foreign intelligence activities of the United States. But intent is a slippery concept Robert L. Keuch, Associate Deputy Attorney General, testified in criticism of this language:

"A mainstream journalist, who may occasionally write stories based on public information mentioning which foreign individuals are thought to have intelligence relationships with the U.S., might be fearful that any later stories critical of the C.I.A. could be used as evidence of an intent to 'impede' foreign intelligence activities."

("Mainstream?" The greatest freedom-of-the-press decision by the Supreme Court, *Near* v. *Minnesota* in 1931, involved a sleazy anti-Semitic weekly.)

Despite further changes the House bill still troubles the Justice Department. And some outside critics object not only to the vagueness of the intent clause. They note that the bill would punish disclosure not just of regular C.I.A. employees but of foreign leaders who have been paid by the agency, and of F.B.I. counterintelligence informants inside this country.

In the Senate, the Intelligence Committee has approved a version of the bill that tries in other ways to limit its reach. It requires proof that disclosure of a name was part of a "pattern of activities intended to identify and expose covert agents," and was done with "reason to believe" it would impede intelligence activities.

The Senate bill is better, and the committee report says specifically that it would not cover "news media reporting of intelligence failures or abuses." But doubts remain. An editor who published a story about the C.I.A.'s hiring of Chicago gangsters to assassinate Fidel Castro might well have "reason to believe" that it would impede that "intelligence activity." Judges tend to defer to the Government in these matters, accepting its definition of what is a legitimate "intelligence activity."

It may still not be too late for a critical voice to be heard in Congress. Senator Moynihan of New York is a logical possibility. He opposed an earlier version of this legislation because, he said, it "might have a chilling effect." And he himself published a book in 1975 that named a forbidden name. He wrote that the C.I.A. had once interfered in Indian politics by giving money for the Congress Party to Mrs. Indira Gandhi.●

BROYHILL SUPPORTS ACCELERATED DEPRECIATION TO ASSIST BUSINESSES

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. BROYHILL. Mr. Speaker, we are all too aware of the declining productivity rate which this country has been experiencing in recent years. As this trend continues, our inflation rate correspondingly soars, and the cycle is perpetuated. In response to pleas for help from specific industries, Congress has reacted in the past by enacting shortsighted, stopgap funding measures, to shore up those businesses who could not otherwise survive. Such a tactic not only fails to address the basic problem of lagging productivity in this country; it also serves to reward those businesses who are failing at the expense of those who are managing to survive despite the condition of our economy.

The textile industry is one which has been surviving despite its capital-intensive nature and its traditionally low profit margins. The tenacity and perseverence of those in the textile industry, who have kept their businesses healthy despite soaring equipment and production costs, are described by writer Rolfe Neill in a recent edition of the Charlotte Observer. As Mr. Neill points out, the textile industry has consistently managed to stay on its feet without any infusions of Government funds into the industry. Rather, the textile industry has relied upon advanced technology and modern equipment in order to increase its productivity levels. However, the costs involved in replacing such advanced machinery, are rapidly becoming prohibitive, as a consequence of our soaring inflation rate. Our present depreciation rates for business equipment and machinery are woefully inadequate, and unless we enact legislation to permit more rapid depreciation of these items, even the textile industry will find it more and more difficult to continue as a healthy, productive contributor to our economy. Mr. Neill's article illustrates why we need tax reform legislation now, to accelerate capital cost recovery.

Mr. Speaker, I commend Mr. Neill's remarks to my colleagues:

U.S. TEXTILES MAKES A BIG POINT

Suddenly, Cinderella has been discovered living in North Carolina. Her name is—surprise!—the oft-maligned industry called textiles.

Here is a story of our nation to ponder as it forms public policy for troubled industries such as autos and steel.

Single solutions rarely work for complex problems. None is suggested here. But there are lessons to be gleaned from the Tar Heel factories that produce one-quarter of all the wealth to be manufactured in our state this year.

In 1961 I left North Carolina to be away until 1975. When I departed, the textile industry was pleading for government help. This was before Lockheed and Chrysler became congressional mendicants. Also it was before so much onerous federal regulation of the marketplace and those who wish to sell there.

HOLLERING FOR UNCLE

Nonetheless, textile operators felt Uncle Sam was the answer to their problem. Keep out lower-priced goods, they begged. Years passed before Washington responded, but finally quotas were imposed. Breathing room was provided.

But that was not the long-term answer. It can never be in a world that is moving, rapidly now, toward a global economy. Each of our 50 states produces what it can most efficiently and peddles it nationwide without tariffs or other trade barriers. Cotton has gone from Carolina to California as a result. So must be it worldwide.

N.C. textiles is proof today that you survive by being efficient, not by subsidy. We actually are exporting textile fabric and yarn to some of the countries that 20 years ago imperiled our own textile economy. (Apparel, however, still is a larger net import in the United States.)

A government wisely concerned for its citizens will not seek to keep alive the inefficient firm, even though owners will be quite willing. Rather, that government will aid in the burial and assist displaced workers in transition.

UNBURIED DEAD

England is the best example of a nation that refuses to bury its industrial dead. When I was a kid, English goods were the pride of any merchant. Today, British factories are the least productive of all major industrial nations. Her goods are losing out.

Know who is next in declining efficiency? Our own nation.

This is the country that boasted "sound as a dollar" and bragged about "Made in USA" and sniggered at the copycat Japanese and their inferior products. We are not terminal but we are quite ill industrially. We will die, and deserve to, unless we take action.

Look at the long-term rates of growth and what has been happening in productivity since the year John F. Kennedy was elected (1960):

PRODUCTIVITY—1960 TO 1979

Nation	1960-67	1967-73	1973-79
Canada	4.1	4.9	2.8
Japan	9.0	10.0	4.2
Italy	7.2	6.6	3.3
West Germany	5.8	5.0	5.0
France	5.6	5.7	5.1
United Kingdom	4.1	3.8	0.6
United States	3.7	2.9	2.1

REALLY QUITE SIMPLE

One needn't possess a Harvard MBA to understand productivity. If you pay a worker $5 an hour and he produces five widgets, then the unit labor is $1 per widget. If he produces 10 widgets and hour, the unit labor cost is now only 50 cents. He is more productive and this makes the factory more competitive in the market.

How does one go from 5 to 10 widgets an hour? Management and worker efficiency help but usually big productivity increases are the result of better machinery.

Our state's textile business illustrates the point. That industry has lowered the number of workers employed, raised the wages of those remaining and increased productivity. How? By installing new equipment (much of it made overseas; suppose Washington imposed such high tariffs that foreign equipment couldn't compete here?).

Consider a typical cotton mill producing a single fabric, from a bale of fiber to cloth ready to ship for dyeing:

In 1968, that firm invested $26,055 in machnery per worker. Today, it invests $122,925 per worker. Land and building are extra.

From where does that money come? Textiles only makes about 3 cents profit on each $1 of sales (compared to nearly 6 cents per $1 in sales for all manufacturing). From the 3 cents, mills must pay shareholders a dividend. The remainder goes back to improve the business.

Textiles has been putting back about 80 percent of what's left after dividends compared to an all-industry average of 55 percent. Still, textile owners must borrow money. Where do they get it? From people who saved it. Where do those people get money to save? By denying themselves pleasures and purchases.

POOR TAX POLICIES

Yet, our tax policies discourage saving. That's why the U.S. savings rate has become the lowest of all major nations, about 4 cents on the dollar. In Japan, a worker can put $50,000 into savings whose earnings are tax free.

A government that encourages savings is encouraging prosperity. A government whose policies make a dollar worth less than it was a year ago steals from all its citizens. Currently, our government policies work against a majority of people as well as against business.

Or consider a single textile machine. A Gaston County mill paid $20,000 for a winder in 1968. Uncle Sam permits a company to depreciate—in effect squirrel away—money to replace the $20,000 machine. It gives the firm 10 years and $2,000 a year off on taxes. When the company replaced the machine this summer the cost was $100,000, not $20,000.

TALK IT UP, MEN

What does a nation do? Change tax policies to encourage faster depreciation so our factories can meet competition. For improvements such as pollution and safety controls, permit even faster recovery, since these costs only increase expense, not efficiency.

These are the issues I want to hear Carter and Reagan and Anderson talk about. Not evolution. Not the KKK.

American textiles set the quality standard on this whole planet. Meanwhile, there is talk about limiting how many of you can purchase a Japanese auto, Why? Because more and more people prefer a Japanese car to those made by their own countrymen.●

INDIA AIDS IRAN AND DOES NOT DESERVE AMERICAN NUCLEAR FUEL

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. MARKEY. Mr. Speaker, I urge my colleagues to oppose the shipment of nuclear fuel to India and support the resolution of disapproval reported out of the House Foreign Affairs Committee.

The State Department and the Carter administration have made unproven assertions that shipping nuclear fuel to India will enhance our foreign policy objectives in that country. Let us examine the evidence.

President Carter told Mrs. Ghandi last winter that he would send the uranium fuel to India. I am inserting in the CONGRESSIONAL RECORD a chronology of Indian foreign policy decisions announced subsequently. The chronology shows that:

First, India and the Soviet Union negotiated a $1.6 billion arms sale.

Second, India signed a major trade agreement with Iran which effectively neutralized the U.S. boycott and reduced pressure to free the hostages.

Third, India recognized the pro-Soviet Government in Kampuchea.

Fourth, Mrs. Ghandi announced her government will not hesitate from detonating nuclear explosions in the national interest.

I am also inserting in the RECORD a copy of a front-page article that appeared in the major Indian newspaper, the Statesman of New Delhi. The headline of the story is "India to Help Iran to Beat U.S. Sanctions".

Mr. Speaker, I wonder if our hostages can figure out what broad foreign policy objectives are being met through the sale of uranium to India, a country that not only refuses to accept full-scope safeguards, but explicitly tries to undermine our attempt to put pressure on a country such as Iran which is actively doing us harm?

I urge my colleagues to support the resolutions of disapproval reported out of the House Foreign Affairs Committee when they are voted on this week.

The chronology and article follow:

CHRONOLOGY

1. March 14, 1980.—Mrs. Gandhi, knowing final U.S. decision on continued Tarapur fuel supply is pending and that U.S. has sought assurances India will conduct no further nuclear tests, announces her government "will not hesitate from carrying out nuclear explosions . . . in the national interest."

2. May 8, 1980.—Carter announces decision to send Tarapur fuel.

3. May 29, 1980.—India and Soviets close $1.6 billion arms sale on terms extremely favorable to India (2 percent interest).

4. June 14, 1980.—India and Iran sign major trade agreement undercutting U.S. embargo on exports to Iran.

5. June 14, 1980.—U.S. sells $32 million worth of TOW anti-tank missiles to India (3700 missiles).

6. June 18, 1980.—State Department testifies in favor of exports at Senate Foreign Relations/Governmental Affairs Committee Hearings, stressing, among other points in India's favor that India has refrained from recognizing the pro-Soviet Kampuchean government.

7. June 19, 1980.—President signs Executive Order overruling the 5-0 NRC vote and authorizing the Tarapur exports, stating the need for the U.S. to "bolster our relations" with nations in South Asia, "particularly those that can play a role in checking Soviet expansionism."

8. July 8, 1980.—India recognizes pro-Soviet Heng Samrin government in Kampuchea.

9. July 19, 1980.—India orbits a satellite using a rocket whose guidance system can be adopted to an IRBM or ICBM. A number of Indian parliamentarians call for the development of nuclear warheads.

[From the Statesman (New Delhi), June 14, 1980]

INDIA TO HELP IRAN BEAT U.S. SANCTIONS

(From Our Special Representative)

NEW DELHI.—India is to send grain and a number of other industrial products believed to be worth several hundred million dollars to Iran to enable her to meet shortages arising out of the sanctions imposed by the USA and the EEC.

But a 17-member Iranian delegation led by Mr. Reza Sadr has been told that it would be difficult to supply cement, sugar and steel because of domestic shortages. It is possible, however, that these items will also become part of Indo-Iranian trade in future.

Prospects of substantially increased trade and economic contacts which will extend to management of plants in Iran, completion of contracts terminated by Western companies and establishment of new plants have emerged following the talks between the Iranian delegation and an Indian team led by Mr. Praneb Mukherjoe, Minister of Commerce.

Further delegations are to be exchanged to study the possibilities opened up in the past few days and Indian business men are to be registered in Iran as both prime contractors and subcontractors. If all the deals discussed materialize, Iran will become a major trading partner of this country.

What remains to be finalized is the financing of the deals since India wants assurances on payments. This is presumably in the context of the default to the extent of nearly $400 million by Iran on the Kudremukh iron ore project which was also discussed in the current round. Mr. Sadr promised to convey India's position to his Government.

In effect, the result of the talks is that India has agreed to help Iran to bear the U.S. and EEC sanctions imposed because of the hostages issue. Iran presented a long shopping list to India of items that she needs urgently and much of her needs are to be met.

While he was here, Mr. Sadr promised that Iran would consider supplying India oil on a long-term, rather than annual, basis. This is an important outcome of the talks, as is the possibility of greatly increased exports to pay for the oil.

In the ministerial-level talks that ended today, India and Iran agreed that bilateral cooperation could be further expanded in the sectors of food and agriculture, drugs and pharmaceuticals, supply of engineering goods, provision of consultancy services and training of managerial personnel.

The Iranian side has expressed interest in purchasing from India items like iron and steel products including pipes, textiles, sugar, industrial raw materials, paper and agricultural products like wheat, barley, rice, maize, sugar and animal food.

The Indian side noted Iran's interests in these commodities, and provided immediate information to areas of surpluses. The Iranian delegation was assured that subject to its own domestic requirements India would make effort to meet the needs of Iran.

During the talks, both sides were in agreement on the desirability of strengthening bilateral commercial and economic links for their mutual benefit. It was decided in course of the discussions that a committee on trade, in terms of the Trade Agreement of 1974, would be constituted and it would meet at appropriate levels alternatively at Teheran and New Delhi.

It was also agreed to exchange delegations comprising various sectors of industry and commerce of the two countries for further discussions with their counterparts and identification of specific areas of cooperation and trade exchanges. There would also be close collaboration between industrial units and Export Promotion Councils in India and the Nationalized Industries Organization of Iran.

The Indian side referred to the experience acquired by India in the development and application of technology and emphasized the scope for expanding cooperation between the two countries through transfer of appropriate technologies. It was pointed out that India could supply a wide range of engineering equipment and machinery for various industrial products ranging from the small-scale sector to the heavy capital goods sector.

The Indian side offered to transfer technology to Iran accompanied by comprehensive assistance that would include training of Iranian technical personnel in Iran as well as in India, and consultancy and management services. The Iranian side stated that technology was required not only for new projects but also for existing industrial plants in Iran.

Both sides identified several areas of industrial cooperation, such as the automotive and commercial vehicles industry, automotive ancillaries, tyres and tubes, refrigeration systems, oil refineries and petrochemicals, machine tools and electrical equipment, power plants, the construction industry and establishment of industrial estates.

Cooperation was offered by India in the small-scale sector and for the establishment of industrial estates in Iran to cover a wide range of products. The Iranian side expressed great interest in collaborating with India in this field and stated that Iran attached priority to the setting up of industries in the small-scale sector.

The two sides identified broad areas for widening bilateral cooperation in the field of shipping. Iran sought Indian assistance in the manufacture and supply of a variety of dredgers, barges, launches and other port equipment, as well as spare parts for vessels of different makes, repair facilities, port development, training of port personnel and consultancy services. The Indian side agreed to extend necessary assistance, wherever possible.

Both sides agreed to strengthen the Iran-o-Hind Shipping Company. The Iranian side recommended that priority should be given by the company to transportation of cargoes between the two countries. It further stated that Iran-o-Hind were in need of suitable additional ships and suggested that India could assist by providing appropriate vessels on charter basis.

The Iranian side took note of the capability of the Indian Roads Construction Corporation and the Dredging Corporation of India to undertake consultancy in specific fields.

In the railways sector, both sides agreed that cooperation would be developed between the two countries in supplies by India to Iran of railway equipment and spares, services and maintenance, and training of personnel. A specific list of requirements of the Iranian State Railways was made available to the Indian side, including rehabilitation of tracks, repair of damaged locomotives and supplies of locomotive parts. The Indian side assured immediate examination of these proposals.

The Iranian side expressed interest in cooperation with India in the fields of agricultural machinery, such as, power tillers, ploughs, threshers, combines and plant protection machinery, animal husbandry and cattle upgrading, veterinary health services, including measures adopted in India to control animal disease and * * * breeding. Iran also showed interest in cooperation in fisheries, including education and training of personnel, fish processing, fisheries survey and fisheries craft and gear.●

TRIBUTE TO ERNEST W. LASS, JOURNALIST

HON. JAMES J. HOWARD

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOWARD. Mr. Speaker, since the role of the press is frequently a subject of debate in our Chamber and elsewhere, I think it is appropriate that we make special note of those areas where consensus does exist.

A journalist, who everyone agrees conducted himself in the finest tradition of his profession, lived and worked in my district for 52 years. Every public official I know had the highest regard and deepest respect for him. He was concerned that his paper's coverage be fair, and that, first and foremost, it represent the public interest. He tackled tough issues, devoting his resources to those areas where it appeared the public's resources were being squandered or the natural resources of the Jersey Shore were being threatened.

This fine man, Ernest W. Lass, editor-in-chief and chairman of the board of the Asbury Park Press, Asbury Park, N.J., died September 8 at the age of 73. He has left his mark not only on his readers, his employees, and the many young journalists who learned from him, but on the quality of life in central Jersey. As a private citizen, he was active in many civic organizations and was honored time and again for his volunteer work. As a journalist and a businessman, he truly made a difference to the communities in our area.

He will be missed, but his good deeds and the memory of his kindness and decency will live on.●

PALISADES PARK CHAPTER OF UNICO NATIONAL CITED FOR ACHIEVEMENTS

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. HOLLENBECK. Mr. Speaker, my colleagues who are familiar with the activities of Unico National will appreciate the high honor or recognition as "Outstanding Chapter" in an organization which maintains a truly remarkable record of community service in 144 chapters throughout the country. The award has been bestowed this year on the Palisades Park, N.J., chapter of Unico National. Its president, Patrick Roma, has been named outstanding chapter president.

The distinguished Italian-Americans who work within the Palisades Park chapter are a community of people of ability and dedication joined to act in the public interest. They reflect, completely, the Unico motto of "service above self."

Needy and deserving citizens of all ages and backgrounds have benefited from the endeavors of this chapter—from their scholarship fund and their contributions to children's athletic teams; from their educational and civic programs; and from their contributions to medical research. Under the able leadership of President Roma, Unico National of Palisades Park, in conjunction with district 6, contributed $8,100 this year to purchase an IBM cell washer for Columbia Presbyterian Hospital to help combat Cooley's anemia, a blood disease affecting children. And, among other civic contributions, the chapter awarded $1,500 in scholarships to deserving recipients.

I am proud to offer my congratulations to Patrick Roma and the membership of the Palisades Park chapter of Unico National for their achievements and to express my sincere appreciation for their continued endeavors to make our communities a better place in which to live.●

MX MISSILE SYSTEM

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Mr. EDWARDS of California. Mr. Speaker, I would like to take this opportunity to insert into the RECORD a resolution recently adopted at the general assembly of the Unitarian Universalist Association in New Mexico this year.

As you can see, the resolution expresses their strong disapproval of the MX missile system. This resolution was adopted by more than two-thirds of the delegates representing all 50 States.

I think it is important that we recognize that many Americans in our country do not support the development of the MX missile system.

The resolution follows:

RESOLUTION ADOPTED BY THE 19TH GENERAL ASSEMBLY OF THE UNITARIAN UNIVERSALIST ASSOCIATION, JUNE 13-18, 1980, ALBUQUERQUE, N. MEX.

Whereas the United States Congress is now considering new funding for the multi-billion-dollar Missile Experimental (MX) Missile System; and

Whereas the MX Missile System represents a major escalation of the arms race; and

Whereas the General Assembly of the Unitarian Universalists Association in 1979 affirmed that reversal of the arms race must be the overwhelming priority on the human agenda because escalating military power (a) diverts crucial resources from human and environment needs, (b) contributes to runaway inflation and inhibits full employment, (c) leads toward the certainty of planetary holocaust; and

Whereas the MX is a destabilizing, potentially first-strike nuclear weapon system; and

Whereas there is widespread opposition by the citizens of Nevada and Utah where the MX is slated to be deployed: Be it

Resolved, That the 1980 General Assembly of the Unitarian Universalist Association calls upon Unitarian Universalists to urge members of Congress to vote against further funding for the MX Missile System, and to urge direct funding to domestic human services programs; and be it further

Resolved, That this Assembly reaffirms the 1979 Peace and Disarmament resolution and calls upon the U.S. Government to seek prompt negotiations with the nuclear powers for a mutual moratorium on nuclear weapons systems.●

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

HON. MILLICENT FENWICK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 15, 1980

● Ms. FENWICK. Mr. Speaker, we often hear about the shortcomings of government and it is heartening to learn of a program which has given encouragement and opportunity to those who have, too often, been denied those benefits.

This is a letter from a constituent, a father whose deaf child has benefited from one of the Federal programs. I enter it in the RECORD as an encouragement to other parents and their deaf children:

Recently my daughter earned her Associate Degree in Applied Science at the National Technical Institute for the Deaf which is one of the nine colleges that make up Rochester Institute of Technology at Rochester, N.Y. My purpose in writing to you is to express my appreciation of not only the support that you as a member of Congress have given in the form of funding this unique institution, but to commend your wisdom in making possible an opportunity for members of the deaf population to become taxpayers rather than tax burdens as well.

Without dwelling on too much detail, the National Technical Institute for the Deaf was established in 1965 by Public Law 89-36 with the funding being administered by the Department of Health, Education, and Welfare. This effort by Congress is unique in that NTID, as a part of RIT, represents the first effort to educate large numbers of deaf students within a college environment designed primarily for hearing students. As such, it is the only one of its kind nationally or internationally.

From a career standpoint, my daughter currently qualifies as a junior computer programmer, but has decided to continue her education with the goal of earning a Bachelor of Science Degree in Business Administration at RIT's College of Business. Since the College of Business is primarily a hearing environment, you should be aware of the fact that the necessary support services, such as note takers and tutors, are also made available by HEW funding. In short, if it were not for the opportunities provided by the National Technical Institute for the Deaf, the expectation of my daughter ever becoming a productive member of society would be severely limited. Here the U.S. taxpayer is truly receiving a good return on his investment.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an interim procedure until the computerization of this information becomes operational, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 16, 1980, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 17

9:30 a.m.

Conferees

To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.

Room S-146, Capitol

Judiciary

Business meeting, to consider pending nominations and legislation.

Room S-207, Capitol

Labor and Human Resources

Business meeting, to consider S. 2887, to provide statutory assurance of confidentiality to respondents participating in statistical programs of the Bureau of Labor Statistics; and pending nominations.

4232 Dirksen Building

10:00 a.m.

Energy and Natural Resources

Business meeting to consider pending calendar business.

3110 Dirksen Building

Finance

Business meeting on pending calendar business.

2221 Dirksen Building

Governmental Affairs

Civil Service and General Services Subcommittee

To hold hearings on the substance of H.R. 6372, providing for the voluntary withholding of State income tax for civil service annuitants, the substance of H.R. 7466, permitting the employment of personal assistants for handicapped Federal employees both at regular duty and travel status, and the substance of H.R. 7666, increasing the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members (all being held at the Senate desk).

1224 Dirksen Building

Governmental Affairs

Permanent Subcommittee on Investigations

To continue closed oversight hearings on the Department of Labor's investigation of alleged mismanagement and criminal activities of the Teamsters Union's Central States pension fund.

3302 Dirksen Building

*Labor and Human Resources

To hold hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

11:00 a.m.

Judiciary

Subcommittee, to continue hearings on matters relating to its investigation of individuals representing the interest of foreign governments.

2228 Dirksen Building

1:30 p.m.

Foreign Relations

To hold closed hearings on U.S. military access agreements with Oman, Kenya, and Somalia.

4221 Dirksen Building

2:00 p.m.

Conferees

To resume on S. 914, and on the substance of H.R. 2063, bills authorizing funds through fiscal year 1983 for public works and economic development programs of the Economic Development Administration.

Room to be announced

Conferees

To resume on H.R. 3904, providing changes in the Employee Retirement Income Security Act (ERISA) regarding insurance provided by the Pension Benefit Guaranty Corporation for pension benefits of employees covered by multiemployer plans which terminate.

H-328, Capitol

3:00 p.m.

Conferees

On H.R. 2977, authorizing funds through fiscal year 1983 to establish a program to increase participation by States and local governments to prevent domestic violence, to provide assistance to victims of crime, and to establish Commissions on National Youth Service.

H-137, Capitol

Joint Economic

To resume hearings on the various aspects of the current housing industry situation.

1318 Dirksen Building

SEPTEMBER 18

8:30 a.m.

Energy and Natural Resources

To hold hearings on the nomination of John C. Sawhill, of the District of Columbia, to be Chairman of the Board of Directors of the U.S. Synthetic Fuels Corporation.

1202 Dirksen Building

9:30 a.m.

Conferees

To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.

Room S-146, Capitol

Labor and Human Resources

Business meeting, to consider pending nominations.

4232 Dirksen Building

10:00 a.m.

Conferees

On H.R. 6942, authorizing funds for fiscal year 1981 for foreign development and international security assistance programs, and funds for fiscal year 1981 for the Peace Corps.

S-116, Capitol

Energy and Natural Resources

To resume oversight hearings on the growing importance of coal in international trade.

3110 Dirksen Building

Finance

Business meeting on pending calendar business.

2221 Dirksen Building

Governmental Affairs

Permanent Subcommittee on Investigations

To resume oversight hearings on the implementation of the Department of Energy's Gasoline allocation program.

3302 Dirksen Building

*Labor and Human Resources

To continue hearings on the role of the work force in the coming decade, focusing on displacement situations caused by the cessation of business activity on a plantwide or product-line basis.

4232 Dirksen Building

Labor and Human Resources

Education, Arts, and Humanities Subcommittee

Business meeting, to mark up title II, providing financial assistance to meet basic, and employment skills needs of secondary school youth of S. 2385, proposed Youth Act, and H.R. 7859, to provide assistance to State and local agencies for the education of Cuban and Haitian refugees.

1318 Dirksen Building

1:00 p.m.

Agriculture, Nutrition, and Forestry

Rural Development Subcommittee

To hold hearings to review the accuracy of the 1980 census count in rural areas.

357 Russell Building

2:00 p.m.

Conferees

To continue on H.R. 6942, authorizing funds for fiscal year 1981 for foreign development and international security assistance programs, and funds for fiscal year 1981 for the Peace Corps.

S-116, Capitol

4:30 p.m.

Conferees

To resume on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.

S-145, Capitol

SEPTEMBER 19

9:30 a.m.

Commerce, Science, and Transportation

Science, Technology, and Space Subcommittee

To hold oversight hearings on the scope of science and technology policy.

235 Russell Building

Conferees

To continue on S. 2719, authorizing funds for fiscal year 1981 for housing programs, and authorizing funds for fiscal years 1981 through 1983 for community development programs.

S-146, Capitol

Judiciary

To hold hearings to review in detail the President's proposal to admit refugees to the United States in 1981, and to receive the President's annual report to Congress on U.S. refugee programs.

2228 Dirksen Building

10:00 a.m.

Energy and Natural Resources

To continue oversight hearings on the growing importance of coal in international trade.

3110 Dirksen Building

2:00 p.m.

Conferees

To continue on H.R. 5192, authorizing funds through fiscal year 1984 for higher education programs of the Department of Education.

S-145, Capitol

SEPTEMBER 23

9:00 a.m.

Select on Small Business

To hold joint hearings with the Committee on Environment and Public Works on the possible economic costs of acid rain, focusing on economic losses to tourism, sport and commercial fishing, agriculture and forestry, damage to public buildings, and threats to public health.

424 Russell Building

9:30 a.m.

Energy and Natural Resources

To hold hearings on the nomination of Wallace O. Green, of the District of Columbia, to be Assistant Secretary of the Interior for Territorial and International Affairs.

3110 Dirksen Building

*Labor and Human Resources

To hold hearings on S. 2979, to maintain and extend to 1986 the cost-of-living increases for pre- and post-retirement for railroad employees, and to increase the tax that employers are required to pay into the fund on behalf of active workers of the railroad industry.

4232 Dirksen Building

11:00 a.m.

Veterans' Affairs

To hold hearings on fiscal year 1981 legislative recommendations from officials of the American Legion.

318 Russell Building

2:00 p.m.

Office of Technology Assessment

The Board to meet and discuss pending business items.

EF-100, Capitol

SEPTEMBER 24

10:00 a.m.

*Labor and Human Resources

To hold oversight hearings on the implementation of the home energy assistance program.

4232 Dirksen Building

10:30 a.m.

Commerce, Science, and Transportation

To hold hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.

235 Russell Building

SEPTEMBER 25

10:00 a.m.

Commerce, Science, and Transportation

To continue hearings on S. 3003, establishing a program within the Department of Commerce to promote U.S. service industries and their competitiveness.

235 Russell Building

2:00 p.m.

Finance

Health Subcommittee

To resume hearings on the FBI's current and prospective investigation into medicare and medicaid fraud, focusing on the current status of the Department of Health and Human Services' efforts in antifraud and antiabuse activities.

2221 Dirksen Building

SEPTEMBER 29

9:30 a.m.

Finance

Health Subcommittee

To hold hearings on S. 3029, to establish a National Professional Mental Health Services Commission.

2221 Dirksen Building

CANCELLATIONS

SEPTEMBER 17

10:00 a.m.

Rules and Administration

Business meeting, to resume consideration of Senate Resolution 448, to establish the Select Committee on Indian Affairs as a permanent Senate committee, and Senate Resolution 510, requesting additional funds for the Select Committee on Indian Affairs for supplemental expenditures.

301 Russell Building

SEPTEMBER 18

9:30 a.m.

Agriculture, Nutrition, and Forestry

Foreign Agricultural Policy Subcommittee

To hold hearings to examine ways of encouraging further increases in U.S. agricultural exports in the coming decade.

324 Russell Building

SENATE—*Tuesday, September 16, 1980*

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father God, as we turn again to waiting tasks, give us who labor in this Chamber the wisdom, humility, and charity sufficient for the day. Through the toiling hours, in tense and testing times, keep our hearts and minds attuned to Thy spirit. Strengthen our weakness, calm our anxieties, and save us from cynicism. May faith in Thee allay all fear. When we have done faithfully the work Thou givest us to do, may we leave the result to Thy higher judgment, and take supreme satisfaction in having served the Nation to the utmost and moved forward Thy coming kingdom.

We pray in His name, who is Lord and Master. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 16, 1980.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. HEFLIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Does the minority leader need any of my time?

Mr. BAKER. Mr. President, I do not. I was inquiring on this side to see if there were any requests for time. I believe there are no requests for time on this side. I have no need of my time under the standing order, and I yield it back.

Mr. ROBERT C. BYRD. I yield back my time.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is terminated.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may put in a quorum call without it being charged against Mr. MCGOVERN. I believe this is a reasonable request, inasmuch as both leaders have yielded back their time, and Mr. MCGOVERN could not have anticipated this.

Mr. BAKER. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR McGOVERN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from South Dakota is recognized for not to exceed 15 minutes.

Mr. McGOVERN. Mr. President, I yield briefly to the Senator from Maine.

PRIVILEGE OF THE FLOOR—H.R. 7631

Mr. COHEN. Mr. President, I ask unanimous consent that Susan Collins of my staff be accorded the privilege of the floor during debate on the HUD appropriations bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RAILROAD DEREGULATION

Mr. McGOVERN. Mr. President, on September 9, the House of Representatives took final action on their version of the Rail Act of 1980, H.R. 7235, the so-called deregulation bill. Members of both bodies, as Senators know, are now preparing to go to a joint conference committee to work out the differences between these two bills.

Action by the Senate on this legislation was taken on April 1, 1979 on S. 1946, and it is important to remember there was some concern expressed and more unexpressed of the implications this legislation could have on shippers and in particular, agricultural shippers and the farmers they serve. In the months that have transpired since the passage of the legislation in the Senate and through the deliberations of the House of Representatives, several points of dispute have arisen on which agriculture has focused especially.

During the Senate debate, I expressed my own personal concern over some provisions of that bill and was successful in obtaining some amendments to clarify and protect agriculture's position with regard to the proposed rail deregulation.

Today I have spoken to several of my colleagues who are equally concerned who are joining in discussing some of these issues and concerns and, if possible, to give some direction to our Senate conferees on the positions that they should take in conference to alleviate the concern we feel over some provisions in the bill as passed by the House of Representatives.

In particular, I wish to discuss:

First, the surcharge and the de facto abandonment provisions of both bills; second, the waiving of certain statutory requirements on the pending applications to build a railroad to haul coal from the Powder River Basin; third, the demand sensitive provisions of both bills; fourth, the contractual authorities granted in both bills; and finally, my

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

concern that this legislation may result in more Government regulation of business.

JOINT RATE AND SURCHARGE PROVISIONS

The House bill that we object to contains a wholesale grant to the railroad industry to apply surcharges in such a way as to clearly allow the railroad's ability to discriminate in favor of certain traffic and commodities and against others. This discrimination would apply to commodities, regions, ports, and markets.

One of the big concerns would be the discrimination which would exist against agricultural commodities. Surcharges could be applied against flour moving from Minneapolis to the East and no surcharges would apply against flour moving out of Kansas City or vice versa, thus directly working against the interests of the agricultural community in different regions. A further discrimination would occur with respect to branch lines.

A surcharge could be applied to one branch line but not to another—the movements distinguishable by an arbitrary standard of 3 million tons.

Moreover, if a carrier does not have adequate revenues there is no restriction on the opportunity to surcharge. A carrier could thus selectively choose the branch lines on which it seeks to impose a surcharge.

The surcharge provision would impose a tremendous burden on rural shippers. They do not have the facilities to police, protest, and file complaints on surcharge proposals.

First of all and the bill reduces substantially the time period for making a tariff effective. Shippers in rural areas do not have the ability to police the filing of the multitude of railroad tariffs.

Moreover, they lack the financial resources and expertise to effectively fight unfair tariffs or surcharges. Also, they lack the resources and expertise to determine whether the cost/revenue tests may be applied.

The bill purports to grant great rate freedom to efficient rail carriers. This section of the bill, on the other hand, permits the inefficient carrier to establish the effective rate level.

Finally, the overall intent of the bill is designed to promote competition in the marketplace. I doubt that has been achieved. In particular, this section of the bill is anticompetitive in that surcharges must be applied to all routes in which an inefficient carrier participates.

It will encourage the efficient competing carriers to likewise raise the rates because of the action of the inefficient carrier. If a carrier possesses an unprofitable route, there should be no reason why it should not be permitted to eliminate its participation in such a route. That action, however, should not be permitted to extend over all the carrier's more efficient routes, or encourage other carriers to raise rates on their noncompensatory routes in order to accommodate the inefficient participant. The anticompetitive effect of such action is clear.

Regarding the Senate provision for Joint Surcharges, Mr. President, it is important that the committee, after lengthy consideration of this proposal decided to eliminate that provision from their reported bill.

The day the bill came to the floor, it was presented as a recently arrived at compromise between the Southern Railway and the Consolidated Railway System, and that it had the endorsement of "a number of other" railroads that "carry well over 60 percent of our Nation's freight." Opposition to the amendment was expressed by other committee members and the vote was close, 52 to 44.

The amendment's sponsor readily admitted that some railroads had not had an opportunity to study the amendment, and that he would assure those railroads that there would be ample opportunity to make appropriate changes to satisfy the legitimate concerns of most everybody.

I refresh our memory about this consideration, since we now have the language, or hope to in the next few days, that is equally as damaging to the smaller railroads and to the small shippers and to rural communities.

I am vitally concerned about this particular provision of the bill since it can readily result in the abandonment of most of the "inefficient" branch lines that are the lifeline for small communities in rural America. I urge all my colleagues to contact their shipper groups, both agricultural and others, and their short line railroads, to get their constituent input on this vital matter. I do know that this surcharge provision is opposed by several major class I railroads and over 60 short line railroads.

POWDER RIVER BASIN RAILROAD

Regarding the special provisions for consideration of an application before the Department of Transportation for a competitive railroad to serve the coal-shipping region of the Powder River Basin, I support competition and will encourage it. I openly question the provision of the House-passed bill which directs the Secretary of Transportation, within 45 days after enactment, to take action on applications pending for such a railway to be constructed.

The reason I question it, is that it is a single purpose amendment and waives certain requirements which Congress felt essential when the loan guarantee program of the 4–R Act was passed. Those provisions waived deal with the requirement for an environmental impact study report, and the security requirements which assure repayment.

Mr. President, if we are to waive these requirements for the Powder River Basin Railroad, then I suggest that we waive the requirement for all such application for Government-guaranteed loans, both in the Department of Transportation and in other agencies. I can assure you that it would relieve a lot of Federal regulation and delay in consideration of all types of loans.

If we must persist in this effort, I recommend the conferees strike the waiver provisions, and require the Secretary of Transportation to reach his decision on the guaranteed loan as expeditiously as possible.

DEMAND SENSITIVE

With regard to demand sensitive rates, the Senate committee rightfully exempted grains from these provisions, since the export grain movement of grain makes such provisions impractical. It is my understanding, however, that cotton was to be included in that exemption and was inadvertently omitted. Further consideration since passage causes me to recommend, that for clarification of the exemption, instead of just reading "grains," be changed to read "grains, including soybeans and rice, or cotton."

One further item, however, concerning demand sensitive rates. The House chose to drop their demand sensitive section, and actually repeal existing authority under the 4–R Act. Some question has arisen over this provision and unless a favorable response is assured from the ICC, I would urge that the conferees insist on the Senate language with my recommended compromise language.

CONTRACT PROVISIONS

Both bills contain authority for contract rates. The House version attempted to accommodate some special circumstances of agriculture, however it provides the antitrust exemption for contracts after the ICC approves them. This leaves a gray area which will necessitate a court ruling for clarification. Railroads presently enjoy antitrust immunity from the Justice Department and that responsibility is given to the Interstate Commerce Commission.

So, the question arises, will contracts between shippers and railroads be subject to antitrust laws, or not. Our small agricultural shippers feel they should be, and therefore it should be clarified in this legislation. I doubt that this would be subject to the jurisdiction of the conference, but deserves some attention.

ADDITIONAL REGULATION

Mr. President, in the 5 or 6 months since the Senate passed this bill, and in particular in the past week since House passage, I have come to ask if this bill, like some other deregulation bills we have considered, will result in more regulation instead of less? Certainly the uniform cost accounting provisions of the House bill will result in more Federal Government intervention in the day-to-day activity of railroads by accountants and auditors.

Consideration and approval of individual contract rates between each railroad and each shipper will surely take more bureaucratic time than the uniform freight rates they now supervise—which they will continue to supervise. Scrutiny of surcharges, abandonments, and other provisions of the bill will result in more regulation of railroads, but it will be rewarded by a broad discretion in their upward movement of rates to their shippers. I guess that is compensation enough for more regulation.

I would close my comments merely by indicating that agriculture and rural America is unique in the railroad freight business. The price a farmer receives for his grain, or cotton, is determined by people other than himself at points far distant from his farm. That market price is determined in terminal markets, largely by export demand. The handling charges and freight charges are then taken off that terminal market price and the farmer receives what is left. Up until this legislation, farmers have enjoyed relatively uniform freight rates, even with unit-train rates, and so forth.

Under this bill, however, the introduction of new variables to his freight costs, such as variable contract rates to all the local elevators that bid for his grain, and selective surcharges on certain branch lines, and, the prospect of de facto abandonments, all cause me to think that he will no longer be able to shop around to the different elevators in this area for the highest price for his grain.

Farm price differentials will vary widely, and therefore the one elevator who has the highest bid in a local area will buy all the grain in that area, and the others will either go out of business or become affiliates of larger grain companies or cooperatives that can provide him with lower competitive freight rates and the resulting ability to bid higher prices for grain. It is obvious that such a process is predatory and will result in the evolution of a few major grain companies and cooperatives controlling the prices farmers receive with little competitive bidding in the local farm markets.

Mr. President, I do not wish to belabor these points here at great length today, but the point of our concern is that the Senate version of the bill, I think, contains a number of safeguards that are designed to give protection against arbitrary decisions that affect rates and abandonment procedures related to branch lines. The Senate version in my judgment contains some essential protection to rural shippers which is of benefit to our agricultural interests. There are a number of other concerns to which I refer.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter written to me under date of September 15 by the President of the Burlington Northern, Mr. Richard M. Bressler, with regard to the Powder River issue and other concerns; two editorials, one from the Alliance, Nebraska, Times Herald, and one from the St. Paul Pioneer Press; and then a third news article from the New York Times.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BURLINGTON NORTHERN,
St. Paul, Minn., September 15, 1980.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR GEORGE: The House has now passed its version of the rail deregulation bill S–1946. The House version is substantially different from the Senate bill. As a result, we expect that conferees will soon meet to reconcile the differences between the Senate and House versions.

While we have had substantial reservations about some of the provisions of this legislation, the House version injects, for the first time, an entirely new special-interest provision singularly punitive and damaging to the Burlington Northern.

It would divert for the benefit of Union Pacific Corporation, Federal financing intended for the rehabilitation of deteriorated rail facilities in virtually every section of the country. The House conducted no Committee hearings with respect to any of the issues involved in this provision.

Specifically, Section 228 of the House version is an effort to legislate a decision on a matter pending before the Interstate Commerce Commission (ICC) and the Federal Railroad Administration (FRA).

In those proceedings, operating authority and Federal loan guarantees are being sought for the benefit of the Union Pacific through the construction of a connector line to transport Chicago and North Western coal movements from the Powder River Basin in Wyoming. Proceedings before the ICC have been completed and the FRA period for public comments expired on August 11, 1980.

All proceedings have been conducted pursuant to existing law, including Section 511(g) of the 4–R Act which establishes sound standards to measure the need for loan guarantees and to protect the security interests of the United States in loans the repayment of which is to be guaranteed by the Federal Government.

Even though the proceedings are completed and ready for decision by both the ICC and the FRA, this new House provision would provide for waiver of all the protective standards in Section 511(g) of the 4–R Act.

Despite the fact that the Union Pacific Corporation is the real beneficiary, the proposal is structured in such a manner that neither Union Pacific nor any of its subsidiaries would have any obligation to repay the Government-guaranteed loan in the event of default.

Further, the Union Pacific Railroad, a subsidiary of the Union Pacific holding company, would enjoy very large revenues from the coal movements which would result from the loan guaranteed by the United States.

In addition, the House version circumvents the objections which have been made by state and local officials by waiving the environmental safeguards of Section 4(f) of the Department of Transportation Act. That section requires the Secretary of Transportation, in consultation with the Secretaries of the Interior and Agriculture, to preserve the environment and the public interest of the United States respecting lands affected by rail construction projects.

Some concerns have been expressed with respect to rail competition in the Powder River Basin. The Burlington Northern has responded to these concerns by offering the Chicago & North Western the right to serve the Powder River Basin without any investment on its part and without the necessity for any public financing.

Unfortunately, the C&NW has rejected this offer due, we suspect, to pressure from the Union Pacific resulting from the substantial economic power that it has over the North Western.

In short, the Union Pacific, without doubt the richest railroad in this Nation, is seeking Federal funding, not for the benefit of the C&NW, but for its own benefit to extend its operations into the Powder River Basin.

Isn't it strange that a holding company that recently announced that it was going to acquire a partnership interest in a large casino complex in Las Vegas, Nevada, should have its railroad subsidiary seek Federal loan guarantees to extend its operations into territory now adequately served by the Burlington Northern?

Perhaps this explains why the House version provides for a waiver of all of the protective standards for such loans contained in Section 511(g) of the 4–R Act.

Clearly, this special interest proposal for the primary benefit of the Nation's most prosperous railroad and its holding company should be rejected. The funding provisions of the 4–R Act were designed for the rehabilitation of deteriorated rail lines, not new construction by railroads fully able to finance such construction in the private sector.

There is no occasion for the waiver of soundly conceived public interest tests. Indeed, if the Union Pacific is entitled to this special treatment, should not all other applicants for loan guarantees be given the same benefits? It is obvious that the Union Pacific is afraid to allow existing law to be applied to this application.

Compare this proposal with the record of the Burlington Northern. Through 1979 BN invested $1 billion in railroad facilities and equipment to transport coal.

The Company projects additional expenditures of $1.6 billion in coal-related facilities and equipment for the five-year period 1980–1984. Despite these recent massive expenditures, BN earned only $41 million before taxes last year from its rail operations, a return of only 1.08 percent on its investment in rail operations.

This compares with the Company's present cost of capital of almost 13 percent.

In addition, the Company has substantial excess coal transportation capacity. Today, we have 31 coal trains in storage, 22 owned by utilities and nine owned by BN.

Further, we have 107 serviceable locomotives in storage. Surely, if public funds are to be provided for redundant transportation facilities, should not such an investment of taxpayers funds be measured by the same public interest standards that apply to all other railroad projects in the United States.

We urgently request that you support our efforts to eliminate this objectionable special interest provision. Thank you for your consideration and your assistance.

Sincerely,

DICK.

[From the Times-Herald, Aug. 13, 1980]

WE AGREE WITH MCGOVERN

Sen. George McGovern (D-SD) has taken a strong stand against the connector-line plan from the Powder River Basin coal fields that would link the Chicago and North Western Railroad and the Union Pacific.

An application has been made by C&NW to the Federal Railroad Administration for federal loan guarantees to fund the project.

McGovern supported action of the Interstate Commerce Commission in 1976 for joint ownership of the new Orin-Gillette railroad line by C&NW and Burlington Northern.

But he opposed the loan application filed by the C&NW on May 12, 1980 with the Federal Railroad Administration, saying that the Union Pacific Railroad would be the primary beneficiary if it were granted.

McGovern also sees "serious policy questions" in the loan application.

Congressional intent in passing the Railroad Revitalization and Regulatory Reform Act of 1976, which authorized the federal loan guarantee program, was to provide federal assistance for the revitalization of marginal lines.

Because the UP would be the primary beneficiary under the loan application, McGovern contends that approval of the loan would violate the intent of Congress. Certainly the UP is not a marginal line.

McGovern takes this stand in a letter written to John Sullivan, administrator of the Federal Railroad Administration, dated Aug. 9, 1980.

He is concerned with the C&NW as it is the primary railroad now serving South Dakota. He boosted the 1976 joint ownership of the new Orin-Gillette line, with Burlington Northern, believing it would provide access to the coal fields for C&NW which would transport it to destinations by ways of the northern Nebraska line.

As McGovern sees it, "a substantial increase in C&NW revenues is essential to the upgrading and modernization of their physical plant which is presently suffering from deferred maintenance and equipment problems."

In the letter to Sullivan, McGovern asks that any decision regarding the Powder River Basin loan application be deferred "pending analyses and investigations of the recent rail merger acquisition (by UP with Missouri Pacific and Western Pacific) that will be conducted in both the Senate Judiciary Committee and the Congressional Joint Economic Committee."

McGovern sees the possibility of the UP providing single line coal service to many utilities in the Southwest at the expense of other carriers.

Many in western Nebraska welcome the stand taken by McGovern. The UP connection to the coal fields of eastern Wyoming makes little sense toward the real needs of the C&NW—upgrading of its present lines.

[From the St. Paul Pioneer Press, Sept. 12, 1980]

Midwest Could Be Big Loser in Rail Warfare

(By Lee Egerstrom)

Early in his administration, President Carter informed Congress and the transportation industry that he would support legislation deregulating the carriers from governmental agencies. In short, he favored turning the transportation industry loose to grow and prosper using its own ingenuity.

This week Midwesterners are learning how ingenious some railroads can be.

Lobbyists for the Union Pacific (UP) and a number of other railroads got the U.S. House of Representatives to pass a rail deregulation bill Tuesday that could provide taxpayers' subsidies to the Union railroad to open a lucrative coal hauling line into the Powder River Basin area of Wyoming at the expense of the Burlington Northern.

But in the process, the move could prevent the Kansas City Southern Railway Co. from improving grain hauling service from the northern prairie states.

The bill also creates a rate-making procedure to regulate the cost of hauling coal. Thus, future railroad operating cost increases might well be disproportionately charged against hauling grain and other commodities in the midwestern and western states.

"This is just the beginning of an effort to limit the number of railroads in this country to a handful of giants," said Phillip Brown, a Kansas City Southern vice president who heads his railroad's law department.

"The intention of this bill is to squeeze everybody else out," he said in a telephone interview from Kansas City. "This will make a lot of lines go broke or consider mergers."

The Kansas City Southern is seeking government approval to acquire from the bankrupt Rock Island Line a long stretch of tracks through Iowa. This move would link St. Paul to the Gulf Coast ports through Kansas City, providing that Kansas City Southern could acquire government loans to rehabilitate the aging Rock Island tracks.

Brown estimates that Kansas City Southern would need between $100 million and $150 million to make the Iowa tracks capable of handling large and efficient grain trains.

"I'm not saying we still won't do it, but the prospects are now very dim," he said.

Those dim prospects stem from an amendment offered to the House deregulation bill Tuesday before the House passed it. It orders the Federal Railroad Administration to act on an application by the Chicago Northwestern (CNW) railroad to open a 60-mile line into the Powder River coal region in Wyoming.

The CNW also wants $300 million from the Department of Transportation's rail rehabilitation program to acquire and build that line. That program offers government-guaranteed loans to all but the wealthiest railroads at interest rates equal to the cost of money to the government.

Since there is only $170 million in that program's pocket right now, and Congress isn't likely to grant more than $600 million more for the coming year, the Kansas City Southern sees little likelihood that it can tap into the program to improve rail service across Iowa.

Furthermore, notes James R. Walker of the Burlington Northern, the rehabilitation program is supposed to help economically hard-pressed railroads and their dependent shippers and consumers.

The main beneficiary of opening a CNW line into the Powder River would be the highly prosperous Union Pacific, he said.

Walker, Burlington's general counsel, notes that the proposed CNW line in Wyoming would merely carry Wyoming and Montana coal to the UP's transcontinental line crossing in northwestern Nebraska. The CNW already has rights to carry Powder River Basin coal to eastern markets on Burlington tracks.

In effect, Walker said, the UP would be given "taxpayer subsidies" to compete with the BN, which now transports most of the Powder River coal.

"There is capacity for one line, scant capacity for two, and capacity for neither if ever Congress passes a coal slurry pipeline bill," he said.

Texas Congressmen, who favor coal slurry pipelines as a means of transporting both North Plains coal and water to Texas users, favored yesterday's amendments giving priority to the CNW new coal hauling line.

But Midwesterners, led by Reps. Bill Frenzel, R-Minn., and Jim Oberstar, D-Minn., fought unsuccessfully to prevent the regulatory amendment from being added to the deregulation bill.

Rep. Mark Andrews, R-N.D., argued that ——— the expenditures of $300 million in taxpayers' guaranteed loan money to duplicate rail service is wasteful when "not 1 cent" is being made available to preserve the bankrupt Milwaukee Road's ——— hauling line from North Dakota to the Big Surry power plant on the Minnesota-South Dakota border.

"All I'm saying is before we put priorities in ——— to, in effect, double the service to one area, we ought to maintain original service to another area that has no other choice," Andrews said.

This prompted Kansas City Southern's Brown's remark Thursday:

"There is a good bit of regional warfare involving the rails right now. I wouldn't say it looks good for (the Northern Plains) region."

[From the New York Times]

Union Pacific Gains Support on Casino

Carson City, Nev., July 16.—The Union Pacific Corporation won a recommendation today to become an active partner in a major Las Vegas hotel-casino, a step paving the way for even bigger gaming-related ventures.

The Nevada Gaming Control Board recommended that the corporation be found suitable for registration as a publicly traded holding company, which, through intermediaries, would hold a 20 to 25 percent interest in the company operating the Union Plaza hotel-casino in downtown Las Vegas.

Until now, U.P.C., a holding company for the Union Pacific Railroad and other diversified interests, had been in a landlord status, owning the Union Plaza complex but leasing it to Frank Scott. The status change for U.P.C. will make it the biggest publicly traded corporation to venture into Nevada gambling.

Mr. Scott and his Scott Development Corporation, through a complex revision of a 1969 agreement with the Union Pacific Corporation, will get the right—and "enhanced ability"—to add a $40 million hotel tower adjacent to the existing casino. Scott Development also gets title to land under the club, and the ability to obtain additional contiguous land for later expansion.

The suitability status for U.P.C. and its intermediaries is a key element in its plans to eventually develop 320 acres of land adjacent to the Union Plaza. Plans call for hotels, casino, entertainment and "leisure time activities."

The control board's recommendation now goes to the Nevada Gaming Commission, which is expected to make a final decision July 24.

Mr. BURDICK. Mr. President, will the Senator yield?

Mr. McGOVERN. I yield to the Senator from North Dakota, Senator Burdick.

Mr. BURDICK. Mr. President, I associate myself with the remarks of the able Senator from South Dakota.

The House of Representatives adopted in their bill the provision known as section 228. Under section 228 the House of Representatives permitted new construction of railroads. It always was the intent and purpose of this act to rehabilitate existing lines.

One can see at once that this is very much a taxpayer's concern when it goes beyond that point.

Let me refer the Senate to a debate on the 1980 Department of Transportation appropriations bill on November 1, 1979, when Senators Magnuson and Bayh stated at page 30615 of the Record as follows:

> Mr. Magnuson. Mr. President, the funds in the bill for redeemable preference share financing and loan guarantee financing under title V of the Railroad Revitalization and Regulatory Act of 1976 will be essential to the rehabilitation and improvement of marginal railroads such as the Milwaukee and the Rock Island.
>
> We want to be sure that Federal assistance under title V is limited to rehabilitation and improvement of existing rail facilities and can only be used for limited new construction as part of a rehabilitation and improvement project, and that it will

not be used for projects not directly related to rehabilitation and improvement of the existing railroad system.

Mr. BAYH. I fully agree with the chairman.

So it seems to this Senator that the House in its bill, by adopting section 228, went way beyond what was intended by this legislation.

This, of course, is not contained in the Senate bill and, as I am advised, there were no hearings on this particular phase of the House bill.

So I would like to call to the attention of the conferees before they go into conference this colloquy held on the floor as reported in the CONGRESSIONAL RECORD as to the meaning and intent of the legislation.

I want to thank the Senator from South Dakota for yielding.

Mr. McGOVERN. Mr. President, I thank the Senator from North Dakota for his remarks.

Mr. YOUNG. Mr. President, when the railroad deregulation bill was debated on the Senate floor in April, a number of us were taken in by a last-minute floor amendment which provided for joint rate surcharges and cancellations. The amendment was promoted by Conrail and Southern railroads as a significant and essential step toward solving Conrail's perpetual financial crisis. While a brief legislative explanation was provided to us on the floor, hindsight has demonstrated that the explanation was at best incomplete and may well have been misleading.

The law presently provides a remedy for carriers which are not receiving a fair or adequate share of the revenues from a joint route. In a "divisions proceeding" before the Interstate Commerce Commission, the disadvantaged railroad may argue that the other railroad(s) involved in the joint route are not equitably sharing the revenues from the joint rate charged the shipper. If successful, the disadvantaged railroad is awarded a larger portion (division) of the income, and the income of the other railroad(s) involved in the joint route are adjusted downward accordingly. ICC's decision on the division of the revenue affects only the railroads involved and cannot result in a higher rate to the shipper.

The joint rate surcharge and cancellation provision which the Senate approved in December makes the division proceeding a less desirable method of resolving inequitable or unjust divisions of revenues on joint routes. The surcharge provision says that when the disadvantaged carrier is receiving less than 110 percent of variable cost on its portion of a joint route, it is entitled to improve that income by applying a surcharge to its portion of the rate. The shipper pays the surcharge, and the disadvantaged carrier has no reason to dispute how much of the revenue from the basic rate might be flowing to the other railroads which are partners in the joint route. Conversely, rail partners in the joint route are not entitled to any of the disadvantaged carrier's revenue from the surcharge.

What was not explained to the Senate is that the criteria of "110 percent of variable costs" acts as a trigger—not a ceiling. If the railroad is receiving less than 110 percent of variable cost, that finding makes the railroad eligible to apply a surcharge. A number of my colleagues acted on the presumption that, if eligible to apply such a surcharge, the railroad could only then surcharge its portion of the joint rate to the extent that the basic rate plus the surcharge did not exceed 110 percent of variable cost.

It was some days after the Senate took final action on the rail deregulation bill that we found out no such ceiling existed; that, in fact, we had passed language which said the sky is the limit on the level to which surcharging may legally increase freight rates. It was computed that even if a ceiling had been placed at 110 percent, that alone would immediately result in surcharges of more than a billion and a half dollars.

It was not adequately explained to the Senate that the authority to cancel joint routes could effectively terminate service to thousands of agricultural shippers and could result in double-to-triple transportation costs for thousands of others.

The same "below 110 percent of variable costs" triggers a railroad's right to simply cancel its participation in a joint route. This means that shippers who use that route have to approach each railroad between them and their market to get individual quotes for that segment of the trip. The rates on these "local movements" tend to be a great deal higher than the combined joint rate for a long-haul across two or more rail systems. In fact, by the time you total up the local rates which will get a shipper to his historic market, you could have a figure which is two to three times higher than the joint rate which can be canceled under the new powers given the rail common carriers in both the Senate and House bills.

Obviously, the higher transportation costs will make it difficult or impossible for shippers to compete effectively in their established markets. Many will find new markets, but the higher transportation costs will still exist in the aggregate and will be passed along to consumers. Many rail shippers will turn to other modes of transportation—trucks, which are far less energy efficient than trains, or barges, a geographically restricted method of transportation with an inflexible capacity for expansion.

In time, demand for rail service along joint routes which have been surcharged or canceled will lag dramatically, signaling to rail management that abandonment of the line might be in the transportation company's best interest. The rail deregulation bill provides in another section for expedited abandonment procedures—another provision tailored to accommodate Conrail's management difficulties. If you combine the effect of joint rate surcharges and cancellations with the new provisions for expedited abandonment, you have the potential for wholesale abandonment of most of the branch lines serving agriculture and nonurban industry in America. The Nation will be left with a transcontinental, gateway-to-gateway rail system of main lines to which most shippers will have difficult or no access.

We were given no time to deliberate and understand this in the Senate last April. The House of Representatives had every opportunity to examine the joint rates provisions and that process led to one of the stormiest debates Congress has seen in some time.

Even knowing as little as we did about the potential harm of surcharges and cancellations, the Senate approved the amendment by a slim margin of eight votes (52 to 44). The legislative process does not now allow us to step back and reverse that position. We are, however, still in a position of some flexibility in tailoring the final version to be approved by the conference committee. The Senate version of the surcharge/cancellation authority is extremely broad in scope—so broad as to be frightening if left totally in the hands of Federal regulators to interpret. The House version, on the other hand, is extremely narrow and precise in its language, and promises to do all the damage I have described with the exception that it does use 110 percent of variable cost as a ceiling on surcharging. In between these vastly different versions is an answer which will do the least amount of damage to the rail transportation system and its shippers. It is my hope to work with others in finding this answer and to vote against the conference report if a serious effort in that direction is not made.

I would offer one specific suggestion at this time. The rail deregulation bill does not repeal the existing law which establishes the forum for divisions proceedings at the ICC. As a matter of fact, the ICC itself under existing authority could do much administratively to expedite those divisions proceedings. Southern Railway and a number of other railroads have effectively utilized that forum to work out their revenue problems among themselves. Conrail has not, yet demands that it be given authority to increase revenues by taking it away from shippers and consumers with a surcharge. While the conferees are working to see that the surcharge allows the least amount of mayhem in the Nation's rail system, I would ask that the ICC internally "deregulate" and expedite the divisions proceeding process into an effective, workable tool.

Mr. McGOVERN. Mr. President, if there are no other Senators wishing to speak on this issue I yield back the remainder of my time.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—INDEPENDENT AGENCIES APPROPRIATIONS, 1981

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, H.R. 7631, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent Agencies, Boards, Commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate resumed consideration of the bill.

Mr. COHEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized.

UP AMENDMENT NO. 1575

(Purpose: To place limitations on year-end spending for contracts)

Mr. COHEN. Mr. President, I send to the desk an unprinted amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. COHEN) proposes an unprinted amendment numbered 1575.

Mr. COHEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 49, beginning with line 15, strike out through line 5 on page 51 and insert the following:

SEC. 414. No funds appropriated under this Act may be obligated or expended during the last two months of the fiscal year ending September 30, 1981, by a department or agency for the award of a contract, or for a modification of a contract increasing the obligations or expenditures under the contract in excess of 10 percent, unless the department or agency issues a solicitation for or notification of the proposed award or modification at least 60 days before the date on which the award or modification is made. The preceding sentence does not apply to any obligation or expenditure for an emergency affecting human safety, property, or national security, or to any obligation or expenditure if the head of the department or agency determines, on a case by case basis, that the obligation or expenditure is necessitated by another type of emergency and reports such determination to the Committees on Appropriations of the Senate and the House of Representatives.

Mr. COHEN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL 11:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 11:30 a.m. today.

There being no objection, the Senate, at 10:56 a.m. recessed until 11:30 a.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. EXON).

Mr. COHEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COHEN. Mr. President, this amendment, which Senator LEVIN and I have coauthored, would strengthen the yearend spending provisions contained in H.R. 7631. It would impose strict new limits on contracts awarded in the final 2 months of the fiscal year to insure that agencies do not rush to deplete their appropriations, regardless of need or time constraints.

Our amendment would prohibit any department or agency from obligating contract funds in the final 2 months of the fiscal year unless the solicitation or notification for the contract is issued at least 60 days before its award. This provision would insure that agencies do not obligate funds simply to prevent them from lapsing and that adequate time for preparation and evaluation of the contract is available. To prevent agencies from avoiding the prohibition by simply enlarging existing contracts, the amendment would also apply to significant modifications of outstanding contracts.

Of course, there may be cases where contracts must be awarded more quickly for emergencies affecting human safety, property, or national security. Our amendment permits the executive department secretaries and agency heads to authorize exceptions to the 60-day rule on a case-by-case basis to cover such exigencies. These exceptions would have to be reported to the House and Senate appropriations committees.

Mr. President, the problem of rushed and unnecessary yearend spending is serious, widespread, and complex. It results from failures at every level of government, from contracting officers to program people, from the Office of Management and Budget to the Congress.

It involves the failures of audit mechanisms and of procurement regulations that grant so much discretion that millions of dollars can be wasted in the waning weeks of the fiscal year.

It is exacerbated by the late enactment of appropriations, the use of continuing resolutions, and the passage of huge supplementals.

It results from a system that rewards spending and discourages thrift because an agency that manages to save tax dollars is a likely candidate to have its budget cut in the following year.

Mr. President, the Governmental Affairs Oversight Subcommittee, under the capable leadership of Senator LEVIN, recently concluded a yearlong investigation into the causes and consequences of so-called hurry-up spending. The subcommittee concluded that wasteful spending practices at the end of the fiscal year cost the taxpayers at least $2 billion annually.

We discovered that hundreds of thousands of contracts are awarded in the final weeks of the fiscal year simply to prevent the return of unused appropriations to the Treasury or to forestall future budget reductions by Congress.

Operating under the "use it or lose it" philosophy, some Federal agencies purchase unneeded goods or services in order to deplete their appropriations. For example, a Young Adult Conservation Corps camp bought 1,000 pairs of horseback riding chaps for fewer than 300 enrollees in response to a memoranum instructing that "all moneys be obligated at the end of fiscal year 1978."

The more significant and costly waste, however, results from the shortcuts taken in the procurement process at the end of the fiscal year. Time constraints encourage the awarding of contracts with limited or no competition, such as sole-source procurements. Noncompetitive practices increase costs because they decrease the probability that the Federal Government will obtain the lowest possible prices for its purchases.

Another common shortcut taken at the end of the fiscal year, in order to speed up the award of the contract, is to waive the preaward audit. Accurate audit information on a firm bidding for a Government contract permits the Government to dispute overly optimistic cost projections which can lead to cost overruns. The subcommittee found that agencies were much more likely to waive the audit requirement at the end of the year. With virtually every Federal agency awarding a disproportionate share of its contracts in September, the pressure to waive the audit increases.

Still another procurement problem caused by the yearend rush is the compression of bidder response time. Shortening the amount of time allowed for private firms to respond to Government bids is a classic technique for awarding contracts before the close of the year. Consequently, the proposals submitted tend to be of poorer quality.

Surges in procurement spending also cause unnecessary adminstrative expenses. In fiscal year 1979 alone, the Federal Government needlessly spent millions of dollars merely to keep procurement personnel working overtime to process the yearend flood of contract requests.

These year-end spending problems that I have discussed permitted HEW to award $135 million worth of contracts during the last 3 days of fiscal year 1979. And those days were a Friday, Saturday, and Sunday.

But HEW was by no means alone in its year-end spending abuses. In fact, none of the 10 Federal agencies and departments examined by the subcommittee were found free of hurry-up spending problems.

The amendment that I have sponsored directly attacks the yearend spending spree. The requirement that a contract could not be awarded in August and September, unless the solicitation for it has been issued 60 days in advance, will make it much more difficult for agencies to spend wastefully.

The 60-day rule will insure that adequate time is allowed for obtaining competition for contracts, for performing important preaward audits, and for allowing private companies enough time to prepare their bids.

It will insure that agencies plan their purchases. In those agencies where procurement planning already has been implemented, there has been a marked decline in yearend buying.

In addition to the enacting yearend spending caps, Congress should establish mechanisms to allow it to monitor the competition for Government funds and the quality of Federal program expenditures. It should enact a strong clamp on unnecessary noncompetitive contracting. It should insure that agencies and officials who spend wastefully or manage poorly are punished. This will be a tedious and time-consuming task, but it is the only action that will work to correct the fundamental problems in the procurement process.

Mr. President, I urge the adoption of this amendment.

Mr. President, this amendment, which Senator LEVIN and I have coauthored, together with Senator HART, was designed originally to be a substitute for the committee provision dealing with hurry-up spending. We have discussed this matter with the Senator from Wisconsin, and it is my understanding that it will be acceptable as an addition to the committee's provision in dealing with hurry-up spending.

Mr. PROXMIRE. Mr. President, in response to my good friend from Maine, I did discuss this matter with him. It is my understanding that this amendment would not strike the amendment that is in the bill by the chairman of the committee which was aimed at preventing this unfortunate spending in the last month or 2 months of the fiscal year. In fact, it would add strength to it.

I congratulate the Senator from Maine and Senator LEVIN for their initiative and for proposing a very constructive and helpful amendment, which I am happy to support.

Mr. LEVIN. Mr. President, the amendment offered by my colleague from Maine, Senator COHEN, is just one step in a series of needed incentives for reducing wasteful spending in the Federal bureaucracy. The amendment clearly states Congress intent to improve the Federal procurement system by concentrating on the nature of the illness rather than by attacking its most visible symptoms.

I am referring specifically to the need to reduce noncompetitive contract procedures that underlie the excessive increases in expenditures during the fourth quarter of the fiscal year in virtually every Federal agency.

The Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, estimates that at least $2 billion are wasted by Federal agencies each year because of the rush to obligate funds during the fourth quarter. Much of the waste associated with such "hurry-up spending" is due to agency failure to insure adequate competition for contract awards during the final quarter.

Examples of rushed spending at the end of the fiscal year abound throughout the executive branch. These are just two of the many examples cited by the subcommittee's recently issued report entitled **"Hurry-up Spending"**:

> In fiscal years 1969 and 1970, the Community Services Administration, and its predecessor, the Office of Economic Opportunity, awarded 45 and 46 percent of its contracts in the final month of the fiscal years."
>
> In fiscal year 1975, the Commerce Department's Maritime Administration, the Environmental Protection Agency, and selected agencies within the Department of Transportation spent 65 percent of their research and development contract funds in the last month of the fiscal year, implying "that funds are obligated to prevent the authority from lapsing or to avoid reductions in future appropriations."

The question is not whether hurry-up spending is wrong, it is; or whether it is costing a tremendous amount of tax dollars, it does; the question is how Congress should act to solve this complex problem. This amendment requires executive agencies and departments to issue bid solicitations, and public notice 60 days prior to the awarding of contracts that are to be let during the final 2 months of the fiscal year. The measure will assure sufficient time for solicitation and negotiation of bids to insure increased competition for fourth quarter contracts. Those actions are the keys to the solution to the problem of hurry-up spending.

This amendment avoids the artificial fourth quarter spending limitations on total agency contract authority, because they may well backfire.

As Senator COHEN pointed out, statutory spending limitations on agency spending, such as that imposed on the Department of Defense, have failed to reduce rushed contracting or the acquisition of goods and services that are not needed. The Deputy Under Secretary for Defense, Dale W. Church, testified that the "limitation, by itself," does "not improve the quality or timeliness of purchases. Proper planning and management is the key."

The Office of Management and Budget recently informed the subcommittee that an arbitrary fourth quarter spending limitation will not solve the problem, and that:

> Because agencies would have to obligate annual funds on an arbitrary schedule that is even shorter than the current schedule, the limitation is more likely to contribute to the mentality of spending funds merely to prevent losing it.

In other words, Mr. President, in the absence of a carefully developed and carefully monitored agency spending plan, which will result from our amendment, the surge in spending could just be advanced to the third quarter.

OMB also noted that the limitation would impose arbitrary limits on some programs which have uncontrollable workloads, such as disaster relief and other emergencies, seasonal programs, and benefit payments (for example, for food stamps) required by other laws.

OMB cited programs in which activity peaks in August and September that would be adversely affected by a spending limitation:

> August and September are two months in which high fire severity occurs in portions of the western half of the U.S., where 85 percent of the forest fire protection budget is used;
>
> The main reason for high obligations for the fourth quarter in Agricultural Marketing Service activities is the seasonality of the cotton and tobacco grading programs;
>
> In food programs, such as the Elderly Feeding, Summer Feeding, and Food Donations programs, many commodity purchases are made when price and supply are most favorable. Because the harvest season occurs during the fourth quarter, sizeable obligation of funds usually occurs at this time.

The Environmental Protection Agency (EPA) informed the subcommittee that:

> The use of obligation limits will introduce unnecessary and undesirable additional constraints on the federal acquisition processes and create many new problems without positively impacting the present problem.

And the Agency cited particular adverse effects of a spending limitation on the construction grants program because of the time needed to negotiate these large contracts with the States and contractors:

> The proposed limitation will apply to all types of procurement actions. We anticipate problems in applying the limit to our construction grants program. EPA wastewater treatment construction grants must be planned well in advance of award. Each state develops a priority list of projects to be funded from each fiscal year's appropriations. The grants themselves must be awarded within two years, or funds will be reallotted to another state. Each state, working with EPA, must plan and manage the progress of each project over the two-year period. One of the cumulative effects of this work is the award of a great number of these projects toward the end of each fiscal year. If the limit were imposed on the last quarter of the year, many large construction projects would have to be held up for several months, with a possibility of needed funds being lost altogether. In such a case, not only will the physical construction not take place, but two years of time and effort spent by state and local governments, and EPA staffs may have been wasted . . . The imposition of a limit on spending during the final quarter of the fiscal year would not help this program.

The purpose of this amendment, again, is to encourage increased competition for agency procurement actions during the fourth quarter of fiscal year 1981 by increasing the time for solicitation and negotiation prior to the award of fourth quarter contracts. Current procurement regulations offer guidelines as to what length of time constitutes a reasonable solicitation period in the awarding of contracts. However, no lower limit is set on the amount of time that agencies may permit contractors to formulate their proposals. My subcommittee found during its 11-month inquiry into fourth quarter spending abuses that it was typical for agencies to compress the contractor response time, effectively reducing the desired level of competition for contracts. In addition, the subcommittee found that agencies rushed their contract negotiation procedures during the final quarter, and activity that results in a diminution of the agency's ability to evaluate proposals, engage in oral discussions to resolve disputed prices or estimates, and insure that basic contract questions not be left for later agreement.

The subcommittee found that the rush to obligate funds at year's end prompted agencies to waive preaward audits of cost projections in contract proposals, and to award a greater number of sole-source contracts in lieu of soliciting a wide array of proposals to insure an adequate level of competition for major contracts. All of these activities also tend to increase agency expenditures for overtime payments to personnel involved in the award of such contracts.

The pending amendment will address all of these fundamental weaknesses generated by inadequate procurement regulations by allowing sufficient time to each agency to solicit an adequate number of proposals, perform preaward contract audits, thoroughly negotiate all contract proposals, reduce the number of sole-source contracts offered, and reduce excessive overtime payments to procurement personnel.

The 60-day rule imposed by this amendment aims at the problem avoidance of bad procurement practices in the rush to use appropriations or lose them. The measure does not impose an artificial limitation on total budget authority but seeks to improve agency procurement practices in the area where spending is highly discretionary—in the awarding of contracts. The amendment permits agencies to spend funds for legitimate purposes while imposing meaningful requirements against noncompetitive contracting procedures. OMB supports the finding of my subcommitteee that a statutory arbitrary limitation on the timing of obligations will inhibit Congress efforts by shifting the spotlight away from the essential problems—that of inadequate budget planning and management and noncompetitive fourth quarter procurement practices.

In view of the importance of imposing meaningful contracting requirements on Federal agencies, I urge my colleagues to support this amendment as a substitute to section 414 of H.R. 7631, the appropriations bill for HUD and independent agencies.

Mr. President, I am delighted that the Senator from Wisconsin has accepted this amendment. I believe that is an important step forward.

I hope that both this amendment and the language in the committee bill will be able to operate, so that we will be able to get a comparison with respect to the two techniques. We really are talking about two techniques, both of which will now be in this bill. I believe that both can be implemented, and I hope they can, because they are distinctly different in approach. We should get the benefit of experience with both approaches, to see whether or not the one we are offering in this amendment is far better than the one which is the appropriations bill that came to the Senate floor a few days ago.

I commend the Senator from Maine for his leadership in the hurry-up spending effort. It is bearing some fruit already.

I thank my colleague and friend from Wisconsin for accepting this amendment, and I hope the other side of the aisle will see fit to do so, also.

Mr. HART. Mr. President, as a cosponsor with Senator Cohen and Senator Levin of this amendment to stop excessive yearend spending. I seek to strengthen the existing yearend spending provisions contained in H.R. 7631.

Those existing provisions attempt to end the wasteful yearend spending practices that now go on in some agencies of the Federal Government. It is well known that some Government agencies will endeavor to spend money by expanding their existing contracts or by issuing new ones, to reduce chances that Congress will curtail funding in the future year. By spending money at the end of their fiscal year, Federal agencies attempt to show that even more money is needed in the following year.

The existing provisions in H.R. 7631 are aimed in the right direction but, unfortunately, will not accomplish that objective. They would limit total yearend spending by an agency to 30 percent of the year's budget in the last 3 months of the year, or limit spending in any of those 3 months to 15 percent of the year's budget.

The problem with such an overall limit is that contracting itself may comprise only a small portion of the agency's budget. Thus, large increases in contracting could occur in the last few months of the fiscal year without changing significantly the total spending profile of the agency.

The Cohen/Levin/Hart amendment would more precisely target budgetarv controls by focusing on contracts themselves. It is the authorization of new contracts, or the hasty expansion of existing ones, which wastes Federal money.

This amendment would require any Federal agency to give public notification at least 60 days in advance of any new contract during the final 2 months of the fiscal year, or of the expansion of any existing contract by more than 10 percent in the final 2 months of the fiscal year.

The important part of this 60-day prenotification is that it subjects new contracts or expansion of existing contracts to both external and internal review. With 60 days of prenotification, it is unlikely that an agency could proceed with a sole-source contract unless it were truly justified. Other qualified firms could make their views known to the agency and insist on competitive bidding.

Furthermore, within the agency budget examiners would have time to review new contracts and be certain that new contracts meet sound budgetary criteria.

Mr. President, the Governmental Affairs' Subcommittee on Oversight of Government Management, under the leadership of Senators Levin and Cohen, have concluded that wasteful spending practices at the end of the fiscal year cost taxpayers at least $2 billion annually. Operating under the "use it or lose it" philosophy, some Federal agencies have purchased unneeded goods or services so as to deplete their appropriations. For example, a Young Adult Conservation Corps camp bought 1,000 pairs of horseback riding chaps for fewer than 300 enrolees, apparently in response to a memorandum instructing that "all moneys be obligated at the end of the fiscal year 1978."

The Oversight Subcommittee found that very significant and costly waste resulted from short cuts taken in the procurement process at the end of the fiscal year. Contracts awarded with limited or no competition increase costs to the Government because they do not strive to obtain the services at the least cost. Some short cuts involved the waiver of the preaward audit wherein the Government examines cost projections to insure they are not overly optimistic and destined to overruns.

In summary, Mr. President, I believe that the existing provisions in this appropriations bill will fall short of achieving their desired objective. By lumping contract authority into total authority for an agency, it is unlikely that wasteful contracting practices will effectively be reduced in all agencies. Furthermore, by choosing an arbitrary maximum level of outlays in one time period, many exceptions may be required, so this provision would lose effect quite quickly.

Mr. COHEN. Mr. President, I ask unanimous consent that the amendment I have submitted be considered as an addition to and a substitute for the committee language and that the Record so reflect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I do not wish to delay a vote on this amendment——

Mr. PROXMIRE. Mr. President, has the amendment been acted upon?

The PRESIDING OFFICER. The amendment has not been acted upon.

Mr. JAVITS. I yield for that purpose.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (UP No. 1575) was agreed to.

Mr. JAVITS. Mr. President, by arrangement with the manager of the bill, Senator Moynihan and I have been given an opportunity—which is very accommodating to me because of difficult time problems—to discuss an amendment to the bill, which was reserved yesterday out of the general agreement to the committee amendments, making this amendment still a subject of debate.

This amendment is of critical importance to the city of New York and to its financial future, which has been much debated and considered and to which Senator Proxmire and other Members have made marked contribution. It raises very interesting questions of law and fact. With the permission of the Senate, I should like to address myself to them briefly, and I hope that the matter may be considered very carefully by the author of the amendment, the manager of the bill, and by other Senators, with a view to what should be done about it.

The amendment provides that in respect of further guarantees of New York City loans by the Treasury—that is, the Federal Treasury—none of the money raised on indebtednesses covered by those guarantees may be utilized after 1982, which is the expiration date of the act.

The purpose we must divine, and which is referred to in the committee report, expresses the feeling that this will minimize the utilization of the guarantees and that it represents a source of credit which should not be called upon until other sources of credit have been used up entirely.

The first point from us, which I hope Senator Proxmire will consider very carefully, is the fundamental responsibility here which, for reasons of technicality, was vested in the Secretary of the Treasury.

We know that in the affairs of a great city like New York City, which really represents a national city so far as our country is concerned, which was reduced in 1975 practically to the point of bankruptcy, it was a national interest that prompted us to intervene. We know the problems of banking markets and the condition of cities in terms of the business they do, the unemployment they have, the stressful circumstances which could occur, including almost any cataclysm to which a great city can be subject, which makes it necessary to contemplate the possibility of changed circumstances.

We cannot be certain that everything will remain the same with New York City. Indeed, it is our position—Senator Moynihan's and mine—that we left the details of how this matter should be handled to the Secretary of the Treasury, precisely to take care of that contingency, and because we all know that Congress cannot get into the administration of detailed acts. That is the function of the executive department.

That does not mean that we cannot change the law. That does not mean that we cannot take away the discretion we vested in the Secretary of the Treasury.

But that is not what is sought here. What is sought here is an administrative determination within Congress as to whether or not these guarantees should be used for the purpose of raising money now which is likely to be used later, that is, after the expiration date of the law.

And I think that is a critically important point, especially in this matter for this reason: this is not a matter of judgment really of a city, nor is it a matter of the city seeking to take away out of some provision of law which it feels encases it against the best interests of both our country and the city, but this is a situation of banking judgment and a banking judgment which has been, considering the city's sacrifices up to now, I think extraordinarily successful.

The whole MAC enterprise, the Municipal Assistance Corp., has Felix Rohatyn, a gifted banker of New York and directing head of MAC, who is extraordinary productive and very intelligent and seems to have timed markets very astutely. And it is their judgment that you cannot crowd the market now with too much MAC paper. You are limited in the area of $400 million or $600 million. Therefore, knowing that you cannot bridge your gap, and that is what the guarantees were given for, the idea is to use providently the guarantees by raising money now which might not be raisable later in order to meet obligations which will be incurred but fall due later.

It seems to me that that is a characteristic, and I know that my friend and colleague, Senator Proxmire, was himself employed by banks. It is not an untraditional drawdown technique, and that is really what we put it on. In short, the debtor is entitled to determine when he draws down. Whether he draws down money or a guarantee is not dissimilar.

On a previous occasion, it drew down money. That is in the 1975 act. Now it draws down a guarantee which is tantamount to money.

So those are the first two points, that is, prudence in finance and in that respect just to have the Record complete I ask unanimous consent to have printed in the Record the letter of the bankers Salomon Bros., dated June 2, 1980, giving their view as to what the market will take in terms of MAC bonds.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Salomon Brothers,
June 2, 1980.

Mr. Robert F. Vagt,
Executive Director, Municipal Assistance Corp. for the City of New York, One World Trade Center, New York, N.Y.

Dear Mr. Vagt: We have reviewed the financing proposal of the Municipal Assistance Corporation for the City of New York ("MAC"). The proposal is designed to assist the City in financing its capital program through December 1984. The proposal would provide for MAC to sell in the public market approximately (i) an aggregate of $800 million of its bonds during the City's 1981 and 1982 Fiscall Years in eight quarterly installments of approximatelly $100 million each, in addition to the $862 million of its bonds now scheduled to be sold privately during this period, and (ii) at least an aggregate of $1 billion of its bonds during FY '83 and '84 in quarterly installments of approximately equal amounts. In addition, the proposal calls for the sale to City and State Pension Funds of up to $900 million of federally guaranteed City bonds during FY '81 and '82.

Assuming normal market conditions, in our opinion MAC's bonds could be sold in the public market as described above at reasonable interest rates and terms if no more than approximately $600 million of MAC bonds were sold to the public during any year. We would like to stress, however, that such market access is dependent upon your proposal, or one similar to it, being adopted as the City's Financing Plan. Such a Financing Plan is necessary in order to assure the public market that the City will have access to adequate financing to meet its capital needs in an orderly manner.

If such a Financing Plan is not in place, MAC's access to the public markets could be substantially impaired. Without such a Financing Plan, there can be no assurance that MAC would be able to continue to sell its bonds in the public market in the amounts needed to assist the City in meeting its capital needs.

Very truly yours,

———·———.

Mr. JAVITS. Mr. President, the second point is that we expressly gave the authority to the Secretary of the Treasury because the Secretary of the Treasury was deemed to be that official who could most keep track of the financial situation of the city and the financial situation of the markets to which the city was expected to go.

Third, the aggregate result will be the same. The aggregate result will be the issuance of MAC bonds and the utilization of the loan guarantee with a view to the city's fiscal independence and ultimate reentry into the public credit market, except that the timing will be as adjudged by their own bankers in the best interest of the city and in the best interest of making successful the guarantees of the Federal Government.

Mr. President, a reason for that in addition to banking judgment, of course, is the tremendous problem of capital improvement projects which are so essential to the city if it is going to maintain its business status and bring more business to New York which it so urgently needs.

I recall to my colleagues and to Senator Proxmire, who officiated at these hearings on this measure and was very generous to both Senator Moynihan and myself in the allocations of time and allowing us to participate, how we all seemed to concur that the city was sitting on a time bomb in terms of its capital requirements, its sewer system, its water supply system, its roads and streets, its bridges, and accumulated deficiencies in maintenance, some not being adequately maintained for a century and it could blow up in our faces and in the faces of the almost 8 million people who inhabit the city. So again this discretion is necessary to be exercised in respect of that priority if we are not to further incur even greater dangers respecting the collapse of the municipal infrastructure.

So, Mr. President, as my colleague is known for his deliberation and also for his willingness to be persuaded if he can be, he agrees with so many of us. That is one of the great hallmarks of the Senate, of any deliberative body. I hope very much that he may give consideration and that other Senators will give consideration to these basic facts and reconsider whether we are not our own worst enemies rather than our own best friends in having this amendment from a situation which we wish to be successful where millions of people have undertaken at great sacrifice. I live there and I know how tough this has been on New York City. What is at stake is what is commonly agreed to be the greatest city in the world, perhaps the greatest city that our civilization has even seen, and there is the matter of business judgment in which we have established a chain of command which it would be very unwise now to vitiate.

I yield to Senator MOYNIHAN.

Mr. MOYNIHAN. I thank my revered senior colleague for yielding to me.

Mr. President, I require only the briefest time to supplement his masterful summary of the question before us. There are two points only that I wish to make.

The first is that the New York City loan guarantees seem to have assumed a life of their own in this institution; they are apparently an event somehow apart from the normal business of our Government.

I simply wish it to be understood for those who would like to know more about this matter that loan guarantees, far from being an exotic phenomenon, are very commonplace in the public finance and political economy of the United States.

In fiscal year 1979, $100,888,000,000 of loan guarantees were issued by the U.S. Goverment—the accumulative total right now approaches $400 billion.

There is nothing unusual about this.

I might add that the Federal Government does not extend money in this process. It collects it. Last week—I think the leader will not mind if I report a private conversation, and the leader is in the Chamber—I called him to discuss this issue and with the prudence that we associate with him in these matters he asked me, "If you have your way will it cost anything?"

I was able to say "no." If the city of New York is not able to use there additional guarantees, the Treasury will actually lose the money which it would charge for those guarantees.

This is not a small amount of money. The first New York City loan guarantee netted the Treasury of the United States $208 million, a very large sum of money. The loan guarantees under the second loan so far issued have earned a fee already of $3.8 million.

We charge for this as is our right as the Federal Government, but certainly this is not a case of special treatment for the city of New York.

The second point I wish to make, having the leader and the chairman on the floor, and I hope I can have them hear me say this, is that they have felt the city of New York's fiscal problems have occupied this Chamber and the other body sufficiently over the last 5 years, then surely they would not want to see this particular amendment enacted, because this amendment guarantees that there will be a third New York City loan guarantee. There will be no way to avoid it.

The city's fiscal plans, which have been forced upon it in many respects by the policies of the Federal Government in raising rates to, at one point, 20 percent this last year, require a spreading out of the loan, of the uses of the guarantee on the MAC. If we are not allowed this, we will be back—can I ask the leader to listen—we will be back, and we do not want to be back.

In the committee report, in language which is scarcely ambiguous, on page 9 the chairman says:

> Finally, the committee wishes to make the point as forcefully as possible that this is the last time.

That is a very direct statement, and certainly one which I would hope will prove to be true. But, I can say in all candor and with absolute conviction, and I think my revered colleague might agree with me, if this amendment were to be adopted, the city will be back, and that we do not want to happen. Therefore we hope that this amendment will not be adopted.

Mr. JAVITS. Mr. President, will the Senator allow me to join with him in that remark?

Mr. MOYNIHAN. I would be happy to do that.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, at the request of the managers of the bill, that the colloquy on this pending subject continue for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, if I may reply to my good friend from New York, I think it was the Senator from New York who mentioned that I was at one time employed by a bank. It was J. P. Morgan, which is now Morgan Guaranty, and I was proud to be associated with one of the great banking institutions in this country, so I am sympathetic, and have been sympathetic, to these banking problems.

As to the New York City situation, for the life of me it is hard to understand why there is an objection to what we put into the bill. I do not think, frankly, that it has been described and analyzed as carefully and accurately as it might be.

Take a look at the actual language contained in this section of the HUD appropriation bill dealing with the New York City loan guarantee program. I offered this language in the course of the regular Appropriations Committee markup of this appropriation bill. It was considered by the committee—several members spoke on the matter including the distinguishd Senator from New Mexico, who was here a few minutes ago, and it was approved. It was approved because it was totally consistent with the intent of the New York City Loan Guarantee Act and consistent with the directives of the Appropriations Committees when they approved the $1.65 billion in loan guarantee authority in 1978.

This language does not change existing law. It would not in any way prevent New York City from getting Federal guarantees in fiscal years 1981 and 1982 if the conditions of the Loan Guarantee Act are met. If New York City is effectively unable to obtain credit in the public markets or elsewhere in amounts and terms sufficient to meet its financing needs—if the interest rates are too high or the amounts too small—then of course the city would get the guarantees. That is what they are there for. They would get them. The amendment does not prevent that.

What the amendment does do is clarify and reemphasize the intent of the law, which is that the Federal Government is supposed to be the lender of last resort. Guarantees are supposed to be issued only if, and to the extent that, neither New York City itself nor the municipal assistance corporation (MAC) is able to meet the city's financing needs in 1981 and 1982. The municipal assistance corporation is a State agency established in 1975 expressly for the purpose of borrowing on behalf of New York City; it has been a mainstay of the city's 4-year financing plan pursuant to the Loan Guarantee Act; it is the city's chief source of credit.

The problem the amendment addresses is a move by New York City to get the Federal guarantees despite that fact that there is credit available elsewhere from the municipal assistance corporation. The city is asking to get all of the $900 million in guarantees remaining in fiscal years 1981 and 1982, despite the fact that it thinks MAC can sell that amount of its own bonds. They want to put the proceeds of the MAC bonds in the bank for possible use after 1982 and use the Federal money now. That is why the amendment was offered.

Mr. President, the effect of the city's proposal would be to overturn the intent of the law. It would make the Federal Government the lender of first resort rather than last resort. If MAC raises money and puts it in the bank, then that is obviously credit elsewhere, and the city should not get the guarantees.

My amendment simply addresses this very narrow case. It says that none of the funds in this bill may be used to administer programs to issue loan guarantees to New York City for the purpose of permitting the municipal assistance corporation to use the proceeds of its borrowings in fiscal years 1981 and 1982 to meet the city's financing needs after fiscal year 1982. That's all it says, and all it does is underscore the "no credit elsewhere" requirement. Guarantees can be provided in any other circumstances, if there is a case to be made that there is genuinely insufficient credit elsewhere—and that may be the case.

In my view, the law is absolutely clear on this issue. Moreover, the provision in the Loan Guarantee Act is bolstered by the specific directives of the Appropriations Committee in its 1978 report on the New York City loan guarantee appropriation, by the agreement to guarantee drawn up by the Secretary of the Treasury and signed by him and all the New York officials, the Governor, the mayor, Mr. Rohatyn who, at that time, was head of MAC, and who still is, of course, and a very able and important official dealing with this situation. I have the language right here from the agreement to guarantee, exhibit A, that states specifically in footnote (6) that the $300 million in guarantees available in 1981 and the $600 million in guarantees available in 1982 are:

To be issued to the extent the City is unable to issue a long term City indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC Indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the Financing Plan.

Mr. President, I ask unanimous consent that a memorandum prepared by Banking Committee staff which explains these matters in some detail be included in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PROXMIRE. Mr. President, my amendment seemed necessary because it appeared that the administration might be willing to give the guarantees despite the intent of the law. This is obviously a matter of great political concern to them, judging from the response to my amendment.

I believe that my responsibility is to uphold the intent of the law and the directives of the Appropriations Committees, and it is for that reason that I offered this language and that I think it is necessary.

One more point I would like to make, and that is to read from the language of the report accompanying the New York City loan guarantee appropriation bill (H.J. Res. 1088) that was passed in 1978. The report reads as follows:

> The Committee directs that the remaining $900 million in guarantee authority, over and above the $750 million intended to be provided in fiscal years 1979 and 1980, be available on a stand-by basis only. This means that primary reliance should be place on sales of MAC bonds as a back-up to anticipated sales of City bonds in fiscal years 1981 and 1982, and guarantees should be provided only to the extent that the MAC back-up is not sufficient to meet the City's financing needs. In general, the Department of the Treasury should seek to minimize the extent of Federal involvement in New York City's financing arrangements.

If that means anything, it means that in the event the guarantee is needed it should be used. That is what it is there for. But, Mr. President, it is also clear that if credit is available elsewhere, if the city can borrow sufficient amounts on its own or through MAC, it should do that first. That is all we provide in this bill, and that is exactly what the law already provides.

So I am very hopeful that my good friends from New York will understand that what we are doing here is simply to reinforce what we said in the law and what is clear in the law.

I am happy to yield to my good friend from New York.

EXHIBIT 1

COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

MEMORANDUM TO THE CHAIRMAN

From: Elinor Bachrach, Professional Staff Member.

Re Status of the remaining $900 million in Federal guarantees authorized under the New York City Loan Guarantee Act of 1978.

You asked for the legislative history and other factors bearing on the use of the remaining $900 million in Federal guarantees authorized but not yet issued under the New York City Loan Guarantee Act of 1978. The Board of Directors of the Municipal Assistance Corporation (MAC) approved on June 3, 1930 a proposal which calls for the issuance of the full $900 million in guarantees, as part of a Financing Program for fiscal years 1981–1985 which assumes that the City will make only modest progress toward regaining market access over most of that period.

The Financial Plan for fiscal years 1979–1982 which was considered by Congress in its deliberations on the New York City Loan Guarantee Act projected the issuance of Federal guarantees in the amount of $750 million in the first two years, 1979 and 1980, with the remaining $900 million to be held on "stand-by". In the latter two years of the plan, 1981 and 1982, the City's long-term financing needs were to be met through a combination of $862 million in private placements of MAC bonds and $950 million in public sales of City bonds. To the extent that City bond sales fell short of needs, those amounts were to be made up through public sales of MAC bonds, in the first instance, and then through use of the stand-by Federal guarantees only if, and to the extent that, MAC bond sales also fell short.

The MAC proposal would turn this plan on its head. It calls for the "up front" use of the $900 million in Federal guarantees in 1981 and 1982, along with the MAC private placements and a minimal amount of City bond sales ($100 million a year), to meet the City's capital needs in those years. At the same time, MAC would also sell bonds to the public, in the amount of $800 million, but the proceeds would be held on stand-by to meet prospective needs that might not be covered by City or MAC bond sales in 1983, 1984, and part of 1985.

Although the interest of New York City and State officials in gaining ready access to the remaining $900 million in Federal guarantees is understandable, there is every indication that the proposed use of the guarantees is not permissible under the law. First, the provisions of the Loan Guarantee Act, along with the legislative history of both the authorization and appropriations bills and the Agreement to Guarantee pursuant to the Act, all show clearly that the stand-by guarantees were intended to be used only if there were no credit available elsewhere from any source, including MAC, sufficient to meet the City's needs. Second, these materials are all tied to the four-year period ending on June 30, 1982, when the loan guarantee program expires. There is no indication that the "no credit elsewhere" test can be met prospectively by reference to potential problems arising after 1982, even though it was explicitly recognized that the City might not succeed in regaining full market access by that date. Third, Administration officials have confirmed this reading of the statute on a number of occasions, most recently in the oversight hearings held by the Senate Committee on Banking, Housing and Urban Affairs in January 1980. Finally, it should be noted that there is no compelling evidence that such use of the remaining Federal guarantees is necessary, even if it were permitted by law. These points are discussed in more detail below.

The first source to consult is the Act itself (P.L. 95–339). The language of the statue provides that guarantees may be made "only if the City is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the City's financing needs." This language was taken from the House bill, H.R. 12426, and the report of the Committee on Banking, Finance and Urban Affairs states further that "the use of the word 'efectively' is intended to create a test of the practical unavailability of credit, including maturity and rate, through the private market." Presumably the phrase "or elsewhere" would refer to sources other than the market, including the private placements with financial institutions and pension funds which are a major component of the City's 1978–1982 Financial Plan. Since it was made clear to the Committees involved and to the Congress at the time the Act was passed that MAC was and would continue to be a major source of credit for New York City in meeting its financing needs, both through the sales of bonds in the public credit markets and through private placements, it is evident that this "no credit elsewhere" requirement was intended to cover sales of MAC bonds as well as City bonds.

The intended use of the Federal loan guarantees in the context of the City's Financial Plan for fiscal years 1979–1982 was explained in some detail in the course of hearings by the Senate Banking Committee on the proposed New York City loan guarantee legislation in June 1978. Mr. Felix G. Rohatyn, Chairman of the Municipal Assistance Corporation, and author of both the loan guarantee proposal and the proposal recently adopted by the MAC board, testified that only a portion of the guarantees authorized should be made part of the "original committed package," with the remainder "kept on a stand-by basis against possible failure of future market access" by both the City and MAC. The testimony expressly foresaw the possibility that the City might fail to regain market access for its bonds "in part or in toto" in 1981 and 1982. It indicated that if this occurred, then MAC would "take up the slack before any of the guarantees are called upon." The following are excerpts from Mr. Rohatyn's testimony of June 7, 1978 (it assume a $2 billion loan guarantee authorization, which was subsequently reduced to $1.65 billion by the Committee of Conference):

"... The Federal guarantees would be limited to $1 billion as part of the original committed package, with the second billion kept on a standby basis against possible failure of future market access ... The ($4.5 billion) long-term portion would be made up of a private placement of $1.5 billion MAC bonds with city pension systems and financial institutions, $1.0 billion Federally guaranteed bonds with city and state pension systems, $1.0 billion MAC bonds sold publicly over 4 years, $1.0 billion of city and/or MAC bonds sold publicly in years 3 and 4, backed up by the remaining Federal guarantees ..."

"... The likelihood of the second billion dollars of Federal guarantees being called upon would be remote, in my judgment. If the city failed in part or in toto with its attempts to re-enter the markets in years 3 and 4, MAC would still have almost $1 billion of capacity to take up the slack before any of the guarantees are called upon."

The intended use of the Federal guarantees and the application of the "no credit elsewhere" requirement were described in the course of Congressional action on the appropriation of the New York City loan guarantees. Based on the testimony of the Treasury Department at a Subcommittee hearing on August 18, 1978, the Senate Appropriations Committee included the following language in the report accompanying the New York City loan guarantee appropriations bill, H.J. Res. 1088:

"The Committee directs that the remaining $900 million in guarantee authority, over and above the $750 million intended to be provided in fiscal years 1979 and 1980, be available on a stand-by basis only. This means that primary reliance should be placed on sales of MAC bonds as a back-up to anticipated sales of City bonds in fiscal years 1981 and 1982, and guarantees should be provided only to the extent that the MAC back-up is not sufficient to meet the City's financing needs. In general, the Department of the Treasury should seek to minimize the extent of Federal involvement in New York City's financing arrangements."

There was no contradictory language in the House Appropriations committee report, and the appropriation bill passed both houses of Congress without amendment and was signed into law. Accordingly, the Senate report language would govern in this respect.

The intent of the law, and the directives and understandings contained in the legislative history, were incorporated in the Agreement to Guarantee pursuant to the New York City Loan Guarantee Act entered into on November 15, 1978 by the Secretary of the Treasury, acting in the name of the U.S. Government, with the State of New York, the City of New York, the New York State Financial Control Board, and the Municipal Assistance Corporation for the City of New York. Exhibit A of that Agreement to Guarantee sets forth a financing plan showing the levels of MAC indebtedness and long-term City indebtedness for fiscal years 1979–1982. A copy of this Exhibit is attached. It shows $300 million in public sales of MAC bonds in fiscal year 1981 and $650 million in 1982, and reference is made to footnote (5) which indicates that these MAC bonds are "to be issued to the extent that the City is unable to issue Long-Term City Indebtedness in Public Markets in 1981 or 1982, as per the Financing Plan." Furthermore, Exhibit A also lists a total amount of $900 million in guaranteed bonds to be sold to City and State pension funds in fiscal years 1981 and 1982, with an acompanying footnote (6) which states that those guaranteed bonds are "to be issued to the extent the City is unable to issue long-term City indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the Financing Plan." Thus, it could not be more clear from the formal legal document executed pursuant to the provisions of the Act that the $900 million in "stand-by" Federal guarantees is to be issued only if, and to the extent that, neither the City nor MAC is able to sell bonds to the public in sufficient amounts to meet the City's financing needs in fiscal years 1981 and 1982.

The preceding discussion of the legislative history and legal documents connected with the New York City loan guarantee authorization and appropriations bills shows conclusively that the intent was to address the City's needs through 1982—the date of expiration of the loan guarantee program. At no point did anyone envision the use of the guarantees in order to permit MAC to sell bonds to the public and reserve the proceeds for use after 1982, nor is there any basis for making the "no credit elsewhere" test apply prospectively to the post-1982 period.

In subsequent hearings before the Committee on Banking, Housing and Urban Affairs, the Treasury Department has repeatedly maintained the position that the $900 million in stand-by guarantees was to be used only in the event that both City bond sales and MAC bond sales were insufficient to meet the City's financing needs in 1981 and 1982. The most recent instance occurred in the course of the Committee's oversight hearings in January and February 1980. The following colloquy between Senator Lugar and Assistant Secretary Altman indicates in detail and unequivocally that the stand-by guarantees cannot be used in the event of failure by the City to sell its bonds in sufficient amounts so long as MAC is able to meet the City's financing needs in those years:

Mr. ALTMAN. We see no reason why the remaining $900 million of guarantee authority will need to be used and it was not foreseen to be used in the original plan. I think the original plan is working and those standby guarantees will remain standby and not be used because any failure by the city to re-enter the markets on schedule, which would be next year for $300 million and the next year for $645 million, will be made up by MAC, not the Federal Government.

Senator LUGAR. What is the triggering mechanism that would bring in that $900 million?

Mr. ALTMAN. A failure by the city and a failure by the Municipal Assistance Corp. to be able to get into the public markets or any other bond markets to raise the amounts that have to be raised in fiscal years 1981–82. In other words, the city schedule calls for the public sale of $300 million in fiscal year 1981 and $645 million the following year. If the city cannot sell these amounts quickly, MAC has sufficient reserve debt capacity to meet the city's needs. Only if both the city and MAC fail would the standby Federal guarantees be used.

Senator LUGAR. It's your judgment, then, even after this $100 million is guaranteed and we reach the $750, that throughout the rest of this calendar year of 1980 there would not be a need for further Federal guarantees?

Mr. ALTMAN. Yes.

Senator LUGAR. And there is some reserve capacity with MAC now that would obviate the need for that in the foreseeable future or, to be very specific, thoroughout the entirely of this 4-year plan?

Mr. ALTMAN. Yes; MAC has $1.1 billion of scheduled, unused, funding authority during the remainder of the plan. If the city can't meet its plan for $945 million of its own bonds, you have that as a backup and MAC continues to have access to the public credit market.

The legislative history should be sufficiently conclusive to determine that the remaining $900 million in Federal loan guarantees cannot be used as contemplated in the current MAC proposal. However, it should also be noted that there is no strong evidence that the proposed use of the guarantees is necessary to enable New York City to meet its financing needs in fiscal year 1983 and subsequently. In testimony given at the Senate Banking Committee's oversight hearings in February 1980, MAC Chairman Rohatyn recommended an increase in the Corporation's statutory borrowing authority from the present $8.8 billion to $10 billion and stated that the latter amount would be "ample to finance the City through 1984," and well within MAC's economic capacity and maximum funding requirements. This recommendation was endorsed by the Governor of New York State at the same hearing. The documents accompanying the recent MAC proposal include draft legislation now pending before the New York State Legislature to accomplish this increase in borrowing authority.

Close examination of a schedule developed by MAC projecting the City's long-term financing requirements confirms that they could virtually be met through 1984 by a combination of City bond sales and MAC borrowing up to an authorized amount of $10 billion (and before that point, there should be sufficient economic capacity to support an additional increase in MAC's borrowing authority, if necessary). The figures shown on the MAC schedule may well turn out to be in excess of actual needs. The City's capital spending has fallen far short of projected levels in the first two years of the Financial Plan, 1979 and 1980, and the figures shown for 1982 and beyond are more than double current capital spending levels.

It has been argued that MAC's public market access is limited to a range of $600 to $750 million per year, irrespective of its borrowing authority or economic capacity, and that this constrains its abiltiy to meet the City's financing needs after 1982. However, calculations using the MAC schedule indicate that annual public sales of MAC bonds even in the $500–$600 million range from 1981 through 1984 should be sufficient to support an adequate capital financing program, along with the projected City bond sales. If the latter run higher than projected, or if the City or MAC were able to obtain modest amounts from other sources, such as additional private placements with financial institutions, then the full program could be carried out, assuming the City has the capability to do this.

This leaves one more question, touched on briefly in the materials accompanying the MAC proposal. That is whether MAC's continued market access is dependent on the assurance of the "up-front" availability of the remaining $900 million in Federal guarantees. Obviously this has not been the case to date. MAC has carried out all of its scheduled public offerings, except for one planned for this spring which was cancelled due to extraordinarily adverse market conditions, and also due to the fact that the City did not need the money. Should such conditions recur, and should the need be there, then some of the stand-by guarantees could be provided under the provisions of existing law. In the absence of such extraordinary conditions, there is no evidence that keeping the $900 million in standby guarantees on stand-by will impair MAC's market access. There is only the caution that such assertions, if made too strongly and too often, could become a self-fulfilling prophecy.

FINANCING PLAN

[In millions of dollars]

	Fiscal year—			
	1979	1980	1981	1982
MAC Indebtedness				
Public markets	500	500	[1] 300	[1] 650
Financial institutions [2]	340.575	314.760	314.760	204.605
City pension funds [2]	60.425	222.240	222.240	120.095
State pension funds				
Long Term City Indebtedness				
Public markets			[3] 300	[3] 650
Financial institutions				
City pension funds [4]	250	125	[5] 150	[5] 300
State pension funds [4]	250	125	[5] 150	[5] 300
Seasonal Loans				
Public markets [3]		900	900	900
City pension funds [6]	375			
Banks [6]	375			

[1] To be issued to the extent the city is unable to issue long term city indebtedness in public markets in 1981 or 1982, as per the financing plan.

[2] Pursuant to the bond purchase agreement.

[3] Pursuant to sec. 6.16 of this agreement.

[4] Pursuant to the guaranteed bond purchase agreement.

[5] To be issued to the extent the city is unable to issue long term city indebtedness in public markets in 1981 or 1982 or MAC is unable to issue MAC indebtedness in 1981 or 1982 on reasonable terms and conditions, as per the financing plan.

[6] Pursuant to the loan agreement, to be reduced by any notes sold in the public market.

Mr. JAVITS. Mr. President, I do not wish to extend the debate except to call one point to the Senator's attention. It is the law which is paramount, and I think we can all agree on that. But when you cannot find it in the law, you must look to the intent, and to me the persuasive words in section 103, paragraph 2, are:

> The Secretary determines that the city is effectively unable to obtain credit in the public markets or elsewhere in amounts and terms sufficient to meet the city's financing needs.

Mr. PROXMIRE. May I say that I agree with the Senator wholeheartedly. He is dead right. That determination is to be made by the Secretary of the Treasury, and our amendment would in no way inhibit it.

Mr. JAVITS. But we are robbing him of it by your amendment.

Mr. PROXMIRE. No; I say to my good friend from New York, we are not doing it, because it is up to him as to whether the terms and conditions are reasonable. If he says they are not reasonable, that sufficient credit is not available, then there is no question in my mind that he can go ahead and provide the guarantees.

Is that not right?

Mr. JAVITS. The reasonable words are not used. It says that the Secretary determines that the city is effectively—that is the key word—effectively unable. So that is what we are contending for. It is his decision, not ours here. In my opinion, we are making the decision based on the Senator's amendment.

Mr. PROXMIRE. I understand the Senator. He makes a very sensible objection. I understand why he is so sensitive to this. I am perfectly willing to make it clearer—and I think we can handle that in conference—make it clearer that the discretion is with the Secretary of the Treasury. It should be with the Secretary of the Treasury.

All we are saying, however, is that if he finds in his judgment that credit is not available on a reasonable basis——

Mr. JAVITS. Effectively.

Mr. PROXMIRE. On a reasonable basis, that is right. All right, effectively.

Mr. JAVITS. Then the Senator is imporing words.

Mr. PROXMIRE. Well, effectively unable to obtain credit, then he can provide the guarantees; the basic point is that he should follow the law which provides there be no credit elsewhere in amounts and terms sufficient to meet the city's needs.

Mr. MOYNIHAN. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield.

Mr. MOYNIHAN. Mr. President, not 2 weeks ago, I was quoted in the Wall Street Journal as describing my senior colleague as the finest lawyer in the Senate. The journalist commented that this was the common judgment of this institution. So I certainly would not wish to add to my senior colleague's masterful statement, but I would wish to say that there is a memorandum of law prepared by the firm of Paul, Weiss, Rifkind, Wharton, and Garrison advising the MAC Corp. in this matter, which I will not put in the RECORD but it will be available to anybody who might like to see it.

I hope that Senator JAVITS' view will prevail.

I wish to thank the chairman for his courtesy, thoughtfulness, and openness in this matter, as in all things. He did all we could wish, even when he does not share our views.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The additional 10 minutes time has expired.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS ADMINISTRATION

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with the minority leadership.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 607, the joint resolution making urgent supplemental appropriations for the Veterans' Administration for the fiscal year ending September 30, 1980; provided further that there be not to exceed 10 minutes, to be equally divided between Mr. MATHIAS and Mr. PROXMIRE; that there be one amendment in order to be offered by Mr. MATHIAS; that there be not to exceed 10 minutes, equally divided, on that amendment; and that the Senate then return to the military construction authorization under the order previously entered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

The Senate proceeded to consider the resolution.

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require.

Mr. President, the Veterans' Administration, on September 4, 1980, requested an additional $40,000,000 for the current fiscal year to cover a shortfall in the readjustment benefit program, due to higher than anticipated enrollments of Vietnam-era veterans under the GI bill. According to the VA, about 260,000 trainees were enrolled in the GI bill program in August, and this number is expected to increase with fall enrollments to about 500,000 in September and about 600,000 in October. The supplemental of $40,000,000, coupled with a $20,000,000 transfer by the VA from its education loan fund and $55,000,000 from compensation and pensions, would cover a total shortfall of $115,000,000 and thus prevent an estimated 128,000 beneficiaries from facing delays of up to 4 weeks in receipt of educational benefit checks.

The Congress has already provided a total of $2,278,535,000 for readjustment benefits in fiscal year 1980. If approved, this supplemental appropriation of $40,000,000 would bring the total 1980 readjustment benefit appropriation to $2,318,535,000 for the current fiscal year.

Mr. President, the House passed this resolution yesterday afternoon with the full $40,000,000 included. In view of the severe time constraints surrounding this legislation, the resolution has been held at the desk rather than referred to the Senate Appropriations Committee for consideration, although the committee, in my presence yesterday, did discuss this issue and was aware that that technique was being used. The only alternative to quickly providing these supplemental funds is to tell 128,000 veterans that their GI bill benefit checks will be delayed for another 3 weeks. Under these circumstances, I urge the Senate to approve the full budget request of $40,000,000, as passed by the House.

I reserve the remainder of my time.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I certainly support enthusiastically the suggestion and proposal that has been made by the Senator from Wisconsin. I feel that we have dealt closely, almost parsimoniously, with the GI benefits and that to cause them to be delayed as a result of some failure—managerial failure or administrative failure—would be to add insult to what I believe already is injury.

So I think it is imperative that we move as the Senator from Wisconsin has suggested and that we make these funds available.

As the Senator said, this matter was discussed yesterday in the Appropriations Committee during the committee's review of appropriations for the State, Justice, and Commerce appropriations bill for the fiscal year 1981. At that time, we agreed to attach an urgent supplemental appropriation for the Bureau of the Census to House Joint Resolution 607.

Due to the counting of more households than anticipated in the 1980 Decennial Census and the litigation protesting undercounts that is forcing the Bureau to keep their field offices open longer than expected, there is a deficiency of $27,000,000. We are advised that the Bureau will literally run out of funds tomorrow and that 6,200 employees will be immediately furloughed, and that 5,000 intermittent employees will also be released.

In order to stay within the 1980 budget ceiling the administration requested that this deficiency be covered by transfers from the following Commerce appropriations: National Oceanic and Atmospheric Administration, "Operations, research, and facilities", $10,000,000; Science and Technical Research, "Scientific and technical research and services", $2,000,000; and the Maritime Administration, "Ship construction", $15,000,000. It was also proposed that $7,800,000 of the Maritime Administration's operating differential subsidies, will be deferred from payment until October 1 in order to stay within the outlay ceiling.

However, we were just advised this morning by the Congressional Budget Office that there is sufficient room in the budget resolution to accommodate a straight supplemental appropriation of $27,000,000 without resorting to the use of transfers. This is indeed good news as we found yesterday that our 1981 ceiling would not allow us to immediately restore the transferred funds as originally planned.

I might note, Mr. President, that this action will have a very important impact on a number of offices in California, Louisiana, and Indiana, but I cannot fail to note that the greatest impact will be in Suitland, Md. So I urge the Senate to adopt this amendment.

Mr. PROXMIRE. Mr. President, there are few things more painful than adding millions of dollars to the Federal budget. All of us dislike doing that; $27 million is a lot of money. It represents a lot of taxes that have to be paid. It hurts. It really hurts.

Mr. MATHIAS. If the Senator will yield, it is painful for us to add this money, but it would be more painful for those 900 employees in Suitland, Md., not to get their paychecks. That would hurt even more.

Mr. PROXMIRE. Mr. President, I was about to make that point. I think the Senator from Maryland is correct. Much as I deplore the fact that we have to add money to the budget, the following consequences will ensue if we fail to do so.

In the first place, the 6,200 employees will be furloughed immediately and an additional 5,000 intermittent employees will be released. A total of 11,000 people would be out of work.

Second, there will be a delay of about 3 weeks in completing the field work of the decennial census in 37 offices.

Much more than that will happen, of course, if we do not eventually provide the funds.

Third, our failure to act will create a conflict with a court order requiring the offices to stay open.

There will also be a delay in processing the census questionnaires.

Also, I understand that there will be disruptions and delays in all programs financed by the Periodic Censuses and Programs Appropriation. This includes the economic censuses, the census of agriculture, the census of governments, intercensal demographic estimates, and geographic support activities.

These are very essential Federal activities. The executive branch must perform them. We have to pay for them. We are not only concerned about the loss in jobs, but about the loss in services which our Government simply has to provide.

Is the amendment pending?

UP AMENDMENT NO. 1576

Mr. MATHIAS. Mr. President, I send an amendment to the desk at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. Mathias) proposes an unprinted amendment numbered 1576.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

DEPARTMENT OF COMMERCE
Bureau of the Census
Periodic censuses and programs

For an additional amount for "Periodic censuses and programs", $27,000,000, to remain available until expended.

Mr. PROXMIRE. Mr. President, Senator Mathias and I have discussed this issue in some detail, and as manager of the bill I am glad to accept the amendment. Let me amend that statement. I am not glad to accept it. I am sad to accept the amendment, but it has to be accepted. That is an unfortunate fact of life.

Mr. President, I yield back the remainder of my time on the amendment.

Mr. MATHIAS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1576) was agreed to.

Mr. PROXMIRE. Mr. President, if there be no further discussion on the joint resolution, I yield back my time on the joint resolution.

Mr. MATHIAS. Mr. President, I yield back my time on the joint resolution.

Mr. CRANSTON. Mr. President, I would like to take this opportunity to express my deep appreciation to the distinguished members of the Senate Appropriations Committee—particularly Senators Magnuson, Proxmire, Young, and Mathias—for their efforts to secure prompt Senate approval of House Joint Resolution 607. This measure will make an additional $40 million in fiscal year 1980 funds available to the VA for the purposes of payment of GI bill benefits, and prompt congressional approval of these funds is urgently needed so as to prevent significant delays in the payment of certain GI bill benefits to the thousands of veterans returning to schools this month.

Mr. President, as chairman of the Veterans' Affairs Committee, I am very grateful for the responsiveness and sensitivity shown by my colleagues on the Appropriations Committee in this regard. I hope that the Members of the House will address these same concerns for prompt enactment of this measure by speedily approving the Senate's amendment relating to the Bureau of the Census.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the joint resolution.

The amendment was ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution (H.J. Res. 607) was read the third time.

The PRESIDING OFFICER. The question is, Shall the joint resolution pass?

So the joint resolution (H.J. Res. 607) was passed.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 3059, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 3059) to authorize certain construction at military installations, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Time for debate on this bill shall be limited to 1 hour, to be equally divided and controlled by the Senator from Colorado (Mr. Hart) and the Senator from Texas (Mr. Tower), with 30 minutes on any amendment (except a Jackson amendment, offered on behalf of the committee, relative to binaries (chemical bombs), on which there shall be 2 hours; a Pryor amendment, relative to a "general alarm system," on which there shall be 30 minutes; and a Hart amendment, relative to binaries, on which there shall be 2 hours), and with 20 minutes on any debatable motion, appeal, or point of order.

Mr. HART. Mr. President, I ask unanimous consent that the following members of the staff of the Senate Committee on Award Services be accorded the privilege of the floor during the consideration of S. 3059: Mr. Frank Sullivan, Mr. James Smith, Mr. Paul Besozzi, Ms. Marie Dickinson, Mr. Rhett Dawson, Mr. Ed Kenney, and Mr. Carl Smith.

In addition, I make the same request for the following members of my personal staff: Mr. Larry Smith and Mr. Peter Gold.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that Mr. Doug Jackson, of Senator Pryor's staff, be granted the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. HART. Mr. President, I ask unanimous consent that the time be equally divided on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, the pending legislation, S. 3059, is an annual authorization bill which provides for the construction of new facilities for all the military services. In addition, authorization is included for the funds necessary to operate, maintain, and repair the 400,000 units of family housing now in the military inventory.

The Department of Defense amended request for military construction for fiscal year 1981 was $5,515,210,000. This compares with $3,838,846,000 authorized for fiscal year 1980 and reflects substantial real growth in this program. A significant part of that real growth reflects new initiatives to expand our capability to operate in the Indian Ocean-Persian Gulf region.

The amount recommended to be authorized by the Armed Services Committee for fiscal year 1981 is $5,448,618,000, about $67 million less than the amended budget request.

In reviewing this bill, the committee recommended deletion or deferral of many projects where the justification or urgency was questionable, and based on service-furnished lists of high priority, unfunded requirements, additional projects have been recommended.

Let me highlight several points that are covered in more detail in the committee report.

MID-EAST BASES

The situation with regard to the establishment of contingency bases in the Indian Ocean-Persian Gulf region is one that has evolved rapidly. In a budget amendment the Department requested authorization to begin construction of bases in Oman, Kenya, and Somalia. In addition, added capability was sought for Diego Garcia. While the committee was supportive of the requirement to improve our capability to move military forces to, and operate out of, bases in the region, the specific plans presented were not well defined and were dependent on emerging country-to-country agreements.

The committee, therefore, has recommended the establishment of a construction contingency fund for Mid-East bases and has included provisions for extraordinary oversight to monitor the expenditure of these funds. The committee's desire was to give the Secretary of Defense flexibility to proceed as the situation warrants, subject to consultation with the Congress.

ENERGY

For several years, Mr. President, the committee has sought to use this annual authorization bill as a vehicle to involve the Defense Department in innovative energy initiatives. These initiatives have ranged from the mundane—adding building insulation, for example, to those at the edges of new technology. The Defense Department has made a reputation for itself in the Federal Government as the result of energy conservation that statistics can attest. Cooperative efforts with the Department of Energy are underway all across the United States. I invite my colleagues to visit a military community in their State and see what they are doing to contribute to solutions to the energy crisis; I think each of them will be surprised and pleased at the range of ongoing efforts.

MARIANAS LAND LEASE

On a separate issue, Mr. President, the committee has recommended that the Department's request for $28 million to lease land for defense purposes in the Marianas Islands not be approved. The Defense Department justified this land lease as "insurance," in their term, against future possible defense needs in that region of the world. The committee was not convinced that such "insurance" was necessary. However, new information has been forthcoming recently on this issue and, since the request is now included in the House counterpart bill, I fully expect to carefully reexamine the request in conference, together with my Senate colleagues.

Mr. President, the bill recommended by the committee deserves the support of the Senate and I strongly urge its passage.

I want to compliment the ranking minority member of the Senate Armed Services Subcommittee on Military Construction and Stockpiles (Mr. THURMOND), for his usual fine support in handling this bill; his efforts are greatly appreciated, together with the efforts of our extremely fine staff.

Mr. THURMOND. Mr. President, I rise in support of the fiscal year 1981 Military Construction Authorization bill, S. 3059, which provides for the military, defense agency, family housing, and reserve construction programs.

This bill authorizes $5.4 billion in construction programs, a significant increase over past years but one which still fails to aggressively address the huge backlog of important projects which now total around $40 billion.

MIDDLE EAST FUND

One important element of this bill is the establishment of a Middle East, Indian Ocean area emergency construction fund of $200 million. The committee favored establishment of such a fund rather than act on specific construction estimates which may or may not be accurate. Therefore, while the committee supports military construction in this important area the members resolved to maintain tight control by establishing a general fund and the requirement of future justifications before these moneys can be expended.

Mr. President, the committee also continued its restraint in funding projects in Europe or NATO for which we believe our allies should make significant contributions. The Defense Department has not been effective in gaining agreement for more cost sharing by our allies and more attention should be given to this subject.

DIA BUILDING

One item of special interest in the pending bill is the first increment of funding for a new building for the Defense Intelligence Agency. This project has been delayed for too long and, now that funds are finally being requested, the committee found that the site surveys lacked depth and tight cost estimates. Therefore, the committee allowed only $32 million of the request and directed that additional site studies be made prior to the beginning of construction.

Another issue which received special attention from the committee was the subject of the use of appropriated funds for morale, welfare, and recreational facilities. The committee has sought a defensewide policy on these projects, and while one was issued early this year it lacked real direction in some areas. While the committee strongly endorses many of these projects, it must be realized that with an operational requirement construction backlog of $40 billion we should use all resources available to us to meet our construction needs. Therefore, a firm defensewide policy is required.

IMPORTANT PROJECTS ADDED

In the area of operational construction projects the committee did include a large number of high priority jobs not included in the budget. This move by the committee should enable the military to move faster in addressing some of its more pressing requirements.

Mr. President, I commend the able chairman of the subcommittee, the senior Senator from Colorado (Mr. HART) for his fairness in handling the hearings. Also, the staff assistant, Mr. Jim Smith, and his secretary, Mrs. Marie Fabrizio Dickinson, provided outstanding assistance to the committee members in preparation of this bill. I urge its approval by the Senate.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

AMENDMENT NO. 2324

(Purpose: To increase the funds for Ellsworth Air Force Base, South Dakota)

Mr. McGOVERN. Mr. President, I call up my amendment No. 2324.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. I wonder at this point if it would be in order, if the sponsor of the amendment, the Senator from South Dakota, would agree, to make a unanimous-consent request which would prohibit amendment of this amendment.

Mr. McGOVERN. I have no objection to that, Mr. President.

Mr. HART. Mr. President, I ask unanimous consent that this amendment not be amended.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WARNER. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WARNER. The Secretary of State is about to address the Republican caucus with respect to a very vital national issue, namely, the nuclear fuel situation in India. I wonder if we could have unanimous consent that there be no rollcall votes between now and the hour of 2 o'clock to facilitate the presentation of the Secretary of State?

Mr. CANNON. Will the Senator yield?

Mr. WARNER. Yes, Mr. President.

Mr. CANNON. Would that preclude us from going ahead with matters which are not contested? There are a number of amendments which I believe are acceptable.

Mr. WARNER. Certainly not.

Mr. HART. Mr. President, reserving the right to object, I think the majority side would like to clear this request with the leadership on the majority side since, in the normal course of affairs, the majority leader enters into requests of this sort. As floor manager on the majority side, I have no personal objection, but I think the majority leader ought to be apprised of the request and concur in it.

Mr. WARNER. I thank my colleague.

Mr. HART. I suggest the absence of a quorum.

Mr. WARNER. Mr. President, we can go ahead, with the understanding that the majority leader will be consulted on this matter. I withdraw the request for the moment.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. McGovern) proposes an amendment numbered 2324.

Mr. McGOVERN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, line 24, strike out "$17,560,000" and insert in lieu thereof "$20,720,000".

On page 43, line 19, strike out "$521,873,000" and insert in lieu thereof "$525,033,000".

On page 43, line 21, strike out "$640,630,000" and insert in lieu thereof "$643,790,000".

Mr. McGOVERN. Mr. President, the amendment I am offering today, which is now pending, authorizes the construction of a new dining facility for Ellsworth Air Force Base in Rapid City, S. Dak. The additional cost of this facility for the fiscal year 1981 military construction authorization bill is $3,160.000.

I think Senators will recognize that, over the past several years, a consensus has taken shape in Congress that military personnel and military readiness are the two highest priority items on the national security agenda of our country. I have strongly supported efforts to raise military pay and to increase the funding of readiness accounts. I think these are worthwhile expenditures which will help us get the maximum security payoff for every defense dollar spent.

But if we take the time to examine personnel and readiness problems, including the related morale problems, from the viewpoint of the men and women serving in the All-Volunteer Force, it becomes clear that better pay is not a sufficient response even if it is the most urgent response. The status of the military installations where our Armed Forces personnel live, eat, sleep, and work must also be improved if we are to attract high-quality people to the military and, equally important, if we are to retain the experienced personnel required for a lean and ready force structure.

In short, we need to stop, as best we can, the neglect of our military personnel at our military bases. No one questions that operational requirements must take precedence, but we will not stem the exodus of experienced personnel from the military unless we provide not only a decent wage but also dignified living conditions at military bases in the United States.

Mr. President, I recently testified on this connection between readiness and the status of our military bases, especially Ellsworth Air Force Base, and I ask unanimous consent that my testimony be printed at this point in my remarks.

There being no objection, the testimony was ordered to be printed in the Record, as follows:

TESTIMONY OF SENATOR GEORGE McGOVERN

I appreciate the opportunity to appear today before the Defense Appropriations Subcommittee to recommend that at least $1.5 million in Operations and Maintenance funds be added to the FY 1981 military budget to stem the deterioration of facilities at Ellsworth Air Force Base and to help the Base Commander turn the corner on the day-to-day repair needs of this critical defense installation.

In many ways, the status of Ellsworth Air Force Base in Rapid City, South Dakota, reflects the status of our military structure as a whole. Ellsworth possesses modern weapons; its military and civilian personnel are skilled and dedicated beyond question. But Ellsworth is not being maintained in an adequate manner with the unacceptable results that the advanced weapons are not fully utilized and the skilled personnel are leaving military service.

A consensus has developed in Congress that we need to shift more military resources to improve readiness. I support that consensus. But it appears that the whole question of defense installations is being left out of the readiness equation. Unless it is changed, efforts to improve readiness will be undercut.

For example, higher military pay and benefits are essential for retaining experienced personnel in the military. But it does not make sense to raise the military pay of an enlisted soldier to a 1980 level and then ask that soldier to sleep in a dormitory built for the Korean War, to eat in a dining room built before most of us entered the Senate, and to work in a converted World War II-era office building.

Or consider the weapons readiness problem. The failure of the helicopter rescue mission in Iran has focused attention on the problem of spare parts for our advanced weapons. Funding increases are properly being made in this area. But we will be unable to improve alert rates if the weapons to be repaired must be trucked in over roads cratered by potholes—on dilapidated service vehicles—into repair hangars where mechanics are forced to overhaul the systems with numbed hands because the corroded heating system and leaky doors are no match for the winter winds of the Black Hills of South Dakota.

Unfortunately, these situations are common occurrences at Ellsworth Air Force Base.

Based on my inspection trips to Ellsworth during the past few months, I recommend that property maintenance and military construction be given a higher priority in the current effort to improve the readiness of our existing force structure. Additional funds must be added to upgrade the facilities at Ellsworth and other key defense bases.

Mr. Chairman, Ellsworth Air Force Base plays a critical role in the maintenance of America's nuclear deterrent. It is the host to the 44th Strategic Missile Wing, which operates 150 ICBMs, and for the 28th Bombardment Wing (Heavy), which operates two B-52H squadrons, one KC-135 tanker squadron and an EC-135 command and control squadron. If South Dakota were to secede from the Union, Ellsworth would make our state the world's third largest nuclear superpower.

The military importance of Ellsworth will grow in the coming decade due to the conversion of the B-52 into a cruise missile carrier aircraft. In addition, the new strategic bomber to be selected by the Defense Department under the authority of the Glenn-Culver amendment to the FY 1981 Defense Authorization bill will almost certainly be based at Ellsworth, because its physical location halfway between the East and West Coasts offers maximum security to bombers against submarine-launched depressed trajectory missile attacks.

Therefore, Ellsworth is important to our security posture now and in the future, and sound national defense security cannot allow Ellsworth to operate at a lowered readiness level, for if Ellsworth's readiness is below par, the readiness of our deterrent is jeopardized. In 1979, for example, 775 missile off-alert hours at Ellsworth were directly attributed to non-availability of service-related vehicles.

But the fact is that the real property at Ellsworth is deteriorating. Let me cite a few examples of what I saw during my visits to the base:

Housing Accommodations: Dormitories for enlisted men built during the Korean War and lack many amenities of decent housing. Now unaccompanied enlisted housing is needed. In the meantime, extensive alterations are required to keep dormitories liveable.

Dining Facilities: The main dining hall for enilsted men is also of the Korean War era and needs refurbishing.

Aircraft Repair Facilities: A number of repair docks and hangars have 25 year old boilers which are worn out and corroded; furnace stacks are unsafe; sliding doors on the repair docks need to be weatherstripped to keep out the wind.

Vehicle Fleet: The vehicle fleet is a key part of Ellsworth's operation because 8.2 million miles are driven annually to maintain the 150 missile sites. Almost 6 million miles are driven over unimproved roadways under adverse weather conditions. Of the 866 registered vehicles at Ellsworth, 41% (352 vehicles) exceed age or mileage criteria or both, and by the end of Fiscal Year 1980, the level will rise to 45%. Many specialized vehicles are in worse shape: 50% of the snow plow flight line fleet has reached or exceeds ten years of age; 60% of the 45 Pax Buses used to rotate security forces to and from the missile fields exceed ten years.

Vehicle Maintenance: The vehicle fleet is the largest in the entire SAC Command, but repair facilities are spread over 4 different buildings separated by 2 miles. This set-up is inefficient.

Weapons Maintenance: The helicopter landing pads at each of the 15 missile launch control facilities are crumbling; the foundation rock is being blown away by helicopter air pressure. In addition, a number of missile access roads are too narrow for safe turning by the missile transporter erectors.

Road Repair: Road upkeep is being defeated by the South Dakota winters, leaving roads with large potholes and crumbling asphalt.

Energy Efficiency: New siding and insulation are needed in the Korean-era dorms and dining halls, in administrative and finance offices, in the vehicle maintenance areas and in many other locations at the base.

Base Engineering: Engineering facilities are spread out over 8 buildings, including converted old dining halls dating back to the 1950's. The Combat Support Group operates out of 6 buildings. Centralized management, cost-savings and office efficiencies become more difficult.

Living Conditions: Approximately 5,000 military dependents live at Ellsworth; they deserve a modern base exchange facility, adequate recreation opportunities, and decent commissary parking.

This backlog of repair projects and military construction projects at Ellsworth exists because the legitimate funding needs of the base have not been met. The Operations and Maintenance funds for these projects have been squeezed by budget pressures, inflation and energy costs at both the national and local level.

At the national level, readiness funds for base repair and for weapons overhauls have been shortchanged in favor of new procurement and gold-plated weapon systems. Operations and Maintenance funds are now being increased, but one of the legacies of years of neglect is a backlog of maintenance and repair projects in the Air Force of $500 million by the end of the current fiscal year. At Ellsworth, the backlog is $7.5 million.

Mr. Chairman, I recently wrote an article for the New York Times on the military budget which attempts to put the readiness problem in a larger foreign policy context. I am attaching a copy of the article for insertion at the end of my prepared remarks.

At the base or local level, repair funds get the short end of the stick. As you know, the Air Force divides up the O&M funds appropriated by Congress among the different commands. The Strategic Air Command allots its funds to the 26 bases under its authority, including Ellsworth.

The funds allocated to Ellsworth are used to pay for utilities, civilian pay, basic supplies and the contracts to perform the repair projects under the real property account.

This is where the squeeze on funds occurs. The Wing Commander at Ellsworth may start off the year by budgeting a share of the funds for a new roof on Hangar No. 10. But then utility costs go up and he must transfer money from the repair budget to pay for utilities and so he ends up postponing the roof repair—or the paint job or road repair or any of a dozen worthy projects—for another year.

Or take another example. At Ellsworth I was shown deep cracks in the asphalt aprons which were caused by wheel ruts made in summer and the freezing and thawing cycle in winter. Since hunks of asphalt can be sucked up into the jet engines and destroy them, the commander will use his limited repair funds to fix the runway instead of repairing that hangar roof.

This pattern repeats itself year after year. Soon that hangar roof can no longer just be repaired—it must be replaced at a high cost to the taxpayers. And in the meantime, that hangar has been wasting energy and the mechanics have been working in substandard conditions.

I have been using the hangar roof as an example, but the lesson applies to road repair, paint jobs for the dorms and to projects across the board. Deteriorating facilities which are not repaired in time must be replaced—at greater costs and with greater waste in the interim.

Over the years, Mr. Chairman, the Strategic Air Command has provided Ellsworth with approximately 80% of its validated repair requirements, although in certain years the figure has been even lower. This means that 20% of the facilities at the base have been eroding. This is unacceptable to me, to the managers and officers of Ellsworth, to the enlisted men and women and to their dependents.

Additional funds are needed to maintain the base property at Ellsworth. Budget increases in operations and maintenance will not only improve performance at the base and increase retention—but higher funding now will save tax dollars in the long run because pressure on the military construction budget will be reduced and energy efficiency will be advanced.

I recommend that this Committee add an additional $7.5 million to fund the backlog of maintenance and repair projects at Ellsworth. If this is not feasible, then at a minimum, I urge that this Committee budget an additional $1.5 million for O&M repairs at Ellsworth to bring the total FY 81 funding up to $3 million. This is the level the Ellsworth managers told me is required to enable them to halt the erosion in base facilities and to permit the base authorities to hold the line on every day maintenance projects.

In other words, an additional $1.5 million is required just to keep the backlog of maintenance and repair from growing even longer and to help Ellsworth start to reduce the backlog year by year.

This small extra investment will more than pay for itself over the long term in terms of improved retention, reduced energy costs, better productivity and extended use of existing structures.

These additional funds, in my view, should be used on a priority basis for "people programs" at the base—to improve the dormitories, dining halls and other facilities which are essential to a decent and dignified life for the military and civilian personnel at Ellsworth.

No one quarrels with the fact that weapons operation must get first priority. The Air Force is providing for sufficient funds for weapons operations, including the on-going Air-Launched Cruise Missile conversion program at Ellsworth. But it is time to stop the neglect of our military people at our military bases.

Mr. Chairman, I am attaching the list of BMAR projects which would be undertaken if additional funds are made available:

Mr. McGOVERN. Mr. President, today, I seek to focus the attention of the Senate on the military construction needs of one of the most important defense installations in the United States—Ellsworth Air Force Base, in Rapid City, S. Dak. As one of the major Strategic Air Command bases in the United States, Ellsworth houses 150 Minutemen II ICBM's and two B-52H squadrons. These numbers translate into 14.2 percent of the operational U.S. ICBM force, 9.5 percent of the U.S.-based strategic bombers, 2.1 percent of the strategic fuel/cargo tankers and 44.4 percent of the command and control aircraft.

As we consider the requirements for military construction funds around the country, we have to keep in mind the military role of the bases over the next 10 to 20 years. It is clear to me that Ellsworth Air Force Base will play a critical role in maintaining America's strategic nuclear deterrent for the rest of this century and beyond.

Recently, I asked the Library of Congress to study the role of Ellsworth in the context of future trends in the U.S. strategic force posture. The study makes clear that Ellsworth will make a vital contribution if the SALT II treaty is ratified or if the treaty is not ratified. This outcome is due primarily to the physical location of Ellsworth, which offers maximum protection and warning time for strategic bombers against submarine-launched missile attacks. In a SALT world, the Minuteman II ICBM's at Ellsworth would, in all likelihood, not be replaced and in a no-SALT world, according to this brief study, they might be replaced but with more modern weapons.

The conclusion I draw from this Library of Congress study, Mr. President, is that Ellsworth needs sufficient funds to permit the base personnel to carry out their critical missions in the years ahead which will be vitally important for American security either with or without the SALT II treaty.

Mr. President, I ask unanimous consent to have printed the study by the Library of Congress, entitled "Ellsworth Air Force Base and Future Trends in U.S. Strategic Force Posture," authored by Jonathan Medalia, in the Record at this point in my remarks.

There being no objection, the study was ordered to be printed in the Record, as follows:

ELLSWORTH AIR FORCE BASE AND FUTURE TRENDS IN U.S. STRATEGIC FORCE POSTURE

Strategic force development over the next 20 years is, of course, difficult to predict. Major decisions on strategic programs—MX, Trident, bombers, cruise missile carriers—are likely in the next few years. The fate of SALT II and the SALT process are uncertain, and existing agreements face a future more doubtful than before. The future of any weapon development program is clouded by technological uncertainty. Finally, future Soviet strategic forces, SALT policies, and responses to U.S. actions cannot be predicted with any certainty. Accordingly, the types and numbers of weapons to be deployed in the year 2000, and the locations of their deployment, cannot be predicted with confidence.

Nevertheless, several trends that may affect Minutemen and strategic aircraft, and thus Ellsworth Air Force Base, can be identified. This discussion examines some consequences for Ellsworth in two different situations: (1) a world in which SALT II and subsequent agreements enter into force, and (2) a world in which SALT breaks down and existing SALT agreements are scrapped.

A world with SALT: SALT II, if it enters into effect, would impose a ceiling of 2250 on numbers of strategic systems as of January 1, 1981, and several subceilings, including one of 1200 on MIRVed (i.e., carrying multiple independently targetable reentry vehicles) air to surface ballistic missiles (ASBMs) and launchers of MIRVed intercontinental ballistic missiles (ICBMs) and MIRVed submarine launched ballistic missiles (SLBMs). To comply with these limits, the United States must dismantle or destroy approximately 30 strategic systems by 1981 to get down to the 2250 level and an additional 150 or so would have to be retired between 1981 and 1984 to make room for planned deployments of more modern systems.

These requirements, however, are unlikely to affect Minuteman II because other strategic systems are almost certain to be dismantled instead. According to a detailed analysis of SALT II provisions submitted by Secretary of State Cyrus Vance in June 1979, "we will only be required to dismantle or destroy approximately thirty strategic systems (probably to be chosen from among mothballed B-52 heavy bombers which have already been heavily cannibalized for parts)."[1] The United States plans to dismantle two Polaris submarines, beginning in 1980, and to convert the remaining eight to attack or cruise missile launching submarines, thus reducing aggregate U.S. strategic systems by another 160. The 54 Titan II ICBMs, which carry one warhead apiece, may also be candidates for phasing out. When the number of launchers of MIRVed ICBMs and SLBMs reaches 1200, as it would do when the seventh Trident submarine begins sea trials, SALT II would require dismantling of existing MIRVed systems to compensate for the addition of new MIRVed systems; such compensation would not affect the unMIRVed Minuteman II force.

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[1] U.S. Department of State. Bureau of Public Affairs. SALT II Agreement, Vienna, June 18, 1979. Annex to letter of June 21, 1979, by Cyrus Vance, Secretary of State, submitting the SALT II Treaty to the President. Department of State Publication 8984, General Foreign Policy Series 316, Selected Documents No. 12A (Washington: U.S. Govt. Print. Off., 1979): 14.

Should the United States deploy the MX in multiple protective structures (MPS) as is currently planned, the relative contribution of Minuteman II to the ICBM force, as measured by such criteria as a number of RVs and throw-weight, would decline. MX/MPS should be more survivable than Minuteman II because of the basing mode, and each surviving MX would have 10 warheads, as opposed to one for Minuteman II. Minuteman based in silos and not defended with antiballistic missiles (ABMs), however, are generally thought to be increasingly vulnerable to a Soviet ICBM attack, so that one might expect their importance in the U.S. strategic posture to decline over time, even if MX is not deployed.

Nevertheless, the technicalities of SALT II could be said to increase Minuteman II's importance in a different way. The United States plans to deploy the MX and Trident systems, which count toward the subceiling of 1200 MIRVed systems. To take full advantage of the aggregate ceiling of 2250, however, the United States must deploy 1050 systems other than MIRVed systems. As of June 18, 1979, the United States deployed 54 Titan IIs, 573 heavy bombers, 160 launchers of (unMIRVed) Polaris SLBMs, and 450 Minuteman IIs. With the removal of 160 Polaris launchers and, probably, about 30 heavy bombers, the United States will have about 1047 unMIRVed systems. If the United States is to deploy strategic systems up to the 2250 aggregate ceiling, then, Minuteman II must be retained.

The conference committee on H.R. 6974, the FY 81 Defense Department authorization bill, has recommended replacing 50 Minuteman IIs with 50 Minuteman IIIs that have been in storage. This action could affect Ellsworth AFB by changing the types of missiles deployed there, but not their numbers. Any Minuteman IIIs deployed at Ellsworth could be affected by the Trident and MX programs, if the U.S. complies with SALT II ceilings on MIRVed ballistic missile launchers. Indeed, the United States might comply by putting the newly-deployed Minuteman IIIs back into storage and replacing them with Minuteman IIs.

The conference committee also called for the development of a multirole bomber to reach initial operational capability not later than 1987. Despite the earlier cancellation of B–1 procurement, it now appears that there may well be a new bomber. Whichever aircraft is chosen, Ellsworth will be one of the better sites for deploying it. Ellsworth's location far from the Atlantic, Pacific, and Gulf of Mexico maximizes warning time of an SLBM attack, and its northern location minimizes flight time to the USSR.

A no-SALT world: In a world with neither SALT I nor SALT II and with little prospect of future SALT agreements, U.S. concern about ICBM vulnerability would increase because no limits would be imposed on numbers of Soviet ICBMs or on numbers of warheads each ICBM could carry. This concern would make bomber and cruise missile carrier aircraft survivability more important. Ellsworth would be an attractive base for these aircraft because, as noted earlier, its location would enhance survivability.

Although some analysts contend that MX would not be viable without SALT II, the Administration insists that it would try to offset ICBM vulnerability with MX/MPS even if the Treaty fails. In that case, the relative contribution of Minuteman II to U.S. strategic forces would decline because Minuteman II warheads would comprise only a small fraction of the ICBM warheads surviving a Soviet attack.

In a no-SALT world, Minuteman II's importance would decline still further because the aforementioned technicalities of SALT II that encourage continued deployment of non-MIRVed systems would no longer hold. The United States would probably replace Minuteman II with Minuteman III, or perhaps with MX. Either change would increase Ellsworth's importance by giving it a larger fraction of U.S. ICBM warheads and throw weight.

If the MPS basing mode did not provide enough confidence in ICBM survivability, the United States might defend MX/MPS with ABMs. MPS is well suited to being defended by an ABM not far beyond the current state of the art, since the basing mode makes the ABM's task easier. (The defense need only intercept those warheads headed for missiles, not those headed for empty shelters.) In this case, a larger fraction of MX warheads would survive than would be the case with an undefended MX. Accordingly, the fraction of surviving ICBM warheads contributed by Minuteman II would be even smaller than it would be with an undefended MX/MPS system.

If ABM becomes capable enough to defend ICBMs based in silos—as it might in 20 years—then the United States would have several choices:

1. The United States could have a mix of MX missiles based in MPS and Minutemen in silos, and defend both with ABM. The Minutemen would be far more survivable than they are expected to be in the mid-1980s without ABM, so would assume greater importance.

2. The United States could decide that its ABM was good enough to permit foregoing MPS, so might deploy MX and Minutemen in silos. Since silo basing is less survivable than MPS basing, a silo-based MX force would contribute fewer surviving warheads to the postattack U.S. force than would an MPS-based MX force of the same size, assuming the defense of each to be equally capable. With silo-based MX, then, the Minuteman force would contribute a larger share of surviving ICBM warheads than it would with MPS-based MX.

3. The United States could have an ABM good enough to defend silo-based ICBMs and might believe that the Soviets had an equally capable ABM. In this case, Soviet ability to intercept MX warheads would greatly reduce U.S. confidence in MX's ability to destroy Soviet silo-based ICBMs. Accordingly, the United States might choose to forego MX, deploy ABMs, and rely on the Minuteman force. Minuteman would then assume more importance to U.S. force planners than it would in the two cases discussed above.

4. The United States could decide to defend silos, forgo MPS, deploy MX in silos, and scrap Minutemen. In that case, the importance of Ellsworth would depend on where MX was deployed. It would seem reasonable to base MX at old Minuteman sites. One reason for basing MX/MPS in the Great Basin is to avoid the severe northern winters that would interfere with the movement of missiles between shelters. In a silo system, however, weather is much less significant, as evidenced by the basing of Minuteman in South Dakota, Montana, and elsewhere. Additionally, Ellsworth's interior and northern location would recommend it as a site for basing MX.

5. Some assert space-based lasers might provide very effective defenses against ballistic missiles. Should the United States and the USSR deploy such systems, bombers and cruise missiles would assume increased importance because they would not be vulnerable to these lasers. Air bases in the northern United States, and particularly in the North Central states, would assume greater relative importance in U.S. strategic forces.

Mr. McGOVERN. Mr. President, in recent months, I have made several inspection trips to Ellsworth to examine the base facilities and to speak with dozens of pilots and engineers, men and women, enlisted personnel and officers. My conclusion is that the real property standards are not being maintained and replaced at a sufficiently high standard in light of the prominent military missions Ellsworth is required to carry out.

I have seen cracked asphalt on the runway aprons, drafty repair docks, poorly lit dormitories, potholed roads, and many other substandard conditions which the base managers are doing their best to overcome with the limited funds at their disposal.

For example, of a total of 1,111 SAC housing units declared inadequate, about one-third, or 388, are located at Ellsworth, even though only 5 percent of the SAC military and only 3 percent of the SAC civilian personnel are located at the base.

Mr. President, I recently asked the Library of Congress to examine the last 10 years of military construction funding and operations and maintenance and funding for Ellsworth. In addition to concluding that one-third of all SAC inadequate housing units are located at Ellsworth, the study also reveals that, over the past 10 years, only 5 percent of SAC military construction spending has gone to Ellsworth, even though 14 percent of this Nation's ICBM's are located there and 9 percent of the strategic bomber force is based there. The figures also show that the 5 percent military construction level is about on par with the 5-percent share of total SAC military and civilian personnel at Ellsworth.

These figures confirm that Ellsworth's funding over the past 10 years has not kept pace with Ellsworth's total share of strategic weapons. These figures bolster the case that a greater share of funds is needed to maintain Ellsworth in a proper manner.

Mr. President, I ask unanimous consent to have printed at this point in my remarks the analysis by the Library of Congress of data provided by the U.S. Air Force on the 10-year funding history of Ellsworth.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., September 4, 1980.

To Honorable George McGovern, Attention: Alex Knopp, 4239 Dirksen, Washington, D.C. 20510.

From Richard P. Cronin, specialist in national defense.

Subject U.S. Air Force response to questions relating to maintenance work at Ellsworth Air Force Base.

Attached, via a cover letter dated August 20, 1980, is the Air Force response to questions posed at your request concerning military construction and maintenance work at Ellsworth Air Force Base over the past ten years and related matters. The data submitted by the Air Force appears to be responsive to all of the questions posed in your letter to Mr. Gilbert Gude, Director, Congressional Research Service, of July 14, 1980, except numbers 10 and 11. We have responded separately to question 11 as this required an independent Congressional Research Service analysis of the relative importance of Ellsworth Air Force Base in the U.S.

strategic forces posture over the next twenty years, based on current and foreseeable strategic weapons programs.

With regard to question 10, we only asked the Air Force to provide certain specific data concerning the base and its role in the U.S. strategic force structure, which they did. We felt that its approximate priority or importance could be inferred from the data thus provided.

The data provided by the Air Force can be summarized as follows: Ellsworth AFB is one of 25 years installations under Strategic Air Command (SAC) jurisdiction. This number has changed little over the ten year period.

The base houses 14.2 percent of the operational U.S. ICBM force, 9.5 percent of the U.S.-based strategic bombers, 2.1 percent of the strategic fuel/cargo tankers and 44.4 percent of the command, control and communications (C^3) aircraft.

The authorized strengths of Ellsworth AFB units, including tenant units, currently total 6,320 military and 820 civilian personnel, or, respectively, 5.1 and 3.3 percent of all SAC personnel. The base also has 5.15 percent of all SAC on-base dependents. Perhaps significantly, of a total of 1,111 SAC housing units declared inadequate, 388, or about one-third are located at Ellsworth.

Over the past ten years Ellsworth has received, in dollar amount, 5.07 percent of SAC military construction spending. Over the past three years the base has received about 2.0 percent each year of the SAC real property maintenance funding.

On the basis of the numbers of ICBM's and aircraft assigned to the facility, Ellsworth would appear to be an important base within a relatively stable total base structure. It would require similar data on every other important base to determine exactly how significant Ellsworth AFB was in comparison with other bases having large shares of the U.S. strategic missile and aircraft forces.

Due to the unknowns about other bases, including the age and condition of their housing and buildings, it is not possible to make conclusive judgments about whether Ellsworth has been receiving military construction and real property maintenance funding commensurate with its importance and need. The total share of construction funding for the ten year period approximates the share of total SAC military and civilian personnel assigned to the base, i.e. about 5 percent in each case, but less than the percentage of ICBM's and strategic bombers and more than the percentage of fuel/cargo aircraft. Due to the small number of aircraft involved, the percentage of (C^3) aircraft is probably not statistically relevant.

The share of real property maintenance funding provided to Ellsworth AFB over the past three years (about 2 percent annually of total SAC RPMA funds) appears less than might be expected, based on Ellsworth's share of total strategic missiles and aircraft and SAC personnel. In this respect, the fact that the base has more than one third of the base housing declared inadequate within SAC as a whole may be indicative of a problem.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., August 20, 1980.

Dr. RICHARD CRONIN,
Foreign Affairs and National Defense Division, Congressional Research Service, The Library of Congress, Madison Building, Washington, D.C.

DEAR DR. CRONIN: This is in response to your letter of July 24, 1980, concerning data on the recent history of base maintenance work and budgetary allocations for Ellsworth Air Force Base in Rapid City, South Dakota.

The attached fact sheets respond to your questions by number. If we can be of further assistance, please feel free to contact us.

Sincerely,

LARRY W. SHREVE,
Colonel, USAF.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 1. Please identify the military construction projects awarded to Ellsworth during the past 10 years. List the projects by fiscal year, include dollar amounts and a short description of each project.

Answer. The information is attached.

Military construction program (MCP) approved by Congress

FY	Description	Amount
1980	Repair airfield pavements	$2,550
	Add to and Alter Composite medical facility	11,800
	Sanitary sewage treatment and disposal fac	2,650
1979	Library	715
	Alter dormitories	2,739
1978	Weapons system security improvement	4,447
	Addition to comm/electronic shop	251
	Air installation compatible use zone (AICUZ)	125
	Various operational facilities	3,590
1977	Weapons system security improvement	2,273
1976	Industrial waste treatment	903
	Solid state ILS	255
	Energy conservation	57
	Igloos	106
1975	Alter a/c covered corrosion control facility	790
	Alter airmen dorm	1,319
1974	Comm electronic shop	514
	Solid state ILS	55
1973	VASI lighting	103
1972	Radar flight control center	399
	Alter officer's quarters	353
	SRAM facilities	669
1971	Non-destructive inspection facility	196
1970	Officer's open mess	858
	Sewage treatment and disp addn	170
	Total	37,887

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 2. Identify the Maintenance and Repair projects undertaken at Ellsworth (listed as BMAR) during the past 10 fiscal years. List the projects by fiscal year, include dollar amounts and a short description of each project.

Answer. The information is attached for those years for which available.

Maintenance and repair (BMAR)

FY	Description	Amount
1980	E Rpr boiler, fac 109, dorm	$13,100
	E Rpr sewage lagoon at golf 1	9,100
	Rpl UG electronic cables (in-house)	150,000
	Overlay dock roofs	271,300
	Sandblast, prime, paint POL tank	25,000
	Tanker alert visitor center	77,700
	Maintain various base roofs	307,800
	Repair and slurry seal/fog seal taxiway 22	358,200
	Slurry seal taxiway 26/taxiway 22	35,500
	Repair kitchen and baths at 15 LCF's	113,000
	Raise electrical distribution manholes	25,000
	Refinish three courts	18,500
	SCL 0663/0926/0082 paint	4,400
	Paint interior of 6 LCF's	28,500
	Paint interior of remaining 9 LCF's	69,400
	XG replace windows	20,600
	Repair LF MX track	95,200
1979	Paint exterior various base bldgs	99,500
	Overlay base streets	73,000
	Slurry seal taxiway 21	26,500
	Replace heating coil 1707	22,200
	Repair 4 metal dorms	174,500
	Repair 4 metal dorms	174,500
	Replace stairs and storm windows 606	16,900
	Replace ceiling tile	23,600
	Emergency subsurface track repair	99,800
1978	Cathodic protection LF LCF	67,000
	Maintain various base roofs	258,000
	Emergency roof repair hail damage	127,900
	Repair three walk-in refrigerators	7,000
	Replace taxiway 27	329,000
1976	Repair metal personnel doors POL	13,000
	Replace condensate return line 1101	17,000
	Replace condensate return line 1211	33,000
	Replace condensate return line 1107	35,000
1975	Cathodic protection system	13,000
	Replace gym floor	52,000
	Repair engineering/construction branch	64,000
1974	Replace roofs 4 bldg's	75,000
	Restore airman dorm 1109	95,000
	Repair underground heat dist line	34,000
	Paint exterior trim 43 bldg's	42,000
	Repair and paint two water tanks	22,000
	Repair cold storage	5,000
	Replace underground cable duct system	19,000
	Total	3,640,700

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 3. Identify the Military Construction budget for the Air Force for each of the past 10 fiscal years, and determine (by use of the response to question No. 1) the percentage of the Air Force's military construction funds allocated to Ellsworth. Please indicate for each fiscal year and ten year total.

Answer. The information is attached.

AF MILCON BUDGET VERSUS ELLSWORTH PROJECTS

[Dollar amounts in thousands]

Fiscal years	AF Milcon	Ellsworth projects	Percent allocated
1980	$565,456	$17,000	3.01
1979	520,414	3,454	.66
1978	482,786	8,413	1.74
1977	807,932	2,273	.28
197T	14,000	0	0
1976	550,644	1,321	.24
1975	456,439	2,109	.46
1974	269,077	569	.21
1973	283,136	103	.04
1972	289,189	1,421	.49
1971	285,147	196	.07
1970	290,327	1,028	.35
Total	4,814,547	37,887	.79

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 4. Same as above, except use Strategic Air Command military construction budget instead of the Air Force budget.

Answer. The information is attached.

SAC MILCON VERSUS ELLSWORTH PROJECTS

[Dollar amounts in thousands]

Fiscal years	SAC MILCON	Ellsworth projects	Percent allocated
1980	$200,010	$17,000	8.50
1979	183,952	3,454	1.88
1978	62,943	8,413	13,37
1977	86,369	2,273	2.63
197T	0	0	0
1976	41,579	1,321	3.18
1975	38,787	2,109	5.44
1974	28,049	569	2.03
1973	36,712	103	.28
1972	31,557	1,421	4.50
1971	17,521	196	1.12
1970	19,621	1,028	5.24
Total	747,100	37,887	5.07

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 5. Identify the "real property maintenance activities" budget account (a part of the Operation and Maintenance account) for the Air Force for each of the past 10 fiscal years.

Answer. The amounts programmed at Air Force level are as follows ($ million): FY 70—$685; FY 71—$701; FY 72—$718; FY 73—$763; FY 74—$858; FY 75— $992; FY 76—$1276 (reflects 15 month period to include the transition quarter); FY 77—$1149; FY 78—$1201; FY 79—$1294; FY 80 (estimate)—$1386.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 6. Identify the "real property maintenance activities" account allocated by the Air Force to the Strategic Air Command for each of the past 10 fiscal years.

Answer. Records reflecting the allocation of above funds to the Strategic Air Command are only available from FY 75. These amounts are as follows ($ millions): FY 75—$197; FY 76—$252 (reflects 15 month period to include the transition quarter); FY 77—$211; FY 78—$203; FY 79—$220; FY 80—$256.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 7. Identify the "real property maintenance activities" funds allocated by the Strategic Air Command to Ellsworth Air Force Base for each of the past 10 fiscal years.

Answer. Records reflecting the allocations of above funds by SAC to Ellsworth Air Force Base are only available from FY 78. These amounts are as follows ($ millions): FY 78—$3.8; FY 79—$5.0; FY 80—$4.8.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 8. Determine for each fiscal year and for the 10-year period the percentage of Air Force and SAC "real property maintenance funds," respectively, allocated to Ellsworth AFB.

Answer. The percentages of Air Force RPMA funds allocated to Ellsworth AFB for the limited data available are as follows: FY 78—.3%; FY 79—.3%; FY 80—.3%, while the following is a percentage of SAC RPMA funds: FY 78—1.9%; FY 79—2.2%; FY 80—2.0%.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 9. Identify the Maintenance and Repair projects actually funded and undertaken at Ellsworth for each of the past 10 years, listed by dollar amounts, and include a brief description of each project.

Answer. The information is attached for those years for which available.

Maintenance and repair

FY	Description	Amount
1980	E Rpr sewer line	22,500
	E Rpr by rpl boilers in fac 7709	160,000
	Rpr water tank; facility 88361	2,000
	Rpl entry doors, dining hall 4, fac 1211	1,300
	E Rpr fire damaged roof, 1109 dorm	1,800
	E Rpr condensate line, fac 1103, VOQ	1,900
	E Rpr commissary siding	5,000
	Rpl built-up roof, 109, dorm	66,300
	E Rpl rail ties asphalt	13,000
	E Rpr parking stub 6	129,500
	E Rpl sewer pipe J-1	5,800
	E Rpr roof, finance, 88535	1,000
	Rpr by rpl 149 MPPS	236,900
	Rpr by rpl 14 MPPS	23,700
1979	Airfield joints/cracks	27,700
	Coat interior POL tanks	15,000
	Locks interior dorm doors	1,800
	Repair doors base exchange	9,900
	Airfield drainage	25,000
	Replace windows fac 7709	1,900
	Replace glass front door 7712	1,200
	Carpet rms 115, 119, 120 fac 8301	1,000
	Carpet rms 2/25 fac 903	800
	Carpet rm 69 fac 7504	500
	Emergency repair overhead door	11,400
	Carpet 181 SY fac 609	3,200
	Tighten fence WSA area	47,000
	Carpet dorms	28,300
	Emergency repair tennis court fence	2,600
	Emergency repair rollup doors	300
	Emergency repair base roofs	18,000
	Emergency replace west end taxiway 27	23,100
	Replace glass front fac 3401	200
	Emergency replace ductwork E-Lab	16,500
	Reshingle 21 LCF's	12,700
	Repair dock door deicer system	315,800
1978	Remove rubber runway	5,500
	Replace overhead door fac 88030	2,000
	Replace carpet tanker alert	1,000
	Repair wind damage dock door	5,000
	Repair wind damage dock roofs	7,000
	Emergency repair built-up roof 8202	23,000
	Emergency repair gym roof	2,000
	Emergency repair youth center roof	3,000
	Repair personnel doors	21,000
	Install carpet dorms	6,000
	Emergency repair expansion joint	35,000
	Repair expansion joint E-6	18,000
1977	Emergency repair subsurface B-5	46,000
	Repair clothing sales	13,000
	Sandblast corrosion control facility	7,000
	Repair overhead doors fac 102	8,000
	Carpet RAPCON	2,000
	Install GFE carpet	2,000
	Repair commissary roof	74,000
	EM repair expansion joints	37,000
1976	Replace small metal overhead doors 8115	5,000
	Revamp truck well ramp	12,000
	Repair furnace 5 aircraft hangers	81,000
	Repair tail door corrosion control fac	8,000
	Thru 67 modify vehicle gates	49,000
1975	Restore airman dorm 1102	49,000
	Restore airman dorm 8202	24,100
	Paint 12 bldg's rushmore area	32,000
	Repair various base roofs	84,000
	Repair aircraft shelters	34,000
	Repair door track deicing system docks	53,000
	Replace boiler burner and controls	36,000
	Replace furnace bldg 903	12,000
	Repair boiler auto maintenance shop	38,000
1974	Restore airman dorm 8203	11,000
	Paint interior eleven water stor tanks	17,000
	Replace air conditioning education bldg	14,000
	Restore airman dorm 1106	103,000
	Paint exterior 17 bldg's interior of 2	21,000
	Asphalt overlay taxiway 26	63,000
	Asphalt overlay 11th street	11,000
	Repair submersible pump well no. 2	8,000
	Repair roofs fac 901/902	4,000
	Repair digestor no. 2	48,000
	Repair overhead electrical circuit	59,000
	Total	2,428,200

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 10. What percentage of the total ICBM force of the United States is based at Ellsworth AFB?

Answer. 14.2 percent of the Operational U.S. ICBMs.

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 11. What percentage of the total SAC fleet of similar aircraft with comparable missions (i.e., U.S.-based strategic bombers; strategic fuel/cargo/tanker; C^3) is based at Ellsworth AFB?

Answer. 9.5 percent of U.S.-based strategic bombers; 2.1 percent of strategic fuel/cargo tankers; 44.4 percent of C^3 aircraft (EC-135).

FACT SHEET

Subject. Congressional Inquiry, Ellsworth AFB.

Question No. 12. Identify the number of military members and civilian employees authorized at Ellsworth AFB, and the percentage of total SAC military and civilian authorized personnel which Ellsworth represents.

Answer. The authorized strengths of SAC at Ellsworth AFB, including tenant units, is as follows:

	Military	Civilian	Total
Ellsworth AFB	6,320	820	7,140
SAC total	123,706	24,820	148,526
Percent Ellsworth to SAC	5.1	3.3	4.8

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 13: What percentage does Ellsworth represent of total SAC on-base dependents?

Answer: Ellsworth represents a 5.15% of total on-base dependents in SAC (4,805 dependents on Ellsworth compared to 93,265 dependents on all SAC bases). All figures are estimates based on the number of family housing units by category (military or enlisted) multiplied by dependent factors:

TOTAL SAC ON-BASE DEPENDENT POPULATION

	Housing units	Dependent factor	Dependents
Officers	9,477	2.81	26,630
Enlisted	26,869	2.48	66,635
Total	[1] 36,346		93,265

ELLSWORTH ON-BASE-DEPENDENT POPULATION

	Housing units	Dependent factor	Dependents
Officers	318	2.81	894
Enlisted	1,577	2.48	3,911
Total	[2] 1,895		4,805

[1] Includes 1,111 units declared inadequate.

[2] Includes 388 units declared inadequate.

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 14: Please determine the growth or decline in the number of SAC bases and facilities in the U.S. over the past 10 fiscal years.

Answer: The following is the number of the SAC bases and facilities in the U.S. from fiscal year 1970 through 3rd quarter 1980. The numbers include missile facilities as well as installations in which SAC is a tenant.

1970	1,350
1971	1,379
1972	1,391
1973	1,388
1974	1,359
1975	1,368
1976	1,365
1977	1,349
1978	1,339
1979	1,332
1980	1,344

Listed below are the number of major installations included in the above figures for which SAC has jurisdiction.

1970	24
1971	27
1972	29
1973	29
1974	27
1975	27
1976	27
1977	25
1978	25
1979	25
1980	25

FACT SHEET

Subject: Congressional Inquiry, Ellsworth AFB.

Question No. 15: Please provide a budget inflator for Military Construction and for Maintenance and Repair accounts for each of the past 10 fiscal years which would permit my staff to recalculate the current dollar figures used in your report into constant dollars.

Answer: The information is attached.

BUDGET INFLATORS FOR MILITARY CONSTRUCTION, MAINTENANCE, AND REPAIR

[In percent]

Fiscal year program	Calendar year—													
	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	198
1973	12.6	9.6	9.6	9.0	9.0									
1974		7.0	6.5	6.0	6.0	6.0								
1975			6.5	6.0	5.4	5.5	5.5							
1976				12.7	12.3	11.3	7.0	6.0						
1977					10.5	12.5	8.7	8.3	8.3					
1978						12.5	8.3	8.0	8.0	8.0				
1979							7.0	6.8	6.6	6.5	6.5			
1980								9.3	6.9	6.5	6.0	6.0		
1981									9.1	9.2	8.3	7.6	7.2	
1982										15.3	10.2	9.1	8.7	7.9

Note: The set of 5 calendar year inflators listed for each specific fiscal year program were used to develop each fiscal year program (i.e., the fiscal year 1974 program used an inflator of 7 percent for calendar year 1972, 6.5 percent for calendar year 1973, 6 percent for calendar year 1974, 1975, and 1976).

Mr. McGOVERN. Mr. President, the old dining hall at Ellsworth stands as a symbol of the neglect of so-called people projects at Ellsworth. This old structure was built in 1952 and it remains an eerie reminder of the Korean war era amidst the more modern weapons and equipment at Ellsworth.

The amendment I am proposing today would authorize the replacement of the old dining hall at a cost of $3,160,000. The case for the new hall can be summed up in three words: "morale, cost-effectiveness, and safety."

First, let's examine the morale issue. I was told during my visits that the existing hall has a negative impact on morale at the base because it cannot adequately serve the base population's needs. Its serving capacity is too small. A number of servicemen told me that they made a habit of skipping breakfast during weekdays because it simply took too much time to stand in line waiting to be served. It strikes me as a contradiction to pay an airman a 1980's wage and then ask him to put up with skipping meals because a Korean war era dining hall does not meet the grade. And there is no doubt that the bad morale this causes has an impact on Ellsworth's retention difficulties.

Second is the cost-effectiveness issue. The existing dining hall is classified as a code 3 structure by the base management. This means that the old hall is deteriorating structurally and that it requires excessive amounts of real property repair funds to keep it maintained in an adequate manner. As repair funds are diverted to keep the dining hall open, other facilities and properties at the base are denied maintenance funds, causing further erosion in the roadbeds, the dormitories and other projects. The base management believes that these repair funds could better be used elsewhere on the base if the dining hall were replaced. Therefore, over the long run, replacement of the dining hall could free up repair funds for other projects and preserve other structures long enough to reduce pressure on the military construction budget.

Third, there is the safety issue. The old dining hall is a wooden structure. There is genuine concern at Ellsworth that it poses a fire hazard. I was told that base personnel feel it endangers their lives and that it should be replaced with a more modern and safe structure. These are real concerns we cannot afford to ignore.

These are the three major reasons why the new dining hall should be authorized and built as rapidly as possible. SAC and the Air Force have tentatively authorized the new dining hall for the fiscal year 1983 budget, but the consensus of the men and women I spoke to at Ellsworth is that this project cannot wait. We cannot wait 2 years to correct morale problems or to save funds or to eliminate a safety hazard. These should be done as soon as possible.

Of course, a new effort will have to be made to appropriate funds for the dining hall if it is authorized, but I am convinced that accelerating the authorization into the fiscal year 1981 budget will be a concrete signal to the SAC personnel at Ellsworth that their problems are being addressed.

Mr. President, this amendment proposes a modest first step to improve morale and reduce retention problems at Ellsworth Air Force Base. I urge its adoption.

Mr. President, it bears repeating that the base that this facility is related to, the Ellsworth Base, is one of the most important in the entire Strategic Air Command system. It houses 150 Minuteman-II CBM missiles and two B-52H bomber squadrons. These numbers translate into something in excess of 14 percent of the entire U.S. intercontinental ballistic missile force and just under 10 percent of our entire strategic bomber force, 2 percent of the strategic fuel cargo tankers, and 44 percent of the command and control aircraft.

Mr. President, the problem with the existing dining facility at this very important base is that it stands as a symbol of the neglect of the so-called people or personnel projects at Ellsworth. The old structure, built some 30 years ago, is a firetrap. It is not large enough to house the personnel. Many of the soldiers that I have visited with at that base tell me that they no longer go to breakfast because of the long wait. Base officers that I visited with say that it requires an enormous amount of effort to keep it maintained and functioning. The repair efforts are diverting personnel from other purposes that are essential to the operation of the base.

It is true that the Air Force, Department of Defense, has plans to include a new dining facility in the fiscal 1983 budget, but meanwhile, a serious morale problem exists at the base, not the least of which are the fire hazards. So I am very hopeful that the committee will see fit to adopt this modest amendment. It is a straightforward effort to include some $3 million for these purposes. I hope that the manager of the bill and other Senators will see fit to accept the amendment.

Mr. HART. Mr. President, the Senator from South Dakota, I think, has raised a very significant issue. It is an issue that our committee has looked at. It is an item not in the counterpart House bill.

We feel, all things considered, that it is a good and worthwhile project. We are prepared on the majority side to accept this amendment.

I wish to concur in remarks by the Senator from South Dakota in two regards. He, above all others of our colleagues, understands the nature of Ellsworth Air Force Base and its importance in our entire national security mix. I think he is not only right on that point about the necessity to keep that base as modern and operable as possible, but also on the issue of the manpower question.

We are all becoming increasingly familiar with the difficulties the armed services are having acquiring and retaining high quality, technically skilled people. They are leaving, not only because of adverse pay circumstances, but also because of conditions that are not acceptable.

I think we can do as much through this military construction budget as even in the pay scale to keep those highly qualified individuals in our armed services and maintaining the equipment we so badly need.

So I commend the Senator from South Dakota for being concerned about this important facility and the people at that facility, and will commit to him we will accept the amendment and give it very serious consideration in the conference.

Mr. McGOVERN. Mr. President, I thank the Senator from Colorado for accepting the amendment.

I appreciate his support, not only on this, but on the leadership he provided in this whole area of giving the country an intelligent, commonsense defense.

Mr. THURMOND. Mr. President, this amendment is not a high priority amendment. I believe the Air Force submitted $100 million in unfunded projects they did consider to be high priority. This is not one of them.

It is not an unreasonable amount, however, and the dining hall is needed. I have no special objection to it.

I do think there are other projects that are of much higher priority. But in order for Ellsworth Air Force Base to get this facility, which is needed, we will not object to the amendment.

Mr. McGOVERN. I thank the Senator.

Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (No. 2324) was agreed to.

Mr. McGOVERN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1577

Mr. CANNON. Mr. President, I send an amendment to the desk on behalf of Senators NUNN, LAXALT, GARN, HATCH, and myself, and I ask for its immediate consideration.

The PRESIDING OFFICER. (Mr. PRYOR). The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON), for himself and Messrs. NUNN, LAXALT, GARN, and HATCH, proposes an unprinted amendment numbered 1577.

Mr. CANNON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert:

IMPACT ASSISTANCE FOR FISCAL YEAR 1981 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. . During fiscal year 1981, the Secretary of Defense may utilize funds appropriated for planning and design purposes to provide community planning assistance as follows:

(1) To assist communities near MX Weapon System sites, $5,000,000.

(2) To assist communities near the East Coast Trident Base, $1,000,000.

IMPACT ASSISTANCE FOR FISCAL YEAR 1982 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

SEC. . (a) During fiscal year 1982, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") is authorized to assist communities located near MX Weapon System sites, communities located near the East Coast Trident Base, and the States in which such communities are located in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the MX Weapon System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of the increased need for such services and facilities.

(b)(1) The Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary is authorized, subject to the provisions of subsection (d), to (A) supplement funds made available under such Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary, (B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the cost under such programs, and (C) guarantee State or municipal indebtedness for improved facilities related to the MX Weapon System or the East Coast Trident Base.

(2) The head of each department and agency of the Federal Government concerned shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, is authorized to provide facilities and services in anticipation of the work to be carried out in connection with the MX Weapon System and the East Coast Trident Base. No department or agency may charge a management fee for assisting the Secretary in carrying out the provisions of this section.

(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, (3) the initial capitalization required for municipal sewer and water systems, (4) the initial operating cost for upgrading municipal services, and (5) such other pertinent factors as the Secretary considers appropriate.

(d) Funds appropriated to the Department of Defense for carrying out the MX Weapon System and the East Coast Trident Base in fiscal year 1982 may, to the extent specifically authorized in the military construction authorization Act for fiscal year 1982, be utilized by the Secretary in carrying out the provision of this section.

(e) The Secretary shall transmit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, not later than November 1, 1983, a written report indicating the total amount transferred to and the amount obligated and expended by each local community or State which has been provided assistance under the authority of this section during fiscal year 1982, the specific projects for which assistance was provided during such year, and the total amount for each such project during such year.

COMMUNITY IMPACT ASSISTANCE STUDY

SEC. . (a) The Congress finds that—

(1) the Department of Defense is required from time to time, for national security reasons, to provide for the construction in the United States of major, new military facilities which have a serious adverse impact on

the communities and the areas in which such facilities are constructed; and

(2) neither the impacted local governments nor the States in which such facilities are constructed should be expected to bear the full cost of such impact.

(b) The President shall conduct a thorough study of the adverse impact on communities in areas in which major, new military facilities are constructed with a view to determining the most effective and practicable means of promptly mitigating such impact. In carrying out such study the President shall, as a minimum—

(1) identify those potential Department of Defense actions that are sufficient in scope to warrant impact assistance by the Federal Government;

(2) examine various options and recommend organizational mechanisms to administer the Federal community impact assistance to be made available;

(3) examine various options and recommend procedures for the budgeting of community impact assistance funds;

(4) recommend such changes in existing programs as may be necessary to provide effective and timely impact assistance to areas adversely affected by the construction of major, new military facilities; and

(5) consult with and seek the advice of appropriate State and local leaders and officials regarding the problems and needs of communities that result from the construction of major, new military facilities in or near such communities.

(c) The President shall submit the results of the study required by subsection (b) to the Congress not later than March 1, 1981, together with such comments and recommendations as the President considers appropriate.

Mr. CANNON. Mr. President, this amendment I have sent to the desk on behalf of Senators NUNN, LAXALT, GARN, HATCH, and myself is to provide impact assistance for fiscal year 1981 for areas affected by the MX weapon system and the east coast Trident base. Since there are no line items for military construction funds in the fiscal year 1981 military construction bill, some provision to assist communities near MX weapon system sites and the east coast Trident base is required. This amendment is designed to do that. It provides $5 million to assist those locations impacted by MX and $1 million for communities near the east coast Trident base. This amendment also provides a policy statement for the future.

For fiscal year 1982 the amendment states the Secretary of Defense shall carry out the program of assistance through existing Federal programs. He is authorized to transfer funds from his office to the agency concerned in the amounts he considers necessary.

Funds appropriated to DOD for MX and Trident in fiscal year 1982 in the Military Construction Authorization Act may be used by the Secretary. He will report to the Committees on Armed Services and Appropriations of the Senate and House by November 1, 1983, on the amount transferred and expended by each community or State. Also the President shall submit the results of an impact study to Congress by March 1, 1981.

Also the House Armed Services and Appropriations Committees have taken steps to address this essential question of MX impact aid. In its consideration of the fiscal year 1981 military construction authorization bill, the House Armed Services Committee amended section 608 of the 1975 Military Construction Authorization Act; this authorizes the Secretary of Defense to request in the DOD budget impact assistance for the MX.

The HASC language constituted primarily a policy statement that impact funding would have to be specifically authorized without stipulating any specific level of funding for fiscal year 1981. The House Appropriations Committee recommended and the full House agreed to appropriate $4 million of the $97 million total MX planning and design funds to be used by the States of Nevada and Utah or any other State in an effort to develop comprehensive plans for a community impact assistance program. Of the $4 million available to the two States, $1 million was designated as a "set aside" for impact planning by any State identified as a possible location for split basing.

In preparing for the Senate's consideration of the military construction appropriations bill, the Senators from Nevada and Utah have reached a consensus among themselves and the State and local officials involved—based on budgeted work plans—that a total of $5 million should be allocated to the States of Nevada and Utah, with $1 million of this total being "set aside" as planning funds for any State identified for split deployment. The division of these funds would be as follows: $2.5 million for Nevada. $1.5 million for Utah, and $1 million for any split deployment area. The subsequent division of these funds among State and local entities within each State would be established on the basis of an agreed work program drawn up by the principals involved and submitted to the Congress and the Defense Department for their review.

I understand and appreciate the legitimate concern expressed by several Members of the Senate regarding potential funding growth that could occur if impact assistance for major defense projects is included in the defense budget. For this reason, I believe that the Senate should adopt the language. In this way, the concerns for the longer term that we all share can be addressed, while necessary planning funds can still be provided to Nevada, Utah, and Georgia for this fiscal year. Consequently, I urge that the amendment be adopted.

Mr. President, I yield back the remainder of my time.

Mr. HART. Mr. President, the amendment offered by the Senator from Nevada and his colleagues authorizes planning funds for these purposes and facilities for fiscal 1981.

It further authorizes use of existing impact language in the law for fiscal 1982 and requires a study for the best way to do impact assistance in these particular circumstances after fiscal 1982.

The particular points of interest about this amendment are, first of all, that for fiscal 1981 no new funds are authorized.

The amendment authorizes the use of planning moneys as included in the budget request for the MX missile facilities, $5 million; for Trident, $1 million.

In the fiscal 1982 year, the amendment includes language similar to that in existing law for impact funding, so-called section 608 language that was used for the west coast Trident base.

The amendment does not authorize any funds. None will have to be included and justified in the fiscal 1982 budget for use in that fiscal year.

In the fiscal 1983 period and beyond, the amendment requires study as to the best way to do impact assistance. In the case of our counterpart House bill, already passed by the House, that bill only restates the so-called old 608 language or the existing law.

As chairman of this committee, it concerns me somewhat to see the direction in which the Government is going in terms of beginning to aid every community, or certainly the communities that have large military impacts from the development of major weapons systems and the potential for outyear funding that those kinds of requests and the trend in that direction may represent—not necessarily in this case but may represent in the future. In spite of those concerns—and just mentioning them by way of calling them to the attention of our colleagues, if, in fact a trend is developing in that direction and the budgetary consequences of that—I believe this amendment is basically sound.

It does not expose the Federal budget to any unnecessary outyear outlays or commitments, and I believe the Senator from Nevada has carefully fashioned a proposal that avoids the worst consequences that I was suggesting.

So, for the majority side, the Senator from Colorado is prepared to accept the amendment.

Mr. THURMOND. Mr. President, I believe this amendment has merit, and it is proper that it should be adopted.

The planning assistance and the design for this project are bound to be expensive. This amendment calls for $5 million for the MX areas and $1 million for the east coast Trident, making a total of $6 million.

I express the hope that funds from current programs will be used as much as possible for the large assistance programs which may be needed and I presume that that will be done.

Mr. CANNON. Yes. No separate construction funds or planning funds are allocated here with respect to the $94 million figure for the 1981 program. Those funds are authorized for planning, and the Secretary will be allowed no transfer of the funds.

Mr. THURMOND. In other words, there will not be additional costs, so to speak, but it will come from funds already allocated.

Mr. CANNON. The overall figures.

Mr. THURMOND. The distinguished Senator from Nevada (Mr. CANNON) has done a great deal of work on this, as has his colleague, Senator LAXALT, as well as the Senators from Utah (Mr. HATCH and Mr. GARN). They are all interested in this project. It is an important matter and should go forward, and we do not oppose the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. Mr. President, I should like to ask the Senator from Nevada a question about the amendment.

We are all familiar with charges and countercharges about the MX system and the timetable and chronology. Some have accused the present administration or individual Members of Congress of delaying the development of the MX. I wonder whether the Senator from Nevada will respond to a question having to do with whether anything in his amendment—if it is otherwise the policy of Congress and the administration to develop the system—would prevent or delay its development in any way.

Mr. CANNON. No; I say to my colleagues that it would have quite the opposite effect. These planning funds would be made available at the local level for them to go ahead with there planning now. Construction would not be ready until the 1982 program. Of course, the system itself, we hope, has an IOC of 1986.

So we do need to move ahead rapidly. There are many actions to be taken now, from the standpoint of planning, to facilitate the early movement in this area.

The draft environmental impact statement has not been completed as yet—it has been delayed a little—but it will be completed before very long. After the comments have been filed or there has been an opportunity for filing, the final environmental impact statement will be prepared and produced, and that will permit the movement ahead with this important program.

Mr. HART. So, for those who might be concerned about further delays, if a policy decision were to be made to produce and deploy this missile system—which has not been made—in no way would this amendment delay or slow that process?

Mr. CANNON. No. It would have quite the opposite effect, as I said. It would help speed up the program.

Mr. HART. I thank the Senator from Nevada.

Mr. NUNN. Mr. President, I am pleased to join Senator CANNON and my other colleagues in supporting this amendment to provide authority for impact assistance for areas significantly affected by the proposed MX weapon system and the east coast Trident base.

I understand that this amendment is acceptable to the managers of the bill, and I would highlight that its form is similar to legislation enacted for the west coast Trident facility in 1974 as well as the ABM site when first activated.

This legislation permits planning, budgeting, and funding of community impact needs, when demonstrated, in a timely fashion. It also insures that these needs are primarily met through existing Federal programs.

In addition, the amendment requires that a thorough study be conducted by the President to determine the most effective means of mitigating the military impacts in areas where local governments are unable to bear this burden alone.

The study will examine options in terms of administration of such programs and will recommend procedures for budgeting for community impact as well as review existing programs in this area. In this fashion, a determination can be made as to what type of assistance is appropriate and will best serve the needs of the community.

It is expected that this study will be completed and submitted to Congress prior to any final action on the fiscal year 1982 program which is the first year any actual funding could be expended for anything other than planning.

Mr. President, the Navy has just filed the final environmental impact statement concerning the proposed east coast Trident Submarine Base for Kings Bay, Ga. It is estimated that severe community impacts will occur during the construction and operational phase of this facility. Camden County, in which the facility is located, is expecting over a 182-percent increase in population. This is a rural Georgia county which does not even have full-time local officials; needless to say, the road, school, and medical structure is woefully inadequate to handle this significant military-related impact.

It is obvious that the local area will benefit from the military presence but it is just as obvious that the Federal Government shares the obligation of mitigating the various impacts associated with the decision to locate the facility there. I believe this amendment will enable an orderly planning process to occur and will establish the appropriate framework in which the assistance can be provided in a timely and justifiable fashion.

Mr. CANNON. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1577) was agreed to.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. HART. I ask unanimous consent that the time be divided equally, on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. CANNON assumed the Chair.)

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1578

(Purpose: To provide for the installation of a general alarm siren system at all Titan II missile sites)

Mr. PRYOR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas (Mr. PRYOR) proposes an unprinted amendment numbered 1578.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. DECONCINI). Without objection, it is so ordered.

The amendment is as follows:

On page 24, between lines 5 and 6, insert the following new section:

INSTALLATION OF ALARM SYSTEM AT TITAN II MISSILE SITES

SEC. 304. The Secretary of the Air Force shall acquire and install, out of funds appropriated pursuant to section 303, a general alarm siren system at each Titan II missile site which has in its near vicinity a significant size population.

Mr. PRYOR. Mr. President, I offer today an amendment which will provide that a general alarm siren be placed at each Titan II missile site with a significant surrounding population to serve as an immediate alert in case of accident. I am pleased to be joined in sponsoring this amendment by Senators representing the three States in which Titan II missile sites are located: The Senator from Arkansas (Mr. BUMPERS), the Senator from Kansas (Mr. DOLE), and the Senator from Arizona (Mr. DECONCINI), who now occupies the chair as the Presiding Officer.

I have discussed the amendment with the floor managers of the bill, and it is my understanding that it is acceptable to them. It is my hope that the Senate will concur.

There are 54 Titan II missile sites located in the States of Arkansas, Kansas, and Arizona, with an estimated population of over 1 million people living in the surrounding areas. It is my belief that we must establish an early warning system to protect the safety of these civilians who could be exposed to accidentally released toxic and even lethal gaseous fumes. The general alarm siren provided for in my amendment will serve this much-needed purpose. The sirens will serve as part of a total civilian warning system and will supplement the proposed Air Force plan to alert the surrounding population of an accident via telephone calls and/or personal contacts.

Mr. President, we have a responsibility to protect the civilians living in the communities and on the farms surrounding these missile sites. Accidents have occurred in the past, and we must take steps to reduce their recurrence and provide for the best course of action in case an accident should occur. My deep concern has foundation in the events involving an incident in my home State of Arkansas. In January 1978, a fuel transporter at a missile site near Damascus, Ark., overheated and vented toxic nitrogen tetroxide vapor into the atmosphere. A toxic cloud drifted over the nearby countryside, exposing seven people to the hazardous missile propellant vapor. Four of these citizens were hospitalized and one citizen stated that he was still experiencing ill effects over a year and a half later.

One of the most troubling aspects of this incident was that the most severe exposures were due to the simple fact that the individuals were simply not aware that any danger existed. They were working out in the fields and continued to work for several hours until neighbors found them and warned them of the evacuation of the area around the site. The Air Force stated that the leak was not immediately detected, thus causing the delay in the notification rather than the lack of procedures. I, however, believe that this emphasizes once again the need for an immediate response once the accident is detected.

Mr. President, I also point out that the January 1978 accident near Damascus was not the last incident to occur in Arkansas. In June of this year, I wrote to Col. John Moser, Commander of the 308th Strategic Missile Wing at Little Rock Air Force Base, requesting detailed information regarding any incidents which have occurred since January 1978. Since that time, there have been 9 incidents, 6 occurring in 1979, and 3 this year. While there have been no civilian injuries, exposure to toxic vapors has resulted in the hospitalization of six site personnel and on two occasions, toxic vapors were released into the atmosphere.

Also, in 1978, there was a more severe propellant leak near Rock, Kans. This accident resulted in the deaths of 2 airmen working at the site, 20 hospitalizations, and the evacuation of approximately 200 people from the nearby town and surrounding farms. Concern over the two accidents which I have mentioned and other incidents led to the adoption of two amendments last year.

The first provided for an Air Force study to include an investigation of the physical condition of the Titan II missile systems and recommendations for improvements to protect the public safety, including that of the military personnel assigned to the missile sites. The second amendment, which I offered, provided for the establishment of a civilian early warning system as found desirable by the Air Force study.

Mr. President, the Air Force has completed its study, and it is with regret that I report its findings. While the Air Force stated that the total number of toxicological exposures and minor mishaps increased in 1978 and 1979, it made no final recommendations with regard to procedural improvements to protect the public safety, stating that expanded hazard notification procedures were being developed involving a system of telephone and personal contacts.

I believe that because of the often rural nature of the areas surrounding the Titan II missile sites, any alerting system must also recognize that many people may, as those involved in the Damascus, Ark., incident, be working out in fields or otherwise unavailable by telephone. It is impossible to calculate the amount of time these persons could be unknowingly exposed before an official reached them. Thus, it is necessary that a general alarm siren system be established to supplement a possible system of telephone calls or personal visits. This would provide immediate notification that an accident has occurred or that a hazardous condition exists and would serve as a means to alert individuals to return to their homes for further instruction.

My amendment will not require additional funds to be included in the bill. The Secretary of the Air Force will be authorized to use funds provided for minor construction for this purpose. The acquisition and installation of the necessary sirens will require the use of approximately $10,000 per site or $500,000 to equip all affected sites, assuming several sites in Arizona will not require sirens because of their locations in deserted areas.

I believe that we must protect the safety and well-being of the people living in the immediate vicinity of the Titan II missile sites. We must make every effort to provide for the most rapid and efficient notification procedure. This will serve as a means to avoid future injury or loss of life due to an accident at a Titan II missile site.

Mr. President, I think this amendment makes sense. I am proud, if my understanding is correct, that it will be accepted by the distinguished managers of the bill at this time.

I yield back the remainder of my time.

Mr. HART. Mr. President, the Senator from Arkansas has very accurately stated the purpose of his amendment which is to be able to alert the surrounding populations if there is a fuel leak in one of the aging Titan missile systems.

No new money is required by this amendment. It would use minor construction authorization that is presently available for purposes of this sort.

I note from my own committee record that the Air Force belief is that the warning systems contemplated by the amendment are not the best solution to the problem of population warning in adjacent vicinities. They prefer a different system.

But since this proposal is not contained in the House bill, as with the other amendments which we have accepted, on behalf of the majority of the committee I am more than prepared to accept this amendment, take it to conference with the House of Representatives, and seek the disposition of the House conferees on the matter.

So with that I am prepared to accept the amendment of the Senator from Arkansas.

Mr. THURMOND. Mr. President, we think this amendment has merit and are willing to accept it.

I was just wondering how this figure of $500,000 was decided upon, if it will actually take that much. It sounded a little high for just the placement of sirens. I am wondering who prepared that figure. Do we have an estimate by the Defense Department?

Mr. PRYOR. It is my understanding that Air Force officials have estimated that the acquisition and installation of each warning siren would cost approximately $10,000. It is my further understanding that of the 54 Titan II missile sites, a small number may be located in areas with no immediate surrounding population, thus the approximate total figure of $500,000.

Mr. THURMOND. That is the estimate by the Air Force?

Mr. PRYOR. The Senator is correct.

Mr. THURMOND. Is this so worded that it is not mandatory, that the Air Force may do this only if necessary and then not to exceed this amount?

Mr. PRYOR. I state to the Senator from South Carolina that last year I offered an amendment to the Department of Defense appropriations bill on this issue. The amendment was accepted, and it provided for the Air Force to go forward with such an early warning system on the site if they determined pursuant to a study that such a warning system was necessary.

Mr. THURMOND. Is this amendment so worded that if the Air Force determines that it is necessary it may be done; it does not make it mandatory?

Mr. PRYOR. It is mandatory unless the Air Force determines that there is no surrounding population that needs to be warned or needs to be protected in this manner.

Mr. THURMOND. In other words, it is in the discretion of the Air Force?

Mr. PRYOR. To the extent that the Air Force would determine whether the site had a significant surrounding population.

Mr. THURMOND. Mr. President, I do not want to make the Air Force spend money unless it is necessary and unless the Air Force feels it is necessary. I would wish to amend the amendment if it does otherwise.

Mr. PRYOR. I just say to the Senator that the civilian warning siren is intended to supplement the proposed Air Force plan of notification of civilians by telephone calls and or personal visits.

Mr. THURMOND. Mr. President, we will not oppose the amendment. If there are any changes after further study of the amendment, this could be accomplished in conference.

Mr. PRYOR. I deeply appreciate the distinguished Senator's acceptance of the amendment. I think it is an amendment which will speak to a long-overdue need, and I hope our colleagues will accept this amendment.

Mr. BUMPERS. Mr. President, I am proud to cosponsor and I vigorously support the amendment of Senator PRYOR to the Military Construction Act of 1981 to provide that sirens be placed at each Titan II missile site with a significant surrounding population.

With area wide, siren type alerting systems, an incident in Arkansas near a Titan II site may never have occurred. Near a Titan II site at Damascus, Ark., in January 1978, an oxidizer transport trailer vented oxidizer into the atmosphere. Several civilians required treatment for oxidizer exposure. This venting occurred over a period of several hours, before it was discovered by the Air Force.

Because of the delay in the detection of the venting and because of the civilian suffering that was caused by the accident, Senators from the three States in which Titan II missiles are deployed—Arkansas, Kansas, and Arizona—held a series of meetings with the Air Force. We insisted that steps be taken to prevent a recurrence of such an incident. To the credit of the Air Force, a series of measures were, indeed, taken.

Specifically, first, fuel transport trailers and oxidizer transport trailers are now enclosed in new containment buildings at each missile wing whenever either propellent is in long-term storage; second, whenever missile propellants are stored at missile sites, military personnel are assigned to round-the-clock surveillance of the propellant trailers and venting should be immediately detected and appropriate action taken; third, "appropriate action taken" involves the following very important, and almost sufficient, steps. The new containment buildings have automatic sensing devices which continually monitor the building atmosphere and alert the missile combat crew should minor amounts of propellant begin to escape. Visual and audible warnings are to be flashed automatically to the missile combat crew in the launch control center. The crew's initial response is to turn on the missile site rotating beacon and warning siren—both of which are located above ground level—to warn personnel in the immediate vicinity.

The "immediate vicinity," however, is not enough. The area-wide sirens we need are the kind that can be heard for a minimum of one-half mile to an average audible range of 2 miles. These are the kinds of sirens authorized in the amendment before us today. Had we had the Air Force's new alerting procedures and these long-range sirens, the serious mishap at Damascus, Ark. might never had occurred. The affected civilians would have been able to leave the area of propellant fumes and into an area of safety.

The cost of $10,000 per site is not great, particularly when one considers the unnecessary risk civilians could suffer—particularly those working their fields or otherwise unavailable to the Air Force's alerting system which includes telephone calls and personal contacts.

Mr. President, I urge the adoption of this worthy amendment.

Mr. DOLE. Mr. President, I am pleased to join the distinguished Senator from Arkansas, Senator Pryor, along with Senators Bumpers and DeConcini in offering an amendment which will provide that a general alarm system be installed at each Titan II missile site with a significant population to serve as an immediate alert in case of an accident.

TITAN II

Mr. President, the Titan II is the largest ICBM in the U.S. arsenal and is capable of carrying a 24 megaton atomic warhead 18,000 miles an hour to targets 6,000 miles away. The Titan II missile system is now almost 18 years old. The 54 Titans in Kansas, Arizona, and Arkansas were established in 1963 with a life expectancy of 10 years.

Mr. President, in recent years, the Titan II has become a "problem" missile. In 1978, for example, 2 airmen were killed and 29 were injured in Kansas and Arkansas in two accidents involving "leaks" of highly toxic liquid propellant used in Titan II's.

Most recently, on April 22, 1980, another major "leak" occurred at the Potwin Kansas missile site. A materiel failure in the stage II oxidizer tank quick disconnect valve was allowing oxidizer to escape. Fortunately, no one was injured.

AN EFFECTIVE WARNING SYSTEM

During the last incident at Potwin Kansas, 16 farm families, which surround the missile site, were ultimately evacuated as a "safety precaution."

While I commend the Air Force and other local law enforcement officials for their good work in notifying the surrounding population of the potential danger as a result of the Potwin "leak", I do not believe it is good enough.

I share my colleagues belief that we must establish an early warning system to protect the safety of these civilians who could be exposed to accidentally released toxic and even lethal gaseous fumes. The general alarm siren provided for in this amendment will serve this much-needed purpose. The sirens will serve as part of a total civilian warning system and will supplement the Air Force proposed plan to alert the surrounding population of an accident via telephone and/or actual personal contact.

Mr. President, it is imperative that we protect the safety and well-being of the people living in the immediate vicinity of the Titan II missile sites. We must continue to make every effort to provide for the most rapid and efficient notification procedures and I believe that by adopting this amendment we will be taking a significant step in the right direction.

Mr. HART. Mr. President, I yield back the remainder of mv time.

Mr. THURMOND. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment (UP No. 1578) was agreed to.

Mr. PRYOR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1579

(Purpose: To provide for the selection of a permanent berthing site for the U.S.S. *Nautilus*)

Mr. RIBICOFF. Mr. President, I have an amendment which I send to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. Ribicoff) proposes an unprinted amendment numbered 1579.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

SELECTION OF A SITE FOR THE PUBLIC DISPLAY OF THE U.S.S. "NAUTILUS"

Sec. 810. (a) The Secretary of the Navy shall select a suitable site, as provided in this section, at which the U.S.S. *Nautilus*, the world's first nuclear-powered submarine, will be permanently berthed and placed on public display after such submarine has been decommissioned. The Secretary shall select a site for such purpose that will be easily accessible and convenient for the people of the United States to visit.

(b) In considering potential sites for the permanent berthing and public display of the U.S.S. *Nautilus*, the Secretary of the Navy shall take into consideration the estimated site preparation and other related costs involved in permanently berthing such submarine for public display at each such site and the extent to which contributions from public and private sources can reasonably be expected to meet such costs in the case of each such potential site. In no event may the Secretary select a site for such purpose unless he finds that there will be a reasonable contribution from public or private sources to help meet such costs at such site.

(C) The Secretary of the Navy shall notify the Congress in writing of the site selected by him for the permanent berthing and public display of the U.S.S. *Nautilus* promptly after he has made such selection and shall include in such notificatioon (1) a list of the sites considered for such purpose, (2) the reasons for deciding on the particular site selected, (3) an estimate of the site preparation and other related costs involved in the case of each of the sites considered, and (4) an estimate of the amount that could reasonably be expected to be contributed by public and private sources to help meet such costs in the case of each of the sites considered.

Mr. RIBICOFF. Mr. President, on behalf of Senator Weicker and myself, this amendment has been sent to the desk.

This amendment would establish a permanent berth for the U.S.S. *Nautilus*, the world's first nuclear-powered submarine. The *Nautilus* was decommissioned in March of this year, after over 25 years of Navy service. She is a technological wonder of unique importance in maritime affairs and in American Naval history. Her stature is comparable to that of the U.S.S. *Constitution* and the U.S.S. *Arizona*. Her historical significance makes her worthy of a permanent national memorial.

There is a strong consensus that a national memorial is appropriate. There has, however, been some question about its siting and about the reliability of the cost estimates of the particular sites which are available.

Mr. President, any permanent berth for the *Nautilus* should be at a place which should be accessible to the public and have a maximum of tourist exposure. It should also be in a location which has a strong historic connection to the ship and where the ship will be well cared for and promoted properly.

There have been a number of cost estimates done by the Navy for the various sites under consideration. It is my belief that the most appropriate site for the *Nautilus* memorial is Groton, Conn. She was built in Groton and homeported there for over 25 years. The Navy has a tradition of retiring historic vessels to areas of the country which have strong historical associations with those ships. Groton is the site of a major U.S. submarine base, and is informally known as the submarine capital of the world. It was in Groton that the men who manned her lived and raised their families. The people of southeastern Connecticut have made a vital contribution to the U.S. submarine tradition and have enormous pride in their achievements.

Whatever site is chosen, a mandatory criteria should be a demonstrated and significant effort by the State or locality in preserving this great monument. Thus, the second part of my amendment would require the Secretary of the Navy to choose a site for which there is a proven ability by the locality to defray a reasonable portion of the site preparation costs.

In the case of Connecticut, I am proud that a combination of State, public, and private sources have pledged nearly $800,000, more than 25 percent of the estimated Groton expenses. No other State or jurisdiction has made any similar effort or commitment. Other sites are welcome to compete, and raise money from whatever source, public or private, they can. In Connecticut, not only has the State pledged half a million dollars, but the Southeastern Connecticut Chamber of Commerce has announced it will spearhead a campaign to raise an additional $250,000. A local piping company has pledged $20,000 in materials and labor.

Any decision by the Navy to select a site should involve Congress. The final part of my amendment would require the Secretary of the Navy to notify the Congress in writing of the site selected by him and include in such notification the reasons for his selection as well as the amount which can be expected to be contributed by the locality.

I fully expect that the desirability of placing the *Nautilus* in Groton will be demonstrated from all criteria—accessibility, local effort, and historic justification. No other locality will meet the challenge like southeastern Connecticut. No other locality is as appropriate. Other jurisdictions are welcome to compete.

I thank the Committee for its consideration of my amendment, and hope it is accepted.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the Senator from Connecticut offers a very worthwhile amendment. The net effect of the amendment would be to ratify the approach taken by the committee in essentially attempting through report lanuage to achieve the result which the Senator from Connecticut would establish in law by his amendment.

Therefore, since particularly this provision is not in the House bill, I think it is very well worthwhile for the Senate to go on official record by the amendment in our bill to achieve the results which we agree should be achieved.

On behalf of the majority, I wish to accept the amendment and urge our colleagues to do likewise.

I congratulate the Senator from Connecticut for raising this issue.

Mr. RIBICOFF. I thank the distinguished manager of the bill.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, we do not oppose the amendment. It is a matter that has got to be worked out. I understand this is just a study to determine the permanent berthing of the *Nautilus*.

Mr. RIBICOFF. That is correct, may I say to the senior Senator from South Carolina.

● Mr. WEICKER. Mr. President, I am pleased to rise in support of the amendment offered by my distinguished colleague from Connecticut, Senator RIBICOFF. I believe this amendment makes a valuable contribution to this bill by clarifying the site selection process for the U.S.S. *Nautilus* memorial.

The U.S.S. *Nautilus* is without question a technological achievement of great historical significance. In terms of its impact on the naval capabilities of the United States, the *Nautilus* takes a rightful place alongside the U.S.S. *Constitution* and the U.S.S. *Arizona*. She is a source of great pride to all Americans as a symbol of American technical knowhow and innovation. We would be greatly remiss in failing to provide a proper memorial to this great achievement.

Mr. President, I believe that Groton, Conn., is the appropriate site for such a memorial. The people of eastern Connecticut and Rhode Island are those most responsible for this accomplishment. By their hard work and dedication, they have earned the privilege of sponsoring this memorial. We should also keep in mind that proper recognition of a job well done can be a powerful incentive to successfully meet the new challenges which lie ahead for the nuclear submarine navy.

From a historical standpoint as well, Mr. President, it is fitting that the *Nautilus* be returned to Groton. This community on Connecticut's southeastern shore is the acknowledged "submarine capital of the world". Groton was not only the construction site for the *Nautilus* but her home port throughout her 25 years of service. The other sites under consideration, I might add, share no such personal or historical association since, to my knowledge, the *Nautilus* has never visited either the Washington Navy Yard or Annapolis, Md.

Mr. President, the Ribicoff amendment which I am pleased to cosponsor, directs the Secretary of the Navy to select a site for a *Nautilus* memorial which is "accessible and convenient" for the American people. It also stipulates that an essential criterion in the Secretary's selection shall be the willingness of the local area to make a "reasonable contribution" to the cost of preparing the site. This latter provision provides a concrete test of the interest and importance of this memorial to the competing localities.

The Groton site will be located near Interstate 95, New England's principal artery, and near the Mystic seaport, which draws over one-half million visitors annually. In terms of local contribution, the State of Connecticut has made its intentions very clear. Governor Grasso has guaranteed that all costs of site preparation beyond $2.6 million will be covered by State, local, and/or private funds. This commitment demonstrates the sincerity of Connecticut's desire to bring the *Nautilus* home and to provide a memorial worthy of her heritage.

Mr. President, I applaud my senior colleague for offering this amendment and urge the Senate to accept it.●

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back my time.

Mr. RIBICOFF. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Connecticut.

Mr. RIBICOFF's amendment (UP No. 1579) was agreed to.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1580

(Purpose: To authorize funds for a launcher laboratory at the Naval Underwater Systems Center, Newport, Rhode Island)

Mr. PELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes on behalf of himself and Mr. CHAFEE an unprinted amendment numbered 1580.

Mr. PELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, between lines 10 and 11, insert the following:

Naval Underwater Systems Center, Newport, Rhode Island, $4,350,000.

On page 43, line 15, strike out "$755,845,000" and insert in lieu thereof "$760,195,000".

On page 43, line 17, strike out "$862,435,000" and insert in lieu thereof "$866,785,000".

Mr. PELL. Mr. President, the amendment I am proposing would add the amount of $4,350,000 for the purpose of constructing a new launcher laboratory at the Naval Underwater Systems Center, in Newport, R.I.

"NUSC" is one of the Navy's top research and development labs, with expanding responsibilities in our submarine programs. The excellence and qualitative superiority of our submarine weapons program is a key part of the strength of tomorrow's Navy. This building, which has been in the planning stage for several years, will provide a badly needed facility for the study of submarine launching systems. This amendment is cosponsored by my colleague, the former Secretary of the Navy, Mr. CHAFEE, and I hope it will be accepted by the managers of the bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the amendment offered by the Senator from Rhode Island is indeed a good project. Based on our examination of his amendment and the needs which it addresses, we feel it is beneficial and worthwhile.

Our understanding of the Navy's budget preparation and the administration's submission was that this item was dropped from the fiscal 1981 budget at the last minute. It has been under consideration for a large number of years. It is on the Navy's high priority list and on its unfunded requirements list.

Since this project is not in the House bill it is more than agreeable to the manager of the bill on the majority side to accept the amendment and take it to conference and seek the disposition of our House colleagues on this item.

Mr. PELL. I thank my colleague very much indeed.

Mr. HART. It is my understanding that this amendment is equally acceptable to the minority floor manager and, speaking on his behalf, we are prepared to adopt the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back our time.

Mr. PELL. I yield back our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

Mr. PELL's amendment (UP No. 1580) was agreed to.

Mr. HART. I suggest the absence of a quorum, Mr. President, the time to be equally divided on the time on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CULVER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1581

Mr. CULVER. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment numbered 1581.

Mr. CULVER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the bill, add the following new section as follows:

STUDY OF CONDITION OF THE STRATEGIC RAIL CORRIDOR

(A) The Secretary of Defense, in consultation with the Secretary of Transportation, shall conduct a study of the condition of railroad lines identified in the Strategic Rail Corridor Network (STRACNET) for National Defense (Military Traffic Management Command Report RND 76–1, An Analysis of a Strategic Rail Corridor Network for National Defense, November, 1976). Such study shall include an identification of those segments of the corridor which, as a result of deferred maintenance or deterioration, may potentially have an adverse impact on the movement of personnel, equipment, and materials among federal military arsenals and installations, and an estimate of the cost of rehabilitating those segments.

(B) The Secretary of Defense shall submit the results of this study, together with recommendations for correcting deficiencies in the railroad network in order to strengthen the military's combat readiness and military mobilization base, to the Armed Services Committees of Congress no later than July 1, 1981.

Mr. President, this amendment authorizes the Secretary of Defense to assess the condition of railroad lines that are vital to the Nation's defense, and to make recommendations to correct deficiencies in order to strengthen the military's combat readiness and mobilization base.

I have taken to the Senate floor on several occasions to argue the need for a major new commitment to revitalize our freight and rail passenger systems—to rebuild track, improve switching yards, and reduce "turn around" time for transporting our agricultural products to ports for export. The current rail crisis is even more ironic—and tragic—because it comes at a time when our Nation is trying to cut down its dangerous dependence on foreign oil. As we all know, railroads are the most fuel-efficient form of transportation, but only if tracks and equipment can be kept in sound condition.

This year, many domestic programs, including railroad revitalization, are being cut back to make way for massive increases in defense spending. Curiously overlooked in this exercise is the prime importance of America's railroads to our national security.

In the event of a national emergency, we need the planes and ships and tanks to meet any threat. We need our forces and equipment to be in a state of combat readines. We need fighting personnel and technicians who are adequately trained and paid.

But we also need swift, dependable transportation facilities to carry food and supplies to the Armed Forces, and munitions and equipment from arsenals to points where they are needed.

As a member of the Senate Armed Services Committee, I recently visited the Rock Island Arsenal and was told by officials there that the poor condition of track could have a serious impact on the performance of their mission in the event of mobilization. The arsenal's function is to move equipment and material to military posts throughout the Midwest, and they feared that more "deferred maintenance" and service suspensions could severely hinder the successful performance of their job.

So it is clear, Mr. President, that when we call for the rehabilitation of our deteriorating rail system, we are not only talking about bolstering our domestic economy, but we are talking about strengthening a front line of our national defense.

We cannot have a rapid deployment force if we cannot transport heavy equipment and supplies quickly and surely to ports of embarkation.

We might not be able to resupply our forces in combat in time if vital materials are delayed in transit by inadequate railroad networks.

The Department of Defense recognized the contribution of railroads to the national defense by conducting a study to identify strategically important rail lines in 1976. That study, undertaken by the Military Traffic Management Command, resulted in the identification of the strategic rail corridor for national defense (STRACNET), a system which serves "as the Department of Defense's mainline system of rail corridors."

Because of the general economic condition of several western and midwestern railroads, many of the corridors identified in STRACNET contain track which is in deteriorating condition. We must know prior to an emergency or mobilization which corridors and track are in substandard condition and how much upgrading they require in order to perform their intended mission.

Therefore, Mr. President, my amendment requires the Secretary of Defense—in consultation with the Secretary of Transportation—to study the condition of the STRACNET system, to identify those elements of the system which are in poor condition, and to estimate the cost of repairing or replacing substandard track. This study, along with recommendations for correcting deficiencies, would then be forwarded to the Armed Services Committees of both Houses no later than July 1, 1981. With this information, Congress will be better able to assure that the network will be upgraded to the high performance standards that would be required during a national emergency.

It is tragic enough that farmers, shippers, and consumers are paying a heavy cost for our deteriorating rail system. We must not compound that tragedy by permitting the continued deterioration of rail segments which support the defense requirements of the Nation. We must identify those components which are in need of repair, and assure sufficient resources to accomplish the task. My amendment will get that process underway.

I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I commend the Senator from Iowa for bringing to the attention of the Senate a very critical matter. This issue, I must say, is in keeping with the career of the distinguished Senator from Iowa as I have followed it as his colleague on the Armed Services Committee. That is to broadly define the issue of national security and our national defense.

Unfortunately, I think too often we in the Congress lead the American people astray by too narrowly defining what our national security really is. We debate these individual weapons systems and vote them up or down, and that is the single barometer by which, too often, individual elected officials' attitudes toward national defense are judged.

The Senator from Iowa has a long and distinguished career in seeking to educate his colleagues and the American people about what the true definition of national security and our proper defense really are. This is a classic instance of that type of education.

What is this country to do, Mr. President, if we have the most sophisticated weapons systems in the world, we have them stockpiled and deployed throughout the United States, they are needed on one coast or the other, they must be moved by rail, and it turns out that our rail system is decrepit, decayed, and we cannot move that sophisticated equipment?

For my part, Mr. President, I think the Senator from Iowa deserves a great deal of credit for focusing attention on this area. I think he is absolutely right. I think to engage the Department of Defense and the Department of Transportation in a survey of the adequacy of our rail systems to help in the defense of this country under stress or under a hostile environment is absolutely the kind of thing we need to be doing in the 1980's to really test the adequacy of this country's defenses.

So, for my part, I wish not only to accept the amendment and to encourage its adoption, but also to compliment the Senator from Iowa for his continuing concern about the adequacy of this country's defenses, his proper definition of those defenses, and his long-term concern for readiness and the ability of this country to mobilize under the proper conditions.

Mr. CULVER. Mr. President, I thank the Senator from Colorado very much for his very gracious remarks.

Mr. President, I move adoption of the amendment.

Mr. THURMOND. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CULVER. Mr. President, I yield back the remainder of my time.

Mr. HART. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1581) was agreed to.

Mr. CULVER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1582

(Purpose: To expand the purposes for which land previously conveyed to the State of Maine by the United States may be used)

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine (Mr. MITCHELL), for himself and Mr. COHEN, proposes an unprinted amendment numbered 1582.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

LAND CONVEYANCE, SOUTH PORTLAND, MAINE

SEC. 810. (a) The first section and section 2 of the Act entitled "An Act to provide for the conveyance to the State of Maine of certain lands located in such State", approved August 28, 1957 (71 Stat. 467) are amended by striking out "for vocational or other school purposes" and inserting in lieu thereof "for public purposes".

(b) The Secretary of the Navy shall issue such written instructions, deeds, or other instruments as may be necessary to bring the conveyance made to the State of Maine under the authority of the Act referred to in subsection (a) into conformity with the amendment made by such subsection.

Mr. MITCHELL. Mr. President, this amendment, offered on behalf of myself and Senator COHEN, will permit the city of South Portland, Maine, to establish a public park along its shoreline.

Pursuant to Federal law passed in 1957, the Secretary of the Navy issued a deed conveying certain military property within the boundaries of South Portland to the State of Maine. Because that property is located on the campus of the Southern Maine Vocational Technical Institute, the deed contained language restricting its use to vocational or other school purposes.

During the last year, however, officials of the school, the city and the State have decided to create along the shoreline a public park called the Spring Point Shoreway. A passive recreation walkway will be built with the aid of State and Federal funds already set aside. In order to allow that project to proceed, the use restrictions in the deed must be changed to allow a public project.

Mr. President, our amendment will permit the Secretary of the Navy to issue a new deed enabling this public project to go forward. It will not require appropriations and has, I believe, been cleared with the distinguished floor manager (Mr. HART). I hope he will accept the amendment without further discussion.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I rise in support of the amendment. Its purpose is to lift certain restrictions on property located in South Portland, Maine, which was conveyed from the Federal Government to the State of Maine in 1957.

This property, which was formerly Fort Preble Military Reservation, is now part of the campus of the Southern Maine Vocational Technical Institute. Adjacent to the property is a shoreline park and conservation area which is open to the public. However, because of the restrictions contained in the legislation which conveyed the property, the public may not cross it to reach the shore. This amendment will simply permit the public to access the shore area by way of the former Federal land. It has the full support of all affected parties and is noncontroversial.

I urge adoption of the amendment.

Mr. HART. Mr. President, the Senators from Maine have identified a worthwhile purpose in their amendment, which is very much in order. The majority side of the committee supports it and urges its adoption.

Mr. THURMOND. Mr. President, we feel this is a meritorious amendment and support it.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. Mr. President, I yield back the remainder of my time.

Mr. MITCHELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1582) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HART. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2321

(Purpose: To authorize funds for the initiation of construction of a binary weapons production facility at Pine Bluff Arsenal, Arkansas)

Mr. JACKSON. Mr. President, I call up my amendment No. 2321 and ask that it be considered immediately.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes an amendment numbered 2321.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, between lines 13 and 14, insert the following item:

"Pine Bluff Arsenal, Arkansas, $3,150,000.".

On page 43, line 11, strike out "$606,560,000" and insert in lieu thereof "$609,710,000".

On page 43, line 13, strike out "$918,830,000" and insert in lieu thereof "$921,980,000".

Mr. JACKSON. Mr. President, this amendment was approved in the Committee on Armed Services by all members of the committee except three. Those approving the amendment are: Senator HENRY M. JACKSON, Senator JOHN C. STENNIS, Senator HOWARD W. CANNON, Senator HARRY F. BYRD, JR., Senator SAM NUNN, Senator ROBERT MORGAN, Senator J. JAMES EXON, Senator JOHN TOWER, Senator STROM THURMOND, Senator BARRY GOLDWATER, Senator John W. Warner, Senator Gordon J. Humphrey, Senator William S. Cohen, and Senator Roger W. Jepsen.

Mr. President, over the past 12 months, the Senate has debated a series of major policy issues which relate to the defense posture of the United States. I have been greatly heartened by the outcome of this body's votes on such key decisions as: increasing the fiscal year 1980 second concurrent budget resolution to allow for substantially increased defense spending in fiscal years 1981 and 1982; raising even further the fiscal year 1981 defense figures as became necessary in the course of this year's budget process; providing sorely needed authorizations for higher pay and improved benefits for this country's servicemen and servicewomen; and approving reinstatement of selective service registration. Today, the Senate has before it yet another difficult and important national security issue.

In recent action, the House of Representatives has authorized and appropriated $3.15 million to facilitize the Army's preferred chemical weapons production facility at Pine Bluff, Ark. The House action was prompted by profound concern over the imbalance that currently exists between Soviet and U.S. chemical warfare capabilities and the resulting absence of a credible U.S. deterrent to any Soviet use of chemical weapons. There also has been strong dissatisfaction with the lack of progress in the U.S.-U.S.S.R. chemical arms control negotiations that have been dragging on since 1976.

Obviously, all of us in this Chamber support our Nation's historic commitment to no-first-use of lethal chemical munitions. None of us advocates chemical warfare; and we all seek a verifiable and enforceable arms control agreement with the Soviet Union that would effectively eliminate chemical weaponry.

But, Mr. President, let us look at the actual situation. By any meaningful measure of relative strength in the chemical armaments field, the Soviet Union enjoys a preponderant advantage over the United States. As a result, there is little or no inducement for Moscow to reach an arms control agreement limiting and reducing chemical weapons.

Unclassified estimates illustrate the substantial disparities which exist between United States and Soviet chemical capabilities:

The Soviet Union has 35 dedicated chemical units for every such unit in the Armed Forces of the United States.

In terms of personnel specifically assigned to chemical warfare, the U.S.S.R. outnumbers the United States by a ratio of 11 to 1.

In decontamination equipment—in addition to its enormous qualitative advantage—the Soviet Union enjoys a numerical advantage of 10 to 1.

The U.S.S.R. leads the United States 8 to 1 in chemical munitions.

The Soviets have a 5 to 1 advantage in ground-based chemical delivery systems.

And the Soviet Union leads the United States in production facilities by a factor of 14 to 1.

Clearly, the Soviet Union has a systematic, vigorous and comprehensive approach to chemical warfare. A sizeable production base; a stockpile estimated to consist of between 100,000 and 700,000 tons of chemical munitions; weapons which offer a wide choice of delivery means, ranges, physiological effects and persistencies; highly effective chemical detection, protection and decontamination equipment; and rigorous, realistic training—often in an actual toxic chemical environment—all point to a potent, credible Soviet chemical warfighting capability. When these factors are considered together with the reports of operational use of chemical agents by Soviet proxies in Laos and Cambodia and, more recently, by Soviet troops themselves in Afghanistan, the picture is even darker.

By contrast, the U.S. chemical deterrent posture has been steadily eroding.

During the past 10 years, the United States has not produced a single chemical round.

In the course of this decade, notwithstanding presidential directives "to maintain the (chemical) force without improvement," the U.S. inventory has actually decreased substantially as more and more chemical munitions become categorized as "unserviceable" or, as Secretary of Defense Harold Brown characterized them, "obsolete."

By 1990, through deterioration and obsolescence, the United States will no longer have a militarily-useable—and, therefore, credible—stockpile of chemical munitions.

For 11 years, not one weapon in our chemical inventory has been fired to revalidate ballistic performance and weapons effects.

Incredible as it might seem, it is only in the past few years that a serious effort has been made to upgrade the defensive chemical posture of U.S. forces. Even so, critical shortfalls continue to exist in protective clothing and other defensive equipment throughout the armed services.

U.S. chemical warfare training is still largely rudimentary, infrequent and unrealistic. Chemical training is often hindered by inadequate quantities of protective equipment. Training with leather gloves and galoshes degrades both the realism of the exercise and the familiarity of the individual soldier with clothing upon which his life might well depend.

The quantity and type of decontamination equipment being introduced into the U.S. Armed Forces, by and large, is inadequate to meet the projected Soviet threat.

Over the past 15 years, our annual investment in chemical warfare research and development has been cut in half in real terms.

In short, Mr. President, the Soviet Union today enjoys a significant advantage over the United States in chemical weaponry—on the battlefield and, consequently, at the negotiating table. For 4 years, United States and Soviet negotiators have been meeting in Geneva to discuss a treaty aimed at banning chemical weapons. After 4 years, not one line of such a treaty has been written and agreed to by representatives of the Soviet and U.S. Governments.

This disappointing record is not surprising. Given Moscow's predominant advantage in chemical weaponry, and considering that the United States, since 1969, has engaged in a unilateral moratorium on any improvements in its offensive chemical capability, why would the Soviets come to terms?

From 1976 on, the administration has tested the proposition that continued deferral of any improvements to the U.S. chemical weapons posture would gain for us some sort of significant "American psychological advantage" over the U.S.S.R. Senior U.S. officials apparently have convinced themselves that this misconceived "psychological superiority" would somehow compel the Kremlin to cut back on its chemical weapons and come to terms at the negotiating table. In fact, inferior American chemical warfare capabilities and American unilateral constraint in the production of chemical munitions have failed utterly to move the Soviets closer to a genuine, reciprocal chemical weapons agreement.

The truth of the matter is that our chemical warfare posture must again be made credible. This is an essential step as a deterrent to the threatened use of chemical agents by the Soviet Union. Beyond this, it is a necessary condition for successful arms control bargaining with the Soviets.

Mr. President, if we are ever to reach a genuine limitation and reduction of chemical weapons through negotiation, we must provide the Soviet Union with a more compelling inducement to be reasonable than that provided to date.

To this end, I am today offering an amendment—endorsed by 14 members of the Senate Armed Services Committee—which corresponds to the action taken earlier by the House. It will make possible a binary munitions production facility at Pine Bluff in 1984. Binaries are chemical weapons containing two separate, relatively harmless chemical agents which are mixed only after firing to form the weapon's toxic substance. The advantages of binary munitions are evident in their safety of handling, transportation, stockpiling, and eventual detoxification.

Two features of the binary program make this a particularly appropriate course of action for Congress to adopt at this time.

The $3.15 million are part of what Secretary Brown has called "a preproduction program." As such, their expenditure does not represent a commitment to initiate binary production.

Due to the long-lead times involved, no production of binary munitions will be possible before fiscal year 1984, affording an opportunity—as well as considerable incentive—for purposes to be made in chemical arms control negotiations.

The question before the Senate today is whether we will join in the message already being sent to the Soviet Union by the House of Representatives. If we do not, the Soviets will have been rewarded once again for their intransigence at the negotiating table, and encouraged to continue their steady expansion of an already formidable chemical arsenal.

With a solid Senate vote in favor of this amendment, Congress will be on record asserting its grave concern about the lack of a credible American chemical deterrent, and its conviction that steps essential to the encouragement of effective chemical arms control must be taken.

I urge the adoption of this amendment.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER (Mr. BENTSEN). Who yields time?

Mr. JACKSON. I yield to the Senator from Virginia.

Mr. WARNER. Mr. President, I support the amendment.

One of the unmistakable lessons of history is that the best deterrent to a chemical attack is a credible retaliatory capability. For example, while Germany pioneered the use of lethal chemical weapons during World War I, Hitler refrained from employing the same strategy in World War II simply because he feared massive chemical retaliation. Other nations lacking a credible retaliatory capability have not been so fortunate as the Allies in World War II.

Japan used chemical weapons against China in 1937; Egypt against Yemen 1963–67; Vietnam against Hmong tribesmen in Laos 1976–79; and Russia against Afghanistan 1979–80.

Today, the U.S. stockpile of chemical weapons is old and deteriorating steadily. Many of the weapons in our chemical inventory are obsolete, in storage awaiting destruction. A predominance of our aging stocks, with a shelf-life of 20 years, are now 20 years or older. What deterrent credibility we have is rapidly deteriorating. We have not manufactured chemical munitions since 1969.

In response to our unilateral restraint, the Soviet Union has developed the largest and most modern chemical weapons inventory in the world. Some estimates of the Soviet offensive capability suggest that possibly one-third of their forward-deployed artillery and rockets may contain chemical agents. Virtually all Soviet armored vehicles have modern collective filtration systems. In both their offensive and defensive preparations, the Soviet Union vastly exceeds the United States. Any question about their willingness to use such weapons has been answered in Afghanistan.

Additionally, the U.S. Army's two top research and development officials, Assistant Secretary Edward A. Miller and Lt. Gen. Howard R. Cooksey, have warned Congress that a nonnuclear Soviet attack against Western Europe would include the use of chemical weapons. Gen. Bernard Rogers, Supreme Allied Commander Europe, stated before the House Appropriations Committee during hearings on the fiscal year 1981 DOD appropriations bill—

> Today, Allied Command Europe has no capable retaliatory ability against the Soviet Union in order to deter their use of CW.

We have tried since 1976 to negotiate with the Soviets an arms limitation agreement for chemical weapons. We have not been successful. The Soviets have little to gain from such a treaty while the United States has ceased production of chemical weapons and our inventory continues to deteriorate into obsolescence.

Consideration of binary weapons production has been underway since 1954. Since 1967, no fewer than 10 studies and 9 national level reviews have been conducted.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of those studies.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

STUDIES ON CHEMICAL WEAPONS

NATIONAL LEVEL REVIEWS

December 1971, NSDM–35.
July 1972, NSSM–157.
January 1973, White House memorandum.
January 1973, NSDM–35.
February 1974, NSSM–192.
May 1976, NSDM–35.
May 1977, PRM–27.
June 1978, PRM–37.
November 1978, Review of PRM–37.
November 1979, NSC review of PRM–37.

STUDIES

June 1967, Mandrake Root.

September 1968, OSD draft Presidential memorandum/guidance specifying capability.

August 1974, JCS review of U.S. offensive chemical posture.

January 1975, Army review of U.S. offensive chemical posture.

1975, TRADOC study.

January 1977, U.S. Army War College—Strategic Studies Institute—chemical warfare policy 1980–1990.

May 1977, U.S. Army—Concepts Analysis Agency.

Fall 1977, JCS study.

September 1979, JCS—Chemical Warfare in Central Europe (IDA).

March 1980, U.S. Army TRADOC chemical operations.

Mr. WARNER. Mr. President, further studies will neither deter the Soviets nor induce them to negotiate.

The United States must retain a credible deterrent capability and at the same time vigorously pursue an arms limiting treaty. For these reasons I am strongly in favor of authorizing $3.15 million as the first step toward providing the United States the capability of producing modern binary weapons.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CANNON. Mr. President, will the Senator yield?

Mr. JACKSON. I yield to the Senator from Nevada such time as he requires.

Mr. CANNON. Mr. President, I associate with the views expressed by my colleague from the State of Washington. The Senator has properly called attention to and described a most worrisome deficiency in our defense posture: our ability to deter use of chemical warfare by the Soviet Union.

We can neither expect to deter the threat posed by the Soviets' growing ability to wage chemical war, nor can we hope to make real progress toward a meaningful chemical arms accord unless we restore some measure of credibility to our own chemical capabilities.

I supported the addition of $3.15 million to establish a binary munitions production facility when it was considered by the Senate Armed Services Committee. This is a timely action which will confirm the strong stance taken by the House of Representatives; it will also send an unmistakable signal to the Soviet Union of the Congress' resolve to counter any advantage they may seek through chemical weaponry and to achieve genuine arms control in this area.

I urge my colleagues to approve the amendment offered by the Senator from the State of Washington on behalf of the Armed Services Committee.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, the Senate has before it what I consider one of the most serious and consequential issues relating to our national security in recent years. It is an issue of a magnitude that will invite the participation of the overwhelming majority of our colleagues. It is a decision whether we go forward or do not go forward with chemical warfare agents that will have vast implications not only for the United States of America but also for all civilized society. This is a decision that should not be made casually and should not be made lightly.

The vote that will be taken on the amendment offered by the Senator from Washington or the substitute to be offered by the Senator from Colorado will be the first vote in recent times by either House of Congress on the issue of going forward on the production of chemical warfare agents—that is to say, a rollcall vote. This measure is in the House military authorization bill. It was adopted by voice vote. There was no record vote taken by the membership of the House of Representatives on this specific issue.

Mr. President, I think it is important to put this proposal in some context.

First, funds for the facility that is being proposed to be activated by the Senator from Washington were not in the President's budget request. The hearings and the record on this issue are confined to one appearance by the Secretary of Defense before the Senate Armed Services Committee in recent days. There was no committee record made on this question in the House of Representatives. The only testimony presented to either House of Congress was that by Secretary Brown before our committee in which he said, in summary, that the position of the administration and the most senior officials responsible for responding to this proposal was that it was premature. The hearings provide little, if any, detail about how the money would be spent, what the outyear costs would be of this facility which are estimated to be considerable, or what the implications for our foreign policy and national security might be, with the exception of statements made by the Secretary of Defense.

Among those statements were some very, very important and serious observations. First of all, this administration and this Government have not consulted at any high level with our

European allies who, of course, in the past have been most reluctant to address whether NATO should introduce new lethal chemical weapons on the soil of the member nations.

The Secretary of Defense testified that a unilateral congressional decision to begin a production facility for a new generation of chemical weapons could jeopardize our present priority in terms of our NATO objective of negotiating a long-range deployment of new theater nuclear weapons in Europe.

Mr. President, both the Secretary of Defense and the Secretary of State, two officials having most responsibility in our Government for issues of this sort, have reemphasized in various ways in recent weeks their judgment that funding a nerve gas or chemical warfare facility at this time would be premature and could adversely affect negotiations with our allies, especially regarding the theater nuclear modernization question which is central to the long-range security of ourselves and our allies.

Mr. President, starting 5 years ago, the Senator from Colorado took the lead, together with the Senator from Georgia (Mr. NUNN), on the question of requiring better defensive capabilities for both our Armed Forces and the equipment which they use.

Five years have gone by, and we have only begun to make preliminary steps in this direction. The Senator from Virginia and the Senator from Washington, and others, who have spoken in support of this amendment, have talked rightly about a credible deterrent, that the development of an offensive chemical warfare capability was a credible deterrent.

Mr. President, in the absence of a defensive capability for our own forces that deterrent is not credible. Even if the United States were to undertake production of chemical warfare agents, if our own forces in Europe and those of our allies were not equipped to withstand a chemical warfare environment, that deterrent is not credible unless the United States of America is prepared to gas its own troops.

I do not think the Soviet Union is going to be deterred 1 minute by a chemical warfare capability of any magnitude if our own forces and our allies' forces and the equipment they use are not prepared to operate in a chemical warfare environment, and they are not. And this amendment will not solve that problem.

We can produce chemical warfare agents for a long time, but that is not a credible deterrent until our own forces are prepared to operate in that environment.

The Soviet forces by and large are, and they are not going to be intimidated 1 minute by a stockpile of chemical agents which we cannot use without doing more damage to our own manpower and our own Armed Forces than we do to theirs.

We do not know what the cost of this facility will be. We do not know what the total budget for an all-out chemical arsenal will be. The best figures I have seen are $2 to $4 billion. That is a foot in the door, Mr. President. It is a camel's nose in the tent. It is just over $3 million which will lead to billions.

To my knowledge, none of that money is directed to the protection of our own men and our own forces.

Mr. WARNER. Mr. President, will the Senator yield for a question to clarify?

Mr. HART. I will in 1 minute.

Mr. President, we do not even know based on the very, very limited records that we have before us whether this is the right facility. We do not know whether it is the right site. We do not know whether it is going to produce the right kind of chemical munitions.

This amendment would begin the process of developing a capability to produce 155-millimeter artillery rounds. This is a very short range round. If the decision were made to proceed with binary munitions, is that 155-millimeter artillery round the top priority, or should it be a bomb, or should it be something else? Would it not make more sense to start with some munition that had more range and therefore more targeting flexibility? We do not know. The Secretary of Defense did not testify. There is no record.

So, Mr. President, what we have before us is one of the most serious defense questions that this Congress or any other Congress will undertake. The record is at best fragmentary and extremely limited. It is composed of 2 hours of testimony by the Secretary of Defense.

The same Secretary has testified and the Secretary of State has also stated that to take this step is in their judgment premature. It could prejudice serious negotiations underway with our allies in Europe. There has been no high level consultation, and in fact, the decision of this sort without that consultation could result in the same kind of debacle we faced as in the cast of the neutron weapon.

We have heard a lot in this Chamber about taking steps in foreign policy and defense areas in the absence of consultation. This is clearly a step being taken in the absence of consultation.

So those who vote for this amendment are voting to take a major defense step in the absence of any appreciable consultation with the allies who will be most affected by this decision.

Mr. President, I feel that based on all these arguments the Secretary of Defense was absolutely correct when he stated this step would be premature. I hope my colleagues will join me in resisting what I think is a very, very ill-advised proposal.

I yield to the Senator from Virginia.

Mr. WARNER. I thank the Senator.

Mr. President, I wish to clarify the fact that all we are doing here today is requesting authorization of a very small sum of money, $3.5 million, for facility construction. My colleague from Colorado has been very forthright on this issue, and I want the listeners to know we are not talking about production of a single binary weapon. It is only construction of facilities.

Am I no correct in that?

Mr. HART. The Senator is correct, but, on the other hand, the Senator is supporting that on the grounds of some kind of deterrent. The Senator's arguments a few minutes ago were to the effect we are going to produce a chemical warfare arsenal that would represent a credible deterrent. Does $3 million of preliminary construction on a facility represent a deterrent that the Senator thinks we need?

Mr. WARNER. It is a beginning, I represent to the Senator, but I want our colleagues to make clear in their minds we are not talking about building a single weapon. As a matter of fact, production is not likely to occur until 1985 or 1984 at the earliest. But we must begin now to erect the facilities necessary, and the distinguished Senator from Colorado questions the specifics that were before the Armed Services Committee.

I ask the Senator's concurrence in having printed in the RECORD at this time the specific sheet which gives the details of the construction sought, namely, two preengineered, noncombustible additions to building 53-220, one building to house canister-filling operations and a sentry station and the other to enlarge the boiler room. This project includes alterations of existing building 53-220.

Am I not correct? Is the Senator agreeable to having this printed in the RECORD.

Mr. HART. I have no objection. I am not familiar with the document. I have not seen it.

Mr. WARNER. It is a document that was presented to the Armed Services Committee.

Mr. President, I ask unanimous consent to have printed in the RECORD the document to which I have made reference.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

FY 1981 MILITARY CONSTRUCTION PROJECT DATA

1. Component: Army.
2. Date: 14 Sep. 1979.
3. Installation and location: Pine Bluff Arsenal, Arkansas.
4. Project title: Binary Munitions Facility.
5. Program element: 78011A.
6. Category code: 226.
7. Project number: B475-46.
8. Project cost ($000): 3,150.
9. Cost estimates:

[Dollar amounts in thousands]

Item	Unit cost	Cost
Primary facility		$1, 491
See cost estimates (continued)		(1, 491
Supporting facilities		1, 356)
Electric service	LS	(105)
Gas, fuel lines	LS	(29)
Generator	LS	(49)
Paving, walks, curb, and gutter	LS	(50)
Storm drainage	LS	(19)
Corridor access	LS	(925)
Fence, lighting, and signs	LS	(158)
Communications	LS	(15)
Gravel road	LS	(6)
Subtotal		2, 847
Contingency (5 percent)		142
Total, contract cost		2, 989
Supervision, inspection and overhead (5 percent)		149
Total request		3, 138
Total request (rounded)		3, 150

10. Description of proposed construction: Construct two pre-engineered non-combustible additions to Bldg. 53-220. One building to house canister filling operations and a

sentry station and the other to enlarge the boiler room. This project includes alterations of existing Bldg. 53-220. Not sited in a flood plain.

11. Requirement: $23,218, SF. Adequate: none. Substandard: $11,374, SF.

Project: This project provides initial production facilities to accommodate equipment for the production of the XM 687, 155mm Binary Projectile.

Requirement: Pine Bluff Arsenal was selected for establishing a government production base capability for the XM 687, 155mm Binary Projectile for which production facilities are required.

Current situation: Adequate facilities for establishing this part of the production base do not exist. Loading, assembling and packaging operations and storage of components and complete projectiles will be accomplished in existing buildings requiring no work other than the addition of security systems and the construction of a small sentry station.

Impact if not provided: The Army initial production base capability for the XM 687 Projectile cannot be established.

Mr. HART. Mr. President, if I may respond, since I yielded for a question, I do not think the Senator from Virginia could have it both ways.

He argued in favor of this amendment on the ground it was going to help us produce a credible deterrent. Now, in response to my arguments, he is saying no, it is not going to do that. It is just going to start some preliminary construction at a facility which will be able to produce the deterrent. He either wants it or does not. The deterrent is represented by the munitions.

It is clear if we take this $3 million step we are going to a $20 million, $50 million or $100 million step to complete the production capability, and the billions of dollars of steps of producing the munitions. That is ultimately where it leads, and that is the reason for the Senator's support. So I do not think we should be disingenuous about it.

We are arguing, in the mind of the Senator from Virginia, to produce some chemical warfare agents to deter the Soviets. That is the issue.

Mr. WARNER. But we will have many opportunities following this for the Senate and the House to intervene with their judgment.

What is taking place today is a simple request for the money to build facilities. I agree it is a step toward creating that deterrent.

I wish to remind the distinguished Senator from Colorado we had much the same situation facing this Nation with the ABM, and it was not until Congress decided to fund the ABM that the Soviets came to the negotiating table in good faith and ultimately settled that question.

Mr. HART. Well, as I said before, responding to the Senator from Virginia, I do not think the Soviets can be deterred 1 minute if our own troops are not capable of withstanding this environment. I think they will be laughing up their sleeves.

In any case, we have had plenty of instances around here, in the time that the Senator from Colorado has served, when the camel got its nose under the tent, and there were all sorts of chances to shove it back out again, but that almost never happens.

Mr. THURMOND. Mr. President, will the distinguished Senator from Washington yield me 10 minutes?

Mr. JACKSON. I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the able and distinguished Senator from Washington. The House has acted on this matter, and I just want to quote a few words from their report on page 7 of the Military Construction Act of 1981:

> The committee has approved $3,150,000 to start construction of a binary munitions production facility at Pine Bluff Arsenal, Ark. The total military construction cost associated with the projects is $30 million.
>
> Based upon the activities of the Soviet Union in the development, production and reported use of chemical weapons, the committee feels it is essential for the United States to proceed with obtaining the capability to produce binary munitions. A lead time of 3 years is involved before production could begin; therefore, it is the committee's judgment that further delay is unacceptable.
>
> Under current law, 50 U.S.C. 1511, funds may not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national interest. Insofar as the committee is concerned, the prohibition does not apply to the development of a production facility.

Mr. President, I want to say if this amendment passes, funds will still not be used for the production of lethal binary chemical munitions unless the President certifies to the Congress that such production is essential to the national security.

If the President certifies that to the Congress how can the Congress turn him down?

Mr. President, it is essential that we protect the people of this country. It is essential that we be prepared. I will just remind the Senate that the United States has not produced chemical munitions since 1969.

I would remind the Senate that our only chemical production facility is inactive and in a state of disrepair.

I would remind the Senate that by 1990, through deterioration and obsolescence, that United States will no longer have a militarily usable stockpile of chemical munitions.

I would remind the Senate that the Soviet Union outnumbers the United States 35 to 1 in chemical units, 14 to 1 in production facilities, and outnumbers us also in chemical personnel, decontamination equipment, chemical munitions, and ground-based delivery systems. What are we going to do about it?

Mr. President, I would remind the Senate that chemical weapons have been historically used against nations having no retaliatory capability. If we had the retaliatory capability, the probability is they will not be used against the United States. If we do not have it they will.

You may say what is the history for that? The history is this: It was used by Germany in World War I, by the Italians in Ethiopia in 1935, by the Japanese in China in 1937, by the United Arab Republic in Yemen in 1967, by the Vietnamese in Laos and Cambodia, and by the Soviets in Afghanistan in 1980. None of these countries had binary weapons and, therefore, they were used against them.

I would remind the Senate that the U.S. policy is one of deterrence—retaliation. However, inaction and the effects of deterioration and obsolescence will equate to unilateral chemical disarmament. If we do not go forward now it is virtually saying we are going to disarm unilaterally in this field. Is that what we want to do? I do not think so. I do not think that is what the people of America want us to do.

I would remind the Senate that bilateral negotiations with the Soviet Union ongoing since 1976 have produced no substantive results. If we go forward I feel we might be able to get some agreement. But if we do nothing I do not think we will.

I would remind the Senate that the Senate Armed Services Committee studied this matter in depth and they favor this amendment 14 to 3. I repeat, 14 to 3. Is not that judgment worth something to this Senate?

Mr. President, I understand the distinguished Senator from Colorado has a study amendment. I want to say that the United States has no current capability to produce binary 155 millimeter artillery rounds in the first place. This facility would give us the capability if the decision to produce is delayed.

Also our current usable stock of chemical weapons is deteriorating. We need a production capability as a minimum for deterrent purposes. The Joint Chiefs of Staff have stated that the current stockpile amounts to only 25 percent of our needed deterrent capability. Mr. President, that is the Joint Chiefs of Staff, the highest military people in this country, and they say our current stockpile is only 25 percent of what we will need as a deterrent capability.

I would remind the Senate that General Rogers, the NATO Commander, supports this step. He has made this statement:

> I support an adequate and modern retaliatory capability to deter a chemical attack by the Soviet bloc nations. At present we do not have an adequate or modern capability. This binary round would give us that capability.

Here is our man in Europe, here is our man in charge of NATO, here is our man who is going to have to oppose the Warsaw Pact countries if aggression begins, and he says we need this.

Mr. President, I would remind the Senate this money is not for production, as has been stated. The President would have to certify to Congress that he favored production, and then Congress would have to approve it. This merely initiates the preparation of a production capability.

I want to say, too, that the need for a chemical deterrent has been studied for the past 5 years. We do not need another study. It has been in the Army budget since 1975 but deleted each time by the administration. Anytime they want to kill something or delay it, it is a study, a study, and that is what the effort is here, a study.

Now is the time to act. We are late with everything. The Joint Chiefs of Staff have said in the last few months that the Soviets are now ahead of us in conventional weapons, and they have also said the Soviets are now ahead of us in strategic weapons, so where do we stand if they are ahead of us in conventional weapons, ahead of us in strategic weapons?

Mr. President, I fear for what could happen to this country unless we go forward and take the steps we need to take to provide an adequate defense for the people of this Nation, and this is one step we need to take. We need to take it as a deterrent. We need to take it so if the Soviet Union starts using binary weapons here, they will get it back.

Mr. President, this is merely a modest step toward adequate preparedness. The United States has renounced first use of chemical weapons, but needs a deterrent to prevent use by the Soviets.

We have said we will not use it first, just as we said that we would not fire off ICBM's first; we would not start a nuclear war first. But we have to be prepared in the event the Soviets start it so we can finish it.

Mr. President, the United States and the Soviets have been attempting to negotiate a treaty on chemical weapons including verification. This step could help bring about a treaty. If you want a treaty so neither country will use it, this is the best step we can take. When the United States moved forward with the ABM system, and only then, did the Soviets agree to a treaty.

The $3.1 million is in the House bill, as I stated, and has been approved by the House in the authorization bill. It has also been approved in the appropriation bill. Thus, the full House has approved this $3.1 million expenditure for this purpose.

I hope the Senate will see fit to go forward and pass this amendment. I think it is highly to the advantage of the people of this country that we do it.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield such time as he may require to the distinguished Senator from Alabama.

Mr. HEFLIN. Mr. President, about 3 months ago I made a speech on the Senate floor which I believe was the first speech dealing with the issue pertaining to the Russian buildup of chemical warfare. Since that time there has been a lot of information that has appeared in the media.

I congratulate Senator JACKSON on his wisdom in moving forward in regard to providing funds through an amendment for the integrated binary production facilities for chemical warfare at Fort Smith, Ark.

First of all, let me say that I share with the proponents of this amendment a basic abhorrence of the use of chemical warfare. I sincerely wish we lived in a world where our unilateral refusal to participate in this deadly and horrible form of killing would insure that all the nations of the world would likewise refrain from its use. But this simply is not the case.

The Soviet Union has been engaged in a massive buildup of both their defensive and offensive chemical warfare capabilities. The motive for this gearing up for chemical war is not simply a military exercise, as reliable reports from Afghanistan bear out. We have recently learned that not only have the Soviets used deadly chemical agents in Laos, Cambodia, and Somalia, but are presently using chemical warfare in Afghanistan.

The United States simply cannot afford to be unprepared and helpless in the face of a mounting Russian chemical warfare threat. Our military experts say that the Soviet Union has the most fully trained and sophisticated chemical warfare force in the world. There are estimates that they have a force of over 100,000 trained troops in regard to chemical warfare.

The Russians have integrated chemical warfare into all phases of their armed services. Right now, Soviet troops in Eastern Europe are fully trained and equipped to launch a deadly chemical warfare attack on our allies in Western Europe, if the decision was made to so launch such a deadly attack.

This buildup of Soviet chemical warfare capabilities poses a serious threat to peace in the world. The United States must act—and act wisely to counter this threat to the peace.

The strongest deterrent the United States can have against a Soviet chemical warfare attack is a comparable chemical warfare force.

Mr. President, at this time the United States is far, far behind the Soviets in both defensive and offensive chemical warfare capabilities. In short, we are vulnerable to the use of chemical agents against our civilian populations and our military personnel in the field.

The United States and NATO forces have inadequate supplies of chemical agents and are totally unprepared and untrained in their uses. Further, our military personnel have little or no protective clothing or decontamination equipment with them in the field.

To begin an American effort to catch up with the Soviets is imperative. And I believe the integrated binary production facility for chemical warfare munitions at Fort Smith, Ark., is essential to this beginning.

I have received both classified and unclassified briefings at the Army's chemical school at Fort McClellan in Anniston, Ala. I am convinced that. contrary to what we are being told on the Senate floor today, the United States does not have adequate supplies of filled chemical munitions and many, if not most, of the chemical munitions we have stockpiled are 1950's generation weapons that are outdated and ineffective.

The Army has recognized the need for a binary facility at Fort Smith since 1975 in order to maintain a credible chemical warfare deterrent. Modernization in this critical area of our national defense is essential.

I am also convinced that binary weapons are the most effective and the safest way to beef up our chemical warfare munitions. Let me stress that binary weapons contain two separate chemical agents that are not dangerous until they are mixed in air. The two separate chemical agents are absolutely safe so long as they are kept separate. This fact alleviates the serious problems of storing and transporting chemical filled munitions.

Mr. President, nearly half of all the filled munitions for missiles and bombs stockpiled by the Soviets in Eastern Europe are chemical weapons. These deadly weapons could be delivered by aircraft, artillery, multiple-rocket launchers or landmines. With our present dismal chemical warfare capabilities, we could do little more than stand and watch Europe die if the Soviets were to attack.

To avaid this kind of disaster, we must develop a defensive posture in chemical warfare that is superior to the Soviets and an offensive posture strong enough to deter a Soviet attack.

The binary munitions facility at Fort Smith is an important first step in this goal. Mr. President, I believe it would be a very serious mistake to delete the funds for this important munitions facility.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the money proposed by the Senator from Washington in his amendment would be spent at Pine Bluff, Ark. I yield to the Senator from Arkansas (Mr. PRYOR) such time as he may require.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Senator for yielding.

Mr. President, I rise for the purpose this afternoon of opposing the amendment offered by the Senator from Washington, Senator JACKSON, and in support of the amendment to be offered later by Senator HART, the manager of this bill, requesting that the administration submit with its 1982 budget request a study of the military, foreign policy and arms control implications of moving forward with the production of binary nerve gas.

Mr. President, because the binary nerve production facility would be located in the State of Arkansas, I have taken the time to study this matter in some detail. I am certainly not an expert. I am a layman in this area. Initially, my concern, when I was Governor of our State, was primarily one of safety. To be honest, I have basically satisfied myself that these binary munitions would probably be relatively safe to produce. But, as I have looked into the matter, I have become increasingly convinced, Mr. President, that there is no need to take this step at this time .

I do not oppose the Jackson amendment because I trust the Russians. I do not. I do not oppose the Jackson amendment because I am any less patriotic than any of my colleagues in this Chamber. But I do oppose the Jackson amendment and support very strongly the Hart substitute because I do not feel that it makes military or economic sense for us to proceed to throw away an 11-year-old policy without adequate debate.

I further feel, Mr. President, that the commitment and expenditure of what ultimately will be a $4 billion project will drain needed defense dollars from what I consider to be higher priority expenditures.

We presently have, to the best of my understanding, a more than adequate stockpile of chemical weapons. The current stockpiles are large enough for 50 divisions to wage chemical warfare for over 100 days. These stockpiles are not significantly deteriorating nor becoming obsolete. The vast majority are serviceable or could easily be made serviceable by repainting or by inserting fuses. These weapons can only be effective, however, if they are available for use. Our European allies have time and again indicated their total unwillingness to store additional chemical weapons on their soil. The West German position was very clearly enunciated in its 1970 White Paper as follows:

> In 1954, the Federal Republic of Germany renounced the production of biological and chemical weapons. She does not carry out any research or development conducive to the production of such weapons. The Federal Republic neither possesses nor does she store any biological and chemical weapons; she does not seek possession of, or control over, weapons of that kind, she has made no preparations for using them, does not train military personnel for that purpose, and will abstain from doing so in the future. Any allegations to the contrary, as occasionally made in the public, are false.

Mr. President, there has been much written about the Soviet chemical weapons capability. Most of the figures used to show a comparison between Soviet and U.S. capability reflect Soviet superiority in defensive not offensive chemical warfare capabiliay. I wish to commend the Senator from Colorado, Senator Hart, for including in his substitute an expression of concern over this country's chemical warfare defensive capability. What is currently inadequate is not the state of our present chemical stockpile, which is adequate, but the state of our defensive capability against chemical warfare. From any reasonable and logical military perspective, defense against chemicals makes good sense. It makes especially good sense if one concedes the reported chemical warfare offensive capability attributed to the Soviets.

For the past 5 years, Congress has urged a more determined defensive effort by the Department of Defense. Some progress has been made in such areas as protective clothing, better gas masks, detection equipment, and training. But we have a long distance to go before the American military is adequately protected against chemical warfare attack.

As an illustration of the tragically inadequate level of our chemical warfare defensive effort, I would like to cite hearings before the Special NATO Subcommittee of the House Armed Services Committee on December 18 and 19, 1979.

Here is what Gen. John W. Pauly, Commander in Chief of U.S. Air Forces in Europe, said:

> Although we have given emphasis to our chemical warfare protection program, we were forced to reduce the buy of critical chemical warfare protective suits in fiscal year 1979 by one-third.

General Pauly's testimony is bad enough, but I would also like to quote from an exchange between Congressman Larry McDonald of Georgia and Gen. Frederick Kroesen, Commander in Chief of the U.S. Army in Europe, at that same hearing:

> Mr. McDonald. Well, how do you stack up in the area of decontamination, radioactive decontamination of your field units; how are we equipped to handle that? The last time we checked it was with a mop and bucket and some cold water.
>
> General Kroesen. Yes, sir.
>
> Mr. McDonald. Are you still at that level of activity?
>
> General Kroesen. I am still at that level of activity?
>
> Mr. McDonald. That is pretty medieval.

It is indeed medieval, but it does not stop there. Listen to the next exchange between Congressman McDonald and General Kroesen.

> Mr. McDonald. Do you have any rapid washing process, or do the contamination process out in the field?
>
> General Kroesen. The manner we are pursuing it right now in Europe, sir, is to have identified for unit commanders the locations of all available washing facilities, such as Schnellwasch stations, automobile drive-in washing facilities.
>
> Mr. McDonald. Our military is going to be able to requisition the civilian automobile washing stations; is that what we are planning on using?
>
> General Kroesen. In times of crisis, we need to know where those kinds of facilities are. . . .
>
> Mr. McDonald. Good God.

If it was not so tragic, it might be funny.

Here we are, considering what is the initial expenditure of a $4 billion project to replace our present adequate offensive stockpile of chemical weapons when our defensive posture against chemical warfare attack is symbolized by a mop and a car wash.

Mr. President, I submit that we do not need to move forward with the authorization of a binary nerve gas production facility at this time. What we need is to redouble our efforts toward improving our defensive capability against chemical attack. That is where our focus shoud be.

Mr. President, here we are considering what the Senator from Virginia, my good friend, has stated to be a $3.2 million expenditure, a small expenditure, I think, in his words. But in the Department of Defense appropriation bill in the House of Representatives at this time is a $19 million request to equip this facility. So we are looking at an initial expenditure of some $21 million or $22 million.

Further, Mr. President, what we are really talking about todav is the beginning of a $4 billion commitment to replace our present offensive stockpile of chemical weapons with a new type of a binary nerve gas which has no military superiority to the present conventional type gas that we have stored in vast amounts.

I say, Mr. President, that before we change this policy, let us remember that nerve gas is a totally indiscriminate killer of civilians who normallv do not have access to protective clothing or to gas masks supplied to military personnel. I hope that we will remember that we are committing ourselves to a long-range multibillion dollar program which is going to begin draining off precious and needed defense dollars from other needs.

Mr. President, with these dollars we will not be purchasing one iota of military advantage. We will only be destroying our present stockpile of chemical weapons and substituting another type of stockpile which does not have any military advantage. The only advantages are in transportation and in storage.

Mr. President, the making of binary gas in Pine Bluff, Ark., Spokane, Wash., or Arlington, Va.—wherever it might be made—is not the issue. The issue is that the making of this new gas will not increase our deterrent capability one iota.

Second, we have no militarily useful place to store this gas since our allies in Western Europe refuse to have additional nerve gas stored on their soil.

Also, Mr. President, I think it is very, very relevant to this debate this afternoon to recognize the fact that the Secretary of State is opposed to this proposal; that the Secretary of Defense has testified against this proposal, and that the President has not made a statement on the necessity of reversing our 11-year policy. It should also be pointed out Mr. President, that the Army is not currently maintaining our existing stockpile of nerve gas agents adequately. In addition, the Army is presently demilitarizing and destroying large quantities of usable lethal chemical agents. I will return to this point later.

Mr. President, this is a far-reaching step that we are considering taking today. It is a step where we have not adequately been briefed. It is a step off into darkness and uncertainty. We have not seen the burden of proof being met by the proponents of the Jackson amendment.

There has been, Mr. President, a lack of debate, a lack of committee hearings, and, with the exception of one or two briefings, a lack of classified briefings, on this particular issue.

I conclude, Mr. President, by saying that our decision this afternoon is going to be extremely critical in negotiations on disarmament. It is going to be extremely critical as to what message we are about to send not only our enemies but also our allies.

Mr. President, I would like to emphasize that where nerve gas is made is not the issue. The issue is not parochial, it is not provincial. The issue this afternoon is global and it could become a catastrophic decision if we move without the adequate facts and without the proper deliberation.

I yield to my friend from Colorado.

(Mr. BRADLEY assumed the chair.)

Mr. HART. Mr. President, I yield to the Senator from Mississippi.

Mr. COCHRAN. I thank the Senator from Colorado.

Mr. President, because of my sincere fondness and respect for the Senator from the State of Washington and the State of Virginia, and others who have spoken in support of this amendment offered by the Senator from Washington, I very reluctantly rise to oppose the authorization of funds for the construction of this binary weapons production facility.

This issue is much too complex and its ramifications much too important to be decided in a hasty fashion.

The administration has not requested construction of this facility. In fact, an interagency study is underway right now examining the need for new chemical weapons. No congressional hearings have been held on this issue during the year, with the exception of an appearance recently by the Secretary of Defense, Secretary Brown, who voiced his opposition to this proposal.

No certification has been made by the President as to the national security need for a new generation of chemical weapons as the Congress requested him to do back in 1975 before any such facility should be constructed.

It is argued that these new weapons will be environmentally safer, that they can be relocated, transported, with greater ease and less danger to the general public.

But the weapons we now have in stockpile have given no legitimate cause for concern. Since the end of World War II, there has not been either an accident or a death resulting from the transportation or storage of chemical weapons. The idea, however, is that our NATO allies will be more inclined to accept the stationing of these so-called "safe" binary weapons on their soil than they have been to accept our current stockpile of chemical agent munitions. But there is no indication that the views of our allies are any different regarding binary munitions. They have indicated that they will not permit the storage of any more chemical munitions on their soil, and it is even questionable whether they would agree to their use in time of war. These new weapons are not going to be of much value stored in Arkansas. It is a waste of millions of taxpayers' dollars to construct a facility and weapons before we have gained a commitment from our allies to accept them.

It is argued that we must build up our chemical stockpile to match that of the Russians. We do not know the size of the stockpile the Soviets have, but we have no reason to believe that it is any larger than our own. There is no evidence that they have produced any new weapons during the past decade. Yet it appears that they are growing increasingly more open to a verifiable ban on chemical weapons. They recently agreed to the principle of on-site inspection at the ongoing Geneva negotiations. Unfortunately, there is every likelihood that our hasty construction of a new chemical plant will end this possibility of agreement and that a new chemical arms race will begin as a result.

We have, at the present time, a large and sufficient stockpile of chemical munitions. It is said we have enough to allow 50 divisions to shoot nothing but chemicals for 100 days. More munitions, binary or otherwise, are not the best deterrent or response to a Soviet chemical warfare threat. Unlike other weapons, there is an antidote for chemical attack. A military force equipped with masks and protective body clothing will be relatively immune to chemical agents. It may find itself hampered by this gear, its performance degraded by as much as 30 percent, but physical harm will come only to those surprised by the first use of these weapons.

Therefore, he who initiates the attack has the advantage and makes the only gain * * * a shortlived gain because he must then be prepared to fight with the cumbersome defensive equipment.

He who initiates the attack will have anticipated, of course, chemical retaliation and have prepared himself with defensive equipment. Practically speaking, then, we require only that quantity of chemical agent which will force the attacker to use his protective equipment and take other defensive measures. Beyond this amount, our stockpile of chemical agents is of little value and our threats to use these weapons are not likely to be a deterrent. In a war fought entirely in Western Europe, a threat to pour more chemical agents on the attacker would only serve to kill our own civilian allies.

This is because, in a period of intense chemical munitions use, a significant risk could exist as far as 60 miles downwind. The result in densely populated countries like West Germany, Belgium, or the Netherlands is hundreds of thousands of civilian casualties. For this reason the West Germans will not even train their forces in the use of offensive chemical weapons. They prefer to expend their efforts and money on augmenting defensive measures—as we and our allies should do. Effective defensive training would discourage the Soviets from thinking that they might gain substantially from the introduction of chemical warfare. At this time, however, we have not done nearly enough to train our own forces in chemical defensive measures. This is where our money should be spent.

Adding more chemical weapons to our stockpile will not deter the Soviet leadership from their use if we cannot use them to inflict equal or greater damage on them. Instead of building more redundant chemical weapons, it should be made clear to the Soviets that first use of these weapons, a decision to break the 1925 Geneva convention, would be viewed by this country as a major act of escalation tantamount to justifying the use of nuclear weapons. Only with nuclear weapons could we hope to reply on Soviet soil to the civilian casualties a first use of chemical warfare would incur on NATO territory.

The authorization for a new binary weapon production facility is entirely wasteful, severely strains our relations with out allies, who are adamant in their opposition to these weapons, and puts in jeopardy our negotiations with the Soviets for a total ban on chemical weapons. This Senator believes that the issue deserves more careful consideration than it has received thus far, and I request that the Senate reconsider this issue in an appropriate forum before committing this Nation to a grievous error.

Mr. President, I thank the Senator from Colorado for yielding.

Mr. HART. Mr. President, I yield such time as the Senator from Oregon may require.

Mr. HATFIELD. I thank the Senator from Colorado.

Mr. President, in the last 10 years, we have no evidence that either the Soviet Union or the United States has increased its supply of offensive chemical weapons. Though we have no concrete policy on chemical weaponry, we have thus been adhering to the terms of an undeclared moratorium.

Few could deny that this exercise in restraint is a desirable and commendable aspect of United States-Soviet relations. President Nixon, I might add, deserves much of the credit for the initiation of this policy. In 1975, Congress adopted a prohibition on the production of binary chemical munitions until and unless the President certifies that such production would be essential to our national security. No American President has made such a determination.

In 1976, President Ford began negotiations with the Soviet Union in the hope of obtaining a formal agreement limiting the development and use of chemical weapons. These negotiations have made substantial progress and achieved a critical breakthrough 3 months ago, when both parties accepted the principle of onsite inspection. While onsite inspection is agreed to in principle only, any student of Soviet affairs knows the reluctance of that nation to yield on this point. Yet, with virtually no public debate or congressional review, we are being asked to take the first step toward what could prove to be a chemical arms race.

Mr. President, this proposal is one of the most glaring examples I have seen of a knee-jerk reaction to temporary strains in the geopolitical environment. I submit that if the Senate approves this measure today, it will hand the Soviet Union a propaganda advantage on a silver platter. They will point to us and say, "There they are, the so-called guardians of peace and humanitarianism, producing a substance that violates every standard of human decency." If history serves as an indicator, they will then say, "we have no choice but to act in kind."

People, like the baby who must touch the flame to understand that it is painful, are slow to develop an awareness of what they do not desire. This undoubtedly contributes to our continuing illusion that nuclear weapons will make us more secure. But American soldiers have experienced the horror of gas warfare. Over 1,300,000 casualties were caused by chemical agents during World War I, including 100,000 deaths—over half were Russian—and 100,000 incapacitations.

Today, we possess the technology and the ability to fully protect our men in uniform from the ravages of lethal chemicals. Indeed, protective suiting is standard issue for our soldiers in the European theater. Mr. President, it is women, children, and innocent civilians, not Soviet troops, who would be subjected to the vile and ugly reality of chemical warfare.

Has it been so long that we have forgotten what this substance actually does to a human being? Let me remind my colleagues. Nerve gas enters the body by inhalation or by absorption through the skin.

Once absorbed, the normal transfer of nerve impulses is disrupted. It then causes intense sweating, bronchial constriction, dimming of vision, uncontrollable vomiting and defecation, convulsion and finally, paralysis and respiratory failure. In short, nerve gas violates the axim that "all is fair in war." And our ability to protect our soldiers from its effects makes the call to produce more nerve gas even less defensible than it was in days past.

I further submit there would be no proponents of this measure if it were our own people, and our own soil, which would be the battleground for a potential chemical war. But it is not the United States, it is Europe and primarily Germany where such a conflict would take place. I contacted officials at the Department of State to inquire into the German position on this specific proposal. The response I received was shocking. I was told that this is an internal debate, not subject to an open forum. I was told that bringing this up with the Germans is too sensitive, that it could potentially jeopardize negotiations being conducted on the forward deployment of Perishing missiles. How can any Senator be expected to approve this proposal in the absence of consultation with the very country in which these agents would be used? In 1970, the Federal Republic of Germany issued a white paper on its defense policies. It states:

> In 1954, the Federal Republic of Germany renounced the production of biological and chemical weapons. She does not carry out any research or development conducive to the production of such weapons. The Federal Republic neither possesses nor does she store any biological and chemical weapons. She does not seek possession of, or control over, weapons of that kind. She has made no preparations for using them, does not train military personnel for that purpose, and will abstain from doing so in the future. Any allegations to the contrary . . . are false.

Mr. President, I contacted the German Embassy in order to determine if this policy holds firm today. It does.

Mr. President, there is absolutely no military utility in this proposal. It is an ill-considered and illogical response to strains in the geopolitical environment and nothing more. The only ground which the proponents of this measure advance is the alleged need for a credible retaliatory capability in chemical weapons. Yet if these weapons cannot be prepositioned in Europe, they are clearly useless. Furthermore, it is clear that conventional weapons present a far more credible response to a chemical attack than would chemicals themselves. Only bullets and artillery shells can render protective clothing useless; a chemical counterattack cannot.

I am told the step we take today could end up costing this Nation $4 billion. How can we, in this period of tight budgets and strained pocketbooks, embark on a multibillion dollar chemical rearmament program when we do not even know if our defensive capability is sufficient to protect our soldiers from a chemical attack? The Army has informed me that they have never conducted, and are badly in need of, a comprehensive war game exercise. Such an exercise would consist of large numbers of troops over an extended period of time and would determine weaknesses, strengths and areas which need to be targeted in the defensive area.

Thus, we are not backed up against a wall, Mr. President. We are faced with clear alternatives in the way to proceed to enhance our deterrent capability. One choice is to embark on a provocative rearmament program. The other choice is to channel every dollar necessary to insure that our men and women in uniform are protected to the degree that our technology and ingenuity can provide. I challenge the proponents of this program to ask the World War I veterans, who suffer today from the use of lethal gas, which path they would choose. Ask the people of Europe. Ask our men and women in the services. And ask their mothers and fathers, their wives and children and friends. We owe them that much.

I commend the distinguished Senator from Colorado (Mr. HART) and the distinguished Senator from Arkansas (Mr. PRYOR) for their leadership on this matter. I am proud to be a cosponsor of this measure with them. The casual manner in which this proposal was considered and approved in the House of Representatives was deplorable. They, however, have had the courage and the foresight to tackle this issue head on. We can all be thankful for their vision.

Mr. President, there is no issue of greater importance to this Nation, to our European allies, and to the international community than our response to this measure today. We stand to lose, voluntarily and without provocation, our ability to effectively influence the outcome of bilateral and multilateral negotiations aimed at controlling chemical weaponry. Thus we choose between a world in which these weapons are more likely to spread to many nations as a legitimate instrument of war, and a world in which the very possession of these substances constitutes a black mark on a nation's record.

We have no choice but to strive with all the force of morality and logic we can muster to create an environment where a single chemical weapon on a nation's soil brands its possessor as a pariah in the international community. We will have to do some explaining, Mr. President, to our men and women in uniform if we approve this measure. They will want to know why we chose to squander our resources to initiate a chemical arms race when bilateral restraint has been successful, and negotiations have made so much progress. They will want to know why we did not use our ingenuity to develop a formidable deterrent through protective measures which would vitiate the effects of chemical weapons and render them militarily useless. Let us reject this call which will inadventently make their use all the more likely. In the name of human decency and realism, I urge my colleagues to reject this proposal and adopt the compromise amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. I yield 7 minutes to the distinguished Senator from Nebraska (Mr. EXON).

Mr. EXON. Mr. President, I rise in support of the Armed Services Committee amendment introduced by my friend from Washington to add funds to begin construction of a binary ammunitions plant.

As I see it, today's vote is not any kind of referendum on the pros and cons of chemical warfare. Rather, it is a vote on how best to deter its ever being employed. The thought of chemical warfare is abhorrent, I am sure, to every Senator and all Americans. Although never used in World War II, I believe most of us knew of those who served in World War I and who suffered the horrible effects of exposure to what was then known as gas warfare. I believe that the idea of chemical warfare today is no less detestable than it has ever been. For this reason, all peace-loving nations must do whatever possible to prevent this type of warfare from ever happening.

The United States has been negotiating for years with the Soviet Union regarding a ban on the production and stockpiling of chemical weapons, similar to the one we already have on the production of biological weapons. In 1969, the United States unilaterally decided to destroy all of our biological weapons and not to increase the size of our chemical weapons stockpile. Since 1976, the United States and the Soviet Union have been holding bilateral negotiations on a formal agreement to limit the development and use of chemical weapons. Unfortunately, these negotiations have not been successful.

The real quandry before the Senate today is how best to spur these negotiations and how best to convince the Soviets that continued intransigence at the negotiating table will be counter-productive and not in their best interest. A look at our two relative positions with respect to chemical warfare gives us a good clue as to why a ban on such weapons has not been achieved.

The Soviet Union has by far and away the largest and best chemical warfare capability in the world today. Their troops continually train in its offensive use and in defenses against a chemical counterattack. Recent literature indicates that Soviet mechanized battlefield equipment is rigged with filtration systems designed to protect the soldiers within from their own chemical agents—a move which means to me that they fully expect to launch such an attack and then move men and equipment into the same area in order to exploit their gains.

The Soviets have a separate branch of chemical troops, which consists of 80,000 to 100,000 specialists in this area. In addition, the Soviet Union is continuing to build up its chemical warfare stocks to increase what is already a preponderant lead over the NATO alliance in such weapons. This investment on their part and ther continued practice at implementing chemical warfare leads me to believe that the United States needs to address this problem head-on.

No one wants a ban on chemical warfare or even a ban on the horrors of war more than this Senator. I should like to see at least one of those horrors—that of chemical warfare—eliminated. But we must be practical and appreciate that in these times and all but proved Soviet capacity deterrent is our safest course of action. Certainly we owe it to our troops in the field to leave no stone unturned in this effort. So, again, the question becomes how best to achieve this goal.

Obviously, the Soviet Union has not been particularly impressed with our good intentions and desire to negotiate an end to chemical warfare. Certainly no one wants to have a President faced with the choice of a tactical nuclear response to chemical attack or no response. The fact of the matter is that the Soviet Union has forced us into this corner and that the only responsible approach now is to have an appropriate deterrent to their first use. My investigation and the testimony of the Secretary of Defense lead me to believe that our deterrent is not up to the task. Some of our current stocks of chemical weapons are leaking and becoming unusable. An even more significant problem is that the weapons we have on hand today are ill-suited to the delivery systems we now have and will soon be bringing into the field. In short, our deterrent to chemical warfare is becoming "hollow."

Lest anyone doubt the Soviet position on this issue, I refer them to the high probability of use of chemical weapons by Soviet or Soviet surrogate forces in Afghanistan, Laos, and Cambodia.

By providing this necessary $3 million investment in the beginning of enhancing our chemical warfare capability, the Senate will be saying that the United States means business at the negotiating table and, if necessary, on the battlefield. There will be plenty of time to consult with our allies on this matter and for a much-hoped-for negotiating breakthrough. It will take years to actually begin production of U.S. binary weapons. If the negotiations with the Soviets can get back on track and a chemical warfare ban achieved, this will be the best $3 million investment we can make. If not, we owe it to ourselves and our allies to be prepared.

Mr. President, I ask unanimous consent to have the following items printed in the Record: A letter dated September 12, 1980, to Meg Greenfield, editor of the op-ed page of the Washington Post, from Representative Richard Ichord of Missouri, and his attachment thereto; a reprint of an article published in the September 1979 issue of Reader's Digest, by Representative Ichord, entitled "The Deadly Threat of Soviet Chemical Warfare."

There being no objection, the material was ordered to be printed in the Record, as follows:

House of Representatives,
Washington, D.C., September 12, 1980.
Ms. Meg Greenfield,
Editor Op Ed Page, The Washington Post, Washington, D.C.

Dear Ms. Greenfield: Many of my congressional colleagues have urged to me respond to the op ed article by Senator David Pryor you published on September 9th concerning U.S. production of binary weapons. In the last several days, I've thoroughly reviewed the history of our policy on this subject and the most recent data compiled by our military services concerning U.S. and Soviet capabilities in this aspect of warfare.

I've been a student of this subject for many years, most recently as Chairman of the House Armed Services Subcommittee on Research and Development, and have written about it extensively in the past. This lengthy experience, coupled with my review this week of the most current information on the subject, convinces me that Senator Pryor's editorial is seriously inaccurate in many respects.

In the editorial I've enclosed, the requirements of concision prevented me from addressing all of the points in Senator Pryor's article, but I've attempted to deal fairly and accurately with what I consider to be the salient errors in his analysis.

As you may know, the Senate will probably take up this issue the week of September 14th and I'm very concerned that the crux of the problem will be missed, namely preparedness. The argument now is not, or should not be, production of binaries itself, because there's a long lead time involved—about three years before production could resume. The need is to be geared up and ready to go, should the President at some later time decide that our stockpiles have so far deteriorated that we are shorn of our deterrent and of our ability to defend ourselves in the event of an offensive strike.

I sincerely hope you'll find my remarks a helpful clarification as the Post continues its efforts to improve public understanding of this terribly difficult and emotional subject, which has suffered in the past from a lack of dispassionate analysis.

Sincerely yours,
Richard H. Ichord,
Member of Congress.

The Deadly Threat of Soviet Chemical Warfare

(By Representative Richard H. Ichord)

The huge American M-60 battle tank sat at the intersections of two roads near a German village, its 12-cylinder diesel engine rumbling at idle. Inside, where static poured from the radio, the gunner, loader and driver were slumped in their seats, dead. Only the tank commander had sensed something in the final seconds of his life that hot summer morning, and had groped desperately for the respirator mask attached to the tank's protective ventilation system—too late.

All across Western Europe, the eerie scene was repeated: bodies slumped on air strips and in cockpits; at entrances to radar bunkers, gun emplacements and missile sites. There had been no smell, no ominous cloud, not a sign that the shells and bombs detonated in the surprise barrage had contained Soman, a deadly nerve gas.

Masked and goggled troops of the Red army and its satellite forces now moved quickly to take advantage of the deadly, invisible miasma of their own making. And while the United States, fearful of massive Soviet retaliation, held back its nuclear weapons, it became clear that Western Europe—its industrial and military infrastructure left largely intact for the conquerors' uses—was falling.

Such a scenario becomes more than the stuff of "war-gaming" speculation when one considers the tremendous chemical-warfare capability that has been steadily developed over the past 40 years by the Soviet Union and its Warsaw Pact allies—a sophisticated catalogue of destructive chemical compounds that can kill or incapacitate by attacking the respiratory, blood or central nervous systems. It is an offensive capability Western forces cannot match, and against which we have only the most rudimentary defense.

As chairman of the Research and Development Subcommittee of the House Armed Services Committee, I have become gravely concerned over the growing U.S.-Soviet disparity in chemical warfare. Tragically, we have allowed our natural revulsion for this form of weapon to override our common sense and have permitted our deterrent capability to deteriorate dangerously.

More than two years ago, the U.S. Army's two top research-and-development officials, Assistant Secretary Edward A. Miller and Lt. Gen. Howard R. Cooksey, warned Congress that a non-nuclear Soviet attack against Western Europe would include the use of chemical weapons. "The Soviets," we were told, "are so immersed in chemical weapons, tactics, doctrine, equipment and personnel, and so much of their training centers around the use of lethal agents, that it would be odd if they did not employ them. Their offensive chemical capability dwarfs ours to the point that they would be throwing away a possibly decisive advantage by not using chemical weapons."

History has shown that the only real "defense" against chemical warfare is an "offense" of such weapons so formidable that it deters the enemy from using theirs. During World War II, mindful of Germany's use of poison gas during World War I, the Allies sent word to the Nazis that such use would result in overwhelming retaliation. Thus no gas was employed by either side.

After the war, the Allies learned that as early as 1936 the Germans had made a devastating breakthrough in chemical warfare by perfecting "nerve gases," such as Tabun, that attack and break down the body's nervous system. Unlike the readily detectable asphyxiating gases of World War I, nerve gas is colorless, odorless, virtually undetectable. Although the Allies had nothing comparable to Tabun, the Germans did not know this, and the general threat of retaliation deterred them.

The United States, Britain and Russia divided the Nazis' Tabun stockpile into equal shares. The United States and Britain dumped most of theirs at sea, keeping only enough to aid them in development of their own gas. The Russians took theirs home, along with the dismantled Tabun laboratories and the scientists who made it, and went on to produce great quantities of this gas. They have continued to produce it, and numerous other chemical weapons as well.

During the 1950s, the United States became aware of this Soviet production, and set out to build a deterrent. By the mid-60's, our chemical-warfare posture was such that no potential enemy would have contemplated using such weaponry against us.

During the Vietnam war, however, we received intense worldwide criticism for using chemicals to defoliate jungles, and tear gas to flush out enemy forces. In March 1968, American citizens joined in the furor after 6400 sheep died on grazing lands near the Army Chemical Corps' Dugway, Utah, proving ground, following a nerve-gas experiment. Some people were convinced that, had weather conditions been different, the lethal gas might have traveled 65 miles to Salt Lake City and killed all its inhabitants. (In reality, no conceivable meteorological conditions could have carried the gas to Salt Lake City in harmful concentrations.)

So we frightened and moralized ourselves into throwing away a vital deterrent, spending upward of $100 million stripping large portions of our chemical arsenal and dumping these munitions at sea. Even the movement of the stuff scared us—to the extent that tightly restrictive legislation was passed to govern the transport, testing and deployment of such weapons.

In 1973, following the Middle East war, American defense analysts were startled to find that Soviet-built equipment captured by the Israelis showed a sophisticated preparation for the offensive use of chemical weapons. Filtration systems in Russian tanks and armored personnel carriers were designed to protect against the nerve gas "Soman," a mainstay of Soviet chemical warfare. Clearly, this equipment had been designed for use in a possible nerve-gas offensive of Moscow's own making.

Ignoring such ominous signals, we continued to disband the Army Chemical Corps. Today we have perhaps 3500 officers and enlisted men involved with chemical-warfare tasks, and nothing remotely resembling an adequate retaliatory capability.

By contrast, the Red army includes a chemical-warfare contingent fully ten percent as large as the entire U.S. Army—80,000 to 100,000 officers and enlisted men. At some 40 sites in Eastern Europe, these forces train intensively for chemical warfare—day and night, in all kinds of weather, on all kinds of terrain. Every Soviet tank and personnel carrier is equipped with chemical detection and alarm systems that automatically close all apertures, and with efficient air-filtration systems. Every Soviet foot soldier is issued a gas mask made of lightweight, rubberized material resistant to all known chemical and biological agents. He also carries gloves, leggings, boots and a thin cape quickly convertible into an overall suit, all of the same protective material.

Approximately every third Soviet missile and rocket warhead, and up to ten percent of artillery projectiles, mortar shells, land mines and aerial bombs, are loaded with a chemical agent. These weapons—between 300,000 and 700,000 tons of them—have a higher kill ratio (per shell or missile fired) than any military device short of nuclear bombs.

Would the Soviets really use their chemical weapons? To my mind, it is naive in the extreme to think that they would go to the immense trouble and expense of constructing history's most impressive offensive chemical-warfare capability, and then not use it. Thus I believe that we have no choice but to proceed with the development of this kind of capability ourselves. Unless we do this, the Soviets will be tempted to wage chemical warfare simply because they are well prepared to do so and also fully aware that we do not now have the ability to retaliate in kind. In the interest of self-preservation, we must act.

Defense officials are aware that any effort to increase our chemical warfare capability will run up against justifiable concerns over the storage of deadly chemical agents. But the Army has been at work on this problem, and investigation by my subcommittee confirms that a solution is at hand in the form of something called binary munitions. Essentially, these are bombs or shells which two containers of relatively harmless chemicals remain separated until the weapon is dropped or fired. Only then do the two chemicals mix into a lethal concoction. Although binary weapons have gone through extensive testing and are now ready for production, opponents of chemical warfare have thus far managed to block their introduction into our armory. Clearly, we are taking a great chance in not moving ahead with this technological advance.

If we allow ourselves the luxury of giving in to our civilized revulsion against this form of warfare, we are whistling past what may turn out to be a graveyard for our forces in Europe. I am convinced that binary munitions will decrease the likelihood of chemical warfare. It is time for Congress to rise to the challenge.

Mr. EXON. Mr. President, I yield back the remainder of my time.

Mr. JACKSON. Mr. President, I thank the distinguished Senator from Nebraska for a very able statement.

I now yield to the distinguished chairman of the committee, Mr. STENNIS, such time as he may require.

Mr. STENNIS. I thank the Senator. I will require 3 to 5 minutes.

Mr. President, even though I was not able to attend the hearings, due to a conflict with other matters on the floor of the Senate, and did not hear the testimony in this matter, I am fully convinced, because of my previous experience in connection with this and general ideas on the subject, that this is a step we can well take. The great probability is that we should proceed without any further loss of time.

Several times in the past several years, we have had this entire subject matter before our committee for discussion back and forth, on the floor of the Senate, and in conferences.

We finally settled the matter and enacted the provision which is the law now. This provision provides that the production of binary chemicals shall not be changed unless the President certifies to Congress that production is essential to the national interest.

Mr. President, if we pass this measure as proposed by the committee, we still will have the law. We start there and we stop with it. It is a good, solid provision. The money we propose today will not make any gas, for 2, 2½ or 3 years but w'll be used for facilities. It merely provides the means to proceed in this direction with respect to the supply of this need, should the President say that it is essential. We could not have a more effective safeguard than that.

I do not look upon it as a step backward, one bit. I look upon it as a step forward, in possible prevention, deterrence, or warning, in view of the undoubted change in the atmosphere, the circumstances, and the facts, with reference to arms limitation or arms control. This amendment will provide the facilities that will take care of our situation in any given time or any call that may be made on us. I believe it is very timely.

We do not like the subject matter. However, we should not let that prejudice our judgment and keep us from seeing that this is a mild step, that it is a step toward prevention and availability and does not rock the boat or stir up things. This proposal does not make one iota of change in the present law, which served well at the time it was passed and has done so since. But it needs some modification as to some preparedness in essential machinery and the preparation for this kind of gas, which we hope never will be used. I believe we should provide this and rest on the provision of the law that the President makes this decision.

Mr. HART. Mr. President, I yield to the Senator from Michigan (Mr. LEVIN).

Mr. LEVIN. I thank the Senator from Colorado.

Mr. President, I oppose the committee amendment and support the compromise amendment of Senator HART, Senator PRYOR, and others. I am pleased to cosponsor this amendment with my friend from the Armed Services Committee. It is designed to keep our future chemical weapons modernization options open and avoid the possible, serious military and foreign policy problems which could be caused by adoption of the committee amendment.

The addition of the $3.15 million authorization to the fiscal 1981 Military Construction Authorization Act for the binary chemical munitions production facility, as proposed in the committee amendment, is premature, unwise and could ultimately be self-defeating from defense, diplomatic, and arms control perspectives.

Delaying this decision for a few months, so it can be considered in the context of our committee's deliberations on the fiscal 1982 Department of Defense and military construction budgets makes a lot more military and foreign policy sense for reasons that I will explain.

There is no national security risk to the United States by this delay. Contrary to the overly pessimistic description of our present chemical weapons stockpile presented by some supporters of the committee amendment, Secretary of Defense Brown testified to our committee just 2 weeks ago that these present stocks of chemical munitions still are a "credible" deterrent and they could cause 'tremendous" damage if actually used against Soviet troops.

Our current stockpile presently consists of hundreds of thousands of artillery shells, land mines, and air-delivered bombs filled with extremely lethal gases which can last on the battlefield from between hours and weeks.

As I point this out, Mr. President, I wish to emphasize that I do not think the sponsors of the committee amendment are necessarily wrong in their concerns about maintaining a credible chemical warfare deterrent for NATO.

My disagreement with the committee is over the unilateral and probably self-destructive timing of the decision whether to build this binary munitions plant.

Perhaps those of us offering the compromise amendment have differing opinions about whether we should ultimately produce and deploy binary chemical munitions. I know some of the cosponsors oppose production. I, myself, have not yet resolved the many issues which argue both for and against such production and deployment.

Personally, I think that this country does need some offensive chemical weapons capability to force the Soviets to wear protective garments so that both sides would suffer performance degradation in a chemical attack. I also recognize the possible military utility in the less-complicated logistics procedures required for binary munitions.

But on one issue the answer seems clear. Now is the wrong time for Congress to decide to begin construction of the binary plant itself. Rather than promoting the maintenance and improvement of a strong chemical deterrent, such a premature decision could seriously jeopardize any prospects we might have to strengthen this deterrent by deploying binaries overseas in the future. It also could weaken, rather than strengthen, our bargaining position in future chemical weapons arms control negotiations.

If Congress does decide at the appropriate time that it wants the Army to produce and deploy binary weapons, the ultimate success of that program will rest on whether our NATO allies have been convinced they should alter their policies against increasing the forward deployment in Europe of U.S. chemical weapons.

I have not heard this issue addressed by the supporters of the committee amendment, Mr. President. It is an important issue because the war fighting and deterrent value of such chemical weapons, binary or otherwise, is significantly reduced if they are not forward deployed.

Yet given the extreme sensitivity the Europeans have about chemical warfare, based on their horrible World War I experience with it, a unilateral decision now about the binary plant, without high-level advance consultations, is likely to provoke a negative reaction among our NATO allies.

There have been no high-level consultations between the United States and its allies about binary weapons. Without that, a unilateral decision on a binary plant could provoke an adverse public and governmental reaction which could seriously jeopardize forward storage.

Thus, such a decision, if European storage is jeopardized, undermines the credibility of the very, offensive chemical threat which the proponents of the committee amendment seek to establish.

The credibility of this threat is also necessary for successful chemical weapons arms control negotiations in the future.

Yet the credibility of that threat is undermined by the lack of consultation about binary munitions, on a high level, between us and our allies and their possible lack of acceptance of forward deploying of these weapons for which proponents of the committee amendment now seek to proceed to build a manufacturing facility.

I happen to agree with the main sponsor of the committee amendment, Senator JACKSON, who professes he wants achievement of a verifiable chemical weapons treaty, that we need to negotiate such a treaty from a position of strength rather than a posture of weakness. Yet adoption of the committee amendment increases the risk that the allies will say "No" to forward deployment because it is a precipitate decision without necessary consultation.

So those who support the committee amendment, because they think that the only way to stimulate Soviet agreement on a comprehensive chemical warfare pact is to confront the Soviets with actual chemical hardware as "bargaining chips," will probably undo themselves if their amendment prevails at this time.

If the Europeans refuse to allow the bargaining chips, in other words, the chemical weapons, to be forward deployed because of the unilateral nature and timing of our binary production plant decision, then these chemical munitions will be of diminished value in any arms control talk with the Soviets. Instead of being meaningful bargaining chips, the binary weapons will become meaningless pieces of plastic.

Instead of permitting us to bargain from a position of strength, which might be possible if proper care is taken to consult with the Europeans in connection with any decision whether to build this facility, making that decision now will mean we will bargain from a position of weakness.

This chemical weapons decision for fiscal year 1981 also could interfere with full implementation of NATO's important long-range theater nuclear weapons modernization program. That prospect is something which should concern all of us who see the alliance's difficult and controversial decision in December 1979, to modernize its theater nuclear forces as important to maintaining a credible conventional and nuclear deterrent in Europe against Soviet/Warsaw Pact aggression.

Mr. President, our military leadership as represented by the Secretary of Defense, who generally supports going forward with the production of binary weapons, recognizes the military risk of prematurely deciding whether to begin construction of the binary plant. Secretary of Defense Brown stated his concern about a decision now succinctly in his statement before the Armed Services Committee, and even though some of that testimony is classified and I cannot read it all, I am going to read now, these two unclassified portions, and I hope my colleagues will read the balance that is classified. He first said:

> My personal opinion is that at some time we should move forward to modernize the stockpile; but I think the time is wrong now.

Secretary Brown then said:

> But there is a broader issue beyond even arms control negotiations, and that is relations with our allies, which I have also discussed. It seems to me that is largely a matter of timing and education. I think the ground now is uncertain.

And I hope my colleagues will note that.

Secretary of Defense Brown said:

> I think the ground now is uncertain. I think it is realistic that a precipitate decision on our part, or what they would see as a precipitate decision, even though, as you correctly point out, we have been hashing this out for several years, would have very negative consequences.

I do not know of anything more valuable than to repeat that thought of Defense Secretary Brown, that a precipitate decision now—one that would be perceived by our allies as a precipitate unilateral decision now—could have very negative consequences for the very program that he and the sponsors of the committee amendment both support.

Regardless of whether authorizing such a small amount of money for facilization is or is not really a commitment by the United States to actually produce binaries, the press here and the Europeans will perceive it as such, no matter how we try to explain it. Already reports emphasizing the significance of this decision have appeared here and in Europe.

Mr. President, I wish to read briefly from an article in the London Times to support this feeling.

On August 13, 1980, the London Times said:

> Thus the decision of the United States House of Representatives last month to agree to a request from the American Department of Defence for funds to resume manufacture of chemical weapons is a sombre, and clearly politically profound, development.

The Washington Post, referring to a number of stories from Europe, reported on August 4, 1980:

> The chemical warfare notion was featured in British newspapers today, with varying degrees of concern expressed. The British, who were repelled by their World War I experience with poison gas, are likely to move cautiously in considering chemical weapons.

My own conversations with NATO embassy officers and with other people from abroad, have convinced me that that position is correct, that it is self-defeating to proceed with the binary plant now and that those who are determined that we need a chemical deterrent will, in fact, be promoting the opposite effect by the reaction that they are going to provoke in Europeans—that of a unilateral decision on our part without the consultations that are necessary to be sure that if these weapons are produced, they in fact can be forward deployed where they would have the most deterrent effect both for deterrence itself, and in terms of arms control treaties.

I am afraid, Mr. President, that the decision to proceed today with the binary munitions plant will diminish the "weight" these weapons will have with the Russians for achieving the goals which this country seeks to achieve.

Governmental and public opinion about chemical weapons in West Germany, a key country in any discussions of possible future forward deployment of binaries, is even more sensitive than that reported in Great Britain. The last time such weapons were discussed publicly in West Germany, in 1969 when forward deployment again was an issue, the New York Times reported on November 26, 1969, that:

> For the West Germans, the question of the use and storage of such weapons has been an embarrassing intrusion into politics since it was conceded officially in July that the United States was keeping limited supplies of gas on German soil.
>
> The West Germans are particularly sensitive about their own weapons and about weapons maintained by the United States in Germany because of their Nazi past and Germany's long record of militarism.

We all recognize that in national security matters, perceptions often are as important as realities, and it is the perceptions of our allies to which we must be sensitive regarding a binary facility decision for fiscal year 1981. We will not be able to avoid a controversy in Europe which could prevent forward deployment by trying to explain the intricacies of the American legislative process.

Secretary Brown stated these problems clearly in his testimony by saying:

> An authorization is not an appropriation, but these nuances are often lost on other countries. I think they would see it as a major step forward in U.S. chemical warfare offensive capabilities with all of the positive and negative effects that that might have, which I have described in my statement.

My own contacts with NATO embassies, and my own knowledge of discussions between U.S. and NATO officials confirms this, Mr. President. This is not "worst-case" State Department analysis.

Given European sensitivities to chemical weapons—greater in fact than their problems with neutron warheads—if the Congress next year decides it wants to procure binary munitions, would it want that decision undercut by another neutron warhead-type controversy?

We ought to find out how far our allies will support our chemical munitions modernization and whether some of them will change their policies against forward deployment of chemical weapons because binaries are safer, before we push ahead.

If we do not give our Government time to prepare the Allies, we might defeat the purpose of any positive decision in our haste.

Mr. President, the committee amendment also ought to be replaced by the Hart substitute because there still are too many unanswered questions about what is the best way to upgrade our chemical warfare capabilities—and whether this particular binaries production plan is the best one from military and foreign policy perspectives.

The additional time provided by the Hart substitute will permit these many questions to be answered.

DOD and the Army are in the process of conducting important new studies in these areas. A major National Security Council, interagency chemical warfare study will be finished by November.

The Joint Chiefs of Staff-sponsored study by the Institute for Defense Analysis—the major justification for our military's chemical stockpile requirement—will be finished by late October. The Army is studying how to fight a chemical war and how it will care for chemical casualties, according to the JCS and DOD.

DOD is studying whether it can rephase the contemplated program to build BIGEYE binary bombs first, which holds out the prospect of avoiding some of the European political problems which could interfere with a binaries program.

Also, our greatest military need in chemical munitions, as I have said previously, is not in artillery shells filled with nonpersistent agents, which is the first phase of the program as it now stands. We have hundreds of thousands of these which still can be used. I have been informed that our major deficiency is in persistent agent-filled, air-delivered bombs, which can be used for deep interdiction against fixed targets. That is what the BIGEYE program is for, and we might want to consider accelerating that program instead of prematurely building artillery shells in the first phase.

All of these studies could affect the scope, timing, and composition of a binaries program, and we ought to wait until most of them are complete before we make such a decision about facilitization at Pine Bluff. We can make these decisions next year after these studies have been finished and as we consider the fiscal year 1982 budget requests.

Delay of a binary production facility decision until fiscal year 1982 also will not harm our national security because we will continue to spend almost $200 million in fiscal year 1981 to improve our chemical warfare defensive capabilities and to conduct research and development on better chemical offensive capabilities.

I might interject at this point that, despite continued improvements in our chemical warfare defensive capabilities, much more progress is needed in this area, and we could more usefully spend any additional dollars for that in the fiscal year 1981 Defense Appropriations Act rather than on a binary plant in this military construction bill now before us.

In assessing the effects of deciding whether to build a binary facility until fiscal year 1982, let me also address the nature of the Soviet chemical warfare threat we face and whether reports of alleged use of chemical agents in Afghanistan, Laos, and Kampuchea are conclusive enough evidence on which to base such a decision.

The sad truth is, Mr. President, that we know very little of the size, scope, and composition of the Soviet offensive chemical warfare threat, again despite the overly dramatic statements of supporters of the committee amendment.

We know that the Soviets have an extensive chemical defense posture, but our estimates of their offensive stockpiles are so broad they are virtually meaningless as a foundation for a prudent and reasonable defense policy decision.

Secretary Brown's testimony before our committee again reinforces my point. He stated:

> My recollection is that the estimates of Soviet capability, and Soviet chemical warfare stockpiles, run from 30,000 to several hundred thousand (agent tons).

He continued:

> I am not trying to imply that the Soviets don't have any chemical warfare munitions; I am convinced they do, and I think they are probably substantially bigger than our stockpiles. I am trying to introduce a proper note of caution into numerical estimates.

Later, Secretary Brown concluded "there is no decent estimate" of the Soviet chemical warfare stockpile.

Mr. President, just because the Soviets may have more chemical munitions than the United States does not mean that they are chemical warfare giants and that we are defenseless midgets. As Secretary Brown clearly stated to our committee, despite this possible disparity, which we cannot verify, our present chemical stockpile remains a credible deterrent which could cause tremendous damage if it ever were used.

We should remember also that the Soviets would have to dedicate some portion of their chemical stockpile against the large armies of the People's Republic of China, and that, despite the fact they are officially outside the NATO military command structure, the French reportedly have offensive chemical capabilities which would complicate Soviet chemical warfare targeting plans and stockpile allocations.

I urge my colleagues to avoid both overstating Soviet capabilities and understating our own in chemical warfare. We must not mislead ourselves, the American public, and the leadership and citizenry of Europe and the Soviet Union about this.

By saying this I do not mean to imply that I think that Congress should regard the relative balance of chemical warfare capabilities between ourselves and the Soviets as completely satisfactory now and in the future. That is not so. I believe that we must continue to modernize our defensive capabilities, and indeed Congress might well have to conclude at the appropriate time that this country should modernize its offensive chemical warfare capabilities, particularly if prospects for chemical weapons arms control do not develop further.

But I do mean that the current state of the chemical warfare balance permits us to more carefully analyze the advantages and disadvantages of whether to produce binary munitions within the context of a comprehensive examination of our overall chemical-warfare policy and posture—and those of the NATO Alliance. Our committee has yet to do this, and the hearing with Secretary Brown cannot be considered such a comprehensive examination of such an important topic.

Before our committee took its position on its proposed amendment, it would have been well-advised to listen to the Secretary of State, which it did not, despite my request, as well as the Secretary of Defense. Adoption of the Hart substitute will permit such testimony to be taken and evaluated, and Congress would be well advised to consider such views before it makes any decision whether to proceed with a binary production facility or with these new munitions themselves.

We will only have this opportunity within the context of our hearings on the 1982 defense and military construction budgets. We should not jump to conclusions in fiscal year 1981, either about the binary facility or about the state of the chemical warfare balance, because such hasty judgments as expressed by supporters of the committee amendment only encourage dangerous misperceptions among our Allies and our adversaries.

Similar caution must be expressed about how much to rely on reports of alleged chemical warfare in Afghanistan, Laos, and Kampuchea as justification for proceeding forthwith with a binary production plant in fiscal year 1981.

The testimony before our committee was cleary inconclusive, although the evidence is stronger about some reported instances than about others. Indeed Senator HUMPHREY was moved to tell our other witness, Lt. Gen. Eugene Tighe, USAF, head of the Defense Intelligence Agency charged with monitoring the Soviet chemical warfare posture:

> General Tighe, I have been struck by your statements and those of Secretary Brown which indicate the difficulty of ascertaining facts about Soviet production. That is the difficulty of ascertaining facts about Soviet production capabilities for chemical weapons and even their use of them.
>
> We evidently can't ascertain whether Soviet chemical weapons were used in Afghanistan. Evidently we are not absolutely sure that Soviets supplied them to Cambodian forces in Cambodia and Laos.

Mr. President, Congress must not be stampeded into deciding whether to build a binary production facility in fiscal year 1981 on the basis of exaggerated statements about the Soviet chemical warfare threat and of inconclusive reports about use of chemical agents in southwest and southeast Asia.

In this latter regard, I found it interesting to learn that at least some knowledgeable observers from Europe do not feel that the alleged chemical warfare incidents in Afghanistan have contributed significantly to their concerns about the Soviet chemical warfare threat. I therefore must seriously question the utility of reaching conclusions about what to do about our chemical posture in Europe based on these inconclusive reports of Soviet chemical warfare activity in Southwest Asia.

There are also other experts both in and out of Government who should be heard before Congress makes any important change in policy about chemical warfare, which production of binary weapons certainly would be.

For example, the distinguished Harvard scientist, Dr. Matthew Meselson, is an expert on chemical weapons and has taken strong exception to the Army's contention that we must produce more offensive chemical munitions. He contends that far fewer chemical munitions are needed to wage an effective chemical war than what the JCS says is required, and he has submitted a detailed study of his estimates based on Army information. I think we would benefit from receiving the Army's official point-by-point rebuttal to this study, so both viewpoints are available to us before we decide whether to authorize a binary munitions production facility.

Our committee and the Congress need to do much more research about what kind of chemical weapons stockpile, posture and policy makes good sense for the United States and NATO before we make such a decision, Mr. President, and the Hart substitute gives us the opportunity to do this responsible investigation.

Mr. HART. Mr. President, I thank my colleague from Michigan and all of the colleagues for their statements on behalf of the position which we have espoused.

If the Senator from Washington is prepared to do so, I am prepared to yield back the time on his amendment and offer a perfecting amendment.

Mr. JACKSON. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

UP AMENDMENT NO. 1583

(Purpose: To provide for a chemical warfare review)

Mr. HART. Mr. President, I have an amendment at the desk in the nature of a perfecting amendment and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an unprinted amendment numbered 1583 as an amendment to the Jackson amendment numbered 2321.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 3, insert the following:

CHEMICAL WARFARE REVIEW

(a) The Congress finds that—

(1) the capability of the Armed Forces of the United States to deter chemical warfare and to protect combat personnel of the United States may be seriously deficient;

(2) the policy of the United States regarding how best to deter chemical warfare and what defensive and offensive chemical warfare equipment is necessary for the security of the Nation is not sufficiently clear; and

(3) before making firm policy decisions and commitments regarding chemical warfare, the United States should consult with its allies.

(b) The President shall conduct a thorough policy review of the issues pertaining to chemical warfare and report the results of such review to the Committees on Armed Services of the Senate and the House of Representatives not later than March 1, 1981. Such report shall include as a minimum—

(1) a statement of national policy on how best to deter chemical warfare and protect combat personnel of the United States in the event that deterrence fails;

(2) a comparative analysis of the defensive and offensive chemical warfare capabilities of the United States and its allies versus those of the Soviet Union and its allies.

(3) an analysis of the alleged recent use of chemical warfare agents by the Soviet Union or its allies in Cambodia, Laos, and Afghanistan, the alleged manufacture in the Soviet Union of biological warfare agents (as evidenced by the so-called Sverdlovsk incident), and the implications that those alleged events may have on the chemical warfare policy of the United States;

(4) a proposed program to redress any deficiencies in the ability of the United States to deter chemical warfare and to protect combat personnel of the United States;

(5) a priority listing of the actions proposed to be taken with respect to the offensive and defensive chemical warfare capabilities of the United States, an estimate of the funding requirements to carry out such actions, and a proposed schedule for accomplishing each such action;

(6) a detailed statement and discussion of those items included in the fiscal year 1982 budget request that are designed to implement the program referred to in clause (4);

(7) a detailed statement and discussion of the consultations of the United States with its allies regarding chemical warfare policy; and

(8) discussion of the foreign policy and arms control issues involved in each such proposed action.

On page 1, line 4, strike all through line 7.

Mr. HART. Mr. President, this issue has been thoroughly debated in the last hour or so. I do not think we need to repeat arguments.

I want to stress, however, just a few points that I think are applicable to the issue before us. First, this will not be by virtue of the pending amendment a situation where our colleagues necessarily will be required to vote for or against the start-up of a new chemical warfare production capability.

This amendment offers an alternative. It is a compromise and what it says is that we will approach this issue in an orderly way. By that I mean this amendment requires the administration to come forward with a policy, a total chemical warfare policy, that will be the result of a number of inquiries and studies underway at the present time by various agencies in the administration, particularly Defense and State; that will coordinate our efforts in a meaningful way; that will make a judgment about production of 155 millimeter binary rounds, part of an entire policy that will fit that production if it goes forward with the production of other chemical munitions; that will have addressed the question of deployment and storage; that will have addressed the very critical question of defensive capability, which has not been addressed; and that, most importantly, will incorporate the judgment of our European allies who will bear the brunt of this weaponry if, in fact, it is ever used.

If we had a fiasco with regard to the neutron bomb, Mr. President, I can absolutely promise the U.S. Senate will have an even greater fiasco where the issue of chemical warfare agents is concerned. Every emotion, every legitimate concern will be aroused, and the civilian population of Europe, every government in Europe, will be required overnight to take a position on whether or not they support deployment of chemical warfare agents on their soil, and I can guess, and I can bet exactly, what that response is going to be, "No."

How much have we advanced towards a credible deterrent against the Soviets if within 72 hours all the major governments of Europe have said they do not want this stuff on their soil? That is going to make the Soviets very much afraid, that is really going to shake them in their boosts.

Mr. President, I think we ought to be adult enough after 200 years as a nation to be able to formulate coherent, thoughtful policies. We ought to be beyond the stage where we ad hoc major national security, international security, and foreign policy issues, and that is exactly what we are being called upon to do here, ad hoc policymaking. It is the very thing that so many Senators on both sides of the aisle are critical of this administration for, ad hoc policymaking. Well, we are about to participate in it.

The majority of the Senators today, if they vote for the amendment offered by the Senator from Washington, would be displaying a classic ad hoc policy decision effort.

We have heard statements about the massive Soviet buildup of chemical warfare agents. There is not one concrete bit of evidence on the record that that in fact exists. The Soviets have prepared their troops defensively and their equipment defensively. They are much better equipped to operate in a chemical warfare environment than the United States and its allies.

As I said before, what threat would it be to the Soviets to have an enormous chemical warfare arsenal that would kill more of our troops than it would kill of the Soviets? Not one thing in the Jackson amendment addresses the issue of defensive capability. That is no threat, that is no deterrent.

As I said before, the Soviets are going to be laughing up their sleeves if we spend $2 billion to $4 billion to develop a chemical warfare arsenal that our own troops cannot even resist. That is a threat to us, not to them.

We are inviting a furor in NATO. We are inviting chaos in the question of negotiating theater nuclear force modernization; we are inviting all sorts of criticism from all nations in the world about a unilateral ill-advised decision to make a major defense or weaponry step that has no context in which it is being made whatsoever.

Speculation about Soviet use of gas in Afghanistan, unconfirmed. It ought to be confirmed. Speculation about nerve gas or other biological warfare agents being produced in the Soviet Union, not confirmed. It may be, and it ought to be, confirmed if it happened.

But the way to respond to these kinds of questions is to have a coherent policy, and that is what this amendment calls for.

It may be that the United States of America ought to spend $156 million to create the Pine Bluff capability. I do not know, and I will not know until I see what the administration recommends and the basis for that recommendation. Right now the only recommendation we have is from the Secretary of Defense, and he says this step would be premature. Let us give him a chance to find out whether it is premature or not before we make that decision. That is all this amendment does.

We are not losing time. We are not setting our defense capabilities back. We are not sitting idly by while the Soviets pass us by. It gives us time to equip our forces in Europe and other places around the world to defend against this capability, which is the best deterrent. If it is not going to hurt the troops, then why use it? And it gives this body a chance to make a mature judgment, which we are not going to make unless we have that time.

So, Mr. President, I urge on behalf of myself and my colleagues, Senators PRYOR, LEVIN, COCHRAN, KASSEBAUM, WEICKER, and BRADLEY that we approach this very troublesome and very complicated and very serious issue in a thoughtful way. If we do not we will be making a serious mistake and we will set back the very deterrent, that the sponsors of the Jackson amendment claim to desire, by a long, long way.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, might I put a question to my colleague?

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. I yield to the Senator from Virginia such time as he may require.

Mr. WARNER. Would the Senator be aware of how many studies to date have been conducted in this area?

Mr. HART. I am sure there are dozens if not hundreds.

Mr. WARNER. I have a list of some 21 studies here beginning in December 1971 and ending in September of 1979, a JCS chemical warfare study in Central Europe. General Rogers has indicated that he has absolutely no capability to defend U.S. forces today.

Mr. HART. Precisely.

Mr. WARNER. We talk about the responsibility of this Chamber—every day young men and women are being sent to that theater, our own people, without the capability to defend themselves. I share your concerns on defense, but I am concerned about our capacity to deter.

Mr. HART. I started 5 years ago to try to solve this problem. This amendment will not solve that problem.

Mr. WARNER. This amendment, however, will indicate a determination by the Congress to go forward.

The thing I find so puzzling about this issue is really who is trying to stop the decision and why.

I refer to internal documents within the Department of Defense, one of which is classified and, therefore, I refrain from giving it in its entirety, but it is directed to the Assistant to the President for National Security Affairs from Mr. Walter Slocombe, Assistant Secretary of Defense for International Affairs, in which he clearly says:

> I directed in the amended program decision dated 29 August 1979, last year, that the binary chemical munitions facility be included in the amount of $19 million in the Department of the Army basic submission. I also believe this action will provide the Soviets a clear indication of our dissatisfaction with the progress of negotiations, and it will signal the increasing difficulty of our continuing restraint in our chemical warfare capability while negotiations toward a comprehensive ban continue.

And I also look at another memorandum, dated October 12, 1979, to the Secretary of Defense from his Chief of Research and Development, William J. Perry, in which he says the following:

> Your memorandum to the National Security Council of 4 October indicated we were reviewing this facility input as part of the FY 1981 budget process in the context of the ongoing bilateral negotiations with the USSR.

It further states:

> We believe this action—

Namely what we are trying to do here today—

> will provide the Soviets a clear indication of our dissatisfaction with the progress of these negotiations and signal our increasing difficulty of exercising restraint in our own chemical warfare capability.

Mr. HART. Will the Senator yield for an answer?

Mr. WARNER. Yes.

Mr. HART. Mr. President, I do not think the Senator from Virginia has to go very far in his search, in what sounds like a preliminary witch hunt, when he says "Who made the decision?" The Secretary of Defense made the decision. He testified before our committee, the only record on this issue that exists before either House of Congress—the Secretary of Defense, the highest constitutional officer, short of the Commander in Chief, for making these decisions. I do not think you need to scurry around in the Defense Department to find out who made the decision.

The Secretary of Defense sent a letter to the chairman of the Senate Armed Services Committee in which he addresses this issue. He said:

> I feel the inclusion of military funds for production facilities in the same budget—

Namely fiscal 1981—

> would be premature. We planned to consider that question in preparing the fiscal '82 budget.

I do not think you need to scurry around looking for gremlins in the Defense Department. The Secretary of Defense made the decision.

Mr. WARNER. Yes, but I draw to the Senator's attention—and we know Secretary Brown very well. It was in a colloquy with our distinguished colleague who proposed this amendment, in which he skirted back and forth. This is the man who can be most precise when he wishes to be. But as you read through the testimony, he sidesteps the issue and he goes on both sides. In fact, he says——

Mr. HART. Mr. President, will the Senator yield? Is that a classified record?

Mr. WARNER. Portions of it are and portions are not.

In the unclassified portion, Senator JACKSON asked:

> What is your personal—I will ask you, as distinguished from the administration's position—what is your personal recommendation?

Secretary Brown:

> I don't make a distinction, but if you want to know my personal opinion, my personal opinion is that at some time we should move forward to modernize the stockpile.

We are not asking to modernize the stockpile today. We are only asking to take the first step—build the facility.

Mr. HART. The key phrase is "at some time." It is "at some time." It is not "modernize the stockpile."

Mr. WARNER. Does not this body have the duty to make important decisions on behalf of the Government?

Mr. HART. Of course we do. The Secretary of Defense said, "Don't make it this year."

Mr. WARNER. I hope the Congress will say, "Let's make it this year."

Mr. HART. Of course the Senator does.

Mr. JACKSON. Will the Senator yield?

Mr. WARNER. Yes.

Mr. JACKSON. There is an interesting article in Science Magazine, September 12 edition. The Secretary of Defense convened a Science Advisory Board on this issue headed by Dr. John Deutch. The initial findings of the DSB have just become available and they support going forward with construction of this binary facility. Let me remind Senators, this is the Secretary of Defense's own Science Advisory Board.

Let me read now from an article in the September 12th edition of Science Magazine. In it Mr. Deutch is quoted as saying:

> The (Defense Science Board) believes there is substantial evidence of Soviet activitv with chemical weapons now and, if anything, a decision to go binary is likely to make them more eager to arrive at an anti-chemical warfare accord for which negotiations are now underway in Geneva.

And, I might add, these negotiations have been underwav since 1976.

Mr. HART. Will the Senator yield for a question?

Mr. JACKSON. Yes.

Mr. HART. Was the Science Advisory Board, including Dr. Deutch, charged with the responsibility of judging the foreign policy implications of this judgment?

Mr. JACKSON. I would assume that their responsibility—I do not have their charter in front of me—but I assume their responsibility was to make a review of the chemical warfare situation and provide their findings and recommendations. Dr. Deutch is one of the world's top chemists, now at the Massachusetts Institute of Technologv and formerly a senior official of the Department of Energy. The DSB is a most distinguished panel, which has just completed its action on this issue, having considered it in detail from August 3 to August 15 in San Diego.

Mr. President, I only make this point: This thing has been studied to death. Chemical warfare is a nastv business, Mr. President. The real issue we must address is whether or not we can eliminate the threat of chemical warfare. We all want to do that. But anv reading of history and of negotiations with the Soviet Union tells us that they will never, never agree to an accord in an area where they have an advantage and we have no offsetting capability.

This is the issue before the Senate. All of us want to get rid of this nasty business, as I call it. But you are not going to do it, Mr. President, by continuing to pursue the naive approach the administration has followed in trying to reach—in the absence of a credible U.S. chemical capability—an effective chemical arms control treaty with the Soviet Union.

Let us be under no illusions, Mr. President. We must have a sound, genuine, verifiable agreement. We entered into an accord with the Soviets to outlaw biological weapons in 1975. We now have had the Sverdlovsk incident which points to the existence of an active production facility manufacturing weapons for biological warfare. There is a big argument within the intelligence community on this. But there is strong evidence that the explanation given by the Soviet Union for this incident is not supported by the facts. We have every reason to believe that the U.S.S.R may be in violation of an arms control agreement we reached with them back in 1975.

Mr. President, the debate today is not over brick and mortar. It is over the question of how we should negotiate with the Soviet Union. That is the issue before the U.S. Senate. The truth is that you simply cannot negotiate with the Soviets from a position of inferiority or of weakness.

Mr. NUNN. Mr. President, will the Senator yield?

Mr. JACKSON. Yes, I will yield in a moment.

One other thing I want to mention, Mr. President. Senators have been talking about this great chemical arsenal that we have. Actually, we have a leaking, deteriorating arsenal. I say to my friends here on the floor of the Senate, the chemical munitions we have are leaking. They are dangerous. That is the crucial advantage of going with binary weapons, which we must do.

I would hope that the Senate will appreciate the gravity of the chemical weapons imbalance and the need to take the step recommended by the Armed Services Committee in the interest of achieving progress toward meaningful chemical arms control negotiations.

I yield to the Senator from Georgia.

Mr. NUNN. I thank my friend from Washington.

Mr. President, I had to leave the floor a few minutes ago. The Senator from Colorado was making a statement. One of the things that I believe he stated, and I would like to ask him about this to make sure I understood him correctly, is that we should not take this action today because there have been no high-level consultations on this matter in NATO. Is that a correct impression that I received?

Mr. HART. That was not a statement the Senator from Colorado made. That was a statement the Secretary of Defense made in our hearings.

Mr. NUNN. Was he speaking of no high-level consultation on this particular facility or the overall question?

Mr. HART. No, on the overall question of chemical warfare capabilities.

Mr. NUNN. Mr. President, I had not recalled that. I was there that day and I had not recalled that statement in those words.

If that is the case, I would say that is the most damning indictment of the high levels of NATO civilian leadership that I have heard in a long time, because this has been one of the most flagrant deficiencies in NATO capabilities for at least 5 or 6 years, and perhaps even longer.

I recall back in 1976 the late Senator Bartlett, our dear friend and colleague from Oklahoma, and I came back from NATO after making an intensive study of the problems and deficiencies in NATO. One of the conclusions we rapidly came to was that the chemical warfare advantages of the Soviet Union were overwhelming and perhaps were the cause for one of the most significant deficiencies in all of the NATO military arena.

This is not something that has slipped up on us. It has been going on for a long, long time. We have had testimony by the Commander of NATO, General Rogers, on this subject for several years. We have had testimony by General Jones in his posture statement for 1981, and in other hearings in previous years.

If there has been no high level consultation in NATO on the problems and deficiencies of NATO chemical warfare capabilities, then that is a real indictment of the NATO civilian leadership because I know that the NATO military leadership has been screaming and hollering about this privately for a long time.

I would hope that the Secretary of Defense has some clarification in this area. I would certainly hope that our Secretary of Defense and his counterparts in the other countries of our NATO alliance have indeed had some discussions and conversations on this very serious problem.

General Jones, Chairman of the Joint Chiefs of Staff, in his posture statement for fiscal year 1981 stated very clearly that anyone's theory that unilateral restraint on our part would cause a similar restraint on the Soviet's part has been thoroughly discredited.

General Rogers stated on February 19, 1980, in testimony before our committee to the effect that the U.S. and NATO forces are vulnerable to a Soviet chemical attack. He also stated to the effect that NATO was not configured for any meaningful response.

That is the testimony before our committee and it is not new. I recall questioning witnesses on this subject for over 3 years. I recall many dialogs in the Armed Services Committee. Perhaps most of them were in closed session, but there is certainly nothing new about the deficiencies in the chemical area.

Hopefully the new element is a willingness by the Congress of the United States to take a leadership position on this issue; to recognize, as the Senator from Washington has pointed out so ably, that unilateral restraint simply has not worked. It has not worked with the Soviet Union in the past and it is not working now.

This is perhaps the best example I know of, of a case where this country and our allies have tried unilateral restraint in the hope that it would produce some form of reciprocity. It has not produced reciprocity, and there are no indications that it is going to produce reciprocity.

If we are serious about wanting to limit chemical weapons in the future, if we are serious about wanting real restraint on both sides in this crucial area, then we had better take some steps to improve our negotiating position and to demonstrate clearly to the Soviet Union that we are not going to have a perpetual, indefinite policy of unilateral restraint while they build up an awesome chemical capability. That has been occurring and it continues today.

Mr. President, I join Senator Jackson and my other colleagues in supporting the Senate Armed Services Committee recommendation that $3.15 million be added to the fiscal year 1981 military construction authorization bill for a production facility for binary chemical munitions.

This initial step toward providing a facility for production of binary munitions is long overdue. There are not many areas in the military equation where the United States shows such a deficit as that relating to deterring or defending a chemical warfare situation.

What we are discussing here today is whether or not we have a clear national policy in this area:

We have followed a policy of unilateral restraint that has failed to restrain anyone but ourselves. This is clear to me and I believe it is clear to the Soviet Union. That the Soviets have a significant capability to wage chemical warfare is undisputed; that the United States and our allies are unprepared to respond in this area is undisputed.

There is no need to repeat the litany of the problems and deficiencies in U.S. capabilities compared to those of the Soviet Union. It is sufficient to say that the inability of the United States and NATO to deter and, failing that, to fight in a chemically contaminated environment is one of our most serious vulnerabilities.

I believe the national focus and attention suggested by the Senator from Colorado and others is warranted, but I believe this review can occur while efforts on this facility are ongoing.

Due to the construction process, this facility will not have a production capability for a number of years; any additional study can be conducted in this time frame.

I share my colleagues' concerns in the arms control area but believe a greater incentive for serious Soviet negotiations will exist in this specific area if the U.S. position represents something more than a unilateral restraint, an obsolescing stockpile and a poor defensive posture.

I urge my colleagues to support the committee recommendation.

Mr. President, I would be glad to yield at this point in time.

I yield to the Senator from Washington.

Mr. JACKSON. Mr. President, we have no need for more time on our side at this time.

Mr. HART. Mr. President, I yield to the Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Senator from Colorado for yielding. I have two brief points, and then I will yield to my good friend and colleague from Arkansas, Senator Bumpers.

First, there has been great discussion this afternoon with regard to our stockpile of chemical weapons. There have been allegations made about leaking chemical weapons and about the instability or the unsuitable nature of our stockpile.

Mr. President, I would like to read from the 1977 Comptroller General's report to the Congress about our chemical weapons stockpile. I believe the findings will be as relevant today as they were in September of 1977. I am quoting from this GAO report:

> The true condition of the stockpile is unknown. Its serviceability may have been greatly understated. For example, many of the unserviceable classifications are a result of minor nonfunctional defects, such as container rust, which do not affect usability. Also, inspection samples are neither random nor representative, block storage hampers access during inspection, entire production lots are classified unserviceable for a few defects, and chemical agent testing recently has been limited.

Further in this report, Mr. President, I would like to read one final paragraph of the GAO report as it relates to our stockpile.

> Little has been done to maintain the stockpile in a serviceable condition or to restore the unserviceable portions. Using anticipated approval of the binary program as a reason for not maintaining the stockpile is inconsistent with sound management. Lack of maintenance could seriously compromise U.S. retaliatory capabilities.

My final point this afternoon, Mr. President, relates to some of the statements made by the distinguished Senator from Washington, Senator Jackson, and the distinguished chairman of the Armed Services Committee, my friend and neighbor, Senator Stennis, of Mississippi. That relates to our retaliatory capability with regard to the amount of nerve gas that we have in storage.

Mr. President, if we do what the Army wants, we are not going to increase our military capability one iota. We will be destroying the present stockpile of conventional chemical warfare agents, and replacing it with a binary nerve gas weapon. This particular binary nerve gas has no military advantage whatsoever, except safety, over our conventional chemical warfare which is stockpiled in adequate amounts.

I think, as the Senator from Colorado has so eloquently stated earlier in this debate, that the Russians would actually laugh at us if we went into this type of program at this time. I yield back the remainder of my time to the Senator from Colorado.

Mr. HART. Mr. President, I yield to the senior Senator from Arkansas such time as he may require.

Mr. BUMPERS. Mr. President, let me say that, first, I ought to distinguish my position somewhat from that of some of my colleagues who favor the Hart substitute, which I also favor. My position on the Hart substitute is not precisely ideological, even though my feelings about the whole issue of nerve gas, nerve warfare, chemical munitions are such that I am just as repulsed by the issue as I think everybody is. I do not suggest that those who favor the position of the distinguished Senator from Washington feel differently about it.

Just so that we get a little feel for what we are talking about here, I refer to a Scientific American article of April 1980 by Professor Meselson, in which he writes about the symptoms that afflict people who are hit by some of these nerve gases. They vary widely, depending on the chemical, of course, but most include the following:

Intense sweating, filling of the bronchial passages with mucus, bronchial constriction, dimming of vision, uncontrollable vomiting and defacation, convulsions and, finally paralysis and respiratory failure. Death from acute nerve gas poisoning is caused by asphyxia, which generally will occur within a few minutes. If the dose is only marginally lethal or is received through the skin, however, it may take up to several hours for the victim to die.

Mr. President, I recite that just so everybody understands what the United States and the Soviet Union are confronted with when we talk about nerve gases.

We are talking about whether or not to go into production on binary chemical munitions. I have not heard anybody here describe that perhaps as well as it ought to be described. In the same article, Professor Meselson points out that instead of containing actual nerve gas, it contains two nerve gas precursors held in separate canisters. When the projectile is fired, the canisters burst and their contents react to form the nerve gas while the munition is in flight. One of the canisters can be stored and shipped separately to be loaded into the projectile at the gun site. This built-in safety feature of binary nerve gas munition is intended to provide a greater operational flexibility in the storage, shipment, and deployment of chemical weapons, in part by alleviating public concern about the possible unintended release of poison gas.

Mr. President, I have heard various figures given this afternoon about the ratio between our stockpile of nerve gases and the stockpile of the Soviet Union. I have heard it referred to as the Soviets having a 10-to-1 advantage, all the way up to a 35-to-1 advantage. Professor Meselson says nobody really knows how much they have and how much we have. But it is admitted by all that the Soviets have a considerably larger stockpile of nerve gas than we have.

(Mr. MITCHELL assumed the chair.)

Mr. BUMPERS. Mr. President, as repugnant as the whole concept of nerve gas is to me, the binary munitions would be built in Pine Bluff, Ark. These munitions would be much easier to store and I would feel much more comfortable with a stock of that kind of munitions than I would the existing supply which can leak and cause all kinds of problems. One of the problems with our present supply of chemical warfare munitions is the difficulty in storing it, at least storing it with any degree of safety.

My position on this issue is very simple. I support the Hart substitute, which says let us wait until March 1, 1981. That is about 6 months off. Let the Pentagon and the White House supply the Committees on Armed Services of both the House and the Senate with a final evaluation as to whether or not we should get involved in this business.

I shall vote aye if that report is positive and says, No. 1, that the Soviets are in the process again of manufacturing chemical agents; No. 2, that their lead over us is increasing to the point that our present supplies no longer constitute a reasonable deterrent; No. 3, that our Government has discussed this with our allies, principally Germany, and Germany has agreed to the key aspects of our detailed, well-developed strategy.

I am not saying that the report which we expect from the executive branch under the Hart substitute on March 1 must firmly answer all of those things. But in its general tenor, it should give this body a good, reasonable, sensible reason for voting to embark on what will ultimately and certainly be a $4 billion expenditure.

Mr. President, I was tempted sorely to vote against my own colleague from Colorado because I think we have to have a chemical weapons deterrent. I do not believe in that theory about how you can protect your troops by giving them only the right kind of passive chemical weapons equipment like gas masks and special clothing to wear and so on. No. 1, these gases often do not have an odor, and you do not know they are in the area until it is too late. It takes quite a while to get the mask on your face and the rest of the equipment on your body. If you have only a gas mask, these gases oftentimes penetrate the skin.

No. 2, the argument that it only kills civilians is hard for me to accept. What it means is that they kill our civilians and we do not have anything with which to retaliate against their civilians. Thus, we would have no deterrent. As I say, the temptation to come down on the side of the Senator from Washington was almost irresistible.

Mr. President, we are talking about $4 billion. We are talking about a project that will cost about $1.6 billion to $2 billion to build and produce the stockpile, and we are talking about $2.4 billion to dissemble and destroy the existing supplies. The destruction of the current stockpile is the biggest expenditure. I might add, it is the most reasonable expenditure, because it will rid ourselves of these terribly toxic chemicals, some of which, as I said, are leaking and will continue to leak.

It does not look to me as if the Hart substitute is a very Draconian solution, even for the most hawklike of the hawks of the Senate. The Hart substitute says, before we embark on something like this, let us not fly right in the face of the President, who says, "Not right now," or fly right in the face of the Secretary of Defense, upon whom we must depend for our best information, who says, "Not yet."

If Harold Brown or the President, whoever he may be on March 1, or the Secretary of Defense, whoever he may be, comes back here and presents us with what looks like an option that we cannot turn down; namely, to start production of binary munitions, I intend to vote "aye."

Mr. President, all of this, in my opinion, is not an issue of who can be the strongest on defense. It is not an issue of who is a hawk and who is a dove. It is an issue of allowing the people on whom we rely to tell us what we need most to do just that. Nobody in this body can tell us with a reasonable degree of certainty and a straight face that the Soviet Union is involved right now in the production of chemical warfare munitions.

If we want to guess, we can say "Yes." But the CIA will tell us it is the toughest kind of intelligence estimate to make. It requries not satellite photography, but human intelligence and documentary sources, about which we may not be overly blessed as far as the Soviet Union's chemical munitions industry is concerned.

We do not really know whether the Soviets are in production of such weapons. We do not even know they are actually using chemical agents in Afghanistan, though there have been reports, but that is not necessarily nerve gas. It could have been tear gas. Nobody here really knows those things for sure.

But, be that as it may, we have a sufficient deterrent right now that will sustain us for the immediate future.

We are talking about a $4 billion expenditure, which it is my guess we will ultimately expend. But I think it would be shortsighted of this body to approve the beginning of that expenditure with no more information than we have right now.

I know it has been studied. I know it has been talked about. I know there are those who profess themselves to be experts on the subject in both this body and in the House. But I have been to some of these top level, sensitive briefings, and I have not heard anything to indicate that anybody knows enough about the subject yet.

The Pentagon and the Administration are in the process of doing this study. I think we ought to let them finish it before we embark on a $4 billion program.

That, simply and finally, is my position on this, Mr. President.

I yield the floor.

Mr. HART. Mr. President, first of all, I ask unanimous consent that a letter from the Secretary of Defense to the chairman of the Committee on Armed Services of the Senate, dated June 9, 1980, be printed in the RECORD, in which the Secretary of Defense, as I have already stated, recommends against inclusion of the money contained in the Jackson amendment.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, D.C., June 9, 1980.
HON. JOHN C. STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to provide the Department of Defense's position on two significant budget items that were mentioned during the Committee's hearings last week, but for which time did not permit adequate discussion.

The first involves the construction of a facility at Bolling Air Force Base to house DIA analytical and support operations. The current buildings, where most of the analyses are accomplished and where much of our computer and telecommunications equipment is presently located, are in such poor condition as to threatened both life and property.

Numerous alternatives have been studied and new construction is the most economical choice. The Congress provided us with $5.9M for the now completed design of a facility to be located at Bolling. The timing is critical since the lease on the building now housing the photo lab at Arlington Hall Station expires in 1982. Our authorization request is for $106.2M, but the FY 81 appropriations request is only $32.7M, with outlays for the project in FY 81 amounting to slightly less than $1M.

The second item involves the production of chemical munitions. The HASC recently proposed an amendment to the FY 81 Military Construction Authorization Act to include funds for a binary production facility. (The binary concept involves storage of two nonlethal ingredients which are combined after launch to produce the lethal agent.)

At this point we are continuing research on production techniques for binary weapons, and have included funds for that purpose in our FY 81 request. I feel the inclusion of MILCON funds for a production facility—in the same budget—would be premature; we plan to consider that question in preparing the FY 82 budget.

My staff is prepared to provide further information to assist in the Committee's review of these two important issues.

Sincerely,

HAROLD BROWN.

Mr. HART. Mr. President, I also ask unanimous consent that a letter from the Secretary of State, our former colleague, Secretary Muskie, to the distinguished majority leader of the Senate (Mr. ROBERT C. BYRD), dated September 15, 1980, be printed in the RECORD, in which the Secretary of State says:

> As Harold Brown emphasized in his testimony before the Senate Armed Services Committee on September 4, a copy of which is enclosed, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.
>
> All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 budget process. In the meantime, any such funding at this juncture would be premature.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, D.C., September 15, 1980.
Hon. ROBERT C. BYRD,
U.S. Senate.

DEAR BOB: In view of the present Congressional consideration, I am writing to apprise you of the Administration's position on whether Congress should authorize funds in the FY 81 budget to begin construction of a binary chemical munitions production facility at Pine Bluff Arsenal.

As Harold Brown emphasized in his testimony before the Senate Armed Services Committee on September 4, a copy of which is enclosed, the Administration is not seeking such funds in Fiscal Year 1981. A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

All of these considerations are now part of a careful interagency examination which has already begun. This examination will be completed and a decision will be made on this issue in time for the Fiscal Year 1982 Budget process. In the meantime, any such funding at this juncture would be premature.

I hope this information will be helpful to you in your evaluation of the issue.

With best wishes, I am
Sincerely,
EDMUND S. MUSKIE.

Mr. HART. Mr. President, what is the record on this issue?

The Senator from Colorado has outlined, as carefully as he can on the basis of the two letters I have just had printed in the RECORD, that there are important and serious foreign policy considerations, not the least of which has to do with the negotiations on theater nuclear forces which all of us feel, one way or the other, are extremely important to the long range mutual security.

There has been no answer to that argument. There is no record whatsoever before the U.S. Senate or the Congress that the Europeans will endorse this proposal. In fact, our experience in recent years is that we are inviting European dissent, and very vigorous dissent.

There is no factual record, classified or otherwise, that I am aware of, of any kind of massive or even significant Soviet buildup of production in chemical warfare agents, and none has been cited.

There is no record before the Senate or before the Armed Services Committee that the Pine Bluff Arsenal is even the appropriate site for this facility. None. No record. We might as well pick a place out of thin air.

There is no record as to cost. The best estimates are over $150 million for this facility, and somewhere between $2 billion and $4 billion for the complete chemical arsenal, and that is pure speculation.

There is no certification on the part of the President of the United States, as required by law, that we should enter into production of this arsenal which the supporters of the Jackson amendment feel is so important.

The law requires that certification. There is none. There is totally inadequate defensive capability on the part of our own forces, our land forces, and manpower, and our equipment.

The record, as I have stated, Mr. President, is completely deficient in all these areas. What we do have on record is a statement by the highest constitutional officers of our Government that we should not do this, and that is the record.

If the Senate wishes to act in haste, it will have plenty of time to repent.

● Mr. BIDEN. Mr. President, I do not wish to address the issue of whether it is wise to overturn the Nixon administration decision of 1969 to maintain existing stockpiles of lethal chemical weapons at present levels. Nor do I wish to address the wisdom of engaging in the development of a new generation of lethal chemical munitions when a formal agreement with the Soviet Union is still being negotiated to limit its development and use. Nor do I wish to question the sagacity of three different Congresses who have refused all pressure to build the binary chemical plant at Pine Bluffs.

I do, however, wish to state that, should the United States enter into the development of a new generation of chemical warfare at this point, it would seriously and adversely affect our relations with our NATO allies. In order to have any potential effectiveness in Europe, this new generation of chemical weapons would have to be pre-positioned and stockpiled on European soil. Our allies have remained firmly opposed to this. West Germany has reiterated her opposition to the possession and storage of such weapons—a decision stated in a white paper more than 25 years ago. Most recently, Prime Minister Thatcher and her Defense Secretary, Francis Pym, emphatically ruled out any plans to develop chemical weapons.

It is my strong conviction that for the United States to make such a major military decision without the approval or even minimum consultation with our allies will produce a high and necessary level of tension between us.

Let me point out that I am not ruling out a U.S. decision at some point in the future to produce a new generation of chemical weapons. And I certainly do not want, Mr. President, to discourage a U.S. policy decision to develop much needed antichemical warfare defense. But I do wish to emphasize that a major military decision with complex and manifold implication should not be made before the appropriate consultative process is set in motion between ourselves and our West European allies.

It is my understanding, Mr. President, that the administration position is simply that the decision to go ahead with the development of binary chemical munitions is premature; ultimate production has not been ruled out. It is because of my particular concern for the future of the NATO alliance that I ask my colleagues to withhold their decision until after NATO consultations have taken place.●

● Mr. KENNEDY. Mr. President, I support the amendment offered by Senator HART to require the President to review the situation surrounding whether to build a new chemical weapons plant and to report back to Congress by March 1.

I believe it would be unwise and premature at this time to begin construction of a binary chemical munitions plant at Pine Bluff. Secretary of Defense Brown has stated that he opposes construction of the plant until an ongoing interagency study on U.S. chemical weapons policy has been completed.

Militarily, we will lose nothing by deferring our decision on the construction of the Pine Bluff facility. The current U.S. stockpile of lethal chemical munitions is sufficient for more than 100 days of warfare, and the weapons will remain lethal for at least another 20 years. Programs to improve our capabilities to protect and defend against chemical warfare will continue.

Furthermore, the United States and the Soviet Union are currently holding negotiations to prohibit the development, production, and stockpiling of any lethal chemical weapons. Progress has been made in these negotiations, and we should not rush ahead in a way that could undermine the talks.

Mr. President, I share the deep concerns of my colleagues over reports that Soviet chemical weapons have been used in Afghanistan, Laos, and Kampuchea. If these reports are confirmed, they would certainly bear directly on our final decision regarding binary chemical weapons. But until we have more evidence, and until the executive branch review is complete and sent to Congress early next year, I believe it is in our interest to delay funding for the Construction of the Pine Bluff facility.●

● Mr. PELL. Mr. President, today the Senate faces a decision on the extremely important issue of whether to proceed with the development of a binary chemical munitions production facility at the Pine Bluff Arsenal in Arkansas. The issue extends far beyond the $3.15 million to begin construction on the binary production facility, because such approval now would reverse longstanding U.S. policy on chemical weapons, without the benefit of administration views, without congressional consideration of all the interrelated issues, and without public debate.

At the present time, the administration is conducting a thorough interagency review of U.S. chemical warfare policy, including the major military, foreign policy, and arms control issues. Secretary of State Muskie has said that this review will be completed and an administration decision on the Pine Bluff facility will be made in time for congressional review of the fiscal year 1982 budget. This ill-advised and hasty attempt to preempt the administration's decision will have implications far beyond the construction of a factory to manufacture binary chemical weapons.

Mr. President, as chairman of the Foreign Relations Committee's Subcommittee on Arms Control, Oceans, International Operations, and Environment, I am very well aware of the detrimental impact that proceeding with this facility now would have on our chance to achieve beneficial arms control of chemical weapons. For the benefit of those Senators who may not be familiar with the ongoing chemical warfare negotiations with the Soviet Union, let me briefly review these issues. The United States, Soviet Union, and over 100 other nations have committed themselves in the 1925 Geneva Protocol not to be the first to use chemical weapons in war. Since 1976 the United States and the Soviet

Union have been engaged in bilateral negotiations to extend this commitment and prohibit the development, production, or stockpiling of any lethal chemical weapon.

The two sides have agreed on many issues such as what types of weapons should be banned. From the outset, however, one of our major concerns has been the development of verification procedures which would give us confidence that the Soviet Union is living up to its commitments. While there are remaining differences on specific verification measures, the Soviets have agreed to the principle of onsite inspections. This is an important breakthrough in the negotiations, which should be pursued vigorously, not abandoned in a headlong plunge toward deploying a new generation of chemical weapons.

If the Congress decides now to begin construction on the binary munitions facility at Pine Bluff, we will be signaling our intent to break the 10-year informal, unofficial ban on chemical weapons production. At the very least, the Soviet Union may decide to take the same step and protect its option for producing modern chemical weapons. Both sides will then be well on their way to a renewed chemical weapons arms race, putting effective arms control that much further from our grasp.

Mr. President, the chemical weapons negotiations have been almost stalled since the Soviet invasion of Afghanistan. As one Senator, I look forward to the day when we recognize that arms control can contribute effectively to our national security, that arms control is not an exercise in unilateral disarmament. We need to take a comprehensive, intelligent approach to our national security planning. With respect to chemical weapons, that means the Senate should not rush to a quick judgment on the Pine Bluff binary facility, before all the implications can be assessed and debated. In my view, the Senate would be well advised to await the administration's position in connection with the budget submission early next year. We will then have the opportunity to consider all the issues raised by chemical weapons and reach a much more well-informed decision.●

Mr. HART. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HART. I yield to the majority leader.

RURAL DEVELOPMENT POLICY ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President. I ask unanimous consent that the Chair lay before the Senate a message from the House on S. 670, for not to exceed 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I would reserve only for the benefit of advising the majority leader that that item is cleared on our side and we have no objection to its consideration on the basis described by the majority leader.

Mr. STENNIS. Mr. President, reserving the right to object, I have been waiting here on what I consider an important vote, one that I should be here for. I understood the time was up, or we had agreed to a set vote. Did the Senator from West Virginia note that this would require a delay of 2 minutes?

Mr. ROBERT C. BYRD. Yes. No more than that.

Mr. STENNIS. All right. I have no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 670) to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

(The amendment of the House is printed in the RECORD of September 15, 1980, beginning at page H8755.)

Mr. McGOVERN. Mr. President, I thank the distinguished majority leader, also the distinguished minority leader, for clearing this matter. It is a measure that the House acted on yesterday that is of great importance to rural America.

Mr. President, S. 670 would provide the basis for a new unified natural rural development effort. Section 603 of the Rural Development Act of 1972 directed the Secretary of Agriculture to provide leadership and coordination to our Nation's rural development efforts.

The Rural Development Policy Act of 1980 improves the 1972 act by adding a new section which further defines the Secretary of Agriculture's leadership role in coordinating our national rural development efforts.

S. 670, as amended by the House, also requires the Secretary to prepare a comprehensive rural development strategy, and to submit this strategy and annual updates to the House and Senate Agriculture Committees on January 31 of each year. Both the strategy and the updates are to include an analysis of the rural impact of the President's proposed budget recommendations, as well as any legislative proposals necessary to achieve our stated rural development goals.

In his rural development policy statement, President Carter called for the establishment of the position of Under Secretary of Agriculture for rural development. S. 670 provides for an Under Secretary of Agriculture for small community and rural development.

Title IX of the Agricultural Act of 1970 stated a national commitment to the development of a comprehensive rural policy as a means of achieving a sound balance between the interest of rural and urban America. The creation of this Undersecretary's position gives rural America a much needed voice in helping to achieve this balance.

The Rural Development Policy Act of 1980 will also increase from $10 million to $15 million the annual authorization for Farmers Home Administration rural development planning grants, and would expand the use of these grant funds to include funding of circuit riders who would assist rural areas in applying for needed Federal assistance.

S. 670 will also amend section 306(A) of the Consolidated Farm and Rural Development Act to authorize an appropriation of up to $1 million annually to the Farmers Home Administration for the purpose of establishing a system for the dissemination of information and technical assistance on federally sponsored or funded programs available for rural areas.

The House amendments to S. 670 also extend the authorization for our rural development and small farm research and extension programs through fiscal year 1981. The Senate had earlier approved the extension of these programs when it passed S. 892.

The House amendments to S. 670 do not alter the purpose or intent of the bill as passed by the Senate. The amendment clarifies and makes technical changes that improve the bill. The House is to be commended for its realization of the need for this bill.

Mr. President, I offer these remarks by way of explanation to my colleagues concerning the authorization of the WEB Water Development Association domestic water pipeline contained in the House amendment to S. 670, the Rural Development Policy Act. Admittedly, this provision affords South Dakota special consideration. Yet, I contend, special circumstances warrant this consideration.

Many of my colleagues, especially those serving on the Energy and Natural Resources Committee, are aware of the problems South Dakota has encountered within the last 4 years concerning the course of water development.

In 1944, the U.S. Government and the States of the Missouri River Basin entered into a covenant concerning the development of the region's surface water resources. The development plan known as the Pick-Sloan Missouri Riven Basin program provided for the construction of dams along the mainstream of the Missouri for the multiple purposes of flood control, hydroelectric power generation, navigation, and agricultural water supplies. Among those States, North and South Dakota made a singular sacrifice in agreeing to give up nearly 1 million acres of our richest farmland along the river bottom to permanent inundation so that the other benefits would be enjoyed by the rest of the region and the Nation as well.

Although North and South Dakota together consume less than a third of the electricity generated by the dams in our States, and although we do not benefit from the navigation system in a direct sense, and although the question of flood control has now become moot due to the permanent flooding of our best land, we agreed to this basin development plan. The reason for our agreement was the premise—indeed the commitment—by the U.S. Government to assist us in the development of that water resource for agricultural use or irrigation.

A large portion of the U.S. commitment to North Dakota will have been fulfilled once the Garrison diversion unit becomes operational. The "sister" project in South Dakota to have fulfilled a large part of the bargain was the initial stage of the Oahe unit. The consideration of the WEB pipeline at this time is bound up in that commitment to assist us in development of the Oahe unit.

As my colleagues know, the Oahe unit was one of the very few projects that this Congress decided could remain upon the President's "hit list" of those projects that he had decided should not proceed further. That project being stalled not only places the United States in the position of reneging upon the covenant South Dakotans take very seriously because of the need for irrigation development in our semiarid State; it also dashes the hopes of 100,000 South Dakotans—one-sixth of the population of my State—for water development for domestic consumption.

While South Dakota can accept the deferral of irrigation development for the time being—indeed part of the problem concerning how to proceed with that course rests with us—we cannot accept and I cannot accept leaving the people of my State with no realistic prospect of improving their water supply and water quality problems. It is to this issue which the authorization of the WEB pipeline is directed.

The proposed WEB pipeline would serve many of the people who had hoped to enjoy the benefits of the Oahe unit's water supply. It has the potential of serving 30,000 rural residents on farms and in small rural communities in the northeast central portion of my State. In fact, even a North Dakota rural water system will eventually enjoy the benefits of its development.

Mr. President, I ask my colleagues to study the language authorizing this project very carefully. They will note that it does not permanently authorize the WEB project, unless it becomes at least a partial trade for the authorization of the Oahe unit. What we are in fact doing by approval of this language is providing the people of South Dakota living within the WEB pipeline service area $1.9 million to prepare the final detailed plans for the project prior to its construction. Actual construction could not begin for at least another year.

Construction cannot begin before Congress has acted to actually deauthorize that project. Construction cannot begin before my colleagues will have another opportunity to review the details of what is proposed. I believe the national interest in this project is sufficiently protected. We are not commiting the United States to a project that flies in the face of the national water policies that this administration has attempted to enact. In fact, we have the support of the administration in acting on this matter.

By agreement between myself, the other members of the South Dakota congressional delegation (Mr. Pressler, Mr. Daschle, and Mr. Abdnor), and the Secretary of the Interior (Mr. Andrus), it was made clear that the administration cannot support the permanent authorization of the WEB project in the absence of the deauthorization of the Oahe unit. But by that agreement, we have been provided until September 30, 1981, the time and opportunity for the development of a comprehensive water development plan that will serve the needs of South Dakota "in trade" for the Oahe unit. My colleagues will have the opportunity to review that plan and decide whether or not we can proceed with it. The administration, the South Dakota delegation and the State of South Dakota intend to work with the appropriate committees of Congress in that regard.

I ask unanimous consent that there be printed in the Record an analysis of the major differences between S. 670 as passed by the Senate and the House amendment thereto.

There being no objection, the material was ordered to be printed in the Record, as follows:

Committee on Agriculture, Nutrition, and Forestry Analysis of Major Differences Between S. 670, as Passed by the Senate, and the House Amendment Thereto

1. Secretary of Agriculture's role in leadership and coordination or rural development policy.

(a) The Senate bill requires the Secretary of Agriculture to establish a "rural development policy management process" to formulate both broad, long-range development plans and short-range strategies concerning national rural development policy. The Secretary is to develop these goals and strategies in conjunction with other Federal agencies, multi-State, State, and sub-State entities involved in rural development policy.

The House amendment substitutes "rural development strategy" for "rural development policy management process" and makes technical changes in the matters to be covered in that effort, providing more specificity.

(b) The House amendment requires the Secretary to hold public hearings to aid in the development of any rural development strategy.

The Senate bill contains no comparable provision.

(c) The Senate bill authorizes an appropriation of $1.5 million for development of the "rural development policy management process" and accompanying reports.

The House amendment contains no comparable provisions.

2. Rural Development Reports.

Both the Senate bill and the House amendment repeal existing legislation requiring five separate annual reports relating to rural development.

(a) The Senate bill institutes a major five-year reporting requirement with biennial progress reports.

The House amendment requires publication of a "rural development strategy" beginning for the fiscal year ending September 30, 1982 and updated for each fiscal year thereafter.

(b) The House amendment requires that the "rural development strategy" and each annual update of the strategy contain an analysis of the President's budget recommendations for the fiscal year following the transmittal of the strategy or update and of all the available budget projections of the President for subsequent fiscal years, and projections regarding the budget that are relevant or essential to the rural development policy and strategy developed under the bill.

The Senate bill contains no comparable provision.

(c) The House amendment requires the Secretary to ensure effective implementation of the "rural development strategy" through a systematic effort to (1) facilitate sharing of common location of field offices administering similar or complementary programs; (2) where possible, delivery systems for rural programs; and (3) facilitate and expedite joint funding of rural projects through Federal programs.

The Senate bill contains no comparable provision.

3. Undersecretary of Agriculture for Small Community and Rural Development.

The House amendment authorizes the position of Undersecretary of Agriculture for Small Community and Rural Development, to be appointed by the President, and approved by the Senate.

The Senate bill contains no comparable provision.

4. Title V of the Rural Development Act of 1972.

(a) The House amendment provides for extension of provisions in title V of the Rural Development Act of 1972 which authorize appropriations annually of $20 million each for rural development research and extension through September 30, 1981.

The Senate bill contains no comparable provision. (Note: The Senate earlier passed S. 892 which also authorizes extension of the authorization for rural development research and extension through September 30, 1981.)

(b) The House amendment requires that in States which contain both 1862 and 1890 land grant universities (including Tuskegee Institute), the annual plan and budget must be jointly developed by mutual agreement of the chief administrative officers of all such institutions and universities.

The Senate bill contains no comparable provision.

(c) The House amendment adds Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the American Virgin Islands to the definition of the term "State", entitling them to a share of the of the formula funds distributed under title V.

5. Rural Development Grants and Technical Assistance and Information Centers.

Both the Senate bill and the House amendment increase from $10 to $15 million the annual authorization for Farmers Home Administration rural development grants. Both the Senate bill and the House amendment expand the purposes for which the grants can be used.

(a) The Senate bill requires the Secretary of Agriculture to establish no less than five rural technical information and assistance centers. Funding for the centers would be provided from the $15 million authorized for rural development grants.

The House amendment requires the Secretary to establish such centers (no number specified), and authorizes a separate annual authorization of $1 million for this purpose.

6. WEB Rural Water Development Project.

The House amendment provides an authorization of appropriations to the Secretary of the Interior for the construction of the WEB Rural Water Development Project in South Dakota, subject to deauthorization of the Oahe Project in South Dakota.

The Senate bill contains no comparable provision.

Mr. McGOVERN. Mr. President, the Rural Development Policy Act of 1980 is designed to improve the planning and coordination of our rural development initiatives, and will inject a new vitality into our rural development programs.

● Mr. LEAHY. Mr. President, as chairman of the Subcommittee on Rural Development of the Agricuture, Nutrition, and Forestry Committee, I am particularly pleased to see the Senate taking final action on S. 670, the Rural Development Policy Act of 1980.

Early in the 96th Congress I introduced S. 670, the Rural Policy and Coordination Act, a measure to improve the delivery of a broad range of Federal programs to rural America. This bill was subsequently passed by the Senate on June 14, 1979. Though not identical to that earlier legislation, I support S. 670 as amended and passed by the House on September 15, 1980. S. 670, as amended by the House, also includes the major provisions of S. 892, which was passed by the Senate on June 14, 1979.

S. 670 is designed to build upon and refine existing Federal efforts in rural development. It will also further integrate rural development planning with multistate, State, substate, and local rural development strategies.

In title IX of the Agricultural Act of 1970, and again in the Rural Development Act of 1972, Congress recognized the need for a fully coordinated rural development policy. Unfortunately, this coordination of rural development programs has not been achieved. I believe this lack of coordination has resulted in wasteful duplication of efforts, conflicts among Federal programs, and a less than effective delivery of assistance and services to rural areas.

As a Senator from the most rural State in the Union, I was pleased to author and introduce S. 670 in the Senate. Too often, the needs of rural residents are unseen and unappreciated in our urban based society.

S. 670, and the House amendments thereto, seek to remedy some of these problems. In effect, Congress is reaffirming its commitment to rural America by giving the Secretary of Agriculture expanded authority to develop a rural development strategy involving the Federal Government, States, and local governments in formulating a flexible rural policy encompassing differing local needs and conditions, while also addressing problems common to all areas and reflecting national objectives.

For the first time we are establishing an Under Secretary of Agriculture for Small Community and Rural Development. This position was an essential element in the administration's small community and rural development policy announced last December, and I am pleased to note we are able to provide for the Under Secretary in this bill.

In addition to providing for a new Under Secretary, S. 670 would:

First, charge the Secretary of Agriculture with coordinating a national rural development strategy, using the resources of the Federal, State, and local governments.

Second, require the Secretary to establish a process that identifies the needs of rural areas on a continuing basis and to review all Federal programs to determine whether rural areas are receiving a fair and equitable share of the benefits of such programs in comparison to urban areas. This includes the use of rural development experts, temporary advisory committees, working groups, public hearings, and other Federal agency resources. The Secretary is to prepare a comprehensive rural development strategy to maximize the effectiveness of rural programs and increase the coordination of such programs to achieve their effective combination with Federal, State, and local resources.

Third, provide for the extension of the authorization of appropriations for rural development research and extension through September 30, 1981, at the existing annual authorization level of $20 million, and small farm research and extension through September 30, 1981, at the existing annual authorization level of $20 million.

Fourth, require that in States which contain both 1862 and 1890 land grant institutions or universities (including Tuskegee Institute), the annual plan and budget must be jointly developed by mutual agreement of the chief administrative officers of all such institutions or universities.

Fifth, add Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands of the United States to the definition of the term "State", entitling them to a share of the formula funds distributed pursuant to title V of the Act.

Sixth, eliminate the current requirement of five annual reports related to rural development and replace them with an annual strategy for rural development which spells out how that strategy will be backed in the President's budget requests.

Seventh, increase from $10 million to $15 million the annual authorization for Farmers Home Administration rural development planning grants. Grant funds could be used to pay "circuit riders" to assist rural areas in applying for needed Federal funds. Eligible institutions for these grants include Tuskegee Institute, State, substate, and regional planning bodies, and other persons concerned with rural development. It would also authorize a separate expenditure of not more than $1 million annually to the Farmers Home Administration to establish a system for the dissemination of information and technical assistance on federally sponsored or funded programs to rural areas.

Eighth, authorize certain expenditures by the Secretary of the Interior, subject to certain conditions and restrictions. For the WEB rural water development project in South Dakota, I would simply add that this particular proposal has the wholehearted support of both the administration and the South Dakota congressional delegation.

The rural development strategy mandated by S. 670 will be for the fiscal year beginning October 1, 1981, and ending September 30, 1982, with annual updates for each fiscal year thereafter. Public hearings are to be used for local input in the preparation of the strategy. The annual updates will be transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry not later than January 31 of each year for the following years.

The rural development strategy and such annual updates are to contain an analysis of the President's budget recommendations for the fiscal year following each transmittal and all available Presidential budget projections for subsequent fiscal years, as well as any other relevant budget projections. By making the rural development effort a more integral part of the budget process and providing the information at a time when it can assist Congress in its budget process, we will have a better idea of the direction that the effort is going and can make any needed modifications in a timely manner.

Each annual update will include a detailed statement of findings and conclusions by the Secretary regarding the implementation of the strategy during the preceding fiscal year, including any revisions to the strategy, recommended legislation, and evaluation of the information system required under the Rural Development Act.

A bipartisan effort was undertaken to design S. 670, as amended by the House. As a result of this process, S. 670 enjoys the support of the administration, the National Rural Electric Cooperative Association, National Grange, National Farmers Union, Congressional Rural Caucus, National Association of Development Organizations, Rural Coalition, National Rural Water Association, Rural Government Coalition, National Governors Association, National Congress for Community and Economic Development, Northeast-Midwest Congressional Coalition, National Association of Towns and Townships, National Association of Regional Councils, National Conference of State Legislatures, New England Regional Commission, Rural America, Inc., National Rural Center, National Association of Counties, Rural American Women, Inc., National League of Cities, and a host of other organizations concerned about improving the quality of life for over 60 million rural Americans. And while nobody got everything they wanted in the bill, including myself, we all realized that in the interest of the rural people we serve it would be necessary to compromise if this bill were to be enacted in this Congress. To wit, Mr. President, we are here today to get final Senate approval on these measures, a legislative compromise I fully endorse.

Mr. President, this is a carefully crafted legislative package uniquely honed to the basic needs of America's small towns and communities. It will assure that realistic goals will be set for rural America, rather than the glorious and hollow promises of the past. Redtape will be cut, Government efficiency will be increased, and all at a bare minimum of cost.

With Senate approval of S. 670, we will have a law on the books that will eliminate many of the impediments that have stifled small community participation in Federal programs in the past.

Mr. President, S. 670, as amended by the House, is good legislation, and I urge that the Senate concur in the House amendments.●

Mr. McGOVERN. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1981

The Senate continued with the consideration of S. 3059.

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from Colorado.

Who yields time?

Mr. JACKSON. Mr. President, is the Senator from Colorado prepared to yield back the remainder of his time?

Mr. HART. Unless there are other sponsors of the amendment offered by the Senator from Colorado who wish to speak, I am prepared to yield back the remainder of my time.

Mr. JACKSON. I yield back the remainder of my time.

Mr. HART. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN), would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD), is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 46, nays 47, as follows:

[Rollcall Vote No. 404 Leg.]

YEAS—46

Baucus
Bayh
Biden
Boren
Bradley
Bumpers
Burdick
Byrd, Robert C.
Chafee
Church
Cochran
Cranston
Culver
Danforth
DeConcini
Durenberger
Eagleton
Ford
Gravel
Hart
Hatfield
Heinz
Huddleston
Kassebaum
Kennedy
Leahy
Levin
Mathias
Matsunaga
McGovern
Mitchell
Moynihan
Nelson
Packwood
Pell
Percy
Proxmire
Pryor
Randolph
Riegle
Sarbanes
Sasser
Stevenson
Tsongas
Weicker
Williams

NAYS—47

Armstrong
Baker
Bellmon
Bentsen
Boschwitz
Byrd, Harry F., Jr.
Cannon
Chiles
Cohen
Dole
Domenici
Durkin
Exon
Garn
Glenn
Hatch
Hayakawa
Heflin
Helms
Humphrey
Inouye
Jackson
Javits
Jepsen
Johnston
Laxalt
Long
Lugar
Magnuson
McClure
Melcher
Nunn
Pressler
Ribicoff
Roth
Schmitt
Schweiker
Simpson
Stennis
Stevens
Stone
Talmadge
Thurmond
Wallop
Warner
Young
Zorinsky

NOT VOTING—7

Goldwater
Hollings
Metzenbaum
Morgan
Stafford
Stewart
Tower

So Mr. HART's amendment (UP No. 1583) was rejected.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WARNER. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

Mr. HART. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the amendment was rejected.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Texas (Mr. TOWER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER. Are there any Senators in the Chamber wishing to vote?

The result was announced—yeas 47, nays 43, as follows:

[Rollcall Vote No. 405 Leg.]

YEAS—47

Armstrong
Baker
Bellmon
Bentsen
Boschwitz
Byrd, Harry F., Jr.
Cannon
Chiles
Cohen
Dole
Domenici
Durkin
Exon
Garn
Glenn
Hatch
Hayakawa
Heflin
Heinz
Helms
Humphrey
Inouye
Jackson
Javits
Jepsen
Johnston
Laxalt
Long
Lugar
Magnuson
McClure
Melcher
Moynihan
Nunn
Pressler
Ribicoff
Roth
Schmitt
Schweiker
Simpson
Stevens
Stone
Talmadge
Thurmond
Wallop
Warner
Zorinsky

NAYS—43

Baucus
Bayh
Biden
Boren
Bradley
Bumpers
Burdick
Byrd, Robert C.
Chafee
Church
Cochran
Cranston
Culver
Danforth
DeConcini
Durenberger
Eagleton
Ford
Gravel
Hart
Hatfield
Huddleston
Kassebaum
Kennedy
Leahy
Levin
Mathias
Matsunaga
Mitchell
Nelson
Packwood
Pell
Percy
Proxmire
Pryor
Randolph
Riegle
Sarbanes
Sasser
Stevenson
Tsongas
Weicker
Williams

NOT VOTING—10

Goldwater
Hollings
McGovern
Metzenbaum
Morgan
Stafford
Stennis
Stewart
Tower
Young

So the motion to lay on the table the motion to reconsider was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Washington (Mr. JACKSON).

Mr. HART. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), the Senator from Mississippi (Mr. STENNIS), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. TSONGAS). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 52, nays 38, as follows:

[Rollcall Vote No. 406 Leg.]

YEAS—52

Armstrong
Baker
Bellmon
Bentsen
Boschwitz
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chiles
Cohen
DeConcini
Dole
Domenici
Durkin
Exon
Ford
Garn
Glenn
Hatch
Hayakawa
Heflin
Heinz
Helms
Humphrey
Inouye
Jackson
Javits
Jepsen
Johnston
Laxalt
Long
Lugar
Magnuson
McClure
Melcher
Moynihan
Nunn
Pressler
Randolph
Ribicoff
Roth
Schmitt
Schweiker
Simpson
Stevens
Stone
Talmadge
Thurmond
Wallop
Warner
Young
Zorinsky

NAYS—38

Baucus
Bayh
Boren
Bradley
Bumpers
Burdick
Chafee
Church
Cochran
Cranston
Culver
Danforth
Durenberger
Eagleton
Gravel
Hart
Hatfield
Huddleston
Kassebaum
Kennedy
Leahy
Levin
Mathias
Matsunaga
Mitchell
Nelson
Packwood
Pell
Percy
Proxmire
Pryor
Riegle
Sarbanes
Sasser
Stevenson
Tsongas
Weicker
Williams

NOT VOTING—10

Biden
Goldwater
Hollings
McGovern
Metzenbaum
Morgan
Stafford
Stennis
Stewart
Tower

So Mr. Jackson's amendment (No. 2321) was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JACKSON. Mr. President, I ask unanimous consent that the distinguished Senator from Virginia (Mr. Warner) be added as a cosponsor with me on the amendment just adopted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 1584

(Purpose: Construct small arms firing range at Malmstrom Air Force Base)

Mr. MELCHER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Montana (Mr. Melcher) proposes an unprinted amendment numbered 1584.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, between lines 5 and 6, insert: "Malmstrom Air Force Base, Montana, $750,000.".

On page 43, line 19, strike: "$525,033,000" and insert in lieu thereof: "$525,783,000".

On page 43, line 21, strike: "$643,790,000" and insert in lieu thereof: "$644,540,000".

The PRESIDING OFFICER. The Chair will state that the amendment would amend the bill in an area already amended and would require unanimous consent it be taken up.

Mr. MELCHER. Then I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MELCHER. Mr. President, this is a very easily understood amendment.

Mr. President, the amendment I am offering to S. 3059 adds $750,000 to the fiscal year 1981 military construction authorization for construction of a small arms firing range at Malmstrom Air Force Base, Mont. This firing range is urgently needed to maintain proficiency of base personnel responsible for missile silo security in the use of the M-16 rifle, the .38 caliber pistol, the shotgun, the M-60 machinegun and the 40 mm grenade launchers.

This is not a new project. It is already in the Strategic Air Command approved military construction program for fiscal year 1983. The purpose of this amendment is to accelerate the actual construction date to meet the urgent security needs at Malmstrom and save tax dollars.

The project is for $750,000 to construct a 2,000-square-foot building, four classrooms, office space for nine instructors, paving, utilities, construction of M-60 machinegun and shotgun ranges, and modification of existing M-16 and .38 caliber pistol ranges. Separate arrangements would be made for grenade launchers.

More than 6,000 people a year need to qualify on some or all of the weapons I have previously mentioned.

The following list shows the number of people who must receive training in arms use:

1. Annual 341st Strategic Missile Wing & 24th NORAD training requirements

M-16:	
Security police group (SPC)	2,085
Maintenance (MB)	144
Warskill—Wartime Augmentee	50
Prime BEEF (mobility force)	210
Prime RIBS (mobility force)	30
Communications squadron	54
Permanent change of station	300
Addition for failure rate of 1.5 percent	43
Total	2,916
.38 Pistol:	
SPG	630
MB	239
Operations (Do)	303
Warskill (wartime augmentee)	50
Prime Beef (mobility force)	25
Helicopter crews	15
Addition for failure rate of 1.5 percent	13
Total	1,272
Shotgun:	
SPG	12
MB	436
Addition for 1.5 percent failure rate	4
Total	452
M-60 Machine Gun:	
SPC (450 twice/year)	900
40 mm grenade launcher (450 twice/year)	900
Total annual 341st SMW & NORAD range training requirement	6,640

2. Annual Montana Air National Guard training requirements (MANG provides its own instructors)

M-16:	
Security police (SP)	132
SP augmentees & mobility force	85
Total	217
.38 Caliber Pistol:	
SP	88
SP augmentees and aircrews	55
Total	143
Total annual MANG range training requirements	360

This is not just a routine activity. Most of the personnel receiving training on these weapons are responsible for the security of missile silos and command centers or other high security areas. They must protect these important military installations during inspection, maintenance, and at times of emergency. Under current conditions the wing commander must waive small arms proficiency requirements for an average of 600 security personnel each year. These waivers are required for up to 3-5 months in some cases because of the lack of a year round small arms training facility. I have no doubt that these security personnel are well trained and competent; however, it makes no sense to me that they should be deprived of training in this critical skill. This flies directly in the face of Congress' mandate that we upgrade the quality of training of our military personnel.

Of equal importance is the waste of tax dollars that will result from delaying this project.

Currently, training is conducted at a range in Helena, Mont., almost 100 miles from Malmstrom. The expense involved in holding these training sessions in Helena rather than at Malmstrom, amounts to $10,000 per session for transportation and approximately $4,000 per session for per diem costs. These unnecessary costs amount to $28,000 per year. Further, it takes three times as long for personnel to qualify at Helena than it would if there was an all-weather range at Malmstrom, resulting in the waste of 800 man-days each year. Finally, the $750,000 cost estimate for the firing range is in 1981 dollars; if it is delayed another 2 or 3 years, we know well from past experience that the cost will escalate and the taxpayer will be the loser.

These weapons training requirements are vital to Malmstrom Air Force Base. Security is a major aspect of the maintenance of a missile complex. The task of maintaining proficiency in weapons use becomes increasingly difficult with inadequate facilities. We have the opportunity to take a definite step toward upgrading the ability of the 341st Strategic Missile Wing to fulfill its mission.

I hope that the managers of the bill will see fit to accept my amendment.

Mr. HAYAKAWA. Mr. President, I am greatly impressed with the proposal made by the distinguished Senator from Montana and I offer support. I believe it is, as he argues, a saving of money in the long run, although it costs some to start with.

I believe the Senator makes a very cogent argument on that subject. I congratulate the Senator from Montana.

Mr. MELCHER. I thank my friend from California.

Mr. WARNER. Mr. President, I ask my distinguished colleague (Mr. Melcher) with respect to how he reached an evaluation of $750,000, and whether or not there is any latitude within which the conference committee may address this item?

Mr. MELCHER. This is the Air Force estimate. It is for $750,000 to construct a 2,000-square-foot building, four classrooms, office space for nine instructors, paving, utilities, construction of M-60 machinegun and shotgun ranges, and modification of existing M-16 and .38 caliber pistol ranges, which are already there.

This has already been approved for fiscal year 1983. I bring it up now because I have been informed by the Air Force they would like to have it because it would save some money, not only in what I have listed as transportation costs, per diem costs, and what they say is 800 man-days waste per year.

But they are satisfied they have to have it. Construction costs will not be cheaper 2 years down the road. They think it will be cheaper in this fiscal year's budget.

Mr. WARNER. Mr. President, we are prepared to accept it. I inform my colleague that during the course of the conference I, personally, will examine the costing of this and reserve the right, within a margin of latitude, to adjust the figure.

Mr. MELCHER. I appreciate that very much.

Mr. HART. Mr. President, we appreciate the Senator from Montana bringing this issue to our attention. As I am sure he and our other colleagues know, each of us in our States has very worthy projects, all of which, or many of which, should be built, many of which will be built, almost all of which could be built more inexpensively in the short term than in the long term.

That is an important argument, but, certainly, not a persuasive one. Everything we build in the future will cost more than if we build it this year.

The Senator from Colorado has some difficulty with the amount of this item. We try to accommodate our colleagues if we can and hold the cost of this bill down.

We brought it in some $65 million or $70 million below the administration request. We have had to be somewhat stern with the services and our colleagues in the sense of resisting very worthwhile proposals and projects, including those that the services wanted.

We added just over $3 million to the cost of the bill by virtue of the Jackson amendment and that, of course, makes it more difficult.

I think in keeping with the spirit of what we tried to do on some of the other amendments that do not appear in the House bill, the majority can accept this with the understanding that we will want to do a very thorough examination of the cost of this facility and see whether that might be reduced.

Mr. MELCHER. I thank my friend from Colorado.

Mr. BAUCUS. Mr. President, I rise in support of the amendment offered by my distinguished senior colleague from Montana, authorizing the necessary funds for a small arms firing range at Malmstrom Air Force Base.

In my view, the need for a small arms range modification project at Malmstrom is clear and unquestionable.

Malmstrom Air Force Base is the home of the 341st Strategic Missile Wing, one of six operational Minuteman wings within the Strategic Air Command. In peacetime, Malmstrom maintains a highly reliable force of Minuteman missiles as a powerful deterrent to nuclear attack.

Clearly, Malmstrom Air Force Base constitutes an absolutely essential aspect of our overall national defense posture.

Yet, at present, security police and other personnel at Malmstrom Air Force Base must travel to other firing ranges in the State in order to obtain the necessary practice. This travel is clearly not a practical or efficient use of man-hours, gasoline or effort.

By authorizing this small amount of money for the small arms firing range, we can correct the situation, and help to streamline all the operations at Malmstrom Air Force Base, so that it can continue to play a critical role in defending our national security in the most efficient and effective manner possible.

Mr. MELCHER. Mr. President, I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Montana.

The amendment (UP No. 1584) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1585

Mrs. KASSEBAUM. Mr. President, I send two amendments to the desk for myself and Senator Dole, and ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mrs. Kassebaum), on behalf of herself and Mr. Dole, proposes unprinted amendment numbered 1585:

On page 3, line 12, strike out $9,900,000 and insert in lieu thereof $11,150,000.

On page 43, line 11, strike out $606,560,000 and insert in lieu thereof $607,810,000.

On page 43, line 13, strike out $918,830,000 and insert in lieu thereof $920,080,000.

On page 3, line 12, strike out $9,900,000 and insert in lieu thereof $16,400,000.

On page 43, line 11, strike out $606,560,000 and insert in lieu thereof $613,060,000.

On page 43, line 13, strike out $918,830,000 and insert in lieu thereof $925,330,000.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. The Chair will state that the amendments would appear to be contradictory in terms of the figures and perhaps the Chair could be advised as to which of the two could be taken.

Mrs. KASSEBAUM. I am addressing them en bloc, Mr. President, and will embrace both of them in my comments on the amendments.

The PRESIDING OFFICER. Apparently, the amendments at the desk do not refer to the same figure in each amendment. So if they were to be passed en bloc, the question would arise as to which figure would predominate.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that my amendments be in order as presented.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, the amendments I have sent to the desk are examples of worthy projects for our State.

The first amendment would authorize $1,250,000 for alteration and modernization of the dental clinic at Fort Leavenworth. Currently, Fort Leavenworth has 24 permanent dental treatment rooms. Twelve of these are inadequate according to the Department of the Army. The Department of Defense has requested $1,250,000 to replace these 12 inadequate treatment rooms with 8 new facilities. Last year the Department requested funding for 12 new treatment rooms, 4 of which were justified on the basis of dependent care. The Senate Armed Services Committee rejected the Department's request because it felt the dependent care facilities were not justified. This year the Department did not request 12 treatment rooms. They only requested 8 additional rooms deleting from their request the 4 dependent care treatment rooms objected to by the Senate. I feel the Department of the Army has been responsive to the concerns of the Senate and that we should follow the lead of the House Armed Services Committee and the House Appropriations Committee by including funding for these 8 new treatment rooms.

The second amendment would authorize $6,500,000 for an administration building renovation at Fort Leavenworth. The building scheduled for renovation was built in 1905 and was used as a hospital until 1961. After the hospital facilities were moved, the building was used for administrative offices. However, much of the building is unusable as office space without this renovation. Plans are far enough along that the Department of Defense requested funding for this project in its original budget request. Also, the House has authorized funding for this project in its military construction authorization bill. The plans for the building are to create 300 administrative offices and some small conference rooms. Some argue that it would be less expensive to build a new building. However, this is a building located in the historical district of Fort Leavenworth and the renovation plans carry out the mandate of Executive Order 11593, Protection and Enhancement of the Cultural Environment, which requires Federal agencies to initiate measures and procedures to provide for the maintenance through preservation, rehabilitation, or restoration, of federally owned and registered sites.

Mr. President, I hope these two amendments will be accepted.

● Mr. DOLE. Mr. President, I am pleased to join my distinguished colleague from Kansas, Senator Kassebaum, in offering the following two amendments.

DENTAL CLINIC

Very simply, Mr. President, the first amendment will authorize $1,250,000 for much needed improvements of the dental clinic at Fort Leavenworth, Kans. This request, which is identical to that submitted by the Department of Defense, will be used to replace 12 inadequate dental treatment rooms with only 8 new rooms.

Last year, the Department of Defense requested funding for 12 new treatment rooms, 4 of which would accommodate dependent dental care. The committee rejected this request because it felt these dependent facilities were not justified. This year the request reflects the wishes of the committee.

I join Senator Kassebaum in urging the Senate to follow the House in including funding for this much needed improvement in Fort Leavenworth's dental care facilities.

ADMINISTRATION BUILDING UPGRADE

Mr. President, the second amendment will authorize $6,500,000 for an administration building renovation at Fort Leavenworth, Kans.

Very simply, Mr. President, this amendment will help to renovate and create approximately 300 administrative offices and some conference rooms.

Some concern has been expressed that the cost of renovation may exceed the cost of constructing a new building. While this may be true, I would note that this building is located in the historical district of Fort Leavenworth and the renovation plans carry out the mandate of Executive Order 11593, protection and enhancement of the cultural environment, which requires Federal agencies to initiate measures and procedures to provide for the maintenance through preservation, rehabilitation, or restoration, of federally owned and registered sites.

Mr. President, although these two amendments will be withdrawn, it is my understanding that the chairman will support the House language when this measure goes to conference. Although I would have preferred acceptance of these amendments by the committee or a rollcall vote, I am pleased that the chairman will support the House position in conference.●

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I compliment the Senator from Kansas for raising these issues.

These are important considerations with respect to the facility at Fort Leavenworth and to the State of Kansas, and I know how strongly she feels and her constituents feel about both items.

These items have been brought to the attention of the committee in the past. We have undertaken to consider them over a period of time, and it is entirely appropriate that they be brought before the attention of the Senate and our committee at this time.

The Senator from Kansas is aware that, unlike other amendments we have accepted today, these items are in the House bill and therefore will be in conference. I can assure the distinguished Senator from Kansas that we will give them every consideration in the conference, and they will receive thorough, thoughtful, and serious attention.

However, given budgetary considerations and other actions taken by the Senate today, it is the strong desire and preference of the floor manager on the minority side that we do not pursue this to a vote, or I am afraid the majority would have to oppose it. I assure the distinguished Senator that we will give both matters every consideration in conference.

Mr. WARNER. Mr. President, I join the Senator from Colorado in stating to the Senator from Kansas that these amendments will receive very careful consideration during the course of the conference.

Mrs. KASSEBAUM. Mr. President, I am very appreciative of the support of the Senator from Colorado and the Senator from Virginia. Under their capable support and guidance in the conference, I feel that the matter will rest in good hands, and I withdraw the amendments I have submitted.

Mr. WARNER. We thank the Senator from Kansas for her willingness to withdraw the amendments at this time.

The PRESIDING OFFICER. Without objection, the amendments are withdrawn.

THE NEED TO MAINTAIN OUR MILITARY SUPPORT SYSTEM

Mr. CRANSTON. Mr. President, I rise in support of S. 3059, the military construction authorization bill for fiscal year 1981. To have an effective defense, it is essential that the facilities which support our defense establishment be properly maintained and modernized. Thus, I would like to take the opportunity to underscore my interest in several projects contained in the military construction legislation which are important to our national security and which also affect the State of California.

First, I would like to commend Senator HART, the distinguished chairman of the Senate Armed Services Subcommittee on Military Construction and Stockpiles, for the comprehensive and careful work that he and his subcommittee have done on this bill. I would also like to thank the chairman of the Armed Services Committee, Senator STENNIS, for his assistance. I appreciate having the benefit of his invaluable expertise in this area.

Mr. President, the increased demands recently made on our naval fleet and aircraft because of the tensions in the Persion Gulf underline the need to keep this equipment in a high state of readiness. We must also keep our shipyards in good condition. A major portion of the naval shipbuilding, refit, overhaul, and repair work of the U.S. naval fleet and repair of Navy aircraft is done by naval shipyards owned by the U.S. Government. In the past, I have spoken at length about the importance of our naval shipyards. Today, I would like to restate my concern that we stick to a prudent schedule for maintaining and upgrading our shipyards so that they can service adequately the Navy ships and aircraft.

Funds are contained in the military construction bill for needed improvements in our shipyards, including those in California. There is some disagreement, however, between the House and Senate versions of the military construction legislation for funding for the Mare Island Naval Shipyard in Vallejo, Calif. In addition to the lead casting facility, for which the Senate Armed Services Committee approved funds, the House has funded three other necessary projects that the Navy has included as part of its maintenance plan for the Mare Island Shipyard.

Of particular concern is the project to dredge the entrance channel at Mare Island so that it will be possible for the new SSN 688 Class submarines to navigate safely. The first boat of this class is tentatively scheduled for work at Mare Island in mid-1981. But first, the Mare Island channel must be dredged from 32 to 36 feet and Pinole Shoal from 35 to 36 feet. Any delay in this dredging will cause serious problems in completing the scheduled work on the SSN-688 submarines.

Other essential projects at Mare Island, which the House funded, are replacement of the drydock's No. 2 caisson and alterations to a complex of service group buildings. The present caisson has reached the point where it no longer makes sense to continue to repair it. As its structural strength can no longer be guaranteed, it is time to replace this caisson. The alterations to the service group buildings are part of the continuous maintenance at Mare Island.

Mr. President, all of these items are essential to keeping the Mare Island Shipyard in proper condition. It is imprudent to postpone these projects because delay will only serve to create a greater backlog of projects, force crash programs later on that are inefficient and more expensive, and hinder planned improvements to our naval fleet. Thus, I hope that the Senate will carefully consider the position of the House on this matter.

With respect to a related program, the Senate Armed Services Committee has included funds at the Alameda Naval Air Station (NAS) for upgrading the pier, for aircraft support facilities, and for improvements to heating, ventilation and air-conditioning. Like our shipyards, it is critical that we keep our air stations in good shape so they can provide the services that our fleets require. The House deferred funding for these facilities at Alameda NAS on the grounds that the Port of Oakland has not determined whether to build a World Trade Center in the area. Regardless of the pending decision on the Trade Center, there is no question about the continuing need for the Naval Air Station at Alameda and, thus, to maintain it properly. I urge that the Senate insist on its position of including funds for the Alameda Naval Air Station.

Turning to a different issue, I am concerned about the problems that residents who live near Norton Air Force Base are experiencing because of Air Force plans to acquire land for an expanded clear zone at Norton AFB. In 1976, the Air Force determined that it should increase the Air Installation Compatibility Zone (AICUZ) at Norton. (The ACIUZ provides a safety area at the ends of runways where accidents are most likely to occur.) At that time, the Air Force made public its study on the AICUZ and its interest in purchasing land for the expanded clear zone.

Since then the owners of the property—approximately six families—have been left in a state of uncertainty anticipating that the Air Force would buy the land. The Air Force did intend to request funding for the purchase this year: however, the administration decided not to include this project in its fiscal year 1981 military construction funding request to Congress.

Mr. President, I believe that final disposition of the AICUZ program at Norton Air Force Base has been delayed for entirely too long. The indecision on this project has disrupted the lives of the families who own the property in question and it has hindered the City of San Bernardino in making long-term plans for the area. Action on the program is needed to insure the safety of the miiltary personnel and the residents in the area. Therefore, I support the House action which included $9.2 million for the purchase of this land this year, and I hope the Senate will recede to House position in conference.

Mr. President, I would also like to address the problem of family housing for the Air Force personnel in the Los Angeles area. We are all well aware of the problems facing the All-Volunteer Force. This is an issue we have discussed at great length in this session of the 96th Congress. To make the All-Volunteer Force work, we must provide our military personnel with an adequate standard of living. This includes decent housing. In the Los Angeles area, the Air Force is having an extremely difficult time meeting this requirement.

There are approximately 1,800 Air Force personnel stationed at the Air Force Space Division. There is little military housing available. The cost of buying a house is so high—the cost of housing in the Los Angeles area is reputed to be the second highest in the country—that only about 10 percent of the Air Force personnel who have been stationed there recently have been able to afford to buy houses. The remainder must rent.

But renting is extremely difficult because of the high costs and because rental housing is in very short supply. The current vacancy rate is estimated at less than 1 percent. This situation has forced military personnel to live in marginal neighborhoods or to commute as much as 90 miles one way. Some have chosen to pay the difference between what the Air Force can provide in quarter allowances and the actual costs, which most personnel can ill-afford.

As you know, Mr. President, the Congress has already acted to help relieve the problem of high housing costs for military personnel in the United States by providing a variable housing allowance. The housing allowance will alleviate the plight of the Air Force personnel in this area to some extent, as will plans to build family housing at Fort MacArthur. I am concerned that despite these efforts the problem will persist in the Los Angeles area because of the unique situation of the costs being so high compared to the national average and the scarcity of rental units.

There is one other avenue which the Air Force has pursued to relieve the problem—the Government-leased housing program. The Air Force Space Division in Los Angeles has made use of this program and the Air Force has authorized 100 units of family housing. However, the rents in the Los Angeles area far exceed the maximum and average amounts the Air Force is permitted to pay under this leasing program. As a result, the Air Force has found that, in general, it cannot compete in the Los Angeles rental market.

The Department of Defense requested this year that the statutory limitations on the maximum cost per unit for rental housing be increased commensurate with the rent portion of the Consumer Price Index for the domestic Government-leased housing program. DOD also proposed that within this program, 500 domestic lease units be exempted from the maximum cost level by raising the cost limitation to $600 a month for these 500 leases. This action would be a significant help to the Air Force in assisting its personnel in finding adequate housing in the Los Angeles area.

The House Armed Services Committee has approved this request. The Senate Armed Services Committee proposed instead of the plan submitted by DOD to allow a domestic average lease cost of $340 per month, and the authority to exempt from statutory limitations 1 percent of the leases currently in effect.

Mr. President, when the House and Senate conferees consider the differences in the two bills on this matter, I ask that the Senate conferees take into consideration the severe housing problems for Air Force personnel in the Los Angeles area and the importance of the Government leasing program in helping to alleviate this problem in the immediate future. I am afraid that the lower figures proposed by the Senate will not give the Air Force the necessary flexibility to resolve the housing problem for its personnel in the Los Angeles area. I hope that the Senate will agree to the House position.

I would also like to discuss the concerns of the residents of the city of Lompoc and the surrounding area regarding the effect of military construction projects at Vandenburg Air Force Base on the local communities. Lompoc is in close proximity to Vandenburg. It is a city that has already experienced a boom/bust cycle. In the late 1960's, there was a boom due to an increase in personnel working on the Air Force Manned Orbiting Laboratory. The bust came when that project was abruptly canceled.

Consequently, the residents of the city of Lompoc are sensitive to both the benefits and the drawbacks of increased defense-related activities at Vandenburg AFB. Vandenburg will again experience a boom as workers prepare this base to be the second launch site for the Space Shuttle and the test site for the MX missile. Between 1983 and 1991, the city of Lompoc anticipates that approximately 5,100 direct permanent and 5,700 indirect permanent jobs will be created as the result of military construction related to the MX missile test program and the Space Shuttle launch site. Fifty percent of the direct MX and Space Shuttle program workers and their families and 30 percent of the indirect MX Space Shuttle workers are expected to live in Lompoc. It is possible that the city's population will increase by 43 percent. Obviously, such a rapid increase will put severe strains on the local community for adequate housing, schooling, and a vast array of social services.

Mr. President, the Senate Armed Services Committee has offered an amendment to this bill which addresses the potential problems that Lompoc residents face. This amendment authorizes the Secretary of Defense when he deems it necessary to assist communities located near the MX Weapon System sites and the East Coast Trident Base in helping to plan for the anticipated growth.

The Committee has also authorized the Secretary of Defense in fiscal year 1982 to assist communities which are located near these programs in meeting the costs of providing increased municipal services and facilities if he determines that it is appropriate given the criteria set out in this amendment.

The committee amendment also provides for an in-depth study regarding the potentially adverse effects large, new defense programs may have on local communities and what steps should be taken to lessen this impact.

I believe that the committee's proposal is an excellent one. It is a sensible approach to a difficult problem. It allows the Secretary of Defense enough flexibility to work with local communities and other Federal agencies to alleviate the negative effect of large defense projects. I strongly support this amendment to S. 3059.

Finally, Mr. President, I would also like to commend Senator HART and his subcommittee for the action that they have taken with respect to the new naval medical facility in San Diego. The issue of where to place the hospital has been a very controversial one for the residents of San Diego because the Navy has proposed to build the new medical complex in one of California's and the Nation's largest and loveliest urban parks—Balboa. A number of other locations have been proposed as alternatives. Two sites for the hospital are presently under active consideration: Balboa Park and Helix Heights. While in the past, the Navy indicated that it preferred the Balboa Park site, many San Diego residents have indicated that they would prefer the Helix Heights site.

Mr. President, the decision on where to build the hospital will have a long-term effect on the city of San Diego. Before such a decision is made, I believe that all reasonable options should be fully explored. Thus, I strongly support the committee's provision requiring the Navy to study both the Balboa Park site and the Helix Heights location and provide the committee with an in-depth comparison of the two locations. This is a sensible approach and I urge that the Senate insist on its language when the House and Senate meet in conference.

Mr. President, I fully realize that the Congress is considering legislation such as the military construction budget under very tight fiscal restraints. However, the projects that I have outlined are all essential. Prudent management requires that we keep up with needed improvements to our support facilities. In the long run, we are not saving any money by putting off work on these facilities. We must also remember that these facilities do have a significant impact on neighboring communities and we must take this into account. Thus, I hope that these projects will be approved.

I thank the Senator from Colorado for his consideration and his time. In closing, Mr. President, I urge my colleagues to join me in supporting S. 3059, the fiscal year 1981 military construction authorization bill.

LORING AIR FORCE BASE FUNDS

Mr. MITCHELL. Mr. President, I rise in strong support of the provision in the bill before us, the military construction authorization, which will begin the first step in upgrading the facilities and operations at Loring Air Force Base in Maine.

The $11.8 million provided in this bill for much-needed housing construction, weapons storage, security, and energy conservation work marks the beginning of a commitment to the people of Aroostook County, to the State of Maine, and most importantly, to the security of our Nation.

The Loring SAC base is a crucial component of our Nation's strategic mission. Its location directly across the North Atlantic from the site of our most important military and security commitment—the nations of northern Europe—makes it essential that this base be maintained and operated in first class condition.

And its location gives Loring the advantage of replicating more completely than any other base in the Nation, the specific climatic and terrain conditions found over large parts of the Eurasian land mass.

International developments in the past year have, unfortunately, forced our Nation to concentrate its attention and more of its resources on the national defense. While we all hope that more stable conditions will develop soon there is no doubt that the maintenance of a strong, credible, and operationally ready defense represents the best way to deter aggression and encourage a peaceful resolution of national differences.

In this effort, the role of Loring Air Force Base is critical. It represents the continued strength of our commitment to the NATO alliance as surely as the NATO installations in Europe itself.

Part of the congressional effort to upgrade our defenses has involved serious attention to the escalating problem of morale in the armed services. We cannot expect enlisted men and women to continue to serve the Nation when they are forced to live in substandard housing, accept less than first-class medical care, and receive less compensation than their counterparts in the civilian world.

The provisions in this bill to improve enlisted housing facilities at Loring are long overdue. They represent the first installment on a much-needed rehabilitation and construction of decent housing on the base, and I will continue to do what I can to make certain that commitment is fulfilled in the future.

As the effort to upgrade the base continues over the coming 5 years, Loring will be able to take its place as an integral and essential component of our Strategic Air Command system. I am glad the committee has recognized its importance in this bill, and I am certain the effort to upgrade the base will pay dividends in national security terms for many years in the future.

I am also pleased to note that the bill contains needed funding for the Brunswick Naval Air Station, which will permit construction improvements at the ordnance pad, and the significant additional funding for improvements in the machine shop and tool shops at Portsmouth-Kittery Naval Shipyard. The ongoing effort to improve the operations and maintenance of our armed services is essential if the costly military hardware we procure is to be adequately maintained in operational readiness.

The funds authorized in this bill are essential to the continued operation of the military bases and installations on which our defense depends, and I believe it represents a responsible and sound allocation of priorities for our national security.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HART. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 1032, H.R. 7301.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 7301) to authorize certain construction at military installations for fiscal year 1981, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. HART. Mr. President, I move to strike all after the enacting clause of H.R. 7301 and to substitute therefor the text of S. 3059, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. HART. Mr. President, I wish to offer the customary thanks to our excellent staff, particularly Mr. James Smith, who efficiently guides this bill through the Senate every year and who is an extraordinary assistant to those of us who have the responsibility for managing the bill on the floor. I also thank Ed Kennedy, of the minority staff, and the other staff members who work day in and day out on these very complicated matters. I appreciate their help greatly.

I also appreciate the help of the distinguished minority member of our subcommittee, Senator THURMOND, and the Senator from Virginia (Mr. WARNER), who is present at this time in place of Senator THURMOND and who also gives very thoughtful attention to these particularly complicated questions.

I call the attention of my colleagues to a significant provision in this bill which is of particular importance to my home State, having to do with the issue we debated most of the afternoon, and that is the disposition of weapons known as "wet eye" bombs at the Rocky Mount Arsenal, located on the outskirts of Denver.

Our committee took this matter under consideration by unanimous agreement and determined that the continued existence of those weapons in the proximity of an urban area of a million and a half people constituted an unnecesary risk. By this bill, the committee has mandated the Secretary of Defense to remove those weapons from that place and to relocate them or detoxify them within the next year and report to Congress within the next 90 days as to what steps have been taken.

I have appreciated the cooperation of my colleagues in resolving what is a very difficult problem for our area, and I think this is a major step in the direction of getting that matter disposed of.

Mr. CHURCH. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, I wish to join my colleague from Colorado in extending my thanks. While it may be customary, it is not for me because I am relatively new in the Senate. To Mr. Smith of the majority side and a new staff member, Mr. Carl Smith on our side and of course to Mr. Kinney, I express appreciation for their valuable assistance in the preparation of this bill and the management today in the Chamber, and to my colleague, Senator JACKSON, whom I have joined in working on the amendment today, I express appreciation for his guidance and assistance in getting this very important piece of legislation attached to this bill.

I again thank my distinguished colleague from Colorado for his ever-present fairness and candor in dealing with matters which are highly controversial.

Mr. ROBERT C. BYRD. Mr. President, this will be the last rollcall vote today. There will be rollcall votes tomorrow.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Ohio (Mr. METZENBAUM), the Senator from North Carolina (Mr. MORGAN), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The PRESIDING OFFICER (Mr. JOHNSTON). Is there any other Senator in the Chamber who would like to vote who has not voted?

The result was announced—yeas 89, nays 3, as follows:

[Rollcall Vote No. 407 Leg.]

YEAS—89

Armstrong
Baker
Baucus
Bayh
Bellmon
Bentsen
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Chafee
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Durkin
Eagleton
Exon
Ford
Garn
Glenn
Gravel
Hart
Hatch
Hayakawa
Heflin
Heinz
Helms
Hollings
Huddleston
Humphrey
Inouye
Jackson
Javits
Jepsen
Johnston
Kassebaum
Kennedy
Laxalt
Leahy
Levin
Long
Lugar
Magnuson
Mathias
Matsunaga
McClure
Melcher
Mitchell
Moynihan
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Pryor
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Simpson
Stennis
Stevens
Stevenson
Stone
Talmadge
Thurmond
Wallop
Warner
Weicker
Williams
Young
Zorinsky

NAYS—3

Hatfield
Proxmire
Tsongas

NOT VOTING—8

Biden
Goldwater
McGovern
Metzenbaum
Morgan
Stafford
Stewart
Tower

So the bill (H.R. 7301), as amended, was passed, as follows:

H.R. 7301

Resolved, That the bill from the House of Representatives (H.R. 7301) entitled "An Act to authorize certain construction at military installations for fiscal year 1981, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Military Construction Authorization Act, 1981".

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION PROJECTS

SEC. 101. The Secretary of the Army may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $16,350,000.

Fort Campbell, Kentucky, $15,070,000.

Fort Carson, Colorado, $129,960,000.

Fort Devens, Massachusetts, $1,000,000.

Fort Drum, New York, $1,650,000.

Fort Gillem, Georgia, $2,600,000.

Fort Hood, Texas, $22,420,000.

Fort Hunter-Liggett, California, $5,100,000.

Fort Lewis, Washington, $16,000,000.

Fort Polk, Louisiana, $20,500,000.

Fort Riley, Kansas, $890,000.

Fort Sam Houston, Texas, $3,750,000.

Fort Stewart/Hunter Army Air Field, Georgia, $31,700,000.

Presidio of San Francisco, California, $750,000.

UNITED STATES ARMY WESTERN COMMAND

Schofield Barracks, Hawaii, $14,420,000.

Tripler Army Medical Center, Hawaii, $84,500,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND

Fort A. P. Hill, Virginia, $930,000.

Fort Belvoir, Virginia, $2,310,000.

Fort Benning, Georgia, $18,590,000.

Fort Bliss, Texas, $2,400,000.

Fort Dix, New Jersey, $1,910,000.

Fort Eustis, Virginia, $5,600,000.

Fort Gordon, Georgia, $2,500,000.

Fort Jackson, South Carolina, $20,140,000.

Fort Knox, Kentucky, $5,400,000.

Fort Leavenworth, Kansas, $9,900,000.

Fort Leonard Wood, Missouri, $13,100,000.

Fort Rucker, Alabama, $30,560,000

Fort Sill, Oklahoma, $4,100,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Anniston Army Depot, Alabama, $3,500,000.

Badger Army Ammunition Plant, Wisconsin, $2,100,000.

Corpus Christi Army Depot, Texas, $1,600,000.

Fort Monmouth, New Jersey, $2,000,000.

Holston Army Ammunition Plant, Tennessee, $4,690,000.

Indiana Army Ammunition Plant, Indiana, $2,800,000.

Iowa Army Ammunition Plant, Iowa, $3,750,000.

Jefferson Proving Ground, Indiana, $960,000.

Kansas Army Ammunition Plant, Kansas, $2,250,000.

Letterkenny Army Depot, Pennsylvania, $9,250,000.

Lone Star Army Ammunition Plant, Texas, $5,090,000.

Louisiana Army Ammunition Plant, Louisiana, $1,050,000.

McAlester Army Ammunition Plant, Oklahoma, $2,770,000.

Milan Army Ammunition Plant, Tennessee, $2,100,000.

Picatinny Arsenal, New Jersey, $1,400,000.

Pine Bluff Arsenal, Arkansas, $3,150,000.

Red River Army Depot, Texas, $3,800,000.

Redstone Arsenal, Alabama, $12,190,000.

Rock Island Arsenal, Illinois, $6,870,000.

Rocky Mountain Arsenal, Colorado, $10,400,000.

Sacramento Army Depot, California, $1,930,000.

Sierra Army Depot, California, $550,000.

Sunflower Army Ammunition Plant, Kansas, $3,950,000.

Tobyhanna Army Depot, Pennsylvania, $680,000.

Tooele Army Depot, Utah, $2,050,000.

Twin City Army Ammunition Plant, Minnesota, $820,000.

Umatilla Depot, Oregon, $620,000.

Volunteer Army Ammunition Plant, Tennessee, $2,150,000.

White Sands Missile Range, New Mexico, $1,000,000.

Yuma Proving Ground, Arizona, $2,650,000.

AMMUNITION FACILITIES

Holston Army Ammunition Plant, Tennessee, $300,000.

Indiana Army Ammunition Plant, Indiana, $3,570,000.

Iowa Army Ammunition Plant, Iowa, $2,300,000.

Lake City Army Ammunition Plant, Missouri, $220,000.

Lone Star Army Ammunition Plant, Texas, $540,000.

Longhorn Army Ammunition Plant, Texas, $260,000.

Louisiana Army Ammunition Plant, Louisiana, $380,000.

Milan Army Ammunition Plant, Tennessee, $210,000.

Radford Army Ammunition Plant, Virginia, $5,890,000.

MILITARY DISTRICT OF WASHINGTON

Cameron Station, Virginia, $930,000.

Fort McNair, Washington, District of Columbia, $690,000.

Fort Myer, Virginia, $1,150,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $4,650,000.

Fort Ritchie, Maryland, $1,750,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fort Detrick, Maryland, $1,350,000.

Fitzsimons Army Medical Center, Colorado, $790,000.

MILITARY TRAFFIC MANAGEMENT COMMAND

Bayonne Terminal, New Jersey, $660,000.

Sunny Point Terminal, North Carolina, $1,800,000.

OUTSIDE THE UNITED STATES

EIGHTH UNITED STATES ARMY, KOREA

Various Locations, $62,074,000.

KWAJALEIN MISSILE RANGE

National Missile Range, $5,440,000.

UNITED STATES ARMY FORCES COMMAND

Panama Area, Canal Zone, $1,250,000.

UNITED STATES ARMY, JAPAN

Kawakami, Japan, $3,000,000.

UNITED STATES ARMY, EUROPE

Various Locations, $192,280,000.

UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND

Korea, $1,186,000.

EMERGENCY CONSTRUCTION

SEC. 102. The Secretary of the Army may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Army, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 103. The Secretary of the Army is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $47,040,000.

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION PROJECTS

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

MARINE CORPS

Marine Corps Air Station, Beaufort, South Carolina, $930,000.

Marine Corps Base, Camp Lejeune, North Carolina, $24,700,000.

Marine Corps Base, Camp Pendleton, California, $8,050,000.

Marine Corps Air Station, Cherry Point, North Carolina, $16,700,000.

Marine Corps Air Station, El Toro, California, $11,500,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $620,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $6,800,000.

Marine Corps Development and Education Command, Quantico, Virginia, $5,800,000.

Marine Corps Air Ground Combat Center, Twentynine Palms, California, $9,400,000.

Marine Corps Air Station, Yuma, Arizona, $2,200,000.

OFFICE OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $7,300,000.

CHIEF OF NAVAL OPERATIONS

Naval Submarine Base, Bangor, Bremerton, Washington, $8,562,000.

Naval Submarine Support Base, Kings Bay, Kingsland, Georgia, $18,000,000.

Commandant Naval District, Washington, District of Columbia, $790,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Air Station, Brunswick, Maine, $4,100,000.

Naval Station, Charleston, South Carolina, $13,200,000.

Naval Air Station, Jacksonville, Florida, $3,830,000.

Naval Amphibious Base, Little Creek, Virginia, $8,100,000.

Naval Station, Mayport, Florida, $620,000.

Naval Submarine Base, New London, Groton, Connecticut, $6,100,000.

Headquarters Support Activity, Atlantic Fleet, Norfolk, Virginia, $3,400,000.

Naval Air Station, Norfolk, Virginia, $2,450,000.

Naval Station, Norfolk, Virginia, $15,500,000.

Naval Air Station, Oceana, Virginia, $19,350,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Station, Alameda, California, $15,650,000.

Naval Air Station, Barbers Point, Hawaii, $2,500,000.

Naval Air Station, Fallon, Nevada, $330,000.

Naval Air Station, Lemoore, California, $5,810,000.

Naval Magazine, Lualualei, Hawaii, $6,600,000.

Naval Air Station, Miramar, California, $1,200,000.

Naval Air Station, North Island, California, $850,000.

Naval Submarine Base, Pearl Harbor, Hawaii, $1,900,000.

Naval Station, San Diego, California, $4,950,000.

Navy Submarine Support Facility, San Diego, California, $4,150,000.

Naval Air Station, Whidbey Island, Washington, $2,390,000.

CHIEF OF NAVAL EDUCATION AND TRAINING

Fleet Ballistic Missile Submarine Training Center, Charleston, South Carolina, $1,100,000.

Fleet Combat Training Center, Atlantic, Dam Neck, Virginia, $4,700,000.

Naval Submarine School, Groton, Connecticut, $1,150,000.

Naval Education and Training Center, Newport, Rhode Island, $620,000.

Naval Training Center, Orlando, Florida, $7,050,000.

Fleet Combat Training Center, Pacific, San Diego, California, $540,000.

Naval Submarine Training Center, San Diego, California, $4,450,000.

Naval Air Station, Whiting Field, Florida, $3,680,000.

BUREAU OF MEDICINE AND SURGERY

National Naval Medical Center, Bethesda, Maryland, $23,000,000.

Naval Regional Medical Center, San Diego, California, $293,000,000, including land acquisition.

NAVAL MATERIAL COMMAND

Naval Air Rework Facility, Alameda, California, $2,350,000.

Puget Sound Naval Shipyard, Bremerton, Washington, $35,000,000.

Naval Supply Center, Puget Sound, Bremerton, Washington, $2,200,000.

Naval Fuel Annex, Casco Bay, Maine, $3,900,000.

Charleston Naval Shipyard, Charleston, South Carolina, $12,450,000.

Naval Underwater Systems Center, Newport, Rhode Island, $4,350,000.

Naval Weapons Station Charleston South Carolina, $2,910,000.

Polaris Missile Facility, Atlantic, Charleston, South Carolina, $8,400,000.

Naval Weapons Center, China Lake, California, $9,050,000.

Naval Construction Batallion Center, Davisville, Rhode Island, $550,000.

Navy Public Works Center, Great Lakes, Illinois, $8,400,000.

Naval Undersea Warfare Engineering Station, Keyport, Washington, $860,000.

Portsmouth Naval Shipyard, Kittery, Maine, $13,880,000.

Long Beach Naval Shipyard, Long Beach, California, $4,400,000.

Naval Ordnance Station, Louisville, Kentucky, $2,050,000.

Naval Supply Center, Norfolk, Virginia, $13,150,000.

Navy Public Works Center, Norfolk, Virginia, $1,560,000.

Naval Supply Center, Oakland, California. $4,600,000.

Navy Public Works Center, Pearl Harbor. Hawaii, $5,783,000.

Naval Air Rework Facility, Pensacola, Florida, $1,550,000.

Philadelphia Naval Shipyard, Philadelphia, Pennsylvania, $10,710.000.

Pacific Missile Test Center, Point Mugu, California, $670,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $11,550,000.

Naval Supply Center, San Diego, California, $2,900,000.

Navy Public Works Center, San Diego, California, $8,750,000.

Mare Island Naval Shipyard, Vallejo, California, $800,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station Eastern Pacific, Honolulu, Hawaii, $2,000,000.

Naval Communications Area Master Station Atlantic, Norfolk, Virginia, $700,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Winter Harbor, Maine, $1,150,000.

OUTSIDE THE UNITED STATES

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Facility, Brawdy, Wales, United Kingdom, $3.600.000.

Naval Station, Keflavik, Iceland, $49,200,000.

Naval Station, Roosevelt Roads, Puerto Rico, $10,500,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $1,000,000.

Naval Station, Subic Bay, Republic of the Philippines, $780,000.

NAVAL TELECOMMUNICATIONS COMPANY

Naval Communications Area Master Station Western Pacific, Guam, Mariana Islands, $1,900,000.

Naval Communications Area Master Station Atlantic, Guantanam Bay, Cuba, $900,000.

Naval Communication Station, Keflavik, Iceland, $3,600,000.

Classified Location, $2,100,000.

EMERGENCY CONSTRUCTION

SEC. 202. The Secretary of the Navy may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements. (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interest of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Navy, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of tne enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 203. The Secretary of the Navy is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $33,010,000.

DUAL PURPOSE AIR TERMINAL, ICELAND

SEC. 204. (a) Subject to the provisions of subsection (b), the Secretary of the Navy may contract for the construction of an Air Passenger Terminal in Keflavik, Iceland, and may use not more than $20,000,000 of the funds authorized under section 201 for the Naval Station, Keflavik, Iceland, to pay the United States share of the construction of such terminal.

(b) The Secretary of the Navy may not contract for the construction of such terminal, or otherwise obligate any funds of the United States in connection with the construction of such terminal, until (1) Iceland and the United States have agreed upon the specifications, design, and location of such terminal, (2) Iceland has agreed to pay as its share of the cost of the construction of such terminal an amount equal to the difference between $20,000,000 and the total cost of the construction of such terminal, and (3) Iceland has agreed to make periodic payments to the United States in such amounts and at such times as the Secretary of the Navy may request in order to meet construction payment schedules.

NAVAL REGIONAL MEDICAL CENTER

SAN DIEGO, CALIFORNIA

SEC. 205. None of the funds authorized to be appropriated for the construction of the Naval Regional Medical Center, San Diego, California, may be obligated or expended until—

(1) the Secretary of the Navy has submitted a report to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives which includes (A) an evaluation of the Balboa Park and Helix Heights areas as proposed sites for the construction of such medical center, (B) a statement of the Secretary's preference between the two sites, and (C) a statement justifying the Secretary's preference; and

(2) each of the committees referred to in clause (1) has approved in writing the site preferred by the Secretary.

NAVAL WEAPONS CENTER

CHINA LAKE, CALIFORNIA

SEC. 206. The Secretary of the Navy is authorized to acquire such lands or interests in lands as may be needed for two established low-level, high-speed aircraft corridors to serve the Naval Weapons Center at China Lake, California. The acquisition of such lands or interests may be made only by exchange, on an equal value basis, of excess land of the Naval Weapons Center, China Lake, California.

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION PROJECTS

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $9,650,000.

Kelly Air Force Base, Texas, $650,000.

McClellan Air Force Base, California, $3,250,000.

Robins Air Force Base, Georgia, $4,850,000.

Tinker Air Force Base, Oklahoma, $17,570,000.

Wright-Patterson Air Force Base, Ohio, $3,700,000.

AIR FORCE SYSTEMS COMMAND

Arnold Engineering Development Center Tennessee, $11,500,000.

Brooks Air Force Base, Texas, $4,200,000.

Buckley Air National Guard Base, Colorado, $900,000.

Cape Canaveral Air Force Station, Florida, $22,300,000.

Edwards Air Force Base, California, $10,500,000.

Hanscom Air Force Base, Massachusetts, $7,200,000.

Port Hueneme Naval Installation, California, $16,700,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $9,260,000.

Keesler Air Force Base, Mississippi, $2,810,000.

Lackland Air Force Base, Texas, $3,840,000.

Laughlin Air Force Base, Texas, $1,100,000.

Lowry Air Force Base, Colorado, $840,000.

Mather Air Force Base, California, $860,000.

Maxwell Air Force Base, Alabama, $630,000.

Randolph Air Force Base, Texas, $7,850,000.

Reese Air Force Base, Texas, $1,730,000.

Sheppard Air Force Base, Texas, $1,300,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $5,190,000.

Elmendorf Air Force Base, Alaska, $14,820,000.

Galena Air Force Base, Alaska, $930,000.

King Salmon Airport, Alaska, $1,000,000.

Shemya Air Force Base, Alaska, $2,900,000.

MILITARY AIRLIFT COMMAND

Andrews Air Force Base, Maryland, $3,140,000.

Charleston Air Force Base, South Carolina, $1,740,000.

Dover Air Force Base, Delaware, $4,500,000.

Kirtland Air Force Base, New Mexico, $1,200,000.

McChord Air Force Base, Washington, $5,500,000.

Norton Air Force Base, California, $2,000,000.

Pope Air Force Base, North Carolina, $9,250,000.

Scott Air Force Base, Illinois, $4,000,000.

Travis Air Force Base, California, $1,080,000.

PACIFIC AIR FORCES

Hickman Air Force Base, Hawaii, $580,000.

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Louisiana, $3,200,000.

Beale Air Force Base, California, $2,670,000.

Blytheville Air Force Base, Arkansas, $6,141,000.

Carswell Air Force Base, Texas, $8,420,000.

Castle Air Force Base, California, $19,850,000.

Dyess Air Force Base, Texas, $10,300,000.

Ellsworth Air Force Base, South Dakota, $20,720,000.

Fairchild Air Force Base, Washington, $22,860,000.

Grand Forks Air Force Base, North Dakota, $22,650,000.

Griffiss Air Force Base, New York, $14,850,000.

K. I. Sawyer Air Force Base, Michigan, $3,700,000.

Loring Air Force Base, Maine, $11,800,000.

Malmstrom Air Force Base, Montana, $750,000.

McConnell Air Force Base, Kansas, $4,040,000.

Minot Air Force Base, North Dakota, $2,570,000.

Offutt Air Force Base, Nebraska, $5,360,000.

Pease Air Force Base, New Hampshire, $10,500,000.

Peterson Air Force Base, Colorado, $600,000.

Rickenbacker Air Force Base, Indiana, $6,300,000.

Vandenberg Air Force Base, California, $75,300,000.

Whiteman Air Force Base, Missouri, $990,000.

Wurtsmith Air Force Base, Michigan, $34,970,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $1,910,000.

Davis-Monthan Air Force Base, Arizona, $3,200,000.

George Air Force Base, California, $640,000.

Holloman Air Force Base, New Mexico, $5,800,000.

Homestead Air Force Base, Florida, $670,000.

Langley Air Force Base, Virginia, $3,892,000.

Luke Air Force Base, Arizona, $2,650,000.

MacDill Air Force Base, Florida, $2,860,000.

Moody Air Force Base, Georgia, $1.470.000.

Myrtle Beach Air Force Base, South Carolina, $780,000.

Nellis Air Force Base, Nevada, $6,250,000.

Shaw Air Force Base, South Carolina, $3,800,000.

Tyndall Air Force Base, Florida, $2,300,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Lajes Field, Portugal, $2,300,000.

PACIFIC AIR FORCES

Camp Zama, Japan, $1,100,000.

Clark Air Base, Republic of the Philippines, $5,250,000.

Kadena Air Base, Japan, $10,280,000.

Kunsan Air Base, Korea, $4,400,000.

Kwang-Ju Air Base, Korea, $5,900,000.

Misawa Air Base, Japan, $1,930,000.

Osan Air Base, Korea, $16,800,000.

Taegu Air Base, Korea, $8,350,000.

UNITED STATES AIR FORCES IN EUROPE

Various Locations, United Kingdom, $2,200,000.

Various Locations, $35,377,000.

EMERGENCY CONSTRUCTION

SEC. 302. The Secretary of the Air Force may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Air Force, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1981, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 303. The Secretary of the Air Force is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $24,870,000.

INSTALLATION OF ALARM SYSTEM AT TITAN II MISSILE SITES

SEC. 304. The Secretary of the Air Force shall acquire and install, out of funds appropriated pursuant to section 303, a general alarm siren system at each Titan II missile site which has in its near vicinity a significant size population.

TITLE IV—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for defense agencies for the following acquisition or construction:

INSIDE THE UNITED STATES

DEFENSE INTELLIGENCE AGENCY

Bolling Air Force Base, District of Columbia, $32,700,000.

DEFENSE LOGISTICS AGENCY

Defense Electronics Supply Center, Dayton, Ohio, $730,000.

Defense Fuel Support Point, Norwalk, California, $2,000,000.

Defense Fuel Support Point, Searsport, Maine, $3,000,000.

Defense Personnel Support Center, Philadelphia, Pennsylvania, $750,000.

Defense Storage Facility, Bayonne, New Jersey, $1,450,000.

DEFENSE MAPPING AGENCY

Hydrographic/Topographic Center, Brookmont, Maryland, $1,500,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $5,065,000.

Kunia, Oahu, Hawaii, $2,700,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Activity, Fort Belvoir, Virginia, $16,500,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Property Disposal Office, Bitburg, Germany, $1,350,000.

NATIONAL SECURITY AGENCY

Classified Location, $674,000.

OFFICE OF THE SECRETARY OF DEFENSE

CLASSIFIED LOCATION

Classified Activity, $3,500,000.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Aschaffenburg, Germany, $1,110,000.

Baumholder, Wetzel Housing Area, Germany, $3,065,000.

Bermuda, Naval Air Station, $2,580,000.

Clark Air Base, Republic of the Philippines, $1,650,000.

Iwakuni, Marine Corps Air Station, Japan, $6,060,000.

Osan Air Base, Korea, $1,900,000.

Pruem Air Station, Germany, $1,150,000.

Sagamihara, Japan, $3,220,000.

Seoul Yongsan Garrison, Korea, $4,500,000.

Taegu, Korea, $4,100,000.

Wiesbaden, Germany, $10,176,000.

Yokota Air Base West, Japan, $7,500,000.

EMERGENCY CONSTRUCTION

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $15,000,000. The Secretary of Defense, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public works undertaken under this section including real estate actions pertaining thereto.

MINOR CONSTRUCTION

SEC. 403. The Secretary of Defense is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $3,680,000.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 404. (a) (1) The Secretary of Defense, acting on behalf of the United States, may participate in the five-year slice group plan for 1980 through 1984 to implement the North Atlantic Treaty Organization Infrastructure program. The Secretary may participate in such five-year slice group plan, heretofore agreed to by member nations of the North Atlantic Treaty Organization, only to the extent that the United States share under such plan does not exceed 27.3 percent of the total amount of the commitments made by all member nations under such plan.

(2) No funds may be obligated or expended in connection with the North Atlantic Treaty Organization Infrastructure program in any year unless such funds have been authorized by law for such program for such year.

(b) The Secretary of Defense is authorized to incur obligations in amounts not to exceed $500,000,000 for the United States share of the cost of multilateral programs for the acquisition or construction of military facilities and installations (including military headquarters) for the collective defense of the North Atlantic Treaty Area.

(c) Within thirty days after the end of each calendar year quarter, the Secretary of Defense shall furnish to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a description of all obligations incurred by the United States during the preceding quarter to meet the United States share of the cost of the multilateral programs for which the Secretary of Defense is authorized to incur obligations.

MID-EAST AND INDIAN OCEAN AREAS CONTINGENCY FACILITIES CONSTRUCTION FUNDS

SEC. 405. (a) There is authorized to be appropriated to the Secretary of Defense the sum of $200,000,000 for the construction of contingency facilities to support the national security interests of the United States in the Middle East and Indian Ocean areas.

(b) None of the funds appropriated pursuant to subsection (a) may be obligated or expended for the construction of any facility until (1) the United States and the country which exercises sovereignty over the land on which the facility is to be constructed have entered into a formal agreement which guarantees the United States access to and use of such facility during the term of the agreement, and (2) a copy of such agreement has been transmitted to the Congress.

(c) None of the funds appropriated pursuant to subsection (a) may be obligated or expended for such construction if such construction is authorized under the terms of a renegotiated, amended, or extended agreement, previously entered into by the United States with any other country, until after a copy of the renegotiated, amended, or extended agreement has been transmitted to the Congress.

(d) On each separate occasion that the Secretary of Defense plans to obligate any part of the funds appropriated pursuant to subsection (a), he shall—

(1) transmit to the appropriate committees of the Congress a written report stating the purpose for which the funds are to be obligated and the amount proposed to be obligated for such purpose; and

(2) withhold such amount from obligation for such purpose for a period of thirty days following the day on which such report is received by such committees.

Each report transmitted under this subsection shall include (A) a detailed accounting of funds appropriated pursuant to subsection (a) that have been previously obligated, (B) a detailed accounting of funds planned for obligation, and (C) a statement of the purposes and the estimated amounts for which any unobligated balance of such funds are to be used (excluding the amount for which an explanation under clause (B) is included).

(e) None of the funds appropriated pursuant to subsection (a) may be obligated or expended to carry out any contract for the construction of any contingency facility referred to in such subsection unless such contract requires that (1) all construction materials (except cement, cement products, and aggregates) used in the construction of such facility under such contract will be materials produced, manufactured, or refined in the United States, and (2) materials will be transported on United States flagships from the United States to the country in which the contingency facility is to be located.

DEFENSE INTELLIGENCE AGENCY BUILDING STUDY

SEC. 406. (a) None of the funds authorized to be appropriated in this title for the construction of a new facility at Bolling Air Force Base, Washington, District of Columbia, for the Defense Intelligence Agency may be obligated or expended until—

(1) the Secretary of Defense has conducted a study to examine alternatives to the facility currently planned for construction at Bolling Air Force Base;

(2) the Secretary of Defense has submitted the results of such study to the appropriate committees of the Congress together with his decision regarding the location and scope of the facility to be constructed for the Defense Intelligence Agency; and

(3) a period of thirty calendar days has expired after the date on which such study is received by such committees.

(b) The study conducted pursuant to subsection (a) (1) shall, as a minimum—

(1) examine alternatives in project scope for the proposed facility referred to in subsection (a) which could result in reduced requirements for new construction;

(2) examine alternative sites for the construction of such facility taking into account available lands and facilities as well as lands and facilities that could be made available by consolidations; and

(3) provide detailed costs and operational efficiency comparisons of the alternatives considered.

(c) The study conducted pursuant to subsection (a) (1) shall be submitted to the appropriate committees of the Congress not later than ninety days after the date of the enactment of this Act.

TITLE V—MILITARY FAMILY HOUSING

AUTHORIZATION TO CONSTRUCT OR ACQUIRE HOUSING

SEC. 501. (a) The Secretary of Defense, or the Secretary's designee is authorized to construct or acquire sole interest in existing family housing units in the numbers and at the locations hereinafter named, but no family housing construction shall be commenced at any such location in the United States until the Secretary shall have consulted with the Secretary of Housing and Urban Development as to the availability of suitable private housing at such location. If agreement cannot be reached with respect to the availability of suitable private housing at any location, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and House of Representatives, in writing, of such difference of opinion, and no contract for construction at such location shall be entered into for a period of thirty days after such notification has been given. This authority shall include the authority to acquire land, and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise.

(b) With respect to the family housing units authorized to be constructed by this section, the Secretary of Defense is authorized to acquire sole interest in privately owned or Department of Housing and Urban Development held family housing units in lieu of constructing all or a portion of the family housing authorized by this section, if the Secretary, or the Secretary's designee, determines such action to be in the best interests of the United States, but any family housing units acquired under authority of this subsection shall not exceed the cost limitations specified in this section for the project nor the limitations on size specified in section 2684 of title 10, United States Code. In no case may family housing units be acquired under this subsection through the exercise of eminent domain authority, and in no case may family housing units other than those authorized by this section be acquired in lieu of construction unless the acquisition of such units is hereafter specifically authorized by law.

(c) Family housing units:

Marine Corps Air Station, Yuma, Arizona, one hundred and thirty-two units, $8,050,000.

Defense Housing Complex, South Bay, San Francisco, California, two hundred and seventy units, $19,045,000.

Marine Corps Air Station, El Toro, California, three hundred units, $17,483,000.

Fort Ord, California, five hundred units, $30,808,000.

Naval Complex, New London, Connecticut, four hundred units, $24,608,000.

Fort Stewart, Georgia, two hundred units, $9,716,000.

Fort Polk, Louisiana, two hundred units, $11,173,000.

Naval Air Station, Brunswick, Maine, sixty-two units, $3,956,000.

Naval Complex, Norfolk, Virginia, two hundred and thirty-two units, $12,093,000.

Lajes Field, Azores, one hundred and fifty units, $9,768,000.

Incirlik Air Base, Turkey, two hundred units, $11,723,000.

Classified location overseas, five units $468,000.

(d) The amounts specified in this section may, at the discretion of the Secretary of Defense, or the Secretary's designee, be increased by 10 per centum, if he determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress. The amounts authorized include the costs of shades, screen, ranges, refrigerators, and all other installed equipment and fixtures, the cost of the family housing unit, design, supervision, inspection, overhead, land acquisition, site preparation, installation of utilities, and solar energy systems.

IMPROVEMENT OF EXISTING QUARTERS

SEC. 502. (a) The Secretary of Defense, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed—

(1) For the Department of the Army, $42,436,000, of which $27,150,000 shall be available only for energy conservation projects;

(2) For the Department of the Navy, $13,562,000, of which $2,819,000 shall be available only for energy conservation projects;

(3) For the Department of the Air Force, $52,819,000, of which $17,000,000 shall be available only for energy conservation projects; and

(4) For Defense Agencies, $23,000.

(b) The first sentence of section 610(a) of the Military Construction Authorization Act, 1968 (Public Law 90-110, 81 Stat. 305) is amended to read as follows: "None of the funds authorized by this or any other Act may be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units when such units are to be converted into or used as a single family housing unit, if the total cost of such improvements exceeds $20,000, adjusted by the area construction cost index (as developed by the Department of Defense) for the location at the time of contract award. The total cost of any such improvement shall include all repair costs undertaken as part of the improvement project and all costs in connection with (1) the furnishing of electricity, gas, water, and sewage disposal, (2) the construction or repair of roads and walks, and (3) any grading and drainage work.".

(c) The Secretary of Defense, or the Secretary's designee, within the amounts specified in subsection (a) of this section, is authorized to accomplish repairs and improvements to existing family housing in amounts in excess of the dollar limitation prescribed in section 610(a) of the Military Construction Authorization Act, 1968 (Public Law 90-110, 81 Stat. 305), as follows:

Redstone Arsenal, Alabama, forty units, $891,000.

Navy Public Works Center, Pearl Harbor, Hawaii, one hundred and forty-six units, $5,468,000.

Fort Knox, Kentucky, one hundred units, $2,592,000.

Loring Air Force Base, Maine, five hundred and sixty-five units, $12,723,600.

Kirtland Air Force Base, New Mexico, one hundred and twenty-five units, $2,458,100.

Marine Corps Development and Education Command, Quantico, Virginia, fifty-two units, $1,910,000.

Warren Air Force Base, Wyoming, one hundred and sixty-two units, $3,150,000.

Hahn Air Base, Federal Republic of Germany, twenty-eight units, $980,000.

Ramstein Air Force (Vogelweh and Landstuhl), Federal Republic of Germany, twenty units, $993,000.

Yokota Air Base, Japan, two hundred and sixty-eight units, $9,054,800.

ADVANCE PLANNING AND DESIGN

SEC. 503. The Secretary of Defense is authorized to carry out advance planning and may obtain architectural and engineering services in connection with any family housing construction, including improvements, authorized or not authorized by law, at a total cost not to exceed $1,500,000.

LEASING OF FAMILY HOUSING

SEC. 504. (a) Section 2686 of title 10, United States Code, relating to leases for military family housing, is amended—

(1) by striking out "$310" in subsection (c)(1)(A) and inserting in lieu thereof "$340"; and

(2) by adding at the end thereof the following new subsection:

"(d) The Secretary of Defense is authorized to exempt not to exceed 1 percent of the leases in effect under this section from the cost limitations specified in subsection (c) of this section.".

(b) Section 2675(d) of title 10, United States Code, relating to leases in foreign countries, is amended—

(1) by striking out "$550" and "$970" in the first sentence of paragraph (1) and inserting in lieu thereof "$605" and "$1,070" respectively; and

(2) by adding at the end thereof of the following new paragraph:

"(3) The Secretary of Defense is authorized to exempt not to exceed 1 percent of the leases in effect under this section from the cost limitations specified in subsection (d) (1).".

SETTLEMENT OF CONTRACTOR CLAIMS ON MILITARY FAMILY HOUSING

SEC. 505. Notwithstanding any other provisions of law, if the proposed settlement of any contractor claim or claims arising out of the construction of new or improvement of existing family housing would cause authorized cost limitations on the construction or improvement of family housing to be exceeded, the Secretary of Defense may proceed with the settlement of such claim or claims after (1) he has submitted a report regarding such claim or claims including the amount of the proposed settlement, to the Committees on Armed Services of the Senate and House of Representatives, and (2) a period of thirty days has elapsed after the date of submission of such report to such committees.

OCCUPANT LIABILITY FOR DAMAGES TO FAMILY HOUSING

SEC. 506. (a) Chapter 165 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2775. Liability of member for damages to family housing, equipment, and furnishings

"(a) A member of the armed forces shall be liable to the United States for damage to any family housing unit, or damage to or loss of any equipment of furnishing of any family housing unit assigned to or provided such member if it is determined under regulations issued by the Secretary of Defense, that such damage or loss was caused by the abuse or negligence of such member or a dependent of such member.

"(b)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of the repairs or replacements made necessary as the result of any abuse or negligence referred to in subsection (a) on the part of such member or any dependent of such member.

"(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations issued under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

"(c) Amounts deducted from members' pay under this section shall be credited to the Department of Defense family housing management account established under section 501 of Public Law 87-554 (76 Stat. 236; 42 U.S.C. 1594a-1) and shall be available for use for the same purposes and under the same circumstances as other funds in such account.

"(d) The Secretary of Defense shall issue regulations to carry out the provisions of this section, including regulations for determining the cost of repairs or replacements made necessary as the result of abuse or negligence on the part of a member or dependent of a member.".

(b) The table of sections at the beginning of chapter 165 of such title is amended by adding at the end thereof the following new item:

"2775. Liability of member for damages to family housing, equipment, and furnishings.".

INCREASED AUTHORIZATION FOR CONSTRUCTION, OAHU, HAWAII

SEC. 507. Notwithstanding the limitations on costs contained in sections 501(a) and 502 of the Military Construction Authorization Act, 1974 (Public Law 93-166; 87 Stat. 673, 674) and sections 501(a) and 502 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1757, 1758), the Secretary of Defense is authorized to complete construction of two thousand six hundred family housing units in support of Department of Defense requirements in Oahu, Hawaii, at a total cost not to exceed $117,150,000.

DEFICIENCY AUTHORIZATION FOR NEW CONSTRUCTION

SEC. 508. Section 501(c) of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 577) is amended by striking out "$1,509,000" in the line item relating to the Naval Facility, Centerville Beach, California, and inserting in lieu thereof "$2,030,000".

REPEAL OF PROVISIONS RELATING TO ENERGY CONSUMPTION METERING DEVICES AND EXCESS ENERGY CONSUMPTION CHARGES

SEC. 509. Sections 506 and 507 of the Military Construction Authorization Act, 1978 (Public Law 95-82; 91 Stat. 372), are repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. (a) There is authorized to be appropriated for fiscal year 1981 for use by the Secretary of Defense, or the Secretary's designee, for military family housing as authorized by law for the following purpose:

(1) For construction of, or acquisition of sole interest in, family housing, including minor construction, improvements to public quarters, relocation of family housing, and planning, an amount not to exceed $269,231,000.

(2) For support of military family housing, including operating expenses, leasing, maintenance of real property, payments of principal and interest on mortgage debts incurred, payment to the Commodity Credit Corporation, and mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715), an amount not to exceed $1,919,882,000.

(b) The amounts authorized to be appropriated in subsection (a)(2) may be increased to the extent additional funds are necessary for increased pay costs associated with actions taken pursuant to law.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND ADMINISTRATIVE PROVISIONS

WAIVER OF RESTRICTIONS

SEC. 601. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes (31 U.S.C. 529) and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes (40 U.S.C. 255) and even though the land is held temporarily. The authority to acquire real estate or lands includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

AUTHORIZATION OF APPROPRIATIONS

SEC. 602. There are authorized to be appropriated for fiscal year 1981 such sums as may be necessary for the purposes of this Act, but appropriations for public works projects authorized by titles I, II, III, IV, and V, shall not exceed—

(1) for title I: inside the United States $609,710,000; outside the United States $265,230,000; minor construction $47,040,000; for a total of $921,980,000.

(2) for title II: inside the United States $760,195,000; outside the United States $73,580,000; minor construction $33,010,000; for a total of $866,785,000.

(3) for title III: inside the United States $525,783,000; outside the United States $93,887,000; minor construction $24,870,000; for a total of $644,540,000.

(4) for title IV: a total of $637,610,000, including $3,680,000 for minor construction.

(5) for title V: a total of $2,189,113,000, including $5,471,000 for minor construction.

COST VARIATIONS

SEC. 603. (a) OVERALL TITLE TOTAL LIMITATION.—Notwithstanding the provisions of subsections (b), (c), (d), and (g), the total cost of all construction and acquisition in each of titles I, II, III, and IV may not exceed the total amount authorized to be appropriated in that title.

(b) VARIATIONS IN INSTALLATION TOTALS—UNUSUAL VARIATIONS IN COST. Except as provided in subsections (c) and (d), any of the amounts specified in titles I, II, III, and IV of this Act (other than in sections 103, 203, 303, and 403) may, at the discretion of the Secretary of the military department or Director of the defense agency concerned, be increased by 5 per centum when inside the United States (other than Alaska or Hawaii), and by 10 per centum when outside the United States or in Alaska or Hawaii, if the Secretary of the military department or Director of the defense agency concerned determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress.

(c) VARIATIONS IN INSTALLATION TOTALS—ONLY ONE PROJECT AT AN INSTALLATION.—When the amount named for any construction or acquisition in title I, II, III, or IV of this Act involves only one project at any military installation and the Secretary of the military department or Director of the defense agency concerned determines that the amount authorized must be increased by more than the applicable percentage prescribed in subsection (b), the Secretary of the military department or Director of the defense agency concerned may proceed with such construction or acquisition if the amount of the increase does not exceed by more than 25 per centum the amount named for such project by the Congress.

(d) VARIATIONS IN INSTALLATION TOTALS—REPORTS BY THE SECRETARY OF DEFENSE.—When the Secretary of Defense determines that any amount named in title I, II, III, or IV of this Act must be exceeded by more than the percentages permitted in subsections (b) and (c) to accomplish authorized construction or acquisition, the Secretary of the military department, or Director of the defense agency concerned may proceed with such construction or acquisition after a written report of the facts relating to the increase of such amount, including a statement of the reasons for such increase, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either (1) thirty days have elapsed from the date of submission of such report, or (2) both committees have indicated approval of such construction or acquisition. Notwithstanding the provisions in prior Military Construction Authorization Acts, the provisions of this subsection shall apply to such prior Acts.

(e) COST AND SCOPE VARIATIONS OF INDIVIDUAL PROJECTS; REPORTS TO CONGRESS.—No individual project authorized under title I, II, III, or IV of this Act for any specifically listed military installation for which the current working estimate is greater than the statutory upper limit for minor construction projects, may be placed under contract if—

(1) the approved scope of the project is reduced in excess of 25 per centum; or

(2) the current working estimate, based upon bids received, for the construction of such project exceeds by more than 25 per centum the amount authorized for such project by the Congress;

until a written report of the facts relating to the reduced scope or increased cost of such project, including a statement of the reasons for reduction in scope or increase in cost, has been submitted to the Committees on Armed Services of the Senate and House of Representatives, and either thirty days have elapsed from the date of submission of such report, or both committees have indicated approval of such reduction in scope or increase in cost, as the case may be.

(f) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, or the Secretary's designee shall submit an annual report to the Congress identifying each individual project (other than a project authorized under section 103, 203, 303, or 403) which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense, based upon bids received, for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced by more than 25 per centum in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

(g) COST AND FLOOR AREA VARIATIONS—SOLAR ENERGY.—The Secretary of Defense shall encourage the utilization of solar energy as a source of energy for projects authorized by this Act where utilization of solar energy would be practical and economically feasible. In order to equip any project authorized by this Act with solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, the Secretary of Defense may authorize increases in the cost limitations or floor area limitations for such project by such amounts as may be necessary for such purpose. Any increase under this section in the cost or floor area of a project authorized by this Act shall be in addition to any other increase in such cost or variation in floor area limitations authorized by this or any other Act.

CONSTRUCTION SUPERVISION

SEC. 604. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army; the Naval Facilities Engineering Command, Department of the Navy; or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded, insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder. Such reports shall also show, in the case of the ten architect-engineering firms which, in terms of total dollars, were awarded the most business; the names of such firms; the total number of separate contracts awarded each firm; and the total amount paid or to be paid in the case of each such action under all such contracts awarded such firm.

REPEAL OF PRIOR YEAR AUTHORIZATIONS: EXCEPTIONS

SEC. 605. (a) As of October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982, whichever is later, all authorizations for military public works, including family housing, to be accomplished by the Secretary of a military department in connection with the establishment or development of installations and facilities, and all authorizations for appropriations therefor, that are contained in titles I, II, III, IV, and

V of the Military Construction Authorization Act, 1980 (Public Law 96–125; 93 Stat. 928), and all such authorizations contained in Acts approved before November 26, 1979, and not superseded or otherwise modified by a later authorization are repealed except—

(1) authorizations for public works and for appropriations therefor that are set forth in those Acts in the titles that contain the general provisions; and

(2) authorizations for public works projects as to which appropriated funds have been obligated for construction contracts, land acquisition, or payments to the North Atlantic Treaty Organization, in whole or in part, before October 1, 1981, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1982 whichever is later, and authorizations for appropriations therefor.

(b) Notwithstanding the repeal provisions of subsection (a) of this section and section 605 of the Military Construction Authorization Act, 1980 (Public Law 96–125; 93 Stat. 944), authorizations for the following items shall remain in effect until October 1, 1982, or the date of the enactment of the Military Construction Authorization Act for fiscal year 1983, whichever is later:

(1) Energy Control System construction in the amount of $3,300,000 at Fort Jackson, South Carolina, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 565).

(2) Regional Sewage Treatment Plant Upgrade construction in the amount of $1,209,000 at Fort Bliss, Texas, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 565).

(3) Regional Sewage Treatment Plant Upgrade construction in the amount of $550,000 at Fort Monroe, Virginia, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 566).

(4) Improvements to Heating System in the amount of $394,000 at Kansas Army Ammunition Plant, Kansas, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 566).

(5) Energy Control System in the amount of $1,372,000 at Fitzsimmons Army Medical Center, Colorado, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 566).

(6) Barracks with Dining construction in the amount of $4,603,000 at Fulda, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567).

(7) Hospital addition, alteration, and upgrade in the amount of $30,283,000 at 2d General Hospital, Landstuhl, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567).

(8) Facilities Modernization in the amount of $1,782,000 at Christensen Barracks, Bindlach, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567).

(9) Facilities Modernization in the amount of $7.731,000 at Ferris Barracks, Erlangen, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567).

(10) Barracks without dining facilities in the amount of $2.299,000 at Conn Barracks, Schweinfurt, Germany, authorized in section 101 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 567).

(11) Effluent Land Irrigation System construction in the amount of $6 933.000 at Fort Ord, California, authorized in section 101 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1349).

(12) Energy Monitoring and Control System in the amount of $765,000 at the Naval Air Station, Jacksonville, Florida, authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 568).

(13) Municipal Sewer Connection construction in the amount of $2,500,000 at the Naval Education and Training Center, Newport, Rhode Island, authorized in section 201 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 569).

(14) Space Transportation System airfield facilities in the amount of $32,100,000 at Vandenberg Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(15) Energy—Alter Lighting System in the amount of $850,000 at Hill Air Force Base, Utah, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(16) Energy Monitoring and Control System in the amount of $3,300,000 at Kelly Air Force Base, Texas, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(17) Fire Station in the amount of $1.031,000 at Tinker Air Force Base, Oklahoma, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(18) Energy—Alter Mechanical, Electrical and Structural Systems in the amount of $1,120,000 at Wright-Patterson Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(19) Energy Monitoring and Control System in the amount of $3.350,000 at Wright-Patterson Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(20) Propulsion Wind Tunnel—16T High Angle Automatic Sting in the amount of $2.710,000 at Arnold Engineering Development Center, Tennessee, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(21) Energy Monitoring and Control System in the amount of $2,750,000 at Edwards Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(22) Insulate Heating and Cooling Controls and Insulate Buildings in the amount of $650,000 at Edwards Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(23) Chapel Center in the amount of $1,190,000 at Elgin Air Force Base, Florida, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(24) Energy Monitoring and Control System in the amount of $2,000,000 at Hanscom Air Force Base, Massachusetts, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 572).

(25) Aircraft Corrison Control Facility in the amount of $7.310,000 at Dover Air Force Base, Delaware, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(26) Chapel Center in the amount of $1,240,000 at Castle Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(27) Energy Monitoring and Control System in the amount of $610,000 at Grand Forks Air Force Base, North Dakota, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(28) Air Installation Compatible Use Zone in the amount of $314.000 at Grissom Air Force Base, Indiana, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(29) Air Installation Compatible Use Zone in the amount of $357,000 at March Air Force Base, California, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(30) Sewage Main Regional Connection in the amount of $946,000 at Rickenbacker Air Force Base, Ohio, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(31) Energy Monitoring and Control System in the amount of $540,000 at Holloman Air Force Base, New Mexico, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(32) Energy Monitoring and Control System in the amount of $900,000 at Nellis Air Force Base, Nevada, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 573).

(33) Add to and Alter Cadet Library in the amount of $4,000,000 at the United States Air Force Academy, Colorado, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 574).

(34) Special Operations Facilities in the amount of $2,800,000 at Various Locations, Pacific Air Forces, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 574).

(35) Telecommunications Facility in the amount of $6,515,000 at Various Locations (Ramstein Air Base), Germany, authorized in section 301 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 574).

(36) ADP and Communications Facility—Alteration of existing space in the amount of $1,573,000 at Defense Depot Ogden, Utah, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public (Public Law 95–356; 92 Stat. 575).

(37) Storage Facilities—Construction in the amount of $1,353,000 at Defense Property Disposal Office, Indianapolis, Indiana, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 92 Stat. 575).

(38) Covered Storage Facilities—Construction in the amount of $584,000 at Defense Property Disposal Office, Subic Bay, Republic of the Philippines, authorized in section 401 of the Military Construction Authorization Act, 1979 (Public Law 95–356); 92 Stat. 576).

UNIT COST LIMITATIONS

SEC. 606. None of the authority contained in titles I, II, III, and IV of this Act shall be deemed to authorize any building construction projects inside the United States in excess of a unit cost to be determined in proportion to the appropriate area construction cost index, based on the following unit cost limitations where the area construction index is 1.0:

(1) $52 per square foot for permanent barracks; or

(2) $56 per square foot for unaccompanied officer quarters;

unless the Secretary of Defense, or the Secretary's designee, determines that, because of special circumstances, application to such project of the limitations on unit cost contained in this section is impracticable. Notwithstanding the limitations contained in prior Military Construction Authorization Acts on units costs, the limitations on such costs contained in this section shall apply to all prior authorizations for such construction not heretofore repealed and for which construction contracts have not been awarded by the date of enactment of this Act.

AMENDMENT TO PRIOR AUTHORIZATION

SEC. 607. (a) Section 301 of the Military Construction Authorization Act, 1979 (Public Law 95-356; 92 Stat. 572), is amended under the heading "Inside the United States" by striking out "$141,782,000" in the item relating to Vandenberg Air Force Base, California, under the subheading "STRATEGIC AIR COMMAND" and inserting in lieu thereof "$223,161,000".

(b) Section 602 (3) of such Act is amended by striking out "$423,059,000" and "$522,743,000" and inserting in lieu thereof "$504,438,000" and "$604,122,000", respectively.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

SEC. 701. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Guard and Reserve Forces, including the acquisition of land therefor, but the cost of such facilities shall not exceed the following amounts:

(1) For the Department of the Army:

(A) for the Army National Guard of the United States, $40,000,000; and

(B) for the Army Reserve, $46,525,000.

(2) For the Department of the Navy: Naval and Marine Corps Reserves, $22,250,000.

(3) For the Department of the Air Force:

(A) for the Air National Guard of the United States, $73,500,000; and

(B) for the Air Force Reserve, $17,725,000.

WAIVER OF CERTAIN RESTRICTIONS

SEC. 702. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, (31 U.S.C. 529) and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes (40 U.S.C. 255) and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

TITLE VIII—GENERAL PROVISIONS

USE OF SOLAR ENERGY SYSTEMS IN NEW CONSTRUCTION

SEC. 801. Section 2688(b) of title 10, United States Code, is amended to read as follows:

"(b) For the purposes of this section, a solar energy system shall be considered to be cost effective if the original investment cost differential can be recovered over the expected life of the facility using accepted life cycle costing procedures.".

LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. 802. Section 609 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1365), is amended—

(1) by striking out in the first sentence "a section of land" and inserting in lieu thereof "three parcels of land";

(2) by striking out in the first sentence "4.5 acres" and inserting in lieu thereof "eight acres more or less";

(3) by striking out in the second sentence "eight acres" and inserting in lieu thereof "ten acres more or less"; and

(4) by striking out the period at the end of the last sentence and inserting in lieu thereof "or the Department of Navy.".

REPORTS ON REAL PROPERTY TRANSACTIONS

SEC. 803. Section 2662 of title 10, United States Code, is amended by striking out "$50,000" each place it appears in subsections (a), (b), and (e) and inserting in lieu thereof "$100,000".

INCREASE IN MAXIMUM AMOUNT THE SECRETARY OF A MILITARY DEPARTMENT IS AUTHORIZED TO EXPEND FOR ACQUISITION OF INTERESTS IN LAND

SEC. 804. (a) Section 2672 of title 10, United States Code, is amended—

(1) by striking out "$50,000" in the catchline and inserting in lieu thereof "$100,000"; and

(2) by striking out "$50,000" each place it appears in the text of such section and inserting in lieu thereof "$100,000".

(b) The table of sections at the beginning of chapter 159 of such title is amended by striking out "$50,000" in the item relating to section 2662 and inserting in lieu thereof "$100,000".

REAL ESTATE TRANSACTION, SAN DIEGO, CALIFORNIA

SEC. 805. (a) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized and directed to amend the declaration of taking which (1) was signed by him on December 26, 1979, (2) was filed in Civil Action Numbered 80-0021-E in the United States District Court for the Southern District of California pursuant to the authority conferred upon the Secretary by section 809 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950), and (3) was condemned for the use of the United States all right, title, and interest of the city of San Diego, California, in and to a certain tract of land consisting of forty acres, more or less, in Balboa Park, San Diego, California. The Secretary may amend such declaration of taking by substituting for the estate described in such declaration a leasehold estate in such tract of land for a term of seventy-five years for the uses and purposes set forth in section 809 of such Act. The amendment of the declaration of taking shall be made by the Secretary subject to such terms and conditions as he deems necessary to protect the interest of the United States and subject to the approval of the city of San Diego.

(b) The Secretary shall convey to the city of San Diego, in consideration in whole or in part for the acquisition under subsection (a), all right, title, and interest of the United States in and to all or any part of the real property (including improvements thereon) of the Naval Regional Medical Center, San Diego, California, that has been conveyed, leased, or otherwise made available to the United States by the city of San Diego (other than the property acquired pursuant to the declaration of taking referred to in subsection (a)).

(c) The Secretary is authorized to construct a Navy hospital or medical center on the lands referred to in subsection (a) and to use such lands for related purposes, notwithstanding the acquisition of a leasehold estate for a term of seventy-five years in such lands rather than the acquisition of all right, title, and interest as provided in section 809(a) of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950).

(d) The provisions of subsections (c) and (d) of section 809 of the Military Construction Authorization Act, 1980 (Public Law 96-125; 93 Stat. 950) shall apply to the amended acquisition authorized in subsection (a) of this section.

ALTERNATE FUELS USE STUDY

SEC. 806. (a) Within one hundred and eighty days after the date of enactment of this Act, the Secretary of Defense shall furnish a report to the appropriate committees of the Congress outlining a plan (1) to convert to the use of a fuel other than oil or gas all oil and gas fired plants of the Department of Defense which have heat input rates of fifty million British thermal units per hour or more, and (2) to replace, in each case in which such action would be cost effective, existing oil or gas fired plants with new central plants that use a fuel other than oil or gas.

(b) Such report shall include with respect to each plant the following:

(1) The estimated cost of conversion or replacement, including a breakdown of costs by major work items (that is, powerplant, utilities, fuel handling facilities, pollution abatement facilities, and related or similar items).

(2) The estimated oil and gas savings that would result from such conversion or replacement.

(3) The estimated annual net fuel cost savings that would result from such conversion or replacement.

(4) The computed benefit-cost ratio and the estimated payback period using accepted life cycle costing procedures.

Such report shall also include funding schedules based on the assumption that such conversions and replacements are to be completed within (A) a five-year period, and (B) a ten-year period.

NEW BOILER PLANT CONSTRUCTION

SEC. 807. (a) Except as provided in subsection (b) of this section, no new facility or plant which requires heat input rates of fifty million British thermal units per hour or more and which uses oil or gas, or a derivative of either, as fuel may be constructed on lands under the jurisdiction of the Department of Defense.

(b) The Secretary of Defense may waive the provisions of subsection (a) in rare, unusual situations; but any such waiver shall be explicitly included in budget justification documents submitted to the Congress in connection with the facility or plant concerned, and such waiver shall be called to the attention of the appropriate committees of the Congress by the Secretary of Defense during review of any proposed legislation to authorize or appropriate funds for the construction of such facility or plant.

(c) The Secretary of Defense may not provide heating service for any new facility or plant in increments in order to avoid the prohibition contained in subsection (a).

REMOVAL OF CHEMICAL MUNITIONS, ROCKY MOUNTAIN ARSENAL

SEC. 808. (a) Notwithstanding any other provision of law, the Secretary of Defense shall remove all chemical munitions from the Rocky Mountain Arsenal, Colorado, within one year after the date of enactment of this Act.

(b) Within ninety days after the date of enactment of this Act, the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives in writing of the methods proposed to be used in carrying out the provisions of subsection (a).

(c) The Secretary of Defense shall not implement the methods outlined in the notification required by subsection (b) until a period of thirty days has expired following the receipt by the Committees on Armed Services of such notification.

DECONTAMINATION STUDY, KAHOOLAWE ISLAND

SEC. 809. (a) In order to determine the feasibility and cost of clearing the island of Kahoolawe, Hawaii, and the adjacent waters of ordnance and other debris resulting from the use of such island as a target range by the United States Navy, the Secretary of the Navy is authorized and directed to (1) develop appropriate technology for clearing unexploded ordnance from test land which has the same or similar soil composition as the island of Kahoolawe and from submerged land which has the ecology characteristics of subtropical waters, and (2) demonstrate the developed technology at selected sites on the island of Kahoolawe.

(b) The Secretary of the Navy shall begin work on the development of the technology described in the first section within six months after the date of enactment of this Act and shall complete the development and demonstration of such technology at the earliest practicable date. The Secretary of the Navy shall submit progress reports to the Committees on Armed Services of the Senate and the House of Representatives each year until the project provided for in subsection (a) is completed.

(c) Any land or water area which may be cleared of unexploded ordnance incident to the demonstration of the technology shall be fenced or buoyed and be used for such purpose or purposes as the Secretary of the Navy may approve.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section during fiscal year 1981.

IMPACT ASSISTANCE FOR FISCAL YEAR 1981 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

Sec. 810. During fiscal year 1981, the Secretary of Defense may utilize funds appropriated for planning and design purposes to provide community planning assistance as follows:

(1) To assist communities near MX Weapon System sites, $5,000,000.

(2) To assist communities near the East Coast Trident Base, $1,300,000.

IMPACT ASSISTANCE FOR FISCAL YEAR 1982 FOR AREAS AFFECTED BY THE MX WEAPON SYSTEM AND THE EAST COAST TRIDENT BASE

Sec. 811. (a) During fiscal year 1982, the Secretary of Defense (hereinafter in this section referred to as the "Secretary") is authorized to assist communities located near MX Weapon System sites, communities located near the East Coast Trident Base, and the States in which such communities are located in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the MX Weapon System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of the increased need for such services and facilities.

(b) (1) The Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary is authorized, subject to the provisions of subsection (d), to (A) supplement funds made available under such Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary, (B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the costs under such programs, and (C) guarantee State or municipal indebtedness for improved public facilities related to the MX Weapon System or the East Coast Trident Base.

(2) The head of each department and agency of the Federal Government concerned shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, is authorized to provide facilities and services in anticipation of the work to be carried out in connection with the MX Weapon System and the East Coast Trident Base. No department or agency may charge a management fee for assisting the Secretary in carrying out the provisions of this section.

(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, (3) the initial capitalization required for municipal sewer and water systems, (4) the initial operating cost for upgrading municipal services, and (5) such other pertinent factors as the Secretary considers appropriate.

(d) Funds appropriated to the Department of Defense for carrying out the MX Weapon System and the East Coast Trident Base in fiscal year 1982 may, to the extent specifically authorized in the military construction authorization Act for fiscal year 1982, be utilized by the Secretary in carrying out the provision of this section.

(e) The Secretary shall transmit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, not later than November 1, 1983, a written report indicating the total amount transferred to and the amount obligated and expended by each local community or State which has been provided assistance under the authority of this section during fiscal year 1982, the specific projects for which assistance was provided during such year, and the total amount for each such project during such year.

COMMUNITY IMPACT ASSISTANCE STUDY

Sec. 812. (a) The Congress finds that—

(1) the Department of Defense is required from time to time, for national security reasons, to provide for the construction in the United States of major, new military facilities which have a serious adverse impact on the communities and the areas in which such facilities are constructed; and

(2) neither the impacted local governments nor the States in which such facilities are constructed should be expected to bear the full cost of such impact.

(b) The President shall conduct a thorough study of the adverse impact on communities in areas in which major, new military facilities are constructed with a view to determining the most effective and practicable means of promptly mitigating such impact. In carrying out such study the President shall, as a minimum—

(1) identify those potential Department of Defense actions that are sufficient in scope to warrant impact assistance by the Federal Government;

(2) examine various options and recommend organizational mechanisms to administer the Federal community impact assistance to be made available;

(3) examine various options and recommend procedures for the budgeting of community impact assistance funds;

(4) recommend such changes in existing programs as may be necessary to provide effective and timely impact assistance to areas adversely affected by the construction of major, new military facilities; and

(5) consult with and seek the advice of appropriate State and local leaders and officials regarding the problems and needs of communities that result from the construction of major, new military facilities in or near such communities.

(c) The President shall submit the results of the study required by subsection (b) to the Congress not later than March 1, 1981, together with such comments and recommendations as the President considers appropriate.

SELECTION OF A SITE FOR THE PUBLIC DISPLAY OF THE U.S.S. NAUTILUS

Sec. 813. (a) The Secretary of the Navy shall select a suitable site, as provided in this section, at which the U.S.S. Nautilus, the world's first nuclear-powered submarine, will be permanently berthed and placed on public display after such submarine has been decommissioned. The Secretary shall select a site for such purpose that will be easily accessible and convenient for the people of the United States to visit.

(b) In considering potential sites for the permanent berthing and public display of the U.S.S. Nautilus, the Secretary of the Navy shall take into consideration the estimated site preparation and other related costs involved in permanently berthing such submarine for public display at each site and the extent to which contributions from public and private sources can reasonably be expected to meet such costs in the case of each such potential site. In no event may the Secretary select a site for such purpose unless he finds that there will be a reasonable contribution from public or private sources to help meet such costs at such site.

(c) The Secretary of the Navy shall notify the Congress in writing of the site selected by him for the permanent berthing and public display of the U.S.S. Nautilus promptly after he has made such selection and shall include in such notification (1) a list of the sites considered for such purpose, (2) the reasons for deciding on the particular site selected, (3) an estimate of the site preparation and other related costs involved in the case of each of the sites considered, and (4) an estimate of the amount that could reasonably be expected to be contributed by public and private sources to help meet such costs in the case of each of the sites considered.

STUDY OF CONDITION OF THE STRATEGIC RAIL CORRIDOR

Sec. 814. (a) The Secretary of Defense, in consultation with the Secretary of Transportation, shall conduct a study of the condition of railroad lines identified in the Strategic Rail Corridor Network (STRACNET) for National Defense (Military Traffic Management Command Report RND 76-1, An Analysis of a Strategic Rail Corridor Network for National Defense, November 1976). Such study shall include an identification of those segments of the corridor which, as a result of deferred maintenance or deterioration, may potentially have an adverse impact on the movement of personnel, equipment, and materials among federal military arsenals and installations, and an estimate of the cost of rehabilitating those segments.

(b) The Secretary of Defense shall submit the results of this study, together with recommendations for correcting deficiencies in the railroad network in order to strengthen the military's combat readiness and military mobilization base, to the Armed Services Committees of Congress no later than July 1, 1981.

LAND CONVEYANCE, SOUTH PORTLAND, MAINE

Sec. 815. (a) The first section and section 2 of the Act entitled "An Act to provide for the conveyance to the State of Maine of certain lands located in such State", approved August 28, 1957 (71 Stat. 467) are amended by striking out "for vocational or other school purposes" and inserting in lieu thereof "for public purposes".

(b) The Secretary of the Navy shall issue such written instructions, deeds, or other instruments as may be necessary to bring the conveyance made to the State of Maine under the authority of the Act referred to in subsection (a) into conformity with the amendment made by such subsection.

Mr. HART. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I wish to compliment the distinguished Senator from Colorado (Mr. HART) on his extremely able and skillful handling of this military construction authorization bill. Some difficult problems were associated with the bill, but he has demonstrated, once again, his ability to manage legislation that is complex and difficult and to manage it in a way that cites the esteem and admiration of his colleagues. I wish to express my appreciation to him on behalf of the Senate.

I also wish to thank him and to thank his colleague on the other side of the aisle, Mr. WARNER, for his cooperation with the leadership in managing this bill. Mr. WARNER, likewise, has done a splendid job and, as always, is very skillful in carrying his share of the burden when it comes to managing a bill on the floor and working with the leadership on this side of the aisle.

Mr. President, I yield the floor.

Mr. STENNIS. Mr. President, will the Senator yield for a 1-second statement?

Mr. ROBERT C. BYRD. I yield.

Mr. STENNIS. Mr. President, may I also commend and thank the fine member of the subcommittee, the Senator from Colorado, who held the hearings and guided this bill, coming up with fine ideas as he has. It is another demonstration, Mr. President, of the great value to the Senate which he gives in whatever test he undertakes. We do not always vote together, but I certainly trust him on very important matters and am never disappointed.

Mr. HART. Mr. President, I thank the distinguished majority leader for his customary generosity, and I appreciate the comments of my esteemed committee chairman very much.

Mr. CHILES. Mr. President, I wish to join in the remarks of the majority leader and the chairman of the committee in congratulating Senator HART for his handling of the military construction authorization bill.

I wish to raise an issue, a construction project in Mayport, Fla., for a berthing wharf at the naval station which has been designated by the Navy as the No. 1 service project priority.

The urgency here is that 18 frigates have just been assigned to Mayport, and if the berthing wharf is not constructed properly, it will be difficult, if not impossible to work out.

Senator STONE and I wish to raise this matter because this project was authorized by the House at the level of $37 million for a 2-year construction project. The House Appropriations Committee subsequently approved $18 million for fiscal year 1981 funding of the wharf. The Senate military construction authorizing bill did not contain an authorization for this project, although the Senate military construction appropriations bill has approved a funding level of $37 million for fiscal year 1981.

The purpose of my remarks today, with Senator STONE, is to formally go on record in the Senate as supporting the Senate acceptance of the House authorization level when the military construction authorization is brought to conference by the Senate and the House. I just waned to relay that to my colleague and urge his consideration.

Mr. HART. Mr. President, I wish to thank the Senator from Florida for bringing this matter to the attention of the committee. Although it is not in the budget request, it is, as the Senator has mentioned, in the House authorization bill. It will be a conference item. Given his guidance and recommendations, we will give it very serious consideration, which it deserves. We appreciate his comments.

Mr. BAUCUS. Mr. President, I, too, join in commending, with the Senator from Mississippi, the Senator from Colorado for his management of this bill.

Mr. HART. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make necessary technical and clerical corrections in the engrossment of the Senate amendments to H.R. 7301.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that the bill, as passed, be printed in full, with amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that S. 3059 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I move that the Senate insist upon its amendments, request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HART, Mr. STENNIS, Mr. JACKSON, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. NUNN, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, and Mr. COHEN conferees on the part of the Senate.

A. PHILIP RANDOLPH INSTITUTE GOLD MEDAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1014, H.R. 5625.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to advise the majority leader that that item is cleared on our calendar. I see the distinguished Senator from Utah (Mr. GARN) is on the floor at this time. We have no objection to the request of the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5625) authorizing the President of the United States to present a gold medal to the A. Philip Randolph Institute.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the committee proceeded to consider the bill which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment on page 2, line 4, strike "1980", and insert in lieu thereof "1981".

Mr. PROXMIRE. Mr. President, this bill, as was indicated, directs the Secretary of the Treasury to design and produce a gold medal suitable for presentation to the A. Philip Randolph Institute in recognition of Mr. Randolph's lifelong advocacy of peaceful change on behalf of workers and minorities.

This should not be considered as a routine action by the Senate. Philip Randolph was truly a great American. As I have stated, he believed very deeply in change, but peaceful change. I know of few people who were more honored by our distinguished leaders including people like the distinguished Senator from New York, Senator JAVITS; Senator Lyndon Johnson and President Lyndon Johnson, Senator Humphrey, Senator Douglas, and John Kennedy, who served, of course, as a Senator and as President of the United States.

I am very proud, as chairman of the committee to have the honor to report this bill.

I wanted to say that because I am going to suggest an amendment to the bill which does not relate to Philip Randolph but which I hope the Senate will consider.

I offer this amendment, Mr. President, on behalf of the distinguished ranking minority member, Senator GARN, and myself. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the Senator wish to have the committee amendment agreed to first? There is a committee amendment pending. Does the Senator wish first to have that committee amendment agreed to?

Mr. PROXMIRE. Yes. I would prefer to have the committee amendment acted upon.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. PROXMIRE. Mr. President, I am happy to yield to my good friend, the junior Senator from New York.

Mr. MOYNIHAN. Mr. President, I simply want to express my appreciation to Senator PROXMIRE and Senator GARN for this significant honor which they bestow upon one of the great men of this Republic and the institute named for him, the A. Philip Randolph Institute, in New York City.

I had an honor which would be as much as any man could hope for when I ran for the U.S. Senate. Mr. A. Philip Randolph was chairman of the labor committee supporting my candidacy. I have been associated with the director of the institute for many years.

We do an honor to this body as well as to the memory of this man.

I would like to thank Senator GARN and Senator PROXMIRE for their leadership and assistance in this matter.

Mr. PROXMIRE. Mr. President, I thank the Senator.

Mr. JAVITS. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. JAVITS. Mr. President, I would like to join in the comments of my distinguished colleague. A. Philip Randolph was a very, very venerated labor leader, and notwithstanding his labor union in a sense contracted because of changes in transportation modes, he remained one of the most influential labor leaders in the country, and one of the most influential Americans.

Mr. President, I believe it is just great that the Senators from Wisconsin and Utah are presenting this honor, and I thank them.

Mr. PROXMIRE. Mr. President, I thank the distinguished senior Senator from New York.

UP AMENDMENT NO. 1586

(Purpose: To prohibit a bank or bank holding company from acquiring a thrift institution except to avoid insolvency)

Mr. PROXMIRE. Now, Mr. President, I send an amendment to the desk on behalf of myself and Mr. GARN, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself and Mr. GARN, proposes an unprinted amendment numbered 1586.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is ordered.

The amendment is as follows:

At the end of the bill add the following:

SEC. 2. Section 4 of the Bank Holding Company Act of 156 (12 U.S.C. 1843) is amended by adding at the end thereof the following subsection:

"(f) (1) Notwithstanding any other provision of law, no bank or bank holding company, directly or indirectly, or through one or more subsidiaries or affiliates, or through one or more transactions, may acquire, merge with, control or engage in the activity of owning, controlling, managing or operating a nonbank depository institution, except where the Board determines that such an activity is necessary in order to prevent the insolvency of, or to restore the solvency of, a nonbank depository institution.

"(2) For purposes of this subsection, the term nonbank depository institution means—

"(A) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act;

"(B) any savings bank as defined in such section;

"(C) any insured institution as defined in section 401 of the National Housing Act; and

"(D) any savings and loan holding company or any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized that is not an insured institution as defined in section 401 of the National Housing Act; and, for purposes of this paragraph, the term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

"(3) The prohibition contained in this subparagraph shall remain in effect until the Congress, by concurrent resolution, provides for its termination. No later than September 30, 1981, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation each shall submit to Congress a study analyzing the potential competitive, supervisory, legal and other effects, including the impact on the availability of residential mortgage lending, of permitting acquisitions by banks and bank holding companies of nonbank depository institutions.

"(4) The Board shall make no determination under paragraph (1) of this subsection with respect to a nonbank depository institution described in paragraph (2) of this subsection without the concurrence of the appropriate federal supervisory agency of both the acquiring and the acquired institution.

Sec. 3. (a) Section 11(e) (2) (B) of the Federal Home Loan Bank Act (15 U.S.C. 1431(e) (2) (B)) is amended by striking out "paragraph" and inserting "subsection" in lieu thereof.

(b) Section 11(e) (2) (B) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e) (2) (B)) is amended by striking out the word "or" the first place it appears, and inserting in lieu thereof the following: "as interpreted by the Federal Home Loan Bank Board in consultation with the Board of Governors of the Federal Reserve System, and may".

(c) Section 307(b) (2) of the Federal Credit Union Act (12 U.S.C. 1795f(b) (2) is amended by striking out the word "or" the second place it appears, and inserting in lieu thereof the following: "as interpreted by the National Credit Union Administration Board in consultation with the Board of Governors of the Federal Reserve System, and may".

Mr. PROXMIRE. Mr. President, the amendment I am offering now is unrelated to Mr. Randolph or his institute, but it is a vital amendment.

Mr. President, this amendment would prohibit acquisitions of mutual savings banks, savings and loan associations, or savings and loan holding companies by banks or bank holding companies. Acquisitions of savings banks by savings and loan associations would not be prohibited nor would acquisitions of savings and loan associations by savings banks be prohibited. An exception to the prohibition applying to a bank holding company acquiring a savings and loan association would be made for cases where the Federal Reserve, for example, and the FHLBB both determined that an acquisition by a bank holding company was necessary in order to avoid the default of the insured thrift or the payment of its insured accounts, by the FSLIC, or to restore the defaulted thrift to normal operation. The prohibition could be terminated by House and Senate adoption of an appropriate concurrent resolution. The amendment further would require the Federal Home Loan Bank Board to provide Congress, no later than September 30, 1981, with a study analyzing the potential effects of permitting bank takeovers of thrifts particularly with regard to the impact on home mortgage financing.

The basic purpose of the amendment is to make sure that the period of transition and adjustment that the S. & L. and mutual savings bank industry is entering in the wake of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, does not lead to a wave of takeovers of S. & L.'s and mutual savings banks by banks.

By giving the S. & L. industry and mutual savings banks broad new asset and liability powers, and by providing for the gradual ending of rate control, Congress has, in a very real way, changed the rules of the games for thrift institutions, presenting them with a considerable challenge that they must meet in order to continue in business and continue to satisfy our Nation's housing credit needs. At the same time, the new powers given thrifts have made those institutions more attractive acquisition targets for banks and their holding companies and have made S. & L. and mutual savings bank acquisitions a more potent method of circumventing restrictions on interstate branching by commercial banks.

A number of bank holding companies already are planning to seek Federal Reserve approval for thrift takeovers. Without an amendment such as the one now proposed, the only barrier to consummation of those acquisitions appears to be the Federal Reserve Board's own 1977 determination, that operation of a S. & L. is not a proper incident to banking. There is no such decision which applies to savings banks and mutual savings banks.

As I noted, the amendment would allow an exception to the prohibition in order to prevent or cure default. It is intended that this exception would be used only where absolutely necessary. For instance, if thrifts were in danger of collapse and no thrift merger partners were available of a size sufficient to acquire the institution, the Board would have the option, only with the concurrence of the appropriate Federal regulator of both the acquiring and acquired institution of turning to a bank or bank holding company as an alternative to the expensive and disruptive process of liquidation. It is not intended, however, that the exception would be used where suitable thrift—savings and loan or mutual savings bank—partners were available to acquire the defaulting savings and loan association or mutual savings bank.

Mr. President, I might point out that the policy of the Federal Reserve, for years, has been not to approve the takeover of savings and loans or their associations by commercial banks. There is some indication that that policy might be changed. If so, I think the policy change would be so significant that it should be a matter of mature consideration by the Congress. We should have an opportunity to know about it, to hear about it, to take action in support or in opposition to it. That is the purpose of this amendment.

Mr. President, earlier this year the Congress enacted the Depository Institutions Deregulation and Monetary Control Act. Part of that act provides that the Federal Home Loan Bank Board may authorize the Federal Home Banks to offer payments services connected with clearing, settlement, and processing of drafts. These services are to be priced according to a set of full-cost pricing principles.

It appears that a clarifying change is needed. This amendment provides the needed clarification. There is some question as to whether the current language applies to new payments services, as well as existing payment services. This amendment would make it clear that both new and existing payments services offered by Federal Home Loan Banks to savings and loan associations are to be priced at full cost on a for-profit basis. This is the same type of requirement that applies to Federal Reserve Banks.

The Federal Home Loan Bank Board has been informed of this amendment, and I am told that they have no problem with its since they intend to require pricing of new and existing payment services.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I support this amendment to prohibit banks or bank holding companies from acquiring savings and loan associations or other types of savings institutions. Although the Fed has generally not permitted such acquisitions, they are not specifically prohibited under current statutes. Thus, the amendment insures that the distinctive character of savings institutions, which are designed to serve as sources of mortgage financing, is not altered without further study and congressional consideration.

The amendment would also clarify the intent of the Depository Institutions Deregulation Act with regard to pricing of payments services offered by Federal home loan banks. Pricing of these services and those offered by the Federal Reserve banks is important for efficiency reasons, and will lead to a more competitive market for payments services. Therefore, I offer my support for the amendment and I am willing to have it accepted as part of the legislation if there is no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 1586) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1981.

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 7631, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 7631) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1981, and for other purposes.

The Senate continued with consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the amendment by Mr. JEPSEN, the HUD appropriation bill be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine business not to extend beyond 15 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRESSIONAL AWARD PROGRAM

Mr. BAKER. Mr. President, I am delighted to report to the Senate that the national board of directors of the congressional awards program held its first meeting this past week here in Washington and has now officially begun its most promising work in behalf of America's youth.

At that meeting, Mr. W. Clement Stone, an inspirational Chicago businessman and philanthropist known to so many of us in Government, was elected chairman of the Congressional Awards board.

Joining Mr. Stone as officers of the board are: The Honorable John D. Rockefeller, IV, the distinguished Governor of the great State of West Virginia, who was elected vice-chairman; Patrick L. O'Malley, the chairman of the board of the Canteen Corp., of Illinois, who was elected secretary; Frank H. Arlinghaus, Jr., a physician from New Jersey, who was elected treasurer; and David A. Koch, the president of Graco, Inc., of Minnesota, who was elected to the executive committee of the award program.

Mr. President, this program has as its sole and noble goal the encouragement and recognition of the 37 million Americans between the ages of 14 and 23.

These fine gentlemen have most generously donated their time and talents to insure the success of the congressional award program and all Americans owe them a great debt.

All Americans also owe a great debt to my good friend, the distinguished Senator from Wyoming (Mr. WALLOP), who was the driving force behind this program in the Congress. Senator WALLOP's untiring devotion to America's youth, his dedication to their promise and their achievements is a model for us all.

I would encourage all of my colleagues to study the goals of the congressional award program and to support them.

To that end, I now ask unanimous consent that a fact sheet on the Congressional Award and a biographical sketch of its illustrious chairman of the board, Mr. Stone, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE CONGRESSIONAL AWARD FOR YOUTH

What is the congressional award?

The Congressional Award is a program which seeks to give national recognition to the initiative, achievement and excellence of the youth of America.

The Congressional Award was established by an Act of Congress Public Law 96–114 on November 16, 1979. The Law states that the program will receive no Federal funds and will be entirely supported by the private sector.

It's a program of activities open to all young people in the United States between the ages of 14 and 23. It offers a challenge to young people, an opportunity to develop skills, explore new interests, experience adventure, make friends and help the community.

The Congressional Award is a voluntary program. It is not competitive since each participant is evaluated on his or her individual goal achievement. Those accepting the challenge offered by the Congressional Award will require perseverance, enterprise and effort to complete the program and qualify for the awards. Gold, silver and bronze medals will be awarded to those who have satisfied the pre-established standards of achievement in all four program components—public/community service, personal interests, physical fitness and expeditions. Within that broad framework each participant can choose activities which match his/her individual tastes and talents and which are relevant to local community needs.

In order to participate in the program, young people purchase a record book, at nominal cost, from a local Congressional Award Operating Agency (Award Agency). The Award Agencies, which are authorized by the Regional or State Congressional Award Boards, may be schools, community and church organizations, youth agencies and clubs, commercial and industrial organizations, and other responsible bodies which encourage participation by the young people under their charge.

Working with Award Co-ordinators appointed by the Award Agencies are Advisers, who are usually school teachers, youth agency directors, community leaders, business men and local volunteers who have a genuine interest in the upbringing of young people and in the aims of the Award Program. Participants follow their chosen activities, largely in their own time, with guidance from Instructors who are knowledgeable in the participant's chosen subject. When predetermined standards of achievement are met, as indicated in the program standards, the participant qualifies for an award.

W. CLEMENT STONE

From their home office near Chicago, Combined International Corporation and Combined Insurance Company of America operate throughout the United States and in Canada, Great Britain, Australia, New Zealand, the Republic of Ireland, West Germany, France, Japan and the parts of the Caribbean. The founder and chairman of the board of that vast accident, health and life insurance group of companies, W. Clement Stone is also chairman or president of its four subsidiaries in Texas, Wisconsin, New York and Sydney, Australia officer of several other types of business enterprises.

Stone's success philosophy is carried to millions of people through self-help books and articles that he has written; through his magazine, Success Unlimited, the PMA Success Rallies and the W. Clement and Jessie V. Stone Foundation's (AMP) Achievement Motivation Program. He reassuringly tells others how he built a multi-million dollar insurance empire and accumulated a personal fortune of some $400 million by combining merchandising expertise with his concept of a Positive Mental Attitude. At the same time, he instructs them on how they too can become successful in their lives by using similar methods. Much of Stone's time, energy and money in recent years has been devoted to philanthropy, civic activities and to political causes.

As W. Clement Stone has himself observed, he speaks from experience when he insists that any man can become wealthy, "no matter how poor his start in life." He was born in Chicago, Illinois on May 4, 1902 to Louis and Anna M. (Gunn) Stone. Before the boy was three years old, his father died. At the age of six he began selling the Examiner newspaper on Chicago's streets, while his mother worked as a dressmaker, and at thirteen he ran a newsstand of his own. He devoured all the Horatio Alger stories available and was particularly inspired by Robert Cloverdale's Struggle.

When Stone was sixteen his mother moved to Detroit to open an insurance agency, representing the United States Casualty Company. Joining her in the summer, he began his career as an insurance salesman by calling office to office at the Dime Bank Building in Detroit and before long he was earning $100 a week. More important, although timid at first in his approach, by reflection and experience he soon began to develop the sales technique and the rationale of optimism to which he attributes his great fortune.

To devote more time to his insurance business, Stone dropped out of high school. Although self-taught to a great extent, he obtained a diploma by attending the YMCA Central High School in Chicago at night and also took some courses at the Detroit College of Law in 1920 and at Northwestern University from 1930 to 1932.

When he was twenty he used his savings of $100 to set up his own insurance agency in Chicago. He advertised for salesmen in newspapers, first in Illinois and then in other states, and by 1930 about a thousand agents throughout much of the country were selling insurance for him as the representatives for large casualty companies.

A Stone dictum holds that every adversity contains the seed of an equivalent benefit if one but searches for it. For him, therefore, the Depression was the "best thing that happened." Robert J. Cole of the New York Times (May 2, 1971) quoted him as saying, "it forced me to develop good work habits and be more scientific in training men so I could pay off my debts."

While Stone's national insurance sales organization flourished as the Depression waned, he began to carry out ambitious plans for expansion. In 1939 he acquired the management contract of the American Casualty Company (now Combined American Insurance Company) of Dallas, Texas, of which he became president. Also in 1939 he organized the Combined Mutual Casualty Company in Chicago and the following year became president and general manager of the Combined Casualty Company of Des Moines, Iowa. Particularly interested in buying a stock company licensed to sell accident and health insurance in many states throughout the country, he found what he was looking for in 1946 in the Pennsylvania Casualty Company of Philadelphia, which was up for sale because it was losing money.

"What's very important in making a fortune is how to use OPM—other people's money." Stone wrote in an article for Nation's Business (July, 1968). He then went on to explain how he purchased the Pennsylvania Casualty Company with the seller's money, by borrowing from the Commercial Credit Company of Baltimore, which owned the Philadelphia insurance firm.

On December 23, 1946, three days after he had acquired Pennsylvania Casualty, he was elected its president. The following year he changed its name to the Combined Insurance Company of America, into which he merged his Combined Mutual Casualty Company of Chicago in late 1947. Two years later he moved the headquarters of the Combined Insurance Company of America from Pennsylvania to Illinois. Also in 1949 he acquired the first of its subsidiaries, becoming president of the Hearthstone Insurance Company of Massachusetts (now merged into the parent company). Another purchase, in 1954, made him president of the First National Casualty Company of Fond du Lac, Wisconsin (now the Combined Insurance Company of Wisconsin). He is also president of another insurance subsidiary, Combined Life Insurance Company of New York, Albany, and a member of the board of Combined Life Insurance Company of Australia Ltd., and chairman of a minority enterprise small business investment corporation (MESBIC), Combined Opportunities, Inc. of Chicago.

Shareholders of Combined Insurance Company of America approved the formation of a holding company, Combined International Corporation, effective May 30, 1980 in order to undertake a broader range of activities than are open to an insurance company. Stock in Combined was exchanged one for one with stock in International.

Stone once estimated that every $10,000 invested in Combined Insurance Company of America in 1951, had earned several million dollars by 1968, when the company's assets exceeded $150,000,000. In early 1969, according to Time (February 7, 1969), the Combined Insurance Company had 23,000 stockholders, 3,500 salesmen and 1,200 employees. Ten years later Combined's assets exceeded $1.15 bililon, its stock was held by almost 30,000 share-holders and policyholders were serviced by a field force of more than 7,000 sales representatives and managers and 3,200 administrative employees.

In the National Underwriter (June, 1980) Price Gaines reported that Combined had premiums earned less dividends of $291,008,675—outproducing its five nearest rivals. Combined has been in first place since 1967. By 1978 the company had in excess of 10,750,000 policies in force in the U.S.A. Included in the world wide total of 14,400,000 health and life insurance policies in force were: Canada, 1,550,000; Australia 425,000; New Zealand 200,000; United Kingdom 1,200,000 and Republic of Ireland 120,000.

Forbes 32nd Annual Report on American Industry in 1979 showed Combined a leader in the stock life insurance industry in regard to return on shareholders equity (ROE) placing the company in the top 15 percent of the Forbes 1,035 company coverage.

The salesmen of Combined Insurance Company of America are trained in methods of merchandising based on inspiration to action, know-how and activity knowledge, and primarily, on what Stone calls PMA—or Positive Mental Attitude. Their training exposes them to such self-motivation spurs to action as "What the mind can conceive and believe, the mind can achieve" and "Do it now." They are said to be instructed to renew or declare their PMA by chanting every morning, "I feel healthy, I feel happy, I feel terriffic." William Davis, author of Its No Sin to Be Rich (Sphere Books 1978) explains that the self-motivators "'float about on the surface of your mind for a while. Then, after sufficient repetition, they begin to sink in and become integral components of your psyche. From then on you barely need to think about them. In the midst of any business situation, the correct self-motivator will assert itself and will automatically guide you in the direction of success." The sales training course also includes learning how "to keep a smile in the voice" and when to make "eye contact" with a prospective customer.

"Combined Insurance isn't the least bit worried about sounding corny," David Garino wrote in the Wall Street Journal (February 27, 1969), "When recruiting new salesmen, the company puts enthusiasm and energy ahead of academic attainment." Answering questions by members of the Investment Analysis Society of Chicago in March, 1974 Stone said: "In 1974 we are hiring more people, training more people and keeping more people. When times are difficult it's easier to sell insurance. I can speak with authority because I learned the art during the Depression years."

In achieving PMA, Stone was influenced by the writings of Emile Coue and the Reverend Norman Vincent Peale, well-known advocates of positive thinking, and by Napoleon Hill, whose book Think and Grow Rich for making money, helped Stone to persevere in overcoming the setbacks of the Depression. Many years later he collaborated with Hill in writing Success Through a Positive Mental Attitude (1960). Stone is also the author of The Success System That Never Fails (1962), and the co-author with Norma Lee Browning, of The Other Side of the Mind (1964). All three of Stone's books were published by Prentice-Hall, Inc., from which in late 1964 he bought a majority interest in Hawthorn Books, Inc. When he became chairman of the board of that company in March, 1965, he indicated that he intended to publish books of the type that he had written, which he once described as "inspirational self-help action books."

Stone also lights the way to material well-being through his magazine Success Unlimited, of which he is chairman of the board. That monthly magazine was founded in Chicago in 1954 but did not seek mass circulation until 1967. "SU cheerily offers its 500,000 readers a potpourri of personal success stories and self-improvement sermons," Newsweek (January 11, 1971) reported, ". . . Editorially, SU manages to combine the pragmatism of Poor Richard's Almanac with the moral certitude of the Bible."

Among his other business affiliations he holds a directorship in the cosmetic firm Alberto-Culver Company in Chicago. "While he has a Midas flair for making money," a writer for Time (February 7, 1969) commented, "Stone is equally skilled at giving it away." He was an ardent and generous backer of former President Nixon, who became a personal friend after his defeat in the 1960 Presidential election and the 1962 California gubernatorial election.

Giving much time as well as money to political causes, Stone is a member of the executive committee of the Republican National Finance Committee, and trustee of the United Republican Fund of Illinois and he has served as a member of the National Advisory Committee to the President.

Among civic and government groups with which he has been associated are the National Advisory Committee on Minority Business Enterprise, and the Chicago Council on Urban Opportunity. He is a trustee of the Lincoln Academy of Illinois and a former member of the Committee for the Preservation of the White House. In December, 1979 Stone was appointed a member of the Congressional Award Board established by Public Law 96–114 to administer the Congressional Award Program designed to encourage initiative and achievement among young people.

Groups concerned with voluntarism, mental health, youth welfare, religion and education have been the chief recipients of the charitable contributions channeled through the W. Clement and Jessie V. Stone Foundation, of which Stone is chairman. Stone's personal gifts and the family foundation grants totaled $57,000,000 at the end of 1972 and exceeded $70,000,000 by December 31, 1978. These figures do not include outstanding commitments. A firm believer that people must be motivated to help themselves, Stone often requires recipients of his grants to raise specified sums of money through their own efforts. To honor those who have overcome adversity and contributed to the betterment of humanity, the Foundation has established the annual "Endow a Dream" award.

Among the countless organizations devoted to human betterment that Stone has endorsed are the Lewis University Special Services Center, which provides training programs in motivation on an international basis for people in criminal justice; Chicago's John Howard Association, an agency to help prisoners; and Teen Challenge, an association for the guidance of troubled adolescents. He is chairman of the board of the Chicago Boys' Clubs, a member of the national executive committee of the Boys' Clubs of America, and of the executive committee of the International Federation of Keystone Youth Organizations, chairman of Helping Hearts and Hands in Chicago and Foundation for the Study of Cycles in Pittsburgh, and member of the Menninger Foundation, the World Federation for Mental Health in Geneva, Switzerland and the Burden Neurological Institute in Bristol, England. In the educational field he is chairman of the board of trustees of Interlochen Arts Academy (Michigan) and the International Council on Education for Teaching (ICET).

In the latter capacity he led educational conferences in Kenya in 1973, Singapore in 1974 (where he personally conducted a seminar on P.M.A. in educational training at the invitation of the Singapore Teachers Union). In the field of National Center for Citizen involvement, he has also helped to support many cultural undertakings such as those of the Art Institute of Chicago, the Chicago Chamber Orchestra, and the Lyric Opera of Chicago.

"Study, Think, Plan, Act" is one of Stone's favorite mottoes. He also asks for divine guidance before setting out on any new venture and regards the Bible as "the world's greatest self-help book." He attends a Presbyterian church and was formerly a director of the McCormick Theological Seminary in Chicago. He is president of Religious Heritage of America, Inc., in Washington, D.C., which named him Layman of the Year in 1962. The Church Federation of Greater Chicago named him Church Layman of the Year in 1968. He is chairman of the Institutes of Religion and Health in New York and in 1969 was chairman of National Bible Week.

Stone belongs to scores of business and fraternal organizations and clubs, including the Hortio Alger Award Committee of the American Schools and Colleges Association, Inc. He himself, received the Horatio Alger Award in 1963. Among his other honors are the B'nai B'rith National Humanitarian Award for 1968, the Patron of the Year Award from the Chicago Medical School's department of microbiology for 1969, the Humanities Award of the College of Insurance for 1971, the Freedoms Foundation Free Enterprise Exemplar Medal in 1972 and the Royal Arch Gold Medal Award of the General Grand Chapter-Royal Arch Masons International in 1972. DePaul University presented him with the St. Vincent DePaul Award and the Doctor of Humane Letters degree in 1970. He holds eight other honorary doctorates, including the Doctor of Jurisprudence degree, conferred by Monmouth College (Illinois) in 1963, and the Doctor of Laws degree conferred by Whittier College (California) in 1973.

On June 16, 1923, W. Clement Stone married his high school sweetheart, Jesse Verna Tarson. They have three children: the eldest, Clement is president and chief executive officer of Combined International Corporation and Combined Insurance Company; younger son, Norman is in business in California and daughter, Donna is president of the W. Clement and Jessie V. Stone foundation and a founding member of the National Committee for Prevention of Child Abuse.

RAIL DEREGULATION

Mr. ZORINSKY. Mr. President, as Senators are aware, the Senate is preparing to go to conference with the House to iron out the vast differences between their respective versions of the rail deregulation bill. We finished our work on that issue last April and have not had to greatly concern ourselves with provisions of that legislation during the months it has taken the House to debate and conclude its deliberations. What is disturbing is that the House debate has brought to light many problems which could well have changed positions taken by a number of my Senate colleagues—particularly with regard to joint rate surcharge and cancellation provisions.

I doubt that many of us had any profound understanding of the consequences of this provision when it was brought in as a last-minute floor amendment. In fact, the legislative explanation provided along with the amendment that day proved to be in many ways inaccurate and misleading. It was misleading in what it did explain and eloquent in what it failed to mention at all.

The surcharge and cancellation provisions we accepted and the modified version passed by the House will create chaos in American rail transportation. Incredible increases in shipping costs are inevitable. At best, parts of America can expect half the service at twice the cost. In all too many communities, shippers can look forward to no rail service at all.

The existing network of joint routes and rates was designed to allow freight traffic to move from origin to destination across the lines of several connecting carriers under a single rate—a long haul rate cheaper than the sum of local rates to be transversed. In some cases, this simply eliminates the problem of "you can't get there from here" without separate quotes from two or more railroads. In others, it provides competition to the big railroads whose single line route to the same destination might otherwise dominate the market and force a chain of small railroads out of business.

In reaching ports, it has meant that through the historical practice of equalization, export goods have access to port facilities and overseas markets at approximately equal and competitive rates. The division of traffic revenues which result from the joint rate is agreed upon by the railroads participating in the route.

It is, however, subject to readjustment at the Interstate Commerce Commission if one of the rail partners can make a case that it is not getting a fair or adequate share. Although this arrangement has worked effectively for over a century, it will be radically disrupted by the surcharge and cancellation authority.

Most of my colleagues are now fairly familiar with this section of the bill, and I need not describe its technicalities at length. The formula was developed by two of the Nation's largest rail transportation companies, Conrail and Southern. It favors inefficient railroads with high operating costs, and as such, the surcharge becomes a reward for inefficiency, providing railroads like Conrail with a means of enhancing their revenues at the expense of prosperous carriers and all shippers.

Conrail has lobbied for its passage with the threat that without surcharge authority, the pricetag on its annual congressional bailout will be increasingly high. Conrail apparently thinks that it is about time American farmers and utility customers begin paying for that railroad's abortive conception and subsequent mismanagement.

Without focusing on the surcharge authority authorized by the legislation, let us look a little bit at what results from cancellation of joint rates, which the legislation also authorizes.

When a carrier is receiving less than 110 percent of its variable costs on its portion of a joint route, it may simply cancel out the joint rate which has been published by the rate bureau—leaving the shippers to fend for themselves in obtaining quotes from the various railroads whose lines will get the shipper's goods to market.

With the artful use of selective cancellation, the large railroads will be in a position to divert traffic to routes from which they derive the greatest economic return. Step two naturally follows—wholesale abandonment of those less desirable joint routes under the streamlined abandonment procedures provided in other titles of the deregulation bill. Once competition from the small railroads which connect with surcharged or cancelled routes has been eliminated and a monopoly position established, the majority of the Nation's shippers—those that have any service left at all—will awaken to find themselves captive to a single carrier.

The small railroads which presently provide a competitive option against this kind of traffic manipulation are not equipped to defend against the new opportunities for predatory practices which are provided by the surcharge and cancellation authority. In an effort to provide Conrail with some temporary financial relief through rapid redetermination of its joint rate revenues, the Congress is risking the bankruptcy of additional carriers and a massive obstruction of market access by manufacturers in thousands of communities across the country. In essence, the legislation will establish a surcharge mechanism which rewards inefficiency and which sidesteps the real issues of good management and proper pricing.

These opportunities for anticompetitive practices have always been curtailed by the Interstate Commerce Act, which protects shippers and small railroads against unjust discrimination and predatory pricing tactics. But deregulation exempts both surcharges and selective cancellation of joint rates from the antidiscrimination law.

That is just a small dose of what we are in for once the joint rates section is enacted. The Senate was inadequately advised of its intent; the House was subjected to severe pressures from the White House to move ahead with the third and final step in President Carter's transportation deregulation program. The conference is not permitted under its rules to simply drop the issue.

I urge all of my colleagues to take an active part in communicating your concerns to the conferees. Our own version of the provision is broad—too broad to safely deliver into the hands of the ICC for interpretation. But it does provide the framework within which we can work out some of the more onerous features of the surcharge and cancellation mechanism. I trust that the conferees will recognize and acknowledge the serious implications of this situation and be receptive to the suggestions of their Senate colleagues.

Mr. President, I request unanimous consent that a copy of a letter from my colleagues Senators McGovern and Dole to Representative Eckhardt be printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Senate, Committee on Agriculture, Nutrition, and Forestry,
Washington, D.C., September 5, 1980.

Hon. Bob Eckhardt,
Washington, D.C.

Dear Congressman Eckhardt: As you well know, the House is expected to vote on the Rail Act of 1980, next Tuesday.

The new compromise proposal is a subject of great concern to many of us representing agricultural states. During the development of the Senate rail deregulation legislation earlier this year we worked hard with the Senate Commerce Committee to include provisions in the bill to protect captive shippers from excessive rates and accelerated abandonments.

The Senate bill as passed contains many of these provisions while allowing railroads increased regulatory freedom. We are deeply concerned, however, that the House version of this bill will create serious hardships for shippers and agricultural producers through dramatically increased rates.

We recognize that House compromise proposal contains acceptable general rate provisions which are in some ways similar to those contained in the Senate passed version. However, the House section pertaining to joint rates and surcharges could be devastating to thousands of shippers across the country, particularly those located on branchlines, as well as adversely impacting a number of bridge carriers that transport agricultural commodities.

Surcharges imposed by one carrier and affecting the traffic of another, can have serious financial consequences for the second carrier. Given the marginal nature of several "bridge" carriers, the surcharge and joint rate provisions could result in additional rail bankruptcies or financial crises requiring increased federal assistance. Yet this deregulation proposal was initially predicated upon the need to allow railroads to regain their financial health in the marketplace, thereby reducing their dependence on the Federal treasury.

Moreover, the doubling of a rail rate through surcharges on a given commodity and line can result in de facto branchline abandonments. Such surcharges, as authorized in the House bill, would result in substantial diversion of traffic to less energy efficient transportation modes, thus creating an atmosphere that would facilitate abandonment proceedings.

We firmly believe in the need to revitalize our national rail system through the modernization of regulation and allowing railroads to more effectively compete with other modes of transportation. We are convinced, however, that this should not take place at the expense of American agriculture as well as the ultimate consumers of agricultural products through increased food prices.

Although you are not floor managing this legislation, we appreciate the active role you have taken thus far to improve the Rail Act of 1980. In the interests of American agriculture and consumers we urge you to make every effort to further improve the bill through modifying or eliminating the joint rates/surcharge provisions of the bill. If we can be of any further assistance to you on this matter, please do not hesitate to contact us.

Sincerely,

George McGovern.
Robert Dole.

Mr. ZORINSKY. Mr. President, I ask unanimous consent that letters from the Consumer Federation of America and the Consumer Energy Council of America be printed in the Record.

There being no objection the letters were order to be printed in the Record, as follows:

Consumer Federation of America,
Washington, D.C., September 4, 1980.

Dear Representative: H.R. 7235, the "Rail Act of 1980," is once again scheduled for consideration by the House on September 5. Support for the Eckhardt-Rahall amendment is strong and has been growing to include many consumer groups since its July 24th passage.

Consumers need your support of this amendment, which will serve as protection against imminent railroad monopolies that will drive smaller lines out of business, allow for discrimination against certain ports, force captive shippers to pay exorbitant rates and cost consumers millions of dollars. If Title 3 remains intact, railroads will acquire the power to surcharge at their discretion. Conrail alone has stated its intention to increase in excess of 285,000 rates.

The Rahall-Staggers-Lee compromise recently offered fails to protect consumers, captive shippers, and small railroads. A report submitted by the Public Interest Economics Center to the Federal Railroad Administration clearly substantiates these concerns as well as numerous other undesirable consequences that will materialize without inclusion of the Eckhardt-Rahall amendment as accepted on July 24.

The amendment has been incorporated into the Rail Bill, illustrating Congress' concern for consumer protection. The Consumer Federation of America urges you to continue supporting the Eckhardt amendment, and oppose the Rahall-Staggers-Lee "compromise" which will negate all virtues of the original Eckhardt-Rahall amendment.

Stephen Brobeck,
Executive Director,
Consumer Federation of America.

Consumer Energy
Council of America,
Washington, D.C., September 4, 1980.

Re H.R. 7235 The Rail Act of 1980.

Dear Representative: The House is once again considering H.R. 7235, The Rail Act of 1980. The Consumer Energy Council of America, a broad based coalition of major national consumer, labor, farm, public power, rural electric cooperative, urban, senior citizen and low income organizations urges you to support all aspects of the Eckhardt amendment—including those already adopted, and to reject the Staggers-Rahall amendment, which is a major step backward.

The bill, as amended on July 24, 1980, provided the minimum protection that consumers of heavy bulk commodities such as coal and grain deserve. Coupled with the other provisions of the Eckhardt amendment, which would protect small railroads and ports, the bill would strike a balance between shippers, consumers, and railroads. The Staggers-Rahall amendment is not a compromise in any sense of the word and it would remove the protection for the consumer, which the House has already voted.

We urge you to reject the Staggers-Rahall amendment and vote for the Eckhardt amendments which would prevent dramatic, inflationary increases in coal and grain prices. Should the Eckhardt amendment fail, we urge you to vote against the bill.

Sincerely,

Ellen Berman,
Executive Director.

Mr. ZORINSKY. Mr. President, I also have a copy of a recent article printed by the Bureau of National Affairs which outlines the most recent business forecast prepared by Conrail, and which predicts that Conrail will need up to $3.5 billion—Federal—over the next 5 year period. I request unanimous consent that this article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

Railroads: Conrail Foresees Need for Additional Federal Funding for Next Five Years

Massive amounts of additional federal funds will be needed by Conrail in the next five-year period, with the rail carrier's most optimistic estimate calling for $900 million more and the worst scenario saying the need will be about $3.5 billion.

These figures are included in the most recent business forecast prepared by Conrail and filed July 1 with the United States Railway Association but not released until last week. USRA oversees the Conrail operation, decides how much of the available federal government funds will be allocated to the rail carrier, and reports to Congress on the railroad's progress toward economic viability. To date, Congress has authorized $3.3 billion for the Consolidated Rail Corporation (Conrail) and $3.115 billion of that has been approved by USRA for the 17,000-mile rail system that services 16 northeast and midwestern states.

Release of the business and economic forecast for the carrier shortly precedes the return of Congress, July 21, from its current recess. Conrail supporters have been working during the interim on the possibility of getting legislation approved to increase authorized federal support for the railroad.

Several sources report that it has not been easy. The railroad would like another $400 million in authorized funding approved by this 96th Congress. In the face of a very tight budget, an economy wave pervading both the House and Senate, plus perhaps most significant event of all—the November election—the congressional response, thus far, has not been significant.

It is likely that some form of "rescue legislation" will be introduced during the two weeks that Congress will be in session before its next break from Aug. 2 until Aug. 18. But, at this point, there is no strong support lined up to push any Conrail legislation through the Congress, and the Carter Administration has made no commitment on supporting any plan.

The distressing financial projection for the calendar years 1981 through 1985 comes in the wake of, and Conrail says primarily as a result of, the national economic downturn. Carloadings on Conrail for the months of May and June this year ran 20 percent below the same two months of 1979, and the early July figures indicate at least a comparable, if not worse, falloff in business.

This is a reversal of the economic extrapolations compiled as recently as December 1979 when the forecast was that the original $3.3 billion in authorized federal funds would be sufficient. But very soon thereafter the picture worsened and has grown progressively darker since.

The first two months of 1980 were "just about even" with the same period of 1979, a company spokesman explained. This was particularly encouraging in view of the year-ago results which saw Conrail turn a net profit in the second quarter of 1979, the only quarter since it started operating in April 1976 that the railroad has made money.

But that early 1980 optimism started reversing itself as the March figures deteriorated. Then the May and June reductions in carloadings hit the disastrous 20 percent level. As the nation's new economic forecast continues to be gloomy, Conrail sinks into a worsening fiscal status.

Many employees have been laid off, and further cuts seem inevitable. In mid-May of 1979, there were 89,500 people on the company payroll. This past May 82,300. Not all of the reduction resulted from layoffs that began near the end of September 1979 when 1,000 furloughs were made across the system. Another 1,550 persons were furloughed in November of 1979 and still another 1,750 in May of this year. Hiring for spring maintenance work was held far below original planning levels and the steady drop in size of the overall work force has continued.

A recent General Accounting Office report on the Conrail operation said a reduction in the labor force and improved productivity will be essential if the carrier is to succeed. It said a work force of 97,053 in 1976 has come down to 87,509 in 1979 reports filed with USRA and the Interstate Commerce Commission, with further labor cuts planned. The report stated: "If Conrail is to become profitable within the current limits of federal investment, it has to reduce its ratio of labor expenses to revenues to a level more in line with other railroads. Conrail recognizes this and has formulated programs which it believes will enable it to reduce its labor expenses to 51.4 percent of revenues in 1983."

Those expenses were 63 percent for 1978 and 58 percent in 1979.

To reach its goal, Conrail officials told GAO that four programs will be followed: negotiated improvements in collective bargaining agreements; improvement programs for management control of operations; continued improvement of the physical condition of the rail system; and mandated force reduction.

Conrail estimates that $500 million might be saved over the next five years if present pending rail deregulation (H.R. 7235) is enacted. Failure of Congress to approve the deregulation plan might lead to a need by Conrail for about an equivalent $500 million in federal funding, the railroad said in its acknowledgement of the dire financial predictions for the years 1981–85.

RAIL DEREGULATION

Mr. DANFORTH. Mr. President, the Senate will soon go to conference with the House to resolve differences in our respective versions of railroad deregulation legislation.

It has been many months since the issue of railroad deregulation was before this body—months in which there occurred numerous announcements of pending mergers between virtually all of the major rail transportation systems in the country. During this same time, the bankruptcies of the Milwaukee and Rock Island systems became an acute problem in the Midwest and in parts of the South and Far Western States. I believe it is fair to say that during its consideration of railroad deregulation legislation the Senate was dealing with a different transportation picture than that which preoccupied the thoughts of our House colleagues in recent weeks.

My concern is that the House of Representatives has responded to this intense pressure and adopted provisions which favor some special and limited interests. I certainly intend to examine the bill sent over by the House more closely, but if my initial impression proves to be correct, I must say there is no justification for this Congress to take steps which may make the rehabilitation of the Rock and Milwaukee systems impossible. We are already skirting dangerously close to the creation of a midwest Conrail.

Three sections of the House bill in particular affect this rehabilitation effort by threatening the integrity of the section 511 loan guarantee program administered by the Federal Railroad Administration:

Section 228, loan guarantees, provides for expedited consideration and waiver of all qualification and repayment criteria on the Union Pacific-Chicago Northwestern application for a $300 million loan guarantee to build a new 56-mile rail connector line into the Powder River Basin;

Section 407, electrification loan guarantees, expands the definition of Conrail's authority to obtain section 511 loan guarantees for electrification to include "capital improvements to achieve the goals of the national energy policy." Conrail's Regional Reorganization Act is further amended to allow all other railroads to compete with Conrail for these guarantees under the new and broader "national energy policy" criteria.

Section 408, Government inclusion, opens the section 511 loan guarantee program to rail applicants seeking working capital. The section also opens the State assistance program to railroads and other private entities by allowing them to apply directly to the Federal Government to receive working capital from the State entitlement funds.

I have not at this time involved myself in the debate over the need for competition in the Powder River Basin. I am concerned, however, to see the boilerplate eligibility rules which govern virtually every Federal loan program waived to specifically favor the joint venture of two railroads—especially considering that approval of the sum of $300 million would exhaust virtually all of the available section 511 loan guarantee authority.

The Government inclusion language appears to do a different kind of violence to the section 511 program. Statutory authority does not preclude the use of section 511 funds for working capital to perform normal maintenance operations. Nevertheless, the Federal Railroad Administration has taken the administrative position that the use of these loan guarantees for working capital could perpetuate bad management or marginal operations and therefore has disallowed such use.

It is the responsibility of this Congress to provide discipline in loan guarantee programs by establishing criteria that demand feasible undertakings and reasonable expectation of repayment. In catering to the pressures of special interests, the House has stripped those underpinnings away from the section 511 guarantee program. I have asked the conferees to take a careful look at the consequences of these sections of the House bill, and I urge my colleagues—particularly those affected by the Milwaukee and Rock Island bankruptcies—to do the same.

TRIBUTE TO BEN STONG

Mr. CHURCH. Mr. President, I note with sorrow the passing on September 6, when I was in Idaho, of Ben Stong, who graced this institution as a devoted staff man for more than a quarter of a century.

I came to know and respect Ben Stong in my first years in the Senate, when he was on the staff of the Interior Committee under Jim Murray. More recently, he has served my colleagues from South Dakota and Montana, and, in a larger sense, this institution and his country.

My closest association was when I was privileged, in 1963, to manage the wilderness legislation to which we had by then given many years, none more than Ben Stong. He was at my right hand then.

Ben Stong's life was devoted to the American farmer, to conservation, and to the wilderness idea. He left lasting marks on these worthy endeavors, not less because others of us had our names on the products of his handiwork.

Colleagues in earlier tributes called Ben Stong an inspiration, a giant among men, the quintessence of a very gentle man.

He was, indeed.

SEPTEMBER GOLDEN FLEECE AWARD TO LABOR DEPARTMENT

Mr. PROXMIRE. Mr. President, I am awarding my Golden Fleece of the Month Award for September to the Department of Labor for funding a summer youth employment program in Tucson, Ariz., in which 14 junior college track athletes were paid for twice-a-day training sessions, weekly trips to compete in races, and a week-long journey to Flagstaff, Ariz., and Reno, Nev., to train, compete, and meet with other runners.

PERSONAL GROWTH PROGRAM

The athletes' job supervisor, who also just happens to be their track coach, described the project as a "personal growth" program designed to prepare participants for college. It can be said, without fear of contradiction, that these CETA funds gave the taxpayers a run for their money and that is about all.

The track coach-job supervisor not only justified paying athletes to be athletes but he explained to the Arizona

Daily Star why he paid the athletes for full-time effort when they practiced only part of the day:

> I arbitrarily decided to pay them eight hours a day because of the hard work involved with running work-outs twice a day. I gave them free time whenever I could to explore. You know, it's a real eye opener to go to a city like Reno with all those lights and everything.

The 14 junior college athletes were paid $3.10 per hour for 240 hours or $744 for 8 weeks of track workouts this summer. Thus the cost to the Federal taxpayers was over $10,000. CETA summer job program is supposed to provide work for some of the Nation's poorest and unemployed youths. While it appears that a number of the junior college athletes may not have come from poor families, they became eligible for the CETA program by stating that they were independent of their families and not living at home. Four of the 14 athletes listed the coach's home as their address, while another five listed the home of the coach's part-time assistant in their application.

RUNNING NOT LISTED IN ORIGINAL STATEMENT

The original statement of work provided to CETA officials never listed the running, racing, and Reno trip; but instead, discussed landscaping the school's cross-country course as the major project to be completed by the young athletes. According to the athletes' coach and job supervisor, the athletes did provide maintenance and landscaping for both the college's track and cross-country course; and he says that the young workers may have even put in more than 30 hours a week, which is the maximum for which they could receive pay from the Federal program.

The local CETA sponsor, which was headed by the wife of the school's athletic director, conducted several reviews of the program but somehow failed to question or find out about the activities and possible ineligibility of the student athletes. In fact, the head of the local CETA sponsor defended the program as valuable. She is quoted as saying:

> The point is you're just trying to teach them things they can use in their personal lives.

FEDERAL CETA OFFICIALS WORKING TO RECOVER SOME FUNDS

After discovering some of the facts and events surrounding this particular project, Federal CETA officials have moved quickly to find out exactly how Federal funds were spent and have assured me that they will attempt to recover any funds improperly spent.

However, for failing to initially properly review and question this obvious misuse of Federal funds, I am awarding my Golden Fleece Award for September to the Department of Labor.

THE 128TH TACTICAL AIR DEFENSE WING OF MADISON, WIS.

Mr. PROXMIRE. Mr. President, I would like to take this opportunity to congratulate the 128th Tactical Air Support Squadron of the Wisconsin National Guard for continuing to uphold the excellent standards they have previously set.

This year, the 128th not only received an "excellent" rating in its first operational readiness inspection, but also was told by the inspection team that it had performed better than any other active duty, Reserve, or Guard unit.

The No. 1 designation for the 128th is nothing new for this exemplary unit. Previously they won the William Tell competition. They have been named the best air guard and air fighter unit in the country. And they have had a pilot named outstanding airman.

Because it has done such outstanding work in the past, the 128th was chosen to break-in the close air support OA–37, the first jet used by the Air Force to receive observation designation and to be used regularly as forward air control aircraft.

I would like to express my admiration to the 128th Tactical Air Defense Squadron for its superb performance. I have no doubt that in the future they will continue to serve our Nation well.

It is for this reason that I ask unanimous consent that the article "Still Leading the Way" from the magazine Airman, which describes the achievements of the 128th squadron, be reprinted in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DESPITE CHANGING AIRCRAFT, THE WISCONSIN ANG IS STILL LEADING THE WAY

(By Sgt. Craig Pugh)

Capt. Curtis Fetty whipped his OA–37 around in a tight turn, then descended on a 20-degree run toward the target. The range officer's voice came through his radio headset matter-of-factly. "Blue Lead, clear to fire." Fellow pilots had preceded Fetty on their rocket runs, missing the target truck by scant meters.

Capt. Fetty was in complete concentration now as he took a final visual reading of the target. It was a mile ahead and about 500 feet below. He carefully aimed his 2.75mm rocket and then fired.

"Blue Leader—bullseye" shouted the range officer not so matter-of-factly. His tone was congratulatory, but he didn't sound surprised. Being on target is nothing new to members of the Wisconsin Air National Guard's 176th Tactical Air Support Squadron from Madison.

The truth is that the squadron is downright comfortable holding a number one position, no matter the mission. Squadron members are busy breaking in the OA–37 as the first jet in Air Force history to receive the observation designation and be used regularly as a forward air control aircraft.

Leading the total force—active duty, Guard, and Reserve—in this conversion takes a winning attitude, something the Wisconsin guardsmen have spent years cultivating.

When they were flying F–102s in 1972, squadron pilots competed with other Guard, Reserve, and active duty fliers in the prestigious William Tell competition and flew away with five awards, including the "top gun" trophy. They aced their closest competitor by more than 1,400 points.

Also in 1972, a 176th squadron pilot won the Air Guard's outstanding airman award, presented to only one pilot from the nation's 91 Guard flying squadrons.

In 1973, the 176th was recognized by the Air Force Association as the best Air Guard unit in the country. That year the 176th won the Spaatz Trophy, too, awarded by the Air Force to the outstanding Guard flying unit.

In addition, the American Fighter Pilots Association's Winston P. Wilson Trophy, presented annually to the best jet fighter unit, was won by the 176th in 1973.

But that victory was bittersweet. While the unit survived a tentatively planned base closure, 176th pilots sadly traded in their beloved "Deuce"—the 800-mph F–102 *Delta Dagger*—for the 190-mph prop-driven O–2A. Even though their air defense mission went the way of the F–102s, the 176th was happy to be still flying and tackled the fine points of their new forward air control mission with customary zeal.

But that, too, is history. Recent force modernization and realignment resulted in Air Force planners directing that a limited number of the small but versatile OA–37 jets be used as Guard FAC aircraft, and that three of the Madison wing's six squadrons would get them.

Keen, as always, in competition, the 176th won first honors. The unit received its first OA–37s (OA for observation/attack) in September 1979. Tactical Air Command required the unit to be marginally combat ready by April 1, 1980. True to form, the 176th was fully combat ready—on April Fool's Day.

"I talked it over with the squadron pilots and maintenance people when we first received the thirty-seven," said Col. David B. Hoff, commander of the 128th Tactical Air Support Wing, the only Air National Guard FAC wing in the nation and the 176th's parent unit. "Everyone felt we could be fully combat ready by April. And once we made the decision there was never any doubt, really, that we would make it."

There was an added incentive that was explained by Col. Donne C. Harned, 128th TASW vice commander. "It's great to be back in jets again, and the thirty-seven's a burner!"

"It's fast, it's small and it can turn on a dime," added 176th TASS pilot Capt. Fetty.

CMSgt. Leonard J. King provided the maintenance specialist's viewpoint. "Thirty-sevens aren't difficult to maintain. It's a good plane. She's a stout bird and takes punishment well. In those high-G turns over target areas, this aircraft is needed. It's a 'rattler'," he said.

Obviously, members of the 176th and its parent organization are enthusiastic about the OA–37. Fighter people by trade and preference, they spend a lot of time discussing FAC tactics.

The squadron's mission is to fly and fight, and they haven't forgotten it. "Our whole reason for being is to be ready," said CMSgt. King, "and we work hard at it."

And well they should; the art of forward air controlling, as with most aspects of aerial warfare, has become more sophisticated. And the professional FACs must keep up with the changes.

Baptized in battle during Vietnam, many FAC crewmen wrote chapters in aerial history while improving FAC tactics learned while performing their vital combat support mission. Many returned from Vietnam and active duty Air Force tours to join Guard units. In the interim, the development of more accurate enemy surface-to-air missiles triggered newer FAC tactics and the use of faster aircraft.

Capt. Fetty, a 203-mission O-2A FAC in 1972, summarized his active duty flying in Southeast Asia this way: "Sometimes, when the enemy was firing everything he had to bring me down, I'd wish I had a faster airplane so I could get the hell out of the area," he said. Flying the OA–37 gives pilots added confidence they will survive in combat, he noted.

The aircraft's turbojet engines generate 5,700 pounds of thrust that can produce .7

Mach (507 mph) speed. The wings have been beefed-up to take heavier G loads during tight turns. The OA-37s are light, quick, and highly maneuverable—making them particularly well-suited for the FAC mission.

" 'FACing' involves 'creeping up' at treetop level to the forward edge of the battle area, so to speak, and 'popping up' to quickly ascertain your target," said Capt. Fetty. "At the height of the pop, you fire your rocket and mark the target. Then you radio final strike coordinates to the waiting fighter force of F-4s, A-7s, A-10s or whatever, and they go in and clobber the target."

Flying forward air control missions has always been done that way in principle, but the new bird—the 0A-37—endears itself to pilots because at the height of its pop, when it is most vulnerable, the aircraft can be put into a six-G dive to escape the threat.

"It takes a little danger out of an already hazardous mission," said Capt. Fetty. "We carry fourteen marking rockets on the aircraft, so in combat we can be exposed to enemy fire at least fourteen times in the course of marking targets."

The OA-37 also boasts a 7.62 minigun, mounted in the right front fuselage. It has both a functional and psychological role, because any fighter pilot is more comfortable with a gun on his aircraft. The minigun also gives the FAC an ability to delay or halt enemy forces with firepower until strike fighters can be called in.

"The bottom line of our mission," explained Col. Hoff, "is to 'hit' the target the Army commander asks to be hit."

The linchpin to the operation is precise target marking by the airborne FAC, who is plugged into a command, control, and communication network. The airborne FAC does not operate independently. He is a vital link in a battlefield chain of command that results in the destruction of a target.

Two distinct components make the chain effective: the U.S. Army ground commander and his supporting Air Force tactical air control party (TACP), which is composed of personnel on the ground with their communications gear, as well as the airborne FAC flying in, around, and over the target area.

Constant coordination is required to ensure effective target-marking for destroying enemy targets while preventing damage to friendly forces in close proximity to the targets. It's the atmosphere a FAC must operate in.

"That's why you can never get too much experience," said Capt. Fetty. "There's a tremendous amount of judgment and responsibility involved in a FAC decision. Our squadron's Southeast Asia veterans have been sharpening their judgment skills for about ten years, so we've never stopped learning."

Wisconsin's abundance of excellent gunnery ranges makes the area ideal for the type of training the guardsmen need. Working with Army units from Fort McCoy—a huge range complex with mock convoys and other targets of opportunity—the Madison-based air and ground operators combine to provide forward air control for Guard, Reserve, and active duty strike fighters from throughout the Mideast. Rocketing and strafing skills are honed at a nearby range that is considered one of the best in the nation.

On a typical training day, A-7's fly in from Sioux City and Des Moines, Iowa, and Sioux Falls, S.D.; F-4s converge from Springfield, Ill., and occasionally from Fargo, N.D., and Selfridge ANGB, Mich. The 176th TASS forward air controllers support the fighters on their training missions.

"We fly over Fort McCoy, about seventy-five miles northwest of here," said Col. Harned, "and radio target coordinates and approach information to the fighters."

While the FACs and fighters are in the sky, Air Force members work with the Army ground forces. Squadron OA-37 pilots also take turns at performing the ground FAC role. A pilot and an enlisted tactical air command and control specialist form a TACP.

"Ground FACing involves coordinating air strikes for the Army from an MK-108 jeep—a radio on wheels," explained MSgt. Bill Sheppard. "We're the middlemen between the FAC in the air and the Army commander."

"It takes a lot of teamwork when you're all in the target area," said Col. Harned, understating the amount of close coordination that's needed.

Two other squadrons in Madison's 128th Tactical Air Support Wing are training in their O-2As for OA-37s. The Peoria, Ill., squadron has already made the transition, and its sister squadron from Battle Creek, Mich., will convert in October. All three squadrons will be FAC-qualified in the OA-37 and combat ready by spring 1981.

The conversion to OA-37s substantially boosts the Air Force's FAC capability and contributes to the total force policy—the training of Guard and Reserve units that would take their place alongside active duty forces in a national emergency.

The first 23 Madison-based pilots to learn OA-37 flying were taught by Air Force Reserve pilots at Barksdale AFB, La. The Guard fliers then returned to Wisconsin to train their fellow pilots in the 176th. Approximately 50 hours are required to become a qualified OA-37 FAC.

Technicians from five Air Force bases traveled to Madison to train the Guard maintenance specialists, some of whom then went TDY to Indiana, Ohio, and New York to learn more about OA-37 jet engine repair.

Additional flying training was provided by the A-37 Reserve squadron from Barksdale that flew to Madison and helped train the Wisconsin squadron. The Reserve unit was able to keep flying—its runway was closed for repairs—and the Guard unit gained valuable A-37 training.

Total-force planning and training keep all members of Madison's 128th TASW busy. Of 850 people assigned, only 165 are full-time guardsmen, and they operate the squadron year-round. The other wing members are part-time guardsmen, often called "weekend warriors." During their annual 15-day active duty training, they are constantly on the go.

"Right now our civil engineers are in Utah learning rapid runway repair," said Lt. Col. Ralph C. Jensen, 128th TASW safety officer and a rated OA-37 FAC. "And our medics and security policemen were at Homestead [AFB] last year to work alongside their active duty counterparts."

Support from the top plays an important role, too, in keeping the 128th Tactical Air Support Wing and the 176th Tactical Air Support Squadron on a ready basis.

Maj. Gen. Raymond A. Matera, Wisconsin ANG adjutant general, frequently travels to Air Force headquarters where he serves as chairman of the Air Reserve Forces Policy Committee, which advises the secretary of the Air Force on Guard and Reserve policy matters. In 1960, then-Capt. Matera was squadron commander of the 176th.

Wisconsin Gov. Lee S. Dreyfus provides strong backing for his Guard units. "As a former communications arts professor whose doctoral dissertation pertained to propaganda in relation to the military draft, I understand the Guard's role in our nation's history," he said. "I feel our American love of democracy demands that I keep people interested in the Guard. It's vital." His support includes participating in Guard activities to help publicize the Wisconsin ANG role in the total force policy and to spur recruitment efforts in his state.

"The Guard's mission is to serve both the state and the nation," Gov. Dreyfus emphasized. "It's a service that requires patriotism, something we've never been short of here in the Dairy State."

Capt. Curtis Fetty is typical of those who gravitate toward the Guard during peacetime. "I feel a calling to the Air Force," he said. "If I have any military talent, it's the ability to fly missions. And if I don't do it and others like me don't do it, who will? I guess that's why I'm in the Guard.

For SSgt. Rosemary Meier, a secretary before joining the Wisconsin unit five years ago, the Guard has given her "a great deal of personal satisfaction." She decided to become a full-time unit technician three years ago and is now "Guard all the way," as she likes to put it.

It's the Fettys, Meiers, and others like them across the country who keep the total force policy alive. And it's units like the 176th TASS, the first Guard jet FAC force, that leads the way in molding that policy into a reality.

SMALL ACTS OF CHARITY REMIND US OF NEED FOR GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, Rachel Auerbach, a Jewish writer and survivor of the Warsaw ghetto, describes the persecution of the Poles who refused to cooperate with the Nazi policy of genocide. In his words, "They were university professors, railroad workers, bus drivers, priests, wives of high officers in the army, peddlers, merchants, and peasants, particularly peasants who, for a single act of charity, giving of a loaf of bread to a Jew, a pint of milk or a night's accommodations in a barn, were cruelly punished, often killed, and their homes set on fire by the Germans."

Despite these risks, some courageous souls defied the Nazis. In Glowno, Poland, Jews who ventured out in search of food usually returned with a bag of potatoes. Such seemingly small acts of assistance often meant life or death. Small acts translated into heroic deeds.

The Jewish writer, Wolf Glicksman, indicated the importance of such acts. When he arrived in Auschwitz, he met Josef Cyrankiewicz. The first thing Josef did was to discretely give Wolf Glicksman a sizable slice of bread. To Glicksman this represented the highest expression of human charity.

The Senate has the opportunity to ratify the Genocide Convention, an act that would become an important, symbolic deed. This treaty will serve as a fundamental document that sets forth international standards to deal with the crime of genocide. Just as a small act during the Nazi regime held important consequences, so would our refusal to pass the Genocide Convention as soon as possible.

MESSAGES FROM THE HOUSE

At 12:40 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 670. An act to require the Secretary of Agriculture to establish and maintain a rural development policy management process, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment in which it requests the concurrence of the Senate:

S. 1946. An act to reform the economic regulation of railroads, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5856. An act to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel.

ENROLLED BILLS SIGNED

At 1:12 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes;

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes;

H.R. 5766. An act to authorize additional Reserve Officers Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes; and

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that Act to assure the safety and nutrition of infant formulas, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 2:22 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House has passed the following bills, each with an amendment in which it requests the concurrence of the Senate:

S. 2223. An act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons; and

S. 2443. An act to authorize the Department of Energy to carry out a high-level nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2170. An act to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government;

H.R. 3765. An act to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities;

H.R. 6175. An act to provide that certain lands constituting part of the El Dorado National Forest be conveyed to cetrain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map;

H.R. 6796. An act to amend and extend title VII of the Comprehensive Employment and Training Act; and

H.R. 7519. An act to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended.

At 6:05 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the House agrees to the amendment of the Senate to the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans Administration for the fiscal year ending September 30, 1980.

(The enrolled joint resolution was subsequently signed by the President pro tempore (Mr. MAGNUSON).)

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 5856. An act to amend title 32, United States Code, to allow Federal recognition as officers of the National Guard of members of the National Guard of the Virgin Islands in grades above the grade of colonel; to the Committee on Armed Services.

H.R. 6175. An act to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map; to the Committee on Energy and Natural Resources.

H.R. 6796. An act to amend and extend title VII of the Comprehensive Employment and Training Act; to the Committee on Labor and Human Resources.

H.R. 7519. An act to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended; to the Select Committee on Indian Affairs.

HOUSE BILLS HELD AT THE DESK

The following bills were ordered to be held at the desk:

H.R. 2170. An act to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government.

H.R. 3765. An act to provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 16, 1980, he had presented to the President of the United States the following enrolled bills:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilites for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes;

S. 1625. An act to amend the Act of December 20, 1944, as amended; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, without amendment:

S. 3116. An original bill to amend the National Historic Preservation Act of 1966, and for other purposes (Rept. No. 96-943).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 494. A resolution authorizing the printing of the report entitled "Progress in the Prevention and Control of Air Pollution in 1978 and 1979" as a Senate document (Rept. No. 96-944).

S. Res. 520. An original resolution relating to the purchase of calendars (Rept. No. 96-945).

By Mr. LONG, from the Committee on Finance, without amendment:

H.R. 7670. An act to amend title II of the Social Security Act to make necessary adjustments in the allocation of social security tax receipts between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (Rept. No. 96-946).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 510. A resolution authorizing supplemental expenditures by the Select Committee on Indian Affairs (Rept. No. 96-947).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment (in the nature of a substitute):

S. Res. 448. A resolution to make the Select Committee on Indian Affairs a permanent committee of the Senate (Rept. No. 96-948).

By Mr. RANDOLPH, from the Committee on Environment and Public Works, without amendment:

S. Res. 521. An original resolution to waive section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1480, creating an Environmental Emergency Response Fund to mitigate damages from spills of hazardous materials. Referred to the Committee on the Budget.

By Mr. HOLLINGS, from the Committee on Appropriations, with amendments:

H.R. 7584. An act making appropriations for the Departments of State, Justice, and

Commerce, the Judiciary, and related agencies for the fiscal year ending September 30, 1981, and for other purposes (together with additional views) (Rept. No. 96–949).

By Mr. KENNEDY, from the Committee on the Judiciary, with an amendment, an amendment to the title, and with a preamble:

S. Res. 482. A resolution to designate the third week of September of each year as "American Buffalo Week".

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment, but with a preamble:

S.J. Res. 197. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

H.J. Res. 594. Joint resolution to authorize and request the President to issue a proclamation designating September 18, 1980, as "Constantino Brumidi Day".

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BUMPERS (from the Committee on Energy and Natural Resources):

S. 3116. A bill to amend the National Historic Preservation Act of 1966, and for other purposes. Original bill reported and placed on the calendar.

By Mr. HEINZ:

S. 3117. A bill for the relief of Remigio Aquino and his wife Ines Aquino; to the Committee on the Judiciary.

By Mr. STONE:

S. 3118. A bill to require that the Secretary of Agriculture insure farmers of equitable opportunities to market their Flue-cured tobacco, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURENBERGER:

S. 3119. A bill to amend the Internal Revenue Code of 1954 to provide limitations with respect to the issuance of mortgage revenue bonds the interest on which is exempt from the Federal income tax; to the Committee on Finance.

S. 3120. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STONE:

S.J. Res. 203. Joint resolution to authorize and request the President to proclaim the month of October 1980 as "American White House Replica Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STONE:

S. 3118. A bill to require that the Secretary of Agriculture insure farmers of equitable opportunities to market their Flue-cured tobacco, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

MARKETING OF FLUE-CURED TOBACCO

• Mr. STONE. Mr. President, I am today introducing legislation to insure that flue-cured tobacco farmers have equitable opportunities to market their tobacco in an orderly and efficient manner.

The bill would amend the Tobacco Inspection Act to require the Secretary of Agriculture to insure that a sufficient number of inspectors are available to allow all flue-cured tobacco auction warehouses to conduct not less than one sale each week during the flue-cured tobacco marketing season.

This is a matter that I had hoped would be handled administratively under existing law, and I urge the Department of Agriculture to do so.

The present situation is intolerable. Small tobacco markets in Florida and Georgia are being forced to cease to operate because of a lack of adequate selling time to service their local farmers. As a result, farmers are being forced to abandon the small markets that they have used over the years and are having to truck their tobacco longer distances to larger markets. This is necessary so that they can sell tobacco before it starts to deteriorate.

The bill includes other provisions—drawn in part from legislation requested by the Secretary of Agriculture and submitted to Congress last year—to improve the grower designation plan under which farmers designate the tobacco markets at which they intend to market their tobacco. Among other things, the bill would subject violators of marketing schedules to monetary penalties. Presently, the Department's only recourse is to temporarily withdraw inspection service for program violations. The closing of warehouses for lack of inspectors works to the obvious disadvantage of tobacco farmers.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3118

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Tobacco Inspection Act is amended by—

(1) inserting after section 5 new sections 6 and 7 as follows:

"SEC. 6. (a) In order to provide tobacco growers the opportunity to market their tobacco in an efficient and equitable manner, the Secretary may:

"(1) Require each tobacco grower to specify the location, warehouse, other facility or person through which or to whom the grower intends to market the grower's tobacco.

"(2) Issue marketing schedules that allocate available sales opportunity to locations, warehouses, other facilities, or persons through which tobacco is marketed. In developing such schedules the Secretary shall take into consideration the following factors:

"(A) the locations, warehouses, other facilities, or other persons at or through which tobacco growers have signified their intent to sell their tobacco;

"(B) the size of the tobacco crop;

"(C) the capacity of processing facilities;

"(D) weather and crop conditions; and

"(E) any other factors that the Secretary considers will affect the opportunity of tobacco growers to market their tobacco in an efficient and equitable manner.

"(3) Prohibit unfair methods of competition and unfair trade practices involving the sale and purchase of the growers' tobacco.

"(4) Provide a method for fixing the size, capacity, weight, dimensions, pack, or condition of the container or containers used in the marketing of the tobacco.

"(5)(A) Require periodic reports from growers, warehouses, purchasers of tobacco, processors of tobacco, and other persons. These reports shall be furnished in accordance with forms prescribed by the Secretary that may include, but not be limited to, (i) the amount of tobacco by acreage that is planted or expected to be planted or the amount of tobacco expected to be produced, or both; (ii) the amount of tobacco sold at a warehouse or other facility during any period of time determined by the Secretary; (iii) the amount of tobacco purchased during any period of time specified by the Secretary or the amount expected to be purchased; and (iv) the amount of tobacco processed during any period of time specified by the Secretary or the amount of tobacco that a facility is capable of processing, or both.

"(B) Each person who is required to submit a report under this section shall maintain such records as are necessary to enable the Secretary to verify such reports. Such records shall be retained for a period of time specified by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary under this section, or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the Secretary may examine such books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda, which the Secretary deems relevant and are within the control of (i) the person from whom such report was requested, (ii) any person having, either directly or indirectly, actual or legal control of or over the person from whom such report was requested, or (iii) any subsidiary of any such person.

"(C) All information furnished to or acquired by the Secretary under this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information as the Secretary deems relevant shall be disclosed by them and then only in a suit or administrative proceeding involving the Secretary's adminisrtation of this Act brought at the direction, or upon the request, of the Secretary, or to which the Secretary or the United States or any officer thereof is a party. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of parties that do not identify the information furnished by any person or (ii) the publication at the discretion of the Secretary, of the name of any person violating this Act. Any officer or employee of the Department of Agriculture violating the provisions of this section shall upon conviction be subject to a fine of not more than $500 and shall be removed from office.

"(b) In developing marketing schedules under this section or any other provision of law, the Secretary shall insure that a sufficient number of inspectors are available to allow all Flue-cured tobacco auction warehouses to conduct not less than one sale each week during the Flue-cured tobacco marketing season.

"SEC. 7. (a)(1) Any warehouse or other person subject to a marketing schedule issued under section 6 of this Act who exceeds the sales opportunity specified in such marketing schedule shall forfeit to the United States a sum equal to one-third of the value of tobacco sold in excess of that authorized by the marketing schedule, which shall be paid to the Secretary. The value of such excess shall be computed by multiplying the average sales price of the tobacco sold during the relevant period by the amount of the excess tobacco sold.

"(2) Forfeitures under this section, that are not paid within thirty days after notice by the Secretary shall be recoverable in a civil suit brought by the Attorney General in the name of the United States.

"(3) Forfeitures received or recovered under this section shall be deposited in the Treasury of the United States.

"(b)(1) Any person, within twenty days after being notified by the Secretary that a forfeiture is due under this section and after payment of such forfeiture to the Secretary, may file a written petition with the Secretary stating that the imposition of such forfeiture is not in accordance with law and praying for revocation or modification thereof. Each person who files a written petition with the Secretary shall thereupon be given an opportunity for a hearing upon such petition in accordance with sections 554, 556, and 557 of title 5 of the United States Code. The Secretary shall make a ruling upon the prayer of such petition, which shall be final if in accordance with law.

"(2) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are vested with jurisdiction to review the ruling of the Secretary on a petition filed under this section if a complaint for that purpose is filed with the appropriate district court within twenty days from the date of the entry of the ruling of the Secretary. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions to refund the forfeiture paid. The pendency of proceedings instituted under this subsection shall not impede, hinder, or delay the United States or the Secretary from obtaining relief under subsections (a) or (c) of this section.

"(c) The district courts of the United States for any district in which a person subject to the provisions of this Act is an inhabitant, or has his principal place of business, are vested with jurisdiction specifically to enforce the provisions of this Act and to prevent and restrain any person from violating any provision of the Act or any marketing schedule or regulation heretofore made or issued under this Act.";

(2) redesignating sections 6 through 18 as sections 8 through 20, respectively; and

(3) in section 14, as redesignated by 3 of this section, striking out "10" and inserting in lieu thereof "12".●

By Mr. DURENBERGER:

S. 3119. A bill to amend the Internal Revenue Code of 1954 to provide limitations with respect to the issuance of mortgage revenue bonds the interest on which is exempt from the Federal income tax; to the Committee on Finance.

TAX EXEMPT BONDS FOR HOUSING ACT

● Mr. DURENBERGER. Mr. President, today I am introducing a bill that provides for the limited use of tax-exempt bonds to provide mortgage funds for low- and moderate-income families.

Mr. President, there are five broad elements essential to a housing policy for the 1980's: First, tax incentives and disincentives; second, the flexibility of Government programs; third, the mix of housing—and by that, I mean the price mix, the balance between rental and owned housing and the need to upgrade present stock and complement rehabilitated homes with new construction; fourth, energy; and finally, the cost of housing.

As a member of the Committee on Finance, I consider the Federal tax system as important a factor in housing as are our housing laws. One of our major areas of concern is tax-exempt bonds. I believe strongly that tax-exempt bonds are an important and necessary part of any housing policy.

Mr. President, the House of Representatives has approved a revised mortgage revenue bond bill which is before the Senate Finance Committee. Unfortunately, as presently drafted, the bill would effectively end the tax-exempt status of mortgage revenue bonds for single-family housing. The House bill is the result of growing apprehension that the proliferation of such bond issues would have an increasing and adverse impact on Federal revenues and would result in questionable public policies. One of the most serious complaints made about certain bond issues involved their use by localities to reduce mortgage costs for high-income families, without any restrictions on where such mortgage proceeds could be used.

Under present law, State and local governments may issue tax-exempt bonds for single and multifamily housing. The lower tax-exempt interest rates on the bonds allow the State and local government to relend the proceeds to individuals at approximately 1 to 2 percentage points below conventional home mortgage interest rates. In some instances, the bond proceeds are applied toward the purchase of high-price housing by high-income individuals.

Mr. President, it is possible to eliminate these abuses while maintaining the use of revenue bonds for a much needed housing program that does not require an exercise of judgment or restraint by either the administration or the Congress.

In 1979, the Minnesota Legislature passed the Schreiber-Humphrey bill to control the use of tax-exempt bonds for housing at the State level. This legislation ended the abuses surrounding housing mortgage bonds in Minnesota.

The cities of Minneapolis and Saint Paul have made wise use of this method of financing housing to rebuild their cities, retain residents in their communities and attract people back to the central cities.

Small cities around the State of Minnesota have also made good use of this method to increase available housing and help young families to purchase their first home.

The Minnesota Housing Finance Agency has a very commendable record of providing housing that otherwise would not have been available without the use of tax exempt housing mortgage bonds. Since 1971 when the agency was formed, they have provided the following units:

Apartment units	14,370
Single family home mortgages	8,700
Home improvement loans	22,000

Total dollars in loans provided by the agency using mortgage revenue bonds are:

[In millions]

Apartment development	$414
Developmentally disabled (group homes)	4.1
Single family home mortgages	265
Home improvement loans	105

Besides providing housing that may not otherwise have been built, the economy, State and Federal, is enriched with the jobs provided and the materials and equipment consumed. The bonds have been a major factor in keeping one of our key industries of our Nation functioning.

Mr. President, in order to respond to the legitimate criticism of the use of tax exempt bonds for housing, the bill I am introducing contains the following qualifications for single family housing:

First. Single family housing is defined as owner occupied residence of not more than four dwelling units or any owner occupied unit in a condominium or cooperative.

Second. The income of owners is limited to individuals receiving 120 percent of HUD median for nontarget areas, and 150 percent for target areas.

Third. The purchase price in nontarget areas is limited to three times the income limits and in target areas to four times the income limits.

Fourth. The limitation of the amount of bonds that can be issued in any 1 year offers a two-step option:

State housing finance agencies have a 10-percent limitation based upon the average of the amount of mortgages issued during the preceding 3 years within the jurisdiction of the agency. This formula also provides that if the cities do not use their full percentage, the State may use a certain amount.

Local housing finance agencies also have a 10-percent limitation based upon the average of the amount of mortgages issued during the preceding 3 years within the jurisdiction of such agencies. The local agencies have an optimal limitation at their election as follows: $1,000 per capita based upon the latest State or Federal census for the first 50,000 of population and $500 per capita in excess of 50,000. This would be a permanent lid subject to any census increase in population.

Fifth. Target areas residences must meet one of the three following definitions:

First. A qualified census tract—a tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located or a census tract which qualifies for benefits under the community development block grant program of the Department of HUD.

Second. An area of chronic economic distress as designated by the State as meeting the standards established by the State. Or which is part of a city eligible for urban development action grant made under the Housing Community Development Act of 1974.

Third. A lighted area which qualifies under applicable State law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities are detrimental to the safety, health, morals, or welfare of the community.

Projects for residential rental property will qualify if 20 percent of the units in each project are to be occupied by individuals of low or moderate income and at least 55 percent of the units in each project are to be occupied by individuals earning no more than 150 percent of low- and moderate-income individuals. The income limits will be determined by the

Secretary of HUD under section 8 of the Housing Act.

Mr. President, the sale and purchase of housing revenue bonds are investments which contribute to the basic housing stock of the Nation. This investment reduces the inflationary demand for housing by increasing the supply. But more importantly, to a large degree, the Congress and the administraton are removed from the housing industry. Key decisions in this area will be properly made by State and local experts with a minimum of costly interference by the Federal Government.

Mr. President, tax exempt bonds are a valuable housing tool if used wisely. The bill I am introducing will eliminate the abuses while preserving reasonable and workable restrictions on the issuance of tax exempt bonds to provide housing to families with below average incomes.

Mr. President, I ask unanimous consent that an editorial from the Minneapolis Tribune, a section-by-section analysis of the bill, and the bill be printed in the Record.

There being no objection, the bill and material were ordered to be printed in the Record, as follows:

S. 3119

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tax Exempt Bonds for Housing Act".

Sec. 2. Mortgage Susidy Bonds.

(a) In General.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by inserting after section 103 the following new section:

"Sec. 103A. Mortgage Subsidy Bonds.

"(a) General Rule.—Except as otherwise provided in this section, any mortgage subsidy bond shall be treated as an obligation not described in subsection (a) (1) or (2) of section 103.

"(b) Mortgage Subsidy Bond Defined.—

"(1) In general.—For purposes of this title, the term 'mortgage subsidy bond' means any obligation which is issued as part of an issue any portion of the proceeds of which are to be used directly or indirectly to make or purchase loans (including mortgages and other owner-financing) with respect to single-family residences.

"(2) Exception.—A qualified mortgage bond shall not be treated as a mortgage subsidy bond.

"(c) Qualified Mortgage Bond: Qualified Mortgage Issue.—

"(1) Qualified mortgage bond defined.—For purposes of this title, the term 'qualified mortgage bond' means an obligation which is issued as part of a qualified mortgage issue.

"(2) Qualified mortgage issue defined.—For purposes of this title, the term 'qualified mortgage issue' means an issue by a State, a political subdivision of a State, or any other entity authorized by State law to issue mortgage revenue bonds of one or more obligations, but only if—

"(A) all proceeds of such issue (exclusive of issuance costs, administrative expenses, and a reasonably required reserve) are reasonably expected to be used to finance owner-occupied residences, and

"(B) such issue is reasonably expected, at the time it is issued—

"(i) in the case of an obligation issued by a State housing finance agency, to meet the requirements of subsection (g), and

"(ii) in the case of any other obligation, to meet the requirements of subsections (d), (e), (f), (g), and (h).

"(d) Residence Requirements.—

"(1) For a residence.—A residence meets the requirements of this subsection only if—

"(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

"(B) it is located within the jurisdiction of the authority issuing the obligation.

"(2) For an issue.—An issue meets the requirements of this subsection only if all of the residences for which owner-financing is provided under the issue meet the requirements of paragraph (1).

"(e) Purchase Price Requirement.—

"(1) In general.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is to be provided under the issue does not exceed 300 percent of the median family income for the statistical area in which the residence is located.

"(2) Special rule for target area residences.—In the case of a target area residence, paragraph (1) shall be applied by substituting '400 percent' for '300 percent'.

"(f) Income Requirements.—

"(1) In general.—An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 120 percent or less of the median family income for the statistical area in which the residence is located.

"(2) Determination of family income.—For purposes of this subsection, the family income of mortgagors, and median family income, shall be determined in accordance with the regulations prescribed by the Secretary of Housing and Urban Development under section 8 of the United States Housing Act of 1937.

"(3) Special rule for applying paragraph (1) in the case of target area residences.—In the case of any financing provided under any issue for target area residences, paragraph (1) shall be applied by substituting '150 percent' for '120 percent'.

"(g) Limitation on Aggregate Amount of Qualified Mortgage Bonds Issued During Any Calendar Year.—

"(1) In general.—An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto, when added to the aggregate amount of qualified mortgage bonds previously issued during the calendar year, does not exceed the applicable limit for that calendar year. For purposes of this subsection, any portion of an issue used to finance qualified rehabilitation loans shall be disregarded.

"(2) Applicable limit for state housing finance agencies.—

"(A) 10-percent limit.—The applicable limit for qualified mortgage bonds issued by a State housing finance agency for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences within the jurisdiction of the State housing finance agency.

"(B) Additional percent.—The applicable limit under subparagraph (A) for any calendar year following a calendar year for which local housing agencies within a State issued qualified mortgage bonds in an aggregate amount which was less than the applicable limit for such agencies (referred to as the 'unused limit year') shall be increased bp a percent equal to the number of percentage points by which the limit in paragraph (3)(A) for local housing agencies in that State exceeded the aggregate amount of such bonds issued during the unused limit year by such agencies.

"(3) Applicable limit for local housing finance agencies.—

"(A) 10-percent limit.—The applicable limit for qualified mortgage bonds issued by local housing agencies within a State for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family owner-occupied residences with the jurisdiction of such agencies.

"(B) Optional limitation.—At the election of a local housing finance agency, made at such time, in such manner, and by such official as the Secretary of Housing and Urban Development may require, the applicable limit for qualified mortgage bonds issued by a local housing finance agency shall be the sum of—

"(i) $1,000 multiplied by so much of the population of the area within the jurisdiction of such agency as does not exceed 50,000 persons, and

"(ii) $500 multiplied by so much of the population of such area as exceeds 50,000 persons.

An election under this subparagraph shall be irrevocable and shall apply for the year for which made and all following calendar years. The population of the area within the jurisdiction of the agency shall be determined on the basis of the most recent Federal, State, or local census data available.

"(4) Overlapping jurisdictions.—If 2 or more governmental units have authority (determined without regard to paragraph (1)) to issue qualified mortgage bonds with respect to residences in the same geographical area, for purposes of this subsection only the unit having jurisdiction over the smallest geographical area shall be treated as having issuing authority with respect to such area unless such unit agrees to surrender part or all of such authority for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

"(h) State Opinion That Issue Meets Federal Requirements.—An issue meets the requirements of this subsection only if a preliminary official statement of such issue has been submitted to a State agency designated by the Governor of the State and—

"(1) such agency has, within 30 days after the date of such submission, issued an opinion that such issue meets the requirements of subsection (g) of this section, or

"(2) 30 days have elapsed since such submission and during such 30-day period the State agency has not issued an opinion that the issue does not meet the requirements of subsection (g) of this section.

"(i) Target Area Residences.—

"(1) In general.—For purposes of this section, the term "target area residence' means a residence located in—

"(A) a qualified census tract,

"(B) an area of chronic economic distress, or

"(C) a blighted area.

"(2) Qualified census tract.—

"(A) In general.—For purposes of paragraph (1)(A), the term 'qualified census tract' means—

"(i) a census tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located, or

"(ii) a census tract which qualifies for benefits under the Community Development Block Grant Program of the Department of Housing and Urban Development.

"(B) Data used.—Determinations under subparagraph (a) shall be made on the basis of the most recent decennial census for which data are available.

"(3) Area of chronic economic distress.—

"(A) In general.—For purposes of paragraph (1), the term 'area of chronic economic distress' means an area of chronic economic distress—

"(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and approved by the Secretary of Housing and Urban Development, or

"(ii) which is part of a city eligible for an urban development action grant made under section 119 of the Housing and Community Development Act of 1974.

"(B) Criteria to be used in approving state designations.—The criteria used by the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

"(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

"(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

"(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

"(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

"(4) Blighted area.—For purposes of paragraph (1)(C), the term 'blighted area' means an area which qualifies under applicable State law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage or deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

"(j) Other Definitions and Special Rules.—For purposes of this section—

"(1) Single-family residence.—The term 'single-family residence' means an owner-occupied residence in a building with not more than 4 dwelling units, or an owner-occupied residential unit in a condominium or cooperative housing project.

"(2) Mortgage.—The term 'mortgage' includes any other owner-financing.

"(3) Bond.—The term 'bond' includes any obligation.

"(4) State.—The term 'State' includes a possession of the United States and the District of Columbia.

"(5) Statistical area.—

"(A) In general.—The term 'statistical area' means—

"(i) a standard metropolitan statistical area, and

"(ii) any county (or the portion thereof) which is not within a standard metropolitan statistical area.

"(B) Standard metropolitan statistical area.—The term 'standard metropolitan statistical area' means the area in and around a city of 50,000 inhabitants or more (or equivalent area) as defined by the Secretary of Commerce.

"(C) Designation where adequate statistical information not available.—For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

"(D) Designation where no county.—In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for 'county' an area designated by the Secretary of Housing and Urban Development which is the equivalent of a county.

"(6) Acquisition cost.—

"(A) In general.—The term 'acquisition cost' means the cost of acquiring the residence as a completed residential unit.

"(B) Exceptions.—The term 'acquisition cost' does not include—

"(i) usual and reasonable settlement or financing costs,

"(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

"(iii) the cost of land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

"(C) Special rule for qualified rehabilitation loans.—In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term 'acquisition cost' includes the cost of the rehabilitation.

"(7) Qualified home improvement loan.—The term 'qualified home improvement loan' means the financing (in an amount which does not exceed $15,000)—

"(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

"(B) only of such items as substantially protect or improve the basic livability of the property.

"(8) Qualified rehabilitation loan.—

"(A) In general.—The term 'qualified rehabilitation loan' means—

"(i) any owner-financing provided in connection with—

"(I) a qualified rehabilitation, or

"(II) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation;

"(ii) a qualified home improvement loan, or

"(iii) a loan made under section 312 of the Housing Act of 1964.

"(B) Qualified rehabilitation.—For purposes of subparagraph (A), the term 'qualified rehabilitation' means any rehabilitation of a building if—

"(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins, and

"(ii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation of, if later, the date on which the mortgagor acquires the residence.

"(k) Special Rule for Issue Used for Owner-Occupied Housing and Rental Housing.—In the case of an issue—

"(1) part of the proceeds of which are to be used for mortgages on owner-occupied residences in a manner which meets the requirements of this section, and

"(2) part of the proceeds of which are to be used for rental housing which meets the requirements of section 103(b)(4)(A),

under regulations prescribed by the Secretary of Housing and Urban Development, each such part shall be treated as a separate issue.".

(b) Clerical Amendment.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 103 the following new item:

"Sec. 103A. Mortgage subsidy bonds.".

Sec. 3. Industrial Development Bonds for Rental Housing Purposes Not To Be Used for Luxury Apartments.

Paragraph (4) of section 103(b) of the Internal Revenue Code of 1954 (relating to certain exempt activities) is amended by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) projects for residential rental property if—

"(i) at least 20 percent of the units in each project to be provided by such issue are to be occupied by individuals of low or moderate income (within the meaning of section 167(k)(3)(B)), and

"(ii) at least 55 percent of the units in each project to be provided by such issue are to be occupied by individuals earning not more than 150 percent of low and moderate income individuals (within the meaning of such section), and

for purposes of this subparagraph, the term residential rental property includes any cooperative housing project in which all or a portion of the units are to be occupied by residents eligible to receive subsidies under section 8 of the United States Housing Act of 1937,".

Sec. 4. Effective Dates for Bond Provisions.

(a) General Rule.—Except as otherwise provided in this section, the amendments made by sections 2 and 3 shall apply to obligations issued after the date of enactment of this Act.

(b) Exception for Official Action Taken Before Date of Enactment.—

(1) In general.—The amendments made by sections 2 and 3 shall not apply to obligations if official action before the date of the enactment of this Act of the governing body of the unit having authority to issue such obligations indicated an intent to issue such obligations.

(2) Action by staff of housing authority treated as action of authority in certain cases.—For purposes of paragraph (1), if, before the date of the enactment of this Act—

(A) the permanent professional staff of a a State or local housing authority performed substantial work on a bond issue, and

(B) it was reasonable to expect that the bond issue, as developed by the staff, would be promptly approved by the governing body of the housing authority,

then such action by such staff shall be treated as the official action of such governing body.

Section-by-Section Analysis

Section 1. Title. Tax Exempt Bonds for Housing Act.

Section 2(b). Definition of Mortgage Subsidy Bond. Exempt in the case of a qualified mortgage bond, interest on any bond is not tax exempt if any portion of the proceeds are to be used for mortgages of single family residences.

Section 2(c). A Qualified Mortgage Bond is defined as part of a Qualified Mortgage Issue that is issued by a state, a political subdivision of a state, or any other entity authorized by state law to issue such bonds with the following requirements:

Section 2(d). Residence Requirements. All mortgages must be for single family residences which can reasonably be expected to become the principal residences of the mortgagors. The residences must be located within the jurisdiction of the issuing authority.

Section 2(e). Purchase Price Requirements. The acquisition cost of each residence cannot exceed 300 percent of the median family income for the statistical area in which the residence is located. For purposes of target area residences (as defined in section 2(i)), the acquisition cost cannot exceed 400 percent.

Section 2(f). Income Requirements. The income of each mortgagor cannot exceed 120 percent of the median family income for the statistical area in which the residence is located. Family income and median family income shall be determined by the Secretary of Housing and Urban Development under regulations prescribed in section 8 of the

United States Housing Act. In the case of target area residences (as defined in section 2(i)) substitute 150 percent for 120 percent.

Section 2(g). Market Limitations. State Housing Finance Agencies—the applicable limit for qualified mortgage bonds for any calendar year shall be 10 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding three calendar years for single-family owner-occupied residences.

Section 2(g)(2)(B). The limitations shall be increased by a percent equal to the number of percentage points by which the local housing limitations exceeded the aggregate of bonds issued by such agencies in the preceding year.

Section 2(g)(3)(A). Local Housing Finance Agencies. The applicable limitations shall be the same as that provided in Section 2(g)(2)(B).

Section 2(g)(3)(B). Optional limitations for Local Housing Finance Agencies. At the election of the local housing finance agency made in a time and manner as the Secretary of HUD may require, the limit shall be the sum of $1,000 multiplied by the population of such area within the jurisdiction that does not exceed 50,000 persons, and $500 multiplied by the population of such area as exceeds 50,000 persons.

Section 2(h). Bond Issue Approval.

All bonds must be submitted to a state agency for the agency's opinions as to whether or not the issue meets the market limitations and targeted portion requirement. The state agency must issue an opinion within 30 days after submission.

Section 2(i)). Target Area Residences.

Targeted areas are defined as follows:

(1) A qualified census tract—a tract in which 50 percent or more of the families have income which is 80 percent or less of the median family income for the statistical area in which the residence is located or a census tract which qualifies for benefits under the Community Development Block Grant Program of the Department of HUD.

(2) An area of chronic economic distress as designated by the state as meeting the standards established by the state and approved by the Secretary of HUD or which is part of a city eligible for an urban development action grant made under section 119 of the Housing and Community Development Act of 1974.

(3) Blighted area which qualifies under applicable state law for inclusion in a targeted area due to such physical conditions as buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage or deleterious land use or obsolete layout, or any combination of those or other factors, are detrimental to the safety, health, morals, or welfare of the community.

Section 2(j). Other Definitions:

Section 2(j)(1). Single Family Residence is defined as an owner-occupied residence in a building with no more than 4 dwelling units or an owner-occupied residential unit in a condominium or cooperative housing project.

Sections 2(j)(2)–2(j)(3). Mortgage is defined as including any other owner-financing Bond. The term includes any obligation.

Section 2(j)(4). State is defined as including a possession of the United States and the District of Columbia.

Section 2(j)(5). Statistical area is defined as a standard metropolitan statistical area and any county which is not within a standard metropolitan statistical area.

Standard Metropolitan Statistical Area is defined as the area in and around a city of 50,000 inhabitants or more as defined by the Secretary of Commerce. Designation where adequate statistical information not available. The Secretary may substitute for such county another area for which there is sufficient recent statistical information.

Designation where no county. The Secretary of HUD shall designate an area which is equivalent as a county.

Section 2(j)(6). Acquisition Cost is defined as including the cost of acquiring the residence as a completed residential unit. But, does not include usual and reasonable settlement or financing costs, the value of services performed by the mortgagor or members of his family in completing the residence, and the cost of the land which has been owned by the mortgagor for at least 2 years before the date on which construction of the residence begins.

Section 2(j)(7). Qualified home improvement loan is defined as including the financing in an amount not exceeding $15,000 of alterations, repairs, and improvements in connection with an existing residence by the owner of such items as substantially improve or protect the basic liability of the property.

Section 2(j)(8)(A). Qualified rehabilitation loan is defined as:

(1) Any owner-financing provided in relation to a qualified rehabilitation or the acquisition of a residence with respect to which there has been a qualified rehabilitation. But, only if the mortgagor to whom such financing is provided is the first resident of the residence after completion of the rehabilitation.

(2) A qualified home improvement loan, or

(3) A loan made under section 312 of the Housing Act of 1964.

Section 2(j)(8)(B). Qualified rehabilitation is defined as any rehabilitation of a building if there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins. The expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

Section 2(k). Special rule for issue used for owner-occupied housing and rental housing. In case of an issue to be used in part for owner-occupied housing and in part for rental housing, each part shall be treated as a separate issue.

Section 3. Industrial development bonds for rental housing. The present exception for tax-exempt industrial development bonds would be limited to obligations from which substantially all the proceeds are to be used for multi-family rental housing projects in which at least 20 percent of the units are to be occupied by individuals of low and moderate income as determined by section 167(k)(3)(B) of the Code. And, at least 55 percent of the units in each project to be provided by such issue are to be occupied by individuals earning not more than 150 percent of low and moderate income individuals within the meaning of such section.

Section 4. Effective dates.

Except as otherwise provided, the amendments made by sections 2 and 3 shall apply to obligations issued after date of enactment.

Exception. The amendments made by sections 2 and 3 shall not apply to obligations if official action of a governing body of issuing authority indicated an intent to issue such obligations. For purposes of this paragraph, if before date of enactment, the permanent professional staff of a state or local housing authority performed substantial work on a bond issue and it was reasonable to expect that the bond issue would be promptly approved, then such actions shall be treated as official action of the governing body.

Tax-exempt Housing Bonds Worth Saving

Tax-exempt state and city bonds to finance construction and rehabilitation of single-family homes are a valuable housing tool in Minnesota and many states. But these bonds are in real danger of being outlawed in Congress. That would be a mistake—at least until Washington finds a better way to subsidize this needed housing.

Two main arguments are used against the tax-exempt bonds. First, investors don't pay federal taxes on their bond earnings. That's true, but the subsidy for housing is nonetheless worthwhile, and serves a better purpose than many other state and local tax-free bonds. Second, a few states and cities have provided housing to families with incomes well above average. That's true, too, but the cure is a simple congressional limit on the income of eligible families.

Instead, the cure that the Carter administration and the House Ways and Means Committee have offered for that illness is to kill the patient. That indicates an overriding interest in the treasury's take at the expense of urban housing needs. The Ways and Means Committee has approved a bill that would eliminate tax-exempt housing bonds while providing an ill-advised tax break on savings accounts (discussed in an editorial on this page yesterday).

Although the bill would eliminate the housing bonds, the Ways and Means Committee also sent an amendment along to the full House for floor debate. The amendment would restrict the use of state and local tax-exempt housing bonds, but not eliminate them outright. The White House and the Treasury Department, ignoring the Housing and Urban Development Department's housing concerns, support the amendment. That is consistent with the Carter administration's basic position since shortly after hearings on the issue began last May.

The catch is that the amendment's restrictions are so severe—by design—that they all but rule out the use of tax-exempt bonds, housing lobbyists maintain. The Minnesota Housing Finance Agency, for example, would find it "virtually impossible" to continue its single-family mortgage or rehabilitation programs, says director James Solem. That mortgage program has provided nearly 9,000 new housing units since 1973, or about a third of the agency's units, which also include townhouses and apartments.

The amendment has only one virtue. It stops short of freezing the House into a position of flat opposition to tax-exempt housing bonds. This makes it more likely that the House might eventually agree to a more flexible Senate bill, which contains income limits and other sensible, workable restrictions. As Rep. Bill Frenzel put it, "We will have to rely on the Senate to repair the flaws."

So the outlook is shaky for housing proponents. But another catch makes their situation even worse. The issue of tax-exempt housing bonds is not even being debated at the moment on its own merits—it has been added to maneuverings of a House-Senate conference committee on the windfall-profits tax. For complicated reasons, that is permissible under congressional rules. But it is also highly unusual, since the full House has not voted on its housing-bonds bill, and the Senate's superior version hasn't even been considered in committee.

A few senators and representatives are protesting, on procedural grounds, that the housing issue should not be discussed in the conference committee on windfall profits. They want the House and Senate to deal independently and fully with their separate tax-exempt-bond bills. We hope they are successful; that would at least give the Senate an opportunity to "repair the flaws" in the House's meat-axe approach.●

By Mr. DURENBERGER:

S. 3120. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Energy and Natural Resources.

VOYAGEURS NATIONAL PARK

● Mr. DURENBERGER. Mr. President, I am introducing a bill to amend the act of January 8, 1971, authorizing the establishment of the Voyageurs National Park and for other purposes.

Legislation authorizing the establishment of Voyageurs National Park was passed in January 1972. It was not until April 1975 that the park was officially established by the Secretary of Interior. Since that time, much has been accomplished. The Voyageurs Park master plan has been adopted, all but 7,065 acres of the 133,622 land acres in the park have been acquired and alternatives for wilderness designation in the park have been developed and are in the public hearing phase.

Throughout this planning phase there has been extensive public involvement. The Voyageurs National Park Association, established in 1963, provided leadership in the park's formation and has served as a broad-based membership citizens' organization which has been actively and effectively involved in Voyageurs Park issues to the present time. The State of Minnesota officially created the Citizens Committee on Voyageurs National Park in 1975. This group has provided a forum for northern local involvement as well as reflecting State concerns.

In addition, extensive public meetings have been conducted throughout the State on park management issues.

The future development of Voyageurs National Park looks bright and is insured if the public and the established groups with an interest in the park continue to be effectively involved.

The bill I introduce today will carry out the recommendations arrived at in the master plan for the park. But more significantly, it will also resolve the points of controversy between northern Minnesota residents, the State of Minnesota and the Department of the Interior which have arisen during the planning process.

Since the establishment of Voyageurs Park in 1975, the National Park Service has banned hunting in the Black Bay area on the western border of the park in accordance with the Service's standard prohibition on hunting in national parks. This has been the most serious controversy with area residents who have maintained that waterfowl hunting should not have been prohibited in Black Bay.

This bill will provide for the transfer of 1,000 acres, primarily water, of Black Bay to the State of Minnesota and will establish this section as a State wildlife management area which will permit waterfowl hunting under State regulations.

A second major problem has been in private land acquisition with a 1971 authorization too low for 1977–80 market values. This legislation would increase authorization from $26 million to $36.9 million which reflects the current best estimate of the required amount for the 6,572 acres which purchase will be from willing sellers except for selected parcels designated for development of the park in the Voyageurs land acquisition plan which is expected to be released shortly. Of land acquired since 1975 at Voyageurs, 66,442 acres have been purchased at a cost of $30 million, and 60,095 acres have been donated by the State of Minnesota or Federal agencies. Condemnation has been used in only 34 cases.

The bill to revise the boundary of Voyageurs National Park and increase the authorizations for land acquisition culminates over a year of negotiations which began when the National Park Service announced its desire to negotiate with the State of Minnesota regarding Black Bay and State lands outside the park needed for park access and development.

The bill represents the agreement reached by the Department of the Interior and the State of Minnesota and is supported by the Governor of Minnesota, Al Quie, as well as the Department of the Interior. The overwhelming majority of the official State of Minnesota Citizens Advisory Committee of Voyageurs also approved the bill.

The companion bill is being introduced in the House by Congressman Oberstar and has the support of Congressman Vento and others in the Minnesota delegation.

A magnificent national park, the establishment of Voyageurs is to the great credit of the Nation, my State of Minnesota, and the people whose vision helped create the park.

I am pleased to introduce a bill which I believe will help measurably to facilitate the management and development of the park in the best interests of the public it serves.

The proposed legislation also includes the following provisions:

First. The deletion from Voyageurs of 782 acres in the Neil Point, or Gold Shores, area on Rainy Lake. This area is no longer necessary for a park administration building. The use of it would require substantial dredging of Rainy Lake, which the Park Service has determined would be environmentally unacceptable, and considerable residential development in the area makes it incompatible with the purposes of the park. The Park Service master plan for Voyageurs supports deletion of the Neil Point area and as an alternative thereto, recommends

Second. The addition to Voyageurs of 180 acres of land and water at Black Bay narrows for park development needs. The narrows site has been selected by the Park Service to provide the primary access site to the park, boat launching facilities, a ranger station, a visitor center and a central maintenance facility, all of which could and should be constructed as early as fiscal year 1982.

Third. The deletion of Black Bay from the park by the Secretary of the Interior, subsequent to the following actions by the State of Minnesota.

DNR designation of the portion of Black Bay now in the park (1,000 acres) as a wildlife management area, permitting the hunting of ducks, and the development of a wildlife management plan for the entire Black Bay area. The State has agreed to develop a management plan for the entire 5,500-acre area of Black Bay, to insure optimum management of it on a consistent basis. The agreement on Black Bay is with the understanding that the State of Minnesota will maintain the wildlife management area in perpetuity.

The State of Minnesota will grant and the National Park Service will acquire a perpetual easement on approximately 120 acres of State land on the Sullivan Bay access road between the present park boundary and the Ash River Trail (County 765). The easement would include the present dirt road and a corridor of 400 feet wide along the road. Easement would permit the National Park Service to realine and improve the road, which is seen as an access point to Voyageurs. National Park Service financial assistance in upgrading this road has long been sought by local officials. The 400-foot strip will insure the park visitors a scenic view, shielded from potential logging sites in that area.

The State of Minnesota will grant and the National Park Service will acquire a lease of 18.45 acres of land at the Kabetogama Forestry Station on the western boundary of the park. This will permit the National Park Service to develop parking facilities and other services for park visitors. Like the Ash River and Sullivan Bay areas, Kabetogama is seen as an access point for visitors to the park, and a desirable area for National Park Service facilities.

One final major management decision is not covered in this bill—possible wilderness designation in the park. That decision is in the public review process.

However, with exception of possible wilderness designation, I see this bill as the end, not the beginning, of legislative solutions to controversies in Voyageurs National Park.

In the ongoing management of Voyageurs, I strongly urge the National Park Service to closely consult and seek advice from the Voyageurs National Park Association, the Citizens Committee on Voyageurs National Park, and the more recently formed Voyageurs National Park Coalition.

I strongly recommend the passage of this bill to the Senate as a major step toward the development of what we in Minnesota consider the finest national park in the country.

I ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 3120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled, "An Act to authorize the establishment of the Voyageurs National Park in the State of Minnesota, and for other purposes", approved January 8, 1971 (84 Stat. 1971), is amended as follows:

(1) By redesignating "Sec. 102" as "Sec. 102(a)", and inserting the following new subsection after subsection (a) of section 102:

"(b)(1) In addition to such revisions as the Secretary may make in the boundaries of the Park from time to time pursuant to other provisions of law, the Secretary is specifically authorized in the manner provided in subsection (a)—

(A) to delete approximately 782 acres in the Neil Point area of the Park;

(B) to add approximately 180 acres in the Black Bay Narrows area of the Park;

(C) to add approximately 18.45 acres owned by the State of Minnesota at the Kabetogama Forestry Station;

(D) to add approximately 120 acres owned by the State of Minnesota, being a strip of land through that portion of section 1, township 68 north, range 20 west, fourth principal meridian, which is parallel to and 400 feet on both sides of the unimproved road extending northward from the Ash River Trail as such road crosses said section; and

(E) to delete approximately 1,000 acres at Black Bay.

"(2) The boundary revisions specified in subparagraphs (C), (D), and (E) of paragraph (1) shall, notwithstanding anything to the contrary contained in this Act or any other law, become effective only upon (1) the tender of a conveyance to the United States, by such instrument and in such manner as are satisfactory to the Secretary including but not limited to lease or easement by the State of Minnesota of the lands or interests therein described in subparagraphs (C) and (D) for purposes of the Park; (ii) the establishment by the State of Minnesota of a wildlife management area in the area authorized to be deleted from the Park by subparagraph (E); and (iii) agreement of the State of Minnesota, incorporated in a plan, to manage state lands, riparian to Black Bay, to preserve the natural character of the area so as to complement to the fullest extent possible the management of the Park.

"(3) At such time as the deletion referred to in subparagraph (E) and paragraph (1) becomes effective, the Secretary is further authorized to convey to the State of Minnesota all right, title, and interest of the United States in and to property acquired for the Park from the State within the area deleted pursuant to subparagraph (E)".

(2) By redesignating "Sec. 401" as Sec. 401 (a)", and inserting the following new subsection after subsection (a) of section 401:

"(b) In addition to such sums as may have been appropriated for the acquisition of property prior to the effective date of this subsection, there is authorized to be appropriated for that purpose not to exceed $10,995,000".

(3) The Secretary is directed to study existing road access to the Park and to report to Congress on the impact of Park-related use of those roads and to report specific recommendations on improvements necessary to insure adequate road access to the Park. The Secretary is directed to report within 6 months of the date of enactment of this section to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.●

By Mr. STONE:

S.J. Res. 203. Joint resolution to authorize and request the President to proclaim the month of October 1980 as "American White House Replica Month"; to the Committee on the Judiciary.

AMERICAN WHITE HOUSE REPLICA MONTH

● Mr. STONE. Mr. President, our Nation is blessed with a most unique gift, a replica of the White House. This remarkable piece of art is a gift to the people from the people. Today, Mr. President, on behalf of all Americans, I request that Congress recognize the contributions of John and Jan Zweifel for their dedication in bringing the White House to the people. Therefore, I am introducing a joint resolution to establish the months of October 1980 as "American White House Replica Month".

In 1956 John Zweifel took a tour of our President's home and was dismayed to find that only five rooms were opened to the public. Like many others his curiosity as to the appearance of the remaining rooms which had contributed to this Nation's history was of a patriotic and historical nature. John Zweifel saw the White House as a cherished symbol of his country which in reality belonged to all the people. Mr. Zweifel was determined to bring the peoples' home to the people.

In 1961, Zweifel approached the Kennedy family with his dream and illustrated his sincere interest by carving samples from photographs. The Kennedy's opened the home to him; extensive research began—countless measurements were taken, sketches and floor plans were drafted; exact detail of each room was mandated. Due to the problems of the 1960's and early 1970's Zweifel had to turn to photographs to complete his work. Photographs were enlarged to obtain exact detail; then reduced to size at the exact scale to compare reproductions with the originals. This extensive research made it possible to produce a 1 inch/1 foot scale replica of the house and its decor.

The White House replica stands 60 feet long and 21 feet wide. Its minute detail makes it possible to view the home exactly as it stood on July 6, 1976, the Bicentennial of our Nation. Exactness was quite important: Identical materials were used (at times wood left from the original pieces was made available by the White House staff); chandeliers were handblown; rugs and draperies hand woven; exact oil colors and textures of original paintings were applied with tiny brushes, even gravy stains and cigar burns had to be incorporated in the replica. Not one item of the White House replica was purchased; it is all completely handcrafted representing over 200,000 hours of manual work.

An inherent problem faced by the Zweifels was the changing of decor with each family. For fifteen years as wall coverings and furnishings were changed, the exact changes were made by Zweifel on the replica.

In December of 1975, the American White House replica, nearing completion, was presented to the American people for President and Mrs. Ford at the White House tree lighting ceremony. It then went on display for the first time in the Kennedy Center for the Performing Arts in Washington, D.C. In 1976, Zweifel began an extraordinary 50 State tour with his masterpiece, enabling those who are unable to visit our Capitol to experience the beauty and history of the White House. After viewing the replica one has a lasting impression of the American heritage and a deep sense of pride and patriotism of the United States today. The White House replica is scheduled to be on exhibit during the month of October at the National Visitor Center at Union Station and I urge each of you to go and view this magnificent project.

We should recognize the many years of diligent work and sincere dedication of the Zweifels in presenting the miniature White House to the people. They have been successful in their attempt to bring our country closer together. I request the support of Congress in establishing the month of October, 1980, in recognition of the contributions that the Zweifels have made to this great Nation.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the Record.

There being no objection, the joint resolution was ordered to be printed in the Record, as follows:

S.J. Res. 203

Whereas John and Jan Zweifel of Orlando, Florida, devoted over 200,000 hours in building the American White House Replica, an exact one-inch-to-one foot scale replica of the White House;

Whereas John and Jan Zweifel generously donated the American White House Replica to the people of the United States so that all Americans could enjoy this masterpiece;

Whereas the exhibition of the replica throughout the fifty States has enabled millions of people to enjoy the beauty of the White House; and

Whereas the American White House Replica will be on exhibit during the month of October 1980 at the National Visitor Center in the District of Columbia: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the month of October 1980 as "American White House Replica Month", and calling upon Federal, State, and local government agencies, interested groups and organizations, and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.●

ADDITIONAL COSPONSORS

S. 2082

At the request of Mr. Zorinsky, the Senator from Nevada (Mr. Laxalt) was added as a cosponsor of S. 2082, a bill to amend title 17 of the United States Code to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders.

S. 2636

At the request of Mr. Pryor, the Senator from Pennsylvania (Mr. Heinz) was added as a cosponsor of S. 2636, a bill to prohibit the drugging or numbing of race horses and related practices, and to amend title 18, United States Code, to prohibit certain activities conducted in interstate or foreign commerce relating to such practices.

S. 2695

At the request of Mr. Bumpers, the Senator from Kansas (Mrs. Kassebaum) was added as a cosponsor of S. 2695, a bill to amend the Powerplant and Industrial Fuel Use Act of 1978 to further the objectives of national energy policy of conserving oil and natural gas through removing excessive burdens on production of coal.

S. 3051

At the request of Mr. Cohen, the Senator from Montana (Mr. Melcher), the Senator from Alabama (Mr. Heflin), the Senator from Wyoming (Mr. Simpson), and the Senator from Montana (Mr. Baucus) were added as cosponsors of S. 3051, a bill to reform Government management and practices relating to Government contracts.

S. 3087

At the request of Mr. Sasser, the Senator from Oregon (Mr. Hatfield), the Senator from Indiana (Mr. Lugar), the Senator from Arkansas (Mr. PRYOR), and the Senator from North Carolina (Mr. MORGAN) were added as cosponsors of S. 3087, a bill to amend the Congressional Budget Act to require the Congressional Budget Office, for every significant bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by State and local governments in carrying out or complying with such bill or resolution.

S. 3092

At the request of Mr. TSONGAS, the Senator from Michigan (Mr. LEVIN), the Senator from Michigan (Mr. RIEGLE), and the Senator from Hawaii (Mr. MATSUNAGA) were added as cosponsors of S. 3092, a bill entitled "National Hostel System Act of 1980".

SENATE JOINT RESOLUTION 125

At the request of Mr. SASSER, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of Senate Joint Resolution 125, a joint resolution designating the "square dance" as the national folk dance of the United States of America.

SENATE JOINT RESOLUTION 201

At the request of Mr. CRANSTON, the Senator from New Mexico (Mr. DOMENICI), the Senator from Missouri (Mr. EAGLETON), the Senator from Nebraska (Mr. EXON), the Senator from Kentucky (Mr. FORD), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. HATFIELD), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Indiana (Mr. LUGAR), the Senator from Illinois (Mr. PERCY), the Senator from Tennessee (Mr. SASSER), the Senator from Florida (Mr. STONE), the Senator from Nebraska (Mr. ZORINSKY), the Senator from Texas (Mr. BENTSEN), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of Senate Joint Resolution 201, a joint resolution to provide for the designation of a week as "National Lupus Week."

SENATE RESOLUTION 520—ORIGINAL RESOLUTION REPORTED RELATING TO THE PURCHASE OF CALENDARS

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 520

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, upon vouchers approved by the chairman of that committee, not to exceed $55,120 for the purchase of one hundred and four thousand calendars. The calendars shall be distributed as prescribed by the committee.

SENATE RESOLUTION 521—ORIGINAL RESOLUTION REPORTED TO WAIVE THE CONGRESSIONAL BUDGET ACT

Mr. RANDOLPH, from the Committee on Environment and Public Works, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 521

Resolved, That section 402(a) of the Congressional Budget Act of 1974 is waived with respect to the consideration of S. 1480, creating an Environmental Emergency Response Fund for fiscal year 1981 and thereafter. This legislation was ordered reported by the Committee on Environment and Public Works on June 27, after being marked-up by the Joint Subcommittees on Environmental Pollution and Resource Protection and the full Committee since last September.

The Committee was unable to report the legislation prior to the May 15 deadline because of the complex issues involved in the legislation, the use of joint subcommittees for initial consideration, and the departure of Senator Muskie from the Committee who was chairing one of the subcommittees considering this legislation. The bill, as reported, authorizes appropriations for fiscal year 1981 and imposes a fee upon chemical feedstocks and other similar type materials to provide a fund from which emergency response actions can be taken and longer term damages remedied.

AMENDMENTS SUBMITTED FOR PRINTING

CRIMINAL CODE REFORM ACT—S. 1722

AMENDMENTS NOS. 2336 THROUGH 2338

(Ordered to be printed and to lie on the table.)

Mr. SIMPSON submitted three amendments intended to be proposed by him to S. 1722, a bill to codify, revise, and reform title 18 of the United States Code, and for other purposes.

Mr. SIMPSON. Mr. President, in the near future the Criminal Code Reform Act will be called up for debate. As one of the code's original cosponsors, I have become keenly aware of the urgent necessity that this bill be adopted during this Session of Congress. This is the third time that this bill, in one form or another, has been before the Senate since 1970, and, of course, the work of the Brown Commission and of the American Bar Association pre-dates that by at least 4 years. I am concerned that, unless legislative action is completed this year, the code may never be reintroduced next year. So much time and effort have gone into this undertaking that I doubt any of us would be willing to go through that particular fire a next time. In short, it is now or never, and I urge your support for this historic effort.

Because of the immense complexity of the code, I fear that several unintended loopholes remain to be closed. Three of these involve the organized crime provisions of the bill. I have submitted three amendments to that section of the proposed criminal code that will strengthen the Government's ability to combat two of the most insidious and lucrative activities in which organized crime engages: Narcotics distribution and loansharking.

These two activities provide the vast bulk of money that "the Mob" uses to take over legitimate business, corrupt local law enforcement officials, and to finance its other criminal activities. As the code is now constituted, after committee amendments, there are several weaknesses in it that make it unnecessarily difficult for the Government to effectively combat organized crime. These amendments are designed to remedy those problems.

The first amendment would rephrase the code's definition of an "extortionate credit transaction," in order to make it less difficult to obtain a conviction of a loanshark. In its present form the code states that it is necessary for the Government to prove that both the victim and the loanshark understood that violence would be used to collect the usurious loan if it were not repaid in a timely manner.

This is an absurd burden of proof to place upon a Federal prosecutor. There is no rational reason for requiring proof of that type of understanding. The fact that the loanshark engages in these illegal activities ought to be sufficient. It should not be necessary for the Government to prove beyond a reasonable doubt that the borrower knew that someone might bust him up a bit if the loan weren't repaid.

Moreover, few loansharks are going to be so overenthused as to make an overt threat to their "customers." The threat is always implicit in the nature of the transaction itself. This proof requirement should be eliminated, and that is what the amendment would accomplish.

The second amendment closes up several unintended gaps in the forfeiture provisions of the code. One of the most effective weapons that the Justice Department has in fighting organized crime is its ability to seize the "fruits of those crimes," including enterprises over which the racketeer has obtained control with profits derived from selling narcotics, loansharking, prostitution, and illicit gambling operations.

This amendment would clarify two issues. In its present form the code states that a victim of any racketeering activity may file suit, and recover treble damages for any injuries sustained as a result of being the victim of any racketeering activity. My amendment would allow the victim to automatically recover those proven damages from any proceeds that the Government might obtain by the sale or other disposition of the property in which the racketeer had invested. This could well eliminate a duplicative and unnecessary lawsuit, as the Government will have—as current law already provides—obtained a court order seizing the property in question. This amendment would also tend to eliminate a danger that a victim might be intimidated by the racketeers from asserting his claim for damages—as the claim would only be filed with the Government instead of against "the Mob."

The third amendment clarifies the applicability of the Racketeer Influence and Corrupt Organizations Act (the RICO statute now codified in chapter 18 of this code). This amendment makes it clear that the RICO statute will apply to a labor union only if the criminal activity that otherwise would violate the RICO statute occurs outside the context of legitimate collective bargaining or otherwise lawful union activities.

The second section of this amendment clarifies the applicability of the RICO statute to legitimate business enterprises, by removing from its coverage three offenses which could unintentionally ensnare an otherwise lawful business. The amendment provides that a later RICO conviction could not be based upon a conviction for violation of the commercial bribery, customs offense, or securities offense sections of the Code. Without this amendment a legitimate brokerage firm, for example, which filed even a single misleading fact in a prospectus with the Securities and Exchange Commission could also be subjected to all of the forfeiture provisions of the RICO statute. That is not what the drafters of the original RICO statute intended, and that needs to be clarified.

I urge you to support these amendments.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

Mr. CHILES. Mr. President, I would like to announce that the Subcommittee on Federal Spending Practices and Open Government of the Committee on Governmental Affairs will be holding hearings on the continued oversight of the General Services Administration. These hearings will take place on Tuesday, September 30, and Wednesday, October 1, 1980, at 10 a.m. in room 3302 of the Dirksen Senate Office Building.

Any one having questions concerning this hearing may contact the subcommittee staff in room 44, Capitol Hill Apartments, or call 224-0211.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources will hold hearings on Wednesday, September 24, and Thursday, September 25, commencing at 8:30 a.m., room to be determined, on the nominees announced by the President last week for the Board of the Synthetic Fuels Corporation.

The nominees are: Lane Kirkland, the president of the AFL-CIO; Cecil Andrus, Secretary of the Interior; Frank Savage, the vice president and manager of Equitable Life Insurance's Investment Management Department; Frank Cary, the chairman of IBM; Catherine Cleary, former chairman of the First Wisconsin Trust Co. of Milwaukee; and John DeButts, retired chairman and chief executive officer of A.T. & T.

Questions concerning this hearing should be directed to Mr. Owen Malone, the committee counsel, at 202-224-7141.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT AND SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. FORD. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON) and the Senator from Nevada (Mr. CANNON), I wish to announce that on September 23, at 2 p.m., in room 3110 of the Dirksen Senate Office Building, the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources, and the Subcommittee on Science, Technology, and Space of the Committee on Commerce, Science, and Transportation, will hold joint hearings on the bill H.R. 6889, the Methane Transportation Research, Development and Demonstration Act of 1980.

All inquiries regarding these hearings should be addressed to Mr. Ed Smick of the Commerce Committee staff (224-9351) or Mr. Lee Wallace of the Energy Committee staff (224-4431).

SELECT COMMITTEE ON SMALL BUSINESS

Mr. NELSON. Mr. President, the Select Committee on Small Business will continue its hearings on SBA's surety bond guarantee program by examining alleged organized criminal involvement in the program.

The hearing will begin at 9:30 a.m., on Thursday, September 25, 1980, in room 424 of the Russell Senate Office Building.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HART. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate today to hold an oversight hearing on the Longshoreman's and Harbor Workers Compensation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. HART. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate today to consider S. 2829, legislation authorizing funds for the settlement of Indian claims in the State of Maine.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMBAT READINESS OF U.S. FORCES

● Mr. GARN. Mr. President, the combat readiness of the Armed Forces of the United States is vital to the maintenance of peace. If we allow the combat readiness of our forces to decline to a point where we are incapable of responding effectively to a surprise Soviet attack, we simply invite such an attack. Today, after 3½ years of the Carter administration, the combat readiness of U.S. forces is lower than at any time since the Korean war.

When President Carter took office in 1977 the United States had 10 divisions based in the United States. All were rated C-1, the designation for fully combat ready. Three years later 6 of these 10 divisions were rated at C-4, "not combat ready." The other four were rated as marginally (C-2 or C-3) combat ready. None of these units were rated at C-1, fully combat ready.

The troops of the so-called Rapid Deployment Force (RDF) come from three divisions, two of which are rated C-4, not combat ready. Indeed Army Chief of Staff Gen. Edward Meyer has stated publicly we have "a hollow Army."

Twenty percent of the U.S. Navy ships are not combat ready due to manpower shortages. This includes 20 percent of the 6th Fleet in the Mediterranean, 32 percent of the 7th Fleet in the Western Pacific and even 18 percent of the ships in the Indian Ocean. In at least two instances, Navy captains have refused to sail because their ships were dangerously undermanned by even peacetime standards.

The Air Force and the Navy suffer severe shortages of pilots and their aircraft have an extremely low rate of readiness.

Even the Marine Corps does not rate any of its three divisions as fully combat ready.

Today the United States has only 20 percent of the air cargo capability it needs to support the first 20 days of a NATO conflict.

The bottom line, as the Chairman of the Joint Chiefs of Staff has noted, is that "The size, readiness and sustainability of U.S. conventional forces cannot insure the success of the strategy they are required to support."

In the tactical nuclear area, regarding the Navy's A-6 and A-7 nuclear strike aircraft, General Jones writes that it is "inadequate" against "increasingly sophisticated Soviet air defenses and continuing Soviet emphasis on anticarrier forces." We have no nuclear antiship cruise missile program. Most Army tactical nuclear weapons date from the Eisenhower administration. U.S. strategic forces are clearly inadequate for the missions we have set for them. Gen. Richard Ellis, Commander in Chief of the Strategic Air Command, recently wrote Secretary Brown that—

> It is apparent that the principle of maintaining a countervailing strategy cannot be supported in the 1979-1988 time period short of an LUA (launch under attack) or an initiative attack (first strike).

The administration has attempted to cover all of this up and create the image of U.S. military capabilities "second to none"—while denouncing Ronald Reagan for demeaning "superiority" or "margin of safety—by leaking the existence of a new strategic targeting strategy—unsupported by strategic programs—and the "Stealth" bomber program—which is a technology package, not a strategic bomber.

The Carter administration will not fool the American people with such sleight of hand, nor will it fool the Soviets. As much as President Carter wraps himself in the flag and suggests that it is unpatriotic to charge him with weakening our defenses or inviting Soviet expansion abroad by projecting the image of a jellyfish, the facts will not change. President Carter is weakening our defenses. Just as he suggested that anyone who opposed his inequitable and unverifiable SALT II treaty—which allows a massive buildup of Soviet strategic forces—was a "warmonger" he now, while hiding in the White House from debate, is suggesting that Governor Reagan and anyone else who is demanding that we end the decline of our military potential is somehow "irresponsible" or a warmonger.

There is only one simple question in the national debate on our national security. Do we believe a stronger America is more likely to keep the peace, or a weaker America? I believe it is a stronger America. Mr. Carter, and the men around him, apparently believe it is a weaker America. If they do not say so directly, they certainly act on that basis.●

MADAWASKA: DOWN EAST WITH A FRENCH ACCENT

● Mr. COHEN. Mr. President, "The 60,000 people who live along the hundred miles from Grand Falls, New Brunswick, to Allagash, Maine, think of themselves not so much as Canadians or Americans, but as citizens of a country between." This is one of the opening lines written by Perry Garfinkel in "Madawaska: Down East with a French Accent," an article which appeared in the September edition of National Geographic magazine.

The author of the article has caught the essence of the St. John Valley. The valley is the northernmost portion of Maine. It is a community that stretches across the border between the United States and Canada, united by culture and language. In a State that is rich in history, culture, and a living presence of the past Madawaska holds a special place.

The people of the region are Franco-American. Their heritage has a strong but quiet influence on the life of the valley. A belief in family and hard work—and a feeling for the land—is bred into each new generation.

In his recent book, "Quiet Presence, Histoires de Franco-Americain en New England," Dyke Hendrickson, a Maine writer, notes:

> The Franco-Americans are the invisible minority group of New England. Not to themselves, of course. Over the years they have clung together with remarkable cohesiveness, and are quite aware of their own culture. But for a group that ranks as the largest minority in Northern New England, . . . they have not achieved the visibility . . . of other ethnics.

In the six-State New England region, nearly 2.5 million residents of Franco descent live and work. Their heritage deserves recognition, as well as the respect of all who call themselves New Englanders.

Mr. President, I ask that the text of the National Geographic article be printed in the Record.

The article follows:

Madawaska Down East With a French Accent

(By Perry Garfinkel)

Gedeon Corriveau lives on the edge—on the edge of two countries, the edge of two cultures, the edge of past and future. From his century-old mill in Upper Frenchville, Maine, where he runs one of the last buckwheat-grinding operations in the valley, he looks down his long treelined driveway at U.S. Route 1 as it nears the end of its 2,360-mile odyssey from Key West, Florida. Just across the road is the Saint John River and just across the river is the town of St. Hilaire in New Brunswick, Canada.

This is the upper Saint John River Valley, also known as Madawaska. This remote region, where the northernmost stretch of Maine meets the westernmost reach of New Brunswick, lies some 200 miles from either Bangor or Quebec City (map, ages 386–7). It is isolated by the green womblike mountains, the whims of international boundaries, and the quirks of cultural history.

The 60,000 people who live along the hundred miles from Grand Falls, New Brunswick, to Allagash, Maine, think of themselves not so much as Canadians or Americans, but as citizens of a country in between. When I asked 19-year-old Patsy Bernier of Fort Kent, Maine, which country she was from, she stated: "The valley is my country."

Life at this border has its idiosyncrasies. A baby born to an American family living in the town of Madawaska, Maine, will most likely enter the world in Edmundston, New Brunswick—since Madawaska has no hospital—and therefore can claim dual citizenship according to both United States and Canadian law. Intermarriage between the valley's Canadians and Americans is so common you need a scorecard to keep track. Money games are even trickier, with exchange rates for Canadian and American dollars fluctuating with the fickleness of the weather. A person who works on one side of the border but lives on the other can make a career of filling out an income tax form. And if he is an American working in Canada, he must get up an hour earlier than his Canadian co-workers, since New Brunswick time is an hour ahead of Maine's.

Despite these complications, the three border crossings along the upper Saint John River—at Van Buren, Madawaska, and Fort Kent—are among the busiest along the entire length of the United States-Canada boundary. This may be due, at least in part, to the fact that the blood of family ties runs thicker here than do the international waters of the Saint John.

And, as much as anyone's, the story of the Corriveau family is the story of the valley.

Gedeon Corriveau, born in Upper Frenchville, is a loader for Fraser Paper, Limited, where he has worked 25 of his 53 years. In the valley, if a man isn't growing potatoes, he's likely working for the paper industry. Between the Canadian pulp mill and the U.S. paper mill, Fraser puts something on the table of almost every family.

Gedeon's wife, Aline, was born in St. Hilaire on the other side of the Saint John—"across." She teaches French to second and third grades. Several generations back, both their families emigrated from France to Quebec and then made their way to the valley. They are devout Catholics and attend church regularly, where the Mass is celebrated in French.

"This's gonna be the last year I grind buckwheat," Gedeon told me in a singsongy patois that managed to combine Maine drawl, Canadian twang, and French twist. He wiped his lean, weatherworn face and dumped a barrelful of grain into the antique grinder. "No matter how I figure it, I will come out in the red." His eight-year-old daughter Nicole, a blue-eyed blonde, and dark-haired Susan Thibault, one of Nicole's 42 cousins from across, played on the steps of the mill where buckwheat sprouts peeked through the cracks.

"Buckwheat used to be a major crop in these parts. We used it for everything. The walls of my house are insulated with it. I still heat with buckwheat hulls. But at this point grinding buckwheat is more like a community service for me. Everyone in the valley who makes ployes buys their buckwheat from me." Ployes are buckwheat pancakes, and everyone in the valley eats them.

In the kitchen Aline poured buckwheat batter on the top of the wood-burning stove. Four handsome blond Corriveau girls bustled and giggled their way around, preparing mashed potatoes, fiddleheads, brisket, and bread, singing a French song.

"We're probably the only family in town who still use a wood stove," Aline said apologetically, and didn't seem to believe me when I said many of my urban friends would envy her that. Stoking the stove, she told me: "I don't make ployes much any more. Too much time. And people are very particular about their ployes. Some say you shouldn't flip them. Cook them one side only. Everyone has their own recipe." Steaming hot and buttered, or layered with baked beans and molasses, then rolled up and eaten with the fingers, Aline's ployes were impossible to resist.

MOTHER TONGUE ONCE FORBIDDEN

Over dinner the conversation was politely in English. If I had not been there, they would be speaking the local French, a combination of Canadian French and an archaic idiom traced to 17th-century France and laced with the nautical terminology of those French ancestors who originally settled and farmed a land that they called l'Acadie—Acadia—along the shores of the Bay of Fundy and its inlets. A majority of the people in the upper Saint John Valley speak this dialect as their mother tongue, but until ten years ago Maine forbade children to speak it in school. Then, in 1970, valley educators designed a bilingual education program with a grant under the Elementary and Secondary Education Act, and it became a model program throughout the U.S.

I got a look at the bilingual program when I accompanied Nicole to her second-grade French class at the Dr. Levesque School in Upper Frenchville. The teacher, Claudette Paradis Violette, told me before the class started, "The parents who were denied the right to speak French are delighted their children can speak bilingually now." She knew because she was one of those parents. "Most of these children's great-great-grandfathers were Acadians. But at this age they don't yet grasp the concept of ancestry—though it's never too soon to try."

She opened the lesson with some Acadian history—in French. Turning to the group of young faces, she asked, "*Qui àtaient ces Acadiens?* Who were these Acadians?"

"Indians?" tried one youngster.

Nicole raised her hand, pushing it higher, bubbling with enthusiasm. "They were people who came from France," she answered, ironically in English. She was right, of course. French colonists came in the 17th century to what is now coastal Nova Scotia and the Bay of Fundy. They brought their own dialect from the province of Poitou, south of the Loire River—along with their own customs, food, and dress, plus an independent spirit and the farmer's stubborn streak. Alternately controlled by the French and the English, they were finally ordered to take an oath of allegiance in 1755 to George II of England. When they refused, Governor Charles Lawrence of Nova Scotia called all men and boys to the St. Charles Church in Grand Pré and ordered the eviction of all Acadians—"*le grand dérangement.*" At gunpoint they were herded onto ships and scattered from Quebec to Louisiana.

Over the years small groups made their way back to resettle along the Saint John River. In June of 1785, a band of perhaps ten families came ashore at St. David on the southern banks, and soon had settled both sides. The names of those first settlers—Duperre, Daigle, Cyr, Fournier—echo today throughout the Madawaska region.

Local interest in Acadian history is growing as fast as fiddleheads. In 1979 Madawaska, Maine, celebrated its second annual Acadian Festival Week, simultaneously commemorating June 28—declared Acadian Day by the state of Maine in 1978—and the 375th anniversary of the landing of the Acadians in North America.

For many residents getting their first accurate view of their own history, Roger Paradis of the University of Maine's Fort Kent branch is the valley's walking encyclopedia. A slight man with a thin mustache and a tired voice, this historian is the impassioned leader of a move to save bits of valley culture before they are homogenized in the 20th century American mixing bowl. He has put together one of North America's largest collections of Acadian folklore.

One day he took me off to Edmundston to meet Alfred Morneault, who might be called a nouveau folk artist. At 77 Alfred had a robust laugh and high red cheeks. He welcomed me into his house and with great joie de vivre, though in barely understandable English, he discoursed on his powerful, primitive wood carvings (preceding pages).

"Come," he said. "Look."

In the middle of his living room, next to a life-size wooden blue heron, there reposed a replica of a white porcupine, the largest I had ever seen. On its base, scribbled in Alfred's scratchy hand, was this less than modest description: "I am albino and maybe a unique structure in all the world."

"I whittled maybe 6,000 toothpicks for its spines," Alfred said. "I feel it's my best work. I sold about 50 pieces to the National Museum of Man in Ottawa, though it was hard to separate my collection. If I count my time, materials, and mileage I could get a small fortune for the whole collection."

"What was your inspiration to start all this?" I asked.

"Roger came to me four or five years ago and said, 'If you don't share what you have in your spirit, it will be lost forever.'"

Roger said, "But I didn't think it would come to this."

What it had come to was a basement full of small carved wooden figures—people, buildings, horses, logging haulers—all displayed on large sheets of plywood in exacting detail to a scale of one inch to a foot.

"These are scenes from the valley logging life—scenes from my life. Histoire vécu—my personal history. Each carved figure represents a real person in my life."

"You were a logger?" I asked.

He laughed. "That—and 44 other things." He pointed to a group of figures. "Here's the first lumber camp I worked at, back in 1920. This man turns the grindstone while this man and horse pull the logs."

LOGGING A HARD DAY'S WORK

At today's lumber camps you will see more giant skidders, mammoth harvesters, and merciless mechanical debranchers than horses and grindstones. But you will still meet families operating in the old ways—like the Landrys, whose 1,900 acres of woodlot sit in the saddle of a green valley township on the Canadian side.

As did his father and his father's father, Elude Landry along with his eight sons and one daughter harvest their own wood, putting strong backs to heavy chains, hauling 50-foot logs with a hefty horse—the whole day laughing, cajoling, cavorting, taunting, and having a grand old time (pages 384–5). They are people whose strength—of back and character—bear out the local boast that Paul Bunyan was born in the valley.

"This land is my life," Elude shouted above the noise of the flatbed truck as we bumped along a dirt lane into the woods for a day's work. Three Landry boys—Luc, 17, Georges, 21, and Claude, 25—horsed around in the back of the truck. "Some guy from Toronto offered me $24,000 for a parcel I paid practically nothing for just after World War II. But I'll never sell. My children will always be able to work this land."

It's hard to imagine anyone working the land harder. A well-drilled team, they cut, split, and loaded three cords of hardwood in two hours. They sell 1,000 cords a year.

Most of the wood that comes out of the region's rich spruce and fir concentrations is harvested by companies like Fraser, the valley's biggest, founded by a sagacious Scot named Donald Fraser. The company started a sulfite pulp mill in Edmundston in 1918, and in 1925 opened the paper mill in Madawaska. Today Fraser Inc. is managing and harvesting 1.8 million acres of prime timberland (of which it owns more than 40 percent), and it manufactures more than 400,000 tons of fine paper a year. If you have ever read a Sears Roebuck catalog, you have touched Fraser paper.

Five-mile-long pipes pump 950 tons of pulp every day under the international bridge from Edmundston to Madawaska, a symbolic umbilical cord of international cooperation. Fraser, a Canadian company, exports pulp duty free to its American paper-producing mill, eliminating the high tariffs levied on Canadian paper imported to the United States. That pipe is the lifeline of the 2,200 valley people employed at the Edmundston and Madawaska mills and offices (pages 402–403).

From Fraser's administrative office in Edmundston I drove 40 miles of unpaved roads with 37-year-old Jeff Leach, a Canadian who oversees close to two million acres as woodlands manager. We were heading north to Camp 69, one of Fraser's typical harvesting operations, driving parallel to the Madawaska River.

"It's hard to believe now, but the Madawaska River was completely covered with wood for 14 miles—you couldn't even see the water, eh?—until 1969 when we stopped using the river as a means of transportation and storage. We found out there was more wood underwater than above. When we cleaned the river out, we pulled 100,000 cords of wood from the bottom."

Camp 69 was buzzing with activity when we got there—literally buzzing from the deafening sounds of chain saws, tree harvesters, grapple skidders, and house-size slashers. Like an angry, gnawing, single-clawed big yellow monster, a harvester was dropping trees as though they were annoying weeds. Relentlessly closing in on one particularly formidable tree, the monster grabbed it at its base. Two sheets of heavy metal cut through the trunk. The crunching wood sounded like bones being ground. You could almost hear the tree cry out. The brute yanked the tree from its home of 80 years and turned slowly, the tree dangling from its claw until it was dropped onto a pile.

Gerald Quimper supervises the camp of 85 men who produce 58,000 cords of wood a year. It is a life of cold, cut, and splintered hands, unshaven faces, tired eyes, weary bodies. They live in long bare-metal Quonset huts or in newer, sterile five-room trailers, two men to a room. Privacy is minimal.

"Yes, it can get lonely up here for us," Gerald admitted, relaxing by the wood stove. "But the supervisor's salary compensates for the loneliness."

LIVING BETWEEN TWO WORLDS

"We were the forgotten territory," said Oneil Clavet of Edmundston, who is doing everything he can to help people remember it. "I would say it has to do with the fact that Madawaskans had to live so long without knowing whether they belonged to the United States or Canada. Look here," he said, pushing a map at me. "For 59 years this area was a bone of border contention because of vagueness in the 1783 Treaty of Versailles. Not until the Webster-Ashburton Treaty of 1842 could the people of the valley claim a country. But by declaring seventy miles of the Saint John River the border, that treaty effectively made an international community of the valley, and in many instances divided families into two nationalities.

"I prefer to call myself a citizen of La République du Madawaska," Oneil earnestly declared. He was referring to the original name for the territory, borrowed from the Malecite word meaning "land of the porcupines," an apt image for the sometimes prickly valley characters. Now Oneil unfurled a flag of the republic, then pulled out a draft of the republic's constitution.

Wait a second! Is this a real republic? In North America? Or am I concerned with the leader of an international conspiracy?

But before my mind could run wild, Oneil was quick to remind me the republic is a myth. The Republic of Madawaska has no political clout but is playing The Mouse That Roared to attract attention to itself.

To that end Edmundston played host last summer to the first annual Foire Brayonne. (A bray, a tool regional farmers used for breaking flax, has become a modern-day symbol for Madawaskans.) If there was not a Mardi Gras of the north before, there is now. The downtown streets were blocked off and jammed for a week with 70,000 people. Their high-spirited French blood ran hot as they celebrated their ancestry in cuisine, dance, dress, parades, and competitions.

The highlight of the occasion was the attempt by Jeannine Albert and Alberic Pelletier and their families and friends to make the world's largest ploye, with bulky and uncooperative pans, poles, paddles, forklifts, and tractors. When they finally poured the batter, it oozed to eight feet in diameter and they gleefully joined hands and broke into spontaneous song and dance around the implausible ploye (preceding pages).

But around here even the largest pancake is humbled by the lowly potato, as this local "Potato Song" laments:

I am a farmer on the Saint John River.
I plant potatoes to pay the income tax.
The collectors have arrived and they are
    encamped at St. Agatha.
They've come to take what little money
    we've lately saved.

"Baked, mashed, or French fries?" the waitress asked, as all waitresses in the valley automatically inquire.

"No potatoes today, thanks," I deferred, still remembering an overindulgence in oversize ployes. By the look on her face I knew I had committed the ultimate insult here in potato country.

The valley is, and has been for a long time, one of the largest potato-producing regions in the United States. The American side is part of Maine's Aroostook County, which accounts for 90 percent of the state's harvested acreage. In potato production Maine ranks just behind Idaho and Washington.

From the air the valley appears as a patchwork of brown corduroy overalls, held up by long green suspenders leading to the Saint John River—remnants of a centuries-old method of farming which gave every farmer access to the river water. Part of the reason potatoes grow so well here is the valley's natural drainage system plus a good ratio of clay, sand, and organic components.

Potato farming in the valley is a gamble, akin to Russian roulette. Why the average price per barrel for U. S. No. 1 grade potatoes was $16.44 in one year and $2.08 the next keeps brokers at the New York Mercantile Exchange perplexed—and Maine potato farmers poor.

Against such heavy odds, I wondered, why did people choose this way of life.

"We were born in the business," was Adrian Morin's fast reply. Across the kitchen table his wife, Riola, threw up her hands and laughed, "We were born to starve."

Certainly they were not born to get rich. In 1977 the per capita income in Aroostook County was under $4,000. In St. Agatha, not far from the Morins, it was even less.

Adrian said: "My father worked this farm. I was born at my brother Roland's place, up the hill, where grandpa had his farm. For a while I worked construction down in East Hartford—20 years ago there was big money down there in Connecticut. But I didn't like that city life. Then I built the sawmill in 1957. In 1958 it burned—lost all my money. When my father retired, my brothers and I took over the farm.

"Today my sons are planting their own three acres. That's how I started. My father gave me three acres to work. They were shining like gold. I was more proud of those three acres than of what I got today.

"In 1965 there were three and a half million farmers in the nation. Now we're less than two and a half. It gets us to wondering whether our boys should go into another business. But what can we do. Nothin'. It's just somethin' we got in our blood."

The river, like the land, is also in the blood. The valley folk sing of their River Saint John:

Blessed be our heavenly Father

Who placed our cradle upon these shores;
May the pure waters of the river someday
caress my grave.

The Indians called it Oo-las-tuk, the Goodly River. From its source deep in the woods of northern Maine, the Saint John River flows more than 400 miles before emptying into the Bay of Fundy. At the eastern end of the river is Saint John, New Brunswick (population 90,000). Far to the west is Allagash, Maine (population 650). If the valley is a place apart, then Allagash—or Moosetown, as people downriver call the isolated town—is a place beyond that.

"DAMN DAM" THREATENS SCOTCH-IRISH

The names on the mailboxes change suddenly as you approach town. Pelletier and Sirois and Daigle turn to McBreairty and Kelly and Gardner. The Scotch-Irish came here in the early 1800s, looking for a place the French hadn't already settled. They are a clannish lot. Marriages between cousins and other relatives are not uncommon.

The woods and the river are what these people know best. Driveways and lawns are strewn with skidders and haulers on one side, canoes and outboard motors on the other. But now this whole way of life is scheduled for demolition.

Allagash, I feel, may become only a footnote in the wake of the proposed two-headed Dickey-Lincoln School hydroelectric project. "That damn dam," as the dual facility is referred to in some valley circles, is the largest public-works project in New England's history and one of the most controversial. Ever since authorized by Congress in 1965, it has pushed emotions to overflowing from Maine to Washington, D.C.

Some chamber of commerce elements, looking toward a boom economy during construction, voted in favor of it. Environmentalists, on the other hand, condemned it for the potential destruction of wilderness, not to mention the rare Furbish lousewort.

Still others pointed to it as a nonpolluting renewable source of an even rarer resource—energy—and as a means of controlling the spring flooding that damages urban properties and potato fields.

With construction slated to begin in 1983, the fate of the project is unresolved. But if built, its impact will be tremendous. The 944-megawatt facility will cost about $825,000,000; the larger Dickey Dam will rise 27 stories and stretch two miles across the valley just above the confluence of the Saint John and Allagash Rivers. It will flood 278 miles of rivers and streams, 76,000 acres of timberland—and part of Allagash.

That last item irked Allagash teacher Bob O'Leary. "What does the dam mean to me? It means 112 families here in Allagash will be displaced. Mine will be one. I just finished building a $40,000 home along the banks of the Allagash a mile from here. It will be lost if they build the dam. And, you know, those people in Washington can tell us to the penny what the dam will cost, but they still haven't told us what they'll pay us for our homes."

ONE FAMILY'S MOST PRECIOUS CROP

If you surmise that home and family are important in the valley, you miss the point—they are everything.

I was introduced to the Minal Caron family of Fort Kent as one of the most successful potato-farming families in the valley. But according to Mrs. Caron, potatoes were not the family's most important product. She pinched my elbow and asked, "Would you like to see our best crop?"

The living room was like a shrine to her family, its walls lined with photographs, portraits, snapshots, cameos, tintypes, degrees, trophies. One by one, I was introduced, by proxy, to her brood of 12 children, 48 grandchildren, and a couple of great grandchildren. "Some have moved to Connecticut, but we are all very close. Family reunions are very special occasions. The most special is Mother's Day."

Nowadays three to five children in a family are not out of the ordinary. A generation ago it was nine to 13. For sheer numbers the Cyrs of St. François de Madawaska, New Brunswick, must take the cake. Heliodore and Marie Cyr have had 27 children.

Next to family is faith.

"Qui-perd sa langue perd sa foi. Who loses his language loses his faith." The strength of faith in the valley is visible everywhere. In the schools, children are allowed to leave their classes for "release time," during which they receive religious instruction, otherwise not permitted in Maine schools. In the homes, a picture of the family priest shares the wall with the children's portraits. In the fields each fall, priests go through the valley performing Masses in potato houses where potatoes are stored before shipment.

But it's the church itself that impresses most as you drive through any town: It is invariably the largest, most elaborate edifice, and the focal point of every village. The only traffic jams in town are on Sundays.

A TEMPTATION AND A PROPOSAL

Months after leaving the valley—back in my urban environment where I sometimes wonder whether all the amenities are worth the price, where it sometimes seems unnatural to be living 250 miles from my parents, where I sometimes feel anonymous in the city's sea of humanity—I find myself valuing the virtues of these valley people more and more. I am often tempted to trade urban slick for country hick and a warming evening singing old songs with old friends.

But of all my valley memories, it is the face of eight-year-old Nicole Corriveau that keeps coming back to me, circled in gold, angelically pure. Bright eyed, naive, but learning fast, Nicole is the upper Saint John River Valley. Child of a mélange of cultures, a child of our times—the valley's most valuable natural resource.

"If I come back in 15 years, will you marry me?" I asked her one day. She smiled coyly but did not answer, later giggling over my proposal with her cousin. It was I who was being naive. In 15 years Nicole would change—as the valley would change. But one could hope.●

REV. C. K. STEELE: THE MARTIN LUTHER KING OF FLORIDA

● **Mr. McGOVERN.** Mr. President, during my 1972 Presidential campaign, I came to know Rev. C. K. Steele, pastor of the Bethel Baptist Church in Tallahassee, Fla. It was my privilege to speak in Reverend Steele's church and to have the benefit of his insight and devotion to the cause of social justice. Recently, Reverend Steele died after a remarkable and fruitful life in which his civil rights commitment earned him the discriptive phrase—"The Martin Luther King of Florida."

I ask that some excellent accounts of Reverend Steele's life and death appearing in the Tallahassee Democrat be printed in the RECORD.

The material follows:

CANCER CLAIMS STEELE

(By LaNedra Carroll)

The Rev. Charles Kenzie "C. K." Steele, the man who since the 1950s led Tallahassee's march toward civil rights, is dead.

Cited at a recent testimonial as "a man who fought for the good, for poor, for the powerless and the forgotten," the pastor of Bethel Baptist Church died at his home at 7:15 Tuesday morning after a long illness. He was 66.

"There is no need to add laurels to make him larger in death than he was in life," said the Rev. Herbert Alexander, a close friend and neighbor. "He was a great man. As long as he lived, he gave himself up to a greater vindication of humanity."

City officials have set Sunday aside as a memorial day for Steele. The flags in front of the Capitol will fly at halfmast Monday in Steele's honor, Gov. Bob Graham said.

Steele's life was a mixture of preaching for justice and fighting for changes.

Born Feb. 17, 1914, in Bluefield, W. Va., Steele was the son of a railroad worker-turned-miner. By the time he was 15 he was preaching.

In 1938 he went to the big city—Atlanta—to attend Morehouse College. It was his first trip far from home.

In the following years he preached in Toccoa and Augusta, Ga., and Montgomery, Ala.

Then, at age 38, he came to Tallahassee. He began preaching at Bethel Baptist Church, and for several years life in Florida's capital was relatively calm for the minister.

That calm was not to last.

It began with a bus boycott in 1956, at a time when black passengers were supposed to ride in the back of the bus.

Two black students refused to give up their seats to a white woman. They were arrested.

Steele and his followers boycotted the bus system, bringing it to a halt. Former Gov. LeRoy Collins said he had to order the temporary halt, to forestall violence at some bus stops.

"He was strong in his convictions as steel . . . ," Collins said of Steele. "(The boycott) hurt black people more than it did white people, in the sense that they needed that service more than white people did. But it showed the people of this community that they were very determined to right this wrong."

Steele was harassed by the Ku Klux Klan, snubbed by civic leaders and arrested several times. Later, he would refer to the bus boycott as the single most important event in shaping civil-rights activities in Tallahassee.

It was just the beginning. Steele was involved in other non-violent sit-ins, marches and boycotts as he and other civil-rights activists labored to achieve integration in the city's restaurants, theaters, airport and schools.

His focus was not just local. He marched side-by-side with such national luminaries as the late Dr. Martin Luther King Jr. and Ralph Abernathy in Montgomery, Selma and St. Augustine. In 1957 Steele helped King and others found the Southern Christian Leadership Conference, of which he was a vice president.

He carried the fight for equality through the '60s and '70s. The methods were different but the message was the same. In later years, he turned his attention to economic discrimination against blacks and other people.

"They have developed a more subtle way of depriving black people of their rights," he said in an interview with The Democrat two years ago, "but there will be a new group of leaders that will be able to cope with that, a group of leaders as sophisticated and subtle, yet as courageous in conflict, as in times past."

In that earlier interview, he acknowledged the progress that had been made in the struggle for civil rights. He also acknowledged, with a touch of regret, that the "surge for freedom" had its up and downs.

"I know I have done a little something for Tallahassee over the years," Steele said then. "I've really tried to do my best to bring the Kingdom of God to the citizens of this community—both black and white—but it's not been an easy task."

It was three years ago that doctors discovered he had cancer of the bone marrow. They gave him only 22 hours to live.

Steele defied their predictions.

"Death didn't interest him that much,"

said one of his sons, C.K. Steele Jr. "He was not afraid of dying."

Steele remained optimistic. In the earlier interview, he looked ahead.

"Ten, 15 or 20 years from now," he said, "we'll be better able to cope with the situation than ever before. We won't have reached Utopia, but we'll be further along than we were.

"I'd like to see a day when we can bring black people and poor people together in a strong organization determined to obtain for all people an equal share of justice and equality."

Survivors include the Rev. Steele's wife, Lois Brock Steele; five sons, C.K. Steele Jr. of New York City; the Rev. Henry Marion Steele of Orlando; and Clifford, Darryl and Derek Steele of Tallahassee; a daughter, Rochelle Steele Davis of Tallahassee; and his mother, Lydia Steele of Maybeury, W. Va.

A Common Man With a Kindly Touch

(By Neil Chethik)

It was April 15, 1980, nearly 30 years after a small, energetic man with a black mustache and goatee first touched Tallahassee, the city he would forever after call home.

It was a symbolic day for the Rev. C. K. Steele—a day that saw most of Boulevard Street renamed for Martin Luther King, whom Steele admired as a colleague and loved as a friend.

Steele's only regret that day was that only portions of Boulevard Street had been renamed. Political compromise had left his job half-finished.

To his close friend, the Rev. Herbert Alexander, he vowed: "Next year, I'll get the rest of it."

"He brought that kind of tenacity to everything he did," Alexander, an administrator at Florida A&M University, said Tuesday. "To me, he was just a common man with a kingly touch."

On Tuesday, Steele died of cancer. He was 66.

But Alexander, who has known Steele since the West Virginia native became pastor of Tallahassee's Bethel Baptist Church in 1952, said he believed Steele's long-fought struggle to dedicate King Boulevard would end in total victory.

"The thing that gives me the greatest inspiration about C. K. Steele is his fierce determination that his ideas never be conquered," Alexander, 52, said Tuesday in an interview.

"I've seen him beaten by the odds," he said. "But inside this little man was a spirit that was indomitable."

That spirit carried Steele through the 1950s and early 1960s, when he mounted successful struggles to integrate Tallahassee's movie theaters, lunch counters, airport and bus station.

It carried him through the late 1960s and 1970s, when he battled to integrate schools, stop police brutality and end job discrimination against blacks and the poor.

And it carried him through the successful 1956 bus boycott in Tallahassee, the incident Steele believed did the most to turn the tide of racism in his adopted city.

"He dared to venture to do things that other men wouldn't think of doing," Alexander said. "His faith helped him . . . and fortified for him a great kind of courage."

Alexander said that faith was never so tested as it was two months ago, when Steele traveled to the NAACP convention in Miami. His body ravaged by cancer, he brought with him nothing but his cane, a small tote bag and $12.

"I told him he could never make it in Miami on that, but he told me, "This will be my last convention. I'm going on faith," Alexander said.

When he arrived in Miami, Alexander said, NAACP officials who didn't even know that Steele was coming took care of him every minute. They fed him, put him up at a hotel and made sure he got back on the plane.

Said Alexander: "He believed in the goodness of people."

Alexander, who was ordained by Steele in 1962, said he saw Steele as more than a teacher, a leader or a pastor. He was a friend.

"And he was the greatest of friends," Alexander said, a smile leaping to his face. "He was a man who took the time to hear what you had to say. He loaned himself to the community, and ofttimes, he received no reward.

"Each time I talked with him, I left with the feeling that I had stolen something from him, without returning anything. He was a giver."

Alexander said Steele often went to his church early to wait for beggars.

"He took great joy in giving to the poor," he said.

Steele's accomplishments, Alexander said, came almost incidentally.

To Alexander, it appeared that Steele was the right man in the right place at the right time.

"I felt that he had an unusual kind of rendezvous with destiny," he said. "He came at a time when men abused other men. He saw that as an evil that had to be attacked."

With the ferocity of a Napoleon, Alexander said, Steele fought battle after battle. He marched, preached, argued and prayed.

"To say that C. K. Steele was a quiet man is not to have seen him in action," Alexander said. "Under the facade of being humble and quiet, he was aggressive and outgoing. He had to be heard."

Alexander said he found it difficult to believe the man he had listened to for almost 30 years would never be heard from again.

It was just Monday night that he sat by Steele's bed. Before leaving, Alexander and two of Steele's sons, Charles and Clifford, knelt by the bed.

The next morning, Steele was dead.

"Even though I had seen a man just a wisp of what he once had been, his hands just skin and bones, it never occurred to me that this man would die," Alexander said. "I knew he was fallible, but in that fallibility, I always found strength."

Leaders Mourn Steele's Death

(By Peter Racher)

Veterans of the nation's civil-rights movement Tuesday mourned the death of Tallahassee's Rev. C. K. Steele, "the Martin Luther King of Florida."

The Rev. Ralph D. Abernathy of Atlanta said he and Coretta Scott King, wife of slain Dr. Martin Luther King Jr., would be among mourners at Steele's funeral Monday.

Abernathy said he hadn't discussed travel plans with Mrs. King, who couldn't be reached for comment.

"I just know Mrs. King," said Abernathy, past president of the Southern Christian Leadership Conference, an Atlanta-based civil-rights group. "I don't see how she can be anywhere else."

In an interview Tuesday with The Democrat, Abernathy praised Steele as a friend, scholar and leader of the nation's civil-rights movement.

Steele, who marched in some of the nation's most famous civil-rights protests, died at his home early Tuesday. He was 66.

"When it came to goodness and noble Christian values, he had no peer," Abernathy said.

Abernathy wasn't the only national figure saddened by news of Steele's death.

"He was the conscience of Tallahassee and, in many ways, the conscience of Florida," the Rev. Jesse Jackson said in a telephone interview.

Jackson said Steele had conducted two fights: one against the cancer that had afflicted him, and another against the "social death" that afflicted minorities.

"He sought to redefine dignity for so many people. . . . He never gave up," Jackson said. "He showed us how to live, and he showed us how to die."

Former U.N. Ambassador Andrew Young, who worked with Steele in the civil-rights movement, said in a phone interview, "The movement's base was always the black church, and C.K. Steele was a symbol of that as well as anyone else. He was a preacher with a social conscience, but most of all, he was a preacher."

Young said he couldn't attend Steele's funeral because of other engagements.

Abernathy said he anticipated other black leaders, such as Joseph Lowrey, president of the Southern Christian Leadership Conference, would attend funeral services.

Abernathy said Steele's dream was to bring unity to the civil-rights movement.

"So that which he could not do in life, maybe he will achieve in death," Abernathy said. "I'm sure all of us will be in Tallahassee for the service. We shall all be together."

Abernathy, who gained fame as a close associate of King, praised Steele as "a friend of humanity."

"This man had risen beyond the level of hate," Abernathy said. "He possessed not the capability to hate. He was imbued only with the ability to love. He loved everybody. To the simplest forms of life, his love was evident—with children, with flowers, with birds, with animals, with human beings, black, white, brown, red, yellow. It did not matter one's distinction in life. He loved."

Abernathy said, "It wasn't anything strange for me to pick up the telephone and get his explanation of a particular biblical passage. He was a real Bible scholar."

When other theologians failed him, Abernathy said, he turned to Steele "and got the Steele version of it."

Steele never gained the national prominence of King or Abernathy, although he had helped them establish the Southern Christian Leadership Conference, which took a leading role in the civil-rights movement.

"He served a great deal of his time in the shadow of Dr. Martin Luther King," said a longtime friend and ally, the Rev. R. N. Gooden of Tallahassee.

"Due to the prominence of Dr. King and the focus on Dr. King and the attention the news media gave him, it always put C. K. Steele in the background," Gooden said.

Gooden, in Los Angeles for a church conference, said in a phone interview that Steele was "an even greater speaker than Dr. King."

In Tallahassee Tuesday, Mayor Richard Wilson set aside Sunday as a memorial day to Steele. Wilson said the city and civic groups might schedule other memorial activities but firm plans hadn't been made.

Gov. Bob Graham said flags in front of the Capitol would fly at half-mast Monday in honor of Steele.

"We have today suffered the loss of a great Floridian," Graham said in a press statement.

George Thurston, a free-lance reporter who covered demonstrations led by Steele in the 1950s, recalled the fiery orator who led Tallahassee blacks in 1956 to boycott public buses until the city changed rules requiring blacks to sit at the back.

The boycott enraged many whites, but it ultimately brought public transportation to its knees.

Steele was arrested for his role in the boycott. But when the back-of-the-bus rule finally was outlawed, Steele stood before Talahassee blacks and raised his voice in victory.

Thurston was new director for a local radio station at the time.

"I can hear his voice raised, and he's waving his arm, and he's saying, 'We can ride the bus now! We can ride the bus!'" Thurston said.

Other words of remembrance came from:

FAMU President Walter Smith: "It is a real and terrible loss to Tallahassee, the state and the nation that such a giant should pass at this time . . .

"It is also a severe personal loss because of my own association with Rev. Steele during my days as a student at FAMU, when all of us formed a team that fought for equal rights for all Americans without regard for race, color or creed."

James Eaton, FAMU black archivist: "Dr. Steele's impact was felt around the state. He was symbolic of the movement in Florida. He was the Martin Luther King of Florida. . . . If there's such a thing as a real messiah, a living Jesus, a prince of peace, he was it."

State NAACP President Charles Cherry: "In my mind (Steele) was the leader of civil rights in Florida. He was involved in civil rights long before it became fashionable."

The Rev. Ernest Ferrell, president of the Tallahassee Urban League: "When I look down Old Brainbridge Road, where this office is located, and see people who have turned to alcohol and who are turned off from society, I know the struggle must go on . . . and I hope that one day the dreams Rev. Steele and Dr. King and other black leaders had can become a reality."

STATION TO BROADCAST STEELE DOCUMENTARY

WFSU-TV Channel 11 (cable 3) will rebroadcast its half-hour documentary on the Rev. C. K. Steele tonight at 7:30.

The documentary, "A Warrior Bold and Gentle," was filmed between spring 1979 and spring 1980 by a local free-lance producer, Robert Perkins.

It consists primarily of interviews with Steele, his wife and friends, and includes photographs of the 1956 Tallahassee bus boycott and film footage of a testimonial dinner given for Steele last year.

The documentary was first broadcast by WFSU-TV July 16.

A COMMENTARY ON THE ADMINISTRATION ANALYSIS OF "THE SALT SYNDROME"

● Mr. GARN. Mr. President, the Carter administration has recently released a commentary on "The SALT Syndrome," a documentary film produced by the American Security Council. As a member of the Intelligence Committee I am deeply disturbed by CIA participation in such a gross propaganda effort. The administration response is a combination of distortions, release of classified information when it suits the administrations purpose, withholding information when it suits their purpose, and pro-SALT propaganda. One does not have to endorse every statement in the American Security Council film—and I do not—to recognize that it is basically a very accurate depiction of the strategic balance and the limitations of SALT II intended for a popular audience.

The message of the Carter administration seems to be that quantitative advantages when enjoyed by the Soviet Union are not significant but that they are highly significant when enjoyed by the United States. No one is arguing that the Soviet Union is ahead in everything but they are ahead in perhaps 75 percent or more of the strategic force indicators and are closing the gap in the remaining areas.

The administration seems to use tunnel vision ignoring the trends in the developing balance. It tries to exaggerate the U.S. advantage in the few remaining areas, such as total number of warheads, and ignores the fact that this gap will be closed within 2 years. It talks about qualitative U.S. advantages in missile accuracy that no longer exist. It even tries to ignore the fact that there has been a massive reduction in the size of the U.S. Navy since the late 1960's and the U.S. Navy today is grossly inadequate to carry out its three-ocean requirements.

I have prepared a commentary on the administration analysis of "The Salt Syndrome." I ask that it be printed in its entirety in the RECORD.

The material follows:

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[Secretary of Defense Robert McNamara] began to disarm.	While McNamara was Secretary of Defense the U.S. engaged in a massive expansion of its strategic nuclear forces. We introduced Minuteman ICBMs, and Polaris submarines and missiles. We also began the developemnt of a light nationwide ABM system and development of multiple independently targeted warheads (MIRVs) for our ballistic missiles. This was hardly an era of unilateral U.S. disarmament.	The Carter Administration characterization of the McNamara defense programs as a "massive expansion" of our strategic forces is ridiculous. Initially there was some expansion of the Eisenhower programs, but defense spending on strategic programs was quickly cut $11.2 billion in 1962 to $6.8 billion in 1966. McNamara froze U.S. strategic forces starting in his 1965 budget and maintained this decision despite the massive buildup of Soviet strategic forces. He reduced U.S. forces by scrapping 180 Atlas and Titan ICBMs, plans for 200 additional Minuteman, and retired all existing U.S. B-47 bombers and planned to retire most of the B-52s. He refused to develop a new bomber. Indeed McNamara did not start a single new strategic system during his 7 years as defense Secretary. More importantly, he formulated the strategy of Mutual Assured Destruction which has had such a negative impact on our defense spending.
1,000 American B-47 strategic bombers were phased out beginning in 1961.	B-47 medium bombers were phased out as obsolete, but were supplanted by vastly more capable long-range B-52s, Minuteman ICBMs, and Polaris SLBMs.	The suggestion that B-47s were "supplanted" by B-52s is a distortion of fact. The B-52s and B-47s were largely contemporary and designed for different missions, the B-47s becoming operational 3 years earlier. The American Security Council point is completely valid—the U.S. phased out its B-47 medium bombers while the Soviets not only retained most of their contemporary Tu-16s but actually improved this force with the introduction of the Blinder and the intercontinental range Backfire. It is true that the U.S. built about 1,700 missiles to replace 1,800 bombers. The Soviets, however, added 2,350 missiles and retained most of their bombers.
Our supersonic B-58 strategic bombers were deactivated in 1970.	The B-58 medium bomber was retired because it was not cost-effective.	The B-58 was retired because of inadequate funding for defense.
In 1977 [President Carter] cancelled the B-1 bomber, which was to replace our obsolete B-52 bombers.	As an alternative to the B-1, President Carter accelerated the development of the air-launched cruise missile (ALCM). B-52s are not obsolete—they will continue to be effective launch platforms for cruise missiles into the 1990s. While the aircraft design is relatively old, the weapons and avionics of the B-52 are quite modern and are being further improved.	The Carter Administration is still trying to maintain the myth that it invented the cruise missile. President Ford's 1976 program called for the deployment of the cruise missile on 250 B-52s plus the deployment of 251 B-1s. Carter cancelled the B-1 and cut the cruise missile force to about 150 B-52s. He also delayed the introduction of the cruise missile.

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The Soviets are already testing even newer strategic bombers.	In 1979 the Soviets may have had one or more new bombers under development, but none had yet been flight-tested.	It is correct that none of the new Soviet heavy bombers have been flight tested but the Administration itself disclosed in the 1979 SALT debate that the Soviets may have 3 heavy bombers under development.
The U.S. has no plans for a new strategic bomber until at least the 1990s.	The U.S. has continued the B-1 program in research and development, as well as other work which will keep open the option to develop a new manned, penetrating bomber in the future. Additionally, the U.S. is considering the deployment of a cruise missile carrier aircraft by the mid-1980s. Meanwhile, ALCM-carrying B-52s will begin joining the force in 1982, and by the mid-1980s, over a thousand ALCMs will be operationally deployed.	The Carter Administration has no intention of deploying any new strategic bomber or cruise missile carrier. The Administration's statement reminds one of Mr. McNamara's old claim he was developing 3 strategic bombers. None of them even materialized. The Carter Administration has been threatening to veto the defense bill if Congress appropriated money for the B-1.
The Soviet Union's medium and heavy strategic bomber force now numbers 675, while the U.S. bomber force has been reduced to 414.	Misleading comparison. These figures count medium range Soviet Badgers and Blinders equally with long range U.S. B-52s. In heavy bombers alone the U.S. has a substantial lead.	The Administration claim ignores the Soviet Backfire which is an intercontinental strategic bomber with more range than half the B-52s and was counted by the U.S. as an intercontinental bomber before Mr. Carter became President.
The number of United States strategic missiles was frozen at the 1967 level.	The U.S. has not stood still in strategic forces since 1967. Before SALT began, the U.S. decided to shift from quantitative to qualitative improvements in strategic forces. In the missile force these improvements included the deployment of MIRVs—which accounts for the fact that since 1967 the total number of warheads in the U.S. inventory has more than doubled and the number of missile warheads has quadrupled while the total number of launch vehicles has declined slightly; the Minuteman ICBM upgrade program (MK-12A RV,W78 warhead, guidance improvements, silo upgrade and Command Data Buffer System): the replacement of Polaris SLBMs with longer range, more accurate and greater playload Poseidon and Trident missiles. In addition there have been numerous improvements to the B-52 force (new SRAM weapons, new electronic counter-measures, new navigation equipment, improved SRAM guidance, and now the addition of air-launched cruise missiles.)	In relation to the Soviet Union the U.S. has stood still. Since 1967 the Soviets have increased the number of their warheads by about 7 fold. While we have introduced only two new SLBM and one modified ICBM, the Soviets have introduced 4 ICBMs, and 3 SLBMs with several major modifications of each. Soviet strategic programs have been funded at about three times the U.S. level. Over $100 billion more has been spent by the Soviets on strategic programs than the U.S. has spent over the last decade.
But the Soviets continued to build missiles even after they passed U.S. numerical limits about 1969.	The Soviets passed us in number of launch platforms, but we were modernizing our missile force by replacing single-warhead missiles with MIRVed missiles, in reality outstripping the Soviets by multiplying the number of nuclear warheads per missile. The Soviets did not begin to deploy MIRVs until the mid-1970s.	It is true that we were the first to introduce MIRVs but the Soviet Union has clearly outstripped the United States in strategic missile forces, particularly ICBMs. The Soviets already have about twice as many hard ICBM warheads & have achieved about parity in accuracy. They are continuing their MIRVed force expansion while ours is frozen.
President Carter further accelerated our disarmament by cancelling our only ICBM production line.	The MM III line was producing spare & test missiles we had no intention or means of deploying; besides, the U.S. already had a sufficient surplus of MM II's. President Carter has approved development of the MX mobile ICBM.	The Carter Administration certainly had no intention of deploying more Minuteman III or even deploying all of the existing ones we have. One might ask why? Why did the Carter Administration refuse to replace the 450 Minuteman II ICBMs which are now suffering from age? Why did it allow the ICBM force to become vulnerable to Soviet attack and why it so delayed MX that the ICBM force will be vulnerable for the entire decade of the 1980s. The Carter Administration cancelled Ford plans to deploy 50 more Minuteman IIIs in 1977.
At that time [1978] the Soviets were producing or testing eight new ICBMs.	Untrue. The Soviets were producing or testing three fourth generation ICBMs—the SS-17, -18, and -19.	This somewhat depends on your definition of "new," but in 1978 the Soviets were testing about 8 ICBM types—SS-9, SS-11, SS-13, SS-17, SS-18, SS-19, & intercontinental range SS-N-8 & SS-N-18.
The Soviets have at least 1400 ICBM launchers to our 1504.	True, but incomplete. The U.S. places about 25 percent of its 9200 strategic nuclear weapons on ICBMs, whereas the Soviets place approximately 75 percent of their 6000 weapons on fixed-silo ICBMs. The other 75 percent of our weapons are dispersed on less vulnerable mobile platforms-bombers and submarines. Only 25 percent of Soviet weapons are deployed on bombers and submarines.	True but irrelevant. It is what the Soviet SLBM & bomber force that can do against us not the percentage that are on a particular element of the force that is important. Soviet ICBM, by the way, are not vulnerable to a U.S. attack. Indeed they enjoy more survivability today than our bomber & SLBM forces because of their much higher alert rates.
Many of [the Soviet] ICBM silos are designed to be reloaded and refired . . .	Soviet silos do not appear to be designed for this capability. Even if they were, reload & refire in the middle of a nuclear war would be no easy feat. The Soviets, who do very realistic testing & training, have never trained for this complex task. In any case, U.S. retaliatory capabilities could destroy any ICBM reload facilities long before a	Soviet SS-18 & SS-17 silos are cold launched & inherrently have this capability. The U.S. at this time has no significant retaliatory capability against silos. The Administration claim that the Soviets don't practice reloading their silos is ridiculous. SALT II does ban this but does not define what it bans.

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	second Soviet salvo could be fired from reloaded launchers, SALT II bans any testing of a rapid reload operation, and prohibits the location near silos of additional ICBMs and hardened storage facilities vital to a realistic refire system.	
The Soviets have at least 1,000 extra missiles for refire, making their advantage in ICBMs at least 2,400 to our 1,054.	We have over 200 extra missiles ourselves, & believe the Soviets may have several hundred more than that. There are legitimate reasons for keeping retired missiles, such as for obtaining spare sparts & for test purposes. It is unlikely that any excess older missiles the Soviets may have would be used for refire. A complex operation with thousands of people & vehicles—all observable—would be necessary to launch these missiles without their silo launchers. There is no evidence of any such infrastructure.	The United States didn't spot a Soviet combat brigade in Cuba for possibly seventeen years despite the fact it had thousands of people & vehicles. We have no idea how many missiles the Soviets have. We can't even account for third generation missiles we know they produced for initial deployment in these silos.
Because of the larger size of the Soviet missiles, they have a six to one advantage over the U.S. in missile firepower.	The Soviets do have an advantage in missile megatonnage; we have a comparable advantage in heavy bomber megatonnage. There are many other indices of strategic military capability more important than simple megatonnage. For example, the U.S. has nearly twice as many nuclear weapons on its total force of ICBMs, SLBMs & strategic bombers than does the USSR. The reliability & accuracy of U.S. missiles are both better than those of Soviet missiles.	The Soviets have a massive advantage in missile megatonnage. The U.S. does not have twice as many warheads as does the Soviet Union by the Administration's own claims. (9,200 vs. 6,000 for Jan. 1980). The Soviets are adding 1,000–1,500 warheads a year while we are standing still. The accuracy of U.S. ICBMs is only very slightly better than the Soviets & does not begin to compensate for the several fold Soviet yield advantage & the two to one advantage in hard target capable warheads. The Administration itself admitted that Soviet accuracy will be better than our own in the early 1980s.
Soviet mobile ICBMs are not included in the ICBM count because they can be hidden from our satellites in any building. So, we don't know how many they have; but, the U.S. has no mobile ICBMs.	We are confident the Soviets have not deployed any mobile ICBMs. SS–16s, the only mobile ICBM they have even partially tested, cannot be further tested, produced, or deployed under the terms of SALT II. If (after Protocol expiration) the Soviets deployed another type of mobile ICBM, any such missile would be included in the ICBM count—& the Soviets are obligated by SALT II to make them countable. The U.S. is developing MX, a formidable ICBM for deployment in a mobile basing mode.	The Administration's claim about the SS–16 is simply not true. The Soviets have already produced and stockpiled well over 100 mobile SS–16 ICBMs. These could be deployed very rapidly. They may already have produced as many SS–16s as they need.
The number of U.S. sub-launched ballistic missiles was frozen at the 1967 level.	Misleading. As with ICBMs, the U.S. shifted in SLBMs from quantitative to qualitative improvements, replacing Polaris missiles with MIRVed Poseidons, & now replacing Poseidon missiles with new MIRVed Trident SLBMs. The number of U.S. SLBM warheads was increased severalfold since 1967, even though the number of missiles has remained the same.	Not misleading. The Administration objects to every factual statement that the Soviets are ahead in most quantitative indicators & we froze our missile force in 1967 on the grounds that we made qualitative improvements. Granted we did make some but the scale of U.S. programs was a tiny fraction of the Soviets & the net result has been Soviet strategic superiority.
The Soviet advantage in all types of ballistic missile submarines is now 93 to our 41, more than 2 to 1.	Our advantage in number of SLBM warheads—a more meaningful comparison—is more than 3 to 1. Moreover, U.S. submarines are all nuclear-powered, whereas more than a quarter of Soviet ballistic missile submarines are diesel-powered. U.S. submarines are quieter, at sea more often, and are augmented by superior ASW forces.	The Soviets will soon have twice the number of nuclear missile submarines and they are rapidly introducing MIRVed SLBMs. The number of missiles available to each side is important for target coverage and the Soviets have a large advantage. U.S. weapons have a very low yield and have to be used in very large numbers against any area target.
The SS–N–8 [has] a range of 5,500 nautical miles, 3,000 miles longer than any of our sub-launched ballistic missiles.	Not true. The new U.S. Trident C–4 missile now being deployed in Poseidon submarines has a range comparable to that of the Soviet SS–N–8.	The ASC statement was true when the film was made, indeed true for the entire 1973–1979 time frame. Trident missiles were only introduced into the U.S. inventory late in 1979. They are still few in number, compared to hundreds of Soviet SS–N–8 and SS–N–18.
The first Trident, the comparable U.S. submarine, will not be operational until 1981.	The first Poseidon submarine backfitted with Trident I missiles entered operations service in 1979. Twelve Poseidon SSBNs are being backfitted with Trident I SLBMs. The first U.S. Trident submarine will become operational in 1981, & will be far superior to the Soviet Delta submarine.	The Soviet D class submarines have much larger tubes than U.S. Poseidon submarines & the missiles they carry are comparable in size to the missiles that could be carried in the U.S. Trident submarines. Soviet D class have substantial upgrade potential. The counterpart of the Trident is the Soviet Typhoon submarine, not the D class, as the Administration suggests.
The United States Navy in the last ten years has been cut in half . . . In the meantime, the Soviet have vastly built up their Navy.	The U.S. Navy has retired many obsolete WWII ships, & replaced them with fewer but more capable new ships. U.S. ship retirements in the past few years have given us a leaner, more modern, & more capable fleet. In fact, the Soviet Navy, which started far behind us, has also been declining in size recently, not increasing. With regard to large ocean-going surface combatants (over 3,000 tons), the U.S. Navy has deployed more than twice	This is perhaps the most grossly misleading response in the package. Every Administration spokesman from the Chairman to the Joint Chiefs of Staff down has admitted that we do not have anywhere nearly enough ships to meet our requirements & that the Soviets have both more surface ships & submarines. Our newer, more modern vessels do not face World War II Soviet ships. They face modern, missile equipped nuclear capable Soviet surface

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	as many platforms as the Soviet Navy since the early 1960s. The U.S. continues to hold superiority over the Soviet Navy in performance of critical missions such as strike warfare, amphibious warfare, & anti-submarine warfare, as well as in readiness.	& sub-surface vessels. The Soviet Navy is literally threatening our command of the sea. The choice of the 3,000 ton cut off ignores the little fact that the Soviet navy maintains a massive fleet of vessels under 3,000 tons while the U.S. Navy has few.
In attack submarines, The Soviet advantage is 3 to 1.	True in terms of the number of ships, but our attack submarine force is vastly more capable than the Soviet force which relies more heavily on diesel subs. The overall U.S. anti-submarine warfare capability is far ahead of Soviet ASW.	This statement is a gross over-simplification. U.S. nuclear submarines are more quiet than their Soviet counterparts. Soviet submarines are generally faster. The newer submarines are much faster & deeper diving. The Soviets have a massive advantage in cruise missile equipped submarines & will continue to. Soviet diesel submarines are not easy targets & can be in more places than U.S. submarines. Soviet submarines carry more effective weapons than U.S. submarines but our sonars are better.
When all types of combat ships—large & small—are counted, the Soviets numerical advantage is almost 5 to 1.	A misleading comparison. Our ships are much larger. in total tonnage, we are far superior to the Soviets. The absurd practice of counting all ships—large & small—as equal conceals major force differences. For example, the U.S. has 13 heavy aircraft carriers; the Soviets have 2 light aircraft carriers, which are equipped with less capable aircraft. Any such comparison should also take into account NATO & Warsaw Pact navies; in that case, the balance is greatly in NATO's favor. Overall U.S. & other NATO navies have twice the naval tonnage & several times the firepower of the Soviet & other Warsaw Pact navies. We are working to counter Soviet ship-borne cruise missiles by improved fleet air defenses & by development of our own Harpoon & Tomahawk weapons. We are aso upgrading our naval forces with new classes of destroyers, frigates, & attack submarines. The U.S. Navy enjoys other advantages as well, including geography. The Soviet Union must divide its large naval forces between 4 separate & widely dispersed fleets. It would be extremely difficult for the Soviet Union to utilize ships from 1 fleet in another theater in the event of hostilities, since these ships must pass through geographical barriers & bottlenecks which are subject to closure by US/NATO naval operations.	There is no doubt that our aircraft carriers represent a significant advantage. However, the Soviet Union is at the verge of threatening our command of the seas & that is a critical vulnerability for the U.S. U.S. efforts to counter the Soviet cruise missile threat are very inadequate. We are not introducing cruise missiles into our forces at anything like the rate we should because of budget constraints. Current inventories of sophisticated Phoenix air defense are so low that we currently have to exchange them at sea so that replacement carriers going into the Indian Ocean have sufficient numbers. We simply do not have enough to defend our aircraft carriers during a war. U.S. cruise missiles are all subsonic while most modern Soviet cruise missiles fly at high supersonic speeds. The Soviets are much further along in the introduction of modern warships equipped with advanced air defense systems. They are now building large aircraft carriers comparable to our own.
The United States followed Secretary McNamara's theory of no defense, which is called Mutual Assured Destruction.	The bedrock of U.S. nuclear strategy is the ability to inflict an unacceptable blow on an opponent even in retaliation—an assured destruction capability. But U.S. objectives also include crisis stability & essential equivalence-denying the Soviet Union any political or military advantage that might derive from perceptions of relative capabilities. Also, contrary to what many believe, the U.S. has always aimed a majority of its strategic weapons at military—not civilian—targets. In the final analysis, however, neither side has any effective defense of its country against massive destruction in a nuclear war.	It is true we give lip service to other objectives than Assured Destruction but we do nothing to achieve them. We are allowing the Soviet Union to erode even our Assured Destruction capability. The Soviets are now in a position where they can quickly deploy a significant ABM potential while we cannot. They are beginning to badly erode our bomber penetration capability & are making major efforts in civil defense. Their counterforce capability against our land-based missiles & bombers is already quite impressive.
HAIG. This is a policy [assured destruction] which I believe to be immoral, self-defeating & devastating in the context of America's ability to manage inevitable crisis.	The U.S. has always targeted heavily against military targets, while also retaining the ability to destroy cities & industry—precisely so that we will not have to rely entirely on our ability to destroy Soviet cities as our only means of nuclear deterrence. The U.S. has capabilities to respond at varied steps on the escalation ladder & to implement limited nuclear options.	The Administration itself now admits that in the early 1980s we can meet only about half of its own requirement to target military forces in the Soviet Union. The requirement itself is too low. The Assured Destruction mentality is still the primary determinant of U.S. defense procurement. Despite its recent leak to the press that we have increased emphasis on military targeting, this Administration is strongly opposing deployment of more Minuteman III which can target them.
The Soviet civil defense program provides shelters for military & civilian leaders & protection for a larger percentage of industry.	The Soviets provide protection for most of their leadership and a large number of key industrial workers. The bulk of the general population, however, must rely on evacuation from urban areas for its protection.	The Administration response ignores the fact that the ASC statement is true. The Soviet leadership would today survive a nuclear war with the U.S. because of their civil defense effort. The Soviets also have a massive blast shelter construction program underway today that already has produced enough blast shelters for 10 to 20 percent of the Soviet population in urban centers. This is highly significant.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Soviet losses would be dramatically reduced by their civil defense preparations.	CIA estimates that the Soviets would suffer over 100 million prompt casualties—about half of those fatalities—in an all-out nuclear exchange for which they had little or no time to put civil defense measures into effect. With full implementation of their civil defense program, Soviet casualties would be reduced to around 50 million, with fatalities numbering in the low tens of millions. These figures, however, do not reflect the long-term effects of radiation resulting from a massive nuclear attack. Nor do they take account of casualties from the widespread famine and disease which would likely occur in the aftermath of a nuclear war.	The Administration's response is a reasonably accurate statement of the CIA position and illustrates that the ASC statement is true. However, I would point out that other studies of Soviet civil defense credit it with being far more effective than the CIA study which probably doubled the likely weight of U.S. nuclear retaliation against Soviet urban-industrial centers. Indeed the CIA study assumed well over 35% more warheads are targeted against Soviet cities than actually are. It assumed optimum lay down of weapons which significantly exaggerates their effectiveness.
The Soviet Union also built a massive strategic defensive weapons system backed up by 100 times as many radars as we have. The Soviets built 2,600 fighter interceptors while the U.S. cut back to 309. Their supersonic fighters can overtake our aged B–52s from behind. The Soviets built 12,000 surface-to-air missiles to shoot down bombers while the U.S. cut back to zero.	The Soviets built an extensive air defense because they face a far more significant threat from U.S. (and other) aircraft than we do from theirs. The large Soviet force of fighter interceptors has major deficiencies in performance against low-flying B–52s. With electronic counter-measures and other devices, most B–52s can penetrate Soviet airspace and survive. In the 1980s the air-launched cruise missile will give the B–52 a standoff capability and will significantly complicate the air defense problem for the Soviets. Another reason for the disparity in U.S. and Soviet air defense efforts is our judgment that it is wiser to invest resources in areas other than protection against strategic bombers, particularly since neither side is permitted under the ABM Treaty to deploy a significant defense against the devastating threat posed by ballistic missiles.	More significant threat? Back in the late 1960s the Defense Department estimates that against no U.S. air defense the existing Soviet heavy bomber force could inflict 73 million fatalities on the U.S. Since that time we have phased out almost all of our air defense and the Soviets have built large numbers of Backfire bombers. Soviet air defenses are now being improved to the degree that B–52 penetration may be impossible within a few years. The penetration capability of cruise missiles is in significant doubt.
Keegan. During SALT I we caught the Soviets in a massive violation of that accord by testing the SA–5 in an antiballistic missile mode . . . Now, this missile . . . is capable of defending the Soviet Union against ballistic missiles.	During 1973 and 1974 the U.S. observed Soviet missile tests that led us to believe that the SA–5 radar had been used to track strategic ballistic missiles in flight. The Soviets could have been using the radar in a range instrumentation role to obtain precision tracking. On the other hand, this could have been the first step toward testing the system "in an ABM mode." The Soviets maintained that no air defense radar had been so tested and noted that the use of non-ABM radar for range safety or instrumentation was not limited by the ABM Treaty. In any case, they ceased the activity of concern to us. U.S. intelligence believes that the SA–5 system has no ABM capability now and could not be given one without a great deal of testing which would be observable through our national technical means.	There is a significant dispute concerning the ABM capability of the SA–5. Moreover, recently there have been reports that the Soviets have been testing the far more modern SA–10 in the ABM mode. This is of great significance.
Keegan. The Soviets are now on the threshold of deploying a particle beam weapon which would throw giant lightning bolts up at income ballistic missiles to simply obliterate them. It is my judgment that the weapon has now been largely perfected and will appear in the field operationally early in the 1980s.	This has been General Keegan's personal crusade for a number of years. This thesis has virtually no support in the U.S. technical and intelligence communities. Particle beam weaponry is considered many years away from becoming a reality, if ever.	Soviet advances in directed energy weapons, both particle beam and laser, are of very substantial significance. If these weapons are developed and deployed first by the Soviet Union, they will be in a position of dictating the future of the world.
Kissinger. We have placed ourselves at a significant disadvantage voluntarily. This is not the result of SALT. It is the consequence of unilateral decisions extending over a decade and a half of a strategic doctrine adopted in the sixties . . . and of the choices of the present Administration. All these actions were unilateral, hence avoidable.	The United States is not at a strategic disadvantage to the Soviets. Both sides are roughly equivalent, although to maintain the balance we need the increased programs the Administration has proposed. Our strategic posture today is the result of decisions made over the past four Administrations, and Dr. Kissinger is correct in stating that our position today is not the result of SALT. Rejecting SALT II—and the limitations it imposes on Soviet strategic forces—would make it more difficult not easier for us.	I agree with Dr. Kissinger. Even key Administration defense spokesmen admit that we have lost essential equivalence and that the trend over the next five years will be badly adverse.
By 1972 the Soviets had already gained a 3 to 2 numerical advantage over the U.S. in ICBMs. This Soviet advantage was accepted by the U.S. in the first SALT agreement.	This charge ignores the fact that the U.S. had a substantial MIRV & warhead lead at the time, & that SALT I did not count long-range bombers where the U.S. maintained a significant advantage in numbers & capability over the USSR. Moreover, SALT II provides for equal numerical limits, thus eliminating the alleged Soviet advantage in SALT I.	This is another Administration attempt to argue that quantitative advantages are not meaningful when the Soviets enjoy them but are meaningful when we enjoy them. The Administration ignores the massive Soviet advantage in medium bombers. I find it almost incredible that the Administration can still try to argue that the SALT II limits are equal.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Clements. Every one of the U.S. defense programs that was promised in order to get SALT I has now been either cancelled, delayed or stretched out, and it puts us in the position of facing the threat of the 80s with equipment designed for the 60s.	No U.S. weapons program has been slowed by a political or SALT-related decision. MX is on schedule for initial deployment in 1986; Trident SSBNs will be on schedule by the delivery of the 6th boat in 1985, now that management & cost problems have been brought under control; the cruise missile programs are substantially on schedule. Minor delays in the cruise missile programs were due to technical problems. Given the complexity & size of major defense acquisition programs, there are invariably delays in deployment. The B-1 bomber was not put into production because an alternate—the cruise missile—was considered more cost-effective.	It is very clear that the cruise missile was slowed down years because of SALT, particularly the SLCM & GLCM. The MX had an IOC of 1983 under the Ford program. Only recently the Carter Administration further delayed the introduction of the SLCM—just after the Soviets announced that there would have to be an extension of the SALT II Protocol if SALT II were to go into effect. The Carter Administration terminated the B-1 for ideological reasons and delayed the ALCM for at least 18 months.
Jackson. To enter into a Treaty that favors the Soviet Union, as this one does, on the ground that we will be in a worse position without it, is . . . appeasement in its purest form.	It is not appeasement to enter into a treaty that is in our own interest. And the test of our interest is whether we are better off with the treaty or without it. SALT II benefits the U.S. because it limits the strategic arms race, increases our knowledge—and the predictability—of Soviet forces, and puts some limits on the size of the Soviet strategic forces. It provides these benefits while allowing the U.S. to do all it needs & plans to do to maintain its retaliatory capabilities & the strategic balance. The treaty does not favor the Soviet Union; it advances the national security of both countries.	It is appeasement when one does not take the required action for this nation's defense & then argues we should accept an inequitable SALT II agreement on the grounds that we would be better off with it than without it. SALT II places no significant limits on Soviet capabilities. The Administration's definition of "what we need" is the essence of appeasement.
Singlaub. From a historical point of view, it's clear that we cannot trust the Soviets to keep SALT II. Out of 27 summit agreements with the Soviet Union, they have broken or cheated on all but one. And that, of course, includes SALT I. I think it's quite clear that we must have some form of positive verification of this treaty.	General Singlaub's statement is nonsense. He does not specify which 27 agreements he is referring to, much less the 26 the Soviets are supposed to have violated (indeed Soviet compliance performance under 14 arms control agreements signed since 1959 has been good). Singlaub's specific charge that the Soviets cheated in SALT I is inaccurate. We raised a number of issues with the Soviets in SALT I—as they did with us—but in every case the activity in question either ceased or subsequent information clarified the situation and allayed our concern. SALT II will actually help us monitor Soviet strategic forces by establishing rules for verification.	The Soviets have been violating SALT I and virtually every arms control agreement we have signed with them, particularly the way these agreements were explained to the U.S. Congress when we ratified them. There have been clear violations of SALT I such as ICBM dismantling. There have been a number of potential violations which we have simply accepted—the SS-19 and the launch control silo issues. We have also allowed the Soviets to test SAMs in the ABM mode.
Graham. There is no way that intelligence, for instance, can tell you how many of a certain missile are being manufactured in the Soviet Union. We can't verify the range of a cruise missile any more than you can verify how far an automobile will go if you go out and take a picture of it in the parking lot. And furthermore, you can't tell, and this is very important, how many individual warheads are within a Soviet missile nosecone.	Our verification capability can determine Soviet compliance with SALT II—that is, we can detect any Soviet violation before the Soviets could derive any military advantage from such cheating. The U.S. was willing to accept some monitoring uncertainties—over the range of cruise missiles, for example—because it benefitted us to have flexibility in developing such systems. As for the number of warheads on Soviet missiles, the U.S. knows how many warheads have been tested from specific Soviet missiles. We follow these tests using a variety of monitoring sources. By counting the number of warheads tested, we can have reasonable confidence that no more would be deployed. If additional warheads were deployed on Soviet missiles without being flight-tested, the Soviets would almost certainly have lower confidence in their reliability than they would for weapons which had been flight-tested. Thus, the kind of Soviet cheating—even if undetected—would not improve their military power.	If one thing was established in the SALT II debate, it was the inadequacy of our verification capability. This was a primary conclusion of the report of the Senate Armed Services Committee on SALT II. The Senate Select Intelligence Committee in its report on SALT II monitoring capability pointed out "The impact of those changed practices permitted under the Treaty may decrease our confidence in our ability to monitor counting provisions and a combination of such changed practices could greatly complicate our task of monitoring those provisions involving qualitative limitations." During the course of the SALT II debate Soviet violations of the SALT I agreement were exposed. Since then we have reports of further violations and the Soviet Union is now violating the encryption prohibition of the SALT II Treaty by encrypting the telemetry of the Typhoon SLBM. Press reports indicate that the encryption level is 70 percent on this missile.
The trouble with signing these agreements is that as well meaning as we are, we live up to them and the Congress just simply will not vote increased conventional weapons spending following SALT II, as they did after SALT I.	This is the heart of the critics' case against SALT II. The debate over SALT II, if it has done nothing else, has relieved concerns about euphoria setting in. The Soviet invasion of Afghanistan reinforced this. The U.S. has committed itself to a significant real annual increase in defense spending over the lifetime of SALT II. The Treaty limits Soviet forces and does not constrain planned U.S. programs. It is up to us to determine how vigorously we will pursue permitted modernization or support programs not subject to SALT limits.	This is not the heart of the case against SALT II but one of the problems with SALT II. If the SALT II debate have proven anything it is that no Administration that could defend SALT II can be entrusted with our national security.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Haig. That agreement will now, in effect, codify some fundamental deficiencies between the U.S. and the Soviet Union, with grave consequences on America's ability to manage inevitable crisis in the period ahead.	On the contrary, SALT II is an equal agreement that allows us to modernize and correct deficiencies in our forces, while limiting the challenge we face from the USSR. Failure to ratify SALT II would raise doubts among our allies about the U.S. ability to fashion and pursue a coherent foreign policy and provide leadership in world affairs.	SALT allows the Soviets to have 308 heavy missiles with twice the payload allowed for any U.S. missile. It allows the Soviets to build Backfire bombers and not count them as strategic weapons. It effectively limits the U.S. to one new ICBM and the Soviets to 5. It assures that the Soviets will have more ICBMs and in a defacto sense more SLBMs than the U.S.
Graham. SALT II is so lopsided that if we allow the Soviets to get away with this one then we will never be able to get any equitable arms control agreements with the Soviets no matter how hard we try.	An agreement that provides for equal ceilings on numbers of strategic delivery systems, MIRVed launchers, and launchers for fixed-silo MIRVed ICBMs is hardly lopsided. SALT II, when combined with current U.S. modernization programs, will allow the U.S. sufficient retaliatory forces to carry out its strategic missions. Moreover, SALT II is the product of nearly seven years of difficult negotiation. It is a compromise arrived at through tough bargaining on both sides. The way to pursue further arms agreements with the Soviet Union is to ratify SALT II and proceed to SALT III negotiations, not to reject SALT II in the false hope that repeating the negotiation will result in an accord more to our liking.	The Administration avoids the argument of equity and talks about the adequacy of our retaliatory capability. This is nothing more than old Assured Destruction thinking. SALT II resulted from a negotiating strategy of pre-emptive concession by the U.S. in a time frame when President Carter was planning to run on a peace candidacy.
One of the ways in which the numbers were manipulated to make SALT II look equal was that over 200 B–52s, retired to the aircraft boneyard in Arizona, are counted against the U.S. limits as strategic weapons, even though they would take more than a year to get flying again.	The SALT II data base numbers were never manipulated. It was very much in the U.S. interest to count mothballed B–52s in the aggregate total. Doing so cost us very little, and prevented the Soviets from claiming that some of their strategic forces should not be counted because they were "mothballed." The film here makes a U.S. gain appear to be a concession. Under the Treaty terms, by the end of 1981 the Soviets will have to dismantle 10 percent of their strategic launchers—250 operational bombers of missile launchers to get down to 2250. The U.S. will merely have to complete the dismantling of a few nonoperational mothballed B–52s.	This sudden concern about the Soviets mothballing their Bear and Bison heavy bombers is rather touching in view of all the statements we have read concerning how ineffective and small the Soviet heavy bomber force is. The Soviets will dismantle a few old missiles and bombers and be allowed to add about 10,000 modern missile warheads. We, on the other hand, will be forced to dismantle modern MIRVed ballistic missiles, the Minuteman III or Poseidon, unless the Administration further slows down our programs.
The 150 deployed operational Soviet Backfire bombers are not counted as strategic weapons in the Soviet limits.	The Backfire has characteristics that fall between those generally attributed to existing heavy bombers and those of medium bombers. (Tactical aircraft and medium bombers on both sides are not covered by the SALT ceilings.) Close observation by U.S. intelligence over a number of years indicates that this bomber is currently being deployed for use in a theater role or against naval forces, not in a strategic role, and is a replacement for older Soviet medium bombers. It is not included in the Treaty ceilings. However, it could reach the U.S. on one-way high-altitude unrefueled missions, and the Backfire is limited by a binding Soviet commitment made at the Carter-Brezhnev Vienna summit. No more than 30 Backfires can be built per year, and there are limits on upgrading the capabilities of this aircraft. The U.S. has reserved its right to build an aircraft similar to Backfire.	The Backfire has greater range capabilities than half of the U.S. B–52 heavy bombers and can be deployed for use against the U.S. in a matter of hours. It has reportedly been tested with a long range cruise missile that would even further increase its capabilities. It has much potential for further clandestine upgrade. The U.S. has not effectively reserved the right to build a comparable aircraft because there is no agreement on what is comparable. In any event the U.S. has no intention of doing so. The under the 30 per year limit might build a force of 750 Backfire types before the end of this century.
Keegan. We should be concerned because with a range of over 5.100 nautical miles, the Backfire bomber, launching from its bases in Northeastern Siberia, can cover all of the U.S., recovering in Cuba, Mexico, or Latin America.	Backfire does have some inherent intercontinental capability flying certain flight profiles. However, concern about the Backfire threat to the U.S. is a reason to support SALT II, not oppose it. The Soviets have agreed to limit the Backfire production rate & have provided certain commitments against upgrading the aircraft's intercontinental capability. Without SALT II the Soviets could do anything they wanted to do with Backfire to improve its capability.	At the allowed production rate the Soviets could ultimately build a 750 Backfire force, an incredible strategic capability. There are no effective commitments concerning Backfire upgrade except that they won't make it the longest range bomber in the world, which they can't anyway.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Rowny. The Treaty grants the Soviet Union a unilateral right to 308 launchers for heavy ICBMs.	The U.S. did not want heavy ICBMs when we are entirely free to build them, & would not build them today if we had the right to do so. In 1974 in the context of resolving a number of issues, including the heavy ICBM question, President Ford & Secretary Kissinger were able to gain concessions in other areas, notably equal aggregrates (which require the Soviets, but not the U.S. to reduce) & the exclusion of U.S. aircraft in W. Europe & E. Asia which could attack the USSR. We would gain nothing by insisting now on a theoretical right to build a missile we do not need or want. Nor does it make sense to reopen negotiations by insisting on such a theoretical right at the risk of losing real concessions we have already gained. This point was convincingly made by General Jones (Chairman of the Joint Chiefs) and General Ellis (Commander of SAC) in their Congressional testimony on SALT II.	The U.S. does not have heavy ICBMs because of the Assured Destruction mentality. We once did have these missiles but they were retired by McNamara. The original planning for MX would have made it a heavy ICBM & even the existing MX could be deployed as a heavy ICBM if there were no SALT constraints. If the SS–18 was traded for the FBS issue this was an incredibly bad deal. However, this is not the only inequity of SALT II. The Administration claims was traded for FBS. Backfire exclusion was also reportedly traded of FBS.
	With or without heavy missiles, by the early 1980s the Soviets will have a theoretical capability to destroy a substantial part of our Minuteman ICBM force in a pre-emptive attack—if they ignore our ability to launch under attack, and assume the massive pre-emptive attack would work as planned. However, Minuteman vulnerability does not mean the vulnerability of our overall deterrent U.S. retaliatory capabilities—even after a first strike—will increase by over a thousand additional warheads, between 1980 and 1985 due to ALCM deployments. The U.S. would have thousands of surviving warheads on submarines at sea and bombers on alert, even under the most pessimistic scenario of Soviet pre-emptive attack.	The reason the Minuteman force is vulnerable with or without the SS–18 is the Soviet deployment of the SS–19 ICBM, which violates SALT I as we interpreted it in 1972. This was one of the SALT I violation issues that was "successfully resolved" by allowing the Soviets to do what they wanted to do. The window of vulnerability created by the Carter Administration in the early to mid-1980s is highly significant and will have substantial impact on international relations.
In just 17 years, the SALT Syndrome has reduced the U.S. from a position of clear military superiority to one of clear inferiority.	The United States & the Soviet Union are now essentially equivalent militarily. The Soviets lead in some areas; we lead in others. The choice facing us today is not between the sort of nuclear superiority we enjoyed in 1962 & nuclear inferiority, but between two types of nuclear parity—one at a higher level, which would be more expensive and less stable, or one at the lower level established by the limitations of SALT II.	Even some key Adminstration military leaders admit we have lost essential equivalence & that all the trends are negative. The Soviets are ahead of the U.S. by substantial margins in most key strategic indicators. They have more ICBMs, SLBMs, missile throw weight, equivalent megatons, more bombers of various types & more counter force capability. They will soon close the gap in many of the remaining areas including warheads & will surge ahead of U.S. by the mid-1980s.
The Soviets now have a 2 to 1 advantage over the U.S. in offensive strategic weapons, a 47 to 1 advantage in defensive strategic weapons, a 2 to 1 advantage in major surface combat ships and submarines, and a more than 4 to 1 advantage in tanks and artillery.	These are misleading statistics which use selected data in comparisons designed to show overwhelming Soviet superiority. These "bean counts" say nothing about the quality of weapons, the scenario, the capabilities of allies, the sufficiency to carry out missions, or the like. A comparable exercise could show the same superiority for the U.S. For example, we lead the Soviets by 8 to 1 in heavy bomber weapons. In perhaps the most significant indicator of strategic strength, the U.S. leads the Soviets by 9,200 strategic nuclear warheads to about 5,000, almost a 2 to 1 edge—just the reverse of the assertion in the film. Overall, in a net assessment of strategic forces, both sides are roughly equal.	The quality of weapons systems is important. However, the Administration seems to ignore the fact that Soviet ICBMs, strategic defensive forces & tanks are qualitatively better than our own. No one is claiming that the Soviets are ahead in every measure of strategic capability. However, they are ahead in over 75 percent of these measures & are closing the gaps in most of the rest. The Administration claims that we lead "the Soviets by 9,200 strategic warheads to about 5,000 almost 2 to 1 edge" is simply not true. It reeks of a deliberate misstatement of fact. Indeed, the Administration in its answer to one of ASC assertions stated that "the Soviets place approximately 75 percent of their 6,000 weapons on fixed-silo ICBMs." (Emphasis added) The Soviet ICBM force has been increasing by at least 1,000 warheads a year and the 6,000 figure dates from January 1980. By mid-1981 the Administration admits the ratio will be 9,200 to 8,000 & the Soviets will reach about parity in warheads in 1982. When the Soviets have parity in warheads combined with equal or better accuracy & a several fold advantage in warhead yield, it becomes rather difficult to credibly argue that essential equivalence will exist without resource the old Assured Destruction thinking which holds that it does not matter.

ASC CHARGES	CARTER ADMINISTRATION COMMENTARY	THE FACTS
Since SALT I, the Communists have accelerated their takeover of other countries, without opposition from the U.S. Communism has indeed been succeeding in its move toward world domination . . . If SALT II is ratified without really major changes, we can expect greater coercion everywhere in the world.	This statement is rhetorical nonsense. It disregards many Soviet set-backs & many U.S. advances around the world. The Soviets have certainly proven themselves willing to exploit opportunities for mischief, & we must respond and resist appropriately. But their foreign policy has hardly been an unbroken record of success in recent years: expulsion from Egypt, continuing conflict with China and world reaction to their Afghan invasion, to name just a few difficulties. In any event, neither Soviet successes nor failures are the result of SALTS, as the film implies. Among other benefits, the ratification of SALT II will permit the U.S. to destroy more resources and attention to conventional forces which are far more likely to be needed in meeting the threats we will face in the years ahead.	The Administration position is divorced from reality. Since 1975 we have seen a wave of Soviet expansion unparalleled since World War II and its aftermath. Certainly there have been Soviet setbacks but the general trend has been toward success and bolder and bolder Soviet expansion activities that have culminated in the first use of combat troops by the Soviet Union in Afghanistan. The foreign policy of this Administration has been a complete failure. It has contributed to the establishment of hostile communist/marxist regimes in Africa and Latin America and has taken no effective action against the Soviet invasion of Afghanistan. The suggestion that there will be economic savings from SALT II and that will improve our conventional forces is nonsense. Even in the unlikely event that we in the future negotiated a significant SALT agreement that allowed reduced expenditures it would probably mean that that would be an even greater transfer of resources from the Soviet strategic program to their general purposes forces. SALT is no substitute for defense spending.●

THE DROUGHT IN FLORIDA

● Mr. STONE. Mr. President, on Monday, July 21, 1980, I appeared before the Senate to urge the administration and my colleagues to consider the deferral of all disaster-related agricultural principal and interest loans for 2 years.

My appeal in July was the result of a visit I had just completed to Florida where the drought and heat had a devastating effect on food producers in Florida.

After my appeal, I received replies from the Farmers Home Administration (FmHA), the Agricultural Stabilization and Conservation Service (ASCS), and the Small Business Administration (SBA). These agencies basically replied that current administrative authority permits each of these agencies at the local level to review a disaster loan on a case-by-case basis. Each agency felt that current provisions of the law are broad enough to help alleviate a financial crisis in most situations.

I am here again, today, Mr. President, to urge agencies in their case-by-case review to look at the overall state of agriculture in Florida the past few years. In the past 4 years, the State of Florida has had only one generally good growing year for agriculture. In the other years, Florida farmers have faced record-breaking freezes, droughts, or hailstorms that have all extensively damaged crops throughout the State.

One decent year of weather in the past 4 years will not pull farmers completely out of debt. The farmers need a couple of years to financially recoup their losses. Otherwise, we will see more and more farmers forced economically to get out of their livelihood. Florida's agricultural industry ranks 12th in the Nation in cash receipts for agricultural commodities. It is easy for one to see that Florida's farm production is an important part of agricultural production in the United States.

If disaster loan payments are deferred for at least 2 years the farmers, not only in my State of Florida, but all the farmers experiencing similar problems throughout our Nation, would be reassured that we want them to continue and survive. That is the only way I can see this vital segment of our economy surviving. I urge the local offices for ASCS, FmHA, and SBA, in their case-by-case review of farmers requests for deferment of disaster loans repayment to take these problems into consideration.

Mr. President, I ask that copies of the letters I have received from SBA, ASCS, and FmHA be printed in the RECORD.

The letters follow:

U.S. GOVERNMENT,
SMALL BUSINESS ADMINISTRATION,
Washington, D.C., August 26, 1980.

Hon. RICHARD (DICK) STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: This is in response to your letter to the Small Business Administration in regard to a moratorium on the repayment of outstanding farm loan debts due to a spring/summer drought in North Florida.

If a farmer who has a disaster loan is in need of assistance or is having difficulty in meeting the loan payments, the farmer should contact the local SBA office to discuss the specific situation with an official in our Portfolio Management Division. Rather than a moratorium on all farm disaster loans, it is preferable that each disaster loan be reviewed on a case-by-case basis at the local SBA office.

SBA has the authority to defer principal payments and, if necessary, interest on disaster farm loans. Since the vast majority of farm loan payments are on an annual basis, such deferments would be on a one year basis, based on the merits of each request. If additional deferments are necessary, the loan case file would be reviewed the following year as requested by the borrower.

In responding to inquiries from constituents, you may wish to mention these "servicing" functions which this Agency can perform and suggest that the borrower contact his local SBA office.

Thank you for your interest in, and support of, SBA's disaster loan programs. If I can be of any further help in this matter, please do not hesitate to contact me.

Sincerely,

RITA M. MCCOY,
Associate Administrator
for Financial Assistance.

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURE STABILIZATION AND
CONSERVATION SERVICE,
Washington, D.C., August 27, 1980.

Hon. RICHARD STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: This is in reply to the recent inquiry by a member of your staff concerning the Farm Facility Loan Program.

The Facility Loan Program provides considerable flexibility in terms of loan repayment. Most loans are scheduled for repayment in 7 installments over an 8-year period. Each installment becomes due on the anniversary date of disbursement and is payable over the next 12 months in cash or by set off from price support or other related programs.

County committees have authority to grant a borrower additional time to pay off a loan if payment cannot be made as scheduled due to situations beyond his control. For example, a deferment can be used to extend the due and payable period for an individual installment for a period of less than one year. In more extreme cases, an extension of the loan term may be granted. An extension moves ahead by one year the due and payable period of each of the remaining installments.

Current provisions of the program are liberal enough to help alleviate a financial crisis in most situations.

Sincerely,

JEROME F. SITTER,
Director, Price Support and
Loan Division.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, D.C., September 2, 1980.

Hon. RICHARD B. STONE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STONE: As a result of the telephone conversation with Ms. Nancy Foster she asked that I verify in writing what I told her verbally regarding our authorities to defer payments on FmHA farm loans.

The Farmers Home Administration (FmHA) under the authority granted in the Consolidated Farm and Rural Development Act, as amended, can defer principal and interest payments as well as consolidate, reamortize and reschedule FmHA indebtedness where borrowers are experiencing financial difficulty. This is done on an individual case basis after a thorough review of the borrower's past and future operations. FmHA field personnel have been instructed to make full use of these various loan servicing authorities.

Sincerely,

H. Allan Brock,
Deputy Administrator,
Farm and Family Programs.●

NEWPORT OBSERVES ANNIVERSARY OF LANDING OF FRENCH ARMY UNDER COUNT ROCHAMBEAU

● Mr. PELL. Mr. President, an outstanding highlight in colonial and historic Newport, R.I., this glorious summer was the colorful observance of the 200th anniversary of the landing of the French Army under Count de Rochambeau.

Without Rochambeau and his gallant soldiers we would not have achieved our independence when and as we did.

In Rhode Island, 1980 has been proclaimed the "Year of the French" and we will continue to celebrate it through 1981, observing the departure of Rochambeau and his men as they went off to rendezvous with General Washington and his army to meet and defeat the British at Yorktown, Va., thus bringing victory to the cause of American independence.

Next year we will celebrate the Rochambeau march, which has given us today the famous Rochambeau trail over which the two armies marched from Rhode Island to Virginia through more than half of the original 13 States. And here in Washington, D.C., we have the Rochambeau Bridge spanning the Potomac River at 14th Street.

My home city of Newport has undergone a renaissance with yachting and tennis and other events of an international flavor. This summer the Rochambeau celebration was unique in itself.

There were 4 days of activities in July, including the reenactment of the landing of Rochambeau and his men from the French armada of ships in Newport Harbor in 1780.

The French then found Newport a beleaguered seaport, which the British had quit after years of occupation. Then, as during the recent celebration the French quickly captured the hearts of the Newporters.

The Rochambeau observance has had a special significance for me as I had the honor again to be involved, as I had been 25 years ago, and as was my father, Herbert C. Pell, a half century ago.

Rhode Island is proud of its role in early American history and of its large Franco-American population.

France was an enthusiastic participant in the observance, sending two warships to anchor in Newport Harbor, and its Ambassador, Francois de Laboulaye, an old friend, who conveyed a message from the President of France, Giscard d'Estaing.

The speech of the French Ambassador in King's Park, at the site of the actual landing 200 years ago, where a statute of Rochambeau points out into the harbor, was especially moving. His words were of the trust and friendship which have bound our nations and peoples together in the common cause of peace and freedom for two centuries.

Our two nations continued their special relationship in the same sacred cause down through the years from that day in 1780 when the French arrived, including two world wars when Americans fought on French soil.

The 4 days were exciting, especially that of the reenactment at the harbor with flags, anthems, colonial uniforms, fife and drum music, a cannon booming and a large multitude of citizens and visitors alike joining naval personnel of both nations and persons of public office and the clergy to watch a small boat come ashore carrying costumed celebrants representing Rochambeau and staff. And like a curtain at the end, a Newport fog crept slowly in behind.

In Rochambeau's army of 200 years ago there were many Irish soldiers, and this added another dimension to our observance in a State which has many citizens of Irish ancestry.

The celebration officially opened with a gala ball and fashion show on July 10, the day 200 years ago when the French fleet moved into sight of the Newport shore. The actual landing took place the next day.

In the 3 days following of July 11, 12, and 13, the observance was varied and rich, including the dedication of a U.S. post card honoring Rochambeau, the first day issue of a French stamp, the opening of a Rochambeau exhibit at Old Colony House, several concerts, a Governor's people reception, a block party, military parade, fireworks from Fort Adams, a mass for Irish soldiers, a State dinner at Marble House, an outdoor mass celebrated by the Most Rev. Louis E. Gelineau, D.D., Bishop of Providence.

Also, a memorial ceremony for King Louis XVI and Admiral de Ternay, who commanded the French fleet, receptions and ceremonies for visiting French naval officers and men, including a Governor's reception at Colony House, a luncheon hosted by Rear Adm. Edward Welsh as president of the Newport Naval War College, and ceremonies aboard the visiting French vessels, the *Suffren* and the *Aconit*.

Groups participating included the Rochambeau Bicentennial Committee, the Rhode Island Heritage Commission, the Bicentennial Council of the 13 Original States, and the Lafayette-Rochambeau Society of Washington, D.C.

Special acknowledgement goes to Gov. J. Joseph Garrahy for his leadership and enthusiastic participation, as it does also to State Senator Robert J. McKenna and Lionel J. Frappier, committee chairmen: Mayor Humphrey J. Donnelly III and Mrs. William Wood-Prince, Newport chairpersons, Bishop Gelineau, Representative Fernand J. St Germain, and Mrs. John Nicholas Brown, for the outstanding Rochambeau military exhibit she organized. Mrs. Garrahy, Mrs. St Germain, and my wife Nuala all served as cochairpersons.

Other committee chairpersons deserving recognition include Bruce G. Sundlun and Paul J. Fournier, business; Mrs. Sundlun, fashion show; Miss Lillian Almeida, arts; Bernard Therous and Representative Roger N. Begin, celebration; Mrs. Helen Priske Gadbois, ball; Robert Lynch and Albert T. Klyberg, coin; Senator Irene P. Smith, education; Don H. Rohrer, government task force; Mrs. Brown, historical; Mrs. Leonard J. Pannaggio and Mrs. Pell, hospitality; John A. Cummings, international; Cols. Gilbert A. Hempel, Patrick Kirby, and Anthony Walker, march; Raymond W. Caine, Jr., media and public relations; Maj. Gen. Leonard Holland, military; Capt. Robert F. Delaney, naval; and Col. Walter E. Stone, security.

Rhode Islanders will have the opportunity for another look at some Rochambeau highlights when WSBE, the Rhode Island educational television station, airs a half-hour program at 8:30 p.m. on September 25 on channel 36.

I ask that the message of the President of France and the speech by the French Ambassador be printed in the Record.

The material follows:

Message of President of France Delivered by Ambassador de Laboulaye

Governor, monesigneur Gelineau, senator, Mr. Mayor, dear colleagues, admiral, ladies, gentlemen, dear friends: We are celebrating today an event which is as much significant for France as it is for the United States for it is, above all, the celebration of French-American friendship. This is why President Giscard d'Estaing has asked me to convey to you a few remarks about the meaning of the Rochambeau Day.

I quote: "Exactly two centuries ago, on July 11, 1780, 6,000 French soldiers under the command of General Rochambeau landed at Newport, on American soil. They came to defend the independence of the United States, as France had pledged two years earlier when it signed the Treaty of Alliance."

To all those who are here gathered to celebrate the bicentennial of this historic event, I should like to say how honored France is to have been the first to fight alongside the American people in defense of such big ideals as independence and liberty.

It is these ideals that forged the alliance between France and the United States and that strengthened it in the course of more than two hundred years. On two occasions, those ideals prompted the American Nation, in its turn, to fight alongside our people on our own soil.

I hope that today's anniversary will remind us all of the profound ties of friendship uniting us, of the living force embodied in the heritage for which we have fought side by side, and of the determination our two countries share in pursuing their common efforts to preserve the independence of peoples and the freedom of mankind.

Valery Giscard d'Estaing,
President of France.

Speech by Ambassador de Laboulaye

Back in the year 1866, students in a history class at the College De France in Paris heard the professor conclude his lecture about the year 1780 in American history with these words: "America should never forget that France watched over its infancy without ambition, jealousy or self-interest". That historian was my great grandfather who spent his life supporting American and French friendships.

Like children in this country, I was raised on the story of how fifty-five hundred French soldiers, well-trained, disciplined, commanded by a distinguished military leader, landed in Newport and helped the so-called rebels to win the field at Yorktown and, with it, their real independence.

Today, we are honoring the two hundredth anniversary of that event and rightly so, for it is a great chapter in American history, it is a great chapter also in French history.

However, two hundred years ago today, when the 44 ships of Admiral De Ternay's fleet landed Rochambeau's 5,500 men, the situation was far from clear-cut. The venture that was to lead to the birth of a nation was an exemplary gamble taken by three truly outstanding men—Washington, La Fayette and Rochambeau.

It is this aspect—the fact that they took a gamble—that I wish to focus on today.

It was a gamble for the Americans.

It was a gamble when the rebels welcomed Rochambeau's expeditionary force, since they were taking a chance on whether France's intentions were honorable.

In the first place, France might have sought to take advantage of the occasion to reestablish his rule on Canada. France was, after all, a colonial power in the new world, and it was at war with Britain, whose colonies might very nicely have enlarged France's own possessions. Americans might legitimately have been concerned lest they exchange one master for another. This was no doubt in the minds of Washington's emissaries when the previous year they had asked the French King for money rather than troops.

Again, the Americans, and especially the residents of Newport, were taking a chance on the good behavior of the French troops: old rivalries were still fresh enough in people's mind for there to be some doubt as to whether Amercans and French would voluntarily fight under the same flag. Another point to remember is that Newport only had that time about 5,400 inhabitants and with the arrival of the French, its population would be more than doubled. So your forebears were not altogether free from misgivings on the morning of July 11, 1780.

The scene is neatly described by an eyewitness, the Abbe Robin, chaplain of the French Army. He wrote in his dairy: "The arrival of the Comte De Rochambeau spread terror everywhere . . . The French were generally regarded as full of prejudices and superstitions, almost idolatrous in their religion, not very handsome, incapable of delicacy and constancy, occupied solely with curling their hair and putting their rouge on right, showing no faith and no respect for the most sacred duties."

But the Abbe continues: "This unfavorable opinion quickly changed . . . and on the evening of July 12, houses and belltowers were illuminated and there were fireworks".

This change of heart was reinforced—and this again is a proof of American trust—as time went: the French troops had to protect their fleet from British naval attack and remained as you know billeted in Newport for many months without any policing other than their discipline and their friendship for the American people.

Let me say that the venture was also a gamble on the part of the French.

One cannot emphasize too much the originality of Vergennes' thinking or that of Louis XVI who came to adopt his minister's ideas as his own. It is difficult to realize today just how rare such an expedition was in the 18th century. It took courage on the part of a statesman and also a certain faith in the ideals espoused by the American rebels at that time to dispatch a fleet to this distant land, a fleet that was to take 70 days to cross the Atlantic and carried over 5,000 crack soldiers, young, brilliant officers, and a distinguished general who was to place himself under the orders of a foreign general whom no one in France had ever met.

It took courage also on the part of the sovereign of a colonial power to help colonial insurgents—there was the risk of a dangerous precedent. Lastly, it took courage for France's King to attack the British at sea.

He was also taking a gamble by relying on Washington's integrity and military competence. Washington was described as a "civilian general" at the time the King made him Marshal of France and instructed Rochambeau to place himself under the American's orders.

Nothing more clearly shows the originality of this thinking than the fact that the British, starting with Lord North, the Prime Minister of Great Britain, never for a moment believed in the possibility that the French were coming over to America.

To the gambler the double gamble paid off as we all know.

It paid off for the United States, obviously. We all know the outcome: The British fleet was defeated at Cape Henry by the Comte De Grasse; with the French in control of the sea, Lord Cornwallis found himself trapped at Yorktown where he was beseiged by the American-French Army. He surrendered on October 18, 1781.

The gamble also paid off for the town of Newport. The once prosperous port had suffered considerably at the hands of the British, but henceforth it was to regain its stature as an international meeting place.

Rochambeau's troops were in fact ordered to use for quarters the houses laid waste by the British occupiers and to restore them at their own expense. It is in part thanks to those troops that we can still admire some of the fine houses that grace this city today.

Accounts written at the time all agree on the perfect harmony that existed between the French troops and the American people. There are numerous versions of the story in which our soldiers were encamped near orchards owned by Americans; when they left, it was noted that not a single piece of fruit had been touched. This is the legend at least.

Finally, the gamble paid off for France, for in the United States, France gained a faithful friend and ally. I remember something my friend Senator Pell said at a conference 25 years ago on France's influence on Rhode Island. I quote: "If we Americans realized that the Frenchman thinks of our aid following World Wars I and II as just a repayment of a debt of many years standing, we could better understand the French attitude of today".

I do not think I am going against the spirit of what the Senator said by stating that it was a debt of friendship and we are voting this today.

The fact is, the French people feel that the part we played in the birth of your Nation creates a special kind of bond between our two countries, a bond that is indissoluble. That is our real reward.

This brilliant result is, I think, the product of a conflux of three qualities shown by those who took part in this chapter of history: Talent, confidence and imagination.

First, talent: Washington and Rochambeau displayed this very clearly, not only in the way they handled the friction which could have arisen between their own two nations, but also by their military genius, which was amply demonstrated in Yorktown.

Then there was the confidence which inspired the deep friendship between the two men and whose influence on the final victory we all know about: Washington, recognizing Rochambeau's qualities and experience left the operational decision-making up to him. Rochambeau, however, made it perfectly clear that he had placed himself under Washington's orders.

Lastly, there was the imagination shown on more than one occasion by Washington, Vergennes, Lafayette and Rochambeau. Their capacity for innovation was quite remarkable. Louis the XVI may have made many mistakes during his life, but in America's war of independence, he had the good sense to trust the men in the field and to break with the tradition of the times by allowing Rochambeau to be placed under Washington's order instead of on an equal footing with him.

All this adds up to an example which can still teach us something today.

I would like to quote another great American general, who also became a great statesman: 25 years ago, President Eisenhower wrote the following about the event we are celebrating today: "It is a source of the deepest gratification to me that those links with America's first ally, forged one hundred seventy-five years ago in our war for freedom and tested in two terrible world wars, are today stronger than ever."

Today, the same still holds true to the great fund of friendship between our two nations. We must turn it to the best advantage, of both our nations in fact, solidarity remains the basis of Franco-American relations, for it concerns the most important aspect of all, namely our common conception of freedom. It cannot be stressed too often that differences of opinion affect only passing events, and must be seen as such.

We should look to our forebears and take a leaf out of their book by using our imagination when dealing with a world that is in the midst of change. The balancing factors that prevailed since the war have been seriously undermined. Shifts in the balance of power, the disarray of economic structures, the needs of development all indicate the need to work out today new kinds of relationships. We cannot expect to deal with these problems by simply trotting out tired old solutions or coming up with answers that do not fit.

We should accept our differences: They are our strength and the best guarantee that our action will be effective.

And so today, as 200 years ago, we remain side by side, similar yet different, in the defense of our common ideal. Thank you.●

EPA DROPS PLAN FOR BUFFER ZONES AROUND FARMS

● Mr. CULVER. Mr. President, as chairman of the Senate Resource Protection Subcommittee, I have worked for strong, responsible environmental and conservation measures to protect and enhance the quality of life in Iowa and the Nation. I have also worked equally hard against unnecessary, unworkable proposals which are unrealistically restrictive, as in my successful effort to get the Environmental Protection Agency (EPA) to modify its proposed regulations affecting "rural fugitive dust." Had the Agency not revised that rule at my urging, industrial growth in Iowa would have been severely restricted.

Last week, I had the opportunity to again convince EPA to drop a proposed plan which would not have been in the best interests of Iowa farmers and agriculture.

The Agency has been working on an advisory opinion—soon to be published in the Federal Register—which would have proposed the creation of "buffer zones" around farmland in order to control pesticide wind drift. While I can understand EPA's attempt to develop a solution to the wind drift problem, I strongly believe that to do so through new controls on the use of farmland was counterproductive, unrealistic and completely unworkable.

I met with EPA officials last week and convinced them that the "buffer zone" concept was an unacceptable way of dealing with the issue of pesticide drift.

Shortly after that meeting, I received a letter from EPA Administrator Douglas Costle stating that the Agency was dropping its advisory opinion and would not publish it in the Register.

EPA's decision was a victory of commonsense, and I am extremely pleased to have had the opportunity to work effectively with them on this issue. The dropping of the "buffer zone" concept will eliminate any remaining understandable fears that farmers may have about new controls on the use of their land.

Mr. President, I ask that a copy of the letter sent to me by the EPA be placed in the RECORD.

The letter follows:

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, D.C., September 12, 1980.

Senator JOHN C. CULVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CULVER: Following your discussion with Administrator Costle yesterday concerning the Agency's Draft Cotton Advisory Opinion, we have given careful reconsideration to the advisability of proceeding with this approach in light of the current climate. Owing to the strong interest you have personally taken in this matter, and knowing that it is of similarly great interest to many of your constituents, I would like to inform you where EPA now stands on this entire issue.

As you know, EPA developed this Draft Opinion in response to the apparent and growing conflict between agricultural and urban interests, where the juxtaposition of conflicting land uses has put these interests into intimate contact. I believe that the concept behind this endeavor remains valid. Indeed, the Committees on Agriculture recognized such a need when they gave EPA express authority for such initiatives in amendments to the pesticide law enacted in 1978. With this in mind, our Draft Opinion was designed to help agricultural interests interpret label directions concerning draft of pesticides from agricultural into non-agricultural areas, providing operational guidance which if followed would have defined a reasonable approach to avoiding excessive drift into residential areas. It also would have relieved professional applicators and farmers from the worry—and the reality—of misuse enforcement should pesticide drift occur.

The way in which this Advisory Opinion would have achieved these goals, however, requires the understanding of some very complex relationships between the role that pesticide labeling and enforcement plays currently and as it would play under the Advisory Opinion. Recognizing this complexity, the Agency sought informal dialogue with farm organizations. USDA, the State Departments of agriculture, and others who would be affected. Unfortunately, some of those with whom we attempted to work seized upon this as an opportunity instead to sensationalize and misrepresent our good-faith attempt to find a balance between extreme points of view.

In the present climate, it is clear that the Agency's Draft Advisory Cotton Opinion can no longer provide the assistance it was intended to give. Rather than pursuing an action that would actually further exacerbate an already polarized issue, I have instructed my staff to discontinue working on this Advisory Opinion and not to publish it in the Federal Register for public comment. This means, of course, that those who use pesticides, those who are exposed to drift, and those with responsibility for enforcing existing label instructions and prohibitions relating to drift must continue to use their own best judgment on the meaning of current label statements regarding drift.

I believe that it remains possible to develop a responsible long range solution to this problem. Over the coming months EPA will pursue that goal in close consultation with all of the interested parties.

Sincerely,

STEVEN D. JELLINEK,
Assistant Administrator for Pesticides and Toxic Substances.●

A TRIBUTE TO SENATOR SAM ERVIN

● Mr. STONE. Mr. President, I was pleased to read in this morning's edition of the Washington Post an article by Mr. Dick Dabney reminding us of the special qualities of former North Carolina Senator Sam Ervin. Although I did not have the privilege of serving in the Senate with Senator Ervin, I have long admired his courage and intelligence. He provided the Senate and the Nation with extraordinary leadership at a time of crisis. More than that, he gave the American people an example of personal integrity and honesty at a time when disgrace and suspicion took hold of our national political life. I join Mr. Dabney in saluting Senator Ervin as an authentic American hero and wish him a speedy recovery from his illness and many, many days of happiness in the years to come. I ask that Mr. Dabney's article be reprinted at this point in the RECORD.

The article follows:

SAM ERVIN, HERO

Word comes that Sam Ervin is in the hospital down in North Carolina—a brief paragraph calling to mind a computer-like blip of the Watergate hearings, of which he was chairman; of white hair, black leaping eyebrows, southern drawl: a quick caricature, which is all anybody ever gets known to the public by in this world. And so, if it had been death that had come for him rather than some trifling illness that I'll lay you 10-to-1 he'll overcome, and if his biographer, being interviewed on that occasion, had said that he was a great man, we would have thought, "Ho hum." All any talk of greatness is to us is words, because we nervous citizens of the late 20th century are a suspicious people. What monuments we've built are all to institutions, not individuals. We don't believe in greatness. And we call that "realistic."

The first time I walked into Sam Ervin's office was in the middle of the Watergate hearings, and I had come to look at scrapbooks and old files. This was easy to do, because nothing in that office was ever locked—a circumstance that took some getting used to. And Sam, who didn't know me, remarked that it looked like I needed a place to work, and with that, led me into his own office, established me at his desk and said that he wouldn't need it for several hours, because he would be occupied on the Senate floor.

So I went to work with those clippings and files in a kind of half-moon space that had been cleared on the desk top. Surrounding this on all sides, within easy reach, were some important-looking papers that I later learned had been secret communications from the White House, abstracts of important forthcoming testimony and secret memos on vital investigative leads. But Sam hadn't bothered to squirrel anything away, nor cautioned me not to look at anything, but had just gone on about his business.

This was an intensely moving experience. For all he knew, I could have been working for Nixon, trying to dig up dirt. Or, by reading and spilling what was in those documents, might have jolted the hearings in ways unfavorable to him. But he had trusted me, and I was later to learn that this openness was characteristic of him. All this made an especially poignant contrast when set against the feral suspiciousness of the Nixon White House, which prided itself on its "realism," which was the motto stenciled on the banner of the ship that went down.

Later, over a glass of beer in his living room down in Morganton, N.C., Sam said to me in an offhand way that you had to trust people, that life was not worth living if you could not do that. And while some might attribute this attitude to naiveté, I knew better and regarded it instead as loftiness of spirit. This was one of several outstanding qualities he had, then as now. He was generous to his friends and loving to his family. He had the best sense of humor of any man I ever knew, and was the most intelligent, and lived each day far more fully than most people do. Moreover, he seemed to me to be exceedingly wise, in knowing what had value and what did not. In my opinion, then, he was a great man. This had nothing special to do with Watergate. This had to do with his whole life.

The trouble is that I did not *say* that in the biography I wrote of him. For although I undertook the book in the first place to learn from him, I had at last not learned enough. It was not enough just to trust others; one needed also to be free from others' distrust. But I became ensnared in, and subordinated to, the intense, destructive suspiciousness that is the chief spiritual characteristic of our town—which Sam himself had managed to live above. I couldn't just flat out write that he was a great man, I told myself; people would suspect me of being a chump, or of subscribing to all Sam's political opinions, or of being some bootlicking spaniel of a Capitol Hill aide.

What I did, instead of saying that he was a great man, was to try and show him being that. This I characterized to myself as merely a literary choice. But in fact it was an inward yielding to the paranoid small-mindedness that I so loathed when I saw it exemplified in the Nixon administration. In practical terms, all it meant was leaving out the concluding page of the biography in which I said just about what I've just gotten done telling you. This would have me from looking bad—and who would be the wiser?

Predictably, no one was, the tome got good reviews, and even the bad ones said that it was "objective" and "balanced." But now I wonder how balanced it was—or are we? Are we really so foolish as to think that great men do not exist, or that some of these do not find their ways into public life? Possibly so: the epidemic suspiciousness, which we not only practice, but give in to, makes it easy for that.

We read tales of the 19th century, which Sam was born into, and in some sense represents, and congratulate ourselves for coming so far from a time when people believed in greatness, and when they allowed themselves to feel things deeply. We read, for instance, of Lincoln breaking into tears in public, or laughing so hugely that he fell off the sofa, rolled on the floor kicking his heels and laughing, and finally had to be restrained—a power of mirth that reminds me somewhat of Sam's. And we say to ourselves that those people back then sure were sentimental. But if they knew us, mightn't they say that we are coldblooded?

And so, if the 19th century was one in which no man was a hero to his valet, the

20th century has become one in which no man is a hero to his biographer—except perhaps for Sam Ervin, who, in spite of some epic strife between us, is a hero to *his*, and to many friends who have known him well, and wish him well, and are strengthened and cheered from having him around.●

SENATOR GLENN URGES PASSAGE OF THE FAIR HOUSING AMENDMENTS ACT OF 1980

● Mr. GLENN. Mr. President, on August 26, 1980, the Senate Judiciary Committee favorably reported S. 506, the Fair Housing Amendments Act of 1980. I am a cosponsor of this important piece of legislation. The Fair Housing Amendments Act of 1980 is the product of extensive congressional hearings which began as far back as the 92d Congress. Although there have been many efforts to weaken this legislation, it has nevertheless arrived at the threshold of final passage still intact. The House of Representatives passed their version of the bill, H.R. 5200, on June 16, 1980. For my part, I will expend every effort to support this legislation until it reaches the Senate floor, obtains final passage, and is signed into law.

The Fair Housing Amendments Act of 1980 will amend title VIII of the Civil Rights Act of 1968 by providing a comprehensive administrative enforcement mechanism with which to combat racism and discrimination in housing. Moreover, it will expand the coverage of our fair housing laws to include handicapped citizens. Because the legislation provides for prompt and efficient resolution of complaints, it is a viable alternative to expensive Federal court litigation. This legislation fulfills a promise of fair and decent housing which was made to the American people 12 years ago—a promise which has, until now, proven to be largely an empty gesture.

S. 506 would establish an independent Fair Housing Review Commission. The Commission would appoint approximately nine administrative law judges who would preside over hearings regarding housing discrimination complaints. The Commission would be empowered to review, modify or reverse the decisions of the administrative law judges. Under S. 506, the administrative enforcement of an alleged discriminatory housing practice would be as follows:

1. Whenever an individual, or the Secretary (of HUD) on his own initiative, files a charge, the Secretary must serve notice on the party charged and make an investigation of the charge.

2. If there is a certified state or local agency, the Secretary must refer the charges to such agency for investigation and enforcement.

3. After the filing of a charge, the Secretary or certified agency must attempt to resolve the matter through conciliation (or, if both parties agree, refer the matter to arbitration).

4. If his investigation supports a finding of "reasonable cause", the Secretary must either file an administrative complaint or refer the matter to the Attorney General for civil action.

5. If an administrative complaint is filed, an administrative law judge must conduct a hearing and may award "appropriate relief", including the assessment of a civil penalty of up to $10,000.

6. Any party may seek review of an administrative order by the Fair Housing Review Commission or by the appropriate court of appeals, or both.

Mr. President, I strongly support the Fair Housing Amendments Act of 1980 and I urge my Senate colleagues to join me in seeking final passage of this legislation within the next few weeks.●

REMARKS OF THE HONORABLE MALCOLM FRASER, PRIME MINISTER OF AUSTRALIA

● Mr. HEINZ. Mr. President, I would like to bring to my colleagues' attention a thoughtful speech made by the Australian Prime Minister, Malcolm Fraser, to B'nai B'rith International on September 1, 1980.

In this speech Mr. Fraser declared that "the single most important fact which faces the world in the 1980's is the reality of Soviet military power." Mr. Fraser charged that the Soviet Union has been acting with singleminded persistence in its attempts to broaden its empire, and that the second most important fact facing the world is "the reluctance of many in the West to recognize that reality and respond to it." Mr. Fraser then called on America's allies to give greater support to the United States to assure the survival of the West.

Through his discussion Mr. Fraser reaffirmed Australia's commitment to world peace and humanitarianism. He raised many provocative and salient points regarding the Soviet Union which bear our close consideration. Mr. President, I ask that Mr. Fraser's speech be printed at this point in the RECORD.

The speech follows:

SPEECH TO B'NAI B'RITH INTERNATIONAL

On occasions like this it is customary to begin by saying that one has been greatly moved by the award in question. In my case I can say that with absolute, literal truth, for I have been moved some 10,000 miles to be here tonight to receive this medal.

I assure you that the length of the journey is commensurate with the importance I attach to the occasion—not only because I feel deeply honoured personally that a body of the stature and prestige of B'nai B'rith has chosen to give me this award, but because I regard your decision as a recognition of the tribute to Australia's humanitarian record.

You represent an organization which has demonstrated the seriousness of its concern for human dignity and justice over the years. I represent a country which has done the same thing. I would like to begin by mentioning briefly two manifestations of that concern in areas which I know have been at the heart of B'nai B'rith's activities since its inception one hundred and thirty seven years ago: refugees and opposition to racialism.

Australia began to take refugees in significant numbers in the 1930s, with the exodus of Jewish people from Central Europe. After the Second World War, Australia continued to do so in response to the vast displacement of population in Eastern Europe and the creation of regimes there which many found intolerable. Thousands came from the Soviet Union and the Baltic States. Overall, in the 35 years since that war we have taken an average of around 10,000 refugees a year. Now I appreciate that for Americans, accustomed to think in very large numbers, that figure may not seem unduly impressive. However, if I point out that as a percentage of population it is equivalent to an annual intake of some 150–160,000 by the United States—over three times as many as it has actually taken—I am sure you will appreciate its significance in Australian terms.

In recent years Australia has been taking many more than that average figure. We have responded to the deliberate creation of a terrible refugee problem in our own region, one made even more harrowing by long sea journeys in small and unseaworthy boats which have resulted in tens of thousands of deaths by drowning. In fact, in per capita terms we have accepted more refugees from Indo-China for permanent settlement than has any other country in the world.

We have done this because it is right. But over the years we have also benefitted greatly from it, as the energy and talents of those who have come to Australia have contributed to the rich diversity and prosperity of life there.

As for racialism, let me begin by acknowledging in earlier times Australia life was seriously marred in this respect. Australians did pursue a discriminatory policy as far as immigration was concerned, the so-called "White Australia" policy. Australians did discriminate shamefully against the Aboriginal people in Australia itself. We do neither any longer.

At the beginning of the 1980s Australia's immigration policy is colour blind and over a third of our settler arrivals come from Third World countries. We have moved a long way from being an essentially Anglo-Saxon-Celtic community to being a truly multi-cultural and multi-racial one. Within that community, the Aboriginals are today an important and respected component. It would be idle and wrong to deny that earlier neglect has left a residue of serious problems. There is no complacency about these problems. They are fully recognised and determined efforts are being made to cope with them. A comprehensive set of policies—covering, among other things, land questions, land rights, royalty payment for mining, low interest loans, and special legal, health and education services—is being implemented. These policies are based on a full recognition of the fundamental right of Aboriginal Australians to participate fully in the determination of their own future. They have been devised in consultation with Aboriginal people and, where possible, are carried out by Aboriginal people.

In international affairs Australia is fully committed to opposing racialism. We have opposed it vehemently and to some effect in Southern Africa, where my Government recently played a significant part within the framework of the Commonwealth of Nations in resolving the Zimbabwe crisis. Unlke some others, however, we do not restrict our opposition to racialism to where it is fashionable and safe. We do not believe in being selective on this issue. We oppose it in all its forms and even when it is practised by the very powerful—by the Soviet Union, for example. You may be interested to know that the Australian Parliament recently conducted an enquiry into Human Rights in the Soviet Union and produced a comprehensive report on the subject; to the best of my knowledge, the Australian Parliament is the only legislature to have produced such a report. It has subsequently been incorporated into your Congressional Record.

Before leaving this question, let me add that we are also concerned to oppose the debasement of anti-racialism, which some seek to exploit in a self-serving way by attaching the label of racialism to anything they oppose. To be more specific, my Government has opposed and will continue to oppose attempts to characterise Zionism as racialist, even when this involves us being in a very small minority as far as UN voting is concerned. Racialism is too vile and serious a matter to be misused and subordinated to other issues in this way.

Ladies and gentlemen, I know that B'nai B'rith's concern is with humanitarian issues. I know also that many people believe that a concern with humanitarian issues should be kept separate from political and strategic matters, that they are somehow incompatible. I sympathise with the impulses behind that view—the religious and humanistic impulses to look for what unites people rather than what divides them. It represents a necessary ideal. Yet at the level of practical policy, I believe that it is profoundly mistaken. All our experience denies it. In particular, the experience of the Jewish people in this century emphatically denies it. Humanitarian problems arise in, and are profoundly affected by, a political context. A realistic humanitarianism, and one meant to solve problems and not merely to assuage consciences, must therefore extend to embrace the great political and strategic issues of our time.

Before I turn to say something about these issues there is something which, from past experience, I feel I should explain. I am sometimes asked, with some surprise implicit in the question, why a geographically remote, middle-sized country like Australia which faces no imminent threat is so concerned with such matters. The best way I could answer this question, if it were possible, would be to take the person asking it to an Australian country town—almost any country town—and ask him to look at this memorial he would find there to the Australians who had died in the wars of this century. The lists are very long. Too many Australians have died in places far remote from their home—in Europe, in the Middle East, in Korea, in South East Asia—for us to be unconcerned about the preservation of world peace. Their sacrifice not only confers a right but imposes a duty on an Australian Prime Minister to speak on these issues.

If I may make a more general point, one cannot on the one hand use the rhetoric of "one world", the "global village" and "interdependence" and on the other proceed to argue that the questions of peace and war should be left to those immediately involved or to the great powers. The middle-ranking countries of the world should recognise that they have a role to play. It would be an excess of modesty on their part, indeed it would be a political and moral failing, to assume that they should be seen but not heard on the great issues.

In the present circumstances, it is not a matter of some exaggerated and unrealistic notion about the extent of the influence an Australian voice can have which moves me to speak. It is rather a belief that in a Western world characterised by a great deal of self doubt, division and illusion, every incremental contribution to the clarifying of issues and the strengthening of resolve is valuable. It is in that spirit that I make my remarks.

We have travelled far this century. Much of the journey has been grim and harrowing. The First World War, whose brutality and suffering almost numb the imagination, left ordinary people shocked, dazed, and longing for an era of peace. They did not get it. 21 years later—in precisely the time required for a new generation of young men to reach their majority—the world was again at war.

Tragically, that second conflict came about because, in the name of peace, the very moderate steps necessary to resist aggression in good time were opposed. Those who sought to maintain the true conditions for peace were denounced as militants. As a result, millions were to perish needlessly—in the gas chambers of concentration camps as well as on the battle fields.

By 1945 the essential lesson had been learned, at least by one generation: it was realized that the end of the War did not signify the end of the struggle to maintain peace—that there was no end to that struggle. So the democracies of the world, led by this great and generous country, girded themselves to face a new threat from a new tyranny. New alignments were forged, new strategies shaped. Leaders of stature and vision emerged. That effort provided the foundation for a generation not only of peace but of unprecedented material advancement for the world.

But 35 years have passed. The generation which emerged from the last war and which understood its lessons is no longer active. Memories have faded; awareness of danger has receded; determination to uphold, and explain and expound the values of free societies has diminished.

What then is the situation facing us at the beginning of the 1980s?

The essence of what I have to say can be summed up in two propositions. First, the single most important fact which faces the world in the 1980s is the reality of Soviet military power and the implications which flow from it. Second, the next most important fact is the reluctance of many in the West to recognize that reality and to respond to it.

As far as the Soviet Union is concerned it is necessary always to bear in mind some basic facts. During the last 50 years, while other empires have been dismembered at an unprecedented rate, the Soviet Union has been the only major power which has acquired substantial territory and surrendered its claim to nothing.

Soviet leaders today, as in the past, describe international politics as basically a struggle between what they call "progressive" forces and the forces of "reaction". They profess support for the "progressive" forces in their struggle to gain power throughout the world and they refuse to accept any definition of detente which in any way circumscribes Soviet participation in that struggle. "Progressive" forces are, of course, defined in terms of their compatibility with the national interest of the Soviet Union.

Internally, there have been some important changes in the Soviet Union over recent decades. In particular the disappearance of mass slave labour and mass terror stand out and are to be profoundly welcomed. But there is still no rule of law, no freedom of opinion or information, no right to strike, no right to emigrate. There is still an oppressive and ubiquitous security service which harrasses cruelly the kind of dissent which is considered normal in open societies. Political and economic power is still monopolised by a self-appointed and self-perpetuating elite. There is still a command economy of the kind which other countries only resort to in war-time. In other words, the basic institutional structure of the country remains unchanged since Stalin's time.

I spell out these features for one reason only: because they are the features of the country which many judge is now the strongest military power in the world and will, given lead-times, remain so for at least most of the 1980s. It has achieved this status by a massive and relentless arms build-up over the last two decades, a build-up which started from what was already a very high base. It was achieved by giving arms an absolute priority, even at the expense of the serious sacrificing of other goals, the achieving of which would have bettered the lot of its long suffering people.

This is the country we are going to live with in the coming years. I believe that doing so is going to be a dangerous business. The main danger as I see it stems not from the likelihood that the Soviet Union will deliberately precipitate a nuclear war or that it will launch a general attack on Western Europe. The Soviet leaders do not want a war with the West. They recognize that if it occurs its effects will be devastating for everyone. I believe, however, that they do want those things the pursuit of which will greatly increase the risk of war.

The danger is greatest in the chronically unstable regions of the Third World. It is particularly great in the Middle East—racked as it is by internal conflict, vital as its oil is for the countries of the world, and adjacent as it is to Soviet military power. The Soviet Union's combination of nuclear parity with the West and conventional military superiority make it tempting for it to use the latter in the Middle East. If it does so the possibility of a spill-back of conflict into Europe will be very great. In other words, the traditional pattern whereby wars have begun in Europe and have then engulfed the rest of the world may well be reversed. For historical reasons it may be difficult for those viewing the world from a European perspective to come to terms with this possibility.

I believe that the danger has been increased by the invasion of Afghanistan which has driven a Soviet salient into the region. I believe it will be further increased to the extent that it is possible for the Soviet Union to misread the situation due to ambiquous or inadequate signals from the West. I emphasise that point: danger will arise not only from Soviet power and intentions but from confusion and division concerning Western policy which could lead to miscalculation on the Soviet side. For the sake of peace it is essential that this be attended to.

It should be emphasized and clearly understood that what I am talking about is not merely hypothetical. To a very significant extent it is already happening: in Angola and Ethiopia on the African continent; in the Yemen and Afghanistan in the Middle East; and, nearer to Australia, in Indo-China where the Soviet Union is subsidising Vietnamese aggression to the tune of $3 million a day, and acquiring military facilities in Vietnam for its troubles.

In the case of Afghanistan and Cambodia, Soviet policy has demonstrated yet again that it has a capacity rivalled only by Nazi Germany in this century for adding to the sum of human misery by creating tragic flows of refugees.

What of the Western response to this challenge? In terms of population, in terms of wealth, in terms of knowledge, in terms of technology, the combined resources of the West far exceed those of the Soviet Union and its associates. If, therefore, the West finds itself vulnerable to Soviet power—as in some respects it does—it is because of a failure of perception and resolve.

These two—perception and resolve—are intimately related. On the one hand, there can be no adequate response to a problem until its existence is properly recognised and its nature understood. On the other hand, a failure of resolve and will is likely to lead to interpretations—either optimistic or fatalistic—which will either explain away the problem or deny the possibility of effective action.

Two years ago at Harvard, Solzhenitsyn spoke of the prevalence in the West of a self-deluding interpretations of the contemporary world situation. "It works", he said, "as a sort of petrified armour around people's minds. . . . it will be broken only by the pitiless crowbar of events". We must hope that Solzhenitsyn is wrong in his conclusion that only after bitter experience will people see things as they are; but he is surely right in identifying the capacity for self-delusion as a critical factor in the West today.

Consider, for example, the typical sequence of arguments advanced against any attempt, to focus attention on Soviet imperialism:

First, a strenuous denial that the Soviet Union is in the process of attempting to achieve military preponderance accompanied by a claim that it is merely reacting to the military programmes of the West.

Second, the assertion that even if the

Soviet Union is in the process of achieving military superiority, this is not politically significant. Beyond the level of "sufficiency" it is claimed, military power is meaningless—and in any case, is becoming increasingly irrelevant to the achieving of foreign policy goals.

Third, the claim that even if military superiority does confer an advantage, there is no need to worry since the Soviet Union is a cautious, conservative, satisfied state, more fearful than ambitious.

Fourth, the reassurance that even if all preceding arguments turn out to be false there is still no cause for alarm, for it is well known that the Soviet Union is so maladroit in its dealings with the Third World that anything it tries there is sure to fail. And so, it is argued the sensible course is to relax and wait for it to do so.

This sequence of arguments—with its series of fall-back positions—constitutes a determined defence in depth against taking anything but an utterly complacent view of Soviet power and intentions. Each step in the sequence is either false, or a dangerous half truth, or involves taking an irresponsible gamble with the peace and security of the world.

The Soviet Union is engaged in a quest for superiority in every important category of weaponry and has already achieved it in many of them. It is not simply reacting to Western efforts, but on the contrary follows an undeviating course regardless of fluctuations in Western performance. The U.S. Secretary of Defense made the point succinctly when he observed that, "As our defense budgets have risen, the Soviets have increased their defence budget. As our defence budgets have gone down, their defence budgets have increased again."

Military superiority is translatable into political advantage, especially when nuclear parity, and consequent nuclear stalement, is combined with conventional superiority.

Soviet caution is not based on conservatism but on a rational calculation of risk and opportunity. When it is at a disadvantage it is cautious, but when it enjoys an advantage it acts boldly to capitalize on it—as it did in Eastern Europe at the end of the Second World War, and as it is increasingly doing now in the Third World. To the extent that the Soviet Union is motivated by fear, it is, as indeed many of those who interpret its foreign policy as defensive concede, a paranoid fear. But the practical manifestations of such a fear are virtually indistinguishable from aggression, in that they cannot be appeased or assuaged short of conceding global dominance.

As to its alleged inability to deal with the Third World, the Soviet Union has had its failures in the Third World, but it has also had its successes; and recently the latter have predominated. In any case, what kind of societies would we be if we were prepared to risk our future on the expected mistakes of an adversary? Surely we value our way of life too much to accept such a risk.

It cannot be denied that some of the effects of the self-delusion and confusion I have sought to identify are apparent in the state of the Western Alliance today. NATO, the centrepiece of that alliance, has been enormously successful, perhaps uniquely successful as a peace-time alliance. But it is operating today in essentially the same form and according to the same strategic doctrine as it did when it was founded 30 years ago, even though there have been profound changes since then.

There have been many such changes: in the economic balance between the United States and Europe; in the extent of trade between the West and the East; in European perspectives following the dismemberment of their empires. All these have important implications and consequences. But in terms of security, one change stands out: in 1949 when NATO was founded, the United States had clear nuclear superiority and virtual immunity from nuclear attack. Now it has neither.

If the Western Alliance is to survive, these changes must be reflected in its form and substance. It must be made consonant with the kinds of threats which its members face today and with the current distribution of power and wealth among its members.

The United States, which has shouldered such a heavy burden for so long, should receive greater support from its now prosperous allies. We in Australia recognize this. In Europe, as America's allies have recovered and become more powerful they have, rightly, reasserted themselves politically. But until this reassertion is accompanied by the willingness to assume a commensurate responsibility for their own security which logically follows from it, it will be a source of strain between the United States and its allies. Some progress has been made in this respect in recent years and this is to be welcomed. But the disparity in burden-sharing is still very pronounced.

The United States, in its turn, should recognize that a changing balance within the Alliance requires different modes of action on its part, including greater attention to continuous policy co-ordination and consultation. There is an urgent need to develop mechanisms which will enable the Western Alliance to respond quickly to events in a dangerous and volatile world.

Again, if we are to avoid nuclear war there is an imperative need for the creation of conventional forces capable in themselves of placing the success of any Soviet conventional attack in serious doubt. It is not enough to depend on a nuclear deterrent in a world in which all are vulnerable to nuclear devastation.

There is an equally urgent need for the allies to agree on the ground rules to be applied for detente: to the relationship between trade policy and the political and military activity of the Soviet Union; and also to the relationship of detente in Europe to events elsewhere in the world. Indeed, high priority should be given to the whole question of the protection of shared Western interests beyond the geographical territory of the NATO members, for as I have said it is there that the danger is greatest.

Beyond all this and perhaps most important of all, there is an over-riding need to articulate the purposes and meaning of the Alliance in language which will revitalize the commitment of ordinary men and women in Western countries to its cause. That cause is not, in the last resort, about military arrangements but about the preservation of a way of life—an open, liberal, democratic way of life governed by respect for law. Whatever the shortcomings of that way of life—and we hear a good deal about them nowadays—it is necessary only to compare it with any of the others which are on offer to realize that it should be supported and defended with zeal and resolution by all who love liberty. It is palpably absurd that its upholders should ever feel morally or ideologically on the defensive in dealing with totalitarians or authoritarians.

Currently, there are disturbing signs of a strengthening of neutralist sentiments in some European countries. This reflects in part the failure of imagination—as someone has said, those who lack to the imagination of disaster are doomed to be surprised by the world. In part it represents a fatalistic assumption that nothing can be done, a feeling of helplessness in the face of events. It is made worse by the current economic problems confronting the developed industrialised countries.

Whatever its causes, it would be a tragic irony if an Alliance which has held firm for three decades should falter now, when the need for it is going to be greatest. It is imperative that the leaders of the Western world—and I do not simply mean its political leaders—find the words and the concepts which will fortify their peoples and that they themselves act in a way which shows that they mean those words.

A people without an objective are a people lost. A people without faith are a people destroyed. A people without conviction will not survive. It is liberty which provides the objective, liberty which allows faith, liberty which sustains conviction.

But liberty is not an inevitable state and there is no law which guarantees that once achieved it will survive. Its preservation requires skill, determination and strength. But first and most important of all, it requires a knowledge and understanding by ordinary people of what is at stake for them not an abstract concept but a whole way of life whose survival depends on their commitment to it.

Once—less than a lifetime ago—it was possible for the voice of a Churchill to bring these truths home to the western democracies. Now, in an age that is suspicious of heroes and sceptical in temper, the task is harder. Leaders of governments cannot master it without the support of ordinary men and women, their readiness to argue the case for liberty with intelligence and passion.

What is needed in this respect is not novelty and gimmickry but the reaffirmation of some old truths in language appropriate to the times. For unfortunaely, the realities of international affairs do not change simply because people find the burden of living with them heavy.

In one of his novels, Saul Bellow has one of his characters comment on the contemporary craving for novelty. I will end by repeating his words:

"It is sometimes necessary to repeat what all know. All map makers should place the Mississippi the same location and avoid originality. It may be boring but one has to know where it is. We cannot have the Mississippi flowing towards the Rockies just for a change."

What is true for map makers is also true for politicians. And what is true for the Mississippi is true for the Elbe and the Mekong and the Jordan.

Ladies and gentleman, I thank you again for the honour you have bestowed on my country and myself.●

MEXICAN INDEPENDENCE DAY

● Mr. BENTSEN. Mr. President, the people of Texas have a special fondness for and affinity with our neighbor to the South. One Texan out of five is of Hispanic origin and an ever greater proportion of our people feel a keen sense of identity with the culture, language, and people of Mexico.

The border between Texas and Mexico, Mr. President, is unique. It is the only place on this globe where a highly advanced, industralized country comes face to face with a dynamic, developing nation. It is to the credit of both Mexico and the United States that this long border has come to unite, rather than divide, almost 300 million people who share a common commitment to freedom, democracy, and opportunity.

Today, "diez y seiz," the 16th of September, marks the anniversary of Mexico's gallant struggle for independence. It was on this date in the year 1810 that Father Miguel Hidalgo y Costilla, a parish priest in the village of

Dolores, assembled his followers under the banner of the Virgin of Guadalupe and initiated the struggle that led eventually to Mexico's independence from Spain.

Mexico's Independence Day is a time for reflection and celebration on both sides of the border. It is an occasion for 70 million Mexicans to take pride in the vast achievements of their nation and the incredible sacrifices made in the cause of freedom. And it is a time for millions of U.S. citizens of Mexican heritage to reflect on their origins, their long legacy of independency, dignity, and accomplishment, and the indelible imprint they have made on every aspect of life in our region.

In a broader sense, September 16 and the brave fight begun with Father Hidalgo's "Grito de Dolores" in an opportunity for all of us to join in saluting our neighbors to the south and paying tribute to Americans of Hispanic origin, who will soon become the largest ethnic minority in this country.

The people of Mexico, Mr. President, have fought with valor and commitment to guarantee a future of freedom; they have been true to the vision of Father Hidalgo.

Today I join with millions of Americans in congratulating our neighbors on their Independence Day and wishing them well in the future. I sincerely hope that the people of our two great nations will continue to reach out across the border and join hands in the cause of a better tomorrow for all our people.●

ERNEST W. LASS

● Mr. WILLIAMS. Mr. President, I am deeply saddened to report the recent death of Mr. Ernest W. Lass, editor in chief and chairman of the board of the Asbury Park, N.J., Press, and I would like to take just a moment to reflect on some of the highlights of Mr. Lass' long and accomplished life.

Mr. Lass joined the staff of the Press as a reporter back in 1928 when he was 21 years old. During his long and fruitful association with that paper, he rose through the ranks, helping to improve the Press every step of the way. Between 1928 and 1980, Mr. Lass served as circulation director, business manager, general manager, and secretary-treasurer of the paper's corporate organization. He was the publisher of the Press from 1955 to 1977. In 1974, Mr. Lass became chairman of the board and chief executive officer of the Press corporations. Through his tenure with the newspaper, the Press increased its daily circulation from 10,000 to more than 100,000.

Mr. Lass' reputation as a journalist and businessman grew with the years, and many of us in New Jersey watched with admiration as he helped build the Asbury Park Press into the respected and widely read paper that it is today.

Over a decade ago, he and I became compatriots of sorts in an enterprise which meant a great deal to both of us, the campaign to open Sandy Hook to the public as a park. Mr. Lass, it seems, became interested in making the area a park when he was still a young man and working for the paper. Some 30 years passed before part of the Hook was finally opened as a State park, leased from the Federal Government. But the campaign to share this unspoiled coast land with people from our State of New Jersey, and from New York was far from over.

Many years after Mr. Lass had begun to work on the park project, I introduced legislation in the Senate which made the Sandy Hook area part of Gateway National Recreation Area, a Federal park. In 1973, when Gateway became a reality, Mr. Lass was among those named to the park advisory commission.

Today, thousands of people are able to enjoy this beautiful, unspoiled part of our State because of the effort Mr. Lass helped bring to fruition over three decades ago.

As an active member of his community, director of a leading paper, and an outspoken, eloquent winner of Four Freedoms Award for editorial writing, Mr. Lass left a very positive mark on our State. I am proud of all that he has contributed to making New Jersey a good place to live, and deeply saddened to have lost so valuable a member of our State.●

RESTORATION OF DEMOCRACY IN PERU

● Mr. KENNEDY. Mr. President, when Peru inaugurated a new civilian President on July 28, its citizens and, indeed, all supporters of democracy throughout our hemisphere had special reason to be heartened. The swearing in of Fernando Belaunde Terry as Peru's 102d President marked the reestablishment of freely elected democratic government in that nation, ending 12 years of authoritarian military rule.

To appreciate the full significance of the inaugural ceremony in Lima on that day, one must understand its place in relation to recent Peruvian history. Following a military coup in 1968—which brought an end to the first presidential term of Belaunde Terry—democracy was severely curtailed. As recently as January 1979, the military suspended constitutional guarantees, declared a state of siege, and detained hundreds of union leaders and opposition political figures, suppressing a general strike called to demand free elections and economic justice.

When elections marking the long-awaited transition to civilian rule were finally held last May—with the welcome support of Peruvian military leaders—Mr. Belaunde won a commanding 45 percent of the popular vote against 14 other candidates. In coalition with the small Popular Christian Party, his centrist Popular Action Party gained a controlling majority in both the Chamber of Deputies and the Senate. In his inaugural address to a joint session of the recently installed Congress, President Belaunde firmly committed himself to implement a return to constitutional rule in his nation, to create an independent judiciary, to spur economic development, and to promote "the full exercise, from this moment, of human rights and freedom of the press."

The job of governing will be a tough task, but initial, concrete actions of the new government have begun to implement these pledges. The new President has promulgated a broad and generous political amnesty, essential to the spirit of national reconciliation, and has ended government control of newspapers and television stations—taken over by the military—to further the checks and balances necessary for truly democratic government.

The restoration of democratic institutions in Peru is not only an essential step in the liberalization of Peruvian political life, but also stands as a signal to the countries of Latin America and the world that the transition from authoritarianism to democracy can occur, in peace, and is worth the effort. Throughout Latin America, military regimes, from Guatemala to Chile, have come under increasing domestic and international pressure to hold free elections and return their countries to civilian rule. Only last year, Peru's Andean neighbor, Ecuador, undertook a similar welcome transfer of power to elected civilian leaders. In Bolivia, however, an encouraging move toward democracy aborted as the military staged a brutal coup against the expected presidential victor of a center-left coalition of parties.

The months ahead of President Belaunde will be difficult economically and politically, and he should know that he will have strong U.S. support in meeting Peruvian needs and aspirations. The return to civilian rule occurs at a time of economic crisis for the people of Peru. While disparities of wealth were reduced under 12 years of military rule, Peru continues to face high unemployment, approaching one-fifth of the population, a 70-percent inflation rate, and continuing widespread poverty.

In the face of these major challenges, President Belaunde has pledged himself to combat widespread poverty by addressing Peru's basic social and political problems, and by actively encouraging renewed large-scale foreign investment and increased international trade to help develop the mining and petroleum sectors central to the nation's economic future. The new democratic leaders of Peru must be sure not only of the unity and support of their own people to push through the bold economic initiatives that will be needed, but also of the committed support of the United States and like-minded democratic nations through increased economic cooperation and aid. We should respond positively and generously to this encouraging call from Peru for renewed cooperation among hemispheric neighbors.

In this way, all Americans and Peruvians can look forward to an enduring system of democracy and social justice in Peru. I, for one, and I know the Congress and the people of the United States join me, congratulate the Peruvian Government and people for their very positive step toward restoring human rights and democracy in their important Andean country.●

THE AMERICAN STEEL INDUSTRY

● **Mr. SCHWEIKER.** Mr. President, today, the American steel industry is at the crossroads. The same industry which dominated world markets in the years immediately following World War II is now deeply troubled by an outdated physical plant, idle capacity, high unemployment, and heavy competition from subsidized imports. With these disturbing facts in mind, I would like to call attention to the statement on the steel industry issued today, September 16, 1980, by Ronald Reagan.

In his statement, Governor Reagan points out that, whatever the industry's mistakes, the sad truth is that a good deal of its problems can be laid at the door of an indifferent, uncaring and short-sighted Federal Government. Unfortunately, this pattern of indifference has accelerated in the past 3½ years. Typically, while we have heard much in these past few weeks about reindustrialization or the revitalization of basic industries, there has been precious little substantive action by the Carter administration. Instead, there has been rigid refusal to enforce antidumping laws, capped by the outright abolition of the trigger price mechanism necessary to enforce those laws. Rather than innovative thinking and modern tax policies designed to encourage capital formation, there has been stubborn insistence on outdated tax formulas which strangle industrial development. Add to this a heavy dose of incentive-killing regulation, and you have all that is needed to depress a once thriving industry.

The solutions which the administration proposes reflect the same lack of understanding for the steel industry by addressing the symptoms rather than the causes of its problems. Thinly disguised bailouts and spur-of-the-moment relief efforts deal only with the grim results of ineffective policies. They contribute nothing to rebuilding the steel industry. Consequently, while steel imports averaged 13.7 percent from 1974–76, in the past 3½ years thev have averaged over 17 percent. In other words, growth in domestic steel consumption has been captured by imports, and domestic capacity continues to decline.

As I said before, the key to many of the steel industry's problems is a lack of understanding of, or worse, indifference to its legitimate needs. As a member of the Senate Steel Caucus, I have joined colleagues on both sides of the aisle in fighting for policies that will make substantive contributions to restoring the health of the steel industry.

We have struggled for the adoption of tax policies which will permit the capital formation the industry so desperately needs. We have sought in vain from President Carter reasonable enforcement of laws designed to insure fair competition for international markets. We have sought the elimination of regulations that impede economic growth without contributing significantly to public health and safety. Too often in recent years we have seen our efforts frustrated by an unwillingness to shed outdated policies or by failure to comprehend basic economic realities.

Given this sad history of broken promises I commend to my colleagues Governor Reagan's statement on the steel industry. It stands in stark contrast to the Carter administrations' indifference which is at the root of the industry's current difficulties.

The statement follows:

STATEMENT BY GOV. RONALD REAGAN

The American people have been told by President Carter that they are suffering from a national "malaise"—a weakness of will, a lack of determination to improve their own lives and the economic condition of their country. The American people have been asked to believe that this "malaise" comes from within themselves. This appraisal is wrong, and indeed is insulting to the intelligence and vigor with which the American people have always attacked their problems. The "malaise" has been imposed upon the people by the Carter Administration, whose policies have undermined the strength of the American economic institutions which are the basis for our prosperity.

Nowhere is the problem more evident than in the states which form the industrial heartland of America. The economic disaster that grips this region didn't just happen. The industries of this heartland have been weakened by short-sighted taxation policies, by inattention to problems created by dumped and subsidized foreign goods and by excessive government regulation.

In this century, America achieved economic strength second to none. But now, in a few short years, the American people have seen this strength undermined. They are worried about the weakness of the nation's industrial base, about the inability of industry to support the nation's military strength, about the decline in productivity, about the erosion in the value of the dollar. In a word, the American people fear that their country is drifting, unguided, away from world leadership, to the point where our jobs, our lives and our institutions are at the mercy of others.

The Administration has failed to realize one fundamental fact: the industries which comprise the industrial base of America, and the people who are employed by those industries, must have the tools with which to produce more and to produce more efficiently. That fact has always been the basis for the economic strength of America; it is a fact now; and it will continue to be so.

The outstanding example of the economic problem—and the outstanding potential for solving the problem—is the steel industry. In the administration of President Eisenhower, the American steel industry was the world leader in production and in technology. Since then, the trend has been one of gradual strangulation of the steel industry by Democratic administrations which have chosen to see American steel mills reduce operations or go out of business entirely, to ignore subsidized imports, to see Japanese, European, or other foreign steel workers take the jobs of American steel workers. The effects of these policies are visible today in scores of cities and towns which depend upon steel mills for their payrolls, for their retail business, for their taxes—for all the economic strengths that invigorate people, families, and communities.

Our people recognize that this country must have a strong world-class industrial base. This industrial base is, in turn, founded upon a strong steel industry. And yet, in a program unveiled before Labor Day, President Carter attacked this massive problem with a series of half-hearted measures which approach the symptoms of economic weakness without really attacking its causes.

If the United States is to return to world leadership in its economic strength, the rebuilding program must be built on a strong industrial base—and steel is part of the foundation of that base.

The steel industry of the United States has been forced into second-class status because short-sighted government policies have prevented it from investing enough money in new production equipment. The steel industry must be revitalized, must be made more competitive with foreign steel, must serve the interests of the American people better with lower-cost, more energy-efficient production. This is a major first step in the industrial revitalization of our country.

The key to this revitalization is investment. Steel mills must be enabled to invest more in modernization and expansion, to protect the jobs of their workers and to retain their own home market. These investment funds can only come from two sources: from profits and from realistic tax policies.

The Carter economic program features subsidies and government handouts. The American steel industry does not ask for subsidies, handouts, loan guarantees or any other form of "bail-out." The industry asks, and should be given, an opportunity to pull itself up by its own bootstraps by earning the money needed for its own revitalization. Enlightened, forward-looking, constructive policies would do the following for the steel industry:

CAPITAL FORMATION

The steel industry, along with others which form the industrial base of the Nation, should be allowed to take its depreciation allowances in a shorter period of time. For the American steel industry the average is now 12 years. This means that, by the time a company takes its tax allowances for new plant investment, the value of the dollars has been eaten away by inflation, and the funds available for new investment buy much less new equipment. American industry in general, and steel mills in particular, are placed at great disadvantage with their major competitors abroad, many of which have the benefit of one- or two-year write-off periods, and none of which have longer depreciation periods. Faster, less complex depreciation schedules should be placed promptly into effect.

Faster depreciation is not a subsidy. All it does is to make available in a shorter period of time the same dollar amount of tax benefits which would otherwise be available to companies over a longer period of time.

IMPORTS

I have already pointed out that the American steel industry has been on a downward path since the Eisenhower years. Nowhere is this more evident than in imports. In the 1950s, imports accounted for an average of 2.5 percent of American steel consumption. In the 1960s, the market share of imported steel rose to an average of 10.2 percent. In the 1970s it rose to 15.5 percent. And, in the first three years of the Carter administration, imports of foreign steel increased to more than 17 percent. In the three years prior to the Carter administration they had been 13.7 percent.

This demonstrates that growth in American steel consumption has gone to imports, while the productive capacity of American mills has gone steadily downward. This does not make economic sense for the steel industry or for the nation, and it adds to the nation's balance of payments deficits.

Democratic administrations, and the Carter administration in particular, have been unwilling to cope with the import problem by enforcing laws which have been on the books for almost 60 years. These laws forbid dumping—that is, the practice of selling goods in the U.S. below cost of production in their home market or below prices which foreign producers sell for in their home market.

The Carter administration has also chosen to ignore laws which require remedies for goods which undersell American producers by means of foreign government subsidies to their producers. Subsidized imports have reduced American sales volume and profits, thus restricting the funds available to American mills for investment.

To enforce those anti-dumping and anti-subsidy laws is not only the most effective answer to the problem, it is actually demanded of a President who swears to uphold and enforce the laws of the land—not just those laws which he finds convenient to enforce.

Enforcement of the trade laws would not prohibit imports of foreign steel. It would, however, require that steel offered for sale in this country be unsubsidized by foreign governments. American mills are ready and willing to meet foreign competition.

As part of that enforcement process, the Trigger Price Mechanism should be promptly reinstated. Once we restore this protection against subsidized imports, we must then move forward to reduce foreign subsidies wherever possible. My administration will make every effort to negotiate reductions in such trade practices.

REGULATIONS

American industry is stifled by over-regulation. Nowhere is this more apparent than in the steel industry's running battle over excessive environmental regulation. No one quarrels with the general objective of cleaning up the nation's air and waters. But we should not pursue those goals by insisting on timetables which force steel mills to spend money on environmental equipment when they don't have enough capital to invest in job-protecting new production equipment. Worse yet are cases where steel mills are forced to close mills or shut down facilities prematurely because strict enforcement of environmental regulations would make them unprofitable. Loss of jobs and community distress are the result. The steel industry has worked hard to accomplish the vast portion of its clean-up task, and within the next few years will be removing even more of its pollutants from the environment. What is needed is to stretch out the time period for further clean-up.

It is a matter of priorities. Right now, with so much of the pollution clean-up already accomplished, we must balance the need for environmental protection and protection of jobs and rebuilding industry.

For a generation, the steel workers and the steel industry have been whipping boys for those in Washington who wish to show the public how zealously they are holding down prices. Price restraints have not been applied evenhandedly—to the point where the costs of producing steel have risen, prices have risen more slowly, and profits have been squeezed.

The steel industry must be allowed to earn a reasonable profit on investment and on sales, in order to generate the funds for investment in plant modernization and expansion. Government loans or subsidies are no substitute for honest profits earned through aggressive cost-saving and competitive selling in a free and open marketplace.

America needs a modern, world-class steel industry. My administration will support government policies which enable us to achieve it.●

ORDER OF PROCEDURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders and any orders for the recognition of Senators, the Senate resume consideration of the HUD appropriation bill for such length of time as is necessary to dispose of an amendment that will be called up at its inception, after which the Senate will proceed to lay aside temporarily the HUD appropriations bill and take up the military construction appropriations bill, to be followed by the Department of Transportation appropriations bill, with the understanding that if those two measures are not completed by no later than noon on Thursday, the Senate will resume the consideration of the HUD appropriations bill.

Mr. BAKER. Mr. President, reserving the right to object, I shall not object. I ask the majority leader if the previous order in respect to treaties on Wednesday would be affected by the request he has just made?

Mr. ROBERT C. BYRD. Mr. President, I am glad the distinguished minority leader remained me of the treaty votes on Wednesday.

UNANIMOUS-CONSENT AGREEMENT WITH REGARD TO TREATIES

Mr. ROBERT C. BYRD. Mr. President, under the order previously entered, as in executive session, under the order previously entered, the Senate was to vote tomorrow on the treaties to the Executive Calendar beginning with Calendar No. 14 and going through Calendar No. 22 on page 2. There was one vote, I believe, on the last item, Maritime Boundary Agreement with the Republic of Cuba, which was to be separate. The other rollcall vote was to have accounted for eight votes and would have disposed of the eight preceding treaties to that Maritime Boundary Agreement with the Republic of Cuba. I ask to modify the agreement in the following fashion:

I ask unanimous consent that the Calendar Order No. 20 on the Executive Calendar, executive F, 96th Congress, first session, not be voted on tomorrow, but that the majority leader, after consultation with the minority leader and the chairman and ranking member of the Committee on Foreign Relations, be authorized to call up that treaty early next week at a time that is agreeable to those three Senators.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. JAVITS. Mr. President, the Maritime Boundary Agreement with the United Mexican States is a very important one for that government, which was solemnly negotiated between us and them and agreed upon. There have been some questions desiring information raised by Members respecting that treaty. I think it is critically important to make it clear that, considering the importance of such a treaty, we in the Committee on Foreign Relations and the leaders would not wish to shut off any Member from acquiring necessary information, provided that it may be done with full dignity to the position of the contracting state—to wit, Mexico. Senator Church and I are satisfied by this arrangement, which assures us that the matter will be very promptly considered, and I have no doubt that the treaty will be ratified.

We are very solicitous about the Mexican Government and we propose to act very promptly. It would hardly be in the spirit of relations between our two countries if we denied any Member any information that that Member may wish in order to cast his vote as he may wish to cast it, based upon all the facts, particularly as we are satisfied as to both the bona fides and the equity of this treaty.

I thank the Senator for this arrangement and my own leader on the minority side and believe it is an appropriate one. I trust that it will work out well.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator. I have cleared the request with the chairman of the Committee on Foreign Relations (Mr. Church).

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, continuing further as in executive session, I ask unanimous consent that, at 1 p.m. tomorrow, the Senate go into executive session. I ask unanimous consent that the remaining portion of the order, as entered earlier, be carried out on tomorrow, beginning at the hour of 12:40 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, to make sure that all Senators understand, at 12:40 p.m. tomorrow the Senate will go into executive session. There will be 20 minutes for debate with respect to various conventions and treaties on the Executive Calendar that will be voted on.

At 1 p.m., the Senate will vote by rollcall on the following treaties: Calendar Order No. 14, the Food Aid Convention; Calendar Order No. 15, Protocols for the Fifth Extension of the International Wheat Agreement, 1971; Calendar Order No. 16, 1978 Partial Revision of the Radio Regulations; Calendar Order No. 17, amendment to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora; Calendar Order No. 18, proposed amendments to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; Calendar Order No. 19, Convention on the Inter-American Institute for Cooperation on Agriculture; and Calendar Order No. 21, Maritime Boundary Treaty with the Republic of Venezuela.

There will be one rollcall vote at that time and it will count for seven.

Immediately following the disposition of that vote, the Senate will proceed to vote separately on Calendar Order No. 22, maritime boundary agreement with the Republic of Cuba.

So, there will be eight treaties voted on, with eight votes in the Record, which will be accomplished by two rollcall votes.

Am I correct, may I ask the Chair, in my understanding of the agreement?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR CONSIDERATION ON TUESDAY, SEPTEMBER 23, 1980, OF DISAPPROVAL OF RESOLUTION ON SALE OF NUCLEAR FUELS TO INDIA

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on next Tuesday, after the two leaders have been recognized under the standing order, the Senate proceed to the consideration of the disapproval of the resolution on sale of nuclear fuels to India, Calendar Order No. 1028, Senate Concurrent Resolution 109.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Does he wish to establish a time for that vote so that Senators could be on notice?

Mr. ROBERT C. BYRD. No; I cannot. I believe, under the agreement, the maximum of 10 hours is assured, which time can be reduced by unanimous consent or by nondebatable motions.

Mr. BAKER. Mr. President, as I understand the request made by the majority leader, it is to make the Tarapur Resolution of Disapproval, which I believe is Calendar Order 1028, the pending business when it convenes on Tuesday, is that correct?

Mr. ROBERT C. BYRD. I am sorry.

Mr. BAKER. That under the formulation presented by the majority leader, that the Tarapur Resolution of Disapproval, Calendar No. 1028, would be the pending business when we convene next Tuesday?

Mr. ROBERT C. BYRD. Yes; following the recognition of the two leaders or their designees under the standing order.

Mr. BAKER. I thank the majority leader.

I wonder, really, for the sake of planning, if we could now set a time for the convening of the Senate on Tuesday?

Mr. ROBERT C. BYRD. Yes; I will be glad to.

ORDER FOR SENATE TO CONVENE AT 9 A.M. ON TUESDAY, SEPTEMBER 23, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate convenes on Tuesday, it convene at the hour of 9 a.m.

Mr. BAKER. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR MEASURE TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 6686, the Reporting Elimination Act, is received by the Senate, that that measure be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXCHANGE OF FEDERAL COAL LEASES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 864, S. 1455.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1455) to further amend the Mineral Leasing Act of 1920 (30 United States Code 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That (a) notwithstanding any provision of law to the contrary and notwithstanding the provisions of section 2(a)(1) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)), the Secretary of the Interior is authorized and directed to issue leases for coal on other Federal lands in the State of New Mexico to the owner or owners of Federal coal leases, serial numbered NM0186612 and NM0186613, upon surrender and relinquishment of such leases or portions thereof. Such exchange shall be completed within 30 months of the date of enactment of this Act: *Provided, however,* That failure of the Secretary to complete such exchange shall not prejudice the rights of the owner or owners of the designated coal leases, and the exchange shall be completed as expeditiously as possible after the expiration of such time period upon request of such owner or owners.

(b) Leases to be issued by the Secretary pursuant to the authority granted by subsection (a) of this Act shall be from within the Federal lands described as follows:

TOWNSHIP 23 NORTH, RANGE 12 WEST

Section 5: South half,
Section 6: South half,
Section 7: All,
Section 8: All,
Section 9: West half,
Section 17: East half, east half west half, northwest quarter northwest quarter,
Section 18: North half north half,
Section 20: Northeast quarter, northeast quarter northwest quarter,
Section 21: West half northwest quarter.

TOWNSHIP 23 NORTH, RANGE 13 WEST

Section 1: Northwest quarter, northwest quarter southwest quarter, north half northeast quarter, southeast quarter northeast quarter, northeast quarter southeast quarter. The selection of lands pursuant to this subsection shall be consistent with existing land use planning policy and leasing procedures established by the Secretary.

(c) The leases to be issued by the Secretary pursuant to the authority granted by subsections (a) and (b) of this Act and the leases or portions thereof to be exchanged therefor shall be of equal value. If such leases or portions thereof are unavoidably not of equal value, the Secretary is authorized to receive, or pay out of funds available for that purpose, cash in an amount up to 25 per centum of the value of the lease or leases to be issued by the Secretary in order to equalize the value of the lease to be exchanged.

(d) Any exchange lease issued by the Secretary under the authority of this Act shall contain the same terms and conditions as those leases surrendered on the date the exchange takes place.

(e) This subsection does not require or obligate the Secretary to take any action or to make any commitment to a lessee or lease applicant with respect to issuance, administration, or development of any lease.

(f) Except as otherwise herein provided, any lease issued pursuant to this Act shall be consistent with the Mineral Leasing Act of 1920 as amended (30 U.S.C. 184 et seq.)

Mr. ROBERT C. BYRD. Mr. President, is there a further committee amendment?

The PRESIDING OFFICER. There is an amendment to the title.

Does the Senator wish to consider the two en bloc?

Mr. ROBERT C. BYRD. No. I just wish to go to third reading, and I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 987, H.R. 6816.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6816) to provide for the exchange of certain Federal coal leases in the State of New Mexico for other Federal coal leases in that State.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the text of S. 1455, as amended, be inserted in lieu thereof; that the bill be advanced to third reading; that it be passed; that a motion to reconsider be laid on the table; and that Calendar No. 864, S. 1455, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISAPPROVAL OF DETERMINATION NOT TO PROVIDE IMPORT RELIEF FOR THE LEATHER WEARING APPAREL INDUSTRY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 992.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 108) to disapprove the determination of the President not to provide import relief for the leather wearing apparel industry.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the name of the Senator from Michigan (Mr. LEVIN) be added as a cosponsor of Senate Concurrent Resolution 108.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I support Senate Concurrent Resolution 108, Calendar Order 992, and urge its adoption by the Senate. This resolution disapproves the President's decision not to provide relief to the leather wearing apparel industry. Its passage by the Congress would result in sorely-needed and long-overdue help to this beleaguered industry and would prove that our trade laws do provide a workable way for our domestic industries to obtain some relief when unduly harmed by imports from other countries.

Mr. President, I commend Senator DANFORTH for his leadership on this matter. He and I and several of our colleagues (Senators HEINZ, EAGLETON, DURKIN, RANDOLPH, MITCHELL, TSONGAS, CHAFEE, COHEN, SARBANES, HOLLINGS, WILLIAMS, NELSON, and LEVIN) introduced this resolution on July 22, 1980. Under section 201 of the Trade Reform Act of 1974, this motion is privileged and must be voted on by the Congress within 90 days. Under the leadership of the wise and distinguished chairman of the Trade Subcommittee, Senator RIBICOFF, the Finance Committee held a hearing on August 19, 1980, and passed the resolution by voice vote on August 21, 1980. The committee recommends to the Senate, for the reasons carefully and clearly outlined in Senate Report 96–910, adoption of this resolution.

Mr. President, the arguments for passing this resolution are compelling. Section 201, popularly known as the "escape clause," of the Trade Act of 1974, is one of the principal ways by which a domestic industry that has been hurt by a sudden and rapid increase in imports can find relief. Through its employer and employee organizations the industry may petition the International Trade Commission claiming "injury," requesting "relief" through the imposition of tariffs or quotas or the securing of orderly market agreements with foreign countries, and may receive that relief for a period up to 5 years. The leather wearing apparel industry, through the National Outerwear and Sportswear Association, Amalgamated Clothing and Textile Workers Union, International Ladies' Garment Workers Union, United Food and Commercial Workers Union, and Tanners' Council of America, Inc., made such a petition on July 24, 1979.

After hearings and an extensive investigation by the ITC, the Commission found that "to prevent or remedy the serious injury to the domestic industry it is necessary to impose rates of duty, in addition to the present rates of duty, with respect to coats and jackets of leather." The ITC recommended a duty increase of 25 percent in the first year, 20 percent in the second, and 15 percent in the third, following which the duty would revert to its original level of 6 percent.

The ITC decision in this case was unanimous. The data upon which it was based leave no doubt that the industry was injured by imports and that relief is justified. From 1975 to 1978, imports increased 143 percent by value and 146 percent by quantity, and thereby captured 82 percent of our domestic market. Moreover, the ITC report concluded that increasing imports of leather garments were the most substantial cause of severe declines in domestic production—approximately a 14-percent decline in the quantity of producers' shipments from 1976 to 1978 and a further 12-percent decline from the first 8 months of 1978 to the corresponding period in 1979.

The President is not compelled to accept such a recommendation of the ITC, only to consider it. Yet, as the Senate report states, with the passage of the 1974 Trade Act by the Congress—

> It was the expectation that the recommendations of the ITC would prevail unless the President, taking into account the broader considerations which the law permits him to take into account, determines that there were compelling national economic interests which must prevail over the recommended relief.

In this case, as in other escape clause cases that have come before him, the President has chosen not to accept the ITC recommendation. Our response to his reasons is outlined in a letter that the sponsors of Senate Concurrent Resolution 108 circulated on September 5, 1980. I ask unanimous consent that the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMITTEE ON FINANCE,
Washington, D.C., September 5, 1980.

DEAR COLLEAGUE: On July 22 S. Con. Res. 108 was introduced. The resolution disapproves the President's decision not to provide import relief for the leather garment industry as recommended unanimously by the International Trade Commission on January 24, 1980.

On August 21 the Senate Committee on Finance, to which was referred the concurrent resolution, favorably reported the resolution and recommended that it be passed by the full Senate. By statute the resolution must be brought before the Senate for a vote by September 19. The motion to proceed to consider S. Con. Res. 108 is privileged.

We are writing to ask your support for and favorable vote on S. Con. Res. 108.

HISTORY OF THE LEATHER GARMENT INDUSTRY'S SAFEGUARD PETITION

Last year the leather garment industry petitioned the International Trade Commission for import relief under the safeguard provision, Section 201(b) of the 1974 Trade Act. The industry made a compelling case for action:

Imports had captured over 80 percent of the domestic consumption of men and womens' leather coats and jackets;

Imports rose 146 percent between 1974 and 1978; and

Employment in the U.S. leather garment industry dropped by nearly one-third between 1974 and 1977.

The U.S. leather garment industry's petition represented one of the most dramatic import injury cases ever to be brought before the ITC. The ITC made two unanimous findings in the case. First, the ITC found that the industry was being injured. Second, the ITC recommended a plan for prompt and effective import relief; a duty increase of 25 percent in the first year, 20 percent in the second year and 15 percent in the third, following which the duty would revert to its original 6 percent.

Under the law, the President had the right to accept, reject or modify the ITC recommendation.

PRESIDENT'S REASONS FOR REJECTING SAFEGUARD RELIEF

On March 26, the President transmitted to the Congress his decision not to accept the unanimous ITC recommendation for import relief. Instead, the President recommended expedited adjustment assistance for the industry. The President gave two reasons for denying the recommended import relief: its alleged inflationary impact and his belief that import relief is an ineffective means of promoting trade. During hearings held on August 18 before the Subcommittee on International Trade of the Committee on Finance on S. Con. Res. 108, the Administration further contended that if the President had granted relief it would have had an adverse effect on U.S. exports of hides. We disagree on each point.

THE LEATHER GARMENT INDUSTRY CAN BECOME COMPETITIVE

First import relief can be an effective short term tool in promoting trade. Now and in the past, firms in the U.S. leather garment industry have utilized advanced technology to compete both with each other and with foreign suppliers. The U.S. leather garment industry is unsurpassed in technological competence and in the efficiency of its operations vis a vis its foreign counterparts. However, the industry's ability to stay at the technological forefront depends on capital investment. To obtain such capital and have the necessary incentive for investment depends itself on future business expectations.

Those prospects today are not good, due largely to the disparity in labor costs between U.S. and foreign producers. An intense capital investment program, promoted by a temporary import relief program, will reduce overall unit labor costs and allow the U.S. industry to remain competitive, to recapture some of its lost market share, and to save jobs.

As stated by the Committee on Finance in its report on S. Con. Res. 108 (Sen. Report No. 96–910):

"With respect to the asserted doubts regarding the ability of the domestic leather coats and jackets industry to become competitive, the committee believes that the industry does have a real possibility of becoming competitive again. This belief is based on the unanimous decision of the ITC that the relief would remedy the import-related injury being experienced and upon the testimony received at the committee's hearing on Senate Concurrent Resolution 108. At the hearing, the industry demonstrated a knowledge of its competitive problems. Additionally both management and labor indicated significant progress in planning ways for becoming competitive during the 3 year relief period. . . . Given the circumstances of this case, the industry should be given the opportunity to try to become competitive."

IMPORT RELIEF WOULD NOT BE INFLATIONARY

Second, as to the contention that the import relief package would be inflationary, the three year import relief program recommended by the ITC would not, to any significant degree, inflate prices, decrease supplies to the American consumer, or reduce competition in the U.S. market. Why? While imports of lower unit-value leather garments have flooded the U.S. market, consumers have not received the benefit of these low prices. U.S. retailers have in the past simply applied higher markups to imported apparel than to apparel which is produced domestically.

Further, domestic producers manufacture the full range of leather wearing apparel and are capable of producing any item that a foreign manufacturer produces. The low level of capacity utilization that exists today in the leather garment industry is evidence that the industry has the capability of substantially increasing its production of leather apparel. The consumer choice in style and type will therefore not be diminshed.

Also, the structure of the U.S. leather garment industry guarantees that intense competition exists and will continue to exist. There are some 100 firms in this industry almost all of which are small-to-medium sized shops.

The Committee on Finance also determined that the inflation impact argument of the Administration was without merit. As stated in its report:

"With respect to the asserted inflationary impact of the proposed relief, the committee notes that any inflationary impact would be minuscule, as the leather coats and jackets consumed in the United States accounts for no more than a few one-hundredths percent of personal consumption expenditures. Any increase in the Consumer Price Index as a result of the import relief taking effect would be almost unmeasurable. While the inflation rate is down considerably from the rate present when the President made his determination, the committee is concerned about inflation, and does not take its action lightly. However, given that this is a discrete case and not a precedent for a series of small inflationary actions; that it is a case arising out of the trade laws whereby an industry has demonstrated its eligibility for relief following a 6-month investigation; and that a U.S. industry has a real possibility of becoming competitive again and creating jobs, the minimal price impact possible in this case should not deter granting the recommended relief."

IMPORT RELIEF WOULD NOT ADVERSELY AFFECT EXPORTS OF U.S. HIDES

Third, as to the contention that the granting of relief might reduce the sale of U.S. hides in foreign markets, this is simply not true. First, any slack in foreign supply of leather garments will be made up by U.S. production. Thus, a seller of U.S. hides will merely switch from a foreign buyer to a U.S. buyer. Second, the overwhelming majority of U.S. hides exported are not for the production of leather garments; rather, the hides are used in the production of shoes and sporting equipment. The ITC's decision would not affect the latter markets.

The import relief package recommended by the ITC was not inflationary. It would not have had a negative impact on consumer choice or domestic competition and it would not have adversely affected the exports of U.S. hides. On the other hand, the relief recommended by the President—expedited adjustment assistance—is wholly inadequate.

THE ADMINISTRATION HAS CONSISTENTLY REJECTED ITC RECOMMENDATIONS

We oppose the President's decision not only because it denies justice to an industry that is clearly injured but because it attacks one of the fundamental principles in our trade policy.

The relief unanimously recommended by the ITC is not an unwarranted bail-out of a particular industry. Instead, it is fully consistent with historical precedent, U.S. law, and international trade agreements. The law which permits this relief (Sections 201–203 of the Trade Act of 1974) embodies a basic element of the General Agreement on Tariffs and Trade (GATT)—the idea that an industry seriously hurt by a rapid increase in imports is entitled to import relief for a temporary period to facilitate its adjustment to new competitive conditions.

In the past three and one half years the International Trade Commission has made 16 affirmative recommendations under Section 201. In none of those cases has the President accepted the Commission's recommendation. The leather garment case is a particularly egregious example because the Commission's two decisions—on injury and on a recommendation for reilef—were unanimous. To ignore this judgment by a responsible independent agency, particularly in view of the President's previous record of rejecting ITC recommendations, threatens the viability of the Commission, and flies directly in the face of the legislative intent of an important element of our trade policy.

At the present time there are ongoing two safeguard petitions under the provisions of the 1974 Trade Act. In one case, dealing with mushrooms, the ITC unanimously found injury and recommended that import relief in the form of increased traiffs for three years be provided the industry. The ITC decision is awaiting Presidential action. The other case, presently pending before the Commission, concerns the domestic automobile industry. A Commission decision is expected late this fall.

In the mushroom case—injury having been unanimously determined—the fate of the industry once again lies in the hands of an Administration with a dismal track record. The fate of the automobile industry may be next in line.

Your support and favorable vote on S. Con. Res. 108 is needed to demonstrate that Congress intends to stand firmly behind the safeguard provisions provided within U.S. trade laws. If you have any questions please have a member of your staff phone Kermit Almstedt (41408) of Senator Danforth's staff, Charna Sherman (49560) of Senator Moynihan's staff, or Bill Reinsch (47750) of Senator Heinz' staff.

Sincerely,

John C. Danforth, Gaylord Nelson, John A. Durkin, John H. Chafee, Thomas F. Eagleton, Paul E. Tsongas, John Heinz, Daniel Patrick Moynihan, Jennings Randolph, William S. Cohen, George J. Mitchell, Harrison A. Williams, Jr., Paul Sarbanes.

Mr. MOYNIHAN. Mr. President, the trade law recognizes that there is room for disagreement and gives Congress the means to alter a Presidential decision through an override resolution.

Mr. President, the Congress has never before made a serious attempt to override a Presidential decision in an ITC case. The decision to do so in this case was not made lightly, and should be seen as a mark of respect for our trading system, the laws that govern it, and a recognition of the need for a preeminent role for the Chief Executive in conducting trade policy.

There are two, equally important, matters at stake here. One is the merits of the leather wearing apparel petition. These are clear and convincing. The other is more fundamental: It is the viability of our trading system and its ability to meet the problems a liberal trade policy can bring to certain industries, while at the same time giving benefits to others. If this does not work, the system as a whole is in jeopardy. And there have been of late, too many good reasons for concern. There is beginning to be a pattern of denial here. There is a danger that the consensus which existed just a short while ago when the Congress approved the Multilateral Trade Agreements may break down.

The escape clause provision provides a means by which industries seriously hurt by a rapid increase in imports can get relief for a time so as to facilitate their adjustment to new competitive conditions. This measure is a safeguard; it lessens the severe hardships that particular industries may encounter as trade barriers are reduced. It has been a basic element of every major round of international trade negotiations, including the General Agreement on Tariffs and Trade and the most recent Multilateral Trade Negotiations.

The pattern of decision in the past 3½ years has shown mounting disregard for the problems of the petitioners. The message is beginning to be heard as: Do not bother to apply, there is no help for you here.

During this period, the International Trade Commission has made affirmative recommendations under section 201.

Although in some cases an acknowledgement of injury was made, in none of these cases was the full recommendation of the ITC accepted. Of the 16, only 7 cases resulted in the granting of any import relief at all and of these 7, 4 required more than 1 petition before relief was granted.

All the industries that have appealed for relief have experienced drastic reductions in their workforce. Some are faced with extinction. The petitioners have included such industries as nonrubber footwear, color television receivers, CB radio transceivers, industrial fasteners, clothespins, and nonelectric cookingwear. I ask unanimous consent that a report on the recent history of section 201 cases be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

A SUMMARY OF U.S. ITC INVESTIGATIONS CONDUCTED UNDER SECTION 201 OF THE TRADE ACT OF 1974 DURING THE CARTER ADMINISTRATION AND PRESIDENTIAL ACTION TAKEN

There have been 42 escape clause investigations, involving 36 industries, completed to date under Section 201 of the Trade Act of 1974, with 2 additional cases pending. In addition, there have been 6 cases requesting extensions of import relief under Section 203 of the Trade Act. The following summary and analysis are confined to those 26 Section 201 cases and 5 Section 203 cases completed since January 1977, that is, during the Carter Administration.

Of these 26 Sections 201 cases (TA–201–17 through TA–201–42), the U.S. International Trade Commission made these determinations: 15 affirmative findings (6 unanimous votes, 9 divided votes), 10 negative findings (7 unanimous, 3 divided), and 1 split finding (tie vote). In several of the affirmative determinations, the Commission found affirmatively for only part of the industry.

Of these sixteen affirmative and split findings of injury which were submitted by the Commission to President Carter for his decision, only seven have resulted in import relief. The seven industries, and the effective dates of import relief, are: nonrubber footwear (June 28, 1977), color television receivers (July 1, 1977), CB radio transceivers (April 11, 1978), high-carbon ferrochromium (November 17, 1978), industrial fasteners (January 6, 1979), clothespins (February 23, 1979), and nonelectric cooking ware (January 17, 1980). (Only one industry, specialty steel, received import relief prior to 1977.)

It should be noted that four of the seven industries which ultimately received import relief were each the subject of more than one case before import relief under the Trade Act was granted. The nonrubber footwear and high-carbon ferrochromium industries were involved in two cases each. The industrial fasteners' industry was involved in three cases before import relief was granted as a result of the third case. The clothespin industry was unsuccessful in its effort to secure import relief under Section 406 of the Trade Act but did receive import relief under the "escape clause."

In two of the seven cases—color television receivers, and nonrubber footwear—the President negotiated orderly market agreements (OMAs) with certain foreign countries. In the case of nonrubber footwear, orderly marketing agreements were negotiated with Korea and Taiwan. In the case of color TVs, an OMA was initially negotiated with Japan and subsequently OMAs were negotiated with Korea and Taiwan under the President's authority to negotiate further OMAs with other countries. The President imposed quotas on all countries in the case of clothespins, but limited the relief to lower-valued clothespins. Tariffs were increased on imports in the other four cases: CB radios, high carbon ferrochromium, industrial fasteners, and nonelectric cooking ware. The increased duty in all four of these cases applied to imports from all countries under the most-favored-nation treatment principle followed by the U.S.

Although the statute permits import relief for up to five years, none of the seven industries has received import relief for more than four years, with the imposition of four-year relief occurring in only two cases, nonrubber footwear and nonelectric cooking ware. In all other cases, import relief was granted for a period of three years.

The statute permits, under Section 203, an extension of import relief for one three-year period. There have been five cases, involving three industries (certain ceramic articles, specialty steel, and color TVs), under Section 203 since 1977 (TA–203–2 through TA–203–6). Two of these industries—specialty steel and color TVs—received extensions. A petition for an extension of import relief submitted by the specialty steel industry resulted in only an eight month extension with greatly increased quota levels. The color TV industry received a two-year extension of the OMAs with Taiwan and Korea, at increased levels, while the OMA with Japan was allowed to terminate. The other two Section 203 cases since 1977 were on specialty steel. (One of these was to drop bearing steel from import restrictions. The other was to review the original specialty steel case and resulted in a continuation of the import relief. Both were initiated by the Administration.)

Mr. MOYNIHAN. Mr. President, the passage of Senate Concurrent Resolution 108 would not only provide much needed relief to the leader-wearing apparel industry, but it would also signal the intention of the Congress to insure that the problems of injured industries are addressed under the law. The importance of this resolution cannot be overstated. It is imperative that we pass it today.

Mr. President, I thank the majority leader for his courtesy in attending to this matter, which is of no small consequence. If the International Trade Commission's findings in escape clause cases are never to be supported by the President, we might as well not have an International Trade Commission, and we would soon have no international trade policy.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. BAKER. Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Missouri (Mr. DANFORTH) in support of this measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR DANFORTH

What is the significance of the vote on Senate Concurrent Resolution 108—a resolution to disapprove the President's decision not to provide import relief for the leather garment industry as recommended unanimously by the International Trade Commission on January 24, 1980? Is the resolution a "bailout" of an industry—specifically the some 100 firms who employ approximately 5,000 persons and comprise the United States leather garment industry? In my opinion, it is not. Is a vote supporting the resolution a vote contrary to the principles of free trade? Again, in my opinion it is not. A vote supporting this resolution is a vote to uphold the principles of free trade as that concept has been molded by the political processes of our nation and today is embodied in the numerous Trade Acts passed by the Congress and enforced by the Executive Branch of our government.

For years Congress has insisted that what is commonly referred to as an "escape clause" provision be included in the trade agreements negotiated by the Executive Branch. For instance, Article XIX.1.(a) of the General Agreement on Tariffs and Trade (GATT) to which the United States is a signatory, contains such a provision. As stated in the Report of the Committee on Finance on the Trade Reform Act of 1974 (Senate Document, Report No. 93–1298 at page 199):

"The rationale for the 'escape clause' has been, and remains, that as barriers to international trade are lowered, some industries and workers inevitably face serious injury, dislocation and perhaps economic extinction. The 'escape clause' is aimed at providing temporary relief for an industry suffering from serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to the freer international competition."

The purpose of an "escape clause" provision is not to provide permanent protection against imports. Quite the contrary—any import restrictions imposed can only be of a limited duration and exist solely to allow the industry time to adjust its operations to meet the demands from foreign competition.

The "escape clause" provision of the Trade Reform Act of 1974 provides that the President may grant import relief to a domestic industry if the International Trade Commission first determines that a product is being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the industry if it produces a similar product. If the injury standard is met, and unless the President determines that to grant relief would not be in the over-all economic interest of the nation, the President may impose any of the following types of relief: increases in or imposition of duties; tariff rate quotas; quantitative restrictions, or orderly marketing agreements. Any relief proclaimed by the President must terminate within five years and if it is proclaimed for longer than three years, it must be phased down beginning in the fourth year. One extension of the relief may be granted for a period of not more than three years.

Since passage of the Trade Reform Act of 1974, there have been 44 "escape clause" investigations under Section 201 of that Act. In addition, there have been six cases requesting extensions of relief under Section 203. Since January, 1977, of the 26 determinations by the International Trade Commission of cases brought under Section 201, 16 were affirmative recommendations for relief. In none of those 16 cases has the President accepted the Commission's recommendations.

Within the past 3½ years it has become obvious that the Executive Branch of government pays only "lip service" to the "escape clause" provision of our nation's Trade Laws. If free trade is to continue as a viable, working concept, then the "escape clause" provision has to be allowed to work and relief proposed under it cannot be summarily rejected as has occurred over the past 3½ years.

The type of foreign competition against which the U.S. leather garment industry has had to compete explains why the Congress has insisted that "escape clause" relief be an integral part of U.S. Trade Laws. The U.S. leather industry has long had the reputation of being the most productive and stylish industry in the world. Likewise, the U.S. tanning industry, which supports the leather industry, has been the most productive, innovative tanning industry in the world. Over the past years, restrictive trade practices of other leather producing countries have become the root of the U.S. leather industry's problems. Some examples will suffice:

ARGENTINA

Argentina subsidizes its tanning industry by the imposition of an export tax on the export sale of hides. The domestic price of Argentine hides over the past few years has averaged considerably less than hide prices on the free world hide market. In addition, Argentina rebates to the exporter a direct cash 'rembolso' on the export of leather garments. The government of Argentina finances the export of leather products through its central bank at very low rates.

URUGUAY

Uruguay subsidies its leather product industry by granting a rebate on the export of leather products. If the leather is converted into products prior to export, the rebate applies to the selling price of the product. Like Argentina, the Central Bank of Uruguay assists in the financing of leather product exports.

Although the U.S. government has attempted to resolve these restrictive practices, the government of Uruguay has consistently reneged on every leather garment trade agreement. In January, 1979, the government of Uruguay agreed to eliminate all its subsidies on leather products to the United States. In April, 1980, the government of Uruguay reinstated its subsidization program.

JAPAN

A simple tariff barrier on leather plus an import quotas protects the local Japanese tanning industry. Operating behind such a barrier the Japanese tanners have a profitable captive customer, the Japanese leather product manufacturer. From this highly profitable, subsidized base, the Japanese tanners export their leather to Korea, Taiwan, Hong Kong and the Philippines at prices lower than their domestic sales price. This practice allows their foreign customers a non-comparable cost advantage.

TAIWAN, KOREA, PHILIPPINES

These countries subsidize the production of leather garments through domestic central bank financing against letters of credit at very favorable rates.

It was in the face of such competition that last year the U.S. leather garment industry petitioned the International Trade Commission for import relief under the "escape clause" provision, Section 201(b) of the Trade Reform Act of 1974. The industry made a compelling case for action. In its case it established that imports had captured over 80% of the domestic consumption of men and womens' leather coats and jackets; that imports rose 146% between 1974 and 1978; and that employment in the U.S. leather garment industry dropped by nearly one third between 1974 and 1977.

The U.S. leather garment industry's petition represented one of the most dramatic import injury cases ever to be brought before the International Trade Commission. The International Trade Commission made two unanimous findings in the case. First, the International Trade Commission found that the industry was being injured. Second, the International Trade Commission recommended a plan for prompt and effective import relief: a duty increase of 25% in the first year, 20% in the second and 15% in the third following which the duty would revert to its original 6%. Under the law, the President had the right to accept, reject or modify the International Trade Commission recommendation.

On March 26 of this year, the President transmitted to the Congress his decision not to accept the unanimous International Trade Commission recommendation for import relief. Instead, the President recommended expedited adjustment assistance for the industry. The President gave two reasons for denying the recommended import relief: its alleged inflationary impact and his belief that import relief is an ineffective means of promoting trade. During hearings held on August 18 before the Subcommittee on International Trade of the Committee on Finance on S. Con. Res. 108, the Administration further contended that if the President had granted relief, it would have had an adverse effect on United States exports of hides.

I disagree with the Administration's reasons for denying relief to the United States leather garment industry. First, import relief can be an effective short term tool in promoting trade. Now and in the past, firms in the U.S. leather garment industry have utilized advanced technology to compete both with each other and with foreign suppliers. The U.S. leather garment industry is unsurpassed in technological competence and in the efficiency of its operations vis a vis its foreign counterparts. However, the industry's ability to stay at the technological forefront depends on capital investment. To obtain such capital and have the necessary incentive for investment depends itself on future business expectations.

Those prospects today are not good, due largely to the disparity in labor costs between U.S. and foreign producers. An intense capital investment program, promoted by a temporary import relief program, will reduce overall unit labor costs and allow the U.S. industry to remain competitive, to recapture some of its lost market share, and to save jobs.

As stated by the Committee on Finance in its report on S. Con. Res. 108 (Sen. Report No. 96–910):

"With respect to the asserted doubts regarding the ability of the domestic leather coats and jackets industry to become competitive, the Committee believes that the industry does have a real possibility of becoming competitive again. This belief is based on the unanimous decision of the ITC that the relief would remedy the import-related injury being experienced and upon the testimony received at the Committee's hearing on Senate Concurrent Resolution 108. At the hearing, the industry demonstrated a knowledge of its competitive problems. Additionally, both management and labor indicated significant progress in planning ways for becoming competitive during the 3 year relief period. . . . Given the circumstances of this case, the industry should be given the opportunity to try to become competitive."

Second, as to the contention that the import relief package would be inflationary, the three-year import relief program recommended by the International Trade Commission would not, to any significant degree, inflate prices, decrease supplies to the American consumer, or reduce competition in the U.S. market. Why? While imports of lower unit-value leather garments have flooded the U.S. market, consumers have not received the benefit of these low prices. U.S. retailers have in the past simply applied higher markups to imported apparel than to apparel which is produced domestically.

Further, domestic producers manufacture the full range of leather wearing apparel and are capable of producing any item that a foreign manufacturer produces. The low level of capacity utilization that exists today in the leather garment industry is evidence that the industry has the capability of substantially increasing its production of leather apparel. The consumer choice in style and type will therefore not be diminished.

Also, the structure of the U.S. leather garment industry guarantees that intense competition exists and will continue to exist. There are some 100 firms in this industry almost all of which are small- to medium-sized shops.

The Committee on Finance also determined that the inflation impact argument of the Administration was without merit. As stated in its report:

"With respect to the asserted inflationary impact of the proposed relief, the Committee notes that any inflationary impact would be minuscule, as the leather coats and jackets consumed in the United States account for no more than a few one-hundredths percent of personal consumption expenditures. Any increase in the Consumer Price Index as a result of the import relief taking effect would be almost unmeasurable. While the inflation rate is down considerably from the rate present when the President made his determination, the Committee is concerned about inflation, and does not take its action lightly. However, given that this is a discrete case and not a precedent for a series of small inflationary actions; that it is a case rising out of the trade laws whereby an industry has demonstrated its eligibility for relief following a 6-month investigation; and that a U.S. industry has a real possibility of becoming competitive again and creating jobs, the minimal price impact possible in this case should not deter granting the recommended relief."

Finally, as to the contention that the granting of relief might reduce the sale of U.S. hides in foreign markets, this is simply not true. First, any slack in foreign supply of leather garments will be made up by U.S. production. Thus, a seller of U.S. hides will merely switch from a foreign buyer to a U.S. buyer. Second, the overwhelming majority of U.S. hides exported are not for the production of leather garments; rather, the hides are used in the production of shoes and sporting equipment. The International Trade Commission's decision would not affect the latter markets.

The import relief package recommended by the International Trade Commission was not inflationary. It would not have had a negative impact on consumer choice or domestic competition and it would not have adversely affected the exports of United States' hides. On the other hand, the relief recommended by the President—expedited adjustment assistance—is wholly inadequate.

The U.S. leather garment industry proved its case for short term import relief before the International Trade Commission. The relief should have been granted and this Resolution should be passed to override the Preisdent's rejection of the International Trade Commission's recommendation. Mr. President, by passing Senate Concurrent Resolution 108 the Congress would be sending a clear signal to the Executive Branch that the President's total disregard of the "escape clause" provision of the 1974 Trade Reform Act is no longer acceptable.

● Mr. **HEINZ**. Mr. President, I wish to express my strong support for this resolution, even though at this point thanks to House action, Senate approval may be more symbolic than substantive. Nevertheless, I am particularly anxious that it be approved because of the implications it has for orderly trade policy process.

Mr. President, last year when Congress wrote the legislation implementing the multilateral trade negotiations' results, we attempted to restructure our trade laws in a way that would insure prompt, fair, and equitable treatment for domestic manufacturers with grievances against foreign producers or governments. We wanted to provide a clear, well-defined procedure and time table for investigating and resolving allegations made. We wanted petitioners to be clearly aware of their rights at every step of the process. We wanted cases resolved strictly on their merits and not on the basis of extraneous political considerations. And we wanted to make sure that if the petitioner was awarded relief, he in fact got it in a timely and effective manner.

At the same time we made these procedural changes, we also clarified the intent of our laws by providing an injury test in certain cases where it was not previously required. As a result we assigned an even more prominent role to the International Trade Commission, the agency given responsibility for determining whether or not injury has occurred. This determination is essential, since no relief will be provided if there is no injury.

One area that remains a problem in terms of the above objectives, and which we did not change last year, is the safeguard section of the law, sections 201–203 of the Trade Act of 1974. This section of law is intended to deal with problems of rising imports. No allocation of subsidy or dumping is made. Petitioner must simply prove he is injured by imports. Relief is limited to no more than 5 years, with a possible further 3-year extension. The intent of this provision is to provide temporary relief to permit adjustment to new competitive conditions. It is not intended to provide permanent tariff or quota protection.

From the Commission's point of view, this section seems to be working. Investigations are timely, and decisions are rendered promptly. In the 3½ years since Jimmy Carter became President, the ITC has sent him 16 affirmative injury determinations with recommendations for relief. It is at that point, however, that the process is clearly breaking down and our goal of petitioners being provided timely and effective relief not being achieved; for in none of those 16 cases has the President acted in accordance with the ITC's recommendations. If one wanted to be charitable, one could say that in two of the cases the President's decision was close to what the Commission recommended, but in all the rest his decision was effectively a rejection of their advice and a denial of relief petitioners clearly merited by reason of their injury.

One of the most egregious examples of this denial occurred this spring in the leather apparel case. In that case, the Commission agreed unanimously that the industry was being seriously injured by imports, and it agreed unanimously on a remedy—3 years of increased tariffs.

The injury case was clear. Domestic production was down sharply from 1975 to 1978 despite a near doubling in domestic consumption. Further declines in production and capacity utilization occurred in 1979. During the same 1975–78 period the value of imports increased 143 percent, and the quantity of imports rose 146 percent. This meant an increase in import penetration in terms of quantity from 62 percent in 1975 to 79 percent in 1979.

Employment has also been adversely affected. Jobs in the industry declined from 11,100 in 1974 to 5,500 in 1979, a drop of more than 50 percent. More than 3,100 of the laidoff workers have been certified for adjustment assistance.

Equally clear was the need for relief—a tariff increase to equalize the price of imports with the price of domestic products. The Commission voted unanimously for such relief, although the amount of tariff increase recommended was smaller than the industry requested.

Despite this clear-cut case, and despite these unanimous findings, the President declined to approve any action at all, aside from expedited adjustment assistance, which has little or no meaning. Mr. President, there is presently on the Senate calendar legislation (H.R. 1543) to make the adjustment assistance program more viable, and I am working for its enactment. But to suggest at the present time that we have an effective program or that it is an adequate solution to a problem as serious as that of the leather apparel industry is simply ridiculous.

The main reason for the President's action, or rather nonaction, appears to have been the need to fight inflation. While this is an argument that always sounds convincing—no one is in favor of inflation—a closer examination reveals its weakness in this situation. As is the case with other apparel items and footwear, retailers tend to take advantage of the lower wholesale price of imported goods by marking them up more than domestic goods, thus increasing their profit but minimizing any real gain to consumers. Naturally such a practice accounts for the popularity of imports with retailers and hence their increased market share, although it is difficult to show any savings to consumers or any real preference on their part for foreign goods. As a result, simply to mouth the word "inflation" as if it explains everything is to misunderstand the way this industry operates.

Mr. President, I support the resolution to override the President's decision in the leather apparel case and thereby to send the President a message about process and about fairness, a clear message that the Congress believes the 201 escape clause process has gone awry in the hands of an administration which was neither sympathy for nor understanding of industrial trade problems.

Mr. President, this is not simply a question of protectionism versus free trade. It is a question of whether we are going to even try to make GATT-sanctioned escape clause procedures work and give our industries a chance to recover. The relief provided is temporary and consistent with our international obligations. It can be implemented only after a finding of injury by the quasi-judicial independent agency we have created for that purpose, the International Trade Commission.

Unfortunately, this administration has consistently rejected or ignored the work of this Commission and in the process has jeopardized the very existence of a number of American industries. If this attitude is an example of the kind of industrial policy the administration is proposing, I shudder to think what lies in store for other import-impacted industries.

I regret that this resolution, which was reported by voice vote from the Finance Committee, did not receive a similar endorsement in the Trade Subcommittee of the Ways and Means Committee. It was rejected there by a vote of 9 to 10 after intense personal lobbying by the President and other administration officials, who simply did not want the President to be embarrassed.

Well, to that I can only say that he deserves to be embarrassed, because his policy in these cases has consistently ignored policy the Congress has set down. Although it appears unlikely the House will not act on this resolution, I believe it is important to pass it simply to send a clear message to the President that his policy is inadequate and out of touch. If we adopt this resolution now, then perhaps the President will consider more carefully before ignoring the works of the International Trade Commission in the future.●

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution .

The concurrent resolution (S. Con. Res. 108) was agreed to, as follows:

> *Resolved by the Senate (the House of Representatives concurring)*, That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on March 26, 1980.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LAS VEGAS VALLEY WATER DISTRICT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1023, H.R. 3210.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

> A bill (H.R. 3210) to terminate the authority to make grants to the Las Vegas Valley Water District under the Act of August 27, 1954.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR MESSAGE ON H.R. 3765 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a message from the House on H.R. 3765 (walnut and olive marketing) be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR A MESSAGE ON H.R. 5236 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the Senate receives a message from the House on H.R. 5236 (Louisiana Land Transfer), the measure be held at the desk pending further disposition by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN LANDS TRANSFER

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2223.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

> *Resolved*, That the bill from the Senate (S. 2223) entitled "An Act to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons", do pass with the following amendment:
>
> Strike out all after the enacting clause, and insert: That the first proviso of section 4 of the Act of June 18, 1934 (48 Stat. 984,

985; 25 U.S.C. 464), is amended by striking the phrase "or any heirs of such members" and inserting in lieu thereof, the phrase "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust".

SEC. 2. (a) The second and third provisos contained in the paragraph entitled "Determining Heirs" in the Act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, and section 2 of the Act of December 24, 1942 (56 Stat. 1080, 1081; 25 U.S.C. 375b), are hereby repealed.

(b) The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MELCHER, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the Senate action was taken.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TONNAGE MEASUREMENT SIMPLIFICATION

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 1197.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 1197) to simplify the tonnage measurement of certain vessels, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON, I move that the Senate insist on its amendments, agree to the conference requested by the House of Representatives on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. JOHNSTON) appointed Mr. CANNON, Mr. LONG, Mr. EXON, Mr. HEFLIN, Mr. JACKSON, Mr. JOHNSTON, Mr. FORD, Mr. BUMPERS, Mr. MELCHER, Mr. METZENBAUM, Mr. SCHMITT, Mr. WARNER, Mrs. KASSEBAUM, Mr. HATFIELD, Mr. McCLURE, Mr. DOMENICI, and Mr. STEVENS conferees on the part of the Senate.

ORDER FOR STAR PRINT—SENATE REPORT NO. 96-919

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAYH, I ask unanimous consent that there be a star print of Senate Report No. 96-919.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR THE RECOGNITION OF MR. ROBERT C. BYRD ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order I be recognized for not to exceed 15 minutes to call attention of the Senate to the fact that 193 years ago on tomorrow the Constitutional Convention completed its work. I believe in the year 1787 tomorrow, Wednesday, was a Monday according to the Library on Congress. I wish to make a few remarks in that regard.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, after the two leaders and the order for the recognition of a Senator have been consummated on tomorrow, the Senate will resume consideration of the HUD appropriation bill until such time as an amendment by Mr. JEPSEN has been disposed of. Upon the disposition of the amendment by Mr. JEPSEN, the HUD appropriation bill will be temporarily laid aside and the Senate will proceed to the consideration of the military construction appropriation bill, upon the disposition of which the Senate will proceed to the consideration of the DOT appropriation bill. There will be rollcall votes throughout the day on tomorrow.

Also on tomorrow at 12:40 p.m. the Senate will go into executive session and after 20 minutes of debate there will be two rollcall votes on treaties on the calendar, the two rollcall vote to count for eight rollcall votes.

Upon the disposition of those two rollcall votes, the Senate will return to legislative session.

On Thursday, at no later than 12 o'clock noon, the Senate, if it has not completed action on both the military construction appropriation bill and the Department of Transportation appropriation bill, will resume consideration of the HUD appropriation bill. In any event the Senate will be on the HUD appropriation bill on Thursday and if action is not completed on that bill on Thursday, which would appear that action might not be completed on Thursday, the Senate will continue on that measure on Friday.

If the Senate completes action on the appropriation bill on Thursday, then there will be other business which the minority leader and I will discuss in the meantime. So there will be rollcall votes on Friday.

RECESS TO 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until tomorrow morning at 10 a.m.

The motion was agreed to and at 6:49 p.m., the Senate recessed until tomorrow, September 17, 1980, at 10 a.m.

HOUSE OF REPRESENTATIVES—*Tuesday, September 16, 1980*

The House met at 12 o'clock noon.

The Reverend Willie J. Ellis, D.D., pastor, New Northside Missionary Baptist Church, St. Louis, Mo., offered the following prayer:

Lord of all, whose balance trieth the nations, to lift up or to cast down; Thou hast planted us, as a people, in quiet resting places, and stretched out our borders from sea to sea, and laid upon us a mighty trust. Never through vain conceit may we be blind to the unchanging conditions of Thy blessings. The world and its fullness are Thine; our portion thereof may we hold, not in wanton self-will, but reverently, as of Thee; making it the stronghold of right, the refuge of the oppressed, and the moderator of lawless ambition.

Grant true wisdom and understanding to the President, the Senate, and to the House of Representatives, and to all others in authority. Make all who speak or act for this Nation true organs of Thine equity, that through their wisdom and faithfulness Thou mayst be our lawgiver and judge. And let it be that, as with the people so with the chiefs, as with the servants so with the masters, as with the buyer so with the seller, all may know Thee as weighing the path of the just; that righteousness may be the girdle of our power. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

THE REVEREND WILLIE J. ELLIS

(Mr. CLAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLAY. Mr. Speaker, next week, a milestone for black Americans will be attained when the Congressional Black Caucus holds its 10th annual legislative weekend.

In reflecting on the significance of this event, I asked the privilege of inviting a black minister to offer today's opening prayer and to give this Congress an opportunity to acknowledge the unique role that black churches have played in the struggle for racial equality.

Rev. Willie Ellis is the pastor of the New Northside Baptist Church in St. Louis, and is among the most independent voices of leadership in our community. As a black minister, Reverend Ellis is capable of articulating the needs of our people without the threat or fear of financial retaliation. As the leader of a black church, Reverend Ellis represents a cornerstone in the efforts of black leaders to reshape America and create a new society where all persons are free and equal. Black ministers have manifest a bond within the black community that has been a source of strength and inspiration to all the minds of black leadership.

Reverend Ellis has dedicated his life to serving his brothers and sisters. On behalf of the U.S. House of Representatives I welcome him and I thank him for his invaluable contributions and commitment to improving the quality of life on this Earth for all of God's children.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first bill on the Private Calendar.

AUTHORIZING AND DIRECTING THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE NEW MEXICO 33955

The Clerk called the bill (H.R. 6538) to authorize and direct the Secretary of the Interior to reinstate oil and gas lease New Mexico 33955.

There being no objection, the Clerk read the bill, as follows:

H.R. 6538

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188), the Secretary of the Interior is authorized and directed to receive, consider, and act upon any petition of David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, for reinstatement of said lease filed within ninety days after the effective date of this Act, together with the required rental, if any, including back rental accruing from the date of the termination of the lease.

With the following committee amendment:

Page 2, strike all of line 1 and everything thereafter through the period on page 2, line 7, and insert: the Secretary of the Interior is authorized and directed, upon petition by David Fasken, lessee of record of terminated oil and gas lease New Mexico 33955, to reinstate said lease if the petition is filed within ninety days after the effective date of this Act, together with the required rental, if any, including back rental accruing from the date of the termination of the lease.".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MRS. ALICE W. OLSON

The Clerk called the bill (H.R. 5160) to amend the act entitled "An act for the relief of Alice W. Olson, Lisa Olson Hayward, Eric Olson, and Nils Olson."

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

DR. HALLA BROWN

The Clerk called the Senate bill (S. 1578) for the relief of Dr. Halla Brown.

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice?

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

JEFFERSON COUNTY MENTAL HEALTH CENTER, INC.

The Clerk called the bill (H.R. 4033) for the relief of the Jefferson County Mental Health Center, Inc., and of certain current and former employees thereof.

There being no objection, the Clerk read the bill, as follows:

H.R. 4033

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the waiver certificate filed by the Jefferson County Mental Health Center, Incorporated (hereinafter in this Act referred to as the "health center"), under section 3121(k)(1)(A) of the Internal Revenue Code of 1954 (relating to waiver of exemption by certain organizations) shall (except as provided in section 5 of this Act) be deemed not to be effective in the case of any individual with respect to whom a repayment has been made which is considered, under section 2 of this Act, as an overpayment of tax under section 6413(b) of such Code, for the period for which such individual received the wages (as defined in section 3121(a) of such Code) with respect to which such repayment was made.

SEC. 2. The Secretary of the Treasury or his delegate, upon proof reasonably satisfactory to him that repayment has been made prior to May 14, 1975, to any individual by the health center, of a sum representing the amount of taxes imposed on such individual under section 3101 of such Code (relating to rate of tax) and deducted and paid by the health center under section 3102 of such Code (relating to deduction of tax from wages) for any period beginning after December 31, 1971, and prior to May 14, 1975, shall consider such sum so repaid to such individual as an overpayment of tax under section 6413(b) of such Code (relating to overpayment of certain employment taxes) and shall approve a claim for a refund, credit, or adjustment filed by the health center prior to or within ninety days after the date of enactment of this Act, under section 6402 of such Code (relating to authority to make credits or refunds) or 6611 (a) or (b)(2) of such Code (relating to interest on overpayments).

☐ This symbol represents the time of day during the House Proceedings, e.g., ☐ 1407 is 2:07 p.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

SEC. 3. Any period of limitations for filing a claim for credit or refund under section 6511 of such Code (relating to limitations on credit or refund) shall be waived with respect to any claim for refund, credit, or adjustment made by the health center under section 2 of this Act. Section 6514 of such Code (relating to credits or refunds after a period of limitation) shall not apply to any such claim.

SEC. 4. (a) A certificate of waiver filed by the health center under section 3121(k)(1)(A) of such Code shall apply to any individual described in the first section of this Act with respect to any period following the period (described in such section) which is applicable to such individual under such section.

(b) Notwithstanding the provisions of section 3121(k)(1)(B)(iii) of such Code, the health center may not elect to have such certificate of waiver apply to any individual described in the first section of this Act with respect to the period (described in such section) which is applicable to such individual under such section.

SEC. 5. (a) In the administration of titles II and XVIII of the Social Security Act, the wages (as referred to in the first section of this Act) received by an individual described in such section for the period (described in such section) which is applicable to such individual shall (except as is otherwise provided in subsections (b) and (c)) be deemed not to constitute wages (as defined in section 209 of such Act) for purposes of determining—

(1) entitlement to or amount of any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

(2) entitlement of such individual to benefits under title XVIII of such Act or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

(b) The provisions of subsection (a) shall not be applicable in the case of any individual (described in the first section of this Act) or any other person claiming any benefit referred to in subsection (a) on the basis of the wages and self-employment income of such individual, if on or before the date of enactment of this Act, such individual has died or attained age sixty-two, or if on such date such individual is under a disability (as defined in section 216(i) of the Social Security Act) which began prior to such date.

(c)(1) The provisions of subsection (a) shall not be applicable to any individual who enters into an arrangement with the Secretary of the Treasury or his delegate for paying into the Treasury an amount equal to the sum repaid to him (as described in section 2 of this Act) by the health center.

(2) The Secretary of the Treasury shall by regulations prescribe the mamer in which such an arrangement for payment by an individual shall be made. Any such arrangement shall afford the individual a reasonable time in which such payment shall be made and the amount and time of the installments which will be made toward such repayment, and shall contain appropriate conditions to protect the interests of the United States and to assure equitable treatment to the individual in the event that the individual fails fully to comply with the arrangement.

(3) The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall cooperate in assuring that, insofar as is practicable, each individual who is eligible to enter into an arrangement under this subsection will be noitfied of that fact and given an adequate opportunity to enter into such an arrangement.

SEC. 6. Nothing in this Act shall be construed to relieve the center of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to any wages paid by it to any individual for any period.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury or his delegate, upon proof reasonably satisfactory to him that repayment has been made prior to May 14, 1975, to any individual by the Jefferson County Mental Health Center, Incorporated (hereinafter referred to as the "health center"), of a sum representing the amount of taxes imposed on such individual under section 1301 of the Internal Revenue Code of 1954 (relating to rate of tax) and deducted and paid by the health center under section 3102 of such Code (relating to deduction of tax from wages) for any period beginning after December 31, 1971, and prior to May 14, 1975, shall consider such sum so repaid to such individual as an overpayment of tax under section 6413(b) of such Code (relating to overpayment of certain employment taxes) and shall approve a claim for a refund, credit, or adjustment for such overpayment filed by the health center prior to, or within ninety days after, the date of enactment of this Act under section 6402 of such Code (relating to authority to make credits or refunds) or 6611 (a) or (b)(2) of such Code (relating to interest on overpayments).

SEC. 2. Any period of limitations for filing a claim for credit or refund under section 6511 of such Code (relating to limitations on credit or refund) shall be waived with respect to any claim for refund, credit, or adjustment made by the health center in accordance with section 1 of this Act. Section 6514 of such Code (relating to credits or refunds after a period of limitation) shall not apply to any such claim.

SEC. 3. Nothing in this Act shall be construed to relieve the health center of any liability for the payment of taxes imposed by section 3111 of such Code with respect to any wages paid by it to any individual for any period.

SEC. 4. Upon payment of a claim authorized by section 1 of this Act, the United States shall be subrogated to all rights of the health center against the individuals referred to in that section who were repaid amounts representing the amount of taxes imposed on such individuals under section 1301 of the Internal Revenue Code of 1954 and deducted and paid by the health center under section 3102 of such Code for any period beginning after December 31, 1971 and prior to May 14, 1975.

AMENDMENTS OFFERED BY MR. WIRTH TO THE COMMITTEE AMENDMENT

Mr. WIRTH. Mr. Speaker, I offer amendments to the committee amendment, and ask unanimous consent that the amendments be considered en bloc.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. WIRTH to the committee amendment: Page 1, section 1, line 5, strike "1301" and insert "3101".

Page 2, section 4, line 9, strike "1301" and insert "3101".

Page 1, section 1, line 15, after "overpayments." insert "For the purposes of applying section 6611(b)(2) the date of the overpayment shall be considered to be May 14, 1975.".

Mr. WIRTH (during the reading). Mr. Speaker, I ask unanimous consent that the amendments to the committee amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. WIRTH. Mr. Speaker, these are two technical amendments, one relating to printing in the bill and one relating to overpayments.

The SPEAKER. The question is on the amendments offered by the gentleman from Colorado (Mr. WIRTH) to the committee amendment.

The amendments to the committee amendment were agreed to.

The SPEAKER. The question is on the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JAMES R. THORNWELL

The Clerk called the bill (H.R. 5063) for the relief of James R. Thornwell.

There being no objection, the Clerk read the bill, as follows:

H.R. 5063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated $1,700,000 to James R. Thornwell, originally of South Carolina and now of Oakland, California. Such sum shall be in full satisfaction for the severe physical, psychological, and economic damage, including pain, suffering, emotional distress, trauma, and permanent injuries, inflicted upon James R. Thornwell as a result of the administration by Army personnel of LSD to him in 1961 without his knowledge or consent after subjecting him for six preceding weeks to extreme physical and emotional stress, as part of an Army drug testing program in which he was the only American subject, and as a result of the concealment by the Army of the use of LSD from James R. Thornwell for seventeen years thereafter, during which time he suffered from severe psychological disorientation, and of the Army's failure to provide him any followup care. The payment of such sum shall be in full satisfaction of all claims of James R. Thornwell, his heirs, executors, personal representatives, or assigns, of any nature whatsoever against the United States and its agencies, or against any past or present employee, agent, officer, or person of or associated with the United States, in connection with the circumstances of his injuries compensated hereunder, including injuries incurred subsequent to his discharge from the Armed Forces, and such payment shall be lieu of any further compensation or award for such injuries.

SEC. 2. No part of the amount appropriated by this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Violation of the provision of this section is a misdemeanor punishable by a fine not to exceed $1,000.

With the following committee amendment:

Page 1, line 5: Strike "$1,700,000 to" and insert "$250,000 to the trustee designated pursuant to section 2 of this Act for the benefit of".

Page 1, line 14: After "United States," insert "including those asserted in the United States District Court for the District of Columbia in Civil Action Number 78–1845."

Page 2, line 17: After "forces", strike ", and such payment shall be in lieu of any further compensation or award for such injuries" and insert: "Further James R. Thornwell shall not be eligible for any compensation or benefits from the Veterans' Administration or the Department of Defense."

Page 2, after line 18, insert:

SEC. 2. The sum to be paid pursuant to this bill shall be paid to a California bank as trustee, under a trust agreement to be entered into by said bank and James R. Thornwell (and to be approved as to form by a representative of the Department of Justice of the United States). The trust agreement shall provide that the Trustee shall initially pay James R. Thornwell's outstanding debts and obligations, including legal fees and reimbursable expenses in connection with legal services (as limited by section 3 of this Act), shall invest the remaining amounts and hold them in trust, shall during the lifetime of James R. Thornwell pay to him all of the net income of the trust on a monthly basis, and also pay or apply such amounts of the principal as the Trustee deems necessary for the health, welfare, comfort and maintenance of James R. Thornwell, and upon his death shall pay all assets then held in trust to his estate.

Page 2, line 19: After "SEC." strike "2" and insert "3".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the Senate bill (S. 1615) for the relief of James R. Thornwell and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, $1,000,000 to James R. Thornwell, originally of South Carolina and now of Oakland, California. Such sum shall be in full satisfaction for the severe physical, psychological, and economic damage, including pain, suffering, emotional distress, trauma, and permanent injuries, inflicted upon James R. Thornwell as a result of the administration by Army personnel of LSD to him in 1961 without his knowledge or consent after subjecting him for six preceding weeks to extreme physical and emotional stress, as part of an Army drug testing program in which he was the only American subject, and as a result of the concealment by the Army of the use of LSD from James R. Thornwell for seventeen years thereafter, during which time he suffered from severe psychological disorientation, and of the Army's failure to provide him any followup care. The payment of such sum shall be in full satisfaction of all claims of James R. Thornwell, his heirs, executors, personal representatives, or assigns, of any nature whatsoever against the United States and its agencies, or against any past or present employee, agent, officer, or person of or associated with the United States, in connection with the circumstances of his injuries compensated hereunder, including injuries incurred subsequent to his discharge from the Armed Forces, and such payment shall be in lieu of any further compensation or award for such injuries.

SEC. 2. No part of the amount appropriated by this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

MOTION OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. OBERSTAR moves to strike out all after the enacting clause of the Senate bill, S. 1615, and insert in lieu thereof the provisions of H.R. 5063 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 5063) was laid on the table.

JESSE KUO TANG AND SHARON KUO TANG

The Clerk called the bill (H.R. 935) for the relief of Jesse Kuo Tang and Sharon Kuo Tang.

There being no objection, the Clerk read the bill, as follows:

H.R. 935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act Jesse Kuo Tang and Sharon Kuo Tang shall be held and considered to be the natural born alien son and daughter of Stanley Chih Chin Tang and Nancy Tsou Tang, citizens of the United States: *Provided,* That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

Strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Jesse Kuo Tang and Sharon Kuo Tang may be classified as children within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in their behalf by Mr. and Mrs. Stanley Chih-Chin Tang, citizens of the United States, pursuant to section 204 of the Act: *Provided,* That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

KIT TUNG

The Clerk called the bill (H.R. 936) for the relief of Kit Tung.

There being no objection, the Clerk read the bill, as follows:

H.R. 936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act, Kit Tung shall be held and considered to be the natural-born alien daughter of Mrs. June Armand, a citizen of the United States: *Provided,* That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed, and read a third time, and was read the third time, and passed, and a motion to reconsider was laid on the table.

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RAYMOND M. GEE

The Clerk called the bill (H.R. 3096) for the relief of Raymond M. Gee.

There being no objection, the Clerk read the bill, as follows:

H.R. 3096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Raymond M. Gee may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in his behalf by Mr. and Mrs. Robert L. Gee, citizens of the United States, pursuant to section 204 of the Act: *Provided,* That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

EILEEN ANGELLA CROSSDALE

The Clerk called the bill (H.R. 3869) for the relief of Eileen Angella Crossdale.

There being no objection, the Clerk read the bill, as follows:

H.R. 3869

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes section 203(a)(2) and 204 of the Immigration and Nationality Act, Eileen Angella Crossdale shall be held and considered to be the natural born alien daughter of William Alexander and Linda Beatrice Crossdale, lawful permanent residents of the United States: *Provided,* That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Eileen Angella Crossdale may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by William Alexander and Linda Beatrice Crossdale, a lawfully resident alien and a citizen of the United States, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Eileen Angella Crossdale."

A motion to reconsider was laid on the table.

ANNETTE JUTTA WOHRLE

The Clerk called the bill (H.R. 4522) for the relief of Annette Jutta Wohrle.

There being no objection, the Clerk read the bill, as follows:

H.R. 4522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Annette Jutta Wohrle shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(c) of such Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Annette Jutta Wohrle may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Hans Wohrle, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

LILIA ESTER CANTU

The Clerk called the bill (H.R. 5157) for the relief of Lilia Ester Cantu.

There being no objection, the Clerk read the bill as follows:

H.R. 5157

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Lilia Ester Cantu shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Lilia Ester Cantu may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Luis Cantu, a citizen of the United States, and a lawful resident alien, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JARAMPORN SERMSRI AND AKHARATA SERMSRI

The Clerk called the bill (H.R. 5379) for the relief of Jaramporn Sermsri and Akharata Sermsri.

There being no objection, the Clerk read the bill, as follows:

H.R. 5379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Jaramporn Sermsri and Akharata Sermsri may be classified as children within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in their behalf by Jack Costner, a citizen of the United States, and his spouse, Chantira Costner pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

With the following committee amendment:

On line 7, delete the words "Jack Costner, a citizen of the United States, and his spouse, Chantira Costner" and insert in lieu thereof the words "Mr. and Mrs. Jack Costner, a citizen of the United States, and a lawful resident alien, respectively"

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MICHAEL CHINWEN KE

The Clerk called the bill (H.R. 5745) for the relief of Michael Chinwen Ke.

There being no objection, the Clerk read the bill, as follows:

H.R. 5745

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Michael Chinwen Ke may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in his behalf by Charles H. and Jean C. Ke citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ELENA PATRICIA MATTOS

The Clerk called the bill (H.R. 6030) for the relief of Elena Patricia Mattos.

There being no objection, the Clerk read the bill, as follows:

H.R. 6030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Elena Patricia Mattos may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Napoleon Mattos, a citzen of the United States, and a lawful resident alien, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RENUKA PAVLA

The Clerk called the Senate bill (S. 215) for the relief of Renuka Pavla.

There being no objection, the Clerk read the Senate bill, as follows:

S. 215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Immigration and Nationality Act, Renuka Pavla may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon the approval of a petition filed on her behalf by Mr. and Mrs. Kenneth L. Lucas, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

KUO-YAO CHENG

The Clerk called the bill (H.R. 1316) for the relief of Kuo-Yao Cheng.

There being no objection, the Clerk read the bill as follows:

H.R. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provision of section 212(a)(9) of the Immigration and Nationality Act, Kuo-Yao Cheng may be issued a visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided,* That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FEERONAIH ABBOSH

The Clerk called the bill (H.R. 4139) for the relief of Feeronaih Abbosh.

There being no objection, the Clerk read the bill as follows:

H.R. 4139

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Feeronaih Abbosh shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct one number from the total number of immigrant admissions authorized to the provisions of section 21(c) of the Act of October 3, 1965.

With the following committee amendment:

On page 2, line 5, delete the words "admissions authorized to the provisions of section 21(e) of the Act of October 3, 1965." and insert in lieu thereof the words "visas and conditional entries which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act: *Provided,* That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as described by section 213 of the said Act.".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SEUNG JA KIM AND LADA KIM

The Clerk called the bill (H.R. 4778) for the relief of Seung Ja Kim and Lada Kim.

There being no objection, the Clerk read the bill, as follows:

H.R. 4778

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, for the purposes of the Immigration and Nationality Act, Seung Ja Kim and Lada Kim shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act, upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct two numbers from the total number of immigrant visas and conditional entries which are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, from the total number of such visas and entries which are made available to such natives under section 202(e) of such Act (8 U.S.C. 1152(e)).

With the following committee amendments:

On page 1, line 4, delete the words "Seung Ja Kim and Lada Kim" and insert in lieu thereof: "Sada Kim".

On page 2, line 5, delete the words "two numbers" and insert in lieu thereof: "one number".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill for the releif of Sada Kim".

A motion to reconsider was laid on the table.

LEOPOLDINE MARIE SCHMID

The Clerk called the bill (H.R. 6739) to confer U.S. citizenship posthumously upon Leopoldine Marie Schmid.

There being no objection, the Clerk read the bill, as follows:

H.R. 6739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Leopoldine Marie Schmid, late of San Mateo, California, and formerly of Zurich, Switzerland, shall be held and considered to have been a citizen of the United States at the time of her death.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER. That concludes the call of the Private Calendar.

UNITED STATES SHOULD STAND APART FROM POL POT REGIME

(Mr. BONIOR of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BONIOR of Michigan. Mr. Speaker, I am somewhat shocked to have picked up the morning paper this morning and to have read that the United States plans to support the Pol Pot regime for a seat in the United Nations. A year ago today, a year ago at this time, we participated in a similar act to the dismay of literally millions of people in this country, and especially those who have been supporters of the administration's progressive and humane policies with respect to human rights.

I would suggest that the administration look carefully at what it is planning to do next week at the United Nations in New York, and take the advice of Senator TSONGAS and Senator LEVIN, who have written the Government of this country and suggested that we should stand apart from the brutality of both the Communist Pol Pot government and the Communist Vietnamese client-government of Heng Samrin.

I think the best policy is expressed by the Reverend Ellis in the prayer at the beginning of this session, when he asked that we girdle our power in righteousness.

PERSONAL EXPLANATION

Mr. RUSSO. Mr. Speaker, due to illness in my family, I was granted, by unanimous consent, a leave of absence last week. I would have voted in the following manner had I been here:

In favor of H.R. 7235, the Rail Act of 1980, rollcall No. 534.

In favor of the Staggers-Rahall amendment to H.R. 7235, rollcall No. 531.

In favor of H.R. 7301, military construction authorizations, rollcall No. 539.

I ask unanimous consent that these remarks appear in the permanent RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

□ 1220

PROPOSED AMENDMENT WOULD GUARANTEE NEW FUNDING LEVELS FOR DEFENSE SPENDING

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, it appears increasingly likely that the Congress will not complete action on the fiscal year 1981 Defense Appropriations Act by October 1. Thus, a continuing resolution will be required. But a continuing resolution based on last year's funding levels will have critical detrimental impacts on the operations of the Department of Defense.

The Defense bill before the House today includes nearly $19 billion more than funded in fiscal year 1980. This major increase is the result of a consensus in both bodies of the Congress that our national security requires real growth in defense investment. This real growth commitment is an integral part of our foreign policy.

A continuing resolution based on fiscal year 1980 rates will require the Department to lose approximately $1.5 billion in obligations each month. The result will be that in December when action on the bill is completed, the Department will be forced to try to make up for lost time. The product will be cost inefficiencies and overall program delays that will harm our efforts to provide adequate national defense without waste.

The perception among the American

people and our allies, whom we have asked to increase their defense budgets, will be that the Congress has reneged on its commitment. They will see that apparently national defense is not important enough to justify a one-time divergence from usual congressional procedure.

I do not think that is the signal we want to send. I do not think we want to eliminate much of the benefit from the spending increases we have voted. For these reasons I will be offering an amendment to the continuing resolution in the Appropriations Committee to provide funding at the level included in the House-passed bill. This action is essential to the smooth operation of the Defense Department and I am confident it will be supported by my colleagues in this body.

THE PRESIDENT'S UNEMPLOYMENT PROGRAM: PLAYING POLITICS?

(Mr. CONABLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONABLE. Mr. Speaker, a hearing and markup on the President's proposal to extend unemployment benefits to a full year is scheduled for tomorrow before the Ways and Means Subcommittee on Unemployment Compensation.

This meeting was postponed last week because the administration's proposal was not ready. The full text still has not been received. Only late yesterday afternoon did we get a page and a half outline of what the President has in mind. Evidently the rest of the proposal is still being hurriedly hashed out and pasted together—by the same President who has refused to cut taxes because it would be political so close to elections.

Evidently he does not think an expensive program to blanket the Nation with a full year of unemployment benefits only a month before the election has anything to do with politics.

How cynical can politics become? These new benefits are to be a 6-month, one-shot deal beginning a month before the election. The $1.3 billion cost will be financed entirely from general revenues.

The areas hardest hit, such as the auto industry, already have a full year's benefits at fairly high levels under trade adjustment assistance. In some States which still have insured unemployment rates of less than 2 percent, a full year's benefits are simply not appropriate.

Why is this legislation being rushed through so quickly and casually that the ink cannot dry and the merits cannot be debated?

The answer just might be that the President is making political use of the fear of unemployment resulting from his policies, in order to prevent his own unemployment.

DISNEYLAND REALITY—WASHINGTON MAKE-BELIEVE

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, some people who have visited Disneyland at Anaheim, Calif., and the House of Representatives in Washington, D.C., have observed that reality is in Anaheim, make-believe is here. Reality at Disneyland came through last week in a very noble, positive way. Date Night at Disneyland is limited to one boy and one girl to form a dance couple. A commercial enterprise has loudly declared that a heterosexual lifestyle is the rule on its premises. This rejection of homosexuality is to be commended for the example which it sets at one of the Nation's most prominent institutions.

Mr. Speaker, it is sad that some politicians do not have similar courage in setting an appropriate moral tone for our Nation.

THE CARTER CAMPAIGN'S SHAMELESS EFFORT TO BUY VOTES

(Mr. RUDD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUDD. Mr. Speaker, the Carter administration is shoveling out election year goodies to key States in an outrageous effort to buy votes with taxpayer dollars in areas considered crucial to President Carter's bid for reelection.

Typical of this politically motivated largesse was Vice President MONDALE'S announcement last week of more than $100 million in Federal grants for Chicago area projects.

The Carter forces have selected Philadelphia, another key vote center, for more than a billion dollars in Federal goodies. This includes overhaul work on two aging aircraft carriers and some $100 million in urban grants that were announced, with great preelection fanfare.

Pro-Carter officials are openly urging urban areas to seek Federal aid before the election in order to better their chances.

This is a shameless effort by the Carter campaign to buy votes and misuse Federal office for political gain.

MIDDLE-INCOME AMERICANS DESERVE PREELECTION VOTE ON 1981 BUDGET

(Mr. KRAMER asked and was given permission to address the House for 1 minute.)

Mr. KRAMER. Mr. Speaker, Saturday's Washington Post contained an article that will come as no shock to middle-income taxpayers across the country. However, it does point up what many of us on the minority side of the aisle have been saying for quite some time, and that is that middle-income Americans are paying for the bulk of Government programs conceived in Washington. The article cited an IRS study indicating that although middle-income Americans make up only 38.2 percent of the taxpaying population, they pay 60.1 percent of the taxes which keep the Federal Government going. Thus, you would think that the least this Congress would do is to let these taxpayers have an idea what is in store for them next year before they go to the polls on November 4.

Mr. Speaker, we have just 3 weeks to go before the scheduled start of the October recess. I would once again urge the majority leadership to reconsider its plan to put off a vote on the 1981 budget until after the election. The people have a right to know right now what kind of taxes and spending the present Congress has in mind for the fiscal year starting October 1. The public has a right to know whether the Democratic Party is going to make good on its promise to balance the budget, or whether we are in store for more deficit spending and higher inflation once again.

A CALL FOR MORE TESTIMONY IN HEARINGS ON STEALTH AIRCRAFT LEAK

(Mr. BEARD of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Speaker, this morning in the Stealth aircraft hearing before the Subcommittee on Investigations of the Committee on Armed Services, retired Admiral Zumwalt indicated to the committee his sources felt that Deputy Assistant for National Security Affairs David Aaron should be called as a witness to his role or his knowledge of the leaks made to George Wilson of the Washington Post concerning this critically important national defense program.

Apparently the admiral's sources within the White House are saying the same thing my sources are saying. It is for this reason and it is because of the fact the Secretary of Defense refused to name those individuals he communicated with at the White House, in making the decision to declassify the Stealth program, that I have requested the subcommittee chairman, the gentleman from New York, Mr. SAM STRATTON, to ask the President to make available Mr. David Aaron, the Deputy Assistant for National Security Affairs, and also Peter Hamilton, Special Assistant to Secretary of Defense Brown, to testify under oath before our committee.

Mr. Speaker, there is growing evidence that no matter how unfortunate this Stealth episode may seem, it is actually just one gross leak among many others that is beginning to form a very distressing pattern.

IS THIS ANY WAY TO RUN A CONGRESS?

(Mr. ROUSSELOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROUSSELOT. Mr. Speaker, the Budget Act of 1974 requires that the Congress complete consideration of the binding second concurrent budget resolution for the upcoming fiscal year by September 15.

Well, today is the 16th of September—the 15th has come and gone. And, while the House has been preoccupied with such pressing issues as the marketing of walnuts and olives, there is still no budget for fiscal year 1981 in sight.

The fact is, the House Budget Committee has not budged. The chairman has not even scheduled the first markup session for the second budget resolution, and rumor has it that the new fiscal year will begin before the markup.

Given the fact that the House leadership has scheduled a recess—or, as I prefer to call it, a Democrat walkout—to begin on October 4, it is entirely probable that the Federal Government will be running without any budget at all for at least the first 2 months of the next fiscal year.

Is this any way to run a Congress? Is this any way to run a country? You bet it is not.

TRIBUTE TO MAJ. GEN. GEORGE S. PATTON

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I would like to pay tribute today to one of our most distinguished and dedicated military leaders, Maj. Gen. George S. Patton, who retired from the U.S. Army on August 31, 1980, after 34 years of honorable and faithful service to our Nation's Armed Forces. General Patton leaves a rich legacy of achievement and he has surely pointed the way for Army leaders in the years to come.

General Patton was born December 24, 1923, in Boston, Mass., the youngest of three children of the late Gen. George S. Patton, Sr., the illustrious and distinguished commander of World War II fame. General Patton is married to the former Joanne Holbrook. They have five children, Margaret, George, Jr., Robert, Helen, and Benjamin.

General Patton was graduated from the Hill School in Pottstown, Pa., in 1942 and the U.S. Military Academy at West Point, N.Y., in 1946, at which time he was commissioned as a second lieutenant of infantry. During his career in the Army, General Patton distinguished himself by exceptionally meritorious service in the Korean and Vietnam conflicts and in successive command positions of great responsibility. He served as assistant division commander, 4th Armored Division assistant commandant, U.S. Army Armor School; commanding general, U.S. Army Readiness Region 1; commanding general, 2d Armored Division; deputy commanding general, VII Corps, U.S. Army, Europe; and as director of readiness, Headquarters, U.S. Army Materiel Development and Readiness Command.

General Patton's integrity and courage were an inspiration to all who served with him and his superb leadership earned him the esteem of soldiers at every level. His distinguished service was characterized by innovative and dynamic leadership, efficient management of resources and the deepest concern for the welfare of his troops.

General Patton was awarded many military medals and decorations during his career, including the Distinguished Service Cross, Distinguished Service Medal, Silver Star, Legion of Merit, Distinguished Flying Cross, and the Bronze Star Medal.

I proudly salute General Patton for his splendid record of achievement and his outstanding contribution to the Armed Forces and our Nation. General Patton is a credit to the Army and the Nation he served so well. I wish him well in retirement.

MRS. DOWNAND IS TURNED OFF BY DEMOCRATS

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ASHBROOK. Mr. Speaker, the continuing saga of the Democratic campaign film clips will go on this week. Last Wednesday I called these to the attention of the House, after I had seen the Carter clips on TV. It showed a Mrs. Downand, at a Presidential town meeting in Steubenville, Ohio. She had expressed some concern over the President's EPA policies and coal policies. The President, in effect, said, "You come down to Washington and I will talk this over with you." The clip shows her blowing kisses to the President and saying, "I love you, Mr. President." That was the impression that was given in the powerful TV ad.

As I pointed out then, what the film clip did not show was that she came to Washington, and she left the White House in tears because it was pretty obvious to her that the President and his advisers were not going to listen in any way to what she wanted.

As a gesture of honesty, I read that the Carter campaign committee has pulled this television ad.

I noticed this week that Mrs. Downand has now indicated that, after that brief foray at the White House, she is not going to support Mr. Carter, and indeed is going to support Mr. Reagan. I know my colleagues would like to have that information.

FISH AND WILDLIFE CONSERVATION ACT OF 1980

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 3292) to assist the States in developing fish and wildlife conservation plans, and for other purposes, with the Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Fish and Wildlife Conservation Act of 1980".

SEC. 2. DECLARATION OF FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more esthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, revise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) The term "approved conservation plan" means the conservation plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, esthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, such term means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any of such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531–1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 4. CONSERVATION PLANS.

The conservation plan for any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, esthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should be taken to conserve the plan species and their significant habitats;

(6) establish priorities for implementing the conservation actions determined under paragraph (5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years.

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies.

SEC. 5. APPROVAL OF CONSERVATION PLANS AND CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) APPROVAL BY SECRETARY OF PLANS.—(1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such mannner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii) is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and the modifications required for approval.

(b) EFFECT OF APPROVAL OF PLANS.—If the Secretary approves the conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation shall be deemed to be an approved plan for the purposes of section 6(a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(c) CONSERVATION ACTION.—If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursment is available under section 6.

(d) NONGAME CONSERVATION ACTIONS IN THE ABSENCE OF AN APPROVED PLAN.—In the absence of an approved conservation plan. and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design.

SEC. 6. REIMBURSEMENT OF STATE COSTS FOR DEVELOPING, REVISING, AND IMPLEMENTING CONSERVATION PLANS AND IMPLEMENTING CERTAIN NONGAME FISH AND WILDLIFE CONSERVATION ACTIONS.

(a) IN GENERAL.—Any State may apply to the Secretary for reimbursement under this section for costs incurred by the State for the following:

(1) The development of a conservation plan.

(2) The revision of an approved conservation plan.

(3) The implementation of nongame fish and wildlife conservation actions approved under section 5(c) and (d).

(4) The implementation of conservation actions specified in an approved conservation plan.

(5) The coordination, consolidation, or implementation of the conservation plan or conservation actions approved under this Act with other related plans or actions developed pursuant to the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act and the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(b) APPLICATIONS.—Application for reimbursement under this section shall be made in such manner as the Secretary shall by regulation prescribe and shall contain such information as is necessary to enable the Secretary to determine whether the State meets the eligibility requirements set forth in subsection (c).

(c) ELIGIBILITY.—No State is eligible for reimbursement under this section unless the Secretary finds that the costs, for which reimbursement is sought, have been incurred by the State as follows:

(1) If reimbursement is sought under subsection (a)(1), such costs have been incurred in developing a conservation plan that meets the requirements set forth in section 4.

(2) If reimbursement is sought under subsection (a)(2), such costs have been incurred in revising the plan in a manner consistent with such requirements.

(3) If reimbursement is sought under subsection (a)(3), such costs have been incurred in implementing the conservation actions as approved by the Secretary.

(4) If reimbursement is sought under subsection (a)(4), such costs have been incurred in implementing conservation actions specified in, and in a manner consistent with, the approved conservation plan.

(5) If reimbursement is sought under subsection (a)(5), such costs have been incurred in consolidating, coordinating or implementing conservation plans and actions approved under this Act with approved plans and actions under the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to at the Dingell-Johnson Sport Fish Restoration Act and the Act of September 2, 1950 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act in a manner consistent with sections 2 and 4 of this Act.

(d) REIMBURSEMENT.—Subject to the limitations in subsection (c) and the terms and conditions imposed under section 7, and to the availability of funds appropriated under section 11, the Secretary shall reimburse each State which the Secretary finds to be eligible therefor under subsection (c).

(e) LIMITATIONS.—(1) The total amount of the reimbursement paid to any State under this section with respect to any fiscal year may not exceed the allocation available to the State under section 8 for such year.

(2) No reimbursement may be paid under this section to any State for any cost incurred by the State during any fiscal year—

(A) after September 30, 1991, in developing a conservation plan;

(B) after September 30, 1986, for costs incurred in implementing certain nongame fish and wildlife actions approved under section 5(d);

(C) in which less than 80 percent of the costs to be reimbursed are for the principal benefit of nongame fish and wildlife or the users of nongame fish and wildlife;

(D) in implementing an approved conservation plan, unless the cost was incurred in implementing actions approved under section 5 (c) or (d);

(E) in implementing an approved conservation plan covering only nongame fish and wildlife, or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that more than 10 percent of such costs are paid for with moneys collected during such year by the State—

(i) from the sale of hunting, fishing, and trapping licenses, and

(ii) as penalties (including forfeitures) for violations of the hunting, fishing, and trapping laws of the State; or

(F) in implementing an approved conservation plan or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that—

(i) more than 10 percent of such costs are applied for purposes of conservation law enforcement under any such plan or action, and

(ii) more than 10 percent of such costs in any such year are accounted for by personal service or other inkind contributions.

(3) The amount of the reimbursement paid to any State under this section with respect to any fiscal year—

(A) may not exceed 75 percent for the development of a conservation plan except that during fiscal years 1982, 1983, and 1984 such amount shall not exceed 90 percent;

(B) for the implementation of nongame fish and wildlife conservation actions approved under section 5 (c) or (d), may not exceed 75 percent of the cost of implementing the action during such fiscal year, except that if such action is undertaken by two or more States such amount shall not exceed 90 percent;

(C) during and after the fiscal year in which the conservation plan of the State is approved under section 5(a), may not exceed 75 percent of the cost of implementing and revising the conservation plan during such fiscal year, or if two or more States cooperate in implementing or revising such plan, such cost shall not exceed 90 percent, and

(D) after September 30, 1991, may not exceed—

(i) 50 percent of the cost of implementing and revising the plan during the fiscal year, if the approved conservation plan of the State covers only nongame fish and wildlife, or

(ii) 75 percent of the cost of implementing and revising the plan during such fiscal year, if the approved conservation plan of the State coordinates and consolidates planning for fish and wildlife.

(4)(A) In computing the costs incurred by any State during any fiscal year in developing or revising conservation plans, in implementing approved conservation plans, or in implementing nongame fish and wildlife conservation actions approved under section 5 (c) or (d), for which reimbursement may be available under this section, the Secretary shall—

(i) take into account, in addition to each outlay, the value of inkind contributions and real and personal property received and applied during such year by the State for such purposes; and

(ii) not include any other Federal moneys received by such State and applied by it, directly or indirectly, for such purposes.

(B) For purposes of subparagraph (A), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies regarding fish and wildlife. The Secretary shall by regulation establish (i) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as inkind contributions; and (ii) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be final and conclusive.

SEC. 7. TERMS AND CONDITIONS OF REIMBURSEMENT.

Reimbursements made to the States under section 6 shall be subject to such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. Such terms and conditions shall include, but not be limited to, the following:

(1) Each State and each designated State agency shall keep such records as the Secretary shall require as being necessary or appropriate for fully disclosing the amount and purposes of costs incurred by the State for which reimbursement under section 6 is, or may be, sought. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to such records.

(2) Upon a finding by the Secretary, after notice and opportunity for an agency hearing on the record, that any State has received reimbursement under section 6 for which it is not eligible, or has violated any term or condition imposed under this section, the State shall thereafter be ineligible to receive reimbursement under such section until restitution satisfactory to the Secretary is made, such violation ceases, or adverse effects resulting from such violation are remedied.

SEC. 8. ALLOCATION OF FUNDS FOR ADMINISTRATION AND REIMBURSEMENT OF STATES.

(a) IN GENERAL.—The total amount appropriated pursuant to section 11 for any fiscal year shall be available for administration and for allocation among the States as provided in this section.

(b) ALLOCATION FORMULA.—Of the total amount appropriated for any fiscal year pursuant to section 11—

(1) the Secretary shall deduct so much, but not to exceed 8 percent thereof, as may be necessary for administering during such fiscal year the provisions of this Act relating to the purposes for which so appropriated;

(2) less the deduction under paragraph (1), the Secretary shall allocate—

(A) for the District of Columbia and the Commonwealth of Puerto Rico each a sum equal to not more than one-half of 1 percent of such amount; and

(B) for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands each a sum equal to not more than one-sixth of 1 percent of such amount; and

(3) less the deduction under paragraph (1) and the sums allocated under paragraph (2), the Secretary shall allocate for each of the States (other than those provided for in paragraph (2)) a sum—

(A) one-third of which is based on the ratio to which the area of such State bears to the total area of all such States, and

(B) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States,

except all sums allocated under this paragraph shall be adjusted equitably so that no State shall be allocated a sum which is less than one-half of 1 percent of the amount available for allocation under this paragraph for any fiscal year or more than 5 percent of such amount.

(c) TREATMENT OF AMOUNTS ALLOCATED BUT NOT USED FOR ANY FISCAL YEAR.—(1) That portion of any amount deducted by the Secretary under subsection (b)(1) for administrative purposes for any fiscal year and not expended during such fiscal year shall remain available for administrative purposes until the close of the next succeeding fiscal year and if not obligated or expended by the close of such succeeding fiscal year shall be available for disbursement by the Secretary without regard to subsection (b), to the States to carry out the purposes of this Act.

(2) That portion of any amount allocated to any State under subsection (b) (2) or (3) for any fiscal year and not disbursed to the State for such fiscal years under section 6 shall remain available for disbursement to the State under such section for the next succeeding fiscal year and if not disbursed for such succeeding fiscal year shall be available for disbursement by the Secretary, without regard to subsection (b), to the States to carry out the purposes of this Act.

SEC. 9. OTHER FEDERAL ASSISTANCE AND ACTIONS.

The Secretary and the chief executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans.

SEC. 10. DISCLAIMERS.

Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the States to manage, control, or regulate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary of Agriculture under the Act of March 2, 1931 (46 Stat. 1468–1469; 7 U.S.C. 426–426b).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for purposes of making reimbursements under section 6 to States for the development and implementation of conservation plans and for administration of this Act under section 8 not to exceed $5,000,000 for each of fiscal years 1982, 1983, 1984, and 1985.

SEC. 12. STUDY.

The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct, out of funds available for the administration of this Act a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this Act, including, but not limited to, funding by means of an excise tax on appropriate items. On or before the expiration of the 30-month period following the date of enactment of this Act, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto.

Amend the title so as to read: "An Act to assist the States in developing fish and wildlife conservation plans and actions, and for other purposes.".

Mr. BREAUX (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. FORSYTHE. Mr. Speaker, reserving the right to object, I do so in order to conduct a colloquy with the chairman of the subcommittee on this very important bill, very important in that it is one that we have been working on with the Senate and with the administration now for nearly 4 years, and to have it at the stage where, by adopting the Senate amendments, we can now send it to the President I think is a very important occasion.

Mr. Speaker, the enactment of the Fish and Wildlife Conservation Art would represent no less than the dawning of a new era in fish and wildlife management in this country. The primary focus of H.R. 3292, which provides matching funds to the States for the development of comprehensive conservation plans for fish and wildlife, will be on those species which are not hunted for sport, food, or fur—the so-called nongame species.

Although the Pittman-Robertson and Dingell-Johnson programs have gone a long way toward fulfilling the conservation needs of game species, the sad truth is that no comparable legislation exists for the conservation and enhancement of nongame fish and wildlife, despite the fact that approximately 83 percent of all vertebrates found within the United States are considered nongame species. In fact, of the 3,700 vertebrates found within the continental United States, less than 10 percent receive any scentific management to insure their welfare, and, with few exceptions, these represent the game species.

The lack of attention which has been paid to nongame fish and wildlife over the years is reflected by the fact that 86 percent of the vertebrate species which are currently listed as endangered were considered nongame species at the time of their listing. This fact alone points to the disproportionate impact of man's activities on nongame fish and wildlife. Unfortunately, the problem is likely to grow worse. It is estimated that in the absence of a program such as that provided for in the Fish and Wildlife Conservation Act, 450 nongame species could be added to the endangered list by 1990—120 within the next 5 years.

H.R. 3292 will provide the first step in establishing a comprehensive conservation program for nongame species. It accomplishes this purpose by providing matching funds to the States to enable the States to complete a comprehensive inventory and assessment of the current status of, and the problems facing these species. The legislation also recognizes that game and nongame species live in the same habitat and, therefore, provides money for the development of comprehensive conservation plans which cover game species.

In addition to establishing a conservation plan for the majority of the fish and wildlife species found within the United States, H.R. 3292 will reduce environmental-developer conflict by providing data which can be used in the early assessment of projects. Currently, we are faced with the unpleasant situation of having many projects well underway before the impact of the project on the fish and wildlife in the area is known. This usually leads to extended litigation and unreasonable delay. With the information developed under H.R. 3292 project sponsors will be able to anticipate any adverse impacts on fish and wildlife and can plan projects in such a way as to minimize this impact.

In the same way, the inventories and assessments developed under this bill will permit swifter compliance with the National Environmental Policy Act. No longer will project sponsors be forced to spend large sums of money to develop fish and wildlife data for the preparation of environmental impact statements. No longer will projects be delayed or stopped because of the failure to prepare adequate impact statements with respect to fish and wildlife.

In addition to providing matching funds for the completion of comprehensive plans for the conservation of fish and wildlife, H.R. 3292, as amended by the Senate, provides funds for the implementation of these plans. The House-passed bill only provided for the completion of fish and wildlife conservation plans. The language providing for plan implementation is, in my view, a useful change to the House bill, since it will permit States to undertake specific projects for the benefit of nongame fish and wildlife.

The Senate made two other changes in the House-passed bill. First, the funding was changed. The House bill authorized the appropriation of $19 million over 3 years. The Senate amendments authorize $20 million over 4 years.

The last amendment made by the Senate requires the Secretary of the Interior to conduct a study to determine if it would be appropriate to fund a nongame fish and wildlife conservation program by a means other than general appropriations. Specifically, the Secretary will determine if an excise tax on certain items would be an appropriate funding mechanism.

One of the major changes the final bill makes in the Senate version is the deletion of invertebrates from the bill. The inclusion of invertebrates could quickly exhaust available funds. However, the exclusion of invertebrates from the bill should not be viewed as an indication that invertebrates are not an important part of the ecosystem. States are encouraged to apply their own resources to invertebrates if such species appear in need of conservation and management. In addition, if such species are threatened or endangered or are crucial to the survival of another endangered or threatened species, it is possible that the conservation and management funds made available under section 6 of the Endangered Species Act could be used for the management of these species.

Except for the changes I have described, the Senate has accepted the House bill and for reasons I have already stated, I urge the passage of the Fish and Wildlife Conservation Act, as amended by the Senate. This is landmark wildlife legislation which is supported by all 50 States and by over 260 environmental organizations.

Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. I thank the gentleman for yielding, and I would say that the gentleman is correct in his statement of what the bill does.

Mr. Speaker, H.R. 3292, the Fish and Wildlife Conservation Act of 1980, establishes a matching grant program to assist the States in developing conservation plans for fish and wildlife, with a special emphasis in the State's nongame fish and wildlife populations. The bill passed the House of Representatives on July 9, 1979. The Senate passed their version on May 22, 1980. Since that time, the House and Senate committees have met to resolve their differences on the legislation. The Senate amendment to H.R. 3292, which is before the House today, represents a compromise between the two versions of the legislation.

The Senate amendment makes the following changes to the bill passed by the House last year:

First, the Senate amendment would permit matching grants to enable individual States to implement approved conservation plans for nongame fish and wildlife resources. The House bill had limited the matching grant program to the development of the conservation plans. It now appears that a number of States have made important progress in developing wildlife conservation plans that could be approved under this act. In light of the progress that has been achieved it seems only appropriate to permit the States to seek matching funds for the implementation of the program. To do otherwise would penalize those States that have, on their own initiative, sought to address the conservation needs of nongame species.

Under the Senate amendment, States would be able to receive a 75-percent Federal matching grant once a State has an approved conservation plan. This matching percentage is fully consistent with the existing matching grant program for games species in the Pittman-Robertson program that has been in existence since 1937. As many Members know, the Pittman-Robertson program is one of the most important wildlife conservation programs in this Nation, and, in fact, provides the bulk of the resources to the States for the conservation of game species.

The Senate amendment also provides that the Federal matching share will drop to 50 percent after fiscal year 1991 unless the State's plan consolidates relevant game and nongame plans for fish and wildlife. We believe that this provision is important to encourage the States to integrate their game and nongame planning. Most wildlife biologists now recognize that the long-term conservation of game and nongame species depends on the development of conservation programs which are ecosystem oriented—programs that recognize the interrelationship of these species in the wild.

The second difference between the Senate amendment and the House-passed bill is that the proposed compromise amendment would authorize $20 million over a 4-year period. The House bill had authorized $19 million over a 3-year period.

Third, the amendment directs the U.S. Fish and Wildlife Service to conduct a study to determine the most equitable and effective mechanism for funding nongame conservation projects under this act. Over the last several years, there has been an ongoing discussion about whether nongame programs should be financed out of general appropriations, as is provided in this bill, or whether the funding should come from specially earmarked excise taxes, as is the case with existing game programs.

Unfortunately, no real consensus has developed about the appropriate items that should be subject to any excise tax to fund nongame conservation programs. We do believe, however, that the excise tax option should be further studied and that Congress should reconsider this issue at a later date.

It should be pointed out that the existing game and sport fish programs are financed almost exclusively out of the pockets of the hunters and fishermen of this country. American sportsmen pay an excise tax on items of hunting and fishing equipment, and the proceeds of this tax are distributed to the States for fish and wildlife conservation purposes. Over the last several years, there has been an increasing tendency by the States to divert some of these funds for nongame conservation purposes. Nearly everyone recognizes, however, that these traditional financing mechanisms can never hope to be adequate, nor are they fully appropriate to meet the conservation needs of nongame fish and wildlife. This legislation is intended to address the inadequacies of the existing programs, and hopefully start us down the road to a fully integrated and coordinated fish and wildlife conservation policy.

This bill has been debated, discussed and modified a number of times during the last 4 years. The primary credit for this effort must go to Congressman FORSYTHE, ranking minority member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, who has been the major sponsor, mover, and supporter of this legislation in the House during the last two Congresses. There is absolutely no question that Congressman FORSYTHE's efforts have been essential in developing this legislation, in forming the coalition of State fish and game agencies and environmental groups that support the legislation, and in moving the legislation through the House.

● Mr. ASHLEY. Mr. Speaker, H.R. 3292, the Fish and Wildlife Conservation Act of 1980, establishes a matching grant program to assist the States in developing conservation plans for fish and wildlife, with an emphasis on the States' nongame fish and wildlife species. The House of Representatives passed this bill on July 9, 1979. The Senate passed S. 2181, their version of the legislation on May 22, 1980. Since that time, the House and Senate committees have met to resolve their differences on the legislation. The Senate amendment to H.R. 3292, which is before the House today, represents a compromise between the two versions of the legislation.

The Senate amendment makes the following changes in the bill passed by the House last year:

First, the Senate amendment would permit matching grants to enable individual States to implement approved conservation plans for nongame fish and wildlife resources. The House bill had limited the matching grant program to the development of the conservation plans. Since it now appears that several States have effectively completed their planning process for nongame fish and wildlife conservation, we suggest that those States be permitted to receive implementation money once their conservation plan is approved.

Under the Senate amendment, States would be able to receive a 75-percent Federal matching grant once the State has an approved conservation plan. This percentage is consistent with the existing matching grant program for game species that has been in existence since 1937. The Senate amendment also provides that the Federal matching share will drop to 50 percent after fiscal year 1991 unless the State's plan consolidates the relevant game and nongame plans for fish and wildlife.

Second, the proposed compromise amendment would authorize $20 million over a 4 year period. The House bill had authorized $19 million over a 3-year period.

Third, the amendment directs the U.S. Fish and Wildlife Service to conduct a study to determine the most equitable and effective mechanism for funding nongame conservation projects under this Act. The basic purpose of this study is to determine whether an excise tax is a more appropriate mechanism for funding nongame conservation projects than general appropriations. The existing program for game species derives its revenues from an excise tax on sporting equipment. There has been a continuing discussion about the fairness of extending this principle to the funding of nongame conservation activities. Unfortunately, no consensus has developed about the items that should be subject to this tax. We believe that it will be necessary for the Fish and Wildlife Service to conduct a formal study of this issue so that we have sufficient information to reconsider this issue at a later date.

This legislation has been developed by the Committee on Merchant Marine and Fisheries over a 4-year period. The legislation is strongly supported by the State Fish and Game Agencies and by every major conservation organization. We believe that the legislation represents another important step in promoting the well-being of the Nation's fish and wildlife resources for the enjoyment of all Americans.

I would like to give special congratulations to Congressman FORSYTHE, ranking member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment who has been the primary sponsor and mover of this legislation in the House during the last two Congresses. There is no question that without his continuing interest, support and encouragement we would not be where we are today on this legislation.●

● Mr. MURPHY of New York. Mr. Speaker, H.R. 3292 would assist the States in developing and revising comprehensive plans for the conservation of all vertebrate species of fish and wildlife.

The basic purpose of this bill is to benefit those species of fish and wildlife which are not taken for sport or food. These so-called nongame species have received little direct benefit from State fish and wildlife programs up to now, although they are enjoyed by increasing numbers of urban and rural Americans. The available habitat for these nongame species has decreased at the same time the public is demanding increased opportunities to enjoy nongame wildlife experiences.

Nongame fish and wildlife represent the overwhelming majority of the 3,700 vertebrate species found in the continental United States. Yet, at the present time, only 10 percent of these species are subject to any form of scientific management, and in most instances these are game species. State wildlife conservation programs are primarily supported by funds derived from the sale of State hunting and fishing licenses and from Federal excise taxes on sporting arms and ammunition and fishing equipment. As a result, State management efforts have been focused primarily upon those game species of fish and wildlife which are of interest to the hunters and fishermen paying the excise taxes which fund the program.

This bill recognizes the fact that the vast majority of Americans do not hunt. It also recognizes the fact that more and more urban Americans are seeking improved outdoor recreation opportunities within or adjacent to our cities.

Mr. Speaker, H.R. 3292, as it has passed the House, would authorize any State to apply to the Secretary of the Interior for reimbursement of costs incurred in developing or revising a comprehensive conservation plan for fish and wildlife. Any reimbursement to a State would be limited to 90 percent of the cost of developing or revising a plan.

However, such reimbursement could not be in excess of the allocation available to such State which is based on the size and population of such State as compared to all States. There would be authorized to be appropriated $19 million over a 3-year period to carry out the purposes of the act.

H.R. 3292 passed the House on July 9, 1979. The Senate passed S. 2181, a similar bill to H.R. 3292, on May 22, 1980. Since that time, the members of the Merchant Marine and Fisheries Committee and the Senate Environment and Public Works Committee have agreed on a compromise version and the Senate amendments to H.R. 3292 reflect this compromise version.

The compromise version is very similar to H.R. 3292 as passed by the House, except for three changes:

First, it would allow grants for implementation of approved conservation plans as well as for the development of such plans.

Second, it would increase the funding authorization from $19 million to $20 million and extend the life of the program from 3 to 4 years.

Third, it would add a provision to the bill to require a study on the most appropriate way to finance these conservation projects. The study would focus on whether such funds should come from excise taxes on certain items or from general appropriations.

Mr. Speaker, I highly support the

compromise version and urge the House to concur in the Senate amendments to H.R. 3292.●

Mr. FORSYTHE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana (Mr. Breaux) that the Senate amendments be considered as read and printed in the Record?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Louisiana (Mr. Breaux)?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PERMISSION TO REDUCE TO 5 MINUTES THE TIME FOR ANY REMAINING VOTES ON MOTIONS TO SUSPEND THE RULES

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent that if there is a rollcall vote on the suspension bill about to be called up, the remaining votes to be taken today on suspending the rules and passing bills be reduced to not less than 5 minutes each.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I just want to note that on this side we want to expedite matters, too.

Mr. PHILLIP BURTON. The gentleman is all heart.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

ESTABLISHING ICE AGE NATIONAL SCENIC TRAIL

Mr. PHILLIP BURTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7825) to establish the Ice Age National Scenic Trail, and for other purposes, as amended.

The Clerk read as follows:

H.R. 7825

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241), as amended, is further amended as follows:

(a) Section 5(a) is amended by adding the following new paragraph at the end thereof:

"(10) The Ice Age National Scenic Trail, a trail of approximately one thousand miles, extending from Door County, Wisconsin, to Interstate park in Saint Croix County, Wisconsin, generally following the route described in "On the Trail of the Ice Age—A Hiker's and Biker's Guide to Wisconsin's Ice Age National Scientific Reserve and Trail," by Henry S. Reuss, Member of Congress, dated 1980. The guide and maps shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to section 5(d) of this Act. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of section 5(e) of this Act. Notwithstanding the provisions of section 7(c), snowmobile use may be permitted on segments of the Ice Age National Scenic Trail where deemed appropriate by the Secretary and the managing authority responsible for the segment.".

(b) Section 10(c) is amended by changing "(7), and (8):" to "(7), (8), (9), and (10):", and by inserting "The Ice Age National Scenic Trail," after the phrase "North Country National Scenic Trail,".

Sec. 2. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1981. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

The SPEAKER. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. Phillip Burton) will be recognized for 20 minutes, and the gentleman from Kansas (Mr. Sebelius) will be recognized for 20 minutes.

Mr. PHILLIP BURTON. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. Reuss).

□ 1240

Mr. REUSS. Mr. Speaker, I rise in support of H.R. 7825, a bill to make a national scenic trail of Wisconsin's Ice Age Trail.

The bill is cosponsored by my Wisconsin colleagues Congressmen Les Aspin, Alvin Baldus, Robert Kastenmeier, David Obey, Thomas Petri, Toby Roth, and Clement Zablocki. An identical bill is sponsored by Senators Gaylord Nelson and William Proxmire in the Senate.

This bill has been worked out in close cooperation with the Department of the Interior's Heritage Conservation and Recreation Service. The Interior Department fully supports the bill.

H.R. 7825 has been amended in the House Committee on Interior and Insular Affairs so to conform with existing national scenic trail legislation.

The Ice Age Trail has been developed over the last 20 years by two Wisconsin voluntary citizens groups—the Ice Age Park and Trail Foundation and the Ice Age Trail Council.

The Ice Age Trail provides parallel hiking and biking trails over a 1,000-mile route from Potowatomi State Park in Door County, through Point Beach State Forest in Manitowoc County, through the Northern and Southern Kettle Moraine State Forests, through disused railway rights-of-way, through Devils Lake State Park, over private lands and little-used roads in central Wisconsin, through Chequamegon National Forest, and ending at Interstate Park in Polk County on the Minnesota border.

The trail brings together the nine units of the Ice Age National Scientific Reserve, set up by Congress in a series of laws starting in 1962. Included in the nine units are Two Creeks Buried Forest, Campbellsport Drumlins, Kettle Moraine State Forest, Horicon Marsh, Cross Plains (Dane County), Devils Lake, Mile Bluff, Chippewa Moraine Unit, and Interstate Park.

The Ice Age Trail lies on a variety of lands—national forests, State parks and forests, county parks and forests, and private lands under cooperative agreements.

In August 1979, the Wisconsin Department of Natural Resources assumed joint administrative responsibility for the trail with the private foundation and council. The Wisconsin Department of Natural Resources joins in requesting national scenic trail designation.

The trail offers an outdoor experience close to population centers such as Milwaukee, Chicago, and the Twin Cities, with a population of 12 million.

Jim Staudacher, a 20-year-old Milwaukeean, was the first to hike the full 1,000 miles of the trail, taking 3 months to do so last summer.

This legislation would make the Ice Age National Scientific Reserve a national scenic trail. This status has been accorded to only eight other trails in the Nation, including the 2,000-mile Appalachian National Scenic Trail in the East, and the 2,350-mile Pacific Crest National Scenic Trail extending from the Canadian to the Mexican borders. The designation as a national scenic trail would involve no additional costs, nor disturb the ownership and control of the existing lands in Wisconsin.

Recognition by the Congress of the efforts of private citizens by giving national scenic trail status to the Ice Age Trail will insure the preservation of one of the Nation's finest outdoor resources.

I pay tribute to the House Committee on Interior and Insular Affairs, and particularly its subcommittee headed by that splendid conservationist, the gentleman from California (Mr. Phillip Burton), for its leadership in making the Ice Age a national scenic trail, and to its outstanding minority leader, the gentleman from Kansas (Mr. Sebelius), all credit for years of devoted service to the cause of the outdoors.

Mr. SEBELIUS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the bill now under consideration, H.R. 7825, which will designate the Ice Age Trail in the State of Wisconsin as a scenic trail unit of our national trails system. This trail route runs for approximately 1,000 miles, and most of its route is already in existence as a completed trail.

A great amount of credit for the development of this bill and for the actual on-site progress in the development of the trail is due our good friend and colleague from Wisconsin, the Honorable Henry Reuss.

Mr. Speaker, the committee modified this bill very slightly. One change was to authorize the State of Wisconsin to prepare the comprehensive plan pursuant to the provisions of subsection 5(e) of the Trails Act. Normally, by terms of the Trails Act, this responsibility would go to the Secretary of the Interior, through the National Park Service.

Since the State of Wisconsin has been so deeply involved and interested in this project, however, and also since the trail is so integrally involved with the various existing separate units of the Ice Age National Scientific Reserve—which is a cooperative effort of the State and the National Park Service—it seemed only logical to authorize the State to prepare the plan. The intent, however, is that consultation with the National Park Service during plan preparation shall be complete and thorough, and the Secretary of the Interior still retains the authority to finally approve the plan and to submit it to the relevant committees of the Congress, as required by the general provisions of the parent National Trails System Act.

Mr. Speaker, this is a simple bill which will bring very positive environmental and recreational benefits to our country, and I support its adoption by my colleagues.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. Roth).

Mr. ROTH. Mr. Speaker, I am pleased to be a part of the effort to bring national recognition to the Wisconsin Ice Age Trail by designating it a national scenic trail.

Much of Wisconsin was sculptured from the Wisconsin ice sheet that covered this region 10,000 to 20,000 years ago. Nature's work has blessed our State with spectacular land formations. According to National Geographic magazine, August 1977, "few places on this Earth have a greater variety of geological phenomenon left by glaciation" than Wisconsin's Ice Age Trail.

Today, people seek to explore and enjoy the glories of our Earth. With a greater-than-ever need to encourage energy-saving recreational activities, and the sudden surge in hiking and biking in the State of Wisconsin and across the United States, we can only anticipate an increasing emphasis on our nature trails.

For 20 years, voluntary citizen groups have been working to develop this trail. These people have succeeded in preserving for posterity natural scenic beauty. Designation of the Ice Age Trail as a national scenic trail is a fitting honor for the two prime carvers of our Nation's landscape, nature, and people. What mother nature perfected, Wisconsinites have preserved.

Wisconsin's Ice Age Trail, the gift of the glacier, is an inspiration to all of us, of the dreams that men have to live in peace and grow with the wonders of nature.

Mr. PHILLIP BURTON. Mr. Speaker, I have no further requests for time.

Mr. SEBELIUS. Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. Phillip Burton) that the House suspend the rules and pass the bill, H.R. 7825, as amended.

The question was taken.

Mr. SEBELIUS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 397, nays 3, not voting 32, as follows:

[Roll No. 541]

YEAS—397

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Beilenson
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Derwinski
Devine
Dickinson
Dicks
Dingell
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stokes
Stratton
Studds
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wolff
Wolpe
Wright
Wyatt
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—3

McDonald
Paul
Stump

NOT VOTING—32

Anderson, Ill.
Cavanaugh
Clay
de la Garza
Derrick
Dixon
Eckhardt
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Hefner
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

□ 1250

The Clerk announced the following pairs:

Mr. Murphy of New York with Mr. Anderson of Illinois.

Mr. Nedzi with Mr. Dixon.

Mr. Giaimo with Mr. Harsha.

Mr. Vanik with Mr. Wydler.

Mr. Charles H. Wilson of California with Mr. Stockman.

Mr. Wirth with Mr. Erlenborn.

Mr. Jenrette with Mr. Fish.

Mr. Derrick with Mr. Goldwater.

Mr. de la Garza with Mr. McClory.

Mr. Hefner with Mr. Bob Wilson.

Mr. Lundine with Mr. O'Brien.

Mr. Myers of Pennsylvania with Ms. Holtzman.

Mr. Huckaby with Mr. Fowler.

Mr. Clay with Mr. Eckhardt.

Mr. Cavanaugh with Mr. Mattox.

Mr. Shannon with Mr. Leach of Louisiana.

Mr. BARNARD and Mr. DANIELSON changed their votes from "present" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1300

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BARNARD). Pursuant to the provisions of clause 3, rule XXVII, the Chair will now put the question on each motion on which further proceedings were postponed on Monday, September 15, 1980, in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 7084 by the yeas and nays, and S. 2514.

The Chair will reduce to 5 minutes the time for any electronic vote, pursuant to the unanimous-consent agreement previously granted.

PRETRIAL SERVICES ACT OF 1980

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 7084, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 7084, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device and there were—yeas 243, nays 155, not voting 34, as follows:

[Roll No. 542]

YEAS—243

Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Beard, R.I.
Bedell
Beilenson
Benjamin
Bereuter
Bethune
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Brademas
Breaux
Brodhead
Brooks
Broomfield
Brown, Calif.
Buchanan
Burton, John
Burton, Phillip
Carr
Chisholm
Coelho
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin
D'Amours
Danielson
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Dellums
Dicks
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edgar
Edwards, Calif.
Emery
English
Ertel
Evans, Del.
Evans, Ga.
Fary
Fascell
Fazio
Fenwick
Ferraro
Fisher
Fithian
Florio
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Frost
Garcia
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Gore
Gray
Green
Guarini
Gudger
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hanley
Harkin
Harris
Hawkins
Heckler
Heftel
Hollenbeck
Horton
Howard
Hughes
Hutchinson
Hyde
Ichord
Jeffords
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kastenmeier
Kazen
Kelly
Kildee
Kindness
Kogovsek
Kostmayer
LaFalce
Leach, Iowa
Lederer
Lehman
Leland
Lloyd
Long, La.
Lowry
Luken
McCloskey
McCormack
McDade
McHugh
McKay
McKinney
Maguire
Marks
Mathis
Matsui
Mavroules
Mazzoli
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Ill.
Musto
Neal
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Pickle
Preyer
Price
Pursell
Railsback
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Ritter
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Santini
Sawyer
Scheuer
Schroeder
Sebelius
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Spellman
St Germain
Stack
Staggers
Stark
Steed
Stewart
Stokes
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
White
Whitley
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—155

Abdnor
Albosta
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Beard, Tenn.
Bennett
Bevill
Bouquard
Bowen
Brinkley
Brown, Ohio
Broyhill
Burgener
Burlison
Butler
Byron
Campbell
Carney
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Derwinski
Devine
Dickinson
Dodd
Dornan
Edwards, Ala.
Edwards, Okla.
Erdahl
Evans, Ind.
Findley
Flippo
Fountain
Frenzel
Fuqua
Gaydos
Gingrich
Goodling
Gradison
Gramm
Grassley
Grisham
Guyer
Hagedorn
Hance
Hansen
Hightower
Hillis
Hinson
Holt
Hopkins
Hubbard
Hutto
Ireland
Jacobs
Jeffries
Jenkins
Jones, Tenn.
Kemp
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Lewis
Livingston
Loeffler
Long, Md.
Lott
Lujan
Lungren
McDonald
McEwen
Madigan
Markey
Marlenee
Marriott
Martin
Mica
Michel
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Murtha
Myers, Ind.
Natcher
Nelson
Nichols
Pashayan
Paul
Petri
Porter
Pritchard
Quayle
Quillen
Rahall
Regula
Rhodes
Roberts
Robinson
Roth
Rousselot
Royer
Rudd
Satterfield
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Solomon
Spence
Stangeland
Stanton
Stenholm
Stratton
Stump
Symms
Taylor
Thomas
Trible
Walker
Wampler
Whitehurst
Whittaker
Whitten
Winn
Wyatt
Young, Alaska
Young, Fla.

NOT VOTING—34

Anderson, Ill.
Applegate
Cavanaugh
Clay
de la Garza
Derrick
Dingell
Dixon
Eckhardt
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Hefner
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

□ 1310

The Clerk announced the following pairs:

On this vote:

Mr. Nedzi and Mr. Murphy of New York for, with Mr. Goldwater against.

Mr. Jenrette and Mr. Dingell for, with Mr. Erlenborn against.

Mr. Myers of Pennsylvania and Mr. Charles H. Wilson of California for, with Mr. O'Brien against.

Mr. Clay and Mr. McClory for, with Mr. Wydler against.

Until further notice:

Mr. Shannon with Mr. Anderson of Illinois.

Mr. Vanik with Mr. Dixon.

Mr. Wirth with Mr. Eckhardt.

Mr. de la Garza with Mr. Fish.

Mr. Cavanaugh with Mr. Harsha.

Mr. Applegate with Mr. Stockman.

Mr. Hefner with Mr. Bob Wilson.

Mr. Huckaby with Mr. Giaimo.

Mr. Lundine with Mr. Holland.

Mr. Derrick with Ms. Holtzman.

Mr. Leach of Louisiana with Mr. Mattox.

Messrs. QUAYLE, MARRIOTT, and LONG of Maryland changed their votes from "yea" to "nay."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

TREASURY DEPARTMENT INTERNATIONAL AFFAIRS FUNCTIONS AUTHORIZATION, 1981

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill, S. 2514.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. CAVANAUGH) that the House suspend the rules and pass the Senate bill, S. 2514.

The question was taken.

Mr. RUDD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 238, nays 164, not voting 30, as follows:

[Roll No. 543]

YEAS—238

Addabbo
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Ashley
Aspin
AuCoin
Bailey
Baldus
Barnard
Barnes
Bedell
Beilenson
Benjamin
Bereuter
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Bonior
Bonker
Bowen
Brademas
Breaux
Brodhead
Brooks
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Butler
Carr
Carter
Cheney
Chisholm
Clinger
Coelho
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Corman
Cotter
Coughlin
D'Amours
Danielson
Davis, S.C.
Dellums
Dicks
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Erdahl
Ertel
Evans, Del.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Frost
Garcia
Gephardt
Gibbons
Gilman
Gingrich
Gonzalez
Gore
Gradison
Gray
Green
Hall, Ohio
Hamilton
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hightower
Hinson
Hollenbeck
Horton
Howard
Hutchinson
Hyde
Jeffords
Johnson, Calif.
Jones, Tenn.
Kastenmeier
Kazen
Kildee
Kostmayer
LaFalce
Leach, Iowa
Lederer
Lehman
Leland
Lewis
Long, La.
Long, Md.
Lowry
Luken
McCloskey
McCormack
McEwen
McHugh
McKay
McKinney
Maguire
Markey
Marks
Marriott
Matsui
Mavroules
Mica
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Ill.
Murphy, N.Y.
Murtha
Musto
Neal
Nolan
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pease
Pepper
Perkins
Peyser
Porter
Preyer
Price
Pritchard
Pursell
Rahall
Rangel
Ratchford
Regula
Reuss
Rhodes
Richmond
Rinaldo
Ritter
Rodino
Roe
Rose
Rosenthal
Rostenkowski
Roybal
Royer
Sabo
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Simon
Skelton
Smith, Iowa
Solarz
Spellman
St Germain
Stack
Staggers
Stanton
Stark
Steed
Stewart
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Thompson
Traxler
Udall
Ullman
Van Deerlin
Vander Jagt
Vento
Walgren
Walker
Wampler
Waxman
Weiss
White
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Wolff
Wolpe
Wright
Wylie
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NAYS—164

Abdnor
Akaka
Albosta
Anthony
Applegate
Archer
Ashbrook
Atkinson
Badham
Bafalis
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bethune
Bevill
Boner
Bouquard
Brinkley
Broomfield
Broyhill
Burgener
Burlison
Byron
Campbell
Carney
Chappell
Clausen
Cleveland
Coleman
Collins, Tex.
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daschle
Davis, Mich.
Deckard
Derwinski
Devine
Dickinson
Dornan
Edwards, Okla.
Emery
English
Evans, Ga.
Evans, Ind.
Flippo
Florio
Fountain
Fowler
Frenzel
Fuqua
Gaydos
Ginn
Glickman
Goodling
Gramm
Grassley
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hammerschmidt
Hansen
Hefner
Heftel
Hillis
Holt
Hopkins
Hubbard
Hughes
Hutto
Ichord
Ireland
Jacobs
Jeffries
Jenkins
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Kelly
Kemp
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leath, Tex.
Lee
Lent
Levitas
Livingston
Lloyd
Loeffler
Lott
Lujan
Lungren
McDade
McDonald
Madigan
Marlenee
Martin
Mathis
Mazzoli
Michel
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Pa.
Myers, Ind.
Natcher
Nelson
Nichols
Pashayan
Paul
Petri
Pickle
Quayle
Quillen
Roberts
Robinson
Roth
Rousselot
Rudd
Russo
Santini
Satterfield
Sawyer
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Smith, Nebr.
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Stump
Symms
Taylor
Thomas
Trible
Volkmer
Watkins
Weaver
Whitehurst
Whitley
Whittaker
Whitten
Winn
Wyatt
Young, Alaska
Young, Fla.

NOT VOTING—30

Anderson, Ill.
Cavanaugh
Clay
de la Garza
Derrick
Dixon
Erlenborn
Fish
Giaimo
Goldwater
Harsha
Holland
Holtzman
Huckaby
Jenrette
Leach, La.
Lundine
McClory
Mattox
Myers, Pa.
Nedzi
O'Brien
Railsback
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.
Wirth
Wydler

The Clerk announced the following pairs:

On this vote:

Mr. Fish and Mr. Jenrette for, with Mr. Goldwater, against.

Mr. Myers of Pennsylvania and Mr. Nedzi for, with Mr. McClory against.

Mr. Clay and Mr. Charles H. Wilson of California for, with Mr. Wydler against.

Until further notice:

Mr. de la Garza with Mr. Anderson of Illinois.

Mr. Shannon with Mr. Dixon.

Mr. Vanik with Mr. Erlenborn.

Mr. Wirth with Mr. Harsha.

Mr. Lundine with Mr. Holland.

Mr. Leach of Louisiana with Mr. O'Brien.

Ms. Holtzman with Mr. Railsback.

Mr. Huckaby with Mr. Derrick.

Mr. Giaimo with Mr. Bob Wilson.

Mr. Cavanaugh with Mr. Mattox.

Mr. GUDGER changed his vote from "yea" to "nay."

Messrs. COTTER, HYDE, TAUKE, RITTER, and LEWIS changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof), the motion was rejected.

The result of the vote was announced as above recorded.

CONFERENCE REPORT ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1980

Mr. BIAGGI submitted the following conference report and statement on the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities, improvement program, and for other purposes:

CONFERENCE REPORT (H. REPORT NO. 96–1320)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT

SEC. 101. This title may be cited as the "Recreational Boating Safety and Facilities Improvement Act of 1980."

SEC. 102. The Federal Boat Safety Act of 1971 (Public Law 92–75, 85 Stat. 213), as amended, is amended as follows:

(1) In section 2 by striking the first sentence and inserting in lieu thereof the following: "It is declared to be the policy of Congress and the purpose of this Act to improve recreational boating safety and facilities and to foster greater development, use, and enjoyment of all the waters of the United States by encouraging and assisting participation by the several States, the boating industry, and the boating public in the development, administration, and financing of a national recreational boating safety and facilities improvement program; by authorizing the establishment of national construction and performance standards for boats and associated equipment; and by creating more flexible authority governing the use of boats and equipment.".

(2) In section 3—

(a) by striking clauses (10) and (11) and inserting in lieu thereof the following:

"(10) 'United States' and 'State' include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction.

"(11) 'Eligible State' means a State that has a State recreational boating safety and facilities improvement program that has been accepted by the Secretary."; and (b) by adding the following new clauses:

"(12) 'State recreational boating safety and facilities improvement program' means a State recreational boating safety program, or a State recreational boating facilities improvement program, or both.

"(13) 'State recreational boating safety program' means education, assistance, and enforcement activities conducted for the purpose of boating accident or casualty prevention, reduction, and reporting.

"(14) 'State recreational boating facilities improvement program' means programs to develop or improve public facilities that create, or add to, public access to the waters of the United States to improve their suitability for recreational boating purposes, including such ancillary facilities as are necessary to insure the safe use of those facilities. Such term shall include acquisition of title, or any interest in, riparian or submerged land, and the capital improvement of riparian or submerged land for the purpose of increasing public access to the waters of the United States.

"(15) 'Fund' means the National Recreational Boating Safety and Facilities Improvement Fund established by title II of this Act.".

(3) Section 25 is amended to read as follows:

"NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT PROGRAM

"SEC. 25. (a) In order to encourage greater State participation and uniformity in boating safety and facility improvement efforts, and particularly to permit the States to assume the greater share of boating safety education, assistance, and enforcement activities, the Secretary shall implement and administer a national recreational boating safety and facilities improvement program. Under this program, the Secretary may allocate and distribute funds to eligible States to assist them in the development, administration, and financing of State recreational boating safety and facilities improvement programs. The Secretary shall establish guidelines and standards for this program. In doing so, he shall—

"(1) consider, among other things, factors which affect recreational boating safety by contributing to overcrowding and congestion of waterways, such as the increasing number of recreational boats using those waterways and their geographic distribution, and the availability and geographic distribution of recreational boating facilities within and among applying States, as well as State recreational boating casualty and fatality statistics;

"(2) consult with the Secretary of the Interior so as to minimize duplication with the purposes and expenditures of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4) and with the guidelines developed thereunder; and

"(3) maintain environmental standards consistent with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464) and other Federal laws and policies intended to safeguard the ecological and esthetic quality of our Nation's waters and wetlands.

"(b) A State whose recreational boating safety and facilities improvement program has been accepted by the Secretary shall be eligible for allocation and distribution of funds under this Act to assist that State in the development, administration, and financing of its State program. Matching funds shall be allocated and distributed among eligible States by the Secretary in accordance with section 26 of this Act.".

(4) Section 26 is amended to read as follows:

"PROGRAM ACCEPTANCE

"SEC. 26. (a) The Secretary, in accordance with this section and such regulations as he may promulgate, may allocate and distribute funds from the fund to any State that has an accepted State recreational boating safety and facilities improvement program, if the State demonstrates to his satisfaction that—

"(1) the program submitted by that State is consistent with the purposes of this Act;

"(2) funds distributed will be used to develop and administer a State recreational boating safety and facilities improvement program containing the minimum requirements set forth in subsections (b), (c) or (d) of this section;

"(3) sufficient State matching funds are available from either general revenue, boat registration and license fees, State marine fuels taxes, or from a fund constituted from the proceeds of such a tax and established for the purpose of financing a State recreational boating safety and facilities improvement program. No Federal funds from other sources may be used to provide a State's share of the costs of the program described under this section, nor may any State matching funds committed to a program under this Act be used to constitute the State's share of matching funds required by any other Federal program; and

"(4) the program submitted by that State designates a State lead authority or agency, which would implement or coordinate the implementation of the State recreational boating safety and facilities improvement program supported by Federal financial assistance in that State, including the requirement that the designated State authority or agency submit required reports that are necessary and reasonable for a proper and efficient administration of the program and that are in the form prescribed by the Secretary.

"(b) The Secretary shall accept a State recreational boating safety program, and such program shall be eligible to receive funds appropriated pursuant to section 30(a) of this Act, if such program includes—

"(1) a vessel numbering system, either approved or administered by the Secretary under this Act.

"(2) a cooperative boating safety assistance program with the Coast Guard in that State;

"(3) sufficient patrol and other activity to insure adequate enforcement of applicable State boating safety laws and regulations; and

"(4) an adequate State boating safety education program.

"(c) The Secretary shall accept a State recreational boating facilities improvement program, and such program shall be eligible to receive funds appropriated pursuant to section 30(b) of this Act, if such program includes—

(1) a complete description of recreational boating facility improvement projects to be undertaken by the State; and

(2) consultation with State officials responsible for the statewide comprehensive outdoor recreation plan required by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4) and for any program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–64).

"(d) Any State may, at its election, submit a combined program to the Secretary for the improvement of recreational boat safety and the improvement of recreational boating facilities in that State. The Secretary shall approve such program if it contains the minimum requirements set forth in subsection (b) and (c) of this section. Those portions of such combined program that are designed to improve recreational boating safety shall be eligible to receive funds appropriated for State recreational boating safety programs pursuant to section 30(a) of this Act. Those portions of such combined program that are designed to improve recreational boating facilities shall be eligible to receive funds appropriated for State recreational boating facilities improvement programs pursuant to section 30(b) of this Act.".

(5) Section 27 is amended to read as follows:

"ALLOCATION OF FEDERAL FUNDS

"SEC. 27. (a) The Secretary shall allocate the Federal funds available for allocation and distribution under this Act for State recreational boating safety programs as follows:

"(1) one-third shall be allocated equally among eligible States;

"(2) one-third shall be allocated among eligible States that maintain State vessel numbering system approved under this Act so that the amount allocated each fiscal year to each such State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States; and

"(3) one-third shall be allocated so that the amount allocated each fiscal year to each eligible State will be in the same ratio as the amount of State funds expended or obligated by such State for the State recreational boating safety program during the previous fiscal year bears to the total State funds expended or obligated during that fiscal year by all eligible States for State recreational boating safety programs.

"(b) The Secretary shall allocate the Federal funds available for allocation and distribution under this Act for State recreational boating facilities improvement programs as follows:

"(1) one-third shall be allocated equally each year among eligible States;

"(2) one-third shall be allocated so that the amount each year to each eligible State will be in the same ratio as the number of vessels numbered in that State bears to the number of vessels numbered in all eligible States; and

"(3) one-third shall be allocated so that the amount each year to each eligible State shall be in the same ratio as the State funds expended or obligated by the State for a recreational boating facilities improvement program approved under this Act during the previous fiscal year by a State bears to the total State funds expended or obligated for that fiscal year by all eligible States for recreational boating facilities improvement programs.

"(c) The amount received by any State under this section in any fiscal year may not exceed one-half of the total cost incurred by that State in the development, administration, and financing of that State's recreational boating safety and facilities improvement program in that fiscal year.

"(d) No allocation or distribution of funds under this section may be made to any State for the maintenance of boating facilities under an approved State recreational boating safety and facilities improvement program.

"(e) The Secretary may allocate not more than 5 percent of the funds available for allocation and distribution in any fiscal year for national boating safety activities of one or more national nonprofit public service organizations.

"(f) The Secretary is authorized to expend from the funds available for allocation and distribution in any fiscal year such sums as are necessary for the administration of this Act, but in no event may the funds expended for such administration in any fiscal year exceed the greater of $250,000 or 2 percent of the funds available for allocation and distribution in that fiscal year.".

(6) In section 28 by striking subsections (a) and (d) and redesignating subsections (b) and (c) as (a) and (b), respectively.

(7) In section 29 by (A) striking the words "boating safety program" and substituting "State recreational boating safety and facilities improvement program" and (B) by inserting the word "land," immediately after the words "costs of" the first time they appear therein.

(8) Section 30 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 30. (a) For the purpose of providing financial assistance for State recreational boating safety programs, there is authorized to be appropriated from the National Recreational Boating Safety and Facilities Improvement Fund $10,000,000 for each of the fiscal years 1981, 1982, and 1983, such appropriations to remain available until expended.

"(b) For the purpose of providing financial assistance for State recreational boating facilities improvement programs, there is authorized to be appropriated from the National Recreational Boating Safety and Facilities Improvement Fund $10,000,000 for each of the fiscal years, 1981, 1982, and 1983, such appropriations to remain available until expended.".

(9) Section 31 is amended—

(a) in subsection (a) to read as follows:

"(a) Amounts allocated and distributed under section 27 of this Act shall be computed and paid to the States as follows: The Secretary shall determine, during the last quarter of a fiscal year, on the basis of computations made pursuant to section 29 of this Act and submitted by the States, the percentage of the funds available for the next fiscal year to which each eligible State shall be entitled. Notice of the percentage and of the dollar amount, if it can be determined, for each State shall be furnished to the States at the earliest practicable time. If the Secretary finds that an amount made available to a State for a prior year is greater or less than the amount which should have been made available to that State for the prior year, because of later or more accurate State expenditure information, the amount for the current fiscal year may be increased or decreased by the appropriate amount."; and

(b) in subsection (c) by striking the words "boating safety program" each time they appear and substituting "State recreational boating safety and facilities improvement program".

(10) Section 32 is amended—

(a) by striking in subsection (a) the words "boating and boating safety" and inserting in lieu thereof the words "boating safety and facilities improvement."; and

(b) by adding in the first sentence of subsection (b) following the word "safety" the words "and facilities improvement".

TITLE II—ESTABLISHMENT OF FUND

SEC. 201. SHORT TITLE.

This title may be cited as the "Recreational Boating Fund Act of 1980".

SEC. 202. ESTABLISHMENT OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.

There is established in the Treasury of the United States a separate fund to be known as the "National Recreational Boating Safety and Facilities Improvement Fund", consisting of such amounts as may be paid into it as provided in section 209(f)(5) of the Highway Revenue Act of 1956. Amounts in the Fund shall be available, as provided in appropriation Acts, for making expenditures after September 30, 1980, and before April 1, 1984, as provided in section 26 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1476).

SEC. 203. TRANSFER OF MOTORBOAT FUEL TAXES TO FUND.

(a) GENERAL RULE.—Paragraph (5) of section 209(f) of the Highway Revenue Act of 1956 (23 U.S.C. 120 note) is amended to read as follows:

"(5) TRANSFERS FROM THE TRUST FUND FOR MOTORBOAT FUEL TAXES.—

"(A) TRANSFER TO NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—

"(i) IN GENERAL.—The Secretary of the Treasury shall pay from time to time from the trust fund into the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1983.

"(ii) LIMITATIONS.—

"(I) LIMIT ON TRANSFERS DURING ANY FISCAL YEAR.—The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $20,000,000.

"(II) LIMIT ON AMOUNT IN FUND.—No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the National Recreational Boating Safety and Facilities Improvement Fund to a sum in excess of $20,000,000.

"(B) EXCESS FUNDS TRANSFERRED TO LAND AND WATER CONSERVATION FUND.—Any amount received in the trust fund which is attributable to motorboat fuel taxes and which is not transferred from the trust fund under subparagraph (A) shall be transferred by the Secretary from the trust fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

"(C) MOTORBOAT FUEL TAXES.—For purposes of this paragraph, the term 'motorboat fuel taxes' means the taxes under section 4041(b) of the Internal Revenue Code of 1954 with respect to special motor fuels used as fuel in motorboats and under section 4081 of such Code with respect to gasoline used as fuel in motorboats."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxes received on or after October 1, 1980.

SEC. 204. STUDY BY SECRETARY OF THE TREASURY.

The Secretary of the Treasury (after consultation with the Secretary of the department in which the Coast Guard is operating) shall conduct a study to determine the portion of the taxes imposed by sections 4041(b) and 4081 of the Internal Revenue Code of 1954 which is attributable to fuel used in recreational motorboats. Not later than 2 years after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Congress on his findings under such study.

TITLE III—REFORESTATION

SEC. 301. AMORTIZATION OF REFORESTATION EXPENDITURES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 194. AMORTIZATION OF REFORESTATION EXPENDITURES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

"(b) LIMITATIONS.—

"(1) MAXIMUM DOLLAR AMOUNT.—The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 143)).

"(2) ALLOCATION OF DOLLAR LIMIT.—

"(A) CONTROLLED GROUP.—For purposes of applying the dollar limitation under paragraph (1)—

"(i) all component members of a controlled group shall be treated as one taxpayer, and

"(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term 'controlled group' has the meaning assigned to it by section 1563(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1).

"(B) PARTNERSHIPS.—In the case of a partnership, the dollar limitation contained in paragraph (1) shall apply with respect to the partnership and with respect to each partner.

"(3) SECTION NOT TO APPLY TO TRUSTS.—This section shall not apply to trusts.

"(4) ESTATES.—The benefit of the deduction for amortization provided by this section shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under this section to such beneficiary.

"(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

"(1) QUALIFIED TIMBER PROPERTY.—The term 'qualified timber property' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

"(2) AMORTIZABLE BASIS.—The term 'amortizable basis' means that portion of the basis of the qualified timber property attributable to reforestation expenditures.

"(3) REFORESTATION EXPENDITURES.—

"(A) IN GENERAL.—The term 'reforestation expenditures' means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

"(i) for the preparation of the site;

"(ii) of seeds or seedlings; and

"(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

"(B) COST-SHARING PROGRAMS.—Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

"(4) BASIS ALLOCATION.—If the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer has made an election under subsection (a) exceeds the amount of the limitation under subsection (b)(1), the taxpayer shall allocate that portion of such amortizable basis with respect to which a deduction is allowable under subsection (a) to each such qualified timber property in such manner as the Secretary may by regulations prescribe.

"(d) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.".

(b) ADJUSTED GROSS INCOME.—Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting after paragraph (14) the following:

"(15) REFORESTATION EXPENSES.—The deduction allowed by section 194.".

(c) CONFORMING AMENDMENTS.—

(1)(A) Paragraph (2) of section 1245(a) of such Code (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, 193" each place it appears and inserting in lieu thereof "190, 193, 194".

(B) Paragraphs (2) and (3)(D) of such

section 1245(a) are each amended by striking out "or 193" and inserting "193, or 194".

(C) Section 1245(b) of such Code (relating to exceptions and limitations) is amended by adding at the end thereof the following new paragraph:

"(8) Timber property.—In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.".

(2) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by inserting at the end thereof the following new item:

"Sec. 194. Amortization of reforestation expenditures.".

(d) Effective Date.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979.

Sec. 302. Investment Credit.

(a) General Rule.—Paragraph (1) of section 48(a) of the Internal Revenue Code of 1954 (relating to definition of section 38 property) is amended—

(1) by striking out the period at the end of subparagraph (E) and inserting ", or";

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of qualified timber property (within the meaning of section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as section 38 property) and taken into account under section 194 (after the application of section 194(b)(1)).''; and

(3) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to property described in subparagraph (F) and, for purposes of this subpart, the useful life of such property shall be treated as its normal growing period.".

(b) Effective Date.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979.

Sec. 303. Reforestation Trust Fund.

(a) There is established in the Treasury of the United States a trust fund, to be known as the Reforestation Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as are transferred to the Trust Fund under subsection (b)(1) and any interest earned on investment of amounts in the Trust Fund under subsection (c)(2).

(b)(1) Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after September 30, 1979, and before October 1, 1985, under subparts A and B of part 1 of schedule 2 of the Tariff Schedules of the United States (19 U.S.C. 1202) and under part 3 of such schedule.

(2) The Secretary shall not transfer more than $30,000,000 to the Trust Fund for any fiscal year.

(3) The amounts required to be transferred to the Trust Fund under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c)(1) It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) For each of the first 5 fiscal years beginning after September 30, 1980, there is authorized after that date to be appropriated to the Secretary of Agriculture, out of any amounts in the Trust Fund, an amount equal to the sum of—

(1) the amount by which—

(A) the sum estimated by the Secretary of Agriculture for the fiscal year under section 3(d)(2) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)) to be necessary for reforestation and other treatment of acreage, as set forth in the report transmitted by the Secretary to the Congress under that section for the fiscal year, exceeds

(B) the sum of the amounts appropriated for the fiscal year under the authorization contained in section 3(d)(3) of such Act and under any other provision of law to carry out the same purpose; and

(2) such sums as are determined by the Secretary of Agriculture to be properly allocable to administrative costs of the Federal Government incurred for the fiscal year in connection with the reforestation program carried out under that Act.

(e) The Secretary of the Treasury shall pay into the general fund of the Treasury any amounts, including interest earned on such amounts, remaining in the Trust Fund after September 30, 1985, which were not expended and remain in the Trust Fund.

And the Senate agree to the same.

Thomas L. Ashley,
John M. Murphy,
Mario Biaggi,
James L. Oberstar,
William J. Hughes,
Al Ullman,
James C. Corman,
Paul N. McCloskey,
Joel Pritchard,
Thomas B. Evans, Jr.,
John J. Duncan,
Managers on the Part of the House.

Warren G. Magnuson,
Wendell H. Ford,
Howard W. Cannon,
Bob Packwood,
Harrison Schmitt,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVMENT ACT OF 1980

Present Law

The Federal Boat Safety Act of 1971 provides for the creation of the State Boating Safety Grants Program. Under this grants-to-State program, 51 of 55 eligible jurisdictions have established or enlarged boating safety programs within criteria provided in the act. Through this unique model of Federal standard-setting and State enforcement, a real decline in boating fatalities was observed during the period of 1971 to 1978. Notwithstanding this demonstrated record of achievement and cost effectiveness in the expenditure of general revenue funds, the State Boating Safety Grants Program is scheduled to be phased out at the end of fiscal year 1980.

House Bill

Title I of the House bill amends the Federal Boat Safety Act of 1971. This Amendment would replace the State Boating Safety Grants Program with a new system of providing funds for Federal-State programs for recreational boating safety and facilities improvement.

Section 101(3) of the House bill establishes the mechanism by which States continue to assume a proportionate share of boating safety education, assistance, and enforcement with Federal assistance. The Secretary of Transportation is directed to establish guidelines and standards for a national program, considering factors such as overcrowding and congestion of waterways, trends in registration of numbered vessels, availability and distribution of boating facilities, and boating casualty and fatality statistics.

The Secretary is further directed to consult with the Secretary of the Interior in the development of guidelines and issuance of regulations to avoid duplication or conflicts in administering the provision of this act. State programs approved under the act must be consistent with approved State Coastal Zone Management Programs.

Section 101(4) of the House bill sets forth conditions of eligibility for Federal matching funds. It recognizes the existence of State marine fuels tax earmarking statutes as well as alternate sources of State matching funds. Also set forth are the minimum requirements for a State recreational boating safety and facilities improvement program for acceptance by the Secretary before allocation and distribution of Federal funds may be made. A State may be eligible for recreational boating and facilities improvement funds, notwithstanding that the Secretary administers the vessel numbering system in that State; however, consistent with existing law, recreational boating safety funds are adjusted to reflect that fact.

Recognizing that in many States boating safety and facilities improvement functions may involve more than one agency, the State must designate a lead agency for program responsibility, implementation, and compliance. Boating facilities improvement programs are defined to include projects involving land acquisition as well as capital improvement, including necessary ancillary safety-related facilities.

Allocation and distribution of funds on a matching basis (as between States and the Federal government, among eligible States, and by category of use) are subject to certain conditions and limitation. These generally effect a balance between large and small States, while providing an incentive for individual States to undertake additional efforts in boating safety and/or facilities development. States are prohibited from utilizing Federal funds derived from other sources as matching funds for a program approved under this act. Also prohibited is double-counting of State matching funds for other Federal programs. The Secretary is further authorized to draw upon appropriated funds for the costs of administering the act, consistent with the self-supporting nature of the program.

Under Title I of the bill, $10 million per year is authorized for grants for recreational boating safety programs, and $20 million per year is authorized for recreational boating facilities improvement programs on a 50 percent matching basis with the States. These amounts are to be available, as provided in appropriation acts, for making expenditures after September 30, 1980, and before April 1, 1984, as provided in Section 26 of the Federal Boat Safety Act of 1971 (as amended by Title I of this bill). Title I of the bill authorizes appropriations of $30 million a year for fiscal years 1981 through 1983 for Federal-State programs relating to recreational boating safety and facilities improvements.

Senate Amendment

The Senate amendment deleted the House provision that provided for development of recreational boating facilities. It provides for authorizations for boating safety programs for fiscal years 1982 and 1983.

Conference Substitute

The Conference substitute would establish separate programs for recreational boating safety and recreational boating facilities improvement. States would have the option of participating in either or both programs. The authorization levels for each of the fiscal years 1981, 1982, and 1983 would be $10 million for safety programs and $10 million for facilities improvement.

TITLE II—NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND

Present Law

Under present law, funds attributable to the 4 cents per gallon excise taxes on motor boat use of gasoline and motor fuels are transferred periodically from the Highway Trust Fund to the Land and Water Conservation Fund. (Sec. 209(f)(5) of the Highway Revenue Act of 1956 as amended.) Of the revenue generated and transferred through this procedure, only a small and unspecified percentage is used to develop recreational facilities which directly benefit boaters.

House Bill

Title II of the House bill establishes a new fund in the Treasury, the "National Recreational Boating Safety and Facilities Improvement Fund." This title also provides that this fund shall receive (from the Highway Trust Fund) up to $30 million per year of the amounts attributable to the existing excise taxes on motorboat use of gasoline and other motor fuels, for fiscal years 1981–83. Thus, those who benefit from the boat safety and facilities improvements rather than other taxpayers will finance the costs of such programs. There is also a maximum balance of $30 million that can be in the new boating fund. Amounts in excess of $30 million per year from these fuels taxes would continue to go into the Land and Water Conservation Fund. Also, the transfer of motorboat fuels tax revenues from the Land and Water Conservation Fund to the new fund (the National Recreational Boating Safety and Facilities Improvement Fund) will not diminish the overall revenues available to the Land and Water Conservation Fund. (Most of the revenues to this fund are derived from receipts under the Outer Continental Shelf Lands Act and are expended primarily for land and water area acquisition costs—including the National parks lands, wilderness area lands, and National recreation areas.

Title II of the House bill also requires the Secretary of the Treasury to conduct a study of estimated annual motorboat fuels tax revenues, with a report to the Congress within 2 years of enactment.

Senate Amendment

The Senate amendment provides that the aggregate amount transferred to the fund for boating safety programs shall not exceed $10 million per year and that the maximum sum in the fund shall not exceed $10 million. House provisions relating to facilities development were deleted.

Conference Substitute

The Conference substitute restores funding for facilities development, however the amount is limited to $10 million per year for facilities and $10 million per year for safety under title I for a total of $20 million per year. The principal reason for the reduction from the House-passed level was the recognition of the need to exercise budgetary restraint at a time when Congress is making every effort to reduce the Federal deficit. An additional basis for the reduction from the House version is revealed from statement and testimony received for the record. The key point was the gauge of the prospective benefits to be anticipated from the annual expenditures of $20 million for new recreational boating facilities versus $10 million.

It was determined that the typical, prefabricated concrete slab launching ramp, with a crushed rock base, costs approximately $15,000 to $20,000 per ramp. Including ancillary development a typical launching facility would cost in the range of $75,000 to $100,000 in 1979 figures. Dry-stack storage can be constructed at a cost of $1,000 per boat. Small marinas may be built at a cost of $1,200 to $1,500 per boat, with minimum support facilities, while more expensive marine facilities may run $2,500 to $3,500 per boat.

These figures thus reveal that an annual expenditure of $20 million in Federal funds, even when matched by the States, is not a significant sum when apportioned among all eligible States for additional recreational boating facilities. What is significant is the fact that for the first time a secure base of Federal funding will exist in order to permit individual States to begin to plan to meet their long-term facility needs and, in the case of States without earmarking statutes, to develop dedicated sources of boating facilities funds should they so desire. Because of the requirement in Title II for a study by the Secretary of the Treasury that will determine the portion of taxes which is attributable to fuel used in recreational motorboats, it is anticipated that the funding level for facilities development may be altered once the results of the study are presented to Congress.

TITLE III: TAX INCENTIVES FOR REFORESTATION AND REFORESTATION TRUST FUND

This title provides several Federal initiatives to promote reforestation on both private and public timberlands. Reforestation of private lands is encouraged through providing 7-year amortization and the 10-percent regular investment credit for a limited amount of qualifying reforestation expenditures each year. In addition, a trust fund is established to fund reforestation activities in order to eliminate a replanting backlog in the National Forest System.

A. Tax incentives for reforestation

Present Law

Under present law, direct costs incurred in connection with reforestation of timberlands are treated as capital expenditures. (Treas. Regs. § 1.611–3(a)). Reforestation costs for this purpose are those for site preparation (including girdling, herbicide applications, baiting of rodents, and bush removal), seed or seedlings, plus labor and tool expenses incident to planting or seeding. Depreciation on tractors, trucks and other equipment used in these activities must also be capitalized as a reforestation cost.

These capitalized reforestation costs may not be depreciated but are recovered through a depletion deduction when the timber is harvested fifteen or more years later.

If a private owner of timberland receives funds from the Federal Government or State government under certain reforestation cost sharing programs, these funds are not included in income. In addition, the private owner of timberlands does not receive any depletion, depreciation or other deduction for his reforestation costs paid with these cost-sharing funds, and the owner's basis in the property does not reflect the amount of these payments. These rules apply for grants made after September 30, 1979.

Where additional costs are incurred for clearing brush and unwanted trees after the planting or seeding of timberlands, these costs are currently deductible because they are in the nature of maintenance charges.

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

Under the Senate amendment a taxpayer may elect to amortize, over a 7-year period, up to $10,000 of qualifying reforestation expenditures incurred during a taxable year in connection with qualified timber property. Amortization deductions claimed under this provision would be allowed as "above the line" deductions, that is, deductions in computing adjusted gross income, so that this limited amortization provision is equally available to small timberland owners regardless of whether they itemize deductions for income tax purposes.

A taxpayer may elect 7-year (84-month) amortization on up to $10,000 of qualifying reforestation expenditures each year. The election is to be made annually on a property-by-property basis. However, the maximum amount of qualifying forestation or reforestation expenditures paid or incurred during a taxable year which may be amortized is $10,000 for all of the taxpayer's timber properties, and there is no carryover of excess expenditures to subsequent years. If a taxpayer incurs more than $10,000 in qualifying costs in connection with more than one qualified timber property during a taxable year and elects to amortize the costs attributable to these properties, the Secretary is delegated authority to prescribe regulations concerning the allocation of this amortizable basis among these timber properties.

A mandatory half-year convention is provided, under which it is required that the amortization period begins on the first day of the first month of the last half of the taxable year during which the reforestation costs were incurred. (For example, the amortization period begins on July 1 for a taxpayer who uses a calendar year for tax purposes, regardless of whether the reforestation expenditures were incurred in January or December of that year.) The maximum annual amortization deduction for qualifying expenditures incurred in any taxable year is $1,428.57 ($10,000 divided by 7) and total deductions for any one year under this provision will reach $10,000 only if a taxpayer incurs and elects to amortize the maximum $10,000 of expenditures each year over an 8-year period. (The full $10,000 deduction would be reached in the 8th year.)

In order to be eligible for this elective amortization treatment, qualifying reforestation expenditures must be incurred in connection with a qualifying timber property. A qualifying timber property is defined as property held for purposes of the commercial production of timber in order to exclude, for example, shelter belts (for which current deductions are allowed under Code section 175) and ornamental trees.

Qualifying reforestation expenditures are direct costs incurred to plant or seed for forestation or reforestation purposes, including costs for site preparation, seed or seedlings, and labor and tool costs (including depreciation on equipment used for this purpose). Reforestation expenditures for this purpose exclude costs for which the taxpayer has been reimbursed under a governmental cost-sharing program, unless the amounts reimbursed have been included in the taxpayer's gross income. In addition, the definition of qualifying reforestation expenditures includes only those costs which must be capitalized and become part of the amortizable basis of the property and excludes costs which are currently deductible.

Rules are also provided concerning the general application of this amortization election. For example, it is provided that a life tenant is entitled to the benefit of this amortization provision on qualifying costs incurred by him and any remainder interest in the property is to be ignored for this purpose. Amortization deductions claimed under this provision will be subject to recapture as ordinary income (to the extent of gain) under Code section 1245 where there is a disposition of the timber property to which the amortizable basis (and the amortization deductions) are attributable within ten taxable years from the year in which the amortizable basis was created.

The annual limitation on the dollar amount of expenditures which can be amortized by a taxpayer is intended to insure that these provisions allow only a limited dollar benefit to any enterprise regardless of size. Consequently, where qualifying costs are incurred by a corporation which is a component member of a controlled group of corporations, the $10,000 maximum limitation on costs eligible for amortization applies to the entire controlled group of corporations, and the Secretary is authorized to prescribe regulations concerning allocation of the limitation among members of the controlled group. In determining whether a group of corporations is a controlled group of corporations for purposes of this provision, the standard of control or ownership by the common parent corporation is "at least 50 percent." (This is the same standard as is provided under Code section 179, relating to additional first-year depreciation.)

In applying the $10,000 limitation to partnerships, the dollar limitation is first applied at the partnership level, and then is applied to each partner. Thus, if an individual is a member of a partnership which owns qualified timber property and also owns qualified timber property directly, the maximum amount of amortizable basis acquired during any taxable year on which he can obtain amortization is $10,000.[1]

The Senate amendment would also allow the 10-percent regular investment tax credit on reforestation costs eligible for the amortization election, regardless of whether amortization treatment is elected for these costs. However, the same annual limitation applies so that the amount of qualifying costs eligible for the credit is limited to $10,000 each taxable year, and there is no carryover excess qualifying costs to subsequent years.

The credit also would not be allowed on qualifying reforestation costs attributable to the capitalization of depreciation on property which already qualifies for the regular investment credit.[2] For example, no investment credit would be allowed for reforestation costs attributable to depreciation on equipment which itself qualifies for the investment credit.

In applying these rules, the reduction in basis for depreciation sustained with respect to other property used in the reforestation process shall be applied prior to the application of the $10,000 limitation on eligible costs. Thus, for example, if in a taxable year a taxpayer pays or incurs $12,000 of qualifying reforestation costs with respect to properties for which an election is in effect and $2,000 of such costs are attributable to depreciation of the taxpayer's equipment, such $12,000 would first be reduced by the $2,000 of depreciation, and the $10,000 limitation would be applied following such reduction.

The amortization election and investment credit for certain reforestation expenditures would apply to qualifying reforestation expenditures incurred after December 31, 1979.

Conference Substitute

The conference substitute is the same as the Senate amendment with minor changes.

B. Reforestation trust fund

Present Law

Under present law, revenues from import duties on lumber and plywood are deposited in the general funds of the U.S. Treasury and are not dedicated for any particular purpose.

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

The Senate amendment would establish a reforestation trust fund, the proceeds of which would be used to supplement congressional appropriations for reforestation and timber stock improvement on publicly owned national forests, in order to eliminate and prevent a backlog in reforestation of the National Forest System. Funding for this trust fund would be derived from import duties on plywood and lumber. The Secretary of the Treasury is required to transfer receipts from these tariffs to the reforestation trust fund in maximum amounts of $30 million for each fiscal year during the six-year period from October 1, 1979, through September 30, 1985. Transfers are required to the trust fund at least quarterly and are based upon estimates made by the Secretary of the Treasury, with adjustments in subsequent transfers to reflect the amount by which earlier estimated transfers were over or under the amounts which were required.

For each of the five fiscal years from October 1, 1980, through September 30, 1985, appropriations are authorized from the trust fund to the Secretary of Agriculture for purposes of paying estimated necessary direct costs and properly allocable administrative costs for reforestation and related programs (under section 3(d)(2)) of the Forest Rangeland Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)), but only to the extent these estimated costs exceed amounts appropriated out of the general fund for these purposes. After consulting with the Secretary of Agriculture, the Secretary of the Treasury must submit annual reports to the Congress setting forth the financial condition and operating results of the reforestation trust fund for the preceding fiscal year and the expected condition and results of the trust fund for the next year.

The Secretary of the Treasury would be authorized to invest trust fund proceeds, in excess of amounts needed for current withdrawals, in interest-bearing obligations of the United States or guaranteed by the United States. At the termination of the trust fund on September 30, 1985, unexpended amounts, including interest earned on invested proceeds, would be returned to the general fund of the Treasury. The reforestation trust fund provisions require transfers to the trust fund for the period October 1, 1979, through September 30, 1985, and authorize appropriations from the trust fund for the period October 1, 1980 through September 30, 1985.

Conference Substitute

The conference substitute is the same as the Senate amendment, with the addition of clarifying and technical amendments.

The conference committee clarified that the $10,000 limit on the amortizable basis applies to a joint return filed by a husband and wife. In cases where a married couple files a separate return, each would be subject to a $5,000 limit on amortizable expenditures.

The term qualified timber property was modified to indicate clearly that eligible property would be a wood lot or other site which will contain trees in significant commercial quantities. For the purposes of this Act, a wood lot may be a one-acre lot planted with trees in the manner normally used in forestation or reforestation.

For determining eligibility for the investment credit, the useful life of a tree will be its normal growing period. The committee waived the requirement that property eligible for the investment credit must be property for which depreciation (or amortization in lieu of depreciation) is allowable.

The conference committee clarified that the provisions apply to reforestation expenditures incurred in the 50 States and the District of Columbia.

C. Revenue effect

House Bill

The House bill contained no provisions on reforestation.

Senate Amendment

It is estimated that the amortization and investment credit provisions for certain reforestation expenses will reduce budget receipts by $6 million in fiscal year 1981, $5 million in fiscal year 1982, $7 million in fiscal year 1983, $8 million in fiscal year 1984, and $10 million in fiscal year 1985.

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[1] The partnership rule is also the same as the rule applicable under Code section 179. As under section 179, this provision is inapplicable to trusts.

[2] This reflects the existing rule relating to qualified investment in new self-constructed property. Under this rule, the taxpayer is required to reduce the basis of self-constructed property by "any depreciation sustained with respect to any other property used in the construction, reconstruction, or erection" for purposes of the investment credit (Treas. Reg. § 1.46-3(c)(1)).

Conference Substitute

The revenue effect of the conference substitute would be identical to the revenue effect of the Senate amendment.

THOMAS L. ASHLEY,
JOHN M. MURPHY,
MARIO BIAGGI,
JAMES L. OBERSTAR,
WILLIAM J. HUGHES,
AL ULLMAN,
JAMES C. CORMAN,
PAUL N. MCCLOSKEY,
JOEL PRITCHARD,
THOMAS B. EVANS, Jr.,
JOHN J. DUNCAN,
Managers on the Part of the House.
WARREN G. MAGNUSON,
WENDELL H. FORD,
HOWARD W. CANNON,
BOB PACKWOOD,
HARRISON SCHMITT,
Managers on the Part of the Senate.

PERMISSION FOR WAIVER OF 3-DAY RULE FOR HOUSE CONSIDERATION OF CONFERENCE REPORT ON H.R. 4310—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1980

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent that the provisions of rule XXVIII(2)(a) shall be waived for purposes of House consideration of the report of the committee of conference on H.R. 4310, the Recreational Boating Safety and Facilities Improvement Act of 1980.

Mr. Speaker, the conference report and joint explanatory statement of the committee of conference on H.R. 4310 was filed today and will be printed in today's CONGRESSIONAL RECORD. The Senate had already agreed to the conference report. The matters at issue are noncontroversial. The measure continues to have strong bipartisan support.

Accordingly, it would be advantageous for the conferees to have the flexibility of bringing the conference report to the floor on Thursday of this week—in order to facilitate floor scheduling of other major substantive legislation during the closing weeks of this session.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

HARLEY O. STAGGERS FEDERAL BUILDING

Mr. LEVITAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6511) to designate the building known as the Federal Building in Morgantown, W. Va., as the "Harley O. Staggers Federal Building," with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 2, after line 2, insert:

SEC. 2. The authorization contained in section 1 of this Act shall become effective on January 15, 1981.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

A motion to reconsider was laid on the table.

DISPENSING WITH THE CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday, September 17, 1980, be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. LEVITAS. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I reserve the right to object for the purpose of inquiring about the status of the Regulation Reform Act. The gentleman from Georgia interposed objection last week when this same unanimous-consent request was made and stated at the time that his purpose was to see that the Regulation Reform Act, the centerpiece of the administration's regulatory reform program, finally get out of the Committee on the Judiciary and come to the floor of this House for a vote and let the House do its will.

Mr. Speaker, I would like to inquire of the acting majority leader whether he can inform the Members of this House, will there be completion of action on the Regulation Reform Act and what is the anticipated disposition.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield to me?

Mr. ROSTENKOWSKI. Mr. Speaker, I yield to the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, I am able to tell the gentleman from Georgia that the Regulatory Reform Act is presently scheduled for markup tomorrow morning in the full Judiciary Committee. I want to add at this time that I am, after this colloquy, going to ask unanimous consent that the Committee on the Judiciary can meet tomorrow. The work we would be doing tomorrow is, hopefully, to complete markup on the regulatory reform bill, the major bill. While I am not able to guarantee that we can complete it tomorrow morning, I can state that when we last adjourned we were, in my opinion, within an hour and a half or 2 hours of completing our work and, hopefully, we can do so tomorrow.

Mr. LEVITAS. Mr. Speaker, further reserving the right to object, I would like to inquire—first of all I would like to congratulate the gentleman from California for this assurance that he is now giving the Members that this important legislation will be completed by the Committee on the Judiciary as best the gentleman can determine. I would, however, like to make one more inquiry: If the Committee on the Judiciary should report this bill out pursuant to whatever compromises might be made within the committee in order to salve the sensibilities of the White House, to get it out of committee, can we have some assurance that the committee will request an open rule or at least a rule which would make in order an amendment which would permit a legislative veto that would not require concurrence of the President?

Mr. DANIELSON. Mr. Speaker, if the gentleman will yield further, I would like to give the gentleman from Georgia assurance, and respond directly and affirmatively to the gentleman's request, but I have found it is better for me to fight only one battle at a time. I have my hands quite full with the one in which I am presently engaged. I know we have an excellent Rules Committee, with fine membership from both sides of the aisle and I should think if we were to sit down together before the Rules Committee we could accommodate the needs of everyone concerned.

I am not on the Rules Committee, I do not even aspire to those heights and, therefore, I would rather not respond further.

Mr. LEVITAS. Mr. Speaker, further reserving the right to object, I would like to inquire whether the gentleman from California, the chairman of the subcommittee—and I notice the presence on the floor of the distinguished gentleman from New Jersey (Mr. RODINO), the chairman of the Judiciary Committee—can we be assured that the rule requested by the chairman of the committee and the chairman of the subcommittee will permit either an open rule or the offering of the amendment which the gentleman from Georgia has upon occasions offered before on this important legislation?

Mr. DANIELSON. I am aware of the gentleman's deep interest in the legislative veto issue, his very sincere interest and the gentleman from Georgia and the gentleman from California both realize that this is an issue that must be resolved. I do not fully agree with the gentleman on everything but I think I have worked out one formula in which the gentleman only disagrees with two words—very important words but only two words.

I would just like to state that I have talked to the White House as late as 8:55 this morning. They do not at all object to having us continue and complete markup. My chairman has agreed to it. Hopefully, the House will agree to let us sit. In that event we should be able to get done tomorrow morning.

Mr. LEVITAS. Further reserving the right to object, I think the gentleman from Georgia has asked a very simple question which is capable of being responded to: Will the gentleman from California, the chairman of the subcommittee and the gentleman from New Jersey, the chairman of the full committee, request an open rule or a rule which would permit the gentleman from Georgia to offer a legislative veto amendment?

☐ 1330

Mr. DANIELSON. If it would comfort the gentleman, I will request it, but I will not guarantee that my tone of voice will be persuasive at the time. I will request it; I will utter those words.

Mr. LEVITAS. Further reserving the right to object, if the chairman of the

Judiciary Committee would care to respond to that question——

Mr. RODINO. Mr. Speaker, I can only tell the gentleman from Georgia that I defer to the gentleman from California, the chairman of the subcommittee, who has stated that he will make that request.

Mr. LEVITAS. Further reserving the right to object, I thank the gentleman from California and the gentleman from New Jersey; and respecting as I do not only the integrity but the good faith of the gentleman from California, and on that assumption and reliance, I withdraw my reservation of objection.

Mr. DANIELSON. I thank the gentleman.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. BROYHILL. Mr. Speaker, further reserving the right to object—and I shall not object—further committee action on regulatory reform is what we have been working for. A number of people have signed my discharge petition, discharge petition No. 12, which has the purpose of discharging the Judiciary Committee from further consideration of this legislation. The purpose of that discharge petition was to urge the committee to resume its markup.

I do appreciate the gentleman from California saying that the committee will be marking up that bill tomorrow. I hope that work is completed tomorrow, because this House, I think, would overwhelmingly approve that legislation. It has been a disappointment to me that the work of the Judiciary Committee was suspended for these past several months. It is too bad that committee action this late in the legislative year could have the effect of killing this needed reform this year.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be permitted to sit while the House is reading for amendment under the 5-minute rule on Wednesday, September 17, 1980. I have cleared this with the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, will my colleague tell us what the legislation is?

Mr. DANIELSON. Yes. There are four bills scheduled. The one that counts is H.R. 3263, the Regulation Reform Act of 1980. There are three very minor bills which may or may not be raised.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. ADDABBO).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 8105, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, September 15, the Clerk had read through line 22 on page 6. Are there any amendments to title II?

If there are no amendments, the Clerk will read.

The Clerk read as follows:

TITLE III

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $3,965,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; $12,222,579,000, of which not less than $641,500,000 shall be available only for the maintenance of real property facilities.

AMENDMENTS OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. WHITE:

TITLE I

On page 2, line 10, in Military Personnel, Army, strike "$10,857,568,000," and insert in lieu thereof "$10,881,768,000."

On page 2, line 18, in Military Personnel, Navy, strike "$7,631,594,000" and insert in lieu thereof "$7,644,094,000."

On page 2, line 18, in Military Personnel, Marine Corps, strike "$2,281,051,000" and insert in lieu thereof "$2,284,951,000."

On page 3, line 10, in Military Personnel, Air Force, strike "$8,692,509,000," and insert in lieu thereof "$8,698,509,000."

TITLE III

On page 7, line 10, in Operations and Maintenance, Army, strike "$12,222,579,000," and insert in lieu thereof "$12,249,579,000."

On page 8, line 25, in Operations and Maintenance, Marine Corps, strike "$990,900,000," and insert in lieu thereof "$994,200,000."

On page 9, line 15, in Operations and Maintenance, Air Force, strike "$13,538,246,000," and insert in lieu thereof "$13,555,046,000."

On page 10, line 5, in Operations and Maintenance, Defense Agencies, strike "$4,008,595,000," and insert in lieu thereof "$4,014,895,000."

Mr. WHITE (during the reading). Mr. Chairman, I ask unanimous consent that the further reading of the amendments be dispensed with, that they be printed in the RECORD, and that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The gentleman from Texas (Mr. WHITE) will be recognized for 5 minutes.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would ask unanimous consent that the debate on these amendments and all amendments thereto be limited to 1 hour.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. WHITE. Mr. Chairman, I want to compliment the Appropriations Committee on the hard work and excellent legislation they bring to the floor. This bill contains funding for many important programs and will be of substantial assistance to our military forces.

Mr. Chairman, it does not mean, though, that I agree with everything that was done in this bill.

I am concerned about the Appropriations Committee action preventing the services from commissioning physician assistants and I feel that the Armed Services Committee may have to consider legislation on the subject next year.

More importantly, however, I am very worried about the proposed reduction of $100 million in Department of Defense recruiting funds. I understand that this proposal was agreed to prior to the conference action on the Defense authorization bill which imposed strict quality standards on enlistment in the military. The statutory controls on quality substantially alter the situation from the point at which the subcommittee originally approved reducing these funds.

I do not fault the Appropriations Committee for this proposal because I, too, am uncomfortable with spending such large amounts to recruit personnel. However, attracting quality personnel in an All-Volunteer Force environment is expensive.

The services, and in particular the Army, have been recruiting too many personnel who score poorly on the enlistment tests. The action of the Congress in imposing limitations on the number of nonhigh-school graduates the Army can recruit in 1981, and for all the services, on the number of personnel scoring between the 10th and 30th percentile on enlistment tests is aimed at forcing the services to orient their recruiting toward the higher quality personnel.

The Appropriations Committee report indicates that the reduction is intended to keep the services' recruiting budgets at the fiscal year 1979 level, plus a factor for inflation.

Unfortunately, Mr. Chairman, in fiscal year 1979, all four services missed their recruiting goals, with the Army taking the largest shortfall experienced in the All-Volunteer Force—over 16,000.

The Appropriations Committee position is that the new pay incentives approved, plus the recession economy, are enough to improve recruiting.

Mr. Chairman, I disagree with this judgment.

All of the estimates presented by the services today in a hearing before the Military Personnel Subcommittee indicate that this reduction in recruiting funds, plus the statutory limitations on quality now in effect, will seriously hurt recruiting in fiscal year 1981, and have an even more serious impact in fiscal year 1982. The Army estimate, alone, is that with the $51 million reduction—which is their allocation of the overall cut—they will have a shortfall of at least 18,000 in fiscal year 1981.

Mr. Chairman, the Congress has taken an important step in establishing—against the wishes of the Department of Defense—strict quality standards on enlistments. That was done 3 weeks ago in the authorization bill. It is simply inconsistent for the Congress now to turn around and not provide the services with the funding required to meet the statutory standards that have been imposed.

Mr. Chairman, I will offer an amendment tomorrow to restore this reduction. I urge the Members to support it.

☐ 1340

The CHAIRMAN. The time of the gentleman from Texas (Mr. White) has expired.

(On request of Mr. Kazen, and by unanimous consent, Mr. White was allowed to proceed for 3 additional minutes.)

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Chairman, I thank the gentleman for yielding, and I rise to associate myself with his remarks. I agree with the gentleman 100 percent on every single point that he has made.

Since we in this Congress have demanded that the service go out and recruit the best possible people they can, we cannot afford at this time to say, "You cannot do what the Congress has mandated."

I would urge this committee to restore the $100 million. If we are going to have the heart of the security system of this country and the defense of this country, which is its personnel, strengthened, we must adopt this amendment. If we are going to have the heart put back in the body of our defense we must have this $100 million put back in this bill. Our country's security demands it.

Mr. WHITE. Mr. Chairman, I thank the gentleman from Texas. I know he is very intimately acquainted with this issue because he has heard the hearings that were held before our committee.

Mr. JOHNSON of Colorado. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentleman would address the problem of what will happen in the event we do not vote this $100 million for the volunteer Army vis-a-vis the reinstatement of the draft which may come up next year.

First, I am opposed to the draft, and it seems to me that those who are opposed to the draft should be supportive of the gentleman's amendment.

Mr. WHITE. Absolutely.

Mr. JOHNSON of Colorado. We should be supportive of the amendment so that we can have a volunteer force that will avoid the necessity of the draft. I will ask the gentleman, Is that a reasonable position for us to take?

Mr. WHITE. Mr. Chairman, that is absolutely logical. If we want to have a viable volunteer service, we must restore this money so they can go out and recruit the men and women we need in the service to meet our quotas.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentlewoman from Maryland.

Mrs. HOLT. Mr. Chairman, I rise in support of the amendment offered by my chairman, Mr. White, to restore the $100 million needed by the Department of Defense for recruiting, advertising, and examining resources, which was deleted by the Appropriations Committee.

First, I would like to join my colleague in congratulating the Appropriations Committee on a job well done—it is generally an excellent bill.

However, as Mr. White has indicated, we must restore the $100 million if we expect the Department of Defense to be able to respond to the statutory requirements levied by the fiscal year 1981 Authorization Act. Mr. Chairman, during the authorization process, we in the Armed Services Committee, under the superb leadership of our chairman, Mr. Price, labored long and hard to develop a defense authorization bill, which was reflective of the needs of our armed services. Particular attention was given to the issues of how to improve the quality of our forces. Accordingly, as a result of our conference with the Senate Armed Services Committee, several restrictive provisions were included in the act, and they were directed to improve the quality of our recruits.

Mr. White has covered the recruiting restrictions in sufficient detail. I would like to add that clearly without the $100 million—which represents about a 14-percent reduction in active forces recruiting funds—it will be difficult, if not impossible, for the department to satisfy the recruiting requirements outlined in the 1981 Authorization Act. This will most likely result in even more serious quality problems. It has been estimated that in the Army alone, the reduction will result in a shortfall in fiscal year 1981 of about 18,000 recruits with 14,000 of these shortages being high school graduates.

Mr. Chairman, I would suggest that we have an obligation to provide the resources necessary for the Department of Defense to carry out the congressionally mandated recruiting requirements.

I strongly urge the Members to support this amendment.

The CHAIRMAN. The time of the gentleman from Texas (Mr. White) has again expired.

(On request of Mrs. Holt, and by unanimous consent, Mr. White was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, I thank the gentlewoman from Maryland (Mrs. Holt) for her contribution.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have had the privilege of serving on the Subcommittee on Military Personnel, and we have dealt with the issue of personnel in the military services. We certainly have our problems there, and I totally agree with the gentleman's amendment and support the amendment. I am realistic to know at this time Congress is not going to pass a draft, even though we do need the draft.

So to have a chance of making the All-Volunteer Service work, we certainly want to have enough funds for recruiting.

As I understand it, the Chief of Staff of the Army does support this amendment and has written a letter setting forth that support.

Mr. WHITE. Yes, he has, and I will include that letter in the record.

Mr. MONTGOMERY. Mr. Chairman, I want to make the point that this is one of the few times that we ever hear from the Defense Department. The Department of the Army needs this money to upgrade its recruiting program.

Mr. Chairman, again I thank the gentleman for yielding.

Mr. WHITE. Mr. Chairman, I will at this point include the letter to which the gentleman from Mississippi (Mr. Montgomery) referred. The letter from the Chief of Staff of the Army is as follows:

U.S. Army,
The Chief of Staff,
September 16, 1980.

Hon. Richard C. White,
Chairman, Subcommittee on Military Personnel, House of Representatives, Washington, D.C.

Dear Mr. White: Maintenance of the Active Army's personnel strength is currently a critical issue because it impacts directly on readiness of the approved force structure. Even as designed and approved, that structure contains an element of risk. Therefore, any proposal which might further extend the risk is extremely dangerous.

Our experience in attempting to man the volunteer force suggests that success is dictated by three principal measures: standards, recruiting resources, and benefit levels. When we prescribe entry standards we automatically fix the size of the potential market open to us. The guidance we are receiving from the Congress regarding AFQT scores and high school graduates has the effect of shrinking the market of eligible young men and women. It thus makes recruiting in FY 81 more difficult than it was in FY 80.

Second, we have the consideration due our competitive position in the declining market. While the recent pay raise and passage of Warner-Nunn have improved our retention prospects, the improvement apparent in the entry wage is small vis-a-vis entry level wages among other employers competing for high school graduates. The potential recruit needs to be an astute judge of the total benefits package to see any advantage for entry into service versus the many alternative options open to him. DoD-wide, the challenge to us is to attract one of every six qualified high school graduates throughout the nation in this coming year. Reflect on the high school you are familiar with, and ask if you think we have the requisite attractability to draw in those youngsters with whom you are familiar.

I think we do have the attractability—provided we are able to maintain a recruiting effort adequate to the task of carrying our case to the young men and women of this country. The dimensions of that program, in my view, should be comparable to our successful recruiting years. The reduction which is being considered reduces our effort to one comparable to a year in which we failed to meet our recruiting requirements.

Failure brings with it risk—a risk I do not believe we can accept.

The issue of how we maintain strength is a National, not an Army issue. The Congressional mandate to maintain that strength with volunteers demands the requisite resources to do the job. The proposed reduction will in all likelihood prevent us from carrying out the Congressional mandate.

I hope my views in response to your request on this critical issue will be helpful to you and other members of the Congress in deciding this issue which is elemental to our national defense.

Sincerely,

E. C. MEYER,
General, U.S. Army, Chief of Staff.

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I would like to express my support for the amendment and also join with my colleague, the gentleman from Colorado (Mr. JOHNSON), and say that I was also one of those Members who voted against draft registration. But to have any intellectual consistency, I have to support all reasonable efforts to recruit as many people as we possibly can in order to insure the success of the All Voluntary Army.

Along with my colleague, the gentleman from Missouri (Mr. SKELTON), I had an opportunity to visit an aircraft carrier last year, and I saw first hand what the recruitment problems and enlistment problems were in our services.

Mr. Chairman, I think the gentleman from Texas (Mr. WHITE) has offered an excellent amendment to this bill.

The CHAIRMAN pro tempore (Mr. LLOYD). The time of the gentleman from Texas (Mr. WHITE) has expired.

(On request of Mr. HILLIS, and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. HILLIS. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Indiana.

Mr. HILLIS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the gentleman's amendment, and I wish to associate myself with his remarks.

The gentleman from Texas (Mr. WHITE) has made all of the points as to why this amendment is needed. I think that if we sat in on the testimony and heard General Meyer, the Chief of Staff, talk about a hallow Army and all of the problems that are associated with trying to equip the Army and maintain adequate personnel in today's Army, we would know that it is exactly the wrong thing to do to cut the recruiting budget.

Higher standards have been placed on the Army, both in the percentage and numbers of high school graduates and ATC scores, and if the Army is to meet these goals, it is going to need every recruiting dollar it can get its hands on. To cut the budget at this point in time and expect the quality and numbers of personnel that we have to have is, I think, a sure ticket to voting not only on draft registration but an active draft within the next year or two in this body.

Mr. Chairman, I think it is absolutely essential that we support this amendment.

Mr. WHITE. Mr. Chairman, I thank the gentleman from Indiana (Mr. HILLIS), who has been a valuable contributor to our committee.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I just want to commend the gentleman from Texas (Mr. WHITE) for his amendment and his statement, and I will seek my own time in support of the amendment.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentleman for yielding, and I rise in strong support of the gentleman's amendment.

This Congress, even without as much help from the administration as we should have had, has at least, been able to increase the pay and incentives for the armed services, especially for retention of qualified people. It does not make much sense to try to do that on the one hand if we cannot get the quality people in the first place and make them aware of the changes that have been made and are being made in benefits.

Mr. DICKS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment. Since the Defense Subcommittee marked up this bill, a number of factors have changed that seriously bring into question the wisdom of reducing the recruiting budget by $100 million.

We have become aware of massive reestimates of test scores for Army recruits that show over 50 percent of those recruited last year were in mental category IV, the lowest acceptable level.

As a result of selective service registration, 350,000 young men have checked the box indicating they would like to receive information on opportunities in the armed services. The original budget submission did not include funds to distribute such information to these people. The reduction proposed in this bill will make it even more difficult to take advantage of these prospects.

☐ 1350

Most important, the authorization conference had not completed its work when we marked up this bill. Thus, the subcommittee was unable to consider the implications of requirements for the Army to produce 65 percent of accessions as high school graduates.

And I might add that this will add a tremendous burden to the job that must be done by our Army recruiters.

In addition, I believe we failed to take into proper consideration the burden we would be placing on recruiters through this cut. The reduction returns the services to 1979 funding levels, a year where we saw widespread recruiting abuses caused by pressures to produce or else. I do not think any of the Members want to force a return to that situation.

While additional recruiting funds above the committee recommendation are needed this year, in the longer run we should be examining actions that will produce greater results at little or no cost. For example, 41 percent of our high schools do not welcome recruiters to present the case for military service. Some State legislatures, including Washington State, have passed measures assuring access. More needs to be done in this area.

In addition, it is intolerable that the Department of Labor refuses to cooperate in presenting military service as an alternative in employment security programs.

Ultimately, if we are to insure the quality and quantity of recruits we need, we will have to improve the product. The military cannot be a financial sacrifice if we are to gain the services of our most talented young people. Quality of life improvements will yield additional benefits by improving retention and lowering the requirements for new recruits.

Until these actions can bear fruit, however, adequate recruiting resources will be essential, and that is what this amendment provides.

I just think it would be tragic, in the year in which we have passed the Nunn-Warner amendment and have approved an 11.7 percent pay increase for the military, to turn around and to slash the recruiting budget when we need that effort to produce the number of new people that we need into the Armed Forces. So I enthusiastically support this amendment, and I urge my colleagues on both sides of the aisle to support this effort to make sure that we have enough people in the Army, the Navy, the Marine Corps, and the Air Force.

Mr. DOWNEY. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from New York.

Mr. DOWNEY. I want to associate myself with the remarks of the gentleman from Washington, who has done yeoman work on the committee, and also the author of the amendment (Mr. WHITE).

There is no question that if we need people that we have to recruit them. It is clear that the recruitment effort to date has not met the needs of the Army, the Navy and the Air Force, and I think that as long as we are requiring greater specifications—and that is what the Army is doing—for quality, then we have to provide them with the money to go out and get these people.

Mr. DICKS. Especially when you say that 65 percent of the Army recruits have to be high school graduates. All of a sudden you limit the pool of people from which you can recruit. Unless we give the Army additional resources to reach those people, we are going to wind up having a 15,000, 16,000, 20,000 shortfall again this year.

Mr. DOWNEY. I also think it is important for my friends and colleagues who have not supported the draft registration or the draft to also understand that we cannot keep having it both ways. If we want to see the Volunteer Force work, we are going to, on occasion, have to provide the money to make it work. And this is what this amendment is aimed at.

Mr. DICKS. I thank my colleague and good friend for his remarks.

Mr. WEAVER. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from Oregon.

Mr. WEAVER. Mr. Chairman, I want to associate myself with the remarks of my distinguished friend, the gentleman from Washington, and also the remarks of the gentleman from New York (Mr. DOWNEY), and I wish to commend the sponsor of the amendment, the gentleman from Texas (Mr. WHITE) and assure him that I will be voting for this amendment.

Mr. DICKS. I thank the gentleman for his comments.

Mr. SKELTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I rise in strong support of this amendment offered by the gentleman from Texas (Mr. WHITE). I support the restoration of funds for the Armed Forces recruiting activities. The $100 million cut that is recommended by the Appropriations Committee will have a severe and adverse impact on the ability of our Armed Forces, particularly the Army, to recruit both the quantity and the quality of personnel that they need. It is estimated that these cuts may well cause the Army to miss its fiscal year 1981 recruiting goal by some 18,000 young men and women, of which some 14,000 will be high school graduates. Thus, the cut recommended by the committee is inconsistent with the requirement imposed by this Congress in the recently enacted Department of Defense authorization bill. In that bill we provide for the fiscal year 1981 that those who are enlisted or inducted into the Army who are not high school graduates may not exceed 35 percent of all male individuals with no prior service who are enlisted or inducted during that year. These people train more quickly, perform productively; they are less likely to be lost through attrition and before the end of the terms of enlistment. They are those who are most likely to have a successful military career through the years. They are worth the cost of recruiting them.

Mr. Chairman, I also would like to point out that the increased military compensation, which is essential to retain the trained and experienced soldiers, is important. But that in and of itself, the 11.7-percent pay raise, will not attract those high school graduates that we need. The 11.7-percent pay raise only moves the entry level pay from 84 percent of the minimum wage to 86 percent. Certainly this is not enough to attract those that we need. It is going to take more.

It is going to take personal contact by recruiters. It is going to take advertising. It is going to take a positive and continuing military presence in the communities across our country. This must be maintained and it must be increased to stimulate and to keep the interest in the Army, the Navy, the Marine Corps, and the Air Force among our high school graduates.

Thus, Mr. Chairman, I urge the adoption of this amendment which will restore this $100 million in recruiting funds for our armed services.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment of the gentleman from Texas (Mr. WHITE) to add back the funds requested for recruiting in fiscal year 1981 that were cut during the committee consideration of the Defense appropriations bill.

We know that a number of factors impact on the ability to meet recruiting goals: For example, entry level compensation, recruiting resources, and civilian unemployment among the relevant age group. One of the most significant factors is the level of recruiting resources. This is a particularly important factor in terms of recruitment of a specific category; namely, the high school degree graduate and individuals in the upper mental categories.

Although it is true that significant military compensation initiatives have been adopted this year, these initiatives have focused primarily on attempts to improve retention among the members of our career force. For example, in the so-called fair benefits package, only about 10 percent of the increases provided will flow to members in the lowest three pay grades; only 2 percent of the increase will flow to the entry level. On the other hand, 30 percent of the personnel are in the lowest three pay grades; about 10 percent are in the entry level pay grade. The disproportionate distribution of these increases highlights the intent to focus on retention.

Increased retention will result in less demand for recruits, but even under optimistic estimates of retention, substantive recruiting problems will remain in the near future.

The increases that were provided to the entry level pay grades through the fair benefits package and through the 11.7 percent October pay increase will be barely sufficient to keep the compensation at the same relative level it had in fiscal year 1980. This is the compensation that potential enlistees observe when deciding whether or not to enter the military.

It is the new quality constraints that have been imposed on the services through the provisions in the Defense authorization bill are going to make the recruiting task much more difficult in fiscal year 1981. These provisions require at least 65 percent male high school degree graduates in fiscal year 1981 in the Army; in fiscal year 1980, there were only 48 percent. In addition, the services may enlist only 25 percent of new accessions who score between the 10th and 30th percentile on the entrance test; this compared to 30 percent today. I believe that the improved quality that will invariably result from these constraints is very desirable. But we need to provide the resources to achieve these goals. They cannot be achieved at no cost. The result of not providing the recruiting resources requested will be a failure to meet the constraints and a consequent shortfall in end strength in fiscal year 1981.

Another factor affecting the number of individuals who volunteer for military service is the unemployment rate. Although teenage unemployment is likely to increase in fiscal year 1981, I do not believe that this will have as substantial an impact on high mental category, high school degree graduates as it will have on those individuals in the lower mental categories and on non-high-school graduates. To the extent that recruitment of high-school-degree graduates is not facilitated by rising unemployment rates, more recruiting resources must be focused on this category to meet the new higher quality constraints imposed.

In summary, Mr. Chairman, recent compensation increases will not be overly helpful in attaining these quality goals, and it is very questionable that unemployment will aid very much either. The manpower problems we face are extremely difficult to solve. We have taken great steps in addressing some aspects of these problems—particularly those dealing with retention. The Appropriations Committee is to be commended for funding many of the initiatives authorized for next year. But not all the problems have been addressed or addressed fully. And alleviating the retention problems will not resolve the recruiting problems.

The $100 million in recruiting resources that were cut must be restored, and I strongly urge support for the amendment.

□ 1400

Mr. LEATH of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. LEATH of Texas. Mr. Chairman, I rise in strong support of the amendment.

Certainly, every Member of this House must know that our conventional military forces have a recruiting and retention problem that is acute. I have observed these problems at very close range during frequent vists to Fort Hood, the Army's largest military post, which is in my district. My own analysis of the problem has convinced me that we need a draft—now. But since the Congress has seen fit not to address that subject, it is, in my judgment, absolutely foolhardy to cut any funds requested by the Department of Defense that are designed to recruit and retain personnel. On the contrary, we should be doing everything we can to provide the services with the resources they need to attract good people.

I have listened with an open mind to the points raised in support of a cut in recruiting funds, and though they are well intentioned, I must reject their validity to our personnel needs, particularly in the Army.

I would like to believe that our actions to provide better pay and compensation for service members will result in droves of high school graduates beating down the doors of our recruiting stations. Some will be brought in perhaps, but these actions will not solve the problem. Many will still be on food stamps.

I would like to believe that announcement of a new GI bill will inspire parents, as well as potential recruits, to seek the services as an opportunity for education and experience. That will bring in some, but it will not solve the problem.

I would like to believe that the temporary rise in unemployment will drive throngs to the recruiter. This sad condition will bring some, but it will not and should not be a crutch to fill the military ranks.

All of the actions that we have recently taken and will soon take will help the services retain the people they already have. But these actions also provide conditions for a vigorous recruiting program to exploit. But in my judgment, they will not be able to do it with relatively the same funding they had in 1979 when, I would remind my colleagues, every service had a recruiting shortfall. To cut recruiting money now is contrary to everything this Congress has done to help the military services. The funds cut in recruiting must be restored and I urge a "yes" vote for this amendment.

Mr. WON PAT. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong support of the amendment.

Mr. Chairman, I rise in support of the amendment before us proposed by the chairman of the Subcommittee on Military Personnel, Mr. White. There is every indication that the situation with regard to enlistments is growing worse. What we are talking about has nothing to do with a balanced budget or equal rights, or even national military policy. We have the equipment. We have the units. But we simply do not have the soldiers to man the equipment or staff the units.

If we are looking for a paper army, we are headed in the right direction. But, as one who saw World War II in my own backyard, I do not relish the picture of the United States becoming a paper tiger as we were once called.

We cannot condone a massive cut in recruitment funds. This will only make matters worse. All of the services will be hurt by this cut.

My constituents on Guam are proud of their military service. They presently enjoy the highest enlistment rate of any ethnic group. As a matter of fact, there may well be more Guamanians in the military on a per capita basis than there are residents of any other American area.

Only recently, President Carter signed into law my bill to permit individuals from the Northern Marianas to enlist in the U.S. military. I supported this bill because America needed a new source of ready and willing recruits and because the residents of the Northern Marianas know that they can expect a good life in the service.

I urge my colleagues not to do anything that would lessen the ability of our armed services to seek out and actively recruit qualified personnel. Our freedoms mean a lot to each of us. But they do not mean much to the Russians if we cannot defend them.

I wholeheartedly support this amendment and ask that my colleagues do also.

Mr. MOFFETT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I do not relish taking this position from the point of view of opposing the distinguished chairman of the subcommittee, because I think he is one of the great leaders on this subject and in terms of our defense capabilities in the Congress or that has ever been in the Congress.

Also, in a more perfect world, Mr. Chairman, it would be wonderful if we were about to vote for $100 million on a national service program with a civilian option, but it is not a perfect world that we are dealing with here, and to continue to allow our recruitment apparatus to go on as it has is like saying that we would expect the University of Texas or Ohio State or Alabama to recruit for football with the recruitment budget of Slippery Rock. It does not make any sense.

I think as the gentleman from New York (Mr. Downey) said and as our colleague from Washington (Mr. Dicks) certainly articulated, those of us who have been against the draft registration program have a special burden here it seems to me.

I have always taken the position, as have some of my colleagues in this House, that more dollars for defense do not always mean a better defense. But the fact is that there are occasions when we have to spend more money to get more impact. This is one of those.

This is an issue that clearly transcends various ideological disagreements about what kind of defense makes a good defense; and one of the fact that we have to confront is that we have almost a primitive character of our war-fighting capability in many respects aside from our nuclear forces.

The idea that nuclear forces would serve as a strong deterrent to an Afghanistan invasion, for example, I think most of my colleagues would agree, is rather absurd. It is the character of our conventional forces that needs to be looked at as a deterrent as the world sees more and more turmoil and little skirmishes here and there that add up to a most chaotic and turmoil-filled world. We cannot begin to address that, however, if we do not address the issue of recruitment.

What we need to do is focus attention on the condition of our conventional forces. We need to ask the tough question in this age of tremendous pressure for neutron bombs and MX missiles and other such hardware that has dubious value as a deterrent in many situations, the tough question of where is the constituency for the soldier?

We know that the Active Army is 70,000 short of being fully manned. We know that the Army National Guard and Army Reserves are 135,000 short of what they should be. We know that the Individual Ready Reserve is short between 500,000 and 300,000. And this is the Army's only source of large numbers of trained individual replacements.

Even worse, the Pentagon tells us that only one-third of our Armed Forces would be ready to fight at any given moment.

We have heard from senior sergeants and maintenance specialists at Langley Air Force Base who have stated that only 35 percent of the 1st Tactical Fighter Wing's new F–15 Eagles, the leading fighter plane in the Air Force today, are fully capable of flying combat missions on any given day. And only half of the Tactical Air Commands 450 F–15's, each of which cost nearly $18 million, are ready to go at any particular time.

Why is this true? Partly because engines wear out faster than expected, because not enough spare parts are ordered, because, in some cases, of poor design or poor materials.

But this inadequacy also stems from a serious lack of skilled and experienced technicians who bear the brunt of the task of keeping airplanes in the air.

Mr. Chairman, as I indicated earlier, it is especially important for those of us who disagreed with the draft registration decision to support this amendment. It is not often that we have a clear consensus in this House. But I believe there is a consensus that we must beef up the core of our defense. In many cases, it is not as glamorous to tend to the nuts and bolts as to the big items like bombers and aircraft carriers and sophisticated nuclear weapons.

But whether we look to the Indian Ocean, the Persian Gulf, the Middle East or other trouble spots in the world, we must agree that our conventional forces must be beefed up. That means giving much more attention to recruitment.

I would not be supporting this amendment If I thought that the money would not be productively spent. Many of us have supported efforts to improve recruiting practices. But now is the time to back up these practices with the dollars needed. I urge support of the amendment.

Mr. ADDABBO. Mr. Chairman, with reluctance, I rise in opposition to the amendment.

Mr. Chairman, most of the arguments we have heard here today are arguments in favor of what has already been done by the committee and by the Congress. In order to improve retention and to better the life of the serviceman, we are funding within this bill the Nunn-Warner amendment, which has increased the benefits to the tune of $713 million. In addition to that, there are further pay raises which will come into effect which will in total increase benefits by over $2 billion. That is money that the military said it needs in order to attract and in order to retain men into the service.

□ 1410

We are discussing here today as if we are not spending any money for recruitment. In this bill before us now is $1 billion—$1 billion for recruitment. One billion dollars would buy enough XM–1 tanks to outfit two complete Army mechanized divisions, an entire wing of F–16's, or four FFG–7 frigates every year.

What DOD is seeking to do here is ask for another $100 million to do something they should have been doing over the years; but whenever a problem arises, their answer is more dollars; never, never, never better management.

We have seen within the Army recruiting service the fraud, the misrepresentations, and nothing has been done to tighten it up.

How do we get their attention? How do we make them go and look at better management? The only way to get their attention is by making reductions. Even by this reduction, Mr. Chairman, we increase in real terms the dollars available over the 1979 recruiting dollars. That is what we have done already in this bill.

What do we accomplish by restoring this $100 million? As far as I am concerned, nothing except giving the Army, the Navy, the Marine Corps, and the Air Force more money to waste. We do not require them to do anything. We do not require them to manage their recruiters better. The Marine Corps has said if a recruiter cannot obtain at least a certain number of recruits he should be removed; but they have not removed recruiters who have not met requirements as shown in their own audit reports.

We speak of the high school graduate. Just the other day before the committee of the gentleman from Texas, General Thurman, director of Army recruiting, said that it is not necessarily true that the high school graduate makes the best soldier.

In addition to that, Mr. Chairman, we are being asked today to spend an additional $51 million for 10,000 fewer recruits. The Army has told the committee that the requirement for nonprior service males has been reduced by 10,000, so they are asking for more money to recruit fewer people.

Mr. Chairman, this bill before us is $2.5 billion over the President's budget. We have added money to the President's budget. We have an allowance in the budget ceiling for an 11.7-percent pay increase. If we start increasing that $2.5 billion over the budget, we now will start cutting into that amount which we have available for that pay increase, which then will really affect the retention and possible recruitment.

So I would ask my colleagues to support the committee and not go for this $100 million which is not needed.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, just a brief comment. I certainly commend the chairman for his leadership on our subcommittee and his work to get a significant increase in money for retention and Nunn-Warner and the other things that are essential; but I do think it is important, as the chairman pointed out in his testimony, that it was suggested that a high school graduate may not necessarily make the best soldier; but is it not true that the Congress now has directed the Army to bring 65 percent of the new people that come into the Army must be high school graduates; so it is an amendment that has been adopted by the authorizing committee that narrows the number of people who are available.

The CHAIRMAN pro tempore. The time of the gentleman from New York (Mr. Addabbo) has expired.

(By unanimous consent, Mr. Addabbo was allowed to proceed for 2 additional minutes.)

Mr. DICKS. Mr. Chairman, if the gentleman will yield further, it is going to make it more difficult to recruit because Congress has said that it wants more high school graduates in the All-Volunteer Forces.

So I would just like to make that point and ask the chairman if he does not agree that it is going to be more difficult to recruit with a smaller pool of people available.

Mr. ADDABBO. I would say to the gentleman from Washington that at the present time the Navy, the Marine Corps, and the Air Force have been recruiting at their own initiative in excess of 75 percent high school graduates. The Army has been recruiting somewhere around 50 percent; so all we are speaking about is an additional 15 percent for the Army alone, which can easily be accomplished without another $100 million, which could easily be accomplished by better managed recruitment programs, by cutting out the waste and better monitoring of their programs.

Mr. DICKS. If the gentleman will just yield further, the chairman takes a different view of that point; but I also want to make it clear to my colleagues that if once we approve an 11.7 percent pay increase for the military, there is no way that Congress is going to take money away from that pay increase because of this recruiting amendment. I do not think the chairman meant to make that assertion in his statement, because once we make that commitment for 11.7 percent, it becomes like an entitlement program and we are committed in this bill and in the supplemental next year to meet that. Is that not correct?

Mr. ADDABBO. The gentleman is correct, except that if we go over our function of $160 billion, as set by the Budget Committee, this bill would then sit on the Speaker's desk until we have a supplemental or a second or third budget resolution.

Mr. DICKS. The gentleman also recognizes, because the gentleman knows the figures so well, that we are $3.7 billion below that figure at this point.

Mr. ADDABBO. That is correct, but the military pay raise for DOD will cost in excess of $3.2 billion.

Mr. DICKS. So this particular amendment does not put that in danger.

Mr. ADDABBO. Well, it is another $100 million; if we have no further amendments, it may not.

The CHAIRMAN. The time of the gentleman from New York (Mr. Addabbo) has again expired.

(At the request of Mr. White, and by unanimous consent, Mr. Addabbo was allowed to proceed for 2 additional minutes.)

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Texas.

Mr. WHITE. Mr. Chairman, I thank the gentleman for yielding and giving me the time.

As a matter of fact, the personnel moneys that are involved here contain some of the bonus moneys that have been one of the most important factors in the recruitment drives of the various services in the past; is this not true, sir?

Mr. ADDABBO. The gentleman is absolutely correct, but it is only the enlistment bonus money. It affects only a small portion of the enlistment bonuses.

Mr. WHITE. Well, that is what we are talking about, enlistment and retention; both of those two things are factors.

Now, as to the question of high school graduates, every witness who appeared before our committee has said that the high school graduate is more likely to complete his term of enlistment than a non-high school graduate, and it follows that he would be more likely to be able to read the instructions on sophisticated weaponry than would a non-high school graduate. At the present time, part of the efforts of the services are directed toward training the young enlistees how to read. By having a high school graduate, you eliminate part of that expense and part of that trouble.

We want an Army and a service that can function on the battlefield and be able to think for themselves and be able to survive the dangers of the battlefield through their ability to think and their ability to follow instructions. That is why I think it is highly important that we go up to the 65 percent high school graduates, instead of the 48 percent high school graduates as we have at the present time.

Mr. ADDABBO. The committee has added almost $100 million in the reenlistment bonuses.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I sat here for the last 45 minutes feeling that maybe somehow our committee had taken leave of its senses as I listened to all these speeches.

Well, you know, what we found ourselves with in real dollars was the budget figure of about $1.1 billion ($1,052 million) for recruiting or you people in the sales department, if you will, and a budget of about $295 million for what I would call retention bonuses to try to keep good people in the service. Somehow it seemed to me, and I think to the committee as we considered this, that we were building a sales force that was not equal to the ability of the corporation, if you will, to keep people working in it once they got hired; so what we tried to do was to move some of this money around in a way that would lead to greater retention.

We are short in the middle levels some 104,000 petty officers, sergeants, people in the middle level in the service, because they are getting out like flies and the reason is that we are unable to retain them there because of inadequate pay and allowances and benefits. It was this Congress that has led the way now in the Nunn-Warner amendment. Our committee put $713 million into that. We have added some $80 million into the retention program and into bonuses.

We have pledged our support for the 11.7-percent pay raise, and it is my considered judgment that if you want high school people in the service, if you want to attract good, competent, intelligent people into the military service, that you offer them something, not in the sales department, but in that department of the military where they train and learn to be good soldiers and are retained in those positions as they learn their trade and as they become proficient.

□ 1420

We felt on the committee that is where the emphasis should be put, and so it is not like we did away with the recruiting program. We have still left almost $1 billion in recruiting, in the sales department, to bring these people into the service.

I think we all agree. We talked yesterday on the floor when the gentleman from Alabama (Mr. NICHOLS) brought his bill to the floor, that if we are going to have a good military service, if we are going to have good, trained people in it, we have to get at the business of retention programs and providing for their needs in the service, for their pay and allowances and benefits. The gentleman from Alabama (Mr. NICHOLS) has done a good job in that regard. I think then we should not come here embarrassed, feeling like we have done something wrong by cutting $100 million out of a $1,050,000,000 recruiting bill, especially since we have added so much money on the retention side.

So I would urge the committee to go along with what the subcommittee has done. I think we have approached it in the right way, and it is not nearly as dire as has been talked about here on the floor.

Mr. WHITLEY. Mr. Chairman, I move to strike the requisite number of words, and rise in support of the amendment.

Mr. Chairman, I am impressed by what the gentleman from Alabama (Mr. EDWARDS) says about salesmen, but it has been my observation that in the society and in the culture in which we live, even if we have a good product to sell, the successful company, the business that sells its product, is the one that has good salesmen, has a good advertising program. I do not see many successful companies in our country that are cutting their advertising budget. They may be increasing their budget to try to produce a better quality product, and that is what we are doing with Nunn-Warner and the fair benefits package and these other items that are primarily geared to retention and not to initial recruitment.

It does not make any difference how good our program is if the message is not getting to our young people and particularly our quality young people, the high school graduates, the kind we want to enlist and are seeking to enlist. If our recruitment program is not effective in communicating to our prospective enlistees what we have to offer, we are going to fall short again next year just as we have last year.

I strongly support the amendment offered by the gentleman from Texas (Mr. WHITE).

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. WHITLEY. I yield to the gentleman from Missouri.

Mr. SKELTON. I wish to associate myself with the gentleman's remarks and commend him on his clear thinking on this issue. The question was raised a few moments ago about the main problem being retention.

I ask the gentleman: Is there any way to retain good people unless you first enlist them?

Mr. WHITLEY. The gentleman is absolutely right. The basic problem really is initial enlistment. We cannot make a good noncommissioned officer out of a person that we do not recruit in the beginning. We do not need to lose the skilled NCO's that we have to the extent we have been losing them. But our really big, major problem, which is not effectively addressed when we start cutting our recruiting budget, is the initial enlistment of qualified personnel who will stay in the service, who will reenlist, and who will become noncommissioned officers. So I think it is crucial we retain our enlistment capacity and our recruiting capacity.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. WHITLEY. I yield to the gentleman.

Mr. DICKS. I want to commend the gentleman for his statement. I think the gentleman's point is well taken, this $100 million cut, of which, $50 million will be imposed upon the Army and will make their appropriation less than what they had in fiscal year 1979, a year in which they suffered a recruiting shortfall of 16,000. Now we have imposed a higher standard on the Army. We all know the Army is where we have had our most serious problems with 6 out of 10 divisions being unfit for combat. Now we are going to take another step that will cut into their capability to get the kind of people they need.

I think the gentleman's statement is absolutely correct and I commend him.

Mr. WHITLEY. The gentleman is right. Our problem in recruiting has traditionally been with the Army. Last year for the first time all of the services fell short, but historically we have had problems with the Army. We certainly need to do everything we can to see that the Army is not cut, which it will be if this $100 million is not restored.

I want to commend the chairman of the Personnel Subcommittee for offering this amendment.

○ Mr. HOPKINS. Mr. Chairman, I would like to ask any Member who may oppose this amendment—how does he or she expect the All-Volunteer Force to succeed? What we will do, if we pass this bill without the $100 million in question, is to build an airplane without wings.

There is no doubt in my mind that at some point down the road, some of the same Members who oppose this additional funding will be asking why the services continue to come up short of the qualified recruits mandated by Congress. The answer will be simple—the House of Representatives failed to put the necessary money where its mouth is.

Many Members would like to think they've done something meaningful to improve the quality of America's military recruits by simply supporting our earlier action this year of limiting the number of non-high-school graduates recruited to no more than 35 percent of all recruits. But I would respectfully say to those of my colleagues thinking along those lines: You have not done enough—we have not finished the job.

The House has gone on record as saying it would like the All-Volunteer Force to work, and we have gone on record saying the quality of the recruits must be raised as well as the quantity. Now in my view, it is time for the House to go on record saying here is the funds necessary to meet the goals we have set. Those of my colleagues who have had some experience in the business world understand that virtually no successful firm—certainly none that must compete for customers—spends millions of dollars to make its goods and services available, and then just throws its product on the shelf as it were and hopes for the best.

Let me say that I had some experience in the business community, and in my mind there is no doubt that to compete you have to market, advertise, sell—and in the military, that is what recruiting is all about. Let us not get into a position of paying for a plane that will never get off the ground because we were willing to pay for everything but the wings. We have set a standard we expect the services to meet, let us give them the resources necessary to get the job done.●

AMENDMENTS OFFERED BY MR. ADDABBO AS A SUBSTITUTE FOR THE AMENDMENTS OFFERED BY MR. WHITE

Mr. ADDABBO. Mr. Chairman, I offer amendments as a substitute for the amendments.

The Clerk read as follows:

Amendments offered by Mr. Addabbo as a substitute for the amendments offered by Mr. White: On page 2, line 10, in Military Personnel, Army, strike "$10,857,568,000", and insert in lieu thereof "$10,881,768,000".

On page 7, line 10, in Operations and Maintenance, Army, strike "$12,222,579,000", and insert in lieu thereof "$12,249,579,000".

Mr. ADDABBO. Mr. Chairman, we have heard the debate here today. Most of the debate has been about the Army. My amendment would restore all of the funds cut from Army recruiting.

The Navy and Air Force have met their strength every year as well as their requirements so far as high school graduates are concerned. My amendment would restore $51 million to the Army for recruiting. They are the ones who are now going to be hard pressed, according to the debate here this afternoon. They have been at 50 percent. They are now being asked to go to 65 percent high school graduates.

So I ask the committee to support my amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman.

Mr. DICKS. I want to make sure I understand and make a little legislative history. This $51 million would be restored to the Army account?

Mr. ADDABBO. That is correct.

Mr. DICKS. It will not be apportioned? The $100 million cut was to be apportioned across the various services. This would be earmarked and it would be for the Army?

Mr. ADDABBO. That is correct. My amendment is restoring the full $51 million to the Army.

Mr. DICKS. I appreciate the chairman's clarification and his explanation.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I do believe the gentleman has perhaps offered an amendment that will solve the main concern we have heard here in the House today. I would urge the Members to support the gentleman's amendment.

Mr. WHITE. Mr. Chairman, I rise in opposition to the substitute.

Mr. Chairman, I appreciate the chairman of the subcommittee of the Appropriations Committee acknowledging the major problem which we have had, and that would be in the Army, of course. But the problem, the intrinsic problem of meeting an obligation that this Congress has imposed upon the services, he now says OK, we are going to restore $51.2 million to the Army so that they can meet their goal of not more than 35 percent of mental category 4 and have at least 65 percent high school graduates. But that same obligation has been imposed on all of the services, all four of the services.

□ 1430

The remaining amount of money, some $49 million or $48 million, is divided among three other services. The $51.2 million that is for the Army is fine. That is a step in the right direction. But what do we do with the other services that have to meet their recruiting goals, too? Are we to say we are going to acknowledge our obligations that we have imposed on you only to the Army, but the rest of you are going to have to shift for yourselves? You will have to forget about dividing up the other part of the pie and still make your quotas? Is this fair to all of the services? We need quality in all of the branches of service. At the present time we have seen what has been happening in the Navy; we have seen what has happened in the Indian Ocean; we saw what happened in the Iranian effort we made. There have been questions about the quality of some of the men who have been in some of these positions of restoring and repairing.

I know that a lot of the problem has been mid-level management. I know a lot of the problem has been the midranks who have been lost for one reason or another. And I certainly applaud the efforts to try to retain these particular people. But someday the people we are taking in now are going to reach those positions. If we are going to have quality down the line, we have got to take in quality now, not just in the Army but in every one of the branches.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Missouri.

Mr. SKELTON. I thank the gentleman for yielding. I commend the gentleman for his statements and comments. I think what he is saying is that we cannot allow by the substitute amendment the Army to have a first-class recruiting service and to allow the Marines, Air Force, and Navy to have a second-class recruiting service. They must be treated equally. I think we should also point out that the Armed Forces, all four of them, the Department of Defense, and the Office of Management and Budget actually are in favor of the gentleman's initial amendment. I think that should be stressed.

Mr. WHITE. I thank the gentleman from Missouri.

Every one of the witnesses who came before us said that they need these moneys in order to meet these goals and they would meet them. The Marine Corps said they would still meet the recruiting goals, but it would be hard on morale. The Marine Corps is the only one who testified before our committee that they could meet their goals. But what about the Navy—the larger branch? What about the Air Force, so technological? I say to you for the little amount now, we are going to be pennywise and pound foolish unless we ascribe to all of the services what we ask for in the initial amendment so we can have an adequate recruiting drive.

Next year we can come back if they have not made it. If there has been some problem, then we can act. But we in Congress imposed these recruiting restrictions.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. I thank the gentleman for yielding. The gentleman from Texas has held extensive hearings, and they have gone into this question very deeply. Does he not admit that all the services except the Army are presently meeting that goal, that at least 77 percent of their recruiting is presently high school graduates as I recall the testimony?

Mr. WHITE. I do not have the figures before me, but notwithstanding, we have imposed even a greater problem. That is the high school graduate level and the intelligence level. This is even more difficult.

Mr. ADDABBO. Will the gentleman yield further?

Mr. WHITE. I yield to the gentleman.

Mr. ADDABBO. The gentleman imposes a requirement of 65 percent; yet the testimony we have received is that both the Navy, the Marine Corps, and the Air Force have been meeting a higher goal by obtaining at least 77 percent of their enlistments from high school graduates.

Mr. WHITE. I think the Navy for the first time last year failed to meet its goal, as I recall.

Mr. ASPIN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Wisconsin.

Mr. ASPIN. I thank the gentleman for yielding. It seems to me that the gentleman has got a good point here in offering his amendment. I do not know what the exact amounts of money ought to be for this recruiting, but it seems to me to be rather incongruous to be on the one hand increasing the demands on the quality of the All Volunteer Force and at the same time cutting them out of money that is used to recruit it.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendments offered by Mr. Addabbo as a substitute for the amendments offered by Mr. White.

The question was taken; and the Chairman announced the noes appeared to have it.

RECORDED VOTE

Mr. ADDABBO. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Mr. ADDABBO. Mr. Chairman, I will withdraw my point of no quorum. I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 66, noes 329, not voting 37, as follows:

[Roll No. 544]

AYES—66

Addabbo
Atkinson
Beilenson
Benjamin
Biaggi
Blanchard
Bolling
Bonior
Broomfield
Brown, Calif.
Conte
Conyers
Dellums
Dingell
Dixon
Drinan
Early
Edwards, Ala.
Erdahl
Evans, Del.
Fascell
Fenwick
Ford, Mich.
Ford, Tenn.
Gibbons
Hollenbeck
Howard
Jeffords
Latta
Lehman
Lundine
McDade
McHugh
Maguire
Michel
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Murtha
Nowak
Patten
Pursell
Regula
Rhodes
Richmond
Robinson
Rodino
Rosenthal
Rostenkowski
Roth
Roybal
Rudd
Sabo
Sawyer
Scheuer
Schroeder
Sebelius
Stanton
Steed
Studds
Ullman
Walgren
Weiss
Wyatt
Yates

NOES—329

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Aspin
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bereuter
Bethune
Bevill
Bingham
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Corcoran
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dodd
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edgar
Edwards, Calif.
Edwards, Okla.
Emery
English
Ertel
Evans, Ga.
Evans, Ind.
Fary
Fazio
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gephardt
Gilman
Gingrich
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Harkin
Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Holt
Hopkins
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jacobs
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kelly
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Leach, Iowa
Leath, Tex.
Lederer
Lee
Leland
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDonald
McEwen
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Mikulski
Mineta
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Oberstar
Obey
Ottinger
Panetta
Pashayan
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Rinaldo
Ritter
Roberts
Roe
Rose
Rousselot
Royer
Russo
Satterfield
Schulze
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stark
Stenholm
Stewart
Stokes
Stratton
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Thompson
Traxler
Trible
Udall
Van Deerlin
Vander Jagt
Volkmer
Walker
Wampler
Watkins
Waxman
Weaver
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wydler
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NOT VOTING—37

Anderson, Ill.
Ashley
Carr
Clay
Corman
de la Garza
Derrick
Erlenborn
Fish
Giaimo
Goldwater
Green
Hansen
Harsha
Holland
Holtzman
Horton
Jenrette
Leach, La.
McClory
Markey
Mattox
Myers, Pa.
Nedzi
Nolan
O'Brien
Oakar
Patterson
Reuss
Santini
Shannon
Stockman
Vanik
Vento
Wilson, Bob
Wilson, C. H.
Wylie

☐ 1450

Messrs. AuCOIN, DECKARD, MURPHY of New York, KOGOVSEK, PEYSER, EDGAR, PEASE, WOLPE, and BINGHAM changed their votes from "aye" to "no."

So the amendments offered as a substitute for the amendments were rejected.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas (Mr. White).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WEISS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 390, noes 13, not voting 29, as follows:

[Roll No. 545]

AYES—390

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Bolling
Boner
Bonior
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, John
Burton, Phillip
Butler
Byron
Campbell
Carney
Carr
Carter
Cavanaugh
Chappell
Cheney
Chisholm
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
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Conyers
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
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Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dingell
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
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Gibbons
Gilman
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Ginn
Glickman
Goodling
Gore
Gradison
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Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
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Harris
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
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Hopkins
Howard
Hubbard
Huckaby
Hughes
Hutchinson
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Hyde
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Jacobs
Jeffords
Jeffries
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
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Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
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Leach, Iowa
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McDonald
McEwen
McHugh
McKay
McKinney
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Marks
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Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
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Miller, Calif.
Miller, Ohio
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Montgomery
Moore
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Moorhead, Pa.
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Murphy, Ill.
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Pease
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Robinson
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Rudd
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Santini
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Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
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Snyder
Solarz
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Spellman
Spence
St Germain
Stack
Staggers
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Stanton
Stark
Steed
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Stewart
Stokes
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Studds
Stump
Swift
Symms
Synar
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Taylor
Thomas
Thompson
Traxler
Trible
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Ullman

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Leach, La.
McClory
Markey
Mattox
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Oakar
Shannon
Stockman
Vanik
Wilson, Bob
Wilson, C. H.

☐ 1500

So the amendments were agreed to.

The result of the vote was announced as above recorded.

Mrs. SCHROEDER. Mr. Chairman, for those of us who have been so concerned with readiness and personnel morale, the Defense Appropriations Act of 1981, H.R. 8105, is a real improvement over previous years' bills.

First, it adds almost $625 million to operation and maintenance funds. This is a significant increase because it recognizes that we have to start improving maintenance rather than simply charging ahead buying more and more new weapons systems. Our voice has been heard.

Second, $800 million was also added to cover fuel cost hikes. This is critical because many of our fighter pilots have been unable to train because the fuel fund was depleted.

Finally, funds were added to the personnel account for the pay increase and the full Nunn-Warner package. Morale in the military will certainly be improved by that action.

In the past, the Armed Services Committee has added billions of dollars for new weapons, above the agreed upon budget for new weapons procurement, and then sent it on to the Appropriations Committee. Since the Appropriations Committee had to operate within the budget ceiling, they often had to raid operations and maintenance, fuel, and personnel accounts in order to squeeze the total package under the budget ceiling.

This year the Armed Services Committee did the same thing, putting in $6 billion for weapons systems that were not in the budget. I offered language, which was accepted by the committee, stating that in accommodating the additional $6 billion the Appropriations Committee should not jeopardize readiness. I am delighted that the Appropriations Committee took the language seriously and did not yield to the weapons lobby.

The problem would not be so acute if all the players were equal. Unfortunately, there is a strong weapons lobby, loaded with clout and power, but no operations and maintenance lobby, no readiness lobby, and no personnel lobby powerful enough to match it.

I congratulate the Appropriations Committee for standing firm and putting readiness and morale first, especially during the heat of an election year.

I would like to address a question to the distinguished chairman of the subcommittee (Mr. ADDABBO). On page 50 of the committee report, the committee reiterates its position that individuals hired after completion of the cooperative education program should have to achieve a passing score on "the appropriate civil service examinations." In the past, the appropriate examination was considered to be the professional and administrative career exam (PACE).

Last May, my Subcommittee on Civil Service held hearings on PACE and uncovered evidence showing that PACE discriminates unfairly on the basis of race. While 16 percent of whites score 90 or above on PACE, only two-tenths of 1 percent of blacks score that high. This race differential in PACE test scores is totally out of line with differentials found on other tests. The subcommittee concluded that PACE was flawed and probably invalid.

As a result of these hearings, the Office of Personnel Management has been phasing out the test. The Social Security Administration, which was the Government's largest user of PACE, has stopped using the exam altogether. Other agencies are finding other, better selection devises.

I hope the Appropriations Committee is not now telling the Department of Defense to use a discredited exam for hiring co-op students. Do you intend that PACE be used?

Mr. ADDABBO. If the gentlelady will yield, the intent of the committee is that a valid, job-related exam be given to cooperative education students before they are given full-time civil service jobs. We want to make sure that the individuals hired possess the minimum qualifications necessary to perform effectively the job. I do not care whether PACE is used or whether some other exam is used. If the PACE has the problems you say it has, obviously a more valid and nondiscriminatory exam should be used.

☐ 1510

Mrs. SCHROEDER. I thank the gentleman from New York for his remarks, and I am very delighted to hear that that was the intent of the subcommittee.

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ROSTENKOWSKI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had come to no resolution thereon.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Sparrow, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a joint resolution of the House of the following title:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

URGENT SUPPLEMENTAL APPROPRIATION FOR THE VETERANS' ADMINISTRATION, 1980

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 607) making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment, as follows:

Page 2, after line 4, insert:

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

PERIODIC CENSUSES AND PROGRAMS

For an additional amount for "Periodic censuses and programs", $27,000,000, to remain available until expended.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, reserving the right to object, I will ask the chairman of the committee, as I understand it, this is the money, the urgent supplemental that we passed yesterday, for education benefits for the Vietnam veterans, and the bill has gone over to the Senate, the Senate has tacked on $27 million for the Bureau of the Census, and it is because the failure to come up with this kind of money would result in the shutdown of all of the Bureau activities for the Bureau of the Census and would mean furloughing, as I understand it, 6,200 employees and about a release of 5,000 interim employees and a delay of 3 weeks in completing the field work of the dicentennial census and the closing of 37 offices; is that correct?

Mr. WHITTEN. If the gentleman will yield, the gentleman is correct. According to the figures given me, the budget authority and outlay situation under the current budget ceilings will be sufficient to accommodate this additional amount of money.

However, the gentleman might yield to the gentleman from Iowa (Mr. SMITH) at this time for further background on this issue.

Mr. CONTE. Is that the gentleman's understanding?

Mr. SMITH of Iowa. If the gentleman will yield, that is correct. Actually, they came up $57 million short. If the gentleman will recall, they sent up a $50 million supplemental request and then withdrew it. If they had not done that, they would not have been in this situation. But there are a number of lawsuits filed which involve an expected cost increase of $10 million in order to do the things that may be required under this litigation. There are also local review operations, completion of followup, and tabulations of preliminary population and housing counts for which additional funds are required. If we do not provide this $27 million now, it means the Census Bureau will have to shut down 37 offices, and they would not have the money to open up again until appropriations are provided for fiscal year 1981. Such a shutdown would cost a lot more than $27 million and result in a delay in completing the field work of the decennial census.

Mr. CONTE. It is my understanding that if we do not appropriate these funds, the Bureau of the Census will have to close down around Wednesday or Thursday of this week.

Mr. SMITH of Iowa. That is right.

Mr. CONTE. So it is a very urgent supplemental?

Mr. SMITH of Iowa. It is very urgent.

Mr. CONTE. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. BAUMAN. Reserving the right to object, yesterday the gentleman from Mississippi (Mr. WHITTEN) was good enough to explain to the gentleman from Maryland the need for the $40 million in additional authority for the Veterans' Administration to pay education benefits. I agreed fully with him then and now of the need for this money for the VA. I also asked the gentleman from Mississippi whether he knew of any other urgent supplemental matters that will be coming down the pike as we close this fiscal year, and the gentleman said that he did not know of any. When did the gentleman discover this new urgency? It has been less than 24 hours since we talked last.

Mr. WHITTEN. I would say 30 minutes ago.

Mr. BAUMAN. Thirty minutes ago?

Mr. WHITTEN. I went to the gentleman from Iowa (Mr. SMITH), who had meetings with the Department of Commerce in connection with the Census request. I might say I may have heard of the census problem on the Senate side. But these funds were added on the Senate side, not on this side. I did not participate in those meetings. I went to the gentleman from Iowa (Mr. SMITH), who was familiar with the census problem. That is the reason I turned to him to give the details. I did ask whether this appropriation would come within the current budget ceilings and I was advised that the budget authority remaining after approval of this measure would be $210 million and the outlays would be $2.5 million. We are getting pretty close to the edge, but those are the figures that were given to me.

Mr. BAUMAN. Further reserving the right to object, yesterday the gentleman from Maryland referred to the statement on September 9 in the CONGRESSIONAL RECORD, which was provided by the Congressional Budget Office, indicating that there were only $19 million remaining in outlays for the current fiscal year 1980. The gentleman is telling us now that their new estimate is that this civil defense add on leaves $2½ million left for all other additional purposes of Government spending for the next 3 weeks?

Mr. WHITTEN. Of course, as the gentleman understands, those were the figures given to me by the staff of the Appropriations Committee, who in turn had gotten them from the proper authorities.

Mr. BAUMAN. Further reserving the right to object, do we have any letter from the Budget Committee which so jealously guards its prerogatives and makes sure that we know exactly what is available in each category of spending? Have they written and approved this request?

Mr. WHITTEN. Personally, I do not have a current letter. We try to keep current. I asked the staff yesterday, when this was up before the House to check and doublecheck with the Budget Committee to be sure that the figures I gave the gentleman were correct. That was the best information that I had.

I am also handed a letter from Director Rivlin, of the Congressional Budget Office dated September 15, 1980, in which she advises:

> Enactment of H.J. Res. 607, as reported, would leave an estimated $237 million in budget authority and $19 million in outlays under the ceilings set by the Second Concurrent Resolution for Fiscal Year 1980, as revised by H. Con. Res. 307.

Now, those are the figures remaining prior to this $27 million additional request. The bill yesterday did not affect outlays in fiscal year 1980. So the amount here would still be within the current budget figures on outlays. In each case we are still within the limits.

Mr. BAUMAN. Further reserving the right to object, what information and proof do we have that the $27 million now added for the Census Bureau is in fact not going to wipe out the remaining $19 million in outlays? It appears to me that there are no restrictions in the other body's amendment. They could spend it all tomorrow if they wanted to. It may be a minor matter in the picture of a multibillion-dollar budget, but this type of legislative practice is destroying piece by piece the budget system that supposedly was so important. That is what is happening here today. It seems like a minor matter, since it is just one little bit here and one little bit there, but there is a larger principle involved here. When we go through the whole year and pass the annual budget resolution and the reconciliation bill and force every committee to come back with adjusted figures, it becomes a meaningless process because we then come to the floor with a request like this that completely negates the whole budget process and ignores all the spending ceilings we have set.

□ 1520

There is nobody here from the Budget Committee to explain it, no one to defend the budget process; and of course, I am not addressing my criticism to the gentleman from Mississippi. I know he is caught in the same problem with all of us. It seems to me there is a rather important principle involved in this action and few seem to care.

Mr. WHITTEN. If the gentleman will yield further, as the gentleman says, I have had some years' experience in dealing with the budget, beginning in the Mississippi Legislature, and the budget types can come up with any figures at any time to fit any situation.

We do have the figures from the proper authorities. I think a letter did come up to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. I just now received the letter. I do not know if the gentleman wants me to read all of it, but the last paragraph says:

> Appropriations of $67 million as detailed above would leave an estimated $210 million in budget authority and $3 million in outlays under the ceilings set by the second concurrent resolution for fiscal year 1980, as revised by H. Con. Res. 307.

This is from Alice Rivlin, Director, Congressional Budget Office.

Mr. BAUMAN. Further reserving the right to object, Mr. Speaker, I was under the impression members of the Budget Committee usually approve some sort of statement, but this is only from the Director of the Congressional Budget Office?

Mr. SMITH of Iowa. It is from the Director of the Congressional Budget Office. It is a copy of a letter, addressed to the chairman of the Committee on Appropriations in the Senate.

PARLIAMENTARY INQUIRY

Mr. BAUMAN. Mr. Speaker, a parliamentary inquiry.

Section 11(a) of Public Law 93-344, the Congressional Budget and Impoundment Control Act of 1974, says that a point of order will lie against any bill, resolution or amendment providing additional new budget authority for such fiscal year after the enactment of the budget resolution, if the enactment of that measure causes the level of total new budget authority or total budget outlay set forth in the most recently agreed to concurrent resolution on the budget to be exceeded or would cause revenue to be less than the appropriate level.

My inquiry to the Chair is, would a point of order lie against this resolution in its present form under that section of the law?

The SPEAKER. The question before the House is a unanimous-consent request. Under the unanimous-consent request if there was an objection, then it would accomplish the same purpose of preventing consideration of the Senate amendment.

Mr. BAUMAN. A unanimous consent would, in effect, wipe out any point of order?

The SPEAKER. If there were no objection the answer would be in the affirmative.

Mr. BAUMAN. A further parliamentary inquiry.

If this were brought in the form of a motion, would this section of the law then lie as a point of order against a motion?

The SPEAKER. If it were a motion to agree to the Senate amendment, the Chair would have to determine based upon Budget Committee estimates whether the amount exceeded the outlay ceiling for fiscal 1980.

Mr. BAUMAN. I thank the Speaker.

Further reserving the right to object, I would like to say the gentleman from Maryland is not going to object to this. The veterans of America need this funding. Whether the Census Bureau does is another question. But take note that what you are doing today and what you did yesterday and what is being done in other ways amounts to the destruction of the budget process. No one seems to care about that, despite all of the protests we hear so many times from the members of the Budget Committee and their defenders.

If that is the way the budget process is to be conducted in the future, then it is doomed to fail. For instance, the majority leadership has decided we will not be allowed to act on the budget this year before adjourning for the elections and a later lame duck session. It seems to me, someone ought to be honest enough to tell the House and the American public you no longer care about the budget process; you are going to legislate as you please and the budget process be damned.

The gentleman from Maryland thinks we are making a serious mistake.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding.

May I say to the gentleman, there are many things he says with which I agree. The budget process has not worked out as I had hoped, almost certainly as I expected, but not as I hoped. I am awfully glad the gentleman is not objecting here, because it would leave the veterans situation unresolved. We would be delaying the amount of money for the veterans education benefits. I am glad the gentleman is not going to object.

May I say I do not feel too good about the $27 million for the Census Bureau. Having read the figures, there is one saving grace, so to speak. They did withdraw a $50 million supplement request voluntarily. This $27 million is far less than what they gave up. I do not know that that answers the question or makes the gentleman feel any better, but, like the gentleman from Maryland knows, when one asks for a set of figures, they seem to be able to come up with whatever the occasion requires.

Mr. BAUMAN. I thank the Chair.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

A motion to reconsider was laid on the table.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

Mr. ADDABBO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from New York?

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 8105, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the Clerk had read through line 12, page 7.

Are there any amendments?

Mr. MYERS of Indiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, last Wednesday, when the full Committee on Appropriations considered reporting the Defense Department appropriation bill, there was considerable discussion about a portion of the language in the report, and voluntarily the chairman of the subcommittee, the gentleman from New York (Mr. ADDABBO), advised he would strike a particular section of the report that many members found objectionable and report the language clean, and would have separate views.

Now, Mr. Chairman, last Wednesday evening in Indiana on the late news, I heard reports that were exactly identical with the language that was struck, that this was the action of the full Committee on Appropriations that was a report by the Committee on Appropriations.

The Friday Indianapolis Star, September 12, dateline Washington, UPI, reported:

> There is no cause to be alarmed about the quality of the Nation's defense.
>
> But the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong.
>
> There is no more reason at this time to fear an imminent Soviet military attack than there has been most of the time in the past two decades.
>
> There is no cause for Americans to be alarmed.

Mr. Chairman, I have gone through the report, with the exception of some language similar to that in the separate views filed by the chairman, I do not find these statements in the report, and it causes me to wonder how did that language get released to UPI on the very day that the full committee acted long before this report, which is dated September 11. Yet on September 10, on the late news, I heard the report from the language that was not to be released.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from New York.

Mr. ADDABBO. The committee cannot control what the individual members do with the report. The draft report was released only to the members of the Committee on Appropriations. It was not a public report. It was not made a public report until the full Committee on Appropriations voted it out on the 10th. If some member gave it out to the press prior to that time, we have no control over that.

Mr. MYERS of Indiana. Well, it has certainly accomplished everything that the full committee overwhelmingly agreed not to let happen, not to mislead the American people, that there is some concern to be alarmed.

I am quite sure most American people feel that way and that the full committee felt that way, from the appearance of the releases going out under UPI and I suppose other news services.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the ranking member, the gentleman from Alabama (Mr. EDWARDS), who along with the gentleman from Virginia (Mr. ROBINSON), were two who led the fight to strike that language in the report which was misleading.

☐ 1530

Mr. EDWARDS of Alabama. Mr. Chairman, I thank the gentleman for yielding. The gentleman has shown to me the article from the Indianapolis paper. I had reports over the weekend back in Mobile that some of the networks, I do not know which ones, had carried this over the air.

I think we should set the record straight, here, without belaboring the point to the extent that we did in the full committee. Obviously, UPI and perhaps others have picked up the report as it came to the full committee. The quotes that the gentleman has referred to in the newspaper story, such quotes as, "there is no cause to be alarmed," or, "but the United States has not grown weak nor has the Soviet Union grown overwhelmingly strong," and other quotes in that article, are not in the report of the Appropriations Committee that came to the floor of the House and which is the basis for support of this bill today.

It would seem to me that those segments of the media that have so reported those views to be the views of the full Appropriations Committee should make a retraction and certainly should clear up that item in their stories in the future.

That language was stricken in the full committee. It was an open session. I do not know whether any of the press was in the full committee during that debate, but certainly it was available as far as the press was concerned to know what was going on in that committee.

The views expressed in those pages that were originally in the committee report that have now been stricken were, in my opinion, not the views of the full committee. Therefore, they were withdrawn. They do appear in the committee report as separate views, which is certainly within a member's prerogative to do. I have no fault with that.

The CHAIRMAN. The time of the gentleman from Indiana (Mr. MYERS) has expired.

(At the request of Mr. EDWARDS of

Alabama, and by unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. MYERS of Indiana. I continue to yield to the gentleman.

Mr. EDWARDS of Alabama. I would hope that because of the strong feelings about the needs of defense in this country, the strong feelings of the members of our subcommittee and of the full committee, that future references to this subject by the media would be reported correctly, that the media would make use of the report that came out of the Appropriations Committee and if it refers to other reports or earlier reports, that they be so designated.

Mr. MYERS of Indiana. Mr. Chairman, I thank the gentleman for his comments. I accept the response the chairman has given us; but I cannot understand any member of the Appropriations Committee who would have had to have been in the meeting to have picked up a copy of that report that was withdrawn, why they would release it to the UPI or any news service when the members of the committee knew the language had been stricken because it was not true.

What really concerns me is the first paragraph. Again under datelines Washington (UPI).

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

(By unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. MYERS of Indiana. It says:

> **The House Appropriations Committee, while recommending a record $156.9 billion U.S. military budget, has assured Americans "there is no cause to be alarmed" about the quality of the Nation's defense.**

It was made very clear that day that the Appropriations Committee rejected that original language that now appears as a UPI newsstory.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. MYERS of Indiana. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I thank the gentleman for yielding. I think the gentleman has done a service by pointing this out. I would also state that it was rejected unanimously by the Appropriations Committee.

Mr. MYERS of Indiana. Yes; the chairman voluntarily withdrew it.

Mr. DICKS. The chairman withdrew it voluntarily and took those views and put them in as his own separate views in this report.

I think it is another example of someone not doing their homework, in this case it appears to be the media.

Mr. MYERS of Indiana. Including the UPI.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield briefly?

Mr. MYERS of Indiana. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. It is a case of sloppy reporting.

Mr. MYERS of Indiana. Misleading reporting.

Mr. EDWARDS of Alabama. Well, it is sloppy. It is $156.9 billion.

The CHAIRMAN. The time of the gentleman from Indiana has again expired.

(At the request of Mr. EDWARDS of Alabama, and by unanimous consent, Mr. MYERS of Indiana was allowed to proceed for 1 additional minute.)

Mr. EDWARDS of Alabama. Mr. Chairman, if the gentleman will yield further, the story refers to $156.9 billion. It is not that. It was $157.3 billion, as I recall, that we finally came to the floor with.

The story refers to an increase in the bill of $18.8 billion. It was $18.9 billion.

The report refers to the increase over the budget as $2.4 billion. In fact, it was $2.5 billion.

Mr. MYERS of Indiana. The number of pages in the report is wrong.

Mr. EDWARDS of Alabama. That is right. In other words, I think the media ought to take a good look at this one.

Mr. MYERS of Indiana. Well, I hope the American people will not be misled that we do not have to do more for our defenses in this country. We have a good defense, but it needs to be much better.

Mr. RUDD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I was astounded to discover recently that millions of tax dollars appropriated for the Navy—and the improvement of our national defense that such expenditures would imply—are actually being spent on costly environmental modifications to achieve compliance with the Clean Water Act.

This environmental legislation passed in 1977 included within its broad authorization power for the Environmental Protection Agency to require ships, including U.S. naval vessels operating in U.S. waterways—especially those coming into U.S. ports—to be equipped with special "holding tanks" for sewage collected onboard.

The water quality improvement from this expensive requirement is minimal at best—especially when viewed from a cost-benefit analysis. Additionally, the systems reportedly do not work well.

The money diverted for these mandated "improvements" cost over a million dollars for each ship. The overall cost to the Navy will be over $881 million simply for upgrading older ships, in addition to an estimated $80 million for marine sanitation equipment to be installed in new ships, approximately $14 to $16 million of which is scheduled for fiscal year 1981.

The following chart, furnished at my request by the Navy, delineates these costs:

SUMMARY OF ACTUAL AND PROJECTED NAVY EXPENSES DIRECTLY RELATED TO THE COMPLIANCE IN EXISTING SHIPS, CRAFT AND BOATS WITH SEC. 312 REQUIREMENTS OF TITLE 33 U.S.C. 1322

[Expenses for new construction ships are not contained in this summary]

Appropriation	Overall total projected	Total expended or obligated through fiscal year 1980	Total projected for fiscal year 1981–85
1. Pier sewers (Milcon)	$102, 589, 000	$102, 589, 000	0
2. OPN (BA–1)	83, 000, 000	66, 265, 000	$16, 735, 000
3. SCN (BA–5) S–SWOBS	10, 400, 000	10, 400, 000	0
4. O. & M.N. (BA–1) FMP	17, 932, 000	7, 028, 000	10, 904, 000
5. O. & M.N. (NRF) FMP	10, 720, 000	5, 217, 600	5, 502, 400
6. O. & M.N. (BA–2) FMP	599, 070, 000	480, 749, 000	118, 321, 000
7. O. & M.N. (BA–7) FMP (DSA)	4, 900, 000	1, 400, 000	3, 500, 000
8. R.D.T. & E. (6.2/6.3)	53, 358, 000	53, 358, 000	0
Grand total	881, 969, 000	727, 006, 600	154, 962, 400

The resources which our Nation allots for defense purposes are precious, and they should not be squandered on such meaningless modifications which represent no significant improvement in the environment.

When sections of the Clean Air Act are considered for renewal next year, I believe the Congress should be especially cautious to consider the effects of various provisions of the proposed extension.

On too many occasions, consequences, not originally envisioned, are produced in the hurry to adopt legislation.

I believe that the Congress must be more cognizant of the consequences of adopting broad legislation without thorough consideration of its implications.

As a result of this seemingly minor provision of the Clean Water Act, our Navy will have been forced to spend close to $1 billion to comply with these provisions by fiscal year 1985.

Mr. ROBINSON. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I would be glad to yield to the gentleman from Virginia.

Mr. ROBINSON. Mr. Chairman, I thank the gentleman for yielding.

I believe the gentleman has come up with a statistic and a commentary that is certainly of interest to those of us on this subcommittee. I wonder if the gentleman could tell us what the source of his information is.

Mr. RUDD. Well, recently I was privileged to be at the commissioning of a new destroyer in Pascagoula, Miss., the navy yard there. While I was there, I asked for and received a thorough tour through the new Navy destroyer from top to bottom. During the course of that tour I asked what this modification of equipment was all about. They explained it to me in detail. I asked for additional information on it and that is the source of this information.

Mr. ROBINSON. Again, I would like to

congratulate the gentleman for bringing this to our attention. Certainly it is going to be a matter in which this Member, at least, is going to be looking into the process of developing the next defense appropriation bill.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $485,993,000, of which not less than $27,400,000 shall be available only for the maintenance of real property facilities.

□ 1540

Mr. MONTGOMERY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to commend Mr. ADDABBO and Mr. EDWARDS and this subcommittee for their dedication and hard work evidenced in this bill for our national defense. I wholeheartedly endorse the bill and the inclusions therein for improvements in all phases of our military systems. I would like to take a minute to single out the provisions that would affect the National Guard and Reserve and speak in support of these portions of the bill.

Badly needed procurement and personnel incentive items have been added, and I am very heartened to see this as an indication of a growing awareness not only of the need for increased Reserve component strength, but also of the very important role these components play in our total defense structure.

Certainly the $2.7 billion contained in H.R. 8105 for personnel costs will be a big help. This includes approximately $100 million in various incentives that will improve recruiting and retention. I strongly support this addition. Likewise, I am pleased to see funds for the procurement of long needed equipment. These acquisitions will not only improve the combat needs of the Reserve and National Guard, but the knowledge that our forces are well equipped will also have a very positive impact on recruitment and retention of well trained and skilled manpower. The equipment along with the other more obvious incentives are absolutely necessary to increase the combat readiness of our Reserve/National Guard.

I will only briefly mention the items that are in the bill that will have a strong impact on the Guard and Reserve and will urge my colleagues to join me in supporting these items: 6 A-7K two-place combat capable fighters, when added to the 24 A-7K's authorized by the Congress during the past 2 years will enable Air Guard Units to better train and save energy; Six C-130H's, these tactical airlifters will replace C-130A's that are more than 20 years old; they are very badly needed for replacement items, as well as the retention of a production line that might be needed in an emergency; 17 AH1S's, these are critically needed to provide some combat deployable helicopters for the Army National Guard; funds are appropriated to accelerate the KC-135 reengining which will increase our operational capability as well as improve safety and noise levels; 30-millimeter gun pod for Guard/Reserve A-7's and F-4's to provide us with a tank killing capability in NATO with those fighters; $12 million for low smoke modification F-4's and RF-4's.

Mr. Chairman, I cannot emphasize too much to my colleagues the essential role the National Guard and Reserves play in the overall combat readiness of our defense systems. These components have suffered along with the active forces from serious shortfalls in the past few years. There have been recent improvements in the numbers of manpower and equipment available. Nonetheless, the Ready Reserves are still 186,000 short of their wartime strength levels, with the Army National Guard over 86,000 short and the Army Reserve over 70,000 short. The Individual Ready Reserve is still over 400,000 short of the level needed to meet emergency mobilization requirements. The support of items in this bill are necessary to improve these shortages.

I am encouraged by this appropriation bill as well as other recent actions taken by this Congress to increase our military preparedness. We must not, however, allow ourselves to lapse into a false sense of security that this 1981 defense spending will be a panacea for all of our past defense weaknesses. We still must remain alert to the needs and open to continued and additional improvements, not the least of which would be a return to the draft, as they become necessary.

There is another issue of great importance to our Reserve components that is not specifically addressed in this bill but which is of great enough significance that I would like to mention it this afternoon. This is the issue of the possible loss of paid military leave for active duty training for members of the Guard/Reserve who are Federal employees. This elimination is a part of the reconciliation bill recently passed by the House. This action removing the paid leave at the Federal level will most assuredly cascade down to the State and local governments and further into private enterprise. This will have a very detrimental effect on recruitment and retention. Fourteen percent of our Selected Reservists are Federal employees and 27 percent are State, county and city employees. Can we ask these people to take 2 weeks each summer of leave without pay or use their vacation time to prepare to defend our Nation? I think not, and I would simply like my colleagues to remain aware of the impact this elimination will have on our Reserve components if it is not restored.

I would again like to commend the members of the Defense Appropriation Subcommittee for an excellent job and to urge the Members of this body to support them unreservedly.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MONTGOMERY. I yield to the gentleman.

Mr. ADDABBO. I thank the gentleman for yielding and for his kind words about our actions.

I wish to point out that the committee has, as the gentleman knows, added $373.7 million over the budget request for the Reserve and the Guard, as follows:

Plus $85.7 million to increase strength of Reserve Forces by 16,100 personnel.

Plus $50.0 million for combat equipment for early deploying Army Guard and Reserve units.

Plus $44.5 million for 17 Cobra-TOW helicopters for the Army Guard.

Plus $70.8 million to buy 6 C-130's for Air Guard.

Plus $12.0 million for modification of F-4 J-79 engines, including those in Air Guard, to reduce smoke trails.

Plus $2.2 million for Marine Corps Reserve annual active duty training.

Plus $12.2 million to restore 6 Navy Reserve helicopter squadrons not included in budget request.

Plus $37.0 million to buy 2 C-9B aircraft for the Navy Reserve.

Plus $17.0 million to modify Navy Reserve P-3 aircraft.

Plus $10.0 million for Navy Reserve travel costs.

Language to strengthen the role of the Navy Reserve and retain 17 Reserve destroyers.

Mr. MONTGOMERY. I certainly thank the gentleman. I would like to point out it makes sense to turn more of the missions to the Guard and to the Reserve makes a lot of sense, if you give them the equipment and you give them the incentive and then they can do it. But they have to have good equipment and they have to have the same incentives that the Regulars have.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. MONTGOMERY. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. Mr. Chairman, I do not know of anyone in the House that has done more to bring to the attention of the House the needs of the Guard and the Reserve and the value of the Guard and the Reserve for this country than the gentleman from Mississippi. I think the fact the gentleman has congratulated our committee for our work means a lot to me, at any rate. We have worked hard to do better by the Guard and the Reserve. We have highlighted in our report several pages of things that we have done.

We all believe, I think, that in time of trouble we have to have this Guard and Reserve and we have to have it trained and ready to go to the greatest extent possible. I believe the committee has taken a good step in that direction in this bill.

Mr. MONTGOMERY. I certainly agree with the gentleman.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized in military construction authorization Acts or authorized by section 2673, title 10, United States Code, and the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $1,536,200,000, to remain available for obligation until September 30, 1983.

AMENDMENT OFFERED BY MR. MOFFETT

Mr. MOFFETT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOFFETT: Page 17, line 20, after "1983." insert the following: "Nose of these funds shall be expended for facilities or equipment relating to binary weapons production.".

Mr. MOFFETT. Mr. Chairman, as my colleagues know, I do not offer amendments to defense appropriations as a practice. I do not think I have ever offered one before. Part of the reason for that is that I do have great respect for the complexity of this area and respect the committee's work. I particularly respect the work of the gentleman from New York (Mr. ADDABBO) and the gentleman from Alabama (Mr. EDWARDS). I cannot think of two people who are brighter and more schooled on this issue.

One of the things I have learned from both of these gentlemen, and I think it is one of the things that led me to support the amendment of the gentleman from Texas (Mr. WHITE) earlier today, is that we ought to get our priorities straight with regard to readiness and with regard to the core of our defense.

It is with a great deal of sadness, I must say, that I offer this amendment, sadness because I believe that the binary weapons program is moving along, bits and pieces, toward the development of a nerve gas program that will roll back the spirit of what the civilized world has been striving for since the Geneva Agreements of 1925 and which will roll back the 10-year commitment and record of our own country through three Presidents not to develop nerve gas production facilities.

I was not going to offer this amendment. As I indicated earlier, I have generally no interest in offering defense appropriation amendments. To be very candid, part of the strategy of those of us who are opposed to nerve gas production was based on our feeling and expectation that in the other body the program would not be included in the military construction legislation, nor in this particular piece of legislation. It has come to my attention, however, that it is likely that the program for the construction of the facility and for the facilities and equipment embodied in this particular bill will, in fact, be included, are likely to be included. Many of us feel as though we should be on record on this issue because, in fact, we are contributing to the creation of a momentum which, as I said, rolls back the spirit of the last 55 years.

Members need not pay a great deal of attention to what an nondefense, nonforeign affairs specialist like myself says on this matter. Members can go back to the debate last week on the military construction bill and listen to the words of the distinguished chairman of the Foreign Affairs Committee, the gentleman from Wisconsin (Mr. ZABLOCKI). I read those words over and over again. I come to the well with great respect for the Appropriations Committee but also great respect for the Foreign Affairs Committee. I am a member of neither and I would much have preferred a member of one of them offer this amendment. But I think this issue is of such importance, and apparently the distinguished gentleman from Wisconsin (Mr. ZABLOCKI) felt the same way, that he rose to speak out loudly and clearly against moving forward with any kind of nerve gas production facility and equipment. In the other body Mr. PRYOR and others have raised their voices on this issue.

It can be said, and the staff, the able staff of the subcommittee that is managing this bill has indicated as such to me, that this is only for certain portions of the equipment and is not for weapons. That is clear and I respect that. I am sure that is the case. But last week it was $3.15 million for a binary weapons production facility This week it is $19 million for facilities and equipment. We are on the road, Mr. Chairman, we are on the road to a $2 billion to $4 billion expenditure. We are on the provocative course of creating a nerve gas production program.

This would not be bad if it did not run counter to what I think this House seems to be doing, which is to begin to focus on the core of our defense. I think all of us know we cannot have everything. We cannot have every weapon and everything that everyone thinks of, and we cannot have everything in this smorgasbord of weaponry possibilities. We have to pick and choose. That is one of the reasons there was overwhelming support for the amendment offered by the gentleman from Texas (Mr. WHITE) earlier today.

☐ 1550

We know that that the recruitment amendment was important.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. MOFFETT was allowed to proceed for 3 additional minutes.)

Mr. MOFFETT. Is this nerve gas program so important to absolutely cement and stalemate the negotiations that have been going on with the Soviet Union since 1976, negotiations to prohibit the development, production, or stockpiling of any lethal chemical weapons? There have been stories about gas use in Afghanistan, as the gentleman from Wisconsin (Mr. ZABLOCKI) said last week—not substantiated in any way in terms of lethal gas use. It is a fact that the United States and the Soviet Union have more than 100,000 tons presently of lethal chemical weapons. Our emphasis should be on defense against this kind of weaponry. We have in fact been spending at the rate of $200 million a year for the past 3 years on research and development in this area.

As I understand it, the estimates are 3 million projectiles currently in our stockpile, most of it usable for the rest of this decade. This great body rejected in 1974 and 1975 DOD authorization and military construction bills, or attempts on those bills, to support production of nerve gas. We rejected them, and I plead with those of you in the body, in the Chamber today and those watching the debate in their offices, to step back from the feeling that so many of us have that we need to improve our defense and to try and ask ourselves the question of whether or not this is really any kind of improvement, or are we getting caught up in a kind of momentum that does not really make a great deal of sense, one which will send a horrible signal to the rest of the world.

I also urge that we be sure—and I make this plea regardless of where you stand on this issue—that we have a rollcall vote on the issue because I have a feeling that it is one of those issues that in 5 or 10 or 20 years, if we go ahead with it, that we are going to be asked about and our children are going to be asking us about. I do not mean to get melodramatic, but I have a young child. Many of the Members here have young children. Many of the older Members have grandchildren. If this is the kind of provocative move that many of us think it is, I think we are going to be called to answer for it. This body is full of wonderful committed people, committed to life and humanity. I think this body would make a serious mistake—a serious mistake—by including this money in the bill, and now is the time to stop it.

I yield back the remainder of my time.

Mrs. FENWICK. Mr. Chairman, I rise in support of the amendment.

I spoke against this proposal last week, the proposal to complete these facilities for the production of lethal gas. I, like the chairman of the Committee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI), have never seen a victim of poison gas but I have spoken to those who have, to the Hmong Tribesmen of Laos who have seen what happens when poison gas is dropped on helpless civilians in the mountain areas of Laos. It is a terrible thing.

I think that the proposal is unworthy of this Nation. Somehow it strikes a terrible chord, a note that never should have been heard in this century. We learned in the First World War how evil, how peculiarly evil, such a weapon is. That we should now, so many years later—60 and more years later—be turning to the development of poison gas in this country, the United States, seems to me contrary to everything we intended to be. We have been called the last best hope of Earth. Turning to poison gas as a weapon, is unworthy of this Nation.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike the necessary number of words, and I rise in opposition to the amendment.

Mr. Chairman, I share the gentlewoman's concern and her grief at the thought of this horrible weapon. It is a terrible thing. This whole bill is a terrible thing. I wish I could stand here and say to the gentlewoman and to this House and to the people of this country that we do not need a bill like this, that we do not need to spend this kind of money, that we do not need to talk about nuclear weapons and ships and planes that bring destruction on other people's nations. But we have to live in the real world, and we know that the Soviet Union continues to move forward with chemical gases, with the types of systems that we abhor.

But I think I would say to the gentlewoman from New Jersey (Mrs. FENWICK) that as a nation we must be as prepared as we can, and so we have gone a step further than we have in the past. We have been moving in this direction with something called binary chemicals where we literally put the chemicals together in two different containers, each being harmless but being together become lethal. So while even to this day we find ourselves in this country with chemicals that are very dangerous, that are stockpiled and stored, that are getting very old, we are not embarked on that type of undertaking. We do believe that we should move a step at a time in the direction of being as prepared as we can.

This money does not buy chemicals. This money does not commit us in the future to buy chemicals. This money says that we will continue to move forward with equipment while we continue to study the problem, while we continue to look at what the Soviet Union is doing, and that there may be a time when this House will be called upon to vote to go further. You are not being called upon today either in the other military bills that have been passed here recently or in this bill today, to produce binary chemicals or any other chemical. I would like to come here tomorrow or the next day or the next year and say to the gentlewoman that we do not intend to build or to produce binary chemicals. But I will say to the gentlewoman that I will not come here tomorrow or the next day or the next year and say that we should, if we could find some way to get some agreement from the other side to stop this horrible thing.

So I come back to the point of agreement with the gentlewoman. It is a terrible weapon, but this is a terrible bill, and it is one that those of us who serve on this subcommittee stay concerned about. We know that we have got to provide the needs for the defense of this country. We know that we are wasting the taxpayers' money in many places, but we know that it simply has to be done. So I do not like opposing the amendment, but I feel that it must be done.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding.

On September 10 we had essentially the same discussion here on the floor when the military construction authorization bill was before us. I have just heard the gentleman say that this is not necessarily a commitment to the whole program—that this is merely a first step. One of the points that I tried to make on September 10 was that in the subcommittee hearing, the gentleman from Michigan (Mr. NEDZI) and the gentleman from Missouri (Mr. ICHORD) entered into a colloquy wherein Mr. NEDZI asked Mr. ICHORD after some discussion about the fact that it would eventually cost a billion dollars whether or not it was a commitment to the whole program. Then the distinguished gentleman from Missouri (Mr. ICHORD) responded that that is true, that it is essentially a commitment to the whole program.

At that time I tried to articulate my concern.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. BETHUNE, and by unanimous consent, Mr. EDWARDS of Alabama was allowed to proceed for 2 additional minutes.)

Mr. BETHUNE. If the gentleman will continue to yield, at that time I tried to articulate the concern that I have that this proposition has not been heard with any degree of precision and fairness out in our committee structure since 1975.

□ 1600

I think, as I said on that day, most Members here in the House really do not know enough about this issue to cast an intelligent vote.

I was persuaded on that day not to offer an amendment because the bill would die in the Senate or it would be killed by the administration. Even as I was making that point, even as that soothing assurance was being made to me, Senator JACKSON was going around on the Senate side hustling votes for the proposition and so I now question whether or not that is the case. If it is going to be stopped on the Senate side and if there is going to be a debate on the whole proposition then I think that would temper some of the adverse comment.

The CHAIRMAN. The Chair would like to caution the Member not to refer to actions of the other body or to refer to Members of the other body.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from New York.

Mr. ADDABBO. Mr. Chairman. I ask unanimous consent that all debate on this amendment and all amendments thereto end in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Members standing at the time the unanimous consent request was agreed to will each be recognized for 1 minute and 45 seconds each.

(By unanimous consent, Mr. DICKS yielded his time to Mr. ICHORD.)

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, the question of the gentleman from Arkansas would be extremely difficult to answer because the gentleman sets up a false premise.

Actually, this is the first step of a $175.2 million program for the facilitation of a plant to produce binary munitions. Only $19 million is included in this bill. I do not know how the gentleman from Arkansas arrived at the conclusion he finally reached.

Mr. Chairman, let me say I think the gentleman from Alabama has adequately answered the gentlewoman from New Jersey. I wish too we did not have to spend a dime for defense. This subject is, to me, just as repulsive, I would say to the gentlewoman from New Jersey, as it is to her. The gentlewoman herself has mentioned the use of gas in Afghanistan by the Soviet Union. Unfortunately that is the real world in which we live. Let me say to the gentleman from Arkansas—and I will include additional material in my full answer—yes, if we are able to obtain the valid, enforceable agreement we can stop the production of chemical agents. It will be necessary, however, to have onsite inspection and I am not too optimistic that the Soviets will ever agree to onsite inspection. We are not even close to any such agreement at the present time.

There has been so much misinformation and so much emotion surrounding this issue. Let me appeal to the Members of the House. This is your Armed Service Defense Appropriations Committee. It is the responsibility of the House and the Senate of the Congress to raise, maintain, and support armies. The issue is one of preparedness.

Mr. Chairman, these are the experts carrying out the constitutionally mandated duty of the Congress to provide, raise and maintain and support armies.

The issue is simply one of preparedness and not fighting chemical warfare.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I understand the existing stockpiles of chemicals we have today are old and very dangerous.

Mr. ICHORD. They are extremely dangerous and are having to be destroyed as each week passes.

Mr. DICKS. It is further my understanding the binary chemical munitions can be separated and are, therefore, a much safer way to proceed with these kinds of weapons. Is that correct?

Mr. ICHORD. The gentleman is correct. In fact, the supplies we have on hand at the present meet only 25 percent of the stated needs of the Joint Chiefs of Staff to deter, I would state to the gentlewoman from New Jersey, to deter chemical warfare. If we do not do anything, we will be disarming ourselves unilaterally and I know no one in this body wants to do that.

Mr. DICKS. As the gentleman points out, the Soviets have a huge advantage in this area, not only in terms of weapons systems but also in defense gear and filters for the various vehicles that make it less likely that they will be damaged by this.

Mr. ICHORD. The gentleman is eminently correct. All we are trying to do here is to maintain a deterrent. Our only possible response by the year 1990 would be nuclear. I am sure the proponents of this amendment do not mean to lower the threshold of nuclear war. Let us use commonsense and logic in dealing with this repulsive subject rather than emotion. The Members of the House should follow their experts who have given long and serious thought to the dangers we face.

Let me now take the time to answer a recent article written by a Member of the other body which appeared in the Washington Post.

This recent article entitled "Let's Stay Out of the Nerve Gas Business" contained many assertions which are demonstrably inaccurate and misleading.

For example: The article states that 10 years ago the United States adopted a new policy regarding chemical warfare. It did nothing of the sort. The article further states that the Army is trying to reverse that new policy. It is not.

On November 25, 1969, the President of the United States declared that the United States "reaffirms its oft-repeated renunciation of the first use of lethal chemical weapons" and "extends this renunciation to the first use of incapacitating chemicals." No ban was placed on further production of chemical weapons.

Our position in 1969 was, and today still is and should continue to be, the maintenance of sufficient stock to deter the use of chemical weapons. As the Secretary of Defense stated in 1969, "The objective of the U.S. program will be to deter the use of chemical weapons by other nations and to provide a retaliatory capability if deterrence fails."

The article also stated that the United States has "an enormous supply of nerve gas and chemical munitions" that is not obsolete or deteriorating; that "no proof exists" that the Soviets are manufacturing massive stockpiles of nerve gas weapons; and that binary weapons offer no military advantage. Every one of these statements is incorrect.

The facts are these: Our allegedly "enormous" stockpile comprises 730,000 rounds of unusable chemical munitions that are either obsolete or deteriorating, cannot be repaired, and are in storage awaiting destruction. A predominance of our aging stocks, with a shelf life of 20 years, is now 20 years old or older. Some nerve agents are 25 years old. A variety of artillery shells averages 19 years of age. Our failure to modernize and replenish these stockpiles means that we are losing our retaliatory/deterrent capability. We now have only 25 percent of our needs, according to the Joint Chiefs of Staff. In the absence of a modern usable chemical stockpile, the only way a U.S. President could respond to a chemical attack is with tactical nuclear weapons. No President should be limited to such a stark choice.

The article states no proof exists of a Soviet chemical buildup but according to the most current statistics gathered by U.S. Army intelligence, the Soviet Union now outnumbers the United States in all aspects of chemical warfare. The Soviets have 35 times as many personnel (100,000) trained in the use of chemical weapons, eight times as great a chemical-munitions inventory, five times as many ground chemical delivery systems, and 14 more production facilities. How many production facilities does the United States have? None.

The evidence of the continuing Soviet buildup is overwhelming and indisputable. In the last 10 years the Soviets have deployed two new self-propelled howitzers (1973 and 1974), and a new, heavy, multiple-rocket launcher (1977), all having an offensive chemical munitions capability. U.S. intelligence has confirmed that Soviet production at a chemical warfare agent plant continues as I presently speak.

Despite the article's claim that there is no military advantage to binary weapons beyond their inherent safety, they do offer the obvious military advantage of deployability. Right now, the U.S. Navy will not deploy Weteye bombs (nerve agent) aboard its carriers because they are old, unsafe, and unstable. In a March 2, 1980 interview with the Denver Post, Senator GARY HART of Colorado said, referring to the Weteye's, their poor condition made it "highly questionable" that they could be used in combat. "They would damage our troops as much as they would the enemy." Binary Bigeye bombs forward deployed aboard these carriers would, in contrast, lend credibility to our deterrent and substantially improve our readiness.

However, the issue today is not that of deployment or production of chemical weapons. The issue is preparedness and the article completely missed that point. I share the revulsion against chemical warfare but attention to our lack of preparedness will reduce the confusion and emotionalism that surround this repulsive subject.

So will intellectual integrity. Again, I urge the Members of the House to uphold the committee.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. DOWNEY).

(By unanimous consent, Mr. MOFFETT yielded his time to Mr. DOWNEY).

Mr. DOWNEY. Mr. Chairman, it is pretty clear that the Soviets have gas and have shown little reluctance to use it. They have probably used it in Afghanistan and it is conceivable they have told their allies in Laos how to use it against the Hmong tribesmen.

The question then becomes, since they have it and we have it and they have more of it, how should we respond to such a situation? We have not really engaged in any sort of tactical argument about whether or not nerve gas makes any military sense. I do not believe it does. That is why use has been limited only to those people who do not have any possible defense against it.

We spend $200 million a year equipping our forces to defend against gas. In fact I think we should spend a little more, in learning how to button up our tanks and our soldiers so they could operate in a chemical warfare environment. That is the direction in which we should be going.

If we decide the only way we can counter a Soviet advantage in chemical warfare is by increasing our own capability, we have yielded once again to the military merry-go-round mentality; that one more weapon, a little more capability will lead to military security. It does not.

Mr. Chairman, I think that notion needs to be rejected out of hand. If anything, the opposite is true. With huge stockpiles of nuclear weapons and huge stockpiles of gas, is it not more likely that they will be used? It would seem to me the ongoing negotiations with the Soviets will bear fruit if we give them a chance.

Mr. Chairman, we are not talking about disarmament, we are talking about arms control, adding to our security at reduced cost to the taxpayer.

One point about gas' tactical use: In the event of a war in Europe if the Soviets start shooting gas over, they are as likely to kill millions and millions of German civilians as they are one American soldier. Now, how long do you think the German Army is going to sit still or the U.S. Army while millions of civilians, unprotected civilians, are going to be killed by gas, without using a nuclear weapon? I do not think very long. If we respond by using gas against these forces we will be in the position of killing millions of civilians needlessly.

Mr. Chairman, there are a number of reasons that this amendment should be accepted by the body. One, the fact that we already have discussions ongoing with the Soviets to limit it. Two, tactically large stockpiles of gas are not good to deter Soviet use. What deters use is the ability by both forces to be able to operate in a chemical environment if it is necessary. We have that capability. It should be improved. We should not add this additional weapon to our arsenal because there will never be an end to the weapons we add in the name of trying to deter war. It only brings war that much closer.

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. ANTHONY).

Mr. ANTHONY. Mr. Chairman, to prove the point that was made earlier about stocks becoming obsolete and out of date, I happen to represent the congressional district wherein the facility will be located, the Pine Bluff Arsenal at Pine Bluff, Ark. In an effort to try to acquaint myself with that facility and the capabilities there, I have gone out and I have had numerous briefings there.

☐ 1610

After one of the briefings that I received, I immediately went and held a press conference and talked about the safety and how everything was well managed, only to have a press release issued the next day, which was the usual practice of the commandant of the arsenal, letting the people know in that area how many leakers were discovered within the premises. The arsenal has a policy of openness within the community so that it will have total acceptance.

Here I was, bragging about the safety and maintenance and then surprised with a press conference the next day totaling the leakers, which points up the fact that the binary system is the best way to go.

We upgrade all other defense systems. We should upgrade chemical warfare for one reason, and one reason only; not for first strike, but for defense, retaliatory capabilities. We are spending massive amounts of money to upgrade all our forces, our Air Force, Army and Navy, plus all of our weapons, because we know our weapons become obsolete or because our technology changes. We should look at this as a total defensive system.

Mr. ANTHONY. Mr. Chairman, our stocks of chemical weapons are insufficient, outdated and becoming nonfunctional. They present difficulty in storage and transportation.

The binary system is safer and will increase our ability to deploy chemical weapons should the need ever arise.

One final point should be made. We are only authorizing moneys for a facility and equipment. Production of chemical weapons must receive Presidential approval and further congressional authority before actual production can begin. The Congress will have sufficient time to study the issue and vote accordingly.

(By unanimous consent, Mr. Petri yielded his time to Mr. Leach of Iowa.)

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. Leach).

Mr. McCLOSKEY. Mr. Chairman, will the gentleman yield?

Mr. LEACH of Iowa. I yield to the gentleman from California.

Mr. McCLOSKEY. Mr. Chairman, I want to join in the position of the gentleman from Arkansas (Mr. Bethune) and those that follow from the gentleman from Iowa.

It seems tragic that after 10 years, a major decision to resume the manufacture of nerve gas should be made without full hearing and comprehensive debate in committee.

It may be that following such hearing and debate we might well vote, on an informed basis, to resume the manufacture of the binary system of nerve gas storage and delivery. But the decision today is not on an informed basis. There has been neither meaningful testimony nor full debate, and as usual the administration has been ambivalent. The Secretary of Defense has testified that the funding is not necessary this year. Why not then wait until we can fully and fairly study and understand the facts.

Mr. LEACH of Iowa. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Connecticut and would make several observations that have not been brought up at this point in the debate.

First of all, in an arms control sense, there are three basic weapons of mass destruction: Nuclear, chemical, and biological. We have dealt with biological through a comprehensive arms control agreement, and I am proud to have served on the negotiating team that negotiated that agreement. With respect to nuclear, we are taking steps, although they are not as yet very profound.

But once a country has one weapon of mass destruction, the importance of a second diminishes significantly. What we are talking about here is a new arms race, not only for ourselves, but for others. Chemical weapons, above anything else, are a poor man's weapon of mass destruction. For us to legitimize their use by expanding our arsenal of these weapons is for us to encourage other countries to develop chemical capabilities.

Rather than committing massive dollars to a fearsome new weapons system, let us go forward in a much more significant way with negotiations on a treaty to ban the development, production, and stockpiling of chemical weapons.

Finally, it should be stressed that the fault for delay in negotiating a comprehensive ban on chemical weapons to supplement the existing Geneva Protocol is not all the Soviets—although it is 90 percent so.

Unfortunately our Government, under this and previous administrations, has given far too little attention to chemical weapons negotiations.

Chemical weapons are every bit as repulsive as nuclear. Their recent usage in Afghanistan and Southeast Asia, as well as their stockpiling in Europe on both sides of the Iron Curtain, pose a great if not greater threat to world order than that posed by nuclear warheads.

After all, it is chemical weaponry, not nuclear, that has been employed in the world in recent years, and it is chemical weaponry which has been passed into the arsenals of smaller, militaristic countries such as Vietnam. This trend must be halted, and it is incumbent on responsible leaders of free world governments to lead the way.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. Weiss).

Mr. WEISS. Mr. Chairman, those of us who are old enough to remember back to the beginning of the Second World War will remember the discussions that took place involving gas warfare; remember the training programs, the training films, and instruction in the use of gas masks given not only to military personnel, but also to civil defense volunteers. I recall the horror with which the world viewed the prospect of chemical warfare once again. There were many veterans of World War I who were visible reminders of that horror. It was fervently hoped that after the experience of World War I poison gas would never be used again.

Chemical warfare was not used in World War II. It should not ever be used again. For the Congress of the United States, against the wishes of the administration, to move forward at this point to revive the prospect of the use of chemical warfare is taking this Nation and probably the world back down the wrong road.

I would hope that we would have the good sense to support the concept that chemical warfare is not an acceptable form of warfare. We must not encourage, by the signals that we send, the utilization by us or anyone else of chemical warfare.

I support the amendment of the gentleman from Connecticut and urge its adoption.

The CHAIRMAN. The Chair recognizes the gentleman from Arkansas (Mr. Bethune).

Mr. BETHUNE. Mr. Chairman, I think some good questions have been raised here, and I think that is indicative of the fact that the debate has been insufficient.

The gentleman from Wisconsin, the distinguished chairman of the Foreign Affairs Committee, came to this floor the other day and spoke strongly against going forward with this program without further debate. I could not begin to approach the eloquence that he displayed on that occasion. I think what has happened here is that proposal has gathered momentum, not because of the collective judgment of any committee or because of the collective judgment of this body. It has gathered momentum and come to the floor because of the individual expertise of a handful of Members who understand the issue from A to Z.

I find it extremely difficult as a new Member of this House to decide with any degree of precision or intelligence, because it has not been adequately debated, and I do not serve on those committees. I agree with the division of labor, but I do not think we ought to take the word of a few individuals hook, line, and sinker.

It occurs to me that there is plenty of time to debate this as the Congress moves forward. Some people are sure they are for it; some people are sure they are against it, but most Members of this body really cannot make an intelligent decision on it. I think we ought to wait about going forward until we have time to debate it.

Again, I want to point out that I think the brevity of this debate and the questions that have been raised indicate that the simple thing for us to do is to support the gentleman's amendment at this time.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. Chappell).

Mr. CHAPPELL. Mr. Chairman, the best way, obviously, for us to deter the Soviets from the use of chemical warfare is to be prepared to produce chemical weapons, and that is all we are attempting to do in this bill, to give us this capability. All of us abhor the idea of chemical warfare. Of course we do, but historically chemicals have been employed against nations having no retailatory capability—by the Germans against the Allied forces in World War I, by the Italians in Ethiopia in 1935, by the Japanese in China in 1937, by the Arab Republic in Yemen in 1967, by the Vietnamese against the Meo tribesmen; by the Soviets—note this—by the Soviets against the Afghanistan freedom fighters.

The Soviets train in chemical warfare. They are prepared to use it. They have 35 times the capacity we do, and the only chance we have, I think, for effective deterrence is to make certain they understand we have the capability to timely manufacture it.

So, I would urge the defeat of this amendment, and give us the capability to deter through possible retaliation.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, I strongly urge a vote against this amendment. I wish we could beat all of our swords into plowshares, but the arguments I have heard from the proponents of this amendment could be used against every weapons system in this bill. I daresay it makes very little matter to a person engaged in war whether they strangle as a result of chemical warfare or are blown to bits by a nucler bomb. Weapons of war are by definition horrible.

That is why we have this bill before us, because we need defensive capacity to avoid war. The fact of the matter is that the money involved in this bill is not, per se, for production of chemical warfare, but rather the production of the howitzer projectiles that might be used for that purpose.

It is admittedly the first step toward chemical warfare capability, but the United States has not produced chemical materials for warefare in this country since 1969. The gentleman from Maryland has availed himself of the Army's classified briefing on this matter a few years ago at Aberdeen Proving Grounds in Maryland, and was astounded at the lengths to which the Soviet Union has gone in their ability to destroy people by chemical warfare. We have heard reference today that the Soviets are already employing such warfare in Cambodia and Afghanistan. Now, we are negotiating with the Soviets for a joint agreement to do away with such warfare.

☐ 1620

How can we negotiate when we have no capacity to fight a chemical war? How can we negotiate when they have all the ability?

The Russians will never sign an agreement limiting chemical warfare if we do not produce a weapon that in some way guarantees that indeed if they use chemical warfare, we will respond in kind.

I suspect that those who argue against this weapons system often vote against all defense bills. They are well meaning and I grant them their motives, but they are sadly mistaken.

Mr. Chairman, this is a death struggle, and it is our national death that is a distinct possibility. I urge the amendment be defeated.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. ADDABBO) to close debate.

Mr. ADDABBO. Mr. Chairman, I rise in support of the amendment.

I think we have taken the first step by including the $3 million in the military construction bill. I think we have met the challenge, and this money is not needed at this time. I think we can wait and see if the Russians do make any real movement toward agreement on the prohibition of this type of weapon.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. MOFFETT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MOFFETT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 125, noes 276, answered "present" 1, not voting 30, as follows:

[Roll No. 546]

AYES—125

Addabbo
Aspin
AuCoin
Baldus
Barnes
Bedell
Beilenson
Bethune
Bingham
Boland
Bonior
Bonker
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Clay
Conte
Conyers
Corman
Coughlin
Dellums
Dingell
Dixon
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Eckhardt
Edgar
Edwards, Calif.
Erdahl
Fascell
Fazio
Fenwick
Ford, Mich.
Ford, Tenn.
Forsythe
Garcia
Glickman
Grassley
Gray
Green
Harkin
Harris
Hawkins
Heckler
Hollenbeck
Howard
Hutchinson
Jeffords
Johnson, Colo.
Kastenmeier
Kildee
Kogovsek
Kostmayer
Leach, Iowa
Lehman
Leland
Lowry
Lundine
McCloskey
McHugh
McKinney
Maguire
Mikulski
Miller, Calif.
Minish
Mitchell, Md.
Moakley
Moffett
Nolan
Nowak
Oberstar
Obey
Ottinger
Panetta
Patterson
Paul
Pease
Petri
Porter
Pritchard
Pursell
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rodino
Rosenthal
Roybal
Sabo
Scheuer
Schroeder
Seiberling
Sensenbrenner
Simon
Smith, Iowa
Solarz
St Germain
Stark
Stewart
Stokes
Studds
Swift
Tauke
Thompson
Udall
Vander Jagt
Vento
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Wirth
Wolff
Wolpe
Yates
Zablocki

NOES—276

Abdnor
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bevill
Biaggi
Blanchard
Boggs
Bolling
Boner
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Carney
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dodd
Dornan
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
Emery
English
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Goodling
Gore
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Hefner
Heftel
Hightower
Hillis
Hinson
Hopkins
Horton
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ichord
Jacobs
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leath, Tex.
Lederer
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lujan
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McKay
Madigan
Marlenee
Marriott
Martin
Mathis
Matsui
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Mineta
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Pashayan
Patten
Pepper
Perkins
Peyser
Pickle
Preyer
Price
Quayle
Quillen
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rostenkowski
Roth
Rousselot
Royer
Rudd
Russo
Santini
Satterfield
Sawyer
Schulze
Sebelius
Sharp
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snowe
Snyder
Solomon
Spellman
Spence
Stack
Staggers
Stangeland
Stanton
Steed
Stenholm
Stockman
Stratton
Stump
Symms
Synar
Tauzin
Taylor
Thomas
Traxler
Trible
Ullman
Van Deerlin
Volkmer
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wright
Wyatt
Wydler
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zeferetti

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—30

Anderson, Ill.
Campbell
Chisholm
Collins, Ill.
de la Garza
Derrick
Dougherty
Erlenborn
Fish
Goldwater
Harsha
Holland
Holt
Holtzman
Ireland
Jenrette
Johnson, Calif.
Leach, La.
McClory
Markey
Marks
Mattox
Myers, Pa.
Nedzi
O'Brien
Oakar
Shannon
Vanik
Wilson, Bob
Wilson, C. H.

☐ 1630

Messrs. LEWIS, STAGGERS, and DAVIS of Michigan changed their votes from "aye" to "no."

Messrs. LOWRY, FORD of Michigan, SMITH of Iowa, and RAILSBACK changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

☐ 1640

Mr. VENTO. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, although the Appropriations Committee and its Subcommittee of Defense have put a conscientious effort into this bill, I must oppose it in its present form.

My reasons for opposition are that the

committee, although exhibiting a realism beyond that of the authorizing committee, has failed to respond properly to the warnings of the leaders of the Air Force that we now face a greater potential for conflict with the Soviet Union than any time since the early 1960's.

In the short term they have failed to place more emphasis on the purchase of weapons that will help us now rather than pie-in-the-sky systems which, at a great expense, may possibly help us some time in the distant future. In the long term they have ignored the fact that a truly effective defense is dependent upon a healthy economy and that to insure such an economy, budgetary limits are required—even for defense.

Unrestrained spending on untested systems does not help us. Look at the example of the C-5A, an airplane for which procurement was finished before test and evaluation uncovered the wing fatique problems. We are paying the price today with the $187 million included in this appropriations bill for a rewing of 12 C-5A's. The whole rewing program will cost $1.4 billion. Because of this mistake the expensive penalty we are paying for the C-5A only underscores the importance of our not making the same mistakes again.

I am, however, pleased that the committee has paid close attention to the F/A-18 aircraft and have made the funding for this program contingent upon certification by the Secretary of Defense that deficiencies identified in both developmental testing III and by all accident investigations have been corrected and successfully tested by the Navy and that the test results demonstrate that the system meets contract specifications for performance and reliability. This is the minimum step that the subcommittee and committee could have taken.

I have been reviewing this aircraft for some months and have discovered that, in addition to the technical problems—which culminated in a near-disastrous crash in England by an exhibition aircraft a week ago, the costs are out of control. It can be expected that the fiscal year 1982 program cost will be some 20 percent higher than the fiscal year 1981 cost. It is reported that the Navy wished to publish this increase in the June SAR but was overruled by the Office of the Secretary of Defense.

Beyond this, many experts question whether the F/A-18 is capable of aiding the Navy in its primary mission of sea control against the Soviet threat. As a result of these technical, cost, and viability problems, the program and our commitment to it is undergoing extensive review by the executive branch OMB Director McIntyre must choose whether to advise the President to accept an OMB report recommending cancellation of the F/A-18. The principal Deputy Undersecretary of Defense for Research and Engineering is heading a task force studying alternatives to the F/A-18. Many in NSC and elsewhere now question the viability of the Navy light-attack concept. Nevertheless, powerful forces protect the project. The glamor and the promotions of a project of this size give it protection in the budgetary politics of the Department of Defense. While more routine established programs get neglected as more and more funds accrue to the larger, newer more spectacular programs.

I urge the subcommittee to continue to monitor the F/A-18 program. We cannot afford to waste Federal funds on a program that does not enhance our defense capabilities. I fully intend to follow closely the progress of this program.

Testimony before the subcommittee last year showed the services often do not put in budget requests for proven systems that they need since they know that these systems will be cut in the budgetary process and their service will lose the money. It appears to be forgotten that it is the routine, established programs which provide us with viable fighting forces. While the new programs get more than sufficient funding, these routine systems not only lose out in budgetary battles but also suffer budget cuts to meet unexpected operational expenses such as those that have been incurred in the Indian Ocean.

This is a practice which must be avoided. Then excessive funds for an untested program such as the F/A-18 would be better spent to provide adequate funding levels for existing essential programs which enhance our current readiness.

Mr. Chairman, I ask that the committee exercise more careful oversight of the process by which the Department of Defense budget is prepared. This I believe, would result in a budget more realistic in terms of the current and projected threat which in turn would result in a better bill and a better defense.

Mr. Chairman, I rise for the purpose of a colloquy with the subcommittee chairman. I want to commend the subcommittee chairman and the committee for their leadership and especially for their report language.

I would like to ask the chairman of the Subcommittee on Defense for a clarification regarding yesterday's debate and the committee report.

In the section of the report regarding the appropriations for the F/A-18, the committee stated:

> These funds shall be made available for obligation only upon certification by the Secretary of Defense that the deficiencies identified in both Developmental Testing III and by all accident investigations have been corrected and successfully tested by the Navy and that the test results demonstrate that the system meets contract specifications for performance and reliability.

During yesterday's debate, the chairman entered into a colloquy on this language and stated that it was not the intent of the committee to unnecessarily delay the program.

In light of the near disastrous F/A-18 accident in England, there appears to be a serious difficulty associated with the aircraft which demands close study.

If I could have the subcommittee chairman respond to a question, would I be correct in my understanding that the committee intended that any deficiency involving safety and/or combat effectiveness would not be considered minor?

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

The committee is concerned about the status of the F/A-18 in terms of cost and its reliability and capabilities. The committee report would cover any major or significant deficiency involving safety and/or combat effectiveness.

Mr. VENTO. I thank the chairman for responding.

I would also like to ask whether deficiencies which may be discovered later in the testing process are also within the scope of the committee report?

Mr. ADDABBO. Any significant deficiency found within a reasonable time insofar as they relate to safety and/or combat effectiveness would have to be considered.

Mr. VENTO. I thank the gentleman for his attention and the subcommittee's attention.

Mr. Chairman, I yield back the balance of my time.

Mr. RUDD. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I rise to propound a question to the gentleman from New York concerning appropriations in this bill to rectify the serious spare parts problems being faced by all the services.

I was told following my visit aboard the U.S.S. *Talbot* earlier this year, when a spare parts problem caused a substantial delay in a scheduled mission, that the Navy had a 35-percent deficiency in spare parts at that time.

Moreover I have just received information from Williams Air Force Base in Arizona, the Nation's largest undergraduate pilot training base, that a deficiency in eight separate aircraft parts is causing a large number of planes to be grounded; 21 planes there have been grounded owing to the lack of only one needed engine part.

I would like to ask the distinguished chairman what the committee has instructed the Defense Department to do to correct this spare parts problem in all the services, and what additional funds are earmarked in this bill to help rectify the current deficiency in spare parts?

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

The committee has had the same desire the gentleman has mentioned. In last year's bill, we recommended funds over the budget for spare parts and hopefully we are moving in the direction of correcting this situation. Again, in this year's bill we have increased spare parts for the Navy by $157 million and increased spare parts for the Air Force by $475 million. So hopefully, we are now moving in the right direction.

Mr. RUDD. I thank the distinguished chairman.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. RUDD. I yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. I thank the gentleman for yielding.

I will not take but just a minute.

The committee has moved, I think, smartly in the direction of trying to resolve the spare parts problem. I think the chairman would agree, while we have made a major step this year in that direction, that we still are a long way from solving the spare parts problem. There is still much to be done, and hopefully in the years to come, we will be adding to the spare parts sections of the bill to see that we do not have the kind of problem that the gentleman has discussed here today.

Mr. RUDD. I thank the gentleman from Alabama, and I know that America will be glad of the awareness that has been expressed here of this problem.

I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land without regard to section 9774 of title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to the approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $9,639,329,000, of which $382,044,000 shall be available for contribution of the United States' share of the cost of the acquisition by the North Atlantic Treaty Organization of an Airborne Early Warning and Control System (AWACS) and, in addition, the Department of Defense may make a commitment to the North Atlantic Treaty Organization to assume the United States' share of contingent liability in connection with the NATO E-3A Cooperative Programme, to remain available for obligation until September 30, 1983.

Mr. GLICKMAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I commend the Appropriations Committee for its decision to approve procurement funding for the KC-135 reengining program in order to set the stage for an accelerated production schedule. The objective of the program is to replace the aging, inefficient engines in the KC-135 tankers with modern, fuel-efficient engines. Reengining will improve the Nation's defense capabilities, reduce fuel consumption, and cut costs.

With a flexible military strategy an increasing necessity to meet national defense requirements, reengined KC-135's will play a critical role in supplying fuel to long-range penetrating bombers. The KC-135's aerial refueling capability can also be used for a growing number of other Air Force aircraft. The new generation of fighters and transport aircraft are being outfitted to receive fuel midair. Reengining minimizes the number of flight hours required for tanker, bomber, and general purpose fleet refueling sorties and permits greater fuel off-load to extend receiver range and payload. Because reengining enables the KC-135 tankers to take off from shorter runways, our defense readiness can be enhanced through the use of an increased number of bases worldwide by the KC-135 fleet.

The KC-135's are the gas guzzlers of the Air Force fleet, burning over one-eighth of total Air Force fuel. Reengining will dramatically lower fuel usage. With 300 reengined tankers, 3.8 million barrels of fuel can be saved per year and at $30 per barrel, an annual savings of $114 million can be realized.

Besides the reduction in fuel costs, reengining can result in other savings. The KC-135's are currently undergoing wing modifications which will permit their airframes to be used well into the 21st century.

The modern engines to be used in the program are significantly quieter than current KC-135 engines. Members like myself who have an Air Force base or an Air National Guard wing in their districts know that constituents have been continually disturbed by the KC-135 tankers, the noisiest aircraft in the air today. Reengining would bring the tankers into compliance with the FAR, part 36 commercial aircraft noise standards.

The KC-135 reengining program is well underway. Engine selection was completed early this year with the GE/SNECMA CFM56 chosen. The fiscal year 1981 funding will permit the procurement of hardware to reengine one KC-135 aircraft as well as the purchase of hard production tooling and long lead raw materials and equipment. It is essential that we continue to move ahead on the reengining in order to capitalize on the program's benefits. Continued strong congressional support such as what we have seen this year will be needed to insure the programs' progress.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $2,961,054,000, to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. COURTER

Mr. COURTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COURTER: Page 25, line 14, strike out "$2,961,054,000" and insert in lieu thereof "$2,965,677,000".

Mr. COURTER. Mr. Chairman, I rise to offer an amendment: On page 25, line 14, to strike out "$2,961,054,000" and insert in lieu thereof, "$2,965,677,000".

Mr. Chairman, the addition of $4.623 million to this legislation is for the necessary and continued research and development on all levels, for various projects under the joint service small arms program headquartered under the Army's Armament Research and Development Command—at the Picatinny Arsenal. These funds have been fully approved by the House-Senate conference report, 96-1222, for the fiscal year 1981 defense authorization bill—page 69, items 106 and 115.

While all of us are rightly concerned with strengthening and modernizing our strategic forces, which I support, we must concomitantly do all we can to strengthen our conventional forces. The basic weapons of our Army, Marine, and special warfare units are small arms. That includes ammunition, pistols, rifles, machineguns, grenade launchers, and other portable, handheld weapons systems up to 40 millimeter. If we are to have an effective rapid deployment force, as called for by the President, they must be equipped with the finest, cost-effective weapons possible. The joint service small arms program, to which these funds are to be directed, is dedicated to developing handheld weapons for all the services, including the Coast Guard, and cut down on waste and duplication. The small arms needs of all our services are being met by this program, with the aim of servicewide standardization and eventual interphase with our NATO Allies.

The need for continued research, development, testing, and evaluation on small arms cannot be overstated. Funding for this program has had the enthusiastic support of professional staff members of both Armed Services Committees. Our major adversary, the Soviet Union, is making major strides in the area of small arms. Forbes magazine, in its September 15, 1980, edition, indicates that the Soviets are far ahead of us in this field. The highly reputable publication, National Defense, in its April 1980 edition, reported that the Soviets are testing a new generation of small arms in Afghanistan, including the new AKS-74 automatic rifle.

As far as our Nation is concerned, the Commandant of the Marine Corps, Gen. Robert H. Barrow, indicated to me in a letter of May 5 of this year, that we should look for a replacement for the M-16 rifle and that:

> Despite fiscal restraints, the requirement to upgrade the equipment of our Armed Forces is ongoing, we are counting on these JSSAP programs to satisfy that requirement for the individual rifleman.

Mr. Chairman, I believe that some of these fiscal constraints should now be removed and that we embark on an ongoing R. & D. program to upgrade our small arms capabilities. The amount of funding is small, in relation to many other programs, yet it is truly needed. An affirmative vote will be in consonance with the authorizing committees and with our national security requirements. Thank you.

☐ 1650

Mr. ADDABBO. Mr. Chairman, it is with reluctance that I rise in opposition to the amendment. It is a small amendment, only $4.6 million, but a million here, a million there, and all of a sudden we have a billion dollars to add to this bill.

The $4.6 million, according to the testimony we received, would be to harmonize the design, development, test evaluation, introduction to the services of small arms.

Mr. Chairman, we have already in this bill $10,344,000 in the Army small arms research program. None of these funds would in any way be for replacing the M-16. Now, over the years our committee has been urging the Department of Defense to standardize on a single handgun. At present there are about 25 different types of handguns and ammunition.

DOD has recently only directed that a single standard off the shelf handgun be procured. This effort was carried out within the levels funded in prior years at the budget levels requested.

Mr. Chairman, there are sufficient funds in this bill for this program.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. COURTER).

The amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $4,433,748,000, and in addition, $6,052,000 of which $4,086,000 shall be derived by transfer from "Research, Development, Test, and Evaluation, Navy, 1979/1980", and $1,966,000 shall be derived by transfer from "Research, Development, Test, and Evaluation, Navy, 1980/1981", to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. CHAPPELL

Mr. CHAPPELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CHAPPELL: Page 25, line 22, strike out "$4,433,748,000" and insert in lieu thereof "$4,502,211,000".

Mr. CHAPPELL. Mr. Chairman, this addresses a matter which was inadvertently overlooked by the subcommittee by virtue of the fact that the Appropriating Committee had not completed markup.

This line is Vertical Launch Systems and $68.5 million is authorized for appropriation. This amount is essential to complete the ongoing engineering development of vertical launching systems which are planned for CG-47, DDGX and DD-963 class ships.

I urge adoption of the amendment.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. Yes, I will yield.

Mr. ADDABBO. I thank the gentleman for yielding.

Mr. Chairman, this matter was not before the committee at the time of markup. We had not received the conference report from the authorizing committee. Since that time the vertical launch systems have been authorized.

We would accept the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. Yes, I will yield to my colleague.

Mr. EDWARDS of Alabama. Mr. Chairman, we accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. CHAPPELL).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $6,230,579,000, to remain available for obligation until September 30, 1982.

AMENDMENT OFFERED BY MR. MITCHELL OF NEW YORK

Mr. MITCHELL of New York. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MITCHELL of New York: Page 26, line 9, strike out "6,230,579,000" and insert in lieu thereof "6,234,779,000".

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. MITCHELL of New York. I certainly yield to my friend, the gentleman from New York.

Mr. ADDABBO. Mr. Chairman, I have discussed the amendment with the gentleman from New York. At the time that the committee marked up the bill, this matter had not been authorized. Since that time we have again reexamined it. It has been authorized.

We would be willing to accept the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, if the gentleman will yield, on this side we agree to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. MITCHELL).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SIMON

Mr. SIMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SIMON: Page 26, line 10 insert after "September 30, 1982," ": *Provided*, That none of the funds appropriated by this paragraph may be used for research and development of a basing mode for the MX missile before April 1, 1981".

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from New York.

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto end in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SIMON. Mr. Chairman, this amendment does not take one penny from this appropriation. What it does is to say that since we have four studies that will be concluded by February 1 on the basing mode, let us have those studies in before we spend additional tens of millions of dollars on this basing mode.

We are talking about something that will be the second largest expenditure in the history of humanity in toto. I am not going to go into the technical reasons why I think we should reject the basing mode. Members have heard me speak on that before; but let me point out a few things that have happened since we last discussed this.

First, two former Chairmen of the Joint Chiefs of Staff of this Nation have said that we ought to take a second look at this mobile basing mode.

Second, the current issue of the Reader's Digest has an article by a former colleague of ours, the former Secretary of Defense, Mel Laird, and let me quote former Secretary of Defense Mel Laird:

> One thing seems obvious. We ought to conduct a thoroughgoing examination of MX basing before any more funds are spent on the hugely expensive deployment of the MX system planned for the Western United States.

James Kilpatrick has called it the Pentagon's Edsel.

I would like to quote also from the Republican Presidential candidate, Mr. Ronald Reagan, who told the Chicago Council on Foreign Relations that he was opposed to the basing mode. In Business Week, March 31, 1980, he said:

> It is not the MX I oppose. It is the missile's racetrack deployment system.

☐ 1700

What I am saying, my colleagues, and I recognize there is a remote possibility that that gentleman might become President of the United States, let us let some time elapse should he be elected so he can take a look to see whether he wants to go ahead with that.

Senator HOLLINGS, certainly a strong supporter of defense, says:

> MX is the right missile but the racetrack basing is nonsensical extravagance.

Senator JACKSON, whose support of defense is clear, says in arguing for proceeding with the MX missile:

> I have no intention of supporting the racetrack basing mode that has been discussed. It strikes me as cumbersome, risky, and expensive.

I could go on. Senator TED STEVENS of Alaska, William Buckley, and the list goes on. If my colleagues look at the rollcall we have had in the House, those who have opposed this are not liberals or conservatives, hawks or doves, but it is a good cross section of this House, people who are thinking twice about something that I believe is not only a massive economic mistake, but a massive military mistake.

So I would ask that we do a simple and sensible thing, let us wait until these studies are in and let us provide an additional 60 days and then go ahead if it it is then deemed wise to do so.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to my colleague from Missouri.

Mr. SKELTON. I wish the gentleman would tell me again what his amendment does.

Mr. SIMON. The amendment does one thing, and it is a very simple thing. It says that we do not spend any more money on the development of the basing mode for the MX. The basing mode alone. We go ahead with the research and the development on the missile, but on the basing mode, we halt the development until four studies that are now pending are completed, one of which is the Cannon amendment put in in the other body, and one of which is the Office of Technology Assessment report due February 1, that we wait until we get those reports before we spend tens of millions of dollars, perhaps hundreds of millions of dollars.

Mr. SKELTON. I thank the gentleman.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. EDWARDS of Alabama and by unanimous consent, Mr. SIMON was allowed to proceed for 2 additional minutes.)

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from Alabama.

Mr. EDWARDS of Alabama. The gentleman keeps talking about the racetrack basing mode for MX. Is the gentleman not aware that the administration has now gone to the straight-line MX basing mode rather than the racetrack?

Mr. SIMON. It is now the linear roadway. That is the new phrase, the latest thing. Who knows what it is going to be 30 days from now? But if one looks at the maps they produce, they look amazingly like the racetrack again. But the gentleman is correct, it is the linear roadway, but it does not fundamentally change the thing at all.

Mr. EDWARDS of Alabama. So the gentleman is suggesting that the President may yet change his mind and that we will not have the linear roadway?

Mr. SIMON. I am suggesting not only that the President may, but there may be many people who are going to join Mel Laird, the two former Chairmen of the Joint Chiefs of Staff. Perhaps Congress and the President will join in saying this really does not make sense.

Mr. MARRIOTT. Mr. Chairman, I move to strike the necessary number of words.

I rise in support of the amendment offered by the gentleman from Illinois. It's my view that it is a very responsible and moderate approach to a major problem under the existing circumstances.

This amendment does not strike the appropriations for the MX. It simply delays spending, and rightly so.

There are basically 4 reasons why spending should be delayed on the MX missile program.

First, the environmental impact statement, which was to be completed last month, has been delayed to November 15 at the earliest, after the elections.

The split basing study, which was required under the Defense authorization bill, has not been completed.

Second, it is unlikely that any funds could be spent before April 1 of 1981 in any case. The Air Force has already admitted that it cannot staff the MX project office.

Let me quote from the committee report on this bill:

> It was noted that the Air Force has failed to fully staff the MX office project, citing as the reason the lack of sufficient numbers of persons with the requisite skills and experience to manage and control so large, complex, and costly an undertaking.

This is a frightening comment. Either the Air Force itself will continue to delay the program because its project office is understaffed, or it will have to staff the office with people short on the necessary skills.

Third, the American people and this body are painfully familiar with the effect of such delays in other defense programs. We can point to the weapons systems on which there have been tremendous cost over-runs and some which were actually scrapped.

For example, the American people spent almost $6 billion over a 10-year period on an ABM system that was shut down within weeks of its completion. The total cost of the B-1 bomber, for example, was over $6 billion when it was decided the cost was excessive and it was abandoned.

We simply cannot afford to repeat this kind of history in developing the MX. Our national survival is at stake.

Fourth, I would point out that politically this is an unprecedented year. There are three major candidates who have a chance of winning the White House. Two of them oppose the "shell game" deployment of the MX. Thus, delaying the spending of funds on a particular deployment mode until next spring will assure that we have neither wasted funds on a program that will soon be abandoned nor have we tied the hands of an incoming administration.

In addition to the practical reasons for delayed spending, there are also political reasons. As a long-standing advocate of a strong national defense, I want what is best for this country. But under the circumstances, jumping into the middle of this project without consideration for the points I have made today would be unwise.

There are still a number of inconsistencies regarding land withdrawal, States' water rights, economic and environmental impacts, and plans to address them have not been resolved.

I urge your consideration of this amendment, not as a destructive force for the MX program—it will not do that—but for the commonsense reasons I have laid out today.

Mr. WEAVER. Mr. Chairman, will the gentleman yield?

Mr. MARRIOTT. I am pleased to yield to the gentleman.

Mr. WEAVER. I want to thank the gentleman. As a fellow westerner, I commend him for his excellent presentation.

I would like to read the concluding paragraph of Jeremy Stone's article in the Washington Post this morning.

> With weapon systems taking 10 years to build and designed to function for 20 years beyond that, America can no longer afford to examine its defense posture only in the annual snapshots of congressional review. Now, while we are still at the fork in the road, would it not be wise to stop and think?

Mr. MARRIOTT. I thank the gentleman and would only say in conclusion we have so many immediate problems, one of which I think is to backfill the Minuteman with MX missiles and to rethink where we are going on this basing mode, I think after the election there is plenty of time to fund this program, move on and still meet our objectives, if it is the purpose of this Congress to have this program in effect by 1989.

The CHAIRMAN. The Chairman will state there are 8 minutes left in the debate.

Mr. SANTINI. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in support of the amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. SANTINI. I am happy to yield.

Mr. EDWARDS of Alabama. Would the Chair advise how much time is left after this amendment?

The CHAIRMAN. After the gentleman concludes his statement, 3 minutes.

Mr. EDWARDS of Alabama. I would urge the gentleman not to use all of his time and save a little for the other side.

Mr. SANTINI. That urging creates a great deal of anguish and anxiety at the beginning of my remarks. I will do my best.

I wish to speak in support of the gentleman's amendment, recognizing that its prime frailty is that it is logical.

I endorse the observations and commentaries of my good friend from Utah and the observations of the sponsor of the amendment, my friend from Illinois (Mr. SIMON).

We have an environmental impact study that is ongoing, No. 1. We have the Office of Technology Assessment study ongoing, No. 2. We have got the Department of Defense study on split basing ongoing, No. 3. We are talking about $500 million and whether or not we spend it now or appropriate its expenditure in April.

□ 1710

My good friend, the chairman of the subcommittee, has observed over the years how many times we go charging on in our understandable enthusiasm to do whatever we can by way of expenditure of taxpayer dollars to reinforce our meager—by some people's assessment, inadequate by most people's assessment—national defense machinery. But it seems to me resoundingly cogent in this case to postpone an expenditure of a half billion dollars when that expenditure could be abrogated immediately by any one of these three studies. It does not make any sense to anyone under any logical terms of analysis to pour this money into this particular appropriation when the probabilities are that that expenditure is going to have to be modified down the line by any one of the three studies that are now pending.

As I suggested at the outset, the perception is that anything dealing with the MX and reasonable judgment are somehow inconsistent one with the other. I do not think so, and I hope that the Members of this body will concur with me that this half billion dollar expenditure is in jeopardy by any one of these three pending studies, and it makes eminent good sense to forestall that expenditure until the studies are in place and we can at that time deal with the findings of any one of those three entities.

I hope that an increasing degree of economic sensitivity, as well as the substantial concern for national defense will compel my colleagues to support the amendment offered by the gentleman from Illinois (Mr. Simon).

I yield back the remainder of my time.

Mr. EDWARDS of Alabama. Mr. Chairman, I will try not to use all of my time, or perhaps I can yield some, but I rise in opposition to the amendment. I would just like to point out briefly that in our committee report on page 319 we take note of the fact that there were changes in the MX basing mode announced after the budget was submitted, and for that reason and other reasons cited in our committee report, we reduced the amount made available for the MX by $120 million, taking that into consideration. I would argue that the very reason that we are still spending money on research and development is to learn the best way to do these things, to build the best type of missile. We are not in procurement. We are not in a case where we are buying in this bill land, as we did under military construction, so I think that the gentleman's concern, while valid, has been addressed in our committee report and something that we have taken time to address.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Florida.

Mr. CHAPPELL. I thank the gentleman for yielding. This amendment says that none of the funds appropriated may be used for research and development of a basing mode for the MX missile before April 1. What concerns me is that we are horribly behind with the program as a very vital and important leg of our Triad. Now we want to delay it some more. It is the basing mode that concerns us the most. Why should we delay the research and development on that, which in my view has nothing more than the effect of delaying the program even further? I do not think it will accomplish a thing. It is the research and development that is important, and we have provided the money to go ahead with it so we will have the information and knowledge about what that basing mode ought to be. I oppose the amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Washington.

Mr. DICKS. I thank the gentleman for yielding. Is it not true, I ask the distinguished ranking minority member, that we have had study after study after study about the basing mode for the MX missile system, and it has been reviewed over and over and over again? I do not see what would be achieved by delaying research and development expenditures during this next 6 months. Research and development has improved the MX program. It should not be stopped for 6 months.

Mr. EDWARDS of Alabama. I agree with the gentleman. We are still in research and development. There no doubt will be other changes made as we proceed down this road. I see no reason to delay this project.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from Missouri.

Mr. SKELTON. I thank the gentleman for yielding. What are the other three studies that we are talking about? Who instituted them, and what do they deal with?

Mr. EDWARDS of Alabama. I would suggest that the gentleman address that question to the gentleman from Illinois (Mr. Simon). I yield to the gentleman from Illinois for that purpose.

Mr. SKELTON. Yes, I would like to have an answer to that.

Mr. SIMON. I thank the gentleman for yielding. Yes, there are four studies really, three fundamental studies. One is an environmental impact statement. The second is an Office of Technology Assessment study requested by Senator Stevens and the gentleman from Arizona (Mr. Udall), on this whole thing. The interim report is due on February 1. The third is the whole split basing mode and other alternatives that was mandated by legislation through an amendment by Senator Cannon.

Mr. SKELTON. When is it due?

Mr. SIMON. It simply calls for a study of the alternatives. What I am saying is before we go ahead massively, let us look at what those studies have to say. That does not seem unreasonable.

Mr. EDWARDS of Alabama. If I could reclaim my time, I would argue we are not going ahead massively and that we have in fact taken a cut based on some of the very points that the gentleman from Illinois has made. I would argue that the cuts we have taken are sufficient to keep the program in line as we continue with our research and development.

Mr. SANTINI. Would the gentleman allow me to reclaim 37 seconds that I yielded back to respond to the gentleman from Missouri?

Mr. EDWARDS of Alabama. I yield to the gentleman.

Mr. SANTINI. The Department of Defense study deals specifically with a split basing question and is not even due until February. So any taxpayer dollars expended prior to February would be done at some degree of peril. It seems far more reasonable to wait, as the gentleman from Illinois suggested in his amendment, until that money is back. And given the recent providence of the conversion of the basing mode, we have seen I believe five different basing modes in this much studied missile. Within the last 6 months we have seen a conversion from racetrack to drag strip. Perhaps that gives the gentleman some solace in terms of dependence on those past studies.

● Mr. ECKHARDT. Mr. Chairman, I rise in reluctant opposition to the amendment offered by the gentleman from Illinois, Mr. Simon. On May 15, 1980, I supported the Simon-Marriott amendment to the Department of Defense authorization bill for fiscal 1981, but the amendment offered today by Mr. Simon to the fiscal 1981 DOD appropriations bill is at sufficient variance that I cannot consistently support it.

The Simon-Marriott amendment to the authorization bill sought to delete $500 million authorized for research and development and deployment of the MX missile basing system, yet it also specified that $66 million would be authorized to carry out a study of alternative basing modes. The present Simon amendment to the appropriations bill now before the House would simply prohibit any research and development funds for basing of the MX missile before April 1, 1981, when several ongoing and proposed studies are expected to be complete.

The key factor distinguishing the two amendments in my mind is the provision for research and development funds to study alternative basing systems—the Simon-Marriott amendment retained funds for that purpose; the present Simon amendment would delay research and development of basing for 6 months, one-half of the fiscal year. While we must take a hard look at the various basing systems currently under consideration, I can see no effective purpose in delaying research and development funds which can be used to learn even more about the best means of basing the MX.

After careful study, I am convinced that the MX or similar new generation of missiles is worthy of development in order to retain a high level of deterrent force for the missile-launched portion of our defensive Triad. Yet I very much share the outspoken and articulate concern of many of my colleagues, most notably Mr. Simon, Mr. Santini, and Mr. Marriott, that the ever-changing basing modes proposed for the MX thus far have been impractical and not cost efficient.

Nevertheless, in attempting to insure that the Department of Defense will adequately address the wholly legitimate concerns about the MX basing systems which have been raised, we should not delay ongoing research and development by DOD on the MX basing mode before a final implementation decision is made. For similar reasons, I opposed the Marriott amendment during House consideration of the DOD authorization last May, which would have placed too many restrictions and conditions on MX basing before it could be accomplished. I also oppose the Simon amendment to today's DOD appropriation bill because it would delay research and development by DOD on MX basing.

We must continue to insist that adequate answers to the many serious questions concerning basing of the MX missile be provided before we finally commit ourselves to a course which could prove wasteful and inefficient, but in doing so we cannot afford to unduly delay the necessary development of the missile itself.●

● Mr. FITHIAN. Mr. Chairman, I add my voice in support of the amendment being offered by my distinguished colleague and friend from Illinois, Mr. Simon. I would like to take just a moment to outline my rationale for this position, in the hopes that it may either sway other Members of this body to join in voting for the Simon amendment, or that my line of reasoning at least give others pause to consider the consequences of lurching ahead with what I call the prairie dog system of missile deployment. I cannot escape the uneasy feeling that future generations will find ludicrous this project which some defense analysts tout as being more ambitious in scope than the Egyptian pyramids or the Great Wall of China.

Please allow me to stress that a vote for the Simon amendment should not in any way be construed as a vote against the MX. The blunt fact of Minuteman vulnerability demands that we seek out an alternate source of strategic strength which will obviate the slightest possibility of a first strike by the Soviets.

I do not lay claim to being an expert on this subject, but even a cursory examination of the basing mode options should convince one that it might benefit us to study for a few months more a project that will demand so much of the American people. A water-based MX has the support of numerous acknowledged defense experts, including former Secretary of Defense Melvin Laird, Rear Adm. George H. Miller—former Director of the Navy Strategic Offensive and Defensive Systems Office—and two former chairmen of the Joint Chiefs of Staff, Gen. Maxwell D. Taylor and Adm. Thomas H. Moorer.

Before a commitment is made to fund a strategic land-based weapons system which is presently estimated to take nearly a decade to become fully operational, and before we are locked into providing over $54 billion for acquisition of this behemoth program, I submit that we continue development of the missile itself, but put off breaking ground on 4,600 silos until certain independent studies referred to by Representative Simon are completed.

Over two-thirds of the Earth's surface is ocean; that fact alone should argue for further consideration of utilizing the seas. One water-based system which has especially captured my interest is the shallow underwater mobile (SUM) concept. This system, which has been extensively explored by our esteemed colleague in the Senate, Mark Hatfield, does not reduce the strategic Triad to a Dyad, but, in effect, adds a leg. The end result of this mode would be to retain a certain number of Minuteman and Trident missiles on land, to keep strategic weapons aboard manned penetrating bombers, to similarly arm our deep-water Trident submarines, and, finally, to deploy 100 or so small, MX-bearing submarines along the Continental Shelves of both east and west coasts. An in-depth study of SUM is currently being conducted by the Office of Technology Assessment, yet another reason to hold off giving the green light to land basing.

The adoption of the SUM solution would not only cause untold complications for the Soviets—thus averting a first strike potential—it would also remove the questions of how the proposed land-based mode might have an adverse social, economic, and environmental impact in the States of Utah and Nevada.●

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois (Mr. Simon).

The question was taken; and on a division (demanded by Mr. Simon) there were—ayes 13, noes 23.

RECORDED VOTE

Mr. SIMON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 141, noes 256, not voting 35, as follows:

[Roll No. 547]

AYES—141

Abdnor
Addabbo
Aspin
AuCoin
Baldus
Barnes
Bedell
Beilenson
Benjamin
Bingham
Boland
Bonior
Bonker
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Chisholm
Clay
Coelho
Collins, Ill.
Conte
Conyers
Corman
Coughlin
Daschle
Dellums
Dixon
Dodd
Donnelly
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Calif.
Emery
Erdahl
Ertel
Evans, Del.
Fenwick
Fisher
Fithian
Florio
Ford, Mich.
Ford, Tenn.
Forsythe
Fowler
Garcia
Glickman
Goodling
Grassley
Gray
Green
Hall, Ohio
Harkin
Hawkins
Hollenbeck
Jacobs
Jeffords
Johnson, Colo.
Kastenmeier
Kildee
Kostmayer
Leach, Iowa
Lehman
Leland
Long, Md.
Lowry
Lujan
Lundine
McCloskey
McHugh
McKinney
Maguire
Marriott
Matsui
Mavroules
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Moorhead, Pa.
Nolan
Nowak
Oberstar
Obey
Ottinger
Panetta
Paul
Pease
Perkins
Peyser
Porter
Pritchard
Pursell
Rahall
Railsback
Rangel
Ratchford
Reuss
Richmond
Rodino
Roe
Rosenthal
Roybal
Russo
Sabo
Santini
Scheuer
Schroeder
Seiberling
Sharp
Simon
Smith, Iowa
Spellman
St Germain
Stack
Stark
Stokes
Studds
Swift
Synar
Thompson
Udall
Van Deerlin
Vento
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Wirth
Wolpe
Yates
Young, Mo.

NOES—256

Akaka
Albosta
Alexander
Ambro
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Bauman
Beard, R.I.
Beard, Tenn.
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boggs
Bolling
Boner
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Carney
Carter
Chappell
Cheney
Cleveland
Clinger
Coleman
Collins, Tex.
Conable
Corcoran
Cotter
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
Deckard
Derwinski
Devine
Dickinson
Dicks
Dingell
Dornan
Dougherty
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Okla.
English
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Flippo
Foley
Fountain
Frenzel
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Gingrich
Ginn
Gonzalez
Gore
Gradison
Gramm
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harris
Harsha
Heckler
Hefner
Heftel
Hightower
Hinson
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ichord
Ireland
Jeffries
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Kogovsek
Kramer
Lagomarsino
Latta
Leath, Tex.
Lederer
Lee
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Luken
Lungren
McCormack
McDade
McDonald
McEwen
McKay
Madigan
Marks
Marlenee
Martin
Mazzoli
Mica
Michel
Miller, Ohio
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Pashayan
Patten
Patterson
Pepper
Petri
Pickle
Preyer
Price
Quayle
Quillen
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rose
Rostenkowski
Roth
Rousselot
Royer
Rudd
Satterfield
Sawyer
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spence
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Stump
Symms
Tauke
Tauzin
Taylor
Thomas
Traxler
Trible
Vander Jagt
Volkmer
Walker
Wampler
Watkins
White
Whitley
Whittaker
Whitten
Williams, Ohio
Wilson, Tex.
Winn
Wolff
Wyatt
Wylie
Yatron
Young, Alaska
Young, Fla.
Zablocki
Zeferetti

NOT VOTING—35

Anderson, Calif.
Anderson, Ill.
Campbell
Clausen
de la Garza

Derrick
Erlenborn
Fish
Giaimo
Goldwater
Hillis
Holland
Holtzman
Jenrette
Kemp
LaFalce
Leach, La.
McClory
Markey
Mathis
Mattox
Myers, Pa.
Nedzi
O'Brien
Oakar
Sebelius
Shannon
Staggers
Ullman
Vanik
Whitehurst
Wilson, Bob
Wilson, C. H.
Wright
Wydler

□ 1730

The Clerk announced the following pairs:

On this vote:

Mr. Markey for, with Mr. LaFalce against.

Mr. Goldwater for, with Mr. O'Brien against.

Mr. MILLER of California and Mr. LONG of Maryland changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 736. No part of the funds appropriated under this Act shall be used to pay salaries of any Federal employee who is convicted in any Federal, State, or local court of competent jurisdiction, of inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned.

Mr. ADDABBO (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. WEISS. Mr. Chairman, reserving the right to object, I ask simply to propound a parliamentary inquiry. I will have a point of order to raise against one of the sections in this title. Under the unanimous-consent request that has been asked for, would that point of order be in order at any time during consideration of title VII?

The CHAIRMAN. Immediately after the unanimous-consent request is agreed to.

Mr. WEISS. I thank the Chair, and I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any points of order against title VII?

Mr. LEVITAS. Mr. Chairman, I reserve a point of order on section 761.

The CHAIRMAN. Is the gentleman making the point of order now?

Mr. ADDABBO. Mr. Chairman, it will be my intention, after unanimous consent has been agreed to, to move to strike section 761.

Mr. LEVITAS. I thank the gentleman.

The CHAIRMAN. Are there any points of order at this time?

POINT OF ORDER

Mr. WEISS. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WEISS. Mr. Chairman, I object to section 736 and rise to make a point of order against section 736.

This provision violates rule XXI, clause 2, of the rules of the House of Representatives, which forbids legislation in an appropriations bill.

By permitting the Department of Defense to impose funding sanctions against its employees who are convicted of "inciting, promoting, or carrying on a riot, or any group activity resulting in material damage to property or injury to persons," section 736 is legislation as to the qualifications of the recipients of these appropriations. This cannot be done under the House rules—see Deschler's chapter 26, section 11.36 and 11.26.

In addition, the section requires a State-by-State analysis of differing criminal statutes, and a review of personnel activities at all levels of the military. This creation of a new affirmative duty on the part of a Federal official is legislation and thus impermissible in an appropriations bill—see Deschler's chapter 26, section 10.7, 11.38, and 8.9.

The precedents of the House clearly state that legislative changes may not be made on an appropriations bill. I urge the Chairman to uphold the rules of this body and rule this provision out of order.

□ 1740

The CHAIRMAN. Does the gentleman from New York (Mr. ADDABBO) desire to be heard on the point of order?

Mr. ADDABBO. I do, Mr. Chairman. I rise in opposition to the point of order.

Mr. Chairman, this is strictly a limitation on the funds in this bill. They pertain only to the Federal employees as the language is contained in the bill, and, therefore, it is strictly a limitation and not legislation.

The CHAIRMAN (Mr. ROSTENKOWSKI). The Chair is prepared to rule, based on the precedents suggesting that when a Federal official is called upon to subjectively evaluate the propriety of individual conduct; such language constitutes legislation.

For example:

An amendment providing that no part of the funds carried in a general appropriations bill may be used for financial assistance for students who have engaged in conduct of a serious nature contributing to a substantial campus disruption and who have used force or the threat thereof to prevent the pursuit of academic aims was held to be imposing new duties and exercise of judgment on the part of Federal officials and was ruled out as legislation—Deschlers; chapter 26, section 16, 12.

Based on this precedent and because the section would require the determinations of material damage and the purpose of local governments in enacting laws, the Chair sustains the point of order, and section 736 is stricken from the bill.

The Chair will inquire, are there any further points of order?

The Chair hears none.

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on the remainder of the bill and all amendments thereto end at 7 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. CHAPPELL. Mr. Chairman, reserving the right to object, may I inquire as to how many amendments are pending?

Mr. ADDABBO. Mr. Chairman, if the gentleman will yield, there are probably only two that will be debated that we know of at the present time.

Mr. CHAPPELL. Two amendments?

Mr. ADDABBO. That is all.

Mr. CHAPPELL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates reads as follows:

SEC. 761. None of the funds appropriated by this Act shall be available for paying to the Administrator of the General Services Administration the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), for space and services for any month after January 1, 1980, unless the Administrator has in effect, during that month, regulations, provided for by section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)), that require the recovery of the costs of care and handling of surplus property under the control of the Department of Defense that is disposed of under the provisions of that section.

The Clerk read as follows:

Amendment offered by Mr. ADDABBO: On page 56, beginning on line 9, strike out section 761.

Mr. JOHN L. BURTON. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the distinguished chairman of the subcommittee for offering the amendment to strike this section.

As chairman of the subcommittee of the Committee on Government Operations, let me say that it deals with the donated surplus property program. I share the concerns of the gentleman's committee, and we are committed to have oversight hearings on this matter that hopefully will work out an accommodation among the States, the gentleman's subcommittee, his full committee, my subcommittee, my full committee, the honorable Congressman, the gentleman from Chicago, Ill. (Mr. ROSTENKOWSKI), and all other interested parties.

Mr. ADDABBO. Mr. Chairman, I thank the gentleman, and I hope the hearings to be conducted by the committee the gentleman chairs, will look into a more equitable distribution of the property that is at issue, look toward better utilization, reduce and if possible equalize the cost of transportation, and otherwise look at matters raised by the committee in recent years, particularly as they relate to those items addressed in pages 124 through 127 of the report.

Mr. JOHN L. BURTON. Mr. Chairman, if the gentleman will yield further, that is precisely our intention, and we look forward to the gentleman from Illinois (Mr. ROSTENKOWSKI) leading off with us.

Mr. ADDABBO. Mr. Chairman, in view of the fact that the gentleman has given us assurances that hearings will be held, I ask for adoption of my amendment striking section 761. I will place in the RECORD a copy of a letter I received from the gentleman from California concerning this matter which was instrumental in my agreeing to delete section 761.

GOVERNMENT ACTIVITIES
AND TRANSPORTATION SUBCOMMITTEE,
Washington, D.C., September 15, 1980.
Hon. JOSEPH ADDABBO,
Chairman, Subcommittee on Defense, Committee on Appropriations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in regard to section 761 of H.R. 8105, the FY 1981 Defense Appropriation bill. Like section 764 of P.L. 96–154, last year's appropriation act, it restricts DOD's expenditures to pay GSA for building space and services unless GSA has in effect a regulation to require recovery of care and handling costs for DOD-generated surplus personal property donated under the Federal Property Act to State and local organizations.

The basic objective of this provision appears to be to cut down on acquisitions of property by donees unless they have a true need for the property and will put it to proper use. Our subcommittee, which is charged with the duty to oversee this program, shares that objective fully. In pursuit of that objective and to examine other major aspects of the program's scope, authority, and operations, I will begin a full-scale review of the program probably in November of this year, with the plan to continue it, if necessary, soon after organization of the 97th Congress. We have noted the sense of the Appropriations Committee in H. Rept. No. 96–1317, about continuing the care and handling surcharge "pending a full review of the program." Our effort will constitute such a review.

Among donation program elements to which our study will give close attention are those which your committee has addressed: Clarification of the care and handling cost provision in the Federal Property Act; procedures to increase assurance of need and proper end use of donated property; further improvement of the system for allocating property to the states; authority and procedure to equalize the high, often prohibitive, transportation expenses that some states sustain by accident of their remoteness from Defense Property Disposal offices; and possibility of streamlining management by combining elimination of use restrictions with an additional charge to the donee for the property item.

The subcommittee's review will involve all parties having a major role in the program: GSA, GAO, the State surplus property agencies, DOD, and individual donees. We have already received assurances of complete cooperation and support from GSA, which has the major administrative responsibility. We would also welcome such information, views, or suggestions as you may wish to present.

Mr. Chairman, the Federal donation program is facing an immediate, grave crisis, largely as a result of implementation of the current surcharge based on section 764 of P.L. 96–154. Numerous reports from State surplus property agencies advise us that donations in the past 2 months have fallen off drastically, in many cases by 50 percent. GSA now estimates that total donations in the next fiscal year will be down well below $300 million (original acquisition cost). Donations for FY 1980 will total about $340 million, down from $443 million for FY 1979.

Right now, some 30 State surplus property agencies are operating at a deficit. On the basis of the current trends, many even most of these agencies will probably have to close within the next two years.

It will be very difficult for our subcommittee's comprehensive review of the program to have a constructive or productive effect if the donation activities have become depressed to a point beyond revival. I believe this point may soon be reached. For this reason, Mr. Chairman, I should like to work with you for the elimination of the burden which section 761 would impose.

I would appreciate it very much if we could get together very soon, today if possible, to discuss this matter.

Sincerely,
JOHN L. BURTON,
Chairman.

● Mr. RINALDO. Mr. Chairman, I support this amendment to delete provisions of the bill that require the payment of a surcharge on property obtained by community health, education, public safety, and recreational organizations under the Federal surplus property donation program.

Under this program, valuable property no longer needed by the Federal Government may be obtained by community service organizations for public purposes. The property is distributed through designated State agencies.

In previous years, sales of surplus property not donated to local organizations financed the donation program. Last year's appropriations bill, however, required that a fee be established on donated property to finance the program and encourage organizations to exercise "self-control" in requesting donation of surplus property. A fee of 2 percent of the value of donated property became effective on July 7, 1980. It must be paid by the State distributing agencies and passed on to local public service organizations that receive the property.

The cost of packing, crating, transporting, and storing already makes it necessary for State distribution agencies to control the amount of property requested from the Defense Department, limiting requests to those items for which there is a bona fide need.

The surcharge imposed under last year's bill, which is continued by section 761 of this bill, has drastically increased the cost of obtaining property through the donation program. Many State distributing agencies have therefore had to cut back drastically on the amount of property being requested from the Defense Department. This cut-back in the State agencies' participation will result in a sharp reduction in useful items available to public service organizations, and will increase the cost of these items for non-profit organizations. In addition, the legality of imposing the surcharge on State agencies, which do not take ownership of the property, is questionable, and many State agencies also do not have clear authority to pay the surcharge. The surcharge provision therefore should be eliminated from the bill.●

● Mr. COUGHLIN. Mr. Chairman, I rise in support of the amendment by my distinguished colleague from New York (Mr. ADDABBO) which would repeal the Maybank amendment and thus permit the Department of Defense to target part of its procurement budget to firms located in labor surplus areas.

Initiated in 1952, Defense manpower policy No. 4—DMP–4—requires that certain procurement contracts be set aside for bidding in areas of substantial unemployment. The program was designed to preserve management and employee skills useful to the Nation's defenses during times of economic downturns. However, every Defense appropriations bill since 1953 has included the language of Senator Burnet R. Maybank, of South Carolina, which prohibits following DMP–4 where the result is a higher price to the Government. Through this language, Senator Maybank was reportedly able to prohibit the Defense Department from paying more for textiles produced in New England mills than would have to be paid at southern mills.

Originally, the General Services Administration imposed the same Maybank amendment restrictions on civilian procurement, for the sake of uniformity in procurement policies. The GSA revised DMP–4 so that civilian agencies are no longer bound by the Maybank amendment as long as the resulting price of contracts targeted to labor surplus—DMP–4—areas is reasonable. Title V of the Small Business Act amendment—Public Law 95–89 of August 4, 1977—specifies that Governmental procurement shall be targeted to high unemployment areas, and specifically refers to DMP–4 as the policy to follow.

Yet, the labor surplus area program was never allowed to get off the ground. For the Defense Department to meet the requirements of DMP–4 and still comply with the provisions of the Maybank amendment, contracts must be split into two production runs. One would go out for nationwide competition to determine the base price and the other would be targeted under DMP–4 to a firm in an area of high unemployment that could meet this base price. This split production process is cumbersome and confusing and as a result, has prevented the effective implementation of the policy. Targeting to areas of high unemployment has been stymied since $60 billion of the $80 billion budgeted by the Government for goods and services is spent by the Defense Department.

Today we have the chance to change this situation while bringing Defense Department procurement practices in line with those of other governmental departments and agencies. The Addabbo amendment allows the Secretary of Defense the discretion to determine that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices in labor surplus areas. Set-asides for labor surplus areas will create private sector jobs which, in turn, will reduce the local demand for welfare, food stamps, Comprehensive Education and

Training Act—CETA—positions, and other similar programs. At the same time, it will be accomplished with little or no additional cost to the U.S. Treasury. There are enough eligible areas to insure that competitive bids would be submitted and under no circumstances is the Defense Department obligated to pay outrageously high prices for goods and services. A broad geographic base and an expanded number of companies participating can only strengthen our national defense.

For these reasons, I urge adoption of the amendment.●

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. ADDABBO).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. REGULA

Mr. REGULA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REGULA: On page 28, after line 4, add a new section as follows:

SEC. 701. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

And renumber the following sections accordingly.

Mr. REGULA. Mr. Chairman, I would like to commend the committee for its concern and attention to the problem involving the Defense Department's service support contracts with outside consultants. For the past 3 years the committee has attempted to reduce the amount of funding for service support/personal service contracts. Yet, it is estimated that over $1.7 billion has been requested this year for such contracts.

In its report, the committee expressed its frustration over the inability to determine accurately how much is being spent overall for outside studies and reports. I am proposing this amendment today as I have on all appropriations bills that will help uncover these contracts and open up the Defense Department's contracting activities to public scrutiny

A recent report by the committee's surveys and investigations staff reveals several examples of abuse and waste in the use of consultant contracts. I believe the only way to stop such questionable activities is to shed some light on these practices and make the agencies accountable for their spending on consultant contracts.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the distinguished chairman of the subcommittee.

Mr. ADDABBO. Mr. Chariman, we have studied the amendment, and the majority accepts it.

Mr. EDWARDS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. REGULA. I yield to the ranking minority member of the subcommittee.

Mr. EDWARDS of Alabama. Mr. Chairman, we accept the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. REGULA).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The portion of the bill to which the amendment relates reads as follows:

SEC. 723. No part of any appropriation contained in this Act, except for small purchases in amounts not exceeding $10,000, shall be available for the procurement of any article of food, clothing, cotton, woven silk or woven silk blends, spun silk yarn for cartridge cloth synthetic fabric or coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or specialty metals including stainless steel flatware, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that a satisfactory quality and sufficient quantity of any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possesions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possesions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of the standardization and interoperability of equipment requirements within NATO so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 814 of the Department of Defense Appropriation Authorization Act, 1976: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions: *Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further*, That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

Amendment offered by Mr ADDABBO: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:".

POINT OF ORDER

Mr. EDWARDS of Alabama. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN. The gentleman from Alabama (Mr. EDWARDS) is recognized in support of his point of order.

Mr. EDWARDS of Alabama. Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination.

The CHAIRMAN. The Chair will inquire, does the gentleman from New York (Mr. ADDABBO) desire to be heard on the point of order?

Mr. ADDABBO. I do, Mr. Chairman.

Mr. Chairman, this is strictly a further proviso that requires no further duties than presently under the existing law, including this legislation and legislation under the Small Business Act. It asks no additional duties by the Secretary of Defense.

Mr. EDWARDS of Alabama. Mr. Chairman, I would like to be heard further on the point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama (Mr. EDWARDS).

Mr. EDWARDS of Alabama. Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of

Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order.

Mr. CHAPPELL. Mr. Chairman, if I may be heard on the point of order, I join the gentleman from Alabama (Mr. EDWARDS) on the point of order and urge that the point of order be upheld.

The CHAIRMAN (Mr. ROSTENKOWSKI). The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. ADDABBO) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

Mr. ADDABBO. I accept the point of order, Mr. Chairman.

The CHAIRMAN. The Chair has sustained the point of order.

Mr. ADDABBO. The point of order is conceded, Mr. Chairman.

AMENDMENT OFFERED BY MR. ADDABBO

Mr. ADDABBO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ADDABBO: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1:".

□ 1750

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from Iowa.

● Mr. BEDELL. Mr. Chairman, I rise in support of this bill and, in particular, its provisions for increasing military compensation and strengthening our conventional forces.

I have long argued that the critical problem in today's Armed Forces is the alarming attrition of both trained midlevel officers, and skilled technicians and mechanics. We cannot maintain our conventional forces at full strength without first restoring the financial incentives needed to attract these quality individuals.

For this reason, I was greatly encouraged last week when President Carter signed into law the authorizing legislation for a broad range of military pay and benefit hikes. These included: An 11.7 percent pay increase for active duty personnel; higher enlistment bonuses; increases in per diem travel allowances; and a more favorable housing formula. Today's legislation appropriates $32 billion for our military personnel with $713 million specifically earmarked for the improved pay and benefits. This funding should be approved.

I must add, however, that I support the bill with reservations over its wasteful expenditures on the MX missile system. As my colleagues are aware, I was one of the first Members of this body to speak out against the so-called multiple aim point or MAP deployment scheme. That was in 1978. Since that time, it has become clear that MX will be the most expensive weapon system in our Nation's history—and it has also become clear that its impact on neighboring communities will be traumatic wherever it is deployed. Moreover, with the SALT II missile limits unratified, the Soviet Union is likely to adopt a similar, but far greater mobile land missile system. This in turn would assure the rapid obsolescence of our own MX system, while further attempts at arms control would be stymied.

Nevertheless, we are being asked today to appropriate $1.6 billion for MX, our most expensive commitment thus far to this exotic weapon system. What disturbs me even more is that this commitment will escalate year after year until it reaches $10 billion per year by the mideighties. Such waste can have only one effect and that is to mortgage our conventional forces, while constraining our ability to recruit talented military personnel.

I therefore oppose the MX funding in this bill, although I support the bill as a whole.●

Mr. ADDABBO. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto end in 30 minutes, the time to be equally divided and controlled by myself and the gentleman from Alabama (Mr. EDWARDS).

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The gentleman from New York (Mr. ADDABBO) will be recognized for 15 minutes, and the gentleman from Alabama (Mr. EDWARDS) will be recognized for 15 minutes.

The Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, in a time of continuing inflation and tight budgets, the mood of fiscal conservatism, new and imaginative tools are needed to generate economic growth and create jobs in areas of the Nation suffering the most from excessive unemployment. One such tool is an almost forgotten directive of the Federal Government called Defense Manpower Policy No. 4B. This was first issued in 1952. This policy requires the Federal Government to give preference in the awarding of suitable contracts to firms in high unemployment areas.

The intent of this program was to minimize idle manpower and machinery in connection with the Nation's efforts in Korea. The policy was designed to insure that the Nation could react quickly to any national emergency with a broad base of diversified manufacturing capability. Production lags are avoided by putting people back to work in areas where unemployment rates are highest, the result being a better defense posture and new, permanent, private-sector jobs where they are needed most.

Almost 30 years later, the potential of Defense Manpower Policy No. 4B remains untapped because of the Maybank amendment. Added routinely to every defense appropriation Act since 1953, the Maybank amendment effectively prevents the Defense Department from using its huge budget to enhance our Nation's industrial preparedness. The Maybank amendment prevents the Defense Department from reserving certain of its smaller supply contracts for competition solely among those firms which will perform most of the work in the high unemployment areas.

The Defense Department is the only agency of the Federal Government which is exempt from considering economic distress in purchasing the goods that it needs. There is no justification for this exemption.

My amendment would encourage the Secretary of Defense to locate the procurement of common supply items with private suppliers in high unemployment areas.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. CHAPPELL).

Mr. CHAPPELL. Mr. Chairman, all of us, I think, ought to do those things that are helpful in the labor-impacted areas. But if you want to run the expenditure of the military procurement up, then you would vote for this amendment.

In my view, the military procurement, the military bill, is no place for us to attempt social programs. It is no place for us to attempt to do the sort of things we do with public works projects. We have enough problem getting dollars for defense, and certainly if we start trying to handle our military expenditures on a basis other than pure competition, we are going to spend many, many billions of dollars more.

I know a lot of Members have received a letter saying that this amendment is going to be very helpful to them in their districts. I have such a letter, and my letter points out that over half of my district would be entitled under this provision. But then that is no reason to vote for this amendment which gets us aside from competition in military expenditures.

So, that is no reason for us to throw aside a principle which has worked for 25 years in keeping military expenditures on the basis of competitive bidding.

Some will say, "Will not this help small businesses?"

It will only help small businesses if the small businesses happen to be in one of those labor-impacted areas. It could very well work to the detriment of your contractors in your districts.

The argument is made, too, that if a Member's district included a labor surplus area designated by the Labor Department, would it not make sense for that Member to vote to drop the Maybank language?

My answer to that, as I stated a moment ago, is: Certainly not.

Let us not throw away a principle that has worked very well in the defense appropriations for 25 years.

The argument is made also that the Maybank language prohibits the Department of Defense from awarding contracts to businesses in labor surplus areas. That simply is not true. Through the normal competitive bidding process and through the small business set-aside program, also subject to competitive bidding, many millions of dollars of defense procurement supporting many thousands of jobs have flowed each year into such areas and will continue to do so.

In addition, however, the Maybank language insures that DOD contracts also are available to the many communities with substantial unemployment but not quite enough joblessness to reach the 7.2 percent which the Department of Labor requires to issue a surplus labor area designation.

So, contrary to what you might hope for, this could be very detrimental to what you think you are doing under this amendment.

Mr. PEYSER. Mr. Chairman, will the gentleman yield?

Mr. CHAPPELL. I yield to the gentleman from New York.

Mr. PEYSER. The question that I have is: My understanding of the amendment is that this will not force the Department of Defense to deal with these areas we are talking about, say, in the Northeast and in other parts of the country, but it merely gives them, under certain circumstances, the option of being able to do it.

It would seem to me that that would be highly fair at this time, without forcing them; is that correct?

Mr. CHAPPELL. If you want to start a real, sure-enough political animal, if you want to turn him loose on military procurement, you will do just what you are talking about, because the Secretary of Defense will have every pressure in the world to designate all kinds of areas to lower the standards of competition and all the rest. So, if you really want to tear up your defense procurement program, if you really want to cost your taxpayers more money for defense, you do away with the Maybank amendment.

Mr. Chairman, I urge the rejection of this amendment.

The CHAIRMAN. The Committee will rise informally.

ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER resumed the chair.

The SPEAKER. The Chair lays before the House the following enrolled joint resolution:

H.J. Res. 607. Joint resolution making an urgent supplemental appropriation for the Veterans' Administration for the fiscal year ending September 30, 1980.

The SPEAKER. The Committee will resume its sitting.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1981

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi (Mr. WHITTEN), the chairman of the full committee.

Mr. WHITTEN. Mr. Chairman, years ago our then President warned us against getting our domestic economy wrapped up in military spending.

I had occasion recently to review some early speeches that I had made for a different reason, one of them made 20 years ago, or longer than that. I could change the date and make the speech here today and it would sound like I was talking about the existing situation.

Right now we do not let soldiers do KP duty. We have a caterer who makes profits out of serving food to the military. The military cannot press their clothes, so the local pressing shop can make money out of it. We have contractors who do much of the work on the base. No wonder we cannot get enough people to join the service, because they do not have anything except time on their hands in between drills.

So I say here that when we meet in committee—and I have the highest regard for the members of this subcommittee and my Committee on Appropriations; they do a good job—we have to ask how much will this contractor get, how much does this area get and that area get.

We already have domestic concerns impacting on defense programs to the extent that we have less defense than we might have for the money we spend.

We have a provision in the law requiring that attention be given to small business, and to give attention to those who meet certain requirements, but if you reject competitive bidding and start dividing your defense dollars even more—and it is bad enough now—then you will have a whole lot of weakening of defense.

I say that it is time we start thinking about defense first. If we want everyone to get cut in on defense business, that is another story.

After I came here, I had a letter from a judge down home, and he said that so-and-so had been to him and said his brother was getting a cut every time he made a Farmer's Home Administration loan. The judge said he told him, "I will write Jamie to stop it." The friend said, "I do not want Jamie to stop it. I want him to make him cut me in on it."

My friends, we had better look at how we do our defense business.

□ 1800

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. PURSELL).

Mr. PURSELL. Mr. Chairman, this Nation, particularly the Northwest, is facing severe economic problems. Unemployment in all areas of the country is on the rise. These economic problems, are not confined to one region but threaten the vitality of the entire national economy.

Before we create additional Government programs, we must learn to use wisely and effectively our current distribution of Federal resources.

The labor surplus area program represents a way in which the Federal Government can effectively utilize the vast potential of its purchasing power by broadening and diversifying its industrial base. It represents the opportunity of meeting our growing economic and military needs, without increasing overall costs to the Government.

Yet, as the program exists today—it cannot begin to realize its potential for addressing the concentrated unemployment problems of this Nation, nor can it assist our very serious problems in industrial preparedness. Over two-thirds of the Federal Government's purchases are made by the Defense Department, yet they are exempt from this program, due to the restrictions of the Maybank amendment. These exemptions include the bulk of the Federal Government's common items. These exemptions include purchases of office supplies, furniture, laundry supplies, and electrical appliances. These items are similar in kind to the purchases made by civilian agencies who participate in the LSA program.

Why does this special exemption exist? Why do we continue to legislate such inconsistencies in our Federal programs?

Jobs are in the best interest of national security.

In 1979, the Department of Defense's procurement budget was over $57.9 billion, yet only $225 million was targeted to areas of high unemployment under the LSA preference program—0.39 percent of the total budget. Billions of dollars a year are spent on these common goods, expenditures which through sound procurement policy can work to counteract the deepening effects of inflation.

Sound procurement policy does not mean increased costs to the Federal Government. On the contrary, a study contracted by the Department of Defense on this issue that the added cost to the Government as a result of contracting to labor surplus area firms was less than three-quarters of 1 percent.

Sound procurement policy does not mean a loss in competition. No contracts would be reserved for bidding to areas of high unemployment if adequate competition to ensure a reasonable price could not be obtained.

The benefits—both direct and indirect—of full implementation of the labor surplus area program are manifold:

increased employment in communities where the need is greatest, the "ripple effect" on local businesses generated by increased spending from the newly employed, lowered Government costs for income maintenance programs, the retention of skilled labor, and increasing the level of military preparedness.

As the Nation's economic and industrial preparedness problems grow, it can no longer afford to give special exemptions to any Federal agency. I urge my colleagues to join in support for the Addabbo amendment to realize the full potential of Federal purchasing power.

REGIONAL ECONOMIC ALERT, MICHIGAN

[August 1980]

	Employment growth rates (percent change)			Unemployment rates (percent)		
	April	May	June	April	May	June
United States, SA[1]	0.3	0.7	−0.6	7.0	7.8	7.7
United States, not SA	.1	.6	1.7	6.6	7.0	7.8
Northeast-Midwest, not SA	−.3	5.8	1.6	7.3	7.9	8.5
Michigan	−.125	2.1	2.1	12.4	14.0	14.0
Ann Arbor	.28	1.2	(2)	8.2	10.0	10.4
Battle Creek	1.15	1.6	(2)	11.5	12.2	11.8
Bay City	1.94	3.2	(2)	15.2	17.9	(2)
Detroit	−1.66	2.5	(2)	12.9	14.7	14.5
Flint	1.08	2.6	(2)	17.5	22.3	23.0
Grand Rapids	1.67	1.6	(2)	8.1	9.3	10.2
Jackson	−.15	2.0	(2)	10.3	12.3	(2)
Kalamazoo-Portage	.6	.4	(2)	8.1	8.9	9.9
Lansing-East Lansing	.9	1.5	(2)	9.9	13.0	10.0
Muskegon - Norton Shores - Muskegon Heights	1.6	2.0	(2)	12.4	13.8	14.3
Northeast-Midwest—Con. Michigan—Continued Saginaw	−.4	3.4	(2)	14.5	17.6	(2)

National economic data	April	May	June
Prime lending rate	19½	14	12
Percent change in:			
Index of leading economic indicators	−3.9	−2.3	2.5
Consumer price index	.9	.9	1.0
Retail sales	−1.2	−1.0	1.4
Industrial production	−1.9	−2.4	−2.4
New Housing starts	−2.1	−11.3	30.4
	1979:IV	1980:I	1980:II
Real GNP: Quarterly growth rates	0.5	0.3	−0.2

[1] Seasonally adjusted.

[2] Not available.

Note: Unemployment and employment data for States and the region are not seasonally adjusted. Percent changes are calculated from the preceding period.

Mr. RINALDO. Mr. Chairman, will the gentleman yield?

Mr. PURSELL. I yield to the gentleman from New Jersey.

Mr. RINALDO. Mr. Chairman, I rise in support of the amendment to repeal the Maybank amendment.

Since 1953, the Maybank amendment has frustrated efforts to target defense spending to areas of high unemployment. Every civilian Federal agency must set aside some portion of its procurement contracts for labor surplus areas and give preference to bids from firms in such areas. Repeal of the Maybank amendment would allow the Defense Department, which has one of the largest procurement budgets, to participate in this setaside program in obtaining nonstrategic goods and services.

The present economic downturn points out the need to find ways in which American workers may be protected against loss of employment without a sharp increase in inflationary spending. Repeal of the Maybank amendment would be one of the most effective ways for the Federal Government to increase employment opportunities without setting up an expensive new Federal program. Jobs would remain in the private sector, and the preference given to contract bids from older industrialized areas would help to revitalize industries and stimulate tax revenues. Increased employment opportunities would also help to cut Federal, State, and local costs of income maintenance programs for the unemployed and their families. This revitalization would come as a result of better use of existing Federal spending, rather than through the establishment of new and complex industrial revitalization programs.

For many years there has been an appalling disparity in the amount of defense contract money spent in the Northeast and the Midwest and that spent in the so-called Sunbelt States. Despite a long tradition of significant contributions to defense efforts, New Jersey last year received only 2 percent of the $56 billion spent on defense contracts. This percentage is far below the average 20 percent of defense contracts that the State of California has received over the last 20 years.

The city of Elizabeth, N.J., in my congressional district is one of the cities that could be targeted for defense contracts upon repeal of the Maybank amendment. Elizabeth qualifies as a labor surplus area due to an unemployment rate that is at least 20 percent higher than the national average. Targeting defense contracts to areas such as Elizabeth would be an important step toward economic recovery for these communities.

I strongly support this effort to repeal the Maybank amendment so that businesses and workers in older industrial areas may share more fully in the defense procurement process.

Mr. ADDABBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. Mr. Chairman, I rise in support of the Addabbo amendment. If the Members read the morning paper today, the Morning Sun, they will see where 75 jobs; 75 low-paying jobs, were made available at the Social Security Administration in Baltimore City. Seven thousand five hundred people lined up to apply for 75 jobs. It is reported that there were another 2,000 on the way down for 75 jobs. Obviously the Addabbo amendment would help this kind of situation.

I heard in the debate earlier, or last year rather, that somehow or another this was detrimental to minority business and small businesses. It is not.

Everyone knows the military runs a virtual monopoly, giving just crumbs to small businesses and minority businesses, and it is not in any way detrimental to the small business programs or the minority business programs that are on the books.

Let me just make one other statement, if I may: It appears to me that we have an excellent opportunity to begin the process of correcting some of our economic deficiencies. If we are going to spend literally billions of dollars in the military operation, surely a portion of that can be applied to meeting some of these terrible situations that are found in our labor surplus areas without in any way—without in any way—doing damage to the effectiveness of the military operation.

I think the gentleman from New York (Mr. ADDABBO) is sound. I think he is right, if indeed we are serious about addressing the economic problems that are tearing our Nation apart.

Mr. Chairman, I rise in support of the Addabbo initiative to repeal the Maybank amendment. Last year we debated this very same subject. Since that time, this country has continued to experience unprecedented modern day economic problems. Higher unemployment, spiraling underemployment and accelerating cost of borrowing money are just a few of these critical conditions. I need not remind you that the poor and minorities of this country are harmed disproportionately by such drastic downturns in our economy.

Today, we have an excellent opportunity to begin the process of correcting some of our economic deficiencies. I believe firmly that the Addabbo amendment is a positive step in this direction.

It is no secret that the operation of the Defense Department's procurement and contracting policies are virtually monopolistic. In recent years, small and minority businesses have managed to impact on the procurement process by securing a few awards. However, our success has not approached the level necessary to counter the spiraling rate of unemployment. I think it is very unwise for us not to support the Addabbo amendment. We talk about getting the most for our Federal dollars; the Addabbo amendment will allow this to become a reality. Indeed, if we are going to spend billions of military dollars, then let us do it in a manner which will help the overall economy.

The labor surplus area program provides us with the ability to target Federal spending to our economically distressed areas. The benefits from this program would be enormous. Studies have shown that $1 in defense spending can generate up to $3 in indirect spending. For example, a $150,000 contract to buy office supplies could generate $450,000 worth of private economic development.

In the past, some of my distinguished colleagues have professed, incorrectly, the argument that this program will inure to the detriment of minority owned firms. The labor surplus preference schedule is clearly set out in the Small Business Act. In no way would this program disrupt existing set-asides. Contrary to this assertion, the labor surplus preference program deserves the attention of everyone if we are to diminish the problems of minorities and small businesses in this country.

There is a need for minority owned companies located in areas of high unemployment, to have greater access to DOD procurement programs. Thirty percent of all blacks in this country live in areas of concentrated high unemployment. This figure does not even include the millions of other minorities also located in these areas.

I think Congressman Addabbo's amendment is sound. If we are indeed serious about addressing the economic problems of our distressed areas, we must move today to repeal the Maybank amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. Hyde).

Mr. HYDE. Mr. Chairman, as a member of the North-East Coalition, I must commit some heresy by saying I oppose the Addabbo amendment. It seems to me to impose a welfare requirement on the defense budget would be a grave mistake. Having the situation where groups seeking these preferences over and above the low bidder would not help our economy and certainly would not help our defense.

If we use any other criterion but the low bidder on defense, we are going to raise an already astronomically high defense budget, and we are not going to add to the quality of the defense procurement. We are going to further politicize something which I suggest has been politicized enough.

Now if we need programs for unemployed people in the cities, and we do, let us target specific programs there. Let us pass a youth deferential in the minimum wage law so that we can put our unemployed youth to work and not price them out of the market, but do not saddle the defense budget with another requirement that it is ill suited to fulfill.

Let us get the most defense for the limited defense dollars at a low-bid basis; and if Baltimore and if Chicago want more defense contracts, let us produce the low bidders then, rather than saddle a procurement responsibility for public works and for jobs on a defense budget that has all it can do to fulfill its goal of defending this country.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Maryland.

Mr. MITCHELL of Maryland. I thank the gentleman for yielding.

In his usual skillful manner, the gentleman has achieved obscuring the issue by talking about social welfare programs. I am not talking about that at all. I am talking about the Department of Defense meeting its obligations in terms of unemployment in this country.

Mr. HYDE. I thought that is what the gentleman was talking about.

Mr. MITCHELL of Maryland. That is right. That is not social welfare, brother.

Mr. ADDABBO. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois (Mr. Yates).

Mr. YATES. Mr. Chairman, my friend from Illinois (Mr. Hyde) has made a very eloquent statement that is not appropriate at all, because the Department of Defense does not give its contracts to the lowest bidder.

Let me read from page 220 of the report.

It says:

> For fiscal year 1978 noncompetitive awards by DOD comprised 63.8 percent of the total contract awards, and for the first half of fiscal year 1979 noncompetitive awards were 67.7 percent of the total. Well over 70 percent of all Navy contract awards are noncompetitive, compared with over 60 percent by the Army and Air Force and 50 percent or less for the defense agencies. Those statistics can be very misleading, since many contracts listed as competitive are in fact sole-source awards.
>
> In late 1979, the GAO testified before a congressional committee on trends in DOD procurement. Essentially, the thrust of their testimony was that the DOD was trending towards less competition in its contracts between 1971 and 1978. For example, the value of negotiated price competitive awards, which includes business and labor surplus area set-asides, decreased from 25 to 19 percent during that time frame.

□ 1810

The point that I make to my friend, the gentleman from Illinois, is yes, we do favor competition, but that does not exist in the Department of Defense. The Department of Defense has its sole source award. That is why I am pleased to join with the distinguished chairman of the Defense Subcommittee in his amendment to eliminate the so-called Maybank provision from the Defense appropriations bill to bring a low-bid process to the DOD.

There is something fundamentally wrong with the current situation that permits the Department of Defense to continue as the only Federal agency that does not set aside a portion of its procurement contracts for private industry in areas of high unemployment. In a defense bill, which will support a procurement budget for nonstrategic goods and services of at least $15 billion, failure to remove the Maybank language means that the opportunity to help thousands of smaller supply-type firms in areas of high unemployment will be lost, and it just does not make sense. The strength and diversity of the economy is as an important a defense resource that we have as a nation. The Addabbo amendment is entirely consistent with a strong defense effort and I urge its adoption by the House.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. Robinson).

Mr. ROBINSON. Mr. Chairman, I yield to the gentleman from Illinois (Mr. Hyde).

Mr. HYDE. Mr. Chairman, I thank my friend for yielding.

In response to the statement of my friend, of course, many of those items cannot be let by competitive bid or low bid because nobody else makes a nuclear carrier except Newport News, a $2.5 billion item; so those statistics are misleading and not helpful.

Mr. ROBINSON. Mr. Chairman, the prime objective of this committee is to get the best defense for the least money. The purpose of this amendment is pure and simple. It is going to allow and demand that the Defense Department pay more for certain services and articles than it would have to otherwise pay. It does make a welfare department of the defense organization.

Now, there is no study that has ever been conducted that has not proven that it is going to cost more if the Maybank amendment is pulled out than it will if the Maybank amendment stays in.

I suggest that it would be very poor business to adopt this on a defense bill.

I want to read a paragraph from the Governor of the State of Virginia replying to a letter that was written to him asking him to support the deletion of the Maybank amendment. He says:

> In my judgment it is inappropriate for the U.S. Department of Defense to divert dollars provided by the Congress to provide for a strong national defense to relieve so-called economic distress. The Federal Government should be directing its strongest efforts to reducing federal spending and bringing about economic recovery as soon as possible. It is, therefore, especially inappropriate to suggest that the Department of Defense be allowed to award contracts on any basis other than to the lowest bidder.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. Fazio).

Mr. FAZIO. Mr. Chairman, I thank the gentleman for yielding.

I rise in favor of the amendment, somewhat surprisingly, because I am still smarting from the defeat on low-income energy assistance that was administered several weeks ago here on the floor. Were this to be a Sunbelt-Frostbelt debate, I can assure you I would not be in support of this amendment; but that is not the issue. I do not know if Members are aware that today California is getting back less than a dollar in the taxes it pays as a State to the Federal Government. Massachusetts, on the other hand, is getting $1.13 for every dollar it pays into the Federal Treasury.

We have seen a reversal in the Sunbelt-Frostbelt debate. Today this amendment will help three-quarters of the congressional districts in California if it is adopted. On that basis, I rise to support it.

I think it is astounding to some that this is the case, but I think we have to realize that only a very few areas of our State have a high concentration of traditional defense industries; but remember, now, we are talking about nonweapons type procurement in the Department of Defense. Throughout the rest of the State we will be able to be eligible for this program and I am in strong support as a result. By all conventional analyses, I should stand here today in opposition to my colleague's attempt to repeal the Maybank amendment. This is because I come from a Sunbelt State, and the normal rule is that this House is supposed to divide on this issue along the lines of the Sunbelt versus the Frostbelt. But even more so because of my frustration at the recent debate and vote on the energy assistance formula, and frankly, language such as that included in this bill report which protects a Scranton facility at the expense of a Los Angeles company.

However, I support my colleague's attempt to repeal Maybank because this need not, should not, and actually is not a Sunbelt versus Frostbelt issue. I would hope to pursuade my colleagues from California, and the West and South as a whole, that they should support our colleague from New York on grounds that this is not another regional squareoff, but an effort to let the DOD participate in logical procurement targeting.

This is not a North and East versus South and West issue, first of all, because the national defense purpose for which President Truman originally decided to target Pentagon procurement remains valid: We do need production capability evenly distributed across the Nation. Chronic weaknesses, wherever they may be, represent a security risk for the Nation as a whole.

Second, labor surplus areas do in fact exist across the Nation, not merely in the North and East. There are 1,050 of these areas, in 48 States; 458 of them are in the North and East, but 592 are in the South and West. Over three-fourths of the congressional districts in my State, for instance, contain labor surplus areas, 32 out of 43. So, the statistics alone refute the belief that this proposed program would confer benefits that are regionally definable. The benefits are as universal as unemployment.

I would hope my colleagues would also bear in mind that economic difficulties move around, from State to State, from congressional district to congressional district, as time passes. Where chronic employment is today, it may not exist 10 years from now. History clearly shows that many areas which enjoyed relatively high employment 10 or 20 years ago, do not enjoy it today. Therefore, as we cast our votes—at this point in this particular year—we should remember that the merits of targeted procurement stand to benefit any of our constituencies at some other points in future years.

The most telling point of all, however, is simply this. We all suffer indirectly when one of us suffers disproportionately. Weakness anywhere is a national problem; chronic weakness demands a national solution. The arithmetic is fairly simple in dollar terms. It is estimated that for every unemployed person the Federal Government spends $16,000 a year. These are Federal expenditures alone. They do not include the less visible costs which can be attributed fairly to inadequate incomes. Crime, for example, is very costly. Like many problems, moreover, it has serious social implications. But it is easy enough to make the point by sticking simply to direct Federal dollars, $16,000 a year for each unemployed person.

Where does that $16,000 come from? Those of us who are tempted to vote on this issue by looking strictly at where defense procurement dollars would flow should bear in mind that there is a steady if less visible flow of dollars far in excess of what we are talking about today toward the areas of high and chronic unemployment. When we decide on the wisdom of targeting $15 to $20 billion, which is what the Maybank amendment prevents us from doing, we need to be mindful of the costs we are already sustaining to support the individuals who cannot find jobs. Those costs are being borne by those congressional districts which are not suffering from unemployment.

The argument is common that from the overall perspective, providing a job in a labor surplus area amounts to the same savings to the Federal Government as a job outside a labor surplus area. The truth is, however, that the more chronic unemployment is the more costly to all of us. The more we target Federal dollars toward areas of chronic unemployment, the more good those Federal dollars are doing, the more we are saving, for all of us.

As I mentioned, this House has recently been through an issue where we unfortunately broke down according to regional lines. I refer to the formula by which we proposed that low-income energy assistance be allocated. The formula that the House ultimately chose was intended, by its sponsors' admission, to place much greater emphasis on the need for heat than on need for cooling and energy relief in general. In other words, it was presented to the House as a Frostbelt versus Sunbelt issue. I would not object to the Frostbelt's basing a case on regional need. However, the statistic that 1,200 people died from heat this last summer went ignored. Need was not the basis for the House action.

The formula was intended to replace one from last year that was clearly unfair. Supporters of the Obey amendment acknowledged that too. Yet the new formula gives a number of Sunbelt States no more low-income energy assistance than they received last year, an acknowledged injustice, while it gave to other States still more money from a large supply. If we were wrong last year, we were even more wrong—albeit deliberately—this year. The House action was, in two words, a power play.

I think that there is a common assumption among my colleagues from the North and East that the Sunbelt is getting more than its share of Federal dollars. The facts from my own State, however, are different.

While it is true that the Sunbelt region as a whole sends more to Washington than it receives back, if you look at the spending patterns of the last few years, as pointed out in the Northeast-Midwest coalition's own studies and illuminated in a recent article in the Sacramento Bee, it is obvious that the trend in Federal spending clearly favors the Northeast, at the expense of the West.

For example, just 5 years ago, California ranked 28th in the ratio of tax dollars collected to Federal tax revenues spent in the State. In 1975, for every dollar paid out in taxes the Federal Government spent $1.11 in California. This went up in 1976 to $1.13 and California rose to number 25 in rankings, but since then my State has slid eight positions in the national rankings. Moreover, in 1979 for the first time in recent history, California received less than it paid out in taxes; 98 cents returned to the State for every dollar paid out.

On the other hand, States leading the Northeast-Midwest coalition, especially the New England States, have been very successful in acquiring an even larger share of the Federal pie each year. The most dramtic upward move came from the State of Massachusetts which rose from 36th in the national rankings, when it received 95 cents on the dollar, to 21st in only 4 years. In 1979, Massachusetts captured a healthy surplus of over $1.5 billion or an extra 13 cents for every dollar paid to the Federal Government in taxes.

Another example is New York, a fierce competitor with California for Federal dollars. In only 4 years, New York increased its return on Federal taxes by 11 cents, leaping from 85 cents on the dollar to 96 cents.

Further, New York has outpaced California in the battle for grants-in-aid to local and State governments. Even though New York has 5 million fewer people, in 1979 it received $621 million more than California in this highly competitive category of funding.

New England has been the real winner over the last 5 years, moving from a deficit of $762 million and spending ratio of 96 cents on the dollar to a surplus of $2.39 billion and a ratio of $1.09. The Mid-Atlantic States have also shown a modest increase, while the South and the Midwest—the region with the lowest return, 72 cents—have held steady. The real losers in the battle for Federal tax dollars have been the Western States which have shown substantial declines.

I hope that by dispelling notions that the South and West are getting more than they deserve, or contribute, that I can help relieve my colleagues from elsewhere from the burden of feeling that they are losing ground in this House. Likewise, I hope that my colleagues from the South and West do not make the mistake on this vote that some made when we adopted the low income energy assistance formula. I hope we can all agree that what the gentleman from New York seeks to address here is a need, a need that can be evaluated without respect to region. Areas of unemployment are areas of need; we can all benefit by helping them. Support for the Maybank appeal represents the larger self-interest.

Thank you.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 1 minute to the gentleman from Kansas (Mr. GLICKMAN).

Mr. GLICKMAN. Mr. Chairman, I rise in opposition to the amendment. While I admit to defects within the procurement system of the Defense Department, I think that this amendment just compounds those defects.

I think that we have all sorts of programs in this Federal Government to target areas of high unemployment, whether they be CETA, public works, public works jobs, or all sorts of things.

The question we have to ask is whether we want to make the defense budget that kind of a program or whether we want to perhaps encourage new industries to move into areas of high unemployment so they can begin hiring some of these people.

I think this amendmnet moves in the wrong direction. It does not encourage any industry to move into areas of high unemployment. It does not work for the favor of the defense industry or the best possible price for military goods; so I urge its defeat.

Mr. ADDABBO. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Chairman, I think Members are aware of the fact that I support a strong defense budget. I would not want to do anything to weaken that kind of budget; but I think we have to recognize that we want a strong defense in a strong country.

We were all happy to read that we are finally coming out of the most recent recession and that people are beginning to go back to work. That is the sort of thing we want to continue. What we have got to do if we are going to continue this economic recovery is to supply, first of all, the economic driver to continue that growth.

Second, I think we have got to recognize that if we are going to have a strong country, we have got to have a strong country everywhere. We cannot have pockets of lowered economic activity.

This subject was the subject of a good deal of debate, as some of my friends on this side of the aisle will remember, at the Democratic National Convention. There was a big issue as to whether we should or we should not have a $12 billion program recommended by the Senator from Massachusetts to create jobs.

Well, here we have, with the help of the gentleman from New York, a $157 billion program that can begin to put this country of ours back on its feet. Fortunately, in this 96th Congress, second session, we have begun to recognize the importance of a strong defense. We have appropriated the money. We have authorized the money and that money certainly ought to go toward helping to restore the economy of our country.

As has already been said, we are not talking about the weapons. We are not talking about the MX's or the aircraft. We are talking about some of the smaller things, the milk, the shoes, the gloves. Certainly they ought to be produced in all the areas of the country, not just in a few.

Mr. EDWARDS of Alabama. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania (Mr. McDADE).

Mr. ADDABBO. I yield an additional 1½ minutes to the gentleman from Pennsylvania (Mr. McDADE).

The CHAIRMAN. The gentleman from Pennsylvania (Mr. McDADE) is recognized for an additional minute and a half.

Mr. McDADE. Mr. Chairman, I thank my colleague for yielding to me.

Mr. Chairman, my distinguished friend, the gentleman from New York, who just spoke in the well, has really focused this debate as it ought to be focused. I do not think anybody in this House would question this Chamber's dedication to a strong national defense. Certainly not my friend, the gentleman from New York, who last year when we spoke on this issue rightly called himself the only unreconstructed hawk left in the House. There may be a few others, but he sure as heck qualifies and we are proud of him and his work. He puts it in focus when he says that we are not talking about the large strategic items that are involved in the defense budget. Nobody is talking about nuclear carriers. Nobody is talking about missiles. What we are talking about is small component parts that can if competition is introduced not only help the Defense Department to meet its requirements, but help the citizens of this Nation get a better price break.

Now, let me just read the history of our small business set-aside. We have already got a small business set-aside in place. After we put that in place, there were dramatic cost savings in the Department of Defense because we introduced competition. Let me tell you what they were. Recently the DOD went out for just nuts and bolts assemblies and they had to pay because they went to a labor surplus area and into a small business $5.90 a unit. Prior to that they were paying $27. It represented a 500-percent saving. The difference between the two is illustrative.

We could go on with a list of others.

DOD was purchasing gears from a large business at $954 an item. We cut that cost in half when we went to competition.

Presently only 17.5 percent of all contracts over $10,000 are formally advertised. This is contrary to the provisions of past Defense Appropriations Acts that direct that "as far as practicable, all contracts shall be awarded on a formally advertised bid basis." Perhaps the DOD resists this method of procurement because competition is required.

The LSA set-aside is a competitive procurement method. If at any time the procurement officer believes that competition does not exist, he or she must, by law (Public Law 95–89) terminate the LSA method of procurement and use an alternative. Just as important is the contracting officer's absolute duty to terminate an LSA bid solicitation if he or she believes that the prices obtained are unreasonable (10 U.S.C. 2304(a)(15)). Both of these laws provide ample discretion to the Department of Defense to prevent any kind of unreasonable procurement.

For a moment, however, I would like to describe the very positive benefits that will flow from the approval of this amendment. We have in some areas of this Nation, severe and persistent unemployment problems. We have appropriated billions to solve hard core unemployment with little success. Although I will not claim that this amendment will solve these problems, I will say that the LSA procurement program will go a long way to help.

For the past 4 years we have attempted to force this Nation's largest purchasing arm into doing something that makes tremendous economic sense. Our chief argument has always been that an LSA program in DOD will help the small business community and as a result create many new jobs where they are most needed. We act as if DOD would be doing us a favor.

Let me say that DOD will reap as great an economic benefit from this proposal as those people we place back on the employment rolls. With an LSA program the Defense Department will be able to purchase better products for less money.

I already gave just a few specific examples of how this policy saves money for both DOD and the taxpayers.

The labor surplus set-aside program we are proposing for DOD will benefit the Defense Department and the taxpayer as much, if not more than the unemployed and small businesses.

We are merely proposing that DOD take advantage of this Nation's most innovative sector—small business.

We are merely proposing that this country's largest purchaser should contract competitively for quality goods at the lowest prices.

We are merely proposing that DOD should no longer ignore the fact that small business creates nearly 100 percent of all new jobs in this country and that some of those jobs should be created in areas where they are most needed.

The gentleman's amendment should be adopted.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. HUGHES).

Mr. HUGHES. Mr. Chairman, I strongly support the efforts of our distinguished colleague, the gentleman from New York, to repeal the Maybank amendment. All of us are conscious of keeping procurement costs to a minimum. It is obvious that the Maybank amendment has outlived its usefulness.

Mr. Chairman, I strongly support the efforts by our distinguished colleague from New York to repeal the Maybank amendment.

While all of us are conscious of keeping procurement costs to a minimum, it is obvious that the Maybank amendment has outlived its usefulness.

When the Maybank amendment was first conceived in the early 1950's, it was a progressive and prudent step for the Government to take. However, circumstances change and the time has come for this provision to be eliminated.

By freeing the Department of Defense from the restrictive provisions outlined in the Maybank language, Congress has the opportunity to bring the Department's procurement policies into line with those practiced by all civilian Federal agencies. Repeal of the Maybank provision will also provide a much needed shot in the arm to the various labor surplus areas around the country.

Clearly, labor surplus areas exist throughout the country. Consequently, this is not another of those Sunbelt-Frostbelt confrontations that pit Members from the North against those from the South and West. We all have a stake in this issue.

I would also like to call attention to the fact that Mr. ADDABBO has carefully crafted this amendment in two important ways. Major weapons systems and goods related directly to national security would not come under the provisions of his language. By repealing the Maybank amendment, Congress would not be locking the Defense Department into unreasonable requirements that would be impossible to meet. Rather, it gives the Department the flexibility necessary to make intelligent decisions on awarding contracts.

Now is the time to discontinue the Maybank amendment. It would be penny wise and pound foolish to keep on with this outdated practice in the name of economy. Mr. ADDABBO offers us the opportunity to bring our defense procurement policies in line with our economic needs. I urge my colleagues to vote for it.

Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. MITCHELL).

Mr. MITCHELL of New York. Mr. Chairman, I rise in support of the Addabbo amendment as a member of the Armed Services Committee, deeply concerned about the military and economic problems plaguing our Nation. The Addabbo amendment provides the opportunity to take positive action to address these problems.

Since 1953, the Maybank amendment has effectively crippled the implementation of Defense manpower policy No. 4 (DMP-4), a policy designed to strengthen and enhance the Nation's industrial base. President Truman was well aware, as we should be, of the military advantages of targeting Defense procurements. In order to be adequately prepared for war, the Nation must maintain a warm and broad production base—keeping at a minimum idle manpower and idle machinery. DMP-4 is designed to meet these industrial preparedness needs.

Anyone involved with the armed services of this country as I have been, has seen the steady decline in the Nation's industrial base. Our ability to mobilize U.S. industry has been deteriorating since the 1950's. Production on our current defense items is dangerously long—114 weeks for the Air Force A-10 airplane and 60 to 80 weeks for the main flight controls of the Air Force F-16. The Pentagon's own recently released mobilization simulation revealed that—

> Industry probably cannot provide additional new equipment during the early warning months of a short warning conflict.

A serious vulnerability.

There is some concern that the performance of contracts in areas of high unemployment will hurt our national security by interfering with the purchasing of strategic weapons. This is absolutely false. The Secretary of Defense has complete discretion on items related to our national security. The Addabbo amendment explicitly assures this. The Addabbo amendment states that only those contracts made by the Defense Logistics Agency, and other such contracts deemed appropriate by the Secretary of Defense, can be considered in the payment of a price differential to relieve economic dislocations. The Defense Logistics Agency buys only common items used by all the services, and beyond these contracts the Secretary of Defense has absolute discretion in matters of national security.

So, what we are really talking about here today are the large number of very common items which the Defense Department buys. I ask those who suggest that this program might affect our national security to take a look at a list of these items. This list includes such items as household furniture, paper clips, paper products, electrical applicances, and office supplies. There will be no compromises to our national security, but rather our national security will be enhanced by increased industrial capacity.

I am also, concerned by the objections I have heard that the Defense Department should not be involved in a socioeconomic program. That is not a socioeconomic program. Our Nation's defense is predicated on maintaining a strong economy, skilled manpower, and vibrant industry. Defense Departement objectives cannot be met, while our economy stagnates. We have appropriated billions of dollars to the Defense Department, let us begin to use it wisely—as Secretary of Defense Clark Clifford has stated:

> I do believe that the citizens of the United States have reason to expect—and indeed demand—that the element of Government which spends half of their Federal dollars, devote more of its time and more of its resources to those aspects of our domestic problems which are important to our total national security.

We can no longer afford the serious impediments to our National economic and military needs that the Maybank amendment presents. I urge my colleagues to join in support of the Addabbo amendment.

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Mr. ADDABBO. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman.

Mr. EDGAR. Mr. Chairman, I would like to take this opportunity to respond to some of the questions most frequently raised about the impact of the repeal of the Maybank amendment to the defense appropriations bill.

Would repeal of the Maybank amendment reduce competition among defense suppliers and increase prices?

Repeal of the Maybank amendment would have only a limited effect on competition. First, competition is restricted only on those contracts set aside for the labor surplus area program. Contracts would be set aside for firms in labor surplus areas, however, only when the Defense Department has determined that enough firms would bid on them to insure adequate competition. Therefore, the Defense Department would not be required to target purchases to labor surplus areas if an unreasonable price would result or if it were not in the best interest of the Nation, as determined by the Secretary of Defense.

Second, it is unlikely that prices for goods and services purchased by the Defense Department would show more than a negligible increase. The Federal Preparedness Agency conducted a procurement study which compared the lowest price submitted by a labor surplus area firm to the price submitted by the eventual contract recipient. The results indicated that the prices submitted by firms in labor surplus areas were only 0.67 percent higher than the bids of contract winners; in other words, the price differential was less than three-quarters of 1 percent.

Would repeal of the Maybank amendment jeopardize awards to the best qualified and most efficient producers and result in decreased quality and delays in defense production?

The mere fact that a firm offers the lowest price does not, of itself, assure that the firm is the most efficient producer. Many of the Nation's best qualified manufacturers are located in labor surplus areas. In fact, nearly one-fourth of the Nation's cities, counties, and other eligible jurisdictions are designated as labor surplus areas. These manufacturing centers, which over the years have tended to have high unemployment rates, probably have just as many if not more qualified firms than other parts of the country. States which historically have contributed heavily to the Nation's defense efforts—New York, California, New Jersey, Georgia, Connecticut, Florida, and Pennsylvania, for example—all have significant numbers of labor surplus areas. It is beyond reason to assume that companies in these States would not be counted among the best qualified and most efficient firms in the Nation.

In addition, it should be noted that the portion of the Pentagon's budget most affected by repeal of the Maybank amendment would be purchases made through the common stock fund of the Defense Logistic Agency, the branch of the Defense Department responsible for procuring goods and services widely used by all sections of the military. Other procurement affected by repeal of the Maybank amendment would be goods and services purchased by the Army, Navy, and Air Force for operations and maintenance.

This combined budget represents roughly $10 to $15 billion for the purchase of such common items as food, clothing, medical supplies, hardware, office furniture, animals, photographic supplies, insignia, hand tools, books, boxes, and so forth. It is clear that targeting such purchases to companies in high unemployment areas will neither jeopardize the national security nor result in decreased quality.

Would repeal of the Maybank amendment adversely affect the Nation's mobilization capacity by denying some firms the opportunity to compete for contracts?

On the contrary, the original purpose of defense manpower policy No. 4 (DMP-4) was to minimize idle manpower and machinery in connection with the Nation's efforts in Korea. By directing Federal purchases to firms in areas of high unemployment, the policy helps insure that the Nation's defense needs are met by a broad-based and diversified manufacturing capability. Repealing the Maybank amendment would help guarantee against procurement delays caused by a lack of trained manpower at qualified manufacturing facilities. In case of a war or other national emergency, there would be a greater number of firms "tooled up" for defense production.

Would repeal of the Maybank amendment increase the dependency of labor surplus areas on defense procurement contracts?

First, an evaluation study of 10 labor surplus areas found that—

> For most private businesses, Federal contracts, direct and indirect, accounted for 5 to 20 percent of total sales, regardless of the size of the firm or the region from which it came.

The report pointed out that from the perspective of private industry, Federal contracts represent an additional, but not primary, market.

Second, private companies most interested in the labor surplus area program viewed it as a means of adding to their financial stability and supplementing their potential for receiving development loans. These firms did not anticipate the program opening up a long-term guaranteed market.

Does not the Defense Department already use the labor surplus area program?

The Defense Department is prohibited by the Maybank amendment from making total labor surplus area set-asides in the same way it now sets aside contracts for small businesses. Under current provisions, the only way the Defense Department can use the program and still comply with the law is to identify an item which can be purchased through two production runs. Half of the contract award is reserved for labor surplus area firms, and the other half is open to all bidders. The contracting officer first awards the "unreserved" portion of the contract on the basis of least cost. The other portion then is offered to labor surplus area firms at the base price as established by the lowest bidder on the unrestricted portion. The Defense Department may also use the program in the case of tie bids. If a firm in a labor surplus area submits a bid matching the lowest price offered by another company, the labor surplus area firm gets the contract.

The procedure of splitting contracts into two separate awards is so cumbersome that Pentagon procurement officials cannot actively use the program. As a result, the Defense Department has never targeted more than one-half of 1 percent of its annual procurement budget to businesses in labor surplus areas.

Would repeal of the Maybank amendment increase inflationary pressures on the Nation's economy?

Since full implementation of Defense manpower policy No. 4B (DMP-4B) would stimulate employment in labor surplus areas, repeal of the Maybank amendment represents a significant tool to combat the effects of a recession on distressed urban areas. It could make a significant contribution to realizing the national goal of full employment without fueling inflation.

As Dr. David Rasmussen, associate professor of economics at Florida State University, explained in testimony before the House Small Business Subcommittee on Capital, Investment, and Business Opportunities:

> The labor surplus policy is one way to raise the employment effects of a given rate of growth. It is an attempt to selectively raise employment in areas which economic growth is last to reach. Such a policy lowers the amount of growth required to achieve any target rate of unemployment and therefore works to reduce inflationary pressures in the economy.
>
> Some may view the labor surplus policy as a zero sum game: that jobs created in areas of persistent unemployment will be lost in other areas. This is a misperception. In fact, the view presented above suggests that the entire nation receives some benefits from efforts to increase the number of jobs in high-unemployment areas. If we take our commitment to full employment seriously, this policy will help produce conditions under which we can realize full employment in most labor markets with less inflation. Rather than having less than full employment in areas ineligible for the labor surplus policy, they may suffer less inflation when they do have full employment.
>
> Monetary and fiscal policy can stimulate growth to generate full employment in most labor markets—these areas will not lose jobs because of the labor surplus policy. In fact, these regions benefit because the nation can reach full employment with less inflation. With a commitment to our stated goal of full employment, the labor surplus policy does not rob Peter to pay Paul.

In addition, Mr. Chairman a number of my colleagues have raised concern that the repeal of the Maybank amendment would somehow affect the procurement of goods which are critical to national security. This is absolutely incorrect. Let me clarify this point. The Addabbo amendment explicitly states that the repeal of Maybank applies only to contracts made by the Defense Logistics Agency, and other contracts outside of DLA that the Secretary of Defense determines will not affect our national security. I would like to share with my colleagues a list of these procurement items which are unrelated to national security:

Air conditioning equipment, alcoholic beverages, bags and sacks, bolts, bottles and jars, brooms, brushes, mops and sponges, building glass, tile, brick and block, cameras, circuit breakers, commercial fishing equipment, compressors and vacuum pumps.

Dogs and cats, draperies, awnings and shades, dyes, electric hardware and supplies, electric lamps, electrical connectors, fencing, fences, and gates, fertilizers, floor coverings, floor polishers and vacuum cleaning equipment, fuel oils, fuses and lightning arresters, games and toys.

Hose and tubing, flexible hospital furniture, equipment, utensils, and supplies, household furnishings, iron and steel scrap, jewelry, kitchen equipment and appliances, laboratory equipment and supplies, luggage, lumber and related basic wood materials, marine lifesaving and diving equipment, motorcycles, motor scooters, and bicycles, musical instruments, nails, keys, and pins, nuts and washers, optical equipment.

Padding and stuffing materials, paper and paperboard, passenger motor vehicles, perfumes, toilet preparations, and powers, personal toiletry articles, phonographs, radios, and television sets, photographic supplies, plumbing, heating, and sanitation equipment, plywood and veneer, punched card equipment, refrigeration equipment, road clearing and cleaning equipment, roofing and siding materials, screws, seeds and nursery stock, signs, advertising displays and identification plate, space heating equipment and domestic water heaters, storage tanks, surgical dressing materials.

Tents and tarpaulins, textiles and fabrics, time-measuring instruments, toiletry paper products, typewriters and office-type composing machines, underwear and nightwear, vending and coin-operated machines, winches, hoists, cranes, and derricks, wire and cable, electrical, woodworking machines, yarn and thread.

In times of chronic inflation and rising unemployment, it makes sense to reap the potential of the Federal Government's purchasing power. The labor surplus area program provides the Government with an effective, low cost tool to stimulate private-sector investment in areas of concentrated unemployment. This program works to broaden and diversify the Nation's defense industrial base, enhancing our national security. As these problems within our Nation continue to grow the Maybank amendment provides a major obstacle which we can no longer afford.

Mr. OBERSTAR. Mr. Chairman, the Defense Department must not be allowed to turn its back on unemployment in America. It must be called upon to do its job to create jobs in America and repeal of the Maybank amendment would be the most significant effort we could undertake to create jobs at little or no cost and without establishing a whole new Federal bureaucracy.

Will there be competition under repeal of Maybank? You bet there will be. They will be out there fighting and scraping for every job and for every dollar in the whole country. There are 150 labor surplus areas out of 4,000 counties in America. That is 26 million people. That is 2½-million people who are out of work in those areas, and you bet they will be scraping for jobs, for every one, and that will keep competition alive; that will put jobs where we need them most, in the places where there is high unemployment, and using that $65 billion checkbook that the Defense Department has to buy goods in the civilian sector of the economy.

Let us repeal the Maybank amendment.

Mr. EDWARDS of Alabama. Mr. Chairman, here we go again on the Maybank amendment. I do not know how many years we are going to fight this thing.

Simply put, DOD cannot pay a premium to go into an area and let contracts. "Sure," the gentleman asks, "Will there be competition? You bet there will," he said. And I guess there will be if you can pay premiums for that competition.

We have a big, massive defense bill. We spend a lot of money on defense. There is no way that I can justify paying premiums for defense contracts when we are hurting so bad for defense money as it is. I started off yesterday talking in my remarks about the fact that we could easily spend $10 to $15 billion more this year if we had the money.

We would be foolish, I think, to put ourselves in a posture where we are having to pay premium payments for contracts that the Defense Department would let. So I urge my colleagues not to turn the defense bill into a welfare bill. I urge my colleagues to help us make every dollar count for defense that we can, to cut out as much waste as we can, and to not be paying premiums for contracts let for defense.

I urge the defeat of the amendment.

● Mr. ALEXANDER. Mr. Chairman, I rise in opposition to this amendment. I oppose it this year as I did its proposal last year, and for the same reasons.

Even when we attempt to insure, as the Maybank amendment does, that our scarce defense dollars buy as much national security value as possible there continues to be a gap between need and purchase. We should not widen that gap by spending more for defense items that we have to pay.

There are numerous Federal programs specifically designed to attack unemployment and economic and community development problems. Many of them use deliberately biased distribution formulas to direct the greater share of funding to our most heavily populated regions in the northeast and midwestern States. Although defense spending certainly has an economic value, the products it buys should not be diminished in favor of turning defense programs into domestic economic or community development programs.

Further, it would be positively ironic if those who are attempting to do so were successful in jerking our national defense programs into the nationally divisive regionalism battle being waged in the Congress.

It is argued that the amendment would help fight unemployment. National security activities should be aimed at keeping the people of the Nation secure and free to pursue programs for increasing job opportunities, but not be skewed for that purpose.

It has been said that the amendment before us would help combat regional decline. That, too, should not be the primary, or even a principal, consideration in our efforts to get the most our defense dollars can buy. Defense spending certainly ought not be used to put the brakes on the achievements the Nation has made thus far toward closing the regional gaps in per capita income and economic development that have existed between the Northeast and Midwest and the South and West for 100 years.

A warning about the dangers of deliberately designing Federal programs in such a way as to benefit one or more regions of the Nation while denying equitable treatment to others is contained in the recently published Advisory Commission on Intergovernmental Relations (ACIR) report "Regional Growth: Historic Perspective," ACIR is chaired by Abraham D. Beame, former mayor of New York City. Its 26 private and public commissioners include Members of Congress, Federal executive branch officials, State Governors and legislators, mayors and county government leaders.

In the conclusion to the Regional Growth report the ACIR warns that proposals designed to "prevent a reversal of the fortunes of one or more of the Nation's regions" have the following objectionable aspects:

> (1) They exacerbate political conflicts and sectionalism;
>
> (2) They hamper the necessary adjustments within, and between regional economies and thus, reduce overall economic efficiency;
>
> (3) They ignore some of the important natural correctives already built into the nation's economy, e.g. the progressive tax system; and
>
> (4) Their potential payoff is uncertain at best. . . .

One of the arguments that the regionalists use is that the Northeast and Midwest should get a bigger share of the Federal dollars because they pay more of the Federal taxes. Another recent ACIR publication "Regional Growth: Flows of Federal Funds, 1952–76" contains data relevant to that argument. In 1952, 57 percent of the Nation's population lived in the Northeast and Midwest, 68 percent of the Federal taxes were collected there, and 58 percent of the Federal dollars were spent there, although the per capita personal incomes in 13 of the 24 States located there was above the national average.

By 1976 the gaps were clearly narrowing. The 53 percent of the population living in the Northeastern and Midwestern States were only paying 55.6 percent of the Federal taxes and were receiving more than 50 percent of the Federal spending, although only 11 of the 31 States in the Nation with per capita incomes lower than the national average were located there.

In other words, between 1952 and 1976 the tax burden of the Northeastern and Midwestern States declined almost twice as fast as their share of the Federal expenditures did. On the other hand, the Southern and Western States share of the Federal tax bill has been rising faster than its share of Federal spending. In fact, in the five 2-year periods the ACIR study reports on, only once did the Northeast and Midwest get less than half the Federal dollars spent.

Thus, although the relatively rapid economic development trend in the South and West was certainly aided by Federal spending, more than half of this spending, with the exception of one short period, has consistently gone into the wealthier northeastern and midwestern region where less than one-third of the States with per capita incomes below the national average are located.

I would agree with our colleagues from the Northeast and Midwest that we must develop fair and equitable solutions to the economic problems of distressed areas, wherever they are located. We can not do that by tearing down the mechanisms, such as that provided by the Maybank amendment, we already have in place insuring equitable treatment for all regions. And, in building the programs we need, I would strongly urge that we keep clearly in mind the warnings in the ACIR report against seeking divisive, regionalist solutions.●

● Mr. BIAGGI. Mr. Chairman, as I have on several previous occasions, I rise to lend my enthusiastic support of the amendment offered by my good friend and colleague from New York, Mr. ADDABBO. The amendment would repeal an outdated if not patently unfair provision of law governing Defense Department procurement policies known as the Maybank amendment.

The Maybank amendment in essence prohibits the Department of Defense from paying a higher price for goods and services, even if it is aimed at relieving economic distress in certain areas of the Nation. Price differentials are in fact permitted to aid small and minority owned businesses.

Also on the books is Defense manpower policy No. 4B, which makes it the policy of the Federal Government to direct Federal procurement to businesses in so-called labor surplus or high unemployment areas.

The situation is inherently contradictory. DMP-4B governs all agencies in the area of procurement policy except the Department of Defense which is practically exempt by virtue of the Maybank amendment.

Repeal of the Maybank amendment may do more to stimulate economic activity in recession-impacted areas than any legislation we pass this year. According to the proponents of this amendment—repeal of the Maybank amendment would permit the Defense Department to target a substantial portion of roughly $10 to $15 billion in procurement of nonstrategic goods and services to areas of high unemployment.

The Addabbo amendment is inherently cost effective for with the targeting of billions of new Federal procurement dollars into hard-pressed areas—there is a corresponding private sector activity three to four times greater than the actual amount of the procurement award. The provision of new jobs in a stable industry will also lead to reductions in welfare payments, housing subsidies and unemployment benefits. Further, we could reduce our undue reliance on public service jobs for economic recovery which are at best short term in nature and highly inflationary.

This amendment promotes full uniformity in Federal procurement policies. It no longer permits the Department of Defense to stand alone in its method of bidding and awarding contracts.

This amendment is of potential real benefit to roughly one-quarter of the Nation's cities and counties, which are considered as labor surplus areas. This is not a regionalized amendment—the fact is 56 percent of these labor surplus areas are in the South and West; the remaining 44 percent in the Northeast and Midwest. I do point out however that the city of New York is a labor surplus area and this amendment would go a long way to promoting new economic stability in the city to move it farther along the road to economic recovery.

I urge my colleagues to vote for the Addabbo amendment. It makes good fiscal sense in a time when our priorities are directed at cost effectiveness in Federal spending. Unemployment remains our Nation's most serious economic problem. This amendment will help reduce unemployment and consequently keep our Federal deficit down. Every increase of 1 percent in unemployment means an additional $25 billion in the Federal deficit. This amendment is capable of immediate implementation—it does not require any new Federal budget authority—it is right and dese-ves passage.●

● Mr. RODINO. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York (Mr. ADDABBO). The amendment is a matter of social justice and commonsense.

Right now nearly one-quarter of our Nation's cities and counties are suffering from unusually high unemployment. All agencies of the Federal Government—except the Defense Department—set aside some of their contracts for businesses in those depressed areas. The Maybank proviso exempts the Defense Department from this labor surplus area program.

While this program is very important to cities in my congressional district—especially Newark and East Orange—and my State, I know that all areas of the country would benefit from the repeal of the Maybank proviso. The Northeast and Midwest have 44 percent of all labor surplus areas and the South and Midwest have 56 percent. This points out the seriousness of our unemployment problem and the urgent need for Congress to act.

Repeal of the Maybank proviso is one step in the right direction. By allowing private firms in high unemployment areas to qualify for preference when bidding on nonstrategic defense contracts, we will be helping to provide jobs where they are most needed. Also, our Nation's military preparedness will be enhanced by a broader industrial base.

Now more than ever we need this program which will help relieve the growing unemployment problem in our country while providing the essential defense goods our Government needs.

Mr. Chairman, I urge the adoption of the amendment.●

● Mr. MARKEY. Mr. Chairman, due to a previous commitment in my home district, I was unable to cast my vote favoring the Addabbo amendment repealing the Maybank provision of the Department of Defense Appropriations Act for fiscal 1981.

I believe that the labor surplus area program, known as Defense Manpower Policy No. 4B, represents a creative and cost-effective means of stimulating private sector economic development in areas plagued by spiraling unemployment. In my own district in Massachusetts, the cities of Revere and Everett have been classified as labor surplus areas by the Department of Labor. I can assure you that the Defense Department contracts for materials and equipment not related directly to national security, such as uniforms, food, medical supplies, and tools, would benefit these distressed areas immensely. In an era of economic stagnation and decreasing productivity, the labor surplus area program would provide the Federal Government with a much-needed stimulus for economic activity.

Further, repeal of the Maybank proviso would insure better utilization of the Nation's overall resources by employing manpower that might otherwise be lining up to collect unemployment compensation. By targeting procurements where necessary manpower and facilities already exist, this would serve to enhance the country's military preparedness by helping to avoid the late delivery of goods and services that often characterizes these contracts.

The Defense Department must no longer continue to be exempt from participation in the labor surplus program, as the Maybank proviso suggests. If the proviso were repealed, set-asides for labor surplus areas such as Revere and Everett would be authorized only if the Secretary of Defense "determines that there is a reasonable price." This would not interfere with the set-asides to small businesses or minority-owned firms nor make any compromises to our national security.

I believe this vote is one of tremendous importance to my district and to the Nation as a whole. The country's economic troubles have seriously eroded our economic base and I believe that repeal of the Maybank proviso will help to strengthen and diversify that base. It will help create new permanent sector jobs in the communities that need them most.●

● Mr. STOKES. Mr. Chairman, I rise in support of the Addabbo amendment to repeal the Maybank provision. At a time when millions of Americans are out of work, we should be using every tool possible to stimulate job production. The billions of dollars that are appropriated every year for Defense Department procurement for material and equipment unrelated to our national security have an enormous potential to bring about a positive economic impact, particularly for the high unemployment areas of this country. Today, we have the perfect opportunity to alleviate high unemployment in a noninflationary manner.

Repeal of the Maybank amendment will permit the Department of Defense to target part of its procurement budget to firms located in labor surplus areas. These set-asides for labor surplus areas will create private sector jobs and at the same time reduce dependency on welfare and public assistance programs. This can be accomplished with no adverse effect on competitive bidding or military preparedness. Surely, both high quality and efficient producers of such common items as food, clothing, hardware, medical supplies, and so on can be found in labor surplus areas which comprise nearly one-fourth of our Nation's cities and counties.

Mr. Chairman, it is time to delete the archaic Maybank provision from the fiscal year 1981 Defense appropriations bill. The Defense Department should not be sacrosanct. All civilian agencies of the Federal Government currently award labor surplus area set-aside contracts. The Defense Department is the only Federal agency which does not participate in this set-aside program.

Mr. Chairman, it is time to use the billions of dollars spent for goods and services by the Defense Department as leverage to relieve economic distress and to create jobs where they are needed most. Repeal of the Maybank provision would accomplish this. Accordingly, I urge that the Addabbo amendment be adopted.●

Mr. ADDABBO. Mr. Chairman, I yield myself 30 seconds.

Mr. NOWAK. Mr. Chairman, will the gentleman yield?

Mr. ADDABBO. I yield to the gentleman from New York.

Mr. NOWAK. Mr. Chairman, I would like to thank my colleague from New York (Mr. Addabbo) for yielding and for his leadership in offering this amendment to repeal the Maybank amendment.

Deletion of the Maybank provision would be highly beneficial to high unemployment areas and I wholeheartedly support this amendment.

For more than 25 years, the Maybank provision has prevented the Defense Department from targeting some of its purchases of nonstrategic goods and services to private firms in labor surplus or high unemployment areas.

Repeal of Maybank, therefore, would help create private sector jobs in economically depressed areas. This is a classic opportunity for using Federal funds to stimulate permanent, private job creation and at the same time help reduce Government expenditures—nonproductive expenditures—for unemployment insurance, food stamps, and other income maintenance expenses.

It simply makes good economic sense for the Government to target its resources to the areas of greatest need. With our Nation in the throes of a recession and soaring unemployment rates, it makes even more sense. Now is the time to repeal Maybank. For too long, the Pentagon has been exempt from a procurement policy that applies to all other Federal departments and agencies. I urge the adoption of the amendment of the gentleman from New York as a sensible way to help economically depressed areas without increasing Federal spending and without creating a new program.

Mr. ADDABBO. Mr. Chairman, I have a letter here from the National League of Cities. The letter reads as follows:

National League of Cities,
Washington, D.C., September 11, 1980.

Hon. Joseph P. Addabbo,
House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Addabbo: On behalf of the National League of Cities and the 15,000 municipalities we represent, I would like to express our strong support for your proposal to repeal the Maybank amendment.

At NLC's Board of Directors meeting this past July, we spent considerable time developing and adopting a responsible economic stimulus statement. Part of our proposed package endorses targeted federal procurement to areas of high unemployment. We believe this to be a prudent federal action which will maximize the impact of already-approved-and-planned federal expenditures, without exacerbating the Nation's already unacceptable rate of inflation.

We understand that the perception in Congress is that repeal of the Maybank amendment is a "sunbelt/frostbelt" issue. It is not. A majority of NLC's Board of Directors are from the south and west. And, as you know, more than half of the labor surplus areas in the country are in the south and west. We believe that repeal of the Maybank amendment would be in the national interest and not merely of regional benefit.

We appreciate your efforts in this important matter.

Sincerely,
Jessie M. Rattley,
President and Councilwoman, Newport News.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Addabbo).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. EDWARDS of Alabama. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 220, noes 179, not voting 33, as follows:

[Roll No. 548]

AYES—220

Addabbo
Albosta
Ambro
Anderson, Calif.
Andrews, N. Dak.
Annunzio
Applegate
Ashley
Atkinson
AuCoin
Bailey
Baldus
Barnes
Beard, R.I.
Bedell
Beilenson
Benjamin
Biaggi
Bingham
Blanchard
Boland
Bolling
Bonior
Brademas
Brodhead
Broomfield
Brown, Calif.
Brown, Ohio
Buchanan
Burton, John
Burton, Phillip
Byron
Carney
Carr
Chisholm
Clausen
Clay
Cleveland
Clinger
Coelho
Collins, Ill.
Conable
Conte
Conyers
Corcoran
Cotter
Coughlin
Courter
D'Amours
Danielson
Daschle
Davis, Mich.
Deckard
Dellums
Derwinski
Dingell
Dodd
Donnelly
Dougherty
Downey
Drinan
Early
Edgar
Edwards, Calif.
Emery
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Florio
Ford, Mich.
Forsythe
Garcia
Gaydos
Gephardt
Giaimo
Gilman
Goodling
Gray
Green
Grisham
Guarini
Guyer
Hall, Ohio
Harkin
Harris
Harsha
Hawkins
Heckler
Hillis
Hollenbeck
Horton
Howard
Hubbard
Hughes
Hutchinson
Jacobs
Jeffords
Johnson, Calif.
Johnson, Colo.
Kastenmeier
Kildee
Kindness
Kostmayer
Latta
Leach, Iowa
Lederer
Lee
Lehman
Leland
Lent
Lowry
Lujan
Luken
Lundine
McDade
McEwen
McHugh
McKinney
Madigan
Maguire
Marks
Marlenee
Matsui
Mavroules
Mikulski
Miller, Calif.
Miller, Ohio
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Nolan
Nowak
Oberstar
Obey
Ottinger
Pashayan
Patten
Pease
Pepper
Perkins
Peyser
Price
Pursell
Quayle
Rahall
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Rodino
Roe
Rosenthal
Rostenkowski
Roybal
Russo
Sabo
Sawyer
Scheuer
Schulze
Seiberling
Sharp
Simon
Smith, Iowa
Snowe
Solarz
Solomon
Spellman
St Germain
Stangeland
Stanton
Stark
Steed
Stewart
Stokes
Stratton
Studds
Thompson
Traxler
Udall
Vander Jagt
Vento
Walgren
Walker
Weaver
Weiss
Williams, Mont.
Williams, Ohio
Wirth
Wolff
Wolpe
Wydler
Yates
Yatron
Young, Mo.
Zablocki
Zeferetti

NOES—179

Abdnor
Akaka
Alexander
Andrews, N.C.
Anthony
Archer
Aspin
Badham
Bafalis
Barnard
Bauman
Bennett
Bereuter
Bethune
Bevill
Boggs
Boner
Bonker
Bouquard
Bowen
Breaux
Brinkley
Brooks
Broyhill
Burgener
Burlison
Butler
Carter
Chappell
Cheney
Coleman
Collins, Tex.
Corman
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Davis, S.C.
Derrick
Devine
Dickinson
Dicks
Dixon
Dornan
Duncan, Oreg.
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Okla.
English
Fascell
Flippo
Foley
Fountain
Fowler
Frenzel
Frost
Fuqua
Gibbons
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Gore
Gradison
Gramm
Grassley
Gudger
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Hefner
Heftel
Hightower
Hinson
Holt
Hopkins
Huckaby
Hutto
Hyde
Ichord
Ireland
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kogovsek
Kramer
Lagomarsino
Leath, Tex.
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lungren
McCloskey
McCormack
McDonald
McKay
Marriott
Martin
Mazzoli
Mica
Michel
Mineta
Montgomery
Moore
Moorhead, Calif.
Neal
Nelson
Nichols
Panetta
Patterson
Paul
Petri
Pickle
Porter
Preyer
Pritchard
Quillen
Railsback
Rhodes
Roberts
Robinson
Rose
Roth
Rousselot
Royer
Rudd
Santini
Satterfield
Schroeder
Sebelius
Sensenbrenner
Shelby
Shumway
Shuster
Skelton
Smith, Nebr.
Snyder
Spence
Stack
Stenholm
Stockman
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Van Deerlin
Volkmer
Wampler
Watkins
Waxman
White
Whitley
Whittaker
Whitten
Wilson, Tex.
Winn
Wright
Wyatt
Wylie
Young, Alaska

NOT VOTING—33

Anderson, Ill.
Ashbrook
Beard, Tenn.
Campbell
Cavanaugh
de la Garza
Erlenborn
Fish
Ford, Tenn.
Hanley
Holland
Holtzman
Jenrette
Kemp
LaFalce
Leach, La.
McClory
Markey
Mathis
Mattox
Myers, Pa.
Nedzi
O'Brien
Oakar
Shannon
Staggers
Trible
Ullman
Vanik
Whitehurst
Wilson, Bob
Wilson, C. H.
Young, Fla.

☐ 1840

The Clerk announced the following pairs:

On this vote:

Mr. Hanley for, with Mr. Campbell against.

Mr. LaFalce for, with Mr. Beard of Tennessee against.

Mr. Markey for, with Mr. Trible against.

Mr. Ashbrook for, with Mr. Whitehurst against.

Mr. Fish for, with Mr. Young of Florida against.

Mr. Kemp for, with Mr. McClory against.

Messrs. KELLY, ECKHARDT, WAXMAN, HAGEDORN, SANTINI, and LONG of Maryland changed their votes from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.,

AMENDMENT OFFERED BY MR. PEASE

Mr. PEASE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PEASE: Page 61, after line 25, add the following new section:

SEC. 772. None of the funds appropriated by this act may be used to pay the salaries of, or provide benefits to, any individual employed to work in the Pentagon executive dining rooms.

Mr. PEASE. Mr. Chairman, in an effort to cut some "fat" from the Defense appropriations bill, I suggest we look to a significant source of calories, cholesterol, and carbohydrates—the Pentagon executive dining rooms. A constituent recently called to my attention the fact that money is appropriated each year to subsidize five dining rooms which serve high-level military officials and their guests in the Pentagon. I have since confirmed with D. O. Cooke, a Deputy Assistant Secretary of Defense, that meal prices in these executive dining rooms cover only the cost of food, laundry, equipment maintenance and tableware—not the cost of personnel.

Instead, Defense funds appropriated by the Congress and paid by U.S. taxpayers provide the salaries of the military personnel who staff the Secretary of Defense's mess, the Secretary of Army's mess, the Air Force executive dining room, the Secretary of Navy's mess, and the Joint Chiefs of Staff's mess. Hence, a select group of officers, high-ranking civilians, and their guests are able to enjoy fine foods at what can only be considered bargain prices. For example, the January menu for the Secretary of Defense's mess included the following entrees:

Chicken cordon bleu at $2.40 (a la carte).

Flank steak at $2.60 (a la carte).

Roulade of beef at $2.40.

The cost to the taxpayer for the personnel in these elegant institutions has been estimated to well-exceed $1 million. Taxpayers, facing rising food bills and hard economic times, have every right to question such use of their income. In the words of my constituent, Dorothy M. Trubey:

> We taxpayers are aware of what's going on and has been for years—and now you expect us to sacrifice! Where can we eat as cheaply?

It is not my intention to deny our high military officials and their guests the pleasures of gourmet dining in a secluded environment. Rather, I wish, quite simply, to end a subsidy which neither the average taxpayer nor any Member of Congress enjoys. With your approval of this amendment, these dining rooms will have to become self-sustaining—exactly like the dining rooms which serve Members of the House. High-salaried military officials can well afford to pay for the service—as well as the food—which they enjoy at the executive dining rooms. In this era of belt-tightening, what could be more reasonable?

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I will be happy to yield to the gentleman from Alabama.

Mr. DICKINSON. Mr. Chairman, I have listened with interest to what the gentleman from Ohio has said and I have no doubt but what his remarks are true.

I wonder if the gentleman is aware that the two dining rooms we have, the Members' dining room and the Speaker's dining room, that they, too, are running a loss of about $500,000 a year?

If we are talking about people on high salaries, salaries of perhaps $60,000 a year plus, perhaps we should treat everyone alike. The Members are enjoying similar benefits.

The Committee on House Administration is studying this subject. It is possible that Members of Congress are enjoying benefits greater than those enjoyed by the people at the Pentagon.

Mr. PEASE. Mr. Chairman, I thank the gentleman for his observations. I did check with the staff of the Committee on House Administration and was told that the cost of meals in our dining rooms do include personnel costs as well as food and supplies.

□ 1850

Mr. ADDABBO. Mr. Chairman, I rise in opposition to the amendment.

The executive dining rooms were established to provide a facility where the Secretary of Defense and his principal staff could dine and host functions involving foreign dignitaries, official visitors, and other guests, as is required in the execution of their duties and responsibilities.

The dining rooms also serve top level senior Defense officials and their guests, providing a place in which they can eat and conduct official business without undue concern for security of their conversations. The general cafeteria, located in the Pentagon, is simply not suited for these purposes.

Accordingly, the Pentagon executive dining rooms are considered necessary and important elements of the Department and, for this reason, certain costs of their operation are paid from Defense funds, as is the case with other DOD activities. Other costs associated with the operation of the dining rooms, such as food and beverages, laundry, maintenance of equipment, cleaning supplies, silverware, and table china are considered as operating expenses and are fully covered by meal prices. Those using the facility, including Secretary Brown, pay for the meals provided.

I urge that the amendment be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. PEASE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. PEASE. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

On a division (demanded by Mr. PEASE) there were—ayes 34; noes 78.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BONIOR OF MICHIGAN

Mr. BONIOR of Michigan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BONIOR of Michigan: Page 61, after line 25, insert the following new section:

SEC. 772. None of the funds appropriated by this Act shall be available for the purpose of converting to performance by a private contractor any commercial or industrial type function of the Department of Defense that on October 1, 1980, is being performed by Department of Defense personnel in an area in which the current rate of unemployment, as determined and published by the Bureau of Labor Statistics of the Department of Labor, pursuant to Section 4 of the Act of March 4, 1913 (29 USC 2), is in excess of 9 percent.

Mr. BONIOR of Michigan. Mr. Chairman, as I understand it, this is the last amendment, and at 7 o'clock we will be voting on the bill.

Mr. Chairman, I am offering my amendment to this bill today for the sole purpose of preventing the Defense Department from contracting out jobs presently being held by Federal employees in areas where unemployment exceeds the national average. I would have gone through the normal process in the Congress of bringing this before the subcommittee and full committee, but to my dismay and shock, I was notified just very recently that possibly 200 jobs in my district at an Air Force base—electricians, plumbers, pipefitters, these types of people—are threatened by this contracting out provision.

What is unusual about the argument that I wish to make here this afternoon is the fact that I do not represent a normal district in this country. I represent a district with an unemployment rate of 15 percent. I think it is unconscionable that this Government would think of coming in and taking out 200 jobs and inflicting the psychological damage that it does to a community already reeling under a high unemployment rate.

What I am asking is that the areas in the country defined in the public law, labor law, and at the MSA's, that have unemployment rates in excess of the national average of about 1¼ percent, using the 9 percent figure, that those districts be left alone until they can come to grips with the difficult problems they have in putting people to work.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. BONIOR of Michigan. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I want to tell my friend from Michigan that I have been one of the staunchest opponents of contracting out on the Defense Appropriations Committee because, not only for the reason the gentleman mentions, but because so often the work is done in a poor and shoddy way. The committee is taking a look at that problem.

I am somewhat concerned, though. I want to explain one thing to the gentleman. The reason we have contracting out all over the country is because we have imposed personnel ceilings on the Department of Defense because of the Leach amendment. What that means, then, is that if you have an area of 9-percent unemployment, that would be given that relief, but an area with less than 9-percent unemployment would then be penalized because of this particular restriction, because there are only so many billets because of the Leach amendment, because of the unemployment ceiling.

So, I am not opposing the gentleman's amendment, because I think anything we can do to point out the problems with contracting out is a step forward, but I do think the Members should understand that there might be a problem for areas with 9 percent or less unemployment because then they would have to take the burden of the Leach amendment.

Mr. BONIOR of Michigan. I appreciate the gentleman's argument. Frankly, it is one I had not heard before. But, in defense of my position, I would suggest that the problem the gentleman speaks of is one that ought to be addressed in continuing debate and discussion on contracting out, and we ought to get to it. But, the deep psychological problems caused by this type of action in unemployment areas of 15 or 16 percent is just unconscionable. You cannot explain that anywhere.

Mr. EDWARDS of Alabama. Mr. Chairman, I rise in opposition to the amendment. I am reluctant to oppose the amendment. We all have problems of unemployment. We all have pockets of unemployment that are great.

Our committee continually fights this battle between contracting out and in-house work. We try to get a handle on it. Frankly, I do not understand exactly what the impact of this amendment would be. It seems to me that it would be inappropriate to adopt an amendment like this when we really do not know what the impact is.

I believe that the better way to handle this would be to let the committee continue to work in trying to resolve the constant conflicts between contracting out on the one hand and in-house work on the other. We certainly want to do what we can to protect the rights of those civil service employees who work on bases and perform important service. We believe in the free enterprise system. We want that to work, so we have contracting out and we have in-house work.

I believe an amendment like this offered at this time, would not be the best way to resolve this problem.

Mr. Chairman, as I understand it, I have about 1 minute left.

The very able gentleman from Connecticut (Mr. GIAIMO), who is over there on the other side, is leaving our subcommittee at the end of this year, and I want to pay my respects to him for the work that he has done on our committee and in the Congress over the years. He not only has had the obligation of serving on our Defense Subcommittee, but for the last 4 years has been chairman of the Budget Committee, which has taken him away from us a good bit of the time.

□ 1900

Mr. Chairman, I have felt a great pride in serving with the gentleman from Connecticut (Mr. GIAIMO). I am sure the subcommittee shares my feelings that we hate to see him go. He has been a good Member of this House, one whom we all have been very proud to know.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the subcommittee chairman.

Mr. ADDABBO. Mr. Chairman, I wish to join my colleague, the gentleman from Alabama (Mr. EDWARDS), in commending the gentleman from Connecticut (Mr. GIAIMO), who has been running back and forth between the Budget Committee and the House, and coming over to the Defense Subcommittee when we needed him for a vote. He was always there when needed.

His retirement from the House will be a great loss to me, because he has been my right arm on the committee. I know that we will continue to applaud him for his expertise when he returns to the so-called civilian world.

Mr. Chairman, we wish the best for the gentleman and for his wonderful wife. We wish him a wonderful, happy life in his retirement.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. BONIOR).

The amendment was rejected.

Mr. TRAXLER. Mr. Chairman, I want to bring to the attention of the House a matter which is of great importance to the maintenance of Army vehicles, and the sad history of how the Army has delayed taking advantage of a technological breakthrough that can aid our combat readiness.

In 1967, the U.S. Army requested the silicone industry to develop an improved brake fluid for global operations. Over the next 11 years, industry worked closely with the Army to develop a fluid to meet the needs for an all-weather, noncorrosive brake fluid. Extensive Army field testing in the 1973–78 period proved that silicone brake fluid would meet the Army's requirements, culminating in a qualified product in 1978.

In July 1978, a cost-effectiveness study was approved by the involved Army agencies. It showed silicone brake fluid, although more expensive initially, would provide substantial cost savings. In addition, silicone brake fluid would make a major contribution to the improved combat readiness of Army vehicles as it eliminates corrosion and is compatible with brake system components during storage. A major overall improvement in reliability and greatly reduced maintenance in any foreseen climate would result.

In March 1979, a plan to convert the Army's vehicles to silicone brake fluid was approved with procurement to begin by mid-1979. Shortly thereafter, the conversion program was suddenly delayed and a variety of technical questions were raised and quickly answered. In July 1979, at a joint meeting of Army and industry representatives at the tank automotive readiness command (TARCOM), concluded that a "change from glycol to silicone brake fluid is not only cost-effective, but will provide improved reliability, availability, and maintain ability of hydraulic brake systems on military vehicles." However, additional costly studies were deemed necessary. The latest of these studies is now scheduled for DOA review later this year, and there is good reason to believe that some parties involved in this session will recommend still more studies.

While the Army vacillates, the U.S. Postal Service (USPS) is taking advantage of the benefits offered by silicone brake fluid. The USPS conversion began in 1979 and is 80 percent completed. There have been no reported failures to date attributed to the conversion. The objectives of: First, increasing reliability; second, reducing vehicle downtime; and third, reducing maintenance costs have all been met. Significant savings were realized the first year with an annual savings of 6.5 percent, and an annual savings of 30 percent of total system maintenance is projected when the conversion is completed. In addition to cost reductions, vehicle availability has been increased by the reduction of downtime for brake system repairs.

More than 10 years of development have yielded a single fluid vastly superior to the three fluids currently being used. The resultant major improvement in combat readiness contributes to the development of an assured and requisite all-weather mobile strike capability previously unattainable. The technology proven and the cost studies have shown it to be cost-effective. Further procrastination camouflaged under the guise of gathering additional information is nonproductive and represents an unacceptable cost when we are demanding that Federal agencies use their funds in the most productive fashions possible.

● Mr. HARRIS. Mr. Chairman, I would like to direct the attention of my colleagues to a section of the committee report entitled "Contracting Out Commercial/Industrial Type Activities" which accompanies this appropriation bill. The report contains a number of conclusions which support my contention that inflexible personnel ceilings result in the Government spending more than necessary for needed services.

In part, the committee report states:

> Placing a hiring freeze and civilian ceiling limitation on DOD at a time when the Department has adequate appropriations to hire personnel to improve readiness and speed up operations will result in additional pressure to contract out activities.
>
> Both OMB Bulletin 80–9 and Circular A–76 state that contracting with firms and institutions outside the Federal Government will not be used to alleviate or circumvent the effect of limitations on hiring or manpower ceilings. Despite the general policy there is considerable indication, that these hiring freezes and ceiling limitations do force additional contracting out of management support functions, engineering and technical support activities, as well as commercial and

industrial activities which are covered by Circular A–76.

Even if it can be shown that in-house performance is less expensive under the required A–76 comparisons, hiring freezes and ceilings can make it impossible to perform the function in-house.

Also, the use of ceilings prohibits bringing back in-house work that has been contracted out if for some reason it becomes more expensive to do it on contract or the contractor fails to perform satisfactorily.

Contracting out and the application of A–76 cannot be a one-way street. In order to insure continued competition it is necessary to have the option to bring work back into Government facilities.

The committee has reached the same conclusions which I have reached after 2 years of investigation. My bill, H.R. 4717, would ensure that the contracting option is indeed a two-way street which exists to serve the needs of Government, not limit the Government in the decisionmaking process. It provides the flexibility necessary to guarantee that decisions are based on cost-effectiveness rather than arbitrary limitation.

I commend the committee for its attention to this matter, and I urge my colleagues to support all moves to make the contract option a double-edged sword whose purpose is to hack away at unnecessary Federal spending.●

● Mr. WEAVER. Mr. Chairman, I rise in support of this amendment, which would restore the $100 million for recruitment purposes which was cut by the Appropriations Committee.

This House has rightfully demanded that the armed services' recruitment programs be managed in such a way as to attract the best recruits possible to our Nation's Armed Forces. There is no question in my mind that the Volunteer Army can be an effective and unmatched fighting force—but to accomplish this goal, we must solve the twin problems of recruitment and retention of qualified personnel.

This amendment will restore 2,000 badly needed recruiting positions, and will allow the Department of Defense to mail recruiting information to the many young men who requested it on their draft registration forms.

These are the kinds of everyday needs which we must meet if we want a combat-ready Armed Force—yet we are constantly sacrificing these requirements in the face of a desire to obtain more and more exotic weaponry. Gold-plated weapons will never replace qualified men and women as the essential strength of America's military. It is time we learned that lesson, and began to act on it.●

● Mr. McDADE. Mr. Chairman, I rise to address the language contained in additional views of my colleagues from California on page 392 of the committee report. I am deeply concerned about the ammunition procurement section. Specifically, I wish to commend the chairman of the Defense Subcommittee and the ranking minority member for the thoughtful analysis provided by the subcommittee.

First, I want to set the record straight. In 1975, Norris Corp. and the Scranton Army Ammunition Plant bid in open competition for the right to produce this round, the M–509. After Scranton won, Norris tied up the contract for a year with bid protests that were denied by the GAO. Thereafter, the Scranton Army Ammunition Plant received a contract to produce 20,000 rounds of the 509 and began production.

Two Army design errors caused that contract to be stopped and subsequently the Scranton plant produced 4,000 of these rounds in a piecemeal fashion that the Army used to solve the design errors.

The M–509 manufacturing line at Scranton is now ready to produce this new and more effective shell and it is clear that the committee made the right decision. Let us look at the facts:

The Scranton plant has already made over 4,000 of these rounds. Norris has made none.

The Scranton plant has a trained work force available; Norris has to train its people.

The Scranton plant is ready to produce now (even though it will require another heating oven to make production easier). Norris is not ready to produce and cannot be ready for at least 4 months.

The Scranton plant has enough raw material (steel and aluminum) on hand to instantly start making over 7,000 of these rounds; Norris has none and must wait at least 4 months from the date of order to get what it needs to make even one of these rounds.

Most importantly, however, is the cost of production. If the initial production of this round goes to Norris, the Army will be buying the 509 at more than twice the cost per round. Under the Army plan, for a $15-million expenditure, Norris would test its production line and the Army will get 6,000 rounds for its stockpile, but the Army will get 15,000 rounds in the stockpile if it goes to the Scranton Army Ammunition Plant for production.

There are additional compelling reasons why the Scranton Army Ammunition Plant should be the producer of the M–509. The Scranton plant is a key producer in the Army mobilization plans. Scranton is the only active producer of conventional heavy ammunition. In addition, the Scranton plant is the most modern large caliber manufacturer. Scranton has a large and well-trained work force (average 20 years). The Scranton plant also provides technical and production improvements used throughout the ammunition industry and is the closest facility to the Army's engineering agency staff. When the total capacity of this plant is reviewed (over 10 different rounds), its importance to the Army is clear. Of the varieties produced at Scranton, seven rounds are manufactured only by the Scranton plant or most efficiently produced by the Scranton plant. Because of these skills, the Scranton plant is the sole supplier of foreign sales for conventional heavy ammunition.

The Army has already invested over $80 million in the Scranton Army Ammunition Plant and more importantly has already built a complete and functioning M–509 production line. That production line has already manufactured more than 4,000 M–509 shells.

There seems to me to be no reason to further delay production, particularly when this M–509 contract will insure that this Nation will have the benefit of keeping the only active manufacturer of conventional heavy ammunition from being considered for closing. The Norris facility, on the other hand, has six active contracts; four for production—two for facilitation.

Lastly, let me address the fire at the Scranton Army Ammunition Plant. Four years ago, the Scranton plant experienced a fire in one of its four furnaces. The only delay caused by the fire was the change to one of the other three idle furnaces. No diminution of capacity occurred. It certainly appears that a fire 4 years ago is no reason to delay the production of this necessary round.

Once again, let me state that we only have limited money. We need to get the most from that money and we need this shell now, not some time in the future.

The Army has spent well over $100 million and 10 years time to get ready to make this shell. The unfilled stockpile requirements are in the millions.

Why must we wait, why must we pay more? We need to build our military strength now.

The chairman and the ranking member together with the other members of the Subcommittee on Defense acted with wisdom and prudence. Their careful study of the whole situation resulted in the very strong committee language. This situation will be carefully monitored in the future.●

● Mr. OTTINGER. Mr. Chairman, I am greatly distressed that both the House of Representatives and the Senate have chosen to authorize funds for facilities and equipment for the production of binary weapons. The issue of binary weapons raises many objections and arguments. Unfortunately, this Congress has chosen to make a decision on it without the benefit of sufficient hearings and debate.

Chemical weapons munitions in current U.S. stockpiles can kill just as many people now as they could in the 1950's and 1960's when the Army produced enough to kill or maim many times over every human being within an area of thousands of square miles. Indeed, our current stockpiles may remain lethal for at least another 20 years. In light of this, why should we spend billions of dollars to resume production of binary weapons?

Production and deployment of the binary weapons will not reassure our NATO allies. Opponents of binaries repeatedly state the British and West Germans are highly unlikely to agree to store any chemical munitions on their territory. West Germany is bound by treaty not to store lethal agents on its territory, except those in U.S. bases, and has refused even to train its troops in the use of chemical weapons. Given the political opposition of the Europeans to storing these weapons, full scale production would anger, rather than reassure, NATO.

Furthermore, this proposal may destroy the arms limitation talks.

Due to the separation of the binary's

components, verification problems may arise. The Soviets will be forced to follow our lead and upgrade their chemical weapons arsenal. Evidence suggests that the Soviet missile buildup of the past 15 years is the result of the U.S. decision to develop MIRV. Are we not signaling to the world that the United States is about to push it into a new generation of sophisticated, expensive and devastating weaponry?

Mr. Chairman, the arguments opposing the entire binary weapons concept have been joined by arguments which call for a reasonable delay in the resumption of binary production. Not only has this Congress failed to afford the issue adequate consideration—I understand that only one committee dealt with the proposal and considered only four or five pages of testimony—but we have not properly consulted with our allies. Secretary of Defense Harold Brown argues that any decision to go ahead with production of binary weapons would have to allow for prior consultation with the allies, and this is an inopportune time to undertake such consultations, according to the Secretary.

The administration does not favor this proposal, and the President and the Secretaries of State and Defense have come down against it. In a letter to Chairman ZABLOCKI, Secretary Muskie wrote:

> A number of very important considerations must be assessed before we make this decision, including major military, foreign policy, and arms control issues.

At this time, an interagency examination is underway which will study these major issues. It will be completed and a decision will be made on binary weapons production in time for the fiscal year 1982 budget process. In the meanwhile, as Secretary Muskie points out, any such funding at this juncture would be premature.

During consideration of the military construction authorization bill last week, my distinguished colleague, Chairman ZABLOCKI, alterted us to the fact that the United States is working with its allies in the United Nations to support a resolution calling for an international investigation of Soviet chemical warfare practices. In today's New York Times, Flora Lewis writes "the U.S. stands to gain much more that way than by serving notice to the world that it is tooling up again for chemical warfare." Unfortunately, we seem to be ready to serve that notice, and embark on a policy which will fly in the face of our efforts in the U.N.

Once again we have been confronted with a proposal that is immensely costly without improving our security, but leaves us less secure as the Soviets are forced to modernize and expand their chemical warfare potential. Moreover, we are willing to engage in a policy that is estimated to cost $4 billion without giving it the consideration it deserves.

We clearly should not embark on this dangerous, counterproductive, and expensive endeavor at this time.●

● Mr. FRENZEL. Mr. Chairman, this bill is one of the largest, most complex, and most important appropriations bill this Congress will have to consider this year. H.R. 8105, the Department of Defense appropriations bill for fiscal year 1981, is designed to assure that American military posture will remain strong enough to provide protection to our country in the coming year, and in the years to come.

Overall, the bill provides for total defense spending of just over $157 billion. This figure, represents, in my judgment, about as much as we can spend effectively. It makes a good start in what is a long term campaign to raise the quality of our national defense to adequate levels. The 12 percent increase in the appropriation over last year represents a commendable effort by the members of the Appropriations Committee to control spending in areas where the entire appropriation for fiscal year 1980 has not been used up, and to provide essential increases in programs where there is a current shortfall.

One program which experienced a slight reduction in spending is the MX missile. While many Members of Congress, including myself, agree that the country needs a new missile system to replace our aging Minutemen, there has been considerable controversy over the basing mode for such a missile. However, the bill before us does not contain any instructions as to the basing mode. In fact, it is not even at issue at this time.

H.R. 8105 simply appropriates $1.44 billion for continued research and design of a new missile system. This figure is $120 million less than the Air Force's request for MX development, and represents the Appropriations Committee's impression that the Air Force's original request was larger than could be efficiently spent in fiscal year 1981. Approval of this measure will assure us that the development of a new missile system, and the study of alternative basing modes, will continue uninterrupted. The development and study of a basing mode should neither be accelerated, nor delayed.

The bill also takes into consideration the need to provide additional incentives to improve the retention rate of our enlisted and noncommissioned personnel by providing $713 million in additional compensation. These increases include the implementation of a variable housing allowance to help pay for members who are assigned to high cost housing areas, increases in sea pay rates by 15 percent, increases in officer and enlisted flight pay by 24 percent, and increases in the subsistence allowance by 10 percent.

These provisions, while only the start of what I hope will be a trend toward increases in military pay levels, should help to provide the immediate incentives to stop the flight of highly trained personnel out of our Armed Forces.

All in all, the bill is a good one. In view of our previous experiences with the appropriations process, I have a feeling that this appropriations bill will be the only one to come before the Congress this year which will satisfy a strong majority of this body. I urge my colleagues to support the bill.●

The CHAIRMAN. Are there any further amendments to title VII or to title VIII?

If not, the Chair recognizes the gentleman from New York (Mr. ADDABBO).

Mr. ADDABBO. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. WRIGHT) having assumed the chair, Mr. ROSTENKOWSKI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having under consideration the bill (H.R. 8105) making appropriations for the Department of Defense for the fiscal year ending September 30, 1981, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. FORSYTHE

Mr. FORSYTHE. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. FORSYTHE. Yes, I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. FORSYTHE moves to recommit the bill, H.R. 8105, to the Committee on Appropriations.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. EDWARDS of Alabama. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 351, nays 42, **not voting 39, as follows:**

[Roll No. 549]

YEAS—351

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N.Dak.
Annunzio
Anthony
Applegate
Archer
Ashley
Atkinson
Badham
Bafalis
Bailey
Barnard
Barnes
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Blanchard
Boggs
Boland
Bolling
Boner
Bonker
Bouquard
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Burgener
Burlison
Butler
Byron
Carney
Carr
Carter
Chappell
Cheney
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
Deckard
Derrick
Derwinski
Devine
Dickinson
Dicks
Dixon
Dodd
Donnelly
Dornan
Dougherty
Downey
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar
Edwards, Ala.
Edwards, Okla.
Emery
English
Erdahl
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Fenwick
Ferraro
Findley
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Fountain
Fowler
Frenzel
Frost
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hutchinson
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jeffries
Jenkins
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kindness
Kogovsek
Kostmayer
Kramer
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Lent
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lungren
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Marks
Marlenee
Marriott
Martin
Matsui
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Miller, Ohio
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, Pa.
Murtha
Musto
Myers, Ind.
Natcher
Neal
Nelson
Nichols
Nowak
Oberstar
Panetta
Pashayan
Patten
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Railsback
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Russo
Sabo
Santini
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Stangeland
Stanton
Steed
Stenholm
Stewart
Stockman
Stratton
Stump
Swift
Symms
Synar
Tauke
Tauzin
Taylor
Thomas
Traxler
Udall
Van Deerlin
Vander Jagt
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
White
Whitley
Whittaker
Whitten
Williams, Mont.
Williams, Ohio
Wilson, Tex.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki
Zeferetti

NAYS—42

AuCoin
Baldus
Beilenson
Bingham
Bonior
Burton, John
Burton, Phillip
Cavanaugh
Chisholm
Clay
Collins, Ill.
Conyers
Dellums
Drinan
Edwards, Calif.
Forsythe
Garcia
Gephardt
Gray
Harkin
Johnson, Colo.
Kastenmeier
Kildee
Leland
Lundine
Maguire
Mitchell, Md.
Nolan
Obey
Ottinger
Paul
Rahall
Richmond
Rosenthal
Seiberling
Stark
Stokes
Studds
Thompson
Vento
Weaver
Weiss

NOT VOTING—39

Anderson, Ill.
Ashbrook
Aspin
Buchanan
Campbell
de la Garza
Dingell
Erlenborn
Fish
Ford, Tenn.
Hanley
Holland
Holtzman
Ichord
Jenrette
Johnson, Calif.
Kemp
LaFalce
Leach, La.
McClory
Markey
Mathis
Mattox
Mavroules
Murphy, N.Y.
Myers, Pa.
Nedzi
O'Brien
Oakar
Sebelius
Shannon
Staggers
Trible
Ullman
Vanik
Whitehurst
Wilson, Bob
Wilson, C. H.
Young, Fla.

☐ 1920

The Clerk announced the following pairs:

Mr. Markey with Mr. O'Brien.

Mr. Nedzi with Mr. Ashbrook.

Mr. Staggers with Mr. Erlenborn.

Mr Vanik with Mr. Fish.

Mr. Murphy of New York with Mr. Whitehurst.

Mr. Jenrette with Mr. Kemp.

Mr Hanley with Mr. Young of Florida.

Mr. Dingell with Mr. Bob Wilson.

Mr. Aspin with Mr. Sebelius.

Ms. Holtzman with Mr. Trible.

Mr. LaFalce with Mr. Campbell.

Mr Shannon with Mr. Buchanan.

Mr. Johnson of California with Mr. McClory.

Mr. Mavroules with Mr. Myers of Pennsylvania.

Mr. Ullman with Mr. Charles H. Wilson of California.

Mr. de la Garza with Ms. Oakar.

Mr. Mattox with Mr. Ichord.

Mr. Ford of Tennessee with Mr. Holland.

Mr. Mathis with Mr. Leach of Louisiana.

Mr. McEWEN and Mr. ASHLEY changed their votes from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion too reconsider was laid on the table.

PERMISSION TO FILE REPORT ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The SPEAKER pro tempore (Mr. ALEXANDER). Is there objection to the request of the gentleman from Indiana?

There was no objection.

MAKING IN ORDER ON OR AFTER THURSDAY, SEPTEMBER 18, 1980, CONSIDERATION OF CONFERENCE REPORT ON H.R. 5192, EDUCATION AMENDMENTS OF 1980

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent that it be in order on or after Thursday, September 18, 1980, to consider the conference report on the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

COMMUNICATION FROM CHAIRMAN ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER pro tempore (Mr. FARY) laid before the House the following communication from the chairman of the Committee on Public Works and Transportation, which was read and, without objection, referred to the Committee on Appropriations:

COMMITTEE ON PUBLIC
WORKS AND TRANSPORTATION,
Washington, D.C., September 5, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, as amended, the House Committee on Public Works and Transportation approved the following projects on August 26, 1980:

11(b) RESOLUTIONS

Decatur and Huntsville, Alabama.
Chicago, Illinois.
Bakersfield, California.

CONSTRUCTION

Birmingham, Alabama, U.S. Courthouse.

CONSTRUCTION AND ALTERATION

Little Rock, Arkansas, Post Office-Courthouse.

ACQUISITION

Charlottesville, Virginia, Federal Executive Institute, Office of Personnel Management.

ALTERATIONS

New Haven, Connecticut, Post Office-Courthouse.

Greenville, South Carolina, Federal Building-U.S. Courthouse.

Detroit, Michigan, Secondary Truck Inspection, Border Station.

CONSOLIDATION–DIRECT FEDERAL CONSTRUCTION

Silver Spring, Maryland, Nuclear Regulatory Commission.

LEASES

Austin, Texas, Consolidation of seven agencies.

Arlington, Virginia, Pomponio Plaza, 1735 North Lynn Street.

Washington, D.C., Penn 17 Building, 1717 Pennsylvania Avenue, N.W.

Washington, D.C., Riddell Building, 1730 K Street, N.W.

New York, New York, U.S. Custom House, World Trade Center.

San Francisco, California, Departments of the Treasury, Transportation & Defense.

Los Angeles, California, Department of Defense, Housing & Urban Development & Commerce, 2500 Wilshire Boulevard.

Los Angeles, California, Department of Defense, 4727 Wilshire Boulevard.

Seattle, Washington, Department of Health, Education, and Welfare.

Department of Housing and Urban Development.

San Francisco, California, Department of Health, Education, and Welfare.

San Francisco, California, Department of Housing and Urban Development.

Dallas, Texas, Internal Revenue Service.

Washington, D.C., Matomic Building, 1717 H Street, NW.

Washington, D.C., Merit Systems Protection Board.

Washington, D.C., Securities and Exchange Commission.

Los Angeles, California, Veterans Administration, 417 South Hill Street.

Washington, D.C., Department of Education, Department of Health and Human Services, National Aeronautics and Space Administration.

The original and one copy of the authorizing resolutions are enclosed.

Sincerely,

HAROLD T. (BIZZ) JOHNSON,
Chairman.

Mr. ROUSSELOT. Mr. Speaker, what was that which was reported? Just a report?

The SPEAKER pro tempore. A report from the Committee on Public Works and Transportation.

Mr. ROUSSELOT. Just a report to be filed?

The SPEAKER pro tempore. And referred to the Committee on Appropriations.

Mr. ROUSSELOT. I thank the Speaker.

There was no objection.

THE NATIONAL INDUSTRIAL INNOVATION ACT OF 1980

(Mr. OTTINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. OTTINGER. Mr. Speaker, I am today introducing "The National Industrial Innovation Act of 1980." This legislation creates a National Industrial Innovation Corporation empowered not only to provide loans, loan guarantees, but as well equity financing and authority for joint ventures with private industry for new or innovative products, processes, or worker incentive programs.

The Corporation will aid the United States in developing new technologies, improving old production processes, regaining lost markets, improving productivity, and revitalizing our economy. The bill address one of our most pressing national problems, the decline in the productivity of our industry and the loss of competitiveness with Japan and Europe in many industrial processes.

Mr. Speaker, Japan in particular and the European countries as well give more assistance to their business communities in becoming competitive than does ours. This will enable us to be on a par with the kind of effort their governments give to their industrial innovations.

Of particular significance is the authority for entering joint ventures and permitting equity financing. Many corporations can not participate in existing Federal loan and loan guarantee programs because of debt to equity limitations. They can participate, however, in the kind of equity partnerships authorized here. Also, it has long been my feeling that if the taxpayers put up a major portion of the capital for this kind of effort they should participate in the profits of any profitable ventures that result.

Mr. Speaker, innovation and technological change have been a hallmark of our economic success in the 20th century. Between 1929 and 1969, technological innovation was responsible for 45 percent of the Nation's economic growth. During that same period, advanced technology industries had twice the productivity, three times the real growth rate, six times fewer price increases, and nine times more growth in employment as compared to other industries.

Sadly, the share of innovation first marketed in the United States has consistently fallen since the 1950's. In a recent report to the Senate Democratic Task Force on the Economy, the Subcommittee on Industrial Innovation, headed by Senator ADLAI STEVENSON, also took note of this unsettling development. I cannot attribute this dropoff to a lack of new technology or innovative ideas. The brainpower remains as does the technology. Corporations and individuals simply cannot raise the capital necessary to develop and market their innovations.

Two examples illustrate the failure of the capital markets. International Power Technology, Inc. (IPT) has been unable to sell a single dual-fluid cycle, an innovative device which reportedly can cut turbine fuel costs by 30 percent. The reason? IPT cannot raise the $5 million needed to build a prototype. Sponsors are scarce, and public utilities will not advance the company the money for product development until they see a prototype. Decision Automation, Inc., another California based firm founded in 1979, plans to manufacture and market microcomputers designed for industrial data acquisition and control purposes. These computers could reduce the cost of computer control applications over conventional systems by 75 percent. The company cannot obtain financing for its project.

Apparently, the capital markets are reluctant to finance industrial innovation. Commercial banks are unwilling to take the risk involved in a new innovation when they can just as easily finance a traditional investment with a predictable return. These banks generally refuse to provide second stage financing for innovative projects with slow start up times. Many venture capital companies are unwilling to fund projects involving small sums, although they may later reap huge windfalls. Tax laws are driving individuals, once a primary source or funding for innovative ventures, to real estate, Treasury certificates, and other tax shelters. Add to this list the traditional bias of large companies against financing innovative products produced by others and a complete picture of a severe capital shortage emerges.

How then, do we revitalize the economy?

On August 28, President Carter announced a new economic revitalization program. He proposed accelerating and simplifying our depreciation system, increasing funding for research and development, and creating an economic revitalization board composed of representatives of Business, labor, and the public. Although likely to stimulate some investment and innovation, his proposals failed to address one of the most glaring weaknesses in our economy, the basic unwillingness of the capital markets to accept the substantial risks associated with financing industrial innovation initiatives. If we are to foster the new technology and industrial innovation necessary to encourage higher rates of productivity, a growing GNP, and an internationally competitive industrial structure, some entity must accept these risks.

Two weeks ago, the Senate Democratic Task Force on the Economy's Subcommittee on Industrial Innovation, headed by Senator ADLAI STEVENSON, recommended that Congress create an industrial financing bank willing to accept the risks associated with financing industrial innovation. The bank would provide capital to high-risk ventures in advanced technology "sunrise" industries with promising potential for growth and export.

Mr. Speaker, I am today proposing legislation which, if enacted, will create just such an entity, the National Industrial Innovation Corporation. This Corporation is designed to be an efficient and productive enterprise which will move necessary capital into innovative undertakings.

The Industrial Innovation Corporation will be efficiently managed by Directors with an intimate knowledge of business finance, and Government. Officers of innovative business enterprises and officers of a commercial bank, a pension fund, and an insurance company will constitute a majority of the corporation's nine member board. Three members of the public sector will complete the board.

The Industrial Innovation Corporation will select projects on the basis of scientific, technological, and financial merit; it is not a bailout firm. It will be limited to providing $100,000,000 in financing to any one firm.

The Corporation will encourage smaller innovative enterprises, and it will disseminate information about its activities to all eligible business entities. It will, however, hold all proprietary information in the strictest of confidence.

It will be flexible enough to aid any industrial innovation, as it will be able to provide loans, loan guarantees, or equity financing depending on the nature of the undertaking. Its equity operations will allow it to share in the profits of the successful undertakings which it finances. Thus, the American taxpayer can reap benefits from successful ventures of the Corporation.

The Industrial Innovation Corporation will be a large undertaking. However, it will not usurp the role of the private capital markets. It will enhance the private financing role by assisting innovative enterprises to become viable risks and thereby encouraging the private financing of industrial innovation.

Industrial innovation is vital to our national interest. In recent years, we have seen U.S. innovations in automobiles, steel, electronics, and other technologies overtaken by our Japanese and European competitors. Their governments do far more than our own to foster innovation and exports. Now, the United States must commit itself to industrial innovation. The Industrial Innovation Corporation should be the centerpiece of that commitment.

The text of the bill follows:

H.R. 8131

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Industrial Innovation Act of 1980".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) the share of innovations first marketed in the United States has consistently fallen since the 1950s;

(2) estimates are that technological innovation was responsible for 45 percent of the Nation's economic growth between 1929 and 1969;

(3) high technology industries between 1929 and 1969 had twice the productivity growth rate, three times the real growth rate, six times fewer price increases, and nine times more growth in employment as compared to other industries;

(4) traditional sources of capital are being driven away from high technology industries by tax laws which favor tax-sheltered investments; and

(5) the United States is not lacking in technology, but United States companies are finding that they cannot raise the capital necessary to put that technology to work.

(b) It is therefore declared to be the purpose of this Act—

(1) to promote undertakings which utilize or create technological innovation;

(2) to increase innovation in the American economy;

(3) to increase productivity and provide jobs for more Americans;

(4) to improve the United States' ability to compete in international markets; and

(5) to nurture the emerging technologies that will form the industrial foundation of the future.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "Corporation" means the National High Technology Industrial Innovation Corporation created under title I;

(2) the term "Board" means the Board of Directors of the Corporation;

(3) the term "industrial innovation endeavor" means a new or innovative product, component, or process which is or may be commercially exploitable, which has significant potential for growth and export, and which is the result of a theoretical scientific or mathematical advance or the application of such an advance, and it also includes (A) the development and the manufacture or establishment of such a product, component, or process, and (B) any change in a process or worker incentive proposal designed to substantially improve productivity and international competitiveness of an industrial product or process; and

(4) the term "qualifying firm" means an individual, corporation, partnership, joint venture, or other business entity which is a citizen of the United States or is incorporated or otherwise organized in the United States, and the business of which can benefit from industrial innovation endeavors.

TITLE I—ESTABLISHMENT OF NATIONAL INDUSTRIAL INNOVATION CORPORATION

ESTABLISHMENT OF CORPORATION

SEC. 101. (a) There is hereby authorized to be created a National Industrial Innovation Corporation, which shall be an agency of the Government of the United States.

(b) The principal office of the Corporation shall be located in the District of Columbia, but the Corporation may establish agencies and branch offices at such other places as may be determined by its Board of Directors.

ORGANIZATION OF CORPORATION

SEC. 102. (a) As soon as possible after the date of the enactment of this Act, the President shall convene a temporary panel which shall consist of the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and the Chairman of the Board of Governors of the Federal Reserve System, and which shall act as the initial incorporators of the Corporation and serve as its board of directors until their successors are elected and qualified. The panel shall arrange for an initial stock offering in accordance with section 103, shall make specific recommendations to the President with respect to the appointment and composition of the Board of Directors to be designated under subsection (b) of this section, and shall take whatever other actions are necessary (with the approval of the President) to establish the Corporation. Upon the completion of its duties under this subsection, and in any event within a period of 120 days after it is initially convened (or within such longer period as the President may specify if additional time is necesary for the completion of such duties), the panel shall be relieved of all responsibilities under this Act and dissolved.

(b) The power of the Corporation to act shall (except as otherwise specifically provided) be vested in its Board of Directors, which shall be appointed by the President by and with the advice and consent of the Senate and which shall consist of 9 members as follows:

(1) three members who are from qualifying firms, one from a firm having annual sales of between $1,000,000 and $50,000,000, one from a firm having annual sales of between $50,000,000 and $100,000,000, and one from a firm having annual sales of more than $100,000,000 (determined in the case of any such member on the basis of sales data for the most recently completed year as of the time of his initial appointment);

(2) three members who are officers (respectively) of a commercial bank, an insurance company, and a pension fund which engage in the financing of industrial innovation endeavors; and

(3) three members from the public sector who are determined to be particularly qualified, by reason of their experience and expertise in industrial innovation endeavors, to participate in the conduct of the Corporation's affairs and otherwise to carry out the purpose of this Act.

(c) Each member of the Board shall be a citizen of the United States.

(d)(1) The President shall from time to time designate one of the members appointed under paragraph (1) or (2) of subsection (b) to be the Chairman of the Board.

(2) The Board may by resolution delegate to the Chairman such of its functions, powers, and duties as it deems appropriate, and the Chairman may by written instrument delegate any of the functions, powers, and duties assigned to him to such other full-time directors, officers, or employees of the Corporation as he deems appropriate.

(e) Members of the Board shall serve for terms of 6 years; except that (1) the terms of the members first appointed under each of the numbered paragraphs of subsection (b) shall be appropriately staggered to assure maximum continuity in the membership of the Board, and (2) no member appointed under paragraph (1) or (2) of subsection (b) shall serve as such for more than two consecutive full terms.

(f) The Corporation shall have a president, and such other officers as may be named and appointed by the Board. The members of the Board, and the officers of the Corporation, shall be compensated at rates fixed by the Board; and such officers shall serve at the pleasure of the Board.

(g) No officer of the Corporation shall receive any salary from any source other than the Corporation during the period of his service with or employment by the Corporation.

(h) The President of the Corporation with the approval of the Board shall appoint and fix the salaries of such employees as are necessary for the performance of the functions of the Corporation, including a permanent administrative and professional staff the size of which shall be determined by the Board according to its needs, and shall in addition procure outside assistance when necessary or desirable in the performance of the Corporation's functions.

(i) No member of the Board or officer of the Corporation shall participate in any way (1) in the consideration or evaluation of any application for assistance made by a qualifying firm in which such member or officer has any ownership interest or by which such member or officer was employed within the 10-year period immediately prior to the receipt of such application, or (2) in any other action taken with respect to such an application or any other matter or proceeding directly affecting or involving such a firm.

(j)(1)(A) Subject to subparagraph (B), in providing assistance and otherwise performing its functions under this Act, the Corporation shall be subject to the same requirements with respect to freedom of information as are other Federal agencies when engaged in generally similar activities.

(B) The Corporation may withhold information which is exempted from disclosure under section 552(b) of title 5, United States Code and subsection (k) as it pertains to minutes of meetings of the Board.

(2) The Corporation, upon receipt of any request for information, shall determine, promptly whether to comply with such request and shall promptly notify the person making the request of such determination. In the event of an adverse determination, and if requested by the person requesting the information, such determination shall be reviewed by the General Counsel of the Corporation.

(3) Section 1905 of title 18, United States Code, shall apply—

(A) to Directors, officers, and employees of the Corporation as if they were officers or employees of the United States; and

(B) to the Corporation as if it were a Federal agency.

(k)(1) All meetings of the Board held to conduct official business of the Corporation shall be open to public observation, and shall be preceded by reasonable public notice. Pursuant to such bylaws as it may establish, the Board may close a meeting if the meeting is likely to disclose—

(A) information which is likely to adversely affect financial or securities markets or institutions;

(B) information the premature disclosure of which would be likely to—

(i) lead to speculation in securities, commodities, minerals, or land; or

(ii) impede the ability of the Corporation to negotiate a contract for financial assistance; or

(C) matters of information exempted from public disclosure pursuant to paragraph (1), (2), (4), (5), or (6) of section 552b(c) of title 5, United States Code.

(2) The determination to close any meeting of the Board for any of the purposes specified in subparagraphs (A) through (C) of paragraph (1) shall be made in a meeting of the Board open to public observation preceded by reasonable notice. The Board shall prepare minutes of any meeting which is closed to the public, except for those portions thereof which, in the judgment of the Board, may be withheld under the provisions of subparagraphs (A) through (C) of paragraph (1).

FINANCING OF THE CORPORATION; CAPITAL STOCK AND DEBT OBLIGATION

SEC. 103. (a) The Corporation shall have capital stock of $1,000,000,000 subscribed by the United States of America acting by and through the Secretary of the Treasury, payment for which shall be subject to call in whole or in part by the Board and subject to the availability or appropriations therefor. There is hereby authorized to be appropriated to the Secretary of the Treasury $1,000,000,000 for this purpose. Not later than one hundred and eighty days after the close of each fiscal year of the Corporation, the Corporation shall declare and shall thereafter pay a dividend on its outstanding capital stock, in an amount determined in the discretion of the Board but not less than an amount computed by multiplying a percentage determined by the Secretary of the Treasury, taking into account the current average percentage yield on marktable obligations of the United States as of the close of such fiscal year, by the paid-in value of such outstanding capital stock; except that the Corporation may defer payment of any such dividend if the Corporation has no earned surplus as of the close of such fiscal year or if the Board determines that the funds otherwise available for payment of the dividend should, in furtherance of the purpose of this Act, be used to provide financial assistance pursuant to title II of this Act. Any dividend deferred pursuant to this section shall, until paid, bear interest at a rate determined by the Secretary of the Treasury and adjusted at the commencement of each fiscal year, taking into consideration the then current average annual percentage yield on marketable obligations of the United States.

(b) (1) The Corporation is authorized to issue and to have outstanding at any time notes, debentures, bonds, or other obligations in such amounts as shall be necessary to provide the financial assistance authorized under title II of this Act, subject to such annual limitations as may be provided in advance in appropriation Acts; except that the Corporation shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the method, source, interest rate, timing, and other terms and conditions of such obligation. The Secretary of the Treasury may direct that any such obligations issued by the Corporation be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

(2) For purposes of purchasing the obligations of the Corporation pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this section shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest due on obligations of the Corporation held by the Treasury may be deferred, at the discretion of the Secretary, but any such deferred interest shall bear interest at the rate specified in this paragraph. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine any of the obligations acquired by him under this subsection. All redemptions, purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(3) All obligations of the Corporation issued under this subsection shall be fully and unconditionally guaranteed as to principal and interest and shall constitute general obligations of the United States, backed by the full faith and credit of the Government of the United States of America. Such guarantee shall be expressed on the face of all such obligations.

(c) Obligations of the Corporation issued under this section shall be lawful investments and may be accepted as security for all fiduciary, trust and public funds the investment or deposit of which is under the authority or control of the United States or any officer or officers thereof.

CORPORATE OBJECTIVE

SEC. 104. It shall be the objective of the Corporation in the performance of its functions under this Act, utilizing funds made available to it under section 103 and acting through the provision of assistance as described in title II to promote the development and commercialization of industrial innovation endeavors in the United States by supporting qualifying firms in undertaking such endeavors and in otherwise carrying out the purpose of this Act.

GENERAL POWERS OF CORPORATION

SEC. 105. In carrying out the purposes of this Act, the Corporation shall have the power—

(1) to adopt, alter, and rescind bylaws and to adopt and alter a corporate seal, which shall be judicially noticed;

(2) to make contracts with individuals and private or governmental entities;

(3) to lease or purchase and to dispose of such real property as may be necessary for the transaction of its business;

(4) to acquire and dispose of personal and intangible property (including money);

(5) to sue and be sued in its corporate name, and complain and defend in any court of competent jurisdiction, State or Federal;

(6) subject to the provisions of section 102(f), (g) and (h), to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business and to define their authorities and duties, require bonds of them, and fix the penalties thereof;

(7) to make provision for and designate such committees, and the functions thereof, as the Board may deem necessary or desirable;

(8) to determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid;

(9) to use the United States mails on the same terms and conditions as the executive departments of the United States Government;

(10) with the consent of any board, commission, independent establishment, or executive department of the executive branch, to make use of services and facilities thereof, with or without reimbursement, in carrying out the provisions of this Act; and

(11) to exercise all other lawful powers necessarily or reasonably related to the establishment and conduct of a corporate entity, to the achievement of its purposes, and to the exercise of its powers, purposes, functions, duties, and authorized activities.

TITLE II—FINANCIAL ASSISTANCE

GENERAL AUTHORIZATION OF ASSISTANCE

SEC. 201. (a) (1) Subject to the limitations set forth in this title, the Corporation is authorized and empowered, upon such terms and conditions as it may determine in carrying out its objective under section 104, to provide financial assistance to qualifying firms, in the form of loans, loan guarantees, and equity investments, for project involving industrial innovation endeavors, in accordance with sections 202 and 203. Such assistance shall be available only to firms which satisfy the applicable requirements of this title, and which would not otherwise receive sufficient financing for the projects involved on terms which would make them commercially feasible (as demonstrated by documented evidence of unsuccessful efforts to obtain financial assistance from other sources, and by such other evidence as the Board may consider indicative).

(2) The Corporation may also provide such assistance by entering into joint venture agreements with qualifying firms to promote industrial innovation endeavors, on such terms and conditions as it deems consistent with the purpose of this Act.

(b) In determining whether to provide assistance to an applicant under this title, the Corporation shall consider and take into account all relevant statistics which are available from the Board of Governors of the Federal Reserve System; but any such determination shall be made without regard to whether or not a patent has been applied for or granted on the product, component, or process involved.

(c) In providing assistance under this title, the Corporation shall treat large and small firms equally, and shall not take the size of an applicant into consideration in determining whether it qualifies for assistance. To the maxmum extent possible, the Corporation shall encourage and assist smaller firms in applying for such assistance, and shall provide such assistance without discrimination to qualifying firms making application therefor which are wholly or primarily owned or operated by members of minority groups.

(d) The Corporation shall make continuing and intensive efforts to publicize its activities under this title, with a view to assuring that all qualifying firms (particularly smaller firms) which might qualify for and benefit from assistance under this title will be fully aware of the availability of such assistance and the steps to be taken to obtain it.

(e) Costs incurred by the Corporation in considering and evaluating applications for assistance under this title (other than clerical and related costs which are reflected in fees charged under section 205) shall be considered administrative expenses and shall not be chargeable or attributable to the particular projects or proposals involved.

(f) Assistance under this title shall be available only to firms which—

(1) adopt and enforce (in the activities financed with such assistance) the labor standards generally required of recipients of assistance under similar programs conducted or administered by other Federal agencies, and

(2) provide reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization for which such assistance is provided under this Act will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with

respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(g) Nothing in this title shall be deemed or construed to require or obligate the Corporation to provide financial assistance to any individual project or particular type of project.

(h) All contractual commitments of the Corporation to provide financial assistance shall be general obligations of the United States and backed by its full faith and credit.

Loans to and Equity Investments in Qualifying Firms.

Sec. 202. (a) The Corporation is authorized and empowered under this title to make a loan to or equity investment in any qualifying firm which fulfills the eligibility requirements set forth in this section and section 204, for any project described in subsection (b) of this section.

(b) A loan to or equity investment in a qualifying firm under this title shall be made only to assist such firm in planning and developing a project which (in the judgment of the Board) consists wholly or primarily of a single industrial innovation endeavor, or to assist such firm in producing and marketing the product, component, or process involved in such endeavor, or both. The specific purposes for which such a loan or equity investment may be made shall include assistance in financing the ownership, construction, conversion, or expansion of productive facilities, assistance in acquiring equipment, plant, machinery, supplies, or materials or acquiring land, mineral rights, or services, and assistance in providing the working capital needed to carry out the project in an efficient manner.

(c) When selecting projects from the pool of eligible proposals to receive such a loan or equity investment, the Corporation shall consider (with respect to each project)—

(1) the productivity of the industry of which the applicant is a part, as determined in accordance with the guide to productivity of the Bureau of Labor Statistics and any other reasonable measures of productivity;

(2) the availability of capital within the firm;

(3) the commercial feasibility of the project, and the potential marketability of the resulting product, component, or process;

(4) the likelihood of eventual repayment of the loan, or the likely return on the equity investment and its potential saleability;

(5) the impact that the project would have upon national energy use and its potential for leading to energy savings;

(6) the possibility of improvement in the United States' competitive position in the international market as a result of the project;

(7) the extent to which the loan or equity investment would aid the applicant in its primary line of business or in a line which is intended to become its primary line of business;

(8) any negative effect which the project might have by reducing or tending to reduce competition or by conferring upon the applicant a significant competitive advantage over other firms in the same industry;

(9) the risk involved in the project or undertaking, and the level of commitment of the applicant with respect to repayment of the loan; and

(10) such other factors as in the Board's judgment may bear upon the extent to which the loan or equity investment would aid in carrying out the purpose of this Act and the mission and objective of the Corporation.

(d) A loan made under this title with respect to any project may include an amount to cover the expenses incurred by the applicant in developing and submitting its proposal for such project if or to the extent that such expenses represent a significant part of the total cost of the project, as determined in accordance with guidelines prescribed by the Corporation.

(e) To the maximum extent possible, any equity investment in a qualifying firm by the Corporation pursuant to this Act shall be made on terms and conditions which provide for the purchase by such firm of the Corporation's investment within such period as the Board may determine to be reasonable.

(f) Nothing in this title shall prevent the Corporation from making a second-stage or follow-up loan or equity investment to a qualifying firm with respect to any project, whether the initial financing or other previous assistance for such project was obtained under this title or from another source, if the Corporation determines that (1) the project has been carried out in accordance with the provisions of this Act and the requirements imposed by the Corporation in connection with such previous assistance, (2) the product, component, or process involved promises to be commercially feasible and marketable, (3) the ability of the firm to complete the project and to commence the actual production and marketing of such product, component, or process depends at least in part upon the receipt of additional assistance, and (4) the making of such loan or equity investment would promote the purpose of this Act and protect the Corporation's interests.

LOAN GUARANTEES TO QUALIFYING FIRMS

SEC. 203. The Corporation is specifically authorized, on such terms and conditions as the Board may prescribe, to guarantee any lender against loss in whole or in part of principal and interest on securities, obligations, or loans (including the refinancing thereof) issued to provide funds to any qualifying firm, where such firm and the project involved meet the applicable criteria for loans under section 202 and such funds substantially contribute to the accomplishment of the purpose of this Act. All guarantees entered into by the Corporation under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America. Any guarantee made by the Corporation under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof; shall be conclusive evidence that such guarantee complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans involved and of the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, or loan, except for fraud or material misrepresentation on the part of such holder. The Corporation shall be subrogated to the rights of any third party receiving payments of interest or principal out of funds provided by the Corporation under a guarantee arrangement authorized hereunder.

LIMITATIONS ON PROVISION OF FINANCIAL ASSISTANCE

SEC. 204. (a) Financial assistance provided by the Corporation shall be made upon such terms, and subject to such conditions and restrictions, as shall be deemed by the Board to be consistent with the purpose of this Act and the needs of the recipient. Financial assistance will be provided in a manner which, to the maximum extent possible, does not restrain trade or tend to promote a monopoly by the recipient.

(b) Interest rates, terms of repayment, and other conditions of any financial assistance granted by the Corporation to any recipient shall not be more favorable than the prevailing rates, terms, and conditions available to borrowers in the private market for activities of a similar scale and nature, unless the Corporation finds that more favorable rates, terms, or conditions are essential to the repayment of the assistance and to the success of the industrial innovation endeavor involved.

(c) The Corporation shall not have outstanding at any one time financial assistance in an aggregate amount in excess of $10,000,000,000. In calculating total financial assistance, the bank shall count not less than 25 per centum of any guarantees outstanding; and the aggregate amount of guarantees outstanding at any one time shall not exceed $20,000,000,000.

(d) No financial assistance may be provided unless an application therefor has been submitted to the Corporation in such manner and containing such information (including a detailed description of all technical, business, and economic aspects of the proposed project) as the Corporation may require, and the Corporation has reviewed such application. Nothing herein shall preclude the Corporation from providing financial assistance to two or more similar projects if it determines that such assistance is appropriate and consistent with the purpose of this Act.

(e) The outstanding principal amount of all loans made or guaranteed by the Corporation to any single firm under this Act may at no time exceed $100,000,000.

(f) Any financial assistance provided under this Act, and any of the terms and conditions thereof, may be renewed, modified, or extended by the Board in such manner and on such terms and conditions as the Board may deem appropriate, to the extent that such renewal, modification, or extension is consistent with the provisions of this Act and with any outstanding contractual agreements relating to such assistance.

FEES

SEC. 205. The Corporation may charge reasonable fees for making loans, guarantees, and commitments therefor pursuant to this title.

ACCESS TO INFORMATION

SEC. 206. Every applicant for financial assistance under this Act, shall, as a condition precedent thereto, consent to such examinations as the Corporation may require for the purpose of this Act, and shall further consent that any reports or examinations of the applicant by constituted authorities may be furnished by such authorities to the Corporation upon request therefor. The Corporation shall require such reports as it deems necessary from any firm receiving financial assistance under this Act regarding activities carried out pursuant to this Act. The Corporation is authorized to prescribe the keeping of records with respect to all such financial assistance and shall have access to such records at all reasonable times for the purposes of insuring compliance with the terms and conditions upon which the financial assistance was provided.

TITLE III—MISCELLANEOUS PROVISIONS

TAX STATUS

SEC. 301. The Corporation, its franchise, capital, reserves, surplus, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property owned in fee by the Corporation shall be subject to State, territorial, county, municipal, or other local taxation to the same extent, according to its value, as other similarly situated and used real property, without discrimination in the valuation, classification, or assessment thereof.

BUDGETARY TREATMENT

SEC. 302. The receipts and disbursements of the Secretary of the Treasury in connection with the purchase or redemption of, and income from, capital stock of the Corporation shall not be included in the totals of the budget of the United States Government. The receipts and disbursements of the Corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government and shall be subject to any annual limitation imposed by statute on expenditures and net lending (budget outlays) of the United States.

MONEYS OF THE CORPORATION

SEC. 303. All moneys of the Corporation not otherwise employed may be—

(1) deposited with the Treasury of the United States subject to withdrawal by the Corporation, by check drawn on the Treasury of the United States by a Treasury disbursing officer, or

(2) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

(3) with the approval of the Secretary of the Treasury, and by authorization of the Board, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Corporation.

FORMS OF NOTES, BONDS, AND OTHER OBLIGATIONS

SEC. 304. In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

FISCAL YEAR; REVIEWS AND AUDITS

SEC. 305. (a) The fiscal year of the Corporation shall coincide with the fiscal year of the United States Government.

(b) On or before June 30 in each year, the Corporation shall submit to the Director of the Office of Management and Budget a financial and management plan, in such detail as the Director may prescribe, for the succeeding fiscal year.

(c) The Corporation shall retain a firm or firms of nationally recognized public accountants who shall prepare and report an annual audit of the accounts of the Corporation including the statements identified in section 106 of the Government Corporation Control Act. The General Accounting Office is authorized to conduct such audits of the accounts, and to report thereon to the Congress, as such Office shall deem necessary or as the Congress may request. All books, accounts, financial records, reports, files, papers, and property belonging to or in use by the Corporation and necessary to facilitate an audit shall be made available to the person or persons conducting the audit and facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

REPORTS

SEC. 306. (a) (1) The Corporation shall submit an annual report to the Congress and the President. The report will state the aggregate sums then outstanding or committed as loans, equity investments, loan guarantees, or other financial assistance and a listing of the qualifying firms involved.

(2) The annual report in which any expenditure or commitment to a firm is first noted shall contain a brief description of the factors considered by the Board in making such expenditure or commitment. The report shall also show the number, functions, and compensation of persons employed or under contract by the Corporation at salary rates exceeding $2,500 per month.

(b) The annual report shall set forth the audited financial statements and report prepared by the independent public accountants pursuant to section 305(c), and shall also contain a general description of the Corporation's operations during the year, a specific description of each project or activity in which the Corporation is involved, a status report on each such project or activity, and an evaluation of the contribution which the project or activity has made and is expected to make in fulfilling the purpose of this Act.

NUCLEAR POLLUTION OF THE OCEAN

(Mr. ANDERSON of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDERSON of California. Mr. Speaker, there are indications, too numerous to ignore, that large amounts of nuclear waste material have been dumped in shallow areas far from the designated 6,000 foot deep ocean disposal sites, and that prohibited high-level waste has also been put in the ocean.

I have reviewed many previously ignored studies and reports which lead me to believe that contrary to testimony from the Environmental Protection Agency (EPA) before the Oceanography Subcommittee in 1978, high-level radioactive waste materials were dumped off the coast of California between 1946 and 1965. In addition, I have spoken with experts who have both interviewed ship captains who were in charge of disposing of the waste, and who have participated in scuba diving explorations of the dump region. Evidentally much of the wastes never made it to the licensed disposal site.

More than 48,000 drums and vaults of nuclear material were dumped off the coast of San Francisco between, 1946 and 1965. Most of this waste was to be dumped at dumpsites in 6,000 feet of water—approximately 50 miles off the coast. A 1957 Atomic Energy Commission (AEC) study by Arnold B. Joseph states:

> Because of such uncontrollable factors as sudden inclement weather and malfunctioning equipment some (few) packages of waste have been deposited in alternative areas.

The fact is, no one has ever completely examined the dump regions to determine how many of the drums really made it to the licensed areas. Even more alarming is there was no one specific disposal area. The October 22, 1958 license issued by the AEC to the Nuclear Engineering Co., of Walnut Creek, Calif., merely stated that:

> The licensee shall dispose of byproduct, source, and special nuclear material in either the Atlantic or Pacific Oceans at a minimum depth of 1,000 fathoms.

The actual location was clearly up to the discretion of the company.

The marine environment may be seriously threatened if high-level nuclear wastes were dumped without adequate protection, especially if they were illegally dropped in shallow water, rich in fish caught by sport and commercial fishermen alike. Amendment No. 1 to the Nuclear Engineering Co. license was issued on November 7, 1958. This allowed them to: "Transport and process as low-level waste a total of 4,000 gallons of liquid waste in concentrations not exceeding 2.0 micro-curies per milliliter." Although the term "low-level waste" is used, according to the definition of high-level waste by the Argonne National Laboratory, this material contained twice as much nuclear material as their classification for high-level liquid waste material.

Testimony by John A. Kaufman in 1958 described the methods used by the University of California Radiation Laboratory at Berkeley to dispose of all their nuclear wastes—both high and low level. He states:

> All nongaseous waste is packaged in concrete . . . The concrete packages are made so they can be stored safely for an indefinite period and eventually be safely transported by truck to a barge for disposal at sea at a depth of 1,000 fathoms (6,000 ft.). . . . The solid wastes from high-level operations are discharged into shielded waste containers.

At the waste processing area the waste container is placed "into a specially designed concrete block for sea disposal." The report goes on to say that—

> High-level large-volume aqueous wastes produced during high-level chemistry work . . . are discharged into specially designed and shielded waste containers. . . . The wastes are then solidified either in the waste container or in a specially-constructed concrete block.

It is clearly evident from this statement from an individual who worked in these laboratories, that high-level wastes were indeed packaged for disposal in our oceans.

EPA stated in their testimony before the Oceanography Subcommittee in 1978 that:

> Contamination (Plutonium 239-240) around the radioactive waste drums were at concentrations ranging from 2 to 25 times higher than the maximum expected weapons testing fallout concentration for this latitude and depth of water.

One must ask: If this is the concentration from low-level drums which they found broken open—what is the concentration at the high-level waste drums which they have not found?

The other important factor, which EPA has failed to report to us, was conveyed in the 1957 AEC report. While we were lead to believe that we knew where all the waste were presently situated, we were also told that it was known exactly how much nuclear waste material were in the drums. According to the AEC report there may be 10 times more nuclear waste sitting on the ocean bottom than their estimates now show.

I also seriously question the monitoring safeguards provided for in the licenses. For example, the September 1959 license issued to the Ocean Transport Co. stated that the "proposed operations will be under the direct supervision of a person who has had at least 4 years training and experience at Lawrence

Radiation Laboratories." This is well and good for insuring compliance with radiation emission standards and drum-handling procedures—but this supervisor did not have to have any sea experience and would not know the difference between being out 25 miles at sea in 300 feet of water and being out 50 miles in 6,000 feet of water. This is very similar to another lax nuclear waste disposal license issued in March 1958 which stated that:

> A qualified member of Isotopes Specialties Company who is familiar with the administrative procedures, together with proper instrumentation for measuring dose rates and detecting contamination is to accompany the disposal crew on the sea journey.

It is evident that the AEC did not feel it was necessary for them to directly monitor these disposal operations with their own personnel.

It is also very apparent that the Federal Government clearly disregarded the wishes of the State of California to protect its coastal marine environment. On May 13, 1958, the State of California entered into an agreement with the companies licensed by the AEC to dump waste off our coast. The agreement stated:

> Wastes will be packaged in containers of such integrity that they will remain intact at the depths prescribed.

And that—

> All such wastes will be disposed of in at least 2,000 fathoms (12,000 feet) of water.

Every license I have examined that was issued after this date by the AEC continued to allow these companies to dump in 6,000 feet, and by EPA's own research it is evident that at least 25 percent of these drums were broken open by water pressure before they ever reached the bottom.

It is possible we may not be able to track down where the nuclear wastes have been dumped. If the reports I have received that some of the ships captains disregarded the license instructions to dispose of the waste in a minimum of 6,000 feet at a specific location, they surely would not have recorded where they dumped the material in their ship's log or reported it to the AEC. The naive assumption that original records were accurate has made all subsequent studies unreliable.

The Environmental Protection Agency has examined what they consider to be the proper disposal sites three different times. But when we asked them if they had investigated the possibility that not all the radioactive material made it to the safe dumpsite—they said they were told of the possibility several years ago by some newspapers but they were "not into muckraking."

As a member of the Merchant Marine and Fisheries Committee which wrote the Ocean Dumping Act to protect our oceans from radiological contamination, I find it absolutely incredible that the agency we designated to enforce these protections has been so cavalier.

Therefore, I am introducing a bill today which will mandate that the National Oceanic and Atmospheric Administration (NOAA) conduct an oceanographic survey of not only the areas where the wastes were supposed to be dumped, but also the areas where the nuclear material may actually be illegally located. NOAA will have to physically examine the drums and concrete vaults and determine whether in fact they are high-level wastes.

In addition NOAA must determine if these wastes pose any threat to the marine environment and to humans who eat fish exposed to radiation from these wastes.

Rumors and speculation abound concerning the actual disposal of these dangerous materials—some of which will remain radioactive for thousands of years. It is time to set the record straight. We must do a thorough examination. Only then can we begin to solve any potential problem.

SBA FALLS SHORT OF GIVING "SPECIAL CONSIDERATION" TO VETERANS

(Mr. HILLIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HILLIS. Mr. Speaker, earlier this year, on June 18, 1980, the Committee on Veterans' Affairs Subcommittee on Special Investigations conducted oversight hearings on the implementation of Public Law 93-237. Under the provisions of this law, our Nation's veterans were to be given "special consideration" by the Small Business Administration in their attempts to enter the field of business.

Testimony received at this hearing brought out clearly that SBA had done little, if anything, toward assisting veterans even though Public Law 93-237 had been the law of the land since January 1974. At the conclusion of the June hearing, I issued a statement sharply critical of both SBA Administrator Vernon Weaver and President Carter for their total lack of commitment to our Nation's veterans. In this statement, I said:

> Six years is far too long for the President to implement the goals of the Congress and it is far too long for our Nation's veterans to wait while the Federal bureaucracy ignores their needs.

My purpose in speaking today, Mr. Speaker, is to furnish my colleagues with an update of what has transpired since the June hearing.

Last week, the subcommittee conducted further hearings into this matter and I can report that while there has been some movement within SBA to assist veterans, there is still a long road to travel before Public Law 93-237 becomes fully implemented. At this most recent hearing on September 10, 1980, Deputy Administrator William H. Mauk testified on behalf of the SBA. While admitting that SBA had totally ignored the needs of our Nation's veterans until recent months, Mr. Mauk then attempted to paint a very rosy picture now that the agency had finally awakened to and recognized the existence of a 6-year-old congressional mandate.

But, I submit, Mr. Speaker, that is hardly the case. The fiscal year 1981 budget for SBA contains no specific funding for assisting veterans while over $13 million is earmarked for monitoring loan applications from women. Now, we can all be proud of SBA's success in the area of assisting women and minorities. But we should all be ashamed by the agency's lack of assistance to veterans.

Mr. Mauk testified that in the first 6 months of fiscal year 1980, 13 percent of all SBA loans went to veterans; yet veterans, their survivors, and their dependents comprise nearly 50 percent of our Nation's population. The SBA can and must do better. When he returned home, the Vietnam veteran received something less than a joyous welcome from his peers, and were he to seek the assistance today of the SBA he would also be received with something less than "open arms."

Mr. Speaker, as I have indicated, Public Law 96-237 has been the law of the land for 6 years, yet I predict that some time between now and election day, November 4, President Carter will hold a media event. He will profess his concern for all veterans, criticize the treatment many have received from Federal agencies, and then will sign an executive order directing SBA and all agencies to redouble their efforts in assisting the Vietnam veteran. This will be the height of hypocrisy.

It is reminiscent of his attending the American Legion Convention in Boston, stating his support of and concern for our veterans, only to veto a bill designed to improve the quality of health care a veteran receives from VA physicians in VA hospitals. It is unfortunately also reminiscent of the President's statement to the sailors aboard the *Nimitz*, returning from 144 days at sea, that he would support a cost-of-living pay increase for them, yet upon returning to the White House the President changed his mind. Then, after the Congress acted favorably on the Nunn-Warner amendment to effect such an increase, the President grandly held a bill-signing ceremony to accept credit therefor.

Now, after 3½ years of doing nothing to help veterans enter the arena of small business, he will sign the Executive order with great fanfare. I hope all Americans, and particularly our veterans, will see through this transparent attempt to garner votes.

It is my hope that the subcommittee will continue to monitor the actions of SBA and that further hearings will be promptly scheduled when necessary. At this time, however, I do want to commend the subcommittee's chairman, the Honorable Ron Mottl, for his tenacity in pursuing this issue. Without his support, and that of the veterans' organizations as well, the issue may well have remained dormat, with veterans continuing to be ignored by SBA.

□ 1230

DEADLINE MISSED ON SECOND BUDGET RESOLUTION

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, yesterday, I took the well of the House to remind colleagues and the Nation of the failure of this Congress to obey the law and complete action on the second budget resolution. The Budget Act requires that action on the binding second budget resolution be completed on or before September 15. September 15 was yesterday and the Senate has not passed a budget resolution and the House Budget Committee has not even scheduled markup sessions.

Today, I bring to the attention of my colleagues and the American people an equally serious example of fiscal and budget irresponsibility—the inability of Congress to pass the appropriation bills before the start of the new fiscal year.

Counting today, there are 11 legislative days left in the 1980 fiscal year; the new fiscal year begins on October 1. Yet, as of today, not a single one of the 13 major appropiration bills has passed the Congress.

The 1974 Budget Act changed the start of the fiscal year from July 1 to October 1 in order to allow more time for the Congress to consider the major spending bills. Action on the 13 major appropriation bills was to be completed before the adoption of the second budget resolution so that the second resolution could specify any "reconciliation" or spending reductions from the spending bills when viewed "in toto."

Mr. Speaker, let me be the first to offer the suggestion that the President may choose to follow in the footsteps of his avowed idol—Harry Truman—and call this Congress back into session—before the election, of course—to complete action on the appropriation bills.

If it were not for the obvious political motivation behind such a move, it would have my support; however, calling the Congress back should not be necessary because Congress should not adjourn before enacting all major appropriation bills.

A lameduck session is not the place to consider the most important bills a Congress must deal with. Adjournment before this important business is completed is a glowing example of the lack of priority this Congress puts on fiscal discipline.

IN TRIBUTE TO THE LATE ALDO BECKMAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DERWINSKI) is recognized for 60 minutes.

(Mr. DERWINSKI asked and was given permission to revise and extend his remarks.)

Mr. DERWINSKI. Mr. Speaker, it is my sad duty to inform my colleagues of the death last week of an outstanding journalist and the respected chief of the Chicago Tribune's Washington bureau, Aldo Beckman. Aldo died of cancer last Wednesday, September 10, at his home in Arlington, Va. Although Aldo suffered a great deal before his passing, he never made any concession to the illness that he was enduring, and proceeded to work until the end. This was an example of the courage and dedication that he brought to his profession, which was almost without precedent.

I have asked for this special order so that the Illinois delegation and all those Members who knew Aldo may have the opportunity to bid farewell to a good friend and to one of the finest and ablest news correspondents.

Aldo's list of accomplishments was extensive. Although only 45 at the time of his death, Aldo Beckman had gained a well-deserved reputation for his keen and penetrating manner of reporting. He received several journalism awards during the period he served as the Tribune's White House correspondent. In 1975, he received the prestigious Merriman Smith Memorial Fund Award for his coverage of Sarah Jane Moore's assassination attempt on President Ford. Aldo won the Tribune's Edward Scott Beck Journalism Award for his coverage of President Nixon's trip to China in 1972. He had previously won this award for his exclusive report in 1966 on a story involving former Agriculture Secretary Orville Freeman's advice to Democratic congressional candidates to "duck" questions on consumer prices.

Aldo was born in Lima, Ill., attended Bradley University, and graduated from Western Illinois University in 1956. After serving in the Army for 2 years, he worked for the Chicago bureau of United Press International for 15 months before joining the Tribune staff in 1959.

After being transferred to Washington in 1965, Aldo spent a great deal of time covering the Congress, and earning our great respect and appreciation of his effective journalistic attributes.

From 1970 to 1976, Aldo was the Tribune's White House correspondent. In addition, he served a term as president of the White House Correspondents Association. He was recognized by his colleagues as well as the Presidents he covered, as a man full of affection and warmth, and with a colorful personality which was reflected in his wit, intellect, and writing.

In 1976, Aldo was appointed chief of the Washington bureau, climaxing a journalistic career with the Chicago Tribune which began in 1959. Aldo spent almost a decade in Washington circles, and became one of the National Capital's finest reporters and illustrious journalists. His honest judgment and conscience in portraying the Washington scene helped the readers of the Tribune get an accurate look at the work of their Presidents and the Congress.

Upon this sad occasion, my wife, Pat, joins me in extending our heartfelt sympathies to Aldo's wife, Marijo, their five children, and the entire Beckman family on their great loss. What he did in his life will long live with us.

Mr. RAILSBACK. Mr. Speaker, will the gentleman yield?

Mr. DERWINSKI. I yield to the gentleman from Illinois.

SPECIAL TRIBUTE TO ALDO BECKMAN

Mr. RAILSBACK. I thank the gentleman for yielding.

Mr. Speaker, I have the privilege of representing the people of Lima, Ill., which is in the western part of our State, and which was the birthplace of Aldo Beckman. I met Aldo when he was a young reporter with the Chicago Tribune, and while I was a member of the Illinois State Legislature. However, it was after I had been elected to Congress in 1966 and moved with my family to Washington that we became good friends. As my wife reminded me, in the very first week after we had moved here from Moline, Aldo and his wife Marijo invited us to their home in Arlington for dinner. It was our first social gathering in Washington, and it helped to make us feel at home. Then from time to time Aldo and I would have dinner, not for purposes of discussing politics or business, but rather to relax and enjoy a good visit.

During my 14 years in Washington I followed Aldo Beckman's career, and I was very proud that he was born and raised in my district. Aldo's father, also named Aldo Beckman, has been a lifetime resident of Lima, and he is one of the area's most respected citizens. Occasionally I would report to his father back in Lima to tell him what a fine job his son was doing. But it was only last Friday, after Aldo's funeral, and many memorial tributes and letters that his father confided to me that he had had no idea of how outstanding his son was. It would have been out of character for Aldo to ever brag about himself.

During Aldo's unfortunately brief career as a reporter, and finally as head of the Washington Bureau for the Chicago Tribune, he did indeed perform in an outstanding manner. His intelligence and wit, his humor and honesty, and his ability to write, all exemplified the job that he did and the respect that he gained from colleagues, politicians, and readers. Traditionally and understandably there is oftentimes an adversarial relationship between politicians and journalists. In the case of Aldo Beckman, however, as far as I know, there was only respect. Politicians could expect to be treated factually and fairly. He made an effort to hear and tell both sides of a story.

The respect that we held for him made us even prouder when his own colleagues elected from President of the White House Correspondents Association. He received many honors during his lifetime, including the 1975 Merriman Smith Memorial Fund Award for his coverage of Sara Jane Moore's attempt to assassinate President Ford, and the Tribune's Beck Journalism Award, which he won in 1966, and again in 1972.

Lastly, Aldo leaves behind a wonderful family that was also very proud of him. I would like to express my deepest sympathy to his lovely wife Marijo, to his four daughters, Theresa, Patricia, Jennifer, and Mary Kathryn; to his son Eugene; to his father, whom I have already mentioned; and to his sister Joann Smith.

□ 1930

Mr. DERWINSKI. Mr. Speaker, I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, I thank my friend for yielding. I commend the gentleman from Illinois (Mr. DERWINSKI) for his thoughtfulness in taking this special order to commemorate a friend, Aldo Beckman, whose untimely death at the age of 45 years while he was chief of the Washington bureau of the Chicago Tribune has saddened all of us.

Aldo Beckman was certainly not your typical, cynical newspaperman, although he did a brilliant job and rose to the pinnacle of his profession by heading the bureau of a major American newspaper; but at the same time he was a man of gentleness, a very soft-spoken person, a person who was thoughtful and considerate of other people's feelings and who always listened and sought information rather than seeking to impart information during an interview.

I knew Aldo many years ago. As a matter of fact, I first met him when he was a witness in a criminal case that I was trying. I was defending and Aldo was called as a witness for the prosecution. I talked to him over the years. This is many years ago in Chicago and Washington. I have been out with him socially. I found him to be the sort of person that you could look up to and you would hope that someday your own children could be the sort of person that Aldo Beckman was.

Most significant was his courage and his bravery during the last few months of his terminal illness which must have been extremely painful. He faced it with a beautiful outlook. He was never complaining; brave, indeed, and set an enormous example that all of us can only aspire to.

Aldo was a beautiful, beautiful person, gentle, considerate, and I know that he is in a place of refreshment and peace. We will always miss him. We have been enriched by knowing him and we are impoverished by his loss.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman.

Mr. Speaker, all the Illinois Members and the other Members of the House who knew Aldo knew him to be a truly outstanding journalist and the type of man who was an example of the best professionalism in that field.

● Mr. ROSTENKOWSKI. Mr. Speaker, it is with a sense of great loss and sorrow that I now pay tribute to a most distinguished journalist, the late Aldo Beckman. On September 10, Aldo lost his private struggle with cancer.

Every profession has its small minority of individuals who combine both intellect and class. Aldo Beckman clearly demonstrated these two qualities and in so doing brought distinction to his profession and himself.

While he was only 45 at his death, Aldo's achievements are, to say the least, quite substantial. His career seemed to move at an ever-quickening pace. After graduating from Western Illinois University, Aldo worked for United Press International, then in 1959 moved to the Chicago Tribune. In 1965 he was promoted to the Washington Bureau of the Tribune. Once in Washington, Aldo wasted no time in establishing himself and in 1966 was awarded the Tribune's Beck Journalism Award for distinguished national journalism. In 1970 he was assigned to cover the White House and in 1972 was awarded his second Beck Journalism Award for his coverage of President Nixon's trip to China. In 1976 Aldo was named the Tribune's Washington bureau chief and from that time to his death, served in that capacity covering various Washington issues in all branches of Government.

He was hardworking and conscientious to the very end. He could not be bothered by his own physical infirmities, but rather he tried to work to his last days.

Aldo Beckman—a dedicated journalist, a man of unquestioned integrity, my dear friend—will long be missed by this Member of Congress.●

● Mr. YATES. Mr. Speaker, it is with a keen sense of loss that I rise to note the untimely passing of Aldo Beckman, the Washington bureau chief of the Chicago Tribune. Aldo had always recognized that one of the highest duties imposed upon the citizens of our country is that of keeping informed. He appreciated the awesome responsibility which this placed upon members of the press and undertook the task with dedication and honor. Moreover in a time in which much of the press has come to feel a need to be an adversary of those who practice the art of politics. It was rare to find a journalist, such as Aldo Beckman, who saw that both the press and the politicians strove toward common goals for the welfare of the people.

In the many years that I knew Aldo Beckman, both in Chicago and in Washington, I found him to be perceptive, incisive, and most persistent in obtaining the information he needed in his work, but always honorable and devoted to the truth. While Aldo and I may have disagreed on some matters, it never diminished the mutual regard, the respect and friendship that Aldo and I felt for one another. The citizens of Chicago as well as those of us in Congress will sorely miss his presence and his talent.●

● Mr. MURPHY of Illinois. Mr. Speaker, I was grieved to learn last week of the death of Aldo Beckman, the Washington bureau chief of the Chicago Tribune. Aldo Beckman was a fine human being who represented the very best in journalism. He was a conscientious reporter with keen, analytical judgment; both as a reporter and as an individual. Aldo was fair, considerate, and thoughtful in his dealings with his fellow man.

Aldo Beckman's achievements as a journalist are well known; even better known, I believe, is the high esteem and affection with which he was held by his colleagues and those who knew him in Congress.

Mr. Speaker, Bob Wiedrich of the Chicago Tribune wrote a moving portrait of Aldo Beckman last Friday. The column says of Aldo:

> In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

To me, this is the very essence of good journalism.

I would like to draw my colleagues attention to this column of September 12:

ALDO BECKMAN'S TOO BRIEF TIME

(By Bob Wiedrich)

> Aldo Beckman was an honorable man. A devious thought never crossed his mind.
>
> He came from the rolling farm country of west central Illinois, where the terrain slopes to the Mississippi River in a tangle of glorious color and an earthy humor born of the land sustains its inhabitants through good times and bad.
>
> Beckman brought that humor to the big city when he joined The Tribune staff as a young reporter in 1959.
>
> He also brought with him a perspective on humanity that served him well during the 21 years that he worked as a reporter and writer for a newspaper that also had sprung from the Illinois prairie and reflected its values.
>
> From Criminal Courts reporter to White House correspondent traveling world capitals, Beckman accepted people he met at every level of society for exactly what they were.
>
> In writing about them, he reported accurately. He didn't produce puff pieces. Nor did he ever demean. He took life as he found it. He faithfully told his readers what he learned. He didn't embellish. The truth was his grail.
>
> And so, in his more than two decades as a working newspaperman, Beckman left an indelible record of highly credible observations of historic events that few are privileged to witness, much less report.
>
> Now Aldo Beckman is dead, taken by cancer this week at the age of 45. And he faced that dread disease as courageously as he confronted the challenges met during his reportorial career.
>
> Perhaps the greatest joy of having known Beckman as a friend and colleague was his love and respect of his fellow man. Beckman found something interesting in everyone he met. And he was capable of conveying that interest to readers with enthusiasm.
>
> When Beckman was assigned to the Criminal Courts Building beat in the early 1960s, he encountered the peaks and valleys of human behavior. For a young man, fresh from the small farming community of Lima, Ill., the jailhouse, with all its sordid sorrows and frustrations, must have been a shock.
>
> Nevertheless, he treated everyone equally—from the lowliest defendant to the stateliest judge. And all became his admirers and friends. For they knew Beckman's word was good. He only lacked patience with phonies.
>
> It was fun to watch Aldo Beckman grow professionally during those 21 years. He learned something new every day. He never became jaded. He had no time for cynicism.
>
> During his apprenticeship at the Criminal Courts, he covered the big trials that made headlines.
>
> But he also found time to write about the little people, the jail guards and bailiffs, court reporters and clerks, the low-profile jobs that make government work.
>
> By giving them recognition, he educated and informed his readers. He also developed a network of loyal informants who kept him abreast of events on his beat, events that even the big shots of the criminal justice system knew nothing about.
>
> Beckman took that same skill to Washington when he was transferred to the Tribune bureau there in 1966.
>
> Within a short time, Tribune readers were relishing informative feature stories about the behind-the-scenes employes who make

the top bureaucrats and congressmen on Capitol Hill look good.

And when Beckman became White House correspondent four years later, his stories about valets, butlers, chauffeurs, and Secret Service men, gleaned from the back corridors of the Executive Mansion, made not only for interesting reading but assured him a continuing supply of news tips.

In my years of personal contact with Aldo Beckman, the newspaperman, I always appreciated his sense of history and his ability to place in proper perspective what was happening now with what had happened before.

That knowledge and skill enriched his offerings to readers. It helped them better understand the world in which they lived.

Beckman's good works were not restricted solely to his own pen. He volunteered the unique access he enjoyed to great events to fellow journalists.

During his grueling trip to the People's Republic of China with former President Nixon in 1972, Beckman became the only person ever to call me collect from Peking.

The phone would ring. And there would be that friendly voice speaking across thousands of miles, inconveniencing himself to provide my column with perceptive sidelights of an unprecedented moment.

Aldo Beckman was what every newspaperman should aspire to be. He represented the finest of his craft. I am proud to have been his colleague. I am prouder still to have been his friend.

I am grateful that the Illinois heartland gave him to my profession to share his warmth, intellect, wit, and humanity, if only for a relatively short time.●

● Mr. ERLENBORN. Mr. Speaker, Aldo Beckman was a talented journalist and a good, decent human being. He was one of a comparative handful of reporters who contributed significantly over the past two decades to maintaining the Chicago Tribune's preeminence, not just in the Midwest but across the United States. He will be missed, not only by his wife and four children, but by the Tribune's millions of readers and especially by those of us in the Illinois congressional delegation who had the great and good fortune to know him and to work with him.

Our hearts, of course, go out to Aldo's family in their sorrow. May they find comfort in knowing we share their loss.●

● Mr. RUSSO. Mr. Speaker, the journalism world and the public at large suffers a great loss with the passing of Mr. Aldo Beckman. In the finest tradition of journalistic principles and skills, his work won him the admiration of his associates and the appreciation of the public.

It takes a special kind of person to manage some 20 items in 10 minutes, but that, I gather, is often the nature of news work. It is demanding. It is challenging. And while the virtues and the follies of the press may only reflect our own as a people and a country, we yet must call on it to do more, be more, because a free press in a free society bears an awesome responsibility.

Mr. Beckman met the challenge and handled the responsibility. The character of the press depends on those directing it, and we can be grateful for men like him, men of talent and insight and character.●

● Mrs. COLLINS of Illinois. I am pleased that my colleague, the Honorable EDWARD DERWINSKI, has called this special order to allow us to pay tribute to a well respected friend, Aldo Beckman.

As chief of the Washington bureau of the Chicago Tribune, Aldo was best known for his penetrating style of reporting. Those of us who were fortunate to know and work with him can truly appreciate his dedication and service in Washington. Many of us share fond memories as we reflect how Aldo presented every aspect of a true spirit of Illinois.

His accomplishments have been recognized and rewarded in the field of journalism. We can all agree that this was truly a great man and we will miss him. There can never be a replacement for someone as dear as Aldo.

Rossiter Worthington Raymond I quote in Aldo Beckman's honor:

> Life is eternal; and love is immortal; and death is only a horizon; and a horizon is nothing save the limit of our sight.●

● Mr. O'BRIEN. Mr. Speaker, the passing of such a dedicated and talented man as Aldo Beckman, causes one to feel a sense of sadness that can only be felt by the loss of a special friend.

Aldo Beckman's journalistic career spanned almost a decade in the Washington circles. The various awards he received along the way and his work as Washington Bureau Chief of the Chicago Tribune, are a tribute to the talent of this well-respected gentleman.

There are many who were influenced by the work of this man. These, and many others, will feel his loss deeply.

I am grateful to have the opportunity of honoring my fellow Illinoisian. His passing leaves an emptiness that is truly noticed by us all.●

● Mr. McCLORY. Mr. Speaker, it was with a sense of personal emotion and sorrow that I recall the life and premature passing of the distinguished journalist, my friend, Aldo Beckman, chief of the Washington bureau of the Chicago Tribune.

In addition to his successful career as a journalist, primarily on the national scene, Aldo Beckman was truly a good friend of those of us on Capitol Hill who came to know him.

Earlier in his career Aldo Beckman served primarily in the press gallery of the House of Representatives, moving thereafter to devote more attention to the United States Senate and finally focusing his main attention on the White House and the entire executive department of the Federal Government.

Mr. Speaker, it can be truly said of this great journalist that he was never known to be unfair, inconsiderate, or even discourteous to a Member of this body. On the contrary, Aldo Beckman was a very great guy, one who obviously liked people just as we in our line of work are reputed to have that quality.

I recall particularly the winter of 1974–75 at Vail, Colo., when Aldo Beckman was following the early experiences of President Gerald R. Ford who was then newly occupying the office of Chief Executive of our land. Aldo Beckman and I met in the charming community of Vail, and he and his devoted and beautiful wife, Marijo, joined with my wife Doris and me for dinner and for other sociable contacts. In this friendly and unhurried atmosphere, we reflected on many of our common interests, including sports, the out-of-doors, and the exciting drama of political life in Illinois and in our Nation's capital.

Mr. Speaker, while an obviously friendly, plain-spoken individual, Aldo Beckman was at the same time a most perceptive and astute political observer and chronicler. His weekend columns in the Chicago Tribune provided analyses of developments and political trends in Washington which appeared to look behind the news columns to the events and changes that were truly happening. It was entirely appropriate that Aldo should have received special recognition as a political reporter. Aldo Beckman was a star in his profession as a journalist and in life as an individual as a husband, father, and friend. My wife Doris and I join in expressing affection and deep sympathy to his widow, Marijo, and to their children and other members of the Aldo Beckman family.●

GENERAL LEAVE

Mr. DERWINSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this Special Order eulogizing Mr. Beckman.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

A TRIBUTE TO CONGRESSMAN WILLIAM S. MOORHEAD OF PENNSYLVANIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania is recognized for 60 minutes.

Mr. GAYDOS. Mr. Speaker, Congressman JOE MCDADE and myself on behalf of the Pennsylvania delegation have taken these special orders to pay tribute to our good friend and fellow Pennsylvanian, Congressman BILL MOORHEAD, who is retiring at the end of this Congress.

Now, because of the many friends that BILL has that are here this evening, I am going to make an attempt to split evenly between both sides those who wish to speak and then will perform as the grand summation between myself and my good friend, the guy with the longest longevity in Pennsylvania, JOE MCDADE.

BILL MOORHEAD and I represent neighboring districts in southwestern Pennsylvania, an area which includes a major portion of the city of Pittsburgh and surrounding suburbs. In serving adjoining congressional districts, we share a knowledge and understanding of our respective constituencies—their attitudes, their needs, and the problems they face in their day-to-day lives.

Even before his election to Congress, BILL actively served the people of Pittsburgh, as a member of various community boards and committees, and more notably through his involvement in the city's redevelopment project known as Rennaissance I.

Since his election to Congress in 1958, BILL has held key assignments on the

Committees on Government Operations and Banking, Finance and Urban Affairs, and he has authored and passed several important bills. As chairman of the Subcommitee on Economic Stabilization, he was responsible for passage of the Energy Security Act of 1980, one of the major legislative accomplishments of the 96th Congress.

An able and knowledgeable legislator, BILL MOORHEAD has represented the people of Pittsburgh admirably, and the members of the Pennsylvania delegation have been able to look toward his expertise and leadership in serving their districts across the State. As dean of the Pennsylvania delegation, BILL, along with his competent staff, has always been readily available to be of assistance in matters affecting the State, and they have consistently maintained a close working relationship with the other members of the delegation.

Throughout this House, he has earned the respect of his colleagues on both sides of the aisle, and is rightfully held in their highest esteem.

I join with my colleagues today in honoring a great statesman and a true friend. It was indeed an honor to have served with BILL in the U.S. Congress, and I extend my sincerest thanks for the help and guidance he has provided. Although his strong leadership will be truly missed, I hope to maintain the friendship we have enjoyed through the years.

I wish BILL the best in his future endeavors and many long and happy retirement years with his lovely wife, Lucy.

At this time I yield to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Speaker, I thank my good friend for yielding.

I am pleased that he has taken this time, both he and my other colleague from Pennsylvania (Mr. McDADE) to say to BILL MOORHEAD, we are sorry that you have decided to move on to something else. Your service here has been excellent. Those of us who try to follow the legislative process in which you were much involved as a member of the Committee on Banking and Currency very much regret that you have decided to depart, because we know that your contribution in that committee has been outstanding.

I wish to make it clear that BILL and I did not always agree on a lot of things. As a matter of fact, we did not agree too much, but the gentleman was extremely knowledgeable in the field of banking and currency and housing and in urban transportation, all of the areas that were covered by the Committee on Banking and Currency.

As chairman of the subcommittee, our good friend BILL was an extremely capable chairman, always made sure that the hearings had adequate balance as far as testimony, assured every member of the committee, the full committee, that there would be adequate time and place for all to participate; was always very careful to make sure that in a markup session all members of the committee, both subcommittee and full committee, were allowed the chance to fully participate, offer amendments, and if for some reason they had not been able to put their amendments together in the committee, he would make sure when handling the bill on the floor that adequate time was allowed for debate and full discussion on all issues.

I think there are few people in the Congress that have chaired committees that have been as fair as BILL MOORHEAD in making sure that all members of the committee, all people from the outside of the administration, whoever they were, had adequate time to present their views.

He was a very thorough legislator, making sure that all members of the committee were prodded into looking into all aspects of the legislation by which we were affected. Besides that, he was just a nice guy.

So we do say, BILL, we appreciate your service here. We know that your constituents were well served. We regret that you will not stay a little longer to help us maybe clean up some other things at HUD or other places that need attention; but we do appreciate your fine service.

I was pleased to participate tonight. I thank both my colleagues for taking this time. We are, indeed, sorry to see BILL leave the Halls of Congress, but we know that whatever he does he will be successful.

Mr. GAYDOS. Mr. Speaker, I thank my colleague, the gentleman from California.

I yield to the chairman of the Committee on Rules, the gentleman from Missouri (Mr. BOLLING).

Mr. BOLLING. Mr. Speaker, I thank the gentleman from Pennsylvania for yielding to me. It is a great pleasure for me to have the opportunity to participate in this series of statements about BILL MOORHEAD.

I had the privilege of meeting him, I guess, before he got here, or very early in his career in his district in Pittsburgh. We became friends then a long time ago and have been ever since.

I had the privilege of serving on a committee with him, the Joint Economic Committee. He was an excellent member of that committee.

The tribute we have just heard from the gentleman from California (Mr. ROUSSELOT) is, indeed, an important tribute, because I know none of those words would have been said by our friend who is known for his nonpartisanship if every word had not been deserved.

BILL MOORHEAD has been in my experience an utterly fair man and, above all, a good and committed public servant.

Unlike the gentleman from California, I can say that BILL and I usually agreed on issues, but I found him to have all the qualities suggested by the gentleman from California (Mr. ROUSSELOT), as well as a real talent for friendship, a very deep commitment to the public service and a sense of moderation that I found most useful and most appealing, particularly in economic matters when people have such strong feelings and are often sure that only their views are right, BILL always demonstrated a tolerance for the views of others and a commitment and concern for the broad-gage public interests.

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So it is a great pleasure for me to participate in this matter and a deep regret that he and his lovely wife are leaving the Congress, at least in part.

Mr. GAYDOS. I thank the gentleman from Missouri.

Because of a prior commitment I would like to deviate from the schedule of switching from one side to the other and, at this time, recognize the gentleman from Michigan (Mr. BLANCHARD).

Mr. BLANCHARD. I thank the gentleman from Pennsylvania for sponsoring this special order.

No State and no people have been blessed more than the State of Michigan by the services of BILL MOORHEAD. I happen to have served with BILL on the Banking Committee for 6 years and as his ranking Democrat on the Economic Stabilization Subcommittee for 4 years. But during this past year BILL and his staff and his family have had to tolerate hour after hour attention and concern to the problems of the depressed auto industry. Without BILL MOORHEAD, without his service, without his fairness, patience and thoroughness, we would never have had a Chrysler Loan Guarantee Act of 1979.

There are tens of thousands of workers at Chrysler, their suppliers, not only in Michigan and around the Great Lakes area, but throughout the country whose futures and livelihoods and families have been saved and given an opportunity by BILL MOORHEAD.

I have worked with BILL MOORHEAD closely and, of course, as JOHN ROUSSELOT and others on the Banking Committee will attest, he is not only a delightful person and a hard-working person, but is simply a nice guy. He is the father of synthetic fuels which, more than Chrysler, I am sure, in 10 or 20 years will be a hallmark achievement for BILL MOORHEAD. He is to all of us from Michigan and all of us who know him the consummate public servant.

So on behalf of all of my constituents, BILL, and everyone from Michigan and the entire Michigan delegation, and those younger members of the Banking Committee who appreciate your guidance and friendship, we are going to miss you terribly and we hope to see you back here maybe keeping an eye on your work and the heritage you have left. We thank you for having given so much of yourself to the Congress and the Government and we express our appreciation to your family for allowing us to have your services for so many years.

Mr. GAYDOS. I thank the gentleman from Michigan for his sincere remarks.

At this time I recognize the gentleman from Ohio (Mr. WYLIE).

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding. I want to thank the gentleman in the well, Mr. GAYDOS, and Mr. McDADE for taking this time to allow us to say thank you, BILL MOORHEAD, for your contribution to our Nation. It has been my pleasure to serve on the Banking, Finance and Urban Affairs Committee with BILL MOORHEAD, along with the synthetic fuels conference of which BILL MOORHEAD was chairman.

I would like to say it is with a real sense of loss that I rise to pay my tribute to my friend BILL MOORHEAD. I say loss, Mr. Speaker, because with his retirement the 14th District of Pennsylvania and the Nation will be deprived of a brilliant, hard-working and conscientious Member whose achievements in the areas of economic policy, international affairs, and synthetic fuels will stand as a lasting momento to his career here in Congress.

I would say that BILL MOORHEAD never allowed party affiliation or disagreement with a Member to stand in the way of fairness and I would say equal treatment to all Members in the interest of passing important and meaningful legislation.

I for one, BILL, will miss your service in Congress. I hope that the future brings BILL and Lucy much happiness and even greater success, if that is possible.

Mr. GAYDOS. I thank the gentleman from Ohio.

At this time I recognize the chairman of the International Relations Committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, at the outset I wish to commend the gentleman from Pennsylvania, our colleagues, Congressman MCDADE and Congressman GAYDOS, for arranging for this special order giving friends and admirers of BILL MOORHEAD an opportunity to pay tribute to a great American.

Mr. Speaker, the end of the 96th Congress will mark the retirement of one of our esteemed colleagues from the House, Representative BILL MOORHEAD, of the 14th District of Pennsylvania.

BILL has been a hard-working, dedicated legislator for 22 years and he will be sorely missed. Although I have not served with BILL on committees. I know how actively he serves on the House Banking, Finance and Urban Affairs Committee where his advocacy of responsible monetary and fiscal policies, as well as housing initiatives, has helped shape responsible legislation. As chairman of the Economic Stabilization Subcommittee, BILL has led the subcommittee successfully in reporting bills which respond to the special needs of our communities hit hard by inflation.

Mr. Speaker, BILL MOORHEAD is a well-respected Member of this body who channeled his interests in many legislative directions. He became closely involved in energy legislation, particularly the synthetic fuels bill; he worked closely on establishing the National Foundation for the Arts and Humanities; he regularly reviewed foreign-aid programs and military spending. BILL MOORHEAD had the ability to work closely on a number of issues in various fields keeping in mind the interrelation of various issues to overall U.S. policy.

I cannot recall when we disagreed on any issue. I have a deep admiration for BILL MOORHEAD. I know that he is a dedicated man with strong character and integrity. Whatever he chooses to do in the future, he will do well.

Mr. Speaker, I join our many colleagues in wishing BILL MOORHEAD, his wife and family, a pleasant, fulfilling, and rewarding retirement.

Mr. GAYDOS. I thank the gentleman for his comments and for his usual sincere remarks.

At this time I would recognize my colleague from Pennsylvania (Mr. KOSTMAYER).

Mr. KOSTMAYER. Mr. Speaker, these occasions which occur with increasing frequency at this time of year have about them, I think, a rather morbid quality. I should point out for those who will be reading the RECORD in the future that the gentleman from Pennsylvania (Mr. MOORHEAD) is very much alive and we are not laying him to rest here today, despite the remarks which might sound like that. He is going to have a second career and I know it will be a very happy and a very active and a very rewarding career.

Unlike so many of the Members who have spoken and who will speak, I have not had the privilege of enjoying a long personal friendship with the gentleman from Pennsylvania. I came to know him only as I came here to my service in the Congress at the beginning of 1977.

But since that time I have noticed about him, as I know my colleagues have, I think really two extraordinary attributes which I think are often not combined in Members of the House. The first is the quality of leadership. Clearly he has been a leader in the House, not only because of his seniority, but because of his effectiveness. With that he has combined the quality of kindness and gentleness. Those qualities of leadership and gentleness do not often go hand in hand. But while he has been a quiet and a gentle and kind Member, he has also been a tough and forceful advocate for his points of view and a good friend to the people of Pennsylvania and to the people of this country.

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Finally, Mr. Speaker, I would say that Congressman MOORHEAD and I serve on the Committee on Government Operations together. I serve on the subcommittee currently chaired by the gentleman from North Carolina (Mr. PREYER), who I see is here in the Chamber, the Subcommittee on Government Information and Individual Rights. At one time this subcommittee, which is concerned I think with the most basic and fundamental rights of privacy of the American people, was chaired by Congressman MOORHEAD and was known at that time as the Subcommittee on Foreign Operations and Government Information. Mr. MOORHEAD chaired that subcommittee from 1971 through 1974 and followed in the distinguished footsteps of the gentleman from California, Mr. John Moss.

While he served as chairman of that subcommittee, he did a number of important things. I would just like to mention three or four of them. He strengthened the public's rights of access to Government documents through the Freedom of Information Act of 1974. The amendments to this act were the first veto of President Ford after he assumed the Presidency, and this vote was overridden. That fight was led on the floor of this House by BILL MOORHEAD. He authored the Privacy Act of 1974 with its important restrictions on the willy-nilly dissemination of information held by the Government on its citizens.

He held an important set of hearings following the publication of the Pentagon Papers and explored in great detail the intricacies of the Government's secret machinery, its security and classification system used to spy on the people of this country. He investigated the excessive use by the Federal Government of polygraphs and telephone monitoring in quizzing and spying on employees and private citizens alike throughout this country. He exposed executive privilege as a wall behind which is hidden example after example of executive wrongdoing. So as one who is deeply concerned about what is happening in this country with the role of Government and the size of Government and with the rights to privacy of the people who live in our country, I think all of us owe a great debt of gratitude to BILL MOORHEAD for his important work in this area.

I thank the gentleman.

Mr. GAYDOS. Moving to the other side of the aisle, I yield to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. I thank the gentleman from Pennsylvania (Mr. GAYDOS) for yielding.

I cannot say that I have known BILL intimately over the years, but I have had the privilege of serving with him on the Committee on Banking, Finance and Urban Affairs. He is the sort of person that when you know him, immediately you like him. He is a thoroughgoing gentleman who conducts and who chairs any subcommittee meetings that I have been on with scrupulous fairness and with unstinting courtesy.

But BILL MOORHEAD is more than all of that. He is a very considerate person. I had the occasion to visit his great home town of Pittsburgh with my wife and my children. I called BILL and asked him if he could arrange a few tickets to the Pirates baseball game. I can only say that if King Farouk ever returned to America, he could not have been treated more royally than I was by BILL MOORHEAD and his staff. We were practically sitting on the Pirates bench for the game. We were treated royally, and it was an act of thoughtfulness and kindness that was that little extraordinary touch that BILL MOORHEAD is well known for.

There are few people who are as nice as BILL MOORHEAD is, as hard working, as knowledgeable, or who have achieved as much in Congress as has BILL MOORHEAD. I speak, of course, of the towering accomplishment of the Synthetic Fuel Corporation which is his accomplishment more than that of any other person.

I am proud to have known him, and I, for one, will surely miss him on the Banking Committee.

Mr. GAYDOS. I now yield to my colleague, the gentleman from Ohio (Mr. ASHLEY).

Mr. ASHLEY. I appreciate the gentleman's yielding. It is a particular pleasure for me to join in this tribute to Bill Moorhead. Bill and I have been friends for some 35 years, I believe going back to the halcyon days of youth—college days in New Haven. I was proud of Bill then; I was proud of him when he was elected to the Congress some 22 years ago; I am even prouder of him on this occasion as he looks to the weeks ahead when he will be leaving the Congress. I am more proud of him today than on those past occasions because of the record of achievement that he has compiled over this years in the U.S. House of Representatives.

I have had the privilege of serving with Bill on the Committee on Banking, Finance and Urban Affairs for the 22 years that he has been in the House. As has been said by others, there is nobody who has achieved a finer record of positive accomplishment for the district that he represents, for the committee, and the Congress that he serves, and indeed for the people of the United States than has Bill Moorhead.

His leaving us will be a void that will be hard to fill, and the people of his district in Pittsburgh will come to recognize that fact, regardless of who it is who is selected to replace him.

I wish nothing but success in the months and years to come for Bill and Lucy Moorhead. They are a wonderful couple. They are, as I indicated, wonderful friends. They have raised a fine family, and I wish them all good things in the days to come.

I thank the gentleman for yielding.

Mr. GAYDOS. I now yield to the gentleman from New York (Mr. Green).

Mr. GREEN. Mr. Speaker, I thank the gentleman from Pennsylvania in the well (Mr. Gaydos) for yielding to me and commend him and the other gentleman from Pennsylvania (Mr. McDade) for taking this special order.

As a member of the House from New York City, I feel a special debt of gratitude to the gentleman from Pennsylvania (Mr. Moorhead) because of the leadership role he played in crafting and enacting the New York City financial aid legislation. All residents of the Big Apple owe him thanks for his leadership in that effort.

Subsequently it was my privilege to be appointed to the Banking Committee's Economic Stabilization Subcommittee which he chairs. As a member of that subcommittee, I can testify to the key role he played in developing an amendment to the Defense Production Act to utilize that act as the basis for a synfuels program. That initiative played a vital role in breaking the logjam in the House on energy legislation; indeed, it was that bill on which the House ultimately went to conference with the Senate, a conference that produced a law that is today the cornerstone of our Nation's energy policy. The Nation owes him a debt of gratitude for that initiative.

All of us will miss his leadership, his courtesy to his colleagues, and his professionalism as a legislator. Most of all, I personally shall miss the sense of fairness he always displayed, even if we were on opposite sides of a question. I wish him all the best in whatever the endeavors are to which he now chooses to turn.

I thank the gentleman for yielding.

Mr. GAYDOS. I yield now to the gentleman from Vermont (Mr. Jeffords).

Mr. JEFFORDS. I thank the gentleman for yielding. I just want also to echo the remarks of the previous speaker.

Mr. Speaker, I am glad to have this opportunity to commend my colleague and a fellow graduate of a highly esteemed academic institution. I know that Bill has served his district and this Congress well, and his contributions to the work of this body will be sorely missed.

Bill is particularly to be commended for his diligent and highly successful efforts on the amendments to the Defense Production Act. Last year he spearheaded the legislation which will help bring a synthetic fuels industry on line. I worked with Bill extensively on my own alternative fuels bill, H.R. 4345, the Replacement Motor Fuel Act. His support was helpful and deeply appreciated.

With the synthetic fuels legislation and many other important initiatives to his credit, the gentleman from Pennsylvania is an inspiration to his colleagues in the House.

Mr. GAYDOS. I now yield to the gentleman from Pennsylvania (Mr. Ertel), a good and close colleague of the gentleman from Pennsylvania (Mr. Moorhead).

Mr. ERTEL. I thank the gentleman from Pennsylvania (Mr. Gaydos) for yielding. I would like to commend him and the gentleman from Pennsylvania (Mr. McDade) for taking out this special order on behalf of our colleague from Pennsylvania (Mr. Moorhead).

When our distinguished colleague, Bill Moorhead, leaves this body at the end of the 96th Congress, his departure will be of major note, because his contributions to our Nation will be long remembered. During his career in this Congress Bill Moorhead was charged with the major responsibility for some of the most difficult policy issues of our time. In matters such as the Federal loan guarantees for New York City and the synthetic fuels program, there were no clear precedents and no tried and true solutions. Instead we were faced with seemingly intractable problems of tremendous dimensions. Were it not for the intellect, creativity, and legislative skill of Bill Moorhead, we might not have approved legislation in these areas. We might not have rescued New York City, and we might not have begun to march toward energy independence. We have Bill Moorhead to thank for these accomplishments, but we must thank him for much, much more. We should be grateful that a kind and gentlemanly individual like Bill Moorhead labored in our midst. He taught us that the burdens of human life must be met with continued dedication to our constituents and unfailing courtesy to each other.

Bill's ability to provide this example is a capstone of his productive career in the House. We will all miss him.

Mr. GAYDOS. I thank my colleague.

I now yield to the gentleman from North Carolina (Mr. Preyer).

Mr. PREYER. I thank the gentleman from Pennsylvania (Mr. Gaydos).

If I may be pardoned a personal note, I first met Bill in law school, in which undertaking we lived across the hall from each other with our respective wives. Each one of us had his first child, in each case a son, born 1 day apart. We became fast friends and have remained fast friends. But when I came to Congress as a royal rookie, Bill was already a veteran and a powerful Congressman. I just want to say that I always will be grateful to him for his advice and counsel and assistance to me, which went well beyond the call of duty and went well beyond the call of friendship.

Bill's legislative accomplishments have been very impressive, and they have been recited here, but I think his deeds, although they make up a memorable record and one not often equaled in Congress, do not give us the whole man at all.

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Bill is the kind of man whose influence runs far beyond the mere facts of his career. It cannot be measured by how many bills he passed. His range of warm friendship among opinion makers in Washington is probably the largest of any Member of Congress. He has served as an ambassador of good will and understanding from Congress to these opinionmakers, just as I am sure that their ideas have enriched his congressional life.

The role of Lucy, his splendid wife, in this enlarged career, wide-ranging career, in which he always first thought about his district but he also thought about his Nation and his world, the role of his wife cannot be overemphasized. They say that behind every successful man there stands a woman telling him he is wrong. Well, I am sure Lucy's influence and charm have helped him greatly in doing many things right. Such as Bill's important role in establishing the National Endowment of Arts and Humanities.

In her own right she is a published author and one of Washington's most charming hostesses, an art form that has more political importance—and I mean that in the best sense of the word—than is usually recognized.

Bill leaves a record that is enlightened and progressive but that is always sound. His kind of judgment, informed by compassion and his balanced approach to problems is something we will sorely miss.

One thing on the legislative side I did want to call attention to because I thought it would be overlooked—I did not want to pour much more syrup on that legislative pancake, but I am glad that Peter Kostmayer brought it to our attention and that is the great work he did on the Government Information and Individual Rights Subcommittee, as it is now known. He was the author of the Privacy Act of 1974, an Act that brought a little more protection to all of us in the way Government handles our records and shares our personal secrets. PETER commented that he took the lead in overriding the foreign veto of the Freedom of Information Act amendments of 1974. These are both extraordinarily important acts.

BILL will also be remembered for putting the full text of the top secret 1970 Houston Plan in the CONGRESSIONAL RECORD, a plan which calls for embassy break-ins and other police state actions and was truly an attempt to institutionalize burglary as an instrument of Presidential policy.

BILL, in his fair way and in his quiet way, was one of the first to alert us to these dangers.

I am sure we are all going to be a little worse off for his departure, a little more vulnerable to undemocratic forces. I join all of his friends in saying to BILL, we are certainly going to miss you.

I thank the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman from North Carolina and now recognize the gentleman from Kentucky (Mr. HUBBARD).

Mr. HUBBARD. Mr. Speaker, I join with my colleagues today to honor my good friend and talented colleague, WILLIAM S. MOORHEAD.

It is my privilege to serve with BILL MOORHEAD on the Banking, Finance and Urban Affairs Committee and to see firsthand his dedication and skills as an effective legislator. As chairman of the Subcommittee on Economic Stabilization, BILL guided the first synthetic fuels bill through Congress in 1979, which, after Senate inclusion of other forms of energy, and a House-Senate conference which BILL MOORHEAD chaired, became the Energy Security Act of 1980.

BILL MOORHEAD will not only be remembered for his legislative accomplishments, which are too numerous to mention, but also for his compassion and determination. Certainly he was liked and admired by his constituents of the 14th District of Pennsylvania—after all, they sent him to Congress for 22 years.

BILL MOORHEAD will be missed by all of us who had the privilege to know and work with him.

Western Kentucky is scheduled for four huge synthetic fuels plants because of our coal, rivers, transportation facilities and other factors. BILL, thank you.

I am hoping that in the late 1980's our colleague BILL MOORHEAD will visit my district and be an honored guest at the two synthetic fuels plants to be constructed at Geneva and Baskett in Henderson County, Ky.

Mr. GAYDOS. Mr. Speaker, I now recognize our colleague from Pennsylvania (Mr. WALGREN).

Mr. WALGREN. Mr. Speaker, I thank the gentleman from Pennsylvania for this opportunity to celebrate BILL MOORHEAD and his career in public.

We celebrate his decision to retire and a chance to look back on a very successful career as an individual. His career has been a success not only for the Nation in terms of the movement that he has led toward energy independence but we celebrate his success as a metropolitan region in Pennsylvania.

There are no programs particularly in the transit area and in the housing area that have come to Pittsburgh that have not been heavily marked by BILL MOORHEAD's efforts on their behalf and it is fair to say that they in all probability would not be there were it not for his efforts behind them.

We celebrate a successful career for his district, one in which the individual rights of black and white together have benefited from his sensitivity, to the importance of civil liberties and also the importance of economic opportunity in forms of jobs, housing and the like.

We all have special remembrances of roles BILL has played in our individual lives. I, perhaps, differently than others, coming from the district next door. When I ran for Congress 10 years ago as a young person who really did not know anything from anything, I went and asked BILL MOORHEAD for advice. The only thing that perhaps I can hold against him is that he encouraged me in the process.

I know, BILL, that the House will not forget you. I for one will not forget you but we all wish you Godspeed in your second and very successful career.

Mr. GAYDOS. Mr. Speaker, I would now like to recognize our colleague from the other end of the State, Congressman LEDERER from Philadelphia.

Mr. LEDERER. Mr. Speaker, I rise today to join my colleagues in honoring Chairman WILLIAM MOORHEAD of Pennsylvania, who leaves this body after 22 years of distinguished and devoted service to his constituents and to the Nation. It is fitting that we set aside this time to praise him and bring to the fore his achievements. I believe his record of tireless service will serve as an inspiration to young people considering public service will serve as an inspiration to young people considering public service and to all of us who strive to be better Americans.

BILL MOORHEAD came to the Congress in 1958 after an active career of community service in the Pittsburgh community. In his years in the Congress he has risen to be one of the ranking members of the Banking, Finance and Urban Affairs Committee and chairman of two subcommittees—the Subcommittee on Economic Stabilization and the Subcommittee on International Development Institutions and Finance. He is also chairman of the Joint Economic Committee's Subcommittee on Fiscal and Intergovernmental Policy.

In these leadership roles he has initiated and shepherded legislation affecting the core of American life such as major energy, housing, and cultural bills which form the basis of our domestic policy today. Chairman MOORHEAD saw the country enter hard times through two wars and various international crises. He spoke up early to end the Vietnam war and took firm stand in defense of the Nation in times of crises.

But more than this, I've come to know BILL MOORHEAD as a freshman Member of the Pennsylvania delegation when first elected to the House in 1976. BILL took the time to let each of us who came that year know that he was there to help. He gave a lot of his time and knowledge to see us through the rough first few months when it is all new and the ropes have not been climbed yet. BILL served as the cohesive force in what has become a delegation working for the benefit of the entire State of Pennsylvania. I credit much of what we have done in the past few years to BILL's quiet leadership, a task which is difficult in the House and is much ignored in this day of hyped media.

Behind the scenes, both in the Committees and in the floor work, BILL MOORHEAD has made a contribution to our daily lives which will be seen for many years to come. For that I thank him and for the guidance and counsel he gave me personally I thank him as well. BILL MOORHEAD will be missed in the hard times ahead, but I know that his service and that which he will render in this next phase of his life will give us the light to lead the way.

To BILL MOORHEAD, his wife Lucy and his children, I wish you well.

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Mr. BAILEY. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. I yield to my colleague from Pennsylvania.

Mr. BAILEY. Mr. Speaker, I suppose that I could add very little to what has already been said here tonight in honor and to pay respects to BILL MOORHEAD. I am a new Member of Congress, and I have had occasion, I hope, I like to think, to learn a great deal. I have learned a great deal from him, and I suppose I could best illustrate and sum up my feelings by telling a little anecdote.

I greatly admire, and consider myself to be a student, of perhaps the greatest politician in the history of the western world—certainly of the United States—Abraham Lincoln. Our colleague from the eastern part of the State, Mr. MCDADE, would like that particular President, being a Republican, but I would, in the spirit of our bipartisan feelings about BILL MOORHEAD, tell this little story.

Lincoln had completed one term of office and was being interviewed by a reporter from one of Horace Greeley's newspapers, one of the New York papers. The reporter asked Lincoln what his greatest accomplishment in life had been, that thing which had brought him the greatest pleasure and that of which he was most proud. Lincoln sat back for a few seconds and very calmly and quietly, and with very deep sincerity, simply said, "The respect and admiration of my fellow man."

I suppose little could be added to what everyone thinks of BILL MOORHEAD, and I share those feelings. I thank the gentleman.

Mr. GAYDOS. I thank the gentleman.

Mr. Speaker, at this time I yield to Congressman MCDADE, who, as I mentioned before, has more seniority in the

Pennsylvania delegation, but hopefully will not be the dean next year. That is a little private arrangement we have in the Pennsylvania delegation, whereby the oldest member of the majority in the State is the one that lays claim to that dubious honor, dean of the delegation.

So, I yield to my good friend.

Mr. McDADE. Mr. Speaker, may I say to my distinguished colleague, with whom I share this special order, that I would not mind, just once, since I have been here 18 years, I would not mind just once being dean. But, whether I am dean or the gentleman is dean, we are both traveling in the shoes of a great successor, succeeding a great man. Whoever he is, we are still going to work together the way Bill and I have this year, because in addition to everything else, he has been dean of our delegation and I have been privileged to work with him as ranking minority member. Every time I have seen him or worked with him, I have seen him be totally impartial; I have seen him be totally dedicated and always courteous, and that is the mark of a real gentleman.

So, I am thrilled at having an opportunity tonight to join in honoring a man who has served this Nation and made it a better Nation through 22 years of public service. It has been my privilege to have, as my dean so said, the current dean, the acting dean, indicated that I do have next to Bill, I guess, the most seniority in Pennsylvania. So, I have shared with him 18 of his 22 years.

As a matter of fact, my first committee assignment was to the committee he serves on so ably, the Banking Committee, and as several of the new Members have referred to, I came here as a freshman Member and I look across the aisle and I see Bill sitting there, and my memory goes back to the days when I served on that committee with some of the giants we were with. I could watch Bill; I could watch Al Raines; I could watch Bill Widenour from the great State of New Jersey; our mutual friend, Lud Ashley, and so many others.

I can say without fear of history or qualification that my service with that great body of distinguished men helped me become a better legislator, and I am always eternally grateful. My colleague from the western part of the State wants to appropriate Bill, as just about everybody does, and appropriate Lincoln or appropriate Bill—either way, I do not not know, but let me say this: I am reminded, when I look at Bill, of just some of the things I want to refer to.

There was an evening with the late President Kennedy. He had assembled every living world recipient of the Nobel Prize at the White House, and of course it was a glorious evening, and it was a glorious dinner, magnificent.

The people who were there were all leaders in the world, and President Kennedy got up and said that this was without question one of the finest evenings in the history of this great House. He said that with just one exception there was more talent gathered here tonight than ever before in the history of the White House. That one exception was when Thomas Jefferson dined alone.

Well, when we look at Bill Moorhead and when we begin to think of what he has done in this Congress, we see a Jeffersonian man at work. He did not just represent Pittsburgh, he represented all of us. He represented all of us last year when he, in the midst of a tough energy crisis, led our delegation's efforts to avert a potential gas strike in the State of Pennsylvania.

He represented all of us in this Nation when he fought first for what was called the National Foundation of the Arts and Humanities, which later became the National Endowment for the Arts and the National Endowment for the Humanities.

He worked for all of us when he worked to uncover foreign aid abuses during the Vietnam war, and as has been said so rightly here tonight, he was the early leader in the fight for energy conservation, and served as floor manager for the synthetic fuels bill in 1979 which, in an enormous House-Senate conference—and it is a miracle that the bill has survived, a great tribute to his legislative skills—that that enormous conference brought back a bill which became known as the Energy Security Act of 1980.

He also made it possible for small businessmen to bid on Federal contracts through the passage of the 1978 Federal contract bill.

Think of this: It was his task to steer through this House aid to New York. We have already heard my friend, Bill Green, mention it. Also, a bill that helped the Chrysler Corp. with its thousands of employees survive. Bill is a guy who never said it could not be done. He was always working for all of us, and in the future, when we think of a legislator who took on the tough jobs and gave us the leadership that was needed to succeed, we will always think of the gentleman from Pennsylvania, my dear friend, Bill Moorhead.

I want to extend my warmest personal regards to Bill and to his lovely wife, Lucy. We wish you well, Bill, in all your future endeavors. We extend to you our deep thanks for making this a better Nation and a better world.

Mr. GAYDOS. Mr. Speaker, I want to thank the dean of the Pennsylvania delegation, because I know his remarks are sincere and well-founded.

GENERAL LEAVE

Mr. GAYDOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert their remarks into the Record on the subject of my special order.

The SPEAKER pro tempore (Mr. Fary). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GAYDOS. Mr. Speaker, let me at this time give another aspect of Bill Moorhead. I listened with interest to my colleagues who set forth a Bill Moorhead that they had grown to know, and the one that they experienced. I would say, primarily if not exclusively from the legislative action on the floor of the House. But, I would like the Record to show at this point that the Bill Moorhead that I have been exposed to over the years was a very, very sensitive, warm individual who has a very unique history in Pittsburgh, a deep history, both political and otherwise.

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A lot of people look at Bill and think he does not look like much of a politician because he is so gracious and has such a warm personality. As a matter of fact, for want of a better description of him, I might say that "You can turn your back on Bill Moorhead and not be concerned that he is behind you"—meaning that he is so very trustworthy.

Sometimes those attributes do not seem to belong to the so-called politician, but Bill Moorhead is a politician and was a politician for many years in Pittsburgh. I know his history. I was there the first day he was nominated by the late Governor Lawrence, who went on to be a national committeeman and was very active as the first Secretary of HUD in the Kennedy administration here in Washington, D.C.—a man well steeped in politics and a man with whom Bill Moorhead and his family were connected. That is an aspect of Bill Moorhead's career that a lot of people do not know about.

Bill was an excellent, dedicated politician and public servant. How else could he find his way down to these great halls if he did not have some semblance of a political know-how and political activity and connections?

And speaking for myself—and I think I speak on behalf of the entire Pennsylvania delegation and most Members in the House—I say that I relish in the descriptive term of being a "politician," one who is interested in government. As I look at the description and analyze the term, a politician is one who is interested in his Government and how it affects his fellow man. And what is more important than participating in Government and helping to make laws that govern a person, according to the old description, "from the cradle to the grave?" And that is becoming even more evident now.

Regardless of what we hear and read in all the newspapers, it is important that people stand ready to assume their political obligations. Bill Moorhead earned that right through his Joe Barr connections in Pittsburgh, through his political activities, and in particular, through his association with the great renaissance in the city of Pittsburgh.

Pittsburgh was the first city after World War II that took into being or into consideration a new law and put it into effect, and as a result they started tearing down and ripping out the heart of the old, dilapidated city of Pittsburgh and started building a new city. I wish that more of my colleagues were here now, because I would like to invite them specifically to come and visit the city of Pittsburgh, the new city that has arisen from the ashes of the old. It is a new, vibrant, clean—and I emphasize the word, "clean"—city with new leadership and a new concept.

Mr. Speaker, all of that had its beginning way back when Bill Moorhead—and this is something a lot of people do not know—was there and participated in that rebirth in the city of Pittsburgh. During that time Bill was interested in and actively participating in all types of new activities, and all of these activities led cumulatively in his earning his credentials and coming to this House and doing the great job that he has done.

That is the BILL MOORHEAD that I know and the BILL MOORHEAD that I respect. That is the BILL MOORHEAD that I believe is known to the rest of our colleagues who spoke tonight. And I say that because we are a practical bunch in this House. The hour is late, and everybody has their commitments. Many of the Members wanted to go someplace, but at the same time they wanted to participate in this special order. In the special orders that I have witnessed during the last two or three times, there has been a greater number of Members staying here and wanting to participate and give their opinions and have them appear in the RECORD without the bullet, meaning that they wanted to give them personally. I am seeing more of that now, as I have said before, during the last five or six times we have taken special orders.

Mr. Speaker, I want to conclude by saying that the BILL MOORHEAD that I know and have grown to love is a warm person, a sincere person, one who is ready at his own inconvenience to help another person. And I must reemphasize again that he is a person in whom I have implicit trust. I have found it is just a fantastic pleasure to work with him. I might say, too, that I have been especially proud that he comes from an adjoining congressional district to my own because we have worked so well together.

All these good things about BILL I spread upon the record from my heart, because that is the BILL MOORHEAD that I have grown to know and respect. He is a person of whom I can say I have no hesitation to recommend anyplace, under any circumstances, to any person in any media, be it public or what have you, be it television or radio. That is the BILL MOORHEAD I know.

I know that my good friend and close colleague, JOE MCDADE, along with myself, has learned to respect and love BILL MOORHEAD.

Before I close, Mr. Speaker, I remind the Members that I have already asked unanimous consent that all Members have 5 legislative days to insert their formal remarks about our good friend, BILL. At this time, if there is no other Member who wishes me to yield, I would like to conclude my special order by expressing my best personal wishes on behalf of the Pennsylvania delegation to you, BILL MOORHEAD, your wife, Lucy, and that extraordinary family of yours—the family which I have not talked much about but which most of your friends know about. God's blessing on you. Our good wishes go with you, and we hope to see you on the floor in the future. My office is open to you, as you know, as are the offices of the full Pennsylvania delegation and every Member of this House. Our offices are open to you, BILL, for a visit in the future, formal or informal.

• Mr. O'NEILL. Mr. Speaker, I am delighted to join with my colleagues in a special order to pay tribute to one of the finest legislators in this Chamber, the Honorable WILLIAM MOORHEAD of Pennsylvania, on the occasion of his retirement from the U.S. House of Representatives.

For more than two decades, BILL MOORHEAD has served the 14th District of Pennsylvania with distinguished and dedicated service, and his legislative skills and incisive mind have contributed to a higher calibre of deliberations in this Chamber.

Those of us who have worked with BILL over the years greatly admire his many fine personal attributes which suggest quality and dependability. BILL MOORHEAD has been a Member whose word is golden, whose commitment is genuine and unwavering, and who understands the complexities of the legislative process.

BILL MOORHEAD has a certain reserve; he is not a headline seeker, nor is he interested in publicity for publicity's sake. Yet, he is reliable, a loyal Democrat, a good lieutenant to the leadership, and hard working. BILL MOORHEAD'S position and stature in the House have contributed to the successful outcome of some of the most far reaching and precedent setting legislation of the past decade.

As chairman of the Economic Stabilization Subcommittee BILL MOORHEAD has been one of the driving forces in the House that put through the 96th Congress the synthetics fuels bill, which including other forms of energy became the Energy Security Act of 1980. Landmark energy legislation, this act is a cornerstone of our national commitment to become more energy self-sufficient.

Chairman MOORHEAD'S subcommittee considered and steered through the House legislation to provide loan guarantees to New York City and the Chrysler Corp., two trying and difficult political decisions in which the national economic ramifications were unimaginable.

BILL MOORHEAD is a fair and just chairman who runs his subcommittee on a consensus and democratic basis. He lets his subcommittee work its will and believes in letting the various forces have their play in the committee deliberations and on the House floor.

Chairman MOORHEAD gives great latitude and flexibility to his subcommittee members and is well liked and respected by colleagues on both sides of the aisle. Each member of his subcommittee can testify to the fact that their chairman is always willing to listen with an open mind to the issues and concerns which affect each of their own districts.

I am proud to consider BILL MOORHEAD my friend, and a wise and trusted counselor. As a long-time member of the whip organization, BILL MOORHEAD has been a valuable part of the Democratic leadership team. I am eternally grateful for his friendship, support, and encouragement over the years.

BILL, you were a leader in Pittsburgh's revitalization programs before you made your impressive mark on the annals of congressional history. Twenty-two years ago you brought to the House of Representatives a keen intellect and a sense of purpose; and throughout your tenure of service in the House, you have pursued a chosen political and legislative course that has been a hallmark of dignity and responsible representation.

While I will greatly miss your wise and trusted counsel in the 97th Congress, I extend sincere best wishes for much happiness in the years ahead, and may God bless you.•

• Mr. BRADEMAS. Mr. Speaker, BILL MOORHEAD and I took our first oath as Members of the House of Representatives together in 1959. We have served with each other here ever since.

During those 22 years, Mr. Speaker, I have counted BILL MOORHEAD and his delightful wife, Lucy, as valued friends.

Few Members of the House have been as loyal and dedicated to it and to the ideals of sound and progressive government as has BILL MOORHEAD.

His decision not to seek reelection will leave a void not easily filled. The longer he served with us, it seemed, the more difficult became the legislation for which he was responsible and the busier he became.

Mr. Speaker, everyone of us is indebted to BILL MOORHEAD for the skill with which he managed such significant and major recent legislation as the Energy Security Act, that landmark program setting the United States on the road toward energy self-sufficiency; the Chrysler Corp. loan guarantee legislation; and the New York City loan guarantee program which saved our largest city from bankruptcy.

Beyond these major statutes, BILL MOORHEAD authored legislation guaranteeing insurance coverage to inner city residents, extending to small businessmen greater opportunities to bid for Federal contracts, and expanding and strengthening the Freedom of Information Act.

One of his more important accomplishments, Mr. Speaker, was his cosponsorship of the legislation creating the National Endowment for the Humanities and the National Endowment for the Arts.

BILL MOORHEAD, a Navy veteran of World War II, was an early and outspoken critic of the war in Vietnam. As a member of what was then the Military Operations Subcommittee of the Government Operations Committee, he was an effective opponent of wasteful and unnecessary military spending. As a member of the Foreign Operations Subcommittee, he was equally instrumental in ferreting out waste and abuses in the foreign aid program.

Today he continues to be a member of the Government Operations Committee where he serves on the Subcommittee on Legislation and National Security and the Subcommittee on Intergovernmental Relations and Human Resources. He is also a member of the Joint Economic Committee where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy and as a member of the Subcommittee on International Economics.

His contributions on those committees are great, but even greater have been his contributions from his seat on the Committee on Banking, Finance and

Urban Affairs. He has been a member of that committee for 22 years and now holds the chairmanship of the Subcommittee on Economic Stabilization.

Finally, Mr. Speaker, as majority whip, I have been particularly fortunate in having BILL MOORHEAD's counsel and dedication. I speak here of his service as a member of the majority whip organization. We of the majority side know his contributions there have been invaluable.

Mr. Speaker, all of us will miss BILL MOORHEAD, and I know that all of you join me in wishing BILL and Lucy continued good fortune.●

● Mr. MURTHA. Mr. Speaker, when I was reviewing Congressman BILL MOORHEAD's career to prepare these remarks, I was interested by the fact that BILL was first elected to Congress in 1958.

I stopped to think about the fact that BILL has really spanned one of the most fascinating periods in congressional history. He served in the last session of the Eisenhower years and with Speaker Sam Rayburn and the young Democratic President John Kennedy. His votes and philosophy were instrumental during the unprecedented legislative accomplishments of the Johnson years. BILL MOORHEAD also saw the frustration and give-and-take during the Nixon years, and finally the emergence of the modern Congress, better equipped and more involved than at any time in congressional history.

And the legislation which bears BILL MOORHEAD's name helps to illustrate the innovations and creativity that has now come to hallmark the congressional approach. Such farsighted legislation as the Freedom of Information Act and the National Endowments on the Arts and Humanities. And nowhere were his legislative skills more called upon than during the difficult but vital aid plans for New York City and Chrysler.

BILL MOORHEAD will always be remembered by me, not only for his legislative accomplishments, but because when I was elected to Congress he was the first Member to call me with his congratulations and helped in acclimating me to Congress.

We have heard a great deal this year about the Democratic tradition. I think that when you look over BILL MOORHEAD's career, and see his innovative legislative record, his concern for the poor and less fortunate in our society, his emphasis on jobs and economic development, and his compassion and integrity, that we see a man not only in the great traditions of his party, but a man who has brought pride and honor to the U.S. Congress and the United States of America.●

● Mr. RAHALL. Mr. Speaker, it is with great pleasure that I rise today to recognize the over 20 years of dedicated service our colleague, BILL MOORHEAD, has given this body and the people of the 14th District of Pennsylvania. As a result of his forthcoming retirement from Congress, he will certainly be missed.

BILL MOORHEAD's career has always focused on one major area, aid to the communities he has represented. His work on various boards, before his election to Congress, served to bring about the redevelopment of a great city, Pittsburgh.

Once in Congress, this work continued, as he served with distinction on the Banking and Urban Affairs Committee, and the Government Operations Committee.

Legislation to guarantee insurance coverage to inner city residents, a Federal contract bill for small businessmen, and the Freedom of Information Act, all have been pushed by BILL MOORHEAD.

Most of all, I believe one of his finest accomplishments was the bill to expand our Nation's efforts for the development of synthetic fuels, an achievement the United States will look back on in the years to come with great relief that someone had the foresight to champion such a cause.

Indeed, BILL MOORHEAD is a champion, in the "City of Champions." I wish him the best, and thank him for his insight, leadership and friendship.●

● Mr. BOLAND. Mr. Speaker, today we pay tribute to one of the most distinguished Members of the House, the Honorable WILLIAM S. MOORHEAD. Since his election to the 86th Congress in 1958, BILL MOORHEAD has served this country, the State of Pennsylvania, and the people of his district with dedication, diligence, and zeal. His retirement at the end of the 96th Congress will leave the House without one of the most creative and effective legislators of recent history.

The list of BILL MOORHEAD's achievements is a long one. BILL was responsible for the establishment of the National Foundation on the Arts and Humanities which later grew to become the National Endowment for the Arts and the National Endowment for the Humanities. He was instrumental in the fight to end our involvement in the Vietnamese conflict, and has helped bring about significant improvements in our foreign aid and defense spending programs.

As chairman of the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance, and Urban Affairs, BILL guided the House to enactment of legislation providing loan guarantees to New York City and Chrysler Corp.

In addition, as chairman of the conference committee which considered the Energy Security Act of 1980, BILL presided over the creation of the Energy Security Corporation. The Energy Security Act is one of the most significant and inspired pieces of legislation of the 20th century. BILL MOORHEAD's knowledge and leadership in these areas have helped the House grapple successfully with some of the most perplexing problems of our time. I am sure that the Members of the House will miss BILL's scholarly counsel on the difficult decisions which lie ahead.

I am delighted to join my colleagues in expressing our appreciation for BILL's many years of leadership, and extending our best wishes for success in his future endeavors.●

● Mr. BINGHAM. Mr. Speaker, I am grateful to our colleagues from Pennsylvania, Messrs. GAYDOS and MCDADE, for arranging for this special order to pay tribute to our retiring friend and colleague, BILL MOORHEAD, and I am happy to join in that tribute.

It will be a real wrench to many of us in this House when BILL MOORHEAD goes on to greener pastures.

He has been an outstanding member of the Banking and Currency Committee ever since I came to the House, and during the 90th Congress I had the pleasure of serving on that committee with him.

BILL has always been a courteous Member, considerate of his colleagues. In particular, those of us from New York City will always be grateful to him for his leadership in the fight to help that great metropolis stave off bankruptcy.

BILL will be sorely missed by his constituents and by his host of friends here in the House. Fortunately, however, he does not plan to leave Washington, so that those of us who have enjoyed the friendship of BILL and his lovely wife Lucy do not have to face the prospect of losing them from our community here.

We wish him well in whatever he undertakes, and we feel sure that he will continue to make a major contribution to the welfare of his country.●

● Mr. BIAGGI. Mr. Speaker, I am honored to join my colleagues in a most deserved tribute to my good friend BILL MOORHEAD, who has announced his retirement from Congress after more than 20 years of dedicated service.

His accomplishments are many, but as a New Yorker, none stand out in my mind more than BILL's effective handling of the New York City loan guarantee legislation. As chairman of the Subcommittee on Economic Stabilization, BILL was responsible for consideration of the New York City loan guarantee measure. Under his strong and effective leadership, extensive hearings on the issue were conducted. The city of New York was allowed to present its case in full, and as a result, the measure reported out of subcommittee was fair and responsible. A testimony to that fact was the overwhelming House passage of the loan guarantee measure by almost 100 votes.

As chairman of the Economic Stabilization Subcommittee, BILL was also responsible for steering the Chrysler Corp. loan guarantee legislation, and the Energy Security Act of 1980 through Congress.

Acting in my role as chairman of the Ad Hoc Congressional Committee for Irish Affairs, I would also like to praise BILL's commitment to achieving a just and lasting peace in Northern Ireland. He has joined myself and the other 130 members of the committee in focusing attention on the tragic situation that exists in Northern Ireland, and in working for a peaceful solution.

Mr. Speaker, the retirement of BILL MOORHEAD represents a major loss, not only to this Congress, but especially to his Pennsylvania constituents, whom he has served so effectively. However, he leaves behind an impressive record, and a shining example for those who will attempt to follow in his footsteps. I join my colleagues in wishing him a long and well-deserved retirement.●

● Mr. RITTER. Mr. Speaker, as a freshman Member of Congress, I was saddened to learn about the retirement of one of the most distinguished Members of the House and the Pennsylvania delegation. I have had the pleasure of working with Bill Moorhead on both the Housing Subcommittee and the House Banking Committee over the past 2 years. I wish it could have been a longer period of time.

Bill's committee accomplishments are numerous. I was honored to be a part of the formation of the synfuels bill in committee in which my respected colleague played a major role. His knowledge and skills in committee and on the floor will be missed.

I want to wish Bill the very best in his retirement. I can only hope that he will remain an active friend of the Pennsylvania delegation as well as all of us in Congress.●

● Mr. COUGHLIN. Mr. Speaker, I am honored today to join my colleagues in paying tribute to an outstanding Member of Congress and fellow Pennsylvanian, Bill Moorhead. As you know, Bill is retiring from the House this year after 22 years of distinguished service to the people of Pennsylvania.

Even before his election to Congress in 1958, Bill's dedication to the improvement of his home district of Pittsburgh was reflected by his record of service to the people of that district.

A record of Bill's achievements during his 22 years with the Banking, Finance, and Urban Affairs Committee point clearly to his longstanding interest in the economy of this Nation. The synthetic fuels bill, one of the major energy initiatives produced by this Congress, was first approved in Bill's Economic Stabilization Subcommittee. Subsequent passage of this bill, expanded to become the Economic Security Act of 1980, is in large part due to his competent leadership and persevering efforts.

Bill's skills as a legislator combined with his long administrative experience were instrumental in the passage of such difficult and controversial legislation as the Chrysler loan guarantees. It has been my pleasure throughout my years in Congress to have the opportunity to work with such an able and respected Member of the Pennsylvania delegation. I extend to Bill and his family my sincere best wishes for the future.●

● Mr. DERWINSKI. Mr. Speaker, I join with my colleagues in paying special tribute to a great statesman, William S. Moorhead. Bill and I were first elected to the 86th Congress, and I am pleased to have him as a friend over the years that we have served together in the House.

Bill is retiring now after 22 years of dedicated and distinguished service. While his most notable contribution during this time is in the area of fiscal policy, his ability and expertise have been demonstrated over a wide spectrum of legislative issues. As a member of the Banking, Finance and Urban Affairs Committee, Bill has made great contributions in shaping a responsible economic outlook. As chairman of the Subcommittee on Economic Stabilization, he was instrumental in the passage of the first synthetic fuels bill which later became the Energy Security Act of 1980. In addition, he had a significant role in the Chrysler Corp. and New York City loan guarantee legislation.

Bill is also a member of the Joint Economic Committee where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy, and is a member of the Subcommittee on International Economics where he is dedicated to seeing that our Nation's best interests are served in funding investments in foreign aid programs and in limiting Government spending.

Bill has had an outstanding record of popularity among his constituency. The State of Pennsylvania and its 14th Congressional District is losing the service of an outstanding legislator who so ably represents the needs of our Nation.

Bill Moorhead may step down from his duties here in Congress knowing that he has served well and contributed significantly to the legislative process. We will certainly miss Bill's wise counsel and leadership.

It has been a true pleasure to know and work with Bill, and I want to take this opportunity to wish him a long and enjoyable retirement.●

● Mr. ANNUNZIO. Mr. Speaker, I rise in tribute to the Honorable William S. Moorhead, who is retiring at the close of the 96th Congress after 22 years of outstanding service in the House of Representatives. It has been a truly rewarding personal experience for me to have known him as a colleague on the Banking, Finance and Urban Affairs Committee and to have worked with him during the 16 years I have been in the House.

Bill was first elected to the 86th Congress in 1958, and he has proved himself a most capable legislator and fully worthy of the trust and confidence of his constituents of the 14th Pennsylvania Congressional District.

This admiration for his leadership is not confined to the citizens of Pennsylvania, for he is respected by every Member of Congress. Having served for over two decades with outstanding dedication to high standards, Bill Moorhead has compiled a splendid record of excellence and achievement, and his inspiring example will be missed here in the House.

Few men have given more of themselves to good government, or have a more compassionate understanding of human problems than has Bill Moorhead as chairman of the Banking Committee's Housing Subcommittee and the chairman of its Subcommittees on Economic Stabilization and on International Development, Institutions and Finance. He is also a member of the Government Operations Committee and the Joint Economic Committee, where he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy and as a member of the Subcommittee on International Economics.

Bill has been in the forefront of efforts to implement meaningful solutions and effective action on behalf of individual citizens, and one of many major legislative accomplishments was the passage of legislation to guarantee insurance coverage to residents of our Nation's large cities who had been redlined by the insurance companies and had no other place or person to turn. He also distinguished himself very early in his congressional career as a major force in the establishment of the National Foundation on the Arts and Humanities, the forerunner of the National Endowment for the Arts and the National Endowment for the Humanities.

Bill Moorhead can retire with the assurance that through his efforts mankind has benefited, and there is no tribute higher than this. I extend to Bill my best wishes for a healthy and happy retirement.●

● Mr. CLINGER. Mr. Speaker, I take this opportunity to honor a fellow member of the Pennsylvania delegation with the knowledge that the Keystone State, and the Nation as a whole, has benefited by the 25 years of service that Congressman William S. Moorhead has contribute to this Chamber.

While I can comment only on the last 2 of Mr. Moorhead's 22 productive years in Congress, I can say without qualification that the attitude of Mr. Moorhead toward myself, a freshman Member of the opposition party, has been one of selfless helpfulness and a fairness transcending party lines.

I wish also, in this tribute to the retiring chairman of the Pennsylvania delegation, to note the legislative achievements of Mr. Moorhead. He is indeed a legislator, and although his achievements as a Member of the House are too numerous to record on this occasion, I make mention here of his contributions in areas as diverse as small business, the arts, and energy.

Mr. Moorhead was a key proponent of legislation making it possible for small businesspeople to bid on Federal contracts. In the arts, he was on the frontier as an early contributor to legislation establishing the National Foundation on the Arts and Humanities. And most recently, he has remained in step with the times and needs of our country by supporting on his subcommittee, legislation representing the first synthetic fuels bill.

These efforts are little more than highlights of a career that in the future will remain as one of the fine examples earning the compliment that all too often the finest Members of Congress leave the political arena for other endeavors.●

● Mr. BRINKLEY. Mr. Speaker, one of my earliest recollections of our esteemed friend, Bill Moorhead, relates to his service on the Banking Committee with my former, senior colleague from Georgia, Bob Stephens. Congressman Stephens is something of a scholar, but his conversation is couched in a rich southern flavor. Once Bill corrected Bob as to the pronunciation of his name being "Moorhead" and not "Mohead." Whereupon Congressman Stephens said, with some emphasis, that that was precisely what he had been saying all the time—to-wit, Congressman Mohead.

Those semantics never diminished the deep affection which existed between these two men and which I think spilled over into the entire Georgia delegation. Seldom would the new man on the block be expected to fill such large shoes as Bob's, but Doug Barnard, who represents the same district, has done so with ability and with distinction. He vouches for Bill Moorhead, as all of us do, as being a man of uncommon ability and a Congressman's Congressman. We appreciate the high service that he has rendered, not only to the State of Pennsylvania, but to the entire United States of America.

● Mr. ADDABBO. Mr. Speaker, as the 96th Congress draws to a close, I would like to take this opportunity to pay tribute to a dear friend and trusted colleague, Bill Moorhead of Pennsylvania, who will be leaving the House after 20 years of dedicated and outstanding service. If ever a man could be considered a devoted, hard working, intelligent servant of the people, it will be Bill Moorhead.

It is not an easy task to say goodby to Bill, a man who has accomplished so much for the people of Pennsylvania, as well as for the Nation as a whole. Few men I have met in Washington have been as courteous and helpful as Bill, and few men have achieved so much, with so little fanfare. As a Representative he earned the respect and admiration of his peers for his expertise on a myriad of issues, and as a friend, he was never too busy to give you some of his valuable time.

He served with distinction on some of the most important and prestigious committees on Capitol Hill, among them the Banking, Finance and Urban Affairs Committee. As chairman of the Subcommittee on Economic Stabilization, Bill was instrumental in securing passage of the first synthetic fuels bill in 1979, which would eventually become the Energy Security Act of 1980. In addition, while chairman of that important subcommittee, it was his responsibility to consider the New York City loan guarantee legislation, legislation of which I and all New Yorkers will be forever grateful for his support.

Some of his other legislative triumphs, among many, include the passage of legislation to guarantee insurance coverage to inner city residents, as well as the adoption of amendments to the Freedom of Information Act. A friend of small business, he was greatly responsible for the passage of the 1978 Federal contract bill, which made it possible for small businessmen to bid on Federal contracts. A man of many interests, Bill very early was aware of the need to encourage and tap the creativity of many of our artists, musicians, and writers and he was a key force behind what is today the basis for the National Endowment of the Arts and the National Endowment for the Humanities.

Bill Moorhead will be missed by all who enjoyed working with him, and I am sure I am not alone in wishing him well in a retirement he has justly earned.●

● Mr. DRINAN. Mr. Speaker, I feel a personal and profound sense of loss in the fact that Bill Moorhead will not be with us next year.

Prior to his service in the Congress for 22 years, Bill Moorhead had a distinguished career. He served in the U.S. Navy during World War II and was commissioned a lieutenant. He had graduated from Yale College prior to that time and received his law degree, cum laude, from Harvard Law School in 1949.

In his native city of Pittsburgh, he served as assistant city solicitor and was a member of the board of visitors of the faculty of arts and sciences at the University of Pittsburgh. He was very active in the area of arts and humanities, and served on the board of directors of the Pittsburgh Council for the Arts.

In the Congress, Bill Moorhead has had a varied and very distinguished career. I know him best as a member of the Government Operations Committee where he served for a significant period of time as the chairman of the Subcommittee on Environment, Energy and Natural Resources. I was happy to be with him as one of the prime sponsors of the leadership's omnibus energy conservation bill in 1976.

Congressman Moorhead's work on the Banking Committee is well known to the Congress and to the entire country. He served as the chairman of the Subcommittee on Economic Stabilization and in that capacity has had a very significant impact on the entire world of banking and on the economic structure of America.

Bill has also served for many years on the Joint Economic Committee, where he was cochairman of the Fiscal and Intergovernmental Policy Subcommittee.

There are many major legislative triumphs for Bill Moorhead in the Congress. He will be known for his work in authorizing the President's Council on Wage and Price Stability, and for his managing of crucial legislation for aid to New York City.

Bill Moorhead has always been so self-effacing that even his colleagues do not fully appreciate the monumental legislation which he has sponsored, processed through committee, and managed on the floor. For example, many persons do not fully appreciate the fact that Bill Moorhead was one of the pioneers in bringing about legislation to initiate the Government's involvement in synthetic fuel.

Bill Moorhead will be greatly missed in the Congress where he was universally admired and respected. Our consolation is that Bill Moorhead will go on to other victories where he will serve the people of the country as he has served the people of greater Pittsburgh during more than two decades of devoted service.●

● Mr. BLANCHARD. Mr. Speaker, I am very pleased to have the opportunity to join in this tribute to Congressman Bill Moorhead. Bill is truly one of the unsung heroes of Congress. He is one of those quiet individuals who, behind the scenes, has been a major force in helping to enact vital legislation.

I have been privileged to serve for the past 4 years with Bill under his chairmanship of the House Economic Stabilization Subcommittee. Through his leadership that subcommittee has been at the cutting edge of key legislation affecting America's future. Bill has helped enact important economic development legislation to aid communities all around the country. He stepped forward, when it was not easy or popular to do so, to help pass the Chrysler Loan Guarantee Act, a bill which has protected thousands of jobs. The people of Michigan owe Bill Moorhead a great debt of gratitude.

Bill was also the father and pioneer of synthetic fuels legislation, which was recently enacted into law under the Energy Security Act. The Energy Security Act just might be the most important legislation passed by Congress in a decade and without Bill Moorhead's foresight, leadership, and dedication it would not have been done.

To me Bill Moorhead has not only been a leader and adviser on legislative issues, but also a friend. While I will miss Bill, more importantly, the Congress will miss him. I know that Bill Moorhead will continue to demonstrate the talents and abilities that are reflected in his numerous congressional accomplishments. He has been the consummate public servant and all of us who honor him are proud of our association with him.

I want to personally thank Bill for all of the help and guidance that he has provided me. I wish him and his family the very best in the years ahead.●

● Mr. SCHULZE. Mr. Speaker, it is my pleasure to take this opportunity to join with my colleagues in praise and recognition of the Honorable Bill Moorhead, the dean of the Pennsylvania delegation. It has been my great honor to serve with Bill for the last 6 years in the House of Representatives, and to work closely with him on many matters of importance to the Commonwealth of Pennsylvania and to the Nation.

I am proud to say that I was among the first supporters of what I consider to be Bill Moorhead's greatest legislative achievement: The Defense Production Act amendments of 1979. Bill's early recognition of the important role which synfuels have the potential to play in our Nation's future was the driving force behind the first step toward energy independence for America.

In my first term, I observed firsthand Bill's dedication to the job while serving on the House Banking Committee. The city of Pittsburgh, the Commonwealth of Pennsylvania and the Nation owe Bill Moorhead a debt of gratitude for his work on this committee, and in particular on the Housing Subcommittee. His exhaustive efforts have enabled countless thousands of the poor and elderly to be properly housed. The revitalization of the inner city of Pittsburgh is living proof of his dedication. As a freshman, I found his knowledge and expertise to be extremely valuable.

Bill Moorhead has labored tirelessly for the past 22 years for his constituents of the 14th District of Pennsylvania. His record speaks for itself in this regard. We will miss him, but he has well earned his rest. He was, and I predict he will continue to be, the epitome of the civil servant. That will never change.●

● Mr. GOODLING. Mr. Speaker, as the 96th Congress progresses to a close, I would like to take a few moments in these proceedings to salute and extend my warmest wishes of success in the future to our esteemed colleague, BILL MOORHEAD, who has chosen to retire this year.

With his election to this venerable House in 1958 he brought with him his interest and already large knowledge of urban affairs and housing redevelopment which quickly made him a valuable member on the Subcommittee on Housing, and which became a useful tool in his chairing of both the Subcommittees on Economic Stabilization, and International Development, Institutions, and Finance.

We can all be proud of other contributions BILL has made. His guiding hand and strong support led to the establishment of the National Foundation for the Arts and Humanities which has been the source of many artistic performances I and my family have enjoyed. The Endowments on Arts and Humanities which evolved from the Foundation will continue to benefit artists and musicians throughout the United States for many years to come.

Another interest of his which has brought him much recognition in Congress, has been his work on our energy problems. Beginning with the first synthetic fuels bill in 1979, BILL has had the satisfaction of working toward and actually seeing its final fruition as the Energy Security Act of 1980.

It was with much regret that I learned of BILL MOORHEAD's decision to retire, but having worked with him and admired his many accomplishments, I know that the success this good Congressman has achieved here in Congress will follow him in whatever endeavors he puts his hand to next.●

● Mr. BROOKS. Mr. Speaker, it has been my distinct privilege and very great honor to have served with BILL MOORHEAD in this body for the past 22 years. When his Pennsylvania constituents elected BILL MOORHEAD to the House of Representatives in 1958, they sent us a fighter for human rights and a public servant determined to improve the quality of life in America.

During the past 22 years I have come to value BILL's wise counsel and willingness to work hard for the principles of our democratic heritage and the interests of the working men and women of our great country.

To all of us who have served with him, BILL MOORHEAD represents the very best our country has to offer. He is respected for his dedication, determination, and vision. He has contributed immeasurably to the economic progress our country has made during the past two decades. His early work in establishing the National Foundation on the Arts and Humanities, which later evolved into the National Endowment for the Arts, and the National Endowment for the Humanities, has greatly enriched the cultural life of all Americans.

As chairman of the House Committee on Government Operations, I know from first-hand experience that BILL MOORHEAD is an untiring enemy of waste and inefficiency in Government programs. His 17 years service on the Government Operations Committee has helped to bring greater clarity to the exercise of our oversight responsibilities over the executive branch of the Government. BILL MOORHEAD is an important member of my Subcommittee on Legislation and National Security. He has helped us uncover millions of dollars in wasteful military expenditures. The members of the Government Operations Committee will greatly miss BILL MOORHEAD when the 97th Congress convenes next January.

It was BILL MOORHEAD's vision and hard work on the first synthetic fuels bill in 1979, which led to the passage of the Energy Security Act of 1980. In no small measure, he has contributed directly to the opening of a new era in America's energy future.

I am going to miss BILL MOORHEAD's good natured presence next January. I consider him a very close friend, as well as a respected colleague, and I hope the future will bring him and his lovely wife Lucy, the very best life has to offer.●

● Mr. ST GERMAIN. Mr. Speaker, for 20 years I have sat next to BILL MOORHEAD on the Banking Committee. It is very difficult for me to realize that BILL will not be there next year.

On a very personal basis, I am going to miss BILL MOORHEAD. And I can tell my colleagues that the Banking Committee, and the entire House of Representatives, will feel the loss of this man's quiet effective work. BILL MOORHEAD has not sought the headlines, but those of us who have served with him on the Banking and Government and Operations Committees know that he has truly been one of the House's most productive Members.

A great number of people simply do not realize the wide swath that BILL MOORHEAD has cut in the legislative history of these two decades. Everything from Freedom of Information Acts to basic planks of the Nation's urban policy bear the imprint of BILL MOORHEAD. BILL MOORHEAD and I have worked together on the Housing Subcommittee and I can tell you, from firsthand day-to-day knowledge, that America's cities owe a tremendous debt to this little giant from Pittsburgh.

BILL MOORHEAD has not lived off of the froth of easy legislative efforts; he has often been tossed the hot potatoes, the issues that no one really wanted to tackle. New York City, I trust, realizes just what this willingness to tackle the tough jobs meant. And I trust that automobile workers at Chrysler plants around this Nation will not quickly forget BILL MOORHEAD's willingness and ability to see a tough job through to a successful finish.

It is not my purpose to run down the long list of Moorhead accomplishments this afternoon. They are many and they will not be forgotten.

It is difficult to imagine BILL not being involved in public service and as he departs to begin a new career, I know that he carries with him the best wishes of us all. There can be no doubt that he will be just as successful in any endeavor he pursues as he has been here in Congress.

Certainly, BILL, you have my best wishes and while I can honestly say I wish you were staying, I respect your decision with the understanding that your wise counsel and advice will always be available.●

● Mr. VAN DEERLIN. Mr. Speaker, BILL MOORHEAD, who is leaving us after 22 years of highly productive service, is one of our most accomplished legislators, particularly in shaping critical fiscal policies.

He has engineered successful bills for establishing the National Foundation on the Arts and Humanities, for stepping up production of synthetic fuels, for aiding small businesses and for strengthening the Freedom of Information Act. As a member of the Housing Subcommittee since 1959, he has had a hand in all the major housing legislation of the last two decades, and as a senior member of the Joint Economic Committee, BILL has helped to direct the evolvement of economic positions affecting not only this country but also our free world allies as well.

BILL is not known only for his impressive legislative achievements, of course. He is also widely regarded as a very decent human being. In describing him, his staff—most of whom have been with him for years—freely use words like "kind," "generous" and "compassionate." I think it is fair to say that these laudable traits have contributed significantly to the enlightened legislative leadership which BILL has provided over the years—his efforts have typically been directed to helping those most in need of help, like small business people, inner city residents and laid-off auto workers.

Our colleague is returning now to the private practice of law, in which he was successfully engaged before his first election to Congress. His wise guidance will indeed be missed when the 97th Congress assembles without him.●

● Mr. MITCHELL of Maryland. Mr. Speaker, I am glad to join my colleagues in this tribute to Congressman WILLIAM MOORHEAD. After over 20 years of service in the House of Representatives, this distinguished Member has announced his retirement from Congress.

Congressman MOORHEAD came to Congress with a deep sense of community involvement. His prior activities in community service and development in his home of Pittsburgh, Pa., formed a solid foundation for his subsequent activities as a member of the House Banking, Finance and Urban Affairs Committee. As a member of this committee myself, I can say that Congressman MOORHEAD has served with dedication, dignity, and strength. It was under the leadership of Mr. MOORHEAD that the Banking Committee's Economic Stabilization Subcommittee guided the passage of the first synthetic fuels bill in 1979. We know the expanded version of this measure today as the recently signed Energy Security Act of 1980.

Representative MOORHEAD is to be further commended for his distinguished service as a member of the Joint Economic Committee. In this capacity, he serves as chairman of the Subcommittee on Fiscal and Intergovernmental Policy, and member of the Subcommittee on International Economics.

Congressman MOORHEAD's significant involvement in economic development activities has not detracted from his ability to provide leadership and impetus in other pertinent areas. One of his initial accomplishments in Congress was the establishment of the National Foundation on the Arts and Humanities, which is today the basis for the National Endowment of the Arts and the National Endowment for the Humanities.

I am proud to point to Congressman MOORHEAD's unwavering opposition to the Vietnam war; his critical role in uncovering abuses in the U.S. foreign aid program; and, his leadership in opposing wasteful and unnecessary military spending. He deserves our admiration and our sincere wishes for his complete fulfillment in whatever he seeks to do in the future.

I wish Congressman MOORHEAD the best as he leaves behind over 20 years of distinguished service to the U.S. House of Representatives.●

● Mr. REUSS. Mr. Speaker, I am delighted to join my colleagues in this special order honoring Congressman BILL MOORHEAD, who has announced his retirement at the end of this Congress. BILL and I have been friends since he first came here in 1958. We have worked closely together on the House Banking Committee, as well as the Joint Economic Committee. I know firsthand the diligence, intelligence, and expertise which he brought to the difficult legislative issues which came before us. He was often the unsung hero of major legislation, such as bills to assist New York City, to aid in the recovery of the Chrysler Corp., and to accelerate the Nation's development of synthetic fuels.

BILL has been a Representative in the truest sense of the word. He has earned the respect and affection of all his colleagues, on both sides of the aisle. I know that I speak for all of us when I say that these halls will miss him.●

● Mr. GLICKMAN. Mr. Speaker, BILL MOORHEAD has not been afraid to confront crises head on, and for that this Nation owes him very special thanks. He is a man who has recognized problems confronting us and developed creative solutions. Most particularly, his leadership in bringing before the House the initiative which led to enactment of the Energy Security Act warrants the thanks of every American. As chairman of the Subcommittee on Economic Stabilization, our colleague from Pennsylvania forcefully articulated the fact that our dependence on foreign petroleum was having a destabilizing effect on our economy and was threatening the Nation's ability to defend itself.

Clearly, the energy problem has not been solved, but thanks to the willingness of BILL MOORHEAD to take the bull by the horns and start the legislative process in the direction needed to promote large-scale synthetic fuels development, we are now headed toward ending our unwise dependence on foreign oil. BILL MOORHEAD is the man who turned the rhetoric which has emanated from Washington about the energy crisis into action aimed at a solution. The final product of his endeavors, S. 932, stands as a fitting tribute to the tireless efforts of this dedicated man. And, as one of the original advocates of alcohol fuels here in the House, it is absolutely clear to me that gasohol would not be as far along as it is today without the efforts of BILL MOORHEAD.

It has been a pleasure to know and work with BILL MOORHEAD here in the House. All of us will miss him, but I am sure I join each and every one of my colleagues in wishing him well in his well-deserved retirement.●

● Mr. YATRON. Mr. Speaker, with the retirement of Congressman WILLIAM S. MOORHEAD, the House of Representatives has lost a great statesman and leader, the Pennsylvania congressional delegation has lost one of its most distinguished members, the residents of the 14th District of Pennsylvania have lost a champion of their rights and concerns, and I have lost the opportunity to continue to work with a man I am honored to know, to have learned from and to call friend.

BILL MOORHEAD has served his constituents and his country for 22 years in the House of Representatives. His legislative accomplishments are innumerable, culminating this year with his sponsorship of synthetic fuels legislation. His active participation in major legislation considered by the Congress, on behalf of the residents of the 14th District of Pennsylvania and the American people, is well-known and deeply appreciated by all his colleagues in the House. For on many occasions, it has been his insight and expertise which have led to better and more comprehensive legislation.

Congressman MOORHEAD's legislative record very ably speaks for itself. We will all miss his valuable counsel and his concern for the people of America. The Pennsylvania congressional delegation will particularly miss his leadership and his voice on behalf of our great State.

I join with my colleagues in wishing BILL MOORHEAD every success in the future. I am honored to have had the opportunity to serve with him for 12 years and I consider it a privilege to have known him. He will be sorely missed.●

● Mr. DERRICK. Mr. Speaker, today I join my colleagues in the House in wishing farewell to a fellow Member from Pennsylvania, WILLIAM S. MOORHEAD.

BILL's 22 years of distinguished service in this body find few parallels. The House-Senate conference he chaired on the synthetic fuels bill of 1979 resulted in nothing less than perhaps the most significant piece of energy-related legislation to that date: the Energy Security Act of 1980.

The scope of legislative initiatives undertaken by BILL was far reaching, spanning from the establishment of the National Foundation of the Arts and Humanities, to consideration of the Chrysler Corporation and New York City loan guarantees.

And while the above highlights some of BILL's accomplishments, it by no means captures the entire extent of his influence in the House of Representatives during his tenure in office.

Having had the pleasure to serve with BILL on the House Banking, Finance and Urban Affairs Committee, I can attest to the tireless effort and dedication he had for his work in this office.

The citizens of Pittsburgh will be hard pressed to find a more capable representative. And BILL's success in public life stands as tribute to that fact.

Mr. Speaker, while I do wish to voice my regret over the departure of such a capable colleague from this body, I do want to extend to BILL my best wishes and good luck in what I am sure will be a continued career of distinction.●

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House in paying tribute to the Honorable WILLIAM S. MOORHEAD, who is retiring after serving the House and his constituents in Pennsylvania for 22 years.

BILL MOORHEAD's numerous legislative accomplishments, among them the establishment of the National Foundation on the Arts and Humanities and the first synthetic fuels bill in 1979, have greatly benefited all Americans. His leadership and expertise in legislative affairs will be sorely missed by the Congress.

We all wish BILL and his family the best of health and happiness in the years ahead.●

● Mr. O'BRIEN. Mr. Speaker, I am honored to place my congratulations among the many that my colleague BILL MOORHEAD will undoubtedly receive in his retirement from Congress.

His career as Representative from Pennsylvania's 14th Congressional District is one of many accomplishments. BILL MOORHEAD's work on establishing the National Foundation on the Arts and Humanities, is just one example of this.

As a member of the Foreign Operations Subcommittee of the Government Operations Committee, he was instrumental in uncovering abuses in our foreign aid program and in opposing wasteful and unnecessary military spending.

I am privileged to have served in Congress with such a dedicated gentleman. The devotion and care that he has given to his work, and to his fellow Members, further shows the kind of man that BILL MOORHEAD is.

He will be greatly missed and I wish him only the best in the years to come.●

● Mr. SHUMWAY. Mr. Speaker, I appreciate having this opportunity to pay tribute to our friend and colleague, BILL MOORHEAD, as he prepares to leave the Halls of Congress to begin a well-earned retirement.

While I have been privileged to work with BILL for only 2 of his 22 years in the House, that period of time was more than enough for me to be convinced of his dedicated service. As a member of the House Banking Committee, and of the Economic Stabilization Subcommittee of which BILL is the chairman, I have worked closely with him on almost a daily basis throughout my tenure in the Congress. The issues which have come before his subcommittee during the past several years have not been devoid of controversy; they include loan guarantees for the Chrysler Corp., and, prior to my service, for New York City. While I have not always shared the chairman's view regarding these issues, I have always respected his opinion, his legislative leadership, and the equitable manner in which he guided our proceedings.

I have also served with Mr. MOORHEAD on the Subcommittee on International Development Institutions and Finance. Again, his responsible approach to legislation and his experience as a Member of this body have created a favorable impression on those who are privileged to know him, and to work with him.

I am pleased to have this chance to offer best wishes to BILL MOORHEAD as he leaves the House, and to assure him that he will not be forgotten.

Thank you.●

● Mr. ERLENBORN. Mr. Speaker, it is with mixed emotions that I add my good wishes to the many others being offered today in honor of my retiring colleague, the Honorable WILLIAM S. MOORHEAD of Pennsylvania. I, of course, wish BILL well and I congratulate him for selecting his own time to retire. On the other hand, I know these Halls and this Chamber will be different without BILL MOORHEAD, and that prospect injects a hollow note.

BILL and I served together for 16 years on the Government Operations Committee. He was chairman of the Foreign Operations and Government Information Subcommittee in the early 1970's, when I was its ranking minority member.

Those were busy years during which major changes to the Freedom of Information Act were made and the Privacy Act was written with our chairman's patient and thoughtful guidance. We worked hard, we worked painstakingly, and we worked together, conferring and consulting to achieve a delicate balance between the public's right to know and the Government's need to keep sensitive material secret.

I expect BILL's representing the 14th District of Pennsylvania and my representing the 14th District of Illinois got our relationship off to a good start. It was, however, our learning about and from each other that built the good relationship we have had.

BILL can leave Congress knowing he was a responsive steward for the people of Pennsylvania's 14th District who left his mark on laws of national importance and who made many lasting friendships in Washington. I know I will always think of BILL kindly and warmly and I hope he has a healthy, happy and long retirement.●

● Mr. VENTO. Mr. Speaker, it has been my privilege to serve on BILL MOORHEAD's Subcommittee on Economic Stabilization of the Banking Committee for the past 4 years.

This experience has been a particularly rewarding one for me, due both to the important legislation which we have tackled and to the pleasure of working with BILL MOORHEAD.

BILL's leadership on the subcommittee has been important in pushing through some of the most important bills of the past two Congresses. BILL skillfully arranged a program of Federal assistance to develop new energy resources in this country and then successfully guided the Energy Security Act through the House and a conference committee. BILL also led the way on legislation to provide Federal loan guarantees for the city of New York and Chrysler Corp. These bills were certainly among the most important that we have passed in recent years, and I think they reflect BILL MOORHEAD's commitment to American working people and his belief in the need for a closer relationship between Government and industry.

BILL has also served this body well by his work in the Government Operations and Joint Economic Committees and as assistant Democratic whip. I know that we will all miss his contributions to resolving the difficult problems we will face in Congresses to come. We will particularly miss his valuable insight into complex economic and financial problems.

We are all losing a good friend in BILL MOORHEAD.●

● Mr. WALKER. Mr. Speaker, I am pleased to join with my colleagues today to pay tribute to our friend BILL MOORHEAD who has announced his retirement from the House of Representatives.

BILL MOORHEAD has ably served his constituents in the 14th Congressional District of Pennsylvania for 22 years. I have been privileged to work with BILL as a member of the Pennsylvania congressional delegation as well as the House Government Operations Committee and can attest to the fact that his leadership will be sorely missed in this House.

I would like to take this opportunity to express to BILL and to his family every good wish for happiness and continued success in the years ahead.●

● Mr. ROE. Mr. Speaker, I rise today with mixed emotions to salute a good friend and an outstanding lawmaker, BILL MOORHEAD of Pennsylvania.

I say mixed emotions because BILL has decided to retire this year and while I wish him well in his new life, neither Congress nor the Nation can afford to lose a man of his outstanding abilities. For the past 22 years the residents of Pittsburgh have been represented in the House by one of the finest lawmakers ever to serve in this Chamber.

Mr. Speaker, I have had the pleasure of working closely with BILL MOORHEAD on several major pieces of legislation. But perhaps the closest to my heart and the one that will have a long lasting effect on the future of our great Nation is the synthetic fuels bill that he introduced in 1979. BILL took the forefront to push for passage of this legislation that will serve as the cornerstone of our efforts to remove the United States from its continuing unhealthy dependence on foreign oil. As vice chairman of the National Alcohol Fuels Commission I can tell you that BILL MOORHEAD's legislation, which eventually became the Energy Security Act signed into law by President Carter this year, is truly a landmark bill.

BILL MOORHEAD is truly a man for all the people and his record in Congress speaks to that fact. He is mainly responsible for the establishment of the National Foundation on the Arts and Humanities, a body that has helped establish a strong cultural tradition for excellence. But he has also been a champion for those who have been unable to help themselves. The people of the Eighth Congressional District of New Jersey, which I proudly represent, will never forget his efforts as a key member of the Banking, Finance and Urban Affairs Committee that resulted in a law guaranteeing insurance coverage to inner-city residents.

BILL, we all miss you. But thank you for leaving us a record of outstanding achievements to serve as a model for all who will follow in your footsteps.●

● Mr. ASHLEY. Mr. Speaker, it is with profoundly mixed emotions that I join so many Members today in paying tribute to my good friend and colleague from Pennsylvania, Congressman BILL MOORHEAD. Having worked so closely with BILL for over 20 years in the Congress, I know better than most what a void his retirement will create in this body. I will miss him as an advisor and a fellow fighter in countless legislative battles, and I will miss him as a friend. But I also want to offer BILL my heartiest congratulations on his remarkable career, and my very best wishes for a very successful and rewarding career in the years ahead.

It has been my special pleasure to serve with and work with BILL on hundreds of issues through the years, especially those emanating from the House Banking Committee and the Economic Stabilization Subcommittee which he has so ably chaired in recent years. BILL's enormous contributions to such legislative landmarks as aid to New York City, COWPS, the aid package for Chrysler Corp., and synfuels—just to name a few—will be remembered for years to come. He has been a true legislative craftsman.

My hope is that BILL will be able to find time in the years ahead to return to Capitol Hill—taking time from what I know will be a very successful law practice—to visit with his old friends, and to offer his special brand of humor, friendship, and counsel. It has been a privilege to serve with him, and it has been a pleasure to be his good friend.●

● Mr. ROYBAL. Mr. Speaker, it is both a privilege and a pleasure to rise in tribute to my distinguished colleague, BILL MOORHEAD, whose retirement from Congress after more than 20 years of service will have a profound effect on all of us.

Like a star football player whose team has retired his number, one almost feels that BILL's seat should be retired right along with him. His profound commitment to the people he serves is reflected in his legislative record. One of his first accomplishments in Congress was the establishment of the National Foundation on the Arts and Humanities. In his capacity as a member of the Government Operations Committee, he has proved himself a true watchdog of the Federal process. He was an outspoken critic of the Vietnam war, was instrumental in uncovering abuses in our foreign-aid program, and has successfully opposed wasteful and unnecessary military spending.

His success in managing sensitive bills is indeed impressive. Among his accomplishments are passage of legislation for aid to New York City and to authorize the President's Council on Wage and Price Stability.

Obviously, Bill's leadership will be sorely missed. I wish him the best of luck in all his future endeavors.●

Mr. GAYDOS. Mr. Speaker, I yield back the balance of my time.

GESMO SHOULD BE COMPLETED SOON

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. Broyhill) is recognized for 5 minutes.

● Mr. BROYHILL. Mr. Speaker, in today's Washington Post, there appears a thought-provoking letter to the editor written by our colleague Tom Corcoran, of Illinois, detailing his views on the so-called GESMO study. His letter is in response to a Post editorial critical of Mr. Corcoran's amendment to the Nuclear Regulatory Commission's fiscal year 1981 authorization bill which would mandate that the NRC complete its rulemaking procedure on the GESMO study. The Corcoran amendment, adopted by a 22-to-20 vote in the full House Commerce Committee in June, with my full support, will be offered to the NRC bill when it is considered by the House in the very near future.

At this point, I would like to insert in the Record a copy of the Post's September 7 editorial and Mr. Corcoran's response to it for the benefit of all my colleagues:

[From the Washington Post, Sept. 7, 1980]

The GESMO Gizmo

Efforts are afoot again in Congress to prepare the way for the reprocessing of nuclear waste and for the associated recycle of the plutonium thus produced for use as fuel in existing types of reactors. The vehicle is an amendment to the Nuclear Regulatory Commission's authorization bill that would require the NRC to revive an exotic rule-making proceeding known familiarly as GESMO—Generic Environmental Statement on Mixed Oxide Fuel.

The law provides that such a statement must be completed and a postive ruling made before the NRC may grant licenses for reprocessing and recyle. Work on it was begun in 1974 but was suspended by the NRC in 1977, in conformity with the president's decision to defer indefinitely reprocessing in the United States. This decision was taken primarily on economic grounds, supported by non-proliferation considerations. Since 1977, both arguments have become, if anything, more compelling.

For reprocessing to make economic sense, the value of the plutonium recovered must be greater than the costs of recovery. Plutonium's value in this context hinges on the cost and availability of the uranium fuel it would be replacing. But since 1977 the price of uranium has dropped sharply, as have projections of future needs for uranium fuel.

The economic argument is buttressed by the fact that the spread of reprocessing technology offers any nation direct access to weapons-usable plutonium. Thus the proliferation risks asociated with a nuclear fuel cycle involving reprocessing and recycle are far greater than those of a cycle that never produces weapons-usable materials. Since 1977, Pakistan has vividly demontrated the point.

The ultimate irony is that reprocessing and recycle do not make the task of disposing of nuclear wastes any easier. Though some types of wastes are reduced, the process produces additional types so that the waste disposal knot—the one that must be untangled if nuclear power is to survive—remains as intractable as ever.

The last thing nuclear power needs now is a congressional directive that will pitch the NRC into three or four years of bootless debate over the pros and cons of reprocessing while urgent safety, health and waste disposal isue get shortchanged. The right approach for those who favor nuclear power is not to keep beating this dead horse, but to turn their attention to efforts to bring about a long overdue nuclear waste disposal program—one that does not involve reprocessing.

[From the Washington Post, Sept. 16, 1980]

Letters to the Editor—GESCO Should be Completed

The Post's editorial of Sept. 7, "The GESMO Gizmo," following by a week an eight-page package of patently false White House GESMO [Generic Environmental Statement on Mixed Oxide Fuel] "facts" sent to me and my colleagues in the House **by the phantom congressional lobbyist for** the president, Frank Moore, suggests that, while Mr. Moore may not have much impact on Capitol Hill, he certainly has influence on other high places in Washington.

For the first time, economics was raised as a major argument against GESMO. Economics in this case is a bogus issue. Contrary to the pap the White House is now putting out on this, the only real argument against GESMO is non-proliferation of nuclear weapons.

The government's role in reprocessing is a regulatory one to make sure reprocessing is not harmful to public health, safety and the environment, and to determine whether there are standards and safeguards that would permit safe reprocessing. In a nutshell, that is what GESMO is all about. The economics of reprocessing is a matter for industry, not the taxpayers of this country, and that certainly suits me fine.

From the standpoint of both domestic energy and sensible nuclear waste management, however, I believe GESMO should be completed. That's why I authored the amendment to the NRC authorization bill to require that. Spent nuclear fuel yields a high percentage of uranium that can be used again. Plutonium, another byproduct, could be recycled through our power plants—not only providing more energy, but avoiding the problems associated with storing it underground forever. Finally, we would be left with much less high-level radioactive waste, ready for solidification and permanent storage.

So, to my mind, the real issue of GESMO is one of foreign policy. That is true today, as it was in 1977 and in 1978 when I supported President Carter's Nuclear Non-Proliferation Act. However, it's not a compelling argument today, because the world is not following our example on non-proliferation matters.

Under the leadership of the United States, a 66-nation international conference was convened to look for alternatives to reprocessing. In February of this year, it completed its work in Vienna, concluding that reprocessing "is an essential preliminary to many of the possible fuel cycles," and that proliferation is a political matter monitored and controlled by international safeguards.

Even before reaching those conclusions, countries such as England, France, Japan, the Soviet Union and West Germany were going ahead with their reprocessing facilities. So our leadership has been ineffective. A few years ago we were the world leader in nuclear technology and, therefore, we had the capacity to control the use of advanced fuel cycles. Had other countries stopped their programs in 1977 as we did, the United States would still be in the preeminent position. But they did not.

That's why GESMO is important. Reopening GESMO would signal that, because other countries didn't follow our noble example on reprocessing, we are reviewing that policy to make it more effective by regaining U.S. leadership in, and influence over, nuclear technology.

Tom Corcoran,
U.S. Representative.

Washington.●

WORLDWIDE VOICE COMPETITIONS TO BE HELD AT ACADEMY OF MUSIC IN PHILADELPHIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. McDade) is recognized for 5 minutes.

● Mr. McDADE. Mr. Speaker, I would like to take this opportunity to salute a great man and a great institution who have joined forces to create a unique opportunity for aspiring young artists in the field of opera. This spring, the Opera Company of Philadelphia and the renowned tenor Luciano Pavarotti will hold worldwide voice competitions at the beautiful and historic Academy of Music in Philadelphia. This event is a testimony to the man whose dream it has been to hold such a competition. It is a testimony to a man who has not forgotten his beginnings.

Luciano Pavarotti has become recognized as "the reigning tenor of the lyric Italian opera" and has one of the worlds finest voices. He will give young artists with great promise a once in a lifetime opportunity to appear on stage with a master. That master is Luciano Pavarotti. For this competition will not award the winners with money as do most opera competitions, instead, Luciano Pavarotti will give the winners the same chance he had in 1962 when he appeared on stage in Italy and launched his own brilliant career. In addition to the opportunity to appear on stage with Luciano Pavarotti, the winners of the competition will be given 4 weeks of extensive training in voice, drama, and language from leading American and European coaches.

Mr. Pavarotti has chosen the Philadelphia Opera Company for all the right reasons; we know them well. The competition will focus the attention of the world on opera and on Pennsylvania. The Philadelphia Opera Company has been at the forefront of encouraging bright new talent. The opera company is widely acclaimed for the superlative quality of its performances and the Academy of Music has the historical backdrop befitting such an esteemed competition and glorious occasion. It is important that we continue to showcase exciting young talent and put new life into the arts. When the performances are given during the 1982 opera season, it will be a moment that the young singers will cherish and it will be a joy for us to behold. It is the spirit of this competition which enables the world to enjoy the likes of a Luciano Pavarotti and we are forever grateful.●

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. NELSON) is recognized for 5 minutes.

● Mr. NELSON. Mr. Speaker, due to official business in my district yesterday I was not present for rollcall vote No. 540. If I had been present I would have voted "yes" on the question of ordering a second on H.R. 6865, to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, N.Y.●

BILINGUAL EDUCATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 15 minutes.

Mr. GONZALEZ. Mr. Speaker, throughout our history, the public schools have been the great catalyst of our society. It is the schools that have produced the world's most capable work force. It is the schools that have created in our people a sense of personal responsibility, a relief in liberty, and a profound understanding that in a free country like ours, the accident of birth is no bar to personal ambition or progress. It is the schools that have made our Nation of immigrants into a society with fundamental unity.

The Department of Education is now carrying out a rulemaking proceeding of profound importance; it addresses the issue of how our schools could better carry out their task of being an effective catalyst, better deal with the disparate needs of people who come from many different backgrounds, but with common hopes and purposes. There is much controversy about this rulemaking procedure, but we are fortunate that it is in the hands of a singularly capable Cabinet officer, Secretary Shirley Hufstedler. She personally opened hearings last week in San Antonio on the proposed bilingual regulation, and her comments are well worth reading. Accordingly, I offer for the RECORD my introduction of the Secretary, and her comments at that hearing:

BILINGUAL EDUCATION HEARING—INTRODUCTION OF THE SECRETARY OF EDUCATION

(Remarks of U.S. Representative HENRY B. GONZALEZ, September 8, 1980)

There could not possibly be a better place than this to begin hearings on the proposed bilingual education regulations. Here, in the Institute of Texan Cultures we see all around us the diversity of the American people—a diversity that has been and remains the wellspring of our strength as a nation. It says on our money, "E pluribus unum;" but our country is not only a federation of States, it is a federation of peoples; we are truly a nation of one, from many.

It is a special privilege for me to welcome and introduce the first Secretary of Education.

Education is the greatest engine of social progress. It has been in the American classroom that our nation of immigrants has learned the skills not just of survival, but of success. It has been in the American classroom that we Americans, coming as we do from many and diverse backgrounds, have learned not just to tolerate, but to respect and draw strength from each other.

Madame Secretary, you recognize the importance of education; to become Secretary you have left a distinguished career in law, and a position of high responsibility on the Federal bench to head the Department of Education—a department whose creation I have supported, and welcome as an agency that at long last recognizes the significance of the Federal role in education, and the importance of education to this nation.

For those who do not know Judge Hufstedler, I can say that I recall meeting her in 1968, when Lyndon B. Johnson nominated her to the Court of Appeals, and again when she was named to be Secretary of Education by President Carter. It would be truly modest to say that you are a person of formidable talent and accomplishment, respected not only as an able intellect, admired not only as a distinguished lawyer, and warmly regarded not only as an outstanding jurist; you are all of those things, and more: you are also a person of compassion, a person of deep and human concern, one who combines humanity with rare talent. You have given your talent in public service, and for that the nation is indebted to you.

Madame Secretary, there is nothing more complex than the question of how we can most effectively teach children who speak a language other than English. In my own school career, it was a question of sink or swim; a matter of giving me extra time in a grade, so that I could learn English. But there were many who sank. We have come a long way since then. We are no longer satisfied to see the children of first generation immigrants consigned to the bottom of the social and economic heap, nor to see those children of that generation stunted in their intellectual growth by reason of limited English ability. Today we believe that it is not only possible, but necessary, to effectively reach and teach children who come to school without a command of English. We know that this is not easy. We know that there are controversies that abound. But it is not an issue we can evade, and this hearing is evidence of that.

Madame Secretary, your presence here clearly underlines the importance of what you are trying to accomplish. Your presence demonstrates the urgency of the task. And your presence proves the depth of your own commitment and concern.

It is a privilege, pleasure, and honor, to welcome here, and to introduce the truly distinguished first Secretary of Education, the Honorable Judge Shirley Hufstedler.

REMARKS OF SECRETARY SHIRLEY M. HUFSTEDLER TO THE OPENING SESSIONS OF THE LAU HEARINGS

This is an important day in the life of the Department of Education and of the nation. The hearings that begin this morning will take us to six cities in two weeks. At each stop along the way parents, educators, community leaders and government officials will come together to address the needs of 3½ million youngsters who speak little or no English.

It will be a small exercise in Democracy, the kind that we Americans take so easily for granted. The witnesses will all be Americans, though the list of names will read like a roll call of the world's nations. We take that for granted, too. Yet there is nothing trivial about either fact. Taken together they say much about why we are here and what we can hope to accomplish. Taken separately, they speak of diversity and democracy, two paths which have converged in San Antonio today.

Our diversity springs from immigration, which has been at the core of our national experience for centuries. Recent arrivals adjusting to life in a new land have been features of our public life with a constancy—and on a scale—almost beyond the comprehension of other countries. That peculiarly American experience continues in the 1980s much as it did in the 1780s, and weaving new Americans into the diverse fabric of society remains a national priority. This hearing is a waystation on our well-worn path toward that goal.

By comparison the other path, that of democracy, seems at once older and newer. In one sense, we are concerned with a timeless problem of principle: Protecting the rights of a minority within a democratic state. Yet the modern concept of civil rights did not really take shape until the Supreme Court's landmark decision in Brown vs. Board of Education just 26 years ago. And it was not until 1964, with the passage of Civil Rights Act, that the principle was firmly established.

Ten years later, in the case of Lau vs. Nichols, the Supreme Court ruled that civil rights protections also extend to school children who do not speak English. Our efforts to meet that mandate put us on the path to this place and this moment.

It is altogether fitting that the ways have converged in San Antonio. The people of this State and this city have travelled both paths. They know them well.

Our gathering place offers eloquent testimony to the diversity and the strength of a State built by immigrants. A lively mixture of the cultures showcased here is at the very heart of Texas' vitality. The resulting enrichment of the State's intellectual, artistic and creative life is reflected not merely in museum exhibits but in every street of San Antonio. It lingers under the cypresses and along the river that winds through this historic city—a city that was bilingual hundreds of years before educators appropriated the term.

The builders of Texas came first from Spain and Mexico, then the United States, then throughout the world. From that endless stream of new arrivals Texas fashioned her unique character—and her most precious resources. The State's wealth resides neither in the vast and magnificent land, nor in the fabulous oil and mineral deposits beneath it. Texas' greatest treasures are her people.

That is why public education has been so important here. In a State built on people, Texans have always understood the value of investing in human resources. And the same logic, the same refusal to waste human potential, has led many to concentrate on the special needs of children who do not speak English.

San Antonio, which was the site of Texas' first public school in 1746, has been a leader in education ever since. Some of the earliest and best bilingual programs in the country were developed right here. I am looking forward to visiting several of them later today.

So Texans come to these hearings with a long and productive experience in the blending of cultures and languages. For you, diversity is a well-travelled path—an integral part of your heritage.

There is another side of that heritage, however, both in Texas and in the nation as a whole. Proud as we are of our diversity, American history is replete with examples of discrimination based on language. I wish that I could say that such problems were behind us; but they are not. We have a long way yet to travel on the path toward equity and democracy.

Millions of non-English speaking children still face enormous obstacles in our schools. Some, unable to communicate with their teachers, are routinely classified as mentally retarded. Countless others fall hopelessly behind their peers during the crucial early years of school. For all too many, early frustration establishes a pattern of failure. School becomes an alien place, a kind of purgatory where catching up is impossibe, and respect for one's heritage is unheard of. The door to education is slammed shut and locked fast before these children have even one foot across the threshold.

Many citizens and communities have made conscientious efforts to overcome these problems. But there are also many who, under one cover or another, have done essentially nothing—leaving countless children to sink or swim. And heartbreaking numbers of those youngsters are sinking.

I do not believe that there could ever be justification for such a policy in a democratic society. But perhaps it mattered less in the days when few Americans completed high school and even fewer went on to college. Then, economic success in life was less closely tied to educational attainment. Today, however, the future for young people without schooling is bleak and getting bleaker all the time. Education cannot guarantee a happy life or productive employment; but lack of education is very nearly a guarantee of lifelong poverty, dependence and despair.

No one understood that better than a man who taught school in Cotulla, Texas in the 1930's. He went on to the White House; but he never forgot the little school where he learned first hand about language barriers and about poverty. Returning to Cotulla in 1966, he recalled those days so poignantly that I cannot resist reading some of what he said:

"Thirty-eight years have passed but I still see the faces of the children who sat in my class. I still hear their eager voices speaking Spanish as I came in. I still see their excited eyes speaking friendship.

"Right here I had my first lessons in poverty . . . and the high price we pay (for it in dropouts and blighted lives.) . . .

"How long can we pay that price?"

"Everything I want to work for as your President—to achieve peace, to conquer poverty, to build a worthy civilization—all of these depend in a very large degree on what happens in this school and what happens in other schools throughout the land."

I think Lyndon Johnson would be gratified with this hearing today. Gratified that we are moving ahead to see that no child is foreclosed from education by barriers of language. Gratified that a program he marched onstage has been lifted to cabinet level and to nationl attention by another President, Jimmy Carter, who understands, as he did, what will make the difference to a civilized society.

Broad concerns for democracy and for diversity have drawn us to San Antonio. But, now that we are here, the specifics of proposed regulations will command our attention. The regulations were written by the Department of Education under court order. It has been a sensitive task. We have tried to reflect both the needs of the 3½ million children involved and the concerns of 16,000 school districts responsible for serving them.

Throughout our work we have been guided by two principles: First, each child must learn English—and must learn it as quickly as possible. Second, while learning the language, children must not be allowed to fall behind their English-speaking classmates in other academic subjects. If either principle is neglected, all our promises of equal educational opportunity will remain empty rhetoric.

Shorn of detail, the proposed regulations would require schools to identify each student's primary language; to assess their skills both in English and the primary language; to provide effective services for teaching students English and helping them keep pace in other academic subjects; and, finally, to determine when those services are no longer needed and the students can be taught exclusively in English.

Since publication of the proposals last month, there has been a good deal of healthy discussion, and also a fair amount of confusion. In the interest of clarity, let me say just a word about what they are and what they are not.

They are not designed to suppress any language or subculture in the United States. But they are designed to ensure that all our children become both fluent and literate in English.

Cultural diversity is one of America's greatest strengths. We could not suppress it if we would; and we should not suppress it if we could. But unity is also America's strength. And the ability of every citizen to communicate in our national language is the keystone of unity.

The regulations are not designed to maintain any language or subculture in the United States. But they are intended to foster respect for the multiple heritages of our people.

I have no doubt that Americans of every background will continue to maintain their traditions as they have always done: through private institutions of family, community, and religion. If, in addition, individual states and localities wish to adopt a policy of maintenance, that is their right; but it is neither the right nor the intention of the Federal government to tell them to do so.

The regulations are not a sudden or surprising development. But they do contain some new features.

The legal requirement to meet the needs of non-English speaking children dates back sixteen years, and civil rights policies on bilingual education have long been in effect. The proposals we are considering today are a good deal easier to read and understand. They set much more practical and convenient thresholds for providing special services. And they acknowledge that children cannot learn subjects taught in a language which they cannot understand. Apart from that, they are not dramatically different from the earlier policies.

Finally, the proposed rules are not rigid or monolithic. But they do attempt to guarantee equal access to education for every child in this country—regardless of the language barriers he or she may face. No one is seeking to impose a single solution or philosophy on America's diverse school system. Instead the focus is on results—on the achievement of individual children. Within the proposed format, each school district would retain absolute freedom in matters of curriculum. And limited waiver provisions would permit districts already achieving the desired results through other programs to continue doing so.

In their simplest terms, the proposed regulations are a reaffirmation of this nation's love and concern for our children—and an investment in their futures.

Such investments have never been cheap, nor free from controversy. And our society has not always been skillful in handling the marriages of education and law that make them possible. Still, we have never shrunk from the investments, for we know the price of neglect. And processes like these hearings enable us to do a better job of managing the logistics with every passing day. I am absolutely confident that, together, we can produce sensible, effective regulations that will benefit the entire country.

Throughout these proceedings, the Department of Education must first and always be an advocate for children. That advocacy requires the courage to adhere to legal requirements without equivocation and the thoughtfulness to define educational responses with vision and with common sense. It also requires meaningful consultation with those persons who have the highest stake in what we do—concerned educators, community leaders, citizens and parents.

That process of consultation, which has been going on for many months now, reaches its climax in these next two weeks. The proposed regulations have come a long way. Yet, within the constraints of the law, nothing about them is beyond change. We have done our best to draft fair and flexible proposals. Now we are anxious to have the reaction of the American people.

I expect the witnesses gathered here and in the other cities across the country to offer a range of comments and insights that will cover—and, hopefully, improve—virtually every section of these regulations. But there are certain areas in which we are particularly anxious to have your advice—areas ranging from exit criteria, to staff requirements, to proper placement for children who are comparably limited in English and their primary language. We have attempted to frame these questions as clearly as possible in the Federal Register. I hope that, where appropriate, you will make reference to them in the course of your testimony.

You will doubtless take a measure of comfort in knowing that I have the advice and assistance of a virtual posse of Texans as these hearings begin. They are outstanding, experienced people who know the problems on a grassroots basis: Dr. Josue Gonzales, Director of Bilingual Education and Minority Language Affairs; Tony Califa who will be heading the team this morning; Ed Baca, the moderator; and, of course, the Chief of Protocol for the United States, Ambassador Albardo Valdez, who will be speaking to us in a moment.

You can be sure that team of Texans and I will be reading every word of testimony from San Antonio, and from the hearings which follow in Denver, San Francisco, New York, New Orleans and Chicago. And you can be sure that every idea that you offer will be carefully considered before we move to a final decision.

I began by remarking how casually we Americans glide over everyday reminders of democracy and diversity. That both are common enough to be taken for granted is a very good thing. Yet there is always the danger that we may lose sight of their true value.

I would like to close with a similar reflection on very large numbers. In our much-numbered society we glibly toss off figures that would have astonished our ancestors, yet we rarely pause to consider their real meanings. Consider, for example, the three-and-one-half-million children whose lives will be touched by what we begin here today.

Think of that: three-and-one-half-million human beings! Each one unlike any other person who ever walked the earth! Each one with limitless potential! What number can do them justice? How can we even begin to glimpse the possibilities of their future? Here is a clue:

Two hundred years ago, precisely three-and-one-half-million people joined together to found this nation. They dreamed radical dreams for their children—democracy, tolerance, education for all—and they made them come true. They changed the world.

We must dream no lesser dreams for children of today. They, too, have it in them to change and astonish the world.

GEN. FRIEDRICH VON STEUBEN TO BE COMMEMORATED IN CHICAGO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, September 17 is the anniversary of the birth of one of the heroes of the American Revolutionary War, Gen. Friedrich Wilhelm von Steuben. As a native German, von Steuben was one of those men whose spirit and imagination were aroused by the struggle for independence of a small group of colonies an ocean away and without the help of this valiant soldier, America's fight for freedom would have been much more difficult.

On Saturday, September 20, the German American Societies of Greater Chicago will present their 15th Annual von Steuben Day Parade. The parade will step off at noon, and I look forward to joining Americans of German descent in Chicago on the reviewing stand in commemorating the crucial and major contributions of this outstanding man in the winning of America's independence, as well as the contributions of German Americans throughout the entire history of our country. America is a land of immigrants, and the immigrants who settled here from Germany have made countless and inestimable contributions to our Nation's freedom and greatness, and to our Nation's rich scientific, cultural, and economic life.

After the colorful pageantry of the grand parade, which begins at Chicago's famous State Street and Wacker Drive, there will be an evening banquet in the Red Lacquer Room of the Palmer House Hotel. The capable and energetic Karl C. Laschet is serving again this year as the parade's general chairman and grand marshal, the honorary grand marshal is the mayor of Chicago, the Honorable Jane Byrne; Joseph Gies is the Honorary General Chairman, and Norbert Hozinger is serving as the parade marshal.

General Friedrich Wilhelm von Steuben won a special place among the heroes of America's War of Independence because of his many talents and his mature experience. He was 47 years of age when he arrived in 1777, a relatively old man for a period of history before modern amenities and medicine. He had already achieved high standing for his accomplishments in Prussia and was a member of the general staff of King Frederick the Great.

In early 1778, von Steuben reported for duty to General Washington at Valley Forge, at a time when the colonies were suffering through military setbacks, privation, and low morale. During the bitter days at Valley Forge, General von Steuben went to work with zest and spirit, sustaining the courage of the troops, and contributing his private funds for their well-being. He drilled and taught them up-to-date military practices so that when spring finally arrived, they were ready to engage the best army of that time in equal combat.

The U.S. Senate passed a joint resolution in 1961 authorizing the President to proclaim September 17 of each year as General von Steuben Memorial Day. A copy of that resolution follows:

RESOLUTION

Whereas the successful conclusion of the struggle of American colonists for liberty was immeasurably aided by sacrifices and services of freedom-loving nationals of many countries; and

Whereas General Friedrich Wilhelm von Steuben, following a brilliant military career in his native Germany, responded to the appeal for assistance from the beleaguered Colonies; and

Whereas General von Steuben, drawing upon his experience and his vision, instructed forces mobilized by the Continental Congress, directed training at Valley Forge, and established discipline and morale which enabled disordered, retreating forces to rally and reorganize following the Battle of Monmouth; and

Whereas General von Steuben served with distinction as inspector general of the colonial forces, in command of the district of Virginia, and during the stage of Yorktown; and

Whereas the drill regulations and rules of order and discpline for troops of the Colonies conceived and promulgated by General von Steuben were formally adopted by the Continental Congress as the governing code for forces of the Revolution; and

Whereas the ideas and methods advocated and perfected by General von Steuben were reflected in the establishment of the United States Military Academy; and

Whereas the United States regularly shows appreciation to heroes of other nationalities who were conspicuous in the fight for independence; and

Whereas the anniversary of the birth of General von Steuben and the anniversary of the completion of labors of the Constitutional Convention coincidentally fall on September 17: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, the President of the United States is authorized annually to issue a proclamation calling upon officials of the Government to display the flag of the United States on all governmental buildings each September 17 and urging the people of the United States to observe the day with appropriate ceremonies commemorating the birth and the services of General Friedrich Wilhelm von Steuben.

Mr. Speaker, on the occasion of this commemoration of the inspiring courage and heroism of General Friedrich von Steuben, I send my greetings and best wishes to all Americans of German heritage residing in the 11th District of Illinois, which I am honored to represent, the city of Chicago and all over this Nation who are celebrating this grand event.

The officers and membership of all the German American Societies of Greater Chicago are working hard to make the 15th Annual Von Steuben Day Parade into another great success and all of Chicago is looking forward to this patriotic event. I send my congratulations to them on their achievement and on their many fine contributions to making Chicagoland a better place to live, and to their general parade chairman, Karl C. Laschet. The names of the parade's leadership and committee membership follow:

Commitee: Felix Bachmeier, Melvin Brandt, Stefan Dama, Rudi Dick, Ludwig Erdbeer, Willi Follmer, John Hebling, Elisabeth Kraus, Fred Marunde, Josef Matzer, Wolfgang Reinke, Horst Seyferth, Willi Scharpenberg, Nick Schneider, Alfred Schmitke, Horst Tietz, Frank Workman.

Helen Meiszner, parade treasurer; Joseph Zottmann, Betty Center, and Louise Jochum, trustees.

Paula Zottman, cornflower chairlady; Clara Winkler, recording secretary; Marianne Gies, correspondence secretary; Virginia Vazzano, cordinator; Edward Kmiec, assistant coordinator.

Directoren: Joseph Anetsberger, Betty Center, Willi Follmer, Josef Frieberger, Karl Kurz, Alfons Schneemann, and Joseph Zottmann.

Finanzcommittee: Sarah Brantsch, Henrietta Baltis, Peter Kratich, and Josef Matzer.●

LEGISLATION EXONERATING BISHOP COLLEGE OF DEBTS OWED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. FROST) is recognized for 5 minutes.

● Mr. FROST. Mr. Speaker, today I am introducing a bill proposing to exonerate one of the oldest and largest black colleges in the country, Bishop College of Dallas, Tex., of $1,237,669 in outstanding debts owed to the Federal Government. This debt was identified in an audit covering the college's activities through 1974 and also includes miscellaneous debts accrued between 1974 and 1978. The debt resulted from questionable financial management practices, over a series of years, of former college officials who were unable to fully account for their use of Federal funds.

In August 1979 the Department of Health, Education, and Welfare and Bishop College culminated an intensive effort to settle this outstanding debt by agreeing to a 6-year repayment schedule. Under the terms of that schedule, Bishop is to begin repaying the $1,237,659 in September 1981, at a rate of $26,000 a month. Bishop entered into these negotiations in good faith and had every intention of living up to this agreement when the time came to begin making the payments.

As confident as I am of the integrity of those officials who signed that agreement, I have been advised by financial experts that Bishop College will have great difficulty continuing in operation if it is not relieved of this obligation before September 1, 1981. Mr. Speaker, Bishop is a pioneer in the field of black education. The 100th anniversary of its existence as a black liberal arts and teacher education college will be commemorated later on this week. If the Congress does not take the steps to relieve Bishop of its debt to the Federal Government, I do not believe it will survive to see its 101st anniversary commemorated.

Some people may question the need to continue black colleges in this country. These institutions remain a source of great pride to the black community nationwide. Many black church leaders are graduates of these colleges, and Bishop has played a leading role in this area. Moreover, black students still have special needs that in some cases can only be met by black institutions. These schools continue to play an important function in integrating young black men and women into the job market.

I do not take the seriousness of my proposition lightly. The predicament of Bishop College is the product of many years of its own mistakes. But the story of this college is not merely the story of questionable management policies. It is symptomatic of a black college's stuggle to compete for the best and the brightest students at a time when educational costs were skyrocketing. The tragedy of Bishop College goes deeper than these audits, as it is the tragedy experienced by any institution where Federal funding plays an important role. Millions of dollars in Government funds were offered to Bishop during a critical time. Yet the myriad of rules, regulations, and accounting requirements that accompanied these funds were too much for a school led primarily by ministers to manage. The tragedy of Bishop College is also tragedy of a handful of men who mismanaged those funds in the belief that they were pursuing the only possible course if the college were to survive. But, Mr. Speaker, the real burden of this tragedy will fall upon the thousands of students who look to Bishop College for their education.

Since the August 1979 repayment agreement, this college has made much progress, and I am introducing this bill with the expectation that officials there will continue to improve their financial management techniques. In conjunction with the Department of Education, the United Negro College Fund, the Ford Foundation, the Dallas Citizens Advisory Council, a nationwide coalition of black churches, and my Congressional office, Bishop College has already begun modernizing its operations. An intensive effort began in 1979 to reconstruct its bookkeeping system. Professional personnel, skilled in the techniques of administering Federal funds, have been hired and are supervising the college's financial transactions. A technical assistance team has been on hand to oversee this operation and college officials are working closely with the Department of Education in planning for long-term operational needs. Bishop has a new chief executive officer and the board of directors will be participating in training sessions that will teach them modern administrative procedures. The scope of the college's service has been trimmed: Degree programs will be reduced, the operating budget has been slashed, empty dormitories will be converted to other uses, and excess land has been sold off. The college, for the present time, will concentrate on recruiting students from the Southwest area, discontinuing its efforts to recruit from Northern high schools. In short, Bishop officials are dealing with their problems in such a way as to life the college out of its present situation without destroying its chances for future growth.

Finally, Mr. Speaker, I will point out that not once during this controversy have the academic credentials of Bishop College been publicly called into question. Not once during the audits, the negotiations, or the trials have allegations of impropriety been levelled against the college as an institution of higher learning. As far as the business of educating young adults, Bishop's record of academic excellence has been sustained. In order to allow this college to continue serving the black community and to continue serving the needs of young men and women who are depending on its survival for their education, I respectfully request of my colleagues their prompt and favorable consideration of this bill.●

DOD APPROPRIATION BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS), is recognized for 5 minutes.

● Mr. BRADEMAS. Mr. Speaker, the Defense Department appropriations bill for fiscal 1981 which the House approved today provides this Nation a balanced approach to our security. The bill recognizes the need to increase selected portions of our military forces to counter a series of aggressively imperialistic moves by the Soviet Union.

This legislation helps assure the protection and maintenance of our position in the world.

It assures our allies that any fears they may harbor about our continued support are unwarranted.

In order to accomplish these objectives, Mr. Speaker, it has been necessary to increase the funds for the Defense Department substantially. This bill provides $157 billion in new budget authority for the Defense Department, $19.7 billion more than was appropriated last year and $2.5 billion more than was requested by President Carter.

The bill provides money for raises for our military personnel; money for additional raises already authorized by Congress will be included in a later supplemental measure.

A major item in the bill is $51.8 billion for what are known as operations and maintenance, a sum $7.1 billion higher than last year.

Mr. Speaker, the increased funds for military pay and for operations and maintenance are designed to deal with two of the more perplexing problems faced by our modern military forces. The salary increases should enable us to keep more experienced personnel from leaving the military and the funds for operation and maintenance should enable those personnel to keep their equipment in better condition and prolong its usefulness.

In addition, the bill provides $44.2 billion for the procurement of new weapons, a sum $8.7 billion higher than a year ago and $3.6 billion over the President's request.

The $14.8 billion appropriated for the research and development of new weapons includes money for the proposed MX missile system, and a new strategic manned bomber that will take full advantages of the latest antiradar technology.

Mr. Speaker, in addition to the overall importance of this bill in maintaining a strong and secure military force is an amendment, adopted by the House, which has much potential importance to areas like the district I represent in northern Indiana.

This amendment, offered by the distinguished chairman of the Defense Appropriations Subcommittee, the gentleman from New York (Mr. ADDABBO) would allow the Department of Defense to target some of its purchases of nonstrategic goods and services to firms in areas of high unemployment.

As I say, Mr. Speaker, the Addabbo amendment, in repealing the so-called Maybank amendment, potentially benefits communities like my own, where unemployment is substantially higher than the national average. But the Addabbo amendment is so written as to maintain competition for defense contracts and as to assure that the Defense Department will be able to select the most qualified competitor for weapons systems, aircraft and other items that are vital to our national defense. I was glad, Mr. Speaker, to give strong support to Mr. ADDABBO's amendment.

Let me, Mr. Speaker, also take this opportunity to congratulate Mr. ADDABBO on the outstanding job he has done in handling a piece of legislation essential to the security of our country. There is no harder working or dedicated Member of this body than JOE ADDABBO and the entire Nation is in his debt.●

THE GLOBAL 2000 REPORT TO THE PRESIDENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 10 minutes.

● Mr. BINGHAM. Mr. Speaker, "The Global 2000 Report to the President" begins as follows:

> If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically, and more vulnerable to disruption than the world we live in now. Serious stresses involving population, resources, and environment are clearly visible ahead. Despite greater material output, the world's people will be poorer in many ways than they are today.
>
> For hundreds of millions of the desperately poor, the outlook for food and other necessities of life will be no better. For many it will be worse. Barring revolutionary advances in technology, life for most people on Earth will be more precarious in 2000 than it is now—unless the nations of the world act decisively to alter current trends.
>
> This, in essence, is the picture emerging from the U.S. Government's projections of probable changes in world population, resources, and environment by the end of the century, as presented in the Global 2000 study. They do not predict what will occur. Rather, they depict conditions that are likely to develop if there are no changes in public policies, institutions, or rates of technological advance, and if there are no wars or other major disruptions. A keener awareness of the nature of the current trends, however, may induce changes that will alter these trends and the projected outcome.

As the President said in releasing the report on July 24—

> Never before had our Government or any government attempted to take such a comprehensive, long-range look at interrelated global issues such as world populations, agriculture, water resources, forest resources, energy needs, and the overall environmental quality of the Earth we live on.

The report, 3 years in the making, tells us what the world will be like a mere 20 years from today—unless we and the other nations of the world join together to change the course of history.

Secretary of State Muskie, in his statement on the release of the report, eloquently outlined the alternatives we face:

> World population growth, the degradation of the earth's natural resource base, and the spread of environmental pollution collectively threaten the welfare of mankind. If these challenges are ignored, they will overwhelm our efforts to improve the quality of life and social opportunities for the world's people, including our own. If they are met and successfully overcome, we will face the twenty-first century with renewed hope and security.

The President has established a task force on global resources and environment to recommend measures by which our Government can respond to the challenge of the "Global 2000 Report." I consider it vital that Congress participate actively in the elaboration and implementation of these measures. I intend to be active in this effort on the Committee on Foreign Affairs, on which I serve. But since the issues transcend the jurisdictions of any single committee, I hope others will be involved as well.

Mr. Speaker, at this point I include a summary of the major findings and conclusions of the report:

Major Findings and Conclusions

If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically, and more vulnerable to disruption than the world we live in now. Serious stresses involving population, resources, and environment are clearly visible ahead. Despite greater material output, the world's people will be poorer in many ways than they are today.

For hundreds of millions of the desperately poor, the outlook for food and other necessities of life will be no better. For many it will be worse. Barring revolutionary advances in technology, life for most people on earth will be more precarious in 2000 than it is now—unless the nations of the world act decisively to alter current trends.

This, in essence, is the picture emerging from the U.S. Government's projections of probable changes in world population, resources, and environment by the end of the century, as presented in the Global 2000 Study. They do not predict what will occur. Rather, they depict conditions that are likely to develop if there are no changes in public policies, institutions, or rates of technological advance, and if there are no wars or other major disruptions. A keener awareness of the nature of the current trends, however, may induce changes that will alter these trends and the projected outcome.

PRINCIPAL FINDINGS

Rapid growth in world population will hardly have altered by 2000. The world's population will grow from 4 billion in 1975 to 6.35 billion in 2000, an increase of more than 50 percent. The rate of growth will slow only marginally, from 1.8 percent a year to 1.7 percent. In terms of sheer numbers, population will be growing faster in 2000 than it is today, with 100 million people added each year compared with 75 million in 1975. Ninety percent of this growth will occur in the poorest countries.

While the economies of the less developed countries (LDCs) are expected to grow at faster rates than those of the industrialized nations, the gross national product per capita in most LDCs remains low. The average gross national product per capita is projected to rise substantially in some LDCs (especially in Latin America), but in the great populous nations of South Asia it remains below $200 a year (in 1975 dollars). The large existing gap between the rich and poor nations widens.

World food production is projected to increase 90 percent over the 30 years from 1970 to 2000. This translates into a global per capita increase of less than 15 percent over the same period. The bulk of that increase goes to countries that already have relatively high per capita food consumption. Meanwhile per capita consumption in South Asia, the Middle East, and the LDCs of Africa will scarcely improve or will actually decline below present inadequate levels. At the same time, real prices for food are expected to double.

Arable land will increase only 4 percent by 2000, so that most of the increased output of food will have to come from higher yields. Most of the elements that now contribute to higher yields—fertilizer, pesticides, power for irrigation, and fuel for machinery—depend heavily on oil and gas.

During the 1990s world oil production will approach geological estimates of maximum production capacity, even with rapidly increasing petroleum prices. The Study projects that the richer industrialized nations will be able to command enough oil and other commercial energy supplies to meet rising demands through 1990. With the expected price increases, many less developed countries will have increasing difficulties meeting energy needs. For the one-quarter of humankind that depends primarily on wood for fuel, the outlook is bleak. Needs for fuelwood will exceed available supplies by about 25 percent before the turn of the century.

While the world's finite fuel resources—coal, oil, gas, oil shale, tar sands, and uranium—are theoretically sufficient for centuries, they are not evenly distributed; they pose difficult economic and environmental problems; and they vary greatly in their amenability to exploitation and use.

Nonfuel mineral resources generally appear sufficient to meet projected demands through 2000, but further discoveries and investments will be needed to maintain reserves. In addition, production costs will increase with energy prices and may make some nonfuel mineral resources uneconomic. The quarter of the world's population that inhabits industrial countries will continue to absorb three-fourths of the world's mineral production.

Regional water shortages will become more severe. In the 1970–2000 period population growth alone will cause requirements for water to double in nearly half the world. Still greater increases would be needed to improve standards of living. In many LDCs, water supplies will become increasingly erratic by 2000 as a result of extensive deforestation. Development of new water supplies will become more costly virtually everywhere.

Significant losses of world forests will continue over the next 20 years as demand for forest products and fuelwood increases. Growing stocks of commercial-size timber are projected to decline 50 percent per capita. The world's forests are now disappearing at the rate of 18–20 million hectares a year (an area half the size of California), with most of the loss occurring in the humid tropical forests of Africa, Asia, and South America. The projections indicate that by 2000 some 40 percent of the remaining forest cover in LDCs will be gone.

Serious deterioration of agricultural soils will occur worldwide, due to erosion, loss of organic matter, desertification, salinization, alkalinization, and waterlogging. Already, an area of cropland and grassland approximately the size of Maine is becoming barren wasteland each year, and the spread of desert-like conditions is likely to accelerate.

Atmospheric concentrations of carbon dioxide and ozone-depleting chemicals are expected to increase at rates that could alter the world's climate and upper atmosphere significantly by 2050. Acid rain from increased combustion of fossil fuels (especially coal) threatens damage to lakes, soils, and crops. Radioactive and other hazardous materials present health and safety problems in increasing numbers of countries.

Extinctions of plant and animal species will increase dramatically. Hundreds of thousands of species—perhaps as many as 20 percent of all species on earth—will be irretrievably lost as their habitats vanish, especially in tropical forests.

The future depicted by the U.S. Government projections, briefly outlined above, may actually understate the impending problems. The methods available for carrying out the Study led to certain gaps and inconsistencies that tend to impart an optimistic bias. For example, most of the individual projections for the various sectors studied—food, minerals, energy, and so on—assume that sufficient capital, energy, water, and land will be available in each of these sectors to meet their needs, regardless of the competing needs of the other sectors. More consistent, better-integrated projections would produce a still more emphatic picture of intensifying stresses, as the world enters the twenty-first century.

CONCLUSIONS

At present and projected growth rates, the world's population would reach 10 billion by 2030 and would approach 30 billion by the end of the twenty-first century. These levels correspond closely to estimates by the U.S. National Academy of Sciences of the maximum carrying capacity of the entire earth. Already the populations in sub-Saharan Africa and in the Himalayan hills of Asia have exceeded the carrying capacity of the immediate area, triggering an erosion of the land's capacity to support life. The resulting poverty and ill health have further complicated efforts to reduce fertility. Unless this circle of interlinked problems is broken soon, population growth in such areas will unfortunately be slowed for reasons other than declining birth rates. Hunger and disease will claim more babies and young children, and more of those surviving will be mentally and physically handicapped by childhood malnutrition.

Indeed, the problems of preserving the carrying capacity of the earth and sustaining the possibility of a decent life for the human beings that inhabit it are enormous and close upon us. Yet there is reason for hope. It must be emphasized that the Global 2000 Study's projections are based on the assumption that national policies regarding population stabilization, resource conservation, and environmental protection will remain essentially unchanged through the end of the century. But in fact, policies are beginning to change. In some areas, forests are being replanted after cutting. Some nations are taking steps to reduce soil losses and desertification. Interest in energy conservation is growing, and large sums are being invested in exploring alternatives to petroleum dependence. The need for family planning is slowly becoming better understood. Water supplies are being improved and waste treatment systems built. High-yield seeds are widely available and seed banks are being expanded. Some wildlands with their genetic resources are being protected. Natural predators and selective pesticides are being substituted for persistent and destructive pesticides.

Encouraging as these developments are, they are far from adequate to meet the global challenges projected in this Study. Vigorous, determined new initiatives are needed if worsening poverty and human suffering, environmental degradation, and international tension and conflicts are to be prevented. There are no quick fixes. The only solutions to the problems of population, resources, and environment are complex and long-term. These problems are inextricably linked to some of the most perplexing and persistent problems in the world—poverty, injustice, and social conflict. New and imaginative ideas—and a willingness to act on them—are essential.

The needed changes go far beyond the capability and responsibility of this or any other single nation. An era of unprecedented cooperation and commitment is essential. Yet there are opportunities—and a strong rationale—for the United States to provide leadership among nations. A high priority for this Nation musht be a thorough assessment of its foreign and domestic policies relating to population, resources, and environment. The United States, possessing the world's largest economy, can expect its policies to have a significant influence on global trends. An equally important priority for the United States is to cooperate generously and justly with other nations—particularly in the areas of trade, investment, and assistance—in seeking solutions to the many problems that extend beyond our national boundaries. There are many unfulfilled opportunities to cooperate with other nations in efforts to relieve poverty and hunger, stabilize population, and enhance economic and environmental productivity. Further cooperation among nations is also needed to strengthen international mechanisms for protecting and utilizing the "global commons"—the oceans and atmosphere.

To meet the challenges described in this Study, the United States must improve its ability to identify emerging problems and assess alternative responses. In using and evaluating the Government's present capability for long-term global analysis, the Study found serious inconsistencies in the methods and assumptions employed by the various agencies in making their projections. The Study itself made a start toward resolving these inadequacies. It represents the Government's first attempt to produce an interrelated set of population, resource, and environmental projections, and it has brought forth the most consistent set of global projections yet achieved by U.S. agencies. Nevertheless, the projections still contain serious gaps and contradictions that must be corrected if the Government's analytic capabiliy is to be improved. It must be acknowledged that at present the Federal agencies are not always capable of providing projections of the quality needed for long-term policy decisions.

While limited resources may be a contributing factor in some instances, the primary problem is lack of coordination. The U.S. Government needs a mechanism for continuous review of the assumptions and methods the Federal agencies use in their projection models and for assurance that the agencies' models are sound, consistent, and well documented. The improved analyses that could result would provide not only a clearer sense of emerging problems and opportunities, but also a better means for evaluating alternative responses, and a better basis for decisions of worldwide significance that the President, the Congress, and the Federal Government as a whole must make.

With its limitations and rough approximations, the Global 2000 Study may be seen as no more than a reconnaissance of the future; nonetheless its conclusions are reinforced by similar findings of other recent global studies that were examined in the course of the Global 2000 Study (see Appendix). All these studies are in general agreement on the nature of the problems and on the threats they pose to the future welfare of humankind. The available evidence leaves no doubt that the world—including this Nation—faces enormous, urgent, and complex problems in the decades immediately ahead. Prompt and vigorous changes in public policy around the world are needed to avoid or minimize these problems before they become unmanageable. Long lead times are required for effective action. If decisions are delayed until the problems become worse, options for effective action will be severely reduced.●

TRIBUTE TO JAMES A. BYRNE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized for 5 minutes.

● Mr. O'NEILL. Mr. Speaker, it is with a deep sense of sadness that I rise on this occasion to pay tribute to one of the most decent and conscientious former Members of the House of Representatives, the late James A. Byrne.

For 20 years, James Byrne served the Third District of Pennsylvania with distinction and purpose. Hard working and dedicated, Congressman Byrne was a true son of the "City of Brotherly Love." Devoted to his constituents, Congressman Byrne concentrated his efforts on the attainment of important Federal programs which benefited the Philadelphia area.

An activist, a liberal, and a loyal Democrat, Congressman Byrne truly delivered on his campaign promises. His constituency service was legend. No task on behalf of a constituent was ever viewed an impossibility, and no constituency request was ever denied as long as James Byrne represented the interests of Pennsylvania's Third District. He was never too busy, too tired or too preoccupied to greet a friend or to meet a constituent in need. He once said, "When I walk down the street, people think I'm Santa Claus, and I hear confessions at all hours."

In every manner of measurement, James Byrne was a top-quality human being. Through compassionate representation, Congressman Byrne championed the anxieties, concerns and interests of the elderly and the hard-working men and women of Philadelphia. His beloved constituents were people who had to work hard for a living, and he felt a sincere obligation to lend a helping hand whenever possible.

I was honored and privileged to have served with James Byrne in the House of Representatives. I extend my deepest sympathy to his wife, Virginia, and to his entire family on the sorrowful occasion of his passing.●

PERSONAL EXPLANATION

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. BRADEMAS. Mr. Speaker, on Monday, September 15, 1980, I missed rollcall No. 540, a vote on ordering a second on a motion to suspend the rules and pass H.R. 6865, West Valley nuclear waste project. The second was agreed to by vote of 244 to 0, with one voting "present." Had I been present, I would have voted "yea." ●

BOB CARR MAKES THE CASE FOR FLAUNTING STEALTH

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, with all the hullabaloo stirred up by the official Republican nominee for the Presidency, Mr. Reagan, over the confirmation, by Secretary of Defense Harold Brown, that the Defense Department is working on the Stealth bomber, several important facts have been lost sight of in some quarters.

First, of course, is the fact that public discussion of the project started during President Ford's administration, in 1976, when the lead article in Aerospace Daily announced that the Defense Department was sponsoring a program to build a Stealth prototype and that Lockheed was already building it. That was over 4 years ago. No additional details have been published by the administration except that the plane has since been built.

So much for the alleged security breach by Secretary Brown.

A second fact, much overlooked, is that the Secretary's statement came at a time when the Reagan camp, and some well-meaning supporters of the B-1 bomber, were making a renewed issue over President Carter's cancellation of it (which, lest we forget, was upheld by Congress), and were trying to promote the spending of billions of dollars on that obsolete concept. It would have been tragic if that effort had stampeded the Congress into appropriating more billions for the B-1 while B-52's are still adequate, when equipped with cruise missiles, and when a Stealth bomber may be deployed before the B-52's must be retired, in the 1990's.

Those of us who fought the B-1 contended from the outset that it would be obsolete before the planned fleet of B-1's was built. Stealth has only served to reinforce our point. Nevertheless, it was important that its existence be confirmed to Congress and the public.

Finally, even though the Soviets certainly knew of the Stealth project and the concept it involved, it was also important that the success of Stealth be confirmed to the Soviets, if it was to help deter any aggressive designs that might arise out of a belief that this leg of the strategic triad was becoming obsolete. It was also important that the existence of Stealth be made known to the rest of the world, to redress the psychological balance of power that has been adversely affected by the endless Republican campaign to "badmouth" the military capability of the United States.

Some of these points have been cogently made in an article by our colleague BOB CARR in the Washington Post of Sunday, September 14, 1980. The complete text of his article follows these remarks.

THE CASE FOR FLAUNTING STEALTH

(By BOB CARR)

Republican expressions of gleeful horror at recent public discussion of the Stealth radar-proof airplane may be good partisan politics, but they are bad history and worse national security policy.

Henry Kissinger claims the Ford administration succesfully kept the lid on the program. Ronald Reagan claims the Defense Department has given the Soviets a 10-year headstart on countermeasures. And Gerald

Ford claims Stealth won't affect the strategic balance for 10 years. All are wrong.

Public discussion of Stealth began on Friday, July 23, 1976, during Ford's administration, in the lead article of Aerospace Daily. Here are some excerpts from that article, titled, "Lockheed's Kelly Johnson Building 'Stealth' Aircraft":

"Kelly Johnson is back.

"The nation's premier aircraft designer has returned to the famous 'Skunk Works' at Lockheed, where he is building a new 12,000-pound, one-man 'Stealth' aircraft. It is due to fly in about two years.

"The program is sponsored by the Defense Advanced Research Projects Agency (DARPA) . . .

"The goal is to reduce aircraft visibility through new technology. Lockheed was chosen from a field that also included McDonnell Douglas and Rockwell International on the strength of Johnson's conviction that he could do the job . . . Lockheed had . . . ambitious ideas in mind. The challenge was sufficient to lure Johnson out of retirement.

"The program is cloaked in tight security. Calls to Johnson's office . . . were not returned. It is known, however, that the Air Force and DARPA have been searching for ways to reduce aircraft signatures through combinations of aerodynamic configurations, absorptive materials, paint schemes and electronic countermeasures."

Whether or not Aerospace Daily's specifics are correct, it is clear that all of the information published and released during 1980 contains not one detail that was not in this 1976 article. In 1980 the Soviets and the world know only one thing they didn't know under Ford: They know the program has been a success.

Does this place the Soviets any nearer to countering Stealth? Certainly not; they know no more specifics than they knew in 1976.

Are they now motivated to work the problem harder? Most unlikely. As they read Aerospace Daily, the Soviets knew of Kelly Johnson's phenomenal 100 percent success record: at least seven successful all-new designs running from the World War II P38 fighter to the Mach 3—plus SR71 reconnaissance plane, each a major step forward in its time. Unless they were fools, the Soviets must have assumed a high probability that Johnson would succeed on this one and their $100-billion investment in anti-aircraft defense would become even less effective than it is today. They must have begun a serious effort to develop countermeasures.

Nothing in this year's public discussion has given the Soviets any reason to increase this effort. Fortunately, there has been no disclosure of specific Stealth technology details, for which the public has no need or use. While it may be that there is no counter to Stealth, there is no point in tempting fate.

While much has been said about the dangers of disclosure, the far more significant advantages of disclosure have been neglected.

Suppose Stealth were kept completely secret until the outbreak of a nuclear war, when Stealth-hidden cruise missiles or bombers would blow the Soviet Union to smithereens. If this happens, Stealth would have failed, since Soviet missiles would at the same time be blowing the United States to smithereens.

The primary target of any strategic weapon is not the adversary's assets. It is the adversary's mind. Stealth will be successful if it convinces Soviet leaders that aggression will cost them more than they will gain from it. This is deterrence. If Stealth were kept secret, it would have no effect on Soviet decisionmaking and would fail.

The question is of the balance between the need for secrecy to inhibit countermeasures versus the need for disclosure to intimidate. While the ideal course may be to hold a major new weapon secret until it is actually in the field, there are often good reasons to disclose the existence of such a program much sooner.

Unfortunately, much of the world is becoming increasingly convinced that the United States has lost military primacy to the Soviet Union. This conviction is growing not because of anything our allies or neutrals see for themselves, nor because of anything they hear from the Soviets. It is growing because of an unceasing campaign, principally by members of past and potential Republican administrations, to badmouth the military capability of the United States.

That this bad-mouthing is factually wrong, that it is based on specious selection and dishonest distortion of military measures, is beside the point. If we tell the world we are weak, why should it not believe us, since what rational reason can there be for a superpower to portray itself as weak when it is not?

So we now have our allies for the first time beginning to question our capability. Such questioning may encourage them to do more for their own defense. But its primary thrust is to loosen the alliance network which supports us all, and there is no way that can be beneficial.

We have not yet succeeded in convincing the Soviets of our inferiority. Their analysts are as good as ours, and there is no evidence that they have projected the outcome of military confrontation as anything other than dismal for the Soviet side. Probably we have not yet persuaded the Soviets of our own self-intimidation, although that is less clear. But if we continue the way we are going, we will do it. At that point they will be on the edge of major aggression, and we will all be on the edge of the next and last World War.

The leadership of the present Defense Department is well aware of this problem. It was not partisan politics for Defense Secretary Harold Brown to invite the press to watch demonstrations of the cruise missile or the Copperhead tank destroyer—major breakthroughs the Soviets are many years away from countering or duplicating. It was understanding that it is not enough to have the right stuff; we must also show the world we have it and we have confidence in it.

Stealth is a fundamental military breakthrough, comparable to the invention of radar. The world doesn't need to know how it works, but the world does need to know we have it. It began to have a major beneficial effect on the psychological strategic balance the moment Brown put it into the headlines. The cause of peace and security is most probably served by shouting the existence of this development from the housetops. The question is not why we are doing this; the question is why we didn't do it sooner.●

LEAVE OF ABSENCE

Mr. McClory (at the request of Mr. Rhodes), September 16 through September 20, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Marriott) to revise and extend their remarks and include extraneous material:)

Mr. Broyhill, for 5 minutes, today.
Mr. McDade, for 5 minutes, today.
Mr. Frenzel, for 30 minutes, today.

(The following Members (at the request of Mr. Kostmayer) to revise and extend their remarks and include extraneous material:)

Mr. Nelson, for 5 minutes, today.
Mr. Brooks, for 5 minutes, today.
Mr. Gonzalez, for 15 minutes, today.
Mr. Annunzio, for 5 minutes, today.
Mr. Frost, for 5 minutes, today.
Mr. Brademas, for 5 minutes, today.
Mr. Bingham, for 10 minutes, today.
Mr. O'Neill, for 5 minutes, today.
Mrs. Collins of Illinois, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Alexander, immediately preceding the remarks of Mr. Edwards of Alabama on the amendment offered by Mr. Addabbo.

Mr. Biaggi, immediately preceding the vote on the Addabbo amendment.

Mr. Seiberling, and to include extraneous matter.

Mr. Eckhardt, immediately before the vote on the Simon amendment.

(The following Members (at the request of Mr. Marriott) and to include extraneous matter:)

Mr. Young of Alaska.
Mr. Brown of Ohio.
Mr. McKinney.
Mr. Clinger in two instances.
Mr. Collins of Texas in three instances.
Mr. Dougherty.
Mr. Corcoran.
Mr. McCloskey.
Mr. Emery.
Mr. Derwinski.
Mr. Broyhill in two instances.
Mr. Wydler.
Mr. Railsback.
Mr. Hillis in two instances.
Mr. Dornan.
Mr. Lagomarsino.
Mr. Miller of Ohio in four instances.
Mr. Gilman.

(The following Members (at the request of Mr. Kostmayer) and to include extraneous matter:)

Mr. Roybal in two instances.
Mr. Mazzoli.
Mrs. Schroeder in two instances.
Mr. Edwards of California.
Mr. McDonald in two instances.
Mr. Jones of Oklahoma.
Mr. Florio.
Mr. Jones of Tennessee.
Mr. Richmond.
Mr. Ottinger in two instances.
Mr. Nowak.
Mr. Flippo.
Mr. Skelton.
Mr. Ford of Michigan in two instances.
Mr. Miller of California in two instances.
Mr. Oberstar.
Mr. Drinan.
Mr. Maguire.
Mr. Yatron.
Mr. Guarini.
Mr. Mitchell of Maryland.
Mr. Wolff.
Mr. Markey in four instances.
Mr. Ertel.
Mr. Bonker.

ENROLLED BILLS SIGNED

Mr. NEDZI, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 5766. An act to authorize additional Reserve Officers' Training Corps scholarships for the Army, to authorize the Secretary of the Army to provide that cadets awarded such scholarships may serve their obligated period of service in the Army Reserve or Army National Guard of the United States, to authorize the Secretary concerned to require an individual furnished post-secondary education by an Armed Force to reimburse the United States for the cost of such education in the event such individual fails to comply with such individual's active-duty obligation, to provide that certain full-time training duty of members of the National Guard shall be considered as active duty for training in Federal service for certain purposes, and for other purposes, and

H.R. 6940. An act to amend the Federal Food, Drug, and Cosmetic Act to strengthen the authority under that act to assure the safety and nutrition of infant formulas, and for other purposes.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 261. An act to provide for the development of State plans for the construction and improvement of subterminal storage and transportation facilities for certain types of agricultural commodities within the State or within a group of States acting together on a regional basis, and to amend the Consolidated Farm and Rural Development Act to authorize loans for the construction and improvement of such facilities, and for other purposes; and

S. 1650. An act to provide for the development of aquaculture in the United States, and for other purposes.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 26 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 17, 1980, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5302. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a cumulative report on rescissions and deferrals of budget authority as of September 1, 1980, pursuant to section 1014(e) of Public Law 93-344 (H. Doc. No. 96-370); to the Committee on Appropriations and ordered to be printed.

5303. A letter from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting notice of the Defense Department's intention to obligate certain money in the Army stock fund for war reserve stocks, pursuant to section 736 of Public Law 96-154; to the Committee on Appropriations.

5304. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the grounds maintenance function at Mather Air Force Base, Calif., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5305. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the T-4/T-26A instrument flight trainer operator function at Sheppard Air Force Base, Tex., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5306. A letter from the Acting Assistant Secretary of the Air Force (Research, Development, and Logistics), transmitting notice that a decision has been made to convert the commissary shelf-stocking and custodial services function at Lowry Air Force Base, Colo., to contractor performance, pursuant to section 806 of Public Law 96-107; to the Committee on Armed Services.

5307. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Navy's proposed sale of certain defense equipment and services to Italy (Transmittal No. 80-103), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5308. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the Army's proposed sale of certain defense equipment to Greece (Transmittal No. 80-119), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

5309. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Thomas D. Boyatt, Ambassador-designate to Columbia, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5310. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Edwin G. Corr, Ambassador-designate to Peru, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5311. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Harry W. Shlaudeman, Ambassador-designate to Argentina, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5312. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by David E. Simcox, Ambassador-designate to Mozambique, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5313. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Arthur H. Woodruff, Ambassador-designate to the Central African Republic, and by members of his family, pursuant to section 6 of Public Law 93-126; to the Committee on Foreign Affairs.

5314. A letter from the Director, Defense Security Assistance Agency, transmitting the quarterly report on foreign military sales as of June 30, 1980, pursuant to section 36(a) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5315. A letter from the Director, Defense Security Assistance Agency, transmitting addenda to the quarterly report on foreign military sales as of June 30, 1980, pursuant to section 36(a) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5316. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to the Netherlands (Transmittal No. 80-98), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5317. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Navy's intention to offer to sell certain defense equipment and services to Italy (Transmittal No. 80-103), pursuant to section 36(b) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5318. A letter from the Director, Defense Security Assistance Agency, transmitting notice of the Army's intention to offer to sell certain defense equipment to Greece (Transmittal No. 80-119), pursuant to section 36(b) of the Arms Export Control Act, together with certification that the sale is consistent with the principles contained in section 620 C(b) of the Foreign Assistance Act of 1961, as amended, pursuant to section 620C(d) of the act; to the Committee on Foreign Affairs.

5319. A letter from the Administrator of General Services, transmitting the annual report on records management activities of the Federal Government for fiscal year 1979, pursuant to 44 U.S.C. 2904(10); to the Committee on Government Operations.

5320. A letter from the Chairman, National Mediation Board, transmitting the 45th Annual Report of the National Mediation Board, including the report of the National Railroad Adjustment Board, covering fiscal year 1979, pursuant to section 4 (second) and section 3 (first) (w) of the act of June 21, 1934; to the Committee on Interstate and Foreign Commerce.

5321. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of space by lease for the expanded needs of the Federal Aviation Administration in East Point, Ga.; to the Committee on Public Works and Transportation.

5322. A letter from the Administrator of General Services, transmitting a prospectus proposing the acquisition of leased space for several agencies in Portland, Oreg.; to the Committee on Public Works and Transportation.

5323. A letter from the Administrator of Veterans' Affairs, transmitting his annual report for fiscal year 1979, pursuant to 38 U.S.C. 214; to the Committee on Veterans' Affairs.

5324. A letter from the Comptroller General of the United States, transmitting a report on ground water overdrafting (CED-80-96, Sept. 12, 1980); jointly, to the Committees on Government Operations, Agriculture, Interior and Insular Affairs, and Public Works and Transportation.

5325. A letter from the Comptroller General of the United States, transmitting a report on the U.S. program in high-energy physics (EMD-80-58, Sept. 16, 1980); jointly, to the Committees on Government Operations and Science and Technology.

5326. A letter from the Director of Central Intelligence, transmitting a draft of proposed legislation to amend title 18, United States Code, to provide criminal penalties for certain acts against intelligence personnel which interfere with the performance of their duties, and for other purposes; jointly, to the Committees on the Judiciary and the Permanent Select Committees on Intelligence.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. S. 885. A bill to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River power system to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes with amendment (Rept. No. 96–976, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BIAGGI: Committee of conference. Conference report on H.R. 4310 with amendment (Rept. No. 96–1320). Ordered to be printed.

Mr. STAGGERS: Committee on Interstate and Foreign Commerce. H.R. 7939. A bill to amend the Securities Investor Protection Act to increase the amount of protection available under such act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission (Rept. No. 96–1321, pt. 1). Ordered to be printed.

Mr. ULLMAN: Committee on Ways and Means. H.R. 3637. A bill to carry out the obligations of the United States under the International Coffee Agreement, 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes; with amendments (Rept. No. 96–1322). Referred to the Committee of the Whole House on the State of the Union.

Mr. DELLUMS: Committee on the District of Columbia. H.R. 7782. A bill to amend the District of Columbia Police and Firemen's Salary Act of 1958 to provide for the same cost-of-living adjustments in the basic compensation of officers and members of the U.S. Secret Service Uniformed Division as are given to Federal employees under the General Schedule; with amendments (Rept. No. 96–1323). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HALL of Texas: Committee on the Judiciary. S. 707. A bill for the relief of certain aliens (Rept. No. 96–1324). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CORMAN:

H.R. 8118. A bill to provide for a temporary program of Federal supplemental unemployment compensation; to the Committee on Ways and Means.

By Mr. ANDERSON of California:

H.R. 8119. A bill to require the Secretary of Commerce to undertake a study to determine the effects of certain past ocean dumping of radioactive wastes; jointly, to the Committees on Merchant Marine and Fisheries and Science and Technology.

By Mr. DEVINE:

H.R. 8120. A bill to amend the Internal Revenue Code of 1954 to provide that certain rentals to members of the taxpayer's family will not be treated as personal use by the taxpayer for purposes of the disallowance of certain expenses in connection with the business use of homes, rental of vacation homes, etc.; to the Committee on Ways and Means.

By Mr. DINGELL (for himself, Mr. Brown of Ohio, Mr. Ottinger, Mr. Moffett, Mr. Moorhead of California, Mr. Wirth, Mr. Stockman, Mr. Markey, Mr. Corcoran, Mr. Gramm, Mr. Maguire, Mr. Gore, Mr. Loeffler, and Mr. Swift):

H.R. 8121. A bill to amend the Energy Policy and Conservation Act to improve the administration of the strategic petroleum reserve program, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. EMERY:

H.R. 8122. A bill to provide for the conveyance to the State of Maine of certain lands located in such State; to the Committee on Armed Services.

By Mr. FISHER:

H.R. 8123. A bill to amend the Internal Revenue Code of 1954 to promote capital investment in small business, and for other purposes; to the Committee on Ways and Means.

By Mr. HEFTEL:

H.R. 8124. A bill to amend the Internal Revenue Code of 1954 to permit tax-free sales of fuels for use in certain buses; to the Committee on Ways and Means.

By Mr. MAGUIRE:

H.R. 8125. A bill to require certain Federal agencies to analyze complaints regarding their delivery of services and benefits and to report their findings to Congress; to the Committee on Government Operations.

By Mr. OBERSTAR (for himself and Mr. Vento):

H.R. 8126. A bill to revise the boundary of Voyageurs National Park in the State of Minnesota, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. PICKLE (for himself and Mr. Smith of Iowa):

H.R. 8127. A bill to amend the Internal Revenue Code of 1954 to reduce corporate income tax rates; to the Committee on Ways and Means.

By Mr. SOLARZ:

H.R. 8128. A bill to amend the Internal Revenue Code of 1954 to eliminate the requirement that States reduce the amount of unemployment compensation payable for any week by the amount of certain retirement benefits; to the Committee on Ways and Means.

By Mr. STOCKMAN (for himself and Mr. Brown of Ohio):

H.R. 8129. A bill to enhance the economic and military security of the United States by requiring completion of the strategic petroleum reserve at an expedited rate; to the Committee on Interstate and Foreign Commerce.

By Mr. TAUZIN:

H.R. 8130. A bill to exempt a portion of U.S. Highway 90 from federally required permits; to the Committee on Public Works and Transportation.

By Mr. OTTINGER:

H.R. 8131. A bill to establish a national industrial innovation corporation to provide financial assistance to industrial firms to assist them in conducting projects and activities which will increase innovation and productivity and enhance the competitive position of the United States in international markets; jointly, to the Committees on Banking, Finance and Urban Affairs and Science and Technology.

By Mr. WHITTEN:

H.J. Res. 610. Joint resolution making continuing appropriations for the fiscal year 1981, and for other purposes; to the Committee on Appropriations.

MEMORIALS

Under clause 4 of rule XXII,

528. The SPEAKER presented a memorial of the Legislature of the State of California, relative to energy resources, which was referred to the Committee on Interior and Insular Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. FROST presented a bill (H.R. 8132) for the relief of Bishop College, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 5099: Mr. Whitten, Mr. Martin, Mr. Stack, Mr. Collins of Texas, Mr. Jones of Tennessee, and Mr. Synar.

H.R. 5947: Mr. Dornan, Mr. Duncan of Tennessee, Mr. Gibbons, Mr. Jeffords, Mr. Lederer, Mr. O'Brien, Mr. Pashayan, Mr. Sebelius, Mr. Bob Wilson, Mr. Charles H. Wilson of California, and Mr. Young of Alaska.

H.R. 6540: Mr. Seiberling.

H.R. 6722: Mr. Solomon, Mr. Lewis, and Mr. AuCoin.

H.R. 7127: Mr. Quayle and Mr. Moorhead of California.

H.R. 7189: Mr. Hyde, Mr. Derwinski, Mr. Railsback, Mr. Erlenborn, and Mr. Findley.

H.R. 7230: Mr. Gibbons, Mr. Bedell, Mr. Fazio, Mr. Downey, Mr. Simon, and Mr. Ottinger.

H.R. 7332: Mr. Seiberling.

H.R. 7365: Mr. Mollohan and Mr. Symms.

H.R. 7437: Mr. Evans of Delaware, Mr. Jeffries, and Mr. Preyer.

H.R. 7506: Mr. Brooks, Mr. de la Garza, Mr. English, Mr. Frost, Mr. Garcia, Mr. Grisham, Mr. Guyer, Mr. Hall of Texas, Mr. Hance, Mr. Latta, Mr. Marriott, Mr. Montgomery, Mr. Moorhead of California, Mr. Sensenbrenner, Mr. Shumway, Mr. White, Mr. Wright, and Mr. Wyatt.

H.R. 7521: Mr. McDonald.

H.R. 7634: Mr. Applegate, Mr. Fithian, Mr. Mollohan, and Mr. O'Brien.

H.R. 7744: Mr. Addabbo, Mr. Solarz, Mr. Hawkins, Mr. Ottinger, Mr. Lehman, Mr. Evans of the Virgin Islands, Mr. Mitchell of Maryland, Mr. Kildee, Mr. Whitehurst, Mr. LaFalce, Mr. Green, Mr. Duncan of Tennessee, Mr. Murphy of Illinois, Mr. Ratchford, Mr. Thompson, Mr. Harris, Mr. Mazzoli, Mr. AuCoin, Mr. Vento, Mr. Stark, Mr. Jeffords, Mr. Walgren, Mrs. Spellman, Mr. Brodhead, Mr. Edwards of California, Mr. Scheuer, Mr. Wolff, Mr. Cleveland, Mr. Guarini, Mr. Madigan, Mr. Simon, and Mr. McDade.

H.R. 7749: Mr. Robinson, Mr. Sensenbrenner, and Mr. Young of Alaska.

H.R. 7773: Mr. Hawkins and Mr. Bennett.

H.R. 7776: Mr. Heftel.

H.R. 7782: Mr. Dellums, Mr. McKinney, Mr. Fauntroy, Mr. Barnes, Mrs. Spellman, Mrs. Fenwick, and Mr. Harris.

H.R. 7824: Mr. Jeffries, Mr. Conable, Mr. Mathis, Mr. Quayle, Mr. Roth, Mr. Brown of Ohio, Mr. Evans of Indiana, Mr. Tauzin, Mrs. Smith of Nebraska, Mr. Abdnor, and Mr. Hillis.

H.R. 7972: Mr. Duncan of Tennessee, Mr. Pickle, and Mr. Martin.

H.R. 8027: Mr. Zablocki, Mr. Derwinski, Mr. Frenzel, and Mr. Stangeland.

H.R. 8062: Mr. Sawyer.

H.R. 8081: Mr. Conyers, Mr. Moffett, Mr. Annunzio, Mr. Mitchell of Maryland, Mr. Hyde, Mr. Walgren, Mr. Florio, Mr. McCloskey, Mr. Williams of Ohio, Mr. Obey, Mr. Cavanaugh, Mr. Gore, Mr. Pease, Mr. Minish, Mr. Lundine, Mr. Aspin, Mrs. Chisholm, Mr. Hubbard, Mr. Reuss, and Mr. Clay.

H.J. Res. 608: Mr. Addabbo, Mr. Blanchard, Mr. Hughes, Mr. Hyde, Mr. Kindness, and Mr. Kramer.

H. Con. Res. 399: Mr. Simon.

H. Con. Res. 422: Mr. Daschle, Mr. Gore, and Mr. Spence.

PETITIONS, ETC.

Under clause 1 of rule XXII,

433. The SPEAKER presented a petition of the City Council, Lorain, Ohio, relative to Puerto Rican statehood, which was referred to the Committee on Interior and Insular Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 85

By Mr. PEYSER:

—Page 56, after line 15, insert the following:

"(5) In addition to the processing and settling of claims under subsection (s) of this section, the fund referred to in subsection (k) of this section is available to pay for removal costs for the removal of in-place toxic pollutants which are present in the navigable waterways of the United States on the effective date of this paragraph, but only to the extent that the removal of such pollutants is approved in advance by the Administrator. Not to exceed $30,000,000 per fiscal year shall be available from the fund referred to in subsection (k) of this section for purposes of this paragraph. For purposes of section 532 of the Environmental Revenue Act of 1980, the payment of any amount under this paragraph shall not be deemed to be a payment for a claim for removal costs.

H.R. 7020

By Mr. DINGELL:

—Page 5, after line 18, insert "Where two or more noncontiguous areas meet the requirements of subparagraphs (A) and (B) and where they are reasonably related on the basis of geography or on the basis of the threat, or potential threat, to public health or the environment, the Administrator may treat such areas as a single inactive hazardous waste site for purposes of this Act.".

By Mr. STOCKMAN:

(Amendment in the nature of a substitute.)

—Strike out all after the enacting clause and substitute the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown.

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective clean-up of dangerous hazardous waste sites is necessary to protect public health and safety.

GOALS

SEC. 4. The goals of this legislation are to—

(1) provide grants for a State-by-State investigation of inactive hazardous waste disposal sites and the condition of such sites;

(2) provide grants for States to evaluate such sites, and set priorities among the sites, based on the danger they present to human populations; and

(3) provide grants to assist States in the containment and cost-effective clean-up of dangerous inactive hazardous waste disposal sites, to assure protection of the public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 5. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"DEFINITIONS

"SEC. 3022. For purposes of this part, the term—

"(1) 'Inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(A) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(B) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under 3005 (including subsection (e) thereof) is required.

"(2) 'Release' means, with respect to hazardous waste, the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping or other transfer of hazardous waste to any land, air, or water, except that such term does not include any such activity—

"(A) which is subject to part 1 of this subtitle, or

"(B) which is carried out in compliance with the requirements of this part and other applicable law.

"(3) 'Chief State Public Health Officer' means the State officer or employee designated by the Governor for purposes of this Act.

"Subpart B—Inventory, Priorities, and Monitoring

"HAZARDOUS WASTE SITE INVENTORY

"SEC. 3031. (a) NOTIFICATION REQUIREMENTS.—(1) Each person (including each State or local governmental department, agency, or instrumentality) who, on the date of the enactment of the Hazardous Waste Containment Act of 1980, owns or operates any inactive hazardous waste site shall provide to the relevant State and local officials (or to the Administrator in the case of a program carried out under subsection (c)) the information referred to in paragraph (2), to the extent that such information is known to, or reasonably determinable by, such person. Such information shall be provided within three months after the date of receipt from the Administrator of the forms required under this section.

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased);

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site; and

"(F) information concerning the proximity of the site to residences or other area used by individuals and its proximity to any water supply used for human consumption.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Upon the request of any person required to submit information under this subsection the Chief State Public Health Officer may grant a waiver to such person with respect to any information required to be submitted under this subsection where he determines that his submission of such information would be impracticable or unnecessary.

"(3) Where any person fails to comply with the requirements of this subsection with respect to any inactive hazardous waste site, or where information acquired from any person under this subsection with respect to any such site is inadequate for any reason, the State in which the site is located, or the Administrator, may exercise the authority of section 3007 of this Act to secure any information described in paragraph (2) from any person referred to in paragraph (1) or from any former or subsequent owner or operator of the site or from any generator or transporter of hazardous waste which is at the site. The State or the Administrator may, by order, require any such person to submit information described in paragraph (2) or such information as may be necessary to compile the information described in paragraph (2). The provisions of section 3008 shall apply for purposes of enforcing such an order.

"(4) Upon the request of the Administrator, each Federal department, agency, or instrumentality—

"(A) which, on the date of the enactment if the Hazardous Waste Containment Act of 1980, owns or operates any site at which hazardous waste has been treated, stored, or disposed of;

"(B) which owned or operated any such site on or before the date of the enactment of such Act; or

"(C) which has generated any hazardous waste before such date of enactment

shall provide the information described in paragraph (2) to the Administrator to the extent such information is known to or reasonably determinable by such department, agency, or instrumentality. Such information shall be provided on the forms referred to in paragraph (1).

"(b) STATE INVENTORY PROGRAMS.—(1) Each State shall, as expeditiously as practicable, undertake a continuing program to compile an inventory containing the information described in subsection (a)(2) for each inactive hazardous waste site within the State. The inventory shall be based upon the information submitted to the State under subsection (a) and upon other information available to the State. For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraph (2) of subsection (a) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress.

"(2) On the basis of the inventory carried out under the preceding provisions of this subsection and on the basis of the State's determination of the relative danger to public health and safety presented by the sites subject to such inventory, each State shall establish priorities among such sites. For purposes of determining the nature and extent of such danger at any site considered by the State to present a relatively high risk of such danger, the State may require the person referred to in subsection (a)(1) to submit information with respect to such site in addition to the information described in subsection (a)(2). Any State may exercise the authority of section 3007 for purposes of this section without regard to whether or not such State has an authorized hazardous waste program under part 1.

"(c) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (b) is not adequately providing information respecting the sites in such State in compliance with subsection (b), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program described in subsection (b) in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (b);

"(2) the funds allocated under subsection (e) for grants to States under this section may be used by the Administrator for carrying out the program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(d) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator shall make grants to the State for purposes of carrying out the program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purpose of this section. The Administrator shall make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Hazardous Waste Containment Act of 1980 to reimburse the State for all, or any portion of, the costs incurred by the State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section $35,000,000, to remain available until expended.

"ESTABLISHMENT OF PRIORITIES

"SEC. 3032. The Administrator shall establish and publish a list setting forth national priorities among the inactive hazardous waste sites throughout the United States which are releasing, or which present a substantial threat of releasing, hazardous waste. Such list shall be published by the Administrator not later than six months after the date of the enactment of this section and revised at least annually thereafter. The priorities shall be based upon the Administrator's determination of the relative danger to public health and safety presented by such sites. The Administrator shall utilize any priorities established by the States under section 3031 for the purpose of establishing national priorities under this subsection.

"MONITORING OF INACTIVE SITES

"SEC. 3033. Upon his determination that any inactive hazardous waste site poses a reasonable likelihood of harm to public health or safety, the Chief State Public Health Officer may require any person and any Federal department, agency, or instrumentality which owns the site to—

"(1) monitor the extent to which hazardous waste associated with such site is released and periodically submit data resulting from such monitoring to the Administrator and to appropriate State and local authorities; and

"(2) immediately notify the Administrator and the appropriate State and local authorities when any hazardous waste associated with such site is released in a manner which presents or may present a substantial threat to public health or safety.

Where the owner is not financially capable of carrying out the requirements of this subsection in a manner satisfactory to the Chief State Public Health Service Officer, he may, by order, require any person who owned or operated the site at the time during which a substantial portion of the hazardous waste at such site was treated, stored, or disposed of at the site, to carry out such requirements.

"IMMUNITY

"SEC. 3034. No information received from any person pursuant to this subpart, and no information derived therefrom, may be used against such person in any criminal proceeding except a prosecution for perjury or for making a false statement or representation.

"DESTRUCTION OF RECORDS

"SEC. 3035. No person may knowingly destroy, mutilate, erase, falsify, dispose of, conceal, or otherwise render unavailable or unreadable any records reasonably necessary for compliance with the requirements of this part.

Violations of this section shall be punishable as provided in section 3061(b).

"Subpart C—Hazardous Waste Response Authority

"EMERGENCY RESPONSE

"SEC. 3041. (a) EMERGENCY RESPONSE AUTHORITY OF ADMINISTRATOR.—(1)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that the release of any hazardous waste from or at an inactive hazardous waste site in such State presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response action as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release.

"(B) The Administrator shall not exercise the authority of this paragraph for undertaking any action unless he determines that the responsible party, or the State or local government will not take the proper action.

"(C) If the Governor of any State notifies the Administrator of any release of hazardous waste into the environment from or at any inactive hazardous waste site in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2)(A) Whenever the Administrator determines that an inactive hazardous waste site presents an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public comment relocate, contain, and clean up the hazardous waste at, or associated with such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary.

"(B) The Administrator shall not exercise the authority of subparagraph (A) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(C) Action may be taken under this paragraph only in accordance with the priorities established by the Administrator under section 3032.

"(3)(A) Upon submission to the Administrator by the Chief State Public Health Service Officer of evidence that there are conditions similar to, but not immediately identifiable as, a release of any hazardous waste from or at an inactive hazardous waste site which conditions present or may present an imminent and substantial endangerment to public health or safety and whenever the Administrator is unable to determine after an inspection of the conditions by his duly appointed representative—

"(i) whether or not such conditions are subject to any provision of Federal law other than this part, or

"(ii) whether or not the Administrator or any other department, agency, or instrumentality of the United States has authority under any other provision of law to take remedial action with respect to such conditions,

the Administrator may provide such assistance to State and local governments, and take such emergency response actions, as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such conditions.

"(B) The Administrator may exercise the authority of this paragraph for a period expiring on the earlier of—

"(i) three months from the date on which he initiates such action, or

"(ii) the date on which he determines that an appropriate remedial response is authorized to be taken under any authority of law other than this paragraph.

"(C) If following the expenditure of amounts under subparagraph (A) for any action or assistance, the Administrator determines that the action taken or assistance provided is authorized under any authority of the Administrator other than this part, the Administrator shall promptly reimburse the Fund established under subpart D for amounts expended under the authority of this paragraph prior to such determination.

"(4) The Administrator shall not exercise the authority of this subsection to engage in the transportation and offsite disposition of hazardous waste unless the Administrator determines that undertaking such offsite activity is—

"(A) less expensive than undertaking such activity onsite; or

"(B) essential to protect the public health or safety due to the seriousness of the danger which may be created by the physical, chemical, or biological properties of the waste and the potential for human exposure, or the unavailability of onsite methods for preventing or minimizing the danger; or

"(C) carried out at a facility where substantial new capacity has been established at such levels as may be necessary to accommodate the hazardous waste transferred to that facility under paragraph (1) or (2) as well as hazardous waste to be treated, stored, or disposed of pursuant to a permit under section 3005.

"(5)(A) The Administrator is authorized to provide equipment and other items necessary to establish and maintain damage assessment capability and damage response capability of Federal, State, and local strike forces, or other emergency response teams, established in conformity with the National Hazardous Waste Response Plan.

"(B) Not more than $5,000,000 of the amounts available to the Administrator in any fiscal year for purposes of this subpart may be used for research and development to improve hazardous waste cleanup and containment technologies in order to ultimately reduce response and containment costs at inactive hazardous waste sites.

"(6) Where the Administrator makes any determination under paragraph (1) or (2) with respect to any site owned or operated by a Federal department, agency, or instrumentality, the department, agency, or instrumentality shall take the action referred to in such paragraph (1) or (2) in lieu of action by the Administrator under such paragraphs.

"(7) Where the Administrator determines that a State or local government has the capability to carry out any or all of the actions required to be carried out pursuant to a determination of the Administrator under paragraph (1) or (2), and where such State or local government agrees to carry out such actions, the Administrator shall enter into—

"(A) cooperative agreements involving the expenditure of appropriated funds, or

"(B) contracts

with such State or local government to take such action. Such agreements shall be subject to the cost sharing provisions of section 3043.

"(8) Anyone authorized by the Administrator to take any action under this part may, in carrying out such authority, exercise the entry, inspection, and other authorities contained in section 3007 in the same manner as provided for officers or employees of the Environmental Protection Agency under section 3007.

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site, any person who—

"(1) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste, or

"(2) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(c) APPORTIONMENT OF COSTS AMONG RESPONSIBLE PARTIES.—Where there are two or more responsible parties with respect to any inactive hazardous waste site, if one of such responsible parties takes remedial action with respect to such site which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under rules promulgated by the Administrator.

"(d) DETERMINATION OF APPROPRIATE RESPONSE.—The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this section. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(1) the need for protection of public health and safety at the site under consideration, and

"(2) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraphs (1) and (3) of subsection (a), the Administrator shall make such determination taking into consideration the need for immediate action.

"(e) INTERIM SITES.—(1) (A) Upon receipt of evidence that the release of any hazardous waste from or at a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an imminent and substantial endangerment to public health or safety, or that there is a substantial threat of such a release, the Administrator may take such emergency response actions as he determines should be taken immediately to prevent, minimize, or mitigate any harm to public health or safety which is associated with such release or threatened release. The Administrator shall not exercise the authority of this paragraph for undertaking any action where he determines that the responsible party, or the State or local government will take the proper action.

"(B) If the Governor of any State notifies the Administrator of any release of hazardous waste into safety from or at any hazardous waste site which is operating pursuant to an interim permit under section 3005(e) in the State which requires, in the Governor's determination, action under this paragraph, the Administrator shall, not later than thirty days after his receipt of such notice, inform the Governor of what action, if any, will be taken by the Administrator under this paragraph.

"(2) Whenever the Administrator determines that a hazardous waste site which is operating pursuant to an interim permit under section 3005(e) presents or may present an unreasonable risk of harm to public health or safety, he may, after notice and opportunity for written or oral public com-

"(A) relocate, contain and clean up the hazardous waste at, or associated with, such site, and take such other remedial action of any kind with respect to such waste, as he determines necessary; or

"(B) by order require any responsible party to take such action in whole or in part.

Prior to issuance of such an order, the Administrator shall afford any such responsible party an opportunity to confer with the Administrator with respect to any action proposed to be included in such order, including the technical and financial capability of such party to take any such action and the reasonableness of such order taking into consideration the degree to which such party may have caused or contributed to such unreasonable risk. The Administrator shall not exercise the authority of subparagraph (A) or (B) where he determines that the responsible party or the State or local government concerned will otherwise take the proper action.

"(3) When the Administrator or any State or local government has incurred costs pursuant to this subsection with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), the provisions of section 3071 shall apply for purposes of recovering such costs in the same manner as such provisions apply in the case of inactive hazardous waste sites.

"(4) As used in this subsection, notwithstanding section 3022(3)(A), the term 'release' includes the discharge, escape, injection, spilling, pouring, emitting, leaching, pumping, or other transfer of hazardous waste to any land, air, or water at or from a hazardous waste site which is operating pursuant to a permit treated as having been issued under section 3005(e).

"(5) As used in this subsection, the term 'responsible party' means with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), any person who—

"(A) owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any unregulated hazardous waste, or

"(B) generated or disposed of, either at the site or elsewhere, a substantial portion of the hazardous waste treated, stored, or disposed of at such site which waste is posing an unreasonable risk to public health or safety.

"(6) Where there are two or more responsible parties with respect to any hazardous waste site which is operating pursuant to an interim permit under section 3005(e), if one of such responsible parties is ordered to take action under this section which results in the expenditure of amounts which he establishes to be in excess of his proportionate share of such costs, such party may recover such excess amount from the Fund established under subpart D. For purposes of this subsection, the proportionate share of such responsible party shall be determined under regulations promulgated by the Administrator.

"(7) The Administrator shall select appropriate actions determined to be necessary to carry out the provisions of this subsection. The appropriate actions shall be as nearly in accordance with the National Hazardous Waste Response Plan as possible and shall provide for that cost-effective response which provides a balance between—

"(A) the need for protection of public health and safety at the site under consideration, and

"(B) the availability of amounts from the fund established under subpart D to respond to other sites which present or may present a threat to public health or safety.

With respect to actions under paragraph (1), the Administrator shall make such determination taking into consideration the need for immediate action.

"STATE CONTRIBUTION

"SEC. 3042. (a) (1) Not more than 75 percent of the total costs of actions taken by the Administrator with respect to any site under section 3041 may be paid by the United States. At least 25 per centum of such total costs shall be paid by the State in which the inactive hazardous waste site concerned is located. Not more than 75 percent of such total costs may be paid by the Administrator when any action under section 3041 is taken by the State pursuant to a determination under section 3041(a)(1)(B) or 3041(a)(2)(B). In any such case at least 25 percent of such total costs shall be paid by the State. No amount may be expended by the Administrator for any such action by the Administrator or the State unless the State has established assurances satisfactory to the Administrator that—

"(A) the aggregate costs of long-term maintenance associated with the hazardous waste site concerned will be funded from non-Federal sources,

"(B) a hazardous waste disposal facility which meets the requirements of part 1 of this subtitle will be available for any storage, destruction, treatment, or disposal of any such hazardous waste which the Administrator determines should be carried out at a location other than a site from which such hazardous waste was released,

"(C) the State share of the costs under section 3041 will be available; and

"(D) such State will provide adequate measures to protect the health and safety of employees engaged in removal, containment, and other remedial actions undertaken pursuant to section 3041.

"(2) No amount may be expended by the United States for the long-term maintenance of any hazardous waste with respect to which any action has been taken under paragraph (1) or (2) of section 3041(a).

"(3) For purposes of this subsection, the term 'long-term maintenance' shall have the meaning provided under regulations promulgated by the Administrator to carry out the purposes of this section.

"(4) In determining the portion of the costs referred to in this section which is required to be paid by a participating State, the Administrator shall grant the State a credit for amounts expended or obligated by such State after January 1, 1978, and before the date of the enactment of this Act, for purposes of remedial action taken by the State with respect to any release of hazardous waste in such State. Such credit shall reduce the amount which the State would otherwise be required to pay in connection with assistance provided under this section until such time as the aggregate amount of credit granted by the Administrator to such State equals the amount required to be paid by such State. No credit shall be granted under this paragraph for any amount expended or obligated by any State for the temporary or permanent relocation of any individuals residing in the vicinity of, or otherwise affected by, the release involved.

"(b)(1) Paragraphs (1) and (2) of subsection (a) shall not apply to any amount expended with respect to any hazardous waste site owned or operated by, or on behalf of, the United States. In the case of any such site, 100 per centum of the costs referred to in such paragraphs (1) and (2) shall be paid by the agency or instrumentality of the United States by which such site is owned or operated (or on behalf of which such site is operated).

"(2) Paragraph (1) of subsection (a) shall not apply to expenditures of the Administrator which are not in excess of $300,000 with respect to any hazardous waste site.

"(3) During the period ending eighteen months after the date of the enactment of the Hazardous Waste Containment Act of 1980, the Administrator is authorized to pay all, or any portion, of any State's share referred to in paragraph (1) of subsection (a) pursuant to an agreement between the Administrator and the State which provides that the State will reimburse the Administrator for such payments within a reasonable period of time following the expiration of such eighteen month period.

"Subpart D—Hazardous Waste Response Fund

"ESTABLISHMENT OF FUND

"SEC. 3051. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Hazardous Waste Response Fund (hereinafter in this Act referred to as the 'Fund') which shall be available as provided in appropriation Acts, only for the purposes specified in subsection (c).

"(b) AMOUNTS CREDITED TO FUND.—(1) The following amounts shall be credited to the Fund—

"(A) all amounts recovered by the United States under any law or rule of law permitting recovery by the United States of the costs to the United States of remedial action undertaken with respect to hazardous waste sites,

"(B) any amount reimbursed to the Fund as provided in subsection (a)(3) of section 3041,

"(C) any penalties assessed under this part, and

"(D) amounts authorized to be appropriated to the fund under paragraph (2).

"(2) There is authorized to be appropriated to the Fund for the fiscal year—

"(A) 1981, $200,000,000,
"(B) 1982, $200,000,000,
"(C) 1983, $200,000,000,
"(D) 1984, $200,000,000, and
"(E) 1985, $200,000,000.

"(c) EXPENDITURES FROM FUND.—Amounts to be credited to the Fund under subsection (b) in any fiscal year (as estimated by the Administrator and submitted to the Congress in the annual budget submittal of the Administrator) shall be available, to the extent provided in appropriation Acts, only for action carried out under subpart C, including actions carried out by States pursuant to a determination of the Administrator under section 3041(a)(1)(B) or section 3041(a)(2)(B) and including reimbursement of excess costs pursuant to section 3041(c). Any amounts credited to the Fund in any fiscal year and not appropriated as provided in this subsection for that fiscal year shall remain available for expenditure in subsequent fiscal years. No amount credited to the Fund may be used to pay any part of the costs referred to in this section which are incurred with respect to an inactive hazardous waste site which is owned or operated by any agency of the United States.

"Subpart E—Enforcement

"ENFORCEMENT

"SEC. 3061. (a) CIVIL PENALTIES.—(1) The Administrator may commence a civil action against any person to impose a civil penalty for violation of any order of the Administrator under this part.

"(2)(A) The amount of penalty under this subsection shall be based on consideration of the size of the business of the owner, operator, or other person against whom the penalty is assessed, the gravity of the violation, the standard of care manifested by such person, the nature and extent of any efforts made by him to minimize or mitigate the effects of such release, and other appropriate factors.

"(B) The amount of any penalty assessed under this subsection against any responsible party under section 3041 for failure to comply with any order under section 3041 shall not exceed two and one-half times the amount of the costs of actions taken by the Administrator or by a State or local government, or both, under section 3041 with respect to the release concerned. Any such penalty shall be in addition to any costs recovered from such person pursuant to section 3071.

"(3) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty.

"(4) No civil penalty may be imposed under this section against any person for violation of an order under section 3041 unless such person is liable for costs under section 3071.

"(b) Criminal Penalty.—Any person who willfully fails to comply with the notification requirement of subsection (a) of section 3031 or who violates section 3035 shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Any person who violates section 3035 (relating to destruction of records) shall, upon conviction, be fined not more than $20,000, or imprisoned for not more than one year, or both.

"Subpart F—Assistance to States for Recovery of Clean-up Costs

"ASSISTANCE TO STATES ATTORNEYS GENERALS

"SEC. 3071. The Administrator may make grants to State attorneys general for purposes of providing training and technical assistance to State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States. There is authorized to be appropriated not more than $50,000,000 for each of the following fiscal years to carry out the purposes of this section: 1981, 1982, 1983, 1984, and 1985.".

(b) The following provisions of the Solid Waste Disposal Act are each amended by striking out "subtitle" in each place it appears and substituting "part": section 3001, 3002, 3003, 3004, 3005, 3006, 3009, and 3010.

(c) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting "Part 1—Standards and Permits for Hazardous Waste Management" immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—HAZARDOUS WASTE RESPONSE PROGRAM

"Subpart A—General Provisions

"Sec. 3021. Coverage of part.
"Sec. 3022. Definitions.

"SUBPART B—INVENTORY, PRIORITIES, AND MONITORING

"Sec. 3031. Hazardous waste site inventory.
"Sec. 3032. Establishment of priorities.
"Sec. 3033. Monitoring of inactive sites.
"Sec. 3034. Immunity.
"Sec. 3035. Destruction of records.

"SUBPART C—HAZARDOUS WASTE RESPONSE AUTHORITY

"Sec. 3041. Emergency response.
"Sec. 3042. State contribution.

"SUBPART D—HAZARDOUS WASTE RESPONSE FUND

"Sec. 3051. Establishment of Fund.

"SUBPART E—PROHIBITIONS AND ENFORCEMENT

"Sec. 3061. Enforcement.

"Subpart F—Assistance to States for Recovery of Cleanup Costs

"Sec. 3071. Assistance to States' Attorneys Generals."

STUDY OF HAZARDOUS WASTE SITING

SEC. 6. (a) The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies, appropriate representatives from State and local governments, and representatives of nongovernmental entities, conduct a study of the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. The study shall include:

(1) an assessment of the current and projected treatment storage and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(2) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate or both, with similar hazardous waste management needs;

(3) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act and other applicable provisions of law;

(4) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities; and

(5) an evaluation of the various options for overcoming obstacles to siting new facilities including needed legislation, for implementing the most suitable option or options.

The Administrator shall report the results of the study to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate not later than one year after the date of the enactment of this Act.

(b) There is authorized to be appropriated not more than $300,000 to carry out the study required under this section.

STUDY OF ADEQUACY OF FUNDING

SEC. 7. (a) The President shall submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United

States Senate within six months after the end of each fiscal year, beginning one year after the date of the enactment of this Act, a report summarizing the receipts and disbursements during that year from the fund established pursuant to this Act. The report shall also describe the administration and functioning of the fund during the period covered and present any recommendations the President may have for improvement.

(b) Before January 1, 1984, the Administrator shall conduct a study, and submit to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and to the Committee on Environment and Public Works of the United States Senate a comprehensive report on experience with the implementation of the amendments made by this Act, including, but not limited to an analysis of:

(1) whether the requirements set forth in the amendments are effective;

(2) the extent to which the fund established under the amendments is effective in enabling government to respond to and mitigate the effects of releases and threatened releases of hazardous waste;

(3) the cost of responding to, and the potential threat to public health or safety, posed by, hazardous waste remaining after actions taken pursuant to the amendments made by this Act; and

(4) State participation in the system of response, liability, and compensation established by such amendments.

In preparing the report under this subsection, the Administrator shall consult with appropriate Federal, State, and local agencies, affected industries and other interested parties. Based upon the analyses and consultation required by this subsection, the Administrator shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of the amendments made by this Act, including but not limited to recommendations concerning authorization levels, State participation, liability and liability limits, and financial responsibility provisions.

SUNSET PROVISIONS

SEC. 8. Unless reauthorized by Congress, the authority of the Administrator to inventory and clean up any inactive hazardous waste disposal site or to exercise any other authority conferred in this Act shall terminate five years after the date of enactment of this Act.

LIMITATION ON AUTHORIZATIONS

SEC. 9. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1980. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

Amend the title so as to read as follows: "A bill to amend the Solid Waste Disposal Act to provide authorities to respond to releases of hazardous waste from inactive hazardous waste sites which endanger public health and safety, to establish a Hazardous Waste Response Fund, and for other purposes.".

—Strike all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Waste Containment Act of 1980".

INAPPLICABLE TO POLLUTION OF NAVIGABLE WATERS

SEC. 2. Nothing in this Act, or in any amendment made by this Act, shall apply to oil, or other, pollution of navigable waters.

FINDINGS

SEC. 3. The Congress hereby finds that—

(1) hazardous waste has been disposed of in a manner which may result in a significant danger to public health and safety;

(2) the exact location of many hazardous waste sites is unknown;

(3) cooperation by Federal, State, and local governments and private industry can assist in compiling an up-to-date inventory of the location, condition, and contents of existing hazardous waste sites;

(4) a systematic method of funding the cost-effective cleanup of dangerous hazardous waste sites is necessary to protect public health and safety.

AMENDMENTS TO SOLID WASTE DISPOSAL ACT

SEC. 4. (a) Subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately after

"Subtitle C—Hazardous Waste Management"

and by adding the following new part at the end of such subtitle:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"COVERAGE OF PART

"SEC. 3021. The provisions of this part shall apply to inactive hazardous waste sites. Nothing in this part shall apply to oil, or other, pollution of navigable waters.

"PURPOSES

"SEC. 3022. (a) IN GENERAL.—The purposes of this part are to provide, through the use of Federal financial and technical assistance, for the establishment and implementation of effective State programs to assure the cleanup and containment of inactive hazardous waste sites by—

"(1) carrying out investigation and evaluation of the inactive hazardous waste disposal sites in the State;

"(2) establishing cleanup priorities among the sites, based on the danger they present to public health and safety; and

"(3) undertaking, based upon such priorities, the necessary remedial action for the protection of public health and safety from the hazardous waste associated with such sites.

"(b) RECOVERY OF CLEANUP COSTS.—It is also a purpose of this part to assist the States in recovering, from persons liable under otherwise applicable law, the costs of State cleanup and containment activities with respect to inactive hazardous waste sites.

"DEFINITION

"SEC. 3023. For purposes of this part, the term 'inactive hazardous waste site' means a landfill, surface impoundment, storage facility, or any other site or facility of any kind—

"(1) at which hazardous waste is, or has been, present (including any site or facility where hazardous waste is, or has been, stored, treated, or disposed of, or which is, or has been, used in whole or in part for the retention, deposit, injection, placing, or dumping of hazardous waste), and

"(2) for which no permit under section 3005 has been issued or treated as issued under section 3005(e) and for which no permit under section 3005 (including subsection (e) thereof) is required.

"FORMULA GRANTS

"SEC. 3024. (a) STATE PLAN.—Each State may, not later than 90 days after the date of the enactment of the Hazardous Waste Containment Act of 1980, submit to the Administrator a plan—

"(1) providing for the discovery and investigation by the State of inactive hazardous waste sites;

"(2) providing for the evaluation by the State of the threat to public health and safety posed by such sites and establishing cleanup and containment priorities among those sites which present, or may present, a substantial threat to public health and safety;

"(3) containing proposed methods and criteria for determining the appropriate emergency response to, containment of, and other remedial measures to be carried out for, releases or threatened releases of hazardous waste from inactive hazardous waste sites where such releases or threatened releases pose a substantial danger to public health and safety;

"(4) setting forth appropriate roles and responsibilities for Federal, States, and local governments and for interstate and nongovernmental entities, in carrying out the plan; and

"(5) establishing an active and effective program for recovering, from persons liable under otherwise applicable law, the costs incurred by the State in the cleanup and containment of inactive hazardous waste sites.

The provisions included in the plan under paragraph (3) shall provide that the State shall have the primary responsibility for carrying out the plan. The provisions included in the plan under paragraph (5) shall insure that the State will have sufficient investigative powers, financial resources, and legal expertise to recover the maximum feasible amount of cleanup and containment expenses incurred by the State.

"(b) EPA APPROVAL.—The Administrator shall approve a State plan described in subsection (a) and submitted under this section unless he determines that the plan—

"(1) does not comply with the requirements of subsection (a) or is otherwise generally inconsistent with the purposes of this part; or

"(2) would not result in a cost-effective use of Federal funds to be made available to the State under this section.

Any State may submit to the Administrator a modification of any State plan described in subsection (a), and any such modification shall be approved by the Administrator unless he makes the determination referred to in paragraph (1) or (2) of this subsection. Each State having a plan approved under this section shall be eligible for grants under subsection (c) unless the Administrator suspends such eligibility on the basis of his determination that the State is not carrying out the plan in good faith or has not properly used prior grants under subsection (c).

"(c) GRANTS.—Upon the application of any eligible State (as determined under subsection (b)), the Administrator shall make grants to such State to assist the State in carrying out the State plan approved under this section. Such grants shall be made not more frequently than annually and shall be allocated among such States on the basis of a formula based on population density, on the annual hazardous waste generators report required under regulations prescribed under this subtitle, and on the annual report for facilities that treat or store hazardous waste required under regulations under this subtitle. The Administrator shall, by rule, prescribe such formula not later than 60 days after the date of the enactment of the Hazardous Waste Containment Act of 1980. For any fiscal year after the first fiscal year in which a grant is made to a State under this section, grants shall be made by the Administrator to any State which applies for such a grant and certifies that the State plan approved under this section is being implemented.

"SUPPLEMENTAL GRANTS

"SEC. 3025. (a) GUIDELINES.—The Administrator shall promulgate guidelines for making supplemental grants to eligible States

(as determined under section 3024) for purposes of assisting such States in undertaking remedial action with respect to inactive hazardous wastes sites. Such guidelines shall provide that the supplemental grants shall be made only for purposes of addressing emergency situations or for purposes of assisting States which have a disproportionate number of inactive hazardous waste sites which pose substantial threats to public health or safety. The guidelines shall provide for the allocation of supplemental grants under this section among the eligible States on the basis of the Administrator's determination as to the relative amounts required to be expended by the State for cleanup and containment of inactive hazardous waste sites, the significance of the threats to public health and safety posed by such sites, and the ability of the State to undertake remedial action without such supplemental Federal assistance.

"(b) GRANTS.—Upon the application of any eligible State (as determined under section 3024), the Administrator may make a grant to such State under this section in accordance with the guidelines prescribed under subsection (a). Any grant made to a State under this section in a fiscal year after the first fiscal year in which any grant was made to such State under this section or section 3024 shall be based upon such guidelines and on the Administrators determination that the State has acted properly in its expenditure of funds made available to the State under this section and section 3024 in prior fiscal years.

"TECHNICAL ASSISTANCE

"SEC. 3026. The Administrator shall undertake a program of (1) research with respect to hazardous waste management and (2) providing training and technical assistance to State officers and employees engaged in hazardous waste management activities. Such program shall include research, training, and technical assistance with respect to—

"(A) the evaluation of hazardous waste associated with inactive hazardous waste sites; and

"(B) emergency response actions which may be taken with respect to releases or potential releases of hazardous waste.

For purposes of the program under this section, the Administrator shall develop equipment, manuals, and other materials which will have a wide application to State programs for cleanup and containment of inactive hazardous waste sites.

"ASSISTANCE TO STATES ATTORNEYS GENERAL

"SEC. 3027. The Administrator may make grants to State attorneys general for purposes of providing not more than 50 percent of the costs of training and technical assistance for State employees engaged in litigation and other efforts to recover the costs of remedial action undertaken by the State at inactive hazardous waste sites and for purposes of otherwise assisting the State attorneys general in recovering such costs. Such grants shall be made in such manner and pursuant to such applications as the Administrator shall by rule prescribe. For purposes of this subsection, the term 'State attorney general' means the principal law enforcement officer of the States.".

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3028. (a) GRANTS.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of making grants to the States under section 3024 and section 3025:

"(1) $75,000,000 for the fiscal year 1981;
"(2) $150,000,000 for the fiscal year 1982;
"(3) $150,000,000 for the fiscal year 1983;
"(4) $75,000,000 for the fiscal year 1984; and
"(5) $50,000,00 for the fiscal year 1985.

Not less than 70 percent of the amounts appropriated under this section for any fiscal year may be used only for grants under section 3024.

"(b) RESEARCH AND TECHNICAL ASSISTANCE.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of research and technical assistance under section 3026:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $15,000,000 for the fiscal year 1982;
"(3) $15,000,000 for the fiscal year 1983;
"(4) $5,000,000 for the fiscal year 1984; and
"(5) $5,000,000 for the fiscal year 1985.

"(c) ASSISTANCE TO STATE ATTORNEYS GENERAL.—There is authorized to be appropriated to the Administrator not more than the following amounts for purposes of recovery assistance under section 3027:

"(1) $10,000,000 for the fiscal year 1981;
"(2) $10,000,000 for the fiscal year 1982;
"(3) $10,000,000 for the fiscal year 1983;
"(4) $10,000,000 for the fiscal year 1984; and
"(5) $10,000,000 for the fiscal year 1985.".

(b) The table of contents for such subtitle C of the Solid Waste Disposal Act is amended by inserting

"PART 1—STANDARDS AND PERMITS FOR HAZARDOUS WASTE MANAGEMENT"

immediately before the item relating to section 3001 and by adding the following at the end thereof:

"PART 2—ASSISTANCE TO STATES FOR INACTIVE HAZARDOUS WASTE SITES

"Sec. 3021. Coverage of part.
"Sec. 3022. Purposes.
"Sec. 3023. Definition.
"Sec. 3024. Formula grants.
"Sec. 3025. Supplemental grants.
"Sec. 3026. Technical assistance.
"Sec. 3027. Assistance to States attorneys general.
"Sec. 3028. Authorization of appropriations.".

—Page 5, strike out lines 5 through 18 and insert in lieu thereof the following:

"(1) 'Inactive hazardous waste site' shall have the meaning prescribed by the Administrator in accordance with subparagraph (1) (A) of this section.

"(A) Not later than 120 days after the date of enactment of this Act, the Administrator shall promulgate a final rule establishing the definition of 'hazardous waste site' and submit such final rule to the Congress for review in accordance with subparagraph (1) (B) of this section. In developing such final rule, the Administrator shall consider—

"(i) the characteristics of the sites that would be encompassed in the proposed definition;

"(ii) the quantity and characteristics of the materials located at sites that would be encompassed in the proposed definition;

"(iii) the magnitude of the threat to public health and safety posed by the sites that would be encompassed in the proposed definition; and

"(iv) the costs and benefits to the nation as a whole of alternative definitions that encompass a larger or smaller number of sites than the proposed definition.

"(B) (i) Any final rule promulgated by the Administrator under this paragraph shall be delivered to each House of the Congress on the same date and to each House of the Congress while it is in session. Such final rule shall be referred to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Interstate and Foreign Commerce, respectively.

"(ii) Any such final rule shall become effective unless, before the end of 30 calendar days of continuous session after the date such rule is submitted to Congress, either House passes a resolution stating in substance that such House does not approve such a final rule."

—Page 7, strike out lines 1 through 4 and insert in lieu thereof the following:

"(5) 'Threatened release' means a condition or situation in which, on the basis of information provided pursuant to section 3031(a) or on the basis of monitoring a particular site, the Administrator determines there exists a substantial likelihood of imminent release to the environment from an inactive site of material posing a significant threat to public health or safety."

—Beginning at page 7, line 22, strike out all that appears through page 9, line 3, and insert in lieu thereof the following:

"(2) The information required to be provided under this subsection is as follows:

"(A) a description of the location of the inactive hazardous waste site;

"(B) the name and address of, or corporate headquarters of, the owner of the site, determined as of the date of submission of the information;

"(C) the current status of the site, including whether hazardous waste is being treated, stored, or disposed of at the site at the time the information is submitted (and, if not, the date on which such activity ceased);

"(D) such information relating to the amount, nature, origin and characteristics of the hazardous waste at the site as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(E) an identification of the types of techniques of waste treatment, storage, or disposal which have been used at such site; and

"(F) information concerning the proximity of the site to residences or other area used by individuals and its proximity to any water supply used for human consumption.

Information under this subsection shall be supplied on forms made available by the Administrator within a three-month period after the date of the enactment of the Hazardous Waste Containment Act of 1980. Upon the request of any person required to submit information under this subsection the Chief State Public Health Officer may grant a waiver to such person with respect to any information required to be submitted under this subsection where he determines that his submission of such information would be impracticable or unnecessary."

—Page 8, strike out lines 13 through 18 and insert in lieu thereof the following:

"(D) such information relating to the amount and characteristics of the hazardous waste at the site and the integrity of the site as may be necessary to determine the extent of any health hazard associated with such site;"

—Beginning at page 17, line 13, strike out all that appears through page 20, line 8.

—Page 16, line 21, strike out "or the environment" and insert in lieu thereof "and safety".

—Page 17, line 15, strike out "or the environment" and insert in lieu thereof "and safety".

—Beginning at page 18, line 23, strike out all that appears through page 20, line 8.

—Page 17, line 21, strike out "; or" and insert in lieu thereof a period. Beginning at page 17, line 22, strike out all that appears through page 18, line 22.

—Page 18, line 6, after "unreasonable risk" strike out all that appears through "action." on line 20.

—Page 22, strike out lines 15 through 25 and insert in lieu thereof the following:

"(b) RESPONSIBLE PARTY.—As used in this section, the term 'responsible party' means with respect to any inactive hazardous waste site any person who owned or operated such site at the time during which it was utilized for the treatment, storage, or disposal of any hazardous waste."

—Page 23, line 23, strike out "the environment" and insert in lieu thereof "safety".

—Page 24, after line 8, insert the following: "In determining whether an action is cost-effective, the Administrator shall assess the social costs of such action, including but not limited to its effect on economic output and employment.".

—Beginning at page 24, line 12, strike out all that appears down through page 28, line 23.

—Page 24, line 17, strike out "or the environment" and insert in lieu thereof "safety".

—Beginning at page 25, line 10, strike out all that appears down through page 26, line 18.

—Page 25, line 19, strike out "; or" and insert in lieu thereof a period.

—Beginning at page 25, line 20, strike out all that appears down through page 26, line 18.

—Page 26, line 4, after "such unreasonable risk" strike all that appears through "applies." on line 15.

—Page 26, line 11, strike out "10" and insert in lieu thereof "3".

—Page 18, line 14, strike out "10" and insert in lieu thereof "3".

—Page 27, line 14, strike out ", or" and insert in lieu thereof a period.

Page 27, strike out lines 15 through 19.

—Page 28, after line 20, insert the following: "In determining whether an action is cost-effective, the Administrator shall assess the social costs of such action, including but not limited to its effect on economic output and employment.".

—Beginning at page 28, line 24, strike out all that appears down through page 29, line 8.

—Beginning at Page 29, line 14, strike out all that appears down through page 32, line 11.

—Page 32, line 13, strike out "90" and insert in lieu thereof "50".

—Page 32, line 16, strike out "10" and insert in lieu thereof "25".

—Beginning at page 33, line 22, strike out all that appears down through page 34, line 12.

—Page 34, strike out lines 21 through 23.

—Beginning at page 35, line 16, strike out all that appears down through page 36, line 15, and insert in lieu thereof the following:

"(b) Amounts Credited to Fund.—(1) The following amounts shall be credited to the Fund—

"(A) an amount equal to all amounts recovered by the United States under subpart F,

"(B) any amount reimbursed to the fund as provided in subsection (a) (3) of section 3041,

"(C) amounts authorized to be appropriated to the fund under paragraph (2).

"(2) There are authorized to be appropriated to the fund for the fiscal year—

"(A) 1981, $100,000,000;

"(B) 1982, $100,000,000;

"(C) 1983, $100,000,000;

"(D) 1984, $100,000,000;"

Beginning at page 37, line 7, strike out all that appears down through page 45, line 18.

—Page 40, after line 20, insert the following:

"(7) No fee shall be imposed under this section on any quantity of feedstock or element or compound that is derived from a synthetic liquid or gaseous material produced from coal, oil shale, tar sands, or heavy crude oil. For the purposes of this paragraph, the term 'heavy crude oil' means crude oil with a gravity of 20 degrees API or less."

—Page 38, strike lines 20 through 24.

—Page 40, after line 20, insert the following:

"(7) No fee shall be imposed under this section on any quantity of feedstock or element or compound that is produced for sale outside the United States or that is used in the production of any material intended for sale outside the United States."

—Page 36, strike out lines 7 through 9 and insert in lieu thereof the following:

"(B) $100,000,000 for the fiscal year 1982,

"(C) $100,000,000 for the fiscal year 1983,

"(D) $100,000,000 for the fiscal year 1984."

—Page 44, strike out lines 7 through 11.

—Page 44, strike out lines 12 through 17.

—Beginning at page 44, line 18, strike out all that appears down through page 45, line 18.

—Beginning at page 45, line 21, strike out all that appears down through page 46, line 24.

—Page 46, line 11, strike out "two and one-half times the amount of".

—Beginning at page 46, line 2, strike out "on considerations of the size of the business of the owner, operator, or other person against whom the penalty is assessed,".

—Beginning at page 47, line 9, strike out all that appears down through page 50, line 7.

—Beginning at page 53, line 6, strike out all that appears down through page 55, line 2.

H.R. 7112

By Mr. WEISS:

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) Authorization of Appropriations for Allocations to State Governments.—

"(1) In general.—In the case of each entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $2[illegible]00,000,000 to make allocations to State governments under section 107 for such entitlement period.

"(2) Entitlement periods.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983."

Page 6, line 3, strike out the close quotation marks and the following period and strike out lines 4 through 20 and insert in lieu thereof the following:

"Sec. 107. Allocations to State Governments.

"From any amount appropriated pursuant to section 105(c)(1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each State government an amount which bears the same ratio to the amount so appropriated for that period as the amount allocable to that State under section 106(b) bears to the sum of the amounts allocable to all States under section 106(b).".

(b) Conforming Amendments.—

(1) Payments.—Section 102(a)(1) of the Act is amended by striking out "the entitlement" and inserting in lieu thereof "the allocation, if any,".

Page 7, line 3, insert "and" after the semicolon and strike out lines 4 through 24 and redesignate the succeeding subparagraph accordingly.

—Page 3, after line 21 insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(c) Authorization of Appropriations for Additional Allocations to Local Governments.—

"(1) In general.—In the case of any entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $920,000,000 to make additional allocations to local governments under section 107 for such entitlement period.

"(2) Entitlement periods.—The following entitlement periods are described in this paragraph:

"(A) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

"(B) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

Page 6, line 3, strike out the close quotation marks and the following period and insert after such line the following:

"Sec. 107. Additional Allocations to Local Governments.

"From any amount appropriated pursuant to section 705(c)(1) for any entitlement period beginning on or after October 1, 1981, there shall be allocated to each unit of local government an amount which bears the same ratio to the amount so appropriated for that period as the entitlement of that unit under section 108 bears to the sum of the entitlements of all units of local government under such section.".

—Page 16, immediately before line 1 insert the following new section (and redesignate the succeeding sections accordingly)

Sec. 104. Establishment of Territorial Allocations.

The State and Local Fiscal Assistance Act of 1972 is amended by inserting after section 109 the following new section:

"Sec. 110. Authorization of Appropriations for Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"(a) In General.—There is hereby authorized to be appropriated for each of entitlement period beginning on or after October 1, 1980, for the purpose of making payments under this tile to Puerto Rico, Guam, American Samoa, and the Virginia Islands an amount equal to one percent of the sum of the amount authorized for such entitlement period under section 105(b).

"(b) Allocations.—

"(1) In general.—From the amount appropriated under subsection (a) there shall be allocated to each territory an amount equal to the total appropriated under subsection (a) for the entitlement period multiplied by the applicable territorial percentage.

"(2) Applicable territorial percentage.—For the purposes of this subsection, the applicable territorial percentage is equal to the quotient resulting from the division of the territorial population by the sum of the territorial population for all the territories.

"(3) Definitions.—For the purposes of this section—

"(A) The term 'territory' means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"(B) The term 'territorial population' means the most recent population for each territory as determined by the Bureau of the Census.

"(c) Payments to Units of Local Government.—The governments of the territories shall make payments to all units of local government within their jurisdiction from sums received under this section on the basis of population as determined by the Bureau of the Census.

"(d) Application of General Provisions.—The provisions of sections 121, 122, 123, 124, 125, 141, 142, and 143 shall apply to the funds allocated under this section.

H.R. 7244

By Mr. BEDELL:

—Page 9, after line 21, insert the following new section and redesignate the subsequent sections accordingly:

COUNTRY EXPOSURE LENDING SURVEY

Sec. 6. The Chairman of the Board of Governors of the Federal Reserve System shall transmit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of each Country Exposure Lending Survey which is prepared by the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. Not less than two such surveys shall be prepared and transmitted during each calendar year.

EXTENSIONS OF REMARKS

CONGRESSIONAL AUTO TASK FORCE HEARING OF SEPTEMBER 15, 1980

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HILLIS. Mr. Speaker, on September 15, 1980, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held its second hearing. The following is a summary of the testimony presented at that hearing by myself, Owen Bieber, vice president, Automobile, Aerospace & Agricultural Implement Workers of America (UAW); Mr. Howard D. Samuel, president, Industrial Union Department, AFL-CIO, and chairman, Coalition of Automotive Component and Supply Workers; and Dr. David S. Potter, vice president, public affairs group, General Motors Corp.

OPENING STATEMENT BY CONGRESSMAN ELWOOD H. HILLIS

The American auto industry is undergoing major changes. It faces new challenges which must be met during the 1980's. The industry is half way through a ten year program designed to double the fuel efficiency of its product. That program may well be successful and certainly it will result in a changed industry. In that regard, this year represents a decisive turning point.

The problems of the industry need not be detailed—they are generally well recognized, I believe. On the other hand, solutions to those problems continue to evade us. We are faced with a Congress obviously unwilling to pass the type of legislation, such as Capital Cost Recovery, which would help the industry. Apparently, the Administration has yet to recognize the nature of the problems inasmuch as they consider the slump in auto sales to be a short-term, cyclical phenomenon. While the President has proposed a "revitalization" package, his proposals have met with mixed reaction.

The purpose of this task force is to consider the various aspects of the auto industry's problems. It is to review several of the recommendations which have been made to address those problems. And in the end, it is to build support for needed legislation and to work as a forum in building knowledge of the industry and its problems.

TESTIMONY OF OWEN BIEBER

The very fact that this task force was formed attests to the importance of the industry in the U.S. economy. In a good year the auto industry employs one million people. On average, every one of those jobs is directly tied to two additional jobs—in steel, rubber, glass, some auto parts, wholesale and retail trade, etc. Many more paychecks are generated as the impact of those jobs reverberate throughout the economy.

The importance of the auto industry to our entire economy as well as its current predicament point to the need for and the suitability of government intervention. This is all the more so because the actions of governments in other countries have had, and continue to have, a substantial bearing on the course of our own industry at home.

The Japanese government set out in the 1950's to cultivate a powerful auto industry. Its program included effective barriers against imports, favorable tax laws and outright subsidies, assistance in obtaining outside technology without foreign control, etc. With such treatment, the industry came into the 1970's as a full scale, technologically advanced sector well ready to compete effectively in the world market.

Thirty-one countries impose some form of content requirement. Our government has meanwhile adhered to a principle of free international trade which has turned industries as strategic as auto and auto-related into obvious targets for other countries' initiatives of expansion.

The costs of the government continuing to do nothing about this problem are staggering. To the approximately three-quarter million currently idled by the slump within the industry, one must add the multiplier effects. These are especially severe at those locations where plants have not only had shifts eliminated or hours cut, but where some have been mothballed or dismantled altogether.

We in the UAW are convinced that, by any measure, the costliest option for government is inaction.

At the top of our agenda is a program of import restraint. We have petitioned the International Trade Commission (ITC) for temporary import quotas which would limit the influx of imported cars and trucks to the level of 1976, as well as for stiff import tariffs. In fact, we would prefer to see an agreement between the American and Japanese governments on a rollback for Japanese vehicle shipments to the U.S.

TESTIMONY OF HOWARD D. SAMUEL

I would like to impress upon you today the urgent need for legislative and administrative solutions for the unemployment problems in the auto and auto-related industries.

Some of the member unions of the Coalition have been extremely hard hit by these shutdowns and by layoffs at other plants. For example, in the rubber and tire industry, the United Rubber, Cork, Linoleum and Plastic Workers union represents about 100,000 workers who produce tires for automobiles, trucks and buses and other automobile components. This year alone, 12,055 URW members have lost their jobs due to plant closures and another 15,800 have been laid off with little hope for early recall.

The United Glass and Ceramic Workers of North America whose members produce automotive glass lost nearly 3,000 members between December, 1979 and July, 1980, due to plant shut-downs or layoffs in the automotive glass industry.

The International Union of Electrical Workers (IUE) currently has some 43,000 members working on the production of auto parts, a reduction of 17,000 auto-related members from last year. An additional 10,000 of these 43,000 are on a four-day workweek. The machinists have about 41,000 members working on auto parts and components. About 25 per cent of these IAM workers are unemployed.

Within the United Steelworkers, auto-related membership declined by about 3,000 members in the past two years. And my own union, the Amalgamated Clothing and Textile Workers Union, has seen five auto-related plants closed since 1978, laying off over 7,000 workers.

According to the current law, these workers are not eligible for Trade Adjustment Assistance (TAA) because the auto components they produce for suppliers of the major auto companies are not "like or directly competitive" with automobile imports.

One legislative remedy to the worker displacement problems I have described would be enactment of the Vanik bill (H.R. 1543). This measure would provide trade adjustment assistance for workers who produce parts and components of imported articles.

While expanding TAA eligibility would offer some relief to unemployed auto-related workers, this program alone wouldn't get to the cause of the injury. The most immediate and effective solution would be to cut back Japanese imports through a negotiated agreement with Japan. The U.S. automobile industry will not be able to recover its health—nor will its workers be restored to their jobs—unless this devastating flood of imports is pushed back. Without immediate relief, the auto and components industries will be unable to finance the transition to producing a sufficient number of smaller, fuel-efficient cars for the American market of the mid-1980's and beyond.

That is the challenge squarely facing this Congress and the Carter Administration. We are convinced that the law allows our government to sit down and negotiate an agreement for the period of years required to allow the automotive industry to get back on its feet. The Administration has taken a few steps to help the industry, in delaying and modifying some regulatory standards and in giving it some tax incentives, but it has failed to take effective action to limit imports, no matter how temporarily.

Two avenues are available to the President for immediate action to limit auto imports. One is embodied in the resolution proposed by the Congressional Auto Task Force and introduced in a related form in the Senate (S.J. Res. 193) by Senator Riegle and 28 cosponsors; this would authorize the President to negotiate orderly marketing agreements (OMA's) with foreign governments to limit the importation of autos and trucks—with enforcement in U.S. ports by the U.S. Customs Service. The focus of these orderly marketing agreements would be to limit imports of autos at the U.S. border through the mechanism of an enforceable government-to-government agreement.

The other option is for the President to exercise his inherent powers to negotiate with foreign governments for export limitations enforceable in the expanding country. This course is readily available to the Administration and can and should be implemented now—before further harm is done, before more workers and communities are irreparably damaged.

Again, I must emphasize the need for immediate congressional and presidential action toward this end. In summary, the Industrial Union Department and the Coalition of Automotive Components and Supply Workers urges Congress: (1) to complete action on the Vanik bill extending trade adjustment assistance eligibility to component and supply workers; and (2) to encourage

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

the Administration to effect immediate relief from the flood of imported autos either through voluntary restraint agreements or through orderly market agreements.

TESTIMONY OF DR. DAVID S. POTTER

In the past decade or two, the shift in this country toward more fuel-efficient automobiles was taking place at a relatively constant rate. Two events in the last decade, however, produced abrupt discontinuities which had a profound impact on the auto industry—the 1973 oil embargo, which followed the 1973 Mideast War, and the gasoline lines in California and on the East Coast, which followed the Iranian revolution in the spring of 1979. Both of these periods saw a sudden, sharp increase in the demand for smaller, more fuel-efficient cars. Both led to a shift in consumer demand toward imports.

In the summer of 1973—before the oil embargo—when there were growing signs that better fuel economy would become a more important factor with American customers, we made the decision to go ahead with the lighter-weight and more fuel-efficient cars that GM is producing today all around the world.

Since the introduction of these fuel-efficient cars coincided with the long gas lines in California and on the East Coast, their reception by the public was far greater than had been anticipated at the time we had made our production decisions. We did not have the means to produce all of the components required to increase production of our X-cars and other smaller models that suddenly came into much heavier demand.

Let me emphasize it was the government-imposed gasoline allocations that caused spot shortages in California and on the East Coast while plentiful supplies existed elsewhere. Until that time, the domestic auto industry's sales had been moving along at a record pace, and inventories of both small and large cars were in good balance. Consumer uncertainty about gas prices and availability slowed the pace of sales and created imbalances in demand to which the domestic industry could not instantly adjust.

Let me state that despite the abrupt shift in consumer demand over the past year and a half, and the ability of Japanese manufacturers to quickly capitalize on that shift, GM new-car deliveries have represented about 45 percent of the industry total—about in line with our experience over the past decade. In part, this reflects the timing of a second assembly plant dedicated to subcompact Chevette output, which was brought on stream in early 1979, as well as our new front-wheel-drive cars—the X-cars—which were introduced early in April, 1979 after a gestation period of nearly four years.

It follows, then, that our financial results in 1980—a $317 million loss through the first half—are largely due to other factors. Certainly one factor is the recession, which reduced our volume. Another is the mix of our product. But an equally significant factor is inflation.

We strongly believe that we can and should solve our problems through the marketplace. Our downsizing program to achieve increased fuel economy required a GM investment of more than $20 billion in the six years from 1974 through 1979. We now have a $40 billion worldwide program underway which we are confident will result in products that meet customer demands in the 1980's.

While we believe strongly in a market solution, there is, however, a problem-solving role for government to play in both the regulatory and the tax areas.

In the area of government regulation, we do not believe there is a full appreciation of the important and immediate relief which could be obtained by responsible and prudent regulatory changes. Since the enactment of the first federal auto regulatory legislation in 1966, there has been a profusion of regulations, instructions and directions from a growing list of government agencies. In GM, the talents and energies of the equivalent of 26,600 full-time employees were tied up last year in complying with regulation from all levels of government.

It must be recognized that the U.S. government now has means at hand that could be pursued in an attempt to improve the competitiveness of the domestic auto industry. For example, government policymakers could nurture a better climate for investment in American business by encouraging greater greater capital formation for new plants and equipment and funding for increased research and development. This can be accomplished through tax laws that allow faster write-offs of capital equipment and a lowering of corporate as well as individual tax rates to encourage more savings and investment.

We believe there should be a substantial tax cut directed toward capital formation. In accordance with the need for fiscal responsibility, it is important that the tax cut be "earned" by spending cuts. We cannot afford to have new inflationary forces cause a takeoff from the current unacceptably high level of inflation.

We want to emphasize that our government must take action now to improve the entire business climate—not just that of the auto industry.

Let me close by stating that General Motors has traditionally supported a policy of liberal trade because such a policy is in the best interests of the world economies, the U.S. and the auto industry. We continue to believe that. We further believe progress in eliminating trade barriers will marshal resources in the most efficient way to satisfy consumer demands.

But we also believe that practices currently being followed by some Japanese auto manufacturers are short-sighted and are causing pressures—both here and abroad—that could result in lasting harm to important world trade relationships.

We believe our government must take the initiative in persuading the Japanese government to protect its own self-interest by acting now—and by acting voluntarily—to adopt more prudent trade practices with the United States. Such prudence would help head off the wave of protectionist sentiment now building in this country—sentiment that threatens permanent harm to important trade relations between the U.S. and Japan.●

CONGRATULATIONS TO NORTH REDONDO BEACH BUSINESS ASSOCIATION

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DORNAN. Mr. Speaker, the North Redondo Beach Business Association will be celebrating its first anniversary on Thursday evening, October 2, at TRW Inc. in Redondo Beach Calif. I will be unable to attend this celebration and second installation banquet, so I would like to take this opportunity to congratulate the North Redondo Beach Business Association before this distinguished body.

The North Redondo Beach Business Association was founded by a group of concerned business men and women during the summer of 1979 to improve the image of the northern section of the city of Redondo Beach. I had the privilege to address this organization at their initial installation banquet and am pleased to report that the business association has pursued its founders' goals in an expeditious and professional manner.

During its first year in existence, the North Redondo Beach Business Association was successful in preventing the proposed installation of parking meters in the area and represented the community in a special task force which assisted in the preparation of a Redondo Beach revitalization survey and report. The organization monitored the progress of the undergrounding of utilities on Artesia Boulevard and expressed business concerns associated therewith, and was a motivating force in the creation of a local corporation established for the development and improvement of a business corridor. The association introduced the Redondo Beach Police Department's K-9 patrol dog program to the community at a public meeting and cooperates with the Lincoln Community Forum in the organization of an annual family picnic in Redondo Beach.

The North Redondo Beach Business Association was successfully guided by its president, Hank Courselle, vice president, Bob Weiss, treasurer, John Mozitis, and secretary, Carol Courselle, with the assistance and cooperation of the members of the association and its affiliate, the Redondo Beach Chamber of Commerce.

Congratulations for a job well done. I look forward to working with President Courselle and the North Redondo Beach Business Association in the coming year.●

SOVIETS' GLOBAL POSITION ERODING

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, in these days when some would have us believe that the Russians are 10 feet tall and about to take over the world, it is refreshing to read a view from Moscow that shows just how much trouble the Soviets are in. An article in the September 11 Washington Post, dispatched from Moscow by Post correspondent Dusko Doder, provides just such a view.

Doder writes:

> While the crisis in Poland is now bringing into focus internal problems of the Soviet bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense

of isolation here as a result of changes in the balance of forces, especially in Asia.

According to Doder, the three main reasons the Soviets see their global position eroding are the Sino-Japanese rapprochement in the Far East, the Camp David peace process that has shut Moscow out from the Middle East, and the rivival of Islamic fundamentalism throughout Central Asia.

Doder concludes:

> This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy.

While the Soviets do present us with serious challenges around the world, those challenges must not be exaggerated if our policies are to be realistic and effective. I think this article helps us keep things in perspective, and I hope my colleagues will read it. I include it at this point:

SOVIETS' GLOBAL POSITION ERODING

Moscow.—While the crisis in Poland is now bringing into focus internal problems of the Soviet Bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense of isolation here as a result of changes in the balance of forces, especially in Asia.

Coming after the deepening morass of Afghanistan, the Polish turbulence seems to be a new, major obstacle in the course of Soviet foreign policy that has successfully exploited the post-Watergate period of American vacillations.

But deeper changes in the strategic equation over the last two years—coupled with new U.S. assertiveness in foreign affairs—have renewed fears of "capitalist encirclement," a notion that party leader Nikita Khrushchev abandoned more than two decades ago when he inaugurated the policy of "peaceful coexistence."

According to senior Western diplomats, the two main changes contributing to the erosion of the Soviet global position involve the Sino-Japanese rapprochement in the Far East and the Camp David peace process that has shut out Moscow from the Middle East.

The third and unexpected element is the revival of Islamic fundamentalism throughout Central Asia.

As a result, Moscow sees itself surrounded by overtly or covertly hostile forces and left without friends on the vast Asian continent, with the exception of India and Vietnam. But even Soviets privately concede that both India and Vietnam draw far greater benefits from these ties than does the Soviet Union.

Moscow's crucial long-term concern is in East Asia, where it sees the United States using China and Japan to create Asian security arrangements "based on anti-Sovietism."

Japan has entered into this picture as a result of the Sino-Japanese peace and cooperation treaty signed two years ago. Increased trade and technological exchanges since then have prompted a flurry of articles, including one by Defense Minister Dmitri Ustinov last week, attacking ties between "the Chinese hegemonists and Japanese revenge-seekers."

The Soviets had an opportunity to prevent this course in Sino-Japanese ties had they been prepared to relinquish control over several small islands in the Kurile chain they had seized at the end of World War II. The Japanese have made their return a precondition for normalization of relations with Moscow.

The Soviets found it impossible to do so. However insignificant the island may be, their return to Japanese sovereignty is seen here as setting a precedent for a far more serious territorial dispute with Moscow's arch-rivals in Peking.

The Chinese have repeatedly denounced what they call "unequal treaties" imposed by the Russian empire on weak Chinese rulers in the last century. But Chinese territorial claims in this context are small compared to their claim on Mongolia, the large buffer state established by the Soviets in 1924 and for all practical purposes a colony of Moscow.

Mongolia—which is roughly the size of Texas, Arizona and California combined—was ruled by China from the 17th century until 1911. Four years later, Czarist Russia acknowledged in a treaty Chinese sovereignty over Mongolia. Susequently, Chiang Kai-shek formally accepted Mongolian independence.

Today, the Chinese view Mongolia as a military threat because of the presence of Soviet land and air forces there.

While they had long studied the implication of Japan's rapprochement with China, the Soviets were unprepared for the Camp David Peace process that re-established U.S. positions in the Middle East and effectively denied Moscow a voice in the course of events there.

The Soviets had thought of the Middle East in terms of a condominium with the United States, even after they were expelled from Egypt. The Arab-Israel conflict seemed to assure a substantial role for them in the region.

The loss of its Middle East positions, coupled with Moscow's overwhelming concern about what it sees as the emergence of an alliance involving China, Japan and the United States in the East Asian region, have produced a sense of strategic vulnerability. And this, according to Western diplomats, was the main reason for the Afghanistan invasion.

There were, of course, other elements such as the decline in U.S.-Soviet relations and the apparent collapse of SALT II as well as the climate of political instability in Central Asia after the Iranian revolution. Moreover, the Soviets had a problem on the ground as the Hafizullah Amin regime in Afghanistan appeared to be going down the drain as a result of the Moslem revival.

But, according to these diplomats, the long-term aim of the intervention was designed to neutralize what Moscow sees as Western strategic gains in crucial areas of the world. The Russians established in the 1970s positions in various parts of Africa and in South Yemen on the Arabian peninsula. But none of these could compare in wealth to the energy resources of the Middle East, the vast human resources of China or the industrial potential of Japan.

It should also be noted that the Soviet Union, while it has begun to export military power through the use of Cuban and Vietnamese proxies, remains a profoundly old-fashioned empire that regards territories contiguous to its own with greater concern than far away places.

The Afghanistan push, seen over the long term, is an effort to break what Moscow sees as the hostile ring around the Soviet Union and to establish a platform in Afghanistan from which the Soviets could pressure Pakistan, Iran and other countries in the region while exposing the West to risks and potential losses in the oil rich area.

Indeed, Soviet propaganda daily exerts pressure on Pakistan, and despite reports of Pakistani resistance, it is unlikely that over the long term the Pakistanis will be able to stand up to the Soviet in Baluchistan and Iran, that the Pakistani military government is headed toward a position in which its security in effect rests on the moral strength of nonalignments, the support of the Moslem world and the goodwill of its neighbors.

Diplomats also see possibilities for the Russians in Baluchistan and Iran. But in their view, an important aspect of Soviet intervention in Afghanistan was Moscow's willingness to use force to protect its friends. In the world of Central Asia, they say such actions cut deep, particularly if contrasted to the American unwillingness to protect the shah.

The move was also addressed to Soviet Central Asia, where there are about 50 million Moslems. The upsurge of Moslem fundamentalism following the Iranian revolution was seen as a threat to internal stability there.

What the Soviet leaders did not expect was the sustained and vigorous American opposition that created a change in public attitudes and, more importantly, produced a new American determination to meet Soviet challenges.

Nor did they expect turmoil in their vital backyard where the Polish crisis threatened the core of the Soviet political and security system and reminded Moscow that its hold on Eastern Europe is as precarious as ever.

This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy. Their preception of Western intentions seems to have come full circle back to the time when "capitalist encirclement" was the slogan of the day.●

THE AGRICULTURAL CONSERVATION PROGRAM

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MURPHY of Pennsylvania. Mr. Speaker, since the agricultural conservation program was created under the Soil Conservation and Domestic Allotment Act of 1936, it has been a consistent and effective program throughout its 40 years of existence. Despite the necessity of imposing responsible controls on Federal spending in this and future years, it is imperative that we continue to support effective programs such as this. With approximately 400,000 farmers and ranchers participating in ACP activities and sharing 50 percent of the cost of the programs, we should support and approve the requested funding of $190 million so that the good conservation practices in rural communities throughout the country will continue. Because of this program, not only our farmers benefit—all Americans who enjoy clean water and unpolluted streams share in the benefits of this admirable program.

In considering this program we should also consider the fact that it is administered by nonpartisan farmer elected committees well qualified to make the necessary decisions on needed conservation practices in their respective counties. Because of the regimentation imposed on the county organizations over the years we should now make this program more responsive to the local needs of county ASC committees. Because they live and work in their individual counties they know far better what each local need is and the best ways for serving those individual counties. The proper stewardship of the land is critical to this Nation's capability of producing more food than any other nation in the world. We cannot afford to fail in supporting those men and women who grow that food on our farms and ranches. I hope that the support of this body in funding the ACP will reflect not only its concern for the rural beauty of the country but will serve as a platform for continued support throughout the years and additional funding to preserve rural America.●

A TRIBUTE TO DONALDSON C. COLE, SR.

HON. ROBERT E. BAUMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BAUMAN. Mr. Speaker, it is my sad duty to report that Mr. Donaldson C. Cole, a good personal friend and adviser and a leading citizen of Cecil County, Md., recently passed away.

Don Cole was born, raised, and lived his entire life in Cecil County where he was a successful businessman and involved in many community activities and organizations. I first met Don nearly 30 years ago when I was an aide to the late Congressman Ted Miller of Maryland. He won wide recognition as "The Watchdog of the Susquehanna," a title fondly applied to him because of his lifelong love for the work on behalf of the preservation of the Susquehanna River.

Throughout my tenure as a Member of the House and also as Maryland State senator, Don Cole was a valued adviser on many matters. He served as a member of the Republican State Control Committee of Cecil County. Long before and well after his official service on the Susquehanna River Basin Commission, he served as a one man task force, never too busy to give his time and energy to any effort which was made on behalf of the health of the Susquehanna and the upper Chesapeake Bay.

Don Cole was born in Perryville and returned there after receiving all-American football honors at Dickinson College in Pennsylvania. For many years, he owned and ran the Perryville Water Co. and also became a junior partner in his family's seafood company. It was said that his love and concern for the Susquehanna River stemmed from the fact that that body of water provided his family's livelihood for many years.

Don later became president of the National Bank of Perryville and served as a director of the Home Building & Loan Association of Perryville as well.

I and my family share a deep sense of loss with his wife, Gertrude, his sons, Don and Bill, and daughter, Becky, and other members of his family. I include with my remarks articles about this remarkable man from the Cecil Democrat, of Elkton, Md., and the Aegis, of Bel Air, Md.

COLE, FORMER STAR ATHLETE, DIES AT 74 IN RIVER CITY

Donaldson C. Cole, Sr., 74, of North East, died Thursday, Aug. 14, at Hartford Memorial Hospital, Havre de Grace after a long illness. He was the husband of Gertrude Cochrane Cole.

He retired about two years ago as President of the National Bank of Perryville. He was a Director of the Home Building and Loan Association.

Earlier, he was the owner of the old Perryville Water Company and was a junior partner in a family wholesale seafood business.

A member of the Cecil County Property Review Board and the Susquehanna State Park Advisory Committee, he was active in the adoption of the Susquehanna River Basin Compact.

Mr. Cole was also a member of the Upper Chesapeake Watershed Association and was a former member of the National Rivers and Harbors Congress.

A former chairman of the Republican State Central Committee for Cecil County, he was a former trustee of the Perryville United Methodist Church and a charter member of the Community Fire Company of Perryville.

He was a founder and former treasurer of the Friends of Rodgers' Tavern, which is working for the restoration of the pre-revolutionary tavern in the Perryville area.

At one time, he also wrote a column that appeared in papers in the Cecil County area under the initials K.E.G.G.O.

A former master of the Susquehanna Lodge of the Masons, he was a member of the Scottish Rite and Boumi Temple.

Born in Perryville, he was a graduate of the Tome Institute and of Dickinson College, where he was reportedly named as a reserve end on an all-American football team.

His interest in sports continued in later life as he played football for teams in Elk Mills and Perryville. He was a founder and captain of a team in Newark, Del.

He also served as manager of the Perryville baseball team in the old Susquehanna League.

In addition to his wife, Mr. Cole is survived by two sons, Donaldson C. Cole, Jr. of North East and William H. Cole, III of Rising Sun; a daughter, Rebekah C. Cameron of Rumson, N.J. and five grandchildren.

Funeral services were conducted from the Perryville United Methodist Church, Sunday, Aug. 17, at 2 p.m.

DONALDSON C. COLE, SR., DIES OF HEART ATTACK

Funeral services for Donaldson Craig Cole Sr., 73, banker, waterman and lifelong resident of Cecil County, were conducted at the Perryville United Methodist Church on Sunday, August 17 at 2 p.m.

Officiating clergymen were Rev. James J. Shand, rector of St. Mary Anne's Episcopal Church, North East, and Rev. John M. Gauger, Perryville United Methodist Church. Burial was in Principio cemetery, Perryville.

Mr. Cole died of a heart attack on Thursday, August 14, 1980 in the Harford Memorial Hospital at Havre de Grace.

Widely known as the "Watchdog of the Susquehanna," Mr. Cole represented the Cecil County Board of Commissioners as a member of the Susquehanna River Basin Commission.

He was a past president of the National Bank of Perryville and continued as an advisor to the bank.

Mr. Cole owned and operated the Perryville Water Company for many years and was a junior partner in the W. H. Cole & Co. Wholesale Seafood Company on the Susquehanna River at Perryville until the U.S. government leased the land for the Perry Point VA Medical Center.

Mr. Cole was born in Perryville on February 23, 1907, the son of the late Maurice Elias Cole and Margaret Craig Cole.

He was educated at Mrs. Currier's private school in Perryville; graduated from Tome Institute at Port Deposit, and Dickinson College, Carlisle, Pa. where he was an All-American football team end.

His residence in recent years was at his summer home on Cara Cove near North East.

Mr. Cole is survived by his wife Gertrude Cochran Cole; two sons, Donaldson Craig Cole Jr. of North East, William Hazlett Cole III of Rising Sun; a daughter, Rebekah C. Cameron of Rumson, N.J.; cousin Katherine C. Boyd of Perryville and five grandchildren.

Mr. Cole was a director of the Home Building & Loan Association of Perryville for many years. He was a past master of Susquehanna Lodge No. 130, AF&AM; member of Boumi Temple of the Shrine; charter member and past president of the Cecil County Hunters Association; managed the Perryville baseball team of the old Susquehanna League; organized and was captain of the Newark Yellow Jackets football team; played local football for Elk Mills and Perryville teams.

At one time Mr. Cole wrote a newspaper column under the byline of "KEGGO."

Mr. Cole was a charter member of the Community Fire Company of Perryville; former member of the National Rivers and Harbors Congress; member of the Cecil County Property Review Board; member of the Susquehanna Park Commission—Cecil and Harford counties; member of the Upper Chesapeake Watershed Association; former trustee of the Perryville United Methodist Church; former chairman of the Republican State Central Committee of Cecil County.

WATCHDOG OF THE SUSQUEHANNA

The "watchdog of the Susquehanna" is dead.

Donaldson C. Cole Sr. who died last Thursday at the age of seventy-three, was a prominent banker but he will be best remembered for his love of the Susquehanna River.

He told us years ago that he felt he owed it to the river to watch over its welfare because it had served his father and their family as the means of livelihood when the family was engaged in the fish business at Perryville.

Don Cole Sr. served the Cecil County Commissioners as their representative on the Susquehanna River Commission after it was established some years ago.

Before that, Don Cole acted as a one-man commission. This editor first met him when we were editing the Havre de Grace Record.

The city of Baltimore tried to obtain rights to siphon off Susquehanna River water by installing a huge pipeline in the river above the Conowingo Dam.

Don enlisted our editorial support and we crusaded against the proposal. Together we helped kill it—at least he always credited us for our efforts.

Don's vigilance was not a sometimes thing. He devoted much of his time to matters affecting not only the Susquehanna but also to the Upper Chesapeake Bay. An ardent waterman, he spent as much time as he could spare on the rivers.

We join his family in mourning the death of this unselfish friend whose considerable energies were spent as the "Watchdog of the Susquehanna."●

FARM LABOR CONTRACTOR REGISTRATION ACT

HON. TOM RAILSBACK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. RAILSBACK. Mr. Speaker, I rise to express my support for H.R. 7824, introduced by Congressman PANETTA and more than 100 other Members of the House to clarify the intent of Congress when it adopted the 1974 amendments to the Farm Labor Contractor Registration Act, and to refocus the resources of the Department of Labor on improving the lot of migrant farmworkers by effective enforcement of this act with regard to true farm labor contractors or crew leaders. This Congress has before it two proposals—the Boren-Panetta bill, which I support; and the Javits-Ford bill.

It is clear that the supporters of both bills agree on one conclusion: The present wording of the Farm Labor Contractor Registration Act, as interpreted by the Department of Labor, imposes needless and burdensome requirements on employers and inadequate protection for migrant farmworkers. Both sides of this debate agree that corrective action needs to be taken by the Congress. It is clear that the Department of Labor has no intention or inclination to interpret the act as intended by the Congress.

It is true that the proposal of the Congressman from Michigan would relieve most agricultural employers from the requirements of fingerprinting, annual registration, disclosure of salaries of employees, and some other administrative requirements that are unnecessary and burdensome; but the heart of that bill is to confirm the basic interpretation of the Department of Labor; namely, that Congress intended that most agricultural employment be brought under the regulatory requirements of this act.

The real issue here is whether the Congress is going to put its stamp of approval on the misinterpretations of the Department of Labor. This act, as I read its legislative history, was intended to protect migrant farmworkers in this country by requiring the registration and strict regulation of labor contractors or crew leaders who, for a fee and as a business, engage in the recruitment, transportation, furnishing or employment of migrant workers.

The act refers throughout to migrant farmworkers. What is a migrant farmworker? Unfortunately, the act fails to provide a clear-cut definition. The fact of the matter is that too many people, either deliberately or inadvertently, confuse seasonal farmworker with migrant farmworker. According to the latest figures available from surveys of the Department of Agriculture, the Nation's hired workforce in agriculture consists of about 1.8 million persons. Of that number, about half are seasonal workers, and of the total number of seasonal workers, less than 10 percent are migrants. The rest of the seasonal workers are local residents, many of them college and high school students, many are local housewives who work for short periods of time. These nonmigrant seasonal workers are almost never recruited, transported, or hired by labor contractors or crew leaders.

This issue is now before a Senate-House conference committee on the child nutrition bill, to which the Boren-Panetta amendments were attached during Senate debate. I hope my colleagues will join with me in expressing to the House conferees our support for the Panetta amendments as contained in the Senate-passed bill.●

H.R. 6865—A VITAL BILL

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. NOWAK. Mr. Speaker, passage by the House Monday of H.R. 6865, the West Valley Demonstration Project Act, represents a major step forward in our Nation's effort to develop an effective nuclear waste management program.

I would like to commend my colleague from New York, Mr. LUNDINE, for his yeoman efforts in achieving the compromise among the three authorizing committees in the House. I would also commend the chairmen of these three committees—Science and Technology, Interior, and Interstate and Foreign Commerce—for their leadership on this legislation, which is of vital importance not only to New York State but to the entire Nation. The bipartisan and multiregional support H.R. 6865 attracted evidences the importance of this demonstration program to solidify the high level liquid nuclear wastes at the Western New York Nuclear Service Center at West Valley.

The agreed upon 90 percent Federal cost-sharing formula is an acknowledgement of both the Federal Government's responsibility for assisting in alleviating the environmental hazards posed by these wastes at West Valley and also the benefits the Nation as a whole will reap from the project's advancement of research and development in the handling, processing, solidification and decommissioning techniques for high level nuclear waste.

H.R. 6865 also provides benefits to the taxpayers of the State of New York, which has neither the technical nor financial capability to solve the West Valley nuclear waste problem on its own. The cost-sharing formula of H.R. 6865—which provides a non-Federal cost share of no more than 10 percent—is an equitable solution for addressing the needs of West Valley.

This legislation is the product of months and months of discussion and negotiation that seeks to resolve some complex issues in a fair and equitable manner and seeks to insure that this project will be implemented in a safe and environmentally sound fashion.

I trust our colleagues in the Senate will move expeditiously to finalize this legislation so the West Valley project can proceed forthwith.●

EXCISE TAX AND THE SMALL BUS OPERATOR

HON. CECIL (CEC) HEFTEL

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HEFTEL. Mr. Speaker, in 1978, the Congress passed the Energy Tax Act—Public Law 95-618—which exempts specific bus operators from the Federal excise tax on diesel fuel. The intent was to encourage the use of the energy efficient intercity bus and to assure the continued viability of the intercity bus industry.

Internal Revenue Code section 6427B, however, requires a bus operator engaged in intercity, charter, local, and special operations to pay the excise tax and then file for a refund. Bus operators from across the country, including those from my own State of Hawaii, have advised me that this is an extremely inefficient procedure and is particularly burdensome to small bus operators.

The bill which I am proposing today will do nothing more than give effect to the intent of Congress as expressed in Public Law 95-618. Bus operators would no longer have to go through the long and complicated process of paying the tax and then filing for a refund. Essentially, they would be permitted to make their purchases free of the excise tax. The revenue impact would be minimal and would, in fact, save money in that the time and expense of processing and refunding the excise tax would no longer be necessary. The bill would also ease the time consuming and expensive burden of Federal paperwork requirements. The intercity bus industry is comprised of primarily small businesses and the time and expense which they must now devote to Government paperwork requirements is staggering. My bill would help ease this burden and would enhance the ability of the small bus operator to utilize his time in more productive ways.

Mr. Speaker, in our energy conscious society, the bus engaged in charter, intercity or special operations is rapidly proving to be an effective means for Americans to lessen their dependence on foreign oil. It is the most fuel efficient mode of transportation, achieving 146 passenger-miles per gallon last year. Fully loaded, a bus can get nearly 300 passenger-miles per gallon. Equally important, the intercity bus industry currently provides service to over 15,000 U.S. communities. The vast majority of these communities—14,000—have no other form of public transportation. It is an essential form of transportation which carries more people than any other form of public intercity transportation.

Mr. Speaker, the legislation I am introducing today seeks to enhance the effectiveness of an important segment of our transportation industry, which plays a valuable role in our efforts to achieve energy independence. I urge my colleagues to support this important legislation.●

DEFENSE ACQUISITION REGULATIONS

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. CLINGER. Mr. Speaker, as we consider today the 1981 appropriations for the Department of Defense, we are all interested in seeing that the armed services procurement program, which is necessarily a very expensive program, makes the best possible use of the taxpayers' money. In this time of fiscal constraint, we must make sure that all programs, including defense, make the best, most economical use of appropriated funds. When we in Congress discover an aspect of procurement policy or practice that tends to defeat our efforts to get the most for our procurement dollar, the public interest that we serve obliges us to subject this policy or practice to serious and critical scrutiny and, if it proves desirable, to work toward its alteration.

An unfortunate example of what might be called mandated waste has just come to my attention. A small firm within my congressional district recently responded to an invitation to bid on a small construction project for the Department of Defense. This firm's bid to do the work for $40,000 was the low bid; however, in filling out the forms the firm had made a very small error. Under the bid bond requirement, the standard form specified bonding of "20 percent, not to exceed $3,000,000." In filling this part out, the firm wrote "20 percent or $3,000." Instead of $8,000, which is obviously 20 percent of their bid of $40,000, the firm inadvertently carried down the "3" from the form's stated bond limit of $3,000,000. This firm's low bid has been ruled "unresponsive" because of this trivial inadvertency, and the contract awarded to a bid that was higher by $5,000.

The error that the firm made in filling out the form, besides being entirely innocent and inadvertent, was also immaterial to the substance of the actual bid. Its correction or waiver would not have put any other bidder at an unfair disadvantage in the bid competition. Clearly the defense acquisition regulation that requires the rejection of a bid as unresponsive on the basis of such minor, obvious, and easily corrected errors hurts all of us. The regulation hurts the low bidder, who is not rewarded for his efficiency and conscientiousness. It hurts the contracting agency, which is forced to spend more of its precious funding on a project than it would if it were allowed more freedom to use its own discretion in correcting or waiving trivial errors. Most importantly, it hurts the American public, whose tax dollars are being wasted by this expensive regulatory practice.

My staff is presently investigating the application of the Defense acquisition regulations in this particular instance. However, we have already found that the ruling of a bid as "unresponsive" on the basis of such a trivial error is in fact quite a common, as well as expensive, occurrence. I believe, therefore, that it behooves the Congress to urge the various defense agencies, together with the General Accounting Office, to reexamine the relevant defense acquisition regulations with a view toward making these regulations more reasonable, more flexible, and more responsive to the needs of the agencies and the public.●

NUCLEAR NONPROLIFERATION POLICY—OPPORTUNITY FOR CHANGE

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WYDLER. Mr. Speaker, now that committees in both Houses have acted on resolutions of disapproval on the shipment of nuclear fuel to India, I believe it is appropriate to put this question in proper perspective.

As I have stated before in "Dear Colleague" letters to Members of the House, it is important to support the President on this issue because it is the first major indication of his willingness to demonstrate flexibility with respect to the implementation of his nonproliferation policy. Constructive forces within the administration lead by Special Ambassador for Nonproliferation, Gerard C. Smith and, supported by Dr. Thomas Pickering, Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State, have worked tirelessly to have the administration adopt a more reasonable stance. This June, Science magazine carried a most informative article on this proposed policy shift and its prospects within the administration. I urge my colleagues to read this article and carefully reconsider the Indian fuel shipment before the resolution comes to the House floor:

OFFICIALS DEBATE NUCLEAR POLICY SHIFT

The shipment of uranium to India, widely viewed as a weakening of U.S. nonproliferation policy, is sparking opposition that could dim any chances for a State Department proposal to soften other key aspects of the policy. In a dispute that parallels the confrontation over Indian fuel, the State Department says the United States needs a gentler approach to breeder reactors and plutonium storage to strengthen its nonproliferation stance; critics say the nation should wield a firmer hand against such concepts, imposing stiff penalties for noncompliance with U.S. orders.

The State Department proposal, drafted by Gerard C. Smith, the special ambassador for nonproliferation, is being debated by an interagency presidential review committee chaired by the Secretary of State (Science, 2 May, p. 478).[1] The committee's deliberations are in limbo while the new Secretary, Edmund Muskie, becomes acquainted with the issues, but once that happens the committee will probably send a series of options to the President. At present, representatives from the National Security Council, the Council on Environmental Quality, and the Domestic Policy staff are arrayed against all others in their opposition to the policy shift. Two key legislators, Representative Jonathan Bingham (D-N.Y.) and Senator John Glenn (D-Ohio), have both sent critiques of the proposal to Smith's staff. The Natural Resources Defense Council has also forwarded its criticism.

At the center of the dispute between these groups are proposals by Smith that the United States withdraw opposition to breeder reactor research and development and to an international system of storing plutonium, a by-product of civilian nuclear programs that can be used to make bombs. Present Administration policy calls for the United States to discourage breeder programs by exercising its control over much of the world's uranium supply. But several important U.S. allies—primarily France and Japan—have signaled their intention to move ahead on breeder R & D with or without U.S. sanction.

U.S. control over the uranium fuel supplies of France and other European allies is actually quite limited, but Japan depends on continuous American authorization to accumulate in breeder fuel supply. Applications for fuel have, in the past, been granted to Japan on a case-by-case basis, but they have never been denied. "We give them a fight every time and then we give in," admits an Administration official. The policy shift is thus designed to spare Japan the embarrassment of continually coming to the United States for an okay; this would be accomplished through blanket approval of fuel shipments needed for breeder R & D in any nation until 1990.

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[1] The committee includes the assistant secretaries of Energy and Defense, and representatives of the Office of Science and Technology Policy, the Arms Control and Disarmament Agency, the National Security Council, the Office of Management and Budget, the Domestic Policy Staff, and the Council on Environmental Quality.

The policy would apply only to R & D plans that are already set. Thus it would not permit start-up of similar plans by other, presumably smaller, nations. Some countries of the Third World find the breeder attractive because it offers energy independence; presumably these nations would complain that the U.S. policy is unfairly discriminatory. Foreshadowing the U.S. proposal, American delegates to the recent International Nuclear Fuel Cycle Evaluation (INFCE) conference argued that breeders are feasible only in developed countries with high electrical demand, but the delegates had little success in getting their views across.

A top U.S. nonproliferation negotiator is unconcerned by the objections these countries might raise: "Nonproliferation is inherently discriminatory to developing nations," he says. But another claims that Third World opposition could be obstructive, and that as a result, the policy should not be openly announced. "You don't say that developing countries will never get plutonium; you just keep ad-hoc-ing, claiming this is not the right time, and so on," the U.S. policy-maker recently told a Washington gathering.

Despite the potential drawbacks in the Third World, State Department officials say the proposal will earn the United States good will with developed countries whose cooperation is needed on other nonproliferation goals. "Right now we concentrate so much on being evenhanded and consistent in our policy of denial that we have discriminated against our friends," says one official. Another says, "We want to introduce a note of practicality and predictability into the U.S. policy."

This is also the goal behind Smith's proposal that the United States agree to supply enriched uranium to reactor operators in foreign countries for the duration of a reactor's lifetime. Contracts are now granted for less than 5 years at a time, primarily to maintained leverage over the reactor's operation and the host country's behavior. But a State Department official says that "our present unilateral actions to interfere with fuel contracts during renewal are disruptive and tend to drive countries toward the acquisition of fuel cycle independence." The official suggests the United States could, in exchange for the contracts, extract assurances that a recipient country would not engage in independent uranium enrichment, from which plutonium might be easily diverted.

Smith's final proposal—that the United States support an international storage and reprocessing system—is clearly the most controversial. Present U.S. policy is to support storage of unreprocessed (uranium) fuel at independent sites. State Department officials claim that an international storage system would prevent the stockpiling of plutonium by the nations that push ahead with the breeder. Access to the stored fuel might be conditioned on pledges not to recycle the fuel in conventional reactors, one of the primary U.S. nonproliferation goals.

Critics worry it will encourage plutonium trade by absolving individual nations of responsibility for storage and reprocessing. The INFCE report, for example, notes that "centralized facilities . . . would alleviate the concerns of countries with small nuclear programs in which suitable sites might not exist." Another critic says that "the most worrisome nations will not agree to any meaningful rules governing access, and as a result they'll develop their own storage and reprocessing facility."

Still unknown is the role to be played by Secretary Muskie in resolving this dispute. Despite more immediate distractions, Muskie—like his predecessor—has taken a personal interest in the policy review and intends to chair the review committee's next meeting. But whether this will enhance or diminish the likelihood of a major policy shift is not immediately clear.●

INTELLIGENCE IDENTITIES PROTECTION ACT

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● **Mr. EDWARDS of California.** Mr. Speaker, the following editorial from the San Jose Mercury News succinctly addresses the first amendment problems in H.R. 5615, the Intelligence Identities Protection Act. I commend the editorial to the attention of my colleagues:

PROTECT AGENTS—BUT

Congress is close to enacting a pair of spy protection bills that appear to clash headlong with the First Amendment and the people's right to keep an eye on their intelligence agencies. That troubles us greatly.

We are totally in sympathy with the intent of these measures, S. 2216 and H.R. 5615, which is to protect the identities of intelligence agents and informants. But we fear Congress is moving too fast and may, in the process, do considerable unintended damage.

At a minimum, these bills should be put over to the next Congress and subjected to extensive public hearings. Belatedly, the judiciary committees of both the House and Senate have interested themselves in the civil and consitutional rights aspects of this legislation, and that is encouraging.

The fuzzy language of S. 2216 and H.R. 5615 is so broad that it threatens responsible reporters, editors and publishers with fines and jail for reporting non-classified, legitimate public information about the CIA, the FBI and military intelligence. Such a sweeping ban is unacceptable.

What Congress is trying to do is laudable. It is seeking to muzzle the Philip Agees, the Louis Wolfs and similar self-appointed critics of the intelligence community who finger past and present agents, on occasion subjecting them to assassination attempts.

Agee is a disaffected former CIA agent whose disclosures five years ago were followed by the murder of the agency's station chief in Athens. The two bills before Congress would deal the Agee problem by making it a crime for anyone with access to classified intelligence information, including the names of agents and informants, to publish such data. That seems fair enough; the government has a right to protect itself against perfidious employees or former employees.

The Wolf problem is not so easily dealt with. Wolf publishes something called the Covert Action Information Bulletin, a publication deriving wholly from unclassified, publicly available information. In it, Wolf subjects this information to his own interpretative process and produces lists of individuals he identifies as intelligence agents and informants. Last month, the home of an American embassy official in Jamaica was attacked after Wolf identified him as the CIA station chief in Kingston.

The Wolf case raises a problem that obviously needs to be dealt with. S. 2216 and H.R. 5615 propose to deal with it by criminalizing the publication of unclassified intelligence information from any source whatever.

This, in our opinion, goes too far.

The problem was outlined succinctly in an Aug. 5 letter to Sen Edward M. Kennedy, D-Mass., chairman of the Senate Judiciary Committee, asking for further hearings on these bills. The letter, signed by nine individuals, including Charles Bailey, the editor of the Minneapolis Tribune, and Jack C. Landau, executive director of the Reporters Committee for Freedom of the Press, said in part:

". . . We believe it (this legislation) would have a chilling effect on vital and necessary news coverage. For example, it might have kept the media from reporting the CIA connections of some of the Watergate burglars. More recently, the White House was reported to be the source of leaks about details of the Iranian hostage rescue mission which may have compromised CIA agents and sources in Iran. Under (these bills) those reporting such stories could face prosecution . . ."

Last week, Rep. Don Edwards, D-San Jose, conducted two days of public hearings into the strengths and weaknesses of S. 2216 and H.R. 5615, and his civil and constitutional rights subcommittee will meet Tuesday to draft proposed amendments, which will be laid before the full House Judiciary Committee shortly. In addition, the Senate Judicary Committee will begin its own hearings into these bills this week.

We hope the judiciary committee hearings will produce moderating amendments to these measures, which have been approved by the intelligence committees of both houses of Congress.

We agree that covert intelligence agents and informants need protection, but we believe firmly that the intelligence apparatus of this country performs best and most responsibly when it is kept under critical public scrutiny. We fear S. 2216 and H.R. 5615, as originally drawn, could make that scrutiny more difficult, perhaps even impossible.●

SPECIAL TRIBUTE TO GEORGE SMITH

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● **Mr. JONES of Tennessee.** Mr. Speaker, I rise today to pay special recognition to one of my constituents, Mr. George Smith of Jackson, Tenn. Mr. Smith has been in business in this community for 50 years, owning a funeral home at first, and then adding other business enterprises to his endeavors as opportunities to do so came along.

Even with the heavy pressures of the business world, George Smith has found the time to repay his community for the opportunities and successes it has afforded him. He takes an active part in civic endeavors in the Jackson-Madison County area. He served the city for 16 years as mayor. He brings Christmas to many people in Jackson by dressing up in the traditional Santa

Claus costume and visiting schools and hospitals. In essence, he has sought to serve his fellowman throughout his life.

George Smith typifies to me the dedication and compassion that an individual feels for those around him. He has sought and continues to seek, even at 70 years young, to make his hometown and its surrounding area a better place to live for its people.

Recently, the Jackson Sun newspaper carried a story on Mr. Smith's work and his life. I would like to take this opportunity to insert that article in the Record in an effort to share his thoughts and philosophy with my colleagues.

Helping People

(By Lisa Frye)

Some things never change. Like George Smith stepping as lively down Main Street at 70 as he did at 35. George Smith, in dark suit and solemn demeanor, directing a funeral. George Smith, in white tuxedo, announcing a Golden Gloves boxing match. George Smith, in padded red suit and white beard, visiting schools and hospitals at Christmas.

"That's just kind of how this old boy ticks and operates," he would say.

Smith is one of those people who graduated from high school into the Great Depression 50 years ago and came out on the other side undaunted.

It was 1930 when Smith, at 20, decided to go into the funeral business—not a furniture store with a coffin shop in the back, still common at the time, but a funeral home.

"I don't know why I thought it would appeal to me, but somewhere, somehow I got the yearning. Some people say, 'I don't know how you could be in that business.' Well, all businesses have a not-so-desirable side. But there's a great deal of satisfaction in helping people who need help at a crucial time."

With a little money, a little credit and no experience, he opened his business on Baltimore Street. "That's the beauty about a young person," he says. "They challenge the world. They don't stop to think they can't do something."

The barter system—a funeral for a calf or a load of corn—and a mutual burial assocition whose members contributed to pay for one another's funerals saw the funeral home through the Depression.

The business came into its own as wakes at home and church funerals began to be replaced with funeral home services. Providing ambulance service for emergencies was for many years part of the funeral home's job, a service Smith embellished by adding two-way radios.

Smith's twin sons Jack and Jerry joined him in the business 30 years ago while they were still in high school, and his grandson Roger, a college student, works with them now. (His other son Robert is a surgeon.)

They hung a 50-year plaque this year at George A. Smith and Sons.

In the meantime, Smith has covered a lot of other ground. "Diversification" he calls it. In business, he's added a cemetery, Highland Memorial Gardens, and a nursing home, Maplewood Health Care Center. He also was a partner in the group that started the local cable television system.

In the social and political realm, he spent 16 years as mayor of Jackson, longer than anyone else. "Sixteen years, and not once did we raise the taxes," he says with satisfaction. "And it was after the war (World War II), and we were doing a lot of building, too."

Working with the Exchange Club, Smith helped to bring Golden Gloves boxing to Jackson, and helps to keep it going year after year.

And then, there is the matter of Santa Claus. For 35 years, Smith has been booking the old gentleman for 90 to 100 appearances a year in the weeks before Christmas. Already this year, he's carrying Santa's little black appointment book in his pocket. It's those wide eyes and big smiles that keep him coming back, he says.

Reflecting on where the past 50 years have brought him, Smith shares these thoughts:

On the funeral industry: The reputation for high prices and high-pressure sales is undeserved, he says.

Providing facilities, equipment, vehicles and 24-hour-a-day service is not inexpensive, he says. The person who has no other business but a funeral home "is just making a living."

At his funeral home, it is always Smith or a member of his family who makes the first call on families of those who have died.

He dispels the notion of high pressure sales by leaving family members alone to choose caskets in a room where each is clearly marked with a price that includes the full service. The least expensive sits near the door and carries a card that gives a price, but says it's available for whatever the family can pay. If they can pay nothing, it's theirs for free. "Golden Rule service," he calls it.

"Of course, as in every business, there are some bad ones, but that shouldn't bring a bad name to everyone."

On initiative: Smith, who came up through the Depression, says he doesn't see enough "operation bootstrap" these days. "I worry about so many people depending on handouts. They want a high standard of living, and they want it to start with."

On government: It's "trying to do everything for everyone, when we should be doing more for ourselves. That's not the basis on which this country was founded."

Too many officeholders are in public office "because it is their living. They do things that are not in the best interest of the people, and that concerns me."

On service: Whether it's political office or social service, "it all comes down to the same idea, people helping people."

"The Lord has been awfully good to me and my family. Jackson has been good to me. I just try to give something back—maybe not in cash. It might be the old man with the long white beard peeking in the window," he says with a smile. "It might be something else."●

RESULTS OF PRIVATE POLL ON PRESIDENTIAL ELECTION

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McCLOSKEY. Mr. Speaker, in five meetings with constituents this past weekend, approximately 250 people attending in five cities—Santa Clara, Sunnyvale, Palo Alto, Menlo Park, and Redwood City—I asked for a show of hands on three questions:

First, assuming Carter, Reagan, and Anderson are running relatively close on November 1—say 30 percent each in the polls with 10 percent undecided—how will you vote?

The results were as follows: Reagan, 38 percent; Anderson, 38 percent; Carter, 12 percent; and undecided or third party, 12 percent.

Second, assuming that on November 1, Anderson has no chance—the polls reflecting a tight race between Reagan and Carter, with Anderson at, say, 15 to 20 percent of the total nationally, as current trends indicate, how will you vote?

The results were as follows: Reagan, 47 percent; Carter, 34 percent; Anderson, 10 percent; and undecided or third party, 9 percent.

On the third question: "How should a Congressman vote if the issue goes to the House of Representatives where each of the 50 States will cast one ballot after a caucus of Members?"—presently 25 Democrats and 18 Republicans in California—a strong majority, perhaps 75 percent, felt a Congressman should vote as his or her district voted. The remaining 25 percent split evenly between (a) the Congressman's own judgment and (b) the way the State of California votes on November 4.

I believe the majority vote on this third question is correct: That a Congressman should vote his district's position, at least on the first ballot in his State's caucus. If elected, this is what I shall do, whether the winner be Reagan, Anderson, or Carter in the 12th District.

If, on November 4, Anderson is not a serious contender, I have reached the following conclusion after 3½ years of firsthand dealing with the Carter administration: The Carter administration's past record and potential future performance is so dismal and dangerous to the Nation's welfare that I will vote for and support the election of Governor Reagan.

I disagree with the Governor and the Republican platform on many counts, but intend to do everything I can to provide affirmative input on issues to both the Governor and the Republican leadership over the next several months and to assist a Reagan administration to be as competent and successful as possible.●

MELVIN LAIRD: MX SEA DEPLOYMENT DESERVES CONSIDERATION

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mrs. SCHROEDER. Mr. Speaker, former Secretary of Defense Melvin Laird presents, in the September 1980 Reader's Digest, a thoughtful discussion of the land versus sea deployment of our MX missile.

I commend it to my colleagues' attention:

SHOULD OUR MISSILE FORCE GO TO SEA?

(By Melvin R. Laird)

Suppose the United States could have, at a price we could afford, a truly effective new deterrent force, one that would put real spine into the positions we must take in future dealings with the Soviet Union. Suppose, too, that such a deterrent force would largely remove the American continent and the American people from the U.S.S.R.'s line of nuclear fire.

In fact, some military experts believe that we can have such a deterrent, and relatively quickly. Others disagree strongly. One thing seems obvious: we ought to conduct a thoroughgoing examination of the possibility before any more funds are spent on the hugely expensive deployment of the MX system planned for the western United States.

New Realities. Our present, fixed-silo, land-based ICBM deployment in the central and northern plains has become vulnerable. Given their huge ICBM force, the Soviets could now destroy virtually all of our missiles in their underground silos. Recognizing this, our defense planners want to replace this land-based force with another land-based force.

The difference is that the MX will be capable of carrying more nuclear firepower more accurately to more targets in the U.S.S.R. than our present first-line ICBM, the Minuteman. Also, the new system will be deployed in such a way that the Soviets would have no confidence that, if they shot at it, they could destroy enough MXs to avoid unacceptable retribution. The system's 200 missiles would be ferried among 4600 separate shelters, each a mile from any other, so that the Soviets could never be certain exactly where any of the missiles are. Proponents feel that such a deployment will ensure that half of the MX force would survive a full-scale Soviet attack. Presumably, this would keep the U.S.S.R. from attacking us in the first place.

There is no question that we need the accuracy and firepower the MX missile can deliver, and fast; development and production should proceed on an accelerated basis. The question is, how can we best deploy an MX force against the new realities of the Soviets' strategic strength, against the accuracy and firepower they can now bring to bear against our land-based missiles?

The Department of Defense and the Air Force insist that if we maintain the current schedule for deployment of the land-based MX, we can have an initial operational capability—a limited number of operational missiles—in 1986, and can be fully operational by 1989. But the Carter Administration has shown little inclination to support expensive new strategic-weapons programs (and the proposed MX land deployment would be the most expensive in our history). The Administration has canceled, cut back or delayed every major defense program that was on the agenda when it took office. So we must expect that the MX land deployment could not be fully operational for at least a decade.

Beyond sheer cost, however, the land-based, mobile MX would involve a profound environmental impact upon an area in Utah and Nevada roughly twice the size of New Jersey. It would affect land, water and mineral resources, rural and small-town lifestyles (because of the influx of construction workers and military personnel and their families) and the activities of thousands of outdoors lovers. Environmental interests are certain to fight the project, and apparently will have plenty of support from residents, more than 50 percent of whom, according to local polls, oppose it. Given the strong opposition to be expected wherever land deployment is recommended, I think it is arguable whether the MX will ever be deployed on land in the United States.

Shell Game. So, where do we put them? The answer may well lie at sea. Indeed, it is distinctly possible that we can spread our ICBM force over much of the 70 percent of the earth's surface that is water and keep it there, constantly moving, far from our shores, Not just in submarines, as we already do, but in surface ships. Initially, this would be done by utilizing such major combat ships as aircraft carriers, cruisers and large naval auxiliary vessels such as ammunition ships. But we also need to examine the use of ordinary merchant vessels and the feasibility of producing a fleet of special-purpose, high-speed surface vessels whose only mission would be to keep our ICBMs at sea and on the move.

Depending on the cost, we might want to build many more ICBM ships than ICBMs, so that we could have a lot of decoys at sea along with the missile carriers. We might even want to play an at-sea shell game, periodically switching missiles from one ship to another. Such a deployment would be far more difficult for an enemy to find than a mobile MX force on land, and would be impossible to destroy in a short space of time.

It has been proved that an ICBM can be made to float and then be launched straight out of water. All it needs is something—like a body of water—that will hold it stable in an upright position. The floating launch concept has been proved in actual test firings. If further, objective examination indicates a surfaceship ICBM force would make sense, we probably could begin deployment in three to four years—certainly during the first half of this decade.

Project Hydra. The principle of launching missiles straight out of water has long been known. The Navy began water-launch experiments in 1960 at its Point Mugu, Calif., missile center. The program was headed by Lt. Cmdr. John Draim, a Naval Academy graduate with an advanced degree in aeronautical engineering from M.I.T. The United States was getting into space exploration in a serious way, and Draim wondered why the many rocket probes being sent aloft from expensive, land-based launching pads could not instead be fired from the sea.

A rocket, he reasoned, could be made to float vertically by separating the center of gravity from the center of buoyancy, or by affixing some sort of floatation collar or jacket—or by doing both. Such a "water pad" would cost nothing, and the seas, lakes, lagoons and rivers of the world offer an infinite supply of reusable sites. The possibilities seemed attractive enough to warrant a serious experimental program.

It was called Project Hydra, after the many-headed monster of Greek mythology that grew two new heads each time one was cut off. Soon the Draim group was packing hundreds of pounds of research instrumentation into probe rockets, dumping them into the ocean and firing them into space. Results exceeded even Draim's expectations. The buoyancy of the water actually added lift and provided for faster acceleration on takeoff than was possible with a land-based launcher.

In five years, the Hydra group fired more than 50 rocket probes and test missiles in the world's oceans, in all kinds of sea conditions and weather. Missiles were rolled like depth charges off all kinds of ships, even tugs and ferryboats. The concept worked.

Common Sense. The advantages of floating-launch system are obvious. It would be impossible for an enemy to plan a simultaneous attack against several hundred moving ships scattered over the oceans. Indeed, such a force would require the Soviets to cut back on their enormous investments in offensive weaponry, in order to concentrate on ways to deal with an entirely new and immensely complicated defensive problem—an American ICBM force that could come at them from all points of the compass.

But the dictates of common sense are not always readily perceived. In 1957, when it became clear that the ballistic-missile submarine program ought to be accelerated, then-Rep. Gerald Ford and I tacked an amendment onto the budget providing for a speedup. We did this over the vigorous objections of both the Navy and the White House. But a few years later, during the Cuban missile crisis, President Kennedy was glad to be able to confront the Soviets with a strategic threat that included the Polaris submarines. Soon after I was named Secretary of Defense it became obvious that the cruise missile, adapted to Navy needs, could give us another effective sea-based strategic-weapons system; yet I had to bull-doze it past tough Navy resistance.

The idea of a sea-based ICBM force was attractive even then, but not as crucial as it is today. Our Minuteman ICBMs were not vulnerable at that point, and we were getting many other necessary programs under way, including the B-1 bomber, the Trident-submarine program,[1] cruise-missile programs for both the Navy and Air Force, and a Navy shipbuilding program which, had it been completed, would have had us in good shape by now.

A major problem with large weapons systems is that bureaucracies tend to form around them which take up cudgels, in self-defense whenever newer ideas come along. For example, opponents of the floating-launch-ICBM concept argue that there is no guidance system for it. That's true; but it is also true that it is now well within the state of the guidance-technology art to develop such a system. It would involve a research-and-development investment on the order of $1 billion, a small fraction of the $30-billion-plus cost estimates for the MX landmobile deployment.

There is also concern as to how guidance-to-target information would be inserted into missiles floating in the sea. For safety's sake, such information is not inserted into silo- or submarine-based missiles until a Presidential order to fire has been received and authenticated. The same thing would be done with surface-ship ICBMs—they would not be deployed into the water until after a Presidential firing command had been authenticated.

Other arguments are made: that ships can be tracked by submarine and satellite, and sunk; that a land-base force is more readily controlled; that communications with a sea-based force would be chancy.

As to the first point, our ICBM ships could be accompanied by escorts possessed of strong anti-submarine-warfare capabilities. And while it is likely that Soviet satellites can now or soon will be able to locate all of the ships at sea, as ours can, locating ships is one thing. It would be quite another matter simultaneously to identify and then sink several hundred ships many miles from one another and moving at high speeds on evasive courses.

As to control and communications, the National Command Authorities (the President and the Secretary of Defense) have long been able to maintain—as they must—

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[1] The cost of the first Trident submarine will be more than $1.2 billion. It would be fiscally impossible to raise our submarine forces to the deterrent capability of a sea-base MX force.

reliable, round-the-clock communications with our forces throughout the world, including ballistic-missile submarines on submerged stations.

Compelling Case. The Russians apparently like the floating-launch concept. According to sources I consider highly reliable, all of the ballistic missiles carried by Soviet submarines are of the floating-launch type; they are not fired from tubes, as ours are, but floated to the surface and fired from there. "The evidence is abundant and conclusive," says one expert. "The Soviets now have at least 800 floating-launch missiles at sea."

If so, this means that Soviet submarines need not rise to vulnerable depths to fire, as ours must; and that the SALT II treaty restrictions on the number of ICBM launchers each side may have is a dangerous deception—since there is no limit to the number of ICBMs each side may have. Conceivably, the Soviets could float missiles in Murmansk's harbor and launch them to hit every significant target in this country.

The theoretical case for a sea-based ICBM force is compelling. Among those who believe it should be seriously examined are Rear Adm. George H. Miller, former director of the Navy Strategic Offensive and Defensive Systems Office, and two former chairmen of the Joint Chiefs of Staff, Gen. Maxwell D. Taylor and Adm. Thomas H. Moorer.

The Administration should convene without delay an impartial panel of weapons experts to study the possibilities. If the proposal proves sound, we should be able by the mid-1980s to confront the Soviets with a largely mobile strategic posture—a cruise-missile-equipped bomber force, ballistic-missile submarines, and ICBM surface ships scattered over the world's oceans. We would then have a deterrent that would be much harder to find and shoot at than the land-based ICBM force now being planned—and one that would compel the Kremlin to remove from its target list most of the American landmass and the American people who live on it.●

YWCA SENIOR CITIZEN WEEKEND CAMP

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. OTTINGER. Mr. Speaker, on August 10, the Senior Citizen Day Camp, sponsored by the YWCA of White Plains and Central Westchester, concluded its fourth season. This weekend camp provided a wonderful change of pace on summer weekends for seniors in Westchester County, and I wanted to bring the camp to the attention of my colleagues.

The Senior Citizens Weekend Day Camp was originally designed to fill lonely weekend hours for the seniors. However, since its inception its goals have expanded along with its camper population. This year almost 400 people from all over Westchester attended the six weekend programs.

The physical layout of the "YW" allows several simultaneous activities to be conducted within sight of each other. Activities include arts and crafts, music, movies, swimming, drama, lawn and card games, and educational discussions. Along with these activities are special events such as a talent show, theater with lunch, square dancing, a ping pong tournament, and a birthday party to celebrate the 50th anniversary of the YW of White Plains and Central Westchester.

July 19 was Special Guests Day and I had the opportunity to attend and talk briefly about some of the issues pending in Congress of concern to senior citizens. Also on this day certificates of appreciation for devoted services were presented to: Fred and Emily Crispens, Mary Louise Peck, Louisa Marcucella, Silas Morris, Eleanor Miller, and Ralph David. Mrs. Miller was given special recognition for her responsible and devoted services to the YWCA and the community. Mrs. Miller came to the YWCA Senior Citizen Day Camp 4 years ago. Refusing to be just a camper, she has served in an unpaid capacity wherever she was needed in the camp. Last year she volunteered in the handicapped program working every Saturday, September through June, with the Kool Camp children ages 5 to 12.

After visiting the camp, it is obvious the seniors feel comfortable and welcome in the YW surroundings, both indoors and outdoors. As the camp's director, Brenda Spyer, told me:

> No senior need feel apart or lonely at the Weekend Camp. One example is the time when I happened to spot a camper reading in a very secluded corner of the building. Asking if there was something amiss—he responded with—no, he wanted to read and that it was different from reading at home because here he could put his book down any time and join 100 laughing people whenever he wanted to.

I believe this incident reflects the feeling of the camp. Congratulations are in order for all associated with this fine summer day camp.●

SOVIETS' GLOBAL POSITION ERODING

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, there is a tendency these days, especially among critics of the Carter administration, to portray the last few years as a time of steady deterioration in the United States position in the world. Indeed, we tend to focus too much on our headaches, forgetting that the Soviets' troubles are more serious.

The erosion of the Soviet position is well brought out in an article in the Washington Post of September 10 by Dusko Doder writing from Moscow:

SOVIETS' GLOBAL POSITION ERODING

> While the crisis in Poland is now bringing into focus internal problems of the Soviet Bloc, the daily flow of bad news from countries along the Soviet borders, ranging from Norway to Japan, suggests a growing sense of isolation here as a result of changes in the balance of forces, especially in Asia.
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> Coming after the deepening morass of Afghanistan, the Polish turbulence seems to be a new, major obstacle in the course of Soviet foreign policy that has successfully exploited the post-Watergate period of American vacillations.
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> But deeper changes in the strategic equation over the last two years—coupled with new U.S. assertiveness in foreign affairs—have renewed fears of "capitalist encirclement," a notion that party leader Nikita Khrushchev abandoned more than two decades ago when he inaugurated the policy of "peaceful coexistence."
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> According to senior Western diplomats, the two main changes contributing to the erosion of the Soviet global position involve the Sino-Japanese rapprochement in the Far East and the Camp David peace process that has shut out Moscow from the Middle East.
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> The third and unexpected elements is the revival of Islamic fundamentalism throughout Central Asia.
>
> As a result, Moscow sees itself surrounded by overtly or covertly hostile forces and left without friends on the vast Asian continent, with the exception of India and Vietnam. But even Soviets privately concede that both India and Vietnam draw far greater benefits from these ties than does the Soviet Union.
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> Moscow's crucial long-term concern is in East Asia, where it sees the United States using China and Japan to create Asian security arrangements "based on anti-Sovietism."
>
> Japan has entered into this picture as a result of the Sino-Japan peace and cooperation treaty signed two years ago. Increased trade and technological exchanges since then have prompted a flurry of articles, including one by Defense Minister Dmitri Ustinov last week, attacking ties between "the Chinese hegemonists and Japanese revenge-seekers,"
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> The Soviets had an opportunity to prevent this course in Sino-Japanese ties had they been prepared to relinquish control over several small islands in the Kurile chain they had seized at the end of World War II. The Japanese have made their return a precondition for normalization of relations with Moscow.
>
> The Soviets found it impossible to do so. However insignificant the island may be, their return to Japanese sovereignty is seen here as setting a precedent for a far more serious territorial dispute with Moscow's arch-rivals in Peking.
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> The Chinese have repeatedly denounced what they call "unequal treaties" imposed by the Russian empire on weak Chinese rulers in the last century. But Chinese territorial claims in this context are small compared to their claim on Mongolia, the large buffer state established by the Soviets in 1924 and for all practical purposes a colony of Moscow.
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> Mongolia—which is roughly the size of Texas, Arizona and California combined—was ruled by China from the 17th century until 1911. Four years later, Csarist Russia acknowledged in a treaty Chinese sovereignty over Mongolia. Subsequently, Chaing Kaishek formally accepted Mongolian independence.
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> Today, the Chinese view Mongolia as a military threat because of the presence of Soviet land and air forces there.
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> While they had long studied the implication of Japan's rapprochement with China, the Soviets were unprepared for the Camp David Peace process that re-established U.S. positions in the Middle East and effectively denied Moscow a voice in the course of events there.

The Soviets had thought of the Middle East in terms of a condominium with the United States, even after they were expelled from Egypt. The Arab-Israel conflict seemed to assure a substantial role for them in the region.

The loss of its Middle East positions, coupled with Moscow's overwhelming concern about what it sees as the emergence of an alliance involving China, Japan and the United States in the East Asian region, have produced a sense of strategic vulnerability. And this, according to Western diplomats, was the main reason for the Afghanistan invasion.

There were, of course, other elements such as the decline in U.S.-Soviet relations and the apparent collapse of SALT II as well as the climate of political instability in Central Asia after the Iranian revolution. Moreover, the Soviets had a problem on the ground as the Hafizullah Amin regime in Afghanistan appeared to be going down the drain as a result of the Moslem revival.

But, according to these diplomats, the long-term aim of the intervention was designed to neutralize what Moscow sees as Western strategic gains in crucial areas of the world. The Russians established in the 1970s positions in various parts of Africa and in South Yemen on the Arabian peninsula. But none of these could compare in wealth to the energy resources of the Middle East, the vast human resources of China or the industrial potential of Japan.

It should also be noted that the Soviet Union, while it has begun to export military power through the use of Cuban and Vietnamese proxies, remains a profoundly old-fashioned empire that regards territories contiguous to its own with greater concern than far away places.

The Afghanistan push, seen over the long term, is an effort to break what Moscow sees as the hostile ring around the Soviet Union and to establish a platform in Afghanistan from which the Soviets would pressure Pakistan, Iran and other countries in the region while exposing the West to risks and potential losses in the oil rich area.

Indeed, Soviet propaganda daily exerts pressure on Pakistan, and despite reports of Pakistani resistance, it is unlikely that over the long term the Pakistanis will be able to stand up to the Soviets in Baluchistan and Iran, that the Pakistani military government is headed toward a position in which its security in effect rests on the moral strength of nonalignments, the support of the Moslem world and the goodwill of its neighbors.

Diplomats also see possibilities for the Russians in Baluchistan and Iran. But in their view, an important aspect of Soviet intervention in Afghanistan was Moscow's willingness to use force to protect its friends. In the world of Central Asia, they say such actions cut deep, particularly if contrasted to the American unwillingness to protect the shah.

The move was also addressed Soviet Central Asia, where there are about 50 million Moslems. The upsurge of Moslem fundamentalism following the Iranian revolution was seen as a threat to internal stability there.

What the Soviet leaders did not expect was the sustained and vigorous American opposition that created a change in public attitudes and, more importantly, produced a new American determination to meet Soviet challenges.

Nor did they expect turmoil in their vital back yard where the Polish crisis threatened the core of the Soviet political and security system and reminded Moscow that its hold on Eastern Europe is as precarious as ever.

This may come as a surprise to Washington, but the men in the Kremlin seem deeply troubled by a series of adverse events and by the threat of a new round in the arms race that would put additional strain on their economy. Their perception of Western intentions seems to have come full circle back to the time when "capitalist encirclement" was the slogan of the day.●

CELEBRATION OF MEXICAN INDEPENDENCE AND HISPANIC HERITAGE WEEK

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ROYBAL. Mr. Speaker, on this date 170 years ago, Mexico, our great neighbor to the south, proclaimed its independence from Spanish colonial rule, ending forever the reign of foreign tyranny in the Western Hemisphere. On September 16, 1810, Father Miguel Hidalgo Costilla urged the citizens of the small town of Dolores to take up arms against the oppressive Spanish rulers. Like the proclamation of our own Declaration of Independence on July 4, 1776, "el grito de Dolores" of 1810 inspired the revolt that brought freedom from European colonial domination.

In recognition of the importance of this date, and in celebration of Hispanic Heritage Week, I take great pride in paying sincere tribute to all of this Nation's Hispanic citizens.

Although Hispanic Heritage Week has been celebrated every year for over 12 years, very few people realize just how much those of Hispanic heritage have contributed to this country. Many people are now aware that the Hispanic community will soon be this Nation's largest ethnic minority group, and it is widely recognized that Hispanic art, music, food, and language have greatly enhanced the richness of American life. However, very few people are aware of the important role played by Hispanics in the development of the United States.

Mexican and Spanish immigrants began settling this country long before the Pilgrims landed at Plymouth Rock, establishing such cities as St. Augustine, El Paso, and Santa Fe. Many areas in the Southwest United States can point to over 200 years of Hispanic culture and history. Historians, however, have not given proper credit to this aspect of American history. Few people realize that Hispanics played an active role in the American Revolution, fighting against the British in the South. Few people realize that Hispanics were present among the defenders of the Alamo or that Hispanic and Anglo troops fought side by side during the Texas revolution against Mexico. And hardly anyone is aware that an estimated 75,000 black Americans escaped slavery by fleeing to Mexico, where they were easily assimilated into the Mexican culture.

There are countless other examples of Hispanic contributions to American society, and it is vital that these contributions be recognized and appreciated. The celebration of Hispanic Heritage Week is a step in the right direction. So is the growing political participation of the Hispanic community, and the inroads made by Hispanic workers in all levels of the government and private sector. And just as our Mexican brothers and sisters are now celebrating their Independence Day, Hispanics must recognize and celebrate our own proud heritage in the United States, now the fifth largest Spanish-speaking country in the world. I invite you all to join us in this celebration and self-discovery.●

THE CIA VERSUS THE CONSTITUTION—PART 3

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. EDWARDS of California. Mr. Speaker, yesterday I called to our colleagues' attention material I have received from professors of constitutional law who are concerned about section 501(c) of H.R. 5615, the Intelligence Identities Protection Act. That provision would subject private citizens to criminal liability for disclosing any information identifying a covert CIA employee, informant, or source, even if the information was not based in any way on classified sources. Obviously, such a provision would have a dramatic impact on our constitutional guarantees of free speech and free press. That is why constitutional lawyers are concerned. The press is also concerned. Following are letters from three major press organizations. All support legislation to protect covert agents' identities, as I do. But all agree—as I do—that H.R. 5615 is too broadly drawn and sweeps within its coverage legitimate news coverage and public debate. All three call for the narrowing or deletion, of 501(c) from H.R. 5615. Mr. Speaker, I urge our colleagues to read these letters while considering this legislation.

The letters follow:

THE NEWSPAPER GUILD,
Washington, D.C., August 29, 1980.

HON. PETER W. RODINO, JR.,
House Judiciary Committee, Rayburn Office Building, Washington, D.C.

DEAR REPRESENTATIVE RODINO: We in The Newspaper Guild would like to join other media organizations that have expressed concern to your committee over a critical provision of H.R. 5615, the Intelligence Identities Protection Act, that would subject members of the press to criminal penalties for news stories that might identify covert CIA agents or sources.

We have no quarrel with the bill's intent to give the government adequate means of halting the purposeful disclosure of its agents' identities by those entrusted with that information. But H.R. 5615 is far too broadly drawn, infringing seriously on First Amendment guarantees of press freedom in the process.

As drafted, the bill would put reporters, publishers and others engaged in disseminating the news in danger of imprisonment for stories revealing the identities of covert agents regardless of the motive for such disclosure and whether or not the information was derived from unclassified sources. It could, as has been pointed out, have been used to prevent the media from reporting the CIA connections of some of the Watergate burglars or the relations between Jordan's King Hussein and the CIA.

We would urge that the bill's provisions be limited to those who have had access to classified information and that it be amended in line with action taken in the House Civil and Constitutional Rights Subcommittee, which removed the section covering public disclosure of agents' identities.

We recognize that the problem of protecting agents' identities without trespassing on cherished press freedoms is not an easy one. But we believe it is both possible and necessary.

Sincerely,

CHARLES A. PERLIK, Jr.,
President.

AMERICAN NEWSPAPER
PUBLISHERS ASSOCIATION,
Washington, D.C., August 18, 1980.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The American Newspaper Publishers Association continues to be concerned about certain sections of HR 5615, the Intelligence Identities Protection Act, which is to be considered by your subcommittee August 20. We ask that this letter be included in the hearing record.

ANPA is a non-profit trade association representing more than 1300 member newspapers throughout North America. Membership includes more than 90 percent of U.S. daily and Sunday newspaper circulation. Many non-daily newspapers also are members.

As we expressed to Chairman Edward P. Boland, chairman of the Permanent Select Committee on Intelligence, in a July 22 letter (enclosed), we are particularly concerned about Section 501(c) of the bill which establishes criminal penalties for people who are not nor have ever been government employees, who reveal the names of covert agents.

ANPA is encouraged by an amendment, sponsored by Chairman Boland and approved by the Intelligence Committee July 26, which specifies that this provision would apply only to persons who reveal such identities "in the course of an effort to identify and expose covert agents with the intent to impair or impede" U.S. intelligence activity.

It remains questionable whether the amended language would in fact exempt from the law journalists involved in legitimate news coverage, and whether it would apply to those persons who obtain information from non-classified sources.

We are confident that the intent of the Intelligence Committee was to exempt legitimate news functions by passage of the Boland amendment. Because of the vagueness of the term "in the course of an effort," however, it is essential that legislative history for this bill, if passed, specifically state that the Congress does not mean to prevent distribution of news information in a society which bases its individual freedoms on the public's right to know.

Section 501(c) does not appear to be limited to the revelation of covert agents' names obtained from classified information. The language in the section extends culpability to the person who "discloses . . . any information that identifies a cover agent." It is unconscionable that legislation would establish criminal penalties for publishing information which is already in the public domain.

ANPA supports the intent of H.R. 5615 and supports efforts to safeguard the identities of U.S. foreign agents whose lives might be endangered by publication of their identities. However, as we stated previously, the proper way to safeguard all government secrets is through wise classification and declassification of information, careful selection of those authorized to handle classified information and prosecution of authorized officials who violate the trust.

We appreciate the opportunity to express our opinions on this bill.

Sincerely,

W. TERRY MAGUIRE,
Vice President/Legal and Government Affairs.

AMERICAN SOCIETY OF
NEWSPAPER EDITORS,
Minneapolis, Minn., August 22, 1980.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I write to you in my capacity as chairman of the Freedom of Information Committee of the American Society of Newspaper Editors. As you know, the society represents more than 850 directing editors on newspapers throughout the United States.

ASNE is committed to the proposition that the press has an obligation, flowing from its privileged position under the First Amendment to the United States constitution, to provide complete and accurate reports on the performance of all branches of government—reports upon which citizens may base reasoned and informed decisions on public affairs. We believe history makes clear that reporting on activities of intelligence agencies has in many cases been essential to important public-policy decisions.

In this regard we are concerned about the reach of H.R. 5615, the "Intelligence Identities Protection Act." We have no quarrel with the intent of the bill, but we believe it still casts too wide a net.

In particular, section 501(c) of H.R. 5615 seems to us to be too broad. We recognize that the section as now drafted is an improvement on earlier versions, but we believe it is still fatally flawed because it appears to allow prosecution and punishment of those who publish unclassified information that is in the public domain. We believe that this language must be revised to make clear that it does not apply to the distribution of news and other constitutionally protected forms of speech, including books.

We believe that unless both the language of the bill and its legislative history make absolutely clear that it is not intended to punish those who publish unclassified information that is in the public domain, it will be of doubtful constitutionality. ASNE and its members appreciate the difficulty of constructing legislation that gives the government adequate tools to halt purposeful disclosure of agents and informers' names without infringing constitutional guarantees of free speech and press. One possible approach, as we and other groups suggested earlier, would be to limit any criminal liability to those who have or have had access to classified information. H.R. 5615 includes such limits in Secs. 501(a) and 501(b), but does not include such language in 501(c) as presently drawn.

Sincerely,

CHARLES W. BAILEY,
Chairman,
Freedom of Information Committee.●

OHIOANS COMMEMORATE THE 200TH ANNIVERSARY OF THE BATTLE OF PICAWEY

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of Ohio. Mr. Speaker, in honor of the American Revolution Bicentennial Committee of Springfield and Clark County for their successful efforts to enrich the heritage of the State of Ohio, I would like to share with my colleagues in the U.S. Congress the following narrative demonstrating the historical significance of the Battle of Picawey:

We of Southwestern Ohio are heirs to an historic legacy dating before the American Revolution. Ours is the heritage of the Woodland Indian, the Revolutionary soldiers and the first pioneers who settled the fertile Ohio River Valley. Ours is the heritage of the triumph of courage over adversity, of the proud role our ancestors played in the early growth of our country, shed their blood and gave their lives on the frontier during a crucial period of our Nation's formation.

Today we have a deep realization of and commitment to the preservation of our early frontier heritage. This provides the basis for educating people, young and old, to the life and times of those who lived and fought in the War For Independence.

During the American Revolution, the frontier was aflame with Colonial and Indian conflicts in Kentucky and Ohio. One expedition, against the Kentucky post of Fort Liberty, precipitated Col. George Rogers Clark's march north of the Ohio River to destroy the Indian towns of Chillicothe (near Xenia) and Picawey (George Rogers Clark Park). On August 8, 1780, Clark's army engaged Shawnee, Delaware, Wyandot and Mingo tribes along the Mad River. The battle lasted the entire day with the Indians retreating to the north.

Comparative peace reigned on the frontier for more than one year after George Rogers Clark's successful battle against the Indians at Picawey. Meanwhile, immigration from the East increased greatly, lending more strength to defend the frontier, when defense was necessary. The Battle of Picawey squelched both the British and the Indians enough that they were never again able to mass their full strength in aggressive action against American frontier posts. From then on, they were on the defensive or, at best, involved in sporadic raiding of the settlements. This engagement ended the raids on Kentucky for several years and opened the Ohio Territory for settlement.

A first reenactment of the famous battle was presented near Clark Park in 1880. Twenty-five thousand attended, most of them making the trip from Springfield by horse or on foot.

In 1924, a statue honoring George Rogers Clark and Tecumseh was dedicated and funds approved for a new state park near the battlesite. The park, dedicated in 1930, was to be a focal point for planned Ohio Revolutionary trails. Many recognized the value of the battlesite and new park so plans were prepared for an early Ohio village and museum near the Hertzler House. The Depression put a stop to these plans but a second reenactment, commemorating the Picawey Battle, in October, 1930, was presented. This time 100,000 people attended. The Vice President key-noted the festivities with people arriving by car, wagon and the interurban. Old newspaper clippings attest to community spirit aroused by this event. Parades, seminars and pagentry were all a part of this Sesqui-centennial commemoration.

The State maintained the park until 1960 when it was sold to Springfield for one dollar. The park and battlefield again remained undeveloped until the Bicentennial of the American Revolution, in 1976, when thousands visited the Hertzler House and viewed "living history" programs hosted by the Ninth Virginia Regiment. A reactivated Revolutionary War unit, the Ninth Virginia still uses the park as its home base.

Extensive interpretive development of Clark Park and battlesite lands again become a reality with the formation of the Project '80 Committee, 1977. This group spent the next three years researching the battle and other related historic events connected with the area.

The work of the Project '80 Committee culminated this year in the reenactment of the Battle of Picawey on August 9 and 10, 1980, two-hundredth anniversary of the battle. Nearly 300 troops, portraying Colonials and Indians, participated in the reenactment, constituting the largest Revolutionary War reenactment to date in the Midwest.

The Project '80 Committee now has turned its responsibilities over to the George Rogers Clark Heritage Association which will work with the Springfield Board of Park Trustees on future park interpretive developments.●

TITO IN PERSPECTIVE: PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McDONALD. Mr. Speaker, recent events in Poland demonstrate once more that communism is not representative of the beliefs and desires of the people of Eastern and Central Europe. These people were simply delivered to the Stalin regime at the end of World War II, when Communist puppet regimes were imposed upon them. The propaganda, on both sides of the Iron Curtain, has since maintained that, once a Communist regime takes over, it is expected to stay in power forever.

Josip Broz Tito of Yugoslavia stayed in power for 35 years. He was installed in power by both Stalin and the leaders of the Western Allies toward the end of World War II, and the people of Yugoslavia never had an opportunity, after that, to make any other choice.

Dr. Slobodan Draskovich is one of many thousands who have voted with their feet against Titoism; he had to leave his country or face destruction for opposing a Communist regime. He has spent many years in the United States attempting to expose the fraud of Titoism as some new, improved form of communism. His books include "Tito, Moscow's Trojan Horse," published in 1957, and "Will America Surrender?" published in 1973—paperback in 1976. The true function of Tito's leadership of the so-called nonalined countries is made clear by Dr. Draskovich:

TITO IN PERSPECTIVE: PART II

THE ESSENCE

What emerges clearly from the evidence about Tito and Titoism is:

1. Titoism is not different from communism; it is communism. Tito served not the goals of Western democracy, freedom, human rights, etc., but the aims of Lenin, Stalin, Mao Tsetung, Hua Guofeng, Kadar, Marchais, etc. Thus, all aid given to Tito was actually aid to world communism.

2. The "different road" which Tito used to perform his services was 100% Leninist-Stalinist. Lenin had made it clear and Stalin developed the point years later, that communism, in order to succeed, must be different in various countries, for it must adapt itself to the historical, political, economic, cultural, etc., conditions of every country. That is why, according to Stalin, communism must be "different in France than in Germany, different in Germany than in Russia". . .

Thus Tito, by being considered a "different" (independent, national, democratic) communist by Western innocents, was enabled to render a unique service to Moscow, by demonstrating that not all communism was bad. Tito elevated "good" communism to the rank of an acceptable alternative to war and violence, and even to Western social and political patterns, which seem inadequate for the needs of modern mankind.

It has, above all, served to confirm the claim of communist propaganda about communism being the wave of the future. So when, at Tito's funeral, Brezhnev and Hua Guofeng extolled his communist virtues, they knew what they were doing. It was recognition for services rendered and seeds sown.

3. Tito could not possibly have rendered the services he did, nor sown the seeds he sowed, without the decisive help and collaboration of the West.

Our foreign policy after World War II was not a policy of stopping and repelling world communism, but a policy of making possible its advance through appeasement, containment, co-existence and detente. It was a policy of historical surrender to communism, from the Conferences of Teheran, Yalta and Potsdam, to the wars in Korea and Vietnam and the revolts in Hungary (1956) and Czechoslovakia (1968), to the Soviet invasion of Afghanistan (December 1979).

The makers of our foreign policy, suffering from a lack of faith in the values of the United States and the West, came to view communism as historically imminent, an irresistible force with no "immovable object" to resist and stop it, and have therefore, under several Presidents, National Security Advisors and Secretaries of State, pursued a policy of reconciliation with the "inevitable" advance of communism in the world.

Western Titoist policy perfectly fitted into such an overall policy. Titoism, because it is communism and because it is conceived as an answer not only to the problems of Yugoslavia, but to world problems, is plainly a rejection of America and Americanism. America and its values and principles cannot solve the problems of the world, but Titoism ("good", independent, etc. but communism) can! Stalin said several decades ago: "Principles triumph, they do not become reconciled". He was absolutely right. If we attempt to strike a compromise between the Declaration of Independence and the Communist Manifesto, between all the record of America and the record of communism and between the interests of the free world and those of communism, we are doomed to inglorious defeat.

For if Tito is best for Yugoslavia, then inevitably all the other communist satraps in Europe and Asia and anywhere else (Kadar for Hungary, Husak for Czechoslovakia, Gierek for Poland, Kim Il Sung for North Korea, etc.) are best for those countries. And the leaders of the communist parties of the free world are best for those countries (Marchais for France, Berlinguer for Italy, Carillo for Spain, etc.). Ah, yes, Gus Hall is then best for America!

That is the message which we are beaming to the world by promoting Titoism. We are telling the peoples of Yugoslavia and all the peoples of the world, enslaved and free, that they no longer have the option between freedom and communism, but only the option between various names and labels of communism, all inexorably leading to a world-wide Gulag.

WHAT NOW?

An attack of the Soviet Union on Yugoslavia "to bring it back to the Kremlin fold", to use an inane Western liberal cliche, is not likely: (a) because both regimes (Soviet and Yugoslav) are communistic. If Western experts do not understand what this means, all communists do: solidarity in spite of and beyond all conflicts, dissensions, disagreements, etc., in fighting for the victory of communism in the world; (b) Afghanistan has proved too costly in terms of arms, casualties, logistics, new problems, etc.; (c) the present condition of Soviet-Yugoslav relations is, economically as well as politically, completely satisfactory from the Soviet viewpoint and with favorable prospects.

THE LAW OF INEVITABLE CHANGE

But if a Soviet military attack on Yugoslavia is not in the logic of the situation and of real Soviet-Yugoslav relations, that does not mean that internal, social and political peace is in the cards for Tito's heirs.

First, Tito, no matter how blown up out of all proportion as a shaper of history, has for such a long time been ravingly glorified that he had really become an element of stability in Yugoslavia.

But he is no more. And now his true "greatness" emerges without its sycophantic embellishments. He was not a great man, a mover of events and inspirer of people. He was an opportunist and a cynic. His death leaves a void not because he is no more, but because he helped create it by his lack of spiritual and human substance.

Second, the events of Iran and Afghanistan have put on the agenda the question of a thorough re-appraisal of the premises of our U.S. foreign policy. The deep gulf between President Carter's ideas of communism and the Soviet invasion of Afghanistan have temporarily been papered over, but the issue will not go away. And everybody knows and sees that there is increasing revolt and dissatisfaction in the countries behind the Iron Curtain. The resistance of the Afghans, in spite of the most brutal and inhuman Soviet methods to destroy them, is an ominous indication of the true mood of the people under communism.

Western Titoists insist that communist Yugoslavia after Tito will turn to the West and that a gradual evolution of Yugoslav communism will take place, bringing it closer to Western concepts and practice.

That is as realistic as expecting Nikita Khrushchev's shrimps to learn to whistle.

Western experts, counseled by Milovan Djilas, the chief political disinformer of the West, confuse two totally distinct categories: the regime and the people. The people never wanted communism. They were most loyal allies of the West and they have not changed. Communism was forced upon them.

As for the regime, Tito's heirs, in spite of all dialectical acrobatics, are communists and will very gladly continue to receive all the aid they possibly can from the West. But they also will, even more desperately than Tito, cling to Moscow for their political life. This is the crux of the whole problem: the source of power of the communist regime of Yugoslavia is not in the people, but ultimately in Moscow.

In the second place, the supreme concern for every communist is power. And the key element of power is the will. The communists have since 1917 (point Zero) until now, 1980, put under their domination well over one billion human beings by being politically bolder, more aggressive and unyielding. With the West's policy of weakness, they could not fail. Besides, in the present state of affairs, the U.S. does not dare stand for its own national interests much less for other nations' interests. Under those conditions, how could any communist be inclined to side with the West (the U.S.), the mighty but timorous ideological and historical enemy, and not with Moscow, the bold and aggressive ideological and historical Big Brother?

Titoism has so far been good for Moscow, for it has kept Yugoslavia under communism. It has, obviously, been good for the powerholders in Yugoslavia. It has been good for Western Titoists, whose chief concern is to "improve" communism and help "good" communism (Titoism) win over bad communism (Sovietism). But it has been bad for the people. And the people are less and less inclined to reconcile with communism, under whatever label, national democratic, liberal, with a human face, etc., no matter how ecstatic the Western "Liberals" may be about Titoism in the past and its outlook in the future.

The United States, which decisively helped bring Tito to power and keep him in power, must reappraise very thoroughly the wisdon of its long-standing policy of siding not with the oppressed people, who are natural and loyal allies of America, but with their communist oppressors, who are America's sworn enemies. Today, more than ever, the solidarity of all—free or enslaved—who cherish freedom, is a matter both of honor and of survival. The free cannot remain free if the enslaved remain enslaved.

We have no right to pursue any longer our disastrous policy of help to communism, based on the stubborn and defeatist refusal to face the stark reality of communist unconditional aggression and imperialism.

The communists have perpetrated too many horrendous crimes to make a reconciliation with them possible. They have killed some 120 million people since 1917, more than all people killed in all wars in history. On the other side, too many good people have toiled and fought and suffered and sacrificed and died to give dignity to the condition of man. A reconciliation between freedom and communism is morally reprehensible and politically suicidal.

The lesson of the whole story of Tito and Titoism is that America can survive, live and march forward only if it wins, not if it obtains from Moscow and Peking the license to whimper while being destroyed.

We have no right to surrender, no right to break faith with those who have died for freedom, against communism.

And we have every obligation to make their ideal of the victory of freedom and human dignity come true.●

ARCTIC WILDLIFE RANGE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. YOUNG of Alaska. Mr. Speaker, I must confess that the policies and priorities espoused by the Department of the Interior with respect to energy development continues to perplex me to no end.

A prime example of how the Department of the Interior skews the facts is underlined in an editorial that was published in the Wall Street Journal on September 8, 1980. This editorial correctly points out that the Department of the Interior only opens its eyes when it wants to read data and closes them when data serves to weaken its position. The issues surrounding the potential oil reserves in the Arctic Wildlife Range have been misrepresented in many instances. I am hopeful that the report which was recently released by the General Accounting Office will shed some true light on the oil potential of the Arctic Wildlife Range in Alaska.

The United States has entered a period where it would be foolish to let ourselves be led by romanticism and emotion rather than logic and pragmatism. We cannot afford to mortgage our future and our lifeblood by continuing to import 50 percent of our Nation's energy needs. Americans should not allow themselves to be the victims of periodic price increases by the OPEC cartel.

The energy industry has the technology to produce oil in the Arctic onshore environment without damaging the environment. The trans-Alaska pipeline is living proof of this fact. Incidentally, the oil produced from Alaska's arctic environment accounts for 15 percent of domestically produced oil—1.5 million barrels per day).

It is time for the Department of the Interior to start being honest with themselves and with the American people concerning the energy resources in the United States. I urge my colleagues to read the editorial that appeared in the Wall Street Journal.

The text follows:

PLAYING FAST AND LOOSE

It seems we failed to make ourselves clear in our August 20 editorial, "Alaska's Endangered Wildcats." (See today's letters.) Perhaps, alternatively the Interior Department still hasn't learned how to read geologic estimates.

For those who came in late, we're debating a release Secretary Andrus issued when the administration wanted to include the National Arctic Wildlife Range in the Alaska wilderness area, putting it off limits to oil exploration. We contended that Interior's explanations played fast and loose with the data from the U.S. Geological Survey report in downgrading the range's oil potential. Interior now says that a General Accounting Office study of the release differed only on the conclusion, not on the handling of the underlying data.

"Interior's public report on the results," the GAO study actually reads, "is highly condensed and excludes certain data that would seem highly relevant in any assessment of the Range's oil and gas potential." In particular, Interior omitted two key items—the geologists' low-probability but high-payout estimates, and the estimates of potential pool size. The geologists' report "shows considerable potential for oil and gas," the GAO wrote. "However, this potential was not reflected in the Department's recent news release."

In support of Secretary Andrus' injunction that "the Wildlife Range should be the last place we look for oil and gas," Interior offered data showing that the geologists estimated that there was a 95 percent probability they would discover 0.16 billion barrels, and a 5 percent probability they could find 17 billion barrels. It omitted their estimate of a 1 percent probability of finding 32 billion barrels, almost enough to double proven reserves in the U.S. And it omitted the estimates of finding a "super-giant field," which in the first runs ran up to a 5 percent probability of finding a single field of 11 billion barrels, larger than anything outside the Middle East and USSR.

The low probabilities reflect the fact that no exploration has been done in the range, and that super-giant fields are necessarily rare. The high payouts reflect the fact that, based simply on geological evidence, the range is highly promising territory. In fact, oil exploration concentrates on high-risk, high-potential areas; even a small probability of finding a super-giant is worth large investments.

Alaska's State Geologist, who also criticizes "serious errors and omissions in Interior's report," says that the USGS figures mean the wildlife range "is an incredibly attractive exploration target unknown elsewhere in the United States onshore or offshore."

While it is harder to be charitable now that reports by the GAO and the Alaska Geologist are available for reading, we are willing to admit the possibility that this dispute arises because Secretary Andrus and his department don't understand oil exploration. On the other hand, since this administration has staked so much on the assumption of an "energy crisis," such as costly synthetic fuels projects, widespread government regulation and the like, maybe it just doesn't want the oil shortage to ease up.●

EPA STANDARDS INCREASE USE OF OIL BY 60,000 BARRELS PER DAY

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. JONES of Oklahoma. Mr. Speaker, through the past 20 years we have constantly urged and pushed all segments of American industry to work to clean up our environment. We have asked that its residue not blight our beautiful land and rob us of our atmosphere, our water, and our land. The intentions behind our efforts were, and are, good, and we believe in those intentions.

Noble as our intentions may be, economic realities have taught us some valuable lessons through these past 20 years. We have worked hard to clean up our environment, and we have met with a great degree of success. However, it has been expensive to accomplish our goals, and it is growing even more expensive than ever as efforts are made at removing the last vestiges of pollution from our Nation.

As any experienced dieter knows who has faced the prospect of losing 25 pounds, the first 20 are tough but manageable—the last 5 require more effort than the preceding 20. It is simply the law of diminishing returns.

We have discovered that the same principle applies to the elimination of pollution in our Nation. It was tough and expensive to remove the first 90 percent of pollution from our industrial processes, but we did it. However, we are discovering that it costs just as much or more to remove the last 10 percent.

A prime example of this problem is the Environmental Protection Agency's regulations concerning the scheduled reductions of the lead antiknock ingredients in gasoline. the EPA imposed these regulations in 1973 because of increasing concerns over the effects of lead in the atmosphere on Americans' health.

If there were no controls, it has been estimated that refiners would use an average of 1.5 grams of lead per gallon of gasoline to raise its octane rating to levels satisfactory for cars to run most efficiently.

In order to remove some of that lead, refiners must subject crude oil to additional refining procedures to achieve adequate octane ratings in compliance with EPA standards. These procedures require the use of additional oil.

To reach present EPA standards of an average 0.8 gram of lead per gallon, it has been estimated that refiners have had to import approximately 70,000 barrels of oil per day. This works out to almost 26 million barrels annually. At the present oil prices, we are paying approximately $800 million more than we otherwise would in order to import oil to meet EPA standards and produce the same amount of gasoline.

On October 1, the lead content will be required to be reduced from 0.8 to 0.5 grams per gallon of gasoline. It has been estimated that refiners will have to use as much as 60,000 barrels more of oil per day to achieve that 0.3 grams reduction. At a projected 21 million barrels a day—$700 million annually—that 0.3 reduction will be almost as expensive as the initial reduction to 0.8 grams.

The 0.5 standard was designed to go into effect in 1979. President Carter ordered that implementation of that standard be delayed because of his concern over our Nation's increasing dependence on foreign oil imports. In addition, there is conflicting evidence over whether the further reduction of 0.3 grams would have significant impact on health factors.

What price are we willing to pay to achieve a possible marginal improvement in air quality? It appears we have reached the point of diminishing returns, and I believe we must take a long, hard look at our ability to pay for our good intentions. We have made significant improvements in our environment in the past 20 years. Unfortunately, it is costing us more and more now to make improvements that may not be significant.●

CONGRESSIONAL AUTO TASK FORCE HEARING OF SEPTEMBER 15, 1980

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HILLIS. Mr. Speaker, on September 15, 1980, the Congressional Auto Task Force, of which I am cochairman along with Congressman WILLIAM BRODHEAD, held its second hearing. The following is a summary of the testimony presented at that hearing by Mr. Wendell Larsen, vice president, Chrysler Corp.; Mr. Will Scott, vice president, Ford Motor Corp.; Mr. Marvin W. Stucky, vice president, governmental affairs and corporate planning, American Motors Corp.:

STATEMENT OF WENDELL LARSEN, VICE PRESIDENT, CHRYSLER CORP.

You are familiar with the facts: The hysteria over fuel availability in 1979, a doubling of gasoline prices virtually overnight, and the inability of our industry to convert quickly enough to meet the sudden demand for 30 mile per gallon cars. Into that disrupted market—into that vacuum—moved the Japanese manufacturers. Today, one in four automobiles sold in the U.S. are built abroad, the overwhelming majority of those in Japan. The Japanese share of the U.S. market has almost doubled in just two years, from 12 percent in 1978 to more than 20 percent thus far this year. All U.S. automobile manufacturers are losing money, supplier plants are closing, automobile dealers are going out of business, and from all of this, hundreds of thousands of American workers are left without jobs.

Obviously, there are many reasons for our current crisis. The Japanese did not create the gasoline shortage, the high interest rates, and the double digit rate of inflation. Nor did we. But the fact is that in this environment, when all of us are scrambling to react to these unforeseen external factors, the Japanese auto manufacturers have deliberately and effectively launched a massive campaign to capture and to maintain permanently an inordinately larger share of the U.S. auto market. The resulting injury to the domestic industry is real and substantial. In the face of this onslaught, we believe it is necessary and appropriate for our government to act responsibly to make sure the injury is not permanent.

We do not advocate unreasonable steps that could start a trade war; we make no proposals that would abridge our obligations under international trade agreements. But we do believe that constructive solutions to the problem can be found within the framework of the trade laws and of sound bilateral relations. Specifically, we recommend that the President and his Special Trade Representative, with the support of the Congress, call upon the Japanese government and the Japanese auto manufacturers to declare a moratorium for two years on shipments to the U.S. of vehicles produced in Japan on overtime work shifts.

In addition to the need to contain foreign imports, Chrysler has in recent weeks made two additional proposals for restoring the domestic automobile industry to a position of strength, and to get people back to work as soon as possible.

First—We have proposed a personal investment tax credit to individuals who purchase new fuel efficient U.S. made automobiles when they trade in a pre-1976 car.

Second—The President has advanced certain tax proposals to help stimulate investment, and the Senate Finance Committee has reported a bill with similar objectives.

We remain convinced, Mr. Chairman, that only with a responsible approach to the immediate problems of this industry can we continue to employ millions of Americans in productive jobs, provide the economic foundation for communities in all parts of the nation, meet the needs of a dealer network that reaches into every town and village in America, and satisfy the basic need of the American people for reliable, economical, energy efficient and safe, personal transportation.

STATEMENT OF WILL SCOTT, VICE PRESIDENT, FORD MOTOR CORP.

As upbeat as we like to be at fall introduction time, there's no getting around the fact that the industry is in the midst of some very serious problems.

Today, even as we approach new model introductions, car and truck sales continue at a low ebb. The severity of the contraction is camouflaged by the historical practice of reporting sales on a total-industry basis. This kind of record-keeping fails to recognize that today, for all practical purposes, we have two auto industries in this country: the domestic industry, and an off-shore industry of foreign producers. On a total-industry basis, car sales have declined from 11.1 million in 1978 to a rate of 7.8 million in the Second Quarter of 1980. As bad as this drop is—over 3 million units—the domestic industry decline is far worse. Sales of domestically-produced cars in the Second Quarter of this year were at a 1959 rate—about 5.5 million units. the truck story is about the same. The rate of domestic truck sales, after more than doubling between 1970 and 1978, declined by more than half from 1978 to the Second Quarter of 1980.

Clearly, we are dealing here with more than a cyclical downturn. What's needed are policies aimed at getting the industry back on its feet and workers back on their jobs. The nation needs to create an environment that is conducive to capital generation. Tax policies must be aimed at stimulating modernization, R. & D. and productivity. Government budgetary policies should be directed at curbing the inflationary spiral. And we need regulatory moderation. But most importantly, we need trade policies that recognize the present imbalance in U.S./Japan auto trade.

I believe all of you know that temporary restraint of excessive and damaging exports from Japan has been at the top of Ford's list as an action which can have substantial near-term impact in aiding industry recovery. I have just described the enormity of the effort under way to remake Ford's fleet. The facts are that since the conversion began 5 years ago Ford has launched 52 new, expanded or refacilitized plants and—through model year 1980—replaced 10 of its car lines and 70 percent of its light truck fleet with more fuel-efficient models. And we have another 5 years ahead of us before we complete this undertaking. Meanwhile, the abrupt change in consumer purchase patterns has handed the Japanese producers a windfall sales advantage, and they have exploited this advantage by resorting to overtime production to step up exports of their small cars to this country. The Japanese did not, despite what some would have you believe, develop these small cars in response to changing American demands. Instead, these cars were simply the obvious products of a home market where vehicle specifications have always been controlled by very expensive gasoline, narrow streets, traffic congestion and short travel distances.

What has happened, of course, is that the small car market in the United States suddenly has become the big market. Small cars now account for over 60 percent of U.S. car sales, and the Japanese have captured 37 percent of this market.

With small cars growing as a proportion of total U.S. sales over the next several years, Japan is uniquely positioned to gain an even larger share. Beyond this, Japanese producers are expanding production capacity despite the fact that home market demand has remained flat. We believe that between the 1979 and 1982 model years the Japanese will increase capacity by 2.8 million vehicles or almost 30 percent.

We think the consequences of allowing the imbalance of U.S./Japan auto trade to go unchecked may well be a permanently damaged domestic auto industry, with accompanying effects on U.S. industrial capacity and even on our ability to mobilize for defense.

We have urged the U.S. government to undertake negotiations with the Japanese government aimed at a better balance between the two countries in automotive jobs, production and trade dollars. The Administration, however, has contended that it does not have legal authority to even begin such negotiations without a final determination of the lengthy ITC investigation. * * *

Another priority is to get the tax system working for industrial revitalization instead of against it. One thing would be to make investment tax credits refundable—a concept endorsed by the Administration in its "economic renewal" package. This would both stimulate auto industry recovery and complement general policies aimed at encouraging modernization, R. & D. and increased competitiveness on the part of all U.S. industries. After all, the investment tax credit is intended to encourage investment in productive machinery and equipment in the U.S.—in fact, to support the modernization of industrial facilities—and thus stimulate the economy and create jobs. That it is not now refundable is largely an accident of history, growing out of the fact that it is administered under the tax laws.

Certainly to the extent that U.S. industrial policy encourages modernization, it need not cause anti-competitive effects by applying to companies only in those years when they operate at a profit. In fact, common sense would tell us that the very time when the credit is needed most is when firms aren't generating enough capital to support investment.

A third area where congressional action is needed is not so easily dealt with. The subject is regulation and we've all heard far too much about it in the past decade. There are two goals we'd like to see pursued. First, we would urge caution in drafting new statutes authorizing regulation and regulatory agencies.

Also, as the only overseer of the total regulatory complex, we hope that Congress will vigorously exercise its oversight authority to assure that the regulatory agencies give comprehensive and meaningful consideration to less costly, less burdensome and more efficient means of achieving societal goals.

The key word with regard to regulation is flexibility and here we suggest one additional area of Task Force leadership. Over three months ago both houses of Congress approved a bill originally introduced in the House by Representative Sharp, providing for a three-year carryforward/carryback of fuel economy credits used for measuring EPCA compliance—yet no conference has been convened. We hope the Task Force can assist in getting this important legislation back on track.

STATEMENT OF MARVIN W. STUCKY, VICE PRESIDENT, GOVERNMENTAL AFFAIRS AND CORPORATE PLANNING, AMERICAN MOTORS CORP.

RECOMMENDATIONS FOR GOVERNMENT ACTION

The following priority government actions are suggested.

1. An arrangement, hopefully voluntary, should be concluded to reduce Japanese passenger car imports substantially for two years.

2. The light duty truck (cab-chassis) tariff of 25 percent should be retained and not reduced in amount.

3. A refundable Investment Tax Credit with full credit applicable to assets having a useful life of three years or greater should be enacted to provide assistance in meeting future capital requirements. The U.S. Treasury should reimburse corporations for tax credits that cannot be utilized in periods of losses.

4. The financial community should be encouraged to cooperate with automobile manufacturers in making additional funds available for future programs.

5. The Automobile Fuel Efficiency Act of 1980 should be enacted.

6. Special emission regulations for high altitude and special California vehicle exhaust emission standards should be eliminated.

7. Proposed 1983 and subsequent model year light duty truck exhaust emission standards and related certification procedures should be deferred indefinitely.

8. Additional U.S. export incentives should be established.

The recent shift away from domestically produced vehicles to imported vehicles was triggered, at least in part, by the higher perceived fuel efficiency and the alleged better quality of imported vehicles. While in the past, imports may have outperformed U.S. vehicles in fuel economy, the new 1980 and 1981 models offered by U.S. carmakers are fully competitive. Nonetheless, another three years or so is required for the U.S. manufacturers to completely change over production facilities to new more fuel-efficient vehicles.

Foreign cars, particularly the Japanese, excel in "fit and finish" which has led buyers to believe they must be of a higher quality and therefore more durable. To the contrary, data indicates that the scrappage rate of domestic cars is lower than imported vehicles.

For example, as shown below, 21.5 percent of all seven-year old imported cars have been scrapped compared with only 16 percent of the U.S. cars. Or put another way, 78 percent of seven-year old imports survive seven-years of use versus 84 percent of U.S. cars.

CUMULATIVE CAR SCRAPPAGE RATES

[Average rates July 1, 1970 to July 1, 1979]

	Percent of initial registrations scrapped	
	U.S. cars	Import cars
Vehicle age:		
1	0.1	0.5
2	.9	1.6
3	2.5	4.0
4	4.2	6.7
5	6.6	9.8
6	10.3	15.1
7	16.0	21.5
8	24.3	29.2
9	35.3	39.3
10	48.6	48.2

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J. L. ATKINSON

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. SKELTON. Mr. Speaker, it is with great sadness that I inform my colleagues in the House of the recent death of a good friend and an outstanding citizen, J. L. Atkinson of Lexington, Mo., in a tragic automobile accident.

Mr. Atkinson was a native of Lafayette County, Mo., and attended Missouri Valley College, Central Missouri State University, and the University of Missouri, Kansas City. He served in the U.S. Army during World War II. He was a distinguished educator and school administrator and served as Lafayette County Superintendent of Schools, and as Superintendent of the Corder, Camden, and Santa Fe School Districts. His service in these positions was characterized by his tireless service to the public, and by his devotion to the betterment of young people through education.

Mr. Atkinson was also active in civic affairs. He served as executive secretary of the Lexington Chamber of Commerce, and was a member of the Lexington Lion's Club, the Missouri State Teachers Association, the Lexington Masonic Lodge 149 A.F. & A. M., and the Lexington United Methodist Church. For 20 years, he selflessly dedicated his energy and talents to the community as chairman of the Lafayette County Red Cross.

Despite his many professional and civic activities, J. L. Atkinson was never too busy for his family, or any of his many friends. He will certainly be missed by all who had the opportunity and the privilege to know him. I extend my deepest sympathy to his widow, Mrs. Lola B. Atkinson.●

CAMBODIA AND THE WORK OF THE MEDICAL MISSION SISTERS

HON. CHARLES F. DOUGHERTY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DOUGHERTY. Mr. Speaker, the pain and tragedy of the people of Cambodia is familiar to the Members of this body. Earlier this year, through efforts to address the needs of these suffering people, we sought to provide millions of dollars in the form of international disaster assistance. With that action the story has not ended. In fact, even today, there are American men and women laboring unselfishly in the refugee camps. Among these workers are members of a community of Roman Catholic religious women whose American motherhouse is in the Fourth Congressional District of Pennsylvania. I would like to share the story of the Medical Mission Sisters involvement in Cambodia with my fellow Americans.

In the fall of 1979, the Medical Mission Sisters received an urgent plea for help from the International Rescue Committee asking for sisters to provide immediate medical assistance to the refugees of Cambodia. The first members of the Medical Mission Sisters' team arrived in Bangkok, Thailand, on November 24, 1979. Since that time a total of 19 sisters—15 from the United States and 4 from Holland—have worked cooperatively with the International Rescue Committee and the International Committee of the Red Cross to provide medical relief personnel in the refugee camps of Thailand.

In addition to caring for the sick and dying Cambodian people, the sisters served as field managers, directing the work of other volunteers. They were responsible for the tuberculosis and other contagious diseases ward at SaKaeo and the surgical ward at Kha-I-Dang. They were also involved in primary health care and outreach work in the Thai villages surrounding the camps; followup care on discharged TB patients; and teaching basic courses in medical, nursing, and laboratory procedures.

The sisters found themselves enmeshed in one of the saddest situations in our world today—a situation that touched each one and etched the anguished and suffering of the Cambodian people in their hearts and minds. The nightmare continues—the brutal fighting, the senseless killing, the unending hunger, and the overwhelming hopelessness.

Three sisters have shared their experience and I share these with each Member of this body:

SR. MIRIAM THERESE WINTER

I was part of a team of Medical Mission Sisters assigned to SaKaeo last November. In our tuberculosis ward, I watched people come alive in response to the love and compassion around them. There was promise of a future.

But what does such a future hold? Uprooted and without material possessions, these once proud people have only a few square meters of alien soil to call home. They must stand for hours in the hot tropical sun for their allotment of food, beg for a handout of clothing whenever a shipment arrives. Yet these are the lucky ones. Thousands of the sick and starving are still massed along the Cambodian side of the border in hope of deliverance. They are often shelled by Vietnamese troops or caught in the cross fire between antigonistic factions, and fear of a full-scale border war is growing.

To a large extent, the future of these people lies with the nations of the free world. We must care enough to ensure not only survival but a certain quality of life for those who have unjustly suffered so much. Such is our responsibility as Christians and as members of the human family.

SR. JOAN MARIE SEYDEL

The Khmer people impressed me deeply with their warmth, gentleness and friendly smiles. I could not help but wonder how they were able to respond so positively in the light of the tragedies that marked their lives these past four years.

One young patient, Pote, was 13 years old although he looked only eight. Pote had a diagnosis of pulmonary tuberculosis, malnutrition, parasites, and like many other patients, suffered from bouts of malaria. Physical symptoms connected with each of these problems added to the already overloaded psychological and emotional stress for Pote and others like him.

"Grandma" Houn, only 60 years of age, was so wizened that she looked more like 90 plus. She was a delightful lady, with adamant feelings about many things, ranging from just exactly which spot was best for her Streptomycin injection, to where the fly-stick papers should be hung in the ward.

"Prince Charmin" Runn was a bouncy five-year-old with a big tummy who looked three years younger than his stated age. He was personality plus—always seemed to be going somewhere with great purpose, at great speed, up and down the aisles. One of his favorite things was to wrap himself around my leg and stand on my foot—this occurred most frequently when I had the medicine basket in both hands but when it was time for his medicine he beat a hasty retreat.

"Chippy" Sinn who was the same age, was a contrast in this respect to Runn. He followed me around at medicine time and kept opening his little mouth like a bird until it was his turn.

Our last day in the ward was painful for us as patients embraced and kissed us, shook our hands and cried, even though our places were about to be filled by incoming volunteers.

We were quiet on the bus ride to Bangkok. As I looked out the bus window, I realized that so many faces of patients were flashing before my mind's eye, and that no longer would news about Kampuchea (Cambodia) be a lot of statistics.

These people were unique individuals and so were we, and we had deeply touched each others' lives, if even for a brief space of time.

SR. KATHRYN GATES

It's a memory now, not just an ordinary impression but an experience so wrenching that I will never be the same.

I was a volunteer for three short months, sharing the tragedy of the Cambodian refugees, the remnant of a gentle, peace-loving people. Without words we spoke—they unable to speak English, and I knowing not a word of Khmer. Yet no words could have spoken more forcefully. The story they told was etched on their bodies by the ravages of starvation . . . limbs so thin you could count each bone . . . muscles shrunken and burnt up to provide calories for survival when they had no food. But even more heart-wrenching was the story their eyes told. In each pair of eyes, I looked into bottomless wells of fear, misery and suffering too horrible to be put into words.

They arrived at SaKaeo camp in trucks and buses during the last big rain before the dry season. Thirty-six thousand of them came to this rice field 40 kilometers from the border. Many were too weak to walk or even stand. Five died from drowning that first day, unable to rise from the puddles into which they had fallen.

In the first days after arrival, their eyes were blank and staring, too numbed by what they had witnessed to respond to new surroundings. No one spoke, even though their cots in the hospital tent were so close together you could not walk between them. One hundred and twenty desperately sick people, crowded into one tent, longing to unburden their grief-stricken hearts, to release the pent-up anger and emotion, to ask for news of missing family members and friends, but no one spoke. The only sound was the continuous coughing from lungs wracked with tuberculosis and pneumonias.

Even the children did not respond. They just lay there, not smiling, or playing or fussing, not even crying. They even died quietly, almost without regret or struggle, about 30 each day, too far gone to respond to the food and medicines.

But it was the children who responded first as they gradually began to eat and to have the strength to sit up and then to walk around, buried under years of horror, those first smiles surfaced as real miracles, drawn from memories of an almost forgotten response.

Food began to allay the pangs of hunger and slowly restore strength to exhausted bodies; medicines fought the multitude of diseases that sapped their energy; bright colored sarongs and blouses brought sparks of life back into somber faces; balloons and soap bubbles would coax children to smile. But it was music that brought about the miracle. With the guitar and singing, hope came alive in faces that faced a hopeless future. And I will be forever grateful to the Cambodian people for allowing me to witness that miracle of rebirth.

Mr. Speaker, three-quarters of a million Cambodians are in the refugee camps in Thailand solely dependent on the generosity of others for food, water, shelter, clothing, and medical care. Thousands more are living in the various encampments along the Thai-Cambodian border often shelled by Vietnamese troops or caught in the crossfire between antagonistic factions. But at least on the border they have access to the food supplied by the international relief agencies.

The entire situation of the people of Cambodia is grave and precarious. The future is uncertain. They who have already suffered so much continue to suffer. However, through funds and, perhaps, more significantly, the gifts of such people as the Medical Mission Sisters the long and constant care of the American people for each human person has once again been made real.●

RENTERS NEED TAX RELIEF TOO

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BIAGGI. Mr. Speaker, in each of the past three Congresses I have sponsored legislation aimed at correcting one of the longest standing inequities against a class of American taxpayers—those who rent their residences. My bills would allow tenants to deduct that portion of their rent which pays for property taxes.

This legislation is vitally needed for many Americans. About one-third of all taxpayers in this Nation are rental units. In Manhattan, more than 90 percent of all housing units are rented. For these Americans, relentless increases in property taxes are oftentimes passed on directly in the form of rental increases.

The House will soon begin deliberations on tax reform legislation. I intend to push for consideration of legislation to provide first time tax relief to renters. Recently WCBS radio issued an editorial endorsing legislation providing tax relief for renters. I urge my colleagues to read the editorial and support me in this important endeavor.

The editorial follows:

GIVE 'EM A BREAK

(By General Manager Robert Hyland)

Rent payments should be more than money down the drain.

New York State Tax Commissioner James Tully went to Washington yesterday on an important errand—to persuade Congress to give renters a tax break. We hope the Congressmen were paying attention and that they will soon take some action on Tully's suggestion.

Renters in New York State aren't the only ones who need a break. About one third of all households in the nation are rental units and the deck is stacked against every one of them. Our federal tax laws are written to encourage homeownership. That was fine maybe forty years ago when owning their own home was a dream most Americans could aspire to. Now, unfortunately, millions of Americans are locked out by the high prices and the dream of walking through their own front door remains just that—something they long for while they write out the rent checks.

Commissioner Tully's recommendation is to give America's renters a tax credit of up to twenty percent of their annual rent, not to exceed one thousand dollars. The lump sum is roughly the equivalent tax break homeowners get and it would in no way interfere with the tax relief landlords receive. Right now renters get no credit for the share of their rent that goes to pay property tax, although that share is often considerable.

Changing this part of the tax law would likely encourage more families to stay in cities and forgo the commutes to the suburbs. And it would help apartment dwelling senior citizens who live on fixed incomes.

Most important, it would have the government play fair with the millions of people who pay rent.●

THE "GESMO" GIZMO

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BINGHAM. Mr. Speaker, I commend to my colleagues an editorial which appeared in the Washington Post recently lambasting a congressional initiative at this time to reopen the so-called GESMO issue—the Nuclear Regulatory Commission's generic environmental statement on mixed oxide fuel. The matter could arise when the House takes up H.R. 7981, the NRC's fiscal year 1981 authorization legislation.

I share the Post's deep concern about any effort to require the NRC to resume its formal rulemaking proceeding on GESMO, which contemplates the wide-scale reprocessing and use of plutonium in existing types of nuclear reactors. I intend strongly to fight any such amendment, particularly from the standpoint of its potentially very serious negative impact on U.S. interests in stopping the spread of nuclear weapons.

The significance of the GESMO proceeding, which was terminated in 1977 by the NRC, is its underlying assumption that the United States will need in the near future to license commercial reprocessing and thermal recycle activities. In other words, contrary to being "just a study"—as GESMO's proponents have characterized it—GESMO signals the dawning of a time when plutonium will be transported and used commercially in a form readily usable for nuclear weapons. In 1977, the United States stood virtually alone in worrying about the security threat of this development. Now, after 2 years of intensive international cooperative studies, there is a clear consensus worldwide that reprocessing for recycle purposes makes little economic sense, and poses potentially significant proliferation risks.

Not only, therefore, does the idea of compelling NRC to reopen the GESMO at this time make little sense on its merits, but such a congressional vote—devoid as it would be of any substantive record in either committee with responsibilities for the NRC budget—would simply confound ongoing U.S. efforts to persuade and accommodate our international nuclear trading partners on an effective nonproliferation regime. Neither the nuclear industry nor the governments involved would be served by muddying the waters with unsubstantiated congressional decisions.

It is my strong hope that the proponents of GESMO will take these considerations, and the fact that the NRC has already embarked on an effort to decide GESMO in a rational manner, into account and decide not to offer their amendment.

The full text of the material submitted for the record follows:

THE GESMO GIZMO

Efforts are afoot again in Congress to prepare the way for the reprocessing of nuclear wastes and for the associated recycle of the plutonium thus produced for use as fuel in existing types of reactors. The vehicle is an amendment to the Nuclear Regulatory Commission's authorization bill that would require the NRC to revive an exotic rulemaking proceeding known familiarly as GESMO—Generic Environmental Statement on Mixed Oxide Fuel.

The law provides that such a statement must be completed and a positive ruling made before the NRC may grant licenses for reprocessing and recycle. Work on it was begun in 1974 but was suspended by the NRC in 1977, in conformity with the president's decision to defer indefinitely reprocessing in the United States. This decision was taken primarily on economic grounds, supported by non-proliferation considerations. Since 1977, both arguments have become, if anything, more compelling.

For reprocessing to make economic sense, the value of the plutonium recovered must be greater than the costs of recovery. Plutonium's value in this context hinges on the cost and availability of the uranium fuel it would be replacing. But since 1977 the price of uranium has dropped sharply, as have projections of future needs for uranium fuel.

The economic argument is buttressed by the fact that the spread of reprocessing technology offers any nation direct access to weapons-usable plutonium. Thus the proliferation risks associated with a nuclear fuel cycle involving reprocessing and recycle are far greater than those of a cycle that never produces weapons-usable materials. Since 1977, Pakistan has vividly demonstrated the point.

The ultimate irony is that reprocessing and recycle do not make the task of disposing of nuclear wastes any easier. Though some types of wastes are reduced, the process produces additional types so that the waste disposal knot—the one that must be untangled if nuclear power is to survive—remains as intractable as ever.

The last thing nuclear power needs now is a congressional directive that will pitch the NRC into three or four years of bootless debate over the pros and cons of reprocessing while urgent safety, health and waste disposal issues get shortchanged. The right approach for those who favor nuclear power is not to keep beating this dead horse, but to turn their attention to efforts to bring about a long overdue nuclear waste disposal program—one that does not involve reprocessing.●

EXPORTING NUCLEAR FUEL TO INDIA

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of California. Mr. Speaker, the House will soon be faced with the decision on whether to back the shipment of enriched uranium fuel to India. As you know, the Nuclear Regulatory Commission voted against shipping fuel, and President Carter has asked the Congress to accept his recommendation to send India this fuel anyway.

Nuclear nonproliferation is an important matter that deserves the most careful review by this body. I believe the House and Senate committees which have decided not to support President Carter have made the right decision. The President is wrong on this matter.

Mr. Speaker, I ask my colleagues to carefully review the pros and cons of this case. When this is done, I am confident the Congress will exercise its responsibility under the law and refuse this nuclear fuel shipment.

I commend to my colleagues the following editorial on this important subject:

[From the Los Angeles Times, Sept. 12, 1980]

REWARDING INDIA FOR NONCOOPERATION

The Carter Administration, stunned by House and Senate committee decisions to block a proposed sale of nuclear fuel to India, is lobbying vigorously to have the committee actions reversed on the floor of one house or the other. This is a fight that we hope the Administration loses.

The White House proposes to ship 38 tons of enriched uranium fuel to India for use in the Tarapur atomic power station. The transaction was disapproved by the Nuclear Regulatory Commission for the very good reason that it would violate the clear intent of the Nuclear Nonproliferation Act of 1978.

That law prohibits the transfer of nuclear materials to nations that do not accept international inspection of all their atomic facilities to prevent a diversion into nuclear bomb-making.

India exploded a nuclear device in 1974, using American and Canadian materials in violation of the supply agreements with both nations. To this day, the government of Indira Gandhi refuses either to accept international inspection or to promise that more nuclear devices won't be exploded. India is also among the holdouts that have never signed the multinational Nonproliferation Treaty of 1970, aimed at preventing the spread of nuclear weapons.

President Carter used the authority provided by the 1978 antiproliferation law to override the regulatory commission's finding. But his decision in turn can be overridden by a vote of both houses. The deadline for such a congressional veto is Sept. 27.

The State Department argues that, especially in the wake of the Soviet invasion of Afghanistan, the United States shouldn't be in the business of irritating India and possibly nudging that country into an even chummier relationship with the Soviet Union.

This is an appealing argument as far as it goes. But it overlooks the fact that rewarding India for its flat refusal to accept international safeguards could have even worse consequences.

Such action might, to begin with, virtually eliminate any prospect of dissuading Pakistan from pursuing its own nuclear bomb-making program. Even more important, it would deal a heavy blow to the credibility of the Administration's entire antiproliferation effort.

If the United States is prepared to overlook India's calculated noncooperation with the nonproliferation effort, other countries are justified in assuming that they can get away with the same sort of behavior without suffering any serious consequences.

We urge the House and Senate to back their committees and pass resolutions disapproving of the nuclear fuel deliveries.●

SOLAR POWER SATELLITE CONCEPT EXPLAINED

HON. RONNIE G. FLIPPO

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FLIPPO. Mr. Speaker, in 1968 Dr. Peter Glaser, vice president of Arthur D. Little in Cambridge, Mass., developed the concept of the solar power satellite (SPS). The idea of using this Nation's $100 billion investment in space exploration to help solve the long-term energy problem of the world has captured the imagination and attention of the scientific community throughout the world.

The House Committee on Science and Technology has held hearings on the SPS concept in 7 of the past 12 years. The House passed a Solar Power Satellite Research, Development, and Demonstration Act in 1978 and again in 1979 by a wide margin.

The Department of Energy is now in the final stages of completing a multimillion dollar 3-year study of the solar power satellite concept. A final report on this study evaluating the societal, environmental, economic, and technical aspects of the SPS concept is near completion. In addition the Office of Technological Assessment and the National Academy of Sciences are also nearing completion of separate and independent studies of the SPS concept. It is interesting to note, Mr. Speaker, that no other potential energy source has been subjected to such thorough and intensive examination and debate both within Congress and in the scientific community.

Mr. Speaker, I am pleased to submit for the consideration of my colleagues an article on the SPS concept prepared by Dr. Peter Glaser and published in a recent edition of the Christian Science Monitor:

ORBITING POWER PLANTS COULD EASE EARTH'S ENERGY CRISIS

(By Peter E. Glaser)

On May 9, 1971, the Sunday papers published a syndicated cartoon, "Our New Age," which illustrated how energy could be beamed from Space to Earth to generate electricity. While the technology depicted in the cartoon had all the earmarks of science fiction, it was in fact, based on a concept for a solar power satellite (SPS) which was proposed in 1968.

In 1980, such a power source now looks increasingly to be a technology whose time has virtually come. Its promise is enormous.

A single SPS could generate the equivalent power output of one to ten nuclear power plants. Placed in an orbit 22,300 miles above the equator, where the sun shines 24 hours a day during most of the year, and where the satellite would be stationary with respect to Earth (a geosynchronous orbit), the SPS would convert solar energy directly to electricity and feed it to microwave (radio) generators forming part of a transmitting antenna. The antenna would precisely aim a low-power density microwave beam to one or more receiving antennas at desired locations on Earth, and there microwave energy would be safely and efficiently reconverted to electricity and transmitted to users. The SPS is uniquely suited to generate power continuously because there are no interruptions by inclement weather and the diurnal cycle in this orbit.

Although it would be an advanced technology, such a power satellite system could be operational by the year 2000. It would be based on known technologies, which could be developed to accomplish the required functions in space. Of potential global benefit, the SPS concept has its roots in the scientific and technical resources, and aspirations, of a broadly based community which views space as a reservoir of unlimited energy and material resources. Since 1971 the SPS has been studied by academic institutions, industrial organizations, and government agencies in the United States, Canada, Britain, France, and Japan, by the European Space Agency, and by the Soviet Union. As a result, there is increasing recognition of its potential to meet future energy demands.

The most extensive assessment of the SPS concept was carried out during the past three years by the United States Department of Energy and the National Aeronautics and Space Administration. With a budget of $20 million, these two agencies had as their objective "to develop by the end of 1980 an initial understanding of the technical feasibility, economical practicality, and the societal and environmental acceptability of the SPS concept." The results of their assessment were reviewed at a conference held last April at the University of Nebraska, where 196 technical papers were presented on a wide variety of technical, economic, environmental, and societal issues.

The consensus emerging from the conference was that no reason has come to light for concluding that the SPS would not be technically feasible. Cost projections fall into a competitive range when SPS is compared with power-generation systems using renewable or nonrenewable energy resources. Environmental issues dealing with long-term exposure to low-level microwaves, land use associated with receiving antennas, and the effects of rocket exhaust products on the atmosphere are not likely to constrain SPS development. The SPS has the potential to be environmentally benign compared with other large-scale continuous power-generation methods based on considerations of climatic effects, waste heat, pollutant release, and energy requirements during construction. However, the involvement of the public will be essential to alleviate concerns with environmental effects and control over a centralized large-scale technology.

In view of the growing interest in the SPS in the scientific community and in Congress, the National Academy of Sciences and the Congressional Office of Technology Assessment are also assessing the concept. Results of these assessments are expected in 1981 and will influence the evaluations and experiments to be carried out as part of the SPS program during the next several years, as well as legislation that may be introduced in Congress. Congress has supported the SPS program efforts of the Department of Energy and the National Aeronautics and Space Administration in the past and there are indications that this support will continue in the future.

The SPS program is unique in that this major technology program focuses not just on key technology issues, but is concerned with the assessment of environmental effects and economic and societal issues so that risks and uncertainties can be identified before proceeding with the next phase of a ground-experiment program. This focus for the SPS program is appropriate at a time when public skepticism of complex, large-scale technologies has been justified by well-publicized failures, and there is distrust of assurances that technological systems will not contribute to involuntary exposure to environmental, health, and safety hazards.

The most significant aspect of the SPS concept is the global implications of continuous power generation available to all nations. Once the overall feasibility of the SPS concept has been established, and the evaluations and ground experiments are concluded with positive results, other nations may be interested in joining in the development and demonstration phases of the SPS program, and in experiments to be conducted on future space missions. Already there is significant international awareness of the SPS concept, as indicated by studies of the United Nations Committee for the Peaceful Uses of Outer Space, and discussions of frequency assignment and geosynchronous orbit positions at the World Administration Radio Conference which met in Geneva in August 1979. The SPS will also be discussed at an international symposium, sponsored by French government agencies, to be held in Toulouse, June 1980.

International participation in an SPS program would also provide assurance of the program's peaceful nature, adherence to agreed-upon environmental standards, and availability of power from space on a global scale. Furthermore, international involvement should assure that the SPS will not be controlled by any one industrial organization, sector of industry, or even one nation.

To derive the maximum benefits from a global SPS system, policies will have to be adopted which will be acceptable to other nations and lead to the formation of the most appropriate international organization devoted to SPS development and implementation. The organizational structure should be responsive to societal issues while the SPS is being developed so these issues won't have to be spliced in later. The organizational structure should also meet the common interests of participating nations, as already is the case with Intelsat, the organization controlling communications satellites and owned by more than 100 nations.

As the effects of the SPS technologies will extend past national frontiers, decisions regarding their development should not be left exclusively to national jurisdiction, but be made part of transnational affairs. The benefits of the SPS should be available on a global basis and should increase the opportunities for developing nations to take an active part in the utilization of energy available in space. The SPS concept should advance the complementary national interests of both developed and developing nations. A political consensus will need to emerge, in spite of diverse and contending interests, through widespread realization that humanity is embarked on a dangerous passage together in a world of finite resources, ultimate weapons, and unmet requirements.

The significant progress that has been made as a result of the many studies being performed on the SPS is resulting in the growing conviction that the SPS is one of the promising power-generation options which could contribute to meeting global energy demands in the 21st century. Its successful implementation, together with energy conservation measures and solar energy applications on Earth, could lead to the elimination of energy-related concerns.

The SPS could provide, not only the impetus for peaceful cooperation among nations because all can share the limitless resources of space, but could also help civilization to make the inevitable transition to renewable sources of energy. The SPS provides a focus for international endeavors to utilize space to improve the human condition on planet Earth and points a way toward a new direction for the evolution of the human species.●

A BILL INTRODUCED BY REPRESENTATIVE DAVID F. EMERY

HON. DAVID F. EMERY

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. EMERY. Mr. Speaker, I am today introducing legislation which would provide for the conveyance to the State of Maine of certain lands located in the State of Maine.

Public Law 85-185, which was passed by the Congress in 1957, authorized the Secretary of the Navy to convey approximately 28 acres of land to the State of Maine. This property, which formerly comprised part of the Fort Preble Military Reservation, is located on the campus of the Southern Maine Vocational-Technical Institute of South Portland.

When the property was conveyed to the State of Maine, the only uses envisioned for the land at the time were vocational and other school purposes. This restriction was then written into the original deed agreed to by the Navy and the State of Maine.

However, since 1957, a conservation zone and public park called the Spring Point Shoreway has been established along this particular portion of south Portland's coastline. Officials of the State of Maine and the Southern Maine Vocational-Technical Institute wish to now traverse this property for access to the beach area and parking lot but are partially prevented from doing so by the use restrictions contained in the Navy Secretary's deed.

Since this land is owned by the State of Maine, the State legislature acted this past spring to pass private and special legislation for the Spring Point Shoreway authorizing the commissioner of the Maine Department of Educational and Cultural Services to apply to the appropriate Federal agency for release of the use restrictions.

In a response to an inquiry initiated earlier this year by then Senator Muskie, Navy Secretary Edward Hidalgo indicated that legislation would be necessary to authorize removal of the restrictions in the deed. This is the substance of my legislation. A similar bill has already been introduced in the Senate by Mr. MITCHELL and Mr. COHEN.●

A TRIBUTE TO THE MEN AND WOMEN OF THE ALL-VOLUNTEER FORCE

HON. TOM CORCORAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. CORCORAN. Mr. Speaker, the letter printed below was recently sent to me by two of my constituents, Alfred and Mary Jane Thurston, upon their return from a visit with their son now serving in the U.S. Army in Fulda, West Germany. In recent days, heavy criticism has been leveled at our All-Volunteer Force, some of it justified; however, as these proud parents discovered, and as I have long advocated, the All-Volunteer Force can be made to work. Rather than belabor the points, I would urge all of my colleagues to read this most eloquently stated letter:

BATAVIA, ILL.

To: Members of Congress.
From: Two parents with a son in service.
Subject: Freedom and fences.

A recent visit to our service son stationed near the iron curtain that separates East and West Germany provided chilling evidence that there are two political divisions in the world today: those in captivity and those in the free world.

Our visit led us to the beautiful city of Fulda about thirty miles northeast of Frankfurt. This lovely, pastoral city serves as home base to the Eleventh Armored Cavalry Regiment. There we were greeted by the regimental commander.

Lt. Colonel Joseph C. Liberti, Master Sgt. William J. Toole, Staff Sgt. William J. Hutton, and Sp/4 George J. Thurston took time out of their busy schedules to brief two anxious parents on the status of the obligations of the United States army in West Germany. Their forthright briefing highlighted the border area.

At the conclusion of the briefing, a personal tour of several border points was arranged. As civilians, we were totally unprepared for the frightening detail of the iron curtain. M. Sgt. Toole and Sp/4 Thurston were unarmed during the inspection tour. Due to the many curves in the border itself, it is not possible to ride alongside the border; instead, the driver had to find side roads that led up to the border.

We discovered that it is possible for the West Germans to walk up to the border without worry or fear, for no barrier exists on this side of the border. However, don't, I repeat, don't stray beyond the simple stone markers set in the ground that delineates the border. For these simple stones, mark the end of the free world.

Beyond this imaginary line stands a ten foot high steel fence that stretches from the North Sea to Czechoslovakia. The first impression, and one that lasts, is that this fence walled up a monstrous animal in a zoo that is too dangerous to be set free. Beyond the fence and a stretch of grass are the concrete slabs designed to prevent anyone with a vehicle from going from one side to the other. Overseeing the steel fence every mile the guard towers with armed guards watching the fence.

Is the fence an honest attempt to mark the border? The armed guards with their live ammunition say no. But, that's not all the visible proof. This steel fence is very treacherous and deserves close attention as it is a deadly trap. Attached to every other fence post: first, head high; then, waist high; and lastly, knee high are the bombs. These are not grenades, they are bombs!

Fences, guard towers, and bombs, is that enough to tell the purpose of the fence? There is more. Just behind the fence on a tether that stretches between the guard towers are the guard dogs. Oftentimes, behind the dogs are additional mine fields.

What, then, is the purpose of the steel fence or the iron curtain? Is it to keep West Germans from entering East Germany? The answer is no. If that were true, the concrete slabs, the dogs, and the bombs are all on the wrong side of the fence. The truth is plain to see. In the Communist world of East Germany and Czechoslovakia, they have found it necessary to build fences to keep people in, for captive people want to be free.

Those who are entrusted with the responsibility of preventing that fence from moving to include us all are the many soldiers of different races, sexes, and religions from the many parts of the United States. These same soldiers are part of our volunteer army, because they care about the free world and the United States.

And, what about these soldiers? What manner of military abilities have they? What are they really like? The media has already spoken many times of their personal qualities. The media has chipped away at the morale of the troops by stereotyping the armed forces as inadequate. They, the media, have criticized the army for a lack of volunteers. But, what are these soldiers really like?

We can only speak for the Eleventh Armored Cavalry stationed in Fulda, Germany. We watched them on the Fourth of July play an officer versus enlisted men softball game in a sea of mud accompanied by a thousand laughs by all concerned. We shared hot dogs at a picnic for families on the fourth. We talked with their children at the picnic. We ran with them to the parade ground to watch the firework's show. We danced with them at the enlisted men's club. We joined with them in singing some of the good old songs as we all celebrated the birthday of our country far from wherever we all called home. They were, on the Fourth of July, the kid next door or the one down the block. However, on the fifth of July, it was busy as usual as they went about their deadly serious job of protecting us all.

The media has done us all a great disservice by inferring that these young men and women are not the best that America has to offer. The soldiers, that I saw, were professional soldiers doing their job in a professional manner.

I am convinced that these young men and women who stand alone each night and day to protect us as they patrol a lonely border halfway around the world deserve and merit our country's unquestioned support and prayers for their courageous vigil.

Without them, that fence could move far enough to include us all.

ALFRED G. THURSTON,
MARY JANE THURSTON.●

BROYHILL COMMENDS TEXTILE INDUSTRY ON ITS PRODUCTIVITY

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROYHILL. Mr. Speaker, yesterday I shared with my colleagues in the House the first part of an article by Mr. Rolfe Neill which appeared last week in the Charlotte Observer. In part 1 of his article, Mr. Neill described how North Carolina's textile industry has managed to survive economically, despite Federal tax policies which discourage productivity by our Nation's industries.

Mr. Neill further illustrates this point in part 2 of his article, which I now share with my colleagues. In the second part, Mr. Neill draws several comparisons between the prosperous textile industry and the financially troubled auto and steel industries, and traces the textile industry's success to its extensive investments in the most advanced equipment, rather than resulting from mass infusions of direct Government assistance.

Mr. Neill makes a number of important points concerning the growing influence of the Federal Government over private industry—points which I think we would all be well advised to consider. I am certain my colleagues will find Mr. Neill's remarks to be most interesting, and quite relevant in view of the great interest across the country in tax and regulatory reform legislation.

OUR STATE SHOWS 'EM—AN INDUSTRIAL SURVIVAL LESSON

The troubled steel and auto industries differ in several areas from thriving North Carolina textiles:

Textiles tend to small mills, often family owned. There are about 6,000 of them.

Steel and autos are concentrated in a few hands where the scale of everything is huge.

There are not many unions among textile plants.

Steel and autos are unionized throughout.

N.C. textiles are pushing into world markets. Competition has forced efficiencies on our plants which have made Carolinas mills the most productive anywhere. They also set the worldwide standard in quality.

Autos and steel are being beat by the Japanese and the Europeans who are shipping their products here. Autos and steel have old plants. You have your own opinion about U.S. auto quality.

Textiles are styling up for overseas markets—from sheets and towels to denim and carpet. Plain patterns are being replaced with colorful ones not offered by overseas competitors. A weakened dollar has been a boon to textile exports.

Autos and steel don't match their competitors.

Textiles, because it is has so many operators, tends to have prices set in the market.

Steel is considered so basic to the nation's economy that "for three consecutive settlements, the steel contract was literally reached at the White House," says U.S. Steel Corp. chairman David M. Roderick.

Textiles is dominated by no firm. Even giant Burlington Industries has but about 6 percent of the business.

What GM (with 46 percent of the U.S. field) does in auto pricing is mimicked by the other three.

There are few areas in our personal or corporate lives into which Uncle Sam's hand does not intrude. Often it is helpful and sometimes benign. Increasingly, however, it is a hand that disrupts.

Our state's textile industry scrambled to stay alive. It did so by pouring money into modernization at a dizzying rate. Productivity improved. An industry that was skidding became reinvigorated. The accomplishment was despite a hostile tax environment.

LOOK WHAT HAPPENED

Meanwhile, look what happened:

1. N.C.'s textile work force is 22 percent minority and 50 percent female.

2. Average hourly wages and fringes have climbed to $6.25.

3. While some textile workers are laid off or on shortened weeks this recession, it's nowhere near as severe as 1974-75.

4. Textile workers and their new machines are outperforming the U.S. economy in productivity gains.

Productivity is very much related to tax policy. Does a nation encourage its producers or discourage them?

U.S. Steel's Roderick is pleading in full-page magazine ads that "tax laws must change to allow American industry to be at least tax competitive with foreign competitors. Our tax laws must allow for the recovery of investments in plant and equipment in at least as short a period as our international competitors—not five to ten times longer as is the case today."

THE POWER TO DESTROY

Chief Justice Marshall observed in 1819: "The power to tax involves the power to destroy." Debate that, Ron Reagan and Jimmy Carter and John Anderson. Tell us what you will do to get America moving again at the factory level.

It really comes down to this:

Is the government better at making decisions than the marketplace?

Evidence is overwhelming that you, the buyer, are far smarter about managing money than the people you send to Washington. A cranial glaze comes over most of them once they get in office.

A parallel question is this one:

To whom does wealth belong, the people who earned it or the government which taxes it?

For 50 years now, politicians have played business against worker while confiscating from both. It is a slick game that can run a long time but must one day end. Meanwhile, the class warfare weakens us all. If left unchecked it will bring the second American Revolution.

Worker exploitation is a settled issue in this nation. Public policy forbids it. Government intervention was required to accomplish this needed objective.

SERVANT BECOMES MASTER

However, we have moved from exploitation by business to exploitation by government. The servant has become the master with predictable consequences.

On the front of each public building should hang a reminder:

You paid for this building. Nobody inside produces any wealth. They only consume it that the needy might benefit from services. Are you keeping up with the results?

Wealth is created only when someone provides a marketable good or service. That nation prospers most which never forgets this, whose laws encourage thrift within the family and in the government office. Presently, we have thrift in neither place.

Only you have the power to change it.●

ARTISTS NEED TAX CREDIT

HON. FREDERICK W. RICHMOND

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. RICHMOND. Mr. Speaker, on August 27, 1980, I had the pleasure of introducing H.R. 8038, which would provide artists with a 30-percent tax credit on the art work they contribute to nonprofit tax-exempt organizations.

The 1969 tax reforms unjustly penalize artists by prohibiting creators of art work from taking tax deductions on the value of works they contribute to tax-exempt organizations. The purpose of the provision was to stop politicians from abusing the tax system, by contributing their personal papers to public institutions and receiving substantial tax deductions for these "gifts". Congress moved to stop these political abuses but, in so doing, stopped artists' contributions as well.

Over the past 11 years several bills have been introduced to reverse this decision as it relates to artists—all without success. There is nothing in the legislative history of the 1969 tax reforms that in any way indicates a congressional intent to prohibit artists from contributing their art works. Yet, over the past decade, artists' contributions of their works to museums, libraries and hospitals have all but stopped, because the creators of these works are no longer able to receive any more than the cost of their materials as a tax deduction.

This present tax system is quite unfair in another respect: The collector of artworks can receive a full fair market value deduction if he or she contributes the work to a public institution—but the creator of that work cannot receive any deduction.

Ironically, when the artist dies, the art work, which he or she was not able to give away for more than its cost of materials, is then taxed, for estate tax purposes, at the full fair market value of that work. Mr. Speaker, it is time to change this unfair law as it affects American artists. It is time for us to allow artists to contribute their works to nonprofit tax-exempt organizations and to receive more than just the cost of materials.

The bill which I have introduced would allow an artist a 30-percent tax credit on the value of art works contributed to tax-exempt institutions.

This would mean that if the artist had a $10,000 tax bill at the end of the year and during that year had contributed art work valued at $10,000, he would receive a $3,000 tax credit and would owe the Federal Government $7,000 in taxes. The total contribution allowed in any 1 year could not exceed $35,000, though the artist could contribute art works valued up to five times that amount and take the tax credit over a period of 5 years.

I believe that with a new tax bill coming before the House soon the time is ripe for the House to change the unfair provisions of the 1969 discriminatory law as they affect artists, and correcting them with the provisions of H.R. 8038. It should be noted that these proposed changes in our tax system were worked out on the floor of the Senate in 1974 between my good friends and colleagues Senator JAVITS and Senator LONG.

Mr. Speaker, I look forward to working with my colleagues in the House to insure the success of this bill quickly so that our museums, libraries, hospitals, and other nonprofit tax-exempt organizations can once again receive gifts of art works from artists. If we do not act quickly, an entire era of contemporary art may be lost to future generations.●

THE 200TH ANNIVERSARY OF THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DONNELLY. Mr. Speaker, I would like to share with my colleagues the text Chief Justice Edward F. Hennessey of the Massachusetts Supreme Judicial Court delivered so eloquently in the historic city of Quincy, Mass., on the recent celebration of the 200th anniversary of the ratification and adoption of the constitution of the Commonwealth of Massachusetts.

Chief Justice Hennessey's address of September 6, 1980, follows:

SPEECH OF CHIEF JUSTICE EDWARD F. HENNESSEY

It is appropriate that the City of Quincy, perhaps above all cities and towns, should mark the 200th Anniversary of the great Constitution of our Commonwealth; your city rightfully claims John Adams and the Adams family, and John Adams was the principal author of our Constitution.

It is also appropriate that I should address you on this occasion, not for personal reasons, but because I hold office as Chief Justice of the Supreme Judicial Court of the Commonwealth; the life of John Adams, the lawyer, tracked closely with some of the history of the Supreme Judicial Court.

Let us look back, for example, to a very special day in the life of the young lawyer Adams: February 26, 1761. On that day the Justices of the Court assembled in their usual courtroom on the upper floor of the building we now know as the Old State House. It is still standing at the head of State Street in Boston. The Court met to hear arguments as to writs of assistance. First of all, let me say here that the Supreme Judicial Court is the oldest court of continuous existence in the Western Hemisphere. It has existed since 1692, but of course on that day in 1761, and indeed up until 1775, the Justices were appointed by the King. And so the lawyers, on that gloomy February day, confronted five Justices of the Crown, arrayed in rich robes of scarlet English broadcloth, and adorned by immense and pompous judicial wigs.

The writs of assistance, used by the King's officers in the colony, were general search warrants, not limited as to scope or time. It was as though today the police were armed with documents which empowered them to search any house they chose at any time they chose. Speaking against the writs was James Otis, a famous lawyer who had many times spoken out against the excesses of the Crown. His argument that day was fiery and courageous and he, of course, stated the community's case for the later adoption of the Fourteenth Article of the Massachusetts Declaration of Rights against unreasonable searches. He also, relying on certain English legal authorities, foreshadowed the constitutional principle that it is the duty of the judiciary to declare unconstitutional statutes void, as he proclaimed, "This writ is against the fundamental principles of law * * * the privilege of house."

Young John Adams was in the courtroom that day, as were most of the lawyers of Suffolk and Middlesex Counties, arrayed in their black legal robes and tie-back wigs. It is certain that Adams was that day, of all days, inspired toward his great constitutional writings of later years. He wrote about it later, with these words, "But Otis was a flame of fire. * * * American independence was then and there born; the seeds of patriots and heroes were then and there sown. * * * Every man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In fifteen years he grew to manhood, declared himself free."

If Adams had moved to the window of the chamber that day in 1761, and had craned his neck a little, he would have seen the place nearby where, a decade later, the Boston Massacre would occur. On that day, in 1771, words flew and stones flew between British soldiers and local citizens. Shots were fired by the British and deaths resulted. And once more Adams was before the Supreme Judicial Court in the Old State House. This time he was risking his reputation and his future in answering one of the highest calls of the lawyer's duty: defending the unpopular client. British Captain Prescott and several of his soldiers were charged with the homicides. Adams and his associate for five days defended the case before the Court and a jury. The defendants were convicted of modest charges and received short sentences.

Finally, in 1775, Adams became Chief Justice of the Supreme Judicial Court, not as an appointee of the King, but as the first Chief Justice chosen by the colony which had proclaimed its independence. He retained the office for only a year, and then went on to other great pursuits. Among these was the writing of our Massachusetts Constitution of 1780.

This document has been called the most remarkable and comprehensive expression of political freedom in history. It preceded the United States Constitution by almost a decade, and it was an all but complete model for that Federal document. Our sweeping Massachusetts Declaration of Rights provided each citizen with protection against self-incrimination; protection against unreasonable search and seizure; the privilege to meet accusers face to face; freedom of speech, press and assembly; protection against excessive bail and cruel and unusual punishment; trial by jury; and due process of law and protection of private property.

Our Constitution also provided a frame of government which was to be later emulated by the Federal document: three separate branches of government—legislative, executive and judicial—with a legislature of two houses. The independence of the judicial branch was proclaimed as never before in history.

What an extraordinary development in the history of freedom we commemorate in this anniversary year! Some of the constitutional principles had been written before in the jurisprudence of France, and particularly England, and other places. But never, until the coincidence of events and genius occurred in Massachusetts, had the great ideas been expressed at once so well and completely. What a wrenching intellectual exercise it must have been, to tear away from the prejudices and vested interests of all previous time! And what courage was summoned, as Adams and his colleagues literally lived (in his words) with a "halter around [their] necks."

Another Chief Justice of the Massachusetts Supreme Judicial Court, Oliver Wendell Holmes, said in 1891: "The electric current of large affairs turns even common mould to diamond, and traditions of ancient honor impart something of their dignity to those who inherit them." These eloquent words suggest a parallel thought. The Massachusetts Constitution, followed by the markedly similar Constitution of the United States, speaks to the highest idealism and morality. They make a heritage which should lift the heart and the mind of every citizen. The citizen who appreciates the nobility of this great heritage, as well as the courage and genius which created it, must surely add to the greatness of his community and his country.

Finally, I think that if John Adams and other giants of our past could speak to us, they might say in the words of the old song, "Of course you can never be like us. But be as like us as you can."●

EMPLOYING DISABLED YOUTH: A VERY WORTHWHILE PROGRAM

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MILLER of California. Mr. Speaker, this recent editorial from a newspaper in my district highlights an important program that helps to place handicapped individuals in productive employment. The Cross Agency project of the Industrial Education Council of California has had great success in placing young people just out of high school in jobs in the community. They, and the businesses who hire these youngsters, are to be commended. I urge all of my colleagues to look at the fine example set by this organization.

The editorial follows:

Another Course?

To all intents and purposes it was another agency luncheon—the summer banquet of the Cross Agency Project of the Industrial Education Council of California.

There was the name tag to stick on your lapel—"Hello, my name is . . ."

There was a choice of chicken crepes or fruit salad with creme de menthe parfait for desert.

The program listed a welcome, nine speakers and a slide show with a certificate presentation at the end.

Midway into the chicken crepes, one of those in attendance scanned the speaker list and remarked, "I hope they're brief. I have a 3 p.m. meeting."

But it turned out to be more than just another luncheon.

The Cross Agency Project educates, trains and places young people we have come to call "the handicapped."

They were there, these "handicapped," some in wheelchairs, some conversing in sign language, sharing the crepes and the parfaits with those of us we have come to refer to as the "more fortunate."

The hollowness and inadequacy—in fact, the inaccuracy—of those labels was apparent from the outset. For those who hadn't noticed, the first speaker quietly hammered home the point.

Fifteen-year-old Tami Lucio, a microphone before her on her wheelchair, told of what it meant for her to have a job, to have work waiting for her to do, to earn a wage, to be needed every day.

"I just wish," she concluded with the eloquence of those not accustomed to public speaking, "that when people looked at me, they'd see me and not just this wheelchair."

Some polished speakers followed Tami, and they had worthwhile, even moving, things to say, but they'd been upstaged from the start. The whole message had been conveyed before they ever stepped up to the microphone.

The director of the Cross Agency Project is Diane Pedonti. Inside her office at the project's headquarters (Suite 160, 2430 Stanwell Drive, Concord) is a slogan that sets the tone for this publicly funded undertaking. It says:

"To deny the rights of any person is to deny our own humanity."

Fifty-four students participated in the project this summer. Twenty-nine employers received certificates of appreciation at the luncheon's conclusion.

By that time it was 2:30, and one person's 3 o'clock meeting was in jeopardy. Somehow that didn't seem as important as it had back during the chicken crepes.●

MOSCOW, POLAND, AND FINANCING OF COMMUNIST COUNTRIES BY THE WEST—PART II

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McDONALD. Mr. Speaker, the recent announcement by President Carter of the granting of a $670 million loan to Communist Poland in the form of agricultural credit guarantees, unfortunately, is just the latest in a series of steps by which the United States and the free world is assisting the Communist bloc out of its troubles. This credit will enable the Soviet Union to continue to place its emphasis on weapons production. It will assist the Soviet Union in avoiding any tough decisions concerning its relations with Poland and will enable Poland's Communist Party to remain firmly in power. Does anyone think the Soviet Union would do us such a favor? Absolutely not, but it appears our Government will continue to sell the rope to hang us with. Just how helpful we have been to Leonid Brezhnev in this respect is pointed out in this, part II, of the article that appeared in the Washington Monthly for June 1980. Part I appeared in the Congressional Record on Monday, September 15, 1980 on pages E4339 and E4340.

Financing of Soviet Bloc by Western Banks Is a Mistake—Part II

(By James M. Whitmire)

OUR PARTNER, LEONID

What began as a civilized courtship has degenerated into a shotgun marriage for Western banks. COMECON nations have begun asking that their debts be "rescheduled," stretching out repayment timetables and effectively lowering interest rates. Poland, the second-largest and most "overextended" of COMECON borrowers (the Soviet Union holds the most loans, followed by Poland, East Germany, and Hungary), has been heavily rescheduled. Even if it wanted to repay, it lacks the money to do so. It seems only a matter of time before other COMECON nations whose seven-year loans are coming due make the same "request."

Poland, according to an IMF source, recently came perilously close to default. It owes the West $18.5 billion. Debt service on that amount—or the interest needed to continue the loan, without retiring any principal—is $4.5 billion. Poland couldn't even come up with the debt service; the Soviet Union stepped in and covered $1 billion of the amount with gold.

In spite of such signs, bankers are willing to reschedule. The relationship is propelled by an internal dynamic that makes Western banks feel obliged to maintain the flow of loans, even against their better judgment. A very large debtor has substantial influence over his creditor, for he can undermine or even destroy the bank by refusing to pay. Nearly every major Western bank is involved in a syndicate that is on the hook: so the entire system, not just individual banks, is threatened. It recalls the adage, "Make a small loan and you have a debtor. Make a large loan, and you have a partner."

Banks often take the easy way out and reschedule loans because they seek to maintain what some disparagingly refer to as "the illusion of liquidity." When a large debtor can't or won't repay, banks are unwilling to force him into default. As is well known, banks are in the business of loaning their deposits (assets). They are required by law to keep only about seven percent of the money they "have" on hand for demand-withdrawals. The collapse of any large debtor like COMECON would inevitably cause depositors to demand their money back, which would drain the federal deposit-insurance pools, activate other risk-sharing syndicates, and spread the chaos further.

This prospect, one expert explains, lends overriding importance to "preventing nations from dropping out of the system altogether." It is, he says, the "symbolic effect of debt repudiation that is most feared."

As Richards Portes of the University of London points out, "If creditors force a country into default, they are in a fundmentally weak position, because the sanctions available to them are limited." Obviously, it would not be possible to "repossess" the tractors, computers, grain, and other goods already shipped to the Soviet bloc. A sheriff's deputy can't serve papers on a factory in Minsk.

It would seem that, even if he were afraid to cut his losses and call in existing COMECON paper, a timid banker would refrain from making fresh loans. But observers believe the banking community is caught in the "undertow syndrome," swirling ever deeper into trouble. Bankers tend to see no alternative to being sucked under the tide of more COMECON loans. As far back as 1976, Financial Times reported that banks making uninsured loans to the Soviet bloc were "likely to make every effort to continue to lend in order to protect the loans, they have already made." Each individual banker afraid to go public, cut his losses, and take the heat now opts to postpone the crisis farther into the future with more doomed loans. It is a classic illustration of sending good money after bad.

COLD, HARD KALASHNIKOVS

While Western governments feign ignorance of their predicament, the Soviet bloc is fully aware of it. Although insiders widely believe that COMECON has no intention of honoring its debts, it surely will not repudiate them as long as there is no crackdown on repayment. To do so now would mean needless martyrdom for the goose that lays the golden egg, why refuse to accept this steady stream of gifts from the West? This is why, some believe, the Soviets were willing to make good some of Poland's debt service. As long as new loans continue, they probably would make the same gesture again. But they are testing COMECON's tactical leverage in subtle fashion, trying to "reschedule" rather than repay problem debts like Poland's.

Even if, in spite of the evidence, you refuse to believe that the Soviets have been planning all along not to honor COMECON debts, you cannot help but worry that they will be incapable of repayment. The rate of credit growth far exceeds the rate of real economic growth in the East. COMECON centralized planning, which has met its initial goals of some crude capital formation, has proved incompetent at managing a sophisticated modern economy. Central planners are finding it one thing to churn out carload after carload of steel, and quite another to fashion advanced computers. As a result, Soviet-bloc GNP growth rates have fallen off recently, for instance Russia's is growing at a rate of only 2.5 percent compared to 6 percent in 1970. The new rate is Russia's "lowest growth since the war," a State Department economist says. At the same time, Eastern worker productivity is declining; shortages, supply bottlenecks, and inflation are widespread throughout COMECON.

The only way the Soviet bloc could raise enough hard currency to satisfy its debts would be to sell products to the West. But Eastern countries produce few goods of sufficient quality to compete on world markets. The only high-quality Russian exports seem to be vodka and weapons. Although it may be fine irony that we drown our sorrows in Soviet liquor, not even Armand Hammer would suggest we stock our armies with AK-47s.

As a result of Soviet-bloc economic inefficiency, "East-West" trade in fact moves mostly in one direction toward the East. With the exception of Hungary, all COMECON nations are net importers of food. With the exception of the Soviet Union, all are net importers of energy. While goods in this "trade" are moving East, money does not move in any meaningful way. We create the loans to "pay" ourselves for what we send.

Right now the Soviet Union is well-stocked with gold, which could be used to cover some of the debt. Bankers maintain that all COMECON loans are backed by an "implicit guarantee" from the Soviets. Nowhere, they admit, is this guarantee written down. "It's never been forcibly exercised by a bank," says one informed official, "so it's impossible to tell if the implicit guarantee has any explicit value." Bankers also contend that, even it the gold were used up, the vast Soviet oil reserves stand as collateral for COMECON borrowing. Obviously, they prefer not to speculate about the logistical specifics of foreclosing on that oil. But even if the Russians wanted to give us oil to cover their debts, it's questionable that they could extract it fast enough. According to Central Intelligence Agency estimates, by 1982 Russia will be forced to begin importing 700,000 barrels of oil a day, just to meet its own needs. At the current price of $30 a barrel (certain to rise by 1982), that would cost the Soviets $7.6 billion a year. Can they obtain enough hard currency to repay COMECON debt to the West and cover this impending new expense?

BLITZKREDIT

The economic and political risks of the existing Soviet-bloc debt present immediate problems of frightening proportions. But unless bankers cease making new and equally hopeless loans to the East, things could become far worse. Unfortunately, the current recession descending on the U.S. which is predicted to take on global proportions later in the year presents the Soviets with an ideal opportunity to throw a full-court press at Western banks. It would be the financial equivalent of the infamous 1972 grain deals, when the Soviets, taking advantage of the open access to commodities markets, nearly cornered the grain supply. They used our own commodities practices—which provide little government regulation of the markets and allow brokers to buy up grain without revealing the identity of their clients—against us. The financial system is vulnerable to similar manipulation. Here's how it might work.

The private international credit market, like the grain market, is largely unregulated. Its transactions—especially knowledge of who is lending how much to whom—are shrouded in jealous secrecy. During the coming recession, when banks will once again be highly liquid and lack loan demand, the Soviets would blitz the credit markets, soaking up every loan available. (Since the new round of oil price increases, it has been estimated that OPEC will take in $300 billion in 1980, most of which will end up in Western banks.) Belatedly comparing notes, the bankers would find themselves accomplices to the runaway COMECON debt. Such a debt, say, pushed to about $150 billion, would be viewed, and rightly so, as a potential Dunkirk for Western banks.

Experts disagree on the susceptibility of the banking community to such blitzkredit tactics. Georgetown University economist Stanislaw Wasowski, an East-West trade authority, considers the blitz analogy alarmist. "While the banking community presents a closed front to the outside world," he says, "it is relatively small—perhaps a few thousand key bankers—and highly cohesive, with elaborate channels of communication." Wasowski believes word of a Soviet borrowing advance would spread quickly within this fraternity, causing bankers to react by moderating the eastward flow of funds.

This analysis overlooks the possibility that the Soviets will shrewdly wait for a recession to saddle lenders with excess capital. In that environment, bankers compete stridently for supposedly safe ways to unload their money. They would have an incentive to keep quiet about increased COMECON borrowing, if only to avoid public criticism. Does this sound implausible? It worked for the Soviet bloc during the 1974-75 recession. Bankers belonged to the same fraternity then, and whatever tips they passed to their brothers didn't prevent the initial round of bad loans from being made.

ALL OTHERS PAY CASH

Whatever happens in the future, the threat posed by the existing Soviet bloc debt is real and immediate. The Soviets are beginning to master the classic nuances of manipulating banks. They are learning to finesse and demur, allowing the bureaucratic momentum of good money after bad to work its magic unassisted.

The West shows little inclination to call in Soviet-bloc paper now, thus forcing the inevitable default. There would be a tremendous disruption of banks and business, but at least the losses would be cut and finished with. (A few losses could be avoided, for some of the COMECON debt involves goods not yet delivered.) Failing foreclosure, our only retaliatory threat is to cut off grain and technology shipments to the East.

(You may think this has already been done because of the alleged "grain embargo" imposed after Afghanistan. In fact, the "embargo" applies only to additional tons beyond the eight million metric tons the U.S. promised to export to Russia each year as part of the 1975 grain agreements. Shipments of that grain continue.)

Conventional wisdom holds that the prospect of a cutoff in grain, computers, and spare parts for vital machinery like oil drilling rigs is sufficient to deter the Soviets from any rash moves on the debt front. During times like these, that threat is certainly credible. But, as we've already established during "times like these" the Soviets have no interest in canceling COMECON debts, since they're receiving gifts as fast as they can unwrap them.

Perhaps the most chilling prospect is that the Soviets' debt card is likely to trump during a severe confrontation, when shooting has not yet started and probably can be avoided. During a severe crisis (similar, say, to the Cuban missile crisis), which side would be injured more by a default trade cutoff showdown? The Soviets would lose access to further loans (gifts) from the West, and face eventual shortages in grain and technology. But these would be long-term problems. The West's problem would be immediate; its banking system could well collapse into chaos. Trying to absorb the gigantic default would set in motion, many believe, a panic equal in magnitude to the stockmarket crash in 1929. The West would also have to absorb the collateral damage of disrupted farms and businesses that base their production on the funny-money Eastern trade. This combination would cause such frantic squabbing in the West distracting the attention of Western leaders that clearly it would be at least a short-run tactical triumph for the Soviets.

Most of the experts interviewed for this article believe that the Soviets would resort to default backmail only after a radical deterioration of the political atmosphere. Considering the invasion of Afghanistan, the predicted defeat of SALT II, and the Soviets' perception of Carter's Olympic boycott as a hostile act, such a deterioration is not unimaginable.

Several days after the Afghanistan invasion, NATO ministers boldly declared they were considering retaliating by shutting off Soviet credits. The idea was quietly dropped the day after it was announced.

NATO's fumbling response to the invasion of Afghanistan has given the Soviets an opportunity to observe how potent their default weapon is even when employed in a tacit, passive manner, for strictly defensive purposes. They must now be all the more impressed with that weapon's potential for an active, aggressive Soviet offensive designed to extract political concessions from a checkmated West.●

THE 75TH ANNIVERSARY OF THE IMMACULATE CONCEPTION CHURCH OF SAINT CLAIR, PA.

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. YATRON. Mr. Speaker, September 21, 1980, marks the 75th anniversary of the founding of the Immaculate Conception Church of Saint Clair, Pa. Under the guidance of Father John S. Beneck, the devotion displayed by the clergy and congregation of this church serves as an inspiration to their community and to our country as a whole.

On Sunday, Bishop Joseph McShea will celebrate the anniversary Mass with the congregation. I know that my colleagues join me in commending the Immaculate Conception Church on its diamond jubilee and in extending every good wish for continued service to its congregation and community.

The United States of America is justifiably proud of our freedoms which have flourished under our many denominations of spiritual belief. As citizens under God, we seek a higher vision to continually perfect ourselves and our country. The clergy and the congregation of the Immaculate Conception Church exemplify our Nation's commitment to God, our country, the betterment of mankind, and to peace. May they enjoy another 75 years and more, of devotion to God and America.●

"BAR TO PROSECUTION" MAILING IS MISLEADING

HON. ROBERT F. DRINAN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. DRINAN. Mr. Speaker, a number of Members of Congress have recently contacted the office of the Subcommittee on Criminal Justice, which I chair, requesting information concerning an alleged bar to prosecution in H.R. 6915, the Criminal Code Revision Act of 1980, which would supposedly give union bosses special protection against prosecution for extortion and crimes of violence. These inquiries are apparently in response to a mail campaign urging rejection of such a bar to prosecution.

Although the Senate criminal code bill—S. 1722—contains a bar to prosecution involving extortion committed during a legitimate labor dispute, H.R. 6915 does not employ such a device. Rather, H.R. 6915 would continue, without significant changes, current Federal law regarding extortion.

The Primary provision of Federal law used to prosecute extortion is the Hobbs Act (18 U.S.C. 1951). The Hobbs Act was construed by the Supreme Court, in *United States* v. *Enmons,* 410 U.S. 396 (1973). In that case, the Court held that the Hobbs Act does not reach conduct by union members and officials during a collective bargaining dispute where the goal of the dispute is a legitimate union objective, such as seeking higher wages in return for services rendered to the employer. The Court viewed use of the phrase "wrongful use of actual or threatened force, violence, or fear," as pertaining only to instances where the alleged extortionist has no lawful claim to the sought-after property. Because union members have a lawful claim to higher wages, legally obtainable through collective bargaining, there can therefore be no wrongful taking. The Court relied on the use of the word "wrongful" in the definition of extortion, and on the legislative history, which, in the Court's view, indicated no intent that the act be applied to activities such as those at issue in *Enmons.*

Section 2522 of the proposed criminal code prohibits extortion. That section requires that the individual have the intent "wrongfully" to obtain the property of another. The Judiciary Committee intends to carry forward the meaning of that term as it appears in the current Hobbs Act (18 U.S.C. 1951). As already noted this term has been interpreted by the Supreme Court to limit the Hobbs Act definition of extortion to the use of actual or threatened force, violence, or fear in order to obtain illegitimate objectives. *United States* v. *Enmons,* 410 U.S. 395 (1973).

The use of the word "wrongful" does not exempt labor unions, labor officials, and other labor representatives from prosecution for extortion. This is clear from the Supreme Court's decision in *United States* v. *Green,* 350 U.S. 415 (1956), upholding a Hobbs Act indictment for using threats of violence to obtain wages for unwarranted and unneeded work. In *Green,* the union local and official were charged with using threats of force to persuade a contractor to hire union laborers to scout ahead of each of his bulldozers to warn of approaching pitfalls. The employer did not want the laborers and saw no need for them. He had always done such work in the past without laborers. *United States* v. *Green,* 246 F.2d 155, 158 (7th Cir. 1957), on remand from 350 U.S. 415 (1956). In the area of labor disputes, personal payoffs, wages for unwanted and superfluous services, or payments prohibited by Federal labor laws could be a basis for a Federal extortion prosecution under the Hobbs Act. See *United States* v. *Enmons,* 410 U.S. 395 (1973), *United States* v. *Green,* 350 U.S. 415 (1956); *United States* v. *Arambasich,* 597 F.2d 609 (7th Cir. 1979); *United States* v. *Nell,* 570 F.2d 1251 (5th Cir. 1978); *United States* v. *Daley,* 564 F.2d 645 (2d Cir. 1977); *United States* v. *Quinn,* 514 F.2d 1250 (5th Cir. 1975); *Bianchi* v. *United States,* 219 F.2d 182 (8th Cir.), cert. denied, 349 U.S. 915 (1955); *United States* v. *Kemble,* 198 F.2d 889 (3d Cir.), cert. denied, 344 U.S. 893 (1925).

Some have argued that any incident of violence in a labor dispute should be prosecutable under the Federal extortion law, the Hobbs Act. Federal extortion law would be a very blunt instrument with which to prosecute incidents of violence. A minor assault in a picket line scuffle, for example, could only be prosecutable as extortion, which carries a maximum term of imprisonment equivalent to 10 years under current law.

As noted by the Secretary of Labor:

> [T]here is no more reason to make employee violence subject to the Federal Criminal Laws than there would be in making employer violence subject to these provisions. These isolated incidents of violence, which ordinarily could erupt in a tense strike situation, while not condoned, are far better dealt with by local authorities enforcing State and local laws.
>
> We are not convinced that State and local law enforcement officials are currently unable to deal with the problem of strike-related violence * * *
>
> Our experience in two recent labor disputes in the coal and trucking industries bears out our conviction that the best way to cool labor strife quickly and effectively is to allow the situation to be handled at the local level. In both of these situations, the Federal Government was able to establish a constructive Federal presence under existing law.

Letter of January 16, 1980 to Hon. Benjamin Civiletti, Attorney General, from Hon. Ray Marshall, Secretary of the Treasury.

Based on testimony before the Subcommittee on Criminal Justice, the committee is in agreement with the Secretary of Labor that no real evidence has been produced to show that States cannot adequately handle incidents of violence arising from labor disputes, nor that the limited resources of the FBI could be used to investigate such incidents more effectively than local and State law enforcement.

By retaining existing Federal law on extortion the committee is not condoning the use of violence for any purpose. Rather, this limitation embodies the committee's judgment that the policing, through the criminal process, of such matters as local labor disputes is not an appropriate matter for the Federal Government. Although the Federal Government has expressed a significant interest in insuring the proper conduct of labor-management relations as they affect interstate commerce, the Government already has a significant arsenal of weapons with which to attack unfair labor practices. The National Labor Relations Board can suspend employment rights of persons engaging in violence in connection with labor activities. Section 8(b)(1)(A) of the National Labor Relations Act (29 U.S.C. 158(b)(1)). The NLRB can also seek a temporary injunction against unfair labor practices. Section 10(j) of the National Labor Relations Act (29 U.S.C. 160(j)).

Employers also have the ability to protect themselves through suits in Federal and State courts to enjoin labor activities involving fraud or violence, see section 4(i) of the Norris-LaGuardia Act (29 U.S.C. 104(i)), and for damages. To add to these remedies the ability of the Federal Government to prosecute in Federal court would be to impinge seriously upon a sphere of Government activity—the enforcement of criminal laws—which is a very special preserve of the States.

The decision of the Judiciary Committee to carry forward the current scope of the Hobbs Act as enacted by Congress and interpreted by the Supreme Court is thus in accordance with the underlying principle of H.R. 6915 not expand Federal jurisdiction absent a showing of compelling need.

Of course, if coercive violence or threats of violence by labor are part of a significant and organized pattern of illegal activity, Federal prosecution may be possible under other sections of the proposed code, such as section 2701—racketeering—or section 2704—travel or transportation in aid of racketeering. Similarly, antilabor violence by management which involves travel in interstate commerce may be prosecutable under section 2107—strikebreaking—of the proposed code.●

LONG AND SHORT HAUL AMENDMENT TO THE RAIL ACT

HON. KENT HANCE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. HANCE. Mr. Speaker, during the controversy over ICC review of and surcharges on rail rates in the Rail Act of 1980, a supposedly minor change in existing law made by the Commerce Committee bill has gone unnoticed. However, repeal of the "long and short haul" provision of the Interstate Commerce Act by section 303(a) of H.R. 7235 would have a far-reaching effect on many rural agricultural shippers which was apparently unintended by the committee. My amendment would restore the protection of the long and short haul provision to grain, cotton, soybean, and rice shippers.

THE LONG AND SHORT HAUL PROVISION

Section 10726 of 49 U.S.C. states that a railroad cannot charge more for a shorter haul in the same route and direction than for a longer haul. The original intent of the provision was to prevent railroads from undercutting water carrier competition on long hauls, where the two compete, to the point where water carriers were driven out of business, and subsidizing the long hauls with exorbitant rates on the intermediate hauls on the same route. With the decline in railroad dominance and the success of water carriers, the ICC has been granting routine relief from this section to allow railroads to compete with water carriers. The committee asserts that repeal of the section for railroads—it still would apply to water—is only conforming to current practice.

My amendment does not affect rail/water transportation competition. The railroads should be able to continue their current practice of meeting competition with water. The problem is discrimination against small shippers who are intermediate to heavier shippers on a rail line.

INTERMEDIATE APPLICATION

There are basically two types of rail rates: Bulk or three-car reduced rates that are established between individual points by the railroads; and higher group, or one-car rates established between a major origin/destination point—for example, Kansas City—and a group of origins/destinations—for example, northwest Texas. Under current law, every little town that does not have a published three-car rate is eligible for that rate which prevails at the next point beyond on the line. This is intermediate application.

The problem that may arise under the committee bill is that the railroads would not be prohibited from doing away with intermediate application of rates. Consequently, a shipper in an unnamed town would only be eligible for the high group or one-car rate for his area, no matter what bulk he shipped in or out. He is, therefore, discriminated against because he does not live in the town lucky enough to have a published rate.

Why does he not apply for a three-car rate? Under present law, of course, he does not really need to. Under proposed H.R. 7235 the railroad may not feel such a reduced rate was justified, given the cost of stopping, and the small shipper may not have the resources to fight the railroad. Besides, he probably could not afford the potential ill will from the railroad if he did fight.

The argument has been made that the railroads should, in fact, receive more compensation for stopping only infrequently in a town without a published three-car rate, even if shippers in that town have a bulk shipment. The railroads say that the cost of stopping a train is covered by bulk rates only if there are many bulk shipments out of a given point. With infrequent bulk shipments, the added cost of stopping is not covered. Consequently, the railroads contend, intermediate application of bulk rates is an unreasonable cost to railroads and should be repealed. If a destination or point of origin merits a published bulk rate, they may apply for it.

There is a major fallacy in this argument: The difference in one-car and three-car or bulk rates is not justifiable in terms of the added cost of stopping infrequently. One-car rates are on the order of 50 percent higher than three-car rates; however, the distribution system for railcars is in two stages: An express stops at a large railyard to drop off a whole series of individual shipments to small towns, and a milk run local drops off these shipments of varying sizes at small towns up and down the line from the yard. The cost of stopping the local only occasionally at any intermediate point does not justify such an increase over the three-car rate.

My amendment to section 303(a) of H.R. 7235 preserves the protection of the long and short haul provision for cotton and grain farmers and shippers. Increasing freight rates by 50 percent for hundreds of elevators in unnamed towns could wreak havoc with our agricultural economy.●

"BUY AMERICAN" POLICY

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FORD of Michigan. Mr. Speaker, I was tremendously pleased this week to learn that the Wayne County Road Commission, in Michigan, has instituted a "Buy American" policy, effective immediately.

With unemployment in Michigan already exceeding 14 percent, double the national average, no part of the Nation is more keenly aware that the United States has a serious unemployment problem.

In Michigan, the historic center of the automotive industry, we are also keenly aware of the role that foreign imports have had on declining auto sales and the resulting rise in unemployment.

Mr. Speaker, for that reason I am happy to see a major agency of Wayne County's government adopting a "Buy American" program. I commend the members of the road commission—Chairman Michael Berry and his fellow board members, Grace Hampton and Claude Dukes.

I insert in the RECORD at this point the board's September 12 press release announcing its new policy:

Concerned with the "depressed condition" of the American economy in general and that of Michigan in particular, the Wayne County Road Commission has instituted a "Buy American" policy effective immediately.

Road Commission Chairman Michael Berry, with the concurrence of his fellow board members, Mrs. Grace Hampton and Claude Dukes, said the new policy will encourage and support American manufacturers and suppliers.

The Board, in adopting the "Buy American" policy, stressed that it will remain in effect until the economy recovers from its tailspin and the unemployed are returned to jobs.

"We realize that alone, the importance of such a policy may appear as a bandaid approach to an extremely serious wound but hopefully, as others join the "Buy American" plan it will have a noticeable impact.

"We fully expect our national and state leaders, both the executive and legislative branches to do what is necessary to restore our nation's economic vitality and put people back on the payrolls of industry," Berry said.

"Our area, Detroit and the state, has one of the highest unemployment rates in the country. We must do something positive to demonstrate our concern and feel that American-made products must be given our fullest support," Berry said.

The Road Commission, with an annual road budget in excess of $100 million is active in road construction and road maintenance and operates both Detroit Metropolitan Wayne County and Willow Run Airports, with combined budgets approaching $50 million-a-year.

The Board's staff has been instructed, where available, that products and materials of domestic (American) origin be purchased.

In establishing the new purchasing policy, the Board made it clear that it will encourage its suppliers to look closely at supporting the "Buy Amercian" concept.

"The impact of foreign produced finished products and raw materials on our country's economy and the adverse affects of all these imports on the business and labor force in the United States is rapidly being recognized, by commissions such as us and by organized labor and industry," Chairman Berry noted.

He cited a recent business-labor meeting called by Mike Rinaldi, President of UAW Local 600, where UAW President Doug Fraser called for a concerted effort on the part of all—business and labor—to consider the plight of the American economy and to "Buy American".

"Since it appears that there are international restrictions when it comes to buying American-made products, we feel that it is time to show our unwillingness to purchase foreign-made products," Berry added.

To ensure that its new "Buy American" policy is well circulated, the Board also instructed its staff to notify, by letter, all of the state's major unions as well as its local suppliers and contractors.

The Board's policy will also be circulated to local governmental agencies and boards for possible action.

The Road Board also revealed that both gasoline and diesel tax revenues, from which road commissions, cities and the state obtain their operating funds, as reported by the Michigan Department of Transportation for the last quarter (April-June) were down 11 and 26 percent respectively compared to a year ago.

"This means to the Wayne County Road Commission that our revenues to build and maintain a viable road system, are reduced by nearly three-quarters of a million for one quarter of the year," Berry noted.

The downward trend in traditional methods of collecting revenues for maintaining and building highways, roads and streets, was also noticed in the previous quarter, reflecting the national, state and local economies sagging conditions, the Board reported.●

THE CONGRESSIONAL COUNTRY CLUB PROBED ON LABOR PRACTICES

HON. PARREN J. MITCHELL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MITCHELL of Maryland. Mr. Speaker, the Maryland Division of Labor and Industry has initiated an investigation of charges that the Congressional Country Club, one of the most prestigious private clubs in the Washington area, is alleged to have defrauded its employees of more than $1 million in wages over the last 30 years. Accordingly, an assistant State attorney general, armed with a court order, has begun to sort through thousands of club documents.

In the course of his inspection, this State official was forced to break open one file cabinet because club officials claimed to have lost the key. This incident, among others, indicates a reluctance on the part of the Congressional Country Club to cooperate with an investigation of its labor practices. Due to the gravity of the charges, such reluctance disturbs me. My dismay is further heightened by the fact that the club is a tax-exempt organization which enjoys all the privileges thereof. It would seem to me that the chief legal officer of the State and his designated representatives should be accorded more respectful treatment in their desire to examine the payroll practices of a government-sanctioned, tax-exempt organization.

Despite its name, the Congressional Country Club is in no way affiliated with the U.S. Congress. Nevertheless, because the case against the club raises serious questions about its management and tax-exempt organizations in general, I believe Congress should be kept informed of any developments in the case. In that regard, I am submitting the following article, taken from the Washington Star, entitled, "Congressional Country Club is Probed on Labor Practices," for my colleagues' perusal.

CONGRESSIONAL COUNTRY CLUB IS PROBED ON LABOR PRACTICES

(By Tonya D. Swanson)

An assistant Maryland attorney general yesterday moved into a former jail cell in the Montgomery County Courthouse to begin investigating the labor practices of the exclusive Congressional Country Club.

Assistant Attorney General David Blum will be reviewing the club records, which have been under lock and key at the courthouse since a club member filed suit on behalf of Congressional's employees two years ago.

The member, George W. Koch, and employees charge that Congressional has systemically cheated club workers over the past three decades out of over $1 million through various fraudulent schemes including a 20 percent payroll deduction from each employee's paycheck.

The club has maintained that the payroll deductions were standard practice for restaurants and has denied all other allegations.

Blum, assigned to represent the Maryland Division of Labor and Industry, is charged with investigating written complaints filed a few months ago by workers at the club. The Division of Labor and Industry investigates all such employee complaints.

The assistant attorney general and other state investigators are prohibited from removing any of the documents from among the approximately 60 cardboard file boxes stored at the courthouse.

As a result, Blum will be spending quite a bit of time in cell until the investigation is closed.

Yesterday, Blum brought a tool box with him to work because the club has been unable to produce a key for a three-drawer metal file cabinet containing some documents. As his first task, the investigator had to break into the cabinet.

The complaints against the club first came to light nearly three years ago when Koch, president of the Grocery Manufacturers of America, was contacted by a waitress, Juanita Chavis, who had been employed at the club for 24 years. She told Koch that money was being skimmed from her paycheck.

Chavis said she took her complaint to Koch after talks with other members listed in the club's directory proved futile.

Koch said, "I just felt a moral obligation to pursue the subject, and as a member to exercise my right and see if there was any money taken from the employees. . . . If so, it was a despicable act."

Further investigation led Koch to similar charges made by other club employees, many of whom are black and Hispanic.

Koch, considering himself a club stockholder, filed suit in Montgomery County Circuit Court in February 1977 seeking access to the club's records after all personal efforts at inspecting them failed.

"I'm sorry that it's taken the attorney general and a drill to bring out the truth," said Koch. "It's a hard way to extract the truth, but it is pleasing to know that even if they have to use a crowbar, the truth will come to light."

The suit has remained in litigation for such a lengthy period because of numerous legal motions—including one seeking to protect employees from retaliation—filed by attorneys for both sides during the extended period.

Although acting independently of his legal actions, the Division of Labor and Industry finally intervened in the Koch case.

As a result of the findings of his investigation, Blum said, the case held by Labor and Industry can be dismissed if, "We can find that the wage-payment complaints don't result in a valid claim under the statute."

He said if the investigation finds the claims are valid, "We can arrive at some kind of settlement. Or we can file suit on behalf of these claimants."

Chavis said, "I hope it will all be over with soon. I just regret that Mr. Koch was misunderstood. The man is a good man and he didn't have any bad motives. He was just trying to help the club stay up to its standards. I hope God will open the hearts of the members and let them see that Mr. Koch is a good man."

Saying he has no regrets over lost friendships at the club, Koch said he will continue his fight for access to the club's records.

"I was there last week, and I played tennis on Sunday. You don't garner friendships by overlooking moral or legal responsibilities," he noted.●

VOYAGEURS NATIONAL PARK AMENDMENTS

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. OBERSTAR. Mr. Speaker, the legislation I am introducing today to amend the Voyageurs National Park Act represents the product of literally years of cooperative effort among the people of my district, the National Park Service, the State of Minnesota, and Members of Congress.

It represents an essential step forward in the development of Voyageurs National Park.

The legislation would implement recommendations for boundary changes contained in the master plan developed by the Park Service. It would resolve a lingering controversy over hunting in the Black Bay area of the park. It would enable the Park Service to establish a development site in the area of International Falls, which has been delayed far too long.

The bill's major provisions would:

Delete approximately 782 acres in the Neil Point area of the park, as recommended by the Park Service master plan;

Add approximately 180 acres in the Black Bay Narrows area of the park;

Permit the Secretary of the Interior to lease 18.45 acres at the Kabetogama State Forestry Station from the State of Minnesota;

Permit the Secretary to obtain a permanent easement for development of road access along the Ash River trail;

Delete approximately 1,000 acres, almost entirely water, of Black Bay;

Increase the authority for land purchases by $10,995,000;

Direct the Secretary of the Interior to inventory road access to the park and report his recommendations for improving that access.

The legislation would return the management of the lands and waters of Black Bay to the State of Minnesota. The State of Minnesota would manage these areas as a wildlife management area, in which only duck hunting would be permitted. The State would also agree to develop a management plan for its lands adjoining Black Bay to preserve the natural character of the area to complement the management of the national park.

The Department of Natural Resources of the State of Minnesota has agreed to:

Lease the Kabetogama State Forestry Station to the National Park Service;

Grant the Park Service a permanent easement on 120 acres along the Ash River Trail for the development of a road into Sullivan Bay;

Establish a wildlife management area in that portion of Black Bay now within the park;

Develop a plan for the management of State lands riparian to Black Bay.

The deletion of the Neil Point area as recommended by the master plan would result in retention of approximately 625 acres of land in the private sector, and returning 25 acres of land to Koochiching County, and 133 acres of land and water to the State of Minnesota; 9 permanent residences, 13 seasonal cottages, and 1 commercial business—houseboat rental operation—will be affected.

The legislation would not require the State of Minnesota to transfer fee title to any additional land. Prior to the establishment of the park, the State donated 35,235 acres. This legislation would require that the State provide the Park Service with a lease on 18.45 acres and an easement for another 120 acres.

The legislation offers a sensible approach to land management by the Federal Government.

The increase in funding will enable the Park Service to acquire property on a willing-buyer/willing-seller basis. It is not intended to imply in any way that the Park Service is to resume condemnation of private lands within the park. The Park Service is, in fact nearing final action on a revised lands acquisition policy. That policy would limit condemnation to the acquisition of property necessary for development purposes and whose owners do not wish to sell or to prevent development inconsistent with the purposes for which the park was established. The funding increase proposed in this bill is necessary to insure that the Park Service has the authority to enter into agreements with landowners who wish to sell and the authority to proceed with long-promised development activities.

Finally, the bill directs the Park Service to undertake a comprehensive study of the road access to the park and to report to Congress on its recommendations to improve that access. This Congress has a responsibility to improve access to the park, and to upgrade those roads whose use of which is primarily generated by the presence of the park.

This legislation has the support of the State of Minnesota, the National Park Service, the Citizens Committee for Voyageurs National Park. It is compromise legislation which deals with the interests of the Park Service, the State, park users and the people who live in and around the park.

I hope this House will act quickly to pass this legislation. I urge my colleagues to join with me in cosponsoring.●

H.R. 4370: AN AMENDMENT

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FLORIO. Mr. Speaker, in accord with House rule XIII, clause 6, I am placing the following amendment, which would amend H.R. 4370, or its substitute, in today's CONGRESSIONAL RECORD.

The purpose of my amendment is to insure that the U.S. Environmental Protection Agency and the Departments of Energy, Transportation, and the Interior work together to recommend to the lead certifying agency the terms and conditions necessary to carry out the operation of coal slurry pipelines in such a way that such operation will not pose a threat to public health and the environment as a result of the discharge, disposal, or release of a hazardous substance or waste.

My amendment establishes an Interagency Environmental Task Force composed of the U.S. Environmental Protection Agency and the Departments of Energy, Transportation, and the Interior. The amendment requires the certifying agency to transmit the application for issuance of a certificate to the task force. The task force is directed to review the application and make recommendations to the lead agency, in this case the Interstate Commerce Commission, as to the terms and conditions of pipeline operation to insure that: First, no adverse effects on water quality occur at the point of discharge; second, waste disposal will be carried out in such a way as not to present an unreasonable risk to public health or the environment; and third, an accidental release of material from the pipeline will not endanger public health or the environment.

In hearings before the Interstate and Foreign Commerce Subcommittee on Transportation and Commerce, Federal agency representatives expressed repeatedly their limited understanding of the overlapping areas of responsibility both within and among agency programs and responsibilities with regard to coal slurry pipeline operations. On the basis of the hearing record and other information available to the subcommittee, I feel it is critical that we take an additional step to guarantee that environmental considerations, especially those associated with the management of hazardous materials and wastes, are addressed early in the planning process:

AMENDMENT TO SUBSTITUTE FOR H.R. 4370, REPORTED FROM THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, OFFERED BY MR. FLORIO

Page 40, line 12, strike out "and".

Page 40, line 16, strike out the period and substitute "; and".

Page 40, after line 16, insert:

(6) the Interagency Task Force established under subsection (k) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 46, after line 16, insert:

(k)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the departments and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (k)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to insure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 56, line 4, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."

AMENDMENT TO AMENDMENT IN THE NATURE OF A SUBSTITUTE FOR H.R. 4370—OFFERED BY MR. FLORIO

(Page and line references are based upon introduced text of H.R. 7982)

Page 7, line 11, strike out "and".

Page 7, line 15, strike out the period and substitute "; and".

Page 7, after line 15, insert:

(6) the Interagency Task Force established under subsection (i) has reviewed the application for issuance of such certificate in the manner required under such subsection and that the Commission has taken into account any terms and conditions recommended by the Task Force.

Page 11, after line 25, insert:

(i)(1) The Secretaries of the Interior, Transportation, and Energy and the Administrator of the Environmental Protection Agency shall jointly establish an Interagency Task Force for purposes of carrying out the review and making recommendations to the Commission under this subsection. Such departments and agency shall make available to the Task Force such personnel of the departments and agency as the Task Force deems necessary to carry out its functions under this subsection.

(2) Whenever application is made to the Commission for a certificate of public convenience and necessity under this section, the Commission shall promptly transmit a copy of such application to the Interagency Task Force established pursuant to paragraph (1). Upon receipt thereof, the Task Force shall review—

(A) the effects of the proposed pipeline and related facilities on water quality at the point of discharge;

(B) the extent to which solid waste (within the meaning of the Solid Waste Disposal Act) will be disposed of in connection with the operations of the pipeline and the hazards associated with such waste disposal; and

(C) any other effects which such pipeline may have on public health and the environment.

For purposes of such review, the Task Force may, in addition to any other information available to it, utilize information developed pursuant to the requirements of subsection (f) of this section.

(3) Following its review under paragraph (2) with respect to any application for a certificate of public convenience and necessity, the Interagency Task Force shall report to the Commission on its findings under (i)(2)(A)(B)(C) and shall make recommendations to the Commission, for inclusion in the certificate, the terms and conditions necessary to ensure that the proposed pipeline will not—

(A) create undue adverse effects on water quality at the point of discharge;

(B) result in solid waste disposal which presents an unreasonable risk to public health or the environment; and

(C) present an unreasonable likelihood of releases of any material from the pipeline or related facilities which may endanger public health or the environment.

Page 20, beginning in line 1, strike out "air and water quality standards" and substitute "standards and requirements relating to air quality, water quality, and solid waste."●

THE AGENCY ACCOUNTABILITY ACT

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MAGUIRE. Mr. Speaker, today I am introducing the Agency Accountability Act of 1980. This is legislation which I originally drafted in 1977. Because I believe it is important to consumers and to proponents of genuine regulatory reform, I am asking the House to consider this legislation again.

From October 4 through October 11, we will be observing Consumer Education Week. This is an important time for the consumers of this Nation and also for those of us in Congress who have fought for strong consumer protection legislation. The Federal agencies and the acts of Congress which they administer—whether the issue is clean water, clean air, motorist safety, the safety of flammable products, carcinogenic sleepwear—mean a great deal to consumers; probably more than some Members of Congress understand. The responsiveness of these agencies and their ability to serve our constituencies are major problems which those citizens marking this week are considering.

Unfortunately, most of the vital regulatory reform proposals have not received much attention this session. The sunset bill, the midprogram agency review embodied in H.R. 65, the suggested regulatory budget, exploration of agency innovation—like EPA's bubble policy—have all taken a back seat to amendments and measures which tie the agencies' hands. While such actions may provide short-term political advantage, they neither reform the regulatory structure in the long term, nor do they serve the very people these laws have been written to protect. Surely, we can do better.

Congress is capable of making concrete regulatory reforms which can have an immediate impact on consumers' contacts with the Federal agencies. Every day constituents call or visit our district offices seeking their Congressman's assistance. Over the last 5 years, my Paramus, N.J. office has been called upon to find thousands of social security checks. We have received hundreds of complaints about the indifference, the ineptitude, or the inability of agencies like the Postal Service or IRS to handle or to resolve consumer complaints. My district office staff repeats the same remedial actions for requests which fall in the same generic categories. Despite the fact that these problems recur constantly, the agencies seem incapable or unwilling to reform themselves.

Some of the constituent complaints are clearly not resolvable by an act of Congress. I do believe, however, that the agencies need a system by which the pattern and frequency of consumer complaints can be analyzed so that the pain and hardship attendant to these problems with agency services can be reduced. This is the goal to which my legislation is addressed.

The Agency Accountability Act would require the Federal agencies to compile and analyze the complaints which Members of Congress transmit through their congressional offices. The agencies would be required to aggregate the complaints according to categories descriptive of the general subject matter of complaints and by region—where appropriate—in which the complaint should be handled. The purpose of this requirement which we would place on the 11 agencies cited in the act is to determine if the pattern of complaints reported by congressional offices can be corrected by administration action or if they reveal a defect in the program which can only be cured through legislative action. By imposing this requirement and by further providing that the agencies submit the results of their analyses on an annual basis, the citizen/consumer complaints which we forward to the agencies will be doing two jobs instead of one. That is, not only will the Federal agencies be addressing each specific consumer complaint, but they will also be using this information in hopes of assuring that the problem does not crop up again, and again, and again.

The complaints forwarded to agencies by congressional offices can serve as a useful data base for the agencies and for Congress to suggest meaningful reforms which will truly serve consumers. Rather than crippling the activities of the agencies—which are, after all, designed to aid our citizens in the marketplace—we should be examining the programs that have caused consumers difficulty in hopes of making them better.

The Agency Accountability Act is printed below; I urge my colleagues to cosponsor and support this measure which contemplates genuine, pro consumer, regulatory reform.

H.R. 8125

A bill to require certain Federal agencies to analyze complaints regarding their delivery of services and benefits and to report their findings to Congress

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agency Accountability Act of 1980".

SEC. 2. The Congress finds that—

(1) citizens experiencing difficulties with the delivery of services by certain Federal agencies often turn to the offices of Members of Congress for assistance in resolving their complaints;

(2) the incidence of such complaints is increasing;

(3) the information generated by each Member's office with respect to such complaints could be used by Federal agencies and could be analyzed to determine if such complaints fall within generic categories and if such complaints could be resolved for all citizens by the prescription of administrative or legislative remedies; and

(4) through the analysis by Federal agencies of such complaints, the frequency of such complaints could be reduced as could the hardship attendant to difficulties experienced by citizens when agency services do not function properly.

SEC. 3. For the purposes of this Act—

(1) the term "agency" means only the following authorities of the Government of the United States:

(A) The Food and Nutrition Service of the Department of Agriculture.

(B) The Department of the Air Force, the Department of the Army, and the Department of the Navy, of the Department of Defense.

(C) The Social Security Administration of the Department of Health and Human Services.

(D) The Immigration and Naturalization Service of the Department of Justice.

(E) The Office of Workers' Compensation Programs of the Department of Labor.

(F) The Internal Revenue Service of the Department of the Treasury.

(G) The National Railroad Passenger Corporation.

(H) The Small Business Administration.

(I) The Office of Personnel Management.

(J) The United States Postal Service.

(K) The Veterans' Administration;

(2) the term "complaint" means any written communication received by an agency from a Member of Congress regarding any difficulty experienced by a person in obtaining action on a matter regarding agency procedures, personnel, or physical facilities; and

(3) the term "resolution" and "resolved", when used to describe action taken by an agency with respect to a complaint, mean—

(A) action that conforms to the action requested by a person who communicated with a Member of Congress as described in a complaint,

(B) reference to statutory authority requiring such agency to refuse to take such requested action, or

(C) referral of a complaint regarding a matter over which such agency has no authority, to a unit of government that has authority over such matter.

SEC. 4. (a)(1) Not later than January 1, 1982, and not later than January 1 of each year thereafter, each agency shall submit a report to the Speaker of the House of Representatives and the President of the Senate. Such report shall include the number of complaints received from all Members of Congress during the preceding fiscal year—

(A) according to each agency region and, within each agency region, according to a set of categories descriptive of the general subject matter of complaints; or

(B) if agency regions do not exist for that agency, according to a set of categories descriptive of the general subject matter of complaints.

(2) Within each category referred to in paragraph (1), the report shall set forth—

(A) the number of complaints resolved by the agency and the amount of time elapsed between receipt and resolution of each complaint, measured in 30-day intervals (beginning on the date of receipt of the complaint elapsing before the date the complaint is resolved; and

(B) the number of complaints within each category not resolved by the agency.

(3) Each report submitted pursuant to paragraph (1) shall also include any suggestions of the agency for administrative or legislative changes to reduce the number of complaints received by the agency.

(b) Each report submitted pursuant to subsection (a)(1) shall be referred to the appropriate committees of the Congress.●

TRIBUTE TO TAYLOR STINGERS

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. FORD of Michigan. Mr. Speaker, I would like to call our colleagues' attention to the first world championship ever won in sports competition by an entrant from my hometown of Taylor, Mich.

On Labor Day weekend, at Kinston, N.C., the Taylor Sporting Goods "Stingers" won the women's class A world softball tournament to become the U.S.S.S.A. world champions.

Competing with 91 other top-rated teams from throughout the Nation, my constituents won eight games and lost only one in the double-elimination tournament. They scored 107 runs and 155 hits during the competition—an average of more than 17 hits and nearly 12 runs per game.

The Stingers won their first seven games before losing a close contest, 7 to 4, to a tough team from Rochester, N.Y.

In the final playoff, the Taylor team defeated Rochester in a cliffhanger, 9 to 8, scoring the winning run in the final inning.

The Taylor team battled to a 6 to 0 lead in four innings, but the Rochester nine fought back, scoring four runs in their half of the fourth. The Stingers then added two more runs in the sixth inning, but the stubborn New Yorkers bounced back to tie the game in their sixth inning.

The Taylor Stingers then bore down, scoring one run in the top of the seventh, and holding Rochester scoreless in the bottom of the seventh to win the game.

The victory gave my constituents a season record of 68 wins and only 10 losses.

Lynn Putnam of the Stingers was voted the most valuable player of the tournament, with a 0.739 batting average and a perfect fielding record.

Five members of the Taylor team were named to the all-world team—Lynn Putnam, Pattie Silye, Jackie Huggins, Nancy Gumtow, and Sue Riedel.

Mr. Speaker, I want to express my public congratulations to this fine women's softball team and to its coaches. They have climaxed a fine season by bringing Taylor its first world championship, and by bringing great honor to themselves, their community, and their State.●

SAKHAROV APPEALS TO MADRID CONFERENCE: HUMAN RIGHTS ARE ESSENTIAL TO INTERNATIONAL SECURITY

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BROWN of California. Mr. Speaker, I commend my colleagues' attention to the recent appeal for Soviet physicist and Nobel Laureate Andrei Sakharov, who has been exiled to Gorky. Dr. Sakharov stresses the fundamental link between human rights and international security. World peace and true national security will not be achieved until there is universal respect for human rights. Although the examples Dr. Sakharov cites are from the Soviet Union, we have examples closer to home. In our own hemisphere, disrespect for human rights—torture, murder, arbitrary imprisonment, and economic repression—by dictatorships in El Salvador and elsewhere are the root cause of political instability which threatens peace in Central America and hence our national security. Unfortunately, U.S. policies have not always been a positive factor in this regard.

In this context, Dr. Sakharov points out the great importance of the Madrid followup meetings to the 1975 Helsinki accords. It is vital that we and other signatories continue to participate in these fora so that nations can hold each other accountable for violations of human rights to which they are pledged internationally. It is also vital that we continue to recognize and support the efforts of individual citizens, such as the Helsinki watch groups, to hold governments, at home and abroad, accountable for human rights violations.

Mr. Speaker, the full text of Dr. Sakharov's article, which appeared in the Los Angeles Times on September 9, is printed here. It also contains an international appeal that Dr. Sakharov's son be reunited with his fiance, Elizaveta Alexeyeva. I hope our delegation to Madrid will request of Soviet delegates that Elizaveta be granted an exit visa by Soviet authorities as provided for by principle VII of the Helsinki accords.

The article follows:

WORLD SECURITY, HUMAN RIGHTS LINKED—SAKHAROV

The historic significance of the 1975 Helsinki Accords, the subject of a conference opening in Madrid today, lies in its affirmation of a crucial principle: International security and confidence are linked to respect for human rights.

The most complete statement of this idea is contained in Principle VII, Section 1(a) of the accords' Final Act, committing participating states to fulfill all the provisions of the International Covenants on Human Rights and of the Universal Declaration of Human Rights. These provisions include guarantees for freedom of opinion and information, freedom to choose one's country of residence (and not just within the context of family reunification), freedom to choose one's domicile within each country, freedom of religion and freedom of association.

The Helsinki Accords also acknowledged the right of the participating states to monitor each other's record of compliance. Such monitoring is regarded not as intervention in internal affairs but rather as a contribution to international security and confidence. The Final Act marked a new stage in the formulation of an international ideology of human rights. Unfortunately, its principles have not been put into practice in a satisfactory fashion. I suppose that human-rights violations have occurred in many countries, including Western countries, but I shall speak about what I know best—the situation in the Soviet Union and in Eastern Europe.

The observance of fundamental civil and political rights in these countries has not just failed in these countries to improve over the past five years; the situation has in fact grown worse. Repressions against groups organized to promote observance of the Final Act, including the Helsinki Watch groups in the Soviet Union and Charter 77 in Czechoslovakia, constitute the most brazen and challenging example of violations which demand from the participating states and unequivocal, uncompromising response—effective actions not limited to verbal protests.

More than 40 members of the Helsinki Watch groups are imprisoned. Many others also have been arrested—individuals who, although not formally members of the Watch groups, worked to promote the exchange of information and the defense of human rights as contributors to samizdat news magazines or journals of opinion, as participants in the movement for freedom of religion and freedom of emigration, or in other ways. The governments, nongovernmental organizations and concerned citizens of the participating states are under an obligation to defend all such victims of repression.

Peace in the world is indivisible. The consequences of any deviation from this principle only confirm its truth. Therefore, I cannot agree with those who consider the Soviet invasion of Afghanistan an event that is unrelated to security in Europe. I also cannot agree with those who suggest a boycott of the Madrid conference as a response to Soviet actions in Afghanistan or to the increased repression of dissenters. I believe that the participating states should use the opportunity offered by the Madrid conference to further a political settlement in Afghanistan, which must provide for the withdrawal of Soviet troops and international guarantees of peace, neutrality and free elections. The participating states should also promote the release of prisoners of conscience in the Soviet Union and in Eastern Europe, and in Western countries as well if persons are imprisoned there who have not used or advocated violence.

The critical international situation requires that the Western participating states coordinate their tactics and pursue their goals with more determination and consistency than at Belgrade. The Helsinki Accords, like détente as a whole, have meaning only if they are observed fully and by all parties. No country should evade a discussion of its own domestic problems, whether the problems of Northern Ireland, the Crimean Tatars or Sakharov's exile (here I am speaking objectively). Nor should a country ignore violations in other participating states. The whole point of the Helsinki Accords is mutual monitoring, not mutual evasion of difficult problems.

I wish to mention a personal matter, although I foresee that some newspapers will drop this paragraph, as if they know better what is important for me. My illegal exile to Gorky last January attracted the attention of worldwide public opinion and government officials. I appeal to all who expressed concern at that time: Help our son's fiancee, Elizaveta Alexeyeva, receive permission to leave the Soviet Union. I appeal in particular to both government and private persons who may meet with Soviet leaders. Liza'a fate, the lengthy separation of two people who love one another, has become a means of pressure on me. This is a strictly personal matter, with no connection whatsoever to interests of state. I do not know what the authorities have in mind for the future, but the affair has already become tragic. I am hoping for assistance in this very concrete problem which is so important to me.●

BINARY CHEMICAL WEAPONS

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. McCLOSKEY. Mr. Speaker, we voted today to permit the resumption, after 10 years, of the manufacture of nerve gas. This may or may not be an appropriate decision, but the fact remains that we have taken a new and significant initiative in foreign affairs without either meaningful testimony in committee hearings or debate by the committees of jurisdiction. We take this action over the opposition of both the Secretary of Defense, who has stated that the money is not needed this year, and over the objections of the chairman of the Committee on Foreign Affairs, who has urged no more than that this issue be fully debated. On an action of this kind it seems tragic that we do not require the ordinary process of hearing and debate which permits us to cast an informed vote.

I have attached a report on this controversy prepared by the staff of the Members of Congress for Peace through Law in order that over 400 of us who do not know the facts on this issue may have the chance to study them.

BINARY CHEMICAL WEAPONS

On June 27, 1980, the House of Representatives passed the Military Construction Appropriations bill, which includes $3.15 million for the construction of a binary weapons production facility at Pine Bluff, Arkansas. These funds, not requested by the Administration, are also contained in the Military Construction Authorization bill which is scheduled for House action on September 8 and Senate action later the same week. An additional $19 million to equip the binary facility is reportedly contained within the Department of Defense Appropriations bill as reported by the Subcommittee to the full Committee. This bill is due to be considered by both the House and Senate later this month.

Congressional approval of the plant and equipment funds would represent the first step in a five-year, $2.4 billion program.

This paper is intended to initiate a debate on this important issue by discussing the current chemical warfare preparedness of the NATO and Warsaw Pact countries, and by reviewing the arguments both for and against the production of binary weapons—the newest generation of chemical weapons to be considered.

BACKGROUND

I. What are binary weapons?

Chemical weapons (CW) were first used during World War I, when both sides used such agents as phosgene and mustard gas during the years of trench warfare. Since then, the possibility of retaliation-in-kind, the effectiveness of the gas mask and other protective equipment, and the difficulty of restricting lethal effects to enemy soldiers, have discouraged their actual use.

Over the years, CW munitions have become colorless, odorless, and more lethal. Most of the modern CW stocks possessed by the United States and the Soviet Union are composed of various types of nerve gas, which may be used as a liquid absorbed through the skin or as a vapor to be inhaled. Both countries, however, also possess substantial stocks of nonlethal chemical munitions, such as tear gas or herbicides.

A lethal dose of a chemical agent works quickly to cause heavy perspiration, poor vision, uncontrollable vomiting and defecation, constriction of the bronchial tubes, convulsions, and paralysis; death comes in minutes due to asphyxiation following respiratory failure. A marginally lethal dose will cause death over a period of hours; and even sub-lethal doses are suspected to cause long-term neurological, physiological and psychological problems. Some antidotes exist, but at present none is as effective as the use of protective clothing.

The newest generation of U.S. chemical weapons under consideration are binary munitions—a particular type of chemical weapon made up of two non-lethal chemical agents. These agents, called precursors, are produced and stored separately. Placed in an artillery shell or bomb just before firing, the precursors mix after firing to form a lethal gas or liquid prior to release over the target.

(NOTE.—Chemical weapons are to be differentiated from biological weapons. The production and stockpiling of biological weapons, as opposed to chemical weapons, is banned by an international convention signed and ratified by 84 nations, including the United States and the Soviet Union.)

II. U.S. and Soviet Supplies of CW

Neither the United States nor the Soviet Union has produced lethal chemical weapons since the late 1960's; in effect, since that time both nations have observed an undeclared and unofficial moratorium on such production. Both nations do, however, stockpile significant quantities of lethal chemical munitions.

While no agreed upon estimate exists within the U.S. intelligence community, it is generally maintained that both the United States and the Soviet Union have more than 100,000 tons of lethal chemical weapons.

Neither the United States nor the Soviet Union has a separate branch of their respective armed forces devoted to the practical application of offensive lethal chemical weaponry. Both, however, possess troops trained to defend against chemical warfare.

In accordance with Congressional directive, the U.S. Army has spent over $200 million in each of the last three years on CW research and development, training, and the procurement of defensive equipment.

About 80% of the serviceable U.S. lethal chemical stockpile is composed of nerve gas. Delivery systems include artillery shells, aerial bombs, and land mines. Lethal chemical munitions are located mostly in the United States, although a supply which is adequate for two weeks of warfare is located in Europe, under U.S. control.

Contrary to general belief, U.S. lethal chemical stocks are not deteriorating. Current estimates place the total number of U.S. nerve gas projectiles at roughly 3 million—or enough for at least 100 days of warfare. Although some of the fuses were removed during the Vietnam War (leading some to assume that they were obsolete), these parts are now being replaced and the weapons restored to their original conditions. None of the chemical payload has been affected.

III. Treaties and laws concerning chemical warfare

Negotiated in response to poison gas use in World War I, the 1925 Geneva Protocol Prohibiting the Use in War of Asphyxiating, Poisonous, or Other Gases and of Bacteriological Methods of Warfare, commits its parties to no first-use in war of chemical weapons. Both the United States and the Soviet Union have ratified the Treaty, in 1975 and 1928, respectively.

Since 1976, the United States and the Soviet Union have been engaged in bilateral negotiations to prohibit the development, production, or stockpiling of any lethal chemical weapon. The talks were last held in July of this year, with general agreement on what items should be banned. While disagreement remains on specific verification procedures, both sides have agreed in principle to on-site verification. Compliance with and verification of terms of the convention will be based on a combination of national and international verification standards. This represents an important break-through in the negotiations.

At present, U.S. law restricts production of all chemical munitions. Section 409(f) of Public Law 91-121 (the fiscal year 1970 Department of Defense Authorization Act) allows funding for production of chemical weapons only if the President certifies that such weapons are "essential to the safety and security of the United States." Following construction of a CW weapons production facility, the law would have to be rescinded or the President would have to certify national security needs for actual binary weapons production to begin.

LEGISLATIVE HISTORY AND STATUS OF PENDING BINARY LEGISLATION

First proposed by the Army during the 1950's, research on binary munitions was not pursued until the phase-out of conventional chemical weapons began in 1969. At this point, the Army advanced binary as a "safe" CW alternative, and in both the fiscal year 1974 and fiscal year 1975 DOD Authorization and Military Construction bills, the Administration requested funds for binary. The House, however, rejected both efforts.

Over the past six years, the Republican and Democratic Administrations have consistently decided against requesting funds for the construction of a binary production facility. The Carter Administration has turned down several requests from the Army for the funding of the Pine Bluff facility. Nevertheless, on May 8, 1980, the House Armed Services Committee, without having held any public hearings on the issue, voted to authorize $3.15 million for the construction of the Pine Bluff facility. Although neither the House nor the Senate has acted on this bill (both are due to the week of September 8), the House did pass the Military Construction Appropriations bill, which also contains the $3.15 million.

Prior to House floor action on this bill, where there was no legislative attempt to delete the binary provision, the Carter Administration announced that it opposed the inclusion of the binary funds pending completion of an interagency study on U.S. chemical weapons policy.

On September 4, Secretary of Defense Harold Brown reportedly told members of the Senate Armed Services Committee, meeting in closed session, that the Administration's position is unchanged, and that Congress should not authorize the construction of the binary facility at this time.

To date, the Senate Armed Services Committee, which like its House counterpart has held no public hearings on the resumption of CW production, has yet to make a recommendation on the construction of a binary weapons facility. Whether or not it recommends funds, a floor debate and vote are likely.

If approved by Congress, this year's binary weapons price tag will be $22.15 million: $3.15 million for construction and $19 million for equipment. The plant to be constructed is scheduled to produce artillery shells and aerial bombs by 1984, with development and production of a land mine and rocket warhead at a later date. The $19 million for equipment has reportedly been inserted by the Defense Subcommittee of the House Appropriations Committee, in the DOD Appropriations bill.

ARGUMENTS FOR AND AGAINST BINARY WEAPONS

Unconfirmed media reports of the use of Soviet lethal chemical weapons in Afghanistan, Laos and Kampuchea have prompted some Members of Congress to advocate the production of binary weapons. In the present climate of heightened international tensions between the United States and the Soviet Union, there has been little opportunity for reasoned debate on U.S. chemical weapons policy. In many instances, the arguments of binary proponents have been unsubstantiated and have gone unchallenged. The following section seeks to summarize the arguments of both proponents and opponents of the production of binary weapons.

I. Are binary weapons safer?

Because the binary precursors can be separately manufactured and stored, its proponents argue that it is much safer to store than the present CW arsenal. With binary weapons, they claim, there would be a greatly reduced possibility of CW accidents.

Opponents of binary note that because it has never been tested or produced, its safety is a matter of conjecture. Some concede that it is probably the safest kind of CW to store; others note that present CW storage has never resulted in a major accident. Opponents also point out other logistical problems with binary's storage: they hold that the British and the West Germans are highly unlikely to agree to store binary or any other chemical munitions on their territory (West Germany is bound by Treaty not to store lethal agents on its territory, except those on U.S. bases, and has refused even to train its troops in the use of any chemical weapons.) Finally, opponents note that the ease with which binaries are produced and stored renders them far more dangerous than standard chemical munitions, as it is likely to make CW more accessible to those who do not now have it.

II. Is there military value in developing a new offensive chemical capability?

Binary proponents assert that since our CW stocks are old, they may have lost their capability; and that since we have redesigned our launchers, the chemical stocks may not be able to be fired in the new launchers.

Opponents of binary argue that CW munitions in existing U.S. stockpiles will remain lethal for at least another 20 years. In addition, they note that our NATO allies are opposed to stockpiling any chemical munitions. Finally, opponents of binary's military effectiveness point out that the prime victims of binary weapons would inevitably be the civilian population in West Germany. If both the NATO Warsaw Pact troops wore protective clothing, it would be the civilian population which would be vulnerable to aerosol clouds which can cause fatalities 20 Km from their detonation points. They would be vulnerable, too, to liquid binary agents, which remain lethal in the area for days or even weeks.

III. Will the production and deployment of binary weapons reassure our NATO allies?

Proponents claim that modernizing our CW arsenal with binary weapons will reassure our NATO allies that the United States will be able to deter any kind of Soviet chemical attack on Western Europe, and that given the state of the Western Alliance, we should be willing to take on this responsibility.

Opponents point out that chemical weapons used in a European war would kill more civilians than troops (West German casualties would probably be in the millions if the Warsaw Pact initiated an all-out chemical battle and NATO responded.) Furthermore, given the legal and political opposition of the West Germans and other Europeans to storing chemical weapons or training troops in their use, opponents hold that full-scale production of binary weapons would anger rather than reassure our NATO allies, and may even jeopardize NATO acceptance of the controversial Theater Nuclear Force decision.

IV. Will binary production serve as a bargaining chip to encourage the Soviets to negotiate a treaty banning CW?

Binary proponents hold that only aggressive action by the United States can force the Soviets into agreeing on disputed verification points; and they point out that construction of a binary plant—which does not automatically commit us to the next step of production—will serve as an incentive for the Soviets to agree on a treaty without starting a new generation of CW. They emphasize that the legislation being considered targets funds only for construction and equipment.

Opponents, on the other hand, hold that development of binary weapons will destroy these talks, rather than force the Soviets into an agreement. They point out that the "in-principle agreement" on on-site verification reached in July is significant and a major step forward; and they also note that production of binary would further complicate verification procedures, due to the separation of binary's components. They also believe that our development of binary would spur the Soviets to follow our lead and upgrade their own arsenal.

Finally, they hold that building a binary plant, even without producing binary, sends a message to both our allies and the Soviets that the United States is not interested in controlling chemical weapons; and that those who advocate the plant as a bargaining chip are the very ones who call it a "first step," and will most likely be the strongest advocates of full production.

CONCLUSION

The current U.S. policy of maintaining our present CW stocks and improving our defensive and protective capabilities—while withholding production of a new generation of CW—underscores the commitment of the United States to the success of the current U.S.-Soviet negotiations aimed at the prohibition of lethal chemical weapons.

Over the past ten years, both the U.S. and the U.S.S.R. have refrained from adding any new weapons to their existing CW stocks; building a binary plant at this time would signal our intent to end this moratorium on the production of lethal chemical weapons.

If Congress decides to authorize the construction of the plant, without the benefit of public Congressional hearings or even a complete Executive Branch review, the Soviets will be forced to modernize and expand their arsenal of chemical weapons. In the process, chemical weapons will acquire enhanced legitimacy among military and political leaders around the world. The technology for producing binary weapons might eventually be acquired not only by other governments, but by other fringe organizations or terrorist groups.

Although proponents argue that we need binary weapons to upgrade our chemical arsenal and deter the Soviets from a chemical attack, binary is, in fact, no military advance over existing chemical weapons, which remain operable. Given the significant progress which has been made at the bilateral CW talks, the production of binary munitions would, in the view of many experts, be a needless and costly escalation of the arms race.●

VETCO, INC.—50 YEARS OF LEADERSHIP

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. LAGOMARSINO. Mr. Speaker, I am proud to announce the 50th anniversary of Vetco, Inc., a multinational corporation based in Ventura, Calif. September 1980 marks Vetco's 50th year of technological leadership in the oil industry.

Vetco's celebrations will honor Fritz Huntsinger, Sr., who founded Vetco's forerunner, the Ventura Tool Co. in September 1930. Starting as an oilfield tool repair shop, Vetco Inc., now a subsidiary of Combustion Engineering, Inc. has always been closely linked with the oil industry. Vetco's association with the oil industry led to involvement in the earliest offshore drilling operations off the California coast in the 1950's. This early involvement led to Vetco's success as a leader in the design, manufacture, and supply of safe, technologically advanced equipment to the offshore oil industry. Vetco's equipment is now used worldwide in exploratory drilling and production of offshore oil reserves.

With Fritz Huntsinger's invention of a device to inspect damaged drill pipes, Vetco became a pioneer in the field of nondestructive testing of oilfield tubular goods. This service has now been expanded to include protective internal pipe coating capabilities. Both services are offered worldwide.

Today, Vetco provides equipment and services to all of the world's oil producing countries from over 60 locations in 30 countries, through the efforts of 2,700 employees.

Vetco's international headquarters are situated in Ventura, along with the headquarters of Vetco's offshore operations. Vetco's service operations are headquartered in Houston, Tex.

Fritz Huntsinger, Sr., founder and chairman of the board of Vetco Inc., immigrated to the United States from Germany, and became a floor sweeper for Schwab Tool Co., in Ventura, Calif., who served the then emerging oil industry in southern California. In 1926, he became a subforeman supervising 72 machinists and by 1928, rose to general foreman. In the height of the depression, the Schwab-Lane Tool Co. went bankrupt and Fritz bought the company in 1930 at a sheriff's sale with his life's savings, determination and six other souls. This was the birth of Ventura Tool Co., the parent of Vetco Inc.

Fritz, early in his career, began sharing his good fortune in his newly adopted country with the less fortunate. He has been a prime contributor to the establishment of the New Community Memorial Hospital in Ventura, donating to them one of the first brain and body scan diagnostic machines west of Chicago. He has contributed to the City of Hope and to other medical research efforts. In the field of education, he donated the Huntsinger Academic Center at Pepperdine University, an Aquatic Center to Hood College in Maryland for use by handicapped children in the three neighboring States. He contributed to a youth center in Celle, West Germany for orphaned children from the Eastern Zone. He has contributed to the California Institute of Technology since 1952 and is a member of the advisory council. He has always been a contributor to organizations fostering a strong American youth such as the Pyle's Boys Camp, the Boy Scouts of America, Y.M.C.A., Salvation Army, various little league baseball teams, and the Ventura girls' softball team which became the national champion 2 years in a row. In December 1977, the Ventura County Boy Scouts of America awarded Mr. Huntsinger with their highest award—the Golden Condor Award.

He is an active participant in civic affairs having served three sessions on the Ventura County grand jury, being foreman twice. He has been chairman of Ventura County Flood Control Committee since 1946. He is very active in trade associations which foster the preservation of the private enterprise system. He has been a frequent speaker before various government bodies providing expert testimony.

Mr. Huntsinger even has some time for hobbies which are deep sea fishing, ranching, and growing orchids.

Other affiliations: founder and past president of Ventura County Taxpayers Association, past president of Ventura Shrine Club, past president of chamber of commerce, board member of Ventura County Development Association, board member and vice president of the R. M. Pyles Boys Club since 1951, former president, now director of Community Memorial Hospital, chairman of county flood control district, member of board of regents of Pepperdine University, honorary doctor of laws of Pepperdine University, and member of the advisory council, California Institute of Technology; member of the executive board of the National Ocean Industries Association, Washington, D.C.; past president of Petroleum Production Pioneers, and life member; honorary member of the National Rotary Club of America; life and honorary member of the Navy League; in 1974 became Knight Commander of the Court of Honor and a member of the Legion of Honor of the DeMolays; received degree of doctor of humanities from Hood College in 1977; benefactor of the Ventura County Historical Museum, newly established and housed in 1977.

In 1971 Fritz accepted on behalf of Vetco Offshore Industries, Inc., the International Petroleum Exposition Special Meritorious Award for engineering innovation in development of the hydraulic motion compensator. In both 1971 and 1972, he received the Humanitarian Award from Lions International for service to mankind. Most recently, Fritz donated a new building and chapel to the order of DeMolay in Orange County, Calif. It was dedicated on September 10, 1977, and will serve as the southern California headquarters. On October 17, 1977, Mr. Huntsinger was elected to a 33 degree Mason—the highest honorary award of this fraternal order which is dedicated to helping handicapped youths and the needy of the world. He was also appointed by grand supreme commander as the first venerable master of the newly formed Ventura County Scottish Rites Bodies. He recently donated a mammograph to Ventura Community Memorial Hospital for diagnosis of breast cancer. In November 1977, Fritz was awarded the Spirit of Life Award by the Oil Industry Council for the City of Hope.

In addition, Fritz has been a good friend, occasional fishing companion, and an inspiration to me.●

TRIBUTE TO THE LATE WILLIAM FRANCIS GAUL

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in the House of Representatives in paying tribute to the late William Francis Gaul, who died in late July.

Bill Gaul and I shared more than just a common faith, a common profession, and worked together on the Education and Labor Committee, on which I served during my first 4 years in the House.

We shared a heritage and a special spirit and bond from the University of Notre Dame, our alma mater. Furthermore, we each had sons who attended Gonzaga College High School.

Bill was a true professional who commanded the respect of all who worked with him for his expertise in the field of education as well as for his strength of character, which was so amply displayed during the last few months of his life when he courageously continued his work despite his struggle against serious illness.

Bill's leadership and dedication will be sorely missed in these days when moral decay seems to have permeated the country from top to bottom.

I extend to his wife, Joan, and his children my deepest sympathy and condolences.●

JEWISH VOTERS' INTERESTS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WOLFF. Mr. Speaker, I would like to bring to the attention of my colleagues an article which appeared in today's New York Times written by Arthur Hertzberg, past president of the American Jewish Congress:

[From the New York Times, Sept. 16, 1980]

JEWISH VOTERS' INTERESTS

(By Arthur Hertzberg)

ENGLEWOOD, N.J.—Like all Americans, I want a President who will promote domestic tranquillity and make us strong but not warlike. The pollsters, however, type me as belonging to the "Jewish vote" and presume that my views are determined by my passion for Israel. Here they are finding something strange. Ronald Reagan is the most ardent pro-Israel "hard-liner" of the candidates and yet he has now, at maximum, one-quarter of the Jewish vote, with the rest divided between President Carter and John B. Anderson, and some people are still making up their minds.

The issue of Israel is thus a political paradox. It stirs the Jewish community in its entirety, and yet, when a supposedly clear voice is available between a maximalist Mr. Reagan and a moderate Mr. Carter, there is no stampede toward the Republican. Why?

Jews presume as beyond doubt that both major parties are for the existence of a secure, viable Israel. They know that disaster will not come to Israel—whoever is elected. Campaign promises about Israel are largely disbelieved, no matter who makes them, because Jews know that, whoever is elected, Israel's maximum demands will not be realized. Administration after Administration, Republican or Democrat, have taken turns in refusing to confront the Arab world as a whole on such issues as the ultimate control of the West Bank, the Palestinians, and the nature of the final settlement even in an undivided Jerusalem. Some actions that have flowed from this position, such as the substantial aid given to Egypt even before Camp David, have been quietly accepted by pro-Israel opinion. Others, such as America's failure to exercise its veto last month when the Security council censured Israel for its new law formally annexing Jerusalem's eastern sector, have created outcries that even Jewish moderates have joined. Ultimately, however, in the deep heart of majority Jewish opinion, it is known that even the friendliest of Administrations will act when in power more circumspectly than its campaign rhetoric indicates.

Leaders of the organized Jewish community are certainly aware of the complexities and even inevitable ambiguities of America's posture in the Middle East. Why then is their normal reaction almost automatic criticism of the President, whoever he may be? Sometimes such statements are meant with great passion. Very often they represent the strongly held views of Jewish "hard-liners" with which moderate Jewish opinion goes along, chiefly because it is presumed that such pressures are weights put into the scale against counterpressures from Arab governments, oil interests, and pro-Arab opinion.

The organized Jewish community in America and the temporary occupant of the White House have thus been playing a game for a long time within well-established rules. Pressure usually gains a few points. The government of the moment responds by doing something for Israel, or sometimes, alas, by doing something against Israel, such as an occasional, brief foot-dragging on aid. Fundamentally, both parties to this relationship know that they are fighting over nuances. This game has been going on at least since 1940, and the results have been remarkably stable. Even Dwight D. Eisenhower, the liberator of Europe and friend of the death-camp survivors, could get only 40 percent of the Jewish vote in 1952 against Adlai E. Stevenson, not known to be a passionate Zionist. In 1972, George McGovern was widely held to be "softer" on Israel than Richard M. Nixon and yet he got almost two-thirds of the Jewish vote.

There is some "float" in the Jewish vote of perhaps 10 percent that is really determined by the issue of Israel—but that is the maximum, even today. The basic truth is that American-Jewish statesmanship long ago succeeded in making the basic support of Israel a matter beyond party and thus, fortunately, beyond partisan vote. The determining consideration for American Jews, which they share with all other Americans, is a special and unique emphasis on domestic tranquility. Here, indeed, there is a "Jewish vote" up for grabs. Jews are at least as well off as Episcopalians and Presbyterians, and they should thus be voting very conservatively for their class interests. They do not, and the reason is not some as-yet-unbanished memory of the New Deal. Out of their experience as a persecuted minority, the Jewish "haves"—and it is the "haves" who are more likely to be liberals than some of the "have-nots"—fear social disorder more than any other group, because throughout their history Jews have been a favorite target of angry mobs.

In this election, as in all those before it in the last generation, American Jews will go into the polling booths not in fear that the candidate they did not vote for might do Israel in, but in the hope that the one they choose will, with all his faults, try to be a maker of internal peace and accommodation.●

WORK SHARING, JOB SECURITY, AND PRODUCTIVITY: A NEW DOMINO THEORY

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mrs. SCHROEDER. Mr. Speaker, W. Edwards Deming, a statistician and industrial productivity consultant, whom many credit with having a significant role in sparking Japan's high annual productivity growth rate, was recently interviewed by People magazine. Dr. Deming emphasizes how much job security is a key factor in productivity.

A bill I recently introduced, H.R. 7529, the Short-Time Compensation Act of 1980, ecnourages, partial layoffs—"work sharing"—in lieu of total layoffs, by allowing States to pay partial unemployment benefits. One immediate effect is increased job security and, if we are to believe Dr. Deming, increased productivity.

The interview follows:

"MADE IN JAPAN" IS NO JOKE NOW, THANKS TO EDWARDS DEMING: HIS NEW PROBLEM IS "MADE IN U.S.A."

There is one domestic problem that all 1980 presidential contenders, including the incumbent, preach against: the disturbing decline in U.S. productivity. Not surprisingly, Japan, with its annual productivity growth rate of 11 percent, is held up as a shining example of "re-industrialization"—already a bipartisan buzzword for Campaign '80. The world has come to rely so heavily on the value and durability of goods "Made in Japan" that it's easy to forget that only 30 years ago the phrase was a joke, a synonym for shoddiness. W. Edwards Deming, an Iowa-born statistician with a Ph.D. from Yale, may deserve as much credit as anyone for the new image and performance of Japanese industry.

In 1950 Deming, then a professor at New York University, made the first of 18 trips to Japan to teach businessmen his gospel of quality control and high productivity through statistical analysis. One indicator of his success is that today Japan's coveted annual award for industrial productivity is the Deming Prize, a silver plaque bearing the professor's tortoise-like profile. Deming, 79, has also advised companies in Taiwan, South Korea, Denmark, Hungary and West Germany, but until recently he was little known at home. Now, with the U.S.'s stagnant productivity (roughly defined as output per man-hour) contributing to both high costs and high prices, American companies are beginning to seek him out. William E. Conway, head of New Hampshire's

$600 million-a-year Nashua Corporation, hired Deming when Nashua decided to enter the copier business last year. "Basically," says Conway, "he told us to make it right the first time." Assisted by his mathematician wife, Lola, 74, Deming runs a consulting business from the basement of his Washington, D.C. home, where he was interviewed by Clare Crawford-Mason of People.

Japanese products were regarded as inferior when you first went there in 1950. How were they able to revolutionize their industry?

They had a magnificent work force, unsurpassed management and the best statistical ability in the world. What's more, everybody was dedicated to the company, and everybody was dedicated to Japan. I put those forces together, and inside four years manufacturers all over the world were screaming for protection from Japanese imports.

Why hasn't American industry adopted your methods?

People here think a statistician comes Monday morning, and by Friday night they're producing like the Japanese. They are not willing to commit to a long training program for all workers, as the Japanese did. And, to my horror, I have discovered that most American companies think they already have statistical control of quality. What they have is a lot of printouts full of irrelevant and out-of-date information.

To boost productivity, isn't a great deal of capital investment necessary?

No. If you don't understand how to run an efficient operation, new machinery will just give you new problems of operation and maintenance. The sure way to increase productivity is to better administrate man and machine.

What is the relationship between declining productivity in the U.S. and inflation?

Declining productivity and quality means your unit production costs stay high but you don't have as much to sell. Your workers don't want to be paid less, so to maintain profits, you increase your prices. That's inflation.

How much of our productivity problem is the fault of workers?

When I've asked managers this, the answer always is, "All of it." That is absolutely wrong. Research has shown that about 85 percent of the trouble is right in their own management—that is, in the production system itself, for which they alone are responsible.

What would be an example of a management-based problem?

If the material is uniformly bad, that's the fault of management. A shoe manufacturer, for instance, asked me to help him because his operators were spending most of their time threading the sewing machines. In about 24 hours I had located the trouble. Management was buying cheap thread. To save 15¢ per spool they were losing $150 per hour because the stuff required so much rethreading. They bought better thread, and the problem disappeared overnight.

Are managers out of touch?

Yes. The prevailing—and foolish—attitude is that a good manager can be a good manager anywhere, with no special knowledge of the production process he's managing. A man with a financial background may know nothing about manufacturing shoes or cars, but he's put in charge anyway.

What can be done about ineffective management?

For one thing, our business schools have to change. Their graduates get good economics, law, finance—overall a good education. But they don't teach statistical method in research and production. For instance, they don't teach the connection between what people need, the cost of materials and what can be produced economically.

Does job security affect productivity?

In Japan a company worker's position is secure. He is retrained for another job if his present job is eliminated by productivity improvement. If a worker has an idea, he can present it to the president, and the door is always open. The worker doesn't have to worry about whether he'll have a job tomorrow; he doesn't have to try to please somebody or conceal problems just to keep his job. There's such a difference between working in a secure position and working in an insecure position.

Is job security the key factor, then?

I don't know if it is, or if participation is. I've seen how deeply plant workers appreciate it when somebody recognizes and respects the storehouse of knowledge they accumulate day to day on the job. Giving people the opportunity to participate in improving the product pays off, because workers realize security isn't worth a hoot if the product is shoddy.

Does that mean that Japanese workers work harder than American workers?

Japanese workers work less hard. They work smarter, not harder. They produce more with less and less effort as the quality goes up.

How exactly do you hope to achieve improved U.S. productivity along with improved quality of our manufactured goods?

By using statistical methods to improve quality. Statistical analysis helps you stabilize the system so the product is the same today, tomorrow and thereafter. It helps you eliminate waste. By describing statistically exactly what is being done, the method locates problems, forces innovation and lets you measure your progress.

In simple terms, how does it work?

I set up a control chart for each major section of the production line. The worker takes readings of the performance of the machine or of his own handwork and makes a very simple calculation—maybe a subtraction, maybe taking an average—to plot an upper-control limit and a lower-control limit, two parallel lines on a graph.

Does this define the machine's normal range of reliability?

Yes. As the machine keeps running, management only has to investigate and correct points that fall outside these parallel lines. Eventually, as the work is corrected at this signal, points will all fall between the lines, and statistical control is achieved. It's worth it, because unnecessary adjustments, which waste time and raise costs, are eliminated. The goal is predictable variation, which is very comforting to management.

Isn't it expensive to troubleshoot the points that fall outside the limits?

No, it's a matter of fine-tuning the system. Most of the time you can use the same machinery, the same raw materials, the same people. For instance, a Japanese pharmaceutical company I advised tripled its production of an acid in six months without any new capital investment.

Can quality be assured through added inspections, as Chrysler is trying to do with its new K-cars?

No, inspection does not build quality. You can't get ahead by making some defective products, and you cannot afford to separate the good from the bad. It's wasteful, and so raises the price the consumer pays. Moreover, inspection is unreliable. It doesn't weed out all the bad. The point is that if you make it right in the first place—using statistical methods of control—you don't have to test it.

Which presidential candidate's platform do you think might best improve U.S. productivity?

I'd rather not comment. I'm only a statistician. I don't want to be a jackass.

Do we have the capacity to regain our momentum?

It's nonsense to say we can't. We invented the laser and the transistor and developed the best communication system in the world. A nation that can accomplish these feats can do almost anything it sets its mind to.●

AIR INTERNATIONAL, INC.

HON. ALLEN E. ERTEL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ERTEL. Mr. Speaker, today, Air International, Inc., a newly formed airline with headquarters in Erie, Pa., applied to the Civil Aeronautics Board for authority to provide air service to various communities in Pennsylvania, New York, New Jersey, Ohio, Indiana, and Illinois. Air International's proposed DC-9 service will fill significant service voids in several communities and provide new competition in other markets.

Mr. Speaker, the Airline Deregulation Act was designed to encourage more service and greater competition in the airline industry. Air International's market plan is entirely in keeping with the purposes of the act. Where existing service is inadequate, Air International proposes to meet the unmet needs of the market. On routes where service is adequate already, Air International intends to attract passengers and further develop the market by providing low-cost, convenient service for consumers and stiff competition for existing carriers.

Since passage of the Airline Deregulation Act, we have seen the accelerated development of innovative competitors such as Southwest Airlines, Midway Airlines, Air Florida, Texas International, Altair, Empire, and, now, New York Air and Air International. Mr. Speaker, I am delighted with Air International's plans. I look forward to its anticipated expansion into Harrisburg, Pa., in my district. And, as one who strongly supported the Airline Deregulation Act, I am delighted that the act continues to fulfill its great potential.●

REPRESSION CONTINUES IN CHILE

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. BONKER. Mr. Speaker, from time to time we are told that General Pinochet in Chile has moderated his harsh policies and therefore we should normalize our relationship with his military regime.

I would like to bring to the attention of my distinguished colleagues two items which deal directly with that question. The first is an article in the New York Times of September 9, 1980, reporting that Amnesty International charges "arbitrary arrests and systematic torture have increased dramatically in Chile in the last 2 months.* * *"

The second is an editorial from the Washington Post of September 13, 1980, entitled "The Pinochet Straitjacket." As the editorial indicates, last week the people of Chile witnessed another charade by the Pinochet dictatorship as it conducted a controlled plebiscite and declared that 60 percent of the people support the Government. In fact, most saw the plebiscite as another attempt by the general to gain popular legitimacy for his personal rule. The State Department commented. "* * * We do not believe that the plebiscite in its substance or process gave meaningful choices to the voters * * *."

The two articles follow:

RISE IN CHILEAN TORTURE CHARGED

(By Youssef M. Ibrahim)

LONDON.—Arbitrary arrests and systematic torture have increased dramatically in Chile in the last two months, according to an Amnesty International report issued here today. Chile is approaching the seventh anniversary of the military coup that brought President Augusto Pinochet to power.

Spokesmen for the private human-rights group said that since July 15 more than 1,000 and possibly as many as 2,000 people have been rounded up by the Chilean secret police.

Detailed reports coming out of Chile confirmed a pattern of systematic torture, including severe beatings, near drownings, prolonged administration of electric shocks and burning with cigarettes, to which most detainees were subjected. Many others, Amnesty International said, have not been heard from since their arrests. The report spoke of doctors overseeing the torture.

Saying it had several dozen detailed accounts by torture victims, the organization cited the case of a 25-year-old university student, Angelica Díaz Tapia of Santiago, who was seized from a restaurant by a dozen men.

She later testified to having been stripped and tied to a metal grid and given electric shocks. She said the torture was applied repeatedly between interrogation sessions until she fainted and was revived after each shock. She also said she was burned with cigarettes, beaten and threatened, the report said.

An Amnesty International source said that although the reports of torture have not ceased since the 1973 coup that brought President Pinochet to power, there has been a dramatic increase in the number of those arrested and tortured since the July 15 assassination of Lieut. Col. Roger Vergara Campos, the director of the army intelligence school. There was a surge in July, then a bigger surge in August, the source said.

The report was made public in the midst of what is becoming a major dispute between the British wing of Amnesty International and the Government of Prime Minister Margaret Thatcher over the Government's recent decision to end a five-year embargo on arms sales to Chile.

A spokesman for the Foreign Office said today that Britain had expressed its deep concern to Chile over the recent arrest and torture of a young woman who holds dual British-Chilean citizenship, but he said Britain had no intention of reimposing the embargo.

THE PINOCHET STRAITJACKET

The "YES" vote in the plebiscite on its new constitution was 70 percent, the Pinochet dictatorship in Chile declares. But perhaps the real tally was 70 percent. Who's to say? Gen. Pinochet ran his little charade in a way to guarantee that the results would be suspect. Wide and intimidating publicity was given, for instance, to a driver arrested for displaying a "no" bumper sticker. In the two-month run-up to the plebiscite, Amnesty International reported, there were sharp increases in arbitrary arrests and cases of torture. There was no independent audit of either the balloting or the counting. Absententions were counted as "yes."

The new constitution, though it is a carefully wrought instrument of "protected democracy," is not to take effect for five years. Meanwhile, Gen. Augusto Pinochet is offered a second eight-year term as president and, if he is up to it, another term after that. His junta is to act as a legislature through the 1980s and then a tame elected legislature gets to take over. The general is 65, and he obviously has in mind a system that will reflect his strong hand even when he is not around to lift it. His effort to gain popular legitimacy for personal rule is in the classic fascist tradition.

It begs belief that the Pinochet system will work and last as he intends. Traumatized as Chileans were by the disintegration before 1973 and the repression after, they have not lost the qualities that had made Chile one of the most vibrant and intensely political societies in the world. Indeed, even within the Pinochet straitjacket, Chileans sabotaged the regime's effort to intimidate and manipulate them by rendering fewer "yes" votes in this plebiscite than in the last in 1978. The Pinochet strategy is bound to fail. It is producing counterviolence that will increasingly have the tolerance if not the active sympathy of other people. The peaceable majority of Chileans will continue to find ways to press their evident longing for a quick return to democracy.●

GILMAN URGES NATIONAL ALCOHOL AND DRUG COALITION TO RAISE PUBLIC'S AWARENESS OF DRUG DANGERS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. WOLFF. Mr. Speaker, this week the National Alcohol and Drug Coalition, which is composed of the Alcohol and Drug Problems Association, the National Drug Abuse Conference, and the National Drug Congress, has been holding a conference among professionals in the field of substance abuse.

The gentleman from New York, Mr. GILMAN, a member of our Select Committee on Narcotics Abuse and Control, of which I serve as chairman, addressed the plenary session of the coalition's conference.

As part of the select committee's efforts to raise the consciousness of the public regarding the dangers of narcotics trafficking and drug abuse, our colleague's remarks focused on the magnitude of the drug problem in this country and the urgency to elevate this problem to a top priority on our agendas. In highlighting some of the activities of the select committee, he stated:

> No amount of Federal, State or local legislation will stop drug abuse if our citizens are determined to misuse and abuse drugs. Waging "war" on narcotics trafficking and drug abuse is a never-ending battle, requiring a commitment of 365 days a year of more stringent law enforcement, more effective education, and better treatment and rehabilitation facilities. Until that message comes across loud and clear to public officials and community leaders, to parents, teachers, school administrators and our youth and until the public realizes the debilitating effects of drug abuse, then lives will continue to be lost to deadly drugs and our Nation will sink into a bottomless pit of drug dependency and societal decay.

Mr. Speaker, I commend the gentleman from New York, Mr. GILMAN, for his diligent efforts to help raise the public's awareness regarding the complex problem of preventing and controlling drug abuse and in the interest of sharing his remarks with my colleagues, I am inserting at this point in the RECORD the complete text of his address at the conference of the National Alcohol and Drug Coalition:

ADDRESS BY CONGRESSMAN BENJAMIN A. GILMAN AT THE CONFERENCE OF THE NATIONAL ALCOHOL AND DRUG COALITION, WASHINGTON, D.C., SEPTEMBER 16, 1980

Mr. Chairman, ladies and gentlemen, I welcome this opportunity for participating in the plenary session of your conference of the National Alcohol and Drug Coalition and commend the leadership of the Alcohol and Drug Problems Association, the National Drug Abuse Conference and the National Drug Congress for their cooperative efforts in bringing all of you together to discuss the complex problems of alcohol and drug abuse.

Our House Select Committee on Narcotics Abuse and Control, of which I am a member, has, over the past four years, conducted extensive hearings on drug abuse among our youth, the elderly, among women, ethnic minorities, and in the military. Our Committee has reported on the deadly effects of the hallucinogen PCP, Cocaine, Marihuana, Talwin, Pyribenzamine, and has dug into the problems of narcotics trafficking throughout the world and the money laundering transactions associated with this sordid industry. As a result of the numerous narcotic field investigations, both here and abroad, I am fearful that our Nation is fast becoming a drug-oriented society whose citizens are becoming psychologically and physically dependent upon drugs and who are seeking to escape into deadly mind-altering substances to resolve their personal and societal problems.

Hardly a day goes by that the Federal, State and local law enforcement agents do not seize Heroin, Marihuana, Cocaine, PCP, Quaaludes, and other dangerous drugs, not by the pound but often by the ton, by the planeload and boatload.

Hardly a day goes by that U.S. Customs inspectors do not seize substantial sums of currency and monetary instruments from organized crime's attempt to launder money obtained from their nefarious drug transactions.

Hardly a day goes by that a hospital emergency room does not report some drug-related injury or a death resulting from the abuse of heroin, amphetamines, barbiturates, stimulants, depressants, and tranquilizers. Yet, each year, more and more of our citizens obtain drugs illicitly or through overly prescribed prescriptions.

This year narcotics trafficking and drug abuse have once again reached epidemic proportions. Nearly every region of the world . . . nearly every city, town, and school district in this Nation has become a victim to drug trafficking and drug dependency. The drug problem is a crisis comparable to our energy crisis and to the deplorable state of our economy.

Banner headlines reflect the magnitude of the drug epidemic in this Nation:

A Treasure in Opium Poppies is Ripe for the Plucking in Golden Triangle (New York Times, Sept. 8, 1980)

State Fears Heroin Deaths Rising (New York Post, Sept. 10, 1980)

Rise in Drug Addicts Strains Programs in New York State (New York Times, Sept. 1, 1980)

Heroin—It's Back and Deadlier (Herald Statesman, June 22, 1980)

The Dope Kids of 115th Street (Village Voice, July 2, 1980)

Mob Seen Cashing in on Drug Trade (Philadelphia Daily News, August 20, 1980)

Drug Abuse Up: Island Groups Apply for State Aid (Staten Island Advance, June 26, 1980)

Drug Crimes Shooting Up at Pharmacies (Wall Street Journal, June 30, 1980)

Cocaine is Linked to Birth Defects (Philadelphia Inquirer, August 22, 1980)

No nation is immune to the operations of the international narcotics traffickers who reap unknown billions of untaxed dollars from their nefarious business transactions, causing untold misery for millions of people throughout the world.

Opium production from the Golden Crescent of Pakistan, Iran and Afghanistan has more than doubled, from an estimated 700 tons in 1978, to approximately 1,600 tons for 1979. Favorable weather conditions this year in the Golden Triangle indicate an anticipated opium bumper crop displacing last year's drought yield of 150 to 200 tons and suggesting a windfall of 700 tons . . . far exceeding that area's usual annual opium production of 250 to 500 tons. Although Mexican law enforcement authorities have, to a large extent, been successful in controlling the illicit production of Heroin and Marihuana, Mexico annually produces an estimated 15 tons of opium and more than 2,000 metric tons of Marihuana.

Add to that the estimated 8 billion dollar Cocaine and Marihuana trafficking between the United States and Colombia . . . a business that far exceeds Colombia's largest legitimate export commodity, coffee, and ladies and gentlemen, you can readily see that narcotics trafficking is a gigantic, multibillion dollar business. Just in the United States alone drug trafficking is an estimated 50 billion dollar business, third in sales after Exxon and General Motors but far ahead of the approximately $37 billion sales of the Ford Motor Company.

In an effort to wage "war" against the highly sophisticated, well-financed billion dollar operations of the international narcotics traffickers, the Federal Government spends less than one billion dollars . . . millions, not billions . . . to interdict narcotics trafficking, to educate our citizens regarding the dangers of drug abuse, and to treat and rehabilitate those individuals who are dependent upon or addicted to drugs. And the United Nations, in its worldwide effort, has allocated from its Regular Budget a meager $6,450,000 out of more than $1.2 billion to combat drug abuse during the two-year period of 1980–81.

As you know, all of this increased opium production comes at a time when the Administration has proposed a cutback of $40 million in Federal treatment programs. Our Narcotics Select Committee recently held hearings to assess the impact of increased opium production and the Administration's proposed cutback in Federal treatment programs. The hearing record has just been printed, copies of which are available for you at this conference; additional copies of this publication may be obtained from our Narcotics Select Committee.

It is a mistake to believe that narcotics trafficking is limited to organized criminal syndicates. Unfortunately, doctors, lawyers, educators, military personnel, businessmen and other professionals have entered the drug trafficking business as independent entrepreneurs. Unscrupulous physicians, pharmacists, nurses, hospital employees, and "patients", have garnered hundreds of millions of dollars in illicit profits from the pill pushing and illicit prescription activities. The drug paraphernalia industry, whose neighborhood stores ("headshops") glorify the use of drugs, reap an estimated $1 billion each year through the sale of kits for inhaling, ingesting and injecting deadly mind-altering drugs.

Approximately 450,000 addicts in the United States reportedly spend $6 billion annually to support their drug habits. In 1978, more than 8,400 of our citizens, mostly our youth, were reported by medical examiners to have succumbed to drug overdoses, while more than 286,000 drug abusers were reported by hospital emergency rooms to have sustained drug-related injuries. Just last week, Julio Martinez, Director of the New York State Division of Substance Abuse, predicted that this year at least 600 individuals would die from Heroin overdose in New York—an increase of 27 percent over last year's figures.

Obviously, this data is only the tip of the iceberg. It does not account for the unknown thousands who are not reported as drug addicts. It does not include those who are not registered in drug treatment centers or who are physically and psychologically dependent upon Amphetamines, Barbiturates, Tranquilizers or who are cross addicted to pills and alcohol. With more than 260,000 prescription and over-the-counter drugs on the market in the United States and the annual purchase of an estimated 275 million psychoactive drug prescriptions, it is no wonder that this nation is fast becoming a drug-oriented society, where drugs are a way of life for relaxation and recreation or are used to sedate anxieties, tranquilize tender nerves and kill real or imaginary pain for millions of individuals who mistakenly believe that they can escape into mind-altering substances to resolve their problems.

National statistics indicate that women are more susceptible than men to drug abuse and more vulnerable to the promotional sales pitch of the drug industry and to the eager physicians who write prescriptions. The National Institute on Drug Abuse (NIDA) estimates that in the United States, 31 million women have used tranquilizers, compared to 18 million men; 2 million women have become dependent upon prescription drugs and 5 million women, including many who are dependent upon pills, are alcoholics. Sleeping pills are prescribed to twice as many women as men.

The most widely prescribed drug on the market to date and one that has become a symbol of our drug dependent society is Valium (Diazepam), a tranquilizer that is a household word for treating anxiety and a drug that, when abused singularly or in combination with other mind-altering substances, has sent more individuals into hospital emergency rooms than any other drug on the market. NIDA has estimated that in 1978, more than 45 million retail Valium prescriptions were filled (or the dispensing of more than 2.5 billion Valium tablets) to consumers to treat anxiety, convulsive disorders, skeletal muscle spasms and alcohol withdrawal. And these statistics do not include all of the Valium tablets that were illicitly obtained. In this regard, the New York State Division of Substance Abuse Services recently estimated that 552,000 men, 272,000 women, and 220,000 school children in the State of New York have taken Valium without any prescription.

NIDA estimates that nearly 31 million prescriptions were written in 1978 for the painkiller Darvon, 13.7 million prescriptions for the anti-anxiety sedative Dalmane, and 11.1 million prescriptions for Librium, the psychoactive cousin to Valium. In 1978, Valium overdoses accounted for an estimated 50,200 emergency room visits and an estimated 1,000 deaths . . . human tragedy and the loss of life that is statistically exceeded only by the overdose of alcohol, combined with other psychoactive drugs, accounting for an estimated 53,200 emergency room visits and 2,230 deaths. Valium/alcohol cross addition is not uncommon among many of our citizens.

Narcotics trafficking and drug abuse affects our young and the elderly, the poor and the affluent . . . men, women, minorities, members of our armed forces, individuals from every sector of society. Narcotics trafficking and drug abuse is too important a problem to be placed on the societal backburner. I find it distressing that so many public officials, community leaders, business representatives, farm and labor leaders, parents, teachers, students, school administrators, and the general public are naive about or unknowledgeable of the magnitude of drug trafficking and the debilitating effects of alcohol and drug abuse. Too often, they relegate this problem to the backburner on their agendas.

Through its hearings and investigations, the Narcotics Select Committee has sought to raise the consciousness of the public regarding the dangers of drug abuse. As the result of hearings on Phencyclidine, legislation was introduced providing criminal penalties for the unauthorized manufacturing of this dangerous hallucinogen. This legislative initiative is now Public Law 95-633, the Psychotropic Substances Act of 1978. Title II of that statute provides criminal penalties for unlawfully manufacturing, distributing, dispensing, or possessing PCP, including a maximum ten-year imprisonment and $25,000 fine, together with stiff reporting requirements and penalties for the unlawful use of piperidine, a key ingredient for the manufacture of PCP.

Our Select Committee's hearings in New York City and Miami, Florida, resulted in the Biaggi-Gilman measure (H.R. 2538) facilitating increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, including the interdiction of drugs on the high seas. H.R. 2538 passed the House on July 23, 1979. Yesterday (Sept. 15, 1980), the President signed this measure into law, which is now known as Public Law 96-350.

I have also introduced H.R. 3674, cosponsored by 44 of my colleagues, providing mandatory minimum prison sentences for persons illegally manufacturing, distributing or dispensing controlled substances.

Our hearings in Chicago in 1977 surfaced the money laundering activities by drug traffickers operating between Mexico and Chicago that led to H.R. 5961, which would close certain loopholes in our banking laws.

Our Narcotics Select Committee has gone into the jungles of Burma, into the border-land areas of Pakistan and Thailand, over Mexico's treacherous mountain ranges, to the European Parliament, to the United States-Mexico Interparliamentary Conferences, to the leaders of Mainland China, the Soviet Union, and to the Vatican in waging our "war" on narcotics trafficking and drug abuse.

Ladies and gentlemen, no amount of Federal, State or local legislation will stop drug abuse if our citizens are determined to misuse and abuse drugs. Waging "war" on narcotics trafficking and drug abuse is a never-ending battle, requiring a commitment of 365 days a year of more stringent law enforcement, more effective education, and better treatment and rehabilitation facilities. Until that message comes across loud and clear to public officials and community leaders, to parents, teachers, school administrators and our youth and until the public realize the debilitating effects of drug abuse, then lives will continue to be lost to deadly drugs and our Nation will sink into a bottomless pit of drug dependency and societal decay.

A coalition of public officials, community leaders, parents, teachers, school administrators, youngsters, leaders from the business, farm and labor communities, health professions, law enforcement officials, individuals from all sectors of society is urgently needed to raise the consciousness of the public regarding the dangers of drug abuse and the insidious operations of the drug traffickers whose multibillion dollar untaxed operations cause so much misery for so many of our citizens.

We must raise the consciousness of the public regarding the misuse and abuse of licit drugs and the deadly dangers of drug abuse.

We urgently need to establish drug education programs in our schools to educate not only the youth of our Nation, but also parents, teachers, and school administrators regarding the debilitating effects of drug abuse.

We must elevate narcotics trafficking and drug abuse to a top priority on our agendas and provide real dollars to underwrite programs that will effectively combat this scourge of all mankind.

I commend all of you for your efforts to help raise the consciousness of the public. Let us commit ourselves to an all out offensive against drug abuse . . . there's a war that must be won!●

ANNETTE WOHRLE WELCOMED "HOME"

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. MARKEY. Mr. Speaker, today, this House, in accepting my bill to enable Annette Wohrle of Stoneham, Mass., to remain in the United States, has acted with compassion and wisdom.

Annette Wohrle, whose early years involved much hardship, has found a haven with her adopted parents in this country. To deny Annette the right to remain with them because of the expiration of her student visa would have been an unnecessarily harsh application of the immigration law.

This country has historically provided a home to those whose hopes for a better life have drawn them to our shores. For the past 4 years, the Wohrles have given their daughter the security of family life, a life she had never known before.

I applaud the action taken today by the House in making it possible for a family to stay together, for a young woman to find a permanent home, and for opening her up to a bright future in America.●

EL GRITO DE DOLORES

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 16, 1980

● Mr. ANDERSON of California. Mr. Speaker, today is the 170th anniversary of El Grito de Dolores, the inspiring call to freedom for Mexicans. On that day in 1810, Father Miguel Hidalgo y Costillo, a parish priest in Dolores, spurned his usual sermon in favor of asking his followers to take up arms against their Spanish oppressors. Although it was 11 years before independence was finally won, September 16, 1810, is commemorated as Mexican Independence Day.

Father Hidalgo's parishioners, consisting of Indians and mestizos, were fully prepared to answer the call, and a band of armed men began to attack Spanish outposts. Over the next few months, this group was augmented by others, tens of thousands joining the cause for independence. Inroads against Royalist troops were continually made, until Hidalgo's forces were ready to battle Spanish troops on the outskirts of Mexico City.

Unfortunately, these freedom forces were repelled and defeated, and Father Hidalgo was captured and later executed. Thus, the leadership of the rebel forces was passed on to one of Hidalgo's devotees, Father José María Morelos.

Father Morelos preferred the use of guerrilla tactics, and by these means was able to win control of substantial sections of southern Mexico. But, Mr. Speaker, Father Morelos was also captured, and after being defrocked as a priest, was shot in December 1815. Nonetheless, small bands of fighters kept the dream of independence alive.

In one of the quirks of history, Mexican independence came about when a rebellion in Spain forced Ferdinand VII to reinstate a liberal constitution. Alarmed that their religious, social, and economic privileges were threatened by this liberalism in the motherland, Mexican conservatives chose a Royalist officer, Agustín Itúrbide, to lead their cause. Itúrbide fought against Vicente Guerrero, the rebels' leader, until negotiations brought them together. Then, with his 2,500 troops and the support of the Mexican elite, Itúrbide defected to the rebels and their cause of independence. Other Royalist officers soon followed his example. Combined with the rebel forces as the Army of the Three Guarantees—independence, union, and the preservation of Roman Catholicism—most of Mexico was now under their control. When Juan O'Donoju, the Spanish viceroy of Mexico, arrived in Cordoba, he realized the futility of attempting to repress these forces any longer, and therefore he signed the Treaty of Cordoba on August 24, 1821. Thus, Spain finally acknowledged Mexico's independence, after 11 bloody and arduous years.

Mr. Speaker, the freedoms that those brave Mexicans were fighting for are universal in essence. Foreign domination is, unfortunately, being practiced in many parts of the world today. It is necessary and fitting that we honor those Mexicans and their descendants for contributing to the unending quest to maintain human dignity as well as preserving a unique cultural heritage. The battles were long and hard, but unity of purpose ultimately won out. Today I salute those Mexican Americans in my own 32d District of California, as well as Mexican Americans throughout the country on this, the day of El Grito de Dolores.●